

TOPIC: <u>DAUGHTERS RIGHT IN PROPERTY OF HUF: SUPREME COURT OF INDIA</u>

1. INTRODUCTION

In a landmark judgment, **Vineeta Sharma vs Rakesh Sharma** decided on **11 August, 2020**, the Supreme Court of India aimed at ensuring “**right of equality**” and it was held that a daughter coparcener would have equal coparcenary rights in Hindu Undivided Family (HUF) properties or **equal right to family property by birth** irrespective of whether the father coparcener passed away before or after 9th September 2005 i.e, the day when Parliament recognised this right by amending the Hindu Succession Act of 1956. The three-judge bench, led by Justice Arun Mishra, opined that Section 6 of the amended Hindu Succession Act bestowed upon the daughter an equal coparcenary status, along with its rights and liabilities, akin to a son coparcener. This right of the daughter was one bestowed by her birth, and would remain unaffected by the date of the father’s demise. This has finally settled the issue of applicability and scope of Sec.6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005.

In its decision, the Supreme Court has clarified two points:

- coparcenary rights are acquired by daughters on their birth; and
- fathers need not have been alive when the 2005 amendment to the Hindu Succession Act 1956 was passed.

Through this ruling, the Supreme Court has now categorically ruled that the daughters’ right flows from their birth and not by any other factor such as the existence of their fathers.

Though the judgment envisages rectifying one of the discriminatory social practices, it would require no less than a behavioral change in the mindset of the Indian society to fulfill the goal of gender parity.

2. WHAT IS THIS HINDU SUCCESSION (AMENDMENT) ACT OF 2005?

- The Mitakshara school of Hindu law, a personal law, codified as the Hindu Succession Act, 1956 used to govern the succession and inheritance of property in Hindus.
- Under this law, only male were recognised as the legal heirs or coparceners and women were not a coparcener in the family and thus were denied the right to inherit their father's property.
- As a result of this discrimination, 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.
- The law also gave the daughter the same rights and liabilities in the coparcenary property as she would have had if she had been a son.

Mitakshara Law School	Dayabhaga Law School
The term Mitakshara is derived from the name of a commentary written by Vijnaneswara, on the Yajnavalkya Smriti.	The term Dayabhaga is derived from a similarly named text written by Jimutavahana.
It is observed in all parts of	It is observed in Bengal and

India and subdivided into the Benares, the Mithila, the Maharashtra and the Dravida schools.	Assam.
A son, by birth acquires an interest in the ancestral property of the joint family.	A son has no automatic ownership right by birth but acquires it on death of his father.
All the members enjoy coparcenary rights during the father's lifetime.	Sons do not enjoy coparcenary rights when the father is alive.
A coparcener's share is not defined and cannot be disposed of.	The share of each coparcener is defined and can be disposed of.
A wife cannot demand partition but has the right to a share in any partition between her husband and her sons.	Here, the same right does not exist for the women because the sons cannot demand partition as the father is the absolute owner.

The Table below lays down the different rules of Hindu law which are as follows:-

The 2005 amendment was passed to confer equal status on both sons and daughters of coparceners. Prior to the 2005 amendment, coparcenary rights were granted only to male descendants (ie, sons) of coparceners. However, while the 2005 amendment sought to grant equal rights to sons and daughters, the wording gave rise to various lacunae, which led the Supreme Court to issue contradictory rulings on this issue.

Until the Supreme Court Judgement of Vineeta Sharma vs Rakesh Sharma, equal status was granted only to daughters whose fathers (coparceners) were alive when the amendment came into force on 9 September 2005.

3. WHAT IS COPARCENER & COPARCENARY PROPERTY?

- In a layman's language, coparcener in relation to a Joint Hindu family means a person who is entitled to demand partition of his share in the Coparcenary property.
- A coparcener is the one who shares equally in the inheritance of an undivided property.
- Coparcenary property is one which is inherited by a Hindu from his/her father, grandfather or great-grandfather i.e ancestral property.
- Only a coparcener has the right to demand partition of property. Share in a property increases or decreases by death or birth in a family.
- Before 2005 women were not a part of the coparcenary and hence couldn't claim or inherit the property of the father.

4. COPARCENERS VERSUS MEMBERS

In an HUF there are two categories of persons (ie, members and coparceners). The judgment affects only coparceners.

A 'coparcener' is someone who:

- acquires rights to their father's property on their birth; and
- can claim partition of the coparcenary at any time.

A 'member' is entitled only to maintenance and is granted no inheritance or partition rights in the coparcenary.

COPARCENER OF AN HUF	MEMBER OF AN HUF
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<ul style="list-style-type: none"> • A person who acquires an interest in HUF property at birth (eg, children who are born into the family). • Limited to three degrees of lineal descendants (ie, great-grandchildren). • Can request partition. 	<ul style="list-style-type: none"> • A wife becomes a member of her husband's HUF on account of her marriage into the family. • Entitled to maintenance but cannot request partition.
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5. DIFFERENT CONFLICTING VIEWS ON THE ISSUE BY THE SUPREME COURT:

Although since 2005, it has been the law that the women are also successor to their father's property but the position 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 very clear.

- In **Prakash V/S Phoolwati** (2016) 2 SCC 36 case, a two-judge Bench headed by Justice A K 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). The Apex Court had held that Section 6 was prospective in nature and would apply only if the coparcener and daughter were *both* alive as on 9 September 2005.
- In **Danamma v Amar**, (2018) 3 SCC 343, the Apex Court had held that Section 6 would apply retrospectively. In this case, the father had died in 2001, leaving behind two daughters, two sons and a widow. The Court had held that "*it is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and*

daughters of a coparcener become coparceners by birth”, and consequently observed that the two daughters being coparceners, were entitled to equal share in the coparcenary property even though the father was not alive when the substituted Section 6 came into force in 2005.

6. HIGHLIGHTS OF THE LANDMARK SUPREME COURT JUDGEMENT VINEETA SHARMA VS RAKESH SHARMA

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

- 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 living 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 earlier in point of 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 requested the pending matters to be decided, as far as possible, within six months.

7. MANNER OF ACQUISITION OF RIGHTS IN COPARCENARY PROPERTY POST THE 2005 AMENDMENT

The Court also categorically held that post the 2005 Amendment, interest in coparcenary property can be acquired only by birth or through adoption within permissible degrees, and not otherwise. Further, the Court has categorically held that survivorship as a mode of succession of a Mitakshara coparcener, has been abrogated since 9 September 2005, by virtue of Section 6 (3) of the 2005 Amendment.

8. HAS ANYTHING CHANGED FOR WIVES?

Daughters of coparceners will benefit from this judgment. However, the status of a coparcener's wife (who is a member of an HUF, as above) remains the same. Thus, wives have only limited rights of maintenance and cannot seek partition of their husband's property, among other things.

9. WHAT HAS CHANGED FOR DAUGHTERS?

Daughters will now be treated on par with sons of coparceners and will be granted equal coparcenary rights in their father's property on their birth. Further, daughters' marital status will not affect the rights conferred on them by the 2005 amendment – hence, they continue to be part of their father's HUF post-marriage.

Daughters can now request the partition of their father's coparcenary property and seek an equal share with their siblings and other coparceners. On acquiring a share in a coparcenary property, a female coparcener can bequeath her HUF share to any beneficiary that she chooses (and to the exclusion of others) in her will.

10. WHAT WILL BE THE REAL IMPACT OF THESE CHANGES?

Although this is a landmark judgment which has cleared up previous confusion and improved women's rights under the law, its real-world application is limited. The judgment applies only to HUF property and does not affect personal or self-acquired assets which are held individually.

Personal and self-acquired assets are passed on under will or intestate succession law. In reality, most personal wealth, including ownership rights in valuable family businesses, are held in the personal names of the patriarch or promoters or in private trusts, holding companies or limited liability partnerships. 'Older' business families may continue to hold some ancestral wealth in HUFs, but the scale and materiality of such holdings are usually limited. Few business families are setting up new HUFs and most existing HUFs are being dissolved. Hence, this judgment may not help to transfer real wealth into the hands of daughters. However, although more needs to be done, this decision is still a victory for daughters.

11. SIGNIFICANCE OF THE JUDGEMENT

- **Ended Legal Ambiguity:** The verdict has cleared the confusion about the law and made it clear that the amendment to the Hindu Succession Act, 1956 granting equal rights to daughters to inherit ancestral property would have retrospective effect.
- **Consonance in the Constitutional Spirit:** The court recognized that gender cannot be grounds for denying anyone their inheritance rights. This interpretation by the Supreme Court has removed male primacy over Hindu ancestral property.
- Giving the daughter equal coparcenary rights is in consonance with the spirit of equality, under Article 14 of the Indian constitution.

- **A Step Towards Women Emancipation:** It is a major push for women who lack economic resources and are often marginalised by male members of the family. The fact that a law and not just a will decides women's property rights is significant.

12. ASSOCIATED CHALLENGES

- **Patriarchal Nature of Indian Society:** While the ruling is a progressive step towards gender parity, it is by no means a guarantee that Indian families will willingly cede reins to their womenmembers.
 - This is because, passing on the succession of the family enterprise only to sons stems from deep-rooted tradition and the patriarchal notion in the society.
 - Given this context, it is quite likely that some business families after this ruling, will bypass this ruling, to park their assets or write wills to bequeath assets in favour of male heirs.
- **Lack of Awareness Amongst the Women:** There is a challenge in ensuring that women are actually empowered by this legal provision, as the majority of women are not aware about their rights.

13. CONCLUSION

Though the judgement is a progressive step in pursuit of creating a level-playing field in legal rights for women, bringing behavioural change in society will play a bigger role towards the goal of gender parity.

Thus, there is a need to bring a change in the patriarchal mindset of the society and ensuring that women have access to the same opportunities as men in acquiring educational qualifications and the training needed to run an enterprise.

Moreover, the fact that it has taken 15 years for the issue to be clarified highlights the urgent need for a clear civil code based on universal principles of natural justice and fundamental rights.
