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PARTITION UNDER HINDU LAW – THE IMPACT OF THE 2005 AMENDMENT ON DAUGHTER’S INHERITANCE RIGHTS ; A COMPARITIVE ANALYSIS BEFORE AND AFTER THE AMENDMENT

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ABSTRACT:

Partition under Hindu law refers to the division of joint family property among its members, bringing an end to the Hindu Undivided Family (HUF). It is primarily governed by the **Mitakshara and Dayabhaga Schools of Hindu Law** and the **Hindu Succession Act, 1956**, as amended in 2005. Partition can be carried out through mutual agreement, notice, legal suit, or conduct that signifies division. It can be total (where the joint family dissolves entirely) or partial (where some members separate while others remain joint). Upon partition, each member acquires independent ownership of their respective shares, and the rule of survivorship ceases to apply. This paper explores the nature, types, legal provisions, and consequences of partition under Hindu law while analyzing its impact on the traditional and modern inheritance system.

INTRODUCTION:

Hindu law has traditionally governed family and property matters in India through well-established principles derived from ancient texts and judicial interpretations. One of the most significant aspects of Hindu law is the concept of joint family property, which allows multiple generations to hold and enjoy property collectively. However, circumstances often arise where family members seek to divide this property, leading to the legal concept of partition. It under Hindu law signifies the severance of the joint family status, converting the ancestral property into individually owned shares. It is primarily regulated by two major schools of Hindu law:

Mitakshara School:

The Mitakshara system is attributed to the famous commentator Vijnaneshwara, who wrote the Mitakshara, which is a commentary on Yajnavalkya Smriti, one of the ancient texts of Hindu law. It is the more prevalent school in most parts of India.

In the Mitakshara system, ancestral property (property inherited from paternal ancestors) is considered joint family property. The property is shared by all male members of the family, and the sons have a birthright to inherit it, even if the father is alive. The joint family structure is fundamental, and the property is passed down through generations in a common pool, where every male member has an equal share. The father is the Karta (head) of the family and manages the property, but all the male members have rights over it. It generally applies to most of India, except for Bengal and parts of Assam.

2. Dayabhaga School:

The Dayabhaga school is associated with the legal treatise **Dayabhaga**, written by **Jimutavahana**. This system is most commonly followed in **Bengal** and some parts of Assam.

The **Dayabhaga** system focuses on individual rights to inheritance. Sons do not have a birthright to ancestral property. Instead, they inherit property only after the father's death. It is a separate property system, unlike the Mitakshara's joint family system. The family property can be divided among the heirs when the father dies, and it is not held jointly during the father's lifetime. The father can give property to anyone he chooses during his lifetime and has full discretion over it. The inheritance follows the principle of succession, where heirs are determined by the laws of descent, and the property is passed down according to the will of the father, after his death. It is primarily followed in Bengal, and it is distinct from the Mitakshara system in that there is no automatic inheritance during the father's lifetime.

PARTITION ACT:

The **Partition Act**¹⁷⁸² is a legal provision primarily concerned with the division of property held by co-owners or joint owners, typically in scenarios involving multiple individuals who own property together, such as in the case of inherited land or joint investments. The Partition Act enables an orderly division or sale of the property to allow each co-owner to receive their rightful share. The division of the property, and thus, a court intervention is necessary.

Section 2 of Partition Act¹⁷⁸³, explains, Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders

therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

If a coparcener has, where he has a rights to do so, sold his interest in the dwelling house, any coparcener may get that interest valued by the court and purchase it at court valuation.¹⁷⁸⁴ Apart from the Partition Act 1893, the court has inherent power to refuse to divide any property and adopt any other course as may appear equitable and just in the circumstances of a case.¹⁷⁸⁵

Family Shrines, Temples and idols:

In Hindu law, family shrines and temples¹⁷⁸⁶ are treated distinctively from ordinary property due to their religious and sentimental value. The presence of a shrine or temple in the joint family property can complicate the partition process. Several principles govern the treatment of such property during partition. The status of idols¹⁷⁸⁷ in family property is crucial when dealing with partition. Idols that are housed in family shrines or temples may be considered sacred or devotional objects and are often treated as part of the spiritual heritage of the family.

RIGHT TO DEMAND PARTITION:

As a common rule, every coparcener of a Hindu joint family is permitted to demand partition of the coparcenary/ Hindu joint family property.

1. Special power of father: A Hindu father reserves a right to effect a partition between himself and his sons. Despite the express

¹⁷⁸⁴ Makhan v. Sushma, 1953 cal. 164

¹⁷⁸⁵ Subbamma v. Veeranya, (1931) 61 M.L.J. 552.

¹⁷⁸⁶ Ramaswami v. Ramaswami (AIR 1984 Mad 176).

¹⁷⁸⁷ Sundara Ramaswamy v. V. Rajan (AIR 1967 Madras 22).

¹⁷⁸² THE PARTITION ACT 1893, Act No, 4 of 1893

¹⁷⁸³ Power to court to order sale instead of division in partition suit.

consent or dissent of his sons, he can exercise this right. Therefore the severance of the property can be done as per the special power given to the father.

2. Son, Grandson and Great-grandson: All coparceners, who is attained majority and of sound mind is entitled to demand partition anytime irrespective of whether they are sons, grandsons or great-grandsons. A clear demand made by any coparcener, with or without reasons, is sufficient and the Karta is legally bound to comply with his demand.

3. Minor coparcener: The test for partition in case of a minor coparcener is whether the partition is in the benefit or interest of the minor or whether it can cause danger to the interests of the minor person. It is pertinent to note that it's upon the discretion of the court to decide that a particular case falls under the ambit of interests of the minor. As per the Hindu Law, if at all a minor has an undivided share in a Joint Family the Karta of the Joint family will act as a guardian of the minor. However, when it comes to the right to demand partition by a person, the rights of the minor and rights of major are similar in nature.

LEGAL PROCEDURE FOR PARTITION :

A partition suit is a legal process in which one co-owner of a property seeks to divide it into separate portions or seek its sale, often when the co-owners cannot come to an agreement about its use or distribution. The partition suit process can vary depending on the jurisdiction, but generally follows these steps:

1. Filing the Suit

- **Petition:** The plaintiff (person filing the suit) initiates the partition suit by filing a **plaint** (a written legal document) in the appropriate court. The plaint must contain:
 - Details of the property (description, location, etc.)

- The relationship between the parties
- Claims for partition or sale, and any other relief sought

- **Court:** The suit is typically filed in the district or civil court with jurisdiction over the area where the property is located.

2. Notice to Other Co-Owners

- Once the petition is filed, the **court issues a notice** to all other co-owners, informing them of the partition suit. These co-owners (defendants) are given a chance to respond.

3. Response from Defendants

- The defendants (other co-owners) can file their written **statement of defense** if they disagree with the claim of partition or dispute the title to the property.
- The defense can also include claims for maintenance of the property, payment of debts, etc.

4. Preliminary Hearing

- In some cases, the court will conduct a **preliminary hearing** to ascertain the claims and defenses of both sides. If the matter involves complex issues, the court may order further inquiries.

5. Preliminary Decree for Partition

- If the court finds that partition is necessary and the ownership of the property is clear, it will pass a **preliminary decree**. This decree may:
 - Declare the rights of the parties in the property
 - Determine the share of each co-owner
 - Direct the preparation of a report by a **commissioner** or **court official** who may physically divide the property or suggest a way to do so.

6. Preparation of a Report/Commissioner's Role

- A **commissioner** (an official appointed by the court) of XXVI OF CPC, may be asked to survey and assess the property and prepare a report suggesting the division or sale of the property. This may involve physical measurement and identification of boundaries for each party's share.
- In some cases, the commissioner may also suggest the valuation of the property.

7. Objections to Report

- Once the report is submitted, the parties may file objections if they disagree with the partition plan or valuation provided in the report.

8. Final Decree for Partition

- After considering the objections and finalizing the partition plan, the court will issue a **final decree**.
 - If the property can be physically divided, the decree will direct its division.
 - If division is not possible or practical, the property may be ordered to be sold, and the proceeds divided according to the shares of the co-owners.

9. Execution of the Decree

- If the final decree includes physical partition or sale, the court will enforce the order. This may involve appointing officials to carry out the division or sale.

10. Appeal

- If any party is dissatisfied with the final decree, they can file an **appeal** before a higher court.

HINDU WOMEN'S RIGHTS BEFORE 2005 AMENDMENT :

The right of Hindu women to inherit property has been restricted from the beginning. In ancient times, women were not considered equal to men, their rights were also not equal to the male members of the society. The denial of property rights to women can be traced back to religious practices, as they were considered incompetent to take part in sacrificial rituals and were prohibited from offering funeral cakes for the spiritual salvation of the common ancestor.

Before the **2005 amendment** to the **Hindu Succession Act**, the property rights of women in Hindu law were quite limited, particularly in terms of inheritance and succession. Under the **Hindu Succession Act, 1956**, women had certain property rights¹⁷⁸⁸, but these were limited, especially in relation to **ancestral** or **coparcenary property**. Here's a brief breakdown of how women's property rights were structured before the amendment.

Self-Acquired Property: Women had full rights over self-acquired property (property earned, inherited, or purchased by them independently). This meant they could own, manage, and dispose of such property without any restrictions. Their rights to self-acquired property were equal to those of men, and they could freely transfer or sell it.

Ancestral (Joint Family) Property: Women had limited rights to ancestral property. Under the Hindu coparcenary system, only male members (sons, grandsons) were considered coparceners and had rights to inherit or demand partition of the ancestral property. Women, such as daughters, had no inherent right to coparcenary property, although they could inherit self-acquired property from their fathers if no male heirs were available. Daughters could not claim a share in the ancestral property unless it was passed on to them through a will.

¹⁷⁸⁸ Hindu Womens's Rights to property act 1937.

Widows' Rights: Widows had the right to inherit their husband's property, but their rights were restricted. They had a life interest in the property, meaning they could use and live on it but could not transfer it. Upon the widow's death, the property would pass on to her husband's heirs. In the absence of male heirs, the widow had more substantial inheritance rights.

Inheritance: Women could inherit property from their natal family (e.g., father's or brother's property), but their right to inherit from their husband's side was often secondary to that of male heirs.

HINDU SUCCESSION ACT, 1956 :

Hence, the first major legislation named Hindu Succession Act, 1956 (HSA) recognizing women's rights to inheritance of property came into existence, since then with the passage of time women's right of property inheritance is getting evolved.

▪ Section 14 – Property of a female Hindu to be her absolute property –

(1) Any property possessed by a Hindu female (whether acquired before or after the Act came into force) becomes her absolute property. She gets full ownership rights, meaning she can sell, transfer, gift, or will the property as she pleases. Property" includes movable and immovable assets, acquired through inheritance, partition, gift, purchase, maintenance awards, or any other source.

(2) If a Hindu female receives property through a gift, will, or any document (such as a decree or award) that gives her only a limited interest, then her rights over that property remain limited as per the conditions of the gift or will.

According to the provisions of Section 14 of HSA, absolute rights are conferred to women in any property possessed by her. The Act gives unfettered rights to women, including the right to dispose the property off. The property can be both movable as well as immovable. Section 14 of HSA grants any Hindu woman the ability to

use her property without the husband's, father's, etc. approval or consent. She is free to transfer her property at any time, and she is free to spend the proceeds in any way she chooses.

▪ SECTION 15: General rules of succession in the case of female Hindus.¹⁷⁸⁹

The general guidelines for the transfer of property intestate of a Hindu are covered in Section 15 of the 1956 Act. It specifies how the devolution will occur:

As per section 15(1)¹⁷⁹⁰ of the HSA 1956, when a female hindu dies without writing will then the devolution of her property is done to the following as per rules set out in Section 16.

- Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.
- Secondly, upon the heirs of the husband.
- Thirdly, upon the mother and father.
- Fourthly, upon the heirs of the father.
- Lastly, upon the heirs of the mother.

Section 15(2)¹⁷⁹¹ 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

HINDU WOMEN'S RIGHTS AFTER THE 2005 AMENDMENT :

Following the 174th Law Commission Report's recommendations, the Hindu Succession (Amendment) Act, 2005 was passed and made significant changes to the 1956 Act. Now married women could

¹⁷⁸⁹

https://www.indiacode.nic.in/bitstream/123456789/1713/1/AAA1956suc_30.pdf.

¹⁷⁹⁰ *Omprakash & Ors vs Radhacharan & Ors* on 5 May, 2009, *Equivalent citations: AIR 2009 SC (SUPP) 2060, 2009 (15) SCC 66, (2009) 2 CLR 1 (SC)*.

¹⁷⁹¹ *Tarabai Dagdu Nitaware And Ors vs Shri. Narayan Keru Nitaware* on 15 January, 2018 *Equivalent citations: AIR 2018 (NOC) 708 (BOM.)*.

coparcener their father's property which was previously only enjoyed by the male members of the family. In other words, women could now become coparceners in a succession of the property of the patriarch and hold equal depository rights to the property. The **Amendment to Section 6 of the Hindu Succession Act** that deals with the Devolution of Coparcenary property has made this possible, and women can also inherit property as coparceners.

Section 4(2) of the 1956 Act was omitted which provided an exception for agricultural property and since the provision regulated by State laws resulted in bias against women obscuring their right to empowered use of agricultural land. It was the first major step towards ensuring the attainment of equality. The restructuring of Section 6 of the Act resulted in daughters becoming coparceners by birth and acquiring all rights and liabilities in the same manner like a son. Added that this section will nowhere affect any disposition or alienation including any partition of property effected before 20th December 2004. A Hindu's property who dies intestate will now devolve by testamentary or intestate succession under this Act thereby completely eliminating the rule of survivorship. The provision of Section 6(4) was not applicable in case the debt was contracted before the commencement of the Act thereby making this amendment inapplicable for partitions taking effect before 20th December 2004¹⁷⁹². Section 23 was omitted as it disentitled female heirs from seeking partition of dwelling house until male heirs chose to divide. Further, Section 24 was also omitted which discriminated against three category of women, namely widow of the predeceased son or the widow of the predeceased son of the predeceased son or widow of the brother who shall not be entitled to succeed to the property if she was remarried when the property opened

up for succession¹⁷⁹³. Under Section 30 of the Act, the words 'disposed by him' was substituted with 'disposed by him or by her' making it gender-neutral according to the objective of the Act.

In *Badrinarayan Shankar Bhandari v. Om Prakash Shankar Bhandari*, the court observed that there are two prerequisite conditions, firstly, the daughters must be alive on the date of enforcement of the Amendment Act, i.e, 9 th September 2005 in order to claim benefit under Section 6. Secondly, the property must be available as coparcenary property on the date of the enactment of the amendment. It was further held that the amendment was retroactive in nature and that will be applicable to all daughters born prior and after 17th June 1956 but before 9th September 2005.¹⁷⁹⁴

Section 6 in The Hindu Succession Act, 1956 – Devolution of interest in coparcenary property.

—¹⁷⁹⁵ On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- 1) The daughter of a coparcener in a Joint Hindu family governed by Mitakshara law becomes a coparcener by birth, with rights and liabilities equal to that of a son. The amendment applied prospectively from September 9, 2005, but with retroactive effects on certain events.
- 2) Coparcenary Property and Testamentary Disposition Property obtained by a female Hindu through the amendment is held with coparcenary ownership incidents, allowing her to dispose of it by testamentary disposition.
- 3) Upon the death of a Hindu after the amendment, the devolution of property in a Joint Hindu family follows testamentary or intestate succession. The coparcenary property is considered

¹⁷⁹²Shital Kharat, Effect of the Hindu Succession (Amendment) Act 2005 – Judicial Response, SSRN, Feb 11, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2912662

¹⁷⁹³ Ibid.

¹⁷⁹⁴ AIR 2014, Bom 151.

¹⁷⁹⁵ Section 6 in The Hindu Succession Act, 1956.

divided, with daughters allotted shares equivalent to sons.

- 4) The Act shields sons, grandsons, and great-grandsons from liability for ancestral debts, eliminating the pious obligation under Hindu law. Exceptions exist for debts contracted before the amendment, preserving creditors' rights and enforcing existing alienations related to such debts.
- 5) The section does not apply to partitions executed before December 20, 2004, defining 'partition' as either a registered deed or one decreed by a court under the Registration Act, 1908.

Vineeta Sharma vs Rakesh Sharma on 11 August, 2020:

The case of *Vineeta Sharma v Rakesh Sharma*¹⁷⁹⁶ dealt with the interpretation of amended Section 6 of the Hindu Succession Act, 1956, which granted daughters equal coparcenary rights as sons. The amendment, effective from 9th November 2005, raised questions about whether daughters born before 2005 could claim these rights and if both father and daughter needed to be alive on 9th November 2005 for the provisions to apply. Previous judgments like *Prakash v. Phulvati* and *Dannama vs Amar*, conflicting views on the retrospective or prospective nature of these rights. To resolve these issues, a three-judge bench was set up to clarify the correct interpretation of Section 6 and address related cases for consistency in the law.

Background:

Prior to the 2005 Amendment, Hindu daughters did not have coparcenary rights by birth. The 2005 Amendment granted daughters equal rights in coparcenary property, effective from the date of the Amendment. However, conflicting interpretations emerged regarding whether these rights applied retrospectively to daughters born before the Amendment.

Key Issues:

The primary issue was whether the Amended Section 6 of the Hindu Succession Act, which grants daughters equal coparcenary rights, applies retrospectively to daughters born before the Amendment.

Supreme Court's Decision:

The Supreme Court, in its judgment delivered on August 11, 2020, held that:

1. **Retrospective Application:** The amended Section 6 applies retrospectively, meaning daughters have coparcenary rights from birth, regardless of when the amendment was enacted.
2. **Overruling Previous Decisions:** The Court overruled its earlier judgments in *Prakash v. Phulavati* and *Danamma @ Suman Surpur*, which had held that the amendment applied only to daughters whose fathers were alive on the date of the amendment.
3. **Impact on Pending Cases:** The decision clarified that daughters can claim their share in coparcenary property, irrespective of whether the father was alive on the date of the amendment.

JUDGMENT:

The Supreme Court's Bench in this case referred to various principles of Hindu law, including codified and customary laws such as Coparcenary and Joint Hindu Family. They discussed unobstructed and obstructed heritage and analyzed a catena of judgments. The Court observed that joint Hindu family property is considered unobstructed heritage, where the right to partition is absolute and is given to a person by virtue of their birth. On the other hand, a separate property is obstructed heritage, where the right to ownership and partition is obstructed by the death of the owner.

The Supreme Court held that the right to partition in the case of a daughter is by birth, which falls under unobstructed heritage. It is immaterial whether the father coparcener was alive or dead on the date when the amendment

¹⁷⁹⁶ AIR 2020 SUPREME COURT 3717, AIR ONLINE 2020 SC 676.

was enacted. The Court overruled the judgment of *Phulavati v. Prakash* and clarified that coparcenary rights pass from the father to his living daughter, rather than from a living coparcener to a living daughter. By overruling the *Phulavati* and *Danamma* judgments, the Court ruled that the provisions of Section 6 of the Act are neither prospective nor retrospective, but rather retroactive in nature. The Court explained the principles of prospective, retrospective, and retroactive laws, stating that the application of a retroactive law depends on features or occurrences drawn from a past event. The Court stated that Section 6(1)(a) of the Act incorporates the definition of Mitakshara coparcenary's unobstructed heritage, and since the right is conferred by birth, it is considered an antecedent case. The provision applies from the date of enactment of the Amendment Act, making it retroactive. The Court emphasized that Section 4 of Section 6 clarifies that the provisions of Section 6 are not retrospective. This approach by the Court addressed the gap in the law.

CONCLUSION:

The **Hindu Succession (Amendment) Act, 2005** was a landmark reform that significantly changed the landscape of Hindu inheritance laws by granting daughters equal rights in ancestral property. Prior to this amendment, only male members had coparcenary rights by birth. However, the amendment extended these rights to daughters, ensuring gender equality in the inheritance of ancestral property. This reform reflects a progressive step towards empowering women, as it recognizes daughters as equal coparceners in Hindu families, allowing them to claim their share of property by birth, just like their male counterparts. It also provided clarity and justice in situations of inheritance, especially where property disputes arose. Overall, the 2005 amendment has been a significant step toward ensuring gender parity in Hindu succession laws and reinforcing the idea that daughters have equal rights in the

inheritance and management of ancestral property.

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