How Did India Successfully Reform Women's Rights? Part I: Answers from the Movement on Equal Inheritance Rights

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his two-part policy brief series traces the development and reform of law in India related to three critical areas that affect women's rights and economic opportunities: women's property rights, domestic violence, and sexual harassment in the workplace. It explores the underlying factors and driving forces that led to reforms as well as the broad processes and extensive timelines required for change. It also highlights the remaining gaps in the rights for Indian women, including how the absence of robust implementation as well as inadequate administrative and infrastructural support for reform—coupled with deeply entrenched patriarchal mindsets—often makes real gender equality elusive for many. The achievements in India, which are the result of years of concerted efforts and thought leadership by multiple governmental and nongovernmental players, private actors, and women's rights activists, could function as a "how to" guide for other countries that may want to carry out similar reforms in the future. This first Brief in the series explores the reform of (Hindu) women's inheritance rights. Starting in 1975, several states reformed the (federal) Hindu Succession Act of 1956, improving women's rights to inheritance, until a federal reform occurred in 2005. However, additional reforms are needed in order to overcome gender discriminatory legal provisions and social norms that perpetuate the exclusion of women from accessing and owning property.

Legal reforms on women's rights are key to achieving sustainable and inclusive growth

India has experienced immense economic growth over the past seven decades. However, while gender equality and women's rights and safety have been consistently stated as a key focus of the government of India, the pace of reform of Indian law in this area, as well as measures of women's economic participation more generally, have not kept up with the country's burgeoning economic growth. In particular, the rate of female labor force participation remains very low: since 1990, this rate has actually declined from 27.8 percent in 1990 to only 23.0 percent in 2021 (compared to 72.7 percent for males) (figure 1). While male labor force participation has declined as well during this timeframe, a gender gap of almost 50 percentage points means that several economic, social, legal, and policy measures are needed in order to bring women's participation closer to men's. Around the world, reform of legal frameworks plays a significant role in expanding women's economic participation and empowerment. If India's growth is to be sustained, it almost certainly will demand that more than one in four women participate in the workforce.

The World Bank Group's *Women, Business and the Law* project has consistently shown the critical links between gender equality under the law and positive outcomes for women's employment and entrepreneurship. Better performance in the areas measured by the *Women, Business and the Law* index is associated with a narrower gender gap in development outcomes, higher female labor force participation, lower vulnerable employment, and greater representation of women in national parliaments (World Bank 2023).

On the Women, Business and the Law index, in 2023, India scores 74.4 out of 100, which is slightly higher than the regional average for South Asia of 63.7. This is a significant improvement from 49.4 in 1970 – the first year for which Women, Business and the Law index data is available. This increase is due to several reforms advancing women's rights that the country has enacted over these past 53 years. Reforms in the areas of inheritance law and violence against women legislation are particularly remarkable in the way that they provide the foundations for women's access to property and their safety, which together are the underpinnings of socioeconomic participation of all women. India has also made progressive

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Note: The figure presents modeled estimates from International Labour Organization (ILO) data

reforms in the area of employment and working conditions of women, but some gaps remain, such as the absence of paternity leave under law applicable to the private sector (World Bank 2023). The reforms on inheritance, domestic violence, and sexual harassment law discussed in this two-part series of Global Indicators Briefs and the lessons learned about what made them successful can encourage reforms to address the remaining gaps in Indian laws and in particular, their implementation, which is fundamental for continued, socially sustainable, and inclusive growth.

Significant gaps remain in the socioeconomic participation of Indian women despite the country's immense economic growth

The time since India's independence in 1947 has been characterized by a focus on institutional and infrastructure building, planning, and development. The country's goal has been to emerge from the aftermath of the colonial rule that had left it in deep poverty, with its share of world income having shrunk from 22.6 percent in 1700 to 3.8 percent in 1952 (Livemint 2019). The initial decades of the 1950s to 1970s saw a predominant role of the government and public sector, growing industrialization, and agrarian revolution, with a gradual involvement of the private sector through a controlled and licensed market regime (Adhia 2015). During this time, civil society and social movements, which had already been active before independence through the Indian freedom and independence movement, continued to grow, and so did the government's work on legislative drafting and reforms. The mid-1970s witnessed the growth of a more vocal civil society (against the backdrop of a National Emergency imposed by the then-ruling government), which demanded a focus on social, political, and legal change and gave a strong impetus to the women's rights movement (Heuer 2015; Scott 2019). From the mid-1980s, the country saw the advent of liberalization, with the government of India encouraging a much larger role for the private sector, growth of capital markets, expansion of international trade, and a larger inflow of foreign capital and investments, including the advance of technology, which catalyzed the Indian economy (Panagariya 2004). India remained the second fastest growing economy in the world, behind China, until 2015. India's GDP crossed the US\$2 trillion mark in 2015–16 (Rao and Kadam 2016), and India is projected to be the world's fastest growing economy in 2023 (IMF 2023).

The constitutional framework promotes equal rights for women

The Constitution of India, adopted in 1950, establishes the principle of equality before the law; prohibits discrimination on multiple grounds, including sex; and allows for affirmative action measures for gender equality (Arts. 14 and 15). It has been a catalyst for the government, judiciary, and civil society to actively examine discriminatory provisions under existing legislation, harmonize laws across the country, and push for legal reforms in favor of women in India. India is a diverse country with multiple religions and communities that each developed and followed their own customary laws and practices. The government of India used this constitutional mandate to harmonize and codify the diverse customary rules on family matters of the Hindu community - which makes up about 79.8 percent of the population (Press Information Bureau 2015). Parliament subsequently enacted a series of laws, including the Hindu Succession Act of 1956 (HSA 1956). While it continues to contain gender discriminatory provisions, it was an important first step toward codification of multiple customary laws governing the Hindu community. Other religious communities in India continue to be governed by their own personal family laws (both codified and customary), some of which still contain gender inequitable provisions.

Interviews with women's rights experts from local civil society organizations (CSOs), the public and private sectors, lawyers, and academics in India, as well as three panel discussions with these experts, were conducted between December 2021 and January 2022 to inform the analysis of this Brief. The information gathered from these sources makes clear that pathbreaking reforms in women's rights, in a traditionally patriarchal society like India, are the result of years of concerted efforts and thought leadership by multiple governmental and nongovernmental players, as well as private actors and women's rights activists.

Equalizing women's inheritance rights across India

Access to property is a key enabler of women's economic participation, particularly women's entrepreneurship. Yet, women own only 20 percent of the world's land (Villa 2017). Discriminatory rules and practices worldwide hinder women's access to assets that can be used as collateral to obtain finance to open or grow their businesses (Bin Humam, Braunmiller, and Elsaman 2023). In India, women's access to property has for the longest time been hindered by patriarchal social norms that also manifest in formalized discrimination in institutions and laws. Gender discrimination was prevalent under the original provisions of the HSA 1956, which governs inheritance and intestate succession (that is, when there is no valid will) among Hindus. Several states were the first to amend the HSA, taking the lead in equalizing Hindu women's inheritance rights, until the Act was amended at the federal level-that is, for all states-in 2005.

A heterogenous society without a unified civil (personal) law

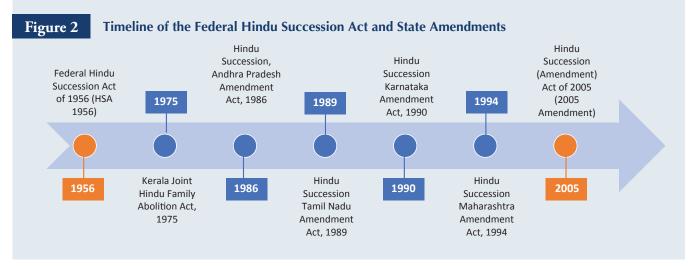
This inheritance law reform can only be understood within the context of India's heterogeneous society. India is a diverse country with multiple religions and communities that each apply their own customary practices and laws. These practices and laws govern a wide range of aspects of personal and family life such as marriage, divorce, succession and inheritance, adoption, and guardianship, among others. India's progressive constitution spurred its government to review, consolidate, codify, and harmonize existing religious, customary, and personal laws and practices governing persons across India who followed Hinduism (across its diverse variants and schools), Buddhism, Jainism, and Sikhism, and other religions (excluding Islam, Christianity, Zoroastrianism, and Judaism). This led to the Parliament of India enacting a series of federal laws, including the Hindu Marriage Act of 1955, the Hindu Adoptions and Maintenance Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the HSA 1956. But-despite the constitutional vision "to endeavour to secure for the citizens a uniform civil code throughout the territory of India" (Constitution of India, Art. 44)-no standardized civil law exists for the whole of the country. Parallel personal laws continue to exist across India, as of today.

A prominent example is the HSA, which, despite India's constitutional principles on gender equality, contained many provisions permitting discrimination against women. Although the law has been amended, including through a federal-level amendment in 2005, several provisions based on customary law remain in effect that deny women equal access to property rights.

Under Hindu customary law, the definition of property of the "joint Hindu family" (also known as "ancestral property") is fundamentally different from self-acquired property. A "joint Hindu family" comprises lineal descendants from a common ancestor and their family members, including wives and unmarried daughters, who are all joint in estate, food, and worship (Srinivasan 2019). Under the Mitakshara school of customary law, three generations of male members became joint heirs (or "coparceners") to the joint family property by birth, while women had no such rights. The HSA 1956 gave statutory recognition to this so-called "coparcenary framework" of inheritance and the basket of "ancestral property" or "joint Hindu family property" owned by it (which includes all of the family's assets and liabilities, such as immovable and moveable property, investments, jewelry, and business assets). This framework was the root of gender discriminatory provisions, as it granted three generations of male descendants an inherent birth right to the ancestral property of the joint Hindu family, while negating any similar property rights for female descendants. The HSA 1956 created limited exceptions to this rule, most notably, in case a testament was made, that property would devolve according to this testamentary disposition (174th Report by Law Commission of India 2000).

State laws change toward equal inheritance rights but remain unequal federally

To eliminate gender inequities, the state of Kerala took an unprecedented step in 1975 and abolished the joint Hindu family system altogether (figure 2). The reform was motivated by the wish to equalize existing patriarchal and matriarchal family traditions, as well as reconcile prevailing conservative and progressive schools of thought. The Indian constitution enlists matters of joint family property, succession, and intestacy to be within the legislative competence of both the central government and the states; hence, either can legislate in this domain. Following suit throughout the 1980s and 1990s (though not to the same extent), with a similar aim to equalize daughters' rights to inheritance of joint Hindu family property, the states of Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra carried out respective state amendments to the HSA 1956 (collectively referred to as State Amendments), wherein by statute, a daughter was given the same coparcenary



Source: Women, Business and the Law database

rights (and liabilities) as that of a son, by birth, with regard to the ancestral property. Because only five states had recognized such equal rights of daughters, but many joint Hindu families (and/or their properties) were situated across multiple states in India (most of which were still following the unamended HSA 1956), the State Amendments, though laudable, led to legal uncertainty and practical challenges in implementation of women's property rights, and an increase in litigation between contesting heirs (Bhadbhade 2001). It took another 10 years, until 2005, when the HSA 1956 was amended at federal level, that women throughout the country saw an improvement in their inheritance rights (Agarwal, Anthwal, and Malvika 2020).

How did the reform come about?

The Law Commission of India, an executive body established under British colonial rule and appointed by the government of India anew in 1947, has a mandate to make recommendations for the removal of anomalies, ambiguities, inequalities, and progressive reform of a wide range of laws. This Commission played a critical role in the legal reform process. Analysis and public consultations led by the Commission resulted in a detailed report in 2000 that proposed a draft law amending the HSA 1956 (174th Report). After consulting the state governments and other concerned ministries and departments, the government of India accepted the recommendations of the Law Commission and introduced a bill to amend the HSA 1956 in the Parliament of India in December 2004 (Seventh Report of Parliamentary Standing Committee, 2005). The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice considered the bill in five sessions, hearing views of the Ministry of Law and Justice, experts, and CSOs. On September 5, 2005, the Parliament of India enacted the Hindu Succession (Amendment) Act, 2005 (2005 Amendment).

The 2005 Amendment to the HSA 1956 brought several important reforms to women's inheritance rights. In particular, Section 6 was amended to give both married and unmarried daughters the same rights in joint Hindu family property by birth as sons across India. The Supreme Court has subsequently taken on an active role to interpret women's equal inheritance rights by recognizing retroactive application of the new rights to daughters born before the Amendment was passed and by clarifying that it was not necessary for the father (coparcener) to be alive on the date of the 2005 Amendment for the rights of the daughters to fructify (see, for example, Vineeta Sharma vs Rakesh Sharma, Supreme Court 2020).

Impact of inheritance law reform on women's land ownership and socioeconomic status

While hailed as a progressive legal reform to create equal

property rights for Hindu daughters, actual land ownership by women has increased only marginally since the passage of the new law. For example, a study conducted over the period 2009-14 across thirty villages in nine states in India, with 95 percent of the sampled landowning households being Hindu, found that women in 2014 owned land in only 16 percent of households. This level was virtually the same as five years earlier, in 2009, when women owned land in only 14.2 percent of the households sampled (Agarwal, Anthwal, and Malvika 2020). Another study based on 8,640 rural households across four states showed that women's land acquisition through inheritance increased only nominally from 5.5 percent in 1956-2005 to 6.4 percent in 2006-15 (Valera et al. 2018). Limited awareness among women about their new rights, and moreover, a lack of assertion of their rights based on deeply rooted gendered norms and behavior, can partially explain this limited progress.

Research comparing inheritance patterns over three generations and across states that have and have not enacted reforms shows that the legal reform improved women's socioeconomic status and empowerment. For example, females whose father died after the State Amendments had become effective were 15 percentage points more likely to inherit land than those whose father died before the reform (Deininger, Goyal, and Nagarajan 2013). Such women covered by the reform were also more likely to complete primary education and to have a bank account. Second-generation effects were even larger, as shown by increased spending on girls' education (Deininger et al. 2019). Further, the reform was found to have raised women's autonomy and labor supply, particularly into high-paying jobs (Heath and Tan 2016). However, some studies have uncovered unintended consequences of this reform: for example, parents circumventing the law so that daughters will not receive an inheritance, higher female infant mortality and feticide, and a higher suicide rate among women and men driven by a rise in marital conflicts (Anderson and Genicot 2015; Bhalotra, Brulé, and Roy 2020; Rosenblum 2015).

Social norms push women to relinquish their property rights

Despite promising outcomes, several gaps remain in law and practice preventing women from fully claiming their property rights and accessing resources in the same way as men. Women often fail to claim their inheritance rights due to deep patriarchal conditioning (box 1). On the one hand, a son traditionally stays with his natal family after marriage and supports parents in old age, while a daughter's new place is with

Box 1 Despite changes in the law, patriarchal norms deprive women of equal inheritance

A few days before her marriage, K. Bina Devi and her sister, who were living in the province of Rajasthan, signed a small piece of paper witnessed by their parents, siblings, and village elders. A small ceremony followed to celebrate that the two women had just completed "haq tyaag," giving up their share of the family property to the benefit of their four brothers. While it is a voluntary practice, misogynist norms often push women to comply. "If we don't do it, our family will boycott us, our relationship will break, and people will speak ill of us," K. Bina Devi explained many years later. The conviction that only sons can and should inherit property, including agricultural land, is widespread. Daughters receive dowry upon marriage, including gold, cash, vehicles, and household goods. Jai Yadav, a resident and police officer in Bihar, explains: "I have given my daughters more than their share; my son shall inherit my property and the ancestral agricultural land. Since they have been given dowry, hence they have no right over family land and property."

However, such attitudes and practices leave many women in vulnerable positions and keep them dependent on their parents and brothers should a marriage not work out. Policy interventions are needed to ensure women's property rights are given effect to. For example, in order to encourage property registration by women, some states offer financial incentives such as lower registration fees for women—which also demonstrates to men the benefits of registering property in the name of the women.

Source: Chandran 2016; Landesa Rural Development Institute 2013; Mehrotra 2021; Times of India 2018.

her husband's family. The son is thus seen as deserving of both his and the daughters' share in the property. On the other hand, a daughter often receives assets as part of her wedding, either voluntary gifts by her family, including the wedding expenses, or a dowry—which despite being prohibited by law is still prevalent across India. This topic is discussed in the accompanying Brief (No. 20) in this series. So, many women are hesitant to antagonize their natal family or ruin social ties by asking for their fair share of inheritance. Social pressure may thus prevent women from asserting their rights in the property—or, conversely, to give these rights up by a relinquishment deed in favor of the male heirs (Gupta 2017). Concerted efforts on behalf of the government and civil society are needed to raise awareness about women's legal rights to inheritance and property and overcome such social barriers.

Equal inheritance rights are often circumvented through the drafting of gender-discriminatory testaments. The HSA 1956 (Section 30) enables any Hindu person to dispose of their property (self-acquired property as well as their share of coparcenary/ancestral joint property) by a testament. This right is often consciously exercised to disinherit female heirs, especially daughters. Social norms have been shown to incentivize fathers to draft a will and bequeath their property-including the share that would go to a daughter in case of intestate succession under the HSA 1956-to their sons (and other male heirs) (Dogra 2015). Experts have suggested the introduction of a legal limit to such unbridled testamentary rights in order to prevent disinheritance of females by choice. For example, a legal provision could stipulate a specified percentage of the property that can (or cannot) be disposed of through a will.

Discriminatory provisions remain in the text of the HSA 1956. While the 2005 Amendment has been celebrated for addressing some glaring issues regarding Hindu women's property rights, several provisions remain effective in the HSA, which do not give women the same rights or recognition given to men (Venkatesan 2020). For example, coparcenary rights —rights to joint ancestral property— of female heirs other than daughters (such as mothers, wives, or widows) are still not recognized. In addition, different rules of intestate succession (when there is no valid will) apply in case of Hindu males and females, including the class of heirs and the rules of priority for inheritance of the property. A woman and her natal family are often not given the same priority as the husband and his side of the family (Damle et al. 2020). The Law Commission of India has recommended to unify the scheme for intestate succession of Hindu men and women so that a surviving female (and her natal family) receives the same priority and inheritance as a male (and his natal family). The Law Commission has also recommended abolishing the "coparcenary framework" and the right in a property by birth (Consultation Paper of Law Commission of India 2018), but no reforms have taken place to date. A less satisfying but equally valid option would be to recognize coparcenary rights of all female heirs (not just daughters).

Gender-equal rules under the HSA 1956 only apply to the Hindu community. While the HSA 1956 has largely equalized daughters' legal coparcenary rights to inheritance in joint Hindu family property, it only applies to members of the Hindu community- the most populous religious community in India. Other communities continue to apply their own personal laws, often perpetuating gender discriminatory or patriarchal rules. There have been discussions and debates about enacting a uniform civil code, but given the extent of religious diversity and related personal laws, it has been difficult to find consensus on the matter (De 2013; Oka 2022). The Law Commission of India recently confirmed that instead of enacting a uniform code, a continuous reform process within the various communities to align their own personal laws with constitutional values of equality and nondiscrimination is preferable (Consultation Paper of Law Commission of India 2018). Further reform efforts should also extend to equal rights to own and administer marital property and the recognition of nonmonetary contributions to the home and family upon dissolution of a marriage (including in the Hindu Marriage Act of 1955, Sec. 27).

Box 2 presents some recommendations.

Need to continue reforming and asserting women's property rights

It took several decades for India to equalize (Hindu) women's inheritance rights, but critical gaps remain in law and practice. This Brief highlights how positive developments can be initiated and driven through regional initiatives. Closing the remaining gaps in women's access to property will require the concerted effort of government, policy makers, civil society organizations, and the private sector (box 2). A second Brief (No. 20) sheds light on the reform of domestic violence and sexual harassment laws. Together, the lessons learned and key factors of successful reforms can guide India's civil society, government, and private sector in addressing gender gaps to spur inclusive and sustainable growth.

Box 2 Recommendations to equalize rules of accessing and owning property for men and women

Several gender discriminatory inheritance rules remain effective in the Hindu Succession Act of 1956 and in other personal laws, and social norms perpetuate the exclusion of women from accessing and owning property. This could be remedied by the following:

- Unify the scheme for intestate succession of Hindu men and women and potentially abolish the "coparcenary framework" and the right in a property by birth.
- Raise awareness on the legal reforms as well as the importance of women's rights to property and inheritance to overcome patriarchal norms that pressure women to give up their rights.
- Strictly enforce anti-dowry laws.
- Review and reform laws across all communities (whether Hindu, Muslim, Christian, Parsi, or otherwise) to align their own personal succession and inheritance rules—as well as other matters of personal law, including marriage and divorce—with constitutional principles of gender equality and nondiscrimination.

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