PAPER-7 MODULE-2

Women,s Right to succession and Inheritance in Hindu Law

(A) Personal Details

Role	Name	Affiliation
Principal Investigator	Prof. Sumita Parmar	Allahabad University, Allahabad
Paper Coordinator	Prof. Kiran Gupta	Delhi University
Content Writer/Author (CW)	**Dr. Alok Kumar**	Asst.Prof.Himachal Pradesh National Law University Shimla
Content Reviewer (CR)	Prof. Kiran Gupta	Delhi University
Language Editor (LE)	Prof. Sumita Parmar	Allahabad University

(B) Description of Module

Subject Name	Women's Studies

Paper Name	Women and Law
Module Name/ Title, description	**Women,s Right to succession and Inheritance in Hindu Law**
Module ID	**Paper-7 Module-12**
Pre-requisites	In India, as far as personal laws (i.e. laws relating to marriage, divorce and succession etc.) are concerned Hindus were governed by Shastric and Customary laws which varies region to region. This brought multiple laws of diversified nature to govern Hindus. The main drawback of these laws is the pervasive discrimination prevalent against women in relation to laws governing the inheritance/succession of property amongst the members of a joint Hindu family. The exclusion of daughters from participating in coparcenery property ownership merely by reason of their sex is unjust. Therefore, the Mitakshara Law of Coparcenery is needed to provide equal distribution of property both to men and women.
Objectives	The purpose of the paper is to trace the position of Hindu women vis-à-vis property rights from the time of *Shastric* Law to Hindu Succession (Amendment) Act, 2005 and the

	present emerging trends of Hindu Law
Keywords	Succession, Inheritance, Intestate, *Stridhana*,Reversioners, *Coparcenary*

Women,s Right to succession and Inheritance in Hindu Law

LEARNING OUTCOMES – The lesson introduces to readers various legislative enactments in pre and post independent India concerning property rights of women in a joint family and coparcenary property.

The lesson further tries to sensitize readers about discrimination against women in respect of their right to inherit the property of their family.

Introduction

Every human being has a right to be treated equally in every aspect of life. However, in our society, the position of a woman is lower than a man's and she is made to feel this inequality particularly in her right to property. The patriarchal society in India disregards the Hindu women's right to property and considers her position to be inferior in the social and economic aspects of human relationships. In ancient times, Hindu women's property rights were beset with manifold limitations. However, attempts have been in India to improve the position of Hindu women with regard to her succession and inheritance rights with different legislative enactments in pre and post independent India. Yet, the position could not be improved as much as would have been expected. This is reflected in the 174th Report of the Law Commission of India on "Property Rights of Women: Proposed Reforms under the Hindu Law"

> *"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 the*

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…"

On the recommendation of Law Commission of India in 2005 an amendment has been brought to the Hindu Succession Act, 1956 to improve the position of women further. In this module the author tries to provide a brief sketch pertaining to women's right to succession and inheritance in Hindu Law in pre and post independent India.

Background

In India, as far as personal laws (i.e. laws relating to marriage, divorce and succession etc.) are concerned, the Hindus were governed by Shastric and Customary laws which varied from region to region. This brought multiple laws of diversified nature to govern Hindus which were prevalent in different schools and sub-schools like Mitakshara and Dayabhaga etc. Both schools differ mainly on two accounts - the law of inheritance and Joint Family System. The Mitakshara School recognizes two modes of devolution of the property namely, survivorship and succession. The rule of survivorship applies to joint family property and the rule of succession applies to the property held by the last owner. The Dayabhaga School recognizes only one mode of devolution of the property, that is succession. In this way the property laws among Hindus became very complex.

In Mitakshara Law the property that was recognized was of two kinds – (i) Joint Family Property and (2) Separate Property. A joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. However, a Hindu coparcenary is a much narrower body than the joint family and includes only the persons, who acquire by birth an interest in the coparcenary property. They are the sons, grandsons and great grandsons. The cardinal

doctrine of the Mitakshara school is that the property inherited by a Hindu from his father, father's father, or father's father's father is ancestral property that means unobstructed heritage as regards his male issues. A property inherited by a Hindu from other relations is his separate property.

The most important point of the coparcenary is that a female cannot be coparcener under Mitakshara law. Even a wife, though she is entitled to maintenance out of her husband's property, and has, to that extent a right in his property, is not her husband's coparcener. A mother is not a coparcener with her son. There can be no coparcenery between a mother and daughter. While considering the position of women in the family, a reference must also go the concept of *stridhan*. It can be described thus as a property which was given to women at the time of marriage and a gift. *Stridhana* is the absolute property of a woman and she may dispose it of as she wants. The position of a female member in a Hindu family was minimal. She had no independent rights. Women had not even been recognized in coparcenery.

In the entire history of Hindu law, women's right to hold and dispose property has been recognized. Two types of property which she could hold were- *Stridhana* and Women's Estate. Among these two *stridhana* was considered to be the absolute property of a female Hindu. In terms of *stridhana* she enjoyed full powers to alienate, sell, gift, mortgage, lease or exchange during her maidenhood and widowhood, but certain restrictions were imposed on her power, if she was married. On her death, all types of *stridhana* passed on to her own heirs.

In respect of a woman's estate or widow's estate, vis a vis property, the Hindu female owner had limited power of disposal i.e. she could not ordinarily alienate the corpus except for legal necessity, benefit of estate and for religious duties. On her death, the women's estate devolved upon the heir of the last full owner known as reversioners who could be males or females.

In the joint family system, under a patriarchal system like Mitakashara *coparcenary,* though a woman was treated as a member of a joint family,

she had only a right to sustenance but she was not vested with control and ownership of property and not admitted into the *coparcenary*. The doctrine of son's birthright was followed, concomitant to the principle of devolution by survivorship of the joint family property to a group called coparceners which comprised of son, grand-son and great grand-son. Thus no Hindu female was a member of the *coparcenary* in Mitakshara law and she was excluded from inheritance.

Making the improvement over the above mentioned Hindu women's position, in the pre-independence period, two legislations such as the Hindu Law of Inheritance Act, 1929 and Hindu Women's Right to Property Act, 1937 were passed.

Pre-Independence Development

In pre-independence India, the Hindu Law of Inheritance Act, 1929 was the earliest legislation which brought the Hindu females into the scheme of inheritance. Three female heirs – son's daughter, daughter's daughter and sister were conferred the right of inheritance under the Act.

The second landmark legislation was the Hindu Women's Right to Property Act, 1937 which brought revolutionary changes and also tried to ensure that in the Mitakshara coparcenary, the widow of the deceased would take the same interest which her deceased husband had in the joint family property at the time of his death. She was made entitled to claim partition as a male owner. However, in all cases, she was as a limited owner. The widow though a member of a joint family and having right in coparcenary interest, was not a coparcener. Although these legislative enactments conferred new rights of succession on certain women, they failed to protect women against discrimination.

Post-Independence Developments

With the dawn of independence, the framers of the Constitution took note of the inequality which had been perpetuated against women depriving them of social and economic justice as envisaged in the Preamble to the Constitution of India, Fundamental Rights in Part III (Articles 14, 15, 16), Directive Principles of State Policy in Part IV (Articles 38, 39, 39A, 44) and Fundamental Duties in Part IVA [Article 51 A (e)]. Despite these constitutional mandates, women continued to be subjugated and deprived of her rights including property rights. Consequently amidst strong resistance from orthodox Hindu sections, the Hindu Succession Act was enacted in 1956 and came into force on 17th June 1956.

The Hindu Succession Act, 1956

The Hindu Succession Act, 1956 was made applicable to all Hindus including Buddhists, Jains and Sikhs and lays down a uniform and comprehensive system of inheritance and applies to those governed by Mitakshara and Dayabhaga schools as well as other schools. Not only this, it was an answer to the need of progressive society and an improvement over the old Hindu textual law particularly the law relating to succession among Hindus, for example, the non-inclusion of female relatives to inherit the property and giving preference to males. It tried to remove the existing inequality between male and female with respect to rights to property in the joint family property and also brought revolutionary changes so as to recognize the right of inheritance of Hindu females at par with males. But even this step of legislation was also not free from criticism pertaining to gender bias.

Hindu Succession Act, 1956 came under heavy criticism for retaining only males as coparceners in a joint family Mitakashara coparcenary. Section 6 of the Act provided that whenever a male Hindu, having an interest in a Mitakshara coparcenary property died after the commencement of this Act, then his interest in property would devolve by rule of survivorship and not in accordance with the Act.

However, Proviso to Section 6 incorporates that when Mitakshara coparcener died leaving behind a female heir of Class I or a male heir claiming through her, then the interest would devolve by testamentary or intestate succession in accordance with the Act and not by the rule of survivorship. Therefore, it is evident from the Act that Hindu females could not inherit ancestral property by birth right and were excluded from joint family coparcenary under the Mitakshara system. For instance, if a joint family property was divided, then each male coparcener took his share and the female got nothing. Only when one of the coparceners died, she got a share in the interest as an heir to the deceased coparcener.

Moreover, by virtue of Section 4 (2) of the Act, women have been placed in an unequal position in comparison to of males with regard to inheritance rights in agricultural land. Further, Section 23 again disentitled a female heir to seek partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares.

Moreover, Section 24 of the Act made three kinds of widows- intestate's pre-deceased son's widow or the widow of a pre-deceased son of a pre-deceased son or widow of the brother, disqualified in succeeding to the property of the intestate on their re-marriage during the lifetime of intestate. Thus the Hindu Succession Act, 1956 instead of promoting gender equality, perpetuated gender discrimination through some of its provisions. Some of the provisions of the Act have been amended by the Hindu Succession (Amendment) Act, 2005.

Apart from the criticism the Hindu Succession Act 1956 reformed the personal law of Hindus and conferred upon Hindu women absolute and full ownership of property instead of limited rights to property. Section 14(1) of the Act provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as a full owner thereof and not as a limited owner.

Further through the Explanation appended to sub-section (1) of Section 14 different methods by which woman may have acquired property are

enumerated or would acquire property and states that 'property' includes both movable and immovable property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person whether 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 such property held by her as stridhana immediately before the commencement of this Act.

The object of Section 14 is two-fold:

(a) to remove disability of a female to acquire and hold property as an absolute owner.
(b) to convert any estate already held by a woman on the date of the commencement of the Act as a limited owner into an absolute estate.

However, where a female Hindu female, after the commencement of this Act, is given any property with certain limitations, she would hold that the property is subject to those limitations and cannot acquire those properties as an absolute owner. The limitations are set out in sub-section (2) of Section 14 which runs as follows: "Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property". Section 14(2) is an exception to Section 14 (1) and it enacts a well established principle of law that if grant is given subject to certain restrictions, the grantee will take the grant subject to those restrictions. Thus, in the absence of any provision in will, gift, decree, order of civil court, award or any other instrument prescribing any restricted estate on a Hindu female, she would take an absolute estate. Section 14(2) applies to instruments, gifts, decrees, awards, etc. which create an independent right or new title in favour of the Hindu female for the first time and not in recognition of pre-existing rights.

The general rules of succession to the property of a Hindu female dying intestate is that the order of succession devolves according to section 15

and 16 of the Act. Section 15(1) provides that if a Hindu female dies intestate, then her property will devolve according to the rules set out in Section 16 as, firstly upon the sons and daughters (including the children of any predeceased son or daughter) and the husband; secondly, upon the heirs of the husband; thirdly upon the mother and father; fourthly upon the heirs of the father; and lastly upon the heirs of the mother. However if a female Hindu, dies issueless leaving behind no child or grandchild, then different rules will govern the matter of succession to her property, depending on whether she has inherited property from her father or mother or from husband or father-in-law. Section 15 does not apply to the property held by a Hindu female with restricted rights i.e. provided in Section 14(2) at the time of her death but applies to cases where she becomes a fresh stock of descent.

Under subsection 2 (a) of section 15, if a Hindu female inherits any property from her father or mother, and she dies without children or grand-children, then her property devolves on the heirs of her father.

Reforms in Succession Law through State Amendments

Acknowledging the discrepancies in regard to Hindu women's position in Mitakshara coparcenary, certain states, viz., Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka in India, took cognizance, that for economic and social justice to prevail, women must be treated with equality. Accordingly, the Kerala Joint Hindu Family System (Abolition) Act, 1975 completely and fully abolished male's right by birth to property and brought an end to the joint Hindu family system. No one can claim any interest in ancestral property on ground of birth in the family. By making amendment to section 6 of the Hindu Succession Act, 1956, the States of Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka in 1986, 1989, 1994, 1994 respectively, declared that daughters are coparceners in Joint family property. As per the Amendment Acts of these four states, only a daughter who was unmarried at the time of the amendment would be

entitled to be a coparcener by birth in her own right in coparcenary property and be subject to similar liabilities and disabilities as incurred by sons. Thus, by virtue of these amendments, dual rights have been conferred on daughters, as on one hand, she becomes coparcenary property right owner in her natal joint family, and on the other hand, she becomes a member of the marital joint family after her marriage.

Law Commission of India

State amendments brought sweeping reforms in their respective places. But, Hindu women in other states of India continued to be subjugated to inequality in relation to their property rights because of the shortcomings of the Hindu Succession Act, 1956. To ameliorate the position of Hindu females, initiative was taken up the Law Commission of India which in its 174th Report on "Property Rights of Women: Proposed Reforms under Hindu Law" under the Chairmanship of Justice B. P. Jeevan Reddy, made important recommendations, stating that discrimination against women is writ large in relation to property rights, social justice and demanded that women should be treated equally both in the economic and social system. The recommendations of the Law Commission of India found reflection in the Hindu Succession (Amendment) Act, 2005 with the amendment of section 6 and omission of sections 4(2), 23 and 24 which had under Hindu Succession Act, 1956 (original Act) perpetuated a gender bias and inequality. In the year 2008, the Law Commission of India in its 207th Report under the Chairmanship of Justice A. R. Lakshmanan, recommended the proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a Hindu female dies intestate leaving her self-acquired property with no heirs. This proposal has not been incorporated in the Act till date.

The Hindu Succession (Amendment) Act, 2005

The Amendment Act, 2005 deleted Section 4 (2) of the Hindu Succession Act 1956, and paved the way for women's inheritance in agricultural lands becoming equal to that of males. The amendment has done away with the discriminatory state-level tenurial laws and benefited many women who are dependent on agriculture for their sustenance.

The Hindu Succession Amendment Act, 2005 has addressed a very pertinent matter relating to the rights of daughters in the Mitakashara coparcenary and thus elevated the daughter's position by amending section 6 of the Hindu Succession Act 1956. The amended Section 6 deals with devolution of interest in coparcenary property. Section 6(1) provides that the daughter of a coparcener in a joint family governed by the Mitakshara law shall, on and from the date of commencement of the Hindu Succession (Amendment) Act, 2005, by birth become a coparcener in her own right in the same manner as the son. She shall have the same rights and be subjected to the same disabilities in the coparcenary property as that of a son and any reference to a Hindu Mitakshara Coparcenary shall be deemed to include a reference to a daughter of a coparcener. But this provision applies to both married and unmarried daughters before the commencement of the Amendment Act, 2005.

Any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th December, 2004, shall not be affected or invalidated by the provision in Section 6(1) [Proviso to section 6(1)]. Further any property to which female Hindu becomes entitled by virtue of sub-section (1) of section 6, shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition [section 6(2)]. The provision also provides that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall

be deemed to have been divided, as if a partition had taken place [section 6(3)].

Further the daughter is allotted the same share as is allotted to a son [section 6 (3) (a)] and that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter [section 6(3) (b)]. Further the share of the pre-deceased child of a predeceased son or of a pre deceased daughter as such child would have got, had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter [section 6(3)(c)]. The Explanation appended to section 6(3), highlights a important fact that the interest of a Hindu Mitakshara coparcener, shall be deemed to be the share in the property that would have been allotted to him, if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. Thus, by virtue of amended section 6, the daughter of a coparcener has become a coparcener in the Mitakshara joint family property and has the same birth right as that of son with same rights and liabilities. Daughters will now get a share equal to that of sons at the time of notional partition, just before the death of the father, and an equal share of the father's separate share.

Though the amended Section 6 is a significant advancement towards gender equality and economic security for daughters, yet other females such as mothers have not been given recognition as coparceners. Justice and equality cannot be secured for one category of women at the expense of another. Therefore, the law must be changed to confer all Hindu women equal property rights in ancestral as well as separate property. Section 23 of the Hindu Succession Act, 1956 has been omitted by the Amendment Act, 2005, as a result of which, at present all daughters, both unmarried and married, are entitled to same rights as sons to reside in and to claim partition of the parental dwelling home. The Amendment Act, 2005 has also omitted section 24 which had disqualified certain widows on remarriage

from succeeding to the property of intestate. Now the widow of a pre-deceased son or the widow of a pre-deceased son of a pre-deceased son or widow of the brother can inherit the intestate's property even if she has remarried.

Moreover the Amendment Act, 2005 has added some more heirs to the list of Class I heirs who are daughter's daughter's daughter, daughter's son's daughter and son's daughter's daughter and daughter's daughter's son.

Conclusion

The position of Hindu woman in respect of her property right has undergone unprecedented transformation from ancient times to the Hindu Succession (Amendment) Act, 2005. The journey from exclusion to recognition of Hindu daughters in Mitakshara coparcenary has been remarkable, but non-inclusion of other Hindu females is irrational and unjustified, for all women are equally entitled to economic and social justice which the Constitution of India proclaims. In spite, of some progress brought by the Hindu Succession (Amendment) Act, 2005, females are still denied their lawful rights in the predominant patriarchal society. Silence and self- denial on the part of women of being subjugated to unequal property rights reinforces and further perpetuates injustice. Hindu women must be made aware through legal literacy campaigns and social awareness programmes about their property rights, so that they may fight for what is rightfully theirs, by virtue of being born as human beings. Concerted efforts on the part of the government, non- governmental organizations, public and women should be taken up to bring about attitudinal change in the mindset for promoting equal rights based on humanity for achieving gender equality.