JOURNAL OF THE INDIAN LAW INSTITUTE

VOLUME 62 JULY-SEPTEMBER 2020 NUMBER 3

EQUAL PROPERTY RIGHTS OF DAUGHTER UNDER HINDU LAW: A SOCIO-LEGAL STUDY

*Vijender Kumar**

Abstract

Daughter brings bucket full of virtues in the family. She needs care, love and affection from her parents, family members, relatives, and society. She blooms into a career-oriented woman; who also gives equal focus to her personal life. After marriage, she leaves behind her parents, maidenhood, surname and sweet memories. The society presumes her ties to her natal family are severed on marriage and replaced by her matrimonial home. In such situations, given her unequal equilibrium in matrimonial home and the property accumulated jointly by spouses, the law needs to protect her humanly dignified existence with property rights. Law has strived to grant daughter equal property rights in her natal family; however, this right in her family of adoption and matrimonial home has not received much attention. This paper attempts to analyse existing laws, judicial decisions and their socio-economic impact to bring out existing inequality and unequal treatment towards daughters.

I Introduction

THE ANCIENT Indian legal philosophy is peculiar in its emphasis on 'duty' rather than on 'right'. In daily life, an individual was ordained to perform his duty conscientiously and diligently. The same rule applied to the state. This principle was based on the theory that rights flow from duty and not vice-versa.[1] Hence, the emphasis was on 'duty'. As M.K. Gandhiji rightly opined, '*take care of your duties, rights will take care of themselves*'. A person who was in a privileged position in the society was expected to discharge his duties more seriously and sincerely. The kings and the brahmins were punished more severely than other ordinary offenders on account of their exalted political and social position.[2] According to ancient Hindu law, not only the kings, but the judges also[3] could not go unpunished on account of wanton and negligent judgment,

* Professor of Law and Vice-Chancellor, Maharashtra National Law University, Nagpur.

1 Ved Prakash Varma, *Philosophical Reflections: Essays on Socio-Ethical Philosophy And Philosophy Of Religion* 34(1st edn. 2005).

2 U.C. Sarkar, The Law Review, 5; See "*Introduction*" by S.K. Ayangar *To Hindu Administrative Institute* (V.R.R. Dikshitar 32, 33(1958); See also, Vishnu, 33, 70; *Kautilya Arthasastra*, I. 29.

3 Manu, VIII. 8, *available at*: https://www.sacred-texts.com/hin/manu/manu08.htm (last visited on Aug. 10, 2020).

if any. Thus, the kings and the judges were also not above the law and even they could not claim any immunity from the operation of the law of the country. But, in the coeval society, norms of life have changed with new outlook of rights' oriented approach at individual, society and state level. It is the ingenuity of the Indian thinkers, that they could solve the problem of inequality and lay the foundation of a real democratic society. In the absence of metaphysical doctrine of non-dualism, such an approach was not possible in the western thought. The western sociologists, therefore, found it difficult to put forth any satisfactory solution of the problem of inequality, and in their enthusiasm, accepted a fact contrary to reason and experience, that all men are equal: Is there equality among human beings in any country? If there would have been equality, there would not have been the ruler and the ruled. Principle of equality is the basis of both, social justice and democracy. Manu has laid down rules for the realisation of these two important aims of society. He divided the whole social order into five groups.[4] This classification is based on function. The unit of the society was not to be a single individual, but men and women were to form a social unit of Hindu social order. Unlike the other legal systems of the world, the Hindu society started with the idea of collectiveness and it is the unique characteristic of the social system of Manu.[5] In the contemporary society, equality is governed by the provisions of the Constitution of India. Article 14 reads, "*the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*". The kind of equality guaranteed by the Constitution seems to be more materialistic in nature rather than internal and intrinsic, which is the core of Hindu jurisprudence, wherein a person is governed by his/her inner-self, spiritual virtues and not materialistic norms.

In the contemporary society, individual autonomy and freedom with regard to life style, intellectual assimilation and freedom of speech and expression must be regarded in due process of social norms and legal provisions. To think about holistic growth and peaceful working of a person, irrespective of gender or religion, one must have sufficient property to survive respectfully. Further, to understand the concept of 'property', whether self-acquired, ancestral or coparcenary among Hindus in India, which was governed by the provisions of either the Mitakshara or Dayabhaga law until 1956, and after 1956 is governed by the Hindu Succession Act,1956 one must have a fair understanding of Hindu law on property. Some of the areas of Hindu law relating to property are still uncodified and governed by these two systems of law. On the other hand, succession- intestate or testamentary, among Hindus, which was previously governed by the Mitakshara or Dayabhaga law, is now governed by the statutory law *viz.*, the Hindu Succession Act, 1956 (2005) and the Indian Succession

4 M.V. Patwardhan, *Manusmriti: The Ideal Democratic Republic of Manu* 79 (1st edn. 1968).

5 Manu, IX, 45, *available at*: https://www.sacred-texts.com/hin/manu/manu09.htm (last visited on July 20, 2020); Vijender Kumar, "*Oriental and Occidental Approaches to Law*" (2005) 5 SCC (J) 17.

Act, 1925 respectively. Hence, reliance on original text of the Mitakshara or Dayabhaga laws still plays a vital role in securing property rights, even in the contemporary Hindu society. Daughter under Dayabhaga law enjoys all property rights in both the families *i.e.,* family of birth and family of adoption, as the redrafted/amended section 6 of the Hindu Succession Amendment Act, 2005 applies only to coparceners, who are governed by the Mitakshara law. Therefore, in case of an adoption of a daughter by a Hindu, who is governed by Dayabhaga law, by virtue of her adoption, she does not lose any property rights in the family of her adoption, if such adoption fulfills all requirements as laid down under Hindu Adoptions and Maintenance Act, 1956. While tracing equal property rights for daughters who are governed by Mitakshara law, in the family of birth, adoption and marriage, in the existing laws among Hindus, certain issues come up for the consideration. *First*, an adopted daughter needs to be considered as a coparcener in the family of her adoption in the same way as a natural born daughter is considered under section 6 of the Hindu Succession (Amendment) Act, 2005. *Secondly*, while by virtue of section 6 of the Hindu Succession (Amendment) Act, 2005, a natural born daughter is made coparcener along with her father and brother in the family of her birth, but she is not provided with such status of being a coparcener along with her husband and father-in law in the family of her marriage. Hence, she should be a coparcener along with her husband, owing to the replacement of her original coparcenary ties in her family of birth with those towards her family of marriage. *Finally*, there is a dire need to introduce and recognise joint family property between the wife and the husband, to be known as 'matrimonial property', in which both spouses will have an equal share during their lifetime. Upon the death of either of the spouses, the said property shall devolve on their survivor(s) as per the law of intestate or testamentary succession, as the case may be. Further, on the dissolution of marriage, the said property shall be divided either equally or proportionately, depending on their respective contributions.

II Issue-I

Adoption under Hindu law, ancient/ Shastric or modern, has been considered as one of the ways to get membership in a Hindu joint family. However, under ancient Hindu law it was only the son who could be adopted. One of the reasons could be as the son was required to discharge religious duties, including offering oblation towards the ancestors. For the first time, through the Hindu Adoptions and Maintenance Act, 1956, a reformative and equitably drafted legislation, daughter was considered the subject matter of adoption among Hindus and thereafter, son and daughter, both were considered as the subject of adoption in equal terms. Though the adoption of a daughter could have no such religious significance towards discharging such duties, yet she has been considered for adoption. The reference to 'son' and/ or 'daughter' can be seen in principal clause of sections 7 and 8 of the said Act under the title "*Capacity of a Male Hindu to take in Adoption*" and "*Capacity of a Female Hindu to take in*

Adoption" respectively. However, section 10 of the said Act uses the word 'person' under the title "*Persons who may be Adopted*", which includes son and daughter both within its scope of context with certain conditions as provided in sub-sections (i), (ii), (iii) and (iv) of section 10 of the said Act. Further, section 12 of the said Act uses the word 'child' for the purpose of effect of a valid adoption on the property. Whereas this section provides that "*an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family*".[6] Considering all facets of terms son, daughter, person or child, as referred earlier, it can be comprehended that daughter is a competent person to be taken in adoption among Hindus and she gets all rights including property in the family of adoption. Hence, there is a sense of equality among brother and sister; father, son and daughter; uncle, nephew and niece and property is to be divided equitably among these relations after the Hindu Adoptions and Maintenance Act, 1956 came into force.

As consequential to the introduction of a daughter for adoption under the codified Hindu law, she has been considered as Class-I heir to her adoptive parent(s), grandparents and great grandparents. It can be seen in the Schedule which provides a list of relatives mentioned as Class-I and Class-II heirs, appended to the section 8 of the Hindu Succession Act, 1956 where 'daughter' finds a place as Class-I heir. Further, clause (f) of sub-section (1) of section 3 of the Hindu Succession Act, 1956 defines the term 'heir' which reads as "*any person, male or female, who is entitled to succeed to the property of an intestate under this Act*". Furthermore, clause (g) of sub-section (1) of section 3 of the Act defines the term 'intestate' which reads as "*a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect*". Hence, an adopted daughter is a legal heir to her adopted parents and gets property from them on intestacy.

Redrafted section 6 of the principal Act, *viz*., the Hindu Succession Act, 1956 in 2005 proclaims daughter of a coparcener, who is governed by Mitakshara Hindu law, which reads as "*by birth become a coparcener in her own right in the same manner as the son; have the same rights in the coparcenary property as she would have been if she had been a son; 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*".[7] So, a plain reading of the statutory provision makes daughter of a coparcener entitled to hold special status in the family of her birth as 'coparcener', which brings her a bucket full of property rights. She enjoys these property rights with full ownership, though an interest from the coparcenary comes to her as 'incidents of coparcenary ownership'

---

6 The Hindu Adoptions and Maintenance Act, 1956, s. 12.

7 The Hindu Succession (Amendment) Act, 2005, s. 6 c. (1)(a)(b) and (c).

with a tag capable of being disposed of by her through testamentary disposition,[8] which she enjoys not only during her lifetime, but also on her death.[9] On her intestacy, the said property devolves on her relatives as per the provisions of the Hindu Succession (Amendment) Act, 2005. However, the daughter as referred in section 6 of the Act of 2005 becomes a coparcener only 'by birth'. The reference of daughter 'by birth' does not include a daughter 'by adoption', who becomes a member of her adoptive family. The said section confers coparcenary status only on a daughter 'by birth' which does not include a daughter 'by adoption'. Therefore, a daughter who is taken in adoption by the adoptive father, mother, or both, does not become a coparcener in the family of her adoption by virtue of amended section 6 of the Act of 2005. Under Shastric Hindu law, an adopted son was considered as good as the son begotten from the lawful wedlock by birth, '*Putrachyavaham*', means that reflection of the *Aurasa* (legitimate) son[10] but under the statutory provisions of the Hindu Succession (Amendment) Act, 2005, the adopted daughter has not been considered as '*Putrichyavaham*', means reflection of the *Aurasa* (legitimate) daughter. Hence, she has not been considered as coparcener in the family of her adoption and consequently, she is not provided with property rights in the family of her adoption, which she was/is enjoying before her adoption in the family of her birth, being coparcener 'by birth' by virtue of section 6 of the Hindu Succession (Amendment) Act, 2005.

Following the aforesaid status and property rights of a daughter 'by birth' and 'by adoption'; who was allowed to be adopted under the provisions of the Hindu Adoptions and Maintenance Act, 1956 and Hindu Succession Act, 1956 permitted her to become an heir in both the situations, *i.e.,* birth and adoption. The Hindu Succession (Amendment) Act, 2005 does not disturb heirship rights of an adopted daughter; however, it does not confer status of a coparcener and property rights to her. The situation is not favourable to a daughter who is/ has been adopted under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 which was also amended in 2015. The issue becomes more serious in a situation where adoption of a daughter, female child or person, is made by an unmarried Hindu female, to herself, either under the provisions of the Hindu Adoptions and Maintenance Act, 1956 or the Juvenile Justice (Care and Protection of Children) Act, 2015 and creates her own family by adoption; this family is separate from the family of her own birth. In a traditional patriarchal setup of Hindu family system, an unmarried daughter is not permitted to add a member to the joint family of her father, but a son is permitted for the same. So, in a family created by an unmarried Hindu female who adopts a female child/ person, the child so adopted cannot become a coparcener as there is no independent coparcenary to which this adoptive mother is a coparcener. The provisions

8 The Hindu Succession (Amendment) Act, 2005, s. 6 (2).

9 The Hindu Succession Act, 1956, s. 30.

10 Vijender Kumar, *Hindu Law of Adoption*: *Principles and Precedents*, 417(1st edn. 2004).

of the Hindu Succession (Amendment) Act, 2005 provides daughter the status of a coparcener, as being the daughter of the coparcener who is governed by Mitakshara law. It means a daughter becomes coparcener only in the coparcenary of her father and acquires the status which brings her special property rights in the coparcenary property. But, there may be a situation where there is no coparcenary property in existence, though she has confirming status of being a coparcener along with her father and other male coparcener in the family of her birth. Therefore, in a family where only adopted mother is the sole creator of such family and there is no independent coparcenary and/ or its property, an adopted daughter may neither become a coparcener nor get any interest in the coparcenary property. Following equality principle while confirming equal status and/ or right, the Supreme Court in *Voluntary Health Association of Punjab* v. *Union of India*[11] held that: [12]

> a female child is entitled to enjoy equal right that a male child is allowed to have. The constitutional identity of a female child cannot be mortgaged to any kind of social or other concept that has developed or is thought of. It does not allow any room for any kind of compromise. It only permits affirmative steps that are constitutionally postulated. Be it clearly stated that when rights are conferred by the Constitution, it has to be understood that such rights recognised regard being had to their naturalness and universalism. No one, endows any right to a female child or, for that matter, to a woman. The question of any kind of condescension or patronization does not arise.

For example, let's take the case of Ekta Kapoor, an unmarried Hindu female, who created her own family with a 'female child' through surrogacy, though the male involved in the surrogacy process who offered his semen to create embryo is not known to the general public. There is a strong presumption that, 'neither a man alone nor a woman can create a child on his or her own'. But, for our academic research purpose, it is imperative to understand whether the female child who has come in this world as a member of her family can be a coparcener along with her mother as that of a natural born child to both the parents. After having due analysis of the existing law on the issue, it can safely be narrowed down that the said female child would be an heir to Ekta Kapoor, but not a coparcener in her 'Single Parent Family'. On the contrary, let's take the case of Karan Johar, an unmarried male Hindu, who also had twins (son and daughter) through surrogacy and added them into the family to which he himself is a member. In the case of Karan Johar, the female involved in the surrogacy process who offered female egg to create an embryo to him is also not known to the general public. However, for all practical purposes, in a patriarchal society these children would

---

11 AIR 2016 SC 5122.

12 *Id*. at 5136.

have the status of an heir and coparcener and would acquire property rights as that of any natural born children in a normal course of things.

III Issue-II

Apart from birth and valid adoption, marriage is another mode of getting membership in a Hindu joint family under Hindu law. Traditionally, among Hindus a daughter is given in marriage by her parents, family members and relatives to the qualified groom by observing certain customary and religious rites and ceremonies, and on marriage she moves to the next family. Therefore, on marriage she becomes a member of the family of her marriage for all purposes and her membership in her natal family is deemed to seize. Therefore, the issue demanding contemplation by the law and policy makers, legal adjudicators, executors, and academia is about making 'daughter-in law' a coparcener along with her husband and the father-in-law in the family of her marriage. From the time, daughter of coparcener governed by Mitakshara law is made coparcener 'by birth' through the Amendment Act of 2005, along with her father and brother in the family of her birth, there seems to be an achievement of increased percentage in the happiness index among the daughters, as they have been provided with coparcenary property rights at par with the male coparceners. This step of law makers has been well appreciated, though it was a long pending demand from the jurists, academia, women organisations and social workers. Going into depth of the issue, one finds that in normal course of things, a lot of investment is made on a daughter by her family members from birth till marriageable age or until she becomes employable. It is the family of her birth which takes care of her educational, medical and other expenses either from the individual or joint account. Even her marriage expenses are taken care of by the joint account of the natal family. On marriage, a daughter goes to the next family, the family of her marriage and becomes *Sapindagotrajya* of that family. In *Kamesh Panjiyar* v. *State of Bihar*[13] the Supreme Court held that:

> a bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter-in law, but a daughter in fact.

Further, the Supreme Court in *Narendra* v. *K. Meena*[14] held that "*in normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband* ".[15] Looking into the composition of a Hindu joint family, wife by virtue of her marriage to a male member in the family of her marriage becomes a member of the said Hindu joint family and thereafter she contributes in

13 2005 (2) SCC 388.

14 AIR 2016 SC 4599.

15 *Id*. at 4603.

that family during her lifetime. She contributes to the family of her marriage not only in terms of bearing and rearing children, but also economically and socially to the best of her abilities. The existing laws governing property among Hindus, whether ancestral, coparcenary or self-acquired, do not consider 'wife' as equal share holder except being 'widow' and 'widow of a pre-deceased son', who has been considered as Class-I heir as enlisted in the Schedule of Heirs as Class-I heir under section 8 of the Hindu Succession Act, 1956. It means on the death of her husband, she becomes an heir to her deceased husband and in case her husband dies during the lifetime of his father, she being the widow of his (father-in law) predeceased son (husband) becomes Class-I heir to her father-in law, but during the lifetime of her husband she gets nothing as sharer from the property owned by her husband and/or father-in-law, separately or jointly. On the other hand, in the family of her birth, a daughter remains undivided coparcener along with the other male coparceners, though her membership in terms of the Hindu joint family seizes on her marriage and is replaced in the family of her marriage. On marriage, she becomes a member of her husband's joint family, but she does not get the status of being coparcener in that family, whereas she remains undivided coparcener in the coparcenary of her father, uncle, and brothers, wherein her normal membership and rights get suspended on marriage and those rights are replaced in the family of her marriage. The Amendment Act of 2005 has created a new doctrine in the Hindu joint family governed by the Mitakshara law, *viz.*, dual membership, which means that 'the daughter of coparcener governed by the Mitakshara law who is a member by birth in the family of her birth until marriage remains undivided member of her father's coparcenary even after marriage, but on marriage she becomes a family member of her husband and gets no membership in his coparcenary'. For the purpose of determining property rights, the court has made a distinction between normal members and special members of a Hindu joint family and their property rights. In *Thimma Reddy* v. *Chandrashekara Reddy*[16] the court held that the right of a person to claim membership of Hindu joint family or coparcenary is based on the right of succession to joint family property, but there is no bar in claiming an ordinary membership of a family. The word 'family' has a wide connotation and cannot be confined only to a group of persons who are recognised by law as having a right of succession or claiming to have a share. It is for this reason, strangers brought up by original owner treating them as his children can be considered as member of his family, though not member of his joint family.[17]

Further, judiciary looks at daughter and/or daughter-in law in the family of her marriage from different lenses and provides certain rights to her including property. There are some of the decisions referred here for the understanding of the readers on the issue incidental or accidental thereto. In *Jayamati Narendra Shah* v. *Narendra Amritlal Shah*[18]

---

16 AIR 2018 Kant 54.

17 *Id*. at 57.

18 AIR 2014 Bom 119.

the court held that in a Hindu undivided family, only son(s) vertically, and brother(s) laterally, would constitute a coparcenary in a Hindu joint family; their wives may be members of the Hindu joint family but are not coparceners, if the Hindu joint family owns any joint property. The wives of coparceners do not get any interest in the joint property owned and held by coparceners who are co-owners. The wives of the co-owners do not get any interest by virtue of their marriage. It is only a Hindu widow who gets the interest of her husband in the coparcenary or joint family property upon the death of her husband. That interest enables her to claim maintenance and the residence. Only a widow can demand partition of the interest which her deceased husband would have been entitled while he was alive. Consequently, a wife has no share, right, title or interest in the Hindu undivided family in which her husband is a coparcener with his brothers, father or sons, and after the amendment of Section 6 of the Hindu Succession Act in 2005 with his sisters and daughters also. The wife by virtue of marrying a male member of the family of her husband becomes a member of the Hindu joint family of her husband. But, by virtue of being a member in the Hindu joint family of her husband, she cannot get any share, right, title or interest in the Hindu joint property which that family owns. Therefore, a wife cannot demand partition unlike a daughter. She would get a share only if partition is demanded by her husband or sons and the property is actually partitioned. The claim by a wife during the life time of the husband in the share and interest which he has as a coparcener in his Hindu undivided family is wholly premature and completely misconceived. If any bequest is made by the wife under the *Will* which does not show the title of the wife to such property, it will be void in law. In *Meenu Seth* v. *Binu Seth*[19] it was seen that the endeavour of the wife is to take control of the family joint properties and that failure of the wife in the said petition under the Mental Health Act, 1983 will not mean that the wife is in any manner prevented from filing any suit seeking to enforce her right as a member of the joint family, assuming that there exists a Hindu joint family/ Hindu undivided family. Thus, the wife is not in any manner prejudiced as she can always file a suit seeking her rights in Hindu undivided family properties, assuming that there is a Hindu undivided family, and this aspect will only be considered when the wife initiates a civil suit in an appropriate court for appropriate relief.

The above-referred analysis of the factual and judicial matrix makes it clear that position of a daughter-in law is not very well defined in the existing Hindu law with reference to her status being a coparcener, an heir and her interest, shares, co-ownership *etc*., in the family of her marriage. Though she is a permanent member of the family of her marriage; contributes whole life to the best of her abilities in the holistic growth of this family, but she is not conferred the status of being coparcener in this family and gets no interest or share in the coparcenary property; which disentitles her to become a *Karta* or *Manager* in the family of her marriage. As the two conditions must be fulfilled

19 AIR 2018 Del 54.

by a person who wishes to become a *Karta* or *Manager* of the Hindu joint family, *viz*., (i) one must be a permanent member; and (ii) must be a coparcener in the said family.[20] Therefore, not having a confirmed status of a coparcener in the family of her marriage, a daughter-in law cannot be considered to be eligible for *Kartaship* or Managership in her own rights. Therefore, author of the paper earnestly requests the law makers, executors and the protectors to note such an injustice which had been done towards an adopted daughter, who is also governed by the Mitakshara Hindu law in the family of her birth and having status of coparcener and rights in the coparcenary property by virtue of birth, but loses her status and property rights on adoption in the adoptive family for no fault of her own but for the choices made by her parents or the guardian. Hence, she is not only losing her status and rights under the Hindu law, but there is also a violation of her fundamental rights guaranteed under the Constitution of India.

IV Issue III: Daughter's property rights

Daughter in the family of her birth not only gets a membership but also gets property rights as Class-I heir to her father, grandfather and great grandfather and legal heir to her mother. On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Hindu joint family governed by the Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son; have the same rights in the coparcenary property as she would have had if she had been a son; and be subject to the same liabilities in respect of the said coparcenary property as that of a son. Consequently, a daughter born to a coparcener gets special status being coparcener in the family of her birth and this status conferred on her unique property right in the coparcenary property for the first time in the history of Hindu joint family system governed by the Mitakshara law. Hence, this amendment has brought equality among sexes with regards to Hindu joint family property.

Further, the demand of daughter for equal share or interest in ancestral property was first conceded in the erstwhile Andhra Pradesh in 1985. Later on, States of Karnataka, Tamil Nadu and Maharashtra followed the suit. Those amendments were prospective and were made conditional on any partition not having taken place in the family and the daughter claiming a share was not married by that date. In other words, if by the time the amending legislation came into force, a partition had taken place already in the family or the daughter was married, such daughter could not have claimed a share/ interest and disturbed the properties already vested in the other members of the family. By introducing a similar amendment through the Hindu Succession (Amendment) Act, 2005, the Parliament has included these two conditions carefully. When these conditions as contained in the state amendments were questioned before the courts, they were held to be valid and that they did not suffer from the charge of any discrimination or excess favouritism. The courts have further upheld the rule that, any

20 *Commissioner of Income-Tax* v. *Seth Govind Ram,* AIR 1966 SC 2.

amendment which affects the rights of parties already accrued in favour of others, shall not disturb the interests so vested. In a similar situation, the Hindu Adoptions and Maintenance Act, 1956 contained a provision that the rights already vested in the joint family properties shall not be divested in any manner by adoption.[21] It means, that the adoptee, if he/ she has any joint family property vested in him/ her at the date of adoption, he/ she shall carry it along with him/ her to the family of the adoption. Again, by reason of adoption, the adoptee shall not disturb the share/ interest of the members of the family to which he/ she goes as an adoptee. Now, the daughter of a coparcener, who is governed by Mitakshara law, is affirmed as a coparcener in the family of her birth, if she is unmarried by the date of adoption she will naturally carry the share/ interest she has in the natal family to the family of her adoption. In a like manner, she will not disturb the share/interest in the properties vested in the sons and daughters of the family to which she goes in adoption by that date.

In *Pushpalatha N.V.* v. *V. Padma*,[22] plaintiff's father, D.N. Vasantha Kumar, who was the owner of all the suit schedule properties having acquired the same under the registered partition deed on March 29, 1967. He died intestate on December 31, 1984 leaving behind him, his widow, daughter and other legal heirs. All the children after his death succeeded to his estate. They were all in joint possession of the suit properties. The daughter was entitled to 1/5th share in all the suit properties. The schedule property was earning a rent of Rs.1000/- and the entire amount was appropriated by the defendants and no share was given to the plaintiff. Therefore, she was entitled to *mesne* profits to the extent of 1/5th share from the income of the said property. When she was not given her legitimate right in the property, she filed a suit for declaration that she was entitled to 1/5th share in the suit properties for partition and separate possession of her 1/5th share in the suit properties and also for *mesne* profits. The court held that 'the Hindu Succession (Amendment) Act, 2005 has retrospective effect and daughters shall have equal shares at par with sons'.[23]

In *Badrinarayan Shankar Bhandari* v. *Omprakash Shankar Bhandari*[24] the court held that a bare perusal of sub-section (1) of section 6 of the Hindu Succession (Amendment) Act, 2005 would, thus, clearly show that the legislative intent in enacting clause (a) is prospective *i.e.,* daughter born on or after September 9, 2005 will become a coparcener 'by birth', but the legislative intent in enacting clauses (b) and (c) is retrospective, 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

21 The Hindu Adoptions and Maintenance Act, 1956, s. 12(c).

22 AIR 2010 Kant 124.

23 AIR 2010 Kant 124, 147-148.

24 AIR 2014 Bom 151.

September 9, 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) of the Act 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 that heirs of such a deceased daughter can also claim benefits of the Amendment Act.[25]

Further, on examination of amended section 6 of the Principal Act and bearing in mind the words 'on and from commencement of the Hindu Succession (Amendment) Act, 2005' mentioned in section 6, it must follow that the rights under the amended section 6 of the Act can be exercised by a daughter of a coparcener only after the commencement of the Amendment Act of 2005. Therefore, it is imperative that the daughter who seeks to exercise such a right must herself be alive at the time when the Amendment Act of 2005 was brought into force. It would not matter whether the daughter concerned is born before 1956 or after 1956. This is for the simple reason that the Hindu Succession Act, 1956 when it came into force applied to all Hindus in the country, irrespective of their date of birth. The date of birth was not a criterion for application of the Principal Act of 1956. The only requirement is that when the Act is being sought to be applied, the person concerned must be in existence/living. The Parliament has specifically used the word 'on and from the commencement of Hindu Succession (Amendment) Act, 2005' so as to ensure that rights which are already settled are not disturbed by virtue of a person claiming as heir to a daughter who had passed away before the Amendment Act came into force.[26]

In *Jamanbhai Maganbhai Mavani* v. *Bhanuben Maganbhai Mavani*[27] the court held that once the partition was not proved or there was no partition, coparcenary property would continue to have the same character. Such right is saved by the amendment made in provision of Section 6 of the Hindu Succession (Amendment) Act, 2005. On the date of death of the father, if the property remained as coparcenary property and no division or partition was made prior to the amendment; the right cannot be extinguished of the Hindu female in coparcenary property. In this case, no satisfactory evidence was produced before the trial court nor before the high court to show that the property was partitioned prior to the amendment. If the property was not partitioned prior to the amendment, merely, because the father, one of the coparceners of the property had expired, such right cannot be said to extinguish nor it be said that the right of partition had accrued only on the death of the father. If on the date of amendment, the property has continued as coparcenary property, the daughter will have right at par with the son.[28]

---

25 AIR 2014 Bom 151, 168.

26 *Id*. at 172.

27 AIR 2014 Guj 185.

28 AIR 2014 Guj 185, 186.

In *Swaran Lata* v. *Kulbhushan Lal*[29] the court held that, where the member of HUF dies leaving behind the heirs of Class-I namely, wife and daughters, there will be a deemed partition at the time of the death of deceased member. However, this does not mean that the share in the coparcenary property for the suit would be decided according to that event or that the shares would have crystallized and become unalterable. Rather, the coparcenary would continue, and the extent of shares would be decided at the time of actual partition, either through a registered deed of partition or a decree of the court. Further, that event, *i.e.,* the death, only determines how that person's share will be divided amongst the family members, either by survivorship or by succession, rather than effecting any broad-based changes in the family holding or effecting a partition *inter se* that would hold against subsequent changes in the family composition or changes in the law. Secondly, neither is the proposition that the shares are defined at the time of filing of the suit for partition correct; nor the HUF, and specifically, the coparcenary, continues even after the filing of the suit. The filing of a suit by itself does not mean that a partition has taken place, until a decree of the court effects partition, or a registered deed of partition is signed *inter se* by the parties. Accordingly, the death or birth of the family members during the pendency of a suit obviously will affect the shares in partition. Similarly, any change in law during the pendency of the suit, as for example is the case with section 6 of the Act, would affect the ultimate shares of the parties. A contrary conclusion would not only fly in the face of the definition of 'partition' in section 6 (5) of the Amendment Act of 2005, but would also mean, for example, that no partition suit can be withdrawn after it is filed, a proposition which has been rejected on various occasions. Further, a deemed partition under the proviso to section 6 of the Act, is not an actual partition that crystallizes the interest of all members of the HUF, but only a legal construction introduced by the legislature to determine how the interests of the deceased would devolve upon his heirs if a Class-I female relative is alive. The purpose of this fiction of deemed partition, as opposed to following the simple rule of survivorship otherwise, is that Class-I female heirs also receive a share in the coparcenary property of the deceased male, as they would otherwise be excluded, not being coparceners themselves, before the Amendment Act of 2005. To agree that such deemed partition crystallizes the interest of the daughters finally, and that any rights accruing to them at a later stage, which grants an interest in the coparcenary property are unenforceable is contrary to the terms and the spirit of the proviso to section 6 of the Act, as it existed before the Amendment Act of 2005 and also after the amendment. Therefore, where till date no final decree for partition has been passed, and neither has any registered partition deed placed on record or relied upon by any of the parties, the amended section 6 of the Amendment Act of 2005 is applicable and shares would be decided accordingly.[30]

29 AIR 2014 Del 86.

30 AIR 2014 Del 86, 99-100.

In *Prakash* v. *Phulavati*[31] the Supreme Court held that, the legislature has expressly made the amendment applicable on and from its commencement and only if death of the coparcener in question is after the amendment. Thus, no other interpretation is possible in view of express language of the statute. The proviso to section 6 of the Act keeping dispositions or alienations or partition prior to December 20, 2004 shall remain unaffected and cannot lead to the inference that the daughter could be a coparcener prior to the commencement of the Act. The proviso only means that the transactions not covered thereby will not affect the extent of coparcenary property which may be available when the main provision is applicable. Similarly, explanation has to be read harmoniously with the substantive provision of section 6(5) by being limited to a transaction of partition effected after December 20, 2004. Furthermore, normal rule is that a proviso excepts something out of the enactment which would otherwise be within the purview of the enactment, but if the text, context or purpose so requires, a different rule may apply. Similarly, an explanation is to explain the meaning of words of the section, but if the language or purpose so require, the explanation can be so interpreted. Rules of interpretation of statutes are useful servants but difficult masters. Object of interpretation is to discover the intention of legislature. In this background, it can be found that the proviso to section 6(1) and sub-section (5) of section 6 clearly intends to exclude the transactions referred to therein which may have taken place prior to December 20, 2004, when the Bill was introduced. Explanation cannot permit reopening of partitions which were valid when effected. Object of giving finality to transactions prior to December 20, 2004 is not to make the main provisions retrospective in any manner. The object is that by fake transactions, available property at the introduction of the Bill is not taken away and remains available as and when conferred by the statute becomes available and is to be enforced. Main provision of the amendment in section 6(1) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the applicants are not intended to be done away with for a period prior to December 20, 2004. In no case, statutory notional partition even after December 20, 2004 could be covered by the explanation or the proviso in question. Hence, the rights under the Hindu Succession (Amendment) Act, 2005 are applicable to living daughters of living coparceners as on September 9, 2005, irrespective of when such daughters were born. Disposition or alienation including partition which may have taken place before December 20, 2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the explanation.[32]

In *Danamma* v. *Amar*[33] the Supreme Court has held that the daughters who were born before the enactment of the Hindu Succession Act, 1956 are entitled to equal shares

31 AIR 2016 SC 769.

32 AIR 2016 SC 769, 776-777.

33 (2018) 3 SCC 343: AIR 2018 SC 721.

as son in ancestral property. The ruling was rendered in an appeal filed by daughters challenging a decree in a partition suit, which excluded them from partition. The partition suit was filed by the grandson of the deceased propositus of a joint family in 2002. The trial court held that daughters were not entitled to share in property, as they were born before 1956, the year of enactment of Hindu Succession Act. The trial court also denied them the benefit of the Amendment Act of 2005, which conferred equal coparcenary status to daughters as sons. The high court upheld the decree of the trial court. Thereafter, the matter came before the Supreme Court and the court after due analysis of the law and previous decisions held that the courts below erred in holding that daughters were not entitled to partition because they were born before 1956. It was further held that, according to section 6 of the Amendment Act, when a coparcener dies leaving behind any female relative specified in Class-I of the Schedule to the Act (which includes a daughter), his undivided interest in the Mitakshara coparcenary property will not devolve upon the surviving coparceners by survivorship, but upon his heirs by intestate succession. Therefore, the interest of the deceased coparcener would devolve by intestate succession on his heirs, which included his daughters. The court also held that the daughters are entitled to the benefit of Amendment Act of 2005 as well, and on that basis also they are entitled to shares.[34]

In *Ratnamala Vilas More* v. *Tanaji Machindra Pawar*[35] which was regarding the entitlement and share of the daughter in the suit property, the court held that daughter of a coparcener acquires 'by birth' the status of coparcener in her own right in the same manner as the son. This view was confirmed and reaffirmed by the Supreme Court in *Prakash* v. *Phulavati* [36] and also in *Danamma* v. *Amar*.[37] Further, one of the incidents of coparcenary, being the right of a coparcener to seek severance of status, even a daughter can now avail right to partition. It was categorically held that "*even when the daughters are born prior to enactment of the Hindu Succession Act 1956, in view of the amendment to Section 6 of the said Act in the year 2005, they also acquire the status of a coparcener by virtue of birth and hence they are entitled to sue for partition*".[38] It was further held that "*the amended provision of Section 6 of the Hindu Succession Act, statutorily recognises the rights of daughter as coparcener since birth, as the Section uses the words in the same manner as the son*."[39] Therefore, both the daughter and son having been conferred the right of being 'coparcener by birth', and the right to partition being inherent in the coparcenary property, it can be availed of by any coparcener. Hence, as regards the right of the daughter of suing for partition of her share in the suit property, the legal position now being fairly well crystallized,

---

34 AIR 2018 SC 721, 725.

35 AIR 2018 Bom 260.

36 AIR 2016 SC 769.

37 AIR 2018 SC 721: (2018) 3 SCC 343.

38 AIR 2018 Bom 260, 263.

39 *Ibid.*

the finding of the appellate court denying her the said right, being against this legal position, is required to be quashed and set aside. Further, once it is held that the daughter, being the coparcener 'by birth' has right to sue for partition, it follows that in the said partition, the mother/ widow, who is legally wedded wife of the deceased husband, is also entitled to claim partition and separate possession of her share in the joint family property.[40]

V Issue-IV

In traditional Indian family set up, a 'matrimonial home' was to be provided by the husband or his family members. But, in the recent past with the changing contours of joint family concept, 'matrimonial home' has become a central focal point for the newly married couples to discuss and decide upon it. However, with passage of time and liberation of patriarchy, women are equally contributing in making of a 'matrimonial home', wherein financial liabilities are shared by both the spouses, though exceptions are in existence wherever joint family still exists. Therefore, a 'matrimonial home' should be recognized as belonging to both the spouses holding it as joint tenants. The connotation of 'matrimonial home' in the Indian context gives rise to a special problem within Hindu law, namely, to what extent a joint family house (dwelling house) can be treated as a 'matrimonial home'. If the spouse's share, capable of separate possession and enjoyment is regarded as a 'matrimonial home', the problem may assume an awkward, if not a serious turn, if a divorced wife decides to exercise her right to live in the joint family house of the husband.[41] At present, no clear answer is possible in the existing laws and it is left to the factual solutions and wisdom of the parties. It is hoped that the existing legal system will meet the challenges of the occupants of the joint family house. The prevailing approach of English law giving power to a court to adjudicate the assets is unsuited in India. It involves time-consuming determination by the courts and fails to recognize marriage as an 'economic partnership with equal rights'. Hence, law should provide a comprehensive mechanism to govern as to who provides a 'matrimonial home' on marriage and within its ambit which property should be recognised as 'matrimonial property' subject to equal and equitable distribution on dissolution of marriage by divorce or death and provisions for maintenance of the children from such wedlock.

An attempt to define 'matrimonial property' was made by the legislatures while amending and codifying the law of marriage among Hindus in the form of the Hindu Marriage Act, 1955 and to regulate the property acquired '*at or about the time of marriage* of a spouse'. While doing so, section 27 of the Hindu Marriage Act, 1955 provides that, "in any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the

40 AIR 2018 Bom 260, 263.

41 B. Sivaramayya, *Matrimonial Property Law in India* 83 (1st edn. 1999).

time of marriage, which may belong jointly to both the husband and the wife." Wherever, any matrimonial matter comes before the court of competent jurisdiction; it is difficult for the court to make a decision with respect to the property under this section as the source of property is very narrowly designed by the legislatures. Wherein several conditions need to be fulfilled to determine whether the property is 'matrimonial property' in accordance with the construction of the section such as the property '*may*' belong jointly to both the husband and the wife; and the property must be presented '*at or about the time of marriage'*.

As property presented '*at or about the time of marriage*' indicates that the relatives, friends, family members, colleagues and well-wishers have given it in the form of gift to either the bride or the bridegroom at the time of marriage or some gifts are given by the parents and relatives after marriage on different occasions, which are also included in the purview of 'matrimonial property'; though the acquisition of this property in the form of gifts did not involve any labour of or skill of the spouses. The intention of the donor is given importance with respect to such properties and hence, the property belongs to both the spouses, as part of the 'matrimonial property' which may be divided equally between them at the time of dissolution of their marriage. In case the donor intended to gift the property to either of the two spouses, then it is considered as the 'separate property' of such spouse and is not subjected to division between them. Therefore, the use of '*may'* rather than '*shall'* has been taken into consideration by the legislatures in section 27 of the Hindu Marriage Act, 1955. Hence, the present section 27 of the Act does not serve the purpose to introduce 'matrimonial property' in the 'matrimonial home' holistically, where both the husband and the wife are sharer to it on the dissolution of their marriage, if such situation emerges among them; and it shall provide equal economic support to the parties on divorce.[42]

Further, section 27 of the Hindu Marriage Act, 1955 does not provide any scope or incident of 'matrimonial property' in case of subsequent earning- jointly or separately by the spouses during their matrimonial relationship. Neither section 27 of the Act recognises home-makers' work as productive work and convert it into the earning of the wife nor it provides any formula of distribution of matrimonial property among the disputing spouses. Furthermore, daughter-in-law is not an heir either to her husband or the in-laws so long her husband is alive. On the other hand, before marriage a daughter is provided with coparcenary status and property rights and she is a Class-I heir to her father and legal heir to her mother but on marriage, she becomes *Sapinda-gotrajya* to the family of her marriage, theoretically all her ties with the natal family are deemed to have been ceased and replaced by those in the family of her marriage, but practically the reality remains otherwise, as she is neither a coparcener nor an heir in the family of her marriage. Hence, the existing legal provisions relating to 'matrimonial

42 Vijender Kumar, "*Matrimonial Property Law in India: Need of the Hour*" 57 *JILI* 499-522 (2015).

property', its distribution, incidents connected to it needs to be relooked keeping in view the changing contours of individual earning of the spouses and their right over such property.

Therefore, identification and division of matrimonial property among disputing married couples becomes more serious when they fight to get matrimonial remedies from the family court established by the Family Courts Act, 1984,[43] which does not have general powers to deal with civil matters relating to the ownership of property; however it deals with "*a suit or proceedings between the parties to a marriage with respect to the property of the parties or of either of them*".[44] In *S.P.G. Sundaram* v. *Indu Vedamurthy*[45] the court held that:[46]

> matrimonial courts have jurisdiction to dispose exclusive property of spouses provided it was presented at or about the time of marriage.

The said provision makes it clear that, at the time of disposition of a matrimonial suit for divorce, the court would settle the matter relating to the property as referred in section 27 of the Hindu Marriage Act, 1955, but may not deal with the property: for the wife, 'acquired by her after marriage', 'inherited by the wife', and 'enabled by section 6 of the Hindu Succession (Amendment) Act, 2005 as coparcener- coparcenary interest'; and for the husband, 'inherited from the parents', 'acquired by him after marriage' and an 'interest from the coparcenary property'. Though the section provides an alternative remedy to the wife so that she can recover the property which is covered by the Section, by including in the decree in the matrimonial proceedings, without having to take recourses to the filing of a separate civil suit and avoid further litigation. Yet, to remove ambiguity on property rights in the matrimonial home, there is a need of matrimonial property to be introduced with holistic method of division and devolution of it among the disputing married couples and their children.

Hence, equality in its real sense can be achieved only when not only equal opportunity, but also equal distribution of resources is taken care off among the members of society, and matrimonial property should not be an exception to it. Though economic freedom, independence and opportunity cannot bring holistic empowerment among women, yet personality development to a great extent is dependent on the financial viability. For example, if a woman wishes to educate herself with vocational or professional higher education, domestically or internationally, she needs a lot of money. If she wants to start a business or for that matter any entrepreneurship, she needs

43 An Act to provide for the establishment of family courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

44 The Family Courts Act, 1984, s. 7(1) exp. (c).

45 AIR 2016 Mad 173.

46 *Id*. at 176.

money. Therefore, income, interest or profit from the property, partially or wholly, with an absolute ownership right can only bring modern outlook among the women, wherein they will contribute to the best of their abilities in the development of the nation building with smile on their face and respect for law in their heart.

VI Conclusion

After reviewing the existing literature on the issue in hand, there seems to be a distinction created by the lawmakers while redrafting section 6 of the Hindu Succession (Amendment) Act, 2005, between 'a daughter born to a coparcener and a daughter adopted by a coparcener' governed by Mitakshara Hindu law. Whether this kind of distinction stands valid under the provisions of the Constitution of India is a moot point. But, a daughter who is central focal person in debate is a coparcener by birth in her family of birth, but under section 6 of the Hindu Succession (Amendment) Act, 2005, she is not considered as coparcener in the family of her adoption. 'Daughter', whether born to the legally wedlock of her parents or adopted legally by the adoptive parents shall be considered as 'daughter' for all practical purposes. In the redrafted section 6 of the Hindu Succession (Amendment) Act in 2005, the law makers have considered only the 'daughter' by birth for conferring a special status on her as 'coparcener', but have distinguished her from an adopted 'daughter' who is also as competent to be a 'coparcener' as any natural born daughter to her respective parents born within their legal wedlock; in such a situation, how can such a 'daughter' be different in the eyes of law for not considering as 'coparcener' and conferring on her the special status being 'coparcener' in her family of adoption. Let's not forget the issue involved here, according to section 10 (iv) of the Hindu Adoptions and Maintenance Act, 1956, "daughter must not have completed fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption".[47] It means that such daughter cannot give herself in adoption to the adopter, whereas she has been given in adoption by either father or mother or both or the guardian. Therefore, her property rights by birth in the family of her birth have been curtailed by the person who has given her in adoption. But, the lawmakers while redrafting section 6 of the Hindu Succession (Amendment) Act, 2005 either did not pay due attention on this point or they have deliberately ignored this point and have left this issue unattended.

Further, since the Hindu Succession Act, 1956 came into force on June 17, 1956, a daughter born to the legal wedlock of her parents is considered as Class-I heir to her deceased father, grandfather and great grandfather and legal heir to her mother. On September 9, 2005, section 6 of the Hindu Succession (Amendment) Act, 2005 has recognised 'daughter' as coparcener in the family of her birth along with her male siblings, the father, grandfather and great grandfather. She being a coparcener gets all

47 The Hindu Adoptions and Maintenance Act, 1956, s. 10(iv).

the rights of a coparcener as the male members in the Hindu joint family property governed by Mitakshara Hindu law. The amendment so made truly justifies the concept of equality of sexes in the inheritance to the family joint property. As per the established practice, after a daughter is married, she goes to the family of her husband and becomes member of that family for all purposes. Thereafter, she contributes in all possible ways in bearing, rearing, and upbringing children, and also participates in social and religious activities of the family of her marriage. But, being daughter-in-law, though a member of the matrimonial family, she has not been considered by the amending law as co-partner, co-sharer or coparcener in joint family property to which her husband, being son of that family is and enjoys all rights in his joint family properties. Hence, there is a dire need to consider daughter-in-law as coparcener in the family of her marriage and she needs to be made co-sharer along with her husband, his siblings and the father-in-law. If such an amendment is made in the existing law, it will provide equality in letter and spirit in the matrimonial home and rising graph of divorce in India will fall flat among the young married couples and it will also bring a sense of security among the prospective couples. Further, there will be assurance to the parents of their daughter when she goes in marriage to the next family, which may also impact prevalent practice of dowry in the society to reduce it drastically. Therefore, the author of the paper is of a definite opinion that, if a daughter-in-law is provided coparcenary property rights in the matrimonial home, the existing joint family system will further strengthen as it has already seen unprecedented withdrawal in its original outfit.

Furthermore, scope and application of section 27 of the Hindu Marriage Act, 1955 needs to be enlarged while considering large amount of properties acquired, inherited and contributed by both the spouses during their lifetime. On dissolution of marriage by a decree of divorce, the said property shall be distributed among the disputing parties, as enshrined in section 27 of the said Act. In case of death of either of the spouses, the said property shall be inherited by the surviving members of the deceased spouse under the provisions of the Hindu Succession Act, 1956 as amended in 2005. Further, on and from September 9, 2005, the daughter of a coparcener governed by the Mitakshara law becomes a coparcener and gets an interest in the coparcenary property 'by birth' and 'by adoption', as advocated aforementioned in the paper, in the family of her birth or adoption, as the case may be, and on marriage, she carries this form of property in the family of marriage, where she acquires by her skills, expertise and employment a lot of self-acquired property, besides the property inherited from her father or mother or both. All the three kinds of properties mentioned here, a daughter holds them with absolute ownership rights under the provisions of the Hindu Succession Act. At present, sections 15 and 16 of the Hindu Succession Act deals with intestate succession of a female Hindu only on two kinds of properties, *viz*., 'property acquired by her' and 'property inherited by her', but do not deal with the property in which 'an interest' has been created by section 6 of the Hindu Succession

(Amendment) Act, 2005 for the first time in 2005. So long a Hindu female dies intestate leaving behind a son or a daughter or the children of predeceased son or daughter, there is no problem as these children along with the husband inherits her properties, 'inherited and acquired' by her during her lifetime, but the problem still prevails when she dies intestate leaving behind no child alive or children of predeceased child but the husband alone, who inherits only her 'self-acquired property', wherein 'inherited property' goes back to its source and devolves on the heirs of her father or the mother. Therefore, an interest in the coparcenary property which was created for a daughter by the Hindu Succession (Amendment) Act, 2005 in normal course of things goes in inheritance to her children and the husband and consequently, it fragments the original coparcenary property to that extent while going out of the fold.

As of now, there is no joint property among the married couples under Hindu law. In the matrimonial home, both the spouses hold property, especially inherited one, on their own name and same is the case of an interest in the coparcenary property in which by virtue of marriage, no new co-sharer or co-ownership gets into existence. It means there are two parallel methods of property working hand-in-hand in the matrimonial home. For example, wife is not a Class-I heir to her husband or the father-in-law, but being a widow, she is a Class I heir to her deceased husband and being a widowed daughter-in law, she is also a Class I heir to her father-in-law. But, there is no joint ownership between the spouses on any of the properties in the matrimonial home. Apparently, there seems to be an urgent need of matrimonial property to be introduced in the matrimonial home not only to save Hindu joint family system, but also to control rising graph of divorce among the young married couples. Further, there is also a dire need to prepare and approve a formula on which joint property among the disputing married couples shall be partitioned, divided and inherited without disturbing the existing system of partition and succession under Hindu law.

Keeping in view the diverse cultural, religious and social practices, and the prevailing situation on registration of marriage since May 1955 till date, though mere registration of marriage does not provide a conclusive proof of marriage, yet in the contemporary society, especially in view of the advancement of technology and social media coverage of individual's life, a reliable proof of marriage with maximum possible details about the prospective spouses are the need of the hour. It is possible only when prenuptial agreements with due application of law are introduced in the country. It will help not only to the disputing parties to the matrimonial proceedings, but also to the courts including the family courts to dispose of matrimonial matters in a more logical and speedy manner.[48]

48 Vijender Kumar, "*Quest for Prenuptial Agreement in Institution of Marriage: A Socio-Legal Approach*", 60 *JILI* 406-426 (2018).

At the end of the paper, the author advocates that: (i) the daughter who has been legally adopted must be considered a coparcener in the family of her adoption through proper amendment into the section 6 of the Hindu Succession (Amendment) Act, 2005; (ii) the daughter has been provided equal property rights including in the coparcenary property in the natal family by Section 6 of the said Act of 2005. In a similar way, she should be provided with equal property rights in the family of her marriage during the life time of her husband through suitable amendments in the provisions of the Hindu Succession (Amendment) Act, 2005; and (iii) the daughter-in law must be welcomed in the matrimonial home with equal property rights in the matrimonial property. The time has come where we need to understand and recognise homemakers' work as productive work and the same shall be remunerated in the due form and share in the matrimonial property. Further, she should be enabled to hold joint ownership in the matrimonial property, where division and devolution of such property is taken care of equally by her and on her children accordingly, through suitable amendment into the provisions of the Hindu Succession (Amendment) Act, 2005 and the Hindu Marriage Act, 1955. If such amendments are incorporated, there shall be real quality among the sexes with regards to property rights, matrimonial remedies and social realities, where odd practice of live-in relationship, breakdown of marriage and emergence of nuclear family will be controlled to a great extent.