

Women's Inheritance Rights Reform and the Preference of Sons in India

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ABSTRACT:

Freedom cannot be achieved unless the women have been emancipated from all forms of oppression

- Nelson Mandela¹

The impact of changes in the form of amendments in The Hindu Succession Act 1956 that grants the daughters equal coparcenary birth rights in joint family property to which they were denied in the past, can be assessed over the three generations of individuals. There has been a significant increase in the likelihood of daughters to inherit land through such amendment which was brought in 2005, but even after this a substantial bias persists in the society. The Hindu Succession Act, 1956 was enacted to amend and codify the laws relating to those unwilled, also called intestate succession for the Hindus which includes Buddhists, Jains, and Sikhs and the preference was being given to women by abolishing the Hindu women's limited estate and thereby laying down a uniform and comprehensive system of succession into the said Act. India being a developing country has land markets which are scarce and generally acquired through inheritance and that is why women remain to be asset-poor and in conditions where they rely on men. This makes the inheritance laws significant in our country. The equalization of inheritance rights can be expected to be a powerful instrument regarding the empowerment of women. Hence this research paper indicates a strong increase in the attainment inheritance rights of daughters and thereby suggesting an alternative for wealth transfer. Further the paper even gives an analysis on the impact of women's empowerment through improved intergenerational transfers of physical human capital as well as inheritance rights in India.

Keywords- Succession, women's inheritance rights, property, intestate succession, The Hindu Succession Act

I. INTRODUCTION

Women have been sharing a better position of their status in today's society because of the rising awareness, available global forums, even social media to voice out their opinions and even various significant amendments in laws to empower them along with proactive government that have helped in implementing gender neutral laws.² Yet their succession rights don't remain absolute.

II. WHAT ADVERSARIES ARE FACED BY INDIAN HINDU WOMEN?

Even after such developments including those in the *Hindu Succession Act* which mainly focuses on providing equal inheritance rights to both men and women, the condition specially for women regarding the same is still in question as it leads to *increase in female foeticide and higher female infant-mortality rates* which clearly indicates that the social norms are at odds with the legal reform. According to the findings of the *Economic*

¹Quotes for succession rights for women, available at; <https://www.bustle.com/articles/f> last seen on 07/09/2019

²Position of women regarding inheritance, available at; economictimes.indiatimes.com/articleshot/ last seen on 2/09/2019

*Survey 2017-18*³ an estimation of nearly 63 million women are 'missing' in India. This is steering towards an unnaturally unbiased male population sex-ratio. The sole reason for this can be related to the preference of 'sons' by Indian parents as they have a stronger economic position and a greater command over the ancestral property. Women or daughters are generally discouraged for inheriting such property because of the fear of fragmentation of land holding or losing it once they get married and are considered as a liability as the inherited property falls in the hands of her in-laws whereas the sons are generally rewarded with inheritance as they are portrayed to work on land and create wealth while looking after the parents in their old age.

Secondly, because of the lack of awareness and literacy among women particularly about their rights, they can be seen with little inclination to contest in courts. Also, the strong patriarchal traditions, still prevailing in society creates a threat of violation by men thereby preventing women from challenging their inheritance rights.

Hence gender-neutral inheritance laws are the need of the hour because of such exacerbating developments.

III. IMPORTANCE OF WOMEN'S INHERITANCE RIGHTS

Women's property rights can be understood as the rights to own, acquire (through purchase, inheritance or gift), enjoy, manage, administer, and dispose of property that is tangible and intangible, including land, money, housing, bank accounts, livestock, and pensions⁴. Widows and daughters particularly are given only temporary rights to land. This leads to lower productivity as well as increased likelihood of being affected by land conflicts. The roots of broader system of inequality emerges when the significance of asset-ownership for women's bargaining power, their allocation of resources for investment and consumption, further opportunities to earn a livelihood as well as their legal rights to property are constrained by these temporary rights which they possess. Lack of the provision of these rights to women to such extent as given to men creates an absence of control over both productive as well as non-productive resources which is prevalent in both urban and rural areas. If so these rights are given accordingly to women it can even act as prerequisites of poverty reduction and economic growth as well⁵. These rights take a significant place in a women's life as they are something which is most fundamental to her security, legal and social status and sometimes even survival. It can even play a vital role in fighting against HIV/AIDS; in the sense that when such rights are violated it further leads to making women more vulnerable to such diseases and speedy deaths given the fact that their homes and assets are taken away.

Apropos such gender inequality, the development of the country also remains hindered. Such insecure property rights of women contribute to low agricultural production, poverty, underemployment and even food shortages.

³Economic survey estimates, available at; <http://mofapp.nic.in/economicsurvey.pdf> last seen on 2/09/2019

⁴ Women's property rights, available at; <https://www.hrw.org/legacy/campaigns/women/property/qna.htm> last seen on 2/09/2019

⁵ Women empowerment and inheritance rights, available at; <https://blogs.worldbank.org/development> last seen on 2/09/2019

The rate of economic growth of sub-Saharan Africa has also fallen by 4 percent due to HIV/AIDS, having close relations to violation of property rights as well as labour productivity which has decreased up to 50 percent in such countries⁶.

IV. THE HINDU SUCCESSION ACT 1956

The Hindu Succession Act which was enacted by the Parliament of India in 1956, governs the inheritance and succession laws among Hindus including Sikhs, Jains and Buddhists. The Act does not make any distinction between movable and immovable property and only applies when there is no will or a case of intestate succession which means it does not apply to matters of testamentary succession or where there is a will. The property which a person owns can be classified as ancestral or self-acquired. In the cases of intestate succession, when a man dies without giving his will, his property devolves among the agnates or the male members (if they are related by blood or adoption) of the family to whom the preference is given.

If we consider the shares of a wife, she is entitled to her husband's property just like other entitled heirs. Also, if there aren't any heirs she is even entitled to the complete property of her husband. But if we understand the question of who inherits a Hindu women's property, Section 14, 15 and 16 of the *Hindu Succession Act* can be taken into view.

Section 14⁷ of the Act describes what constitutes a women's property. It includes those properties obtained through inheritance, partition, maintenance, gift or even by her own effort or in any other manner and also the property she possesses as *streedhan* which she obtains at the time of the marriage. Section 15⁸ of the Act defines, that the property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband; (c) thirdly, upon the mother and father; (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the mother⁹.

Section 15(2)¹⁰ defines the distribution of such acquired property of a woman which depends on whether it is from her parents, husband or in-laws. If such property is acquired from her parents (be it father or mother), then in the absence of a son/daughter, it would be distributed upon father's heirs and if inherited by her husband or father-in-law it would devolve upon the heirs of the husband in case of the absence of son/daughter. Section 16 gives the rules for the distribution of such intestate property among those heirs as mentioned under section 15.

⁶ Sub-Saharan Africa HIV/AIDS statistics, available at; <https://www.prb.org/thestatusofthehivaidsepidemicinsubaharanafrica/> last seen on 2/09/2019

⁷ *Supra note 1*

⁸ *Supra note 1*

⁹ *Supra note 1*

¹⁰ *Supra note 1*

V. THE HINDU SUCCESSION ACT 2005

An amendment was made in the Hindu Succession Act 1956 by The Hindu Succession (Amendment) Act, 2005 which received the assent from the President of India on 5th September 2005. The purpose of such amendment was for the removal of provisions relating to gender discrimination regarding property rights and became an imperative step in the system of Indian legislation for the rights of women in India¹¹.

Section 6 of the 1956 Act was interpreted by a full bench in the case of *Gurupad Khandappa Magdum vs Hirabai Khandappa Magdum And Ors*¹² on 27 April, 1978 where the bench clarified that such section of the said Act, after the amendment, makes a daughter a “coparcener” that means, (one who shares equally in the inheritance of an undivided joint family property, and since 2005 this applies equally to both sons and daughters) since birth. This fact will give her the same rights and liabilities like a son and will be applicable in all property disputes filed before 2005 as well. The fact of the marriage of the daughter won't affect such status of a woman. This judgment was approved by another full bench in the case of *State of Maharashtra vs Narayan Rao Sham Rao Deshmukh & Ors*¹³ on 19 March, 1985.

In the case of *Commissioner of Wealth Tax vs. Chander Sen*¹⁴, the issue was whether the property of the father who had died intestate would devolve on the son who was separated by partition from his father individually or to the karta of his Hindu Undivided Family; held, that the property of the father who had died intestate should devolve on his son individually and not to the karta of his own undivided family. Section 8 of the Hindu Succession Act 1956 lays down the scheme of succession of the property of a Hindu who is dying intestate which further classifies the heirs on whom such property should devolve.

If we look into the data of Indian Human Development¹⁵, we can easily examine that the amendment to such Succession Act is clearly related to a significant increase of 0.40 years in the education of women, especially the landed households. The 2005 Amendment has essentially altered the status of women, by making daughters equal coparceners in the same manner as the sons in the Hindu Undivided Family property are. However, it can be seen that it did not expressly provide for retrospective operation of law. Rather this decision has made it clear that a daughter will be entitled to an equal share as that of a son in her father's property thereby leaving a very little scope of misrepresentation by the courts.

The scope of the 2005 amendment was first discussed in the case of *Ganduri Koteshwaramma v. Chakiri*

¹¹ Amendment to Hindu Succession Act, available at; <https://economictimes.indiatimes.com/familybusinessforum/insights.cms> last seen on 3/09/2019

¹² AIR 1239, 1978 SCR (3) 761

¹³ AIR 716, 1985 SCR (3) 358

¹⁴ AIR 1753, 1986 SCR (3) 254

¹⁵ Survey by Indian Human Development on women's succession rights, available at; <file://WomensInheritanceRightsHousehold.pdf>, last seen on 06/09/2019

*Yanadi*¹⁶, where the son had filed a case against his father and sisters and brothers. Later the Karnataka amendment came into force in 1994 as the father had died in 1993 and the daughters were married before 2005 amended act. Hence, they were claiming an increased share in the property under the said amended Act of 2005. The court here focussed on the amendment made in 2005 in the succession act by observing that the amended section 6 provided parity of rights in coparcenary property among both males and females of a joint Hindu Family and because of this a daughter becomes a coparcener by birth in a similar way as a son and accordingly the legislature has conferred the substantive rights specially in favour of daughters. It can thus be said that a daughter will have equal shares of entitlements in the ancestral property as if she had been a son¹⁷.

VI. WHAT STEPS CAN GOVERNMENT TAKE TO REMEDY SUCH VIOLATIONS APART FROM THE AMENDMENT?

Some actions taken up by the government to further protect women's property rights can be;

- Enact, implement and monitor such legislations to protect women's property rights
- Launch several public awareness campaigns so as to inform the people about equal property rights of women¹⁸
- Train judges, magistrates, police, as well as relevant national and local officials on their responsibility to enforce such laws
- Establish national legal aid systems having the capacity to control civil property claims for women
- Establish shelters for the victims of domestic violence and those women who have suffered violations of property rights
- Establish gender units in all ministries
- Include information regarding HIV/AIDS programs concerning about the link between HIV/AIDS and property rights violations¹⁹
- Design such housing programs so as to address women's housing problems, giving special attention to widows, divorced or separated women, mothers, and HIV/AIDS affected women

¹⁶ 2011 (6) CTC 102 (SC)

¹⁷ Important judgments for the amendment of Hindu Succession Act 1956, available at; <http://www.lawyersclubindia.com/articles/.asp> last seen on 08/09/2019

¹⁸ Remedies available to women, available at; <https://www.proptiger.com/guide/post/this-womens-day-know-your-succession-rights> last seen on 08/09/2019

¹⁹ Remedies by the government for protecting women's succession rights, available at; <https://www.hrw.org/legacy/campaigns/women/property/.htm>. Last seen on 06/09/2019

- Ensure that private acts that violate women's property rights are investigated, prosecuted, and duly punished and courts take efficient actions for the same

What happens if such rights are denied?

If a woman is denied her right or her due share in the ancestral property then she can eventually send a legal notice to the party or the person who is so denying such right. If she is restrained from seeking her claim, then she can even file a suit for partition in a civil court. Partition can also be in terms of properties which is occupied by the legal heirs. Also, if such partition is not possible then the court can interfere and auction such properties and give the woman her due share. A court injunction can also be sought to make sure that the property is not sold during the pendency of the suit.

VII. CONCLUSION

For those daughters desiring to claim a share in their ancestral property, can easily do so now irrespective of the year in which they were born. Even the children of a pre-deceased daughter can now claim a share in Hindu Undivided Property to an extent. Yet, practically, most daughters certainly do not claim a share in their ancestral property or give up it in favour of their brothers, often for little or no compensation. If we pay more attention, then we can observe that the societal and family pressures actually force women to do so, and this is highly unlikely, to change in the medium term across India. Even awareness about their personal wealth and the real need for succession planning is very limited or even seen non-existent. This reflects a sad state of affairs in the Indian environment which is essentially male-dominated²⁰.

While the developing countries have come forward to make a considerable progress particularly in equalising economic opportunities for women, many other inheritance laws remain to be gender-biased on a strong level²¹. Reform in such succession laws in India, taken in the form of state-level amendments in the Hindu Succession Act do provide a significant experiment which further explores whether and to what extent such efforts have been effective and thereby providing important lessons for India including other nations where such succession laws remain severely biased against women.

While developing countries have made considerable progress in equalizing economic opportunities for women, inheritance legislation remains, in many cases, strongly gender-biased. The fact that failure to address inheritance issues could potentially undermine progress in female empowerment made in other domains implies that this is an urgent issue. Reform of inheritance laws in India, in the form of state-level amendments

²⁰ Condition prevailing in India for succession rights of women, available at; [//economictimes.indiatimes.com/articleshow/t](http://economictimes.indiatimes.com/articleshow/t) last seen on 08/09/2019

²¹ Women's inheritance: evidence from India, available at; <https://voxeu.org/article/women-s-inheritance-evidence-india> last seen on 08/09/2019

to the Hindu Succession Act, provides an interesting natural experiment to explore whether and to what extent such efforts have been effective, thus providing potentially important lessons for India (where similar changes have been made, in 2005, on a national scale), and for other countries where inheritance rights remain severely biased against women.