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DAUGHTER'S RIGHT TO PROPERTY UNDER HINDU LAW

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ABSTRACT
Under this article we will learn about the rights of daughters to property under Hindu Law. We'll see what all sections apply and if there are precedents set by judgements of the same. We will analyse the rights provided by the codified Hindu Laws.

INTRODUCTION

Property succession and inheritance are governed under the Hindu Succession Act, 1956 for people belonging to Hindu religion. This Act creates a comprehensive and unified framework that covers both succession and inheritance. This Act also applies to testamentary succession, sometimes known as intestacy. This Act amalgamates all the aspects of Hindu succession. This article will go into further detail about the application, definitions of key terms, and succession standards for both men and women.

The two institutions known as Dayabhaga School and Mitakshara School have a significant influence on Hindu personal law legislation. According to the Mitakshara School, there are two approaches to property devolution. which include:

- Devolution based on survivorship
- Devolution of succession

When it comes to joint family or coparcenary property, the rule of survivorship alone applies. On the other hand, when a person owns distinct property, succession laws apply. The Dayabhaga school, however, emphasises succession as the sole method of property transfer. The article provides a summary of the entire Act as well as a discussion of the Act's succession regulations. Together with the significant changes brought about by it, the devolution of coparcenary property is also described.

The Hindu Succession Act (HSA), an enactment that was primarily intended to amend and codify the law governing intestate succession among Hindus, enumerated in detail schemes of succession for both male and female intestates and also provided for the devolution of an undivided share in a Mitakshara coparcenary and the extent of testamen. It has been more than 60 years since this law was modified and given statutory shape for the majority of Hindus. A Hindu is capable of completely disposing of his or her property via a testamentary disposition, including their undivided share in the Mitakshara coparcenary, in accordance with section 30 of the Act. The traditional Hindu concepts of joint families, coparcenary, categorising of properties into separate and coparcenary, position, powers, and duties of karta, alienation of joint family properties, and partition, among others, have been granted statutory recognition by the retention and recognition of Mitakshara coparcenary in the statute books under sections 6 and 30. Significant legislative advancements in the traditional conceptions have also been made in the retention of Hindu joint families and Mitakshara coparcenaries. One of the main characteristics of Mitakshara coparcenary, the application of the doctrine of survivorship, was

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eliminated in 1956 under section 6, but it was still in effect for the eight class-I heirs and the son of a predeceased daughter.

It created the idea of a statutory partition, which had the effect of creating a legal presumption that a division should be enforced if it occurred just before the death of the deceased coparcener.
The purpose of this statutory/notional division was to define the deceased person's portion, which would then pass to his or her class-I heirs, who included females, rather than via survivorship to the remaining cohabitant as was the case before the passage of the HSA. The main reason for the adoption of this fictitious, notional, or legal division was to grant daughters and other female family members a piece of the ancestral property that had previously been denied to them.

As a result, although though indirectly and insubstantially compared to what their male counterparts' entitlement was, it was a step forward in allowing daughters to hold coparcenary property. Application of section 8 to the share determined by application of section 6 has resulted in numerous legal disputes both procedurally and practically. This area has frequently been the subject of judicial deliberations and has exposed its technicalities, unfortunately in some cases leading to incorrect pronouncements. It requires understanding both the classical concepts of coparcenary and modalities of partition and then the application of the rules of intestate succession.

The fight for women's property rights has been ongoing for a while, but there haven't been many victories. Additionally, before the Hindu Succession Act of 1956, the majority of thereforms were focused on defending the rights of spouses. One of the earliest stages in the formal acknowledgement of a daughter's entitlement to her father's property was likely the inclusion of the concept of notional division in section 6 of the HSA, with the daughter as a class I heir. The Hindu Law Committee had recommended eliminating the idea of right by birth prior to the aforementioned legislation, but the patriarchal forces in society who were unwilling to concede the possibility of granting equal rights to a daughter fiercely opposed the idea.
Making daughters into coparceners was also denied. It has taken the Parliament close to fifty years to provide daughters a right by birth, and even then, the effort was hesitant, as is seen from the sheer volume of anomalies it has generated.
Daughters' insufficient protection under the previous section 6 is likely what led to the need to introduce them as coparceners. The HSA allowed daughters to receive a portion of the notional partition, but it also allowed the coparceners to give away their whole interest in the coparcenary, which is against ancient Hindu law. Therefore, there was a good probability that the daughter's interests will be compromised. According to the revised clause, the daughter gains an interest upon birth and is nonetheless protected even if the father sells his own interest in a will.

TRANSFORMATION IN THE TRADITIONAL NORMS

According to the traditional principles of Hindu law, a Mitakshara coparcenary is a more exclusive institution within a joint family made up only of male members, and these members are regarded as the "owners" of the joint family property. The membership is restricted to three generations of consecutive

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male descent from the holder. By virtue of birth (or legally recognised adoption), the coparceners gain a stake in the coparcenary. [1]

THE DEVELOPMENT OF THE CONCEPT OF RIGHT BY BIRTH

The idea of a right by birth in the father's property is not a holdover from Vedic times, but rather a later development brought on by the value that came to be associated with landed property. At first, there was a tonne of unused land.[2] A son may simply leave his family and start a new life on a different plot of property. There was no need to give him any ownership rights to his father's property as a result. The sons made the difficult decision to stay on the family farm as this surplus began to disappear. As a result, the unified family and the idea of birth right were developed.[3]

COPARCENARY RIGHTS OF DAUGHTERS

With the addition of daughters as coparceners, first in a few States, namely Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka, and subsequently nationally, the traditional idea of coparcenary underwent a significant alteration. Thus, the legislative branch undermined and later transformed the religious and spiritual foundation of a coparcenary that exclusively allowed males. While only males were granted coparcenary privileges by the ancient law makers, the status of women was protected through stridhana.[4] This idea eventually turned into dowry, and the daughter lost ownership over the property, which was now allegedly given to the husband and his family on her behalf and for her happiness.[5] As a result, discrimination and severe hardship were caused by the exclusion of daughters' coparcenary property.

In representations made to the Hindu Law Committee in 1945 by various people and organisations, the concept of include daughters as coparceners was raised. Just before the HSA was passed, the issue was even discussed in the legislature.[6] However, it wasn't until much later that this concept actually became a reality in four Indian States, with Andhra Pradesh taking the lead and allowing daughters to become co-parents through changes to the HSA.[7]

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[1] D.F. Mulla, Principles Of Hindu Law 315 (2000) [hereinafter Mulla].

[2] K. Nagendra, The Concept of Right by Birth and its Changing Dimensions m the Hindu Joint Family Law 8 (2000) (Unpublished Master of Laws dissertation, National Law School of India University) (on file with the National Law School of India University library) [hereinafter Nagendra].

[3] 6 N.C. Sen Gupta, Evolution of Law 141-144 (1962), cited from Nagendra, id.

[4] Stridhana refers to that property which is acquired or owned by a wom which she has absolute control, subject to a few exceptions. See Mayne, supr at 874.

[5] See F. Agnes, Law and Gender Equality 82 (1999).

[6] 6 M. Kishwar, Codified Hindu Law: Myth or Reality , 33 Economic And Political Weekly 2145, 2154 (1994).

[7] 3 See §§ 29A, 29B and 29C of the Hindu Succession (Andhra Pradesh Amendment) Act, 1985, the Hindu Succession (Tamil Nadu Amendment) Act, 1989, and the Hindu Succession (Maharashtra Amendment) Act, 1994. See also , §§ 6A, 6B and 6C of the Hindu Succession (Karnataka Amendment) Act, 1994 [hereinafter the [State] Amendment Act]

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As is clear from their preamble, the stated goals of these State Amendment Acts were twofold. First, they sought to implement the constitutional guarantee of equality before the law, which is enshrined, among other places, in Articles 14 and 15. It was determined to be against it to exclude the daughter from coparcenary ownership based only on her sex. Given that certain High Courts had determined that the exclusion did not violate Article 15, it should be stressed that this was a very significant move. Second, the provision was made to end the dowry custom, which was said to have originated from this exclusion.

THE CHANGES INTRODUCED BY THE AMENDMENT OF 2005

The Law Commission of India recommended the HSA be amended in a manner similar to the State Amendment Acts in May 2000. While the State Amendments were silent regarding a daughter's pious obligation, the Commission advocated eliminating the idea of pious obligation altogether. The most important recommendation was to keep married and unmarried daughters apart, despite the fact that the gifts given to the daughter at the time of marriage may not be equal to the son's share and are frequently rather substantial. Thankfully, the Parliament decided to do away with this distinction.

In light of this, a daughter who was married before the Central Amendment is as entitled to a right by birth in the coparcenary as a daughter who has never been married. Furthermore, the Commission's draught legislation suggested that, in the event of a Mitakshara coparcener's passing, his interest should pass under the HSA via testamentary or intestate succession, as applicable, rather than through survivorship.44 In contrast to the State Amendments, section 15(1) of the HSA would be triggered by every intestate death of a female coparcener under the Central Amendment. The heirs of the spouse benefit more from devolution under the aforementioned provision, sometimes even when the property that is devolving was purchased from the natal family.

CONCLUSION

Women are subject to discrimination under the HSA's devolution concept. This discrimination probably violates Article 15(1) of the Indian Constitution. Even while the discrimination may not have been conclusively proven to be unconstitutional by the courts, it is undoubtedly incredibly unfair. India's obligations under the CEDAW as a signatory to the convention are violated by the discrimination against women. In its current form, the law is incompatible with the socioeconomic position of women in contemporary India.

Since that devolution under other Indian laws, such the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 and Indian Succession Act, 1925, one of which predates the. Hindu Succession Act, 1956, by many decades, is significantly more gender-equitable, the discriminatory devolution method is even more difficult to defend. In order to create a system of devolution that does not discriminate on the basis of gender, we can learn from these two pieces of legislation and the succession laws in first-world nations. In order to create a system of devolution that does not discriminate on the basis of gender, we can learn from these two pieces of legislation and the succession laws in first-world nations.

The 2005 amendment to Section 6 was a significant step towards recognising women's property rights. It is argued that the continuation of the ability to inherit by birth with daughters included as co-heirs serves to safeguard their interests more than doing away with joint families altogether. They would

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afterwards be shielded from the effects of the father's testamentary disposition of the coparcenary property. If the Dayabhaga system or the joint family system had been implemented, it would have been necessary to impose constraints on a person's testamentary authority that violate their right to personal freedom. Now, if a daughter's marriage doesn't work, she will be able to remarry as a matter of right rather than at the insistence of her family because she is still a part of her joint family of birth.

The amendment, however, is not comprehensive. The effects of making daughters coparceners in terms of the other HSA requirements are not considered. For instance, the spouse and his heirs would have the right to inherit property under section 15 that they should not have an equitable claim to. Furthermore, they would even receive a preferred right to purchase any interest that a co-heir sought to transfer under section 22. It is argued that these clauses need to be changed in order to bring them more in line with the original sections' primary goal of preventing outsiders from acquiring an interest in family property.

Additionally, section 6 is inadequately written. For instance, it is unclear from a simple reading of the clause whether the daughter's offspring would also be born with a right to the property of their maternal forebears. It is unclear whether the courts will apply a purposive reading consistent with the goals of the amendment or a more literal interpretation when interpreting these provisions. The scope of judicial interpretation has a limit, though. The legislature itself must take action to fix the irregularities.