

# Women's Proprietary Rights: A Revisit into the Recent Amendment in Hindu Succession Act

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**Abstract:** The Hindu Succession (Amendment) Act, 2005 has widely affected the concept of Mitakshara Hindu Coparcenary. Hindu Succession (Amendment) Act, 2005 has totally damaged the concept of Mitakshara Coparcenary because the daughter has been treated like a son under Hindu Succession (Amendment) Act, 2005. She has now become a coparcener in her own right in the same manner as the son and is entitled to a share in coparcenary by birth. She has not only been conferred with the coparcenary right as that of the son; but she has also been given all the rights as possessed by the son in the coparcenary and though she is bound by the similar liabilities like a son. The major changes lie in the fact that all daughters including married daughters have begun to be regarded as coparcener in joint family property.

**Keywords:** Women's Proprietary Rights, Hindu Succession Act, Recent Amendment

## I. HINDU SUCCESSION AMENDMENT ACT, 2005

This Hindu Succession (Amendment) Act, 2005 is enacted to empower women, especially daughters to hold property as a coparcener in their ancestral coparcenary property. This coparcenary property held by a daughter after 2005 shall be held by her with the incidents of coparcenary ownership and shall be regarded as property being capable of disposal as by her by testamentary disposition. Where a Hindu dies after the commencement of Hindu Succession (Amendment) Act, 2005, his interest in the property of a joint Hindu family governed by Mitakshara law, shall be devolved 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 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 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 daughter, as the case may be.

Section 6 of the Act before the Amendment of 2005 dealt with devolution of interest of a male Hindu in coparcenary property and recognized the rule of devolution by survivorship among the members of the coparcenary. The

retention of the Mitakshara coparcenary property without including the females in it meant that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughters from participating in the coparcenary ownership not only contributed to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution of India having regard to the need to render social justice to women. Thus, in 2005 the Parliament after much agitation thought of amending this provision and on 9-9-2005 the said Section 6 was amended providing the daughters with equal rights and liabilities in the acquisition of ancestral coparcenary property by them, same as equivalent to the share of a male Hindu coparcener in a family governed by Mitakshara law. Section 6 after amendment conferred an absolute right in a female heir in respect of partition of property occupied by joint family.

A question which may arise in the case of a daughter is how the coparcenary interest will be determined at the time of her marriage. In fact, it would pose no problem because the male members of a coparcenary can determine the coparcenary interest any time at their will so why should there be any difficulty in the case of daughters. In fact, the main emphasis is on granting the proprietary rights to female children equal to the proprietary rights of male children. Therefore, the marriage of a daughter may or may not have any impact on the proprietary interest rather it will depend upon the will of the female herself. The division of property of a coparcenary will depend on the nature of the property whether the property which is in the hands of the coparceners is ancestral property or it is the self-acquired property of the coparceners. This problem has already been in existence both in the Mitakshara and the Dayabhaga Schools of Hindu law and the

solution of the problem of division or partition of coparcenary property may follow either the pattern followed in Hindu law or statutory provisions may be made in this behalf. But, in any case inclusion of a female child in coparcenary is not against the letter and spirit of Hindu law.

## II. EFFECTS OF THE AMENDMENT:

As concluding the whole study, it is necessary to mention the effects of the amendment which can be there in the near future upon the status of joint family, joint family property, society and moreover on women itself.

### 1. Increasing the cases of Female Feticide:

Giving birth right to the daughter in this joint family property may increase the cases of female foeticide. Some communities among Hindus are mostly depends upon the land and joint family property. They don't even let the small portion of that to get away from them. Daughters have to go to her husband's house after their marriage. Therefore, there is a possibility that they won't let a girl child to be born in the family. This will apparently increase the cases of female foeticide

### 2. Indirect form of Dowry:

Giving birth right to the daughter in the joint family property is an indirect form of dowry. As after the death of the married women dying intestate, the property will devolves firstly, upon the heirs of the husband, thereafter to the husband, then to the parents of the husband and at last to the parents of the women dying intestate. Therefore, we can say that there is an indirect form of dowry.

### 3. Affects the Concept of Joint Family:

This right will affect the concept of joint family as among Hindus the most of the families do not want to give property to the daughter. Therefore, their right will broke the relation of brother and sister or the joint family if she demands share from the joint family property. This right will apparently increase the partitions in the joint family, which become destructive for the joint family system.

### 4. Affects the Property or Fragmentation of Land:

It will adversely affect the property. It will divide the joint family property in small shares even if the male members of the family don't want partition. The in-laws may pressurize the women to demand partition. This will divide property in small shares.

### 5. Indirect Right to in-laws:

With right to daughter or women, it is an indirect right in the hands of her in-laws. They can anytime demand partition in the joint family property or dwelling house by pressurizing the women. Therefore, it is an indirect right in the hands of her in-laws, which increases the property of her in laws and not of the women.

### 6. Enhancing the cases of Domestic Violence:

There may be cases where women do not want any share from her parental joint family property. But her in-laws want it. In this case, there is a possibility of the incidents of domestic violence to pressurize the women to demand partition or to get all shares from her parental joint family property.

Therefore, it will create difficulties for the women to take independent step.

## III. CONCLUSION

The Hindu Succession (Amendment) Act, 2005 has tried to balance the differences which were there earlier in respect to girl child in a family with respect to property. This amendment has brought them on equal footing with respect to the property matters, thereby eliminating the discrimination which was there in the Indian Hindu Society with respect to the property. Now they hold equal share in the joint Hindu Family property. The previous law which excluded the daughters from participating in the coparcenary ownership not only contributed to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution of India having regard to the need to render social justice to women. These amendments will render an enormous change in the behavior towards women in Hindu society.