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## HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937: A CRITIQUE

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### ABSTRACT

In the past, women were allowed to own property, but in reality, this was less common than for men, and the patriarchal system limited their ability to dispose of their property. One of the most significant laws that improved the status of women was the Hindu Women's Right to Property Act of 1937. This was the earliest statute granting widows of deceased persons equal succession rights to the deceased's sons. These privileges were only applicable in cases of intestate succession (when there is no will). The Hindu Women's Right to Property Act of 1937 is regarded as a watershed moment in the history of women's property rights. It made significant modifications to the law of succession by granting new succession rights to selected females. The main object of the Hindu women's right to property act is to give fresh rights to Hindu women. The Researcher in the present Research Paper attempts to analyse the Hindu Women's Right To Property Act, 1937. Specifically, an attempt has been made to ascertain: the objective of the Hindu Women's Right To Property Act, 1937, changes effected by the said Act, lacunae in the Act.

**KEYWORDS:** *property, inheritance, devolution of property, coparcener, intestate.*

### INTRODUCTION

Since ancient times, the property rights of a Hindu female is marked by many fluctuations. Starting from the Vedic age where women enjoyed equal rights to a very inferior position at

the time of Manu. As per Manu, a wife, son and a slave do not have any property rights and even if they acquire then also it would belong to male under whose protection they are living. Prior to the enactment of the Hindu Women's Right To Property Act, 1937, the property of a Hindu female comprised of : 'stridhan' and 'non-stridhan' A Hindu female possesses absolute ownership over stridhan properties while she has a limited interest over non-stridhan properties. The word 'stridhan' encapsulates everything. 'Stri' refers to a woman, while 'dhan' refers to her possessions. The general rules of succession were intended to apply to a male's property, which was not described as 'purushdhan,' because ownership of material assets was normally with men, and it was also inherited by men absolutely, whereas women's rights were in the form of gifts made out of love and affection, or in lieu of her maintenance. Men were responsible for sustaining close female relationships, and when men died, they became the duty of either the entire male family or those who inherited the interest of her deceased husband or father through survivorship. Rather than allowing her to claim her husband's or father's share, the males were given ownership, and her rights were reduced to maintenance, which she might seek in court. The Hindu Women's Right to Property Act, 1937, was passed to transfer this maintenance liability from others to her own concern. Under this act, when a husband died, his share went to his widow (widow of a predeceased son and widow of a predeceased son of a predeceased son), rather than the surviving coparceners. The minimal resources were used to ensure her upkeep because the priority was to secure her maintenance. The limited ownership ended upon her death or remarriage, and the property was returned to her husband's heirs. This concept of ownership without absolute power of disposal was intended to enable a female to support herself, so that she would not have to rely on others for her survival.

The Researcher in the present Research Paper attempts to analyse the Hindu Women's Right

To Property Act, 1937. Specifically, an attempt has been made to ascertain: the objective of the Hindu Women's Right To Property Act, 1937, changes effected by the said Act, lacunae in the Act.

#### **RESEARCH OBJECTIVES**

- To ascertain the objective of the Hindu Women's Right to Property Act, 1937
- To study the changes effected by the Act
- To examine the benefits of the Act
- To examine the lacunae of the Act.

#### **RESEARCH QUESTION**

- Whether Hindu Women Right to Property Act, 1937 was successful in providing better rights to Hindu female?

#### **RESEARCH HYPOTHESIS**

- Hindu Women's Right to Property Act, 1937 was successful in providing better rights to Hindu female.

#### **LITERATURE REVIEW**

##### **Hindu Women's Right to Property Act, 1937- A Study, By Dr. R. Sathiya Bama and Dr. N. Neela.**

This research paper attempts to analyse the Hindu Women's Right to Property Act, 1937. The research examined and analysed the aims and objectives of the Act, primary changes effected by the Act and the lacunae in the Act.

**Kanakhalata Mukund**, has present a synthesis of the findings of ongoing research studies on women's property rights and customary practices; how these are changing as traditional south Indian society is being transformed in a process of broader socio-economic changes; and to situate these empirical studies within a larger canvas of analytical work on gender and inequalities.

**Patel Reena**, in this paper, addresses the need to critically define the bases and contours of 'rights' as created by law. Taking the example of changes in Hindu women's position in relation to property through the rights generated by statutory and constitutional provisions, the article critically evaluates the potential for such a 'rights regime' to enable Hindu women's greater access to property. It argues that the idea underlying a particular claim, its legitimacy and therefore effectiveness within a legal

framework must be critically evaluated. The legitimacy of claims presumptively conferred within a legal framework must be interrogated in the light of legal, historical, political and cultural contexts. Such a contextual and critical analysis is crucial for effective protection of rights claims through law. To the extent that legal regimes reflect and substantiate wider social relations, their potential for bringing about substantive change in the lives of women can only be realised through ongoing critical analyses of gender, law and society.

#### **OVERVIEW AND OBJECTIVE OF THE ACT**

##### **OVERVIEW OF THE ACT:**

The Hindu Women's Right To Property Act was passed in the year 1937 and was amended in 1938. The application of the legislation was prospective in nature<sup>1</sup> and applied to properties other than agricultural property<sup>2</sup> and impartible estates, which either under a custom or otherwise went to a single heir. The provisions of the Act are applicable to the property of Hindu male dying intestate and it affected both the separate as well as the undivided share in coparcenary property. The Act applied to Hindus governed by Dayabaga School of Law, Mitakshara School of Law and Customary Law of Punjab but it has no application where the death of an undivided coparcener took prior to 1937. Section 2 of the said Act expressly repealed the rules of laws and the pre-Act customs that were contrary to the provisions of the Act. The Preamble of the Act provided that it was expedient to amend the Hindu Law so as to provide better property rights to women.

Prior to the framing of the 1937 Act, the undivided share of the Mitakshara coparcener would go to the surviving coparceners (Through Doctrine of Survivorship), leaving widow of the deceased coparcener only with the right of maintenance in the Joint Hindu Family property. This traditional concept was changed by '*The Hindu Women's Right To Property Act, 1937.*' The Act provided that where a deceased Mitakshara coparcener was survived by the widow, the

<sup>1</sup> *Krishappa v. Ananta Kalappa Jarathakhane*, AIR 2001 Kant 322.

<sup>2</sup> *Kotaya v. Annapurnamma*, (1945) ILR Mad 777.

undivided share would go to her instead of going to the remaining coparceners. But she would not be called a coparcener and only had a limited interest in the respective property. She could enjoy it during her lifetime and use the income coming out of the property but she could not sell it or alienate it by will or gift. On the death or remarriage of the widow, the undivided interest would again go back to the remaining coparceners. The Act also provided that widow has a right to claim partition similar to the right as that of the son.

#### **OBJECTIVE OF THE ACT:**

The Hindu Women's Right to Property Act of 1937 is regarded as a watershed moment in the history of women's property rights. It made significant modifications to the law of succession by granting new succession rights to selected females. The main object of the Hindu women's rights to property act is to give fresh rights to Hindu women. The Act of 1937 allowed the widow to succeed alongside her son and receive an equal share of the estate. Despite having a right equivalent to a coparcenary interest in the property and being a member of the joint family, the widow did not become a coparcener. The widow was only entitled to a small estate in the deceased's possessions, with the ability to partition.

#### **CHANGES EFFECTED BY THE ACT**

- **Property Rights of the Widow**

The Hindu Women's Right To Property Act, 1937 only governs the devolution of the property of a Hindu male only and not of female.<sup>3</sup> As a result, the property of a Hindu female devolved as per rules of Hindu Law, which provides for a differentiation between inheritance to streedhan and non-streedhan properties. The Act governed both the separate and the coparcenary property. As per this Act, widow inherits the property along with the son by taking an equal share to that of the son. Similar to son the widow also had a right to claim partition. But unlike, son, the widow only got a limited interest and if she died without there being a partition, her interest would go to the

remaining coparceners by the application of Doctrine of Survivorship. These rights further extended to the widows of a predeceased son and of a predeceased son of predeceased son as well. "Same share as a son" does not mean that the presence of the son is required for the widow to be eligible for interest in the property. Even in the absence of a son, she could inherit the property as if she was a son but with only limited interest.

The modifications made by the Act in the area of devolution of separate property were in the nature of changes made in earlier laws, and accorded a legislative recognition of the right of a widow. This step was progressive in nature which strengthened her position.

The Act did not made the widow a coparcener, but enabled her to enjoy her husband's share in her own right, which was not possible before the formation of the Act. The inclusion of the widow neither disrupted the joint family nor the unity of possession in the coparcenary. The position of the widow was unique in nature as she was neither a coparcener nor a Karta but as a member of joint family had a right to partition and demarcation of her share. Till partition come into force she will be represented by Karta in all family matters. She could possess, enjoy the property for her lifetime and also the income appropriating from that property.

- **Non-inclusion of Daughters, Sisters and Mothers**

The Hindu Women's Right To Property Act, 1937 provided the benefit to only widows of deceased Mitakshara coparcener and left other female classes (i.e. daughters, sisters and mothers) as untouched. It did not conferred any better rights to daughters, sisters and mothers. The daughters as previously have a right to maintenance out of Joint Hindu Family property.

- **Succession to a Woman's Estate**

The Hindu Women's Right To Property Act, 1937 specified the property rights of widows in clear and definite terms. But the Act was silent on the aspect of devolution of widow's estate after her death. The right of the widow in the estate got terminated after her death and she was not a

<sup>3</sup> Sham Lal v. Amar Nath, AIR 1970 SC 1643.



fresh stock of descent i.e. her estate was not heritable among heirs then the question arises that who will succeed to the widow's estate? So, the rule was that the separate property of the husband would go to his heirs on the death of the widow and the undivided interest in the Mitakshara coparcenary property would go back to the surviving coparceners as per the Doctrine of Survivorship.

- **Unchaste Widow**

As per the Old Hindu Law, an unchaste widow was disqualified from inheriting her deceased husband's property. The 1937 Act was silent on this aspect. It did not mention about the issue of disqualification. It only repealed those provisions of pre-Act law that were inconsistent with the Act. So, the main question was that whether the unchaste widow would be entitled to inherit the separate property or the undivided interest in the Mitakshara coparcenary even without any express provision in the Act. There were conflicting judicial opinions with regard to this aspect. The High Courts of Bombay<sup>4</sup> and Calcutta<sup>5</sup> were in favour of granting the inheritance rights to the unchaste widow but the High Court of Madras held a contrary view.<sup>6</sup> As per the Madras High Court, Section 2 of the Act only repealed those rules of custom and of Hindu Law which were contrary to the 1937 Act. Since, the 1937 Act was silent on this issue, this meant that the rules related to disqualification of a widow were applicable even after 1937 and thus unchaste widows were disqualified from inheriting the deceased husband's property.

- **Maintenance Rights of The Widow**

The basic objective of the 1937 Act was that the widow after the death of her husband should not be dependent upon others but should be so capable to maintain herself on her own. The motive of the Act was to secure the maintenance rights of widows by providing ownership over the property even though limited in nature. Under the Old Hindu Law, the widows enjoyed maintenance rights in the Joint

Hindu Family. Now with this Act, the provision for inheritance rights automatically extinguished the maintenance rights to widow as both cannot co-exist together. The 1937 Act does not apply to impartible estates and agricultural property, so therefore, women can claim maintenance rights with regard to these types of properties.

### **FOUNDATION STONE FOR THE INTRODUCTION OF SECTION 14 OF HINDU SUCCESSION ACT, 1956**

A Hindu woman's property was divided into two categories under old Hindu law: Stridhana and woman's estate. Stridhana was a woman's absolute property, which she might dispose of or even alienate as she pleased. She might alienate her property but was subject to her husband's dominion during distress. The female's estate was known as the "Woman's Estate," and she could only enjoy it during her lifetime, with no personal stake in alienation or disposition. The Hindu Women's Right to Property Act of 1937 changed the previous Hindu Law in all schools to provide women with greater property rights. The Act has been hailed as an eye opener in the history of women's property rights. The Act laid the foundation stone for future reforms in the arena of women's property rights. The 1937 Act wanted to give absolute right to widow to alienate the property but unfortunately ended up in giving only the limited interest to the widow in the property which came to be known as 'limited interest'. This limitation of the 1937 Act led to the enactment of Section 14 of the Hindu Succession Act, 1956 through which absolute property rights were conferred on the widows. Section 14 of the Hindu Succession Act provides that:

***"Property of a female Hindu to be her absolute property.— Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.***

*Explanation : In this sub-section, 'Property' includes both movable and immovable property acquired by a female Hindu by*

<sup>4</sup> Akoba Laxshman v. Sai Genu, AIR 1941 Bom 204.

<sup>5</sup> Suraj Kumar Sardar v. Manmadhanath, AIR 1953 Cal 200.

<sup>6</sup> Kuppu v. Kuppuswamy, 1984 (2) Mad LJ 224.

*inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription or in any other manner whatsoever and also any such property held by her as stridhan immediately before the commencement of this Act."*

Section 14 of the Hindu Succession Act, 1956 changed the limited ownership to full ownership and clarified the exact share that the widow received as an undivided member of the Mitakshara coparcenary when her husband died. Currently, she inherits the separate property of her deceased husband as that of the son. With respect to the undivided share of the deceased husband in the coparcenary property, her presence defeats the application of Doctrine of Survivorship and restraints it from going to the remaining coparceners. The widows who were limited owners on the date of the passing of Act, it was provided that they would hold these estates as absolute owners.

#### **BENEFITS AND LACUNAE OF THE ACT**

The Hindu Women's Right to Property Act, 1937 no doubt was a new beginning for Hindu female with respect to property rights. It gave fresh property rights to widows. However, the Act is not free from defects. The Act has certain limitations which forced the law-makers to enact another legislation (i.e. Hindu Succession Act, 1956) in order to cure such defects.

#### **BENEFITS OF THE ACT:**

The Act changed the law of succession significantly. It was intended to give more rights to women by acknowledging their claim to fair and equitable treatment in certain succession matters. Furthermore, as a result of this action, many branches of Hindu Law were affected like adoption, maintenance, and inheritance. This Act made significant changes to both the law governing the devolution of a person's separate property and in the law governing any interests that he may have in the Joint Family property. The Act stipulated that the widow, together with the other beneficiaries, is entitled to a share of

the inheritance. The Act elevated the position of the widow in the line of succession. Furthermore, the widow is entitled to full beneficial enjoyment of the property and also can use the income coming out from the property but she could not sell it or alienate the property.

#### **LACUNAE OF THE ACT:**

The lacunae of the Hindu Women's Right to Property Act are as follows:

- The Act was only prospective in nature. It was not retrospective in nature. It only applies to the property of any Hindu who died intestate after the commencement of the Act.
- The Act only provided limited interest to the widow in the deceased husband's undivided share in the Mitakshara coparcenary. She could enjoy it during her lifetime and use the income coming out of the property but she could not sell it or alienate it by will or gift. On the death or remarriage of the widow, the undivided interest would again go back to the remaining coparceners.
- The scope of the Act was only limited to widows. It did not touch upon other sections of Hindu female. It did not confer any better rights to mother, sisters and daughters. The daughters as previously only had a right to maintenance out of the Joint Hindu Family property.
- The Act did not provide any better rights to an unchaste widow. They were still disqualified from inheriting the deceased husband's share.

#### **CONCLUSION**

In light of the above, Hindu Women's Right to Property Act, 1937 can be said as a beneficial legislation. It was the new beginning in the arena of women's property rights. Despite of its shortcomings, it can be said that the Act was successful in providing better property rights to women. It laid the foundation stone for future reforms in the area of women's property rights. Moreover, the Act changed the outlook of Hindus towards the widows and helped them



in providing respectable position in the society.

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