Empowering Women Living with or Affected by HIV on Property Ownership and Legal Literacy

HINDU WOMEN'S RIGHT TO PROPERTY
Asha, who is 35 years old, has been living with her parents for the past three years after her husband’s death due to AIDS. She has two children. Soon after the death of her husband, her mother-in-law and two brothers-in-law together blamed her for bringing HIV/AIDS to their family; and chased Asha and her children away from their home.
Mala is a lawyer, who is working in District Legal Services Authority of Nagpur, came to visit Asha who is her childhood friend. Asha had recently lost her father and Mala went to offer her condolences. As Mala was a lawyer, Asha wanted to consult with her about the denial of share in her father-in-law's property. Asha told Mala, "After my husband's death, my mother-in-law, and two brother-in-laws ill-treated me and sent me along with my two children out of home. Subsequently my father-in-law expired. When I asked for a share in the father-in-law's property, they said that all the properties belong to them".

Mala : Did your father-in-law write a Will for his property?
Asha : What is a Will?

Mala : A Will is a document in which a person says how his property may be disposed off after his death. This document can either be written in legal stamp paper or in a white sheet and either be registered or not registered.
Asha : No, Mala, there is no Will.
Mala : Then, tell me about your father in-law's property in detail

Asha : You know Mala, my father-in-law was not a man of very large means. He was a school teacher. He had three small plots of land and this house. Two plots of land and this house are ancestral. He bought the third plot from his pension money.
Mala: There is a law called The Hindu Succession Act, 1956, which tells us what will happen to the property of a Hindu male or female after his or her death. This law was also recently changed in the year 2005 in which women have been given the same rights as men. You must understand some things that this law says:

A male or a female can Will away the property that is in his/her name i.e. both the ancestral properties and self-acquired properties. In that case, the property will be given to the persons mentioned in the Will.

If there is no Will, upon his or her death, the property will be divided amongst their Class I heirs such as:
- Sons
- Daughters
- Widow
- Mother
- Children of a pre-deceased son
- Children of a pre-deceased daughter
- Widowed daughter-in-law
- Children of a pre-deceased son's pre-deceased son. In case there is no such person, specified as a Class I heir, then property will be divided among Class II heirs.

Asha: I see! So my father-in-law's entire property will be divided into four equal shares i.e. mother-in-law, two brothers-in-law, and my husband. Is that right?

Mala: You are absolutely right. Furthermore, since your husband is no more, his share will be divided into three parts equally and shared among you and your two children.

Asha: Suppose my father-in-law had made a Will, would my children have got more than what we would be getting now?

Mala: Well, it all depends on what is written in the Will. In a Will, a person can give any person any of his property. Then, people who are not mentioned in the Will cannot ask for a share.
Asha : Can a woman also make a will?

Mala : Certainly! Every person, whether a man or a woman, has the right to will away his or her property.

Asha : If a woman does not write her will, what will happen to her property after her death?

Mala : If a Hindu woman dies without making a Will, her property (land and/or jewellery) will also be divided among her heirs according to the law. A Woman's Class I heirs are her sons, her daughters, her husband, and the children of a son or daughter who have died before her. If none of these relatives exist, her property will go to her husband's heirs.
Mala told Asha that if she comes to District Legal Services Authority (DLSA) office which is located in the District High Court, she or one of the lawyers will help her to get her husband's share that is due to her and her children free of cost. DLSA provides free legal services to all women irrespective of their income, caste, religion, and education.

While Asha was talking to Mala, Asha's neighbor Rani came to Asha's house for a courtesy visit. As Rani learned that the discussion was on issues related to property rights, she decided to clarify with Mala about the property issues that she was facing.
Rani : Do daughters have rights in their father's property?

Mala : Yes. Each son or daughter has an equal share in the father's property when father dies intestate (without a will).

Rani : But we are being told that daughters are not entitled to any share of their father's property. My brother says that because my father spent money on my marriage, so I am not entitled to get anything.

Mala : According to the old law, women were entitled only to maintenance, but now they have a right to a share in the property. It does not matter what money or gifts you were given at the time of your marriage. You are still entitled to get a share of your father's property just like your brothers.
Rani : Can we all do with our shares as we wish?

Mala : Your share is your absolute property. You can do with it as you wish. It was prior to 1956 that the female members were entitled only to enjoy the benefits of the property during their lifetimes. Now they have a full right over their property. They can sell it, gift it or will it away to whomsoever they wish.

Rani : One last thing I want to ask you is about my mother's and father's jewellery. My brother says all the jewellery belongs to the family and should be handed over to him. Is it true?

Mala : No. The jewellery and all presents that have been given to any woman member during her lifetime is called her Stridhan and belongs to her alone. She is the absolute owner of such Stridhan and can do as she wishes to do with it.
Asha and her neighbor Rani were very happy to learn from Mala about the rights they have over their father-in-law's and father's properties, respectively. They decided to get their share with the help of DLSA with Mala's support. Both of them felt empowered and thanked Mala.
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