

WOMAN'S RIGHT TO INHERIT UNDER HINDU SUCCESSION ACT 1956 AS AMENDED IN 2005 – LEGAL ENTITLEMENTS AND SOCIAL BARRIERS

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ABSTRACT

'Woman's right to property' has direct relationship to 'Empowerment of woman' and they are cause and effect concepts wherein law is a benefactor conferring rights to women as a measure of empowerment and removal of gender disequilibrium within the family relationship and woman is a beneficiary. 'Right to inherit and succeed to Property' is one of the most significant legal strategy favouring women who are striving hard to come out of patriarchal clutches reflected in joint family system and coparcenary, that distinguish Hindu jurisprudence from the remaining world family order. Women perform different roles in her family as mother, daughter and wife and law takes cognisance of it in recognising and conferring property rights. The rights and their incidence also differ in the context of nature of the property which is either separate or ancestral. Despite these divergences, it is an important tool of economic emancipation of woman, indispensable for realisation of her potentials for self-emancipation. But legal justice with legal hurdles, social barriers and deep rooted customs has no meaning for justice in real sense. This paper throws light on the consequent lag between the legal entitlement and societal acceptance leading to socio-legal tension to women folk and analyses how law operates on socio-psychological phenomenon in Hindu society, in an important area of personal law of Succession. The scope of the paper is confined to Hindu women in the light of the Hindu Succession Act, 1956 as amended in 2005.

KEYWORDS: Coparcenary, Inheritance, Succession, Socio-Legal Tension, Legal Justice

INTRODUCTION

Hindu law recognises dual property concept namely separate property and coparcenary property of a Hindu. The separate property includes self acquisitions, self earnings, gifts received and property obtained under testamentary and interstate succession. Coparcenary property includes ancestral and joint family property and joint purchases by the coparceners with joint family funds. While the former is characterised by independent ownership and absolute rights of alienation by the owner, the latter is marked by joint ownership and community of interest by the coparceners, which was, till 2005, limited only to male members of the joint family up to four generations.

17th June, 1956¹ and 9th September 2005² are significant dates of legal importance when the law of Patriarchy was re-written in terms of property rights for Hindu women in general and daughters in particular respectively. By virtue of the former legislative initiative, the right of mother among non-dravida schools to get a share at the time of partition between father and son, of joint family property, is legally recognised; the daughter, the mother and the widow are given share in the separate property of male Hindu equal to that of a son and a few more women are placed in the scheme of succession;

¹ The date of commencement of Hindu Succession Act, 1956

² The date of commencement of Hindu Succession (Amendment) Act, 2005

And through the latter initiative, the daughter is legally acknowledged as coparcener on par with son in the ancestral property in the hands of father, which has changed the definition of coparcenery drastically. These legal entitlements are like legal bounty conferred on her as rectification of historical mistakes.

However, law has not been able to bring about necessary changes in the attitudes and perceptions of society. Giving equal property rights to women is resisted by male members in the family making it tough for her to enjoy the fruits of her entitlements. Even if she is successful in realising it, the answer to the question 'at what cost' remains difficult to answer. Viewed from sociological aspect, it is a situation where the actual behaviour of the society differs from the legally desired behaviour, signifying the existence of a lag between law and social change which results in socio-legal tension³. In the light of above observations the discussion can be carried on in four segments namely (A) Substantive aspects of law (B) Social barriers (C) Legal hurdles and (D) Ways to make the entitlement real.

SUBSTANTIVE ASPECTS OF LAW

For the purpose of clarity this segment is analysed in two parts namely rights in separate property and rights in coparcenery property.

Women's Rights in the Separate/Self Acquired Properties of a Male and Female Hindu under Hindu Succession Act 1956 (HSA, 1956)

- The Hindu Succession Act, 1956 prescribes rules for succeeding to the separate property of a male and female Hindu differently⁴. The Act also addresses a situation where a male Hindu dies leaving behind his undivided interest in the joint family which has not been claimed by him by way of partition during his life time. The Act prescribes a formula for notional partition whereby his undivided interest is converted into his separate interest just before his death, so that it is available for his heirs to succeed as if it is his separate property⁵.
- The Act mentions many female relatives of the male propositus⁶ and places them in the scheme of succession in hierarchy according to nearness of blood relationship. However they do not have any rights in such property during his life time⁷.
- Widow, mother and daughter are class I heirs and get equal share along with sons, provided the property is not willed away by the propositus during his life time.
- If he has two wives, legally married prior to 17th June 1956, both wives/widows take collectively one share⁸.
- Marital status of mother and daughter is not relevant to succeed to the property of the Hindu.
- Widow and daughter of a predeceased son, widow and daughter of pre-deceased son of a predeceased son, daughter of pre-deceased daughter, daughter of pre-deceased daughter of a pre-deceased daughter, daughter of predeceased son of a predeceased daughter, daughter of a pre-deceased daughter of a pre-deceased son also get

³ The idea was expressed by Kelsen and cited by Yehezkel Dror, "Law and social change", Tulane Law Review, vol.33 (1959) pp.749-801

⁴ Rules of succession to a male Hindu in Ss.8 to 13 and rules of succession to a female Hindu in Ss.15 and 16 of HSA 1956

⁵ S.6 of HSA 1956

⁶ Person from whom a descent is traced

⁷ Rule 2 of S.10 of HSA 1956

⁸ Rule 1 of S.10 of HSA 1956

their shares but not equally but according to the number of heirs in the branch which they represent⁹.

- If the widow of the pre-deceased son and widow of the pre-deceased son of a pre deceased son are already remarried, as on the day of the death of the male Hindu, they will not get any share¹⁰.
- Sister, brother's daughter, sister's daughter, father's mother, father's widow (Step mother), father's sister, mother's mother and mother's sister - all of whose marital status is immaterial and Brother's widow (not remarried) are remote heirs classified as class II heirs and have chance of succession only if there is no one standing between them and the deceased male Hindu in the Schedule mentioned in the Act¹¹.
- The service benefits of the male Hindu, post-death, is treated as his self acquired property for the purpose of succession.
- Adopted daughter is treated on par with natural born daughter for the property rights¹².
- The wife of bigamous marriage will not get any share in her husband's property.
- The daughter of void marriage and annulled voidable marriage of the deceased male Hindu are 'deemed' to be legitimate children and are entitled to get a share equal to that of each child of his valid marriage¹³.
- Daughter of 'no-marriage' is illegitimate and will not get any entitlement in the property of her putative father. Deeming protection is not extended to her.
- In case of succession to a female Hindu¹⁴, her children (daughter and son), both legitimate and illegitimate, and her husband are equally entitled to their shares. In the absence of children, the property inherited by her from her parents would go to the heirs of her father and the property inherited from her husband would go the heirs of her husband and her separate property would be taken by heirs of husband, her parents, heirs of her father or heirs of her mother in order of succession, each category having a chance of succession only if the previous category in the said order does not exist.

Women's Rights in the Undivided Interest¹⁵ of the Male Hindu

Mother's right to property is saved under HSA, 1956 whereby among non-Dravida schools whenever a partition of joint family property takes place between father and son, mother (father's wife) is entitled to a share equivalent to the share of a son. If the father has two wives, legally wedded, each will get one share equivalent to the share of a son. This rule is applied both in real partition and notional partition.

Daughters' right in the coparcenary property is newly conferred under the Hindu Succession (Amendment) Act, 2005 with the following features.

- These provisions of law are attracted only in lineal father-son coparcenary¹⁶

⁹ S.8 read with Schedule of HSA 1956

¹⁰ S.24 of HSA 1956

¹¹ Schedule HSA 1956

¹² S.12 of Hindu Adoptions and Maintenance Act 1956

¹³ S.16 of Hindu Marriage Act 1955

¹⁴ Ss.15 and 16 of HSA 1956

¹⁵ Undivided interest is the joint share of a male Hindu in the ancestral/coparcenary property which belongs to all

- Agricultural lands and tenancy rights over agricultural lands which belong to Hindu are brought under this amendment Act.¹⁷ By virtue of this amendment, the daughters are made coparceners even in the agricultural lands belonging to the joint family.
- Daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son¹⁸
- Existing daughter born before 9th September, 2005 will get the benefit of this provision provided father must have been alive in the family as on 9th September, 2005
- In those families, where father has already deceased prior to 9th Sep, 2005, daughter as sister will not get the benefit as coparceners from her brothers.
- Daughter will get an equal share with son both in notional partition¹⁹ and real partition
- She has equal rights in the ancestral property in the hands of her father on par with sons.²⁰
- She is also equally liable for joint family debts on par with sons
- She can demand partition as sons and get her share through legal mechanisms
- However, she cannot demand reopening of partition, either duly registered under Registration Act or by a decree of court effected before 20th of December, 2004.
- To convey it in positive terms, she can ask for reopening of the registered partition effected from 20th December 2004 onwards and unregistered and oral partitions those had taken place before or after 20th December 2004.
- She can challenge the alienations made by her father in his capacity as Karta on the grounds of non existence of legal necessity, benefit of the estate and indispensable duties.
- She can, if she wishes, blend her separate property with the coparcenary property.
- She can seek partition in the family dwelling house which is in the joint occupation of her brothers²¹.
- Marital status of daughter is immaterial – married and unmarried, widowed and divorced – all are entitled to these benefits
- A daughter can execute a will with regard to her undivided interest in the coparcenary property, like a son which will come into effect after her death.²² But she cannot gift her undivided interest to any person including any coparcener
- Her right to alienate her undivided interest is governed by the same rules which govern such rights of her male counter parts.

¹⁶ S.6(1) HSA 1956

¹⁷ Bar of S.4(2) is omitted

¹⁸ S.6(1)(a) (Amendment of 2005)

¹⁹ S.6 (3) (a) *Ibid*

²⁰ S.6(1)(b) *Ibid*

²¹ S.23 is omitted

²² Ss. 6(2) and 30 (Amendment of 2005)

- In case of death of a daughter having undivided interest, notional partition will be legally construed similar to the case of male coparcener to ascertain her share, that will become her separate property the succession to which will be governed by S.15 and 16 of HSA,1956.
- If, on the date of death of father, the daughter is predeceased (presumed to have died before the Act) leaving behind her children, they shall be allotted her share.²³
- The above said rule applies to children of pre-deceased daughter of pre-deceased daughter also²⁴
- Daughter's children are entitled to the benefits of their mother's coparcener status only and cannot have independent claim in their maternal grandfather's coparcenary property during his life time. Neither can demand share in the mother's undivided interest in her natal family as coparcener.

By virtue of these provisions of law, daughter's position is legally emancipated and gender discrimination within the family is removed in terms of property rights.

SOCIAL BARRIERS

Despite the legal declaration of right to inherit and succeed, women are not able to reap the benefits as sharers. Their right to succeed to the separate properties of a Hindu as daughter, widow or mother, conferred by HSA 1956, is relatively less complicated from that of daughter's right to equal share in the ancestral property, conferred by amendment Act 2005, in which her brothers are co-owners with her father. Most of the joint family properties are situated in villages and matrix of social relationship in rural areas is quite different from that of urban and semi-urban areas. Joint family system and coparcenary are basically patriarchal institutions which consider daughter till marriage as part of joint family and on marriage, she loses her status in the natal family and becomes member of her husband's joint family by marriage. Her children become the members of their father's joint family by birth and her sons become coparceners with her husband. The primordial notion that only sons should get the property is disturbed by the legislative initiatives and daughter claiming her share is like breaking the ice deep frozen for centuries in the minds of males. There has been apprehension and non-acceptance about the legal implications of the coparcener status of daughter. The perceptions are varied but uniformly signify the patriarchal mindset of the society. It is largely presumed that:

- Married daughters are share snatchers. They will take away their share to be given to her husband and children who belong to a different joint family.
- Daughters on marriage belong to their husband's family and lose concern for her natal family's concern for jointness.
- Their demand for share will create family unrest and will disturb social balance.
- The rights of the brothers to free use of dwelling house and free use of daughter's share in the dwelling house are taken away by the law.
- The right of daughters to will away their undivided interest in the coparcenary property will lead to family

²³ S.6 (3) (b) *Ibid*

²⁴ S.6 (3) (c) *Ibid*

property going away from the hands of coparceners.

- Son-in-law may instigate, force or harass his wife to ask her share, which the law permits her to do so.
- A long legal battle will discourage them to withdraw themselves in the middle.
- Diversion of ancestral property as benami transactions secretly to thwart the rights of daughters is a better alternative.
- Daughters can be induced or pressurised to sign the release deed for petty consideration
- The growing tendency of Khaps or Village panchayats acting as unlawful parallel judiciary are totally against the legal entitlements of daughters and pose a great threat to their lives. Villagers get united in this cause with a notion that otherwise daughters will become emboldened to assert their rights. Any rightful claim of daughter is looked down as disgrace and dishonour to the family.

Very few daughters come forward to ask for their share on the fear of severance of family ties, ban on entry into natal home, humiliation and indifference at the hands of brothers and non-support from one's own mother and father. They are sandwiched between persuasion from husband's family to bring her share and denial by her own blood relations to part with her share. Not able to cope up with pressure, they land into a critical situation that may lead to taking extreme steps of committing suicides.

LEGAL HURDLES

Though law conferred on women inheritance and succession rights, which are substantive in nature, access to legal justice is very difficult. Those women are blessed who receive their due share from their near and dear amicably without protest. But it is not the reality in most cases. It is a long legal battle involving high cost of litigation. Women feel difficulty in approaching the court to work out their share. The testamentary power of the father to will away his separate properties in favour of his sons defeats the claims of his wife, daughter and mother, who are otherwise entitled to get a share equal to that of a son, had there been no testamentary disposition. Lack of transparency in advocate-client dealing leads to trust deficiency in lawyer's commitment to the case, which is another hurdle in continuing the case. Procedural complexities are by no means small. Multi-layer litigation forces her to withdraw in the middle. Even if she wins –at what cost, is a difficult question to be addressed. The answer would speak for itself.

WAYS TO MAKE THE ENTITLEMENT REAL

An insight into the social barriers and legal hurdles in the path of access to real justice makes one to wonder that law, however strong, would be of little consequence if there is no social consensus moving parallel. Eleven years passed since daughters are made coparceners. Six decades passed since women in general are given property rights. How many claims are made by women in general and daughters in particular for their legitimate share? This is an important question to be researched. Little research has been done in this functional approach of law. This study may facilitate a wider platform for further research in the area.

Pre-litigation 'Alternative Dispute Resolution' (ADR) mechanism is best suited for resolving property issues within the family rather than adversarial system of litigation, which is time consuming and expensive and hardens the

emotions between blood relations. Looking at the rural dimension of most of the joint family properties, 'Nyaya Panchayat' system should be revived in all States which seek to settle the claims amicably at grass root level. In this context, the observations of Justice P.N. Bhagwati²⁵ are worthy of consideration: "Today the poor and the disadvantaged are cut off from the legal system- they are functional outlaws not only because they are priced out of judicial system by reason of its expensiveness and dilatoriness but also because of the nature of the legal and judicial system. They have distrust and suspicion of law, the law courts and lawyers for several reasons. One is ignorance and illiteracy on their part which prevents them from taking advantage of the legal rights. Another is their helplessness and lack of assertiveness which arises by reason of social disabilities and economic dependence and that also places legal process beyond their reach.....there is an air of excessive formalism in law courts which overawes them and sometimes scares them...They are completely mystified by the court proceedings..." Though these observations apply to all who are unable to reap the benefits of legal entitlements, they are all the more apt for women who are helpless in exercising their right to inherit in normal course.

There is a great need for synchronising the legal objectives with social perceptions. Adjustment of law to social needs is relatively easier than adjustment of social behaviour to legal needs. If social change moves in the direction expected by law, the socio-legal tension will be minimised. Basic institutions rooted in traditions and customs are extremely resistant to changes imposed by law. A closer analysis of the role of law as a device for woman's emancipation leads us to understand the fact that utilization of law ultimately rests with woman. How to cross the hurdles is the biggest challenge for her. The onus of removing the legal barriers rests on the shoulders of the government and that of the social barriers rests on the society. Since it is a patriarchy rooted problem, progressive thinking males should lead the movement to provide a fair deal for women and contribute for a just and fair world. But till the path is cleared, the journey is her own.

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²⁵ Report (1977) of Justice P.N.Bhagwati, The Committee on Judicare, constituted by the Government of India.

