

CRITICAL ANALYSIS OF HINDU WOMEN LIMITED ESTATE

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ABSTRACT

As per western philosophies, the property is considered to be of permanent character having the right to inheritance being vested in it, but in the Indian context, can we say so? There is a whole jurisprudential shift in the Indian legislative framework especially in a post-independence era with respect to women's right of inheritance in general, and Hindu law in particular. With this very objective, the present paper tries to track this jurisprudential shift by referring to different reforms which are brought on this aspect. The subjection of women by the patriarchal norms under the garb of culture becomes normalized and even the legislations, as well as lawmakers, got influenced from this normalization as a result of which rights (property rights) of the women had been made limited in nature. And, by referring to Hindu law jurisprudence, it can be said that in actuality, the property rights of women are limited because of the notion that they are not the part of the family in which they are born, instead, they belong to their husband's family as they have to leave their parents' home after marriage. However, this biasness has been addressed in the post-1956 era through different enactments by the legislature, but it was only in the year 2005 when women vis-à-vis daughters got equal rights in terms of property as that of their male counterparts. Thus, the present paper deal with the most basic issue of the inheritance right of the woman in the Hindu society and tries to simplify the legislative jargon for the readers.

Keywords: Inheritance, Hindu Society, Stridhan, Dowry.

INTRODUCTION

Since time immemorial, the rights of Hindu women are subjugated and suppressed through parochial norms of the society, which is evident from the fact that they were not allowed to inherit the property or remarry after the dissolution of their marriage, etc. But with the changing norms of the society, it can be observed that several rights are now been extended to women as

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well, however, these rights are not enough in their true nature and spirit to put the status of women on a similar pedestal as that of man.

Furthermore, in the pre-1956 era, there were two kinds of rights given to Hindu women; firstly, with respect to “Stridhan”¹ she had absolute right over it, and secondly, Hindu women had limited right over the estate which has gone through significant change after the Hindu Succession Act, 1956 (HSA). Both moveable and immovable property can be considered as Stridhan if the same has been received by a Hindu woman through a gift or which has been acquired through any of the means specified under section-14 of HSA, and Hindu woman have absolute control over this Stridhan which is evident from the bare reading of section-27 of the Hindu Marriage Act, 1955 as well.²

Furthermore, the right of Hindu women over their estate is subject to evolution under which several changes can be observed some of them can be summarised by saying that the right to property is now given to all the family members on equal footing including widows, daughters, and predeceased son’s widow. And, respect to the transfer of property directly to the son after the death of the father is now abolished through the 2005-amendment, because now after the death of the father, the property will be first transferred to the father’s wife (mother) then it will subsequently pass on to son or daughter depending upon heirs of the deceased father.

SCOPE OF STRIDHAN AND HINDU WOMEN LIMITED ESTATE

Stridhan is such a kind of property on which a woman has the absolute right and a woman can use her stridhan in any way as she deems fit. And, the Supreme Court clarified certain aspects with respect to the gifts which will fall under the category of stridhan,³ these are;

- (i) If a woman receives gifts before the nuptial fire.
- (ii) Those gifts are received by women during the bridal procession.
- (iii) Gifts received by a woman from in-laws through love and affection at the time of marriage.
- (iv) And, gifts that are received by a woman from her mother, father, or/and brother.

¹ Manusmriti Chapter IX verse 194.

² The Hindu Marriage Act, 1955, Act No. 25 of 1955, s.27.

³ *Pratibha Rani v. Suraj Kumar*, 1985 SCR (3) 191.

Moreover, property acquired by a woman through skill/exertion in the nature of salary/share in profits, basically those properties which are purchased by a woman through her own funds, along with the property acquired via decree or adverse possession are also considered as stridhan and thus, a woman has absolute right over such property,⁴ she can alienate it as she wishes and upon her death, such stridhan passes on to her heirs as laid down vide section-15 and 16 of HSA.

And, for any property to be qualified as a stridhan source of acquisition and a woman's marital status need to be considered.⁵ Even though the woman has absolute right over stridhan but in certain circumstances like extreme distress, the husband can use stridhan which must be returned when he becomes capable of doing so.⁶

Moreover, the property can also be sub-divided into the broad categories of "saudayika" and "non-saudayika", Hindu woman enjoys the absolute right of alienation over saudayika properties which are usually referred to as stridhan and every moveable/immovable property which is given by parents or any other relatives comes under the purview of stridhan and thus she has absolute right to alienate saudayika properties. However, the property which has been received by a woman from non-relation or the properties inherited by a woman from male/female relations including husband along with the properties inherited by her at the time of partition is called non-saudayika property and Hindu woman is not allowed to alienate any such property without the consent of her husband.⁷

The ambit of Hindu women's limited estate deals primarily with the aspect of limited right over the property, sources of Hindu women's estate can broadly be classified into the following categories;

(i) Property received through partition: Section-14 of HSA clearly elucidates that the properties which are received by a Hindu woman after commencement of the Act through partition will be considered as her absolute property and those properties on which enjoys possession, will also be considered as her absolute property due to the said enactment.⁸

⁴ Kusum, & Poonam Pradhan, "Family Law Lectures", ch.12, Lexis Nexis, 3rd Ed. 2018.

⁵ Paras Diwan, "Modern Hindu Law", pg.389-408, 24th Ed. Allahabad Law Agency.

⁶ *Ibid.*

⁷ Kusum, & Poonam Pradhan Saxena, "Family Law Lectures (Family Law-II)", ch.12, Lexis Nexis, 3rd Ed. 2018.

⁸ *Chinappa Givinda v. Valliamal*, AIR 1969 Mad 187.

(ii) Property received under award/decreed: The Supreme Court explains the scope of section-14(1) by stating it cannot be limited by any theory or interpretation of any clause whatsoever under HSA.⁹ And, even properties that are obtained by the widow through a preliminary declaration by the Court before the passage of the final decree, the ownership of the widow over the said estate will remain absolute.¹⁰

(iii) Property received under inheritance: Any property which has been received by a woman after commencement of HSA, and properties which she had inherited before this Act and she has possession over the same, both will be considered as her absolute property and after her death, it will devolve upon her heirs.

(iv) Property received under gifts: It is the same as stridhan as any property which has been received by her from relatives/strangers and she has absolute right over the same.

(v) Property received through a will: Those properties which are received by a Hindu woman through will, she shall have absolute right over it vide section-14(2) of HSA.

(vi) Property received under compromise/agreement: If there is any condition regarding limitation on the right of a Hindu woman under an agreement, then such agreements fall under section 14-(2), but if there is no agreement to the contrary regarding her limited right over such property then general provision of section-14(1) will be applicable.

Journal of Legal Research and Juridical Sciences

Features of women's estate: A Hindu woman has a similar right over her property to that of any other individual but this right was subject to certain limitations, which are; she is not legally entitled to alienate the corpus, and in case of death, such property devolves upon the heirs of last full owner. And to understand the nature of such property, Privy Council had dealt with this aspect by expressing that the woman has all the rights with respect to property but is limited, and nobody can have interest in such property till she is alive.¹¹ Her limited power over the disposal of the property defines the nature of her estate.

Hindu woman as representing coparcener: In the pre-1937 era, there was a huge difference between Mitakshara and Dayabhaga schools of Hindu law in terms of females as representative of share belonging to the coparcenary system. On one hand, Mitakshara excludes female

⁹ *Punithavalli Ammal v. Ramalingam (Minor) and Anr.*, 1970 AIR 1730.

¹⁰ *Santosh and Ors. v. Saraswathibai and Anr.*, AIR 2008 SC 500.

¹¹ *Janki v. Narayansami*, (1916) 43 LA. 207.

dependents of the deceased male from right of inheritance to even separate property of the deceased male, but, the Dayabhaga school is more liberal as it recognises both males and females as coparceners, thus it can be said that Dayabhaga school deviates to a certain extent over “doctrine of survivorship” as conceptualised by Mitakshara school. This is also because under Mitakshara widow/daughter have the right of maintenance only from the estate of their husband/father but in Dayabhaga, the rule of inheritance has been given weightage as both male and female can become coparceners in the absence of husband/father, and property will not devolve upon the surviving coparceners.¹²

DIFFERENCE BETWEEN STRIDHAN AND DOWRY

Dowry basically means a gift/present given by the bride’s family to the bridegroom’s family before/during the marriage based on previous arrangements. But, the difference between dowry and stridhan is the element of demand because dowry involves undue influence/coercion from the side of the bridegroom’s family; however, gifts given under stridhan are totally voluntary.

Articles or presents which are usually given at the time of marriage can be classified into three categories; (i) articles given to a woman for her exclusive use like jewelry, (ii) presents given in the form of dowry for its common use in matrimonial house, and (iii) those articles which are given to husband and other relatives from the side of the husband.¹³

However, the SC in Pratibha Rani Case draws a parallel between dowry and stridhan by stating that mere common use or enjoyment of articles with the permission of the bride which is received in dowry shall not result in *jointness of control and custody of the couple to undefined and unreasonable limits*.¹⁴

But, recently it has been held that in dowry, the intended property is transferred to that person who demands it, while the property is granted to the bride during/before the marriage voluntarily under stridhan.¹⁵ Thus, the wife has the absolute right to dispose of the property received via stridhan but when it comes to her right over dowry, the legal framework is totally different.

¹² Poonam Pradhan Saxena, “Family Law Lectures (Family Law-II)”, Lexis Nexis, pg.99-101, 04th Ed. 2019.

¹³ *Vinod Kumar v. State*, AIR 1982 P&H 373.

¹⁴ *Supra* note 4 at 4.

¹⁵ *Girish Chander Raina v. Sushma Sharma*, J&K High Court, LQ 2008 HC 19363.

HINDU WOMAN'S RIGHTS OVER ESTATE IN THE PRE-1956 ERA

In the pre-1956 era, a woman's right over her estate was limited to much extent which can be summarised in the following ways:

(i) Right to Manage Property: When it comes to the power of management, it can be observed that her status is slightly superior in nature in comparison to that of Karta in a Hindu undivided family, as she enjoys full right to manage, possess, and spend the income generated from any such property at her own will. This is also because Karta in HUF even manages the undivided property but his inherent right to alienate or use such property to own benefit is limited to his share only in coparcenary property, but Hindu woman enjoys absolute right over their property and any profit/income accrued from any such property is considered as their stridhan due to which they can only be sued or sue others on behalf of their property.¹⁶

(ii) Right to Alienate: Prior to HSA (1956), Hindu women had no right to alienate their estate; this is what we refer to as Hindu woman's right to the limited estate. It was not the case that there was a blanket ban on their right of alienation, but such rights were restricted to exceptional circumstances which include situations like that of legal necessity, discharge of indispensable duty, or benefit of the estate.¹⁷

(iii) Right to Surrender: Surrender or renunciation of one's own right can be done in two ways, firstly, by voluntarily renouncing the rights over the estate during the lifetime, or secondly, through the death of the concerned woman. However, such surrender/renunciation must comply with certain conditions in order to provide validity to surrender.¹⁸ These conditions are two-fold; the surrender must be of the entire estate (but they can keep a certain portion of their estate for maintenance), and it should be in favour of the nearest heir or the heirs of the last owner ("reversioners")¹⁹ coupled with bonafide intentions.

PROPERTY RIGHTS VIDE THE HINDU WOMEN RIGHT TO PROPERTY ACT, 1937

During the time of Manu, the Hindu father was treated as despotic in the sense that the wife, son, and slave were proscribed from holding any property as their own because they belong to

¹⁶ *Supra* note 5 at 4, pg.457-458.

¹⁷ *Id.*

¹⁸ *Ibid.*

¹⁹ *Chikamarti Kotaiah v. Addanki Venkata Subbaiah*, AIR 1919 PC 75.

the man (Father) thus, their earned property will also belong to that man only.²⁰ Rule of survivorship was followed earlier as laid down by Narada, this states that in case there is the death of childless then the property shall be partitioned amongst other coparceners excluding the widows of that deceased.²¹ Thus after the abolition of Sati, Britishers introduced the Hindu Women's Right to Property Act, 1937, which extends the rule of survivorship in favor of widows where interests of the deceased male coparcener devolve upon his widow if he was childless, and the widows are legally entitled to demand partition.

This Act gave property rights to Hindu widows, however, they still she has limited interest in such property and it further became more discriminatory when the statute was amended in 1938 to restrict widows from having an interest in agricultural land. And, on the death of the widow, the said property will not devolve upon the heirs of the widow but it will go back to the heirs of the last male owner.²²

Thus, it can be said that it confers limited inheritance right especially to the widows²³ because which Hindu Law Committee (1941) was formed to suggest reforms in the Hindu personal laws to improve the status of women and reduce gender inequality. Committee submitted its report in favour of monogamy, divorce, inheritance, coparcenary system, etc. there was a huge ruckus over giving property rights to Hindu women within and outside the Parliament. People opposed the suggestions by saying that giving property rights to the woman will cause disintegration in Hindu families which are based on a cooperative system and the suggestion with respect to giving inheritance rights to daughters is a European influence that will act contrary to the Indian culture.²⁴

GENDER INEQUALITY IN THE HINDU SUCCESSION ACT, 1956

As stated earlier, significant changes are introduced through HSA (1956) vide property rights of Hindu women. This enactment led to the abolition of the limited estate of Hindu women under which she had limited rights with respect to the alienation of property,²⁵ it brought every Hindu under one roof of a coparcenary system where both son and daughter have equal right of inheritance. But, the inheritance right of a Hindu daughter remained limited to the self-

²⁰ Manu, VIII, 416.

²¹ Narada XIII, 25.

²² *Kery Kolutani v. Moneeram Koluta* (1880) ILR 5 Cal 776.

²³ Bina Agarwal, *“Redefining Family Law in India”*, Routledge (Delhi), 2007, p.306-354.

²⁴ Paras Diwan, *“Daughters Right to Inheritance and Fragmentation of Holdings”*, SC (J) 15 (1978).

²⁵ The Hindu Succession Act, 1956, (Act 30 of 1956), s.14.

acquired property of the father and the notional portion which the father will get in joint family property, provided that the father dies intestate (without a will). This was the first post-independence enactment that tried to reduce gender biasness in Hindu law, and it applies to both Mitakshara and Dayabhaga schools along with some matriarchal societies like Marumakkattayam, Aliyasantana, and Nambudri which exist in the south.

The Parliament tried to accord equal rights to the woman where she can inherit and dispose of the property independently which was not possible earlier as her right of inheritance and alienation was determined through customs that often favor the view of keeping property intact for the male heirs.²⁶ Thus, it was highly discriminatory in nature as even the absolute right of Hindu women over property is limited to a certain extent when it comes to the inheritance of different kinds of properties in comparison to property inherited by sons.

Moreover, sons have the right to demand partition as they are part of the Hindu coparcenary system but a daughter cannot. Like sons can demand partition even in dwelling house but daughters have right of residence only. Even though the rule of survivorship is made nugatory to a greater extent through this Act by involving mothers, daughters, and widows as heirs for inheritance in case of the male father dies intestate, section-6 of this Act retains the structure of Mitakshara coparcenary system survivorship due to which male members still hold onto the joint family property by excluding female family members.²⁷

Journal of Legal Research and Juridical Sciences

Thus, HSA (1956) fosters gender inequality as there was always a threat of disinheritance to daughters because if the father converts his separate property into the joint family property, or willed/gifted his entire separate property to sons, or in case if male coparcener renounces his property daughters will lose their rights but sons still have an independent share over ancestral property, all three scenarios cause disinheritance to daughters but not sons.²⁸ Since land holdings constitute a large chunk of property belonging to any Hindu family, especially in rural areas, thus, excluding the daughter's right of inheritance in ancestral property promotes gender biasness that violates Article-14 of the Constitution.²⁹

²⁶ J. Dancan. M. Derret, "*A Critique of Modern Hindu Law*", N.M. Tripathi Pvt. Ltd. Bombay (1970), p.193.

²⁷ *Supra* note 2 at 1, s.6.

²⁸ Chadha Purva, "*Hindu Family Property Law in India and Gender Inequality*", SCJ J-13 Vol.2 (2002).

²⁹ Nazeer H. Khan; "Ambedkar on Gender Equality: Myth and Reality", (2001), p.176.

WOMAN'S RIGHTS OVER ESTATE IN THE POST-2005 ERA

The Hindu Succession (Amendment) Act, 2005, is based on the recommendations proposed by the 174th report of the Law Commission³⁰ which highlighted several lacunae regarding the daughter's right of inheritance over the father's separate property, and exclusion of female vide section-6 of HSA³¹ from the coparcenary system. Suggested reforms by the Law Commission can be summarised as follows:³²

- (i) A suggestion was made by the Commission to include daughters in the coparcenary system similar to that of sons.
- (ii) Delete section-23 of HSA (1956) which puts a bar on the daughter's right to demand partition over the dwelling house.
- (iii) And, over the issue of disinheritance, Law Commission was also of the view that certain restrictions should be placed on the father's act where he is free to will his property, but this suggestion was not pursued by the Law Commission.

On the basis of these recommendations, Parliament passes an amendment to HSA (1956) which brought a revolution by giving property rights to Hindu women through amending *prima facie* gender discriminatory provisions which are in contravention to Constitutional mandate vide Article-14, Article-15(2) & (3). Section-6 of the old Act is substituted by a new provision which gives an equal right of inheritance to daughters as well similar in line to that of sons, and this marks the advent of the long-standing demand of Hindu women to have absolute right over a property *in toto*, along with this, section-23 is also repealed through amended legislation and the legislative intent behind deletion of section-23 is given under "statement of the object" of the statute which says that it is done "*to remove disability on female heirs constrained in that section*".

However, doubt still persists on the retrospective nature of section-6 of the 2005-amendment as the SC in *Prakash v. Phulvati and Ors.*³³ held that both father and daughter have to be alive on the date of effect of the said 2005-amendment in order to qualify the daughter as coparcener and it cannot be applied retrospectively. But the same court in *Dannama @ Suman Surpur v.*

³⁰ The 174th Report of the Law Commission of India on "Property Rights of Women: Proposed reforms under the Hindu Law", (May, 2000).

³¹ *Supra* note 2 at 1, s.6.

³² *Ibid.*

³³ (2016) SCC (Civil) 549.

*Amar*³⁴ gave contradictory judgment by recognising the retrospective nature of section-6, thus, the said issue need clarity which has been resolved by the SC in *Vineeta Sharma v. Rakesh Sharma*,³⁵ where the court accepts the view that father need not be alive at the time when the said amendment came into effect because the rule of survivorship is just a mode of succession and it does not result in the formation of coparcenary rights and the amendment came into being so to bring equality, thus, there is no reason to sustain the view held by the court in Prakash's case.

CONCLUSION

The Hindu woman's right/interest in the property keeps changing from time to time for ensuring gender equality. Like in the pre-1937 era, widows were disinherited from the property after their husband's death and they only had the right of maintenance from the property, but it has been changed after the enactment of the Hindu Woman Right to Property Act, 1937, as now they can demand partition and enjoy ownership over husband's property.

Similarly, under the Mitakshara coparcenary system females were not considered as coparceners which excludes them from inheriting ancestral property, and even though HSA-1956 tried to bridge this gender inequality by abolishing the concept of the limited estate which prohibits Hindu women from alienating their property, but there are several lacunae still persist in terms of Hindu woman's right over property as they can claim theirs over the separate and notional property of father which creates a problem of disinheritance which can be effectuated by father by willing his property in favour of sons or any other person.

Till 2005 females are not considered coparceners, thus, they had no inheritance right over joint family property, but the situation is improved through the 2005-amendment to HSA which considered males and females as a part of the Hindu coparcenary system resulting in providing the equal right to daughters and wives over the ancestral property by the rule of inheritance in consequence of which doctrine of survivorship is diluted to a large extent.

So to conclude, it can be said that Hindu woman's right over property was limited in the pre-1956 era, but it has been changed by the 1956 Act, however, this enactment left certain discriminatory provisions untouched which stands corrected through the 2005-amendment to HSA. And, now females are considered as coparceners, and also they have absolute right over

³⁴ Civil Appeal Nos. 188-189 of 2018.

³⁵ (2020) 9 SCC 1.

the property inherited by them through father/deceased husbands. However, when it comes to implementation aspect, society still favours patriarchy which is evident from the fact that if daughter demands for partition, then they have to file a suit before the court but in case of demand made by sons, father or karta of happily divides the share without any hesitation. Thus, even though legislative framework favours property rights of Hindu woman, but deeply engraved patriarchy force daughters to go through tough times in fighting legal battle, which needs to be corrected through a sense of social responsibility.

