

# Indic Legal Law Journal

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## **FEMALE INHERITANCE, A MYTH OR PRACTICE?**

*This article gives us an insight towards how far female inheritance under the Hindu Succession Act has travelled post independence and whether there have been any significant changes with respect to inheritance on Coparcenaries' property for a female.*

At the dawn of our independence, the makers of our constitution were of the view that women in the society then faced high number inequalities which further led to deprivation of socio-economic rights. To erase that, Articles 14, 15 and 16 were inserted in the Fundamental Rights, Article 38, 39 and 39A inserted in Directive Principles of State Policy and Article 51A (e) as part of the Fundamental Duties. But even with these many provisions ensuring that women are not faced with any kind of discrimination anywhere, To curb such practices, the legislators of our country brought about a progressive law, The Hindu Succession Act 1956.

Was this a success? It was not. The act retained only a male member as a coparcener. Section 6 of the Act provided that whenever a male Hindu, having an interest in a Mitakshara coparcenary property died after the commencement of this Act, then his interest in property would devolve by rule of survivorship and not in accordance with the Act. The proviso to the section was that if a coparcener died leaving behind a female heir or a male heir who claims the property through her, then such property/share of the property would go to that male heir. It is therefore very visible that the act did not allow female members to inherit the ancestral property. When a male coparcener dies leaving behind no one but his wife, the wife would then get his property/share of the property.

### **Sections Affecting the Rights of Women**

Section 15(1): In devolution of a property belonging to a woman, the husband's heirs are placed at a higher pedestal over the woman's family. On the contrary, Section 8 of the act allows for

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the male's property to be inherited by his side of the family and does not devolve to his wife's side.

Section 23: This section disentitles a woman to seek partition until the male heirs choose to divide their shares.

Section 24: This section provides for three kinds of widows- intestate's pre-deceased son's widow or the widow of a pre-deceased son of a predeceased son or widow of the brother, disqualified in succeeding to the property of the intestate on their re-marriage during the lifetime of intestate.

## **Cases determining the validity of Section 15 of Hindu Succession Act**

In *Mamta DInesh Vakil v. Bansi S Wadhwa*<sup>1</sup>, two questions were put forth before the Bombay High Court regarding the constitutional validity of Sections 8 and 15(1) of Hindu Succession Act 1956:

- a. Whether the priority given the relatives of the husband and not the wife's during the devolution of the property under Section 8 of the Act in accordance with Article 15 of our Constitution?
- b. Whether the priority given to the husband's relatives on devolution of the wife's property according to Section 15(1) is in accordance with Article 15 of our constitution?

The court while delivering the judgment observed on critical point. With regards to the first question, the court observed that there are no gender based discrimination with specific reference to Class I heirs.

In the judgment however, the court held that under Class II and Class III of the succession list, the wife's side features at the last under both categories and held the sections to be unconstitutional in nature.

In *Om Prakash v. Ramachandran*<sup>2</sup>, the SC held that according to the basic design of Section 15, the property held by a Hindu Female are classified only under the following three major categories:

- a. Property inherited from her parents (Stridhan etc.)

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<sup>1</sup>2012 L.N.I.N.D. BOM 748.

<sup>2</sup>2009 15 S.C.C. 66.

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- b. Property inherited from the marital house
- c. Other Properties

The SC further held that there are no differences between a self acquired property or an inherited property by a woman. Hence, it was held that Section 15 of the Hindu Succession Act would be in application and the successors of the husband must be the ones who would get preference over the parents. No question of whether the marital house had helped or contributed in the acquiring of the property was to take place.

Even though there has been a declaration by the courts regarding the constitutional validity of the said provisions, there are no authoritative provisions or pronouncement made by the law makers of our country.

## **Positives gained from Hindu Succession Act, 1956**

Section 14 of the Act conferred upon Hindu women absolute ownership of the property acquired by her. Before the commencement of this act, women were entitled to only life interest in the property acquired by her and the male heirs of women were the absolute owners of the properties. Whether the woman had completely acquired the property through her means would not be a matter of question.

This section empowered women to right wills and make them enforceable as well. The object of Section 14 is as follows:

- a. Removing disabilities of females to acquire and hold property;
- b. To convert any estate held by the women before the date of the commencement of this act from a limited owner into a complete owner.

## **Reformation of Succession Laws in by states**

The states down south were the first ones to recognize the major drawback of the Hindu Succession Act. The state of Kerala was the first to recognize such discrimination by the Act and it enforced major changes by introduction Kerala Joint Hindu Family System (Abolition) Act, 1975 which completely abolished the right of males to property by birth. Further down the line, the states of Andhra Pradesh (as it was back then), Tamil Nadu, Maharashtra and Karnataka amended Section 6 of the Act and announced that daughters and sons have an equal stay in the joint family system and hence daughters were also considered to be coparceners.

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Women at this time had double the rights; coparcenery before marriage and coparcenery after marriage as well. Thus, these amendments by the states entitled women to be a coparcener by birth and the transfer of coparcenery takes place after marriage as well.

The Government of India passed the Hindu Succession Amendment Act, 2005 which paved way for more rights to be conferred upon women.

Firstly, Section 4(2) was repealed which allowed women to get inheritance of agricultural lands thereby becoming equal to men. This particular amendment helped women who were solely dependent on agricultural activities as the only source of sustenance.

Section 6 of the act was also amended, which now allows for a daughter of a coparcener in a joint family system under the Mitakshara School shall become a coparcener by birth thereby giving her the same rights as a son would have gotten. Section 6(3) now allows for daughters to get the same amount of share that sons get. A daughter is entitled to get the equal amount of share from her father that would be received by her brother as well in terms of ancestral property and with regards to properties acquired by the father; the daughter is entitled to get an equal share as that of her brother.

In the case *Prakash v. Phulavati*<sup>3</sup>, the SC held that the notional partition recommended by the condition specified under Section 6 of the unamended act leads to apportionment of the coparcenery property in the event of death of a predecessor coparcener prior to 2005. Therefore, the court further held that there is no property in the coparcenery left to be partitioned for the daughter.

But the Supreme Court in the landmark judgment *Vineeta Sharma v. Rakesh Sharma*<sup>4</sup> held that “Bearing in mind the express language of Section 6(1), the requirement for female coparcener to become the successor is not dependent on whether or not the predecessor coparcener was alive on the date of the amendment.

This case overruled *Prakash v. Phulavati*.

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<sup>3</sup>2016 (2) S.C.C. 36.

<sup>4</sup>2020 S.C.C. ONLine S.C. 641.

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## **Future on the same grounds**

It is indeed laudable that both the Executives and the Judiciary are slowly moving forward to repair the damage caused due to such discriminatory practices. The fact is that women born before the 80s were not okay with the practices back then but did not have the time, energy and most of all courage to go out and fight for their rights in succeeding their ancestors in the property.

The current generation women are slowly fighting for all the mishaps that have happened back in those times. The governments along with the judiciary are day in and day out fighting for discriminatory practices to end.

The drawback is that the existences of personal laws are there. Article 44 of our Constitution under the heading of Directive Principles of State Policy is a concept known as Uniform Civil Code. In layman's term, UCC is basically the common governing rules for all the citizens and its intention is to replace the existing personal laws. The process for implementation of UCC is a huge task because it needs to formulate standardized principles derived from all the existing laws. But what people can expect is that all the existing discriminatory practices can be abolished and an equitable justice system can be brought. Will that brought is a question of time.