

**Summary of Papers written by Judicial Officers on
scope of Section 6 of the Hindu Succession Act
amended in 2005 with special reference to
daughter.**

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 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 have a deep impact on the national economy. The need to dispense gender justice raises deep political debate and at times acrimony in legislative forums.

This enthused the parliament to move a bill to make amendments in the Hindu Succession Act, to secure the rights of women in the area of property. The aim is to end gender

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discrimination in Mitakshara coparcenary by including daughters in the system. 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 only to male members of the joint family.

The Hindu Succession (Amendment) Act, 2005 is a landmark. After 50 years, the parliament finally removed gender inequalities in the 1956 Hindu Succession Act (1956 HSA), which itself was path-breaking. The 2005 Act covers inequalities on several fronts: agricultural land; Mitakshara joint family property; parental dwelling house; and certain widow's.

The Hindu Succession (Amendment) Act, 2005 seeks to make two major amendments in the Hindu Succession Act, 1956. First, it is proposed to remove the gender discrimination in section 6 of the original Act. Second, 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,

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wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein. However in the instant project, I have focused specifically on the changes brought in Section 6 in regards to the position of woman and has made a clause-by-clause consideration of the section thus amended.

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. Laws reflect the face of society and its evolution over the time. To respond to the needs of a dynamic social system, laws have to be changed and amended, at regular intervals. As far as the basic objective of the Act is to remove gender discriminatory practices in the property laws of the Hindus, whereby daughters have been given the status of coparceners in the Mitakshara joint family system. However, the position of other Class I female heirs should not suffer as a result of this move.

In **Vaishali S. Ganorkar v. Satish Keshavrao Ganorkar and Others 2012 (5)BOM.CR. 210**, Our Hon'ble Parent High Court, Division Bench held that, operation of the Amendment Hindu succession Act of 2005 is prospective in nature and not retrospective. Prior to that, Hon'ble Apex Court

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in **G.Sekhar v/s.Geeta and ors. (2009)6-SCC-99**
held_

Neither the 1956 Act nor the 2005 Act seeks to reopen vesting of a right where succession had already been taken place. The operation of the said statute is no doubt prospective in nature. The High Court might have committed a mistake in opining that the operation of Section 3 of the 2005 Act is retrospective in character, but, for the reasons aforementioned, it does not make any difference. What should have been held was that although it is not retrospective in nature, its application is prospective.

The Hindu Succession Act, 1956 came into effect on 17 June, 1956. Section 6 of the Act was amended by the 2005 Amendment Act and it came into force on 9th September, 2005. The Hindu Succession (Amendment Act), 2005 made the daughter coparcener by birth in her own right in coparcenary property. Before proceeding further, it would be justified to reproduce amended Section 6 of the Act as under :

Devolution of interest of 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,

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(a) *by birth become a coparcener in her own right in 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 sub-section (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 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 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 pre-deceased 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 son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this subsection, 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 recognise 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

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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 grand son” 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 (16 of 1908) or partition effected by a decree of a court.

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The nature of amended Section 6 i.e. whether prospective, retrospective or retroactive was a hotly debated topic into the legal circle. The nature of said section was agitated before the Division Bench of the Hon'ble Bombay High Court in case of **Vaishali S. Ganorkar and others vs. Satish Keshavrao Ganorakar and others, 2012 (3) Mh.L.J. 669.** An appeal in case of **Badrinarayan Shankar Bhandari and others vs. Omprakash Shankar Bhandari** came for hearing before the Hon'ble Single Judge Bench of the Bombay High Court (R.G. Ketkar, J.) who doubted correctness of decision rendered by Division Bench in Vaishali S. Ganorkar (Supra) and after framing five questions of law referred the appeal in case of Badrinarayan (Supra) to the full bench of the Hon'ble Bombay High Court. The following five questions were referred.

“(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?

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(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 incuriam of Gandori Koteshwaramma and others?"

The Hon'ble Full Bench have answered the above questions as under :

"77. In view of the above discussion, we now answer the questions posed in the reference for our opinion as under:-

(I) Question (a) - Section 6 of Hindu Succession Act, 1956 as amended by the Amendment Act of 2005 is retroactive in operation, as explained in this judgment.

In brief :

Clause (a) of sub-section (1) of amended Section 6 is

prospective in operation;

Clauses (b) and (c) and other parts of sub-section (1) as well as subsection (2) of amended Section 6 are retroactive in operation, as indicated hereinafter.

(II) Questions (b), (c) and (d) – Amended Section 6 applies to daughters born prior to 17 June 1956 or thereafter (between 17 June 1956 and 8 September 2005), provided they are alive on 9 September, 2005 that is on the date when the Amendment Act of

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2005 came into force. Admittedly amended Section 6 applies to daughters born on or after 9 September 2005;

(III) Question (e) – Yes. Decision of the Division Bench of this Court in Vaishali S. Ganorkar¹ is per incurium the Supreme Court decision in Ganduri Koteshwaramma case.

In Full Bench Judgment in case of Badrinarayan (Supra) in para no. 38 has held as under.

“38. (i) A prospective statute operates forwards from the date of its enactment conferring new rights on parties without reference to any anterior event, status or characteristic;

(ii) Retrospective statute, on the other hand, operates backwards, attaches new consequences, though for the future, but to an event that took place before the statute was enacted. It takes away vested rights. Substantive benefits which were already obtained by a party are sought to be taken away because of legislation being

given effect to from a date prior to its enactment. The rules of interpretation of statute raise a presumption against such retrospective effect to a legislation. In other words, if the Legislature has not expressly or by necessary implication given effect to a statute from a date prior to its enactment, the Court will not allow retrospective effect being given to a legislation so as to take away the vested rights. Statutes enacted for Regulating succession are ordinarily not

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applicable to successions which had already opened, as otherwise the effect will be to divest the estate from persons in whom it had vested prior to coming into force of the new statutes. (**Muhammed Abdus Samad Vs. Qurban Hussain**), **ILR.26 Allahabad 119(129) P.C.**

(iii) There is the intermediate category called “Retroactive Statute” 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. For example, a provision of an Act brought into force on 1 January 2014, the Act applies to a person who was employed on 1 January 2014 has two elements :

(a) that the person concerned took employment on 1 January 2014 - an event;

(b) that the person referred to was an employee on

that day - a characteristic or status which he had acquired before 1 January 2014. Insofar as the Act applies to a person who took employment on 1 January 2014, the Act is prospective. Insofar as the Act applies to a person who had taken employment before 1 January 2014, the Act is retroactive.”

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Equality before law is enshrined in Article 14 of the Indian Constitution. There has been long standing demand that in property rights women should be brought at par with men. Before amendment in Section 6 of the Hindu Succession Act in the year 2005, a daughter could not be considered to be coparcener. She had share in share of her father whereas her male counter-parts used to have equal share with that of father. Thus, under law before amendment, share of daughter was considerably low as compared to share of her brother. Amended provisions of Section 6 of the Hindu Succession Act strikes at this inequality and bring daughter at par with her brother not only as regards rights but also as regards liabilities. The proposed amendment could be considered to be one of the landmark steps in direction of women empowerment and equal treatment to the women.

(N.M.Waghmare)
District Judge-2 & Assistant
Sessions Judge, Gadchiroli