

Women's property rights: The law, the barriers—and the way forward

Women continue to face significant resistance from families when claiming inheritance, despite legal equality

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Owning property is a big step toward financial independence for women. It provides status in society and an economic foundation. "It is security for life, and it's their right," Gautam Khurana, managing partner and founder, India Law Offices LLP in Delhi, said.

However, land ownership by women in India remains abysmal. Only 18.7% of women between the ages 15 and 49 own a house by themselves, while 13.7% own it jointly with someone else, according to World Bank data.

Historically, daughters are often excluded from property distribution after a father's death. "The brother doesn't have to ask; the sister has to ask. And when she asks, she is considered bad," said Amita Jadhav, at Coro India, a non-profit organization that works for women empowerment in the marginalised segment. "We want to create an environment where women don't have to ask," she said.

This Women's Day, we explore the inheritance and property succession rights of women in India, and how to exercise them.

These rights are governed by personal religious laws and vary by faith. Here we focus on the Hindu Succession Act, 1956, applicable to Hindus, Buddhists, Jains and Sikhs.

Right to Parental Property

If a father leaves a valid will, its contents determine how his property will be distributed. However, if a Hindu man dies 'intestate', that is, without making a will, all his Class I legal heirs are entitled to an equal share in his property. These include the man's mother, wife and children—including daughters—regardless of whether they are married, unmarried, divorced or widowed.

Daughters have been allowed equal rights in their father's property only after the Hindu Succession Act was amended in 2005. A daughter has the same claim as a son in the father's property, including the family home, even if the father lived with the son and the son continues to occupy the property after the father's death. Daughters also have an equal share in any ancestral property, passed down through generations.

In practice, however, women often face resistance from brothers or other relatives who believe daughters should not claim a share. "Even in the educated class, nobody gives," said Usha Tiwari, founder of Usha Tiwari & Associates, a law firm in Mumbai.

Often, the woman is asked to sign a document by which she willingly gives up her share of the property in favour of the brother or other heirs. Legally, this is known as a 'release' or

Her right to inherit

A 2005 amendment to the Hindu Succession Act puts women on a par with men in property inheritance.

What women are entitled to

- ✓ **An equal share in her father's property**, along with other Class I heirs—brothers, sisters, mother and grandmother.
- ✓ **An equal share in her husband's property**, along with his other Class I heirs—children and mother.

How to secure your share

- ✓ **Obtain a heirship or survivor certificate** to establish that you are one of the legal heirs.
- ✓ **Obtain a succession certificate** to claim and transfer inherited property in your name.
- ✓ **Get your name recorded** in government property records as owner or co-owner.
- ✓ **If the property is in a housing society**, apply to update its records to reflect your ownership or co-ownership.



Risks to watch out for

- ▶ **Family pressure to sign a relinquishment or release deed**, which gives up your property rights.
- ▶ **Lengthy legal disputes**, which can take years to resolve and enforce.

Plan ahead

- ✓ **Have a clear discussion** with your father or husband on how property should be distributed after their death.
- ✓ **Encourage them to write a will.**
- ✓ **Consider a family settlement agreement**, where all family members agree on how property and assets will be divided.



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Right to husband's property

In case a husband dies intestate, the wife can claim an equal share in any land or house he had purchased and registered in his name. She would have to share this with the husband's other Class I heirs, including his mother and children.

However, if the husband's property is part of his family's ancestral assets, the allocation changes. In that case, the wife can claim only a part of the husband's share in the ancestral property.

How to claim share in property

Properties are broadly classified into two types: movable assets such as bank fixed deposits, mutual funds and shares, insurance policies, and provident fund, etc., and immovable property, which typically includes land or a home.

To claim her share of these assets, a woman first needs to obtain a legal heir document that would establish her right to ownership. "It's important to establish the family tree," said Khurana.

One such document is a legal heir certificate, also called an heirship or

survivor certificate, which establishes the relationship between the deceased and the heirs. This is typically issued by the local revenue office, such as the sub-divisional magistrate's office or a tahsildar. If there is no dispute, it can be obtained within a month, said Praveen Nagar, founder, PS Legal Advocates & Consultants, a law firm in Delhi.

Another document that may be required is a succession certificate, issued by a civil court where the property is located. The judge verifies and establishes the list of assets and the ownership of the claimant to the property or assets. The process can take about six months if the matter is non-contentious, said Nagar.

One or both of these certificates may be required by the bank or a company where fixed deposits or other financial assets are kept, along with other documents and fees. If a nominee has been named on the financial asset, the proceeds are typically transferred to the nominee unless it can be proved that the nomination was not valid. "It's always good to have a nominee in the bank

account," said Nagar.

However, if a woman was not nominated and she feels that she has been left out of her fair share in the bank deposit or another financial asset, she can contest the issue in court, said Khurana.

Meanwhile, to get her share in a physical property like a home, the woman, along with the other heirs, must get the property registered in their names. This is done typically at the sub-registrar's office, where property documents are held. They'll need to submit the original title deed of the property, the succession certificate etc, along with various fees.

Once the registration is done, the next step is to get a property 'mutation' done. This is a process to put your name as an owner or co-owner in the records of the local municipal corporation or land revenue department. By updating this record, you become liable to pay property tax, and other bills associated with the property.

If the residential unit in question is part of a housing society, you would also need to change the owner's name in the society's office. They may ask for a heirship or succession certificate, and a no-objection certificate from other heirs.

Dispute and Prevention

If the other heirs, such as the brothers, are unwilling to give the woman her due share, she will need to file a lawsuit for partition.

This is a years-long process, especially if the brother is living on the disputed property or has money to keep delaying court hearings. It also takes a toll on the woman's mental health and standing in the family, said Tiwari. "She has to choose—does she want the relationship or the property," said Tiwari.

Even if the court order comes in favour of the woman, and she is issued what is called a property inheritance decree, "to execute it, you will have to sweat it out," said Tiwari.

As much as possible, legal experts suggest resolving disputes outside court. Ideally, start the groundwork early even before the event of a succession comes up. The first step is to understand what are the assets involved, who has their ownership, and your legal rights.

Next, ask your father or husband to put in writing how he wants to dispose of his assets. "It's always good to have a will," said Nagar.

"If there is no will, the best solution is a family settlement agreement," said Khurana. This is a simple agreement in which all heirs agree on who gets what, and put it in writing in front of a witness. This agreement can be made even prior to losing the parent, he said. "That's very good insurance against disputes later on," he said.

Woman's property succession

The Hindu Succession Act takes a more tangled approach to who gets a woman's property if she dies without making a will.

If it's a property she purchased and owned, the first right to it goes to her children and her husband, and after that to the husband's heirs, which would include her mother-in-law. If the woman wants her parents to get a piece of her property, she would need to make a will.

For property inherited from her father, the succession will pass to the father's other heirs. Property inherited from the husband will pass to the husband's heirs.

A lack of awareness and societal norms have historically kept women in India away from claiming their right to property. "Law is one thing, but the practice is happening differently," said Jadhav. At Coro India they train leaders to help women get these rights and reclaim their power. "Getting the property is to shake that system," she said.



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