



A Critical Study On The Rights Of Women In Coparcenary Property In India

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Abstract: Women are the backbone of any civilized society and without women partnership in a civilized society is not complete. In the old days, women were given the same rights as men. However, with the passage of times, some miscreants of society have snatched the rights of them. After the independence of India, attempts were made to remove the inequality and injustice in the society especially for women and fundamental rights inserted in the Constitution of India. Section 6 of the Hindu Succession Act done away only proprietary rights and not religious rights. After the 2005 Amendment Act, in the coparcenary property daughters have the same rights and liabilities as son has, by birth. This paper studies the rights of women in Coparcenary property. Secondary data used in this research paper. This paper mainly based on books, articles and Supreme Court's judgment etc.

[Ram, S. **A Critical Study On The Rights Of Women In Coparcenary Property In India.** *Academ Arena* 2021;13(2):60-62]. ISSN 1553-992X (print); ISSN 2158-771X (online). <http://www.sciencepub.net/academia>. 4. doi:[10.7537/marsaaj130221.04](https://doi.org/10.7537/marsaaj130221.04).

Keywords: Mitakshara school, survivorship, retroactive, unobstructed and obstructed heritage, coparcenary and separate property.

Introduction

Hindu Succession Act, 1956, (hereinafter HSA) applies upon all the persons other than Muslim, Christian, Parsi, Jew by religion. HAS applied only upon the Mitakshara School of law, which is based upon the patriarchal system. The law of Mitakshara school extends to the whole of India except Assam and West Bengal. Hindu Joint Family consists of all the members of the family, i.e. one common male ancestor, his wife, his lineal male descendants with their wives, unmarried or divorced daughters, widows and children of a male descendant. Whereas in Hindu Coparcenary consists of all the male members, after the 2005 Amendment Acts, daughter also, until the third generation from the male holder alive. Hence, Coparcenary consists of father, father's father, father's father's father. Therefore, the Hindu Joint Family is wider than Hindu Coparcenary, we can say that Hindu Coparcenary is part of the Hindu Joint Family. HSA enacted by the legislature for the empowerment of women and to do proprietary justice, which is guaranteed by The Constitution of India.

HSA gives legal recognition to the Coparcenary or ancestral property and separate property. The property inherited from father, father's father, or father's father's father is called coparcenary property, i.e. unobstructed heritage (when right is created by birth) or ancestral or joint family property, which is purchased by joint family's efforts.

When right is acquired not by birth but by there being no male issue is called obstructed heritage

whereas the property received other than father, father's father or father's father's father is called separate property, i.e. by gift, by will, self-acquired, testamentary or intestate succession. In Hindu Coparcenary property, a son has the same rights as a father have and son can claim partition, on the other hand, in separate property, a son has no rights in father's property and son cannot claim partition. Rights in Hindu Coparcenary property get by birth or by way of adoption only. Before 2005 Hindu Succession Amendment Act, daughters are not considered as coparcenary but after amendment, by substitution of sec-6, daughters also recognized as coparcenary.

Legal Position Of Women In Property Before 2005 Amendment

The Hindu Women's Right to Properties Act 1937 gave a deathblow to the doctrine of survivorship. Under this Act, the widow of a deceased coparcener of a Mitakshara undivided family will have the same interest, which her husband had while he was alive. It may be noted that the widow has the right to claim partition. (1)

Under the Hindu Women's Right to Properties Act, 1937 widow can claim maintenance from her father-in-law's ancestral property in which her husband had a share. She has the only possessory right, she could use only for herself maintenance and not otherwise. She has no absolute right in the

ancestral property; she has an only limited or restricted interest. She has only right to enjoy the possession of the property until her alive and she cannot alienate that property.

Section 14 of the Hindu Succession Act, 1956.

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. According to section 14 of The Hindu Succession Act, 1956, any property, which is possessed by a Hindu female, which is acquired either before or after 17 June 1956, is her absolute property.

Under the Hindu Women's Right to Properties Act, 1937, Hindu female has an only limited interest, but section 14 of The Hindu Succession Act, 1956, gives the absolute interest in the property. Therefore, The Hindu Women's Right to Properties Act, 1937, women has rights only limited interest, but at the commencement of The Hindu Succession Act, 1956 i.e. 17 June 1956, this limited interest converts into absolute ownership under section 14 of the 1956 Act.

Section 6 Of The Hindu Succession Act, 1956: Before The Amendment Act, 2005.

When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not following this Act: Provided that, if the deceased had left him surviving a female relative specified in class one of the schedule or a male relative specified in that class who claims through such female relative then the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this act and not by survivorship.

Explanation 1 - For this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2 - Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

After the commencement of The Hindu Succession Act, 1956 i.e. 17 June 1956, a male Hindu dies with the interest in a Coparcenary property, his interest devolves only by way of survivorship. Nevertheless, if such male Hindu had died living behind a female relative or male relative who claims through such female relative, covered under class one of the schedules, the interest of such male Hindu

(deceased) shall be devolved by testamentary and intestate succession and not by survivorship. For determination of the Hindu male share under this section, Notional partition takes place, whereas to calculate such share testamentary or intestate succession takes place.

Section 6 Of The Hindu Succession Act: After Amendment Act, 2005.

Section 6. Devolution of interest in coparcenary property (1):- On and from the commencement of the Hindu Succession (Amend) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall.

- By birth become a coparcener in her own right the same manner as the son .
- Have the same rights in the coparcenary property as she would have had if she had been a son.
- Be subject to the same liabilities in respect of the said coparcenary property as that of a son.

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

On and from the 9 September 2005 i.e. the commencement date of The Hindu Succession (Amend) Act, 2005, the daughter of a Coparcener shall be by birth same rights and liabilities as a son in the Mitakshara's Hindu family. If nothing contained in this sub-section shall affect or invalidate any disposition or alienation, including any partition or testamentary disposition of property, which had taken place before the 20th day of December 2004. Any partition, alienation or disposition of the coparcenary property will remain unaffected, which take place before 20 December 2004 i.e. introduction date of the bill in the Council of State. The object of Legislature in the above provision is to make unaffected of fake transaction that takes place after the introduction of the bill, to protect the rights of the females.

Parkash & Ors Vs Phulavati & Ors (2016)

The supreme court held that the rights under the 2005 amendment apply to living daughters of living coparceners as on 9th September 2005 irrespective of when such daughters are born, means only those daughters are coparceners whose father is alive on 9th September 2005. The court also held that this Act is prospective in nature.

Danamma @ Sumen Surpur & Anr Vs Amar & Ors (2018)

In this case, the Supreme Court held that the daughter of a coparcener by birth should become a coparcener in her own right in the same manner as the son. The right is inherent and can be availed of by any coparcener now even by a daughter who is coparcener is entitled to his coparcenary properties.

The question regarding the interpretation of section 6 of the Hindu Succession Act, 1956 has been

referred to the larger Bench of the Supreme Court, to clear the confusion of two Division Bench judgements of this court in Prakash & Ors V. Phulavati & Ors (2016) and Danamma @ Sumen Surpur & Anr. V. Amar & Ors (2018).

Vineeta Sharma Vs Rakesh Sharma & Ors (2020)

1. The provisions contained in substituting sec.6 of the Hindu Succession Act, 1956 confer the status of coparcener on the daughter born before or after amendment in the same as a son with the same rights and liabilities.

2. The rights can be claimed by the daughter born earlier with effect from 9th September 2005 with savings as provided in Sec 6 (1) as to the disposition or alienation, partition or testamentary disposition, which had taken place before 20th December 2004.

3. Since the right in coparcenary is by birth, father coparcener does not need to be living as on 9th September 2005.

4. This Act is retroactive in nature (it has taken effect from a date before it was approved) i.e. this Act approved on 9.9.2005 but taking effect 20.12.2004.

Conclusion

India is world largest democracy and if there is any inequality, it is the responsibility of the legislative as well as the judiciary to do away that inequality and with the help of both previously mentioned authorities, section 6 of The Hindu Succession Act, 1956 do the complete justice to the women. Without giving complete justice to women, it is against the soul of Constitutional principles. Now women have the same rights and liabilities in the Coparcenary properties as son has, by birth. If a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener with effect from the date of the Amendment Act, irrespective of the date of birth earlier in point of time.

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2/20/2021