Scope of Section 6 under Hindu Succession Act

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The Hindu Succession (Amendment) Act, 2005 is a landmark, after 50 years, the Act, finally addressed some persisting gender inequalities in the Hindu Succession Act, 1956 which itself was path-breaking. The 2005 Act covers inequalities on several fronts: like agricultural land, Mitakshara joint family property, parental dwelling house and certain widow’s rights.

The major achievement lies in including all daughters especially married daughters as coparceners in joint family property. The 1956 Hindu Succession Act, distinguished between separate property and joint family property. The separate property of a (non-matrilineal) Hindu male dying intestate devolves, in the first instance, equally on his Class I heirs, namely, son, daughter, widow and mother (plus specified heirs of predeceased children). If previously governed by Dayabhaga, this rule applied also to joint family property.

The Hindu Succession (Amendment) Act, 2005 was passed to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and to give equal rights to daughters in Hindu Mitakshara coparcenary property as the sons have. The Act aimed at making two major amendments in the Hindu Succession Act, 1956. Firstly it amended the provision which excluded the right of the daughters form the coparcenary property and secondly it omitted Section 23 of Act which this entitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein.

OBJECTIVE

This study will look into gender discrimination and condition before implementation of Hindu Succession Act 2005. The study will also analyze the inception and evolution of concept of coparcenary in the Hindu Law.

INTRODUCTION

The Constitution of India gives that each individual is entitled for equity under the steady gaze of law and equivalent protection of the laws and consequently disallows segregation based on
creed, caste and sex. The discrimination based on sex is admissible just as defensive measures to the female nationals as there is need to empower ladies who have suffered sexual discrimination over hundreds of years. Empowerment of women, leading to an equal social status with men hinges, among other things, on their right to hold and inherit property. Civilized societies across the globe ensure that women's inheritance rights are more secure than those of men because women take on the tremendous responsibility of producing and nurturing the next generation. In India, women's rights have suffered serious setbacks among all communities. Before 1956 Despite the Hindu Succession Act being passed in 1956, which gave women equal inheritance rights with men, the mitakshara coparcenary system was retained and the government refused to abolish the system of joint family. According to this system, in the case of a joint family, the daughter gets a smaller share than the son. While dividing the father's property between the mother, brother and sister, the share is equal.\[1\]

The Hindu Succession (Amendment) Act, 2005 is a landmark. After 50 years, the Government finally addressed some persisting gender inequalities in the 1956. The aim was to end gender discrimination in Mitakshara coparcenary by including daughters in the system. Mitakshara is one of the two schools of Hindu Law but it prevails in a large part of the country, it has been further elucidated in the project.

**LEGAL ASPECTS**

**POSITION OF WOMAN AFTER ENACTMENT OF HINDU SUCCESSION ACT, 1956**

After the advent of the Constitution, the first law made at the central level pertaining to property and inheritance concerning Hindus was the Hindu Succession Act, 1956 (hereinafter called the HSA). This Act dealing with intestate succession among Hindus came into force on 17th June 1956. It brought about changes in the law of succession and gave rights, which were hitherto unknown, in relation to a woman's property. The section 6 of Hindu Succession Act, 1956 follows as:

**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 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 subsection (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, 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 predeceased 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 so or a pre-deceased daughter, as the case may be.

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

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

The gender biased scheme in the Hindu Succession Act, 1956 under the guise of joint family Mitakshara coparcenary which retained only males as coparceners, came under scathing criticism from the supporters of gender equality. Section 6 of the Act provided that whenever a male Hindu, having an interest in a Mitakshara coparcenary property died after the commencement of this Act, then his interest in property would devolve by rule of survivorship and not in accordance with the Act. However, if the Mitakshara coparcener died leaving behind a female heir of Class I or a male heir claiming through her, then the interest would devolve by testamentary or intestate succession in accordance with the Act and rule of survivorship is inapplicable (Proviso to Section 6). This meant that Hindu females could not inherit ancestral property by birth right and was excluded from joint family coparcenary under Mitakshara system. For instance, if a joint family property was divided, then each male coparcener took his share and female got nothing. Thus the law by excluding the daughters from participating in coparcenary ownership (merely by reason of their sex) not only contributed to an inequity against females but has led to oppression and negation of their right to equality and appears to be a mockery of the fundamental rights guaranteed by the Constitution.

Hence this very fact necessitated a further change in regards to the property rights of women, and which was done by the Hindu Succession (Amendment) Bill, 2004.

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

Women in traditional Hindu society have commanded a very revered. A position of respect. However, in spite of this fact, the rights of women over property have been mostly Nil. Until, the Hindu Succession (Amendment)Act, 2005 came into being. The Hindu Succession Act is a landmark law which has drastically improved the position of women in the society. The act has given equal rights to the daughter as that to the son in a family. The Hindu Succession (Amendment) Act, 2005 was passed to remove gender discriminatory provisions in the Hindu
Succession Act, 1956 and to give equal rights to daughters in Hindu Mitakshara coparcenary property as the sons have. The Act aimed at making two major amendments in the Hindu Succession Act, 1956. Firstly it amended the provision which excluded the right of the daughters form the coparcenary property and secondly it omitted Section 23 of Act which dis entitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein.

**EFFECT OF THE AMENDMENT ACT ON THE POSITION OF THE WOMEN**

A consistent concern has been that under *Mitakshara* law, a son would inherit his deceased father’s property and would also have a share in the joint family property whereas the daughter would only get a share out of the notional partition of the deceased person. No right would be accrued to her by the virtue of birth. Out of many significant benefits brought in for women, one of the significant benefit has been to make women coparcenary (right by birth) in Mitakshara joint family property. Earlier the female heir only had a deceased man's notional portion. With this amendment, both male and female will get equal rights. In a major blow to patriarchy, centuries-old customary Hindu law in the shape of the exclusive male mitakshara coparcenary has been breached throughout the country. The 2005 Amendment brought in a change that made the daughters capable of getting a birth right in the ancestral property. If she dies intestate, then her property would devolve in accordance with section 15 of the Act.

The significant change of making all daughters (including married ones) coparceners in joint family property - has been of a great importance for women, both economically and symbolically. Economically, it can enhance women's security, by giving them birthrights in property that cannot be willed away by men. In a male-biased society where wills often disinherit women, this is a substantial gain. Also, as noted, women can become kartas of the property. Symbolically, all this signals that daughters and sons are equally important members of the parental family. It undermines the notion that after marriage the daughter belongs only to her husband's family. If her marriage breaks down, she can now return to her birth home by right, and not on the sufferance of relatives. This will enhance her self-confidence and social worth and give her greater bargaining power for herself and her children, in both parental and marital families.

“Now under the amendment, daughters will now get a share equal to that of sons at the time of the notional partition, just before the death of the father, and an equal share of the father’s
separate share. The amendment made in 2005 gives women equal rights in the inheritance of ancestral wealth, something reserved only for male heirs earlier. It indeed, is a significant step in bringing the Hindu Law of inheritance in accord with the constitutional principle of equality. Now, as per the amendment, Section 6 of the Hindu Succession Act, 1956 gives equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. The amendment was made because there was an urgent need for certainty in law.”

ANOMALY CREATED BY SC OVER SEC 6 OF HINDU SUCCESSION ACT, 1956

“Females have suffered a lot in India for their property rights. After the amendment of succession act in 2005, females felt a bit relaxed due to the egalitarianism provisions. But confusion arose over applicability of sec 6 i.e. whether women born after 2005 will get benefit as coparcener or it will apply retrospectively. In case PRAKASH & ORS vs. PHULAVATI &ors[2], (2015) SC opined”:-

“The rights of coparcener under amendment act 2005 are applicable to living daughters of living coparceners as on 9/9/2005 irrespective of the birth date of daughters.”

Simply it means if the father passes before the said date 9/9/20015, the living daughter of coparcener would have no right in coparcener’s property. So SC had set a clear line for availability of right under 2005 amendment but anomaly arose, In case DANAMMAS VS AMAR[3] (2018) SC unintentionally giving a peculiar judgement i.e.:-

“Partition is not complete with passing of preliminary decree &attains finality on final decree. If father had died before 2005 & prior suit is pending by male coparcener for partition, female coparcener is entitled to share in partition” has changed the line set by PRAKASH case.

CONCLUSION

The Constitution of India enshrines the principle of gender equality in its Preamble and Parts III, IV and IVA pertaining to Fundamental Rights, Fundamental Duties and Directive Principles respectively. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Despite the equality guaranteed by the law of the land, women in India had suffered a lot of inequalities.[4] Before the establishment of the Hindu Women's Right to Properties Act 1937, women were not qualified for a share in the Joint Family Property and progression was represented by
survivorship. According to the rule of survivorship, on the demise of an individual from joint and undivided family, his share in the joint family property would pass on to the surviving coparceners, which was comprehensive of just the male individuals from the family. Section 6 of the Amendment Act 2005 treated a female coparcener at standard with a male coparcener. The real accomplishment lies in including all daughters especially married daughters as coparceners in joint family property and her liabilities in Mitakshara coparcenary are like the liabilities of “son”.

References:


