

“EMPOWERING ECONOMIC PROWESS OF HINDU DAUGHTER – ANALYSIS OF HINDU SUCCESSION ACT”

DR. M. MADHURI IRENE

Abstract: Women Economic Empowerment in the simplest of words is basically the creation of an environment where women can make independent decisions on their proprietary rights. Constitution of India does not differentiate between males and females. Women have equal rights as that of a man in every sphere. Earlier women did not have any rights to the property and they were at the mercy of the male members of the family.

The Hindu Succession Act 1956 brought out revolutionary changes in property rights of women. Section 14 of the Hindu Succession Act, confers absolute right to the female in any property possessed by Hindu female. The rights are of full nature including unfettered rights of disposal of property. The property covered under the Section 14 of the Hindu Succession Act is both movable and immovable, which is acquired by inheritance, demise, partition, in lieu of maintenance, arrears of maintenance, gift, property acquired by her own skill, purchase, prescription, or in any other manner and also Stridhana. At the same time under section 6 of the Act daughters are not treated as coparcener hence not entitled in undivided joint family property of the father. Taking another Dynamic step in 2005 The Central Legislature amended the Act and changed the position of the Hindu daughters as coparceners and given equal rights in undivided joint family property of the father. This Article basically highlights on how Hindu daughter enjoys her prowess on property rights under Hindu succession Amendment Act, 2005.

Keywords: Hindu Women, Hindu Succession Act, 1955, Daughter, Economic Empowerment.

“Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution and the one which, united with that of personal liberty, has contributed more to the growth of civilization than any other institution established by the human race.” – William Howard Taft (American 27th US President (1909-13))

Introduction: Women Economic Empowerment in the simplest of words is basically the creation of an environment where women can make independent decisions on their proprietary rights. Women execute multilateral role in the society i.e. as a breadwinner of her family, as a care taker of her family as a mother, wife, daughter and service provider to the society. In spite of the fact that the women’s contribution to the country’s development is equal to that of their male counterpart, still they experience a number of limitations that restrain them from comprehending their potential for expansion. [1]

Women’s property rights in the Patriarchal Family: A Hindu father in patriarchal family enjoyed absolute power, the head of the family a despotic ruler. A Hindu Joint family consists of males and females. The married and unmarried daughters continued to remain as members of the joint family. The male members are coparceners with right of survivorship [2]. Daughters are not were entitled to get their share by Partition [3]. They are given power only to hold Stridhana.

Hindu Women’s Rights to the Property Act 1937 dealt with the rights of Hindu widow, on the death of her husband who does not make any Will. In such cases, the widow is entitled to the share of the property as

that of a son. But her interest in the property, Hindu Women Estate is limited interest.

The history of Hindu Law reform starts with the Hindu Law committee (Rau Committee) set up in 1941. It was followed by second Committee in 1944. The committee finally submitted its report to the Federal Parliament in 1947. There were also fears among the orthodox Hindu men that if women were given property rights families would breakup. In 1948 there was an All India Anti- Hindu Code Convention. It was argued that the introduction of women’s share would result into disintegration of Hindu family system which had been working as a co-operative system for ages for preservation of family ties and property. The most contested area was women’s property rights [4]. As far as the State is concerned unification of Hindu Law was paramount rather than women’s inheritance rights.

Property Rights under the Hindu Succession Act 1956: Women’s right to property has been substantially improved by the Hindu Succession Act 1956. The concept of women being entitled to a limited estate when they acquire property by inheritance is abolished and women are entitled to an absolute estate like men when they inherit any property. Again the daughter of a predeceased son and the daughter of a predeceased daughter are

raised to a higher rank. They became Class – I heirs and get a share along with the son, and other Class – I heirs. The daughters are included in the Class – I in order to remove the discrimination on the basis of sex. Similarly succession to a women's property or stridhana of whatever nature is made uniform irrespective of the nature of stridhana. In the same way the distinction between male and female heirs in the case of succession has been taken away and now they are treated on equal basis if they belong to the same degree of relationship.

Under Section 14 of The Hindu Succession Act 1956, the limited interest of Hindu female is converted into absolute rights. If she gets property from her husband she can sell it and the purchaser gets absolute right in the property [5]. The disability of daughter in inheriting the father's property was undone under Section 6 of the 1956 Act [6]. Formerly she was not given the power of alienation [7]. The provision has been given retrospective effect. Consequently the limited estate becomes absolute. Another important change brought out is to the explanation Section 6 of the 1956 Act [8].

Similarly section 15 is the first statutory enactment that deals with succession of Hindu female's property when she dies intestate before the Act the property of women dying intestate was governed by customary Hindu law. She had only limited interest which would be terminated on her death. It is heartening to note that the Act provides two different laws based on the sex of the intestate. This double scheme is the traditional method intended to protect the family property [9].

The property of a female Hindu dying intestate shall devolve according to the rules set out under section 16. (a) Firstly sons and daughters (including the children of any predeceased son or daughter) (b) secondly upon the heirs of the husband thirdly upon the mother and father (d) fourthly upon the heirs of the father and (e) lastly upon the heirs of the mother. Again (a) any property inherited by a female Hindu from her father or mother shall devolve in the absence of any son or daughter of the deceased (including the children of any pre deceased son or daughter) not upon the heirs referred to in sub section (1) in the order specified there in, but upon the father. (b) So also any property inherited by a female Hindu from her husband or from her father – in – law shall devolve in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub section 1 but upon the heirs of the husband. This separate scheme of succession reflects a strong patriarchal and orthodox outlook [10].

Effect of the 2005 amendment act: Section 6 of the amended Act 2005 has completely wiped off all the in

equalities in Section 6 of the 1956 Act at one stroke. The females in the joint families are elevated to the status of coparceners having birth right in the ancestral property equal to that of a son. Thus women are given coparcenary status. Some of the discriminations that existed in sections 23 and 4 (2), have been omitted by the 2005 Act. It is another significant achievement of the 2005 Amendment. Another notable achievement of the 2005 Act is the inclusion of all daughters especially married daughters as coparceners in the Joint Family Property. Section.6 of the 2005 Act removed the discrimination between married and unmarried daughters [11]. It took away the notion that after marriage the daughter belongs only to her husband's family. If her marriage breaks down, she can now return to her natal home as a matter of right and not on the displeasure and mercy of the relatives. Further giving daughters right to ancestral property will also have an impact on changing the inherently unequal power equations between the majority of the husbands and wives even today.

Consequently Section 23 of the 2005 (Amendment) Act was omitted to confer all daughters (including married daughters) the same rights as sons to reside in or seek partition of the parental dwelling house [12]. By deleting Section 23 of 1956 Act, the amending Act (2005) removed the last remnants of discrimination against women. The objective of the section is to prevent the fragmentation of a family dwelling house at the instance of a female heir to the prejudice of the male heir [13].

Similarly the Amendment Act (2005) removed the second discrimination between women themselves on the basis of their marital status. The section was based in favor of unmarried daughters and granted them the right to residence in the dwelling house but only till they were unmarried [14]. It is pertinent to note here the Supreme Court's path breaking decision in *Savitha Samvedi v. Union of India* as early as in 1997 [15]. It was held that the differentiation based on marital status is wholly unfair, unreasonable and gender biased, and violates Article 14 of our Constitution.

Again in *Sekar v. Geetha & Ors* [16] the Supreme Court made it clear that the Parliament intended to achieve the goal of removal of discrimination not only as contained in Section 6 of the Act but also conferring an absolute right to a female heir to ask for a partition in a dwelling house wholly occupied by a joint family as provided for in terms of Section 23 of the Act. It is also apt to look into the observation made by the Orissa High Court in *Pravat Chandra Patnaik and Ors v. Sarat Chandra Patnaik & Ano* [17]. In the instant case the Court highlighted the intention of enacting the 2005 Act. The Court observed that it is to remove the discrimination

contained in Section 6 of the Act by giving equal right in the Hindu Mithakshara coparcenary property as the sons have. So a daughter gets the right of a coparcener from the date the amended Act came into force i.e.9.9.2005. The Court also made it clear that a daughter gets the rights of a coparcener from 2005 even though they might have been born earlier. Thus there is a gradual development in conferring property rights to Hindu women. However it remains as a paper tiger and the implementation is very poor.

Conclusion: The Hindu daughter's position after the succession Act,1956 and Amendment Act, 2005 has

been tremendously strengthened her prowess with regard to her economic liberty, when comparative with other women may be as wife, mother, sister. At the same time, the Millennium Development Goal on gender equality and women's economic empowerment can be realized in India only when the traditional practices like female infanticide, dowry deaths, domestic violence, or sexual abuse is eliminated. It is only then equality and women's empowerment in all areas can become a reality.

References:

1. International Research Journal of Social Sciences Vol. 3(7), 49-53, July (2014) ISSN 2319-3565 pg.49
2. See *supra* note 6.
3. See *supra* note 6 at 528.
4. Archana Parashar, *Women and Family Reform in India.* 103(Sage Publications New Delhi,1992)
5. Prior to the Act, she could sell it only for the necessities of the family or to perform religious Ceremonies for the benefit of her deceased husband
6. Amrito Das, "Notional Partition, A critique., Section 6 of The Hindu Succession Act 1956", J 149 *AIR* (2004)
7. See Section 14 of the Hindu Succession Act 1956
8. Section 6 of the 1956 Act
9. AIR 1977, SC 1944
10. Ms.Indira Jaising, "Mapping women's gains in inheritance and property rights under the Hindu Succession Act,1956",*Lawyer's Collective*, 12-13
11. Bina Agarwal,`` Landmark steps to gender Equality``, The Hindu Sunday September 25, 2005.
12. Jagadish Walmik Chavan, "Progress in Hindu Succession Law", available at: <http://www.lawyersclubindia.com>.
13. Adv Mohan.V.``The Hindu Succession (Amendment)Act`` Vol.(2)2 Civil-4.5 *MLJ* 8 (2006)
14. Suchita Saigal Bangalore, 'Dwelling Houses, A Compromise on the Rights of the Daughter(2007) *SCJ*(2) p.13
15. (1996) 2 *SCC* 380
16. AIR 2009 SC 2649
17. AIR 2008 Orissa 133.

Dr. M. Madhuri Irene/ Assistant Professor/ Faculty of Law/ ICFAI foundation for Higher Education (IFHE)/ Hyderabad/ Telangana State/ madhuriirene@gmail.com /9247133349