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# A Treatise on Hindu Female Succession Rights in Modern India

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## ABSTRACT

*According to a recent Supreme Court decision in the case of Vineeta Sharma vs Rakesh Sharma, the Hindu Succession (Amendment) Act, 2005 has a retrospective rather than prospective effect, meaning that a Hindu daughter's coparcenary right is not contingent on whether she is the living daughter of a living coparcener at the time the Amendment was enacted. This important decision removed the final impediment to Hindu females gaining equal Status with Hindu sons in Hindu households, and it was warmly greeted by the legal community and advocates for gender equality. However, since its beginnings, the black letter of the law has rarely seemed to penetrate to the very roots of society, where daughters have been seen as a financial burden that must be married off since they are "parayadhan." It is an ancient and patriarchal belief that males are the exclusive carriers of the family line and should be the lawful owners of their parents' properties, whilst 'dutiful' married girls should focus on their post-marital commitments and not meddle in their parents' affairs. This three-part article aims to illuminate the various aspects of the daughter's right of coparcenary pre- and post-amendment of the Hindu Succession Act, 1956, as well as its acceptance in Hindu homes. The first section sheds light on the modifications done in HAS, 2005. The second section critically examines various Supreme Court decisions concerning daughters' coparcenary rights, while the third section suggests the recommendations to be made in the current statutory laws in India regarding Hindu Women Succession Rights in Property.*

## I. INTRODUCTION

The sloka in Manusmrithi emphasises the significance of women being protected at various periods of their lives and being judged as physically and mentally inferior to males. This feminist concept can still be found in today's culture. Women were permitted to own property, but not absolute ownership. They were unable to sell or pass on the property and hence were unable to participate in economic development. The British Indian Parliament was hesitant to change classical Hindu rules but gradually did so after realising that these personal regulations

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were infringing on many essential rights of women. One such step was the Hindu Women's Right to Property Act, 1937. According to the Hindu Women's Entitlement to Property Act of 1937, which incorporated and defined women's maintenance rights as well as a widow's right to inherit her deceased husband's coparcener share while preventing it from fluctuating among the other coparceners, The Act's Section 14 removed women's limited property ownership and made them absolute owners. Though the widow did not have the absolute ownership of the land, she was allowed to enjoy it for the rest of her life or until she remarried. This was not a great step, but it was significant since the doctrine of survivorship was limited, and only male decedents were entitled to the property. Now, while women do not have absolute rights to their property, they do have the ability to utilise and enjoy it during their lifetime.

The Hindu Succession Act 1956 was the most significant step taken to codify and unify the succession laws for Hindus. Here is to bring into light what effect it had on the rights to women:

i. Abolished the disparity between son and daughter in the matter of their right to inherit the property.
ii. The widow was ranked par with a son and had an interest in coparcenary property.
iii. Conversion will not disqualify the women.
iv. Mother built as a Class I heir in the law and will succeed along with heirs.
v. Women were given absolute power over the property, including the right to dispose of the property.
vi. Empowered women to testamentary succession.
vii. Under Section 6 of the Act, notional partition was introduced; if a member had left behind a surviving female heir, it would be assumed that the partition took place before the death and the property can be carried forward to the widow or daughter as intestate or testamentary succession. This still did not erase the discrimination as the son had a larger share compared to the daughter. In contrast, some states like Kerala and Andhra Pradesh introduce amendments to bring equality.
viii. The introduction of daughters and her heirs irrespective of her marital status in the absence of a primary heir.

The Hindu Succession Act did have a huge impact as it codified the majority of the laws, tried to bring all Hindus under one umbrella unlike previously, and moved towards a liberal approach. A stranger on adoption was granted the status of a coparcener, but the same was not granted to a woman of the family. The Act totally failed to eradicate gender equality under succession. Due to high pressure from the conservatives, the Act could not erase the traditional concept. There was a lack of implementation of these progressive laws, which led to poverty,

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particularly for women. The difficult challenge was to bring about the socio-economical change in the society, which attracted a lot of stigmas, which then led to women being exploited.

A reform was made by the legislation with The Hindu Succession (Amendment) Act 2005. The changes brought were:

- Section 4(2), which stated that the Act should not override any other act, was omitted. Rights created for women shall not be absolute and cannot be overridden by any other provision. Section 23 dealing with delving house was omitted, and women were entitled to dwelling house even when married.
- Section 6 of the Act was amended; this provision included a daughter as a coparcener and was entitled to the same rights as a son under the Act.
- Various Sections were amended to "him/her" from just him to denote the inclusion of women.

The said Amendment was constituted with the following positive and progressive changes for the women of our country:

i. The Act introduces daughters as coparceners in Mitakshara coparcenary, regardless of their marital status.

ii. It abolished the doctrine of survivorship for male coparceners who die as members of Mitakshara coparcenary.

iii. Women get the right to demand partition, which was held in Ganachari Veeraiah vs Shiva Ranjani 3

iv. The Act removed the rule involving the bar on agricultural land to women under the Act but does not add or clarify the same in the amended Act.

v. Inspires female coparcener to make testamentary succession.

The courts in the coming years of this Amendment delivered various judgments which clarified the amended laws. In some cases, the court held that there were two conditions for daughters to become coparceners which were that she should be unmarried, and no partition should have been taken place before the commencement of the Act (Jayamma vs Muniyamma).

In the court holding in Pushpalatha N.V vs V Padma, the court observed that marriage will not end the right of the daughter to coparcenary and that she obtains this right by birth. The court, in the decision of Prakash vs Phulavati, noted that this legislation will only apply to "living daughters of living coparceners" only and will not have a retrospective effect. While recently, the Supreme Court, in the case of Vineeta Sharma vs Rakesh Sharma, overruled Prakash vs

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Phulvanti holding that the Amendment will have a retrospective effect and a daughter will be treated as a coparcener regardless of the year she was born in. This holding removed the uncertainty of the father being alive before 2005; the predecessor need not be alive for this right to be conferred. The court held that the daughter after the Amendment receives the right of a coparcener just as a boy would at the time of his birth. This was a historic and landmark judgment that finally put women and men on the same pedestal.

Both the acts provided for a forward-looking, progressive law, but that did not at all change the realities in the real world and women were still considered inferior in the family. The Act included that if a Hindu female dies intestate, leaving behind the self-acquired property, the property will devolve to her husband's heir and not her natal family. This should be amended as women nowadays prefer that her property goes to her natal family as closeness between them in this age still exists, and it also denotes a way to give them for taking care of her. A huge rise in sex-selective abortion is one of the main risks of this new Amendment. Couples and families could deliberately determine the sex of the unborn child and abort it if it were a girl to escape transferring her rightful share.

Women have come a long way since the existence of these laws and are now in top positions and stand with men. They have been deprived of their rights in society and subjected to gender bias in the workplace. A low level of awareness, along with literacy about their rights under the law, leads to these rights not being executed or having a chance of not reaching the court.

Every family is afraid of the 'P'(Partition) word and imagine it coming from a women's mouth. Traditions such as 'Haq Tyag', where women voluntarily give up their rights to property, are a blot in this country. The country saw increased incidents of girl feticides between 1970 and 1990 along with a higher female infant mortality rate because families considered girls as a liability who would claim and eat up the share of the property. The Law Commission Report stated that "The issue of family law reform does not need to be approached as a policy that is against the religious sensibilities of individuals but simply as one promoting harmony between religion and constitutionalism, in a way that no citizen is left disadvantaged on account of their religion and at the same time every citizen's right to freedom of religion is equally protected." 6 Now, after almost 60 years of independence and the formation of a liberal constitution, we have come to our senses that men and women are equal. Gender-neutral laws will create awareness and result in implementation. Many studies have shown a correlation between the economic environment of women and family income to show that more economic freedom for women could significantly improve the families and the country's financial health.

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Reforms alone will not make an impact until and unless we challenge the religious practices that have existed. "The Constitution of India provides contradictory provision with regard to tribal society, in the sense that Article 14 has enshrined equal rights and on the other hand, allows the practice of norms and customs." Every person and community should have the right to practice their beliefs, but they should be allowed to the point they don't infringe the rights of any citizen of the country or living being, to be precise. To improve the situation, social acceptance of women's right to property needs to take place. Gender inequality still persists, and various courts have acknowledged it. The Vineeta Sharman judgment is a welcome step, but our country actually took as much time as our democratic history to get there. The case or changes in the Act still do not answer or reflect a substantial change in the society; many social issues prevail. Codifying every right and criminalising non-compliance is the way forward.

## II. WHAT IS SECTION 15(1)

India has been a patriarchal society since time immemorial. Male preference has always prevailed in India from the beginning. The biological distinction between men and women has manifested as inequality and dominion, which has become the primary cause of Indian women's oppression. According to a new survey conducted by the Thomson Reuters Foundation, India ranks first among the world's most dangerous countries. During ancient times, an initiative was taken to provide a separate identity to married women by calling them "Ardhangini". Many abusive patterns emerged later in the Vedic period, including the Sati system, Pardha system, child marriage, dasi pratha, Niyog Pratha, and so on. According to the Garuda Purana, women were told to "follow the rules of the Vedas or wrath in hell," and this time, the ancient rules not only oppressed them but also punished them for disobedience. The punishments were a cycle of torment, with the ending of one hellish practice and the beginning of the other. In a nutshell, the Vedas created a hostile atmosphere for women in society. The disturbing patterns in the sex ratio and survival rates of the Indian society indicate a long-standing son preference. Sons are expected to carry on the family name, earn money, help their parents in their old age, and perform funeral rites, while girls are expected to marry into another family, taking her dowry with her and thereby being a financial burden to their family. "Bringing up a daughter is like watering a plant in someone else's courtyard," as an Indian proverb goes.

As apparent from the lack of female appraisal as seen during ancient times, the male child was preferred over a female child. It was commonly thought that only males could be the head of the house; males are the ones who bring food to the house. It is only the males who deserve

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property. As a result, the parents started wishing for a male child as they saw a bright future ahead of them, and in addition to being treated like a blessing in the household, the parents willfully handed over all the property to their child. With that in the backdrop, let us discuss modern-day succession and the current impact of the long-prevailing Section 15(a) of the Hindu Succession Act on married women. Succession is the Act or process by which a person becomes entitled to the property, or property interest of a deceased person and the transmission of the estate can be from a decedent to his or her heirs, legatees, or devisees. In the case of Intestacy, the deceased dies without having in force a valid will or other binding declaration, and if we look further, we can see a well-defined meaning of intestate succession. It means that the transmission of property or property interests of a decedent takes place in accordance with the statute as distinguished from the transfer in accordance with the decedent's will.

The problem with section 15(1)(b) of the Hindu Succession Act

Now let us first talk about Section 15 of the Hindu Succession Act, which deals with intestate succession. General rules of succession in the case of female Hindus are laid down as,

"(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother

It is further stated in 15(2) that,

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

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When we read this section, it can be seen that in sec 15(1)(b), preference is given to the in-laws rather than the deceased's own parents, as mentioned in sec 15(1)(c). The discriminatory factor of the section can also be found in the 15(2) as it can be clearly deduced from the rules mentioned above, the property inherited by the deceased Hindu woman is also passed on to the heirs of the husband and not to her own aggrieved parents.

So, what is specifically wrong with section 15(1)(b) of the Hindu Succession Act? It can be clearly seen in the section mentioned above that the property of female Hindu intestate is given to the husband, and then his parents and the parents of the deceased Hindu female is not only not considered as a priority, but they are also given lesser importance than her in-laws. This biased behaviour has is not only about the biological difference between a male and a female; the biased approach can be seen to affect the elderly as well. If a Hindu female dies, it is obvious that in most of the cases, the female would prioritise her own parents over her husband's. Because of this section, the wife's parents not only lose their child but are also put behind in the line to inherit her property that is most likely to not get a chance to avail. Keeping this in mind, another issue which is of concern is that there are a lot of parents with a single female child, so when they marry off their only daughter, and she dies, they not only go through emotional trauma but also do not get what they very rightfully deserve for growing up. Alongside they start facing financial problems. This is a huge problem when we notice that the self-acquired property of the female does not go to her parents but goes to her in-laws just on the basis of her not being a Hindu male, i.e., on the basis of her sex. This is how the elderly, who are the parents of married Hindu females, are affected in huge numbers and are discriminated against for the biases of misogyny and a problematic statute made under those customs created. On a side note, the elderly being pushed to their extreme financial worst sets an awful example for society, and it can also be said that with every dejection of an elderly parent of a married woman comes a huge risk of increasing son preference. This also increases the chances of female infanticide, thus creating a huge difference in the sex ratio.

## III. CONSTITUTIONAL IMPLICATIONS

Our Constitution guarantees fundamental rights to every citizen without taking any cultural or biological differences into consideration. It is deeply disheartening that after 71 years of a developed constitutional jurisprudence, sections like Art 15(1) of the HSA act as codified means of promoting the inequal treatment of married women. Understanding the importance given to personal law in the country, these provisions are often protected under the freedom of conscience, practice and propagation of religion as given to the communities under Articles 25

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and 26 of the Constitution. Given the communal tension with regard to amendments made in personal laws and the outrage that follows, various precedents show that both the Judiciary and the executive have frequently been hesitant in making changes in these matters. It should be noted that along with the right guaranteed to the people to freely profess their religion, the Constitution also consists of provisions that limit the said freedom when it can be seen as a threat to any other fundamental right or the social welfare of the citizens. These limitations are present in the form of certain provisions of the Constitution, namely Article 25(1), Article 25(2)(b), in addition to the legislative intent behind the making of these laws. Under Article 25(1), all religious practices are subjected to public order morality and can be restricted if it is in violation of part III of the Constitution. Art 25(2)(b) takes one leap further and gives the State the power to amend or introduce reforms with regard to any problem rooted in religious grounds. A similar principle was laid down in the case of Sardar Syedna Taher Saifuddin v. The State of Bombay, as it was said,

"laws providing for social welfare and reform are not intended to enable the legislature to reform the religion out of existence or identity."

It is thus apparent that the Constitution clearly favours social welfare and rights over religious customs that are being carried out through personal laws. In the given context, the HSA amendment in 2005 failed to point out the direct infringement of part III of the Constitution by Section 15 of the Act where the rights of not just married women but a large portion of vulnerable parents of these women were being affected by it. Provisions infringed by the section with respect to both women and the elderly are further discussed below.

The violation of Fundamental rights (14,15 21)

Article 14

In the case of Maneka Gandhi v. Union of India, it was laid down that "Article 14 strikes at arbitrariness in State action and ensured fairness and equality of treatment. The principle of reasonableness, which logically as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence."

One of the most important constitutional values guaranteed to the citizens is the right to fair and equal treatment given to all, leaving no scope for privilege or oppression between individuals. Article 14 acts as the guarding provision for ensuring equal enjoyment of the rights conferred by both men and women, and section 15(1) of the Hindu Succession act goes directly against the guiding principle of the article.

Bearing in mind the diverse demographic of our country, the principle of equality has been

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made with required layers to it. People living under unfortunate or unequal circumstances were given separate treatment to ensure holistic welfare to each and every citizen, and therefore, classification was allowed under the expansive definition of the article. However, in order to keep the classification from getting misused, the principle of reasonableness was added to it, with Intelligible differentia (a reasonable basis for classification) being mandatory for any form of classification in the law. A similar principle was laid down in the case of State of West Bengal v. Anwar Ali Sarkar, where it was further added that there must be rational nexus on which classification can be made in the application of a statute.

As mentioned above, Sec 15 draws a distinction between the succession rights of a female and a male intestate, which in turn not only violates the ethos of Article 14 but it also leads to the unequal treatment of the parents of the deceased. It is bizarre to imagine that in the 21st century, a Hindu married intestate woman's In-laws who might or might not have been residing with the deceased are given priority over her own parents who raised her. One of the main reasons behind this unjust hierarchy can be traced back to the definition of marriage under Hindu law. Under Hindu law, where the sacrosanct practice of marriage is considered to be a 'union' of two families, the laws applied to the woman turns it into more of an economic transaction with the woman being a financial addition to the family. Apart from the blatant objectification of women under the law, there is also inequality on the basis of sex, as the Hindu intestate male is in no way required to prioritise his wife's parents over his own. It can be easily made out that the classifications made under the law are, (a.) Sex of the individual, (b.) The marital status of the individual leads to the unequal treatment of the parents because having a married daughter instead of a son. Clearly, these classifications directly contravene the tests laid down under reasonable classification with no rational nexus and are thus, unconstitutional.

## IV. DPSPs

Article 36-51 under Part-IV of the Indian Constitution deal with Directive Principles of State Policy (DPSPs). They are borrowed from the Constitution of Ireland, which had copied it from the Spanish Constitution. DPSPs are ideal policies and rights that are needed to be kept in mind by the State when it formulates new policies and laws. There are various definitions to Directive Principles of State, such as 'instrument of instructions', and these seek to establish economic and social democracy in the country. We are now going to discuss how there are certain DPSPs that are tailored for the elderly. It is of serious concern that these few policies and laws do not only affect all the citizens, but only a certain group of people, i.e. the elderly and their violation is often grossly overlooked.

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Article 38 of the Indian Constitution states,

“Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities”.

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III. Decisions of the Supreme Court on the Coparcenary Rights of Daughters

After the revolutionary 2005 Amendment of the HSA, 1956, specifically Section 6, there was an influx of cases on the adjudication of coparcenary rights of daughters. However, one issue stood quite distinct from the others that whether the 2005 Amendment had retrospective or a prospective application. Thus, Section 6 of the HSA, 2005 has always been a hotbed of controversy. Below mentioned is a timeline of cases where the stand of the Indian Judiciary regarding the retrospective or prospective effect of Section 6 has been a major point of contention:

Pushpalatha N. V. v. V. Padma

In this case, Sri D.N. Vasantha Kumar, father of the plaintiff, had died intestate and left behind him, his wife V. Padma, the daughters and sons as the legal heirs. All the children after his death have succeeded to his estate. The plaintiff, who was one of the daughters, was entitled to 1/5th share in all the properties for which she filed a suit for declaration that she is entitled to 1/5th share in the properties for partition and separate possession of her 1/5th share. The defendants (wife and the other children) contended that the properties exclusively belonged to D.N. Vasanth Kumar and denied joint possession. The Karnataka High Court applied the mischief rule of interpretation and held that Section 6 was retrospective in nature, and a daughter becomes a full-blown member of the coparcenary since birth.

Ganduri Koteshwaramma v. Chakiri Yanadi

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The daughters of one Gurulingappa Savadi contested a suit of partition, claiming that they were entitled to the joint family property since Gurulingappa Savadi had died after the commencement of HSA, 1956. However, the trial court and the High Court held that the daughters were not entitled to any share as they were born prior to the enactment of the 2005 Amendment Act and, therefore, could not be considered as coparceners. The Supreme Court overruled the lower court decisions and held that Section 6 of the 2005 Amendment Act creates coparcenary by the factum of birth itself. Thus, Section 6 was held to have a retrospective effect.

Shri Badrinarayan Shankar Bhandari vs. Ompraskash Shankar Bhandari

The Bombay High Court elaborated on the nature of prospective and retrospective statutes stating that prospective statutes are the ones conferring new rights whereas retrospectives operate in future, meaning that it operated forward, but the operation was not functioning before its enactment. Therefore, the daughters' whether born on or before September 9 2005, were entitled to the coparcenary property. However, this rule was applicable to daughters and fathers who were alive in 2005.

Prakash vs Phulavati

The Supreme Court made a literal interpretation of Section 6, HSA and conceded with the reasoning of the Bombay High Court in Bhandari. However, they clarified that the applicability of the 2005 Amendment Act was prospective, and both the father and the daughter must be alive on the day of the commencement of the same.

Danamma v Amar Singh

The Supreme Court stated that daughters are entitled to inherit the coparcenary property by birth irrespective of whether they were born before or after 2005. However, the court also emphasised that the principle laid in Prakash v. Phulavati was binding, making it utterly confusing as to whether Section 6 was prospective or retrospective in nature.

Mangammal vs. T.B. Raju

The Supreme Court once again opined that the Amendment is prospective in nature. However, the court applied the retrospective principle while adjudicating the shares of daughters in the partition suit. Therefore, this ruling again darkened the cloud of confusion surrounding Section 6.

## V. THE NATURE OF HSAA CONCERNING VINEETA SHARMA'S JUDGEMENT

Before HSAA, the primary objective of the Hindu inheritance system is to preserve property

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especially immovable property, for male heirs. Earlier, women had absolute rights only over stridhan, but the problem began when women could not inherit the ancestral property of their father mainly because a patriarchal society desired to keep intact properties within patrilineal families. The 174th Law Commission report has taken the task of terminating these old customs, alienating women from the inheritance of property. It found that, in the economic and social sphere, social justice demands that a woman be treated equally. It is unfair to exclude daughters from engaging in coparcenary property ownership solely based on their sex.

However, HSSA, 2005 took a major step towards gender equality by allowing daughters to inherit the ancestral property. Even after the legislation, there exist institutional errors such as conflicting judgements of the apex court, which create hurdles in the way of the daughter's birthright. Vineeta Sharma's case acted as a potential measure towards swimmingly inheritance of ancestral property to daughters. To understand the nature of Vinneta Sharma's Case, firstly, we need to understand certain points stated by the Court in the concerned judgement. They are as follows -

i. The provisions of substituted Section 6 of the HSSA, 2005 confer equal coparcenary rights on daughters irrespective of the fact that they have been born before or after the Amendment as to sons with the same rights and liabilities.
ii. The daughter born before September 9, 2005, can claim rights with savings as enshrined in Section 6(1) with respect to partition or testamentary disposition, alienation, or disposition that had occurred before December 20 2004.
iii. Father need not be alive at the time of the Amendment Act because coparcenary is a right by birth, and daughters likely the sons are coparcenary of their father's ancestral property as soon as they are born.
iv. The legislative fiction of the partition created as originally enacted by the provision to Section 6 of the HSA, 1956 did not result in the actual partitioning or disturbance of the coparcenary. The fiction was to determine the proportion of the deceased coparcener when a female heir, Class I as defined in the 1956 Schedule to the Act, or male relative of such female heir, survived.

The verdict in Vineeta Sharma's case identified the major interpretational errors in Prakash's judgement. The core concept of coparcenary property is misunderstood and further confused with the notion of survivorship. The concept of "living coparceners" that was raised was wrong because the court didn't pay attention to how a coparcenary right is created. In Vineeta Sharma's case, the court held that to become coparceners or to form coparcenaries, it is not necessary that predecessor coparceners should be alive. The relevant fact is whether the birth

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is within the extended degrees of the coparcenary.

Survivorship is a mode of inheriting property, not that of the formation of the coparcenary. Under Section 6 of the unamended HSA, 1956, when there was no class I heirs, the share of the property of any coparcener would go to the other survivors of coparcenary property. This means that the property would be divided among the remaining coparceners after the death of the coparcener. The Amendment, in the first place, was intended to confer daughters the same rights with respect to coparcenary property as their brothers. Prakash's judgement missed the major motive of bringing such an amendment. The coparcenary right to ancestral property is always a birthright, and this provision was not changed by the Amendment Act.

Moreover, the point that the joint ownership of coparcenary property by the coparceners does not come to an end after the death of any one of the coparceners was also missed by the Court in Prakash's judgement. After the death of any one of the coparceners, the property won't automatically get partitioned among the existing coparceners but reconstituted or renowned by the remaining coparceners with different shares. The application of this provision when the Amendment act came into force was it granted daughters a right in father's ancestral property on the same level as the sons.

As regards the retrospective or prospective applicability of the amended Section 6, the Hon'ble SC held that the amended Section 6 is retroactive in nature. Elaborating the theories of prospective, retrospective, and retroactive, the Hon'ble SC held that the retroactive legislation works on the basis of a past characteristic or incident or requirements drawn from the previous event. Furthermore, the Court held that Section 6(1)(a) contains the concept of the coparcenary of Mitakshara's unobstructed heritage, which is obtained by virtue of birth and since the right is granted by birth which is a precedence case. Hence, the provisions operate retroactively on and from the date of the Amendment Act.

The Supreme Court does not challenge the correctness of Prakash's judgement on the grounds of its iniquitous result or the arbitrary distinction between classes of women entitled to the benefits of the HSAA. Instead, the Prakash's Judgement has been set aside because of the wrong understanding of the court about how the However, the judgement of the apex court in Danamma's Case was the same as that of the Vineeta Sharma case, but the court failed to identify all the potential errors in Prakash's judgement. Hence, this has been corrected through the recent verdict by harmonising the Damanna judgement by upholding its correct part and striking the inconsistent part.

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## VI. Conclusion

The framers of the Constitution envisioned a truly equal India, where every Indian has an arena to fulfil their full potential and ambitions both in their personal lives and while performing their duties towards their nation equally. However, even with multiple intense debates and discussions around reports of various committees, the original legislators of the Hindu Code could not envision the women of the country owning property in the future, other than that which devolved upon them through inheritance. Such is the plight of women in India, where the ingrained patriarchal systems could not fathom financially independent women! Consequently, there was no provision for self-acquired property for Hindu women in the HSA, 1956. The legislators, however, did envision a more progressive society and made laws flexible enough to accommodate the changes in the dynamic Indian society while striking a balance with every religion's personal laws. Pt. Jawaharlal Nehru, while addressing the symbolic significance of reforming Hindu laws, had famously remarked:

"They are not in any way revolutionary in the changes they bring about, and yet there is something revolutionary about them. They have opened the barrier of ages and cleared the way somewhat for our womenfolk to progress."

Following the global norm of making colonial laws more gender-inclusive, the 2005 Amendment opened a luminous pathway for daughters to finally be treated as equal to sons as coparceners and to exercise the rights attached to it. The Supreme Court, blindsiding a few hiccups like the Omprakash case, also settled the dust on the retrospective vs prospective debate of the application of the 2005 Amendment in the Vineeta Sharma case in August 2020 and made daughters truly equal in their coparcenary rights. Moreover, the 2005 Amendment was warmly welcomed in most Hindu families barring a few exceptions due to the deeply clawed patriarchal mindset in Indian society. Making daughters have equal property rights in ancestral properties, however, is just a needle in a haystack. It took nearly 50 years for the legislators to finally evolve the property rights of daughters, which looks quite bleak at the surface. Further, the legislation for the devolution of the self-acquired properties of daughters dying intestate is still to see the light of the day. With recent advancements in gender studies where binary genders are considered obsolete, property rights of transgenders and non-binary persons who are Hindu are still to be discussed in the corridors of the Parliament. Considering the versatility of cultures, religions and customs in a country like India, this seems like a humungous task, but it is not an unachievable, utopian scenario because two steps forward and one step backwards is still one step forward. The author hopes and wishes that the country witnesses

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another revolution soon which makes laws more gender-inclusive, and the legislators do not take another 50 years to concretise the rights of the concerned parties.

## VII. RECOMMENDATIONS

Some recommendations to improve the current scenario as the entire scenario will change when the corrupt minds of this country change. Without looking at the past, we should step forward into some changes, namely:

- Pre-nuptial should be promoted, and even a provision for it should be made as setting up a spousal trust will help in the protection of her assets, stability in financial situations, limiting the role of the courts, and it is a perfect instrument to protect their rights.
- Determining the share of women coparceners.
- The legislation should take time and clarify the details and make the law itself clearer. They need to clear the grey areas to implement it to perfection.
- Raise awareness about the rights of women through programs and government initiatives.
- Practices such as 'Haq Tyag' should be abolished, and women should mandatorily get their share.
- Implementation of the Law Commission consultation paper presented on August 31, 2018.
- Women married into the family should also be given the same right. Uncertainty over agricultural land should be clarified.

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