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A JOURNEY OF HINDU FEMALE ON THE WAY TO SUCCESSION

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Abstract

In contemporary India, there are plethora of laws enacted by the Parliament and various other legislatures for the Empowerment of women, but even after more than seven decades of independence contribution of women in their family is just homemakers, childbearing, and performing other domestic works. A woman is more powerful than the man in raising the generation ahead to new levels. They have tremendous influence. But still, males are an active part, and the females are a passive part of the Society. She is confined to the kitchen and boundary walls of the home. The past several decades have seen greater attention and some progress towards women's Empowerment. Law cannot change Society overnight, but it can certainly ensure that the disadvantaged are not given a raw deal. It is essential to empower women to extend the economic rights of women. In the ancient period the women were treated as chattel and a slave. But during the Vedic period, women had exalted position and they enjoyed a fair amount of personal freedom and equality with men. Indian Constitution has a substantially agenda to ensure equality amongst its citizens. It not only assurance equality to all its persons under Article 14 as a fundamental right, but also exhausted this Article to designed a chamber for positive action and optimistic discrimination. The property rights of a Hindu women largely depends on her status in the family i.e. whether she is a daughter, married or unmarried or deserted, wife or widow or mother. It also be subject to on the type of property in issue i.e. whether the property is self -acquired or ancestral /hereditary. This paper highlights the voyage of Hindu females in the Hindu law.

Key words: Hindu females, Succession, Property, Constitution, Discrimination

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Introduction

In contemporary India, there are plethora of laws enacted by the Parliament and various other legislatures for the Empowerment of women, but even after more than seven decades of independence contribution of women in their family is just homemakers, childbearing, and performing other domestic works. Women depend on their father, brothers, husbands, and her son in their life. The male members of their family are continuously discriminating against her. The female side is the best part of the planet. She is Saraswati for education, Laxmi for wealth, Durga for force and power, Parvati for strength, Ganga to wash off the sins. A woman is more powerful than the man in raising the generation ahead to new levels. They have tremendous influence. But still, males are an active part, and the females are a passive part of the Society. She is confined to the kitchen and boundary walls of the home. The past several decades have seen greater attention and some progress towards women's Empowerment. Law cannot change Society overnight, but it can certainly ensure that the disadvantaged are not given a raw deal. It is essential to empower women to extend the economic rights of women.

India is a multi-linguistic, multicultural, and multi-religious state of more than a billion people, of which almost half comprise females. The Principles of impartiality and justice are enshrined in the Constitution of India that unequivocally mandates gender equivalence. Discrimination and violence against females do not just victimize the individual women but do indeed hold back whole sections of Society. They are assuring rights to women in investment in making the entire nation stronger and self-reliant⁵.

This is equally true for women belonging to other religions; India follows legal pluralism allowing different religious communities to be governed by their laws relating to marriage, divorce, maintenance, adoption, guardianship, and even inheritance. Personal laws often legalize the dominance of men over women forms particular to each religion⁶. Considerable uncertainty prevailed over personal Law applicable to persons other than Hindus and Muslims while India was still a British colony, so much so that the second Law Commission⁷ pointed out that personal Law in India being religious should not be interfered with by an outside agency. While colonial officials were slow to engage with the native populations in the Lawmaking process, their cautious approach to the transplantation of the legal system and rules reflected their acknowledgment of the pre-existing Hindu and Muslim codes of conduct⁸.

Although many legislations enacted for the Empowerment of women and other welfare schemes run for their upliftment. No substantial changes have occurred in their economic status in general, particularly in villages. No sincere attention has been paid towards the implementation of inheritance; Law already available on the statute books. No female can remain economically backward if given their shares in the property of their father, husband, and son, etc.

Position of Hindu Females in Vedic Period

In the ancient period the women were treated as chattel and a slave. But during the Vedic period, women had exalted position and they enjoyed a fair amount of personal freedom and equality with men. Women studied in Gurukul and enjoyed equality in learning Vedas. In the matter of selecting life partners in marriages bride had exclusive rights of selecting their own consorts. A widow can marry again and do not require giving up wearing ornaments and shave her head. The main disability, which the women suffered in the Vedic period was proprietary rights, they could hold or inherit no property. The man used to regard woman as partners in managing the affairs during the

⁵ Menski Werner, *Hindu Law: Beyond Tradition and Modernity* p.n. (Delhi: Oxford UP:2003)

⁶ See, Mishra Archana, "Vicissitudes Of Women Inheritance Right- England, Canada And India at the dawn of 21st Century", 492, *JILL*, vol 58:4, (2016)

⁷ Under the provisions of the Charter Act 1853. A Law Commission was appointed in England on Nov 29, 1853.

⁸ See, Ronald J. Daniels, Michael J. Trebilcock and Lindsey D. Carson, "The Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies" 59(1) *The American Journal of Comparative Law* 111-178(2011)

Grihastha, Vanaprastha and Sannyasa Ashrams in life. Presence of wife is compulsory in performing religious rites consequently women must have enjoyed the quality of life comparable to that of man.

Position of Hindu Females in Post Vedic Period

In the post-Vedic period, between 1500 BC to 500 AD, the status of women suffered a setback when various restrictions were put on women rights and privileges by Manu. The role of women got restricted within the four walls of their home. During the puranic and epic period, there was the reduction of the age of marriage of girls and deprivation of women in various areas. Women had only duty of unquestioning obedience to her husband. Even Sita was made to give proof of her chastity in presence of all.

Position of Hindu Females under Old Hindu Law

Under the old uncodified Hindu property law, the position of women was not very good. Hindu joint family property governed by the two important schools-mitakshara and dayabhag. States like Assam, Tripura, and West Bengal generally followed the dayabhag and states like Banaras, Bombay, and Mithila etc. followed Mitakshara School. In mitakshara school the inheritance is based on the principle of proximity i.e. the nearest in blood relationship will get the property. The school is followed throughout India except Bengal state and dayabhag inheritance based on the religious efficacy, i.e. Sapinda relationship is of blood. The right to Hindu joint family property is by birth. A son immediately after birth gets a right to the property as a coparcener. A woman could never become a coparcener. In both schools. Succession to the property was vested in males' heirs. Females were totally depending on the males. Excepting the STRIDHAN-the gifts and ornaments were given by family members at the time of marriage.

Position of Hindu Females under Hindu Women's Right to Property Act 1937

After that Hindu women right to property act 1937, was passed, it gave better rights to women. Women's inherited property in two categories firstly by their husband in form of women's estate. It was Hindu Women's Rights to Property act 1937 limited ownership. She was not an absolute owner. She had beneficiary or usufruct rights till their lifetime. She could not dispose it of except strictly for necessity or benefit of the estate. And secondly, property fully owned called stridhan.

Position of Hindu Females under Hindu Women's Right under the Hindu Succession Act 1956

Hindu Women's Rights to Property act 1937 repealed by new Hindu succession act 1956 passed after coming into force of the Constitution, marks a new era in the Indian history of social legislation for granting Hindu females equal inheritance right with absolute ownership. It abolished the concept of limited ownership. But they had no rights in coparcenary property.

Position of Hindu Females under Hindu Succession (Amendment Act) 2005

On 9.9.2005 the Hindu Succession (Amendment) act 2005 was passed. It's a great revolution in Hindu succession act. An effort has been made to remove the discrimination by giving coparcenary right to daughters as son. The disabilities of Hindu female's heirs were also removed. These amendments can uplift the women both economically and socially and have far-reaching benefits for the family and Society.

Constitutional Position of Hindu Females

Indian Constitution has a substantially agenda to ensure equality amongst its citizens. It not only assurance equality to all its persons under Article 14 as a fundamental right, but also exhausted this Article to designed a chamber for positive action and optimistic discrimination. It provides the general principles of equality before the Law and prohibits unreasonable discrimination between people. Article 14 uses two expressions equality before the Law and equal protection of laws. Both expressions aim at establishing the equality of status. Article 15 prohibited to discrimination on grounds of religion, race, caste, sex, and place of birth or any of them. Article 21 of the Constitution as a sunshade and shield to secure and included within it right to everything which would make life expressive, including the right to food, clean air, roads, health, and prominently the right to shelter/housing.

Further the Directives Principle of State Policy under Part IV of the Indian Constitution lends support to the model of equality, social justice and Empowerment. One of the purpose of the directive principles is to guide the morality of the state, they have been used to positively interpret the latitude and ambit of the fundamental rights, which also hit any discrimination or injustice towards women. Article 51A of the Indian Constitution declares, it shall be the duty of every citizen that to relinquish practices derogatory to the dignity of women.

The property rights of a Hindu women largely depends on her status in the family i.e. whether she is a daughter, married or unmarried or deserted, wife or widow or mother. It also be subject to on the type of property in issue i.e. whether the property is self -acquired or ancestral /hereditary.

Women and Human Rights

“Women’s Rights Are Human Rights” is a slogan used in the women’s rights movement and is the name of a speech given by Hillary Rodham Clinton, at the time the First Lady of the United States, on September 5, 1995, at the United Nations Fourth World Conference on Women in Beijing. Effectively ensuring women’s human rights requires, firstly, a comprehensive understanding of the social structures and power relations that frame not only laws and politics but also the economy, social dynamics and family and community life. Harmful gender stereotype must be dismantled, so that women are no longer viewed in the light of what “should” do and are instead seen for who they are: unique individuals, with their own needs and desires. Discrimination based on sex is banned under almost every human rights treaty – including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which under their common article 3 provide for the rights to equality between men and women in the enjoyment of all rights.

CEDAW: The International Bill of Rights for Women

The Covenant on the Elimination of All Forms of Discrimination against Women clarifies the right of females to be free from discrimination and sets the Centre belief systems to ensure this right. It launches an agenda for national action to end discrimination and gives the premise to accomplishing equity among people through shielding ladies' equivalent access to, and equivalent breaks in, political and open life just as instruction, wellbeing and work. CEDAW is the solitary human rights treaty that confirms the regenerative rights of females.

In 1994, the International Conference on Population and Development in Cairo (ICPD) expressed and confirmed the relationship between advancement and fulfilment of rights and gender equality and equity. It also elucidated the theories of women’s upliftment, gender impartiality, and reproductive health and rights. The programme of Action of ICPD asserted that the upliftment and independence of women and the enhancement of their political, social, economic and health status was a highly important end itself as well as vital for the attainment of sustainable development. In 1995, the Fourth World Conference on Women in Beijing created global commitments to advance a wider range of women’s rights. The inclusion of gender equality and women’s enablement as one of the eight Millennium Development Goals was a recap that many of those assurances have yet to be kept. It also represents an acute opportunity to implement those promises.

In spite of many international agreements, the denial of women’s basic rights is determined and widespread. For example:

- Over a large portion of a million females keep on dyeing every year from pregnancy and labour related causes.
- Rates of HIV contaminations among females are quickly increasing. Among those 15-24 years old, young females presently comprise most of those recently tainted, partially in light of their monetary and social weakness.
- Gender-based brutality executes and incapacitates the same number of females between the ages of 15 and 44 as malignant growth. As a rule, culprits go unpunished.
- As a result of their working circumstances and attributes, a lopsided number of females are devastated in both creating and created nations. In spite of some advancement in ladies' wages

during the 1990s, ladies despite everything acquire not as much as men, in any event, for comparable sorts of work.

- Many of the nations despite everything have unfair laws overseeing marriage, land, property and inheritance.

While development has been made in some areas, many of the dares and hindrances identified in 1995 still remain. In addition, the new challenges for women's upliftment and gender impartiality that have emerged over the spans, such as the feminization of the AIDS epidemic, feminization of migration increasing of trafficking on women need to be more effectively addressed.

Review of Literature

The author contends that "law enforcers...discriminate between women and men and inadvertently tend to reflect old and restrictive views towards women" while discussing the execution of legislation designed to help women. Regarding testamentary succession, the Act contains no substantive law and stops at stating that members of joint families may dispose of their undivided shares in a will in the same manner as they may do with their separate property. It also specifies that this may be done in accordance with the Indian Succession Act 1925. Just some of the concepts and expressions used in this field of law are specified in the Hindu Succession Act of 1956, which is necessary for a thorough grasp of the Law of Succession (Lina Gonsalves, *Women and human Rights*,28,2008).

Despite all the reforms , most critics still argue that the condition of women in relation to property matters is not yet satisfactory. "Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Numerous legal improvements have taken place since independence in India, including on equal share of daughters to property. Yet equal status remains elusive (Dr. Sarala Gopalan, "Judiciary and the quest for equal justice to women", in *Judiciary & Gender Justice*, 2004).

Section 14 of the Hindu succession Act, 1956 hereinafter referred to as the "Act" is the most salutary provision of the said Act which has annihilated the time –old concept of limited estate held by a Hindu Women, known as "Hindu Women's estate" or "widow estate" also known as "limited estate". The women, estate was a special, qualified and anomalous estate peculiar to Hindu Law which knew nothing about the estate for life or in tail or in fee which are the concept of Anglo-Saxon Law. Within the limits imposed on her, the female holder had the most absolute power of enjoyment and was accountable to no one. The whole estate vested in her for the time being and she represented the estate in every aspect. She was not a life-tenant: her interest was not a life interest, for, in certain circumstances, she had the power to convey an absolute and complete title to the alinee which a life –tenant had not. The most unique characteristic of the estate is that on her death, it revert to the last male owner and she never became a fresh stock of descent (Justice S.A. Kader "The Hindu Succession Act, 1956 should The Legal Riddle Under section 14 of The Continue Forever", 2008).

Law is essentially a patriarchal construct, and is seen to be based on male norms, male experience and male domination (Ratna Kapur and Brenda Cossman, *Subversive Sites-Feminist engagements with Law in India*,29 ,1996).

The amendment of Hindu Succession Act of 1956 in 2005 is a total obligation for the women authorization and protection of women's right to property. This Amendment Act in a patrilineal system, like Mitakshara school of Law opened the door for the women, to have the birth right in the family property like the son. The women were vested the right of control and ownership of property beyond their right to sustenance. No doubt the daughters were empowered for their rights in the ancestral property as if they are sons. But once a daughter became a coparcener on the equal scale as her brother in real spirit and content, the relationship that stands from drawn of civilization i.e. love to sister and daughter , will cease to continue impassionately : in this respect it quoted that : "*Sometimes new laws allow legal intellectuals to feel , they had corrected a long-standing error. But contrarily enough they preserve for individual to think over the socially unenforced rights, forever*" (P.K.Das, 2011.).

Deep cultural bias often prevents women from asserting their right to inherit and women fear that asking for their share would cause conflict within the family. The fear is well founded as revealed in a study where majority of males and local officials surveyed opposed daughter's inheritance of family property. A proper study of the Law of Succession requires a clear understanding of the terms and expressions used in this branch of Law, only some of which are defined in the Hindu Succession Act 1956 (Ashok Sircar and Diana Fletschner, 2014.).

The new (S.A.Kader (Former Judge Madras High Court), 2014.) s.6 substituted by the Hindu Succession (Amendment) Act 2005 has completely supplanted s.6 of the principal Act. The deleted s.6 has been in the statute book for about fifty years and it is the provision which gave the new and real thrust to the Mitakshara school of coparcenary system and paved the way for its disintegration. Pandit Jawaharlal Nehru who strode the political arena of our nascent democracy almost like a colossus was firm in bringing about equality in the status of Hindu male and female. The Hindu Code Bill as in the beginning framed by the B.N.Rao Committee and piloted by Dr.B.R.Amedkar was for abolition of the Mitakshara coparcenary with its perception of survivorship and the son's right by birth in a joint family property and replacing it with the principle of inheritance. These suggestions met with a storm of conservative opposition. When Dr.Ambedkar was questioned as to how this happened in the Select Committee, he said, "It was not a compromise. My enemies combined with my enthusiastic supporters and my enemies thought that they might damn the Bill by making it appear worse than it was"⁹.

Up to the Hindu Succession (Amendment) Act of 2005, the Act's original form was in effect. The amending Act changed the joint family law to allow daughters to become co-parents. The change really went beyond the original Act's title and objectives, which merely dealt with inheritance. According to us, it ought to have been implemented through a separate statute [that would have been known as the Hindu Joint Family Reform Act]. The 1956 Act has become a mishmash and its provisions have become confusing due to the mixing of the Law of Inheritance and the Law of Joint Family, which are two distinct areas of Law. Depending on whether the dead person whose property is to be inherited was a male or a woman, the 1956 Act offers two possible inheritance methods. While the plan intended for the property of deceased men [Section 8–13] is applicable regardless of how it was acquired, the plan intended for the property of deceased women [Section 14–16] is not uniform and follows different paths depending on where the woman had acquired the property and which of her relatives have survived her. These characteristics set the Law under the 1956 Act apart from the Muslim Law of Inheritance, which offers a uniform method of succession for both men's and women's possessions, regardless of how the dead acquired them. (Tahir Mahmood, "*Principles of Hindu Law*"³⁰⁵, Universal Publication co. New Delhi, 2014)

Historical Background

Pandit Madan Mohan Malviya stated, "In the Brahman society, the woman has been given the highest place, there is nothing higher than the mother"¹⁰. In a similar manner, legislator Krishna Chandra Sharma noted: "Our mother is a respected behind, and our daughter is a part of our life and blood. Is that not so? Why then do you raise the cry that this is something which will bring down Hindustan and that the Hindu society will be crushed to pieces? There is nothing in religion; there is nothing in culture; there is nothing on the basis of Hindu Society that is against these conditions and repugnant to them"¹¹. The Indian women were raised in a culture that trained her to be an ideal mother from early childhood.

The position of Hindu women in the Society during the ancient period could be found in the writings of Smritikars of the Smriti period. Smriti is measured as the earliest source of Hindu law. During the Smriti period, extensive changes regarding the position of women in the home as well as in the Society were reflected in the writings of Manu, Yajnavalkya, Brihaspati, Narada, and other

⁹ *Pushpalatha v Padma* (AIR 2010 Kar 124 at 138)

¹⁰ XV part I September 19, 1951, *Parliamentary Debates*, 2872-96.

¹¹ VI part II, December 12, 1949, *Constituent Assembly Debates*.

Smriti writers. Among all the authority of Manu is paramount. Permanent subjection was the condition of women, according to the ancient legal system¹².

According to Sir, Thomas Strange, it would seem to follow, from the universal condition of Hindu females, uneducated, and the universal condition of Hindu females, uneducated, and thence liable to perversion and influence that any gross abuse of it by her will be controlled by her father while single, by her husband during coverture, and by guardian after his death; such interference being itself subject to revision by the judicial power since otherwise, the idea of Stridhan would be but a mockery¹³. And the misery of Hindu marriages, at (on the part of the female) an immature, and often an inordinately disproportioned age, is sensibly shown, by the present in question being said to be intended as a bribe, to induce her to repair the more cheerfully to the mension of her lord¹⁴.

Under the ancient Hindu Society, a woman was considered to be of low societal status and treated as a dependent with barely any property rights. That “ a woman must never seek independence;” and carrying the principle the length of declaring, that “by a girl, or by a young woman, or by a woman “advanced in years, nothing must be done, even in “her own dwelling-place, according to her mere pleasure.”¹⁵

Professor MacDonnell and Keith described in their Vedic Index the status of the wife in the matter of wealth; they point out that very little information it may be assumed that the husband appropriated the wife’s dowry if any as well as her earning if any, the recognition of woman’s property as their Stridhana¹⁶.

Both Gautama and Vashishta recognized the proprietary right of women .Gautama gave special rules of inheritance to a woman’s separate property calling such property as Stridhana. Vashishta, too, recognized this right in clear terms.

According to Jolly, it is also unmistakable that the price of the bride (sulka) mentioned in the Smriti often signifies merely a present from the bridegroom to the bride or from the husband to the wife, -thus, for example, it is mentioned as a part of the Stridhana¹⁷.

Budhayana excluded women from inheritance; the stiffness of his theory of exclusion of women from inheritance was, to some degree, stunned by the fiction of identity between husband and wife¹⁸. The custom of niyoga also affected its rigidity and helped the widow to improve her legal position regarding inheritance and using the property of her deceased husband¹⁹.

Thus, the lifelong subjugation was the condition of a woman under the ancient Law. Even since women have been regarded as having a far inferior position in the Hindu family and the matter of succession.

According to the 12th aphorism of Jaimini,

“The act of women which leads to the acquisition of wealth conduces to the benefit of her husband (and not to her own).”²⁰

According to Sabar swami²¹ , if anyone objects that a woman may perform sacrifices with wealth which she earns by cooking food for others, or by saving from the diet (food) given, her the

¹² Sastri G.L., *A treaties on Hindu Law* 581(Eastern Law House, Calcutta, Fifth edition).

¹³ Sir, Thomas Strange (Late Chief Justice of Madras), *Hindu Law, Principally with reference to such portion of it as concern, The Administration Of Justice in the King’s Court on India* 28(Vol.I Parbury Allen And Co. London ,1830)

¹⁴ *Supra* note 37 at 29

¹⁵ *Id* at 245

¹⁶ *Ibid*

¹⁷ Julius Jolly, *Hindu Law and Custom*, 113 (Bhartiya Publishing House,1975)

¹⁸ . Sankara sastri C., *Fiction in Hindu Law Text*, 207 (1926)

¹⁹ . Manu IX,185

²⁰ Mitter,D.N.,*the Position of Women in Hindu Law* 1(Inter-India Publications, New Delhi 1984)

answer is that it is not her wealth. When she herself is another's property, the acquisition belongs to that other. Again, whatever she does is intended to serve her husband. Leaving the duties towards her husband, she cannot do anything for herself; whatever is acquired by her by other means belongs to her husband²².

In the chapter, IX deals with the eternal laws for a husband and his wife, Manu Says, "her father shield (her) in childhood, her husband shield (her) in youth and her sons shield her in old age; a woman is never fit for independence."

According to Jolly, the wives and daughters were without doubt originally entitled only to maintenance, and it is disputed even if they can retain their ornaments and the presents received from their relations when partition takes place²³.

According to Narada Smriti, a partition only among brothers: they should give full share of a son to the mother and a smaller share to the unmarried sister, they should provide for the wife and the daughter of a brother who has no son -the latter however only till her marriage.²⁴

According to Jolly, some Smriti writers again speaks of the fourth-part share of the daughter, but those who commentators are probably right who take this term solely to mean a sum sufficient to cover expenses of the marriage and the wife's share too, which is equal to that of a son, is explained to be nothing more than a life annuity in conformity with the rules about the dependence of the sex²⁵.

Dr. P.V.Kane stated that "Yajnavalkya and Vishnu among Smriti writers were probably the first to enunciate the rule that the wife was the foremost heir of a man dying without male issue. Brihaspati makes the wife the first heir of a sonless man and supports his opinion with reasons. He says: "in the Veda and the doctrines of the Smritis and popular usage, the wife is declared to be half of the body of the husband, equally sharing the consequences of good and evil acts. Of him whose wife is not dead, half the body survives. How can another obtain property, while half the body of the deceased lives²⁶?"

Sir Thomas Strange points out the distinction between the Bengal law and that of South India in this respect," had the property been the mother's in the Hindu sense of Woman's property, it would descend on her death to her daughters, but having been inherited by her from her son, it passes, according to the Law as practiced in Bengal, not to her heirs, but to his, which on the failure of issue of the propriety, male and female of his widow and parents, is his brothers; those of the whole being preferred to those of the half-bloods, those of the half succeeding only on failure or in default of those of the whole. According to Mitakshara which is followed in this respect by other authorities in Southern India so vested, it classes as Stridhana and descends accordingly under rules of inheritance for the property of that description to her daughters and not to her sons; but according to the doctrine of Smriti -Chandrika the right of inheritance is vested in different persons, as it was acquired before or after coverture."²⁷

Property Rights of Hindu Females under Statutory Law

With the progression of time and the development of current evenhanded standards of the Renaissance, awareness arose among the females, and a sense of discontent stirred in their inner consciousness.

²¹He was the commentary writer of Jaimini Mimansa

²² Kane P.V, *History of Dharamshastra* 75(Bhandarkar Oriental Research Institute ,Poona,VolI,2nd edn,1968)

²³ *Supra* note 9 at 181

²⁴ Nar. 12,13 f, 26 f.

²⁵ *Supra* note 13 at 182.

²⁶ R.L.Chaudhary, *Hindu woman's Right to Property* ,7, (Firma K.L. Mukhopadhyay Calcutta 1961)

²⁷ Trevelyan E.J.,*Hindu Family Law* 12 (W.Thacker & Co. ,2 Creed Lane London1908)

Discontent led to demonstration and the females, who had long been reeling under acute discrimination, launched a vivacious measure to secure property rights for themselves. These measures gradually, however doubtlessly picked up energy, and brought about the formation of various enactments planned for giving property rights to females.

The earliest of such statute can be followed back to the Indian Succession Act, 1865, where, it was set out that a female was to have full control over all property attained from her parents' side, and the better half was in essence barred from acquiring any interest in such property whatsoever. This act was followed by several other statutes like the Married Women's Property Act 1874, where it was laid that any earning or property acquired by a married woman was to be her separate and exclusive property. This change procedure that began in 1865 has proceeded at different pace. In spite of the fact that alert about the adequacy of law in taking care of social issues is alluring, inordinate cynicism is anything but a reasonable position.

In ancient India, except for Stridhana, the female practically had no rights to property; even, that right was easily controlled by the ravenous male members in the absence of effective law enforcement. Hence, the doctrine of Stridhana had over the passage of time, declined and was neglecting to give adequate protection to the female race. Females have traditionally been denied the right of inheritance and succession, and this led to a sense of discontent. Women's liberation was indicating its first hues in Quite a while, and such pressure, the erstwhile British Indian Government was constrained make a few laws to improve the condition of the females.

To follow up the good work done by the earlier Act, in 1874, the Married Women's Property Act (Act III of 1874), was passed, it extended the scope of the concept of Stridhana. It declared that the salaries and incomes of any married woman, any property acquired by her the employment of her art and skill, and all her funds and investments shall be her separate property, and that a married woman can file a suit in her own name in respect of such property. Both these Acts were far ahead of their times in terms of their vision, and wholly revolutionized the Hindu law of that time. These legislations laid a firm platform for future law reforms to take place.

The Hindu Law of Inheritance (Amendment) Act 1929 to modify the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate. WHEREAS it is expedient to modify the order in which certain heirs of a Hindu male dying intestate are entitled to succeed to his estate; It extends to the whole of India, but it applies only to persons who, but for the passing of this Act; would have been the subject matter of Mitakshara law in respect of the provisions herein enacted, and it applies to such persons in respect only of the property of males not held in coparcenary and not disposed of by will. A son's daughter, daughter's daughter, sister, and sister's son shall, in the order so specified, be entitled to rank in the order of succession.

The 19th-century legislations without an iota of doubt improved the condition of women in India. But still, there were several questions that were left unanswered even after that. In order to remove this ambiguity and to further extend the ambit of the property rights of Hindu women, the Hindu Women's Right to Property Act 1937 was passed and came into force in April 1937. Which has no retrospective operation. As the Act was considered to be defective, it was amended by the Hindu Women's Rights to Property (Amendment), Act, XI of 1938, which was declared to have retrospective effect as from the 14th April, 1937, it gives better rights to females. It introduced significant changes in the law of succession by conferring new rights of succession on certain females. It improved the condition of widows in a Mitakshara Coparcenary.

The reform process started by the in the later part of the 19th Century grew from strength to strength, and reached its pinnacle in the Hindu Code Bill debate of the 1948, which proposed the abolition of the joint family system. It was a general feeling that the Mitakshara Coparcenary system was in urgent need of radical changes, and the system that when one of the coparceners died it was necessary that not only in case of his separate property but also in respect of his undivided interest in the coparcenary property there should be impartial distribution of that share between sons and daughters. Moreover, there was the international sentiments that there should be equality before law.

and equal treatment for all, irrespective of caste, sex and religion. This deal also formed the corner stone of the Indian constitution, and without a complete overhaul of the joint family system in favour of equality between the sexes, this goal of equality cannot be achieved.

The debate resulted in the demand for a Uniform Civil Code so as to achieve the great norm of equality, which has been the dream of all humanitarian thinkers. The proposed Hindu Code was put to debate which was to be the first step in the direction of achieving the constitutional mandate of the Uniform Civil Code. However, the code could not be passed because of a number of differences among the political entities of that time. Finally, a set of Hindu laws were passed separately covering different aspects of Hindu law. Which though was a very poor substitute for the Hindu Code²⁸, was nevertheless effective in meeting the requirements of the time. This Act, which came into force on June 17, 1956 amends and codifies the law, relating to intestate succession among Hindus. It brings about many fundamental and radical changes in the law of succession. It lays down a uniform and comprehensive system on inheritance for the Hindus. Under the Hindu law, prior to coming into force of this Act, a woman's ownership of property was hedged by certain delimitations on her right of disposal either by acts of inter vivos or by way of testamentary power. In case of a female owner, absolute power of alienation was not regarded as a necessary concomitant of the right to hold and enjoy property. It was only in case of property acquired by her from particular sources that she had full dominion over it. The preamble of the Hindu Succession Act, 1956 reads as follows. "An Act to amend and codify the law relating to intestate succession among Hindus". It is very clearly specified that this Act is applicable to only a Hindu who dies intestate. The term "intestate" has been defined as under. "A person is deemed to die testate in respect of property of which he or she has not made a testamentary disposition capable of taking effect."²⁹

In 2004, a Bill titled the Hindu Succession (Amendment) Bill was tabled in the House, which intends to advance further rights to the women. It proposes to introduce women membership into the Mitakshara Coparcenary which can go a long way in giving equal rights to both the sexes. It has since become an Act, and promises to take the goal of gender equality farther. However, one needs to be skeptical if not cynical about the impact of legal reform on the condition of the women race for the bottom line is that a law is as good as it is implemented. This Act proposes to remove those provisions of the parent Act which are discriminatory against women. The law minister in issuing the statements of objects and reasons while laying the Bill in the Parliament, said that the provision of denying women membership to the Mitakshara joint family amounts to violation of a woman's fundamental right of equality³⁰; hence, it has been laid down that the female should be allowed to be full-fledged member of the Mitakshara coparcenary, and be subject to all the rights and liabilities associated with being a member of the joint family. The shares in such property should be allotted to the female in the same manner as they are allotted to a son.

It is evident that the Hindu law of succession has been undergoing a continuous process of evolution, and is in the process of being a perfectly gender neutral law³¹.

It has been a brave piece of legislation, which was considered to be revolutionary when it was passed. However, after 64 years have passed since its enactment, and the winds of change that have swept the community during these past six decades demand that change be effected in the law by way of legislation so that some lacunas in the existing law may be modified. Some of the pressing demands of the moment are that male monopoly, the Mitakshara coparcenary should be done away with, and women should be awarded full membership in the Mitakshara. These changes are a part of the Hindu Succession (Amendment) Act, 2005.

Section 6 of the Hindu Succession Act, 1956 deals with devolution of interest of a male Hindu in the coparcenary property and recognizes the rule of devolution by survivorship among the

²⁸ See, Basu Smriti, She comes to Take her Rights...Indian Women Property and propriety, 7

²⁹ Hindu Succession Act, 1956(30 of 1956) s 3 (1) (g)

³⁰ See, Bhardwaj H.R. (law minister), Statements of objects and reasons, 16th December 2004.

³¹ See, *Supra* n 14 at 14

members of the coparcenary. According to Hindu Law, before the Amendment Act, 2005 female was not the coparcener. Hence, she was deprived of the right to inherit the ancestral property except under the circumstances mentioned in the Section 6. The law, by excluding the daughter from participating in coparcenary ownership, not only has contributed to her discrimination on the ground of gender, but also has led to oppression and negation of her fundamental right of equality guaranteed by our law of the a nations i.e. The Constitution of India.

Considering these points and to render social justice to women, many States, have made necessary changes in the law with the intention to give equal right to daughters in Hindu mitakshara Coparcenary property. But, the application of State amendment is confined to concerned State only. Consequently, this Hindu succession (Amendment) Act, 2005 has been enacted to remove the discrimination by giving equal rights to daughters in Mitakshara coparcenary property as the sons have. So as to remove the disability on female heirs, this amendment also omits the Section 23 and 24 of the Hindu Succession Act, 1956, which are more fully described in the later part of this chapter, which disentitled a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until a male heirs choose to divide their respective shares therein and in certain cases, widow was not entitled to inherit the property, if not the date the succession opened she had remarried.

This Amendment has conferred equal status on the Hindu women with a man. Consequently, she is supposed to bear, like a man, the burden also under certain circumstances, as there is one Principle i.e. 'Person who takes the benefit must bear burden also'. Unlike in the past drastic changes have been taken place now in the position of the woman. At least, the woman taking the benefit under the Hindu Succession (Amendment) Act, 2005 can be made liable like a son. Any how this amendment deserves the appreciation for its contribution in removing gender discrimination, though, there are some defects. It gives the following rights to daughters under Section 6:

- The daughter of a coparcener in her individual right in the similar manner as the son;
- the daughter has the same rights in the coparcenary property as she would have had if she had been a son;
- the daughter is allotted the same as is allotted to a son
- the share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or pre-deceased daughter
- The share of the pre-deceased child of a pre-deceased son or a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.
- The daughter, at the same time, shall be subject to the same liability in the said coparcenary property as that of a son.
- This amendment also abolished the doctrine of pious obligation except to the extent as it is applicable under circumstances as provided in the section.

The Hindu Succession Act, 1956, brought in reforms enabling Hindu women to succeed to intestate immovable property. But Section 4(2) kept agricultural land out of the purview of the Act. This Section was repealed by the 2005 amendments made to the Hindu Succession Act. Repealing section 4(2) of the HSA should have led to changes in laws relating to equal rights in Succession to agricultural land, at least for Hindu women.

Delhi has given widows inheritance rights for agricultural land, but not daughters. In Uttar Pradesh, daughters and sisters do inherit agricultural land, but they are low in the order of Succession. The new UP Revenue Code, 2006 which came into force in 2016 has rolled out many welcome modifications to revenue laws in the state including consolidating the law by revoking 32 Acts. But for Succession to farming land, in cases where there is no will, married daughters possibly acquire if there are no widows, male lineal descendants, the mother and father of the deceased, or an unmarried daughter. Section 107 of this Act allows the owner to dispose of agricultural property by making a will, so theoretically, they have the option of willing it to anybody they want to, ignoring the

restrictions of intestate Succession. How many know of this provision, or use it to welfare of their daughters remains to be seen.

The Hindu Succession Act, 1956, brought in reforms enabling Hindu women to succeed to intestate immovable property. But Section 4(2) kept agricultural land out of the purview of the Act. This Section was repealed by the 2005 amendments made to the Hindu Succession Act. Repealing section 4(2) of the HSA should have led to changes in laws relating to equal rights in Succession to agricultural land, at least for Hindu women. The presumption is that now Hindu women, at least, inherit agricultural land in the same manner in which they inherit other property, equally with their brothers.

The NGO, Lawyers Collective, in its Women's Rights Initiative report for the United Nations Development Fund for Women (UNIFEM) says that it would have been helpful if when repealing Section 4(2) the Act had also expressly stated that the HSA applies to agricultural land over and above state laws. The report says that the amendment appears to have created a distinction between the rights of Hindu women and the rights of non-Hindu women on account of the fact that state agricultural land laws apply to all persons regardless of religion. Therefore, the rights of non-Hindus remain unchanged. Nevertheless, the improved position of Hindu women at least was lauded by the report as, "the amendment of 2005 brought all agricultural land at par with other property and made Hindu women's inheritance rights in land legally equal to men's across the states, overriding any inconsistent state laws".

However, a 2014 judgment of the Allahabad High Court has put a spanner in the works. In *Archana v. Deputy Director of Consolidation Amroha and Ors*³², a judgment by Justice Ram Surat Ram held that the provisions of the Hindu Succession Act are not applicable to agricultural land in Uttar Pradesh. The court held that "agricultural land is in the exclusive domain of State law makers and Parliament has no power to enact any law in this respect. Section 4(2) was only by way of clarification. On its basis, it cannot be said that after its deletion, Hindu Succession Act, 1956 *suo moto* applies to agricultural land". This judgment directly affects Hindu women, by taking away the rights that the removal of Section 4(2) of the HSA gave them. Legislations, like the UP Act, also affect women from other religions. Even though their personal laws may permit them to get a share, legislations such as the UP Act, prevent the devolution of agricultural property in terms of personal law. These Acts impose different rules for Succession, effectively depriving some women from inheriting agricultural property.

In a blog for the Council on Foreign Relations, Ashok Sircar³³, who works with the NGO Landesa, says: "That woman do not inherit land effects India's ability to climb out of scarcity. First, it is clear that females lack access to the tools (credit) and agendas (agricultural extension services) they need to climb out of scarcity. Second, as a abundance of research shows, when females have control over land, they direct more of their income than do men toward their children's education and nutrition. This means that most rural females across India inherit poverty, not property generation after generation. As a result, India is missing a chance."

Depriving women of inheriting agricultural land was sought to be justified with the excuse that it was in order to prevent the fragmentation of landholdings. The logic for this unequal treatment was based on the argument that after marriage, women departed from the folds of their natal families, either physically or socially, and permitting them succession rights would lead to her husband's family gaining the land. Of course, the entire logic is predicated on the assumption that a woman is incapable of taking independent decisions.

³² WRIT B 64999/2014 A.H.C. the court observed that, "Agricultural land is in the exclusive domain of State Legislature, and Parliament has no power to enact any law in this respect. Section 4(2) was only by way of clarification. On its basis, it cannot be said that after its deletion, Hindu Succession Act, 1956 *suo moto* applies to agricultural land."

³³Supra note 26

Depriving women of inheriting agricultural land was sought to be justified with the excuse that it was in order to prevent the fragmentation of landholdings. The fragmentation of landholdings is uneconomical. Therefore, many states have land consolidation laws. These laws were enacted even in countries where women did not inherit agricultural property, such as Punjab. If the land is to be consolidated, one would think that a family might prefer to have a sister or daughter as their neighbour, rather than a stranger.

Depriving women of agricultural property rights is not the answer to preventing fragmentation. As Saxena³⁴ says: “Women without independent resources are highly vulnerable to poverty and destitution in case of desertion, divorce, or widowhood. In parts of western and northwestern India, not uncommonly, rural women, even from rich families, deprived of their property shares when widowed, can be found working as agricultural laborers on the farms of their well-off brothers or brothers-in-law. Among them, the fate of deserted and divorced women is far worse... Tenure security, and especially titles, can empower women to assert themselves better with agencies that provide inputs and extension services”. He also says that females tend to spend on basic household needs, unlike items on men’s shopping list like alcohol or tobacco.

Article 14 of the Constitution assures equality to all. Article 15 promises women freedom from discrimination. Excluding women from inheriting agricultural land does not serve any useful purpose, but seems only to increase poverty and destitution in many cases.

*“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development, and building good governance.”*³⁵

In the matter of agricultural rights of Hindu females the different high courts have different views after the deletion of Section 4 (2) by the Hindu Succession (Amendment) Act 2005. In the matter of *Archana v Dy. Director Of Consolidation, Amroha And 6 Others*³⁶, the Allahabad High court held that the provisions of the Hindu Succession Act, 1956 has no application on agricultural land. Now Section 4 (2) has been deleted. As held above, Section 4(2) of the Hindu Succession Act, 1956 was nothing to do with the applicability of the Act³⁷.

As a researcher, I personally surveyed the District Courts in State of Uttar Pradesh in India. This exact survey has been done in five district courts of Uttar Pradesh, i.e., Ghaziabad, Noida, Meerut, Aligarh, and Bulandshar as well as Ghaziabad tehsils, i.e., Ghaziabad, Modinagar and Loni. Researchers inspect the cases of property partition in residential as well as agricultural land. The residential properties partition inspect by the registration register of the partition suits in competent Court in all the five Districts from 2015 to 2020 July.

On the basis of all data collecting by the researcher, the researcher comes to the conclusion that the legislations related to the property provide stringent and furnished rights to the females. But the improper implementation of the laws, females are not aware of their property rights. And also, their rights have been denied by way of natural and affection. We lose our morals. We don’t want to give the Share of our mother, sister, and daughters in the property. The society becomes greedy day by day. We take away the property rights of females members of our family in the form of natural and affection. Concerning the relations, they relinquish their property share. Still, we are not aware of the statutes of property related to the females.

³⁴ *Supra* note 26

³⁵ Former UN Secretary-General Kofi Annan

³⁶ WRIT - B 64999 / 2014 AHC

³⁷ The court observed that, combined reading of the preamble, Section 4 and Section 6 of the Hindu Succession Act, 1956 it is clear that the Act was applied on Joint Hindu Mitakshara property only and not on agricultural land. As held above, agricultural land is in exclusive domain of State Legislature and Parliament has no power to enact any law in this respect. Section 4 (2) was only by way of clarification. On its basis, it cannot be said that after its deletion, Hindu Succession Act, 1956 suo moto applies to agricultural land. Under Section 6, (as amended) daughters are given right under Hindu Mitakshara Coparcenary Property alone.

Conclusion

Empowerment of women, leading to an equal status in civil society pivots, among other things, on their right to grasp and inherit property. Several legal developments have taken place since independence in India, including on identical share of daughters to property. Discrimination based on sex is prohibited under almost every human rights treaty –including the International Covenants on Civil and Political rights and the International Economic, Social and Cultural rights, which under their common Article 3 provide for the rights to equality between men and women in the enjoyments of all rights. Under the Article 7 of UDHR. , both men and women are entitled right to equality without discrimination. Article 17 of UDHR provides everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property. Yet equal status remains illusive. Formation of laws and bringing practices in conformity thereto is essentially a long drawn out process. The administration, the governing body, the legal executive, the media and common society needs to accomplish their goals, each in their own capacities of skill and in a rigorous way for the process to be quick and operative.

These amendments can uplifted to the females both economically and socially, and have far-reaching welfares for the family and society .Independent access to agricultural land can decrease a female and her family’s risk of scarcity, improve her livelihood options, and upgrade possibilities of child survival, education and prosperity. Females owing land or a house also face risk of spousal violence. And land in women’s name can increase productivity by improving credit and input access for numerous de facto female household heads.

Making all daughters coparceners moreover has broad ramifications. It gives females birth rights in joint family property that cannot be given by their own will. Rights in coparcenary property and the dwelling house will also enshrined communal shield to females facing domestic violence or marital breakdown, by giving them an umbrella in a rainy day. The Supreme Court also observed, in a recent case³⁸, that the right of property is no longer a fundamental right. But still it is a constitutional right. Apart from constitutional right it is also a human right. The Supreme Court also mention in their recent judgment in *Vineet Sharma v Rakesh Sharma*³⁹, “A son is a son until he gets a wife. A daughter is a daughter throughout her life⁴⁰.”

In *Arunachala Gounder (dead) v. Ponnuswamy*’s.the Supreme Court observed that “*The basic aim of the legislature in enacting Section 15(2) is to ensure that the inherited property of a female Hindu dying issueless and intestate, goes back to the source.*”The judgment establishes a scheme of succession that is in alignment with the “rule of proximity and the entitlement of the sole surviving daughter” to her father’s separate properties, even as far back as before the enactment of the 1956 Act.

In *Kamla Neti (Dead) through LRs v The Special Land Acquisition Officer & Ors., (January2023)* Supreme Court observed that the Hindu Succession Act, insofar as the female tribal member is concerned, there may not be any reason to reject the right of survivorship. There is no reason to deny the daughter of the tribal community the same privilege when the daughter who belongs to the non-tribal group is entitled to an equal portion in the father's property. In intestate succession, female tribe members have the same rights as male tribal members. It is now time for the Central Government to look into the situation and, if necessary, change the articles of the Indian Constitution, which has guaranteed the right to equality for 70 years, because it continues to deny the equal right to the tribal daughter. We trust and expect that the Central Government will investigate the situation and make the correct choice while taking into account the right to equality granted by Articles 14 and 21 of the Indian Constitution.

³⁸ CIVIL APPEAL NO.6156 OF 2013,*Hari Krishna Mandir Trust v State Of Maharashtra*,para no 96,decided on 7/8/2020, *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Others, (2008) 4 SCC 649 (para 42)*

³⁹ Civil Appeal No. 32601/2018, decide by Supreme Court on 11 August 2020.

⁴⁰ *Ibid* para 50

It is crucially important for women to own property, especially land, in order to fulfil those constitutional requirements. Several Acts have been created in order to safeguard the rights of Hindu women and improve their standing both in society and the household. Only land and property rights that correspond to an enforceable claim and guarantee women's freedom to rent, inherit, or sell the property may assure women's ownership or rights of use (usufruct). Women's voices may be diminished by the absence of property rights, but it may also be more difficult for them to enter and succeed in commercial, economic, and even certain social activities.

Legal changes to advance women's inheritance rights might theoretically offer a low-cost option to lessen gender discrimination and enhance a variety of socioeconomic outcomes for women, notwithstanding the complexity of the underlying social and customary factors. In addition to boosting her prestige and respect in the family and society, owning property gives women more negotiating and decision-making power and enables them to fight laws that discriminate against them in the use and transformation of land and other productive assets. Gender inequality must be viewed from several angles since it can take on numerous forms and manifest itself differently depending on the place and time period.

Millions of women –as widow and daughters-and their families thus stand to gain by these amendments. Land rights would be connected straightforwardly to living arrangement and dealing with land under this methodology being campaigned for under the Beijing Platform for Action. Be that as it may, the difficulties are many, social acknowledgment of females' privileges in property drives them. In a nation where females keep on being property themselves the street ahead vows to be long and uneven.

*Teach your daughter economic independence so in the future, she can have a partner, not a master;
Teach your son to do housework so in the future, he can have a partner, not a servant.*

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