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Mitakshara Daughter's Birth Right in Ancestral Property Coparcenary Conundrum, Legal Ambiguities and Judicial Interpretations

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Abstract

The year 2005 witnessed a significant legal change declaring Mitakshara Hindu daughters as coparceners by birth and conferred a right to inherit an equal share in the ancestral property along with their male counterparts. It was a moment to be celebrated as a milestone in achieving equal property rights with absolute power of disposal. Nevertheless, it has opened up many queries relating to the concepts like what is Mitakshara? What is coparcenary? What is right by birth? Who is a daughter for the purpose of this right? Do married daughters continue as coparceners? Does the Act have retrospective effect? Whether this will apply only to daughters in those families where father was alive as on the date of coming into force of this Act? Etc. Where the law is silent, interpretations sweep in. Justice facilitators, the advocates, take it to the advantage of their clients, who are either the daughters or sons of the family. Justice dispensers, the courts, in the process of interpretation, take different routes to find out the intention of the legislature and arrive at different conclusions, may be contrary to each other.

In this backdrop, the object of this paper is to throw light upon the basic concepts about which most of the Hindus are unaware of, though the law pertains to them, to give an overview of the law and its complexities and to highlight how the courts have interpreted various connected issues relating to daughter's right to inherit coparcenary property in her father's family.

Keywords: Mitakshara and Dayabhaga, Coparcenary and coparcener, Ancestral property and separate property, retrospective and prospective operation of law etc.

INTRODUCTION

The Mitakshara school of Hindu law, one of the principal schools governing Hindu joint family properties in India, has historically conferred coparcenary rights—rights by birth—to male descendants within a joint Hindu family. This framework excluded daughters from the coparcenary, thereby denying them equal birthright in ancestral property. However, with growing emphasis on gender equality and legal reform, significant changes have emerged, notably with the enactment of the Hindu Succession (Amendment) Act, 2005.

Despite the legislative intent to ensure parity, the implementation and interpretation of these provisions have given rise to legal ambiguities. Key judicial pronouncements—including landmark decisions by the Supreme Court—have played a pivotal role in interpreting the retrospective application of the 2005

amendment, the status of pending partitions, and the rights of daughters whose fathers passed away before the amendment came into force.

The paper is structured into four parts. Part I unfolds the basic tenets and features of Joint family system and coparcenary, which is uncodified. It emphasizes the patriarchal and uncodified nature of this traditional legal construct and sets the stage for understanding the exclusion of daughters from property rights. Part II discusses the intersection of law into uncodified law of joint family and coparcenary leading to its partial codification. However, the legal reforms have not been without challenges. The implementation of the Act and its amendments have given rise to several legal ambiguities, judicial interpretations and academic debates, particularly concerning its retrospective application and procedural complexities. Part III highlights these aspects. Part IV proposes recommendations for legislative clarification, gender-sensitive judicial training, and awareness measures to ensure the effective realization of daughters' rights in coparcenary property. The paper concludes with a synthesis of insights drawn from these parts and reiterates the significance of judicial consistency and legislative clarity in upholding the constitutional promise of gender equality.

PART I JOINT FAMILY AND COPARCENARY – UNFOLDING THE CONCEPTS

Joint family system is the characteristic way of Hindu society, having its origin in Vedic period. It is composed of a common male ancestor, his wife and unmarried daughters, his male lineal descendants up-to any generation, their wives and their unmarried daughters. The daughters, once get married, become the joint family members of their husband's family. Normatively, it is a patriarchal system headed by the common male ancestor, who takes care of the persons and properties of the family, takes decisions and represents the family in social, religious and legal matters. It is a patrilineal system where the family line continues with the male members of the family.

A coparcenary constituted an inner circle within a joint family, restricted to only male members belonging to four generation namely, father, son, son's son and son's son's son and they are bound by sapinda relationship - the relationship eligible to offer spiritual benefits to the ancestors. All coparceners are basically joint family members. It is a continuous institution. As upper links are removed, lower links are added to it. A coparcener is one who is not removed from common ancestor by more than four generation, taking common ancestor as the first. They are entitled to common ownership, possession and enjoyment of ancestral property of the family.

The dual property system:

Dual property system is a unique concept recognized by Vedic jurisprudence and nourished by the Hindu society having no parallel in any other legal system. Joint family property is a byproduct of the unique institution called Hindu joint family. It is also called coparcenary property as it commonly belongs to coparceners. Ancestral property coming from generation to generation is a main segment of joint family property. Accretions to joint family property, properties purchased out of joint family funds, properties renounced by a coparcener to the benefit of joint family also constitute joint family property only. All members of the joint family, including females and non-coparceners have a right to be maintained out of these joint family assets. However, the ownership and possession belong to the male coparceners only who collectively own and enjoy the benefits. They can claim their share and get separated from the coparcenary as they wish.

Apart from having a joint interest in the joint family property, a coparcener is not barred from having his separate property that includes his self-acquired property, property received through prize or scholarship,

received as gift or under will, his self-purchase, salary and self-earnings etc. He is the absolute owner of the property with complete control over them. No one has a right or share in that property during his life time. This dual system of property and the distinction between the two existed since ancient times and formed the basis of the nature of inheritance and the property rights of the Hindus.

What is Mitakshara & Mitakshara coparcenary?

It is a less known fact among common man that there are two schools of Hindu law namely Mitakshara and Dayabhaga and the issues that created a distinction between the two.

During 11th century AD, in the process of interpreting Smritis, Vignaneswara, a great jurist, in his treatise "Mitakshara" expounded 'right by birth' theory that every coparcener acquires an interest by birth in the ancestral or coparcenary property. The moment a son is born within four generations from the common ancestor, an interest in the coparcenary property vests in him. He becomes one in the coparcenary. He acquires a right to demand partition of his share, whenever he wished. The fact that his father remained as an undivided member with his collaterals does not bar his claim. He enjoyes an unobstructed heritage. The undivided interest of a coparcener, on his death, would devolve upon his surviving coparceners since coparceners alone could inherit coparcenary property.

A century later, Jimutavahana, another great jurist of the time from erstwhile Bengal region, in his treatise called "Dayabhaga", refuted the concept of 'right by birth' of the coparceners and interpreted that sons do not acquire a right by birth in the ancestral property, despite the fact that they are coparceners and the right vests in them after the death of their father. The absolute ownership and power to dispose of the coparcenary property remains with the father until his death. It is a case of obstructed heritage and the son's right to seek partition of ancestral property is obstructed during the life time of their father. After the death of father, not only the sons, but also the widow and daughters have equal claim in the property, whether it is ancestral or self-acquired property of the father. Going by his analogy, virtually there does not exist a coparcenary as such and inheritance to ancestral as well as separate property of a Hindu goes by succession and not by survivorship.

The debate on the rights of the coparceners and the nature of coparcenary, thus, rested on the two treatises on the Hindu law of inheritance and became an issue of public interest in those days. Those who accepted the view of Vignaneswara, which was permeated the entire landscape of Bharat, reckoned themselves as Mitaksahara Hindus and on the other hand, those who subscribed to the view of Jimutavahana, spread in Assam, Bengal and certain parts of Punjab, distinguished themselves as Dayabhaga Hindus. Demographically, the majority of the Hindus are Mitakshara Hindus. Thus, the differential nature of son's right to acquire an interest in the coparcenary property, resulted in the division of Hindus into two distinct schools namely Mitakshara and Dayabhaga. This distinction is very much relevant, even today, with regard to coparcenary and inheritance to coparcenary property but not in other matters like marriage, guardianship etc.

PART II – LEGISLATIVE INROADS INTO JOINT FAMILY SYSTEM LEADING TO GENDER PARITY IN INHEIRITANCE

Post Independence, when the Constitution of India gave a clarion call for gender equality, the subordinate position of daughters within the family, denial of inheritance rights to them in the separate and ancestral property of father and the discrimination between married and unmarried daughters within the joint family became the matters of legislative debate. The entire hotpot of ancestral property remained in the exclusive possession and enjoyment of male coparceners headed by Karta. They had a right by birth in it. Only

unmarried daughters had the privilege of remaining as members of father's joint family till their marriage with a right of maintenance out of joint family funds, which included food, clothing, shelter, education, health and marriage expenses. The separate property of father also was inherited by sons to the exclusion of daughters. Thus, daughters were denied right of inheritance in joint family property as well as in separate property of father till the enactment of the Hindu Succession Act 1956.

A first step - Daughters are recognized as class I heirs to participate in intestate succession

The Hindu Succession Act, 1956, hereinafter referred as the Act 1956, marked a watershed moment in Hindu family law by recognizing daughters as eligible heirs to succeed to the properties of their parents, thereby aiming to eliminate gender discrimination embedded in the traditional system. The Act 1956, specifically Secs. 6, 8 and 15 contain significant provisions for the benefit of daughters. As a first step, daughters are declared as class I heirs[1] along with sons to participate equally in the scheme of intestate succession to self-acquired property of father. They are reckoned as primary heirs to the property of mother too.[2] Sec.6 is another landmark legislative inroad into joint family and coparcenary system whereby, a concept called notional partition has been introduced according to which, in case of death of an undivided coparcener in a Mitakshara family, it is legally presumed that just prior to his death, a notional partition had taken place between himself and his other coparceners and his undivided interest has become a divided one, which will be governed by the rule of intestate succession and not by the rule of survivorship.[3] In intestate succession, his class I heirs would inherit his property, in which daughters are also class I heirs. This was a welcoming step in the journey of daughters' right to succeed to the properties of their father and mother, in equal share, on par with the sons as class I heirs.

However, this Act did not recognize daughters as coparceners having coparcenary interest in the ancestral property of their natal family. It preserved the character of four generations of male members of the family as privileged coparceners and excluded daughters from the coparcenary.

Historic entry of Mitakshara daughters into the erstwhile exclusive zone of male coparcenary

The Law Commission of India in its 174th Report[4], reiterated the need for gender equality in matters of inheritance and recommended equal rights for daughters in coparcenary property. It took five decades, since the independence, for the Parliamentarians to recognize the same and brought in an amendment as the Hindu Succession (Amendment) Act, 2005, hereinafter referred to as Act 2005. However, as a pioneer attempt, a few State governments took the lead to confer coparcener status to unmarried daughters, within their state jurisdictions, proving their sensitivity to the issue. The Statement of objects and Reasons of the Amendment Act 2005 mentions that -

"The Mitakshara law by excluding the daughter from participating in the coparcenary ownership not only

[1] Section 8 of Hindu Succession Act 1956 read with Schedule I to the Act.

[2] Section 15 (1) of the Hindu succession Act

[3]Section 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 claiming through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession under this Act and not by survivorship.
Explanation 1. —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.

[4] The Law Commission of India 174th Report on "Property Rights of Women: Proposed Reforms under the Hindu Law". MAY, 2000

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. Having regard to the need to 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 Hindu Succession (Andhra Pradesh Amendment) Act 1984 was a nascent and pioneer step,[5] incorporating Sec. 29-A whereby daughters, who were unmarried as on the date of coming into force of this Act, were declared as coparceners and given an entry into the coparcenary, a concept, totally unheard of under the classical Hindu law. Though the object of this amendment was to curtail the practice of dowry, it was seen as a great victory for daughters to inherit even the ancestral property in the hands of father or brothers after the demise of father. However, it was a discrimination against married daughters and the presumption that they might have received dowry lacked evidentiary value.

Nevertheless, the Amendment was soon followed by the State of Tamil Nadu,[6] Maharashtra[7] and Karnataka[8] in 1989, 1994 and 1994 respectively. All these State amendments conferred coparcenar status on unmarried daughters only. They had right to seek partition and get their shares worked out. The subsequently-born daughters became coparceners by birth, in their own right in the same manner as sons. The period between 1984 to 1994, was thus seen as a remarkable period of mixed reactions culminating in debates and discourses, judicial interpretations and clarifications. Cases piled up in High courts of concerned States and the Supreme court challenging the classification of daughters on the basis of their marital status, the suits of partition and the issues of retrospective effect of the amended law.

The year 2005 witnessed a revolutionary change with the enactment of the Hindu Succession (Amendment) Act 2005[9], a central legislation. It extends to the entire territory of India, and governs all Hindus without any reference to the marital status of daughters. The amendment was hailed as a progressive step towards gender justice to all daughters, born in a Mitakshara family.

PART III – LEGAL AMBIGUITIES AND JUDICIAL INTERPRETATIONS

Prima facie it seems well that a law has come in place to set right the historical folly of excluding women from coparcenary. A cursory reading of the provision makes it clear that a daughter of coparcener has become a coparcener and her rights and liabilities are same as that of a son. She can seek partition and dispose of her share through will.

However, the early assumptions, the hopes and the seeming legislative clarity have raised many complex issues and ambiguities, when daughters started claiming their newly conferred legal rights within the family. Many untold facts have surfaced which are still being agitated before the courts and judicial pronouncements are not uniform. These legal ambiguities have dragged daughters to courts to struggle and get their rights achieved.

The most relevant and much debated provision is Sec.6 which reads as –

S.6 (1): 'On and from the commencement of this Act, in a joint 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 son;

(b) Have the same rights in the coparcenary property as if she had been a son

[5] Came into force on 5-9-1985
[6] Hindu Succession (Tamil Nadu Amendment) Act 1989 came into force on 25-3-1989
[7] Hindu Succession (Maharashtra Amendment) Act 1994 came into force on 22-6-1994
[8] Hindu Succession (Karnataka Amendment) Act 1994 came into force on 28-7-1994
[9] With effect from 9-9-2005

(c) Be subject to same liabilities in respect of the said coparcenary property as that of a son.
..... Provided that nothing contained in this sub-section shall affect or invalidate any disposition or any alienation including any partition which had taken place before the 20th day of December 2004.
Explanation - … Partition means any partition made by a deed of partition duly registered … or partition effected by a decree of a court.'
Sec 6(2): 'Any property to which a female Hindu becomes entitled to ... shall be held by her with the incidents of coparcenary ownership …… and as property capable of being disposed of by her by testamentary disposition.'
The cut-off date of 20th day of December 2004 is reiterated in S.6(5) also.[10]
The significant questions left unanswered by the legislators are:

1. Who are covered in the expression 'the daughter of a coparcener' mentioned in S.6(1)?

Under classical Hindu law, coparcener means male coparcener. But post-amendment, coparcener means and includes male and female coparceners. The ambiguity arose whether daughter's daughter is also a coparcener on the understanding that her mother happens to be a coparcener and she is the daughter of a Mitakshara coparcener.
Daughter's daughter cannot be a coparcener because the joint family structure is such that the daughter's daughter is a coparcener in her father's family and she cannot have two coparcenary status. Going by the analogy of 'son means and includes son, son's son and son's son's son', the daughter of a Mitakshara coparcener means daughter of the common ancestor, (2nd gen) son's daughter, (3rd gen) and son's son's daughter (4th gen). The coparcenary of a daughter does not extend to her lineage. It stops with her. It is her personal right.
This is due to the misleading wording. 'Daughter of a Mitakshara male coparcener' would have been an apt phrase to avoid this ambiguity.

2. What are the incidents of coparcenary?

Sec 6(2): "Any property to which a female Hindu becomes entitled to ... shall be held by her with the incidents of coparcenary ownership ……" The phrase 'incidents of coparcenary ownership' is left undefined or unexplained in the Act 2005.
The classical concept of 'incidents of coparcenary' governing the Mitakshara male coparcenery are 'Four generation rule', 'sapinda relationship', 'rule of survivorship' and 'Karta-ship'. The four-generation rule does not change post amendment. The remaining terms need clarity.

Whether female coparceners are bound by sapinda relationship -the relationship eligible to offer spiritual benefits to the ancestors?

Customarily and ritually, sapinda relationship binds the male members of the family and not the female members. Daughters were prohibited from offering spiritual benefits to the ancestors of father's family. The married daughter becomes a part of husband's family and facilitates her husband to offer spiritual benefit to the ancestors of husband's family. Since the law uses the term 'incidents of coparcenary', now a broader question arises that whether daughters can also participate along with sons in discharging their duties towards the deceased mane. At present, a daughter in the absence of a son, takes up to perform funeral rights of her deceased father due to a change in the societal attitude but in the presence of sons, whether she is allowed? – is still a question for which law is silent.

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

Is daughter, as a coparcener, governed by the rule of survivorships?
In case of death of a male coparcener, in the absence of his female heirs or a male heir claiming through his female heir,[11] his undivided interest in the coparcenary devolves on the surviving coparceners. Applying this rule, in case of death of a daughter without having her heirs, whether her interest in the coparcenary property would devolve upon the surviving coparceners of the family?
Can daughter act as Karta if she is the seniormost coparcener in the family? Under Classical Hindu law, the seniority and the gender determined the status of Karta. The seniormost male member, by virtue of his birth status, is Karta of the joint family and head of the coparcenary. Now the present Act has removed the gender disqualification of daughter to become coparcener. The issue that came before the Delhi High court in *Sujata Sharma v. Manu Gupta*[12] was on the facts that the petitioner, after the death of her father and Paternal uncles, claimed Karta-ship against her younger cousin, who happened to be the seniormost male member of the family. Her contention that she being a woman cannot be seen as a disqualification from being a Karta since the same has been expressly removed by the amendment Act. The issue before the court was (i) whether the benefit conferred on daughters are to be mere coparceners to jointly own and seek partition of their shares or the right extends to become the Karta of her father's coparcenary and exercise all the powers enjoyed by the male Karta. Further, (ii) whether a married daughter can claim the position of Karta in her father's family?
The court held that S. 6 does not stipulate any such restriction on a senior most daughter to act as Karta. Further, the marriage of a daughter does not alter her coparcener status and she would be competent to act as Karta if she happens to be the senior most.

3. Will daughter born before 9-9-2005 get the benefit? Does Section 6 have prospective or retrospective operation?

This was the most complex issue that consumed a lot of court's time in getting a clarity.
In *Vaishali S Ganorkar v. Satish Keshavrao Ganorkar*[13] (2012), a single Bench of Bombay High court had held that S.6 is clear and it is only those daughters who are born on or after the Act could become coparceners and those daughters who were born prior to 9-9-2005 would neither be coparceners nor get coparcenary shares. This decision was later declared as *per incurium* and erroneous by a division bench of same Bombay High court in *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari*[14] (2014) and observed that the phrase 'on and from the commencement of the Act' does not refer to the time of birth of the daughter, but indicates the time of her inclusion in the coparcenary irrespective of the time of her birth.
In *Prakash v. Phulavati* (SC 2015) Phulavati, born before 9-9-2005, claimed a share in the coparcenary property. It was denied by her brothers on the ground that she was born before the Act came into force and that the new law should be in operation prospectively. The issue was: whether s. 6 (1) is prospective or retrospective in operation? The SC held: S.6(1) shall have prospective effect and rights under the new amendment are applicable to living daughters of living fathers as on 9-9-2005 irrespective of when such daughters are born. For a daughter to be eligible to be a coparcener three conditions are to be satisfied.

1. The daughter should be alive as on 9 September 2005 or to be born after the said date.

[11] S. 6 of Hindu Succession Act 1956
[12] (2016) 226 DLT 647
[13] AIR 2012 Bom 101
[14] AIR 2014 Bom 151

2. The father should also be alive as on 9 Sep 2005
3. No partition of the joint family property should have occurred after 20 December 2004 by registered document or by a decree from court of law.

4. Whether father should be alive as on 9-9-2005, to confer benefit on daughters?

This aspect is also not clear in the Act. Initially it had been clarified in *Prakash v. Phulavati* (SC 2015), that she could be a coparcener only when her father was alive on 9-9-2005. This ruling excluded daughters whose fathers had died before the amendment from claiming coparcenary rights. Because the phrase 'On and from the commencement of this Act, *a daughter of a coparcener* shall by birth become a coparcener' denotes that her claim is in the status of daughter. After the death of father, a notional partition would have taken place between father and his sons by virtue of s. 6 it would become intestate succession. She can claim her share in the share of the father as class I heir along with sons and not as coparcener since on the date of death of father, she was not a coparcener. So, father should have been alive as on 9-9-2005 for daughter to claim the coparcenary benefit.

However, in *Danamma @ Suman Surpur v. Amar*[15] (2018), the Court allowed daughters to claim coparcenary rights even though the father had died in 2001, seemingly contradicting the earlier ruling. This inconsistency led to confusion in subsequent litigations.

Finally, the matter was settled in *Vineeta Sharma v. Rakesh Sharma* [16] (2020), where a larger bench of the Supreme Court held that the 2005 amendment is retrospective in nature and daughters have coparcenary rights by birth, irrespective of whether the father was alive on the date of the amendment. The Court clarified that the right is not dependent on the father's survivorship and that daughters are entitled to equal shares as sons.

Despite this authoritative pronouncement, procedural and practical challenges continue to persist, particularly in pending partitions and disputes over the applicability of this ruling to previously decided cases.

5. Whether a daughter who is dead as on 9-9-2005 would be a coparcener and her coparcenary benefit would be inherited by her children?

This question was also addressed in *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari*[17] (Bom 2014). If she was dead on 9-9-2005, then she would not be a coparcener herself retrospectively and her children would not be benefitted by this provision. It is to be noted that in case of son as a coparcener, his lineal descendants namely son's son and son's son's son are coparceners. It is not so in the case of daughters. It is her personal right and she should be alive on or after coming into force of the Act 2005.

6. Whether the 2005 Act can nullify the benefit conferred on daughters under State amendment?

Central amendment was preceded by State amendments, in which coparcenary rights on unmarried daughters, including the right to demand partition, were vested in them and they could legitimately exercise them. However, they could not seek reopening of partition, that took place before a notified date in the statute. An unforeseen consequence, probably not envisaged by the legislature arose after passing the central amendment Act 2005. This was surfaced in *R. Kantha v. UOI*[18] (Kant 2010), in which case an unmarried daughter filed a suit in 2007, for partition by virtue of the right conferred on her under the

[15] AIR 2018 SC 721
[16] AIR 2020 SC 3717
[17] AIR 2014 Bom 151
[18] AIR 2010 Kant 27

Hindu Succession (Karnataka Amendment) Act 1994 from 30 July 1994. Pending the suit, 2005 Amendment Act came into force with a rider, proviso to S.6(1) (c) that daughters cannot exercise their right if partition had already been made before 20 December 2004. On dismissal by the Trial court, she approached the Karnataka High court through a writ challenging the constitutional validity of proviso to S.6(1) (c) on 2 grounds that: (i) it is void on the ground that a right that accrued to her in 1994 under the State Amendment cannot be taken away from her under 2005 Act. (ii) It is arbitrary and gender discriminatory because, a similar restriction is not there in case of sons who can seek partition at any time. The court rejected her first challenge on the ground that in case of conflict between the two, a central law would prevail over the State law. Moreover, she filed the suit in 2007, when the central amendment had already come into force.

However, the court had accepted her second challenge and held that there is no justification for prescribing a cutoff date for daughters to limit her right under the central law when there is no such restriction for a son though the presumed hardship and inconvenience would be no different. It has no nexus with the object of the Act.

7. Whether daughters can ask for reopening of the partition when a preliminary decree has already been passed by the court?

In *Ganduri Koteswaramma V. Chakri Yenadi* (2011) 9 SCC 788**,** the facts were that a Hindu joint family consisting of father, two sons and two daughters had coparcenary properties. Son filed a suit for partition against father and his brother. Pending the suit, father died in 1993 and a preliminary decree was passed in 1999 and subsequently an amended preliminary decree was passed in 2003, declaring his share. Pending final decree, the amendment came in 2005 declaring that the daughter shall by birth become a coparcener in the same manner as son. So, the sisters (Ganduri Koteswaramma and her sister) claimed a share in the coparcenary property and asked for reopening of the partition.

The issue before the court was whether daughters can ask for reopening of the partition when a preliminary decree has already been passed by the court?

It was held by the Apex court that "The suit for partition is not disposed of by passing a preliminary Decree. The partition is not complete, unless and until the final decree is passed and the coparceners are put in possession. If, in the interregnum, events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree. … they were entitled to re-allotment of shares in the coparcenary property along with their brothers even if preliminary decree was passed."

8. What is the nature of the property devolved on the daughter under the Act 2005?

It is a crucial question that arose due to the fact that the Hindu Succession Act 1956 has laid down different schemes of succession to a female Hindu, on the basis of nature of the property and her status as a woman with a child or a woman without a child.

For the purpose of succession, the property of a Hindu female is categorised as (i) Property inherited from her father or the mother. (ii) Property inherited from her husband or father-in-law. (iii) Other properties obtained from any other sources like self-earnings, gift, will, and from any other persons or relatives etc. The rules laid down in S.15[19], as simplified for easy understanding are:

[19] Section 15. General rules of succession in the case of female Hindus. —(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, —
(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

1. If a female Hindu dies having children, whatever may be the nature and source of the property, it would devolve upon her children and children's children and husband.
2. If she dies without having a child, then the source is very much relevant. (a) Property inherited from her father or mother would go to father's heirs. (b) Property inherited from husband or father-in-law would revert back to husband's heirs. (c) Other properties of a childless woman would devolve upon husband's heirs.

Now a bunch of questions that surfaced after the Act 2005, due to legislative silence, are:

- What is the nature of the property which she acquired by birth in her personal right?
- Is it a coparcenary property in which her children have a right?
- Is it her separate property?
- Is it a property inherited from her father?
- Whether her husband would succeed to that property?

Taking an analogy from the rules of Mitakshara coparcenary -

1. If she died as an undivided member, in the absence of her children, it would devolve by survivorship on her surviving coparceners, may be her brothers and father.
2. If she died as an undivided member, leaving behind her child/children, S. 6 of Notional Partition would apply and her presumed divided share would become her separate property and would devolve by testamentary or intestate succession as the case may be.[20] It would not devolve by survivorship.
3. If the daughter, having child/children, has taken her coparcenary share during her life time, it should be treated as her separate property and will go by testamentary or intestate succession as the case may be. In the absence of a will, it will go to her children and husband.[21]Till this proposition, there is no ambiguity. But -
4. If a daughter has taken her coparcenary share during her life time and died without having a child, it gives rise to an incongruent situation. It adds to the complexity which is already existing due to legislative ill-drafting of S.15 (2).

Is it her separate property, that would devolve upon her husband, if alive or to husband's heirs as per S. 15(1) or will it be an inherited property that would devolve on her father's heirs as per S. 15(2) (a)?

This legislative discrepancy has already been brought to light and commented upon by legal personalities and academicians after Karnataka High court has passed a much-debated judgement in *Sangappa v. MM Siddamma*[22] (2011). The claim of the daughter to a share in the ancestral property was under Karnataka Amendment Act 1994. Pending disposal of the appeal before the High court, she died in 2004 leaving behind her husband and no child. Her husband got impleaded and claimed the share. The court held that

(b) secondly, upon the heirs of the husband;
(c) thirdly, upon the mother and father;
(d) fourthly, upon the heirs of the father; and
(e) lastly, upon the heirs of the mother.
(2) Notwithstanding anything contained in sub-section (1), —
(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and
(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

[20] S.30 of the Act 2005 says: A coparcener can bequeath his or her undivided share under a will.
[21] S.15(1)
[22] AIR 2011 Kant 125.

since she died issueless, her share inherited from her father should revert back to her father's heirs as stipulated in S.15(2)(a). The share should not go to her husband. The court treated her coparcenary interest as inherited interest from her father.

This decision was commented upon as incorrect. "The decision is totally incorrect as it is an incorrect judicial ruling barring lack of clarity on the issue of joint family and law governing daughters right as coparceners. … The grave error committed by the court was with regard to the nature of the coparcenary property."[23]

The coparcenary interest of a daughter vests in her by birth as an unobstructed heritage. If she wishes, can seek partition of her share. It is not the exclusive property of her father. It is a property belonging to the coparceners as a whole, everyone having a community of interest. She takes her share in her capacity as coparcener and not inherited from father as class I heir after his death. Only for inherited property, if she died issueless, S.15(2)(a) would apply[24]. Applying the section to the coparcenary property is incorrect. When it is not an inherited property, it becomes her separate property by default, which should devolve upon her heirs according to S.15(1)(a) and in the present case, her husband should be the rightful heir. 'The legislative scheme of trying to conserve the property acquired by a female from her father and its restoration to his family, in the absence of her children, has created confusions and complications, totally unwarranted in the present-day scenario'.[25]

PART IV THE IMPACT OF THESE LEGAL AMBIGUITIES AND WAY FORWARD

In the backdrop of above discussion, it becomes clear that legislative clarity is missing and fails to address unforeseen situations. All these ambiguities in the law are still leading to flooding of cases in the courts. The judiciary was confronted with several interpretive challenges. While the judiciary has attempted to resolve interpretational conflicts, several practical challenges remain. These include:

- Difficulty in reopening partitions made under earlier laws and redistribution of assets and liabilities
- Delays and resistance in lower courts to uniformly apply the *Vineeta Sharma* judgment.
- Societal and familial resistance to women's assertion of their legal rights.

Moreover, ambiguity remains regarding the proof of joint family property and partitions, and limitation periods for filing claims. These issues underscore the need for legislative clarification and consistent judicial application.

Recommendations include:

- Enacting clarificatory amendments to address these legal ambiguities and procedural uncertainties with utmost care and good drafting skill.
- Conducting awareness campaigns to educate women about their rights.
- Sensitizing the society, judiciary and legal practitioners to gender-equal principles in property law.

CONCLUSION

All legislative process aims towards reform and refinement of existing law. Legislative activism in the field of inheritance and succession ameliorated the condition of women by conferring various rights on her. Despite the fact that the Hindu Succession Act 1956 and 2005 have brought vital changes to the

[23] Poonam Pradhan Saxena, "Family Law Lectures", Lexis Nexis, 5th Edn, @ p.454-455

[24] Section 15(2)(a) - Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father;

[25] Poonam Pradhan Saxena, "Family Law Lectures", Lexis Nexis, 5th Edn, @ p.454-455

institution of joint family and coparcenary and made them nearing to gender just, they fall short in various areas giving scope for legal dilemmas and conflicting judicial decisions. That law is the best law which gives little scope for interpretations. Amendments should be holistic without giving scope for amendment to amendment. It speaks a lot about the quality of drafting of legislations. Utmost care should be taken by the drafters to see that there is little scope for misinterpretation. Seven decades and two decades have passed respectively and it is high time Indian legislature looks into the lacuna in section 15 of Hindu Succession Act 1956 and S. 6 of Hindu Succession (Amendment) Act 2005. It is essential that legislative and judicial institutions continue to work in tandem to eliminate ambiguities, ensure uniform application, and uphold the constitutional vision of equality for all, regardless of gender. It is a great journey from exclusion to recognition of a daughter's birthright in coparcenary property is a significant milestone in the broader movement towards legal and social reform in India. Full realisation of this right ultimately depends on efforts to remove these legal and societal hurdles.