A STEP FORWARD TO ELIMINATE INEQUALITY: DAUGHTER'S RIGHT IN FATHER'S PROPERTY

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INTRODUCTION

"A son is a son until he gets a wife, A daughter is a daughter throughout her life."[2]

The joint family is the essence of the Hindu family. There has always been discrimination between the son and the daughter in respect to the distribution of property after the father dies. Daughters were always treated as "*Paraya Dhan*" because of which sons were given the prior privilege in the distribution of property. Each individual by the excellence of being conceived as a human has the inborn option to be treated with respect and correspondence in each part of life. Nonetheless, women's however considered as a person is consigned to a place of enslavement and mistreatment as she is made to endure disparity and insult as for her privileges, all the more especially her entitlement to the property is disregarded unmitigatedly. Nonetheless, endeavours have been in India to improve the situation of Hindu women concerning her progression and property rights. The Hindu Succession Act, 1956 (herein referred to as 'HSA, 1956') came into effect on 17 June 1956. It laid down the uniform method for the succession for all Hindus. It codified laws of intestate succession and testamentary succession, and the classic laws which were prevailing before 1956. It bases its rule of succession on the basic Mitakshara Principle of Propinquity. There were only two types of properties that the women can hold i.e. *Stridhan* and *Women's Estate* but with certain restrictions on its alienation, gift, sell, or exchange.

NEED FOR A NEW CONTEMPORARY LEGISLATION

After the disappointment of the piecemeal enactments, Hindu law identifying with property privileges of women stayed static and prejudicial for quite a while. With the appearance of autonomy, the Constitution creators in India observed the antagonistic segregation sustained against women denying them of social and financial justice and gender equality balance as imagined in the Preamble of the Constitution of India, Article 14[3],15[4],16[5],21[6] (Fundamental Rights), Art 38[7], 39[8] 39A[9], 44[10] (Directive Principles of State Policy),

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[2] *Vineeta Sharma v. Rakesh Sharma & Others* LNIND 2020 SC 349 ¶ 50
[3] Art 14. Equality before Law.
[4] Art 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
[5] Art 16. Equality of opportunity in matters of Public Employment
[6] Art 21. Protection of Life and Personal Liberty
[7] Art 38. State to secure a social order for the promotion of welfare of the people
[8] Art 39. Certain principles of policy to be followed by the State
[9] Art 39A. Equal Justice and Free Legal Aid
[10] Art 44. Uniform Civil Code for the citizens

and Art 51A (e)[11] (Fundamental Duties). Despite the following rights and duties of the constitution, women were kept on being enslaved to male-centric control and denied of her privileges including property rights. Consequently, the HSA, 1956 was passed redressing the women's rights in the property and came into force on 17 June 1956.

A RAY OF HOPE- 1956 LEGISLATION

The HSA, 1956 provided for a comprehensive and uniform scheme of intestate successions for Hindus. This Act applies to any person who is Hindu, Buddhist, Jains, or Sikh by religion.[12] The HSA jams the double method of devolution of property under the Mitakshara school, the joint family property still decays by survivorship with this significant exemption that if a Mitakshara dies leaving behind the mother, widow, daughter, daughter's daughter, son's daughter, son's son's daughter, son's widow, son's son's widow, or daughter's son, his interest in the joint family property will devolve by succession.[13]

There are two types of succession under the succession law i.e. Testamentary succession and Intestate succession. The Testamentary succession relates to giving effect to the wishes of the testator (persons who make the will), how the will be made, how it will be given effect. In short, it relates to the distribution of property as per the wish of the deceased in the manner he wishes to distribute. All matters related to testamentary succession are provided in the Indian Succession Act, 1925. Whereas, Intestate succession relates to matters such as who are the persons entitled to take the property, who are the heirs, what will be the share of each heir, what will be the preference in distribution, etc.

Basic Features of the Act

1. The Act provides a detailed scheme of devolution of property by intestate successions for Hindus who are subject to the application of this Act. It cancels the unmistakable laws of succession under the Dayabhaga and Mitakshara frameworks and gives a uniform law, in light of regular love and friendship and closeness in relationship.[14]
2. It annulled the idea of the restricted domain for Hindu women and supplanted it with total possession. the ineptitude of a Hindu woman to hold the property as a full proprietor was taken out totally and she procured full powers of enjoyment and removal over her properties.

[11] Art 51A (e). to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
[12] HINDU SUCCESSION ACT, 1956, § 2
[13] Dr. Paras Diwan, Family Law, 467 (11th edition, 2018)
[14] 2 Dr. Poonam Pradhan Saxena, Family Law II, 271 (4th Edition, 2019)

3. It accommodates two separate plans of succession for male and female intestates. on account of female intestates, there is a further dissimilarity connected with the wellspring of the procurement of property that is the topic of progression.
4. It presented daughters and her youngsters in her nonappearance as the essential beneficiaries in inclination to the male collaterals and made her conjugal status immaterial for deciding her privileges of legacy.
5. The Act specifically protected the rights of posthumous children.
6. It preferred full blood relations over the half-blood relations if the relationship was the same in every other respect and relegated those related through uterine blood to a very inferior position.

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005- ABOLISHING GENDER INEQUALITY

The Hindu Succession (Amendment) Bill was introduced in the Parliament on 20 Dec 2004 and was passed by Rajya Sabha on 16 Aug 2005 and the Lok Sabha on 29 Aug 2005. Based on the recommendations of the 174th Law Commission Report on "Property Rights of Women- Proposed Reforms under Hindu Law", its primary aim was to remove gender inequalities under the Act, as it stood before the amendment.[15] The Bill received President's assent on 5 Sept 2005, and it came into force on 9 Sept 2005.[16]

Daughters as Coparceners

One of the radical changes brought in by the amendment was the inclusion of daughters as coparceners which they were not before the amendment. At present, instead of only the son had a right by birth, any child born in the family or legally adopted will be a coparcener and would have an interest in the coparcenary property. Thus, the concept that only the male could be a coparcener and female cannot be a coparcener ever is no longer valid. According to § 6[17] of the Act, the gender inequality against the daughters

[15] G.GOPICHAND III Addl. District Judge Kakinada, Latest Trends in Succession Among Hindus, District E-Courts Gov (9th Sept ,2020,20:25);https://districts.ecourts.gov.in/sites/default/files/Paper%201%29%20By%20Sri%20G%20Gopi%20Chand%2C%20III%20ADJ%20KKD.pdf

[16] 2 Dr. Poonam Pradhan Saxena, Family Law II, 273 (4th Edition, 2019)

[17] **6. Devolution of interest in coparcenary property**. -- **(1)** On and from the commencement of the Hindu Succession (Amendment) Act, 2005*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

a) by birth become a coparcener in her own right in the same manner as the son;
b) have the same rights in the coparcenary property as she would have had if she had been a son;
c) 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: Provided that 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.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005*, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be,

has been brought to an end and her rights and liabilities are the same as that of a son. In other words, daughters are now capable of acquiring coparcenary property and disposing of the same as per testamentary disposition on their own. The daughters are now held to be coparceners along with the sons and are entitled to an equal share in the coparcenary property.[18] Similarly, where a Hindu man domiciled in Andhra Pradesh died in 1999, his widow was held entitled to 1/16, and his son and the two daughters as coparceners were held entitled to 5/16th each of his property.[19] The courts from time to time have upheld in various cases that daughters have a right to property and also to re-open the partition and get her share.[20]

Earlier, the Act was deemed not to have the retrospective effect, so the daughters who were born on or after the 2005 amendment were only entitled to be a coparcener and a right in coparcenary property, and not those who were born before the said amendment.[21] But after in the case of ***Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari***[22], the court analyzed the amended section and held that amended § 6 is not wholly retroactive in operation, § 6(1)(a) is prospective whereas § 6(1)(b), (c) and § 6(2) are retroactive in operation. In other words, the Court upheld that the amended section applies to both daughters born before or after the amendment.[23] In a landmark judgment of ***Danamma @ Suman Surpur v. Amar***[24], the Apex court held that the date of birth of the women is irrespective while considering that whether they would be covered within the 2005 amendment or not. They are entitled to be coparceners whether they were born before or on or after the said amendment. The bench quoted that ;

"These changes have been sought to be made on the touchstone of equality, thus seeking to remove the perceived disability and prejudice to which a daughter was subjected. The fundamental changes brought forward about in the Hindu Succession Act, 1956 by amending it in 2005, are perhaps a realization of the immortal words of Roscoe Pound as appearing in his celebrated treaties, The Ideal Element in Law, that

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under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—
(a) the daughter is allotted the same share as is allotted to a son;
(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.
Explanation. —For the purposes of this sub-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

[18] *Phulawati v. Prakash* AIR 2011 Kant 78; *Ramesh Verma v. Lajesh Saxena* (2017) 1 SCC 257
[19] 2 Dr. Poonam Pradhan Saxena, Family Law II, 278 (4th Edition, 2019); *M Sujata v. M Surender Reddy* 2015 (40 ALT 273
[20] *Maheshwar Amat v. Ujala Amat* AIR 2016 Orissa 148; *Kalavani v. Ramu* AIR 2017 (NOC) 172 Mad
[21] *Vaishali S Ganorkar v. Satish Keshavrao Ganorkar* AIR 2012 Bom 101
[22] *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari* AIR 2014 Bom 151
[23] 2 Dr. Poonam Pradhan Saxena, Family Law II, 284 (4th Edition, 2019)
[24] *Danamma @ Suman Surpur v. Amar* AIR 2018 SC 721

"the law must be stable and yet it cannot standstill. Hence all thinking about the law has struggled to reconcile the conflicting demands of the need for stability and the need for change."[25]

§ 6(2) makes it very clear that a female Hindu would be entitled to hold property with the incidents of coparcenary ownership. The females have been classified into two categories per se. One those who are born in the family i.e daughters, they possess a right by birth in the coparcenary property and secondly those who become the member of a family by marriage. The latter is subjected to the same law as it stood before the amendment.

Does a Daughter loses its right in Property after Marriage?

It has been a controversial question as to whether the married daughter would still be entitled to coparcenary property or not. Before the 2005 Amendment, once the daughters get married, they ceased to be part of the family. In other sense, they were no longer entitled to avail benefits over the coparcenary property of her father alike son. Many women saw this as their curtailment of rights of property and gender discrimination.

After the 2005 amendment act, every daughter including married and unmarried was entitled to get the coparcenary property and were considered as the part of her father's family. She was allowed to enjoy her father's property even after her marriage. So, marriage was no more bar on the availing of property rights. Yet, prior, as indicated by the decision, a daughter can profit of the advantages allowed by the amendment just if her father died after September 9, 2005. also, the daughter is qualified to be a co-sharer just if the father and the daughter were alive on September 9, 2005.. If the father passed away before the amendment then the daughters whether married or unmarried were not allowed to be the co-sharer in the property and no rights vest in her. In ***R Mahalakshmi v. A Kanchana***[26], concerning the shares of the married daughter out of the ancestral property held by her father under § 29A, Hindu Succession (Tamil Nadu Amendment) Act, 1989, the court granted the shares to the daughters who were married but also said that if the partition would have taken place in 1984 when the claimant was married, she would not have a share in the joint family property despite being a daughter[27]. But in 2018, the court removed such barriers and said that the daughters were entitled to share in father's property living or dead, on the date of the amendment, thus making her children too to claim this right.[28]

[25] India Today Web Desk, SC clears that women born before Hindu succession act (2005) also have ancestral rights, India Today, (September 11th 2020, 20:18),https://www.indiatoday.in/education-today/gk-current-affairs/story/supreme-court-clears-that-women-born-before-hindu-succession-act-2005-also-have-ancestral-rights-1162549-2018-02-06
[26] *R Mahalakshmi v. A Kanchana* 2016 (8) SCALE 805
[27] 2 Dr. Poonam Pradhan Saxena, Family Law II, 288 (4th Edition, 2019)
[28] *Supra*, Note 23

JUDICIAL SCRUTINY OF THE 2005 AMENDMENT

In ***G Krishnamurthy v. Union of India***[29], a petition was filed for declaring the Hindu Succession (Amendment) Act, 2005 as ultra vires the Constitution of India. The constitutionality was challenged because they violate the basic tenets of Hindu law. The issue before the court was that whether § 6, 23, and 24 were ultra vires the Constitution. The Court while rejecting the contentions of the Petitioner, observed that § 6 of the HAS, 1956 earlier rights of the women were restricted, which are now provided by the 2005 amendment and accomplishing the goals of the fundamental right to equality enshrined in the Constitution so it cannot be called as unconstitutional. Similarly, the amended act omitted § 23 to remove the disability of the female heirs to ask for a partition in a dwelling house wholly occupied by a joint family. § 24 earlier created statutory discrimination against widows remarrying qua inheritance. The said section was important to remove as she cannot be barred to take her property only on account of her remarriage. So none of the amended provisions violate the Constitution. The 2005 Amendment act was called to be valid.[30]

WHAT HAPPENS TO THE PROPERTY WHEN THE MARRIED DAUGHTER DIES?

The 2005 Amendment Act made it clear that the daughters will also have a right in coparcenary property whether married or unmarried. But it fails to clarify as to what happens to the property when the married daughter dies after taking a share in her coparcenary property. The mode of devolution of that property has not been detailed in the said amendment. In such a case, her property may be divided into three cases-

(i) Property that she inherited from her parents: If the property has been inherited from the parents (not the *Stridhan*), then two categories have been made according to which the devolution of the property will take place. Under Category I, sons, daughters, sons, and daughters of a predeceased son and sons and daughters of a predeceased daughter have been kept. Under Category II, the property will devolve upon the heirs of the father if there is no one specified in Category I[31].

(ii) Property that she inherited from her husband or father in law: If the property is inherited by her husband or father in law, then the property will again be devolved as per two categories. Under Category I, sons, daughters, sons, and daughters of a predeceased son and sons and daughters of a predeceased daughter have been kept. Under Category II, the property will be devolved as per the heirs of her husband[32].

(iii) Property from any other source: If the female has inherited property from any other source except the above two categories, then it will be governed by § 15(1) and not § 15(2). As per § 15(1), the Hindu

[29] *G Krishnamurthy v. Union of India* AIR 2015 Mad 114
[30] *Supra*, Note 27
[31] Dr. Paras Diwan, Modern Hindu Law, 445 (23rd edition, 2018)
[32] Ibid, at page 445-446

female has been categorized into five entries. If there are no heirs as per five entries, then the property will go the Government by way of escheat.[33]

WAS IT THE TURNING POINT - 2015 REPEALING AMENDMENT?

The Parliament on 13th May 2015, passed the Repealing and Amending Act, 2015 to repeal and amend certain legislations. One of the wholly repealed acts was the Hindu Succession (Amendment) Act, 2005. The issue that arose was what is the effect of the repeal of the said 2005 amendment? Will it take away the rights of daughters in the coparcenary property or will it not affect at all on the 2005 Amendment?

The issue came before the Karnataka High Court in the case of ***Lokamani v. Mahadeamma[34],*** the court while considering the issue referred to § 6A of the General Clauses Act, 1897 and § 4 of the Repealing Act of 2015. The Court analyzed that the said 2015 Act does not in any way try to snatch away the power of the daughter that has been granted to them vide 2005 Amendment act as that Amendment has been given part of the 1956 Act and retrospective effect while giving them away from the equal rights as sons and removing gender discrimination. The court observed that the object of the Repealing Act is to strike out unnecessary Acts and excise a deed matter from the statute book and lighten the burden and remove confusion from the minds of people. It is not enacted to change the law but to remove enactments that have become unnecessary. The repeal of an amending act has no repercussion on the Parent Act which together with the amendments remains unaffected.[35] According to *Halsbury's Law of England*, such Acts have no legislative effect, but are designed for editorial revision, is intended only to excise dead matter from the statute book and to reduce its volume.[36]

A STEP FORWARD TO FIGHT AGAINST DISCRIMINATION

Recently, on Aug 11th, 2020, the three-judge bench headed by Justice Arun Mishra pronounced a landmark judgment and set aside all the controversy related to § 6 of the HSA, 1956 in the case of ***Vineeta Sharma v. Rakesh Sharma***[37]. The Apex Court in its strict sense has held that the application of § 6 applies to daughters by birth and not dependent on whether her father was alive at the time of the 2005 Amendment or not. The 2005 Amendment gave Hindu women the right to be coparceners or joint legal heirs in the same way a male heir does. Since the coparcenary is by birth, the father coparcener does not need to be living as on 9.9.2005.

[33] Supra, Note 30 at page 442-444
[34] *Lokamani v. Mahadeamma* AIR 2016 Kant 4
[35] 2 Dr. Poonam Pradhan Saxena, Family Law II, 303 (4th Edition, 2019)
[36] 2 Dr. Poonam Pradhan Saxena, Family Law II, 303 (4th Edition, 2019); *Lokamani v. Mahadeamma* AIR 2016 Kant 4 at ¶ 31-32
[37] *Vineeta Sharma v. Rakesh Sharma* LNIND 2020 SC 349

Daughters have been given the Right to equality by amending the § 6 of the HSA, 1956. It is no way that can be scratched away from them. The rights can be claimed by the daughter born earlier with effect from 9 Sept 2005 with savings as provided in § 6(1) as to the disposition or alienation, partition, or testamentary disposition which had taken place before 20th Dec 2004.[38] The court also overruled its earlier judgments[39] and told the other courts to dispose of similar matters within six months.

The decision has cleared the disarray about the law and clarified that the correction to the HSA, 1956 conceding equivalent rights to daughters to acquire property would have a review impact. The court perceived that sex can't be justification for denying anybody their legacy rights. This translation by the Preeminent Court has taken out male supremacy over Hindu property. It is a significant push for women who need financial assets and is regularly underestimated by male individuals from the family. The way that law and not only a will chooses women property rights is noteworthy.

CONCLUSION

Women have consistently been exposed to male strength. They were never given their privileges and equality despite the constitutional mandates. They generally lived under the male-centric culture and were smothered. Such rights additionally incorporate their property rights. A fight has been battled for quite a long time to give equivalent property rights in the ancestral property to the sons and daughters. The 2005 Correction was one of the beams of want to daughters by giving them equivalent rights as that of sons.

Even though the recent judgment is a dynamic advance in the quest for making a level-battleground in legitimate rights for women, acquiring conduct change society will assume a greater part towards the objective of gender equality. In this way, there is a need to get change the male-centric attitude of the general public and guarantee that women approach similar open doors as men in obtaining instructive capabilities and the preparation expected to run a venture.

[38] Ibid, ¶ 129 (ii)
[39] *Prakash v. Phulavati* AIR 2016 SC 769; *Mangammal v. T.B. Raju & Ors* (2018) SCC OnLine SC 422.; *Danamma @ Suman Surpur & Anr. v. Amar* AIR 2018 SC 721