



## INHERITANCE RIGHTS OF WOMEN AS COPARCENERS UNDER THE AMENDED SECTION 6 OF HINDU SUCCESSION ACT, 1956: A STUDY OF ITS ENFORCEMENT IN THE STATE OF HARYANA

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### ABSTRACT

With the 2005 amendment to the Hindu Succession Act of 1956, fundamental and drastic changes have come about in the law of intestate succession. It was a much-needed evolution in the Mitakshara law as upon one's death not only his separate property but also his coparcenary property must be divided equally among his male and female heirs. The interest of a deceased in a Joint Hindu Family is determined by a fictional, notional partition, which calculates the share of the deceased coparcener by assuming the division of the ancestral property took place before his death, and it is the only mechanism to implement the proviso given under section 6. After studying the historical evolution of women's inheritance laws and section 6 in particular, this paper will look at its enforcement in India. A research conducted with participants from the state of Haryana will also aim to uncover its practical implementation in the patriarchal set up of the state and analyze the harms of this law not reaching its citizens. The joint family system established by age-old laws needs some reevaluation, and the gendered nature of coparcenary rights is something that needs to be analyzed and deconstructed. There is a need to introduce legislations that are specific in language, free of anomalies and empowering in nature.

### I. INTRODUCTION

The Constitution of India, has within its foundation, inculcated the interests and given paramount importance to the protection of women and their rights. Article 14 guarantees equality before the law and equal protection of the laws to all persons.<sup>1</sup> Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15(3) permits protective discrimination in favor of women and children and State may make special provisions for safeguarding their interests. Article 21 ensures the right to live with dignity and is a concomitant of right to life. Fundamental duty under article 51A(e) renounces practices derogatory to the dignity of women.<sup>2</sup> These constitutional guarantees cannot be negated and any adverse legislation cannot be permitted; as the very foundation of our laws aims at establishing a code that is inclusive of every person and promotes their equal status in the Indian society. The exclusion of women from coparcenary ownership went against the constitutional mandate of equality.

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<sup>1</sup>Art. 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>2</sup> The Constitution of India.

Prior to the amendment of the act the interest of women in property ownership was only limited to wives, the amendment by acknowledging daughters as coparceners is a step in the right direction. The Hindu Law Committee also suggested abolishing the 'right by birth' and the principle of survivorship, but due to the patriarchal voices which at the time could not envision women having an equal footing as men, it took half a century for daughters to get the same right from birth.<sup>3</sup>

## II. WOMEN AND LAWS RELATING TO INHERITANCE AND SUCCESSION

Property can be acquired by three methods

- Gainful employments;
- Inheritance- intestate or testamentary; and
- Gifts.<sup>4</sup>

In the absence of a Uniform Civil code in our country, inheritance and succession are governed by personal laws. Hindu Succession Act governs Hindus, Sikhs, Buddhists and Jains.

Prior to codification, succession to property in North India was governed by the *Mitakshara School of Law* under which only males could be coparceners and property devolved by survivorship.<sup>5</sup> Women had limited inheritance rights, as only males could be coparceners and demand for partition.<sup>6</sup> The law recognized them as heirs, but only regarding properties that were separately owned by men or women. Hindu Law of Inheritance Act, 1929 conferred inheritance rights on three female heirs i.e. son's daughter, daughter's daughter and sister.<sup>7</sup>

Hindu Women's Right to Property Act (XVIII of), 1937 conferred rights on a coparcener's widow to succeed along with the son and to take a share equal to that of the son. Although she was not recognized as a coparcener, she could claim partition and was entitled to a limited estate in the property of the deceased.<sup>8</sup>

Section 6 of Hindu Succession Act 1956(old) laid down rules regarding devolution of interest of a male Hindu in coparcenary property by survivorship amongst coparceners. Non-recognition of women as coparceners meant that they could not inherit ancestral property and had no right to demand partition. Being a class-i heir, she had inheritance rights in the Hindu Undivided Family, but only in the share of which her father would have had in the HUF property at the time of his death.<sup>9</sup>

The age old notion of coparcenary rights first was challenged in the states of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu before the changes introduced in Section 6 of the Hindu Succession Act *vide* the Amendment Act of 2005 were introduced nationwide.

<sup>3</sup>Hindu Law Committee, *Annual Report*(1994).

<sup>4</sup>Poonam Saxena, *Family Law Lectures: Family Law II* (first published 2011, LexisNexis).

<sup>5</sup>Satyajeet Desai, *Mulla Hindu Law* (first published 1912, Dinshaw Mulla).

<sup>6</sup>*Sunil Kumar v. Ram Prakash* [1988] SC 576.

<sup>7</sup> Hindu Law of Inheritance Act 1929.

<sup>8</sup>Hindu Women's Right to Property Act 1937.

<sup>9</sup> Hindu Succession Act 1956, s 6.

After the Hindu Succession (Amendment) Act, 2005 [No. 39 of 2005 notified on 5th September, 2005] daughter was made a coparcener by birth in a joint Hindu family governed by the Mitakshara law, subject to the same liabilities in respect of the said coparcenary property as that of a son.<sup>10</sup> The amended provision is applicable only in respect of joint properties held by Hindu Undivided Family. This does not apply to self-acquired properties or properties acquired through will or gift. This applies to ancestral properties of Hindu male governed by Mitakshara School of law, dying intestate.<sup>11</sup> This is a central law which recognized that bifurcation of properties as ancestral and self-acquired, was harsh on women and thus, post 2005, the doctrine of survivorship has been abolished. Prior to this amendment, the partition after the father's (karta's) death, would leave the wife, son-i, and son-ii with 6/20 share in the property each and daughter-i and daughter-ii with 1/20 share each.<sup>12</sup> After the introduction of the amendment, daughters now have the same coparcenary rights as sons.

### III. CRITIQUES OF THE AMENDED SECTION

The amendment does by restricting itself to the share of a daughter, take away from its goal of creating gender equality by a significant margin. The share of the widow and other female members of a Hindu Joint Family upon the death of a male coparcener is decided as per past judicial rulings and the legislation lacks clarity. The concept of notional partition is still however socially relevant in deciding the manner of partition in an HUF.

The diminishing share of wives is pointed out by Indira Jaising in her article where she argues that "Wives along with other class-i female heirs will get a reduced share in the notional partition due to the addition of daughter as a coparcener. Justice can not be secured for a particular category of women at the expense of other women as that hinders the end goal of bringing uniformity in law."<sup>13</sup> However, it must be noted that the wives will have their own share coming from a completely different source altogether, i.e. their fathers. So even when their portion in the notional partition may decrease they still have their own share from their ancestral property. Still, there is need to introduce certain clarity in the law in this area.

Critics often argue for the need to remove the right from birth system, or abolish the joint family Hindu system altogether like the state of Kerala has.<sup>14</sup> Removing the joint family system was considered by the Law Commission but they dismissed it as the joint family system with only male coparceners had already been abolished, making daughters coparceners was in their best interest.<sup>15</sup>

<sup>10</sup> Hindu Succession (Amendment) Act 2005, s 6.

<sup>11</sup> *Supra*, note 4

<sup>12</sup> *Gurupad Magdum v. Hirabai Magdum* [1978]SC 1239.

<sup>13</sup> Indira Jaising, 'An Uncertain Inheritance: A Critique of the Hindu Succession (Amendment) Bill' (2005) 20 *Lawyer's Collective* 8.

<sup>14</sup> Kerala Joint Hindu Family (Abolition) Act 1975.

<sup>15</sup> Law Commission of India, *174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law* (2000).

A simple reading of the section also shows a number of anomalies, there is no specificity in terms of the daughter's children acquiring a right by birth in their maternal ancestor's property, such matters are left to judicial interpretation which also have certain limitations.

### **Judicial Interpretations of the Amended Provision**

In the case of *Ganduri Koteshwaramma & Anr. v. Chakiri Yanadi & Anr*, the Supreme Court held that “the rights of daughters in coparcenary property as per the amended Section 6 of Hindu Succession Act are not lost merely because a preliminary decree has been passed in a partition suit.” As far as partition suits are concerned, the partition only becomes final when a final decree is passed on the same. In the event where such situations may arise, the initial decree would have to be amended with taking the amendment of 2005 into consideration, accounting for the change in law.<sup>16</sup>

In *Prakash & ors v. Phulavati & ors*, the Supreme Court stated that the amendment to the Hindu Succession Act is prospective and is applicable to a living daughter of a living coparcener as on 9 September 2005 (i.e. at the commencement of the Amendment Act). This is irrespective of when such daughter was born, provided that any disposition or alienation including partitions with respect to the said property, took place before 20 December 2004 as per law applicable prior to the said date will remain unaffected.<sup>17</sup> Similarly, in the 2008 judgment of *Danamma v. Amar*, the Supreme Court held that a woman, by her birth in the family, is born as a coparcener and is entitled to obtain a share in the ancestral property irrespective of whether she was born before or after the amendment of 2005.<sup>18</sup>

Devolution of coparcenary property as seen in *Uttam v. Subhag Singh*, where three appellate courts held that upon the death of one of the coparceners, the HUF comes to an end. So when one coparcener died, the ancestral property ceased to be joint family property, and all coparceners lose their share in it. As the coparcener that passed away was the only class-I heir, partition could not take place.<sup>19</sup>

As Professor Poonam Saxena, on this judgment comments, “it deprives a legitimate shareholder of their portion in a coparcenary property while undermining all legislation on the same. It shows the lack of understanding and poor implementation of the law regarding the concept of coparcenary”.<sup>20</sup> This incorrect rewriting of the law leads to confusion regarding concepts of ancestral property and its acquisition and delegation.

## **IV. INHERITANCE RIGHTS OF WOMEN IN HARYANA**

<sup>16</sup>*Ganduri Koteshwaramma & Anr. v. Chakiri Yanadi & Anr* [2011] 9 SCC 788.

<sup>17</sup>*Prakash & ors v. Phulavati & ors* [2016] 2 SCC 36.

<sup>18</sup>*Danamma @ Suman Surpur v. Amar* [2018] 3 SCC 343.

<sup>19</sup>*Uttam v. Subhag Singh* [2016] 4 SCC 68.

<sup>20</sup>Poonam Saxena, ‘Judicial Re-Scripting Of Legislation Governing Devolution Of Coparcenary Property And Succession Under Hindu Law’ 58 *Journal of Indian Law Institute* (2016)

As per the 2011 Census, Haryana's population constitutes of nearly 87.5% Hindus; 7% Muslims and 5% Sikhs.<sup>21</sup> Thus, almost 93 percent of Haryana's population is governed by Hindu Succession Act in matters of succession and inheritance. Our constitution permits State Governments to introduce variations in the central act in accordance with the prevailing customs or practices of their region. Haryana has embraced the Hindu Succession Act, 1956 and the amendments to this act in 2005, *in toto*.<sup>22</sup>

However, there is a vast difference in theory and practice. Rights in ancestral property continue to elude women in Haryana. Haryana is notorious for practices such as female feticide and honor killings.<sup>23</sup> A deep-rooted patriarchal mindset has led to ubiquitous discrimination against women in all areas and matters of succession and inheritance are no different.<sup>24</sup> As noted by Professor Pathania in her research of women's lives in Haryana, eighty percent of women that she interacted with were opposed with the idea of inheriting property from their fathers. Though a level of awareness was present amongst the women regarding the laws, they still believed that they inherently had no right to ask for a share in their paternal ancestral property, fifteen percent agreed that they would take their share if financial need arises and only five percent said that they would like to have their share.<sup>25</sup> A disconnect from their own property rights can be observed in the women of Haryana, as the patriarchal set up rarely allows for one to feel comfortable having their ownership over resources.

Thus, this study was conducted with the following objectives

- i. To assess the implementation of Hindu Succession (amendment) Act, 2005 in Haryana;
- ii. To analyze the impact, positive as well as negative, of this law on people's lives and relationships;
- iii. To examine the obstacles in the proper implementation of this law;
- iv. Suggest remedial measures for proper legal implementation and social acceptance of the law.

### **Hypothesis**

*Hindu Succession Act (amendment) Act, though accepted, has not been implemented in Haryana.*

### **Research Methodology**

Taking the State of Haryana as the universe of this study, a questionnaire was prepared for respondents. Due to the prevailing lockdown, the research could not be personally done by meeting and interacting with the respondents. So, respondents were requested to submit their responses online

<sup>21</sup> Census of India (2011).

<sup>22</sup> <http://hsla.gov.in/sites/default/files/documents/19.pdf>

<sup>23</sup> National Human Rights Commission, Review of laws, implementation of treaties and other international instruments of human rights — 'Rights of the Child' — Female foeticide and infanticide 26(1996).

<sup>24</sup> Sunita Pathania, 'State of Awareness among Haryana Women on the Question of Human Rights: Weaknesses of Empirical Framework.' 22 Social Scientist (2014).

<sup>25</sup> *Id.*

(or via telephonic communication). Samples were chosen by purposive random sampling using snowball method. A diverse group consisting of both men as well as women, cutting across caste and class lines with medium to high literacy levels, were requested to submit their responses. The data so collected was analyzed and the findings have been presented in a tabular form.

**Research Findings**

Question 1: Are you aware that women have an equal share in ancestral property?

Response	Yes	No
Number of respondents	40	10

Majority of the respondents 80 percent were aware of the equal property rights granted to women. Only ten percent expressed ignorance of the law.

Question 2: Have women in your family staked a claim to their ancestral property?

Response	Yes	No
Number of Respondents	3	47

A miniscule six percent of respondents said that women had claimed their share in the property. Ninety-four percent of the respondents answered in the negative.

Question 3: Should women take their lawful share under this law?

Response	Yes	No
Number of Respondents	12	38

Only twenty-four percent of the respondents agree with the proposition that women should take their rightful share in ancestral property. Majority (seventy-six percent) response was against women taking their share.

Question 4: What is the reason behind your response to question number 3?

Response	Yes	No
Reason behind response	The law says so, Now-a-days there is no difference between boy and girl child, It is important for women empowerment.	This is contrary to customs and practices followed, Girls get their share in form of dowry and other gifts, They are shareholders in their husband's property, This will lead to unnecessary disputes,

		This will allow interference of outsiders (girlshusband) in their family matters.
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Those who were in favor of women taking their rightful share in ancestral property felt that it was their lawful right. Some of them said that people in the 21<sup>st</sup> century need to stop discriminating between sons and daughters and they should voluntarily give daughters their rightful share. They also felt that this will be a positive step towards women empowerment. On the other hand, majority of the respondents who were against women taking share in ancestral property felt that women should not be given share as this goes against the traditional practices and norms practiced in Haryana since ancient times and which should be preserved to maintain social order. They felt that since lot of expenditure is incurred by the family members on marriage, child birth and other related functions of daughters, so the family of her birth needs to retain the ancestral property to compensate for those expenses. Many of them also felt that women have less knowledge of worldly affairs and if they take share in ancestral property, they are indirectly giving it to their husbands who will take decisions regarding that property. This will cause outside interference in joint family property's disposition and related matters. Some expressed concerns that, even if they gave their daughters and sisters, their shares, there is a possibility that their wives or daughters-in-laws may not take shares from their brothers and fathers. Thus, the menfolk will be at loss.

Question 5: Do you think this amendment will contribute towards empowerment of women?

Response	Yes	No
Number of Respondents	45	5

An overwhelming majority, ninety percent of the respondents agreed that this will lead to women empowerment. Mere ten percent viewed this as detrimental to women empowerment.

Question 6: What is the reason behind your response to question number 4?

Response	Yes	No
Reason behind response	Women will become more confident, Girls will finally have their own share and an exit from unhappy marriages.	This law will also fail like other laws such as Dowry Prohibition Act (1961), This will lead to increase in crimes against women such



		as female feticide and female infanticide, This will reduce share of widow in husbands property.
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Those who felt that this will lead to women empowerment felt that this will be a confidence boosting step for the girl child. She will not feel like an outsider in her family of birth and will always have a secure backup. Many women continue in unhappy marriages as they have nowhere to go. Having a birth right in ancestral property will shield her from such insecurities and she will be able to take a stand to safeguard her dignity.

Question 7: Is this amendment beneficial to the society at large?

Response	Yes	No
Reason behind response	22	28

Forty-four percent of the respondents feel that this amendment will prove to be beneficial to the society as this will promote substantive gender equality.

Fifty-six percent of the respondents held a contrary view and felt that this will lead to more property disputes and unrest in families. They said that when start claiming ownership over ancestral property then the societal structure will be unsettled and women will become more powerful than men, by claiming share in family of birth as well as their matrimonial home. Some people said that there will be cases of boys enticing girls for their ancestral property share and this will lead to more love marriages which could be inter-caste in nature and this would be against the traditional societal norms. Some people said that this will embolden women to speak out against their husbands as they will not be scared of walking out of their matrimonial home. This will encourage break-up of the institution of family.

Question 8: What is the reason behind your response to question no.7?

Response	Yes	No
Reason behind response	Women will finally be acknowledged as equal to men.	There will be an increase in property disputes, This will disturb the social equilibrium, Women will become more powerful than men, and disturb the family structure, This will encourage love



		marriages, This will encourage divorces.
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## V. CONCLUSION

The responses show that despite awareness of the laws, people are not keen to implement them. There is reluctance in according women their rightful share, the male population is scared of loosening their hegemonic grip by making women equal shareholders in a property. People are skeptical of women taking a stand against continuing in unhappy marriages without realizing the torture that women are undergoing. Little do they fathom that the reason behind breakdown of families is ill-treatment of the woman and not the capacity of woman to sustain herself in the face of adversity. Still in Haryana, the divorce rate is one of the lowest in India.<sup>26</sup> That itself can be seen as a clear indicative of women not being able to avail their share of ancestral property which would help them in becoming more financially independent.

People need to shed the obsolete notions ingrained in patriarchy and discard discriminating practices against women. They need to be acknowledged as equal human beings not only on paper but also in practice. Sensitization of people is essential for the successful implementation and acceptance of any law. The modern version of Hinduism as we know it needs to be expanded to include women and provide them with equal opportunities, as any legislative measure will cease to exist if there is no societal acceptance of it. Though Hindus have the oldest codified laws there is a need for accommodating the modern woman and her position as a property owner.<sup>27</sup>

It has taken centuries for women to come out of the claustrophobic legal framework established in the Manusmriti and have their own rights recognized. Though there is still work to be done the 2005 Amendment allows unmarried as well as married women to ask for their rightful share in their ancestral property. Through evolution of legal texts women are closer to being an equal shareholder of rights in our society as their male counterparts.

<sup>26</sup>Soutik Biswas, 'What divorce and separation tell us about modern India' (BBC, September 29, 2016) available at <<https://www.bbc.com/news/world-asia-india-37481054>>.

<sup>27</sup>Halder, D., & Jaishankar, K., 'Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, And Modern India' 24 *Journal of Law and Religion* 685(2009).