
HAS MATRIARCHY INFLUENCED SUCCESSION LAWS IN INDIA?

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ABSTRACT

Succession laws in India have gone through various changes with time. Under classical law, only the male members of a Hindu Joint family were considered for seceding the joint family property. According to the Mitakshara law, a male by birth has an interest in the joint family property, but this was not the case with the female member as it was believed that female marry and goes away from the family. Later, with time and because of the influence of the matriarchy over family affairs, these succession laws were moulded accordingly. With the passing of legislation like the Hindu Succession Act 1956 and other prior legislation than this act, females were given the position of a coparcener, and hence it also gave them the succession rights.

Introduction

The following study is being conducted to understand how matriarchy has influenced succession laws in India. The study focuses on the time-to-time development of succession laws and the ways that matriarchy moulded the laws accordingly.

Since ancient time women has been subjected to lots of discrimination and were never treated equally to men. The rights vested to both men and women in society have always been unequal, where men enjoy more rights than women. The same was the case in the rights related to succession and inheritance. Under conventional laws such as Mitakshara, women did not have the succession rights as men. The only property that women possessed was the 'Streedhan' also, a female member cannot be a coparcenary. All these issues were dealt with in various legislation and were resolved. Matriarchy has a great role to play in making such legislation, and there is a need to study this influence of matriarchy in order to understand how this social custom has played a role in making laws for the nation

The study is being conducted by refereeing various journals, case laws, articles, and books. It has also taken into account the various legislation related to succession in India.

Understating "Matriarchy" in India

To begin with, we first need to understand the concept of matriarchy and its existence in Indian society. Matriarchy, as defined in the dictionary,¹ is "a system of social organization in which descent and inheritance are traced through the female line." It is a social system in which the female member of a family group has absolute authority. Matriarchy in India can be traced in some of the regions of Kerela and Meghalaya, where a few tribes, namely the Khasi and Garo tribes of Meghalaya and tribes in Kerela, are known to follow matriarchy. According to the law of inheritance, in the Khasi tribe, the house is inherited by the youngest daughter of the family, and she remains with her parents, and the husband is expected to leave his house and stay with his wife at her residence (mother-in-law's house). Similarly, in the Garo tribe, the family is headed by the mother, and similar to the Khasi, the youngest daughter inherits the property. If, within the immediate members of the family, there is no female child, the property is passed to the daughter of the mother's sister. In Kerela, the matriarchal system is abolished by the Joint

¹ Merriam Webster' (Merriam-Webster Dictionary) <<https://www.merriam-webster.com/dictionary/matriarchy>> (accessed 27th February 2023)

Family System (Abolition) Act of 1975. But there is a family that still continues to be governed by the matriarchal system or carries their mother's name.

Influence of matriarchy over succession laws

a) Earlier position of woman

Since ancient times India has been known to be a patriarchal society where women find it difficult to stand equal to men in matters of their rights and status. Women have been considered subordinate to men and have also been represented to be dependent on men. The Hindu has been guided by the smritis that did not give women exclusive rights to hold property. As mentioned earlier, this discrimination regarding the right to inherit or hold property has been faced by women since ancient times. As we can see in the old Mitakshara law, the son, grandson, and great-grandson have a right by birth in the joint family property, and these forms the coparcenary. At the same time, there is no concept of a female coparcener. It was only after the amendment in the succession law in the year 2005 that women were accepted as coparceners. It's very well known that women have been treated inferior to men. It was only after the independence that efforts to raise women's status in India got its momentum. Several international conventions have also played an important role in giving women of the nations a better status in society. For the first time, Hindu widows were vested with succession right under The Hindu Women's Right to Property Act, 1937, as a limited interest in the form of a Hindu Woman's Estate. Earlier, only the 'Stridhan'² was the widows' absolute property, and in regards to this, she had an exclusive and unlimited right of ownership, possession, and alienation. The first post-independent law that conferred property right to Hindu women was The Hindu Succession Act of 1956, and following its amendment, as mentioned earlier daughter of a coparcener could become a coparcener. All these were some ways by which there were efforts made to raise the status of women in the matter of inheritance of property.

b) Matriarchal influence

Every personal law has been influenced by various social customs, and similarly, matriarchy has influenced the succession laws in India to provide females the absolute right to inherit and hold property. Under the old Hindu law, such as the Mitakshara and Dayabhaga, women were

² Jharkhand State Legal Authority, Know your law on Streedhan, (2018)
<<https://ijtr.nic.in/family%20matters/11%20Pamphlet%20Streedhan.pdf>>

not granted any right to inherit the joint family property as it was thought that a female would marry and go away to some other house. Before major enactments, the property of Hindu women was classified under two categories first, the Streedhan, which was her absolute property over which she enjoyed full ownership, and second, the Hindu women's estate. If we trace back to the enactments prior to independence, the earliest enactment that vested women with inheritance rights was 'The Hindu Law of Inheritance Act of 1929'. This laid down the son's daughter, daughter's daughter, and sister as the female heirs. Another legislation that conferred women with ownership rights was The Hindu Women's Right to Property Act of 1937. According to this enactment, a widow woman could get the same share of the property as a son.

The condition of women in the matter of inheritance was very weak, and hence there was no strong legislation under which women could fight for their right to inherit property. It was the end of colonialism in India that ignited the women to fight for their rights, and this fight also included her right to hold and inherit property. Initially, in India, the Mitkashara law was followed, and in some, mostly the Bengal Dayabhaga was being followed, and due to this, there was a difference in the coparcenary system. All the Hindus were brought under the Mitaksahra coparcenary by the enactment of The Hindu Succession Act of 1956. This enactment was aimed at both sons and daughters in a Hindu joint family would have equal inheritance rights. This also did not change much, and daughters were discriminated against in matters of inheritance, and the main cause that promoted this business was that the son had a right by birth in the joint family property, where this was not the same for the daughters. The Hindu Succession Act of 1956 provided for a uniform system of inheritance and succession among Hindus. It abolished the Hindu women's estate, but it did not recognize the coparcenary right of women. However, under section 6 of this act, it provided for the devolution of interest in the coparcenary property to the surviving coparcenary, but if the deceased coparcener left behind a female member or any male claiming through a such female member, the interest of the deceased would transfer to such member by succession. Though the Hindu Succession conferred some limited property right in a matter of non-coparcenary property but did not target the traditional discrimination happening between male and female members.

In 2005 the then union government raised the matter that the principle under section 6 of the Hindu Succession Act has discriminated against female members on the ground of their gender and also is in contradiction to her fundamental right of equality vested to her by the constitution.

This has been done by excluding the daughter from being part of the coparcenary ownership, a later amendment was made, and daughters of a coparcenary were recognized to become a coparcener and to have this right for the time of birth, same as the son. Some states like Tamil Nadu, Kerala, Andhra Pradesh, Karnataka, and Maharashtra have made amendments in the state law prior to the 2005 amendment to provide daughters with equal rights of inheritance.

The amendment in 2005 was implemented on the 9th of September, and the question that was raised before the courts in various cases was "whether it would apply to daughters born before 09 September 2005. or if they are born before that, would it be limited to those whose father (coparcener) through whom they would be inheriting the property was also alive on that day?"

There were few courts that mentioned that a daughter would be allowed to take the property according to the new law only if the father (coparcener) would have been alive on or after the 9th of September 2005. In the landmark case of *Prakash vs. Phulavati*,³ the two-judge bench gave the decision that if the father (coparcener) passed away before 9th September 2005, his daughter would not have the right to coparcenary property. However, in another case, *Danamma vs. Amar*⁴ there was a contradictory verdict was passed that mentioned that the daughter would get the share in the property even if the father was not alive on 9th September 2005.

It was only after the judgment by a large three-judge bench headed by Justice Arun Mishra in the case of *Vineeta Sharma vs. Rakesh Sharma*⁵ it was made clear that the daughter would have the status of coparcenary by birth as it has as mentioned in the amendment in 2005. A daughter would have the same status as a son as soon as she is born.

It can be clearly seen that though it seems that matriarchy has been abolished or does not exist in most parts of the nation, it has continuously influenced the law with its urge to provide

³ *Prakash Vs Phulavati* [2015], CIVIL APPEAL NO.7217 OF 2013, Supreme Court of India <<https://main.sci.gov.in/judgment/judis/43087.pdf>>(accessed 1st March 2023)

⁴ *Danamma Vs Amar*, [2018], CIVIL APPEAL NO. 188-189 OF 2018, Supreme Court of India <https://main.sci.gov.in/supremecourt/2013/3186/3186_2013_Judgement_01-Feb-2018.pdf>(accessed 1st March 2023)

⁵ *Vineeta Sharma Vs Rakesh Sharma*, [2020], CIVIL APPEAL NO. DIARY NO.32601 OF 2018, Supreme Court of India <https://main.sci.gov.in/supremecourt/2018/32601/32601_2018_33_1501_23387_Judgement_11Aug-2020.pdf>(accessed 1st March 2023)

female members with equal rights as the male members of the family. With time matriarchy still continue to exist in the minds of the people and guide them on its principle

Conclusion

Females have been subjected to discrimination for a long time, and it is clearly evident that they have not been treated as equal to men. From ancient times women were not vested with equal rights as men, and the same could be seen in the matter of inheritance and succession rights of the property. Under the conventional law, the only absolute property that a woman holds is 'Streedhan.' It was considered that women would marry and go to another house, and it was the son who should inherit the joint family property. All this scenario has been changed to a large extent by the influence of matriarchy that seems to be abolished. We can see this through the development that has occurred in the succession laws in India, keeping in mind the female members of the family and the way they have been provided with authority in regard to the property and its inheritance.

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