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Inheritance Rights of Hindu Daughters: A Comprehensive Analysis

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Abstract

The gender discrimination in India, particularly regarding daughters' rights to inherit their father's property under the Hindu Succession Act, 1956, was a significant issue prior to the 2005 amendment to the Act. Before the amendment, daughters faced unequal treatment compared to sons in matters of inheritance, particularly in ancestral property. The amendment aimed to rectify this disparity by providing daughters with equal rights to ancestral property, regardless of their father's survival at the time of the amendment. The research problem addressed the ambiguity surrounding daughters' inheritance rights post-amendment and the need for clarity on whether the father needed to be alive for daughters to claim equal coparcenary rights. The study utilized legal analysis and case law interpretations to explore the implications of the amendment on gender equality in property rights.

This highlighted that daughters now have the same inherent coparcenary rights in ancestral property as sons, irrespective of their father's survival at the time of the amendment. The amendment aimed to eliminate gender disparities in property rights and promote gender justice by granting equal status to daughters in joint Hindu families. The implications of the research underscore the importance of the 2005 amendment in addressing gender discrimination and ensuring daughters' equal rights to ancestral property. It signifies a significant step towards gender equality in inheritance laws in India, marking a shift towards a more equitable society.

Key words- Gender discrimination, Daughters' rights, Inheritance, Hindu Succession Act, 1956, 2005 amendment, Ancestral property, Coparcenary rights, Gender equality, Joint Hindu families, Property rights.

1. Introduction

In the past, there was significant gender discrimination in India, including regarding daughters' rights to their father's property. Women often faced unequal treatment in matters of inheritance and property rights. Daughters had no equal rights as sons used to have rights on their father’s property. Also, there were such rights for women who could not inherit the property, like-Section 24 of the Hindu Succession Act, 1956[1] dealt with certain widows remarrying may not inherit as widows was removed by the 2005 amendment to the Act. as widows which is now omitted after the amendment of the Act in 2005. In India, the Hindu Succession Act, 1956 governs the laws relating to the land rights of Hindu Undivided Families (HUFs). This law applies not only to Hindus but also to Buddhists, Sikhs, and Jains. Other religions, such as Muslims and Christians, have their own laws regarding inheritance. The 2005 amendment to the Hindu Succession Act brought significant changes by granting daughters equal rights to ancestral property as

[1] Omitted by section 5, the Hindu Succession (Amendment) Act, 2005 (w.e.f. 9-9- 2005)

sons, irrespective of whether the father was alive at the time of the amendment or not. This means that daughters have the same inheritance rights as sons, and their right to ancestral property is not affected by the father's survival or the timing of the amendment.

In a landmark judgment, **Vineeta Sharma v. Rakesh Sharma**[2], the Supreme Court held that the daughters have the same rights in the coparcenary property (ancestral property) of the HUF as sons, irrespective of whether the father, who is a coparcener, is alive or not at the time of the amendment. The right is not dependent on the father's survival but is inherent from birth. The Supreme Court explained Section 6 of the Hindu Succession Act, 1956 as-

"The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal."[3]

Daughter's Right to Inherit Property

Before the enactment of the Hindu Succession Act in India, the Hindu community followed the laws of Shastric and Customary rites. There were two primary schools of Hindu law: the Dayabhaga School and the Mitakshara School. The Dayabhaga School was followed in the Northeast part of India and Bengal, while the Mitakshara School was followed in the rest of India.

In the Mitakshara School, traditionally, women were not given equal rights as males in joint Hindu families for inheriting property. A joint Hindu family is a fundamental aspect of Hindu life. According to Mitakshara law, a joint Hindu family consists of the common ancestor and all his lineal male descendants up to any generation, as well as the wife(s) or widows and unmarried daughters of the common ancestor and the lineal male descendants. Judiciary also defined joint Hindu family mentioning that there should be at least one male member to fulfil the purpose of joint Hindu family. [4]

In the case of **Navneet Arora v. Surender Kaur**[5] , the court described a Joint Family as a family where members reside together, share a common household, and are descendants of a common ancestor. This definition includes spouses of members but excludes married daughters and their children.

In terms of property inheritance under the Mitakshara School, the principle of survivorship is followed. This principle applies only to joint family or coparcenary property. According to this principle, the share of coparceners (members entitled to inherit ancestral property) changes with deaths and births in the family. When a family member dies, the coparcenary property increases, and when a new member is born, the coparcenary property is divided among more members, reducing everyone's share. On the other hand, the Dayabhaga School focuses on succession as the sole method of property transfer. This pertains to

[2] (2020) 9 SCC 1
[3] (2020) 9 SCC 1
[4] Gowli Buddanna v. Commissioner of Income-tax, AIR 1966 SC 1523
[5] FAO(OS) 196/2014 on 10 September 2014 (Delhi)

separate property owned by an individual, including self-acquired assets. The Hindu Succession Act was enacted on June 17, 1956, with the primary aim of regulating intestate succession. Therefore, when a Hindu, Buddhist, Sikh, or Jain passes away without a will, this law governs how their estate will be distributed, whether through inheritance or survivorship rules.

There are two forms of succession: testamentary and intestate.

(a) Testamentary Property: This refers to property distributed according to a will after the owner's death. A "will" is defined in Section 2(h) of the Indian Succession Act, 1925, as the legal declaration of a person's intentions regarding their property, to be implemented after their death. A will specifies who will inherit the estate and how it will be divided among the legal heirs.

i) Describes something that is inherited, given, or stated in a will; ii) Describes something that is designated or arranged according to a will; iii) Relates to a will or the management of a will, testamentary. The term testamentary deposition refers to the transfer of property to another person upon the death of the owner. It refers to a property transfer through a gift, will, or deed that only takes effect upon the grantor's death or upon the occurrence of a specified event.

According to Section 59 of the Hindu Succession Act, any person of sound mind, who is not a minor, has the right to create a will for their property at any point in their life. However, there are certain conditions. A Hindu married woman can only make a will for property that she has the right to dispose of during her lifetime. If a person who is deaf, dumb, or blind creates a will, they must prove that they were aware of their decision. If a person is insane or mentally ill at the time of creating a will, the will is considered invalid. However, if a person is of sound mind when the will is created and later becomes insane, the will remains valid. The property mentioned in the will should be distributed among the widow, son, daughter, or any other person named in the will.

(b) Intestate property: This refers to assets that are not covered by a will or other testamentary document at the time of the owner's death. In such cases, the property is distributed according to the laws of inheritance. According to Section 3(1)(g) of the Hindu Succession Act, a person is deemed to die intestate in respect of property of which they have not made a valid testamentary disposition. This means that if someone dies without leaving a will, their property will be shared among their legal heirs as per the inheritance laws. Section 8 of the Act lays down the general rules of succession for Hindu male property. It states that if a Hindu male dies intestate, his property shall devolve upon the heirs specified in Class I of the Schedule. If there are no heirs in Class I, then the property devolves upon the heirs specified in Class II of the Schedule. If there are no heirs in Class II, then the property devolves upon the agnates (relatives through the male line) of the deceased. Lastly, if there are no agnates, then the property devolves upon the cognates (relatives through the female line) of the deceased. The amendment to the Act also addresses disqualifications of heirs. For example, under Section 25, a person who has been convicted of murdering the deceased is disqualified from inheriting the deceased's property. This ensures that individuals who have committed such serious offenses are not allowed to benefit from their actions.

The Hindu Succession Act, through sections 26 and 27, stipulates that if a person converts to another religion, they are disqualified from being an heir. Additionally, any inherited property would be treated as if the disqualified person had died before the intestate, effectively nullifying their claim to the property, and excluding them from the line of descent. self-acquired property, as defined in the Hindu Succession

Act, refers to any property acquired by a person through their own efforts, whether by earning, purchasing, or receiving as a gift. This property is considered the individual's separate and exclusive ownership. Even if the property was obtained through the sharing of ancestral property, it is still classified as self-acquired.

Coparcenary property, in simple terms, refers to ancestral property inherited by the male members of a Hindu Joint Family according to the Mitakshara School of Hindu law. These male members were known as 'coparceners' and had exclusive rights to inherit this property. However, the 2005 amendment to the Hindu Succession Act brought a meaningful change by granting equal rights to both male and female members of the Hindu Joint Family in the inheritance of ancestral property. This means that after the amendment, both sons and daughters have an equal share in the ancestral property of the family.

Ancestral properties can be classified into the following categories:

1. **Property inherited from a paternal ancestor:** This type of property used to be distributed only among the male line of the family. However, after the amendment, daughters also have a right to this property by birth. Ancestral property is inherited by a Hindu male from his father, paternal grandfather, etc. The share in the property by birth will be received by the children, grandchildren, and great-grandchildren of the person. In other words, descendants in the male line have a right to ancestral property. In a case the Privy Council held that property acquired by daughter’s son form his maternal grandmother is no ancestral property in his hand, but it is his own separate property.[6]

2. **Property inherited from a maternal grandfather-**If a property is not ancestral but self-acquired by the maternal grandparents and there is no valid Will, the distribution of the property will be governed by intestate succession. This means that the property will be divided equally among the Class-1 heirs of the intestate, excluding Class-2 and Class-3 heirs, as per the provisions of the Act.

3. **Property inherited from partners or from women:** When a Hindu daughter or a woman dies without any children, her property will revert to the source from which she inherited it. If she inherited the property from her father, it would go to her father's legal heirs. If she inherited it from her father-in-law or husband, it would go to their respective legal heirs. This principle ensures that the property returns to the original family or lineage from which it was received. This provision emphasizes the importance of maintaining the integrity of family property and ensuring that it remains within the family or lineage it originated from. It also ensures that the property does not pass outside of the family or lineage, preserving the family's heritage and ancestral wealth.

4. **Share allotted on a partition:** According to the Hindu Succession Act, the share on partition should be allotted equally among the coparceners. This share is acquired by a successor by birth. Therefore, if a coparcener dies without any descendants and without a Will, the property will automatically pass to the other coparceners by survivorship. This principle ensures that the property remains within the family and is not distributed outside of it. It also reflects the traditional Hindu practice of joint family ownership, where property is shared equally among family members. By ensuring equal distribution of property, this principle promotes harmony and equality among coparceners and prevents disputes over inheritance.

[6] Muhammad Husain Khan v. Kishva Nandan Sahai, (1937) 39 BOMLR 979

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5. **Property received by gift or pleasure from a paternal ancestor-**When a Hindu gives his self-acquired or separate property to his son, or wishes to do so in a Will, the question arises whether such property becomes the son's separate property or remains ancestral property in his possession concerning his male offspring. The Court has observed that it is not necessary, under all circumstances, for property received by gift to be treated as ancestral property in the hands of the manager. Hence, the Supreme Court has held that there is no definitive rule to determine whether property received by gift or bequest is the separate property of the son or belongs to the ancestor; the decision will depend on the specific circumstances of each case.

Hindu Succession (Amendment) Act, 2005

The amendment to the Hindu Succession Act in 2005 was a significant step towards gender equality and the empowerment of women in India. Before the amendment, there were various discriminatory practices against women, including unequal rights to property. The amendment sought to address these inequalities by granting daughters equal rights as sons in the ancestral property of their fathers. This change was crucial in aligning the law with the evolving societal norms and values that recognized the equal status of women in inheritance matters. By amending the Act, the government aimed to promote gender justice and ensure that women are not deprived of their rightful share in family property.

The 2005 amendment to the Hindu Succession Act aimed to eliminate gender disparity in ancestral property rights by granting daughters equal status as coparceners in joint Hindu families. However, the issue of whether the father needed to be alive at the time of the amendment for daughters to claim these rights led to conflicting interpretations and court decisions.

In the case of **Prakash v. Phulwati**[7] , the court held that the father must be alive at the time of the amendment for daughters to claim equal coparcenary rights. This was based on the view that only living daughters could assert their rights as coparceners. However, In **Danamma v. Amar**[8] , the Supreme Court took a different stance, ruling that even if the father had passed away before the amendment, daughters would still have the same rights as sons in ancestral property. The court held that the amendment was intended to have retrospective effect, ensuring that daughters would not be deprived of their rights even if their fathers had passed away before the amendment.

In **Vineeta Sharma v. Rakesh Sharma**[9] , the Supreme Court overruled both earlier decisions and held that daughters have equal rights in their father's property by birth, like sons. This decision clarified that daughters have equal coparcenary rights irrespective of whether their fathers were alive at the time of the amendment.

Concluding Observations

The 2005 amendment to the Hindu Succession Act was a significant milestone in addressing gender discrimination in India, particularly regarding daughters' rights to inherit ancestral property. Before the amendment, daughters faced unequal treatment compared to sons in matters of inheritance. The

[7] (2016) 2 SCC 36
[8] (2018) 3 SCC 343
[9] (2020) 9 SCC 1

amendment aimed to rectify this disparity by providing daughters with equal rights to ancestral property, regardless of their father's survival at the time of the amendment.

The amendment ensured that daughters now have the same inherent coparcenary rights in ancestral property as sons, irrespective of their father's survival at the time of the amendment. This change marked a shift towards gender equality in inheritance laws in India, promoting fairness and justice for women. It aligned the law with evolving societal norms and values that recognize the equal status of women in property rights.

Overall, the 2005 amendment to the Hindu Succession Act was a crucial step towards gender equality and the empowerment of women in India. It aimed to eliminate discriminatory practices and ensure that daughters are not deprived of their rightful share in family property. By granting daughters equal rights to ancestral property, the amendment contributed to a more equitable society where women have equal opportunities and rights as men.