
HINDU WOMEN'S RIGHT TO PROPERTY ACT 1937 - A STUDY

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In the ancient times, the woman could hold property but in practice, in comparison to men's holding, her right to dispose of the property was qualified, the latter considered by the patriarchal set up as necessary. She became too-independent and neglect her marital duties and the management of household affairs. This was the situation prior to 1937 when there was no codified law. The Hindu Women's Right to Property Act, 1937 was one of the most important enactments that brought about changes to give better rights to women. This was the earliest legislation giving rights of succession to widows of deceased persons on par with the sons of the deceased. These rights were confined to intestate succession (where there is no will) only.

Key Words: *Property, Coparcener, Inheritance, Intestate, Mitakshara, Dayabhagha, Devolution of Property and Succession.*

Introduction

The law of Property of a Hindu female is marked by vicissitudes starting from the Vedic society when female enjoyed equal status economically and wife enjoyed equal rights in husband's house to a very inferior position when Manu declared-a wife, son and a slave are declared to have no property and if they happened to acquire it would belong to male under whom they are in protection. The daughter's right to inherit the patrimony was also disputed and she inherited only when she was a putrika, a brother less girl. In the joint family, the position of female was relegated as only entitled to maintenance in the family. But whatever rights were given by the Smritikaras to a female to inherit the property she was limited owner of the property and could enjoy it only during her lifetime and the property reverted back from where it came. It was due to the fruitful efforts of social reformers in the British period, the Hindu Law of inheritance (Amendment) Act, 1929 and Hindu Women's Right to Property Act (Act XVIII) of 1937 were passed to amend the law of all schools materially to confer greater rights on women. ¹

Objectives of the Act

The Hindu Women's Right to Property Act 1937 has been hailed as an eye opener in the history of women's right to property. Whatever the position of the Hindu women in the social structure of ancient India might have been, their successors had the feeling that

their condition is not very good as they deserve. This feeling is fast gaining ground and unfortunate too. Any difference in the Hindu law is denounced as a mark of oppressive in justice to women. Women occupied a very dependent position in the family and her rights to hold and dispute of property were limited but the history reveals that Hindu law had never been progressive. It was only during British period due to their policy of non interference in the matters of personal laws that it ceased to grow with the time. But the Hindu Women's Right to Property Act 1937 was passed. It introduced important changes in the law of succession by conferring new rights of succession on certain females.² So, this Hindu women's right to property act is undoubtedly the biggest success so far achieved. The reason is that this act brought about revolutionary changes in the Hindu law of all schools and affected not only the law coparcenary; but also the law of partition, alienation of property, inheritance and adoption.³ The Act of 1937 enabled the widow to succeed along with the son and to take a share equal to that of the son. But, the widow did not become a coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights. Despite these enactments having brought important changes in the law of succession by conferring new rights of succession on certain females, these were still found to be incoherent and defective in many respects and gave rise to a number of anomalies and left untouched the basic features of discrimination against women. These enactments now stand repealed

Though, it is has been criticized in some places as being revolutionary in character leading to the breakup of the Hindu joint family system, according to others, it is nothing more than a half hearted rights to property. The object of the Hindu women's rights to property act is to give fresh rights to Hindu women. The legislator at that time Roger de covertly had a soft corner for widows than for women in general.⁴ The result was that the act satisfied itself with dealing of widows. And it refrained from improving the legal position of the women as a class. This bill was first introduced by Dr. Deshmukh and contained provisions dealing with the position of the daughter in the line of heirs.⁵ But they were all with drawn while the bill was presented before the select committee of the legislature.

Scope of the Act

The act came into operation from 14th of April 1937.⁶ It is specifically enacted that its provisions will be applicable to the property of any Hindu dying intestate before the state. The act has no application to properties situated in foreign countries or to agricultural lands in governor's provinces or to properties which did not belong to the

deceased in his own right. The act applies only when a Hindu dies intestate either partially or wholly. It does not apply where he has disposed off all his property. It was concerned with improving the status and condition of a widow of a copartner in the family so as to make her secure in her husband or father in law or grandfather in law left property as copartner out of which she was given a share to enable her to maintain herself without being at the mercy of the surviving copartners

The provisions of the Act

The separate property of a Hindu is concerned may be summarized as follows⁷

- His sons, his widow, the widows of his predeceased sons, his son's sons and son's son's sons and the widows of predeceased sons of predeceased sons, succeed together to that property with this qualification that if the parties are governed by the Dayabhaga School in the presence of the son his own son cannot claim any interest in the property inherited.
- The share of another objectionable feature of the Act was that it perpetuated the distinction between male and female heirs and gave only a limited estate to the widow. The antagonists of the limited estate were of the view that there was no legal basis for the continuance of a truncated estate in the face of the change social structure. When women, in ancient times and under Vedic Law, were capable or owing and holding Stridhan properties with absolute power, i.e they could dispose them of at their sweet will, why was only limited estate allowed to them in 1937, when our women had already reached the near standard of equality in educational, professional cultural, political and other spheres of life. It was in fact discriminatory, hostile and absolutely indefensible to stick to the theory of limited estate for women in the property inherited by them.
- However, the protagonists of the limited estate for women were of the opinion that such conferment of the limited rights was not on the bias of sex alone, but was designed to be protective measure for the Hindu Women of this country, who might otherwise allow the estate to be dissipated and spent away during their lifetime by men on whom they had to depend.

Changes in succession

The act introduced changes in the law of succession. It was not retrospective in its operation. It did not apply to the property of any Hindu who died intestate before the commencement of this act. But it intended to redress disabilities and to give better rights to women. It was ameliorative in character and enacted to carry out important social reform by recognizing women's claim to fair and equitable treatment in matters of

succession. The act conferred new rights on three widows, namely intestate's widow, his son's widow and his grandson's widow, his son recognized than as heirs along with the son, grandson and great grandson. But it was expressly declared that under section 3(3) the interest devolving on a Hindu widow would be the limited interest.⁸ It is known as Hindu women's estate which had been interpreted to mean widow's estate. Further it provided that she would have the same right of claiming partition as a male owner. Thus the widow's interest arose neither by inheritance nor by survivorship but by statutory provisions.

Devolution of Property

The change introduced by the act in the law of devolution under the *Dayabhaga* is not very considerable when compared with the change in the law of devolution obtaining under the *Mitakshara* and the *Dayabhaga*, so far as succession to the property of a deceased Hindu is concerned, there is no difference between his once ancestral and self-acquired property.⁹ On the father's death the son succeeded to the ancestral property held by the father not as a co-owner or coparcener with him under the *Mitakshara* but as his heirs. The only change is that on the death of a Hindu, not only his sons succeed but also his widow and the widows of predecease sons and widows of predeceased sons of predeceased sons can succeed. A daughter had virtually no inheritance rights despite these enactments having brought important changes in the law of succession by conferring new rights on certain females, these were still found to be incoherent and deceptive in many respects. It gave rise to a number of anomalies and left unfounded the basic features of discrimination against women. But finally these enactments now stand repeated.

Remarkable Changes

The act introduced far reaching changes in the law of succession. It was intended to give better rights to women by recognizing their claim to fair and equitable treatment in certain matters of succession. Moreover, this act as a consequence, touched many branches of Hindu law such as joint family and partition, adoption, maintenance and inheritance. This act effects important changes both in the law governing the devolution of a person's separate property and in the law governing the interest which he might have inherited joint family properties.¹⁰ Regarding the separate property of a person is concerted a widow can take only in default of a son, grandson or great grandson.

Moreover, the act provides that the widow shall be entitled to a share in the inheritance along with such persons. It also gives them a very high rank in the line of heirs that they are permitted to share the inheritance along with the widow and the sons, grandsons and great grand sons of the deceased superseding even his daughter and granddaughter's sons.

Further the act provides that whatever be the character of the property which the widow gets on her husband's death, it is only the limited estate (i.e.) Hindu Women's Estate. However, she shall have the same right of claiming partition as a male owner. Thus, under this act, when a widow succeeds as to her husband, the ownership in the properties both legal and beneficial vests in her. She is entitled to the full beneficial enjoyment of the estate. She cannot alienate the property unless it is for legal necessity or for the benefit of the estate.¹¹

Effects of the Act

The act confers new rights on widows. It puts the widow as a member of the joint family in the place of her deceased husband. The husband interest in the joint family under *Mistakshara* vests immediately upon his death on the widow and does not devolve by survivorship.¹² The acquisition by the widow of the same interest as the deceased husband in the joint family property does not itself disrupt *Mitakshara* joint family.

The widow continues as before to be a member of the joint family. The act was concerned with improving the status and condition of a widow of a copartner in the family so as to make her secure in her husband or father in law or grandfather in law left property as copartner out of which she was given a share to enable her to maintain herself without being at the mercy of the surviving copartners.

Defects of the Act

An important defect of this act was that it gave undue rights to a predeceased son's widow, who got more concrete rights than those of the widow of the deceased owner. There was no such limitation in respect of the interest (Hindu Woman's Estate) conferred on the predeceased son's widow. Another serious defect was that it affected the daughters. The Hindu law gives expressly laid down that the maiden daughters maintenance till her marriage and her marriage expenses were to be paid out of her father's estate. The act of 1937 was not specific as to what would happen if a man died leaving a son and a predeceased son's widow and her son. Consequently, the maiden daughter could not enforce her claim to maintenance or her marriage expenses from the pre deceased son's widow.¹³ In fact, there was not given any justification to the maiden daughter.

Conclusion

Thus the purpose of the act was achieved in a great measure, i.e., bringing a change in the general outlook of the Hindus towards the widow of the family and the widow was given an honourable place in the family as well as in the society. The Act did not relate to succession to property but only defined rights of a widow to property. The rights of the daughter, whatever they were during the period prior to the enactment, were not

interfered with by this Act as it did not deal with the daughter's right to property. A Bill was brought before the Legislative Assembly by Mr. Akhil Chandra Datta on November 22, 1940 for defining the rights of the daughters to their father's property but it was not accepted on the ground that piecemeal legislation on an important subject like succession would lead to confusion.

Therefore it was decided to appoint an expert committee to consider the matter as a whole. The result was the enactment of the Hindu Succession Act, 1956, which gave the rights to the widow, the mother, the daughter and the sister, i.e., to the females of the family. Any property that a Hindu female will get after June 17, 1956, will be her absolute property unless specifically given to her with limitation. The woman's estate over which she has possession when the Act came into force (June 17, 1956) is converted into her absolute estate. The old Hindu law of woman's estate and reversioner is still relevant in respect of property over which she had no possession when the Act came into force. Now, daughters can claim equal right in the self acquired/separate property left by their father. Thus gender discrimination has been removed to a larger extent by the Act 1956.

References

1. Hindu Women's Right to Property Act No. XVIII OF 1937
2. Suman Gupta, 'Status of Women under Hindu Succession Act', AIR, vol.V, May, (New Delhi: 2007), p.65.
3. S.Venkataraman, 'The Hindu Women's Rights to Property Act 1937', The *Madras Law Journal*, vol. III, Sept, (Madras: 1937) ,p.81.
4. N.R. Ragavachariar, *Hindu Law*, (Madras: 1970), p.755.
5. Ibid.p.66
6. Justice Alladi, *Maynes's Treatise on Hindu Law and Usage*, (New Delhi: 1998),p.823
7. S.A.Desai, Mulla's Principles of Hindu Law, Lexis Nexis,(New Delhi:2005),p.115
8. It means that she could not dispose of the property or make a will or make a gift and on her death, the property would go to the reversionary and not her heirs i.e she could enjoy only during her lifetime.
9. N.R.Ragavachariar, *op. cit.*, p.758.
10. S.Venkataraman, *loc.cit.* p.81.
11. S.A. Desai, *op.cit.*, p.118.
12. Christine Chorine, Women and Law, Mihri Desai Socio-Legal Information Centres, (Bombay: 1999),p.56
13. The India Council Act No. XI of 1938.