

Property rights of Women

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Abstract:

The earlier times of India give instances of women's right to property but in a limited aspect. Through the years there was a gradual devolution of property rights to women. In the ancient Indian society, we see the right to property in terms of stridhan. Later we find codified law in the form of acts. With the formation of such acts, it is seen that the scope of right to property of women was increased. Due to changing society, a need was also felt that the position of women needs to be more enhanced in the society as women could efficiently do all the responsibilities needed for the furtherance of the society. Hence today we have laws which recognize women's rights on equal basis with men. The present paper gives us an overview of all the legislations brought about which grant the property rights to women.

Key words: right, women, property.

Introduction:

The position of women in India shows a remarkable change through the ages. During the ancient period women rendered a significant contribution to the development and welfare of family and society. The ancient Indian texts referred that the status of women in India deteriorated during the Maurayan period showing instances that women in upper class had to follow the purdah system and the practices of polygamy and sati where in practice to a great extent. During the Gupta period they suffered from mistreatment and abuse. Child marriage was deeply rooted in the society. The classical Indian society showed patriarchal system in the society. The society also reflected in the same nature and the rules and regulations in the society were made in such a nature as to deprive the women from all types of rights and property rights. This increased the dependency of women on father, husband after the marriage and son in the widowhood as they did not have any rights to property. They could not own or transfer any property nor enter into any agreements related to property. Thus, the status of women experienced a positive as well as negative effect. This situation took a significant period to change and now we have women with recognized rights to property. The present paper gives us a detailed note of the journey of women's right of inheritance in the Indian context.

Objectives of the study:

- To study the position of women's right to property in Indian scenario
- To study the laws governing the property rights of the women
- To study the impact of laws governing women's property rights.

Statement of research problem:

The present position of women is the gradual development of rights relating to property of the women in India who were once deprived of all rights to property. The aim and purpose of present research is to demonstrate the property rights of the women.

Research methodology:

The research methodology used in the present research is doctrinal. Doctrinal research entitles analyzing various legislations, along with the relevant case laws, organizing, ordering and systematizing legal ideas and studying a legal institution. As a result the technique used here necessitates a study of theoretical, practical as well as legislative issues. The study will focus on

primary sources on the different forms of legislations with the relevant case-laws. The secondary sources for the topic include scholarly books, research reports, journals, textbooks and relevant websites.

Conceptual analysis of right to property:

The right to property is a legal right to own and use the property including land, buildings and other resources. It also includes the right to receive income from property. In India the right to property is protected under Article 300 A of the Constitution of India. This article states that no person shall be deprived of their property without the authority of law. The government can only curtail, modify or abridge property rights by exercising its legislative power. Right to property is internationally recognized in the international convention on the elimination of all forms of racial discrimination. It states that, everyone has the right to own property. The universal declaration of Human Rights also recognizes property rights. Right to property includes all types of property such as tangible property like houses, cars, books and cellphones. It also includes intangible property like inventions, ideas or words. It also includes non-human creatures such as dogs, cats, horses or birds.

Women’s right to property:

The evolution of women’s right to property in India has been a long and arduous journey. Under classic Hindu law, women had limited rights to property, with their property bifurcated into stridhan (gifts from parents, husband or relatives) and non-stridhan (property inherited or acquired through other means).

The concept of stridhan:

It is said that India has a rich culture of about 5000 years old. Unlike other civilizations all over the world India’s cultural heritage is not restricted to any set of written rules and regulations but is a product of norms which were passed from one generation to the other through oral pronouncements in the form of shlokas and were donated as shrutis. For about hundreds of years these shrutis were interpreted by the then existing scholars, and the norms were implemented accordingly. As a result of this practice, the same norms were having different types of scope and beliefs in different places in India. When the British invaded India they did not disturb the existing legal ideology. Rather they took the Manusmriti as the base law and started interpreting accordingly. The reference of Manu Smriti which deeply rooted in the Indian society was a woman should be maintained by her father in the maidenhood, her husband during and after her marriage and her son during her widowhood. This provision of the Manu Smriti as further referred as a woman was not capable of having any kind of property related rights or proprietary rights. Sir Henry Maine, the governor general of India (1861 – 1869) said that stridhan is a concept existing in India some time before the advent of the Roman Empire. In the Vedic period, the father used to gift his daughter with many kinds of gifts during her marriage. The property which was gifted to her was her stridhan of which she was the absolute owner. Manusmriti says that stridhan consists of six different types of properties. According to Manu, ‘Adhyagni’ (whatever has been given at the time of nuptial fire), Adhyavahanika (whatever has been given at the time of departure of wife), Dattam prite karmani (given out of love and affection) and given by the father, mother or brother, all these are six types of gifts which come under the term ‘stridhan’. The husband could use the property only in the terms of financial crises and he was under an obligation to return the stridhan as soon as he came out of the financial crises.

In earlier times it was stated that a woman did not have any right to own any property rather she could not even have a control over any property. She did not have any right to alienate any property. The property which was inherited by her as succession was not brought under the ambit of stridhan. Even the property which was acquired by her due to her own exertion was not considered as a stridhan. As the principle of patriarchy was adopted in the society, the position of women's proprietary rights started deteriorating. In the ever-changing dynamic society, the tradition of gifting a daughter out of love and affection was discarded and the dowry system came into existence which further deteriorated the condition of women.

Right of succession among the Hindus:

As a general rule, a person as long as he is alive, is free to deal with his property in any ways he likes. He can lay down his own scheme of distribution of his property after his death through the medium of will. If a person dies without leaving a will, the law of inheritance will be applicable to distribute his property among his heirs. So, the law of succession is classified as testamentary succession and intestate succession. The law of intestate succession is concerned with matters such as, who are the persons entitled to take the property. It also deals with persons who are the heirs and what are the rules of giving preference to heirs regarding distribution of the property. It also deals with provisions relating to manner in which property is to be distributed in case if a person has more than one heir. It gives us rules regarding disqualification of heirs as well. The law of inheritance consists of rules which determines the mode of devolution of property of the deceased solely on the basis of their relationship to the deceased. Succession opens at the time of the death of the person whose estate is in question and is governed by his law in force at the time.

Before coming into force of the codified Hindu law, there were two systems of inheritance among the Hindus in India namely the Mithakshara and the Dayabhaga. The Mitakshara system prevailed in the whole of India except in Bengal and its adjoining parts where the Dayabhaga system prevails. The Mitakshara recognized 'survivorship' as a mode of devolution of property while the Dayabhaga recognized 'succession' as a mode of devolution of property.

The Hindu Women's Right to Property Act, 1937:

It is in the preceding 100 years the condition of proprietary rights of women started changing. The remarkable legislation which was brought was the Hindu married women's act of 1937. The Hindu Women's Right to Property Act, 1937 was a law that gave a Hindu women better property rights. It was the first legislation to give widows the same rights to inherit property as sons. It gave widows the same share of property as sons if the husband died without a will. It gave widows the same interest in joint family property as their deceased husbands. It gave widows the right to claim partition of property like male owners. However, it did not give daughters any rights. It did not apply to property that descended to a single heir by custom or rule of succession. It did not apply to property that was subject to the Indian Succession Act of 1926. The Hindu women's right to property act 1937, marked the significant turning point granting Hindu widows the right to their deceased husband's property. However, this right was limited and women still didn't have equal rights to inheritance.

The Hindu Succession Act 1956:

The Hindu Succession Act came into force on June 17, 1956. The main object in passing the Hindu Succession Act 1956 is to meet the needs of the progressive society. The old law did not fulfill the desired ends and remained hardly acceptable to a dynamics Hindu society of contemporary era.

Hence there was a need of a uniform system of law of succession which may be acceptable to all the sections of the Hindus and be equally enforceable upon them. With this end in view, the Hindu Succession Act 1956 came into existence. It removes inequalities between men and women with respect to rights in property and it lays down a common list of heirs entitled to succeed on intestacy. The act has been passed to amend and codify the entire law of succession. The Hindu Succession Act 1956, further expanded women's rights stating that any property possessed by a female Hindu would be held by her as full owner. This meant that women now had absolute ownership of their property, including stridhan and non-stridhan and property acquired through their skill or exertion.

The Hindu Succession (amendment) Act 2005:

The Hindu succession (amendment) act 2005, revolutionized women's right to inheritance, making daughters coparceners in their own right, with equal rights to their fathers' property. This amendment also granted women the right to dispose off their coparcenary property as they saw fit. The amendment act 2005 brought about a major change in section 6 of Hindu Succession Act. This amendment is considered as revolutionary as far as the position of women in Hindu law is concerned. It was a product of 174th report of the law commission of India on "Property rights of women: Propose reforms under Hindu Law" which aimed at ending the discrimination against women in property matters. Vineeta Sharma V Rakesh Sharma (2020): the judgement has further solidified women's right to inheritance, stating that the birth date of a daughter is immaterial, and the father need not be alive for the daughter to claim her rights.

Conclusion:

From the above discussion of various legal provisions, it has been observed that the amended section 6 of the Hindu Succession Act has conferred substantive rights in favour of daughters. From 9th of September 2005, a daughter is entitled to a share in ancestral property and is a coparcener as if she has been a son. The section notably does not make any distinction between a married and unmarried daughter. If a partition takes place after the commencement of the act, the daughter is entitled to her share. Overall, the evolution of women's right to inheritance in India has been a gradual process with significant milestone and amendments to laws, today women have equal rights to inheritance, marking a major step forward in gender equality.

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