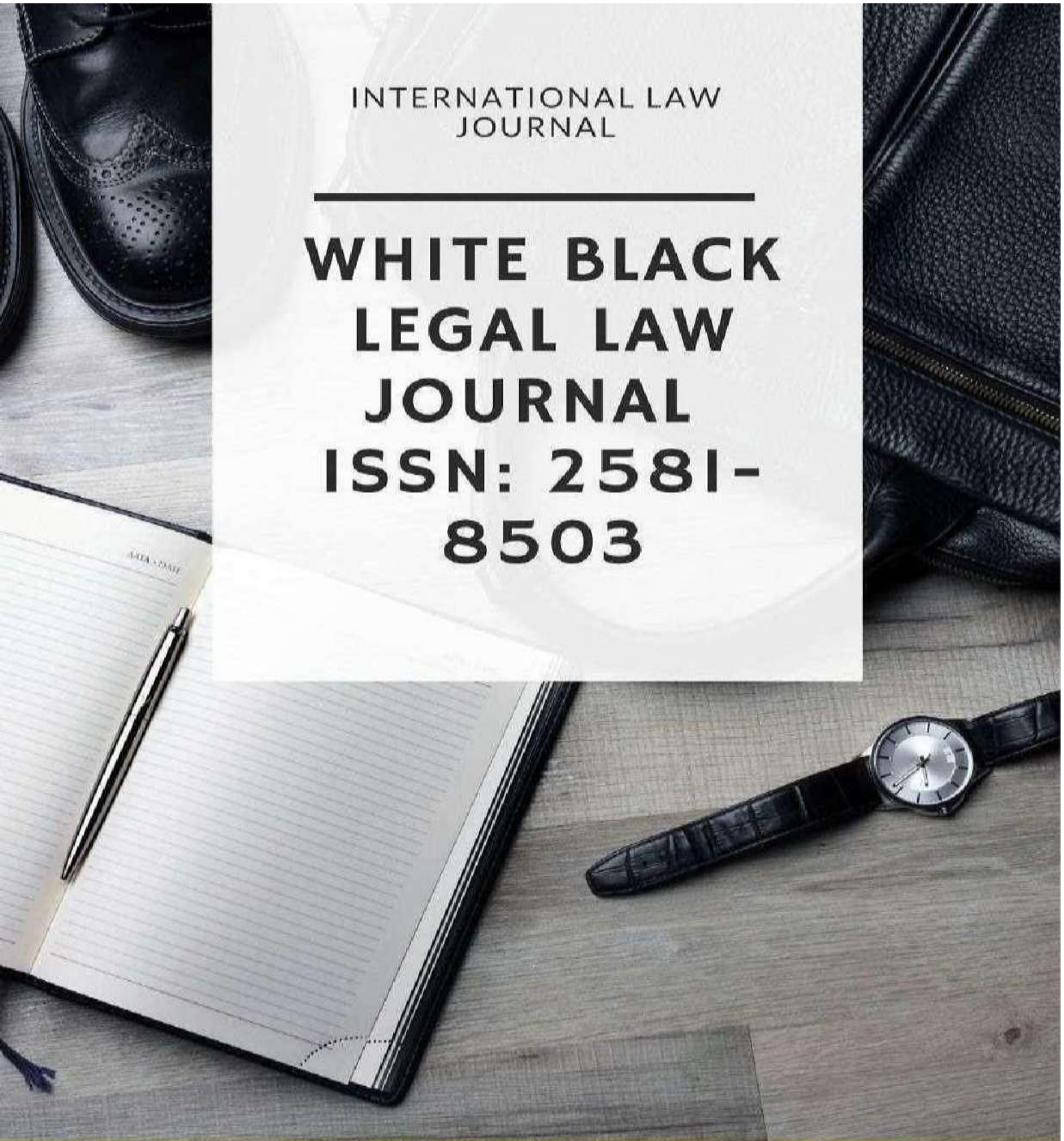




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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUDICIAL PERSPECTIVE TOWARDS PROTECTION OF PROPERTY RIGHTS OF WOMEN IN INDIA

AUTHORED BY - INDUMATHI M J¹ & Prof, DR. SURESH M BENJAMIN²

Abstract:

The judicial system in India has historically played an instrumental role in advancing and protecting the rights of women, particularly in relation to property ownership and inheritance. Although constitutional and statutory provisions offer formal scaffolding for these rights, it is the interpretation, enforcement, and development of these legal norms by the judiciary that have given them substantive content and meaning. Judicial responses towards women's property rights have also been shaped by the interplay between religious personal laws and constitutional mandates. The Indian judiciary has often taken a proactive role in addressing gender-based discrimination in property rights through Public Interest Litigations. The judiciary before the Constitution of India played a constrained yet formative role in shaping the discourse on women's property rights. The role of the judiciary after the Constitution of India has been instrumental in shaping and protecting women's property rights. This section delves into how Indian courts, across various historical periods and legal transitions, have responded to the critical question of protecting women's property rights. By exploring case laws, legislative interactions, social contexts, and progressive judicial pronouncements, we aim to analyze how the judiciary has served both as an agent of change and, at times, as a site of contestation in the journey toward gender-equitable property rights in India.

Key Words: Property rights, Ownership, Gender Equality, Inheritance, Judicial Pronouncement

Introduction:

The Indian judiciary has played a pivotal role in shaping the landscape of women's property rights, navigating the complex intersection of personal laws, constitutional guarantees, and evolving societal norms³. While legal provisions enshrined in the Constitution and various statutes lay the formal groundwork for gender equality in matters of property and inheritance,

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³ Basu A, *Women in Indian Society* (National Book Trust 1992).

it is the judiciary's interpretation and application of these laws that have truly given them force and meaning. Over time, Indian courts have engaged deeply with the inherent tensions between personal law traditions and constitutional principles of equality and non-discrimination. Through landmark judgments, proactive interventions in public interest litigations, and progressive legal reasoning, the judiciary has emerged as both a protector and promoter of women's property rights⁴. This chapter explores how judicial decisions across different historical phases—from colonial courts to the post-constitutional era—have influenced and often redefined the discourse on property rights for women in India, highlighting the courts' dual role as agents of reform and arenas of legal contestation.

Judicial Responses Post-Independence and Constitutional Mandate

With the adoption of the Constitution of India in 1950, the framework for legal equality was firmly established. Article 14 guarantees equality before the law and equal protection of the law, while Article 15(1) prohibits discrimination on the basis of sex. Article 15(3) further empowers the state to make special provisions for women and children⁵. These provisions laid the groundwork for a transformative approach to women's rights, including in the realm of property. In the post-independence period, courts began interpreting laws in light of the Constitution's equality mandate⁶.

The judiciary gradually shifted from a formalist to a more substantive equality approach. Courts began striking down laws and practices that were discriminatory or violative of women's rights. In several instances, the judiciary stepped in to address legislative gaps or inertia. For example, in *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*⁷ (1996), the Supreme Court held that women's right to property is a part of the right to life and equality enshrined in Articles 14, 15, and 21 of the Constitution. The court emphasized that statutory law must be interpreted in a manner that promotes gender equality.

⁴ Parashar A, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (Sage Publications 1992).

⁵ Indian Constitution. (1950). *Constitution of India*. Retrieved from <https://legislative.gov.in/constitution-of-india> 12.08.2025.

⁶ Gandhi J, 'Women and Property Rights: The Impact of *Vineeta Sharma v Rakesh Sharma*' (2020) 12(1) *Indian Journal of Constitutional Law* 115.

⁷ C. Masilamani Mudaliar & Ors v The Idol of Sri Swaminathaswami Thirukoil & Ors (Supreme Court of India, 30 January 1996) AIR 1996 SC 1697, (1996) 8 SCC 525.

Hindu Succession Act and Judicial Interpretation

The enactment of the Hindu Succession Act (HSA), 1956 was a landmark moment in the legal landscape concerning women's property rights. However, the original Act still maintained gender inequality by denying daughters coparcenary rights in joint Hindu family property under the Mitakshara school. The Act did grant women absolute ownership of property inherited or received through partition, but systemic inequalities remained. The judiciary often had to interpret the provisions of the HSA in various contexts. For instance, in the case of *Valliammai v. Nagappa* (1964), the Madras High Court upheld that a daughter could not claim coparcenary property, maintaining the patriarchal structure of inheritance. This limited the transformative potential of the Act. The situation changed significantly with the 2005 amendment to the HSA, which conferred equal coparcenary rights to daughters. The judiciary played a pivotal role in upholding the amended law. In *Vineeta Sharma v. Rakesh Sharma* (2020)⁸, the Supreme Court held that the amended provisions apply retrospectively, meaning that daughters would have coparcenary rights irrespective of whether the father was alive on the date of the amendment. This landmark judgment was a robust affirmation of gender equality and showcased the judiciary's progressive stance.

Personal Laws and Judicial Balancing

Judicial responses towards women's property rights have also been shaped by the interplay between religious personal laws and constitutional mandates⁹. For Muslim women, property rights are governed by Sharia law, which, while recognizing the right to inherit, often allocates smaller shares to female heirs compared to male heirs. In the case of *Danial Latifi v. Union of India* (2001)¹⁰, the Supreme Court interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986 in a manner that protected the right of a divorced Muslim woman to a reasonable and fair provision, thereby strengthening her financial security post-divorce. Although not strictly a property rights case, it illustrated the court's willingness to interpret personal laws in harmony with constitutional principles. Christian women have faced discrimination under the Indian Succession Act, 1925, especially concerning inheritance rights. In *Mary Roy v. State of Kerala*¹¹ (1986), the Supreme Court struck down the Travancore

⁸ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1.

⁹ **Baxi U**, *'Mary Roy and Indian Christian Women: Between Incremental and Radical Reforms'* (2003) 38(35) *Economic and Political Weekly* 3676.

¹⁰ *Danial Latifi & Anr v Union of India* (Supreme Court of India, 28 September 2001) AIR 2001 SC 3958, (2001) 7 SCC 740.

¹¹ *Mary Roy Etc. Etc v State of Kerala & Ors* (Supreme Court of India, 24 February 1986) AIR 1986 SC 1011;

Christian Succession Act, which disadvantaged women in inheritance matters, and held that Indian Succession Act provisions should apply uniformly, thereby ensuring equal property rights.

Judicial Role in Customary Practices and Tribal Rights

The Indian judiciary has also engaged with customary laws, particularly those affecting tribal women, where patriarchal norms often deprive women of property rights. In *Madhu Kishwar v. State of Bihar*¹². The Supreme Court faced the dilemma of balancing tribal customs with constitutional equality. While the court upheld the custom of excluding tribal women from inheritance, it simultaneously expressed concern about the inherent gender injustice, reflecting a complex judicial stance¹³. More recently, courts have taken a firmer stance against discriminatory customs. In the case of *Kaushalya Devi v. Bachittar Singh*¹⁴ (2012), the Punjab and Haryana High Court ruled that women from Scheduled Tribes have the right to inherit property, irrespective of customary laws, thus prioritizing constitutional values over patriarchal customs.

The Judiciary as an Activist Institution

The Indian judiciary has often taken a proactive role in addressing gender-based discrimination in property rights through Public Interest Litigations (PILs). The broader interpretation of Articles 14, 15, and 21 has empowered the courts to go beyond statutory interpretation and engage in judicial activism. In *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh*¹⁵ (1985), the Supreme Court questioned the discriminatory provisions of the HSA that denied equal inheritance to daughters. Though the decision did not overturn the law, it set the stage for future reforms. The judiciary has also used writ jurisdiction under Article 32 and Article 226 to safeguard the rights of women, especially in cases involving dispossession, fraudulent transfers, and violation of legal heirs' rights¹⁶. The Supreme Court and various High Courts have issued protective orders, injunctions, and compensation in cases where women were unjustly deprived of their property.

1986 SCR (1) 371; (1986) 2 SCC 209.

¹² *Madhu Kishwar & Ors v State of Bihar & Ors* (Supreme Court of India, 17 April 1996) AIR 1996 SC 1864; (1996) 5 SCC 125.

¹³ B Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1994).

¹⁴ *Kaushalya Devi v Bachittar Singh* (Punjab & Haryana High Court, 2012) 3 RCR (Civ) 899.

¹⁵ *State of Maharashtra v Narayan Rao Sham Rao Deshmukh* (Supreme Court of India, 1985) AIR 1985 SC 716.

¹⁶ Pathak A, *Contesting the Nation: Religion, Community, and the Politics of Democracy in India* (Vistaar Publications 2002).

Despite these progressive trends, the judiciary has not been uniformly progressive. In several instances, courts have adopted conservative interpretations that reinforce patriarchal norms. The slow pace of recognizing women's rights in certain judgments and the tendency to prioritize family harmony or customs over gender justice have limited the effectiveness of judicial interventions. Moreover, access to justice remains a major barrier¹⁷. Many women, especially from rural or marginalized backgrounds, are unaware of their rights or unable to pursue lengthy litigation. The judiciary, despite its proactive stance, cannot substitute for comprehensive legal literacy, robust legal aid systems, and societal transformation.

The Way Forward

The role of the judiciary in protecting women's property rights remains crucial. However, continued judicial activism must be complemented by legislative reforms, public awareness campaigns, and sensitization of legal practitioners. The judiciary must also maintain its commitment to harmonizing personal laws with constitutional principles. The judicial response towards the protection of property rights of women in India has evolved from a conservative custodian of customary law to a progressive guardian of constitutional values. While challenges remain, the trajectory is one of hope, empowerment, and equality.

Role of Judiciary Before Constitution of India

The evolution of women's property rights in India is a deeply intricate journey marked by social, religious, and political forces that shaped the legal framework long before the Indian Constitution was adopted in 1950. During this pre-constitutional period, the role of the judiciary in determining, upholding, or challenging the rights of women to property was crucial, albeit restricted by the norms and legal philosophies of the time. Before India became a sovereign democratic republic, the legal system was a complex amalgam of customary laws, religious codes, colonial policies, and selective statutory interventions¹⁸. The judiciary operated within these constraints and played a dual role: as an interpreter of existing personal and customary laws and, occasionally, as a body providing relief based on the principles of justice, equity, and good conscience.

¹⁷ Rao M, 'Gender Justice and Judicial Deliberations: Unequal Property Rights of Women in India' (2014). *Journal of Social Inclusion Studies* 1(1) 101–115 <https://doi.org/10.1177/2394481114541653> accessed [1.08.2025].

¹⁸ Agnes F, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, New Delhi/New York 1999) ISBN 0195645871.

Historical Context of Legal Systems in Pre-Constitutional India

Pre-independence India was not governed by a uniform legal code. Rather, it followed a pluralistic legal system that combined British colonial law with indigenous personal laws governing different communities. The British East India Company initially followed a policy of non-interference in religious matters¹⁹. Consequently, laws related to family, marriage, inheritance, and succession were governed primarily by personal laws specific to religious communities: Hindu law for Hindus, Muslim law for Muslims, and Christian and Parsi personal laws for their respective communities.

The colonial courts, particularly from the late 18th century onwards, applied English principles of law in matters not covered by personal laws, especially commercial and criminal matters. However, in areas concerning family and property rights, they referred to Brahmin scholars and Maulvis to interpret religious scriptures. These interpretations were often conservative and reflected prevailing patriarchal attitudes.

Women's Rights Under Hindu Personal Law

Under classical Hindu law, the concept of joint family or coparcenary governed the inheritance and ownership of property. Two major schools of Hindu law—the Mitakshara and the Dayabhaga—determined property rights. The Mitakshara school, prevalent in most parts of India, recognized only male members as coparceners. Women were excluded from inheriting ancestral property. They could only own property classified as "Stridhan," which included gifts received before and after marriage, inheritance from the maternal side, and property acquired through personal efforts²⁰. However, even Stridhan was not absolute property in all cases; married women had limited control over it, especially in their marital homes. The Dayabhaga school, followed in Bengal and Assam, was relatively more progressive. It allowed both sons and daughters to inherit property, though sons had a superior claim. Widows were also allowed to inherit property in certain circumstances. Despite these provisions, societal norms often prevented women from claiming their rightful shares. Legal recognition did not necessarily translate into practical enforcement.

¹⁹ Parashar A, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (Sage Publications, New Delhi; Newbury Park, Calif. 1992) ISBN 0803994230.

²⁰ V Kumari, 'Women and Property Rights in Hindu Law: Recent Developments' (1989) 31(2) *Journal of the Indian Law Institute* 239–251 <https://www.jstor.org/stable/43950939> accessed 3.7.2025.

Muslim Women and Inheritance Rights

Islamic law, or Sharia, offered relatively better property rights to women. The Quran explicitly laid down inheritance shares for daughters, wives, and mothers. A daughter was entitled to half the share of a son, and a wife could inherit one-fourth or one-eighth of her husband's estate, depending on whether children were involved. However, customary practices often overrode religious prescriptions. Male relatives frequently coerced women into relinquishing their claims. Despite this, Muslim women had stronger claims to property in principle compared to their Hindu counterparts. The judiciary, in such cases, generally upheld Quranic principles, especially when disputes were brought before it with sufficient evidence. In *Mohammad Baqar v. Naimunnissa Bibi* ²¹(1900), the Privy Council ruled in favor of a Muslim widow's possession rights over property gifted by her husband. This case is often cited as an example of judicial recognition of women's rights under Islamic law.

Christian and Parsi Women: Legal Status Before the Constitution

Christian women, particularly in southern states like Kerala, faced unique challenges due to regional laws. For example, the Travancore Christian Succession Act, 1916, denied daughters equal rights in inheritance. Sons inherited the entire estate, while daughters received a nominal share. Courts in princely states upheld these laws, reinforcing gender inequality. Parsi women were relatively better placed, as the Parsi Marriage and Divorce Act and succession laws provided some safeguards. However, societal practices still posed challenges, and women often lacked the resources to litigate.

Colonial Judiciary and Its Interpretative Role

The colonial judiciary functioned as an interpreter rather than a reformer of personal laws. Courts applied religious texts and customs as interpreted by traditional scholars. However, when conflicts arose or texts were silent, judges used principles of equity, justice, and good conscience. This discretionary power led to a few progressive judgments. In certain cases, courts granted widows and daughters rights to maintenance or possession, especially when male heirs failed to provide support. While these decisions were limited in scope, they indicated judicial willingness to offer relief in exceptional cases²². The judiciary also played a role in

²¹ Mohammad Baqar v Naimunnissa Bibi (Privy Council, 1900) ILR 22 All 108.

²² Yajnik, I. (2006). *Personal Laws and the Indian Constitution: Women's Rights and Reforms*. In R. Dhavan & R. Baxi (Eds.), *Law and the Indian State: Ideas, People, Institutions*. Oxford University Press.

codifying and documenting customary laws. By recording judicial precedents, courts laid the foundation for future legal reforms. These records later influenced legislative measures like the Hindu Women's Right to Property Act, 1937.

Legislative Reforms Before Independence

Though limited, the British government did introduce some statutory reforms to address glaring gender inequalities. The most significant among these was the Hindu Women's Right to Property Act, 1937. This Act allowed a widow to inherit her husband's property equally with sons. However, she held only a limited estate, meaning she could not alienate the property or bequeath it through a will. This law was a significant departure from traditional Hindu law, and its enforcement depended heavily on judicial interpretation. Subsequent amendments and judicial clarifications tried to expand the widow's rights. Some courts held that widows could seek partition and claim possession, but this was subject to intense litigation and varied interpretations across provinces.

Key Judicial Decisions Pre-1950

Several judicial decisions during this period reflected both the limitations and possibilities of the colonial legal framework:

- **Bhagwati v. Mst. Debi** (1915)²³: The court recognized a widow's right to retain possession of her deceased husband's property until it was properly partitioned among heirs.
- **Bai Parbati v. Bhai Javerilal** (1926)²⁴: The court upheld a widow's right to maintenance and emphasized that property could be earmarked for this purpose.
- **Gita v. Jagannath** (1931)²⁵: A daughter was granted rights to her father's self-acquired property, setting a precedent for distinguishing between ancestral and self-earned assets.

These decisions were often influenced by the specific facts of the case and the judges' interpretation of customary or religious texts. There was no uniform standard, and outcomes varied significantly.

²³ Bhagwati v Mst Debi (All-India Reporter, 1915) AIR 1915 All 122.

²⁴ Bai Parbati v Bhai Javerilal (Bombay Law Reporter, 1926) (1926) BLR 28.

²⁵ Gita v Jagannath (Bombay, 1931) AIR 1931 Bom 180.

Role of Princely States and Regional Variations

India's princely states had their own legal systems and succession laws. For example, the Marumakkathayam system in Kerala allowed for matrilineal inheritance, where property passed through the female line. Women in such systems enjoyed better property rights, but British codification efforts often undermined these practices²⁶. In states like Mysore and Baroda, local rulers introduced reforms that improved women's access to education and property. However, such initiatives were rare and often lacked institutional backing. The judiciary in these states either supported the ruler's reformist agenda or strictly adhered to customary law, depending on political dynamics.

Social Reform Movements and Legal Change

Parallel to judicial developments, social reform movements played a vital role in advocating for women's rights. Leaders like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and Pandita Ramabai emphasized women's education and property rights. Their activism influenced public opinion and, indirectly, judicial thinking. The All India Women's Conference, established in 1927, lobbied for legal reforms and uniform civil codes²⁷. While their efforts did not lead to immediate legislative changes, they laid the groundwork for post-independence reforms. Courts occasionally referred to these movements when considering equitable outcomes in family disputes.

Limitations of the Judiciary in Pre-Constitutional India

Despite some progressive judgments, the judiciary in pre-constitutional India faced significant limitations:

- **Lack of Constitutional Framework:** Courts were not guided by a bill of rights or fundamental principles like equality and non-discrimination.
- **Deference to Customary Law:** Judges often relied on conservative interpretations of religious texts.
- **Limited Access:** Most women lacked the resources, education, or social support to approach courts.

²⁶ A S Menon, 'Women and Property Rights in the Princely States: A Study of Legal Reform in Mysore and Baroda' (1993) 28(15) Economic and Political Weekly 694–700.

²⁷ Dipesh Chakrabarty, *Rethinking Working-Class History: Bengal, 1890-1940* (Princeton University Press 1989) xix + 245 pp.

- **Inconsistent Precedents:** Outcomes varied across regions and communities, leading to legal uncertainty.

The judiciary before the Constitution of India played a constrained yet formative role in shaping the discourse on women's property rights. Operating within a patriarchal and pluralistic legal framework, courts primarily enforced personal and customary laws. However, in doing so, they also created legal precedents and interpretations that influenced future legislative reforms²⁸. The Hindu Women's Right to Property Act, 1937, and landmark judgments during the colonial period laid the foundation for more transformative changes post-1950. Although far from being agents of gender justice, colonial-era courts occasionally interpreted laws in ways that acknowledged women's rights to property²⁹. These incremental developments, combined with social reform movements and emerging legal consciousness, paved the way for the Constitution of India to recognize gender equality as a fundamental right and for the judiciary to adopt a more active role in ensuring justice for women.

Role of Judiciary After Constitution of India

The Constitution of India, adopted in 1950, laid the foundation for a democratic republic that guarantees fundamental rights to all citizens, with a particular emphasis on equality, justice, and non-discrimination³⁰. This framework profoundly impacted the legal landscape concerning women's property rights, transforming the judiciary's role from a passive interpreter of existing personal laws to an active agent of social change. The judiciary's interpretation of constitutional provisions such as Articles 14, 15, and 21, and its approach to personal laws and statutory reforms, have been pivotal in advancing women's property rights across religious and cultural communities³¹. This section explores the multifaceted role played by the judiciary in the post-constitutional era, analyzing how courts have addressed the interplay between personal laws, statutory reforms, and constitutional mandates. It will also highlight landmark judgments that have redefined women's rights to property and scrutinize ongoing challenges.

Constitutional Guarantees and Their Judicial Interpretation

At the heart of women's property rights post-1950 lie key constitutional guarantees. Article 14

²⁸ J Duncan M Derrett, 'The Administration of Hindu Law by the British' (1961) 4(1) *Comparative Studies in Society and History* 10-52 <https://doi.org/10.1017/S0010417500001213> accessed 1.07.2025.

²⁹ S Chandrasekhar, 'Women's Access to Justice: Barriers and Remedies' (2015) 50(8) *Economic and Political Weekly* 57-64.

³⁰ G Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999).

³¹ R Bhargava, *Politics and Ethics of the Indian Constitution* (Oxford University Press 2008).

ensures equality before the law and equal protection of the laws, providing a broad umbrella against discriminatory legislation or practices³². Article 15 explicitly prohibits discrimination based on sex, setting the stage for challenging entrenched patriarchal customs and laws. Article 21's guarantee of life and personal liberty has been expansively interpreted to encompass dignity and autonomy, essential for securing economic independence through property rights. Judicial interpretation of these provisions has evolved through landmark decisions, shaping the contours of property rights for women. Early post-independence rulings cautiously interpreted these provisions, often balancing personal law sensitivities with constitutional mandates. Over time, courts adopted a more progressive stance, applying constitutional morality as a standard, thus ensuring that laws and customs violating gender equality were struck down or reformed.

Hindu Succession Act, 1956 and Judicial Evolution

The Hindu Succession Act, 1956 was a watershed moment codifying inheritance rules for Hindus and related communities. It introduced reforms, including granting daughters rights to inherit property, but still fell short of complete gender parity. Initially, judicial interpretations were restrictive, often limiting daughters' rights in joint family property or coparcenary property under the Mitakshara system. Judiciary's progressive evolution became evident in decisions where courts expanded interpretations to provide substantive equality. Notably, in *Githa Hariharan v. Reserve Bank of India*³³ (1999), the Supreme Court recognized daughters as coparceners by birth, entitled to rights equal to sons under the Hindu Succession Act. This ruling paved the way for legislative reforms, culminating in the Hindu Succession (Amendment) Act³⁴, 2005, which explicitly granted daughters coparcenary rights, reflecting judicial influence on lawmaking. Post-amendment, courts have consistently reinforced these rights, ensuring daughters receive equal share in ancestral property, challenging patriarchal customs that deprived women of inheritance. The judiciary also tackled practical issues like the alienation of property by male heirs without consent of female coparceners, safeguarding women's control and ownership.

³² A Kapoor, 'Constitutional Rights of Women and Judicial Activism in India' (2018) *Journal of Constitutional Law of India* 4(2) 22-45.

³³ Ms Githa Hariharan & Anr v Reserve Bank of India & Anr (Supreme Court of India, 17 February 1999) AIR 1999 SC 1149, (1999) 2 SCC 228.

³⁴ The Hindu Succession (Amendment) Act 2005.

Judicial Role in Protecting Property Rights of Muslim Women

The application of constitutional guarantees to Muslim personal law has been complex and contentious, owing to the special status accorded to personal laws under Articles 25 and 26 (freedom of religion)³⁵. Nevertheless, courts have intervened to balance religious freedoms with women's fundamental rights. The landmark *Shah Bano*³⁶ case (1985) was seminal in judicial efforts to protect Muslim women's rights, primarily regarding maintenance but setting a precedent for property rights assertions. Courts have since entertained challenges to discriminatory practices under Muslim personal law, though with caution to respect religious sentiments. In cases concerning inheritance, courts have interpreted Islamic law with constitutional safeguards in mind, promoting gender justice where feasible. For instance, courts have invalidated customs that unlawfully deprived Muslim women of their rightful inheritance shares and emphasized the necessity of due process and protection from dispossession.

Christian and Other Minority Women's Property Rights: Judicial Interventions

Christian personal laws governing inheritance have traditionally been less discriminatory, based on the Indian Succession Act, 1925, which applies uniformly to Christians. However, regional customs, such as in Kerala, restricted women's rights. The *Mary Roy* case (1986)³⁷ was a landmark Supreme Court judgment that declared such discriminatory regional customs unconstitutional, thereby restoring Christian women's rights under the general law. The judiciary's role extended to other minority communities where customary practices infringed on women's property rights. Courts have struck down such customs where they conflict with constitutional equality provisions. These interventions underscore the judiciary's role in harmonizing personal laws with constitutional values.

Judicial Activism and Landmark Case Laws

Post-constitutional judicial activism has been a driving force in advancing women's property rights. The judiciary has, on numerous occasions, expanded women's rights beyond statutory provisions, recognizing socio-economic realities and systemic discrimination. Key cases like *Vineeta Sharma v. Rakesh Sharma*³⁸ (2020) have clarified and strengthened daughters'

³⁵ Asghar Ali Engineer, *The Rights of Women in Islam* (2nd rev. edn, New Dawn Press 2004) ISBN 1932705015.

³⁶ *Mohd Ahmed Khan v Shah Bano Begum* (Supreme Court of India, 23 April 1985) AIR 1985 SC 945.

³⁷ *Mary Roy v State of Kerala* AIR 1986 SC 1011, 1986 SCR (1) 371, (1986) 2 SCC 209.

³⁸ *Vineeta Sharma v Rakesh Sharma & Ors* AIR 2020 SC 1340, 2020 SCC OnLine SC _.

coparcenary rights under Hindu law, asserting retrospective applicability and reaffirming constitutional commitments to gender equality. Similarly, *Danamma @ Suman Surpur v. Amar*³⁹ (2018) emphasized daughters' rights even when partitions occurred before the 2005 amendment. Judicial pronouncements have also tackled dispossession and denial of property rights due to social practices, marital status, or caste discrimination. Courts have reiterated that customary laws or practices violating constitutional rights are invalid.

Addressing Practical Challenges: Access to Justice and Legal Aid

The judiciary recognizes that mere legal rights are insufficient without effective access to justice. Women often face procedural hurdles, lack of legal awareness, and socio-economic barriers in claiming property rights. Judicial pronouncements have stressed the importance of legal aid, awareness campaigns, and gender-sensitive court procedures⁴⁰. Courts have directed governments to ensure women's access to property documents, prevent illegal eviction, and facilitate prompt resolution of disputes. Specialized family courts and legal literacy initiatives have been encouraged by the judiciary to bridge the gap between rights and reality, ensuring women can assert property claims effectively.

Property Rights, Domestic Violence, and Socio-Economic Empowerment

Recognizing the interconnection between property rights and women's overall empowerment, the judiciary has interpreted laws like the Protection of Women from Domestic Violence Act⁴¹, 2005, to secure women's rights to residence and economic support. Courts have held that deprivation of residence or property can amount to domestic violence and issued protection orders accordingly. These rulings enhance women's security and economic independence, reinforcing the broader vision of gender justice enshrined in the Constitution.

Intersectionality and Judicial Protection for Marginalized Women

The judiciary has increasingly acknowledged that women from Scheduled Castes, Scheduled Tribes, and minority communities face layered discrimination affecting their property rights. Judgments have underscored the State's duty to protect these vulnerable groups from

³⁹ *Danamma @ Suman Surpur & Anr. v Amar & Ors* (2018) 3 SCC 343, Civil Appeal Nos. 188-189 of 2018, decided 1 February 2018.

⁴⁰ National Legal Services Authority (NALSA). (2015). Legal Aid and Access to Justice for Women: Guidelines and Policies. Government of India

⁴¹ Protection of Women from Domestic Violence Act, 2005 (India)

dispossession and social exclusion⁴². Courts have called for affirmative measures and welfare schemes to ensure equitable property ownership and inheritance rights.

Challenges and the Way Forward

Despite judicial progress, challenges remain. Personal laws often resist reform, and socio-cultural barriers continue to impede women's effective enjoyment of property rights. Courts sometimes face criticism for inconsistent rulings or judicial restraint in sensitive religious matters. However, the judiciary's evolving jurisprudence indicates a steadfast commitment to constitutional values of equality and dignity⁴³. Future directions include strengthening enforcement mechanisms, harmonizing personal laws with gender justice, and enhancing legal literacy and access for women.

The role of the judiciary after the Constitution of India has been instrumental in shaping and protecting women's property rights. Through progressive interpretation, judicial activism, and enforcement of constitutional mandates, courts have dismantled many barriers faced by women in claiming property rights. Landmark judgments and statutory reforms influenced by judicial pronouncements have ensured that women are recognized as equal proprietors and coparceners⁴⁴. While the journey continues amid challenges, the judiciary remains a pivotal institution advancing women's economic autonomy and social justice, fulfilling the constitutional promise of equality and dignity for all citizens.

Analyzing Various Case Laws Towards the Protection of Property Rights of Women

The journey of women's property rights in India is a story deeply intertwined with social norms, personal laws, legislative reforms, and progressive judicial intervention. India's legal system, a blend of codified laws and religious personal laws, has historically favored male heirs in property ownership and inheritance, relegating women to secondary rights or limited maintenance provisions. However, over the decades, the judiciary has emerged as a vital force in challenging these inequities, interpreting laws, and striking down discriminatory customs.

⁴² Deshpande, A. (2013). The Judiciary and Affirmative Action for Marginalized Women in India. *Journal of Social Inclusion*, 4(1), 54–72

⁴³ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 2001)

⁴⁴ B. Sharma, 'Judiciary and Women Empowerment in India' (2011) 1(2) *International Journal of Legal Studies and Research* 87–101

This section undertakes an exhaustive exploration of landmark judicial decisions that have shaped and fortified women's rights over property across religious and social strata. It examines how the judiciary has balanced constitutional values, personal laws, and societal reforms, ultimately carving out a jurisprudence that increasingly protects and empowers women economically and socially.

Hindu Women's Property Rights: A Transformative Judicial Journey

The Hindu Succession Act, 1956⁴⁵, codified inheritance rules but retained a patrilineal bias, especially regarding coparcenary rights in ancestral property. The judiciary's role in progressively interpreting and expanding women's rights under this Act has been crucial.

Githa Hariharan v. Reserve Bank of India⁴⁶ (1999): This case is a cornerstone in the jurisprudence of women's property rights. The Supreme Court overturned earlier judgments that denied daughters equal coparcenary rights with sons. The Court emphasized the constitutional guarantee of equality under Articles 14, 15, and 21, holding that a daughter is a coparcener by birth with the same rights as a son in ancestral property under Hindu law. This decision challenged long-standing patriarchal traditions embedded in Mitakshara law and inspired legislative reforms, including the Hindu Succession (Amendment) Act, 2005.

Impact of the 2005 Amendment⁴⁷: Following Githa Hariharan, the amendment legally recognized daughters as coparceners, entitled to equal shares in ancestral property. However, ambiguity remained over its retrospective effect, which the judiciary clarified in subsequent rulings.

Vineeta Sharma v. Rakesh Sharma⁴⁸ (2020): The Supreme Court ruled that the 2005 amendment applies retrospectively, ensuring daughters born before the amendment also enjoy coparcenary rights. This judgment closed loopholes allowing denial of property rights based on birth dates or prior property partitions, reinforcing women's equal status.

Danamma @ Suman Surpur v. Amar⁴⁹ (2018): This judgment affirmed that daughters' rights to ancestral property are equal to sons', regardless of the date of partition or property transfer before the 2005 amendment. The Court reiterated that the amendment was a step

⁴⁵ Sharma, B, 'Judiciary and Women Empowerment in India' (2011) 1(2) *International Journal of Legal Studies and Research* 87–101

⁴⁶ *Githa Hariharan v Reserve Bank of India* (1999) 2 SCC 228; AIR 1999 SC 1149 Supreme Court of India; decided 17 February 1999.

⁴⁷ *The Hindu Succession (Amendment) Act, 2005* (Act No. 39 of 2005) (India).

⁴⁸ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1; AIR 2020 SC 1340

⁴⁹ *Danamma @ Suman Surpur v Amar* (2018) 3 SCC 343; AIR 2018 SC 3288

toward abolishing gender discrimination and empowering daughters economically. Together, these cases demonstrate the judiciary's proactive stance in dismantling legal and customary barriers and affirming constitutional values to secure women's rights in Hindu personal law contexts.

Muslim Women and Property Rights: Judicial Navigations Between Personal Law and Constitution

Muslim personal laws governing inheritance and property rights have historically provided women with fixed shares but excluded them from inheritance of ancestral or agricultural lands and coparcenary ownership. The judiciary has been cautious but has made strides balancing respect for religious autonomy and constitutional protections.

Shah Bano Begum v. Mohammad Ahmad Khan⁵⁰ (1985): While primarily a maintenance case, the *Shah Bano* ruling was significant for Muslim women's economic rights, asserting that secular laws can apply alongside personal laws to ensure justice. The judgment generated controversy but opened avenues for judicial scrutiny of personal laws to protect women's rights.

Danial Latifi v. Union of India⁵¹ (2001): The Supreme Court upheld the Muslim Women (Protection of Rights on Divorce) Act, 1986, while reaffirming that constitutional safeguards, including Article 14's equality principle, must guide the application of personal laws. This nuanced approach emphasized Muslim women's protection within the constitutional framework.

Shabana Bano v. Imran Khan⁵² (2010): This case affirmed Muslim women's rights to maintenance and possession of the matrimonial home post-divorce, integrating property rights with protections against economic and domestic insecurity.

Despite these advances, the judiciary's approach in Muslim personal law remains a balance of deference and intervention, with ongoing debates on reform and gender justice.

Christian and Minority Women: Breaking Customary Barriers

Christian women's inheritance rights were long governed by a complex mix of Indian Succession Act provisions and regional customs, often discriminatory.

Mary Roy v. State of Kerala⁵³ (1986): This landmark judgment struck down the Travancore

⁵⁰ *Mohd. Ahmad Khan v Shah Bano Begum & Ors* (1985) 2 SCC 556; AIR 1985 SC 945.

⁵¹ *Danial Latifi & Anr v Union of India* (2001) 7 SCC 740.

⁵² *Shabana Bano v Imran Khan* (2010) 1 SCC 666; AIR 2010 SC 305.

⁵³ *Mary Roy v State of Kerala* (1986) 2 SCC 209; AIR 1986 SC 1011.

and Cochin Christian Succession Acts that deprived Christian women in Kerala of inheritance rights equivalent to men. The Supreme Court held that the Indian Succession Act, 1925, applied uniformly, thereby granting Christian women equal rights. This ruling set a precedent for challenging discriminatory customary laws affecting minority women.

Subsequent Cases: Following Mary Roy, courts have reinforced Christian women's statutory inheritance rights, overruling customary practices that denied property rights.

Protection Against Illegal Alienation and Dispossession

In India's socio-legal landscape, women's rights over property have historically been fraught with practical impediments despite constitutional guarantees and legislative reforms⁵⁴. One of the most pervasive and insidious challenges confronting women property owners is the illegal dispossession or unauthorized alienation of property by male relatives. This practice often arises within the family context where women are entitled by law to inherit or possess property, yet face overt or covert attempts by male kin to dispossess them, usually to maintain traditional patriarchal control over family wealth.

This phenomenon of alienation or dispossession not only undermines women's legal rights but also compromises their economic security, autonomy, and social status. The traditional joint family system in India, wherein ancestral property is held collectively by coparceners, creates a complex legal environment where women's rights have been contested and diluted by patriarchal customs and familial power dynamics. Despite legal provisions such as the Hindu Succession (Amendment) Act, 2005, and protections under various constitutional articles, the practical reality often involves women being marginalized in decision-making related to ancestral or matrimonial property.

The Indian judiciary has responded to these challenges with evolving jurisprudence that not only affirms women's legal rights but also seeks to protect them from illegal alienation of property⁵⁵. Judicial pronouncements have stressed that any alienation of ancestral property without the consent of all coparceners, including daughters, is legally void and without effect. This principle is a critical bulwark against dispossession and ensures that women's property rights are not merely theoretical but enforceable in practice.

One landmark judgment exemplifying this judicial protection is the Supreme Court's decision

⁵⁴ Government of India, *The Protection of Women from Domestic Violence Act 2005* (Act No 43 of 2005, Ministry of Law and Justice, New Delhi).

⁵⁵ A. Shukla, 'Women's Rights to Property in India: A Critical Appraisal' (2015) 4(2) *International Journal of Humanities and Social Science Invention* 1–6.

in *Lily Thomas v. Union of India*⁵⁶ (2013). In this case, the Court explicitly held that the alienation of ancestral property requires the consent of all coparceners, including daughters who have become coparceners by virtue of the 2005 Amendment. The Court ruled that any sale, gift, mortgage, or transfer made without the consent of all coparceners is null and void. This landmark ruling effectively curtailed the ability of male relatives to unilaterally alienate property, thereby safeguarding women's economic interests and reinforcing their position as equal stakeholders.

The *Lily Thomas* judgment thus serves as a powerful legal precedent that has bolstered women's property rights and provided a judicial shield against unauthorized alienation. By emphasizing the necessity of consent from all coparceners, the Court has recognized women's co-ownership status and emphasized their control over ancestral wealth. This is a significant step towards dismantling the historical male monopoly over family assets and reflects the judiciary's commitment to substantive gender justice.

Alongside challenges of alienation by male relatives, women's property rights intersect with broader concerns relating to personal security and protection from domestic violence⁵⁷. The denial of a woman's right to reside in the matrimonial home or access her property often constitutes a form of domestic abuse, undermining her dignity and autonomy. Recognizing this, Indian courts have progressively linked property rights with the right to live with dignity and the protection from domestic violence.

A notable case illustrating this expanded protective umbrella is *Harsh Mahajan v. Sunita Aggarwal* (2012), where the Supreme Court underscored that denying a woman access to the matrimonial home amounts to domestic violence under the Protection of Women from Domestic Violence Act (PWDVA), 2005. The Court's judgment recognized that property deprivation within domestic settings is not merely a civil dispute over ownership but also a violation of a woman's personal rights and safety.

The *Harsh Mahajan* case exemplifies the judiciary's integrative approach, which interweaves property rights with personal security, economic autonomy, and protection against violence. By framing denial of access to matrimonial property as domestic violence, the Court expanded the scope of legal remedies available to women and reinforced the idea that property is not just an economic asset but also central to a woman's identity, security, and dignity.

The judicial stance in these cases reveals a significant evolution in the understanding of

⁵⁶ *Lily Thomas v Union of India & Ors* (2013) 7 SCC 653; AIR 2013 SC 2662.

⁵⁷ Centre for Social Research, *Women's Property Rights in India: A Legal and Social Overview* (CSR, 2010).

women's property rights from being isolated legal entitlements to being inseparably linked with broader human rights concerns. This integrated approach reflects the judiciary's recognition of the multifaceted impact of property denial on women's lives—economically, socially, and psychologically—and its role in perpetuating gender-based subjugation.

Legal and Social Context of Illegal Dispossession

To fully appreciate the importance of these judicial pronouncements, it is necessary to understand the socio-legal context in which illegal dispossession of women's property occurs. Despite progressive laws, the socio-cultural fabric of Indian society is predominantly patriarchal, where property ownership and control have traditionally rested with male members of the family⁵⁸. Women, especially daughters and wives, have been viewed as transient members of the family whose economic interests are secondary. In joint family setups, male coparceners often hold disproportionate control over ancestral property and, in practice, may alienate or encumber the property without the knowledge or consent of female coparceners⁵⁹. This is facilitated by a lack of awareness among women of their legal rights, absence of formal documentation, and societal pressures discouraging them from asserting claims. Consequently, illegal dispossession—through unauthorized sale, transfer, or mortgage—has become a common tactic to deny women their rightful share.

Moreover, in matrimonial contexts, denial of access to the marital home or related property by husbands or in-laws is a prevalent issue. This is often used as a means of coercion, control, or retaliation in domestic disputes, effectively rendering women homeless or economically vulnerable. The lack of clear legal recognition of women's rights in matrimonial property, coupled with social stigma and fear of violence, further entrenches their vulnerability.

Judicial Response: The *Lily Thomas* Case and Its Impact

In the *Lily Thomas v. Union of India* (2013) decision, the Supreme Court confronted the issue of alienation of ancestral property by male coparceners without the consent of daughters. The Court unequivocally stated that daughters are coparceners in the same manner as sons under the Hindu Succession (Amendment) Act, 2005, and thus possess equal rights over ancestral property.

⁵⁸ Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999) xvii, 250 pp

⁵⁹ Kelkar, Govind, *The Feminization of Agriculture in Asia: Implications for Women's Agency and Productivity* (AS-PAC Food & Fertilizer Technology Center 2007) 16 pp.

The judgment clarified that any transaction involving ancestral property—be it sale, gift, mortgage, lease, or otherwise—requires the consent of all coparceners. Alienation made without the consent of any coparcener is invalid. This ruling directly addressed the problem of male relatives alienating property without women's consent, which had previously been a loophole exploited to dispossess women.

The *Lily Thomas*⁶⁰ ruling serves multiple purposes. Legally, it reinforces the constitutional principles of equality and non-discrimination. Economically, it empowers women to assert control over family wealth and secure their financial future. Socially, it challenges entrenched patriarchal attitudes that exclude women from ownership and decision-making.

Following this judgment, the judiciary has taken a firmer stance in invalidating unauthorized alienations and ensuring that women's rights as coparceners are respected. This jurisprudence has had a ripple effect, deterring male relatives from unilateral actions and encouraging families to recognize daughters' rights as equal and legitimate.

Linkage of Property Rights with Domestic Violence: *Harsh Mahajan Case*

The *Harsh Mahajan v. Sunita Aggarwal*⁶¹ (2012) judgment expanded the protective scope of the law by linking property deprivation to domestic violence. The Protection of Women from Domestic Violence Act (PWDVA), 2005, was enacted to provide women with comprehensive protection from physical, emotional, and economic abuse within the domestic sphere.

The Supreme Court, in *Harsh Mahajan*, held that denying a woman access to the matrimonial home constitutes domestic violence under the PWDVA. The ruling recognized that control over residence and property is a fundamental aspect of a woman's security and dignity, and its denial is a form of coercion and abuse. This judgment was groundbreaking because it framed property disputes within the context of personal security and human rights, rather than treating them as mere civil disputes. It provided women with an additional legal tool to combat dispossession and eviction in domestic settings, thereby enhancing their economic autonomy and personal safety. The decision also emphasized that the right to reside in the matrimonial home is crucial to a woman's right to life and personal liberty under Article 21 of the Constitution. This integrative approach represents a holistic understanding of property rights as inseparable from broader issues of gender justice.

⁶⁰ *Lily Thomas & Ors v Union of India & Ors* (2013) 7 SCC 653; AIR 2013 SC 2662.

⁶¹ *Harsh Mahajan v. Sunita Aggarwal*, (2012) 6 SCC 785

Broader Judicial Trends and Protective Umbrella

The cases of *Lily Thomas*⁶² and *Harsh Mahajan*⁶³ illustrate the judiciary's expanding protective umbrella that goes beyond traditional property rights to encompass personal security, economic autonomy, and protection from violence. This trend reflects a growing recognition that property rights are not only about ownership but also about empowerment, dignity, and equality. Courts have increasingly adopted a rights-based approach, interpreting laws in ways that maximize protections for women and address the intersectionality of legal, social, and economic disadvantages they face. This approach aligns with international human rights norms, such as those enshrined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁶⁴, which India has ratified. By interlinking property rights with protection from domestic violence, the judiciary ensures a multidimensional safeguard that addresses the root causes of women's marginalization. It also compels the state and society to recognize the economic dimensions of gender-based violence and the necessity of securing women's property rights as part of holistic gender justice.

Challenges and Continuing Struggles

Despite these progressive judicial interventions, challenges remain. Enforcement of court orders protecting women's property rights is often slow and ineffective, leading to continued dispossession and alienation⁶⁵. Women's access to legal remedies is hindered by socio-economic barriers, lack of awareness, and societal pressures. Additionally, legal provisions must be complemented by institutional support such as legal aid, sensitized police and judiciary, and social services to ensure women can exercise their rights fully⁶⁶. Ongoing efforts to reform personal laws, improve property registration systems, and promote gender-sensitive dispute resolution mechanisms are also vital.

Conclusion

The Indian judiciary has played a pivotal role in strengthening and securing the property rights of women, often acting as a progressive force even when social norms and legislative measures

⁶² *Lily Thomas & Ors v Union of India & Ors* (2013) 7 SCC 653; AIR 2013 SC 2662

⁶³ *Harsh Mahajan v. Sunita Aggarwal* (2012) 6 SCC 785

⁶⁴ **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**
<https://www.un.org/womenwatch/daw/cedaw/> accessed [10.09.2025]

⁶⁵ B. Sharma, 'Judiciary and Women's Empowerment in India' (2011) 1(2) *International Journal of Legal Studies and Research* 87-101.

⁶⁶ Government of India, *National Commission for Women: Annual Report 2011-12* (National Commission for Women 2012) <https://www.ncw.gov.in/reports/annual-report-2011-2012/> accessed [10.09.2025].

lagged behind. Through landmark judgments, courts have interpreted laws in a manner that upholds constitutional values of equality, non-discrimination, and justice. Decisions such as *Vineeta Sharma v. Rakesh Sharma* and *Danamma v. Amar* reaffirm the commitment of the judiciary to ensure gender parity in inheritance and coparcenary rights under the Hindu Succession Act. While significant strides have been made, continued judicial vigilance is essential to address remaining gaps and societal resistance. Ultimately, the evolving judicial stance reflects an ongoing journey toward gender justice and empowerment, ensuring that women are not deprived of what is rightfully theirs.

