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Intergenerational reforms in women's right to inheritance in India

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Abstract--The evolution after the Hindu Code Bill, women's property ownership in India has improved. Women's position in old custom and their evolution in modern law from the colonial period to the Hindu Code Bill are the study's main focus areas. In ancient legal codes, such as Dharmashastras, Manusmriti, and Arthashastra, women were denied property rights and she always is dependent on their father, husband, or son. As per our constitution, every human being has the right to equitable treatment. Equal property rights for men and women are important for reducing the gender gap, to empower women in order to promote social and economic development and to ensure gender and social justice within the framework of Personal Laws and inform women about the areas of legislation that are most likely to affect and enhance their lives. So the focus of the article is on women's inheritance rights in old Indian laws and their development in modern laws with help of international conventions. As the status of women in India improves economically and socially,

there is a need for more development and a single or uniform property rights for every sect of Indian females. Article 44 of the Indian constitution refers to legal uniformity in civil matters such as inheritance, marriage, adoption, succession, and divorce. Because most religious personal laws discriminate against women, uniformity is required to accomplish the ideal of gender justice stated by our framers of the constitution.

Keywords---Inheritance, women, coparcener, property, CEDAW.

I. Introduction

“I do not wish them (women) to have power over men; but over themselves”.
-Mary Wollstonecraft

Transferring a person's property, obligations, claims, privileges, and responsibilities to another individual after their death is known as Property Inheritance. In India, property can be inherited in two ways: through a will or by the laws of succession when a person dies intestate (without making a will). Every community in India is controlled by its own laws as tribal women of different religion; ethnicity and states are governed by their ethnic customs and standards for their property rights. Property rights for Indian women are the outcome of a long-time conflict; they remain unequal, unfair. Still, in the 21st century, women face oppression, a lack of equal opportunities, and limited access to resources. Men have dominated society's sociopolitical and economic broader areas, leaving few opportunities for women to explore and thrive. As a result, several rules and legislation, such as the Hindu Succession (Amendment) Act, 2005, have been introduced to promote gender parity in all spheres. It gives women equal property rights, allowing for women's empowerment.

According to the Indian Constitution, in all aspects of life, a woman has the right to equality. Sustaining this, India has taken steps to improve women's succession and inheritance rights through different laws both before and after independence. On the other hand, it was also discovered that these rules were conflicting and weak in many ways, leading to various irregularities and leaving the core element of bias against women. The Constitution of India guarantee a triangle of communal, financial, and political justice, as well as equivalence of status and opportunity, as a result of India's independence.

As a result, to ensure compliance with the Constitution's provision and economically empower women, the then-government enacted the Hindu Women's Empowerment Act. Both the federal and state governments have the authority to enact rules on succession under the Indian Constitution, therefore federal can and some have, Within each state, they developed their variants of property laws. The thought of this paper is to trace the impact of women's inheritance claims on their status. Throughout India's history women's right to property is ignored by society, and she is regarded as a second-class citizen in terms of social and economic factors. India is a country of many religions, in a variety of ways, each religious group is still controlled by its own set of personal laws, Property rights

are one of them, on the other hand, evolving laws aimed to eradicate gender discrimination and provide women the opportunity to own property. Property ownership patterns and rights vary by society and are affected by local, ethnic, geopolitical, and legal issues.

II. Historical Background and an Overview of Women's Property Rights

"A woman must be reliant upon her father in early days, upon her husband in youth, and upon her sons in old age. She should never be free"

Manu

The issue of male-female dissimilarity is not new; it has been debated for at least 2,400 years. Women have always been treated as lower citizens in a patriarchal society. This inferior position can be found not just at home and in civilization, but also the workplace. She is supposed to feel this inequity the most. Women were denied ownership rights in ancient law texts such as the Arthashastra, Manusmriti, and other Dharmashastras. Women who do not have any assets are vulnerable to domestic threats and other inequality. The Constitution of India provides equal opportunity to all citizens, regardless of any factors.

Historically, women held limited opportunity and right to own ancestral land or property in India. In Manu Smriti's words, *"Women are forever underage and must spend their lives in the care of their father, husband, or son."* A woman's position is seen as lower and she is supposed to feel inferior, specifically in her claim to the belongings. Before Act of 2005, no Hindu woman had a right to coparcener property in her own right.

Status of Women in Ancient Period

"The wife is half the man, his truest friend," says the Mahabharata. *"A loving wife is a continual stream of virtue, pleasure, and wealth, a faithful wife is his best aid in achieving heavenly joy. A sweetly speaking, a wife is a companion in loneliness, a father in advance, a mother in all seasons of suffering and a respite in the wilderness of existence"*. Respect, dignity, and honor—According to these, women in ancient India are strongly emphasized in these writings. The property rights of Hindu women vary based on their family's wealth and the position of the woman. She is a widow, mother, or wife. She is a daughter, deserted, unmarried, or married.

It relies on the type of possessions: whether it is inherited or ancestral. Land, dwelling house, or matrimonial property that is self acquired. Law differentiates between hereditary and self acquired property. It also recognizes a creature known as a "coparcener." A coparcener is a legal entity made up of three generations of male heirs from the same family. When a male member is born, it shrinks, and when a male member dies, it grows. Any coparcener has the power to seek that the joint family is divided. When a member is partitioned, a new coparcener is formed, consisting of the partition member and his two generations of males.

Concept of Dayabhaga and Mitakshara

The Dayabhaga was written by Jimutavhana, an early medieval Indian Vedic scholar and noted writer of legislative and religious treaties. Dayabhaga is a Hindu theory that primarily deals with the inheritance system in India. In colonial courts inside the Bengal region of India, it was the primary source for consideration. Vijnaneswara wrote Mitakshara on the Yajnavalkya Smriti, on the other hand. Mitakshara is a word that comes from the word 'commentary.' The Dayabhaga and Mitakshara schools of law were mostly used in Bengal and Assam, whereas the Mitakshara School was used across India. The Mitakshara School has four sub-divisions that handled the Hindu Joint Family's inheritance law under Indian law. Women had only nominal rights over some properties known as "Streedhana" before the 1956 Succession Act. "Streedhana" is a Sanskrit phrase that means "wealth of women." Streedhana was limited to particular kinds of belongings specified to woman on particular occasions or at different stages of her life. According to Smritikars, the "Streedhana" are made up of the assets and resources that a lady gets from her parents or spouse. Relatives presented her with gifts at her wedding. The majority of this was made up of moveable elements, while a house or a plot of land was occasionally given to a woman as a gift, along with ornaments and jewelry. Jimutavhana includes detailed descriptions of "Streedhana" in addition to costumes, including Bequests and gifts from family members, Strangers' donations, and bequests Self-sufficiency and modern skills yielded property; assets bought with "Streedhana" money A compromise resulted in the purchase of property, Assets obtained as a result of adversity

III. The scenario of the position of women under different legal system

Muslim Women's Property Rights

Muslims are governed by their Law (Shariat). It handles all of its matters, including property rights, marriage disputes, and divorce. Although Muslim law has given Muslim women significant autonomous rights, the Act of 1937, which would supersede usual law, has to be organized. While the rest of the world considered women as property of men Islam granted them two separate rights: the right to bear children and the right to inherit property. Inheritance rights came from the only source i.e. Quran. Other school of law elaborated the concept further regarding inheritance. Shia and Sunni had mentioned separate aspects of their laws which are totally different from each other; they both had defined laws differently.

Under Islamic law in Islamic period, the male rights in property are always double to women to same category. Women's were dominated by man and considered as the property in the Islamic age also abused and used alike other property. The woman was treated as like object. She couldn't control her life. She had no social, political or any economic right. Even there was no such concept as consent for women. Female infanticide was actually a common practice because of family burden as women were considered as the burden to a family. Inheritance right of women was neglected completely. After the advent of the Islam prophet brought new changes to the condition of women. It came as the revolt for women and gave

all the rights to live freely and choose things for her. In present situation both man and the woman are equal and treated accordingly, still the man share is double as compared to women. During the marriage women is maintained by her husband also she gets mehr or dower by the groom. She pays her mehr or promise to pay. So mehr is considered as the woman's property. She has every right to use that whatever the way she wants to. If husband fails to fulfill the promise to pay the mehr then she can ask for the reasonable mehr as she holds right regarding that and she can refuse marital obligations and cohabitation as well. No one can claim it from her until and unless she herself entitled any other member for it. Though her brother is the actually dependent upon the property of the ancestors so share of the women is halved. Widow woman is entitled for the one fourth of the property of her husband.

Parsi & Christian Women's Property Rights

Indian Succession Act is generally applicable to Christians in the country but those communities of Various region which are govern by their customary law are excluded under sec 29(2) of the act of 1925, Section 31 to 49 of Indian Succession act 1925 applicable on Christians and Jews .Generally act is applied to property of Jews, Christians who marries under SMA1954 or get their marriage registered under the act. Some prominent Christian advocates and lawyers have stated that "laws on delicate subjects such as inheritance should reflect practices and practices for their acceptance and preservation." At the same time, the improvement in women's property rights introduced by the Indian Succession Act of 1925 was welcomed. The majority of Christians look the same when it comes to giving women an equal share of legal inheritance. "

Rights of tribal women

In many tribes in India, the property is hereditary in female lines but maintained as shared family property of communities but female do not have independent rights of alienation. While men administer the land, both work together to decide whether or not to alienate it. However, both males and females have inland inheritance rights that they can hold independently. Traditional customs, on the other hand, have changed with time, both before and after independence. Women's traditional rights are often provisional on them staying in their native town, and frequently in their natal homes. The Legal and limited rights on land have been vested in men. A woman from a wealthy patrilineal family owned and operated a business in the country at one point, but her level of control was quite limited. This is because supporting communities that develop and transform such customary rights is essential to exercising those rights. The state recognize women's inheritance rights as individual, but marriage practices that give women customary rights are regulated by the community. These habits haven't changed.

IV. Evolution of Women's Property Right Legislation in India

From Hindu Succession Act 1956 to Amendment of 2005

The Hindu community is known for its coparcener. Every member of HUF is not eligible for coparcener. Son has some specific rights to coparcener property due to

his status as a coparcener in Hinduism. In coparcener, the right of the daughter is denied, which prevents daughters from claiming ancestral property, which leads to sexual category dissimilarity. It also leads to domination and the denial of her fundamental rights. The Hindu Succession Act 1956 came into existence, making significant modifications to the law of succession and granting previously indefinite rights to a woman's property. Still, women were denied the position of coparceners in comparison to siblings. It expressly says that, in the case of HUF property, a male Hindu's interest would pass to surviving members of the coparcener by survivorship rather than succession following his death.

The Hindu Code Bill, on the other side, aimed to eradicate gender discrimination and provide women with property rights. By proposing the idea that both genders should be treated fairly for a community to progress, this statute cleared the ground for the removal of caste society's "graded inequity."

However, the 2005 Amendment Act made a revolutionary change to Article 6 of the Act, completely changing the concept of transfer of ownership of Coparcener property, and changing the concept of transfer of ownership of Coparcener property to the Coparcener property of Hindu daughters. The same property rights are provided to daughters as they are provided to sons. Indeed, the 2005 Amendment Act is a piece of gender reform legislation that aims to empower women economically by granting them property rights in their way, substantial changes to the Hindu Succession Act in terms of women's standing as coparceners.

Woman in India is equally liable for the entitlement of the property of the deceased husbands property same as other heirs and if there are no co sharers to that property then she has sole right over that entire property. She has the power to hold her assets no matter earned or inherited or gifted. Anciently, according to rules of inheritance said that females were completely exempted and excluded from the property. After the demise of a father all the property was entitled to an oldest son in the family either adopted son. A woman is not considered as independent of her own so she is excluded from taking over the father's property. 11 August, 2020, the day when Apex court of India gave the landmark judgment of *Veenita Kumara V Rakesh Sharma (2020) 9 SCC1* about the Hindu women rights in the ancestral property. There were three judges bench supervised. Bench stated that by birth woman has right to be a joint heir in the ancestral property. It doesn't matter if father is living or not when law enacted in 2005.

V. Comparative Analysis of Women's Property Rights Under Different Legal System

'Comparative law is a procedure or method for comparing two or more legal systems, or parts of them, with a specific goal in mind.'

Comparison between Hindu and Muslim Inheritance Rights

Under the Hanafi sect, women enjoy the full ownership of to acquire, retain and dispose of their property. They have the right to inherit the property of Deceased with a male heir. Since Muslims can only inherit one-third of deceased's property

by will, the remaining property must be sold in according to the rules of the Islamic Inheritance Law. Shareholders under the Mohammedan Act are relatives whose shares clearly nominated by the Quran. According to Hanafi law, daughter share is half of son's share, but in the absence of son, her position.

Is that if she is single daughter then her share is 1/2 and if there are two or more daughters then they will share 2/3 of real estate. Under Shia sect same as Hanafi sect daughters inherits the property but the rights of agnates are not recognized under Shia sect, hence the daughter gets a higher share under the Shia law. In Hindu law, the status of the daughter is far better than in Muslim law, because the girl is always given the same part as the son. Even if there are two or more daughters, they will all receive an equal share of the property and the inheritance sons. Earlier in the act of 1956 there is discrimination between the daughter and son but after the amendment of 2005 both are on equal footing.

Comparision between Christian and Hindu Inheritance Rights

Both Hindu and Christians are governs under the provision of Indian Succession Act, 1925. Section 29(2) of the Act of 1925, deals with Indian Christians but, a substantial segment of the Christian community regulated by their customary rules, so they were exempted from the application of this Act. The Portuguese Civil Code controlled the Christians of Goa and continues to do so now. As a result, not only is there an increase in the number of laws, but there is also the emergence of a legal system that is completely different from rest of the country.

Comparison between Parsi and Hindu Inheritance Rights

The Parsi community in India did not have its own law Act first so they adopt the law of locals where they had initially settled, after the Indian Succession Act was passed in 1925, The Parsi Intestate Succession Act was inserted into chapter 3 of this act. Section 50-56 of Indian Succession Act seals with Parsi. Amendment of Parsi intestate Act in 1991 now provide equal rights for son and daughter in the intestate property of their father previously, the daughter received half of the son's share.

VI. Judicial Perspective

Case "*Prakash Vs Phulavati (2016)2SCC36* It was held that if the co-sharer, i.e. the father, died before September 9, 2005, his daughter would not be entitled to co-ownership in another case, *Danamma Vs Amar (2018) 4, ADJ406* Even though their father was not alive in 2005, another two-judge panel concluded that the girls in the case would obtain a share of the property.

Vineeta Sharma Vs Rakesh Sharma (2020)9SCC1 Because of these divergent viewpoints, a larger three-judge panel led by Arun Mishra was formed to hear another case. Daughters have been granted the right of coparcenary, bringing them on the level with sons, and the excluding of daughters from coparcenary was discriminatory, resulting in tyranny and the denial of fundamental rights. The Supreme Court of India clarifies the extent and breadth of Sections 14(1) and (2) of the HSA 1956 in the decision of *Tulasamma & Ors. versus V. Sessa Reddi (1977)3SCC99* , in which the court created a subtle distinction between the

woman's right to belongings and her pre-existing right to be maintained. *Masilamani Mudaliar Vs. The idol of Sri Swaminathaswami Thirukoil (1996) AIR1697* Supreme Court has held that those private laws, to the extent that they violate fundamental rights, are void.

Arunanchala Gounder Vs. Ponnusamy and Ors. (1953) AIR495

It was said by the apex court that in previous cases of the Hindu Succession Act, 1956 if Hindu male dies Intestate leaving behind self-acquires property, such self acquire property would pass to by inheritance and its transference shall not be by way of survivorship.

VII. International Conventions and it's Implications in Indian Judicial System

Female's rights are supported globally through many treaties, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the Convention on the Elimination of Discrimination against Women. The Beijing Action Plan, established in 1995 at the 4th World Conference on Women, asks for guaranteeing equality and non-discrimination in law and practice, as well as repealing all remaining laws discriminating on the basis of gender. Under the UN system, two organs have been established to promote women in diverse profession and to prevent prejudice against women. First, there's the commission on the status of women, which in charge of designation policies on women's advancement requires an international policy framework as well as a variety of other key issues affecting women's growth, secondly CEDAW which is a body that works to eliminate discrimination against women.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW is the body of self-governing experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW is a pact that is to help women's entire the world to create difference in their lives. Some countries that have ratified the CEDAW convention, is precious while dealing the discrimination such as poverty, violence, refusal in inheritance of property, rights lack of legal protection and access to credit.

The Committee proposes that the State party fulfill its liability under Article 16 of the CEDAW Convention in the general recommendations. In accordance with Article 16, "Parties shall take all appropriate steps to abolish discrimination against women in the matters of matrimonial and family relations and to make certain fairness between men and women in this regard. CEDAW will participate in future dialogues attention was given to the women in broadest way. The most important obligations of the convention are based on the three principles:

1. Duty to respect and equality in laws and guidelines.
2. Duty to protect from non discrimination either direct or indirect.
3. Obligation fulfills to uphold equality and reduce the gender discrimination in the whole sphere of socio economic life.

These are the three principle of prism which gave lens through which all aspects of the gender prejudice must be inquired and corrected. Committee of CEDAW encourages the NGOs for the reports that provide country specific information so that it can gather alternative views provided by government. It can be oral evidence and in the form of reports. NGOs play crucial role in the implementing CEDAW by:

1. For the awareness, so can be spread to people around the world.
2. Business, government lobbying and individual to execute CEDAW
3. To inform the government about the problems, progress, and strategies to permit more effective implementation on effective human rights.

The International Covenant on Economic, Social and Cultural Rights 1976

It was adopted by UN General Assembly on 16 December 1966 and came in force in 3 January 1976 Article 3 of covenant stated that the signatory countries of the covenant have to ensure the equal rights of men and women to the enjoyment of all economic, cultural and social rights. Our legislation, strategy development, plans, and projects have all intended to empower women in many fields within the context of a democratic society.

National policy for the empowerment of women, 2001

Main objective of policy are making Policies and guidelines to remove the gap in women's equality. The committee looked after the impact of constitutional, legal, and managerial laws on women, particularly in rural areas and made recommendations for ways to help women take a more active role in the workplace. Constructing the nation goals of the policy are Empowerment, Growth, Advancement, Women's equal engagement and decision-making in the nation's communal, political, and financial life including a gender perspective in the development enhancing and extending connections with civil society. Legal knowledge is a type of general education that deals with the study of law. As a member of the community, we should know about the laws and developments that teach us to make, analyse, and criticise laws. It emphasizes individual liberty as well as societal progress, solidarity, and the strengthening of the rule of law. As a result, women need to be informed of their legal rights.

VIII. Conclusion & Suggestions

According to the findings, the 2005 Amendment Act has resulted in equal inheritance for everybody. In the Hindu family, the girl child of a coparcener is now a coparcener by birth, in the same way that a son is; she enjoys the same right of survivorship as a son, as well as the same obligations and limitations. This legislation, however, will not be effective until women become more aware of their claims. Women frequently give up their rights and are subjected to deprivation. Because of people's ignorance, the transformation that took eras to bring females on parity with sons in terms of their claim to family property cannot be overlooked. The judiciary should likewise make an effort to put the law into effect.

Women's demand for rights of property was traditionally satisfied by presenting something as a gift despite rights. Gifts were given in the name of dowry according to the wishes of her natal family, for their name and fame in society, but not as a woman's right. This problem can be solved by increasing public knowledge about the necessity of women being accepted and respected as equal members of society.

In order to improve property rights, study proposed two actions- first is legal action which means Legal steps taken to improve statutory provisions for example unified laws on land holding, Women should have equal share in her husband's property, If the Female dies intestate issueless, her mother shall also be included in the List of her heirs, both parents must be given the equal share in their children property, i.e. elevate the father to include him in class 1 heir and second is social measures, NGOs, panchayati raj institutions provide legal awareness in the rural areas, Current amendments and laws should be explained them in simple language and lastly, self help is the need of the hour, women should fight herself for her rights.

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