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# A Constantly Evolving Hindu Daughter's Right to Property; The Indian Scenario

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## ABSTRACT

*The article is a critical assessment of the various laws which determine a women's right to property and her legitimate rights and share. The article aims at clarifying the ambiguity related to a women's rightful share emerging out of different laws and judicial pronouncements. It lays emphasis on the property rights of Hindu women, especially after the monumental judgements of the Hon'ble Apex court.*

## I. INTRODUCTION

Any objective study of gender and property rights reflects the dismal record of developing countries in providing women with equal rights not only to land but to the basic necessities of life. Women have less access to shelter, income, water, food, education, and healthcare when compared to men, leading to what is often called the "feminization of poverty." In addition, women hold only an estimated 1-2 percent of all titled land in the developing world (1) The plight of women in poverty seems destined to continue unless there is significant reform and strengthening of laws, policies, and practices relating to ownership and control of property. In India however women have come a long way from being regarded as property themselves to owning and controlling property in their own names.

Aligned with the ideas of gender equality and progressive feminism the fundamental concepts of a women's right to property have evolved from the continuing friction between the shackles of status quoist and progressive forces. Much of these notions owe their origin to perplexing nature of India society and the dynamic nature of the status accorded to women as they transcend through different stages of their lives. In absence of an Uniform Civil Code the individual rights of the women are dependent on her religion, marital status, heirs etc as different personal laws are applicable to different women. Therefore every religious community continues to be governed by its respective personal laws in several matters – property rights are one of them. In fact even within the different religious groups, there are sub-groups and local customs and norms with their respective property rights. Thus Hindus, Sikhs, Buddhists and Jains are governed by one code of property rights codified only as recently as

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the year 1956, while Christians are governed by another code and the Muslims have not codified their property rights, neither the Shias nor the Sunnis. Also, the tribal women of various religions and states continue to be governed for their property rights by the customs and norms of their tribes. To complicate it further, under the Indian Constitution, both the central and the state governments are competent to enact laws on matters of succession and hence the states can, and some have, enacted their own variations of property laws within each personal law.

Even though there exist so many segregations with regard to the property rights of Indian Women the one thing that unifies them is the lack of constitutional protection. The diverse rights as they exist today are discriminatory and arbitrary notwithstanding the Constitutional guarantees of equality and Fairness enshrined under Article 14 and Article 15(3).

It is important to understand that succession and inheritance according to different laws comes into play only in the scenario when a person dies intestate, since in the case of testamentary succession i.e if the person dies leaving an authentic will behind he can exercise his right to will away his absolute property to whomsoever he deems fit.

## **II. EVOLUTION**

Prior to the codification of Hindu law the succession like many other aspects was governed by Shastric ( "Hindu Canonical") and customary law that laws that varied from region to region governed the Hindus. There existed different schools, like Dayabhaga in Bengal in eastern India and the adjoining areas; Mayukha in Bombay, Konkan and Gujarat in the western part and Marumakkattayam or Nambudri in Kerala in far south and Mitakshara in other parts of India, with slight variations.

The earliest attempt to detangle the complexities surrounding succession was enactment of the Hindu Law of Inheritance Act, 1929 . This was , the act that brought the woman into the scheme of inheritance. This legislation imposed the rights of inheritance on three female heirs such as son's daughter, daughter's daughter, and sister, a limited restriction on the survivorship rule.

The aforementioned act was followed by the Hindu Women's Rights to Property Act, 1937, though this enactment was itself radical as it conferred rights of succession to the Hindu widow for the first time it had many loopholes.

A significant leap in this direction was achieved through enactment of the Hindu Succession Act enacted in 1956 which was the first law to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities in the area of inheritance. It

was therefore a process of codification as well as a reform at the same time. The Hindu Succession Act was the first post-independence enactment of property rights among Hindus – it applies to both the Mitakshara and the Dayabhaga systems, as also to persons in certain parts of South India previously governed by certain matriarchal systems of Hindu Law such as the Marumakkattayam, Aliyasantana and Nambudri systems.

The main scheme of the Act was:

1. The hitherto limited estate given to women was converted to absolute one.
2. Female heirs other than the widow were recognized while the widow's position was strengthened.
3. The principle of simultaneous succession of heirs of a certain class was introduced.
4. In the case of the Mitakshara Coparcenary, the principle of survivorship continues to apply but if there is a female in the line, the principle of testamentary succession is applied so as to not exclude her.
5. Remarriage, conversion and unchastity are no longer held as grounds for disability to inherit.
6. Even the unborn child, son or daughter, has a right if s/he was in the womb at the time of death of the intestate, if born subsequently.

Under the old Hindu Law only the “streedhan” (properties gifted to her at the time of marriage by both sides of the family and by relatives and friends) was the widow's absolute property and she was entitled to the other inherited properties only as a life-estate with very limited powers of alienation, if at all. Section 14 of the Hindu Succession Act removed the disability of a female to acquire and hold property as an absolute owner, and converted the right of a woman in any estate already held by her on the date of the commencement of the Act as a limited owner, into an absolute owner. The provision is retrospective in that it enlarged the limited estate into an absolute one even if the property was inherited or held by the woman as a limited owner before the Act came into force. The only exception, in the form of a proviso, is for the acquisitions under the terms of a gift, will or other instrument or a decree, or order or award which prescribe a restricted estate.

A fresh lease of life was added to this process when the Rajya Sabha and Lok Sabha adopted the Hindu Succession (Amendment) Bill, 2005. The proposed Hindu Law changes, based on the 174th Law Commission Report on Women's Property Rights, aimed to alleviate gender imbalances in the Act. Daughters become coparceners, but sons no longer owe their fathers' debts. Other than the aforesaid major modifications, it alters the idea of coparcenary, abolishes

the theory of survivorship, adjusts sections pertaining to Mitakshara coparcenary, intestate succession, and class I heirs, and gently affects the provision dealing to testamentary succession. Below are the Act's most major modifications:

### **III. ABOLITION OF DOCTRINE OF SURVIVORSHIP IN CASE OF MALE COPARCENERS**

When a male coparcener dies, the Amending Act abolishes survivorship. If a Hindu dies after the Hindu Succession (Amendment) Act 2005 takes effect, his stake in a joint Hindu family's Mitakshara law-governed property will pass via testamentary or intestate succession, not through survivorship, and the coparcenary property will be judged to have been partitioned.

#### **Introduction of Daughters as Coparceners**

In Hindu joint households, the amendment extends the right to coparcenary property to females in addition to males. This dramatic change has changed the Mitakshara coparcenary. Four Indian states introduced daughters as coparceners before the national law. Every kid born or adopted into a family is a coparcener, not only the son. Section 6 of the Mitakshara Law states that a coparcener's daughter is also a coparcener by birth. If she were a son, she'd have the same rights to coparcenary property. Same coparcenary property duties as a son. Every mention of a Hindu Mitakshara Coparcener involves a daughter implicitly.

#### **Marital Status of Daughter**

Opposing views would have disrupted society's rights and obligations. Daughters of coparceners were considered coparceners regardless of marital status. A daughter married before September 6, 2005, would be a coparcener after that date and an unmarried daughter's status would continue to be a coparcener even after marriage. It's interesting that a married woman might still be a coparcenary and seek her own portion of joint family property. Nothing in this paragraph will invalidate a division or testamentary disposition made before December 20, 2004. This helped protect existing rights. If the male members of a joint family haven't partitioned their property, they must now share it with their married sisters because their daughter is a coparcener.

#### **Property held by daughters with incidents of coparcenary ownership**

The girls will manage the family's common property as they have coparcenary privileges. A female Hindu entitled to property under Section 6(1) holds it in coparcenary ownership and may dispose of it by testamentary disposition notwithstanding this Act or any other legislation in effect. Section 6(2) specifies that a female would own the property coparcenarily. Legislation hasn't clarified coparcenary ownership. In this scenario, it's reasonable to look at coparcenary

ownership, which has two co-ownership occurrences. All co-owners jointly own the property and have equal rights to it, in accordance with the principles of unity of ownership and mutual benefit. Before the divorce is finalised, no one knows how much of his estate he'll receive. All coparceners have equal rights to the property under the notion of survivorship.

#### **IV. RETENTION OF THE CONCEPT OF NOTIONAL PARTITION**

This makes a change to the application of the notional division. When a male coparcener passed away without any of the eight female heirs of class I or the son of a daughter who had passed away before him, a notional partition was carried out. This only came into play in the event that the undivided male coparcener died leaving behind one of the eight class I female heirs or a son of a daughter. The recently enacted law employs the usage of notional division for all intestacies. It is stated in Section 6(3) that a Hindu's stake in a joint Hindu family that is governed by Mitakshara law will be passed on by testamentary or intestate succession, not by survivorship, and that the coparcenary property will be presumed to have been partitioned after the Hindu Succession Act, 2005 went into effect. This provision was added to the law in 2005.

As a direct consequence of the Hindu Succession (Amendment) Act of 2005, the Mitakshara Coparcenary system is now completely defunct and has no place in modern society. This is because a girl is now regarded exactly the same as a boy would be. Simply by virtue of the fact that she was born, she is automatically qualified to receive a portion of the coparcenary. As was the situation with the boy, the fact that she was born immediately gives her the obligation of being a co-parent. Not only does she have the same rights as the son in relation to the coparcenary, but she also has all of the rights and duties that the son has in relation to the coparcenary. This is the case since she has the same rights as the son. It is a tremendous accomplishment that all of the women in the family, particularly those who have married, are now recognised as co-owners of the joint family estate. This is especially true for those women who have been married more than once. The Act of 2005 has absolutely no effect whatsoever on separate property (except broadening the class-1 heirs). As a direct result of this, women who are a part of joint family property in Mitakshara are regarded as co-owners and have the same rights as men in terms of shares, claims for division, and (by implication) the ability to play the role of karta. This is the case even if the property is held in a single name (manager).

However, the proviso of sub-section (1) of section 6 of the Hindu Succession (Amendment) Act of 2005, contained a nonobstante clause providing that nothing contained in the sub-section shall affect or invalidate any disposition or alienation including and partition or testamentary disposition of the property which had taken place before 20.12.2004. This often

became the bone of contention and gave rise to a lot of legal ambiguity. The judicial stance on this was clarified in the landmark judgement *Vineeta Sharma v. Rakesh Sharma*, Civil Appeal No. 32601 of 2018 proving to be yet another significant milestone in the long journey of the evolving equal rights given to women which clarified the ambiguity concerning which partition that transpired before 20.12.2004 will be valid and which will not be. The Hon,ble Supreme Court gave a retrospective effect to the interpretation of Section 6 while stating that in view of change of provisions of section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably has to be supported by other contemporaneous public documents admissible in evidence. It may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act as explained by the Hon'ble court is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. This was to safe guard the bebeficial provisions envisaged by the Amendment Act.

The aforementioned scheme of interpretation and consequential rights is the scenario envisaged by the Amendment Act and have be presented as a road map for the society by the Apex court. This approach is going to have a great ripple effect through out society. Daughters need to be regarded as equal members of the family in all aspects such as love, care, affection, rights and duties. While it is important to maintain and preserve the inherent fabric of the Indian Society, the same has to be done keeping in mind the equal status of men and women in the society as equal bearers of rights and responsibilities.

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