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Law

RIGHT TO PROPERTY OF HINDU WOMEN: A CRITICAL ANALYSIS OF PROVISIONS UNDER HINDU SUCCESSION (AMENDMENT) ACT,2005

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ABSTRACT

Property is one of the objects that help us to assess the status of a person in a society. Proprietary position of a woman in any system of law represents the position of women in the community and Hindu legal system is not an exception in this regard. The position which a woman occupied in Hindu law, is not only a mirror of Hindu civilization but also a correct indicator of the culture of the Hindu race. Although many steps have been taken from time to time to improve the legal position of Hindu female, yet she is not given a status at par with her male counterpart. Although right to equality under Indian Constitution is guaranteed equally to both men and women, but proprietary rights of women are not at par with men but by the Hindu Succession Act, 1956. They have been included in the list of Class I legal heirs of deceased male Hindu and are entitled to property right from their ancestor. However, women's rights were restricted in respect of ancestral holding and provided right by birth to male alone. Law Commission of India under 174th report recommended the amendment in the existing provisions to remove the discrepancies. The Hindu Succession (Amendment) Act, 2005 has tried to give equal right of property to women with men, which is supplemented by the Indian Courts through its decisions. Still there are few provisions which still need consideration.

Introduction:

The preamble to the Indian Constitution resolves to usher in a society in which not only democracy but also justice and equality exists for all its citizens. Any society which tolerates the exploitation of one of the group by the other cannot of course, claim to be just and equal for all. Since women's property right is closely connected to her socio-economic status, as it helped removing the various disabilities are it social or economic. And the concept of equality has the prime role to play in order to determine her status property, since without equality the property right to the women remains an illusion. The women in India are still not sure about their rights so in far as their right to property is concerned. Due to women's subordination in the social structure, despite the amendments of the Hindu law, the women are not provided with equal opportunities of education like men. There is a general lack of perspicacity among Indian women about inheritance and property, owing to the socio- legal phenomenon in which they are subsisting. The economic independence of women is a paramount concern for position of women in the society. There is immediate need to lay sincere emphasis on the overall development of women. The most importantly, creating awareness among women in respect of their rights and responsibilities and also acknowledge their important role in the society and towards work and at home. It is the need of hour that the attitude and response of society should change towards her.

Growth and Development of Right to Property of Women

In the ancient times, right to immovable property was not given to the daughters and female descendants since female was not given the duty to offer funereal oblation to the deceased. She had only one right i.e. right to maintenance in the family, but not conferred inheritance or ownership rights. Similarly, Narda and most of the smiritis restricted the areas of rights of females. Women were treated in most of the Hindu's religious text as dependent, which require protection and it was considered that women were not capable of exercising independent authority. Hindu Women's Right to Property Act, 1937, conferred the some limited rights to the women which were also known as widow's estate. Section 14 of Hindu Succession Act, 1956 has repealed the Hindu Women's Right to Property Act, 1937 and sanctioned absolute property right to women as the new Act granted equal right to the daughter, widow, mother and son. They have been included in the list of Class I legal heirs of deceased male Hindu and are entitled to property right from their ancestor. However, women's rights were restricted they could not be coparceners in respect of

ancestral property and provided right by birth to male alone. By introduction of this Act, the coparceners hold the property as tenants-in-common and not as joint tenants. Before The Hindu Succession (Amendment) Act, 2005, came into force, as per Section 8 of Hindu Succession Act, 1956, the mother, widow and daughter had been provided equal right to the property.

Constitutional Provisions

The Constitution of India has guaranteed right to property under Article 19(1) (f), This Article guarantees to Indian citizens a right to acquire, hold and dispose of property. Article 31 of the Constitution also guaranteed the right to property to every citizen of India. This right was deleted from part III of Constitution in 1978 i.e. fundamental rights by passing the Constitutional (Forty-Fourth Amendment) Act, 1978. However the right to property is still a constitutional and statutory right because the same amendment which omitted such fundamental right has secured it as the Constitutional right. It provides that a person cannot be deprived of his property right except with the authority of law, and this right is essentially Constitutional and Statutory under the express provisions of Article 300A. Since the areas of human rights are expanding, right to property has become a part of the new facet of the Constitution as a human right. Article 14 reaffirms and gives the fundamental right to equality to all individuals. Indian society is full of vulnerable sections including women and it is full of discriminations and discrepancies. It is impossible to expect for an individual to avail the benefits of all the fundamental guarantees. rights or the protection of special laws. So it becomes a constitutional duty of the State to perform and undertake proactive measures to bring all the people at same plane and to provide the benefits or the protection of such laws equally. Indian legislatures have protected this right by passing various laws to protect the proprietary rights of women. For Hindu females this right is protected under Hindu Succession Act, 1956, which was further amended in 2005.

Property Rights of Women under the Hindu Succession Act, 1956

There are two kinds of properties upon which devolution can take place under Hindu succession Act, firstly, the ancestral property is devolved by the survivorship rule; secondly, the self-acquired property. Focusing on the structure of a joint Hindu family, one would come across two term namely, members and coparceners. Before the Hindu Succession

(Amendment) Act, 2005, under Section 6 of the Act, coparceners were only those who are lineal descendants of same ancestor up to three degrees and only the male lineage members could qualify for coparcenary rights up to those three generations and excluded daughter, widow and wife thereby not recognizing women as coparceners and intestate succession came into the scope of the Hindu Succession Act.

The provision of testamentary succession under the amended Hindu Succession Act has allowed a person to allocate his self acquired property to any person. It may be his or her son, daughter, widow, or any other person. In intestate succession problem lies that, it revolves around the ancestral property and the same was dealt with in the Hindu Succession (Amendment) Act, 2005 by providing for intestate succession and providing for four classes of heirs wherein the first right of property on the death of a person would go to widow, son and daughter and each of them would get an equal share. After that the survivorship rule was abrogated and the testamentary and intestate rule was introduced in the Hindu Succession Act, 1956. By virtue of this amendment, the daughters would get the coparcenary right since birth and they would have equal liability like sons in such ancestral property.

The original Act did not provide any independent right to the daughter in respect of partition and to demand the partition. The daughter was entitled to get a share in father's share and she could claim it only after the death of her ancestor. This led to gender discrimination and daughters were left out from enjoying the coparcenary property being violating of Article 14 and 15 of the Constitution of India. 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. The Law Commission of India submitted its 174th report to the Indian Government in respect of Property Rights of Women and proposed Reforms under the Hindu Law. Keeping this background in mind, the Hindu Succession Amendment Act, 2005 was enacted to broaden the rights of a daughter, married and unmarried both and to bring her at par with a son or any male member of a joint Hindu family.

The Hindu Succession (Amendment) Act, 2005

When Hindu Succession (Amendment) Act, 2005 came into force, daughters were conferred with coparcenary rights. Effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. An important change which became a milestone in the history of women's rights in property was deletion of the old provision under Section 6 of the act and insertion of new provision. With this new provision, the daughter becomes coparceners in the property of the Joint Hindu Family by birth, acquiring same rights and responsibilities to that of a son. Property rights are given to Hindu women depending on her status in the family and her marital status. It also depends on the kind of property one is looking at whether the property is ancestral or self-acquired, land or dwelling house or matrimonial property. Another landmark change brought in with this amendment was omission of section 23 of the Act, which clearly discriminated against the female heirs to seek any partition in the dwelling house which the intestate left before the male heir chose to do so. Section 24 was also omitted with the amendment brought in 2005. This section discriminated three category of women related to the intestate as the widow of a predeceased son, the widow of a predeceased son of a predeceased son or the widow of a brother, by virtue of their remarriage on account of opening of the succession. Now as the constitutional pronouncements made it clear that equality is the essence of the justice and legislative system. Therefore, in order to correct this problematic situation creating disadvantage to certain categories of women under section 24 of the Act, it was

omitted. The Hindu Succession (Amendment) Act, 2005 does not have a retrospective effect, since it is a substantive law and not a declaratory law. In *Anil Kumar Goel v/s Kishan Chand kaura*, it was observed by Apex Court that all laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospective nature, if they affect vested rights and duties, unless the legislative intention is clear and compulsive, those laws are discriminatory. Hence, the rights granted to daughters under the 2005 amendment would be applicable to living daughters of living coparceners as on 9th September, 2005, irrespective of fact that when such daughters are born.

Right to Property of Women: Social Challenges

The disturbing aspect of Indian legal system is that the women's right to inherit like other rights is also violated in practice very often. Women living in the tribal areas including districts of Lahaul and Spiti, Kinnor and a few parts of Chamba of Himachal Pradesh are deprived of their rights on ancestral property. They are still bound by the old patriarchal property laws that allow only men to inherit the property. Their justification for such custom is to preserve the agricultural land. according to the customary law females cannot inherit the property in accordance with the Hindu Succession Act, 1956. *Wajib-ul-urj* is a century old customary law which permits only men to inherit property, if it is not bequeathed. *Wajib-ul-urj* still exists in the tribal areas of Himachal Pradesh. In a landmark judgment of High Court of Himachal Pradesh, *Bahadur V/s Bratiya and others* Justice Rajiv Sharma upheld the district Courts order and there by granting the tribal women to inherit the share in a family property according to the Hindu Succession Act, 1956. But this judgment was challenged in the Apex court The Supreme Court stayed the high Court's orders and the case is still pending. Such practices act adversely to the status of women and their rights. On one hand we talk about the equality of all genders in the society, on the other hand such practices are not eradicated by the Governments, by passing required amendments in the existing laws.

Judicial Development

The Judiciary can only act as watchdog and not as a time-keeper. The courts can neither perform the functions of Government and nor allow the Administration to get away with its omissions and commissions. The Indian Judiciary is very vigilant to the need of justice and it enjoys a very high status of being fair and responsive. The response of Judiciary has been very positive in giving the equal rights to women in property. Judiciary is playing a proactive role in determining the right to property of women. The judiciary has brought clarity to some major provisions of the Hindu Succession (Amendment) Act, 2005. It is ironic that this amendment, which was introduced as a remedy for women to have an equal right and liability in the ancestral property has rather brought more confusion in the law. The Hon'ble Supreme Court has acted as a protector of equality in intestate succession by Hindu women, has held that, "There is a need is to set up new social order and giving her equality and place of honor. Abolition of discrimination based on equal right of succession is the prime need of the hour" Section 14 of Hindu Succession Act, 1956 has been interpreted by the Supreme Court time and again in order to provide equal right of property to women. The Apex Court was of the view that a share obtained by Hindu female in a partition is a type of property falling under Section 14 (1), although her share is described as a limited estate in the decree or award. The Apex Court held in *Munna Lal Vs Raj Kumar* that by virtue of Section 4 of the Act, the legislature abrogated the rules of Hindu Law on all matter in respect of which there is an express provision in the Act. The Supreme Court has also decided in *Radha v. Hanuman*, that, a Hindu female holder of women's estate makes improper alienation; the reversioners are not bound to institute a declatory suit during the life time of a female holder. After the death of the woman, they can sue the alienee for possession of

the estate treating the alienation as a nullity. The question arises whether a limited estate conferred under a Will becomes a full estate by virtue of Section 14 (1) came for consideration before the Hon'ble Supreme Court in *Kamri Vs. Amru*. A Hindu under a registered Will conferred a life estate on his wife, with direction that after the death of wife property would devolve on two of his collaterals. It was held that where only life estate is confer under a will Section 14 (2) will apply and the estate would not become a full estate, but if the will confers on her full estate, she will take absolutely.)

This problem was identified and cleared in *Prakash and others v. Phulavati* where in the divisional Bench held that the father has to be alive on the date of enforcement of 2005 amendment and subsequently the daughters can claim benefit under the 2005 Act. This means that the living coparcener and living daughter are necessary. However in *Danamma @ Suman Surpur & Anr. v. Amar & Ors.*, a divisional bench comprising of Hon'ble A K Sikri, Justice and Hon'ble Ashok Bhushan, Justice had held that even if the father is not alive, that is, if the father may had died before 2005 amendment, i.e. still the daughter would get an equal share. Both these judgments which had the same number of judges in its composition of bench were conflicting and a view of the larger bench was necessitated. To solve this confusion, in 2020, a full bench comprising of Hon'ble Arun Mishra, Justice, Hon'ble S Abdul Nazeer, Justice and Hon'ble MR Shah, Justice in *Vineeta Sharma v. Rakesh Sharma* has held that ancestral property right of women is same as that of men which is by birth. Thereby overruling the *Prakash and others v. Phulavati* and upholding the *Danamma* case, the Hon'ble Apex Court of the country held that 'A son is a son till he gets a wife, but a daughter is a daughter all her life and cleared the last hurdle in the realm of gender equality in domain of the property laws of Hindu Women.

CONCLUSION AND SUGGESTIONS

Property always plays important role in the life style and social status of individual, family, community and country. The right of property of women has been the subject of controversy from the dawn of civilization and is still subject of argument till today. Right to property though granted to women by the legislation has not been implemented the way it was intended by the legislatures. The existence and continuation of gender discrimination is a blot and slur on the face of modern welfare State. In India, social structure dispirits the women's right over ancestral property. It is a common belief that after marriage all proprietary rights of a girl over the ancestral property comes to an end and she must claim her maintenance, property etc from her husband only. If she claims her right over ancestral property, she is believed to claim the rightful share of her brothers resulting into hostile relations with brothers. Although the legislation is an important medium for inserting the normative values to the society. But the mere existence of such laws will not be proved profitable, if it not restored by the common practice. As a result women though have knowledge of her rights, generally avoid claiming partition to maintain cordial relations with her brothers. So the need is not only to make people aware of the property rights of the women but also to create awareness among the society that gender of the child must not decide the proprietary rights. These values must be inculcated in the family right from the very beginning.

There is a plethora of legislations providing proprietary rights to women but these are not accepted by the male dominating Indian society. Men are not ready to give share in the property to women willingly. It is submitted that to infuse flesh and blood to the legislations, men should come forward and join hands with women by full spirit. They should understand that if they require some proprietary rights to survive in the society, then females should also be kept on same footing. They should not be deprived from enjoying the proprietary rights. So an immediate change is required in the attitudes of men towards the women at family, society, State, national and international level.

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