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WOMEN'S RIGHTS TO PROPERTY

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INTRODUCTION:

The ancient texts had given different dictates for property rights of a Hindu woman while some were liberal and granted specific shares to women there were others that severely restricted a women's right to property. However whatever might have been the recommendations of the Dharmashastras, there is no dispute about the fact that the interpretation and selective pickings of its provisions and the influence of customs placed severe impediments on her right to own property. The women, as per ancient scriptures, mostly had only right to maintenance and no rights to absolute ownership and issue of chastity was emphasized repeatedly in all the texts.

Prior to Hindu Women's Right to Properties Act 1937, women were excluded from getting a share in the Joint Family Property. Succession to the property of male member was governed by rule of survivorship. The Constitution of India provides that every person is entitled for equality before law and equal protection of laws and thereby prohibits discrimination on basis of caste, creed and sex.

There is disparity in inheritance by the Hindus so as females are concerned. Prior to enactment of Hindu Succession Act 1956 Hindus in India were governed by Shastric and customary laws which varied from region to region and sometimes it varied on caste basis. The multiplicity of laws in India diverse in their nature; made the property of her husband and she could not own property herself.

So far as property is concerned, the daughter shall be given every right to inherit immovable and movable property equal to that member. Empowerment of women, leading to an equal social status in society, among other things, on their right to hold and inherit property several legal reforms have taken place since independence in India, including on equal share of daughters to property.

COPARCENARY PROPERTY:

To understand the position of Hindu women under law of succession, it is worthwhile to know important features of coparcenary property.

The rule of survivorship means that on the death of a member of joint and undivided family, his share in the joint family property passes on to the surviving male members called as coparceners. If a man has sons, grandsons and great-grandsons living, all of these constitute a single coparcenary with him. Coparcener's jointly inherit property and have unity of possession.

The co-heirs and their heirs are also called coparceners so long as unity of possession continues. Coparcenary is different from joint family. Coparcenary is limited to three generations next to the holder while the joint family has no such limitation. It includes several generations of the holder.

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There are two different laws followed by Hindus in respect of property. One is mithakshara law which is widely followed in India, except in West Bengal where Dayabhaga Law is followed.

CHARACTERISTICS OF COPARCENARY PROPERTY:

Unity of ownership: the ownership of property is vested in the whole body of the coparceners.

In determinability of shares: The interest of a coparcener in the property is fluctuating and is capable of being enlarged by deaths in the family and liable to be decreased by births in the family.

Community of interest: No coparcener is entitled to any independent and exclusive interest in the coparcenary property nor is he entitled to exclusive possession of any part of the coparcenary members acquire interest in the property by birth under Mithakshara law while under Dayabhaga, nobody inherits any interest by birth.

Devolution of survivorship: one of the interesting features of Mithakshara coparcenary is that on the death of a coparcener, his interest in the property passes on to other coparceners by survivorship (i.e. to the members who are alive). In Dayabhaga, the property devolves on the coparceners on the death of the holder.

Section 6 of Hindu Succession Act has been amended by the Hindu Succession (Amendment) Act, 2005, and according to which, in a joint Hindu family governed by the Mithakshara 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 and that of a son, and reference to a Hindu Mithakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

Any property to which a female Hindu becomes entitled to under this Amendment Act 2005, shall be a property capable of being disposed of by her by testamentary disposition i.e. by way of Will.

Where a Hindu dies after the commencement of the Amendment Act 2005, his interest in the property of the joint Hindu family governed by the Mithakshara Law shall devolve by testamentary or intestate succession and not by survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place.

Now, there is no distinction between son and daughter in so as the property rights in coparcenary property is concerned.

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INHARITHNCE:

In achieving equality rights of inheritance for women and to give right to the women by birth as coparcener was demanded in order to bring equality before law as a fundamental right.

Since the women in India started occupying major offices the rights of women and their protection gained more importance. Right from the president to other offices which were considered that such offices can only be occupied by male has remained an imagination and the women have occupied the same and therefore new Acts have been enacted by the legislature. And in order to lay down a uniform law and a comprehensive system of inheritance; the Hindu Succession Act came to be amended which applies to any person who is a Hindu by religion in any form or developments including Veershaiyva, Linguist or follower of Brahmo, Parthian or Arya Samaj or a person who is a Buddhist, Jain or Sikh by region wherein the daughter shall have the same right as that of a son and she shall be considered as a coparcener of the joint Hindu family. Due to this amendment, the discrimination between the male and female could be curtailed.

A very progressive development in this context is the enactment of the (Hindu Succession [Andhra Pradesh] Amendment act, 1985). According to this law, the rights of the daughter are absolutist equal to that of the son even in cases of application of Mitakshara system. The rationale of the law has been explained in terms of Mitakshara system being violative of the fundamental right of equality before law, apart from leading to the pernicious dowry system. The States of Tamil Nadu, Maharashtra and Kerala have amended the law by including women as members of the coparcenary.

From July 2005 the new Act has come into force and the daughter is allotted the same share as is allotted to a son. The daughter shall have a right of claim partition in the joint family properties as well as the right to claim right of partition in the dwelling house of the joint family and she shall also have a right to claim partition during the lifetime of her father. This privilege is only given to Hindu women. The laws applicable to Muslims & Christians do not give equal status to women.

Poonam pradhan Saxena, professor, Faculty of Law, university of Delhi brought out into limelight significant transformation in the status of women through Hindu Succession Act 1956 to amended Act 2005; daughter would be a member of two Hindu joint families and also her children. Poonam Sexena has critically analyzed the amended law as she strongly feels that such peculiar and unforeseen implication is bound to pave way for immense confusion and litigation. However, professor Sexena, in her book on Family Law Lectures has been of the opinion that the legislative steps taken to improve the position of a Hindu woman have been reformative in nature and in terms of her ability to acquire property and that a Hindu women has come a long way from the late 19th centre to the present day, at least on paper.

CONCLUSION:

The legal reforms so far have not been adequate to give all Indian women a right to property on the same terms as men. It varies with religion. Even where law has given a right, conventions and practices do not recognize them. Women themselves relinquish their rights.

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Women, as daughters, wives, daughters-in-law, mothers or sisters tend to lose out and often suffer deprivation

A social reform movement is necessary for such awareness and change of mindset. Since 'marriage' is the most traditional institution of initiating a family and preserving it, let registration of marriages be made compulsory (which Government of India agrees in principle) and recognize the decentralized units of Governance down to the Village Panchayats to take up this task.

When the constitution of India and laws newly enacted are in favor of giving equal status to the women, the women are interested in claiming lesser than what they are entitled for and they are trying to implement the women's Bill wherein they shall have only 33% right.

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