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Women's Equality under Hindu Succession law still under construction in India

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Patriarchy is deep-rooted in Indian society. Religious laws and texts have always held men above women in the matter of marriage, succession, and property regardless of religion. This essay explores how Hindu Succession laws under the Hindu Succession Act, 1956 have discriminated against women based on religious texts and how gradual changes were made to ensure parity between both genders. This road to equality under Hindu Succession Law took India more than 70 years, despite that there still exists cracks in the law that need to be dealt with. This essay deep dives into how the Hindu Succession Act, 1956 abolished various discriminatory practices while codifying some of them which were blatantly discriminatory, after various nudges by the judiciary, the Hindu Succession (Amendment) Act 2005 was passed. The amendment for the first time introduced daughters as coparceners and equals to sons. While this was a desired change there still exists room for improvement to achieve complete equality. Laws in India have historically been biased and patriarchal from the beginning of time, may it be family, criminal, or property laws. The rights of women have been infringed even after the laying down of the constitution. In this essay, I will discuss the ancient and post-colonial laws relating to Hindu succession and inheritance law for women and in the latter part discuss what were the steps taken to strengthen their rights and what more can be done to improve the current situation.

Keywords: *equality, succession, hindu law.*

INTRODUCTION

In Manusmrithi, the sloka highlights the importance of protecting women at different stages of their life and being deliberated as physically and mentally inferior to men. This ideology of women still exists in the current society as well. Women were allowed to be the owners of the property but not absolute owners. They could not sell or pass the property on and thus were deprived of involvement in the economic development. The British Indian Parliament was hesitant to alter classical Hindu laws but slowly ventured into them a lot of fundamental rights of women were being infringed due to these personal laws, one such step was The Hindu Women's Right to Property Act, 1937. According to *The Hindu Women's Right to Property Act, 1937* as it integrated and codified the right of maintenance of women along with the right of a widow to take over the share of her deceased husband who was a coparcener while not letting it fluctuate between the other coparceners. Section 14 of the act abolished women's limited ownership of the property and made them absolute owners. Though the widow did not hold absolute right she could enjoy the property during her lifetime or until remarriage. This was not a major step but a significant one as Doctrine of Survivorship was hindered where only the male decedents were entitled to the property, now though women do not have absolute right, have a right to use and enjoy their property during her lifetime.¹

The Hindu Succession Act, 1956 was the most significant step taken to codify and unify the succession laws for Hindu. Here is to bring into light what effect it had on the rights to women:

- i. Abolished the disparity between son and daughter in the matter of their right to inherit the property.
- ii. The widow was ranked par with a son and had an interest in coparcenary property.
- iii. Conversion will not disqualify the women.
- iv. Mother built as a Class I heir in the law and will succeed along with heirs.
- v. Women were given absolute power over the property including the right to dispose of the property.

¹ Poonam Pradhan Saxena, *Family Law Lectures* (Generic 2020)

- vi. Empowered women to testamentary succession.
- vii. Under Section 6 of the Act, notional partition was introduced, if a member had left behind a female surviving heir it will be assumed that the partition took place before the death and the property can be carried forward to the widow or daughter as intestate or testamentary succession. This still did not erase the discrimination as the son had a larger share compared to the daughter. While some states like Kerala and Andhra Pradesh introduce amendments to bring equality.²
- viii. The introduction of daughters and her heirs irrespective of her marital status in the absence of a primary heir.

The Hindu Succession Act did have a huge impact as it codified the majority of the laws, tried to bring all Hindus under one umbrella unlike previously, and moved towards a liberal approach. A stranger on adoption was granted the status of a coparcener but the same was not granted to a woman of the family. The Act totally failed to eradicate gender equality under succession. Due to high pressure from the conservatives, the Act could not erase the traditional concept. There was a lack of implementation of these progressive laws which led to poverty particularly for women. The difficult challenge was to bring about the socio-economical change in the society which attracted a lot of stigmas, which then lead to women being exploited.

A reform was made by the legislation with **The Hindu Succession (Amendment) Act 2005**.

The changes brought were:

- Section 4(2), which stated that the act shall not override any other act, was omitted. Rights created for women shall not be absolute and cannot be overridden by any other provision. Section 23 dealing with dwelling house was omitted and women were entitled to dwelling house even when married.
- Section 6 of the Act was amended, this provision included a daughter as a coparcener and was entitled to the same rights as a son under the Act.

² Kerala Joint Hindu Family (Abolition) Act 1975; Andhra Pradesh Hindu Succession (Amendment) Act 1985

- Various Sections were amended to “him/her” from just him, to denote the inclusion of women.

The said amendment was constituted with the following positive and progressive changes for the women of our country:

- i. The act introduces daughters as coparceners in Mitakshara coparcenary, regardless of their marital status.
- ii. It abolished the doctrine of survivorship for male coparceners who die as members of Mitakshara coparcenary.
- iii. Women get the right to demand partition which was held in *Ganachari Veeraiah vs Shiva Ranjani*³
- iv. The act removed the rule involving the bar on agricultural land to women under the act but does not add or clarify the same in the amended act.
- v. Inspires female coparcener to make testamentary succession.

The courts in the coming years of this amendment delivered various judgments which clarified the amended laws. In some cases, the court held that there were two conditions for daughters to become coparceners which were that she should be unmarried, and no partition should have been taken place before the commencement of the Act (*Jayamma vs Muniyamma*).

In the court holding in *Pushpalatha N.V vs V Padma* the court observed that marriage will not end the right of the daughter to coparcenary and that she obtains this right by birth. The court in the decision of *Prakash vs Phulavati*⁴ noted that this legislation will only apply to “living daughters of living coparceners” only and will not have retrospective effect. While recently the Supreme Court in the case of *Vineeta Sharma vs Rakesh Sharma*⁵ overruled *Prakash vs Phulvanti* holding that the amendment will have a retrospective effect and a daughter will be treated as a coparcener regardless of the year she was born in. This holding removed the uncertainty of the father being alive before 2005, the predecessor need not be alive for this right to be conferred. The court held that the daughter after the amendment receives the right of a coparcener just as

³ *Ganachari Veeraiah v Shiva Ranjani* AIR 2010 351

⁴ *Prakash v Phulavati* AIR 2015 721

⁵ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1

a boy would at the time of his birth. This was a historic and landmark judgment that finally put women and men on the same pedestal.

Both the acts provide for a progressive forward-looking law but that did not at all change the realities in the real world and women were still considered inferior in the family. The act included that if a Hindu female dies intestate leaving behind self-acquired property the property would devolve to her husband's heir and not her natal family. This should be amended as women nowadays prefer that her property goes to her natal family as closeness between them in this age still exists and it also denotes a way to give them for taking care of her. A huge rise in sex-selective abortion is one of the main risks of this new amendment. Couples and families could deliberately determine the sex of the unborn child and abort it if it were a girl, to escape transferring her rightful share.

Women have come a long way since the existence of these laws and are now in top positions and stand with men. They have been deprived of their rights in society and subjected to gender bias in the workplace. A low level of awareness along with literacy about their rights under the law leads to these rights not being executed or having a chance of not reaching the court.

Every family is afraid of the 'P' (Partition) word and imagine it coming from a women's mouth. Traditions such as 'Haq Tyag' where women voluntarily give up their rights to property are a blot in this country. The country saw increased incidents of girl feticides between 1970 and 1990 along with a higher female infant mortality rate because families considered girls as a liability who will claim and eat up the share of the property. The Law Commission Report stated that "The issue of family law reform does not need to be approached as a policy that is against the religious sensibilities of individuals but simply as one promoting harmony between religion and constitutionalism, in a way that no citizen is left disadvantaged on account of their religion and at the same time every citizen's right to freedom of religion is equally protected."⁶ Now after almost 60 years of independence and the formation of a liberal constitution we have come to our senses that men and women are equal. Gender-neutral laws

⁶ Law Commission, *Reforms on Family Law* (Consultation Paper 2018)

will create awareness and result in implementation. Many studies have shown a correlation between the economic environment of women and family income to show that more economic freedom for women could significantly improve the families and the country's financial health.

Reforms alone will not make an impact until and unless we challenge the religious practices that have existed. "The Constitution of India provides contradictory provision with regard to tribal society, in the sense that Article 14 has enshrined equal rights and on the other hand, allows the practice of norms and customs." Every person and community should have the right to practice their beliefs, but they should be allowed to the point they don't infringe the rights of any citizen of the country or living being to be precise. To improve the situation, social acceptance of women's right to property needs to take place. Gender inequality still persists, and various courts have acknowledged it. The Vineeta Sharman judgment is a welcome step but our country actually took as much time as our democratic history to get there. The case or changes in the Act still do not answer or reflect a substantial change in the society, many social issues prevail. Codifying every right and criminalizing non-compliance is the way forward.

RECOMMENDATIONS

Some recommendations to improve the current scenario as the entire scenario will change when the corrupt minds of this country change. Without looking at the past we should step forward into some changes namely:

- Pre-nuptial should be promoted and even a provision for it should be made as setting up a spousal trust will help in the protection of her assets, stability in financial situations, limiting the role of the courts and it is a perfect instrument to protect their rights.
- Determining the share of women coparceners.
- The legislation should take time and clarify the details and make the law itself clearer. They need to clear the grey areas to implement it to perfection.

- Raise awareness about the rights of women through programs and government initiatives.
- Practices such as 'Haq Tyag' should be abolished, and women should mandatorily get their share.
- Implementation of the Law Commission consultation paper presented on August 31, 2018.
- Women married into the family should also be given the same right. Uncertainty over agricultural land should be clarified.