

EQUALITY FOR WOMEN: MAKING A CASE FOR 'EQUAL' COPARCENARY IN INDIA

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ABSTRACT

It is often said that the status of women in a society is a reflection of its overall progress. In India, women have fought long and hard for their rights and equality. One of the most significant legal battles was for the right to equal inheritance in their father's property under Hindu Undivided Family (HUF) law. In pre-independence India, a few institutions were established to address the issue of property rights for Hindu women. However, despite these efforts, the position of women did not significantly improve. The Hindu law pertaining to property rights remained stagnant and discriminatory for a long time, despite some piecemeal legislations.

Fortunately, there has been a significant shift in the position of Hindu women regarding their right to property following the enactment of the Hindu Succession Act in 1956 and its subsequent amendment in 2005. These legal changes have played a crucial role in advancing the rights of Hindu women in relation to property ownership. This paper attempts to analyse the evolution of the property rights of women in India over the years.

Keywords: *Discriminatory, Hindu Law, Inheritance, Property rights and Women.*

1. INTRODUCTION

Women have experienced a variety of forms of inequality and discrimination throughout history. Equality is still a battle in progress, despite great advancements. Ensuring that women have equal rights and opportunities in all areas of life is a critical component of gender equality. All of the ancient Hindu laws regard women as being socially inferior to men. She had been stripped of her independence and placed under the control of the male members for her basic needs. The Hindu Succession Act of 1956, was the first law of its type to handle the Hindu legal principle of inherited ancestral property¹. It established the Hindu law stating that only the male lineal descendants of a Hindu Undivided family are eligible to inherit their ancestors' property.

The women had 'total ownership' over their own property, but they were not granted coparcenary rights over the land of their ancestors. As a result, the Act explicitly discriminated against women based only on their gender, violating their fundamental right to equality provided by Article 14 of the Indian Constitution².

2. COPARCENARY RIGHTS: MEANING AND CONCEPT

The Hindu Succession Act, 1956, which regulates the inheritance and property rights of Hindu people in India, places a strong emphasis on the idea of Hindu Coparcenary Rights. Prior to the 2005 amendment of the Hindu Succession Act³, the concept of coparcenary rights was typically applied to the male members of a Hindu Undivided Family (HUF). The word "coparcenary" refers to a special form of joint family ownership where the male family members, or "coparceners," are entitled to the ancestors' property by birth. This right, which they may enforce and exercise, gives them an undivided interest and a stake in the property.

Four generations of male family members, starting with the eldest survivor, made up a traditional Hindu coparcenary. The female relatives of the deceased were left without any protection under such an arrangement because only the men who were members of the coparcenary were given property rights. Because it was believed that women lacked the strength to carry out religious duties like presenting sacrifices to the dead and executing

¹ Hindu Succession Act, 1956, No. 30, Acts of the Parliament, 1956 (India)

² INDIA CONST. art. 14

³ The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of the Parliament, 2005 (India)

burial rites, they were not allowed⁴. Because of this bias against women, old succession laws prevented women from achieving equality.

By allowing daughters equal coparcenary rights, the Hindu Succession Act underwent a significant alteration in 2005. The amendment granted daughters the same status and rights in the inherited property as sons by recognising them as coparceners in their own right. Daughters gained the same birth right to a piece of the coparcenary property as sons. However, it is important to note that coparcenary rights are applicable only to ancestral property and not to self-acquired property⁵.

3. TRACING THE HISTORY OF COPARCENARY RIGHTS

Coparcenary is founded on the idea of Daya, or property, which Vijnaneshwara discussed in his commentary on Yajnavalkyasmriti in the "Daya vibhaga prakranam vayavahara adhaya." Daya solely refers to possessions that pass to someone else due to their connection to the original owner. The expression "merely by reason of relation" does not contain any other motive, such as purchasing. Narada recognises the Daya's significance as a coparcenary asset and agrees that only a father's property that has been approved by the learned is accessible for sons to share.

It can be claimed that ancient Hindu jurisprudence contributed to shaping the Mitakshara School of Hindu law in particular and Hindu law in general since it gave rise to the peculiar concept of coparcenary.

3.1 Hindu Schools of Law

The codified Hindu law lays down uniform laws for the Hindus in society. Their relevance lies only in those areas in which there is no codified law.

3.1.1 The Mitakshara School

The propinquity concept, which essentially means nearest blood related first, was used in this school to apply the law of inheritance. The 1956 Hindu Succession Act was based on this

⁴ Shambhavi Singh, *The Rights of Women vis-à-vis Succession under Hindu Law*, 3 INT'L J. L. MGMT & HUMAN. (2020)

⁵ Self-acquired property is something that was obtained independently of ancestry, whether through direct purchase or inheritance. Both girls and sons are equally entitled to inherit self-acquired property.

notion⁶. Based on the concept of birthright ownership, the men of the family had birthright exclusivity in the joint family property, although the women did not⁷. This distribution theory is known as the doctrine of survivorship. According to Indian family law, this essentially indicated that the daughter's rights should be forfeited because the property should be transferred to the inheritor, who can assure the family's survival in the future.

3.1.2 The Dayabhaga School

This institution is regarded as the Benaras School's rebel institution. Banaras has served as the fortress of Brahmin orthodoxy and conservatism as well as the stamp of Brahmana scholarship. This school is widely used in Bengal and Assam⁸.

The concept of spiritual or religious efficacy is the cornerstone of this institution. The Doctrine of Oblations states that the property shall be inherited by those who offer higher spiritual benefits than those who bestow smaller spiritual advantages. The Mitakshara school, which mostly concentrated on agnatic relations, had left out many cognates from the list of heirs. This new theory corrects that flaw.

The women in the family may also inherit the property. The sons do not inherit the property by birth, according to this school. If the coparcener passes away without leaving an heir, his widow is entitled to inherit his share and to bring about a division on her own behalf.

4. PRESENT SCENARIO: THE LANDMARK JUDGEMENTS

Even though the 2005 amendment acknowledged women's rights, there have been a number of issues that have called into question the consistency of the amendment with respect to daughters' rights. One of these concerns was whether the daughter's father had to be alive as of the amendment date in order for the latter to make a claim for benefits under the 2005 amendment.

4.1 Prakash v. Phulavati⁹

⁶ Hindu Succession Act, 1956, No. 30, Acts of the Parliament, 1956 (India)

⁷ Saimy Eliza Abraham, Short Note on Hindu Joint Family- Under Mitakshara and Dayabhaga, 2 INT'L J. L. MGMT & HUMAN. (2018)

⁸ Ibid

⁹ (2016) 2 SCC 36

In the current case, the daughter of the deceased filed a complaint for partition and inheritance in 1992. The plaintiff altered her argument to take advantage of the 2005 amendment¹⁰, which was passed while this litigation was still underway. The trial court, however, refused to give her a share of the ancestors' property. The High Court overruled this decision on appeal, saying that the amendment act would still apply to the situation at hand even if the respondent's father had passed away prior to the enactment. It was discovered after reading the amended legislation that the only situations in which partition had already occurred before the stated date were exempt.

The defendants in the instant case claimed that the plaintiff was not entitled to the separate property of her father. They presented this justification in a Supreme Court appeal, claiming that the plain language of the amended clause made it clear and that it would apply to the "daughter of a coparcener" at the time the act started. Because the coparcener passed away before the amendment took effect in the given situation, the daughter would not be able to benefit from it. It was contended that the amendment was a social law and should apply retrospectively.

The court ruled that the amendment act could only go into effect if the father died after it was passed. It was held that the act cannot be applied retrospectively in the absence of any specific provisions. As a result, the amendment only applies to "living daughters of living coparceners" at the time of implementation, and prior transactions are unaffected.

4.2 Dannamma v. Amar¹¹

This case revolves around the death of Gurulingappa Savadi, who was the head of a joint Hindu family. After his passing in 2001, he left behind his widow and four children: two daughters named Danamma and Mahananda, and two sons named Vijay and ArunKumar. Amar, who is the son of ArunKumar, filed a lawsuit seeking partition and separate ownership of the family's property. However, he refused to give any share to the daughters on the ground that they were born before the amendment and furthermore, both of them have

¹⁰ The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of the Parliament, 2005 (India)

¹¹ CIVIL APPEAL NOS. 188-189 OF 2018

received dowry during their marriage. The trial court and the High Court had refused the daughters any share.¹²

The Supreme Court did, however, reverse the contested rulings. The question was whether the amendment would grant the girls coparcener status "in the same right as the sons." It was found, using the case of Anar Devi¹³ and Phulavati as a reference, that the idea of notional partition only affects the heirs' shares, not the coparcenary as a whole. It said that the purpose of the amendment was to uphold the constitutional mandate for equality.

5. CONFLICTING INTERPRETATIONS

The Danamma ruling, therefore, brought the controversy back to life. Even though the judgement agrees with the Phulavati ratio, it does not apply it. The decision openly defies the Phulavati ratio, which held that the new legislation should only apply to "living daughters of living coparceners," by giving the girls the benefit of the amended law even though the father had already passed away before the amendment. Since the Phulavati case remains a valid legal precedent, a daughter whose father passed away before the amendment is not eligible to profit from the amendment legislation.

But regardless of when the father passed away, a daughter will be qualified for Amendment Act benefits in the current lawsuit filed after 2005, according to the Danamma ruling. According to a literal interpretation of the law, the Phulavati ruling is valid. It is also more useful to specify a date when the revised law will go into effect. It is yet unknown whether the Danamma ruling will allow daughters of coparceners who pass away before the amending act to make a claim on the coparcenary property.

The argument in Danamma is centred on the amendment's objective of giving the girls an "inherent right to property by birth," meaning a daughter should be allowed to submit a claim for partition based on this entitlement in the event the father dies before the amendment. Only cases that are still being heard or those that were initiated by a male co-defendant are covered by the ruling¹⁴. On the other hand, a female has no rights under the amendment act if the

¹² Archana Mishra, *Towards Women's Equal Right to Property - Recent Judicial Developments in India*, 5 PROP. L. REV. (2016)

¹³ Appeal (civil) 4171 of 2006

¹⁴ Shambhavi Singh, *The Rights of Women vis-à-vis Succession under Hindu Law*, 3 INT'L J. L. MGMT & HUMAN. (2020)

father died before it was passed, even though the Phulavati ruling is an "authoritative precedent." She wouldn't be qualified to begin a partition process in such a circumstance.

6. CONCLUSION

While India has made significant progress towards gender equality, there are still issues, particularly with regard to property rights. However, the concept of "Equal" Coparcenary Rights has become an influencing factor. By eliminating widespread illusions and preconceptions, it becomes obvious that women in India continue to face discrimination and are denied property rights. It undermines the autonomy of women and contributes to gender inequity by assuming they are disinterested in inheriting property¹⁵. Recognising the importance of equal coparcenary rights is critical to removing these biases. Equal coparcenary rights play an important role in establishing gender equality. They challenge patriarchal stereotypes by understanding that women can contribute just as equally to families and society as men.

Implementing equal coparcenary rights necessitates comprehensive reforms. Governments must bolster legal systems, make sure that they are effectively enforced, and increase public knowledge of fundamental rights. Building a society that values women's rights and contributions requires addressing social attitudes and backward practises. The establishment of complementary measures including legal aid, financial literacy programmes, and dispute resolution processes is necessary to maximise the advantages of equal coparcenary rights.

For a better future when women's rights and equal opportunities are truly recognized in India, it is critical for governments, civil society organisations, and people to continue campaigning for the implementation and effective enforcement of these rights.

¹⁵ Arjun Pal, *The Evolution and Transformation of Women's Rights in India*, SSRN (Aug 10, 2023, 6:00 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3516474