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Should the Father be a Class-I Heir like the Mother under Hindu Law?

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Succession is the passage, distribution, or transfer of a deceased person's properties to those who are rightfully entitled to receive that property upon his demise. The Schedule of the Hindu Succession Act 1956 provides a list of Class I & Class II heirs. As per this Act, the property of a male Hindu dying intestate shall be transferred to the Class-I heirs first and then to Class II heirs.¹ One of the heirs in the list of Class-I heirs is the “mother” in Class-II heirs is the father. If the above-mentioned rule of Class-I heirs obtaining the property first after the Hindu male dying intestate is applied, then the mother and other persons in the list of Class-I heirs shall have a right over the property first and later the father and other members of Class-II heirs. This Article provides several arguments as to whether the decision of the legislators to not make the “father” a Class-I heir was a fair or unfair decision.

Keywords: *succession, class-I, class-II, father, mother, inheritance.*

INTRODUCTION

Succession is the transfer of property of a person to his heir or heirs upon his demise. The Hindu Succession Act, 1956 imparts regarding those persons who are rightfully entitled to receive the

¹ Hindu Succession Act 1956, s 8

property after the owner's death and also lets us know in what sequential order the property shall devolve upon them through some of its provisions.

If a male Hindu dies, without making any will, then according to the Hindu Succession Act, of 1956, the property will first go to Class-I heirs.² If there are no Class-I heirs the property shall go to the Class-II heirs³ and if no Class-II heirs are present then to the agnates of the deceased person.⁴ Lastly, if there are no agnates then the property shall devolve upon cognates of the deceased person.⁵ If we follow this rule, then the relatives who are in the list of Class-I heirs shall have the right over the property of the deceased male in the first place.

Both mother and father as parents have a significant role in the upbringing of a child. Each of them makes equal contributions in shaping a child's character & developing him into a well-literate person in their own different ways. Thus, when parents grow old, it is their right to get the same support that they had given to their children. One of the most important ways of supporting a parent is to provide for him/her shelter so that they can spend the rest of their life without any discomfort. Financial support is very important to be given as they become aged and infirm and are unable to provide for themselves. Owning a property would be a great financial aid for parents.

During old age, the son is responsible for the maintenance of his mother and father, takes care of them and provides them with all the basic necessities which are important for their living. But if a son dies, his parents have quite a hard time not only emotionally but also financially. At this elder age, after their son, they cannot work and are incapable of supporting themselves because they are quite weak and vulnerable. Thus, the Hindu Succession Act, 1956 provides that mother as a Class-I heir has a right to inherit her son's property after he dies without making a will.⁶ But a lot of argument arises on the fact as to why the father is not placed on the list of Class-I heirs. Father being a Class-II heir is deprived of the same privilege as the mother gets, of having the property first. This has been a subject of debate and discussions as to why can't a

² Hindu Succession Act 1956, s 8(a)

³ Hindu Succession Act 1956, s 8(b)

⁴ Hindu Succession Act 1956, s 8(c)

⁵ Hindu Succession Act 1956, s 8(d)

⁶ Hindu Succession Act 1956, s 8

father have the same right over his deceased son's property as the mother. The fact that the absence of any of the persons in the list of Class-I heirs will decide the fate of the father in getting the property has been considered absurd by a lot of people.

REASONS WHY FATHER SHOULD BE A CLASS-I HEIR

Promotes Gender Equality - Making the father a Class-I heir shall promote gender equality. Equality before the law and equal protection of laws⁷ is something which is provided in the Indian Constitution and which ensures that no person must be discriminated against on the basis of their religion, sex, caste or place of birth.⁸ Gender-neutral laws are very important in order to eliminate all gender- stereotypes so that both men and women are on an equal footing. Thus, when both father and mother have equally supported their child and given him equal care, there shouldn't be any discrimination when inheriting their son's property. A father also must have the same right to get the property of his deceased son as the mother. In a world where we are striving hard to make laws that are in favour of women so that they do not feel any less than men, the same must be done when a man does not get the same opportunity in comparison to a woman. Thus, in order to promote gender equality, placing the father as the class-I heir is necessary.

If a son has the right to get the father's property, the father must also have the same right to get his son's property - If a Hindu male, being a father dies intestate, his son being in the category of Class-I heirs shall have a right to inherit his property. On the other hand, when a Hindu male being a son dies intestate his father being the Class-II heir shall only get the property when there is no one in the line of Class-I heirs. Thus, it would be quite unfair when a father sacrifices everything to satisfy the needs of his children and would not get anything in return when he is in need. So, in order to acknowledge the sacrifices of a father, he must be recognized as a Class-I heir.

Financial dependency of a Father in old age - Naturally, when a person grows old, he becomes financially dependent on his children. Although many people have access to pension benefits

⁷ Constitution of India 1950, art 14

⁸ Constitution of India 1950, art 15

after their retirement, still there are a majority of people who are looking up to their children for financial aid. For instance, if we understand it by this example that when a father is old and has no daughter and his wife and son are deceased, there is absolutely no one to take care of him, and in addition to that if he has no property of his own, he can't even get the property of his deceased son because of being a Class-II heir and as a result has to suffer more difficulties. So, in order to avoid this scenario, the father must be recognized as a Class-II heir.

Financial Stability for Father and rest of his children - If an elder son dies intestate then his mother, widow, sons, and daughters would get the property whereas his sisters, brothers and father being Class-II heirs shall have no chance of inheritance. But if the father is made the Class-I heir and his elder son dies who had a major role in contributing towards the family's finances, the other children in the family can be at an advantage. The devolution of property to the father after the death of his eldest son would help in avoiding any financial crisis if the eldest son was the sole breadwinner of the family or had a hefty contribution towards the income of the family. The father can support his other younger children from the income generated from the property. There would be no problem if the brothers and sisters of the deceased being a Class-II heir could not get the property because the father as a Class-I heir inherits the property and is able to support them.

REASONS WHY FATHER SHOULD NOT BE A CLASS-I HEIR

The prime objective of the Hindu Succession Act 1956 is to provide equal property rights to both men and women. It was the first legislation to bring gender-neutral laws in India. Women have been struggling for several rights for decades and one of the most important rights is the right to property and since they get married and move to their matrimonial homes, they are not given any share in their ancestral or family property.⁹

Thus, various people feel that the mother is on the list of Class-I heirs and the father being a Class-II heir is perfectly justified as the rights of the mother being ignored for ages must now be given precedence over the rights of the father.

⁹ J Jerusha Melanie, 'Property rights of women in India' (*iPleaders*, 21 June 2022) <<https://blog.ipleaders.in/property-rights-of-women-in-india/>> accessed 23 June 2023

Reasons why a father should not be a Class-I heir:

About 66% of men who are married own land of their own which is more than the land owned in comparison to married women.¹⁰ Men are considered to be the wage earners of their families. In our society, a man has to be the one who works, earns money and economically supports and provides for his family. Hence, he is provided education so that he could earn as much as he can to provide for his wife, children and parents. Men being well-literate get good job opportunities and as a result, have a handsome salary. Thus, they buy more properties because they have a fine income.

On the other hand, women in our society are seen as persons who carry out domestic responsibilities and do household work, rather than earning money to support their families. Although, nowadays the circumstances have changed and women are being educated and earning more money than men yet in some places in our society women are not much educated and are seen as a vulnerable section of society and thus are more inclined to do domestic work and not earn money due to lack of education. In rural areas, still, there are not enough educational opportunities for women due to which it is hard to find jobs for them. So, women do not tend to buy as many properties as men.

Therefore, when a Hindu male dies intestate the first right over his property is with his widowed wife and mother. The Father being an earning member of the family in most cases has a property of his own. Since he is the head of the family and earns to economically support his children, wife and parents, most of the time he has a property of his own. But if on the death of a husband a widowed wife does not receive her husband's property, she would not be able to support herself and her children. Most of the women after getting married sacrifice their jobs for taking care of their children. So, the husband is the one who earns to feed the family. After the death of the husband a widow with no income can only generate income somehow if she gets the property of her deceased husband. Thus, instead of giving the property to the father by placing

¹⁰ Isis Gaddis et al., 'Women's legal rights and gender gaps in property ownership' (*Ideas for India*, 23 April 2021) <<https://www.ideasforindia.in/topics/social-identity/women-s-legal-rights-and-gender-gaps-in-property-ownership.html>> accessed 23 June 2023

him as one of the Class-I heirs, the property must go to someone who is actually in need of help after the death of the man.

- The spirit of the Hindu Succession Act, of 1956 is to give women equal rights to inherit property for the upliftment of their position in society. But if the father is made the Class-I heir the very essence and spirit of the statute would be opposed.
- Recognizing a mother as a Class-I heir basically acknowledges her sacrifices towards her family and children. Most mothers give up their careers, jobs, and profession to take care of their children at home. Some of them even work while being pregnant in order to contribute towards the income of the family. Some women even join work after a short interval of delivering their child. The sacrifice of mothers is impeccable and must be admired at all times.
- There are many cases where women have to tolerate their abusive husbands because they are financially dependent on their husbands. If the son dies, the woman after receiving the son's property can move out of the abusive marriage and the property might provide some financial support to her. Thus, the mother being placed as a Class-I heir could also help many women to leave behind a toxic and abusive marriage.

SUGGESTIONS

In this article, I have endeavoured to explain both viewpoints; why a father should be included in the list of Class-I heirs and why he should not be regarded as a Class-I heir. But my personal opinion or suggestion is somewhat inclined to one side only.

Property rights have always been in favour of men. Thus, the intent of the legislators while formulating the Hindu Succession Act, of 1956 was to promote property rights that would benefit both men and women. So, if the very purpose of the statute is to provide equal property rights to both men and women, placing the father in the list of Class-II heirs and the mother in Class-I heirs would not suffice the purpose of the statute and its objective would be violated. Thus, in my opinion, in order to satisfy the purpose of the Hindu Succession Act, 1956, the father and mother both should be placed on the list of Class-II heirs. Also, this decision would help in encouraging equality which is one of the most significant human rights.

When a person dies grief consumes his whole family and his nears and dears. But it is more painful for the family when a man who has been financially supporting his whole family passes away. So, in order to protect those fathers who have no one else to take care of them and are quite vulnerable and weak to earn and support themselves after their son's death, the father should be considered as a Class-I heir.

Laws are made to protect the interest of all individuals in society and for the welfare of all of them. So, keeping that in mind my suggestion would be to make the father a Class-I heir. If the same is done, the mother, father, widowed wife, son, and daughter could equally divide the property among themselves and each one of them could individually have a separate share of the property.

CONCLUSION

Property is considered the most crucial asset of a person. It is of great advantage and can be a source of both financial and emotional security. Thus, every individual wants to own a property so that he can avail some life of ease and opulence. The Hindu Succession Act provides a uniform formula for governing the aspect of succession among all Hindus and thus lays out several rules of succession and inheritance for males and females through its provisions. Gender-biased laws have been prevailing through the ages. As a consequence, steps are being taken to make our laws bias-free. We all have been aware of the fact that the bias is toward women most of the time. So, while trying to accomplish the state of gender neutrality the legislators are trying to invent laws that are more in favor of women and while doing so, they are overlooking the rights of men. Making the law in favour of women does not imply that the rights of men are to be relinquished. Uplifting the mother's right and on the other hand sacrificing the father's right is no different from biases. Considering all the reasons why a father should be a Class-I heir or shouldn't be a class-I heir it can be safely deduced that including the father as a Class-I heir might not have any major or severe impact on the mother and the other Class-I heirs but not including the father as a Class-I heir may have serious repercussions on some fathers who are old and have no support from other members of the family after the death

of the son. The agony of such fathers must be addressed and some proper solution must be determined.