

EVOLUTION OF SUCCESSION RIGHTS OF HINDU WOMEN FROM ANCIENT TO MODERN

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“Freedom and Property rights are inseparable. You cannot have one without the other.”

- George Washington

INTRODUCTION

Every person has a right to receive equitable treatment in all facets of life. However, a woman is made to feel this imbalance, particularly when it comes to her right to property because her status in our society is lower than a man's. Hindu women in India's patriarchal society are denied the right to own property and are viewed as less valuable in both social and economic spheres of life. Hindu women's property rights were subject to numerous restrictions throughout antiquity. The position of Hindu women about their succession and inheritance rights has been improved through several legal enactments in pre- and post-independence India. The situation could not, however, be improved as much as had been hoped

ANCIENT PERIOD

In India, women had an inferior position throughout the ages, particularly in the matter of property rights. The journey of a Hindu woman's property right has passed through many phases and attained various milestones from time to time. It is said that Baudhayana and Jaimini¹ women are unable to make sacrifices; as a result, they have no need for riches and no need for property rights. *"A wife, a son, and a slave are proclaimed to have no property; the wealth they produce is obtained for the owner of each."*²

The word "commentary" is where the word "Mitakshara" comes from. While the Mitaksharaschool of law predominated in other regions of India, the Dayabhagaschool of law was mostly used

¹ Baudhayana II, 2.3, 46 and Jaimini VI. I. 4. 17-20, 983-986. 57 Neera Desai, Women and Society in India 171 (1987).

² Manu, VIII-416.

in Bengal and Assam.³ However, while dividing property during a husband's lifetime, Mitakshara law permitted a wife to receive an equal share with her son or sons. She was unable to obtain a divorce on her own; instead, she could only receive a portion of the husband's choice to divorce his sons while still alive or if the sons made a divorce claim while their father was still alive.⁴ However, there was a clause stating that the wife couldn't have any Stridhana property that had been given to her by her husband or her father-in-law, and if she did, then just the amount of wealth necessary to make her portion equal to a son's would be given to her.⁵ Women should never spend money from shared family assets or even their Stridhana without their husband's consent, according to Proverbs.⁶ In summary, we can say that the situation of the wife in terms of her legal status, namely in the area of proprietary rights, has improved.

³ Sarita Kumari, (2019) Women Inheritance Rights In India: Some Reflections, *IJR-AR- International Journal of Research and Analytical Reviews, Volume 6* (E ISSN 2348 –1269, PRINT ISSN 2349-5138).

⁴ Yajnavalkya Smriti.

⁵ Yajnavalkya Smriti, 11-148. 68 Power of disposition.

⁶ Manu Smriti, IX-199.

PRE-INDEPENDENCE DEVELOPMENTS

The first step toward economic security and independence for women was made in the latter half of the 19th century. For women, the Hindu Law of Inheritance severely restricted their ability to possess property. Except for the right to Stridhana, women were dependent on their spouse, parent, brother, and children. To improve the standing of Indian women in society, the Indian Succession Act of 1865 made it clear that no one may gain an interest in the property of the person they marry or lose the ability to act to their property if they were not married to that person.

The 1938 revision of the 1937 Hindu Women's Right to Property Act was approved in that year. It pertained to property apart from agricultural land and impartible holdings that descended to a single successor by custom or otherwise or that were prospective.⁷ It applied to Hindus who were subject to Punjabi Mitakshara, Dayabhaga, and customary law. The pre-Act customs and laws that violated the Act's requirements were expressly

⁷ *Krishappa v. Ananta Kalappa Jarabakhane* AIR 2001 Kant 322.

repealed by Section 2 of the Act. The preamble of the Act claimed that it was necessary to change Hindu law to offer women better property rights⁸. The Act only applied to the devolution of a Hindu man's property; it did not apply to a woman's property⁹. A mother or any other female is not suitable for Kartaship, according to the Supreme Court's ruling in the case of the Commissioner of Income Tax v. Seth Govind Ram.¹⁰ However, the Karnataka High Court ruled in *Gangoji v. H. K. Channappa* that the mother can manage the joint family property because she is the natural caregiver for her minor sons.¹¹

POST-INDEPENDENCE DEVELOPMENTS

The Hindu Succession Act of 1956 was the first and principal statute to grant Hindus, Sikhs, Buddhists, and Jains equal inheritance rights. It acknowledged gender parity in the domain of succession as well. The children of the intestate's mother and

widow receive an equal share; however, it only applies when the husband passes away without leaving a will. The testamentary succession is not covered by this law (where there is a written will). Section 6 of the Act addressed the Hindu male's birthright to coparcenary property. This refers to the two methods of intestate succession and survivorship for the devolution of an undivided coparcenary interest.¹² The Hindu Succession Act of 1956 changed the limited ownership of women into full ownership. The Hindu Law committee (Rau Committee), which was established in 1941, is where the history of Hindu Law reform begins.¹³

The Hindu Succession Act (amended) 2005 granted Hindu women the same rights as their male counterparts to become co-owners of ancestors' property. Daughters have equal access to inherited property under Section 6 of the Hindu Succession (Amended) Act of 2005.

⁸ Poonam Pradhan Saxena, *Family Law Lectures, Family Law II*, Lexis Nexis Butterworths Wadhwa, Nagpur, 2007, at p. 402, 03.

⁹ *Sham Lal v. Amar Nath* AIR 1970 SC 1643.

¹⁰ *Commissioner Of Income-Tax v Seth Govindram Sugar Mills*, 1966 AIR 24, 1965 SCR (3) 488.

¹¹ *Gangoji Rao And Anr. V H.K. Channappa And Ors.* AIR 1983 Kant 222.

¹² Before Act 39 of 2005, Section 6 of Hindu Succession Act, 1956.

¹³ Bina Agarwal, *Redefining Family Law in India*, Routledge Delhi, 2007, at p. 306-354.

JUDICIAL CONTRIBUTION AND INTERPRETATION

Section 6 of the Hindu Succession (Amendment) Act, 2005 has undergone divergence of judicial interpretations in various decided cases, thereby creating some confusion regarding the devolution of the interest in the coparcenary property in the following cases.

- *Prakash & others v. Phulavathi & others*,

The Supreme Court, in this case, held that the rights under the amendment are applicable, to living daughters of living coparceners, as on the date of commencement of this Amendment, ie 9th September 2005, irrespective of when such daughters are born.¹⁴

- *Danamma vs. Amar*

1st February 2018, Where a suit for partition was filed by the son in 2002, and during the pendency of the same, the amendment of 2005 came; it was held that the daughters would become coparceners. In this case, the Supreme Court held that the daughters in this matter would get a

¹⁴ *Prakash & others v. Phulavathi & others*, 2015 (4) RCR (Civil) 952.

share in the property, even if their father had passed away in 2001.¹⁵

- *Vineet Sharma vs. Rakesh Sharma*

12th August 2020 the Supreme Court disagreed with the judgment of *Prakash v. Phulavathi*, agreed with the judgment of *Danamma v. Amar*, and held that the father need not be alive, on the date of enforcement of the 2005 amendment. According to the Supreme Court, boys and daughters have the same legal right to inherit joint Hindu family property. According to the court, the revised Hindu Succession Act, which grants daughters an equal claim to ancestors' property, will take effect retroactively.¹⁶

CONCLUSION

It is encouraging to see the Supreme Court affirm a daughter's total right to inherit her father's possessions. This is a step in the direction of encouraging gender equality. For women to be socially, economically, and legally secure, property rights are essential. Women who stand up for their rights are labeled "greedy." But if women,

¹⁵ *Danamma vs. Amar* CIVIL APPEAL NOS. 188-189 OF 2018.

¹⁶ *Vineet Sharma vs. Rakesh Sharma*, CIVIL APPEAL NO, DIARY NO.32601 OF 2018.

who make up half of humanity, are suppressed and denied the opportunity to play their part in society, there can be no real advancement or growth in society. After examining various stages passed through and different milestones arrived regarding the journey of Hindu women 's property rights one can understand the long struggle sustained by women to get equal property rights to attain the constitutional goal of equality and improve their socio-economic condition. In this context, we should remember that daughters have equal rights as well as equal liabilities as that son's rights and duties are the two sides of the same kind the married women cannot escape from the liability and responsibility.