

A Study of Hindu Women Rights towards Tradition

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Abstract – In India, women's lower social position is frequently blamed on the ineffectiveness and inadequacy of existing legislation. Even if this is a recurring issue, the relationship between legislation and the treatment of women remains the most important component. Women's Inheritance rights are still viewed in a feudal context, and numerous gender-biased legal provisions fail to offer equal access to economic resources despite the Constitutional guarantee of equality. A shift in perspective is needed to better comprehend what motivates anti-feminist laws and how they keep women economically dependent on their male counterparts. An analysis of the function of legislation in defining women's Inheritance rights in India serves as an example of this economic dependency. With a focus on Hindu and Muslim law, this study aimed to examine and assess the position of women in relation to their Inheritance rights under various personal laws. Law and women's economic standing are examined, as well as the areas that need to be prioritised for comprehensive legislations, such as in the subject of marriage Inheritance law in India, in this study. Present law, while legally granting equal social standing to women, also restricts their potential growth by preserving patriarchal practises, which denies women access to economic resources outside the home and provides an inequitable division of Inheritance within the family.

Keywords – Women's Inheritance Rights, Legislation, Economic Dependency, Ineffectiveness

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INTRODUCTION

Women's status is the best indicator of a nation's progress. Women have played an essential role in human society since its inception. Through their work in diverse fields, they've helped to shape values that have resulted in a kind of all-around progress³. Women's treatment has also been linked to cultural levels because there is a strong correlation between the lower status of a woman and a society's poor culture. As a result, in order to understand the status of women in any community, one must examine the range of functions that a woman plays in the socioeconomic, cultural, religious and political arenas.' Since the dawn of human society, the roles of men and women have been clearly delineated. It was men's physical strength that held the women at bay, assigning and relegating light domestic duties to women and physically hard duties to males. As time went on, women became confined to the four walls of their homes, while men were free to do their work outside. Our patriarchal society came into being as a result of this gradual subjugation of women, both physically and economically. Male-dominated societies have led to a subservience of women to their male counterparts, with obvious differences

between the sexes. Gender injustices, then, might be defined as justice meted out to one gender at the expense of the other. It also shows how these two genders are discriminated against in broad terms. A well-accepted reality of our society is that a man's survival is ensured not by his daughter, but rather by his son⁶. Gender power imbalances are also a contributing factor to the problem of gender injustice. To make matters worse for women in these patriarchal countries, the preference for male children and a lack of legal understanding amongst women further exacerbated their already unfavourable condition. As a precondition for achieving gender equality, women must be given the same opportunities as men in all spheres of life, including the political, economic, cultural, and social spheres. The principle of equality is the foundation of gender justice since it does not make a distinction between men and women.

According to what Lord Denning has noted, Female emotions and thoughts are just as strong as those of a man. The same may be said for men and women in their respective domains. She has the same right as a guy to be free to express her fully. Instead of becoming her husband's slave, she

becomes his equal partner when they marry. In the same way that his work is more vital to the community, so is hers in the family. The two of them are inseparable. It's impossible for one to exist without the other. Equals in every way. The importance of ensuring women's Inheritance rights as a development issue and a pillar of social justice has long been acknowledged. Because of the importance of women's Inheritance rights, they have a significant impact on women's ability to make decisions, to pool resources, and to acquire wealth in the community. Because of this, economic empowerment becomes a key fulcrum for her empowerment. Inheritance laws have been framed and monopolized by men since time immemorial, while women have been kept subservient and rarely questioned any law, even if it was completely nullified with respect to their own rights, since time immemorial. Because of this, women's secondary status has been explicitly codified in our society, making it impossible for them to live independently or even survive without the support of a man. One-tenth of the global income is earned by women and they own less than one hundredth of the world's Inheritance, according to the United Nations Report on Women, published in 1980. While the first part of the book praises women's contributions to the global economy, the second half of the book exposes the deplorable conditions in which most women find themselves. The rights she deserves are denied to her because she is abused, abused, and exploited. Many elements contribute to the exploitation and subordination of women, but removal of her Inheritance rights is the most significant and prominent one. Inheritance rights have a critical role in determining whether or not future generations will have access to family assets that will impact their life chances. Formal equality has yet to be provided in a number of legal regulations, not the least of which is the law of Inheritance. A significant patriarchal imprint may be seen in India's laws of succession, which are still skewed in favour of the men. Gender equality is doomed to remain a charade unless women and men have equal rights to inherit. For this reason, cultures in which women held prominent roles enjoyed a greater social position and were held in higher regard than those in which they played minor roles. When it came to day-to-day economic activity, women held entire or at least significant influence in these societies. For example, in tribes that rely on fish and roots, the position of women is excellent, while in tribes that rely on hunting or other means in which women can be of little use, they are the most oppressed. Similarly, women in hunter-gatherer and pastoral societies had low status, whereas in agricultural societies, women hold a more prominent position. India is noted for its pluralistic culture, which includes Hindu, Muslim, Christian, Buddhist, Jain, Sikh, and Persian peoples, all of whom have lived together for centuries while preserving their distinct identities.

The Inheritance/ Inheritance rights of Hindu women can be studied under the following headings:

- A. Inheritance Rights of Daughters
- B. Inheritance Rights of widows
- C. Rights of women under Customary Laws.

A) Inheritance Rights of Daughters: The inheritance rights of daughters can be studied under the following headings:

I) Ancient Position:

The Vedic period, or 'Swarna Yuga', can be considered a golden age for women's rights and status. In the Rigvedic era, the daughter's social or familial status was generally satisfactory. They received the same education as boys and were required to wear a sacred thread during their Brahmacharya period (Upavita Dharana). They continued their study of Vedas, recited Vedic mantras, performed Vedic rituals, took Vedic vows, and did everything else necessary for the correct completion of the Yagayajna after this Upavita ceremony. They were just like their sons. As a result, we can conclude that women's educational status was generally equivalent to that of men during the Vedic period. It was common for women to receive the same education as males; she participated in philosophical arguments with and against men, and she engaged in penances. This demonstrates that in the early time, men and women were viewed as having an equal importance in social life. Daughters traditionally had no legal authority over the possession, acquisition, or disposal of any type of Inheritance. Because she lived in her father's residence her entire life, she was entitled to a portion of his assets. In the Rigveda, it is stated plainly that a son born of the body does not transfer money to his sister, hence she could not claim any share of their fortune. Only in the absence of a brother may married girls who were living with their husbands inherit from their fathers. At the time, the prevalent belief in Hindu society was that females who had brothers were not entitled to any share of the family wealth.

There was a significant shift in popular opinion about women's propriety throughout the Smriti period, as evidenced by the admission of female heirs to the throne by Manu, Yajnavalkya, Brishpati, Narada, and other Smriti writers. The order of succession in Manu 6 explicitly included the widow, the daughter, and the mother. Brishpati underlined the importance of a daughter's right of succession. Narada refused to acknowledge a widow's claim, but he agreed with the daughter's claim. It was Vishnu's intention to name his wife, daughter and mother as his successors. " Devala left Inheritance to his daughter, mother, and wife. There was no practical need for Apastamba to put the daughter in its list of heirs. After a long list of relatives and strangers, including a spiritual

brother, a teacher, a pupil, or a priest, he finally named his daughter as an heir. A person who was never a member of a spiritual fraternity or had never been taught by a teacher, a student, or a priest would never have died. Under Indian tradition, women who worked hard to acquire Inheritance were regarded as having earned it themselves, and their daughters were granted the right to inherit it. First, the unmarried daughter; next the married daughter who is not provided for; then the married daughter who is provided for. Then the unmarried daughter. Daughter's daughters followed by the daughter's son were next in line. Only in the absence of female heirs could the woman's own son inherit it. A daughter should be subject to the same restrictions and limitations imposed on a Hindu widow who inherits her husband's estate, according to the Privy Council's judgements. Except in the Presidency of Bombay, where the estate a daughter received as an inheritance from her father or mother belonged to the daughter outright.

II) Legislations on Daughter's Inheritance Rights

i) The Hindu Law of Inheritance (Amendment) Act, 1929

This was the first piece of legislation that extended the rights of the daughter in terms of Inheritance ownership, the Hindu Law of Inheritance (Amendment) Act, 1929. If a sister's son is adopted after her sister's death, it is not included in the list of female heirs in the line of succession. Only a limited number of women's rights issues were addressed by the legislation. Daughters and widows were excluded from inheriting under this law. No more was said about how far away the male heirs were from the female heirs in the Act than it said that they should be put on hold. So, the Act's provisions in support of women's Inheritance rights were not particularly radical. Act II of 1929 also had limitations, as it exclusively dealt with the succession of a Hindu male's separate Inheritance in the event of his death intestate. After his wife's death, a husband would inherit her husband's stridhan in the same way as if it had belonged to him. If Act II of 1929 was in effect at the time, the Inheritance could not be regarded as the Inheritance of a female because that Act governs succession. As a result, Act II of 1929 left women in a very precarious position legally. They realised this and continued to push for increased female inheritance rights in the legislatures, despite this fact. Dr. G.V. Deshmukh aimed to promote Inheritance equality for Hindu men and women with the Hindu Women's Right to Inheritance Bill. To ensure that no one would be disqualified from inheritance or Inheritance division because of their gender, Bill 3 established this in clause 3. Clause-4 of the Bill stated that the Inheritance of a Hindu who died intestate would be devolved to the wife, mother, daughter, and wife of a predeceased son along with the sons, and all would have an equal portion in the

Inheritance. Clause-5 elevated women to the status of equals with males, making them the sole owners of the land. As a result of the strong opposition to the bill, the provision awarding daughters a stake in the family's assets was dropped.

ii) The Hindu Women's Right to Inheritance Act, 1937

To make matters worse for daughters, a law called the Hindu Women's Right to Inheritance Act of 1937 went into effect. Maiden daughter's upkeep until marriage and her wedding expenditures were stipulated in Hindu law by the Law-givers of the Indian subcontinent. An heir to a predeceased son's inheritance was put before his daughter, but she was not obligated to pay any money to anyone out of the estate that descended on her by virtue of the 1937 Act and Amendment. As a result, the young daughter was unable to collect support and wedding expenses from the widow of the deceased son. A maiden daughter should have been given precedence, not a widow or an illegitimate heir to her father's throne. The daughter's rights were not protected by the Act or its revisions, so any of these widows may put her out to fend for herself. It was only when the United States gained its independence that traditional human values took on a new hue, and the necessity to liberate women from feudal bondage became more pressing than ever. In some areas, India's society has gained new dimensions as a result of the country's new constitution. Sex, colour, creed, and all other forms of discrimination have been abolished, and all legislation in conflict with or defying fundamental rights have been declared void. In the same vein, the state is directed to provide accommodations for women and children by removing prohibitions or discrimination based on religion, race, caste, gender, or place of birth. In addition, there were numerous voices calling for revisions to the Mitakshara system of Inheritance ownership. Even the concept of united family and Mitakshara coparcenary was no longer popular in modern society. Daughters are discriminated against by the constitutionality of the Mitakshara coparcenary. If the laws are administered equally to all Indians, it will hasten the improvement of Indian civilization. This is also a mandate from the state's constitution.

Devolution of the Inheritance belonging to intestate female³⁸

Under the Hindu succession Act, 1956 a female intestate's self-acquired Inheritance, a gift or Inheritance received under a valid will devolve as follows

- a) Firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;

- b) Secondly upon the heirs of the husband;
- c) Thirdly upon the mother and father;
- d) Fourthly upon the heirs of the father and
- e) Lastly, upon the heirs of the mother

A dominating male mindset is clearly apparent in the regulations that govern a Hindu female who dies without leaving any estate. In this sense, the rules that apply to Hindu women differ from those that apply to Hindu men. Her children and husband will receive the Inheritance first, followed by her husband's heirs, her father's heirs, and then her mother's heirs. After that, the Inheritance will go to her mother's heirs.

Special rules for females governed by Marumakkattayam and Aliyasantana Laws

When it comes to inheritance, the Mitakshara system adheres to the patriarchal system, whereas the Marumakkattayam and Aliyasantana laws follow a matriarchal system, tracing their lineage back to one common ancestor. Every member of a tarwad (a joint family structure like the Mitakshara Hindus') has a right by birth under this system, which includes a woman and all of her offspring. Tarwad's Inheritance is distributed according to the rules of survivorship. Propinquity is used to determine heirs. Male and female intestates have separate Inheritance rights that are devolved in a different way. Even if the categories have been reduced from three to two (i.e. a woman's general Inheritance and Inheritance inherited from her husband and father-in-law), the source of acquisition of Inheritance in female intestates is still important, as it is in general law. Male intestacies are passed down according to the same criteria as under general law, with the difference that distant agnates and cognates are treated equally. The mother and her heirs are given preference over the husband and his heirs in female intestacies.

Anomalies in the Hindu Succession Act, 1956

The Hindu Succession Act, 1956 gave women:

1. The right to hold Inheritance as absolute owners;
2. The status of co-heirs with brothers in the father's Inheritance and
3. Made a daughter's inheritance share equal to that of a son.

In spite of above mentioned achievements, some of the basic principles which contribute to gender inequality in the Hindu law of succession were left untouched by the HSA, 1956. The following were the demerits of the Hindu Succession Act, 1956:

a) The Mitakshara coparcenary

Mitakshara and Dayabhaga are two separate sorts of joint families recognised in Hindu law by the law of succession. Members of Mitakshara's joint family, including coparcener's spouses and unmarried daughters, are treated as a larger group than the coparcenary. Adoption makes a stranger a family member, but it does not make a daughter who was born into the family a family member. The Hindu Succession Act, 1956, did not eliminate the Mitakshara coparcenary; rather, Section 6 of the Act stated that the interest in the coparcenary Inheritance would pass to the surviving family members. However, the provision also states that the deceased's stake in the Mitakshara coparcenary Inheritance shall pass by testamentary or intestate succession and not by survivorship if he left him a female relative or a male relative who claims through such a female relative. Section 6's guidelines were a compromise that had some of the benefits and all of the drawbacks that go along with flexible legislation⁵⁰. The daughter, on the other hand, had no interest in the family's joint Inheritance when she was born. When her father died, she was only entitled to a portion of the land he had. Besides being a co-owner of the coparcenary Inheritance, the son received an equal portion in the deceased's self-acquired Inheritance, along with the daughter and widow. A daughter's inheritance part was therefore different from her brother's. HSA also permitted women to be Kartas of the coparcenary, which was another arena where inequality had been allowed to persist. He or she represents and acts on behalf of the joint family as the Karta, the oldest male member of the family. Women were not considered Kartas in traditional Hindu law since they couldn't be coparceners, and hence couldn't manage a joint family. This had been the ruling of the courts as well, in a number of instances. With its decision to keep in place the Mitakshara system for succession, the HSA rejected an urgent need for reform in Hindu Law. But in fact, some courts did take a more liberal stance and allowed women to be Kartas or joint family managers.

b) Separate Schemes for Male and Female Intestates

The Hindu Succession Act, 1956 also retained two separate schemes of succession for men's and women's Inheritance. To reflect the patriarchal presupposition of a dominant male ideology, Section 1554 of the Act is drafted in this manner. When a Hindu woman dies intestate, her assets go to her husband's heirs, not her own children, who are all Class I heirs. As a result, the Inheritance would go to the father, siblings, sisters, nephews, nieces, and other relatives of her spouse, rather than her own. If her (the daughter's) children, husband, and heirs of the husband are all deceased, her (the daughter's) Inheritance falls to the mother, even if she is listed as a Class I heir

under the Schedule. The position is completely different and unfair in the case of a woman's Inheritance, as her father and mother are delegated to a lower position as they come only after the husband's heirs. In other words, if a man dies intestate, his mother is entitled to an equal share of his Inheritance with his wife and children as Class I heirs. In addition, the father's heirs get priority over the mother's heirs when comparing the two sets of heirs. Clause (2) of Section 15 has another example of gender prejudice, which states that whatever Inheritance a Hindu woman inherits from her father or mother passes to the heirs of her father in the absence of her children. Consequently, even though the mother's Inheritance is inherited by a girl from her mother, it will not pass to her heirs but to those of her father's. This is another another example of a discriminatory provision that could lead to an unanticipated outcome. If the source is irrelevant in the situation of male intestate, then the legislature's need to design multiple plans is perplexing. Legislators also appear unconcerned with the issue of women's Inheritance passing to their own heirs rather than the heirs of their husband or father. Legislators appear to be motivated by a desire to protect Inheritance and return it to its original location. Legislators may have intended for her to receive Inheritance from her parent that goes to the heirs of her father, but this does not accomplish that goal because it only refers to that Inheritance.

CONCLUSION

Women's rights were acknowledged by the Hindu Women's Right to Inheritance Act, 1937, although they were far from adequate. As heirs of the Hindu male intestate, this Act acknowledged the right to Inheritance of two additional widows, one who was the widow of the deceased son and the other who was the widow of a pre-deceased son. The interests of male coparceners are transferred to widows upon the death of the men. They had a right to partition their share. As a result, women's legal status was much improved and they no longer had to rely on their husband's family financially. To be clear, she retains a limited right to use the Inheritance for her lifetime, after which it reverts to the original owners. In spite of this, the Act had a fundamental flaw in that it impacted the rights of daughters to their father's estate. According to Hindu law, the father's inheritance had to pay for the maiden daughter's upkeep till her marriage and her wedding expenditures. As a result, the Act of 1937 lacked the necessary safeguards to ensure the safety of Indian women. The Hindu Succession Act of 1956 was passed to protect the Inheritance rights of Hindu women. The Hindu Succession Act of 1956, Section 14, removed women's estates and replaced them with "full estates," a new legal status. All women's estates, excluding those gained by gift, will or decree, shall be transformed into full estate at the time of the Act's enactment except for those that were acquired by way of gift, will, or decree. For

those whose estate was not covered by section (2) of the Act, this sweeping provision made it a full estate. It was applied retroactively. All of the Inheritance that women had inherited from their husbands, parents, and other relatives, including immovable Inheritance, became their sole Inheritance as a result of this provision.

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