

A CRITICAL ANALYSIS ON WOMEN RIGHTS IN INDIA UNDER HINDU LAW

Raj Ranjan* & Harsh Vardhan Dhanik**

INTRODUCTION

“Of all the evils for which man has made himself responsible, none is so degrading, so shocking or so brutal as his abuse of the better half of humanity; the female sex.”

- Mahatma Gandhi

We all are said to be human beings and the term human beings itself emanates from the human beings as the other terms emanate and considered as one of the best art of god, the nature has made us without making any discrimination, then who are we to make any discrimination in fairer sex, caste and religion. According to Manu *“a wife, son and a slave are declared to have no property and if they happened to acquire it would belong to male under whom they are in protection.”* We all are regarded as natural person in the eyes of law irrespective of sex, caste and religion. Our constitution gives us the right to sue and to be sued in case of infringement of our any of the rights against who infringed and who got legal injury respectively.

Every citizen of India is guaranteed equality before law and equal protection of the laws irrespective of his gender, caste, creed, and race. The Constitution of India also contains provisions for empowerment of women. The concept of equal social status to women also includes their right to hold and inherit property like the male members of the family. Despite the equality guaranteed by the law of the land, women in India had suffered a lot of inequalities. Prior to the enactment of the Hindu Women's Right to Properties Act 1937, women were not entitled to a share in the Joint Family Property and succession was governed by survivor ship. As per the rule of survivor ship, on the death of a member of joint and undivided family, his share in the joint family property would pass on to the surviving coparceners, which was inclusive of only the male members of the family.

The Hindu Succession Act, 1956 gave women equal inheritance rights with men. But the daughters were not given a birth right in the ancestral property under the Mitakshara coparcenary. Coparcenary refers to equal inheritance which was restricted only to male members of the Hindu Undivided Family. It is a narrower body of persons within a joint family. Coparceners jointly inherit property and have unity of possession.

Coparcenary is limited to three generations next to the holder. If a man has sons, grandsons and great grandsons living, all of these constitute a single coparcenary with him. The share of coparceners in the joint coparcenary property was fluctuating which diminished and enlarged

* Student @ Damodaram Sanjivayya National Law University, Visakhapatnam

** Student @ Damodaram Sanjivayya National Law University, Visakhapatnam

with the birth and death of a coparcener in the family. No female was a member of the coparcenary in Mitakshara Law before the Hindu Succession (Amendment) Act, 2005. If the family owned a dwelling house, then the daughter's right was confined only to the right of residence and not possession or ownership. The daughter has been made a coparcener by birth in the joint property after coming into force of the Hindu Succession (Amendment) Act, 2005.

RIGHT OF WOMEN UNDER HINDU SUCCESSION ACT, 1956

The Hindu Succession Act, 1956 dealt with law relating to intestate succession among Hindus. The properties of a Hindu male dying intestate devolves, in the first instance, equally on his sons, daughters, widow and mother and include the specified heirs of predeceased sons or daughters. Section 6 of the Act deals with devolution of interest in the coparcenary property, according to the Section 6 of the Act prior to the passing of the Amendment Act of 2005, the interest of a coparcener who died intestate shall devolve on others coparceners by rule of survivorship. According to the un-amended Section 6, if the deceased died leaving behind a surviving female relative specified in Class I of Schedule I, or a male relative specified in that Class who claims through such female relative, or a male claiming through such female, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or interstate succession under this Act and not by survivorship. Thus, in Mitakshara coparcenary females could not inherit ancestral property. Thus, the provision contained in the un-amended Section 6 of the Act, by excluding the daughters from participating in coparcenary ownership not only contributed to an inequity against females but had also led to oppression and negation of their right to equality. The Hon'ble Supreme Court in the case of **V. Tulasamma v. Sesha Reddy**¹ held that, a Hindu widow is entitled to maintenance out of her deceased husband's estate irrespective whether that estate may be in the hands of male issues or coparceners. She can follow the estate for her right of maintenance, even if it is in the hands of third person having notice of her rights.

There is disparity in inheritance by the Hindus so far as females are concerned. Prior to the enactment of Hindu Succession Act, 1956 Hindus in India were governed by Shastrik and customary laws which varied from region to region and sometimes it varied on caste basis. The multiplicity of laws in India diverse in their nature and made the property law even more complex. A Hindu wife was not capable to hold any property separate from her husband. In fact, the wife was considered to be a cattle and property of her husband and she could not own property herself. Of the two types of property women were to hold- 'stridhan and women's estate. Women's estate has the following features:-

- 1) It gives women an absolute ownership of property,
- 2) She has the right of alienation and even she can dispose,
- 3) She can sell ,gift, mortgage ,lease, exchange or if she chooses , she can put it on fire,
- 4) Her property can be passed on to her own on heirs on her death.

¹ AIR 1977 SC 1944

The old law of succession has put an end by The Hindu Succession Act, 1956. As per Section 15 of the Hindu Succession Act, 1956:

General rules of succession in the case of female Hindus are as follows

The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16:

- a) firstly, upon the sons and daughters (including the children of any pre-deceased 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.

In the constitution of India, equality to women was guaranteed for the first time. To secure equality of status to improve Hindu women's right to property, Hindu Succession Act, 1956 came to force. At the time of enactment of this act, daughters could not become members of the co-parcenary and the Act did not afford right of natural inheritance to daughter because of the very concept of right by birth and by reason of sex as only males can be coparcener. To do away with these obstacles in achieving equality right of inheritance for women and to give right to the women by birth as coparcener was demanded in order to bring equality before law as a fundamental right.

RIGHT OF INHERITANCE OF PROPERTY FOR HINDU WOMEN

When we check the systems of inheritance in Hindu law, there can find two different systems of inheritance, namely:

1. The Mitakshara System
2. The Dayabhaga System

The former system prevails in Bengal and the latter system prevails in other parts of India. Both the systems are based upon the text of Manu that "to the nearest Sapinda the inheritance next belongs; after them, the Sakulyas, the preceptor of the Vedas, or a pupil." The guiding principles of the two systems are different. Under the Mitakshara system the law of inheritance shall be based according to the nearest heir ie; based on the principles of consanguinity. Whereas according to Manu, the dayabhaga system is based on the principle of religious efficacy.

MITAKSHARA SYSTEM

Devolution Of Mitakshara School Can Be In The Form of:

1. Separate Property Of The Last Owner;
2. Joint Family Property.

The Classification Of Heirs Under Mitakshara Are As Follows:

- Sapindas
- Samanodakas, And
- Bandhus

Under Mitakshara law, females could take only limited estate whereas males took absolute interest in the estate. When it comes to males succeeding as heirs, from a male or a female they took absolutely. Now when it comes to females succeeding as heirs to a male they took a limited estate in the property except in certain cases. If a separated Hindu under Mitakshara or any Hindu under Dayabhaga died leaving a widow, and brother the widow succeeded to the property as his heir but she being a female did not take the property absolutely. She was entitled to the income of the property. She could not make a gift of the property nor could she sell it unless there was some legal necessity. On her death, the property would pass not to her heirs, but to the next heir of her husband, i.e; his brother.

DAYABHAGA SYSTEM

Under Dayabhaga system, there is only one mode of devolution of property i.e; succession.

The Order of Succession Has The Following Features;

1. Religious efficacy
2. One mode of succession

Under the first order of succession, the right to inherit the property is bestowed with spiritual benefit on the deceased owner. And under the second order, there is no right by birth or survivorship.

It does not recognize the rule of survivorship in the Joint Family property. Moreover, 2 or more persons can become joint tenants but with the exception of widows and daughters. The joint family property is passed on to heirs, males or females or even to his legatees as if he were absolutely seized thereof and not to the surviving coparceners on the death of owner. It cannot be found in Mitakshara law.

THE STATE AMENDMENTS

The Hindu Succession Act containing the discriminatory provision was followed for about 49 years. But there were five states in India namely, Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka who took the initiative to treat women equally both in the economic and the social spheres. States of Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka had inserted provisions wherein the daughter has been made a coparcener by birth in the joint family property in her own right in the same manner as the son. The state of Kerala, in addition to making the daughter as a coparcener has also abolished the right to claim any interest in any property of an ancestor during his or her lifetime founded on the mere fact that he or she was born in the family. It has abolished the Joint Hindu family system.

THE 174th REPORT OF THE LAW COMMISSION OF INDIA AND THE HINDU SUCCESSION AMENDMENT ACT OF 2005

Under the Principal Act the daughters were not given any independent right in respect of partition or to demand for partition. She only got the right to hold her father's share and that too after her father's death. And this led to violation of Article 14 and 15 of the Constitution of India encouraging gender discrimination. Realizing the dichotomy and gender discrimination, Law Commission of India undertook the study of provisions of Hindu Law with regards to the Laws of inheritance and with regards to the rights of daughters. An apprehension was also raised that a whole generation of woman contemporary to passage of this important enactment will lose out all their property rights. On 5th May 2000 The Law Commission of India submitted its 174th report to the Government of India in respect of "Property Rights of Women and hence proposed certain reforms under the Hindu Law." It started with, *"Discrimination against women is so pervasive that it sometimes surfaces on a bare perusal of the law made by the legislature itself. This is particularly so in relation to laws governing the inheritance/succession of property amongst the members of a Joint Hindu family. It seems that this discrimination is so deep and systematic that it has placed women at the receiving end. Recognizing this Law Commission in pursuance of its terms of reference, which, inter alia, oblige and empower it to make recommendations for the removal of anomalies, ambiguities and inequalities in the law, decided to undertake a study of certain provisions regarding the property rights of Hindu women under the Hindu Succession Act, 1956. The study is aimed at suggesting changes to this Act so that women get an equal share in the ancestral property."*

Henceforth, to enlarge the rights of a daughter if she is married or unmarried and to bring her at par with the male gender governed by the Mitakshara law The Hindu Succession Amendment Act, 2005 was enacted. The amendment sought to bring the female line of descent at an equal level with the male line of descent, including children of predeceased daughter of predeceased daughter. Now with the act the daughters were given the coparcenary rights. With this right the daughters came at par with the sons and now she shall also be liable along with the sons for debts of the joint family. She even got the right to dispose of her share of the coparcenary property or her interest thereof by way of a will. The Hindu Succession (Amendment) Act, 2005 was passed to remove gender discriminatory provisions in the Hindu

Succession Act, 1956 and to give equal rights to daughters in Hindu Mitakshara coparcenary property as the sons have. The Act aimed at making two major amendments in the Hindu Succession Act, 1956. Firstly it amended the provision which excluded the right of the daughters from the coparcenary property and secondly it omitted Section 23 of Act which dis entitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein.

The main provisions of the Hindu Succession (Amendment) Act, 2005 are:

- 1) In a Hindu Joint Family governed by Mitakshara law, the daughter by birth shall become a coparcener in her own right in the same manner as a son.
- 2) She would have the same rights in the coparcenary property as that of a son.
- 3) She shall be subject to same liabilities in respect of the said coparcenary property as that of a son.
- 4) Any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.
- 5) Any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004 shall not be affected or invalidated by reason of the amendment of Section 6 of the Act.
- 6) Any property to which a female Hindu becomes entitled by virtue of subsection (1) shall be held by her with the incidents of coparcenary ownership and could be disposed of by her by testamentary disposition.
- 7) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place.
- 8) In case of notional partition:
 - a) The daughter is allotted the same share as is allotted to a son;
 - b) The share of the predeceased son or a predeceased daughter shall be allotted to the surviving child of such predeceased son or of such predeceased daughter;
 - c) The share of the predeceased child of a predeceased son or of a predeceased daughter, shall be allotted to the child of such predeceased child of the predeceased son or a predeceased daughter, as the case may be.
9. The interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death,
10. After the commencement of the Amendment Act, there shall be no obligation on the son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grand father solely on the ground of the pious obligation under the Hindu law.
11. Nothing contained in amended Section shall apply to a partition, which has been effected before the 20th day of December 2004.

RECENT JUDICIAL PRONOUNCEMENTS AND THEIR EFFECTS

Some of the most important recent judicial pronouncements are discussed to ascertain the actual effects of the Amendment Act of 2005. Hon'ble Supreme Court in the case of **Ganduri Koteshwaramma v. Chakiri Yanadi**², held that, the new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son.

Hon'ble Bombay High Court in the case of **Ms. Vaishali Satish Ganorkar & Anr. v. Satish Keshorao Ganorkar & Ors.**³. It was held that Ipso facto upon the passing of the Amendment Act in 2005 all the daughters of a coparcener in a coparcenary or a joint HUF do not become coparceners. The daughters who are born after such dates would certainly be coparceners by virtue of birth, but, for a daughter who was born prior to the coming into force of the amendment Act she would be a coparcener only upon devolution of interest in coparcenary property taking place. Until a coparcener dies and his succession opens and a succession takes place, there is no devolution of interest and hence no daughter of such coparcener to whom an interest in the coparcenary property would devolve would be entitled to be a coparcener or to have the rights or the liabilities in the coparcenary property along with the son of such coparcener. A reading of Section as a whole would, therefore, show that either the devolution of legal rights would accrue by opening of a succession on or after 9 September, 2005 in case of daughter born before 9 September, 2005 or by birth itself in case of daughter born after 9 September, 2005 upon them.

Two conditions necessary for applicability of Amended section 6(1) are:

- i. The daughter of the coparcener (daughter claiming benefit of amended section 6) should be alive on the date of amendment coming into force;
- ii. The property in question must be available on the date of the commencement of the Act as coparcenary property.

EFFECT OF THE AMENDMENT ACT ON THE POSITION OF THE WOMEN

The significant change that was brought by the Amendment Act was to make daughters coparceners in joint family property. After the amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and she would have the same rights in the coparcenary property as she would have had if she had been a son. With the rights that she acquire in the joint family property she also is subjected to the same liabilities in respect of the said coparcenary property as that of a son and any reference to a Hindu Mithakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

² AIR 2012 SC 169

³ AIR 2012 Bombay 101

According to this amendment if the daughter dies intestate; her interest in coparcenary would devolve by succession in accordance with section 15 of the Hindu Succession Act, 1956. If the daughter is left alone by deceased male coparcener, she shall inherit his entire property of which she would become absolute owner and after her death, if she dies intestate shall devolve upon her heirs as per section 15. The daughter now has the right to dispose of her interest in coparcenary by making a will and if she is a lone heir she shall become absolute owner of the property and shall also have a right to alienate it during her life time. This amendment also created a right to have a share in the joint property during the partition favour of children of the daughter and her predeceased daughter, in case of their death, that is to say a son of a predeceased daughter of a predeceased daughter; daughter of a predeceased daughter of a predeceased daughter; daughter of a predeceased son of a predeceased daughter; daughter of a predeceased daughter of a predeceased son, are also now included in Schedule to Hindu Succession Act, 1956 as Class I heirs. The said heirs, not being coparceners, would not have right to demand partition. Any disposition, alienation, partition or testamentary disposition of property made before 20th December, 2004 shall not be invalidated by reason of the amendment of Section 6.

However, the right of the mother or deceased's widow in the joint family property has remained unchanged. They would be entitled to an equal share with other Class I heirs only from the separate share of the father and her husband respectively computed at the time of the notional partition. With the amendment Section 6, the actual share of the mother will go down with daughters also becoming coparceners in the joint family property.

According to the amended Section 6 of the Hindu Succession (Amendment) Act, 2005 if a Hindu dies after the commencement of the Amendment Act, his interest in the property of the joint Hindu family governed by the Mitakshara Law shall devolve by testamentary or intestate succession and not by survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place.

CONCLUSION

The basic object of the amendment to the Section 6 of the Hindu Succession Act was to achieve equal inheritance for all. Daughter of a coparcener in a Hindu joint family governed by Mitakshara Law now is coparcener by birth in her own right in the same manner as a son; she has right of claim by survivorship and has same liabilities and disabilities as a son; now coparcenary property to be divided and allotted in equal share. But these laws cannot be successful unless and until there is social awareness amongst the women about their rights. Women themselves relinquish their rights and tend to suffer deprivation. The change which took about 49 years to bring daughters at par with the sons with respect to their right in their ancestral property cannot be lost sight of just because of ignorance of people. The judiciary should also make efforts to implement the law so as to achieve the objective behind the amendment of the law. Above all it's the woman herself who has to be aware of and assert her rights. Thus we can conclude here by saying that the recent Judgments and the amendments has paved way to many women, who are aspiring to assert their rights in coparcenary property. It has given a huge relief to the daughters to fight with the

discrimination on the ground of gender and the consistent oppression and negation of their fundamental right of equality.

“I rise up my voice not so I can shout but so that those without a voice can be heard, we cannot succeed when half of us are held back.”

Malala Yousufzai