



The Status of Coparcenary Rights For Daughters In Hindu Joint Family

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Published on: 8th December 2025

Abstract

“The recognition of daughters as coparceners in Hindu joint families marks a significant transformation in the legal and social fabric of India’s patriarchal inheritance system.”

In India, still it is very hard to get equal rights and property as a compare to son in Hindu joint family. This paper led to the legal evolution of coparcenary rights for daughters within the Hindu joint family, a journey marked by legislative reform, judicial conflict, and eventual constitutional clarity. Historically, the Mitakshara coparcenary, a corner stone of Hindu property law. The Hindu Succession Act of 1956 maintained this patriarchal framework for family riches even if it was progressive in allowing daughters equal rights in separate property. The Hindu Succession (Amendment) Act, 2005, which formally acknowledged girls as coparceners by birth and gave them the same rights and obligations as boys, marked a paradigm change. However, conflicting Supreme Court decisions in which required the father to be alive on the date of the amendment, and which established an exception, demonstrate the ten years of judicial unrest caused by legislative ambiguity regarding the amendment's retrospective application. The Hindu Joint Family structure has been a part of Hindu society for ages. It has considerable influence on legal issues including inheritance and

property rights even if it isn't regarded as a formal legal entity like marriage. Although this deeply ingrained practice has evolved throughout time, it still has a significant impact on modern family life. The **Mitakshara School**, the more widely followed the two, offers a particular view on property rights and inheritance works. The analysis of the current legal environment, in which girls are now equal coparceners to boys in every way, closes the study. It also looks at the continual need to close the gap between legislative mandate and social reality by examining the recurring socio-legal issues, such as ignorance and social pressure, that cause a gap between this *de jure* equality and its *de facto* execution.

KEY WORDS – Daughter as coparceners, Hindu Joint family, Hindu property law, HAS, 1956, HAS Amendment act, 2005, Gender equality, Socio-Legal issues

1. INTRODUCTION:

According to the Mitakshara School of Hindu law, coparcenary refers to a unique type of joint family property ownership in which certain male members—that is, sons, grandsons, and greatgrandsons—are coparceners by birth. As a result, they share unity of title, possession, interest, and obligation and have a birthright to ancestral property. Coparcenary status was traditionally established in a patriarchal manner, permitting only male members to be coparceners with direct authority and ownership of property. Due to ingrained gender inequity in inheritance rules, daughters were not granted these rights. Because it went against the equality ideals found in Articles 14, 15, and 21 of the Indian Constitution, this prejudice based on gender was subject to constitutional objections. In response, daughters were given equal coparcenary rights under the historic Hindu Succession (Amendment) Act, 2005.

According to this legislation, daughters—married or not—became coparceners by birth, with the same rights and obligations for ancestral assets as boys. Gender equality in inheritance rights was further confirmed by the Supreme Court's decision that these rights are retroactive, meaning they apply irrespective of whether the father passed away prior to the amendment date. Even with this important legislative development, there are still operational gaps. The full realization of daughters' coparcenary rights has been hampered by social norms, ignorance, and opposition in some areas and communities. There are many landmarks judgement after the amendment are **Prakash V. Phulavati in 2016**, **Danamma V. Amar in 2018**, and the latest **Vineeta Sharma V. Rakesh Sharma in 2020**, which have metamorphosed the way one understands the amendment and set the scope in terms of daughters' rights in inheriting property.

2. RESEARCH QUESTION:

- How did the Hindu Succession (Amendment) Act, 2005 alter the legal status pf daughters as a coparcener in Hindu joint families compared to prior laws?
- How effective has the legislative and judicial expansion of coparcenary rights been in promoting gender equity in succession and property ownership?
- What were the customs and legal realities for daughters in Hindu joint family property before statutory reforms like the Hindu succession Act of 1956 and its 2005 amendment?

3. OBJECTIVE OF THE STUDY:

The Current research involves a descriptive and prescriptive approach. Hence, the following are the study: To examine how a daughter's status and rights have changed within the Hindu joint family structure, particularly in light of recent legal changes. To comprehend the legal, social, and symbolic importance of giving daughters property interests and coparcenary rights. To investigate how these rights affect societal attitudes, family dynamics, and gender equality in modern Hindu culture.

4. HISTORICAL BACKGROUND OF COPARCENARY UNDER HINDU LAW:

In Hindu law, real estate ownership and distribution in joint families have traditionally been governed by the coparcenary system. Daughters are essentially denied these rights since this system only acknowledges male lineal descendants as coparceners, including sons, grandsons, and great-grandsons. Male heirs were granted an inherent right by the coparcenary rights, which guaranteed them dominion over ancestral possessions by enabling them to both inherit it and seek its division. Daughters, on the other hand, were placed in a dependent status and were only considered members of the Hindu Undivided Family (HUF) without the same rights to manage or possess property. An attempt was made to standardize Hindu inheritance rules throughout India with the Hindu Succession Act of 1956. The Mitakshara coparcenary organization, which maintained to identify solely male members as coparceners, was significantly intact. In particular, the devolution of interest in coparcenary property was controlled by Section 6 of the Act. Daughters were merely entitled to a portion of the ancestral estate under Section 6 (prior to the 2005 amendment) in the event of partition or if the father passed away intestate (without a will). Otherwise, the coparcenary property transferred only to male coparceners who survived, according to the law of survivor-ship.

Gender discrimination in Hindu succession and inheritance was maintained by this institutionalized disparity, which guaranteed that daughters' privileges remained inferior to those for sons.

CONSTITUTIONAL PERSPECTIVE:

In the Indian Constitution the Article 14,15 and 38 serve as foundation pillars for promoting the gender equality, non-discrimination, and equal justice, especially in the context of gender equality and personal laws. All these provisions underpin the judicial critique of gender bias in personal law, Hindu law, emphasizing the gender discrimination violates constitutional principles.

Linkage to Article 14,15 and 38

- **Article 14** says that guarantees equality before the law, it ensures that every person in India gets the equal rights and protection under the law doesn't matter whether its male or female. Its strike at arbitrary discrimination and mandates that laws must prescribe equal rights for all citizens.¹
- **Article 15** prohibits discrimination based on sex, religion, caste, race or place of birth and affirms the right to equality and prohibits discrimination, either through state law or personal law based on gender.²
- **Article 38** deals with the obligation on the state to promote welfare and social justice, taking into account the need to remove inequalities, specifically about women and marginalized groups.³

Landmark Judgement: C. Masliamani Mudaliar V. Idol of Sri Swaminathaswami

Thirukoil⁴

The Supreme Court held that the law must subject property rights to gender discrimination. The Court pointed out that legislation that stipulates different rights to men and women in property matters violates the equality and non-discrimination provisions of Articles 14 and 15. The ruling asserted that constitutional principles and judicial rulings that have promoted equality for women across property rights cannot be reconciled with gender discrimination embodied in personal legislation.

¹ Constitution of India, art 14.

² Constitution of India, art 15.

³ Constitution of India, art 38.

⁴ C. Masliamani Mudaliar V. Idol of Sri Swaminathaswami Thirukoil AIR 1996 SC 1697.

THE HINDU SUCCESSION (Amendment) ACT, 2005:

A Significant Change: The Hindu Succession (Amendment) Act, 2005 By replacing Section 6 of the 1956 Act, the 2005 Amendment brought about a radical shift by giving daughters the same coparcenary situation by birth as males, regardless of their marital affiliation. Daughters now have the same rights and obligations as boys with regard to the coparcenary property. The ability to demand ownership and division of ancestral wealth. rights to use a testamentary agreement (will) to distribute their portion via requiring devolution via succession law, the Amendment essentially eliminated the coparcenary property theory of survivorship. According to the Supreme Court's affirmation, it also applied retroactively, giving girls ownership rights from birth regardless of whether their father was still alive on the day of enforcement (September 9, 2005). After the Amendment of 2005 it has become been very helpful or beneficial for the daughter that she doesn't have to stay dependent at any one in the house or husband as she will get her right and property from the ancestor. Also, after getting her property, she has the right to use that the way she wants and also, she can sell it or start a new business to earn money that will helpful for her. Now daughter have her the legal right from her father's lineage that set a significance milestone that daughter can easily demand for the partition from her ancestor property as equal to the son and enjoy the rights.

This amendment has significant ramifications for women's property ownership. Instead of waiting for male relatives to pass on their interests, the amendment gives daughters the ability to assert their claim to a portion of ancestral land by acknowledging them as being coparceners.

In addition to improving women's financial stability, this statutory recognition gives them the authority to manage and control property, which promotes greater financial autonomy. Furthermore, daughters can now assume leadership positions within the family structure by acting as the Karta (manager) of the HUF if they are the senior coparcener.

Daughters can now establish their claims to ancestral property without being constrained by conventional patriarchal standards because to the amendment's introduction of the ability to petition for partition. The capacity to seek division challenges the long-standing gender stereotypes that restricted women's ownership of property and guarantees that daughters can proactively exercise their liberties and protect their interests. In general, the Hindu Succession (Amendment) Act, 2005, radically

changed the legal environment for daughters in Hindu law, putting them on an equal footing with sons in terms of property ownership and coparcenary rights.

EQUAL RIGHTS OF DAUGHTER IN JOINT FAMILY PROPERTY:

Daughters now have the same rights as males in joint family (ancestral) property under the Hindu Succession (Amendment) Act, 2005. They have the same legal rights as sons to inherit, manage, and demand the division of the family property because they are acknowledged as coparceners by birth. This amendment applies retroactively, giving daughters property rights even if they were born before 2005 or if their father was deceased at the precise moment of the modification. The daughters can dispose of their portion by will and accept the obligations related to joint family property, including debts. In addition, if they are in need of money, they are entitled to maintenance from the ancestral property. Anything a son gets from his father, paternal grandfather, and even paternal great-grandfather is regarded as Joint Family Property. The taxpayer is considered to have purchased all other property. The nature of different types of properties varies based on where you reside in India. In some part of the country there are still maintained a difference between a daughter and sons in the context of joint family property. Women still have to stay dependent on her father or brother before marriage and Husband after marriage for her single expenses. A daughter inheritance right has been unaffected by her marriage, the death of her father, the death of her husband, or any other event occurs in her life. Legislative legislation and Supreme Court decisions have granted females in Hindu Undivided Families similar coparcenary rights in joint family property, granting them complete inheritance, control, and disposal rights comparable to sons. As a result, this led to the lawsuit using the now-famous phase "once a daughter, always a daughter." Because of this structure, both married and unmarried daughters have the same property rights in their parents' joint family property. A daughter-in-law is entitled to inherit both her own and her father's property laws. This rule also applies to a widowed granddaughter in law. The daughter has the same rights as a male to manage and inherit the Joint Family Property of her ancestors during her entire existence.

DIVOLLUTION OF THE SHARE OF AN INTESTATE FEMALE COPARCENER:

The notion of survivorship has been entirely eliminated by the Hindu Succession Act (HSA) modification, making the laws of testate or intestate succession applicable upon the death of any coparcener. However, there are serious issues with the current intestacy plan for females under section 15 of the HSA. The clause often favors the spouse's heirs above the woman's personal blood kin. In every instance where a female coparcener passes away intestate, the husband, who is grouped with the children in the first category of heirs, inherits equally with them. Despite the woman's autonomous position as a coparcener following the 2005 amendment, this strategy is blatantly unfair as it violates her natal maternal family's ownership privileges.

According to Section 15(2)⁵ of the Act, the lawmakers gave careful consideration to the source of a woman's property when deciding how to devolve it. This section's primary legislative goal was to keep property that formerly belonged to the woman's grandparents from ending up in the hands of those who justice would consider unworthy, including the husband's heirs. According to subsection (2)(a), property inherited by a female from her father will pass to her father's heirs upon her death if she leaves no heirs. But only property inherited from her father is included by this provision; property obtained as a conjoint at birth is not. The goal and spirit of the 2005 amendment, which gave granddaughters equal coparcenary rights, seem to be at odds with this exception.

It is important to understand that daughters had no coparcenary rights when section 15 was droughted. Courts now have to deal with a different reality where daughters are equal coparceners because legal interpretation must take into account the social and legislative environment of the moment. A broader interpretation of the phrase "inherited" in section 15(2)(a) can be justified by the argument that legislative terminology develop to reflect societal change, much how "handwriting" has grown to encompass "typewriting." However, this broadening of interpretation might not be adequate. Section 15(2)(a) must be specifically amended to extend its rule of devolution to the coparcenary interest obtained by daughters by birth order to preserve the legislative aim and guarantee justice.

⁵ Hindu Succession Act 1956, No 30, Act of Parliament.

JUDICIAL INTERPRETATION AND LANDMARK CASES:

1. Prakash V. Phulvati ruling (2015)⁶

Facts: In 1988, Phulavati's father passed away. In accordance with the revised Section 6 of the Hindu Succession Act, 1956, she requested a portion of family property. The question in the case was whether the changes made in 2005 granting daughters equal coparcenary rights applied in cases where the father passed away before the amendment was passed.

Judgement: According to the Supreme Court, the amendment is prospective rather than retroactive. Only if both a father and the daughter were still living on September 9, 2005, do daughters enjoy coparcenary rights. The amended rights do not apply if the father died before such date; the older law governs succession.

2. Danamma V. Amar (2018)⁷

Facts: Danamma and her sister Suman were born before the Hindu Succession (Amendment) Act, 2005, the lower courts determined that they were not coparceners and hence were denied a portion of their family land. Additionally, it was maintained that since they had received a gift, they were not eligible to inherit as coparceners.

Judgement: Regardless of when they were born or whether they received a dowry, the Supreme Court decided that daughters enjoy equal coparcenary rights by birth in Hindu joint family property. The Court overturned previous decisions that denied daughters born before the 2005 Amendment comparable rights to ancestral property as sons. According to Hindu law, this confirmed gender equality in inheritance.

3. Vineeta Sharma V. Rakesh Sharma (2020)⁸

Facts: Dev Dutt Sharma left behind three kids, one daughter (Vineeta Sharma), and a widow when he passed away in 1999. Following the 2005 modification that gave daughters equal coparcenary rights, Vineeta asserted her claim to her portion of the family property.

⁶ Prakash V. Phulvati ruling (2015) AIR SCW 6160.

⁷ Danamma V. Amar (2018) (3) SCC 343.

⁸ Vineeta Sharma V. Rakesh Sharma AIRONLINE (2020) SC 676.

Her brothers refuted the allegation, claiming that since the father passed away before 2005, the amendment should not be applicable. For her portion of the joint family property, Vineeta filed a lawsuit against her brothers.

Judgement: With a final decision, the Supreme Court cleared out any ambiguity left by earlier rulings. It made it clear that a daughter's coparcenary right is a status bestowed by birth and is thus unaffected by her father's survival on September 9, 2005, the date of the amendment. The ruling highlighted the Hindu Succession (Amendment) Act, 2005's retroactive application to grant daughters coparcenary rights, therefore upholding gender equality and its legal duty. The court made it clear that "the conferral of right is by birth, and the rights of daughters are the same as that of sons. This ruling resolved judicial conflicts about the time of rights development and established the stance that daughters enjoy equal coparcenary rights retroactively.

Clarified the confusion:

- Whether or whether the father was alive on September 9, 2005, has no bearing on the daughter's eligibility to be a coparcener.
- Although the 2005 amendment wasn't retroactive in legislative form, it functions retroactively in effect, which means it applies to existing rights derived from previous actions.
- The Supreme Court's ruling upheld both gender equality and the constitution's guarantee of equal property and inheritance rights.

Key Judgment Quote: "The conferral of right is by birth, and the rights of daughters are the same as that of sons."

Notable High court and Supreme court cases for context and diversity:

- **S. Sai Reddy VS. Narayana Reddy (1991)⁹**

Facts: In S. Sai Reddy v. S. Narayana Reddy (1991), Sai Reddy sued his father and brother for an additional portion of the family property. The High Court overturned the trial court's decision to give

⁹ S. Sai Reddy VS. Narayana Reddy AIRB (1956) Cal 147 .

the share in favour of the defendants on the grounds that the father's will was legitimate. **Judgement:** The Supreme Court affirmed the High Court's finding, holding that the appellant Sai Reddy was not entitled to a portion of the ancestral property and that the Will was legitimate. In contrast to counterfeiting claims, the case highlights the legitimacy of testamentary disposition of ancestral property through a will. The appeal was turned down.

- **Arunachala Gounder (Dead) By Lrs VS Ponnusamy reported (2022)¹⁰**

Judgement: the Hon'ble Supreme Court of India has held that even in cases prior to enactment of the Hindu Succession Act, 1956 (1956 Act), if a Hindu male dies intestate leaving behind self-acquired property, such self-acquired property would devolve by inheritance and its devolution shall not be by way of survivorship. Further, the daughter of such a Hindu male would be entitled to inherit such self-acquired property.

CHALLANGES AND IMPLEMENTAION ISSUES:

Despite legislative changes intended to guarantee equality, women's property rights in India continue to face substantial practical obstacles and ground realities. Several enduring challenges are highlighted by empirical data and publications from important organizations like the Law Commission of India and the National Commission for Women (NCW):

Reluctance to Give Daughters Property:

Due to deeply rooted cultural and social conventions in various regions of India, families frequently oppose giving daughters property rights. Many families, especially in rural region prefer to maintain property within the patriarchal system even when legislative reforms like the amendment to the Hindu Succession Act provide girls equal inheritance rights. Empirical research demonstrating the sluggish pace of advancement in women's real property ownership relative to legal entitlements supports this reluctance, which is maintained by conventional patriarchal views that value sons as inheritors of property.

Problems with Awareness, Partition Symptoms, and Genetic Mutation:

¹⁰ Arunachala Gounder (Dead) By Lrs VS Ponnusamy reported (2022)11 SCC 520 .

Women are prevented from obtaining their lawful inheritance by procedures obstacles such challenges with mutation (updating land records), delays or complexity in partition cases (legal division of property), and ignorance of legal rights. Many women encounter bureaucratic obstacles or are ignorant of their rights. In order to close this gap between law and practice, studies and publications from organizations like the NCW highlight the necessity of efficient legal literacy initiatives and simplified incorporation processes.

Influence of Customary Laws in Rural Areas:

Customary laws and regional customs frequently take precedence over statutory laws in rural India, influencing inheritance customs that go against the law. Many rural and tribal cultures have their unique inheritance practices that may favor some male relatives over women. Many tribal traditions uphold male supremacy, even if some are maternal in nature. Such heterogeneous legal realities are documented in the Law Commission of India's publications and case studies on tribal communities, highlighting the difficulty of consistently upholding equal property rights. To protect women's rights without alienating cultural identities, official laws and customs must be carefully reconciled.

In conclusion, societal attitudes, procedural inefficiencies, and customary legal frameworks continue to be the core of practical issues, even while legal change like the Hindu Succession Amendment Act represents a substantial step. Continuous awareness campaigns, administrative changes, and culturally conscious policy initiatives based on empirical studies and the advice of organizations like the NCW¹¹ and the Law Commission are necessary to address these issues.

COMPARATIVE PERSPECTIVE ON DAUGHTER PROPERTY RIGHTS:

Dayabhaga School (Bengal):

In contrast to the Mitakshara system, the Dayabhaga school of Hindu law, which is prevalent in Bengal and some areas of Assam, historically adopted a more moderate position on women's property rights. One significant distinction is that Dayabhaga does not acknowledge the idea of coparcenary by birth;

¹¹ National Commission for women (NCW)

instead, ownership titles are gained mostly by inheritance upon passing of the previous owner. Significantly, Dayabhaga gives women greater inheritance rights, enabling mothers, widows, and even daughters to inherit property.

Although females were previously unable to sell or transfer real land, widows retain rights to their husband's inheritance and can enforce divisions against male heirs, giving them a type of restricted possession. In Mitakshara, on the other hand, women had little inheritance claims and were mainly denied coparcenary privileges by birth. This was further modernized by the Hindu Succession Act, 1956, and its 2005 revision, which gave daughters complete ownership and equal coparcenary rights, eliminated the idea of a restricted estate for women, and brought Dayabhaga closer to the ideals of gender equality throughout inheritance.

Other Countries: Nepal's Early Reforms:

Nepal is noteworthy for enacting progressive laws intended to achieve gender equity in inheritance and for revising property rights for women in some areas before India. With an emphasis on sons and daughters having equal rights to ancestral property, Nepali law has developed to challenge long-standing patriarchal conventions limiting women's property rights. Although there are still issues with execution and cultural acceptance, these changes were a part of larger social and legal modernization to empower women economically and socially. Nepal's legislative efforts draw attention to regional differences in South Asia, as certain jurisdiction have acknowledged women's inheritance rights earlier than India.

Modern Feminist Perspectives on Gender and Property:

The legal and historical structures that upheld gender disparity in property ownership are criticized by contemporary feminist research. Property rights must be viewed not only legally but also as an issue of justice that is essential to women's equality and economic independence, according to feminist jurisprudence. proactively addressing cultural norms and practices that marginalize women's authority over property, feminists contend that legislative change alone is insufficient. They want all-encompassing changes that include safeguards against discriminatory inheritance practices, control over marital property, and property ownership rights. Recent changes to inheritance laws have been impacted by feminist viewpoints, which have pushed for equal coparcenary rights for daughters, acknowledged women's agency in property disposal, and dismantled patriarchal familial structures.

CONCLUSION:

A significant step towards undermining the deeply ingrained patriarchal structure of Hindu inheritance law has been taken with the legal recognition of daughters as coparceners in Hindu joint households. In the past, the Mitakshara coparcenary system almost entirely favored male descendants, making girls dependent and preventing them from directly controlling and owning family property. Despite being progressive in other ways, the Hindu Succession Act of 1956 perpetuated gender inequity by preserving this male-centric bloodline in shared family wealth.

The Hindu Succession (Amendment) Act, 2005, however, significantly changed this situation by giving females the same coparcenary rights as sons at birth. This amendment represents a strong constitutional compatibility with the principles upheld in Articles 14, 15, and 21 of the Indian Constitution, which provide equality and prohibit discrimination based on gender, rather than just a reform of the law. Daughters' legal status as coparceners now gives them the ability to autonomously manage, divide, and sell ancestral property, improving their financial independence and stature in the family.

The amendment's reach has been reinforced and clarified in large part by the changing court interpretations. Significant Supreme Court decisions, such as **Vineeta Sharma v. Rakesh Sharma (2020)**, have cleared up previous questions about retroactive application and the father's survival at the time of amendment, proving that daughters' rights are established by birth regardless of these circumstances. These rulings highlight the judiciary's crucial role in guaranteeing that legislative purpose is translated into actual gender equality.

Despite these legislative developments, there are still many practical and sociocultural obstacles to daughters' coparcenary rights being implemented. Many women's ability to effectively exercise these rights is nevertheless hampered by deeply ingrained patriarchal attitudes, ignorance, bureaucratic obstacles, and the continued existence of customary rules in many areas. In order to change social perceptions and promote women's empowerment, the gap between de jure equality and de facto reality necessitates persistent efforts in legal literacy, administrative changes, and culturally relevant campaigning.

The study also emphasizes the comparative viewpoint, pointing out that although the Mitakshara system traditionally discriminated against daughters, institutions like Dayabhaga and nations like Nepal have shown more positive trends in women's inheritance rights. These geographical differences offer valuable insights for promoting a more consistent and equitable property law system.

From a feminist perspective, acknowledging daughters as coparceners is essential to achieving gender equity and economic independence. Feminist legal academics, however, warn that legislative changes must be a part of a larger social change that opposes patriarchal standards and safeguards women's rights in both the legal and practical spheres.

