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ONE ERROR RECTIFIED, MANY TO GO

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

In 2005, Parliament amended the Hindu Succession Act of 1956 to bring daughters of coparceners on a par with sons in a joint Hindu family. The law bestowed upon daughters the same rights and liabilities as that of sons. In *Vineeta Sharma v. Rakesh Sharma* (2020), the Supreme Court held that a coparcener's daughter would become a coparcener in her own right by birth, thereby setting aside the *Prakash v. Phulavati* (2015) judgment that created a condition for a daughter to avail her right of being coparcener only if her father was alive on the date of this amendment.

There is a difference between rights conferred by the Hindu Succession Act of 1956 and the amendment of 2005. In 1956, equal right of succession at par with a son was given to a daughter, but only after the demise of the father or mother. The 2005 amendment, however, gave the right to property to a daughter in a joint Hindu family during the lifetime of the father. As a matter of fact, right of succession is not a confirmed right and can easily be negated by the father or mother by creating a will. The 2005 amendment changed that; the right could no longer be negated.

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Vineeta Sharma v. Rakesh Sharma is a progressive pronouncement that rectified an error committed by the Supreme Court. In *Prakash v. Phulavati*, the Supreme Court delved into the prospectivity or retrospectivity of the law creating coparcenary rights in favour of daughters. It applied the basic premise that the law is always prospective unless it is retrospective either expressly or by necessary intendment. The court held that as there was no express provision for giving this law a retrospective effect, it cannot be applied retrospectively. It created a condition that the rights under the amendment are applicable only to living daughters of living coparceners as on September 9, 2005; however, it gave no reason as to why this was chosen as a condition. The condition seems to have overstretched the scope of interpretation. The status of a daughter to be subject to her father being alive is apparently a mistake. The death of an individual should not determine the rights of their heirs. If any right had accrued in the daughter's favour by a legislation, the same can't be disturbed by death of her father.

Coming to the 2005 amendment, if the legislature had any doubt about the prospective or retrospective applicability of the right created in favour of the daughter, then it would not have specifically added a proviso to Section 6 subsection (1). The proviso mentions that all those property rights, which have already been settled before December 20, 2004, by way of any transfer, partition, will, etc., shall not get affected by this right. Similarly, the explanation to subsection (5) of Section 6 mentions that this law shall not affect any registered partition deed effected before December 20, 2004. Both the proviso and explanation clearly indicate that this law created rights and entitlements in favour of daughters and an exception was carved out to protect the disturbance, the retrospective application of law could have created.

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In the present judgment, *Vineeta Sharma v. Rakesh Sharma* , the court rightly held that as laid down in Section 6 (1) (a), daughter is to be a coparcener by birth; so there is no question of being prospective or retrospective. It is the physical status that matters and should not be linked to a date. Even in the case of unregistered partition deeds executed before December 20, 2004,

the court has opened a new window for daughters. Daughters can claim a right even in an unregistered partition deed which has not been proved conclusively.

Editorial | Right by birth: On daughters and Hindu succession act

Legislative errors disentitling daughters still exist as seen in the U.P. Zamindari Abolition and Land Reforms Act, 1950. Such discrimination is based purely on gender. There is a need to examine all the existing laws and wherever discriminatory practices exist, they need to be amended appropriately.

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