



HINDU WOMEN AND HER PROPERTY RIGHT

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Abstract-- From the Vedic period onward when we turn the pages of our history, we can find the position of women in the society. In Manu Smriti, it has been stated as: “*Pitho rakshathi kaumare Bhartho rakshathi youvane Puthro rakshathi vardhakye Na sthri swathanthriyamarhathi*”. It describes the importance of protecting women in her different stages, as she being considered physically and mentally inferior to men. But it is being misinterpreting even now and doing all sorts of exploitations towards her including in the inheritance and succession of property rights. In India, most of the women sections are ignorant about their rights on property. Though the rights prescribed in Hindu law texts in different systems of systems such as Mitakshara and Dayabhaga are more deplorable for women, a lot of improvements have made in the existing laws such as The Hindu Women’s Right To Property Act, 1937, Hindu Succession (Amendment) Act, 2005, The Hindu Succession Act, 1956 etc. as a result of increasing demand from well-wishers of women in society. Improvements include the amendment in Hindu Succession (Amendment) Act, 2005 which has given absolute interest as a coparcener instead. As per S.14 of The Hindu Succession Act, 1956, women estate has been abolished and old law of succession has put an end by the Sections 15 and 16. Therefore, the above stated Sections and amendments has actually emboldened the women’s property rights. Apart from The Hindu Succession Act, 1956, there are other Acts which has come to the limelight for strengthening the position of women regarding property rights. At the same time, the Hindu Succession Act, 1956 has laid down stringent conditions for avoiding enjoyment of property rights by the undeserved ones. When we thoroughly study the Hindu Succession Act, 1956 and its amendment including during 2005, it is very evident that remarkable and significant changes has been evolved which ultimately led to the change in the position of Hindu woman in related to coparcenary rights, inheritance and property rights.

Key Words: Hindu Women, Hindu Succession (Amendment) Act, 2005, Coparcenary, Property rights

INTRODUCTION

From the Vedic society onwards, the rights of Hindu women’s property has been undergoing vicissitudes. Now the position has reached where the equal status of women with men is being denied and given a very inferior position.

Under ancient Hindu Law, the right to ownership has been recognized by great commentators notably *Narada*, *Yajnavalkya*, *Vyas* etc. According to them, the right to ownership of property should be used for noble cause and good motives. The ancient Hindu Law has invested duties to behave in a particular manner regarding the acquisition of property. As per ancient Hindu texts, there can be seven modes for acquisition of ownership of property such as: (a) inheritance (b) purchase (c) gain (d) conquest (e) employment (f) investment of wealth and acceptance of gifts.

According to Salmond, the ‘property’ takes the following applications in legal terms such as:-

(a) All legal rights (b) Proprietary rights and (c) Corporeal property rights

In the case, *R C Cooper v. Union of India*¹ (commonly known as *Bank Nationalization case*), a very extensive definition of property has been observed by the Hon’ble SC as:-

“Property means the highest right a man can have to anything being that right which one has to lands or tenements, good or chattels which does not depend on other’s courtesy; it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in persona capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having money value, especially with reference to transfer or succession, and of their capacity of being acquired.”

Most of the modern legal systems are using term ‘property’ in a full sense including Hindu Succession (Amendment) Act, 2005. The constitution of India as per Art.19 (1) (f) giving the right to property before the 44th Amendment Act, 1978 and it has been dropped from the category of fundamental rights for the reason that the importance of property has been diminishing nowadays. In the present legal world, property has been developed as social institution.

¹ AIR SC (1970) 564



HINDU WOMEN'S COPARCENARY RIGHTS

“Coparcenary is a narrower body of persons within a joint family and consists of father, son, son's son's son.”²
Mulla defines coparceners as “the three generations next to the holder in unbroken male descent”.³

In *Venugopala v. Union of India*⁴, SC observed as “The *Mitakshara* concept of coparcenary is based on the concept of birth right of son, son's son and son's son's son.”

Under ancient Hindu Joint Family system, property rights were within the hands of male members of family. Women had no rights and it was the duty of male members to administrate the property of the whole family and women hasn't enjoyed any freedom for expression of opinion regarding the property administration.

Later by the virtue of Section 6(1) of Hindu Succession (Amendment) Act, 2005, daughter has also been made a coparcener. The crux of the Section is that if there is no female or male heir claiming through a female heir, the rule of survivorship is not, in any way affected, otherwise, if there is any such heir, the interest will devolve in accordance with this Act either by testamentary succession under Section 30 of the Act or by intestate succession under Section 8.

In *Subhash Eknathrao Khandekar v. Pragyabai Manohar Birader*⁵, Bombay High Court has stated that “The widow of a son is not a coparcener”.

In *Commissioner, Income tax, Bihar II, Ranchi v. Sandhya Ram Datta*⁶, SC ruled as “A coparcenary cannot be formed by the female heirs by entering into an agreement”.

As per The Hindu Women's Right to Property Act, 1937,

“The undivided interest of a coparcener on his death did not go by survivorship to other coparceners, but his widow took it as heir, though she took it as a limited estate.”

Before the Act of 1937, the undivided interests of a coparcener on his death are passed by survivorship to the other coparceners. But with the Act of 1937, the situation has changed. Section 3(3) of The Hindu Women's Right to Property Act, 1937 says that the right of a widow for partition of property. Therefore she will have the same right to claim a partition as a male owner.

In *Sahadeo Singh v. Chhabila Singh*⁷, Patna High Court held that “widow cannot be a Karta of joint family as she is not a coparcener. She has no legal qualification to become Karta. Therefore, the mother can't alienate share of a minor in Joint Hindu Family property. It is possible only with the permission of court.”

Moreover, she cannot represent in a suit. Under *Dayabhaga* and *Mitakshara* schools, a coparcenary cannot begin with females. But under *Dayabhaga*, females can become a coparcener and she has the right to call for the partition of the coparcenary property. When we compare the *Dayabhaga* and *Mitakshara* law, the *Dayabhaga* law can be preferred as it is in line with the growing spirit of the modern society, where there is recognition of equal status of men with women.

In *Guramma Bhatar v. Mullappa Bhatar*⁸, SC examined as “it is competent to a father under *Mitakshara* law to make a gift of immovable property to a daughter if the gift is of reasonable extent having regard to the properties held by the family”.

But in *Kandammal v. Kandish Khevar*⁹ Madras High Court held that “the gift made by the father (Karta) in favor of his wife of an immovable ancestral property is void”.

Under Hindu Joint Family system, a female member cannot be Karta but once the Nagpur H.C held the view that it is possible for a female member to become a Karta though not a coparcener.

² HINDU LAW –DR.PARAS DIWAN

³ PRINCIPLES OF HINDU LAW BY MULLA (13TH EDITION)

⁴ AIR (1969) SC 1094

⁵ AIR (2008) BOM 46

⁶ AIR (2001) SC 115

⁷ AIR (1978) Pat 258

⁸ AIR (1964) SC 510

⁹ AIR (1977) NoC (Mad) 220



*In Commissioner of Income Tax v. Seth Govind Ram*¹⁰, SC held that a mother or any other female is not entitled to *Kartaship* and *In Gangoji v. H.K Channappa*¹¹, Karnataka High Court held that mother as a natural guardian of her minor sons can manage Joint Family property.

Though India's constitution provides gender equality, it is not followed regarding the right to inheritance of property for Hindu women and it is evident in The Hindu Succession Act, 1956. Later the limitation on the intestate succession in Mitakshara system has been changed through the Amendment of 2005 which helped Hindu woman to acquire equal status with men. It has given emancipation in related to right to inheritance of property from the male dominated dynasty. The amendments were enacted by Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu in 1986, 1989, 1994, and 1994, respectively. Kerala abolished joint family property altogether in 1975.

HINDU WOMEN'S PROPERTY RIGHTS

Before 1956, there were two kinds of women's property,

1. STREEDHAN 2. WOMEN'S ESTATE

As per Section 14 of Hindu Succession Act, 1956, the women's estate has been abolished.

The word '*streedhan*' means women's property. According to *Smritikars*, the *streedhan* constituted those properties which she received by way of gift from the relations which included mostly movable property (though sometimes a house or a piece of land was also given in gift) such as ornaments, jewelry and dresses.¹²

Jimutvahana gave a different enumeration of *streedhan*, so did the schools of Mitakshara. The enumeration of *streedhan* can be as follows:-

1. Gifts and bequests from relations
2. Gifts and bequests from strangers
3. Property acquired by self-exertion and mechanical arts
4. Property purchased with *streedhan*
5. Property acquired by compromise
6. Property obtained by adverse
7. Property obtained in lieu of maintenance.

Similarly, Women Estate also has the following forms:-

- Property obtained by inheritance and Share obtained on partition

The Above Stated Women Estate Has The Following Features:

- It gives women an absolute ownership of property.
- She has the full rights of its disposal or alienation.
- She can sell ,gift, mortgage ,lease, exchange or if she chooses , she can put it on fire,
- Her property can be passed on to her own on heirs on her death.

The old law of succession has put an end by The Hindu Succession Act, 1956. As per Section 15 of the Hindu Succession Act, 1956:

General rules of succession in the case of female Hindus are as follows

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16:

(A) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(B) Secondly, upon the heirs of the husband;

(C) Thirdly, upon the mother and father;

(D) Fourthly, upon the heirs of the father; and

(E) Lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)-

¹⁰ AIR (1966) SC 24

¹¹ AIR (1983) Kant 222

¹² HINDU LAW OF MARRIAGE AND STREEDHAN BY DR.PARAS DIWAN (3RDEDITION,280)



(a) 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 pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) 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 predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

As per Section 16 of the Act, "The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:-

Rule 1- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

The above stated two sections constitute new law of succession to women's property.

Under Section 14(1) of The Hindu Succession Act, 1956, the Act has abolished the Hindu women's limited estate and confers on the women the absolute ownership over all her property acquired by her as per Section 14 of the act:

Properties of a female Hindu to be her absolute property are as follows:

(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *streedhan* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Under this Section, any property acquired by a Hindu female except that which is covered by sub-section 2 before the Act came into force will become her absolute property and any property acquired by a Hindu female except that which covered by the commencement of Act will be her absolute property.¹³

The above stated changes could be seen while going through the observation of courts at different periods:-

In *Janaki v. Narayana Swami*¹⁴ Privy Council observed regarding women's estate as "her right is of the nature of right of property, her position is that of owner; her powers in that character are, limited... So long as she is alive, no one has vested interest in succession."

In another case, *Kalawati v. Suraj*¹⁵, SC stated that in the context of section 14 " 'women' does not mean any woman, but that woman who is the owner of woman's estate. If the holder of woman's estate had alienated the estate to a woman, that woman is not the woman whose estate is enlarged to full estate."

¹³ FAMILY LAW BY PARAS DIWAN (2013 EDITION)

¹⁴ (1916) 43 I.A.207

¹⁵ AIR (1991) SC 1581



“The effect of rule laid down in the Section 14 of The Hindu Succession Act, 1956 is to abrogate the stringent provisions against the proprietary rights of a female which are often regarded as evidence of her perpetual tutelage and to recognize her status as independent and absolute owner of property.”¹⁶

Before the enactment of The Hindu Succession Act, 1956, a Hindu woman has streedhan as:-

(A) Absolute property (B) Limited estate.

When the constitutionality of the Act has been challenged and SC has observed that the Act has the object of enhancing women’s limited estate concept regarding property into absolute interest. It is within the spirit of court of India. Hence it is not violative of any fundamental rights especially Art.14, 15(1) of the Constitution of India.¹⁷

S.14 has been given retrospective effect. But this Section has no application for those who has already inherited and alienated the property before the Act came into force. In *Anandibhai v. Sundarabhai*¹⁸, High Court has been observed as “the expression ‘any property possessed by a female Hindu’ in Section 14 means ‘any property owned by a female Hindu’ at the date of the commencement of the Act, and, these words are prospective in their application. Any property ‘acquired before’ the commencement of the act shall be the absolute property. The expression ‘whether acquired before or after the commencement of this act’ shows that section is operative retrospectively.

There are two conditions to be fulfilled for the application of Section 14 of The Hindu Succession Act, 1956:

(a) Ownership of the property must vest in her and (b) she must be in the possession of the Estate when the Act came into force.

Supreme Courts and High courts have given wider connotations for the term possession. According to their observation, it can be in the form of actual and constructive possession. In *Santosh v. Saraswathi*¹⁹, a question has been raised regarding the possession of property of female Hindu and Court held the view that where property was given to the woman by way of maintenance over which she had a right, her possession was accepted, it became her absolute property. Even when the property is in the possession of a trespasser, it has been held that she is in constructive possession.²⁰

RIGHT OF INHERITANCE OF PROPERTY FOR HINDU WOMEN

When we check the systems of inheritance in Hindu law, there can find two different systems of inheritance, namely:

- THE MITAKSHARA SYSTEM
- THE DAYABHAGA SYSTEM

The former system prevails in Bengal and the latter system prevails in other parts of India. Both the systems are based upon the text of Manu that “to the nearest Sapinda the inheritance next belongs; after them, the Sakulyas, the preceptor of the Vedas, or a pupil.”²¹ The guiding principles of the two systems are different. The Mitakshara interprets the law of inheritance as nearest blood will be the heir i.e.; based on the principles of consanguinity. Whereas according to Manu, the dayabhaga system is based on the principle of religious efficacy or the nearest Sapinda can offer oblation to the souls. Modes of devolution of property are also different in both schools.

➤ MITAKSHARA SYSTEM

Devolution Of Mitakshara School Can Be In The Form of:

- Separate Property Of The Last Owner and Joint Family Property

The Classification Of Heirs Under Mitakshara Are As Follows:

- Sapindas, Samanodakas, And Bandhus

¹⁶ MULLA: PRINCIPLES OF HINDU LAW(16TH EDITION)

¹⁷ PRATAP SINGH v. UNION OF INDIA, AIR (1985) SC 1694

¹⁸ AIR (1965) MP 85

¹⁹ AIR (2008) SC 500

²⁰ MANGAL v. RATTNO, AIR (1956) SCJ 437

²¹ MANU, IX ,187



Under Mitakshara law, female's takes only limited estate whereas males takes absolute interest in estate. Males succeeding as heirs to a male or to a female, took absolutely. Females succeeding as heirs to a male took a limited estate in the property inherited by them, except in certain cases. If a separated Hindu under Mitakshara or any Hindu under Dayabhaga died leaving a widow and brother the widow succeeded to the property as his heir but she being a female did not take the property absolutely. She was entitled to the income of the property. She could not make a gift of the property nor could she sell it unless there was some legal necessity. On her death, the property would pass not to her heirs, but to the next heir of her husband, i.e.; his brother.

➤ DAYABHAGA SYSTEM

Under Dayabhaga system, there is only one mode of devolution of property ie; succession.

The Order of Succession Has the Following Features;

- Religious efficacy and one mode of succession

Under the first order of succession, the right to inherit the property is bestowed with spiritual benefit on the deceased owner. And under the second order, there is no right by birth or survivorship.

It does not recognize the rule of survivorship in the Joint Family property. Moreover, 2 or more persons can become joint tenants but with the exception of widows and daughters. The joint family property is passed on to heirs, males or females or even to his legatees as if he were absolutely seized thereof and not to the surviving coparceners on the death of owner. It cannot be found in Mitakshara law.

Under Mitakshara law, the right of inheritance was a right which vested immediately on the death of the owner of the property in the person who was the nearest heir at that time. But it has some exceptions:-

- A son or daughter in the mother's womb at the time of death of owner is not entitled to inheritance²², a son validly adopted to the deceased owner by his widow.²³ And "Apart from the case of a child *en ventre sa mere* or of an adopted child, the estate once vested in an heir will not be divested by the subsequent birth of a person who would have been a preferable heir had been alive at the time of the time of the death of last owner."²⁴

However both under Mitakshara and Dayabhaga schools, in certain special cases women has excluded from inheritance of property. Under Mitakshara the only heir liable to be excluded from inheritance on unchastity is widow of the deceased.²⁵

Sections 24 and 25 of "The Hindu Succession Act, 1956" have also laid down the grounds for excluding a person from inheritance while Section 28 of the said Act of 1956 provides that no person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity or on any ground except as provided in the said Act of 1956. Therefore, the disabilities left after the Hindu Inheritance (removal of disabilities) Act, 1928, have been removed by the Hindu Succession Act, 1956.

The Section 8 -13 of The Hindu Succession Act, 1956, deals with the rules of succession with separate property of a male Hindu, dying intestate. The Act applies to cases of succession which opens after the Act came into force. The properties of a male Hindu dying intestate devolve firstly on heirs in clause (1) who include widow and son.²⁶

The Section Divides The Heirs of a Male For The Purposes Of Inheriting The Property Into Four Classes. These Include:

- Relations Mentioned In The Class I Of The Schedule, Relations Mentioned In The Class Ii Of The Schedule, Agnates Of The Deceased And, Cognates of the Deceased.

The Section 6 and 8 of the Hindu Succession Act, 1956

The relationship between the above stated Sections can be read out from decisions of courts.

²² BAYAVA v. PATKAKAVA, (1933) 35 Bom. LR 118

²³ HIRA v. BUTA, (1919),1 Lah. LT 36;

²⁴ GADA DHAR MALIK v. OFFICIAL TRUSTEE OF BENGAL (1940) 67 IA 129

²⁵ BALDEO v. KATHURA, 33 All. 702

²⁶ RAMESHWARI DEVI v. STATE OF BIHAR, AIR 2000 SC 735



Section 6 is applied to the devolution of coparcenary property of a male Hindu who dies after the commencement of the Act. Section 8 is applied to the devolution of a self-acquired property of male Hindu.²⁷

In *Narayanan v. Pushparajani*,²⁸ Kerala High Court observed that where a person dying intestate does not have wife or children and leaves behind him brother by half blood and a sister by full blood. In such a case, the sister by full blood would be excluded by the brother by half blood. Thus sister by full blood alone would inherit the property excluding the brother by half – blood.

Under Mitakshara Law, father's widow and brother's widow were not heirs. But now they are recognized as heirs and are given a high place in the order of succession. Similarly, in the case of persons mentioned under class ii of schedule (brother's brother, sister's daughter and father's father) were used to inherit property as 'bandhus' after all the agnates are exhausted, are now placed in the high place of order of succession.

CONCLUSION

Hence it is possible to conclude that the recent developments regarding the law of Hindu women's property rights has definitely enriched the possibilities of providing extensive rights on deserved property.

²⁷ ERAMMA v. VEERUPANA, AIR 1966 SC 1879

²⁸ AIR (1991) Ker.10