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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHTS OF WOMEN UNDER CHANGING PERSPECTIVE OF HINDU LAW: AN APPRAISAL

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Abstract

It discusses the necessity of critically defining the foundations and boundaries of legally established "rights." The essay critically assesses the possibility of a "rights regime" that would allow Hindu women to have more access to legal rights, using the example of changes in their status regarding property due to rights created by statutory and constitutional requirements. It makes the case that a claim's underlying theory, validity, and hence efficacy within a legal system, all require careful consideration. Examining claims presumptively granted within a legal framework in the context of law, history, politics, and culture is necessary to determine their legitimacy. A critical and contextual examination of this kind is essential for the successful legal defence of rights claims. Only by continuing critical assessments of gender, law, and society can legal regimes' potential to significantly improve women's lives—to the degree that they reflect and substantiate larger social relations—be achieved.

Introduction

Though it can take many forms, the most prevalent way that gender disparity in India shows up is when it comes to effective property rights. A number of laws have been established to give women equality and high status while removing their dependency on the economy. Furthermore, the Indian Constitution guarantees equality, supporting women's access to economic resources and property rights¹. The status of women is unaffected by any of this. The terrible state of women is caused by ignorance, illiteracy, and the non-application of women's welfare laws. Owing to social stigma, familial norms, and associated expectations, women are less inclined to defend their rights. Women

¹ LEGAL SERVICE INDIA E-JOURNAL, <https://www.legalserviceindia.com/legal/article-6120-hindu-women-sright-to-property-the-fight-for-equal-rights-from-past-to-present.html>

held a distinct place in every society, regardless of the level of civilization they lived in developed, developing, or undeveloped². The various positions that women play throughout their lives such as that of daughter, wife, mother, sister, etc. are the cause of this. She has made many contributions to the family, but due of a number of cultural standards and beliefs that have been constant since ancient times, she is yet considered to be among the impoverished in society. In India, women have always been in the hands of men; they are subject to their power and are ruled over in every manner.

India is a patriarchal society that has existed since the beginning of modern history. The society in which we live is no longer solely a man's domain; males have well defined positions and make decisions, while women take care of their spouses, parents, kids, and household tasks. When a civilization has existed for a very long period based on a set of customs and beliefs, there will always be resistance. Although women do better than males in many sectors, they do not match them in everyone. Regretfully, there is still a long way to go until the societal stigma and ingrained beliefs associated with patriarchy which maintain that women are inferior to males and not on an equal footing are completely eradicated.³ India's rules on property and inheritance are governed by the Hindu Succession Act. The underlying idea that keeps women from owning property is that, upon marriage, they have to renounce their biological family. This restricts the family's capacity to manage its possessions.⁴

Hinduism's Historical Right for Women

During the Vedic Era, the woman and her husband were considered joint proprietors of the house and, by extension, of its belongings. There was no guarantee of property rights in the family due to the small ownership share in the home, which only helped the women in the family achieve certain rights and privileges like making financial contributions and obtaining enough money and goods from the husband. Women did not have the right to own property throughout the Vedic era. Still, the Vedic literature recognises her as the proprietor of the Streedhan.⁵ Hindu religious regulations differ by area, even in matters of property succession and decision-making. Numerous schools taught the

² Prakash Chand Jain, Women's Property Rights Under Traditional Hindu Law and the Hindu Succession Act, 1956: Some Observations, 45 Journal of the Indian Law Institute (2003).

³ <https://vakilsearch.com/blog/hindu-succession-act-on-womens-property-rights/> .

⁴ <https://www.indialegallive.com/legal/property-rights-of-women-under-hindu-law-in-india/> .

⁵ Supra note 2.

fundamentals of Hindu law, and each school had authority over a distinct state. The Mitakshra schools were the most important All over India, schools were in operation, with the exception of the eastern area, which was home to the Dayabhaga school, especially in the states of Bengal and Assam. The Mitakshra school addresses the right to ancestral property through birth or a lawful adoption, which is the main difference between it and the Dayabhaga school. The male family member does not have a claim to the father's personally obtained property, thus they can ask their father to divide only the ancestral property.⁶

Certain types of property are considered to be the property of women who inherit them. Hindu women have the same legal claims to their deceased parents' possessions as do Hindu males, per Section 14 of the Hindu Succession Act. When it comes to receiving property from a deceased parent, men and women are treated equally, much like with inheritance rights.⁷ Another important thing to keep in mind is that a married daughter has the same inheritance rights as an unmarried daughter. Everybody is entitled to the same inheritance as their brothers who are men. The women's status that was marginalised throughout time as a result of the introduction of private property is now highlighted. Their inability to execute due to physical limitations and other shortcomings. The imposition of lower rank was justified by religious rituals and ceremonies. An Baudhayana, the alleged founder of Hinduism, forbade women from inheriting of the Yajurveda schools. He supported his belief that women are with the power to women "are considered to be lacking of strength and of a part," hence they are not allowed to inherit. In addition, he said that the vedas prohibited women from inheriting because they are "useless, incapable of following procedure, and devoid of capacity to occupy."⁸

Section 14 (1) of The Hindu Succession Act, 1956 states that the following things are sources of Streedhan:⁹

- Bequest and gifts from family member.
- Bequest and gifts from strangers.
- Property obtained by manual labour and mechanical skills.
- Property acquired by Streedhan.

⁶ Supra note 1.

⁷ HINDU SUCCESSION ACT, 1956, §14.

⁸ <https://www.wisdomlib.org/hinduism/book/baudhayana-dharmasutra> .

⁹ HINDU SUCCESSION ACT, 1956, §14(1)

- Property obtained through a compromise.
- A property acquired unfairly.
- Property acquired as opposed to up keep.

The Function in a Joint Hindu Family

The status of women was significantly worse in the combined family. She was perceived as being in a far inferior position in the merged household. No woman, whether she a mother, widow, or wife, In questions of succession, the Mitakshara's daughter or sister may succeed him. shared family resources. She just met the requirements for upkeep. The sister of a departed brother and his widow were not encompassed the collective of unbroken brothers and their sons; rather, they were vulnerable to the other brothers and only entitled to subsistence. Seldom could they make advantage of their inability to deal with recalcitrant brothers and enforce even their maintenance rights. In terms of interest in joint family property, succession, and partition, the women's rights were comparatively restricted. In summary, Hindu law historically discriminated against women, allowing only men to possess and exercise exclusive rights as they deemed proper.

Before this Act came into effect, a widow who lost her husband and left a son, grandson, or great-grandson had no claim to inherit his separate property under the Mitakshara and Dayabhaga schools. The Act enhanced her legal status and named her the joint heir of the son, grandsons, or great-grandsons, as applicable. In a similar spirit, the Act likewise awarded the same rights to the widow of a deceased son and the widow of a deceased son of a deceased son. However, the Act only granted them a small portion of the inherited property.¹⁰

Hindu Succession Act, 1956

The Hindu Succession Act of 1956 has been heralded as a turning point in Indian history when it comes to women's property rights since it challenges the patriarchal system that has long existed in Indian society, which holds that only male agnates are eligible to possess and inherit property. The only known form of women's property was the extremely complex and restricted Stridhana. Hindu women were formerly the sole proprietors of their property, with no restrictions on how they may

¹⁰ Supra note 2.

dispose of it. However, this Act converted their limited ownership to absolute ownership. It strengthened the economic position of women and granted them both social and financial freedom. The patriarchal system in which males had all rights and women had little opportunities to assert their own rights was destroyed by the Hindu Succession Act of 1956, revolutionising the entire issue of disparity in property rights. In the past, women were only granted stridhana before to marriage instead of property. Even yet, because of its limitations, it could not guarantee financial independence. However, the Hindu Succession Act guaranteed both social and economic freedom. The measure guaranteed and eliminated the cap on total ownership.

In 2005, the parliament altered the Hindu Succession Act, 1956 to confer on girls the title of coparcener, putting them on par with males in the home and granting them similar inheritance rights. In *Vineeta Sharma v. Rakesh Sharma*¹¹, the Supreme Court's panel of Justices Arun Mishra, S. Abdul Nazeer, and M.R. Shah decided on August 11 that a daughter is a coparcener by birth and that it makes no difference whether the father was alive or deceased on the day of the modification. The Hindu Succession (Amendment) Act, 2005 (39 of 2005) eliminated the gender-discriminatory provisions of the Hindu Succession Act, 1956. The amendment states that a girl who is born into a family of coparceners will automatically become one herself, just like a boy. In the Hindu undivided family's ancestral property, known as coparcenary property, a girl would now possess the same rights as a boy. Section 23 of the Hindu Succession Act,¹² which forbade female heirs from asking for a partition of a house that was fully occupied by a joint family before the male heirs made the decision about how to split their separate halves, is also removed. Since Section 24 of the Act was removed, a widow is no longer eligible to inherit her late husband's assets upon remarriage.¹³ This Act has resulted in a significant change that now affects all state governments.¹⁴

Hindu Succession (Amendment) Act, 2005

Many issues that had not been specifically addressed by the 1956 Succession Act became apparent as time went on. In many areas of property law, discrimination still exists. Thus, in an effort to give women in society greater economic security, the government decided to alter the 1956 Act in 2005.

¹¹ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

¹² HINDU SUCCESSION ACT, 1956, §23.

¹³ HINDU SUCCESSION ACT, 1956, §24.

¹⁴ <https://evaw-globaldatabase.unwomen.org/en/countries/asia/india/2005/the-hindu-succession-amendment-act>

The Hindu Succession Act of 2005 eliminated the distinction between a daughter's and son's rights and granted women the status of coparcener, allowing them to inherit property just like a son. Previously, only male family members were able to occupy the position of karta, but today women are able to do this as well. Unfairness in inherited property, residential properties, and widows' rights are all covered under the 2005 Act. By include certain new heirs on the Class I heirs list, it also protects their interests. In actuality, it guarantees women's equality and social justice in a deeper sense. In essence, it does away with the outdated Hindu laws that prevented women from becoming property owners. The Hindu women's community is in favour of this law. A female Mitakshara member will now be born with a silver spoon in her mouth. Her rights will be identical to those of a man in every way. Nonetheless, she has the same legal responsibilities for coparcenary property as a man. She is able to ask for a partition of the house under the 2005 Amendment Act. The prohibition on a widow inheriting her late husband's property in the event of another marriage has been lifted.

In actuality, it ensures women's social justice and equality even farther. It essentially repeals the old Hindu legislation that denied women the ability to own property. The community of Hindu women is in favour of this policy. The Hindu girl in Mitakshara will now also be born with a silver spoon in her mouth. The same rights as her male equivalent will apply to her. Nevertheless, in terms of coparcenary property, she has the same obligations as a male. The 2005 Amendment Act permits her to request division in the living house. The rule that barred a widow from receiving her husband's assets in the event that she got married again has also been lifted.

Landmark judgments and judicial interpretations

The Prakash v. Phulvati¹⁵ case was one of the significant landmark rulings pertaining to the succession legislation; in reality, it guarantees social justice and equality for women in a more comprehensive way. In essence, it does away with the outdated Hindu laws that prevented women from becoming property owners. The Hindu women's community is in favour of this law. A female Mitakshara member will now be born with a silver spoon in her mouth. Her rights will be identical to those of a man in every way. Nonetheless, she has the same legal responsibilities for coparcenary property as a man. She is able to ask for a partition of the house under the 2005 Amendment Act. The

¹⁵ Prakash v Phulvati, A.I.R. 2011 Kar. 78.

prohibition on a widow inheriting her late husband's property in the event of another marriage has been lifted. Since birth, she will be entitled to her father's tribe and self-involved property because the primary goal of the amendment was to do away with the existing differences between sons and daughters regarding their coparcenary rights. The High Court determined that the amended provisions ought to be implemented. Despite this, the Supreme Court denied the High Court's motion, ruling that the Act would continue to be in effect going forward until it is specifically mentioned in the legislation.

She will be entitled to her father's tribe and self-involved property from birth since the main objective of the amendment was to abolish the present differences in coparcenary rights between sons and daughters. The High Court declared that the revised parts need to be applied. Nevertheless, the Supreme Court turned down the High Court's request, ruling that the Act would stay in force unless it is modified.

Daughters will be coparceners and have an equal part in a joint Hindu family property as men according to the approval of the Amendment Act. It is important to remember the following case point:

- The daughter has to be a resident of 2005 to be eligible to receive a portion of the joint Hindu family property.
- A portion of the joint Hindu family property would not be available for the daughter's legal successor to claim in the event that she passes away before the modifying law takes effect.
- At the time of the enactment, the daughter's father must also be living in order to ensure an equal status in the coparcenary property.
- The 2005 Amendment did not affect the alienation, disposition, or transfer of any joint family property or a recorded division done prior to the amendment act, notwithstanding the daughter's claim as a coparcener in the joint Hindu family property.

A recent ruling, *Vineeta Sharma v. Rakesh Sharma*¹⁶, announced on August 11, 2020, changed the status of women's coparcenary rights. In this instance, it was ruled that the women would be entitled to coparcenary status and the same rights as sons, regardless of when they were born before or after

¹⁶ *Vineeta Sharma v Rakesh Sharma*, (2020) AIR 3717 (SC).

the amendment. It is not required that fathers must have been living on September 9, 2015, the day the law was approved. The act's "retroactive" application was granted by the court. Women now have equality after the court's ruling in the Prakash v. Phulvati¹⁷ case was reversed. Between the two points of view, the court provided women with equal coparcenary liberties from birth, ignoring the father's continued existence at the time the amendment was adopted. All the doubt and uncertainty regarding women's succession rights was cleared up.

Conclusion

Notwithstanding the groundbreaking provisions of the Hindu Succession Act of 1956, property rights are still generally denied to Hindu women in Indian culture. It was really just a piece of legislation. The Act brought about revolutionary changes, but in reality family members have mostly disregarded it since the requirements clash with the long-standing Hindu societal norms. The law as it is and the law as it is applied actually differ rather significantly from one another. It is often damaged by instances of overt discrimination. In principle, all of these are commendable actions, but the real difficulty is in upholding women's property rights rather than in recognising them. Every social custom has its cultural roots. However, the moment practitioners forget about the fundamental ideas of the practise, it turns into an unassailable, orthodox tradition that ought to be adhered to without doubt. Many of our long-standing traditions and convictions have changed from their initial significance, rendering them unsuitable for today's culture. Since they haven't financial means and the intelligence to capitalise on the positive traits, Hindu women have traditionally been denied the opportunity to reap the benefits of legislation made in their behalf.

The reality is very different from the text of the legislation since, even today, only around 10% of women are aware of the rights they are allowed to exercise. It is the duty of the legally aware members of society to ensure that this deficiency is fixed. However, these regulations are a huge step towards achieving gender equality as our country's founding fathers and the drafters of our constitution intended.

¹⁷ Supra note 15.