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Gender Equality under the Hindu Succession Act

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ABSTRACT

Hindu Succession Act, 1956 has codified the property laws for Hindu, Sikhs, Buddhists and Jains. Hindu Women's Rights to Property Act, 1937 was enacted prior to this and it brought major changes in the property rights of women by giving rights of succession to the Hindu widow for the first time. Streedhan was considered as the only absolute property of a widow. Section 14 of the Hindu Succession Act removed the disability of the Hindu female to acquire and hold property as an absolute owner and the right of women in any estate already held by her on the date of commencement of the Act as a limited owner was converted to absolute owner. The 2005 amendment has changed the overview of the act by giving equal property rights to Hindu daughters as similar to the sons of a Hindu family. The amendment has faced many challenges from the very beginning which is evident from the notable cases like Pravat Chandra Pattnaik and Others v. Sarat Chandra Pattnaik and Another where Court held that the Amendment was enacted to abolish the discrimination by giving equal rights to daughters of the family as sons in the Hindu Mitakshara property through Section 6 of the Act. Court also held that Section 6 will also give rights to daughters born before 2005 as coparcener as they are entitled to equal share as compared to the sons of the family. Section 14 of the Act has clearly given daughters the full ownership of their acquired property.

I. INTRODUCTION

According to United Nations, the concept of gender equality is defined as the goal of equality of the genders or the sexes, in terms of equal rights and opportunities. UN also says that gender equality is not only a fundamental right of every human being, but it is a necessary foundation for a peaceful, prosperous and sustainable world. Entire world has seen immense progress in terms of more and more rights being extended to female gender since decades. Right to education and work, to hold a position in offices and law-making authorities, not being forced into early marriages and right to vote are some of those rights. Still, women face challenges in society due to discriminatory laws and social norms.

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II. GENDER EQUALITY IN INDIAN LAWS

It is commonly observed that the property laws in the countries similar to India in terms of gender equality possess better and advanced policies and incentives for women. In India, women are yet to travel a long way to receive equal and fair rights in property as men in their family. The cultural disparity and different religious practices prove to be a great obstacle in achieving the goal of equal property rights. Every religious group has their own various sub groups having separate and distinguished property rights rules and norms. Given this situation, India still has to achieve Uniform Civil Code. Article 14 of the Indian Constitution guarantees right to equality before law and equal protection of law to everyone within the territory of India. Article 15 prohibits discrimination on the basis of gender. Women, being identified as the weaker section of the society, are expressly entitled to the protection of law against discrimination and they are also entitled to rights through special legislations that are available for their upliftment, given the major historical and social disadvantage that they have suffered solely on the basis of their gender. Clearly, there are certain laws and norms that are practiced wisely and courts are afraid to take measures against it or declaring them unconstitutional as it would directly attack the religious sentiments.

Hindu Succession Act, 1956 has codified the property laws for Hindu, Sikhs, Buddhists and Jains, but not for Muslims. The property rights for Muslims are yet to be codified officially whereas Christians have their separate code. Under Indian Constitution, both state and central government possess the power to enact laws on succession which has further complicated the matter as states have entered their own variations in the personal property laws.

Gender equality in Hindu Succession Act, 1956

Property rights of a Hindu female depends on her marital status and her position in the family, whether she is married or unmarried, mother, widow, daughter etc. It also depends on the type of property namely ancestral, matrimonial or self-acquired. Hindu Succession Act acted as a reform to address gender inequality and inheritance. Hindu Women's Rights to Property Act, 1937 was enacted prior to this and it brought major changes in the property rights of women by giving rights of succession to the Hindu widow for the first time. Afterwards Hindu Succession Act was enacted post-independence to complete the reform started by the prior act. Major Schemes of the act are:

1. The hitherto limited estate received by women was converted to an absolute one.
2. The position of a widow was strengthened as well as female heirs other than the widow were recognised.

3. The principle of simultaneous succession of heirs of a certain class was introduced.
4. The principle of survivorship continues to apply in Mitakshara Coparcenary but the principle of testamentary succession is applied so as not to exclude any female in the line.
5. The grounds of disability to inherit will no longer be remarriage, conversion and unchastity.
6. Even the unborn child(son/daughter) in the womb at the time of death or born subsequently to the death of intestate will acquire the property rights.

“Streedhan” is a concept related to Hindu female where she receives gifts at the time of her marriage from both sides of the family. Streedhan was considered the only absolute property of a widow and she was entitled to other ancestral property only as a life-estate with only a few powers of alienation. The concept of “limited estate” continued under the women’s property Act, 1937. Whereas Section 14 of the Hindu Succession Act removed the disability of the Hindu female to acquire and hold property as an absolute owner and the right of women in any estate already held by her on the date of commencement of the Act as a limited owner was converted to absolute owner. It clearly meant that even if the property was held by or inherited by the women as a limited owner before the act was enacted, limited estate can be enlarged into an absolute one and she can become the absolute owner.

A coparcenary refers to a legal institution constituting three generations of male heirs in the family. Every male member born within three generation will become the member of coparcenary. It also means that the share of any member of the coparcenary cannot be decided with certainty because the individual share might increase on the death of a male member whereas the share might decrease when a new male member is born. Clearly, females of the Hindu Family i.e., daughters or married daughters had no coparcenary right in the family as according to the Hindu Succession Act, 1956. Hence, Section 6 of the Act was amended as follows:

“6. Devolution of interest in coparcenary property. — (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in 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 a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener;”

The amendment has faced many challenges from the very beginning which is evident from the notable cases like *Pravat Chandra Pattnaik and Others v. Sarat Chandra Pattnaik and Another* where Court held that the Amendment was enacted to abolish the discrimination by giving equal rights to daughters of the family as sons in the Hindu Mitakshara property through Section 6 of the Act. Court also held that Section 6 will also give rights to daughters born before 2005 as coparcener as they are entitled to equal share as compared to the sons of the family. Similar issue was raised in the case of *Sugalabai v. Gundappa A. Maradi and Others* where it was held that as soon as the Amendment was brought into force, daughters of a coparcener will have equal property rights as the sons of the family as she has become a coparcener when she was born.

Section 14 (1) of the Hindu Succession Act states:” *Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*”

The term “property” includes both movable and immovable property acquired by a Hindu female by inheritance, in a partition, under maintenance, or a gift, or acquired by her own skill, or by purchase or any such property held by her as “Streedhan”. The proprietary rights of a women, earlier, depended on her marital status and also on the source and the type of the property. Women has no power of absolute alienation of the property. The Hindu Woman’s Right to Property Act, 1937 came with many shortcomings. Hence, Hindu Succession Act was enacted, and then particularly Section 14 to overcome the shortcomings of the prior acts. This granted the right to a Hindu woman where she can acquire, retain and dispose off the property on an equal footing as a Hindu male.

In the case of *Eramma v. Veerupana*, it was held that the words in section 14 “*as full owner thereof and not a limited owner*” clearly suggests that the limited ownership of a Hindu female has been changed to full ownership. Hence, she is entitled to the full ownership with all powers of disposition and to pass on her acquired property to her own heirs. In the case of *V. Tulasamma v. Seshi Reddi*, court adopted the most expansive interpretation of this section where it was mentioned that the changes are brought deliberately to uplift the economic and social position of a Hindu female.

III. CONCLUSION

The Hindu Succession Act brought a much-needed post-independent reform in the status of Hindu women in terms of property and coparcenary rights. The 2005 amendment has changed the overview of the act by giving equal property rights to Hindu daughters as similar to the

sons of a Hindu family. Section 14 of the Act has clearly given daughters the full ownership of their acquired property. There are no restrictions on her rights related to her property regarding disposing or selling her property. She has the power to hold and transmit property on her own choices. The section puts her in *aequali jura*, making her the absolute owner of the property.
