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Phone: +91-8351033361,

Email: lawjournal@lawaudience.com, info@lawaudience.com,

Website: www.lawaudience.com,

Contact Timings: 10:00 AM to 9:00 PM.

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FEMALE AS A KARTA

AUTHORED BY: MR. SANKET VASHISTHA, NATIONAL LAW UNIVERSITY
ODISHA.

“Her father protects her in childhood, her husband protects her in youth and her sons protect her in old age; a woman is never fit for independence.”--Manu¹

I. ABSTRACT:

Rights of the Hindu women to legally inherit property has been restricted from the earlier times in the Indian Society. Females were not always absolutely excluded from inheriting immovable or movable ancestral property but they were not given share equal to their male counterparts. This position has gone into many changes from the earlier to the current times. But the traces of the evidence from the earlier time can still be found in the ongoing time. Under patriarchal Hindu society, women are provided with stridhan² (literally women's property or fortune). This concept of stridhan started spreading its meaning both in literal and legal sense with the advancement of time. The main hindrance in accomplishing gender equities in case of succession amongst the Hindus remains the difference in the two schools of law which govern the diverse parts of the nation. The ancient Hindu religious text mentions that women can own property, but shuns the responsibility of women. This paper inspects the development of succession rights of Hindu women from the old to the modern era and evaluates the present status of Hindu women as property owners and changes in the position of women that have been brought up by the different legislations such as Hindu Succession (Amendment) Act (2005)³. This paper also discusses the status of women and the relevant position regarding being her Karta of Joint Hindu Family.

II. INTRODUCTION:

The Karta of Hindu Joint Family in the Hindu Law is the senior most individual from the family qualified to look for family issues and matters in his absence the following oldest male part after him is qualified for being the Karta. But, there arise situations, that if no male

¹Manu IX.3: Manusmriti: The Laws of Manu.

²Stridhan (stri, meaning women, and dhan, meaning fortune or property in Sanskrit) literally means women's property. The term was first used in the Manusmriti. This term denotes the property proportion that can be owned by a female. The language of the Dowry Prohibition Act (1961), India Code Act No. 28 of 1961, gives enough scope to convert stridhan into dowry in camouflaged ways.

³India Code Act 2005.

individual is left in the family or in the event that every single male part are minor, who turns into the Karta? Can a female individual from Hindu Joint Family turn into a Karta? This circumstance influences us to depend on different legal professions which have managed this legal question. Presently, the Hindu Succession Amendment Act, 2005 can be seen as the panacea to resolve the problems related to the gender inequality prevalent in the families and to enhance the status of women in the society. Prior women were excluded as coparcenary part and as indicated by Hindu sages just a male part can turn into a Karta however now in view of the changed position of daughters as coparceners the circumstance is supportive of the probability of females being the Karta of Joint Hindu Family.

III. THE ANCIENT PERIOD:

As per ancient Hindu traditions, Lord Brahma formulated the earliest writings of the Hindu religion as four Vedas (the Rig Veda, Atharva-Veda, Sama-Veda, and Yajur-Veda). Old Hindu sages included different Smritis and Srutis (separately, covered and uncovered writings) to the Vedic writing⁴, many managing unequivocally with issues of property and women's rights in regards to it⁵. The Mitakshara and the Dayabhaga were the most conspicuous schools, every one of them is in light of a different understanding of Yajnavalkya Smriti, which was composed by sage Yajnavalkya and is one of the three primary Smritis of ancient India and the second most essential wellspring of Hindu code after Manusmriti. The Dayabhaga School contrasts essentially from the Mitakshara School on the subject of women's remaining as a proprietor of the property. In spite of the fact that the old schools varied about the attributes of stridhan while examining property acquired by a female, all schools of Hindu law collectively concurred that the share obtained by partition is not Stridhan but women's estate⁶. The Dharmashastras Sanskrit writings relating to Hindu religious and legal Obligation says that the spouse of a missing chief, or the widow of a dead director, can estrange or exchange family property having a place with various minors who can't go into legally binding contracts in their very own people, particularly in circumstances that call for keeping dependents and fulfilling the different requirements of the family⁷. The

⁴Smriti refers to a specific body as mentioned under the scriptures of Hindu religion. While dealing with the authority of smriti it is secondary to shruti.

⁵Sruti often denoted as what is heard under the Hindu sacred texts. They do not belong to the particular period but covers the whole span under the entire Hindu history from upanishads to modern times.

⁶Devi Prasad v. Mahadeo, 39 LA. 121 (1912).

⁷Narendra Subramaniam, Family Law and Cultural Pluralism, in Encyclopedia of India 55-58 (Stanley Wolpert ed., Charles Scribners Sons: Thomson Gale 2006).

idea of Women's state picked up acknowledgement in the Hindu Society due to socio-cultural reasons. Prior ladies can be made proprietor of the property on the satisfaction of two conditions i.e, she couldn't normally estrange the corpus and second is that property which was received by the lady would be regressed upon the following beneficiary of the last full proprietor.

IV. HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937:

Hindu customary laws and rules continued to be practiced well after the British left the country. The laws of inheritance thus continued to be governed by the Mitakshara and Dayabhaga school of laws till the beginning of the twentieth century. Under this act, women are made sharers without being a claimant. Under this act, certain conditions were defined in which women can become a sharer.

This act recognizes different categories of widows:

a) WIDOWED MOTHER:

She cannot herself compel the partition as long as her sons (now daughter also) remain United. However, if partition takes place between sons, then she is entitled to equal share to that of the son in the coparcenary property.

b) WIFE:

Wife by herself cannot claim partition but when partition takes place between her husband and sons, then she is entitled to a share equal to that of her sons and she can separately enjoy that share without her husband.

c) WIDOWED DAUGHTER-IN-LAW:

She would be entitled to the same share as her children would get & if no children then share of her husband.

d) WIDOWED GRANDMOTHER:

A paternal grandmother cannot by herself demand partition but when partition takes place between her son's son and daughter's children, her own children being dead, her share would be equivalent to the share of her son's son.

In the above-mentioned categories, the wife is also mentioned because the act also talks about the share of the wife on the coparcenary property. Much was made of the Hindu Women's Right to Property Act as an instrument for enhancing the treatment of Hindu women, particularly for those women who lost their husbands after just a few years of marriage. Though the 1937 Act set up constrained rights for Hindu women in their intestate spouse's property, its greatest blemish was that it would never ensure any rights to women successors when the deceased had discarded his property by will. Neither did the Act specify anything about the shares of women in the agricultural property. The restricted interest of women proceeded in the landed property even after the autonomy in 1947. The Hindu Code Bill was in this manner the initial move toward annulling restricted home for women and changing over it into a full bequest.

V. THE HINDU SUCCESSION ACT (1956):

This legislation gave a blow to all the ancient practice of preventing women to inherit property from male heirs. This was the uniform law, which covers all the Hindus in free India. This legislation is based on the Hindu code bill. Section 14 of this act clearly states that any property acquired by the Hindu women after 17th June 1956 will be her absolute property. As per the Act, "property" incorporates both movable and undaunted property that she gets a gift, or through upkeep or legacy, or that she gains by her very own expertise or by buying, prescription, partition and so forth⁸. Therefore, Section 14 has had a retrospective effect or a backward look⁹. It changes over a current women's domain into stridhan or supreme bequest just when two conditions are satisfied: 1) responsibility for the property must vest in her and it is not constrained proprietorship; and 2) she should be in control of the home when the Act came into power¹⁰. The Act additionally keeps silence in instances of a women's spouse perished property. Aside from the privilege of support, the property cannot turn into her absolute property¹¹.

VI. PROBLEMS PERSISTING EVEN AFTER THIS ACT:

There are clauses in this legislation, which continued the discrimination between males and females. Section 15 states that daughter-in-law can only inherit when she is a widow. She is

⁸Hindu Succession Act section 14(1)(1956).

⁹Diwan, Supra n. 13 at 354.

¹⁰Rajuram v. Deenadayal, 1970 S.C.R 1019 (1970).

¹¹SurajMal v. Babulal, 1985 Del. 95 (1985).

not allowed to inherit the share when her husband is alive¹². Hindu law gives the special position to the dwelling house, which as per the smritikaras should not be partitioned. In the case of a dwelling house, only the male heirs were considered as successors and not the female heirs. Section 23 of the act clearly states that female can only claim partition of the dwelling house when male members decide to share their respective shares. This legislation under section 23 differentiates between married, unmarried and widowed daughters' ability to claim the right of residence. Married daughters do not have either rights to claim partition or right of residence. These kinds of restrictions are being imposed on the females only and not on their male counterparts. Thus, Hindu Succession Act (1956) can be seen as a legislation under which only the concept of stridhan is cleared but the act does not talk about the issue of partition and right of residence of married daughters in the dwelling house as well as a share of partition. This issue made the old age practice of discrimination is more exposed.

VII. THE HINDU SUCCESSION (AMENDMENT) ACT 2005:

This legislation brought the most effective changes in the position of women in respect of succession of landed property. The effect of this legislation is two-fold. In the coparcenary property now, women can be an active member and can enjoy the right of the partition of an ancestral dwelling house. She can be Karta of the Joint Hindu Family property.

Now women can have the right to enjoy property fully, does not matter whether the inheritance is done from her parents or her in-laws. The very old tradition of managing the property was totally changed which was earlier only be done by the male coparceners of the property. Now females have been given the right to manage the property. Another major change, which is brought by the amendment act of 2005, is that daughters are made coparceners in the property. Before this amendment, daughters were not given equal rights as that of a son but after this act, right and liabilities of daughters are made equal to that of the son. Further, this act also ends the rule of survivorship and pious obligation on son to discharge the debt taken by his father.

VIII. WOMEN AS A KARTA (CURRENT POSITION):

Before understanding the idea of Karta, the idea of Joint Hindu Family should be comprehended fully. A Joint Hindu Family is a body, which comprises a group of individuals joined by the tie of sapindaship emerging by birth, marriage or adoption. Hindu Undivided

¹²Kailash v. Kishan, Pat 154.

Family is the unified and unpartitioned group of direct descendants of a typical progenitor including their spouses (assuming any) and unmarried daughters (assuming any) and excluding married daughters.

a) KARTA:

The Karta of a Hindu joint Family in Hindu Law is the senior most member of the family. He has a unique position. Karta is not the ultimate owner of Joint Hindu Family Property. He just acts as the leader of the family. The decision of the family has to be taken unanimously with the consent of all the family members of the Joint Hindu Family. Karta has the duty to maintain the family. In many cases, Indian courts compare the position of Karta with the manager, trustee, principal, master etc. it is a unique position, which cannot be put into straightjacket formulae. His relationship with other members is a relationship of trust and confidence. Earlier women were not included as coparceners and according to Hindu saints, only a coparcener can be a Karta. But now a woman can be a coparcener in the ancestral property. The position regarding women has changed because earlier laws were framed to keep in mind the benefit of male members and female were treated as subservient, and dependent on male support. This position has been abolished almost due to a change in the position of a daughter as a coparcener. Therefore, the situation is in the favor of the women. Now we will understand the position of women as Karta with the help of the judicial pronouncements.

b) JUDICIAL PRONOUNCEMENTS:

➤ *Pandurang v. Pandurang*¹³:

- This was the case of 1947 when women were not given the status of coparceners. In this case, there was a joint Hindu Family and in that there was no senior male member and earlier there was the position that only the eldest male coparcener of the family can be a Karta.
- Being the earliest case to talk about the issue whether women can be Karta of Joint Hindu Family or not. In this case, the senior most member of the Joint Hindu family was a female she had a minor son. Court wanted to appoint the administrator until the son reaches the majority.

¹³ (1947) Nagpur HC.

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- The mother, in this case, pleaded that why to appoint a third party when she is qualified enough to look after the property and is acquainted with the property.
- The court, in this case, accepted the contention of women and granted her the right to act as the manager of the property until her son attains majority. This judgment was not appreciated by the members of the legal community.

➤ **Rakhmabai kachu v. Sitabai kachu (1951)¹⁴:**

- The question, in this case, was related to the appointment of the widow as the guardian of the property. In this case, the widowed mother resisted the appointment of her stepson as the Karta of the Joint Hindu Family property.
- In this case, the widow pleaded that she was the one managing the estate and her authority should not be undermined by such an appointment.
- The court, in this case, stated that proper course for managing the Joint Hindu family property is to appoint the guardian for the property so that he/she can take care of the property and can manage the affairs related to the property.
- The court, in this case, held that the widow cannot be a manager of a joint Hindu Family property and the case of Seethabai was affirmed which talks about women cannot be appointed as manager of the Joint Hindu Family property.

➤ **Commissioner of Income Tax v. Seth Govindram Sugar Mills (1966) SC¹⁵:**

- There was a Joint Hindu family property. The Karta who was the father having four sons and a wife died. It was contended by the widow of late Govind ram in the court of law that she should be made Karta of the Joint Hindu Family Property.
- The reason given by the widowed women was that since her sons were not in the amicable terms amongst each other and kept on fighting over the property and it is now the issue of the daily basis. So to clear these things she shall be appointed as a Karta of the same property.

¹⁴ A.I.R. 1952 Bom 160, (1952) 54 BOMLR 55: ILR 1952 Bom 455 (India).

¹⁵ 1966 A.I.R. 24, 1965 S.C.R. (3) 488 (India).

- The Supreme Court by rejecting the arguments made by the widow of late Govindram stated that only coparcener can be a Karta and mother is not a coparcener. She cannot be appointed as Karta. Further talking about the issue the court said that it is not about the gender the fact is clear that affinity only gives membership in the family and not coparcenary rights.

➤ **Mrs. Sujata Sharma v. Shri Manu Gupta & Ors (Delhi High court, 2015)¹⁶:**

- This case came in the light of the 2005 amendment in the Hindu Succession Act. In this case the dispute was regarding the property in the GTB Nagar Delhi. The property was registered on the name of Dr. Gupta and Sons.
- Dr. Gupta had five sons. He died in 1971. The eldest of them was Krishan Mohan Gupta having two daughters named as Sujata Sharma and Radhika Seth. The eldest sibling was Sujata Sharma while eldest male coparcener was Manu.
- The dispute between them arose as Manu claimed that he should be Karta of the family property because he is the eldest male coparcener of the family while Sujata claimed that section 6 after the amendment gives equal rights to the females as sons which also includes managerial rights as well.
- Section 6 of the Hindu succession act was brought into conflict in this case. Section 6 itself is silent about women being a Karta. Even parliament was not sure that is the reason this was not specifically mentioned.
- Going by the arguments of Sujata Sharma the Delhi high court, in this case, held that daughter too can be a Karta of a Joint Hindu Family property. Marriage would not be an impediment. The mere fact of marriage cannot rescind a daughter's blood relationship.

IX. CONCLUSION:

The quote as mentioned at the beginning of the project work correctly represents today's scenario and the tone used in the paper bends with the persisting problem. This is because females were not given equal position in society from the beginning the daughters were considered a liability. From the Historical aspect, women have been treated with inequality and this is the reason that many people fought to make their status equal to men. "In the theatre of life, it seems, man has put the autograph and there is no space for a woman even to

¹⁶ [CS (OS) 2011/2006].

put her signature. The society has to undergo a perceptual shift from being the propagator of hegemonic patriarchal notions of demanding more exacting standards from women to be the cultivator of equality where the woman is in no way considered frailer, lesser or inferior to man. Any rule based on discrimination or segregation of women pertaining to biological characteristics is not only unfounded, indefensible and implausible but can also never pass the muster of constitutionality¹⁷. Religious practices are some of the time seen as propagating male-centric society along these lines invalidating the fundamental precepts of confidence, gender equity, and rights. The attitude of society too revolve around patriarchal mindset and thereby enhancing the derogatory status of female in society. "The prohibition of little girls from taking part in coparcenary property proprietorship just by reason of their sex is unjust" The Commission felt that further change of the Mitakshara Law of Coparcenary is expected to give a parallel dispersion of property both to people. The law commission made a progressive stride by suggesting changes in the old progression laws of Mitakshara and Dayabhaga and in this manner revising the current Hindu Succession Act (1956) to give rise to share to Hindu women in their hereditary properties. This is by all accounts evidently uncalled for as women are substantiating themselves equivalent to any task. Since they can act as coparcenaries then they should likewise be given the power of Karta. The shastra is certain that without senior part a lesser part (in the event that he has achieved the time of legitimate fitness) may bring about obligations for the necessities of the family, and without a male part, a female part may do as such. The new amendment will be of no use if it is not properly implemented. The old texts of the Hindu religion say that women can claim property, and have the right to manage the property. Unexpectedly, Hindu ceremonies and practices of venerating the Shakti were never respected, all things considered. Women are viewed as a pariah. The antiquated law and codes can never direct the cutting edge women's situation for the sake of religion. So in the end, I would like to suggest that equal status and rights must be given to women which also includes right to be Karta for which a legislation has to end the old customary definition of Karta. And these changes must be done within the blanket of the constitution. So that status of women can be brought equal to men.

X. SUGGESTIONS:

The amendment act of 2005 gives the equal position to a daughter in respect of rights and liabilities to that of a son. A person can play different roles like a mother, daughter, and

¹⁷Indian Young Lawyers Association vs State of Kerela,2018 SC.

daughter-in-law. There exist a problem that a daughter can inherit from the share of her father and even after getting married from the property of her in-laws. This position is still unsettled and she is getting the benefit from both sides.

The amendment act of 2005 is silent about women to be made a Karta. Though it talks about equal rights of men and women and moreover the amendment tried to maintain 14, 15 & 21 of the Indian Constitution. The position of women is still unclear. The laws are made for the benefit of society and to regulate it in a better manner. Now women are equally participating in every sector with men. The time is changing so the legislature must clear the position of women as Karta.

Hindu Succession Act has been amended but women still are not perceived as natural inheritors of property. The reasons behind this include unawareness of their rights, illiteracy and financial resources. Lack of knowledge is still considered as the major factor when the matter of inheritance arises. These rights are also being provided by the state as well as the constitution.