



HINDU DAUGHTER'S RIGHT AS COPARCENER: A MILESTONE TOWARDS GENDER REFORM

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ABSTRACT Every human being has a right to be treated equally in every walk of life. However, since the advent of Hindu civilization, status of Hindu woman was very diverse, she wasn't treated as coparcener and she had no right in coparcenary property. The position of woman is considered inferior and she is made to feel this inferiority particularly in her proprietary right. Prior to the Hindu Succession Act (Amendment) Act, 2005, no Hindu female was conferred proprietary right in coparcenary property in her own way. She can take share only when male seek partition. But 2005 Amendment Act brought revolutionary changes with respect to Section 6 of the Act and changes whole idea of devolution of interest in coparcenary property by giving Hindu female (daughter) the same rights as male coparcener (son). Now daughter by birth has same right like son. Indeed, 2005 Amendment Act is gender reform legislation which try to make woman economic empower by conferring proprietary rights on her in her own way. Through this article, the author wants to analysis major reforms in Hindu Succession Act regarding status of women as coparcener.

KEYWORDS : Hindu Joint Family, Coparcenary, 2005 Amendment Act, Judicial Interpretation

INTRODUCTION:

The Indian Constitution envisages woman, as a citizen of India, will be treated equal to man in all aspects of life. However, in patriarchal society, she has always been treated as an inferior creature. This inferior status exists not only in home and society but also in matter of privileges and rights. The most she is made to feel this inequality and inferiority regarding her right to property. The patriarchal Hindu society disregards women's right to property and considers her inferior in social and economic aspects. **Manu, the first law giver** also stipulated; *"A women must be dependent upon her father in childhood, upon her husband in youth and upon her sons in old age. She should never be free"*.

In spite of all, efforts have been done to improve woman's position regarding her succession and inheritance rights with different legislation in pre and post independent India. *The Hindu Law of Inheritance Act, 1929, The Hindu Women's Right to Property Act, 1937* were landmark legislations which conferred some ownership rights on women. However, it was realized that these laws were incoherent and defective in many respects and gave rise to a number of anomalies and left untouched basic feature of discrimination against women.

Thus, with the independence, the Constitution of India desires to secure justice in form of social, economic and political and to secure equality of status and opportunity. Hence, to abide constitutional mandate and make women economic empower, the then government enacted **Hindu Succession Act in 1956**. The Act was the first law to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities in area of inheritance. However, women's position could not be improved as they still face discriminatory inheritance laws and there was no concept of inclusion of female as coparcener. Therefore, on the recommendation of 174th Report of the Law Commission of India on *"Property Rights of Women: Proposed Reforms under the Hindu Law"*, an amendment in 2005 has been done to the Hindu Succession Act, 1956 to improve women's position. The Amendment has done two major changes in the Act of 1956. Firstly, it removes gender discrimination in section 6 by giving equal rights to daughter. Second, it omits section 23 which disentitles 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. In fact, this amendment is proved as a milestone towards gender reforms. However, still there is long way to implement it in our patriarchal society.

Hindu Joint Family vis-à-vis Coparcenary:

Both the Hindu Joint Family (HJF) and coparcenary is fundamental feature of the Hindu community. The Hindu joint Family is a larger body defined as a unit consisting of a common ancestor and all his lineal male descendants together with their wives and unmarried daughters. It cannot be created by acts of any party except as by adoption or marriage. A Hindu Joint family is ordinarily joint not only in estate but in food and worship. On the other, coparcenary is a narrower body of the Hindu Joint Family. It originally consisted of

father and his three male lineal descendants i.e. father, son, grandson and great grandson. A son becomes a coparcener in the HJF by birth. According to Hindu succession Act, Coparcener is a person who acquires interest in the joint family property (coparcenary property) by birth.

Prior to 2005 Amendment, only lineal male descendants were considered as coparceners and daughters merely obtained status of members and not coparceners. But Amendment in 2005 removed gender discrimination and conferred on daughter the status of coparcener. It follows that the birth of a male or female in Hindu joint family makes him or her coparcener of the HJF.

Reformation of Property Rights of Hindu Women:

Women during the Vedic times were held in great regard and enjoyed various rights and privileges. They shared equal rights and obligations with her husband. However, the only discrimination they were subjected to was in respect of inheritance and succession in father's property. Under Hindu law, sons have an independent share in ancestral property. However, daughters' shares are based on share received by their fathers. Hence, father can effectively disinherit daughter by renouncing his share of the ancestral property. But son will continue to have a share in his own right. Additionally, married daughters, even those facing marital harassment, have no residential rights in ancestral home.

As women's right to property, inheritance are limited and frequently violated, it was realized that women's deprivation in property wasn't just and therefore in 19th century, *the Hindu Law of Inheritance Act, 1929* was enacted. It was the earliest legislation which brought Hindu females into scheme of inheritance. Three female heirs – son's daughter, daughter's daughter and sister were conferred the right of inheritance under the Act. Another landmark legislation was *the Hindu Women's Right to Property Act, 1937* which brought revolutionary changes and tried to ensure that in the Mitakshara coparcenary, widow of deceased would take same interest which her deceased husband had in the joint family property at the time of his death. She was made entitled to claim partition as a male owner. However, in all cases, she was as a limited owner. The widow though a member of a joint family and having right in coparcenary interest, was not a coparcener. A daughter had virtually no inheritance rights. Although these enactments conferred new rights of succession on specific women, they failed to protect women against discrimination.

Therefore, to overcome all these anomalies and bring Hindu women at par with men, **the Hindu Succession Act in 1956** came into existence. It brought important changes in law of succession and gave rights, which were earlier unknown, in relation to a women's property. However, daughters were denied status of coparceners as against sons. It clearly states that in case of joint family property, interest of a male Hindu, on his death, would devolve by survivorship upon surviving members of coparcenary and not by succession. However, if the deceased had left him surviving a female relative, interest of deceased

in coparcenary shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. In brief, if a joint family gets divided, each male coparcener takes his share and females get nothing. Only when one of the coparceners dies, a female gets a share of his share as an heir to the deceased. Thus, law by excluding daughters from participating in coparcenary ownership merely by reason of sex not only contributed to an inequality against them but has led to oppression and negation of their right to equality and appears to be a mockery of the fundamental rights guaranteed by the Constitution. Hence, this very fact necessitated a further change in regards to property rights of women, and which was done by the Hindu Succession (Amendment) Act, 2005.

Daughter as a Coparcener (s.6): Hindu Succession (Amendment) Act, 2005:

As above said, coparcenary is special feature of Hindu community. Being a coparcener, he (son) has some special rights in coparcenary property by birth. But, Hindu male chauvinism disregards these rights for daughter since the existence of Hindu law. This exclusion of a daughter from participating in coparcenary not only leads to gender disparity but also leads to oppression and negation of her fundamental right of equality. Besides, there is no social, legal, moral reason behind denial of daughter's right in coparcenary. Hence, to render social justice to daughter and to bring her in mainstream of society, various attempts were made. Several states like State of Andhra Pradesh in 1985, State of Tamil Nadu in 1989, State of Karnataka in 1994 and State of Maharashtra in 1994 had made necessary changes in the law by giving equal right to daughters in Hindu Mitakshara coparcenary property. As per the law of these States, in a joint Hindu family governed by Mitakshara law, daughter of a coparcener shall by birth become a coparcener in her own right in same manner as son. In order to remove discrimination, section 6 of the Hindu Succession Act, 1956, was also amended by the Government in 2005 giving equal rights to daughters in Hindu Mitakshara coparcenary property as sons have. It gives the following rights to daughters in a joint Hindu family.

- By birth she shall become a coparcener in her own right in same manner as son.
- Shall have the same rights in the coparcenary property as she should have had if she had been a son.
- Shall be subject to same liabilities in respect of said coparcenary property as that of a son, and any reference to a Hindu coparcener shall be deemed to include a reference to a daughter of a coparcener.

Thus, the newly amended section 6 has abolished all discriminations i.e. difference based on schools, forms of marriages and nature of Stridhan. Now, Hindu female became an absolute owner of property. She could inherit equally with a male counterpart and a widow was given importance regarding the succession of her husband's property as also to her father's property. The daughter of a coparcener in a joint Hindu family shall, by birth, become a coparcener in her own right in same manner as son, having same rights and liabilities.

Recent Judicial Interpretation of Sec.6:

A Division Bench of the Supreme Court in *Prakash v. Phulavati* [(2016) 2 SCC 36] held that section 6 is not retrospective in operation and it applies when both coparceners and his daughter were alive on the date of commencement of Amendment Act, i.e. 9th Sep. 2005. Further, *Danamma @ Suman Surpur & Anr. v. Amar & Ors.* [(2018) (1) Scale 657] the Court reiterate its earlier decision of *Prakash v. Phulavati* and held that rights under amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. But both these decisions didn't clear picture regarding daughter's right and still left the area of gender discrimination. Thus, the H'ble SC in *Vineeta Sharma v. Rakesh Sharma & Ors.*, decided on 11th Aug. 2020 clarifies position regarding certain issues arising out of 2005 amendments particularly in relation to conferring status of a coparcener on daughter and overruled its earlier decisions. The court stated:

- A daughter born before or after amendment or born before commencement of the Hindu Succession Act, 1956 is conferred status of coparcener.
- The rights of coparcenary can be claimed by daughter with effect from 9th Sep. 2005.
- It is not necessary that the father coparcener should be living on 9th Sep. 2005.
- Even if preliminary decree has been passed in partition suit, daughters are to be given share in coparcenary equal to that of a son

in pending proceedings for final decree or in an appeal.

- In view of the Explanation to Section 6(5), a plea of oral partition cannot be accepted as a statutorily recognized mode of partition.

CONCLUSION:

The above study shows that 2005 Amendment Act has achieved equal inheritance for all. Daughter of a coparcener in a Hindu joint family is now a coparcener by birth in her own right in same manner as a son; she has right of claim by survivorship and has same liabilities and disabilities as a son. However, these laws cannot be successful unless and until there is social awareness amongst women about their rights. Women themselves relinquish their rights and tend to suffer deprivation. The change which took about decades to bring daughters at par with sons in relation to their right in ancestral property cannot be lost sight of just because of ignorance of people. The Judiciary should also make efforts to implement law so as to achieve real motto behind amendment. Above all it's woman herself who has to be aware of and assert her rights.

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