

WOMEN'S LEGAL RIGHT TO ANCESTRAL PROPERTY

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**SEMINAR ON WOMEN AND FAMILY LAWS &
LITIGATION**

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INTRODUCTION

Historically, the Hindu Succession Act, 1956, did not confer any rights on a daughter to the ancestral property of her father.

On 9 September 2005, the Hindu Succession (Amendment Act), 2005 (Amendment Act) came into effect and daughters in a joint Hindu family, governed by Mitakshara law, were granted statutory right in the coparcenary property (being property not partitioned or alienated) of their fathers.

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After the Amendment Act and the judgment pronouncement of the Supreme Court in the case of Prakash & Ors v. Phulavati & Ors, rendered on 16 October 2015, it has been held that the property rights of daughters are prospective in their application, i.e., to be available only if both the father and the daughter are alive on the date of commencement of the Amendment Act (i.e., 9 September 2005).

The daughter now has the same rights and liabilities in the coparcenary property as the son. This means that a daughter along with a son is liable for debts of joint family. The daughter is also entitled to dispose of her share of the coparcenary property or her interest thereof by way of a will.

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THE HINDU SUCCESSION ACT, 1956

- The objective of the Act was to amend and codify the law relating to intestate succession among Hindus.
- This preamble of the present Act speaks only of the law relating to intestate succession.
- The enactment brought some radical changes in the law of succession without abolishing the joint family and the joint family property. It does not interfere with the special rights of those who are members of Mitakshara Coparcenery.

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- Every coparcener is held to be entitled to the share upon partition.
- A wife can not demand partition but if a partition does take place, she is entitled to receive share equal to that of her son and can enjoy the same separately even from her husband.
- Section 6 of the Act provided that the devolution of interest will be by survivorship. However it also came with proviso that if such Hindu has left surviving female relative specified in Class I or a male relative specified in that class, who claims through such female relative, his interest shall devolve by testamentary or intestate succession and not by survivorship. It created the theory of notional partition.

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- As such section 6 and 8 of this Act gave rights to the female relative of a Hindu to some extent and she was entitled to succeed the interest in the property.
- Section 14 of the Act has one of the path breaking provision, whereby the female Hindu was given the absolute ownership in the property acquired before or after the commencement of this Act.

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- Any movable or immovable property acquired by a female Hindu by inheritance or partition or in lieu of maintenance or by Gift or by her own skill or in any other manner was included in the scope of this section.
- The rights of female Hindu were tried to be recognized by this effort. Hon'ble Supreme Court in the case of V. Tulasamma vs. Sesa Reddy (AIR 1977 Supreme Court 1944) held that, a Hindu widow is entitled to maintenance out of her deceased husband's estate irrespective whether that estate may be in the hands of male issues or coparceners. She can follow the estate for her right of maintenance, even if it is in the hands of third person having notice of her rights.

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- Earlier, The Act does not recognize the female Hindu as a coparcener nor does it gives any right to her to seek partition. Her rights were still limited. Section 23 of the Act further put an embargo on the rights of a female Hindu, wherein it is provided that she is not entitled to claim partition in the dwelling house, until the male heirs choose to divide their respective shares. She was given only a right of residence in such dwelling house that too when she is unmarried or deserted by her husband or is a widow.
- By the way of the Hindu Succession Amendment Act, 2005, the daughter of a coparcener has been admitted in coparcenary and after the commencement of the Amendment Act, the daughter is a coparcener in her own right.

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The statement of objects and reasons for amending the Principal Act is as follows:

“STATEMENT OF OBJECTS AND REASONS

The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act-lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed previously by the Murumakkattayam, Aliyasantana and Nambudir laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the

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Brahmo, Parathana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts to. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution.

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Having regard to the need of render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property, The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have.

Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.”

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Section 6 of the Amendment Act has an overriding effect, so far as the partition of a coparcenary property and succession of interest of deceased member (male or female) is concerned. It also supersedes all customs and usages or Shashtric Law in this regard. The amended Section 6 has an overriding effect so far as the constitution of coparcenary is concerned. The basic concept of coparcenary is that only male members of a joint Hindu family can constitute a coparcenary completely excluding the female members of the family. This concept has not been substantially modified with the amendment of Section 6.

However, although the daughter has been included as a coparcener by way of this amendment, the wife, mother and widow are still standing in queue for their admission in the coparcenary.

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RECENT JUDICIAL PRONOUNCEMENTS AND THEIR EFFECTS

Judicial pronouncements of Hon'ble Supreme Court and Hon'ble High Courts are of vital importance, as they lay down the interpretation of the enactment and the intention of the legislature. Some of the most important recent judicial pronouncements are discussed to ascertain the actual effects of the Amendment Act of 2005.

Hon'ble Supreme Court in the case of Ganduri Koteshwaramma Vs. Chakiri Yanadi reported in AIR 2012 SC 169, held that, “The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son.

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The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.”

Hon'ble Bombay High Court in the case of Ms. Vaishali Satish Ganorkar & Anr. Vs. Satish Keshorao Ganorkar & Ors. reported in AIR 2012 Bombay 101. It was held that, “ Ipsa facto upon the passing of the Amendment Act in 2005 all the daughters of a coparcener in a coparcenary or a joint HUF do not become coparceners. The daughters who are born after such dates would certainly be coparceners by virtue of birth, but, for a daughter who was born prior to the coming into force of the amendment Act she would be a coparcener only upon a devolution of interest in coparcenary property taking place.

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Until a coparcener dies and his succession opens and a succession takes place, there is no devolution of interest and hence no daughter of such coparcener to whom an interest in the coparcenary property would devolve would be entitled to be a coparcener or to have the rights or the liabilities in the coparcenary property along with the son of such coparcener. A reading of Section as a whole would, therefore, show that either the devolution of legal rights would accrue by opening of a succession on or after 9 September, 2005 in case of daughter born before 9 September, 2005 or by birth itself in case of daughter born after 9 September, 2005, upon them.”

However another bench of Hon'ble Bomabay High Court, in various appeals before it, disagreed with the law laid down by the Hon'ble Bombay High Court in the Vaishali Ganorkar's case and referred the matters to a bench of two or more Judges by formulating questions of law.

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Hon'ble Bombay High Court constituted a full bench on the said reference and proceeded to decide the questions of law raised in the said matters. Hon'ble Bombay High Court in that case of Badrinarayan Shankar Bhandari and others Vs. Omprakash Shankar Bhandari reported in 2014(5) Mh.L.J. 434 differed from the view taken by the Division Bench in Vaishali Ganorkar's case. It was observed that, if a daughter born prior to amendment will get right only on the death of her father, it will postpone the conferment of valuable property rights on crores of daughters, who may also lose everything upon the father and other coparceners disposing of the property in the lifetime of father. The legislature did not and could not have intended such eventuality.

The Hon'ble Bombay High Court in Bhandari's case cited supra observed that, the clause (b) in amended Section 6 was not referred to in Vaishali Ganorkar's case.

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It was also observed that, “A bare perusal of sub section (1) of section 6 would, thus, clearly show that the legislative intent in enacting clause (a) is prospective i.e. daughter born on or after 09/09/2005 will become a coparcener by birth, but the legislative intent in enacting clauses (b) and (c) is retroactive, because rights in the coparcenary property are conferred by clause (b) on the daughter who was already born before the amendment, and who is alive on the date of Amendment coming into force.

Hence, if a daughter of a coparcener had died before 09/09/2005, since she would not have acquired any rights in the coparcenary property, her heirs would have no right in the coparcenary property. Since section 6(1) expressly confers right on daughter only on and with effect from the date of coming into force of the Amendment Act, it is not possible to take the view being canvassed by learned counsel for the appellants that heirs of such a deceased daughter can also claim benefits of the amendment.

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Two conditions necessary for applicability of Amended section 6(1) are:

- (i) The daughter of the coparcener (daughter claiming benefit of amended section 6) should be alive on the date of amendment coming into force;
- (ii) The property in question must be available on the date of the commencement of the Act as coparcenary property.”

Hon'ble Bombay High Court in this judgment held that, amended Section 6 of the Hindu Succession Act is retroactive in the nature.

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Hon'ble Bombay High Court also considered the applicability of the amended provision to daughter born prior to 17.06.1956 and after 17.06.1956 but prior to 09.09.2005. It was held that, it is imperative that the daughter who seeks to exercise such a right must herself be alive at the time when the Amendment Act, 2005 was brought into force. The Principal Act was applicable to all Hindus irrespective of their date of birth, when it came into force. The date of birth was not a criteria for the application of the Principal Act. The only requirement is that when the Act is being sought to be applied, the person concerned must be in existence or alive. So, to ensure the rights which are already settled the Parliament has specifically used the word “On and from the commencement of Hindu Succession (Amendment) Act, 2005”.

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It was observed and laid down that, the Amendment Act applies to all daughters born prior to 09.09.2005 and who are alive on the date of commencement of that Act i.e. on 09.09.2005. The case of coparcener who died before 09.09.2005 would be governed by pre-amended Section 6(1) of the Act. It is only in case of a coparcener on or after 09.09.2005 that, the amended Section 6(3) of the Act would apply. The provisions of amended Section 6(3) do not and cannot curtail or restrict the rights of daughters born prior to 09.09.2005. Sub section (1) and (2) of amended Section 6 and sub section (3) operate in two different fields.

This judgment of Hon'ble Bombay High Court has laid down the minute details to be considered by all the Courts and has laid down the law in respect of the Amendment Act of 2005. The ratio has paved way to many women, who are aspiring to assert their rights in coparcenary property. It has given a huge relief to the daughters to fight with the discrimination on the ground of gender and the consistent oppression and negation of their fundamental right of equality.

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