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# Case Analysis: Verdict on Daughter's Coparcenary Status (*Vineeta Sharma v. Rakesh Sharma*)

On August 11, 2020, the Apex Court delivered yet another remarkable judgment in [Vineeta Sharma v. Rakesh Sharma](#), elaborating on the right of the Hindu daughters to inherit ancestral property, thereby setting at rest the intense legal debate surrounding the issue, and opening the doors of equality for women. Following paragraphs highlight the importance of the decision.

## Situation Pre and Post Hindu Succession (Amendment) Act, 2005

The [Hindu Succession Act, 1956](#) governs succession and inheritance laws for Hindus, but for a very long time, the Act had recognized only the male members descending from a common ancestor to be coparceners. The daughter could claim a share in the property left by a deceased coparcener but she was denied coparcenary status.

To do away with such gender-discriminatory provisions and to accord equal status to women in the inheritance laws, the government enacted the Hindu Succession (Amendment) Act, 2005 and amended, inter alia, Section 6 (Devolution of interest in coparcenary property) of the Act. The amended Section conferred on Hindu daughters the right to be coparceners by birth. It stated that on and from the date of commencement of the 2005 amendment (i.e. 09.09.2005), a coparcener's daughter shall become a coparcener in her own right by birth, in the same manner as the son, and that she would have the same rights and liabilities in respect of the coparcenary property as she would have had if she had been a son. However, it would not invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before December 20, 2004 (the day on which amendment was introduced in the Rajya Sabha).

## Struggle Ahead

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Although the 2005 Amendment was a revolutionary step towards granting equal inheritance rights to women, there was still a long way to go. Questions arose regarding the interpretation of the amended provision: Whether the law will operate prospectively or retrospectively? Whether the father of the daughter through whom she will inherit the right, has to be alive on the date of the amendment i.e. 09.09.2005? Different Benches of the Supreme Court itself rendered conflicting opinions on the issue.

In [\*Prakash v. Phulavati\*](#) (2015), a two-judge bench of the Apex Court held that rights under the amendment are applicable to living daughters of living coparceners as on the date of amendment i.e. 09.09.2005, irrespective of when such daughters were born. The bench said that conferring coparcenary status on daughters whose fathers had died prior to 09.09.2005 would render retrospective effect to the amendment which cannot be the legislative intent behind it. This position was reiterated by the Supreme Court in [\*Mangammal v. TB Raju\*](#) (2018).

Meanwhile, in [\*Danamma @ Suman Surpur v. Amar\*](#) (2018), a contradictory judgment was delivered by another division bench of this Court which recognised the right of the daughter as a coparcener even though her father had died in 2001. In this case, however, the issue was pertaining to whether a daughter who was born prior to the 2005 amendment would be entitled to claim a share in the ancestral property, to which the bench answered in the affirmative and held that it is the very factum of birth that creates the coparcenary and gives the daughter her coparcenary right, irrespective of the date of her birth. The issue of the living status of the father at the time of amendment was not dealt with specifically in this case and to that extent, it sided with the judgment in *Phulavati*.

## “The End” of the Intense Legal Debate

The conflicting verdicts by the benches of equal strength made it imperative for a reference to be made to a larger bench. Thus, in *Rakesh Sharma*, a three-judge bench comprising Arun Mishra J., S. Abdul Nazeer J., M.R. Shah J. was formed to resolve the issue once and for all. The judgment delivered on August 11, 2020, overruled the decision rendered in *Phulavati* and *TB Raju* and upheld the legal position that the coparcenary status of the daughters is created by birth and is not dependent on the living status of their fathers as on the date of amendment i.e. 09.09.2005. The Court held:

*“The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application, they confer benefits based on the antecedent event, and the Mitakshara coparcenary shall be deemed to include a reference to a daughter as a coparcener.”*

## Law behind the Decision

The Court referred to the terms, Unobstructed heritage (property, in which a person acquires an interest by birth) and Obstructed heritage (property, the right to which accrues not by birth but on the death of the last owner without leaving a male issue) to interpret the provision governing the coparcenary status of daughters. It said that the right of coparcenary under Section 6 is a right created by birth, and thus, it is an unobstructed heritage. The existence of the father (through whom the daughter will claim the right) at the time of amendment is irrelevant as she has not been conferred that right by obstructed heritage which depends on the owner’s death.

The argument, that if the father had died before the 2005 Amendment Act came into force, his interest in the coparcenary property would have already merged in the surviving coparceners, and there would be no coparcener alive from whom the daughter would inherit, was outrightly rejected by the Court on the ground that the coparcenary rights do not accrue by the death of the father but by the factum of birth.

The court observed that for interpreting the provisions of Section 6, what is significant is, how the right of a coparcener is acquired under Mitakshara coparcenary. While negating the concept of “living coparcener” as laid down in *Phulavati*, the Court held that:

*“It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends.”* [emphasis added]

The Court further clarified that the 2005 amendment is retroactive in operation rather than being prospective or retrospective. Elucidating these terms, the court said that the prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates

backward and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates *in futuro*. However, its operation is based upon the character or status that arose earlier. It was held that the provisions concerning claiming rights operate on and from the date of the Amendment Act i.e prospectively, but the right is based on the birth of the daughter which is an antecedent event.

## The Road Ahead

The reform in the coparcenary status of daughters had already been brought about by many states (Kerala, Andhra Pradesh, Tamil Nadu and Karnataka) even before the Union Government decided to bring the amendment for the whole country in 2005. The 2020 verdict of the Apex Court has cushioned the law further by crystallizing the legislative intent that the daughter's rights are the same as they would be if she had been a son at the time of her birth, and has put an end to all the doubts arising therefrom. Now, all eyes are on the society which is expected to broaden its perspective in line with this decision and do away with the prejudicial positions faced by the daughters in every sphere of life.