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Judicial Approach to Women's Succession

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Introduction

The researcher attempts to analyse the role of the judiciary in upholding property rights of women including deals with the self-acquired property of Hindu women in India, and how the judiciary has been acting as a driving force of social transformation in the context of women's property rights in India. In the case of intestate succession, women faced numerous hurdles to receive the property of the deceased father. Though the law provides a fair inheritance right to women under different law there are still women who face a lot of bitter struggles to secure their rights. Succession rights of women are rapidly being challenged and landmark judgments are being passed by progressive benches of judges with comforting frequency. However, the legal battle for succession is also being fought by women across the country in countless cases when the patriarchal family setup restricts women from inheriting ancestral property.

The eminent political philosopher, Garner says that 'a society without legislature is conceivable, and indeed, legislative organs did not make their appearance in the state until modern times, but a civilized state without a judicial organ and machinery is hardly conceivable. A moving spirit of justice has not been completely achieved, but to an extent it has been successful in imparting justice to its citizens and particularly to women who have been victimized in various conflict issues. "The role of a judge is not merely to interpret the law, but to also lay new norms of law, to suit the changing social and economic scenario to make the ideals in the Constitution meaningful and of reality". To protect women's socio-economic status and property rights, the judiciary has taken many initiatives including monitoring the effective enforcement of laws in the society. These efforts of the judiciary had started even from the British period.

The process of making legislation on the women's property by the government was not sudden, but it has a long history. When we analyse the history of evolving any law which sensitized society, there has been a hidden history that existed behind that law. The government would make laws only on the rise of demand by the general public supported by social reformers. A similar way of strategy has also been followed in establishing many women laws,

internationally and nationally. Many feminists and other leaders who have real concern over the freedom of women have worked for creating those laws. As part of India's initiatives on enacting laws on women rights which were started only during the 1950s, before which the Britishers had already introduced many women-specific laws for saving women from various social evils like the Widow's Remarriage Act, 1856, Civil Marriage Act, 1872, Married Women's Property Act, 1874, The Child Marriage Restraint Act, 1921, The Prevention of Prostitution Act, 1923, The Hindu Inheritance Act, 1929, Prohibition of Sati and incorporating specific provisions in Indian Penal code, 1860 etc. In 1985-1986, in the case of Shah Banu, due recognition of the Muslim's Women's right to maintenance upon divorce was the recommendation of the judiciary to the Indian Government and led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act 1986; Allocation of 1/3 of the Seats reserved for women in local Self Government (Panchayats Raj) was also recognized.

In India, there were several social reformers emerged and consistently worked for freedom of Indian women. The struggle was initiated against the social evils such as sati, devadasi, widow's remarriage, and inequality for women. Mere spreading of awareness will not help much to control these social issues and we need a strict legal mechanism. The social leaders and reformers mostly emerged from both India and British had taken initiatives for the emancipation of women through creating awareness through appropriate legislation. Particularly, the leaders like Mahatma Gandhi, William Bentinck, Mahakavi Bharati, E.V. Ramasamy worked commendably on women liberation through their speeches and writings. They identified that the Provincial Courts of Appeal and Circuit Court had been largely responsible for the huge arrears of causes related to socially sensitized cases. The legal processes in these courts frequently led to delays and unpredictability. Bentinck abolished these courts and established different grades of courts to avoid delays in the trial of cases. He ordered to use vernacular language in the trial of the cases. Social reformers from India like Raja Ram Mohan Ray supported this pioneering venture of Bentinck.

Constitutional Provisions Relating to Women's Property

The Indian Constitution does not expressly mention anything on women's property rights. It substantially elaborates the framework to ensure equality by following special laws and developmental policies. Equality means that no one should be excluded from claiming rights including property rights on the basis of religion, race, caste, sex etc., Indian Constitution not only guarantees equality to all persons through Article 14 and Article 15 also facilitates to take affirmative action and follows the strategy of positive discrimination to balance the inequality that existed among the citizens whose domicile is in backward areas and people who are facing any discrimination in the name of sex in the society.

Article 14 of the Indian Constitution ensures 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." Similarly, Article 15(1) forbids discrimination on the grounds of sex. Article 16 (2) prohibits discrimination in respect of getting employment opportunities based on sex. Though our Indian Constitution provides the utmost guarantee for conserving human rights to an Indian citizen, many times, these human rights could not be enjoyed by the citizen completely, due to various socio-legal reasons. In this sense, the application process of human rights is complicated by the issues like large size population, widespread poverty, illiteracy, improper education and diverse culture. Despite the country's status as the world's largest sovereign, socialist, secular and democratic republic, the human rights issues and violations are high in an exponential way. Article 41, Article 42, Article 43 also provide various secured life provisions for Indian women and paves way for leading life equal to men. However, human rights violations occur frequently. Inequality still exists in all sections

of society. For maintaining human rights in the country, it's a mandate of the judiciary to uphold the human rights of the citizens and the Supreme Court and High Courts are empowered to take action to enforce these rights. If any citizen is affected by any of his rights by any individual or state authority, the judiciary may intervene and provide relief under Article 32 and Article 226 of the Constitution. Likewise, the Indian Constitution acts as a protecting of human rights. The development of human rights in India was made possible only through the judgements of the court on equitable principles.

In *P. Rathinam Vs Union of India*, the Supreme Court held that the right of a person to live with human dignity and the concept of life includes the tradition, culture and heritage of a person concerned. In *S.P.Gupta Vs Union of India and others*, Supreme Court held that any member in the society can approach the court for getting a legal solution if their rights are being affected by any individual or authority.

Judicial Review by the Privy Council & Supreme Court of India

Hindu women's absolute right to property advocated by Vijnaneswara was judicially curtailed by the Privy Council for the first time in 1866 in *Musamat Thakur Dehee Vs. Rai Balukram*. In this case from Benaras school the Privy Council held that a widow may have the power of disposing of movable property inherited from her husband but she has no such right in respect of the immovable property. The Privy Council also held under the Bengal school, Hindu widows were restricted from disposing of both movable and immovable property, but in Banaras School, she was free to dispose of movable property inherited from her husband.

In *Bhugwandeem Doobey v. Mynabae*, the Privy Council ruled that, under the Hindu law applicable in Banaras (the Western school), none of the husband's estate, whether movable or immovable, constitutes part of the widow's stridhana. Furthermore, the widow lacks the authority to transfer the estate inherited from her husband in a way that would harm his heirs, as the estate reverts to them upon her death.

The Supreme Court in *Gurubad Khandappa Magudam Vs Hirabai Khandappa Magudam*, the word, 'notional partition' was constructed narrowly which gave the little right to the women heirs of class 1 of the Schedule. The interest of the Mitakshara coparcenar dying intestate required to be ascertained in the manner prescribed by explanation 1 to Section 6. The explanation embodies a legal fiction and to give effect to it, two views were made possible.

The Supreme Court in *A. Ragavamma Vs Chenchamma* laid down that there would be a question of facts determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst other coparceners if they remained united. The burden is certainly on the person who sets up the partition to prove the fact. The question of the family of the deceased coparcener whose coparcenary interest devolved on his widow after working out a notional partition remaining undivided or partitioned has been debated. The Supreme Court in *State of Maharashtra Vs Narayana Rao* examined this question in the light of *Guru Pad's* case and held, "a legal fiction should no doubt ordinarily be carried out for the purposes for which it is enacted but it cannot be carried beyond that. There is no question that a female heir's right to the interest inherited in family property becomes established on the date of a male member's death under Section 6 of the Act. However, she cannot be considered to have automatically ceased to be a member of the family without her consent, as this would lead to unintended consequences that Parliament likely did not foresee when enacting the provision.

In *Kotturswami v. Veeravva*, the Supreme Court interpreted the phrase "any property possessed by Hindu women, whether acquired before or after the commencement of this Act" in order to settle a dispute pertaining to Section 14 of the Hindu Succession Act, 1956. In Section 14, it is

stated that Hindu women should be the owners of any property that was purchased prior to the Act's implementation. The provision did in fact have a retroactive impact for property acquired prior to the Act's enactment.

The Supreme Court of India approved the opinion of P. N. Mookherjee. J in Behari Vs Harida Samanta, contemplated the women's possession when it came into force. Such possession might have been either actual or constructive or in any form recognised by law. Section 14 has application to all kinds of property whether movable or immovable and the rights of the Hindu women to the property which they acquired as a limited estate before the commencement of this Act are enlarged. It came up before the Supreme Court in V. Tulasamma Vs. Sesha Reddi. It was debated on subsection (i) of section 14 dealing with enlargement of absolute right in the property given to a widow in the life of her maintenance and the instrument by which she would hold the property as limited owner.

In certain rulings, the Supreme Court has explicitly urged the state to fulfill its duty under Article 44 of the Constitution by implementing a Uniform Civil Code. There is a definite swing towards a Uniform Civil Code and one can see that the courts are going to play a significant role in some cases, like Jolly George Varghese & Another Vs State Bank of India. Indian courts have increasingly relied on international standards, deriving from various international declarations and conventions. CEDAW has been referred to and relied upon by the Supreme Court in some judgements.

The Indian judiciary, over six decades has acquired a well-entrenched system to protect and assert the human rights of women with suitable corrections whenever and wherever necessary. As explained by former Chief Justice Hidayatullah, in the era of judicial activism, modern-day judges in India have changed themselves from their traditional role as neutral referees in the game and have increasingly resorted to tipping the scale of justice in the name of 'Distributive Judges.' Judges are meant to act as humble of Law, not to pose as emperors who adjudicate on a whim. The Egalitarian bluestocking that the Hindu society may have become, in consonance with the Constitutional mandate has been still leaving untouched is perhaps the last discriminate read corner of the Hindu society has otherwise would have to be looked upon wanting in an equal society"

The issues of women's property come to the judiciary for their judicial purview. The property rights of Indian women are unequal and unfair: while they have come a long way ahead in the last century. Indian women continue to get fewer rights in property than men, both in terms of quality and quantity.

To develop the concept of women's property rights, the Indian judiciary has taken various initiatives by promptly handling the various issues of individual property-related cases.

Besides it, the role of judiciary also helps in upholding the constitutional validity and its supremacy through its legal pronouncements in many cases like Om Prakash Vs Radhacharan case, where a 15 years old Hindu girl Narayani Devi married Din Dayal Sharma in 1955 and three months later her husband died due to Snake bite and she was thrown out of the matrimonial home. She took shelter with her parents who gave her education so that she could stand on her own feet and be financially independent. This enabled her to take up a job as a school teacher. Her in-laws never bothered to even enquire or contact her. Neither had she ever visited her in laws. She died in the state in 1996 at the age of 42 leaving behind a sum in various bank, her provident fund and substantial property. Her mother Ram Kishori sought a grant of succession certificate under Section 372 of Indian Succession Act 1925. But her late husband's brother also filed application letter to claim right in the property. The Supreme Court as per the provision of Hindu Succession Act 1956 held that it was the heirs of husband who had a legal right to inherit property. Parents of married Hindu women cannot inherit in their presence. In the contemporary era, the Indian

judiciary has taken many bold judicial decisions in critical circumstances at the regular interval. For example, the judicial decision has started to impact Indian society which is beginning with the Vishaka case on sexual harassment in the workplace in the late 1990s. In following years, the Indian judiciary has also taken many progressive decisions like those on the fundamental rights of transgender persons, the Constitutionality of triple talaq, decriminalization of homosexuality, the right to choose a partner in Hadiya's case and the context of honour killings, the decriminalization of adultery and the entry of menstruating women in Sabarimala etc. From 2010, the Supreme Court and High Courts of various states upheld the doctrine of rule of law and had struck down the relevant provisions of law which are discriminatory against women. In this regard, in earlier cases that have been filed in various courts of India, the courts also support or favour not letting Constitutional rights intrude personal law.

In *Harvinder Kaur Vs Harmander Singh*, the court upheld the principles of women's property rights and equality by the way of rejecting the claim based on personal law and it also interpreted that it was discriminatory towards gender equality in India and stated that the "...introduction of Constitutional law into the home is most inappropriate." The judgment of Delhi High Court in the matter of *Sh. Surender Kumar Vs Sh. Dhani Ram & Others*, has summarized as when a property becomes ancestral or self-acquired in the case of Hindu undivided family under pre and post Hindu Succession Act, 1956.

In cases relating to property inheritance, the court upheld the concept of equality initially in the Syrian Christian community, in the case of *Mary Roy Vs State of Kerala*, a Women from the Syrian Christian community in Kerala was prevented from inheriting property after demising of her father. She filed a case against her brother who opposed giving the share with the reason of gender discrimination and patriarchal traditions. This case was brought before the lower court of Kerala which rejected the plea of Mary Roy and she appealed in High Court against the decree passed by the lower court. The High Court of Kerala overruled the previous judgment and accepted the plea of Mary Roy to get the share from their ancestral property. In this regard, in earlier cases that were filed in various courts of India, the courts are also supporting or favouring not letting Constitutional rights intrude personal law.

When the Judiciary recommends through the Law Commission to make changes in the Hindu Succession Act, 1956 and 207th Law Commission Report provides two options in making the changes in the discriminatory provisions of the Hindu Succession Act, 1956 through the first option considered is of bringing the intestate succession laws in parity with the males, and the other option is of dividing the property equally among the matrimonial and natal heirs taking into note the ground reality that the women ultimately leaves her natal place and works under the constant support of her in-laws. Either of these options will have progressive changes in Hindu law.

The Hindu Succession Act came into effect on 17th June 1956 under which the most important provision is section 14 (1) which has erased the limited estate of a Hindu Women known as Hindu Women's estate and as transformed from the earlier law, namely, the Hindu women's Right to property Act 1937 and changed it into a full estate as per the law, the Hindu Succession Act, 1956 with titled "Property of a women Hindu to be her absolute property." Section 14 of the Act has two classes of properties held by Hindu women viz., stridhana and non-stridhana, and the nature and character and sources of stridhana and her heirship over the same according to different schools and sub-schools of Hindu Law. The prior law of succession to the property of Hindu women varies according to the nature and source of her acquisitions whether she was married or not, if married whether she was married in an approved or unapproved form and according to the school or sub-school to which she belonged.

There was consensus among the various schools in respect of succession to maiden's property and it passed in the following order, viz 1. Uterine brother; 2. Brother; 3. Father 4. Father's heirs in the order of propinquity; 5. Kinsmen of the deceased heirs in the order of propinquity and much confusion in respect of other women. According to Banaras, Bombay, Madras and Mithila School Shulka passes in the following order: Uterine Brother to Mother in default of these it is conceived that it passes to Father, Father's heirs that are his sapindas, samanodakas, and Bandhus etc. Likewise, the customary laws have changed from time to time. With the consolidation of those customary laws such as Dayabhaga and Mitakshara, the Hindu women's Right to Property Act, 1937 and the Hindu Succession Act, 1956 have been brought into force.

Succession on Women's Property Rights

As the researcher discussed earlier, throughout many centuries, Indian women have faced innumerable troubles due to the forced customs which has been followed by their family and society. Due to these factors, there has been a significant gap between the effective usages of women's property laws and the upholding of laws by the judiciary.

As they become part of a different family after their marriage, the issue gets even more complex. For example, in the case, Ajit Kumar Maulik Vs. Mukundalal Maulik and Dharma Shing Vs Aso and another, in which the court had stated that daughters who had played any role in the family are not entitled to the father's property upon her marriage. In 2016, the Punjab and Haryana High Court declared that a daughter-in-law has no right on the self-acquired property of her parents-in-law.

Likewise, a widow can claim only her deceased husband's property, but not the property earned by fathers-in-law and husband blood-related relatives. At this stage, the family members of the matrimonial home and the society start to see them differently and the social condition of that 'husband -fewer women' worsens. She used to face the situation of coming out of his husband's or matrimonial home. Once they come out of their matrimonial home, they are confined in their parental house till the end of their life.

In other words, Post death of an intestate widow, her parents and members of her husband family starts claiming right over the son property through filing case in the court through Section 15(2) of the Hindu succession 1956. Since the Act, does not contain any specific provisions on self-earned property and hence, the judiciary could not take any firm decision.

In the case of Om Prakash Vs Radhacharan, the court has mentioned some of the prior cases for substantiating its legal stand likely to which supports this position.

In a different case, Teja Singh (the initial respondent in the appeal) v. Bhagat Ram (the original appellant, deceased), The land was received by Smt. Santi from her mother Smt. Kripa (both were the legal heirs of dead claimants), who passed away on December 25, 1951, and at that time Smt. Santi was limited in his rights to this land by the old legislation. But she gained complete ownership of the land when the Hindu Succession Act, 1956, was passed, namely Section 14(1). Consequently, in accordance with the guidelines outlined in Section 15(1) of the Act, her lawful heirs would inherit the property she possessed upon her death. The court has further argued that Smt. Santi had only a limited right prior to the Hindu Succession Act, 1956, but that Section 14(1) of the Act assisted to transform such a restricted privilege into an unrestricted one. Additionally, the court declined to apply Section 15(2) in this case, stating that only Section 15(1) of the general rules of succession apply in this case because the Act is silent about the devolution of Hindu women's self-acquired property. In this sense, the court has moved to enforce the legislation even if it did not apply to every group of individuals. Therefore, in accordance with Sections 15 and 16 of the Hindu Succession Act, 1956, a woman's self-acquired property passes to her husband's heirs rather than her parents in the event of her intestate death. When a Hindu man passes away

intestate, his relatives acquire the property rather than the widow's lawful heirs. When a Hindu woman passes away without a will, her assets belong to her husband's descendants, and this is unfair. In the same manner that women enjoy less rights than men do, this rule grants greater rights to family members of the husband or marital house than to those of the parents or natal home. However, only as a result of this decision have several cases been brought in India's various courts, raising concerns over the constitutionality of the Hindu Succession Act of 1956, among other laws.

The High Court of Mumbai specifically stated in this regard: "The provisions in Section 8 and Section 15 of the Hindu Succession Act, 1956 reported discrimination between Hindu males and female based on gender. Apart from that, in this law, the family unit or the tie mentioned in the law may be to get a justification, but the discrimination is not based on family ties. The law's classification is solely based on gender, distinguishing between males and females. This approach faced criticism as people realized that, according to Section 15(1) of the Hindu Succession Act, 1956, a woman's self-acquired property could end up in the hands of distant relatives of her deceased husband—individuals she may not have even known or considered as potential heirs—rather than being inherited by her preferred heirs, unless they claimed precedence as class II heirs under Section 8 or as preferential heirs under Section 15(1)(b). In light of the reasoning presented above, the High Court declared that 15(1) was discriminatory and ultra vires of the Constitution.

Transforming Judicial Decision in Upholding Women's Property Rights

We know that all the succession and inheritance issues of women have been dealt with following the earlier customary laws prevailed in the Mitakshara school and codified law namely the Hindu Succession Act, 1956 which has been used to govern the succession and inheritance of the property of Hindu women. But this law is silent in various property issues including the self-acquired property of Hindu women. As per this law, if Hindu women dies intestate, even her self-acquired property goes to her husband's heirs, not her parents. In the case of a man, the property is inherited by his relatives, not the women's heirs. Likewise, there are a lot of legal questions raised while we implement the Hindu Succession Act, 1956.

For example, Section 14 of Hindu Succession Act, 1956, provides the women with the absolute property. Before this Act, Hindu women's ownership of property was limited about disposal and right was dependent upon her status as maiden, married or widow.

For example, *Ajit Kumar Maulik Vs Mukundalal Maulik and Dharam Shing Vs Aso* in which law had stated that daughters are not entitled to father's property upon her marriage. Hindu Succession Act, 1956 applied to all countries except Jammu and Kashmir in India. Likewise, when we analyse the coparcenary property and the coparcenary rights in a family, both ancestral and self-acquired property can be a coparcenary property. The coparcenary rights are common to both sons and daughters in a family. While in the case of ancestral property, the property should be equally shared by all members of the coparcenary including son and daughter. In the case of self-acquired, the person or women is free to manage the property according to his own will.

Judiciary tries to make supportive or fair judgments for women. But in most of the cases filed before the 2000 A.D, the courts used to give judgments according to stringent, outdated and non-user-friendly custom-based laws. Critics say that the reasons for these judgments are due to the fact that the law maker failed to realise the deprivation of the legal rights either by the Hindu women or her legal heirs on her death leading to discrimination. This position continues even after establishing the Hindu Succession (Amendment) Act, 2005.

Besides it, at the Indian level, still, the women did not come forward to claim property rights under new law. In this regard, it is pertinent to note that the empirical study was conducted among the Bheema sect in Maharashtra shows that, despite progressive legal initiatives in Maharashtra,

women in Bheema did not enjoy inheritance rights because people did not make use of the provision of the Hindu Succession (Amendment) Act, 2005.

It has greatly influenced the decisions in cases that emerged later before the courts. Particularly, it has impacted critically in other cases like *Saroja Chandrasekhar and Ors. Vs. Union of India and Others*. The High Court of Madras has taken this judgment as also one of the guiding principles and has also refused the devolution of self-acquired property of the Hindu women to her natal heirs which are mentioned under Section 15(2) of the Hindu Succession Act, 1956. However, a court decision in *Saroja Chandrasekhar and Others. Vs. Union of India and Others, Mamata Dinesh Vakil v. Bansi S. Wadhwa and Nirmala @*

Nivedita Desai v. Nivedita Dhiman Desai opened the legal avenue to raise the question of the Constitutional validity of Section 15(1) and make people know the discriminatory provisions of the Hindu Succession Act, 1956.

In the later dated, the courts started to give different kinds of judgments which are contradictory to their earlier judgments which seem to be supportive for women who legally fight for their birth rights. Reversing those judgements, the Supreme Court recently pronounced a land mark judgement on Hindu Women's inheritance rights over their parental property. In this case namely *Vineeta Sharma Vs Rakesh Sharma and others*, the court ruled that 'women can have coparcenary right. She has an equal right to family property by birth, irrespective of whether her father was alive or not as on 09-09- 2005. The judge further affirms that 'once a daughter, always a daughter' and court need not consider while giving a judgment whether the women are married or unmarried and ancestral or self-earned property or matrimonial property etc.

The apex court expressed its view in *Omprakash and others. v. Radhacharan and others* as 'sentiments or sympathy alone would not be a guiding factor in determining the rights of the aggrieved parties.'

When the Dayabhaga and Mitakshara systems of old inheritance laws first split the customary law school, they did not recognize Hindu women as coparceners in a single family. Following that, certain women were included as heirs in all Mitakshara sub-schools for the first time by the Hindu Law of Inheritance Act, 1929, and they were also given a definite position in the sapinda class. The only heirs listed in the Act were the sister and daughter of the son's daughter. The Dayabhaga was not covered by the Act; it only pertained to Mitakshara. Afterwards, in 1937, the Hindu Women's Rights to Property Act came into effect. It granted women a small estate and allowed the widow, the widow of the deceased son, and the widow of the deceased son to inherit. But the Act didn't completely change or revise Hindu inheritance law as a whole.

The Hindu Succession Act of 1956 eliminated the long-held notion that women are often excluded from inheritance by granting the right to succession to a large number of females. While

Regarding the interpretation of certain sections of the Hindu Succession Act, 1956, the courts rendered contradictory decisions in 2016 and 2018. As a result, the judges ordered Indian courts located in the state's various districts-where cases had already been postponed because of the conflicting rulings-to render decisions within six months. Furthermore, daughters' Section 6 right to equality cannot be withheld from them.

Generally, in India, women of all religions have been facing discriminatory practices in society. Specifically, the women belonging to the weaker sections of the society i.e., women in rural/semi-urban /slums in metropolis or cities /the Scheduled Castes / Scheduled Tribes / Other backward Classes who live in all the backward areas.

Women nowadays are, in comparison, in a better position than they were in the past in this modern period. To give women more legal power, other amendments have also been made to the national and federal legislation now in place. The judiciary has also been acting as a woman's

savior, protecting her from innumerable crimes and offering several forms of assistance to improve her standing in all areas of her life. In a number of instances, like Prakash & Others Vs. Phulavathi & Others, the judiciary also preserved women's dignity by defending their property rights. Regarding the topic of the retroactive application of section 6 of the Hindu Succession (Amendment) Act, 2005, which provides equal rights, the Supreme Court ruled in this case.

Judicial Approach towards Self Acquired Property of Hindu Women

Though the law itself says the son and daughter in the modern family should be treated equally and property should also be shared equally, in practice, women's rights are denied in most of the families which follow the traditional dogmas in sharing the movable and immovable properties. When we analyse the traditional way of sharing properties in the Hindu family system and the reasons for not allowing the women to enjoy the ancestral or parental property, it may be found that the ancient Mitakshara law was being followed for a long time. It means that all their family property was a collective stock, which was made by the collective contribution of every male family member. In this respect, women got a secondary position in the family and were allotted only the home-making related functions.

Though this system of the integrated family was called in later period as Joint Hindu Family, women here were not given a prestigious or dignified family position in par with men in that traditional family system and that system of women position transformed into a degraded position in the Indian society for many centuries.

The Indian society has undergone drastic social and economic changes since then and these laws started to give importance to self-earned women's property also. Even Stridhana property itself got legal importance. In a case, the Supreme Court referred to 147(2) of paragraph of Mulla's Hindu law and expressed the view that the daughter of a predeceased sons of a Hindu women married in an approved form is not entitled to succeed to her stridhana other than Shulka, in preference to the son of the brother of her deceased husband. Before this, there were conflicting decisions of various High Courts by referring to the traditional customs of Hindus and the way of getting the Stridhana property.

According to Poonam Pradhan Saxena, the orthodox and parochial notions chase the women from her conception, follow her during her lifetime and ironically refuse to leave her alone even after her demise. Prenatal diagnostic tests for prevention of her birth in the world, women infanticide attempts to get rid of a new born, and post-death operation of succession laws ensure that her blood relations are relegated to an inferior position while her in-law's triumph in enjoying her hard-earned properties. The Hindu law of succession has historically been biased against women, particularly in the devolution of property. An example discussed earlier in this chapter illustrates a case where a daughter-in-law faced clear discrimination, with the injustice stemming solely from Narayani Devi's status as a married Hindu woman. The Hindu Succession Act establishes different devolution rules for men (under Section 8) and women (under Section 15), resulting in a situation where the husband's family often has a stronger claim to the property than the wife's family, even in cases where the wife acquired the property through her own efforts and skills (*Mamta Dinesh Vakil v. Bansi is Wadhwa*). This system reinforces patriarchal norms, as noted in the judicial critique that calls for reform in the succession laws for Hindu women. After 2005, significant changes were made regarding coparcenary property. For centuries, women in India were deprived of their right to ancestral property due to various socio-legal factors. However, with the enactment of the Hindu Succession Act, 1956, women were granted full property rights, ending the "limited ownership" status previously imposed on them.

Changes in Coparcenary Property- After 2005

For centuries, women in India have been discriminated against and denied the right to ancestral property due to various socio-legal reasons. Only after establishing the Hindu succession Act, 1956, women got all kinds of rights including property rights. This Act has also abolished the “limited ownership status of women”. Daughters now enjoy the same inheritance rights to their father’s estate as sons.

The Act also ensures the right to receive a share in the mother’s property. But in practice, the granted status has not been enjoyed by women even after the establishment of the Hindu Succession Act, 1956. Only in 2005, and after the Amendment in Hindu Succession Act, 2005 that the daughters were allowed equal receipt of property as that of the sons. Likewise, the coparcenary rights of daughters have also questioned the establishment of the Hindu Succession Act, 1956. It was explained the condition of coparcenary rights of women that “the effects of this law providing women coparcenary rights is yet to be seen.

Women were not allowed to inherit the family property in the past as they were not co-parceners. The Hindu Succession Act, 1956 was changed by several states, including Karnataka, Andhra Pradesh, Maharashtra, Tamil Nadu, and Kerala. The Karnataka Amendment to the Hindu Succession Act became operative on July 30, 1994. Prior to July 30, 1994, married women had no legal claim to the ancestral or coparcener’s property. However, this Act granted women the same rights as males who married after July 30, 1994. In the same way as a son, she was born into a coparcenary family.

She is entitled to a portion on the coparcenary property split that is equivalent to a son’s. She is able to make any testamentary disposition or use a will to dispose of the property that was gained by succession. The 2005 Hindu Succession (Amendment) Act updated the laws pertaining to coparcenary property, giving daughters of a deceased father the same rights as sons and making them liable for the same debts and impairments.

Through the Hindu Succession (Amendment) Act, 2005, equal rights were given to the daughters in the following manner. In the context of a coparcener, the daughter will get all kinds of rights equal to the son; the daughters can bear the equal share in the ancestral and other properties as the son. Earlier, the married daughter does not have the right to ask for maintenance or to shelter in her parent’s home. But if the married daughter is deserted, widowed or divorced she has the right of residence but she is not allowed to own any family property, that too reformed by the new Amendment Act.

In the *Prakash v Phulavathi* case (2015), a two-judge Bench held that the benefit of the 2005 amendment could be granted only to “living daughters of living coparceners” as on 09-09- 2005 (the date when the amendment came into force). After three years, in February 2018, when the case came to appeal, the judgment was contrary to the 2015 ruling, a two- judge Bench held that the share of a father who died in 2001 will also pass to his daughters as coparceners during the partition of the property as per the 2005 law. Then in April that year, yet another two-judge bench, reiterated the position taken in 2015.

In a recent case, *Vinita Sharma v. Rakesh Sharma*, the Hon. Supreme Court of India In the Hindu unobstructed heritage, the right to divide is total and bestowed onto the individual by birth, according to a 46 decision made on August 11, 2020. Separate property, on the other hand, is property that has been hindered by the death of its owner, so obstructing the right of ownership and partition. Additionally, it was ruled that the father of the coparcener, being alive or deceased on the day the amendment took effect, had no bearing on the right to partition generated by the birth of the daughter. The *Phulavathi* and *Danamma* cases were both overturned by the Apex court with this ruling. Additionally, the Apex Court read the law in light of its goal, which was to make good

to When they were denied equal property rights, women like Mary Roy and Vinita Sharma went to court to seek justice. After all, in the event that a woman's marriage fails or her husband passes away, her parents' family serves as her safety net. The Hindu Succession Amendment (2005) Act's enforcement has been the subject of several empirical investigations. This revealed a number of gaps in the legal framework, as well as prevalent societal norms and obstacles that prevent the amendment that granted females coparcener rights from birth from being implemented effectively. Could daughters' land and inheritance rights be replaced by dowries? Given that money, jewelry, and other goods are given as The daughter is denied social and economic equality within the family as the husband and his family control and use the dowry.

Conclusion

Through Hindu Succession (Amendment) Act, 2005, a daughter gets a special legal position. She has all the rights in any property that she has been gifted or has earned, or that has been willed to her, that too if she has achieved a majority. She has the authority to transfer the property by selling, gifting, or bequeathing it to others according to her wishes. Most of the time, the laws of women's property would not be followed by people. Still, people follow the traditional family customs who refused to accept the coparcenary right. In that situation, Judiciary is the only hope to protect those lawful rights of women. The socio-legal implications of judicial pronouncements on women's property rights will be high. In the following chapter, the researcher is going to analyse factors that influenced the effectiveness of law and judiciary's judgments through the proposed data analysis. And finally, the researcher attempted to know what kind of factors are influenced on the effective functioning of women's property laws and what kind of changes need to be adopted in the existing legal and judicial aspect of women's property rights in India.

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