

WIDOWS VS DAUGHTER OR WIDOWS AS DAUGHTERS? PROPERTY, LAND AND ECONOMIC SECURITY IN RURAL INDIA

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INTRODUCTION

In order to put this in context, we need to trace process of struggling of Hindu women's right to inheritance or succession, especially as we know the struggle for gender equality has been our reality since decades. In Manusmriti, the remarks of Manu on women were very clear indication of pervasive patriarchy which was prevailing in the Indian society. According to Manu "Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; it seems that a woman is never fit for independence." Manu insisted for female's perpetual dependence, declaring that she is incompetent to take decisions for herself, and therefore her proprietary rights were to be hedged and nominal with limitations. Now considering the fact that the classical Hindu law was derived from Hindu scriptures that is Dharmashastras and smritis), it was discriminatory in its nature. Women's were not a part of coparcenary but ancient law makers tried to safeguard their rights by way of Stridhan except for fact that the Stridhan consisted of tangible property like cash, jewellery, etc. woman was never absolute owner of Stridhan because Manusmriti clearly reads that ' a wife along with the property , belongs to husband. Flavia Anges opined that this concept is degenerated into dowry and because of this the daughter lost control over stridhan which was given on her behalf to her husband and his family or relatives. And consequently, the daughter's exclusion from coparcenary became a source of discrimination and hardship. In fact, the two main schools Dayabhaga and Mitakshara based on different interpretations were equally discriminatory.

Today, we live in an era where equality is slowly but definitely prevailing in Indian Hindu law scenario. more number of women are coming and claiming what is rightly theirs. Because of this the norms and reforms are changing. But in rural areas there are still some women who are seen as a weaker gender who possess little to no authority in terms of inheritance and succession. We can't deny the fact that there are many factors contributing for this mentality such as lack of

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education, family customary obligations, child marriages, etc. This paper is going to explore law reforms in Hindu inheritance and succession act In rural areas of India over the past decades and what more we can do to ensure women's rights so that they can remain secure. Property ownership really does bring a sense of self sufficiency and which is a fundamental right. The same is also asserted in article 48 of the constitution of India. Women whether married, unmarried, widow, or a daughter should not be denied right to property inheritance or succession based on gender because it is violative of fundamental right of individual. law reforms played a major role for uplifting women's status in their society as well as in ensuring economic security to them in independence terms.

LAWS RELATING TO THE ISSUE

The Hindu Law is governed by two personal sub laws:

- Mitakshara
- Dayabhaga

Dayabagha is prevalent in Assam and Kolkata. On the other Hand Mitakshara, Law is established and widely followed in other parts of the country. there is a difference between Mitakshara Law and Dayabhaga Law which is mostly overlooked hence because of this very reason it deems appropriate to throw some light on it since the research topic revolves around women's rights In rural areas. In the Law of Dayabagha male members doesn't acquire right to property in family by birth. Shares and division of this can take place only after the death of the owner not before that. And in this even the women have legal right to inherit the property.

Under Mitakshara Law on the other hand as Hindu joint family consisted of up to 4 male members generations in this every male member had absolute right in the property of their family and doctrine of survivorship from birth as they are the coparceners. In a nutshell "under Mitakshara Law the essence of coparcenary is the ownership of unity, where on the other hand it is unity of possession under Dayabhaga Law" (Law Commission of India Report).

Until 1956 amendment act women could not be coparceners. Law related to women is divided into two episodes pre 1975 and post 1975. State of kerala abolished system of joint family in

1975. This state gave right to every member of the joint tenant in common, states like Karnataka and Maharashtra followed the footsteps of Kerala and these states amended their laws in the year 1994. 2005 is a year of landmark because since this year law has evolved for the betterment of states and rest of the Indian states unanimously reformed their laws of Hindu Succession. Many reforms were made for the betterment of women in the society. Before 1950 women's in Hindu Joint Family didn't have the right to be coparceners but post 1950, they were not just eligible to be coparcener but they can also take the position as Karta of the family if there is any situation of such demand in the Mitakshara Law. Section 6 of the Hindu succession act was amended. This amendment was made to ensure daughters get fair due in their property rights. Before the amendment of 2005 daughters were considered only as a "part" or member of undivided Hindu Joint Family. But post 2005 amendment the right to be a coparcener in the family was given to them. This was a good step taken towards empowering women. But the issues of disparity in our system persist. In case women falling under Hindu Law, if she dies intestate then that property goes to her husband's family and not her maternal family, According to section 15 and 16 of Hindu Succession Act. but on other hand if husband dies intestate then his property goes to birth family of him or it goes to his heirs. This is a clear bias and it shows that women are not equal to man in the eyes of law. in addition to it our law has overlooked the tribal women in this country specifically the women belonging from the places like Bihar and Jharkhand till now they are denied their right to property. Not only just property but they are also denied the right to claim arable(agricultural) land. Women have suffered to much in the name of cultural preservation. An example of this situation is in the case of *Madhu Kishwar and others V. State of Bihar*. The contention that was raised in this case by petitioner was that in terms of labor in work fields there is no recognition of exertion of women which is equal to men or possibly more than men. women are involved as men not just in Homes, but they also work and still they are denied their inheritance rights. No matter if she is a married or unmarried girl or even if she is a widow. The appellant challenged this contention in the court in the court on the grounds of illegality and unconstitutionality. It was held that the women's of tribal area would succeed to their parent, brother, husband estate, as heirs by succession of intestate and will inherit property with equal share with their male heir with the absolute rights according to the principles of Hindu succession act, 1956, as interpreted and amended by the court and equally with Indian succession Act to tribal Christian". Even after passing the laws of Land, the question is: are women all over

the country really benefiting from these laws? These laws are enforced in every state or community or not? These are the type of evaluative questions that comes to my mind when I read real life situations or tribulations. This kind of unfairness or injustice doesn't just end here it even includes Muslim Women's because in Muslim community also laws of inheritance are ruled by personal laws where if a man (father or husband) passes away the share of a women heir in the property is half of a male heir. How can this be fair in name of equality and feminism? In case of Christian community who even follows Hindu Succession Act, 1925. Heirs equally inherit regardless of sex. Kerala pioneered in amending laws in women's favor in the year 1976. Then it was followed by other Indian states following the suit in 2005.

In fact, in 1937 Act also the notional presence of limited persisted. The law reform that brought this change was, section 14 of Hindu succession Act. this section of Hindu succession Act deals with property of female Hindu to be property of absolute nature. Section 14 states that "Any property possessed by a female Hindu whether acquired before or after commencement of this act, shall be held by her as full owner thereof and not as a limited owner". Section 14 enabled women to have absolute right over property instead of the partial right. with exception being of property given in the form of gift would prescribe restricted estate. The similar situation was then upheld, reinstated, and explored in case of *V. Tulasamma and Ors. Versus V. Sessa Reddy*. Tulasamma the appellant was allotted ownership of few properties after her husband's death. However, right of alienation of property was not granted to her by the brother of her deceased husband. Brother in law of Tulasamma challenged this In the court when the appellant decided to alienate her share of property to other person. After that brother in law then initiated the lawsuit on grounds that property given to Tulasamma was on contractual agreement, Tulasamma was Supposed to just enjoy it as widow and tulasamma's interest could be enlarged further than that. Such contentions were discarded by supreme court and section 14 of HSA, Tulasamma,s right to alienate her property as per will was well upheld and well explained in the judgement.

EVOLUTION OF LAW

Before 2005 amendment act section 24 of Hindu Succession act denied right of a widow to inherit her husband's property but after the amendment was made daughter of a coparcener by birth became a coparcener in the same manner as the son and that too in her own rights. Now

daughters have the same rights in the coparcenary property as the son. This act brought a central amendment applicable to all the state governments. This amendment also repealed section 23 of the Hindu succession act because section 23 disentitled female heir to ask for partition of the house occupied by joint family until male heirs of the family chose to divide their share. Because of section 24 a woman (widow or daughter) was not getting ownership over anything. Our constitution abolished this act because this section was violative of article 39A of constitution of India which says equal justice now even in rural areas free legal seminars are held and free legal aid is given to women. they are told about their rights and how they can claim. Women can now even demand maintenance from her father in law also. And now as a daughter she has equal rights as son. But there are still some women in country which are being controlled by the male members of the family. In Indian rural areas in some communities' women are being controlled by the men. They are not allowed to go out or are not allowed to take educations because of many other factors like these they don't know their rights and then they suffer a lot. In some of the families they are still discriminated against are suffering discrimination in silence. Section 19 of Hindu adoption and maintenance act gives right to women to get necessities which are reasonable. Maintenance here includes food, clothing, residence, education, medical treatment and attendance. She can claim maintenance from her father in law if her husband dies.

PERSISITING ISSUES IN THE LAW

With the changing time our legislature has always tried to give women a better economic, social, and political life but there are still many communities where women are still downtrodden. They are still struggling for equal status to that of the men. In many parts of the country they are still abused, attacked and discriminated and become victim of domestic violence. The problem behind this is not only that the laws are not properly implemented but it is also because they are not aware of their rights. the effectiveness of the legislation has been destroyed just because they want to be in the good books of their parents and brothers and because of this very reason the laws such as right of succession and inheritance are not properly utilized.

The widow status in Indian society has been precarious because death of their husbands removed primary source of their economic well-being. In many societies where men held dominant power over widows control their social, economic and their sexual relationship. We need to see widows as embodying a stage in other women life cycles, not as a category in themselves. A stage which

is coterminous with old age. The property ownership rights vary between the societies and they are influenced by racial, political, cultural and legal factors. Because of lack of control over productive and non-productive resources in rural areas women are at a level of disadvantage in the areas of security of home, assessing economic opportunities, and maintaining a basis for their survival. In relation to the inheritance of property, not only claim of women are often violated in the practice but women's claim in other capacities also enjoy lesser social legitimacy. Most of the traditional legal system have placed the rights of widows over the rights of daughter.

So as far as the property is concerned the daughters shall be given equal right to inherit movable and immovable property equal to that of the male members. Women's were excluded from getting share in joint family property prior to the Hindu women's right to property act 1937. The privy council had caused injustice to Women's on Hindu community in matters relating to property rights of women. A Hindu Women had always been subjected to restrictions and limitations in matter of property rights. So women's were discriminated on the basis of gender in the ancient times and only male could enjoy the property rights at that time as he pleased. Women's in India Specially in rural areas are still suffering from social and economic dislocation. Till now there are some areas in India where women's work is undervalued and generally it is not considered work at all. Equal rights should be given to women's if we want them to contribute and make a difference to the country's future. Equal opportunities should be given to them as compared to men. There are many laws in our legal system to protect the rights of women where we are lacking is its proper implementation. Women's in many parts of our country are still not given anything and because of this they have to face many problems during widowhood. in case a Women doesn't have any women security, she is mistreated, her children's life comes at stake. She is asked to leave the house, there are so many problems she has to go through if she is not economically strong. Today in most of the India states especially in north India the rules of succession for Hindus related to land held under tenancy have different devolution than the Hindu Succession Act specifies. In states like Haryana, Punjab, Jammu and Kashmir, Himachal Pradesh, and Uttar Pradesh (northwest India) in these States strong preference for agnatic succession with special priority given to agnatic males is still prevailing.

Not Inheritance laws for agricultural land are highly gender unequal but there are many other land reform laws which are included in ninth schedule of the constitution of India. even if we

keep gender inequalities aside there is vast gap between contemporary law and present-day practice in recognition of women land rights. it is more for daughters than widows. In rural Hindu household the nature of rights that a widow enjoys in her deceased husband lands are in practice on variety of factors. Whether she remains single or not, whether she has sons or not. in rural areas inheritance claims of a widow are dependent on her having sons.

CONCLUSION

It would not be wrong if I say that our legal system which was majorly governed by patriarchy is slowly but surely changing. Things in the legal arena are changing for the betterment as we are progressing into a more independent, educated, strong sense of selves in the world. There are many flaws in our legal system that are still there but if they are corrected or improved can result in a major move forward in direction of women empowerment and upliftment. For instance, section of Hindu Succession Act, 1956 “special provisions respecting the dwelling houses”. The problem with section 23 is that it doesn’t take right to claim property into account during partition or as when women pleases. The women need to wait till a man comes forward from the family to seek partition. This discrepancy is very unfair, and it still persists to this date. Amendments for this problem are being made and they are in process. Making the daughters as coparceners is a great idea to move forward this decreased the share of other class 1 like widows and mothers. Since the agenda of topic gravitates towards widows and daughters why leave other females such as mothers out? In case of *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum* this issue was explored further and at last explanation 1 of section 6 of Hindu Succession Act was upheld. i opine with idea which is proposed in Law commission report of india that coparcenery at central level should be abolished and right in property by birth should be discarded instead of “tenancy In common” should be practiced and adopted rather than “joint tenancy”. It is a fact that laws made in favour of Hindu women are out of their reach till today in some areas of the society. This is because of them not having mental awareness and lack of financial security to take advantage of these provisions. This has made the whole task very

difficult. though today position of women in our country is better than before but still laws relating to property rights of women requires drastic alteration. The most important step we need to take is to strengthen the process of regulation of law. The law should be provided with sufficient teeth and genuine apprehension should be there in mind of every Hindu that noncompliance of laws of succession will be visited with exemplary punishment.