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Daughters' Right to Property: Breaking Rigid Patriarchal System & Upgrading Women's Rights

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ABSTRACT

One truly said that you could tell the condition of a nation by looking at the status of its women. By this quote, one could easily accept the fact that women have come a long way for their rights and equality in India. Right from cruelty to sexual harassment at the workplace, every legal battle has its own story. One such legal battle fought by women in getting equal rights in their father's property under Hindu Undivided Family, which are opposing to our customary law, which grants property rights to male descendants. But our judiciary system, on August 11, 2020, introduced the right of daughter over an ancestral property giving equal rights and status to daughter in the family and in the society and upholding the true meaning of article 14 of the Indian constitution. But what is the judgement? How it is historic in its verdict, and how it will change the status of daughters and Hindu undivided families (HUF) under Hindu law? The paper will highlight and analyse the judgement of the daughter's rights on the property, what it lacks and how it will give a new dimension to the concept of the Right to Equality.

Keywords: *Hindu law, daughter right, property, Hindu undivided family, ancestral property*

I. INTRODUCTION

Nelson Mandela once stated that “freedom cannot be achieved unless women have been emancipated from all forms of oppression”. The scenario and condition of women in society need no description either in history or in the present. The picture was and is clear. Women have been continuously targeted and suppressed for dowry, sati pratha, assault, inequality and many more. But gradually, the scenario started changing. Today, women who have achieved an independent identity is because of tons and tons of sacrifices made by the other women, whether sacrificing their personal choices, freedom or their professional aim. Now, society and law see women as spate independent individuals. The idea of equality started framing, leading

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to change in legislative laws in India.

D Anderson once framed a quote that feminism is not about making women stronger. Women are already stronger; it is about changing the way the world perceives that stranger". The point is not making women above every other, but the point is of making and giving them equal rights, status and opportunities as only article 14 of our constitution will stand true. The Constitution of India prohibits discrimination in any field based on gender and thus provides equal opportunities to men as to women in all spheres of life. Though there is still a long way to go before it can be said that both men, as well as women, walk shoulder to shoulder.²

II. HINDU LAW AND HINDU UNDIVIDED FAMILY (HUF)

India, since ancient times, has followed the concept of the traditional joint Hindu family. A group of people having individuals related by blood, sharing a common roof, together in worshipping and having common ownership of properties in the interest of the family. The institution of a joint family is a fundamental and integral part of Hindu life. In the case of *Chotelal v. Jhandelal*³, it was held that "*Hindu joint family is not a corporation. A Hindu joint family has no legal entity distinct and separate from that of the members who constitute it. It is not a juristic person either.*"

The two schools of Hindu law, the Mitakshara the Dayabhaga School, differ basically and fundamentally on the concept of the joint family. The difference between both the schools lies in the acquiring of ancestral property by the coparceners after their birth in the Hindu Undivided Family. This concept has been derived in Mitakshara school of Hindu law with the term called "coparcenary", which consists of a male ancestor (Karta) and three lineal male descendants that are in total four generations. In the case of *Amarendra Man Singh Bhramarbhar & Anr. V. Sanatan Singh & Ors.*,⁴ the Court held that "by birth and adoption, a male becomes coparcener. The custom of adoption is of ancient origin." The terms like coparcenary and Hindu joint family were inculcated in Indian statute looks when certain aspects of Hindu law were codified after gaining independence.

The Hindu Succession Act, 1956 (HAS) deals with the matters of succession and identifies and interprets the concept of the coparcenary and its interest. But to note over here, before the commencement of the Hindu Succession Act, 1956(HAS), there were a couple of laws that

² Pradeep Kulshrestha, Huma Baqa (2020) the Hindu Succession Act, 1956 and the Amendment Act of 2005. *JCR*, 7 (10), 1337-1341. doi:10.31838/jcr.07.10.262

³AIR 1972 ALL 424

⁴ AIR 1933 PC 155

were governing the procedure and dealing of Hindu laws.

III. SERIES OF LEGISLATIONS

1) Prior to the Hindu succession act 1956 (HAS), Hindus used to practise customary laws which were different from region to region. Several schools, such as Mitakshara and Dayabhaga, dealt with the matters of succession and inheritance.

2) After this, the Hindu law of inheritance act, 1929 was passed that allowed women to enter into matters of inheritance act, 1929 was passed that allowed women to enter into matters of inheritance and gave rights of inheritance up to three female heirs.

3) The parliament of India passed the Act called Hindu succession act 1956(HAS) to amend and modify the laws relating to inheritance and succession in order to ensure equality while conferring the rights between sons and daughters. This Act had classified property into two parts that are ancestral property and self-acquired property. This Act was applicable to all Hindus, including Buddhists, Jains and Hindus. Even anyone whose parents are Buddhist, Jain, Hindu and Sikh and raised as Hindus have been extended further.⁵ However, the law does not cover a person for whom it applies under the 1954 special marriage law.⁶ The Hindu succession act, 1956 (HAS) saw a notifying amendment in 2005 which changed the concept of succession in Hindu undivided family (HUF) or Hindu joint family.

IV. LEGISLATION FOR WOMEN

In 1975 a “Committee on the Status of Women” was constituted by the Government of India to assess the current legal provisions as to women so that that a woman is not left totally dejected. The said Committee made different suggestions concerning the privileges of Hindu, Muslim and Christian women. With regards to succession to property among Hindus, the Committee made, inter alia, the accompanying recommendations⁷:

1. The right by birth ought to be cancelled, and the Mitakshara Coparcenary ought to be changed over into Dayabhaga (the maintenance of Mitakshara Coparcenary propagates inequality in the middle of sons and daughters as only sons can be coparceners, and inheritance is just through the male line).

2. The exception was given in Section 4(2) of the Hindu Succession Act identifying with

⁵ Paras Diwan, Ancestral Property after Hindu Succession Act 1956—Joint Family Property or Separate Property? A Muddle under Tax Cases, *Journal of the Indian Law Institute*, Vol. 25, No.1, January-March 1983.

⁶ Kharat, Shital, Effect of the Hindu Succession (Amendment) Act 2005– Judicial Response, 6 February, 2017, available at < <https://ssrn.com/abstract=2912662> > or < <http://dx.doi.org/10.2139/ssrn.2912662> > last accessed on 15 April 2018.

⁷ <http://www.arvindguptatoys.com/arvindgupta/JP-59.pdf> Pgs 52 - 56

devolution of tenancies ought to be nullified (this procurement, the way things are currently rejected devolution of tenancy rights under different State Laws from the scope of the Act).⁸

3. The discrimination between married and unmarried daughters with respect to the right of inheritance of dwelling houses brought on under Section 23 of the Hindu Succession Act ought to be uprooted.

4. The privilege of testation ought to be restricted under the Hindu Succession Act, such that female beneficiaries are not denied their inheritance rights.

5. In marital property, lawful acknowledgement ought to be given to the monetary estimation of the support provided by the wife via household work for purposes behind deciding ownership of property, rather than proceeding with the obsolete test of real financial commitment;

- On separation or divorce, the wife must be qualified for no less than 33% of the assets procured during or at the time of marriage.

The National Commission for Women additionally prescribed certain alterations in-laws with regards to women and property. The proposal, in a nutshell, was as per the following⁹:

- a) There ought to be equality in the distribution of not just separate or self-procured properties of the deceased male but also of their undivided interests in coparcenary property;
- b) Daughter of a coparcener in a Hindu joint family governed by Mitakshara Law to be coparcener by birth in her own privilege in the same way as her son;
- c) Daughter ought to have right of claim by survivorship and to have same liabilities and inabilities/disabilities as a son;
- d) Coparcenary property to be divided and allotted equally.

The earliest piece of legislation bringing females into the inheritance scheme is the Hindu Law of Inheritance Act, 1929. This Act gave inheritance rights to three female beneficiaries, i.e., child's girl, little's girl and sister (thus making constrained confinement on the guidelines of survivorship). Another landmark legislation bestowing proprietorship rights on women was the Hindu Women's Right to Property Act (XVIII of) 1937.¹⁰ This Act realised progressive

⁸ <https://www.studocu.com/in/document/guru-gobind-singh-indraprastha-university/family-law-i/family-law-research-paper/12564906>

⁹ Pal, Arjun. (2016). Transformation of Women's Rights under section 6 of the Hindu Succession Act, 1956. 10.13140/RG.2.1.4795.3522.

¹⁰ Hindu Women's Right to Property Act (XVIII of) 1937

changes in the Hindu Law of all schools, and acquired changes in the law of coparcenary as well as in the law of partition, alienation of property, inheritance and adoption.¹¹

V. CHAOS AND CONFUSION IN THE SERIES OF JUDGEMENTS

- In *Prakash V/S Phoolwati*¹², a two-judge bench headed by Justice A K Goel stated that the advantage of the 2005 amendment could be given only to “living daughters of living coparceners” as on September 9, 2005, i.e. the day when the amendment came into the picture.
- However, In February 2018, contrary to the 2015 ruling, a two-judge bench headed by Justice A K Sikri stated that the share of a father who died in 2001 could also pass to his daughters as coparceners during the partition of the property as per the 2005 amending act in Hindu law.
- Adding to this, another two-judge bench, headed by Justice RK Agrawal, reframed the position taken in 2015. These conflicting views by benches of equal strength and opposing and different views led to the addition of a three-judge Bench in the current case.

VI. AMENDMENT IN HINDU SUCCESSION ACT, 2005 AND RIGHT TO EQUALITY

The Hindu Succession Act, 1956 was changed to the Hindu Succession (Amendment) Act, 2005, which came into the picture from ninth September 2005. The Amending Act replaced Section 6 of the Act.¹³ The amendment in Hindu succession act, 2005 was passed to give equal status to both sons and daughters in the regards of the coparceners. Prior to this amendment, the daughter was not recognised as a coparcener. However, women in no such context were given or even considered as legal heirs of the ancestral property so as to men. The reason for such discriminatory vision was common traditional thinking that she would one day get married and will become a part of some other family. Such a discriminatory approach towards women and gender led to oppression of the fundamental rights of women, which resulted in an amendment in the Hindu Succession Act, 1956.

The Act abolished Hindu women’s restricted property and managed to make the property their absolute proprietor regardless of their source of purchase. Everything that a Hindu woman acquires and possesses in any legitimate way is her absolute property, and she is able to dispose of it in the way she wants.¹⁴ The Act establishes general rules of succession, amongst other

¹¹ Mayne's, Treatise on Hindu Law and Usage, (1996 fourteenth Edition, altered by Alladi Kuppaswami p. 1065.

¹² CIVIL APPEAL NO.7217 OF 2013

¹³ http://www.hrln.org/admin/issue/subpdf/HSA_Amendment_2005

¹⁴ Hindu Succession Act, 1956, s.8

things, that heirs of a male or a female executor are preferable to half-blood-related ones if the nature of the relationship is the same in all other respects. Another provision is if two or even more heirs succeed in an intestate's land, they are not allowed to take their portion per capita. These heirs consider the property to be common holders rather than joint holders.¹⁵

Through the amendment of 2005 in the Hindu succession act, section (6) of the Hindu succession act was modified by vesting equal rights and liabilities of daughters in her father's property despite becoming a member of her husband's undivided family. The important point to be noted in this amendment is that since it allows women to be a coparcener, it automatically allows them to be the 'Karta' of the Hindu joint family. Though this amendment brought a significant change in the Hindu succession act, 1956, it at a very point failed to give clarity with respect to its applicability prior to the 2005 act, various states such as Andhra Pradesh, Tamil Nadu, Kerala, Karnataka and Maharashtra have welcomed state amendment in the Hindu succession act, 1956 by providing equal rights to daughters in the concept of coparcenary property under the Mitakshara school of Hindu law. But who is actually a coparcener? Coparcener is the one who by birth gains legal right in the ancestral property. A coparcenary property is an ancestral property inherited by any Hindu from his father, grandfather and great grandfather.

In the case of *Prakash and others v. Phulanati*¹⁶, it could be held that a daughter can claim for coparcenary rights only when her father is living as a coparcener on the date of enforcement of the 2005 amendment, whereas in the case of *Danamma v. Amar* (2018), the court overruled its previous judgement and stated that daughter right to coparcenary property would stand irrespective of the fact that father died before 2005 amendment or not.

On August 11, 2020, in *Vineeta Sharma v Rakesh Sharma*¹⁷, a three-judge bench of the Supreme Court held that daughters and sons have equal coparcenary rights under Hindu undivided family since there are two concepts of persons in Hindu undivided family (HUF) that is members and coparceners, this judgement particularly affected only coparceners. The judgement delivered by the Supreme Court has given true meaning to Article 14 of the Constitution, i.e. Right to Equality. The importance and evolution of Article 14 in our country and especially its judicial interpretations in various cases has held its position strong in the Indian Constitution. *"Equality is a dynamic concept with many aspects and dimensions, and it cannot be imprisoned with traditional and doctrinaire limits. Article 14 strikes at arbitrariness*

¹⁵ Hindu Succession Act, 1956, s.28

¹⁶ CIVIL APPEAL NO.7217 OF 2013

¹⁷ CIVIL APPEAL NO.DIARY NO.32601 OF 2018

in State action and ensures fairness and equality of treatment.”¹⁸ Even Article 15 of the Indian Constitution states that there should be no discrimination on the grounds of Religion, Race, and Caste. Though our customary laws gave importance to male descendants over the right to ancestral property, the Constitution of India is supreme over all other laws in India. With the evolving times, the Supreme Court, through its judgement, is reinterpreting the customary law in accordance with fundamental rights stated in the Indian Constitution. Through this landmark judgement, the Hindu persona laws and Right to Equality both are reinterpreted. The word ‘discrimination’ means to make an adverse distinction or to distinguish unfavourable from others.¹⁹

VII. CHANGE FOR DAUGHTERS

Daughters will be now seen on par and equal with sons of coparceners and will be granted equal coparcenary rights in their father’s property and on their birth. This would also be applicable to even adopted daughters plus naturally born daughters regardless of them being born on or adopted prior to the 2005 amendment to Hindu succession act, 2005. Also, adding the marital status of the daughter will not affect the rights given to them through the amendment in 2005. The form then, the daughters can ask for an equal share with other coparceners after acquiring the equal share, the female coparcener can wilfully give her share of the property to any beneficiary that she wants in her will.

Any change for wives?

Through this judgement, the daughters of coparceners will get the benefit, but to the point, the image and status of wives (who is considered a member of Hindu undivided family) remains unchanged. The wives under Hindu undivided family (HUF) as a member have limited rights, including maintenance. They cannot ask for partition of their husband’s property and form other things.

But the previous confusion regarding the rights on property confusion regarding the rights on the property has been cleared through this landmark judgement. Also, through this judgement, women’s rights in society have been improved and uplifted. But still, its applicability is limited in the real world. The landmark judgement applies only to Hindu undivided family (HUF) property and doesn’t deal with self-obtained assets held by individuals.

¹⁸ Maneka Gandhi v. Union of India, AIR 1978 SC 597

¹⁹ Srinivas Aiyer v. Sarawathi Ammal, AIR 1952 Mad. 193

VIII. CONCLUSION

The United Nation's Report in 1980 stated that -"Women constitute a large portion of the world's populace, work for about 66% of its time and only get one-tenth of the world's pay and under one-hundredth of the property." The Hindu woman's position is very similar to that of the statement displayed above. Despite the fact that a woman in a Hindu family holds a respectable status regarding upbringing in the family, still, she has always been disregarded her individuality with reference to property holdings. Even after such notable legal changes and judicial pronouncements, the daughter has been ignored in the first place, in her own family and everywhere, because of the rigid patriarchal system and wised customary laws. The status of Hindu women has always been placed below the male members in accordance with dharmashastras. But whatever our customary or personal says, our Indian constitution is trying to take gender equality with all possible means, opportunities and resources. Lumma Watson truly said that it is time that we all see gender as a spectrum instead of two sets of opposing ideals as article 14 of our Indian constitution mirrors the united states equal protection clause and promise all individuals equal protection of the law.
