

**Right of daughter as coparcerner in the Hindu Joint Family property u/s 6 of the Hindu Succession Act, as amended in the year 2005 with reference to recent case laws.**

**Introduction**

The Constitution of India provides that every person is entitled for equality before law and equal protection of the laws and thereby prohibits discrimination on the basis of caste, creed and sex. The discrimination on the basis of sex is permissible only as protective measures to the female citizens as there is need to empower women who have suffered gender discrimination for centuries. Empowerment of women, leading to an equal social status with men hinges, among other things, on their right to hold and inherit property. Civilized societies across the globe ensure that women's inheritance rights are more secure than those of men because women take on the tremendous responsibility of producing and nurturing the next generation. In India, women's rights have suffered serious setbacks among all communities.

2. The Constitution of India enshrines the principle of gender equality in its Preamble and Parts III, IV and IVA pertaining to Fundamental Rights, Fundamental Duties and Directive Principles respectively. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Now as India becomes increasingly aware of the need for equal rights for women, the government can't afford to

overlook property rights, which have a deep impact on the national economy.

3. Despite the Hindu Succession Act being passed in 1956, which gave women equal inheritance rights with men, the mitakshara coparcenary system was retained and the government refused to abolish the system of joint family. According to this system, in the case of a joint family, the daughter gets a smaller share than the son. While dividing the father's property between the mother, brother and sister, the share is equal. Mitakshara is one of the two schools of Hindu Law but it prevails in a large part of the country. Under this, a son, son's son, great grandson and great great grandson have a right by birth to ancestral property or properties in the hands of the father and their interest is equal to that of the father. The group having this right is termed a coparcenary. The coparcenary was confined to male members of the joint family.

4. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of a male in the family, the share of every other surviving male either gets diminished or enlarged. If a coparcenary consists of a father and his two sons, each would own one third of the property. If another son is born in the family, automatically the share of each male is reduced to one fourth. The Mitakshara law also recognizes inheritance by succession but only to the property separately owned by an individual male or female. Females are included as heirs to this kind of property by Mitakshara law.

## 5. **Prior to Hindu Law of Inheritance Act, 1929-**

Prior to this Act, the Mitakshara law also recognize inheritance by succession but only to the property separately owned by an individual, male or female. Females are included as heirs to this kind of property by Mitakshara law. Before the Hindu Law of Inheritance Act 1929, the Bengal, Benares and Mithila sub schools of Mitakshara recognized only five female relations as being entitled to inherit namely - widow, daughter, mother paternal grandmother, and paternal great-grand mother. The Madras sub-school recognized the heritable capacity of a larger number of female's heirs that is of the son's daughter, daughter's daughter and the sister, as heirs who are expressly named as heirs in Hindu Law of Inheritance Act, 1929. The son's daughter and the daughter's daughter ranked as bandhus in Bombay and Madras. The Bombay school which is most liberal to women, recognized a number of other female heirs including a half sister, father's sister and women married into the family such as stepmother, son's widow, brother's widow and also many other females classified as bandhus.

6. **Hindu Law of Inheritance Act, 1929-** This was the earliest piece of legislation, bringing woman into the scheme of inheritance. This Act, conferred inheritance rights on three female heirs i.e. son's daughter, daughter's daughter and sister (thereby creating limited restriction on the rule of survivorship).

7. **Hindu Women's Right to Property Act, 1937 :-** This was the

landmark legislation conferring ownership rights on women. This Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. The Act of 1937 enabled the widow to succeed along with the son and to take a share equal to that of the son. But, the widow did not become a coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights.

8. Despite these enactments having brought important changes in the law of succession by conferring new rights of succession on certain females, these were still found to be incoherent and defective in many respects and gave rise to a number of anomalies and left untouched the basic features of discrimination against women.

9. **Position Of Woman After Enactment Of Hindu Succession Act, 1956 :-**

After the advent of the Constitution, the first law made at the central level pertaining to property and inheritance concerning Hindus was the Hindu Succession Act, 1956 (hereinafter called the HSA). This Act dealing with intestate succession among Hindus came into force on 17th June 1956. It brought about changes in the law of succession and gave rights, which were hitherto unknown, in relation

to a woman's property. The Section 6 of this Act is very important which reads as under (The unamended section) :-

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

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

**Explanation 1:-** *For the purpose of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.*

**Explanation 2:-** *Nothing contained in the proviso to this section shall be construed as enabling a person who*

*has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.*

10. Section 6 deals with the devolution of the interest of a male Hindu in coparcenary property. It says that if a male Hindu dies leaving behind his share in Mithakshara Co-parcenary property, such property will pass on to his sons, son's son's, son's son's son by survivorship, on surviving members. In case there are female relatives like daughter, widow, mother, daughter of predeceased son, daughter of predeceased daughter, widow of predeceased son, widow of predeceased son of a predeceased son, then the interest of the deceased co-parcenary will pass on to his heirs by succession and not by survivorship.

11. While recognizing the rule of devolution by survivorship among the members of the coparcenary, makes an exception to the rule in the proviso. According to the proviso, if the deceased has left him surviving a female relative specified in Class I of Schedule I, or a male relative specified in that Class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession under this Act and not by survivorship.

12. The rule of survivorship comes into operation only where the deceased does not leave him surviving a female relative specified in Class I, or a male relative specified in that Class who claims

through such female relative and when the deceased has not made a testamentary disposition of his undivided share in the coparcenary property.

13. As pointed out above that the main provision of this section deals with the devolution of the interest of a coparcener dying intestate by the rule of survivorship and the proviso speaks of the interest of the deceased in the Mitakshara Coparcenary Property. Now, in order to ascertain what is the interest of the deceased coparcener, one necessarily needs to keep in mind the two Explanations under the proviso. These two Explanations give the necessary assistance for ascertaining the interest of the deceased coparcener in the Mitakshara Coparcenary Property. Explanation I provides for ascertaining the interest on the basis of a notional partition by applying a fiction as if the partition had taken place immediately before the death of the deceased coparcener. Explanation II lays down that a person who has separated himself from the coparcenary before the death of the deceased or any of the heirs of such divided coparcener is not entitled to claim on intestacy a share in the interest referred to in the section.

14. Under the proviso if a female relative in class I of the schedule or a male relative in that class claiming through such female relative survives the deceased, then only would the question of claiming his interest by succession arise. Explanation I by deeming that a partition had taken place a little before his death which gives the clue for arriving at the share of the deceased. Section 6 can further be understood by the following example :-

15. If X dies leaving behind his two sons only, and no female heirs of class I then property of X passes to his sons by survivorship since there are no female relatives like daughter or any other member specified in the class I of first schedule. In case X dies leaving behind two sons and three daughters, then property of X will pass on to his sons and daughters by succession in the following manner.

16. Firstly property of "X" is divided between "X" and his two sons. The shares of "X" and his two sons are, X gets one-third and each son one-third. The sons are entitled to the equal share of the property along with the father. But the daughters are entitled to the share in the share of the deceased X along with other sons. So the sons will get one-third of the property and a share, which is one-fifth in the share of deceased X. Hence the daughter does not take equal share with the son.

17. But, now the question is whether, the Hindu Succession Act actually gave women an equal right to property or did it only profess to do so. The answer is no. The retention of the Mitakshara coparcenary without including females in it meant that females couldn't inherit ancestral property as males do. If a joint family gets divided, each male coparcener takes his share and females get nothing. Only when one of the coparceners dies, a female gets a share of his share as an heir to the deceased. Thus the law by excluding the daughters from participating in coparcenary ownership (merely by reason of their sex) not only contributed to an inequity against females but has led to oppression and negation of their right to equality and



appears to be a mockery of the fundamental rights guaranteed by the Constitution.

**The Hindu Succession (Amendment) Act, 2005 :-**

18. The Hindu Succession (Amendment) Act, 2005 seeks to make two major amendments in the Hindu Succession Act, 1956. Firstly, it is proposed to remove the gender discrimination in section 6 of the original Act. Secondly, it proposes to omit section 23 of the original Act, which disentitles a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein. However at present we have focused specifically on the changes brought in Section 6 in regards to the position of woman.

19. The amended section 6 of the Hindu Succession Act reads as under :-

***section 6. Devolution of interest in coparcenary property - (1)***

*On and from the commencement of the Hindu Succession*

*(Amendment) Act, 2005, in a Joint Hindu family governed by the*

*Mitakshara law, the daughter of a coparcener shall,--*

*(a) by birth become a coparcener in her own right the same manner as the son;*

*(b) have the same rights in the coparcenary property as she would have had if she had been a son;*

*(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,*

*and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:*

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

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

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

*(a) the daughter is allotted the same share as is allotted to a son;*

*(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and*

*(c) the share of the pre-deceased child of a pre-deceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased so or a pre-deceased daughter, as the case may be.*

***Explanation.--*** For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

*(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the*

*ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:*

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

*(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or*

*(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.*

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

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

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

Section 6 seeks to make the daughter a coparcener by birth in a joint Hindu family governed by the Mitakshara law, subject to the same liabilities in respect of the said coparcenary property as that of a son.

20. This amending Act of 2005 is an attempt to remove the discrimination as contained in the unamended section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as to sons have. As a result, the disabilities of female heirs is removed. This is a great step of the government so far the Hindu Code is concerned. The 2005 Act does not touch separate property. But it makes daughters coparceners in the Mitakshara joint family property, with the same birth rights as sons to shares and to seek partition.

21. This provision shall not affect or invalidate any disposition or alienation including partition or testamentary disposition of property which had taken place before 20th December, 2004. Further any property to which female Hindu becomes entitled by virtue of above provision shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition. The

provision was also made that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act of 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place. Further the daughter is allotted the same share as is allotted to a son. The provision was also made that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter.

22. The most important fact is that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. Thus the amendment of Hindu Succession Act of 1956 in 2005 is a total commitment for the women empowerment and protection of women's right to property. This Amending Act of Hindu Law opened the door for the women, to have the birth right in the family property like the son. The women were vested the right of control and ownership of property beyond their right to sustenance.

23 In the Case of **Ganduri Koteshwaramma & Anr vs Chakiri Yanadi & Anr Civil Appeal No. 8538/11, decided on 12-10-2011**, there was a question before the Hon'ble Apex Court as

to whether the preliminary decree passed by the Court can be amended/ modified. In that case the Hon'ble Supreme Court had an occasion to observe the applicability of The Hindu Succession (Amendment) Act, 2005. In said case the preliminary decree for the partition of the ancestral property was passed in the year 1999. In the year 2003, one of the male coparcenar died before passing of the final decree, hence the preliminary decree was modified accordingly. When the execution process was still going on, The Amendment Act of 2005 came to be passed. Thereafter The daughters (female coparceners) as defined in the The Amended Act of 2005, prayed to modify the preliminary decree claiming their share in the ancestral property. The trial court had allowed said application, but the High Court had set aside the order of the trial court.

24. When the matter reached upto Hon'ble Supreme the Hon'ble Supreme Court had extended the benefit of the Amended Act of 2005 to both those daughters. Strictly speaking the judgment delivered in the case of the *Ganduri (supra)* was not directly on the point of the date of the commencement of the The Amendment Act of 2005.

25. The issue of the date of the commencement of the The Amendment Act of 2005 was came up before the Hon'ble Bombay High Court in the case of Vaishali S. Ganorkar Vs. Satish Keshavrao Ganorkar 2012[3] Mh.L.J. 669. In said it was held by the Hon'ble High Court that,

*“the Section is required to be dissected for interpretation. The subtitle of the section relates to devolution of interest in coparcenary property. The interest devolves upon succession. Such devolution may be upon intestate or testamentary succession. The entitlement of a daughter of a coparcener is, therefore, upon devolution and not without any such cause since devolution is only upon succession. The succession would open on a given day. It would, therefore, open only upon the death of the coparcener. Until that time the coparcener, to constitute the coparcenary of which he is a coparcener, must be a member in HUF consisting of other coparceners. “It would have to be seen when the appellants would be coparceners being the daughter of a coparcener. The section gives the right to a daughter of a coparcener "on and from" the commencement of the Act. The amended provision under Section 6 of the HSA came into effect from 9 Septemeber 2005. On and from that date the daughter of a coparcener would become a coparcener in her own right just as a son.*

*“The devolution of her interest should, therefore, be on and from 9 September 2005”. “No interest can devolve in a coparcenary property except on the death of the coparcener. In this case there has been no devolution of interest by any succession, testamentary or intestate,*



*because no coparcener has been deceased. The share in the coparcenary, therefore, cannot "devolve" upon anyone.*

*"The succession, therefore, has not yet, opened. The suit is, therefore, premature. The appellants, as the daughters of the coparcener, are not statutorily given any right as coparceners ipso facto before devolution of any interest". "for a daughter who was born prior to the coming into force of the amendment Act she would be a coparcener only upon a devolution of interest in coparcenary property taking place".*

*"The right which she has got is from "on and from" the commencement of the amendment Act i.e., on and from 9 September 2005. The basis of the right is, therefore, the commencement of the amendment Act.* The daughter acquiring an interest as a coparcener under the Section was given the interest which is denoted by the future participle "**shall**". What the section lays down is that the daughter of a coparcener shall by birth become a coparcener . It involves no past participle. It involves only the future tense. Consequently, by the legislative amendment contained in the amended Section 6 the daughter shall be a coparcener as much as a son in a coparcenary property. This right as a coparcener would be by birth. This is the natural ingredient of a

*coparcenary interest since a coparcenary interest is acquired by virtue of birth and from the moment of birth. This acquisition (not devolution) which until the amendment Act was the right and entitlement only of a son in a coparcenary property, was by the amendment conferred also on the daughter by birth. The future tense denoted by the word "shall" shows that the daughters born on and from 9 September 2005 would get that right, entitlement and benefit, together with the liabilities. It may be mentioned that if all the daughters born prior to the amendment were to become coparceners by birth the word "shall" would be absent and the section would show the past tense denoted by the words "was" or "had been". The future participle makes the prospectivity of the section clear*".

*“The express words in the section clearly indicate the intention of the legislature to make daughters coparceners in coparcenary property on and from the date the amendment Act came into force. The Act also clearly shows that from that date they shall become coparceners with the same rights and liabilities and the reference to the Mitakshara would also be reference including the daughter from then on. The express provisions in the Act are, therefore, inconsistent with any retrospectivity”.*

*“It may be mentioned that Section 6 creates substantive rights in favour of a daughter as a coparcener; it would, therefore, be ordinarily prospective”, “there are no express words showing retrospective operation in the Statute and in fact the express words are “on and from” denoting prospectivity”, “the plain normal grammatical meaning of the words “shall become” and “shall be deemed” shows the future tense and the total absence of any past participle. The words must be given the grammatical meaning as per the grammatical tense”.*

26. In view of the above observations it was held that The Hindu Succession (Amendment) Act, 2005 is prospective in operation.

27. Subsequently, when this issue again came up before the full bench of the Hon'ble Bombay High Court for the reconsideration in another case of **Badrinarayan Shankar Bhandari Vs. Omprakash Shankar Bhandari 2014[5] Mh.L.J. 434** , which was referred to Full Bench in the light of judgment in Vaishali S. Ganorkar and Ganduri's case.

28. In the case of **Badrinarayan Shankar (supra)** the following questions of law were referred to the full bench :-

"(a) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 is prospective or retrospective in operation?"

(b) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies to daughters born prior to 17.6.1956?

(c) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies to daughters born after 17.6.1956 and prior to 9.9.2005?

(d) Whether Section 6 of the Hindu Succession Act, 1956 as amended by the Amendment Act, 2005 applies only to daughters born after 9.9.2005?

(e) Whether the decision of the Division Bench in the case of Vaishali Ganorkar is per incurium of Gandori Koteshwaramma and others?"

29. At the outset it is necessary to mention that the Hon'ble full bench has observed that 'so far as the decision of our Division Bench in Vaishali S. Ganorkar (supra) is concerned, we find that it was decided in the peculiar facts of the case, the facts were indeed very gross. Having regard to various considerations, and the arguments advanced on behalf of the parties, as well as reasoning of the learned single Judge, we are compelled to reach the conclusion that the principle enunciated in Vaishali S. Ganorkar's case (supra) was erroneous and it must be corrected.

30. After considering the entire law on the subject the Hon'ble High Court has held that ' A bare perusal of sub-section (1) of Section 6 would, thus, clearly show that the legislative intent in enacting

clause (a) is prospective i.e. daughter born on or after 9 September 2005 will become a coparcener by birth, but the legislative intent in enacting clauses (b) & (c) is retroactive, because rights in the coparcenary property are conferred by clause (b) on the daughter who was already born before the amendment, and who is alive on the date of amendment coming into force. Hence, if a daughter of a coparcener had died before 9 September 2005, since she would not have acquired any rights in the coparcenary property, her heirs would have no right in the coparcenary property. Since Section 6 (1) expressly confers right on daughter only on and with effect from the date of coming into force of the amendment Act, it is not possible to take the view being canvassed by learned counsel for the appellants that heirs of such a deceased daughter can also claim benefits of the amendment.

31. It is further observed that two conditions necessary for the applicability of amended section 6 (1) are :-

- (i) The daughter of the coparcener (daughter claiming benefit of amended Section 6) should be alive on the date of amendment coming into force;
- (ii) The property in question must be available on the date of the commencement of the Act as coparcenary property.

32. The Hon'ble bench has clarified that, the "Retroactive Statute" means, which does not operate backwards and does not take away vested rights. Though it operates forwards, it is brought into operation by a characteristic or status that arose before it was enacted.

33. The Hon'ble full bench while answering the reference observed that ' in our view the correct legal position is that Section 6 as amended by the 2005 Amendment Act is retroactive in nature, meaning thereby the rights under Section 6 (1) (b) and (c) and under sub-Rule (2) are available to all daughters living on the date of coming into force of the 2005 Amendment Act i.e. on 9 September 2005, though born prior to 9 September 2005. Obviously, the daughters born on or after 9 September 2005 are entitled to get the benefits of Amended Section 6 of the Act under clause (a) of sub section (1). In other words, the heirs of daughters who died before 9 September 2005 do not get the benefits of amended Section 6. In the above view of the matter, so far as questions (b), (c) and (d) are concerned, we hold that the Amendment Act applies to daughters born any time provided the daughters born prior to 9 September 2005 are alive on the date of coming into force of the Amendment Act i.e. on 9 September 2005. It was held that the judgment of the Division Bench in Vaishali Ganorkar's case (supra) is per incurium the Supreme Court decision in Ganduri Koteswaramma (supra).

### Critical Appraisal of Amendments to the Hindu Succession Act

34. After the amendment the daughters will now get a share equal to that of sons at the time of the notional partition, just before the death of the father, and an equal share of the father's separate share. However, the position of the mother vis-a-vis the coparcenery stays the same. She, not being a member of the coparcenery, will not get a share at the time of the notional partition. The mother will be entitled to an equal share with other Class I heirs only from the separate share of the father computed at the time of the notional partition. In effect, the actual share of the mother will go down, as the separate share of the father will be less as the property will now be equally divided between father, sons and daughters in the notional partition.
35. The equal sharing of the father's property applies in cases where he dies intestate that is, without making a will. Given the bias and preference for sons and notions of lineage, discrimination against daughters in inheritance through wills is bound to remain. In most cases, the terms of the will would favour the son. Perhaps the share of property that can be willed by a person could be restricted, as a step towards greater gender equality. For example, Islamic jurisprudence lays down that a person can only will one-third of his property. Provisions to check the prevalent practice of persuading daughters to give up their share in joint family property is another area that requires attention. This is an opportune time to keep up the momentum for further reforms to reduce gender inequities and move towards a more

equal society.

36. The amendment will only benefit those women who are born into families that have ancestral property. There is no precise definition of ancestral property. Given the fact that families have long since been fragmented and the fact that the joint family system is on the decline, it is not at all clear whom this law will benefit. It cannot apply to self-acquired property. No person by birth will acquire any rights in self-acquired property. In today's context, most property is self-acquired and that property must follow principles of succession under the different succession laws. Moreover, its owner can dispose off such property during his lifetime by gift. It can be bequeathed by will to anyone of his choice. The proposed amendment notwithstanding, a Hindu father can disinherit his wife or daughter by will, in his self-acquired property. What is more, under the laws of certain states, it will actually disadvantage widows, as the share of the daughter will increase in comparison to the widow.

37. With a daughter along with the sons acquiring a birthright, which she can presumably partition at any time, the rights of other members of the joint family get correspondingly diminished. Until now, the only protection the women had in the marital home was the status of being married, which carried with it the right to be maintained, not only by the husband, but by the joint family and its assets as a whole. Thus married women who lived in a joint Hindu family had the protection of the family home. This protection will now stand eroded, to the extent that the total divisible amount gets reduced.



Something similar will happen to Hindu widows. Daughters will acquire a birthright in Hindu joint family property, mothers stand to lose a portion of the cake, as an inheritance. Since Hindu law does not grant any rights to wives in marital property, their only chance of getting anything was on an inheritance, as equal share with the sons and daughters, if the marriage was subsisting on the death of the husband. On divorce, of course, even that right to inheritance disappears. When property becomes disposable and self-acquired, different rules of succession have to apply. It is in the making of those rules that gender justice has to be located. What the 2005 amendment does is to reinforce the birthright without working out its consequences for all women.

**Conclusion** :-

38. Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Several legal reforms have taken place since independence in India, including on equal share of daughters to property. Yet equal status remains illusive. Establishment of laws and bringing practices in conformity thereto is necessarily a long drawn out process. The government, the legislature, the judiciary, the media and civil society has to perform their roles, each in their own areas of competence and in a concerted manner for the process to be speedy and effective. These amendments can empower women both economically and socially and have far-reaching benefits for the family and society.

39. Making all daughters coparceners like wise has far-reaching implications. It gives women birthrights in joint family property that cannot be willed away. Rights in coparcenary property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter. Millions of women as widows and daughters and their families thus stand to gain by these amendments.

Submitted with respect