

TRACING THE JUDICIAL DEVELOPMENT OF COPARCENARY RIGHTS OF DAUGHTER

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ABSTRACT

This article explores the evolution of coparcenary rights for daughters under Hindu law, tracing the historical exclusion of women from property inheritance and the pivotal role of judicial and legislative reforms. Initially, the Hindu Succession Act of 1956 entrenched a patriarchal framework that favoured male heirs. However, the 2005 amendment marked a significant turning point, recognizing daughters as coparceners and granting them equal rights to ancestral property. Key judicial interpretations, including landmark cases such as Santilala Sahu and Vineeta Sharma v. Rakesh Sharma, have further clarified and reinforced these rights. These rulings established that daughters are entitled to equal shares in coparcenary property, irrespective of their father's death date or whether they were born before or after the amendment. The Supreme Court's decision in Danamma v. Amar notably overruled earlier restrictive interpretations, asserting that daughters' rights are inherent from birth. The article underscores the judiciary's vital role in challenging traditional norms and promoting gender equity in inheritance law. By dismantling legal barriers, these reforms empower women within the family structure, fostering a more equitable society. As the legal landscape continues to evolve, the progress achieved through these landmark decisions highlights the importance of ongoing advocacy for women's rights in property inheritance.

Keywords: Hindu Succession Act, 1956, Daughter As Coparcener, Ancestral Property, Hindu Succession (Amendment) Act, 2005.

INTRODUCTION

The concept of coparcenary rights in Hindu law has historically been rooted in a patriarchal framework, where property rights were largely reserved for male heirs. Daughters were often excluded from the rights of inheritance that their male counterparts enjoyed. However, over

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time, the Indian judicial system has played a pivotal role in reshaping the legal landscape to ensure gender equality in matters of property inheritance.

Judicial interpretation and legislative reforms, however, have gradually altered this legal landscape. From the enactment of the Hindu Succession Act, in 1956, to the landmark amendment in 2005, courts have played a central role in challenging and redefining traditional inheritance structures. These changes have empowered daughters, granting them rights on par with sons and marking a crucial step toward gender equity in the family inheritance system. The judicial journey of these reforms reveals the courts' progressive stance on dismantling legal and social barriers to women's rights.

COPARCENARY SYSTEM

A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters.¹ A daughter ceases to be a member of her father's family upon marriage and becomes a member of her husband's family.²

Under the Hindu Succession Act, 1956, Sec.6³ it deals with the devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit ancestral property as their male counterparts do. The law by excluding the daughters from participating in the coparcenary ownership not only contributes to her discrimination on the grounds of gender but also has led to oppression and negation of her fundamental rights of equality guaranteed by the Constitution.⁴

LAW COMMISSION REPORT

In the year 2000 the Law Commission of India in its 174th report, on "Property Rights of Women: Proposed Reforms under the Hindu Law", the Commission undertook a study of certain provisions regarding the property rights of Hindu women under the Hindu Succession Act, 1956. The Commission had taken up the aforesaid subject *suo motu* in view of the pervasive discrimination prevalent against women in relation to laws governing the

¹ Commissioner of Income tax v. Luxminarayan [1935] 59 Bom 618

² Mulla, Hindu Law (23rd ed., LexisNexis, 2021) 315

³ Hindu Succession Act, 1956, S.6

⁴ Paras Diwan (26th ed., Modern Hindu Law, Allahbad Law Agency, 2023) 417

inheritance/succession of property amongst the members of a joint Hindu family⁵. The Hindu Succession (Amendment) Bill 2004 was introduced with the intent to remove such discriminatory provisions under The Hindu Succession Act, one of the important aspects was to Amend Section 6, into a gender-neutral provision, which was earlier a male-centric provision.

In the year 2005, The Hindu Succession Amendment Act, 2005 was enacted. Which abrogated the survivorship rule, and succession could either be done through “testamentary succession” or “intestate succession”. Therefore, recognizing daughters as a coparcener.

JUDICIAL DEVELOPMENT AND ANALYSIS

- **Amendment Applicable To All Leaving Daughters**

In *Santilala Sahu v. Sabitri Sahu*,⁶ the court held that Post Amendment daughters are entitled to share an ancestral property in the capacity of a coparcener. The amendment gives the right to daughters from 2005 and not merely to daughters who were born after 2005.⁷

In *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari*,⁸ Where the single judge referred the matter to the full bench. In this case, it was held that this provision is available to all living daughters those born prior to amendment or after amendment. But of course, this provision does not apply to heirs of those daughters who died prior to the amendment. The court was of the opinion that since this provision is for the welfare of daughters no other interpretation can be given to it.

- **During The Pendency Of A Suit**

Fur, then in the case of *Prabhudayal v. Ramsiya*,⁹ the question is required to be adjudged whether the plaintiff being a female heir Can ask for partition of the dwelling house of a joint family. No doubt before coming into force the Amendment Act of 2005 certainly plaintiff being the female heir of a Hindu coparcener was not entitled to ask for partition of the dwelling house occupied by a joint Hindu family until the male heirs chose to divide their respective shares

⁵ Law Commission of India, *Property Rights of Women: Proposed Reforms under the Hindu law* (Law Com No 174, 2000)

⁶ *Santilala Sahu v. Sabitri Sahu* [2008] Mad. 250.

⁷ *Pravat Chandra Pattnaik v. Sarat Chandra Pattnaik* [2008] Ori. 133

⁸ *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari* [2014] AIR Bom 101

⁹ *Prabhudayal v. Ramsiya* [2007] 3 MPHT 471

therein but section 23 of the act has been omitted by section 4 of the amendment act of 2005 which would mean that from the date of enforcement of amendment provision to the act, The female hire of coparcener can ask for partition of the dwelling house because according to section 6 of the act, Her status is also that of Coparcener. The Supreme Court in Kolhapur Cane Sugar Works Ltd. V. Union of India,¹⁰ in para 35-38 while Considering the scope of omission of provision in particular statute vis-a-vis section 6 Of the general clause actor has laid down the law of land that is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the law after the said provision was omitted the court is not to look for a provision in the newly added statute for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the said statute to the effect that pending proceedings will lapse on the omission of a particular provision. According to the Apex Court in such a case the court is to look to the amended provision in the statute which has been newly introduced after the omission of the previous provisions in order to determine whether a pending proceeding will continue or lapse. If, there is a provision in the amended statute that pending proceedings shall continue and be disposed of in accordance with the old provision as if the set provision has not been deleted or omitted then such a proceeding will continue. If the case is covered by section 6 of the General Clauses Act or there is a peri-material provision in the statute under which the newly amended provision has been framed in that case also the pending proceeding will not be affected by the omission of that particular provision or section. However, in the absence of any such provision in the statute the pending proceedings would lapse on account of omission of that particular provision or section. This was a crucial case which set the precedent that the provisions of the amendment act would apply even on pending proceedings as new section 6 does not contain a saving clause which implies that omitted section 23 is not saved for pending cases.

- **AMENDMENT'S EFFECT ON FATHER'S DEATH DATE**

Although this amendment established that female heirs have an equal share in their father's property, the clarity regarding women's inheritance rights, especially about the date from which the amended law would take effect, was initially lacking. The specifics of when women could claim rights to ancestral property after the father's death were not specifically outlined in terms of the amendment's enforceability.

¹⁰ Kolhapur Cane sugar works ltd. V. Union of India [2000] 2 SCC 536

The confusion arose because the law did not clearly specify whether these rights applied retroactively to cases where the father had passed away before the amendment took effect on September 9, 2005. Courts initially delivered mixed verdicts on whether daughters could claim equal rights if their father had died before this date.

In the case of *Prakash V. Phoolwati*¹¹, a two-judge Bench headed by Justice A. K. Goel. It was a pivotal judgment by the Supreme Court of India concerning the applicability of the 2005 amendment to Section 6 of the Hindu Succession Act, 1956. In this case, the daughter, Phoolwati, sought an equal share of her deceased father's ancestral property under the amended law, which granted daughters the same rights as sons. However, her father had passed away in 1991, before the amendment came into force on September 9, 2005. The Supreme Court ruled that the 2005 amendment could not be applied retroactively if the father had died before the amendment's effective date. For a daughter to claim coparcenary rights under the amended law, the father must have been alive on or after September 9, 2005. This judgment clarified that the amendment had only prospective application and limited daughters' rights to inherit ancestral property if the father was no longer alive by that date.

The *Danamma @ Suman Surpur v. Amar* (2018)¹² case, which consisted of the two-judge bench Justice Ashok Bhushan and Justice A.K. Sikri, was a landmark ruling by the Supreme Court of India that expanded the rights of daughters to inherit ancestral property under the 2005 amendment to the Hindu Succession Act, 1956. In this case, Danamma, along with her sister, claimed a share in their father's ancestral property. Their father had passed away in 2001 before the 2005 amendment came into effect. The key issue was whether daughters could inherit property if the father had died before the amendment. The Court ruled that the 2005 amendment had retroactive application, granting equal rights to daughters regardless of whether their father was alive at the time the amendment was enacted. This decision was significant as it overruled earlier restrictive interpretations, reaffirming that daughters, by birth, are equal coparceners and are entitled to an equal share in ancestral property, even if the father had passed away before the 2005 amendment.

As these above cases are contradictory but were decided by a two-judge bench, it was confusing for the court to decide which judgment to take as precedent. To resolve this issue, the Supreme

¹¹ *Prakash vs. Phulavati* [2016] 2 SCC 36

¹² *Danamma v. Amar*, [2018] 3 SCC 343

Court set up a three-judge bench, and their decision would be binding on all future cases of a similar nature.

The *Vineeta Sharma v. Rakesh Sharma*¹³ case was a significant ruling by the Supreme Court of India that clarified the inheritance rights of daughters under the Hindu Succession (Amendment) Act, 2005. The key issue was whether a daughter could claim coparcenary rights (equal rights to ancestral property) if her father had passed away before the amendment's enforcement on September 9, 2005.

The Supreme Court, in its judgment, held that the 2005 amendment granted daughters equal coparcenary rights by birth, regardless of whether their father was alive or deceased when the amendment took effect. The Court further clarified that a daughter's rights are not dependent on the timing of her father's death, as these rights are inherent from birth, similar to those of sons. This ruling overturned earlier decisions, such as the *Prakash v. Phoolwati* (2015) case, which had restricted the application of the amendment to cases where the father was alive after 2005. The Court in *Vineeta Sharma* emphasized that as long as the ancestral property had not been partitioned before September 9, 2005, daughters would be entitled to an equal share. The judgment, which strengthened gender equality in property inheritance, was delivered by a three-judge bench comprising Justices Arun Mishra, S. Abdul Nazeer, and M.R. Shah. This decision marked a significant step towards ensuring that daughters have the same rights as sons in Hindu undivided family property.

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CONCLUSION

In conclusion, the evolution of coparcenary rights under Hindu law reflects a significant shift towards gender equality in property inheritance. The historical exclusion of daughters from coparcenary rights has been challenged through a series of judicial interpretations and legislative reforms, notably the Hindu Succession (Amendment) Act, 2005. Landmark judgments, including *Prakash v. Phoolwati*, *Danamma v. Amar*, and *Vineeta Sharma v. Rakesh Sharma*, have played pivotal roles in redefining the legal landscape, clarifying the rights of daughters as coparceners, and ensuring their entitlement to ancestral property, regardless of the timing of their father's death. The progression towards equal rights underscores the importance of a progressive judiciary and robust legislative frameworks in dismantling patriarchal norms and promoting gender equity in inheritance law. As the legal landscape continues to evolve,

¹³ *Vineeta Sharma v. Rakesh Sharma & Ors.* [2020] 9 SCC 1[SC]

these landmark decisions pave the way for greater empowerment of women within the family structure, fostering a more equitable society.

