



Hindu Women's Property Rights under Hindu Succession Law : past and present

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Abstract

In India, Hindu women's struggle for being conferred with property rights both in the matrimonial and natal family, not only in name but also in spirit, in the patrilineal system, is not a new phenomena but dates back to the days of Shastric laws where her status as maiden, widow or married defined her property rights burdening her with more restrictions than privileges. With the passage of time, certain laws were enacted during pre-independence period to improve the conditions of Hindu women with regard to inheritance, succession and partition. With the advent of independence, certain changes were brought into effect for providing property rights to Hindu women. This paper attempts to highlight the Hindu women's property rights under The Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005.

Keywords : Hindu Women, Property Rights, Succession Law, Stridhana, Coparcenary and Joint Family Property.

1. Introduction

Every person by virtue of being born as human has the inherent right to be treated with dignity and equality in every aspect of life. However, women though considered as human being is relegated to a position of subjugation and oppression as she is made to suffer inequality and indignity with respect to her rights, more particularly her right to property is violated blatantly. The Indian patriarchal society, intentionally disregards the Hindu women's right to property, pushing her to a position of inferiority in social and economic aspects of human relationship. In ancient times, Hindu women's property rights were hedged with manifold limitations. However attempts have been in India to improve the position of Hindu women with regard to her succession and inheritance right. The present paper will portray the position of Hindu women's right to property from customary law to the present Hindu Succession (Amendment) Act, 2005.

2. Objective

The objective of the present paper is to examine the Hindu women's property rights under

The Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005.

3. Methodology

The methodology adopted in the present paper is doctrinal legal research, study of case laws and textual analysis.

4. Background

In India, Hindus were governed by Shastric and Customary laws that varied from region to region resulting in multiplicity of laws with diversified nature being followed in different schools and sub-schools of Hindu law like Mitakshara, Dayabhaga, Nambudri etc. Consequently property laws among Hindus were very complex favouring only males and discriminating females. In the entire history of Hindu law, women's right to hold and dispose property has been recognized. Two types of property which she could hold were- Stridhana and Women's Estate. However the quantum of property held by her was always very meager. Stridhana was the absolute property of a female Hindu over which she had full powers to alienate, sell, gift, mortgage, lease

or exchange during her maidenhood and widowhood, 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 in respect of which a Hindu woman was a limited owner constituted her limited estate or women's estate or widow's estate. The Hindu female owner had limited power of disposal i.e. she could not ordinarily alienate the corpus except for legal necessity, benefit of estate and for religious duties. On her death, the women's estate devolved upon the heir of the last full owner known as reversioners who could be a male or female.

In the joint family system, under patrilineal system like Mitakshara coparcenary, though women were treated as members of joint family, she had only right to sustenance but she was not vested with control and ownership of property and not admitted into the coparcenary. Doctrine of son's birthright was followed, concomitant to the principle of devolution by survivorship of the joint family property to a group called coparceners which comprised of son, grand-son and great grand-son. Thus no Hindu female was a member of the coparcenary in Mitakshara law and she was excluded from inheritance.

During the pre-independence period, two legislations such as the Hindu Law of Inheritance Act, 1929 and Hindu Women's Right to Property Act, 1937 were passed to improve the condition of female Hindus.

Hindu Law of Inheritance Act, 1929 was earliest legislation bringing the Hindu females into scheme of inheritance. Three female heirs – son's daughter, daughter's daughter and sister were conferred the right of inheritance under the Act. The Hindu Women's Right to Property Act, 1937 was another landmark legislation which ushered revolutionary changes by providing that in the Mitakshara coparcenary, the widow of the deceased would take the same interest which her deceased husband had in the joint family property at the time of his death. She was entitled to claim partition as male owner. However in all cases she took as a limited owner. The widow though a member of joint family and having right in coparcenary interest, she was not a coparcener.

Although these legislations conferred new rights of succession on certain women, they were

found to be defective in many respects and the Acts failed to protect women against discrimination. These two enactments at present stand repealed.

5. Post-independence legislations

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 advent of independence, the Constitution makers in India took note of the adverse discrimination perpetuated against women 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)]. In spite, of these constitutional mandates women continued to be subjugated to patriarchal domination and deprived of her rights including property rights. Taking a stand in favour of women rights, the then Prime Minister of India, Pandit Jawaharlal Nehru expressed his commitment to carry out reforms to remove disparities and disabilities suffered by Hindu women. Consequently amidst strong resistance from orthodox Hindu section, the Hindu Succession Act was enacted in 1956 and came into force on 17th June 1956.

5.1 The Hindu Succession Act, 1956

The Hindu Succession Act, 1956 is an Act to amend and codify the law relating to intestate succession among Hindus. The Act applies to all Hindus including Buddhists, Jains and Sikhs and lays down a uniform and comprehensive system of inheritance and applies to those governed by Mitakshara and Dayabhaga schools as well as other schools such as Murumakkattayam, Aliyasantana and Namdudri.

The Hindu Succession Act 1956 reformed the personal law of Hindus and conferred upon Hindu women absolute and full ownership of property instead of limited rights to property as evident from Section 14(1) of the Act which provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as a full owner thereof and not as a limited owner. The Apex Court in *Punithavalli v Ramanlingam* AIR 1970 SC 1730 :

(1970) 1 SCC 570, held that the right conferred under Section 14 (1) is a clear departure from Hindu law, text or rules, and the estate taken by a female Hindu is not defeasible by any rule of Hindu Law and is an absolute ownership.

Explanation appended to sub-section (1) of Section 14 enumerates different methods by which woman may have acquired property or would acquire property and states that '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 gift from any person whether relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also such property held by her as stridhana immediately before the commencement of this Act.

The object of Section 14 is two-fold : (a) to remove disability of a female to acquire and hold property as an absolute owner and (b) to convert any estate already held by a woman on the date of the commencement of the Act as a limited owner into an absolute estate. The female becomes a fresh stock of descent and her property devolves by succession on her own heirs if she dies intestate (without making a will). Supreme Court of India has held that section 14 was introduced as a step in the direction of practical recognition of equality of sexes and meant to elevate women from a subservient position in the economic field to a higher pedestal and to ensure uniformity in the law relating to the nature of ownership of stridhana (*Bai Vijaya v T. Chelabhai* AIR 1979 SC 993 : (1979) 3 SCC 300).

The Act is not retrospective in operation. But section 14 of the Act has qualified retrospective application. Section 14 (1) confers an absolute right on the widow who acquired the property on the death of her husband prior to the commencement of the Act and was enjoying only a limited estate under the customary Hindu law. However, it will convert only those women's estate into full estate provided the ownership of property is vested on her and she has possession of the estate concerned when the Hindu Succession Act 1956 came into force.

Section 14 is aimed at removing restrictions on the right of a female Hindu to enjoy as full owner the property possessed by her so long as her possession is traceable to lawful origin (*Gulwant*

Kaur v Mohinder Singh AIR 1987 SC 2251). In 2000, the Supreme Court in the case of *Venkata Sivaprasad v K. Venkateswarlu* 2000 SC 434 held that an estate shall not be converted into full estate after coming into force of Hindu Succession Act 1956, where the limited estate of a Hindu widow married prior to 1956 was divested.

The word 'possessed' in Section 14 is used in broad sense and in the context means the state of owning or having in one's hand or power (*Eramma v Veeruppa* 1966 SC 1879; *Annapurna v Kalpana* 1972 Gau. 107). The words "any property possessed by a female" under Section 14 (1) does not say that possession must be actual or physical. Thus the term possession has wide connotation and includes actual as well as constructive possession. In *Kotturu Swami v Veeravva* AIR 1959 SC577 : (1959) Supp 1 SCR 968 : 1959 SCJ 437, the Supreme Court held that where a woman is possessed of property, whether it is in her actual or constructive possession, though she has acquired the property before the Hindu Succession Act 1956, she becomes the absolute owner. The expression 'female Hindu' in section 14 could not be read only as 'wife' but includes 'any female Hindu' (*Vidya V Nand Ram* (2001) 10 SC 747). A daughter being a female Hindu would be covered within the ambit of the Act.

In an important case pertaining to Stridhana, the Supreme Court in *Pratap Singh v Union of India* AIR 1985 SC 1695 : (1985) 4SCC 197 held that Section 14(1) is not violative of Articles 14 and 15 (1) of the Constitution of India. Section 14 of Hindu Succession Act is beneficial legislation which to some extent provides remedy to the plight of Hindu women who could not claim absolute interest in the properties inherited by her from her husband and had to enjoy them, with restrictions attached to a widow's estate under Hindu Law. The express constitutional mandate under Article 15(3) of the Constitution of India which provides that nothing shall prevent the State from making any special provision for women and children further protects the provision in section 14(1) of the Act.

However, where a female Hindu, after the commencement of this Act, is given any property with certain limitations, she would hold that property subject to those limitations and cannot acquire those properties as an absolute owner. The limitations are set out in sub-section (2) of Section 14 which runs

as follows: “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”.

Section 14(2) is an exception to Section 14 (1) and it enacts a well established principle of law that if grant is given subject to certain restrictions, the grantee will take the grant subject to those restrictions. Thus, in the absence of any provision in will, gift, decree, order of civil court, award or any other instrument prescribing any restricted estate on female Hindu, she would take an absolute estate. In *Suba v Gauranga* 1971 Ori. 242, the Court held that where a Hindu female was given a life estate in lieu of her maintenance under a family arrangement which specifically gave her a limited estate, her limited estate would not converted into an absolute estate by virtue of Section 14(1) and the case came under the purview of Section 14(2). The Supreme Court has observed that section 14 (2) applies and not section 14(1) where a person settled property on his brother’s widow with a life interest and the property was to revert to the settlor and his heirs on the death of the widow (*Satyanarayana v. Sithayya AIR 1987 SC 353*)

Section 14(2) applies to instruments, gifts, decrees, awards, etc. which create an independent right or new title in favour of the Hindu female for the first time and not in recognition of pre-existing rights. The Apex judiciary in India in *Tulasamma v. Seshareddi AIR 1977 SC 1944 : (1977) 3 SCR 261 : (1978) 1 SCJ 29 : (1977) 2 SCC 99*, held that a woman in a Hindu family has an existing right to be maintained and has rights against the family property, hence the partition deed did not create a new right for the first time in her in property. Consequently, section 14(2) would not be attracted and section 14(1) applies thereby enlarging her rights in the property as absolute right notwithstanding any recitals in the partition deed.

Commenting on Section 14 sub-sections (1) and (2), the Supreme Court in *Tulasamma v. Seshareddi (1977)* and *Bai Vijaya v. Thakurbai (1979) 2 SCC 300 : AIR 1979 SC 993*, stated that Section 14(1) and Explanation thereto have been couched in the widest possible terms and must be

liberally construed in favour of females so as to advance the object of the Act and promote socio-economic ends, sought to be achieved by long needed legislation. Further section 14(2) is in the nature of proviso to sub-section (1) and should not be construed in a manner so as to destroy the effect of the main provision of the right conferred by section 14 (1). However, the creation of restricted estate in favour of a female Hindu is legally permissible and section 14(1) will not operate in such cases.

The general rules of succession to the property of a female Hindu dying intestate and the order of succession devolves according to section 15 and 16 of the Act. Although section 14 has brought about substantial change upon the aspect of the right of a female Hindu to her property, yet the source of acquisition of her property is still material, as the order of heirs depend upon the source of property of a female Hindu. However, property inherited by a Hindu male, from whomsoever it has been inherited or obtained, is treated as his own property which is regulated by a uniform scheme of succession and the source of acquisition of property is irrelevant.

Section 15(1) provides that if a female Hindu dies intestate, then her property will devolve, firstly upon the sons and daughters (including the children of any predeceased son or daughter) and the husband; secondly, upon the heirs of the husband; thirdly upon the mother and father; fourthly upon the heirs of the father; and lastly upon the heirs of the mother.

However if a female Hindu, dies issueless leaving behind no child or grandchild, then different rules will govern the matter of succession to her property, depending on whether she has inherited property from her father or mother or from husband or father-in-law. Section 15 does not apply to the property held by a Hindu female with restricted rights [section 14(2)] at the time of her death but applies to cases where she becomes a fresh stock of descent. Certain aspects of section 15 sub-section (1) and (2) (a) are found to be discriminatory.

In section 15(1), it is seen that if the persons in the first order are not available, then the property of a Hindu woman who dies without making a will, devolves to the heirs of her husband, thus giving them preference over the female Hindu’s father and

mother who are placed below them. Moreover, the law is silent on the hard earned self-acquired property of a female Hindu. The effect of this anomaly results in gross injustice in cases, where even though female Hindu is driven out of her matrimonial home, after her husband's death and she goes back to her parents, on her death, her self-acquired property devolves not upon her father or mother but upon the heirs of her husband. This has happened in reality in the case of Omprakesh and Others v. Radhacharan and Others (2009) 15 SCC 66, where a Hindu widow driven out of matrimonial family, left a substantial estate on her death without a will. In a contest between her mother and the husband's sister's son, the Supreme Court after having considered the scope of section 15 of the Hindu Succession Act 1956, gave the verdict against the mother. Unfortunately, the deceased husband's family which had subjected the female Hindu to indignity and failed to take care of her has been privileged to enjoy the fruits of her hard labour instead of the old mother who was with her daughter till the end.

It is very strange that while a mother shares equally with the children and the widow when a son predeceases her, but when married women dies, her father and mother ranks after the heirs of the husband. No inheritance law in the world confers inheritance rights, as Hindu Succession Act, 1956 does, by giving preference to matrimonial than natal relations of the deceased Hindu woman and what is sad is that judiciary in India also upholds such irrational inheritance law as in the case of Omprakash. In cases, where aged and infirmed parents are maintained out of their married daughter's property, then in the event of her dying inestate without children and husband (deceased), her parents may be left destitute, as the property by which they were maintained can legitimately be taken by her deceased husband's heirs.

Under subsection 2 (a) of section 15, if a Hindu female inherits any property from her father or mother, and she dies without children or grandchildren, then her property devolves on the heirs of her father, meaning thereby that if the deceased woman had inherited from her father, her property, even though her mother is alive, will devolve upon her father's heirs. Similarly even if her father is alive, property inherited by her from her mother, will

devolve upon the heirs of the father. Thus, as per section 15(2) (a), the mother if alive or father if alive when the Hindu female dies inestate are discriminated against the heirs of the father. The Supreme Court, in Bhagat Ram v. Teja Singh 2002 (1) HLR 17 (SC), has held that section 15(2) (a) will apply in case of property inherited from the father or mother, by a Hindu female dying inestate without issues and devolve upon heirs of the father and section 15 (1) will not be applicable.

In view of such injustice and discrimination, it is imperative that Section 15 should be amended and other modes of acquisition such as gifts from parents in addition to inheritance could also be added.

Provisions relating to the succession to the property of a male Hindu dying inestate are dealt from sections 8 to 13. The heirs of a Hindu male are broadly divided into of four types – Class I Heirs, Class II Heirs, agnates and cognates who are mentioned in the Schedule of the Act. Some sections of the Act tilt more towards females as out of twelve heirs in Class I, eight heirs are females and in Class II out of twenty-three heirs, twelve are women. Section 30 of the Act permits a Hindu male or female to alienate his or her property by way of will, in accordance with the provision of the Indian Succession Act, 1925.

The gender biased scheme in the Hindu Succession Act, 1956 under the guise of joint family Mitakshara coparcenary which retained only males as coparceners, came under scathing criticism from the supporters of gender equality. Section 6 of the Act provided that whenever a male Hindu, having an interest in a Mitakshara coparcenary property died after the commencement of this Act, then his interest in property would devolve by rule of survivorship and not in accordance with the Act. However, if the Mitakshara coparcener died leaving behind a female heir of Class I or a male heir claiming through her, then the interest would devolve by testamentary or inestate succession in accordance with the Act and rule of survivorship is inapplicable (Proviso to Section 6). This meant that Hindu females could not inherit ancestral property by birth right and was excluded from joint family coparcenary under Mitakshara system. For instance, if a joint family property was divided, then each male coparcener took his share and female got nothing. Only when

one of the coparceners died, she got share in the interest as an heir to the deceased coparcener.

Moreover, the Act had placed women in unequal position to that of males with regard to inheritance rights in agricultural land [Section 4 (2)]. Section 23 disentitled a female heir to seek partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares. Three kinds of widows—widow of a pre-deceased son, widow of a pre-deceased son of a pre-deceased son or widow of the brother, on their re-marriage during the lifetime of inestate, were disqualified in succeeding to the property of the inestate (Section 24).

Thus the Hindu Succession Act, 1956 instead of promoting gender equality, perpetuated gender discrimination through some of its provision. Some of the provisions of the Act have been amended by the Hindu Succession (Amendment) Act, 2005.

5.2 Reforms in succession law through state amendments

Acknowledging the discrepancies in regard to Hindu women's position in Mitakshara coparcenary, certain states, viz., Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka in India, took cognizance, that for economic and social justice to prevail, women must be treated with equality. Accordingly, the Kerala Joint Hindu Family System (Abolition) Act, 1975 completely and fully abolished male's right by birth to property and brought an end to the joint Hindu family system. No one can claim any interest in ancestral property on ground of birth in the family. By making amendment to section 6 of the Hindu Succession Act, 1956, the States of Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka in 1986, 1989, 1994, 1994 respectively, declare that daughters are coparceners in Joint family property. As per the Amendment Acts of these four states, daughter of a coparcener in a joint Hindu family governed by Mitakshara system, is entitled to be a coparcener by birth in her own right in coparcenary property and be subject to similar liabilities and disabilities as incurred by sons. Thus, by virtue of these amendments, dual rights have been conferred on daughters, as on one hand, she becomes coparcenary property right owner in her natal joint family, and on the other hand, she becomes a member of the marital joint family after her marriage.

5.3 Law Commission of India

State amendments only brought sweeping reforms in their respective places. But, Hindu women in other states of India continued to be subjugated to inequality in relation to their property rights because of the shortcomings of Hindu Succession Act, 1956. To ameliorate the position of Hindu females, initiative was taken up the Law Commission of India which in its 174th Report on "Property Rights of Women: Proposed Reforms under Hindu Law" under the Chairmanship of Justice B. P. Jeevan Reddy made important recommendations, stating that discrimination against women is writ large in relation to property rights, social justice and demanded that woman should be treated equally both in the economic and social system. The recommendations of the Law Commission of India found reflection in the Hindu Succession (Amendment) Act, 2005 with the amendment of section 6 and omission of sections 4(2), 23 and 24 which had under Hindu Succession Act, 1956 (original Act) perpetuated gender biasness and inequality.

In the year 2008, the Law Commission of India in its 207th Report under the Chairmanship of Justice A. R. Lakshmanan, recommended the proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a female Hindu dies inestate leaving her self-acquired property with no heirs. This proposal has not been incorporated in the Act till date.

5.4 The Hindu Succession (Amendment) Act, 2005 [the Amendment Act, 2005]

The Hindu Succession (Amendment) Act, 2005 after having been passed in both the Houses of the Parliament on August 2005, received the assent of the President of India on 5th September 2005 and came into force from 9th September, 2005 incorporating the reforms suggested in the 174th Report of the Law Commission of India.

The Amendment Act, 2005 deleted Section 4 (2) of the Hindu Succession Act 1956, and paved the way for women's inheritance in agricultural lands equally to that of males. The amendment has done away with the discriminatory state-level tenurial laws and benefited many women who are dependent on agriculture for their sustenance.

The Hindu Succession Amendment Act, 2005 has addressed a very pertinent matter relating to rights of daughters in the Mitakshara coparcenary and thus elevated daughter's position by amending section 6 of the Hindu Succession Act 1956. The amended Section 6 deals with devolution of interest in coparcenary property. Section 6(1) provides that the daughter of a coparcener in a joint family governed by the Mitakshara law shall, on and from the date of commencement of the Hindu Succession (Amendment) Act, 2005, by birth become a coparcener in her own right in the same manner as the son. She shall have the same rights and be subjected to the same disabilities in the coparcenary property as that of a son and any reference to a Hindu Mitakshara Coparcenary shall be deemed to include a reference to a daughter of a coparcener. But this provision does not apply to a married daughter before the commencement of the Amendment Act, 2005. In *Porchuri Sambasiva v. Porchuri Srinivassarao* (2007) 59 AIC 14 (AP), it was held that the daughter becomes coparcener after The Hindu Succession (Amendment) Act, 2005. The right of a daughter as coparcener in family property arises only after 2005 Amendment (*Valliamal v. Muniyappar* (2009) 73 AIC 685 : (2008) 4 AIC 773 (Mad)). The Orissa High Court in *P. C. Pattnaik and Others v. S. C. Pattnaik and another* AIR (2008) Orissa 133, held that Section 6 as amended gives right to the daughter as coparcener, from the year 2005, whenever they may have been born.

Any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th December, 2004, shall not be affected or invalidated by the provision in Section 6(1) [Proviso to section 6(1)]. Further any property to which female Hindu becomes entitled by virtue of sub-section (1) of section 6, shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition [section 6(2)]. The provision also provides that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided, as if a partition had taken place [section 6(3)].

Further the daughter is allotted the same share as is allotted to a son [section 6 (3) (a)] and that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter [section 6(3) (b)].

Further the share of the pre-deceased child of a predeceased son or of a pre deceased daughter as such child would have got, had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter [section 6(3)(c)]. The Explanation appended to section 6(3), highlights an important fact that the interest of a Hindu Mitakshara coparcener, shall be deemed to be the share in the property that would have been allotted to him, if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Thus, by virtue of amended section 6, daughter of a coparcener has become a coparcener in the Mitakshara joint family property and has the same birth right as that of son with same rights and liabilities. Daughters will now get a share equal to that of sons at the time of notional partition, just before the death of the father, and an equal share of the father's separate share. The Delhi Court in the case of *Jai Lakshmi Sharma v. Dropati Devi* AIR 2010 Del. 37, held that after the amended section 6, women has been given full coparcenary rights as coparceners like son and is entitled to equal share and has all rights to dispose of her property including by way of testamentary disposition. The Supreme Court of India in its judgment on 12 October, 2011 in the case of *Ganduri Koteshwaramma & Another. V. Chakiri Yanadi & Another* observed that "the new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from

September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son”.

Though the amended Section 6 is a significant advancement towards gender equality and economic security for daughters, yet other females such as mothers have not been given recognition as coparceners. Furthermore, only the daughter of the common male ancestor has been included, clearly excluding the daughters of all the coparceners. Justice and equality cannot be secured for one category of women at the expense of another. Amended Section 6 only addresses joint family property and not separate property. Therefore, law must be changed to confer all Hindu women equal property rights in ancestral as well as separate property.

Section 23 of the Hindu Succession Act, 1956 has been omitted by the Amendment Act, 2005, as a result of which, at present all daughters, both unmarried and married, are entitled to same rights as sons to reside in and to claim partition of the parental dwelling home.

The Amendment Act, 2005 has also omitted section 24 which had disqualified certain widows on remarriage from succeeding to the property of inestate. Now the widow of a pre-deceased son or the widow of a pre-deceased son of a pre-deceased son or widow of the brother can inherit the inestate's property even if she has remarried.

Moreover the Amendment Act, 2005 has added some more heirs to the list of Class I heirs who are daughter's daughter's daughter, daughter's son's daughter and son's daughter's daughter and daughter's daughter's son.

6. Conclusion

The position of Hindu woman in respect of her property right has undergone unprecedented transformation from ancient times to the Hindu Succession (Amendment) Act, 2005. The journey from exclusion to recognition of Hindu daughters in Mitakshara coparcenary has been remarkable, but non-inclusion of other Hindu females is irrational and unjustified, for all women are equally entitled to economic and social justice which the Constitution of India proclaims. In spite, of some progress brought by the Hindu Succession (Amendment) Act, 2005, females are still denied their lawful rights in the predominant patriarchal society. Silence and self-denial on the part of women of being subjugated to unequal property rights reinforces and further perpetuates injustice. Hindu women must be made aware through legal literacy campaigns and social awareness programmes about their property rights, so that they may fight for what is rightfully theirs, by virtue of being born as human beings. Concerted efforts on the part of the government, non-governmental organizations, public and women should be taken up to bring about attitudinal change in the mindset for promoting equal rights based on humanity for achieving gender equality.

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