Reclaiming Personhood: Subjecthood and Property Relations in Hindu Succession Laws

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This essay tries to problematise Hindu intestate succession and inheritance by using Hegel's personality theory of property. In Hegel's conception, property is a pre-requisite for the self-actualisation of individuals. The abstract, self-conscious person ontologically acquires a sense of being by externally manifesting its personhood in property. This forms the basis for a general right to property. Using this Hegelian framework, I will focus on the dynamics of women's personhood in Hindu personal laws, primarily in the Hindu Joint Family and the property-holding unit of the coparcenary.

First, I will attempt to show how the whole kinship system is predicated upon a systemic deprivation of women's personhood. Divesting women of their personhood is a necessity to constitute them as conduits to pass property within the joint family. I then go on to trace the intuition of personhood in the organicity of the coparcenary. One's eligibility to acquire a share in the coparcenary property is based on the qualification to offer funeral oblations. This totalitises the masculine personhood in the coparcenary unit by transcendentally tracing the members position and stature to deceased ancestors. Women's exclusion from this ritual stems from the stereotypical notion of them lacking the potency to deal with gods, thus reducing them to a subordinate plane within the coparcenary.

The essay then critically examines the Hindu Succession Act, 1956 and the much-celebrated 2005 Amendment to it. By questioning the rhetoric of gender neutrality in these legislations, I attempt to underline why legislative interventions might not suffice without progressive judicial attitudes and meaningful changes in the hegemonic discourses that regulate and plunder women's personhood. The reclamation of women's personhood can be a prudent anchoring point for this movement. In this scheme of things, Hegel's framework provides the crucial link between the social and economic forces dictating what it means to be a woman and its reflection in joint-family property.

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INTRODUCTION: THE FORMAL AND ONTOLOGICAL CONTOURS OF PERSONHOOD

Property is the embodiment of personality. This, in a nutshell, is Hegel's justification for private property.[1] His most sustained account of private property can be found in the first part of *Elements of the Philosophy of Right*—his seminal work on legal, moral, and political philosophy.[2] Hegel uses the polymorphous word "person" to mean a self-conscious subject. The person is a free and rational agent whose existence is an end in itself. Although this resembles the Kantian Categorical Imperative,[3] Hegel is quite critical of "purely formal" theories that extract moral and legal rights from the abstract self-relations binding a subject to itself, divorced entirely from its social existence.[4] This abstract person, a personification of will, is "infinite and universal". However, nature is constraining.[5] The indeterminate will of the person must therefore manifest itself in "external things" to realise the freedom of its existence. In Hegel's framework, property moulds the personhood[6] of the individual.

The first part of *Philosophy of Right*, aptly titled "The Abstract Right", expounds this transition from the ontological impossibility of full-fledged personhood in the state of nature to a socially relevant sense of personhood mediated through property rights. Personhood for Hegel is not a solipsistic being-for-self. It is a social unity of free intersubjectivity bound in an ethical relationship of mutual respect; a unity of being-for-self and being-for-others.[7] The book begins by contemplating personhood as being-for-self or as inner capacities enabling reflective freedom for the person.[8] This is a conception of legal personhood that is yet to be concretised and sees the possibility of true freedom in respect for the other. The differentials of being-for-self and being-for-others encapsulated by the unity of personhood as a category, at another level, is also characterised by defined social roles within the totalities of state, civil society, and family. Property

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[1] For a lucid introduction to Hegel's theory of property, *see generally*, Dudley Knowles, *Hegel on Property and Personality*, 33 THE PHILOSOPHICAL QUARTERLY 45 (1950).

[2] G.W.F. HEGEL, ELEMENTS OF THE PHILOSOPHY OF RIGHT (Allen M. Wood ed., Cambridge University Press 1991).

[3] I. KANT, GROUNDWORK FOR THE METAPHYSICS OF MORALS 31, 45 (Allen W. Wood trans., Yale University Press 2002).

[4] Friedricke Schick, *The Concept of the Person in Hegel's Philosophy of Right*, *in* RECHT OHNE GERECHTIGKEIT? HEGEL UND DIE GRUNDLAGEN DES RECHTSSTAATES (Königshausen & Neumann 2010).

[5] HEGEL, *supra* note 2, at 70.

[6] My use of the word "personhood" is based on its everyday, dictionary definition. Throughout the essay, however, I have qualified it with relevant anthropological evidence as per the context in which the word is used.

[7] Robert R. Williams, *Hegel on Persons and Personhood*, *in* HEGEL ON THE PROOFS AND THE PERSONHOOD OF GOD (Oxford University Press 2017).

[8] Arto Laitinen, *Hegel and Respect for Persons*, *in* THE ROOTS OF RESPECT: A HISTORIC-PHILOSOPHICAL ITINERARY 171 (De Gryuter 2017).

then becomes a prerequisite for not just the abstract person to acquire personhood but, more importantly, for legal personhood itself to affirm its existential aspects. A rereading of Hegel's philosophy allows us to say something of which legal scholarship today must be resolutely mindful: that property rights are not a detached end but a means to guarantee subjecthood to the disenfranchised; that legal recognition means nothing without a politics of ethical love and moral respect. And this is neither an empiricist overstatement nor a juridico-formal simplification.

This essay will attempt to problematise the workings of Hindu joint-family property and inheritance through the lens of Hegel. His is a foundational theory of property, intuitions of which can be found in most property systems.[9] I will begin by foregrounding the hints of this approach in Hindu classical law and its legal institution by the colonial project of codification. Drawing on anthropological literature and doctrinal developments, I hope to highlight how women's subservience has been a traditional necessity for the circulation of property. The second part places women's access to coparcenary property within Hegel's framework. I will end with some comments on the Hindu Succession Act, 1956 and its 2005 amendment, underlining why legislative action in terms of women's property rights leaves much to be desired. The primary endeavour here is to ponder if the personhood approach offers ample space for the personhood of women in Hindu succession laws, especially since Hegel's argument is for a general right to property that everyone should have.[10] Indeed, it is a clear shortcoming to binarily posit women's personhood as the opposite of the universal male personhood. But my effort here is precisely to exploit that fault line—to critically analyse the idea of personhood and property itself. The entrapment of this essay in the gender-binaries is coincidental to the heteronormativity immanent in Hindu personal laws.

I. COMMUNITY AND PROPERTY

There is sufficient anthropological evidence that women's personhood in property is often articulated through marriage. In construing dowry and bride-wealth as contributions towards a specific conjugal fund rather than a "circulating societal one",[11] Goody seems to be drawing a normative understanding of title over property from the very marital union that facilitates this exchange. Of course, his ethnographic insights compellingly foreground the structural forces underlying this kinship-regulated flow of property, but to argue that the property exchanged upon marriage becomes some sort of community-property has a more nuanced undertone. For a

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[9] *See* Margaret J. Radin, *Property and Personhood*, 34 STANFORD LAW REVIEW 957 (1982).

[10] It must be noted that Hegel himself thought very disparagingly of women. In his book, he has likened the personhood of a woman to that of a "plant". Women's desires are stripped of "ideals"; so are they stripped of the "universal element" required for "higher sciences, for philosophy and certain artistic productions". *See* HEGEL, *supra* note 3, at 207.

[11] Jack Goody, *Bridewealth and Dowry in Africa and Eurasia*, *in* JACK GOODY & S.J. TAMBIAH, BRIDEWEALTH AND DOWRY 1, 2 (Cambridge University Press 1973).

property transacted with an individual to be assimilated into a communally-owned pool, marriage must imply a "mutual and undivided surrender"[12] of the individual personalities. It is then that the "substantial personality" of the family[13] comes into existence with its "external reality in property", as Hegel would put it.[14]

Although this usually remains an unstated intuition in both legal thought and common perception, the hegemonic grip of this normativity cultivates a plethora of theses like Goody's. The same intuition plays out in the idea that dowry acts as a guarantee for the husband's exclusive access to his wife.[15] Controlling the reproductive autonomy of the wife ensures the "purity" of the children, the logical extension of which is the confinement of the property within the same family.[16] Instead of being negative players, women act as "transforming agencies" in this process[17]; by reproducing the family, they maintain and reproduce its intemporal manifestation in the property.

A great many scholars of Hindu law have admonished judicial pronouncements[18] allowing the Hindu Undivided Family (HUF)[19] to continue with a sole surviving coparcener and the female members.[20] In fact, these judgments built on earlier privy council decisions that had already laid the groundwork for this development.[21] The point is not to comment on the merits of these judgments but to highlight the implicit presence of a personality-based understanding of joint-family property. The impressions of this approach can be traced in the judiciary's bid to retain the joint family[22]—a commonality in all the judgments cited here. After all, every Hindu family is

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[12] HEGEL, *supra* note 2, at 208.

[13] Whether it is the marital family (as in the case of dowry), the bride's family (as with bride-wealth), or merely the conjugal couple would differ from society to society.

[14] HEGEL, *supra* note 2, at 209.

[15] *See* S.J. Tambiah, *Bridewealth and Dowry Revisited: The Position of Women in Sub-Saharan Africa and North India*, 30 CURRENT ANTHROPOLOGY 413, 423-424 (1989).

[16] Tambiah's paper must be read with adequate caution, for he often romanticises the "notions of purity" by whitewashing the violence inflicted and internalised under its garb.

[17] Mitzi Goheen, *Comments on Bridewealth and Dowry Revisited*, 30 CURRENT ANTHROPOLOGY 413, 427 (1989).

[18] *See* CIT v. Gomedalli Lakshminarayan, (1935) 37 BOMLR 692; Gowli Buddanna v. CIT, AIR 1966 SC 1523.

[19] The Hindu Undivided Family is a separate taxable legal fiction. For more on the tax-related implications of an HUF with a sole surviving coparcener, *see* S.P. Verma, *Ownership Rights of a Sole Surviving Coparcener and Tax Liability*, 13 JOURNAL OF THE INDIAN LAW INSTITUTE 234 (1971).

[20] *See* B.N. Sampath, *Hindu Undivided Family in Taxation: A Saga of Conceptual Aberrations*, 20 JOURNAL OF THE INDIAN LAW INSTITUTE 29 (1978).

[21] J. Duncan M. Derrett, *The Supreme Court and the Hindu Undivided Family: A Footnote*, 20 JOURNAL OF THE INDIAN LAW INSTITUTE 463, 466-470 (1978). *See* Attorney-General of Ceylon v. Ar. Arunachalam Chettiar, (1958) 34 ITR 42 (SUPP).

[22] This does not mean that the coparcenary remains intact if there is just one male member. However, the surviving members still interact with each other with respect to the property through the family. For instance, a justification of retaining the HUF is the added obligation on the family to maintain the women out of the property.

presumed to be a joint family,[23] even though the ethnographic evidence flounders in sustaining this colonial (mis)reading of the texts and reality.[24] In one case, so irresistible was the inclination that the court refused to dissolve the joint-family property "merely because the family [was] represented by a single coparcener", while inserting a caveat eschewing an opinion on the status of the HUF in the same breath.[25] This preferential focus on preserving the property in the hands of the community over fragmenting it might not bode well with Hegel's own view; for in his words, the "community does not ultimately have the same right to property as a person does".[26]

II. PROPERTY AND WOMEN

This begs the question: is there any scope in Hegel's framework for a radical redistribution of property? Borrowing from his theory, there is a "developmental thesis" which propounds that a minimal amount of private property is instrumental in realising an individual's freedom and capabilities.[27] Property, therefore, is necessary for the self-actualisation of an individual—the highest attainment in Maslow's hierarchy of needs. A "musician must make music, an artist must paint, a poet must write, if he is to be ultimately happy", and for that to happen, the musician must have some property in the instrument, the artist in the canvas, and the poet in the pen and paper.[28] Hegel himself concedes to the moral preferability of a civil society where individuals have the bare minimum to meet their livelihoods.[29] This does not stem directly from nature; in nature, the abstract person is yet to be particularised in a determinate social clime. If considered seriously, Hegel's conception is malleable enough to make a broad case against the exclusivity of the coparcenary.

Joint-family ownership of property can most closely be aligned with a system of collective property where social rules govern allocation. Hegel's framework on the other hand operates explicitly for private property from an individual-oriented standpoint. Nonetheless, a reconciliation is plausible in that, as Waldron notes, property systems can seldom be pigeonholed strictly into a uniform

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[23] DINSHAW F. MULLA, HINDU LAW, 346-347 (22nd edn., LexisNexis 2016).

[24] The concept of the Indian joint family was an outcome of colonial engagement with indigenous systems of kinship and marriage from a historically and methodologically flawed textual perspective. *See* Patricia Uberoi, *The Family in India*, *in* HANDBOOK OF INDIAN SOCIOLOGY 275 (Veena Das ed., Oxford University Press 2004).

[25] Gowli Buddanna v. CIT, AIR 1966 SC 1523, ¶ 22.

[26] HEGEL, *supra* note 2, at 78.

[27] Alan Patten, *Hegel's Justification of Private Property*, 16 HISTORY OF POLITICAL THOUGHT 576 (1995).

[28] For that matter, one might argue that the musician must hold property in the music, artist in the artwork, and the poet in the poem. *See* A.H. Maslow, *A Theory of Human Motivation*, 50 PSYCHOLOGICAL REVIEW 370 (1943).

[29] HEGEL, *supra* note 2, at 80.

pattern.[30] These are analytical categories, "ideal types" in the Weberian sense.[31] In a system where it is possible to partition joint-family property (coparcenary property, to be precise) at the will of the coparceners and, in a stroke, convert it into separate property (essentially, private property), the divide between private and other forms of property becomes a fluid theoretical invention.

Hegel himself admits that the ultimate interest of individuals lie in the pursuit of the collective goals of the community.32 Perhaps too deeply rooted in his time, Hegel refrains from subsuming private property entirely in the organic community unit.33 However, that an individual can only fully actualise in a community, is something that he does argue. A sense of belongingness to a community, be it the family or the state, prompts the individual to perceive it as the universal that circumscribes "personal individuality" and consciousness.34 The universality of the community only prevails when its members act not merely as private persons but as individuals in pursuit of the community's ends by cooperating among themselves in their designated roles. The family offers its members "full development" and "recognition of their right."35

What Hegel is saying here is quite pragmatic: that freedom cannot thrive in isolation from a concrete social and ethical order.[36] The state of affairs in the Hindu Joint Family, where social organisation is premised upon ordaining women into subordinate roles, is therefore a hinderance to both individual freedom and the community's development. The individual's interests, though aligned with the community's, need not be subservient to its greater good. Unconsciously, she caters to the completion of the "whole" that makes up the community while ontologically she becomes a person.[37] Only her enhanced freedom can lead to a fledging community. The hierarchies within the family which fundamentally degrade freedom—divesting women of ownership, to name one—would thus be amiss in any radical retake of Hegel's framework cherishing the attitudes of emancipatory politics.

In Margaret Radin's authoritative work on personhood and property, she perspicaciously notes the communitarian's frustration with the definition of person steeped in an individualistic worldview.[38] Likewise, to move from the individual to the family in this essay, we must deliver the person from

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[30] *See* Jeremy Waldron, *What is Private Property?*, 5 OXFORD JOURNAL OF LEGAL STUDIES 313, 332 (1985).
[31] For a comprehensive discussion on Weber's Ideal Types, *see generally* Donald McIntosh, *The Objective Bases of Max Weber's Ideal Types*, 3 HISTORY AND THEORY 265 (1977).
[32] JEREMY WALDRON, THE RIGHT TO PRIVATE PROPERTY 347 (Clarendon Press 1988).
[33] Radin, *supra* note 9, 977.
[34] HEGEL, *supra* note 2, at 282.
[35] *Id.*
[36] *See* Z.A. Pelczynski, *Political Community and Individual Freedom in Hegel's Philosophy of State*, *in* THE STATE AND CIVIL SOCIETY: STUDIES IN HEGEL'S POLITICAL PHILOSOPHY 55, 62 (Cambridge University Press 1984).
[37] 2 G.W.F. HEGEL, LECTURES ON THE HISTORY OF PHILOSOPHY, 209 (E.S. Haldane trans., Routledge and Kegan Paul Ltd. 1955).
[38] *Id.*

its confinement in the abstract state of nature to the history and the social fabric that create its existence.

The family is not just a site where the woman's personhood remains subservient to the universalised masculinity of men, but the circuits of power within it destroy any space for her subjectivity. She is always given in marriage by one man to another.[39] Her passivity fuses into the personhood of the husband as his wife; the children as their mother; and the family as a conduit for the property dowered with her.[40] To become a woman is not just a cultural construction but a more "purposive and appropriative set of acts".[41]

For instance, to become a wife and be subject to exchange in marriage ensures the reproduction of the kin.[42] What then becomes some semblance of a system of promises and reciprocal promises, where the flow of women from one family to another is complemented by a simultaneous flow of property, can be situated in a larger heteronormative enterprise of conserving the family in a caste-based society by systemically stripping women's agency.[43] The personhood of the family is just a reflection of the universal masculine personhood. Even in the case of dowry which is more pertinent here, the flow of women and property in the same direction is tactically negotiated by the social statuses of the parties. By paying a hefty dowry, the bride's family stakes claim to a higher social status; whereas by seeking a lavish dowry, the groom's family reaffirms theirs.[44]

Hindu law also has the idea of *stridhan*, property gifted during marriage that becomes the separate property of the woman.[45] *Stridhan* is different from dowry insofar as the husband's family is bound to restore it if misappropriated.[46] One could argue, and problematically so, that the "separateness" of *stridhan* is a projection of the woman's personhood in it. Yet, the husband's family can utilise the property in "extreme distress, as in famine, illness or the like", with the liability of making good the wife's loss.[47] The ease with which the wife can robbed of her *stridhan* suggests not an extension

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[39] SIMONE DE BEAUVOIR, THE SECOND SEX 502-509 (Constance Borde & Sheila Malovany-Chevallier trans., Vintage Books 2011).

[40] *See* Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex, in* TOWARDS AN ANTHROPOLOGY OF WOMEN 157, 169-174 (Rayna R. Reiter ed., Monthly Review Press 1975).

[41] Judith Butler, *Sex and Gender in Simone de Beauvoir's Second Sex*, 72 YALE FRENCH STUDIES 35, 36 (1986).

[42] Broadly, this is Levi-Strauss's exchange theory of studying kinship. As revealed by ethnographic research, the role of this exchange in constituting the family unit in various societies downplays the importance that Levi-Staruss accords to it. To go with his insistence that the exchange of women forms the basis of culture is an awkward argument to say the least. It implies that women's oppression would not have existed without culture. For a critique of Levi-Strauss's theory, *see* Rubin, *supra* note 40.

[43] Harland Prechel, *Exchange in Levi Strauss's Theory of Social Organisation*, 5 MID-AMERICAN REVIEW OF SOCIOLOGY 55, 61-62 (1980).

[44] Alice Schelgel, *Dowry: Who Competes for What?*, 95 AMERICAN ANTHROPOLOGIST 155 (1993).

[45] For an authoritative account of the rights and liabilities attached to stridhan, *see* Bhai Sher Jang Singh v. Virinder Kaur, 1979 CRI.L.J. 493.

[46] Shri. Ashok s/o Laxman Kale v. Sau. Ujwala w/o Ashok Kale, AIR 2007 (NOC) 1093 BOM, ¶ 23.

[47] Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370, ¶ 7.

of her personhood to include the specific property that was gifted—the ornaments, the furniture, or even the utensils—but a mere right to maintenance that can be fulfilled by any other object.

In this configuration of legal relations, the property is rendered somewhat "fungible"[48] and the ambit of the wife's personhood in it purposively moot to secure the self-preservation of the family. Be it *stridhan* or dowry, the exchange entails joining her personhood with that of the husband's to channelise property.[49] That women be bereaved of their personhood is not just a fallout of this exchange but a crucial necessity to constitute this process.

A similar logic of divesting women of their personhood operates within the legal entity of the coparcenary. The coparcenary derives its spiritual legitimacy from funeral oblations. Within the family, the act of offering funeral oblations transcendentally ties the members sharing blood relations with a dead common ancestor.[50] This ceremony has its provenance in the *Dharmasastra* which imagines the household by stringing it together through a variety of rituals, with oblations being one key sacred element.[51]

As Durkheim would say, these rituals bind the members of the family in their experience of a close-knit social life.[52] Rituals demonstrate the infusing of individual consciousness in the social system[53]; the sensibilities and desires of the family members are intricately codified in them.[54] In this scheme of things, the ceremony of funeral oblations becomes a ritualistic means to invoke the personhood of the dead coparceners. It is by establishing this organicity in the family that the property is held jointly.[55]

Exclusion from this organic unit, thus, naturally translates into a disqualification from holding property. Traditionally, women, and male members beyond four degrees of descent have been denied membership in the coparcenary.[56] Various texts in classical Hindu law, from Manu's *Dharmasastras* to Vijnanesvara's compilations that later became the principal source of the

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[48] Fungible in the sense that the specificity of the *stridhan* is diluted by allowing its replacement with something of equal market value. *See* Radin, *supra* note 9, at 959-960, 970.

[49] *See* BEAUVOIR, *supra* note 24, at 122.

[50] Vijender Kumar, *Coparcenary Under Hindu Law: Boundaries Redefined*, 4 NALSAR LAW REVIEW 27, 29 (2008).

[51] 1 PANDURANG V. KANE, HISTORY OF DHARMASASTRA 11 (Bhandarkar Institute Press 1930).

[52] *See* ANTHONY GIDDENS, SOCIOLOGY 692 (6th edn., Polity Press 2009).

[53] Daniel B. Lee, *Ritual and the Social Meaning and Meaninglessness of Religion*, 56 SOZIALE WELT 5, 14 (2005).

[54] *See* Raymond Boudon, *Max Weber on the Rationality of the Religions*, 51 L'ANNEE SOCIOLOGIQUE 9, 33 (2001).

[55] The idea of jointness of property is also visible in the way Black's Law Dictionary defines "coparceners": "Persons to whom an estate of *inheritance* descends *jointly*, and by whom it is held as an entire estate" (emphasis added). However, in *Mitakshara* law, coparcenary property does not devolve through inheritance but through survivorship. *See* HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY, 405 (4th edn., West Publishing Co. 1968).

[56] *See* Moro Visvanath v. Ganesh Vithal, (1873) 57 BOM. H.C. REPORTS 444.

Mitakshara school, directly employ this organic personhood of the family as the bedrock of individual's rights in the coparcenary property.[57]

III. PERSONHOOD AND LAW

The first attempt in post-colonial Indian to comprehensively codify Hindu personal laws resulted in the introduction of the Hindu Code Bill by Congress in 1947. With the mindwork of Ambedkar and the backing of progressives like Nehru, the Bill sought to organise the "rules of Hindu Law" scattered in "the innumerable decisions of the High Courts and the Privy Council".[58] The legislation was vehemently resisted by the Hindu orthodoxy and traditionalists for its proposed changes in the precepts of Mitakshara Law, mainly by supplanting them with Dayabhaga elements. By extending Dayabhaga Law to the Mitakshara territories, the Bill, in effect, ensured that "a woman who also [had] a right to inherit [got] it by the reason of the fact that she [was] declared to be an heir irrespective of any other considerations".[59] The Bill dissolved by 1952, giving rise to a period of piecemeal legislations such as the Hindu Marriage Act of 1955, the Hindu Succession Act (HSA) of 1956, the Hindu Minority and Guardianship Act of 1956, the Hindu Adoption and Maintenance Act of 1956 and the Dowry Prohibition Act of 1961.[60] Contrary to the Hindu Code Bill, the HSA extended Mitakshara Law over the whole country.

With the enactment of the HSA, women were classified as Class I heirs.[61] This meant that they could now inherit their husband's or son's property.[62] Section 6 of the act, even prior to its amendment in 2005, diluted the doctrine of survivorship by requiring the devolution of an intestate male coparcener's share through succession upon being survived by a female Class I heir.[63] This experiment in Anglo-Hindu law was initially declaimed as a confused piece of legislation.[64] Its progressiveness failed to see beyond the patriarchal-patrilocal joint-family central to its subject

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[57] *Effects of Adoption*, SHODHGANGA, *available at* http://shodhganga.inflibnet.ac.in/bitstream/10603/132435/10/10_chapter%205.pdf (last visited Apr. 15, 2019).

[58] B.R. Ambedkar, *The Hindu Code Bill*, *in* THE ESSENTIAL WRITINGS OF B.R. AMBEDKAR 495 (Valerian Rodrigues ed., Oxford University Press 2002).

[59] *Id.* at 497.

[60] P.K. Menon, *Hindu Jurisprudence*, 9(1) International Lawyer 209 (1975).

[61] *See* The Hindu Succession Act, 1956, Schedule I (hereinafter "HSA").

[62] HSA, s. 8.

[63] *See* HSA, unamended s. 6.

[64] For a brief analysis of the early debates surrounding this act, *see* J. Duncan M. Derrett, *The Hindu Succession Act, 1956: An Experiment in Social Legislation*, 8 THE AMERICAN JOURNAL OF COMPARATIVE LAW 485 (1959).

matter.[65] Mired deeply with heteronormative hues, women in the Act featured only as daughters and wives. Moreover, they were still not eligible to become coparceners.

In classical Hindu law, married women acquire a share upon partition for maintenance. Her right is appended to an obligation on the marital family to maintain her. To put in other words, to maintain a woman means conserving her functionality as a conduit for property. Therefore, she is placed in a narrative that dispossesses her of her prudence and her faculties. This narrative essentially reduces married women to "weak women", and from it stems the need to maintain them. Women are said to lack the *indriya* (literally, the senses)—the potency to deal with the gods.[66] As a result, property would pass through women in the joint family, but this "weak woman" is never capable of retaining it herself.

The 2005 amendment to the act elevated women to the status of coparceners in their natal families. Instantly, this "ground breaking legislation" was hailed as a "more progressive legislation than possibly seen in the entire previous decade".[67] Yet, the inherent patriarchal overtones in the Hindu Succession Act eclipsed the celebration of its gender neutrality. In the whole amendment, much like the rest of the act, nowhere does the subjectivity of an independent woman personhood become visible.

To begin with, the amended Section 6(1) as it stands today defines the coparcenary rights of the daughters with reference to the sons in the family. The act frames gender in terms of its performance in the roles of wives and daughters.[68] What emerges, therefore, are contesting identities that reveal the fissures in the quest for a universal woman personhood or identity, if at all there is one.[69] For instance, the induction of the daughter into the coparcenary, while leaving out the wife, has led to a diminution in the share that the latter receives for maintenance. An extra coparcener—the daughter—decreases the quantum available for partition. This doubly jeopardises the wife; first, on not being included in the husband's coparcenary, and second, owing to the reduction in her share.

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[65] *See generally* Rakesh. K. Chadda & Koushik S. Deb, *Indian Family Systems, Collectivist Society and Psychotherapy*, 55 INDIAN JOURNAL OF PSYCHIATRY 299 (2011). A majority of Indian joint families are patrilocal and patrilineal, though a number of matrilineal and matrilocal systems exist in the southern and north-eastern parts of the country. The effect of these systems is simply not a subject of anthropological study, but forms of inheritance and residence in the family have a discernible psychotherapeutic effect on the personhood of its members. However, by extoling the benefits of a collectivist family system, the article ignores the subordination and violence that occurs within the family.

[66] 2 J. DUNCAN M. DERRETT, ESSAYS IN CLASSICAL AND MODERN HINDU LAW 30 (E.J. Brill 1977).

[67] *Groundbreaking Legislation*, 40 ECONOMIC AND POLITICAL WEEKLY 4487, 4487 (2005).

[68] For more on gender performativity, *see generally* JUDITH BUTLER, GENDER TROUBLES: FEMINISM AND THE SUBVERSION OF IDENTITY (Routledge 1990).

[69] Shivani Singhal, *Women as Coparceners: Ramifications of the Amended Section 6 of the Hindu Succession Act, 1956*, 19 STUDENT BAR REVIEW 50, 64 (2007).

Of course, one could argue that exclusion from the husband's coparcenary would be compensated by inclusion in her natal family's coparcenary. This, however, does not account for the disparity between Section 8 and Section 15 of the act. While Section 8, governing succession among males, circulates the property within the male intestate's heirs, Section 15 perceptibly prefers the husband's heirs over the wife's own parents, let alone her other heirs.[70]

The wife has been put at a further detriment by the judiciary's unempathetic, formalistic interpretation of these sections. One might have been deserted by her husband's family. She might have then toiled herself and amassed considerable property. Yet, the precedent in *Omprakash v. Radhacharan*[71] would force us to permit the husband's heirs to inherit. In this case, Narayani Devi, the deceased widow, was driven out of her matrimonial home after her husband's death within three months of her marriage. With her parents' support, she completed her education, secured employment, and died intestate with a considerable provident-fund balance almost three-and-a-half-decades after the eviction. The same in-laws who had abandoned her filed an application for the grant of succession. While the Supreme Court was astute enough to note that it was a "hard case", they stuck to a literal interpretation of the HSA and allowed the in-laws to inherit. The violence of Narayani Devi's experiential past featured merely as a chronological building block in the juridico-deductive reconstruction of her life for the purpose of applying the law, which, for the SC judges, was set in stone in this case.

In Hegel's framework, the manifestation of one's will in the property is complete when it is given an "end other than that which it immediately possessed".[72] One might be motivated by a number of reasons to acquire property. Narayani Devi in *Omprakash* might have intended a handsome bequest for her heirs or might have simply wanted fruits for her labour, but to plausibly fathom that it was her "will" to leave the property in the hands of the heirs that had maltreated her, defies all tenets of reasoning. In the workings of Sections 8 and 15, courts have trapped the personhood of the women in a mythic sphere. In this sphere, gender sensitivity exists elusively in rhetoric,[73] but not a single provision allows women to acquire property as *women*.

If we are to conceive of gender neutrality in Hindu personal laws, the reclamation of personhood must first occur within this domain. Otherwise, anomalous legislations are bound to happen. Consider the 1985 state amendment passed by Andhra Pradesh, inserting *Chapter II A* in the act.

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[70] *See* Mamta Dinesh Vakil v. Bansi S. Wadhwa, (2012) 6 BOM. C.R. 767. Subjecting these sections to constitutional scrutiny, the Bombay HC in this case found them to be unconstitutional.

[71] (2009) 15 SCC 66.

[72] HEGEL, *supra* note 2, 76.

[73] For a critical take on the gender bias in the Hindu Succession Act, *see* Kusum, *Towards Gender Just Property Laws*, 47 JOURNAL OF THE INDIAN LAW INSTITUTE 95 (2005).

The new chapter amalgamates succession and survivorship, producing an incongruous mishmash of inheritance and joint-tenancy.[74]

A similar story of anomaly dictates Section 14 of the HSA. The section grants full and absolute ownership to "female Hindus", for once not limiting them to gendered roles, at least in the wordings.[75] In a piece of legislation where gender sensitivity hangs by a slippery rope, provisions like Section 14, though welcome, can hardly be harnessed. Instead of remaining an aberration in the HSA, Section 14 must become a guiding exemplar of rethinking Hindu intestate succession. The emphasis must be on altering the internal cogency of the whole Act, and the sources of classical law on which it rests.

One starting point can be delving deeper within the diversities of Hindu personal laws. Unlike Mitakshara, Dayabhaga bases women's heritable rights on a loose composition of the organic unit within the family. From this accrues the limited property rights of five female heirs; namely, the daughter, widow, mother, paternal grandmother, and paternal great grandmother. Likewise, the Bombay school recognises many more female heirs than Mitakshara.[76] This multiplicity in personal laws has been rendered invisible through the hegemonic functioning of law and culture.[77] Granted that even these shadows of the personhood approach carry an inextricable history of violence and subordination within the family, but the preponderance of Mitakshara law in succession curbs any internal scope of equalisation in property rights within Hindu personal laws.

A redemption of this brutal history, however, lies precisely in a just and equitable redefinition of personhood itself. Modern forms of power, of which law is a vital technique, do not brazenly oppress but they regulate identities[78]; they structure and restructure personhood. As Foucault has written, the dynamics of juridical power shape the representation of its subjects.[79] Therefore, we must abjure the illusion of law being a transformative force and mobilise for social change at its modalities. Radical politics, to name one means, might usher in the transformation of women's

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[74] B. Shivaramayya, *The Hindu Succession (Andhra Pradesh) Amendment Act 1985: A Move in the Wrong Direction*, 30 JOURNAL OF THE INDIAN LAW INSTITUTE 166, 168 (1988).

[75] The section is one of the more progressive provisions in the act. Yet, the discourse around this provision has been restricted to "maintenance" and "stridhana". Rather than eradicating these obsolete and oppressive tools, the section has been usurped to vindicate them. *See* Judupdy Pardha Sarathy v. P.R. Krishna, (2016) 2 SCC 56.

[76] P.C. Jain, *Women's Property Rights Under Traditional Hindu Law and the Hindu Succession Act, 1956: Some Observations*, 45 JOURNAL OF THE INDIAN LAW INSTITUTE 509, 513 (2009).

[77] *See* NIVEDITA MENON, RECOVERING SUBVERSION: FEMINIST POLITICS BEYOND THE LAW 17-20 (University of Illinois Press 2004). Menon construes the hegemony of law as the constituent discursive force behind the shaping of "real bodies".

[78] *Id.* at 205.

[79] Michel Foucault, *Right of Death and Power over Life*, *in* HISTORY OF SEX 133, 135-159 (Robert Hurley ed., Pantheon Book 1978).

personhood into agents and subjects of their own.[80] "Freedom of the will"[81] is contingent on nature, and nature is not a pre-discursive. In this case, Hindu personal laws are the discursive site where "nature" is conditioned.

It is time to reorient these obsolete concepts of personhood to suit a more progressive "nature". In other words, we might not know what a coherent and adequately representative idea of personhood is, but we can certainly fight its manifestly iniquitous constructions. Simply introducing seemingly gender-neutral amendments propelled by a shallow motive of undoing the "oppression and negation"[82] of women's fundamental rights will only take away from the thrust of movement.

A validation of the personhood approach need not be recklessly imported from the Western philosophical tradition in which Hegel wrote. Strands of it can be discerned in the debates on the Uniform Civil Code and personal laws in India as well. The 2018 consultation paper authored by the B.S. Chauhan-headed Law Commission advocates the formation of a "community of property" comprising all separate property acquired by either spouse after marriage.[83] The call for such a conjugal fund is not new, but the reasoning in the paper is indeed novel. By recognising the instrumentality of the woman's household labour as a underprop for the man's economic activities, the paper reinforces her entitlement "to an equal share in a marriage", hence not degrading her labour to a secondary stratum for the want of "monetary or financial" calculability.[84]

Yet, the idea of this conjugal fund originates from a *gender/sex* system where heteronormativity ensures a gendered division of labour in the household,[85] forcing women to provide for "household labour, home management, and child bearing". If the family is the site where this division of labour is enforced, then by restricting the conjugal fund to only separate property acquired after marriage, not joint-family property, the paper becomes yet another plot to subdue women's personhood within the family.

Even the Goa Civil Code, often championed by the proponents of a nation-wide UCC, is a peculiar outcome of colonial interventions in an already composite system of personal laws.[86] The

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[80] *Id*. at 208-215. It is beyond the scope of this essay to explore the merits of radical politics to make interventions in the sphere of law. The point simply being that if personhood is to be recovered, then Hindu personal law must not be understood as *the given*. It ought to be seen as the site where the struggle unfurls, but it is not the means that guide the contestation. Furthermore, the debate on the juridical representation of the women-subjecthood is another contentious path that this essay refrains from treading.

[81] HEGEL, *supra* note 2, at 35.

[82] The Hindu Succession (Amendment) Act, 1956, *Statement of Objects and Reasons.*

[83] The Law Commission of India, *Consultation Paper on Reform of Family Law*, Aug. 31, 2018, 29-31, *available at* https://barandbench.com/wp-content/uploads/2018/08/Consultation-Paper-LCI-Family-Law.pdf.

[84] *Id.* at 30.

[85] *See* Rubin, *supra* note 40.

[86] D.C. Manooja, *Uniform Civil Code: A Suggestion*, 42 JOURNAL OF THE INDIAN LAW INSTITUTE 448, 451 (2001).

code allows for a "communion of assets" pooled by the spouses, albeit the management lies with the husband.[87] Law, rather than being an agent of social change, renders invisible this secondary personhood of women in exhorting the code's ostensible gender neutrality.[88] Both the "communion of assets" and "community of property," at best, work as securities that the wife can redeem if the marriage breaks down. During its continuation, the matrimonial union precedes her personhood. Unless we confront these oppressive structures, will personhood invariably remain an exclusionary privilege? Will marriage remain an avenue to exchange property, or women for that matter, unless we question the economic and social forces of coercion within the kinship system? And will the family continue reducing women to their reproductive function unless we stand for a vision of personhood which encapsulates the full subjecthood and agency of all its members?

CONCLUSION

I have tried in this essay to show the prevalence of the personhood approach in the very foundations of property relations in Hindu personal laws. The trajectories that have chiselled the personhood of women, or the sheer lack thereof, in succession laws raise a timely call to introspect within judicial discourses and critically examine their intuitive underpinnings.

In this rereading of Hegels' *Elements of the Philosophy of Right*, I have tried to build from the right-based claim that property is instrumental for the actualisation of one's personhood. Constructing women as passive channels devoid of a subjective personhood facilitates the kinship-regulated flow of property through them, without women ever being active holders of property. The Hindu Succession Act of 1956 legitimates the Mitakshara school as the exclusive authority on Hindu personal laws throughout the country. It was not until the 2005 amendment to the Act that women were offered a share in their natal coparcenary. This legislative intervention was instantly hailed as a historic step towards a gender-neutral personal-law regime. Perhaps rightly so; for many women, the long due legal recognition was indeed a momentous change. However, we would lose sight of the core issues if the moment of reparations hides that which amendment is symptomatic of: the problematique of personhood. Kinship and marriage structures represent women only in the gender roles they create; that of the wife, mother, daughter or after the breakdown of the marriage, widow. The text of the 2005 amendment raises daughters to the status of sons, at no point acknowledging their independent subjecthood.

The personhood framework is not just a Hegelian theoretical device confined to select academic circles. It is much more than that. The anatomy of the word "personhood" is historically, socially,

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[87] Nabeela Jamil, *Is the Goa Civil Code the Answer to India's Sexist Laws?*, FEMINISM IN INDIA (Nov. 9, 2018), https://feminisminindia.com/2018/11/09/goa-civil-code/.

[88] Shaila Desouza, *'Just' Laws are not Enough: A Note on the Common Civil Code, Marriage and Inheritance in Goa*, *in* WOMEN'S LIVELIHOOD RIGHTS, 277-287 (Sumi Krishnan ed., Sage 2007).

and culturally contingent, and deconstructing it ruptures the bulwarks that separate subalterns from their rightful claim to personhood.