

SUPREME COURT ORDER ON COPARCENARY RIGHTS IS ENORMOUSLY WELCOME

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

Describing the idea of natural rights as “anarchical fallacies” and “rhetorical nonsense”, English Utilitarian philosopher, Jeremy Bentham, strongly argued in favour of positive/legal rights, both for their comprehensibility and tangibility. Rights for Bentham were fruits of the law and of the law alone. It is difficult to challenge the scope of natural rights in a modern liberal democratic setup without invoking blowback from the votaries of political accountability, individual liberties and those who seek to curb state power. However, it is imperative that in order to gain efficacy, natural rights are dependent on progressive legislative interventions and executive capabilities, and, most significantly, on periodic judicial reviews and decrees. The expansive judicial interpretations of the Right to Life under Article 21 of the Constitution clearly set this out in the Indian context. Further, contestation between morality, legalities, customary practices, social values and norms are characteristic features of all societies; and it may not be that easy to settle these differences without a corresponding change in societal attitudes and social norms. In this context, the Supreme Court’s recent judgment granting coparcenary rights to women requires a nuanced understanding.

The judgment delivered by a three-judge bench of the Supreme Court is praiseworthy simply for reiterating the idea that women are born as equals, and that it is the patriarchal mindset and embedded customary practices and traditions that accord them an inferior status. In real terms, the judgment is progressive on two counts. First, for highlighting the patriarchal practices of the Mitakshra School of Hindu law — the guiding force of the Hindu Succession Act, 1956 — and second, for settling the confusion created by two of its own antagonistic judgments in *Prakash vs Phulawati* (2016) and *Danamma @ Suman Surpur vs Amar* (2018) cases. In the first case, it had ruled that the amendments to the Hindu Succession Act (2005) applied only to women whose parents were alive on September 9, 2005, the date of the notification of the act. In the second case, it inferred that coparcenary rights were birthrights. The Supreme Court has now set forth the idea that coparcenary rights are birthrights free from limitations imposed by the dates of any legal notifications. As a natural corollary, property inheritance rights apply to all women retrospectively from 1956, the year of the codification of the Mitakshara laws as the Hindu Succession Act.

Explained: [Reading SC’s verdict on Hindu women’s inheritance rights](#)

What makes this judgment epochal is the progressive change in the attitude of the courts, which now appear to be upholding principles of substantive justice for women both in theory and practice. Indeed, the higher judiciary in India has generally been broad-minded in dismantling patriarchal practices and institutions. In that sense, the judicial sojourn that in a way commenced from the judgment delivered in the case of *C B Muthamma* (1979) or *Nergesh Meerza* (1981) continues to be persistent in breaking stereotypes, be it [Sabarimala](#) (2018), or granting permanent commission to women officers in the Indian Army.

While the delivery of the judgement is one thing, its proper implementation quite another. Admittedly, this judgment accepts the natural equality of women, but several issues still need to be addressed.

The issue of stree dhan, as explained under section 14 (1) of the Hindu Succession Act 1956, is

upturned in the light of this judgment. For example, the said section provides that women can acquire property as a full owner, and it can be carried over or retained post marriage as stree dhan. There are cases where the movable property may have been given to a daughter by her father as an intentionally undeclared and informal settlement between his descendants. At the same time, it is quite true that stree dhan over time gave way to the unethical and illegal practices of dowry, but the issue of stree dhan needs to be explained further in the light of this judgment. If women are seen as double beneficiaries of these laws (through lineage and marriage), can we anticipate that the ruling might impact dowry transactions that continue despite stringent anti-dowry laws?

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Moreover, the right to possession may not be easy for women who are married and do not reside in their ancestral homes. Property transactions may be more convenient for urban settings. However, it may not be that easy in the rural context, where most of the property is in the form of agricultural land. Most women who may want to claim their share may end up spending the rest of their lives in litigation to get their names on the relevant documents. With patriarchy entrenched, it is doubtful if male heirs will share property-related documents, information or initiate legal processes in the interest of the women family members.

Many educated, professional, middle-class women who have otherwise rejected patriarchal controls and demands, and fought against practices such as dowry, have been denied property rights by their own families. Most have chosen not to pursue the legal pathway, which is tedious, lengthy, and expensive. Most importantly, those who seek property rights undergo harrowing emotional abuses from their own families for asking what is rightfully theirs.

On occasion, the law and courts may turn out to be progressive. However, on no occasion can we expect the society to readily accede to progressive reforms. The challenge for economically dependent women in far-flung rural areas who are denied literacy, dignity and, sometimes, even a name and identity, in securing their rights is immense. In parts of Bihar we come from, there are areas where women are still addressed by their village names or more commonly as someone's wife. Family histories have conveniently wiped out any references to women, and what their lives were like, what became of them, and how they managed to survive in the absence of support from husbands and children.

So even as we welcome the court decision, we remain sceptical about its implementation and its actual benefits to women. Patriarchal attitudes are changing: Women are asserting their rights, both in conjugal and property matters. However, there are significant cultural, religious, educational barriers and caste and class inequalities that require a massive overhauling of social attitudes to overcome. Besides, litigation processes need to be simplified and made accessible, inexpensive and time-bound, for women to claim their coparcenary rights if denied.

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