LEGISLATIVE INITIATIVE SAFEGUARDING PROPERTY RIGHTS OF HINDU WOMEN: A STUDY

A SUMMARY OF THE THESIS
Submitted to the
FACULTY OF LAWS
PANJAB UNIVERSITY, CHANDIGARH
for the degree of

DOCTOR OF PHILOSOPHY

2013

VARUN MALIK
DEPARTMENT OF LAWS
PANJAB UNIVERSITY
CHANDIGARH
SUMMARY

On the basis of present study it is concluded that there has been paradigm shift in the roles and capabilities of women. The shift has been for the betterment of the women, but majority of women still faces gender discrimination in every walk of life. If laws are enacted for amelioration of condition of women, these must encompass every sphere which touches women life and aimed at socio-economic and political empowerment of women.

The parameter of their success is to what extent they are able to incorporate their voices, values and concerns in the laws enacted by legislature and more importantly in interpretation, application and enforcement of these laws.

The reforms in the property rights of women are lopsided and not adequate to completely empower the Indian Women, but the reforms in the property rights of Hindu women are adequate enough to empower Hindu Women by giving her birth right in coparcenary property as that of son.

Twin methods i.e. “reforms by retention” and “reforms by abolition” in the area of women coparcenary rights have produced mixed results. Reforms by abolition mean to amend statutes without fundamentally affecting them or interpreting codified/ uncodified law without abrogating the discriminatory laws. Kerala state approach is “reforms by abolition” i.e. by abrogation of joint family law.

It is evident from the research that reforms by retention have a number of flaws which have been highlighted by an eminent writer that this method might create position of law in a joint family “… unknown to law and unworkable in practice.”

Selective codification of Hindu coparcenary law led to discrepancies and uncertainty in the area of customary law of the regional schools. This
uncertainty is being used by Supreme Court to accru e coparcenary rights to widows without the formal equality of coparcener ship for women. Gurupad case\(^1\) in several respects makes the widows a \textit{de-facto} coparcener without the \textit{de-jure} status. However, non applicability of Gurpads ratio to widows governed by the Madras School of \textit{Mitakshara} wherein widows do not have share in coparcenary. There exist unacceptable constitutional positions wherein two widows governed by different school receive discriminatory treatment which cannot be rectified by determined judicial interpretations. The only savior in this situation is legislation.

Certain amendments were made in southern states to give benefit to the daughters which have fundamental drawbacks. The amendment purports to amend a part of the \textit{Hindu Succession Act, 1956} which the latter does not even attempt to codify i.e. the law related to devolution of coparcenary property by principles of survivorship.\(^2\) Therefore it is not clear what position the amendments actually have and if challenged they could be totally struck down. As illustrated earlier there arise serious constitutional questions relating to certain differences in treatment that the Acts give to certain classes such as those based on “marital status” and “birth”. Also the interface between the amendments and uncodified law is difficult to understand such as that related to ‘pious obligation’ and ‘reunion’ etc.

Before \textit{Hindu Succession Act, 1956}, there were two schools-\textit{Mitakshara} School of inheritance and \textit{Dayabhaga} School of inheritance, which guided diverse communities in India following different inheritance laws as per their religious beliefs and customs. The main purpose of Hindu Succession act 1956 was to bring uniformity in intestate succession for all Hindus. Tribal communities among Hindus have their own unique rules of inheritance. Apart, from these, the matriarchal system had different set of laws altogether. To bring uniformity relating to succession among Hindus, the Hindu Succession Act retained the concept \textit{Mitakshara} coparcenary.

\(^1\) Gurupad v. Hirabai, (1978) 3 SCC 383.
\(^2\) Section 6 of Hindu Succession Act, 1956
However, it created a distinction between Hindu males and females in respect of property rights.

The section 14 of *Hindu Succession Act* declared absolute ownership on Hindu female in property which was in her possession when the Act came into force. The concept of ‘limited estate’ of Hindu female ceased to exist and reversionary rights were abolished.

The main aim of Hindu Succession (Amendment) Act, 2005 was to remove gender discrimination which was there in *Hindu Succession Act*, 1956. The amendment retained the concept of joint family property and introduced daughter as coparcener with same right and liabilities as that of son. It also abolished the Doctrine of pious obligation of the son to pay fathers debt.

The Act incorporates certain ideas from the model existing in states of Kerala and in Andhra Pradesh. It also amends the concept of coparcenary and abolishes the doctrine of survivorship and modifies the provisions relating to devolution of interest in *Mitakshara* coparcenary and the provisions relating to intestate succession. It also added four new heirs in class I and not deleted these four heirs from class II heirs.

The Act also amended the rules as to disqualifications of heirs and minutely effects the provision relating to testamentary succession. The overall intention of the amendment is to empower the women by giving birth right to the daughters. This amendment deleted Section 23 of the *Hindu Succession Act*, 1956 providing to all daughters (including those married) the same rights as that of the sons to reside in or to seek partition of the parental dwelling house. The amendment also deleted a discriminatory Section 24 which barred certain widows from inheriting the deceased’s property, if they had remarried.

---

4 Section 6 of Hindu Succession (Amendment) Act, 2005.
In this research it has been observed that the legislative initiatives taken by the government for safeguarding the property right of Hindu women are adequate and amendments made in 2005 are definitely a right step in the direction towards giving equal rights to daughters in coparcenary property as like a son and suggest the following:

I Explanation to Section 6(5) of Hindu Succession (Amendment) Act, 2005 need to be amended

Section 6(5) of the Hindu Succession (Amendment) Act, 2005 says that nothing contained in this Section shall apply to a partition, which has been effected before the 20th day of December, 2004.\(^5\)

The Explanation defines “partition” as any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition affected by a decree of Court.\(^6\) The researcher submits that partition does not include oral partition and family arrangement. Since the amended Act has failed to include oral partition and family arrangement within the definition of “partition”, which are usually a legally accepted modes of division of property under the Hindu Law.

The Supreme Court of India in its judgment in Kale and Ors. v. Deputy Director of Consolidation and Ors.,\(^7\) has held that a document which is in the nature of a memorandum of an early family arrangement and which is filed before the Court for its information for mutation of names is not compulsorily registrable and therefore can be used in evidence of the family arrangement and is final and binding on the parties.

The above view of the Supreme Court has also been clearly enunciated in other decisions of the Court and also those of Privy Council and High Courts. The courts have taken a liberal and broad view of the

\(^5\) Explanation- For the purposes of this Section, “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a Court.

\(^6\) The Hindu Succession (Amendment) Act, 2005.

\(^7\) (1976) 3 SCC 119.
validity of a family settlement and have always tried to uphold it and maintain it. This view is suitable for the amendment in the Explanation to Section 6(5) of the *Hindu Succession (Amendment) Act, 2005* is absolutely necessary in public interest.  

II. **Uncertainty regarding the self acquired property and the ancestral property**

As the terms ancestral property and self acquired property are not clearly defined in statute and it is not clear whether the self acquired property falls within the ambit a broader concept of ancestral property. There is a need to define statutory ancestral property and self acquired property. Ancestral property means the property received by a person from forefathers whereas self acquired property means and includes that property that the deceased may have left earned i.e. his salary or shares or bonus or provident fund or property received by way of will or gift or from another relatives etc. Moreover, certain statutory restrictions should be placed on alienation of self acquired property. In the absence of any such restriction, Hindu women stand a chance to be completely disinherited of property. Because he may transfer his all self acquired properties by way of will to any male descendent or any other person.

III. **Statutory status to the Gurupad’s case**

In the case of *Gurupad v. Hirabai,* the Supreme Court had rightly interpreted the intention of the legislature behind the concept of notional partition. In a notional partition, partition is effected as if it is real partition and share of deceased coparcener should be determined or fixed. The separated share of deceased is distributed among all heirs, both male and female as per Section 6 of the *Hindu Succession Act.*

In a notional partition the share of wife, mother is enlarged and they get share in whole of joint family property equal to son. The interpretation

---


9 *Supra* note 1.
is logical and acceptable. This interpretation clearly reflects the intention of the legislature. However, discrepancies and restriction on the concept of notional partition still exists. The possible solution lies in putting the ratio of *Gurupad case* formally in the statute. Then only the interests of the female heirs will be fully protected.

IV. Over-lapping in Class I and Class II heirs: need for correction

By 2005 amendment following relations have been added in the list of class I heirs:

1. Son of a predeceased daughter of a predeceased daughter (i.e. daughter’s daughter’s son);
2. Daughter of a predeceased daughter of a predeceased daughter (i.e. daughter’s daughter’s daughter);
3. Daughter of a predeceased son of a predeceased daughter (i.e. daughter’s son’s daughter);
4. Daughter of a predeceased daughter of a predeceased son (i.e. son’s daughter’s daughter);

The above four newly added heirs are already in Class II prior to the amendment in 2005 and though they have been elevated to Class I, they have not been deleted from Class II. But, the said relations were required to be omitted from their entries present prior to 2005 viz. under 2\textsuperscript{nd} and 3\textsuperscript{rd} Entry under Class II heirs\textsuperscript{10} which are still present under the aforesaid provisions only in different words as:-

Class-II, Entry II - (2) son’s daughter’s daughter (S.No.4 under clause I)
Class-II, Entry III - (2) daughter’s son’s daughter (S.No.3 under clause I)

(3) daughter’s daughter’s son (S.No.1 under clause I)

(4) daughter’s daughter’s daughter (S.No.2 under clause I)

\textsuperscript{10} 204\textsuperscript{th} Report on “Proposal to Amend the Hindu Succession Act, 1956” Law Commission of India. See *supra* chapter 5.
Though both the above entries in Class II prima facie seem to be different due to the use of the word “pre-deceased” in Class I for the same, actually meaning wise, both relations are same and will only come into picture if their legal ascendants died prior to the opening of succession i.e. before the death of the Hindu male dying intestate, with respect of whom all the above relations are derived.\textsuperscript{11}

Therefore, a correction is required in list of heirs of Class II, which are already covered in Class I. As already stated, the four of the descendants added in Class I heirs are listed as Class II heirs as well. The confusion caused by this repetition requires correction. Two of the male descendants in the daughter’s line are not listed as Class I heirs while their female counterparts are listed. There seems to be no justification for this omission. The omission is not based on principle, but creates a reverse discrimination against the male descendants and these needs to be rectified. Thus “son of predeceased son of a predeceased daughter” as well as “son of a predeceased daughter of a predeceased son” of the intestate is not added under Class I by the said amendment of 2005.\textsuperscript{12}

\textbf{V. Status of coparcener’s wife in coparcenary property}

Hindu Succession Act, 2005 conferred right by birth in favour of daughter of coparceners in the coparcenary property, prior to it only male descendents upto three generations next to last male holder could be member of coparcenary. Coparcenary rights were vested with the male only. Now daughter is capable of acquiring an interest in coparcenary property by birth, thereby fundamentals framework of \textit{Mitakshara} coparcenary was altered. Still a distinction has been made between two classes of females (1) who are born in the family and (2) who become member of the joint family by marriage to male coparceners. Those who are born in the family have been the right by birth in coparcenary property but who later on joined by way of marriage is subjected to the previous law

\textsuperscript{11} \textit{Ibid.}.
\textsuperscript{12} \textit{Ibid.}.
as it stood before 2005 amendment. Wives married in the family are deprived of any share in the coparcenary property.

VI. An amendment in Section 15(2)

Women after amendment of 2005 are entitled to inherit the property from both parental and husbands side/ family. In case of her death leaving behind no will about herself acquired property. It is justified if property is equally devolved on her parental heirs as well as the heirs on her husband side in the absence of son/ daughter (including the children of any pre-deceased son or daughter).

In Omprakash v. Radhacharan, Court observed that women have been entitled to inherit property from her parental side as well as from husband’s side. Will it be quite justified if equal right is given to her parental heirs along with her husband’s heirs to inherit her self-acquired property.

Addition of following clause in Hindu Succession (Amendment) Act, 2005, after clause 2 of section 15:

“If a female Hindu leaves any self-acquired property, in the absence of husband and any son or daughter of the deceased (including the children of any pre-deceased son or daughter), the said property would devolve not upon heirs as mentioned in sub-Section (1) in the chronology, but the heirs in category (b) and (c) would inherit simultaneously. If she has no heirs in category (c), then heirs in category (b) and (d) would inherit simultaneously”.

VII. Restrictions on testamentary disposition

Both Hindu male and female has right to bequeath their property by way of will, including a share in the undivided Mitakshara coparcenary, in favour of anyone. There should be reasonable restriction on the

---

13 2009 (15) SCC 66.
14 Supra note 347, chapter 4, page 241.
testamentary disposition of property. As of now, a male member can disinherit his widow, daughter and other female heirs from inheriting any property at all. Under Muslim law there exist a restriction on testamentary disposition; Muslim male cannot bequeath more than 1/2 share of property. The primary objective of this rule in Hadith is for the benefit of the beneficiaries so that rightful claim in the property is not disturbed.

VIII. Infrastructure, awareness, legal aid etc.

Female in our society face discrimination in every walk of life and every stage of life. Most of them are not aware about their legal rights. Legal amendments on papers alone are not going to change the status of female. Women should be provided with more awareness about their rights to property and should have access to legal aid. Awareness campaign at local level especially in rural areas about property rights of women should be started; information and communication technology, mass media seminars, workshop at school, college, university level etc should be organized.

Free legal aid should be provided to women who are deprived of their property rights and person who deprives them of their legitimate rights should be reprimanded. Apart from this the social perception about property rights of women should be changed. Women who claim their property rights should not be shunned by family and society at large. Then only such amendments will have real and positive impact on lives of women. In short we can say that Hindu Succession (Amendment) Act, 2005 is right step towards empowerment of women.

Concluding the present study, it can be said that the amendment in 2005 in Hindu Succession Act, 1956, by making daughter as coparcener by birth in the same manner like a son is rightly a step towards gender equality.