

Relevancy Of Coparcenary In Hindu Law At Present Time

Dr. Amit Kumar Srivastava

Dy. Dean Faculty of Legal Studies Mewar University Chittorgarh, Rajasthan.

Abstract:

"Boys are sons till they marry, while daughters will always be daughters." The Supreme Court used these phrases to resolve the issue of coparcenary rights in *Vineeta Sharma vs. Rajesh Sharma*¹ (Supreme Court of India, 2021). The Indian judiciary entered the principality of gender equality also, considering a case of coparcenary rights, upholding women's rights and bursting all social categorizes.

Rendering to Black's Law Dictionary, coparceners are "persons to whom an estate of inheritance passes jointly and by whom it is held as a whole estate." The term coparcenary is used to describe Hindu succession law. As per the definition, an heir is "a person who, by birth, has the capacity to assume a legal interest in his ancestral property." It stands for 'unity of title, ownership, and awareness.' It is a legal invention; parties acting together cannot make it unless they adopt it. Coparcenary Rights have a long history in India, and they have a bright future ahead of them. This paper examines the evolution and current situation of coparcenary rights in India under Hindu Vedic laws and the Hindu Succession Act. In this study, Indian judiciary's approach toward situations involving these rights is also explored.

Keywords: - Coparcenary rights, Hindu Law, The Mitakshara School, Hindu Succession Amendment Act of 2005

Introduction:

¹ Supreme Court of India. (2021, August). *indiankanoon.org*. Retrieved from indiankanoon.org: <https://indiankanoon.org/doc/67965481/>

Coparcenary is derived from the theory of Daya, or property, in place specified by Vijnaneshwara while mentioning on Yajnavalkyasmriti in the 'Daya vibhaga prakranam vayavahara adhaya'. Property which transfers to another individual only because of the owner's relationship is referred to as daya. The phrase simply for purpose of relative excludes any other motive, for example purchasing. Rendering to Narada, sons be able to share their father's property that has been sanctioned by the learned, hence the Daya is a coparcenary property. As a result, ancient Hindu jurisprudence gave birth to the novel concept of coparcenary, which far along come to be a central feature of Hindu law in overall and the Mitakshara School of Hindu law in specific. To understand coparcenary rights, you must first recognize the subsequent:

Hindu Schools of Law

Hindu law, which has been codified, establishes a set of universal regulations for Hindus throughout society. These schools are not permitted to be used under these laws. They are only useful in areas where there is no classified law.

A) The Mitakshara School

In this area, the inheritance law was applied as per the concept of propinquity, that is proximity in order of family connections. The Hindu Succession Act of 1956² (Ministry of Law, 1956) was also created on this judgment. The rule of possession by birth applied to property distribution, that means the family's male child had special rights to the joint family's property by birth, but female child did not. This allocation rule remained recognized as the doctrine of survivorship. This one essentially intended as the land should be transferred to the successor who could assure family's future continued existence, effectively forfeiting daughter's rights under the Indian family system.

B) The Dayabhaga School³ (Agrawal, 2021)

This is known as the revolutionary branch of the Benaras School. Benaras has traditionally served as epicentre for Brahmin conservatism as well for orthodoxy, as well as the seal of Brahmana wisdom. This is also situated in Bengal and Assam.

This is based on the idea of religious value or spiritual value. Individuals that supply additional spiritual value are allowed to take over the property over others who provide a smaller amount of spiritual value, according to the Doctrine of Oblations. An early advantage of this fresh philosophy was the addition of various associated in the list of successors, which had previously been ignored by the Mitakshara school, that was primarily agnatic. As property may also descend to the family's female members. As this school, boys do not have a right to the property because they were born

² Ministry of Law. (1956). *The Hindu Succession Act, 1956*. New Delhi: Ministry of Law.

³ Agrawal, S. (2021, August 11). *samarthagrawalbooks.com*. Retrieved from <https://samarthagrawalbooks.com/2021/08/11/mitakshara-and-dayabhaga-school/>:
<https://samarthagrawalbooks.com/2021/08/11/mitakshara-and-dayabhaga-school/>

there. If the coparcener dies without children, his widow is entitled to receive his share and divide it on her own.

2) Hindu Undivided Family

Lineal children of a common ancestor, also the wives and unmarried daughters, make up the Hindu undivided family. An undivided Hindu family is one in which all of the family's assets are owned in common. The family is no longer undivided after assets are divided. A simple division between eating and worship is not considered a division. Prior to the Hindu succession statute of 1956, there were restrictions governing coparcenary privileges that were not based on Hindu theology. Prior to this law, women's inheritance rights were governed by the Hindu Law of Inheritance Act of 1929. This granted his son's daughter, grandson, and sister the right to inherit.

The Hindu Women's Right to Property Act, 1937⁴ (Gazatte of India, 1935) was passed shortly after, granting women ownership rights. The types of expected laws believed in use the time has changed dramatically as a result of this rule. Property, inheritance, and adoption laws, as well as coparcenary and division rules, were all impacted. It also addressed the rights of widows and divorcees. Earlier to the introduction of law, inheritance was governed mostly by customary or shastric laws, which brazenly disregarded gender equality. The idea of survivorship was struck a severe blow by this 1937 decree, which preserved the rights of widows and daughters. According to statute, the widow of a late coparcener of a Mitakshara undivided family was entitled to the equal interest as her husband while he stayed alive. The power to demand partition was also provided to a widow.

After that, the Hindu Succession Act, 1956⁵ (Ministry of Law, 1956) was passed. The act reaffirmed the idea of equality by removing a Hindu Women's Right to Property Act's concept as "limited estate." similarly provided women the right to a share of their father's estate. Daughters were acknowledged as legal heirs to their fathers and were given inheritance civil rights to a share to the father's separate property. In some ways, though, this behaviour exacerbated the disparity. The boy was nonetheless legally entitled to inherit the family's ancestral property, which a daughter had no claim to. As a result, the survivorship doctrine was upheld. In a study issued in 2000, the law commission proposed revisions to the women's right to property as a result of these faults in the legislation. Based on the principle of injustice, it campaigned for reforms in all sectors. The Hindu Succession Amendment Act of 2005 was passed after these amendments were adopted. The Amendment Act of 2005 asserted the purposes and details that the law led to gender discernment, harassment, and denial of daughter's fundamental right to equality. This has taken into consideration while Section 6 amended. As Section 6 of the amendment confronted Hindu law's in equal coparcenary rights and as a result, all of family's daughters, whether married or unmarried, were granted coparcenary rights with all of rights, responsibilities of the son. That means the

⁴ Gazatte of India. (1935). *Hindu Women's Right to Property Act, 1937*. New Delhi: Governor Of India.

⁵ Ministry of Law. (1956). *The Hindu Succession Act, 1956*. New Delhi: Ministry of Law.

daughter can be responsible for the duties and fatalities in addition to the property shares and other moralities. As stated, women of family may now perform as the family's Karta, that they were unable to do previously. Some place to a coparcener too applies to daughters.

Discussion on Hindu Succession Amendment Act, 2005⁶ (Ministry of Law, 2005)

While essential components of Hindu Joint Family concept were altered by the 1956 Act and the 2005 Amendment, the coparcenary concept was preserved in the superstructure. The coparcenary and the Hindu undivided family were traditionally patriarchal, which meant that the women of the household were fully excluded. The daughter and her lineal descendants were never involved; instead, sons, grandsons, and great-grandsons were always involved. This situation was changed by the Hindu Code Bill and the 2005 Amendment.

Despite the fact that the B N Rau Committee's Hindu Code Bill aimed to eliminate Mitakshara Coparcenary and replace it with the concept of Dayabhaga, Mitakshara Coparcenary was included in the Hindu Succession Act of 1956, albeit in a greatly reduced form. The rule of survivorship was weakened by the addition of a proviso that a coparcener's curiosity in a Mitakshara Coparcenary intend to only transfer down to other coparceners if he is not survived by a female family member listed in Class I of Schedule I, or a male family member listed in that Discussion who claims over such female family member.

1956 Act, in contrast to the Mitakshara stance of the time, which prioritised the Hindu Joint Family system over the welfare of the coparcener's biological kin, prioritised the latter. The 2005 Amendment Act made history by making the coparcener's daughter, as well as the coparcener's son, coparceners. It defied popular belief that a woman could never be a coparcener or the Karta of a mixed household. The Amendment Act totally eliminates the concept of survivorship devolution of curiosity in a coparcenary property. Births in HUF will continue to lower a coparcener's interest, but deaths in the undivided family will not. A Hindu undivided family that happened at the time the Amendment Act was implemented resolve gradually degenerate, disintegrate, also by natural death of all surviving coparceners or through a partition based on a coparcener's request.

It is important to note, however, that the Amendment Act does not completely eradicate the concept of Coparcenary. The partitioned coparceners may establish a new coparcenary on the partition of an existing coparcenary with their sons and daughters. Following the division of a coparcenary property, each of the partitioned coparceners will form their own coparcenaries with their children, daughters, grandsons, and great grandsons. A new coparcenary can also be formed by the deliberate pooling of several properties owned by a person, his sons and daughters, and enjoyed by the coparcenary members collectively.

⁶ Ministry of Law. (2005). *Hindu Succession Amendment Act, 2005*. New Delhi: Authority.

Some Anomalies Still Persist⁷ (Kumar, 2008-09)

1. One initiates from the Mitaksara joint property structure's existence.

Creating female member coparceners will reduce the portions of other Class I female heirs, such as the mother and deceased's widow, as the coparcenary share of the departed male since whom they receive will drip. The widow's latent share at present equivalent to son's & daughter's few states similar to Maharashtra, everywhere the wife gets a piece of partition. The widow's probable portion will be lesser than daughter's in places as if in Tamil Nadu or Andhra Pradesh the wife does not get a quota at the stretch of partition.

2. Men's main entitlement remains co-parcenary.

As law, no hesitation, provides for an equivalent division of the men's stake parcener's estate between every male and female heirs; however, as law places male heirs on a upper stability by giving them inherit an excess share in co-parcenary property other than what is inherited similarly with female heirs; the idea of co-parcenary is that of an special male membership club, and thus must be eradicated.

Any elimination, however, would want to attended as a restriction on the right to will (say, to 1/3 of the property). Similar limitations exist as a number of European countries. Females are frequently disinherited by wills, leaving them with nothing. Possession of Mitaksara system at a place & making daughters coparceners, where not ideal, does offer women with assured involvement in combined family property as the 2005 Act not prepares limit testamentary liberty.

3. As a Hindu woman dies without a will, her property passes initial to her husband's heirs, next to her husband's father's heirs, and lastly to her mother's heirs; as a result, the without a will Hindu woman's property is still encumbered by her husband's lien.

One more purpose for an all-India rule is that, a United Family holds property in two situations, one of that is governed by the Amending Act and the next not, the consequence might be dual Kartas, out of which one is a daughter and the next is son. Here also be worries with the regional solicitation of the Amending Act. As a result, the requirement of an all-India Act or a Uniform Civil Code has grown increasingly urgent. The problematic process of applying the 2005 Act continues. Legal literacy movements, hard work to create social consciousness of the welfares of women possessing property for the whole family, and lawful and communal assistance for women seeking to declare their privileges are just a rare of the many stages are essential to put the Act's amendments into effect.

Current scenario: The judicial judgement that made a mark

⁷ Kumar, P. V. (2008-09). Coparcenary under Hindu Law, Boundaries redefined, published in Nalsar Law Review, 2008-09. *Constituent Assembly (Legislative) Debates*.

Despite fact that women's rights have been recognised since the 2005 amendment, there have been a number of issues that have raised questions regarding the amendment's compliance with daughters' rights. One such concern was whether the daughter's father had to be alive at the time of the 2005 change in order for her to get the benefit. This matter was elevated in the case of *Prakash vs. Phulavati*⁸ (Goel, 2015). The Supreme Court stated in this case, "Daughters would have a coparcenary right on and from the commencement of the amendment, thereby providing clarity that the amendment is prospective in its application, meaning that the right to coparcenary property would be available only to 'living daughters' of 'living coparceners' on and from the commencement of the amendment." Here no clear provision for alteration to be made retroactively, nor is it necessary." The court reaffirmed this position in *Mangammal vs. T.B Raju*⁹ (Agrawal R. K., 2018). Such a reading observed that have no understanding of concept of modification. The clause was designed to offer females with coparcenary and equal rights to males, according to the evidence. If the focus is placed on the phrases employed in the section, it could have understood that coparcener must be active for this conferment, because provision the aforementioned indicates that sons and daughters have equal rights. The courts are erroneous in erecting a barrier by reading terms as "daughter of a coparcener" to suggest that coparcener must be active for daughter to seek her coparcener privileges. The entire goal of the amendment, which was predicated on Article 14 of the Constitution's equality clause, is thus defeated.

In *Danamma v. Amar*¹⁰ (A Sikri, 2018), the Supreme Court completed comments that contradicted earlier circumstances. The culminated in the *Vineeta Sharma* decision, which was referred to a three-judge panel. The Supreme Court bluntly rejected any possibility of the amendment having retroactive effect in these instances. A similar issue with the retrospective effect was addressed in *Vineeta Sharma vs. Rajesh Sharma*¹¹ (Supreme Court of India, 2021). Following the representation of the Hindu Succession (Amendment) Act, 2005¹², as question in this case was whether a coparcener's female member would automatically convert into a coparcener in her individual right, exactly like son. After this instance, court stated that "the provisions included in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as the son, with the same rights and obligations." With exclusions set forth in Section 6(1), the privileges can be demanded by the daughter who was born earlier as of September 9, 2005. The father coparcener doesn't have to be active as of September 9, 2005, as the privileges to coparcenary is based on birth."

The *Vineeta Sharma* judgement is founded based on assumption with aim of Section 6 of the Act, as amended by the 2005 amendment, to provide benefits to female member successors

⁸ Goel, A. K. (2015). *Prakash vs. Phulavati*. New Delhi: Supreme Court of India.

⁹ Agrawal, R. K. (2018). *Mangammal vs. T.B Raju*. New Delhi: Supreme Court of India.

¹⁰ Sikri. (2018). *Danamma v. Amar*. New Delhi: Supreme Court of India.

¹¹ Supreme Court of India. (2021, August). *indiankanoon.org*. Retrieved from [indiankanoon.org](https://indiankanoon.org/doc/67965481/): <https://indiankanoon.org/doc/67965481/>

¹² Ministry of Law. (2005). *Hindu Succession Amendment Act, 2005*. New Delhi: Authority.

retroactively, rather than proactively or retrospectively. When a law makes benefits conditional on eligibility, it takes effect retroactively, even though the eligibility existed before the law was enacted. When it comes to the 2005 amendment, it was defined as providing female successors with the same benefit of succession as their male counterparts depended on an antecedent occurrence, namely her birth. While the Vineeta Sharma decision is to be applauded for achieving gender equality, the fact was, it acquired over fifteen years to resolve the case demonstrates the long path to justice. Numerous women have been missing without compensation for their roles in the coparcenary property throughout the years, putting them in considerable financial problems.

Conclusion

Many advancements have happened as field of coparcenary rights, letting women for fulfil their full potential. Numerous legislative statutes connecting to coparcenary rights enacted, with the Hindu Succession (Amendment) Act of 2005 being the furthestmost important in relations to inheritance and succession. This act addressed a fundamental concern concerning gender imbalance to some extent. However, as previously said, there were a few thorny issues that were handled differently depending on the situation. On the other side, the Vineeta Sharma verdict has been regarded as a landmark moment because it not only explained the situation but also upheld the constitutional equality values. While some issues remain to be resolved, such as Class I female heirs' shares, male heirs' higher standing, and partial restrictions on the right to make a will, this decision deserves praise for breaking down long-held gender stereotypes in inheritance and the ambiguity that existed after the 2005 amendment, and deciding on a matter that resolves many conflicts in a just manner.

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