

# Navigating Legal Disparities: Women's Rights in India

Dr. Pooja Srivastava

Faculty of Law, Chanakya National Law University, Patna  
Email- poojasrivastava@cnlu.ac.in

The genesis of property rights can be traced to how the human species evolved into a civilized society, bringing with it a variety of cultures and ways of life that were rooted in religion. Emerging into rights to property for Hindu, Christian, Parsi, Muslim, and tribal women. The comparative thought-provoking ideas about women from various religious sects is limited to the traditions and theological context in which they have lived for their overall achievement in shaping a civilized society. The key tenet is building the groundwork for their acknowledgment by granting them property right since that right center on their position and personal security, and that idea was developed through the creation of a law for property rights. The woman is the primary support for creating a family as an independent social unit. Since the beginning of time, women have played the primary role in raising a family. Of course, men have been an equally important limb and pillar, but without giving women the same legal rights to property as men, laws won't serve their intended purpose. We are legally required to treat everyone equal under our constitution, and this purpose can be served by including property rights. The preamble of the Indian Constitution is built on the dignity of every human being, including women, men, and children.

Although Muslim personal law, Shariyat, and the religious holy Quran also guide and fix the parameters of the Muslim women's property right, which occasionally differs from the Hindu Law of women's right to property, the Constitution makers in our country have still made provisions for Hindu women and Muslim women equally.

The Hindu joint family system placed property rights in the hands of the male family members, and women had no rights. It was the male family members' responsibility to administer the property of the entire family, and women did not have the freedom to express their opinions about the administration of property or the issue of women's coparcenary rights. It is also very important to consider that the coparcenary is a narrower body of persons within a joint family and consists of father, son, son's son, son's son's son. The different great authorities of Hindu law defines coparceners as the three generation next to the holder in unbroken male descent. It is also important to consider a very important judgment in *Venu Gopala vs. Union of India* wherein it has been laid down and observe to the extent that the mitakshara concept of coparcenary is based on the concept of birth right of son, son's son, son's son's son.<sup>1</sup>

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<sup>1</sup>AIR 1969 SC 1094

No female can be a coparcener in mitakshara coparcenary since, with the exception of the daughter, she has no birthright interest in joint family property and no survivorship or division rights.

A female can be a coparcener under DayabhagSchool, however a coparcenary cannot begin with females. When a man passes away, his two widows or daughters will inherit his property, but they won't be considered a coparcenary.

The hardest area of Hindu law is unquestionably stridhan. From what Jimutavahana claims, it can be inferred that Dayabhaga addressed the most challenging topic of succession to childless women after concluding his speech in stridhan.

Women should have the same rights as men since they are in no way less than males. It is crucial to realize that in order to accomplish this equality, our laws must be changed. One of the most impactful changes has been the modification of our property rights, and many current laws have been improved. For example:

- A The Hindu Women's right to property act 1937
- Hindu succession act 1956
- Hindu succession Amendment Act 2005

Prior to the Hindu Succession Act 1956, Hindu law did not explicitly address women's property rights. The Hindu Succession Act, however, has brought about the most significant modifications. A female heir is granted full and heritable capacity under Section 14 of the Hindu Succession Act of 1956 with regard to all property she acquires, subject to certain restrictions, whether before or after the act's commencement. As a result, by virtue of the retrospective application of that section, she holds the property in her possession as a full owner and not as a limited owner. The fact that male and female heirs are now handled equally and without distinction is the clearest legal feature. It has been further solidified to the point where restrictions and limitations on a female heir's authority no longer apply to property that is already owned. The Equalijuria provision of the Constitution, which has physical form in the Hindu Succession Act of 1956, provides the clearest understanding of the right of Hindu women.

In the ongoing fight for gender equality inside Hindu families, the Supreme Court of India's 2019 ruling in the **Vineeta Sharma v. Rakesh Sharma** case marked a significant turning point. This landmark decision, made pursuant to Section 14 of the Hindu Succession Act of 1956, altered the landscape of Hindu women's property rights by addressing entrenched gender inequities and unwaveringly reinforcing the ideal of equality.<sup>2</sup>

Understanding the historical setting in which this case first appeared is crucial to comprehending its importance. Hindu Undivided Families (HUFs) daughters have struggled with unequal property rights for many years. The Hindu Succession Act was amended in 2005, ending the coparcenary rights granted to only sons to inherited property. This long-standing legal rule effectively excluded daughters from receiving their fair portion of the family's assets, perpetuating gender inequity and discrimination in inheritance affairs.

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<sup>2</sup>AIR 2020 SC 3717

At its core, the Vineeta Sharma Case concerned whether daughters born prior to the 2005 amendment might assert equal coparcenary rights in Hindu Undivided Families (HUF) property. The unanimous decision of the Supreme Court provided a resolute response, making it clear that daughters, regardless of their birthdate, have the same rights as their male counterparts. This decision marked a turning point in Indian law by reaffirming that one's inheritance rights should never be determined by one's gender.

This landmark decision had several noteworthy highlights, each of which added to its profound significance:

1. **Retrospective effect:** One of the Vineeta Sharma case's most significant findings was the Supreme Court's confirmation that the 2005 change to the Hindu Succession Act had a retroactive impact. In other words, even if their fathers had passed away before to the amendment, daughters were still eligible for a part of family property. With this retroactive application, there was a definite and unmistakable commitment to righting historical wrongs and enabling daughters to receive their just inheritance.
2. **Equal Share:** The Supreme Court's decision assured that females were given the same rights in HUF property as sons. A significant step was taken to reduce gender disparity in households and society at large with this equal share provision. It represented a gradual departure from long-standing conventions that had supported discrimination against daughters in inheritance-related concerns.
3. **Emphasis on Gender Equality:** The importance of gender equality within the family system was prominently underlined in the Vineeta Sharma ruling. It emphasized the importance of redressing historical wrongs committed against daughters and sent a strong message that women's rights shouldn't be constrained because of their gender. This emphasis on gender equality was not only a legal principle; it also signaled a societal and cultural shift.

The impact of the Vineeta Sharma case on Hindu women's property rights has been profound and far-reaching:

1. **Legal Empowerment:** Hindu women now have the legal standing to seek their claims to ancestors' property according to the landmark ruling. Their newly discovered empowerment has increased both their economic independence and financial security, fostering greater autonomy and self-reliance.
2. **Dismantling Gender Stereotypes:** Beyond its repercussions on the law, the Vineeta Sharma case acted as a potent catalyst for the demolition of deeply rooted gender stereotypes. Daughters had historically been subjected to prejudice because of these stereotypes, which reduced them to supporting roles in inheritance disputes. The ruling disproved these preconceived notions, paving the way for a society that is both progressive and just.
3. **Social Transformation:** The judgement in this case had an impact on society as a whole, changing how people saw gender roles and the rights of women in the household. This impact went beyond the legal sphere. It compelled the reevaluation of deeply rooted conventions, promoting a more equal and inclusive viewpoint.
4. **Legal Clarity:** Perhaps equally important, the Vineeta Sharma judgment gave courts and attorneys clear and unmistakable advice on how to read Section 14 of the Hindu Succession Act.

By ensuring consistent application of the law and reducing uncertainty, this legal clarity helped create a more fair and predictable legal system.

In conclusion, the Vineeta v. Rakesh Sharma case serves as a glimmer of hope for female equality inside Hindu families and the larger Indian community. The Supreme Court reasserted the essential ideals of justice, equality, and social advancement by providing daughters equal coparcenary rights. This ruling not only addressed previous gender imbalances, but it also prepared the path for Hindu women to enjoy greater equal property rights in the future.

The case is evidence of how Indian society and law are changing for the better in the direction of a more inclusive and just system. It has established a precedent for tearing down long-standing discriminatory customs, upending gender expectations, and advancing more gender equality. Vineeta Sharma's case will undoubtedly continue to influence gender equality and rights in India for many years to come, acting as a stepping stone on the way to a more just and equitable society.

It is crucial to comprehend how Muslim law is written in order to grasp a Muslim woman's property rights. We may grasp correctly that Muslim law has a divine beginning and further if it is made clear that the aforementioned rule originates from divinity because Muslim law originated in Arabia, where the great prophet Mohammad introduced Islam. For better comprehension, it is also explained that this law was formed by a revelation from God in response to men's deeds. Here, it is crucial to recognize that men are given priority. As a result, it is claimed that men and women have different rights under Islamic law, which will lead to the idea that Muslim women have a lower status. That may be recognized as an issue of prejudice in the actual Muslim law. Here, researchers discuss and depict eradicating discrimination against all castes and communities—including Hindu Muslims, Parsis, Sikhs, Adivasis and other original Adivasis living in jungles—in reference to property. However, it is also possible to see the discrimination in Muslim law with regard to their property rights in the ancillary laws established for them as heir autonomous laws, all of which are settled down in their diversity. The question now is whether the major concept of the paper I wrote can be distilled into a single, comprehensive statute that protects all women in this wonderful country's property rights. Article 15 of our constitution also forbids discrimination, and article 21 of our constitution provides support for such a uniform rule.

The Koran, the Sunna, the Ijma, and the Kyas are the main sources of Muslim law when analyzed within the context of this article. There are two distinct sects: Shia and Sunni. The Hanafi School, the Maliki School, the Shafi School, and the Hanbali School are among the sub-schools that make up this school of Sunni jurisprudence. Muslim women have the following property rights: hiba, hiba-bil-ewaz, hiba-sharul-ewaz and wasiyat. The willful acquisition of property is another method. Here, it is clear that will also need to comply with tradition. The norms of succession found in the Koran, in tradition, as well as from those pre-Islamic customs that the Prophet endorsed, are where the Muslim law of succession and inheritance also originates. Reforms have also been made by the Prophet of Islam in the said subject. There is no assumption of a united family and there is inheritable property. In Islamic law, the heirs are only tenants-in-common, whose shares are clearly defined by law. In Hindu law, however, the heirs and successors have a different scope and are completely different from each other. This is because, in the Hindu law, everyone who has an interest in property is required to be a party. The actual Muslim law does not recognize a separate core for Muslim women's property rights, which is both also discriminatory and a

violation of an individual's dignity. Men and women are both a part of it. A logical conclusion in this context for Muslim women's property rights would be the Indian Civil Code, which is the only statute for women's property rights and does not discriminate on the basis of gender.

The All India Women's Conference first called for a single civil code in 1937 on the basis that the personal laws of various religious communities were unfair to women. The constituent assembly had held a lengthy discussion on the subject.

As a reassurance to the Muslim community, Dr. Ambedkar said that Article 35 (now known as 44) just calls for the state to make an effort to establish a consistent civil code for citizens.

It is important to note that the founding fathers showed their forethought by including Article 44 in our constitution. Only once a uniform civil code is created will the different national goals of our constitution—such as justice, liberty, equality, fraternity, and judicial independence—become fully realized. It is crucial to note that the fundamental design of the constitution would appear deformed in the absence of a unified civil code. A uniform civil code is entirely feasible, as is plainly demonstrated by the fact that all communities in India are subject to a common criminal code without any complaint or dissatisfaction.

Diverse perspectives exist on the uniform civil code. It is also pointed out that there is an anomaly between Article 19 and Article 44 of the constitution of India which is the right to religion and uniform civil code but here right to religion may be confined to the rituals of a particular religious community, caste or creed does worship as per religion with their place of religion, kinds of religion that is for self-purification and utmost devotion and complete submission to the almighty. Although the sources of law are various religions of this nation their inhabitancy are free to practice their own religion and it should be given respect by all citizen irrespective of their belief in a particular religion.

However, as far as the law is concerned, the uniform civil code in India will be the only one that applies to this specific subject of gender discrimination on women's property rights. All citizens of different religions, faiths, beliefs, and cultures should respect the uniform civil code as it is a requirement of the constitution in the area of equality. This is because it will benefit their property rights (women's rights to property), which have been curtailed by the different personal laws of Hindu and Muslim women as per their religious beliefs. It is also to be pinpointed that all religions preach against differences in law for their property right that is women's right to property and as such the personal law in religion shall not come in the way of making a uniform civil code.

The Shah Bano case from 1985 is a turning point in the debate about the requirement for an Indian Uniform Civil Code (UCC).<sup>3</sup> A Muslim woman named Shah Bano filed a maintenance claim against her husband in accordance with Section 125 of the Code of Criminal Procedure. Her maintenance being granted by the Supreme Court sparked a national discussion about the need for universal legislation regarding maintenance in all religious organizations. Although the impact of this important ruling was ultimately diminished by legislative action, it was successful in elevating the discussion of gender justice in personal laws.

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<sup>3</sup>AIR 1985 SCR (3) 844

The Shah Bano case captivated the nation's attention in 1985. Shah Bano, a 62-year-old Muslim woman, had been divorced by her husband and was left without any means of support. She filed a petition under Section 125 of the Code of Criminal Procedure in India in order to obtain support from her husband. Shah Bano's case was upheld by the Supreme Court, which was viewed as a major victory for women's rights and gender equality.

Regardless of her faith, the Supreme Court ruled that Shah Bano was entitled to support under Section 125 of the CrPC. The Indian Constitution's protection of gender equality served as the foundation for this ruling. It stressed that a woman's right to upkeep was a fundamental right that couldn't be taken away from her based only on her religious beliefs.

However, conservative Muslim organizations and religious authorities strongly opposed this decision, claiming it interfered with Muslim personal law. They argued that Sharia, or Islamic law, should apply to maintenance disputes. The Muslim Women (Protection of Rights on Divorce) Act was enacted by the Indian government in 1986 in reaction to these demonstrations, under the direction of Prime Minister Rajiv Gandhi. By excluding Muslim women from the scope of Section 125 of the CrPC and restoring the use of Sharia law in maintenance disputes, this Act essentially voided the Supreme Court's ruling in the Shah Bano case.

The Shah Bano case and the ensuing legislative action brought to light the conflicts between individual religious identity-based laws and the constitutionally guaranteed values of justice and gender equality in India. It brought up significant issues regarding the requirement for a uniform civil code that would grant all individuals uniform and equal legal rights and protections, irrespective of their religious affiliations.

The Shah Bano case highlighted the need for uniformity and consistency in Indian law, particularly when it comes to issues of family and personal status. It sparked worries about people abusing legal weaknesses brought on by various personal laws among religious groupings.

The John Vallamattom case from 2003 was another important case that demonstrated the difficulties and discrepancies in personal laws. In one instance, a Christian priest attempted to wed under the Indian Divorce Act but was refused due to religious restrictions on Christians. The case illustrated how discrimination and difficulties for people seeking legal redress could result from differing legal systems for distinct religious communities.

The John Vallamattom case demonstrated the necessity of a Uniform Civil Code to end such inequalities and offer a uniform legal system for all citizens, regardless of their religious affiliations. It underlined that the lack of a Uniform Civil Code can result in unfair decisions and make it harder for people to obtain their legal rights.

The landmark case *Daniel Latifi v. Union of India*, which especially addressed the problem of maintenance under Muslim personal law, is seen as a key legal milestone in the framework of personal



laws in India.<sup>4</sup> The Supreme Court of India's decision in this case had a significant impact on the debate over a Uniform Civil Code (UCC).

In its ruling in the Daniel Latifi case, the Indian Supreme Court emphasized the significance of a UCC as well as the necessity of making sure that personal laws do not violate the fundamental principles of justice, equality, and gender rights enshrined in the Indian Constitution. The court's decision reaffirmed the idea that personal laws ought to change to conform to the more comprehensive framework of constitutional rights and ideals.

The judgment's fundamental argument was that personal laws, particularly those relating to maintenance, must be examined via the lens of constitutional principles. The court highlighted that it is impermissible for any personal law to support gender inequality or to trample upon the ideals of justice and equality. In this sense, the decision was a strong appeal for legal changes that would address the pervasive gender disparities in many personal laws.

The Daniel Latifi case unequivocally reaffirmed the necessity of a Uniform Civil Code (UCC), which would integrate and standardize various personal laws among various faith communities. The Supreme Court's concept of a Uniform Civil Code (UCC) would be crucial in addressing gender inequalities and ensuring that everyone is treated fairly under the law, regardless of their religious beliefs.

The discussion on the adoption of a Uniform Civil Code in India has been spurred by the legal cases discussed above as well as current discussions and debates. These cases have brought to light the urgent need for equity and uniformity in personal legislation, particularly when it comes to issues involving marriage, divorce, child support, and inheritance. In addition to advancing gender justice, a Uniform Civil Code (UCC) will simplify legal procedures, clear up confusion, and maintain the equality and secularism entrenched in the Indian Constitution.

Given the variety of religious and cultural practices in India, the path to a uniform civil code is undoubtedly difficult. It necessitates giving significant thought to the issues and priorities of distinct religious communities. However, it continues to be a vital objective in the development of a just and equitable society in India, where all individuals, regardless of their religious affiliations, are granted equal rights and protections under the law. The takeaways from notable cases like Shah Bano, Sarla Mudgal, John Vallamattom, and Daniel Latifi serve as potent reminders of the necessity of implementing a Uniform Civil Code (UCC) to resolve the intricacies and inconsistencies in personal laws.

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<sup>4</sup>2001 SC SCC 740