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EXPLORING THE EVOLUTION OF WOMEN'S RIGHTS IN COPARCENARY PROPERTY UNDER THE HINDU SUCCESSION ACT: A COMPREHENSIVE ANALYSIS

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ABSTRACT

One of the major amendments that were enacted by the Hindus in relation to inheritance concerns was the Hindu Succession Act. The first enactment of this law did not offer many concessions in favour of women in relation to inheriting ancestral property. However, the amendment that was made such as the Hindu Succession (Amendment) Act of 2005 has seen some significant improvement in inheritance rights of women. Therefore, this research shall examine the amendments that were made to this Act so as to facilitate women inheritance rights concerning coparcenary property. In this paper, the researcher shall conduct a critical analysis of the amendments of this Act in order to examine the impact that it has had on women inheritance rights. This will be achieved through examining the history and current status of the problem. A comparison of important cases related to coparcenary property rights and inheritance right of women shall enable this paper to analyse the change in the rights of women in relation to inheritance laws in India.

1. INTRODUCTION

The inheritance in Hindu law has not evolved through a continuous development; instead, it has emerged from a long battle between the patriarchal traditions and the constitutional principles of equality. The Mitakshara system of coparcenary rights, the dominant tradition of property inheritance until now, is not just one more instance of property inheritance in legal terms, but an instance of a property system based on social and religious beliefs, where property belonged to the lineage of men. The reservation of coparcenary rights to men alone was thus a form of perpetuating inequality and subjugation within the realm of property rights. The enactment of The Hindu Succession Act, 1956, was certainly a significant moment in the annals of reform in India, representing efforts toward the codification of the laws governing Hindus. However, the spirit of progressivism that characterized the statute was compromised by the

desire to preserve the prevailing social structure. While the statute provided some inheritance rights for women, they were not included in the concept of coparcenary, thus preserving the very essence of patriarchy. This kind of legal strategy can be seen as the prevailing trend in lawmaking in post-independent India, in which efforts were made to accommodate constitutional principles in light of social facts. The Hindu Succession (Amendment) Act of 2005 marked a milestone in this regard as the daughters were provided with the right of coparcener ship on the basis of birth itself, thus making them equal to their male counterparts. This cannot be viewed simply in terms of a technical issue, but as an attempt to bring about a radical transformation in the understanding of the structure of family, property rights, and gender within Hindu personal law. This Act attempted to question the domination of males in the concept of coparcenary within the Hindu joint family system. However, the importance of this transformation does not stop at the mere language of the law. It is in the interpretation, implementation, and experience of it. Therefore, any attempt at reform must be analysed in terms of three overlapping planes. The first is an analysis of the law in terms of the legal foundation of coparcenary so that the rationale used to perpetrate discrimination based on gender through this law may be determined. The second is a critical analysis of the evolution of rights accorded to women in the legislative and judicial context to determine just how much progress has been made towards the goal of substantive equality, particularly through landmark cases such as Vineeta Sharma v. Rakesh Sharma. Perhaps most important, however, is an analysis of the socio-legal dynamics.

In conclusion, the lessons learned from the analysis above show that the struggle for equality in property laws among Hindus is not yet fully achieved. The passing of the Act in 2005 is a milestone towards attaining this goal, but at the same time, it shows that legislative actions alone cannot solve this problem. Thus, it can be concluded that change in property laws is not solely a legislative process.

2. CONCEPTUAL FRAMEWORK

2.1 Coparcenary as a Legal Institution:

The Mitakshara coparcenary system has its own special characteristics regarding joint property ownership, which make it distinct from existing property laws. First of all, the principle of Mitakshara is that certain family members have rights over their ancestors' property due to their birth rather than their inheritance or transfer. Thus, the unity of ownership and unity of interest are achieved by virtue of the birth of individuals as members of Hindu joint families, implying

that no member has any share in the property until there is a partition of interest among the family members. As a consequence, all coparcenary owns the whole property without division of shares, and the shares can be increased or decreased depending upon the number of coparcenary members.

Secondly, there is another peculiar feature of coparcenary called survivorship, which means that the interest of a coparcener after his/her death passes directly to the rest of the family members. Consequently, property remains within the same lineage.

As for the problem with the system, it lies in the fact that the rights of coparcenary were granted only to male members of the family who belonged to the fourth generation or less of their common ancestor. This way, women also lost these benefits. In other words, the rights received by women according to this system included the right to reside and receive maintenance. However, the fact is that these benefits did not arise accidentally; on the contrary, they can be regarded as natural for this system, as they are based on patriarchal concepts of family relations. Thus, through restricting coparcenary rights and hence the right of inheritance for women, the system maintains the inequality in the relationships between males and females, as women are subordinated to men. Indeed, women did not have access to property and, therefore, remained economically dependent on men who made all decisions concerning different aspects of family life. As for the Mitakshara coparcenary system, it is certainly gendered.

2.2 Property Rights in View of Feminist Jurisprudence

Feminist jurisprudence can be used in analysing coparcenary property rights as emanating from the patriarchal system of law, which denies women the right to own property. It cannot be said that the reason for this denial of the right to own property stems from some oversight when drafting regulations concerning property rights in the legal framework. Instead, the denial of women's property rights represents a form of gender discrimination that exists in economic and social contexts.

Where women have had their property rights denied, it is likely that their economic independence would have been compromised to an extent where they have had to depend on other people's decision making. Such women may find it difficult to make decisions concerning whom to marry and bear children.

As emphasized by many feminists including Bina Agarwal, possession of property/land increases the power of women, making themselves economically independent and also within and outside the family. Not only does possession of property provide economic independence

to women, but it also gives social legitimacy to women, enabling them to confront the patriarchal order that already exists. In the words of Agarwal, "women owning land decide on many matters, oppose domestic violence, and improve their lives and those of their children". However, according to feminist theory, it is immaterial whether women have access to law or not. They will not gain power through that until and unless that law is implemented in reality. Although women must be provided with their rights, many factors intervene between the grant of right and its execution. Hence, when a law granting coparcenary to women is enacted, these issues must be considered.

2.3 Constitutional Morals and Personal Laws

There has always been controversy in analysing the interaction between personal laws and constitutional morals in India's legal sphere. For instance, personal laws like the Hindu Law have been used for handling marriages, property, and familial matters based on religion. Nevertheless, it is worth mentioning that the religious practices might not be in line with constitutional morals of equality and non-discrimination.

According to Articles 14 and 15 of the Indian constitution, citizens should receive equal treatment according to the law without discrimination for their sex and other statuses. Substantive equality is a key principle behind these articles to achieve more than just equality and get rid of structural inequality. Inconsistency in applying this concept has been seen while dealing with personal laws for the sake of not involving religious and cultural aspects.

Another such important concept that attempts to find a solution to this problem of choice between the two contradictory ideas of morality is Constitutional Morality. Constitutional Morality requires everyone who has any affiliation to the law as well as social norms to respect the values enshrined in the Constitution despite them contradicting the existing social practices. Constitutional Morality can be defined as a set of standards that lay stress on individual rights instead of social customs.

One case that could prove to be helpful in understanding the above relation is the Hindu Succession (Amendment) Act, 2005. As a legislation, the above act tries to bring together the idea of Personal Laws and Constitutional Morality by granting the daughter's right of equal share in the coparcenary property. As seen in the case of Vineeta Sharma v. Rakesh Sharma, it must be remembered that a daughter's right to coparcenary property does not depend on her father's death.

In any case, it must be noted that the harmonization of personal laws and constitutional ideals is an ongoing endeavour, as seen from the presence of discrimination and selective enforcement of laws, which suggests that the constitution's spirit still has not realized its full potential. It can be accomplished only when not just progressive laws are made, but even more importantly, social values underlying personal laws are questioned.

3. THE DEVELOPMENT OF THE RIGHT TO PROPERTY OF WOMEN

3.1 Women's Rights to Property before Colonialism and under Classical Hindu Law

The status of women in the classical period was unique because of the combination of different aspects such as religion, tradition, and patriarchy that formed the social framework of that time. The Manusmriti and Dharmashastra legal systems stipulated that there existed an arrangement in which women were considered lifelong dependents who would come under the control of the father, husband, and later sons. In such a scenario, the property rights of women did not indicate freedom for women, but they were a form of privilege attached to their dependence. Stridhana may be characterized as the only property that women owned in the classical period. Even though Stridhana has been identified as the property of women, its application was restricted to some areas. These comprised a gift from the woman's husband on the day of her marriage or gifts from other family members, but it was still controlled by men. It may even be that women were not involved in the decision-making process of how the gifts should be used. But what is important to be noted here is that there was no ownership right of women in the properties possessed in joint possession according to the Mitakshara coparcenary tradition. This is because it is the sons who have their share in the ancestral properties as per birth in the family lineage and, thus, women had no share in the ancestral properties despite having worked for the welfare of the family. This reasoning for depriving the right of women from ancestral properties has its origin in worshipping the ancestors, an act only possible by the sons and not daughters.

Therefore, it can be said that the end result of such customs has led to the lack of freedom of women. In other words, by depriving the women from ownership of means of production, it became a dependent social structure. It is on this basis that we have talked about the factors leading to the persistence of such social structure.

3.2 The Role of the Colonials in the Codification Process

The introduction of British rule and legislation opened a new chapter in the evolution of the Hindu Personal Law. The period in question was defined by a codification process that aimed at achieving some degree of uniformity in applying the law. At the same time, the involvement of the colonials in the sphere of the Hindu Personal Law was far from neutrality in terms of gender relations in India. Instead of changing the existing laws, colonizers sought to justify the prevailing norms and customs of the society.

Thus, the codification process facilitated the perpetuation of patriarchal customs. Although the tradition was much more versatile than the codification process, the codification of the Hindu Personal Law based on literary works became the norm for people. For this reason, the process of codification helped consolidate the power of men in the distribution of property through Mitakshara Coparcenary.

There were some attempts to amend the existing law to empower women. Thus, for instance, when in 1937 the Hindu Women's Right to Property Act was adopted, it allowed to give some empowerment to widows to receive some property rights to their late husband's inheritance. Nevertheless, this kind of empowerment could be valid only during the widow's life, but it was not associated with the full right of property. Consequently, all the above-mentioned legal changes became vain.

Consequently, one should consider that the colonial period can be referred to as that period which sought to preserve the system of patriarchy as a basis for future law making.

3.3 Hindu Succession Act, 1956

The Hindu Succession Act, 1956 is one of the outcomes of this drive towards modernizing and amending the personal laws of the Hindus following their independence from colonial rule. It tried to bring about uniformity among all these varied procedures involved in succession, thereby introducing many reforms such as allowing women to inherit if there was no will, among others.

Nevertheless, much of the features of the coparcenary did not get influenced by the Hindu Succession Act since the role of women as coparceners had never been defined before. As such, she lacked any entitlement to make claims for the coparcenary property, unlike men who enjoyed a slight advantage over the former while inheriting ancestral property.

All this theory did nothing but widen the already widening chasm between the two genders. According to the rule, the share of the dead coparcener would automatically transfer to the remaining coparceners who were men. This meant that the property had no share left for the

heirs of the woman.

Thus, it can be said that the 1956 Act is really a result of such a balancing act performed by the legislature when making this much needed reform. The legislation was passed in consideration of the fact that it should help empower women in society without disturbing the existing social system.

4. HINDU SUCCESSION (AMENDMENT) ACT, 2005

4.1 Key Provisions

There is no doubt that Hindu Succession (Amendment) Act, 2005 could be considered one of the important milestones concerning the protection of property rights under Hindu Law. In the first place, the most important feature of this law refers to the recognition of the status of coparcener by birth for daughters who, in turn, have the possibility to own property on an equal footing with their brothers when it comes to joint family property. As a rule, all these provisions have been implemented with the purpose to deal with the problem of gender discrimination within the coparcenary system.

In addition to having equal rights to inherit, daughters are also responsible for paying all obligations made on the behalf of coparcenary. This means that women now have an opportunity to actively participate in the business conducted by families, acting as equal partners.

Furthermore, devolution has become more pronounced while there has been less emphasis on survivorship.

4.2 Transformative Possibilities

There are various viewpoints that can be considered regarding the transformative implications of the amendments mentioned above. In terms of structure, this represents a big threat to the concept of the exclusion of men in regard to coparcenary status. Therefore, any such amendment will have a significant impact on the entire framework of property law among Hindu joint families.

In terms of symbolism, the amendment has great significance because women are regarded as equal stakeholders in the property ownership process. It turns everything upside down for both males and females socially.

In terms of economics, the proposed amendment will provide more resources for women.

4.3 Limitations

Nevertheless, there exist several drawbacks connected with this law. Firstly, the process of implementation of the act may prove problematic. The lack of enforcement tools presupposes that the exercise of rights becomes possible only on the basis of the initiative taken by individuals; nevertheless, sometimes the socio-economic situation does not favour such an initiative.

The second major obstacle in the process of implementation can be referred to as social opposition to the adoption of the act. It is true that there is still some patriarchal mentality not only in communities, but even within families, as a result of which women give up their rights in order not to upset the balance within their societies. Indeed, there were cases where women had to be persuaded to renounce their rights to inherit any properties.

Initially, the act caused several problems. For example, there were problems with regard to the retroactive nature of the law and the period for which the joint ownership would be in effect. All those problems were resolved as a result of the Vineeta Sharma vs. Rakesh Sharma case.

5. JUDICIAL INTERPRETATION

5.1 Ambiguity in the interpretation of early judicature

Initially, the court decided to apply a conservative approach while interpreting the Hindu Succession (Amendment) Act of 2005. The Supreme Court, through the Prakash v. Phulavati ruling, stated that any right given to a daughter through Section 6 of the Hindu Succession Act will be considered valid only from the prospective date. From the ruling made by the Supreme Court, a daughter needs to be alive alongside the father for her to acquire the coparcenary rights under the provisions of the amendment. This means that there were many women, who would have had a chance of acquiring coparcenary rights but failed because of having deceased fathers.

This is a clear indication of how formalistically the judiciary approached the interpretation of the Act instead of addressing the main purpose of the legislation.

5.2 Progressive Interpretation

There were indications that the interpretation of the law became more progressive, as seen in the case of Danamma v. Amar, whereby despite the death of the father prior to the enactment of the amendment, the Supreme Court awarded coparcenary rights to the daughter. There was indication that the Supreme Court may have gone against the interpretation made by the

Supreme Court in the Prakash v. Phulavati case, leading to inconsistencies.

The importance of the judgment in Danamma is that the Supreme Court showed that there was a reason for making this amendment and that it was aimed at addressing the wrongs of the past, thereby promoting gender equality. Nevertheless, the failure to be consistent led to inconsistencies in the lower courts.

One should be aware of the fact that there was a conflict in the era of judicial interpretation between literal and purposive interpretations of the law.

5.3 Doctrine of Consolidation

With the decision on the 2005 amendment in the landmark case Vineeta Sharma v. Rakesh Sharma, it was established by the apex court that daughters would be coparceners the moment they were born as their brothers are. The Court further held that the right of being coparcener by birth would not depend on the existence of the father when the amendment of 2005 came into effect.

The narrow view of the law held by Prakash v. Phulavati and the conflict in decisions in Danamma v. Amar was dismissed by the Apex Court and harmonized. It was emphasized that the amendment in discussion is a declaratory nature to eliminate a hindrance for recognizing an existing right. In addition to that, the right of being born a coparcener was declared as inherent in nature and independent of extrinsic conditions.

This particular decision was indeed a landmark in the history of jurisprudence of the judgments on personal laws where the interpretation of the statutes considers constitutional principles to historical injustices.

6. SOCIO-LEGAL REALITIES

6.1 Divergences Between Legal and Practical Spheres

While the legal dimension of the issue might appear pretty simple and obvious, there is always some divergence between what women are entitled to legally and what they can actually do in real life. To start with, it is necessary to emphasize that there are still many women who are unaware of the fact that they are entitled to inheritance rights. The legal knowledge of property rights does not have high levels among certain segments of society.

Further, even if women have some information concerning their property rights, they still would have to waive these rights because of the social dimension. The most important thing is to maintain harmony within the family than to assert their legal rights. In this way, women give

up their part in favour of men. Women undergo pressure from various sides, including psychological and blackmailing.

To finish with, one should bear in mind the following point. Informal ways of handling family problems prevail.

6.2 Cultural Resistance

The primary hindrance in implementing changes in legislation and developing reforms concerning women's property rights stems from cultural resistance. The patriarchal culture dominates and thus causes people to believe that only men have any property right in the family. Any appeal of the female individual regarding the right to property looks like something threatening since it is assumed that the woman no longer belongs to her family due to being married and therefore cannot inherit anything.

In this case, any appeal to receive a portion of property means breaking the existing social and cultural traditions and results in isolation of the woman from the community. As a consequence, she may be refused the possibility to be within the circle of village female acquaintances, and even her relatives will face certain difficulties in dealing with her.

From the above-mentioned examples, it becomes clear that legislative steps are not enough to ensure gender equality.

6.3 Economic Impact

The economic impact of individual empowerment through the ownership of property cannot be overlooked. In addition to that, through property, one gets to create a buffer zone where one does not have to depend upon his or her relatives. With the help of property ownership, women are empowered to engage in bargaining without necessarily depending heavily on men to be economically empowered. In case of an economic recession, property owners can do without depending upon the male gender. Through property, women empower themselves to decide on how household matters should run.

Through property, women can easily protect themselves from different types of vulnerabilities including domestic abuse and neglect among others. Bargaining for women becomes easier through property since women are not economically vulnerable as was before property ownership.

This means that the empowerment of women through property, as seen from the amendment made in 2005, has not been complete due to some factors such as education level and

economics.

7. CRITICAL ANALYSIS

7.1 Formal Equality vs. Substantive Equality

Only then does it make sense for one to talk about the issues related to formal equality vs. substantive equality in relation to the changes brought about by the amendment in 2005. In regard to formal equality, it should be taken into account that such concept may be considered as equal treatment regardless of the difference in gender. Therefore, it goes without saying that formal equality is guaranteed by the 2005 amendment due to equal legal position of men and women. Meanwhile, substantive equality implies exercising one's rights.

There are numerous hindrances which make it difficult for one to exercise his/her rights. Social norms and economic dependence serve as excellent examples of such barriers.

7.2 Intersectionality

The property rights that the women can claim vary significantly. It suggests that the impoverished women will encounter difficulties in raising money to file a lawsuit against the men. Moreover, it suggests that the women, who are part of the lower castes, will face discrimination more often.

Furthermore, there exists a wide gap between the ownership of properties of the rural and urban women. The women living in villages indulge in farming-related work; thus, conflicts regarding their properties become more frequent. Moreover, they may not even obtain legal assistance in these matters.

Hence, intersectionality helps assess the consequences of legislative modifications.

7.3 Legal Reform Limitations

From a historical standpoint of moving from an era where there were no coparcenary rights for women to being incorporated into the Hindu Code Bill, it becomes clear that there is a perception of the advantages as well as the limitations associated with legal reforms. While legal reform can be utilized as a tool for social reform, as a stand-alone legal mechanism, it fails to be adequate for dismantling all social structures.

The presence of the patriarchal structure may be viewed as an indication that the exercise of legal rights fails to make sense unless there is also a revolution occurring. The revolution would involve raising awareness about legal reform and also developing social institutions in tandem

with a fierce resistance to all social norms that undermine the liberty of women. Put differently, gender equality in property rights cannot be achieved through this method.

8. COMPARATIVE ANALYSIS

A comparison of the reforms that have been carried out in laws concerning inheritance would demonstrate that the problem of providing equal rights for women and men concerning inheritance is not peculiar to India alone but is rather a worldwide concern. There have been reforms made in several countries in an attempt to ensure that men and women are treated equally when it comes to inheritance. Despite how easily it might appear to be provided legally, implementation can prove to be difficult.

It is observed that Nepal has made reforms concerning its Civil Code, introducing the Muluki Civil Code in 2017, which gave daughters equal rights as their brothers concerning inheritance. This was due to the need to implement some clauses within the Constitution and also within human rights law. Nevertheless, even though such clauses existed in the legal framework, a lot of difficulties have been experienced by the women.

In this connection, other African countries within the boundaries of sub-Saharan Africa have also developed legislation concerning gender equality in the field of inheritance laws. For instance, in Kenya, the Law of Succession Act is introduced to provide women with equal opportunities in the inheritance process; at the same time, in Ghana, the Intestate Succession Act must guarantee the rights of both sexes. Nonetheless, due to a large number of legislative changes, the informal system remains dominant in rural areas since informal norms are more significant than any formal legal norms.

Thus, according to the above analysis, the discussed problem may be regarded as common for Indian law instead of being specific to it. It is important to underline that the problem can be considered as embedded in social relationships because it is common for all societies. Although the development of legal reforms is crucial in solving the problem, these efforts remain fruitless because of the dominance of informal traditions within the society.

9. RECOMMENDATIONS

From the above discussion, it is obvious that in order to achieve equality while exercising property rights, it becomes necessary to have some kind of overall strategy in place. Besides, apart from the legal changes, it is also important that there should be certain other institutions established that facilitate the exercise of property rights in an easy manner.

9.1 Legal Reforms

Firstly, as far as legal reforms are concerned, it is important to make some changes in the laws relating to property rights of women. This requires reducing the amount of bureaucracy while exercising property rights and also utilizing modern technology while doing so.

Secondly, another issue that comes up when talking about exercising property rights is that of forced waiver of such rights, especially because of the lack of awareness about property rights. Also, improvements in documentation should not be overlooked. Land-use disputes can happen due to inadequate or poor documentation of the land, which often disadvantages women. The importance of adequate documentation cannot be overemphasized since it protects the rights of women.

9.2 Institutional Measures

One can suggest that the efficiency of the rights greatly relies on the institutions that administer such rights. Legal aid service became quite important to the women because they may be incapable of obtaining their rights through the means of courts. Therefore, it is vital to create measures for improving the state-funded legal aid service so that more women could receive it.

Finally, it would be a mistake to underestimate the role of the judiciary and executive personnel. The process of conducting the awareness campaign with the purpose to provide knowledge to the judges, lawyers, and tax administrators regarding interpretation of the property law will lead to equality between sexes.

Moreover, there should be created a certain system to influence property laws in order to ensure that such laws are implemented properly. Auditing and obtaining data on property ownership by sex will illustrate such problem.

9.3 Awareness and Education

One more thing that needs to be considered is that the awareness of the law may help in implementing these laws. In most cases, ignorance of the laws relating to the inheritance rights of women makes it impossible for women to inherit from their parents. Thus, awareness programs regarding the law may prove useful through various mediums including community groups, schools and colleges, and media.

Apart from this, other means need to be employed to ensure the achievement of the objectives

in this regard. First of all, it will be important to conduct educational campaigns about inheritance among students, which will help in realizing the goal. As a result, people will get information about this issue. It will help in creating an attitude of society in this regard.

In any case, one must not forget the role that communities can play in this respect.

9.4 Societal Change

In the first place, the important thing that one must recognize is that any form of effort made to secure the rights of women concerning property would necessarily entail considering the changing nature of society itself. Although there may be certain regulations that will help in gaining such property rights, this effort may prove insufficient as long as the problem of the status of women within society must also be considered.

Therefore, the promotion of gender equality regarding property rights within the family is certainly a wise means to make changes within society. Ultimately, the efforts to convince parents that their children are equals according to the law in all aspects, particularly in relation to inheritance, can be considered an important move towards gender equality.

As a conclusion, one can say that inheritance matters must always be addressed in a positive manner. This way, one will ensure that there will be fewer conflicts and a better atmosphere for the advancement of women's rights.

10.CONCLUSION

First of all, it should be noted that the development of the chosen topic can be viewed positively because it concerns the fight against gender-based discrimination. Namely, the introduction of such legislative measures as the modification of the Hindu Succession Act and court decisions related to the problem of women's right to property may serve as an example of overcoming barriers which prevent females from acquiring property according to modern legislation. Therefore, the accomplishment of gender equality and equal rights becomes feasible.

On the other hand, people's inability to observe new regulations for different reasons indicates that the acquisition of equality by women may become a difficult and lengthy process. That is, new legislation cannot be implemented effortlessly; consequently, it requires some time to become a reality. Thus, women's property rights will require much time.

Summing up, it is necessary to point out that both normative and organizational measures need to be taken into account when dealing with the chosen topic.

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