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Inheritance Rights of Hindu women in Agricultural Property: A Critical Analysis

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In India, agricultural land is considered one of the most important resources as well as a status symbol. The Hindu Succession Act deals with the succession laws amongst Hindus however, the agricultural property was dealt with by the Succession Act, 1956 differently from the other property as the agricultural land is the domain reserved for the State legislature. However, the positions seem to have changed after the 2005 Amendment of the HSA, 1956, and the issue of the agricultural property was revived. In this paper, an attempt is made to analyse the impact of the 2005 Amendment Act of HSA, 1956, and what other issues of constitutional importance may arise because of the amendment. The paper starts with the core principles of succession under Hindu law, then it talks about the impact of the 2005 Amendment and its impact on the right to succeed by women with respect to agricultural property.

Keywords: *Hindu succession act, agricultural land, inheritance, Hindu law.*

INTRODUCTION

India is considered a country of villages and the Indian economy is still largely dependent on agricultural and rural economies. Agricultural land is one of the biggest assets of any rural

economy. It is also claimed by the theorists that the land is the only wealth that cannot be created, and fertile land is something that has the highest economic value. Thus, land ownership is something that is one of the very important factors in ensuring economic equality in society. If we look at the agricultural land ownership patterns in India, we find that the majority of the land belongs to the male population of the country.¹ Despite the fact that more than 70 percent of the rural women population is involved in the agricultural work they hold a meager 12.8% of agricultural land. Succession laws play a very important role in the redistribution of wealth and the creation of ownership rights. Generally speaking, testamentary succession rules provide an opportunity for a person to create a Will which becomes effective after his death. The Will is a mode to dispose of one's own property during one's lifetime in favour of any person. The title of the property passes to the person named in the Will at the time of death of the testator. The Will is an opportunity that provides a choice to the testator to dispose of his own property as per his or her choices in favour of any person(s). Apart from the testamentary succession, the law also deals with such situations where the person has failed to dispose of his property as per the rules available in the testamentary succession. In India, apart from the general succession law, which is contained in the Indian Succession Act, 1925, the succession law generally falls in the domain of the personal laws and there is diversity as per the religious denomination. Interestingly the succession laws belonging to one religious denomination are substantially different from another religion. In this paper, an attempt has been made to analyse the Hindu law relating to succession in the context of agricultural land. The second part of the paper deals with the core principles of Hindu law relating to succession and various landmarks in terms of legislative interventions and their impact on the rights of Hindu women on agricultural land. The third part deals with the impact of the 2005 Amendment Act of the Hindu Succession Act and the legislative gap which has been created. The fourth part deals with the various causes and the arguments which may be the core concerns of the debate and suggestions for the improvement of the law.

¹ Shreya Raman, '73.2% Of Rural Women Workers Are Farmers, But Own 12.8% Land Holdings' (*India Spend*, 9 September 2019) <<https://www.indiaspend.com/73-2-of-rural-women-workers-are-farmers-but-own-12-8-land-holdings/>> accessed 10 April 2022

SUCCESSION UNDER HINDU LAW: CORE PRINCIPLES

As discussed earlier personal laws also contain rules relating to intestate succession so that in case a person does not create the Will before death then the property belonging to the repository may devolve as per such rules. A brief survey of the personal laws dealing with the succession related rules provides an insight that these rules relating to intestate succession, across all the religions are predominantly favour the males of the family.² If we talk about ancient Hindu law, we find that there is a lot of diversity within it. There are two schools *Mitakshara* and *Dayabhaga* schools. The former has various sub-schools and is prevalent in most of the Indian Territory and the latter is prevalent in the eastern part of the country, i.e., Bengal and Assam. These schools are based on the commentaries which interpreted the Smritis and Srutis in different manners.³ It is to be noted that the current statutory law which deals with the matters relating to succession does not be comprehended without the proper understanding of the ancient Hindu law as there are various aspects dealt with in the statutory provisions which are directly connected to the ancient institutions and practices. Hindu succession law, which is also applicable to Sikhs, Jains, and Buddhists,⁴ is based on and recognises the ancient and unique institution of joint family.⁵ Membership of an individual in a Joint Hindu Family (JHF) was one of the first considerations to determine the inheritance related rights in ancient times. JHF is still very much an important factor that affects the rights and liabilities of individuals for the purposes of succession.⁶ JHF is a statutorily recognised institution and in the case of Hindus, it is a presumption that the person belongs to a JHF.⁷ The membership of the JHF can be obtained through only three methods i.e. by birth, marriage, and adoption.⁸ There are no other methods of obtaining membership in this unique institution.

² Poonam Pradhan Saxena, 'Reinforcing Patriarchal Dictates Through Judicial Mechanism: Need to Reform Law of Succession to Hindu Female Instates' (2009) 51 (2) Journal of the Indian Law Institute, 221-236
<<http://www.jstor.org/stable/43953440>> accessed 10 April 2022

³ Debarati Haider & K. Jaishankar, '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
<<https://www.jstor.org/stable/25654333>> accessed 10 April 2022

⁴ Hindu Succession Act, 1956, s 2

⁵ Sir Dinshaw Fardunji Mulla, *Mulla Hindu Law* (21st edition, Lexis Nexis 2021) 101-108

⁶ *Ibid*

⁷ *Ibid*, 317

⁸ *Ibid*

The members of the JHF consist of all the descendants of the common male ancestor, the wives of all the descendants of the common male ancestor, and the children adopted by any of the members of the joint family.⁹ There was no limitation on the number of members comprising a JHF.¹⁰ There is a presumption that a family is an HF unless the contrary is proved.¹¹

Another important institution within the JHF was the institution of the coparcenary. The coparcenary was an institution that comprised only the male members of the common ancestor up to five generations, including the common ancestor. JHF is an institution that consisted of unlimited numbers of members descending from the common male ancestor and the relations from marriage and adoption. Therefore, within the bigger institution of JHF, there was another smaller institution of coparcenary the membership of which was restricted to only five generations. If all members of the oldest generations died, the coparcenary would comprise the next generation i.e. the sixth generation.¹² The institution of coparcenary restricted the devolution of the property only to a specific number of male members of the family based on the rule of consanguinity. It also provided that the closer a male relative in terms of blood relation, the higher the chances of him succeeding as inheritor with the rule of survivorship. If the intestate belonged to the JHF as coparcener then his share in the JHF property devolved by the rule of survivorship in ancient times. The rule of survivorship was applicable in succession. Therefore, in case of the death of any coparcener in the joint Hindu family, the surviving coparcener succeeded to the property. The survivorship made the family property inheritance share fluctuate and it was never fixed unless any of the coparceners asked for the partition of the JHF. Thus, in case of death, the tentative share of a coparcener increased and in case of birth of a coparcener, the tentative share decreased.¹³ Once the partition is demanded by the coparcener the share became fixed at the same moment. As per the *Shastric* law, the common ancestor or the senior-most male member of the JHF was given the responsibility of performing the duty of *Karta* of the family, who was required to manage the internal as well as external affairs of the family with the responsibility to take care the needs and requirements of

⁹ *Ibid*, Chapter 12

¹⁰ *Ibid*

¹¹ *Ibid*

¹² *Ibid*, 343-345

¹³ *Ibid*

all the members of the JHF. He represented the family in all matters be religious, social, financial, or political. As he was the senior-most male member of the family, it is obvious that he was also the coparcener. As per the statutory provisions prevailing today,¹⁴ the death of the coparcener will lead to the deemed partition of the JHF and then the share of the intestate coparcener would devolve as per the succession rules applicable. Further, any property of an intestate, which is self-acquired property then the same shall devolve as per the rules of succession as per the applicable law relating to succession. Inroads have been made into the institution of the coparcenary. The ancient law allowed only males to be members of the coparcenary. However, the statutory law has provided that now the daughters of coparceners are also deemed as coparcener¹⁵ and all the rights and liabilities attached with the status of the coparcener is also applicable to the daughter of the coparcener.¹⁶ Thus, the rights and obligations of all the members were not the same in the JHF. Hindu law recognised that those who can offer the last rites to the deceased are the ones who are entitled to succeed. If we look at the ancient texts dealing with Hindu laws, we find that the pious obligations and the spiritual benefit of the ancestor are primarily given to the male descendants of the family based on blood relations. The nature of the property also impacted the devolution of the property. If the property was JHF property then the property devolved by the rules of coparcenary and survivorship. However, if the coparcener had obtained the partition and at the time of his death his status was of separated one then the property became his sole property and devolved as per the rules of succession to the heirs. Yet, if the person who had obtained the partition was having a son or any other male descendants, then the property obtained after the partition was considered JHF property for the purposes of the smaller joint family of the father and son.

HINDU WOMEN'S RIGHTS UNDER HINDU SUCCESSION LAW

The Ancient Hindu law with respect to the rights of women with respect to succession is an interesting journey of conflicting prescriptions, commandments, and practices. Women were

¹⁴ Hindu Succession Act, 1956, s 6(3)

¹⁵ Hindu Succession Act, 1956, s 6

¹⁶ *Ibid*

not considered capable of being given freedom. The unmarried women had no right to hold any property. However, the *Karta* was responsible for taking care of the needs of all the members of the JHF and he was also responsible to arrange the expenses for the marriage of the daughter. At the time of marriage, generally, the daughters were given certain gifts which could also include immovable property. These gifts were considered *Stridhan* (property of women). However, it is to be noted that as the women were not given freedom so the control over the women as well as her property vested with the husband, in general.¹⁷ It is argued that the limited ownership given to the women over the property was a tool devised by the males to protect the property going into the hands of the other communities rather than recognising the right of the women to hold property.¹⁸ This practice is also associated with various types of socio-economic crimes against women.¹⁹ However, the 1956 Act provided rights of succession to women under various capacities such as mother, daughter, wife, and other relations. However, the practical effect of the same was negligible. Therefore, the 1956 Act was amended in the year 2005 to make it more effective. The amendment inserted various women relatives in the list of Class I heir as well as in other classes. However, one of the most interesting amendments was related to a change in the position with respect to agricultural property. The said change is discussed in the next part of the paper.

SUCCESSION LAWS AND AGRICULTURAL PROPERTY

Devolution of rights in acquired and inherited property has been a subject of personal laws of different communities. The Hindu Succession Act, 1956 (hereinafter, HSA, 1956) came into force on 17th June 1956. The object of the Act was to amend and codify the law relating to intestate succession among Hindus. Despite the object of codification, the agricultural property was purposely left out of the ambit of application of the HSA, 1956.²⁰ The reason for this exclusion lay in the legislative competence with respect to 'agricultural land' which falls exclusively under the State List as per entry 18. So, while Sections 4(1)(a) and (b) gave an overriding effect to the application of HSA to all other pre-existing laws, the agricultural land,

¹⁷ Debarati Haider & K. Jaishankar (n 3)

¹⁸ *Ibid*, 672

¹⁹ *Ibid*, 671

²⁰ Hindu Succession Act, 1956, s 4(2)

by virtue of Section 4(2) was specifically exempted. Therefore, the HSA, 1956 was not applicable in case the inheritance property was agricultural land. The land laws of respective States were to apply. This led to anomalous situations where the land law dealt with the inheritance of agricultural land, the inheritance devolved as per the State law relating to agricultural land. On the other hand, in States where the land laws were silent on rules of inheritance, HSA applied by default. Post the 2005 Amendment which omitted Section 4(2), the question arose whether the separate rules of inheritance were so convenient for the sake of proper administration, then what was the need to delete it? To be able to reach an answer to it, we need to look back at the State tenancy laws according to which the ownership of land is concentrated mostly in male hands in the patriarchal set-up of the Indian society.

The rules provided in the State's tenurial laws were highly gendered and unequal. Especially in the States like Delhi, Punjab, Uttar Pradesh, Haryana, Himachal Pradesh, Jammu, and Kashmir, the primacy was given to male lineal descendants and women came very low in the order of heirs. In some states, women were totally excluded from ownership rights. We are aware that India is primarily agrarian and the contribution of women, both as workers and farm managers, cannot be overlooked. With more men moving to non-farm jobs, there has been an increased feminisation of agriculture in the last two decades. The lack of entitlement to land due to unequal laws acted as a severe impediment for women cultivators. In absence of titles, women were unable to get credit or be entitled to irrigation and other inputs, especially technology. The contours of law and the customs must undergo a change with the march of time. The rule of law envisages the establishment of a uniform pattern for harmonious existence in society. Gender must not become an obstacle to enjoying social, economic, political, and cultural rights. This was the very concern of the Law Commission while making recommendations in its 174th Report on "Property Rights of Women- Proposed Reform under Hindu law". The primary aim was to remove the gender inequalities which existed in the present HSA, 1956. In the light of the recommendations made in the 174th Report, the Hindu Succession (Amendment) Act was enacted in 2005 which came into force on 9th September 2005. The major achievement of the Amendment Act was providing females with coparcenary rights at par with the males. The other significant amendment is the deletion of the gender

discriminatory Section 4(2) of the 1956 Act which offered implied protection to the unequal State land laws dealing with inheritance.

The result of the omission of Section 4(2) was that the protection of the shield from obliteration which the Section provided has now been removed. The Act brings all the property including the land which is agricultural land at par. Thus, there is no more difference between agricultural land and other types of property. The land which is used for agricultural purposes shall not be given any differential treatment and the same is to be considered just like any other property for the purposes of succession. The impact is that it allows the women to claim inheritance rights in agricultural land equal to men, across States. And any other law is overridden as being inconsistent with the law of the Parliament. Thus, HSA with all its favourable amendments was now applicable to Hindu women in their agricultural property. The 2005 Act gave a severe blow to the patriarchal structure of HSA bringing about equity and parity. However, by the omission of Section 4(2), confusion has been created as the Legislature did not provide any express provision which stated or confirmed the application of the HSA to the agricultural property, over and above any State law, that also deals with same. Another confusion lies with the respect to the conflict between the Centre and the State legislations as inheritance falls under the concurrent list while the land is a State subject. While Article 254 of the Constitution gives primacy to the Central legislation in cases of conflict, Article 256 provides that the Centre must be competent to legislate on it.

These confusions were brought to the notice of the Court in a writ petition filed in Delhi High Court in 2007 in the case of *Nirmala & Others v Govt. Of NCT of Delhi & Others*²¹ which was finally decided in 2010. Herein, Section 50²² of the Delhi Land Reform Act, 1954 (hereinafter, DLRA, 1954) which provided for rules of inheritance was challenged to have become void by virtue of omission of Section 4(2) which implied application of HSA post-2005 amendment in its place.

²¹ *Nirmala & Others v Govt. Of NCT of Delhi & Others* (2010) Writ Petition (Civil) No. 6435/2007

²² Delhi Land Reform Act, 1954, s 50

In this case, the agricultural land in dispute belonged to Late Shri Inder Singh who died on 15th December 2006 leaving behind the families by his two marriages. The petitioners were the widow and two minor daughters from the second marriage while the respondents are the two sons and one daughter from the first marriage. The petitioner, Nirmala Devi, had first filed an application to the *Tehsildar* on 5th February 2007 which was refused with regard to Section 50, DLRA. Next, she went to the *Panchayat* on 12th February 2007 wherein it was unanimously decided between the parties that 1/3rd share of the land would be allotted to the petitioner. Even after this decision of *Panchayat*, the step-sons caused continuous hindrances to the petitioner. She had also filed an application to the SDM and the Deputy Commissioner in this regard but it was not entertained. Failing all attempts, she finally filed the writ petition in the High Court of Delhi. The main issue in the case was whether the Amendment Act has the effect of repealing Section 50, DLRA as deletion of Section 4(2) of HSA removes the immunity which DLRA had with respect to the laws of succession in agricultural land. Section 50, DLRA provides the rule of succession in case a *Bhumidari* or an *Asami* dies intestate. In such a case, the primary right of inheritance was vested in only male members of the family with respect to agricultural land. The female members were altogether excluded to succeed in such property when there was the presence of male lineal descendants. Thus, the provision of Section 50 of the DLR Act is such that it is in contradiction with the Hindu Succession Act.

Section 4(1) of the HSA clearly spells out that:

“any other law in force immediately before the commencement of the HSA would cease to apply to Hindus in so far as it was inconsistent with any of the provisions of the HSA.”

By virtue of this, the provision as contained in DLR Act would have the effect of being eclipsed as it would cease to apply to Hindus in matters of inheritance. Therefore, the protection or shield which was available earlier stands eclipsed and now the relevant provision is directly hit by the HAS express provision.

The Court in the above case finally opined that the rule of succession as prescribed in the Hindu law as contained in the HSA is given shall be applicable as opposed to the rule which is contained in the DLR Act.

CONCLUDING REMARKS

Though the case has given the pro-women judgment in the case, however, it has to be remembered that the issue does not settle merely by the judgment. There are various issues that emerge because of the judgment, these are whether the Parliament has the power to affect the provisions dealing with agricultural property by way of amendment in the succession laws. It is to be noted that the agricultural land is the exclusive subject matter of the State on the other hand the succession is to be found in the concurrent list. In such a scenario, it is difficult to guess which rule of interpretation of the constitution shall be applicable. It shall be interesting to know if the Courts in the future will utilise the pith and substance doctrine or the repugnancy rule of harmonious construction. These are the questions that are to be answered by the Apex Court in the recent future. There have been various benefits to the omission of the gender discriminatory clause from the HSA as it has now provided women cultivators with ownership rights. They can now deal with the property in the manner they like i.e., they can either lease out the property to their family or someone else to cultivate in case of migration due to marriage. This has given women a sense of economic security, howsoever small. She can now return to her home of birth in case the marriage breaks down and not on the sufferance of relatives. This will enhance her self-confidence and social worth and give her greater bargaining power for herself and her children, in both parental and marital families. Thus it can be said that the 2005 Amendment Act certainly is a big step taken by the Legislature in amelioration the status of women. The task is still incomplete as the implementation has been rough and patchy. The women are either unaware of their newly gained right or they knowingly relinquish their share in the name of their brothers. There are women who want to contest their rights but are prevented due to pressures built by the moral custodians of society. It is difficult for the patriarch to be adjudged at par with the females of the family who have long been assigned a subjugated status. This is where the whole

discussion of assigning equal 'rights' to women narrows down to. The legislature has done its task and now it is the society that has to move forward to enable the establishment of an equitable society.