
RIGHTS OF DAUGHTER IN FATHER'S PROPERTY

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INTRODUCTION

This Research Paper is based on the “**SC verdict on Hindu women’s inheritance rights**” which was proclaimed on 11/08/2020. It discusses about the recent SC Court’s verdict regarding the inheritance rights of Hindu Women in Parental Property.

This Judgment aimed at protecting “**Right of Equality**” of a daughter in Hindu undivided family, the SC has held that **women will have equal coparcenary right in parental property by birth, irrespective of whether her father is alive or not as on September 9, 2005** i.e. , the day when parliament recognized this right by amending the Hindu succession act of 1956 .

“DAUGHTERS MUST BE GIVEN EQUAL RIGHTS AS SONS DAUGHTER REMAINS A LOVING DAUGHTER THROUGH HER LIFE. THE DAUGHTER SHALL REMAIN A COPARCENOR THROUGHOUT LIFE, IRRESPECTIVE OF HER FATHER IS ALIVE OR NOT”¹

- **JUSTICE ARUN MISHRA**
SUPREME COURT OF INDIA

Through this verdict, the Supreme court has completely ensured the equal rights among daughters and sons. Supreme court has now categorically ruled that the rights of daughter flows from their birth and not by any other determinant such as existence of their father .

This verdict plays most significant role in removing the discriminatory social practices , it encourages the behavior change in the mindset of the Indian society to fulfill the goal of gender parity . As the Supreme Court has held “**son is a son till he takes his wife and daughter is daughter all of her life**” , ensures Right to Equality and is categorically directing towards removing the gender bias in the legal system .

¹ <http://www.sci.gov.com>

WHAT IS THE HINDU SUCCESSION (AMENDMENT) ACT of 2005?

An Act to amend and codify the law relating to intestate succession among Hindus.²

- Hindu succession Act, 1956 is governed by the codified **Mitakshara school of Hindu law**, which governs the succession and inheritance of property in Hindus among Hindu undivided family.
- Under the act of 1956 , only males were recognized as the coparceners or legal heirs and no right is given to a women as a coparceners as Hindu undivided family , thus were denied the right to inherit their fathers property .
- As a result of this impartiality, Section 6 of the act was amended in the year 2005 to make a daughter of a coparcener also a coparcener by birth in her own right in the same manner as the son .

SECTIONS 6 OF AMENDMENT ACT, 2005³

Devolution of interest in coparcenary property – on and from the commencement of the Hindu succession amendment act, 2005, in a joint Hindu family governed by a Mitakshara Law, the daughter of a coparcener shall , -

- a) By birth become a coparcener in her own right in the same manner as the son;
- 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 in respect of the said coparcenary property as that of a son,

There are two schools:

- a. **Mitakshara school, and**
- b. **Dayabhaga school**

Governing the Hindu succession.

SCHOOLS OF HINDU LAWS	
MITAKSHARA LAW SCHOOL	DAYABHAGA LAW SCHOOL
The term Mitakshara is extract from the	The term Dayabhaga is extract from a

² The Hindu Succession Act, 1956

³ The Hindu Succession (Amendment) Act, 2005

name of a commentary by Vijnanaswara, on the Vajnavalkya smriti.	similarly named text written by Jimutavahana.
The school of Mitakshara prevails all over the India except the Bengal.	The school of Dayabhaga prevails in Bengal. ⁴
The son gets the rights by birth in joint family property and can insist on a partition even during the father's lifetime.	There is no right by birth accorded to a son and he cannot demand partition so long as the father is alive.
The son by virtue of his right by birth can restrain unauthorized alienation of ancestral property by the father.	The father is the absolute owner of the properties and can deal with the property in anyway he likes.
The widow of the deceased coparcener cannot impose partition of her husband's share against his brothers.	The widow becomes a coparcener with her husband's brothers and can demand on a partition of his share.

WHAT IS COPARCENER AND COPARCENARY PROPERTY?

- In laymen's language, in relation to joint Hindu family means a person Who acquires equal right in ancestral property by birth and a person who has the right to demand partition in the Hindu Undivided Family.

- Coparcenary property is the one, which is inherited by a Hindu from his or her father, grandfather or great-grandfather.
- Only a coparcener has the right to demand partition in a coparcenary property. Also share in a property increases or decreases by the death or birth in a family.
- The act of 1956 was biased as no coparcenary right is given to the women and hence women couldn't claim or inherit the property of a father.

RIGHTS OF DAUGHTER

PREVIOUS SCENARIO

The Hindu succession Act , 1956 doesn't grant any of the coparcenary right to the Hindu women in their ancestral / parental property . Considering the circumstances where you have been married young , without much education or earning potential and also end up being harassed by your husband and family and also to make the situation worst , your parents are not too keen to support you and brothers don't want to give you a share in the ancestral property . Financial or emotional dependence be it on father , brothers or husband has been at the root of much hardship for the women over the years . hence with the idea of removing this biasm Hindu Succession Act , 1956 was amended in the year 2005 allowing daughters an equal share in ancestral property but the possession of a woman to succeed to her father's property whose father was dead on the day of the enforcement of the law was not crystal clear.

CONFLICTING VIEWS HAS BEEN TAKEN BY THE DIFFERENT BENCHES OF THE SUPREME COURT AND HIGH COURT ON THE ABOVE ISSUES

- ⁵ In **Prakash v/s Phoolwati** (2015) case, a two judge bench headed by justice AK Goel held that the benefit of the 2005 amendment could be granted only to living daughters of living coparceners as on September 9, 2005 the date when the amendment came into force.
- However In February 2018, contrary to the 2015 ruling, a two –judge Bench headed by Justice AK Sikri held that the share of a father who died in 2001 would also pass to his daughters as coparceners during the partition of the property as per the 2005 law.
- Then in April that year, yet another two-judge bench, headed by justice RK aggarwal, reiterated the position taken in 2015. These contradictory views by benches of equal power led to a recommendation to a three Judge bench in the current case.

HIGHLIGHTS OF CURRENT JUDGEMENT

The three-judge Bench administered by Justice Arun Mishra ruled the following:

⁵ <https://indiankanoon.org>

- That a **Hindu woman's right to be a joint heir to the ancestral property is by birth and does not depend on whether her father was alive or not when the law was enacted in 2005.**
- The Hindu Succession (Amendment) Act, 2005 gave Hindu women the **right to be coparceners or joint legal heirs in the same way a male heir does.** Since the coparcenary is by birth, it is not necessary that the father coparcener should be surviving as on 9.9.2005.
- If a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener with effect from the date of the Amendment Act, irrespective of the date of birth before time.
- **Daughters cannot be deprived of their right of equality conferred upon them by Section 6.**
- The judges also used the common saying that a son is a son until he gets a wife while a daughter is a daughter throughout her life.
- The judgment noted that several cases on this issue were pending before different courts and were already delayed.

The court ordered the pending matters to be decided, as quick as possible, within six months.

SIGNIFICANCE OF THE JUDGEMENT

- ✓ **ENDED LEGAL AMBIGUITY:** the recent verdict has cleared the uncertainty about the law made by the act of 1956. The Hindu Succession Act of 2005 was not crystal cleared regarding the Coparcenary rights of Hindu women in her parental property. Hence, the recent verdict by the supreme court which was passed on 11/08/2020 by Justice Arun Mishra ensures the equal right of the women as a coparcener in the ancestral property irrespective of the fact whether their father is alive or not. This clarifies that the daughters who were born even before the 2005 have coparcenary rights to the joint Hindu family.

- ✓ **ENSURES RIGHT TO EQUALITY:** this verdict plays a very significant role in removing the gender discrimination as the court recognized that gender couldn't be grounds for denying anyone their inheritance rights. The verdict of Supreme Court has encourages gender parity and has successful removed male preeminence over Hindu ancestral property.
 - Giving the daughter equal coparcenary rights are in conformity with the spirit of equality under article 14 of the Indian Constitution.
- ✓ **GUARENTEES WOMEN LIBERALISM: It is a major plunge for women who lack economic resources and are often marginalized by male members of the family.**
- ✓ **WOMENS PROPERTY RIGHT ARE THE KEY TO ECONOMIC DEVELOPMENT**

CHALLENGES

- ✓ **LACK OF AWARENESS AMONGST THE WOMEN:** There is big challenge to ensure that women are actually empowered and aware by the legal provision regarding their inherit rights, as the majority of women are not aware about their rights may be because of
 - **Lack of education**
 - **Lack of legal awareness**
 - **Lack of support from parental house**
- ✓ **PATRAIARCHAL NATURE OF INDIAN SOCIETY:** While the current verdict is a progressive step towards gender parity, it is by no means a guarantee that Indian family is willingly obliged the law and let their women members inherit their coparcenary rights.
- ✓ **ISSUE MAY ARISE BETWEEN FAMILY MEMBERS**
- ✓ **INSUFFICIENT UNDERSTANDING OF LEGAL REDRESS OPTIONS**

CONCLUSION

The current Judgment wef 11/08/2020 is a progressive step in pursuit a building a significant role with the respect to legal rights of a women and also for bringing behavior change to the society which increases the goal of achieving gender parity index .

The objective of amending act indicates the objective as a removal of discrimination daughters inherit in the Mitakshara coparcenary.

Thus, there is a need to bring a change in the patriarchal mindset of Indian society and ensuring that women have equal access as man in acquiring although the opportunity such as education qualification, job opportunities, equal coparcenary rights, etc.

The Judgment has Play a crucial role to clarify the highlights of a principle of natural justice and fundamental rights. Moreover, the fact that it has taken 15 years for the issue to be clarified. The Supreme Court observation came, while clearing the conflicting decision by the courts decision in the past.

There is a need to social awareness and to educate people to change their attitude towards a concept of gender inequality. There is also a need to focus attention on changing the social attitudes in favor of equality for all by enacting a uniform law.

In today's scenario, This Judgment Plays an important role towards the women empowerment as it guarantees to women equality, women liberty, etc. It is a great approach for encouraging the women to fight for their rights and to be economically independent.

It has successfully eliminated the gender inequality and is one of the good steps towards ensuring the rights of the women.