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DIGITAL ERA AND FAMILY LAW: AN INSIGHT INTO THE GROWTH OF WOMEN'S RIGHTS OF SUCCESSION

AUTHORED BY - VYSHAKH S SHEROFF

Introduction

The Universal Declaration of Human Rights guarantees equal right to property, stating that no one's property rights shall be arbitrarily revoked. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is widely regarded as one of the most important instruments focusing solely on women's rights, and it is often referred to as the international bill of rights for women.¹ It consists of a preamble and 30 articles that define what constitutes discrimination against women and establishes a national action agenda to end such discrimination.² This convention expressly affirmed its position and imposed obligations on state parties to take all appropriate measures to ensure equal rights for both men and women in terms of property ownership, acquisition, management, administration, enjoyment, and disposition.³ India ratified the entire convention in 1993.

The 1980 Five-Year Plan decided to focus on women's health, employment, and education, ushering in the third wave of Indian feminism. Women-led non-governmental organizations proliferated to help other women. The movement also advocated for Dalit and marginalized women's rights. Women's groups and development programs have largely focused their efforts on improving women's economic and social status. Women's groups primarily sought to empower women to

¹ Two, I.T. (ed.) (2013) *Nelson Mandela: champion of women's rights, Global Citizens*. Available at: <https://www.globalcitizen.org/en/content/nelson-mandela-champion-of-womens-rights/> (Accessed: November 30, 2022).

² <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, (Accessed: November 30, 2022).

³ Article 16(1)(h), Convention on the Elimination of all forms of Discrimination against Women (CEDAW), available online <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>, (Accessed: November 30, 2022).

integrate them into the mainstream.⁴

With the effects of economic liberalization and the introduction of modern technology, women in India experienced a cultural shift in the 2000s that emphasized rights such as women's freedom, choice, and independence. The fusion of technology and the physical world has completely transformed the global economic, social, and political landscape. In theory, technology, as embodied by the digital revolution, provides policymakers with an opportunity to create a more inclusive future. Blogging and social media have democratized the feminist movement by increasing accessibility, encouraging diversity, and inspiring leadership in a movement that has historically lacked these elements. Bloggers and social media are used by online or cyber feminists for political mobilization and community building. Social media enable the rapid dissemination of knowledge and information across borders, facilitating transnational feminist networks.

ABSTRACT

Women's property rights in the Hindu religious system have long been viewed as a source of contention, both domestically and globally. Restrictions imposed by religious and legal authorities. After the rise of the machines, i.e. in the post-industrial revolution era, when social deconstruction began with the rising awareness of Economic, Social, and Cultural rights and Civil and Political Rights, the global community began seriously considering it. Religion gradually lost its hold on society, and the common people began to consider providing a fair and equal share to everyone entitled to the property. As a result, the Universal Declaration of Human Rights (UDHR) emerges, which defines the right to property as an essential human right and prohibits any form of deprivation in this regard. Gender equality in property rights is a critical human rights issue in today's socioeconomic realities, and this concept varies by society.

Socio-cultural norms and practices have embedded discrimination in a more deeply rooted dimension for Hindu women in terms of property rights. This controversy has been exacerbated by the global community's pressure for the establishment of fair and equal property rights while assessing the feasibility and implications of a universal rights regime that disregards religious or cultural

⁴ Emelie Lawrence and Jessica Ringrose, "@Notofeminism, #Feministsareugly, And Misandry Memes," Routledge (January 2018), <https://doi.org/10.4324/9781351175463-13>

differences. Through the amendment of existing domestic laws, the legislative authority has been successful in improving the current situation and bringing the entire rights regime at the national level into line with the universal rights framework over time.

Keywords: Right to property, Hindu women, legislative reformation, universal rights, globalization, Hindu law

-1-

The right to property is defined as an essential human right in the Universal Declaration of Human Rights (UDHR), and any deprivation of that right is prohibited. Gender equality in property rights is a critical human rights issue in today's socioeconomic realities, and this concept varies by society. Cultural relativists argue that this distinction between rights and usages should be recognized both theoretically and practically. Nonetheless, equal property distribution contributes to women's true empowerment and is regarded as a critical factor in the socioeconomic development process.

Thus, appropriate conformity and compliance of national legislation with international covenants redressing property rights, whether expressed or implied, may have paved the way for the establishment of equal property rights for Hindu women in succession. It is unavoidable that the flow of globalisation has influenced the state and national behaviour. The world has become one without borders, with the free flow of technology, capital, goods, and services. The presence of law within the State is no longer exclusive and discriminatory, but rather capable of providing a sense of security, comfort, and justice to everyone who lives and works in this State. One important concept that can be used to increase resilience in all aspects of life in the face of globalisation is to strengthen local wisdom that is imbued by religious law in every community in the nation community.

The Hindu Code Bill was introduced in the Parliament in 1946 but was not acted upon and reintroduced, by Law Minister Ambedkar, in the Constituent Assembly on 11 April 1947.⁵

The bill for Hindu marriage with his passion for the values of liberty, equality, fraternity, and dignity,

⁵ Rajak, K. (2020). Trajectories of Women's Property Rights in India: A Reading of the Hindu Code Bill. *Contemporary Voice of Dalit*, 12(1), 82–88. <https://doi.org/10.1177/2455328X19898420>

Ambedkar reframed the bill. ⁶The seamless integration of the overture of women's absolute share in property, the removal of caste restrictions in marriage and adoption, the abolition of polygamy, and support for monogamy would restore these egalitarian values. As a result, the purpose of this bill was to restructure society around gender-neutral ideas. The bill was a kind of equalizer and a path to creating a society in which men and women would be equal, people of all castes and genders would be equal, and there would be a perfect kind of democracy in which everyone would be given equal status in society.

The Hindu Marriage Act was enacted in May 1955, and it was followed by the Hindu Succession Act in May 1956, the Hindu Adoption and Maintenance Act in December 1956, and the Dowry Prohibition Act in July 1961. A woman has been made an absolute owner under Section 14 of the Hindu Succession Act, 1956, by converting her limited estate on whatever property she has into an absolute estate, and no woman can be denied property rights on the basis of any custom, usage, or text.

Following 1956, five Indian states, namely Kerala (1975), Andhra Pradesh (1986), Tamil Nadu (1989), Maharashtra (1994), and Karnataka (1994), recognized the need for women to be treated equally in both the economic and social spheres. Four of the five southern states, with the exception of Kerala, took the initiative and enacted state amendments stating that the daughter of a coparcener, by birth, becomes a coparcener in her own right in the same way that the son does.⁷

The Hindu Succession Act of 1956 dealt a significant blow to the traditional view of women's property rights. The act's greatest merit is that it establishes a uniform and comprehensive system of inheritance for all Hindus. This act nullifies all succession rules, whether based on a text or rule of Hindu law, or a custom or usage with legal force. As a result, modern Hindu succession law is essentially a secular law. There are no religious or spiritual considerations. There is no mention of religion or spirituality. The most significant effect of this law is that it has abolished Hindu women's limited estate and made her the absolute owner of all property acquired, with the unrestricted power to dispose of it at her discretion. The distinction between married and unmarried daughters has been removed. This

⁶ (Ambedkar, 2014, p. 8)

⁷ Rajak, K. (2020) "Trajectories of Women's property rights in India: A reading of the Hindu Code Bill," Contemporary Voice of Dalit, 12(1), pp. 82–88. Available at: <https://doi.org/10.1177/2455328x19898420>.

enactment also abolished the distinction between Stridhana and Widows estate, making all property interests held by a Hindu woman absolute. It has granted certain female heirs the right to succeed to the deceased's interest in the coparcenary property. This act represents a clear break with the past, bringing about significant and far-reaching changes in Hindu intestate succession law.

Period leading up to this, the Hindu Women's Rights to Property Act of 1937 was in effect, and while this act was groundbreaking in that it granted rights of succession to Hindu widows for the first time, it also left gaps that were later filled by the Hindu Succession Act (HSA). HSA was the first post-independence enactment of Hindu property rights; it applies to both the Mitakshara and Dayabhaga systems, as well as persons in certain parts of South India previously governed by matriarchal Hindu law systems such as the Marumakkatayam, Aliyasantana, and Nambudri systems. The Act's main scheme is as follows:

1. The previously limited estate granted to women was converted to an absolute estate.
2. Other female heirs were recognized, while the widow's position was strengthened.
3. The principle of concurrent succession of heirs of a particular class was introduced.
4. In the Mitakshara Coparcenary, the principle of survivorship is maintained, but if there is a female in the line, the principle of testamentary succession is used to ensure that she is not excluded.
5. Remarriage, conversion, and unchastity are no longer considered grounds for inheriting disability.
6. If the unborn child, son or daughter, was in the womb at the time of the intestate's death and was born later, he or she has a right.

Sections of Hindu succession act that brought in change

Section 14

Section 14 of the Hindu Succession Act removed a female's inability to acquire and hold property as an absolute owner, and converted a woman's right in any estate already held by her as a limited owner on the date of the Act's commencement into an absolute owner. The provision is retroactive in the sense that it converted a limited estate into an absolute estate even if the property was inherited or held by the woman as a limited owner prior to the Act's enactment. The only exception, in the form of a proviso, is for acquisitions made in accordance with the terms of a gift, will, or other instrument,

or a decree, order, or award that prescribes a restricted estate. A woman has been made an absolute owner through Section 14 of the Hindu Succession Act, 1956, by enlarging her limited estate, on whatever property she has, into an absolute one, and no woman can be denied property rights on the basis of any custom, usage, or text.

The Supreme Court of India clearly laid down the scope and ambit of Sections 14(1) and (2) of the HSA in the case of *V. Tulasamma & Ors. V. Sesha Reddi*⁸, in which the court made a fine distinction recognizing the woman's right to property through her pre-existing right to be maintained. The Court applied the exception only when an instrument created a new and independent title in favor of women for the first time, and it rejected it when the instrument merely confirmed, endorsed, declared, or recognized pre-existing rights, such as the right to maintenance.

Section 8

If a Hindu dies intestate, his property will pass to his son, daughter, widow, mother, son or/and daughter of a predeceased son, son or/and daughter of a predeceased daughter, widow of a predeceased son, son or/and daughter of a predeceased son, and widow of a predeceased son of a predeceased son. As a result, female heirs were granted property rights over the deceased male Hindu's estate. This Section applies to a male Hindu's self-acquired property or separate property.

Section 6

While coparcenary property, that is, joint family property, would devolve by survivorship on the surviving members of the coparcenary, that is, male lineage under Section 6 of the Act, if the deceased had left a surviving female relative such as a daughter, widow, mother, daughter of a predeceased son, widow of a predeceased son, daughter of a predeceased son of a predeceased son, or widow of a predeceased son of Section 6 of the HSA provides that when a member of a coparcenary dies, the property passes to his mother, widow, and daughter, as well as his son, by testamentary or intestate succession, as the case may be, and not by survivorship.⁹

⁸ (1977) 3 SCC 99

⁹ Nigam, S. (2020) "A Hindu Daughter's Right to Property: Is the retrospective amendment of Section 6 of the Hindu Succession Act a step towards women's economic empowerment? ." Available at: <https://doi.org/Legal News and Views Volume 34 Number 9>.

Section 23

Some inequalities remained in that, according to Section 23 of the Act of 1956, if an intestate Hindu died surviving both male and female heirs and his or her property includes a dwelling house wholly occupied by members of his or her family, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective share therein; the female heir shall be entitled to a right of residence. Only if such a female heir is a daughter and is either unmarried or has been deserted by, or has separated from, her husband or is a widow.

Conclusion

When it comes to women's land rights, a lot has changed since 1986. The Hindu Succession Act of 1956, as amended in 2005, granted daughters the right to own and inherit ancestral property. Widows' inheritance rights have also been strengthened since 1937, when they were first introduced. The rights of succession of women are being quickly challenged, and landmark judgments are being handed down by progressive benches of judges with reassuring regularity. The Women's Inheritance Law could result in another landmark decision as late as August 2020. The Supreme Court ruled that a woman was entitled to equal rights in her father's property even if he died before 2005. This decision made it clear that the Hindu Succession Act of 1956 had given way to the more woman-friendly version of 2005. The August 2020 judgment overturned a series of earlier rulings that said the new rules would apply only if the father and daughter were alive in 2005.

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