

RIGHT BY BIRTH: THE HINDU EDITORIAL ON DAUGHTERS AND HINDU SUCCESSION ACT

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The latest decision of the Supreme Court on the [right of Hindu daughters to ancestral property](#) corrects an obvious anomaly in the interpretation of a crucial 2005 amendment to the Hindu Succession Act, 1956. The verdict settles the question whether the coparcenary right of daughters comes into effect only if the father through whom they claim that right was alive on the day the amendment came into force. The apex court has now categorically ruled that the daughters' right flows from their birth and not by any other factor such as the existence of their fathers. In other words, it has rejected the common misinterpretation that only daughters of coparceners who were alive on that day could get an equal share in property. The court has rightly recognised that the amendment conferred equal status as a coparcener on daughters in Hindu families governed by Mitakshara law, and this right accrued by birth. The change came into effect from September 9, 2005, but with a provision that partitions or testamentary disposition that had taken place prior to December 20, 2004 — the date on which the amendment Bill was introduced in the Rajya Sabha — will remain valid and unaffected by the change. This led to the interpretation that the daughters' coparcenary rights, being prospective, would not come into effect unless both the coparcener father and his daughter were alive on September 9, 2005. This position was crystallised in a 2015 judgment of the Supreme Court in *Prakash and Others vs. Phulavati*. This judgment now stands overruled.

The court's reasoning is unexceptionable. First, it locates the origin of the coparcenary right in one's birth. Second, it finds that there is no necessity for a predecessor coparcener to be alive for one to acquire that status, as what is relevant is birth within the degrees of succession to which it extends. In that sense, the legislation, even though it comes into effect on a prescribed date, is retroactive in its application as it is linked to birth, an antecedent event. It also underscores that the legislation makes it clear that the daughter's rights are the same "as that of a son," and "as if she had been a son at the time of birth". The coparcenary status given to daughters has been a subject of reform in many States, particularly in south India, long before the UPA regime brought in the amendment for the whole country. Kerala had introduced legislation in 1975, Andhra Pradesh in 1986, Tamil Nadu in 1989 and Maharashtra and Karnataka in 1994. The legislative aim was that a flagrant discrimination between sons and daughters in entitlement to an equal share in coparcenary property, that is property inherited from one's father, grandfather or great-grandfather, should be done away with. It is indeed welcome that the apex court has sought to give full effect to this intent by setting at rest doubts arising from varying interpretations.

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