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Property Rights of Women under Hindu Law: A Critical Study

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ABSTRACT

The status of women all over the world generally has been inferior to Men and in this respect India is not an exception. After Independence, the movement to improve the Position of women gained momentum and several International Conventions Played a significant role for its amelioration. The Hindu Women's Right to Property Act, 1937 Conferred rights of succession to the Hindu widow for the first time as Limited interest in the form of 'Hindu Woman's Estate'. Under the old Hindu Law only the 'Stridhan' was the widow's absolute property and she had Exclusive and unlimited rights of ownership, possession and alienation in Respect of it. The Hindu Succession Act, 1956 was the first post-independence enactment for conferring property rights on Hindu women. Section 6 of the Act deals with the devolution of interest of a coparcener dying intestate. The Act converted woman's Limited Estate into absolute ownership. The Hindu Succession (Amendment) Act, 2005 has introduced important changes in Section 6 and by virtue of this amendment daughter of a coparcener has become a coparcener like son, with all consequential Effects and rule of survivorship has been abolished.

Keywords: Hindu Women, Property rights, Inheritance.

I. INTRODUCTION

"Women constitute half the world's population, perform nearly two thirds of its hours, and receive one tenth of the world's income and less than one hundredth percent of the world's property."

Women have a unique position in every society whether developed, Developing or underdeveloped. This is particularly due to the various roles. They play during various stages of their life, as a daughter, wife, mother And sister etc. Inspite of her contribution in the life of every individual. Human being she still belongs to a class or group of society which is in a Disadvantaged position on account of several social barriers and Impediments. She has been the victim of tyranny at the hands of men who Dominates the society. The position of Indian woman is no better compared to their counterparts in other parts of the world. On one hand,

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she is held in high esteem by all: worshipped, considered as the embodiment of Tolerance and virtue. But on the other hand, she has been the victim of untold miseries, hardships and atrocities caused and perpetuated by the Male dominated society. She has not only been denied of full justice, Social, economic and political but as a “weaker sex” she has been used to Be abused and exploited to maximum extent and subject to ignorance at all Levels by male dominated society. The vulnerability of the women as a Class has nothing to do with their economic independence. The woman has been a victim irrespective of her economic background. The rich and the poor alike are the victims of social barriers and disadvantages of varying kinds. Women play a significant role in the life of every individual human being. Securing her better birth rights would mean giving a better future to our own society, family and to every individual. There is gender inequality in various forms, but most tedious one relates to property rights granted to women. This disparity in property rights pertaining to gender, spells right from ancient times. In India, a woman is seen as divine and worshipped as the embodiment of all the virtues on one hand but on the other she is discriminated against and victimized by the norms created by the male dominated society. She has not been given her due and legitimate place and status in the society even after all the civilization and cultural revolutions. Exploitation of women at home and outside continues in most parts of the country. Male superiority and adverse conditions for women are still widely prevalent. The full development of personality, and fundamental freedom and equal participation by women in political, social, economic and cultural scenario are concomitants of national development which depends on social and family stability. All forms of discrimination on grounds of gender breed unrest. Under ancient Hindu society, women were considered to be of low social status and treated as a dependent with barely any property rights.

Under the old Mitakshara Law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson and a great grandson constitutes a class of coparceners, based on births in the family. No female is a member of the coparcenary in the Mitakshara Law. The earliest legislation which brought females into the scheme of inheritance was ‘The Hindu Law of Inheritance Act, 1929’, which conferred inheritance rights on three female heirs, i.e., son’s daughter, daughter’s daughter and sister. During this period another landmark legislation conferring ownership right on a woman was ‘The Hindu Women’s Right to Property Act, 1937’. This Act of 1937 enabled the widow to succeed along with the son and to take the same share as the son. The widow was not a coparcener, even though she possessed a right akin to coparcener’s interest in the property and was a member of the joint family.

However, prior to the commencement of ‘The Hindu Succession Act, 1956’, the property held

by a Hindu female was classified under two heads: (1) Stridhan and (2) Hindu Women's estate. The former was regarded as her absolute property over which she had full ownership and on her death it devolved upon her heirs. The latter was considered to be her limited estate with respect to which her powers of alienation were limited. The enactment of The Hindu Succession Act, 1956 got all the Hindus under the one kind of joint family coparcenary system, i.e., Mitakshara coparcenary. This law was designed to lay down a law of succession whereby sons and daughters would enjoy equal inheritance rights. In fact, however, significant gender inequalities persisted that disadvantaged the daughters considerably. The main source of biasness came from joint family property, to which sons enjoyed right by birth to an independent share but daughters did not. Both had equal rights of inheritance to the separate property that their father accumulated during his lifetime. The sons had a share in the coparcenary property of his father and the daughters in the self-acquired property of her father. But due to the fact that a considerable amount of property, especially in the rural areas, is still jointly owned, such biased rights had a crippling effect on the position of women in India.

According to Hindu Succession Act, 1956, daughters of a 'Hindu' male dying intestate, i.e., without leaving a will, were equal inheritors, Along with sons, but of only their father's separate property and his 'notional' portion of joint family property, but had no direct inheritance Rights to joint family property itself. Sons, on the other hand, not only inherited their share of their father's own property and his 'notional' Portion of joint family property, but also had a direct right by birth to an Independent share of the joint family property. In fact, all persons who Acquired interest in the joint family property by birth were said to belong to the 'Hindu coparcenary', which is conceptually similar to an exclusive male membership club in relation to the issue of inheritance to which women had no access. Property Rights of Women in Vedic Age:

During the Vedic age, the Brahmins occupied the highest position in the socio-religious hierarchy and they for legalizing their superiority adopted the method of relying upon Dharamsastras. The sources of these Dharamsastras were supposed to be Hindu religious texts like the Vedas and Smritis, approved customs and good conscience. An important digest on all the Smritis written by Jimutvahana in 12th Century was Dayabhaga which got much acceptance in Bengal. The Mitakshara which was again written in 12th Century is a running commentary on one of the Smritis called Yajnavalkya written by Vijnaneshwara which was accepted in the rest of India. Later on these two (digest and commentary) emerged as two different schools known by the name Mitakshara and Dayabhaga. These two schools differed on the subject of inheritance. During the Vedic period the husband and wife were treated as joint owners of the

household. The husband was required to take a solemn vow at the time of marriage that he would never contravene the economic rights and interests of his wife. On the basis of this joint ownership theory of husband and wife in the household, it was concluded in the Apastamba Dharmasutra that the wife was entitled to incur normal expenditure on the Household during her husband's absence. Along with this joint ownership Theory, another important fiction i.e. the fiction of identity between the Husband and wife also gave females right to inheritance. Brihaspati, On the basis of this fiction, declared that a widow to be entitled to succeed the Estate of a sonless husband in preference of all other heirs. So if husband and wife are treated as one and there is joint ownership the question naturally arises as to how, in Hindu Law, the wife was deprived of her Right of ownership and inheritance on the death of her husband. On this Question, Kane's statement concisely summarized the position: Apastamba Postulated the identity of husband and wife in the religious matter. But this Identity of the husband and wife was not accepted by the ancient sages for Secular or legal purposes.

II. FEMALES WHO ARE ENTITLED TO GET A SHARE

Under Mitakshara School there are certain female who are entitled to get a share on partition but their share was again in form of limited estate i.e. during their life time. After the death of these female the estate reverts back to the reversionary of last male owners. These female who are entitled to get a share are:

(A) Father's Wife

Whenever a partition takes place between her sons and her husband, then the father's wife is entitled to get a share equal to the share of son. She can hold this share and enjoy it separately from her husband. If there is more than one wife, then each wife is entitled to take a share equal to the share of a son. It is immaterial that whether a wife has her own son or not. If no share is allotted to her then she has a right to get the partition re-opened. Under the Dayabhaga School she has no such right.

(B) Mother

Whenever a partition takes place among the sons, a widowed mother has a right to take a share equal to the share of son. This right accrues to her only when partition by metes and bounds takes place. Under the Mitakshara School the mother, including the step-mother even if she is childless is entitled to take a share when ever partition takes place after the death of the father among sons. Mother and step-mother each take a share equal to the share of son. Under the Dayabhaga School a childless step-mother is excluded from taking a share on partition.

(C) Grandmother

In the Mitakshara school the paternal grandmother and step grandmother are entitled to a share

on partition in the following situations:

- i. When partition takes place between her grandsons (son's son) her son being dead, she is entitled to a share equal to the share of a grandson.
- ii. When partition takes place between her son and sons of a predeceased son, she is entitled to a share equal to the share of a grandson.
- iii. When partition takes place between her sons and their sons, according to the Allahabad and Bombay High Courts, she is not entitled to a share, but according to the Calcutta and Patna High Courts, she is entitled to a share equal to the share of a Grandson.
- iv. In *Ramdhan v. Balathe Nagpur High Court* has evolved a fresh scheme. In this case there is a partition suit, between an uncle and nephew. The mother of the uncle, as grand-mother and the mother of the nephew as mother were allowed to participate in the distribution of properties. Mother was allowed to take 1/6 and the grandmother taking 1/3 share. So far as the decision relates to the uncle's mother, the decision is correct, because the case comes under the rule (2) set out here. But so far as it relates to nephew's mother, it is curious since there is no partition among her son, and the rule being that 'mother' takes a share only when there is partition 'among her sons'. Probably the court was compelled to take

This view on equitable basis, because the nephew's mother would otherwise get nothing. Here it is submitted that there is No authority in support of that view, and it is obviously wrong according to the Shastra.

(D) Coparcener Widow

Now, it seems to be settled law that after Partition their husband then each widow acquires a right of survivorship Along with this either widow also gets the right to partition with or without the consent of the other or others. Thus, coparcener widow can put an end to joint status of the family. Even when a father's Widow succeeds along with her sons, she also acquires right to Partition. Similarly if a partition takes place among the brothers, after the death of the brother his widow is entitled to a share.

(E) Daughter

In the case of *Paachi Krishnamma v. Kumaram* daughter claimed a share equal to the son in a partition of the property. But however she failed to prove this custom and that is why she was unable to get the share. It seems that if such a custom was proved, she can claim the share, since under the uncodified Hindu law custom still override the rules of Hindu Law

III. CONCEPT OF STRIDHAN

The subject of Stridhana occupies a large place in the Sanskrit law Books. Woman's separate property was, from the most ancient times, known as Stridhana. This term 'Stridhana' first occurred amongst the Smritis in the Dharmasutra of Gautama which literally means woman's Property. The Mitakshara and the authorities that follow it take the term in its etymological sense as including all kinds of property of which a woman has become the owner, whatever the extent of her rights over it. Jimutavahana restricts the term to that property of woman over which she has absolute control even during the life of her husband.

As the word denotes, Stridhan comprises of two words Stri+Dhan. Thus, it means Dhan of the 'Stri' i.e. women's property. The term 'Stridhana,' first occurs in the Smritis and literally means woman's Property but various sages use the word in different senses. Some extend the scope of the word, others try to restrict it, like a text of Manu states that a wife, a son and a slave can have no property and that the wealth which they earn is acquired for him to whom they belong. According to Manu's commentators, this did not mean that they could not own property, but they could not dispose of their property according to their own wishes.

This view also receives support from Gautama who specifically admits the Right of a woman to hold separate property and provides for its succession. Apastamba also hold the same view and mentioned that the share of the Wife consists of the ornaments and the wealth, which she may have received from her relations the texts relating to Stridhana, except in the matter of succession, are fairly adequate and clear. The principal definition of Stridhana consists of 'what was given before the nuptial fire, what was given at the bridal procession, what was given in token of love and what was received from a brother, a mother or a father, are considered as the six -fold property of a woman

IV. THE HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937

"Half of the Indian populations too are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-Denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, and discrimination".

- Justice K. Rama Swamy in Madhu Kishwar v. State of Bihar

In order to confer better, equal and significant inheritance rights to the women, the Hindu Women's Right to Property Act was passed in 1937 basically to amend the Hindu law of succession amongst all the schools. It made innovative changes in the Mitakshara law. In fact, it affected the law of coparcenary, partition, alienation and succession. It conferred upon the

Widow of a man, whether governed by the Mitakshara or the Dayabhaga Law, right to inheritance to the property even when he dies leaving behind a Male issue. Similar rights were conferred upon the widows of his pre - deceased son and the widow of pre-deceased son of a pre-deceased son.

After this Act, in the Mitakshara undivided family the widow of a deceased coparcener was entitled to take his interest in the joint family. In all cases, widows were entitled to claim partition. All the females took a limited estate. Prior to the passing of this Act the widow in respect of the separate property left by her deceased husband had no right of inheritance. If the deceased husband had left a son, grandson or great grandson then the widow had only right of maintenance. She could inherit as an heir to her husband in respect of his separate property only when he had not left any son, grandson or great grandson. Even when in the absence of these persons she inherited as an heir, she would be divested of the same, the moment she adopted a son to her husband. This Act conferred better rights on the above mentioned widows in times of the devolution of separate property of the deceased dying intestate as well as in the joint family property in which the deceased had an interest at the time of his death. By the Act of 1937 new rights of inheritance have been conferred on her and she had been given the right to inherit her deceased husband's property in the same manner as the son. In other words, the Act has made her co -heir with the sons and entitled her to inherit in her husband's property the same share as that of a son. In the case of more than one widow, the Act together gave them a share equal to that of a son. Similar rights were conferred on the widow of a predeceased son and the widow of a predeceased son of a predeceased son. Thus, the Act had its applicability when a Hindu dies intestate either partially or wholly.

V. PROPERTY RIGHTS OF WOMEN UNDER HINDU SUCCESSION ACT, 1956

Under the Act of 1956, daughters of a male dying intestate had Rights to an equal share in separate property along with their brothers but not over joint family property. This created gender inequalities between Sons and daughters' rights. Daughters had a right over their share of Separate property and to the share of the joint family property. Sons had the right to their share of separate property, their share of joint family Property and an additional independent share on joint family property by Virtue of birth. Sons would be given this additional share by being part of The Hindu male coparcener. The Hindu male coparcener consisted of male Members of Class I, II and III heirs which were, by virtue of birth, entitled to an individual share in the joint family property. Consequently, sons would in addition to the amount of the daughters' inheritance, inherit an Individual share because they were part of the male coparcener. Mr. Roy suggests that this could imply that sons would inherit twice as much as

Daughters. In addition to this source of discrimination, a father could declare His separate property as part of the joint family property and this would will out the daughter in this part of the property. Furthermore, a male Coparcener could renounce his rights in the coparcener. This would not have any repercussions for his son, which would still have his independent Share of the ancestral property. However, this would exclude daughters and Class I female heirs in this share of the property.

Thus, in the present scheme of the Act the two separate systems of Inheritance to the property of a Hindu male prevailed under the Mitakshara And Dayabhaga Law have been abolished and a uniform system comes into Operation as propounded in Section 8. The three recognized classes of heirs of sapindas, samanodaks and bandhus cease to exist after the coming into Force of the Act. Now the heirs are divided into four classes under the Act, Viz,

- i. Heirs in class I of the schedule,
- ii. Heirs in class II of the schedule,
- iii. Agnates, and
- iv. Cognates.

The Hindu women's limited estate is abolished and any property Possessed by a female Hindu howsoever acquired is now held by her as her Absolute property and she has full power to deal with it or dispose of it by Will as she likes. The restraints and limitations on her power cease to exist even in respect of existing property possessed by a female Hindu at the Date of the Act coming into force whether acquired by her before or after the commencement of the Act. It is now held by her as full owner and not as a limited owner (Section 14). The disability of women in inheriting the father's property was Undone under Section 6 of the 1956 Act. Similarly section 15 is the first statutory enactment that deals with succession of Hindu female's property When she dies intestate before the Act the property of women dying intestate was governed by customary Hindu law. She had only limited interest which would be terminated on her death. It is heartening to note that the Act provides two different laws based on the sex of the intestate. This double scheme is the traditional method intended to protect the family property.

The property of a female Hindu dying intestate shall devolve according to the rules set out under Section 16:

- a) Firstly sons and daughters (including the children of any predeceased son or daughter)
- b) Upon the heirs of the husband
- c) Upon the mother and father
- d) Upon the heirs of the father and

e) Lastly upon the heirs of the mother.

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 predeceased son or daughter) not upon the heirs referred to in sub section (1) in the order specified there in, but upon the father. 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 separate scheme of succession reflects a strong patriarchal and orthodox outlook.

VI. HINDU SUCCESSION AMENDMENT ACT 2005

The Hindu Succession (Amendment) Act, 2005 (39 of 2005) was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956. Under the amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. The daughter shall now have the same rights in the coparcenary property (ancestral property of the Hindu undivided family) as a son. This amendment also repeals Section 23 of the Hindu Succession Act which disentitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares. Section 24 of the Act which denied rights of a widow to inherit her husband's property upon her re-marriage has been repealed. This Act has brought about a central amendment which is applicable to all the state governments.

VII. CONCLUSION

Indian are very religious minded people and religion can play a very important role in distribution of property. The religious slogans depicting woman as a respectable part of the society should be propagated in public through radio, newspapers, television, by highlighting them at schools, colleges, other government institutions, etc. small documentary films should be made in the regional language and it should be shown in villages, cities, towns, etc.the most important requirement for the implementation of the laws is that women have to rise to their Own rights. They should not sleep over their rights. They can knock at the doors of court for the realization of their shares in the family Property. The new Amendment of 2005 in the law of succession is an Encouraging step to improve the proprietary position of Hindu females. Now, it is the turn of executive and judiciary to implement the Provision of new Hindu Succession (Amendment) Act, 2005. After the Legislative efforts the role of courts is of great importance and it is expected that courts will give broader and wider interpretation to the Laws

providing property rights, to the female in the interest of the Society.

VIII. BIBLIOGRAPHY

- The Constitution of India, 1950.
- The Dowry Prohibition Act, 1961.
- The Hindu Code Bill, 1954.
- The Hindu Inheritance (Removal of Disabilities) Act, 1928.
- The Hindu Law of Inheritance (Amendment) Act 1929 (Act II of 1929).
- The Hindu Succession (Amendment) Act, 2005.
- The Hindu Succession (Andhra Pradesh Amendment) Act, 1986.
- The Hindu Succession (Karnataka Amendment) Act, 1994.
- The Hindu Succession (Maharashtra Amendment) Act, 1994.
- The Hindu Succession (Tamil Nadu Amendment) Act, 1989.
- The Hindu Succession Act 1956 (Act No. XXX of 1956).
- The Hindu Women's Right to Property Act, 1937.
- The Hindus Will Act, 1870.
- The Indian Succession Act 1865, (Act X of 1865).
- The Indian Succession Act, 1925.
- The Indian Succession Act, 1925.
- The Kerala Joint Hindu Family System (Abolition) Act, 1975.
- The Married Women's Property Act, 1874.
