

CHAPTER 3

GENDER DISCRIMINATION AND INEQUALITY IN FAMILIES IN TERMS PROPERTY RIGHTS

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Abstract

Women, holds a significant place in every segment of the society. But history reveals that she is often overlooked when it comes to the equality in the rights, be it in terms of any phase of the life. 'She' is at times designated with the term home-maker. Right from the home till the point of ruling the nation women has always proved beyond the expectation. This Amendment to Hindu Succession Act, 2005 has raised the status of women in the property holdings of the Hindu undivided family. Prior to this rule women were not having any say in the property matters of the family. Earlier daughters just have the right over the things which are gifted to her before her marriage, during her marriage and after her marriage that is in common parlance known as 'Stridhan'. This research paper will bring into lime light the rights devolved over Hindu women after the advent of the Amendment to Hindu Succession Act, 2005. The researcher will also study association of inheritance right to property with sons and dowry substitution to daughters under the shade of patriarchal social practices. In addition to this the author will also highlight the level of denial towards the daughter with regard to social and economic equality in the Hindu family. The researcher will also make an effort to study the acceptance of the amendment. This paper will highlight how this new change has affected the lives of the daughters of the Hindu Family. This paper will also look upon the initiative taken up by the states to uplift the standard of living of the daughters of the Hindu Undivided Family. This research paper will also emphasize upon the level of awareness among the daughters of the family. In addition to this, it will also highlight the attitude of the male members of the Hindu Undivided Family. Last but not the least the researcher will likely to portray some of the suggestive measures highlighting the loopholes in the existing statutory provisions.

Keywords Amendment of 2005, Historical Evolution, Property Rights, Hindu Women, Comparative Study, Critical Evaluation.

1. INTRODUCTION

"Both men and women should feel free to be sensitive. Both men and women should feel free to be strong; it is time that we all perceive gender on a spectrum not as two opposing sets of ideas."

-Emma Weston

Women, this term itself comprises of the word men. It can be interpreted that this term itself signifies the fact that both the genders of the society holds an equal place. This term connotes that what so ever rights and privileges are available to men by the governing laws of the respective country, the same should be enjoyed by both genders by the same token. Men and women together have evinced to be the caster of the same cart so as to maintain equilibrium in the society at large. However the reality is different. What has been enumerated in the huge piles of the grundnorm of the land has no semblance with the practical scenario. The facets of gender inequality are known to be the glared matters of the daily headlines. The major kind of gender inequality existing in the present scenario is related to property rights. Such disparity has its roots since ancient times. Inheritance of property has never been considered as cup of tea for women. Society has bifurcated both men and women with regard to property rights in a democratic country like India. Under ancient Hindu Laws women had used to be considered as incapable for holding property of the family as compared to sons. In primordial period women were not allowed to roll their eyes on books, neither any education nor rights in society were given. Henceforth women had used to hold a very low status in the society in terms of property rights in India. Even the laws in India, the Mitakshara School of law prior to the amendment of 2005 gives upper hand to men in terms of property rights. According to this school it was only son, grandson and great grandson had the ability to hold family property and consequently form themselves as a part and parcel of a coparcenaries clan. Unfortunately women were not used to be subjects of coparceners. (Dr. Ashok K. Jain, 2019).

The struggle to make a place in law governing the developing nation Indian women has gone through a long way just like any other developing or under-developed nation. During this journey the aspirants has witnessed a scuffle between status quoits and progressive forces. Much later in 2005 their struggle has brought forth the fruits in the form of an amendment to Hindu Succession Act in favor of women. It is only after this amendment that now women can count themselves in the line of coparceners. This has allowed Indian daughters to hold their share as well place for equal rights in ancestral property. Not only this but also daughter if born prior to 2005 still has the capability for inheriting the family property under the shade of the amendment of 2005 to Hindu Succession Act. According to this landmark amendment if father has lost his life prior to 2005 on records even then this amendment enables the daughter to accede to the family property and holds a place in the line of coparceners of the family respectively. Supporting the same the honorable Supreme Court of India, in one of its landmark judgment has decided that regardless to the fact that the father of Indian daughter has died prior to 2005 does not deny the right of inheriting the ancestral property of that daughter and to hold her share as coparcener in the Hindu Undivided Family. In addition to this, amendment holds the retroactive effect also. This will enable the daughters who were born prior to the year when the said amendment has come into effect. While delivering the judgment, the bench comprising Justices, 'Arun Mishra, S. Abdul Nazeer and M.R Shah' asserted the stree on section 6 of the Hindu Succession Act bestows same rights, liabilities and privileges to the daughters as coparceners born before or

after the advent of this amendment of 2005 in a similar manner as son of the Hindu Undivided Family holds the place in the line of coparceners for inheriting the family property. (R.K Aggarwal, 2011)

This amended law has been formulated to raise the social status of the women in the society. The ameliorated condition of women has knocked the doors of the law making bodies to come with laws for the betterment of the condition of women both in terms of quantity and quality. However prior to this landmark judgment of 2020, in 2016 if the father of the Indian daughter has died before 2005 then such daughter does not hold neither any right nor any liability towards the property falling under the Hindu Undivided Family. But the practical implementation of this ruling has failed to find the place in the orthodox clan of the society. Still families show their reluctance to give the share to their daughters in the ancestral property.

2. MEANING OF GENDER

In general parlance gender can be explained as a state typically referring of being male and female. Though, the term “Gender” has coined to define the biological differences. But in the modern scenario, wherein society is composed of diverse people belonging to accorded clan, variant status, dwelling in the various strata of the society, has more often begin to put in use of this term “Gender” to refer social and cultural differences rather than biological ones. (Shalu Nigam, 2020)

3. HISTORICAL EVOLUTION OF PROPERTY RIGHTS OF HINDU WOMEN

This amendment is not the only law in favour of daughters of Hindu Undivided Families. The 1929 Hindu Law of Inheritance Act devolves the share of ancestral property amongst the three female heirs of different generation namely

3.1 Daughter of Son

3.2 Daughters as well as Sisters of the daughters of the family.

Another Act in the line of inheritance of property by female of family is 1937 Hindu Women’s Right to Property Act, gives the widow women of the family share similar as that of the son of the family. Mere death of the son does not hamper the right of his widow to hold the share in the ancestral property. Although such widow cannot count herself amongst the coparceners of the family but still the above mentioned law enables her to hold her place amongst the ancestral property of Hindu Undivided Family.

After such Act but before the commencement of Hindu Succession Act of 1956, the property held by women of the family is broadly bifurcated under following stated two heads

3.3 Stridhan

3.4 Estate belonging to Hindu women

Stridhan majorly comprises of movable property such as jewellery, gifts which women gets before, on and after her wedding. This is a property over which female as per sec. 14 of Hindu Succession Act 1956 has an absolute right. A female can hold, manage and dispose off her Stridhan

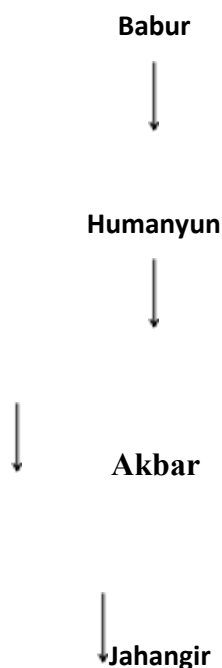
a manner she aspires without any interference. After her death such property has a likelihood of getting into the hands of her legal heirs. However the later property that is any estate belonging to Hindu women majorly comprises of immovable property and consequently her rights in association with such property are accompanied by certain limitations. Women holding later property cannot willingly alienate such property without the prior consent of the other family member.

The basic aim behind the amendment of the above stated Act is to uplift the ameliorated condition of the women in the sphere of the property in the present society. However this amendment has reached to its aim but upto some extent. Beside the fact that in 21st era of the century women is still forced to face such inequality in terms of inheritance of the property under Hindu Undivided Family. Under the shade of feebleness women in the present scenario also strained to confine her within the four walls. The miseries and hardships faced by women are always remaining indiscernible to the eyes of the men at large in the society. History reveals that women has a competency to hold up half of the sky but still the dominant wing of the society across the world has always remain dragging back their feet in terms of sharing the property belonging to family of which that women is known to be a daughter, sister, and last but not the least a mother. Such inequity not only endorses the orthodox thinking of the ascendant clique of the family but also obstructs the overall growth of the nation. Considering the present status of the women despite of the advent of the above stated amendment the women is still deprived of her rights with regard to property of the family. Since the birth of the girl, it is a preconceived notion that she will be given her share at the time of her marriage only. (Shruti Mahajan, 2020)

Once a Hindu woman got married the society begins to shun her share from the family to which she was born and brought-up. To put it differently, to the family to which she has got married treats her as not the part of the family at times as she wasn't born in the said family. Henceforth by one reason or other a women has to suffer such discrimination when it comes to the alienation of the property. It is only the men of the family who has a right to decide upon such matters, despite of the new amendment the women are not offered even to keep their opinion their opinions in such matters.

If either of them shows valor to keep their say in such matters is often threatened with the fact of being thrown or forced to leave her marital house. Therefore keeping these consequences in mind women hardly raises her voice in such alienation matters. This amendment has given the sword back into the hands of daughters. Earlier daughters were not allowed to present their opinion in the matters of property of the family. The birth of son was associated with legacy to carry forward the entire prestige as well earnings of the family. Due to these believes only women in the society were not placed at the footing equal to men. By virtue of this amendment now daughters of the family do share the place equal to that of the sons in the family. Prior to this amendment daughters cannot hold the share in the family property if the father has died before the amendment. To put in a different terms the daughter is not allowed accessing the share in the

family property if the father has died before the enforcement of the amendment. But now the tables have turned this amendment has uplifted the voice of the daughters of the Hindu family, depicting the fact that they do have a share beyond their marriage also. The basic principle, around which the concept of gender justice revolves, is the belief that no individual should be denied of, for availing any benefit from any opportunity because of the gender. When one begins to discuss the concept of gender justice, he should not ignore the fact that this concept explains the bunch of wide range of cases of injustices based on the gender of the individual. The supreme law of land, i.e The Constitution of India, also provides various provisions giving equal status to both men and women. Various efforts have been made to bring into the effect, the provision for equal pay for equal work, so enshrine in the supreme law of the land. Gender Justice on a whole has enabled to fit itself within the walls of the sweeping rule, which is flouncing every aspect of the life of every individual. It may evident in the modern era, that women is allowed to pursue the profession of her own choice, but at the end of the day, this male dominating society, simultaneously desires that women should pay heed to the house-hold work more, looking after the children, thereby wishes to enclose the women within the four walls. Due to this reason woman always remains for her whole life as an unpaid worker or an employee who is just a call away. The major reason for such a pitiable condition of most of women that too in the 21st century is due to the social and financial dependence of women over their husbands. Since her birth, a female was taught that, it's her father and brother who are the care-takers of her, care in terms of economic necessity. After her wedding this dependency, got shifted to the shoulders of her husband, thereby subjecting her again into the hands of another man. This discrimination has its roots clutched way back, which is evident enough from the era of Mughal Rulers, ruling India. Even at that time also the succession of throne is crowned only to the son of the previously demised ruler, not his daughter. History reveals the fact that women are often considered being inferior to man. For instance, the chain of Mughal Rulers was dominated by the males only such as,



Shahjahan



Aurangzeb

Therefore the awareness about the rights of the women so as to restructure the whole society is the dire need of an hour. There is a greater need to mould the social, economic, moral and political framework, simultaneously, though the legal constitutional structure is composed of many such provisions giving the equal status to both men and women, but there is dire need of implementation machinery to take the proper charge of operation of these provisions so hallowed to constitute a legal framework. (Prachi Bhardwaj, 2020)

4. RELEVENCE OF GENDER JUSTICE

Everyone in today's scenario, gender justice has evinced to be the state of affairs of every executing authority. Even government before taking its charge over any particular nation, talks about gender justice in its manifesto. But unfortunately, the use of this term is restricted to those pages of the manifesto only, has in reality failed to achieve the designated status. When circumstances are such that leading to

- 4.1 the unequal treatment between men and women on the basis of their gender or
- 4.2 placing either of the gender over another leading to nepotism of either of gender, or
- 4.3 wherein one gender is offered with higher power and greater number of opportunities as compared to another,

Then only Gender Justice begins to play its role, to maintain the equipoise, so as to cause the development of the every wing of the society on a whole. (Prof. Kusum, 2018)

5. COMPARATIVE STUDY WITH THE OTHER DEVELOPED NATIONS

Women, dwelling in the every corner of the world are largely denied of the property rights. Studies has reveled that growth of the nation largely depends upon how much ratio of the women are well aware of their rights. The growth of nation can be counted on the level of protection to the rights of the women is secured by any particular nation. The key to the success of every nation in term of economic development lies onto the growth of women in terms of intellectual level. However there are certain nations though are counted in the rows of developed ones but still lags behind when it is the time to measure the equality in terms of property rights between men and women of the country. Even the flourished countries such as USA, U.K have the notion that the land falls into the hands of men while the product fetched through that land lies into the hands of women. Even women in the developed nation also have to suffer a lot to get their holding written after their names. The struggling phase of every women be it within the boundaries of the country or

the across the borders has the similarity when it comes to the rights and share of women in the property. The studies have revealed the status of women in the West Africa is also somewhat similar to Hindu women in India prior to the enforcement of the Amendment. Women in African countries do not stand on equal footing with that to men in terms of property rights. Therefore It can be traced that women has to fight for its rights in every sector of the world. (Noshirvan H. Jhabvala, 2015)

6. EFFECT OF SUCH UNEQUAL FOOTING OF MALE AND FEMALE

Due to the certain factors triggering in twisting the concept of gender justice into gender injustice has place the fate of the women is an oppressive state under the hefty social structure to be termed as patriarchy, as a result women not only suffers in developing like India, but also faces shackle of glitches in the developed nations such as United States of America and also in United Kingdom as well. (Prof. PC Jain, 2019)

6.1 Firstly, every possible effort is made to restrain the birth of female.

6.2 Secondly, if by luck female gets the birth, then initiative are made to kill her in her infancy period only,

6.3 Thirdly even if she has managed to survive, then she is subjected to such an environment, wherein she is always surrounded by utmost neglect and subjected to abuse, be it the physical or mental.

There are numerous instances which proves that regardless to the field, women outshines in building the foundation of most of the foreign policies, thereby strengthening the international relations. Therefore it can be taken in the sense, that if the count of both men and women is placed in an equal proportion then there will be more chances of stable negotiations, thereby fortifying the international relations.(Dr. Mukesh Aggarwal, 2019)

Thus such equal proportion is not only going to contribute in the political arena, but also going to bridge in the gap between the accorded nations by virtue of maintaining the stable international relations. But unfortunately, the ground reality is this that women often have a very less say in the dogmatic field as compared to men. Gender is the first and foremost concept, considered as the milestone to achieve stable political process and valued structural growth of any particular nation. Gender is now-a-days considered to be the building bloc on any nation, its non-consideration can often questions the credibility of the distinct perspectives set up by the administrative authorities of any particular nation. The decade of 1990's is considered to be very significant with regard to amalgamation of gender issues along with the concept of international relations. Even similar initiative was taken by UN in its 1995, fourth UN Conference of women, which had held in Beijing, wherein endeavours were made to place both male and female on equal footing while formulation of any policy, be it to be of Domestic nature or of International nature. (Prof. P.K Gupta, 2019)

Therefore it is only the aftermath effect of this conference that state legislations have come up with certain effective legislations eliminating any sort of discrimination in almost every field of work and has therefore lead to the development in various branches of International Law, such as

6.4 Asylum,

6.5 Human Rights,

6.6 Humanitarian Intervention

7. CRITICAL INSIGHT AND SUGGESTIVE MEASURES

The evolutionary growth of the accorded laws curbing the dysphoria is not of much success because of the lack of awareness among the people at large. Government should show its observance to the provisions of the supreme law of land, which has placed both men and women at equivalent foothold. International Relations can be cordially balanced by two or more nations only if its respective subjects are satisfied with the existing laws of that particular nation. Thus in the end it is only these lieges, who are going to portray the nation over the international platform in a positive manner. To place both men and women at equal footing today is the dire need of an hour. Therefore, development of any nation will solely depend upon the equivalent ratio of both male and female, which is reflecting the:-

1. educational status,
2. Political infrastructure,
3. employment opportunities,
4. ties with other developed nations,
5. funding from developed nations

Under developed nations often aspire to ace in the race of development. There are certain instances wherein under developed nations often depict themselves to be below average in order to extract more and more funds from the developed nations on a whole. India being a country with diverse culture consists of people belonging to diversified cultures keeping them over equal footing success because of the lack of awareness among the people at large. Thereby flowing with trend the entire imposition of the responsibility & duty is over the court of laws.

7.1 The institutional framework has to be followed up in the following three stages:-

7.1.1 Awareness,

7.1.2 Acceptance,

7.1.3 Implementation.

7.2 The mechanism of the prevailing legal system is required to be more viable, meaning thereby the inflow of the cases can't be stopped because the doors of justice can never be closed for anyone who's aggrieved.

7.3 Need for the adherence of the laws in a view to profound a change in the Indian Legal System.

8. CONCLUSION

While framing any policies for the betterment of the society on a whole, the framers of any particular nation should place their reliance in elimination of all sort of discrimination both at domestic as well as international level. Strivings should be made in promoting the interest of each and every citizen of the nation

heedlessly to their gender. Government should show its observance to the provisions of the supreme law of land, which has placed both men and women at equivalent foothold. International Relations can be cordially balanced by two or more nations only if its respective subjects are satisfied with the existing laws of that particular nation. Thus in the end it is only these lieges, who are going to portray the nation over the international platform in a positive manner. To place both men and women at equal footing today is the dire need of an hour. Therefore, development of any nation will solely depend upon the equivalent ratio of both male and female, which is reflecting the:-

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Under developed nations often aspire to ace in the race of development. There are certain instances wherein under developed nations often depict themselves to be below average in order to extract more and more funds from the developed nations on a whole. India being a country with diverse culture consists of people belonging to diversified cultures keeping them over equal footing this is the foundation of every democratic nation. Therefore it is the responsibility of the forerunners of the state to provide equality to every individual without discriminating on the basis of gender.

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