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DO WOMEN REALLY HAVE THE RIGHT OF INHERITANCE IN INDIA?

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ABSTRACT

Through this paper, I have researched the gap between the legal status and the ground realities of a Hindu female's right to inheritance in the past and present. And would like to raise some arguments and suggestions on this topic. In this paper, I explain the notion of inheritance by Hindu women through Aristotle's perspective and then compare it to the Hindu inheritance law related to women in India and deduce how these laws have changed or not changed with regard to modern ideas which have developed from the period of Aristotle to the twenty-first (21st) century. This also talks about the Mitakshara School and compares it to Aristotle's perspective as well as the modern perspective and examines its role in the current Hindu inheritance law related to women in India. The paper also explains in detail the critique of the Hindu Succession Act with reference to Hindu inheritance law related to women in India.

INTRODUCTION

Nearly half of the Indian population consists of women¹, yet women have always been discriminated against and are still suffering from discrimination. All around the world women have remained subjugated to men since the inception of civilization in one form or another. This is seen in Karl Marx and Frederick Engels theory of women's oppression in their publication of The Origin of the Family, Private Property, and the State in 1884. Marx and Engels believed that women's oppression is greatly due, to men having a long-established need to oppress and dominate women². They believe that this assumption is held both by, numerous feminists who are seeking to prove an ambiguously characterized inclination in men to dominate women, as well as traditional male chauvinists who are seeking the same thing³. The argument is rarely a purely biological one over testosterone levels⁴.

¹"Sex Ratio of India." Sex Ratio of India | India Sex Ratio 2020 - StatisticsTimes.com, Statistics Times, statisticstimes.com/demographics/sex-ratio-of-india.php.

² As Hal Draper argues in "Marx and Engels on Women's Liberation," in International Socialism 44, July/Aug. 1970: "There is a myth, widely accepted among the half-informed, that Morgan's anthropological work is now simply 'outmoded,' like Ptolemaic astronomy, and is rejected by 'modern anthropologists'...in this respect Darwin and Newton are outmoded as well."

³ C. Harman, "Engels and The Origins of Human Society," in International Socialism 65: Winter 1994, p. 84.

⁴ Take, for example, Peggy Reeves Sanday's argument in Female Power and Male Dominance: On The Origins of Sexual Inequality (Cambridge, 1981), p. 210: "The evidence suggests that men and women respond differently to stress. Men almost always respond to stress with aggression..."

Like most weaker sections of society, they are at a disadvantageous position. They are, exploited and are subject to social injustice, which is why women are not able to compete with men in political, socio-cultural, and economic fields⁵. Due to this reason, many international organizations started developing several laws and legislations in giving equal opportunities and rights to women⁶.

This is why the Indian government has taken several measures to uplift the status of women in India. Unfortunately, the Right to Inherit is one such measure that does not seem to alleviate gender inequality and improving the social status of women in India⁷.

ARISTOTLE AND THE FEMALE INHERITANCE

One must be wondering where this notion of ‘inheritance is something only for the male’ comes from. This concept of discriminating against women with respect to inheritance primarily began in the time of the Greek scholar Aristotle⁸. Aristotle believed that the head of the household is a man, so he is the person who holds authority over his family members such as his wife and children and that if a child is male, he is more fit for rule than women which is why upon the death of the father he will be the only one to get an inheritance⁹. According to Aristotle the rule of the male over the female and that of the father over the wife and children are a different form of the rule of masters over slaves. Aristotle was a firm believer in the rule of male over females in the household in the context of the husband’s hold over his wife and children who had not yet been married¹⁰. In his opinion the husband does not rule with the wife but instead rules over her¹¹. He feels women have their own role in the household, which is to preserve what the man acquires. And, since women do not participate in politics, because they lack the authority to do so as he feels they are weak and incompetent and do not have the

⁵"ECONOMIC INEQUALITIES AND POLITICAL CONFLICT: A STUDY OF THEORETICAL PERSPECTIVE." *The Indian Journal of Political Science* 67, no. 4 (2006): 733-44.

⁶ Nations, United. "With Equal Rights, Empowerment, Women Can Be 'Agents of Change' for Sustained Socio-Economic Development, Security around World, Third Committee Told | Meetings Coverage and Press Releases." *United Nations*, United Nations, www.un.org/press/en/2011/gashc4009.doc.htm.

⁷ "Ministry of Women & Child Development: GoI." *Home*, Government of India, 1 Jan. 1970, wcd.nic.in/womendevlopment/national-policy-women-empowerment.

⁸ Devin Henry. "Aristotle on the Mechanism of Inheritance." *Journal of the History of Biology* 39, no. 3 (2006): 425-55.

⁹ Coonen, Lester P. "Aristotle's Biology. *BioScience* 27, no. 11 (1977): 733-38.

¹⁰ *Ibid* (736-737)

¹¹ Burns, Tony. "ARISTOTLE AND NATURAL LAW." *History of Political Thought* 19, no. 2 (1998): 142-66.

required skills¹². Thus, it is important that only the male heir is the recipient of the inheritance. This is why Aristotle upholds the belief that as the master is superior to the slave, the man is superior to a woman and which is why the familial inheritance is something that is solely for the man¹³.

MITAKSHARA SCHOOL AND THE FEMALE INHERITANCE

The Indian inheritance laws in Hindu's are quite similar to Aristotle's point of view. The Hindu inheritance laws follow the code written in the Mitakshara texts which are said to be written in the late 11th century. In the Hindu law, the Mitakshara School recognizes an entity known as the 'coparcenary'¹⁴. A coparcenary is an entity within the joint family there is a narrower body consisting of father, son, son's son, and son's son's son. This occurs because there is an assumption that every Hindu family is a joint family and that there is no assumption that properties held by its members are also joint family properties¹⁵. Which is why the father-son relationship is necessary for the entity known as coparcenary. A Mitakshara coparcenary can continue to exist indefinitely so long as no one is removed by more than four generations from the last holder of the property¹⁶. A Hindu coparcenary includes only those family members who acquired the property by birth in coparcenary or joint property. These by birth coparceners are male members of the joint family like sons, grandsons, and great-grandsons of the joint property holder for time being. Thus, a Mitakshara coparcenary can consist of grandfather and grandsons, brothers, uncles and nephews, and even remoter male relatives¹⁷. However, no female can be a coparcener under the Mitakshara School. The other characteristic features of the Mitakshara coparcenary are: all coparceners have a right to be in joint possession and enjoyment of the entire joint family property; every coparcener has a right to be maintained out of the joint family property every coparcener is bound by the proper alienations made by the Karta, and every coparcener has a right to object and challenge any improper alienation made

¹² Coonen, Lester P. "Aristotle's Biology. *BioScience* 27, no. 11 (1977): 733-38.

¹³ Devin Henry. "Aristotle on the Mechanism of Inheritance." *Journal of the History of Biology* 39, no. 3 (2006): 425-55.

¹⁴ "PROTECTION AGAINST UNJUST ENRICHMENT AND UNDESERVED MISERY AS THE ESSENCE OF PROPERTY RIGHT JURISPRUDENCE IN 'MITAKSHARA.'" *Journal of the Indian Law Institute*, vol. 48, no. 2, 2006, pp. 155–174.

¹⁵ Ibid (156-158)

¹⁶ Ibid (155-156)

¹⁷ Ibid (170-173)

by the Karta. Every coparcener also has a right to partition¹⁸. However, since the women's inheritance rights are concerned with land or immovable property, the male members of the family do not allow the land or immovable property to be inherited by women¹⁹. This is why at the time of marriage, women are given clothes or ornaments (movable contents) by their parents as her only share in the parental property²⁰. Any such property which is acquired by Hindu women is her absolute property. In today's society, it is known as stridhana. Generally, stridhana is known as the gifts of Hindu women given at the time of marriage, before and after marriage, constituted as women's property²¹. Stridhana means the absolute property of women. She has absolute ownership over stridhana which her successors will inherit. In women's estate women have limited alienation rights with their properties²². She only alienates property when there is a necessity of alienation either legally, directly, or by the estate itself. The property in women's estate is inherited by the male descendants who are also known as reversioners, but in stridhana property is inherited by the women descendants. Stridhana is a wealth on which women had absolute rights and she could pass her stridhana to her daughters²³. But this raised the question that whether this stridhana is considered as a gift or her share in parental property. Because at the time of marriage the gifts, ornaments, or dowry given to the bride are considered as her share or inheritance²⁴. While this law helps the women get some sort of inheritance it is still bound by gender norms and is discriminatory to a certain degree²⁵.

CURRENT SITUATION ON FEMALE INHERITANCE IN INDIA

While our Constitution is bound to provide equality to all citizens under Article 14, 15, 21, and Article 29. It falters when it has to guarantee the equality of women, the inheritance rights of women are a prime example of how far our society is from gender equality even today. The

¹⁸ Ibid (157-159)

¹⁹ Ibid (173-174)

²⁰ 'STRIDHANA' AS DEPICTED IN 'VIBHAGASARA' OF VIDYAPATI." Proceedings of the Indian History Congress, vol. 58, 1997, pp. 329–333

²¹ Ibid (330-332)

²² Ibid (331-333)

²³ SOME ASPECTS OF THE STRIDHANA IN POST-MAURYA NORTH INDIA (c. 200 B.C.—c. 300 A.D.)." Proceedings of the Indian History Congress, vol. 34, 1973, pp. 114–119

²⁴ Darshini, Priya. "PROPRIETARY RIGHTS OF WOMEN IN ANCIENT INDIA (600 B.C. – 100 A.D.)." Proceedings of the Indian History Congress, vol. 73, 2012, pp. 132–143

²⁵ WOMEN'S PROPERTY RIGHTS UNDER TRADITIONAL HINDU LAW AND THE HINDU SUCCESSION ACT, 1956: SOME OBSERVATIONS." Journal of the Indian Law Institute, vol. 45, no. 3/4, 2003, pp. 509–536

Mamta Dinesh Vakil v Bansi Swadhw (2012)²⁶ had tried to change the position of women in this aspect. The case was about a female intestate succession issue. In fact, it is one of the few cases which challenge the constitutionality of the law about female inheritance in today's time. Many times our judicial system has given a landmark judgment in the cases of women's inheritance rights which help in reducing gender inequalities. But unfortunately, due to traditional thinking about inheritance, many inequalities are still practiced outside of the legal system²⁷.

Pre 2005 India followed The Hindu Succession Act 1956 which was based on the Mitakshara School. Before this Act, women's inheritance rights, property ownership, and control over it were rarely accepted by our social norms and values²⁸. In Indian society inheritance rights have been preserved for male heirs especially land rights. The main objective of Hindu Succession Act was to improve the economic position and status of women in the society, it gave property rights to women²⁹. Daughters became eligible for getting a share in father's property. But some sections of the act like section 6, seems in the favour of gender inequality. According to this act, Women were not equally entitled to the ancestral property as the males. She was not considered as a coparcener by birth in the ancestral property of the family³⁰. Under section 8, heirs are divided into three classes. Mother, daughter, son, and widow become class I heirs in deceased Hindu male property³¹.

But since the law was based on the Mitakshara school, a male who is the head of the household has authority and control over children, women, and property³². And in structure daughters are unwanted and seen as a burden in families because they never inherit the property of their father and on the other hand boys are on preference because they inherit their father's property automatically³³.

²⁶ "Mamta Dinesh Vakil Vs Bansi S. Wadhwa On 6 November, 2012".

²⁷ "Ministry of Women & Child Development: GoI." *Home*, Government of India, 1 Jan. 1970, wcd.nic.in/womendevlopment/national-policy-women-empowerment.

²⁸ "WOMEN'S PROPERTY RIGHTS UNDER TRADITIONAL HINDU LAW AND THE HINDU SUCCESSION ACT, 1956: SOME OBSERVATIONS." *Journal of the Indian Law Institute* 45, no. 3/4 (2003): 509-36.

²⁹ "Hindu Succession Act, 1956, Section 14—Restricted Estates in Wills—Sakunthala Devi v. Beni Madhav." *Journal of the Indian Law Institute* 6, no. 2/3 (1964): 338-41.

³⁰I bid (339-340)

³¹ Ibid (338-339)

³² Ibid (339-341)

³³ Ibid (339-340)

ANALYSIS OF THE CURRENT SITUATION ON FEMALE INHERITANCE IN INDIA

What most of the society does not understand is that women will no longer burden be an on the family if she inherits like her other male siblings. If a woman inherits property, she will get equal status like a man but if no property is given to her, she has a lower status than a man and it results in the subjugation of woman's status. All these thoughts led to the enactment of The Hindu Succession Act Amendment 2005³⁴. The act came into force due to the disappointment expressed by a section of the society against the discontent position and unsatisfactory legal status of women inheritance rights. This act brought some revolutionary changes not only which affect the coparcenary laws but also partition laws, property alienation, adaptation, and inheritance³⁵. It was believed that these discriminations are eliminated as The Hindu Succession Amendment Act, 2005 was a direct hit on the roots of the patriarchal system. Gender discrimination has been removed from Mitakshara coparcenary to some extent by raising the female member's status of Hindu Undivided Family and makes them equal to the male coparcener³⁶. Both male and female become heirs by birth and inherit their father's property if father had prepared no will for his property. Due to this Act in a joint family there are now three successive generations i.e. grandfather, father, and grandson or granddaughter³⁷. And after the death of the eldest member or Karta of Hindu joint family, the property of Hindu joint family is owned collectively by coparcenary property related to the deceased person and the joint Hindu family will distribute between each coparcener collectively. Coparcener male or female or both will get their share³⁸. After the amendment of 2005, the share of Karta or any coparcener devolves by way of succession and not by survivorship. The Hindu Succession Amendment Act, 2005 allows a daughter to claim her rights as a coparcenary in parental property³⁹.

³⁴ JUDICIAL RE-SCRIPTING OF LEGISLATION GOVERNING DEVOLUTION OF COPARCENARY PROPERTY AND SUCCESSION UNDER HINDU LAW." Journal of the Indian Law Institute, vol. 58, no. 3, 2016, pp. 337–349

³⁵ WOMEN'S PROPERTY RIGHTS UNDER TRADITIONAL HINDU LAW AND THE HINDU SUCCESSION ACT, 1956: SOME OBSERVATIONS." *Journal of the Indian Law Institute* 45, no. 3/4 (2003): 509-36.

³⁶ JUDICIAL RE-SCRIPTING OF LEGISLATION GOVERNING DEVOLUTION OF COPARCENARY PROPERTY AND SUCCESSION UNDER HINDU LAW." Journal of the Indian Law Institute, vol. 58, no. 3, 2016, pp. 337–349

³⁷ Ibid (339-340)

³⁸ Ibid (337-346)

³⁹ Ibid (345-348)

This was a landmark change in our society, the revolutionary rights that make a woman capable to inherit her share in the parental property, especially sisters or daughters after the death of their parents. The Hindu Succession Act, 1956 was the bold attempt that makes female Class I heirs and provides the opportunity to get access and control over the property⁴⁰. However, this was not without loopholes. Such as women will have only maintenance right of property, which means she can only maintain the property but not get ownership right over it⁴¹. The transfer of agricultural land and land holding, and control rights are coming under laws of the state which kept out from Succession Act circumferences but mostly states of India placed women as a last heir in the land ownership issues⁴². According to the succession rights of Hindu Succession Act, 1956 only unmarried daughter who was deserted, or divorced or a sister had permission by law to live in a house, but the married daughter was not permissible to do so. With the Hindu Succession Amendment Act, 2005 all these discriminations were abolished⁴³.

CRITIQUE OF HINDU SUCCESSION ACT

Regardless to the fact The Hindu succession Act, 1956 was a landmark change in our society. It was still criticized on the grounds of gender inequality. According to the 174th Report of the Law Commission of India on 'Property Rights of Women, many citizens felt that The Hindu succession Act, 1956 was on only progressive at face value and had no real progressive weight⁴⁴. A similar was seen during the social reform movement during the pre-independence era. During that time also similar issues were raised about women inheriting property and even though steps were taken to improve this situation back then, we call all see that no real change has truly been made to this⁴⁵. Some examples of this are, in the Hindu Succession Act, 1956 women cannot inherit ancestral property as males do. If a joint family gets divided, each male

⁴⁰ Ibid (343-344)

⁴¹ "PROTECTION AGAINST UNJUST ENRICHMENT AND UNDESERVED MISERY AS THE ESSENCE OF PROPERTY RIGHT JURISPRUDENCE IN 'MITAKSHARA.'" Journal of the Indian Law Institute, vol. 48, no. 2, 2006, pp. 155–174.

⁴² JUDICIAL RE-SCRIPTING OF LEGISLATION GOVERNING DEVOLUTION OF COPARCENARY PROPERTY AND SUCCESSION UNDER HINDU LAW." Journal of the Indian Law Institute, vol. 58, no. 3, 2016, pp. 337–349

⁴³ JUDICIAL RE-SCRIPTING OF LEGISLATION GOVERNING DEVOLUTION OF COPARCENARY PROPERTY AND SUCCESSION UNDER HINDU LAW." Journal of the Indian Law Institute, vol. 58, no. 3, 2016, pp. 337–349

⁴⁴ Hrln.Org, 2020,

https://hrln.org/admin/issue/subpdf/Report_of_the_Parliamentary_Standing_Committee_05May.pdf.

⁴⁵ Ibid

coparcener takes his share, and females get nothing. Only when one of the coparceners dies, a female gets a share of his interest as an heir to the deceased⁴⁶. A married woman is denied the right to residence in her parental home unless she widowed, deserted, or separated from her husband⁴⁷. None of these provisions are fair but they still allow a woman to inherit some property. So, society calls the Act progressive and a landmark judgment. But after truly understanding this act can one actually say that inheritance is the same for men and women? No, it is not. It was not the same during Aristotle's time, it wasn't the same during the pre-2005 judgment and it isn't the same now.

CONCLUSION

Unfortunately, many women still live in an oppressive and male-dominated world that has made women so dependent on their male counterparts throughout their life and led them to neglect their rights and claim in the partition of property⁴⁸. Only a few women are conscious of their legal rights which is why most women do not claim their rights in parental property. Hardly few females get their rights and access to property, especially inland property. Property ownership is control and reserved only for male members of the family and is practiced under the guise of customary laws those which are in the favour of men rather than equality⁴⁹.

This is why there is a huge difference between reality and practices of inheritance laws at the grass-root level. Does this raise questions like Why do women not get an equal share in the parental property as compared to her male siblings? Why do the male siblings of women get the whole parental property? What are the ways through which the male sibling of a woman gets the whole parental property? How do male siblings manipulate women's inheritance rights?

A solution to this issue about female inheritance is to bridge the gap between theory and practice. It is possible to bridge the gap but is a long and tedious process. But the research has

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Hindu Succession Act, 1956, Section 14—Restricted Estates in Wills—Sakunthala Devi v. Beni Madhav." *Journal of the Indian Law Institute* 6, no. 2/3 (1964): 338-41.

⁴⁹ WOMEN'S PROPERTY RIGHTS UNDER TRADITIONAL HINDU LAW AND THE HINDU SUCCESSION ACT, 1956: SOME OBSERVATIONS." *Journal of the Indian Law Institute* 45, no. 3/4 (2003): 509-36.

shown me the reality at a grass-root level. I have understood that no matter what women are not going to be able to claim their share in the parental property the majority of the time, and our socio-legal system plays a big role in preventing women from claiming their legal rights. One may feel it is easy to solve the problem by simply changing our socio-legal system, but is not that simple because for our socio-legal system to change one has to change the mindset of the society as a whole. The very mindset that has been there for centuries. As a result, Hindu women in India do not exercise or enjoy equal legal rights as men do. Especially succession rights. Even in today's modern society where women are considered equal to men in every regard. They still do not have the inheritance rights that equal men. Which shows how little development has occurred for women from the time of Aristotle in the 384 BC⁵⁰ to the Mitakshara School in the 11th century⁵¹ to the present in the 21st century.

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⁵⁰ Burns, Tony. "ARISTOTLE AND NATURAL LAW." *History of Political Thought* 19, no. 2 (1998): 142-66.

⁵¹ PROTECTION AGAINST UNJUST ENRICHMENT AND UNDESERVED MISERY AS THE ESSENCE OF PROPERTY RIGHT JURISPRUDENCE IN 'MITAKSHARA.'" Journal of the Indian Law Institute, vol. 48, no. 2, 2006, pp. 155-174.

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