

Property Rights of Women under Indian Legal System

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Abstract-

Property rights are a limitation for financial turn of events and much more so for women. This paper utilizes a legal change in inheritance law in India which improved property rights of women to gauge the impact of women's improved financial states of on savagery against them. Utilizing the legal amendments acquainted with the Hindu Succession Act this paper utilizes the stunned usage of the Act to gauge the causal impact of the amendments on viciousness submitted against women. I locate that improved inheritance rights diminished viciousness submitted against women. Social justice requests that women ought to be dealt with similarly in both the monetary and social circles. This investigation gives proof that improved property rights for women may speak to an improvement in government assistance which need not really be joined by an improvement in self-rule.

Keywords— Property Rights, Rights of Women, Property Rights of Women, Laws for Women

Introduction-

Women have a special place in every society whether it is developed, developing or underdeveloped. This is especially due to the different roles she plays as a daughter, wife, mother and sister etc. during different stages of her life. Despite this contribution to the life of every person, she still belongs to a section or group of society which is in a hindered position due to many social constraints. She has been the casualty of abominations because of men who command society. The status of Indian woman is not better than her partners in different parts of the world. On the one hand, she is held in high esteem by all: worshiped, which is considered the embodiment of tolerance and virtue. But on the other hand, she has been the victim

of immoral sorrows, sufferings and atrocities generated by the male dominated society.¹

Under ancient Hindu society, women were considered to be of low social status and dependent for any property rights. Under the old Mitakshara law, at birth, the son acquires a right and interest in family property. According to this school, a son, grandson and an elder grandson, based on birth in the family, form a class of mating. In Mitakshara law no woman is a member of the Coparcenary.²

The first law which brought women in the scheme of inheritance was the Law of The Hindu Law, 1929', which confers inheritance rights on three female heirs, namely, son's daughter, daughter's daughter and sister. Another historic law asserting ownership over a woman during this period was 'The Hindu Women's Right to Property Act, 1937'. This act of 1937 enabled the widow to succeed with the son and take equal share of the son. The widow was not a coparcener, even though she had the right to coparcener's interest in the property and was a member of the joint family.

Concept of Coparcenary Property-

Coparcenary is a unity of title, possession and interest. To further illustrate the term, a Hindu coparcenary is a much narrower body than a Hindu joint family. This includes only those individuals who are interested in coparcenary property since birth, they are, for some time, sons, grandchildren and great-grandchildren of property holders.

The Black's Law Dictionary³ gives a more comprehensive description of the term coparcenary. It states, such property arises, where many people take descent from the same ancestor as the same heir, all who make coparceners but having an heir and an estate and being attached to the unity and title of interest. A species of property, or tenancy, that exists where the land of inheritance descends from the predecessor to at least two people. It originated in England by common law or special practice.

¹ C.A. Gurudath, (ed.), Women, Child Law and Society, 119 (2006)

² K.M. Kapadia, Marriage and Family in India 80 (1955).

³ Black's Law Dictionary (10th Edition)

Hindu Women's Right to Property-

A Hindu woman, whether a young woman, wife or widow, is never precluded the utilization from securing her property. Indeed, even in Manusmriti one can see that the right to keep property was respected.⁴ Jurists like Yajnavalkya, Katyayan and Narada put forward the concept of women's property rights.⁵ The property rights of women became better and defined during their time. Smritiras created a unique type of wealth for women, Stridhan. From time immemorial, stridhan was considered a separate property of women.⁶ Jimutavahana stated that even after marriage the woman has complete control over her property.⁷ The ornaments she gets from her father and relatives at the wedding are part of it. Her own and husband's family gifts will also be added to her.

Muslim Women's Rights of Property-

The rights of Muslim women have been the subject of discussion since the Constitution came into force in 1950. Islamic law (Sharia) is considered by many to be patriarchal and oppressive for women. Although the Quran has tended to women's issues fourteen hundred years back by making a few changes to improve the status of women, these reforms are not prevalent in Muslim society today. Although Islam before Prophet Mohammed is not oppressive for the interpretation of women enforced in the law of Islam, and surviving every day is patriarchal.

Christian Women's Rights of Property-

India (which) is a multi-religious multi-cultural society, which has given its citizens an opportunity for full development of their gender, caste, religion or race by ensuring various fundamental rights in Part III of the Constitution. Despite this, religious precepts always overturned the nation's beneficial practical and humanitarian

⁴ Kanaka Latha Mukund, 'Turmeric Land, women's property rights in Tamil society since early medieval times'', XXVII/17, *Economic and Political Weekly*, WS-2 (1992)

⁵ *Ibid.*

⁶ Alladi Kuppaswami(ed.) *Mayne's Hindu law and Usage* 840(12th edn., Bharat Law House, 1986).

⁷ D Bh IV, I, 18. See also, *supra* note 6 at 840

international and national laws.⁸ The constitutional mandate of non-discrimination against any person based on religion given under Article 15 (1) has not been fully implemented even after the declaration of the Constitution 71 years ago.⁹

Hindu Women's Property Rights under the Hindu Succession Act 1956-

The property rights of women have been substantially improved by the Hindu Succession Act 1956. The concept of women being entitled to limited property on acquisition of property by inheritance has been abolished and women are entitled to full property like inheritance of any property. Again, the daughter of an earlier son and the daughter of a preceding daughter are raised to a higher position. She became the heir of Class-1 and got a share with the son and other Class-1 heirs. Daughters are included in Class-I to remove segregation based on sex. Similarly, the succession of a woman's property or Stridhanam of any nature is made uniform paying little respect to the idea of Stridhanam. In the same way the distinction between male and female heirs in terms of succession has been overcome and they are now treated on the same basis if they are of the same degree of relation. Women will no longer be brought to the ground of instability.

Hindu Succession (Amendment) Act 2005-

The object of amending the Hindu Succession Act 1956 is to strike at the base of male centric society that has been sustained through the Mitakshara coparcenary. Section 6 of the Act prohibited women from acquiring the hereditary property since women are most certainly not coparceners.¹⁰ The Amendment Act 2005 crushed the exclusive citadel of male coparcenary so as to offer impact to the rule of uniformity cherished in Part III of the Indian Constitution. The sex separation in the Mitakshara coparcenary has been totally cleared off by raising the status of female individuals from the Hindu joint family equivalent to that of the male coparceners.

⁸ Dr.A.K.Srivastava, "Muslim Personal Law and Rights of Muslim Women, A Socio Legal study" 34 SCJ 3 (2007)

⁹ Emmanuel Nahar, "Minority Rights in India: Christian experiences and Apprehensions" Mainstream Weekly Vol.XLV, No.01, (24-4-07).

¹⁰ Manisha Garg and Neha Nagar, "Can women be Karta?", available at: [http:// www.legal-servicesindia.com](http://www.legal-servicesindia.com)

The Amendment made in 2005 depended on the recommendations made by the Law Commission in its 174th Report on Hindu women's property rights. Truth be told the Commission had taken the subject *suo moto* in light of the glaring segregation existed in the Mitakshara coparcenary.¹¹ It was seen by the Commission that since days of yore property laws were authorized to assist men. Property rights had been denied to Hindu women just to practice power over them and to make them oppressed and subject to men. In the Joint family women were entitled only for maintenance. Despite what might be expected a son gains inheritance in the genealogical property since he is a coparcener. The maintenance of the coparcenary barring females sustained the conventional male predominance in the matter of legacy. The Commission called attention to this imbalance and said that it is in actuality extortion on the Constitution. Based on these discoveries the commission recommended for the amendment of Section 6 of the Hindu Succession Act 1956.

Property Rights of Muslim Women under the Customary Law-

In pre-Islamic Arabia, the law of legacy depended on were rejected from legacy. Comradeship-in-Arms and their wives and children were rejected from legacy. In fact, the rule of legacy depended on the preferences of the agnostic and the principles of exclusion of women. Thus, a daughter or a sister or daughter's son or sister's son could not succeed in the property.¹² It is clear that before the advent of Islam women were not only denied their right to succession, but their fate was in the hands of their husband's clan or their relatives. In pre-Islamic society, men enjoyed the upper hand over women in matters related to heritage. When a person lost his life, his heir would claim authority over the widow and marry her. After marriage, he denies her the right to claim the portion of the inheritance formed by the dowry. He can also take a dowry and ask another person to marry him. Further fatherless children were never inherited, instead they were abused and not well cared for and young girls would fall prey to sexual abuse.

¹¹ Section 6 of the Hindu Succession Act 1956 Act excludes women from inheritance. Only male members are entitled to inherit property of the joint Hindu family.

¹² Paras Diwan; *Muslim Law in Modern India*, 213 (9th edn., Allahabad Law Agency, Allahabad, 2000)

Conclusion-

The preamble is shown as the motivation behind the amended Acts is to expel oppression daughters revered in Mitakshara coparcenary and along these lines destroy the duplex arrangement of dowry by positive measures, consequently improving the status of women in human culture.

It is important to get that if fairness exists just as a phenomenon outside the mindfulness and endorsement of the individuals, at that point it can't be felt socially by a section of women in the customs of disparity. Subsequently, there is a requirement for social mindfulness and teaching individuals to change their demeanour towards the idea of sexual orientation uniformity. The need for great importance is additionally to concentrate on changing the social viewpoint for balance for all by enacting uniform laws.

Finally, one can say that there are many laws in India by legislatures, rules of administrators and judicial pronouncements and the more important ones, as well as the women's organizations of the group, have a continuing relationship for women's safety and empowerment but do little justice to it as being illegal, interest between women and people in society. Time is needed to make women aware and empowered.

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