Women as Coparceners: Ramifications of the Amendment in the Hindu Succession Act

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The struggle over the property rights of women has been a protracted one, and the accomplishments have been few and far between. Also, till the advent of the Hindu Succession Act 1956\(^1\) most of the reforms were directed towards protecting the rights of wives. The introduction of the concept of notional partition in Section 6 of the HSA, with the daughter as a class I heir, was probably the first step in the statutory recognition of a daughter’s right in her father’s property.

Prior to this enactment, the Hindu Law Committee had recommended the abolition of the concept of right by birth, but the suggestion had been met with stiff opposition from the patriarchal forces in society which were unwilling to concede the possibility of granting equal rights to a daughter. The idea of making daughters coparceners was likewise rejected. It has taken the Parliament nearly fifty years to grant a right by birth to daughters, and then also the attempt has been half-hearted, as is evident from the number of anomalies it has produced.

The need to include daughters into the category of coparceners probably arose out of the inadequate protection afforded to them under the old Section 6. While the HSA had enabled daughters to get a share on notional partition, at the same time it had also authorized the coparceners to alienate their undivided interest in the coparcenary by will—a practice alien to traditional Hindu law. Hence, there was a substantial chance of

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1. Hereinafter referred to as the HSA.
the daughter's interest being defeated by males opting for a will. Under the amended provision, the daughter acquires an interest by birth, and continues to be protected even when the father disposes of his own interest through a will.

This article traces the evolution of the gendered notion of right by birth, and its metamorphosis into a gender neutral principle with the introduction of daughters as coparceners. An attempt has been made to examine the repercussions of such a transformation on concepts like pious obligation, female intestate succession, reunion et al. Finally, the viability of this measure vis-a-vis other alternatives, like the abolition of the joint family system, has also been considered.

According to the ancient principles of Hindu law a coparcenary, is a narrower institution within a joint family, comprising exclusively of male members. These members are considered to be the 'owners' of the joint family property.\(^2\) The membership in a coparcenary is limited to three generations next to the holder in unbroken male descent.\(^3\) The coparceners acquire an interest in the coparcenary by birth (or by valid adoption).\(^4\)

### The Evolution of the Concept of Right by Birth

The concept of right by birth in the property of the father is not a product of Vedic times, but a subsequent development, resulting from the importance that came to be attached to landed property.\(^5\) As *res nullius* became scarce, the sons chose to remain on the family land and would

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4. *Supra* n. 2 at p. 249.
not separate easily. This led to the development of the joint family as well as the concept of right by birth. The evolution of this concept has been traced in four stages based on classical texts. In the first stage, the sons had no right over the family property as long as the father was alive. The second stage placed a moral or religious limitation on the powers of alienation of the father, on the ground of maintenance of family members. The third stage marked the end of the absolute rights of the father over immovable property. The final stage brought about co-ownership of father and son in the property. This is how the principle of right by birth got crystalized.

The denial of this right to women, however, has its basis in religious practices. Women lacked the fitness to partake in sacrificial rituals on an equal basis with men. The actual offering on their behalf was made by a male. Further, they lacked the *indriya* or the vital potency which was


7. For instance, according to the Manusmriti, “Upon the demise of the father and the mother, the brothers should come together and divide the paternal wealth, but they have no property in it while they live.” Supra n. 5 at p. 11.

8. This is clear from the text of Vyasa- “Immovebles and slaves even if they have been acquired by himself cannot be sold without bringing together all the sons. Those who are born, those who are unborn and those who are in the womb, all look for maintenance; there is no gift or sale permitted.” Supra n. 5 at p. 13.

9. For instance, according to Prakasha, “In the case of immovable property... even though self acquired, there shall be no giving or selling without the consent of all the sons.” Supra n. 5 at p. 14.

10. For example, Katyayana says that “grandfather’s property shall belong equally to the father and son.” Supra n 5 at p. 15.

considered essential for dealings with Indra and other *devas*. Consequently, it was asserted in a later Vedic text that they were non-sharers. This was interpreted to mean that they could neither inherit nor take property on partition of the family wealth. In contrast to this, the right of a male coparcener was based on his ability to offer the funeral cake to the common ancestor. It was only a son, a grandson or a great-grandson who could offer spiritual salvation by the performance of funeral rites.

**The Subsequent Undermining of the Concept**

In an attempt to improve the property rights of women, the legislature started undermining the classical institution of coparcenary. For instance, the Hindu Women’s Right to Property Act 1937 allowed a widow to step into the shoes of her husband in respect of his undivided share in the coparcenary, and hence the operation of survivorship was postponed till her death. Moreover, though the widow was not a coparcener, she hitherto became entitled to certain rights previously available only to coparceners, like the right to demand a partition. The institution came close to extinction under the Hindu Code Bill wherein the B.N. Rau Committee had proposed the abolition of the Mitakshara coparcenary and with it the concepts of survivorship and right by birth. However, due to the furore that this proposal generated it was not incorporated in the HSA. The Mitakshara coparcenary was retained though under Sections 6 and 8 changes were effected in it. Survivorship was no longer the general rule. Where the deceased left behind female class I heirs, or male heirs claiming

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15. *Id.* at p. 861.
through female class I heirs, or where the deceased had disposed of his undivided interest through a will, the doctrine of survivorship was inapplicable. Thus the concept of a son’s right by birth in the father’s share got diluted.

Daughters as Coparceners

The Transformation

The classical notion of coparcenary underwent a radical change with the inclusion of daughters as coparceners, first in certain States, and then at a national level. Thus, the religious and spiritual basis of a coparcenary that admitted only males was undermined and subsequently transformed by the legislature.

While the ancient law givers had given coparcenary rights to only males, they had safeguarded the position of women by way of stridhana. With time this concept degenerated itself into dowry and the daughter lost control over the property, which was now presumably given on her behalf, and for her happiness, to the husband and his relatives. Consequently, the exclusion of daughters from the coparcenary property became a source of acute hardship and discrimination.

The idea of including daughters as coparceners was mooted as early as in 1945 in statements submitted by several individuals as well as groups to the Hindu Law Committee, and just prior to the enactment of the HSA

17. Ss. 6, 8 and 30 of the Hindu Succession Act, 1956.
18. These States were Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka.
20. Stridhana refers to that property which is acquired or owned by a woman and over which she has absolute control, subject to a few exceptions. Supra n. 14 at p. 874.
it was even debated upon in the parliament.\textsuperscript{22} But it was much later that this proposition came to be recognised in four Indian States, with Andhra Pradesh taking the lead, and daughters were made coparceners through State amendments made to the HSA.\textsuperscript{23}

The avowed objects of these State Amendment Acts, as evident from their preamble, was twofold\textsuperscript{24} - Firstly, to realize the constitutional mandate of equality before law enshrined \textit{inter alia} in Articles 14 and 15. The exclusion of the daughter from participation in coparcenary ownership, merely by reason of her sex, was found to be contrary to it. It may be noted that this was a highly progressive step given the fact that certain High Courts had held the exclusion to be not violative of Article 15.\textsuperscript{25} Secondly, the provision was intended to eradicate the practice of dowry which was believed to have stemmed from this exclusion.

\textit{Salient Features of the State Amendment Acts}

The amendments conferred the following: (1) a right by birth in coparcenary property on daughters remaining unmarried on the date of the commencement of the respective amending Acts. Such daughters were thereafter made subject to the same rights and liabilities as a son. It was held that the daughter was to be treated as a coparcener from the date of

\begin{itemize}
\item \textsuperscript{22} \textit{Supra} n. 16 at p. 2155.
\item \textsuperscript{23} Ss. 29A, 29B and 29C of the Hindu Succession (Andhra Pradesh Amendment) Act, 1985, the Hindu Succession (Tamil Nadu Amendment) Act, 1989, and the Hindu Succession (Maharashtra Amendment) Act, 1994. See also Ss. 6A, 6B and 6C of the Hindu Succession (Karnataka Amendment) Act, 1994. Hereinafter referred to as the [State] Amendment Act.
\item \textsuperscript{24} See for instance the Preamble of the AP Amendment Act.
\item \textsuperscript{25} See for instance, \textit{Nalini Rajan v. State}, A.I.R. 1977 Pat. 171 where the Patna High Court held: "although a daughter can be a member of the Hindu Undivided Family she cannot be given the status of a coparcener in a coparcenary, even after the commencement of the Constitution of India, and that by itself cannot be said to attract the constitutional inhibitions contained in Article 15."
\end{itemize}
her birth. Hence, she could challenge any alienation or gift made during the period between her birth and the commencement of the Act.\(^{26}\) However, if a partition had already been effected before the commencement of the Act, the above rule was inapplicable. A ‘partition’ for the purposes of this provision had to be a partition by metes and bounds.\(^{27}\) Where in a partition suit, only a preliminary decree has been passed, and not a final one, the amendment would have the effect of varying the shares of the parties in the preliminary decree.\(^{28}\)

(2) It retained the concept of survivorship but it operated only when the daughter died intestate leaving behind no child, or child of a pre-deceased child. If she did leave behind such an heir, the principle of notional partition was to apply in order to determine the shares. Therefore, if the daughter had died before a partition, the share that would have been allotted to her on partition, was to be allotted to her surviving child, and in the absence of a surviving child, it had to be allotted to the child of such pre-deceased child. When the interest of the intestate daughter devolved upon two or more heirs, and anyone of such heirs proposed to transfer his or her interest in the property, the other heirs were given a preferential right to acquire the interest proposed to be transferred.

**Legal Effect of the Amendments**

The State Amendments make a distinction between daughters who got married prior to the date of commencement of the Act and those who had remained unmarried. The implicit reason appears to be that a married daughter would probably have got dowry at the time of her marriage.\(^{29}\)


But this is a rebuttable presumption. The dowry may or may not have been given.\(^{30}\) Also, dowry is a one time settlement that generally consists of expendable or movable property. Most of it is spent on extravagant display which supposedly enhances the status of the family.\(^{31}\) Its value cannot be compared with that of immovable property.\(^{32}\) Further, it has been pointed out that weddings of both sons and daughters are conducted on an equally lavish scale, and that even boys receive gifts which may be equivalent in value to those received by girls. Furthermore, sometimes even daughters-in law get gifts.\(^{33}\) Thus there is no rational basis for the exclusion of married women.

By virtue of being a coparcener, a daughter may also become a *karta*. The capacity of women to act as *de facto* managers of joint family property, in certain contingencies, had been recognized in the *Dharmasastras*\(^ {34}\) as well as by the courts.\(^ {35}\) These amendments confer a *de jure* recognition on the ability of a woman to act as *karta*.

Under traditional Hindu law, a religious or spiritual duty was cast on sons to discharge the debts of the father so as to save his soul.\(^ {36}\) Over a period of time, this pious obligation got converted into a strict legal obligation and the son was made liable to the extent of his undivided interest

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30. B. Agarwal, "Far From Gender Equality", 20 (2) *Lawyer's Collective* 16 (2005) at p.17
32. *Supra* n. 30.
33. See the comments made by Shrimati D. Purandeswari in the Lok Sabha. Fourteenth Lok Sabha Debates <http://loksabha.nic.in> (visited on March 16, 2006).
35. For instance, see *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree*, 6 M.I.A. 393.
36. *Supra* n. 2 at p. 311.
in the coparcenary. Now that daughters have an equal interest in the coparcenary property and, as per the Act, are to be subject to the same liabilities as sons, it appears that they should be held equally liable. But whether this liability of discharging the father's debt can be deemed to be a pious obligation is uncertain, given the religious connotations attached to the doctrine.

The retention of the principle of survivorship, in the absence of a child, or a child of a pre-deceased child, ensures that the coparcenary property acquired from the natal family does not go to the husband or his heirs. However, there is an anomaly in the wording of the provision which can be interpreted to mean that where the intestate female coparcener is survived by a child, or a child of a pre-deceased child, the provisions of Section 15 of the HSA would apply. Accordingly, the husband would then share equally with the children or the children of the pre-deceased children.

Following the above criticism, if the interest has devolved as per the provisions of Section 15 of the HSA, and subsequently one of the heirs, say the child or the child of a pre-deceased child, wishes to transfer his or her share, the husband along with the other heirs, would have a preferential right to acquire it. The purpose behind giving preferential rights is to prevent fragmentation of the estate and to avoid entry of strangers into the family business. This purpose may be defeated if the husband is given preferential rights.

37. Supra n. 3 at p. 443.
38. Supra n. 29 at p. 35.
39. S. 29B, introduced by the A.P. Amendment Act, reads: "Where a female Hindu dies ...having at the time of her death an interest in a Mitakshara coparcenary property, her interest in the property shall devolve by survivorship" "...Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased shall devolve by testamentary or intestate succession as the case may be, under this Act, and not by survivorship." Identical provisions are present in the other three State Amendment Acts as well.
40. Supra n. 5 at p. 100.
Changes Introduced by the Amendment of 2005

In May 2000, the Law Commission of India recommended the amendment of the HSA along the lines of the State Amendment Acts. However, while the State Amendments had been silent as to the pious obligation of a daughter, the Commission proposed abolition of the concept of pious obligation itself.\(^41\) The most significant recommendation was the retention of the classification between married and unmarried daughters, on the ground that even though the gifts received by the daughter at the time of marriage may not be commensurate with the son's share, they are often quite substantial.\(^42\) Fortunately, the Parliament chose to eliminate this distinction. Accordingly, a daughter married prior to the Central Amendment is as entitled to a right by birth in the coparcenary as an unmarried daughter.

The Bill drafted by the Law Commission had proposed that on the death of a Mitakshara coparcener, his interest should devolve by testamentary or intestate succession, as the case may be, under the HSA, and not by survivorship. Thus, unlike the State Amendments, under the Central Amendment, in every case where a female coparcener dies intestate, Section 15(1) of the HSA would be attracted. Under the said section, devolution is more favourable to the heirs of the husband, sometimes even when the property that is devolving was acquired from the natal family.

Status of the State Amendments after the Central Amendment

Both the Central Act and the State Amendment Acts were enacted under entry 5 of the concurrent list of the seventh schedule to the constitution. According to the rule of occupied field, when two statutes


\(^{42}\) Ibid.
pertain to the same subject matter, but when Parliament intends to make its enactment a complete code and evinces an intention to cover the entire field, the State law whether passed before or after would be overborne on the ground of repugnancy.\textsuperscript{43} This is so even where obedience to each of them is possible without disobeying the other.\textsuperscript{44} Thus the Central Amendment can be said to have superseded the State Amendments, and the amended Section 6 of the HSA represents the current legal position with regard to the coparcenary rights of daughters.

\section*{Daughters as Coparceners : Legal Issues}

\subsection*{A. Whether the Daughter's Children are Coparceners Along With Her?}

A literal interpretation of Section 6 would entitle the children of female coparceners to claim a right by birth in their mother's interest in the coparcenary.\textsuperscript{45} This is due to the fact that the section deems the daughter of a coparcener, and a son of a coparcener has a right by birth in the coparcenary property, provided he is not separated by more than four degrees from the common ancestor. Further, Section 6(1) provides that any reference to a coparcener would be deemed to include a reference to a daughter of a coparcener. Thus the daughter of a female coparcener would also be deemed to be a coparcener.

\begin{thebibliography}{99}
\bibitem{45} See P.P. Saxena, \textit{Family Law Lectures}, LexisNexis Butterworths, New Delhi, Vol. 2 (2004), p. 137. She feels that the children of a daughter would also be coparceners, and thereby also members of the mother's natal family. This remark was made in the context of the State Amendment Acts which are substantially similar to the present Section 6 and the researcher feels that this position can be applied to the latter provision as well.
\end{thebibliography}
Alternatively, it may be argued that Section 6 does not confer a right by birth on the children of a female coparcener. A right by birth exists primarily in the context of ancestral property. Ancestral property is the property inherited by a Hindu from his father, father's father, or father's father's father. Section 6 merely enables a daughter, to stake a birthright in such ancestral property. In the hands of the daughter the property would not be ancestral property as against her children, and hence they do not have a right by birth in it. Before partition she would hold it as joint tenants with the other coparceners and on partition it would become her separate property. Further, a combined reading of the Statement of Objects and Reasons, the Law Commission Report on the point, as well as the Parliamentary debates, shows that the mischief sought to be redressed was the discriminatory practice of allowing only males to claim a birthright in the coparcenary property. Thus it is primarily the daughter whose interest is sought to be protected and not her children. Their interests would remain protected in their father's family.

According to the well established rules of statutory interpretation, where more than one interpretation is possible, effect must be given to that interpretation which suppresses the mischief and advances the remedy. This rule is known as ‘purposive construction’ or ‘mischief rule.’ Applying this rule to the instant case it may be argued that the

46. Supra n. 3 at p. 324.
47. Supra n. 3 at p. 315.
48. Supra n. 3 at p. 328. A maternal grandfather would not be an ancestor.
50. This rule was laid down in Heydon's case, 76 E.R. 637. According to it, one needs to consider the following questions (i) what was the law before the making of the Act, (ii) what was the mischief or defect for which the law did not provide, (iii) what is the remedy that the Act has provided and (iv) what is the reason of the remedy. And any reference to a male Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.
scope of Section 6 should be confined to making daughters coparceners, and not their children.

Finally, it is submitted that this interpretation would also avoid the strange situation where the children of a female coparcener become coparceners in two families simultaneously, and maybe even become kartas of two families at the same time. Even though it is possible to thus interpret the section, yet it would be advisable to specifically amend it.51

B. Daughters as Kartas

The powers of a karta are founded on his being an ‘owner’ of coparcenary property, as he binds himself by all proper acts which bind his coparceners also.52 Thus under traditional Hindu law only a coparcener could become a karta and this view was subsequently endorsed by the Supreme Court.53 Proceeding on this logic, after the amendment, daughters could be able to become kartas. Yet it has been noted that there is a general reluctance to make them kartas.54

However, it can be justified on the grounds of practical difficulties as a daughter, on marriage, moves to her matrimonial home. But, it has been contended that this argument is hardly ever used when the son decides

51. That S. 6(1) should be read as follows: “
   “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 male coparcener shall,-
   (a)...
   (b)
   (c)...”
   And any reference to a male Hindu Mitakshana Co-parcener shall be deemed to include a reference to a daughter of a coparcener.
52. Supra n. 2 at p. 260.
54. Supra n. 41.
to settle elsewhere. Aspersions are also cast on her ability to manage the property. Since mothers have been allowed to act as *de facto* managers of joint family property in the past, there is no reason why there should be any reluctance to make a daughter a *karta*. If the daughter is incompetent, as in the case of an incompetent male *karta*, here also the other coparceners can demand a partition.

C. Devolution of the Share of an Intestate Female Coparcener

Since the new amendment has abolished the concept of survivorship altogether, on the death of any coparcener the rules regarding testate or intestate succession, under the Act, are attracted. The scheme of intestate succession to females under Section 15 of the HSA tends to favour the heirs of the husband over her blood relations. Further, the husband is clubbed along with the children in the first category. Thus in every case where a female coparcener dies intestate, the husband would inherit equally with the children. This provision seems patently unfair.

The provisions of Section 15(2) show that the legislature has considered the source from which a female inherited the property significant for the purpose of devolution of that property. The object of this provision is to ensure that the properties do not pass into the hands of those to whom justice would demand they should not pass. This principle should logically apply in the case of devolution of the interest of a female coparcener in her natal family. However, Section 15(2)(a) applies only to property ‘inherited’ from the father and cannot be extended to a share

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55. *Supra* n. 30.
56. *Supra* n. 41.
57. *Supra* n. 29 at p. 34.
58. *Supra* n. 3 at p. 378.
59. See S. 15(1) where the parents are placed after the heirs of the husband.
acquired by right, on birth. The disapproval against devolution of father’s property on the husband or his heirs was so strong that the latter are not just denied a preferential status, but are altogether excluded from the purview of Section 15(2)(a).

It must be remembered that Section 15 was framed at a time when daughters did not enjoy coparcenary rights. It has been held that in interpreting an Act of Parliament “it is proper, and indeed necessary, to have regard to the state of affairs existing, and known to the Parliament to be existing, at that time. It is a fair presumption that Parliament’s policy or intention is directed to that state of affairs.” 61 But when a fresh set of facts, having a bearing on policy, comes into existence, the courts have to consider whether they fall within the parliamentary intention. 62 Accordingly, now ‘handwriting’ includes typewriting, ‘telegraph lines’ include ‘electric lines’ et al. 63 Analogously, it may be argued that ‘inherited’ in Section 15(2)(a) can be expanded to include the case of a daughter’s interest in the coparcenary. However, this is not a very strong argument. 64 There is a need to specifically amend Section 15(2)(a) so that the object manifest in it is protected.

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62. Ibid.
64. This argument can be countered on the ground that at the time of introducing the amended S. 6 the biased order of devolution was discussed by at least two members in the Lok Sabha, and had the legislature wanted it could have amended S. 15. However, the discussion was in the context of the general preference that is given to the husband and his heirs over the blood relations. The specific consequences arising out of making daughters coparceners were not debated. See the comments made by Professor M. Ramadass and Smt. C.S. Sujatha in the Lok Sabha. Fourteenth Lok Sabha Debates <http://loksabha.nic.in> (visited on March 16, 2006).
D. Blending

The theory of blending under Hindu law involves a process of wider sharing of one's own properties by allowing the other members of the family the privilege of common ownership and common enjoyment of such property, without renouncing one's own interest in favour of others.65 This implies that only a coparcener can blend his property. A female was not permitted to do so.66 However, the introduction of daughters as coparceners would now enable them to blend their property. All other categories of females, like a wife, would be still barred from doing so.

E. Possibility of Reunion

The cardinal rule in the case of reunions is that only parties to the original partition can reunite. Now that daughters have been made coparceners and can become parties to a partition, can they also reunite? It is to be noted that the subject of reunion falls outside the purview of the HSA and hence would be governed by the old Hindu law.67 According to the Mitakshara school, once a (male) coparcener has separated, he can reunite only with his father, brother or paternal uncle, but not with other relations, even though they were parties to the original partition.68 From this it cannot be conclusively said whether a reunion between a father and daughter, brother and sister, or niece and uncle is possible. Since a daughter has been made a coparcener now, she should be able to reunite. On the other hand, reunion had traditionally implied a reunion between brothers, or father and son, or nephew and paternal uncle. It is submitted that the former view is more in consonance with the spirit of the amended Section 6.

66. Ibid.
67. Supra n. 29 at p. 36.
68. Supra n. 3 at p. 545.
Criticisms Against the Amendment

1. If a partial partition with respect to some coparceners had been effected before the commencement of the new provision, their share would remain intact. On the other hand, those who remained undivided would suffer a reduction of share with the entry of the daughter in the coparcenary. This is a valid criticism but it seems unavoidable.

2. It has been repeatedly argued that where wives do not get a share on partition, if daughters are made coparceners, the shares of the former would further diminish. This is because with the introduction of the daughter as a coparcener, the father’s share, and therefore the quantum available for the purposes of notional partition, reduces. Thus the impact of the amendment on wives can be understood with reference to two classes of wives, viz (i) those who belong to States like Maharashtra, where wives are given a share on partition. Here the share of the widow will decrease but it will now become equal to that of a son or a daughter. (ii) Those who belong to States like Andhra Pradesh, where wives do not receive a share on partition. Here the widow gets a share only on notional partition, and after the amendment, this share would be smaller. Thus, it is argued that while the amendment will reduce the inequality between sons and daughters, it would bring about inequality between a daughter and a widow.

69. *Supra* n. 29 at p. 30.


Similarly, the share of the deceased’s mother would also depend on the State to which she belongs. Other female Class I heirs will also get a diminished portion.\textsuperscript{72} It has been contended that justice cannot be secured for one category of women at the expense of another.\textsuperscript{73} Further, the goal of uniformity in law is seen impaired.\textsuperscript{74} However, it is submitted that, this is not a very valid criticism. The wives would also be entitled to an interest in their respective fathers’ shares. So, even though their share on notional partition would decrease, yet at the same time they would get property from another source altogether. Further, the endeavour at this juncture is to remove discrimination between sons and daughters. In the long run all women will benefit.

3. With daughters becoming coparceners, they may become *kartas* in preference to mothers, even when they lack experience and move to another family on marriage.\textsuperscript{75} However, the same argument can be adduced in case of a son as well.

**Commonly Suggested Alternatives**

Most of the critics of the new provision want to abolish the concept of right by birth itself. However, their solutions proceed along two trajectories-some want to retain the concept of joint family but replace the Mitakshara system with the Dayabhaga one.\textsuperscript{76} Others want to remove the joint family system itself, as in Kerala.\textsuperscript{77} The latter solution was considered and rejected by the Law Commission on some very valid grounds. It was realised that if the joint family system, as it then stood

\textsuperscript{72} Supra n. 30.
\textsuperscript{73} Indira Jaising, *supra* n. 70.
\textsuperscript{74} Supra n. 29 at p. 38.
\textsuperscript{75} Supra n. 29.
\textsuperscript{76} Supra n. 5 at p. 126.
\textsuperscript{77} See the Kerala Joint Hindu Family (Abolition) Act 1975.
with only male coparceners was abolished, then all the male coparceners would hold the property as tenants-in-common and women would not get anything more than what they were then entitled to.\textsuperscript{78} In Kerala, this problem would not have arisen because under the Marumakkattayam law that prevailed there even daughters were coparceners. Accordingly, the Law Commission recommended making daughters coparceners.

The common limitation of both the above suggestions is that they fail to protect the daughter, and even a wife, in cases where the deceased has made a testamentary disposition of his share. It is true that restrictions may be imposed on the right to testamentary disposition of property, yet it is debatable how beneficial that will prove to be. Making daughters coparceners is a better solution since it protects their interest right from birth. Since the father does not have an absolute right over the property, he cannot recklessly alienate or dispose of property. Further, alienations not made for specified purposes like legal necessity, would be open to challenge by daughters.\textsuperscript{79}

Conclusion

The amendment of Section 6 in 2005 is a significant step in the recognition of the property rights of women. It is submitted that the retention of the concept of right by birth with the inclusion of daughters as coparceners is more conducive to the protection of their interests than the abolition of the joint family system itself. Henceforth, they would be protected against the consequences of testamentary disposition of the coparcenary property by the father. If the Dayabhaga system had been adopted, or the joint family system had been abolished, it would necessarily

\textsuperscript{78} Supra n. 41.

\textsuperscript{79} For instance, see Vanimisatti Anil Kumar v. Jayavarapu Krishna Murthi, A.I.R. 1995 A.P. 105. In this case the father had executed an agreement of sale. After the State Amendment Act his daughters were allowed to challenge the alienation in their own right as coparceners. See further supra n. 24.
have required imposition of restrictions on the testamentary power of a person which is violative of individual freedom. Further, now if a daughter’s marriage breaks down, then being a member of her natal joint family, she would be able to return to it as a matter of right, rather than on the sufferance of her relatives.

However, the amendment is not a holistic one. It does not take into account the consequences of making daughters coparceners in terms of the other provisions of the HSA. For instance, under Section 15, the husband and his heirs would be entitled to inherit property to which they should not be equitably entitled. Moreover, under Section 22 they would even get a preferential right to acquire any interest sought to be transferred by a co-heir. It is submitted that there is a need to amend these provisions so as to bring them into consonance with the spirit of the original sections, which were mainly intended to prevent an outsider from acquiring an interest in family property.

On a plain reading of the Section. It cannot be conclusively determined whether the children of the daughter would also acquire a right by birth in the property of their maternal ancestors. It remains to be seen how the courts will interpret these provisions—whether they will adopt a purposive interpretation in keeping with the object of the amendment, or a more literal version. However, there is a limit to judicial interpretation. To rectify the anomalies, steps need to be taken by the legislature itself.