

RIGHTS OF HINDU WOMEN IN COPARCENARY PROPERTY: LEGAL REFORMS AND CONTEMPORARY CHALLENGES

¹Dr. R. S. Bhakuni and ²Dr. Bipin Chandra Choubey

¹Deputy Director, Directorate of Higher Education, Govt. of Uttarakhand.
²Assistant Professor, Govt. Law College, Gopeshwar Chamoli, Uttarakhand

drsbhakuni@gmail.com¹
vishvasbhu@gmail.com²

I. GROUND MATRIX

The issue of property rights for Hindu women, particularly in the context of coparcenary property, has been one of the most contested and evolving facets of Indian legal and social history. The traditional Hindu joint family system, governed by the Mitakshara and Dayabhaga schools of Hindu law, for centuries relegated women to a subordinate status in matters of inheritance and property ownership. The structure of coparcenary, inherently patriarchal, traditionally excluded women from ownership and management of joint family property. The Hindu Succession Act, 1956, marked a significant legislative intervention aimed at codifying and reforming the law relating to intestate succession among Hindus, but it fell short in granting equal coparcenary rights to women. With legislative and judicial interventions in the late twentieth and early twenty-first centuries, especially the seminal Hindu Succession (Amendment) Act, 2005, the legal landscape has shifted toward greater gender parity. The landmark amendment of 2005 sought to address this imbalance, declaring daughters as coparceners by birth, and thus entitled to the same rights and liabilities as sons.

This research paper delves into the existing legal framework governing Hindu women's property rights in coparcenary property, critically examines the judicial approaches and interventions in protecting and advancing these rights, and situates the discussion within broader socio-legal, ethical, and technological discourses. Through a critical analysis of historical development, legislative reform, judicial interpretation, and ongoing social resistance, this study situates the struggle for women's property rights within the larger canvas of ethical, equitable, and transparent social transformation.

II. THE HISTORICAL CONTEXT: HINDU COPARCENARY AND WOMEN'S STATUS

The Hindu joint family, as conceptualized under classical Hindu law, is a unique institution comprising lineal descendants from a common ancestor, typically governed by the Mitakshara or Dayabhaga schools. The Mitakshara school of Hindu law, dominant in most parts of India, established the doctrine of coparcenary—a joint family structure comprising male members descended from a common ancestor, up to four generations. Coparcenary property, under this doctrine, was inherited by birth, conferring upon male descendants the right to demand partition, alienate their share, and participate in management.

The Vedic Era

The Vedic period of Hindu jurisprudence is a glorious chapter in the social history of India. Women enjoyed equal status with men. In public life they participated freely. However, it did not secure for her an absolute right with the husband in the ownership of the property. Since time immemorial the framing of all property laws have been exclusively for the benefit of

man, and woman has been treated as subservient. There were certain disabilities regarding the property rights of women.¹ According to Baudhayana, the father protects a woman in her childhood, the husband during her youth, the son in her old age; the women ought to have freedom.² Baudhayana, excluded a Hindu women from inheritance.³ However the theory of exclusion of women from inheritance as given by Baudhayana, became the subject of controversy among Scholars. Professor Max Muller, West and Buhler, Jolly Kane etc. have not accepted his principle. In their opinion, the Vedic text was not related at all with inheritance.⁴

The Smriti Era

During the Smriti period, the position of Hindu women, considerably improved in the sphere of proprietary rights. Some commentators and scholars admitted certain female heirs in the order of succession. In the Smriti period, the widow, the daughter and the mother were expressly recognized as heirs. Manu admitted the widow, the daughter and the mother in the order of succession.⁵ Brihaspati recognized a daughter's right of succession. He also recognized the wife's right of succession, but refused to extend it to immovable property⁶. Narada accepted the succession right of a daughter⁷.

Although, the Smritikars allowed the succession rights of Hindu women, but they could succeed to the property of a man, only in the absence of male heirs. A woman could only take a life interest while she was living together with the rest of the family member⁸. Women's heritable capacity was subject to certain conditions. A widow who is unchaste at the time of her husband's death is not entitled to inherit his estate, but once the property has vested in her, it cannot be divested by her subsequent unchastity.⁹

Post Smriti

After the Smriti age, the right of the women to inherit the property came to be eventually recognized all over the country. Both the Mitakshara and the Dayabhaga School¹⁰ have conceded heritable capacity to females. According to Dayabhaga School, the widow, the daughter, the mother the father's mother and the father's father's mother were recognized as heirs. The Mitakshara School also included the above named five women in the list of heirs. The Sub-Schools of Mitakshara had also recognized the women as heirs. In Madras School the Brother's daughter, sister's daughter, brother's son's daughter, father's sister are also recognized as heirs. The Bombay School recognized more female heirs. It included not only the heirs

¹A. S. Altekar, Position of Women in Hindu Civilization: Position of Women in Hindu Civilization: From Prehistoric Time to the Present Day, p. 409 Motilal Banarsidass Publishing House, New Delhi 1956.

² Baudhayana Dharmasutra, II.2.3.44- 46

³ Baudhayana Dharmasutra, II.2.2.47

⁴ Prakash Chand Jain, "Women's Property Rights Under Traditional Hindu Law and the Hindu Succession Act, 1956: Some Observations" 45: 3 & 4, *Journal of Indian Law Institute* (2003).

⁵ Manu Smriti IX, at 130 and 217

⁶ Brihaspati Smriti, XXVI, 93-94

⁷ Narada, XIII, 49

⁸ *Ibid*, 28-30

⁹ Satyajeeet A Desai, *Mulla Hindu Law*, p. 197, Lexis Nexis, 22nd Edition, 2016. There is difference between Mitakshara and Dayabhaga School as to whether the unchastity of any other female heir excludes her from inheritance. According to Mitakshara School, the condition of unchastity applies only to the widow, whereas according to Dayabhaga School the exclusion from inheritance due to unchastity applies not only to the widow, but also to other female heirs, such as daughter and mother. *Ibid*, p. 198.

¹⁰ The Mitakshara School owes its name to Vijnaneshwara's Commentary on the Yajnavalkya Smriti by the name of "Mitakshara."

recognized in the Benares and Madras School, but also includes Sister, Father's sister, the widows of the predeceased gotraja sapindas¹¹, son's daughter and daughter's daughter.

III. LEGISLATIVE EVOLUTION OF PROPERTY RIGHTS OF HINDU WOMEN: PRE-INDEPENDENCE DEVELOPMENT

With the advent of colonial rule there was substantial change in the legal structure of India. The Britishers modified the complete administration of country particularly the system of law and justice. The modification was at two levels: (i) through the introduction of a legal structure based on Anglo-Saxon Jurisprudence, and (ii) through principles of substantive law which were evolved and administered by the Colonial Courts.¹²

Colonial Codification

The ambience of women's rights started since the British period when the Indian Succession Act, 1865¹³ was enacted to strengthen the position of Indian women. The Act was also first in a series of legislations that strengthened the position of proprietary rights of women. The Act provided that "no person shall, by marriage, acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done if not married to that person."¹⁴ In 1929 the Hindu Law of Inheritance (Amendment) Act, 1929¹⁵, was passed, which aimed at giving preference to some nearer degrees of female heirs over certain remoter degrees of male heirs.

In order to confer better and significant rights of inheritance to the Hindu women, in 1937, the Hindu Women's Right to Property Act, 1937 was enacted.¹⁶ The Act made innovative changes in the Mitakshara law. The Act improved Hindu women's legal position regarding her property rights and made her co-heir with her husband's lineal descendants.

Under this Act, the widow of a deceased coparcener of a Mithakshara undivided family will have the same interest which her husband had while he was alive. She is thereby introduced into the coparcenary, and between the surviving coparceners of her husband. However, the claim granted to the widow is a limited one and it is such a limited interest that has come about to be called as a Hindu woman's estate. She does not acquire the right which her husband could have exercised over the interest of the other coparceners. It may be noted that the widow has the right to claim partition under this Act.

To sum up the scope of the Act was limited. It was concerned with improving the status and condition of a widow of a copartner so as to make her secure. She was given a share to enable her to maintain herself without being at the mercy of the surviving copartners. The purpose of the Act was achieved in a great measure in bringing a change in the general outlook of the

¹¹ The expression "sagotra sapinda" means of the same gotra and includes females that enter the gotra of the deceased by marriage. The widow of gotraja sapindas are recognized as heirs in the Bombay State only. *Supra* note 13, pp. 173-194.

¹² *Supra* note 25, p. 4. The Charter Act of 1661 was the first in a series of Charter, which authorized East India Company's judicial power in the company's territorial possessions.

¹³ Act No. 10 of 1865.

¹⁴ Section 4, *Ibid*. In 1874, the British Government enacted the Married Women's Property Act, 1874 to conferring economic security upon Indian Women.

¹⁵ Act III of 1929.

¹⁶ Act XVIII of 1937. The aim of the Hindu Women's Right to Property Bill, was to set right the problems created by the judicial decisions of the English courts which had constrained the scope of stridhana, during the later phase of the nineteenth century. K. Gill, *Hindu Women's Right to Property*, at p. 104, Deep & Deep Publication, New Delhi (1986).

Hindus towards the widow of the family and the widow was given an honorable place in the joint family. The Act did not relate to succession to property but only defined rights of a widow to property.

Thus a Hindu widow was introduced for the first time into the Hindu coparcenary having the same rights as her husband and became as it were a member of the Hindu coparcenary with two qualifications, viz.; (1) that she had only a limited interest; and (2) that she could not be a coparcener because having regard to the nature of her entry into the family after marriage with her husband there was no question of her getting interest in the Hindu coparcenary by birth which is one of the most important incidents of a Hindu coparcenary. Though the Hindu Women's Right to Property Act, 1937 was a reformatory measure, it was subjected to a good deal of criticism. The rights of the daughter, whatever they were during the period prior to the enactment, were not interfered with by this Act as it did not deal with the daughter's right to property.

Impact of Colonial Courts

Despite the initial policy of non-interference in personal matters, the English principles of justice, equity and good conscience were used for introducing English laws and customs into areas reserved as personal laws.

They introduced a system of codification of laws and the laws were now open to judicial interpretations and subsequent amendment. The British interpretations of the ancient texts became binding and made the law certain, rigid and uniform.¹⁷

On the other hand, through a series of judicial pronouncement by colonial courts, the scope of women's property rights was constrained. In a significant number of decisions the courts upheld that whether the property is inherited by a woman through her male relatives or through her female relatives, it was not her stridhana. The women did not have a right to will or gift away their stridhana. In *Mussamat Thakoor Deyhee vs. Rai Baluk Ram*¹⁸, the Privy Council ruled that "the widow has no power to dispose immovable property inherited from her husband, whether ancestral or acquired." The Privy Council in *Bhugwandeem Doobey vs. Myna Bae*¹⁹ proclaimed that "under the law of the Benares School, notwithstanding the ambiguous passage in the Mitakshara, no part of her husband's estate whether movable or immovable to which a Hindu woman succeeds by inheritance, forms part of her Stridhana".

The legal precedents set by the Privy Council became the binding rule of law followed by various High Courts in the subsequent cases. The Calcutta High Court in *Gonda Kooer vs. Kooer Gody Singh*²⁰ held that the property purchased by a widow out of the accumulated income from her stridhana was not stridhana and hence she does not have the right to dispose it off by will and upon her death it would devolve on her husband's heirs. In *Deo Prashad vs. Lujoo Roy*²¹ the court ruled that the property inherited by a daughter from her father is not stridhana.

IV. PROPERTY RIGHTS OF HINDU WOMEN: POST-INDEPENDENCE DEVELOPMENTS

Indian Constitution: Framework of Equality

¹⁷ *Ibid*, at p. 46. The Sati Regulation Act, 1829, the Widow Remarriage Act, 1856, the Age of Consent Act, 1860 and the Prohibition of Female Infanticide Act, 1872 were some of the legislative reforms intended to strengthen the social position of Women.

¹⁸ (1866) 11 MIA 139.

¹⁹ (1867) 11 MIA 487.

²⁰ (1874) 14 BLR 159.

²¹ (1873) 20 WR 102.

Indian Constitution has a substantially elaborate framework to ensure equality amongst its citizens. It not only guarantees equality to all persons, under Article 14 as a fundamental right, but also expands on this in the subsequent Articles, to make room for affirmative action and positive discrimination. The Indian Constitution not only guarantees women's equality, but also allows the government to implement measures of positive discrimination in their favor in order to mitigate the accumulated socioeconomic, educational, and political disadvantages they suffer. In the Indian Constitution's Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles, the concept of gender equality is entrenched. Our laws, development strategies, plans, and programmers have all sought to promote women in many areas within the framework of a democratic democracy. Fundamental rights include, among other things, ensuring equality before the law and equal protection under the law; prohibiting discrimination against any citizen on the basis of religion, race, caste, sex, or place of birth; and ensuring equal job opportunities for all people. Our Constitution is a very well structured to maintain equality between its inhabitants.

The Hindu Succession Act, 1956 : The Path to Formal Equality

The 1956 Act lays down a uniform and comprehensive system of inheritance and applies, inter-alia, to persons governed by Mitakshara and Dayabhaga Schools as well as to persons of certain parts of southern India who were previously governed by the Murumakkattayam, Aliyasantana and Nambudri Systems of Hindu Law²². The Act affected extensively the entire concept of Mitakshara coparcenary, which was subject to the rule of survivorship. 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, when 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 not by the rule of survivorship.²³ The Act removed the distinction between the son and the daughter in the matter of their right to inherit the property, as the daughter takes simultaneously with the son, widow and other heirs specified in Class I of the Schedule and the daughter inherits the interest of her father in the Mitakshara Coparcenary property.

The Act has abolished Hindu Women's limited estate and conferred upon Hindu women absolute and full ownership of property irrespective of its source of acquisition. The Act provided that, any property, both movable and immovable, possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as a full owner thereof and not as a limited owner and such property held by her as stridhana.²⁴ In this way the Act removes disability of a female to acquire and hold property as an absolute owner and also convert any estate already held by a woman on the date of the commencement of the Act as a limited owner into an absolute estate.

The widow entitled to succeed not only to the intestate's separate property, but also to her interest in the coparcenary property. Since the widow has been given absolute rights of

²² Law Commission of India, 174th Report on "Property Rights of Women: Proposed Reforms under the Hindu Law", MAY, 2000.

²³ Section 6, the Hindu Succession Act, 1956.

²⁴ Section 14, *Ibid.* However, where a Hindu female, after the commencement of this Act, is given any property with certain limitations, she would hold that the property is subject to those limitations and cannot acquire those properties as an absolute owner. Section 14(2), *Id.*

inheritance, she will not be deprived of property on her subsequent re-marriage. Conversion to another religion and unchastity is not a disqualification for inheritance of a Hindu female under the Act. In *Pratap Singh v. Union of India*²⁵ the Supreme Court held that Section 14(1) of the Act was enacted to remedy to some extent the plight of a Hindu woman who could not claim absolute interest in the properties inherited by her from her husband but who could only enjoy then with all the restrictions attached to a widow's estate under the Hindu law.

Though, the Hindu Succession Act, 1956 was intended to give better property rights to Hindu women, it came under heavy criticism on several grounds. An important defect of this Act was that a Hindu female could not inherit ancestral property by birth right and were excluded from joint family coparcenary under the Mitakshara system. Only when one of the coparceners died, she got a share in the interest as an heir to the deceased coparcener.²⁶ Next serious defect of the Act was that, women have been placed in an unequal position in comparison to of males with regard to inheritance rights in agricultural land.²⁷ Further, the Act again disentitled a female heir to seek partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares.²⁸ Thus the Hindu Succession Act, 1956 instead of promoting gender equality, perpetuated gender discrimination through some of its provisions.

The Hindu Succession (Amendment) Act, 2005

The Hindu Succession (Amendment) Act, 2005 omitted Section 4 (2) of the Hindu Succession Act 1956, and paved the way for women's inheritance in agricultural lands becoming equal to that of males. The Amendment Act, 2005 has addressed a very pertinent matter relating to the rights of daughters in the Mitakshara coparcenary and thus elevated the daughter's position by amending section 6 of the Hindu Succession Act 1956. The amended Section 6 provides that the daughter of a coparcener in a joint family governed by the Mitakshara law shall, on and from the date of commencement of the Hindu Succession (Amendment) Act, 2005, by birth become a coparcener in her own right in the same manner as the son. She shall have the same rights and be subjected to the same disabilities in the coparcenary property as that of a son and any reference to a Hindu Mitakshara Coparcenary shall be deemed to include a reference to a daughter of a coparcener.

Further any property to which female Hindu becomes entitled by virtue of sub-section (1) of section 6, shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition. Further the daughter is allotted the same share as is allotted to a son and that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter.

Section 23 of the Hindu Succession Act, 1956 has been omitted by the Amendment Act, 2005, as a result of which, at present all daughters, both unmarried and married, are entitled to same rights as sons to reside in and to claim partition of the parental dwelling home. Thus, finally through the Amendment of 2005, the daughter of a coparcener has become a coparcener in the Mitakshara joint family property and has the same birth right as that of son with same rights and liabilities. Daughter will now get a share equal to that of son.

²⁵ 1985 AIR 1695

²⁶ Section 6, the Hindu Succession Act, 1956.

²⁷ *Ibid*, Section 4(2).

²⁸ *Id.* Section 23.

V. COPARCENARY RIGHTS OF DAUGHTER: PROSPECTIVELY OR RETROSPECTIVELY

Judicial Hunch

The judiciary has played a major role in protecting the rights and interests of women by correctly interpreting the legislative requirements. The Apex Court has also shown concern for women's property rights in recent times. The Apex Court has been taking several steps to render relief to the victims to ensure no discrimination between men and women regarding property rights of women.

In *Prakash & Ors. v. Phulavati*²⁹ a two judge bench of Apex Court held the provisions of the Act to have prospective effect and confers the coparcenary right on the living daughter of a living coparcener as on 09.09.2005. Accordingly, the provisions of Section 6 were held to be prospective. Meanwhile, in the case of *Danamma @ Suman Surpur v. Amar*³⁰ a contradictory judgement was delivered by another division bench of Apex Court and held the provisions of the Act to have retrospective applicability. The Apex Court took the view that when a daughter, claiming and demanding a share in the coparcenary property is alive on 9.09.2005, she would be entitled to the benefit of the amended provision irrespective of the effect whether a coparcener had died before the commencement of the Amendment Act.

Conflicting verdicts had been pronounced in both the cases which had conflicting ratio decidendi. This ambiguity was cleared and settled down in *Vineeta Sharma v. Rakesh Sharma*³¹ which overruled the decision rendered in *Phulavati* and upheld the legal position that the coparcenary status of the daughters is created by birth and is not dependent on the living status of their fathers as on the date of amendment i.e. 09.09.2005. A three judge bench of the Apex Court, held that the provisions contained in amended Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. The rights can be claimed by the daughter born earlier with effect from 9.9.2005. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on commencement of the Amendment Act, 2005. It held that the Act will be effective retroactively. That is, daughters will be given a share in the coparcenary property even if the father died before 2005. The Supreme Court pointed to the object of the Act which was to remove gender discrimination regarding rules of the coparcenary.

VI. OBSERVATIONS

The legal status of Hindu woman in respect of her property right has undergone unprecedented transformation from Vedic text to the Hindu Succession (Amendment) Act, 2005. The Hindu Law of Inheritance (Amendment) Act, 1929 was the earliest statutory legislation which brought the Hindu females into the scheme of inheritance. The Hindu Succession Act, 1956 abolished the concept of limited estate and made Hindu women the absolute owner of all property acquired by her. Further the most revolutionary change brought by the 2005 Amendment Act through inclusion of Hindu daughters in Mitakshara coparcenary as a coparcener like a son.

The journey of Hindu women's rights in coparcenary property, from exclusion to inclusion and from limited estate to full ownership has been remarkable. While the codification has brought tremendous developments relating to the rights of Hindu women in holding and disposing of

²⁹ AIR 2016 SC 769.

³⁰ AIR 2018 SC 721.

³¹ AIR 2020 SC 3717.

their property, these rights are more conceptual than actual, as Hindu women are still denied their positive ownership in coparcenary property in the predominant patriarchal society. The Hindu Succession (Amendment) Act, 2005, and the progressive judicial interpretations that followed, have dismantled the structural barriers to gender equality in inheritance law. Almost twenty years have passed since the Hindu Succession (Amendment) Act, 2005 was notified, yet most of the people still do not know about the coparcenary rights given to the daughters. The provisions of the Hindu Succession (Amendment) Act, 2005, have not been able to take "live law" shape despite the objective of gender equality enshrined in Constitution of India.

VII. RECOMMENDATIONS

On the basis of this study following appropriate recommendations are being suggested for effective enforcement of the law governing women's property right:

- (i) Efforts should be made to make people aware of the law and to tell the women about their coparcenary right in the ancestral property.
- (ii) At the time of partition of coparcenary property, the daughter is not getting the share in the property through automatic route like son. In this regard more influential executive rules are required at Tehsil or Sub-district Level for granting possession over the coparcenary property to the daughter.
- (iii) Since the daughter has been made a coparcener and gets a birth right in the ancestral property but in actual practice most of the daughters surrender their property interest in favour of their brothers and others. In such situation there is no change in their economic and social status. A multidimensional approach is needed to improve the coparcenary status of women.
- (iv) The provisions of the Hindu Succession (Amendment) Act, 2005 should also be made applicable to members of the Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution of India so that the daughters of the tribe community may also get the coparcenary benefit.