

# Property Right Among Rural Women Hindu Succession (Amendment Act)

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## ABSTRACT:

In England under common law a married lost her legal existence by the fact of marriage. In the words of Blackstone, "by marriage, the husband and wife are one person in law, that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated in that of the husband". "Upon this Principle, of a union of person in husband and wife", he further adds, "depend almost all the legal rights, duties and disabilities that either of them acquires by marriage". This principle very pointedly brings out the effect of the merger of the wife's legal status into that of her husband on her property rights. Much of her person property whether possessed by her at the time of marriage or coming to her after marriage, either became absolutely his own, or during covert use might, if he chose, be made absolutely his own, so that even if the wife survived him, it went to his representatives. On the other hand, the wife's freehold estates of which she was seized, vested in husband and wife both, but the husband acquired sole management and control during marriage. Though he could not sell it, but the birth of a child entitled him an interest for life by the courtesy of England.

Under this common law scheme of property, which lasted up to 1870, "it is surely substantially true to say that marriage transferred the property of the wife to her husband". In sum, the husband could say, "What is yours is mine; what is mine is my own". The courts of equity mitigated of some extent the hardship of married women, which they encountered at the common law. Equity courts were not bound by the rules of common law and were free to "consider all the circumstances of those cases that came before them and to adopt the means to the end". The goal was achieved by a systematic and ingenious development of the principle that "even though a person might not be able to hold prop-

erty of his own, it might be held for his benefit by trustee whose sole duty was to carry out the terms of the trust. This principle created a separate property for the married woman for her separate use, on the basis of the declaration of the settlor. With regard to this separate property; the married woman was "released and freed from the fetters and disability of coverture, and invested with the rights and powers of a person who is sui Jusus". However, even if the courts of equity were able to improve the lot of women, yet, it could not make a married woman, in respect of her separate property, a fame sole.

**KEYWORDS:**

Property, Rights, Rural Women, Hindu, Act, Amendment.

**Introduction:**

In India, women`s right have suffered serious setbacks among all communities, especially after its colonial rulers imposed their own norms of property ownership. Despite the Hindu succession Act being passed in 1956, which gave women equal inheritance rights with men, the Mitakshara coparcenary system was retained and the government refused to abolish the system of joint family in spite of contrary recommendations by the select committee. According to this system, in the case of a joint family, the daughter gets a smaller share than the son. While dividing the father`s property between the mother, brother and sister, the share is equal. However, the brother and the mother are entitled to an additional share from which the sister is excluded. If the family owned a house, the daughter`s right therein was confined only to the right of residence and that too till she got married.

The 15th law commission, headed by Justice B.P. Jeevan Reddy, has suggested fundamental changes in the Hindu Succession Act 1956 to ensure that women get an equal share in ancestral property. One of the radical changes suggested as part of the Hindu Succession (Amendment) Bill 2000 is equal rights for daughters in coparcenary property.

**The Hindu Succession (Amendment) Bill, 2004.**

A bill further to amend the Hindu Succession Act, 1956, BE it enacted by parliament in the Fifty-fifth year of the public of India as follows:

1. (a) This Act may be called the Hindu Succession (Amendment) Act, 2004

(b) It shall come into force on such date as the Central Government may, by notification in the official Gazette appoint.

2. For section 6 of the Hindu succession Act, 1956, the following section shall be substituted, namely-selections:6, (1) On and from the commencement of the Hindu succession (amendment) act, 2004, in a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall –

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

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

(c) Be subject to the same liabilities and disabilities in respect of the said coparcenary property as that of a son, and any reference to the Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter: provided that nothing contained in this sub-section shall apply to a daughter married before the commencement of the Hindu succession (Amendment) Act, 2004.

### **Statement of objective and Reasons**

1. The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindu and gave right which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of

inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian succession act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara Coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts.

The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of the fundamental right of equality guaranteed by the constitution, having regard to the need to render social justice to women, the states of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala legislature has enacted the Kerala joint Hindu family system Act, 1975.

The above proposals are based on the recommendations of the law commission of India as contained in its 174th report on 'property rights of women: proposed reform under the Hindu law.'

The Hindu Succession (Amendment) Act, 2005 is a landmark, after 50 years the government finally addressed some persisting gender inequalities in the 1956. Hindu Succession Act, which itself was path breaking. The 2005 Act covers inequalities on several fronts: agricultural land: Mitakshara joint family property; parental dwelling house, and

certain widow's rights. Some anomalies persist, but first consider the achievements.

## **Achievements**

### **1. Agricultural land:**

One of the most significant amendments in the 2005 Act is deleting the gender discriminatory section 4 (2) of the 1956 Hindu Succession Act. Ironically, this amendment almost went unnoticed, with Members of parliament demanding during the Lok Sabha debate, what had already been done. Section 4(2) exempted from the purview of the Hindu Succession Act significant interests in agricultural land, the inheritance of which was subject to the devolution rules specified in state level tenurial laws.

### **2. Mitakshara Coparcenary Property:**

The second major achievement lies in including all daughters, especially married daughters, as coparceners in joint family property. The 1956 Hindu Succession Act distinguished between separate property and joint family property.

### **3. Dwelling house, widow's claims:**

Third, the Act deletes section 23 of the 1956 Hindu Succession Act, thereby giving all daughters (married or not) the same rights as sons to reside in or seek partition of the family dwelling house. Section 23 did not allow married daughters (unless separated, deserted or widowed) even residence rights in the parental home.

The history of this process will no doubt be written some time. But our experience does suggest that initiatives taken even by a relatively small number of the committed individual, and groups, endorsed the supported by grassroots organizations and people from across the country, with a government and parliament that have the will to reform, can go a long way. The difficult question of implementing the 2005 Act remains. Campaigns for legal literacy; efforts to enhance social awareness of the advantages to the whole family if women own prop-

erty; and legal and social aid for women seeking to assert their rights, are only a few of the many steps needed to fulfil the promise the this long – due legislation.

### References:

1. Kirtee Singh. Personal law. (Vol.4) issue January 1, 2005. publications Pvt.Ltd. Mumbai.
2. Swati Chaturvedi & Rajeshkumar. Law panel proposes equal share in ancestral property for Hindu women. New Delhi. May 11, 2000.
3. O.P. Ralhan. (1995). Indian Woman Through Ages. (V.01.4) (Women and Modernity) Anmol Publications Pvt.Ltd. New Delhi.
4. Werner F. Menski. (2003). Hindu Law (Beyond Tradition and Modernity). Oxford University Press. New Delhi
5. Madhu Shastri. (1900). Status of Hindu Women. RBSA publisher. Jaipur.
6. Giri Raj Shah. (1995). The Encyclopaedia of Women `s Studies (Vol. 1). Gyan Publishing House. New Delhi.

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The Authors have no conflict of interest to declare that they are relevant to the content of this article.

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