



STUDY ON HINDU SUCCESSION RIGHTS OF WOMEN UNDER THE AMBIT OF CONSTITUTION

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ABSTRACT

In modern era there were emerging change that how one women should be treated mainly in equal way as how one man is respected and treated in the society. As constitution states that property is one fundamental right but after amendment under article 300A it explicitly derived that property is a right where no individual has any right to snatch that from any individual in that way how male individual has the right to property in same way female too have the same explicit right to property. Earlier it was very tough for women to get their share of property among the family but now since legislation and few amendments falls in place women also have same right to succeed their share through Hindu Succession Act 1956 where here it only mentioned about how Hindu individuals can succeed the property. In the following article the main objective will be discussed how the evolvement of women succession to property is changed from pre independence to post independence, how the Hindu Succession Act, 1956 through amendments brought the rights for women to succeed the property which includes the testamentary and intestate succession, coparcenary property and property rights of Hindu women. Even though many changes have occurred in positive note, there is still gender discriminatory provisions are still there in existence which will be comprehensively discussed with the constitution to what extent Article 14 and 300A helps the situation. Women have only an absolute right where they can succeed through stridhan property in that way they have full and absolute right to what extent that considered to be true. Also how the code or Act changes the essence of Hindu Joint family, absolute and full ownership towards the property. In what way the partition evolved around the women how the class heirs paves the way for the female to succeed the property. Here the possession is strayed through the transfer of limited ownership and lost by remarriage which dealt comprehensively in accordance to Section 14 of Hindu Succession Act 1956. Will plays a major

role where it denotes the intention of the person who is not alive at the present moment but through instrument he or she convey to whom that particular property should reach so will has its own role but on other side women have only limited estate towards it that will be explicitly discussed in the article. Heirs to property in general under Section 15 of Hindu Succession Act, 1956. Section 15(2) of Hindu Succession Act was challenged for constitutional validity as it has gender discrimination. Will also discuss how devolution of female coparcenary right prevails among the family in accordance with section 6 of the Act. Married daughter right over the father's property to what extent that appropriate daughter can succeed. Impact of the Hindu Succession Act on women's economic empowerment. These matters will be comprehensively and explicitly dealt in the following paper also its impact and accordance with Indian Constitution.

KEYWORDS

Succession, Coparcenary, Constitution, Survivorship, Devolution, Inheritance, Gender discrimination.

INTRODUCTION

Property is a basic right of every individual which is dealt under article 300A¹ of Indian Constitution in which women has also have authority over the property but where it is limited to certain extent here under section 14² of Hindu succession Act it states that any hindu female has full ownership where limited estate is eliminated from the provision. The main objective here to be noted is that even though women have absolute power over the property in certain circumstances it is limited when it comes to the devolution of property the husband side heirs including the relatives and their spouses have a higher priority that the women's parents and siblings. This paves the way for discrimination of women under article 14 and 15 of the constitution.

DEVOLUTION OF PROPERTY INHERITED BY FEMALE

According to the Bengal school the only females who are eligible to inherit the property of male are the widow, daughter, mother, father's mother, father's father's mother. The son;s daughter, daughter's daughter and sister who are expressly mentioned as heirs in the Hindu law of Inheritance Amendment Act 1929 take a limited estate. In the procedure of devolution given under the Act under section 8 and 15 of the Act³ where here if the property belongs to male dying intestate and if his class I heirs are alive then the property automatically goes to them and none of the class II heirs can claim the property. In the case of women dying intestate if her children are alive , her husband's heirs and parents doesn't claim over it where here in this case the scheme of section 15 applies but the discrimination held in the section 15 is the devolution of women's property will goes to the husband's heirs and his natal relatives have the higher priority than the women's parents and siblings. The scheme of section 8 doesn't include any of the women's relatives even though that particular women purchase the property through her own hard earned money or through gift her husband's heirs and relatives has the priority

¹ No person shall be deprived of his property save by authority of law.

² Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

³ The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—(a)firstly, upon the heirs, being the relatives specified in class I of the Schedule;(b)secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;(c)thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and(d)lastly, if there is no agnate, then upon the cognates of the deceased.

over the property. In⁴ the case where the petitioner was expired and the respondents claiming the property of the deceased here the society who is one of the respondent threatened the petitioner's family to submit the property to them and also it was said that the deceased didn't stated any testamentary will. Here the main objective to be noted is that the petitioner family wanted that the said property should settle with the deceased adopted daughter and that was challenged before the court but court in this particular case held that the respondent who threatened the petitioner family said to be proved and the respective respondent will be punished but the property will be inherited by the husband's side where his relative and parents will be prioritized when the property is divided. So the petitioner is totally devoid of the merit.

The⁵ petitioner was a widow whose husband written a will that after his demise the property should be surrendered to his wife where here the widow wife equally gave the property to her daughters where here she gave the property as gift to her daughters when the property is challenged before the court that the widow doesn't have the absolute estate but the court held that the husband had already wrote a will stating that it should reach his wife so the decision will fall on the widow to whom the property should be surrendered.

STRIDHANA PROPERTY

“Stri” means women and “dhana” means property which is literally means women's property. Various schools have their own meanings and perspectives about stridhana. Manu enumerates six kinds of stridhana

(a) gifts made before the nuptial fire where the property will be surrendered to the women at the time of the marriage.

(b) the gift which is made at the time of the bridal procession where being led from the residence of her residence

(c) gift which was made in token of love namely katyayanna which was made through the affection by the women's mother-in-law and father-in-law.

(d) gifts made by father to his daughter

(e) gifts made by mother to her daughter and

(f) gifts made by the brother

Gifts made from strangers which is exclusively the gifts which is given before the nuptial fire and at the bridal processions where such gifts are stridhana.

The definition of Stridhana according to Mitakshara school which is given by Vijaneshwara where the property given as stridhana by the father, mother, husband and the maternal uncle. Yajnavalkya definition of stridhana was not actually recognized by the early sages. According to Madras school Smriti Chandrika enumerates certain kinds of stridhana which is actually recognized as stridhana. As⁶ of wife's earning the same court expressed that her stridhana will pass on to her heirs.

⁴ Purushottam Vasudev Nagpal v. Rani lalchand kalro & ors, AIR 17 2013

⁵ Thippeswamy v. SriRangappa AIR 18 2017

⁶ Salemma v. Latchmana 21 Mad 100

According to Mithila school, Vivada Chintamani is an authority who enumerates 11 kinds of property where first six kinds as enumerated by Manu, gifts which are made on suppression, gifts, ornaments, food and vesture mentioned by Devala. According to Dayabhaga every kind of stridhana can pass to the heirs up on the demise but every kind of stridhana cannot be disposed of by a women on her liberal way. If she wants to dispose the stridhana he cant do it without the consent of her husband.

When the property is inherited by a women may inherit the ordinary property of male that is husband, father, son and where she may also inherit the stridhana of female that is mother, mother's mother or daughter but here according to mitakshara school the privy council has held that both these form of property was not recognized but in one set of case the lordship held that the property will not pass on to her heirs but to the next heir of her husband⁷.

SHARE OBTAINED BY A WIDOW ON PARTITION

As the property obtained by the widow on partition of the joint family property it has been held by the privy council in the case of Debi Mangal v. Madhadeo Prasad where the actual point decided in the case is that there was no substantial difference in the principle that women acquired property by inheritance and it doesn't pass her heirs after the demise where the property will pass on to the husband's next heirs. However a women is not the absolute owner of property which is not her stridhana, nor can she dispose of it at her pleasure even during widowhood. She is merely a qualified owner of such property where she can take only a limited interest in the property and the nature depends on the character of the property.

According⁸ to Dayabhaga school when a share is allotted to a mother or father's mother on partition of joint family property it was given to her by way of provision of maintenance for which the particular family is bound to and it is not therefore her stridhana and after her it will not pass on to her daughters but reverts to the son or grandson. Even in cases governed by Mitakshara school the privy council held that a share allotted to a mother on partition is not her stridhana property but it stands on the same foot as property inherited by her husband and on her death it will not pass on to her stridhana heirs but to the sons or grandsons.

When a property is obtained by adverse possession in that case if the mother dies after the daughter's possession has become adverse then the daughter is entitled to the property as her stridhana and after her death it will pass on to her heirs. However if mother dies before 12 years of adverse possession leaving the daughter as her heir and the daughter continues in possession her possession after her mother's death is the possession of an heir and she takes a limited interest in it and on her death the property will not pass on to her heirs but to the next stridhana heirs of the mother⁹.

⁷ Bhugwandeem v. Myna bae 11 MIA 487

⁸ Sani Bhusan v. Hari Narayan 48 cal 1059

⁹ Mohim chander v. kasha kant (1897)

SUCCESSION OF FEMALE'S PROPERTY

When comes to the succession of the female property is that when she dies her property will devolve up on her own will to whom it should reach after her demise as prescribed under section 15(1)¹⁰ of the Act where here it mandatorily included her husband and children if she doesn't have child then the property will devolve on the source from where the property is acquired. If the property is self acquired in that case if she driven out of the matrimonial house her property will not devolve up on her father or mother where this actually causes injustice to her hard earned property because here her hardwork disappears when she wants to devolve the property not on her will.

When come to grand-children it only includes the sons and daughters of a predeceased son and where here only legitimate children by natural birth or by adoption. Illegitimate child will be excluded. This applies to the children of the predeceased daughter also on the exception that illegitimate children can succeed the property when they are related to the mother.

WOMEN'S ESTATE

According to section 14 of Hindu succession Act she must be the owner of the property that if a Hindu female has no title to the property she will not become its absolute owner even though she is in its possession the Supreme¹¹ court stated in the case that the word possessed has a broader meaning where the context denotes that owning or having in one's hand or power. Thus if a female cannot claim any title to the property by mere possession she cant claim the property absolutely. In¹² the case where the petitioner's mother died intestate leaving three daughters behind her in which for one daughter she gave the property as stridhan but after few years the petitioner's elder sister died to whom the stridhan property was gave so after the demise the stridhan property devolved and came to the petitioner who is the second daughter of the mother. Here now the brothers of the petitioner who are the respondents of the case stating that they have share on the property and it doesn't comes to the hands of the petitioner because the petitioner's mother objectively gave the property to the petitioner's sister. Hence the appeal got dismissed. In the learned counsel of appeal the court held that self-acquired property of a Hindu female cannot be blended with the joint family property.¹³

UNCONSTITUTIONALITY OF HINDU SUCCESSION ACT AGAINST WOMEN

Section 15 and 16 of Hindu succession Act which states about female intestate actually goes against Article 14 and 15 of the constitution. As per the class heirs namely, Class I, Class II, agnates and cognates where after entry 4 if the heirs are absent in the class then only the property of the female intestate will reach which is practically not possible. So here the property of the female will be practically doesn't reach to her parents. In the 2009 case where a widow was forcefully thrown out of the matrimonial house after three months of marriage

¹⁰ The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—(a)firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;(b)secondly, upon the heirs of the husband;(c)thirdly, upon the mother and father;(d)fourthly, upon the heirs of the father; and(e)lastly, upon the heirs of the mother.

¹¹ Annapurna v. Kalpana, 1952

¹² Renuka Bala Chatterjee v. Aswini kumar Gupta AIR 1961 498

¹³ Sushilkumar Parasuram v. Shanti Devi

after 42 years when she died her assets were actually went to the heirs of the husband which is practically a discrimination faced by the female intestate where section 15 of Hindu Succession Act actually violated Article 14 of the Indian Constitution.¹⁴ The¹⁵ Bombay High court held that “Section 15(2), upheld its constitutionality and reasoned that since laws are meant to achieve specific objectives, attaining absolute equality or uniformity is impossible. Further, the Court held that if persons of two groups are rationally classified, and such classification is evidence of the long-standing stance of the personal law, then such differential treatment would not result in discrimination. The reasoning used is fallacious, as the same can be used by any and every Court to prevent the reform or amendment of laws, by relying on the age-old prevailing customs of personal laws. The sole reason why the legislature or the judiciary intervenes is to ensure that prevailing laws do not unjustly enrich one category of person while disadvantaging the other category.”

In *State of West Bengal v. Anwar Ali*, the Apex Court had held that the operation of Article 14 would not be excluded merely because the legislature had no intention to discriminate, although the consequence of the Act shows discrimination. The same principle can also be used to amend Section 15(2)(a)¹⁶ as well.

In¹⁷ the case of appellant where here the wife died intestate her husband firstly divorced her and married another women now her assets remained with him and her parents challenged before the court that the assets of their daughter should reach them. Here the court held that if a female intestate died then the property will goes to her father's heirs and not to her mother's heirs.

PROPERTY GIVEN IN LIEU OF MAINTAINENCE

The Karta has the full authority to grant a share in the property to his or her family as maintenance which can help them to lead their livelihood. The¹⁸ right of a Hindu widow to get the maintenance out of the joint family property is an indefinite right where she does not get the maintenance right as charity here her possession is accepted and she will be considered as an absolute owner. The testator had settled a property in his wife in lieu of maintenance where the recital stated in the will is that after the demise of the testator the whole property will be enjoyed by his wife and after her death the properties will be surrendered to his daughters but where here the court held that the option completely falls on the wife to decide to whom the property should be settled because the virtue was enlarged on her as she is the absolute owner of the property after the death of the testator.¹⁹ The Madras High Court in the case where the father-in-law gave some share in his property to the widow daughter-in-law as maintenance but after few years he died leaving the property where now while the succession taken

¹⁴ Om Prakash v. Radhacharan

¹⁵ Sonubhai Yashwant Jadhav v. Bala Govinda Yadav

¹⁶ Notwithstanding anything contained in sub-section (1),—(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

¹⁷ Subbaih v. Subbaiah Naicker

¹⁸ Santosh v. Saras Wathibai 2008 S.C. 500

¹⁹ Palchuri Henumayyaya v. Tadikamalla kotlingam 2001 SC 3062

place the respondent side forced the widow daughter-in-law to surrender her share in the property as maintenance for inheritance now here the court held that when the maintenance is given to an individual it becomes his or her own absolute property so no one has any right to combine the maintenance property in to the succession property.²⁰

Widow²¹ of an illegitimate son who obtained possession of an immovable property in lieu of maintenance it would be enlarged in to full ownership under section 14(1)²² of Hindu Succession Act. A Hindu female was given a life estate in lieu of maintenance under a family arrangement where the instrument in the family arrangement gave her a limited interest the court held with the support of Section 14(2)²³ of Hindu Succession Act that the Hindu female limited interest would not be converted in to absolute interest.²⁴

Property²⁵ includes the property acquired by a female Hindu in lieu of maintenance or arrears of maintenance, it is submitted that if the female has no right or interest in the property prior to the grant she will take in accordance with the grant if she had an interest or right in the property prior to the grant then that grant embodies that interest where here the Supreme court pronounced this statement. Where²⁶ here in the case the partition of the brother's mother was allowed to reside in the house for lifetime here this will not convert the house in to her absolute estate. In a former case where the widow inherited some properties from her husband here she made a statement to certain reversioners that her estate is a limited estate and she would not cut any trees that rooted in the land but after the establishment of Hindu Succession Act she had her option to cut the trees so she did where here the same reversioners filed a petition against her the court held that as per the effect the women estate converted to a full estate so she can practice her right without any compromise.²⁷

Equal²⁸ share was granted to a stepmother and a stepdaughter which was under the compromise decree under a decree where here the stepmother recognized the ownership of the stepdaughter and was allowed to retain the property during her lifetime. Since her right was not in lieu of maintenance so she didn't become the absolute owner the share. A ²⁹widow was allowed a share in her husband's property under a compromise but on a subsequent compromise decree were not secured. On her death, her daughter could not claim to represent her.

²⁰ Chinnappa v. Valliammal 1969 Mad 187

²¹ Subhankar Rao v. Paravati Bai 10 SCC 235

²² Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

²³ Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

²⁴ Suba v. Gauranga 1971 Ori. 242

²⁵ Sellamal v. Nallamal 1977 S.C. 1265

²⁶ Chinnammal v. Kannaji 1989 Mad 185

²⁷ Vaddeboyina v. Vaddeboyina 1977 S.C. 1944

²⁸ Smt.Himi v. Smt.Hira Devi 1997 SC 83

²⁹ Rajeshwari v. Shashi Bhushan 1996 S.C. 481

The³⁰ daughter claimed a share which is equal to the son share in the partition but she failed to prove the custom it seems that if such a custom is established she can claim the share since under the uncodified Hindu law, custom still overrides the rules of the Hindu law.

When³¹ comes to partition by daughter where the daughter was not in possession of any property, her father had died leaving behind his self acquired property which was occupied by other heirs here now daughter should be presumed nationally that she was in possession and enjoyment of joint family property.

HINDU SUCCESSION AMENDMENT ACT, 2005

The 174th Law commission prepared a report on property right of women under Hindu law under the guidance and chairmanship of Justice B.P.Jeevan Reddy in the year 2000 where here the report predominantly concentrates on the gender discrimination where the exclusion of daughter from being a coparcenary right is unjust so that was made applicable for the daughter that they can be now established as coparcener. This Amendment Act brought changes to the society and eradicated the discrimination to certain extent. Another major amendment which happened in the Hindu Succession (Amendment) Act, 2000 was abrogating the provisions regarding dwelling house. Previously, Section 23 excluded female heirs to have right over the dwelling house unless male heirs allow such. They were only granted right of residence over the same. This gender derogatory section was abolished in Amendment Act. Under Section 30 of Hindu Succession Act the daughters can also recognized with the right of testamentary disposition.

CONCLUSION

As we see that India is one secular country where even though it is secular in nature there were certain gender discrimination faced by the female when comes to property where she is limited to occupy only limited interest of the property in some cases she doesn't left with the choice of to whom her property should be surrendered in certain cases her property has not been prioritized over the male heirs. This actually challenged and questioned against Article 14 and 15 of Indian Constitution. After the amendment of Hindu Succession Act in 2005 it brought some just choices for women in equal way as male like equal coparcenary right and testamentary disposition but even though the daughters and widows facing certain discrimination under the legislation and also in their self-acquired property.

³⁰ Pachi Krishnamma v. Kumaram 1983 Ker. 137

³¹ L.H.Vidya poorna v. L.H.Premavathy AIR 2005 Mad. 193