

MATRIMONIAL PROPERTY RIGHTS OF WOMEN IN INDIA

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DOI: 10.5958/2249-7315.2023.00005.9

ABSTRACT

In the modern era, the institution of marriage and matrimonial property is one of the key issues. The issue which are addressed in the present research work is the disparate rules governing matrimonial property, including succession rights and the law of maintenance due to various personal laws existing in Indian society. The concept of partnership must be connected to the right to share in matrimonial property upon divorce. Regardless of who holds the title to the matrimonial property or assets, it should be assumed that each spouse contributed equally and independently to the marriage and to the acquisition of the matrimonial property, making them each eligible for a share of the assets and property acquired during marriage. In order to define matrimonial property which can be obtained at or around the time of a spouse's marriage, the legislators amended and codified Hindu marriage law in the Hindu Marriage Act of 1955. The aim of the present study is focus on matrimonial rights of married women from different religion in India after divorce or death of her husband.

KEYWORDS: *Matrimonial Dispute, Matrimonial Property, Hindu Marriage Act.*

INTRODUCTION

In light of this, Section 27 of the Act states that the Court may include in the decree which deems just and appropriate with regard to any property delivered at or around the time of marriage, which may belong jointly to the husband and wife. According to the limited scope of Section 27, the source of property is very specifically defined by the lawmakers, making it difficult for the court to decide on it in the event that a marriage dispute is brought before it. Only the property that was presented at or around the time of marriage is covered by Section 27, making it joint property of the husband and wife. It has been determined that no order under Section 27 of the Act can be imposed with relation to Stridhan because it is the exclusive and absolute property of the wife¹. According to the decision in *Sunter Chand v. Simla Rani*², Section 27 of the Act includes two key requirements: (i) any provision must be made in the decree itself in any proceedings under the Act; and (ii) any provision can only be made with respect to joint property owned by the husband and wife.

The Allahabad High Court ruled in *U.P. Sunni Central Board of Waqf v. Khursheed-Haider*³ that Section 27 did not preclude the court from passing an appropriate judgement regarding property that wholly belonged to either the husband or the wife. The legal actions that result from the Hindu Marriage Act are inherently subject to the court's jurisdiction. In such situations, dealing with the property that belongs exclusively to the husband or wife would often not provide any problems. Where there are properties that belong to both of them jointly, then the problems could occur. In such a case, the court must apply the principles of equity, justice, and good conscience while taking into account all relevant factors. According to Section 27 of the aforementioned Act, the court was required to be given specific powers in order to ensure that such equitable adjustments would be made. Hence, Section 27 never disallows the court's inherent authority to make an appropriate ruling about property that belongs exclusively to either the husband or the wife. The property given as gifts by friends, family, and relatives to the bride or the groom at the time of the wedding as well as the gifts given by parents and relatives after the wedding fall under the definition of matrimonial property, even though neither spouse's labour nor skill was required in its acquisition. As a result, the property belongs to both spouses as part of the married property and may be divided equally between them upon dissolution of the marriage. The purpose of the donor is given priority with respect to such properties. If the donor meant to give the asset to one of the two spouses as a gift, it is regarded as that spouse's independent property and is not divided between the two.

So, it is still up for debate what exactly constitutes matrimonial property. In India, there is no legal concept of matrimonial property. There is no simple solution in this case, but it is anticipated that the current legal framework will handle the difficulties associated with living in a shared family home. The courts are given the authority to alter assets that are not available in India under current English law. The Indian legal system takes a long time to settle joint family property disputes and does not recognize marriage as an equal-rights economic relationship. So, Indian law needs to specify who provides the matrimonial residence upon marriage and, within its purview and ambit, the property needs to be recognized as matrimonial property entitled to equal distribution upon the dissolution of marriage, whether through death or divorce.

Gender equality provisions and changes to Indian family law are covered by various international human rights treaties. The family is deemed to be the natural and fundamental unit of society deserving of protection from society and the state in accordance with Article 23 of the 1966 International Covenant on Civil and Political Rights, which also states that spouses must have equal rights and responsibilities prior to marriage, during the marriage, and after its dissolution. In addition, Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires State Parties to take all necessary measures to end discrimination against women in all matters relating to marriage and family relations, particularly to ensure, on the basis of equality, that men and women have the following rights and obligations: (i) the same rights and obligations during marriage and at its dissolution; (ii) the same rights and obligations during and at its dissolution;

Rights of Hindu Women to Hindu Property law has historically recognized women's property rights as Stridhan, or a woman's property properties over which she has complete discretion. As a result, these types of property are essentially distinct from other types of property that belong to a woman as her estate. The two biggest differences between a woman's estate and a stridhan are. Firstly, a woman's inheritance, in the event of her passing, passes to the last male owner's heir rather than to her own, but in stridhan, the property passes to her own heirs in accordance with Hindu law. Secondly, a female estate owner has a constrained ability to dispose of her assets

because doing so would be against the law or would be detrimental to the estate. In contrast, as it is Stridhan's sole property, she is free to dispose of it as she pleases. Yet, a Hindu female's possessions were divided into two categories: non-stridhan and stridhan. Property acquired at the time of partition or that was inherited from a male or female relative, including the husband, fell under the category of non-stridhan property. In *Gandhi Maganlal v. Bai Jadab*⁴, the Bombay High Court held that stridhan includes property acquired through a woman's own efforts and liability or through adverse possession, bequests from strangers or relatives, money received as bride price, gifts and presents given to her by her parents, husband, or close relative of parents or husband, either at the time of marriage or on other occasions or at the time of the performance of ceremonies. The Hindu Women's Right to Property Act, 1937 was passed with the intention that a widow should not be forced to rely on others for support following her husband's passing. She only possessed maintenance rights to the property under classical law, and she was not allowed to inherit any of the joint family property⁵. The Hindu Succession Act, 1956 establishes two distinct intestate succession plans based on gender that are distinct from one another. The Act changed the widow's previous limited ownership into a full and absolute ownership. In addition to awarding a Hindu widow absolute and whole ownership, Section 14 of the Act also ended the debate about the precise share that the widow received upon her husband's passing as an undivided member of the Mitakshara Coparcenary. The Mitakshara school of thought had an impact on how the Act was drafted, and concepts like stridhan and female inheritance in dual capacities were added. She is only treated as a temporary occupant under this concept of reversion of the once inherited property back to her male survivors, which was introduced by the legislature. By granting them the status of coparcener and granting them the status as similar male Hindus who are subject to Mitakshara law, the Hindu Succession (Amendment) Act, 2005 has increased the rights of female Hindus. Currently, female Hindus have the same rights and obligations regarding coparcenary property as male Hindus, and they are also permitted to make a will to dispose of their portion or interest in the coparcenary property.

The Rights of Muslim Women to Property

It is true that the Quran addressed the concerns of Muslim women fourteen hundred years ago by establishing various reforms to elevate women's status, even though these reforms do not appear to be followed in contemporary Muslim society. The basic five principles of inheritance are based on Quranic concepts. They are as follows:

In cases where they inherit together, a son receives a double share compared to a daughter.

- (i) When there are children, the woman receives an eighth of the share, but when there are not, she receives a quarter. If the husband has more than one wife, the eighth share should be divided evenly between them. When there are children, the husband receives a fourth of his deceased wife's property; however, when there are not, he receives a half.
- (ii) If a parent has more than one daughter, only two-thirds of the property, which is shared equally among them, passes to the additional daughters. If a parent only has one daughter, she will receive half of the parent's assets in that situation.
- (iii) If there are grandchildren, the mother inherits one-sixth of their deceased child's property; if there are none, she inherits one-third.
- (iv) No matter how many or how few the other heirs are, the wife, husband, children, and parents must always receive shares. Although a daughter is a Quranic sharer both Sunni and Shia Muslims may exclude her from marriage due to customs and laws. These

traditions, which treat a daughter as nonexistent at the time the intestate succession is opened, are legal despite being at odds with the precepts of the Quran.

Both the trial court and the Andhra Pradesh High Court upheld the Hanafi principle of Muslim law of inheritance in the case of *Sheikh Madar v. Kursheeda Begum*⁶. This principle states that if any property remains after being divided among the sharers, who make up the first category of property inheritors, the residuary can acquire a share on partition. If any portion remains after giving the daughter her half, the residuary would unquestionably be entitled to receive it. Since the daughter and the residuary demanded a share on division at the same time, the widow, the surviving spouse of the deceased, had no legal basis to reject the portion of the residuary. The Court further decided that if the portion to be divided is exactly one, the residue would not be entitled to a share. If the share to be divided is less than a unity, the sharers would inherit the property first, and the residue would inherit the remaining property. The legal maxim that earning a pension after retirement is a matter of right and not of pleasure is well-established in India. In *Shashikala Devi v. Central Bank of India*¹, the Supreme Court correctly noted that pension is a right and that its payment is not subject to the employer's discretion or ability to refuse it for any reason. It is still up for debate whether getting maintenance from a Muslim lady counts as property or not.

The Dissolution of Muslim Marriages Act of 1939 addresses the conditions under which Muslim women may obtain a divorce as well as the rights of Muslim women who have been divorced by their husbands and to make provisions for connected topics. Marriage, succession, inheritance, and charitable organizations among Muslims are all covered under the Muslim Personal Law (Shariat) Application Act of 1937. According to some, the ultimate results of the application of Islamic and Hindu inheritance laws in India had a significant impact throughout the British era. Hindu households gained an advantage over Muslim families in building money, which had a significant impact on how well each group performed economically in the country. Wealthy Muslims had to turn to the waqf and other methods of getting over Islamic inheritance regulations in order to build wealth. The recent discussions surrounding Muslim personal law, however, are particularly in favour of abolishing the current legal system for several reasons:

- 1) A Muslim man may wed up to four women simultaneously.
- 2) He can divorce her without following any formal legal processes.
- 3) Unlike males of other religions who are probably compelled to do so permanently, he is not required to provide for his ex-wife financially after three months after the divorce. Due of this, the argument in favour of a unified civil code, as outlined in Article 44 of the Indian Constitution, has recently gained momentum.

Rights to Property for Parsi Women

The succession regulations that were initially outlined in the Parsi Interstate Succession Act, 1925, and later integrated in Chapter-III, Part-V of the Indian Succession Act, 1925, control the property rights of Parsi women. Women have the right to inherit property through interstate succession under Parsi law. Yet, the fundamental tenet of receiving property under Parsi law is that the recipient must be a member of the Zoroastrian community. Children born to Parsi dads and non-Parsi mothers can practice Zoroastrianism and are subject to Parsi interstate succession laws. Yet, as the children of Parsi women who have married non-Parsis are not regarded as Parsis, they are not entitled to anything under Parsi law. If a Parsi man wishes to give away his property, there are no legal prohibitions against his doing so, and his wife also has no legal

standing to oppose. In accordance with Parsi law, a woman has the right to receive property through interstate succession, and a daughter inherits half of a father's property as compared to a son. When a Parsi lady passes away intestate, her assets might be split evenly between her husband and kids. As a result, a daughter has a right to an equal portion of her mother's property. A Parsi widow receives twice as much of her deceased husband's property as a daughter and an equivalent property claim to that of a son. The widow can inherit half of the inheritance if a Parsi spouse passes away intestate, leaving only a widow and no lineal descendants. In the instance of a widow of a lineal descendant, the widow and the widow of the lineal descendant must each get a third of the estate, with the remaining assets being distributed among the deceased person's living relatives. However, if she marries again while her husband is still alive, she forfeits her right to any share of his property. This legal protection is insufficient, though. Women make up half of the population in India². Women have experienced and still experience discrimination. The noble qualities of a woman are self-sacrifice and self-denial, yet she nonetheless endures all forms of prejudice, inequality, and indignity. In *Madhu Kishwar v. State of Bihar*³, the Supreme Court made the following observation: The fundamental rights protected in Part III, as well as the guiding ideals enshrined in Part IV and the Preamble of the Constitution, which serve as the conscience of the Constitution, must be consistent with and carried out by legislative and administrative activities. The need and desire to abolish discrimination and barriers based on gender are increased by United Nations covenants. In order to construct an equal social structure, appropriate legislative action should be developed to form economic empowerment of women in socio-economic restructure. Law serves as both a tool for social change and a champion of it. For the purpose of preventing gender-based discrimination and bringing the Protection of Human Rights Act to life, as well as the empowerment of economic, social, and cultural rights, this Court is obligated by Article 2(e) of CEDAW to give the Constitution, international treaties, and the Protection of Human Rights Act life.

The Rights of Christian Women to Property

Under the Indian Succession Act of 1925, Christian women's property rights are outlined. The rights of a woman would differ from one region to the next and would also depend on the time period they were born in or the generation they were a part of, if they were a part of a generation that was a progressive society. This makes it difficult to draw analogies when considering the rights of a woman in a Christian society because the Christian society itself is not a homogeneous society because it is multiple and not monolithic. The Christian family's girls also had some privileges. The females, like the daughter of the Hindu household, were on an equal footing with their brothers in terms of inheritance rights. She received an inheritance from both her mother's and father's property, and after her inheritance, she was given the right to use the property anyway she pleased.

The Indian Succession Act, 1925 was extended to the State of Travancore-Cochin by virtue of Section 3 of the Part B States (Laws) Act, 1951, which led to the Supreme Court ruling in *Ludina Pavanakumari v. Thankamma*⁴ John that the Travancore Christian Succession Act, 1092, stood repealed. The court then went on to state that the respondents are entitled to a share of their father's wealth.

Indian Women's Property Rights

Under Section 24 for maintenance pendente lite during divorce proceedings, Section 25 for permanent alimony, and Section 27 for property disposition, the Hindu Marriage Act, 1955 makes unique provisions for women⁵. Therefore, any property that is proven to have been

presented at or around the time of marriage and that may belong jointly to both the husband and the wife may be subject to appropriate provisions in the decision that the marital Court may pass in the proceedings under the Act.⁶ The legal actions that naturally result from the Hindu Marriage Act have this power built into them. In these situations, dealing with the property that belongs exclusively to the husband or wife should normally not provide any problems. In situations when there are properties that belong to both parties jointly, problems are likely to occur. In certain situations, the court must make an equitable adjustment between the parties while taking into account all relevant factors. To guarantee that this equitable adjustment was made, the court was given explicit authority under Section 27 of the aforementioned Act. It is a fact that the provisions of Section 27 of the Hindu Marriage Act give the court the authority to make decisions regarding the property submitted at or near the time of marriage that may be jointly owned by the husband and wife when making a decision in a matrimonial case⁷. As a result, the Supreme Court stated in *Balkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam*⁸ that the property covered by Section 27 does not simply include things that are provided to the wife when they get married. If the property is related to the marriage, it also includes gifts made to the parties before or after the union. The term "employee" refers to an individual or an organization. All such property is safeguarded by the Act's Section 27. Section 14 of the Hindu Succession Act of 1956 states that Hindu women today occupy positions that have undergone major and fundamental modifications. This provision was intended to guarantee that women enjoyed the same status and opportunities as men in terms of property ownership and pleasure. The definition of "property" in the Explanation to Section 14(1) makes it clear that it includes both movable and immovable property acquired by a female Hindu through inheritance or any other devise, by a partition, as a gift from anyone, whether a relative or not, before, at, or after her marriage, or by her own skill or exertion, or in lieu of maintenance or arrears of maintenance, or by purchase or by prescription, or in any other way, as well The Supreme Court ruled in *Kamala Devi v. Bachu Lal Gupta*⁹ that the phrase, whether acquired before or after the passage of this Act, has retrospective effect. Property comprises immovable property that a female Hindu acquires through a partition or that she receives as a gift from anyone, family or not, during or before her marriage, according to the section's explanation. The Supreme Court ruled in *Ajit Kaur v. Darshan Singh*¹⁰ that the use of express terms in the explanation of Section 14(1), such as "property acquired by a female Hindu at a partition," "in lieu of maintenance," "arrears of maintenance," etc., make it clear that: "The Hindu female's right to maintenance is a tangible right against, not a hollow formality or an imaginary claim being conceded as a matter of grace and generosity," The husband has a moral obligation to support his wife, and although while it may not be a property right, the wife has a legal right to maintenance from any property that the husband or family holds. She was given proprietary status under Section 14(1) of the Hindu Succession Act. This new proprietary requested the right of Hindu women, claiming that denying them property rights was a sin, and further wanted an explanation for why it was wrong to deny them complete ownership of their land. In *Gulwant Kaur v. Mohinder Singh*¹¹, the Supreme Court interpreted Section 14(1) of the Hindu Succession Act of 1955 and noted that the legislature had eliminated the idea of limited ownership in regard to a Hindu female and had instead enacted a new provision that would treat any property held by women as though she were the full owner. This amendment under Section 14(1) of the Act was made in consideration of Article 14 of the Indian Constitution, which has been in effect since 1950 and prohibits discrimination on the basis of sex as well as granting property rights to one person while denying them to another. The foundation of the Indian Constitution was the principle of parity, or treating men and women equally. The women received a new standing and a new job that put them on

par with males. The same podium was made available to the women, and they were given equal recognition. In the Independent India, a new democratic norm was produced by this operative spirit. Hindu women, like women everywhere else, were fighting against injustice, which had its roots in European nations and, logically, had an impact on India as well. Women's participation in all those spheres of life, especially those where and where males once held dominant positions in society, was the world's social and political upheaval. The political scene in India was significantly impacted by this. So, in section 14 of the Hindu Succession Act, the Indian government granted full ownership rights to any property possessed by a Hindu woman before 1956 or after 1956 out of respect for their feelings. Wife maintenance is covered by the Hindu Adoptions and Maintenance Act of 1956. In *Pillai Lakshmi Ammal v. Pillai Thillanayakom Pillai*¹², It cannot be disputed that a female Hindu who is given possession of property in order to or in recognition of a right to maintenance has acquired a limited right or interest in the property; once that position is accepted, it follows that the right enlarges to full ownership. This is how the Supreme Court described property under Section 14(1) of the Hindu Succession Act.

Protection of Women's Property Rights by legislation

The right to own property is recognized for everyone under the Indian Constitution. Both men and women value this right equally. The Indian Succession Act of 1925, the Hindu Women's Right to Property Act of 1937, and the Hindu Succession Act of 1956 are a few examples of laws that have expanded the right to property in accordance with the Constitution. These laws established the property rights of women of all religions, with the exception of Muslims, whose rights require careful consideration.

Indian Succession Act and Christian Women's Property Rights

The Indian Succession Act is not applicable to the intestate or testamentary transfer of any Hindu, Muslim, Buddhist, Sikh, or Jain person's property. This Act safeguards the succession rights to property of members of the Indian Christian society. The Supreme Court was asked to decide in *Mary Roy v. State of Kerala*¹³ whether the Indian Succession Act, 1925 applied to the intestate succession of members of the Indian Christian community. The Indian Succession Act, 1925's chapter II of part V's provisions were to govern intestate succession with regard to the property of Indian Christians in the areas that made up the old State of Travancore, the Supreme Court ruled. In general, Sections 33 and 33-A of the Indian Succession Act of 1925 specify the property rights of Christian women. In circumstances when the intestate is survived by a widow and lineal descendants, a widow and close relatives alone, or a widow and no close relatives, the rules of succession are outlined in Section 33 of the Act. According to the Act's requirements, if the intestate left a widow as well as any lineal offspring, his widow would inherit one-third of his property while his lineal descendants would receive the other two-thirds. Additionally, except as allowed by section 33A¹⁴, if the intestate has no lineal descendants but has only left kindred, his widow will inherit half of his property, and the other half will go to those who are related to him, in the order and per the regulations outlined in the provisions that follow in the Act. In addition, it has been stated that if the intestate leaves no survivors who are related to him, his widow will receive the entirety of his estate. The Act's Section 33-A offers measures in five situations where an intestate has left a widow and no lineal descendants:

1. If an intestate leaves behind a widow who is the only member of his line and whose estate is valued at less than 5,000 rupees, his widow will inherit the entirety of his estate.

2. If the value of the property exceeds 5,000 rupees, the widow is only entitled to 5,000 rupees. However, she has a charge on the entire property for the purpose of realizing the 5,000 rupees plus interest from the date of the intestate's death at a rate of 4% per year until she receives the money¹⁵.

3. After payment of the aforementioned amount of 5,000 rupees with interest, the widow's interest and share in the remaining portion of the intestate's estate will be distributed in accordance with section 33's rules as the entirety of the intestate's property. The provision for the widow made by this section is in addition to and does not affect her interest and share in the remaining portion of the intestate's estate.

4. After paying off all debts, the intestate's funeral and administration costs, and all other legal duties and charges against it, the property's value will be determined.

5. The property of: (i) any Indian Christian; (ii) any children or grandchildren of any Indian Christian man; (iii) any Jaina, Hindu, Buddhist, or Sikh person whose succession and inheritance are governed by the provisions of this Act; as stated in Section 24 of the Special Marriage Act of 1872¹⁶.

In *Solomon v. Muthiah*, the Madras High¹⁷ Court ruled that Section 33 and Section 33-A relate to one another. Section 33 states that, except as provided by Section 33-A, if an intestate leaves no lineal descendants but is survived by a widow and people who are related to him, one-half of his property shall pass to his widow and the other half shall be inherited by those who are related to him in the order and in accordance with the rules provided for under the said Section. The Karnataka High Court ruled in *Elizabeth v. Subhoda*¹⁸ Prakash that the Act's Section 33(b) applies in situations when the intestate has no lineal descendants. In order to qualify under Section 33(a) of the Act, the plaintiff must be a direct descendant of the late Devadatta Kumar. Even to bring the plaintiff's lawsuit under Section 33(b) of the Act, his other siblings and sisters receive a share in addition to him. In that case, they must be parties to the lawsuit. The Madras High Court ruled in *Arulayi v. Antonimuthu Nadan*¹⁹ that the Section 33-A of the Act would not apply to the property of an Indian Christian unless the deceased died intestate with regard to his property and in accordance with the individuals listed in Clauses (ii) and (iii) of the Act (iii). If this is the correct interpretation, then only those situations of Indian Christians passing away and leaving behind a will regarding some or all of their assets will be prohibited by the provisions of Clause (5), which say that the section would not apply in specific circumstances. However, the requirements in Article (5) will not be in effect if the Indian Christian died intestate with regard to all of his property, in which case the right of elimination stated in Clause (5) would not be applicable.

Indian Succession Act and Parsi Women's Property Rights

While Hindu reformers finally succeeded in establishing the Hindu Women's Right to Property Act in 1937, granting some of their women limited property rights, Parsi women had already gained the ability to own and control both their marriage gifts and any inherited money in 1865. However, the Indian Succession Act of 1925 established particular guidelines for Parsi intestates in general and for women in Sections 52 to 55.²⁰ The guidelines regarding intestate succession among Parsis are outlined in Section 50. Section 51 of the 1925 Indian Succession Act governs Parsi Intestate Succession. The Bombay High Court ruled in *Perviz Sarosh Batliwalla v. Viloo Plumber*²¹ that Clause 1(a) of Section 51 of the Act clearly states that if a Parsi passes away intestate and leaves behind children as well as a widow or widower, the property is to be divided

equally between the children as well as the widow or widower. Also, according to sub-section 51(1)(b), if a Parsi passes away intestate and is the only survivor, meaning there is no widow or widower, the property will be split equally among the children. According to Section 51(2), the property of a Parsi who passes away intestate and leaves behind one or both parents, along with children and a widow or widower, shall be distributed so that the parent(s) or each parent shall inherit an amount equal to half of the portion of each child. According to Section 53 of the 1925 Act, if a Parsi dies intestate and leaves any lineal descendants, but any children of that intestate have passed away during the intestate's lifetime, the survivors of the deceased child will receive the share of the intestate's property that the deceased child would have inherited had the child been alive at the time of the intestate's death. In addition, section 54²² of the Act states that if a Parsi dies intestate and without leaving a widow, widower, or widow or widower of a lineal descendant, the property of the deceased intestate shall be distributed among those survivors in accordance with the following rules: I in the event that the deceased intestate is survived by a widow, widower, but no widow, widower, of a lineal descendant, such widow, widower, Thus, the Bombay High Court ruled in *Bharat Dalpat Patel v. Russi Jal Dorabjee*²³ that Part I of Schedule II of the Act mentions the brothers and sisters of such a person dying intestate. By interpreting these rules collectively, it thus appears, at a minimum, that Keki is entitled to a 50% portion in Ivy's estate, with the remaining 50% going to her siblings. The Bombay High Court ruled in *Anita Chandrakant Kodkany v. Bakhtawar Dastur*²⁴ that Section 55 of the Act provides that when the next of kin fall under the same degree of propinquity, both male and female relatives will receive an equal share. So, under Section 55, the next-of-kin of a Parsi intestate who does not leave behind any lineal descendants, widows, or widowers of any lineal descendants would succeed to the entirety of the intestate's property without regard to gender as specified in part II of Schedule II to the Act. Where there is no relative eligible to succeed the intestate, his property would be distributed equally among his kindred under Section 56²⁵.

Rights of Hindu Women to Property

Before the Hindu women's right to property in 1937, women's status in society had a different characteristic. The Privy Council had concerns about women's estates as they could be seen. The Privy Council ruled in *Bhagwan Deen v. Mayna Bai*²⁶ that the property that a female inherited from a male, regardless of the relationship—whether mother or wife—should not be inherited by the woman's people, i.e., not her heirs, but rather to the deceased next heirs of the male, in this case, the husband. She just had a few limited rights, which is why this is the case. As long as she was alive, she had control over it as a renter with no authority or collaborator. It was decided by their lordship of the Privy Council in the case of *Shiv Shanker v. Devi Sahai*²⁷ that the deceased woman's inherited property would not be passed on to the daughter from her mother or to the daughter's heirs after her death. Instead, it would be given to the mother's heirs since the lady had few rights.

The legal structure in India that supports women's rights through succession and inheritance demonstrates how, in two ways, the law actually reflects ideological viewpoints.

1. The law re-establishes fundamental components of Hindu women's roles and identities, which do not include their claim to property, according to an analysis of the statute and judicial rulings on various aspects of Hindu law.
2. Second, there appears to be a coexistence of opposing legal ideas insofar as Hindu women's ownership of property is a result of the change imposed by the law, which ignores their role and position based on their exclusion from enjoying property. In this, the legislation simultaneously

reaffirms the traditional duties of Hindu women, successfully overcoming the right to ownership. The laws require careful consideration.

The 1937 Hindu Women's Right to Property Act marked the beginning of changes made by Hindu women to the law of succession. Yet, its impact was not retroactive. It did not apply to any Hindus' property who passed away intestate before to the passage of this Act. Yet, it proposed to address impairments and improve women's rights. The fundamental flaw in this Act was that it granted unwarranted rights to the widow of a predeceased son, who received greater tangible rights than the widow of the deceased title-holder. Regarding the interest (Hindu Woman's Estate) given to the widow of the predeceased son, there was no such restriction. The fact that it harmed the daughters was another severe flaw. The upkeep of a maiden daughter till her marriage and her wedding costs must be covered out of her father's fortune, according to Hindu law. What would happen if a man passed away leaving a son, a predeceased son's widow, and her son was not specified in the Act of 1937. Because of this, the unmarried daughter was unable to compel the widow of the predeceased son to pay for her maintenance or wedding expenditures. In actuality, the unmarried daughter received no justification.

The Hindu Succession Act, 1956 was passed as a result of the codification of the legislation governing intestate succession among Hindus. Hindus were subject to Shastric and Customary regulations before the Ratification of the Act, which varied from area to region and occasionally on the basis of Caste within the same region. Women's rights in Indian culture have been observed despite restrictions and changes brought about by the revolutionary society in which they are less respected than other rights, let alone property rights. Nonetheless, the changes to the fundamental rights of women in Indian society during colonial and post-colonial periods were made quickly, despite being initially feeble and delayed. Section 6 of the Principal Act has been replaced with a number of new principles by the Hindu Succession (Amendment) Act, 2005. A daughter of a coparcener in a joint Hindu family subject to Mitakshara law shall, in accordance with new Section 6, (a) by birth become a coparcener in her own right in the same manner as the son; (b) comprise the same rights in the coparcenary property as equivalent to a son; and (c) be subject to the same legal obligations in respect of the coparcenary property as equal to a son, and any orientation to a Hindu Mitakshara. In *Ganduri Koteswaramma v. Chakiri Yanadi*,²⁸ the newly proposed Section 6 of the Act, according to the Supreme Court, grants a daughter of a coparcener the same rights and obligations as a son as a coparcener at birth. As stated in Section 6 of the Act, it is obvious, undeniable, and irrefutable that the daughter of the coparcener should have the same rights and obligations in the coparcenary property as to that of a son. With this change, we have attempted to eliminate the disparity that the Hindu Succession Act of 1956 spelled out so clearly. Along with this, Sections 4(2), 23 and 24 were also removed in the 2005 modification. The right to property and the right to gender equality in general are both goals of this amendment. A Hindu woman's property is her sole property according to Section 14 of the Act. The Patna High Court ruled in *Ram Ayodhya Missir v. Raghunath Missir*²⁹ that Section 14 of the Act was purposefully written with retrospective effect, with the result that any property acquired by a Hindu female, whether acquired before or after the Act's entry into force, shall be alleged by her as a full possessor and not as a limited owner.

In a similar vein, the Calcutta High Court noted in *Billabasini Datta v. Dulal Chandra Dutta*³⁰ that while Section 14 of the Hindu Succession Act of 1956 does not expressly mention ongoing legal disputes, it is true that it does not exclude them from its scope. But, according to the way the clause is written, it is retroactive and applies to any property that a Hindu woman owns, regardless of whether she acquired it before or after the start of this Act. The property that is the

subject of the active lawsuit falls within the apparent purview of the clause.³¹ With regard to ongoing legal disputes, there is no exclusion clause. Section 14 states that a Hindu woman's property is her own property (1) Any property obtained by a Hindu woman will be assumed by her as an absolute owner, not as a limited or restricted owner, whether it was bought before or after the start of this Act. In this sub-section, "property" is defined as both movable and immovable property acquired by a Hindu female through inheritance or legacy, at a partition, by gift from anyone, whether a relative or not, before, at, or after her marriage, or in lieu of or as arrears of maintenance, by her own skill or labour, by prescription or by purchase, or in any other previous mode at all, as well as any such property claimed by her as stridhan. However, sub-section (1) shall not apply to any property acquired through a bequest, gift, will, other instrument, order, decree, or award of a civil court when the provisions of the gift, will, other document, decision, or award impose a restricted estate in the property. The basic requirements for attracting the benefit of Section 14 are that the Hindu female must have first acquired property, notwithstanding the commencement of the Act, as opposed, for example, to a plain right of maintenance or dwelling as alleged in this case, and secondly that she must have been in control and possession of it at the commencement of the Act; the section is inapplicable if she cannot be said to be in control of the property at the time of the Act's commencement. If she has control and possession, the law makes it plain that she will now be regarded as the full owner and not just a limited owner. The significant shift in the limited meaning of women's property intended by Section 14 and the clear break from the previous law have, generally speaking, the effect of changing limited rights where they previously existed into absolute rights. The primary purpose of the modified law was to immediately affect the incidence of women's property, including both property acquired and held by women before the Act's commencement and property she had already acquired and got in the past and possessed. In that sense, the new law's application has been retroactively applied, and the provision can be said to have received that treatment. In *Natarajan v. M. Ravi*³², the Madras High Court ruled that Section 14(1) of the Act applied to property acquired by a Hindu female through inheritance, partition, gift from anyone, whether related or not, in lieu of maintenance, devise, or maintenance. The scope of Section 14(1) is fairly broad. All property a Hindu woman acquires must be held by her in the capacity of a full owner, even if she initially acquired it as a limited owner. An exception to the foregoing clause is provided by Section 14(2) of the Act, which also applies to property acquired through a will, a gift, or any other instrument when the terms of the will, gift, or other instrument specify a restricted estate in the property.

The Bombay High Court further noted in *Jagannath Waman Undre v. Yamunabai Sitaram Kadam*³³ that the explanation appended to Section 14 encompasses all modes of acquisition, including the acquisition of property by a female Hindu in lieu of maintenance or arrears of maintenance, by inheritance or devise, or at a partition, or by gift from any person, whether a relative or not. In this regard, the Supreme Court made the following observation in the case of *V. Tulasamma v. Sesha Reddy*³⁴: Every property acquired or possessed by a Hindu female, whether acquired before or after the 1956 Act came into effect, shall be assumed by her as a full owner and not as a limited owner, according to Section 14(1) of the Hindu Succession Act, 1956, and its Explanation. The term "property" includes both movable and immovable property acquired by a Hindu female. The language must be liberally interpreted in favour of Hindu women in order to advance the Act's objectives and support socioeconomic goals, particularly to turn her limited interest into an absolute interest in line with the changing needs of the times sought to be met by such a comprehensive legislation.

Sangeeta Balkrishna Kadam against Balkrishna Ramchandra Kadam³⁵ The parties in this case were engaged in marriage proceedings. The respondent's wife had filed a petition with the City Civil Court in Bombay seeking both a judicial separation decree and maintenance payments. In regards to her jewellery and other property, she also requested relief under Section 27 of the Act. The appellant, the spouse, had submitted a petition asking for a divorce judgement based on cruelty. While the respondent's petition for judicial separation was approved, the appellants' request for a divorce decree was denied. In addition, maintenance was declared due from the date of the judgement until the parties' children "attain the age of majority." The respondent was the wife. The respondent filed a first appeal, which was partially permitted by the High Court's learned single judge. She also instructed the appellant-husband to begin paying child support as of the date the petition was presented rather than only as of the date the judgement was issued. On the basis of the judicial separation decision obtained by the respondent, the appellant requested a divorce on the grounds that there had not been a return to cohabitation between the couples after it was granted. The appellant was then granted a divorce by the matrimonial Court. The Hindu Marriage Act, 1955 gives the Matrimonial Court the authority to include in the decree any provisions it deems just and appropriate with regard to any property presented "at or about the time of marriage" that may be jointly owned by the husband and wife. This is clear from a plain reading of the section. This clause provides the wife with an alternative remedy so that she can add the protected property to the divorce order and regain it without spending money to file a separate civil lawsuit and prevent additional litigation. We learn that in the current case, the wife asserted ownership of several jewellery items during her deposition.

M.C. Padma vs M.D. Krishna³⁶ in this husband's appeal, we are only considering whether the court's instructions to him to return the cash of Rs. 2,000/-, along with the silver items and the furniture as noted at items Nos. 2 and 4 in Schedule A of I. A. II, or its value of Rs. 2,000/-, are proper. The court also instructed him to pay Rs. 120/- per mensem towards the permanent alimony for his wife from the date of his filing the petition, i.e. This decision was reached based on I.A. II, which the wife submitted in response to the husband's petition for a divorce under section 13, clause 8 of the Hindu Marriage Act of 1955 (hereinafter referred to as the Act). According to Section 25 of the Act, the Court must decide how much maintenance should be provided to the wife while taking into account the husband's own income and other property, if any, as well as the wife's income and other property, if any, and the behaviour of the parties. the trial court's judgement, which requires the husband to give the wife only Rs. 600. With this change, the appeal is rejected.

Ashwani Kumar vs Smt. Seema³⁷ The main issue in contention relates to rules that have been passed about marriage registration; in some States, marriage registration is voluntary. If the marriage record is kept, disputes over the solemnization of unions between two people are generally avoided. Women suffer disproportionately when weddings are not registered, as the National Commission accurately pointed out. Legal recognition of the marriage establishes a rebuttable presumption that it took place and provides additional evidence that it did. The registration has great probative value in cases involving child custody, parental rights for children born into wedlock between the two people whose marriage is registered, and the parties' ages even though it cannot prove the validity of a marriage on its own and would not be the deciding factor regarding the validity of a marriage. Given this, it would be beneficial for society if marriages were legally required to be registered. The legislative objective is made apparent by the term "for the purpose of facilitating the verification of Hindu Marriages" found in Section 8 of the Hindu Act.

Suraj Kumar and Others v. Pratibha Rani³⁸ in this case, Mrs. Pratibha Rani, the complainant, filed a lawsuit at the Court of CJM of Ludhiana against her husband and her in-laws. She had been married in accordance with all Hindu rituals, and her husband's family had requested money from her parents throughout the entire wedding as payment for the union. This demand was granted, and a dowry of jewellery valued at Rs. 60,000 was provided. Even yet, the accuser continued to mistreat the plaintiff and eventually isolated her. In Prathibha Rani v. Suraj Kumar (AIR 1985 SC 628) the Supreme Court made the observation that even if a married woman's Stridhan property is left in the care of her husband or in-laws, they will be deemed trustees and must return it at her request. A person commits a criminal breach of trust under IPC sections 405 and 406, if they deprive a lady of her dowry property or stridhan as previously stated. Criminal breach of trust is a capital offence punishable by up to three years in jail, a fine, or both. It is non-bailable, cognizable, and compoundable (up to Rs. 250 only).

As a result, for many centuries, the topic of gender justice has been gaining support. Although the traditional view of gender injustice has received a good deal of quietus and is now regarded as a thing of the past, the disease still exists, occasionally ambushing with stingy horror and giving the meagre gifts of nature in man free rein, making the entire concept laughable and numbing the entire association built in recent decades. We should all be aware that women are not merely a product or object to be cared for and kept by the family for a specific purpose. Women also have the right to self-governance. They have the freedom to own a home, a piece of land, or any other type of property in their own name and do anything they choose with it. The current social structure is dominated by men, favours them, and is the foundation upon which institutions like marriage and families are constructed.

Madan Gopal Singh vs Surinder Kaur³⁹, in the present case Shrimati, On April 14, 1973, in Chandigarh, Madan Gopal Sin, the respondent, and Surinder Kaur, the appellant, were wed. She filed for judicial separation from her spouse on May 11, 1974, citing his cruelty towards her. She appeared in the first matrimonial court. The husband had previously filed a petition with the first matrimonial court on July 16, 1974, seeking restoration of the conjugal rights allegedly interrupted on August 30, 1979, by the wife's exclusion from his social circle. The wife filed a request on 9-1-1975 under Section 27 of the Hindu Marriage Act (hereinafter referred to as the Act) for the sale of the property listed in Annexures 'A' and 'B' attached thereto, during the pendency of the aforementioned two issues. Together with the aforementioned two problems, this application was kept on hold. In order to submit a petition under Section 13(1)(ib) of the Act, the husband, with the court's agreement, was able to have the petition under Section 9 of the Act withdrawn. In light of this, he filed for a divorce on April 18, 1977, claiming that his wife had been unfaithful to him for at least two years. A common decision and order of the first marital Court was issued on October 10, 1979, and it resolved the three matters—the husband's petition for divorce, the wife's petition for judicial separation, and the wife's petition for the distribution of property. The husband's petition was approved, while the wife's requests were both denied. Both in the petition filed under Section 10 of the Act and in the Section 13 petition, none of the spouses have opted to contest the judgement and decree of the first matrimonial first. Therefore both of them are happy to see the matrimonial link between the couples dissolve. They are at peace on one front, but at war over how to handle property disposal. The wife has appealed that decision of the first matrimonial Court since her petition for such a purpose was denied. Which property Smt. Surinder Kaur claimed in her application dated 9-1-1975 under Section 27 of the Hindu Marriage Act is entitled to a return? The lower court's proceedings were concluded after more than five years. The spirit of the Hindu Marriage Act as amended is not served by

such a drawn-out trial in a matrimonial case. Because of its unique nature, matrimonial jurisdiction requires specific consideration. The goal of the legislation would be defeated if such proceedings were treated as regular civil proceedings, and this would also have regrettable consequences. Hindu marriages in India are typically organized by parties other than the intended couples, therefore when one of these unions dissolves, the rest of society is affected. It is one of the reasons that the majority of marital court rulings that are covered by Section 41 of the Indian Evidence Act are in rem rulings that have an impact on everyone in the world. The decision cannot be made quickly if the matrimonial Court's focus is diverted by another process in which a decree is sought and a contested issue of property disposition. Only if it can be resolved quickly, avoiding a delay in the decree's passage, can the disposition of property as contemplated by Section 27 be included in the decree, subject to the fulfilment of other conditions. But, if the Court finds itself regularly up against opposition due to the nature of the pleadings, differences in opinion, and the anticipated volume of evidence, it would be well within its rights to decline issuing decisions governing the disposition of property as part of the judgement. The resolution of a property problem cannot be more important than the court's ongoing primary litigation, for which a decree must be issued. Due to the aforementioned discussion, this appeal is partially granted, and the husband-respondent is instructed to give the aforementioned items to the wife-appellant for use going forward in the condition in which they are currently in existence without engaging in any acts of destruction, substitution, or minimization on his part. Be treated as an addition to the divorce decree by following this instruction. In this appeal petition, there would be no charges.

Muslims in India were subject to deeply unfair and anti-women customary rules prior to the passage of the Shariat Act in 1937. Muslim personal law began to govern Muslims in India's personal concerns and property rights after the Shariat Act was passed in 1937. But it did not significantly alter how women's property rights were treated. In terms of inheritance, men and women have equal rights under Islamic law. If a Muslim guy passes away and leaves both male and female heirs, both will inherit the property at the same time. Yet, a man receives twice as much in inheritance as a woman who had an equal level of relationship to the deceased. A Muslim female inherits half as much as a male heir of like status would receive in property. It is a clear illustration of how differently treated women are under Islamic law. In general, Muslim women face the same barriers to owning property and land as women in other patriarchal, hierarchical countries, but numerous unique characteristics of tradition and Islamic law frequently come into play. In *KhuranSunnath Society v. Union of India*⁴⁰, the Kerala High Court made the following observation: According to the tradition currently observed by the majority of Muslims in India, a daughter has the right to inherit property along with other relatives, including close relatives like spouse and parents. But, if the deceased's lone male kid survives, he inherits the full estate and is only required to share it with the deceased's spouse and parents. The Muslim civil union known as *nikah* is performed for the purpose of procreation and is not a religious ceremony. This agreement is based on the bride and the groom's consent. So, if the partners are adults, only their voluntary consent and not anybody else's is necessary for a marriage to be legal. There is no marriage if the permission is not given voluntarily. Guardians may grant consent on behalf of minors or those who are not of sound mind. In certain situations, the minor has the option to ratify or reject the marriage after reaching the age of majority. It is referred to as the puberty option (*khayar-ul-bulugh*). As a result, a woman cannot be coerced into marriage. It is not regarded as a legal marriage, even if she is coerced into it. This legal clause seems to encourage women's recognition of their right to choose their spouse. Yet, she can only choose to enter puberty if she is capable of supporting herself or if someone else is present to do so. In

addition, Islam law does not favour women when it comes to the maintenance of women following the breakdown or dissolution of a marriage. According to Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, her former spouse must make a fair and reasonable provision for support throughout the iddat term. Nonetheless, this Act has been put into effect to ensure that the maintenance provisions are in accordance with Muslim personal law with regard to the right of maintenance for Muslim women once a marriage is dissolved. In *Abdul Haq v. Yasmin Talat*⁴¹, the Madhya Pradesh High Court held that in order to determine exact significance of the word a reasonable and fair provision and maintenance to be provided to her as mentioned in Clause (a) of the Act, it would be practical to refer to the status of the Muslim Personal Law on the point. Since independence, there have been no legislative revisions to Muslim personal law. To codify personal laws, as has been done in other Muslim nations, is hardly ever attempted. Three arguments have always been used to oppose the move in India: (i) personal laws are based on shariat, which is unchangeable because it is divine; (ii) it is impossible to incorporate all schools of Islamic jurisprudence in codification; and (iii) Muslims see codification as the first step towards enacting a Uniform Civil Code.

In summary, it can be concluded that the idea of property has changed over the years. Law and property have no place in the prehistoric stage of man. Then, the rule of "might makes right" applied; whoever had more power had greater control over things and held the ultimate dominion or right over the claim on the property in his hands. The history, the stories, and the documentation all support the idea that the powerful held the land and that the person who acquired more property in the shortest amount of time or before anyone else could claim it, as in the case of common property, also had a claim to own it.

In a society where the norms governing collective property were dominant and the concept of personal property was not clearly established, "might" thus granted you the right. As civilizations developed gradually, the idea of a legitimate interest became ingrained in people's minds. People started to search for their own property rights in a group setting as the idea of property started to take shape. Even though they may have belonged to a particular tribe, they might have had some personal property of their very own that would have allowed them to benefit from it, and leave behind necessary wealth for their successors who would have the right to his property through inheritance. When communities started to stabilize and people started to crave their own private property more and more, this started to happen more frequently. Together with it, the proprietary and personal interests developed in the dynamic social system, forming the cornerstone of the property in peoples' lives. The concepts of family, marriage, and property all evolved together with those concepts. In this regard, the "equality and non-discrimination" concept of international human rights law offers protection.

From the debate, it can be concluded that since marriage is the relevant issue, even though women significantly contribute to the household economy, the lack of adequate financial support is the cause of their bad results. As the majority of Indian women stay at home and many, if not all, balance their work schedule with that of their in-laws' household, they are not granted any economic co-ownership with equal rights because their contribution to the growth of the family is not viewed as productive work. So, it is important to reason through the topic of women's property rights in India and their acknowledgment of the property rights granted to them by the Indian Constitution. The husband and wife should be considered to be in an "equal economic partnership" during marriage. According to Indian law, "matrimonial property" must have clear rules defining how it will be divided between couples. With each current family structure that

lacks and desperately needs "matrimonial property," it is crucial to identify the tensions and strains in the notion.

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