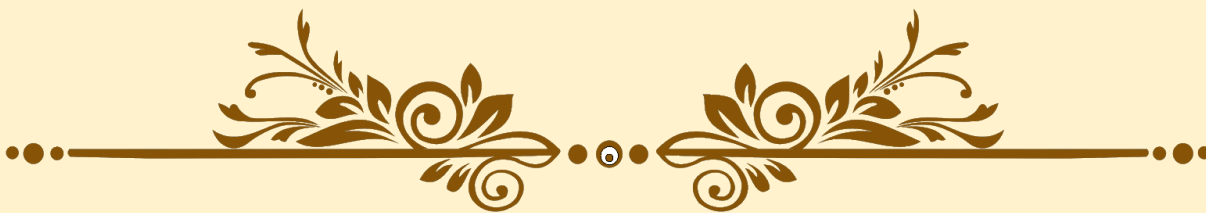


## NAVIGATING THE EMERGENCE OF A WOMAN'S PROPERTY RIGHTS

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### Literature Review

- **Karve (1968):** Expressed that the inherited property relied upon the law of proprietorship by birth in the Mitakshara School, and a man could leave his property that is self-acquired. The property of joint family when partitioned is known as coparceners, for instance the people who had a place within the next three ages and moreover the property of joint family by portion could be, at whatever point, changed over into separate property. Mitakshara School however gave prohibitive rights to sons in property of joint family by birth.<sup>1</sup>
- **Diwan P. (1994 ):** The author has seen in specific cases that there has been no milestone alterations and judicial pronouncement in the sphere of Indian joint family aside from a few changes in certain States like Kerala and Maharashtra. Additionally, in the space of alimony and maintenance some High Courts have embraced liberal

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<sup>1</sup> Karve Irawati, Kinship Organization In India Ed.2nd, (2nd ed., 1965).

perspectives while others held orthodox perspectives. A few parts of Hindu Law were thought about and certain intriguing realities were brought before us through the different decisions of High Courts and Supreme Court.<sup>2</sup>

- **Sathe S.P, (1995 )** : It repeats the demand for a Uniform Civil Code through countless interpretations given by the Supreme Court in different decisions. Article 44 of the Constitution states about Civil Code all through the domain of India. The word "uniform" in Article 44 implies that all communities should be administered by uniform standards of gender equity and human equity. A uniform law is to be founded on uniform principles of equality of sexes and freedom of individual. In this way, Article 44 should be deciphered related to Article 14 which ensures equality before the law and equal protection of the law. The Constitution makers didn't mean that there ought to be a solitary law for all; rather they gave extension to change of each personal law in order to remove gender injustice along with outdated customs and practices.
- **Agnes (2004)** : Expressed that the property rights of women were taken care of on account of the male centric structure of society of India. Disregarding the way that the male individuals claimed property, this position can't be compared with the high level thought of ownership which essentially gives the advantage of estrangement. The basic normal for the joint property was its unavoidable nature. The legging of property can't be disposed of adequately by technique for contract, blessings or will. In this manner the joint ownership of males was more emotional than real. The family head was administered all rights of the property or karta to support the entire family including its female individual. When the property was separated, the benefit of male individual was reasonably the benefit of safety. Indeed, even after partition, the property in the hands of all of the coparceners, continued being joint property.<sup>3</sup>

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<sup>2</sup> Manoj Tiwari, *CHANGING DIMENSIONS OF WOMEN IN MITAKSHARA COPARCENARY: A REVIEW*, 2 IJARCSMS 1, 270-270 (2019).

<sup>3</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford Scholarship Online, <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780195655247.001.0001/acprof-9780195655247>.

- **Mishra R, ( 2011 )** : It plights the situation of women who notwithstanding being a critical part of the populace is constantly exposed to inequities, outrages, inequality and discrimination. Their exclusive rights on the issue of succession to the estate of their parents and husbands were restricted. There was an idea of stridhan which is assets brought by her at the hour of marriage, these resources were accessible for their delight and acted as a security when she confronted sick conduct or mercilessness in her matrimonial home. The Hindu Succession Act, 1956 gives some relief by ensuring her right to stridhan and effectuating monetary strengthening of Hindu females. The Act attempted to eliminate segregation however certain biased provisions for example, mitakshara coparcenary, devolution of tenure, partition, dwelling rights and so on proved unable to be eliminated. An endeavor was made by the Hindu Succession (Amendment) Act, 2005, to reduce discrimination among the sons and the daughters by abrogating the coparcenary system, qualifying daughter for equivalent property rights just as right to residence at par with the son's right.
- **Agnes F, (2012 )**: It is a basic evaluation of the different amendments and their impact upon the general public in the domain of personal laws. The primary attack is on marriage laws where there is introduction of the idea of unrecoverable breakdown of marriage and division of property at the hour of separation. It is being accepted that the amendments will make divorces simple and help women to walk out of relationships with half of man's well deserved property. The breakdown hypothesis of marriage helps the court acquire a benefit, as the process is simplified , responsibility of the judges decreased, trial process gets disposed of and furthermore restricts appeals to higher courts. Even after the introduction of the Hindu Succession Act in 1956, giving Hindu women property rights in their parental property and resulting amendment in 2005 rendering women as coparceners in the family property, the notion that men have a right by birth in their parental property and women are imposters lingers on. For carrying out the provisions an unmistakable strategy needs to be arranged by both government and public which will be valuable for all kinds of

people. These actions ought to be based on the ground of social reality and the standards of equity and correspondence.<sup>4</sup>

## Introduction

### Coparcenary Rights of Woman

The two basic tenets of the Hindu family law include the concept of Joint Hindu Family (JHF) as well as Coparcenary. The JHF is defined by the common ancestor and his male lineal descendants encompassing other members as well: wives, daughters or unmarried people sharing one roof. However, there are differences in the composition of JHF as per different schools of thoughts: Mitakshara and Dayabhaga.<sup>5</sup> Coparcenary refers to a narrower concept within JHF and implies a division therein that deals with matters of property. The primary purpose of coparceners was spiritual in nature. A coparcener is a person who can offer a funeral cake to his father. This capability to offer spiritual salvation was with the son, grandson, great-grandson and as a consequence of it they were conferred a right by birth in the property of the father<sup>6</sup>

By the virtue of article 372 of the Indian Constitution<sup>7</sup>, the Hindu Laws are applicable; Prior to independence, in colonial India, they derived legitimacy from certain statutes of the British Parliament and by imperial and provincial legislation passed during the period of British rule, which unless altered or repealed, are to continue in force under the express provisions of the Indian Constitution.<sup>8</sup> The Hindu Law of 1955 amended and repealed the following laws existing prior to it:

1. The Caste Disabilities Removal Act, 1850: The act ceased to be enforced as law in the courts of British India. The Act is also known as the Freedom of Religion Act.<sup>9</sup>

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<sup>4</sup> *supra* note 34.

<sup>5</sup> Saimy Eliza Abraham, *Short Note on Hindu Joint Family- Under Mitakshara and Dayabhaga*, Vol. II, Issue I, KMCT Law College (2018).

<sup>6</sup> Saxena, Poonam Pradhan, *Property Law* (LexisNexis Butterworths 2011).

<sup>7</sup> INDIAN CONST. art. 372

<sup>8</sup> Dinshah Fardunji Mulla, *Mulla Hindu Law* 69 (LexisNexis 2020)

<sup>9</sup> *Khunni Lal v Gobind Krishna*, (1911) 33 All 356; 38 IA 87; 10 IC 477; *Chidambaram v Ma Nyein Me*, (1928) Rang 243; AIR 1928 Pat 179

2. The Hindu Widows' Remarriage Act, 1856: The act was repealed by Act 24 of 1983 (w.e.f. 31 August 1983)
3. The Indian Succession Act, 1925: Section 214 and Schedule III to the Act are dealt with in the chapter on Wills.
4. The Converts' Marriage Dissolution Act, 1866
5. The Special Marriage Act, 1954.
6. The Transfer of Property Act, 1882: The Act has been superseded by transfer of property.
7. The Majority Act, 1875
8. The Guardians and Wards Act, 1890
9. The Hindu Inheritance (Removal of Disabilities) Act, 1928
10. The Hindu Law of Inheritance (Amendment) Act, 1929
11. The Child Marriage Restraint Act, 1929: Repealed by the Prohibition of Child Marriage Act, 2007.
12. The Hindu Gains of Learning Act, 1930.
13. The Hindu Women's Rights to Property Act 1937: The act is repealed by section 31 of the Hindu Succession Act, 1956.
14. The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946: Repealed by section 29 of the Hindu Adoptions and Maintenance Act 1956.

The court in various judgements has defined a 'Hindu' and converts on whom the law can be applied.<sup>10</sup> The courts have also defined the class or section of people on whom the law does not apply and includes:

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<sup>10</sup> Yagnapurushdasji v Muldas, AIR 1966 SC 1119 : (1966) 1 SCR 134; Bhavan Koer v Bose, (1904) ILR 31 Cal 11; M.P.Gopalkrishnan Nair v State of Kerala, AIR 2005 SC 3053; Adi Saiva Sivachariyargal Nala Sangam v The Government of Tamil Nadu, 2016 2 SCC 725 : 2015 (13) Scale 714; Abraham v Abraham, (1863) 9 Moo Ind App 195, p 243; Jowala v Dharum, (1866) 10 Moo Ind App 511, p 537; Dagree v Pacotti, (1875) 19 Bom 783, p 788; Re Joseph Vadiar of Nazareth, (1872) 7 Mad HC 121; Morarji v Administrator-General, (1929) 52 Mad 160 : 111 IC 364 : AIR 1928 Mad 1279; Sahdeo Narain v Kusum Kumari, (1922) 50 IA 58 : 2 Pat 230 : 71 IC 769 : AIR 1923 PC 21; Palaniappa Chettiar v Alagan Chetti, (1921) 48 IA 539 : 44 Mad 740 : 64 IC 439 : AIR 1922 PC 228; Ganesh Mahto v Shib Charan Mahata, (1932) 11 Pat 139 : 133 IC 165 : AIR 1931 Pat 305 following : (1928) 51 Mad 1 (FB) : 108 IC 760 : AIR 1928 Mad 299; Sunder Devi v Jhoboo Lal, AIR 1957 All 215 (inheritance to property of a Muslim woman converted to Hinduism). As to conversion, generally see Chaturbhuj v Moreshwar, AIR 1954 SC 236. As to when change of religion can be inferred, see Ganpat v Returning Officer, AIR 1975 SC 420; D Neelima v Dean, PG Studies AP Agri University, Hyderabad, AIR 1993 AP 229 (on marriage a wife acquires caste or tribe of her husband and also gotra and sapindaship, ceasing all ties with her paternal family) Perumal v Ponnuswami, AIR 1971 SC 2352.

- 1) To the illegitimate children of a Hindu father by a Christian mother who are brought up as Christians<sup>11</sup>, or to illegitimate children of a Hindu father by a Mohammedan mother<sup>12</sup>
- 2) To the Hindu converts to Christianity: This has been decided on a case-to-case basis.<sup>13</sup>
- 3) To converts from the Hindu to the Mohammedan faith
- 4) To the property of any person professing the Hindu, Sikh or Jain religion who married under the Special Marriage Act, 3 of 1872 or the property of the issue of such marriage. These are governed by sections 32 to 48 of the Indian Succession Act. Also see section 21 of the Special Marriage Act, 1954 and section 5(1) of the Hindu Succession Act, 1956.

## 1.1 Mapping the trajectory of women's property Rights

### Ancient and Medieval Period

The Hindu Law derives its principles from mainly three sacred texts: Shrutis, Smritis and Customs. However, a practical application of these texts in the contemporary era would not sustain owing to the influx of many progressive ideas, changes and developments. In today's era, the principle and basis should be justice, equity, fairness and good conscience among other aspects.

Manusmriti contained Hindu code for governance of social, organisational and judicial relations of the society. It can be described as the main constitution among other Hindu Dharma-shastras. The rights of Hindu women in ancient India were extremely restrictive and, in a way, oppressive. In Manusmriti, "Manu writes: *"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*

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<sup>11</sup> Lingappa v Esudasan, (1904) 27 Mad 13 (maintenance);

<sup>12</sup> Charanjit Singh v Amir Ali Khan, (1921) 2 Lah 243, p 248: 64 IC 892: AIR 1921 Lah 121.

<sup>13</sup> Arumugam v Rajagopal, AIR 1969 SC 101; Tellis v Saldanha, (1887) 10 Mad 69; Jogi Reddi v Chinnabbi Reddi, (1929) 56 IA 6, pp 9–11: 52 Mad 83, pp 87–90: 114 IC 5: AIR 1929 PC 13; Francis Ghosal v Gabri Ghosal, (1907) 31 Bom 25; Kulada v Haripada, (1913) 40 Cal 407, pp 417–18: 17 IC 257; Anthonyswamy v Chinnaswamy, AIR 1970 SC 233.

for independence.”<sup>14</sup> Though the women weren't always excluded, their shares were less than the male counterparts.<sup>15</sup> The women were provided for and given 'Stridhan' that used to their property or fortune and used to be usually sourced from marital gifts that was composed of clothes, gold ornaments or in rare cases, of property. However rather than empowering women, they promoted the culture of dowry<sup>16</sup> and even then, except feminine commodities (Clothes and jewellery), other gifts were supervised and taken care of by the husbands as advocated by the Manusmriti. The stridhan somewhat ensured independence for the women, however, it was restricted to homes. The women did not have any rights to the ancestral property and their rights were extremely limited and in subjugation to that of men. There is no mention of any property rights for unmarried women.

“*Na stri swatantramarhati-'Swatrantam Na Kachit Striyah*”

The Sanskrit saying implies that women were unfit for any independent existence. This used to be the rule of ancient Hindu society. With passage of time, various commentaries, translations and interpretations, various school of thoughts emerged: *Dayabhaga* by Jimutvahana, *Mitakshara*, a commentary on Yajnavalkya Smriti by Vijnaneshwara, *Viramitrodaya* by Mitra Misra, *Vivada Chintamani*, by Vachaspati Misra, *Vivada-Ratnakara*, by Chandeshwara, *Dayatattwa*, by Raghunandana, *Diagram Sangraha* by Sri Krishna, *Smriti Chandrika*, By Devan Bhatta, *Parashara Madhaviya*, Commentary on Parashara, by Madhavacharya and *Vyavhara Mayukha* by Nilkantha.<sup>17</sup>

The most prominent ones included Mitakshara and the Dayabhaga. These schools have influenced the laws of inheritance in India and form the basic principles governing the same.

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<sup>14</sup> Buhler trans , *Manu IX.3: Manusmriti: The Laws of Manu, in Sacred Books of the East* 56 (1886)  
[http://www.hinduwebsite.com/sacredscripts/laws\\_of\\_manu.htm](http://www.hinduwebsite.com/sacredscripts/laws_of_manu.htm).

<sup>15</sup> Debarati Halder and K. Jaishankar, *Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, And Modern India*, Journal of Law and Religion, Vol. 24, 663-687, (2008-2009), JSTOR  
<https://www.jstor.org/stable/25654333>.

<sup>16</sup> imati Basu, *Dowry and Inheritance: Issues in Contemporary Indian Feminism* 318 (Zed Books 2005).

<sup>17</sup> Asmita Yadav, *Coparcenary Rights and Gender Justice*, Indian History Congress, vol. 78, 1165-1171 (2017), JSTOR  
<https://www.jstor.org/stable/10.2307/26906195>.



While the applicability of the Dayabhaga was confined to Bengal and Assam, the laws in Mitakshara are more widely covered in India albeit with regional variations. The main difference between them is particularly in the law of inheritance and the joint family system.

If the ancient time is considered to be a dark episode in the history with regard to women's right, the medieval period was the darkest, made worse by the regressive rules, extreme male dominance and chauvinism on the account of Mughal invasion<sup>18</sup> which introduced the Sharia law. Even though they did not directly affect the Hindu laws, the only source of means for Hindu women i.e., Stridhan became a symbol of status for matrimonial gifts and thus the women's property status accorded to it became lost.

In colonial times, the idea of 'women's estate' did receive recognition<sup>19</sup> However, it was subjected to limitations of: the property could not be alienated except in certain cases i.e, funeral rites, marriage rituals etc. and in case of death, the property would pass on to the next heir of the last full owner, also known as a reversion. This was established in *Bijoy Gopal Mukherji v. Krishna Mahishi Debi*<sup>20</sup>. Thus, it can be very well deduced that the position of a woman in this regard was merely that of a caretaker and not 'owner' as claimed.

Due to various steps and progressive reforms, led by thinkers and reformists like Ram Mohan Roy, Ishwarchandra Vidyasagar in Bengal and Ranade in Bombay Presidency during the first and second half of the 19th century, many progressive legislations were enacted: The Hindu Law of Inheritance (Removal of Disabilities) Act of 1928 and its amendment in 1929 which had the provisions for inclusion son's daughter, the daughter's daughter, the sister and the sister's son as heirs next after father's father and before the father's brother.<sup>21</sup> The single most important step in this direction was the Hindu Women's Right to Property Act of 1937, known as the Deshmukh Act after Dr. G. Deshmukh, its physician-social reformer author which advocated for the rights of widows and was directly attacked the principles in

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<sup>18</sup> V.D. Mahajan, *History of Medieval India* (S. Chand 2004).

<sup>19</sup> J. Duncan M. Derrett, *The Hindu Succession Act, 1956: An Experiment in Social Legislation*, *The American Journal of Comparative Law*, Oxford University Press, Vol. 8, 485-501, (1959).

<sup>20</sup> *Bijoy Gopal Mukherji v. Krishna Mahishi Debi* 34 LA. 87(1907).

<sup>21</sup> *Rights of Women in Hindu Joint and Coparcenary property after 2005 Amendment- Effects of recent Judicial Pronouncements*, [http://mja.gov.in/Site/Upload/GR/Workshop\\_280215\\_Civil.pdf](http://mja.gov.in/Site/Upload/GR/Workshop_280215_Civil.pdf).



Mitakshara rule book.<sup>22</sup> The Women's Right to Property Act (1937) recognised three kind of widows ( intestate man's widow; widow of a predeceased son; and widow of a pre-deceased grandson who is the son of a predeceased father)<sup>23</sup> and clearly defined the confines and limits of the Stridhan along establishing women's right over the landed property of males, especially that of husband; however, it failed to provide any provision for women successors in case of testaments and will and also did not clear the position on ownership of agricultural land.

### **Post-Independence Scenario (Evolution of Hindu Code Bill)**

In 1941, a committee was set up to deal in legal reforms headed by B.N.Rau and two bills were drafted. They dealt with the issue of Hindu intestate succession and Hindu marriage. After due deliberation, public opinions, evidence gathering, the bill was drawn and introduced on 1 Aug. 1946, however, faced severe criticism and was subjected to delaying tactics<sup>24</sup> The Hindu Code Bill, presented by Dr. Ambedkar was an attempt towards codifying and presenting a concrete Structure. Ambedkar advocated for the significance of Inheritance, order of succession, deplorable condition of women and the bill sought to overcome or resolve them, he further tried to look into the subject of intestate succession to women. It was, for practical purpose, a protest against the "Manu Code" and was touting for one of the most progressive reform aimed at attacking the institution of Brahmanical patriarchy and hence faced criticism from the proponents of the same on the ground of interference with personal Hindu laws, customs, traditions and institution of family as well as marriage (It claimed that women do not need equality because in many respects in family relations they are considered superior by Hindu custom). Dr Ambedkar resigned on Sept., 27, 1951. In his resignation, he explained the delay for the action he took as well as the reasons why he relinquished.<sup>25</sup>

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<sup>22</sup> Supra note 12.

<sup>23</sup> Janaki Nair & Natl. L. Sch. of India U., *Women and Law in Colonial India: A Social History* 196 (1996).

<sup>24</sup> Banningan, John A, *The Hindu Code Bill*, *Far Eastern Survey*, Vol. 21, Issue 17, 173-176 (1952).

<sup>25</sup> Supra note 13

The Hindu Succession Act of 1956, may be called as Hindu women's magna carta of property rights<sup>26</sup>. A significant benefit was the strict enforcement of monogamy as polygamy was widely practiced for 'male son'. The rights for guardianship and adoption were provided.<sup>27</sup> Yet some of the handicaps remained, it left the case of married daughters, position of dwelling house among many other issues.

In fact, even many reformists argued that not only is the code very far from offering equal rights to women, it in fact took many existing and more liberal customary provisions available to women of different caste and communities<sup>28</sup>

### **Gender Justice and Way Ahead**

The amendment in Hindu Succession Act in 2005 was surely a step in the right direction. However, it was too little and too late. While the amendment already deleted a major discriminatory clause i.e., section 4(2) of the 1956 Act via enabling the equal right to inherit agricultural land along making the married daughter as well as the unmarried daughters coparceners in an HJF. The amendment by deleting the section 23 of the 1956 Act, which denied the married daughters (except the ones who were divorced, deserted or widowed) the right of residence and partition (only unmarried daughters had the right to residence), paved way for the women to enforce same rights as their brothers for residence or partition in parental dwelling house. The legislation also removed the section debarring certain widows inheriting deceased's property in case of remarriages.<sup>29</sup>

The state governments of some south Indian states, in their quest for women's rights and equality, already enacted legislations to ensure the same. Till now, Five States in India have amended the law relating to coparcenary property. Four States, viz, Maharashtra, Andhra

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<sup>26</sup> Prakash Chand Jain, *Women's Property Rights Under Traditional Hindu Law And The Hindu Succession Act, 1956: Some Observations*, Journal of the Indian Law Institute, Family Law Special Issue (July-December 2003), Vol. 45, 509-536, (2003).

<sup>27</sup> Monmayee Basu, *Impact of Hindu Code on Indian Women*, World Affairs: The Journal of International Issues, Kapur Surya Foundation, Vol. 5, 46-49, (1996).

<sup>28</sup> Nivedita Menon, *The Historian and 'His' Others: A Response to Ramachandra Guha*, Economic and Political Weekly, Vol. 43, 73-36, (2008).

<sup>29</sup> *Groundbreaking Legislation*, Economic and Political Weekly, Vol. 40, No. 42 (Oct. 15-21, 2005), 4487-4488.

Pradesh, Tamil Nadu and Karnataka, have conferred upon daughters a birth right in coparcenary property, while Kerala has abolished the joint family system among Hindus.<sup>30</sup>

In 2020, the Supreme Court in *Vineeta Sharma v. Rakesh Sharma and ors.*<sup>31</sup> further cleared the position on daughter's coparcenary rights.

However, while the question with regard to Hindu laws and customs has constantly been amended; the mistakes rectified and lacunae filled, the major issue of women's right and equality has remained unresolved if the secular fabric of the country is critically analysed wherein the laws of succession and inheritance are still controlled by the personal laws. Can the recent trends and developments in Hindu Succession Act 1956 pave the way or set a precedent for other religions to follow to bring in a more liberal and progressive system? Or will the much-needed reforms in governance of property rights be ensured by a Uniform Civil Code, the demand for which is being raised stronger than ever before?

### **Judicial Decisions and Judicial Mandate Concerning Section 6 of The Hindu Succession Amendment Act, 2005**

#### *Prakash vs Phulavati*

- In the current case the suit for partition and for inheritance was recorded in the year 1992 by the female child of the deceased. During the pendency of this suit, the amendment of 2005 was enacted and the plaintiff altered her plaintiff to be able to profit with this amendment.<sup>32</sup>
- The trial court didn't proclaim a share in the ancestral property in support of her. In request, the High Court reversed this decision and held the amendment act would be relevant to the current case, despite the fact that the respondent's dad had died before the enactment. While deciphering section 6(5) of the Amendment Act, it held that it just bars materialism of the amendment act to situations where partition has been

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<sup>30</sup> Nilima Bhadbhade, *State Amendments to Hindu Succession Act and Conflict of Laws : Need For Law Reform*, Supreme Court cases (2001) 1 SCC (Jour) 40.

<sup>31</sup> *Vineeta Sharma v. Rakesh Sharma and Ors* (2020) AIR 3717 (SC).

<sup>32</sup> *Prakash v. Phulavati*, (2016) 2 SCC 36.

affected before the specified date. Notwithstanding, this bar won't be drawn in the current case on the grounds that there was no deed of partition except for just a notional partition that had occurred.

- The defendants in the current case appealed the Supreme Court and fought that the plaintiff respondent was qualified for the separate property of her father, yet was not qualified for the ancestral property. According to them, the plain phrasing of the amended provision clarified that the provision would apply to "daughter of a coparcener" during the initiation of the act.<sup>33</sup> However, since the coparcener had passed on before the amendment in the current case, the daughter would not be able to claim the benefit of the amendment. Against this, it was argued that the amendment was a social enactment and ought to be given retrospective impact excepting for partition that have been affected by a decree of court or those done by a registered deed.
- The court held that the amendment act can be effective if the demise of the father happens after the date of enactment. Without any express provisions, it was held that the Act can't be applied retrospectively, regardless of whether it is a social enactment. Hence, the amended will just apply to "living daughters of living coparceners" at the time of enactment and the transactions earlier will stay unaffected.

#### *Vineeta Sharma vs Rakesh Sharma and Ors*

- The court expressed that women have been exposed to historical injustice with regards to being a coparcener and they should be given equivalent rights independent of the prospective or retrospective application of the Amended Act, 2005.<sup>34</sup>
- Section 6(1)(a) of the Hindu Succession Amendment Act, 2005 clarifies about the inheritance of a coparcener i.e 'unobstructed heritage' under Mitakshara coparcener to inherit the property. The court thought that the coparcener has a right over the ancestral property by birth and henceforth it isn't fundamental for the father(coparcener) to be alive as on the date of the amendment. It is so on the grounds that the coparcenary rights bestowed by the female child are by her birth, not by

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<sup>33</sup> The Hindu Succession (Amendment) Act, 2005, §6.

<sup>34</sup> Vineeta Sharma v. Rakesh Sharma, CA No. 32601 of 2018.

obstructed heritage. Accordingly, the concept that the dad (coparcener) and daughter should be alive on the date when the Amendment Act, 2005 came into power as set down in the Phulavati's case was overruled.

- The Hon'ble Supreme Court of India held that Section 6 of the Amendment Act, 2005 will be applied retroactively. Clarifying the idea of retroactive application of the Amendment Act, 2005, the court held that the said Act empowers women to have the advantage of succession dependent on her birth.
- Through this case, it was decided that female children have an equivalent right in the coparcenary property same as the male children, regardless of whether the father died before the enactment of the Hindu Succession (Amendment) Act, 2005.
- It likewise held that the rights under the said amendment apply to living female children of living coparceners as on 9th September 2005, independent of the date of birth of the daughter.

#### *Danamma vs Amar*

- In this case, the appellants were the daughter of a coparcener who had passed on in 2001.<sup>35</sup> The respondents were the male children of the deceased who had filed a suit for partition of the property in 2002. They asserted that the daughters were born preceding 1956, the enactment of the Act. The trial court had denied any share to the female child. The appeals to the High Court were also rejected.
- But, the Supreme Court set aside the impugned decisions. The question was if by virtue of the amendment, the daughter would become coparceners "in the same rights as the son." While depending on the issue of Anar Devi, it held that the idea of notional partition exists just for the calculation of the interests of the shares of the beneficiaries and doesn't disrupt the coparceners all together.<sup>36</sup> Further, the court repeated the principles set down in the Phulavati case. It said the intention behind the amendment was to understand the constitutional mandate of equality.
- The trial court order in the current case was passed in 2007. The court held that the lower courts ought to have been aware of this change in legal rights. It relied on the

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<sup>35</sup> Danamma v. Amar and Ors.(2018) 3 SCC 343.

<sup>36</sup> Anar Devi and Ors. v. Parameshwari Devi and Ors, (2006)8 SCC 656.

case of Ganduri Koteswaramma, to say the rights under the amended Act are not lost simply in light of the fact that a preliminary decree has been passed in a partition suit before.<sup>37</sup> It was held that the amendment further gave an innate right by birth in the property to the daughters. The court then directed the trial court to apply the principles in a like manner and award a share in the coparcenary property to the female child too.

### Potential Ramifications

A Judgment by a larger Bench is welcome since it rectifies historical wrongs against women as well as settles the debate made by conflicting perspectives taken by various Courts. From a functional outlook, the ruling could inter alia have the accompanying ramifications:

- Plenty of new legal proceedings are being started under the steady gaze of Civil Courts, High Courts and Debt Recovery Tribunals. Aside from male coparceners, developers, banks and financial institutions are additionally prone to witness a sharp ascent in litigation where they are displayed as parties, along with the suits for the nature of partition, declaration, cancellation and injunction, also challenges the validity of mortgage to overcome credit recuperation/securitization procedures.
- Direct effect on ongoing partition suits where last decree(s) are yet to be drawn up since trial Courts should consider anew these significant explanations made by the three-Judge Bench. Earlier ineffective litigants are additionally liable to re-agitate partition disputes by adducing the retroactive part of the ruling.
- Re-organizing of Hindu United Family assets, particularly among male ruled family business.

Due diligence of past/progressing property acquisitions and also loaning exchanges being returned to. Future diligence will likewise must be painstakingly analyzed from the prism of these explanations.<sup>38</sup>

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<sup>37</sup> Ganduri Koteswaramma v. Chakiri Yanadi, (2011)9 SCC 788.

<sup>38</sup> Nikhilesh Rao & Ganapathy Subbiah, *Supreme Court affirms Daughter's Equal Rights to Coparcenary Property: Significant Clarifications under the Hindu Succession Regime & Potential Ramifications*, Lexology (Aug. 24, 2020), <https://www.lexology.com/library/detail.aspx?g=c9f97207-aa41-4f20-90df-46e7baa8410b>.

### **Ambiguities in Interpretation of Danamma and Phulavati Cases**

- The judgment in Danamma hence brought back the contention from its grave. By giving the female child the advantage of the Amendment Act despite the fact that the father had died before the amendment, the judgment goes against the ratio of Phulavati which recommended that the amendment will just apply to "living daughters of living coparceners." Since the Phulavati case actually keeps on being acceptable law, a female child whose father had passed on before the amendment cannot claim the advantage of the Amendment Act. But, going by the decision in Danamma, a female child will be entitled for the advantages of the Amendment Act in a pending suit recorded after 2005 regardless of when the father died. The differentiation between new suits for partition and pending suits doesn't have sound reasoning.
- By the literal interpretation of the statute, the ruling in Phulavati is lawfully sound. It is likewise more practical to set a reasonable date for the application of the Amendment Act. This has, however, been obscured by the judgment in Danamma. There is still uncertainty regarding whether the female children of coparceners dying before the amendment act can by the virtue of the judgment in Danamma institute a claim in the coparcenary property.<sup>39</sup>
- The reasoning in Danamma focuses on the purpose of the amendment to give the female child "inheritance right to property by birth." If this reasoning is followed, then, in the event of father's demise before the amendment a female child ought to be permitted to institute a claim for partition dependent on this right. Notwithstanding, the ruling confines itself to pending suits or suits recorded by a male coparcener. Interestingly, seeing that the ruling in Phulavati is an "authoritative precedent," a female has no rights under the Amendment Act if the father had passed on before enactment. In such a case, she will have no claim to institute proceedings for partition. Consequently, suits for partition that have not been finally decided and those suits for

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<sup>39</sup> Uzair Ahmad Khan, *Devolution of Interest in Coparcenary Property: Scope and Interpretation Post Amendment*, IBlog Pleaders (Oct. 23, 2019), [https://blog.ipleaders.in/coparcenary-property-post-amendment/#\\_ftnref44](https://blog.ipleaders.in/coparcenary-property-post-amendment/#_ftnref44).



partition that are sought to be instituted by female children does not sound logical. The impact of these two judgments, therefore, has dichotomized the law.

### **Progress in Women's Property Rights**

The colonial regimen didn't wander into the personal laws of Hindus or of different communities. However the latter part of the regimen was set apart by conspicuous social change developments, it featured the need to enhance the compliant situation of women in the familial and social space.

Enactments like the Hindu Law of Inheritance Act, 1929 which bestows inheritance rights on three female heirs and the Hindu Women's Right to Property Act (XVIII of ) 1937 achieved progressive changes in the Hindu Law, of all schools. The progressions were in the law of coparcenary as well as in the law of partition, inheritance, and adoption.<sup>40</sup>

But, the widow didn't turn into a coparcener despite the fact that she had a right similar to a coparcenary interest in the property, and was a member of the joint family. The widow was entitled distinctly for a restricted bequest in the property of the deceased, with a right to claim partition. A daughter practically still had no rights of inheritance.

The Indian Constitution makers observed the unfriendly and unfair situation of women in the public eye. They guaranteed special consideration to actuate the State to take an affirmative action and establish positive strides to give women equal status. Provisions of considerable equity embodied under Articles 14, 15(2), and (3) and 16<sup>41</sup> of the Constitution of India impede discrimination of women as well as, in appropriate conditions, gives a free hand to the State to guarantee defensive segregation in support of themselves. Part IV of the Constitution contains the Directive Principles which are no less fundamental in the administration of the State.

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<sup>40</sup> Mahalakshmi Pavani, *Coparcenary Rights of Daughters: Solving the Obvious Jigsaw*, The LeafLet (Aug. 28, 2020), <https://www.theleaflet.in/21478-2/>.

<sup>41</sup> India Const., 1950, art. 14, 15 (2), 15 (3) and 16.

### **Evaluation of the Amendment of 2005**

Back in the days where only the eldest male member was considered to be worthy of inheriting the properties of the family, this amendment was a progressive step to change the notion. The attempt was in the direction of making the daughter of coparcener a coparcener. Though the idea behind this was radical, it has raised questions with respect to Mitakshara Coparcenary in its entirety. There has been a drastic change in the traditional patriarchal nature of the coparcenary with the introduction of the daughter as coparcenary. In view of the Hindu Successions Act (Amendment) 2005, ambiguity exists concerning the definition of the Mitakshara coparcener, and the status of the "daughter of a coparcener" needs to be thoroughly investigated and studied.

Section 6 of the Hindu Succession Act, 2005 makes it quite explicit that a coparcener's daughter must become a coparcener by birth in her own right, as is the son. It further indicates that she has the same rights as she would if she had been a son on the coparcenary property, and that she would have the same obligations and liabilities. Thus, the daughter is, under Article 6 of the Hindu Succession Act (Amendment Act), 2005, an admissible member of the hindu coparcenary. It's not that straightforward, though. There is no explicit distinction between married and unmarried daughters in Section 6 of the Act. This must be underlined since the married and the unmarried daughter differ from one another in terms of family membership; which is vital for the idea of coparcency. However, it is significant to recognise that the term daughter as applied in the Act is, as far as the definition of a coparcenary does not include, married and unmarried daughters, that attempting to differentiate between a married and an unmarried daughter might be fruitless. The inclusion or exclusion of the adopted daughter is another interesting subject in the definition of the coparcenary. In section 6 of the Hindu Succession Act 2005 (Amendment), no mention is made of a daughter adopted but only the birth of a daughter as part of the coparcenary is included. Therefore the adopted daughter cannot be integrated into the new concept of a coparcener for all practical purposes - a subject which needs re-examination. The phrase 'daughter of a coparcener' is the root of all confusion. One has to understand the applicability of this phrase because one cannot include daughter's children as coparceners in their mother's side of the family. One can assume the

son of a daughter is to be excluded from the coparcenary of his mother's side as there is no mention of the same in the text of Section 6 of the Act. In any case, while there is equivocality encompassing the situation of the daughter's daughter, it is unfeasible to propose that the daughter's daughter might be viewed as an individual from her mom's coparcenary. On marriage the daughter stops being her relative of birth. In this way, she is a coparcener in her natal family, however as of now not an individual member from it. Her daughter will get a share in her dad's coparcenary. In case the coparcener's daughter i.e. the daughter's daughter is permitted an offer in the mother's coparcenary, she would be the beneficiary of a twofold offer that is, an offer from every one of her parent's coparcenary. Consequently, the daughter's children can't be made coparceners.

This underlines the unreasonable benefit owing to the daughter's children that stems from issues connected to enrollment of a family's membership. Generally, the wedded little daughter's share in her father's coparcener will just serve to help her significant other's family. Along these lines, there is a vital issue encompassing the participation of a family, and the coparcenary itself.

It is important to note that the arrangement of the Mitakshara coparcenary loses its significance, as membership of the joint family is as of now not a pre-imperative. The altered Section 6 of the Hindu Succession Act, 1956 has made a daughter who isn't an individual member from the family, a coparcener. The arrangement of the coparcenary substantiates itself as worthless as regardless of how the property went to the married daughter, it will just profit the family of her marriage. Generally, it is maybe an ideal opportunity to reevaluate the thought of the coparcener, and as a result relook the constituents of the Hindu joint family. Notwithstanding, in view of the examination of the sources referenced above it is recommended that the Mitakshara coparcenary will presently comprise of "the common ancestor, the son, the son's son, the son's son's son, the daughter of the common ancestor, son's daughter, son's son's daughter." The law discriminates between a family-born daughter and an adopted daughter in the adoptive family. This problem must thus be eliminated by amending, as with an adopted son, the current Act to absorb an adopted daughter in the household of her adoption as a coparcener. In case there is a genuine way to help the female

overall and the Hindu female specifically in the light of the Hindu Succession (Amendment) Act, 2005, the arrangements to make the spouse a sharer in the property at the time of her entrance into the family of her marriage should be made. Since her entrance in the family of her marriage isn't brief yet is lasting forever, the female ought to be made a sharer in the property of the relations of her significant other. Where the spouse is a sharer, she ought to be an equivalent sharer with her significant other.

On the off chance the Parliament is significant to advance monetary situation of Hindu female, the wife, who is the other portion of her better half, it should make a law that should give her equivalent financial rights in the property of her better half and equivalent right of heirship with her significant other in the property of family members of her significant other as she is the indivisible portion of her significant other. It will be in absolute similarity with the soul of Hindu perspective on life. Every one of her privileges should stop in her birth family and ensuing substitution should happen in the family of her marriage. Further, every marriage should be registered. If these arrangements are made, divorce will turn out to be an exception, and on divorce a Hindu female ought to be stripped of every one of her properties which she had got by ideals of her marriage.

### **Prior Initiatives by the States**

There were many initiatives that were taken by the States before 2005 which led to the formation of the Hindu Succession (Amendment) Act, 2005. In 1945, Hindu Law Committee received written statements which suggested that a daughter should be made coparcener. Later, in 1956 when the Hindu Succession Bill was debated for the last time, an amendment was moved for the same but this idea was too progressive for those times and was ultimately dismissed.<sup>42</sup> The amendment stating daughter and her children to be made members of the Hindu coparcenary as the son was rejected and the Hindu Mitakshara Joint Family System was retained.

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<sup>42</sup> Madhu K., *Codified Hindu Law: Myth or Reality*, Vol 29, No. 33 Economic and Political Weekly 2145, 2145-2167 (1994).

The Mitakshara coparcener was never altered before the year 2005, only few states namely, Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka acknowledged the changes that were required with dynamics in time.<sup>43</sup> They understood that this would pave the way for women being treated equally in all spheres of life. According to the amendments made by the States excluding Kerala, the daughter of a coparcener would become a coparcener by birth in her own right just as the son of a coparcener which was governed under Mitakshara Joint Hindu Family System. Kerala stood out and went beyond this and followed the suggestions of the B.N. Rau Committee of abolishing one's right to claim any interest in the property by virtue of an individual's birth. Indeed, it has canceled the Joint Hindu family framework through and through including the Mitakshara, Marumakkattayam, Aliyasantana and Nambudri frameworks. Accordingly, stating that the 'joint tenants' be replaced by 'tenants in common'. The Kerala Joint Family System (Abolition) Act definitely has proved to be positive but it had some negative consequences too especially for the rights of women. This Act was limited to the boundaries of Kerala where matrilineal succession systems prevailed and as mentioned above laws like Marumakkattayam were also abolished. The 'right by birth' as a principle has proven to be unjust and significantly discriminatory to women but this may not have been the same in Kerala as due to the existence of matrilineal systems this Act has proved to have negatively affected the women who were benefiting with this same principle. This act is prospective in nature which makes it evident that women who previously were refused under the 'right by birth' principle won't be able to benefit from the same. The Act establishes that the members of the Mitakshara coparcenary would possess the property as tenants in common but this act will only help if a partition takes place and every member possesses the property independently. The rights of property of women may be denied if, via testament or alienation, the male coparceners dispose off the property, and there is no effort to avoid any such loss in women's property rights. In existing coparcenary properties the law does not bestow any rights on children.

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<sup>43</sup> The Kerala Joint Family System (Abolition) Act, 1975.  
The Hindu Succession (Andhra Pradesh Amendment) Act, 1986.  
The Hindu Succession (Tamil Nadu Amendment) Act, 1989.  
The Hindu Succession (Maharashtra Amendment) Act, 1994.  
The Hindu Succession (Karnataka Amendment) Act, 1994.

The objective of the said State Amendments Acts was very clear from their respective Preambles. It was two-fold in nature. To begin with, it aimed to fulfill the constitutional mandate and ensured equality before law which is enshrined in Article 14 & Article 15 of the Indian Constitution. The inability of daughters to not be coparceners on the basis of their gender was deemed to be contrary to the basic Fundamental Rights of an individual. As stated before, this was a major step paving the way for a progressive society given that the High Courts of the country didn't hold this exclusion to be violative of Article 15.<sup>44</sup> Another objective was to eliminate the practise of dowry that was supposed to have arisen as a result of this exclusion.

### **The Way Forward**

- The assertion of objects of the amendment act expresses that the traditional Mitakshara coparcener encroaches women's right to equality by barring them from inheritance of ancestral property. The amendment tries to change this inequity. The ruling in Danamma in this way, is more in consonance with the purpose of the Act.
- The coherent basis given by amendment act and that given by the ruling in these cases stays as before. It says that transactions preceding enactment will not be effected and it tries to secure those rights that have effectively been given. However, this end can be accomplished regardless of whether the decision in Danamma isn't limited to just pending proceedings. Even in a situation where the father has passed on before the enactment of the amendment act and no partition has been affected for the coparcenary property, a girl ought to be permitted to institute proceedings and claim her share according to the amendment act. In such cases as well, there is no irrevocability of shares between the coparceners. Subsequently, giving such a benefit to the female child won't give negative rights bestowed already. For this situation likewise, the benefit of the Amendment Act can be given regardless the date of death of the father

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<sup>44</sup> Nalini Rajan v. State, A.I.R. 1977 Pat. 171.

- Going one step further, it has been proposed by certain critics that the idea of coparcenary property be annulled together.<sup>45</sup> This had been done in the province of Kerala in its now superseded Amendment Act. This thought was launched out by the Law Commission on the record that this would not ensure the interests of women. Hence, making daughters a part of the coparcener is maybe the most ideal approach to shield their advantage from being willed away.

### **Conclusion**

The aim to alter the Preamble reveals the expulsion from the coparcenary Mitakshara of prejudice against the daughter and subsequently the demolition of the harmful settlement arrangements via positive estimations in order to improve the status of women in a human society. It is significant to realise that if equity exists merely as a wonder outside most people's conscience and endorsement it cannot be recognised by a group of women linked with disparity norms. Thereafter, societal attention must be paid to individuals and they must learn to shift their minds towards the notion of equal sexual orientation. The need to focus on altering the societal mentality for equity for everyone is also of major importance through consistent legislation. The modification in section 6 from 2005 represents a major breakthrough in the recognition of female property privileges. The notion of right by birth with females being included as coparceners is shown to maintain gradually aid the security of their preferences rather than the annulment of the joint family structure. From here on out, they would be guaranteed against the aftereffects of testamentary demeanor of the coparcenary property by the father. If the joint family system had been invalidated, it would basically have required inconvenience of restrictions on the testamentary force of a person which is violative of individual freedom. Further, by and by if a woman gets separated, by then being a person from her natal joint family, she would have the choice to return to it as an issue of right, instead of on the suffering of her family members.

It will in general be a lot given that Indian legislation has consistently shown a clear interest in the advancement of women and offering them greater and increasingly equal rights to men. As of now, the issue, which consistently incorporates discourse and extensive discussions, is

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<sup>45</sup> *supra* note 30.



that if the governing body has consistently attempted with altering opportunities to offer women an unequalled social, monetary, and political existence, why are women presently debilitated? Why are women fighting for equal rights to males at this point? Why are women consistently ostracised, assaulted, and mistreated, resulting in a lack of assertiveness at home? Thus, the reason for these shrewd happenings toward women isn't just that the laws aren't appropriately realised, but additionally that women don't consider their advantages, for example, right of movement and heritage because they wish to be in the good books of their kin and guardian, and with this the reasonability of sanctioning has consistently been pounded. As a result, in order to keep such institutions effective and successful in the long run, all branches, parts, and researchers of the general public must work together.

