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Hindu daughter's right as Coparcener:

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Abstract:

The Hindu Law of Inheritance Act, 1929 was adopted in the 19th century. It was the first piece of legislation to include Hindu ladies in the inheritance system. The Act gave the right of inheritance to three female heirs: the son's daughter, the daughter's daughter and the sister. The widow was not a coparcener, although being a member of a joint family and having a claim in coparcener's interest. A daughter's inheritance rights were practically non-existent. The Hindu Succession Act was enacted to address all of these inequities and bring Hindu women on par with men.

Introduction:

The Supreme Court's decision on Hindu daughters' rights to family property corrects an obvious inconsistency in the interpretation of a key 2005 amendment to the Hindu Succession Act, 1956ⁱ. The judgement resolves whether or not a daughter's coparcenary right kicks in only if the daddy she claims it via turned into alive on the day the change took effect. The Supreme Court has now explicitly said that the daughters' proper to inherit arises from their delivery, not from any other issue such as the lifestyles of their fathers. In other words, it disproved the famous notion that handiest daughters of coparceners alive on that day were entitled to an identical proportion of the estate. The courtroom rightly regarded that the modification allowed daughters in Hindu families bound with the aid of Mitakshara law similar popularity as coparceners, and that this reputation changed into acquired thru birth. With the exception of wills or testamentary dispositions made earlier than December 20, 2004, the date on which the amending Bill was tabled in the Rajya Sabha, the change went into effect on September 9, 2005. As a result, the daughters' putative coparcener rights could not kick in till each coparcener father and his daughter were alive on September nine, 2005. In *Prakash and Others vs. Phulavati*ⁱⁱ, a Supreme Court decision from 2015

crystallised this position. This decision has now been overturned.

The logic of the court is unmistakable. It begins via tracing the origins of the coparcenary again to one's beginning. Secondly, it establishes that so one can gain that popularity, a predecessor coparcener does now not should be residing, as what topics is beginning in the ranges of succession to which it extends. In that experience, the legislation is retroactive in its applicability due to the fact its miles tied to beginning, an antecedent event, despite the fact that it takes impact on a positive date. It similarly emphasises that the law clearly states that the daughter's rights are the identical "as the ones of a son" and "as though she had been a boy on the time of delivery." Long before the UPA regime introduced in the amendment for the complete United States of America, the coparcenary reputation conferred to daughters became a topic of reform in many States, mainly in south India. Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka all passed laws in 1975, 1986, 1989, and 1994, respectively. The bill's intention become to cease apparent discrimination among little children whilst it came to their rights to an same percentage of coparcenary property, that is assets inherited from one's father, grandfather, or awesome-grandfather. The Supreme Court deserves the credit for wanting to provide complete impact to this intention through putting to rest any troubles which could have arisen due to varying interpretations.

The main objectives of this research paper are:

- To compare the rights of Hindu women and men.
- To determine the extent of rights available to women belonging to Hindu Joint Family.

Coparcener under the Hindu Succession law:

Coparcener is a term used in Hindu succession law to describe a person who acquires a legal right to his ancestral property as a result of his/her birth into a Hindu Undivided Family (HUF). Any person born into a Hindu family becomes a coparcener by birth, according to the Hindu Succession Act of 1956ⁱⁱⁱ.

Coparceners and members of the HUF have different rights in the HUF's property. Coparceners have the proper to search for the belongings to be divided and for the stocks to be dispensed. Members of the HUF, which include daughters and mothers, had the proper to maintenance from HUF belongings, in addition to a stake inside the HUF's assets when the HUF changed into divided. When the daughter marries, she ceases to be a member of the father's HUF and so loses her declare to preservation further to a element in the HUF's assets if the assets is partitioned after her marriage. Female contributors of the HUF have been not allowed to come to be Kartas of the HUF and administer its operations due to the fact best a coparcener become allowed to do so.

Daughter's right to property after Amendment in 2005:

In 2005, Section 6 of the Hindu Succession Act, 1956^{iv}, which deals with the coparcener's right in HUF property, was changed with effect from September 9, 2005. In terms of coparcenary rights in HUF property, girls are now on par with sons as a result of this modification. As a end result, the daughter inherits all the rights that come with coparceners, which include the strength to request property partition and grow to be a Karta of the HUF.

Only the daughters born into the family will be granted coparcenary powers. Other female family members who enter the household through marriage are still treated as guests. As a result, they do now not have the proper to request partition, but they do have the proper to upkeep and shares if and when partition happens.

Married daughter's right to property under Hindu Succession Amendment Act 2005:

A daughter will not be a member of her parents' HUF after marriage, despite the fact that she will remain a coparcener. As a result, if she is the eldest coparcener of her father's HUF, she has the right to request partition of the HUF property and to come to be the Karta of the HUF.

Even if a married daughter dies earlier than the partition, her youngsters are entitled to the stocks

she would be becoming if she had been alive at the time of the cut up. The grandchildren might be entitled to the stocks that the daughter could have obtained on partition if none of her youngsters are residing at the day of partition.

Surprisingly, the daughter can't give up her part of the HUF assets even as she is alive, however she is flawlessly able to do so through a will. If she dies without leaving a will, her part of the joint property will switch to her personal heirs in place of the alternative individuals of the HUF. Daughters, like sons, have the authority to request partition and sale in their ancestral houses.

Arguments in favour of Hindu daughter:

The Hindu Joint Family (HJF) and coparceners are both important aspects of Hindu culture. The Hindu joint Family is a larger group composed of a common ancestor and all of his lineal male descendants, as well as their wives and unmarried daughters. It cannot be created by any party's actions, with the exception of adoption and marriage. A Hindu joint family is usually united not only in terms of estate but also in terms of food and worship. Coparcenary, on the other hand, is a smaller branch of the Hindu Joint Family. Under this Act, the coparcenary shall devolve through testamentary or intestate succession, as the case may be, rather than by survivorship. In a nutshell, if a joint family is separated, each male coparcener receives his part while the ladies receive nothing. Only when one of the coparceners dies does a female inherit a share of the deceased's share. Thus, by prohibiting daughters from participating in coparcenary ownership solely because of their gender, the law has not only contributed to inequality against them, but has also resulted in oppression and negation of their right to equality, and appears to be a mockery of the Constitution's fundamental rights. This circumstance demanded a further reform in women's property rights, which was accomplished by the Hindu Succession (Amendment) Act, 2005.

Evidence supporting argument:

Coparcenary is a unique trait of the Hindu community, as previously stated. He has various specific rights in coparcenary property due to his status as a coparcener. Since the inception of Hindu law,

however, Hindu male chauvinism has ignored these rights for daughters. This exclusion of a daughter from coparceners leads to not just gender inequality, but also oppression and denial of her fundamental right to equality. Furthermore, there is no societal, legal, or moral justification for denying a daughter's right to coparcency. As a result, different attempts were undertaken to provide social justice to the daughter and to integrate her into society. Several states, including Andhra Pradesh in 1985, Tamil Nadu in 1989, Karnataka in 1994, and Maharashtra in 1994, made required legal reforms by granting equal rights to daughters in Hindu Mitakshara coparcenary property. In a joint Hindu family governed by using Mitakshara regulation, a daughter of a coparcener shall by means of delivery become a coparcener in her very own right within the identical manner as a son, in keeping with the regulation of those States. In order to do away with discrimination, the authorities revised section 6 of the Hindu Succession Act, 1956 in 2005, giving daughters the same rights as sons in Hindu Mitakshara coparcenary assets. It grants the following privileges to daughters in a Hindu family. She is a coparcener in her own right, just like the son, from the moment she is born. As if she were a son, she will be entitled to the same rights in the coparcenary property. Any mention to a Hindu coparcener shall be deemed to include a reference to a coparcener's daughter, and any reference to a Hindu coparcener shall be deemed to include a reference to a coparcener's daughter.

As a result, all discriminations, such as those based on schools, marital forms, and the type of Stridhan, have been banned under the newly revised section 6. Hindu women are now the sole owners of their property. She had the same right to inherit as a man, and widows were given special consideration in the succession of both her husband's and her father's estates. By birth, the daughter of a coparcener in a combined Hindu household becomes a coparcener in her own right, with the same rights and liabilities as the son.

A Hindu widow's parental-side kin can inherit her property:

The Supreme Court has declared that family members on a Hindu widow's parental aspect cannot be taken into consideration "strangers," and her belongings can skip to them under the Hindu

Succession Act. The Supreme Court clarified that the heirs of a Hindu woman's father are encompassed by using the definition of folks entitled to succession of property.

The Supreme Court upheld the excessive court's and trial court's decisions allowing a childless widow to enter right into a circle of relatives agreement to transfer her assets to her brother's son, saying: "A perusal of Section 15 of the Hindu Succession Act suggests that heirs of the father are protected within the heirs of the property who may also prevail." When the heirs of a girl's father are listed as potential successors, it can not be said that they may be strangers and not contributors of the lady's family.

Data:

The Court decided on Tuesday that daughters, like sons, have an identical property to inherit joint Hindu circle of relatives property. The modified Hindu Succession Act, which provides daughters equal rights to ancestral property, was accepted by the court, and is retroactive.

“A daughter always remains a loving daughter. A son is a son until he gets a wife. A daughter is a daughter throughout her life,” stated Justice Arun Mishra, who led a three-judge Bench.

The court agreed with senior attorney Bishwajit Bhattacharya's lead arguments that the replaced Section 6 of the Hindu Succession Act, 1956^v conferred the same status of 'coparcener' on a girl born before or after the amendment as it does on a boy. A coparcener is a person who is entitled to parental property by birth.

Warrant:

Although the Hindu Succession Act had been amended continue providing equal rights to sons and daughters, the vocabulary used throughout the change left loopholes in the law, compelling the Supreme Court to take opposing opinions on the issue. Until the verdict, daughters had equal status only if their father, the coparcener, was alive on September 9, 2005, when the amendment took effect. The decision has now established that the equal rights afforded to daughters of

coparceners will be conferred at the time of their birth, regardless of the date of their father's death. The Supreme Court underlined that the modification would apply to all cases, not just those in which the father is living at the time of the amendment.

Counter-claim:

The Hindu property act recognises the idea of HUF, which refers to a collection of folks who are related via delivery or marriage and are lineally descended from a commonplace ancestor. The people descended from common ancestors were split into two groups. Coparceners fall into the first type. Only males were recognised as HUF coparceners and were provided with rights to the ancestral property.

Therefore, under these divisions the women did not have rights to the ancestral property under the Hindu Succession Act until the amendment of 2005. The law had supported and accepted the tradition of giving ancestral property only to the males.

Rebuttal:

The rights provided by law must evolve even if it must go against traditional values in order to survive. Women must be provided with equal opportunities as men.

Literature Review:

Lineal descendants of the same ancestor make up a Hindu joint family. To put it another way, a male head of state and his descendants, including spouses and unmarried daughters. A coparcenary is a smaller family unit that owns property together. A propositus, or man or woman at the head of a line of descent, and his 3 lineal descendants, or sons, grandsons, and first rate-grandsons, make up a coparcenary. Because the co-ownership is marked by "unity of possession, title, and interest," coparcenary property is so titled.

A male's right to be a coparcener is granted by birth in the Mitakshara school, which is prevalent

in most parts of India. If, on either hand, a newborn male is a brilliant-super-grandson and the not unusual ancestor, his son, grandson, and excellent-grandson are all residing, the proper to be covered within the coparcener will simplest ripen when the commonplace ancestor dies. In other sense, a coparcenary has a four-diploma linear downward succession. This is actually based on the Hindu concept that only three-degree males can spiritually minister to ancestors. Coparceners can only be males.

Traditional Position changed by Codified Law:

In Mitakshara law, when a coparcener dies, his interest is combined with the interests of the other coparceners. Sons only inherited property if they were or became coparceners. This position was mainly sustained when Section 6 of the Hindu Succession Act of 1956^{vi} was implemented. It said that if a male Hindu died after the Act comes below regulation, his stake in a Mitakshara coparcenary might visit the alternative participants of the coparcenary in place of the beneficiaries of the Act. However, a caveat become blanketed to make sure the pursuits of lady kids. It unique that if the deceased had a Class I woman relative (daughter, widow, mom, etc.) or a male relative claiming thru such girl relatives, the deceased's interest could bypass with them via testamentary or intestate succession instead of via survivorship.

This meant that conventional gender discrimination was not remedied by the law. Despite the truth that daughters and widows had been granted some minimum inheritance rights beneath impartial colonial-technology law, women have been denied coparcenary status. The Hindu Succession Act of 1956^{vii} removed these laws.

2005 Amendment:

In its announcement of items and reasons for the modification, the Union government said that the 1956 Act's popularity of the guideline of devolution by way of survivorship and retention of Mitakshara coparcenary belongings with out inclusive of girls intended that ladies couldn't inherit ancestral property in the identical manner as guys. By preventing the daughter from engaging in

coparcenary ownership, the legislation not only promotes her gender discrimination, but also oppresses her and interferes on her constitutional right to equality.

As a result, it changed Section 6 to eliminate the discrimination and provide daughters the same rights as sons. It provided that a coparcener's daughter, like a son, would become a coparcener in her own right at birth and would have the same rights as a son. The amendment comes into force on September 9, 2005, with the caveat that it would not invalidate any property dispositions done by division or will before December 20, 2004, the day the amendment was approved in the Rajya Sabha.

Verdict by Supreme Court:

Civil cases concerning coparcenary assets highlighted issues about whether or not it would follow handiest to daughters born after September 9, 2005, or possibly just to those whose father changed into the coparcener via whom they could also get the fame in the event that they had been born earlier than then.

Many judges held that the new statute would only apply to the daughter of a surviving coparcener. It become contended that if a person died previous to 2005, his hobby would not have long past to his daughter because the change had no longer but taken impact. Allowing such women to have coparcenary status would indicate that the amendment was unconstitutional.

In Prakash and Others vs. Phulavati (2015)^{viii}, the Supreme Court ruled along these lines, ruling that it had no retroactive impact and that it would only benefit live daughters of living coparceners. This was brought before a three-judge bench led by Justice Arun Mishra since another ruling had taken a different stance.

The courtroom affirmed that a daughter's coparcenary status is ascertained by using delivery, now not whether or not the father turned into alive or not at the date the decree took impact, and that a daughter has the equal popularity as a son from the instant she is born. This choice is crucial

because it solves all uncertainties approximately whilst the amendment will go into effect and whether or not some ladies might be ignored because it may handiest be carried out proactively.

Judicial Decisions:

Conflicting Judgments Prior to the Supreme Court's Decision:

Although it has been the law for the reason that 2005 that ladies are also successors to their father's property, the popularity of a female to inherit her father's assets after his death turned into uncertain at the day the regulation turned into carried out.

A two-judge bench led by Justice AK Goel held in *Prakash vs Phoolwati* (2016) 2 SCC 36^{ix} that the benefit of the 2005 amendment could only be awarded to "living daughters of living coparceners" as of September 9, 2005. (The date when the amendment came into force). The Supreme Court ruled that Section 6 was prospective in nature, meaning that it would only apply if both the coparcener and the daughter were alive on September 9, 2005.

The Supreme Court ruled in *Danamma vs Amar*^x, that Section 6 will apply retroactively. The father in this case passed away in 2001, leaving daughters, two sons, and a widow. The Court had held that "it is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by birth," and that, as an end result, despite the fact that the daddy became now not alive while the substituted Section 6 went into effect in 2005, the two daughters were entitled to an identical proportion within the coparcenary property.

Important Aspects of the Supreme Court Judgement:

The 3-judge Bench headed by using Justice Arun Mishra dominated the following:

- That a Hindu female's entitlement to be a joint heir to the ancestral property is primarily based on beginning as opposed to whether or not or no longer her father become alive on the time the regulation become surpassed in 2005.

- The Hindu Succession (Amendment) Act of 2005^{xi} granted Hindu women the same rights as male heirs to be coparceners or joint legal heirs. Because the coparcener is by means of beginning, the daddy coparcener does no longer have to be alive on September 9, 2005.
- If a daughter is alive on the day of the Amendment Act's enforcement, she becomes a coparcener with effect from that date, regardless of the date of her birth in advance in time.
- The right to equality granted on daughters by Section 6 cannot be taken away from them.
- The judges also cited the adage that a son is a son until he marries, whereas a daughter is a daughter for the rest of her life.
- Several cases on this topic were pending before several courts and had previously been delayed, according to the ruling.
- The Court requested that the ongoing proceedings be resolved within six months, if at all feasible.
- The Court additionally said unequivocally that, following the 2005 Amendment, hobby in coparcenary belongings can best be received thru start or adoption inside accepted degrees, and now not by means of another approach. Furthermore, by virtue of Section 6 (3) of the 2005 Amendment, the Court has unequivocally held that survivorship as a manner of Mitakshara coparcener succession has been abolished since September 9, 2005.
- This decision will assist the daughters of coparceners. The position of a coparcener's wife stays unchanged. As a result, wives have restrained aid rights and are not able to pursue partition in their husband's belongings, among other reasons.
- Daughters of coparceners will henceforth be handled equally to sons and might be accorded same coparcenary rights in their father's property at the time of their start. Furthermore, the marital status of daughters has no bearing at the rights granted to them by way of the 2005 change, therefore they continue to be participants of their father's HUF after marriage.
- Daughters can now request that their father's coparcener belongings be partitioned and that they be given a same share with their siblings and different coparceners. A lady coparcener can bequeath her HUF part to any beneficiary she chooses in her will after purchasing a proportion in a coparcener belongings.

Conclusion:

The Hindu Succession Act was enacted to address all of these inequities and bring Hindu women on par with men. It resulted in significant modifications in the law of succession, as well as recognition of hitherto unknown rights in connection to a woman's property. In a nutshell, if a joint family is separated, each male coparcener receives his part while the ladies receive nothing. Hindu women treated equal to Hindu men in Hindu Joint Family and the law must prevent discrimination of daughters in Hindu Joint Family:

ⁱ Hindu Succession Act, 1956

ⁱⁱ Prakash and Others vs. Phulavati

ⁱⁱⁱ Hindu Succession Act, 1956

^{iv} Hindu Succession Act, 1956

^v Section 6 of the Hindu Succession Act, 1956

^{vi} Section 6 of the Hindu Succession Act, 1956

^{vii} Hindu Succession Act, 1956

^{viii} Prakash and Others vs. Phulavati (2015)

^{ix} Prakash vs Phoolwati (2016) 2 SCC 36

^x Danamma vs Amar

^{xi} The Hindu Succession (Amendment) Act of 2005