

Women's property rights in India under Hindu law



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Abstract

7th September 2005 began a new chapter in the history of the women because on this day the Hindu Succession (Amendment) Act came into force, and it blessed them with property rights in the property of their father. It was something that had been denied to them by the previous enacted Acts. With the gender discrimination removal from the society and raising the status of the women in the society as its basic motive, the Hindu Succession (Amendment) Act proved to be a revolutionary step in the women's history in India.

For several years before and after independence, the woman in India had been deprived of her rights she deserved as a daughter under Hindu law which did not allow her to get any part of the movable or immovable ancestral property. No doubt, the women had previously been allowed to inherit the ancestral property for the limited use, but it was not what they actually deserved being daughters.

After the independence of India, the codification of the property-related Hindu law was made, and in 1956, the Hindu Succession Act 1956 was enacted, but it was gender biased and could not treat women and men equal in terms of property rights. However, the good thing was that it recognized the women's right to property or their right to inheritance in a joint family. Despite all this, a daughter failed to get and enjoy the status of coparcener.

The paper is an interpretative study in the form of review article on the women's rights of property granted to her by the Hindu (Amendment) Succession Act, 2005. The study surveys several important aspects of the Indian woman, and interprets in particular her right to property which had previously been denied to her by the previous succession acts.

The findings reveal that despite the amendment in 2005, the Indian woman is still far away from being aware to her property rights, and that she still believes that she has her right only on the property of her husband, and not on the property of her father. The study suggests that there is an utmost need of organizing such programmes as can bring the common Indian woman closer to the provisions of the amended succession Act, 2005.

Keywords: Property rights, Hindu Law, Mitakshara, Succession, Destiny, Statutes.

Introduction

Regarding the property rights, the Hindu law prescribes two methods or aspects, namely, Mitakshara and Daibhag under which the property rights of the individual had been fixed. Survivorship and Succession are the two methods of devolution of property recognized by Hindu law. Survivorship plays a dominant role in the property of the joint family, as it allows the separation of the property owned by the deceased. The succession method allows the successors to inherit the property.

The Hindu Succession Act 1956 which was once taken as a landmark with regard to the succession, but it is shocking to note that this major Act failed to guarantee any independent right to a daughter in the ancestral property. Hence, she was not allowed to make a demand for partition or for her share in the ancestral property. Only after the death of their ancestors, the daughters could have the share in the property of the father.

Obviously, the Hindu Succession Act, 1956 contributed to the gender discrimination in the Indian society, as the daughters were deprived of enjoying property. Indeed, it was against the spirit of the right to equality

and an open violation of Articles 14 and 15 of the Constitution of India to which both men and women are equal .

The Hindu Succession (Amendment) Act, 2005 amended the Hindu Succession Act, 1956, and the daughter was granted the same property rights as are granted to the son, and no difference between the sons and daughters was maintained as it was the case in the Hindu Succession Act, 1956. After this revolutionary amendment in the Hindu Succession Act, the daughter is the coparcener with all the property rights.

The Hindu Succession (Amendment) Act 2005 also allows the daughter to dispose of the coparcenary property of her right in accordance with the will. The Amendment Act revises section 6 of the Hindu Succession Act, 1956 and recognizes the right of a daughter as a coparcener overriding the original concept of coparsanari that favoured only the male members of a united Hindu family and deprived the female ones.

After this revision, the Indian woman whether she is a daughter, wife or mother, is in the queue of coparceners. With the enactment of the Hindu (Amendment) Succession Act, 2005, section 23 of the Hindu Succession Act, 1956 has also repealed, and now the Act recognizes equal rights of daughters seeking partition even in a house occupied by a male co-worker of a joint family.

Objectives of the study

1. To produce the picture of the Indian women in general
2. To study and reflect the Indian woman's destiny in her matrimonial and native family
3. To make the reader familiar with the woman's constitutional rights
4. To explain provisions of the various Succession Acts
5. To make reflections on the woman's property rights
6. To distinguish between theory and practice with regard to the woman's property rights
7. To produce the practical contemporary scenario of the woman's awareness to the women's property rights
8. To produce practical contemporary scenario of the woman's demand for her property right
9. To emphasize the need of running woman's property right awareness programs
10. To mirror the emerging changes in the life of woman with the advent of the women's property rights

Review of literature

- 174th Report of Law Commission of India (2000), under Property Rights of Women: Proposed Reforms Under the Hindu Law, makes recommendations for the removal of anomalies, ambiguities and inequalities in the law; takes up the aforesaid subject suo motu in view of the pervasive discrimination prevalent against women in relation to laws governing the inheritance or succession of property amongst the members of a joint Hindu family. The report emphasizes that social justice demands that a

woman should be treated equally both in the economic and the social sphere. The exclusion of daughters from participating in coparcenary property ownership merely by reason of their sex is unjust. The Commission feels that further reform of the Mitakshara Law of Coparcenary is needed to provide equal distribution of property both to men and women. The recommendations contained in the Report are aimed at suggesting changes in the Hindu Succession Act, 1956 so that women get an equal share in the ancestral property.

- Karine Bates (2000), in *The Hindu Succession Act: One Law, Plural Identities*, writes that issues of gender and legal pluralism are complex and multidimensional, and thus require varied research strategies. Recent ethnographic and comparative studies reveal the significance of property rights in shaping gender inequality. The study undertakes comparative analysis of socio-economic, as well as regional variations, in the ability of a widow to claim her legal property rights and cope in other ways, thereby deepening our understanding of the interaction of legal reforms, socio-economic trends, and customary law.
- Pradeep Panda, Jayoti Gupta, Indika Bulankulame & Nandita Bhatla (2006), in *Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience*, share that Women are also affected by the inherent gender bias in informal systems of social provisioning. Within informal systems of social provisioning, the family and community act as primary means of social protection in developing, low income countries. Literature records that the burden of social security provisioning by families falls heavily and disproportionately on women. Moreover, these informal systems are rooted in gender norms, often maintain the status quo with respect to women, and inherently contribute to increased vulnerability of women by denying them social support in particular circumstances such as widowhood.
- Reena Patel (2006), in *Hindu Women's Property Rights in India: A Critical Appraisal*, emphasizes the need to critically define the bases and contours of 'rights' as created by law. Taking the example of changes in Hindu women's position in relation to property through the rights generated by statutory and constitutional provisions, the article critically evaluates the potential for such a 'rights regime' to enable Hindu women's greater access to property. It argues that the idea underlying a particular claim, its legitimacy and therefore effectiveness within a legal framework must be critically evaluated. The legitimacy of claims presumptively conferred within a legal framework must be interrogated in the light of legal, historical, political and cultural contexts. Such a contextual and critical analysis is crucial for effective protection of rights claims through law. To the extent that legal regimes reflect and substantiate wider social relations, their potential for bringing about

substantive change in the lives of women can only be realised through ongoing critical analyses of gender, law and society.

- Debarati Halder and K. Jaishankar (2008), in *Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India*, discuss at length that the Hindu women's legal right to inherit property has been restricted from the earliest times in Indian culture. In the ancient text *Manusmriti*, Manu writes: "Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; a woman is never fit for independence." However, women were not always excluded from inheriting movable or immovable property from ancestral and marital families. But their proportion of share in the property was far less than that of their male counterparts. Throughout history, restrictions on Hindu women's property rights have undergone change, and current laws governing these rights are more liberal than those of ancient Hindu society. Patriarchal Hindu society provided women with property known as *stridhan* (literally, women's property or fortune), and it mainly came from marriage gifts (clothes, jewelry, and in some rare cases, landed properties). However, women were denied property rights to the ancestral or marital landed property, and their right over succession of the landed family property was limited. With the emergence of different schools of Hindu law, the concept of *stridhan* started expanding its literal and legal meaning, granting women more rights to certain forms of property. Later, the nineteenth and twentieth centuries witnessed the passage of several pieces of legislation that were intended to remove more of the barriers to full and equal property rights for Hindu women. Most recently, sexual discrimination in Hindu succession rules was mostly discontinued by the recent *Hindu Succession (Amendment) Act (2005)*.
- Bina Agarwal (2009), in *Hindu Women's Property Rights in Rural India: Law, Labour and Culture in Action*, informs that in Rural India, practically the women are not allowed property rights. The parents consider it their liability to marry off their daughters, and feel themselves free from all the obligations. The Constitution of India guarantees right to equality, but in terms of property, the rural women are generally deprived of their rights. The same applies to the right to property.
- Deininger Klaus, Goyal Aparajita, Nagarajan Hari, Klaus W. Deininger, Aparajita Goyal & Hari K. Nagarajan (2010), in *Inheritance law reform and women's access to capital : evidence from India's Hindu succession act*, examine whether and to what extent amendments in inheritance legislation impact women's physical and human capital investments, using disaggregated household level data from India. The authors use inheritance patterns over three generations of individuals to assess the impact of changes in the Hindu Succession Act that grant daughters equal

coparcenary birth rights in joint family property that were denied to daughters in the past. The causal effect is isolated by exploiting the variation in the timing of father's death to compare within household bequests of land given to sons and daughters in the states of Maharashtra and Karnataka. The analysis shows that the amendment significantly increased daughters' likelihood to inherit land, but that even after the amendment substantial bias persists. The results also indicate a robust increase in educational attainment of daughters, suggesting an alternative channel of wealth transfer.

- Indira Sharma, Balram Pandit, Abhishek Pathak, and Reet Sharma (2013), in *Hinduism, marriage and mental illness*, discuss that the Indian society is predominantly patriarchal. There are stringent gender roles, with women having a passive role and husband an active dominating role. Marriage and motherhood are the primary status roles for women. When afflicted mental illness married women are discriminated against married men. In the setting of mental illness many of the social values take their ugly forms in the form of domestic violence, dowry harassment, abuse of dowry law, dowry death, separation, and divorce. Societal norms are powerful and often override the legislative provisions in real life situations.

Hypothesis

1. The picture of the common Indian woman in India is miserable
2. The destiny of the Indian Woman as a daughter and sister in her father's house is full of depravity
3. The destiny of Indian woman as a wife, daughter-in-law, sister-in-law and mother-in-law in her husband's house is scornful and full of humiliation
4. The Constitution of India treats woman equal to man, and guarantees her all those rights that are guaranteed to man
5. The Acts associated to succession lay down different provisions and lack uniformity
6. With the enactment of Succession Act 2005, the Indian woman has seen a new dawn
7. The Hindu Succession Act 2005 allows the woman to get her property rights in her father's property
8. With regard to the woman's property rights, there is much difference between theory and practice
9. The Indian woman lacks awareness to the woman's property rights
10. Only few of the women in India make demand for their property rights
11. In order to make all the women of India familiar with the provisions of the woman's property rights, there is a need of the awareness programmes
12. The Hindu Succession Act 2005 is a new vista for the Indian woman.

Research methodology

The paper is a review article with a special focus on the women's property rights

guaranteed to her by Hindu Succession Act 2005. Designed on the secondary information and contents available in the various research papers published in the various national and international journals, constitution and statutes, the paper is a mirror to the various aspects of the Indian woman who finds herself content with the property rights. The steps involved in the process of the current study involve in particular the collection, classification and explanation and interpretation of data in addition to the other common steps that are undertaken by the researchers of law. Efforts were made to produce factual explanation in order to maintain the scientific spirit of the work. A special care was taken to maintain objectivity throughout the research paper.

Findings

1. The destiny of a common rural and urban woman in India is of being a dependent who depends for all her decisions on the male members of her family
2. The cases of female feticide, female infanticide and parents' attitude of partiality reveal her miserable status in her father's house
3. As a daughter and sister in her father's house, all the forms of depravity are faced by her
4. As a wife, daughter, daughter-in-law, sister-in-law and mother-in-law in her husband's house, hers is a tale of exploitation, torture and ill-treatment
5. The Constitution of India guarantees the right to equality to the woman under Article 14
6. Indian Succession Act 1925, the Hindu Succession Act, 1956 and the Hindu Succession Act 2005 are the various succession acts that lay different provisions
7. The Hindu Succession Act, 2005 guarantee the property rights to women
8. The Hindu Succession Act, 1956 was gender-biased
9. Section 14(1) of the Hindu Succession Act, 1956 provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as a full owner thereof and not as a limited owner.
10. The Hindu Succession (Amendment) Act, 2005 amends section 6 and omits sections 4(2), 23 and 24 that created inequality
11. The Hindu Succession Amendment Act, 2005 deals with the rights of daughters in the Mitakshara coparcenary elevating the daughter's position through the amendment in section 6 of the Hindu Succession Act 1956.
12. The Hindu Succession Amendment Act, 2005 has brought a ray of new hope in the life of the Indian woman
13. The Indian woman is still unaware of her property rights and hardly breaks ice on it
14. The Hindu Succession Amendment Act, 2005 is likely to raise the status of the Indian woman through the provisions regarding the property rights.

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