

DAUGHTER'S RIGHT ON FATHER'S SELF ACQUIRED PROPERTY

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ABSTRACT

This research paper focuses on the rights which should be granted to the daughters in same manner as are granted to the sons. Since the earlier times there have been changes in the rights of daughters. Actually what happens earlier was that the share in the fathers property was not given to the daughters, only son has the right but with the change in the behavior of people and society the laws has also been changed and amended related to the rights. Whether a daughter is married or not she is entitle to the rights in property of her father like that of the son and as people changes law changes it is the fact that is needed to maintain peace around the world and among the people. The difference in the rights of the son and the daughter can also because of the customs and traditions because earlier they were hardly given any freedom, rights or opportunities as the men's have but now the scenario is far different and consider both as equal in all aspects and are trying to change their mentality toward the approach regarding this concept. Daughters are also the children of their parents in the same way as son is so why there is a discrimination between them as they are the children's of same parents instead have difference in only physical appearance. So basically all the general rights and rights related to the property especially of daughters whether married or unmarried will be discussed here in this paper.

INTRODUCTION

“Once a daughter, always a daughter... Son is a son till he is married¹. The daughter shall remain a coparcener throughout life, irrespective of whether her father is alive or not.

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¹ A three-judge bench headed by Justice Arun Mishra said

In Para 49 of the judgment, the court hails the 2005 amendment as fulfilling the Constitutional goal of gender justice. In the next Para, the judgment quotes from the 1996 judgment mentioned in the question. The court's reliance on the quote places a daughter on a pedestal (as she is a daughter throughout her life) and a son at the ground level (as he is a son only till he gets married).

If we talk about the rights of son and daughter there are many differences and discrimination in spite of being born by same parents just because of customs, traditions and all but the fact is that, this is inequality. This has to be changed someday because our constitution itself is against the inequality and believes in equality. So there should be equal rights given to both and recently the change has been taken place in aspect of the fathers property with respect to its distribution among daughter and son which is a good thing because we live in a society where according to the needs of people law changes so as to keep pace with the world so this is the result of that which has recently taken place as customs have to be changed if they are not satisfying or fulfilling the needs of people in a fair and reasonable manner.

So giving equal share to both the children's irrespective of gender is something which was needed since the time so as to have equality maintained among the children's and in a family so that no one can discriminate a girl and a boy and treat daughter as a burden on the family of either her father before marriage and her husband after marriage.

KEY WORDS

- Intestate – When a person dies without making a will.
- Heir – person who is entitled to inherit property after death of intestate
- Descendent – it means the offspring of the person
- Amendment – It's a formal or official change made to law for this dynamic society.
- Ancestors – The one who known as Forefathers. As per the law whom an estate has been inherited.
- Testamentary – It's a legal document or a will after the death of person the beneficiary can claim the assets

- Probate – It's a legal process for reviewing the assets of a deceased person determining inheritors.
- Dominion – Semi-independently polities under the British crown constituted the British Empire.
- Solicitors – It means a person who traditionally deals with most of the legal matters in some jurisdictions.
- Usufruct – Having the possession of the property and enjoy a thing possessed directly. Fructus- Is the right to derive property from a thing ^{possessed}.
- Maintenance – The act of maintaining.

Hindu Joint Family-

- Hindu joint family is a common family which consists of common ancestors and his wife, son, widow, unmarried daughters of the common ancestors and of the lineal male descendants and their whole generation comes under Hindu joint family. There should be a common ancestor for bringing a joint family into existence but on the contrary common ancestor is not a necessity for its continuance
- , “A joint Family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried sisters. A daughter ceases to be a member of her father's family on marriage, and becomes a member of her husband's family”². A Joint and Undivided family is the normal condition of Hindu Society.
- At present Hindu joint Family is an unavoidable and fundamental concept of the Hindu law which is now governed by the Hindu Succession Act. If in a normal situation a one generation is end by the means of partition, it comes back into the existence in the next generation automatically. So this rule gives a support that every Hindu family is a joint family.

² According to Sir Dinshaw Mulla he is an Indian author of legal reference books.

Coparceners:-

- In coparcener who has the right by birth in the Hindu joint family are known as coparcener. After the 2005 judgment women can also claim the property since birth according to section 6 of Hindu Succession Act.
- **“In land, corrode or wealth received from the grandfather, the ownership of the father and son is equal”³. This means that the son can enforce a partition in ancestral property, that is, property descending to the father from his male ancestors such property becomes coparcener property in the hand of son**
- **That in now both the son and daughter has now equal rights over the ancestral property since birth. After the share obtained by partition is also a coparcener right. The self acquired property is kept apart by them and it's divided according to the will made by the ancestor.**

HISTORY

Earlier Succession Act was regulated by the Indian Succession Act, 1865. This act was mainly applicable on the English laws and constituted the law at the time of British in India, applicable to all the classes of testamentary and intestate succession. Later in 1870 The Hindu wills act was passed and this Act provided that certain portions of the Indian Succession Act would as it is applied to all wills and **codicils** made by Hindus also. So in 1881, the Probate and Administration Act was passed and this act was applicable both on Hindu as well as on Muslims. The old Hindu joint family system was considered inconsistent with any conception of dominion over property and perhaps this was the reason why there was no question of testamentary power of a Hindu came to be recognized by the courts established in British India. In early times the family property was vested in the family and the members of the family had only the right of usufruct. The Hindus thought of the idea of making Wills only after the establishment of British rule. Wills made by Hindus came to be recognized as a matter of course by the English lawyers associated with the superior courts as Judges, Advocates and Solicitors. The idea

³ Text of Yajnavalkya says

of making Will was of spontaneous growth among the Hindus. The rich Hindus of Calcutta and other Presidency-towns had English solicitors for their legal advice, who started preparing Wills for those affluent Hindus

However, Muslims of India are governed by the Islamic law of wills, of Sunni and Shia Schools, or by local customs, relating to wills. The rules of Islamic law of wills applicable to the Muslims of India are those derived from the classical texts. The sources from antiquity regarding the customs and usages of the pre-Islamic Arabs seem to establish abundantly that testamentary dispositions were not known among the pagan tribes of the peninsula. But it is difficult to say, from the material available, what were the conditions which regulated the validity or invalidity of Wills made by them. The Rabbinical Law which was in force among the Jewish tribes prohibited the testator from depriving his lawful heirs from succession; it also precluded him from constituting a stranger as an heir. But when a disposition was effectuated by the immediate delivery of possession, the Rabbinical Law apparently regarded it as valid. A Will could be made either verbally or in writing, but, generally speaking, the first mode was considered as the more preferable of the two. The Quran expressly sanctioned the power of making a testamentary disposition, and regulated the formalities and conditions to which it is subjected.

Earlier what happens is that there were different communities who make laws for them according to their needs like in the Mitakshara School after the death of the co-parcener, the property of that co-parcener or the interest of that property in which co-parcener was having in the co-parcenary property was immediately taken by the surviving co-parcener. Basically the share of the co-parcener property immediately transfer and taken by the joint family property pool and gets divided among the surviving co-parceners and after the death of co-parcener no property has been left for the female descendent. Earlier the matters related to family has been solved within the family by the karta of the family and if the disputes are bigger than it used to solve by the help of panchayats as they were at that time well versed with the laws and accordingly give decisions and resolve disputes. Then after this when British rule came into existence at that time also panchayat does not interfere with those rules because they were related to civil and criminal matters and not to the family disputes but after some time formal courts were

established like family courts to resolve the disputes related to the family then the parties to the disputes are themselves the representative of the case and represent the case to the judge in a formal procedure and manner as prescribed through the help of litigator. And the judges were also not well versed with the laws and customs of the particular families so they take the help of pandits and written texts in resolving the disputes but court were not satisfied with these decisions so they started following the British rule and the text which were written in Sanskrit was also translated in English and because of that some meaning of the text has also changed these all many times had created the confusion in resolving the disputes so there is a need to codified the law so it can be bound on everyone and then comes the Hindu Succession Act 1956.

Former Prime minister Jawaharlal Nehru Championed the cause of women's right to inherit property and despite the stiff resistance from orthodox section of Hindus, the Hindu succession act was enacted and came into force on June 17, 1956. Then from there the changes were made especially in the doctrine of survivorship like earlier what happens is that after the death of the co-parcener the property is transferred to the surviving co-parceners but after the Hindu Succession Act,1956 the doctrine of survivorship was applicable only to some extent and they put a condition that after the death of the co-parcener the property will resolve through testamentary if will has been made otherwise through intestate succession and many other changes has also taken place with new conditions.

The two schools of law that govern the law of succession of the Hindu Undivided Family are The Dayabhaga and The Mitakshara. Mitakshara School of succession is mainly prevalent in North India and it is a legal treaty on inheritance which means that the principle division of ancestral property will be held by the Hindu Joint Family and the right in the joint family is acquired by birth with that females have no right of succession to the family property. While in Dayabhaga system the rights in the joint family or property are acquired by inheritance or will and females have the right in the property.

HINDU SUCCESSION ACT, 1956 basically deals with both testamentary succession and intestate succession. Important features are as follows:

This Act applies to all intestate succession except to the property of a person to whose marriage provisions of Special Marriage Act, 1954 apply and to impartibly estate of rulers of India estate, succession to which is regulated by special covenants or agreement in any existing enactment.

The act will not apply to mitakshara coparcenary property except when coparcener dies leaving behind female heirs mentioned in section 6. The act lays down the new provisions for evolution of property of male and female Hindu.

The act modifies in certain respects law relating to Joint Family Property, now the undivided interest of mitakshara coparcener in JFP on his death does not necessarily developed by an absolute rule of survivorship, but may go by any of the following modes.

- By testamentary disposition.
- By survivorship.
- By rule of intestate succession.

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

On the effect of 2005 amendment to the Hindu succession Act as conferred that there must be given equal rights to a daughter also in the same manner as sons are having in Hindu joint family. This has been done by considering a daughter to be a coparcener. The recent verdict by the Supreme Court in the case of *Vineeta Sharma vs. Rakesh Sharma*⁴ here it settles the question which was pending since the case of *Prakash vs. Phulwait*⁵ came into existence. In this it was held that father should be living when the amendment to the act has taken place. It is necessary to have living coparcener and living daughter. The question was whether the coparcenaries right of daughters can only be claim if the father at the time when this amendment came into existence was alive? The answer to this question has been given in the recent judgment of the case *Vineeta Sharma vs. Rakesh Sharma*, in this it was held that this act will have retrospective effect which means it is not necessary whether this amendment came into existence after or

⁴ AIR 2020

⁵ AIR 2016

before the death of the father it will have same effect. Women's right to ancestral property is by birth no matter father is alive or not. So in the same way this amendment will have retrospective effect and women's have this right by birth no matter what is the condition or circumstances exist right now.

Important points of Hindu Succession Amendment Act, 2005 are as follows:

- A daughter by birth becomes a coparcener in her own right in the same manner as the son which means daughter is also a coparcener.
- A daughter has the same rights in the coparcenary property as she would have had if she had been a son which means if she is a coparcener so she would have the same right as a coparcener has now.
- Be subject to the same liabilities in respect of the said coparcenary property as that of the son which means now daughter will also have the same liabilities as that of the son.
- Where a Hindu dies after the commencement of the Hindu Succession Amendment Act 2005, his interest in the property of JHF be governed by the mitakshara law, shall devolve by testamentary or intestate succession, as the case may be under act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and according to this rule the division of property would be followed by mitakshara law and if the father dies intestate then the property is divided equally among all offspring's.
- So the daughter is allotted the same share as is allotted to the son, which means the division of property will be done equally among all.
- The share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter it means if either son or daughter is not alive during the partition of the property then his/her share will be given to child or children. However this property right of a daughter is not absolute rather there is a condition which says the amendment provision of Hindu Succession Amendment Act 2005, do not have a retrospective effect, therefore a daughter can only hold the right to the ancestral property if the father has died after this amendment came into force in 2005 it means that a daughter whose

father died before amendment of this act that is 2005 in such a condition she cannot claim a right in her father's property.

The Hindu Succession (Amendment) Act 2005 was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956. Under the amendment, the daughter of a coparcener shall by birth become a coparcener in her own rights in the same manner as the son. This amendment was come into force on 09-09-2005.

For example there is a difference in the age of marriage between the male and the female. Female should be of 18 years and male should be of 21 years. Then why not females should also have the same age criteria as the male have that is 21 years. We all know that females get mature earlier as compared to males but this should not be considered as the only reason to select the age of marriage of the girls as because of this age criteria many girls do not get the chance to continue their study further as should also have the right to study till whatever age she wants so this is just an example of differences between male and female regarding some rights.

How do we look at the judgment held in Vineeta Sharma case, will this judgment proves to be a useful one or not?

As we all know the judgment held in Vineeta Sharma case that daughter has the right to claim the unobstructed heritage (apratibandha daya) since birth. Dr. Saumya Uma opined on this matter "The lesson that the empirical studies brings in our mind is that the judgment of this case is a significant one, in order that daughters actually get benefit from the judgment at the ground level, and there has been removal of the barrier of inequality between the daughters and the sons, strategies need to be devised for addressing the social, cultural and economic barriers which are deeply entrenched in the Indian society"

If we talk about the patriarchal society they usually treats women as worthless and as second-class citizens, equal property rights in law may place daughters in a vulnerable

situation within their families, unless complemented by socio-economic and cultural strategies for empowerment. For example, in Haryana and Rajasthan, daughters are made to sign a release/relinquishment deed (called *haq tyag*) by which they relinquish their rights in ancestral property in favor of their male family members.

While such a relinquishment is supposed to be voluntary, women are often subjected to overt and covert pressure tactics by their brothers in particulars. Theoretically, they can dispute the validity of the deed on the ground of fraud, coercion, threat and intimidation by their family members but female members of the family do not ever do this because they want their family members to live peacefully and that's why in many of the cases they don't even ask for their share. But practically, it is a Herculean task. Women are likely to be seen as threats to their natal families, unless social, economic and cultural processes to empower daughters as well as awareness-raising activities with their families are in place.

So, if talks about it there are both negative and positive effects of Hindu Succession Act because for every advantage there is a disadvantage also if not utilized or applied properly.

Within a Hindu joint family, a daughter, upon marriage, usually leaves the natal house and starts living with her husband and his family members; but this does not apply to the son as per the customs, culture, traditions and law. The consequent treatment of married daughters (as belonging to their husbands' families) impairs their rights within the natal family. After the marriage women get the right in their father's property and with that gets the share in their husband's property if they share a good bond and have trust so in this way the girl has two shares one from the father side and one from the husband but husband's side is not compulsory it is upon the willingness of the husband and in mainly cases it arises after the divorce in cases of maintenance where female can demand her share from her husband.

This judgment has proved to be beneficial for the females as daughter and son should be treated equally in all aspects because both are the children's of their parents but the thing which is different is that their physical appearance and gender. So on this basis also one cannot discriminate between their children's. So this has to be done in relation to the distribution of the father's property but with that some can use this right in false way and

acquire share in both fathers as well as husbands property like after divorce she can file for maintenance and in that she can claim some share in her husband's property only in order to acquire that property so it can be use as an advantage and disadvantage at the same time.

But in many cases usually a daughter does not ask for share from their father's property because of love but after divorce from husband she can ask her share in the husband's property. There are many of the disputes which are only related to property because earlier there was no equal share but now after giving equal share to both son and daughter there is equality being maintained among the children's in the aspect of share in the father's property which is a good thing.

DO DAUGHTERS HAVE RIGHT OVER FATHER'S SELF ACQUIRED PROPERTY?

As per the section 6 of the act the daughter has all the right as similar to that of a son in relation to self acquired property of the father. And after the amendment made in 2005 of the Hindu Succession Act basically it was very major change brought in 2005 which stated that daughter was also be treated as a coparcener. After this amendment daughter got the rights even in the property which is not self acquired by a law so now the present scenario is that the daughter has all the rights on all the properties whether they are self acquired or not. This basically depends on father as it is his self acquired property he can give to anyone he wants. But if the father divides his self acquired property then it should be in the same way as ancestral property in which both son and the daughter have the equal share. If in self acquired property a son is treated as coparcener then in same way daughter should also be treated as co parcener then only there will be equality maintained between the two. In case of self acquired property, a daughter has to raise an objection to get the share but if the father dies intestate, without leaving a will, all legal heirs have an equal right to his property the share will be equally divided between both the son and the daughter.

In case of self acquired property, a daughter has to raise an objection to get her share but if the father dies intestate without leaving a will, all legal heirs have an equal right to his

property including the daughter also in same way as the sons have and if she is not given the share then she has the right to claim her share from the property

But if we talk about the ancestral property which means inherited up to four generations in this also both the grand daughter and the grandson have the equal rights. Earlier it was not for the daughters but now after the amendment granddaughters can also claim the rights in the ancestral property.

Do female have both rights in regards to property from in laws and her father?

To understand this question first we have to differentiate between Hindu Succession Act and Hindu Marriage Act because if a female is married then she will be governed by the laws of Hindu Marriage Act means her rights will be governed by husband they are the rights are of husband which she enjoys and if she is not married then her will be governed by the father according to Hindu Succession Act. In the first case she has the rights as of wife and in the later case she has the rights as of daughter so there is a distinction between the two.

But even married daughter can demand rights on the property of father in same way as the other sons have which means the share which sons have in the property in same way daughters have and it automatically arises and if not given then she can file a suit for partition.

Basically under Hindu Law, property is divided into two types- Ancestral Property and Self-Acquired Property. Self acquired property is distributed as per the father's will which means till he is alive he can dispose his property in any way he wants basically these property related issues arises when there is an intestate death of father.


CONCLUSION

We all live in a society where rules, laws and regulations changes as per the needs of the people so as to keep pace with the world so for this there have to be changes done and this is the reason for the amendment in Hindu Succession Act 2005 because earlier there were no



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laws and everything is governed according to the customs or traditions but as our behavior and pattern of living, thinking changes these customs and traditions becomes outdated so there come the need to bring a change which is possible through the amendments in the acts and laws. As we all know that till now there are some areas where there are still differences between the son and the daughter exist which have to be abolished because both son and the daughter are the children of their parents so there be no discrimination between the two should be done on any basis so this 2005 amendment and August 2020 judgment were based on the equality of son and the daughter by providing coparcenary rights to the daughter by birth in the same way as the son have.



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WORDS SPEAK
