

COPARCENARY RIGHTS OF HINDU WOMEN IN UTTAR PRADESH (1956-2011)

SUMMARY of THESIS

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SUMMARY

INTRODUCTION

In India, every religion has their laws governing laws related to marriage, divorce and succession etc. in case of Hindus, personal laws were governed by Shastric and customary laws which varied from region to region. This essentially meant a plethora of multiple laws of diversified nature governing Hindus. These laws were prevalent under different schools and further divided into sub-schools like Mitakshara and Dayabhaga. These two sub-schools were governing majority of India. They mainly differ in the law of inheritance and joint family system. The Mitakshara school identifies two means of devolution of the property namely, survivorship and succession. These rules have a different application on a different property like survivorship applies to joint family property and rule of succession applies to property held by the last owner. On the other hand, Dayabhaga recognizes the only succession as an only mode of devolution of property. The nature and implications of these laws rendered the property laws among Hindus very complex.

The Mitakshara school states that the property can be bifurcated into two kinds
i.e.

1. Joint family property
2. Separate property

A joint Hindu family consists of all persons lineally descended from a common ancestor which includes the wives and unmarried daughters in the family. Coparcenary is a much narrower body than joint family. It consists of only those

persons who acquire an interest in the ancestral property by birth. It includes sons, grandsons and great-grandsons.

The ancestral property is the property inherited by a Hindu from his father, father's father, father's father's father. It means an unobstructed heritage as regards his male issues. Any other property inherited is his separate property.

The point to be emphasized here is that no female member of the family can be a coparcener under the Mitakshara Law. A wife was entitled to maintenance out of her husband's property and to an extent has a right in his property but even she is not her husband's coparcener. A mother is not a coparcener with her son. A mother and a daughter cannot have a coparcenary in between them.

A reference to the concept of Stridhana must be given while analyzing the position of women in the family. The notion of Stridhana is as long-standing as the Rigveda. The references from the Rigveda suggest that the woman did hold separate property and had control over it. A Stridhana can be described as an absolute property of woman which she receives as gifts before, at the time of marriage or afterwards from various sources. The stridhana was recognized as her sole ownership and she may dispose of it off as she desires. Thus, the position of women in a Hindu family was minimal having no independent rights and unrecognized as a coparcenary.

In the case of women's estate or widow's estate, the female owner of the property does not enjoy the same powers as Stridhana. She had limited power of disposal and could not ordinarily alienate the corpus except for legal requirements, the benefit of the estate and in observing religious duties. The women's estate devolved back to the heir of the last full owner on the death of Hindu female owner. These heirs were known as 'reversioners' who could be both males or females.

So, a female family member of a joint Hindu family had no ownership right to property and was not vested with any control over it. Under a patriarchal system like Mitakshara coparcenary in the joint family system, women were not admitted into the coparcenary. Thus, she was excluded from inheritance as the doctrine of son's birthright was followed, associated to the principle of devolution by survivorship of the joint family property to a faction called coparceners comprising son, grandson and great-grandson.

Thus, it is detected that the condition of the female's right was indistinct. The widow's estate was in its uncertain position. The courts were not able to interpret the set law in the absence of any legislative enactment. Further, the female owner had only restricted rights over such property. Hindu women's plight was addressed in the pre-independence period with two legislations namely Hindu Law of Inheritance, 1929 and Hindu Women's Right to Property, 1937. These legislations conferred certain women with new rights of succession but all in all, failed to safeguard them against discrimination.

With the dawn of independence, the framers of the Indian constitution addressed the issue of discrimination against women in social and economic aspects of life. To impart justice, some constitutional mandates had been included in the Preamble to the Constitution of India, Fundamental Rights in Part III (Articles 14, 15, 16), Directive Principles of State Policy in Part IV (Articles 38, 39, 39A, 44) and Fundamental Duties in Part IVA [Article 51 A (e)]. In spite of all these steps, women continued to be deprived of their rights including the right to property. A much firmer step was taken in this regard as the "Hindu Succession Act, 1956". This Act faced severe resistance from orthodox Hindu sections. Nevertheless, it came into force on 17th June 1956. The Hindu Succession Act 1956 retained the Mitakshara coparcenary

resulting in the discrepancies regarding Hindu women's position. The anomalies in the Hindu Succession Act,1956 were addressed and the Hindu Succession (Amendment) Act,2005 was passed to ensure the social and economic equality to Hindu women. With this amendment, daughters were given an equal right in the coparcenary property as that of the son.

OBJECTIVES OF THE STUDY

1. To trace the general position of Hindu women in the Indian society from the Rigvedic era to post-independent India.
2. To examine the evolution of the personal laws governing property rights of Hindu women.
3. To understand the codification of Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act,2005.
4. To study the coparcenary rights of Hindu women in Uttar Pradesh.
5. To find the extent of awareness of the general public regarding the legislations on coparcenary rights.
6. To identify the factors inhibiting Hindu women to exercise their economic rights.
7. To suggest for amendments for eradicating barriers and bringing equality in the inheritance of property rights by Hindu women.

ASSUMPTIONS OF THE STUDY

1. Historically, women were denied of their coparcenary right.
2. The Laws granting women right to property are still not completely free from the inherent patriarchal mindset.

3. These legislative attempts do not always translate to the change in the grassroots reality.
4. Social setup is such that women, whether aware of their rights or not, refrain from asking their share in the ancestral property due to the fear of spoiling their relationship with natal home.
5. People prefer to give higher education and dowry to their daughters in place of share in the property.
6. There is a belief that property is the right of sons only as they would take care of the family while daughters would marry off to different family wherein their interests should lie.

SCOPE OF THE STUDY

The present investigation covers a span of 55 years, from 1956 to 2011, a period that was significant in the history of empowerment of women. The year 1956 is a milestone because The Hindu Succession Act, 1956 gave women equal inheritance rights with men. But the daughters were not given a birthright in the ancestral property under the Mitakshara coparcenary. The latter year of the study 2011 is also a landmark in the history as the census was done which may be utilized as a measurement of economic empowerment of women since The Hindu Succession (Amendment) Act, 2005 was passed to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and to give equal rights to daughters in Hindu Mitakshara coparcenary property as the sons have. The passing of this act was a great achievement of the Government which has given a new life to women.

The study attempts to locate the dynamics of the issues regarding women coparcenary rights in particular and property rights in general. It will help to develop a better understanding of the complex interplay of factors and rational working at the

level of individual, community and society violating the basic rights of women of inheritance. The findings could be utilized in designing better programs to enhance gender equity in society.

REVIEW OF LITERATURE

It is important to study some of the important works in this area in order to contextualize this study.

- 1. Flavia Agnes** in her work **Law and Gender Inequality** has masterly carried out historical as well as the legal perspective of gender injustices in Indian legal system. She critically studies the role of traditions and customs in ancient as well as the medieval period for safeguarding the interests of the fairer sex. She refuses to accept that Uniform Civil Code is the answer to all the problems the females are facing in Indian social and legal structure. She challenges that the so-called Uniform Civil law is a modified adaptation of Hindu laws as envisaged by the colonial masters. She finds some patriarchal elements working in new laws framed for the protection of women. She argues that many a time even the women have emerged as the champion of older patriarchal values. She laments that in the name of Hindu laws, the customs and traditions were sacrificed. According to her, the customs went a long way to protect the rights of women in a household. She compares how traditionally women were entitled to a large amount of movable and immovable stridhana, but the same right was conspicuously absent in newly framed Hindu laws. She mocks that claim of woman's maintenance by her divorced husband as this maintenance is again based on the concept of sexual purity of the woman. She interestingly studies how monogamy has hampered the prospects of many

women who are now not able to demand their legitimate share of maintenance from their husbands. She remarks that earlier, man was responsible for maintaining the second wife but now he is exempted from this as the second lady is at the difficulty to prove that she is legally married in light of new limited code of Hindu marriage law. She finds that traditionally women rights were depended on the inalienability of certain property rights in a family, but the modern laws have made the position of women more vulnerable. She aptly concludes that the legal system has to look for the dynamics in modern society which is rapidly evolving and changing. Women are therefore also undergoing many changes. She stresses that Indian laws must address these questions and only then it can redress gender injustice.

2. **Sudhir Chandra** in his work **Enslaved Daughters** has studied a famous case of Rukhmabhai of 1885 in which the later dared the society and law against becoming the property of her husband. He finds the wife Rukhmabhai against her husband Dadaji who had filed a suit for the restitution of conjugal rights against her wife. The author studied the response of contemporary liberal as well as conservative camp. He critically studies the law points involved in the case and how such arguments can force a lady to go against her will to submit her physical and mental faculties before her husband. Through Rukhmabhai, the author in a way highlights the evils of the child marriage and how such marriages rob opportunity of education to the girls. She is forced into matrimonial alliance even before her maturity and as a result, the wife remained in perpetual confinement throughout her life. Though outwardly the study seemed confined to a case yet the work has raised many questions. The author has studied the question of widowhood and divorce in Hindu marriage

laws. He finds the applications of English law being imposed on the Indian society which is guided by many customs and rituals. For example, he finds widow remarriage prevalent among many lower castes and even the mother of Rukhmabhai married Dr Sakharam after the death of her first husband. He explores how restitution of conjugal right was implied in the minds of Hindu lawmakers yet its execution with the help of force, like in English law, was never even dreamt by ancient sages. On the wider horizon, the author has attempted to highlight the injustices women face in the name of religion, culture and morality in a given society.

- 3. Lotika Sarkar** in her article, **Reform of Hindu Marriage and Succession Laws: Still the Unequal Sex** traces how women have contributed even in the pre-Independence era and fought shoulder to shoulder with men against oppressive colonial rule. But her greatest stress lay on the evolution of the Hindu laws in the pre-and post-independence era. She asserts that Hindu Laws were "confused" before Independence era. She finds the only rule governing the Hindus Laws in the pre-Independence era was the inequality bestowed upon Hindu woman. She correlates many oppressive and anti-woman provisions for Hindu woman in the matter of marriage, property, adoption and succession under Hindu laws. She goes on to trace the women movement which culminated in the Hindu Code Bill presented in 1955-56. However, she finds many shortcomings and loopholes in it and bemoans that it also failed to ensure equality of Hindu woman viz a viz her counterpart. She finds that the Hindu Bill is unable to completely remove the anomalies in the status of the woman. She attributes many reasons for such a scenario. She blames the socio-economic structure which is so decisively tilted against women. She

concludes that Gender could not be singled out and redefined without threatening the very integrity of the community. Thus, it is an analytical work and Lotika Sarkar has interestingly succeeded in interrelating socio-economic mindset of the Hindu community to the subversive role accorded to woman even after so many hailed reforms in Hindu Laws. She has successfully concluded that in real sense Hindu women still lag behind men and this would continue as long as the serious attempt is not made to change the Hindu social structure.

4. **Sharad Chandra Mishra (2013)**, in his book **“Property Rights of Hindu Women”** has dealt with changes brought in the women's property rights in Mitakshara joint on the position of women, loopholes in the amendment, its advantages and disadvantages and few suggestions to make it more effectual.
5. **Eleanor Newbiggin (2013)**, in the book **“The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community”** traced the origins of the Hindu Law reform project to changes in the political economy of late colonial rule. The work considers how questions regarding family structure, property rights and gender relations contributed to the development of representative politics, and how, in solving these questions, India's secular and state power structures were consequently drawn into a complex and unique relationship with Hindu law. Newbiggin demonstrates the significance of gender and economy to the history of twentieth-century democratic government, as it emerged in India and beyond.
6. **Reena Patel (2013)**, in her work **“Hindu women's property rights in rural India: Law, Labour and Culture in Action”** addressed the issue of Hindu peasant women's ability to effectuate the statutory rights to succession and

assert ownership of their share in family land. This work combines a critical evaluation of law with economic analyses into the allocation of resources in the family as a means of addressing gender relations and explaining gender inequalities.

7. **Debarati Hadder and K. Jaishankar,(2008)**, in their article **“Property Rights of Hindu Women: A Feminist review of succession laws of Ancient, Medieval and Modern India”**, critically examined the development of succession rights of Hindu women from the ancient to the modern period, from feminist perspective. It also analyses the present status of Hindu women as property owners.
8. **Sanchari Roy (2011)**, in her paper **“Empowering women: Inheritance rights, female education and dowry payments in India”**, examines the impact of gender progressive reforms to the inheritance law in India on women's outcomes. Despite stipulating that daughters would have equal shares as sons in the ancestral property have found that the reform failed to increase the actual likelihood of women inheriting property. Instead, parents appear to be "gifting" their share of land to their sons to circumvent the law. However, parents also appear to be compensating their daughters for such disinheritance by giving them alternative transfers in the form of either higher dowries or more education following the reform.
9. **Werner F. Menski’s Hindu Law Beyond Tradition and Modernity**

This book pours over the Hindu Law and how it has progressed from the past and has achieved and emerged as a post-modern event. It examines our lack of knowledge and understanding about the law which is composite, critically flexible and constantly growing and advancing that it has extended to

the stage of post-modernity. In his work, Werner has discussed different aspects of Hindu Law into three separate bits. The first bit deals with the Historical and conceptual background of Hindu Law within the classical, post-classical, colonial and post-colonial context. Second bit focuses on the factors of Hindu Law that are beyond tradition and modernity. The third bit is the conclusion and analysis and discussion the post-modernity in Hindu Law.

10. Janaki Nair's Women and Law in Colonial India a social history

The book provides a perfect picture of the condition of women and the gradual reaction of British regarding women's issues. It talks about the laws and their gradual changes in the colonial period regarding women. The introduction throws light on the condition of women in the post-independence period.

The introduction describes the forms of discrimination faced by Indian women and the way they are supported by the legal-judicial framework. The second chapter mentions the rise of orientalist and also the brahmin interpretations of native law. The Hindu code of law regarding women's conduct was the major issue to be tackled. Soon after the imperialists became the critique of Indian womanhood and started abolishing norms like sati. All these movements supplemented by Indian reformers helped women to speak for themselves. Sarda bill infused their campaign with new vigour. This book also deals with the women belonging to the working class since colonial times. 'Labor to legislation and the women workers' chapter is about working-class legislation in various sectors-mills, coal mining etc. then it proceeds to the politics and representation: Indian women and the vote. The struggle for the women's vote in India was embedded in the broader mobilization of women in

the movement for national liberation. Before Montague Chelmsford reforms, a committee of 1917 the women's Indian association had already been set up. It also talks about nationalist patriarchy and women's sexuality. There is mention of various ceremonies like talikittukalyanam during the pre-colonial and colonial era and the abolition of the devadasi system and suppression of immoral traffic act. There is a discussion regarding various personal laws passed such as the special marriage act 1872, the Indian divorce act 1869, property and succession acts etc. The chapter on signposts deals with development on women's since independence and raises various questions on many debates and cases.

The work done by Janaki Nair is a very comprehensively approached to take on the subject and not only describe the gradual evolution of women's movement but also compares it with post-colonial developments.

11. Gender and Politics in India, edited by Nivedita Menon

The book by Nivedita Menon is a collection of essays dealing with significant aspects of gender equality, rights and political approach. What is commendable about this volume is its efficiency in giving voice to a variety of views and disciplines on gender issues. The essay, 'On Women Equality and the Constitution: Through the Looking Glass of Feminism' by Ratna Kapoor and Brenda Cossman is a beautiful essay that points about how much the constitution has to say about equality for women. This chapter discusses as to what extent Indian constitutional law is informed by a model of equality and how substantial attempts have been made towards improvisation. It criticizes how formal equality differs from substantive equality and thus how and where we lag. The essay further reviews the judicial approaches to the equality rights guaranteed by the

Indian constitution. The judicial lanes to deal with the sex discrimination cases have also been discussed further and thus concluded that there is a huge gap between formal and substantive equality.

The essay, 'Rights, Bodies and the Law: Rethinking Feminist Politics and Justice' by Nivedita Menon criticises how far laws and rights can achieve social justice for women. She talks about the topics from female infanticide and foeticide to sexual violence and probes a question to the readers how far have laws and rights succeeded or fulfilled their purpose of enabling equality and Justice. The essay is a critical viewpoint of Menon which aims to differentiate between constitutional equality and social equality.

12. Property rights of Women, edited by Dr K. Uma Devi

This edited volume by Dr K. Uma Devi contains a collection of eleven articles on women's property rights which analyses the position of women in respect to their rights of property in a male-dominated society. The property rights of Indian women is the same as many other women personal rights, highly complex, unfair and unequal. These laws have come a long way ahead in the last century, Indian women continue to get an unequal share in property than men, both in forms of quality and quantity. In the book, the property rights of Christian women, Parsi women, Muslim women and Hindu women have been examined according to their respective personal laws. Also, many chapters deal with matrimonial property. Special study regarding the cultural practices of property rights of women in tribal India has also been taken up.

13. Rina Verma Williams' Postcolonial Politics and Personal Laws colonial legal legacies and the Indian state

This book investigates the postcolonial state in India from a longitudinal viewpoint. It focuses on the religious legal system of personal laws in India. These laws are a prime case of congruity between the colonial and postcolonial Indian state. What's more, this book explores how the postcolonial state in India has framed arrangements on the personal laws through the 1990s. It attempts to improve the comprehension of how the postcolonial state has applied power in the post-independence period and the degree to which that exercise of power has been affected by the influences of the colonial state. Freedom of India came as a legal statute and it is accurate for such reasons that the instance of India can give comprehensive and significant understanding into the structures and limitations of legal progression between the colonial and postcolonial periods. Moreover, the individual laws in India are vital for the investigation of this coherence. Further, the book reviews the advancement of the Indian government's policy on the personal laws to distinguish the degree to which colonial legal institutions endured after independence and moulded the policies of the postcolonial government.

14. 'Signposts' Gender issues in post-independence India edited by Rajeswari Sunder Rajan

It is a book consisting of several essays written by different scholars and edited by Rajeswari Sunder Rajan. The book focuses on issues such as gender, untouchability, how modernity has affected the gender as well as caste through the essays such as 'gender development and the women's movement', 'Gender caste & modernity', 'Cutting to size' etc. in the post-independence era. The emphasis that the book puts on 'Gender' can be seen from the introduction

part written by Rajeshwari, "issues of gender are central to post-colonial national culture & politics". The work also showcased the problems that women had to face and are still facing. The essay 'Gender cleansing' focuses on the schemes that the Tamil Nadu Government had introduced whose aim was to protect the women and stop the elimination of that particular gender. But these schemes were ineffective to some extent. The essay 'Gender Development and the Women's movement' show how had a role in building nationalism and development. Also, 'Virgin Mother Beloved Other' explains how it is always not necessary that nationalism has to be achieved through and desire. Other essays also deal with topics such as violence against women, the impact of Mahabharat in 'The story of Draupadi's disrobing', the legal rights that the women have and have not ('cutting to size'), the role of advertisements in the lives of middle class and how they control middle class' desire. ('Thinking about the new Indian middle class'), etc.

15. Srimati Basu's She Comes to Take Her Rights Indian women, property and propriety

This book examines the contemporary workings of property law in India through the lives and thoughts of the middle class and poor women. This is the study of how cultural practices and particularly notions of gender ideology guide the workings of the law. The writer studied property rights in several neighborhoods in New Delhi in the early 1990s and finds out a close reading of decisions by women that appear to be contrary to material interests and that reinforced patriarchal ideologies. Using interview and close observatory data drawn from various households in Delhi, this book explores the difficulty of women's decisions about the family property. Although

legally men and women are now supposed to inherit equally in India, what the writer found was that the majority of the time, only sons would inherit from their parents. The daughters would forego their rights to any property. When studied deeper, it was found that because daughters were considered to be part of their husband's family and thought to inherit through his family, they were expected to let their brothers have all the property from their natal family. Even women who were single or widowed were expected to give up their natal legacy because they could marry again. Women who tried to claim what was legally theirs rarely won court cases and even the attempt cut them off their natal family. An examination of recent legal cases also reveals that the formal legal dominion can be hospitable to women's right-based claims but judgments are still coded in terms of customary provisions despite legal criteria to the contrary.

16. The book “**The Position of Women in Hindu Civilization**” by **A.S. Altekar** deals with the topic of the position that has been granted to women by the Hindu civilization since its inception, and how it has changed and evolved with time, and also the causal factors of these changes. With the nature of the topic being of sentimental and religious sensitivity, it is easy for authors writing about it to get at least a little swayed by their own opinions and bias. But Altekar does a remarkably good job of remaining objective while examining and presenting facts.

The book surveys and evaluates the position of Hindu women in the last 4000 years. It indicates subtly why some of the backward practices and problems of the past still prevail, and what can be done to solve them. Both, the limitations as well as the excellence of the Hindu society have been

highlighted, without undue emphasis on either, which makes it a very informative read, enabling the reader to form his or her view on the matter. One important aspect of this book is its ability to comprehensively survey the state granted to women by the Hindu society, throughout the thousands of years of the Hindu civilization.

Beginning with the description of the status of Hindu women during the prehistoric times, it covers the entire span of the Hindu civilization, until modern times. In a very systematic and structured manner, the book begins by recounting the problems confronting women and their childhood education in the initial chapters, moving on to deal with problems related to marriage and married life, the position of widows in the society, the role of women in

Hindu public life and religion, their property rights, etc., in the following chapters. The final chapters deal with the approach of the Hindu society towards women in various situations, and how it has changed over time.

Owing to its unprejudiced narration, the book gives the reader ample opportunity to explore his or her thoughts on the facts and form his or her perspective. The information presented is real, accurate and comprehensive, and can be trusted since the author uses material from religious texts such as the Jatakas, the Milindapanha, the Vinay Pitaka, and the Therigatha, and the content is well-researched, giving information supported by evidence and reference.

Unlike other books related to this topic, which deal with the position of Hindu women at one point in time in the history of the Hindu civilization, this

book provides one with a comprehensive view of the whole matter, thus cementing its status as an indispensable read to all those interested to learn more about it.

SOURCES AND METHODOLOGY

In this study, a variety of sources both primary and secondary have been used. Primary data were collected from contemporary administrative records, proceedings, reports and records of departments of census etc. Along with other official and non-official records, Gazetteers published by the state of Uttar Pradesh which gives information related to this study also taken into consideration. During the study in fieldwork few personal interviews were conducted to collect first-hand information to have an in-depth analysis of the topic. Thus, primary sources were mainly collected from state archives of Uttar Pradesh, National Archives etc.

Secondary sources such as books, journal and newspaper reports and articles published in this regard were used in our study that consists of published books, articles, journals and unpublished works. These works helped us in formulating the conceptual and theoretical framework that is employed in the process of our study.

ORGANIZATION OF THE STUDY

The present study has been divided into six chapters. Each chapter deals with an aspect on the issue and provides an insight for the better understanding.

Chapter 1. Introduction

The first chapter of the study deals with the general introduction to the topic which explains the inherent discrimination towards women in Hindu personal laws

and how the non-inclusion of women as a coparcener played a role in the subservience of women historically. The chapter includes the review of the existing literature relevant to the issue along with this also explains the universe of the study, objectives, sources and methodology and organization of the study.

Chapter 2. Hindu Women through the Ages

This chapter throws light on the status of Hindu women in society through various periods in the history of Indian civilization. The period taken into the study is further divided into the Rigvedic age, the age of the later Samhitas, Brahmanas and Upanishads, the age of sutras, epics and early smritis, the age of later smritis, commentators and digest writers, the era of colonial rule, and post-independent India. The status of women as a daughter, wife, widow and in general has been studied.

Chapter 3. Evolution of Proprietary Rights

The third chapter traces the evolution of rights regarding succession rights since the ancient period to the colonial era. It introduces with the Hindu philosophy of law under which the personal laws governing proprietary rights come. By examining the proprietary rights prescribed in Ancient smritis it then proceed to look the daughter's right as a coparcener.

Chapter 4. Hindu Succession Act, 1956 and Amendment Act (2005)

The fourth chapter analyses the women's coparcenary rights under Hindu Succession Act, 1956 by studying the sections dealing with it and also contains the implications of the new amendment made in the 'Hindu Succession (Amendment) Act' passed in September 2005.

Chapter 5. Translation of Women's Coparcenary Rights

In the fifth chapter deals with the empirical study conducted regarding the women's property rights which through a questionnaire method and observation method tries to analyze the level of awareness of the respondents regarding the socio-legal scenario and other issues on the rights of women.

Chapter 6. Conclusion

The sixth chapter concludes the study by stating the findings and stating some suggestions and altered approaches to adopt so that the constitutional mandate of equality of status and opportunity would be transformed into reality.