

PROPERTY RIGHTS OF WOMEN AND DAUGHTERS UNDER HINDU LAW

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ABSTRACT

The people's power woman-power is the totality of democracy, and half of the world's population is women. In the past, women have had limited rights on their parental property, and the widows were invariably at the mercy of their sons. The government has been taking a number of progressive steps to promote property holding among women in recent times. The Hindu Succession Act was amended with an object of bringing the wave of equality among male and females belonging to Hindu religion in relation to partition and share of properties of joint family, here the female Hindu includes both women and daughters. The Indian Judiciary has been conscientiously sensitized after such provision in half-century old Hindu Succession Act and is interpreting the issues of properties accordingly. After a provision of property rights of Hindu women and daughters in the Hindu Succession Act were incorporated, many judgments are witnessed in lower and higher Judiciary. India is experiencing extensively its social development in respect of a step-forward from gender discrimination to gender equality in respect of property rights.

KEYWORDS: Women, Daughter, Property, Hindu Succession Act.

INTRODUCTION

Under the Indian Constitution, both the central and the state governments are competent to enact laws on matters of succession and hence the states can, and some have, enacted their own variations of property laws within each personal law. The Constitution of India guarantees equality of opportunity and equal status to both men and women citizen. Article 14 of the Constitution of India enshrines "equality before law" and Article 15 prohibits any form of discrimination. Article 14 of the Constitution of India states that: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The idea of limited estate as propagated by the Hindu Women's Right to Property Act was abolished in 1956 by the introduction of the Hindu Succession Act. Until the Hindu Succession Act, 1956, was amended in 2005, the

property rights of sons and daughters were different. While sons had complete right over their father's property, daughters enjoyed this right only until they got married. After marriage, a daughter was supposed to become part of her husband's family, women were not supposed to have as much share in property as men had. Property rights of women in India remained largely an ignored issue. In September 2005, the courts declared that Indian women would have a right to a share in property just like a man of the family did. After the Hindu Succession (Amendment) Act 2005 amended the Hindu Succession Act, 1956 every daughter, whether married or unmarried, is considered a member of her father's HUF and can be appointed as 'KARTA' of his HUF property¹. In spite of the initial set back the Congress party could enact four separate Hindu Codes².

PROPERTY RIGHTS OF HINDU WOMEN AND DAUGHTER:

The Hindu Succession Act, 1956, was amended in 2005 to give equal rights to women. The amended Act, which came into effect on September 9, 2005, is applicable to the various sects and castes of Hindus, apart from Sikhs, Buddhists and Jains. Prior to the amendment, a woman had no right in a joint ownership or coparcenary property. Section 6 of the amended Act talks about devolution of interest in coparcenary properties. Mulla defines coparceners as "the three generations next to the holder in unbroken male descent"³. Now, a daughter becomes an owner of the coparcenary property by birth right in the same manner as a son does. Widows are also entitled to claim a share equal to that of their children at the time of distribution of the joint family property among the sons. In *Venugopala v. Union of India*⁴, SC observed as "The Mitakshara concept of coparcenary is based on the concept of birth right of son, son's son and son's son's son." Section 6 is applied to the devolution of coparcenary property of a male Hindu who dies after the commencement of the Act. Section 8 is applied to the devolution of a self-acquired property of male Hindu⁵.

The Section 8 -13 of The Hindu Succession Act, 1956, deals with the rules of succession with separate property of a male Hindu, dying intestate. The Act applies to cases of succession which opens after the Act came into force. The property of a male Hindu dying intestate devolves firstly on heirs in clause (1) which include widow and son⁶. Under Section 14 of The Hindu Succession Act 1956, the limited interest of Hindu female is converted into absolute rights. If she gets property from her husband she can sell it and the purchaser gets

¹ The Hindu Succession Act, 1956, section 6

² The Hindu Marriage Act 1955, The Hindu Succession Act 1956, The Hindu Adoption and Maintenance Act 1956 and The Hindu Guardian and wards Act 1956.

³ Principles of Hindu Law by Mulla (13TH Edition)

⁴ AIR (1969) SC 1094

⁵ *Eramma v. Veerupana*, AIR 1966 SC 1879.

⁶ *Rameshwari devi v. State Of Bihar*, AIR 2000 SC 735

absolute right in the property⁷. Formerly she was not given the power of alienation⁸. The provision has been given retrospective effect. Consequently the limited estate becomes absolute. Another important change brought out is to the explanation Section 6 of the 1956 Act⁹. Upon the death of a coparcener the property devolves upon his mother, widow and daughter along with his son by testamentary or intestate succession and not by survivorship. This rule confers on the women an equal right along with the male members of the coparcenary¹⁰. The Judiciary has also played a significant role to widen further the scope of Section 14 of the Hindu Succession Act 1956. In *Tulsamma v. Sesha Reddy*¹¹, the Supreme Court observed that the shackles placed on the Hindu women over her property have been broken by this Act and her status has been brought on par with men. In the instant case the trial court decreed the suit on the ground that the appellant had a limited interest in the property allotted to her by the respondent, her deceased husband's brother. The appellant was entitled to maintenance out of the joint family property when she leased out her property. The respondent filed a suit for a declaration that she had no absolute right over the property. Instead her right was only a limited interest. The contention of the appellant that she had become the full owner of the property by virtue of Section 14 of The Hindu Succession Act 1956 was upheld by the Supreme Court. The Court said that Section 14 is wide in its scope and ambit.

CONCLUSION:

Though India's constitution provides gender equality, it is not followed regarding the right to inheritance of property for Hindu women and it is evident in The Hindu Succession Act, 1956. Later the limitation on the intestate succession in Mitakshara system has been changed through the Amendment of 2005 which helped Hindu woman to acquire equal status with men. The developments in the law of Hindu women's property rights have definitely enriched the possibilities of providing extensive rights on deserved property.

⁷ Prior to the Act, she could sell it only for the necessities of the family or to perform religious ceremonies for the benefit of her deceased husband.

⁸ See Section 14 of the Hindu Succession Act 1956. Section 14 is wide in its ambit. The legislation has defined women's property in the widest possible manner. The property includes both movable and immovable property acquired by a female by inheritance, partition, in lieu of maintenance, arrears of maintenance, gift from any person, a relative or not, before or after marriage or by her own skill, exertion, by purchase or by prescription or in any other manner whatsoever and also any such property held by her as stridhan immediately before the commencement of the Act.

⁹ Section 6 of the 1956 Act provides: Devolution of interest in coparcenary 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 up on the surviving members of the coparcenary and not in accordance with this Act: provided that if the deceased has left him surviving a 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 Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship.

¹⁰ Sruthi Pandey, "Property Rights of Indian Women." available at: <http://www.muslimpersonallaw.com> (Accessed on 02.05.2010).

¹¹ AIR 1977, SC 1944.