



RESEARCH ARTICLE

AN ANALYTICAL INVESTIGATION ON WOMEN'S PROPERTY, WITH PARTICULAR EMPHASIS ON THE 2005 AMENDMENT OF HINDU SUCCESSION ACT, 1956

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ABSTRACT

Women are pushed to a position of inferiority in social and economic facets of human relationships by the patriarchal society of ancient India, which wilfully ignores their claim to property. Women were specifically denied economic and sexual freedom under ancient Hindu law. Manu, the first lawmaker, stated that "a woman must be dependent upon her father in childhood, upon her husband in youth, and upon her sons in old age" in order to sustain this assumption. She must never be allowed to be free. In comparison to their male counterparts, she has consistently been viewed as a lesser being. Women are viewed as inferior not only in their homes and in society at large, but also when it comes to rights and benefits. According to our Constitution, Indian women are to be treated on an equal basis with males in all spheres of life. Several revisions were adopted in succession laws to achieve the goals of the Constitution; however this has led to inequalities among women. These inequalities were not limited to social status but also extended to the inequality of economic and property rights.

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INTRODUCTION

"A daughter always remains a loving daughter. A son is a son until he gets a wife. A daughter is a daughter throughout her life."

-Justice Arun Mishra

The aforementioned quotation is taken from the recent historic case that granted daughters the same coparcenary rights as males. Women have fought for their most fundamental rights for ages, both in India and outside. Property rights are one example of these rights. It was assumed in Hindu culture of old that the girl would eventually be married and be moved to a new home. Therefore, only the male Hindu family members would receive a portion in the event of a partition or split of property. Women were only granted property during public meetings on auspicious occasions and when they were wedded (stridhan). Women were not granted a part of the land since they had no other source of income. Women are now on equal with men as a result of time's progress. They own property and have a separate source of income. In a situation like this, laws have to change to keep up with society. Consequently, throughout the last several decades, many laws have been passed; they include the Hindu Women's Right to Property Act of 1937, the Hindu Succession Act of 1956, the Hindu

Succession (Amendment) Act of 2005, and numerous more. Even a number of court rulings have been made to clarify legal issues and provide the right interpretation. These rulings and statutes have all been the subject of more discussion. Ancient Indian Patriarchal Society intentionally disregards the women's right to property, pushing her to a position of inferiority in social and economic aspects of human relationship. Ancient Hindu law was particularly denied sexual and economic freedom to the women. In support of this premise, it is emphasized that Manu, the first law giver stipulated; "A woman must be dependent upon her father in childhood, upon her husband in youth and upon her sons in old age. She should never be free". She has always been treated as an inferior creature as compared to their male counterparts. This inferior status of the woman exists not merely in their households and in the society but also in the matter of privileges and right. Our Constitution envisages women as a citizen of India will be treated as equal to man in all walks of life. To obtain the object of Constitution, several amendments introduced in Succession laws, however, it has caused disparity between females. This paper analyses the position of different category of woman that is mother, widow and daughter in old succession. On 17th June, 1956, a new dawn of the era began in socio legislation history when Hindu Succession Act, 1956 was enforced. It aimed at making comprehensive and uniform provisions for dealing with intestate succession for Hindus. Prior to its enactment, there

were several personal laws governing different sects of Hinduism which was no less than a formidable maze in the inherently diverse community.¹

It was due to the decision of Rau Committee, Hindu women were vested with absolute rights over Stridhan and via a separate chapter, the Select Committee provided that after the commencement of the Code, not only it will be an absolute one under the Chapter 'Women's

Property', but it can also be inherited by her heirs.²

This legislation was passed to bring a progress in the society. It aims to remove the inequalities between genders in respect of right to property and provides heirs solely based on natural love and affection and not efficacy³. This legislation aims to empower women to acquire the property in her full power as owner and gives her liberty to dispose it at her pleasure. It also had retrospective effect regarding the acquired property before commencement of the Code.⁴ law and after new amended Act.⁴

Objective of the study

Hindu woman's right under classic Hindu Law

Holding of property: The historical Vedas and commentaries provide sufficient evidence that women were capable of owning property. In actuality, though, they were not granted any such privileges. Additionally, the transactions they completed were regarded as invalid. They had two types of property: non-stridhan and stridhan. The former was separated into non-saudayika and saudayika categories.

Saudayika property: In the days of the saudayika, women owned all property. Gifts from her parents, spouse, and other relatives were included in this category of property.

Non-saudayika property: After marriage, women's ownership of non-saudayika property was restricted, and alienation required the husband's approval. These items included presents from strangers.

Non-stridhan property: This category comprised gifts and assets she inherited from a male or female relative. She could only utilize such property, therefore her rights over it were restricted, and she was not allowed to alienate it. Upon her passing, such property would become hers.

1.1. Introduction of the Hindu Women's Right to Property Act, 1937

The Hindu Women's Right to Property Act, 1937 gave the widow of a deceased spouse ownership rights over his belongings upon his passing. The widow now held the only claim to such property, as opposed to the past practice of the theory of survivorship, which split the property among the surviving coparceners. She did, however, have some

restrictions on this land, which she owned until the end of her life.

Disposition of property: Regarding the rights of disposition, a woman, regardless of her marital status, had the entire right to dispose of her saudayika property. In contrast, her absolute right to alienate or dispose of non-saudayika property would expire at marriage and would require her husband's approval. She did not have the right to give the non-stridhan property away to anybody, nor was it transferable. Such property would be shared among her heirs upon her death. She had no authority to dispose of her deceased husband's property; instead, it would be distributed in accordance with the laws of survivorship and inheritance in the cases of self-acquired and ancestral property, respectively.

Hindu woman's right after the Hindu Succession Act, 1956

Holding of property

Section 14 of the Hindu Succession Act, 1956 states:

"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."

In the explanation, it explicitly states all types of property by whatsoever name it may be called. It states, *"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 a gift from any person, whether a relative or not, before, at or after her marriage, or by her skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act."*

Thus, with the introduction of the Hindu Succession Act, 1956, a Hindu woman now had absolute ownership of any property that she possessed. This meant that now, there was no difference between her saudayika property, non-saudayika property, and non-stridhan property. Thus, even in cases of property other than saudayika property, she no longer needed her husband's consent or to follow any restriction.

Punithavalli Ammal v. Ramalingam and Anr⁵: The Supreme Court, in this case, held that Section 14(1) gives an absolute right to women and it cannot be curtailed in any manner by making any presumption or interpretation of the law. It further held that the date of possession of such property is irrelevant as women in possession of the property before the enactment of the provision would now be given absolute rights which were previously limited.

Radha Rani Bhargava v. Hanuman Prasad Bhargava⁶: The Supreme Court, in this case, reiterated its stand and held the woman to be the absolute owner. Such ownership cannot be challenged on any basis. However, it can be challenged if it can be proved that the widow transferred or alienated the property before the enactment of Section 14 and such transfer or alienation was made without any reasonable cause or legal

¹ POONAM PRADHAN SAXENA, FAMILY LECTURES FAMILY LAW II 271 (Lexis Nexis Butterworths, Wadhwa, Nagpur, 2011)

² SABZWARI, HINDU LAW (ANCIENT & CODIFIED) 1078 (2007)

³ R.K. AGARWAL, HINDU LAW, 243-244 (Central Law Agency, Allahabad, 2007)

⁴ <https://www.tnsja.tn.gov.in/article/11%20Starli%20female%20property%20rights%20article%20-%20corrected.pdf> Starli, M. L. (n.d.). CRITICAL ANALYSIS OF DISPARITY IN PROPERTY RIGHTS OF WOMEN IN INDIA: A GLIMPSE. Tamil Nadu Judicial Academy.

⁵ 1970 AIR 1730

⁶ 1966 AIR 216

necessity. Thus, this is the only situation in which the absolute ownership rights of the woman can be challenged.

Pratap Singh v. Union of India: Section 14(1) faced a lot of criticisms wherein the Hindu men stated it to be unconstitutional on the ground that it infringes the right to equality guaranteed under Article 14. However, the Supreme Court in Pratap Singh held that the provision was, in no way, a violation of either Article 14 or Article 15(1). It was constitutional since the rights of women need to be strengthened.

Amendment in four states: In 1985, Andhra Pradesh became the first state to bring a tremendous amendment in the succession laws by providing the status of a coparcener to unmarried daughters. Thus, Andhra Pradesh succeeded in bringing this law two decades ahead of other states. Inspired by this amendment, other states including Tamil Nadu, Maharashtra and Karnataka also accorded the status of a coparcener to unmarried daughters. These states became an inspiration and a similar suggestion was then given by BP Jeevan Reddy in his Law Commission Report for changes in centrally enacted law.

Disposition of property: Since Hindu women now had absolute ownership of all the property they had, there was no question regarding the disposition of such property. Women could freely transfer or sell such property and appropriate money gained through such sale as per their wish. As regards the testamentary disposition, she had a right to dispose of her self-acquired property by way of a will. Enactment of Hindu Succession Act, 1956 gave way for intestate and testamentary disposition of property. However, as regards the coparcenary property, it was only men who could dispose it by a will whereas women were not entitled to do so.

Agasti Karuna v. Cherukuri Krishnaiah⁷: The Court held in this case that women had absolute right over the property of the deceased husband under Section 14. Any transfer or alienation of such property by the wife after the commencement of the Act cannot be challenged by any of the heirs.

Hindu woman's right after Hindu Succession (Amendment) Act, 2005

Holding of property: One of the most revolutionary changes brought in by the 2005 Amendment Act is that now even daughters were eligible to be coparceners in the Joint Hindu Family of his father. Moreover, her marital status would be irrelevant in this regard. It substituted Section 6 of the 1956 Act and now states:

“On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall

- By birth become a coparcener in her own right in the same manner as the son;
- Have the same rights in the coparcenary property as she would have had if she had been a son;
- Be subject to the same liabilities in respect of the said coparcenary property as that of a son”

Thus, daughters are now considered at par with sons in terms of coparceners and now have an equal right to hold coparcenary property. Thus, with the 2005 Amendment, the following incidents are now possible:

- A Hindu woman has an equal right to become the Karta of Hindu Undivided family if she is the senior-most member in the family, which was previously not possible.
- Secondly, she can now put her self-acquired property in the family fund which was earlier not allowed by the Act.
- In the case of the deceased father, a daughter has an equal right over his property whether she is married or unmarried.
- Daughters now have an interest in the coparcenary property and can even demand partition for the same.
- Women can now not only start their coparcenary but also their own joint family.

Thus, Hindu women have now been brought at par with men and have all the rights as those granted to sons in terms of the coparcenary. The Hindu Succession (Amendment) Act, 2005 (39 of 2005) was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956. Under the amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. The daughter shall now have the same rights in the coparcenary property (ancestral property of the Hindu undivided family) as a son. This amendment also repeals Section 23 of the Hindu Succession Act which disentitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares. Section 24 of the Act which denied rights of a widow to inherit her husband's property upon her re-marriage has been repealed. This Act has brought about a central amendment which is applicable to all the state governments.⁸

Prakash & Ors. v. Phulavati and Ors⁹: In the case of Phulavati, the daughter acquired the property from her deceased father who had acquired it from his adoptive mother. The appellant in the present case contended that the respondent had a right over only the self-acquired property of the father. However, at this time, the 2005 Amendment was introduced and the respondent now claimed share as per the amendment. The Supreme Court held that “only living daughters of living fathers could become coparceners” and no remedy would lie if the father died before the commencement of the Hindu Succession (Amendment) Act, 2005. Therefore, no retrospective effect could be given to the Act and in the case of a pre-deceased father, the property would devolve as per the rules of survivorship. Therefore, such a daughter whose father died before the date of commencement of the Act could only have a right in his self-acquired property and not coparcenary property.

Danamma v. Amar Singh¹⁰: The facts of Danamma were that a man died in 2001 leaving behind a wife, two sons, and two daughters. After the death, the grandson of the deceased grandfather sought partition. However, they denied any share to

⁸ <https://data.unwomen.org/global-database-on-violence-against-women/country-profile/India/measures/The%20Hindu%20Succession%20Amendment%20Act%202005>

⁹ AIR 2016 SUPREME COURT 769

¹⁰ AIR 2018 SUPREME COURT 721

⁷ 1999(5)ALD387

the two daughters claiming that they were born before the enactment of the Hindu Succession Act, 1956. The contention was upheld by both the trial court and High Court, though, by then, the 2005 Amendment had already come into being. On appeal to the Supreme Court, the Supreme Court held that daughters could be treated as coparceners and be given a share in coparcenary property if the case had been pending before the 2005 Amendment Act. Moreover, the date of birth of the daughter was irrelevant, the only condition being, she should be alive on the date of partition. The above two cases added to further conflicts as both the cases were contradictory. The dispute was finally settled in 2020.

Vineeta Sharma v. Rakesh Sharma & Ors¹¹ (2023): Overruling Phulavati and partly overruling Danamma, the Supreme Court, in this case, stated that the right in coparcenary is accorded by birth. Thus, the birthdate of a daughter is immaterial in this regard. Moreover, it stated that the father need not be alive as on commencement of the 2005 Amendment Act. It held that the Act will be effective retroactively. That is, daughters will be given a share in the coparcenary property even if the father died before 2005. The Supreme Court pointed to the object of the Act which was to remove gender discrimination regarding rules of the coparcenary. Thus, the object could be fulfilled only if the Act was applied retroactively.

Disposition of property: As mentioned before, the 2005 Amendment substituted the former Section 6 of the Hindu Succession Act. Section 6(1) of the Act deals with the right of Hindu women to hold the property whereas Section 6(2) and Section 6(3) deal with the disposition of the property. The former gives the authority to a female coparcener to dispose of her coparcenary property as per her will. It has also been stated above that with the amendment, daughters have been brought at par with sons. As a result, they were even entitled to hold the coparcenary property as well as ask for partition in such property.

Thus, in such a case, a woman should even have the right to dispose of her property as per her wish i.e. make a testamentary disposition of such property. Section 6(2) which has been inserted allows this and says that a female coparcener can dispose of her coparcenary property by way of a testamentary disposition. Section 6(3) deals with the incidents of devolution of property in case of the death of a Hindu.

It states that it will be treated as if a partition is taking place and property will be divided as per rules of intestate or testamentary succession. Moreover, it explicitly states that female coparceners are entitled to an equal share as other male coparceners. Also, in the case of a predeceased son or daughter, their heirs would be entitled to such a share in the property.

Section 30 earlier allowed for testamentary disposition of coparcenary property for only male Hindus since females were not previously part of the coparcenary. But since, with the 2005 Amendment, they also have a right to be the part of coparcenary, they even have the right to dispose of the coparcenary property by the way of a will, as also stated in Section 6(2).

CONCLUSION

The law is now finally settled and Hindu women have been accorded equal rights in the property as Hindu men. Thus, Hindu women have led a long way from the classic Hindu law which gave them very limited rights to the Hindu Succession (Amendment) Act, 2005. In the process, they even got absolute ownership of the property they possessed from the limited ownership which earlier hindered their absolute enjoyment of property. Moreover, they have been accorded coparceners in the Hindu Joint Family. With this, they even got the right to ask for partition as well as dispose of such coparcenary property as per their own will or through a testamentary disposition. Additionally, the role of the judiciary in this regard is also commendable as, without its assistance, the right would have merely existed in legal statutes but not in the Hindu society practically. To conclude, there has been tremendous development relating to the rights of Hindu women in holding and disposing of their property. Lastly, this has been possible only with the help of the proactive role of the judiciary, that the Hindu women have gained their rights in a true sense.

¹¹ <https://indiankanoon.org/doc/162446035/>