



**Vidhyayana - ISSN 2454-8596**

An International Multidisciplinary Peer-Reviewed E-Journal

[www.vidhyayanaejournal.org](http://www.vidhyayanaejournal.org)

Indexed in: ROAD & Google Scholar

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# **Critical Analysis on the Development and Advancement of Laws for Protection of Women in Indian Society**

**A. P. Dave**

Research Scholar,

SGGU University, Godhra

**Dr. Apurva Pathak**

Principal Law College ,Godhra



## Abstract

This paper explores the evolution of legal and social frameworks aimed at safeguarding women's rights in India, highlighting both advancements and persisting deficiencies in the quest for gender equality. Since the attainment of independence, the issue of gender equality has remained a focal point both domestically and internationally, with reformist sentiments resonating throughout history. As Swami Vivekananda aptly observed, "There is no chance for the welfare of the world unless the condition of women is improved; a bird cannot fly on only one wing." This perspective is underscored by the United Nations Human Development Report (2019), which ranks India 129th in the medium human development category, signaling ongoing disparities in crucial areas impacting women's empowerment.

Recent developments, such as the Indian Supreme Court's endorsement of women's eligibility for high-ranking military roles, as noted by the World Economic Forum, indicate incremental strides toward achieving gender parity. Nevertheless, this paper seeks to critically assess the underlying motivations, legal provisions, and inherent limitations of the current legislative framework designed to protect women. It scrutinizes whether these laws adequately encompass essential protections and identifies potential avenues for legislative misuse or oversight. Despite numerous initiatives since independence, the realization of genuine gender equality remains an unresolved challenge, necessitating a thorough examination of the cultural and ideological forces that perpetuate inequality.

To facilitate this analysis, the paper organizes the evolution of women's protection laws into four distinct historical phases: Vedic (Ancient), Medieval, Modern, and Contemporary. A comprehensive analysis of these phases reveals the socio-legal transformations that have influenced women's rights, tracing contemporary legal frameworks back to their historical roots. This contextual understanding is vital for evaluating the foundations of existing legal protections and pinpointing areas that require further reform. In particular, the paper assesses laws governing property rights and general protections for women, offering well-founded recommendations derived from an evaluation of their effectiveness and limitations.

## Scope of the Paper

This research focuses on:

1. The development of laws pertaining to women in India over time.
2. Property rights of women and their evolution across different eras.



## Introduction

The issue of gender equality has been a persistent struggle in Indian society, with its roots tracing back centuries. As Swami Vivekananda aptly stated, "there is no chance of development of the nation if you do not develop the women as a bird cannot fly on one wing." Despite numerous legal reforms, India still ranks 129th in the Human Development Index for gender equality (UN 2019). This paper aims to trace the historical and social factors behind the development of laws for the protection of women, with a focus on property rights, and assess whether these laws have fulfilled their intended purpose.

## Methodology

A historical and analytical approach is adopted, dividing the time frame into four phases:

1. Vedic (Ancient)
2. Medieval
3. Modern
4. Contemporary

Each phase is analyzed through a legal lens, focusing on property rights for women, their purpose, evolution, and impact. The paper also identifies gaps or loopholes and suggests areas of reform.

## Chapter I: Status of Women in the Vedic Era

### The Status of Women in India During the Vedic Period

Understanding the evolution of women's legal rights in India requires examining the Vedic period, an era foundational to the construction of societal norms, where women's roles were characterized by both respect and limitation. Early Hindu texts from this time offer a complex narrative of women's place within society, showing them as figures of reverence yet positioned within a patriarchal structure.

A key text influencing societal views on women, the *Manusmriti*, remains significant in Hindu cultural and legal practices. Chapter 3, verses 56–60, famously express, "*Yatra naryastu pujiyante ramante tatra Devata,*" which suggests that a household prospers when its women are respected and well-cared for. However, Chapter 5, verse 149 presents a more restrictive stance, advising that while women deserve



protection and happiness, they must remain under the guardianship of male relatives throughout life. This dichotomy has prompted considerable debate, reflecting early gender dynamics oscillating between reverence and subordination.

In terms of property rights, women's legal standing during the Vedic era was severely limited. The *Manusmriti* generally prohibited women from property ownership, excluding wives, daughters, and widows from inheritance rights. Scholars such as Gautama and Apastamba acknowledged rare exceptions, allowing women to inherit only under specific circumstances—such as in the absence of a male heir or when the male head of the family died without issue. Nonetheless, these instances were narrowly defined, and inheritance by daughters was restricted to cases where no male descendants were present.

After the Vedic era, Hindu legal traditions evolved through schools like Dayabhaga and Mitakshara, which further codified property rights. The Dayabhaga school, articulated by Jimutavahana, held that inheritance rights vested upon the father's death, meaning sons inherited posthumously rather than by birthright. The Mitakshara school, based on the Yajnavalkya Smriti and advanced by Vijnaneswara, prescribed a joint family property system governed by a *karta* (typically the eldest male), designating male members as coparceners. Women were systematically excluded from coparcenary rights and barred from initiating property partition under Mitakshara principles.

This legal framework dictated inheritance rights in India for centuries, with women receiving property rights only as a last resort when no male heirs existed. The influence of these ancient schools persists in modern Hindu inheritance law, although reforms have since aimed to grant women more equitable rights

## Chapter II: Status of Women in the Medieval Era

### Women's Status in India During the Medieval Period

The medieval period in India marked a profound shift in the legal and social framework, shaped largely by the influence of foreign cultures and rulers, especially with the establishment of Islamic governance in northern India through Mughal and Afghan conquests. This introduced Islamic law, rooted in the Quran, Sunna (Prophet's traditions), Qiyas (analogical reasoning), and Ijma (consensus), as the primary legal structure. Unlike the earlier Hindu legal tradition, Islamic law adopted a unified view of property, with no distinction between ancestral and self-acquired assets, applying a straightforward inheritance division among heirs.



Islamic inheritance law divided heirs into three classes and included specific property rights for women. Indian Muslims generally adhered to two major schools within Islamic jurisprudence: Sunnite and Shiite. The Sunnite school, dominant in India, includes four main sub-schools—Hanafi, Shafi, Maliki, and Hanbali—with the Hanafi school being most widely followed in India, Pakistan, Afghanistan, and Turkey. The Shiite school, representing a smaller segment of the Indian Muslim populace, encompasses notable sub-sects, particularly the Ismailis and Ithna Asharis. In the Indian context, "Sunni law" and "Shia law" commonly denote the Hanafi and Ithna Ashari laws, respectively.

Under Hanafi law, inheritance follows a per capita approach, granting women a share of the family estate. By contrast, the Ithna Ashari school strictly adheres to the Quranic guideline that female heirs receive half the inheritance of their male counterparts, resulting in males receiving double the share of females. This principle embodies a core aspect of Islamic inheritance laws during the medieval period, acknowledging women's rights to property, though with specified limitations.

## Chapter III: Status of Women in the Modern Era

### Women's Status in Modern India

With the decline of Islamic governance, British colonial rule introduced substantial shifts in India's legal system, notably in property and inheritance law. This period saw the establishment of a codified legal structure that culminated in the Indian Succession Act of 1925. This landmark legislation aimed to create a unified inheritance framework across religious communities, filling gaps in legal consistency that had previously existed.

The Indian Succession Act of 1925 includes key provisions for various religious groups:

- **Hindus (including Buddhists, Jains, and Sikhs):** The Act addresses only testamentary succession (inheritance through wills) for Hindus, while intestate inheritance (inheritance without a will) was later covered by the Hindu Succession Act of 1956. This 1956 Act introduced reforms granting daughters equal rights to ancestral property, marking significant progress in gender equality.
- **Christians:** The Act governs both testamentary and intestate inheritance for Christians, with Sections 31–49 providing detailed provisions. These sections aim to balance legal uniformity with the diversity of practices within the Christian community.



- **Muslims:** Muslim inheritance remains outside the scope of the Indian Succession Act, following instead principles derived from the Quran and other religious interpretations. This exclusion respects the distinct inheritance traditions in the Muslim community.
- **Parsis:** For Parsis, intestate succession is specifically addressed in Sections 50–56 of the Indian Succession Act, reflecting the law’s inclusivity of diverse religious customs.

A significant feature of the Indian Succession Act is its gender-neutral language, which avoids differentiating between male and female heirs. This terminology grants all children equal rights to inherit. For instance, under Section 33, if a person dies intestate, the widow inherits a share of the estate—ranging from one-third to the full estate—depending on the family structure.

The Indian Succession Act of 1925 also paved the way for later legal reforms that aimed to improve women’s rights. As discussions on gender equality continue, this Act has had a lasting impact in promoting women’s financial security and independence, signaling a shift away from historical norms that restricted women’s property rights. These changes underscore a larger movement within Indian society toward the empowerment and equality of women.

## Chapter IV: Contemporary Status of Women and Property Rights

### Post-Independence Reforms:

India’s independence ushered in an era of legal reforms aimed at modernizing inheritance laws to promote gender equality. The Hindu Succession Act of 1956 was a pivotal reform, establishing equal inheritance rights for daughters alongside sons. However, challenges persisted in the form of legal ambiguities and deeply entrenched societal attitudes, which hindered effective enforcement.

### Recent Developments:

The Supreme Court of India has delivered several progressive rulings advancing gender equality, including allowing women to assume leadership roles within the Indian Armed Forces. While these legal strides represent substantial progress, cultural and legal barriers continue to constrain the full exercise of women’s property rights, underscoring the need for ongoing reform and societal change.



## Analysis and Loopholes in Contemporary Laws:

While substantial legislative progress has been made to safeguard women's rights in India, several issues continue to limit their impact:

- **Cultural Barriers:** Despite advancements in inheritance laws, traditional attitudes toward women's inheritance rights remain a persistent obstacle, particularly in rural regions where patriarchal norms prevail.
- **Implementation Challenges:** Although statutes like the Hindu Succession Act extend equal rights to women, implementation remains inconsistent, often failing to reach its full potential in more conservative or underserved areas.

## The Hindu Women's Rights to Property Act, 1937

The Hindu Women's Rights to Property Act of 1937 marked a watershed moment in Indian legal history, particularly for Hindu widows. Introduced by D.V. Deshmukh in the Central Legislative Assembly on February 4, 1937, this legislation for the first time granted Hindu women property rights beyond mere maintenance. Prior to its enactment, Hindu women were not afforded inheritance rights. The Act allowed Hindu widows to inherit their deceased husband's share of the joint family property, although the ownership was limited. Specifically, it provided widows with restricted rights, prohibiting them from selling or otherwise alienating the inherited property, thereby withholding full ownership. Despite resistance, the Act was a critical step in redefining women's property rights in India.

## The Madras Marumakkathayam Act, 1932

Distinct from the prevailing inheritance norms in North India, South India made a progressive move towards enhancing female inheritance rights with the passage of the Madras Marumakkathayam Act of 1932. This legislation represented a major milestone in property law, specifically by formalizing the inheritance of property through the maternal line. Officially recognized as Madras Act No. 22 of 1933, it was published in the Fort St. George Gazette on August 1, 1933. Under British rule, Malabar fell within the Madras Presidency, and the Act aimed to codify the local customary inheritance laws practiced in the region.



The term "Marumakkathayam," as outlined in the Act, describes a matrilineal inheritance system where property is passed down through the female line. This system ensured that property was inherited through one's maternal lineage, marking a fundamental shift from traditional patrilineal norms and significantly increasing women's rights to property ownership in South India.

### **The Hindu Women's Rights to Property Act, 1937**

The Hindu Women's Rights to Property Act of 1937 marked a transformative step in advancing property rights for women in India. Introduced by D.V. Deshmukh, who presented the Hindu Women's Property Right Bill to the Central Legislative Assembly on February 4, 1937, this Act was a groundbreaking piece of legislation, representing the first time women in India were granted direct rights to inherit property rather than limited entitlements for maintenance.

Despite facing strong resistance, Clauses 3, 4, and 5 of the Hindu Women's Rights to Property Act significantly improved the position of Hindu widows by allowing them to claim a portion of their deceased husbands' joint family property. However, the Act did not grant women complete ownership; restrictions remained on selling or transferring the property, limiting the extent of their control over inherited assets. This legislation, while progressive, thus established partial property rights without granting full autonomy over inheritance.

### **The Sharia Act, 1937**

The Sharia Act of 1937 marked a significant step in codifying Muslim personal law in India, formally dividing Muslims into Shia and Sunni groups and defining core principles of Islamic inheritance. The Act signaled a shift from pre-Islamic customs, especially regarding women's inheritance rights, and introduced key provisions, including: (i) recognizing spouses as heirs, (ii) allowing female relatives and cognates to inherit, (iii) granting inheritance rights to parents and ascendants even alongside male descendants, and (iv) establishing that females typically inherit half of what males receive.

Unlike Hindu law, which applies the doctrine of survivorship, Islamic law does not. Inheritance shares are fixed and take effect upon a person's death, meaning that the timing of deaths dictates inheritance distribution. Heirs cannot renounce contingent rights unless it forms part of a family settlement and is backed by valid consideration. The rule of representation is absent, so if individual A dies, leaving son B and a grandson (from a predeceased son) C, B, as the closest relative, excludes C from inheriting. Islamic





law also makes no distinction between movable and immovable property.

## Heir Categories in Hanafi Law

Hanafi jurists classify heirs into seven groups, comprising three main and four subsidiary categories. Primary heirs include Quranic heirs, Agnatic heirs (patrilineal descendants), and Uterine heirs, while subsidiary groups consist of heirs by contract, acknowledged kin, sole legatees, and the state (through escheat).

## Daughters' Rights

- *Sunni Law*: In Hanafi law, when a son exists, a daughter is a residuary and inherits half the son's share. Without a son, a single daughter receives half of the estate, and multiple daughters share two-thirds. This approach stems from the view, as noted by Mulla, that granting daughters the status of sharers might result in insufficient residue for additional daughters.
- *Shia Law*: Shia law offers daughters sharer status in the absence of sons. A single daughter inherits half of the estate, and two or more share two-thirds. If a son is present, a daughter inherits half his share. Unlike Hanafi law, Shia law excludes agnates, enabling daughters to inherit more. For example, in cases involving a mother, daughter, and brother, the daughter inherits three-fourths while the mother receives one-fourth, differing markedly from the Hanafi model.

## Widows' Rights

- *Sunni Law*: Under Hanafi law, a widow inherits one-eighth if her husband leaves children or descendants of sons; otherwise, she inherits one-fourth. If the deceased had multiple wives, they share this portion equally. However, a widow receives nothing until all other heirs are accounted for. For instance, if a deceased man leaves a widow and three brothers, the widow's share is one-fourth while the brothers inherit the rest, a division sometimes viewed as inequitable, as widows often lack independent income.
- *Shia Law*: Like in Sunni law, a Shia widow is ineligible for a "return." A widow without children cannot inherit land from her husband but is entitled to one-fourth of the value of buildings and household items. The prevailing opinion suggests that the widow's share should be based on land value, though she cannot inherit the actual land itself.



## Mothers' Rights

- *Sunni Law*: In Sunni inheritance law, mothers have a lower standing compared to fathers and are categorized as sharers rather than residuaries. If a person dies leaving a mother, father, and spouse but no descendants, the spouse receives their entitled portion, with the mother inheriting one-third of the remainder. If the deceased had siblings, her share decreases to one-sixth, which has raised questions about fairness.
- *Shia Law*: Under Shia law, mothers hold a more favorable position, receiving one-third of the estate if the deceased had no children, even if this reduces the father's portion. For example, in cases where a deceased individual leaves a mother, father, and spouse, the mother receives one-third, the spouse inherits one-half, and the father receives one-sixth.

## Rights of Descendants of Daughters and Sons

- *Sunni Law*: Hanafi law permits only a son's daughter to inherit as a sharer if there are no sons or daughters. A son's daughter inherits half of a son's share when both are living. In contrast, a son's daughter may inherit only if there are no direct descendants.
- *Shia Law*: In Shia law, the rule of exclusion applies, where a closer descendant takes precedence over a more remote one. For instance, a son would exclude a grandson from inheriting if both survive the deceased.

## Sisters' Rights

- *Sunni Law*: Sisters can inherit as sharers only if there are no children, fathers, or full brothers. When a full brother is present, the sister inherits as a residuary, receiving half his share. Consanguine sisters are excluded if a full brother exists, while uterine siblings (sharing a mother but different fathers) have a designated share of one-sixth.
- *Shia Law*: In Shia inheritance, both brothers and sisters, along with their descendants, inherit alongside the grandparents of the deceased. When no full brother or parent survives, a full sister receives half of the estate. Full and consanguine brothers inherit as residuaries, while uterine siblings inherit independently and are not excluded by other siblings.



## Omission of Widowed Daughters-in-Law

Islamic inheritance law notably omits widowed daughters-in-law from inheriting. This likely reflects the pre-Islamic Arabian custom where remarriage was common, reducing the perceived necessity of inheritance rights for widowed daughters-in-law.

## The Hindu Succession Act, 1956

The enactment of the Hindu Succession Act in 1956 represented a landmark moment in codifying Hindu inheritance laws, just prior to India gaining independence. This legislation consolidates the principles established in the Mitakshara and Dayabhaga schools of law.

## Categories of Heirs Under Mitakshara Law

Heirs are classified into the following categories:

1. Class I Heirs
2. Class II Heirs
3. Agnates
4. Cognates
5. Government

## Class I Heirs

Upon the intestate death of a Hindu male, the estate is first distributed among Class I heirs, which include:

- Mother
- Widow
- Daughter
- Son
- Widow of a deceased son



- Son of a deceased son
- Daughter of a deceased son
- Widow of a deceased grandson
- Daughter of a deceased grandson
- Son of a deceased grandson
- Daughter of a deceased daughter
- Son of a deceased daughter

## Shares of Class I Heirs

Section 10 of the Hindu Succession Act governs how property is divided among Class I heirs, with specific guidelines:

- 1. Equal Shares for Immediate Family:** The mother, sons, and daughters of the deceased receive equal shares.
  - For instance, if 'P' passes away leaving behind his mother 'M', two sons 'S1' and 'S2', and two daughters 'D1' and 'D2', each heir receives one-fifth (1/5) of the estate.
- 2. Widow's Share:** The widow is entitled to one share, which is equally divided if there are multiple widows.
  - If 'P' dies leaving a widow 'W' and three daughters, each will inherit one-fourth (1/4) of the estate.
- 3. Doctrine of Representation:** If a predeceased son has heirs, the representation doctrine ensures that those heirs receive shares equivalent to their parent's share.
  - For example, if 'P' dies leaving a son 'S', the widow of a predeceased son 'SW', and children from a predeceased daughter 'DS' and 'DD', each branch will collectively inherit one-fourth (1/4) of the estate.



## Class II Heirs

In the absence of Class I heirs, the estate is then distributed among Class II heirs, divided into nine distinct categories. An heir from an earlier category will exclude those from later categories, while all heirs within a single category inherit simultaneously. The categories are:

### 1. Category I:

- Father.

### 2. Category II:

- Son's daughter's son,
- Son's daughter's daughter,
- Brother,
- Sister.

### 3. Category III:

- Daughter's son's son,
- Daughter's son's daughter,
- Daughter's daughter's son,
- Daughter's daughter's daughter.

### 4. Category IV:

- Brother's son,
- Brother's daughter,
- Sister's son,
- Sister's daughter.



## 5. Category V:

- Father's father,
- Father's mother.

## 6. Category VI:

- Father's widow (stepmother),
- Brother's widow.

## 7. Category VII:

- Father's brother,
- Father's sister.

## 8. Category VIII:

- Mother's father,
- Mother's mother.

## 9. Category IX:

- Mother's brother,
- Mother's sister.

Within Class II, each heir receives a per capita share, including widows.

### **Agnates and Cognates**

Next in line for inheritance are agnates and cognates, with preference given first to agnates, then to cognates.

- **Agnates:** Individuals related through male lineage, such as brothers, paternal cousins, and any male descendants tracing back to the father.



- **Cognates:** Individuals related through female lineage, which encompasses maternal relatives and any female descendants tracing back to the mother.

## Escheat to Government

If a Hindu male passes away without any Class I or Class II heirs, agnates, or cognates, his property will escheat to the government. In such cases, the government assumes the role of heir, taking on all rights and responsibilities of the deceased.

## Current Scenario

In the wake of India's independence, the Constitution was established as the supreme legal framework, instigating the creation and revision of various laws to reflect contemporary societal values. This legal reform initiative aimed to improve social welfare and address the changing demands of society.

A significant development took place with the amendment of the Hindu Succession Act in 2005, which had a profound impact on women's rights to property. This pivotal amendment granted women the right to inherit property by birth, representing a substantial transformation in their legal status. Previously, women's rights were largely confined to maintenance provisions; however, this shift has empowered them to become legitimate property owners. This advancement marks an important step in the ongoing journey toward gender equality in India, as it sought to elevate women's status to that of men in society.

Nevertheless, it is crucial to recognize that these rights primarily apply to Hindus, Christians, and Parsis. The property rights of Muslim women, which fall under the Shariat Act, still necessitate thorough examination and reform to ensure they attain equitable treatment and opportunities similar to their male relatives.

## Conclusion

The development of women's property rights in India represents a steady progression from restrictive traditional norms to a more balanced legal framework reflective of contemporary values. Foundational statutes like the Madras Marumakkathayam Act of 1932 and the Hindu Women's Rights to Property Act of 1937 marked early legal recognition of women's inheritance rights. This evolution continued with the Hindu Succession Act of 1956 and its transformative amendment in 2005, which collectively reshaped inheritance laws to afford women equal rights in ancestral property, challenging long-standing patriarchal structures.



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An International Multidisciplinary Peer-Reviewed E-Journal

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Indexed in: ROAD & Google Scholar

Yet, notable disparities remain, especially under the Sharia Act of 1937, where Muslim women's property rights do not parallel the autonomy or ownership rights afforded to women under Hindu law. As India advances toward its goal of gender parity, revisiting and reforming these legal distinctions has become essential to ensure that women across all communities enjoy equal standing in matters of property. The advancement of these laws underscores a growing societal acknowledgment of women's roles within family and society. Continued efforts in legal advocacy and reform are indispensable for achieving full equality in property rights for women across India, reflecting an evolving commitment to justice and fairness.

## Suggestions:

This paper concludes that while the development of laws for the protection of women, particularly in terms of property rights, has evolved significantly, there is still a long road ahead. Further legal reforms and robust enforcement mechanisms are needed to close the gaps. Moreover, societal attitudes must change to ensure that these rights are not only recognized but practiced. Suggestions include:

- Strengthening enforcement mechanisms, especially in rural areas.
- Introducing gender sensitization programs to address cultural resistance.
- Closing existing loopholes in inheritance laws to prevent misuse.





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