

RIGHTS OF HINDU WOMEN IN ANCESTRAL PROPERTY: A REVIEW OF SUCCESSION LAWS

*By: Ms. Isha Kalwant Singh
From: NMIMS, Kirit P. Mehta, School of Law, Mumbai*

ABSTRACT

India is primarily a patriarchal society. In earlier times, a Hindu woman had rights of a minimal nature in her family; she had no independent rights, she was dependent on the male counterparts of her family, and had no absolute right in the ancestral family property. The legislative saga on women's rights to ancestral property has witnessed turbulent twists and turns, and is often considered to be unsettled even today. Ushering remarkable amendments in the Hindu Succession Act, 1956, the Hindu Succession (Amendment) Act, 2005 has elevated the status of Hindu women in terms of inheritance; however, whether the law eliminates gender bias still remains unanswerable.

This paper attempts to analyse the right of Hindu women to inherit ancestral property, the extent and nature of the right, the legislative sojourn and judicial interpretation of the right and whether or not such right conferred under the Indian law brings women at a position of parity and equality with men.

Keywords: Ancestral property, *karta*, *stridhan*, discrimination, gender equality

INTRODUCTION

“Of all evils for which man has made himself responsible, none is so disregarding, so shocking, or so brutal as his abuse of the better half of humanity; the female sex.”

- Mahatma Gandhi

It has been found that women, who constitute nearly half of the world's population, work nearly two-thirds more as compared to men, but receive only one-tenth of the world's income and less than one-hundredth of the world's property.¹

For a very long time, women in India have not only ignored their right to property, but also believed that they are not entitled to hold property because of the convoluted laws of inheritance and customs. It was believed that women exercising rights ruin the offshoots of patriarchy.² Even after acquiring rights in ancestral property, it has been found that women often voluntarily deny their right, under the belief that property is a matter regarding men of the family,³ thus depicting the flawed

¹ Dr. Santosh Nandal, *Gender dimensions of the global crisis and their impact on poverty*, EXPERT GROUP MEETING ON POVERTY ON POVERTY ERADICATION, 4 (September 15-17, 2010),

<http://www.un.org/esa/socdev/social/meetings/egm10/documents/Nandal%20paper.pdf>

² Ishita Khare, *Tracing the process of structuring of a Hindu woman's right to Inheritance*, ILJ Vol. 8 Issue 1 Article 7,

<http://www.indialawjournal.org/archives/volume8/issue-1/article7.html>

³ Rachel Brulé and Hari K. Nagarajan, *Jus respicit aequitatem? Evidence from India on the Welfare Effects of Egalitarian Property Rights Reforms*, IDRC Canada (2011)



conception, which has developed as a result of centuries of male domination.

Over the years, the law has witnessed remarkable transformation in Hindu women's right to ancestral property, from women not having rights in their own natal ancestral property, to holding rights to property in two families after marriage. However, the laws of succession continue to be confounding, not presenting a coherent view on Hindu women's rights in ancestral property.

ANCIENT HINDU LAW

Females all over the globe have been believed to have an inferior status, which is reflected in the rights and privileges they have been conferred with since time immemorial. Before enactment of legislation on the right to inheritance and succession of Hindu women, such matters were governed by customary laws of the *Mitakshara* and *Dayabhaga* systems.

India's discriminatory property rights can be traced back to the *Vedic* texts.⁴ Under ancient Hindu law, women enjoyed a respectable social status, though they did not possess any proprietary rights.⁵ They could not even claim a share in the property till a male heir moved for partition of the same.⁶ The only property that women could possess was called *stridhani*, i.e. movable assets received at the time of marriage, such as

jewellery, clothes, utensils, etc.⁷ However, she was never the absolute owner of *stridhan*, as the teaching was that a wife, along with her property, is the possession of her husband.⁸

According to *Vijyaneshwara*, women were incompetent to celebrate sacrificial rights; hence, they were not entitled to participate in the devolution of property, but they were considered to be entitled to "food and raiment".⁹ However, *Yajnavalkya* admitted women to the order of succession.¹⁰ *Brihaspati* also states that similar to sons, since daughters are reproduced from a man's body, she ought to have the right to inherit her father's property while she lives.¹¹ However, the *Manusmriti* changed the status of women by declaring her as dependent, and incompetent to perform religious ceremonies; thus limiting her proprietary rights.¹²

Under the *Mitakshara* law, though women were included as heirs to separately owned property, they were not considered coparceners, unlike males, who acquired interest in the family property upon birth.¹³ Neither the wife,¹⁴ widow,¹⁵ or mother¹⁶ of a

⁴ MULLA SIR DINSHAH FARDUNJI, *PRINCIPLES OF HINDU LAW* 803 (17th ed. 2010)

⁵ R. Kumari, *Women's right to property under Hindu law: A Socio-Legal Study*, 1 (2013)

⁶ *SheoDyal v. Juddoonath*, (1868) 9 WR 61

⁷ D. Halder, K. Jaishankar, *Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India*, *JOURNAL OF LAW AND RELIGION* Vol. 24 No. 2 665 (2009)

⁸ *Id.*

⁹ *Atharva Veda* 10'85.7

¹⁰ *Mitakshara*, Chapter II

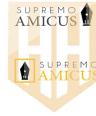
¹¹ *Brihaspati*, XXV. 56

¹² *Manusmriti*, IX, 217

¹³ Law Commission of India, *174th Report on Property Rights of Women: Proposed reforms under Hindu Law*, 2 2000

¹⁴ *PunnaBibi v. RadhaKissen*, (1904) ILR 31 Cal. 476

¹⁵ *Seetha Bai v. Narasimha*, (1945) ILR Mad. 568



man were regarded as coparceners. However, *Dayabagalaw* recognised the equal share of daughters in the father's property, enabling them to be coparceners as well as *Kartas*.¹⁷

Due to the multiplicity of diverse succession laws, women's right to ancestral property remained a complex question, and led to widespread discrimination against women.

MEDIEVAL PERIOD – DARKEST AGE

With invasion by the Muslim between the 11th to the 17th centuries, male dominance over succession rights of Hindu women became more prominent.¹⁸ *Stridhan* started losing its character of "women's property" and was regarded as a matrimonial gift.¹⁹

It is interesting to note that during this period, the concept of "women's estate" gained considerable importance, subject to the conditions that she could not alienate the property and that on her death, the property would devolve upon the heirs of her husband or father.²⁰ However, the main reason for devolving limited ownership of property upon women was to protect the property from being forcefully seized by Muslim rulers in case the full owner died intestate,²¹ thus reducing her position to that of a caretaker of the property.

¹⁶*Gangamma v. Kuppammal*, AIR 1939 Mad. 139

¹⁷*Supra* note 11

¹⁸ V.D. MAHAJAN, HISTORY OF MEDIEVAL INDIA (Chand ed. 2004)

¹⁹ Halder, Jaishankar, *supra* note 7, at 671

²⁰ Arvind Sharma, *Sati: Historical and Phenomenological Essays* (1988)

²¹ Halder, Jaishankar, *supra* note 7, at 672

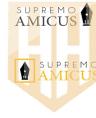
MODERN HINDU LAW – LEGISLATIVE EVOLUTION

The initial efforts made to impart property rights to Hindu women were obstructed by many who believed it was outrageous for women to avail a share in their ancestral property. Hence, the Indian Succession Act, 1865 and Married Women's Property Act, 1874, which recognised the right of women to property to an extent, did not extend to married women belonging to the Hindu, Muslim, Sikh and Jain communities.

However, the first step in furtherance of Hindu women's right to property was witnessed in the Hindu Law of Inheritance (Amendment) Act, 1929, which recognised the elevated status of nearer female relatives over distant male relatives with respect to separate property of Hindu males dying intestate. Subsequently, the Hindu Women's Right to Property Act, 1937 conferred widows with the right to inheritance of property, even if a man had male descendants. Pressure for such social reformation was instigated by a number of European and Indian social reformers such as Raja Ram Mohan Roy.

Concerned with the growing number of legislations, but the lack of one adequately recognizing the inheritance rights of women, the government appointed a Hindu Law Committee headed by B.N. Rau, which aimed to muster a uniform code of intestate succession for Hindu's.²² Though the Hindu Code Bill framed by the Committee introduced in the Legislative Assembly was initially opposed due to resistance from the orthodox sections of society, it eventually

²² Report of the Hindu Law Committee (1947)



led to the enforcement of the Hindu Succession Act, 1956, which was subsequently amended in 2005 to provide absolute proprietary rights to Hindu women.

CONSTITUTIONAL FRAMEWORK PROPAGATING GENDER EQUALITY

The validation for equal rights of men and women is found under the Constitution of India. Not only does the Constitution of India enshrine the principle of gender equality,²³ but it also empowers the State to adopt laws in favour of women²⁴ and obliges citizens to renounce practices derogatory to the dignity of women²⁵.

HINDU SUCCESSION ACT, 1956 – PRIOR TO 2005

The Hindu Succession Act (HSA), 1956, which resulted from the efforts of the B.N. Rau Committee, was welcomed with much praise and applause that dwindled shortly after enactment as the provisions were a mere facade in the name of gender equality. The Act came under much criticism for the continued gender inequality due to a number of provisions.

Firstly, Section 6 of the Act recognised the rule of devolution by survivorship, retaining the *Mitaksharacoparcenary* system, which constituted only males of a joint Hindu family, thus leading ancestral property to be governed by a completely patriarchal regime, wherein property devolved only through the male lineage. Though the

proviso to the Section provided that the interest of the deceased would devolve by testamentary or intestate succession if he was survived by a female relative classified as a Class I heir, the direct interest in the coparcenary of male members remained unaffected, as it only affected the interest held by them in the share of the deceased. The implication of Section 6 was the women could not inherit ancestral property as men, and got a share of the interest of the coparcener to whom she was a Class I heir only upon his death. The Madras High Court even held that a gift of immovable ancestral property made by the *karta* of a family in favour of his wife would be void.²⁶

Secondly, though female heirs had the right of residence in dwelling houses wholly occupied by their family, they could not claim partition of the dwelling house unless the male heirs opted to divide their respective shares.²⁷ Even if there was only one male heir of an intestate in a Hindu joint family, the female heirs could not claim partition of the dwelling house.²⁸

Thirdly, the right to residence in her paternal home was denied to women unless they were unmarried, widowed or separated from their husbands;²⁹ thus, bereaving them of shelter and protection during emergencies, such as incidents of spousal violence or temporary separations.

²³ Article 14, Constitution of India, 1950

²⁴ Article 15(3), Constitution of India, 1950

²⁵ Article 51A(e), Constitution of India, 1950

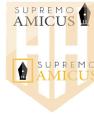
²⁶ *Kandammal v. KandishKhevar*, AIR 1997 NoC (Mad) 220

²⁷ Section 23, Hindu Succession Act, 1956

²⁸ *JanabaiAmmalGunabooshni v. TAS*

PalaniMudaliar, AIR 1981 Mad. 62

²⁹ *Proviso*, Section 23, Hindu Succession Act, 1956



Fourthly, the legislature gave *karta* unrestrained power to disinherit his female heirs by way of a will³⁰; thus, giving men a weapon to further deprive women of their rights.

REASONS FOR DENYING RIGHTS IN ANCESTRAL PROPERTY TO WOMEN

During the process of drafting the Hindu Succession Act in the 1950's, and even subsequently, the parliamentarians and the judiciary have provided a number of reasons for denying women rights in their ancestral property.

Firstly, it was contended that allowing women a share in their ancestral property would result in the introduction of strangers in the house, as it was a stereotypical notion that the families of men women got married into would “pounce” upon the property of their father-in-law, and since women were uneducated, they would not be able to seek an effective remedy for the same.³¹ It was believed that if women are allowed to have a share in ancestral property, it would result in new elements entering the family,³² thus disrupting the family set-up as the son-in-law would, by default, become a co-sharer in the family property.³³

The second argument in favour of denying women rights in ancestral property was that if daughters were granted the same rights as

sons, it would lead to uneasiness and tension in the country and “every family will be ruined by litigation”.³⁴ It was also believed that allowing women rights in ancestral property would shatter the bond between a brother and sister, thus leaving a woman helpless in situations where she would need to be protected by her family.³⁵ Hence, the parliamentarians believed that women should be deprived of their just claims in order to avoid displeasure to the men of the family.

Thirdly, the social phenomenon prevalent was that the son continues to live in the family home with his parents even after marriage, but the daughter leaves her father's house once married; hence, she is considered a temporary resident of her father's house.³⁶ However, this argument was futile in light of the fact that even the mother or widow of an intestate did not have a right in the ancestral property.

Fourthly, the ancestral home was believed to be an asset that should not be fragmented at the instance of women in order to preserve the memory of the parents.³⁷ The basis for this argument is itself flawed, as it follows on the presumption that the ancestral property would be destroyed if partition of the same is asked by women of the family, but it would still be preserved if sons ask for partition.

³⁰ Section 30, Hindu Succession Act, 1956

³¹ Shri Bogawat, Lok Sabha Debates, Part II 8211-8212 (1955)

³² Shri Lakshmayya, Lok Sabha Debates, Part II 8209 (1955)

³³ Shri Sadhan Gupta, Lok Sabha Debates, Part II 8139 (1955)

³⁴ Shri Thakur Das Bhargava, Lok Sabha Debates, Part II 8045 (1955)

³⁵ S.S Johl, Daughters at a disadvantage; Hindu Succession Act change doesn't help them, The Tribune, March 20, 2006

³⁶ Khare, *supra* note 2

³⁷ *Narasimhamoorthy v. Sushilabai*, AIR 1996 SC 1826



Another incoherent justification for denying women rights in their ancestral property was that if the brother was denied the use of his sister's share for no consideration, it would cause gross injustice to him.³⁸ However, the researcher respectfully submits the opinion that the Honourable Supreme Court, in the case of *Narsimhamoorthy v. Sushilaba* failed to take cognizance of the fact that what was being advocated was a share of the sister in her ancestral property, and not that the brother's share should also devolve upon the sister.

Some Courts have even drawn the conclusion that if women were entitled to a share in their ancestral property, on partition of the same, she would be encouraged to desert her husband and live separately from her husband.³⁹

The researcher would like to highlight the grave observation that from the period of drafting of the Hindu Succession Act till the late 1990's, not only ordinary citizens, but even the Courts held a negative opinion on the right of women to their ancestral property, depicting the high degree of gender discrimination prevalent before the 21st century..

STATE AMENDMENTS

Due to the apparent gender-biasness, in order to expedite gender equality, a number of States, such as Andhra Pradesh⁴⁰,

Karnataka,⁴¹ Tamil Nadu⁴² and Maharashtra⁴³ amended Section 6 of the HSA by including daughters as coparceners by birth in a joint Hindu family. However, even these amendments extended the right of coparcenary only to unmarried daughters, and daughters married prior to the amendment were explicitly excluded from the application of the amendment, thus leading to an unfair distinction.

Prior to the amendment, the State of Kerala completely abolished the joint Hindu family system,⁴⁴ and provided that members of a *Mitakshara* coparcenary would hold property as tenants-in-common of the joint family property and become full owners of their respective shares.

HINDU SUCCESSION (AMENDMENT) ACT, 2005

As the State amendments improved the position of law on the right of Hindu women to ancestral property, a need was felt to amend the Central legislation to bring it in line. The Law Commission of India initiated a *suomotu* study on Sections 6 and 23 of the HSA and submitted its Report⁴⁵ to the Government of India in May, 2000, providing recommendations in the form of the Hindu Succession (Amendment) Bill, 2000, which came into force on September 9, 2005. The Amendment has modified and

³⁸*Id.*

³⁹*Kalamma v. Veeramma*, AIR 1992 Kant. 362

⁴⁰ Hindu Succession (Andhra Pradesh Amendment) Act, 1986

⁴¹ Hindu Succession (Karnataka Amendment) Act, 1994

⁴² Hindu Succession (Tamil Nadu Amendment) Act, 1990

⁴³ Hindu Succession (Maharashtra Amendment) Act, 1986

⁴⁴ Kerala Joint Family System (Abolition) Act, 1975

⁴⁵ Law Commission of India, *supra* note 10



introduced a number of provisions that are conducive to promote the rights of women in ancestral property.

Daughters made coparceners:

A daughter was made a coparcener by birth, given the same rights and liabilities as a son.⁴⁶ It also empowered women to become *Karta* of Joint Hindu families. Thus, the amendment does not change the position of the son in the coparcenary, but makes an addition of daughters to have rights in the ancestral property.⁴⁷ The Courts have also clarified that though the Amendment has prospective effect, the Act in no way indicates that the rights in coparcenary property will be available only to daughters born on or after the commencement of the amendment; it would be available to all daughters, born before or after the commencement of the Act, from the date of commencement.⁴⁸

Incidents of coparcenary:

A woman was made capable of holding property with all incidents of ownership and disposition.⁴⁹

Survivorship:

The doctrine of succession replaced the doctrine of survivorship.⁵⁰ In the event of

partition of the property, the daughter would be allotted a share equal to the son, so would her children and grandchildren.

Pious obligations:

Under ancient Hindu law, the son was under a religious mandate to pay the debts contracted by his father, which has been discontinued post the amendment in 2005⁵¹. Along with the sons, daughters are also liable for the debts of the joint family.

Deletion of Section 23:

Section 23 has been deleted, thus empowering women to ask for partition in their ancestral property as well as reside in the same, irrespective of the marital status.

Right to make testamentary dispositions:

Since daughters came to be regarded as members of the coparcenary by birth, it gave them the right to absolute testamentary dispositions under Section 30.

EFFECT OF HINDU SUCCESSION (AMENDMENT) ACT, 2005 ON STATE AMENDMENTS

The preliminary steps towards securing rights of women in ancestral property were taken by certain States, which eventually resulted in the introduction of similar amendments in the Central law. However, there were certain contradictions in the Central law and State laws. Firstly, the States had introduced only unmarried

⁴⁶ Section 6(1), Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005

⁴⁷ *Pravat Chandra Pattnaik v. Sarat Chandra Pattnaik*, AIR 2008 Ori. 133

⁴⁸ *Sugalabai v. Gundappa A. Maradi & Ors.*, 2008 (2) Kar. LJ 406

⁴⁹ Section 6(2), Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005

⁵⁰ Section 6(3), Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005

⁵¹ Section 6(4), Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005



daughters as coparceners, while as per the amendment in 2005, all daughters were made coparceners irrespective of their marital status. However, since State law is inoperative to the extent it is inconsistent with the Central law,⁵² all daughters, irrespective of marital status, would be coparceners in the States as well. The Karnataka High Court⁵³ has held that a distinction between son and daughter on the ground of marital status would violate Article 14 of the Constitution of India.

Secondly, the amendment in 2005 provided that a daughter could not challenge alienation or partition of property effected before December 20, 2004; however, under the State Amendments, an unmarried daughter could challenge alienations effected after the State Amendments came into force, which was before the Central Amendment. Thus, the effect was that while a woman did have the power to question partition effected post the State Amendments, this right was expressly taken away by the Central Amendment. In such cases if the Central Amendment prevailed over the State Amendment, the consequences would be contrary to the objective of the Central Amendment. Hence, the Karnataka High Court held that depriving a woman of her right to challenge alienations prior to December 20, 2004 as inoperative and *ultra vires* the constitutional principle of gender equality.⁵⁴ The Karnataka High Court also held that daughters would be entitled to equal share even if the father died prior to

September 9, 2005;⁵⁵ however, the Supreme Court of India has reversed the judgments and held that the Act applies only prospectively, and only those daughters can avail the rights in ancestral property whose fathers were alive on and after September 9, 2005⁵⁶.

ANALYSIS OF EXISTING LEGAL FRAMEWORK

The HSA Amendment Act is considered a landmark legislation for promoting the rights of women. It has postulated all new spheres of rights of women, making an attempt to bring them at parity with men. The ancient tradition of devolving the entire property of an intestate only on male heirs finally came to an end. The effect of the amendment is two folds; firstly, women became active members of coparcenary property and now have the right of partition of ancestral dwelling house, and secondly, women became entitled to absolute enjoyment of property inherited by her parents as well as her in-laws.

However, the researcher is of the opinion that even after the enforcement of the Act, neither has discrimination against women in matters of succession been fully wiped out, nor has the law promoted gender equality in the true sense. The law consists of a number of lacunae, which makes it difficult to achieve gender equality.

Discrimination between female family members:

⁵² Article 254(1), Constitution of India, 1950

⁵³ *Pushpalatha N. V. v. V. Padma*, AIR 2010 Karn. 124

⁵⁴ *R. Kantha v. Union of India*, AIR 2010 Karn. 27

⁵⁵ *Phulavati v. Prakash*, AIR 2011 Kar. 78

⁵⁶ *Prakash v. Phulavati*, (2016) 2 SCC 36



The law creates a difference between the rights of different female members. Though daughters have been included as coparceners, mothers and widows are still not admitted as the same. Unequal primacy has been assigned to different female members, thus not truly consistent with Article 14 of the Constitution. Furthermore, it makes a distinction between married and unmarried daughters by stating “on and from the commencement of the Hindu Succession (Amendment) Act, 2005”, implying that the benefits of the provision would be given to only those daughters married after the commencement of the law.

The Bombay High Court,⁵⁷ followed by the Supreme Court of India⁵⁸, have also held that the amended Section would not have retrospective effect; the father would have to be alive on September 9, 2005 if the daughter is willing to become a co-sharer in ancestral property along with male siblings. This ruling clearly discriminates against women, as it adds another disqualification for women regarding their right of inheritance; in addition to not having a right in ancestral property alienated or partitioned before December 20, 2004, it makes it imperative for the father to be alive when the amendment came into force.

Discrimination against men:

The law discriminates against the position of the father, as he is placed in the category of Class II heirs; however, a mother is considered a Class I heir.⁵⁹ This is not an

equitable provision as there is no legal basis for giving priority to one parent over the other when both have equally contributed to the upbringing of the child, and subsequently, both would equally need support, security and protection by the child.

Furthermore, a woman not only gets a share in the property of the family in which she is born, but she also gets a share in the property of the family into which she is married.⁶⁰ However, the Schedule of heirs does not include the husbands of pre-deceased daughters or other men who become members of a family by virtue of marriage with daughters of a family. This provision has triggered discrimination against men, as they are not entitled to a share in their wife’s ancestral property, which is a form of gender discrimination not envisaged under the constitutional principles of gender equality.

Discrimination in devolution of property of issueless widow:

The law has created an unfair shift in favour of males as when a childless Hindu widow dies intestate, her husband’s heirs alone inherit her estate.⁶¹ In the absence of heirs of her husband, the property would first devolve on the heirs of her father⁶², and in their absence, on the heirs of her mother,⁶³ thus depicting bias even between parents based on their gender.

Severance from joint family:

⁵⁷*Badrinarayan Shankar Bhandari &Ors. v.*

Omprakash Shankar Bhandari, AIR 2014 Bom. 151

⁵⁸*Prakash v. Phulavati*, (2016) 2 SCC 36

⁵⁹ Section 8, Hindu Succession Act, 1956

⁶⁰*Id.*

⁶¹ Section 15(1)(b), Hindu Succession Act, 1956

⁶² Section 15(1)(d), Hindu Succession Act, 1956

⁶³ Section 15(1)(e), Hindu Succession Act, 1956



Lastly, under the Special Marriage Act, where a Hindu belonging to an undivided joint family marries under the Act, it leads to his severance from the joint family,⁶⁴ thus, imposing a statutory sanction from inheriting ancestral wealth on a Hindu who resorts to civil marriage, which is an option available to those who wish to avoid religious rituals or marrying outside their community without converting the spouse.

ANALYSIS OF IMPLEMENTATION OF THE LAW

Though the amendment to the HSA has attempted to provide equal rights to daughters in their ancestral property as the male counterparts, the Act has failed to fully wipe out gender discrimination due to the sociological and historical reasons.

Resistance against the law:

Many Hindu families where women were severely discriminated against are likely to resist the application of the new law.

Status of daughters:

Though women do have rights in ancestral property under the current law, even today, the practice largely followed is to give daughters gifts in marriage and absolve her of any future rights; however, seldom are these gifts equivalent to the value of inheritance.

Child marriage:

Though laws prevent child marriage, such acts are still widely prevalent in India. The Census conducted in 2011 found that 31.3% Hindu women were married before they

attained 18 years of age.⁶⁵ The same Census found that 10.9% Sikh women, 27.8% Buddhist women and 16.2% Jain women were married before the age of 18. Usually, once a girl is married as a child, she never returns to her paternal family to ask for her share in the ancestral property, nor would her family entertain such demands.

Lack of awareness:

Unlike in cases of other laws enforcing rights, such as the Right to Information Act, 2005, the government has not made any noticeable attempt to spread awareness about the change in property rights, nor have civil society groups been vigilant in monitoring the enforcement of the law.

Dowry harassment:

The HSA gives daughters a right in their ancestral property; however, this has increased the scope of dowry harassment. In-laws often force women to sell their share of ancestral property and render the same to them in the form of dowry. Between 2012-2015, 24,771 cases of dowry death were reported in India.⁶⁶

CONCLUSION

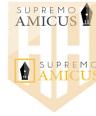
"I raise up my voice, not so I can shout, but so that those without a voice can be heard, we cannot succeed when half of us are held back"

- Malala Yousufzai

⁶⁴ Section 18, Special Marriage Act, 1954

⁶⁵Sagnik Chowdhury, *30% women married under age 18*, THE INDIAN EXPRESS, May 31, 2016

⁶⁶24,771 dowry deaths reported in the last 3 years: Govt., THE INDIAN EXPRESS, July 31, 2015



The aim of every society is to eradicate biasness against any of its segments. The duty of a rational and ideal State is to establish an environment of equal rights to all its citizens. The position of women in comparison to men assumes great importance where the questions of rights arise in family property. Though it has often been argued that the roots of gender gap lie in societal norms and beliefs, the government cannot evade its responsibility of creating a balanced paradigm for parity-based existence of males and females in the society.

It is undisputable that laws have to be amended at regular intervals to respond to the needs of dynamic social systems. The HSA Amendment of 2005 has definitely proven to be a progressive legislation, bestowing upon women, the title of coparcener, giving them rights in ancestral property, and providing them with shelter in their ancestral homes. What is even more commendable about the Act is that it has preserved the values of coparcenary established under the *Mitakshara* School, while at the same time, it rectifies gender discrimination to eliminate unconstitutional principles, thus, tending to the religious sentiments of the people while progressively developing a neutral law.

However, the existing legal framework and its interpretation are not devoid of anomalies. From discriminating against married daughters, mothers and widows, to extending the right only to those women whose fathers died after 2005, to providing dual inheritance to women as compared to men, the amendment has failed to cure

gender discrimination prevalent in the society.

Furthermore, new legislation would be ineffective unless properly implemented. Lack of creating awareness, stereotyping women as a burden on their parents, child marriage, dowry, etc. are all sociological factors which hinder the smooth implementation of law and enforcement of rights.

RECOMMENDATIONS

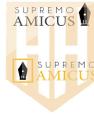
In the opinion of the researcher, further steps need to be taken at a legislative as well as societal level in order to ensure gender equality. Though the prevalent practices in society, in general, are not in favour of women, the law needs be amended and implemented, not only for enforcement of rights of women, but also for the rights of men.

Amendment to remove discrimination against classes of female family members:

Firstly, Section 6 of the HSA ought to be amended to include all classes of women as coparceners, irrespective of whether they are mothers, widows or daughters. All women of a Hindu family should be made coparceners, irrespective of whether they are daughters who married before or after 2005 and irrespective of whether their father died before or after 2005.

Amendment to remove discrimination against male family members:

In the opinion of the researcher, the current law discriminates against fathers and widowers. Hence, the Schedule of Class I heirs should be amended to include fathers



and husbands of pre-deceased daughters as Class I heirs under Section 8.

Devolution of property of childless widow:

When a childless Hindu widow dies intestate, it would only be fair if her property would devolve equally upon the heirs of her husband and her parents, without even making any distinction between the heirs of her mother and father.

Amendment of Section 19 of Special Marriage Act:

Section 19 of the Special Marriage Act should be amended to the effect that Hindu's marrying under the Act should not be severed from their undivided joint family, as in the opinion of the researcher, where the constitutional principles propagate secularism, the law ought not to discriminate against persons who choose to resort to civil marriages or marriages outside their community.

Awareness about women's rights and implementation:

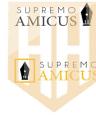
It is incumbent upon the appropriate authorities to create awareness on property rights of women, from big cities to smaller towns and villages. Furthermore, we need efficient moral policing to strengthen the human rights situation for women. In cases of alienation of property, transfer of property rights, etc. the appropriate authorities should establish a mechanism to verify the number of relevant heirs of the property, ensure each one of them is aware of their rights, and has given consent to transfers only in the state of awareness of laws.

Steps for prohibition of dowry:

The HSA should include a separate provision for the prevention of dowry harassment, categorically stating that property in the nature of *stridhanis* solely the woman's property and any kind of capture or attempt to capture such property by any person would be entailed with penal consequences.

REFERENCES

- Dr. Santosh Nandal, *Gender dimensions of the global crisis and their impact on poverty*, EXPERT GROUP MEETING ON POVERTY ON POVERTY ERADICATION, (September 15-17, 2010), <http://www.un.org/esa/socdev/social/meetings/egm10/documents/Nandal%20paper.pdf>
- Ishita Khare, *Tracing the process of structuring of a Hindu woman's right to Inheritance*, ILJ Vol. 8 Issue 1 Article 7, <http://www.indialawjournal.org/archives/volume8/issue-1/article7.html>
- Rachel Brulé and Hari K. Nagarajan, *Jus respicitaequitatem? Evidence from India on the Welfare Effects of Egalitarian Property Rights Reforms*, IDRC Canada (2011)
- Mulla Sir Dinshah Fardunji, *Principles of Hindu Law* (17th Ed. 2010)
- R. Kumari, *Women's right to property under Hindu law: A Socio-Legal Study* (2013)
- D. Halder, K. Jaishankar, *Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India*, JOURNAL OF LAW AND RELIGION Vol. 24 No. 2 (2009)



-
- V.D. Mahajan, History of Medieval India (Chand ed.2004)
 - Arvind Sharma, *Sati: Historical and Phenomenological Essays* (1988)
 - S.S Johl, Daughters at a disadvantage; Hindu Succession Act change doesn't help them, The Tribune, March 20, 2006
 - Sagnik Chowdhury, *30% women married under age 18*, The Indian Express, May 31, 2016
 - *24,771 dowry deaths reported in the last 3 years: Govt.*, The Indian Express, July 31, 2015

