

Some Leading Cases

- **Law on equal right for daughters over property is prospective: Supreme Court**

Prakash & Ors. Vs. Phulavati & Ors.,DOJ 16 Oct 2015

The law, which gave equal right to daughters in ancestral property under the Hindu Succession Act, is prospectively enforceable and not with retrospective effect (as held by some High Courts in the country), the Supreme Court declared in its recent verdict. A Bench comprising Justice Anil R Dave and Justice A.K. Goel, in its October 16, 2015, interpreted the succession law while setting aside the Judgment of the Karnataka High Court in the case Prakash v Phulavati of 2010. The Apex Court was dealing with the only issue which has been raised in this batch of matters, whether Hindu Succession (Amendment) Act, 2005 ('the Amendment Act') will have retrospective effect. In the impugned Judgment (Phulavati v Prakash), plea of restrospectivity has been upheld in favour of the respondents by which the appellants are aggrieved. According to the case of the plaintiff, the suit properties were acquired by her late father Yeshwanth Chandrakant Upadhye by inheritance from his adoptive mother Smt. Sunanda Bai. After the death of her father on 18th February, 1988, she acquired the share in the property as claimed. The suit was contested mainly with the plea that the plaintiff could claim share only in the self acquired property of her deceased father and not in the entire property. During pendency of the suit, the plaintiff amended the plaint so as to claim share as per the Amended Act 39 of 2005. The Karnataka High Court had held that daughters would be entitled to equal share even if father had died prior to September 9, 2005, when litigations over partition were pending in courts. The defendants-appellants have questioned the Judgment and Order of the High Court with the contention that the amended provision of Section 6 has no application in the present case. Father of the plaintiff died on 18th February, 1988 and was thus, not a coparcener on the date of commencement of the Amendment Act. The plaintiff could not claim to be "the daughter of a coparcener" at the time of commencement of the Act which was the necessary condition for claiming the benefit. The amendments of 2005 gave equal right to daughters in coparcener properties by removing the discrimination that existed in the original enactment, the Hindu Succession Act, 1956 against Hindu women on rights over ancestral properties. The Apex Court said that the rights under the Hindu Succession (Amendment) Act, 2005 are applicable to living

daughters of living coparceners (those persons sharing the inheritance of an undivided property equally with others) as on September 9, 2005 (when amendments came into force) irrespective of when such daughters were born. “The text of the 2005 amendment, itself clearly provides that the right conferred on a ‘daughter of a coparcener’ is ‘on and from the commencement’ of the Hindu Succession (Amendment) Act, 2005.” “In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is always prospective unless either expressly or by necessary intendment it is retrospective,” the Supreme Court said. In the present Amendment Act of 2005, “There is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect.” “We are unable to find any reason to hold that birth of the daughter after the amendment was a necessary condition for its applicability. All that is required is that daughter should be alive and her father should also be alive on the date of amendment,” the Apex Court said. While delivering the Judgment Supreme Court took suo motu notice of the issue regarding the rights of Muslim Women and directed to register a PIL and put up before the appropriate Bench as per the orders of Chief Justice of India.

- **Women can be manager of a Joint Family**

Shreya Vidyarthi Vs. Ashok Vidyarthi & Ors., DOJ 16 Dec 2015

[Civil Appeal Nos.3162-3163 of 2010]

The Apex court bench comprising of Justices Ranjan Gogoi and N.V. Ramana held that, though a women could not be treated as Karta of a joint family, she can be a manager of a joint family, in some particular circumstances. The bench also held that the expression ‘Manager’ can be understood as denoting a role distinct from that of the Karta from that of the Karta.

- **Unwed mothers can become the sole guardian of child without disclosing father’s name or his consent: SC**

ABC Vs. State (NCT of Delhi) DOJ 6 July 2015

In a landmark judgment, a Supreme Court bench headed by Justice Vikramajit Sen has held that an unwed mother in India can apply to become the sole guardian of a child, without giving notice to the father of the child and without disclosing his identity. The Court also directed that if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the contrary.

- **Women as respondent under Domestic Violence Act, 2005**

Harsora v. Harsora AIR 2016 SC 4774

In a landmark verdict, the Supreme Court has widened the scope of the Domestic Violence Act by ordering deletion of the words “adult male” from it, paving the way for prosecution of women and even non-adults for subjecting a woman relative to violence and harassment. The apex court has ordered striking down of the two words from section 2(q) of the Protection of Women from Domestic Violence Act, 2005, which deals with respondents who can be sued and prosecuted under the Act for harassing a married woman in her matrimonial home.

Referring to earlier verdicts, the apex court said “the microscopic difference between male and female, adult and non adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial, nor does it have any rational relation to the object of the legislation.”

Section 2(q) of the Act reads: “‘respondent’ means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under DV Act.”

A bench of Justices Kurian Joseph and R F Nariman paved way for prosecution of any person irrespective of gender or age under the DV Act, ordered deletion of the words “adult male” from the statute book saying it violated right to equality under the Constitution.

The bench said that the words “adult male person” were contrary to the object of affording protection to women who have suffered from domestic violence “of any kind”.

- **Stridhan Wife’s only entitlement**

Krishna Bhattacharjee Vs. Sarathi Choudhury and ANR., 2016 CriLJ 330 (SC)

A bench of Justices Dipak Misra and P.C. Pant said streedhan is woman’s “absolute property with all rights to dispose (them of) at her own pleasure”,

- **Domestic Violence Act, 2005 can have retrospective effect**

V.D. Bhanot v. Savita Bhanot (2012) 3 SCC 183

In this Case, the question arose whether the provisions of the 2005 Act can be made applicable in relation to an incident that had occurred prior to the coming into force of the said Act? It was held that the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005."

- **Maintenance to Earning Wife**

Sunita Kachwaha v Anil Kuchwaha, 2015 CriLj 659 (SC)

The Court held that "inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.

In Shamima Farooqui v. Shahid Khan, 2015 CriLJ 2551(SC), the Supreme Court held that,

"...if the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right...."

In **Shalu Ojha vs Prashant Ojha, 2015 CriLJ 63**, the Supreme Court directed that the maintenance order passed by the magistrate be executed in accordance with law. The executing court should complete the process within 8 weeks and report compliance in the High Court.

- **S.375 Exceptin (2)**

Intercourse with a woman below 18 years of age is rape

Independent Thought v. Union of India & Others, Writ Petition (Civil) No. 382 of 2013 decided on 11 October 2017

- **Articles 14, 15, 25 and 51A(e) of the Constitution of India**

Gender Equality at Religious Places

Indian Young Lawyers Association and Ors. v. State of Kerala and Ors., Writ Petition (Civil) No. 373 Of 2006, Decided on 13 October 2017

- **Article 14 of the Constitution**

Legality of Triple Talaq

Shayara Bano & Others v. Union of India & Others, AIR 2017 SC 4609, decided on 22 August 2017

- **Right to Marriage**
- **Article 21 of the Constitution**
- **Shafin Jahan v. Asokan K.M & Ors** Criminal Appeal No.366 of 2018, arising out of S.L.P.(Crl.) No.5777 of 2017, decided on 8 March 2018