



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Daughters as Coparceners: A Step towards Gender Equality

Devashree Badekar^a Prutha Veni^b

^aMaharashtra National Law University, Nagpur, India ^bMaharashtra National Law University, Nagpur, India

Received 01 October 2023; *Accepted* 27 October 2023; *Published* 31 October 2023

The recognition of daughters as coparceners through the Hindu Succession (Amendment) Act, 2005, marks a significant advancement in the pursuit of gender equality in societies with traditional joint family systems like India. This legal reform empowers daughters economically, socially, and culturally, ensuring they are no longer marginalized when it comes to property inheritance. It eliminates discriminatory practices, fosters financial independence, and challenges deeply ingrained gender biases. Beyond the legal aspect, it signals a shift in societal attitudes, promoting the idea that daughters are equal stakeholders in family prosperity. However, the implementation of these rights faces challenges, including a lack of awareness, resistance from family members, and legal complexities. Despite these hurdles, recognizing daughters as coparceners represents a pivotal step in the path toward gender equality, offering a brighter, fairer future where individuals are judged by their abilities and not their gender.

Keywords: *gender equality, property rights, daughters, inheritance, societal attitudes.*

INTRODUCTION

In the present times, society is moving steadily towards development and making progress leaving the traces of primitive society behind. But sometimes we can still see the dark lingering shadow of the past haunting the present. Gender inequality is one such bane that modern society still strives to fight. Women were always the victim of various practices like dowry, sati,

domestic violence, abuse, rape, etc. The past century had still the waves of revolution steam out in the field of gender equality around the world and its ripples can also be seen in India. Society has started considering women as being an individual with their own dignity and identity separate from that of their family. The idea of equality which was a mere dream for many in the past, can be seen as the guiding principle of various legislation in today's time. With the passing Hindu Succession (Amendment) Act in 2005,¹ India took a significant leap to dismantle the age-old- patriarchal norms in property rights and took a concrete step to foster gender equality in the country

Coparcenary rights refer to the legal entitlement that allows the family members especially daughters to inherit the ancestral property. After this legislation, the parliament granted equal rights to the daughters of the Joint Hindu Family and was based on the recommendations of the 174th Law Commission report.² This is a monumental step as traditionally daughters were always denied their right to property, which reinforced the economic dependence of women and maintained the gender-based disparities. This would ensure financial support to a woman but also would lead to a broader shift in the intrinsic value of women in society as she would also be an economic stakeholder and a part of the decision-making process.

LEGAL FRAMEWORK OF PROPERTY RIGHTS IN INDIA

India has followed the concept of a Joint Hindu Family since time immemorial. It is a very important concept in the Hindu family law. It is a group of people which includes the individuals related by blood and share a common roof. They are together in worship and have common ownership of properties in the interest of the family. The Hindu Law has two schools of thought i.e. Mitakshara and Dayabhaga. "Under the Mitakshara law, a Hindu coparcenary is a much narrower body than the Hindu undivided family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are sons, grandsons and great-grandsons of the holder of the joint property for the time being."³ Traditionally in

¹ Hindu Succession Act 1956

² Law Commission, *Property Rights of Women: Proposed Reforms Under The Hindu Law* (Law Com No 174, 2004)

³ *Surjit Lal Chhabda v Commissioner of Income Tax* 1976 SCR (2) 164

Mitakshara School, only the Hindu Male could inherit their father's property by birth. This relationship is established immediately at the time of conception, but this right is not available to Hindu Females. The concept of the Coparcenary is derived from the Mitakshara Law. It consists of a male ancestor (Karta) and three lineal male descendants that are in total four generations.⁴ It is very clear that women cannot be a coparcener under the Mitakshara law.⁵

The Hindu Succession Act 1956 was the first law to codify the Hindu law on the procedure of succession of ancestral property. It recognizes the Mitakshara idea that the son has a birthright to ancestral property it had stated that only the male descendants would be allowed to receive ancestral property as it was based on the ideology that women would not be considered the coparcener as she would be a part of different family after marriage. Hence, women would not have any rights over ancestral. She claims to share in the self-acquired property of the husband/father or the coparcenary property if it is divided and not otherwise. ⁶The Act was severely biased and favoured the male heir of the family; daughters of the family were not coparceners as they would marry someone and be a part of her husband's family whereas the wife of the coparcener the reason was given that she did not directly fall in the bloodline of the ancestor.

In 2005 the Hindu Succession Act was amended giving daughters the same rights as that of sons in the inheritance of the ancestral property and making them a coparcenary in the property. It gave equal status to both Hindu sons and daughters of Coparcener. The important point to be noted is that as the Act allowed the woman to be the coparcener of the ancestral property, it also opened the possibility of her being the Karta of the Joint Hindu family.⁷ Section 6 was replaced and gave all rights and liability to the daughter as the son had.⁸ "In the case of Prakash and

⁴ Shambhavi Kant, 'Equal Inheritance Right to Hindu Daughters: A Step Towards Gender Equality' (*All India Legal Forum*, 10 November 2020) <<https://allindialegalforum.com/2020/11/10/equal-inheritance-right-to-hindu-daughters-a-step-towards-gender-equality/>> accessed 26 September 2023

⁵ *Commissioner Of Income-Tax v Seth Govindram Sugar Mills* 1965 SCR (3) 488

⁶ *Hiraji Tolaji Bagwan v Shakuntala* 1990 SCR (1) 66

⁷ Jeel Pathak, 'Daughters' Right to Property: Breaking Rigid Patriarchal System & Upgrading Women's Rights' (2014) 5(1) *International Journal of Law Management and Humanities* <<https://doi.org/10.1000/IJLMH.112724>> accessed 27 September 2023

⁸ Shital Prakash Kharat, 'Effect of the Hindu Succession (Amendment) Act 2005 – Judicial Response' (*SSRN*, 11 February 2017) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2912662> accessed 27 September 2023

others v Phulanati⁹, the court could be held that a daughter can claim coparcenary rights only when her father is living as a coparcener on the date of enforcement of the 2005 amendment, whereas in the case of Danamina v Amar¹⁰, the court overruled its previous judgment and stated that daughter right to coparcenary property would stand irrespective of the fact that father died before 2005 amendment or not.”

Finally, in the landmark case of Vineeta Sharma v Rakesh Sharma & Ors,¹¹ the historical injustice faced by women when it comes to coparcener was discussed. The Hon’ble court opined that the coparcenary rights of daughters are from birth and hence it is not essential that the father should be alive at the date of amendment. It is said that the coparcenary rights of the daughter thus do not depend on any obstructed heritage. Thus, the Phulavati judgment was overruled. It was held that in this judgment the Amendment should be applied retrospectively. With this ruling women’s coparcenary right was recognized, thus the fundamental right to equality was upheld in the true sense.¹²

THE SIGNIFICANCE OF EQUAL PROPERTY RIGHTS

The equal property rights guaranteed by the amendment in the Hindu Succession (Amendment) Act, are monumental in changing the social status of women in society. Women were always considered inferior citizens due to the belief that women were secondary to men. There is a conception in people’s minds that women are solely meant to do domestic work. They should dedicate their life only to their husband and family.¹³

The equal property rights granted by the Hindu Succession (Amendment) Act. It is an instrumental tool to promote the economic stability of women in the society. This elevates their

⁹ *Prakash and Ors v Phulanati* Civ App No 7217/2013

¹⁰ *Danamma @ Suman Surpur v Amar* Civ App No 189/2018

¹¹ *Vineeta Sharma v Rakesh Sharma* (2020) SCC ONLINE SC 641

¹² Poornima Advani, ‘A Giant Step to Address Gender Injustice’ (*The Mint*, 15 August 2020)

<<https://www.livemint.com/opinion/online-views/a-giant-step-to-address-gender-injustice-11597478771696.html>> accessed 29 September 2023

¹³ Perna Pahwa, ‘Women And Their Property Rights In India: A Critical Analysis’, (*Latest Laws*, 09 August 2022)

<<https://www.latestlaws.com/articles/women-and-their-property-rights-in-india-a-critical-analysis-188095>> accessed 29 September 2023

position within the family and ensures the reduction of prevalent violence against them. The ancestral property acts as an asset that contributes to their economic development and increases their net worth. When the women have capital with them, they can start their own business and opportunities for entrepreneurship increase.

Another aspect of equal property rights that improves the position of women in the family. In most of the patrilineal setup of families, women were often subordinated and had limited rights over resources or inheritance, and were not allowed any say in decision-making of the household. Women are always subordinated and they have no autonomy. Even the decision about their own body is controlled by the men.¹⁴ When the daughters are the stakeholders in the family property, they can participate more actively in the families' decision-making. They can effectively make decisions regarding their own life and can independently stand against any discrimination. This will gradually reduce the gender bias we can still have in society and will lead us to a more equal society. The women make women financially independent and reduce their dependence on male family members. It increases their self-confidence, self-esteem, and overall well-being.

CHALLENGES AND OBSTACLES IN IMPLEMENTING EQUAL PROPERTY RIGHTS

Lack of Awareness: Even after the amendment of the Hindu Succession Act (2005), there is a severe lack of awareness in this regard. In many rural and remote areas, there is no understanding of the positive benefits of the amendment which renders the application of the law difficult. Low education of women and their families can make it difficult for women to be aware of their rights and advocate for them.

Resistance of Family Members: India is a patriarchal society and gender bias can easily be observed within the family. All this can lead to severe resistance from the family to give equal coparcenary rights to the daughters. Many people might consider it a deviance from traditional laws and customs and completely against the Mitakshara School. There are long-standing

¹⁴ K. Saradamoni, 'Review: Matriliney and Women's Status' (2001) 36(33) Economic and Political Weekly <<https://www.jstor.org/stable/4410995>> accessed 29 September 2023

expectations by the family members about getting the complete inheritance, so they do not readily accept another stakeholder in their property. Also, there is still a persistent belief that the daughter is part of her husband's family so, there is a fear of division of the property and losing this family property.

Legal Complexities: Even in modern society, approaching the courts is never considered a viable solution too many people. Apart from the societal mindset, access to legal aid is also limited and a large amount of the population is still out of the protection of legal aid. India has only 21 judges per million population which is severely disproportionate.¹⁵

EMPOWERING DAUGHTERS THROUGH COPARCENARY RIGHTS

Empowering daughters through coparcenary rights is a crucial step towards gender equality and women's empowerment, particularly in societies with traditional joint family systems like India. Coparcenary Rights ensure that women have a rightful share in the coparcenary rights, which can include land, houses, and other valuable assets. This ownership provides them with a tangible and often substantial economic asset. Owning property through coparcenary rights offers women a form of financial security. They have an asset that can serve as a safety net in times of financial need, such as emergencies or unexpected expenses. Property ownership allows women to accumulate assets over time. These assets can appreciate in value, generate rental income, or serve as collateral for loans, enabling them to access credit for various purposes, including investments or starting a business. Women with coparcenary rights can choose to invest in their inherited property or use it as a foundation for other investments. This can lead to wealth accumulation and financial growth. Property ownership can empower women to start their businesses or ventures, particularly if they have access to land or commercial property. They can establish agricultural activities, rental properties, or small businesses that generate income and contribute to their economic independence. Having property rights can influence women's educational and career decisions. They may be more

¹⁵ 'India Has About 21 Judges Per Million People' (The *Economic Times*, 10 February 2022) <<https://economictimes.indiatimes.com/news/india/india-has-about-21-judges-per-million-people/articleshow/89481479.cms?from=mdr>> accessed 29 September 2023

inclined to pursue higher education or career opportunities when they have a financial safety net, knowing they have an asset they can rely on. Property ownership can improve women's access to credit and financial services. Lenders are more likely to extend loans to individuals with valuable assets, allowing women to invest in their businesses, education, or other income-generating activities. Coparcenary rights provide women with the means to plan for their retirement. They can leverage their property for income or housing during their later years, reducing their reliance on external sources of support.

THE NOTION OF GENDER EQUALITY

The concept of gender equality states that everyone should be accorded the same rights, opportunities, and respect in all spheres of life. It includes the abolition of bias and discrimination based on gender, guaranteeing that men and women have equal access to economic resources, education, and employment, as well as involvement in decision-making. A society that is fair and just, free from prejudice, stereotypes, and social conventions that support gender-based inequities, is one where gender equality is promoted. It is an essential human right and a major force behind global social and economic advancement. Coparcenary rights to daughters refer to the legal acceptance and parity treatment of sons and daughters in joint family systems when it comes to inheriting ancestors' property. Many old societies, including some of India, valued male heirs when it came to property inheritance, leaving daughters with little or no access to the family's wealth. By giving daughters the same coparcenary rights as sons, legislative measures like the Hindu Succession (Amendment) Act 2005 have sought to address this gender disparity.

Daughters have an equal claim to an inheritance to sons, which is the main feature of gender equality in coparcenary rights. This prevents discrimination against daughters based only on their gender. These legal changes aid in the abolition or reduction of discriminatory practices like dowries, which were frequently considered as a means of making up for daughters' allegedly lacking inheritance rights. Laws governing inheritance that are gender-neutral forbid such behaviour. Equal rights for men and women in marriage provide daughters more economic power. They have the ability to inherit and manage property, which increases their financial

independence and reduces their dependence on male family members or spouses. Families are more willing to spend money on their daughters' education and personal growth if they have equal inheritance rights.

Daughters are inspired to further their education and follow their career goals, which benefits their development and self-worth. These legislative modifications increase understanding of women's rights, not just in terms of property but also in broader societal contexts. Daughters are better prepared to claim their rights in various spheres of life as they become more knowledgeable about their legal privileges. By giving daughters more influence over family decisions, gender-equal coparcenary rights might change the dynamics of families. They have an interest in investments and property management, which may result in a more liberal and democratic family structure. Gender-equal coparcenary rights have the potential to influence cultural perceptions of women's roles in the home and in society over time. Daughters are viewed as equally valuable members of the family. These legal reforms set a precedent for gender equality in inheritance laws, not only in India but potentially in other countries with similar practices. They serve as an example of how legal changes can promote gender equality.

The empowerment of women through the recognition of daughters' coparcenary rights represents a powerful catalyst for gender equality and women's autonomy. By granting daughters an equal share of ancestral property, this legal reform not only bestows economic independence but also encourages educational pursuits and career aspirations, dismantling age-old gender biases. It challenges discriminatory practices, fosters entrepreneurship, and enhances women's access to financial services, amplifying their decision-making power within families. Moreover, it sets a transformative example for societal attitudes, affirming that women and daughters are equal stakeholders in property inheritance and broader social progress, contributing to a more inclusive and equitable future.¹⁶

The provision of coparcenary rights to women also marks a significant reduction in gender discrimination by rectifying historical inequalities in property inheritance. These legal reforms

¹⁶ *Ibid*

challenge entrenched biases by granting women an equal share of ancestral property, eliminating the pervasive gender-based discrimination that relegated them to inferior inheritance statuses. Simultaneously, they foster economic empowerment, enabling women to assert their financial independence, pursue education and career aspirations, and dismantle practices like dowry that perpetuated gender inequity. Moreover, these rights elevate women's social standing and encourage a broader cultural shift towards recognizing women as equal contributors within families and communities, ultimately forging a path towards greater gender equality and societal fairness.

The recognition of coparcenary rights for women significantly enhances their social status by challenging deeply rooted gender norms and traditional hierarchies. By granting women equal access to ancestral property, these legal reforms elevate their standing within families and communities, breaking away from historical perceptions of women as secondary or dependent members. Empowered women with property rights are seen as equal stakeholders in family affairs, fostering a shift in societal attitudes toward recognizing their contributions to both economic and social spheres. This heightened social status not only bolsters women's self-esteem and agency but also sets an important precedent for a more equitable and inclusive society where women are valued and respected as equal participants in shaping family legacies and community well-being.

The recognition of coparcenary rights for women has played a pivotal role in raising legal awareness among them. These legal reforms have empowered women by making them more informed about their rights and entitlements within joint family systems. As women gain equal access to ancestral property, they become more cognizant of the legal avenues available to protect and assert their interests. This heightened legal awareness not only extends beyond property matters but also encourages women to become advocates for broader gender equality issues in society. By understanding and asserting their rights, women are contributing to a more inclusive and equitable legal landscape, challenging discriminatory practices, and advocating for gender equality in various facets of their lives.

The acceptance of women's coparcenary rights has a profoundly altering effect on family dynamics. By granting women a legitimate portion of ancestors' property, these legal reforms disrupt established power systems within families. This change in property ownership helps family members' obligations and decision-making authority to be distributed more fairly. Women who are empowered and have access to property are more likely to actively engage in family talks and financial decisions, fostering a more open and democratic home environment. As inheritance disputes are reduced and women's roles as equal contributors to the family's economic and social well-being are recognised, it strengthens ties between family members. In addition to enhancing family ties, this change in family dynamics establishes a crucial precedent for more equal and forward-thinking policies.

CONCLUSION

In conclusion, recognizing daughters as coparceners represents a significant stride toward gender equality in societies with traditional joint family systems. This legal reform empowers daughters economically, socially, and culturally, ensuring they are no longer marginalized when it comes to property inheritance. It eliminates discriminatory practices, fosters financial independence, and challenges deeply ingrained gender biases. Beyond the legal aspect, it signals a shift in societal attitudes, promoting the idea that daughters are equal stakeholders in family prosperity. While challenges may persist in implementation and acceptance, the acknowledgment of daughters as coparceners remains a pivotal step in the pursuit of gender equality, offering a brighter, fairer future where individuals are judged by their abilities and not their gender.