ACCEPTANCE OF DAUGHTERS AS COPARCENERS IN INDIAN SOCIETY- A CRITICAL ANALYSIS

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Abstract:
A recent judgment by the Supreme Court in the case of Vineeta Sharma vs. Rakesh Sharma\(^1\) held that the Hindu Succession (Amendment) Act, 2005 (hereinafter mentioned as the 2005 Amendment Act) has a retrospective and not a prospective effect, meaning, that the right of coparcenary given to a Hindu daughter is not dependent on the fact that whether she is the living daughter of a living coparcener at the time the said Amendment was brought in force. This landmark judgment levelled the last hurdle in the way of Hindu daughters in achieving an equal status to that of Hindu sons in a Hindu household and received a warm welcome amongst the legal fraternity and champions of gender-equality. However, the black letter of law, from its inception, seldom seems to penetrate to the very roots of the society where daughters from generations immemorial have been treated as a financial burden who are to be married off since they are “parayadhan”. It is an ancient and patriarchal notion that sons are the sole carriers of the family line and should be the ones who are the rightful owners of their parents’ properties whereas, on the other hand, the ‘dutiful’ married daughters should only focus on their post-marital obligations and not meddle in the matters of her parents’ home. This long article is divided into three parts and proposes to shed light on the various facets of the daughter’s right of coparcenary pre- and post-amendment of the Hindu Succession Act, 1956 (hereinafter mentioned as HSA, 1956) and the acceptance of the same in Hindu households. The first part navigates through the inception of the HSA, 1956 to the 2005 Amendment Act. The second part critically analyses the various decisions of the Supreme Court on the coparcenary rights of daughters and the third part comprises the analysis of a small survey with a sample size of 53 middle income Hindu family members to attain a general view of the acceptance of daughters as coparceners in the Indian society.

Keywords: Hindu Succession (Amendment) Act, 2005; Coparcenary rights; Coparcener; Property; Inheritance; Gender equality; Personal law

Introduction
“A son is a son, till he gets himself a wife, but a daughter is a daughter all her life!”

--Hon. Justice Arun Mishra in Vineeta Sharma vs. Rakesh Sharma\(^2\)

The population of India is a massive 1,210,193,422 which includes 623,724,248 males and 586,469,174 females with the sex ratio of 940 females per 1000 males.\(^3\) Further, according to the Global Gender Gap Report 2021\(^4\) released by the World Economic Forum, India ranks at a lowly 140 out of 156 results/data_files/mp/06Gender%20Composition.pdf (last visited on May 30, 2021).

\(^1\)AIR 2020 SC 3717
\(^2\)Ibid.
nations. These figures loosely translate to the fact that India still needs to work heavily on levelling the sex ratio and gender equality to be a truly equal country. Numerous measures have been taken by governments of various regimes to bring the females of the country at an equal footing with their male counterparts, as envisioned by the framers of our Constitution and clearly mentioned in the Preamble and Fundamental Rights. Some of the relatively successful measures to realize this have been policies like: the National Policy for the Empowerment of Women, Janani Suraksha Yojana, Sarva Shiksha Abhiyan, Support to Training and Employment Programme for Women (STEP), reservation for women in panchayat bodies, to name a few. These policies, however, are mostly directed to empower the women outside the boundaries of their households so that they become financially independent and contribute to the economy of our nation. What happens to the status of women inside one’s household, is a matter of deliberation. Legislations such as Dowry Protection Act 1961, Domestic Violence Act 2005, Prevention of Child Marriage Act 2006 and provisions in the Indian Penal Code relating to punishment of domestic violence and heinous sexual crimes as well as provision of maintenance in the Criminal Procedure Code are the pall-bearers of safeguarding women rights both in the public and private spheres. But how does one truly elevate a gender, who since times immemorial, has been crushed under the shackles of a patriarchal society? Indeed, this humongous task will begin in one’s own home.

As a cell is considered to be the building block of an organism, a family is considered to be the fundamental unit of a society. The Indian society has always been a paramount example of intricately knit families which are predominantly patriarchal except a few communities such as the Khasis of Meghalaya and the Nayars of Kerala. India, which is an amalgamation of various cultures and religions, prides itself to be a family-centric society, where personal laws have a distinct standing. With practically no progress to frame the Uniform Civil Code by the current and past governments, except for its mention in Article 44 of the Constitution, personal laws of various religions continue to govern the subject matters of marriage, adoption and succession.

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12 The Constitution of India, art. 44.
Even though the foundation of these religions is customs, the customary laws have been codified so as to maintain uniformity and to provide a specific guide to the judiciary to resolve matters pertaining to marriage and succession. For the purposes of this article, the author will focus on the codified Hindu Laws. Following is a list of statutes that form a part of the modern codified Hindu Law:

- Hindu Women’s Right to Properties Act, 1937 (repealed)
- Hindu Marriage Act, 1955
- Hindu Succession Act, 1956
- Hindu Minority and Guardianship Act, 1956
- Hindu Adoption and Maintenance Act, 1956

The codification of Hindu laws was seen as a measure to unify the Hindu community post India’s independence and to pave a way for social progress and modernization. However, it was riddled with controversies and staunch objections from the conservative factions of the Hindu society. Nevertheless, the modern Hindu law has been modified to accommodate women’s property rights and judicial pronouncements have time and again given validation to the same by adjudicating upon them in sync with the modern notion of gender equality. However, these advancements are fruitless if the very unit of the society is not progressive and mature enough to contemplate the ideals of gender equality in matters of marriage, succession, inheritance or adoption. Therefore, an equal society, even though achievable over a considerable span of time, appears to be utopian to say the least. Daughters have equal rights as sons is easier said than done in the context of Indian society because change, however minute, brings resistance. This, however, is one face of the coin. The vice of greed knows no gender so daughters demanding an unfair share in their parents’ properties or mistreating their in-laws is also not unheard of. Therefore, along with implementation of laws, a careful fact-based scrutiny of every case is also required and expected from the judiciary to strike a balance between elevating the daughters’ status in the society as well as deterring false and vexatious litigation.

I. The Hindu Joint Family and Coparcenary

A Hindu joint family is a unique and intriguing institution of Hindus which consists of a common ancestor and all his lineal male descendants along with their wives or widows or unmarried daughters. Even illegitimate sons are considered to be a part of the Hindu joint family.13 Further, a Hindu gets a joint family status at birth and the joint family property is only an adjunct of the joint family. For the purposes of taxation, a joint Hindu family is known as a Hindu Undivided Family (HUF). The Hindu joint family is, in all matters and affairs is represented by a Karta. The Karta, prior to the 2005 Amendment Act, was supposed to be the senior-most male member of the joint family, but now, even women can take the position of a Karta. The Karta, prior to the 2005 Amendment Act, was supposed to be the senior-most male member of the joint family, but now, even women can take the position of a Karta. Therefore, the Karta is the head of the family who acts on behalf of the family members and has unlimited powers at his disposition.

On the other hand, a coparcenary is a smaller unit or rather a genus of a Hindu joint family and includes Hindus who acquire an interest in the joint or coparcenary property at the

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time of their birth. A coparcenary consists of the father and his three male lineal descendants (prior to the 2005 Amendment Act). The thumb-rule is, one should not be removed by more than four degrees from the last holder of property, howsoever removed one may be from the original holder, one will be a coparcener.\(^\text{14}\) A coparcenary cannot be created by agreement; it is a creature of law.\(^\text{15}\) There are two schools in Hindu law which have different stands when it comes to the matters incidental to joint family:

- The Mitakshara School
- The Dayabhaga School

In Mitakshara joint family property, the son has the right over the property since birth, whereas, under the Dayabhaga school, there is no joint family between the father and the son and consequently, sons have no right by birth.\(^\text{16}\) In the Dayabhaga system, the right of coparcenary accrues only after the death of the father. If a son dies, leaving behind a widow or a daughter, then under the Dayabhaga school, she will succeed and become a coparcener.

There are other key differences between the two schools as mentioned below:

- Absolute right of alienation is not present with the father under the Mitakshara school whereas in Dayabhaga, the absolute right of alienation of the ancestral property is with the father as he is the sole owner of that property during his lifetime.\(^\text{17}\)
- The son has the right to ask for the partition of ancestral property even against the father under Mitakshara school since he acquires coparcenary rights by birth but in Dayabhaga school, the right to ask for the partition of ancestral property against his father is not available to sons.
- The Mitakshara school is unforgiving when it comes to the disposal of members’ share of property when the property at issue is undivided whereas in Dayabhaga, the members of the coparcenary enjoy the unfettered right to dispose their property.
- In Mitakshara school, while deciding inheritance, the rule of consanguinity is followed but in Dayabhaga school, the inheritance is decided by *pinda* rule.

Following the codification of Hindu laws pot-1956, the difference between Mitakshara and Dayabhaga has dwindled because currently, one uniform law of succession governed by the HSA, 1956 is applicable on Hindus.

II. The Right of Property of Hindu Women

A. Stridhan

Since times immemorial, Hindu women, irrespective of their marital status have not been deprived of the use of their property, rather, the right of women to hold property was respected.\(^\text{18}\) Women’s property rights


\[17\] Subodh Asthana, “Important Pointers about the Sources & Schools of Hindu law”, iPleaders, September 10, 2019, available at

https://blog.ipleaders.in/sources-schools-hindu-law/


were improved and defined during the time of eminent jurists like Yajnavalka, Katyayana, and Narada, who strived to promote the idea of women exercising their right to property.\textsuperscript{19} Stridhan, where “Stri” means woman and “dhan” means wealth (together- women’s wealth), was a term coined by the Smritikars. Stridhan includes gifts and bequests from relations, gifts and bequests from strangers which she attains during her maidenhood, property acquired by self-exertion and mechanical arts, property purchased with Stridhan, property acquired by compromise, property obtained by adverse possession, property obtained in lieu of maintenance, property obtained by inheritance and share obtained on partition.\textsuperscript{20} Since Stridhan is absolutely owned by a woman therefore, she has the full right to alienate with it. Moreover, her position in regards to her Stridhan is even more significant than that of a Karta because being a Karta translates to co-ownership but a woman possessing Stridhan has sole rights over it. The woman’s estate has now been converted into Stridhan by Section 14, HSA, 1956.\textsuperscript{21}

B. The Right of Property of Hindu Women: Pre-Independence Developments

The demand for codifying Hindu laws and placing them on a road to reforms was not initiated by the Hindu community. Rather, it was the British colonizers who, during the late eighteenth century, first attempted to codify personal laws in India- not because they wanted the betterment of Hindu society, but for their own convenience of governance and anglicizing the indigenous population of India. However, during the nineteenth century, owing to social pressures from great reformers like Raja Rammohan Roy, Vishnu Parashuram Shastri Pandit, Annie Besant, Ishwar Chandra Vidyasagar and many other eminent personalities, great reforms like abolition of the Sati pratha and Widow remarriage took place. The women’s movement in India, which flourished under the tutelage of the freedom movement, was still in its inception when the debates around the right of property of Hindu women started garnering attention in the legal corridors. In 1934, All India Women’s Conference passed a resolution demanding that a commission be appointed to enquire into the entire question of eliminating the legal disabilities of women.\textsuperscript{22}

The passing of the Hindu Women’s Rights to Property Act, 1937, fundamentally affected the Mitakshara coparcenary and abrogated the rule of survivorship.\textsuperscript{23} Section 3(2) of the Act stated that in the joint family property, the widow of the deceased coparcener would have the same interest as he himself had. In the case of \textit{Satrughan v. Sabipuri},\textsuperscript{24} the issue was whether the interest of the widow arose by inheritance or survivorship or by statutory substitution. The Supreme Court held that it came into existence by statutory substitution. Because of statutory substitution or her

\textsuperscript{19} Ibid.
\textsuperscript{21} The Hindu Succession Act, 1956 (Act 30 of 1956), s. 14.
\textsuperscript{22} All India Women’s Conference, “Annual Report”, p.45 (1934).
\textsuperscript{23} The Hindu Women’s Right to Property Act, 1937 (Act 18 of 1937), s. 3(2).
\textsuperscript{24} AIR 1967 SC 272.
interest in the coparcenary property in place of her husband, the right which the other coparceners had under the Hindu Law of the Mitkashara School of taking that interest by the rule of survivorship remains suspended so long as the estate endures. But on the death of the coparcener there is no dissolution of the coparcenary so as to carve out a defined interest in favour of the widow in the coparcenary property.

C. The Hindu Law Committee

The Hindu Law Committee was a four member committee constituted in January 1941 and was headed by Hon. Justice B.N.Rau. The other three distinguished members were Dwaraka Nath Mitter, R. Gharpure, Principal and Rajratna Vasudev Vinayak Joshi. The Committee submitted its report on June 19, 1941. Some of the recommendations by the Rau Committee were:

- to enact a complete Code of Hindu law given that a number of legal hurdles are created in available “piecemeal” legislations;
- preparation of the Hindu Code in stages, beginning, “with the law of succession, to be followed by the law of marriage and in due course by other topics of the Hindu law.

The Committee toured a number of cities throughout India, including Bombay, Poona, Delhi, Allahabad, Patna, Calcutta, Madras, Nagpur and Lahore during 1945. As is the case with any revolutionary legislation, the introduction the Hindu Code Bill did not go down well with the conservative faction of the Hindu society and some legislators in the Constituent Assembly. However, with ample public support of the Congress party and a broad mind set of Pt. Jawaharlal Nehru, during the 1950’s, the Hindu Code Bill was exhumed and four legislations HMA of 1955, HSA of 1956, HMGA of 1956 and HAMA of 1956 were enacted after days of deliberations.

D. The Right of Property of Hindu Women: Post-Independence Developments

The newly enacted and codified version of the Hindu laws garnered immense support from the womenfolk of the country as they were considered to be the harbinger of the women empowerment era. Some noteworthy developments were:

- Marriage within the same caste was made non-compulsory.
- Polygamy was abolished and provisions for the dissolution of marriage were made.
- Limited interest in property of females heirs was replaced by full ownership rights.
- Women were made eligible to claim one-third of the joint income of her husband and herself in case of divorce.
- The mothers were granted guardianship rights if the child was neglected by the father. Moreover, the right to be the lawful guardian of illegitimate children was also given to mothers.

The womenfolk in India poured immense support to the Hindu Code Bill. Feminist legislators such as Sucheta Kriplani, Hansa

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25 Ibid.
26 Padmanabha v. Harsamoni, (1972) 1 CWR 775.
28 Ibid.
29 Ibid., p. 3.
Mehta, G. Durgabai and Renuka Ray presented a unified and liberal perspective. Sucheta Kripalani, parliamentarian from Delhi and a leader in the Women’s movement in the country remarked,

“If men and women are to work equally, if they are to function as equal citizens of the State, if they are to fulfil their obligations towards the state, how can we have such discriminatory rules in the matter of property rights of women? Unless woman gets her full share of property you cannot expect her to fulfil her obligations to the state.”

Thus, women leaders played a proactive part in the process of developing the Hindu personal laws which in turn, were monumental in defining the property rights of women. This was the first step in concretizing the ideals of a truly equal state as envisioned by the makers of the Constitution. Presenting a unified view, they gave strength to the liberal perspective and helped in the emergence of feminist consciousness in India.

E. Section 14 of the Hindu Succession Act, 1956:
The stance of women property rights was revolutionized with the passing of HSA, 1956 because through the text of Section 14 of the Act, the differentiation between Stridhan and Non-Stridhan properties was removed. Section 14 has been given a retrospective effect. It converts the existing woman’s estate into stridhan or absolute estate. However, two conditions are necessary: 1) the ownership of the property must vest in her, and 2) she must be in possession of the estate when the Act came into force. There was also a restrictive condition that she has no right in her deceased husband’s property, except the right of maintenance. Moreover, that property cannot become her absolute property.

In Suharam v. Gauri Sankar it was contended that does this estate become a Hindu widow’s absolute estate by virtue of Section 14 when she acquired the interest of her deceased husband under the Act of 1937 but has not exercised her right to partition,? Shah J. observed that “the interest acquired by a widow under Sec. 3(3) of the Act of 1937 was indisputably her property within the meaning of Sec. 14 of the Act of 1956, and by virtue of the latter provision she became its full owner.” The object of Sec. 14 was to enable a Hindu widow to attain absolute property rights. However, Section 14(2) provides that if a restricted estate is bestowed on the Hindu widow, in the form of a gift, will or any instrument, decree or order of a civil court or award grants, she will take the property accordingly, adhering to the conditions of the restricted estate.

F. Criticism of HSA, 1956:
The major criticism of HSA, 1956 revolved around different standards of devolution of property of Hindu males dying intestate and Hindu females dying intestate. For the purpose of this article, I will limit myself to the analysis of Sec. 6, Sec. 8, Sec. 15 and Sec. 23 of the HSA, 1956. Here are some of the
key differences which loosely translate to gender discrimination and are unfair in the HSA, 1956:

- Sec. 6 of HSA adopted the idea of coparcenary from the Mitakshara system, which only comprises of male coparceners. This archaic and ancient idea was based on the notion that women are the financially weaker section of the society and their protection is the duty of the male coparceners through a centralized authority which also maintains the unity and integrity of the Hindu joint family since only coparceners can request partition.

- The devolution of male intestates’ property is mentioned in Section 8, which provides an exhaustive list for succession by Class I\(^{35}\) and Class II\(^ {36}\) heirs. However, female intestates’ property which is mentioned in Section 15 lists a handful of persons as potential heirs but there is no mention of any classes of heirs.

- One major point of contention is that in the scheme of devolution for property belonging to a woman, the husband’s heirs (which includes his natal relatives, their spouses and their children) have a higher priority than the woman’s parents and siblings.\(^ {37}\)

- An intestate man’s property, in the scheme of devolution, does not include any of the woman’s relatives. Further, the list of the husband’s heirs is so exhaustive, that in practice a woman’s parents and siblings would rarely stand to inherit property from her.\(^ {38}\)

- In cases where the woman’s family stands to inherit her property, her father’s heirs have a higher priority over her mother’s heirs.\(^ {39}\)

- Most women in India were not engaged in paid work at the time this law was drafted. It was therefore considered inconceivable for women to acquire property through the exercise of their own skill.\(^ {40}\) Even for the devolution of a woman’s self-acquired property, her natal relatives have been put at a lower hierarchy than her husband’s relatives, if she is not survived by own issues.

- Under Section 23, if the property includes a dwelling house that is occupied by members of the female heir’s family, that female heir does not have a right to claim partition until the male heirs first decide to divide their shares.\(^ {41}\) Further, a woman who is unmarried, deserted, separated, or widowed has a right to reside in the dwelling house.

Therefore, there were crucial amendments required in the HSA with the progression of the Hindu society, where women were striving to carve their own niche by actively participating in building the nation’s economy. As a result, they were acquiring property off their own labour and talent and thus, their image as a “bread-earner” rather than a “bread-maker” was getting recognition by leaps and bounds.

F. 174\(^ {th}\) Law Commission of India Report, 2000

\(^ {35}\) Class I heirs include, broadly, the male intestate’s mother, and lineal descendants.

\(^ {36}\) Class II heirs are the father, siblings, lineal descendants of siblings, and the siblings of the parents of the male intestate.


\(^ {38}\) Ibid, p. 10

\(^ {39}\) Dr. Shashi Ahuja v. Kulbhushan Malik, AIR 2009 Del 5 2009

\(^ {40}\) The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

\(^ {41}\) The Hindu Succession Act, 1956 (Act 30 of 1956), s. 23.
The 174th Law Commission of India Report, 2000 (hereinafter mentioned as the Report) was titled “Property Rights of Women: Proposed Reforms Under Hindu Law” and was prepared under the chairmanship of Hon. Justice B.P. Jeewan Reddy. As per the Report, which sought to bring parity between the anomalies and the ambiguities of the HSA, 1956, regarding property rights of Hindu women, in staunch wording expressed its displeasure at the solely gender based discrimination against women in contesting coparcenary rights. Further, the Report highlighted that the coparcenary included a small group of people and was an unfair system where property was being administered through a patrilineal system. The report recommended that that Section 23 of the HSA which placed restrictions on the daughter to claim partition of the dwelling house should be deleted altogether. Moreover, the report recommended a combination of the Kerala and Andhra model of coparcenary rights and abrogated the doctrine of pious obligation and recommended that the daughters should be coparceners in the full sense. However, the Report made a distinction between married and unmarried daughters because married daughters per the Indian society standards, have already received dowry or substantial gifts at the time of their wedding which may or may not be at par with the son’s share in ancestral properties. In addition, the Report mentioned that after the commencement of the Act, the death of the dowry system could be a much anticipated result since post the Amendment, daughters would have already become coparceners in ancestral properties, thereby, discouraging parents to give dowry during their weddings. Finally, the commission also drafted a Hindu Succession Amendment Bill, 2000.

G. The HinduSuccession (Amendment) Act, 2005

After a well-received 174th Law Commission Report, it took a substantial five-year period for the Parliament to bring an actual amendment to the HSA, 1956. The major highlights of the Act included:

- **Equal coparcenary rights to daughters:** The 2005 Amendment Act gave absolute property rights to daughters putting them at par with sons. The Mitakshara system of devolution of property was done away with. According to Sec. 6(3) of the 2005 Amendment Act, the interest of a deceased Hindu was to devolve either by testamentary or intestate succession and not by survivorship.

- **Abrogation of the doctrine of pious obligation:** The son was no longer liable to discharge his father's debts out of his ancestral property.

- **Rights of Hindu Women in a joint family dwelling place:** The earlier provision (Section 23) did not allow female heirs to claim partition of the property of a Hindu who died intestate, leaving behind both male and female heirs, until the male heirs decided to opt for the same. Thus, Section 23 was scrapped. Moreover, Section 24 disqualified certain widows such as the widow of a predeceased son, widow of a predeceased son of a predeceased son and brother’s widow if they remarried on or before the succession to the intestate opened. This section was also removed post the 2005 Amendment.

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43 The Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005), s. 6.
The 2005 Amendment was a pioneer and much-awaited step in bringing the status of daughters in Hindu families at an equal pedestal to that of sons and make them a part of the ancient concept of coparcenary. Daughters became more vocal for their ancestral property rights as equal shareholders which is evident from the fact that there was an influx of judgments from the Supreme Court reinstating the same. Thus, the 2005 Amendment made its way right from the legislators’ desk to the common Hindu families’ drawing rooms. However, there were some points of criticism against the 2005 Amendment Act as well. The 2005 Amendment Act, like the original HSA, 1956 was applicable to daughters belonging to families who had “ancestral property” and nowhere in the Act the phrase “ancestral property” was defined. In contemporary times, where most properties are self-acquired, the Hindu male can disinherit the female members of his family like his wife or daughter from the same, notwithstanding the amendment.

Moreover, with the daughter’s right of coparcenary, which is now acquired at birth, effects or rather diminishes the rights of other members of the Hindu family. These dwindled rights are not only of the male members but also widowed females in the family since the share of the daughters will increase vis-à-vis their share in ancestral property. Further, since the concept of birth right forms the foundation of inheritance of the ancestral property, women of the older generation will be at a loss because whatever property the current generation of daughters are getting as a matter of inheritance by birth, the mothers cannot get from their fathers since that property either has already been disposed or they don’t want to be considered as robbing their brothers’ share. The 2005 Amendment reinforces the concept of birthright without considering the consequences for all women. Justice and equality, therefore, of one man’s daughter cannot be on the expense of the other and an equilibrium has to be maintained while formulating laws, keeping in mind the sociological aspects of the community.

H. 207th Law Commission of India Report, 2008

In its 207th Report\(^4\), the Law Commission has examined the question of intestate succession of self-acquired property of a Hindu female. Self-acquired property has always been a grey area in terms of legislation. In this regard, an amendment to Section 15 of the HSA, 1956 to accommodate the devolution of self-acquired property equally on the heirs of a Hindu woman’s husband and heirs from her natal family was recommended.\(^5\)

The issue of devolution of self-acquired property of Hindu female for the first time came before the Supreme Court in 2009 in Omprakash v. Radhacharan\(^6\), wherein, the husband of the woman died within three months of their wedding and she was disowned by her in-laws. Her parents supported her by providing her education due

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to which she was employed and later passed away, with no children, leaving behind a considerable amount of self-created wealth. On her death, her mother claimed for the property along with her brother but it was opposed by the sons of sister of deceased’s husband. The Supreme Court accepted that the law is silent with regard to self-acquired property of a woman and Section 15(1) does not make any distinction between a self-acquired property and the property which she had inherited. Subsequently, the court strictly interpreted Section 15 and ruled that the devolution of the self-acquired property of the deceased should be to her husband’s heirs and not her heirs from the natal family, in spite of the fact that her husband’s heirs had done nothing to support or educate or help the deceased acquire the property in contention. This decision of the Supreme Court was heavily criticized and labelled as miscarriage of justice since the premiere court could have exercised its inherent powers under Article 142 and applied the ideals of equity and good conscience to set an example of being more accommodating of the property rights of women by judging the ethos of the current society.

III. Decisions of the Supreme Court on the Coparcenary Rights of Daughters

After the revolutionary 2005 Amendment of the HSA, 1956, specifically, Section 6, there was an influx of cases on the adjudication of coparcenary rights of daughters. However, one issue stood quite distinct from the others—that whether the 2005 Amendment had retrospective or a prospective application. Thus, the Section 6 of the HSA, 2005 has always been a hot bed of controversy. Below mentioned is a timeline of cases where the stand of the Indian Judiciary regarding the retrospective or prospective effect of Section 6 has been a major point of contention:

**Pushpalatha N. V. v. V. Padma**

In this case, Sri D.N. Vasantha Kumar, father of the plaintiff, had died intestate and left behind him, his wife V. Padma, the daughters and sons as the legal heirs. All the children after his death have succeeded to his estate. The plaintiff, who was one of the daughters, was entitled to 1/5th share in all the properties for which she filed a suit for declaration that she is entitled to 1/5th share in the properties for partition and separate possession of her 1/5th share. The defendants (wife and the other children) contended that the properties exclusively belonged to D.N. Vasanth Kumar and denied joint possession. The Karnataka High Court applied the mischief rule of interpretation and held that Section 6 was retrospective in nature and a daughter becomes a full-blown member of the coparcenary, since birth.

**Ganduri Koteshwaramma v. Chakiri Yanadi**

The daughters of one Gurulingappa Savadi, contested a suit of partition, claiming that they were entitled to joint family property since Gurulingappa Savadi had died after the commencement of HSA, 1956. However, the trial court and the High Court held that the daughters were not entitled to any share as they were born prior to the enactment of the 2005 Amendment Act and, therefore, could not be considered as coparceners. The Supreme Court overruled the lower court decisions and held that Section 6 of the 2005

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47 Ibid.  
48 AIR 2010 Kar 124  
49 2012 SC 169
Amendment Act, creates coparcenary by factum of birth itself. Thus, Section 6 was held to have a retrospective effect.

**Shri Badrinarayan Shankar Bhandari vs. Omprakash Shankar Bhandari**

The Bombay High Court elaborated on the nature of prospective and retrospective statutes stating that prospective statutes are the ones conferring new rights whereas retropectives ones operate *in futuro*, meaning that it operated forward but the operation was not functioning before its enactment. Therefore, the daughters’ whether born on or before 9th September 2005 were entitled to the coparcenary property. However, this rule was applicable on daughters and fathers who were alive in 2005.

**Prakash vs. Phulavati**

The Supreme Court did a literal interpretation of Section 6, HSA and conceded with reasoning of the Bombay High Court in Bhandari. However, the clarified that the applicability of the 2005 Amendment Act was prospective and both the father and the daughter must be alive on the day of the commencement of the same.

**Danamma v Amar Singh**

The Supreme Court stated that daughters are entitled to inherit the coparcenary property by birth irrespective of whether they were born before or after 2005. However, the court also emphasized that the principle laid in Prakash v. Phulavati was binding, making it utterly confusing as to whether Section 6 was prospective or retrospective nature.

**Mangammal vs. T.B. Raju**

The Supreme Court once again opined that the amendment is prospective in nature. However, the court applied the retrospective principle while adjudicating on the shares of daughters in the partition suit. Therefore, this ruling again darkened the cloud of confusion surrounding around Section 6.

**Vineeta Sharma vs. Rakesh Sharma**

This August 11, 2020 landmark judgment reasserted, in a brand-new light, the rights of the daughters in the coparcenary property and held that Section 6 of HSA has retrospective application irrespective of whether the daughter or the father were living or dead at the time of the 2005 Amendment. The court opined that the daughters possess equal rights in the coparcenary property by birth, at par with sons. However, all the alienations and partitions which have already taken place prior to this judgment remains undisturbed. Lastly, the Supreme Court overruled its decision in Phulavati’s case and upheld the ratio given in the Danamma’s Case.

**IV. Critical Analysis of Granting Coparcenary Rights to Daughters**

“Women constitute half the world’s population, perform nearly two-thirds of its hours, receive one-tenth of the world’s income and less than one hundredth of the property.”

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50 AIR 2014 Bom 908.
51 AIR 2015 SC.
52 Supra. note 50.
53 AIR 2018 SC 721.
54 Supra. note 51
55 AIR 2018 SC.
56 Supra. note 1.
The above quote, though published in 1980, still resonates in current times, partially—if not completely. There are multi-facetted reasons to it, the topmost being the increasing female literacy rate, which stands at a fair 64.6% and their growing financial independence. The daughters of Hindu families in urban areas are acquiring more property off of their own labour and education and are not considered to be financial burdens anymore. However, the same cannot be said for the daughters in rural India, where the women still struggle for basic necessities like toilets and fresh water. This gap in privilege is what translates to contesting of rights in courts of law. Further, the 174th Law Commission Report proposed the equal coparcenary rights for daughters in the new Hindu Bill citing an unusual reason among others. The Commission noted that since dowry has been criminalized, parents would not spend exorbitant amounts on their daughters’ weddings which will make the daughters equally entitled to the ancestral properties, at par with sons. Earlier, parents had this mentality that since they are already spending a hefty amount on their daughter’s weddings, this would discourage them from hogging the share of their sons. However, the ground reality is quite different. The National Crime Bureau of India in the year 2017, recorded approximately 7000 dowry-related deaths which had considerably risen from 19 per day in 2001 to 21 per day in 2016. Therefore, if we go by the Law Commission’s logic, parents are still giving dowry and they would not be comfortable in giving equal shares to daughters in properties. Thus, the reasoning of the Law Commission, even though coming from a good place, was flawed. Unless and until the social evil of dowry is not nipped in the bud, daughters themselves would be hesitant in demanding their share in the ancestral property because of the fear of being looked down upon by the society and even if they do, there could be situations where their in-laws wrongly pressure them to file a suit regarding the same, out of sheer greed. Education of women and even their financial independence is also not an effective measure in curbing dowry-demand cases because it is a practice which is engrained in our society’s DNA, which needs intense re-programming and demolishing the patriarchy. When daughters themselves don’t demand a share in their parental properties, what use is the law which grants them the same?

Another reason why the Hindu Succession laws need serious revamping is the fact that they are mum on the self-acquired property of Hindu daughters dying intestate whereas it gives an exhaustive list for heirs for a Hindu male dying intestate. Therefore, unless this issue is addressed by the black letter of law, instances of the likeness of Omprakash v. Radhacharan are unavoidable. Moreover, even in the classes of heirs of a Hindu male dying intestate the male-relatives (agnates) are given preference over the female-relatives (cognates). Thus, if we want to make our legislations more gender-neutral, available at https://www.news18.com/news/india/rape-every-16-minutes-dowry-death-each-hour-ncrb-data-shows-how-unsafe-india-is-for-women-2925445.html (last visited on May 30, 2021)

57 Tanushree Chandra, “Literacy in India: The gender and age dimension”, National Sample Survey at Observer Research Foundation’s India Data Labs, Table 1 (2019).

58 Rape Every 16 Minutes, Dowry Death Each Hour: NCRB Data Shows How Unsafe India is for Women,
these issues need to be addressed on a priority basis. Another prime example of the primitive nature of HSA is the non-inclusion of Hindu transgenders and their self-acquired property. Transgenders or the “third-gender” is an officially recognized gender in the country and it is not fair to that community of persons to be excluded from property rights. With increasing representation of the transgender community in politics, entertainment and even high administration posts like civil servants and judiciary, special amendments need to be made regarding the self-acquired properties of Hindu transgenders. Lastly, adequate legislative mechanisms regarding vexatious suits should also be in place because greed is a vice which knows no gender.

Therefore, we can conclusively say that even though daughters have been granted coparcenary rights in ancestral properties, and it is a ginormous leap in achieving gender-equality, there is still a long way to go to finally manifest the true spirit of our Constitution which guarantees equality to every Indian, in every shape and form.

V. Analysis of the “Acceptance of Daughters as Coparceners” Survey and its Findings

To get a general view of middle-class families regarding the coparcenary rights of daughters, I conducted a short survey of 53 Hindu individuals. The survey results were insightful and reflective of the fact that middle-income Hindus are supportive of giving their daughters and sisters equal shares in ancestral properties.
Are you aware that Hindu Succession Act gives equal right of coparcenary to sons and daughters in their parents’ property? 53 responses

Do you have a sister with whom you would like to have a share in your parents’ property? 53 responses

Fig 3. Awareness of HAS (Amendment), 2005

Fig 4 Inclusion of Married daughters in Parent’s Property

Would you like to give an equal share of your property to your son and daughter, irrespective of their marital status? 53 responses

Fig 5. Willingness of Hindus to share ancestral properties with their sisters and daughters

Fig 6. Willingness of Hindus to share ancestral property with sisters

How likely are you to agree with the statement that “Daughters are parayadhan and they should not meddle in their parents’ property post marriage”? 53 responses

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On analysing the data collected through this survey, it is evident that 79.2% subjects were aware of the 2005 Amendment (Fig. 3) and 66% strongly disagree with the statement that daughters are “parayadhan” and should not interfere in their natal family matters post-marriage (Fig. 4). Further, 88.7% subjects were happy to equally divide their properties among their sons and daughters (Fig. 5) and 79.2% subjects are willing to give an equal share to their sisters in their parents’ ancestral properties (Fig. 6). However, only 75.5% subjects felt that giving equal coparcenary rights would actually elevate the position of Hindu women in Indian society (Fig. 7). Lastly, a whopping 86.8% subjects felt that daughters demanding their shares in ancestral properties neither causes familial discord nor injustice to sons (Fig. 8).

VI. Conclusion

The framers of the Constitution envisioned a truly equal India, where every Indian has an arena to fulfil their full potential and ambitions both in their personal lives and while performing their duties towards their nation, equally. However, even with multiple intense debates and discussions around reports of various committees, the original legislators of the Hindu Code could not envision the women of the country owning property in the future, other than that which devolved upon them through inheritance. Such is the plight of women in India, where the ingrained patriarchal systems could not fathom financially independent women! Consequently, there was no provision for self-acquired property for Hindu women in the HSA, 1956. The legislators, however, did envision a more progressive society and made laws flexible enough to accommodate the changes in the dynamic Indian society while striking a balance with every religion’s personal laws. Pt. Jawaharlal Nehru, while addressing the symbolic significance of reforming Hindu laws had famously remarked:
“they are not in any way revolutionary in the changes they bring about and yet there is something revolutionary about them. They have opened the barrier of ages and cleared the way somewhat for our womenfolk to progress”

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Following the global norm of making colonial laws more gender-inclusive, the 2005 Amendment opened a luminous pathway for daughters to finally be treated as equal to sons as coparceners and to exercise the rights attached to it. The Supreme Court, blindsiding a few hiccups like the Ompraksh case, also settled the dust on the retrospective vs. prospective debate of the application of the 2005 Amendment in the Vineeta Sharma case in August, 2020 and made daughters truly equals in their coparcenary rights. Moreover, the 2005 Amendment was warmly welcomed in most Hindu families barring a few exceptions due to the deeply clawed patriarchal mindset in Indian society. Making daughters have equal property rights in ancestral properties, however, is just a needle in a haystack. It took nearly 50 years for the legislators to finally evolve the property rights of daughters which looks quite bleak at the surface. Further, the legislation for the devolution of the self-acquired properties of daughters dying intestate is still to see the light of the day. With recent advancement in gender studies where binary genders are considered obsolete, property rights of transgenders and non-binary persons who are Hindu are still to be discussed in the corridors of the Parliament. Considering the versatility of cultures, religions and customs in a country like India, this seems like a humungous task but it is not an unachievable, utopian scenario because two steps forward and one step backward is still one step forward. The author hopes and wishes that the country witnesses another revolution soon which makes laws more gender inclusive and the legislators do not take another 50 years to concretize the rights of the concerned parties.

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