

Daughter's right to property as a coparcener in reference to Hindu Succession (Amendment) Act, 2005 & recent judgments

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Abstract:

Women play a significant role within the lifetime of each and every human being. Securing her better birth rights would mean giving a better future to our society, family, and every individual. However, in Hindu society, patriarchy has been prevalent and women have been thought of to be of lower social status, treated as a dependent with barely any property rights. The preamble to our Constitution secures justice for all our citizens. Justice includes social justice as well and it demands that women should be treated equally in both the economic and social spheres.

As per the law, both men and women can acquire property and land through different ways such as purchase, inheritance, gift, or transfer by the government. Yet, inheritance remains a significant mode of acquiring property.

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The objective of this Research:

Through this article, I tried to analyze the position of women's right to property in the context of the Hindu Succession Act, 1956 and later Hindu Succession (Amended) Act, 2005, and the recent verdicts by the Supreme Court in January 2022. The paper also deals with women's right to inheritance of ancestral property and self-acquired property. The following questions have been answered in the article:

- Right of women to property: an introduction
- Concept of survivorship and Section 6 of the Hindu Succession Act, 1956
- Purpose of Hindu Succession (Amendment) Act, 2005
- Can a Daughter be a source of Coparcenary?
- Whether survivorship was abolished for males or females?
- Daughter's right to inherit her father's ancestral property dying intestate
- Daughter's right to inherit her father's separate property dying intestate.

(Keyword: Abolishment of survivorship, section 6 of HSA, daughter as a source of coparcenary, women's right to inherit property)

Women's right to property: An Introduction

"Under the previous Hindu Law, a Joint Hindu Family was continually thought about to be a bigger body than a Hindu Coparcenary. A Joint Hindu Family would encompass persons lineally descending from a common ancestor and would include their wives as well as unwedded daughters. However, Coparcenary is a far narrower body consisting of a common male relation and his 3 lineal male descendants i.e., the common male relation, his son, his grandson, and his great-grandson."¹

A joint Hindu family property, under the recent Hindu Law, be solely commanded by the male descendants of a Coparcenary. Such Coparcenary,

as already mentioned, would carry with it male descendants up to three generations i.e., up to the great-grand-sons. All male descendants would get a right to be a coparcener by virtue of birth or by means of adoption. A woman in a joint Hindu family had no right to become a part of the Coparcenary.

The earliest legislation that brought females into the theme of inheritance was '**The Hindu Law of Inheritance Act, 1929**', which gave inheritance rights. In the 20th century, various social reformers fought against social evils including the lower status of women. One of its impacts in the field of legislation was the enactment of the Hindu Law of Inheritance (Amendment) Act, 1929. It was felt that without economic independence, the position of women cannot be improved. So, to give them some amount of economic security in the joint family, the Hindu Law of Inheritance (Amendment) Act, 1929 was passed. Although the interest of wives and husbands was safeguarded by the Acts of 1923 and 1927 yet this Act was passed in 1929, which aimed at giving preference to some nearer degrees of female heirs over other male heirs who are remoter in relation to the propositus. It conferred inheritance rights on some female heirs i.e., son's daughter, daughter's daughter, sister, and sister's daughter. These females were made heirs after the father, in the order of succession, thereby creating a limited restriction on the rule of survivorship.

Another landmark legislation conferring ownership right on a woman was '**The Hindu Women's Right to Property Act, 1937**'. This Act of 1937 enabled the widow of a departed coparcener to succeed in conjunction with the son and to require an identical share as the son. The Hindu Women's Right to Properties Act 1937, gave a death blow to the concept of survivorship. Under this Act, the widow of a deceased coparcener of a Mithakshara undivided family can have the identical interest that her husband had while he was alive. It should be noted that the widow has the right to claim partition.

However, before the commencement of 'The Hindu Succession Act, 1956', the property held by a Hindu female was classified under the following two heads:

- (1) **Stridhan** - The property she obtained before marriage or at the time of marriage or after

1. Kumar Ajay, right to property of women in India with special reference to Hindu Law.

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marriage from her father's and husband's family constitute stridhan. A woman was given absolute right over Stridhan within the sense that no one including her father, mother, brother, husband and son can take the property away from her. It absolutely was thought to be her absolute property over which she had full ownership, and, on her death, it devolved upon her heirs.

(2) Hindu Women's estate- Under the 1937 Act, the widow of a male coparcener will get a life estate upon the undivided Coparcenary interest of her husband's property. However, this was considered to be her limited estate with regard to which her powers of alienation were restricted.

Later on, after the British period, the Indian Parliament tried to systemize the property law of inheritance among Hindus and thereby enacted the Hindu Succession Act, 1956 (hereinafter to be read as HSA, 1956). As per the preamble of HSA, 1956 it was enacted to amend and codify the law relating to intestate succession or testamentary disposition, among Hindus, Buddhists, Jains, and Sikhs. The Act lays down a consistent and comprehensive system of inheritance and succession into one Act.

This is a very essential change brought about by the Act. **The ancient law discriminated against a male and female heir in the case of inheritance.** Females were not at all given the right of inheritance and were totally excluded. But a limited right namely, widows' estate or the limited estate was given to the widows.

Concept of Survivorship and Section 6 of the Hindu Succession Act, 1956

When in a joint family, a coparcener dies, the joint ownership of the coparcenary property will be continued by the surviving coparceners and the jointness will continue to exist. This is called the doctrine of survivorship.

However, if all the other coparceners die and only one of them remains, then he will be called the sole surviving coparcener. The property will remain as an absolute property like his separate property in the hands of the sole surviving coparcener until another coparcener is added to the family. When a coparcener dies leaving behind his undivided

coparcenary interest in joint property and also its separate property then

- His **joint property** (i.e., undivided coparcenary interest) will not devolve upon someone rather by the doctrine of survivorship it will continue under the joint ownership of surviving coparceners.
- His **separate property** is his absolute property and therefore it will devolve upon his legal heirs by the rule of succession.

By **Hindu Succession (Amendment) Act, 2005**, every daughter has been given the coparcenary right since 9th September 2005, though she became the coparcener from the date of birth or adoption. She gets a birthright in the same manner as a son and therefore, it will be unjust to declare that she became the coparcener on the 9th of September 2005. She became the coparcener since the date of her birth but the use of the words "**on and from**" in section 6(1) clearly suggest that the intention is to make her coparcenary right effective from 9th September 2005 and therefore if the daughter has to claim partition in her joint family, then she can do so only on and from 9th September 2005.

However, to bring equity, a slight retrospective angle has been provided. It means if there has been any partition on or after 20th December 2004 then she can claim reopening of the transaction and can obtain her share. But if it was done before 20th December 2004 then she can get it re-opened only if it was an oral partition and not otherwise.

Purpose of 2005 Amendment Act

In 1937, for the first time, rights were created for women with respect to joint Hindu family property. Under the 1937 Act, the widow of a male coparcener will get a life estate upon the undivided coparcenary interest of her husband's property. The purpose was to do proprietary justice to the females in a joint family.

Later in the 1956 Act also, the doctrine of succession was restricted to a certain extent and if a male died leaving behind an undivided coparcenary interest, then if he has left behind a female heir in class 1 of the Schedule or male heir in class 1 claiming through such female then the doctrine of survivorship will not apply and the shares of such deceased coparcener will devolve according to the

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rules of succession where she will also get the share. Also, by section 14 of the Hindu Succession Act it was declared that if the female is holding property as a life estate owner, then with the commencement of the Hindu Succession Act, 1956, she will become an absolute owner. Here also, therefore, the purpose was to do proprietary justice.

The purpose of the 2005 Amendment Act is not to bring about larger scale socio-religious changes in the concept of the joint family rather it was simply to do proprietary justice to the females in joint family and for that purpose to whatever extent and interference in the socio-religious aspect of the joint family were essential, it was done.

Without making her a coparcener a complete gender justice could not have been done therefore she has been declared to be a coparcener: even if it amounts to interference in the socio-religious aspect of joint family. However, the female does not do *pind daan* to their ancestors as the male members do within 4 degrees, still in order to do proprietary justice and equity she has been made a coparcener.

Can daughter be a source of coparcenary?

Daughter, as per socio-religious dimensions of Hindu law, cannot do the *pind daan* and from the socio-religious perspective it is only the male members who can do *pind daan*, and therefore they can be the source of the coparcenary. But if the daughter is also made a source of coparcenary, then a double coparcenary ship will be created i.e. one in Mother's family and the other in the father's family and that would further complicate the concept of coparcenership.

However, the children of a daughter up till 4 degrees, including propositus, have been given a share in the notional partition by section 6(3) of HSA, but that is not because such children are coparceners in mothers paternal family rather for the purpose of doing equity to those children. Equity to children cannot be so stretched so as to create a double coparcenary ship.

Another side of the argument

Gender justice requires that the daughter and son should be placed on the same footing. By making the daughter a coparcener, she has been put on the same footing, but that equality is not maintained when it comes to the children of such daughter. Such children are not made a coparcener in the maternal

grandparent's family whereas children of a son would automatically become coparceners. If gender equality has to be maintained then irrespective of double coparcenership, the children of a coparcener daughter should also be made a coparcener.

Whether survivorship has been abolished for males or females?

Coparcenary never existed in a woman and therefore survivorship never applied upon them. The same act by which she has been made a coparcener abolishes survivorship for men. That means it was never created for a female, therefore, it was not required to abolish for a female.

Daughter's right to inherit her father's ancestral property dying intestate

After the amendment Act of 2005, a question was raised before the Supreme Court as to whether Amendment Act is prospective or retrospective in nature and whether the father has to be alive on the date of enforcement of Amendment Act, 2005 for devolution of rights on daughter as a coparcener in his coparcenary interest. This question was decided in **Prakash and others v. Phulavati and others (2016)**². Supreme Court through the division bench has held that the Hindu Succession (Amendment) Act, 2005 is prospective in nature. Whenever an amendment is done to substantive law provision, they will always be prospective unless the intention of the legislature is manifestly clear that the amendment has been retrospective. The above will apply even if the law relates to social legislation. The use of the words "on and from" in section 6(1) clearly provides that the amendment is prospective. The Supreme Court further held that section 6, as amended in 2005, applies only to those cases where both the father and his daughter were alive on September 9, 2005 i.e. when the amendment came into effect.

Later on in 2018, the question was again raised before Supreme Court in **Danamma @Suman Surpur v. Amar Singh**.³ In this case, the Supreme Court, speaking through Justice A.K Sikri and Justice Ashok Bhushan, gave a contrary view holding that even if the father had died before dating of enforcement of the 2005 Amendment Act, i.e. before 9th September 2005 the daughter will get an equal share and will be entitled to his coparcenary property since birth as she has her coparcenary rights since her birth like as son.

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Once again in 2020 in **Vineeta Sharma v. Rakesh Sharma**, the issue had been raised and referred to a larger bench in view of the conflicting judgments made in two Division Bench judgments of the Apex Court in **Prakash and others v. Phulavati and others**, and **Danamma @Suman Surpur v. Amar Singh**.

A three judges' bench of the Supreme Court, in this case, speaking through Justice Arun Mishra, held that the women's right to ancestral property is by birth and father's being alive or dead has no effect on her right to inherit. Therefore, the father need not be alive on the date of enforcement of the Amendment Act of 2005.

Daughter's right to inherit her father's separate property dying intestate

Vineeta Sharma's case is a landmark judgment as to the right of women to inherit ancestral property. But there was no such judgment as to the inheritance of the separate property of propositus

dying intestate. This question was raised recently in 2022 in **Arunachala Gounder (Dead) By LR's. v. Ponnusamy and Ors.** The following questions were answered by the Supreme Court in this judgement:

- (i) Whether a sole daughter could inherit her father's separate property dying without making any will (prior to the enactment of Hindu Succession Act, 1956)?

The Supreme Court held that the self-acquired property or family property of Hindu male who dies without making a will, will be devolved by inheritance, and daughters are entitled to the same.

- (ii) What if a female Hindu dies issueless without making a will, where will the property go?

The bench said that if a female dies without making a will, then property inherited by her from her father and mother will go to the heirs of her father whereas the property inherited from her husband and in-laws will go to heirs of her husband.



REFERENCES

1. Kumar Ajay, right to property of women in India with special reference to Hindu Law., <http://hdl.handle.net/10603/341872>
2. Chandigarh Judicial Academy, e-newsletter, Karuna Sharma Civil Judge (Jr.Divn.)/JMJC -cum-Faculty Member, CJA
3. Chandni Tyagi, Gender Perspectives on Women's Property Rights with reference to the Hindu succession Amendment Act 2005, <http://hdl.handle.net/10603/316477>
4. The Hindu Women's Right to Property Act, 1937