



# The Big Picture: Hindu Succession Law & Daughter's Rights

## Why in News?

The Supreme Court in an important judgement declared that the daughters would have coparcenary rights in a joint Hindu family equal to that of the male heirs irrespective of the father being alive (or not) before the date of enactment of Hindu Succession (Amendment) Act 2005.

- 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.

## Key Points

- The law considers daughters equal coparceners of the ancestral property as their brothers.
- It provides **unobstructed inheritance rights** to the daughters of the Hindu Undivided Family.

## Need of the Amendment

- Prior to the 2005 amendment, the **daughters of the Hindu undivided family were not granted the status of coparceners to the property.**
- The distribution of property in a family took place from the grandfather to the father to the son.
- The Solicitor General of India **criticised the Mitakshara coparcenary 1956 law** because it contributed to **discrimination on the ground of gender** and was also **oppressive** and **negated the fundamental right of equality (Articles 14 to 18)** guaranteed by the Constitution of India
- An amendment in 2005 in section 6 was made, **claiming daughters to get the equal coparcenary rights and liabilities as their male siblings get.**
- Even after the 2005 amendment, there were quite unclear facts about the inheritance such as:
  - if the daughter would inherit the property if the father was not alive as on 9.9.2005 or not
  - If the law applies to daughters born before (or after) 2005.
- **The latest amendment clears all the doubts by declaring the coparcenary as the birth right.**

## The Hindu Succession Act, 1956

- The **Mitakshara school of Hindu law** codified as the **Hindu Succession Act, 1956** governed **succession and inheritance of property** but only **recognised males as legal heirs.**
- It **applied to everyone who is not a Muslim, Christian, Parsi or Jew** by religion. **Buddhists, Sikhs, Jains and followers of Arya Samaj, Brahma Samaj,** are also considered **Hindus** for this law.
- In a Hindu Undivided Family, several legal heirs through generations can exist jointly. Traditionally, only male descendants of a common ancestor along with their mothers, wives and unmarried daughters are considered a joint Hindu family. The legal heirs hold the family property jointly.

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 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.
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.
All the members enjoy coparcenary rights during the father's lifetime.	Sons do not enjoy coparcenary rights when the father is alive.

## Scenario in Previous Judgements

- 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 and Significance of this Judgement

- Daughters cannot be deprived of their right of equality conferred upon them by Section 6.
- It also **directed High Courts to dispose of cases involving this issue within six months** since they would have been pending for years.
- **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.
- The partition deeds that have already taken place in the same manner will not be affected; the judgement has a retroactive effect.

## Way Forward

- Change can not occur if it exists only on papers, people on their part need to broaden their mindsets and accept that coparcenary is a daughter's birthright and if they are giving it to her then it is no charity work.
- The coparcenary right of a daughter shall not be denied just because she will have her husband's property after marriage.
- The law should not mean to increase the number of litigations but to provide the daughters their rights in a more graceful and easy manner; the decision should be welcomed with open arms.
- The daughters instead of being so magnanimous and letting it go, should just stand up for their rights and claim it.

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