

EVOLUTION OF PROPERTY RIGHTS OF A HINDU FEMALE – AN ANALYSIS UNDER THE HINDU SUCCESSION ACT, 1956

Kanieka Arora*
Dipti Bansal**

ABSTRACT

Society has placed unequal expectations on women, often limiting their financial autonomy and defining their roles within the family structure. Fortunately, societies around the world are evolving, recognizing the importance of gender equality and women's rights. Efforts are being made to empower women economically, socially, and legally. The Hindu Succession Act of 1956 enforces and protects the property rights of Hindu women in the community. The enacted act and amendments allowed both married and unmarried daughters to inherit their ancestral properties thereby allowing them to be absolute owners of any property they inherit or purchase, with the freedom to handle it as they wish. The Hindu Succession (Amendment) Act, 2005 brought significant changes in the Act, which amended Section 6 of the Hindu Succession Act, 1956 and recognized a Hindu girl as a coparcener as that of a son. The various court rulings clarified that the provisions of section 6 of the Act are retroactive, not merely prospective or retrospective. This retroactive nature signifies that a daughter's equal coparcenary rights are established from 9th September, 2005 based on her birth as a past event. This rectified the legal gap concerning the timing of events and clarified that a Hindu female will have a right over the ancestral property as a coparcener like her brother.

KEYWORDS:- Women, Section 6, self-acquired property, Hindu, coparcenary

1. INTRODUCTION

In the ancient text *Manusmriti*, Manu writes: “Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; a woman is never fit for independence.”

Property rights encompass the legal control and ownership of specific resources, granting the sole authority to determine their use or disposal. These rights ensure income and security for all individuals, fostering peaceful living. However, throughout history, women have often been marginalized in matters of finance. While they've been recognized as trustworthy custodians of others' money, they've seldom been seen as deserving of financial independence. From a young age, women are taught that their eventual home lies elsewhere, and after marriage, they're informed that their in-laws' house is their primary residence. In their parental home, they are daughters as long as their father is alive, but once married, they may find themselves in a precarious position after widowhood or divorce. This cycle often leads to a fate of destitution for women in these circumstances.

It's disheartening to see the historical and cultural biases that have affected the treatment of women when it comes to financial independence and societal roles. For generations, many societies have placed unequal expectations on

* Assistant Professor, Department of Laws, Panjab University, Chandigarh.

** Assistant Professor, Department of Laws, Panjab University, Chandigarh.

women, often limiting their financial autonomy and defining their roles within the family structure. It is recognised around the world that women's property rights are limited by social norms, customs and legislation hampering their economic status and opportunities to overcome poverty.¹ Fortunately, societies around the world are evolving, recognizing the importance of gender equality and women's rights. Efforts are being made to empower women economically, socially, and legally. Encouraging financial literacy, promoting equal job opportunities, and advocating for fair treatment within families are a few steps toward breaking these harmful stereotypes and providing women with the individuality which they deserve.

In ancient times in India two Hindu schools based on legal principle, the Dayabhaga² school of law and the Mitakshra³ School of law, were in charge of enforcing the laws in their own religious field. These two schools had a great impact and had a paramount role in the present Hindu law of property inheritance. Even though none of these schools provided rights over property to the women in India. Dayabhaga school kept women in a better position than Mitakshra did. The standing of women was higher in the Vedic era than it was in the later era. All around the Vedic age in comparison to the latter period women enjoyed a greater status. They were regarded as a divinity. They were expected to be present at all religious gatherings before or after being married because they were viewed goddess. Every auspicious work of the family was being done by woman and she and her husband shared same responsibilities and rights in the personal home except right to property.

With the onslaught of feminism and continuous claim of equality under Fundamental rights of our constitution, the pleas of women were finally considered. Many laws were enacted which acknowledged the rights of various women in India. After the independence of India, the Hindu Succession Act, 1956 was enacted wherein significant changes were made with respect to the rights of the woman in property. Yet, women were given exclusive control or right over her stridhan only, which included some gifts from her natural family and from her husband's family during their marriage.

It's crucial to challenge the ingrained beliefs and work towards creating a more equitable future where women are valued for their capabilities, not confined by societal expectations. Empowering women financially and socially

¹ UN Women Asia Pacific (Nov. 6, 2023, 11:10 AM), <https://asiapacific.unwomen.org/en/focus-areas/women-poverty-economics/women-s-land-property-rights>.

² Dayabhaga School of Law, which is based on the code of Yajnavalkya commented by Jimutvahana, governs the succession rules of Hindu Joint Families only in Assam and West Bengal.

³ The Mitakshara School derives majorly from running commentaries of Smritis written by 'Yajnavalkya'.

is not only beneficial for the individuals but also contributes to the progress and well-being of entire society.

The **Hindu Succession (Amendment) Act, 2005**⁴ was a breakthrough towards equality and bringing sons and daughters at par in the family. As per Mitakshara school of law, only male members were considered good enough for the inheritance and the liabilities of the family. This amendment of 2005 was a turning point and amended Section 6 of the Hindu Succession Act, 1956, which finally recognized a Hindu girl as a coparcener since her birth as that of her brother and she will bear the same rights and responsibilities as it is expected from a son.

2. OBJECTIVES OF STUDY

This paper will shed light on the discrimination which existed in our society and even till today even after many judicial/landmark precedents, the biasness is still prevailing in our country. The difference of gender is deep rooted in our culture and even after the enactments of statutes and pronouncements of judgments, the women is still fighting for her property rights in the 21st century. Moreover, the law may be in support of woman but the society overpowers those laws and follow the same old perspective which exists since time immemorial.

An illustrative example discussed in this paper is the recent judgment of **Vineeta Sharma v. Rakesh Sharma**⁵ and **Arunachala Gounder (dead) By Lrs v. Ponnusamy**⁶ which highlights the ongoing prayer of women to give equality like that of a son in property rights from the society, whereas it has been more than 18 years since the enactment of Hindu Succession Amendment Act, 2005.

3. RESEARCH METHODOLOGY

Research methodology is the procedure to conduct the research in an aligned way by providing guidance to the researcher. In this study, the rights of a Hindu female over the self acquired and ancestral property of her father and husband has been discussed briefly. During the research, ethical principles are followed. For the preparation of the paper, secondary sources such as published journals, articles, Supreme Court and High Court's judgments and enacted laws such as Hindu Succession Act, 1956 and Hindu Succession (2005) Amendment Act have been refereed.

⁴ Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005, § 6.

⁵ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 S.C.C. 1 (India).

⁶ *Arunachala Gounder (dead) By Lrs v. Ponnusamy*, A.I.R. 2022 S.C. 605 (India).

4. HINDU WOMEN'S PROPERTY RIGHTS IN INDIA- A HISTORICAL OVERVIEW

Vedic Period: In the Vedic era, women were highly revered and celebrated as goddesses. However, they faced a significant disadvantage as they lacked inheritance rights. According to Vedic literature, unmarried daughters and married daughters without brothers were entitled to inherit. Widows, on the other hand, didn't inherit any property from their husbands but could access their deceased husband's wealth if they were childless.⁷

Smriti period: During the smriti period, particular mention was made of the mother, widow, and daughter as potential heirs. Their inheritance of a man's property was contingent upon the absence of male heirs.

Under Hindu law, two major schools of thought existed- Mitakshara and Dayabhaga.

In Mitakshara Law, a son is granted automatic rights and interests in the family's property from birth. As per this school, Sons, grandsons, and great-grandsons are considered coparceners based on their birth within the family. This school of thought did not recognize women as coparceners. Property within the joint family under Mitakshara is transferred among the coparceners based on survivorship, which keeps on fluctuating i.e. it decreases on the birth of a male and increases with the deaths within the family. For instance, in a coparcenary consisting of a father and two sons, each would own one-third of the property. If another son is born, the share reduces to one-fourth for each male. The Benares, Mithila, and Bengal sub-schools of Mitakshara previously acknowledged only five female relatives entitled to inheritance before the Hindu Inheritance Laws (Amendment) Act of 1929: widow, daughter, and mother were among them.

Under Dayabhaga Law, neither sons nor daughters are coparceners at birth, and thus have no claim to the family estate while the father is alive. They inherit as common tenants, however, when the father dies. It is a unique aspect of the Dayabhaga school that daughters receive an equal portion of the property as their brothers, and they cannot compel the father to divide the land during his lifetime or later gift or sell it without his approval. If one of the male heirs dies, his heirs, including women like his wife and daughter, will become members of the joint property, representing him rather than acting independently.⁸

⁷ Lucy Carroll, *Law, custom, and statutory social reform: the Hindu Widows' Remarriage Act of 1856*, 20(4) THE INDIAN ECONOMIC & SOCIAL HISTORY REVIEW 363-388 (1983).

⁸ Sachin Drall, *Succession Under Classical Hindu Law: A Comparative Study Between Dayabhaga and Mitakshara Schools and The Significance Of "The Hindu Will Act, 1870" And "Hindu Women's Right To Property Act, 4 IJLLR 1, 2 (2022)*.

Medieval period: Throughout the medieval period, societal norms such as Sati, early marriages, and the prohibition of widow remarriage significantly affected the status of Indian women, leading to a decline in their societal standing. The practice of Purdah was introduced into Indian culture by Muslim invaders, and among Rajasthani Rajputs, the Jauhar dance gained popularity. Hindu Kshatriya rulers often practiced polygamy. During this era, women faced a lack of property rights.⁹

Prior to 1937, Religion played a major role in the succession of property in India and the personal laws were mostly dominated by the scriptures of the religions. During the earlier period, the law of succession was mostly uncodified and followed according to the traditions of the communities. Hence, there is no uniformity in the succession laws. But Religion plays a very important role in the formation of succession laws. The succession laws which are codified separately to different religions, neglected women and gave an unequal status to them.¹⁰ But with the enactment of the Hindu Women's Right to Property Act, 1937, the widow got a right over her deceased husband's property. Unlike previously, where the property was divided among the surviving coparceners by the doctrine of survivorship, now, the widow got the sole right over that property but with restrictions. The right which she got would remain with her till her death.¹¹ The Act was also amended in 1938 to exclude the widow from any interest in agricultural land.

4.1 HINDU SUCCESSION ACT, 1956- THE MODERN ERA OF HINDU LAWS

Following India's independence, significant changes occurred in Hindu personal laws, notably the enactment of the Hindu Succession Act, 1956 which applied to Hindus, Buddhists, Jains, & Sikhs. This legislation marked a pivotal shift by introducing a uniform law governing inheritance among Hindus, spanning both Mitakshara and Dayabhaga schools and regions in southern India previously governed by matriarchal Hindu law.

The Act, revolutionary in its time, not only bestowed women with the right to inherit property from male heirs, breaking free from ancient Hindu law restrictions, but also abolished the concept of women's estate. Additionally, it broadened the definition of stridhan to encompass both movable and immovable property, earlier being restricted to only the movable objects she

⁹ Prakash Chand Jain, *Women's rights under traditional Hindu law and the Hindu succession act, 1956*, 45 JOURNAL OF THE INDIAN LAW INSTITUTE 509, 520-525 (2003).

¹⁰ Dr. Shivamma A, *Women Property Rights in India (with reference to Hindu, Muslim and Christian)*, 6 IJCRT 435, 436 (2018).

¹¹ Monmayee Basu, *Impact of Hindu Code on Indian Women*, 5.1 WORLD AFFAIRS: THE JOURNAL OF INTERNATIONAL ISSUES 46-62 (1996).

received as gifts from family members like clothing, jewellery and ornaments. Section 6 of the Act specifically granted Hindu women the right to inherit property at par with male heirs. It dictated that upon the death of a coparcenary member, the property would devolve to the mother, widow, and daughter alongside the son through testamentary or intestate succession, eliminating the rule of survivorship for female heirs.

However, there was a limitation in the Act, it failed to grant the coparcenary rights by birth to daughters, unlike sons. Section 6 specified that if a male Hindu died intestate, the devolution of his coparcenary property would occur among coparcenary members. If in the case, there was any surviving female relative of the deceased coparcener then the devolution of property would happen by the testamentary or intestate succession. Notably, the term "notional partition" was narrowly interpreted, resulting in meager or no share for female heirs in partition scenarios.

The Supreme Court intervened to clarify the Act, interpreting it to grant women equal rights in coparcenary property. In **Gurupada v. Heera Bai**¹², the court ruled that the share of successors should be determined as if a partition had occurred during the deceased's lifetime, ensuring fair inheritance.

Another crucial change brought about was through Section 14 of the Act, which abolished the limited estate of women, empowering women to acquire and hold property as absolute owners and not only as limited owners. Under Section 14 of the 1956 Act, every Hindu woman has absolute ownership over any moveable or immovable property she possesses, it may be acquired before or after her marriage in any of the following ways: Inheritance, Partition, in lieu of maintenance or its arrears, Gift from any relative or non-relative, Own skill or exertion, Purchase or prescription, stridhana, etc. It concerns women's freedom to reclaim their property at any moment, use it however they see fit, and dispose of it as they see fit. In **Punithavalli Ammal v. Ramalingam (Minor) and Another**¹³, the Apex Court held that, Property possessed by a Hindu woman pursuant to clause 1 of section 14 of the Act is absolute and not defendable, and its extent cannot be restricted by any provision of the act, including its language, inferences, theories, or rules. It further held that the date of possession of such property is irrelevant as women in possession of the property before the enactment of the provision would now be given absolute rights which were previously limited.

Despite efforts by Parliament to eliminate ambiguity, controversies arose regarding the retrospective nature of the Act's application. The Apex Court

¹² Gurupada v. Heera Bai, 1978 S.C.C. (3) 383 (India).

¹³ Punithavalli Ammal v. Ramalingam (Minor) and Another, A.I.R. 1970 S.C. 1730 (India).

resolved these controversies in the case of **Kotturuswami v. Veeraava**¹⁴, clarifying that Section 14 applied retrospectively, but only to property possessed by a female Hindu at the Act's commencement. In the case of **Radha Rani Bhargava v. Hanuman Prasad Bhargava**¹⁵, the Apex Court, held that the absoluteness of property rights of a woman could not be challenged on any basis. However, it can be challenged if it can be proved that the widow transferred or alienated the property before the enactment of Section 14 and such transfer or alienation was done without any reasonable cause or legal necessity.

Further and final clarifications ensued in **V. Tulasamma & Ors. v. Sessa Reddi**¹⁶, wherein the Supreme Court differentiated between pre-existing rights and new entitlements under Section 14. It ruled that property granted to a wife or daughter-in-law for maintenance constituted a pre-existing right and fell under subsection (1) of Section 14, allowing the Hindu woman to alienate that property as she deems fit. This is an important decision of the Supreme Court of India, which conclusively put an end to all the delimita to who will become the owner of husband's property on his death. Thus, if a woman is given property for her maintenance, it becomes her absolute property.

4.2 POST 2005 AMENDMENT (HINDU SUCCESSION (AMENDMENT) ACT, 2005) - MOVE TOWARDS GENDER EQUALITY-

A coparcenary property refers to any ancestral property acquired by the members of a Hindu Undivided Family (HUF) and it extends to only three male lineal descendants (son, grandson, and great-grandson) only. Section 6 of the Hindu Succession Act, 1956, initially recognized Mitakshara coparcenary, a system where only male members were regarded as coparceners and enjoyed birthright over ancestral property. This meant that Hindu female/daughter had no right in the coparcenary property as that of a son since they could not be coparceners. This setup drew criticism from advocates of gender equality. In cases of intestate succession of a male Hindu's self-acquired properties, daughters, widows, and mothers were included as Class I legal heirs and could inherit such properties. However, daughters were excluded from inheriting their father's ancestral property.

Acknowledging this significant inequality in the position of Hindu women within Mitakshara coparcenary, several states—such as Kerala, Karnataka, Andhra Pradesh, Tamil Nadu, and Maharashtra—initiated state amendments to Section 6 of the Hindu Succession Act, 1956. These amendments aimed to

¹⁴ Kotturuswami v. Veeraava, 1959 A.I.R. 577 (India).

¹⁵ Radha Rani Bhargava v. Hanuman Prasad Bhargava, A.I.R. 1966 S.C. 216 (India).

¹⁶ V. Tulasamma & Ors. v. Sessa Reddi, (1977) 3 S.C.C. 99 (India).

rectify this disparity by granting daughters coparcenary rights within Mitakshara joint families, providing them equal property rights.

The Law Commission of India¹⁷, in its 174th Report on ‘Property Rights of Women, proposed reforms under the Hindu Law’, recommended the amendment of HSA 1956. According to Justice B.P Jeevan Reddy, “Social justice demands that a woman should be treated equally both in the economic and the social sphere. The exclusion of daughters from participating in coparcenary property ownership merely by reason of their sex is unjust. The Commission has also taken into consideration the changes carried out by way of State enactments in the concept of Mitakshara coparcenary property in the five States in India, namely, Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka. The Commission feels that further reform of the Mitakshara Law of Coparcenary is needed to provide equal distribution of property both to men and women. The recommendations contained in the Report are aimed at suggesting changes in the Hindu Succession Act, 1956 so that women get an equal share in the ancestral property.”

As a result, the Hindu Succession Act (HSA) of 1956 underwent amendments and as a result Hindu Succession (Amendment) Act, 2005 was passed which was enacted on September 9, 2005, incorporating the recommendations outlined in the Law Commission's report. The amendment Act elevated the status of daughters in Mitakshara Coparcenary by granting them coparcenary rights at par with sons and now have an equal right to hold coparcenary property.¹⁸ Sec 6 (1) says that “in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- (a) by birth become a coparcener in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.”

As a result of the 2005 Amendment, several significant changes have occurred:

¹⁷ Law Commission of India Report, No. 174, 2000, Property Rights of Women: Proposed Reforms under the Hindu Law, (Nov. 27, 2023, 08:50 PM), <http://www.commonlii.org/in/other/lawreform/INLC/2000/4.html>

¹⁸ Kasturi Gakul, *Hindu Women's Property Rights under Hindu Succession Law: Past and present*, 2.2 THE CLARION-INTERNATIONAL MULTIDISCIPLINARY JOURNAL, 149-156 (2013).

1. A Hindu woman now holds the right to take up the role of Karta in a Hindu Undivided Family if she is the eldest member, a privilege previously unavailable to her.
2. She is now permitted to include her self-acquired property in the family estate, a practice previously prohibited by the Act.
3. In the event of her father's demise, whether married or unmarried, a daughter possesses an equal claim to his property.
4. Daughters have gained a stake in coparcenary property and are empowered to demand partition of such property.
5. Women are now not only capable of initiating their coparcenary but also establishing their independent joint families.

Thus, this legal change redefined the dynamics of Mitakshara joint families by providing daughters with the same legal status and rights as sons in terms of inheriting ancestral property, irrespective of the marital status of the woman.

4.3 HINDU SUCCESSION (AMENDMENT) ACT 2005- WHETHER RETROSPECTIVE OR PROSPECTIVE?

The real issue which came up before the court was whether a female will be considered a coparcener prospectively or retrospectively. In the case of **Prakash v. Phulavati**¹⁹, Respondent filed a partition suit before the Trial Court in 1992 claiming 1/7th share in the properties that her father acquired from his mother. During the pendency of the suit, the Hindu Succession (Amendment) Act, 2005 was made effective which recognised the coparcenary rights of the daughters as well. Phulavati amended her previous claim as per the 2005 Amendment. The Trial Court only partly allowed her suit. However, on appeal, the High Court ordered in Phulavati's favour and allowed the retrospective effect of the 2005 Amendment. Aggrieved by the High Court's decision, Prakash approached the Supreme Court.

Finally, the Supreme Court held that "only living daughters of living fathers could become coparceners" meaning thereby that the ability for daughters to become coparceners applied solely to cases where both the father and daughter were alive after the commencement of the Hindu Succession (Amendment) Act, 2005. If the father passed away before this Act took effect, no retrospective application could be granted. In such instances, the property distribution would follow the rules of survivorship. Consequently, daughters whose fathers died before the Act's commencement could only claim rights in their self-acquired property and not in coparcenary property.

¹⁹ Prakash v. Phulavati, (2016) 2 S.C.C. 36 (India).

But further in 2018, a similar case came up before the Apex Court in **Danamma v. Amar Singh**²⁰, wherein the Supreme Court held the opposite view. In this case the father died in 2001 leaving behind a wife, two sons, and two daughters. After the death, the grandson sought partition of the property and denied any right to the two daughters as they were born before the enactment of the Hindu Succession Act, 1956. This contention was upheld by both the trial court and High Court, though, by then, the 2005 Amendment had already come into being.

The question that came up before the Supreme Court was whether daughters could be denied their share on the ground that they were born prior to the enactment of the Act. And whether, with the passing of Hindu Succession (Amendment) Act 2005, the daughters would become coparcener “by birth” like that of a son. The Supreme Court held that daughters could be treated as coparceners and will be given a share in coparcenary property irrespective of the birth of the daughter. The only required condition being, she should be alive on the date of partition.

The above two cases added to further conflicts as both the cases were contradictory. The dispute was finally settled by a three-judge constitutional bench in 2020 after a detailed reasoning in the case of **Vineeta Sharma v. Rakesh Sharma**²¹. In this case, the appellant’s father died in 1999, leaving behind three sons and a widow. One of her brothers died unmarried in 2001, after which she filed a suit claiming coparcenership and one-fourth share in her father’s property. But, the High Court rejected her claim stating the fact that her father died before the 2005 Amendment. Now, the main questions before the Hon’ble Supreme Court were - Firstly, Can daughters claim their coparcener rights established in 2005, even if a partition occurred before that time? Secondly, was it a prerequisite for a daughter's father to be alive in 2005, when the amendment occurred, for the daughter to claim her share and enforce her rights as a coparcener? Or, could she pursue partition even if her father had passed away before 2005? This question held significance because, in numerous instances, sons contended that upon their father's demise, the property automatically became theirs due to what legal practitioners term a 'notional partition.' As per this argument, once this division occurred, post-2005, there remained no further claim for the daughter.

The court's ruling emphasised that joint Hindu family property is unobstructed heritage, granting the absolute right to partition by virtue of birth. In contrast, separate property is obstructed heritage where ownership and partition rights are hindered by the owner's death. As the right to partition stems from the daughter's birth, irrespective of the father coparcener's status at the

²⁰ Danamma v. Amar Singh, (2018) 3 S.C.C. 343 (India).

²¹ UN, *supra* note 1.

time of the amendment, the court overruling Phulavati²² judgement and partly overruling Damanna²³ judgement, establishing that coparcenary rights pass directly from father to a living daughter, not from "a living coparcener to a living daughter."

The court's decision clarified that the provisions of section 6 are retroactive, not merely prospective or retrospective. This retroactive nature signifies that a daughter's equal coparcenary rights are established from November 9, 2005, based on her birth as a past event. This rectified the legal gap concerning the timing of these provisions' effects.

Furthermore, the court clarified that a notional partition doesn't signify an actual partition. It's a legal construct limited to ascertaining each coparcener's share in the joint Hindu family. The shares determined through notional partition aren't final, as the birth or death of a coparcener can alter these shares. Therefore, a daughter can claim a share in joint family property even if a notional partition occurred before November 9, 2005, as it doesn't nullify the existence of coparcenary property.

The court acknowledged that according to the legislation, any partition completed before December 20, 2004, remains valid despite the amended provisions. However, to prevent fraudulent partitions aimed at depriving daughters of their equal rights, the court established criteria for post-December 20, 2004 partitions to be considered genuine. It mandated that these partitions must be either registered or decreed by a court, ensuring they are final and legally binding. Additionally, the court specified that relying on an oral partition as a defense would not hold unless it aligns with the aforementioned criteria. While acknowledging that some oral partitions might be genuine exceptions, the burden of proof lies heavily on the defense to demonstrate the authenticity of such partitions.

The amendments in the Hindu Succession Act have brought about a significant change, granting women equal property rights as men. This signifies a strong move by the Indian Judiciary towards gender equality, going beyond mere legislative changes. These reforms have practically empowered Hindu women, offering them improved standing in property law. They now have the autonomy to own property exclusively and make independent decisions about its management, free from external interference.

²² Sachin Drall, *supra* note 8.

²³ Prakash Chand Jain, *supra* note 9.

4.4 DAUGHTER'S RIGHT TO INHERIT SELF-ACQUIRED PROPERTY OF FATHER DYING INTESTATE BEFORE ENACTMENT OF HINDU SUCCESSION ACT, 1956

Until 2022, the law still lacked clarity regarding property devolution of self-acquired property before the enactment of the original Hindu Succession Act in 1956. However, the Court's ruling in the **Arunachala Gounder (dead) By Lrs v. Ponnusamy**²⁴ case has brought clarity to this issue. The Court not only upheld equality between sons and daughters but also prevented the transfer of property to individuals remotely related to the owners, who lack any substantial interest. This decision aligns with the principles of proximity and Mitakshara Law, a crucial school of Hindu law.

The main issue before the Hon'ble Supreme Court in this case was whether a sole daughter could inherit her father's separate property dying intestate? And if so - what would be the order of succession after the death of such a daughter?

The Supreme Court, referencing customary Hindu Law and legal precedents, affirmed the recognized rights of widows and daughters to inherit self-acquired property or shares from the partition of a coparcenary property of a Hindu male who dies intestate. The Court highlighted the following Hindu Customary laws:

- a. Mitakshara School: Mitakshara recognizes inheritance limited to individually owned property, including females as heirs. Before the 1929 Act, Bengal, Benares, and Mithila sub-schools recognized a specific set of female relations entitled to inherit.
- b. Madras Sub school: This school acknowledges the heritable capacity of specific female heirs like son's daughter, daughter's daughter, and the sister, also recognized in the 1929 Act.
- c. Bombay School: This school extends heritable capacity to various female heirs, including a half-sister, father's sister, and other females termed as "bandhus."

The same view was supported by various judicial precedents. Reference was made to the case of **Pranjivandas Tulsidas v. Dev Kuvarbai**²⁵, wherein a Hindu man passed away, leaving behind his widow and four daughters, alongside a brother and the descendants of deceased brothers. The court ruled that the widow had a right to a life estate in the property, and following her interest, the daughters held priority over the brother and the descendants of deceased brothers. Additionally, the case of **Katama Natchiar v. The Rajah of**

²⁴ Dayabhaga, *supra* note 2.

²⁵ Pranjivandas Tulsidas v. Dev Kuvarbai 1 Bomb. HC B 131 (India).

Shivagunga²⁶ was cited, where the widow was entitled to her deceased husband's self-acquired property, and in the absence of male issue and a widow, the daughter had the entitlement. Several commentaries supported the view that in the event of a Hindu man dying intestate, daughters were entitled to self-acquired property. The succession to the property follows a sequence where the next heir succeeds when the preceding one fails – and according to these commentaries, daughters were considered heirs above the sons of his brothers.

The Court reflected on the legislative changes brought about by the 1956 Act, particularly Section 14(1). It noted that this legislative intent aimed to remove limitations on Hindu women's absolute interest in inherited properties, formerly restricted to a life interest.

The Arunachala Gounder²⁷ case brought clarity to the daughter's entitlement to her father's self-acquired property. Both the trial court and the High court had based their decisions solely on codified Hindu laws enacted after the property owner's death, neglecting the uncodified customary Hindu laws relevant to the case. The Supreme Court rightly interpreted these customary laws. This case not only addresses gender equality but also confirms that the principle of succession aligns with the rule of proximity, affirming the sole surviving daughter's entitlement to her father's separate properties, even preceding the enactment of the 1956 Act.

5. STRATEGIES TO PROTECT AND ENCOURAGE WOMEN TO PROTECT THEIR RIGHTS IN CURRENT SOCIAL CIRCUMSTANCES

To achieve genuine gender equality, it must extend beyond the confines of Supreme Court or High Court rulings. The traditional practices of inequality and the challenge of enforcing the 2005 Act still persists, which can be changed by changing the attitude and mindset of society. Some of the strategies to protect the rights of the woman in current social circumstances are:

1. Legal and Policy Reforms: Strengthening Legislation and Simplifying Legal Procedure

To enhance women's property rights, it is essential to amend existing laws to eliminate loopholes that may be used to deny these rights and to incorporate the principles established by landmark judgments into statutory provisions. Legal procedures related to property claims must be streamlined to make them more accessible and less time-consuming, thereby reducing the burden on women and encouraging them to assert their rights.

²⁶ *Katama Natchiar v. Srimut Rajah Mooto Vijaya Raganadha Bodha Gooro Swamy Periya Odaya Taver* (1863) 9 MIA 539 (India).

²⁷ *Dayabhaga*, *supra* note 2.

2. Fast track courts or special tribunals

Establishing fast-track courts or special tribunals dedicated to efficiently resolving disputes related to women's property rights should be established. Additionally, the role of paralegal volunteers and community-based legal aid workers should be strengthened to assist women at the grassroots level.

3. Awareness: Public Awareness Campaigns and Educational Programs

To inform women about their property rights, it is crucial to launch comprehensive awareness campaigns utilising various platforms, including print media, social media, television, and community outreach programs, to reach a broad audience. Collaborating with civil society organisations, NGOs, and women's groups can help spread awareness and provide education on legal rights and procedures. Additionally, incorporating education on property rights and gender equality into schools from an early age.

4. Institutional Support: Capacity Building for Authorities and Monitoring and Accountability

To effectively handle cases involving women's property rights, it is essential to train revenue officers, police, judiciary, and other relevant authorities to approach these cases with sensitivity and a thorough understanding of the law. Establishing dedicated cells or departments within government bodies to focus specifically on issues related to women's property rights can enhance support and enforcement.

4. Regular audits

Regular audits should be conducted to ensure accountability of public officials and institutions responsible for implementing property rights laws. Mechanisms such as helplines, grievance redressal systems, and watchdog committees should be set up to monitor the enforcement of these rights.

5. Social and Cultural Change: Community Engagement and Support Network

To advocate for women's property rights and challenge patriarchal norms, it is essential to engage community leaders and influencers. Community acceptance is crucial for the practical realization of these rights. Promoting positive role models and success stories of women who have successfully claimed their property rights can inspire and encourage other similarly situated women.

6. Economic Empowerment: Financial Inclusion and Supportive infrastructure

To empower women in managing and utilizing their property effectively, it is important to facilitate their access to financial services, including bank accounts, loans, and credit. Providing financial literacy programs will educate women on asset management and the economic value of their property rights. Promoting schemes and incentives for women to invest in property and land will further ensure their long-term security and economic independence.

6. CONCLUSION AND SUGGESTIONS

Hindu Succession Act, 1956 clearly provides that a Hindu female's property is her absolute property which she can dispossess as per her wishes. Gone are those days when women hardly contributed in the economic matters of the family. Now, the socio-economic stratum has changed and women are contributing equally with men. With the advent of technology and education to women, they are not dependent on Stridhan anymore to fulfil their basic daily need. A woman not only shares the rights but will have the same liabilities as that of a son and can be sued in the Court of law on non-fulfilment of her duty towards her natural parents.

With end of age-old tradition of suppressing women, now women are equally entitled to property rights similar to that of their brothers. The recent developments in the laws settled through landmark judgments are a worthwhile contribution of our judiciary towards making a gender-equal India.

The Hindu Succession Act of 1956 enforces and protects the property rights of Hindu women in the community. The enacted act and amendments allowed both married and unmarried daughters to inherit their ancestral properties thereby allowing them to be absolute owners of any property they inherit or purchase, with the freedom to handle it as they wish. The women will have equal rights and liabilities from birth as sons have in their families. They won't have any restrictive right over the property and they can sell, rent, mortgage, etc. their property as per their desire. The Hindu Succession Act has made considerable strides in ensuring equality in relation to property rights, and has helped to secure the economic status of women in the society.

However, these laws sometimes collide with traditional customs and norms in society, which may be patriarchal and male-dominated. Therefore, it is important that these legal rights are not only enforced but are also socially accepted and implemented. The Hindu Succession Act, 1956, has secured the property rights of women in a significant way. The enforcement of these rights is still an issue and often depends on social and cultural factors. The main obstacle is the society, which in real sense has to start treating men and women equal for both the rights and liabilities and not just theoretically.

REFERENCES

Articles

- Dr. Shivamma A, *Women Property Rights in India (with reference to Hindu, Muslim and Christian)*, 6 IJCRT 435, 436 (2018).
- Kasturi Gakul, *Hindu Women's Property Rights under Hindu Succession Law: Past and present*, 2.2 THE CLARION-INTERNATIONAL MULTIDISCIPLINARY JOURNAL, 149-156 (2013).

- Lucy Carroll, *Law, custom, and statutory social reform: the Hindu Widows' Remarriage Act of 1856*, 20(4) THE INDIAN ECONOMIC & SOCIAL HISTORY REVIEW 363-388 (1983).
- Monmayee Basu, *Impact of Hindu Code on Indian Women*, 5.1 WORLD AFFAIRS: THE JOURNAL OF INTERNATIONAL ISSUES 46-62 (1996).
- Prakash Chand Jain, *Women's rights under traditional Hindu law and the Hindu succession act, 1956*, 45, JOURNAL OF THE INDIAN LAW INSTITUTE 509, 520-525 (2003).
- Sachin Drall, *Succession Under Classical Hindu Law: A Comparative Study Between Dayabhaga and Mitakshara Schools and The Significance Of "The Hindu Will Act, 1870" And "Hindu Women's Right To Property Act*, 4 IJLLR 1, 2 (2022).

List of Cases

- Arunachala Gounder (dead) By Lrs v. Ponnusamy, A.I.R. 2022 S.C. 605.
- Danamma v. Amar Singh, (2018) 3 S.C.C. 343.
- Gurupada v. Heera Bai, 1978 S.C.C. (3) 383.
- Katama Natchiar v. Srimut Rajah Mooto Vijaya Raganadha Bodha Gooro Swamy Periya Odaya Taver (1863) 9 MIA 539.
- Kotturuswami v. Veeraava, 1959 A.I.R. 577.
- Prakash v. Phulavati, (2016) 2 S.C.C. 36.
- Pranjivandas Tulsidas v. Dev Kuvarbai 1 Bomb. HC B 131.
- Punithavalli Ammal v. Ramalingam (Minor) and Another, A.I.R. 1970 S.C. 1730.
- Radha Rani Bhargava v. Hanuman Prasad Bhargava, A.I.R. 1966 S.C. 216.
- V. Tulasamma & Ors. v. Sessa Reddi, (1977) 3 S.C.C. 99.
- Vineeta Sharma v. Rakesh Sharma, (2020) 9 S.C.C. 1.

Statutes

- The Hindu Succession Act of 1956
- The Hindu Succession (Amendment) Act of 2005