

Property Rights of Indian Hindu Women: A Study in Human Rights Perspective



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Abstract

Women in India are ascribed a secondary role at domestic and societal level. This secondary role has to be metamorphosed to the primary one to bring women at an equal stratum with men. Hindu women's legal rights to inherit property has been restricted from the earliest time in the India. Throughout history, restrictions on Hindu women's property rights have undergone change, and current laws governing these rights are more liberal than those of ancient Hindu society. Patriarchal Hindu society provided women with property known as *stridhan* (literally, women's property or fortune), and it mainly came from marriage gifts (clothes, jewelry, and in some rare cases, landed properties). However, women were denied property rights to the ancestral or marital landed property, and their right over succession of the landed family property was limited. With the emergence of different schools of Hindu law, the concept of *stridhan* started expanding its literal and legal meaning, granting women more rights to certain forms of property. Later, the nineteenth and twentieth centuries witnessed the passage of several pieces of legislation that were intended to remove more of the barriers to full and equal property rights for Hindu women. Most recently, sexual discrimination in Hindu succession rules was mostly discontinued by the recent Hindu Succession (Amendment) Act (2005). It has been born in mind that in the absence of equality of gender, human rights remain in the inaccessible realm. To achieve so, a different outlook in law has to be perceived.

Keywords: Women's Rights, Property Rights, Succession, Discrimination, Mitakshara, Coparcener, Hindu, Amendment.

Introduction

Women have a unique position in every society whether developed, developing or underdeveloped. This is particularly due to the various roles they play during various stages of their life, as a daughter, wife, mother and sister etc., in spite of her contribution in the life of every individual human being she still belongs to a class or group of society which is in a disadvantaged position on account of several social barriers and impediments. She has been the victim of tyranny at the hands of men who dominates the society. The position of Indian woman is no better compared to their counterparts in other parts of the world. On one hand she is held in high esteem by one and all, worshipped, considered as the embodiment of tolerance and virtue. But on the other hand she has been the victim of untold miseries, hardships and atrocities caused and perpetuated by the male dominated society. The vulnerability of the women as a class has nothing to do with their economic independence. The woman has been a victim irrespective of her economic background. The rich and the poor alike are the victims of social barriers and disadvantages of varying kinds. A report of the United Nations Organisations points out that women constitute half the world populations, perform nearly two third of work hours, receive one tenth of the world's income and own less than one hundredth percent of world's property.

The women had enjoyed good respectable social status during Vedic and Post-Vedic period. Although she did not possess any property right in that golden era but, even then, she was treated like Devis and had a respectable and upper place in the family. In India almost half of the Indian population is women. They have often been discriminated against and have suffered and are suffering discrimination due to silence on their part in the civilized as well as the primitive society. Even though self sacrifice and self denial are their nobility and virtue, yet they have been made the victims of all inequalities, indignities, inequity and discrimination, from time immemorial. Modern constitutional factors have prompted the

legislature to make various progressive laws to give the women their due share.

The Constitution of India prohibits any discrimination solely based on the ground of sex in general and in the matter of public employment. The prohibition of gender based discrimination has been given the status of a fundamental right. Various other laws have been enacted to deal with the personal matters like marriage, divorce and succession etc., of the women. Unfortunately only a few such laws could be codified and made uniform. The criminal law also contains numerous provisions to deal with the crimes committed against women; enactments like The Dowry Prohibition Act, 1961 supplement the existing criminal laws to combat the evil of dowry. Number of labour and industrial laws provide for the protection and welfare of the women, which include maternity benefits, prohibition of employment of women in dangerous activities and crèche facility for the children of working women. In order to curb the immoral and antisocial practice of prostitution, The Immoral Traffic (Prevention) Act, 1956 has been enacted and amended the Act in 1986. The female foeticide and infanticide have assumed dangerous proportions and the determination of sex of the foetus which became possible due to the advanced scientific inventions, abetted the commission of these inhuman acts. The Parliament has passed the Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994 to arrest this undesirable trend. These legislative measures aforementioned are only by way of illustrations and not at all exhaustive; nor our subject matter of research requires that much of details thereon.

The Parliament of India has realized the importance and desirability of a monitoring institution to examine and investigate all the matters relating to the safeguards provided for women under the Constitution and other laws. This realization has led to the enactment of the National Commissions for Women Act, 1990 which came into force with effect from 31/01/1992. Though this commission which consists of a chairperson and five members nominated by the Central Government, has been entrusted with the task of presenting to the Central Government the problems of women, deprivation of women's rights, and the reports of the progress of the development of women under the Union and any state, it has not been given a Constitutional Status so far. However, this body has been burdened with the laborious responsibility of reporting to the government as to the efficacy and effective implementation of the safeguards for improving the conditions of women by the government, and for monitoring the socio-economic development of women in all walks of their life. Unfortunately, the Commission can make only recommendations and send the same to the respective authority for necessary action. It has no judicial powers for making it an effective instrument for providing relief to women in distress. Justice V.R. Krishna Iyer aptly remarked that a National Commission for women has "hardly any teeth or nail". It is high time that the commission has been given the

judicial powers and also conferred the Constitutional status.

The people power in general and the women-power in particular is said to be the totality of democracy. Half of the world's population is women, but their lot is having terribly less power, to self and property than that should be due to them for the full development of their stature and facilities and opportunities to uphold their personality, notwithstanding the rhetoric in international instruments, National Constitutions and statutory provisions in the corpus juris in many countries of the world. It is we the people where the women as a gender had rarely gained fair treatment from the pivotal male dominated culture of the country.

The discrimination is writ large against womanhood and there is no high priority to level up and to equalize their unjust disability. It is true that a generation of great men is incomplete without the generation of empowered women. Even if in the present era of human rights the women from womb to tomb, suffer a status of submissiveness, a span of second class citizen, and the injustice flag of female gender flies high as mothers, wives and household everywhere lacking facility and opportunity, if one looks closer at the problems, issues and social realization of unjust egalitarianism that belongs to womanhood, and its victimization. The woman has right to life in its luminous amplitude, which belongs to every woman. She has the freedom of discrimination inflicted in her sex and she has the claim to preferential processes through the State's affirmative action to wipe out the vintage injustices in the scale of equity. The United Nation's Report in 1980 presented that, "Women constitute half the world's population, perform nearly two thirds of its hours, receive one tenth of the world's income and less than one hundredth percent of the world's property."

Objectives of the Study

Hence it can be envisaged that, though the women constitute half of the world's population they suffer even today, the course of the discrimination. The minute study of world's women specified records and statistics reveals that the women comprise 66% of the world's literacy and 70% of the world's poor. Therefore, the problem needs to be examined in the context of rights for establishment of a just and equitable social order, where nobody can be treated or exploited by another as unequal. The Convention on Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)¹ is the main foundation of rights in respect of women to which 166 countries including India are members till date. The convention recognized that the discrimination against women in these areas, hampers economic growth and detrimentally hampers the society at large. This paper, therefore, examines legislative and judicial approach with an object to protect the property rights of Hindu women from a human rights perspective so that the equality clause of the Constitution may become in reality.

Review of the Literature

Mr. Debarati Halder and K. Jaishankar in their article "Property Rights of Hindu Women: A

Feminist Review of Succession Laws of Ancient, Medieval, and Modern India (2008)" have established that Hindu women's legal right to inherit property has been restricted from the earliest times in Indian culture. In the ancient text *Manusmriti*, Manu writes: "Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; a woman is never fit for independence." However, women were not always excluded from inheriting movable or immovable property from ancestral and marital families. But their proportion of share in the property was far less than that of their male counterparts.

Mr. K. C. Roy in his paper entitled "Property rights in women's empowerment in rural India: A Review" examined the importance of property rights in women's empowerment in rural India. Arguments justifying the need for granting property rights to women are presented and the distinction is made between legal (formal) and customary (informal) rights. The ineffectiveness of legal right in absence of customary rights has been discussed. Customary rights also become ineffective due to other institutional impediments. These impediments have been discussed. The results of extensive field work in rural West Bengal and Orissa have been presented to illustrate the pattern of development process that poor rural women want and in which the property right is only one component, not the only component.

Methodology

To accomplish the present study doctrinal method has been used with the help of relevant case law and literature available in the form of report, journals, commentaries, and cases in order to achieve the objective of the study.

Status of Women Under the Constitution

Half of the Indian population too is women, women have always been discriminated against and have suffered and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination. The Indian Constitution adopted by the Constituent Assembly on 26th November, 1949 is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity. These objectives specified in the preamble and elsewhere form part of basic structure of the Indian Constitution. The fundamental law of the land assures the dignity of the individuals irrespective of their sex, community or place of birth. With regard to the women, the Constitution contains many negative and positive provisions which go a long way in securing gender justice. While incorporating these provisions, the framers of the Constitution were well conscious of the unequal treatment meted out to the fairer sex, from the time immemorial. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as specific provisions for upliftment of the status of women in our constitution. The rights guaranteed to the women are on par with the rights of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions "in the interest

of women and children" through state legislation and affirmative action.

Property Rights of Hindu Women

The rights of women to succeed to any property vary from one religion to other depending on the personal laws followed by them. The religion played a very important role in the devolution of property on the woman in the earlier days. Initially the entire law of succession was uncodified but with the advent of modern governments and legislatures, most of the succession laws have been codified and consolidated. However there is no uniformity in the succession law relating to women following different religions. In India the women enjoyed a secondary status with regard to the succession. This unequal status was sought to be removed by certain legislations governing different religions like The Hindu Women's Rights to Property Act, 1937, Cochin Christian Succession Act, 1902, The Hindu Disposition of Property Act, 1916, , The Indian Succession Act, 1925, and The Hindu Inheritance (Removal of Disabilities) Act, 1928. The law relating to testamentary succession among Hindus, Christians and Parsis etc., is contained in the Indian succession Act, 1925. It does not make any distinction between the rights of women and men under a will.

Hindu Women And Succession

The Hindu law of intestate Succession has been codified in the forms of the Hindu Succession Act, 1956, which bases its rule of succession on the basic Mitakshara principle of propinquity, i.e., preference of the heirs on the basis of proximity of relationship. Prior to 1956, there used to be two major schools of Hindu law viz. Mitakshara and Dayabhaga which laid down different principles of succession. There was no uniformity in the rights of the Hindus following different schools to succeed to the property of a Hindu who died intestate i.e., without leaving a will behind him.

Position of Hindu Woman before 1956

Before 1956, the property of a Hindu woman was divided into two heads viz. (a) Stridhan (b) Woman's estate. Stridhan literally means woman's property. The Hindu Law interpreted Stridhan as the properties received by a woman by way of gift from relations. It included movables as well as immovables properties. The texts relating to Stridhan except in the matter of succession are fairly adequate and clear. Manu defined Stridhan as, that what was given before the nuptial fire, what was given at the bridal procession, what was given in token of love and what was received from a brother, a mother, or a father.² The property inherited by a woman from a male or female was not considered as Stridhan and it was not her absolute property for the purpose of inheritance.³ However Bombay school considered the property inherited by a woman from a male (other than a widow, and mother etc.) as Stridhan. Under all schools of Hindu law, the property obtained by a woman in lieu of maintenance, or by adverse possession and a property purchased with Stridhan was considered as Stridhan.

Rights in respect of Stridhan

1. The Hindu woman had full rights of alienating the "Stridhan", she being its absolute owner. She could sell, gift, mortgage, lease or exchange the same in any manner she liked.
2. On her death, all types of Stridhan passes to her own heirs and not the heirs of her husband. Thus, a Hindu woman had unlimited rights of enjoyment, alienation and possession in respect of "Stridhan" as its absolute owner. The Supreme Court has explained the meaning and nature of "Stridhan" in recent judgment.⁴ The properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her Stridhan properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her Stridhan property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to resort the same or its value to his wife. Therefore, Stridhan property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof.

Women's Estate

The other type of property that could devolve upon the Hindu woman was called woman's estate. It was also called widow's estate. A Hindu woman could be the owner of woman's Estate in the same way as any individual subject to two basic limitations. (a) She could not alienate the property and (b) On her death, it devolved upon the next heir of the last full owner. In other words, she had only 'limited estate' in respect of this kind of property. She had full powers of possession, management and enjoyment of such property but she had virtually no power of alienation or transfer. However she could alienate the property in certain exceptional cases like (a) legal necessity i.e., for her own needs and for the need of the dependents of the last full owner, (b) for the benefit of estate and (c) for the discharge of indispensable religious duties such as marriage of daughters, funeral rites of husband, his 'Shradhha' and alms to poor for the salvation of his soul. In other words she could alienate the property for the spiritual benefit of the last full owner but not for her own spiritual benefit. So the rule in *Hanooman Parsad v. Babooeee Mumraj*⁵ applied to alienation of woman's estate also. The women's estate was normally taken by the woman either by way of property obtained by inheritance or as share obtained on partition.

The foregoing brief discussion makes it amply clear that the position of Hindu woman in relation to property and succession was not satisfactory and uniform. The rights varied depending on the school to which she belonged and the nature of property that devolved upon her. The Hindu Women's Right to Property Act, 1937 made some changes in succession in respect of separate property of a Mitakshara Hindu and in respect of all properties of a Dayabhaga Hindu. It provided for right of survivorship and right of partition to a Hindu widow of Mitakshara school in coparcenary property. However, she was

not accorded the status of a coparcener. The uncertainty was put to rest by codifying and amending the entire Hindu law of Succession of 1956.

Position After the Hindu Succession Act, 1956

The preamble of the act signifies that it is an act to amend and codify the law relating to intestate succession among Hindus. The Act aims to lay down an uniform law of succession whereas attempt has been made to ensure equality of inheritance rights between sons and daughters. It applies to all Hindus including Budhists, Jains and Sikhs. It lays down an uniform and comprehensive system of inheritance and applies to those governed by the Mitakshara and Dayabhaga schools as well as other schools. The Hindu Succession Act reformed the Hindu personal law and gave women greater property rights, allowing her full ownership rights instead of limited rights in property. The daughters were also granted property rights in their father's estate. In the matter of succession of property of Hindu male dying intestate, the Act lays down a set of general rules in sections 8 to 13. Sections 15 and 16 of the Act contain separate general rules affecting succession to the property of a female intestate. Under section 8 of the Act three classes of heirs recognized by Mitakshara law and three classes of heirs recognized by Dayabhaga law which cease to exist in case of devolution taking place after coming into force of the act. The heirs are divided into four classes viz:

1. Heirs in class I of the schedule
2. Heirs in class II of the schedule
3. Agnates and
4. Cognates

Of course mother, widow, son and daughter are primary heirs. In the absence of class I heirs, the property devolves on class II heirs and in their absence first on agnates and then on cognates. Still some sections of the Act came under criticism evoking controversy as being favourable to continue inequality on the basis of gender. One such provision has been the retention of Mitakshara coparcenary with only males as coparceners.⁶ As per the law Commission Report, coparcenary constitutes a narrower body of persons within a joint family and consists of father, son, son's son and son's son's son. Thus, ancestral property descends only through the male line as only the male members of a joint Hindu family have an interest by birth in the coparcenary property, in contradiction with the absolute or separate property of an individual coparcener, which devolve upon surviving coparceners in the family, according to the rule of devolution by survivorship. Since a woman could not be a coparcener, she was not entitled to a share in the ancestral property by birth. Section 6 of the Act, although it does not interfere with the special rights of those who are members of a Mitakshara coparcenary, recognizes, without abolishing joint family property, the right upon death of a coparcener, of certain members of his preferential heirs to claim an interest in the property that would have been allotted to such coparcener if a partition of the joint family property had in fact taken place immediately before his death.

Thus Section 6 of the Act, while recognizing the rule of devolution by survivorship among the members of the coparcenary, makes an exemption to the rule in the proviso. According to the proviso, if the deceased has left a surviving female relative specified in class I of the schedule I or a male relative specified in that class who claims through such female relation, the interest of a deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession under the Act and not as survivorship.⁷ The case of *Amar Kaur v. Raman Kumari*,⁸ is best case to test the right of women in ancestral property, likewise, if the parties were governed by customary law, then the widow could succeed to widow's estate. Similarly, under the Hindu law widow could succeed in preference to daughters but to limited estate. Similarly, on the death of widow, the daughters could succeed as limited owners. The direct interest in the coparcenary held by male members by virtue of birth remains unaffected. It affects only the interest they hold in the share of deceased. A son's share in the property in case the father dies intestate would be in addition to the share he has on birth. A man has full testamentary power over all his property, including his interest on the coparcenary.

Thus non-conclusion of women as coparceners in the joint family property under the Mitakshara system as reflected in section 6 of the Act relating to devolution of interest in coparcenary property, has been under criticism for being violative of the equal rights of women guaranteed under the Constitution in relation to property rights. This means that females cannot inherit ancestral property as males do. If a joint family gets divided, each male coparcener takes his share and females get nothing. Only when one of the coparceners dies, a female get share of his interest as an heir to the deceased. Further as per the proviso to section 6 of the Act, the interest of the deceased male in the Mitakshara coparcenary devolve by intestate succession firstly, upon the heirs specified in class I of schedule 1. Under this schedule there are only four primary heirs, namely son, daughter, widow and mother. For the remaining eight, the principle of representation goes upto two degrees in the male line of descent. But in the female line of descent, it goes only upto one degree. Thus the son's son's son and the son's son's daughter get a share but a daughter's daughter's son and daughter's daughter's daughter do not get anything. Again as per section 23 of the Act married daughter is denied the right to residence in the parental home unless widowed, deserted or separated from her husband and female heir has been disentitled to ask for partition in respect of dwelling house wholly occupied by members of joint family until the male heirs choose to divide their respective shares therein. These provisions have been identified as major sources of disabilities thrust by law on woman.

Another controversy is the establishment of the right to will the property. A man has full testamentary power over his property including his interest in the coparcenary.

On the whole the Hindu Succession Act gave a weapon to a man to deprive a woman to the rights are earlier in certain schools of Hindu law than the Indian Succession Act, 1925.

Effect of State Amendments

Certain states in India like Andhra Pradesh, Tamil Nadu and Maharashtra have realized the difficulty that arises by excluding the daughter's right to claim partition in coparcenary property. In order to confer equal rights on Hindu women along with the male members in the coparcenary under the Hindu Mitakshara law, these state legislatures have amended the Hindu Succession Act, 1956 to achieve the Constitutional mandate of equality.⁹ A clear perusal of the Andhra Pradesh Amendment inserted by Andhra Pradesh Act 13 of 1986 shows that, in the state of Andhra Pradesh.

1. The daughter of a coparcener shall become a coparcener by birth in her own right and her status is equal to that of a son. She enjoys the same rights in the coparcenary property as a son. She is entitled to all the rights of coparceners including the right of survivorship. She will be subject to the same liabilities and disabilities in respect of coparcenary property as the son.
2. She becomes the absolute owner of the property inherited by her as a coparcener.
3. When a female Hindu dies after coming into force of this amendment (i.e. after 5-9-1985), having at that time interest in Mitakshara coparcenary, her interest will be devolved by survivorship upon the other coparceners. But if the deceased dies leaving behind any children or children of pre-deceased child at the time of death, the devolution will be in accordance with the provisions of the Hindu Succession Act and not by survivorship. Similar amendments are made in Tamil Nadu by the Hindu Succession (Tamil Nadu Amendment) Act, 1990 (1 of 1990) w.e.f. 25-03-1989, and in Maharashtra by the Hindu Succession (Maharashtra Amendment) Act, 1994 (46 of 1994 w.e.f. 22-06-1994). These legislations are beneficial to the women who form part of vulnerable effect to them.¹⁰

On the basis of recommendation of Law Commission, The Hindu Succession (Amendment) Act, 2005 has been passed for the empowerment of women. We have to discuss the effects made by this Act and to make necessary suggestion in this regard. Thus the law commission of India's 174th Report contributed to overcoming the oppression of women by creating a legal order for women on equal footing. Interestingly, the law commission drafted the Hindu Succession (Amendment) Bill, 2000 so that recommendations made by it are implemented by the govt. and this bill was embodied in the Hindu Succession (Amendment) Bill of 2004 which became the Hindu Succession (Amendment) Act, 2005 passed by both the Houses of Parliament on August, 2005, assented on 5th September, 2005 and came into force from 9th September, 2005. During this process the Joint Committee of Rajya Sabha had an important role to expedite the amendment.

Changes Brought By The Hindu Succession (Amendment) Act, 2005

The amending Act of 2005 is an attempt to remove the discrimination as contained in the amended section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Simultaneously section 23 of the Act as disentitles the female heir to ask for partition in respect of dwelling house wholly occupied by a joint family until male heirs choose to divide their respective shares therein, was omitted by this Amending Act. As a result the disabilities of female heirs were removed. This is a great step of the govt. so far as the Hindu Code is concerned. This is the product of 174th Report of the law commission of India on "Property Rights of Women: Proposed Reform under the Hindu Law." According to the amending Act of 2005, in a Joint Hindu Family governed by the Mitakshara law, the daughter of a coparcener shall, also by birth become a coparcener in her own right in the same manner as the son heir. She shall have the same rights in the coparcenary property as she would have had if she had been a son. She shall be subject to the same liabilities and disabilities in respect of the said coparcenary property as that of a son and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter as well. This provision shall not affect or invalidate any disposition or alienation including partition or testamentary disposition of property which had taken place before 20th December, 2004.

Further any property to which female Hindu becomes entitled by virtue of above provision shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her will and other testamentary disposition. The provision was also made that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act of 2005, his interest in the property of a joint Hindu Family governed by the Mitakshara law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place. Further the daughter is allotted the same share as is allotted to a son. The provision was also made that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter.

Further the share of the predeceased son or of a predeceased daughter as such child would have got, had he or she been alive at the time of partition, shall be allotted to the child of such predeceased child of the predeceased son or a predeceased daughter. The most important fact is that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. This

amending Act of 2005 has also clear provision that, after commencement of the amending Act of 2005, no court shall recognize any right to proceed against son, grandson, or great grandson for the recovery of any debt due from his father, grandfather or great grandfather (on the ground of the pious obligation under the Hindu law), of such son, grandson or great grandson to discharge any such debt. But if any debt contracted before the commencement this amending Act of 2005 the right of any creditor, to proceed against son, grandson or great grandson, shall not affect of any alienation relating to any such debt or right shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if Hindu Succession (Amendment) Act of 2005 had not been enacted.

Further for the purpose of creditors right stated above the expression son, grandson or great grandson shall be deemed to refer to the son, grandson or great grandson who was born or adopted prior to the commencement (9th September, 2005) of the Amending Act of 2005. Such provisions shall not apply to a partition which has been done before 20th December 2004. By this amendment Sections 23 and 24 of the HAS have been omitted. Likewise special provisions relating to rights in respect of dwelling house and the disentanglement rights of widow's remarrying, respectively omitted from the Act. The Amending Act has also introduced in the schedule of the Hindu Succession Act, 1956 new heirs viz, son of a predeceased daughter of a predeceased daughter of a predeceased daughter, daughter of a predeceased daughter, son of a predeceased daughter, daughter of a predeceased son.

Thus, the Amendment of Hindu Succession Act of 1956 in 2005 is a total commitment for the women empowerment and protection of women's right to property. This amending Act allows partition if a daughter so desires, like Mitakshara school of Hindu law, and, as such, has opened the door for the women, to have the birth right in the family property like the son. The women were vested the right of control and ownership of property beyond their right to sustenance. In a ruling that will restrict the right of women seeking equal share in ancestral property, the Supreme Court has said that the 2005 amendment in Hindu law will not give property rights to a daughter if the father died before the amendment came into force. The court held that the amended provisions of the Hindu Succession (Amendment) Act, 2005, could not have retrospective effect despite it being a social legislation. The court said the father would have had to be alive on September 9, 2005, if the daughter were to become a co-sharer with her male siblings.

Conclusion

The Hindu Succession Act, 1956, originally did not give daughters inheritance rights in ancestral property. They could only ask for a right to sustenance from a joint Hindu family. But this disparity was removed by an amendment to the Act on September 9, 2005. The apex court judgment has now added another disqualification for women regarding their right of inheritance in *Prakash &*

*Ors v. Phulavati & Ors*¹¹, rendered on 16 October 2015 SC case. Until now, they could not ask for a share if the property had been alienated or partitioned before December 20, 2004, the date the Bill was introduced. This judgment makes it imperative for the father to have been alive when the amendment came into force. Settling the law in the wake of a clutch of appeals arising out of high court judgments, a bench of Justices Anil R Dave and Adarsh K Goel recently held that the date of a daughter becoming coparcener (having equal right in an ancestral property) is “on and from the commencement of the Act”.

The bench overruled the view taken by some High Courts that the amendment being a gender legislation that aimed at according equal rights to the daughter in ancestral property by removing discrimination should be applied retrospectively. Interpreting statutory provisions, the top court shot down the argument that a daughter acquires right by birth, and even if her father had died prior to the amendment, the shares of the parties were required to be redefined. “The text of the amendment itself clearly provides that the right conferred on a ‘daughter of a coparcener’ is ‘on and from the commencement’ of the amendment Act. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text,” it said.

Further, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intent, noted the court, adding “even a social legislation cannot be given retrospective effect unless so provided for or so intended by the legislature”. About applicability of the amendment to the daughters born before it was brought, the bench held that the new law would apply irrespective of the date of birth. “All that is required is that the daughter should be alive and her father should also be alive on the date of the amendment,” it said.

The court also held that alienation of ancestral property, including its partition, which may have taken place before December 20, 2004, in accordance with the law applicable at that time, would remain unaffected by the 2005 amendment, and those partitions can no longer be reopened by daughters

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