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# **CHANGING NATURE OF THE PROPERTY FOR ITS USAGE IN CONTEMPORARY HINDU SOCIETY: A SOCIO-LEGAL STUDY**

AUTHORED BY - VIKAS KUMAR

## **Introduction**

The concept of property plays a very important and crucial role under Hindu society. The description of Hindu law will be incomplete without discussing the concept of property. It is a very complex and dynamic in nature. The importance of property for a Hindu is described in the old writings. The old writers describe how properties matter for the society, family and individuals. They explain this by citing the necessities of property for social, religious and individual purposes. In the old religious texts, it was given that usage of property is related to the individual's karma. The Manu, Narada, Vrispati and etc talked about this.

But with the changing times, Hindu society gets changed and it modifies itself with the need of the time. This the reason for the continuous practise of Hinduism even after many changes. It is the beauty of Hindu society that it encompasses the changes and also preserved their basic foundational pillars. Along with other changes, the concept of the property also gets changed. The different kinds of properties like joint family properties, properties of Hindu undivided properties, ancestral, coparcenary, properties under joint-stock, separate property, self-acquired property and etc get changed with the time. Also, the changes are not only in kind but also in its usage. The properties which were previously used for mainly religious and social purposes now gets used for the individual betterment.

There are confusions regarding this because of diverse writing and sources. Many writers say many things in different manners and in the context of a different society. And the inclusion of English law also made it more complex because of the different nature of property in English law and Hindu law. This research paper is aiming to just simplify the concepts, changing types of property and will also discuss the changes in its usage. It will also discuss the changing nature of the society, and the effect of change of property upon them. It will also discuss the changing legal

scenario regarding the property and its usage. It will discuss the impact of changing the law regarding the property and how society accepts that. It is research tracing the usage of property in the old law and the changes in it in modern times. The whole study is around the concept of property and its usage in relation to social and legal changes.

### **Aim and Objectives.**

This paper is aimed to study the nature of the property and its usage under the contemporary Hindu society in the light of the nature of properties and the laws regarding the Hindu society. It is an attempt to study the impact of changes brought by law in society. It will study the people's reactions and the changes in their lifestyles.

### **Research Methodology**

This study is based on the doctrinal method of study and research. The researcher considered various articles, journals and write-ups to understand the changing nature of property and its usage. This research paper also studies many cases to provide support to the arguments. In this research, both descriptive and analytical methods of writing have been used.

### **Understanding Property under Hindu law**

According to the dictionary meaning, property means “any object of value that a person may lawfully acquire and hold; anything that may be owned; stocks, land, etc.; any possession. It is also ownership or dominion; the legal right to the possession, use, enjoyment and disposal of a thing; a valuable legal right or interest in or to a particular thing.”<sup>1</sup>

Many authors described property as an economic value and many as a right. In common sense, property means the right which also has the economic value. Property is attached to many elements of life of a human being. Economic, social, legal, psychological attachment are indispensable from the property. In the eye of the law, it is a package of rights and the question is who exerts its control and what rights accumulate from it. On the point of defining property, experts are of opinion that, it is challenging to define the property without concerning the factor of variation in ownership.<sup>2</sup> The property is different in different societies and in a different

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1. Webster comprehensive dictionary, International Edition Vol 1, Chicago, 1984, p.1011.

2. Melville J Herskovits, ECONOMIC ANTHROPOLOGY THE ECONOMIC LIFE OF PRIMITIVE PEOPLES, 1974, p.314.

context. Factors and conditions of ownership may vary with respect to these changes. Although the property is universal, it is culture-specific and any study regarding this should be done in the shadow of the society it belongs. It is the case with the Hindu law. The view of society about the property is different from other religion and other laws.

According to philosophers like Engels who describes the concept of private ownership, at the time of the initial stage, the property is under common ownership. The individual ownership started after the concept of ownership regarding the cattle like cow, goat and etc. First, it was changed to family from common ownership and then after it is moving towards an individual's ownership.<sup>3</sup> The forms of the family also determine the nature of the property. At the time, when the property was held by the common people the nature of the right is the enjoyment of property not of ownership. In Hindu law, the Shastra not only describes the property as a right of enjoyment or ownership but also consider it as a tool to perform some religious rituals which is necessary for a Hindu. As the society changes the laws governing property gets changed which also modifies the nature of the property. In modern times, there are many laws governing the property among the society. Different places, society has different laws regarding the property.

The Mitakshara School classifies property mainly under two heads: first, *Apratibandha Daya* or unobstructed heritage; and secondly, *Sapratibandha Daya* or obstructed heritage.<sup>4</sup> All properties inherited by a male Hindu from a direct male ancestor, not exceeding three degrees higher to him are called *Apratibandha Daya*. In the interest was due to the birth. On the other hand, when a person inherits property from any other relation, such as a maternal or paternal uncle or brother, nephew, etc., then it is known as *Sapratibandha Daya*. In this, the individuals don't get interest by birth. The different kinds of property under Hindu law will be described later.

### **Property under English law**

The concept and nature of property under English law and Hindu law is very much different. In England, ownership, as a rule, is single, independent, and unrestricted. There may be some cases where it is joint but in general cases, it is of individuals and because of this the presumption is in favour of individuality. Whereas in Hindu law it is contrary to English law, the presumption is in

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<sup>3</sup> Ibid.

<sup>4</sup> Vijendra Kumar and Vidhi Singh, "Extinguishing Hindu Joint Family and Mitakshara Coparcenary: A Critique", 1 CLPR (2018).

favour of joint because the society is of such nature. In Hindu law, joint ownership is the rule. If an individual holds any property in severalty, it will in the next generation, relapse into a state of joint ownership. A Hindu may start with nothing, and make a self-acquired fortune by dint of his own ability, knowledge and skills and he is the absolute owner of the estate. But, in a couple of generations his offsprings would have ramified into a joint family, exactly like a Banyan tree which started as a single shoot.<sup>5</sup> Absolute, unrestricted ownership is an exception. Hindu law has a check and balance inbuilt mechanism regarding the control over the property. The father is restrained by his sons, the brother by his brother, the woman by her successors. If a property is free in hands of its acquirer, it will become fettered in the hands of his heirs., Individual property is the rule in the west; corporate property is the rule in the East.<sup>6</sup>

## **Kinds of Property under Hindu law**

### **Joint Family property or coparcenary property**

Hindu joint family is a very ancient concept. It consists of a common ancestor and all his lineal male descendants up to any generations together with the wife or wives (or widows) and unmarried daughters of the common ancestor, and of the lineal male descendants.<sup>7</sup> The Smriti and commentaries also describe the joint family as 'Kutumba' or 'Avibhakta-Kutumba'.<sup>8</sup> The common ancestor is the person who starts the joint family but the family doesn't dissolve after the death of the common ancestor. Hindu law confers status and several rights to the members of a Hindu joint family, the concepts of coparcenary, and other things related to property is related to this. An undivided Hindu family is ordinarily joint not only in the estate but also in food and worship.<sup>9</sup>

Within the Hindu joint family, there is a narrower part called Coparcenary. It includes the eldest male member of the family along three generations belong the person. The interest in property arises just by taking birth. Here a mere conceived child is also a coparcener subject to his birth. Joint-family property or coparcenary property signifies the property in which all the coparceners have a community of interest and unity of possession. There are different types of properties

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<sup>5</sup> Rangnath Mishra and Vijender Kumar (rev.), John D. Mayne, TREATISE ON HINDU LAW AND USAGE, 17<sup>th</sup> ed. 2014, p. 841.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Paras Diwan and Peeyushi Diwan, FAMILY LAW, 4th ed. 1998, p. 259.

<sup>9</sup> Raghunadha v. Brozo Kishoro (1876) 3 IA 154; MAYNE, supra note 1, at 820.

having different nature inside the circle of Hindu joint family or coparcenary properties. These are as follows: -

- a) Ancestral Properties.
- b) Property jointly acquired by the members of the joint family.
- c) Separate property of a member “thrown into the common stock”.
- d) Property acquired by all or any of the coparcener with the aid of joint family funds.

These are the most common types of property under the property of the Hindu Joint Family. The mere severance of status in a joint family doesn't change the nature of the property. A joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers.<sup>10</sup>

#### ➤ **Ancestral Property**

It refers to all properties which a man inherits from a direct male ancestor, not exceeding three degrees higher than himself, is ancestral property, and is at once held by himself in coparcenary with his own male issues.<sup>11</sup> In general sense, it can be said that, all those properties which devolve by survivorship and not by successions. The only persons who acquire an interest in it by birth are sons, son's son and son's son's son. Any property by other relatives like mother, sister, brother etc, will not come under the ambit of ancestral property, the nature of such properties are different from this. To determine the nature of property given by the grandfather, or father to the person will be determined by examining the intention of the person who submits the property. If the giver has the intention to give the property for the personal use then the property will not be count under the ancestral property. In case of other intentions like to preserve the property to pass over the next generations then the property will be under the ambit of ancestral property.

The Court held that where it has not been indicated in the deed of gift that the donee will take as a joint family property, that property shall be the absolute property of the donee, in which his sons will not have any right by birth.<sup>12</sup> Therefore, the intention is one of the important factors to trace the ancestral property.

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10 Bhagwant P. Sulakhe v Digambak Gopal Sulakh And Obs, AIR 1986 SC 79.

11 Shyem Behari v Rameswar Prasad (1941) 20 Pat 904.

12 Commissioner Of Income-Tax v. P.M. Muthuraman Chettiar And Anr. AIR 1967 SC 415.

➤ **Property jointly acquired by the members of the joint family**

If any property is included in the Hindu joint family by its member by their joint labour whether, in business, profession or vocation, with the aid of joint family property, the nature of property is of the coparcenary and belongs to the joint family. The presumption about the property lies in the favour of Hindu joint family unless the contrary is proved.<sup>13</sup> It is settled rule that if any property is acquired by the member of the joint family or any interest from the property of joint family will be the property of the joint family if the intention and the circumstances don't go contrary. The nature of property is of joint ownership. It shows the concept of unity in our older Hindu law. It explains the reasons that even after many changes the people believe in common ownership.

➤ **Separate property of a member "thrown into the common stock".**

When any coparcener voluntarily in the situation of giving consent submits his self-acquired property into the joint fund with the intention of deserting his personal claims to it, then the nature of such property is of the joint property. All other members will get the right over that property.<sup>14</sup> Further, it will change its nature into ancestral property. Surrender of such property is not a primary activity, it is possible only by thoughtful and intentional acts of the owners of such property by direct or indirect expression. The conduct of part can also express his intention. The act of surrendering the property is unilateral. The act of submitting own property to the joint fund is not the act of gift nor is its gift. There is neither any donor nor donee nor does it attract the provisions of Transfer of Property Act.<sup>15</sup>

In the lack of submission of any property by a person into a joint family, no self-acquired property will be converted into joint family property. If any member claims that certain property of the joint family is not of the joint family but his own individual then the burden of proof lies on the person who claims such.<sup>16</sup>

➤ **Property acquired by all or any of the coparcener with the aid of joint family funds.**

Any property which has been acquired by the joint family then all the acceleration like rent, income, sale etc will be the property of the joint family. In a joint family, it is a practise that there are several properties and businesses of the family and different members are managing that. The

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13 Supra Note 4.

14 Satyajee Desai (rev.), D.F. Mulla, PRINCIPLES OF HINDU LAW, Vol. I 18th ed. 2001, pp. 123-126.

15 R K Agarwal. HINDU LAW, 21<sup>st</sup> ed. 2003, Central Law Agency, Allahabad.

16 K. Abebul Reddy v. Venkata Narayan, (1984) 3 SCC 447.

gain by those properties will be of the joint family not of the person who was managing it. It also includes the properties which were purchased on the name of one of the members of the joint family by the aid of the other members or property of the joint family. So, the mere purchase on the name of a person is not enough to make the property self-acquired.

It shows the culture of the Hindu joint family, in which each one is responsible to each one and the Karta of the family ensure the distribution of resources for all according to needs. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might gain any property then the presumption in eye of law is that it is a joint family property and the burden of proof is on the individual member to show evidence that the property was acquired by him without the aid of the said nucleus and the intention was of self-acquired property not of the joint family.<sup>17</sup>

### **Changing the nature of the property under Hindu society**

As time changes. Hindu society also went through changes and need and thinking of the people also got changed. The concept of the property also went through many changes. The concept of commonship is changed into individualism. The people shifted for the individual property instead of common welfare and common ownership over the property. The major change is that property shifts to self-acquired property which is also known as Separate property.

- **Separate property-** means the person has ownership over the property, not the joint family. It happens when a person separates himself from the joint family, he gets his share on which he has the ownership but still at that time his brach will take that property as the joint family property. In other words, it means property obtained by a Hindu without any detriment to ancestral property.<sup>18</sup> Separate property is also known as self-acquired property. It refers to the property acquired by Hindu by his own exertions without the assistance of family funds.<sup>19</sup>

There are many other types of property which comes under the ambit of self-acquired property or separate property. These are the following properties: -

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17 B.M. Gandhi- "HINDU LAW", 3rd edn. 2008.

18 Supra Note 14, p 341.

19 Ibid.

- **Obstructed heritage-** These are the properties inherited by a Hindu from a person other than his father, father's father or father's father's father.<sup>20</sup> In previous times, it was said that the property should be only given to their own son but at the present time, people prefer to transfer the property to the person who supports him in his lifetime. Changing relations lead to the innovation of this type of property.
- **Gift-** A gift of a small portion of ancestral movable property made through affection by a father to his male issue, is his separate property.<sup>21</sup>
- **Government grant-** Any property which has been granted by the government to a member of a joint family is the separate property of the person unless the contrary is proved.<sup>22</sup>
- **The income of separate property-** The income of separate property and purchase made with such income.<sup>23</sup>
- **Separate earnings-** The individual's earning of a member of a joint family. It can be in many ways like remunerations, salary, incentives and etc.

Thus, these are the major types of property in modern times which has the basic of the nature of property as in traditional times but has the flavour of modernisation and individualism.

### **Changing usage of property under a Hindu society**

The usage of property depends upon the society which is using it and the time it is being used. The usage of property under Hindu society is somehow gets changed in modern times in comparison to traditional times. The traditional Hindu society uses the property for social welfare, commonness, religious purposes, protection from any future problems and etc. The main use of the property was for religious purposes. The rules to use the property were governed by the Shastras. The moral duties were given priority regarding the use of the property. Even in modern days, it is said that moral duties are necessary even after there are other legal duties. The priority is given to moral duty under Hindu society.

The pious obligation of the son is one such moral obligation where precedence to moral obligation

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20 Ibid.

21 Ibid.

22 Ibid.

23 Ibid.

was given over legal rights.<sup>24</sup> In the counting of such moral obligations, religious duty is important which also includes the payment of the debt of father. The inclusion of the debt part is derived from the belief of Hindu society that unpaid debt will lead to hell after the death and it is the duty of the son to discharge the debts of his father.<sup>25</sup> The ancient Indian literature is full of evidence of the importance given to the discharge of liability to pay off debt from ancient times. According to ancient Indian thought, one is born indebted; and is under an obligation to discharge the liability.<sup>26</sup>

According to literature, the son is desired because of the reasons that he would pay the debts spiritual and worldly of his father. This the basis of that the pious obligation of the son is based on the authority of the religion. But at the same time son is exempted from paying the “*avyavaharika*” debts. It consists the debts which are not immoral like for play, entertainment, on prostitutes and etc. As it was stated that morality was given importance there is no chance of bounding the son for the immoral acts of his father.

### Impact of Laws

The above practices were not codified but remain in the practices of people with little bit deviations according to society. The status of property gets drastically changed after the enactment of the Hindu Succession Act 1956 which has a very far-reaching impact on the nature of the property and its usage under Hindu society. Although, it was said that the act is not intended to change the nature of hindu family, it changed many things. The rule of survivorship and Doctrine of ownership which is basis of pious obligations was effected by sections 6,8, and 30 of the aforesaid act.

Considering the changed the law, the court established the principle that the sons cannot set up their rights against their father’s alienation for an antecedent debt, or against his creditor’s remedies for their debts, if not tainted with immorality. On this important question of the liability of the joint estate, their Lordships think that there is now no conflict of authority.<sup>27</sup> The court supports the doctrine of pious obligation,<sup>28</sup> but in between that many courts expect the son from

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24 Vijender Kumar, “Basis and Nature of Pious Obligation of Son to Pay Father's Debt vis-à-vis Statutory Modifications in Hindu Law”, 36 JILI (1994), p. 339.

25 Ibid

26 P.V. Kane, HISTORY OF DHARMASTRA, Vol.III, 2<sup>nd</sup> ed. 1972, pp. 560-561.

27 Manomi Babuasin v. Modun Mohun (1885) 13 IA 1, 17-18.

28 Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh, AIR 1952 SC 487, 90.

paying immoral debts. Later, the courts realised the importance and economic challenges behind this doctrine and then curtailed the doctrine of immoral debts. The court held that if a person is getting property from one then he is bound to pay his debts without considering the immoral or moral debts. This was done on the basis of provisions given in section 4 of the Hindu Succession Act.

The Hindu Marriage Act, 1955 has a great impact on the doctrine of pious obligation. Section 16 of the Act in order to remove the social stigma about illegitimate child provides rights to an illegitimate child which are equivalent to a legitimate child. But the legitimacy means the child will only get the property of his father- mother not of grandfather and because of this he is exempted from pious obligation. This was the partial abrogation of the doctrine of pious obligations. Further, the Amendment act of 2005 totally abrogates this doctrine. The provisions of legitimacy and the coparcenary rights to women were the reason for superseding this doctrine. The said amendments were made considering the social welfare, equality and acceptance by society. The very basic of providing coparcenary rights only to son is that they have to perform the pious obligation was destructed by giving this right to the women.

Now, in modern times, the property is for the purpose of the individuals use which also includes religious and moral duties. There are no exceptions for not following the legal duties. Therefore, as the nature of property changed with time, the legal enactments changed the usage of property in Hindu society. In starting of the intereference of law in the religious matter was opposed by the people but very soon they accommodate the changes understanding the need. The changes are centered to the individual and these changes mainly glorified the importance of women in society and tried to make the society discrimination-free on the basis of gender.

## **Conclusion**

The nature of the property was definite but uncodified in the traditional age of the Hindu society. There was clarification regarding the nature of the property and it was a presumption that the property belongs to the joint family. The nature of the property was of joint ownership which later changed to the separate or self-acquired ownership. The changed scenario considers the changing need of the individuals and their requirements. It discovers the new arena of diverse natures of property. There were different types of property with different usage. The changed scenario also changed the usage of the property. Previously it was focus on the morality and the

religion-based duties but after the enactments of many laws like Hindu Marriage Act, 1955, the Hindu Succession Act, 1955, and the amended act of 2005. These acts made some changes one after another which makes different laws regarding the nature of the property and its usage. These new laws were opposed by the old minded people on the basis that it will infringe their personal laws but after considering this in new world, the Hindu society accepts it wholeheartedly. These changes give new rights to individuals of the Hindu society which were not provided in the past. It also legalises the many things which were only based on morality. These changes are good and far-fetching for society. The society should look forward to encompasses such laws in future.

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