

# Role of Dr. Ambedkar in Protection of Rights of Women

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Women's condition in India since classical times had been a cause of concern and that had led to the passing of a number of enactments for protection and improvement of the condition of women. Hinduism is a major personal law followed in India and the Hindu religious rituals and social practices are directly and indirectly compromising women's right either by defining her as an idol of sacrifice, statue of pity or in the name of motherhood. The Hindu women's socio-religious cultural condition reached a low blow during the British reign. The custom of demanding stridhan as part of dowry become established, female infanticide, feticide, sati pratha and a countless number of acts against the female genesis called for a number of legislations. The preference of the son and her treatment in the society had led to the disproportionate ration between the males and females. Hindu women's right to property was ignored since long, absence of control over the economic and financial resources had made her dependent on the male and subject to abuse.

Dr. Bhim Rao Ambedkaris recognized as a revolutionary feminist who had always advocated women's right to equality. The Hindu Code Bills were the series of legislations passed during 1950's under the guidance of Dr B.R Ambedkar aimed to codify and reform Hindu Personal laws in India. In the book named 'The Rise and Fall of Hindu Women" Dr. Ambedkar claimed that in the Brahminical framework women are treated equal to shudras and both were denied fundamental rights to property, self-respect and knowledge. In that series of legislation The Hindu succession Act, 1956 of one of the most important Act that had provided the right to the Hindu women the right to hold and possess the property in her name<sup>1</sup>: Right to the property is very important particularly when the financial deficit makes her life more pitiful and dependent. Through various legal enactments in pre and post independent India attempts were made to ameliorate the status of women. One of the most important change in this regard is made through the amendment in the Hindu Succession rules by the amendment<sup>2</sup> made on 5 September 2005 and was given effect from 9 September 2005.The Hindu Succession (Amendment) Act, 2005,ratified to remove gender discrimination in the Hindu Succession Act, 1956. Under the amendment, the daughter of a coparcener becomes a coparcener in her own right by birth in the same manner as that of a son. The daughter will now have the same rights to the coparcenary property (ancestral home of an undivided Hindu family) as a son.

**Keywords:** Succession, coparcener, property, ancestral, economic and financial.

## Introduction:

American women in 19<sup>th</sup> century launched a liberation movement for freedom and equality of the women. The moment produced a revolution in the Western world and is envisioned as basis of the revolution for women and girls everywhere. Presently, women's financial and societal participation is considered a basic requirement for a nation's healthy democratic development. Organized religion is a risky form of patriarchy, for curtailing women rights. Feminism is about all genders having equal rights and opportunities for all genders. It's about valuing diverse women's experiences, distinctiveness, knowledge and strengths, and striving to empower all women to realize their cerebral capabilities to their fullest. Ownership of land and property empowers women's economic position and provides income, security and thereby reduces their level of dependency. Without resources such as land, women have limited say even in household decision-making, and have no recourse to the assets during crises. This often narrates to other vulnerabilities such as domestic violence and HIV/AIDS. Agriculturalist scientist and Rajya Sabha (2007-13) member Prof. M.S. Swaminathan introduced The Women Farmers' Entitlements Bill, 2011 in the upper house on May 11, 2012. However, this 'lapsed' on April 10, 2013. India is basically an agricultural economy, wherein women constitute fifty percent of Indian farmers

and about sixty percent of the farming sector's workforce. Prof. Swaminathan proposed Bill's object was basically intended to safeguard the nation's food security and indirectly to build up the livelihood security of rural women, most of these females have no other source of livelihood except small scale crop harvesting and animal husbandry, fish culture, plantation and handling agroforestry practices. As with the gradual decline in the size of farm holdings, many rural men from poor families were drifting to cities and towns looking for non agricultural work. This had led to "an increasing feminization of agriculture," and women farmers experienced several handicaps related to land ownerships, access to credit facilities, contributions, indemnity protection, technology access and the approach to market. The majority of women have access to the land to cultivate it, yet they do not have control over production, access to the required conveniences that are provided under any policy or scheme by the government to uplift the women and are seldom deprived of inheritance rights over land.

coparcener shall,— (a) by birth become a coparcener in her own right the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

The general legal property rights in property are the right of possession, the right to have control over the property, physical or constructive, the right of elimination (right in rem), the right over the derived income, and the right of disposal at will. Landed property provides security against Future contingency, to all irrespective of the gender. Property is a protection against the wants of tomorrow. Those who have no property may not be uncertain about the means of life in future but certainly they are less secure financially than those who have. Property rights springs from culture and community in the organized societies mainly, though the property can be attained through the acts of the parties also just like transfer, wills and gifts. The main source of getting the property is by inheritance and majority of the personal law governing the devolution of property are either in the name of norms, values, sacrifice, family welfare, incapacity of females to control and manage the property, and negating the right to property to the females. One person living in seclusion does not need to think about property rights. However, at the societal level, there is a necessity to outline and administer the rules of access to the land and the rights over the profits from belongings.

Constitution of India provides that discrimination based on the sex, religion, caste and status is void and any discriminatory provision can be challenged on this ground. Even the privileged, unprivileged and under privileged are treated equally according to constitutional provisions. Equal opportunities means all those who are placed in similar circumstances should be treated similarly by providing equal opportunities to all similarly placed. These provisions are the reason behind many amendments in the constitution of India[1], amendments in the Penal law statutes are not any exception[2] along with many statutes governing personal law[3] are also amended to achieve equality of genders. These amendments are done with a view to achieve gender parity as these parameters are must to be achieved if the states want to progress. Since the times of British's in India, state had participated in molding the social life of people by fabricating different statutes[4] to achieve uniformity and appropriateness for all irrespective of all sex and personal law governing the people[5]. Constitution of India too provides for Uniform civil code mandate to be achieved by the State in all legal spheres governing personal aspects of a human life[6], these civil varied matters like marriage, divorce, adoption, succession & inheritance, for all citizens should be administered uniformly. Constitution of India and common conscience are against the illegitimate discrimination just on the basic of classical norms established in the ancient societies and different principles are being challenged, repealed and declared void[1] by the Supreme Court of India. Classical laws are archaic and paternalistic law that trespasses upon a woman's autonomy and dignity by denying certain civil and economic rights. Denials of these rights to women especially under Hindu codes have reinforced these unjustified discriminations in the name of custom, dharam and religion which ultimately lead to the status of women just as that of chattel and possessions. Property rights can be violated in two ways—through private action and through public action. Indian women own just

12.8% of the country's land. India's succession laws contribute to a larger extent to the imbalance of access to property by Hindu women. Hindu, Jain, Sikh and Buddhist women in India were given equal inheritance rights to ancestral property in 2005 by Hindu Succession (Amendment) Act, 2005 – legally. Though in practice very rarely the daughters gets right in ancestral property and generally the judiciary is proactive in interpreting the provisions of classical and modern Hindu Succession provisions[2].By the figures, some 28% of women and 49% of men in India own land in landowning rural households, but how much they own is not known<sup>3</sup>.

Ram Krishna Dalmia v. Justice Tendolkar<sup>4</sup>, In this case, the Supreme Court described the jurisprudence of equality before the law and “classification test” had also been given in this case. It authorizes the State to make a differential classification of subjects<sup>5</sup>, provided that the classification is founded on intelligible differentia and there is a rational nexus with the objective sought to be accomplished by the grouping. The right to property is important particularly in patriarchal culture as the state of financial deficit makes women position pitiful. The Hindu Code Bill had also considered women pitiful situation and provided for many provisions specifically recognizing the women's destitute condition in caste based patriarchal society where she does not have her individual existence from birth to death. In an effort to create an egalitarian structure where women enjoy equal property and other rights equal to that of men, Hindu Marriage Act, 1955 provided for the absolute rule of monogamy<sup>6</sup>. The Hindu Minority and Guardianship Act, 1956 provided for equal right to women to the guardianship of the children and The Hindu Adoption and maintenance Act, 1956 makes provision under section 8 wherein women can also adopt a child in her own right. Generally Indian customary Laws give privileged right of custody and guardianship over children to the males over the mother discriminating against women and are just based on a sex stereotype that views men superior to women.

#### **Shaping the status of Hindu women in India**

The revolutionary transition was observed when the Hindu Succession Act, 1956 provided for the provision entitling the women to hold and possess the property as separate property and conferred her with the capacity to own the property, inherit the property as a heir in intestate succession in various capacities like mother, wife, daughter and widowed daughter in law[1]. The Hindu law of Inheritance Act, 1929 was the first law to first law in the pre-independent India to include Hindu ladies in the inheritance system. Before it stridhan and women estate were two kinds of property that she might own. The Hindu Women's Right to Property Act, 1937 was the second landmark legislation bringing remarkable changes in an attempt to ensure that in the Mitakshara Coparcenary; the widow of the deceased would take the same interest in the joint family property as her deceased husband would have taken at the time of his death. Just like a male owner the widow was not given to partition the property but was a limited proprietor of the property who cannot dispose of the property but could only be a life estate holder. With India's independence, the Indian Constitution framers recognized the inequality perpetuated against women depriving them of social and economic justice and they provided for the laws envisioned in the Preamble of the Constitution of India, Fundamental Rights (Part –III . Article 14'15'16) Directive principles of state policy (Part IV, Article 38, 39,39A ,44) and Fundamental Duties in Part IV A . The Hindu Succession Act, 1956 attempted to eliminate the existing disparity between male and female but the stride forward in law was not without its share of gender bias criticism. Only the men born in the family were retained as coparceners in a mixed family Mitakshara coparcenary. Section 6 of the Act stated that if a male Hindu with an interest in the Mitakshara Coparcenary died after the Act come into effect, his interest in the property would devolve according to the law of survivorship rather than the Act[2]. Thus even after the passing of the Act, the Hindu women were not allowed to inherit the ancestral property by birth right and were barred from joint family coparcenary. However if Mitakshara coparcener died leaving a female heir of Class –I or a male heir through her, the interest would descend by testamentary or intestate succession in conformity with the Act[1]. With the two fold objectives of removing the disability of women to own property and to convert the limited ownership into absolute estate of women, Section 14(1) of the Act, maintained that any property owned by a Hindu female whether immovable or immovable,

acquired before or after the Act's inception will be held by her as full owner and not as a limited owner.

**State Amendments:  
Reform in the  
Succession Laws**

Reconsidering the disparity towards Hindu women status in the Mitakshara coparcenary, in the various legal provisions and the mandate in the Preamble of Constitution of India and Constitutional provisions various States like Kerala, Andhra Pradesh [2], Tamil Nadu[3], Maharashtra[4] and Karnataka[5] have initiated amendments in the succession laws so that women must be treated equal to the man and to achieve economic and social justice. The amendments in these states were more aimed to improve the economic condition of women than to achieve gender equality. These changes in the succession laws were confined to these particular states and have resulted in significant improvements in the status of women in these areas[6].

The law Commission of India, under the chairmanship of Justice Shri B.P. Jeevan Reddy issued its 174<sup>th</sup> report on "The Property Rights of women: proposed reforms under Hindu Law". Hindu Succession Amendment Act, 2005 passed after deliberations to bring gender parity and to strengthen the women property rights as a central legislation in 20 Dec 2004 and came into force on 9 Sept 2005. Amendment in section 6 of the Act[7] for the first time put a daughter at par with son in matters of devolution of ancestral property beyond providing her right in the property of parents. Technicality of the law and the practical problems in conferment of status of coparcener on her had posed complications which are nowhere in the case of males. For the application of amendment to daughters Supreme Court introduced two basic qualifications, first that her father must be alive on the date 9 September 2005 and that the daughters are incapable of reopening the partition which took place before 20 December 2004 [1]. In *Ganduri Koteswaramma v. Chakiri Yanadi* [2] Supreme Court ordained that the right in favour of daughters is absolutely accrued if no partition by registered deed had taken place before the amendment Act came into force. Determination of shares by preliminary decree is not final and till the suit is not finally disposed of by metes and bounds shares are not demarcated. Positive attitude of Courts is revealed in the case wherein Courts recognizing the interruption caused by supervening circumstances in between the passing of preliminary decree and final disposal of case, redeterminations of rights and interests of the affected parties was permitted and the benefit of amendment was given to daughters. The retroactive right of daughters via central amendment Act conferred the benefit on daughters irrespective of her marital status and date of birth of daughter[3]. In the *Dannama@Suman Surpur v. Amara* [4] daughters are without any constraint on the bases of date of birth entitled to coparcenary right.

Public Interest Litigation was filed challenging the validity of the Hindu Succession (Amendment) Act, 2005 [5] and was not upheld by the court considering the intention of legislature behind the amendment and for the purpose of remove the discrimination solely on the bases of sex. The restriction placed by the basic statute was only on the daughter's right to have share in ancestral property and the restriction placed by the amended Act too was on the daughter's right to challenge partition effected before 20 Dec. 2004[6]. Karnataka High Court held the proviso to section 6(1)(c) as ultra vires the Constitution thus providing for right to challenge partition effected before 2004 December as unjustified discrimination.

**Aim of the Study**

To make a social justice in society argued for representation and protect the rights of women.

**Conclusion**

Liberal feminist believe that the inadequacies in the autonomy of women are caused by the “gender systems” or the patriarchal character of inherited traditions and institutions. The women’s moments should endeavor to identify and fix them. State can and should be the women’s partner in achieving the women’s autonomy. Radical feminism grew out discussing the more revolutionary wider rights of women like reproductive rights of women including the ability to choose whether to give birth, have an abortion, use birth control pills or to be sterilized. Women’s special and superior ability are attributed to such disparities between male and female by the cultural feminism. Postmodern feminist reject the idea of objective reality and unified truth and agree that gender designations are just social constructs. Equality is also a social construct. These patriarchal structures are clearly in dire need of feminist reconstruct where females are treated equal to that of male in all prepositions. The Right of Hindus are governed primarily by the religious and social conventions along with statutory provisions. The law and statutes both recognize the right of daughter to ancestral property.[1]

“The Hindu Law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by the efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by Courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift, of a reasonable extent of the family property for the maintenance of a Daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one cannot make the gift any the less a valid one.”

Justice Arun Mishra, heading a three-judge Bench of Apex Court on the question of daughters right to ancestral property held that for the daughters to have a right in ancestral property, it is not necessary that the father must be living on 9 September 2005 over ruling the decision[1] of 2015 as the right of daughter too in the ancestral property is also by birth just like a son[2]. Judiciary has given its due to women through judicial decisions just like legislature but now the ball is in the court of general peoples. Whether their mindset towards the daughter’s entitlement to property had changed through the time is a question of fact.

**References**

1. 14, (1) *Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Property of a female Hindu to be her absolute property.*
2. [6. *Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,— (a) by birth become a coparcener in her own right the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.*
3. *Indra Sawhney v UOI, AIR 1993 SC 477*

4. On September 27, a five-judge bench of the Supreme Court struck down Section 497 of the Indian Penal Code (IPC), and decriminalized adultery in India (it remains a "civil offence", that can be a ground for divorce). The judgment is important not simply because it got rid of an archaic and patriarchal law, but also because of its consequences for the future. *Joseph Shine v UOI*, AIR 2018 SC 1676
5. Hindu succession Act, 1956
6. Removal of Caste Disabilities Act, 1850
7. The Women Right to Property Act, 1937.
8. article 44 in The Constitution Of India, The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.
9. *ShayaraBano v UOI*, WP (C) 118/2016
10. *Gurupad Khandappa Magdum sHirabe Khandappa Magdum And Ors* 1978 AIR 1239, 1978 SCR (3) 761
11. <https://scroll.in/article/989157/how-much-land-do-women-own-in-india-its-still-not-known>.
12. AIR 1958 SC 538
13. Article 14: Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
14. Section 5 in The Hindu Marriage Act, 1955
15. Conditions for a Hindu marriage are satisfied. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:(i) neither party has a spouse living at the time of the marriage;
16. The Hindu Succession Act, 1956, Section 8 &14.
17. Devolution of interest of coparcenary property When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:
18. PROVIDED that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship
19. Hindu Succession (Andhra Pradesh Amendment) Act, 1986
20. HINDU SUCCESSION (TAMIL NADU AMENDMENT) ACT, 1989
21. The Hindu Succession (Maharashtra Amendment) Act, 1994
22. Hindu Succession (Karnataka Amendment) Act, 1990
23. Kerala has the highest female literacy rate, with over 86 percent of women literate in 1991.
24. Hindu Succession (Amendment )Act 2005
25. *Prakash v. Phoolwati* AIR 2016 SC 769.
26. AIR 2012 SC 169
27. *Shankar Bhandari v. Omprakash Shankar Bhandari* AIR 2014 Bom 151
28. AIR 2018 SC 721
29. *G. Krishnamurthy V. UOI*, AIR 2015 Mad 114
30. Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.
31. *GURAMMA BHARTAR CHANNABASAPPA DESHMUKH V. MALLAPPA CHANNABASAPPA* (1964) 4 SCR 497 : AIR 1964 SC 510
32. *Prakash v. Phoolwati*
33. *Vineeta Sharma vsRakesh Sharma* on 11 August, 2020