

## OPPRESSION AND DISCRIMINATING WOMEN IN SUCCESSION IN SELF ACQUIRED PROPERTY

By

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Since time immemorial the framing of all property laws have been exclusively for the benefit of man, and woman has been treated as subservient, and dependent on male support. The right to property is important for the freedom and development of a human being. Prior to the Act of 1956, Hindus were governed by Shastric and Customary laws which varied from region to region and sometimes it varied in the same region on a caste basis. As the country is vast and communications and social interactions in the past were difficult, it led to diversity in the law. Consequently in matters of succession also, there were different schools, like Dayabhaga in Bengal and the adjoining areas; Mayukha in Bombay, Konkan and Gujarat and Marumakkattayam or Nambudri in Kerala and Mitakshara in other parts of India with slight variations. The multiplicity of succession laws in India, diverse in their nature, owing to their varied origin made the property laws even more complex.

A woman in a joint Hindu family, consisting both of man and woman, had a right to sustenance, but the control and ownership of property did not vest in her. In a patrilineal system, like the Mitakshara school of Hindu law, a woman, was not given a birth right in the family property like a son.

### *What is Mitakshara Coparcenary?*

Coparcenary literally means Joint inheritance or heir ship of property. Coparcenary is a narrower body of persons within a joint family, and consists of father, son, son's son, son's son's son. The disparity in the property

rights on the basis of gender is deep rooted and can be traced back to the ancient times. Traditional Hindu inheritance laws evolved from the ancient texts of Dharmashastras and the various commentaries and legal treatises on them. In particular, the Mitakshara and the Dayabhaga legal doctrines, dated around the twelfth century AD govern the inheritance practices among the Hindus. In most of northern and parts of western India Mitakshara law is prevalent. Under the Mitakshara law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson and a great grandson constitute a class of coparceners, based on birth in the family. No female is a member of the coparcenary in Mitakshara law. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of a male in the family, the share of every other surviving male either gets diminished or enlarged. If a coparcenary consists of a father and his two sons, each would own one third of the property. If another son is born in the family, automatically the share of each male is reduced to one fourth. The Mitakshara law also recognizes inheritance by succession but only to the property separately owned by an individual male or female. Females are included as heirs to this kind of property by Mitakshara law.

Before the commencement of the HINDU SUCCESSION ACT 1956, codifying the rules of succession, the concept of a Hindu family under Mitakshara school of law was that it was ordinarily joint not only in estate but in religious matters as well. Coparcenary property, in contradistinction

with the absolute or separate property of an individual coparcener, devolved upon surviving coparceners in the family, according to the rule of devolution by survivorship.

Social justice demands that a woman should be treated equally both in the economic and the social sphere. The Hindu succession Act 1956 was amended giving equal rights to daughters along with sons. How far it is advantageous is altogether a different issue and can be examined latter.

The Hindu Succession Act, 1956 dealing with intestate succession among Hindus came into force on 17th June, 1956. This Act brought about changes in the law of succession and gave rights which were hitherto unknown, in relation to a woman's property. Section 6 reads thus:

***'Devolution of Interest in Coparcenary Property (Before amendment)***

'Section 6 of the HINDU SUCCESSION ACT 1956 dealing with devolution of interest to coparcenary property states—

"When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, *his interest in the property shall devolve by survivorship* upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left behind him *a surviving female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara Coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.*

Explanation 1.- xxxx

Explanation 2.— xxxx'

***'The Hindu Succession (Amendment) Act, 2005 - (After Central amendment)***

6(l). Devolution of interest in coparcenary property.

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) *by birth become a coparcener in her own right the same manner as the son;*

(b) *have the same rights in the coparcenary property as she would have had if she had been a son;*

(c) xxxx.

(2) xxxx.

(3) *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 and,—*

(a) *the daughter is allotted the same share as is allotted to a son;*

(b) *the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and*

(c) *the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.*

Explanation.— xxxx

(4) xxxx.

Explanation.—xxxx

(5) xxxx.

Explanation- xxxx

The Hindu Succession (Amendment) Act, 2005 (39 of 2005) that came into force from 9th September, 2005 gave the following rights to daughters under Section 6:

- The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son;
- The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
- The daughter shall be subject to the same liability in the said coparcenary property as that of a son; and any reference to a Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of a coparcener;
- The daughter is allotted the same share as is allotted to a son;
- The share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter;
- The share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.

### ***Right to succession modified***

Prior to the amendment, Section 6 reads “....when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, *his interest in the property shall devolve by survivorship*”. But after amendment, the same was modified as:

“.....*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*.”

The expression ‘survivorship’ means Ownership of property by two or more people in which the survivors automatically gain ownership of a decedent’s interest. In the case of more than one survivor, the decedent’s share is divided among the survivors. In addition, each owner can sell or gift his/her share as he/she wants, without the other owners’ permission.

According to the meaning of the expression ‘survivorship’ both male and female are covered.

### ***General rules of succession in case of males interest in the coparcenary property:***

In respect of General rules of succession in the case of males, distribution of property among heirs in class I of the Schedule, The Hindu Succession Act, 1956 made provisions in Section 8, 9 and 10 which reads as:

#### ***‘8. General rules of succession in the case of males***

The property of a male Hindu dying intestate shall devolve according to the provisions of this chapter-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

#### ***9. Order of succession among heirs in the Schedule***

Among the heirs specified in the Schedule, those in class I shall take simultaneously

and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

*10 Distribution of property among heirs in Class I of the Schedule*

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:

Rule 1-The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2-The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3-The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4-The distribution of the share referred to in Rule 3-(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion; (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions'.

***General rules of succession in case of female property:***

In respect of the property acquired by female Hindus also, the Hindu Succession Act, 1956 reformed the Hindu personal law and gave a woman greater property rights, allowing her full ownership rights instead of limited rights in the property she inherits under Section 14 dealing with Property of a

female Hindu to be her absolute property with a fresh stock of heirs under Sections 15 dealing with General rules of succession in the case of female Hindus and 16 of the Act, dealing with Order of succession and manner of distribution among heirs of a female Hindu which reads as:

*'14. Property of a female Hindu to be her absolute property*

*(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*

*Explanation: xxxx*

*(2) xxxx*

*15. General rules of succession in the case of female Hindus*

(1) 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.

(2) Notwithstanding anything contained in sub-section (1)—

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

*16. Order of succession and manner of distribution among heirs of a female Hindu*

The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:-

Rule 1- Among the heirs specified in sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.'

From a perusal of the aforesaid provisions it is clear that the property of the Hindu males (from Sections 6, 8 to 10) and the Hindu females (Sections 14 to 16)

have been separately dealt with. According to the provisions relating to the male Hindus, when a male Hindu dies, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the *surviving members of the coparcenary* and not in accordance with this Act. The words '*survivorship*' and '*surviving members*' have been used.

Section 6 dealing with the devolution of the interest of a male Hindu in coparcenary property and while recognising the rule of devolution by survivorship among the members of the coparcenary, makes an exception to the rule in the proviso. According to the proviso, if the deceased has left behind him 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, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession under this Act and not by survivorship.

The property of a male Hindu dying intestate shall devolve firstly, upon the heirs, being the relatives specified in class I of the Schedule. In the list of class 1 heirs, along with son, females like (i) daughter; (ii) widow; (iii) mother; (iv) daughter of a pre-deceased son; (v) daughter of a pre-deceased daughter; (vi) widow of a pre-deceased son; (vii) daughter of a pre-deceased son of a pre-deceased son; (viii) widow of a pre-deceased son of a pre-deceased son, have been covered.

So, it is clear from the statute, as mentioned in the list of Class1 heirs, daughters were also granted property rights in their father's estate.

Section 6 contemplates the existence of coparcenary property and more than one coparcener for the application of the rule of devolution by survivorship. The head note

of the Section reads “Devolution of interest in coparcenary property”. The language of the main provision to the effect that “his interest in the property shall devolve by survivorship upon the surviving members” indicates that the devolution by survivorship is with reference to the deceased coparcener’s interest alone; this coupled with the notional partition contemplated in Explanation 1 in this Section for the ascertainment of the interest of the deceased coparcener in a Mitakshara coparcenary property indicates that there is no disruption of the entire coparcenary. It follows that the other coparceners, would continue to be joint in respect of the other coparcenary property till a partition is effected.

### ***Inequalities and Anomalies Discriminating Women***

Despite the constitution guaranteeing equality to women, there are still many discriminatory aspects in the Hindu law in the sphere of property rights. In our society maltreatment of a woman in her husband’s family, *e.g.*, for failing to respond to a demand of dowry, often results in her death. But the tragedy is that there is discriminatory treatment given to her even by the members of her own natal family.

Again, the patrilineal assumptions of a dominant male ideology are clearly reflected in the laws governing a Hindu female who dies intestate. The law in her case is markedly different from those governing Hindu males. The property is to devolve first to her children and husband; secondly, to her husband’s heirs; thirdly to her father’s heirs, and lastly, to her mother’s heirs. The provision of Section 15(2) of HINDU SUCCESSION ACT, 1956 is indicative again of a tilt towards the male as it provides that any property she inherited from her father or mother should devolve, in the absence of any children, to her father’s heirs and similarly, any property she inherited from her husband or father-in-law, to her husband’s heirs.

These provisions depict that property continues to be inherited through the male line from which it came either back to her father’s family or back to her husband’s family.

The Hindu Succession Act, 1956 made a provision for testamentary succession covered by Section 30. It reads as:

‘30. *Testamentary succession.*—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

*Explanation:* xxxx’

It is to be pointed out here that though by amending the law of succession in respect of coparcenary property giving equal right to daughters along with the sons, the legislature has not considered the aspect of giving equal rights to both sons and daughters in respect of self acquired property. The said aspect, *i.e.*, by not considering the same, not only contributed to an inequity against females but has led to oppression and negation of their right to equality in respect of self acquired property and appears to be a mockery of the fundamental rights guaranteed by the Constitution. Another apparent inequity under the Hindu Succession Act as per Section 23, is the provision denying a married daughter the right to residence in the parental home unless widowed, deserted or separated from her husband and further denying any daughter the right to demand her share in the house if occupied by male family members. This right is not denied to a son. The main object of the section is said to be the primacy of the rights of the family against that of an individual by imposing a restriction on partition. Why is it that this right of primacy of family is considered only in the case of a female member of the family?

A similar instance of inequity created by law was the establishment of the new right to will away property. The Act gave a weapon to a man to deprive a woman of the rights she earlier had under certain schools of Hindu Law. The legal right of Hindus to bequeath property by way of will was conferred by the Indian Succession Act, 1925. None of the clauses of 1925 Act apply to Hindus except wills. The right to will away property was traditionally unknown to Hindus. It was introduced into the statute by virtue of Section 30 of the HINDU SUCCESSION ACT 1956. According to the said section any Hindu may dispose of by will or other testamentary disposition any property capable of disposition (this includes his undivided interest in a Mitakshara coparcenary property as per the Explanation) in accordance with the provisions of the Indian Succession Act, 1925.

Parents should shower love and affection equally on their children and should not discriminate. But many parents are showing discrimination between their sons and daughters in many ways. The following is one of them.

“A” and “B” are wife and husbands and they are blessed with two children, a son “C” and a daughter “D”. The discrimination between son “C” and a daughter “D” started from this young age of the children, in the sense, when “A” father has given Rs.500/- note to son “C” as a gift, daughter “D” questioned father “A” that when she asked her father to give Rs.50/- for her needs, father refused to give but gave Rs.500/- note to her brother, *i.e.*, the son of “A”. Then father “A” replied that “C” is his son and his successor and he will look after “A” and that “D” being daughter after attaining the marriageable age, will be got married and go away from the parents house and as such, giving education also to her is futile and if son

“C” brought up with all needs he will protect the parents. All these things will not appear apparently, but can be visualized from the day to day situations in the family. Thus, the parents themselves are showing discrimination between the son and daughter from that age it self. This will be continued and come to a peak stage, which will be visible at the time of distribution of self acquired property of the parents. The best example is given below.

The example given in this para is very much relevant to throw light on how females are discriminated with oppression and inequality shown in the succession of property. The gist of the case is – “A” and “B” are husband and wife and “A” acquired an immovable property of his own – but got the property registered both in his name as well as in his wife’s name. Since the source through the said property was got registered in his wife’s name was no disclosed, it was called as her ‘stridhana’. While the matter stood thus, both “A” and “B” executed wills in respect of their respective properties. In the will executed by “B”, it was clearly recited the source is stridhana. In the wills executed by “A” and “B”, it was mentioned that they are having three sons and two daughters, out of which marriage of eldest daughter was performed by the parents “A” and “B” and specifically stated that in respect of the marriage of the second daughter that they are trying to get her married during their lifetime and if for any reason marriage is not performed during their lifetime, directed sons to perform the second daughter’s marriage by keeping a charge on the property bequeathed to them by means of will. In fact, after execution of the wills, marriage of the second daughter was also performed by the parents. So the charge created over the property given to the sons is *null* and *void*, thus the sons enjoyed the property given to them by means of the wills executed by their parents.

The above case clearly shows that the discrimination of women is still continuing. When a right was given to the female in respect of coparcenary property along with the son, why a similar benefit could not be extended to females in respect of self acquired property also. The only difference is 'ancestral' and 'self acquired'. In the wills executed by the owners of the self acquired property either male or female are not rendering justice to their own children *i.e.*, daughters by giving preference to the sons to succeed the self acquired property. The reason that is being mentioned in the wills is that marriages of the daughters are performed by meeting some expenditure and they were given some benefits in name of "Saare". It is necessary to state here that in respect of son's marriage also the parents will meet some expenditure, though not equal to daughter's marriage. By giving this reason, the parents are depriving the right of daughters in respect of the self acquired property. Further Section 15 which deals with General rules of succession in the case of female Hindus, provides equal rights in respect of the property of a female Hindu as – "(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband". Of course this right is also subject to Section 30 of the HINDU SUCCESSION ACT 1956.

It may not be out of place to mention here that the Legislature while enacting The Hindu Adoptions and Maintenance Act 1956 made a provision in Section 20 stating that a Hindu is bound, during his or her lifetime, to maintain ——— his or her aged and infirm parents.

Section 2(b) of The Maintenance and Welfare of Parents and Senior Citizens

Act, 2007 defines "maintenance" as: 'includes provision for food, clothing, residence and medical attendance and treatment' and Section 2(d) of the said Act defines "parent" as: 'father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen.' Section 3 of the said Act imposes an obligation on the Hindu to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

Under these two enactments, the legislature created an obligation on the Hindu children to maintain his or her parents, whereas the said legislature in their wisdom has not considered providing a right to the females in the self acquired property of a male Hindu or female Hindu. This is a clear anomaly.

In the said circumstances, the legislature has to review the matter once again and create right to daughters in respect of self acquired property also along with the ancestral property of the male. It is, therefore, suggested to amend Section 30 of HINDU SUCCESSION ACT 1956, by adding the words, 'in favour of sons and daughters equally', between the words 'any property' and 'which is capable of'. Further, the restrictions inserted in Section 6 of the HINDU SUCCESSION ACT 1956 should also be deleted giving equal rights in the property to daughters with that of sons.

By doing this, the nation will take a further step towards achieving equality enshrined in our Constitution.