

INTRODUCTION

In the 19th and 20th Century, one of the most remarkable and important social developments has been gender consciousness especially on the part of women. The persistent, consistent and often silent changes have led to a new thought popularly and loosely coined as gender jurisprudence. It has also led to restructuring of the society where the women seek to project themselves as more liberated, emancipated and vital strata of society equaled and at par with men. It will not be correct to say that gender jurisprudence looks only to women. It will be even more incorrect to state that women's struggle for gender justice is against men. The endeavour to achieve equality and dignity at par with other human beings is against the system prevailing in India. There may be bias against men as well. The idea is to achieve a balanced system. This work intends to investigate into the economic disability of the women, the root of which is embedded in the Indian family laws that tend to discriminate against women in their right of inheritance from their natal and matrimonial family. This discrimination in effect is reflected in the society as a whole qua Hindu, Muslim, Christian or Parsi.

Improvement in the status of women was a solemn pledge made by the founding fathers of the Constitution and accepted by the subsequent Governments for the last fifty-five years. In spite of various laws and programmes of development, aimed at enabling women to play their role in the National life in an effective manner, a balanced society vis-à-vis gender justice still remains a distant dream. Right to property is well recognized as an important instrument of freedom and development of human beings in general and

empowerment of women specifically. It is not merely a symbol of a dignified living but also significantly affects the life-style of the individual concerned as well as the society as a whole. It provides recognition to the women. When a woman is discriminated against or deprived of her right of inheritance or equal right thereto, it bespeaks of her subordinate status within her own natal or matrimonial family and among her kith and kin.

Economic dependence is one of the causes for gender discrimination. Women are deprived of economic empowerment from birth and from within their biological family. The study attempts to explore the nexus between the rights of women to inherit and their social status and suggests ways and means to overcome the hurdles by making an attempt to change, amend or modify the laws and legal policies. This work will also look into the impediments in bringing about uniformity in inheritance rights of women in general irrespective of their socio-religious background. The Centuries old discrimination meted out to the women has become so natural that it has been accepted as such and does no longer appear to be strange, unfair or unnatural. These discriminations have completely affected the proprietary rights of women. To explore and examine the issues and laws related thereto the Present research work has been divided into seven chapters. The chapters are based on categorical descriptions of the study.

Chapter I of the work introduces the subject. Chapter II traces the development of succession under the Hindu law. In early Hindu society, the whole Hindu Law of Inheritance is centered in a single word—*Sapindas*—who are a man's heirs. Prior to 1956, there used to be two major schools of Hindu Law viz. Mitakshara and Dayabhaga, which laid down different principles of succession. There was no uniformity in the rights of the Hindus following different schools to succeed to the property of a Hindu who died intestate, i.e., without leaving a will behind him. At that time, women had no legal status. The Hindu law of inheritance had deprived women of the right to property (except the right of their stridhan) and, as a result, their economic security was completely

dependent on the pleasure of the man— husband, father, brother, son. The movement to strengthen the position of women in society began from the second half of the nineteenth century. The earliest attempts may be traced back to 1865, with Act X of that year as the first step towards conferring economic security upon Indian women. Indian Succession Act 1865 had a provision declaring the right of person his or her property independent of his or her marital status. The consequence was that a person could not get any right in relation to the property owned by his or her spouse. The Married Women's Property Bill 1874 was a natural consequence of this Act. The Bill was passed into Act III of 1874, which was the first law in modern times extending the scope of *stridhan*. This Act, though a radical one, did not create stir in Hindu society because, until 1923, it applied only to Indian Christian women. In 1923, Act XIII of 1923 so as to bring Hindu women and others within its ambit amended the Married Women's Property Act of 1874. This Act was further amended in 1927, with the aim of safeguarding the interests of husbands. Apart from safeguarding the interest of wives and husbands by the Act of 1923 and 1927, respectively, another Act was passed in 1929 [the Hindu Law of Inheritance (Amendment) Act 1929]. By this Act neither daughters nor widow were provided with the right of Inheritance. The Act only emphasized that certain degrees of remoter male heirs should be post pond in favour of the nearer degrees of female heirs and nothing more. A few years later, the Hindu Women's Right to Property Act was passed in 1937, which eventually recognized the rights of Hindu widows. After that the Government appointed a small Hindu Law Committee known as Rau Committee. The Mitakshara is one of the two systems of law—another being the Dayabhaga. According to Mitakshara, the property of a Hindu was not his individual property but belonged to what was called a coparcenary, which consisted of father, son, grandson and great-grandson. On the death of any member of this coparcenary, the property passed on by survivorship to members who remained live and did not pass to the wife and children of the deceased. According to Dayabhaga, the

property of a Hindu was to be held by that person as personal property with an absolute right to dispose it of. The Committee advocated a Hindu Code—a blend of the finest elements of various schools of Hindu law. The Hindu Code relating to succession became the law of the land on 17 June 1956. The Law was named the Hindu Succession Act 1956. It provided a share to a female even in property owned by a Joint Hindu family of the Mitakshara type, and gave a solution to strong divergent views regarding a Hindu woman's position in order of succession without disrupting the Mitakshara coparcenary. At the same time the Act was also influenced by the Dayabhaga system by adopting a system, under which the property was to be held by the wife and children as personal property with an absolute right to dispose it of.

The Hindu Succession (Amendment) Bill 2004 was based on the 174th Law Commission Report and seeks to make two major amendments in the Hindu Succession Act, 1956. First, it is proposed to remove the gender discrimination in section 6 of the Parent Act. Secondly, to omit section 23 of the Parent Act, which disentitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein. The Bill was passed with minor amendments in the shape of the Hindu Succession (Amendment) Act 2005. It gives Hindu women equal rights in inheritance of property. Winding up a brief discussion on this landmark Bill, Law and Justice Minister H R Bhardwaj said it would remove gender bias giving equal rights to daughters as sons have. He said since rights over agricultural land were part of the State subject, the Centre soon write to State Governments in its endeavour to bring a consensus on the matter. The gradual developments of law on right to succession among the Hindus have been discussed in the present chapter.

Under Third chapter the rules relating to succession under the Islamic law is incorporated. The Muslim law of inheritance has always been admired for its completeness as well as the success with which it has achieved the ambitious aim

of providing not merely for the selection of a single individual or homogenous group of individuals, on whom the estate of the deceased should devolve by universal succession, but for adjusting the competitive claims of all the nearest relations. There are two schools of Muslim law, namely, the Sunni and the Shia. This division is based on political reasons. Majority of Muslims in India are Hanafis, one of the sect of the Sunnis. The Hanafis, for succession, allow the framework or principles of the pre-Islamic customs to stand; they develop or alter those rules in the specific manner mentioned in the Quran, and by the Prophet. The Hanafis interpret the principles of customary law and Islamic law in such a manner as to blend them together in a harmonious manner; the customary heirs are not deprived of their right of inheritance in the estate of the deceased, but only a portion out of the estate is taken out and given to the heirs enumerated in the Quran. This means that the basic structure of customary succession viz., the rule of agnatic preference, is retained—the agnates are still preferred over cognates. The Quranic succession takes the agnatic principles further by recognizing the right of female agnates. Thus, if there is a female agnate (as specified in the Quran) nearer to a male agnate (as specified under the Customary law), then, by virtue of nearness of her claim to take a share in the estate of the deceased, she is allowed to take a share. But thereby, the male agnate is not deprived of a share in the inheritance. The female heir takes her specified share, and male agnate takes the residue. Or where the female agnate and the male agnate are equally near to the deceased, then the male heir takes twice the share of the female heir. It is submitted that this principle applies not only to female agnates but also to male agnates (i.e., those heirs who are made heirs by the Quran), and it is wrong to generalize that the male heir as such always takes double share of a female heir. Thus, uterine brother and father as sharers do not take more than the uterine sister and mother respectively. It should also be noticed that most of the newly created heirs (i.e., those specified by the Quran) are the near blood relations of the deceased who were ignored in the customary

law. The Shias changed the pre-Islamic law by altogether abolishing the difference between the agnates and cognates as also males and females. The Shia system (unlike the Hanafi) shuffled all the heirs, cognates and agnates, males and females, and then classified them for Order of succession. According to Sunni, the daughter's son (being cognate) was relegated to the last class of heirs distant kindred. In Shias, the daughter's sons were entitled to a much higher position.

The laws relating to succession governing Parsi community have been examined under Chapter four. Prior to 1837 the law applicable to the Parsis and their property was the common law subject to certain exceptions as to marriage and bigamy. The Parsee Intestate Succession Act was enacted in the year 1865 and have a specific provision providing that the widow and the daughters of a Parsi dying intestate in the mofussil, entitled to maintenance only, for the first time got a share in the property. The Parsi Intestate Succession Act remained in force up to 1925 till the Indian Succession Act 1925 was enacted, the Parsi Intestate Succession Act was verbatim incorporated in chapter III of the said Act and was thoroughly repealed by Schedule IX of that Act. Sections 50 to 56 of the Indian Succession Act 1925 now govern the Parsi community in India, in the matters of succession and provide for the division of property of male and female intestate. In the female intestate's property, daughter and son get equal shares, whereas in the male intestate's property, son gets double the share of the daughter. The Parsi community has come forward for making amendments in the law so as to do away with the discrimination between sons and daughters by providing that both will share equally in the male intestate's property also.

Chapter five deals with the laws relating to Christian succession. Part V of the Indian Succession Act 1925 applies to Europeans, Indian Christians, Jews, Armenians and other persons professing Christian religion domiciled in India. With respect to the Indian Christians, the diversity in inheritance laws is greatly intensified by making domicile a criterion for determining the application of laws. Like, the Christians in the State of Kerala were governed by two different

Acts—those domiciled in Cochin were subject to the application of the Cochin Christian Succession Act 1921 while the Travancore Christians were governed by the Travancore Christian Succession Act 1916. As per sections 15 and 16 of the Indian Succession Act 1925 by marriage a woman acquires the domicile of her husband if she had not the same domicile before and a wife's domicile during marriage follows the domicile of her husband. In section 20 it is clearly stated that no person shall, by marriage acquire any interest in the property of the person whom he or she marries or becomes incapable of doing any act in respect of his or her own property which he or she could have done if unmarried. Under the Indian Succession Act 1925, there is no discrimination between sons and daughters with regard to the distribution of the intestate father's property. But most controversial and bias provision is there under the Travancore and Cochin Christian Succession Acts relating to the rights of a daughter to the property of her intestate parents.

India has a multiplicity of family laws. In addition to these various laws, customs also play some role in the area of marriage, divorce and other family matters. With a view to achieve uniformity in law, its secularization and making it equitable and non-discriminatory, the Constitution of India contains Article 44 of the Directive Principles of State Policy, which runs as: "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India." The Uniform Civil Code is an issue politically more sensitive and debatable than an instrument to remove the gender discrimination. The feasibility and the probable issues in the Code are subject matter of controversies not only between the various religious communities but also intra-communities. All such points have been discussed in the sixth chapter.

Finally, the seventh and last chapter contains the conclusions of the work. Some suggestions for curbing gender discrimination in the context of succession laws have been submitted in the concluding pages of the thesis.