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Daughters equal right in the coparcenary property in India: Legislative and judicial perspectives

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Abstract
The Constitution of Indian provides the equal rights for both men and women in all respect even in property also because it was the real intention of the framers of our Constitution and specifically *Dr. B. R. Ambedkar* worked a lot in this regard. In 2020, the rights of daughter to be a coparcener in Mitakshara coparcenary has been given equal to that of a son by the Supreme Court of India. The codification of Hindu law and particularly women's rights were taken care of, and attempts were made to remove the anomalies and unscrupulous practices by the steps taken under able leadership of India's 1st Law Minister *Babasaheb Dr. Bhimrao Ramji Ambedkar* from 11th April 1947 to 27th September, 1951. After the independence, necessity was by felt Babasaheb Dr. Bhimrao Ramji Ambedkar to give the Constitutional imperatives to bring about equality of status and later on it was codified as the Hindu Succession Act, 1956 which has been amended from time to time till the Hindu Succession (Amendment) Act, 2005. Section 6 of the Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005 interpreted by the full bench of Supreme Court of India in *Vineeta Sharma v. Rakesh sharma & ors*., (2020). Therefore, in this paper we have to discuss pre-constitutional position of traditional and religious values with historical perspective of the concept, the Hindu Code Bill, post-constitutional position, the Hindu Succession Act, 1956, the Hindu Succession (Amendment) Act, 2005, Outcome of amplification of daughter's rights and some judicial interpretations with respect to Daughters Equal Right in the Coparcenary Property will be discussed for brief analysis in this research work.

Keywords: Codification, Post-Constitutional Position, Hindu Code Bill, Hindu Law, Succession, Women's Rights, Equal Rights Of Daughter, Coparcener, Mitakshara Coparcenary, Coparcenary Property, Conflicting Judgments Etc

Introduction
At a snail's pace, necessity was felt to codify the Hindu law and particularly women's rights to remove the anomalies and unscrupulous practices by the steps taken under able leadership of India's 1st Law Minister Babasaheb Dr. Bhimrao Ramji Ambedkar from 11th April 1947 [1] to 27th September, 1951 [2]. After the independence, Babasaheb Dr. Bhimrao Ramji Ambedkar provided the Constitutional imperatives to bring about equality of status and later on it was codified as the Hindu Succession Act, 1956 which has been amended from time to time till the Hindu Succession (Amendment) Act, 2005 in which the rights of daughter as coparcener has been given equal to that of a son in Mitakshara coparcenary. Section 6 of the Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005 interpreted by the full bench [3] of Supreme Court of India in *Vineeta Sharma v. Rakesh sharma & ors*., (2020). Therefore, we have to discuss pre-constitutional position of traditional and religious values with historical perspective of the concept, the Hindu Code Bill, post-constitutional position, the Hindu Succession Act, 1956, the Hindu Succession (Amendment) Act, 2005, Outcome of amplification of daughter's rights and some judicial interpretations with respect to Daughters Equal Right in the Coparcenary Property will be discussed for brief analysis in this research work.

The Hindu Code Bill
Chief architect of our Indian Constitution, Dr. B. R. Ambedkar introduced the Hindu Code Bill in the House on 11th April 1947. Its sole purpose was to change, under Law, some of the basic frame work of the Indians giving Hindus a uniform law regulating their social and religious life and ensuring, among other things, the right to divorce and women's right to property and order of succession to the property [4]. The Hindu Law was not uniform for all Hindus and as such codification was the only [5] solution and the necessity as it aimed at consolidation of the Hindu Society. The Important points which were taken by Dr. Ambedkar in the Hindu Code Bill [6] are as: (I) Right to property by birth and (II) Right to equal share for daughter.

The Rau Committee has pointed out about the Shastras and Smritis and one-fourth share of a daughter out of her father's property as prescribed in these Smrities. On this point of Smrities Dr. Ambedkar said that "once I counted 137 Smrities and I do not know why our ancient Brahamins were so occupied in writing Smrities and why they did not spend their time doing something else." Dr. Ambedkar wanted to get the Hindu Code Bill passed in the Assembly and it was selected from their answer against their answer to Shri Biswanath Das in which he said, "I care more for the Hindu Code Bill than for my election."[7]

On Hindu Code Bill some other members also supported Dr. Ambedkar's attempts. Shri Gokulbhai Daulatram Bhatt said, "H.S. Gaur had remarked that it will only be Avtar who might come someday and bring forth this code. Shri Gaud is perhaps sitting at Negpur now and he must have been gratified to learn that the Avtar manifested himself at last that the Hindu Code Bill has arrieved." [8] Smt. Renuka Ray said, "let us have the tyranny of the Brahamanical society for the next thousand years." [9] Kumari Padmaja Naidu [10] said, "Dr. Ambedkar takes his place in the long line of social legislators who throughout the ages have laboured diligently, always in the face of opposition, often in the face

of prosecution, to eradicate social injustice and to enhance the sum total of human happiness." [11] Smt. Hansa Mehta [12] said, "This Bill to codify the Hindu Law is a revolutionary Bill and though we are not quite satisfied with it, it will be a great landmark in the social history of the Hindus." [13] Dr. B.V. Keskar [14] said, "There is no doubt that quite apart from the question of making any radical change in Hindu Law, the necessity for consolidating the Hindu law was very urgent because on the present day Hindu law is a maze." [15] Smt. G. Durgabai said, "The opposition of Hindu Code Bill is based on the fear of coming Lok Sabha Election 1952. There are also some men who change their opinions."[16] Some persons opposed the Hindu Code Bill like Sh. Naziruddin Ahmad [17] Dr. B. Pattabhi Sitaramayya [18] Dr. Bakhshi Tek Chand [19] Babu Ramnarayan Singh [20] Pt. Thakur Das Bhargava, [21] Sardar Hukam Singh, [22] Dr. S.P. Mookerjee, [23] and Sh. Syamnandan Sahaya [24] demonstrated. In a dialogue with Sh. Bhatt, Dr. Ambedkar said, "they are all lunatics; they are out because our lunatic asylums are too small."[25] With regards to Dr. S.P. Mookerjee, Dr. Ambedkar said, "I have a feeling that it is not necessary to take him seriously at all. It seems to me that he has no mind of his own." [26]

Ultimately, the Bill was fell down, and not passed during the regime of Dr. Ambedkar as Law Minister. The Hindu Code Bill furnished the instant ground for resignation of Dr. Ambedkar. Later on, some parts of the Hindu Code Bill were passed in fractions by the Parliament of India in 1955 and 1956.

The Hindu Succession ACT, 1956:

Section 6 of the HSA, 1956 **before the substitution** by Amendment Act, 2005 is reproduced hereunder:

"6. Devolution of interest in coparcenary property - When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation I. - For the purposes of this section, the interest of a Hindu Mitakshara 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."

The Hindu Succession (Amendment) ACT, 2005

Section 6 of the HSA, 1956 **after the substituted** provision by the Amendment Act, 2005 is extracted hereunder:

"6. Devolution of interest in coparcenary property:-

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. be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub- section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

2. Any property to which a female Hindu becomes entitled by virtue of sub- section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

3. Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place 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 predeceased daughter, as the case may be.

Explanation.- For the purposes of this sub- section, the interest of a Hindu Mitakshara 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.

4. After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great- grandson for the recovery of any debt due from his father, grandfather or great- grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great- grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub- section shall affect-

a. the right of any creditor to proceed against the son, grandson or great- grandson, as the case may be; or
b. any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation - For the purposes of clause (a), the expression 'son', 'grandson' or 'great- grandson' shall be deemed to refer to the son, grandson or great- grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

5. Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section 'partition' means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

Therefore, Section 6 was amended with these amendments which had taken place from 20.12.2004.

The Explanation to sub-section (5) of Section 6 suggested as under:

"As regards sub section 5 of the proposed new, the committee vide paragraph has recommended that the term 'partition' should be properly defined, leaving any arbitrary interpretation. Partition for all practical purposes should be registered have been effected by a decree of the Court. In case where oral partition is recognised, be backed by proper documentary evidence. It is proposed to accept this recommendation and make suitable changes in the Bill."

"(5) Nothing contained in this section shall apply to a partition, which has been effected before the commencement of the Hindu Succession (Amendment) Act, 2004."

Judicial Trends

In Rukhmabai v. Laxminarayan, [27] and Mudigowda Gowdappa Sankh & Ors. v. Ramchandra Revgowda Sankh (dead) by his LRs. & Anr., [28] the Supreme Court of India observed,

"That prima facie a document expressing the intention to divide brings about a division in status, however, it is open to prove that the document was a sham or a nominal one and was not intended to be acted upon and executed for some ulterior purpose. The relations with the estate are the determining factor in the statement made in the document. The statutory requirement of substituted sub-section (5) is stricter to rule out unjust deprivation to the daughter of the coparcener's right."

The Supreme Court of India held in Shripad Gajanan Suthankar v. Dattaram Kashinath Suthankar, [29]

"Two crucial questions then arise. One-third share out of what? Should the gift by Mahadev of what was under the then circumstances his exclusive property be ignored in working out the one-third share? Two principles compete in this jurisdiction and judges have struck a fair balance between the two, animated by a sense of realism, impelled by desire to do equity and to avoid unsettling vested rights and concluded transactions, lest a legal fiction should by invading actual facts of life become an instrumentality of instability. Law and order are jurisprudential twins and this perspective has inarticulately informed judicial pronouncements in this branch of Hindu law. We reach the end of the journey of precedents, ignoring as inessential other citations. The balance sheet is clear. The propositions that emerge are that: (i) A widow's adoption cannot be stultified by an anterior partition of the joint family and the adopted son can claim a share as if he were begotten and alive when the adoptive father breathed his last; (ii) Nevertheless, the factum of partition is not wiped out by the later adoption; (iii) Any disposition testamentary or inter vivos lawfully made antecedent to the adoption is immune to challenge by the adopted son; (iv) Lawful alienation in this context means not necessarily for a family necessity but alienation made competently in accordance with law; (v) A widow's power of alienation is limited and if — and only if — the conditions set by the Hindu Law are fulfilled will the alienation bind a subsequently adopted son. So also alienation by the Karta of an undivided Hindu family or transfer by a coparcener governed by the Benares school; (vi) Once partitioned validly, the share of a member of a Mitakshara Hindu family in which his own issue have no right by birth can be transferred by him at his will and such transfers, be they by will, gift or sale, bind the adopted son who comes later on the scene. Of course, the position of a void or voidable transfer by such a sharer may stand on a separate footing but we need not investigate it here." [30]

The Supreme Court of India also considered how family settlement is effected in Kale v. Deputy Director of Consolidation, [31]

"In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions: (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family; (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence; (3) The family arrangement may be even oral in which case no registration is necessary; (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable; (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same; (6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement." [32]

In Tek Bahadur Bhujil v. Debi Singh Bhujil, [33] it was pointed out by the Supreme Court of India,

"That a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum of what had been agreed to did not require registration. Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions

about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess."

Further, the Supreme Court of India in Savita Samvedi (Ms) & Anr. v. Union of India & Ors., [34] held,

"6. A common saying is worth pressing into service…'A son is a son until he gets a wife. A daughter is a daughter throughout her life.'…The eligibility of a married daughter must be placed on a par with an unmarried daughter (for she must have been once in that state),... to claim the benefit… (Otherwise, it would be) unfair, gender-biased and unreasonable, liable to be struck down under Article 14 of the Constitution…It suffers from twin vices of gender discrimination inter se among women on account of marriage." [35]

In Chinthamani Ammal v. Nandgopal Gounder, [36] it was observed,

"That a plea of partition was required to be substantiated as under law, there is a presumption as to jointness. Even separate possession by cosharers may not, by itself, lead to a presumption of partition."

In Kalwa Devdattam v. Union of India, [37] it was laid down,

"That when a purported petition is proved to be a sham, the effect would be that the family is considered joint."

The Supreme Court of India observed in Digambar Patil v. Devram [38] and held,

"Earlier, an oral partition was permissible, and at the same time, the burden of proof remained on the person who asserted that there was a partition. It is also settled law that Cesser of Commonality is not conclusive proof of partition, merely by the reason that the members are separated in food and residence for the convenience, and separate residence at different places due to service or otherwise does not show separation. Several acts, though not conclusive proof of partition, may lead to that conclusion in conjunction with various other facts. Such as separate occupation of portions, division of the income of the joint property, definement of shares in the joint property in the revenue of land registration records, mutual transactions, There is a general presumption that every Hindu family is presumed to be joint unless the contrary is proved. It is open even if one coparcener has separated, to the non-separating members to remain joint and to enjoy as members of a joint family. No express agreement is required to remain joint. It may be inferred from how their family business was carried on after one coparcener was separated from them."

Regarding separation of one coparcener from all other members, in Palani Ammal [39] and Girijanandini Devi & Ors. V. Bijendra Narain Choudhary, [40] In Palani Ammal, [41] it was held by the Privy Council:

"…… It is also now beyond doubt that a member of such a joint family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off for him, and that the remaining coparceners, without any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family what remained after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener had separated from them. It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved…."

It was also held by the Privy Council in Hari Baksh v. Babu Lal, [42]

"That in case there are two coparcener brothers, it is not necessary that there would be a separation inter se family of the two brothers. The family of both the brothers may continue to be joint."

Recently, the Supreme Court of India in Vineeta Sharma v. Rakesh sharma & ors., [43] answered the references as under:

"(i) The provisions contained in substituted of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. (ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in (1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th December, 2004. (iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them. Hence, we request that the pending matters be decided, as far as possible, within six months. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in Prakash v. Phulavati and Mangammal v. T.B. Raju & Ors. The opinion expressed in Danamma @ Suman Surpur & Anr. v. Amar is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits." [44]

Conclusion and Suggestions

The Constitution of Indian provides the equal rights for both men and women in all respect even in property also because it was the real intention of the framers of our Constitution and specifically Dr. B. R. Ambedkar worked a lot in this regard. In spite, of Constitutional provisions he also introduced the Hindu Code Bill in the House on 11th April 1947 to provide the basic frame work to the Indians a uniform law regulating their social and religious life and ensuring equality among other things such as women's right to property by birth, order of succession to the property, right to equal share for daughters. Later on, some Laws were passed but these laws were not uniform for all. Daughters were not given their due by the Hindu Succession Act, 1956 also. Section 6 of the Hindu Succession Act, 1956 was amended by the Hindu Succession (Amendment) Act, 2005 which provided the equal right to daughters in coparcenary property in the same manner as the son have rights in the coparcenary property but the society was not ready for the same. There were some practical problems to execute the same in the society even after the said Amendment. Different opinions of different courts also created ambiguity on the point which was finally resolved

by the Hon'ble Supreme Court of India on 11th August, 2020. Therefore, everyone in the society should come forward to provide to the equal rights to daughters in all respect even in property also. Everyone in the society also to renounce practices derogatory to the dignity of women and to give the respect to them because it is our Fundamental Duty enshrined under the Constitution of India.

References

1. The day on which the Hindu Code Bill was introduced in the House by Babasaheb Dr. Bhimrao Ramji Ambedkar
2. The day on which Babasaheb Dr. Bhimrao Ramji Ambedkar resigned from Ministry of Law due to fall down the Hindu Code Bill in the House.
3. On 11th August, 2020. This full bench of the Supreme Court of India was headed by Justice Arun Mishra and Justice S. Abdul Nazeer & Justice M.R. Shah were along with him.
4. Rattu, N. C., *"Last Few Years of Dr. Ambedkar"*, 1st ed., A.P.H., p.17.
5. Kuber, Builders of modern India (Dr. Ambedkar) p.68; See also Rattu, N. C., *"Last Few Years of Dr. Ambedkar"*, 1st ed., A.P.H., p.38.
6. DBAW&S, Vol.14 (1), p.5.
7. DBAW&S, Vol.14 (2), p.918.
8. DBAW&S, Vol.14 (1), p.702.
9. DBAW&S, Vol.14 (2), p.1121.
10. Parliamentary Debates (P.D.), Vol. 15, Part-II, 20th September 1951, pp. 2929-33.
11. DBAW&S, Vol.14 (2), p.1149.
12. C.A.D. Vol. 4, 9th April 1948, pp.3642-44.
13. DBAW&S, Vol.14 (1), p.27.
14. C.A.D. Vol. 4, 9th April 1948, pp.3647-48.
15. DBAW&S, Vol.14 (1), p.33.
16. Id., p.753.
17. DBAW&S, Vol.14 (2), p.848.
18. DBAW&S, Vol.14 (1), p.674.
19. Id., p.716.
20. Id., p.388.
21. Id., p.351.
22. Id., p.745.
23. DBAW&S, Vol.14 (2), p.987.
24. Id., p.911.
25. Id., p.1051.
26. Id., p.1057.
27. AIR 1960 SC 335.
28. AIR 1969 SC 1076.
29. (1974) 2 SCC 156.
30. Para 11 & 18, Ibid.
31. (1976) 3 SCC 119.
32. Para 10, Ibid.
33. AIR 1966 SC 292 at p.295.
34. 1996 (2) SCC 380.
35. Para 6 & 7, Ibid.
36. (2007) 4 SCC 163.
37. AIR 1964 SC 880.
38. AIR 1995 SC 1728.
39. AIR 1925 PC 49.
40. AIR 1967 SC 1124.
41. AIR 1925 PC 49.
42. AIR 1924 PC 126.
43. On 11th August, 2020, a full bench of the Supreme Court of India headed by Justice Arun Mishra along with Justice S. Abdul Nazeer and Justice M.R. Shah.
44. Para 129 & 130, Ibid.