

Property Rights Of Hindu Women And Gender Equality

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Abstract: As per the mandate of the Constitution of India various statutes have been enacted to answer the issue of gender inequality. This paper focuses on the study of property rights of Hindu women in the perspective of gender equality. For this research the various provisions related with property rights of Hindu women under various statutes are discussed. The present legal position is analyzed with the help of study of amendments introduced in the area and the judicial interpretation of statutory provisions given by higher judiciary. The present paper encompasses the study of historical background of property rights of Hindu woman and the law developed later on. Whether the present law and the decisions given by the court on property rights of Hindu woman are sufficiently addressing the gender equality issue is the focus of study under this paper.

Keywords: Property Right, Stridhan, Ascendants, Inheritance, Coparcenary, Succession, Mitakshara.

1. Introduction

In the vast country like India, issue of equality has always been a debatable one. The Constitution of India has discarded all sex discriminations and sex equality and liberty has been made a fundamental right and the states are directed to remove all sex inequalities and impediments to the personal liberty. To promote gender equality the mandate has been prescribed by the Constitution of India. As per this mandate of the Constitution provisions have been incorporated in various statutes and certain statutes have been specifically legislated to answer the issue of gender inequality. Despite all the efforts, the fact remains that women constitute almost major portion of Indian population and receives negligible income or property. Most of the women do not have the ownership of any land or other property or what they own is of lower quality as compared to land or other property owned by men.

2. Historical Background

As per old Hindu law, Hindu women were never entitled to absolute property rights. Basically, property of Hindu woman can be studied under two following heads –

2.1 Stridhan- It is an exclusive and own property of woman which she gets in marriage as gift from in-laws and others, and other property received from her father, mother, etc. or in succession from her father or other lineal paternal or maternal ascendants. It is used in different senses in different schools of Hindu Law. Rights of its disposal also vary from school to school of Hindu law.

2.2 Property acquired by a woman by inheritance- The Hindu Women's Right to Property Act, 1937, the first legislation of its own kind, created property rights for women. These rights were limited i.e. property received by succession from her in laws was her limited estate which she could use and be benefited by it and on her death it was to revert to the coparcener of her husband. These limited rights took the form of absolute ownership rights in property with the enactment of the Hindu Succession Act, 1956. Now, under Section 14 of Hindu Succession Act, 1956 the conception of limited estate has been finished and she becomes full owner of all properties got by her in succession from anybody.

3. Hindu women's property rights before and after Hindu Succession Act, 1956

Before the enactment of 1956, woman had only right of maintenance and residence in the property. But in case of widow different observation was made by the Supreme Court and held that where a widow receives a property in lieu of her maintenance, under a compromise before the Act, her limited rights mature into absolute rights. [1] After the commencement of enactment of 1956 it becomes very clear that any property possessed by a female Hindu whether acquired before or after the Act shall be held by her as full owner thereof and not as a limited owner. If she takes the property as an heir under the Act, she takes it absolutely. However, if while getting possession of property after the Act, under a device, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Sec. 14(2). [2] Further where a woman is entitled to receive maintenance from certain property and that property is transferred to third party, she can enforce her right against such third party. [3] As per Hindu Succession Act, 1956 no female can be a coparcener under Mitakshara Law. [4] Even a wife, though she is entitled to maintenance out of her husband's property, and has to that extent an interest in his property, is not her husband's coparcener. [5] Nor is a mother a coparcener with her sons. [6]

4. Hindu women's property rights after Hindu Succession (Amendment) Act, 2005

The abovesaid position has now been changed after passing of Hindu Succession (Amendment) Act, 2005. With the substitution of S. 6 of that Act which stipulates that a daughter of a coparcener would become a coparcener in her own right, the position prior to the amendment stands modified to the extent that daughters of a coparcener are now coparcener in their own right. This right gives a woman the right to seek a partition in the dwelling house also, as she has an equal right to possess and own her ancestral property.

Mitakshara law recognizes that only a coparcener could be a karta or manager of a coparcener. As by way amendment to Sec. 6, daughters have been conferred with equal status as that of the sons in coparcenary, a daughter can now, be a Karta of

HUF in the same right as a son. [7] By making such observation the judiciary has recognized the rights of Hindu women as coparcener and thereby enhanced their right to equality in the matters of succession.

On 11-8-2020, the Supreme Court of India passed a landmark judgement in Vineeta V. Rakesh [8] stating that the Hindu Succession (Amendment) Act, 2005 will have a retrospective effect. It was held that as the right of being coparcener is by birth for a son and so is it for a daughter post the 2005 Amendment and even if the father was not alive on 9-9-2005, it does not obstruct a daughter's right from claiming her share in the coparcenary property. This judgement overruled its earlier judgement in Prakash V. Phulavati [9] which had held otherwise. Hereby, Vineeta judgement reaffirmed equality in the treatment of sons and daughters by the law for the purposes of succession.

Though Hindu Succession (Amendment) Act, 2005 and judgements delivered later have taken a step forward to bring equality among men and women but other provisions remained as it is and maintained the old law. The coparcener comes into existence only if minimum two generations of male members are present. Among females, the right to be coparcener is restricted to daughter. Wife, mother etc. are not included. [10] Though Sec. 14 of H.S. Act, 1956 lays down that all properties held by a Hindu female are her absolute properties, but after her death, if she dies issueless, for the purpose of succession, the source from which she got the property is important. The succession is still classified as succession to the property of a Hindu male and succession to the property of a Hindu female [11]

Section 15 of the Act talks about general rules of succession in case of female Hindus of their property inherited from her father or mother and property inherited from husband and father-in-law. Here for the purpose of succeeding the property, the preference is given to male heir over the female heir. [12] This is to take note that the section is silent with regard to self-acquired property of a woman. It has been observed in the case of Omprakash V. Radhacharan [13] that self-acquired property of a female would be her absolute property and not the property she had inherited

from her parents or husband. This shows the gross injustice done to women in India in respect of property rights. The issue that arose in the instant was who will be entitled to the self-acquired property of an issueless widow who died intestate. The Supreme Court considered the scope of section 15 of Hindu Succession Act, 1956 and the claim of her mother and their brother was denied and the case was held in favour of her late husband's brothers on the ground that as per the provision of Hindu Succession Act, 1956, it is the heirs of the husband who have a legal right to inherit her property and her parents cannot inherit such property in their presence.

5. Conclusion

From the discussion it is clear that the law is inadequate to tackle problem with respect to property right of a Hindu woman. Apart from conferring coparcenary rights over daughter, nothing much has been done. Even the judiciary is not coming to the help of Hindu female. When the law is silent on any issue, the judiciary must interpret it in favour of beneficiary [14]. The interpretation must be done not based on the letters but in spirit. Section 15 of the Hindu Succession Act that determines the order of succession in the case of a Hindu woman who dies intestate should be amended for, it reflects an entrenched system of subjugation of women. In present times where women's rights are considered as her human rights, denying property rights to her has created a situation of great injustice to her.

A human rights-based approach needs to be adopted by the legislature while formulating or amending any law more particularly property law. It will help in achieving equality as far as property rights of a woman. The problems and practices

which are discriminatory in nature need to be addressed with more focus for the eradication of the same. It will also help in changing the mindset of the people and will be helpful for the better implementation of gender justice programme. Government should also initiate programmes which will make women empowered more particularly by protecting their property rights. The effectiveness of the concerned laws should be ensured by regular monitoring and evaluation of laws. Achieving equal property rights for women would definitely be a step towards achievement of UN sustainable development goals 2030.

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