

A CRITICAL ANALYSIS OF HINDU WOMEN'S RIGHT IN AGRICULTURAL PROPERTY UNDER U.P REVENUE CODE, 2006 IN THE BACKDROP OF GENDER JUSTICE

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ABSTRACT

Concept of property has been changed over the centuries from the very nature of feudalism to capitalism. Under the Hindu succession amendment act, 2005 if a man dies intestate the daughter will get the same part of his property as his son had. But there is a wide gap in actual ownership of property by women due to some legal loopholes, customary norms and family restrictions. This paper analyses the concept of women's right to property under Hindu law and UP Revenue law. This paper aims to analyse daughters right under Uttar Pradesh Revenue Code, 2006. Daughters rights under Uttar Pradesh revenue code 2006 are critically analysed in this paper. Women before marriage get a limited succession right in agricultural land of their father. UP Revenue code has changed the scenario of sharing property rights in agricultural land. This paper also highlights the effect of omission of subsection 2 of section 4 of the Hindu succession act, 1956. The inconsistency of central and state laws with respect to legislative power is also highlighted in the paper.

Keywords: Hindu Women, Property Rights, Revenue Laws, Gender Justice, Inheritance



1. INTRODUCTION

"I RAISE UP MY VOICE SO I CAN SHOUT BUT SO THAT THOSE WITHOUT A VOICE CAN BE HEARD, WE CAN NOT SUCCEED WHEN HALF OF US ARE HELD BACK."

MALALA YOUSUFZAI

Our Indian society is a patriarchal society in which women's position is considered inferior to men. In ancient period i.e. early Vedic period women had a high social status Women participated in the meetings of Sabha and samitis along with men.¹ At that time females had equal freedom as of men. Even in ancient Hindu religious scriptures there is a concept of ardhnanarishvara in which half of the body of god represents body of woman and half of the body represents the body of men.²

Although it is not found in record that at that time women had property rights at par with men. Women was equal as of men in the matters of practicing dharma, performing rites and ceremonies. Gradually with the time the status of

¹ Rigveda X. 124.5.

² R.C Mujumdar, The History and culture of the Indian people, (1965) vol.1, p.n 394

women started to decrease in the society. Patriarchal society intentionally disregarded women's right to property and pushed her up in inferior position in all the economic and social aspects of life.

Women were behind the shoulders of men in economical and societal matters. Manu, the first law giver, in Manuscript demonstrated, "*A Woman should be under the control of her father in her childhood, under the control of her husband in the youth, and under the control of her sons in her old age.*"

This kind of junior ship and inferiority which was mentioned by Manu in Manuscript was not limited to household chores only it was also in the matters of privileges and rights available to women. Although constitution of India considers women as a citizen of India and guarantees them right to equality under article 14³ of constitution of India.

India is a country comprises of villages and towns. Agricultural land makes a large part of asset in India⁴. Uttar Pradesh consists of 18826 hectare, Karnataka 12777 hectare, Rajasthan 25493 hectare, Uttrakhand 1550 hectare, Madhya Pradesh 17207 hectare, Haryana 3759 hectare part of irrigation land in India.⁵ A major portion of rural economy depends on the productivity of agricultural land. Ownership of this agricultural land is largely vested in males in comparison of females.

This paper identifies some gender inequalities mentioned under inheritance laws. In rural India, agricultural land is very valuable property. Women would be economically and socially empowered after having right in this agricultural land.

Actually the progress in inheritance laws has been by going towards gender equality in inheritance laws.⁶ Although an attempt has been made in Hindu Succession Act 1956, and Hindu succession amendment act 2005, by adding succession rules in favour of women to remove the discrimination between men and women as holders of property.

Women are now absolute owner of their property. Daughters are also coparcener in Hindu mitakshara property. Hindu succession act made daughters absolute owner of ancestral property. Now daughters can also be a karta of family under the provisions of Hindu succession amendment act, 2005.

There is different law among revenue laws of different states. It can be said that the state tenure laws are also gender discriminatory. If an attempt is being made to challenge these state tenure laws on the basis of violation of fundamental rights, it cannot be done because of inclusion of state tenure and ceiling laws in the 9th schedule of the constitution of India. Although it is a fundamental right under constitution of India not to discriminate on the ground of sex, religion etc. even though state land revenue laws are made in contravention of constitutional provisions and are highly gender discriminatory in nature.

Initially gender inequality in joint family property under Hindu succession act 1956 was discussed but what would be the effect of these rights on agricultural land was neglected. By amendment of 2005 in Hindu succession act 1956, an attempt has been made to remove gender inequality by including the provision of daughter's equal right to property as par of sons under section 6 of the said act.

But the 2005 amendment brought a new confusion by omitting subsection 2 of section 4 of the Hindu succession act, 1956. It is not clear whether Hindu succession act will be applying on the tenancy rights in agricultural land or not. In the case of succession of Hindu women, there is discrepancy between the Hindu succession act, 1956 (central law) and up revenue code, 2006 (state law). There is no similarity between land revenue laws and land ceiling laws of different states. Every state has its unique, different revenue law.

This paper is an attempt to identify and address these gaps.

³ 14. Equality before law. - the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

⁴ 2 Jus Corpus L.j. 583 (2021-2022)

Inheritance Rights of Hindu Women in Agricultural Property: A Critical analysis

⁵ Directorate of Economics and statistics, MoA & FW

⁶ Agarwal, B. (1995). Gender and Legal Rights in Agricultural Land in India. Economic and Political Weekly, 30(12), A 39-A 56. <http://www.jstor.org/stable/4402533>

2. METHODOLOGY

Doctrinal method of research has been used in writing this research paper. Statutes, law reports, various research papers have been referred for this paper. This is a conceptual paper which has been divided into five parts. The first part of this paper deals with the introductory portion of the paper. The second part of the paper deals with the concept of gender justice and women's right to property. Constitutional mandate of gender justice is also discussed in the paper. The third part of the paper deals with meaning and concept of Hindu women's right to property under Hindu law. The provisions of the Hindu succession act, 1956 and the Hindu succession amendment act, 2005 are discussed in this part. The fourth part of the paper deals with Hindu women's right to property under U.P REVENUE CODE, 2006. The fifth part of the paper deals with concluding portion of the paper in which comparative challenges in Hindu succession act and revenue laws have been discussed and some suggestions are proposed towards the end of this research paper.

3. CONCEPT OF GENDER JUSTICE AND WOMEN'S RIGHT TO PROPERTY

The concept of gender justice lies on the basis of feminism which believes that nobody should be discriminated on the basis of sex merely. There should be equality between men and women. Women should be empowered to enjoy all the very good things of life which have been enjoyed by men from a very long time.⁷ Gender justice and women's land rights are basic pillars of the chain of human rights. If property rights are provided to women it will promote and protect their human rights in rural areas. Women will be empowered in rural areas.

The objectives mentioned under CEDAW⁸ could be smoothly achieved by implementing property rights of rural women. When we talk about the right to hold land, there is inequality on the basis of sex. Women have less or small portion of land/plot in comparison of men.⁹

Gender justice is a tool for balancing women's and girls' equal rights and to achieve gender equality. United nations for development programme has set up a strategy for favouring gender justice at global level.¹⁰ Firstly the inequalities existing between men and women on a particular point is identified and then those inequalities are redressed through various legislations and policies and this leads towards the concept of gender justice.

Gender justice is not merely about legal provisions it is about the practice of law also.

Right to property is a constitutional right and also a part of human right. It is documented under the provisions of The Hindu Succession Amendment Act, 2005, various state revenue laws i.e. U.P Revenue code, 2006; the Delhi land reforms act, 1954; Punjab tenancy act, 1887; Rajasthan tenancy act, 1955; Madhya Pradesh land revenue code, 1959 etc.

Constitution of India guarantees right to equality. It mandates to treat equally with all the citizens of India. Constitution is a landmark document/ grund norm in India. As Constitution directs not to make any kind of discrimination between men and women. although article 15(1) prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.¹¹ Article 15(3) empowered the state for making special provision in favour of women.¹² Directive principles of state policy¹³ directs state to secure a social order for the promotion of welfare of the people.

It is a common law saying that king can do no wrong but it seems that in original the Hindu succession act, 1956, king has done a wrong by not providing Hindu daughters an equal share in coparcenary property.

⁷ Gheaus; A. (2011). Gender Justice. J. EthIcS & SoC. PhIL.,6,1.

Heinonline.org/HOL/Leading Page? handle=hein. journals/jetshy 6& div=3 & id=&page=

⁸ Convention on the elimination of all forms of discrimination against women

⁹ According to FAO (2011) – women have only 10.9 % all agricultural landowners in India.

¹⁰ UNDP Gender Equality Strategy 2022-2025. <https://www.undp.org>.

¹¹ 15(1). The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

¹² 15(3) nothing in this article shall prevent the state from making any special provision for women and children.

¹³ Part 4 constitution of India

Although the object behind passing the Hindu succession act, 1956 was to empower women economically and to abide by the constitutional provisions.

For the very first time this act provided a uniform pattern of inheritance by addressing gender inequality i.e. Hindu sons and daughters were not at equal footing under this act. So, a reform was needed in the succession law and it was done by Hindu succession amendment act 2005.

4. HINDU WOMEN'S RIGHT TO PROPERTY UNDER HINDU LAW

Initially under ancient Hindu law women got limited rights in property. There was a concept of stridhana. women enjoyed the right to property till their last breath. Daughters had no right in ancestral property as they had no duty to perform funeral rites of the deceased. There was a concept of pious obligation upon the male descendants of the family including sons, grandsons, great grandsons. Sons had a duty towards their ancestors.¹⁴ Later on a series of reforms was done towards inheritance rights of Hindu women.

- 1) HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937
- 2) THE HINDU SUCCESSION ACT, 1956
- 3) THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

Hindu women's right to property act, 1937 was enacted to give property right to women. This act brought provisions of right to property to widow. But widow got limited right in property. She was only entitled to have right over her late husband property only for the maintenance. She was not entitled to alienate, transfer that property. One more limitation of this act was also that it did not provide equal right in property to daughters.

The Hindu succession act, 1956 repealed the Hindu women's right to property act, 1937 and this act for the very first time made provision for right to property to daughters, widow, mother. Now under this act woman got absolute right to property. Now women became class 1 heirs of the act and became eligible for obtaining property right from their ancestors. The nature of coparcenary property was changed under this act. Coparceners had the right in property as tenants in common. Under the section 8 of the act succession law with respect to women was illustrated.

Although this act made a discrimination between sons and daughters having birth right in property. Sons had birth right in coparcenary property but daughters had not equal share in coparcenary property as of sons. This act deals with two kinds of succession i.e. intestate succession and testamentary succession. Now women had absolute right in property as daughter class 1 heirs, mother, widow etc.

A reform was needed in the succession law and the Hindu succession amendment act, 2005 was enacted in this series. This amendment act tried to remove the gender discrimination which original Hindu succession act, 1956 provided. The discriminatory provision of Hindu succession act, 1956 also violates commitments of India under the CEDAW. The inspiration for elimination of gender discrimination in Hindu succession act are some other Indian legislations i.e. Goa succession, special notaries and inventory proceeding act, 2012 and Indian succession act, 1925 and succession laws of developed countries.

Section 6¹⁵ of the Hindu succession amendment act, 2005 gives equal rights to daughters in the Hindu mitakshara coparcenary property just like sons. According to the provisions of the Hindu succession amendment act 2005, In a joint Hindu family which is governed by the mitakshara system of law the daughter by birth becomes a coparcener in her own right. The Hindu community deals with two basic facets one is Hindu joint family and the second one is coparcenary. If we compare the both then the former is larger. Son is coparcener in joint family property by birth. before 2005 daughters were not considered coparcener. this was a great reform by this amendment.

¹⁴ Manu chapter 9

¹⁵ 6. Devolution of interest in coparcenary property. - 1. On and from the commencement of Hindu succession amendment act, 2005, in a joint Hindu family..... coparcener shall, -

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

© be subject to the same liabilities in respect of the said coparcenary property as that of son and any reference to a Hindu mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: ...

It is also obvious that such kind of drastic reform is possible due to the efforts of law commission of India. Our patriarchal society follows mitakshara system in which joint family property devolves by survivorship within the coparcenary.

5. HINDU WOMEN'S RIGHT TO PROPERTY UNDER U.P. REVENUE CODE

Social Justice necessitates that women should get her due share in agricultural property. Hindu women right to agricultural property is not uniform in India. Every state has its own revenue law i.e. land law. Although documentary rights are available to women under revenue laws but practically women had no ownership of land which had leads to her backwardness.

There are two types of property one is mentioned under Hindu succession act and the other one is mentioned under revenue laws. Initially there was section 4(2) of Hindu succession act which clearly mentioned that personal laws and land tenure laws both have different domains and there will be no effect of personal law on land laws. But in 2005 this particular clause was omitted. Now this amendment has created a confusion with respect to application and non-application of Hindu succession act at revenue laws.

U.P. REVENUE CODE, 2006:

Under this code chapter 7 deals with ownership of land and other properties and the rules with respect to devolution of property are discussed under section 107 to 115. Section 108 deals with general order of succession to male, bhumidhar, asami or government lessee. Section 109 of this code deals with succession to women inheriting interest as a female heir. Section 108(2) which is inserted from 2020 amendment provides a list of heirs in agricultural property.¹⁶ section 109 of the said act deals with succession to woman inheriting interest as a female heir. This particular section makes a discrimination between married daughters and unmarried daughters right to own property. Actually the share of a daughter in agricultural land ceased after her marriage.¹⁷ It is to be noted that Hindu personal law 2005 established a gender equal basis of property inheritance. In India land is governed by state law rather than central law.

6. CONCLUSION AND SUGGESTION

Conclusively it is analysed that a successful attempt has been made by Hindu succession amendment act, 2005 for gender equality by keeping daughters as equal footing at par with sons. Central law i.e. HSA 2005 made a positive provision in favour of women and attempted to remove gender inequality. On the other hand, U.P Revenue code 2006 has made an another inequality between the same sex tenure holders i.e. daughters. It provides daughters share in agricultural property only on the condition of being unmarried. This kind of discrimination is in contravention of fundamental right of right to equality and also a contravention of constitutional right that is right to property. This kind of discrimination should be removed by legislature and a supreme court ruling should also come on this specific point.

Another challenge is with respect to application and non-application of the Hindu succession act, 1956 upon the agricultural land. As it has become the point of confusion after the omission of subsection 2 of section 4 of The Hindu

¹⁶ 108(2). The following relatives of the male third gender bhumidhar, asami or government lessee are heirs subject to the provisions of subsection (1) namely:

- (a) Widow, or third gender spouse, unmarried daughters, third gender issue and the male lineal descendants in the male line of descent per stripes:
Provided that widow, unmarried daughters, third gender issue and sons howsoever low shall inherit per stripes the share which would have devolved upon the pre deceased son had he been alive.
- (b) Mother and father
- (c) Married daughter
- (d) Brother, unmarried sister..... unmarried daughter,
- (e) Son's daughter....
- (f) Father's mother and father's father
- (g) unmarried daughter
- (h) Married sister ETC.....

¹⁷ 109. Succession to woman [inheriting interest] as a female heir.- where before or after commencement of this code, any woman inherits the interest of a male [third gender] bhumidhar, asami or government lessee in any holding, and such woman dies, marries or remarries after such commencement then, her interest in the holding shall, subject to the provisions of sections 107 and 112 devolve upon the nearest surviving heir of the last male[third gender] bhumidhar, asami or government lessees as the case may be.

succession (amendment) act, 2005. Legislature as well as judiciary should clear this specific point of application of personal laws in the matters of tenure land/ agricultural land.

Another challenge is with respect to distribution of legislative powers between centre and states. As Hindu succession act, 1956 is a central law which provides daughters equal right in property and make them absolute owner of property whereas Uttar Pradesh revenue code 2006 is a state law which provides Hindu unmarried daughters a share in agricultural property. So in consistency of both the laws which law has to be prevailed it is a major question to find out. Although state tenure law cannot be challenged in the apex court upon the ground of violation of fundamental rights as it has been put down in the 9th schedule of constitution of India so judicial review cannot be done of this act.

These above are some challenges which have to be meet out by legislation itself by removing these discriminatory provisions. Judiciary should also come forward by giving a landmark judgement on these specific points.

CONFLICT OF INTERESTS

None.

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