IV SMT NIRMALA DEVI BAM MEMORIAL NATIONAL MOOT COURT COMPETITION - 2022

13TH TO 15TH MAY, 2022

Inaugural Chief Guest :
Senior Adv. Indira Jaising, (Supreme of India)

Valedictory Chief Guest :
Honorable Justice MR Shah (Judge, Supreme Court of India)

Valedictory Guest of Honor :
Honorable Justice Dr. K.J. Thacker
(Judge, Allahabad High Court)

The Fourth edition of Smt. Nirmala Devi Bam Memorial International Moot Court Competition was organized from 13th to 15th May, 2022. The competition is initiated in the loving memory of Smt. Nirmala Devi Bam mother of Shri Akshay Kanti Bam, Chairman, Indore Institute of Law. This year we had collaboration with the India's oldest law firm the Hammurabi and Solomon. The theme was based on Energy Law.
In spite of the lockdown and inception of online mode we witnessed the great zeal among the participants. We locked the registration at 24 team, national as well as leading law school of the country.
The orientation was not only for the participants we also had separate orientation for the judges of all rounds to let them be acquaint with the software.

Day 1
The first day of the competition began with Sarswati Vandana on 13th May, 2022 at 16:00 hrs. The Chief Guest for the occasion was Senior Adv. Indira Jaising, Supreme Court of India followed by our management, Staff, Moot Court Society, Legal Aid society and participants.
Followed by the inaugural ceremony the Researcher Test was conducted.

Day 2
The pre round 1 & 2 began at 11:30 hrs on 14th May, 2022. The rounds last till 15:00hrs. Top 10 teams made into Quarter finals and at 17:30 hrs we began with the semi-final that last till 19:00hrs. Top 4 teams were made into semi-final.

Day 3
On 15th May, 2020 at 11:00 hrs we had final round that last till 13:00hrs. Following us had Valedictory Ceremony at 16:00hrs.
Valedictory ceremony was held on 15th May, 2020 at 16:00 hrs. The evening was marked by the presence of the Chief Guest Honorable Justice MR Shah (Judge, Supreme Court of India) and Guest of Honor Honorable Justice Dr KJ Thacker (Judge, Allahabad High Court). We also had presence of Dr. Manoj Kumar (Managing partner at Hammurabi & Solomon).

The evening began by paying obeisance to Goddess Sarswatiji. The opening speech was by Shri Kanti Lal Bam Ji, Chairman ICON Education Society followed by the words of our Chief Guest and Guest of Honor. The winners were announced by the Chairman of IIL Shri AkshayKanti Bam. Followed by the enlightening words of Dr. Manpreet Kaur Rajpal, Dean & Director, IIL. With the presence of our other Management staff, Faculty Members, IT Department, Anchors, students and participants we marked end of the event.

The Winners of the Competition with the prizes are:

Winner:- NMC 05, Himachal Pradesh National Law University
Cash prize-31000, Certificate trophy and internship Opportunity in Hammurabi and Solomon law firm

I Runner up:- NMC 12, O.P. Jindal Global Law School
Cash prize-21000, Certificate and trophy

II Runner up :- NMC 08, SLS, Nagpur
Cash prize-11000, Certificate and trophy

Best Researcher :- NMC 05, Himachal Pradesh National Law University
Cash prize: 3000 and Certificate

Best Memorial :- NMC 05, Himachal Pradesh National Law University
Cash prize: 3,000 and Certificate

Best Speaker :- Satyabhama Institute
Cash prize - 3,000 and Certificate

We are thankful to all the judges who spared their valuable time for us and associated themselves with us.
Though the event came to an end but we all are still reminiscing the memory of it. It all started in the month of January with planning and designing of brochure and calling of teams by MCS students. This event could not be ended successfully without the support of our management, positive outlook of our Director & Dean Ma'am, efforts and dedication of MCS & Legal Aid Society and the support of our Skill Development Cell. Co-operation of the judges' team, love of our faculty members and anchoring team.

Glimpses of Moot Court Competition





Patrons Hon'ble Justice M R Shah, Judge Supreme Court of India

Associating Partner Dr. Manoj Kumar Founder, Hammurabi & Solomon partners

Inaugural Ceremony





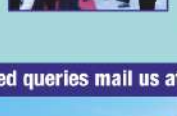
Welcome of Guest of Honour Adv. Vivek Patwa, Sr. Advocate, High Court Indore

Chief Gusst Adv. Indirajal Singh, Sr. Advocate Supreme Court of India, Addressing the Gathering

Participants with the Special Guest and management of IIL

Valedictory Ceremony





Guest of Honour, Adv. High Court of Indore with faculty and management of III at Valedictory ceremony

Hon'ble Justice M R Shah, Chief Justice, Supreme court of India Interacting with the Participants

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The Leader of Law Education for last 18 years...
Rau Pithampur Road, Opp. IIM, Indore (MP)
E-mail: indoreinstituteoflaw@gmail.com
Ph.: +91-99770 19777, 99770 91777, 94250 00720
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INDORE INSTITUTE OF LAW
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NYAYA DISHAA

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HOW 'MANUSMRITI 'BACKS BIRTH-BASED CASTE AND GENDER DISCRIMINATION?

Before we learn about the topic under discussion, we shall understand what 'Manusmriti 'is?

Surely, most of us understand it as a book with chapter and verses resembling a form of life prevalent in ancient India. However, I deny to accept it mere as a form of book because when we talk about Manusmriti, we talk of philosophy of India. The philosophy on the internal affairs of family, the philosophy of social structuring, the philosophy of economical regulation of society. It is embedded with the society in such a form that we may not be able to separate it and see the Indian society any further. Thus, I deny to agree and accept it merely as a kind of book but as a philosophy of Indian society.

The fact is undisputed that we in India follow patriarchal form of structuring of family which is also a mainstream philosophy in Manusmriti. Though I deny to accept that it is because of Manusmriti that we are following such an order of society. The patriarchal form of society, caste-based system, the hierarchy in India sub-continent is so tangled that it seems unimaginable to think and justify any other form of society. Manusmriti depicts exactly the same.

It has often been misunderstood that it is because of Manusmriti, we are divided into caste, and have been discriminating to women. No. It's other way around. It is because of society, the structure that have been working in Indian sub-continent that the Manusmriti was written, re-written, translated, analyzed, quoted and unquoted.

Further, it is evident from the intent behind the words formulated into chapters and shlokas in Manusmriti that it backs birth-based discrimination both against caste and women. It has not been merely a discrimination but derogatory towards the position of women in society.

Also, there has been misunderstanding I shall focus upon. It is about Varna and Caste system. It has often been differentiated however they are all the same. Varna is a bigger circle and caste formed under the varna system. If you say Manusmriti differentiate based on varna and not the caste, wait, think about it. Have you ever seen Dalit in Brahmans? No. Because Varna is a bigger circle under which caste are formed. Manusmriti has differentiated based on Varna and thus has made differentiation based on caste.

Remember, if you believe in Karmas, re-birth, don't dare to forget that you could be a woman in your next birth. So better to fight for them now. And, if you don't believe in Karmas and re-birth, you don't have to worry about it, because you are non-believer of Manusmriti and Geeta as well.

Below are the evidences from Manusmriti itself of not only being discriminatory but derogatory against any other caste but Brahamans and any other gender but Male. We may nicely conclude that the benefactory of Manusmriti system are Brahmans in particular and Male in general. It's is extremely unfortunate that Manusmriti demands female to form no opinion of their own. (While reading the Chapters and Verses you may google it, or have a hard copy of Manusmriti translated from guanine source and not the foreign writer.)

Chapter 1 Verse 31
"But for the sake of the prosperity of the worlds he caused the Brahmana, the Kshatriya, the Vaisya, and the Sudra to proceed from his mouth, his arms, his thighs, and his feet."
Undisputedly, it was clearly mentioned that Brahmans are created from mouth of Lord, Kashatriya from his arms, Vaisya from his thighs and Sudras from his feet.
These lines quoted above shall be read ironically otherwise it would be out of reason to beget a person out of a body part such as mouth, arms, thigh, feet but not Uterus of female.

So, understanding it that way and connecting it with logic, we can smartly assume that Mouth which connects with brain is one the most important part of the body, which further concludes in Verses 88.

Chapter 1 Verse 88
"To Brahmanas he assigned teaching and studying (the Veda), sacrificing for their own benefit and for others, giving and accepting (of alms)."

Verse 89
"The Kshatriya he commanded to protect the people, to bestow gifts, to fir sacrifices, to study (the Veda), and to abstain from attaching himself to sensual pleasures;"

Verse 90
"The Vaisya to tend cattle, to bestow gifts, to fir sacrifices, to study (the Veda), to trade, to lend money, and to cultivate land."

Verse 91
"One occupation only the lord prescribed to the Sudra, to serve meekly even these (other) three castes."

The above quoted verses from Chapter 1 of Manusmriti clearly depicts division of caste clearly not based on merit. They are based on the form of their origin from body part of Lord. To quote this, I would like to quoted Chapter 1 Verse 92 and 93, which reads as under;

"The purest part is the mouth and Brahman is created from the mouth so the Brahman is the lord of the whole creation.....the Self existent (Svayambhu) has declared the purest (part) of him (to be) his mouth."
&
"As the Brahmana sprang from (Brahman's) mouth, as he was the first-born, and as he possesses the Veda, he is by right the lord of this whole creation."

Since, it has been clearly mentioned in Manusmriti itself that only Brahmans are a complete form of creation of Lord and none other, it is quite evident that the one who was born in any other caste than Brahmans are not a complete creation and thus the hierarchy was created. Feet being that part of the body which has to meet dust, the one created out of that part of the body, fell below in the hierarchy. And, thus, a hypothetical hierarchy was created amongst human possess same soul.

It didn't stop here. It went on describing and ruling on what name one could choose for their son and daughter.

Chapter 2, Verse 31 & 32
"Let (the first part of) a Brahmana's name (denote something) auspicious, a Kshatriya's be connected with power, and a Vaisya's with wealth, but a Sudra's (express something) contemptible."
&
"(The second part of) a Brahmana's (name) shall be (a word) implying happiness, of a Kshatriya's (a word) implying protection, of a Vaisya's (a term) expressive of thriving, and of a Sudra's (an expression) denoting service."

The above quoted lines from Manusmriti clearly resembles that there are a undisputed intention to follow the hierarchy and the fear of it being broken otherwise which civilization decides on what name a individual could choose.

However, Verse 10.65 of Manusmriti says as under;
"The Śūdra attains the position of the Brāhmaṇa and the Brāhmaṇa sinks to the position of the Śūdra; the same should be understood to be the case with the offspring of the Kṣatriya or of the vaiśya."

Further in **Verse 2.172 of Manusmriti one may find as under;**
"He should not pronounce Vedic texts, apart from the Svadhā-offering; because so long as he is not born in the Veda, he is equal to a śūdra."

The above-quoted text may seems difficult to understand. It reads, "He who has not been initiated with teaching of the Vedas is Sudra."

Again, read chapter 1 verse 91, 90, 89. You will clearly understand that even in its most liberal form, Manusmriti says that one who reads veda is Brahmans, and Sudras are strictly prohibited from reading vedas. So, in order to write it in a clear line that one who is born Sudras will be Sudras, because people may directly go against it, tear it and throw it out, it says diplomatically that if you are born Sudras, you cannot be a Brahman. Though you can be a Brahman if you can read Veda, but your work is to be in service of above three Vernas and thus, you won't be able to read Veda ever. Thus, you won't be a Brahman ever. And, that is how Bhramans are protected from being Sudras.

Chapter 8, Verse 21 & 22
"When a Sudra interprets the Law for a king, his realm sinks like a cow in mud... the entire realm, stricken with famine and pestilence, quickly perishes when it is teeming with Sudras, overrun by infidels and devoid of twice-born people."

Chapter 8, Verse 410
"A king should make Sudras engage in the service of twice-born people"

AMARESH PATEL
Assistant Professor,
Indore Institute of law

PSEUDO FEMINISM AND MISUSE OF WOMEN RIGHTS OR RIGHT GENDER JUSTICE AND ACTUAL FEMINISM.

Feminism is not that was started years ago. It was a fight to remove the odd from the society and to bring equal rights, pay, status between men and women. The act of women empowerment in the light of feminism has brought the equality in most extent of society, where women claim to be ahead in the race with male dominance but still there is reservation in conveyance, jobs and other areas.... pseudo feminism.

When we talk about the gender justice, what comes in our mind. Female to be saved, empowered and protected from any harassment from male? Definition of Gender Justice should be irrespective of gender. Some might remember male named Sarvjeet singh, a male who was proved accused for harassing an innocent girl Jasleenkaur by the so-called social media trial and was sentenced for life imprisonment not in jail but with his career, social image, social life. He is still known as a national harasser. Another strong example of pseudo-feminism is that women's income tax slab is higher than men. A woman who earns till 3,00,000-3,50,000 is exempt from tax payment. If both men and women earn the same account, why should it only be the men who pay tax? It leaves a considerable dilemma

ROHIT MAHOR
LL.B. (Hons.) 1st Sem.
Indore Institute of law

WHY PHYSICAL CONTROL DOES NOT CREATE TRUE OWNERSHIP?

The corpus (the physical control) alone cannot constitute the possession. Animus is also necessary. It means that there must be an intent, a mental consciousness on the part of the possessor to exclude any interference by others. Some principle about animus are as follows:

1. The person having the animus is not necessarily the owner and sometimes he (possessor) too is aware of it. But if he has the animus, he is considered to be in possession. For example, a tenant or a mortgagee are not owners and they know it, but as they have got the required 'animus' therefore, they have the possession of the tenancy land and the mortgaged property.

2. The animus is not necessary based on possessor's own interest or right as in the case of a bailee. He has the possession of the object bailed although the animus to exclude others is not on his own behalf.

3. It is not necessary that the animus should be specific: it may be a general animus. It means that the possessor need not have the continuous and present knowledge (animus) of every specific or particular object forming part of a group or store. If the person has the required animus towards the group or the store, it extends to the specific or particular part also, for example, if a person has got a library he might have forgotten the existence of many books, but still they are in his possession.

4. It is not necessary, that the animus should be based on a legal claim to the object. The object, might have been unlawfully but if such taker has the required animus he has got the possession of the object. For example, a thief has possession of the stolen property as real as owner himself has.

5. The animus must be exclusive claim to the object. The possessor must have in intent to exclude others from the use of the thing. If a person has got a right of way over the land of another person, the former is not in possession of the land because he has not the required animus to exclude others. But it does not mean that the exclusion should be absolute. A person can possess land although others have certain rights over it.

Landmark Case:

Bridges vs. Hawkesworth: In this case it was decided by the Court that the bundle of notes found on the floor of a shop passed into the possession of the finder rather than shopkeeper. The decision has been supported by Pollock and Salmond. Pollock holds that since the shop-keeper (defendant) has no corpus in the bundle of notes, he has no de facto control over it. Salmond has taken the view that the shopkeeper has no animus for possession. The decision has, however, been criticized by Prof. Goodhart and Ganville Williams. In their opinion this case was wrongly deided because the defendant shopkeeper had a general animus and sufficient control requisite for legal possession as the notes were physically found in the stop itself.

R.vs. Reley: In this case, where the accused was driving his herd of sheep, some of the prosecuter's sheep joined the herd and were driven away by the accused along with his own. This mistake came to his notice after he had sold the entire flock of sheep. The accused was held to have taken possession of the sheep which belonged to the prosecuter and which he unknowingly drove with his own flock to the market.

R.vs. Harding: In this case, the accused was convicted of stealing a rain-coat from a maid-servant who, as against the master, had mere custody of the raincoat and could herself have been convicted of larceny had she dishonestly made off with it. In the eyes of law she had possession as against the thief but not as against her employer.

R.vs. Chissers: A person went in a shop and took some cloth to see. Then he ran away with the cloth. He was convicted for larceny as the court held that he had not obtained the possession of the cloth merely by taking and it was still in possession of the shopkeeper.
Salmond observed that possession is sometimes possible without knowledge of the subject matter and sometimes knowledge is a necessary requirement for possession. He explains this by a hypothetical illustration. If 'A' momentarily hand his wallet to 'B', from whom it is stolen by 'C', who then looses it on 'D's property, where it is found by 'E', the question who has the right to possess or who has legal possession will depend on who brings actions against whom.

As against all subsequent parties 'E's title would prevail because finder acquires a good title. In an action between 'D' and 'E', however, it would seem that 'D 'would have a better title if he could prove the article was found on property from which he had a general intention to exclude others.

As against 'C', neither D nor E would be said by law to have possession since C had right against all except the true owner. In an action by C against D and E, the latter would not be allowed to plead just tertii, that is they cannot argue that the wallet belongs to someone other than C and therefore C should not succeed against D and E. To allow this, would be to allow anyone who could prove a defect in possession's title to dispossess him of his goods. The plea of jus tertii, is allowed only to the true owner and/or his agent.

Obviously, as against A or B, C would have no defence. B would recover the wallet because he had actual possession of it. A could recover it from C, because though it was in B's hand, he (i.e, A) had an immediate right to possess. Therefore, A or B, whosoever brings action against C, would be deemed to have legal possession of the wallet as against C.

It would be therefore, seen that in common law, possession is a relative matter. The law is not normally concerned with the question which of the parties before the court has a best right to possess; it is concerned with the question as in which of the parties has the better right to possess.

AYUSHI SHRIVASTAV
B.A.LL.B (Hons.) 4th Sem
Indore Institute of law

JUVENILE JUSTICE ACT AND RECENT AMENDMENTS

Introduction

- The Juvenile Justice (Care and Protection of Children) Act, 2015 received parliamentary approval on 22 December 2015, replacing the pre-existing Juvenile Justice (Care and Protection of Children) Act, 2000. There was a great need to have an efficient juvenile justice system to control the growing crime rate in India.
- The treatment of children ought to be different from that of adults. They should be given more room for improvement and reformation. Therefore, arises the need for a separate justice system for children in conflict with the law. Many young offenders are also victims, with complex backgrounds.
- These children are distressed because, more often than not, they are being abused, exploited or neglected, or they do not have parents to take care of them or are mentally ill. Due to their sensitive needs and volatility, they are also likely to be inducted into drug abuse or trafficking.
- It has been recognised that children, when dependent on the same justice mechanism as adults may find themselves further victimised by the system itself, and therefore, arises the need for a separate legal justice system.

Salient features of the act
The existing law for juvenile justice in India is the Juvenile Justice (Care and Protection of Children) Act, 2015. It was enacted to adopt a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this law.

• Definition of child
Firstly, the act defines a child as a person who has not completed eighteen years of age. The Act classifies the term "child" into two categories, namely 'child in conflict with law', and 'child in need of care and protection'.

• Classification of offences
The Act has also made a clear distinction of the kinds of offences, categorising them as petty, serious and heinous. It stated that in case of a heinous offences alleged to have been committed by a child who has completed or is above the age of sixteen years, a preliminary assessment with regard to his mental and physical capacity to commit such offence will be conducted, and that the child may be tried as an adult. It was by this Act that it was recognised that the rights of juvenile accused are equally important as those of victims, and therefore, special provisions were proposed to tackle heinous offences committed by individuals in the 16-18 age group. This provision of the Act has faced criticism, which will be dealt with later on.

2015 Amendment
The Juvenile Justice (Care and Protection of Children) Bill, 2014 was introduced in the Lok Sabha on 12 August 2014 by the Ministry of Women and Child Development. This Bill aimed at making a more robust, effective and responsive legislative framework for children in need of care and protection as well as children in conflict with the law.
In the Act of 2015, the definition of a 'child in need of care and protection' had been expanded, such that it includes a child who is:
- Found working in contravention of labour laws, or
- At imminent risk of marriage before attaining the lawful age, or
- Who resides with such a person who has or had threatened to injure, exploit, abuse or neglect the child or violate any other law, or
- Whose parents or guardians are unfit to take care of him/her.

Also, the definition of 'adoption' had been added, and the rights of an adopted child have been recognised in the Act.

• Introduction of children's court
A very important provision of 'children's court' had been made, which was absent in the 2000 statute. Under this, a court is established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions is having jurisdiction to try offences under the Act.

Critical Analysis
The new Act of Juvenile Justice (Care and Protection of Children) Act, 2015 has faced wide criticism. The criticisms are as follows:

•Treatment of juveniles as adults in some cases
One of the major of these criticisms is that under this Act, juveniles can be tried as an adult if they committed the wrongful act as an adult. The UN Convention on the Rights of the Child requires every individual below the age of 18 years to be treated as a 'child'. Therefore, the above-mentioned provision in the Act of 2015 is seen to be in contravention of the Convention. Some also say that it destroys the rehabilitative foundation of the existing juvenile justice system in India.

•Inherently discriminatory nature of the Act
Another criticism is that this new law discriminates against children on the basis of their age and nature of the offence. It is also not premised on the understanding that children cannot be held to the same standards of culpability as adults because of their developmental immaturity and their amenability to rehabilitative interventions.

•Scope for misuse and arbitrariness
It is also criticised that the method of identifying whether the child between the age of 16 and 18 years committed the crime as a child or as an adult, is very subjective, and may be very inaccurate at times.

•Children's Courts
It is also said that the children's courts, that were essentially developed to try offences against children, are now trying offences by children under the new law, which destroys the essence of these courts.
Also, upon turning 21 years of age, the fate of the person will lie in the hands of the Children's Court. As per Clause 21 of the Act, the Court will decide whether a person has "undergone reformative changes" or "can be a contributing member of the society". Such an inquiry is highly subjective and prone to arbitrariness that falls foul of Article 14 of the Indian Constitution.

AAKRITI SHUKLA
Assistant Professor
Indore Institute of law

LANDMARK JUDGMENT ON EQUAL RIGHTS OF DAUGHTER IN COPARCENARY PROPERTY

Case: Vineeta Sharma vs. Rakesh Sharma & ors. C.A. No. 32601 of 2018

Date: August 11, 2020

Court: Supreme Court of India

Judges: Justice Arun Mishra, Justice S. Abdul Nazeer and Justice M.R. Shah

Issue:
• Seeks interpretation of Section 6 of the Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005 as referred to a larger Bench in view of the conflicting verdicts rendered in two Division Bench judgments of this Court in Prakash & ors vs. Phulavatti & ors., (2016) 2 SCC 36 and Danamma @Suman Surpur & Anr. Vs. Amar & Ors (2018) 3 SCC 343.

Fact of the Case:
The question concerning the interpretation of Section 6 of the Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005 has been referred to a larger Bench in view of the conflicting verdicts rendered in two Division Bench judgments of this Court in Prakash & ors vs. Phulavatti & ors., (2016) 2 SCC 36 and Danamma @Suman Surpur & Anr. Vs. Amar & Ors (2018) 3 SCC 343.

Judgment of High Court in Lokmani & Ors. V. Mahadevamma & Ors. [SLP (C) No. 6840 of 2016)

It was held that section 6, as amended by the Act of 2005, is deemed to be there since 17.6.1956 when the Act of 1956 came into force, the amended provisions are given retrospective effect, when the daughters were denied right in the coparcenary property, pending proceedings are to be decided in the light of the amended provisions. Inequality has been removed. The High Court held that the oral partition and unregistered partition deeds are excluded from the definition of 'partition' used in the Explanation to amended Section 6(5).

Judgment of Division Bench of Supreme Court in Prakash v. Phulavatti
It was held that section 6 is not retrospective in operation, and it applies when both coparceners and his daughter were alive on the date of commencement of Amendment Act, 9.9.2005. This Court further opined that the provision contained in the Explanation to section 6(5) provides for the requirement of partition for substituted section 6 is to be a registered one or by a decree of a court, can have no application to a statutory notional partition on the opening of succession as provided in the unamended Section 6. The notional statutory partition is deemed to have taken place to ascertain the share of the deceased coparcener which is not covered either under the proviso to section 6(1) or section 6(5), including its Explanation. The registration requirement is inapplicable to partition of property by operation of law, which has to be given full effect. The provisions of section 6 have been held to be prospective.

Judgment of Supreme Court in Danamma @Suman Surpur. Vs. Amar
It was held that the amended provisions of section 6 confer full rights upon the daughter coparcener. Any coparcener, including a daughter, can claim a partition in the coparcenary property. Gurunalingappa died in the year 2001, leaving behind two daughters, two sons, and a widow. Coparcener's father was not alive when the substituted provision of section 6 came into force. The daughters, sons and the widow were given 1/5th share apiece.

Judgment of this Court:
The Court Observation against Prakash vs. Phulavati

The observed that it is not necessary that the father of the daughter should be living as on the date of the amendment for the latter to claim the benefit of the 2005 amendment.

Coparcener right is by birth: It is not all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu Law, as administered which is recognized in Section 6 (1), it is not necessary that there should be living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughters born before can claim these rights only with effect from the date of the amendment, i.e, 9.9.2005 with saving of past transactions as provided in the proviso to Section 6 (1) read with Section 6 (5).

The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6 (1) recognizes a joint Hindu family governed by Mitakshara law. The coparcenary to enjoy on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case a living coparcener dies after 9.9.2005, inheritance is not survivorship but by intestate or testamentary succession as provided in substituted section 6 (3).

It is apparent that unobstructed heritage takes place by birth, and the obstructed heritage takes place after the death of the owner. It is significant to note that under Section 6 by birth, right is given that is called unobstructed heritage. It is not the obstructed heritage depending upon the owner's death. Thus, the coparcener father need not be alive on 9.9.2005, date of substitution of provisions of Section 6.

It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, the Supreme Court disagrees with the concept of "living coparcener", as laid down in Prakash v. Phulavati. The daughters should be living on 9.9.2005. In substituted section 6, the expression 'daughter of a living coparcener' has not been used. Right is given under Section 6 (1) (a) to the daughter by birth. Declaration of right based on the past event was made on 9.9.2005 and as provided in section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of section 6 (1) leave no room to entertain the proposition that the coparcener should be living on 9.9.2005 through whom the daughter is claiming.

Plea of Partition based on oral evidence. Section 6(5) of Hindu Succession Act, 1956

The expression used in Explanation to Section 6 (5) 'partition effected by a degree of a court' would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a degree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing the final decree, thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by Court. Even if partition is supported by a registered document it is necessary to prove it had been given effect to and acted upon and is not otherwise sham or invalid or carried out by a final ccree of a court. In case partition, in fact, had been worked out finally in toto as if it would have been carried out in the same manner as if affected by a decree of a court, it can be recognized, not otherwise. A partition made by execution of deed duly registered under the Registration Act, 1908, also refers to completed event of partition not merely intendment to separate, is to be borne in mind while dealing with the special provisions of Section 6 (5) conferring rights on a daughter. There is a clear legislative departure with respect to proof of partition which prevailed earlier; thus, the Court may recognize the other mode of partition in exceptional cases based upon the continuous evidence for a long time in the shape of public document not mere stray entries then only it would not be in consonance with the spirit of the provisions of Section 6 (5) and its Explanation.

BHAVIK YADAV
B.A.LL.B (Hons.) VII
Indore Institute Of Law

CURRENT AFFAIRS, May 2022

• The Supreme Court had Suo moto opened a review of the process by which courts award the death penalty. Death penalty, also known as capital punishment, can be defined as 'a practice sanctioned by law whereby a person is put to death by the state as a punishment for a crime after a proper legal trial'.By end of 2021, 488 prisoners were on death row in India under serious offences with introduction/ proposal of more laws with Death Penalty such as: Punjab and Madhya Pradesh introduced death penalty for causing deaths by spurious liquor.

• Supreme Court has ordered that the 152- year-old sedition law under Section 124A of IPC should be effectively kept in abeyance till the Union Government reconsiders the provision.
• Supreme Court of India will have all sanctioned seats filled i.e. 34 after more than two years. At present, SC has strength of 32 judges as against a sanctioned strength of 34 judges. As per Article 124(1) of the Constitution of India, Parliament by law prescribes the strength of the SC.

• India hosted meeting of Regional Anti-Terrorist Structure (RATS) as India assumed its role as Chairperson of the SCO-RATS mechanism recently.

• External Affairs Minister recently indicated that Bangladesh, Bhutan, Myanmar, and Nepal were India's most trusted global partners along with Japan and members of the ASEAN (Association of Southeast Asian Nations).

• The CEPA is likely to benefit about $26 billion worth of Indian products that are currently subjected to 5% import duty by the UAE.UAE is India's third-biggest trading partner behind the US and China.
• The 6th inter-government consultation's plenary session in Berlin concluded with India-Germany signing a joint declaration of intent establishing the Green and Sustainable Development Partnership (SDGs).

• India and Nordic countries 2nd India-Nordic Summit at Copenhagen, after the 1st summit of 2018 in Stockholm. Nordic countries represent the five countries of Nordic region, i.e., Denmark, Norway, Sweden, Finland and Iceland.

• The recovery for financial creditors from the resolution of stressed firms under the IBC crashed to a record quarterly low of 10.2% of their admitted claims in the last quarter.