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THE RIGHT TO RESIDENCE OF HINDU WOMEN IN INDIA: A DOCTRINAL STUDY OF LEGAL EVOLUTION AND CONTEMPORARY CHALLENGES

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Abstract

Under Hindu customary law right to residence is treated as an incident of right to maintenance. This claim of maintenance is determined by family ties. In the last century through multiple legislative reforms, at present residential right of a Hindu woman is a legal right. This study is a doctrinal analysis of this evolution. It traces the transformation of the residential right from a position of dependency to recognition as an independent legal right. This paper discusses the status of residential claim during pre-independence period and the post-independence legislative reformation, which resulted in growth of women's rights. This paper brings attention to the conflict of residential rights under DV Act and the Senior Citizens Act. Through analysis of relevant judicial decisions this paper attempts to understand the judicial approach to conflict resolution between competing right. The study concludes that although right to residence is protected through multiple legal frameworks, the fragmented nature of the frameworks calls for greater coherence and legal certainty.

Key Words: Hindu Women, Residential right, Maintenance, Property Rights, Senior Citizens Act, Intersectional Vulnerability.

Chapter 1: Introduction

“Home” is supposed to be the place of serenity, stability and security, yet historically for many women it has been a site of conditional acceptance. A woman could spend her entire life dedicated to a household and still find her right to remain there disrupted by widowhood, marital disputes, property disputes, or changing dynamics of family.

Conceptually, the right to residence is distinct from both property rights and maintenance

rights, although the three frequently overlap. Property rights encompass ownership and control over property, while maintenance rights ensure financial support from close family relations. Right to residence refers to a person's claim to occupy and continue living in a dwelling setup.

Traditionally, a woman's access to residence was contingent upon her status as a daughter, wife, widow, or mother of the family and was treated as an incident of maintenance rather than a separate right. Socio-legal reforms post the twentieth century expanded various rights of women; including the right to residence. At present the right to residence flows from multiple legal frameworks governing property rights, maintenance, domestic violence, and welfare.

The expansion of residence rights is also part of the objective of protecting vulnerable groups. As a result of centuries long social injustice, structural inequalities, and economic dependence women, women have been recognised as requiring special legal protection. However, in contemporary society vulnerability is not confined to a single group.

The emergence of multiple vulnerable groups has created new legal challenges. Courts are increasingly confronted with situations in which competing claims are asserted over the same residential space. A daughter-in-law may seek protection from eviction by asserting her right to residence, while her elderly in laws may seek exclusive possession of the property as a part of residential rights. In such cases, the issue is no longer simply one of protecting women from displacement, rather, it involves reconciling competing claims advanced by different vulnerable groups. The challenge before courts is not to determine how competing interests can be accommodated in a manner that minimises harm and preserves dignity for all parties involved.

Research Objectives

1. To trace the historical evolution of a Hindu woman's right to residence from being a socio-moral claim to a legal entitlement.
2. To analyse judicial approaches to resolving disputes between residence rights claimed by women and by senior citizens.
3. To evaluate the adequacy of the existing legal framework in protecting residential security.

Research Methodology

This study is doctrinal research, as it relies upon statutes, judicial decisions, journal articles, and books relating to maintenance, succession, domestic violence, and senior citizens' rights. This study is a combination of historical, analytical, and comparative methods of research. The historical approach is used to trace the evolution of a Hindu woman's right to residence from classical Hindu law to the contemporary statutory framework. The analytical approach examines residence rights under different statutes and evaluates the judicial interpretation of these provisions. Through analysis of leading judicial decisions, the study assesses how courts reconcile competing claims within a family arising from overlapping provisions.

Chapter 2: Historical Evolution of the Right to Residence

As per the classical Hindu law, property, lineage, and residential rights were centered around male members of the family. A woman's right to residence was determined primarily by family relationships and maintenance obligations rather than from independent legal claim. Under the Mitākṣarā school, family property devolved through the coparcenary system.¹ It granted birth-based proprietary rights exclusively to four generations male members of the joint family. As women were excluded from coparcenary, they lacked any direct claim to the ancestral dwelling. In contrast, the Dayabhaga school afforded comparatively greater inheritance rights to widows and daughters.² However, it did not socially alter women's dependence on male-controlled property for residential security.

A woman's claims were limited to *strīdhana*, which consisted of gifts received at the time of marriage or thereafter.³ This category of property, though technically recognised as belonging to the woman, did not necessarily translate into economic independence or residential security within the joint household.

The scope of a woman's access to residence was determined by her familial role. As a daughter, she belonged to her natal home till marriage; as a wife, she became a member of her husband's household; as a widow, her continued residence often depended upon the goodwill of her husband's family; and as a mother, she relied upon her sons for care and shelter. Thus, a woman's claim to shelter lacked legal certainty, as residence was part of maintenance; and

¹ Dr. Paras Diwan, *Modern Hindu Law* 56 (Allahabad Law Agency, Faridabad, 23rd edn., 2016).

² *Id.*

³ *Id.* at 385.

maintenance itself was a moral and religious obligation. Disputes concerning residence were resolved within the family or community rather than through formal legal processes.

Upon marriage, a daughter was expected to leave her childhoods home and integrate into her husband's family for rest of her life. This transition carried not only social but also legal consequences. The notion that a married daughter could return and assert a residential claim in her natal home was largely frowned upon as per the prevailing social and legal norms. As a consequence, a wife subjected to cruelty or desertion or a widow could find herself without secure accommodation.

The British colonial rule marked a gradual socio-legal reformation with the enactment of Hindu Women's Right to Property Act.⁴ It granted widows a limited interest in their husband's property, including a right to enjoy the property during their lifetime.⁵ Although the interest was not absolute and did not confer full ownership, it provided a legal basis for the widow's continued residence in the family home. The widow's estate was a restricted, it did not allow her to alienate the property freely, and her rights could be affected by partition or reorganisation within the joint family. The Act did not extend similar protections to other categories of women, such as married daughters or daughters-in-law, thereby retaining a hierarchy of legal status for women.

By the time India became independence, the right to residence of a Hindu woman had undergone only a partial transformation. The law had shifted from purely customary norms and to limited statutory protections, particularly for widows. Nevertheless, the fundamentals governing residential rights for Hindu women remained unchanged. The transition from dependency-based residence to a legally enforceable right emerged only through the legislative reforms of the post-independence period.

Chapter 3: Post-Independence Statutory Framework and Judicial Interpretation

In India the rights of women have evolved alongside the change in status of women in society. The post-independence legal reformation has transformed a Hindu woman's right to residence, from being a socio-moral obligation to an enforceable legal right in nature. The right to residence today does not flow from a single framework; rather, it is contained in multiple

⁴ The Hindu Women's Right to Property Act, 1937 (Act 18 of 1937).

⁵ *Id.* s. 3.

statutes governing property law, maintenance laws, matrimonial relief, and welfare.

3.1 Hindu Succession Act, 1956 (HSA,1956)

The Hindu Succession law provides the strongest legal foundation for a woman's right to residence because grants women right of ownership. This statute marked a watershed moment in Indian legal history, as it transformed the nature of women's property rights by converting limited estates into absolute ownership.⁶ This meant that a woman who owned property could not be excluded from it, and her right to reside there became legally secure.

However, this progress was restricted by the provision of Section 23 in the original Act. This provision prevented female heirs from seeking partition of a dwelling house occupied by a joint family until male heirs chose to do so. This in effected limited women's rights at the level of abstract entitlement. They could inherit a share, but they could not enforce possession or claim an independent residential space within the ancestral home. In practice, this maintained the gendered hierarchy of the household.

The amendment of 2005 was a turning point, which removed Section 23 and recognised daughters as coparceners by birth under Section 6.⁷ As a result of this strengthening female inheritance rights, the basis of residence was fundamentally altered. This ensures daughters equal rights as of a son, not only in terms of succession but also in terms of control over the family dwelling. A daughter's right to live in the family home now flows from her status of co-ownership.

The Supreme Court has further solidified this right by clarifying in *Vineeta Sharma v. Rakesh Sharma*⁸ that coparcenary rights accrue by birth and are not dependent on the father being alive at the time of the amendment. Thus, this right is retrospective in its application protecting maximum beneficiaries.

3.2 Hindu Adoptions and Maintenance Act, 1956 (HAMA, 1956)

Under this statute, Section 3(b) expressly mentions residence within the definition of maintenance. Unlike property rights, which are based on ownership, the Act secures access to residence through the obligation to maintain certain family members.

The Act entitles a Hindu wife to be maintained by her husband and permits her to live separately without forfeiting claim to maintenance in specified circumstances, including cruelty,

⁶ The Hindu Succession Act, 1956 (Act 30 of 1956), s.14.

⁷ The Hindu Succession (Amendment) Act, 2005, (Act of 59 of 2005).

⁸ (2020) 9 SCC 1.

desertion, conversion, husband's keeping of another women, or any other just reason for separate accommodation.⁹ Although the provision does not create an independent right to residence in a particular property, it ensures that a wife remains entitled to residential support even when cohabitation becomes impossible.

The Act also extends maintenance rights beyond wives. As per the provisions of the Act widowed daughter-in-law can claim maintenance from her father-in-law¹⁰, unmarried daughters are entitled to be maintained by their parents, while aged or infirm parents may claim maintenance from their children.¹¹ Unlike other maintenance provisions, the Act grants right to maintenance to female dependent relatives, to seek maintenance from the estate of a deceased Hindu in certain circumstances.¹² Since maintenance includes residence, these provisions indirectly contribute to the residential security of women who may otherwise lack independent means of support.

3.3 Hindu Marriage Act, 1955 (HMA,1955)

This statute governs to the right to residence in the context of matrimonial litigation. The Court may grant interim maintenance¹³ or permanent alimony and maintenance¹⁴, which includes provision for accommodation.

As a wife's access to matrimonial home is detrimentally affected in a marital dispute. In practice, this provision ensures that a spouse is not disadvantaged during ongoing proceedings. Thus, ensuring right to residence is not an end in itself but a means of ensuring procedural fairness and substantive justice.

3.4 Code of Criminal Procedure, 1973 and Bharatiya Nagarik Suraksha Sanhita, 2023

The legislative intent of inclusion of maintenance within criminal procedural law is social justice and protect vulnerable people from vagrancy and destitution. Section 125 of the CrPC¹⁵ the Section 144 of BNSS¹⁶ provide for the right of maintenance. This remedy may be availed by a woman as a wife, divorced wife, legitimate or illegitimate daughter, and mother. It is enforceable through a summary proceeding at the Court of a JMFC.

⁹ The Hindu Adoptions and Maintenance Act, 1956, (Act 78 of 1956), s.18.

¹⁰ *Id.* s. 19.

¹¹ *Id.* s. 20.

¹² *Id.* s. 22.

¹³ The Hindu Marriage Act, 1955 (Act 25 of 1955), s. 24.

¹⁴ *Id.* s. 25.

¹⁵ The Code of Criminal Procedure, 1973 (Act of 02 of 1973).

¹⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act of 46 of 2023).

3.5 Protection of Women from Domestic Violence Act, 2005 (PWDVA, 2005)

The DV Act marks a radical shift by recognising residence as an independent statutory right. The statute guarantees that irrespective of ownership every woman in a domestic relationship has the right to reside in the shared household.¹⁷

This provision breaks away from earlier legal stance by ensuring residence irrespective of property. It acknowledges that women often are in households where they have no legal title but deep social and economic ties. The DV framework thus introduces a protective dimension to the right to residence, aimed at preventing homelessness and safeguarding dignity of victims. The Hon'ble Supreme Court has strengthened this protection by adopting a broader, purposive interpretation in *Satish Chander Ahuja v. Sneha Ahuja*.¹⁸ It held that any dwelling place where the woman has lived in a domestic relationship is a shared household, regardless of ownership. In *Prabha Tyagi v. Kamlesh Devi*¹⁹ the apex court has also clarified that a woman need not be in actual physical possession of a shared household to seek relief under the DV Act. These judgments recognise that residence is fundamentally about ensuring basic need of shelter and shifted the focus from legal title to lived reality.

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (MWPC Act 2007)

This Act introduced a new dimension to the right to residence by formally stating it under the definition of maintenance.²⁰

This protection is particularly significant for senior citizen women, as it enables senior citizens to seek maintenance.²¹ It further strengthens their ability to secure residential security. At the same time, the Act creates potential conflict with the residence rights of women, especially daughters-in-law residing in homes owned by their in-laws.

Chapter 4: Conflict Between Women's Right to Residence and Senior Citizens' Rights

The evolution of society has pivoted traditional assumptions regarding vulnerability. Historically, women being a vulnerable group, have been regarded as the primary beneficiaries of protective legislations. Contemporary disputes reveal that the changing dynamics of family relationships may place different individuals in positions of disadvantage simultaneously. As

¹⁷ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s.17.

¹⁸ (2021) 1 SCC 414.

¹⁹ (2022) 8 SCC 90.

²⁰ The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act 56 of 2007), s.2(b).

²¹ *Id.* s.4.

present, the legal protection is no longer confined to women, but extends to balancing the interests of multiple vulnerable groups, including senior citizens. This conflict is frequent in disputes involving daughters-in-law residing in houses owned by their in-laws, where competing claims arise under the DV Act, 2005 and the MWPSA Act, 2007.

The DV Act was enacted for protection of women from violence and provide redressal to victims. The Act recognises the right of a woman in a domestic relationship to claim for residence in the shared household. This right is available irrespective of ownership of the house. Women often stay and build their lives in homes that are legally owned by others and fear of eviction from such household could deter victims from seeking redressal. Taking into account social realities of victims of domestic violence, scope of this statute has been made deliberately wide.

The Senior Citizens Act aims to secure safety and dignity for elderly parents by giving them right to claim residence as a part of maintenance. The Court may order for eviction of children or members who are harassing senior citizen in their own home. The summary remedy enables Tribunals to order eviction of other residents harassing senior citizen in their own home. While this ensures effective relief for the elderly, it also creates the possibility of bypassing the protection available under the DV framework.

Both statutes aim to protect vulnerable victims. The DV framework prevents homelessness and coercive displacement of victims, while the Senior Citizens Act secures dignity and autonomy for the elderly. Thus, the conflict is between two legally recognised claims grounded in social justice. The difficulty lies in determining how these rights are to be balanced when the claims are upon the same physical space; the home.

The right to residence was expanded in *Satish Chander Ahuja v. Sneha Ahuja*²², as the Court held that definition of “shared household” includes property owned by in-laws. By recognising that a woman can claim residential rights in such property, the Court significantly strengthened her position in conflicts involving senior citizens. However, this expansion also intensified the potential for overlap between the two statutory regimes.

²² (2021) 1 SCC 414.

The judiciary encountered this conflict in *Smt. Vanitha v. Deputy Commissioner, Bengaluru Urban District*.²³ The case was of eviction of a daughter-in-law from her matrimonial home under the Senior Citizens Act, despite her claim to residence under the DV Act. The Apex Court made two important observations. First, it held that the right to residence under the DV Act cannot be defeated through summary eviction proceedings. Second, it recognised that the rights of senior citizens are equally legitimate and must be protected. The Court rejected the view that the provision of the Senior Citizen Act overrides the protection granted under DV Act. Instead, it emphasised the need for harmonious construction in such cases, holding that both statutes must be interpreted in a manner with due consideration given to their respective objectives.

In *Manju Arora v. Neelam Arora*²⁴, the Delhi High Court adjudicated that though the right to residence is an important protection, it is not absolute. If continued cohabitation would be detrimental to senior citizens, it may be necessary to separate the parties.

In this case the dispute involved severe breakdown of relations between a daughter-in-law and her elderly in-laws. The Court granted the relief of eviction in favour of the in-laws; however, also directed for arrangement of adequate alternate accommodation for the daughter-in law. This ensured that right to shelter is preserved even as she is required to vacate the shared household. This implies adoption of a “pragmatic separation model”, where the emphasis is on preventing harm to both parties rather than enforcing cohabitation in the same household.

On analysis of cases it appears, an informal three prong test has evolved. First, courts examine whether the premises in question qualify as a shared household or not. Second, they assess the nature, and impact of the conflict between parties. Third, they take into account the consequences of eviction, particularly whether the woman will have access to alternate accommodation. Such nuanced understanding recognises that both vulnerable groups may occupy positions of disadvantage. Justice shall prevail only by mitigating harm and inconvenience for all parties involved.

²³ (2021) 15 SCC 730.

²⁴ 2025 SCC OnLine Del 7280.

Chapter 5: Present-Day Challenges, and the Way Forward

The right to residence of a Hindu woman is governed under four primary legal frameworks. Ownership-based residence, is based on the HSA, 1956 (amended in 2005). A woman who is a coparcener or owner enjoys the strongest form of protection, as her residential right flows directly from ownership of property. This is the most legally secure form of residence.

The maintenance-based residence framework, is governed under statutes such as the HMA 1955, HAMA 1956 and provisions of the BNSS, and CrPC. Residence is incidental to the personal obligation to maintain. However, this protection remains conditional and dependent on the discretion of the court.

The third category is protective residence articulated under the DV Act, 2005. It grants women the right to reside in a shared household irrespective of ownership. This framework is particularly helpful for women who lack property rights but have deep social and economic ties to the household.

The fourth category is welfare-based residence, contained in the MWPC Act. The Act secures the residential security of senior citizens by enabling them to seek maintenance and residence, including senior citizen women.

Together, these legislations create a residential right framework with multiple remedies available. In theory, this allows for flexibility and ensures that women in different circumstances can access appropriate form of protection. In practice, however, it often causes uncertainty. Residential right being derived from multiple statutes with different objectives remains fragmented. In absence of a unified statute similar cases can produce different outcomes depending on the provision invoked and the judicial discretion.

The position of senior women is the most delicate to navigate, who may simultaneously be claimant or adversary in a legal dispute relating to residence. For instance, a widowed mother-in-law may invoke the Senior Citizens Act to secure exclusive residence in her household, while a daughter-in-law may invoke the DV Act to resist eviction from the same household.

The summary nature of proceedings under the Senior Citizens Act could also be potentially misused to bypass procedural fairness, particularly where eviction orders are passed without

adequate consideration of the woman's claims under the DV Act.

The procedural overlap between different legal forums further complicates matters. Disputes relating to residence may simultaneously involve Family Courts, Magistrates under the DV Act, and Tribunals under the Senior Citizens Act. A lack of coordination between these forums can result in conflicting orders, creating uncertainty and prolonging litigation.

There is also a necessity to strengthen enforcement mechanisms. This could include better coordination between different forums, stricter compliance measures for maintenance and residence orders, and increased institutional support for women seeking relief. Without effective enforcement, even the most progressive legal provisions remain limited in their impact.

The law continues to treat residence as a fragmented right, derived from multiple statutes with different objectives. This fragmentation makes it difficult to develop a coherent standard for conflict resolution. As a result, outcomes often depend on judicial discretion, leading to variability and uncertainty.

Recognising this complexity, rather than treating all women as a homogeneous category, different forms of vulnerability must be acknowledged. A senior woman seeking protection from harassment is not in the same position as a younger woman seeking protection from displacement, even though both claims arise from gendered experiences. This recognition could lead to more tailored remedies that take into account the specific circumstances of each case.

The emerging "balanced vulnerability" approach represents a step forward, but it is not a complete solution. While it allows for flexible, context-specific adjudication, it also places a significant burden on courts to navigate complex social realities without clear legislative guidance. The risk is that similar cases may yield different outcomes, undermining the predictability of the law.

CHAPTER-6

CONCLUSION

The right to residence of Hindu women continue to evolve alongside the transformation in the socio-legal status of women in India. Despite noteworthy reformations, the residential rights remain fragmented across multiple frameworks governing inheritance, maintenance, protection, and welfare. As each framework gives different level of protection, the net outcome is uncertainty. The extent of protection depends on the specific statutory recourse availed and the interpretation adopted by courts. To accommodate competing claims judiciary has adopted a balancing approach, rather than prioritising one vulnerable group over another. This casts the duty on the judiciary to scrutinize facts of each case and use judicial discretion without any legislative guidelines.

A coherent framework can be developed through legislative reforms, clearer standards for adjudication, and its effectiveness can be achieved through improved enforcement mechanisms, and institutional coordination. At the same time social security measures could be undertaken to address the underlying factors contributing to residential insecurity and for realisation of the legislative intent of protecting of vulnerable groups.

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