

## A LEGAL STUDY ON PERSONAL LAWS IN INDIA WITH RESPECT TO WOMEN'S PROPERTY RIGHTS

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### Abstract

*The main motive behind this research is to legally study on "Personal Laws in India with respect to Women's Property Rights". It is most significant to highlight the necessity of gender-sensitive social protection programs that pay attention to Personal Laws in India with Respect to Women's Property Rights. It creates an impact by emphasising how numerous cultural, economic & social factors influence the relationship between domestic violence & property ownership, and warns against using a one-size-fits-all strategy to domestic violence prevention. An attempt has been made to identify and determine the share of females under various legal systems, so as to undergo through the problems and challenges faced by women in India. By doing so, a research gap has been furnished to domesticate the intricate law of inheritance, allowing members of a given culture to quickly determine the shares of females. Therefore, to overcome with this research gap, certain objectives has been finalized such as to learn more about women's knowledge of their property rights; determine the extent to which various religious groups in India use legal acts to protect women's property rights; recommend Acts be amended as needed to eliminate gender prejudice in women's property rights inheritance; and make recommendations for the formulation of policy effectively & execution that will lead to gender equality. The current researcher used a completely doctrinal research approach to complete the research assignment. The recapitulation is made in this study, and a feeble but honest attempt is made to offer some methods for women's empowerment, emancipation from the equality of rights in inheritance & gender bias system. This research aids in revealing the dynamics of challenges relating to the property rights of women in order to build better programs that respect property rights of women's while increasing social fairness. At the social, individual, & communal levels, the study attempts to document and explore the complex conversation of reasons and explanations that breach women's entitlement to community & land property rights. Thus, the apex courts' and different high courts' judicial rulings have been thoroughly addressed in this study, and appropriate corrective measures have been proposed.*

**Keywords:** Personal Laws, gender-sensitive, religious groups, policy, women's empowerment, judicial rulings.

## **Introduction**

India is a diverse country in terms of tradition, religion, culture, & race. Personal law governs each religious community<sup>1</sup>. Even within religious communities, there exist sub-groups with their own property rights and local customs and conventions.

A woman's other titles include impoverished, deprived, discriminated, desolated, forsaken & despaired. On one hand, she is revered, adored, & even worshipped, and she is elevated to the highest social standing; on the other hand, she is mistreated, humiliated, degraded & brutalized. All of these torments are caused by economic inequity & monetary reliance. Men and women are often seen as two distinct components of society, and neither can fully realise their creative potential without the assistance of others. Since the dawn of time, they have been the victims of flagrant injustice. Despite the fact that we have entered the new millennium, the women's status has so far not improved due to prejudices & historic biases towards that part of society that has been excluded from mainstream society through no fault of their own.

Discrimination is caused by societal attitudinal biases, not by a lack of adequate legislation. Material and substantial changes to laws have been made from time to time, resulting in radical transformations, such as recent enactments that spell out equality & dignity of women to global standards. Despite this, inequality in the area of property rights, as well as many others, persists, and women still own only one percent of immovable property in their own names<sup>2</sup>.

The issue of women's dignity and gender inequality has emerged as one of the most pressing worldwide issues as the new millennium approaches. Gender inequity exists and is perpetuated in the modern welfare state, which is a blemish and disgrace. It is a social blight, an embarrassment to the entire human species, and a disease that threatens humanity's backbone. The growth of fair sex has a significant impact on the human world's future. The welfare of a country's women, who make up a significant portion of the world's population, is inexorably related to its fate.

The global system has recently begun to judge a country's progress not just in terms of economic or military might, or the splendor of its public structures & capital cities, but also in

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<sup>1</sup> Jain, P. (2005). Balancing minority rights and gender justice: The impact of protecting multiculturalism on women's rights in India. *Berkeley J. Int'l L.*, 23, 201.

<sup>2</sup> Agarwal, B. (2003). Gender and land rights revisited: Exploring new prospects via the state, family and market. *Journal of agrarian change*, 3(1-2), 184-224.

terms of its people's human development. In this context, gender discrimination has remained a major impediment to human growth in all countries, particularly in the developing world. The right to property of women is both a serious human rights issue and a profoundly emotional one<sup>3</sup>.

Property rights for Indian women, like those of women in other countries, have evolved as a result of a long-running battle between conservative and progressive forces. And, like women's property rights elsewhere, Indian women's property rights are unfair & unequal : despite progress over the last century, Indian women still enjoy fewer property rights than men, in terms of both quantity and quality.

Property rights for women's in India are distinctive in that, along with many other personal rights, they are highly divided within themselves. India has yet to enact a standard civil code despite the fact that it is home to a wide range of religions. As a result, in many ways, each religious group is still ruled by its own personal rules, including property rights. Even within religious groupings, there are sub-groups as well as norms & local customs of their own property rights<sup>4</sup>.

Thus, Sikhs, Hindus, Jains & Buddhists, are controlled by a single code of property rights written only in 1956, whereas Christianity are regulated by a different code, and neither Sunnis nor Shias have defined their property rights. When it comes to the property rights of tribal women inclusion of all religions and states are nonetheless bound by tribal conventions and standards. To make things a bit more complicated, the Indian Constitution empowers both state and central governments to enact succession laws. As a result, states can enact their own versions of property laws inside every personal law, which several have already done.<sup>5</sup> As per the outcomes, property rights of women's in India are not governed by a single authority. The property rights of Indian women are influenced by their religion or religious school, whether they are married or unmarried, where they come from the country, even if they are non-tribal or tribal, and other variables.

### **Caste as a Tool in the Denial of Property Rights**

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<sup>3</sup> Nussbaum, M. (2000). Women's capabilities and social justice. *Journal of human development*, 1(2), 219-247.

<sup>4</sup> MAZUMDAR, S., & GUPTA, A. (2011). Gender Issues and Land Rights under Hindu Personal Law in India. *Centre for Social Justice, Ahmedabad, India*.

<sup>5</sup> Young, E. A. (2007). The constitution outside the constitution. *Yale LJ*, 117, 408.

Gender inequality has been at the heart of all political, cultural identities, & social, according to sociological and anthropological research<sup>6</sup>. The 'moral' & 'ideological' pedestal for the roles & status of women in Indian culture is provided by religious literature. The foundation of Hinduism is the caste system, which is based on the concepts of contaminated & pure ideas.

In a caste-based society, endogamous marriages or marriages have been imposed specifically within the caste circle to keep caste integrity intact as women are considered the gatekeepers of caste as they have reproductive power. To accomplish this, women were placed under the authority of men in every field <sup>7</sup>so that they could not make their own decisions.

Due to the violability of caste standards, several procedures, such as ex-communication, have been implemented to protect caste Hindu purity. However, such mechanisms are patriarchal discriminatory practices in which a woman is excommunicated from her paternal varna and loses her former caste benefits if she marries a man from lower varna than hers. However, if a man marries a woman who is less Varna than himself (but not fewer than two degrees), he will not be dis-fellow shipped from his Varna privileges and will continue to enjoy them <sup>8</sup>. The rights of women over immovable or movable property, such as land (which is a major source of support and independence), were refused, as if they had property rights or absolute rights on property in such a patriarchal structure based caste system, where property can be given to someone else after her marriage (even to a man from another caste if she marries), because women are controlled by the patriarchal structure. As a result, gender inequality is a basic premise in Indian society.

### **Women in Ancient period**

Since ancient times, women's legal right to inherit has been restricted. Women were awarded Stridhan property in ancient law, but only for the purpose of supporting themselves, their sons, and their daughters-in-law, and only in the absence of their husbands <sup>9</sup>.According to Kautilya's Arthashastra, when a woman lives a virtuous life after the death of her husband, she will inherit his endowments & ornaments, and if the marriage is arranged a second time by her father-in-law, she can inherit her father-in-law's & take what the spouse has given you. She will have to

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<sup>6</sup>Cornwall, A., & Lindisfarne, N. (2016). *Dislocating masculinity: gender, power and anthropology* (pp. 27-61). Routledge.

<sup>7</sup>Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India: Critical Quest.

<sup>8</sup>Rege, S. (2013). *Against the madness of Manu: B. R. Ambedkar's writings against the Brahmanical patriarchy*. New Delhi, India: Navayana Publishing Pvt. Ltd.

<sup>9</sup>Shamsastry, R. (1915). *Kautilya's Arthshastra*. Retrieved from <http://192.168.0.32:8080/jspui/123456789/80>

give up everything given by the spouse and father-in-law if she decides to marry someone other than the choice of her father in law. If she divorces, the right to inherit the in laws property<sup>10</sup>.

As a result, a woman's maintenance rights were limited in ancient times. In order to continue using that property for sustenance, she had to give up her autonomy with regard to marriage, divorce and other issues, which are still prevalent today. The patriarchal outlook of the society is responsible for the exclusion of women's succession. The latter believes that because men are the lineage's major bearers, property should only pass to them when women marry into a different family (or lineage). As a result, property was protected by maintaining masculine control over it.

Ambedkar stated in *The Rise and Fall of Hindu Women* that women were equated with the Shudras in the framework followed by Brahmanis, all of whom were deprived with basic human rights to property, knowledge, renunciation & self-respect. In Hinduism, it is said that this is the "one road to salvation." This Aryan law was broken by Buddha, who paved the path for women's freedom of movement. However, the victory of Brahmanism over Buddhism eventually drove the women & shudras down once again, as it produced a caste system with hierarchical inequality<sup>11</sup>. 'A woman shall have no property, and whatever is acquired by her belongs to one by whom she is controlled,' Manu combines a woman in such a slave-like position relative to property. She could look after her husband's property after he died, but she had no legal claim to it<sup>12</sup>.

## **Women's Property Rights in India: A Historical Overview**

### **Women's Property Rights & Vedic Period**

During the Vedic period, women were revered as goddesses and cherished. The only disadvantage she had was that she did not have the inherit rights. The unmarried daughter and the married daughter without a brother were to inherit according to Vedic literature. The widow was not given an inherited right in the property of her husband, but she was eligible to accede to her husband's wealth as a childless widow<sup>13</sup>.

### **Women's Property Rights & Medieval Period**

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<sup>10</sup>Ibid

<sup>11</sup> Ambedkar, B. R. (2013). *Castes in India: Their mechanism, genesis and development*. New Delhi, India: Critical Quest.

<sup>12</sup>Ibid

<sup>13</sup> Carroll, L. (1983). Law, custom, and statutory social reform: the Hindu Widows' Remarriage Act of 1856. *The Indian Economic & Social History Review*, 20(4), 363-388.

When Sati, child marriages, and a restriction on widow remarriages were part of social life throughout the medieval period, the Indian woman's status in society deteriorated. Purdah practice was introduced into Indian civilization by Muslim invaders. The Jauhar was a form of dance popular among Rajasthani Rajputs. Polygamy was common among Hindu Kashatriya rulers, in particular. During this time, women lacked property rights.

**Women's Property Rights & Smriti Period:** The mother, widow, & daughter were specifically named as heirs during the smriti period. Only in the absence of male heirs could they inherit a man's property.

**Property of women under Hindu Law:**

- 1) Stridhan
- 2) Non-stridhan

Under Hindu, there were two school of thoughts/laws.

- a) Mitakshara
- b) Dayabhaga<sup>14</sup>

**Mitakshara Law**

The son is given the right and interest in the family's property at birth under this law. On the basis of birth in the family, a son, a grandson, and a great-grandson, according to this school, form a class of coparceners. According to Mitakshara legislation, no woman can be a coparcenary. The property of a joint family is transferred within the coparcenary under the Mitakshara system by the survivor. This indicates that the share of each live male in the family either reduces or grows with the birth or death of each male in the family. If a father and his two sons form a coparcenary, each of them will own one-third of the property. If the family has another son, each male's portion is reduced to one-fourth. The Benares, Mithila & Bengal sub-schools of Mitakshara acknowledged just five female relatives as being entitled to inheritance prior to the Hindu Inheritance Laws (Amendment) Act 1929<sup>15</sup>:

- 1) widow,
- 2) daughter,
- 3) mother

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<sup>14</sup> Pal, A. (2016). The Evolution and Transformation of Women's Rights in India. Available at SSRN 3516474.

<sup>15</sup> Rankin, G. (1945). Hindu Law To-Day. *J. Comp. Legis. & Int'l L.* 3d ser., 27, 1.

- 4) paternal grandmother, and
- 5) paternal great-grand mother

### **Dayabhaga Law**

Neither sons nor daughters are coparceners at birth, and thus have no claim to the family estate while the father is alive<sup>16</sup>. They are inherited as common tenants, however, when he dies. It is a unique aspect of the Dayabhag school that daughters receive an equal portion of the property as their brothers, and they cannot compel the father to divide the land during his lifetime or later gift or sell it without his approval. If one of the male heirs dies, his heirs, including women like his wife and daughter, will become members of the joint property, representing him rather than acting independently.

### **Women's Rights to property**

In principle, a woman might own property in ancient times, but in practise, her right to dispose of it was limited in comparison to men's, the latter being deemed necessary by the patriarchal system to prevent her from becoming too independent and neglecting her marital duties and home management. Prior to 1937, there was no codified law, hence this was the case.

**a) The Hindu Women's Right to Property Act, 1937** was enacted as a result of widespread dissatisfaction with the state of women's property rights in India<sup>17</sup>. A widow was entitled to a limited interest in her husband's property, referred to as the Hindu widow's estate, under the aforementioned Act.

**The Act was amended in 1938** to exclude the widow from any interest in agricultural land.

### **b) Hindu Succession Act, 1956**

The 1956 Hindu Succession Act was the first to establish a comprehensive succession system for Hindus, Buddhists, Jains, & Sikhs, as well as to eliminate gender inequities in property rights. It only applies to intestate succession and to Hindu converts and their children. The offspring (married or unmarried son or daughter), widow, mother, of the intestate each receive an equal portion of the estate. In the case of testamentary succession, it has no application.

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<sup>16</sup> Carroll, L. (1991). Daughter's right of inheritance in India: A perspective on the problem of dowry. *Modern Asian Studies*, 25(4), 791-809.

<sup>17</sup>BASU, M. (1996). Impact of Hindu Code on Indian Women. *World Affairs: The Journal of International Issues*, 5(1), 46-62.

Inheritance, partition, maintenance, arrears of support, gift, prescription, or property, purchase, obtained by her, the Act grants the woman all rights, such as unrestricted property disposal rights, in any property - mobile or immovable. Stridhan, which comprises garments, jewelry, property, and wedding presents, received from her funds, is included in the property acquired in her own skill, in any other way.

**c) Amendments**

**After the Hindu Succession (Amendment) Act, 2005 Section 6**

In a major decision in September 2005, the Supreme Court of India determined that Indian women have the same right to property as men, allowing daughters to inherit family property alongside male relatives. As a result of this Act, there is no longer any distinction between male and female inheritors. Female heirs [daughters] can now claim a share of the ancestral estate.

**Section 6 of this Amendment Act (2005)**

It ensures that females and males members of an united Hindu family have equal rights to coparcenary property<sup>18</sup>. The daughter is a coparcener and is allowed to be part of the family property as if she were a son. The new Section-6 does not apply to the following two exceptions:

- a) In which the disposal or alienation, along with any partition, occurred prior to December 20, 2004.
- b) a testamentary transfer of the property done prior to December 20, 2004.

**d) Property Rights of Women under Muslim Law<sup>19</sup>**

According to a literal interpretation of the Quran, women have significantly more property rights than is commonly recognised. Insaaf, ehsaan, rehem, and Ilma are the four essential values emphasised in the Quran. Many Islamic regimes, such as Tunisia, have passed legislation against this liberalism, claiming that it lays an undue burden on men.

**Dowry**

The dowry, as well as any interest earned in cash, belongs to the Muslim woman. If the investment is done through dowry money, the women retain all gains and are under no legal

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<sup>18</sup>Gakul, K. (2013). Hindu Women's Property Rights under Hindu Succession Law: Past and present. *The Clarion-International Multidisciplinary Journal*, 2(2), 149-156.

<sup>19</sup>NAIK, T. (2021). Women's Succession Rights under Muslim Law.

obligation to share them with the her partner. To put it another way, dowry is the bedrock of all the property rights of a women.

### **Muslim Women's Property Rights<sup>20</sup>**

If anything, Islam's gender divisions favour men. All of the responsibilities belong to the husband. According to the law, the spouse is responsible for the home, children, and any elderly parents. None of these things are required of a lady, a wife. Her funds are solely hers. The money never truly belongs to the man, but rather to his extended family. Under Islamic law, these rights aim to liberate women, but they also tie males to support their families.

According to Dr. Nahid Angha, a woman can buy and sell in the market, run a business and get all her contributed assets which includes dowry. Since a woman has complete control over the money and wealth of her dowry, Islam cannot legislate against her without contradicting itself in the concern of any other property.

**Shares of Property Under Muslim Law:**"Allah commands you regarding your children. For the male a share equivalent to that of two females."

\*A son can inherit an equivalent portion of two daughters, a full brother (germane) has chances to inherit twice as the sister, the inheriting portion can be twice of son's daughter for son's son.

\*\*If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half."

\*The woman's portion is established by the notion that twice the proportion as daughters can be inherited by son as per laws in Muslim.

### **e) Property Rights for Christian Women in India:**

- A widow woman who belongs to Christianity is eligible for 2/3 of her husband's property under the Indian Succession Act of 1925.
- The surplus property is divided equally among the children.
- Offsprings of predeceased daughter & son inherit a portion from the property of their parents.

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<sup>20</sup>Aslam, A., & Kazmi, S. (2009). Muslim Women and Property Rights. *Economic Affairs*, 29(2), 10-15.

- If the woman is not having any children then she will be provided with Rs.5,000 plus half of the remaining property once that amount has been deducted.
- The property share is also applicable for the child carried by mother in her womb.
- A Christian woman is the exclusive owner of any money she earns. The power to take off these were not available with anyone else.
- She has the legal authority to bequeath or gift her own money, jewellery, and other belongings to whoever she chooses.
- Even if a father of a Christian woman spends money on presents at her wedding, she still has a right to a piece of her father's property.

### **Property Rights of Christian Women in India: The Laws:**

- Christians in Goa are regulated by the civil law of Portugal.
- Christian Succession Act 1921 and Travancore Christian Act 1916 regulate Travancore & Cochin areas.
- The areas such as Himachal Pradesh, Haryana & Punjab were regulated by Customary laws
- Indian Succession Act

### **Intestate succession among Christians**

The rules governing intestate succession among Christians would only apply if a decedent hadn't yet left a will, an instrument of gift, or a deed of settlement. The principles of succession stated under sections 29 to 49 of Part V of the Indian Succession Act, 1925 would come into effect if the aforementioned documents were not available. However, if the dead left a will, the general legislation found in sections 57 to 391 would apply.

### **Objectives**

- The study's goal is to learn more about women's knowledge of their property rights.
- Determine the extent to which various religious groups in Tamil Nadu use legal acts to protect women's property rights.
- To recommend Acts be amended as needed to eliminate gender prejudice in women's property rights inheritance.
- Make recommendations for the formulation of policy effectively & execution that will lead to gender equality.

## Methodology

The current researcher used a completely doctrinal research approach to complete the research assignment. All relevant texts, statutes, & case laws on inheritance have been studied thoroughly and critically. A comprehensive comparative chart of female shares under Hindu, Muslim, Parsi & Christian laws has been attempted.

Various books on the issue, reports relating to case laws, articles published in various periodicals, encyclopaedias, reports of various commissions on the subject, and applicable statutes are among the research materials for the current thesis. Articles from national dailies, journals & magazines, were also consulted and incorporated into the thesis when applicable. Wherever necessary, relevant texts from the Hadith, Holy Quran, Vedas, Dharmashastras, as well as the words of eminent scholars, have been included.

## Findings

The outcomes of this study highlight the necessity of gender-sensitive social protection programs that pay attention to Personal Laws in India with Respect to Women's Property Rights. The study also emphasises how numerous cultural, economic & social factors influence the relationship between domestic violence & property ownership, and warns against using a one-size-fits-all strategy to domestic violence prevention. This research aids in revealing the dynamics of challenges relating to the property rights of women in order to build better programs that respect property rights of women's while increasing social fairness. At the social, individual, & communal levels, the project attempts to document and explore the complex conversation of reasons and explanations that breach women's entitlement to community & land property rights.

## Analysis

The rights of women to possess, control & inherit property are largely governed by accepted social norms & values, as well as domestic decision-making and distribution processes (Rutherford, 1996).<sup>21</sup> The continuance of traditional labour divisions, in which women perform heavy duties like gathering fuel & water, adds to huge number of women's who works in rural areas informally (Cheryl & Doss, 2011).<sup>22</sup> Whereas excluding women from land control and transfer, as well as process of decision-making, has resulted in a drop in sustainable

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<sup>21</sup>Rutherford, Malcolm (1996): *Institutions in Economics The Old and the New Institutionalism*, Cambridge University Press, Cambridge, (Paperback).

<sup>22</sup>Bomuhangi, A., Doss, C., & Meinzen-Dick, R. (2011). *Who owns the land?: perspectives from rural Ugandans and implications for land acquisitions* (No. 1136). International Food Policy Research Institute (IFPRI).

development, in addition to increasing vulnerability and lowering status (Bina & Agarwal, 2002)<sup>22</sup>. The rights of women must be explicitly considered in planning development, and women must be forced to take part in policy creation and execution (Moock, 1976 & Meinzen-Dick, 1997)<sup>23</sup> and others. Gender equality can often lead to economic equality. Registration of land and land reform at a lowest cost, has been found to lead to higher views of tenure security for both men and women (Holden and Tewodros, 2008)<sup>24</sup>. The presence of women's names on land certificates contributed to the impression that women would be allowed to keep the land following their husband's death or divorce. Women's participation in land-related decision-making has grown. By identifying the assumption that women are entitled to an uneven resource sharing, and many other forms of discrimination learnt as children, and accepted women's own judgement. Their family and their place within it and it was described that how property resources are divided between men and women. Therefore, it was analyzed that this research was extended to women's land rights, which is against the concept of "perceived interest" response (Papanek, 1990)<sup>25</sup> Hence, it was analyzed that women's commitment to harmful practises is not the consequence of acceptance of discrimination, and that they fight it in a variety of hidden ways Agarwal, 1994.<sup>26</sup> But it has been pointed out that "... whatever be the spirit of law and custom, women fail in general to obtain rights to ownership of (or control over) land", & despite the fact that women were considered as formal legal owners, the land was managed by men, accordingly, "depriving women not only of headship in a formal sense, but of much else" (Krishnaji, 1992).<sup>27</sup> The primary objective of Indian society's inheritance regulations was to maintain property, specifically property related to lands, with male heirs (Sen, 1990). In reality, interpersonal and inter allocations are rooted in patriarchal, which is defined by patrilineal, patrilocal (or virilocal) conventions that govern women's and men's economic and non-economic responsibilities. Women's rights are mediated by family relationships and strongly ingrained notions that women must sacrifice among them, interests, as well as what comprises the well-being inside their families. Thus, at the social, individual,

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<sup>23</sup>Meinzen-Dick, R. S., Brown, L. R., Feldstein, H. S., & Quisumbing, A. R. (1997). Gender, property rights, and natural resources. *World development*, 25(8), 1303-1315.

<sup>24</sup> Holden, S., & Tefera, T. (2008). From being property of men to becoming equal owners? Early impacts of land registration and certification on women in southern Ethiopia. *Unpublished report for UNHABITAT*.

<sup>25</sup> Papanek, H. (1990). To each less than she needs, from each more than she can do: Allocations, entitlements and value. In I. Tinker (Ed.), *Persistent inequalities: Women and world development* (pp. 162–181). New York/Oxford: Oxford University Press.

<sup>26</sup> Agarwal, B. (1994). Gender and command over property: A critical gap in economic analysis and policy in South Asia. *World development*, 22(10), 1455-1478.

<sup>27</sup>Krishnaji, N (1992): Poverty and Sex Ratio: Data and Speculations in *Pauperising Agriculture Studies in Agrarian Change and Demographic Structure*, Oxford University Press and Sameeksha Trust, Bombay, pp 199-217.

& communal levels, the study attempts to document and explore the complex conversation of reasons and explanations that breach women's entitlement to community & land property rights. As a result, the apex courts' and different high courts' judicial rulings have been thoroughly addressed in this study, and appropriate corrective measures have been proposed.