

A FIRST STEP IN THE DIRECTION OF GENDER REFORM: THE RIGHT OF HINDU DAUGHTER AS COPARCENER

Dr. Meenakshi Dahiya

Assistant Professor

Department of Law, PDM, University, Bahadurgarh

Email: meenakshidahiya9@gmail.com

Abstract: Every person has the right to receive equal treatment in all spheres of life. However, from the rise of Hindu culture, women's standing has been extremely uneven; they were not considered as coparceners and were not entitled to coparcenary property. Women are viewed as inferior, and they are taught to feel as such, especially when it comes to their property rights. None of the Hindu females were granted patrilineal rights in coparcenary property in their own manner prior to the Hindu Succession Act (Amendment) Act, 2005. She can only accept a portion when a man requests a division. However, the 2005 Amendment Act, which gave Hindu female coparceners (daughters) the same rights as male coparceners (sons), drastically altered Section 6 of the Act and the concept of the devolution of interest in coparcenary property. Daughter now has the same rights as Son by birth. In fact, the 2005 Amendment Act is a piece of gender reform legislation that aims to give women more economic power by granting them the freedom to possess property in their own manner. The purpose of this essay is to analyze significant changes made to the Hindu Succession Act that affect women's status as coparceners.

Keywords: Hindu Joint Family, Coparcenary, Amendment Act, 2005, Judicial Interpretation.

1.0 Introduction:

Women will be treated equally to males in all areas of life as Indian citizens, according to the Indian Constitution. Nevertheless, in patriarchal culture, she has always been seen as an inferior entity. This lower position extends to matters of privilege and rights in addition to the household and society. She is most made to feel inferior and treated unfairly in regards to her property rights. Hindu society is patriarchal; women's property rights are disregarded, and they are viewed as less valuable in social and economic spheres. "A woman must be dependent upon her father in her childhood, upon her husband in her youth, and upon her sons in her old age," said Manu, the first lawgiver. She must never be left unbound.

Despite this, attempts have been made to strengthen women's status with respect to their rights to inheritance and succession through several laws in India both before and after independence. Two important pieces of legislation that gave women some ownership rights were the Hindu Law of Inheritance Act of 1929 and the Hindu Women's Right to Property Act of 1937. However, it was quickly found that these regulations ignored the essential component of discrimination against women and were inconsistent, faulty in many ways, and the source of many abnormalities. As a result, the Indian Constitution aims to provide equality of position and opportunity as well as social, economic, and political justice following independence. Therefore, the then-government passed the Hindu Succession Act in 1956 in order to uphold the constitutional mandate and give women economic empowerment. The Act was the first legislation to address gender disparities in inheritance and to give Hindus a complete and standardized system of inheritance. Women's status, however, could not be changed because there was no notion of include women as coparceners and they continue to suffer discriminatory inheritance laws. Therefore, an amendment to the Hindu Succession Act, 1956 was made in 2005 to better the status of women, based on the proposal of the 174th Report of the Law Commission of India on "Property Rights of Women: Proposed Reforms under the Hindu Law." There are two main modifications made to the Act of 1956 by the Amendment. First of all, by granting daughter equal rights, it eliminates gender discrimination in section 6. Second, section 23 is omitted, meaning that until the male heirs choose how to divide their individual halves of the property, a female heir cannot request partition for a house completely occupied by a joint family. It has been demonstrated that this amendment represents a major advancement for women. In our patriarchal culture, there is still much work to be done before it can be implemented.

2.0 Hindu Joint Family vis-à-vis Coparcenary

A basic aspect of the Hindu society is the coparcenary and the Hindu Joint Family (HJF). A larger group known as the Hindu joint family is made up of all the male lineal descendants of a common ancestor, together with their wives and daughters who are not married. Other than through marriage or adoption, it cannot be generated by any party's acts. Hindu joint families typically share meals and prayer in addition to their estate. Conversely, the Hindu Joint Family is comprised of a smaller group known as coparcenary. The father and his three male lineal descendants—his son, grandson, and great grandson—made up the original composition. In the HJF, a son is a coparcener from birth. According to the Hindu Succession Act, a coparcener is a person who, by virtue of their birth, acquires an interest in joint family property, also referred to as coparcenary property.

Before the 2005 Amendment, girls only attained the status of members and were not recognized as coparceners; only male lineal descendants were. But in 2005, a change made the post of coparcener available to daughters and outlawed discrimination based on gender. Consequently, a boy or girl born into a Hindu joint family is automatically recognised as a coparcener of the HJF.

3.0 Modification of Hindu Women's Property Rights

Throughout the Vedic era, women were respected greatly and had a number of rights and benefits. Together with her spouse, they had equal rights and responsibilities. But the only prejudice they faced was succession and inheritance from their father's estate. Sons are entitled to an autonomous part of the family's property under Hindu law. Daughters' shares, however, are determined by the portion that their dads get. Because of this, the father can essentially disinherit his daughter by giving up his inheritance. Son, however, will still have a piece all by himself. Married daughters also have no residence rights in the ancestral house, not even if they are the victims of marital harassment.

The Hindu Law of Inheritance Act, 1929 was created in the 19th century in reaction to the realisation that women's property loss was unfair. This is a result of the limitations and occasionally mistreatment of women's rights to inheritance and property. It was the first law that gave Hindu women access to the inheritance system. Three female heirs were given the right to inherit under the Act: the sister, the son's daughter, and the daughter of the daughter. Another significant piece of law that brought about revolutionary changes and aimed to ensure that, in the Mitakshara coparcenary, Hindu Women's Right to Property Act, 1937, In the joint family property at the time of his death, the widow of a deceased husband would inherit the same stake that her husband had. As a male owner, she was granted the right to assert division. She was, therefore, just a limited owner in each instance. Even though she belonged to a joint family and had a coparcenary stake, the widow was not a coparcener. There were almost no inheritance rights for a daughter. These laws did not shield women from discrimination, even if they gave certain women additional rights of succession.

Thus, the Hindu Succession Act was created in 1956 in an effort to address all of these injustices and put Hindu women on an equal footing with males. It introduced significant modifications to the law of succession and bestowed rights on women's property that had not before existed. But unlike sons, girls were not granted the status of coparceners. It makes it very plain that, in the event of shared family property, a male Hindu's stake would pass by survivorship to the remaining coparcenary members rather than via succession. However, under this Act, the dead's interest in coparcenary will pass by testamentary or intestate succession, as applicable, and not by survivorship, if the deceased had left him with a living female relative. To put it briefly, in a joint household, the male coparcener takes his part while the female coparcener receives nothing. A female coparcener receives a portion of her deceased partner's estate only in the event of that coparcener's death. Consequently, the law's exclusion of daughters from coparcenary ownership due to their gender has not only exacerbated inequality against them but also resulted in the oppression and denial of their right to equality, making it seem as though the fundamental rights protected by the Constitution are being mocked. Because of this, there had to be an additional modification made to women's property rights, which was accomplished by the Hindu Succession (Amendment) Act of 2005.

4.0 The Hindu Succession (Amendment) Act, 2005, Section 6: Daughter as a Coparcener

As was already said, coparcenary is a unique aspect of the Hindu culture. He (the son) enjoys some specific rights in coparcenary property by birth since he is a coparcener. Nonetheless, male chauvinism in India has ignored these rights for daughters ever since Hindu law was established. Denying a daughter the chance to engage in coparcenary not only perpetuates gender inequity but also oppresses her and goes against her fundamental right to equality. Moreover, there is no social, legal, or moral basis for depriving a daughter in a coparcenary her rights. As a result, several initiatives were made to help the daughter integrate into society and get social justice. The necessary legal changes were implemented by a number of governments, including those of Andhra Pradesh (1985), Tamil Nadu

(1989), Karnataka (1994), and Maharashtra (1994), by giving daughters in Hindu Mitakshara coparcenary property the same rights. According to these States' laws, a daughter of a coparcener shall automatically become a coparcener in her own right from birth, much like her son does in a joint Hindu household regulated by Mitakshara law. Section 6 of the Hindu Succession Act, 1956 was changed by the Government in 2005 to remove prejudice and grant females the same rights as sons in Hindu Mitakshara coparcenary property. In a combined Hindu family, it grants girls the following privileges.

- She will naturally become a coparcener in her own way, just like her son.
- Will possess the coparcenary property rights that she would have possessed if she had been a son.
- Shall have the same obligations with regard to the aforementioned coparcenary property as a son, and any mention of a Hindu coparcener shall be understood to include a mention of a coparcener's daughter.

Due to the recent amendment to Section 6, there is no longer any discrimination based on Stridhan's nature, marital status, or place of education. Hindu women are becoming complete property owners. She was entitled to inherit equally with men, and widows had priority in the succession of both their father's and their husband's assets. In a joint Hindu family, the daughter of a coparcener has the same rights and obligations as her son and is automatically made into a coparcener in her own right from birth.

5.0 Current Judiciary Interpretation of Section 6

In *Prakash v. Phulavati* [(2016) 2 SCC 36], a Division Bench of the Supreme Court ruled that section 6 applies where both coparceners and his daughter were alive on September 9, 2005, the day the Amendment Act began to take effect. Section 6 is not retroactive in nature. Furthermore, the Court reiterated its earlier ruling in *Prakash v. Phulavati in Danamma @ Suman Surpur & Anr. v. Amar & Ors.* [(2018) (1) Scale 657] and declared that live daughters of living coparceners as of 9-9-2005 are entitled to rights under amendment, regardless of when such daughters are born. However, neither of these rulings provided a clear picture of a daughter's rights and continued to ignore gender discrimination. In *Vineeta Sharma v. Rakesh Sharma & Ors.*, the Hon. SC thereby reversed its previous rulings and clarified its stance on a number of difficulties coming out of the 2005 changes, notably in regards to granting a daughter the status of a coparcener. This decision was made on August 11, 2020. The court stated:

- A daughter who is born before to the start of the Hindu Succession Act, 1956, or after an amendment, is granted the status of coparcener.
- Daughters may assert their coparcenary rights as of September 9, 2005.
- It is not required for the father of the coparcener to be alive on September 9, 2005.
- In pending procedures for a final decree or in an appeal, girls are entitled to a coparcenary share equal to that of a son, even if a preliminary decision has been granted in the partition matter.
- An oral partition plea cannot be accepted as a statutorily recognized manner of division in light of the Explanation to Section 6(5).

6. Conclusion

According to the aforementioned report, everyone now has equal inheritance rights according to the 2005 Amendment Act. The daughter of a coparcener in a Hindu joint family is now, by virtue of her birth, a coparcener in her own right, with the same rights of claim by survivorship as well as the same obligations and limitations as a son. However, societal awareness of women's rights is a prerequisite for the effectiveness of these legislation. Women typically experience hardship and give up their rights. It is impossible to ignore the shift that took several decades to achieve parity between girls and boys regarding their ownership of family property due to public ignorance. In order to truly accomplish the goal of amendment, the judiciary should also work to put the legislation into effect. The woman herself must, above all, be conscious of and assertive of her rights.

7.0 References:

- Agarwal, R.K. (2007), *Hindu Law*. Central Law Agency. Allahabad.
- Diwan, Paras (2015), *Modern Hindu Law*. Allahabad Law Agency. Faridabad.
- Jilova Nishant (2018). Female Hindus as a coparcener after: the Hindu succession (amendment) act, 2005, *International Journal of Law* 4(3), 117-120.
- Jhaveri, B. & Boricha Kevin (2020). Hindu Undivided Family, Female Coparcener and her rights clarified by the three judges' bench of the Supreme Court, *AIFTP Journal*, 11-20.

- v. SS. Janhavi (2016). Overview of Gender Equilibrium from the Perspective of Woman's Coparcenaries Right, *Journal Of International Academic Research ForMultidisciplinary*, 4(1) 110-117.
- vi. Pradhan Saxena, Poonam (2011). *Family Lectures Family law II*. LexixNexis Butterworts Wadhwa. Nagpur.
- vii. Singh Shambhavi (2020). The rights of women vis-à-vis succession under Hindu law, *International Journal of Law Management & Humanities* 3(5),222-225.