

# Position of women in india

[Sociology](#), [Women](#)



“ Savitri fought with the God of Death (Yama) and succeeded in getting her husband back to life. Can you find any instance in the scriptures or history where a husband was prepared to do sacrifice for his wife? If the wife is dead, he is ready to have a second marriage. Such unfair things are happening in the world in respect of women. ” -: Sathya Sai (Volume 31, Chapter 14 'Glory Of Womanhood') When we look at the Hindu mythology we see that women are supposed to be treated as Goddesses.

One of the most popular festivals of Hindus is the ' Navratra' in which Hindus worship Goddess Durga (the warrior goddess), Goddess Lakshmi (the goddess of wealth and prosperity) and Goddess Saraswati (the goddess of Knowledge and Arts). On the last day of this festival, the daughters of the house are worshiped. But still in India we see that our society has grown so favorable towards the males. Hindu's, even after referring to the daughters as Devi (goddess), expect a widow to jump on the pyre of the husband, a practice known as Sati.

Dowry is still date given (even after being criminalized) to the groom at the time of marriage. The Gender imbalance can be traced down to Manusmriti in 200 B. C. which lays down the duties of a woman. “ In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent. ” . The Manusmriti were used as a model for the framing of the Dharmashastra, which later became the local laws. Thus we can see the position of women in India today is because of century old traditions and customs.

Even though the Constitution of India promotes gender equality through the notion of Equality and secularism providing a framework to treat all its citizens equal and commands that no discriminations should be made on the bases of one's gender, gender discrimination still exists due to the presence of various personal laws. In recent years, India has witnessed many reforms for example the abolishment of sati and criminalizing sex determination. The Hindu Succession Act, 1956 The Hindu Succession Act, 1956 (HSA) amends and codifies the law relating to intestate succession among Hindus and aims to lay down a uniform law of succession whereby attempt has been made to ensure equality of inheritance rights between sons and daughters.

It applies to all Hindus including Buddhists, Jains and Sikhs'. The section 6 of the act is as follows: ' Devolution of interest of coparcenary property. - When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act.

Provided that, if the deceased had left him surviving a female relative specified in class 1 of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1. For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place

immediately before his death, irrespective of whether he was entitled to claim partition or not. Explanation 2. - Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein. For example, F (the father who had an interest in the coparcenary property) has two sons A & B (who are also the members of the coparcenary) and a daughter D. In such a case on the death of A, D will get only 1/3 share from the share of A in the coparcenary property. While the sons A and B will get  $\frac{1}{3} + \frac{1}{9}$  each. But this act remained under controversy as the laws of inheritance gave preference only class I heirs in a joint Hindu family.

This included only the male members and excluded women. Due to this women of the family could not inherit the family ancestral property. But even before the amendment took place, in states like Maharashtra, and Karnataka, women were given equal rights. Hindu Succession (Amendment) Act, 2005 For a very long time female members of the family were not considered a coparcener. The family property was divided only amongst the male members of the family.

But then thanks to the feminist movements in India, the law commission of India submitted its 174th report in the year 2000: " Property Rights of Women: Proposed Reform under the Hindu Law". In this report it was suggested that female members of the family should be included under the list of coparcenary thus giving them the right to inherit property. As a result of this report and other feminist movements, the Hindu Succession Act was

amended and the Hindu Succession (Amendment) Act, 2005 came into force from 9th September 2005 ' section 6 (I). Devolution of interest in coparcenary property. 1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-- (a) by birth become a coparcener in her own right the same manner as the son ; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. 2) Any property to which a female Hindu becomes entitled by virtue of subsection (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition. (3)

Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,- a) the daughter is allotted the same share as is allotted to a son (b) the share of the pre-deceased son or a pre-deceased

daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and (c) the share of the pre-deceased child of a pre-deceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased so or a pre-deceased daughter, as the case may be. Explanation. -- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. 4)

After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted. Explanation.

For the purposes of clause (a), the expression " son", " grandson" or " great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005. 5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December 2004. Explanation- For the purposes of this section " partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition affected by a decree of a court' The main objective of this act was to include women in the category of coparcenaries so that even the female members could inherit property under any circumstances which could lead to a situation of where the family property is being divided amongst its members . The author submits that this amendment gave women the right they deserved and which had been denied from the very beginning.

This amendment also opposes Section 23 of the original act, suggesting omission of the same as it does not permit any female heir to ask for a partition. In the earlier act only a male heir could chose to have a partition. The amendment on the other hand does not interfere with the special rights of those who are members of Hindu coparcenary except to provide rules and certain other regulations for division of interest of a deceased male. The Author also submits that the anomalies which still persist are because of the retention of the core essence of the Mitakshara joint property system. The system believed that making daughter coparceners would affect the share of other Class I female heirs like the deceased's widow and mother.

This would be because the coparcenary's share would in fact come from the Class I female heirs. Another problem is the fact that coparcenary remains a primary entitlement of the males in the house. By this system the male heir is put before the female heir as this legal set up provides that the male heirs should inherit an additional independent share over and above what they inherit with the female heirs. In the case of a ' Hindu female dying without a will; her property divides first to her husband's heirs, then to husband's father's heirs and finally only to mother's heirs; more or less this property of a Hindu female is well kept and maintained within her husband's hold. ' .