

Unintended Consequences of Women's Inheritance Rights on Female Morality in India

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Abstract

The relevant objective of this paper is to outline the evolution of Hindu female inheritance and succession rights in India in order to examine the impact and effect of the reforms. It has been observed that any legislation towards equality has a huge impact on female morality in India. Ever since the enactment of amendments in Hindu female property rights, various changes in decision making, attitude, educational attainments, female labor supply and violence against women have been observed in India. Yet, because of the defaults in institutional framework and persisting social norms, it has been discovered that the project of reform is far from over. Through the lens of this paper, an attempt has been made to encourage the framers and custodians of our constitution to not undermine the emancipatory potential of law. The values envisaged in our constitution shall continuously be upheld until the objective is fully achieved.

Keywords: Inheritance and succession, educational attainments, labor supply, violence, judicial precedents

INTRODUCTION

In India, as far as personal laws are concerned, the Hindus were governed by Shastric and Customary laws which varied from region to region. This resulted in a plethora of laws governing Hindus, which were prevalent in different schools such as Mitakshara and Dayabhaga. In ancient times, the Hindu patriarchal society disregarded women's right to property and considered her position inferior to men. However, with the progress and rising awareness, attempts have been in India to improve the position of Hindu women regarding her succession and inheritance rights through different legislative enactments in pre and post independent India. Yet, the position of women's rights requires reconstruction, amendment and reconsideration because the discrimination against women has become ubiquitous. It has started functioning on the legislations enacted by the framers themselves. This thought was reflected in the 174th Report of the Law Commission of India on "Property Rights of Women: Proposed Reforms under the Hindu Law" as well [1]. It stated that:

"Discrimination against women is so pervasive that it sometimes surfaces on a bare perusal of the law made by the legislature itself. This is particularly so in relation to laws governing inheritance/succession of property amongst the members of a Joint Hindu family. It seems that this discrimination is so deep and systematic that it has placed women at the receiving end..."

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Received Date: May 26, 2021
Accepted Date: September 28, 2021
Published Date: December 31, 2021

Citation: Vanshika Aggarwal. Unintended Consequences of Women's Inheritance Rights on Female Morality in India. Journal of Family & Adoption Law. 2021; 4(2): 6–11p.

PRE-AND POST INDEPENDENCE DEVELOPMENTS

The attitude and behavior pattern of Hindu patriarchal society started changing drastically during the British regime. The Hindu Law of Inheritance Act, 1929 [2] was the first legislation that recognized three female heirs—son's daughter, daughter's daughter and sister's right to inheritance. Then the Hindu Women's Right to Property Act, 1937 [3] was enacted which brought

about some changes to the classical Hindu law by allowing the widow of a coparcener limited right to hold his share after his death. The widow now had the right to claim partition in the property and enjoy any income arising out of it. However, she was not allowed to alienate or sell the property as she was granted limited ownership only.

Even though these legislative enactments conferred new rights of succession on certain women, they failed to recognise the equality that should persist between men and women. It was with the advent of independence that the framers of the Constitution took notice of the inequality which had been perpetuated against women. To remedy this defect and to uphold the principles of social and economic justice envisaged in the constitution, despite strong resistance from orthodox Hindu sections, the Hindu Succession Act, 1956 was enacted.

THE HINDU SUCCESSION ACT, 1956

The Hindu Succession Act, 1956 enabled the enactment of a uniform, systematic and comprehensive system of inheritance. It brought about a revolutionary change as it did away with the old Hindu textual law that did not allow female relatives to inherit property. It attempted to eliminate the existing inequality between male and female with respect to the rights of property in a Hindu joint family. However, despite this stance, the advancement in legislation was not free from criticism pertaining to gender biasness. This is because the various provisions in HSA discriminated against Hindu women by prescribing different rules of devolution for men and women [4].

Firstly, it came under heavy criticism because it only recognized men as coparceners by birth. From Section 6, (pre-2005) [5] it can clearly be inferred that if a joint family property was partitioned, each male coparcener would get a share but the female would not get anything. Only when the coparcener died, she would get a share as an heir to the deceased coparcener. Section 4(2) [6] also placed women in an unequal position in comparison to men regarding inheritance rights in agricultural land. Section 23 [7] barred a female heir from seeking division of a dwelling house that was entirely occupied by a joint family until the male heirs agreed to divide their separate interests. It was contended by feminist scholars that this section is also discriminatory against married women because it only grants right to residence in the dwelling house until a female is unmarried. This restriction is unreasonable in accordance with Article 14 [8] because no such restriction has been put on married men. Further, Section 24 [9] disentitled the widow of a pre-deceased son, the widow of a pre-deceased son of a predeceased son and a widow of the brother to succeed to the property of the intestate, if on the date succession opens, she has remarried.

Thus, instead of promoting gender equality, the Act further perpetuated gender discrimination against women. Such instances make it imperative to examine the structures within which legal discourse operates. This is because the institutions and structures itself seem subject to patriarchal norms and notions. The state seems to apply its own idea of morality on citizens when it is constitutional morality that should guide the law.

REFORMS IN SUCCESSION LAW THROUGH AMENDMENTS

The discrepancy of Hindu women's position in Mitakshara coparcenary was first acknowledged by the State of Kerala. It introduced the Kerala Joint Family Act, 1975 [10] which gave all heirs including women an equal right to inherit ancestral property [11]. Following this, the states of Andhra Pradesh [12], Tamil Nadu, Maharashtra and Karnataka in 1986, 1989, 1994, 1994 respectively, also passed state amendments that declared daughters to be coparceners in Joint family property. But, Hindu women in other parts of India continued to be subjugated to inequality as they could not inherit ancestral property at par with men. Considering the awareness these various state legislations had raised, an initiative was taken by the Law Commission of India in its 174th Report [13] to make recommendations for an amendment which would remedy this defect in other parts of India as well. It acknowledged that the current concept of coparcenary and the rights that come with it amounted to

gender discrimination and violated the Indian constitution's fundamental right to equality. Therefore, the Hindu Succession Amendment Act was passed in 2005. The amendment abolished Section 4(2) which did away with the discriminatory state-level tenurial laws. This paved way for women's inheritance in agricultural land which benefited many women who are dependent on agriculture for their sustenance. It also amended Section 6 to recognise daughters as coparceners. Due to this, she now has the same rights and liabilities in the ancestral property as that of a son. This provision applies to married and unmarried daughters. The disability caused by Section 23 and 24 has also been resolved through this amendment [14].

Nonetheless, it would be incorrect to solely recognise the progression of these legislations without focusing on the practical applicability and assessing the impact and effect of these reforms. Therefore, the latter half of this paper seeks to analyse the changes brought about in the society through these reforms and assess whether they have been functioning sufficiently in comparison to its claimed purpose.

IMPACT OF THE AMENDMENTS ON VIOLENCE, DECISION MAKING AND ATTITUDES

Through one empirical study, it has been observed that the effect of women's increased access to inheritance has decreased the aggregate rate of violence against women. This was recognised because a reduction in violence reporting and female mortality was discovered post these reforms. It is no doubt that inheritance rights in a developing country like India is a major source of income, production and investment. Therefore, consequently, the property rights given to women increased their economic value, [15] which in turn has provided social prestige to women by challenging the stigmas, stereotypes associated with their well-being. This step played a huge role in changing the perspective towards women. It allowed various women to gain economic independence through these avenues of land which automatically had an effect in bringing about gender equality in households. The HSA modifications also raised women's premium in the marriage market, making them more likely to marry a better-quality spouse. This in turn has reduced the likeliness of women to be subject to domestic violence by 17%. Further, per the survey, women's participation in household financial decisions, either jointly with their husbands or completely on their own, grew by 2%. This provides evidence that inheritance not just increases economic value but also the marital outcomes, decision making and overall impact of women. In terms of policy analysis, these results play an important role from a welfare perspective [16].

FEMALE LABOUR SUPPLY AND EDUCATIONAL ATTAINMENTS IN INDIA

Another empirical study employing the difference-in-difference estimation strategy discovered that property rights have increased the bargaining power of women, which in turn has allowed them to steer allocations in their preferred channels, namely their decision to participate in the market and their educational outcome. The evidence was derived by comparing mean educational attainment, and female labour force participation between reform and non-reform states [17].

The 2015-16 National Family Health Survey reported that 28% of women own land – either jointly or by themselves – and 37% own a house. Per the Union ministry of statistics and programme implementation, women own 21.5% of all proprietary establishments in the country. The Census figures discovered that this in turn has increased the workforce participation of women from 12% in 1971 to 25% in 2011. Their literacy rate has also increased from 9% in 1951 to 65% in 2011. Women now represent 46% of the total annual enrolments in higher education, and are 53% of the total post-graduate degrees awarded every year [18]. The purpose of outlining these study reports in this paper is to emphasise that any institutional reform that promotes women's access to property has a huge impact on female morality in India. From these reports, it can clearly be inferred that the legislations have paved way in enhancing the education, labour supply, capital assets, reduction in domestic violence towards women in India.

Without a doubt, given the patriarchal mind-set that only men can own and manage property, any law reform on women's property is resented, resisted and revolted against. But, the state shall not hesitate before paving way for necessary reform process. It must recognise the loopholes that are still persisting in the society and act accordingly. To re-emphasise the already stated, even a small step has a huge impact on female morality in India. Therefore, the state shall continuously thrive until the objective is fully achieved. Why the need for acknowledgment for any future reform, despite these accomplishments, still exists, is something that will be analysed in the forthcoming part of the paper.

WHY THE PROJECT OF REFORM IS FAR FROM OVER?

Even though the 2005 amendment has played a significant role in progression of gender equality and economic security in India, it is imperative to highlight that the process is far from over. This is because HSA still runs on various provisions that entail gender inequality. Firstly, other females such as mothers have not yet been given recognition as coparceners. It is impossible to achieve justice and equality for one group of women and leave aside others. Thus, the legislation should be altered to give all Hindu women equal property rights.

Second, if an individual dies intestate, a separate scheme of succession is followed depending upon whether it's a man or a woman. No other religious community's succession laws enforce such a provision. In case of a women intestate, the differentiation in the scheme of succession in Section 15 [19] has been justified using two arguments. The first states that it is to preserve the joint family which is the most important unit of societal organisation. The Second states that, it has been done because women do not have the competence to hold, acquire and manage property. However, with the advancement in modern society the traditional joint family system has now become irrelevant. Moreover, women are far more employed today than they were when HSA was enacted. Evidence to back this stance has been already been established in the former part of this paper. No reasonable explanation can be construed as to why the source of acquisition under 15(2) [20] is a detriment in case of Hindu women when it is not so for a Hindu man. Neither can it be construed as to why it is reasonable that husband's heirs are preferred over her parents [21]. Thus, Section 15 needs to be amended and made gender neutral [22].

Third, in Section 8 of HSA an agnate is preferred over cognate even though the agnate is remotely related. In class 2 heirs, while full blood is preferred to half blood, relationships by uterine blood are completely unrecognised [23].

Lastly, a study by Landesa examined that eight years after the amendment, the ground reality is that women still do not inherit land on an equal basis with men. This is because the formal structure and prevailing social practises act as barriers in implementation of the amendment [24].

ROLE PLAYED BY THE COURT'S IN GENDER CONTOURING LEGISLATIONS

On several occasions the constitutional validity of Section 8 and 15 has been challenged. In *Mamta Dinesh*, [25] the Bombay HC heard two suits with respect to each of these sections. The Additional Solicitor General arguing for the constitutionality of Section 15(1) substantiated his stance by stating that the differentiation is justified because it not solely based on gender. It is for *the maintenance of family ties*. Precedence was laid on *Sonubhai Yeshwant* [26] in which the court had ruled that the objective of HSA is to further the "*integrity of the family which requires closer blood relations to be preferred over distant blood relations.*" To this effect, since the female merges with the husband's family after marriage, the heirs of the husband are preferred over her parental heirs.

The court in the instant case refuted these arguments of the ASG because after analysing the scheme of devolution in detail it concluded that "*many of the classes of persons who fall under the category of husband's heirs are not even related by blood to the deceased Hindu female. The classification is not based on family ties at all, and is wholly based on gender.*" The separate scheme

of succession both in Section 8 and 15 was declared unconstitutional as it does not satisfy Article 15 [27]. Section 8 [28] was attacked because in class 2 heirs, under sub clause V to IX, gender discrimination does persist. However, despite these realisations, since both these conflicting judgements were upheld by a single judge bench, the matter was referred to a larger bench. The decision is still pending. It is disheartening to see that despite the persistence of gender inequality nothing has been done in this regard.

In practicality, this had led to several undesirable outcomes. In *Om Prakash* [29], Narayani was thrown out of her matrimonial home after her husband's death. She then started living with her natal family, through their help in her education, she acquired her own property. Yet, upon her death the Supreme Court passed her property to her husband's heirs by aligning its opinion on the text of HSA. This has set a wrong precedent to follow in several judgements such as *Pushpa v. N. Venkatesh* [30] and *Anima Das* [31] as it devalues the autonomy of women and refutes her devolution of self-acquired property. Since these cases did not involve testing the constitutional validity of Section 15(1), it has argued that the court could not have done much. But, it is wrong to say that because the court still could have invoked its powers under Article 142 [32] instead. That would have ensured that the principles of good conscience and equity are upheld [33].

RECOMMENDATIONS

It can be inferred that the gaps persist because gendered identities, stereotypes and prejudices still operate within and outside intuitional frameworks. In fact, they run on the bare perusal of the legislation itself. Therefore, this paper seeks to suggest certain recommendations before drawing its conclusive remarks.

1. Wherever possible, a paralegal program should be established to educate women about their legal rights. They should be assisted in asserting and pursuing their rights to inherit land in a proactive manner.
2. Officials in charge of providing mutation, partition and updating land records should get specialized training on the new instructions for implementing the HSAA
3. The recommendations of the 207th Law Commission Report to amend Section 15 shall be implemented. Natal families of men and women and the lineage through them must be treated equally. In fact, all other loopholes identified above shall be amended [34].
4. The judges, tehsildars, over all administration and public shall be sensitized on the importance of women's land rights.

CONCLUSION

The findings of this paper suggest that significant and persistent gaps exist between the rights that have been granted to women over the years and their actual inheritance, control and enjoyment of land. An examination of the impact and effect has led to the realization that any step towards gender equality has an overall impact in the society towards the improvement in position of women. Nonetheless, the gaps still persist because of gendered identities and the institutional framework within which the legal discourse operates. Therefore, the task of the custodians is not over yet. A continuous effort to thrive towards gender equality shall be made until the objective is fully achieved.

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