

# **AN ANALYSIS OF, THE PROPERTY RIGHTS OF A FEMALE UNDER HINDU LAW WITH RECENT AMENDMENT**

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## **Introduction:**

Property rights of women under Hindu law has been evolving since time immemorial. Whatever development that has taken place relating to the property rights of the women is only, the outcome of the intense struggle from ancient time till now. Women's are continuously knocking the doors of the court to provide justice to them and not to discriminate them and to amend the laws which are prejudice to their interest. Although, "the constitution of India" under Article 14 which states that "every one is entitled to equality before law and equal protection of law" Whereas, Article 15 which states that "prohibition of discrimination on the ground of religion, sex, caste, creed etc".

It is clear that the "supreme law of the country" provides for the equality in each and every aspect but still the law relating to inheritance rights of women in some point is discriminatory. Women are not granted equal property rights as men, as people have the notion in their mind that "women are inferior to men". The inheritance rights of the women is one of the main criteria to determine the socio- economic condition of the women in any country. The most important criteria which are determined before granting her property rights is her marital status. At some point of time, married daughters had no property rights in her father's property and also on her marriage, "she ceases to be a part of Hindu undivided family". Women's were not granted coparcenary right in the joint family property, coparcenary was only confined to the four generation and only male members of the Hindu undivided family. To resolve all the conflict, the parliament enacted the "Hindu succession Act, 1956 to codify the law relating to succession among the Hindus". The main changes that has been brought in the property rights of the women is, "the Hindu succession (amendment) act, 2005" and the "women's right to property act, 1937".

## **Property rights of women during the ancient time:**

In Ancient time, the Hindu's were governed by shruti's, Veda's and smriti's. There was no uniform system for inheritance as people belonged to different school like mitakshara or

dayabhaga and which was further divided into several sub school and the rules of each sub school differed from the other sub school and then, the conflict arises.

The property laws particularly relating to women was very discriminatory. The women only hold two type of property i.e., stridhana and women's estate. Stridhana was the absolute property of the women over which she had the right to sell, alienate, lease and the other but these rights were curtailed to some extent on her marriage. On her death, the stridhana passed to her legal heirs. The other property which was held by the women is the women's estate or the limited estate, the limited estate comes to an end on the death of the life estate holder and cannot be passed to his legal heirs on her death<sup>1</sup>. The women did not have any right of alienation on her interest in case she has created any interest over the property, then, the interest would last only for her lifetime with the exception when the interested is created for religious purpose or for the benefit of the estate. On her death, the property passes on to the reversioner.

#### **Property rights of the women under the Hindu succession act, 1956**

“The Hindu Succession act, 1956” has brought a revolutionary changes in the status of the women and to a large extent has improved her position. The first changes that has been brought by the 1956 act is that it has included the daughter in the list of the class I heirs. Earlier, she was excluded from inheriting the property in, the presence of the son and the widow but now, the daughter is one of the heir enumerated in the class 1 heirs and get share equal to what the son and the widow gets.

The second change that has been brought by the act is the recognition of the right of representation, the son or daughter of the predeceased daughter can claim her share through representation and along with this, under this act whatever property a woman inherited in her own capacity, she had an absolute right over the property held by her, and she becomes a fresh stock of descent i.e., on her death her property passes on to her legal heirs and not to the **reversioner**<sup>2</sup>. The rule of limited estate was struck from the succession act. Even, in case if the woman has inherited property prior to 1956, and has been in possession of property either actual or constructive through the force of “Section 14”, her limited estate was enlarged into absolute estate.

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<sup>1</sup> V. Kalyan swami V. Bakthavatsalam

<sup>2</sup> Ranchhod Ram Narayan V. Manubhai & Ors AIR 1954 Bom 153

### **Hindu Succession (Amendment) Act, 2005**

With, the view to eliminate gender inequality in the 1956 act, the rules relating to succession was amended in the year 2005 to give the daughter equal rights as is given to the son<sup>3</sup>. Under, the 1956 act, the daughter was not allowed to inherit the ancestral property as it was divided only among the son's and on the partition of the Hindu undivided family, the son's inherited an equal share excluding the daughter's, in order to resolve the conflict and to make the laws free from gender bias, the 2005 amendment act was passed which recognized, the right of the daughter to inherit the ancestral property. "Section 6 of the Hindu succession act, 1956" was amended to place the daughter on the equal footing as the son<sup>4</sup>.

It is clearly specified under Section 6 that the daughter shall by birth become a coparcener and will have the same rights in the coparcenary property if, she had been a son<sup>5</sup>. Through, the 2005 amendment, the historical blunder of excluding the daughter from becoming the coparcener was rectified and the along with this, the provision was enacted with retrospective effect.

In cases where a coparcener dies intestate living behind the female relative and the son as specified in the Class 1 heir they all shall between them one share and the rule of inheriting the property through the "doctrine of survivorship" was abolished.

The amendment has been brought in the "Hindu succession act, 1956" looking at the recommendation proposed in the 174<sup>th</sup> law commission report to grant the women, the status of coparcener. Before the said amendment, state of Andhra Pradesh, Karnataka, Maharashtra and Tamil nadu had made changes in the succession laws and has conferred equal coparcenary rights upon the daughter as is given to the son. Kerala had abolished the system of Hindu joint family in the year 1975.

### **Conditions on the women's right to inherit the property(pre amendment)**

At some point of time, there was a lot of ambiguity when a daughter can become a co- sharer in the father's property or whether she can inherit the ancestral property. The courts in India have passed several judgements, whether she can be co- sharer or not in the father's property,

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<sup>3</sup>Mamata Dinesh Vakil V. Bansi S. Wadhwa

<sup>4</sup> Daughter have equal coparcenary property rights, Hindu succession act has retrospective effect rules SC, Press trust of India (2020).

<sup>5</sup> Section 6 of the Hindu Succession (amendment) act, 2005

different interpretation was done by the court in this matter. Earlier, the rule was if the daughter want to inherit her father's property then, the father should have died after the date of the "Hindu succession (amendment) act, 2005" i.e., 9<sup>th</sup> Sep, 2005. In case, if the father had died before 9<sup>th</sup> sept, 2005, then in that case, she cannot inherit her father's property.

In the case of **Girijavva V. Kumar Hanmantagouda & Ors**, the question raised before, the court was that, the substituted section 6 of the Hindu Succession (amendment) act, 2005 is prospective in nature and the future of the claimant has died prior to 2005 and because of which, the daughter's claim over the property is struck off.

In the case of **Prakash V. Phulavati**<sup>6</sup>, In this case, the daughter of the deceased had file a suit for the partition and for the inheritance and the father (coparcener) had died before the amendment. The trial court stated that, the daughter shall not be entitled to inherit the ancestral property. On an appeal to the High court it stated that, the daughter shall have a right to inherit the property while interpreting section 6(5) of the "Hindu succession (amendment) act, 2005". The court also stated that while interpreting, the section it is clear that it will not apply to the present case, as there has been no partition deed that has been effected only a notional partition has taken place. The Supreme court however in it's judgement has cleared the ambiguity and has stated that the daughter in this present case cannot inherit property as the act cannot be applied retrospective, even if, it is a social legislation.

In the case of **Dannamma V. Amar**<sup>7</sup>, In this case, the grand son filed a suit for partition and claimed that the widow of the deceased and the two son's were the co- sharer of the property and the two married daughter cannot "claim any share in the property"<sup>8</sup> as the father has died before the enactment of the "Hindu succession act, 1956" and the trial court stated that, the daughter's does not have any share whereas, on an appeal to the supreme court, the court held that the daughter has a right to get share in the property because "section 6 confers on the daughter to be a coparcener with the same rights and liability as that of a son" and the suit was filed in the year 2002 and the preliminary decree was passed in the year 2007. So, "the daughter is entitled to get the share".

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<sup>6</sup> Prakash V. Phulvati (2016) 2 SCC 36.

<sup>7</sup> Dannamma V. Amar (2018) 3SCC 343.

<sup>8</sup> Lawn, Daughter's share and right in the father's property and the case of Dannamma V. Amar (2018)



### **2020 Amendment to the Hindu succession act**

The Three bench judge of the Supreme court has cleared that, the daughter is entitled to get equal share in the joint family property irrespective of when she was born or whether her father is alive on the date of amendment<sup>9</sup>. The main contention before the court is that inserting such clause under section 6 impairs, the daughter's right to inherit property and the scope of the act is restricted and it is unjust by not allowing daughter to inherit the property.

Along with, this “the bench has directed all the high court and the subordinate court to decide all the pending cases within six months”. Along, with this, the court has made clear, that the amendment will not apply to partition which took place before Dec 20, 2004 as contemplated in “section 6(1) of the Hindu succession (amendment) act, 2005”

The words present in section 6 says “daughter of the coparcener” the words present cannot be interpreted as the daughter of the living coparcener. So it is not fair to exclude the daughter from inheriting the property.

### **Conclusion**

“The Hindu succession act” has brought about revolutionary changes in the status of the women in India. In, a developing country like India women suffers the most for her rights and for the fairness in the prevailing laws in the country. The rights and freedom the women in India enjoy today is the outcome of the intense struggle by them in the past. During, the shastric law time having no rights to inherit the property and was not entitled to become a coparcener as it was confined only to the male members in the family but after the 2005 amendment, the “rights of the women were enlarged and was placed in the same footing as the male”. Many other legislation like “women right to property act 1937” and the state amendment has been passed in various state to better the condition of women in India

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<sup>9</sup> Sawanwaya Rautray, Daughter's have equal coparcenary right in joint Hindu family property: SC, The Economic Times (2020)