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Tracing the root of women's property and recent developments under Hindu law

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This paper aims to trace the root of women's rights in property and analyze the recent developments under Hindu law. If we look at the history of mankind, we could see that women have always been considered inferior and discriminated against in every sphere of life be it home, workplace, etc. They have never been conferred equal place as to the men in society. On the other hand, our Indian constitution does not make any difference between men and women and provides equal rights to both of them. But in the case of inheritance of property women had not been provided equal rights to the male members of a joint Hindu family. Before the independence of India, two legislations dealt with the right to the property of women Hindu Law of Inheritance (Amendment), 1929, and Hindu Women's Right to Property Act 1937. Post-independence, the Indian Parliament passed the Hindu Succession Act, 1956 which deals with the right to Succession of property in Hindu undivided families wherein only male members have the right to enjoy coparcenary rights over the joint family properties by birth. Although as per section 14 of the Act, women had been given absolute ownership over their own property i.e., Stridhan. However, they were still ineligible to claim coparcenary rights over ancestral property which was completely discriminatory towards women. The said Act too was not immune from errors. This unfair and uneven gender discrimination was realized by the lawmakers and then they brought an amendment in this Act in 2005, whereby daughters were recognized as coparceners in the ancestral property by birth. Even then, there were remained many doubts regarding the inheritance of property by daughters in their parental properties which has been settled down by the judiciary in many cases. Now, both the daughters and the sons are entitled to enjoy the same and equal rights in obtaining ancestral as well as the self-acquired property of their parents.

Keywords: *women, discrimination, succession, ancestral property, coparcenary property.*

INTRODUCTION

India has always been a patriarchal society wherein women have always been treated in a discriminated manner. They have fought a long battle to achieve their rights in parental properties. They have never been given equal status in society as to the men and have always been discriminated against men and in every sphere of life, be it home, or workplace, or inheritance of property, etc.¹, and the same discriminatory nature towards women is reflected in our laws, too. Manu writes in his text Manusmriti, "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 independence²." However, this scenario is now gradually changing due to rising awareness, education, availability of global entities and social media to voice their physical and mental suffering, amendments in-laws to empower them, and proactive government policies to frame and implement gender-neutral laws have all come together to give women a hearing. Now women are possibly in a better position than before. For instance, Before the 2005 amendment, Hindu women have not conferred the right to inheritance the ancestral property which was contrary to the right of equality guaranteed under Article 14³ of the Constitution of India. However, Hindu women are now provided equal rights as to the men, on the property after the amendment made under the Hindu Succession Act in 2005⁴. The 174th Report⁵ of Law Commission of India also recommended adopting this reform in the Hindu Succession Act. Even before the 2005 amendment in Hindu Succession Act by the Central government, the four states had already introduced this change in their legislations and these states were Andhra Pradesh in 1986, Tamil Nadu in 1989, Karnataka and Maharashtra in 1994, and also,

¹ Riju Mehta 'Inheritance rights of women: How to protect them and how succession laws vary' (*The Economics Times*, 29 July 2019) <<https://economictimes.indiatimes.com/wealth/plan/inheritance-rights-of-women-how-to-protect-them-and-how-succession-laws-vary/articleshow/70407336.cms>> accessed 21 January 2022

² Debarati Halder & Jaishankar Karuppannan 'Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India' (2008) 24 (2) *Journal of Law and Religion*, 663-687

³ Constitution of India, 1950, art. 14

⁴ Hindu Succession Act, 2005

⁵ Law Commission of India, *Property Rights of Women:*

Proposed Reforms under the Hindu Law (Law Com. No. 174 2000)

<<https://lawcommissionofindia.nic.in/kerala.htm>> accessed 23 January 2022

Kerala had abolished the Hindu Joint Family System in 1975⁶. Many people are not aware of the fact that in respect to the provisions of succession in the Hindu code bill as originally framed by the B.N.(Benegal Narsing) Rau Committee, was abolishing the coparcenary concept under the Mitakshara school and son's right by birth in a joint family property which was taken down in the final bill due to the fierce opposition by the elected representatives. Later on, the Andhra legislature by following B. N. Rau Committee's recommendation conferred coparcenary rights by birth on daughters who were unmarried at the date of the enforcement of the Act. Instead of abolishing a son's right by birth in a joint family property, providing equal rights on daughters, this step strengthened it and eradicated gender discrimination in case of the inheritance of property⁷.

MEANING OF COPARCENARY UNDER THE HINDU JOINT FAMILY

A Hindu joint family is a wider concept than the coparcenary group. It consists of all people linearly descending from a common ancestor and wives and unmarried daughters of other family members. On the other hand, a coparcenary is a much smaller unit of the family that jointly owns the property. It consists of a 'propositus', that is, a person (from whom a line of descent can be traced) at the top of a line of descent, and his three lineal descendants- sons, grandsons, and great-grandsons. Coparcenary property or joint Hindu family property is the one that has been inherited by a Hindu male from his father, grandfather, or great grandfather. As we know that the property in coparcenary has been held as joint owners, and therefore the person who is not a coparcener, cannot demand partition of this property. Only a coparcener has the right to claim a partition/share from this property⁸. The term 'coparcenary' has been borrowed from common law but the concept exists under Hindu Law. The Mitakshara school

⁶ 'Right by Birth: On daughters and Hindu Succession Act' (*The Hindu*, 14 August 2020) <<https://www.thehindu.com/opinion/editorial/right-by-birth-the-hindu-editorial-on-daughters-and-hindu-succession-act/article32347299.ece>> accessed 24 January 2022

⁷ Amit Jain, 'Vineeta Sharma v Rakesh Sharma: Clearing the last hurdle towards gender equality in Hindu property law' (*Bar and Bench*, 24 August 2020) <<https://www.barandbench.com/columns/vineeta-sharma-v-rakesh-sharma-gender-equality-hindu-property-law>> accessed 25 January 2022

⁸ Apoorva Mandhani 'Daughter's equal right to ancestral property – here's what landmark SC judgment says' (*The Print*, 11 August 2020) <<https://theprint.in/judiciary/daughters-equal-right-to-ancestral-property-heres-what-landmark-sc-judgment-says/479728/>> accessed 26 January 2022

of law prevails in the whole part of India except Bengal and Assam. In this school, a male acquires the right to be a coparcener by birth.

THE TRADITIONAL POSITION OF WOMEN IN SOCIETY AND CHANGES IN SUCH POSITION THROUGH CODIFIED LAW

Under the Mitakshara school of law, the allocation of ancestral property is based on the rule of survivorship. Whenever a coparcener died in the joint family property or coparcenary property, his interest got merged with that of the surviving coparceners. Therefore, only by being or becoming coparceners, sons used to inherit property. To a great extent, this position of male coparceners was maintained under Section 6 of the Hindu Succession Act, 1956 enacted by the Parliament. Before the Hindu Succession Act, there were two major legislations during the British rule in India, namely, Hindu Law of Inheritance (Amendment), 1929, and Hindu Women's Right to Property Act 1937. These legislations conferred on daughters some limited rights of inheritance of property⁹.

Hindu Law of Inheritance (Amendment), 1929: During the colonial era, one of the earliest legislations which conferred inheritance rights on women in respect to intestate and non-coparcenary property was, the Hindu Law of Inheritance (Amendment), 1929. This Act dealt with inheritance rights among Hindus and conferred inheritance rights on women by adding the son's daughter, the daughter's daughter, and the sister as legal heirs and thereby creating a limited restriction on the rule of survivorship.

Hindu Women's Right to Property Act 1937: This Act brought revolutionary change and conferred the right to property on Hindu widows, upon the death of a husband who dies intestate. In such a case widow would be entitled to a limited share in her husband's property as to the son.

⁹ K. Venkataramanan, 'The Hindu Explain: What is coparcenary property in Hindu Law?' (*The Hindu*, 16 August 2020) <<https://www.thehindu.com/news/national/the-hindu-explains-what-is-coparcenary-property-in-hindu-law/article32364484.ece>> accessed 27 January 2022

THE CONCEPT OF JOINT FAMILY PROPERTY AND SEPARATE PROPERTY

Under Hindu law, the property has been divided into two heads:

- (1) Joint family property or coparcenary property, and
- (2) Separate property or self-acquired property

(1) Joint family property or coparcenary property

Joint family property or coparcenary property is that property in which each coparcener acquires a joint right or interest over such property by birth. Before the 2005 amendment under the Hindu Succession Act, only male members of a joint Hindu family used to have such rights, but now daughters too are entitled to enjoy the same right.

(2) Separate property or self-acquired property

Separate property or self-acquired property is property inherited from an ancestor or ancestress. It is also known as self-acquired property after the partition in the joint family property. Under Hindu law, it has a technical meaning. Inherited property may be:

- Property inherited from father, father's father, father's father's father
- Property inherited from a maternal grandfather, and
- Property inherited from any other relation

Most of our High Courts and even the Supreme Court held the view that since the Hindu succession Act has introduced a new set of heirs when a Hindu inherits the property from his father under section 8 of the Hindu succession act, he takes it as his separate property and not as joint family property.

CASE LAWS

Prakash vs Phulavati¹⁰: In this case, the Hon'ble Supreme Court held that the coparcenary rights under the amendment act of Hindu Succession Act, apply to living daughters of living coparceners irrespective of birthdate of daughters. It means the father (who was a coparcener in a joint Hindu family property) of a daughter has to be alive on the date of enforcement of amendment act i.e., 09.09.2005, and hence, the living daughter of a father (coparcener) would not have any right over joint Hindu family property as her father had already before the commencement date of 2005 amendment act.

Danamma @ Suman Surpur vs Amar¹¹: In this case, a Supreme Court bench of two judges consisting of justices A.K Sikri and Ashok Bhuwan had held that the daughter of a deceased Hindu male who was a coparcener in a joint Hindu family property, would be entitled to get an equal share even her father passed away before the commencement date of amendment act i.e., 09.09.2005. The Court also observed that the coparcenary rights on daughters were applicable in a retrospective manner and the legislature intended to confer equal rights on daughters to that of the sons since their birth in the family and thus Supreme Court overruled its earlier judgment given in the case of Prakash v Phulavati. But these two contrary judgments brought huge confusion among people and this confusion has been settled in subsequent cases.

Vineeta Sharma v Rakesh Sharma & Others¹² (2020) 9 SCC 1: In this case, a Supreme Court bench of 3 judges consisting of justices Arun Mishra, S. Abdul Nazeer, and Justice M. R. Shah had given a 121 pages judgment. The primary issue before the court, *in this case*, was whether daughters could exercise their right as coparceners if the father was not alive on the date of the amendment i.e., 09.09.2005. The court held that the daughters' right flows from their birth and not by any other factor such as the existence of their fathers. In other words, the Court refused the common misinterpretation that only daughters of coparceners who were alive on that day

¹⁰ *Prakash v Phulavati* AIR 2016 SC 769

¹¹ *Danamma @ Suman Surpur v Amar* (2018) 2 SCC 36

¹² *Vineeta Sharma v Rakesh Sharma & others* (2020) 9 SCC 1

shall be eligible to get an equal share in the property. it stated that the Hindu Succession (Amendment) Act, 2005 shall have a retrospective effect.

Arunachala Gounder vs Ponnuswamy¹³ 2022 Civil Appeal No. 6659 of 2011: In this landmark judgment on January 20, 2022, a Supreme Court bench of two judges consisting of Justices S. Abdul Nazeer and Krishna Murari gave its 51 pages judgment whereby it conferred on daughters not only the right to inherit ancestral property in preference over other members of the family in such a case where the father dies intestate but they would also be eligible to inherit their fathers' self-acquired property too.

CONCLUSION

In a country like India where the patriarchal notion is deep-rooted, the recent judgment of the Supreme Court to provide rights to daughters in their fathers' self-acquired property is a welcoming and progressive step. The Amendment to the Hindu Succession Act in 2005, was a huge step to eradicate patriarchal rule from joint Hindu family property and conferred economic freedom to the daughters and established their rights in the ancestral property even after getting married and becoming part of someone else's family. Even these rights to daughters provide them with a potential shelter in case of spousal violence or break down of marriage. Here, the judiciary has played a vital role in providing daughters equal rights in their parental properties to that of the sons, and thus Indian legislations are now gradually changing and progressing towards gender-neutral laws which is a landmark change in itself.

¹³ *Arunachala Gounder v Ponnuswamy* (2022)