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“Once a daughter, always a daughter”: Supreme Court of India

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This article is based on the **“Reading the SC verdict on Hindu women’s inheritance rights”** which was published in The Indian Express on 11/08/2020. It talks about the recent Supreme Court’s verdict regarding the inheritance of Indian women over parental property.

In a significant judgment **aimed at ensuring “right of equality”** of a daughter in a Hindu Undivided Family, the Supreme Court has held that **women will have coparcenary right, or equal right to family property by birth, irrespective of whether her father was alive or not as on September 9, 2005** i.e, the day when Parliament recognised this right by amending the Hindu Succession Act of 1956.

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 to rectify 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.

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.

Schools of Hindu Laws

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 India and subdivided into the Benares, the Mithila, the Maharashtra and the Dravida schools.	It is observed in Bengal and 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.

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.
 - 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.

See-Saw Scenario in the Previous Judgements

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.

Different benches of the Supreme Court and High Courts had taken conflicting views on the issue. For Example:

- In **Prakash V/S Phoolwati (2015) 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).
- However **In February 2018, contrary to the 2015 ruling, a two-judge Bench headed by Justice A K Sikri** held that the share of a father who died in 2001 will 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 Agrawal, reiterated the position taken in 2015.** These conflicting views by benches of equal strength led to a reference to a three judge Bench in the current case.

Highlights of the Current Judgement

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.**

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.

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 women members.
 - 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.

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**.

'GOAL OF GENDER JUSTICE ACHIEVED'	
<p>➤ SC irons out confusion arising from its own conflicting interpretations of the amended Section 6 (in force since Sept 9, 2005) of the Hindu Succession Act, 1956</p> <p>➤ Spells out daughters' equal coparcenary rights in Hindu Undivided Family properties even if they were born before the 2005 amendment & regardless of whether their father</p>	<p>coparcener died before '05</p> <p>➤ But the daughters won't get the right to question ancestral properties already disposed or alienated by then existing coparceners prior to December 20, 2004</p> <p>➤ Rights of other relatives to remain unaffected as prevailed in the proviso to Sec 6 before amendment. It's only a case of enlargement of daughters' rights</p>
	
<p>Who is a coparcener? A Hindu who inherits property from his/her father, grandfather or great grandfather. Only a coparcener has the right to demand partition of property</p>	
<p>“The classic Shastric Hindu law excluded the daughter from being coparcener... (this) injustice has now been done away with by amending the provisions in consonance with the spirit of the Constitution. The goal of gender justice, as constitutionally envisaged, is achieved, though belatedly – Supreme Court</p>	

Drishti Mains Question

“Equality of sexes is a fundamental principle of any modern, progressive society and state”. Analyse the statement in the context of recent Supreme Court judgement on women’s coparcenary rights.

<p>MAKING HINDU SUCCESSION LAW GENDER NEUTRAL</p>	 <p>drishti</p> <p>EDITORIAL ANALYSIS</p> <p>13 AUGUST, 2020</p>
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This editorial is based on **“Seal of Justice”** which was published in The Indian Express on August 13th, 2020. Now watch this on our Youtube channel.
