

The Evolution and Transformation of Women's Rights in India

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The United Nation's Report in 1980 displayed that -"Women constitute a large portion of the world's populace, work for about 66% of its time and only get one tenth of the world's pay and under one hundredth of the property." The Hindu woman's position is not very different. Despite the fact that a woman in a Hindu family relished a respectable status regarding upbringing in the family, she was a disregarded individual with reference to property holdings. A lot like those of women of some other nations, the property privileges of Hindu women have developed out of an on-going struggle between the general population supporting the old norms and the persons pushing the dynamic corrections. There is no single body of property privileges of Hindu women. Their property rights get decided relying upon which religion and religious school she takes after, whether she is married or not, which part of the nation she originates from, whether she is tribal or non-tribal, and so on and so forth.

Earlier, women were entitled to hold only two kinds of property, namely "stridhana" and "women's estate", but the share of property held by her was always a lot lesser than that held by a Hindu male. Stridhana was the total property of a Hindu woman over which she had full powers to alienate, sell, gift, mortgage or lease throughout her life, but certain restrictions were imposed on her power, if she was married. On her death, all types of stridhana passed on to her own heirs. The property of which a Hindu woman was a limited owner comprised her limited estate or women's estate or widow's estate. The Hindu female owner had limited power of disposal. She couldn't ordinarily alienate the corpus except for legal necessity, benefit of estate and for religious duties. On her death, her estate devolved upon the heir of the last full owner known as "reversionary", who could be either a male or a female. Hence, since time immemorial the laws have been made solely for the advantage or benefit of man, and woman has been dealt with as menial, and subject to male support.

A few institutions were made in the pre-independence India overseeing the Hindu woman's entitlement to property. In any case, the position of women did not progress. After the failure

of the piecemeal legislations, Hindu law relating to property rights of women remained static and discriminatory for a long time. With the coming of independence, the Constitution makers in India took note of the harsh discrimination bolstered against women, thereby depriving them of social and economic justice and gender equality as envisaged in the Preamble to the Constitution of India, Fundamental Rights in Part III (Articles 14, 15, 16), Directive Principles of State Policy in Part IV (Articles 38, 39, 39A, 44) and Fundamental Duties in Part IVA [Article 51 A (e)]. Be that as it may, after the authorization of the Hindu Succession Act, 1956 and its consequent alteration by the Hindu Succession (Amendment) Act, 2005, the position of a Hindu lady with reference to her right to property has significantly moved forward.

Before the Hindu Succession Act, 1956, shastric and traditional laws that differed from one region to another, represented Hindus and often it differed in the same area, based on caste, thereby bringing about an assortment of laws. Similarly, in matters of succession too, there were distinctive schools, as Dayabhaga in Bengal and the neighbouring areas; Mayukha in Bombay, Konkan and Gujarat and Marumakkattayam or Nambudri in Kerala and Mitakshara in different parts of India with slight changes. The variety of succession laws in India, assorted in their temperament, due to their different origins made the property laws even more complicated. Earlier, a woman in a joint Hindu family, comprising both of men and women, had a privilege to sustenance, yet the control and responsibility for property did not vest in her. In a patrilineal framework, similar to the Mitakshara school of Hindu law, a woman was not given an inheritance in the family property like a male child/son.

The earliest piece of legislation bringing females into the inheritance scheme is the Hindu Law of Inheritance Act, 1929. This Act, gave inheritance rights to three female beneficiaries, i.e., child's girl, little's girl and sister (thus making a constrained confinement on the guidelines of survivorship). Another landmark legislation bestowing proprietorship rights on women was the Hindu Women's Right to Property Act (XVIII of) 1937ⁱ. This Act realized progressive changes in the Hindu Law of all schools, and acquired changes in the law of coparcenary as well as in the law of partition, alienation of property, inheritance and adoption.ⁱⁱThe Act of 1937 empowered the widow to succeed alongside the son and to take a share equivalent to that of the son. Be that as it may, the widow did not turn into a coparcener despite the fact that she had a privilege much the same as a coparcenary interest in the property and was also a member of the joint family. The widow was qualified just for a limited estate in the property of the expired/deceased with a privilege to claim partition.^{iiiiv}A

daughter still possessed no inheritance rights. Notwithstanding these enactments having acquired vital changes in the law of succession by giving new privileges of succession on specific females, these were still observed to be incomprehensible and damaged in numerous regards, gave rise to various inconsistencies and left untouched the fundamental elements of discrimination against women. These enactments now stand cancelled.

The framers of the Indian Constitution observed the unfavourable and prejudicial position of women in the society and took extraordinary care to guarantee that the State found a way to give them equivalent status. Articles 14, 15(2), (3) and 16 of the Constitution of India, in this matter, not only hinder oppression of women, but also in suitable circumstances give a free hand to the State to give protective favouritism towards women. These procurements/enactments are a part of the Fundamental Rights ensured by the Constitution. Part IV of the Constitution contains the Directive Principles which play a crucial role in the administration of the State and inter alia additionally provide that the State should endeavour to guarantee equality between men and women. Despite these established commands/mandates given over fifty years prior, a woman is still neglected in her own natal family and also in the family she weds into due to conspicuous negligence and unjustified infringement of these procurements by a portion of the personal laws. Pandit Jawaharlal Nehru, the then Prime Minister of India communicated his unequivocal commitment to complete changes to uproot the incongruities and handicaps endured by Hindu women.^v

As an outcome, notwithstanding the resistance of the orthodox segment of the Hindus, the Hindu Succession Act, 1956 was authorized and came into drive on 17th June, 1956. It applies to all Hindus including Buddhists, Jains and Sikhs.^{vi} It sets out a uniform, complete and comprehensive arrangement of inheritance and applies to those governed both by the Mitakshara and the Dayabhaga Schools and furthermore to those in South India governed by the Murumakkattayam, Aliyasantana, Nambudri and different frameworks of the Hindu Law.

For a large portion of a century since the passing of the Hindu Succession Act, 1956, there has been broad conviction that under Hindu personal law, daughters are equivalent to sons. This conviction depended on Section 10 of the Act managing the conveyance of property of a Hindu who has passed away without making a will, alluded to as "intestate" in law. The provision distinctly proclaims that property is to be appropriated/distributed equally among Class I beneficiaries (heirs), as stated in the schedule.^{vii} The schedule unmistakably sets down daughters, mothers and widows as Class I beneficiaries entitled for a share equivalent to that

of sons. This, though apparently an immense stride for gender equality, was truth be told more a sleight of hand. The wickedness lay in customary Hindu law and the idea of Mitakshara coparcenary property. A Hindu joint family comprises a common ancestor and all his lineal male relatives (descendants), together with wives or widows and unmarried daughters. The presence of a common ancestor, important to bring a joint Hindu family into presence, proceeds even after the demise of the ancestor. Upper connections are uprooted and lower ones are included; the joint family can proceed uncertainly. But on account of selection, no outsiders are allowed and membership in the joint family is by birth or marriage to a male member. A Hindu joint family is a unit and is represented by the Karta or Head. The Hindu Succession Act, 1956 retained the coparcenary. Actually, Section 6 particularly proclaims that, on death, the interest of a male Hindu in Mitakshara coparcenary property shall devolve by survivorship to different individuals from the coparcenary and not by succession under the Act. In any case, it set out that the separate share of the deceased, calculated through the device of a regarded partition just before his passing, would lapse as per the Succession Act. The Act did not clearly delineate the ramifications of exclusion from participation to the coparcenary in regard of inheritance of property. In this manner, if a widowed Hindu male passed on leaving a child and a little girl, then, as per the clarification in Section 6 of the Act, there will be considered to be a partition just before the demise of the individual. In this regarded or "notional" partition, the father and son share equally and each gets a large portion of the property. The father's half will be shared equally by his son and daughter as Class I beneficiaries. Basically, along these lines, the daughter gets one-fourth of the property, while the son gets his own half from the deemed partition as a coparcener and an extra half from the share of his father. Together that would be three-fourths of the property. It is this disparity in son and daughter that has now been removed by the amendment.

In 1975 a "Committee on the status of Women" was constituted by the Government of India, to assess the current legal provisions as to women, so that that a woman is not left totally dejected. The said Committee made different suggestions concerning the privileges of Hindu, Muslim and Christian women. With regards to succession to property among Hindus, the Committee made, inter alia, the accompanying recommendations^{viii}:

- i) The right by birth ought to be cancelled and the Mitakshara Coparcenary ought to be changed over into Dayabhaga (the maintenance of Mitakshara Coparcenary

propagates inequality in the middle of sons and daughters as only sons can be coparceners, and inheritance is just through the male line).

- ii) The exception given in Section 4(2) of the Hindu Succession Act identifying with devolution of tenancies ought to be nullified (this procurement, the way things are currently rejects devolution of tenancy rights under different State Laws from the scope of the Act).
- iii) The discrimination between of married and unmarried daughters with respect to right of inheritance of dwelling houses brought on under Section 23 of the Hindu Succession Act ought to be uprooted.
- iv) The privilege of testation ought to be restricted under the Hindu Succession Act, such that female beneficiaries are not denied of their inheritance rights.
- v) In marital property, lawful acknowledgment ought to be given to the monetary estimation of the support provided by the wife via household work for purposes behind deciding ownership of property, rather than proceeding with the obsolete test of real financial commitment;
- vi) On separation or divorce, the wife must be qualified for no less than 33% of the assets procured during or at the time of marriage.

The National Commission for Women additionally prescribed certain alterations in laws with regards to women and property. The proposal in a nutshell was as per the following:

- a) There ought to be equality in the distribution of not just separate or self-procured properties of the deceased male but also of their undivided interests in coparcenary property;
- b) Daughter of a coparcener in a Hindu joint family governed by Mitakshara Law to be coparcener by birth in her own privilege in the same way as her son;
- c) Daughter ought to have right of claim by survivorship and to have same liabilities and inabilities/disabilities as a son;
- d) Coparcenary property to be divided and allotted equally.

A noteworthy impression, in this circumstance, was made by the Hindu Succession [Andhra Pradesh] Amendment Act, 1985, which started a progressive advancement.^{ix} This law expressed that, in any circumstances, the privileges and rights of the daughter are equivalent to that of the son. This new law found the Mitakshara framework violating the fundamental

right of equality bestowed on women by the Indian Constitution. Taking after Andhra Pradesh, the States of Tamil Nadu, Maharashtra and Kerala in this way additionally altered their laws by including women as individuals from the coparcenaries.

Perceiving such different abnormalities, the Law Commission^x in compatibility of its terms of reference, which, inter alia, oblige and engage it to make suggestions for the removal of peculiarities, ambiguities and disparities in the law, chose to attempt an investigation of specific provisions with regards to the property privileges of Hindu women under the Hindu Succession Act, 1956. The Law Commission was worried with the inherent discrimination in the Mitakshara Coparcenary under section 6 of the Hindu Succession Act, 1956 as it comprises on just male members. The Commission's fundamental aim was to end the gender discrimination that was evident in the said section 6 of the HSA, 1956. The Law Commission made an expansive investigation of section 6 of the HSA, 1956 and the Hindu Succession State (Amendment) Acts of Andhra Pradesh (1986), Tamil Nadu (1989), Maharashtra (1994), Karnataka (1994) and the Kerala Joint Family System (Abolition) Act, 1975. The mentioned study resulted in the establishment of the Hindu Succession (Amendment) Act, 2005.

The Hindu Succession Act, 1956 was altered by the Hindu Succession (Amendment) Act, 2005 which came into force from ninth September 2005. The Amending Act substituted section 6 of the Act.^{xi} The statement of questions and reasons attached by the Legislature while moving this amendment was as per the following:

Section 6 of the Act manages devolution of interest of a male Hindu in coparcenary property and perceives the rule of devolution by survivorship among the coparceners. The maintenance of the Mitakshara coparcenary property without incorporating the females in it implies that the females can't inherit in the ancestral property as their male partners do. The law by barring the girl from taking part in the coparcenary proprietorship not just adds to her separation on the ground of sex additionally has prompted persecution and invalidation of her key right of correspondence ensured by the Constitution having respect to the need to render social equity to ladies, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have rolled out fundamental improvements in the law giving equivalent right to little girls in Hindu Mitakshara coparcenary property. The Kerala Legislature has ordered the Kerala Joint Hindu Family System (Abolition) Act, 1975. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equivalent rights to daughters in the Hindu Mitakshara coparcenary property as the sons have.

Mayne's 'Hindu Law and Usage' describes the scope of the Amending Act as under:

'The Hindu Succession (Amendment) Act, 2005 has substituted S. 6, w.e.f. 9-9-2005. With effect from this date, the devolution of interest in the coparcenary property shall be governed by this Section. In a Mitakshara joint Hindu family, 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.'^{xii}.

Nonetheless, even after the passing of the Amending Act and substitution of section 6, various inquiries were brought up in the legal circles in respect to whether the Amending Act was retrospective or not and whether a daughter conceived before coming into force of the Amending Act i.e., ninth September 2005 was qualified for benefits under the newly formed section 6 of the Act. There were conflicting perspectives and contradictory contentions.

The recent judgment of the Full seat of the Bombay High Court has settled on four inquiries of significance in this connection by alluding to different judgments of the Supreme Court and additionally judgments of House of Lords and Court of Appeal.^{xiii}

In a landmark judgment dated 14/08/2014, the Full bench of the Bombay High Court in bunch of 12 appeals grouped under Second Appeal No. 566/2011 decided the following issues^{xiv}:

1. Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 is prospective or retrospective in operation?

Held: Section 6 as amended by the 2005 Amendment Act is retroactive in nature meaning thereby the rights under Section 6(10)(b) and (c) and under sub-rule (2) are available to all daughters living on the date of coming into force of the 2005 Amendment Act, i.e. 09/09/2005, though born prior to 09/09/2005. Obviously, the daughters born on or after 09/09/2005 are entitled to get the benefits of amended section 6 of the Act under clause (a) of subsection (1). In other words, the heirs of daughters who died before 09/09/2005 do not get the benefit of amended section 6.

2. Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies to daughters born prior to 17/06/1956?

Held: Amended Act applies to daughters born prior to 17/06/1956 provided they are alive on 09/09/2005, i.e. the date of coming into force of the Amendment Act, 2005.

3. Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies to daughters born after 17/06/1956 and prior to 09/09/2005?

Held: Amended Act applies to daughters born after 17/06/1956 but before 09/09/2005 provided they are alive on 09/09/2005, i.e. the date of coming into force of the Amendment Act, 2005.

4. Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies only to daughters born after 09/09/2005?

Held: The Amended Act applies to daughters born on or after 09/09/2005.

Similar view was taken by the Orissa High Court in Pravat Chandra Pattnaik and Others vs. Sarat Chandra Pattnaik and Another and by the Karnataka High Court in Sugalabai v. Gundappa A. Maradi and Others.

Many legal reforms have happened since independence in India, including on equivalent share of daughters to property. Yet, equality stayed illusive. Foundation of laws and bringing practices in similarity thereto is fundamentally a long process. The administration, the law making body, the legal, the judiciary and civil society needs to perform their separate parts, each in their own particular zones of skill and in a deliberate way for the procedure to be expedient and viable. To cite Hon'ble Justice Sujata V. Manohar of Supreme Court of India "...It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society."

A reference to The Convention on the Elimination of all Forms of Discrimination against Women (the CEDAW Convention), which is a human rights treaty for women will be

pertinent.^{xv} The UN General Assembly received the CEDAW Convention on 19th December 1979. It came into force as a bargain on third September 1981; thirty days after the twentieth member nation became a States party to it. CEDAW is a standout amongst the most profoundly endorsed universal human rights conventions, having the backing of 185 States parties. This is one of the numerous advantages of the CEDAW Convention; it can remain as an arrangement that has accomplished a worldwide agreement and along these lines mirrors the standardizing models material to women's human rights. India has marked the bargain on 9th July, 1993. The delighting trend is that the Indian courts are progressively depending on universal principles got from different worldwide presentations and traditions. In particular, CEDAW has been alluded to and depended upon by the Supreme Court in a few judgments, viz. *Madhu Kishwar and others v. State of Bihar and others* (1996) 5 SCC 125; *Visakha and others v. State of Rajasthan and others* AIR 1997 SC 3011; *Githa Hariharan v. RBI*, AIR 1999 SC 1149. ^{xvi}The line of these judgments provides a strong premise for the women in India to request gender equality and equivalent rights keeping pace with worldwide standards.

Nonetheless, it is important to comprehend that if equality exists just as a marvel inside the four dividers of a High Court or Supreme Court and outside the mindfulness and endorsement of most of the general population, it can't be acknowledged by an area of women associated in customs of inequality. Along these lines there is a need to have social awareness and to instruct individuals to change their state of mind towards the idea of gender equality. There is a great need to focus on changing the social attitudes in favour of equality for all by ordering a uniform law. The troublesome question of actualizing the 2005 Act remains. Battling for legal education, endeavours to upgrade social consciousness of the favourable circumstances to the entire family if women claim property; and lawful and social guide for women looking to affirm their rights, are just a couple of the numerous strides expected to satisfy the change consolidated in the Act. The Judiciary and the civil society everywhere need to assume a critical role in accomplishing this objective.

Despite the fact that Judiciary has ruled in favour of gender equality, in a nation where often the female foetus is prematurely ended, it will be a huge undertaking and can't be tended to by any judgment of a Full Bench of a High Court or the Supreme Court in its genuine sense.

References

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- ^v The Hindu Code Bill of 1948 controversy
- ^{vi} The Hindu Succession Act, 1956 (30 of 1956) - Commentary by National Commission for Women, India
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