

Study on Position of Hindu Women's Property Rights After 1956 Act

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Abstract – Women Constitute helping women to remain on their own feet on the off chance that we don't consider ways women can approach and power over cash, land and house. The initial step is to dismiss the blessing framework and request an offer in the family property. A lady ought to defeat the inclination that the home she imparts to her better half isn't hers. Furthermore, legitimately she ought to acquire and furthermore be the joint proprietor of her better half's property since she also places in her work. Women Constitute half of the total populace, perform multi-talented duties in the wedding home, in national development and planning process basically with pushes on wellbeing, education and business. Be that as it may, in spite of this, she respects to a class or gathering of society which gets unacceptable and deficient monetary help as their commitment to the development of family isn't viewed as beneficial work and they are not given any financial co-possession with equivalent rights. Oppression women is unavoidable to such an extent that it in some cases surfaces on an uncovered scrutiny of the law made by the assembly itself. This is especially so according to laws administering the legacy/progression of property among the individuals from a Joint Hindu family. It appears that this segregation is so profound and orderly that it has set women at the less than desirable end Hindu women's legitimate option to acquire property has been confined from the most punctual occasions in Indian culture. In this paper an endeavor has been made to consider the nature, advancement and the development of the idea of lady's property through different stages of development. Presumably, the privilege to property is significant for the freedom and development of a person. The exclusive situation of lady in any arrangement of law speaks to the idea and the sentiments of the network. Subsequently the exclusive status which a lady involved in Hindu law was a list of Hindu human advancement as well as right measure of the way of life of the Hindurace.

Keywords – Women, Property, Rights, Position

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INTRODUCTION

Women's economic status and social security is influenced by their ownership and control over immovable property. Effective rights in property, especially land are of critical importance for women's economic and social empowerment. Since time immemorial, the framing of all property laws have been exclusively for the benefit of men and women have been treated as subservient to and dependent on male support. Women's right to inherit, own and control over the property are also determined by the values and norms which are socially acceptable, as well as the mechanisms of intra-household decision-making and distribution. The United Nations Conventions On Elimination Of All Forms Of Discrimination Against Women's commitment towards providing equal access to land and other property gave a push to women's rights but the expansion of women's right in property has been slow

Hindu Succession Act 1956

The Hindu Succession Act, 1956 marks a new era in the history of social legislation in India. It came into force on 17 June 1956 with the basic objective of providing a comprehensive and uniform scheme of intestate succession for Hindus. Prior to the enactment of this Act, different religious communities were governed by different succession laws and within the Hindu community itself, there was a wide divergence with respect to application of inheritance laws. Amidst this maze of inheritance laws governing Hindus, it was a formidable task to lay down a uniform law that could be applicable and even acceptable to this inherently diverse community. The Rau Committee vested a Hindu woman with full rights over stridhan property and laid down certain rules of succession with respect to stridhan, The Select Committee on the Hindu Code incorporated the substance of all these provisions in a separate chapter headed "Woman's Property" and provided that after the

commencement of the Code, whatever property was acquired by her as woman became her absolute property and devolved on her own heirs. Clause 16 of the Bill follows the Select Committee's draft and declares that whatever property is acquired by a Hindu woman after this law, it shall be her absolute property and the term "property" is defined as comprehensively as possible for the purpose.³

Fundamental Changes Brought by the Hindu Succession Act, 1956:

- i. It amends and modifies the aspects of classical Hindu law that related to joint Hindu family, MIT Akshara coparcenary, intestate succession and even testamentary succession.
- ii. The Act provides a detailed scheme of devolution of property by intestate succession for Hindus who are subject to the application of this Act. It abolishes the distinct laws of succession under the Dayabhaga and MIT Akshara systems and provides a uniform law, based on natural love and affection and nearness in relationship. For the purposes of intestate succession, it is immaterial presently as to which school of law the intestate was adhering to.
- iii. It has abolished the concept of the limited estate for Hindu women and replaced it with absolute ownership. The incapability of a Hindu woman to hold the property as a full owner was removed completely and now she acquired full power of enjoyment and disposal over her properties.
- iv. It provides two separate schemes of succession for male and female intestates. In case of female intestates, there is a further divergence linked with the source of acquisition of the property that is the subject matter of succession.
- v. In old- law, there was a distinction between male and female heirs, but the Hindu Succession Act. 1956 makes no distinction between male and female heirs.
- vi. It alters the character of the property inherited by the son from his father, paternal grandfather and the paternal great grandfather and makes it separate property in his hands vis a vis his progeny. Under the classical law the property inherited by the son from father or his two parental ascendants was the ancestral property.
- vii. It introduced daughters and her children in her absence as the primary heirs in preference to the male collaterals and made

her marital status irrelevant for determining her right of inheritance.

- viii. Under the Act the eligibility to succeed was not merely consanguinity but affinity as well.
- ix. With respect to testamentary succession, it empowers a Hindu, male or female, to make a testamentary disposition of the totality of properties in favour of anyone.
- x. The Act modifies the law of MIT Akshara coparcenary and its devolution by survivorship in a situation where an undivided coparcener dies leaving behind class I heirs, other than a son, son of a predeceased son and son of a predeceased son of a predeceased son. In such a case, the law presumes that the deceased had died after demanding a partition, which would determine his share in the coparcenary property, convert it into his separate share, so that it would no longer go by survivorship, but will go to the legal heirs in accordance with the rules of intestate succession.
- xi. Under old law, there were no rights to female heirs to succeed to the interest of a MIT Akshara coparcener, but the Hindu Succession Act, 1956 has given the rights to certain female heirs i.e. mother, widow, daughter, grandmother to succeed to the interest of a MIT Akshara coparcener.
- xii. The disqualifications for inheritance, based on physical and mental diseases, disabilities and deformities, were removed.
- xiii. On the ground of public policy, the murderer of an intestate is disqualified from inheriting his property.
- xiv. The widow of an intestate is now his primary heir and her rights to succeed cannot be defeated on the grounds of her unchastity. As she is an absoluteowner of the property on the day of opening of the succession, her share vests in her and she cannot subsequently be divested of her share in the property, even if she remarries.

Women 's Right to Property under the Act, 1956:

Right to Partition: Although the ownership of the coparcenary property is with the coparceners only and a female member of the joint family can neither be a coparcener nor claim any title to the coparcenary property. However, when an actual partition takes place in the joint Hindu family, certain female members in the Joint family are

entitled to get a share. This rule is applicable in all sub schools of MIT Akshara, except the Dravida or Madras School. In the Dravida School, no female gets a share at the time of partition, but in the rest of the schools of MIT Akshara, three categories of female members are to be given a share. It is noteworthy that these females don't have the right to ask for partition and claim their share.

These following categories of females are entitled to get a share on partition subject to certain conditions are:

1. Father 's wife,
2. Mother, and
3. Paternal grandmother
4. Coparcener 's widow
5. Daughter³²⁰ of a coparcener.

Distribution of property among heirs in class I of the Schedule.

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules: —

Rule 1:— The intestate 's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2: — The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3: — The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4:— The distribution of the share referred to in Rule 3—

- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters gets equal portions; and the branch of his predeceased sons gets the same portion;
- (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

Full Ownership in Property for Hindu Females: Section 14 of the HSA, 1956

The maximum impact of the Hindu Succession Act, 1956 is visible in the area of a Hindu woman's right to hold property and dispose it of as an absolute

owner. Section 14 of the Act, 1956 has introduced fundamental changes in the Hindu law of woman's property. In the opinion of the Apex court, S.14 was introduced as a step in the direction of a practical recognition of the equality of sexes and meant to elevate women from a subservient position in the economic field, to a higher pedestal where they could exercise full powers of enjoyment and dispose of property held by them as owners, untrammled by artificial limitations placed on their rights of ownership by the society in which the will of the dominant male prevailed to bring about a subjugation of the opposite sex.

Section 14 of the Act converted the limited ownership into a full-fledged ownership and also ended the confusion and controversy regarding the exact share that the widow took on the death of her husband as an undivided member in the Mitakshara coparcenary. Presently, she inherits the separate property of her husband as his primary heir and the quantum of her share and the nature of her estate are absolutely identical to that of the son. From the undivided share of the deceased husband in the Mitakshara coparcenary, her presence defeats the application of the doctrine of survivorship over his undivided share and prevents it from going to the surviving coparceners. The share of the deceased husband is ascertained by means of a notional partition and she inherits his share as his class-I heir, taking it as an absolute owner.³²³ For widows who on the date of the passing of the Act were in possession of the property as limited owners, it was provided that henceforth, they would hold these estates as full owners thereof. Thus, sec. 14 of the Act has abolished woman's estate and has virtually introduced Vijnaneshwara's interpretation of Stridhan. In *Eramma v. Veerupana*³²⁴ the Supreme Court said:

—The object of section 14 is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. Section 14 of the Hindu Succession Act has only converted limited ownership of a Hindu female into full ownership; it does not purport to create title in a Hindu female where none existed. The section could not be interpreted so as to validate illegal possession of a Hindu female and it did not confer any title on a mere trespasser.

OBJECTIVES

The Hindu Succession Act, 1956 (Act No. 30 of 1956, hereinafter referred to the Act) has been passed to meet the needs of a progressive society. It removes inequalities between men and women with respect to rights in property and evolves a list

of heirs entitled to succeed on intestacy based on natural love and affection rather than on efficacy. The Act has been passed to codify and amend the Hindu Law regarding succession. 316 It also removes the disability imposed under the Hindu law on a woman, to hold the property only as a limited owner. The Act removed it expressly enabling her to acquire the property from whatever may be the mode as a full owner that includes a power to dispose it of at her pleasure. Any property that a woman acquired before or after the passing of the Act was her absolute property. In this sense, it abolished the concept of a woman's estate as being different from a man's ownership.

Section 14 of the Act provided:

Property of a female Hindu to be her absolute property. - Any property possessed by a female Hindu, whether acquired before or After the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Application of Act to Properties Acquired Before the Commencement of the Act:

One of the aims of the Act was to convert the limited interest of a widow in to an absolute estate provided she was in its possession on the date of the commencement of the Act. It was, therefore, immaterial that the acquisition of this property was prior to the passing of the Act. Where the widow inherited the property of her deceased husband or acquired the same interest from her husband under the Hindu Women's Right to Property Act, 1937 or even prior to that and was in actual or constructive possession of it, the Act converted this limited estate into an absolute estate. However, if she remarried before the commencement of the Act, or died, her heirs could not take the benefit of these provisions as the Act is not retrospective in application.³²⁵ Two conditions were required to be satisfied before the limited estate matured into an absolute estate,

- i. She possessed the property as a limited owner; and
- ii. She must possess the property at the time of commencement of the Act.

Possession Lost through Transfer of Limited Interest:

One of the essential features of a limited estate was its general inalienability at the pleasure of the widow. The widow had limited powers to transfer it that could be exercised only in times of need i.e. a legal necessity or for the performance of indispensable religious duties that included ceremonies for the spiritual salvation of her husband. But if the widow lost the possession of the limited estate by transferring it in favour of a third party, when she was not legally authorized to do it, would this limited

estate mature into an absolute estate so as to confer a full ownership in favour of the alinee? The answer of this is in negative. The Act clearly says that if she loses possession by transfer before the commencement of the Act, despite s.14 (1), her ownership will not mature into an absolute one. However, if the interest was reconvened to her before the commencement of the Act, either voluntarily or under a compromise following litigation, this temporary loss of possession would not adversely affect the conversion of the limited ownership into a full ownership by the Act

Loss of Possession by Remarriage: Section 2 of the Hindu Widow's Remarriage Act, 1856 provides that the rights and interests in certain properties which a widow gets from her husband as limited estate, shall cease upon her remarriage and shall devolve as if she had died. Does this property also become her absolute property? And if so, will her remarriage afterwards lead to its forfeiture? The Rajasthan High Court in *Bhuri Bai v. Champi Bai*³³⁵ held that if the widow remarried after coming into force of the Act of 1956, she will incur no disqualification and her estate cannot be forfeited as contemplated by S. 2 of the Act of 1956. The Supreme Court in *Punithavalli v. Ramalingam*³³⁶ held that the right conferred by sec. 14(1) on a Hindu female constitutes a clear departure from Hindu law, texts or rules and that it is clear that the estate taken by a Hindu female under it is an absolute one and is not defeasible under any circumstances. However, in *Velamure Venkata Sivaprasad v. Kothuri Venkateswarlu*³³⁷ it has been held that where a Hindu widow had married prior to 1956 and her limited estate was divested, such estate shall not convert into full estate after coming into force of the Act of 1956

If the property is not in possession when the Act came into force: Here the question is if a Hindu female has no possession over the property when the Act came into force, does that property retain the character of woman's estate or does that also become absolute estate? For instance, a Hindu died in 1940 leaving behind his widow W and a brother B. W succeeded to the property and took a limited estate. B was then the presumptive reversioner. W sold the properties in 1950 to A. In 1954, B brought a suit against A for a declaration that alienation was invalid. When the suit was pending before the court, the Hindu Succession Act, 1956 came into force. There may be yet another situation, suppose B did not file the suit in 1954 but he filed it in 1960, when the widow had died. In both the cases the question is: has B, as reversioner, a right to file the suit under the old law? Or to put it differently, can the suit filed in 1954 be continued? Or, can B file a suit after the coming into force of the Act?

Succession of the Property of a Hindu Female Intestate: S.15 of the Act

Section 15 is the first statutory enactment dealing with succession to the property of a Hindu female intestate. Prior to 1956, the property of a woman dealt according to the rules provided under the uncodified Hindu law. In majority of cases, her limited interest terminated in the event of her death and therefore the question of succession to her property did not arise. The efforts on the part of legislature were aimed more towards securing her maintenance and property rights, rather than towards providing a scheme of succession to her property, as property ownership in absolute capacity by a female, was rarity and her general and complete economic dependence, a rule. The two statutes that were enacted to improve her conditions of life, viz., the Hindu law of Inheritance (Amendment) Act, 1929 and the Hindu Women's Right to Property Act, 1937, concentrated on securing her rights rather than on focusing on who, after her, will be eligible to take her property. These statutes thus, dealt with succession of the property of a Hindu male intestate and securing the right of the widow in case he died as an undivided member of a Mitakshara coparcenary, having at the time of his death, an interest in it.

Source of Acquisition of Property by a Female under Hindu Law: Determining Factor

The Hindu Succession Act, 1956 discriminates between the devolution of male and female property on the basis of the source of the property. With respect to devolution of male's separate property, irrespective of source (whether he inherits from his parents or his wife), the Act lays down uniform rules with regard to scheme of succession and determination of heirs. But in the case of a female dying intestate, the heirs are determined on the basis of the source of the property. Accordingly, for determining the scheme of succession and her heirs, property acquired by her could be classified into two types:

- 1) Property in general s. 15(1) and
- 2) Property inherited from her parents or husband or father-in-law s.15(2).

Property Inherited from Husband or Father-In-Law

A female may have inherited property from her husband as his heir. She may also have inherited property from her father-in-law as the widow of a predeceased son. In any such case, the property so inherited is to go not to the other heirs referred to in sub-s.(1), but to the heirs of the husband. Section 15(2)(b) provides. Notwithstanding anything contained in sub-section (1), any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son

or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

It follows from the context that the heirs of the husband mentioned in this clause are not the heirs of the husband she might have remarried after the death of her first husband but heirs of 'the husband' whose property she had inherited as his widow; and in case of property inherited from her father-in-law which could only be as widow of a predeceased son, the heirs contemplated are heirs of 'the husband' from whose father she inherited the property.

Constitutional Validity of Section 15

In a case before the Bombay High Court³⁷⁸ the constitutional validity of s.15 (2) was challenged on the ground of hostile discrimination on ground of sex. The court ruled in favour of the impugned legislation and held that the rule of reversion, i.e. property reverting to the family from where it was inherited, was in furtherance of the clear objective of the continuing the family unity. The petition was rejected and the court held that it is not discriminatory.

CONCLUSION

The Hindu Succession Act, 1956 has undergone a lot of change by virtue of The Hindu Succession (Amendment) Act, 2005 (39 of 2005). Section 6 of the said Act has been totally replaced by a new provision. This new provision has wide sweeping ramification on the Hindu Joint Family. This amendment is based on the recommendations of the 174th Report of the law Commission on „Property Right of Women-Proposed Reforms under Hindu Law“ under the Chairmanship of Justice B. P. Jeewan Reddy dated 5th May 2000. This commission recommended for the removal of anomalies and ambiguities with regard to property rights of Hindu women under the Act of 1956. As per the view of the Law Commission, the exclusion of daughters from participating in coparcenary property ownership merely by reason of sex was unjust. Therefore, this Amending Act gives full-fledged property rights to daughters in ancestral property along with sons.³⁹⁸ Pursuing the recommendation of 174th law commission, the Hindu succession (Amendment) Bill was introduced in the parliament on 20 December 2004 and was passed by the Rajya Sabha on 16 August 2005 and the Lok Sabha on 29 August 2005 respectively. The primary aim of the amendment was to remove gender inequalities under the Act, as it stood before the amendment. The amendment also became necessary in view of the changes made in Hindu Succession Act, 1956, in five Indian.

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