

Development of Legal Position of Property Rights of Indian Women

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“Women have a much better time than men in this world; there are far more things forbidden to them.”

-Oscar Wilde

Introduction :

“Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law, it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different time.”- Justice A.K.Ganguly & G.S. Singhvi.² Rights of Indian women are unequal and unfair. Indian women still continue to get fewer rights in property than the men. There is no single body of property rights of Indian women. The property rights of the Indian woman get determined depending on which religion and religious school she follows. The Amendment of Hindu Succession Act, 2005 is a landmark step towards for the women empowerment and protection of women’s right to property. It opened the door for women to have the birth right in the family property like the son. Women were vested with the right of control and ownership of property beyond their right to sustenance.

Property Rights of Women under International Laws³:-

The Convention on Elimination of All Forms of Discrimination against Women, 1979, is the main foundation of rights in respect of women to which 166 countries including India are members till date. Gender inequality facets in different forms but the most tedious percepts are to the effective property rights. Convention of 1979, the UN Declaration, General Assembly Resolution No. 217A (III) dated 10th December, 1948, Art.14 of African Charter on Human and People’s Right, 1981 specify that the right to property shall be guaranteed. It may only be encroached

²Revanasiddappa & Anr vs. Mallikarjun & Ors, (2011)11 SCC 1 (India).

³ P.K.DAS, Universal’s New Law on Hindu Succession, at, 147 (2nd ed. 2006).

upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. American convention on human rights also spells about the property rights in its Art. 21. Art. 16 and 17 of European Social Charter, 1961 and its protocol viz. right of family to social, legal and economic protection and the right of mothers and children to social and economic protection, deal with women's property rights and allied rights respectively. Rome Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 particularly its Art.14 specifies the prohibition of discriminations and Art. 1 of its Protocol deal with protection of property. Art, 1 and 23 of The International Convention on Civil and Political Rights, 1966 deal with the rights of women in respect of marriage and property. Art. 36 to 44 of Vienna Declaration and Program of Action, 1993 state the equal status and human rights of women. All these Conventions, Declarations and Resolutions try to protect the interest of women and remove the disparity and gender inequality along other thing particularly the women's right to marriage, family status and property. Unfortunately these rights are rope in sand because international law has no binding force for the member countries as because there is no enforcing agency to implement these laws.

Types of Women's property in India:-

Stridhana⁴:-

The word Stridhana is derived from the Stri means women and dhana i.e. her property. Stridhan is the property received by way of gifts and presents given to women by her parents, husband, or close relations of parents or of husbands either at the time of marriage or other occasions, at time of giving farewell or at the time of performance of the ceremonies. It includes property acquired by own exertion and ability or adverse possession or of bequest from stranger or relations, money or property given to her in lieu of maintenance, savings or purchases made with stridhan. In nutshell women enjoyed larger powers of disposal over her stridhan.

⁴ Dr. Poonam Pradhan Saxena, Family Law Lectures Family Law II, at 33(3rded. 2011).

Earning and insurance on lives of married women:-

Women are absolute owners of all property vested in, or acquired by them. Women can enjoy their wages and earnings and the insurances on their lives. The Married Women's Property Act, 1874 afforded protection to married women about her wages and earnings as it was their separate property. Married women may maintain a suit in her own name for recovery of property.

Women's estate⁵:-

By inheritance

As per sec.3 of the Hindu Women's Right to Property Act, 1937 a Hindu dies intestate leaving separate property. In this case the widow was to be entitled to the said property. This Act has been repealed by Hindu Succession Act, 1956. As per the Sec.14 of this Act women become full owner of all properties got by her in succession by anybody. As per sec. 14 she would become a full and absolute owner of the property and competent to alienate the property as full owner.

By partition:-

Sec. 23 provided right to the female heirs specified in class- I heirs in relation to dwelling house and it is provided that such female has right of residence in the said dwelling house only if she is unmarried or deserted or has been separated from her husband or she is a widow. The right of partition of dwelling house has been suspended until the male heirs choose to divide their respective shares therein. It is violative of the provisions of the Art. 14 of the Constitution. This provision is very strange, creating inequality between male and female.

In lieu of maintenance: -

Maintenance include reasonable provision for food, clothing and shelter. It would vary from case to case, but the basic purpose behind securing the maintenance is that a woman who loses a regular monetary support, should not be left in lurch, and a suitable alternative amount or property that yield income, should be given to her, more so if her husband died living behind property. It is an amount or income or

⁵Satyajeet A. Desai, Mulla Hindu Law, at 217(21st ed.2010).

property that can take care of her basic expenses or even the comforts of life. The Supreme Court held that property received by a Hindu widow, in lieu of maintenance, under an instrument that restricts the nature of interest given to her, would be held by her as an absolute owner as per Sec. 14 of the Hindu Succession Act, 1956.⁶ Re-married widow, murderer and converts shall not be entitled to get share in the property of intestate.

Historical development of legal position of property rights of women⁷

Religion plays a major role in the succession of the property by women. The personal laws of religious communities are mostly dominated by the scriptures of those religions. In the earlier period laws of succession were mostly uncodified and followed according to the traditions of those communities. As the society moves towards civilization, the governments started to codify the succession laws. The codification mostly depends upon the existing traditional practices. Even the succession laws codified separately for different religions neglected women and gave an unequal status to them.

In a Mitakshara School of Hindus, females had only one right of maintenance but had no right of inheritance. The principle of survivorship was applicable and coparcenary properties were used to pass on to the surviving coparceners i.e. male members. In Dayabhaga school of Hindus females had a right equal to the rights of male in the family and the principle of survivorship had no application.

Hindu Law of Inheritance Act, 1929:-

By this Act, rights of son's daughter, daughter's daughter, and sister came to be recognized whereby the principle of survivorship came to be restricted.

⁶V. Tulsamma v. Sessa Reddy (1977) 3 SCC 99; AIR 1977 SC 1944, (India).

⁷Ibid.

The Hindu Women's Property Act, 1937

By this Act rights of widow came to be recognized whereby the principle of survivorship came to be restricted.

The Constitutional Law of India, 1950

The provisions introduced in the Indian Constitution do not differentiate between males and females. The constitution of India provides various special provisions for the protection of women's rights in the Preamble, Fundamental rights, fundamental duties and directive principles. Women have equal rights as that of a man in every sphere within the frame work of our laws and policies. Art.14 of Indian Constitution guarantees that the State shall not deny to any person equality before the law and the equal protection of the laws within the territory of India. Thus it Prohibits discrimination on the basis of religion, race, caste, sex or place of birth

The Hindu Succession Act, 1956

The Parliament of India enacted the Hindu Succession Act in 1956. The object of the Act states that it was enacted to amend and codify the law relating to intestate succession among Hindus in India. The Act introduced a uniform and comprehensive system of devolution of property that applies to persons governed by the Mitakshara and Dayabhagashools, as well as those people who have been guided by the Murumakkattayam, Aliyasantana and Nambudri system previously. This Act provides the Principle of survivorship. This principle had no application when the deceased coparcener left behind him any female relative specified in Class I heir of the schedule. The concept of notional partition came to be introduced.

The Kerala State Amendment Act, 1976:-

The concept of Hindu Joint Family and Coparcenary came to be abolished by the State of Kerala. It was the first progressive step taken in furtherance of the principle of equality enshrined in the Constitution of India.

State Amendments: -

The concept of coparcener and meaning of coparcener was changed by the State of Andhara Pradesh, Tamilnadu, Maharastra and Karnataka. This amended Sec. 6 of Hindu Succession Act, 1986, 1994, 1994 and 1989 respectively declaring daughter to be coparcener of join family property.

The Maharashtra State Amendment Act:-

The Maharashtra State Amendment Act came into force and became applicable from 22/06/1994. By this amendment daughters who were unmarried on the appointed date came to be treated as sons. This amendment brought inequality amongst the married and unmarried daughter on the appointed date.

The 174th Report of the Law Commission of India 2000:-

The 174th Report of the Law Commission of India on Property Rights of Women: Proposed Reforms under Hindu Law considered the State amendments for equal distribution of property rights of women. The Law Commission has suomotuundertaken the subject for study, analysis and recommendations. As this provision was discriminatory towards women and therefore it was acknowledged by the Law Commission and while presenting its 174th Report, it suggested the changes to provide women equal property rights.

The Hindu Succession (Amendment) Act, 2005:

The Hindu Succession (Amendment) Act, 2005 amended S.4, Sec.6 and Sec.23, 24, 30 of the Hindu Succession Act, 1956. It revised rules on coparcenary property, giving the daughter of the deceased equal rights with sons and subjecting them to the same liabilities and disabilities. The amendment essentially furthers equal rights between male and females in the legal system.

Section.6⁸ of this amendment Act provides an important right to daughter in devolution of interest in coparcenary property. The daughter shall become a

⁸ Section.6 Devolution of Interest in Coparcenary Property:- 1. On and from the commencement of the Hindu Succession Amendment Act, 2005 a Joint Hindu Family governed by the Mitakshara Law, the daughter of a coparcener shall-

a.by birth become a coparcener in her own right in the same manner as the son;

b.have the same rights in the coparcenary property as she would have had if she had been a son;

c.be subject to the same liabilities in respect of the said coparcenary property as that of the son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener;

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

2. Any property to which female becomes entitled by virtue of subsection (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or other law for time being in force as property capable of being disposed of by her by testamentary disposition.

3. Where a Hindu after the commencement of the Hindu Succession (Amendment) Act, 2005 his interest in the property of joint Hindu Family governed by Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place and-

a.The daughter is allotted the same share as is allotted to a son;

b.The share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the same time of partition, shall be allotted to the surviving child of such pre-deceased son or of such predeceased daughter; and

c.The share of the pre-deceased child of a pre-deceased son or pre-deceased daughter, as such child would have got they been alive at the time of partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

4. After the commencement of this Hindu succession (Amendment) Act, 2005 no court shall recognize any rights to proceed against a son, grandson or great-grandson for the recovery of any debt from his father, grandfather, or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson, or great-grand son to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 nothing contained in this sub-section shall affect-

a.The right of any creditor to proceed against the son, grandson or great-grandson, as the case may be ; or

coparcener in a Joint Hindu Family governed by the Mitakshara Law by birth in the same manner as the son.

This right is not available if any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. Daughter can have right to dispose of her property. Daughter is able to get same share in partition as allotted to son.

The object of the amending Act of 2005 was twofold first to remove the disparities between men and women in terms of inheritance rights and secondly to remove the discrimination against women, by placing men and women on an equal footing.

Effects of the Amendments:-

- With this amendment, both male and female got equal rights in case of property distribution.
- Daughter of a coparcener be treated like a son.
- Women can become kartas of the property.
- By birth property rights of daughter recognized.
- Same share is allotted to a daughter like that of a son. Equal distribution of undivided interests in co-parcenary property.
- All the partitions, dispositions, alienations, and testamentary succession before 20th December, 2004 are protected and saved.
- Daughter would become manager or Karta.

b. Any alienation made in respect of or in satisfaction of any such debt, and any such right or alienation shall be enforceable under the rules of pious obligation in the same manner and to the same extent as it would have not been enforceable as if the Hindu succession (Amendment) Act, 2005 has not been enacted.

Nothing in this section shall apply to a partition, which been effected before the 20th day of December, 2004.

Explanation- the purpose of this section Partition means any means any property made by execution of a deed of a partition only registered under the Registration Act or partition effected by decree of a court.

This amendment tries to do away with the evils of the discrimination between son and daughter on a far better footing than the earlier provisions.

Interpretation of the provision of sec. 6 of the Hindu Succession (Amendment Act, 2005) by the Judiciary:-

The new amendment Act, 2005 resulted into the various controversies. Indian judiciary has played an important role for the interpretation of this amendment Act through its various judgments.

The amendment Act is prospective and would have no application where succession opened prior to this Act.⁹ Section.6 is retrospective and would apply to all daughters who are born after 17th June 1956, irrespective whether succession opened or not.¹⁰ The Apex court held that “it would be in our opinion convenient to the court and advantageous to the parties specifically in partition suits to have disputed rights finally settled and specification of shares in preliminary decree, varied before a final decree prepared.¹¹ Division Bench of Bombay High Court ¹² held that Sec.6 of the Amended Act is prospective in application. It is applicable to daughters born on or before 09/09/2005 and they would get rights in coparcenary property upon the death of their father on or after 09/09/2005. The Court considered the settled rules of interpretation of the Statutes embedded in various judgments of the Supreme Court such as

- Statutory provisions of substantive rights are ordinarily prospective.
- Retrospective operation must be given only when it is made expressly or by necessary implication.
- The intention of the legislature has to be gathered from the plain words giving them a plain grammatical meaning.
- If the legislation has two meanings, the meaning which preserves the benefits should be adopted.
- Interpretation giving rise to absurdity or inconsistency should be discarded.

⁹Sheela Devi vs. Lal Chand (2006) 8 SCC 581(India).

¹⁰Pushpalatha vs. V.Padma (2010) SCC Online Kar. 227; AIR 1470 (India).

¹¹Phoolchand vs. GopalLal (1967) 3 SCR 153; 14 law Rep.287; AIR 1967 SC 1470 (India).

¹²VaishaliGanorkar vs. SatishGanorkar (2012) SCC online Bom.116 (India).

In *Mahadfolal Kanodiavs. Administrator General of West Bengal*¹³ Court opined about the interpretation of the Sec.6

- It may be mentioned that Section.6 creates substantive rights in favour of a daughter as a coparcener; it would, therefore, be ordinarily prospective.
- there are no express words showing retrospective operation in the Statute and in fact the express words are "on and from" denoting prospectively.
- The plain normal grammatical meaning of the words "shall become" and "shall be deemed" shows the future tense and the total absence of any past participle. The words must be given the grammatical meaning as per the grammatical tense.
- The section is incapable of two meanings; it cannot mention that all the daughters born before the amendment would be included and that only daughters born after the amendment would be included.

Since two meanings are not contemplated, it would rule out interpretations which are required in legislations which are capable of two meanings. An appeal was filed before the Supreme Court against the order of the Andhra Pradesh High court in *Ganduri Koteswaramma vs. Chakiri Yandi*¹⁴ which was dismissed and the question of law kept open by the Supreme Court. In this case the fact was that the amendment was passed where the preliminary decree was passed and the final decree proceedings were pending. While the final decree proceedings were pending, the Act was amended and the question that fell for consideration was whether the development, namely, the amendment to the Principal Act, can be taken into consideration while passing the final decree. All along major issues of controversy were as to the application of the amended Act. These issues were referred before the full Bench:-¹⁵

1. Whether Sec. 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 is prospective or retrospective in application?

¹³AIR 1960 SC 936

¹⁴ (2011) 9 SCC 788; (2011) 4 SCC (Civ) 880 (India).

¹⁵Ashok Gangadhar Shedge vs. Ramesh Gangadhar Shedge (2014) SCC online Bom. 621(India)..

2. Whether this amended Section is applied to the daughters born prior to 17/06/1956?
3. Whether this section applies to daughters born after 17/06/1956 and prior to 09/09/2005?
4. Whether this Section applies only to daughters born after 09/09/2005?

In *Badrinarayan Bhandari and others vs. Omprakash Bhandari*¹⁶ the full bench answered all the questions in above mentioned case and held that:-

1. Sec.6 of the Amendment Act, 2005 is retrospective in application.
2. This section applies to daughter born prior to 17/06/1956.
3. This section.6 applies to all daughters born before the 09/09/2005, provided that they are alive on 09/09/2005.
4. Sec. 6(a) is prospective in application and hence it applies to all daughters born after 09/09/2005.
5. Sec. 6(5) of the Amendment Act, 2005 recognizes two limitations:-
 - a) Duly registered partition. b) Partition effected by decree of the court.
6. Impliedly the notional partitions effected before 09/09/2005 as consequences of death of a coparcener will be valid.
7. The case of a coparcener who died before 09/09/2005 would be governed by the pre-amended section. 6(1) of the Act.
8. The case of death of coparcener on or after 09/09/2005 will be governed by the amended section 6(3).
9. The decision of the division bench in the case of *Vaishali Ganorkar* is per incuriam the Supreme Court decision in the case of *Ganduri Koteswaramma and others*.

The Full Bench came to the conclusion that the amendment to Section 6 was neither prospective nor retrospective but 'retroactive' in nature i.e. it operates forward but it is brought into operation by a characteristic or status that arose before it was enacted. Therefore, the right in co-parcenary property will accrue to a daughter only on 09/09/2005, but as a consequence of an event that occurred prior to 09/09/2005, the event being her birth. Accordingly all daughters whether born before or after

¹⁶ (2014) SCC online Bom. 908 (India).

1956 or 2005 are entitled to the benefit of the amendment to Section 6, provided they were alive as on 09/09/2005 (since that is the day the right accrued). Therefore, if a daughter had died prior to 09/09/2005, the heirs of such predeceased daughter cannot retrospectively claim the benefit of the amendment. Further, any notional partitions done under Section 6 i.e. if any male Hindu having a right in HUF property had died prior to 09/09/2005 and his property had devolved as per the pre-amended Section 6, the same would not be affected by this amendment. To arrive at this interpretation the Full Bench considered the object of enacting the amendment and the purpose and intent of the Legislature which was to foster equality as mandated under Article 14 of the Constitution of India.

In *Prakash and Others vs. Phulavati and Others*¹⁷ Supreme Court finally decided the application of sec.6 of the Amendment Act, 2005. A Bench comprising Justice Anil R Dave and Justice A.K. Goel, in its October 16, 2015, interpreted the succession law while setting aside the Judgment of the Karnataka High Court in the case *Prakash v Phulavati* of 2010. The legal position after judgment of the Supreme Court of India is as below:-

- a) Daughter becomes coparcener by birth.
- b) Right conferred on daughter is on and from the commencement of Hindu Succession (Amendment Act), 2005.
- c) Section 6(3) of the amended provision talks about death after the amendment for its applicability.
- d) An amendment of a substantive provision is always prospective in operation unless either expressly or by necessary intendment it is retrospective. In the present amendment there is neither express provision nor intendment for giving retrospective effect.
- e) Notional partition, by its very nature, is not covered either under proviso or under sub-section 5 or under the explanation.
- f) In no case statutory notional partition being even after 20th December, 2004 could be covered by the Explanation or the proviso in question.

¹⁷ (2016) 2 SCC 36; (2016) 1 SCC (civ) 549 (India).

- g) Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unnamed provision, having regard to the nature of such partition which is by operation of law.
- h) Explanation cannot permit reopening of partitions which were valid when effected.
- i) The rights under the amendment are applicable to living daughters of living coparceners

Conclusion:

Social justice demands that a woman should be treated equally both in economic and social areas. The exclusion of daughters from participating in coparcenary property ownership merely by reason of their sex is unjust. The property devolves only on male members is a blatant violation of the equality principle guaranteed under the Constitution. When partition of joint family takes place only male members get share of the family property. Women get nothing. In *Pravat Chandra Patnaik and Ors v. Sarat Chandra Patnaik & Ano*¹⁸. In the instant case the Court highlighted the intention of enacting the Amendment Act, 2005 The Court observed that it is to remove the discrimination contained in Section 6 of the Act by giving equal right in the Hindu Mithakshara coparcenary property as the sons have. So, a daughter gets the right of a coparcener from the date the amended Act came into force i.e. 9.9.2005. The Court also made it clear that a daughter gets the rights of a coparcener from 2005 even though they might have been born earlier. Thus, there is a gradual development in conferring property rights on Hindu women as compare to the earlier position. Male and female both are two sides of a coin. The nation cannot make a progress if women left back. It may be concluded by citing a quote of Mala Yousafzai-

“I raise up my voice-not, so I can shout but so that those without a voice can be heard...we cannot succeed when half of us are held back.”¹⁹

¹⁸AIR 2008 Orissa 133, 106 (2008) CLT 98 (India).

¹⁹<http://www.goodreads.com/quotes/tag/women-s-rights> visited on 01/01/2017.