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PROJECT REPORT

on

COPARCENARY RIGHTS OF WOMEN IN ANDHRA PRADESH

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INTRODUCTION:

The concept of coparcenary as understood in the general sense in English law has different meaning in India or Hindu legal system. In English law coparcenary is the creation of act of parties or creation of law. In Hindu law coparcenary cannot be created by acts of parties however it can be terminated by acts of parties. The coparcenary in Hindu law was limited only to male members who descended from the same male ancestors within three degrees. These coparceners have important rights as regards the property of the coparcenary but so long the coparcenary remains intact no member can claim any specific interest in any part of the property of the coparcenary.

However under Hindu law the coparcenary in the Mitakshara and the Dayabhaga schools of Hindu law have different meanings with the result that this difference in the concepts of coparcenary of the Mitakshara and the Dayabhaga schools of Hindu Law resulted in the difference in the definition of Partition and the right of the sons to pay the debt of their father. Therefore the deviation in the original concept of coparcenary is the result of social and proprietary influence. Hence when females are made entitled to become coparceners it does not militate against the nature and concept of coparcenary because it is the social and proprietary aspect which prominently make it necessary that females should be included in the concept of coparcenary. However the term *Apatya* (child) is a coparcener because according to Nirukta *Apatya* means son and daughter both. Therefore, when a female is made a coparcener it is only the recognition of the meaning of child in its true sense without making any distinction between son and daughter.

The division of property of a coparcenary will depend on the nature of the property whether the property which is in the hands of the coparceners is ancestral property or it is the self acquired property of the coparceners. This problem has already

been in existence both in the Mitakshara and the Dayabhaga schools of Hindu law and the solution of the problem of division or partition of coparcenary property follow the Hindu law or statutory provisions made in this behalf. But in any case inclusion of female in coparcenary is not against the letter and spirit of the Hindu law.

The Hindu Succession (Andhra Pradesh Amendment) Act, 1986 has conferred daughter equal share with son in ancestral property by making her a coparcener by birth in the state of Andhra Pradesh. The study tries to find out the effective mechanism for proper implementation of this Act in the state which has conferred daughter equal share with son in ancestral property by making her a coparcener by birth and as such makes an effort to review the concept of coparcenary in English law and in Indian Law its genesis, history and socio cultural understanding of the concept and then studies the ways in which women were provided with property rights in Hindu law so as to fully understand the present situation and suggest any changes if necessary. The study is, therefore, divided into the following parts:

(i) First part deals with historical perspective of coparcenary;
(ii) Second part deals with genesis of coparcenary in Mitakshara and Dayabhaga;
(iii) Third part deals with property rights of women under Hindu law;
(iv) Fourth part deals with empirical study pertaining to implementation of Andhra Pradesh State amendment in the State; and
(v) Fifth part deals with conclusions and suggestions.

HISTORICAL PERSPECTIVE OF THE CONCEPT OF COPARCENARY:

Coparcenary is "unity of title, possession and interest". To clarify the term further A Hindu Coparcenary is a much narrower body than the Hindu Joint Family, it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons, and great-grandsons of the holders of the joint property for the time being (***N.V. Narendranath*** v. ***Commissioner of Wealth Tax***, AIR 1970 SC 14).

The Black's law dictionary gives a more comprehensive explanation of the term coparcenary. It says, "Such estate arises where several take by decent from same ancestor as one heir, all coparceners constituting but one heir and sharing but one estate and being connected by unity of interest of title. Species of estate or tenancy which exists where line of inheritance descent from the ancestor to two or more persons. It arose in England either by common law or particular custom. By common law as where a person, seized in fee simple or fee tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives, in this case they all inherit and these coheirs care called copartners or for breirty "parceners" only. By particular custom, as where lands descends as in gavelkind, to all the mates in equal degree, as sons, brothers, uncles etc…An estate which several persons hold as one heir, whether male or female. This estate has three unities of time, title and possession, the interests of the coparceners may be unequal (Henry Capball Black, "Black's Law Dictionary", 6th ed. 1990, p. 323).

In *Dharmasastra* coparceners are referred to as *Sahadaee*. The term coparceners came to be used as a result of influence of Western Jurisprudence. Therefore the present concept is not very different from the earlier one. The justification of coparcenary according to the Mitakshara is that those who can pay funeral oblations (*Pindh daan*) are entitled to the property also. The concept of *Pindh daan* is that the person who pays funeral oblations share the same blood of the person to whom he is offering *Pindh daan*.

Coparcenary is purely a creation of law; it cannot be created by act of parties, except by adoption. In order to be able to claim a partition, it does not matter how remote

from the common ancestor a person may be, provided he is not more than four degrees removed from the last male owner who has himself taken an interest by birth.

In ***Sudarsana Maistri*** v. ***Narasimhulu,*** ((1902) 25 Mad. 149), it was held that a joint family, and its coparcenary with all its incidents are purely a creature of Hindu law and cannot be created by act of parties, as the fundamental principle of the joint family is the tie of *sapindaship* arising by birth, marriage and adoption.

In Hindu law of succession the coparcenary is still not codified. There are two schools of Hindu law viz. the Mitakshara and the Dayabhaga. According to the Mitakshara school there is unity of ownership that is the whole body of coparceners is the owner and no individual can say, while the family is undivided that he has a definite share as his interest is always fluctuating being liable to be enlarged by deaths and diminished by birth in the family. There is also unity of possession and enjoyment. Further while the family is joined and some coparceners have children and others have few or none or some are absent, they cannot complain at the time of partition about some coparceners exhausted the whole income and cannot ask for an account of past income and expenditure. Moreover, the joint family property devolves by survivorship that is on the death of a coparcener his interest lapses and goes to the other coparceners. The conception of coparcenary under the Dayabhaga School is entirely different from that of the Mitakshara. Under the Dayabhaga sons do not acquire any interest by birth in the ancestral property, but the son's rights arise for just at the time on the father's death and the sons take as heirs and not as survivors.

However, the coparcenary in Hindu law is not identical to the coparcenary as understood in English law. Thus, in the case of death of a member of a coparcenary under the Mitakshara law, his right accretes to the other members by survivorship while in English law if one of the co-heirs jointly inheriting properties dies his or her right goes to his or her own relatives without accreting to the surviving coparceners.

THE MITAKSHARA SCHOOL:

To understand the formation of coparcenary, it is important to note the distinction between ancestral property and separate property. Property inherited by a Hindu from his father, father's father, or father's father's father, is ancestral property. Property inherited by him from other relations or acquired by himself is his separate property. The essential feature of ancestral property is that if the person inheriting it has sons, grandson, or great grandson, they become joint owners with him. They become entitled to it by reason of their birth. Thus, if A, who has a son B, inherits property from his father, it becomes ancestral property in his hands, and though A, the head of the family, is entitled to hold and manage the property, B is entitled to an equal interest in the property with his father A and to enjoy it is common with him. B can, therefore, stain his father from alienating it except in the special cases viz. legal necessity which includes *Kutumbharthe, Dharmarthe* and *Aapatkale*. Such alienation is allowed by law and he can enforce partition of it against his father. On his father's death, he takes the property by right of survivorship and not by succession. It is otherwise, however, as to separate property. A man is the absolute owner of property inherited by him from his brother, uncle, etc. His son does not acquire an interest in it by birth and on his death it passes to the son not by survivorship but by succession. Thus if A inherits property from his brother, it is his separate property and it is absolutely at his disposal. His son B acquires no interest in it by birth and he cannot claim a partition of it nor can he restrain A from alienating it. The same rule applies to the self acquired property of a Hindu. But it is of the utmost importance to remember that separate or self acquired property, once it descends to the male issue of the owner becomes ancestral in the hands of the male issue who inherits it. Thus, if A owns separate or self acquired property it will pass on his death to his son B as his heir. But in the hands of B it is ancestral property as regards his sons. The result is that if B has a son C, C takes an interest in it by reason of his birth and he can restrain B from alienating it, and can enforce a partition of it as against B.

Ancestral property is a species of coparcenary property. It is stated above that if a Hindu inherits property from his father, it becomes ancestral in his hands as regards his

son. In such a case it is said that the son becomes a coparcener with the father as regards the property so inherited and the coparcenary consists of the father and the son. But this does not mean that a coparcenary can consist only of a father and his sons. It is not only the sons but also the grandsons and great grandsons who acquire an interest by birth in the coparcenary property. Thus, if A inherits property from his father and he has two sons B and C, they both become coparceners with him as regards the ancestral property. A, as the head of the family, is entitled to hold the property and to manage it and hence is called the manager of the property. If B has a son D and C has a son E, the coparcenary will consist of the father, sons and grandsons, namely, A,B,C,D, and E. Further, if D has a son F and F has a son G, the coparcenary will consist of the father, sons, grandsons, and great grandsons, in all it will consist of seven members. But if F has a son X, X does not become a coparcener, for a coparcenary it is limited to the head of each stock and his sons, grandsons, and great grandsons, X being the great great grandson of A cannot be a member of the coparcenary so long A is the holder of the joint family property is alive.

In a decision of the Andhra Pradesh High Court in ***Ashok Kumar Ratanchand*** v. ***CIT***, ((1990) 186 ITR 475), it was held that where a coparcener who obtains property on partition and marries subsequently, the status of the unit of assessment after marriage is necessary that of a Hindu undivided family and the income from such property is assessable in that status and not that of the individual. After discussing the entire case law on the subject the court observed that (p.488)....

> The property which a coparcener obtains on partition does not become for all times his individual and separate property. If he has a wife or a daughter depending on him the property will be charged by the obligation to maintain them. If he marries later, his property, ancestral or self-acquired, will be burdened by an obligation to maintain his wife. If he begets a son, that son becomes entitled to a share in the property which thereby revives the character of joint family property. If he begets only daughters the obligation to maintain them will be fastened on the property. It is not as if an unmarried Hindu male obtaining a share of ancestral property in partition

retains the property as his absolute property even after marriage encumbered by any obligation to maintain his wife or other dependents. In that absolute sense it may not be his absolute property after he marries. It sheds the character of separate property and revives its character as joint property of the smaller unit consisting of himself and his wife. In that limited sense the income there from may be the income of the Hindu undivided family consisting of himself and his wife.

GENESIS OF COPARCENARY:

A coparcenary is created when for example a Hindu male A, who has inherited no property at all from his father, grandfather or great grandfather, acquires property by his own exertion. A has a son B, B does not take any vested interest in self acquired property of A during A's life time, but on A's death he inherits the self acquired property of A. If B has a son C, C takes a vested interest in the property by reason of his birth and the property inherited by B from his father A becomes ancestral property in B's hands, and B and C are coparceners as regards the property. If B and C continue joint and a son D is born to C, he enters into the coparcenary by the mere fact of his birth. And if a son E is subsequently born to D, he too becomes a coparcener.

Though in a coparcenary there must be a common ancestor to start with, it is not to be supposed that every extent coparcenary is limited to four degrees from the common ancestor. A member of a joint family may be removed more than four degrees from the common ancestor (original holder of coparcenary property) and yet he may be a coparcener. Whether he is so or not depends on the answer to the question whether he can demand a partition of the coparcenary property. If he can, he is a coparcener but not otherwise. The rule is that partition can be demanded by any member of a joint family who is not removed more than four degrees from the last holder however, remote he may be from the common ancestor or original holder of the property.

When a member of a joint family is removed more than four degrees from the last holder he cannot demand partition and therefore, he is not a coparcener. On the death, however, of the last holder, he would be entitled to a share on partition, unless his father, grandfather and great grandfather had all predeceased last holder. The reason is that whenever a break of more than three degrees occurs between any holders of property and the person who claims to enter the coparcenary after his death, in the line in that direction and the survivorship is confined to those descendants who are within the limit of four degrees.

Another important element of a coparcenary under the Mitakshara law is unity of ownership. The ownership on the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by the Mitakshara law, no individual member of that family whilst it remains undivided can predicate of the joint and undivided property that he, that particular member has a definite share, one third or one fourth. His interest is a fluctuating interest, capable of being enlarged by deaths in the family and liable to be diminished by births in the family. It is only on a partition that he becomes entitled to a definite share. The most appropriate term to describe the interest of a coparcener in coparcenary property is "undivided coparcenary interest". The rights of each coparcener until a partition takes place consist in a common possession and common enjoyment of the coparcenary property. As observed by the Privy Council in ***Katama Natchiar*** v. ***The Rajah of Shivaganga,*** (9MIA 539) there is community of interest and unity of possession between all the members of the coparcenary, and upon the death of any one of them the other members will take by survivorship that in which they had during the deceased's life time a common interest and a common possession.

The Supreme Court has summarized the position and observed that the coparcenary property is held in collective ownership by all the coparceners in a quasi corporate capacity. The incidents of coparcenary are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person, secondly, that such descendants can at any time work out their rights by

asking for partition, thirdly, that till partition each member has got ownership extending over the entire property co-jointly with the rest, fourthly, that as a result of such co-ownership the possession and enjoyment of the properties in common, fifthly, that no alienation of the property is possible unless it is for legal necessity, without the concurrence of the coparceners, and lastly, that the interest of a deceased member passes on his death to the surviving members of the coparcenary.

THE DAYABHAGA SCHOOL:

In conception a coparcenary and coparcenary property, according to the Dayabhaga School, is entirely distinct from that of the Mitakshara School. According to Mitakshara law, each son acquires on his birth an equal interest with father in all ancestral properties held by the father, and on the death of the father the son takes the property, not as his heir, but by survivorship. According to Dayabhaga law, the son does not acquire any interest by birth in ancestral property. Son's right arises only on the death of his father. On the death of the father he takes such of the property as is left by him whether separate or ancestral, as heir and not by survivorship. Since the son does not take any interest in the strict sense the word between a father and a son according to the Dayabhaga law, so far as reads ancestral property. As a corollary of the above doctrine, negaturing the son's right by birth is the other peculiar doctrine of the Bengal School that is what is called fractional ownership of the heirs, contrasted with the doctrine of aggregate ownership expounded by the other school.

According to the Mitakshara law the foundation of a coparcenary is first laid on the birth of a son. The son's birth is the starting point of a coparcenary according to the law. Thus if a Hindu governed by the Mitakshara law has a son born to him, the father and the son at once become coparceners.

According to Dayabhaga law, the foundation of a coparcenary is that laid on the death of the father. So long as the father is alive, there is no coparcenary in the strict sense of the word between him and his male issue. It is only on his death leaving two or

more male issues that a coparcenary is first formed. Thus, it would be correct to say that the formation of a coparcenary does not depend upon any act of the parties. It is creation of law. It is formed spontaneously on the death of the ancestor. It may be dissolved immediately afterwards by partition but until then the heirs hold the property as coparceners. These observations must obviously be read in the context of a father dying leaving two or more male issues who would constitute a coparcenary, through of course, is their case there would be only unity of possession and not any unity of ownership. Thus till a partition by metes and bounds, that is, (actual distribution of properties) takes place no coparcener can say what is his share. In other words, none of them can say such and such property will fall to his share. Each coparcener is in possession of the entire property, even if he has no actual possession, as possession of one is possession of all. No one can claim any exclusive possession of property unless agreed upon by the other coparceners.

WOMEN AND COPARCENARY PROPERTY-PROPERTY HOLDING:

Coparcenary is a much narrower body than a Hindu Joint Family. Coparcenary is an integral part of Hindu Joint Family and is as of the patriarchal society. In the Mitakshara the coparceners are referred as *Sahadies*. The concept of co-ownership exists as a coparcenary may be due to the fact that there was no individual ownership in property for long and immovable property used to belong to the family or *Kutumbha*. Coparcenary is still important because it helps in devolving the ancestral property. There are two Schools of Hindu law which have different ways of devolution of property. In Mitakshara the coparceners have a right by birth, that is as soon as a son is conceived, he has a right in the joint family property. Thus in, Mitakshara sons have a right by survivorship where in Dayabhaga sons do not have right by birth, their right in the property arises only on the death of the father. There is no right by survivorship in Dayabhaga they inherit property only in the capacity as heirs.

Coparcenary as understood in Hindu Jurisprudence is very different from English Common Law and arose in very different circumstances. Since law is an abstraction of

social norms the exclusion of daughters as coparcener was understood and justified in ancient Hindu Jurisprudence. With the enactment of the Hindu Succession Act, 1956 daughters were included in the list of class I heirs resulting in equal share to them with sons in the self acquired property of father still they do not get the same share as their brothers in ancestral property though under the Dayabhaga they may get a greater share through the doctrine of representation. In 1986 the State of Andhra Pradesh came out with the State Amendment into the Principal Act of 1956 and introduced daughter, as a coparcener in her family of birth in all respects like the son.

EMPOWERMENT OF WOMEN THROUGH LEGISLATIONS:

The text of Manu states that "Sons take property to the nearest sapinda, the inheritance next belongs" is the foundation of the Rules of inheritance of the Hindus. Hence the rules of inheritance were discriminative against women and the Supreme Court held that they cannot be questioned for inequality before Court of law as they are governed by personal law ***(Krishna singh*** v. ***Madhura Iher*** *(AIR 1980 SC 707)*

In the olden days women were totally excluded from any share in the ancestral and self acquired property. Later on women's right for maintenance was recognized and giving property for maintenance was there but was subject to life interest. Later court held in ***Katama Nachiar*** v. ***The Raja of Shivaganga*** *(9MIA 539)* that widow would be entitled for equal share with sons in self acquired property of her husband.

The legislation that was passed to confer better rights at that time was the Hindu Women's Right to Property Act, 1937 this Act was passed to confer greater rights on women than they had previously. Widow was given right to inherit to her husband's share under this Act. Widows were also given an entitlement to claim partition but they take the property with limited interest which would revert back to the last full owner or his heirs. But this Act was not applicable to ancestral agricultural lands though applicable to self acquired and ancestral property. This property was considered as women's estate. The absolute property of women was known as *stridhana*. The property obtained from

gifts, self exertion, in lieu of maintenance or property purchased from *stridhana* constitutes her absolute property where women would be a fresh stock of descent. But after the passing of Hindu Succession Act, 1956 the property which would be held by her as limited owner would be her absolute property by virtue of section 14 of the Hindu Succession Act, 1956 and she is also recognized as fresh stock of descent (Sections 15 to 17). Widow, daughter and mother were entitled to equal share along with son in the self acquired property of the male Hindu dying intestate (dying intestate are words of mere description indicating status of the deceased and have no reference to the time of death). The Hindu Succession Act, 1956 has conferred equal share to daughter along with son at least as far as self acquired property is concerned and has to that extent done greater justice to women.

Though the Hindu Succession Act, 1956 has conferred rights of succession in a large measure on Hindu females it left untouched the rights of members in a joint Hindu family except to the extent provided in Section 6 of the Hindu Succession Act, 1956 relating to succession to an undivided interest in a joint family in certain cases, and the right of a Hindu male to dispose of *inter vivos* or by will, his interest in the joint family property. As per Section 6 of the Act where a male Hindu dies having at the time of his death an interest in the Mitakshara coparcenary property his interest in the property shall devolve by survivorship on the remaining coparceners and not in accordance with the succession except where he leaves behind a female heir of class I of the schedule or a male heir claiming through a female heir of the class I of the schedule in such case a notional partition would be held where in the deceased share will be ascertained and his share will be divided in accordance with the succession that is that female heirs do not get share in the coparcenary property but in the share of the deceased. Where the husband dies as a coparcener his widow takes the property and she becomes absolute owner of the property and becomes fresh stock of descent.

It was however felt by the legislature of Andhra Pradesh that it was not fair to exclude daughter from the ownership in coparcenary property and this was also one of the reasons for the pernicious dowry system. In order to confer the right of survivorship

on a Hindu female and assimilate her to the position of a male member of a coparcenary, a Bill, L.A. Bill 12 of 1983 was introduced in the Andhra Pradesh Legislative Assembly. The Bill was enacted by the Andhra Pradesh State Assembly on the 25th September, 1985. The Act received the assent of the President and came into force on the **5th September, 1985** when it was introduced in the Assembly.

The Hindu Succession Act, 1956 has been amended by introducing a new chapter, chapter II-A consisting of sections 29A, 29B and 29C. Section 29A provides that the daughter becomes a coparcener by birth along with the other male members and has a right to obtain partition having the same share as a son. Section 29B provides daughter's interest in the joint family property which would devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of the Hindu Succession Act, 1956. The Hindu Succession (Andhra Pradesh Amendment) Act, 1986 extends to the whole of the State of Andhra Pradesh.

Andhra Pradesh:

Whereas the Constitution of India has proclaimed equality before law as a fundamental right;

And whereas the exclusion of the daughter from participation in coparcenary ownership merely by reason of her sex is contrary thereto;

And whereas such exclusion of the daughter has led to the creation of the society pernicious dowry system with its attendant social ills;

And whereas this baneful system of dowry has to be eradicate by positive measures which will simultaneously ameliorate the condition of women in the Hindu society;

Be it enacted by the Legislature of the State of the Andhra Pradesh in the thirty-fourth year of the Republic of India as Follows:-

The following chapter IIA has been inserted by **the Hindu Succession (Andhra Pradesh Amendment) Act, 1986** (13 of 1986), with effect from **05-09-1985**:

1. Short title, extent and commencement:- (1) This Act may be called the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) It shall come into force on such date as the State Government may, notification in the Andhra Pradesh Gazette, appoint.

2. Insertion of new chapter IIA in Central Act 30 of 1956:- In the Hindu Succession Act, 1956, after chapter II, the following chapter shall be inserted namely:-

Chapter –IIA **Succession by Survivorship**

29A: Equal rights to daughter in coparcenary property:- Notwithstanding anything contained in section 6 of this Act.

(i) in a joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) (a) at a partition in such a joint Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share as is allowable to a son;

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such predeceased son or of such predeceased daughter;

Provided further that the share allowable to the predeceased child of a predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of the predeceased daughter, as the case may be;

(b) the same allotted to a female at a partition shall be held by her, subject to the terms of the partition, as a full owner;

(iii) when a partible property includes a dwelling-house wholly occupied by members of the joint Hindu family, when notwithstanding anything contained in this Act, the right of a female coparcener to claim partition to the dwelling-house shall not arise until the male coparcener shall be entitled to a right of

residence therein if she is unmarried or has been deserted by or has separated from her husband or is a widow;

(iv) any property to which female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(v) nothing in clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

29B. Interest to devolve by survivorship on death:- When a female Hindu dies after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 having at the time of her death an interest in a Mitakshara coparcenary property, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a deceased child, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

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

Explanation 2: Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

29C. Preferential right to acquire property in certain cases:- (1) Where, after the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolve under section 29A

or section 29B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation: In this section "Court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Andhra Pradesh Gazette, specify in this behalf.

The Act is prospective as every Act is presumed to be unless there is anything express or implied, including that the Act has retrospective operation. The Act has come into force on 5th September, 1985 and from the date a daughter who is not married or who is subsequently born gets an interest in the coparcenary property as a son gets.

This is a very progressive measure and removes to a large extent inequality between males and females among Hindus with regard to property under Hindu law and the example set by Andhra Pradesh has been followed by other States viz. The Hindu Succession (Tamil Nadu Amendment) Act, 1989, The Hindu Succession (Maharashtra Amendment) Act, 1994, The Hindu Succession (Karnataka Amendment) Act., 1994.

Whether the discrimination between daughters married prior and later the act came into force would amount to discrimination which requires to be rectified can be stated to be answered in the negative as any legislation shall be generally prospective and also the fact that the law commission also stated that there will be many practical

problems which will lead to family quarrels as well they might have already taken fair share in the form of dowry etc.

The courts in Andhra Pradesh have been since then implementing the Act where ever it was relevant to observe some of the judgments will show the judicial intention to implement the provisions of the Act effectively

In ***Narayan Reddy*** v. ***Sai Reddi,*** (AIR 1990 AP 263), where in a suit for partition of joint family properties, a preliminary decree was passed ascertaining the share of the parties, it was held that it was open to the unmarried daughter to claim therein share in those properties under Section 29A as amended by A.P. Amendment Act, 1986 before passing the final decree.

In ***Nimmagadda Sambasiva Rao*** v. ***State of A.P.***, *(1999 (4) ALT 353).*

This was a revision filed under Section 21 of Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The petitioner and his major son filed separate declarations under the provisions of the Act in respect of the lands held by them. After due enquiry the Land Reforms Tribunal held that both of them were non surplus holders. The question before the Court here was whether the unmarried major daughter of the petitioner was entitled to hold one standard holding separately.

By virtue of Section 29-A of the Hindu Succession (A.P. Amendment) Act, 1986, the daughter becomes a coparcener in her own right by birth and shall rank with the son in all respects subject to the two conditions that she should not have been married prior to the commencement of the Amendment Act and, that no partition should have been effected before the commencement of the Amendment Act. In the present case, the daughter of the petitioner did not file any declaration. This could not alter the legal position or effect the legal rights of the petitioner and his daughter. The petitioner's daughter was not bound to file a separate declaration since she was not holding any land in excess of the ceiling area. Since the facts were not in dispute, the Court held that the

unmarried major daughter of the petitioner was entitled to hold one standard holding separately.

In ***Pulla Reddy*** v. ***Seshi Reddy***, *(1987 (2) ALT 210).*

The two appellants were the unsuccessful plaintiffs. They were the son and daughter respectively of the first defendant and their suit for partition was dismissed which gave rise to this appeal. The second defendant was the father of the first and third defendants. The appellants were the children of the first defendant. The second defendant died pending appeal. His widow, the fourth respondent, and his two daughters, the fifth and the sixth respondents were impleaded as legal representatives. The entire appeal revolved around the partition of the coparcenary property and the shares to be got by each.

The main contention for our purpose here was whether the second plaintiff, being an unmarried daughter of the first defendant, was entitled to an equal share with the first plaintiff in the joint family property as per the provisions of Section 29-A of the Hindu Succession (A.P. Amendment) Act, 1986.

The Court accepted the fact that law is a social engineering to sub serve the need of the society and to bring about the change in the society without friction. Therefore the Court tried to mould the relief as per the Amendment Act prevailing as on the date of the decree. Thus, the second **plaintiff being unmarried, was entitled to an equal share with the first plaintiff in the joint family property.**

In ***S. Sai Reddy*** v. ***S. Narayana Reddy***, *(1991) 3 SCC 647*

The appellant filed a suit against his father and brother. The subordinate judge passed a preliminary decree by the order dated on 1973 December 26th declaring the appellant as well is father and brother each were entitled for 1/3rd share. The defendant appealed against this preliminary decree. The High Court confirmed the Trial Court's finding with the direction that an appropriate provision should be made for the maintenance and marriage expenses of respondent 2 to 5 who were unmarried sisters. During the pendency of the proceedings the amendment was passed and respondent 2 to 5 filed an application for claiming their share in the property. The Trial Court rejected the

application on the ground that the preliminary decree was already passed and specific shares already allotted. The unmarried daughters preferred a revision against the Trial Court order the High Court allowed it n 2nd February, 1990 and further directed the Trial Court to determine shares accordingly. The appellant challenged the order of the appeal.

The counsel for appellant urged the preliminary decree already passed prior to Amendment and High Court was in error. Under Hindu Mitakshara unmarried daughters were not entitled to any share in joint property. The judgment looked into the provisions closely and in para 6 said the provision amended was aimed at removing the difference between daughter and son of Mitakshara Hindu Family. But now she is entitled to claim partition. The amending provision is a beneficial legislation which is directed towards eradicating social evils such as dowry and dowry deaths. It also achieves the constitutional mandate of equality between sexes. The legislators didn't want to unsettle the positions as partition already affected prior to the amendment. Another thing if prior to partition of family property a daughter had been married she was disentitled to any share in the property. The Crucial Question was as to when a partition can be said to have been affected for the purpose of the added provision. A partition can be affected by different modes. Unless the final decree is passed and the allottees shares are put in possession of the respective property, partition is not complete. The preliminary decree which determines share does not bring about final partition.

"Since the legislation is beneficial and placed on the statute book with the avowed object of benefiting women which is a vulnerable section of the society of all its strata, its is a necessary to give a liberal effect to it. For this reason we cannot equate the concept of partition that the legislation has in mind in the present case with a mere severance of status of the joint family which can be effected by an expression of a mere desire by family members to do so..... **hence we are of the opinion that unless a partition of the property is effected by metes and bound the daughter cannot be deprived of the benefits conferred by the Act.**

In ***Chandrashekar Reddy*** v. ***State of Andhra Pradesh,*** *2003 (4) ALT 9 (SC)*

It's a case concerning A.P Land Reforms (Ceiling on Agricultural Holdings) Act,1973, Sections 3(f) , 4 and 9(A)-The Hindu Succession Act, Section 29-A inserted by State Amendment.

The Tribunal held that family of appellant entitled to hold one standard holding under the act and excess of 4.3360 standard holdings was held to be surplus land. This went on a revision to the High Court. During the pendency of revision in the High Court, Section 29-A was inserted by state amendment in Hindu succession Act whereby daughters of a Hindu joint family acquired rights as a coparcener in a joint Hindu family and thus they have got right by birth . Revision was dismissed. The appellants went on an appeal to the Supreme Court.

The primary contention was that the daughters who were minors when the amendment was passed, but attained majority subsequently attained coparcenary rights and hence they had a share in the family property-land. So it was contented that there was no excess land and the daughters had a share in it.

High Court held that amendment to Section 29 of the Hindu Succession Act would not alter the position and appellants not entitled to get any additional share. **It was also held that Section 29 –A has no impact on fixation of ceiling as far as appellants were concerned. Benefit of Section 29-A could be invoked only by major daughters if they were not married prior to commencement of the Ceiling Act.** As regards fixation of ceiling, Section 29-A did not confer any additional benefit to appellant Nos.6 and 7, who were the minor daughters at date of commencement of the Act. The Supreme Court upheld whatever was laid down by the High Court .The appeal was dismissed without costs.

In ***Dodla Kumaraswami Reddy*** v. ***Dodla China Abayireddy,*** *2002(2) ALT 641*

This appeal is filed in challenging the judgment and decree dated 26-11-2001 passed by the learned single judge in A.S No. 730 of 1991, whereby the appeal filed by the plaintiff was partly allowed directing partition of the plaint schedule properties into

four equal shares among the plaintiff and defendants 1 to 3 with a further direction to allot one such share to the plaintiff. The learned single judge further gave liberty to the plaintiff to claim the relief in the suit on other aspects by way of filing a separate application for the said relief.

The plaintiff filed a suit to the subordinate judge seeking:

1. Partition of the schedule properties into four equal shares and for putting the plaintiff in separate possession of one such share.
2. To direct the 1st respondent to render correct accounts of all the monies realized by him by selling the lands at Budhireddipalem and Annareddipalem and for payment of 1/4th share of such realization after deducing the amount already paid to the plaintiff .
3. To direct the 1st defendant to render accounts in relation to future profits and payment of 1/4th share to the plaintiff and defendants 1 to 3 are brothers and all of them are members of undivided Hindu joint family.

The following points were considered:-

1. Whether the defendants 4 and 5 are necessary parties to the first appeal?
2. If they are necessary parties, what is the effect of their non-impleadment in the first appeal?
3. Whether the provisions of section 29A of the Hindu Succession Act, 1956 will have the overriding effect against section 6 of the act, in so far as the defendants 4 and 5 are concerned?
4. Whether Ex.A-1 Kararnama agreement dated 16-1-1982 signed by the plaintiff and defendants 1 and 3, is true valid and binding on the parties or that the earlier partition of 1953 pleaded by the 1st defendant is true?

The High Court differed from the learned single judge's decision that "the suit against the 4 and 5 defendants does not lie". The High Court held that the defendants 4 and 5 were made parties to the suit by the plaintiff himself and since the appeal is a continuation of the suit, it cannot be held that the defendants 4 and 5 are not necessary parties to the appeal, particularly when the specific contention of the first defendant and the plaintiff is that the defendants have relinquished their shares. **The Question of**

relinquished will come only when they have share. The court held that in view of their findings the defendants 4 and 5 were parties and the appeal has to fall to the ground.

Section 6 and Section 29-A of the Hindu Succession Act, 1956 were discussed in detail. It was held that section 29-A is intended to carve out an exception in favor of the daughters who were unmarried till 5-9-1985, by conferring coparcenary rights on them. **Hence in the present set of facts the view taken by the learned single judge while dealing with the question of non-impleadment of the necessary parties that after the introduction of the amendment ,the rights of the daughter married prior to 5-9-1985 remains extinguished is erroneous and cannot be sustained in law.** Accordingly the decision was answered in favor of the 1st defendant –appellant.

DEFICIENCIES IN THE HINDU SUCCESSION (ANDHRA PRADESH AMENDMENT) ACT, 1986:

All these legislations however brought the change in the property rights of women under Hindu Law but the comments by some of the authors about the recent State Amendment in Andhra Pradesh are worth considering:

A.M.L. NARASIMHA RAO (AIR 1988 JOUR 85)

Women had no right of ownership by birth. Neither the Hindu Succession Act nor any other enactment affecting the property rights of Hindus, created any right by birth in favour of a Hindu woman nor the coparcenary right is a creation of codified Hindu law by the A.P. Amendment Act 1986, a Hindu woman is blessed with a right of ownership by birth, making her a coparcener in the Hindu coparcenary. **This is clearly outside the scope and object of the main Act.**

P.V. SRINIVASA DEVAR, (ALT 1987 JOUR 6)

Section 29 A (i) sub-Section is couched in such words, that it most certainly and in very definite terms gives the daughter (i) the right to partition and at such partition, she shall get a share equal to that of a son, (ii) the doctrine of representation is applicable in a case of Hindu Succession, unlike the Mahomedan Law on the subject.

According to the author **there is absolutely no necessity for sub-Section (ii) with its two Provisos and sub-Section (iii) of Section 29-A.**

Section 29A sub-Section 3 is redundant but causes no harm to the scheme of the Act.

DR. N. MAHESHWARA SWAMY

From a perusal of the working of the Act, it is evident that it still suffers from dark clouds of social sentiments and legal acumen. The Act does not contain precise and clear cut provisions and their meanings. Since it was apparently framed taking into consideration the socio-economic conditions prevailing during 1950s, it scarcely suits the present day situations and social needs. The Act needs remodeling to meet the changing needs of the daughters. It is therefore suggested that

1. **Section 6 of the Act should be redrafted** on the lines of the AP Act (13 of 1986), so as to provide uniform law applicable through out the country;
2. the term 'daughter' should be defined precisely so as to include the various kinds of daughters within its ambit;

MRS. S. INDIRA DEVI

The article mainly points out that the scope of the HSA, 1956 is limited only in governing the intestate succession. But the Hindu Succession (AP Amendment) Act, 1986 is to bring about significant changes on the customary law of Mitakshara coparcenary ownership. This Amendment Act conferred right by birth in the coparcenary property and right to partition to a daughter which is completely outside the scope and object of the 1956 Act. Hence, **it is desirable to pass separate Act conferring**

coparcenary rights to daughters instead of bringing an amendment to the Hindu Succession Act, 1956.

Since the 2 parts of Clause 3 of Section 29A are in conflict with each other, it is better to delete the earlier part so that she will take the coparcenary property as a full owner.

B.SIVARAMAYYA

Mr. B. Sivaramayya undertook a detailed critical study of the various legislations that were passed by the states of Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka to remove the discriminatory features of the right by birth under the Mitakshara law. **The Kerala Joint Family System (Abolition) Act, 1976 broadly followed the recommendations of the Hindu Law Committee—the Rau Committee—and abolished the right of birth** under the Mitakshara as well as the Marumakattayam law. On the other hand, the Andhra Pradesh legislature conferred the right by birth on daughters who were unmarried on the date when the Act came into force.

Law Commission of India – 174th Report – property rights of women- proposed:

Recommended to have a model which lies between Kerala model and Andhra Pradesh model though the committee found Kerala model to be better one and they suggested **deleting Section 23 from the original Act** which do not allow daughters to claim share in dwelling house. Law commission has drafted a bill

THE HINDU SUCCESSION (AMENDMENT) BILL 2000:

The draft suggests amending Section 6 of the Hindu Succession Act, 1956 to come out with the practical difficulties and to better empower the women and to do away the practical difficulties of Hindu Succession (Andhra Pradesh Amendment) Act, 1986 and they suggested the model for whole country where the position of daughters is even bad.

To look at the factual situation in Andhra Pradesh about the implementation of the Andhra Pradesh State amendment the following would be highly helpful

Table -1

Cases pertaining to Coparcenary Rights of Women in Andhra Pradesh- Districts

Name of the District	Total No. of cases filed in the District from 1986 till 2003 concerning women's coparcenary Property rights	Total No. of cases disposed	Total No. of Disposed cases in which Detail information is furnished	Cases compromised		Cases Decreed		Total No. of cases dismissed
				Compromised And women obtained property	Compromised And women has not obtained property	Decreed And women obtained property	Decreed And women has not obtained property	
East Godavari			41 (18 pending)	1out of 3	2 out of 3	2 out of 8	6out of 8	12
Guntur	240	136	96 (7 pending)	4out of 17	13 out of 17	22 out of 40	18 out of 40	32
Cuddapah	151	105	47	9 out of 9	Nil	14 out of 14	Nil	24
Ranga Reddy	562	193	193	38 out of 44	6 out of 44	53 out of 70	17 out of 70	79
Khammam	60	45	36 (11 pending)	7 out of 7	Nil	8 out of 14	6 out of 14	4
Chittor	188	123	94	6 out of 17	11 out of 17	32 out of 61	29 out of 61	16
Warangal			40 (11 pending)	6 out of 6	Nil	10 out of 11	1 out of 11	12
Vizianagaram	250	93	60	7 out of 14	7 out of 14	28 out of 28	Nil	18
Krishna	436	305	138 (12 pending)	18 out of 22	4 out of 22	60 out of 64	4 out of 64	40
Nalgonda	140	103	93 (26 pending)	5 out of 14	9 out of 14	15 out of 35	20 out of 35	18

Nalgonda District:

There are various courts in the district where no case has been filed at all the Act is virtually not implemented so far in these places. Bhongir is a Place in the district which has a junior and senior civil Judge court but no case has been filed in that place. Suryapet is another place where a senior and junior civil Judge court are there but only one case is filed in Senior civil judge court which is pending other than that there are no cases filed in this place. Both these places are important places in the district

Only 20 women acquired the benefit of this legislation in this district so far out of 93 cases regarding which information has been furnished out of a total of 103 cases that were disposed

Khammam District:

This district has only 60 cases filed so far and only 15 women are benefited so far out of 45 cases for which information is available.

Places such as Kothagudem, Sathupally, Yellandu and Madhira in the district had no cases filed. All these are very important places in the district.

Ranga Reddy District:

The district has the highest number of cases in the state from the information we received. 91 women have acquired property so far. There are also as huge as 79 cases being dismissed sometimes due to default are as the parties do not insist and nearly 400 cases are pending. All these information creates a doubt that **daughters** are either forced to compromise or that they withdraw from pursuing the matter further.

Cuddapah District:

As per the information given only 23 **daughters** obtained property under this Act so far and equal number of cases were dismissed majority of them dismissed for not pursuing the matter the detail information is furnished in 47 cases out of 107 cases disposed so far even if we go by same statistics in 50% of these cases women might have obtained property but 50 women obtaining property under a beneficial legislation

prevailing in the state for nearly 20 years is something which reveals the situation and in majority cases **daughter** compromise and take a share much lesser than what they are entitled to shows the effect of this legislation and the impossibility of a women to exercise her right due to fear of being isolated or other fears.

East Godavari District:

As per the information given pertaining to 23 disposed cases in only 3 situations **daughter** obtained property this is truly unbelievable that a beneficial legislation could not be used by women.

Guntur District:

In 26 out of 89 disposed cases in which information is available that **daughter** obtained property in as many as 40 cases compromised she could bargain for some share in 18 cases and in other cases compromised without taking a share. It is against human psychology that any body would compromise and not take a share which clearly projects the point that if she takes a share or some property in compromise the atmosphere will not be conducive for her to claim and exercise her right or that she might be forced to a situation of compromise or that dowry might have been given.

Chittor District:

Only in 38 out of 94 cases disposed so far that **daughter** received property in this district also the situation is not better.

Warangal District:

In 16 out of 29 cases in which information is available daughter obtained property it means that not one woman per year since the legislation is in force has obtained property.

Krishna District:

In 78 out of 122 disposed cases daughter obtained property in the district so far. This district is considered to be one of the very intelligent districts in the state with property being very valuable still there are not many cases where she did receive property.

Table- 2

Details of cases from the courts in Ananthapur, Prakasham Districts and few courts in other districts:

Name of the Court	No. of cases filed from 1986 till 2003	No. of cases disposed	No. of cases information furnished	No. of cases Compromised and women obtained property	No. of cases decreed and women obtained property	No. of cases dismissed
Senior Civil Judge Court, Bodhan, Nizamabad District	9	7	7 (2 pending)	5 (no details)	-	-
Addl. Senior Civil Judge Court, ongole, Prakasham District	1	Nil	1(pending)	-	-	-
Principal Senior Civil Judge Court, ongole, Prakasham District	2	2	2	Nil	1(obtained property)	1
Senior Civil Judge Court, Kadiri, Ananthapur District	69	66	19	6(obtained in all 6 cases)	13 (Obtained in all 13 cases)	-
Junior Civil Judge Court, Rayadurg, Ananthapur District	6	2	-	-	-	-
Senior Civil Judge Court, Anakapalli, East Godavari District	103	83	5(1 Pending)	-	4 (obtained in 3 cases)	
Senior Civil Judge Court, Penukonda , Ananthapur District	29	23	17 (2 Pending)	4(Obtained in 4 cases)	3 (obtained in 3 cases)	8

Principal Junior Civil Judge Court, Addanki, Prakasham District	34	23	23	6 Obtained in 6 cases)	7 Obtained in 7 cases)	10
Principal Junior Civil Judge Court, Kandukuru, Prakasham District	24	18	24 (7 pending)	9(obtained in 6 cases)	5(obtain ed in 1 case)	3
Principal Junior Civil Judge Court, Ananthapur, Ananthapur District	16	14	16 (2 pending)	2(Obtaine d minor amounts)	5(obtain ed in 5 casees)	7
Junior Civil Judge Court, Dharmavaram, Ananthapur District	34(18 cases filed by women for share)	21	18(filed by women) (8 cases pending)	3(obtained in 2 cases)	2(obtain ed in 2 cases)	5
Principal Junior Civil Judge Court, kadiri, Ananthapur District	-	-	20 (4 pending)	2(obtained in 2 cases)	10(Not obtained in any case)	4
Junior Civil Judge Court, Markapur, Prakasham District	1	-	-	-	-	-
Senior Civil Judge Court, Hindupur, Ananthapur District	18	16	4(Filed by women)(3pending)	-	-	1
Junior Civil Judge Court, Madakasira, Ananthapur District	53	38	7(no other details)	-	-	-
Junior Civil Judge Court, Giddaluru, prakasham District	3	3	3	-	1(obtain ed property)	2
Senior Civil Judge Court, Addanki, Prakasham District	38	28	28(1 case transferr ed)	6(obtained in 6 cases)	16(obtai ned in 13 cases)	5

The table above shows clearly that the instances in which women obtained property is very few. In the following courts the number of cases filed from 1986 till date did not exceed even 10.

Senior Civil Judge Court, Bodhan, Nizamabad District
Addl. Senior Civil Judge Court, ongole, Prakasham District
Principal Senior Civil Judge Court, ongole, Prakasham District
Junior Civil Judge Court, Rayadurg, Ananthapur District
Junior Civil Judge Court, Markapur, Prakasham District
Junior Civil Judge Court, Giddaluru, prakasham District

Table- 3

List of Courts where no cases have been filed concerning women's coparcenary rights in Andhra Pradesh:

S.No.	Name of the Court	No. of cases filed regarding women's coparcenary rights from 1986 till 2003
1	Junior Civil Judge Court, Kanigiri, Prakasham District	Nil
2	Junior Civil Judge Court, Ibrahipatnam, Ranga Reddy Dustrict	Nil
3	Senior Civil Judge Court, Chirala, Prakasham District	Nil
4.	Principal Junior Civil Judge Court, Chirala, Prakasham District	Nil
5	Principal Junior Civil Judge Court, Parchur, Prakasham District	Nil
6	Senior Civil Judge Court, Parchur, Prakasham District	Nil
7	II Addl. Junior Civil Judge Court, Ongole, Prakasham District	Nil
8	Junior Civil JudgeCourt, Podili, Prakasham District	Nil
9	Junior Civil Judge Court, Bodhan, Nizamabad District	Nil
10	Principal Junior Civil JudgeCourt, Rayachoti, Cuddapah District	Nil
11	Xth Junior Civil Judge Court, City Civil Court, Hyderabad	Nil
12	I Addl. Junior Civil Judge Court, Repalle, Guntur District.	Nil
13	I Addl. Junior Civil Judge Court, Ongole, Prakasham District	Nil
14	Judl. Magistrate 1st class, Special Mobile Court, Ranga Reddy District	Nil
15	Junior Civil Judge Court, Gooty, Ananthapur District	Nil

16	Senior Civil Judge Court, Gooty, Ananthapur District	Nil
17	Junior Civil Judge Court, Guntakal, Ananthapur District	Nil
18	Junior Civil Judge Court, Kalyandurg, Ananthapur District	Nil
19	Junior Civil Judge Court, Special Excise Court, Uravakonda, Ananthapur District	Nil
20	Family Court, Hyderabad	Nil
21	Addl. Magistrate, Hyderabad East and North	Nil
22	I Addl. District and Sessions Court, Prakasham District	Nil
23	District and Sessions Court, West Godavari District	Nil
24	District and Sessions Court, Ananthapur District	Nil
25	Addl. District and Sessions Court, Hindupur, Ananthapur District	Nil
26	I Addl. District and Sessions Court, Adilabad District	Nil
27	II Addl. District and Sessions Court, Madanapalle, Chittoor District	Nil
28	District and Sessions Court, Nellore District	Nil
29	VI Addl. District Court Ananthapur	Nil
30	Senior Civil Judge Court, Kothagudem, Khammam District	Nil
31	Senior Civil Judge Court, Sathupally, Khammam District	Nil
32	I Addl. Junior Civil Judge Court ,Khammam, Khammam District	Nil
33	II Addl. Junior Civil Judge Court ,Khammam, Khammam District	Nil
34	Principal Junior Civil Judge Court ,Kothagudem, Khammam District	Nil
35	Junior Civil Judge Court, Sathupally, Khammam District	Nil
36	Junior Civil Judge Court, Madhira, Khammam District	Nil

37	Junior Civil Judge Court, Yellandu, Khammam District	Nil
38	District and Sessions Court, Vizianagaram District	Nil
39	Addl. District and Sessions Court, Vizianagaram District	Nil
40	Senior Civil Judge Court, Bobbili, Vizianagaram District	Nil
41	Senior Civil Judge Court, Parvathipuram, Vizianagaram District	Nil
42	Principal Junior Civil Judge Court, Parvathipuram, Vizianagaram District	Nil
43	Junior Civil Judge Court, Gajapathinagaram, Vizianagaram District	Nil
44	Principal District and Sessions Court, Nalgonda District	Nil
45	II Addl. District and Sessions Court, Nalgonda District	Nil
46	III Addl. District and Sessions Court, Nalgonda District	Nil
47	IV Addl. District and Sessions Court, Nalgonda District	Nil
48	Senior Civil Judge Court, Bhongir, Nalgonda District	Nil
49	Junior Civil Judge Court, Nalgonda, Nalgonda District	Nil
50	Junior Civil Judge Court, Nakrekal, Nalgonda District	Nil
51	Junior Civil Judge Court, Suryapet, Nalgonda District	Nil
52	Junior Civil Judge Court, Kodad, Nalgonda District	Nil
53	Junior Civil Judge Court, Huzurnagar, Nalgonda District	Nil
54	Junior Civil Judge Court, Miryalguda, Nalgonda District	Nil
55	Principal Junior Civil Judge Court, Bhongir, Nalgonda District	

The above mentioned list of Courts where there are no cases have been filed in all these years, it shows that either daughters are not treated as necessary parties in the partition cases or that the awareness level is very low or that the Act is virtually non applicable though the list also includes some Courts which have no jurisdiction to deal with these cases but still there are many Courts which have jurisdiction but have not exercised due to lack of filing.

The research findings make it quite clear that the Andhra Pradesh Amendment Act did not find desired favour because of its poor drafting and the possible practical difficulties that it pose.

OBSERVATIONS:

The research projects the view that the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 though conferred equal rights to daughters in ancestral property the number of instances where the daughter obtained property are minimal and also it is a fact that dowry system still prevails though making daughter as a coparcener is within the letter and spirit of law still the socio cultural situations are not conducive for enforcement of that right. The following are found to be the major reasons for the low implementation of this beneficial legislation.

The main points for consideration and elucidation of the consequences of the result of statutory inclusion of a daughter in the category of Mitakshara coparcenary are that the anomalies and inconsistencies must be eliminated. As far as the anomaly, it is to be made clear that at the time of marriage the daughter ceases for all purposes to be a member of the joint family of her birth as per custom. The result is that for the purpose of succession under Section 6 of the Hindu Succession Act, 1956 she will remain as heir in the class I of the schedule but it would be inconsistent to regard her or her children to be the members of the coparcenary of their mother's family because in the case of male coparceners the children of the coparceners become the member by virtue of their birth in the family. But the daughter's children though denied the coparcenary membership of

their mother's family in lieu of that they get the membership of coparcenary of the family in which their mother is married, so there is no denial of any equality to the daughter of a daughter by denying her the coparcenary membership in the family of her mother's birth. So coparcenary is very patriarchy in its character and the effort to fit in women in it creates practical problems and also is undesirable.

It is found that the cases on the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 for claiming coparcenary interest are not coming up much in Courts. There may be two reasons for this. First, it may be that they are getting their newly created statutory right in their favour being satisfied. The other reason may be that the females do not want to disturb the existing usages, customs and practices of their family. The second reason seems to be the most plausible reason. Granting of coparcenary interest to females not only brings them proprietary interest but at the same time the females are also liable to the same duties to pay the debt of their father and in satisfying the debt their interest can be taken. Therefore, if they do not claim the interest they would still be liable to pay the debt of their father. Further the coparcenary interest will be effected also when a Karta alienates the joint property of the coparcenary and if the alienation is for legal purpose or for the benefit of the family or for legal necessity the female coparcener will be bound by the alienation unless she proves the alienation was not for legal purpose or for the benefit of the family or for legal necessity or that it was immoral or illegal. The aforesaid implications are not imaginary but they are natural and practical problems which the law must take into account.

The Amendment Act did not provide for the practical way as to how the coparcenary interest of the female in the family of birth would be determined. Her interest may require to be ascertained on the date of the marriage to do away with dowry presuming that it was the date on which the partition of the coparcenary is affected. Her continuation as member of coparcenary in the family of her birth will logically make her daughter and son to be coparceners in the family of her birth. It is not in consonance with the custom or is it practicable to adopt therefore, the Act must make proper provisions in this regard. Especially this makes implementation of Section 29-B very impossible.

Another point of making the daughter the coparcener in the family of her birth will naturally have the consequences of her appointing the Karta of the Mitakshara family. Though there are dicta of the courts have been in the past that a female cannot be a Karta yet there is nothing wrong to enable her to become the Karta of the family through statute. But here also a difficulty, though not very complicated, will arise when she goes out of family on marriage. Therefore, it is submitted that a thorough study of the existing coparcenary and incidences must be worked out.

Further it is submitted that the Act makes a discrimination between a daughter born in the family and a daughter adopted in the family of her adoption. Therefore, this anomaly must be removed.

Section 29-B presumes the married female's continuance in the family of her birth. The net result would be social and family feuds and tensions. Therefore, it is suggested that the aforesaid provision regarding continuance of a female as coparcener even after marriage must be reviewed.

The proviso to Section 29-B is not properly worked out because a female coparcener if her interest in the coparcenary is not determined at the time of her marriage the situation of leaving the surviving children of such a female does arise except in the case of illegal or illegitimate child, and the interest of illegitimate children, if any, must be protected not by granting them her survivorship interest but by presuming in such a case that there was partition in the coparcenary just before her death and the interest which she would have got must be assigned to the illegitimate children of such a female.

CONCLUSIONS:

In view of the above observations it is desirable not to further strengthen patriarchal institutions Such as coparcenary in an effort to empower women. Empowering women should be done in any other manner.

The amendment to Section 6 as suggested by Law Commission of India in its 174th report clearly highlights that there is a greater need to amend the State Legislation for its effective implementation and to have similar Legislation all over the Country.

The present Act is poorly drafted and requires to be changed for attaining the objective of the legislation

The present Act though beneficial legislation is not been utilized due to the practical difficulties

The poor number of cases filed in the Courts in spite of the fact that non-joinder of necessary parties would not be maintainable is a proof of the fact that situation is not conducive for women to exercise their right.

The prevalence of dowry system further justifies the need to reconsider the retention of the Act as the Act intends to do away with the dowry of evil.

The number of cases where women compromised without taking share justify the fact that socio cultural context is not suitable or that the Act does not consider it.

The Act shall remain as mere eye wash to women rather than actually empowering them unless it be drafted otherwise, to make it more effective.

SUGGESTIONS:

The coparcenary should be done away with in Hindu Succession Act, 1956 as we have in 1956 done away with *Stridhana*.

Equal share to daughter along with son in the ancestral property should be done on the lines of Section 8 of the Hindu Succession Act, 1956 which confers equal share in self acquired property.

The right to claim partition should be given to daughter along with sons and predeceased son's wife/ widow.

The members of Joint Hindu Family can still continue and those of them who wish to stay together can stay as co-owners of property.

Hence it is not new under Hindu Law that the legislations have done away with old concepts and renamed them or restructured with necessary modifications to suit the contemporary situations. For example we do not find *stridhana* or women's estate today similarly in the state Section 6 should be re-drafted not as suggested by Law Commission of India but by removing coparcenary and conferring equal rights to daughter on par with son along with the right to claim partition. It can be drafted in the lines of Section 8 so that the situation of conferring women power in patriarchal institution and then asking her to utilize the power can be done away.

It is already made clear but to reiterate once again that Courts should not entertain partition suits without daughters being made party to the suit. Suit should fail for non - joinder of necessary parties.

It has been put forth by many authors including Law Commission of India which has not been implemented i.e. the removal of Section 23 from the Hindu Succession Act,

1956, which we would like to reiterate especially where many a times in today's scenario the only property that will be there are dwelling houses and also the value of houses sometimes are much more than all the rest of the property put together. If this Section continues the rights conferred under the beneficial legislations may remain only on paper.

Annexure- I

ANALYSIS OF THE RESEARCH ARTICLES

Written by various research scholars

HINDU SUCCESSION (A.P. AMENDMENT) ACT, 1986: A CRITICAL VIEW

By: ***A.M.L. NARASIMHA RAO AIR 1988 JOUR 85***

This article stresses on the fact that Hindu females should not be given coparcenary rights as Hindu law does not allow for it. At no point of time were females made members of the Hindu coparcenary. Females were given absolute rights over their *stridhana* properties with a few exceptions. But women had no right of ownership by birth. Neither the Hindu succession Act nor any other enactment affecting the property rights of Hindus, created any right by birth in favour of a Hindu woman nor the coparcenary right is a creation of codified Hindu law by the A.P. Amendment Act, 1986, a Hindu woman is blessed with a right of ownership by birth, making her a coparcener in the Hindu coparcenary. This is clearly outside the scope and object of the main Act. Not only the preamble of the Act but also the provisions of the main Act do not suggest any deviation from the purpose as given in the preamble that is "*An Act to amend and codify the law relating to*". So, in all its chances, the A.P. Amendment Act, 1986 is outside the scope of the Hindu Succession Act, 1956 and therefore invalid.

RIGHTS OF WOMEN TO PROPERTY IN THE DHARMASHASTRAS

By: P.V. KANE

This article spells out the right to property of a woman as wife, widow and mother, as enumerated in the ancient texts. In the ancient period, a woman could not hold property. However in the *Dharmasastras*, the denial that a woman could own property was early modified by the admission of the institution of *stridhana*, which was in fact originally confined to personal assets of the wife kept separately from the property of the agnates, and maintenance. The right to inherit and to a share was, however, of a slow growth, and once it was admitted the question was not whether a woman could own property, but

whether she had, an unrestricted power of disposition. It also talks of the aspect of maintenance and its historical origin and also the rights of a mother or widowed mother and the position of a daughter, none of which were too empowering.

ANOMALY IN THE HINDU SUCCESSION (A.P. AMENDMENT) ACT, 1986

***BY: P.V. SRINIVASA DEVAR, ALT* 1987 JOUR 6.**

As the title of the article clearly indicates, it basically tries to point out the anomaly in the Hindu Succession (A.P. Amendment) Act, 1986. Section 29 -A sub-Section (i) gives the daughter of a coparcener by birth: 1.) the status of an independent coparcener identical with that of a son, and 2.) rights in her coparcenary property identical with that of son, and she is also subjected to the liabilities and disabilities as a son is subjected to. This sub-Section is couched in such words, that it most certainly and in very definite terms gives the daughter (i) the right to partition and at such partition, she shall get a share equal to that of a son, (ii) the doctrine of representation is applicable in a case of Hindu Succession, unlike the Mahomedan Law on the subject.

According to the author there is absolutely no necessity for sub-Section (ii) with its two Provisos and sub-Section (iii) of Section 29-A.

In view of the legal situation mentioned above, this sub-Section with its two Provisos has no justification for its existence. Thus we find that Section 29- A sub-Section (i) is the basic provision which creates and vests the right by birth in the daughter of a coparcener, which is equal to that of a son in all respects, where as Section 29A subSection (ii) makes a superfluous mention of the quantum of the share of the daughter at the partition. By virtue of Section 30 of the parent Act, read with Section 29-A sub-Section (i) of the amending Act, there is absolutely no doubt rearing the share of the daughter 'capable of being disposed of by will or testamentary disposition'. Hence, Section 29-A sub-Section (iii) is redundant but causes no harm to the scheme of the Act.

RIGHT OF A SHARE IN THE DWELLING HOUSE TO A FEMALE: A MYTH OR REALITY

By: *SRIPADA RADHAKRISHNA*

This article tries to find out a right of a share granted to a female heir in a dwelling house is a myth or a reality. Under the old Hindu law, *Dharmasastras* made the female incapable of having a share in inheritance. In the present day, Hindu Succession Act, 1956 no doubt attempted to give a semblance of equal right to a female equal with that of the male, probably by being influenced by the Article 15 in the Constitution of India. But this is not a real equality. The framers of the code enlarged the hitherto limited estate of the female into a full estate and placed her on the same footing as her brother by the provisions of the Hindu Succession Act, 1956. While so conferring an equal right with the son, a novel statutory restriction has been made by which the Act made share in a dwelling house impartible at her demand, except in particular circumstances.

If the right of a female heir in a dwelling house devolving on her under the Hindu Succession Act, 1956 is to be treated as a reality, Section 23 must be removed so as to confer upon her an absolute right to a partition in it as and when she pleases. If the Parliament in its wisdom intends to protect the male heir from outside interference, at best they can give the same remedy which they granted in the Partition Act, 1893 which is the option of buying her share for its market price but not by depriving her right to demand partition until the male heir(s) choose to partition.

SECTION 6 AND 29A OF THE HINDU SUCCESSION ACT: A CRITIQUE

By: *M. RAMAKOTI*

The purport of the non obstante Clause in Section 29 -A referring to Section 6 of the Act only means despite non-conferment of such a right under Section 6 under which this right should have been incorporated and conferred by the central legislature as an attendant sequel to the concept of survivorship and halting thereof, and as such, the State of Andhra Pradesh intended to confer such a right. If such a right has already been conferred under Section 6, introduction of Section 29-A is wholly unnecessary and otiose.

Section 6, therefore, froze the operation of survivorship only without making any further inroad into the system, conferring right by birth on a daughter. Section 29 -A of the Andhra Pradesh State Amendment alone conferred such a right, Sections 6 and 29 A therefore, occupied two different fields of legal concepts altogether.

It is a misconception and a mistaken reading of Section 6 that the rights of a daughter married prior to 5-9-1985 are identified and protected under Section 6 of the Act.

DAUGHTER'S RIGHT TO SUCCEED HER PARENTAL PROPERTY—AN APPRAISAL UNDER THE HINDU SUCCESSION ACT, 1956.

By: *DR. N. MAHESHWARA SWAMY*

From a perusal of the working of the Act, it is evident that it still suffers from dark clouds of social sentiments and legal acumen. The Act does not contain precise and clear cut provisions and their meanings. Since it was apparently framed taking into consideration the socio-economic conditions prevailing during 1950s, it scarcely suits the present day situations and social needs. The Act needs remodeling to meet the changing needs of the daughters. It is therefore suggested that

3. Section 6 of the Act should be redrafted on the lines of the AP Act (13 of 1985), so as to provide uniform law applicable through out the country;
4. the term 'daughter' should be defined precisely so as to include the various kinds of daughters within its ambit;
5. A provision should be included in Section 30 so as to provide scope compulsorily giving a share in the property of parents to the daughters even in case of testamentary succession. The Act in itself should contemplate modalities for testamentary succession without embarking upon the Indian succession Act or other such laws prevailing in the country;
6. Section 23 should be omitted in to, and succession to the dwelling houses should be made on par with the succession of other properties.

RAISING THE STATUS OF WOMEN: RESPONSE TO THE AP STATE GOVERNMENT'S PROPOSED AMENDMENTS AND ADDITIONS TO LEGISLATIONS PERTAINING TO WOMEN

By: *Y. PADMAVATHI*

The government of AP gets the credit of being the first state in India to accord coparcenary status by birth to females belonging to Mitakshara Joint Family, but at the same time a close reading of the relevant Section reveals discrimination between married and unmarried daughters. Because of the Proviso, in Clause 4 of Section 29-A, married girls of Mitakshara Joint Family are pt to disadvantage when compared to their unmarried sisters. Especially girls married prior to commencement of AP State Amendment Act and divorced after the commencement of eth Act are at a greater disadvantage. In this regard, the suggestion is that an Amendment may be brought out to this Act, to ensure the benefit of Proviso 2 of 29-A of said Act be extended to females married prior to the commencement of this Act, and who have not received any considerable property either by way of *stridhana* or otherwise at the time of partition from parental house. Similarly, the benefit of Proviso 2 should be extended to females of Mitakshara Joint Family who have married before the commencement of this Act, and divorced after the commencement.

STATE AMENDMENTS TO HINDU SUCCESSION ACT AND CONFLICT OF LAWS: NEED FOR LAW REFORM

By: *NILIMA BHADBHADE*, (2001) 1 SCC (Jour) 40

The article points out that there is no rule of conflict of laws which can provide any direct and immediate solution in a case involving different laws relating to coparcenary property in different States in India. Neither do any of the four state laws provide any answer, nor have any rules been established by decisions of courts, Indian or English. Until these rules are formulated, various courts in different states would be free to decide cases based on their own interpretations of the rules of conflict of laws and of the state legislations. Decisions would vary, thereby increasing uncertainty, and

providing inducements for open courts "*forum-shopping*". Law must be definite particularly in this area to enable interested parties in planning and managing affairs relating to coparcenary property. Therefore, there is need for certainty in law.

The Kerala Act and amendments to the Hindu Succession Act, 1956 by Maharashtra, AP, Tamil Nadu and Karnataka, have all been hailed as progressive in their way. But these can create situations of conflict of laws, since laws in the states in India relating to Mitakshara coparcenary property differ. Resolution of these situations of conflict and formulation of rules by the courts would take some time. Hence, there is urgent need for:

1. Having one law relating to Mitakshara coparcenary throughout India; or
2. Clear definition of applicability of the state laws/ amendments; or
3. Immediate enactment of rules of conflict of laws for resolving conflicts.

THE HINDU SUCCESSION (AP AMENDMENT) ACT, 1986- CERTAIN ANOMALIES

By: *MRS. S. INDIRA DEVI*

The article mainly points out that the scope of the Hindu Succession Act, 1956 is limited only in governing the intestate succession. But the Hindu Succession (AP Amendment) Act, 1986 is to bring about significant changes on the customary law of Mitakshara coparcenary ownership. This Amendment Act conferred right by birth in the coparcenary property and right to partition to a daughter which is completely outside the scope and object of the 1956 Act. Hence, it is desirable to pass separate Act conferring coparcenary rights to daughters instead of bringing an amendment to the Hindu Succession Act, 1956.

Since the 2 parts of Clause 3 of Section 29-A are in conflict with each other, it is better to delete the earlier part so that she will take the coparcenary property as a full owner.

LAW: OF DAUGHTERS, SONS AND WIDOWS DISCRIMINATION IN INHERITANCE LAWS

By: *DR. B. SIVARAMAYA*

The elevation of daughter as a coparcener will erode the share of a widow on the intestacy with respect to ancestral property in the states governed by the dravida sub school. In favor of the AP approach, (coparcenary rights to daughters) it is said: Even while it discriminates against her, she is well-taken care of, she is safe in her rights as a daughter, the dependence of widows on husband's property is largely due to the fact that they do not inherit from fathers.

The force of the above view is not denied especially as a daughter is no longer bound by the restriction imposed on her to seek partition of dwelling house under Section 23 of the Hindu Succession Act. But granting coparcenary rights to daughters is a weak and inadequate right. First, the important category of property which is regarded as ancestral, that is, property inherited from father, paternal grandfather, or paternal great grandfather, under Hindu Succession Act ceased to be ancestral after the decision of the Supreme Court in ***Commr. of Wealth Tax, Kanpur*** v. ***Chander Sen*** (AIR 1986 SC 1753). Second, conferment of right by both does not afford relief to women governed by the Dayabhaga law. Third, the measure preserves the different schools and sub schools of Hindu law and thus affects the desirable goal of unification of Hindu law.

GENDER BIAS IN THE HINDU SUCCESSION ACT, 1956

BY KUSUM

This article written by Prof. Kusum seeks to analyse the gender discriminatory provisions in the Hindu Succession Act, 1956 with suggestions to amend them so as to bring women on par with men. Reference has been made to the prior position of Hindu law relating to succession and a mention of the various schools of Hindu law like Dayabhaga, Marumakattayam, and Mitakshara. It also discusses the Hindu Women's Right to Property Act, 1937, though this Act was a big step forward and brought about revolutionary changes in Hindu law of all schools and conferred larger rights on women, it did not give any coparcenary rights to women. Thus, to overcome the several anomalies

and discriminatory provisions Prof. Kusum advocates for a comprehensive uniform and gender non-discriminatory law of succession applicable to all Hindu schools of law.

SUCCESSION TO THE PROPERTY OF A HINDU , BUDDHIST , SIKH OR JAINA UNDER THE HINDU SUCCESSION ACT ,1956 VIS-À-VIS THE INDIAN SUCCESSION ACT ,1925--A JURISDICTIONAL RECONCILIATION – *DR. N MAHESHWARA SWAMY*

Dr. N Maheshwara Swamy makes a persuasive argument for a Common Civil Code of succession, which would be applicable to all the citizens of India equally, irrespective of caste, creed, community and religion which he suggests could be done by compiling together all the existing laws of succession in India. The two important enactments pertaining to succession to the property of a deceased person who professes Hindu, Buddhist, Sikh, Jain religions as the case may be , namely, the Hindu Succession Act, 1956 and The Indian Succession Act, 1925 has two dimensions namely intestate succession and testamentary succession. Dr. Swamy critically examines how the law postulates an entirely separate and distinct set of procedural rules dealing with these issues in respect of properties pertaining to a male and a female person. The detailed analysis of the various provisions under these enactments reiterates the point that the law of succession as contemplated is not only cumbersome and self-contradictory but also incomplete leading to misconceptions and misnomers. Hence, the need for a Common Civil Code, which would ensure that the objective of the law of succession is not jeopardized.

COPARCENARY RIGHTS TO DAUGHTERS: CONSTITUTIONAL AND INTERPRETATIONAL ISSUES *BY B.SIVARAMAYYA*

Mr. B. Sivaramayya undertakes a detailed critical study of the various legislations that were passed by the states of Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka to remove the discriminatory features of the right by birth under the Mitakshara law. The Kerala Joint Family System (Abolition) Act, 1976 broadly followed the recommendations of the Hindu Law Committee—the Rau Committee—and abolished the right of birth under the Mitakshara as well as the Marumakattayam law. On the other

hand, the Andhra Pradesh legislature conferred the right by birth on daughters who were unmarried on the date when the Act came into force. The same model was followed by the states of Tamil Nadu (1989), Maharashtra (1994), and Karnataka (1994). Mr. Sivaramayya after a detailed analysis puts forth that all these regional amendments tend to defeat the goal of Uniform Hindu law as envisaged by the Parliament during the years 1955-56 and in fact worsen the condition of women in these states. But he points out that the approach being followed by Kerala which abolishes the right by birth altogether is in consonance with the recommendations of the Rau Committee and subserves the goal of uniformity. He suggests that this approach coupled with the imposition of restraints on testation as under continental laws and Muslim law would have achieved better results than the above mentioned amendments which confer the coparcenary rights on unmarried daughters. As regards the issue of the daughter as a coparcener, she will be bound by the common run of liabilities well settled under the Hindu law. But the question whether a daughter would be governed by the doctrine of pious obligation as in the case of a son has not been answered clearly by the legislation.

POSITION OF HINDU WOMEN UNDER THE HINDU ADOPTIONS AND MAINTAINENCE ACT, 1956

BY: C.R. DAVDA, LECTURER, LAW COLLEGE, VALSAD, GUJARAT

Mr. C.R. Davda highlights the rights conferred on women by the Hindu Adoptions and maintenance Act, 1956 as well as points out the provisions which fall short of achieving this objective. Adoption is one of those fictions of law which has been marshaled for the furtherance of individual interest. The law of adoption enables a childless person to make somebody else's child his own. After the Hindu Adoptions and Maintenance Act, 1956 was passed, according to Section 9 (2), father cannot give the child in adoption without the consent of the mother. Section 9 (3) empowers the mother to give her child in adoption without the consent of her husband if he is dead or is suffering from any of the disabilities described in the Section. Section 10 now allows for the adoption of a boy or a girl which was not possible under the old Hindu law. Thus the law tries to put women on the same footing as men but it leaves much to be sought for .It

does not allow a married women living separately from her husband either take or give a child in adoption. Under Section 19 of the Act, widowed daughter-in-law's right of maintenance is very limited. She can claim maintenance only if all the conditions of the Section are fulfilled not otherwise. The author makes a suggestion that the obligation to maintain legitimate/illegitimate children should be co-extensive of mother and father i.e. jointly liable. He also suggests changes to Section 19, that the first part of Section be omitted.

MARRIED WOMEN PROPERTY RIGHTS

BY: MARJORIE BERMAN

The researcher has very insightfully thrown lights on the development of Women's Property Rights in Common Law. A majority of the States that is 42 out of 50 follow this kind of a model. The women lost all her property rights once she is married but in the mid nineteenth century due to passing of Married Women Property Rights Act everything belonged to her husband. However, now they have control over the property they obtained prior to marriage.

There has been a growth in 1970's on the doctrine of equitable distribution which means that property accumulated after marriage will equally get distributed after the divorce. The author gives insights into the judicial interpretation of the do trines. There has been fixed shares statutes that are the wife will always get a fixed share after the death of the husband another interesting development of the common law countries are that earlier alimony was the only thing that a wife could expect but now they can go for property settlement. The researcher approves of the Uniform Marital Property Act which is base on the concept of vested ownership of both the spouses in the property. It upholds the individual right of the spouses and hence freedom to contract still remains. The researcher feels very optimistic about the working of the UMP Act.

The article has much relevance for us as our entire legal system has been based on Common Law. The early deprivation of a women's right in Common Law countries can be compared to the Hindu Joint Family System.

WOMEN'S RIGHT TO MATRIMONIAL HOME

FREDDY FARM

The researcher has looked into the basis of this right as the concept of right in matrimonial home that is a women's dependence on her husband makes her vulnerable at the time of separation between spouses. Under Old English Law a women didn't have a right to reside in her matrimonial home hence she faced a constant threat of eviction. Contemporary law however has given the right of deserted women to stay at her matrimonial home.

Researcher cites Lord Dennings opinion of giving more rights to women and cases from ***Shipman*** v. ***Shipman*** in 1924 to ***Jones*** v. ***Jones*** in 1971 where in the courts have time and again tried to give accommodation and means to the deserted wife.

In the Indian context he says though there isn't an explicit right but the courts again through interpretation have given her such rights. The Indian Courts looked up to the English Body of case laws to justify its ratio.

The article has an important bearing for us as it has cited the Andhra Pradesh High Court's decision in ***B.H.P.*** v. ***Vishakapatnam*** (AIR 1986 AP207). Here the wife was occupying her matrimonial home which was a flat the husband rented from his employer the Government. The wife's injunction evicting her was granted and the government on the husband's termination of the right to stay there was restrained to throw her out.

This case in the article shows how the Andhra High Court has come out with gender sensitive interpretation and inclination to give rights to a woman. Amendment was a result of such awareness in the first half of the 1980's.

BETWEEN THE IDEAL AND THE REAL: GENDER RELATION WITHIN THE INDIAN JOINT FAMILY

BY IMTIAZ AHMAD

The article is an elaborate study of the traditional Joint Family System, the role of each member in the family. They ate together, held property in common and

participated in common worship. The individual is subordinate to the collective interest of the family. The writer highlights how the formal decision making process were done by male member of the family and very nicely constructs the hierarchal roles played by each relation. The supreme role has given to the Karta and the least role to a newly married wife. He intricately links this hierarchy to gendering of roles. There was a notion of greater value to sons which strengthen by the special worship, fast and observance that are performed by women. He stresses on the point that how girls grow up with the notion of temporary membership within the natal home to that of the husband. He goes to the history of the joint family and how does the individual figure out in the entire collective philosophy of the family. In the later stages of the article he builds a very effective argument whether joint family is only a source of oppression or it has its advantages as well. He brings in the recent trend of nuclear growing in urban areas and the vulnerability of women to oppression more in a single household. At the end he concludes by pointing out the tyranny of hierarchy in joint family and also the excellent supportive arrangement in which individuals live together. It's true that Indian women lack personal identity under this kind of system which means preference of a western style of individualism. It's yet to see how Indian traditional family system copes with the forces of modernization.

THE LAW COMMISSION REPORT: ARTICLE

This article is a fact based report recording how the 15th Law Commission of India headed by B. P. Jeevan Reddy in his 174th report on property rights of women was forwarded to the government has recommended Hindu daughters to be given the status of coparceners. The constitution has proclaimed equality before the law as a fundamental right and a daughter excluded from participation to the ancestral property is discriminatory. The Andhra Pradesh State Legislature in its Act no.13 provided daughter by birth will become a coparcener in the same manner as the son and will have a right to claim survivorship. The State of Tamil Nadu and Karnataka has followed the Andhra Pradesh Legislature. The State of Kerala abolished the joint Hindu family system in 1975.

The commission recommended that daughters first to be made coparceners like sons so that they have a right by birth and would be entitled to share of partition or on the death of the male coparcener and hold thereafter as tenants in common. The Commission makes no distinction between daughters married before the Act comes in force and those married thereafter.

LAW: OF DAUGHTERS, SONS AND WIDOWS

Dr. B.Sivaramayya

He has done a study on the Hindu Succession Act, 1956 and put forth the background, the different schools of secession in different parts of India and traditionally daughters are not entitled to property rights by birth in such ancestral properties. He writes about two kinds of succession interstate [Section 8 of The Hindu Succession Act, 1956] and testamentary [Section 30 of The Hindu Succession Act, 1956 [Section 30 of The Hindu Succession Act, 1956]. He shows through hypothetical examples how interstate succession takes place under Dayabhaga and how the shares get divided. He looks into the discrimination of the daughters in ancestral property and also looks at the Hindu Law Committee [Rau Committee] recommendation. He looks at the amendment in Andhra Pradesh and Tamil Nadu and gives examples to show how the daughters share has enhanced. He finds the Hindu Succession Act very inadequate and half hearted legislation and fear of daughter's right being excluded by execution of wills were also discussed. The widow's share is eliminated by the daughters being the coparceners in the post amendment era.

The greatest inadequacy is probably the property regarded to be ancestral inherited from father, grandfather cease to be ancestral after the Supreme court's decision in ***Comm. of Wealth- Tax, Kanpur*** v. ***Chander Sen*** (AIR 1986 SC 1753) Besides it does not offer any relief to a women under Dayabhaga Law and lastly it preserves different schools and hence fail to bring integration.

Annexure- II

ANALYSIS OF THE LIST OF CASES

Pavitri Devi v. ***Darbari Singh***, (1993 (3) ALT 25)

FACTS:

One Brahmadeo Singh filed a partition suit against his brothers and their heirs claiming $1/6^{th}$ share in the coparcenary properties mentioned in that plaint. The Trial Court dismissed the suit. While the appeal was pending in the High Court of Patna, he died on June 8, 1981. The appellant, Pavitri Devi, filed an application for substitution of her and her son as legal representatives. Her claim was founded on two grounds namely, as the daughter of Brahmadeo Singh as well as the registered gift deed executed by the father giving his entire share in the joint family property and putting them in possession of 9.96 acres of land.

CONTENTION:

The question before the Supreme Court was whether Brahmadeo Singh had power to dispose of his undivided share in the joint family property by testamentary disposition including by way of gift to his daughter. Secondly, whether by virtue of the daughter being a Class I heir under the Hindu Succession Act, 1956, she was entitled to represent the estate of the deceased as his legal representative.

JUDGMENT:

It was held by the Court that having made the demand for partition and laid the suit in that behalf claiming a specific share in the Mitakshara coparcenary, Brahmadeo Singh stood divided in status from other members of the coparcenary, though partition by metes and bounds had not taken place. Hence on the date of his death he was a dividing member of the joint family. By operation of Section 30 of the same Act, he was entitled to dispose of his undivided share and the interest in the coparcenary by testamentary disposition. Secondly, Pavitri Devi was held to be the daughter of Brahmadeo Singh. Therefore she being the Class I heir succeeded to the estate of the deceased by intestate succession under Section 6 of the Hindu Succession Act, 1956, and she was entitled to represent the estate in the partition action. Accordingly by operation of Section 6 of the Act read with order 22 Rule 3 C.P.C. she was entitled to represent the estate of the

deceased. The application for substitution stood succeeded and she was brought on record as the legal representative of the deceased.

Nimmagadda Sambasiva Rao v. ***State of A.P.***, (1999 (4) ALT 353)

FACTS:

This was a revision filed under Section 21 of Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The petitioner and his major son filed separate declarations under the provisions of the Act in respect of the lands held by them. After due enquiry the Land Reforms Tribunal held that both of them were non surplus holders. On appeals filed by the State the matter was remanded to the primary tribunal to consider the question whether the lands covered by certain agreements of sale were liable to be included in the holdings of the declarants or not. Questioning the said order of remand, the petitioner filed a C.R.P. which was allowed in part, holding that the petitioner's son was entitled to hold one standard holding separately. The matter was then remitted back to the primary tribunal for fresh computation. Meanwhile the A.P. Amendment Act to the Hindu Succession Act, 1956 came into force. The petitioner thereupon raised the plea that by virtue of the said Amendment, his unmarried major daughter was also entitled to hold one standard holding separately and if so, the family unit was not liable to surrender any land at all and there would be no surplus.

CONTENTION:

The question before the Court here was whether the unmarried major daughter of the petitioner was entitled to hold one standard holding separately.

JUDGMENT:

By virtue of Section 29-A of the Hindu Succession (A.P. Amendment) Act, 1986, the daughter becomes a coparcener in her own right by birth and shall rank with the son in all respects subject to the two conditions that she should not have been married prior to the commencement of the Amendment Act and, that no partition should have been effected before the commencement of the Amendment Act. In the present case, the daughter of the petitioner did not file any declaration. This could not alter the legal position or effect the legal rights of the petitioner and his daughter. The petitioner's daughter was not bound to file a separate declaration since she was not holding any land

in excess of the ceiling area. Since the facts were not in dispute, the Court held that the unmarried major daughter of the petitioner was entitled to hold one standard holding separately.

Sundari Dharmanna v. ***Narsu Bai,*** (1997 (4) ALT 803)

FACTS:

The father died intestate leaving one son and two married daughters living with their husbands. The daughters sought partition of the dwelling house also along with other properties. The suit failed as the District Judge held that the female sharers were not entitled to force the partition of joint family properties and that since the houses in the suit schedule were ancestral properties they could be partitioned only at the choice of the defendant who was the sole male heir.

Out of the failure of this suit in the District Court, this appeal arose.

CONTENTION:

The main question before this Court for our purpose was whether the ancestral house can be partitioned only at the choice of the defendant who was the sole male heir. Apart from this there was also the question of the extent of the property falling to the share of the two sisters and one brother.

JUDGMENT:

In this case the defendant- appellant was the only son and therefore the undesirable situation that the female heirs cannot claim for partition of the dwelling house when there are more than one male heirs, to keep the undivided dwelling house intact, which is sought to be remedied by Section 23 of the Hindu Succession Act, 1956, did not arise in this case. Section 23 of the Hindu Succession Act, 1956 was interpreted to mean that it does not extinguish the right of the female heir to claim partition of a dwelling house, but merely postpones that right when there is more than one male heir until they choose to divide their property.

On account of the death of the father, the intestate property comprising residential houses, agricultural lands and other movable properties have to be divided among the heirs of the deceased even if no specific direction is given for partitioning the dwelling house property. Therefore, in that view of the matter, the question of partitioning the

property at the instance of the female heirs paled into significance here. Also the real question here related to the extent of the property falling to the share of the two sisters and one brother. As such the Court also passed a decree specifying the shares to be given to each. Section 29-A of the Hindu Succession (A.P. Amendment) Act, 1986 was not applied to this case as the Amendment had come into force from 5-9-1985 while the father of the three heirs had died on 14-4-1980.

Kolluru Sambasiva Rao v. ***Kolluru Nagabhushanam alias Nageswara Rao,***
(1993 (3) ALT 256)

FACTS:

The basic facts in this case relate to the claim of partition and separate possession filed by the minor son, Kolluru Nagabhushanam, through his mother and next friend Kolluru Pramila Rani against his father Kolluru Sambasiva Rao, as also some other defendants. In this case, Kolluru Pramila Rani, the wife was referred to as the first plaintiff, Kolluru Nagabhushanam, the minor son was the second plaintiff and Kolluru Sambasiva Rao, the husband was the defendant. The defendant married twice after this and begotted three daughters- the step sisters of the second plaintiff.

CONTENTION:

The main question before the Court was whether a mere intimation to separate by a minor coparcener through next friend or institution of a suit immediately disrupts the status in joint family either from the date of the said intimation or the institution of the suit. Further, if daughters are born to a coparcener after such division in status and disruption of joint family, whether they will be entitled to a share out of the entire estate of coparcenary or to shares only out of their father's share and lastly whether the share of a coparcener who laid such a suit is affected by the subsequent births of daughters of his father. The crux of all the contentions was the share to be given to all the members of that particular extended family.

JUDGMENT:

It was established that the second plaintiff and the defendant were coparceners. It was further held in this case that a mere intimation to separate by an adult coparcener or a minor coparcener through next friend or institution of a suit immediately disrupts the status in joint family either from the date of the said intimation or the institution of the

suit, as the case may be. If the daughters are born to a coparcener after such division in status and disruption of joint family, they will not be entitled to a share out of the entire estate of coparcenary, but are entitled to shares only out of their father's share and the share of a coparcener who laid a suit gets untouched and unaltered as his share already gets crystallised the moment there was a division and disruption in status of joint family, in view of intimation or civil action.

In view of the above legal position, the second plaintiff's share stood crystallised on the date of the institution of the suit for partition in forma pauperis and was not held liable to be varied or altered due to the subsequent births of his step sisters. His step sisters were held entitled for shares out of the estate of their father only. The Court, after proper calculations, then directed specific shares to be given to each.

Pulla Reddy v. ***Seshi Reddy***, (1987 (2) ALT 210).

FACTS:

The two appellants were the unsuccessful plaintiffs. They were the son and daughter respectively of the first defendant and their suit for partition was dismissed which gave rise to this appeal. The second defendant was the father of the first and third defendants. The appellants were the children of the first defendant. The second defendant died pending appeal. His widow, the fourth respondent, and his two daughters, the fifth and the sixth respondents were impleaded as legal representatives. The entire appeal revolved around the partition of the coparcenary property and the shares to be got by each.

CONTENTION:

The main contention for our purpose here was whether the second plaintiff, being an unmarried daughter of the first defendant, was entitled to an equal share with the first plaintiff in the joint family property as per the provisions of Section 29-A of the Hindu Succession (A.P. Amendment) Act, 1986.

JUDGMENT:

The Court accepted the fact that law is a social engineering to subserve the need of the society and to bring about the change in the society without friction. Therefore the Court tried to mould the relief as per the Amendment Act prevailing as on the date of the decree. Thus, the second plaintiff being unmarried, was entitled to an equal share with the

first plaintiff in the joint family property. The relief of equal share was accordingly granted to her and a direction was also given by the Court as to the partition of the properties in question and the shares to be allotted to the rest of the members.

S. Sai Reddy v. ***S. Narayana Reddy***, (1991) 3 SCC 647

FACTS:

The appellant filed a suit against his father and brother. The subordinate judge passed a preliminary decree by the order dated on 1973 December 26th declaring the appellant as well is father and brother each were entitled for 1/3rd share. The defendant appealed against this preliminary decree. The High Court confirmed the Trial Court's finding with the direction that an appropriate provision should be made for the maintenance and marriage expenses of respondents 2 to 5 who were unmarried sisters. During the pendency of the proceedings the amendment was passed and respondents 2 to 5 filed an application for claiming their share in the property. The Trial Court rejected the application on the ground that the preliminary decree was already passed and specific shares already allotted. The unmarried daughters preferred a revision against the Trial Court order the High Court allowed it n 2nd February, 1990 and further directed the Trial Court to determine shares accordingly. The appellant challenged the order of the appeal.

CONTENTION:

The counsel for appellant urged the preliminary decree already passed prior to Amendment and High Court was in error. Under Hindu Mitakshara unmarried daughters were not entitle to any share in joint property. The judgment looked into the provisions closely and in para 6 said the provision amended was aimed at removing the difference between daughter and son of Mitakshara Hindu Family. But now she is entitled to claim partition. The amending provision is a beneficial legislation which is directed towards eradicating social evils such as dowry and dowry deaths. It also achieves the constitutional mandate of equality between sexes. The legislators didn't want to unsettle the positions so partition already affected prior to the amendment. Another thing if prior to partition of family property a daughter had been married she was disentitled to any share in the property. The Crucial Question was as to when a partition can be said to have been affected for the purpose of the added provision. A partition can be affected by

different modes. Unless the final decree is passed and the allottees shares are put in possession of the respective property, partition is not complete. The preliminary decree which determines share does not bring about final partition.

JUDGMENT:

"Since the legislation is beneficial and placed on the statute book with the avowed object of benefiting women which is a vulnerable section of the society of all its strata, its is a necessary to give a liberal effect to it. For this reason we cannot equate the concept of partition that the legislation has in mind in the present case with a mere severance of status of the joint family which can be effected by an expression of a mere desire by family members to do so..... hence we are of the opinion that unless a partition of the property is effected by metes and bound the daughter cannot be deprived of the benefits conferred by the Act.

M.C. Chinna Nagamma v. ***M.C. Gidamma***, 2000(2) HLR

FACTS:

Plaintiff is Chinna Nagamma and Defendant no 1 is Pedda Nagamma's daughter in law. The plaintiff appellant urged there was no partition and she was the absolute owner.Defendant urged there is partition and she should get half the share. The defendant has also leased a part of the property to defendant 2 which she supposed was her share. Chinna Nagamma wanted two things -declaration and injunction. And held the lease between defendant 1 and 2 is a sham plaintiff disputed the defendant's title. However the lower courts found evidences through revenue their village heads and how paata was allotted that defendant had half the share.

CONTENTION:

The plaintiff appellant urged that it's not possible to partition as the widow as Chenchama herself had a limited estate under the Hindu Women Rights Property Act and hence she could not divide the property among his two daughters Pedda Nagamma and Chenchamma the plaintiff.

The defendant argued when by mutual consent they have agreed to divide the properties prior to death of Pedda Nagamma in the year 1937 and same can't be challenged in 1974 as it was barred by time.

JUDGEMENT:

The Court looked back to Supreme Court's decision in Karpagathachi's case where they held that the co-widows as limited owner had partitioned the property and such partition would have the effect of extinguishing the right of survivorship. The Supreme Court pointed out that a limited co widow can relinquish her right in favors of each and after such division of the property their respective heirs succeed to their property, but not by survivorship.

The Court referred to BS Mahamandal, Kanpur case, the Supreme Court held that widow as limited owner could partition the property and the principle applies to daughters.

The Court has looked into why Limitation Act will come which is beyond the scope of this research. Finally it was decided that the appeal was barred by time.

Chandrashekar Reddy v. ***State of Andhra Pradesh,*** 2003 (4) ALT 9 (SC)

FACTS:

It's a case concerning A.P Land Reforms (Ceiling on Agricultural Holdings) Act,1973, Sections 3(f) , 4 and 9(A)-the Hindu Succession Act, Section 29-A inserted by state amendment.

The Tribunal held that family of appellant entitled to hold one standard holding under the act and excess of 4.3360 standard holdings was held to be surplus land. This went on a revision to the High Court. During the pendency of revision in the High Court , section 29-a was inserted by state amendment in Hindu succession Act whereby daughters of a Hindu joint family acquired rights as a coparcener in a joint Hindu family and thus they have got right by birth .Revision was dismissed. The appellants went on an appeal to the Supreme Court.

CONTENTION:

The primary contention was that the daughters who were minors when the amendment was passed, but attained majority subsequently attained coparcenary rights and hence they had a share in the family property-land. So it was contented that there was no excess land and the daughters had a share in it.

JUDGMENT:

High Court held that amendment to section. 29 of Hindu Succession Act would not alter the position and appellants not entitled to get any additional share. It was also held that Section 29–A has no impact on fixation of ceiling as far as appellants were concerned. Benefit of Section 29-A could be invoked only by major daughters if they were not married prior to commencement of the Ceiling Act. As regards fixation of ceiling, Section 29-A did not confer any additional benefit to appellant Nos.6 and 7, who were the minor daughters at date of commencement of the Act. The Supreme Court upheld whatever was laid down by the High Court .The appeal was dismissed without costs.

Makineni Venkata Sujatha v. ***Land Reforms Tribunal,*** 2000 (6) ALT 31 (SC)

FACTS:

The Special leave petition was filed by daughter of the second respondent .the 2nd respondent filed a declaration under the Andhra Pradesh Land Reforms (ceiling and agricultural holdings) Act, 1973 on 11-4-1975. The petitioner was a minor as on 1-1-1975 and she was included in the family unit of her father. It was determined that the father's family had excess land to be surrendered. In 1987, the petitioner filed an application before the land reforms tribunal on the land ceiling proceedings pertaining to her father, claiming that by virtue of section 29-A as introduced by the A.P amendment Act to the Hindu Succession Act as inserted w.e.f 5-9-85, the petitioner had become coparcener being unmarried on that day.(she got married on 26-8-86)and therefore had equal rights as a son. The two contentions raised in this case before the tribunal was rejected, the revision petition before the high court was dismissed. This special leave was preferred against the said order.

CONTENTIONS:

1. By virtue of the amendment, section 29-A to the Hindu Succession Act, the daughter i.e. the petitioner had obtained coparcenary rights and hence was entitled to the position of a major son.

2. To that extent, the father would be entitled to an extra unit and need not have to surrender any excess land.

JUDGMENT:

It was held that section 4-A when it was introduced in 1977 by the amendment to the Land Reforms Act, w.e.f 1-1-1975 , It did not apply to major daughters and even if they were major daughters on 1-1-1975 it was of no benefit to their father. The fact remains that as on 1-1-1975, the petitioner was a minor daughter and even assuming the principle under the General Clauses Act that a male includes a female could apply to section 4-A, that would not help the father and the father's family unit would not therefore get any extra entitlement because the daughter was not a major on 1-1-1975. It must be noted section-29-A would not nullify the fact that the petitioner was a minor on 1-1-1975. Thus the plea based on section 4-A has no merit. Thus both contentions stand rejected. The special leave petition is dismissed.

Dodla Kumaraswami Reddy v. ***Dodla China Abayireddy***, 2002(2) ALT 641

FACTS:

This appeal is filed in challenging the judgment and decree dated 26-11-2001 passed by the learned single judge in A.S No. 730 of 1991, whereby the appeal filed by the plaintiff was partly allowed directing partition of the plaint schedule properties into four equal shares among the plaintiff and defendants 1 to 3 with a further direction to allot one such share to the plaintiff. The learned single judge further gave liberty to the plaintiff to claim the relief in the suit on other aspects by way of filing a separate application for the said relief.

The plaintiff filed a suit to the subordinate judge seeking

4. Partition of the schedule properties into four equal shares and for putting the plaintiff in separate possession of one such share.

5. To direct the 1st respondent to render correct accounts of all the monies realized by him by selling the lands at Budhireddipalem and Annareddipalem and for payment of 1/4th share of such realization after deducing the amount already paid to the plaintiff .
6. To direct the 1st defendant to render accounts in relation to future profits and payment of 1/4th share to the plaintiff and defendants 1 to 3 are brothers and all of them are members of undivided Hindu joint family.

Further averment in the plaint is that defendants 2 and 3 migrated from buchireddipalem to Nellore in the year 1942. Plaintiff was also staying outside Buchireddipalem. The 1st defendant was the manager of the joint family and had been managing the joint family properties. The further averment is that the plaint A, B, C and D schedule immovable properties are their ancestral joint family properties all of them have been in joint possession and enjoyment of the same .subsequently owing to the dissensions among the brothers, all the four brothers agreed to have A, B and C schedule properties divided and sell away the D schedule properties subject to certain conditions incorporated under Ex. A-1 Kararnama. Since the 1st defendant was not coming forward to divide the properties as agreed under Ex. A-1, the suit came to be filed for separate possession of the respective shares as mentioned in Ex.A-1.The 3rd defendant issued a notice on 16-3-1984 to the 1st defendant and the same was not responded. Defendants 4 and 5 who are the sisters of the plaintiff relinquished their right in relation to their share in the estate of their father. Hence the plaintiff and defendants 1 to 3 alone are entitled to have share in the property. There were subsequent developments which are complex and would further add to the confusion, so to cut short facts and state the required facts, the defendants 4 and 5 who are the sisters of the plaintiff and defendants 1 and 3 filed separate written statements contending that they did not relinquish their right in the property of their father and they were eagerly waiting for the partition of their ancestral property.

CONTENTIONS: The following points were considered:-

5. Whether the defendants 4 and 5 are necessary parties to the first appeal?
6. If they are necessary parties, what is the effect of their non-impleadment in the first appeal?

7. Whether the provisions of section 29A of the Hindu Succession Act, 1956 will have the overriding effect against section 6 of the act, in so far as the defendants 4 and 5 are concerned?
8. Whether Ex.A-1 Kararnama agreement dated 16-1-1982 signed by the plaintiff and defendants 1 and 3, is true valid and binding on the parties or that the earlier partition of 1953 pleaded by the 1st defendant is true?

JUDGMENT:

The High Court differed from the learned single judge's decision that "the suit against the 4 and 5 defendants does not lie". The High Court held that the defendants 4 and 5 were made parties to the suit by the plaintiff himself and since the appeal is a continuation of the suit, it cannot be held that the defendants 4 and 5 are not necessary parties to the appeal, particularly when the specific contention of the first defendant and the plaintiff is that the defendants have relinquished their shares. The Question of relinquished will come only when they have share. The court held that in view of their findings the defendants 4 and 5 were parties and the appeal has to fall to the ground.

Section 6 and Section 29-A of the Hindu Succession Act, 1956 were discussed in detail. It was held that Section 29-A is intended to carve out an exception in favor of the daughters who were unmarried till 5-9-1985, by conferring coparcenary rights on them. Hence in the present set of facts the view taken by the learned single judge while dealing with the question of non-impleadment of the necessary parties that after the introduction of the amendment ,the rights of the daughter married prior to 5-9-1985 remains extinguished is erroneous and cannot be sustained in law. Accordingly the decision was answered in favor of the 1st defendant –appellant.

Annexure- III

THE HINDU SUCCESSION (AMENDMENT) BILL, 2000

A

Bill

Further to amend the Hindu Succession Act, 1956.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:-

1. Short title extent and commencement.- (1) This Act may be called the Hindu Succession (Amendment) Act, 2000.

   (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Substitution of new section for section 6 of Act 30 of 1956.- In the Hindu Succession Act, 1956, (hereinafter referred to as the principal Act) for section 6 the following section shall be substituted, namely:-

"6. Daughter's right to be coparcener by birth and devolution of interest in coparcenary property.- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2000, in a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener;

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

(c) be subject to the same liabilities and disabilities 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;

Provided that nothing contained in this sub-section shall apply to a daughter married before the commencement of the Hindu Succession (Amendment) Act, 2000.

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

(3) When a male Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2000, his interest, in the property of a joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and, -

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

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

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

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

(4) After the commencement of the Hindu Succession (Amendment) Act, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2000, nothing contained in this sub-section shall affect –

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

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) act, 2000 had not been enacted.

Explanation. – For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case

may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act 2000.

(5) Nothing contained in this section shall apply to a partition which has been effected before the date of the commencement of the Hindu Succession (Amendment) Act, 2000".

3. Omission of section 23 of the principal Act.- In the principal Act, section 23 shall be omitted.

Annexure- IV

LETTER (S)/ PROFORMA:

The copy of covering letter and proforma sent to all the lower courts in Andhra Pradesh:

NALSAR University of Law has been assigned with a research project entrusted by the National Commission For Women on "Coparcenary Rights of Women in Andhra Pradesh".

Property rights under Hindu Law require to be reviewed time and again as they are discriminative. This discrimination becomes the root for many social evils like dowry, low status of women, domestic violence, bigamy and female feticide to name a few and as we progress and civilize the discrimination is more intolerable. As such the process of consistent effort to eliminate discrimination becomes relevant for study.

It can be stated without any doubt that economic empowerment shall have direct nexus to empowerment in general. The coparcenary rights/ property rights as they stand today have been modified by legislations over a period of time. Any progressive legislation is bound to eliminate discriminate to the extent possible Hindu Law also could reduce discrimination to certain extent but certain States have taken lead and have tried to rectify the situation to greater extent. The Hindu Succession (Andhra Pradesh Amendment) Act, 1986 can be described as one such effort in this context. Inspite of the fact that the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 conferred equal rights to property to daughter at par with son in Andhra Pradesh in coparcenary property still the dowry system prevails without taking note of the Dowry Prohibition Act. This evil practice can only be eliminated if the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 implemented properly and also women can be empowered.

The research study reviews the nature of coparcenary rights and the effect of legislative changes and the impact of these rights in practical and legally on women and their empowerment. The study shall also, review the legislation, judicial decisions and case studies to understand the factual situation and suggest suitable and practicable remedies.

In this scenario the University requires to have full information of the factual situation of the implementation of the provisions of this Act-the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 in the districts. Hence we request you to submit the following details of partition and succession cases involving women's coparcenary rights only in the annexed format.