

Legal Implications of Coparcenary Rights for Daughters: Retrospective vs Prospective Application Support

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Abstract—The act changed Hindu personal law through the bestowal of coparcenary rights equally on daughters in ancestral property. This affair had never been witnessed in several centuries of patriarchal ethos. The paper examines how this amendment confers such rights onto women through scrutinised perspectives on egalitarian gender and property rights issues, tested by provisions, judicial interpretations, and implications for Hindu joint families. The retrospective applicability of an amendment and daughters' coparcenary rights was settled in judgments relating to *Prakash v. Phulavati*, *Danamma v. Amar*, and *Vineeta Sharma v. Rakesh Sharma*. Though the courts' decisions have been inconsistent, there is no doubt that this amendment brought social justice to the doorstep of women through equal rights in corporate property. Of course, there is a greater need for more reforms concerning the remaining bottlenecks and the appropriate application of these reforms. This would become a landmark amendment as it showed the importance of this amendment in developing women's empowerment and the structure of Hindu succession law.

Hindu Succession (Amendment) Act, 2005 was a starting point for women's equality in Hindu inheritance law, and shortly, daughters could share equal coparcenary rights with sons in HUFs. This reform eliminated centuries of patriarchal norms under Hindu law that aligned with constitutional principles of equality and justice. Section 6 was the target of particular focus through reformation to democratise rights in property and gender disparities in inheritance. However, its work has been plagued by issues. One only needs to glance at a series of landmark judicial decisions to understand how issues such as whether the amendment was retrospective and clarified rights for daughters born even before the amendments enactment have arisen.

This study analyses the amendment concerning the legal and social implications of this amendment, the role of the Supreme Court in resolving interpretative ambiguities, and the modification of property distribution dynamics within Hindu families. So far, the amendment has been a significant step towards achieving gender justice, but inconsistent court interpretations and procedural

complexities have raised challenges in realising its objectives. The paper argues that the ruling of *Vineeta Sharma* would clear much-needed ambiguity while guaranteeing rights to daughters under equal inheritance without causing any harm to daughters at whatever date their father has passed away. However, it calls for further reforms that would eliminate remaining ambiguities. Ultimately, this analysis underscores the amendment's role as a stride toward arriving at a more gender-equitable India in law; however, vigilance and reform would still be needed to ensure that daughters' substantive rights to inheritance are recognised and upheld.

Keywords—Hindu Succession (Amendment) Act, 2005, Gender Equality, Coparcenary Rights, Hindu Joint Families, Property Rights, Social Justice.

I. INTRODUCTION

The Hindu Succession (Amendment) Act of 2005 was a landmark legislation in the development of Hindu personal law in India, particularly from the view of checking gender inequalities in succession rights. Succession rights, especially under the Mitakshara system of Hindu law, were restrictive in that it did not admit females, even minor girls, as coparcenary members, leaving them entirely out of the joint family property. Women's rights, in such circumstances, were confined to minimal claims on family property and, hence, were circumscribed within the straitjacket of patriarchal domination.

The 2005 amendment redrew the legal landscape by granting daughters equal rights as coparceners in Hindu Undivided Families, HUFs, a right that, to date, had traditionally been the exclusive reserve of sons. This legislative alteration was also part of a broader gender justice movement that aligned inheritance laws with the constitutional requirement of equality under Articles 14 and 15. The provision under Section 6 of the Hindu Succession Act, 1956, was amended to entitle daughters to the same rights and liabilities as sons in ancestral property, whether the daughters were

born before or after the amendment came into operation.

Although this change was progressive, the transition from legislation to realisation in practice has hardly been smooth or without controversy. Implementing the amendment threw open several legal problems regarding its retrospective application and how to treat daughters whose fathers predeceased the amendment. This has ignited a chain of judicial interpretations where the Supreme Court's decisions played a crucial role in settling the ambiguity that has already sprung up in this judgment. Recently, the landmark judgments are *Prakash v. Phulavati* in 2016, *Danamma v. Amar* in 2018, and the latest *Vineeta Sharma v. Rakesh Sharma* in 2020, which have metamorphosed the way one understands the amendment and has set the scope in terms of daughters' rights in inheriting property.

It delves into the legal, social, and procedural problems that cropped up after the enactment of the Hindu Succession (Amendment) Act, 2005. This paper critically examines judicial developments that have clarified or, at times, complicated the implementation of the law and explores how such rulings have influenced the debate on gender equality among Hindu families. Prevailing tensions are further discussed in this paper between traditional values imprinted in family structures and the present push forward for equal inheritance rights for women, with which it concludes on a debate regarding whether the amendment has fully realised its intended goals of parity for the genders in the area of property rights.

The analysis is located in the development of the socio-legal framework of India, against which the penetration of law, culture, and gender continues to stamp and shape the reform's trajectory. The amplitude of such an amendment would not only change the practice of inheritance but also redefine the status of women in the family and society at large. This paper is designed to provide an all-around understanding of the Hindu Succession (Amendment) Act of 2005. It includes its significance and the remaining challenges toward substantive gender equality in inheritance rights by engaging with critical judicial pronouncements and their impact.

A landmark change in the arena of inheritance law for Hindus was made through the Hindu Succession (Amendment) Act, 2005, which granted daughterly rights to be coparcenaries. Before this amendment, the

rights over ancestral property were governed by the Hindu law of the Mitakshara school, and only males were allowed to be coparceners. Thus, daughters were not brought on equal footing regarding rights on family property. The 2005 amendment redressed this inequality by making daughters equally eligible with sons to inherit and administer ancestral property. It was, thus, a legislative attempt in modern times to incorporate it into Indian law, and it was promised to make a massive difference in the practices of Hindu families and legal interpretations. However, introducing the Repealing and Amendment Act of 2015 further complicated the legal scenario, wherein some rights were affected by this amendment; hence, there was a need to inspect and analyse these amendments.

A. Statement of problem

The Hindu Succession (Amendment) Act 2005 was an attempt at rectification for so long a history of gender discrimination under the Hindu law of succession to bring daughters on par with sons. Though the Amendment Act is indeed one of the outstanding legal reform steps undertaken to achieve equality between genders, the applicability of the same abounds in complexity and inconsistency. The significant issues raised include retrospective application of the law, procedural problems daughters face in enforcing their rights, and divergent judicial interpretations that have arisen since its enactment.

Other complicated issues could arise after the amendment, including different applications of the law in the various courts, especially concerning daughters born before this amendment and if a father dies before the enactment of this legislation. The judgment of *Vineeta Sharma v. Rakesh Sharma*, 2020 has settled the position that the rights of daughters are independent and do not depend upon the father's death, and this ruling was retrospective. Judgments like in *Prakash v. Phulavati*, 2016, created confusion and legal uncertainty.

Although daughters are legal coparceners, it is the social society or patriarchal practice in the day-to-day context that is creating obstacles for the complete reaping of such rights. In their struggle to claim a share of ancestral property, the claimants face a bitter battle with their close family members, probable legal hurdles, and significant procedural delay. At any rate,

this is where the intention of the law and its practical application differs and requires judicial clarification, awareness, and reforms so that rights conferred by this amendment can be applied judicially.

Therefore, there were simultaneously legal indeterminacies over whether the amendment could be applied retroactively and societal circumstances that made people resent granting inheritance rights to daughters. Equally, legislation was enacted that was in favour of gender equality.

B. Objectives and Implications of the Amendment

The Hindu Succession (Amendment) Act, 2005, came into force to do away with gender discrimination in the inheritance laws as daughters were to be given equal status in coparcenary property just like sons. The primary aim was to redress this and similar old lacunas whereby daughters had been excluded from coparcenary rights and gender inequality in the distribution of property. This reform aimed at protecting constitutional guarantees of gender equality and non-discrimination and reflected, as it were, a step forward for the progressive trend of family law. The amended legislation granted several prime rights by giving daughters automatic inheritance rights and management by birth over coparcenary property. It instituted a notional partition as of September 9, 2005, to determine shares in ancestral property. This provision was to ensure that rights in the case of daughters did not get defeated on account of the death of a coparcener before the amendment. The Act sought daughters to be placed at par with brothers in matters concerning family property, totally by the notion of fairness and equality worldwide.

C. Research Questions

1. How has the Hindu Succession (Amendment) Act, 2005, impacted the inheritance rights of daughters in Hindu Undivided Families?
2. What are the critical judicial interpretations of the Hindu Succession (Amendment) Act, 2005, and how have the judicial understandings of the coparcenary rights of daughters evolved?

3. What remains the last legal and practical challenges in effectively implementing the amendment, and how can these be addressed further toward achieving gender equality in property rights?

D. Research Methodology

This study employs a qualitative research design, using a combination of doctrinal and socio-legal approaches to examine the impact of the Hindu Succession (Amendment) Act, 2005, on gender equality and property rights in Hindu joint families.

II. LEGISLATIVE CHANGES AND THEIR IMPACT

The 2005 amendment of Section 6 of the Hindu Succession Act significantly changed the concept. At the same time, daughters could make no claims on ancestral property, which would go only to male descendants. The daughters had coparcenary rights, equal status, liabilities, and responsibilities but nothing to do with the administration and division of coparcenary property. For the first time, it introduced the concept of notional partition on September 9, 2005. It is a sharp departure from earlier practice wherein shares in coparcenary property were deemed to have arisen as if the partition had been made on the date of the amendment under the notional partition. In this section, the wrong issue of property ownership was being rectified. At the same time, in case one coparcener died before the amendment, no consideration was given to the rights of daughters. Changes in this respect were profound in legal and social dimensions because these tried to eradicate historical bias against women and further boosted the cause of equality in rights to property.

III. JUDICIAL INTERPRETATION AND CASE LAW

1) Prakash v. Phulavati¹

Section 6 is not of retrospective operation and applies where both coparceners and his daughter were alive at the commencement date of Amendment Act 9.9.2005. The provision contained in the Explanation to section 6(5)² is that for the requirement of partition for

¹ Prakash Vs. Phulavati (2015) AIR 2016 SC 769

² Daughters have coparcenary rights by birth even if father died before the Hindu Succession (Amendment)

Act, 2005 came into force [DETAILED REPORT] | SCC Times.

<https://www.scconline.com/blog/post/2020/08/11/daught>

substituted section 6 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 6.³ The notional statutory partition is said to have taken place to determine the share of the deceased coparcener. It neither falls within the proviso to section 6(1) nor section 6(5), including its Explanation. The registration requirement cannot apply to the partition of property by law, which must be implemented in its totality.

2) *Danamma v. Amar*⁴

Under the amended provisions of section 6, the rights have been fully granted to the daughter coparcener. Any coparcener, even a daughter, can claim partition in the coparcenary property. The father of the case had died in the year 2001, leaving behind two daughters, two sons, and a widow.⁵ The father of the coparcener was not alive when the substituted provision of section 6 came into force. The daughters, sons, and the widow were given 1/5th share a piece.⁶

Coparcenary property is the one that a Hindu inherits from his father, grandfather, or great-grandfather. Property inherited from others is held in his rights and cannot be treated as forming part of the coparcenary. The property in the coparcenary is held as joint owners. Coparcener heirs get right by birth. Another method of being a coparcener is adoption. As before, a woman could not be a coparcener but could still be a joint family member. Substituting section 6 with the effect of 9.9.2005, daughters are recognised as coparceners in their rights as if they were born into the family like a son. Coparcenary is the creation of law. Only a coparcener has a right to demand partition. The test is if a person can ask for a partition, he is a coparcener, not otherwise."

3) *Vineeta Sharma v. Rakesh Sharma*⁷

In the instant case, the Hon'ble Supreme Court decided on the following questions :

- Is the father coparcener alive on 9 November 2005?
- Can a daughter born before 9 November 2005 claim equal rights and liabilities in coparcenary as a son?⁸
- Was the statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956,⁹ one of the facts that brought about partition or disruption of coparcenary?
- Will a plea of oral partition after 20 December 2004 be accepted as a statutorily recognised partition mode?

The court clarified the conflict opinion in the case of *Prakash v. Phulavati* (2016) 2 SCC 36 and *Danamma v. Amar* (2018) 3 SCC 346

The provisions under substituted Section 6 of the Hindu Succession Act, 1956 confer the status of coparcener on the daughter born before or after amendment in the same manner as a son with the same rights and liabilities.

The rights can be claimed by the elder daughter, effective from 9.9.2005, with savings as referred to in Section 6(1) relating to the disposition or alienation, partition, or testamentary disposition that occurred before the date of the 20th day of December 2004.

As the right accrues by birth, the father coparcener need not necessarily be alive as of 9.9.2005.

The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956, as initially enacted, did not bring about the actual partition or break of the coparcenary. It was only fiction to determine the share of the deceased coparcener when he left behind a female heir of

ers-have-coparcenary-rights-even-if-parents-died-before-the-hindu-succession-amendment-act-2005-came-into-force/

³ Hindu Succession Act, 1956: A Manoeuvre to Gender Equality in India.

<https://legalserviceindia.com/legal/article-3699-hindu-succession-act-1956-a-manoeuvre-to-gender-equality-in-india.html>

⁴ *Danamma V. Amar* (2018) 3 SCC 343

⁵ Coparcenary Right of a Daughter: Case Law - Meliora Legal Center.

<https://www.mplegalfirm.in/2020/08/coparcenary-right-of-daughter-case-law.html>

⁶ Ibid

⁷ *Vineeta Sharma V. Rakesh Sharma & Ors* (2020) 9 SCC 1(SC)

⁸ *Vineeta Sharma v. Rakesh Sharma*; A Case Analysis. <https://www.legalserviceindia.com/legal/article-4710-vineeta-sharma-v-rakesh-sharma-an-case-analysis.html>

⁹ Daughters right to property - Advocatespedia.

https://advocatepedia.com/Daughters_right_to_property

Class-I as contemplated by the Schedule to the Act of 1956 or a male relative of such female. The substituted Section 6 is meant to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given a share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

In the context of the stringency of provisions of Explanation to Section 6(5) of the Act of 1956, an oral partition cannot be accepted as the statutorily recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or caused by a decree of a court. However, in exceptional cases where documentary evidence and partition support are needed, a plea of oral partition is finally displayed in the same manner as if it had been affected by a court decree; it may be accepted. A plea of partition based on oral evidence alone cannot be accepted or rejected outright. *Vineeta Sharma v Rakesh Sharma* is a landmark case in the Indian legal judiciary that deals with the coparcenary rights of daughters in a joint Hindu family. It raises the question of how Section 6 of the Hindu Succession Act, 1956, should be interpreted basically, such as whether a daughter, born before the amendment of 2005, holds equal coparcenary rights as her sons.

As amended, the Supreme Court clarified that the provisions operated retrospectively from when the Act occurred, with daughters acquiring an equal right in coparcenary property. The court voiced the genuineness of notional partitions since 2004 so that they were not misused; this judgment has had momentous consequences for gender equality and property rights in the Hindu family.

IV. CONCLUSION

To achieve gender equality for Hindu joint families, the Hindu Succession (Amendment) Act of 2005 granted equal coparcenary rights to daughters. An essential landmark against centuries of patriarchal domination in Hindu law, it fosters social justice among women. However, even after implementing this amendment, judicial interpretations remain with inconsistent standards and complications in procedures.

The judgment delivered by the Supreme Court in *Vineeta Sharma v. Rakesh Sharma* finally clarified whether the change applies retrospectively or prospectively so that daughters, unscathed by the earlier date of death of their father before 2005, should get equal inheritance rights as sons. However, more reforms are required to eliminate the remaining ambiguity and inconsistency.

As such, the study calls for continued vigilance and reform to establish substantive recognition and enforcement of the rights of daughters. For all its practical impact, the Hindu Succession (Amendment) Act of 2005 has impacted substantial progress on India's legal landscape toward gender equality, and its impact will be felt for generations to come.

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