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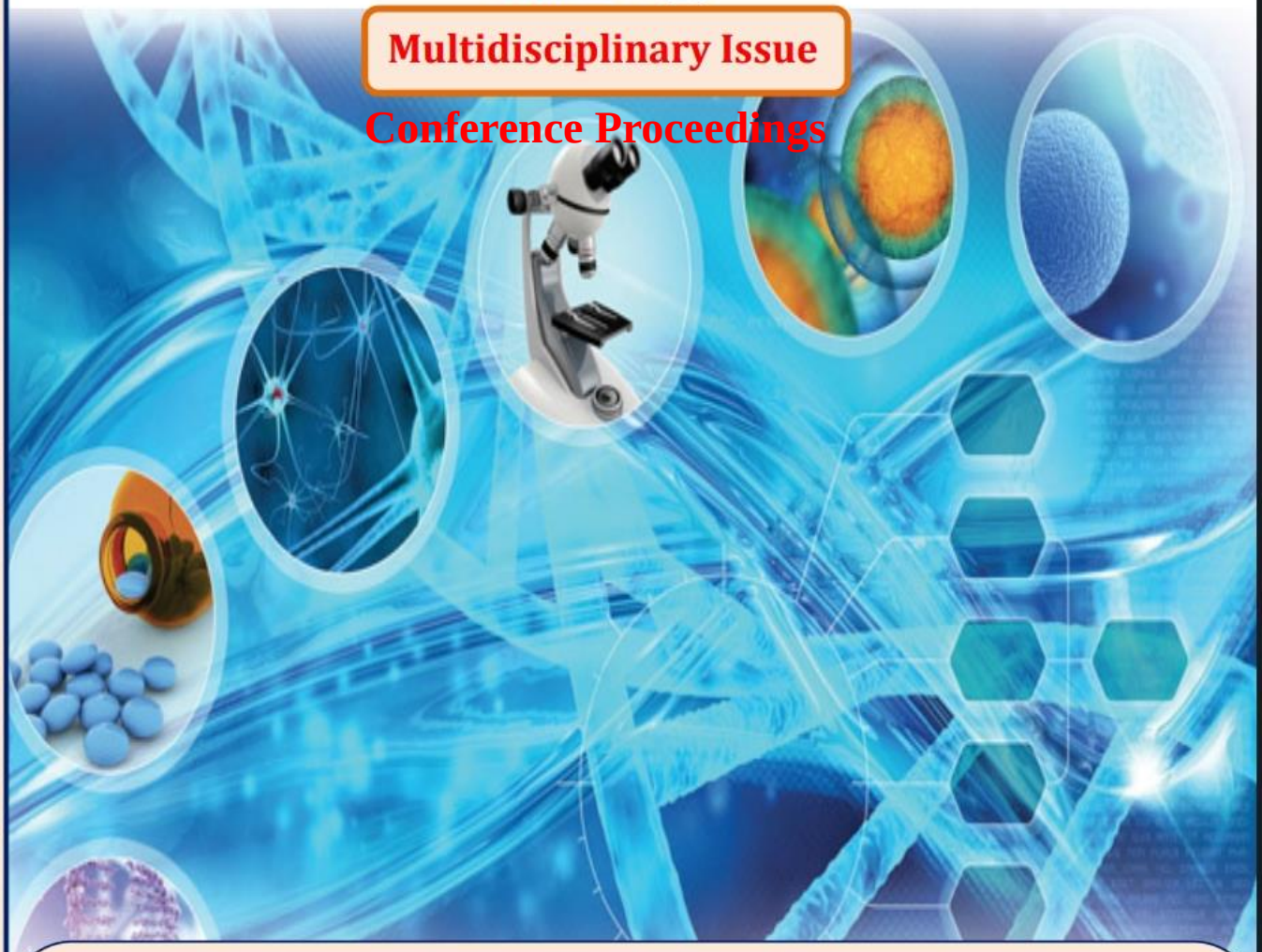

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Property Rights of Daughter in The Light of Hindu Succession (Amendment) Act, 2005: an Analytical Study

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Introduction:

The Hindu Succession Act, 1956 is a piece of document providing the rule of succession amongst Hindu. Before enactment of this Act, the Hindus were governed by two different sets of rules i.e. Mitakshara and Dayabhaga. Among Mitakshara the property of Hindu after his death were transferred by rule of survivorship to the survivor and not to the legal heirs, but among Dayabhaga the property of Hindu after his death directly transferred to his legal heirs by way of Succession. These two different sets of rules for Mitakshara and Dayabhaga has been abolished by the enactment of Hindu Succession Act, 1956 and after the enactment of this Act, person belonging to Mitakshara and Dayabhaga is equally bound by the provision of the Act of 1956. Hindu Succession Act, 1956 provides the provisions of intestate as well as testamentary succession. In Section 8 of the Hindu Succession Act, 1956, daughter is included in the list of Class I heirs and will get share in case of death of father but in Section 6 only son was included in the list of Coparcenary and daughter was not included as coparcener. With an aim to remove inequality, which exist in Section 6 of Hindu Succession Act, 1956, Amendment of 2005 came into effect. Hindu Succession Amendment Act, 2005 brings daughters under the umbrella of Coparcenary and has given all the rights as the son is having. After the enactment of Hindu Succession Amendment Act, 2005 both daughter and son are having equal rights in Coparcenary property and daughter is eligible to ask partition as well.

Aims and Objectives:

1. To know the status of daughter after the enactment of Hindu Succession Amendment Act, 1956.
2. To know the status of daughter who got birth before the enactment of Hindu Succession Amendment Act, 1956.

Hypothesis:

The provisions of Hindu Succession Amendment Act, 2005, regarding shares of daughter are still unclear.

Research Methodology:

The researcher for conducting this research has adopted the doctrinal research Methodology and collected data from different books, Supreme Court and High Court judgments, the researcher has also collected data from the different website and digital platform.

Right of Daughter under Section 8 of Hindu Succession Act, 1956

Section 8 of Hindu Succession Act, 1956[1] deals with the provisions regarding the rule of succession in case of male dying intestate. If a male Hindu dying intestate, his property if he left behind will go at first instance to Class I heirs, if not a single person from the list of Class I heirs is present then property will go to Class II heirs, in absence of Class I and Class II heirs property

[1] https://egazette.nic.in/WriteReadData/1956/E-2173-1956-0038-99150.pdf, last visited on 5th November 2021.

at third instance will go to Agnates and in the absence of Agnates to the Cognates. Daughter falls in the category of Class I heirs and in case of her father's death she will inherit the self-acquired property of father equal to the son. For instance, if father dies leaving behind two sons and two Daughters, the self-acquired property of father will be divided in four parts and each son and daughter will get ¼ it means one part e.g. if the property is rupees one crore each son and daughter will get 25 lacs. As per Section 8 of Hindu Succession Act, 1956, daughter will get share only after the death of father and only in respect of self-acquired property of father, however in the lifetime of father before the enactment of Hindu Succession Amendment Act, 2005 she was having no right to claim any share or partition in respect of coparcenary property. No doubt Section 8 was giving equal right to son and daughter in the self-acquired property of father in case of his death, but in Section 6 only son was considered as coparcener and daughter was not supposed to be a coparcener and due to this reason, she was having no right to claim any share and partition in the lifetime of father in respect of coparcenary property. To remove this inequality the Amendment of 2005 took place and now daughter is also coming under the category of coparcener and being a coparcener, she is entitled to claim share even in the lifetime of father and claim partition as well. Now daughter is entitled to claim share and partition, even in the coparcenary property, as she became coparcener by virtue of 2005 amendment.

Right of Daughter under Section 15 of Hindu Succession Act, 1956

As per Section 15 of Hindu Succession Act 1956,[2] if any female dies intestate and if she left behind any property, her property will be distributed amongst the legal heirs by this Section. The property of female intestate firstly goes to the sons, daughters and the husband. In absence of son, daughter and husband, the property of the female goes to the heirs of the husband and if there is no son, daughter, husband and heirs of the husband, her property will go to her father and mother. If the relatives discussed above are absent, property of intestate female go to the heirs of her father and lastly if the heirs of the father are also missing, the property will go to the heirs of mother. If we peruse the above provision of Section 15, daughter is included in the list of heirs and allotted the equal share with son in case of her mothers' death. Hindu Succession Amendment Act, 2005, makes daughter coparcener and provides equal share to daughter with son in self-acquired as well as coparcenary property of father.

Hindu Succession (Amendment) Act, 2005

In Hindu Succession Act 1956, daughter was having right of share as a Class I heir, but she was not included in the list of coparceners, as per Section 6 of the Act only male member of the joint family could be a coparcener and being coparcener, they are entitled to have a share in the coparcenary property. To eliminate this inequality and to bring daughter in the list of coparcenary the amendment of 2005 has taken place.

The amended provisions of Section 6 provide that from the commencement of amendment of 2005, the daughter of the coparcener become coparcener along with the son. Whatever the rights son is having in the coparcenary property, after amendment daughter will also have the same rights. The amended Section imposed a liability on daughter in respect of coparcenary property, as the son is having. The amended clause C of sub section 1 of Section 6 has clearly deposed that coparcenary property alienated by way of partition or testamentary disposition before 20th December 2004 will be valid and no person will question it. Sub clause 2

[2] https://egazette.nic.in/WriteReadData/1956/E-2173-1956-0038-99150.pdf, last visited on 5th November 2021.

of Section 6 enable women to hold property absolutely and even she will be entitled to share the same by testamentary disposition. Amended sub clause 3 of Section 6 abolished the rule of survivorship and provides after the commencement of amendment of 2005 the property of coparcener belonging to Mitakshara Law will devolve by testamentary or intestate succession.

1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, -
(a) by birth become a coparcener in her own right in the same manner as the son;
(b) have the same rights in the coparcenary property as she would have had if she had been a son;
(c) in this clause daughter is having the same liability in respect of Coparcenary property as that of a son and this clause provides that any alienation of Coparcenary property including partition or testamentary disposition taken place before 20th December 2004 will be valid and it cannot be questioned.
2) Any female receiving property by virtue of sub section 1 of Section 6 can hold property absolutely and she can dispose it by testamentary disposition.
3) This clause provides that if any Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, and if he belongs to Mitakshara Law, his interest in the property shall devolve by testamentary or intestate succession and not by survivorship and, -
(a) the daughter is allotted the same share as is allotted to a son;
(b) the share of the pre- deceased son or a 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 a pre- deceased daughter, as the case may be.[3]
Explanation. - For the purposes of this sub- section, the interest of a Hindu MIT Akshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Hindu Succession (Amendment) Act, 2005 and Judicial Decision

Prakash & Ors. v. Phulavati & Ors. [4]

In this case the Apex court has delivered a judgment and opines that if the daughter wants to claim share in the coparcenary property as per the Amendment of 2005, then she and her father must be alive on the date of commencement of amendment of 2005 i.e. 9th September 2005. It clearly means that if the father of the coparcener died before 9th September 2005 and left living daughter, the living daughter is having no right to claim share from the coparcenary property of father, for getting share father and daughter must be alive on or after 9th September 2005. In this case the Supreme Court has given prospective effect to the amendment of 2005.

[3] https://egazette.nic.in/WriteReadData/2005/E_45_2012_114.pdf, last visited on 8th November 2021.
[4] (2016) 2 SCC 36

Danamma @ Suman Surpur & Anr. v. Amar & Ors.[5]

In this case Mr. Gurulingappa Savadi and coparcener of Hindu joint family died in 2001 and at the time of his death he has left behind his widow, two sons i.e. Vijay and Arunkumar and two daughters i.e. Danamma and Mahananda. Amar son of Arunkumar filled a suit for partition and separate possession of coparcenary property in 2002. It was the contention of petitioner that daughters are having no right as they got birth prior to the enactment of Hindu Succession Act, 1956. When the partition suit was pending the Hindu Succession Amendment Act, 2005 came into force, which brings daughter under the umbrella of coparcenary and make the daughter equal to the son. By taking the benefit of amendment of 2005 Danamma filled a suit before the trial court and claim share as coparcener, but the same is rejected by the trial court and she has preferred appeal before High Court and High Court also upheld the decision of trial Court. Finally, Danamma brought the appeal before the Supreme Court and while dealing with appeal Supreme Court made it clear and passed the following judgment.

1. Daughter wish to get benefit of the amendment of 2005 should be alive on 9th September 2005.
2. Father need not be alive on 9th September 2005, for getting the benefit of Amendment of 2005.
3. The daughter can take benefit of amendment if the partition suit is pending before the court of law.
4. The daughter can even take the benefit of amendment if the preliminary decree of partition has been passed and final decree is awaited.

By virtue of above guidelines if the daughter wants to take the benefit of Amendment of 2005, either father should be alive on 9th September 2005 or the suit for partition should have been pending before the court of law at the time of passing of this amendment Act. The Supreme Court has left some questions unanswered even in this case, as what about the daughter who is alive on 9th September 2005, but the father died prior to 2005 and no suit for partition is pending.

Vineeta Sharma v Rakesh Sharma[6]

In this case the Supreme Court has resolved the confusion which was left in **Praksh and Others v. Phulavati and Others** and **Danamma @ Suman Surpur & Anr. v. Amar & Ors** and delivered a remarkable judgment in favour of daughters. As in Phulavati's case the supreme court has said that for getting the benefit of amended Section 6 of Hindu Succession Act the father and daughter both should be alive on 9th September 2005. In Danamma's case the supreme Court has said that if the suit for partition is pending at the time of Amendment of 2005, even if the father died earlier the daughter is entitled to get benefit of Amendment of 2005 but left the confusion regarding the status of daughter whose father died before the enactment of amendment of 2005. In the present case the supreme court resolved the same confusion and delivered a following judgment.

1. The supreme Court has given the retroactive effect to the provisions of Amendment of 2005.
2. The court further declared that the benefit of amended Section 6 will also be given to the living daughters of any coparceners.

[5] (2018) 3 SCC 343.
[6] (2020) – SCC ONLINE SC 641

3. Father need not be alive at the time of amendment, it means that if father died prior to the amendment of 2005, even in that situation daughter is entitled to get share in coparcenary property.
4. The existence of joint family property is a condition precedent for getting the benefit of Section 6.
5. The Court further declared that partition deed should be registered as per provision of Indian Registration Act, 1908.

In view of above judgment now it is clear that the amended provisions of Section 6 are having retrospective effect, and even if the daughter has taken birth prior to the amendment of 2005 and if she is alive at the time of amendment, she is entitled to get equal share as to the son.

Conclusion.

After discussing all scenarios and amended provision of Section 6 it is concluded that the Amendment Act of 2005 is applicable to all the daughters irrespective of the fact that they have taken birth prior to the Amendment or after Amendment. But the condition is that the daughter should be alive at the time of Amendment and the joint family property must be in existence. If the property has already been disposed before the Amendment Act of 2005, the daughter is having no right in that property.

Conclusion against Hypothesis: Initially the amended provision of 2005 seems to be unclear as the Supreme Court decided in **Prakash & Ors. v. Phulavati & Ors.**[7] that if daughter wants to claim share in the coparcenary property, she and her father must be alive at the date of Amendment and has given prospective effect to the Amendment. The Supreme Court further led a confusion by delivering a judgment in **Danamma @ Suman Surpur & Ors v. Amar & Ors.**[8] and held that for getting the benefit of Amendment either father should be alive, or suit of partition should be pending before the court of law at the date of Amendment Act of 2005. But finally, the Supreme Court made the provision of Amendment Act of 2005 clear in **Vineeta Sharma v Rakesh Sharma**[9] and held that the Amended provision of 2005 is having retrospective effect and even if the daughter has taken birth prior to the Amendment is entitled to take the benefit of Amendment. In the wake of above discussion, the researcher concluded that the hypothesis of this research Article has been disproved.

Suggestion.

1. After conducting this research, researcher has suggested that the Court should look after the strict implementation of the amended provisions of the Act of 2005.
2. The guidelines of the Supreme Court in Vineeta Sharma v. Rakesh Sharma should be followed by subordinates Court to make justice with the daughters.

[7] (2016) 2 SCC 36
[8] (2018) 3SCC 343
[9] (2020) – SCC ONLINE SC 641