



PROPERTY RIGHTS FOR DAUGHTERS UNDER HINDU SUCCESSION AMENDMENT ACT, 2005

Mrs. Vineeta Parihar
Research Scholar
Dayalbagh Educational Institute, Agra

Abstract

Ownership stands for the rights of a person in the fullest degree to manage, use and take decisions regards of land or goods. Property is one of the elementary institutions of society and its concept is as old as history. In northern India the property is always controlled and enjoyed by males of the family. The Hindu Succession Amendment Act, 2005 made women empowered and provide equal opportunity to daughters to inherit parental property as like son. In present discussion daughters (married or unmarried) rights in father property is discussed with reference to Hindu Succession Amendment Act, 2005. Women members of the family always keep out from the property distribution, especially daughters even they are married or unmarried. In general terms only few women are shareholder in parental property.

Key words: Property rights, Hindu daughters, Consciousness for property.

Introduction

Property rights for women in India is various on the basis of their marital status, religion, region (state), family structure and property types etc. The married or unmarried daughters share in parental property is an emerging issue, which affects and challenge patriarchal system in Indian society. Hindu Succession Act, 1956 was the milestone which provides women inheritance rights in property. It was a vigorous attempt which has been made to bring some reforms of far reaching outcomes in the system of inheritance and succession. The law needed some revolutionary changes so as to identify the long felt right of inheritance of Hindu females at par with their male siblings. The Hindu Succession Act, 1956 became law on 17th June, 1956, the day which received the permission of the

President (Published in the Gazette of India, Extraordinary, part II section 1 dated 18/06/1956). The Hindu Succession Act, 1956 (Act No. 30 of 1956) has been passed to fulfill the needs of a progressive society. It removes inequalities and discrimination between male and female regards to rights in property and it evolves a list of heirs allowed to succeed on intestacy based on natural love and devotion rather than on efficacy. The Act has been enacted to codify and amend the Hindu Law with reference to succession. The scheme of the act is to enact in sections 15 and 16 separate general rules affecting succession to the property of female intestate.

- The Act has abolished Stridhana and provided the rules of succession relating to the different kinds of Stridhana (Sec. 15).
- The Act has provided uniform order of succession also with respect to the property of a female Hindu. If a woman die intestate, her children would become her first heirs followed by her husband and her parents. In the absence of any issue, property inherited from her father would revert to his family and property inherited from her husband or father-in-law will revert to husband heirs (Sections 16 and 17).

The Mitakshara law identified two ways of devolution of property namely, survivorship and succession. The survivorship rules applied with respect to coparcenary property, whereas the succession rules applied to property which consider as separate or self-acquired property by Hindu male who may be a member of joint family. The property of a Hindu male may consist of his own self-acquired or separate property or a share in the Mitakshara coparcenary property or both. Whenever a question arises as to the way of coparcenary interest devolution of a Mitakshara Coparcener, Section 6 of the Hindu Succession Act, 1956 gives the solution.

Section 6 of the Act (before its amendment in 2005), presented the first revolutionary change to the Hindu law of inheritance or succession by affording a female heir, and the son of a daughter of a deceased Hindu, a portion in the coparcenary property. If a coparcener die leaving a female heir, his interest in the coparcenary property will devolve by succession rules and not by survivorship rules. The deceased coparcener share, which succeeds, is intended by taking his share immediately before the time of his death into consideration.

Daughter's property rights under Hindu Succession Amendment Act, 2005

In Hindu Succession Amendment Act, 2005, section 6 as discussed above, was replaced and new section 6 is introduced, which removed gender discriminatory provisions in the 1956 succession Act's section 6. In terms of the amended section 6, a daughter of a coparcener in a Hindu joint family becomes a coparcener in her own rights. She has same or equal rights and responsibilities in the coparcenary property and is assigned the same share as a son.

According to the succession amending Act of 2005, in a Joint Hindu Family or in a nuclear family governed by the Mitakshara Law, the daughter of a coparcener shall also become by birth coparcener in her own right in the same manner as the son heir in family. She shall have the full rights in the coparcenary property to access, ownership and control. She shall be subject to the similar liabilities and disabilities in regards of the said coparcenary property as that of a son and any reference to a Mitakshara coparcenary shall be deemed to comprise a reference to a daughter.

Section 23 of the Act, 1956 disentitles female heirs to ask for partition in regards of a dwelling house wholly occupied and controlled by a joint family until the male members(heirs) choose to divide their respective portions therein. It is also proposed to remove the said section so as to eliminate the disability on female heirs contained in section 23.

One of the major changes brought in by the amendment is that in a joint Hindu family, the exclusive prerogative of males coparceners has been changed altogether and the by birth rights in the coparcenary property has been conferred in favour of a daughter as well. This major change has fundamentally altered the character of a coparcenary under Mitakshara. Before the central enactment of this amendment Act of 2005, four Indian states, Karnataka, Andhra Pradesh, Tamil Nadu and Maharashtra, had brought in a similar change; they introduce daughters as coparceners in joint Hindu family. At present, instead of only the son having rights by birth in property, any child (male or female) born in the family or validly adopted will be a coparcener and would have share in the coparcenary property. Thus the traditional concept that only males of the family could be members of the coparcenary and no female could ever become coparcener nor could own or got share in coparcenary property is no longer the law.

This also means that a daughter is now eligible of acquiring share in the coparcenary property, demand a partition of the same, and dispose it of through a will or testamentary disposition. Further, daughters would not only be empowered to practice a coparcenary along with their other male or femalesiblings, but would also be capable to start a joint family herself. She can even become a

Karta; throw her byacquired earnings into the family fund, something that was not probable before the amendment. The rule that women cannot form or start a family on their own but can carry on it even on the demise of a male member in the family but provided they have the ability to add a male member to it by birth or through adoption, stands repealed now. In other words, all the birthrights and uniqueness of a son's position in the family is now also available to a daughter as well.

All over the world, gender injustice and discrimination on the basis of gender is glaring highly in the property rights issues of women. Social norms, traditions and customs limit their property rights which hurdle opportunity of women, dignified life and their financial status at the home. Ownership of land property and other kind of property give empowerment, income, status, and security to females. Without any resource like land, female have no existing property during their emergency and have limited involvement in decision making in house hold issues. The female who has their own property or buy property, is in better position to improve her livelihood. If females have their own house and land as their property they directly gain profit, have increment in income and most importantly they have a secured and own place to live with honour. If a woman is financially independent then this will enhance her personality development, which increase her self-confidence and make her strong financially and feel secure in every aspect. Women property rights and their ownership over property will influence positively on her conditions, which increases nutritional status of their family and children, encourages girl's education and improvement in their socialization. It is important and become mandatory for men and women both that they in the same way participate in every field and every sphere whether it is social, cultural, economic, and political, to make their world developed and built better place and atmosphere for their present and future generation. The gender gap in ownership, access, control and management of property is the most critical contributor factor to the increasing in gender discrimination in economic well-being and so called empowerment. Most importantly, the partition of arable or agricultural land property is an important question in rural areas.

The agricultural land transfer and the land holding rights come under State laws which are kept away from the Succession Act periphery but in reality most of the Indian States females are to be treating as the last heir in the matter of land ownership rights. Regards to the dwelling houses (in succession rights) the unmarried daughter, deserted or divorced daughter and widowed is allowed by law to live in parental house or place but this right is not valid on married daughter. Such discriminations are removed in the Hindu Succession Amendment Act 2005. Daughter or sister never asks or seeks for partition and for their share in parental property because of managing and continuing her good relations with parental family siblings and the key reason is that she get dowry at the time of

marriage which is considered as her share in the parental property. In family, land ownership rights and property inheritance or succession, the once personal status and customary laws and their practices take preference over legitimate and constitutional provisions and rules for equality in gender reference. Women may not or may be conscious about their legal means so they cannot claim or try to claim but are rejected harshly for their legal rights of ownership over property. Only few women get access in land property and their property rights. In nature, almost all customary laws and their practices are patriarchal dominated so the property ownership has a male domain.

Agarwal (1994) noted that, a female's class position is generally defined by means of that man particularly in marriage. A spouse's property would elevate it, while divorce or widowhood would lower it. She states that there are important commonalities between females which cut across dispossessed classes specially, the vulnerability to ferocity (violence), the accountability and duty for all domestic work and childcare or oldies care, gender disparities in legal rights, and the risks of marital failure or divorce due to which even female of rich farmerhouseholds can be left needy or dependent and forced to look for wage work, disclose their property less condition and financial vulnerability as female.

The inheritance or succession system in our Indian society has been to reserve property, especially land property, precisely for male heirs. In real practice, intra-family allocations are actually situated in a culture of patriarchy which is rooted in patrilineal, patrilocal practices, which describe the role of female in economic and non-economic provinces. Rights for females are mediated through domestic or personal relationships and deeply inculcated views or thinking that females have about them, their interests or happiness and what set up their well-being within their relatives. Female's right, to access, own and control over property, is identified through female's overall living conditions and standard, financial security, and physical safety. Discrimination on the basis of gender is correlated to lower per capita income, life expectancy, and literacy rate. The problem of gender disproportion is due to the deep cultural bias against women throughout their life.

Conclusion

The amendment of Hindu Succession (Amendment) Act of 2005 is a total commitment for the women empowerment and protection of women's right to property. This amending Act in a patrilineal system, like Mitakshara school of Hindu's law opened the door for the women, to have the birth right of control and ownership of property beyond their right to sustenance. Property rights for females can have an effect on decision making, acquisition, income pooling, and female's overall role and position in the community. Moreover, land is a critical and important resource for females when the household breaks down or during financial crisis. In present scenario females are more aware toward their constitutional rights than past. Women are conscious for their property rights and they demand for their share but unfortunately this limited only inside family. Only few females come forward and take legal action to get their share.

REFERENCE

- Agrawal, Bina. (1994). *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge U. K.: Cambridge University Press.
- Basu, Srimati. (1999). *She Comes to Take Her Rights: Indian Women, Property and Propriety*. Albany: State University of New York Press.
- Mohsin, Urusua. (2010). *Women's Property Rights in India: With Latest Amendments and Cases*. Delhi: Kalpaz Publications.