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### RESEARCH ARTICLE

## WOMEN EQUAL SHAREHOLDERS IN HINDU JOINT FAMILY, WITH SPECIAL REFERENCE TO THE CASE OF – VINEETA SHARMA VS RAKESH SHARMA & ORS

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### Abstract

This Research Paper will cover the concept of—whether women have equal shares over the coparcenary property or not & on the other hand it will also discuss the landmark judgment of Vineeta Sharma V/S Rakesh Sharma which has opened up a space for the women to have equal shares in the ancestral property of Hindu Undivided Family. Since the inception of the Hindu Succession Act, 1956 the provision for the division of property of Hindu Undivided Family was only limited to the sons but the amendment of 2005 made some of the special changes to the act, adding daughters as the equal shareholders to the coparcenary property and even this amendment provided that the daughter can be the Karta of the Hindu Undivided Family. With special reference to the case of Vineeta Sharma vs Rakesh Sharma this research note will provide in-depth analysis with conflicting case laws where it will be put forth whether the coparcenary property are the property of the sons or even the daughter can claim for equal shares over the Hindu Undivided Family property.

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### Introduction:-

Prior to the 2005 amendment of the Hindu Succession Act, 1956, the property rights of sons and daughters were poles apart. Even though sons had absolute right over their father's property, daughters were barred from it after their marriage. After the marriage a daughter was supposed to become a part of her husband's family. The early years were as such where people had the mindset and even the law was not that concrete as to whether the property can devolve to the daughter as well, or only the sons have the sole right over the ancestral property of Hindu Undivided Family. Coparcenary right over the property of Hindu Undivided Family was only for the sons and not the daughters. Coparcenary means, a HUF where the lineage came from a common ancestor. Daughters were only allowed to enjoy the benefit of this coparcenary property until their marriage. The amendment of 2005 gave a detailed analysis of partition procedure of a Hindu Undivided Family, coparcenary property. Class –I, class-II, Class-III, and Class-IV heir has been added in accordance for the division of the HUF property. Beforehand, once the daughter was married, she was held to be removed from her father's HUF and primarily was added to the family of her husband. In some or the other way many believed that by this the rights of women are being curtailed. But on September 9, 2005, the Hindu Succession Act, 1956 was amended which governed the devolution of property under Hindu Undivided Family. The Amended Act of 2005 provided that every daughter is a member of her father's Undivided Family and also can be the Karta of Hindu Undivided Family. The revision now admits daughters the same rights, duties, liabilities and disabilities that were previously limited to the sons. Hindu undivided family

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always has to go for the division of the property in some way or the other. Hindu Succession Act, 1956 provides for the lawful division of the ancestral property.

**Hindu Succession Act, 1956:**

Hindu succession act, 1956 talks about the succession and inheritance of the property. This act provides as to what amount of property will be inherited with whom. This act is applicable on Hindu, Muslims, Jains and Sikhs. The act has been amended few times for the procurement of law and justice. The act analyses and put forth the provisions related to the division of the property of a Hindu undivided family.

This act says that there are two types of property or the property are classified under two heads:

1. Ancestral Property
2. Self-Acquired Property.

Ancestral property is the property that has been inherited from our ancestors i.e. our fathers and forefathers. These properties remain for the devolution within the coparcener. The ancestral property can only be devolved within the coparcener and be distributed in accordance to the Hindu Succession Act, 1956. Whereas the self-acquired property is the self-established property or the property that has been bought by the particular person by his/her own pocket. The ancestral property is only which has been mentioned in the act that can be devolved. The self-acquired property can never be devolved. Self-acquired property can be transferred by the means of testamentary succession and not intestate succession.

**Coparcener:**

Under the Hindu succession act, 1956, the word coparcener is of utmost importance. This act provides the provision of inheritance of the ancestral property to only the coparceners. Coparcener simply means where the lineage is of same ancestor and of same blood line. It means that only male members were ought to be the coparcener and have the right to inheritance of the coparcenary property. The problem of Hindu succession act, 1956 was only this that coparceners were only the male lineage group and female or the daughters were barred from being a coparcener.

For example-

If 'A' is the father having ancestral property, then the coparcener of A would be A's son, grandson and great grandson. All the coparceners are only the male members, i.e. the daughters are not added under the meaning of coparcener, which was the fault to be revived.<sup>1</sup>

The rule of survivorship was followed under the coparcener concept and the property would be devolved in accordance with the survival of the coparcener. For instance if, 'A' dies, then the coparcenary property to be devolved will be to A's son, grandson, great grandson, and great great grandson.

**Amendment of 2005:**

The amendment of 2005 brought about several changes in the Hindu Succession Act, 1956. The survivorship rule of succession was abolished and two separate succession rules were established, namely:

1. Testamentary succession
2. Intestate succession

Under the testamentary succession the property can be evolved according to a testament provided by the person in the form of will. Here only the self-acquired property can be devolved. Under the testamentary succession the ancestral property can never be devolved. Whereas if a person dies intestate then the Hindu Succession Act 1956 provision will be entertained where the property will devolve according to the class-I, Class-II, Class-III, and Class-IV heirs.

Two important changes that were adopted under the 2005 amendment were:

1. Daughters are coparcener since birth.
2. Daughters will have equal liability.

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<sup>1</sup>Prakash & Ors. V. Phulavati&Ors., (2016) 1 Supreme Court Cases (Civ) 549

But the amendment of 2005 also put forth certain conflicting questions as to whether on the particular date of 9<sup>th</sup> September 2005, the father has to be alive or even if the father has died before 2005 the daughters can claim equal shares in the ancestral property.

**Case Laws:****Prakash vs Phulwati 2016:**

This is a landmark case comprising of 2 judge bench, Justice Anil Dave and Justice A.K Goyal. The apex court in this case held that for the devolution of property to the daughter the father has to be alive on the date as mentioned i.e. 9 September 2005. Honorable court held that the property will only devolve from an alive coparcener to a living daughter.

**Dannama vs Amar 2018:**

After Prakash vs Phulwati case, another landmark case was put forth in front of the apex court which also comprised of 2 judge bench namely Justice A.K. Sikri and Justice Ashok Bhushan.

In this case the judgement pronounced was conflicting to the case of Prakash vs Phulwati 2016.

In this case the court held that although the father has died before 9 September 2005, daughters will get equal shares in the ancestral coparcenary property.

The judgment pronounced in Dannama vs Amar created a lot of confusion in regards to the applicability of the provision. The conflict arose whether to follow the judgment of Prakash vs Phulwati 2016 or the judgment pronounced in Dannama vs Amar 2018.

So, in view of removing the difficulty and the conflicting nature another landmark case was introduced in the apex court which was – Vineeta Sharma vs Rakesh Sharma 2020.<sup>2</sup>

**Vineeta Sharma vs Rakesh Sharma 2020:**

Vineeta Sharma vs Rakesh Sharma is a landmark case in which 3 Judge Bench was established, comprising of Justice Arun Mishra, Justice S Abdul Nageer and Justice M.R Shah. This case solved the whole confusion related to the 2005 amendment to the Hindu Succession Act 2005 and the judgment pronounced in earlier cases of Dannama vs Amar & Prakash vs Phulwati.

The Supreme Court in this case, held that as like as sons the daughters also have the right over the ancestral property since birth, whether father is alive or dead does not affect their personal right.

This case opened up the face of devolution of ancestral property and made daughters equal shareholders in the ancestral coparcenary property. The right over the ancestral property has got a sudden change and both the sons and daughters were eligible to get equal shares in their father's HUF property.<sup>3</sup> The case of Vineeta Sharma vs Rakesh Sharma mainly deals with two important aspects that is, with regard to the rights of the daughters and secondly it gives a very important provision i.e. daughters being a coparcener since birth.

The court in this particular case quotes that- "A son is a son until he gets a wife" whereas "a daughter is a daughter throughout her life"

So, today the law is as such if a daughter has her father alive or dead on 9 September 2005, she is entitled to get equal share in the coparcenary property of her father. The law really changed and ended up the controversial judgment of Prakash vs Phulwati & Dannama vs Amar. The 3 judge bench was established to remove the uncertainty and ambiguousness of earlier two judgments which was really fulfilled and today the judgment of Vineeta Sharma vs Rakesh Sharma has become a landmark judgment within the ambit of coparcenary property devolution within the Hindu undivided family.

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<sup>2</sup>Danamma @Suman Surpur V Amar Singh, (2018)3SCC 343

<sup>3</sup>Vineeta Sharma vs Rakesh Sharma 2020

**Conclusion:-**

A Hindu undivided family consists of more than 1 member which can be anything. Further the commencement of Hindu Succession Act 1956 provided for the devolution of HUF property to the lineal descendant of the same ancestor. It meant that only the sons have had the right over the ancestral coparcenary property as lineal descendant comprised of only male members of blood relation. The daughters were left untouched in the devolution of the coparcenary property. Meanwhile the year 2016, 2018 and 2020 marked a series of judgment pronouncements where it was to be held whether the daughters comes under the ambit of coparcener or not and whether the daughter can have equal share in the ancestral property or not. The first two judgments were contradicting to one another and hence in the year of 2020 a landmark judgment in the case of Vineeta Sharma vs Rakesh Sharma was provided. The judgment of Vineeta Sharma vs Rakesh Sharma put forth the legal acceptability of whether a daughter can be a coparcener or not and also opened up the space for the daughters for the entitlement of equal shares in the coparcenary property as of the sons.