



**PROPERTY RIGHTS OF WOMEN
UNDER HINDU LAW: FROM VEDAS
TO HINDU SUCCESSION
(AMENDMENT) ACT 2005**

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ABSTRACT

Property rights refer to the theoretical and legal ownership of specific property by individuals and the ability to determine how much property is used. In many countries, individuals generally exercise private property rights-the rights of private persons to accumulate, hold, delegate, rent or sell their property. Inheritance is the practice of passing on property, titles, debts, rights and obligations upon the death of an individual. The rules of inheritance difference between societies and have changed over time. The property rights have differed as states above on several factors, religions, ideologies, customs, beliefs, traditions.

The Hindu traditional law also has certain structured and defined property rights and rights of inheritance that has been explained in detail through various Vedas, Smritis, Commentaries, Digests, Customs. The degree of gender equality followed by Vedic societies was high in all spheres of life especially in imparting education. The Shrutis, frequently referred to as the Vedas, contain significant number of phrases that emphasize on the importance of respecting and treating women appropriately. However, this situation did not persist, as more and more thinkers and sages interpreted the Vedas the status of women and their property rights as well gradually differed from that of the Vedas. Analyzing the

Dharma Shastras, reveal that daughters who had brothers did not inherit property that is they were completely excluded from inheriting any share in their paternal property. Further emerged the concept of Stridhana and parental obligations to give Stridhana.

As years passed there was statutory interventions into the realm of property rights and inheritance rights. The property rights of women have been reformed and enhanced under several statutes during the 19th century. Such statutory reformations included the Married Women's Property Act 1872, Hindu Law of Inheritance Act 1929, Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005. These laws were all enacted to structure inheritance laws and to reduce biases and inequality to a great extent. The concluding portion of the research deals with the effectiveness of the statutory reformations in terms of women's wealth. It includes the status of women's access to capital in the country. Further provides recommendation to improve the strength of women's property rights.

KEYWORDS

Capital, Hindu Succession Act 2005, Inheritance, Property rights, Statutory reformations, Traditional Hindu Law.

Historical Analysis of status of women and their property rights

Vedic age is dated back to the time almost 8000-10000 years ago. In the early Vedic age, women enjoyed equal rights and privileges in the society. The degree of gender equality followed by Vedic societies was high in all spheres of life especially in



imparting education. The Shrutis, frequently referred to as the Vedas, contain significant number of phrases that emphasize on the importance of respecting and treating women appropriately. For instance, in Rigveda there are several hymns which preach the importance of begetting heroic sons while birth of a girl child is never considered inauspicious, celebrations and rituals were conducted in the same way for a girl child as well. Twin daughters have been compared to heaven and earth in the Veda. During this age studies usually began after a thread ceremony known as the “Upnayana Samskara”. Several women also underwent the “Upnayana Samskara” indicating the importance given to education girl children equally. The status of women was that of reverence and privileges and never one of subjugation or inferiority. A man was considered incomplete without his wife. Wife was given the status of “Ardhanagini”. A man was not allowed to perform rituals without his wife for he was not considered complete without her. Coming to the property rights of women, Rigveda speaks about individual proprietorship, sons divide the father’s property after his death. The right of unmarried daughters living in the father’s house at the time of his death is also recognized. Inheritance rights are hence explicitly given to unmarried daughters and married daughters who do not have brothers.¹ Daughters were allowed to perform the last rites of her father if she had no brothers which substantiate the reason for her right to inheritance.

Analyzing the Dharmashastras, reveal that daughters who had brothers did not inherit

property that is they were completely excluded from inheriting any share in their paternal property.² Further husband and wife are considered joint owners of the house and associated property. This status which was conferred on the wife helped her secure minor rights which included enjoying the wealth along with the husband and claiming proper maintenance. However there was no absolute equality with the husband in the ownership in the property which effectively made a woman devoid of any property rights. Interestingly there was another prominent concept which held strong foot in Vedic times that is the concept of Stridhan. Rigvedic society considered the following things to be included in Stridhan: Gifts from parents and brothers, Gifts before nuptial fire, Gifts in the bridal procession, Earning by mechanical arts. To this list there has been references to share that a daughter growing old in her father’s home is entitled to and also a widow’s share in the husband’s property in certain situations. The above mentioned gifts would become part of the women’s property over which she would have absolute control and dominion even after marriage. In the Vedic age the concept of Stridhan was followed in its strict sense, where the women held the property independently and effectively. The women also had a rights to alienate a property and use it for her benefits or for her wants. As a general rule widows were not allowed to inherit any property from her husband’s estate³ but a childless widow was entitled to succeed her husband’s property⁴. Here it is to be noted that during the vedic age there

²Dr Lila Samantani ,*Status of women in vedic times* (August 12, 2018, 8:30am)

³Baudhyayanadharmashastra II 2.3.46

⁴Apastambadharmashastra II 6.14.2-3

¹ Rigveda 11 , 17 , 7



was a custom known as “niyoga” which was very common. Niyoga means appointment of a wife or widow to procreate a son on an appointed male preferably her younger brother in law or any sapinda relation. Effectively there were very few widows without children. As law evolved there arose the concept of private property and significance of property rights which gradually became institutionalized, women gradually lost her status. Woman’s physical weakness and incompetency to perform rituals were cited as reasons to assign her an inferior status. This was particularly true in the case of Baudhyayana the reputed founder of one of the schools of Yajurveda he excluded a Hindu woman from inheriting any property. He based his arguments for this stance on the authority of Sruti which says “women are considered to be destitute of power and strength” and further stated that Vedas hence declared that there is no inheritance to women. Such interpretation which places women in a completely inferior pedestal as compared to their men did lead to contrary thoughts by several scholars. Prof. Max Muller⁵ has completely discarded this interpretation of the Sruti text. In the middle ages, widow, mother and daughter were involved in the list of heirs thus improving her status with regard to property inheritance however this addition was done to the end of a long list which contained kin and strangers like spiritual master, teacher, pupil or a priest. There was another interesting view about women’s inheritance to property.⁶ It was suggested that a woman was entitled to inheritance so long as she is chaste. She did not have full authority over the property, she could spend

it only with the permission of her son and in his absence the King. If she had an unchaste life she was entitled to maintenance only. Another writer stated that a woman who led an unchaste life must be deprived of all her rights, left to remain dirty, despised and sleep over dirty floor.⁷ If a widow according to customs and subject to the restriction inherits any property did not become absolutely the owner of the property but only took what was called the “widow’s estate” in the property.

Further the schools of Hindu law emerged of the era of commentaries and digests. The two main schools of Hindu law are: Mitakshara and Dayabhaga or Bengal school. The two men whose interpretation have delimitated the practice as regards the inheritance and right to property of different members of the joint Hindu family were Vijnaneshwar from Andhra Pradesh and Jeemuthavahana from Bengal. Vijnaneshwar wrote a commentary on the Yajnavalkya smriti. This commentary was called Mitakshara meaning “measured words”. Jeemuthavahana wrote on inheritance only. His book Dayabhaga (“division of inherited property”) has been an authority in Bengal and Bihar.

In Mitakshara school, Vijnaneswara held that there were two kinds of property that a man could hold. Firstly, a man could give away to whom he willed his self-earned property while in the case of ancestral property the principle of *janmasvatvavada* which means “principle of ownership by birth” would be applicable. The doctrine son’s right by birth in the joint family property was a unique contribution to Hindu

⁵ Sacred books of the east, Volume 14(1882)

⁶ Katyayana quoted in Mitakshara, Chap II S II,2

⁷ Yajnavalkya 1,70



jurisprudence by this school. Under Dayabhaga school Jeemuthavahana propounded the concept of *uparamasvatvavada*. Uparama means death, svatva means ownership and vada means principle. The whole expression hence means “the principle of ownership by death”. It means right to ancestral property accrue only after the death of the person in whose possession the property was. So as long as the father lives he has complete autonomy and control over the property and it cannot be partitioned however this is not the scenario under the principle of *janmasvatvavada*. In respect to the law of succession, the Mitakshara school based its law of inheritance on the principle of propinquity (nearness of blood relation or community of blood) while the Dayabhaga school based its law of succession on the principle of consanguinity. The Mitakshara school however did not give full effect to the principle it propounded and limited its application subject to two rules: 1. exclusion of female from inheritance and 2. preference of agnates over cognates. Vijnaneswara used the age old word *sapindya* and gave it a novel meaning or interpretation, *sapinda* were those who shared common body particles. On this principle the rights of son, grandson was established as immediate successors to the property. Jeemuthavahana said that the property of a dead person would go to the one who brought greatest spiritual benefit when he was offered *pinda* on certain days by the Hindu ritual *Shraddha*. Those who had a right to offer *pinda* had a right to inherit property as well. A *shraddha* could be performed by a widow for here husband and daughter could offer *pinda* if her father had no sons. Hence the rights of a widow and daughter were

established through the principle of *pinda* offering by Jeemuthavahana. Dayabhaga followed Katyayana and declared that the property obtained by a woman by mechanical arts and gifts received from strangers were not disposable by her without her husband’s permission or consent. Mitakshara however did not say anything expressly on this point. The sub schools of Mitakshara, the Bombay and Banaras schools though admitted such property as *Stridhana* but did not assign her absolute power over such property. The commentaries such as *Viramitrodaya* and *Mayukha* enumerated that a woman was incompetent to dispose off her property however she could have the power to do so only with a certain category of *Stridhan* known as *Saudayaka* and the gifts received from strangers and her separate property cannot be alienated by her without the consent of her husband. Both the commentators relied on *Manusmriti* to propound this principle of property right of woman. *Mithila*⁸ sub school on the other hand did not make any distinction in *Stridhan* and held that no property can be under the absolute control of a woman. *Madras* school conferred absolute dominion of women over *Saudayaka Stridhan* and the husband’s gift of immovable property⁹. Such absolute control was however not absolute in the real sense, for validating any act of alienation of such property, husband’s consent was necessary and further in a time of distress it was open to husband to have recourse. This right was restricted to her husband and could not be availed by others even if they are the creditors of her husband.

⁸ BABOO PROSONNO COMMAR, *VIVIDA CHINTAMANI* 256-63

⁹ *Smriti Chandrika* Chap 9 sec II,12



Neither husband nor any other person is authorized to misappropriate the property of a woman's Stridhana. The non Saudayaka Stridhana was always subject to the husband's control. The husband was entitled to use it at his pleasure even at times of absence of any distress. This rule did not apply when the spouses were not living together and the husband has not control over the wife. During widowhood a Hindu female was given absolute power of disposal over every kind of Stridhana whether acquired before or after husband's death. With regard to a daughter's right in the property of her father, Mitakshara made no restriction on it. Daughter had an independent individual character and her right in no way was linked to her son, possible or actual.

Moving on to analyze women's property rights from a different perspective, let's examine the concept as established under the Arthashastra. Kautilya's Arthashastra is an excellent treatise on statecraft, economic policy and military strategy. It is said to have been written by Kautilya, also known by the name Chanakya or Vishnugupta, the prime minister of India's first great emperor, Chandragupta Maurya. In Arthashastra, Kautilya mixes the harsh pragmatism for which he is famed with compassion for the poor, for slaves, and for women. He reveals the imagination of a romancer in imagining all manner of scenarios which can hardly have been commonplace in real life. Hindu sociology had to be protected from demagogues who have no regard for reason and from ideologues who twist facts to justify their distorted notions and mischievous objectives. By insisting on authorization by parents especially by

fathers, Arthashastra tried to protect the interest of girls lest they should be kept as only concubines or treated as slaves by their husbands. All agreements are economic contracts. Marriage too is an economic contract. The father of the bride had to adorn her with ornaments. These belonged to her exclusively and were later declared to be inherited only by her daughters. Stridhan thus constituted to be a permanent asset inheritable only by her daughters while what was gifted to her or inherited by her husband became his property and was inheritable only by his sons and by his kinsmen. Even if some immovable property was given to the bride it was treated as Stridhan. Laws protected Stridhan against misappropriation.

Statutory Reformations

The property rights of women have been reformed and enhanced under several statutes during the 19th century. Married Women's property Act 1872 was one of the foremost acts to recognize and give effect to the strong concept of Stridhan. The Act included the following in the list of properties in Stridhan:¹⁰ 1. Wages, earnings got as a result of occupation, employment or trade. 2. Savings from investment made using the above-mentioned earnings. 3. Cash acquired through literary, artistic and scientific skill. 4. Insurance policy effected by her for herself. This Act was instrumental in increasing the width of property types that fell under the concept of "Stridhan".

The Hindu Law of Inheritance (Amendment) Act, 1929 extended to whole of India except the then Part B states. Part B was formed by

¹⁰ Department of sociology, University of Jammu, *Property Acts of Hindu women*



the princely states or groups of princely states governed by Rajpramukh. The Act altered the order of intestate succession under Mitakshara law with a view to prefer certain near cognates to distant agnates in the matter of succession to the property of Hindu male who dies without leaving any male issue. It laid down that a son's daughter, daughter's daughter, sister and sister's son shall in that order be entitled to rank in the order of succession next after paternal grandfather and before paternal uncle. This was an obvious half hearted attempt. It omitted several near relations like son's daughter's son. Next came the Hindu women's right to property Act 1937. It was one of the most important enactments to give better rights to women in respect to property. The Act also extended to whole of India except Part B states and was applicable to a Hindu dying intestate notwithstanding any rule of Hindu law or custom to the contrary. According to its provisions a widow was entitled to the same share which a son received in the case of the property in respect of which he died intestate. The Act made mitakshara widow succeed to coparcenary interest of her husband in the partable of the joint family and along with the male issue in all cases. As for the self acquired property, the wife, daughter and the mother were usually recognised as heirs. In respect of separate property of a Mitakshara Hindu and in respect of all properties of a Dayabhaga Hindu, the Act introduced three widows which are intestate's own widow, his son's widow and his son's son's widow as heirs along with the son, grandson and great grandson. The widow took an equal share of a son. This Act conferred better rights on the above mentioned widows in the devolution

of property of the deceased dying intestate as well as in the joint family property in which the deceased had an interest at the time of his death. Hence new rights of inheritance had been conferred on women through the 1937 which could not be challenged by virtue of any prevailing Hindu law or custom.

The further move to reform property rights was the Hindu code of 1948. It was introduced in the constituent assembly on 9 April 1948 and its main provisions regarding women's right to property and inheritance consisted of the following changes:

1. Adapted Dayabhaga rule of coparcenary which conferred absolute ownership rights to heir male or female.
2. Succession was based on blood relation and not cognatic or agnatic relationship.
3. Widow of deceased, daughter, son's widow were given same rank as a son in matters of inheritance.
4. A large number of female heirs was introduced compared to the existing Mitakshara or Dayabhaga schools.
5. Abolition of all conditionalities in the inheritance of female heirs in practice earlier such as their marital or economic status. They were to inherit by the virtue of being heirs.

The major move after Independence to overhaul existing practices and to structure the Hindu laws regarding inheritance and succession was the enactment of the Hindu Succession Act, 1956¹¹. Different schools of Hindu law laid down different ordered of

¹¹ Prakash Chand Jain, *Women's property rights under traditional Hindu law and Hindu succession Act*



succession with regard to the Hindu woman's position. The Act was enacted to provide a just and proper solution to these and other problems. It did not merely codify the existing law of succession but in reformatory spirit made fundamental changes. The Act is famously referred to as Hindu female's magna carta of property rights. It removes the distinction between Mitakshara and Dayabhaga rules of inheritance and lays down a uniform, comprehensive system of inheritance which applies to all those governed by Mitakshara and Dayabhaga in addition to those parts in southern India that followed Marumakkattayam, Aliyasantana and Nambudri system. It further removes the divergent categories of Stridhana and rules relating to succession. It abolishes the fundamental principle that female takes only a limited estate and provides that whatever property is inherited by a woman whether it be from male or female, from now she will be the absolute owner over such property. The Act removes the distinction between son and daughter in the matter of their right to inheritance the property. Widow is entitled to succeed not only to intestate's separate property but also his interest in the coparcenary property. Since the widow has been conferred with absolute power to own such property her rights will not vanish after her remarriage, adopting a son will also not disqualify her from her right to such property. Further conversion of a Hindu female to another religion during the lifetime of the deceased is not recognized as a disqualification for inheritance.

Hence it can be concluded that Hindu Succession Act has made vast changes in the previous law and it is also clear that it has to

some extent satisfied the zeal to emancipate the Hindu woman and to some extent realized the guarantee of equality as enshrined in the Constitution. The Act has in effect given a deathblow to the whole concept of joint family property of the Mitakshara school which was widely followed in a majority of the states throughout the nation.

The latest reform that took place in the arena of Hindu women's property rights is the Hindu Succession (Amendment) Act 2005. Section 6 of the principal Act which deals with the interest of female coparcener and rule of survivorship is recasted and modified. From the commencement of the Hindu Succession (Amendment) Act 2005 with reference to the joint family governed by Mitakshara Law, the daughter becomes coparcener by birth and has all rights in the same manner as the son. She has the same rights and liabilities in the said coparcener property as that of the son. Now, reference to a Mitakshara coparcener will be deemed to include reference to a daughter of a coparcener. However this section will not affect any disposition or alienation including any partition or testamentary disposition of property that took place before 20th December 2004. The incidence of coparcenership shall automatically follow. It was also provided that after the commencement of the amendment, If a Hindu dies having interest in the joint family property governed by Mitakshara Law. It shall devolve by testamentary or intestate succession under this Act and not by survivorship or coparcenary property shall be deemed to have been divided as if the partition had been taken place and the daughter is allotted the same share as



allotted to a son. The share of predeceased son or 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 such predeceased daughter. Thus, complete justice is sought to be extended in so far as daughter is concerned as heir. Further agricultural land was kept out of the purview of the provisions of the principal act under Section 4(2)¹², this provision was however repealed by the Amendment Act.

The Amendment Act was subjected to judicial interpretation several times since its enactment. Recent clarifications that were given by the Supreme court with respect to right of daughters will inevitably include the judgement of Prakash vs Phulavati¹³. The judgement in effect stated that the law which gave equal rights to daughter in ancestral property under the Hindu Succession Act is prospectively enforceable and not retrospectively. The Apex court held that the rights under Hindu Succession Act 2005 are applicable to living daughters of living coparceners as on September 9, 2005 irrespective of whether such daughter were born or not. 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 Hindu Succession (Amendment) Act 2005”. The court said “In the view of plain language of the statute there is no scope of a different interpretation than the one suggested by the text of the amendment”.

Further there was a debate on if women born before the enactment of the principal act is

entitled to get the rights under the Act or not. This issue was settled by the Apex court in the case of Danamma vs Amar¹⁴. The Supreme court held that the daughter born before the enactment of Hindu succession Act 1956 are entitled to equal share as son in the ancestral property. The ruling was given out in an appeal filed by the daughters challenging a decree in partition suit which excluded them from partition. The court said that the courts below it erred in holding that the daughter were not entitled to partition because they were born before 1956. It was held that according to Section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class 1 of the schedule to the Act which includes a daughter, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener by survivorship but upon his heirs by intestate succession. Therefore, the interest of the deceased coparcener would devolve by intestate succession on his heirs which included his daughters.

Effect of Statutory Reformations on Women's Access to Capital

Women's agency has a strategic role in promoting inclusive growth and gender parity in distribution of resources. Recent policy discussions on building economic power of rural communities have been drawn attention to two facts: 1. Access to and control and ownership of certain assets such as land, housing, livestock, common property resource, business, health and finance are leveraging factors in pursuing

¹² Section 4(2), Hindu Succession Act 1986

¹³ Prakash v. Phulavati (2016) 2 SCC 36

¹⁴ Danamma vs Amar Civil Appeal nos. 188-189 of 2018



women's empowerment and gender equality and for bringing more equitable change to institutions and society at large. 2. Women constitute a significant majority of small scale farmers and food producers. Hence strengthening women's rights to property land and related productive assets and developing their capacity are central to overcoming poverty and inequality. Women allocate a greater portion of their savings to family sustenance than do men from their earnings. As women's own earnings have a positive effect on their status within the family, the status of woman has a significant power on status of family. Women's lack of ownership and control rights over land and productive assets is increasingly being linked to negative development outcomes. There does exist positive correlation between women's ownership of specific assets and reduced vulnerability to experiencing access to productivity increasing technologies.¹⁵ Lack of control over assets also results in women's lower wages and cripples their economic agency and decision-making power over assets.

The Hindu Succession Act 1956 that covers inheritance and succession of property of Hindus, Sikhs, Buddhists and Jains comprising 84% of the Indian population was amended in 2005 to grant rights to women to inherit agricultural land of the parents by virtue of Section 6 and Section 4 of the amendment. Empirical research on the arena of inheritance rights is rare. The only researches made during the past decade are Roy(2008) and Deininger (2010) quantitatively assess the impact of inheritance law in the context of India. Later

¹⁵World Bank, 2008

the world bank came up with a study to analyze the impact of the amendment of the Hindu Succession Act in the urban context. The survey contained detailed information on the timing of key life events such as birth, death and marriage and the level of education as well as assets received from parents by male and female individuals. One of the findings of the research are 0.301 lower than that received by males.¹⁶ Further a research by Landesa, an institute for rural development institute in the context of Women Agricultural Producers of Andhra Pradesh, Bihar and Madhya Pradesh. Certain shocking average statistics that was arrived at by the research are the following: 1) Women inheriting from parents- 15.33% 2) Women wishing to inherit- 12.66% 3) Women who do not know of Hindu Succession Act- 40.33%.

Ways to improve women's access to capital:

1. Paralegal programs should be instituted to pro-actively assist the women to claim and pursue their rights to inherit land.

2. Legal literacy on Hundi Succession Amendment Act and related issue in combination with other legal rights of women should be packaged as a program for the Self-help group and federations.

3. To overcome social barriers and complicated administrative procedures the revenue department must conduct village level camp courts specially to ensure women's rights to agricultural land. This will help hundreds of thousands of widows

¹⁶ World Bank United States of America, *Does inheritance Law reform improve women's access to capital?*



and single women to come forward and claim their rights.

4. District Legal Services Authority should include Hindu Succession Act as one of their listed topics of legal advice, legal literacy campaigns and fighting cases of women's land rights.

5. The Gram Panchayat and Block Panchayat must be informed on the provisions of the Hindu Succession Act and of their responsibilities in this regard in particular on equality of women's land rights under inheritance.

