
ANALYSIS ON RULES OF SUCCESSION IN CASE OF FEMALE HINDU

Ipesh Subhash Yadav, Shree L R Tiwari College of Law

ABSTRACT

I would like to begin this paper by referencing a verse from Manusmriti.

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः।

यत्रैतास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः।

Which means, where women are respected, divinity thrives, and wherever they are disrespected, even the most virtuous deeds remain barren.

The legal position regarding the succession rights of female Hindus in India has witnessed considerable development, reflecting a composite relationship between traditions and reforms. Traditionally, property succession was trapped in male-controlled norms, limiting female privileges. The shift towards reforms against this position began with enactment of the Hindu Succession Act (HSA) of 1956¹, which codified heritage laws but still somewhat failed to provide equal positions to daughters with sons with respect to ancestral properties.

The 2005 amendment² to the HSA marked a significant shift, giving daughters the same rights as sons to ancestral property by recognizing them as coparceners. This amendment also updated the rules for how a female Hindu's property is passed on if she doesn't leave a will. However, while the law has advanced, real-world challenges persist. Societal norms, lack of knowledge, and issues with property records often hinder the actual exercise of these rights.

This paper tries to explore the evolution of these inheritance rules, from their historical roots to present-day challenges and implications, providing insight into the position of Hindu women in India's inheritance landscape.

¹ The Hindu Succession Act, 1956.

² The Hindu Succession (Amendment) Act, 2005.

INTRODUCTION

An attempt is made in this paper to study the position of a daughter under different enactments, minutely in the light of the Hon'ble Supreme Court and Hon'ble High Courts' decisions and to also examine the applicability of Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005.

Before discussing about the legal status of a daughter as a coparcener under the enactments and its applicability, it is discussed the following concepts:

a) The Joint Hindu Family

A Joint Hindu Family encompasses all individuals who are direct descendants from a shared ancestor, along with their wives and unmarried daughters. Traditionally, upon marriage, a daughter would no longer be considered part of her father's family and would join her husband's family. However, with the introduction of the Hindu Succession Act in 1956 and its subsequent amendment in 2005, a married daughter is now deemed a coparcener in her birth family regarding succession, provided she meets the criteria outlined in these acts. We will delve into these specific conditions in the following sections.

The Hon'ble Supreme Court of India in *Vineeta Sharma v/s Rakesh Sharma & Others*³ held, a joint Hindu family encompasses a broader group than a Hindu coparcenary. It includes all individuals who are linear descendants of a common ancestor, along with their wives and unmarried daughters. This family structure is characterized by joint worship and the collective ownership of assets. The family remains 'joint' until there is a division of these assets. Simply splitting in terms of food and worship does not constitute a legal separation in the context of a joint Hindu family."

b) The Concept of Coparcenary

³ *Vineeta Sharma v. Rakesh Sharma*, 2020 SC at Page 33 Para 22

Coparcenary refers to the shared inheritance or collective ownership of property, originating from ancient Hindu legal principles. This concept was later incorporated into the Mitakshara School of Hindu law. Essentially, a Joint Hindu Family that forms a Coparcenary consists of a primary male ancestor and his direct male descendants up to four generations, including the ancestor, or up to three generations excluding the ancestor.

The Hon'ble Supreme Court of India in *Narayan Rao vs State of Maharashtra*⁴, held that, a Hindu Coparcenary is a more limited entity compared to the joint family. Historically, only male members who have an inherent interest in the joint or Coparcenary property by virtue of their birth are eligible to be members of the Coparcenary or to become coparceners. Therefore, a male member of a joint family, along with his sons, grandsons, and great-grandsons, forms a Coparcenary. A coparcener's right to the Coparcenary property is established at birth, but the specific extent of this right can only be precisely determined when a partition occurs. In a joint family setting, the exact share of a coparcener remains indeterminate and is subject to change. It fluctuates, increasing with the death of a coparcener and decreasing with the birth of a new one.

c) **The Rule of Four Degrees**

While every Coparcenary originates from a common ancestor, it doesn't mean it's always restricted to four degrees from that ancestor. A joint family member can be more than four degrees apart from the original holder of the Coparcenary property and still be a coparcener. Whether someone is a coparcener hinges on their right to demand a partition of the Coparcenary property. If a member can seek partition, then they're considered a coparcener; if not, they aren't. A crucial guideline is that only members not more than four degrees away from the most recent holder can demand a partition, regardless of their distance from the original common ancestor. If a member is more than four degrees away from the last holder, they cannot demand a partition and, by extension, aren't considered a coparcener.⁵

⁴ *Narayan Rao vs State of Maharashtra*, reported in (1985) 2 SCC 321 at page 328.

⁵ *Hindu Law by Mulla*, 23rd Edition (Reprint 2019) pages 319 and 320)

If we take the propositus (original holder) as the great grandfather, then the lineage of coparceners eligible to demand partition includes the great grandfather, grandfather, father, and son. However, when we get to the fifth generation, which is the son's son, he can only be recognized as a coparcener with the right to demand partition after the death of the great grandfather. This pattern of succession persists across generations. While the lineage might stretch far from the original holder, it's essential that the active line of coparceners remains within four degrees of succession. The right for the fifth generation to be acknowledged as a coparcener and to ask for partition only becomes active once the senior-most member of the lineage (their direct link) passes away.

POSITION OF DAUGHTERS BEFORE THE ENACTMENT OF THE HINDU SUCCESSION ACT, 1956.

Under the Mitakshara School of Hindu Law, women could claim sustenance but didn't have control or ownership over familial properties. The Hindu Law of Inheritance Act of 1929 was a pioneering move in offering Hindu women inheritance rights, specifically to the son's daughter, daughter's daughter, and sister. Later, pivotal legislations like the Mysore Hindu Law Women's Rights Act of 1933, and the Hindu Women's Right to Property Act of 1937, brought about significant shifts in Hindu law, revisiting rules on coparcenary, inheritance, and partition. Although the 1937 Act acknowledged a widow's entitlement as equivalent to a son's, it came with constraints, such as excluding daughters from inheritance rights and placing restrictions on a widow's claim to property.

Acknowledging this imbalance, the framers of the Indian Constitution aspired to uplift the status of women in society by establishing their equality with men, as embodied in Articles 14, 15(2), 15(3), and 16, treating these values as Fundamental Rights. Furthermore, Article 39(d) in Part IV, which represents the Directive Principles, instructs the State to champion gender equality by advocating for equal pay across genders. Even with these constitutional safeguards, discrepancies in personal law remained, resulting in ongoing prejudice against women in both their birth and marital homes.

SUBSEQUENT ENACTMENTS WHICH CONFERRED RIGHTS ON DAUGHTERS:

1. THE HINDU SUCCESSION ACT, 1956

(A) Unamended Section 6 of Hindu Succession Act, 1956

(B) Section 14 of Hindu Succession Act, 1956

2. HINDU SUCCESSION (AMENDMENT) ACT, 2005

Amended Section 6 of the Act, 2005

THE HINDU SUCCESSION ACT, 1956

A. Unamended Section 6 of Hindu Succession Act, 1956

According to Section 6 of the Act of 1956, if a male Hindu passes away after the Act's implementation, his share in the property will transfer to the living members of the Coparcenary through survivorship. But, the proviso to Section 6 of the Act, 1956, states that if the deceased is survived by a female relative listed in class I of the schedule or a male from the same class claiming through the said female relative, his interest in the Mitakshara Coparcenary property would be determined either by will-based (testamentary) or law-based (intestate) succession under this Act, not by survivorship.

The Supreme Court of India, in the case between Vineeta Sharma V/s Rakesh Sharma & Others⁶, observed, prior to its amendment, Section 6 specified that when a male Hindu coparcener in a Mitakshara coparcenary passed away, his share in the coparcenary property would transfer through survivorship to the surviving members of the coparcenary, as per traditional Hindu law. This transfer did not follow the succession rules outlined in the Hindu Succession Act of 1956. However, the proviso to Section 6 made an exception, stating that if a male Hindu from the Mitakshara coparcenary dies leaving behind a Class I female

⁶ Vineeta Sharma v. Rakesh Sharma, 2020 SC at Page 52 Para 53 and para 59.

relative, or a male relative who inherits through such a Class I female relative, the succession would occur accordingly.

The Court further observed, under the conditions set forth in Section 6, when a coparcener is survived by a Class I female heir or a male relative of such a female heir, it becomes necessary to ascertain the share of the deceased. To address this, a legal fiction was introduced. Explanation I to Section 6 created this legal fiction of a partition, considering it to have taken place just before his death, irrespective of whether he had the right to demand it. This meant that, even if a partition had not actually occurred, it was legally presumed to have happened for the purpose of determining his share. However, a Hindu who had already separated from the coparcenary could not claim a share in the coparcenary property based on the intestate interest of the deceased.

Section 14 of Hindu Succession Act, 1956 – Property of a female to be her absolute property.

Before delving deeper, let's first explore the provisions of Section 14(1) and 14(2) of the Hindu Succession Act, 1956 concerning the property rights of females.

Under Section 14(1) of the Hindu Succession Act, 1956, any property held by a female Hindu, irrespective of whether it was acquired before or after the Act came into effect, shall be considered as her absolute property, not as a limited ownership. The Explanation attached to Section 14(1) of the Act specifies the various ways a female Hindu can acquire property. According to this Explanation, she can obtain property through inheritance, devise, during a partition, as maintenance or arrears of maintenance, through a gift from anyone (relative or not), before, during, or after her marriage, by her efforts or skills, through purchase or prescription, or any other means. It also includes any property she held as stridhana right before this Act was enacted.

Section 14(2) of the Hindu Succession Act, 1956 states that if a female receives property through a gift, will, or any other document, or due to a civil court's decree or order, or an

award that specifies limited rights over the property, then she won't have the absolute ownership rights over such property as described in Section 14(1) and its associated Explanation.

To grasp the implications of Section 14(1), its accompanying Explanation, and Section 14(2) of the Act, 1956 regarding the property rights of a female, it's essential to reference the judgment given by the Supreme Court of India in the case of *V. Tulasamma v. Sesha Reddy*⁷. In this case, while interpreting Section 14(1) and Section 14(2) of the Hindu Succession Act, 1956, the Supreme Court set the following principles:

(1) The provisions of Section 14 of the Hindu Succession Act of 1956 should be interpreted broadly to fulfil the Act's purpose, which is to expand the limited rights previously held by a Hindu widow, aligning with the evolving societal norms.

(2) It is evident that subsection (2) of Section 14 does not pertain to any transfer that simply acknowledges a pre-existing right without bestowing a new title on the widow. This principle was definitively established in the case of *Badri Prasad v. Kanso Devi*, (1969) 2 SCC 586.

(3) The 1956 Act has introduced groundbreaking and extensive changes in Hindu society. Efforts should be made to implement the spirit of the Act, which addresses a long-standing need and aims to eliminate the unfair differences in intestate succession between Hindu males and females.

(4) Subsection (2) of Section 14 should be seen as a proviso to subsection (1) of Section 14 and interpreted accordingly. It must not be construed in a way that negates the main provision's effect."

⁷ *V. Tulasamma v. Sesha Reddy*, (1977) 3 SCC 99, page 12021, para 30 Page 13536, para 61.

Additionally, in the aforementioned case, the Supreme Court, distilled the interpretation of Section 14(1) and 14(2) of the Hindu Succession Act, 1956 in the following manner:

The legal conclusions reached after thorough examination of relevant authorities on interpreting Sections 14(1) and (2) of the Hindu Succession Act of 1956 can be summarized as follows:

- A Hindu female's right to maintenance is a substantive claim against property, rooted in the spiritual relationship between husband and wife, and recognized by traditional Hindu Law. This right may not be a direct right to property, but it is a claim against property. The husband has a personal duty to maintain his wife, and if he or the family owns property, the female has a legal right to be maintained from it. If a charge is created for her maintenance, this right becomes legally enforceable.
- Section 14(1) and its Explanation are framed in broad terms and should be interpreted liberally in favor of females, advancing the Act's goal and promoting the social and economic objectives of this essential legislation.
- Subsection (2) of Section 14 functions as a proviso, distinct from Section 14(1) but not materially altering its operation. The proviso should be interpreted in a way that supports the main provision's effectiveness and the protection granted under Section 14(1).
- Subsection (2) of Section 14 applies to legal instruments that create new titles for females and is not applicable in cases where the instrument merely recognizes or confirms preexisting rights. In these situations, a female's limited interest automatically becomes absolute under Section 14(1), and any restrictions in the document are disregarded. This applies to property allotted to a female in lieu of maintenance or share at partition.
- The explicit mention of terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', etc., in the Explanation to Section 14(1) makes subsection (2) irrelevant to these categories.

- The term ‘possessed by’ in Section 14(1) is comprehensive and includes ownership even without physical possession. Therefore, if a widow is entitled to a share under a preliminary decree, she is deemed to possess the property and gains absolute interest in it under Section 14(1), provided her possession is under some legitimate claim or title.
- The term ‘restricted estate’ in Section 14(2) encompasses more than just limited interests as indicated in Section 14(1). It includes any kind of limitation that may be placed on the transferee.

The Supreme Court of India has delineated the extent and constraints of Section 14(1) and Section 14(2) of the Hindu Succession Act, 1956. Therefore, when adjudicating the rights of a female under Section 14 of the Hindu Succession Act, 1956, the court ought to interpret the provision in a manner that benefits females, furthering the intentions of the 1956 Act.

PROPERTY STANDING IN THE NAME OF MOTHER (DAUGHTER COPARCENER) AND SUIT FOR PARTITION FILED BY HER CHILDREN.

In situations where a property is registered in the mother's name (as a Daughter Coparcener), is it possible for her children to initiate a partition lawsuit claiming the property is a Joint Hindu Family asset?

There may be instances where property is registered in the mother's name, and her children, during her lifetime, initiate a partition suit against her, arguing that the property is a Joint Family asset. They might claim she had no independent means to purchase the property. In response, the mother could appear in court, asserting that the property was acquired solely by her and request the case's dismissal.

One must note that, according to Section 14(1) of the Hindu Succession Act, 1956, sale is indeed a legitimate means for a female to acquire property. Typically, when a property is registered in a female's name, and the accompanying sale deed does not specify that it was bought using the Joint Hindu Family's income, the property should be considered the woman's absolute property in line

with Section 14(1) of the Hindu Succession Act, 1956, rather than being labelled a Joint Family asset.

Another crucial point to consider is the reason for a father, acting as the Karta of the Undivided Joint Family and managing family affairs, to register a property under his wife's name. If he, as the Karta, procured certain assets in his name and separately purchased a property in his wife's name, it likely indicates his intention to ensure her security after his passing. This could be a gesture of appreciation for her invaluable contributions to the family's wellbeing. He might have intended to protect her future in the event of his demise. As such, this property, under the wife's name, should be viewed as her exclusive asset according to Section 14(1) of the Hindu Succession Act, 1956. The children, in such cases, shouldn't claim rights over the property on the premise of it being a Joint Hindu Family asset.

In the case of *Om Prakash Sharma v. Rajendra Prasad Shewda and Others*⁸, the Supreme Court of India observed, the practice of a husband purchasing property in his wife's name, known as a benami transaction, has been a longstanding custom in India, influenced by the historical status of Hindu women in inheritance matters prior to the Hindu Succession Act and its subsequent amendments. Under the Hindu Women's Rights to Property Act, 1937, a Hindu widow had limited rights to her deceased husband's estate. In this context, it was a common and recognized practice for husbands to buy property in their wives' names to ensure their financial security in the event of the husband's death. This practice is even acknowledged in the explanation clause of Section 3 of the Benami Transactions (Prohibition) Act, 1988. Understanding this cultural and legal background is essential when determining the nature of property transactions where a husband buys immovable property in his wife's name. Alongside other facts and circumstances, this background forms a crucial part of the assessment to determine, as a matter of fact, whether the property was purchased benami.

In the aforementioned case, the Supreme Court further noted, in reviewing the case, the High Court rightly determined that the property, bought with Jagannath Joshi's funds, was actually for his

⁸ *Om Prakash Sharma v. Rajendra Prasad Shewda and Others*, (2015) 15 SCC 556, on page 560, Para 10 and page 562 Para 13

widow, Moni Debi, making her the true owner. Key evidence included Moni Debi's name on official records and the absence of Joshi's brothers, suggesting the purchase was to safeguard the property. Joshi's management of the property, typical in Hindu families, further supported Moni Debi's ownership, as acknowledged by the High Court.

The Supreme Court has definitively ruled that even if a husband provides the funds for a property purchased by his wife, that property is deemed her absolute possession.

However, scenarios may arise where a father passes away, leaving behind his wife and underage children, and the Joint Family has substantial income. In such situations, if properties are acquired in the mother's name using the Joint Family's income, those properties can be considered Joint Hindu Family assets. Additionally, in cases where the husband is incapacitated and the children are minors, leaving no one to manage family affairs, and the wife buys properties using the Joint Family income, those assets might also be recognized as Joint Hindu Family properties.

Given the judgment in the aforementioned case, it's evident that when interpreting Section 14(1) and its accompanying explanation, the legislative intent must be clearly understood. It's crucial to ensure that the protective provisions crafted for women under these sections are effectively extended to them.

SECTION 15 OF HINDU SUCCESSION ACT, 1956 – GENERAL RULES OF SUCCESSION IN THE CASE OF FEMALE HINDUS

When a female Hindu passes away without leaving a will after the introduction of the Hindu Succession Act, 1956, the distribution of her assets is governed by Sections 15 and 16 of the 1956 Act. Section 15(1) outlines the sequence of inheritors as:

- (a) First, to her children, husband, and children of any deceased offspring;
- (b) Then, to her husband's heirs;
- (c) Next, to her parents;
- (d) After that, to her father's heirs;
- (e) And lastly, to her mother's heirs.

It's vital to recognize that Sections 15 and 16 are only relevant if the female Hindu passed away without a will. If she had designated her assets in a will, then these provisions would not apply, and her property would be distributed according to her specified wishes.

As stated in Rule 1 of Section 16, even though inheritors from (a) to (e) are listed in Section 15(1), those in earlier categories are prioritized over later ones. Individuals within the same category inherit concurrently. For instance, if a woman passes away leaving behind a son, daughter, husband, and other relatives, the property would first be equally divided among her son, daughter, and husband. This means the property would be split into thirds. The rest, from categories (b) to (e), would not inherit unless there were no living members from the preceding categories. This structured inheritance process should be meticulously followed in partition cases.

It's also essential to note that individuals in a single category inherit the property simultaneously and equally. For instance, if a woman's survivors are her son, daughter, and husband, each would receive an equal one-third of her assets, sidelining all other potential inheritors from the categories (b) to (e).

SECTION 15(1) IS CONTROLLED BY SUBSECTION (2) OF SECTION 15 OF THE HINDU SUCCESSION ACT OF 1956

When adjudicating a partition suit concerning the assets of a deceased female who passed away without a will, it's crucial to recognize that Section 15(1) of the 1956 Act is subject to the provisions of Sub-Section (2) of Section 15 of the same Act.

SECTION 15(2)(A) OF THE ACT OF 1956 PROPERTY INHERITED BY A FEMALE HINDU FROM HER FATHER OR MOTHER AND RULE OF DEVOLUTION

According to Section 15(2)(a) of the 1956 Act, if a female inherited property from her parents and passed away without leaving a will, and without any surviving son or daughter (including the descendants of any predeceased son or daughter), the inherited property will not be distributed to the other heirs listed under Section 15(1) of the 1956 Act. Instead, it will devolve to the heirs of

her father.

Saint Shishunala Sharifa, in his distinctive style during the 18th Century, aptly portrayed this idea when he remarked, "mohada hendati teerida balika mavana maneya hanginyako." This translates to the notion that once a beloved wife passes away, the husband shouldn't seek refuge in his in-laws' household. This sentiment aligns with the provisions of Section 15(2)(a) of the 1956 Act concerning a husband's stance on the property his wife inherited from her parents, especially if she dies without any children.

SECTION 15(2)(B) OF THE ACT OF 1956 PROPERTY INHERITED BY A FEMALE HINDU FROM HER HUSBAND OR FATHER-IN-LAW AND RULE OF DEVOLUTION.

According to Section 15(2)(b) of the 1956 Act, if a woman inherited property from her husband or her father-in-law and passed away without leaving a will or any surviving son or daughter (including descendants of any deceased son or daughter), the property she inherited won't be passed on to the other heirs listed in Section 15(1) of the 1956 Act. Instead, it will be inherited by her husband's heirs.

The underlying rationale of Section 15(1)(b) of the Hindu Succession Act, 1956 is to ensure that in cases where the deceased woman isn't survived by her own offspring but has living parents, siblings, or other legal heirs of her deceased husband, the property she acquired from her husband should return to his lineage rather than her own natal family. The Parliament recognized this potential scenario and framed the law to stipulate that, in the absence of the woman's own children, such property should revert to her husband's lineage and not be inherited by her birth family.

POSITION OF DAUGHTERS AFTER THE ENACTMENT OF THE HINDU SUCCESSION ACT, 1956

The Hindu Succession Act of 1956, effective from 17th June 1956, was enacted amidst opposition from certain segments of the Hindu community, superseding the Hindu Women's Right to Property Act of 1937. Its primary objective was to rectify the injustices and biases faced by Hindu

women by enhancing their property rights. The act's preamble articulates its purpose to consolidate and modify laws related to intestate succession among Hindus. By introducing a uniform and comprehensive succession law, it aimed to establish inheritance parity between sons and daughters among Hindus, Buddhists, Jains, and Sikhs. The 1956 Act revolutionized Hindu law, bestowing absolute property ownership to women under Section 14 and recognizing daughters' rights to their deceased father's property under the proviso to Section 6, striving for gender equity.

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

Section 6 of the 1956 Act pertains to how a male Hindu's interest in Coparcenary property is devolved, upholding the principle of survivorship among Coparcenary members. Maintaining the Mitakshara Coparcenary property system that excludes females means that women cannot inherit ancestral property as their male counterparts do. This exclusion not only discriminates against daughters based on gender but also infringes upon their constitutional right to equality, perpetuating injustice. Recognizing this inequity, states such as Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra have amended the law to grant daughters equal rights in Hindu Mitakshara Coparcenary property. Kerala has taken a different route by enacting the Kerala Joint Hindu Family System (Abolition) Act, 1975. The proposed change aims to eradicate this bias from Section 6 of the Hindu Succession Act, 1956, ensuring that daughters receive rights equal to sons in Hindu Mitakshara Coparcenary property.

SECTION 6 OF HINDU SUCCESSION (AMENDMENT) ACT, 2005 DEVOLUTION OF INTEREST IN COPARCENERY PROPERTY

Section 6(1)(a) of the 2005 Act stipulates that, from the initiation of the 2005 Act, within a Joint Hindu Family adhering to the Mitakshara Law, a coparcener's daughter will inherently become a coparcener just as a son does. According to Sections 6(1)(b) and (c) of the 2005 Amendment, daughters are granted the same rights and responsibilities in Coparcenary property as sons. This provision explicitly states that any mention of a Hindu Mitakshara coparcener should also be understood to refer to a coparcener's daughter.

CONDITIONS TO BE FULFILLED BY A DAUGHTER TO CLAIM A STATUS OF COPARCENER IN A JOINT HINDU FAMILY UNDER HINDU SUCCESSION (AMENDMENT) ACT 2005

- (1). On the date of 09.09.2005, the daughter (whether married or unmarried) must be living.
- (2). Prior to 20.12.2004, no transfer, alienation, or testamentary disposition should have occurred.
- (3). Before 20.12.2004, no partition should have been finalized, whether through a registered partition deed or a conclusive decree.

WHETHER THE HINDU SUCCESSION (AMENDMENT) ACT, 2005 IS PROSPECTIVE OR RETROSPECTIVE IN NATURE AND A DAUGHTER WHO WAS BORN BEFORE 1956 WOULD GET SHARE IN THE ANCESTRAL PROPERTY AS A COPARCENER IN VIEW OF AMENDMENT TO SECTION 6 OF HINDU SUCCESSION (AMENDMENT) ACT, 2005?

In the case of Vineeta Sharma V/s Rakesh Sharma & Others⁹ the Hon'ble Apex Court of India, deliberated on whether the Hindu Succession (Amendment) Act, 2005 has prospective or retrospective applicability. The Court observe, although the rights under the amended law can be claimed from September 9, 2005, the provisions apply retroactively. They grant benefits based on past events, and the Mitakshara coparcenary law is now interpreted to include daughters as coparceners. However, the legislature has included a safeguard: any disposition, alienation, testamentary disposition of property, or partition that occurred before December 20, 2004, the date the Bill was introduced in the Rajya Sabha, remains unaffected and valid."

The Hon'ble Court further held that, the prospective statute takes effect from the date of its enactment, granting new rights. In contrast, a retrospective statute operates backward, potentially revoking or impairing rights previously acquired under existing laws. A retroactive statute, however, does not operate retrospectively; it acts forward, but its application is based on a status or character that arose earlier, often linked to past events or conditions.

⁹ Vineeta Sharma v. Rakesh Sharma, 2020 SC at on Page 53 Para No.60, Page 53 Para No.61 and Page 56 Para No 68.

Under the amended Section 6, rights are conferred by birth, an antecedent event, so the provisions apply to claiming rights from the date of the Amendment Act onwards.

Regarding the principle of coparcenary, where rights in the Mitakshara coparcenary are conferred by birth, the daughter is now recognized and treated as a coparcener, with equal rights and liabilities as a son. Section 6 states that she becomes a coparcener in the same manner as a son, and these rights can also be conferred by adoption. The traditional Hindu law concept of unobstructed heritage is formalized under sections 6(1)(a) and 6(1)(b). The right of a coparcener is by birth, making it irrelevant whether the daughter's father is alive at the time of the amendment. According to Mitakshara coparcenary Hindu law, as recognized in section 6(1), the existence of a living coparcener or father at the time of the amendment is not necessary for the daughter to inherit. She steps into the coparcenary like a son, whether born before or after the Act. However, daughters born before the Act can only claim these rights from the amendment date, i.e., September 9, 2005, subject to the savings of past transactions as outlined in the proviso to section 6(1) read with section 6(5)."

After examining the judgment given by the Apex Court of India in the case of Vineeta Sharma V/s Rakesh Sharma & Others, it is evident that the Hindu Succession (Amendment) Act, 2005 is not retrospective but rather retroactive. It takes effect from 09.09.2005, with the stipulation that the daughter must be alive on that date, regardless of when she was born. Additionally, even if the daughter's father passed away before the enactment of the Hindu Succession (Amendment) Act, 2005, she would still attain coparcener status as long as she was alive on 09.09.2005.

RIGHT OF TRIBAL WOMEN TO EQUAL SHARE IN FATHER'S PROPERTY WHEN SIMILAR RIGHT IS AVAILABLE TO NONTRIBAL WOMEN.

In a recent case, the Supreme Court of India in Kamla Neti matter¹⁰ addressed a situation involving a Scheduled Tribe woman who sought a share of the compensation for land acquired from her ancestors. The bench, consisting of Justices MR Shah and Krishna Murari, found that under the

¹⁰ Kamla Neti v. Special Land Acquisition Officer, 2022 SC 1694, decided on 09.12.2022.

current provisions of the Hindu Succession Act, 1956, the woman did not qualify for survivorship rights as Section 2(2) of the Act excludes Scheduled Tribe females. However, the Court urged the Central Government to reevaluate this exemption in the Act, especially in terms of its application to Scheduled Tribes, and to consider an appropriate amendment. The Court emphasized the importance of upholding the right to equality as enshrined in Articles 14 and 21 of the Indian Constitution, arguing that there is no valid reason to withhold survivorship rights from tribal women.

The Court pointed out that daughters from non-tribal communities are entitled to an equal share in their father's property, and therefore, tribal daughters should not be denied this right. After 70 years of the Constitution's existence, which guarantees equality, the Court expressed that it's crucial for the government to address this disparity and potentially revise the Hindu Succession Act to include tribal members.

In the specific case, a tribal woman appealed against the decision of the Orissa High Court, which had confirmed a ruling regarding the distribution of compensation for ancestral land acquisition. She claimed a one-fifth share in the compensation. However, her claim was rejected because, as members of a Scheduled Tribe, the Hindu Succession Act did not apply to them, and thus, she was not entitled to a share. The Supreme Court, constrained by the current law, upheld the High Court's decision, acknowledging that it could not amend the law, which is a legislative responsibility. The Court recognized that despite the inequity of the situation and the considerable time passed since the enactment of the Hindu Succession Act, it could not extend survivorship benefits to the appellant until the Act is amended to encompass Scheduled Tribe members.

LIVE AND RELATION AND THEIR IMPACT ON SUCCESSION

The legal landscape in India concerning live-in relationships has undergone substantial changes, as courts are progressively acknowledging and safeguarding the rights of individuals in these partnerships.

The Courts in India has consistently recognized the legitimacy of live-in relationships. In the

pivotal case of *Indra Sarma vs. V.K.V. Sarma*¹¹, the court declared that cohabitation without marriage is neither illegal nor immoral. This judgment highlighted the fundamental right to live together. Additionally, the court has shown a commitment to upholding the rights of women in live-in partnerships.

Various judicial rulings have acknowledged the rights of women in live-in relationships, including entitlements to maintenance, financial support, and inheritance. A significant development in this regard is the Protection of Women from Domestic Violence Act of 2005, which extended its scope to encompass women in live-in partnerships, thereby offering them additional legal protection and recognition.

The legislation recognizes that women in live-in relationships may face similar forms of neglect and abuse as those who are married. Reflect on the relief experienced by partners in such unions as courts have increasingly leaned towards granting property rights, acknowledging the financial and emotional interdependence commonly found in these relationships.

Imagine a world where relationships are fluid, love is boundless, and people are united not just by marriage but through shared experiences and profound connections. In this evolving scenario, the matter of inheritance rights for live-in partners and their children becomes increasingly significant. Traditionally, marriage has been the gateway to inheritance rights, but the emergence of live-in relationships is challenging these long-established norms.

The judiciary in India has been instrumental in shaping the legal structure for live-in relationships and their inheritance rights. The Supreme Court has steadfastly supported the rights of women in such unions, ensuring their entitlement to maintenance, financial support, and inheritance. Recent amendments to legislation have further extended property rights to partners in live-in relationships, underscoring the importance of equitable access to assets.

¹¹ AIR 2014 SC 309

In the case of *Bharata Matha & Ors. V R. Vijaya Renganathan & Ors.*¹², the Supreme Court of India ruled that a child born from a live-in relationship could be entitled to inherit property from the parents, thereby granting such children legal recognition. The court acknowledged that while both live-in relationships and marital partnerships are legally valid, differentiating between children from these unions could constitute a breach of Article 14, which guarantees equality before the law.

Section 16 (3) of the Hindu Marriage Act¹³ implies that children born from a marriage that is null and void, or annulled under section 12, are entitled to inherit property from their parents but not ancestral property. This distinction clarifies that while these children have rights to their parents' personal assets, they do not have the same claim to ancestral properties, which would have been inaccessible to them under the law if the Act had not been passed. This legal stance acknowledges their right to parental property yet sets limits regarding ancestral holdings.

In the case of *Revansidapa v. Malikarjun*¹⁴, the court observed that the term "property" in Section 16 of the Hindu Marriage Act (HMA) of 1955 does not explicitly distinguish between ancestral or self-acquired property. The interpretation of what constitutes "property" was left to judicial discretion. In this specific case, the court decided that illegitimate children could inherit both ancestral and self-acquired property from their parents. While there has been some uncertainty regarding the inheritance rights of illegitimate children to ancestral property, this case offered a novel perspective on Section 16 of the HMA, potentially expanding the scope of inheritance rights for such children.

In Indian courts, children born from live-in relationships are generally presumed to be legitimate. This means that such children are considered legitimate for all intents and purposes, as opposed to being illegitimate. However, establishing the legitimacy of these children doesn't automatically confer equal inheritance rights as those granted to children born within wedlock. While legitimate children have the right to inherit their parents' ancestral property, children recognized as legitimate

¹² AIR 2010 SC 2685

¹³ S.16(3), Hindu Marriage Act, 1955

¹⁴ *Revansidapa V. Malikarjun*, (2011) 11 SCC 1

from live-in relationships do not necessarily share this right. This discrepancy raises the question: why can't children from live-in relationships have the same inheritance rights as those born to married couples? Consequently, the legal stance regarding the inheritance rights of children from live-in partners remains somewhat ambiguous and unresolved.

The issue of inheritance rights for live-in partners and their children extends beyond legal complexities, having significant societal implications. These implications encompass the changing dynamics of family structures, societal acceptance of non-traditional relationships, and the evolving understanding of what constitutes a family in the modern context. Recognizing these rights can lead to greater social inclusion and equality, challenging longstanding norms and potentially reshaping societal attitudes towards relationships and family legacies.

Economic Security:

Granting inheritance rights to surviving partners and their children in live-in relationships provides them with crucial economic security. This support is especially vital during times of loss or crisis, reducing their vulnerability and offering a safety net. It ensures that these families have financial stability and protection, similar to those in traditional marital relationships, helping to safeguard their future and well-being in the face of adversity.

Gender Equality:

The legal recognition of inheritance rights in live-in relationships plays a significant role in promoting gender equality. By ensuring equal access to assets and property for both partners, it challenges traditional gender roles and economic disparities often seen in relationships. This legal acknowledgment empowers both men and women in live-in partnerships, enabling them to have equitable control and rights over shared resources, thereby fostering a more balanced and fair dynamic within their relationship.

Family Structure:

The evolving concept of family within the context of live-in partnerships challenges traditional definitions and norms. This shift underscores the importance of inclusivity and equality in inheritance laws. By accommodating the diverse forms of family structures that exist in contemporary society, these laws can reflect and respect the varied ways in which people build and maintain familial relationships. Recognizing and legally validating live-in partnerships in matters of inheritance not only aligns with changing social dynamics but also promotes a more equitable and inclusive approach to familial rights and responsibilities.

Social Acceptance:

The acceptance and normalization of inheritance rights for live-in partners can significantly contribute to diminishing the societal stigma associated with non-traditional family structures. By legally validating these relationships in terms of inheritance, society takes a step towards recognizing the legitimacy and importance of diverse family configurations. This progress can foster a more inclusive social environment where different forms of relationships and families are respected and treated equitably. Such a shift not only promotes inclusivity but also reflects a broader understanding and acceptance of the varied ways in which individuals form and maintain familial bonds in the modern world.

Legal Awareness:

Raising awareness about inheritance rights is crucial for individuals in live-in partnerships. By being informed about their legal rights and entitlements, these individuals can make more educated decisions regarding their future and the security of their families. Knowledge of these rights enables them to access legal protections and resources that can safeguard their financial well-being and ensure stability for their families, particularly in unforeseen circumstances. Educating people in live-in relationships about their inheritance rights is not just about legal empowerment; it's also about providing them with the tools to protect and nurture the financial health of their family units.

DESIRED CHANGES IN THE HINDU SUCCESSION ACT FOR MAKING IT GENDER NEUTRAL

Sections 8 and 15 of the Hindu Succession Act (HSA) present contrasting approaches to property inheritance after the demise of male and female family members. The core issue is that these sections treat women unfairly. Specifically, HSA tends to favor the deceased wife's husband's relatives over her own family, especially when she lacks a husband or children. This bias extends even to properties women acquire themselves, often excluding their birth families from inheritance rights.

The Constitution of India, through Article 15, prohibits discrimination based on religion, race, caste, gender, or birthplace. Yet, the HSA, seemingly in contradiction to Article 15, differentiates in inheritance laws based on gender. The Bombay High Court, in the case of *Mamta Dinesh Vakil vs. Bansi S. Wadhwa* in 2012, examined whether Sections 8 and 15 of the HSA were discriminatory and thus unconstitutional. The court found these provisions violated Article 15(1), marking them unconstitutional. However, this ruling conflicted with an earlier judgment in *Sonubhai Yeshwant Jadhav vs. Bala Govinda Yadav*, leading to the case being forwarded to a division bench, which has yet to resolve the issue.

There have been attempts to amend the HSA to eradicate its gender-biased clauses, but these efforts have been largely ineffective. The Hindu Succession Amendment Bill of 2013 proposed a modification in the distribution of self-acquired property by adding Section 15(3), but it didn't tackle the inherent gender bias in Section 15(1). This amendment also failed to address scenarios where a woman's marital family, having abandoned her, claims rights to her property after her death. The Amendment Bill of 2015 made further attempts to improve women's rights by revising Section 15(1), yet it didn't fundamentally alter the different property devolution methods for men and women.

A more gender-balanced approach, similar to that of The Indian Succession Act of 1925, could be considered for incorporation into the HSA. An alternative solution would be to eliminate Section 15 altogether and extend the property devolution framework of Section 8, which currently applies to men, to everyone. This change could ensure a fair and equal inheritance process, removing the existing bias where a deceased woman's husband's heirs are prioritized over her own family for her self-acquired property.

The legal complexities surrounding inheritance rights for live in partners and their children touch upon the very essence of our human nature. The challenges faced by cohabiting partners and their children in terms of inheritance rights deeply reflect our fundamental human qualities - our capacity for love, dedication, and nurturing. This situation demands a response from legislators and society at large, emphasizing the need for understanding and kindness. It's crucial that everyone, irrespective of their marital situation, is accorded fair and respectful treatment. Pursuing this fairness not only fortifies our legal framework, but it also enhances our communities by acknowledging and valuing the varied forms of love and family that exist in our dynamic world.

CONCLUSION

Women have historically faced inequality under various personal laws. To address this disparity, the Indian Constitution, through Article 15(3), empowers the State to enact special legislation to promote gender equality. In line with this objective, the Karnataka State Legislature and the Parliament of India introduced the Hindu Succession (Karnataka Amendment) Act, 1990 and the Hindu Succession (Amendment) Act, 2005 respectively, bestowing upon daughters the status of coparceners. Both the legal fraternity and the judiciary should work towards reinforcing gender equality by correctly interpreting and applying these enactments. It's vital to approach these laws with impartiality, especially when recognizing the rights of female irrespective of its caste and religion and for those born from live and relation.