

A critical analysis on disputes of Hindu women's property right in India

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Abstract

In India the women's right to property inheritance is limited and frequently violated. Under Hindu law, sons have an independent share in the ancestral property. The married daughters, even those facing marital harassment have no residential rights in the ancestral home. Due to patriarchal society the inheritance rights of property of women concerned with the immovable property especially land the properties keep intact with their families but in the Mitakshara it is considered to be more liberal in acknowledging that when women inherited property this could also be stridhan. It is an important aspect even in contemporary society since it denies to women to control over the most important productive resource in the Indian economy which is land. In practically widows have no share in the family property in the joint family normally had the right to maintenance by the heirs of the husbands.

Keywords: Mitakshara, stridhan, coparcenary, inheritance

Introduction

The basic feature of the secularism was explained by the Hon'ble Supreme Court which held that, secularism means "the State shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their conscience and have the right freely to profess, practice and propagate any religion. India is a country of diverse cultures, religions, race and traditions. Each religious community is governed by its respective personal law. The different religious groups are having their own local customs and rule with their own property rights. Under the Hindu succession Act 1956, in one code of property Hindu, Sikh, Buddhist and Jains are governing while Christians are governed by Indian succession Act, 1925. Section 31 to 49 deal with Christian Succession, the Muslims of India are governed by their personal law including property rights and The Tribal women of various states continued to be governed for their property by their local customs and conditions. Women's right to property has been recognized as significant issue in India. Property rights of the women and to control over property determined through women's living conditions, economic security, and physically safety in the community. Globally that woman constitutes half of the world's population and who work two-third of world working hours. The majority of women do not belong to the working class there are different from different backgrounds but remain victim of their property rights. Further land is a critical resource for woman when husband neglect, divorce, illness or death etc. The property rights of women also helps to promote women's economic security and empowerment thereby reducing the vulnerability to domestic violence. Though the Indian constitution bequests women identical rights and prospects, and a quantity of liberal laws such as the Equal Remuneration Act proclaim this value, India's legal arrangement continues to differentiate counter to women. This is most apparent in two areas: the inheritance laws, and divorce and maintenance laws. Public dissertation on removing legal perception against females has concentrated on the claim for a uniform civil code. This claim has as a rule

been maintained by Hindu religious frontrunners and intensely opposed by Muslim and Christian religious frontrunners. In actuality, however, nearly all personal laws, be it Hindu, Muslim, or Parsi, differentiate against women. In notion women are constitutionally assured the elementary right to property. In exercise, the liberal nature of the constitution is compensated by a similar system of personal law that confines women's inheritance, protection, and maintenance rights. Inheritance laws are a salient instance of gender injustice in the control and circulation of properties.

Property Rights of Female in Male dominated Family

A Hindu father in male-controlled family adored complete power like the Roman father in prehistoric Rome. The scriptures indisputably backed much to mark the father, the holder of the family a absolute ruler. Manu said that three persons, a wife, a son and a slave are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong. Similarly Narada believed in the view that a son could be independent only if his parents are dead; during their lifetime he is dependent even though he is grown old. So in a male-controlled family females and offspring did not have property rights. The wife was placed into the set of possessions and slaves. They had an burdened and subdued life in the old male-controlled families.

Widow's Right in a Hindu Joint family

The wedded and unmarried daughters remained as affiliates of the joint family. The male affiliates are coparceners with right of survivorship. The procedures for survivorship had been placed by Narada. He said that if among several members, one childless dies or becomes a religious ascetic, the other shall divide property excepting stridhanam. So widows are barred from survivorship. However this old rule has been repealed by the Women's Right to Property Act 1937. As per the Act the comforts of male coparceners delegate on their expiry upon widows. This instituted Hindu women's domain. They were

eligible to get their portion by Partition. This legislative modification was carried out by the British to advance the position of widow. Subsequent to the eradication of Sati the quantity of widows increased. In order to discharge them of their despairs the Hindu Women's Right to Property was legislated to give property rights to them; she could enjoy the assets during the lifetime. Her legal position had been enhanced. She no more had to rest on on the husband's family for her upkeep. The purpose of the Act was to familiarize equality between male and female. In actual fact clause 3 of the Bill said that no person should be left out from heritage and partition on the base of sex. But when the Act came into power women were allowed only a restricted right of legacy of the widows domain ^[1]. It was established that the 1937 Act was insufficient to guard the welfare of Hindu women and a committee was prearranged to make an inclusive Hindu Code.

Transformations in Hindu Law

The olden times of Hindu Law transformation comes with the Hindu Law committee (Rau Committee) formed in 1941. It was trailed by another Committee in 1944. The committee lastly submitted its report to the Federal Parliament in 1947. The commendations of the committee were disputed in the provincial Parliament. There was tough opposition contrary to the institution of monogamy, divorce, eradication of coparcenary and inheritance to daughters from the conventional Hindu public. The Congress representative from West Bengal contended that only women of the lavender, lipstick and vanity bag variety were interested in the Bill ^[2]. There were also worries among the conventional Hindu men that if females were assumed property rights relations would collapse. In 1948 there stood an All India Anti- Hindu Code Convention. It was claimed that the institution of women's portion would lead to the breakdown of Hindu family system which had been occupied as a co-operative system for eternities for conservation of family bonds and assets. It was also pointed out that the inclusion of daughter in the line of inheritance is due to European influence ^[3]. Though the upper male congress frontrunners were against the Bill, Jawaharlal Nehru and Dr. Ambedkar were faithful to the Bill. Nehru individually believed in women's assertions to equivalent property rights. Dr. Ambedkar had to fight considerably due to the robust opposition from the stronghold of higher class Hindus ^[4]. In spite of the preliminary set back the Congress party could enact four separate Hindu Codes ^[5]. The most challenged area was women's property rights ^[6]. As far as the Nation is concerned fusion of Hindu Law was dominant rather than women's legacy rights. This is revealed in the arguments of Archana Parashar. She said that the concealed agenda was amalgamation of the nation by homogeneity in law. Instituting the supremacy of the Nation over religious establishments was an additional significant consideration. This could be best attained by redefining the rights of women ^[7]. There was strong disapproval amid the congress itself against allowing inheritance rights to daughters. Accordingly the coparcenary system under the Mitakshara law was left intact ^[8]. As an outcome women were deprived of rights in the inherited property of a Hindu Undivided Family. Only men could turn out to be coparceners and property transfers to them by survivorship. Women are completely left out from inheritance. So difference The Hindu Marriage Act 1955, The Hindu Succession Act 1956, The Hindu Adoption and Maintenance

Act 1956 and The Hindu Guardian and wards Act 1956. 6 Ibid 7 Archana Parashar, Women and Family Reform in India." Economic and Political Weekly, 2145(1994), continued in the problem of property rights even subsequent to the beginning of the Constitution ^[9]. The daughters had equivalent rights lone in the distinct or self-attained property of their father. Conversely the father can effortlessly disown a daughter by accomplishing a Will. Section 30 of The Hindu Succession Act 1956 offers that any Hindu may set of by Will or other authentication disposition any property which is proficient of being so predisposed of by him in accord with the provisions of the Indian Succession Act 1925 ^[10]. Wills were exclusively unknown to Hindu Law according to Mayne. He is of the belief that Wills were transported to India in the Mughal rule and in future by the westerners ^[11]. So the English notion of testamentary succession established its system into Hindu Succession Act 1956 by creating section 57 of The Indian Succession Act 1925 to Hindus too. Though the lawmakers ignored the shield allowed to the family members in the "Inheritance (Provision for family and dependents) Act 1975 in U.K. During the Legislatorial debates, these omissions were taken to the notice of persons who were heatedly differing women's inheritance that it can be avoided by testamentary disposition.

Hindu Women's Property Rights under the Hindu Succession Act 1956

Women's claim to property has been considerably upgraded by the Hindu Succession Act 1956. The notion of women being eligible to a limited domain when they obtain property by birthright is eliminated and women are allowed to an outright estate like men when they receive any property. Also the daughter of a predeceased son and the daughter of a predeceased daughter are upraised to an upper rank. They turn out to be Class – I heirs and get a portion along with the son, and further Class – I heirs. The daughters are counted in in the Class – I in order to eliminate the discernment on the base of sex. Likewise succession to a women's property or stridhanam of whatsoever nature is made even regardless of the nature of stridhanam. In the similar way the difference between male and female successors in the situation of succession has been gone and The Indian Succession Act under section 57 provides: "The provisions of this part shall apply to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jain at the present they are treated on identical basis if they fit to the same grade of relationship. Women will no more be disowned on the reason of un- chastity.

In Section 14 of The Hindu Succession Act 1956, the restricted concern of Hindu woman is renewed into complete rights. If she acquires property from her husband she can trade it and the buyer gets complete right in the asset. Earlier to the Act, she could trade it lone for the inevitabilities of the household or to execute religious rites for the assistance of her dead husband. Previously she was not assumed the power of alienation ^[12]. The Act has been set with retroactive effect. So the restricted estate becomes unqualified. Another significant change carried out is to the explanation Section 6 of the 1956 Act ^[13]. Upon the demise of a coparcener the property transfers to his mother, widow and daughter alongside with his son by testamentary or without a will succession and not by survivorship. This provision deliberates on the women an identical right along with the men with the rights of the

coparcenary^[14]. It is to be taken into notice that Section 6 still preserves the Mitakshara coparcenary eliminating women from survivorship as a consequence father and sons grip the joint family property to the complete barring of the mother and daughter in spite of providing an even scheme of inheritance without a will Succession. The strict restraints under the Shastric law on woman inheritance were lastly taken away by the Parliament to mark it follow to the Constitutional obligation of equivalence. The incapacity of women in getting the father's property was unfastened under Section 6 of the 1956 Act^[15]. 12 See Section 14 of the Hindu Succession Act 1956. Section 14 is wide in its ambit. The legislation has defined women's property in the widest possible manner. The property includes both movable and immovable property acquired by a female by inheritance, partition, in lieu of maintenance, arrears of maintenance, gift from any person, a relative or not, before or after marriage or by her own skill, exertion, by purchase or by prescription or in any other manner whatsoever and also any such property held by her as stridhanam immediately before the commencement of the Act 13 Section 6 of the 1956 Act provides: Devolution of interest in coparcenary when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: provided that if the deceased has left him surviving a female relative specified in class – I of the schedule or a male relative specified in that class who claims through such female relative the interest of the deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship Correspondingly section 15 is the major legal enactment that takes into account the succession of Hindu female's assets when she expires without a will. Before the Act the property of women dying without a will was administered by regular Hindu law. She had only restricted concern which would be dismissed on her death. It is comforting to note that the Act offers two different laws grounded on the sex of the without a will. This twofold scheme is the customary method anticipated to safeguard the family property. The property of a Hindu woman dying without a will shall transfer conferring to the guidelines set out in section 16. (a) Firstly sons and daughters (including the children of any predeceased son or daughter) (b) secondly upon the heirs of the husband thirdly upon the mother and father (d) fourthly upon the heirs of the father and (e) lastly upon the heirs of the mother. Again (a) any property inherited by a female Hindu from her father or mother shall devolve in the absence of any son or daughter of the deceased (including the children of any pre deceased son or daughter) not upon the heirs referred to in sub section (1) in the order specified there in, but upon the father. (b) So also any property inherited by a female Hindu from her husband or from her father – in – law shall devolve in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub section (1) but upon the heirs of the husband. This distinct scheme of succession reveals a tough male-controlled and conventional attitude^[16]. Furthermore, Section 15(2) offers that the property innate from the father would return to the successors of the father when the Hindu woman dies without disputes. The section also offers that the property got from the mother would

return to the successors of the father and not to the mother's successors. The Statutory intent of preservation of property turns out to be problematic here because if the objective is to preserve the family property, the property got from the mother should return to the mother's successors^[17].

Conclusion

The Hindu Succession Act of 1956 was envisioned to expand the rights of Hindu women. Though the Act has condensed some gender disparities, many till now continue. Under Hindu law, sons have an autonomous share in the family property. However, daughters' portions are grounded on the share got by their father. Hence, a father can efficiently disown a daughter by relinquishing his share of the family property, but the son will remain to have a portion in his personal right. Moreover, married daughters, even those fronting marital nuisance, have no domestic rights in the family home. Though laws themselves have not been gender-equitable, even the weak rules protecting females have not been sufficiently applied. Consequently, in exercise females continue to have little entrance to land and property, a chief source of revenue and continuing economic safety. Even when the state deliberates rights on the underprivileged by land reform, the ownership to the land is consistently in the designation of the male head and is hardly held together with his spouse. And authoritative farmer lobbies in north India have in recent times wanted to deprive females of minimal property rights. Great amount of females continue to be oblivious of their rights of inheritance; and, where informed, social powers prevent women from challenging these rights. Females themselves frequently repel variations in inheritance arrangements, with two of three females being apparently against girls getting an equal portion with boys in parental belongings. By customary definition, the family properties are those assets attained from father or paternal grandfather or paternal great-grandfather or portion attained on partition or self-attained properties or distinct properties of a person thrown into the combined family properties. In the Indian Succession Act, 1925, which is also pertinent to Hindus, both men and women have unobstructed right of testamentary character, while the Muslim Law confines the said right to only 1/3rd of the domain after reducing funeral expenditures and arrears. The Law Commission has been trusted with the duty of reviewing the Central Acts to streamline them and to eliminate irregularities, vagueness and discrimination. From July 2005 the new Act has come into power and the daughter is allocated the same portion as is allocated to a son. The daughter shall have a right to assert partition in the joint household properties in addition to the right to assert right of partition in the residence house of the joint family and she shall also have a right to assert partition during the lifespan of her father. This opportunity is only given to Hindu females. The laws pertinent to Muslims & Christians do not give equivalent position to females. When the constitution of India and the laws recently enacted are in approval of giving equal position to the females, the females are concerned in asking for lesser than what they are eligible for and they are trying to apply the Women's Bill where they shall have only 33% right. Both Hindu and Muslim personal laws do not recognize marital property. Hence, at the period of divorce, females have no rights to their household or to other assets gathered during marriage; in consequence, their assistances to the maintenance of the household and gathering

of family assets go unrecognized and unrewarded. To quote from Justice Sujata V. Manohar of Supreme Court of India "It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society.

References

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9. ibid
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12. See Section 14 of the Hindu Succession Act Section 14 is wide in its ambit. The legislation has defined women's property in the widest possible manner. The property includes both movable and immovable property acquired by a female by inheritance, partition, in lieu of maintenance, arrears of maintenance, gift from any person, a relative or not, before or after marriage or by her own skill, exertion, by purchase or by prescription or in any other manner whatsoever and also any such property held by her as stridhanam immediately before the commencement of the Act 1956.
13. Section 6 of the Act provides: Devolution of interest in coparcenary when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship up on the surviving members of the coparcenary and not in accordance with this Act: provided that if the deceased has left him surviving a female relative specified in class – I of the schedule or a male relative specified in that class who claims through such female relative the interest of the deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship 1956.
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