



WOMEN EMPOWERMENT IN INDIA THROUGH PROPERTY RIGHTS : A SOCIO LEGAL STUDY

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ABSTRACT

The woman in our country has always been accorded the status not only equal but above men. Since ancient time anything nurturing human life was worshipped as a female identity, i.e., the nature as Prakriti Devi, the earth as Prithvi Devi, the forests as Van Devi and so on. The tides of time have affected the status of women from worshipped to the exploited. During the Vedic period the Woman in India have always been issues of concern. Rig Veda is the only scripture among those of all religions in which the Divine Truths are revealed to women sages also. There are more than thirty women sages in Rig Veda with specific hymns associated with them. There are numerous hymns in the Rig Veda indicating the high status accorded to women in the Vedic society. Though we admire and preach them in the name of Durga, Saraswati, Parvati and Kali, we also abuse her in the form of Child-marriage, Female infanticide as well as foeticide, Sati, Sexual harassment, Dowry and so on. The status of women in India has been subject to many great alterations over the past few millenniums. From property rights point of view the women in India is divided in various religious groups. Their rights to property are governed by the personal laws of particular religion they belong to. Meaning thereby the Hindu women acquire, inherit and claim property as per Hindu Succession Act, the Muslim women as per Shariyat and so on. The Hindu Women's Right to Property Act, 1937 was one of the most important enactments that brought about changes to give better rights to women. The said Act was the outcome of discontent expressed by a sizeable section of society against the unsatisfactory affairs of the

women's rights to property.

Keywords: Acts, Empowerment, Property Rights, Women rights

Introduction

“Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind”

--Swami Vivekananda

The woman in our country has always been accorded the status not only equal but above men. Since ancient time anything nurturing human life was worshipped as a female identity, i.e., the nature as Prakriti Devi, the earth as Prithvi Devi, the forests as Van Devi and so on. The tides of time have affected the status of women from worshipped to the exploited. During the Vedic period the Woman in India have always been issues of concern. Rig Veda is the only scripture among those of all religions in which the Divine Truths are revealed to women sages also. There are more than thirty women sages in Rig Veda with specific hymns associated with them. There are numerous hymns in the Rig Veda indicating the high status accorded to women in the Vedic society. One of the hymn (Rig Veda 10.27.12), explicitly states that the practice of a lady choosing her husband was in vogue. The Rig Veda's marriage hymn (10.85), explicitly states that the daughter-in-law should be treated as a queen, samrajni and bride was exhorted to address the religious assembly.¹

This is noteworthy that various names and epithets are used to denote women in Vedic literature. Apart from Jaya, Jani and Patni woman is designated as Devi, as she is divine; Ida, as she is worshipping; Simhi, as she is courageous; Suyama, as she is self-disciplined; Vishruta, as she is learned.² The Vedic period was glorified by the tradition. Many rishis were women and several of them authored slokas in the Vedas. Some of these rishis are Ghoshala, Godha, Vishwara, Apala, Upanishad, Brahmjaya, Aditi, Indrani, Sarma, Romsha, Lopamudra, Shaswati and many others. Even married women were known to be acknowledged authorities on the Vedas.³

Though we admire and preach them in the name of *Durga, Saraswati, Parvati* and *Kali*, we also abuse her in the form of Child-marriage, Female infanticide as well as foeticide, Sati, Sexual harassment, Dowry and so on. The status of women in India has been subject to

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many great alterations over the past few millenniums. From a largely unknown status in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been lively. The status of women has varied in different time periods.

Some idea of the position of women under Hinduism could be gleaned from the classic Hindu Dharmashastra ‘Manu-smriti’, is the best known, this describes the duties of women as follows:

“by a girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house. In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent⁴. In fact the women were prevented from performing religious rites, and even the knowledge of the Vedas was to be kept away from them.⁵

Women Empowerment through Property Rights in India

From property rights point of view the women in India is divided in various religious groups. Their rights to property are governed by the personal laws of particular religion they belong to. Meaning thereby the Hindu women acquire, inherit and claim property as per Hindu Succession Act, the Muslim women as per Shariyat and so on. Most of the Hindu Personal Laws are codified now, whereas Muslims Personal Laws are not codified so far despite of many directions and calls of Universal Civil Code by the Apex Court. The codified laws are amended as per the need of the society and development in consonance with the provisions of our Constitution and international conventions which has positively resulted in empowering women economically and socially.

Property Rights of Hindu Women

The property rights of women under the Hindu law can be traced under four stages, i.e., pre- 1937, 1937-1956, 1956-2005 and post-2005. Since time immemorial the framing of all laws have been exclusively for the benefit of man; woman has been treated as subservient, and dependent on male support. In theory, in the ancient times, the woman could hold property but in practice, in comparison to men’s holding, her right to dispose- off the property was qualified, the latter considered by the patriarchal set up as necessary, lest she became too-independent and neglect her marital duties and the management of household affairs. This was the situation prior to 1937 when there was no codified law.

The Hindu Women's Right to Property Act, 1937 was one of the most important enactments that brought about changes to give better rights to women. The said Act was the outcome of discontent expressed by a sizeable section of society against the unsatisfactory affairs of the women's rights to property. Even the said Act did not give an absolute right to women. Under the said Act a widow was entitled to a limited interest over the property of her husband – what was to be termed as Hindu widow's estate. The Act was amended in 1938 to exclude the widow from any interest in agricultural land.

The Hindu Succession Act, 1956 introduced many reforms and it abolished completely the essential principle that runs through the estate inherited by a female heir, that she takes only a limited estate. The Supreme Court put a lot of controversy at rest by holding that the woman becomes the absolute owner under Section-14 of the Hindu Succession Act, 1956. The object of Section 14 is two-fold:

- (i) To remove the disability of a female to acquire and hold property as an absolute owner, and
- (ii) To convert the right of woman in any estate held by her as a limited owner into an absolute owner.

The provision was retrospective in the sense that it enlarged the limit of the estate into an absolute one even if the property was inherited or held by the woman as a limited owner before the Act came into force. Any property acquired under the 1937 Act held in capacity of a limited owner was now converted to her absolute estate. The Hindu Succession Act, 1956 abrogates all the rules of the law of succession hitherto applicable to Hindus whether by virtue of any text or rule of Hindu law or any custom or usage having the force of laws in respect of all matters dealt with in the Act.

Therefore no woman can be denied property rights on the basis of any custom, usage or text and the said Act reformed the personal law and gave woman greater property rights. The daughters were also granted property rights in their father's estate.

The Hindu Succession Act, 1956, is basically based on *Mitakshara* law, under which co-parcenary rights are in favour of male child by birth. The Act explicitly approved the continued application of the traditional concept of the joint family and the preferential rights of the male heir.

The other provisions under Hindu Succession Act, 1956 act states:

“When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a *Mitakshara* co- parcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the co-parcenary and not in accordance with this Act.

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in *Mitakshara* co-parcenary property shall devolve by testamentary and intestate succession, as the case may be, under this Act and not by survivorship.

Explanation-1: For the purposes of this Section, 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.

Explanation – 2: Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the co- parcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

This provision was discriminatory towards women and was acknowledged by the Law Commission and while presenting its 174th Report, it suggested the changes to provide women equal property rights. The report mentions that:

“The Law Commission is concerned with the discrimination inherent in the *Mitakshara* co- parcenary under Section 6 of the Hindu Succession Act, as it only consists of male members. The proviso to section 6 of Hindu Succession Act also contains another gender bias. It has been provided therein that the interest of the deceased in the *Mitakshara* co-parcenary shall devolve by intestate succession if the deceased had left surviving a female relative specified in class I of the Schedule or a male relative” specified in that class, who claims through such female relative. In order to appreciate the gender bias it is necessary to see the devolution of interest under Section 8 of the Hindu Succession Act.

The property of a male Hindu dying intestate devolves according to Section 8 of the Hindu Succession Act, firstly, upon the heirs being the relatives specified in Class I of the Schedule. However, there are only four primary heirs in the Schedule to class-I, namely, mother, widow, son and daughter. The remaining eight represent one or another person who would have been a primary heir if he or she had not died before the *propositus*. The principle

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of representation goes up to two degrees in the male line of descent; but in the female line of descent it goes only up to one degree. Accordingly, the son's son's son and son's son's daughter gets a share but a daughter's daughter's son and daughter's daughter's daughter do not get anything. A further infirmity is that widows of a pre-deceased son and grandson are Class I heirs, but the husbands of a deceased daughter or granddaughter are not heirs. Keeping this background in mind⁶, the Hindu Succession Amendment Act, 2005 was enacted to enlarge the rights of a daughter, married and unmarried both and to bring her at par with a son or any male member of a joint Hindu family governed by the *Mitakshara* law. It also sought to bring the female line of descent at an equal level with the male line of descent, including children of pre-deceased daughter of pre-deceased daughter. By the way of the amendment Act, the daughter of a coparcener has been admitted in co-parcenary and after the commencement of the Amendment Act the daughter is a coparcener in her own right. The daughter now has the same rights and liabilities in the co-parcenary property as the son. This means that a daughter along with a son is liable for debts of joint family. The daughter is also entitled to dispose of her share of the co-parcenary property or her interest thereof by way of a will.

The Hindu Succession (Amendment) Act, 2005 (39 of 2005) came into force from 9th September, 2005. The Government of India has issued notification to this effect.

The Section 6 of the Hindu Succession Act as it stands after the Amendment in 2005 is extracted hereunder for better appreciation:

Section- 6: Devolution of interest in co-parcenary property

Sub-Section 1 - On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a joint Hindu family governed by the *Mitakshara* law, the daughter of a coparcener shall,

- a. by birth become a coparcener in her own right in the same manner as the son;
- b. have the same rights in the co-parcenary property as she would have had if she had been a son;
- c. be subject to the same liabilities in respect of the said co-parcenary property as that of a son, and any reference to a Hindu *Mitakshara* coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-Section shall affect or invalidated any disposition or alienation including any

partition or testamentary disposition of property which had been taken place before the 20th day of December, 2004.

Sub-Sections 2 to 4 deleted.

Sub-Section 5 - Nothing contained in this Section shall apply to a partition, which has been effected before the 20th day of December, 2004.

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) of partition effected by a decree of a Court.

The basic concept of co-parcenary is that only male members of a joint Hindu family can constitute a co-parcenary completely excluding the female members of the family, This concept has not been substantially modified with the amendment of Section 6 of the Hindu Succession Act However, although the daughter has been included as a coparcener by way of this amendment the wife, mother and widow are still standing in queue for their admission in the co-parcenary.

The courts have played a vital role in making this amendment effective by interpreting it liberally and bringing in the concept of notional partition, without it being expressly mentioned in the amended section. In **Gurupad v. Hirbai**⁷ Supreme Court observed that ignoring a woman’s right to get a share at the time of notional partition essentially means that: “One unwittingly permits one’s imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff’s husband and his sons. The fiction created by Explanation I has to be given its full and due effect.”

In **M. Yogendra and Ors. v. Leelamma N. and Ors.**⁸, the Supreme Court held that “The Act indisputably would prevail over the Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005.

Further in **G. Sekar v. Geetha and Ors**⁹, the Supreme Court held that:

“It is, therefore, evident that the Parliament intended to achieve the goal of removal of discrimination not only as contained in Section 6 of the Act but also conferring an absolute right in a female heir to ask for a partition in a dwelling house wholly occupied by a joint family as provided for in terms of Section 23 of the Act.”

Till now we have seen what the status of women regarding Ancestral property is. Now we move forward to next dimension of women property rights i.e. as an absolute owner of her own property. This finds specific mention under Section 14 of the Hindu Succession Act 1956.

Section 14 of the Act states that the property of a female Hindu is to be her absolute property:

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation:- In this sub-section “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *Stridhan* immediately before the commencement of this Act.

(2) 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. Plain reading of the section 14 reveals that female Hindu is conferred the absolute right to her property.

In **Komalam Amma v. Kumara Pillai Raghavan Pillai and Ors.**¹⁰ Supreme Court has laid down that, “Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady’s life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).

In another decision of **Tulasamma v. Sessa Reddy**¹¹ Apex Court held that:

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“Besides possessing an existing right of maintenance, woman in the Hindu family is also conferred right in the family property. It cannot be said that partition deed is something creating a new right in her in so far as the property is not concerned; nor it amounts to acquiring of the property by her by virtue of partition deed when the facts are so, there would be the application of sub-section (1) of Section 14 and not of sub-section (2) of the said Section. The Court further held that a widow is entitled to maintenance out of her deceased husband’s estate, irrespective of whether that estate is in the hands of his male issue or other coparceners.”

Further, Section 15 of the Hindu Succession Act specifies how the property of a female Hindu will devolve and it is discriminatory on face of it. It states that in the absence of Class I heirs (son, daughters & husband) of the property of a female Hindu will go to her husband’s heirs and only if these heirs are not then will the property devolve upon her mother and father. However, in the absence of the mother and father, the property will again devolve upon the heirs of the father and only if there are no heirs of father will the property devolve upon the heirs of the mother.

Here, it is apt to discuss **G. Sekar v. Geetha and Ors.**¹² where the Apex Court laid Down :

“The Act brought about revolutionary changes in the old Hindu Law. It was enacted to amend and codify the law relating to intestate succession amongst Hindus. By reason of the Act, all female heirs were conferred equal right in the matter of succession and inheritance with that of the male heirs.....”

By reason of Section 14 of the Act, a woman who had limited interest in the property but was possessed of the same was to become absolute owner. Section 6 of the Act, however, makes an exception to the aforementioned rule by providing the manner in which the interest in the co-parcenary property shall devolve upon the heirs stating that the rule of survivorship would operate in respect thereof. The right, title and interest of an heir, whether male or female, thus, are governed by the provisions of the Act.

Section 23 of the Act has been omitted so as to remove the disability on female heirs contained in that Section. It sought to achieve a larger public purpose. If even the disability of a female heir to inherit the equal share of the property together with a male heir so far as joint co-parcenary property is concerned has been sought to be removed,.....”

The Amendment Act deletes Section 23 of the 1956 Hindu Succession Act, thereby giving all daughters (married or not) the same rights as sons to reside in or seek partition of

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the family dwelling house. Section 23 did not allow married daughters (unless separated, deserted or widowed) even residence rights in the parental home. Unmarried daughters had residence rights but could not demand partition.

The Supreme Court confirmed the equal property rights of an unmarried Hindu woman on 10th May 2011 in its decision in a Civil Appeal of 2005.¹⁴ Co- parcenary refers to equal inheritance which was restricted only to male members of the Hindu Undivided Family but after successive amendments several states have chosen to extend the benefit to unmarried female members too.

In **Ganduri Koteswaramma v. Chakiri Yanadi**¹⁴ a Hindu woman or girl will have equal property rights along with other male relatives for any partition made in intestate succession. Thus gender discrimination has been removed to a larger extent by the 2005 Act. Now, daughters can claim equal right in the after September 2005, the Supreme Court has ruled. A bench of justices R.M. Lodha and Jagdish Singh Khehar in a judgment said that under the Hindu Succession (Amendment) Act, 2005 the daughters are entitled to equal inheritance rights along with other male siblings, which was not available to them prior to the amendment.

The apex court said the female inheritors would not only have the succession rights but also the same liabilities fastened on the property along with the male members. “The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from 9th September, 2005. The legislature has now conferred substantive right in favour of the daughters.

According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcener property as she would have been a son is unambiguous and unequivocal. Justice Lodha, writing the judgment, said, “The ‘term coparcener’ refers to the equal inheritance right of a person in a property. The apex court passed the ruling while upholding the appeal filed by Ganduri Koteswaramma, daughter of late Chakiri Venkata Swamy, challenging the Andhra Pradesh High Court’s decision not to recognise equal property rights of women along with their male siblings.

Under the 2005 Act, married daughters will also benefit by the deletion of Section 23, since now they will have residence and partition rights in the parental dwelling house. In particular, women facing spousal violence will have somewhere to go. The only negative

aspect is that allowing partition could increase the vulnerability of elderly parents. A preferred alternative would have been to bar both sons and daughters from seeking partition during their parents' lifetimes, if the family had only one dwelling.

The Act also deletes Section 24 of the Hindu Succession Act of 1956, which barred certain widows, such as those of predeceased sons, from inheriting the deceased's property if they had remarried. Now they can so inherit.

The significant change making all daughters (including married ones) coparceners in joint family property is also of great importance for women, both economically and symbolically. Economically, it can enhance women's security, by giving them birthrights in property that cannot be willed away by men. In a male-biased society where wills often disinherit women, this is a substantial gain. Also, as noted, women can become Kartas of the property. Symbolically, all this signals that daughters and sons are equally important members of the parental family. It undermines the notion that after marriage the daughter belongs only to her husband's family. If her marriage breaks down, she can now return to her birth home by right, and not on the sufferance of relatives. This will enhance her self-confidence and social worth and give her greater bargaining power for herself and her children, in both parental and marital families.

The Property Rights of Muslim women

Indian Muslims broadly belong to two schools of thought in Islamic Law: the Sunnite and the Shiite. Under the Sunnite School which is the preponderant school in India, there are four sub categories; Hanafis, Shafis, Malikis and Hanbalis. The vast majority of Muslims in India, Pakistan, Afghanistan, and Turkey are Hanafis. The Shiites are divided into a large number of sub schools, the two most important of which, so far as India is concerned are the Ismailis and the Ithna Asharis, but they form a smaller section of the Indian Muslim population. The usual practice in this sub- continent is to use the terms 'Sunni' law or 'Shia' law. Strictly speaking, this is inexact; by the former is meant the Hanafi Law and by the latter, the Ithna Ashari school. Till 1937 Muslims in India were governed by customary law, which were highly unjust. After the Shariat Act of 1937 Muslims in India came to be governed in their personal matters, including property rights, by Muslim personal law as it "restored" personal law in preference to custom. However this did not mean either "reform" or "codification" of Muslim law and till date both these have been resisted by the patriarchal forced in the garb of religion. Broadly the Islamic scheme of inheritance discloses three

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features, which are markedly different from the Hindu law of inheritance:

- i. The Koran gives specific shares to certain individuals;
- ii. The residue goes to the agnatic heirs and failing them to uterine heirs; and
- iii. Bequests are limited to one-third of the estate, i.e., maximum one-third share in the property can be willed away by the owner.

The main principles of Islamic inheritance law which mark an advance vis-à-vis the pre-Islamic law of inheritance, which have significant bearing on the property rights of women, are:

- i. The husband or wife was made an heir,
- ii. The females and cognates were made competent to inherit,
- iii. The parents and ascendants were given the right to inherit even when there were male descendants, and
- iv. As a general rule, a female was given one half the share of a male. The newly created heirs were mostly females; but where a female is equal to the customary heir in proximity to the deceased, the Islamic law gives her half the share of a male. For example, if a daughter co-exists with the son, or a sister with a brother, the female gets one share and the male two shares.

The doctrine of survivorship followed in Hindu law is not known to Mohammedan law; the share of each Muslim heir is definite and known before actual partition. Rights of inheritance arise only on the death of a certain person. Hence the question of the devolution of inheritance rests entirely upon the exact point of time when the person through whom the heir claims dies, the order of deaths being the sole guide. The relinquishment of a contingent right of inheritance by a Muslim heir is generally void in Mohammedan law, but if it is supported by good consideration and forms part of a valid family settlement, it is perfectly valid. The rule of representation is not recognized, for example, if A dies leaving a son B and a predeceased son's son C, the rule is that the nearer excludes the more remote and, there being no representation, C is entirely excluded by B. There is however no difference between movable property and immovable property. Some of the features of the Hanafi School are being pointed out here to get a glimpse into the broad structure of the property rights of Muslim women in India. The Hanafi jurists divide heirs into seven categories; three principal and four subsidiaries. The 3 principal heirs are Koranic heirs, Agnatic heirs (through male

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lineage) and Uterine heirs. The 4 subsidiaries are the successor by contract, the acknowledged relative, the sole legatee and the state by escheat.

The following 12 heirs constitute Class I heirs (Koranic Heirs), Class II heirs (Agnatic heirs) & Class III heirs (Uterine heirs)

1. Class-I heirs (Koranic Heirs) are as:

- a. Heirs by Affinity - Husband and Wife,
- b. Blood Relations - Father, True Grandfather (howsoever high), Mother, True Grandmother (howsoever high), Daughter, Son's Daughter (howsoever low), Full sister, consanguine sister, uterine brother, and uterine sister.

Rules of Exclusion: The husband and wife are primary heirs and cannot be excluded by anyone, but they also don't exclude anyone either. Law fixes the share of the spouses; if they exist they reduce the residue which may be taken by the Agnatic or Uterine heirs, but they do not exclude either wholly or partly any heir. The father does not affect the share of any Koranic heir except the sisters (full, consanguine or uterine) all of whom he excludes.

The mother excludes the grandmother, and the nearer grandmother excludes the more remote. The mother's share is affected by the presence of children or two or more brothers or sisters. Her share is also greatly affected by the existence of the husband or wife and the father. In the case of a daughter she is the primary heir. She partially excludes lower son's daughters, but one daughter or son's daughter does not entirely exclude a lower son's daughter. As far as the sisters are concerned, one full sister does not exclude the consanguine sister, two full sisters however exclude the consanguine sister. The uterine brother or sister is not excluded by the full or consanguine brother or sister. Another rule that requires consideration is that, 'a person though excluded himself, may exclude others.' For example, in a case where the survivors are the mother, father, and two sisters: the two sisters are excluded by the father; and yet they reduce the mother's share to 1/6th.

2. Class II heir (Agnatic heir)

Group I (Males) - the agnate in his own right,

Group II (females) - the agnate in the right of another,

Group III – the agnate with another. The first group comprises all male agnates; it includes the son, the son's son, the father, the brother, the paternal uncle and his son and so forth. These in

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pre-Islamic law were the most important heirs; to a large extent they retain, in Hanafi law, their primacy, influence and power. The second group contains four specified female agnates, when they co-exist with male relatives of the same degree, namely, daughter (with son), and son's daughter brother and consanguine sister with consanguine brother. The third group comprises the case of the full sister and consanguine sister. For example if there are two daughters and two sisters, here the daughter is preferred as a descendant to the sister who is a collateral; thus the daughter would be placed in Class I and she would be allotted the Koranic share and the residue would be given to the sister as a member of Class II. Under this system the rule that is followed is first the descendants, then the ascendants and finally the collaterals. The agnatic heirs come into picture when there are no Koranic heirs or some residue is left after having dealt with the Koranic heirs.

3. Class III (Uterine heir)

This class is constituted mainly by the female agnates and cognates. Classification is Group I descendants, which are daughter's children and their descendants and children of son's daughters howsoever low and their descendants, Group II- ascendants, which are false grandfathers howsoever high and false grandmothers howsoever high, Group III- collaterals, which are descendants of parents and descendants of grandparents true as well as false. Members of this class succeed only in the absence of members of Class I and Class II. They also succeed if the only surviving heir of Class I is the husband or the widow of the deceased.

Property rights through marriage: The Supreme Court of India has laid down in **Kapore Chand v. Kadar Unnissa**¹⁶ that the *Mahr* (dower) ranks as a debt and the widow is entitled, along with the other creditors of her deceased husband, to have it satisfied out of his estate. Her right, however, is the right of an unsecured creditor; she is not entitled to a charge on the husband's property unless there is an agreement. The Supreme Court has laid down that the widow has no priority over other creditors, but that *Mahr* as debt has priority over the other heir's claims. This right is known as the widow's right of retention. Will: There is a provision against destitution of the family members in the Islamic law in that it is clearly provided that a Muslim cannot bequeath more than one third of his property. However if he registers his existing marriage under the provisions of the Special Marriage Act, 1954 he has all the powers of a testator under the Indian Succession Act, 1925.

The Property Rights of Christian Women

The laws of succession for Christians and Parsis are laid down in the Indian Succession Act, 1925. Sections 31 to 49 deal with Christian Succession.

The Indian Christian widow's right is not an exclusive right and gets curtailed as the other heirs step in. Only if the intestate has left none who are of kindred to him, the whole of his property would belong to his widow. Where the intestate has left a widow and any lineal descendants, one third of his property devolves to his widow and the remaining two thirds go to his lineal descendants. If he has left no lineal descendants but has left persons who are kindred to him, one half of his property devolves to his widow and the remaining half goes to those who are of kindred to him. Another anomaly is a peculiar feature that the widow of a pre-deceased son gets no share, but the children whether born or in the womb at the time of the death would be entitled to equal shares. Where there are no lineal descendants, after having deducted the widow's share, the remaining property devolves to the father of the intestate in the first instance. Only in case the father of the intestate is dead but mother and brothers and sisters are alive, they all would share equally. If the intestate's father has died, but his mother is living and there are no surviving brothers, sisters, nieces, or nephews, then, the entire property would belong to the mother.

A celebrated litigation and judgment around the Christian women's property rights is **Mary Roy v. State of Kerala & others**¹⁷ in which provisions of the Travancore Christian Succession Act, 1092 were challenged as they severely restricted the property rights of women belonging to the Indian Christian community in a part of south India formerly called Travancore. The said law laid down that for succession to the immovable property of the intestate is concerned, a widow or mother shall have only life interest terminable at death or on remarriage and that a daughter will be entitled to one-fourth the value of the share of the son or Rs 5000 whichever is less and even to this amount she will not be entitled on intestacy, if streedhan (woman's property given to her at the time of her marriage) was provided or promised to her by the intestate or in the lifetime of the intestate, either by his wife or husband or after the death of such wife or husband, by his or her heirs. These provisions were challenged as unconstitutional and void on account of discrimination and being violative of right to equality under Article 14 of the Constitution. The Writ Petition was allowed by the Supreme Court and the curtailment of the property rights of Christian women in former Travancore law was held to be invalid on the ground that the said state Act stood repealed by

the subsequent Indian Succession Act of 1925 which governs all Indian Christians. However, the provisions were not struck down as unconstitutional since the Court felt that it was unnecessary to go into the constitutionality issue of the provisions as Indian Succession Act.

Conclusion

Empowerment of any section of a society is a myth until they are conferred equality before law. The foundation of freedom, justice and fraternity is based on the recognition of the inherent dignity and of equal and inalienable rights to all the members of the society. The Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948, envisaged in Article 2 that “everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind.” Further, it also recognized that “the family is the natural and fundamental group unit of the society and is entitled to protection by society and the State.”

The Constitution of India lays that an Indian Woman will function as a citizen and as an individual partner in the task of nation building whatever her social position role or activities may be. While motherhood is an important function, the Constitution implies that this is not the ‘only role’ for women of India. There are so many other roles for the Indian Women as a partner in the nation building. Since the independence of our country the Constitution has proven itself to be the guardian of gender equality. It is the basic document providing a strong framework for women empowerment. Although the above mentioned few complexities remain in the Constitution the overall picture is favouring women empowerment. It is because the Courts with the help of the harmonious construction have widened the scope of “the Right to Life” under Article 21 to effectuate the Directive Principles. Thus, the existing provisions for women in our Constitution are sufficient but their effectiveness depends upon the awareness of these rights among them.

Empowerment of women is a gradual and complicated process. It involves changing the way of thinking of the whole society. Constitutional provisions and the legislation enacted by the Government of India to safeguard the interests of women have been bringing slow but effective change in social, economic and political status of women in India and thus laying a strong foundation of women empowerment.

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