

PROPERTY RIGHTS OF HINDU WOMEN

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Abstract:

The half of the world population i.e. women had rarely gained equal treatment in respect of property rights under any religious law. Under Hindu law the unequal treatment was evident until the amendment of Hindu Succession Act, 1956 in 2005 which abolished the inequality between son and daughter of Hindu Mitakshara Coparcenary. Section 6 of the Hindu Succession (Amendment) Act, 2005 speaks that the chief objective of this Act is to provide equal rights to women in the matters of intestate succession and share in the joint Hindu family governed by the Mitakshara law. Daughter will be treated as a coparcener and shall by birth be subject to same right and liability in respect of the coparcenary property as those of a son. However it has to be mentioned here that after crossing of so many decades of the adoption of our constitution which mandates to impart equality and abolished disparity under article 14, the personal law such as Hindu Succession Act, 1956 is silent in providing equal justice in distribution of property between Hindu male and female. Hence it proves that though laws are available in letter but in spirit it still lacking behind.

The paper will primarily focus on the property rights of Hindu women. They are deprived from their legitimate claim in their own house from the property. Inequal treatment has been given to them relating to property.

Key words: *Intestate Succession, Mitakshara coparcenary, Hindu Succession Act.*

Introduction:

The Constitution of India guarantees equality of status and of opportunity to all citizens within the country, irrespective of the fact that whether they are male or female¹. It provides that the state shall not deny to any person equality before the law and equal protection of the laws within the territory of India and prohibits discrimination on the ground of sex, race, and place of birth etc². There is a growing and massive demand for making laws free from gender bias and to provide legal equality to all in every spheres of life. It mandates that women shall have equal rights and privileges along with men and that the State may make special provisions³ for the welfare of the women, whereas such practice is a far cry. The womenfolk are not getting what is their due and what they deserve except discrimination. They are depriving in many instances and the major one is that they are denying to have property rights in their natal as well as marital house from earlier ages. They are depriving more or less almost under all the major religion in this world. Hindu religious system too is not exception to this in applying depriving attitude towards women, being majorly patriarchal in its nature.

The gender inequality is in different facets which hamper the social upliftment of women at large in the form of domestic violence, rape, marital rape, female foeticide, forced abortion, uneven distribution of property. The main purpose of this study is to highlight the legal provisions relating to property rights of women under Hindu law and workability of the same in ground reality.

Rights of women under the International Laws:

There are many International Conventions and Declarations who supports the Property Rights of Women's. To protect the women's right to property the United Nations Organisation (UNO) stand at Zenith in Worldwide.

While considering that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human persona and in the equal rights of men and women and considering that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedom set forth therein without distinction of any kind, including any distinction as to sex, the United Nations has solemnly proclaimed by General Assembly resolution 2263 (XXII) of 7th November, 1967 as follows: (The relevant provisions)

- (1) Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.
- (2) All appropriate measures shall taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in

particular by embodied in the Constitution or otherwise guaranteed by law, the international instruments of the United Nations and the law specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

- (3) All appropriate measures shall be taken to educate people and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.
- (6) without prejudice to the safe guarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:
 - (a) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;
 - (b) The right to equality in legal capacity and the exercise thereof;
- (10) The principle of equality of rights of men and women demands implementation in all states in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.

Among the various Conventions and Declarations on the issues relating to discrimination on women The United Nation Convention on Elimination of All Forms of Discrimination⁴ against women, stood as major.

The Preamble of the Convention speaks among other things:

“Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacles to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.”

Article 16 of the very Convention states that the State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure on a basis of equality of men and women the same right to enter into marriage and the same rights of both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration.

India being a signatory of this Convention, has declared that it shall be abided by the provisions in article 15(1) and 16(2) and ensures these provisions in conformity with the principle of non-interference in personal affairs without the consent of any community.

Though these Conventions, Resolutions and Declarations try to protect the interest of female and to remove the disparity and gender bias including the women's right to marry, status in the family and right over property. But due to lacking of binding force on the member countries and implementing agency to enforce these international laws in the domestic fields, the rights made for women seems to becomes futile.

Legal Provisions under Different Legislations:

The Hindu Women's Right to Property Act, 1937:

It was the endeavour of the British rule that had started to bring the reformation in the then society, in context of discrimination and ill treatment imparted to women under personal laws. Accordingly they brought different laws, and this law is an instance thereof, main the provisions of this Act, i.e., the Hindu Women's Right to Property Act, 1937 applies to the separate property left by a Hindu male. This Act has reduced the gap between the Mitakshara⁵ system and Dayabhaga⁶ System to a great extent by conferring upon the widow of a member of an undivided joint family the right to inherit her deceased husband's coparcenary⁷ interest. And she will be able to enforce the right of partition in every case. In connection to the undivided interest of a person in Mitakshara joint family property, the Act provided that widow took the place of her husband. The quantum of her share will be equal to that of her husband subject to the provision that in all cases the interest taken by the widow was only a limited interest⁸. But before 14th April 1937, the widow inherited in default of a son, son's son or son's son's son and since the date along with them. Chastity was a condition precedent to her heritable capacity.

The Hindu Succession Act, 1956⁹:

To give better rights to Hindu women, Parliament in 1956 enacted the Hindu Succession Act with an intent to remove the distinction between the Mitakshara and Dayabhaga rules of inheritance and also divergent categories of Stridhana which were based upon the nature of the marriage whether approved or unapproved.

The significant provision of this Act is Section 14 which provided as:

- (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.
- (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.

Law Commission's Report¹⁰:

The law commission had suo motu taken up the subject of anomalies in the property rights of Hindu women relating to the laws of inheritance of property within the members of a Joint Hindu family. The Commission took the effort to make a qualitative study on women's right to property and at the same time amendments made by some states like Andhra Pradesh¹¹, Karnataka¹², Maharashtra¹³ and TamilNadu¹⁴ on the other. The Commission targeted to recommend for the equal distribution of ancestral property among both male and female heirs. Consequently a sea change has been made in the Hindu Succession (Amendment) Act 2005.

The Law Commission expressed its view that non inclusion of daughters in coparcenary property of a Mitakshara Hindu Joint family merely on the ground of their sex is unjust.

The Hindu Succession (Amendment) Act, 2005:

This Amending Act has made an attempt to abrogate the long standing discrimination contained in section 6 of the Hindu Succession Act, 1956. The amending act has provided under section 6 of it equal rights to daughter of the Hindu Mitakshara Joint family property as like the son is entitled. As per this amending Act, the daughter of a coparcener shall, by birth become a coparcener in her own right in the same manner as the son as an heir. She shall have the same right in the coparcenary property as she would have had if she had been a son¹⁵. She shall be subject to the same liabilities¹⁶ and disabilities in respect of the said coparcenary property as that of a son. Though in letters and the book of law it has been trying to remove the obstacles but in spirit it seems that to provide equal property rights to daughters merely is a non-functional doctrine.

Section 23 of the Hindu Succession Act, 1956 had said that where a Hindu intestate has left surviving him or her both male and female heirs specified in Class I of the Schedule and his or her property includes a dwelling house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling- house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein :

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

Again section 24 of the same provided that certain widow re-marrying may not inherit as widows. Any heir who is related to an intestate as the widow of a predeceased son, the widow of a pre-deceased son of a predeceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried.

However passing of the Hindu Succession (Amendment) Act, 2005 has omitted such discriminatory legal provisions which were done only on the basis of sex.

Observation:

There is a gap between the formal idea of women's right to property and their meaningful use in practice. Unwillingness of man to break the monopoly of patriarchy is emerging as obstacle in the path of giving equal right to property to women.

Socio - economic status plays a key role in changing attitude of people. People persuade to think according to their status, be it social or financial. In matters of distribution of property socio- economic status of intestate as well as of legal heir plays a significant role. By providing equal property right to daughters we can provide opportunity to womenfolk to elevate her status and also earnings thereof in the society.

Again there is lack of proper implementing agency in the field of equal distribution of property among son and daughters. Most of the married daughters sometimes find it difficult to institute suit in the court for want of equal distribution of property. Moreover legal awareness seems to be inadequate among the masses, resulting of not getting their entitlements.

Hence in such circumstances by way of creating legal awareness and speedy and available implementing agency can reduce the disparity to a considerable extent.

Conclusion:

The fair sex which is the half of world population is falling prey of unfairness and unjust treatment by the society. The economic unjustness towards female will not only disable the economic positing of woman folk but also it will consequently affect its male counterpart and the entire nation. It was much needed cries of time which our patriarchy dominated society has been denying from age old. However with initiative taken by United Nation Conventions on Elimination of All Forms of Discrimination against Women, 1979 invokes the signatory nation to think about the half

population and India has made the assurance by bringing amendments in the Hindu Succession (Amendment) Act, 2005, which focus to strengthen the position of Hindu female. Section 6 and section 14 of this Act will help the women folk to get their legitimate right as well as share in the property.

Notes and References:

1. Article 14 of the Constitution of India
2. Article 15 of the Constitution of India
3. Article 15 (4) of the Constitution of India
4. Adopted on 18th December 1979 and came into force in 1981
5. In this context it is a system applicable almost in all parts of India except Assam and Bengal, which is patriarchal in nature whereby son acquires the right to the property of the family and then son's son and son's son's son in exclusion of daughters.
6. This system is applicable in Assam and Bengal, where both son and daughter do not possess any right over the property during the life time of father, and after him they both have the right over the intestate property of their father.
7. It is joint family system under Hindu law.
8. It means not the absolute owner. Where husband dies as a coparcener leaving the wife under Hindu Women's Right to Property Act, 1937, she becomes a limited owner.
9. Came into force with effect from 17th July, 1956
10. 174th Report of Law Commission of India, vide D.O.No 6(3) (59)/99(LC) 9(LS), dated 5th May, 2000
11. The Hindu Succession (Andhra Pradesh Amendment) Act, 1986
12. The Hindu Succession (Karnataka Amendment) Act, 1994
13. The Hindu Succession (Maharashtra Amendment) Act, 1994
14. The Hindu Succession (Tamil Nadu Amendment) Act, 1989
15. Section 6(3) of the Hindu Succession (Amendment) Act, 2005
16. Section 6(4) of the Hindu Succession (Amendment) Act, 2005