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# **A STUDY ON ANCIENT AND CONTEMPORARY VIEWS ON THE RIGHTS OF HINDU DAUGHTERS IN COPARCENARY PROPERTY**

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## **ABSTRACT**

This article elucidates the rights of Hindu daughters in a coparcenary property from the vedic age till the contemporary era highlighting the changes and evolution related to it. The focus is to explain the ancient and present scenario of Hindu daughters in depth by throwing light on the ancient and contemporary thoughts on the rights of Hindu women in coparcenary property. The article further explains some other terms such as stridhan, appointed daughters, Mitakshara and Dayabhaga school etc., with necessary and supporting provisions along with the cases. In the ancient times, it has been evident that women, even after their constant contribution and support in every aspect of someone's life, ironically, have lived their whole life being subject to discrimination and oppression by the same people that they have supported and continued to be so, for over three millennia. All the positive and cogent changes regarding a women's right and life have been so slow or have come into existence at such a later stage that at this point, it is not nearly sufficient or acceptable. Though, one can be optimistic and say that some change is better than none and one of these changes is that of a daughter's right in coparcenary property but like any other optimistic change regarding a women's life, this change has also been very slow, so in order to clearly understand the fact, where we are today and how we got here, one will have to dive deep into the vedic age and then start studying in the chronological order.

**Keywords:** Daughter's Rights, Coparcenary, Property, Manusmriti, Mitakshara, Stridhan

## I. INTRODUCTION

The Hindu culture has been, of a '*patriarchal nature*' since the time of Manu. It has always restricted or put a limit on a woman's right to property. It is evident from a verse in Manusmriti: "*She is protected by her father in her childhood, she is protected by her husband in adulthood and by her sons in old age; liberation and authority are not for a woman.*" In some cases, daughters were allowed to inherit not just movable but also immovable property from their paternal or maternal families, though this share for women was insignificant in comparison to their brothers, uncles etc.<sup>1</sup> In the Vedic era, after the connubium of a man and woman, they were both considered to be owners of the house, ergo, of the possession in it. This shared ownership merely assisted the woman in achieving a few rights, such as sharing in money and having adequate maintenance supplies. It never guaranteed the act that she would, in possession of the property, be equal with her husband. A daughter's stature declined with time when the idea of private property developed. Her, not being able to perform certain customs and religious rites and ceremonies, became a ground for discrimination and oppression.<sup>2</sup>

The Mitakshara and Dayabhaga were two schools of Hindu Laws, which were widely accepted and practised throughout India and are also the basis of the present Hindu Laws, these two schools - Mitakshara, which has the following sub-schools: (i) Varanasi (Central India) (ii) Mithila (Present day Bihar & Jharkhand) (iii) Mumbai School (iv) Dravida or Madras School and Dayabhaga School (practised in present-day Bengal & Assam) emerged in the era of commentaries and digests.<sup>3</sup> These two schools played a very crucial role in the matters of inheritance, though only a few rights over property were provided to the women.

If we look at the Vedic period women were at a better standing than they were in the later periods and this decline in status and standing persisted for centuries and centuries. Absolute power over landed property was never given to women and only gifts during the time of their marriage like jewellery and clothes and in very rare cases land was given, these gifts during the time of marriage are known as Stridhan which gradually lost its true meaning and took on the form of dowry and a way of making a woman's life even more challenging than it ever was. Daughters in this era only had a few rights in property and were denied property rights in the

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<sup>1</sup> Debarati Halder and K Jaishankar, "Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India" 24 *Journal of Law and Religion* 663 (2008).

<sup>2</sup> Pranshutosh Kumar, "Kumar, Pranshutosh, Women's Property Rights Under Traditional Hindu Law and the Hindu Succession Act, 1956" *University of Petroleum and Energy Studies* 3 (2008).

<sup>3</sup> Dr. Paras Diwan, *Modern Hindu Law* 58 (Allahabad Law Agency, Faridabad (Haryana), 25th ed., 2022).

maternal and paternal property, and their right to inherit property was limited. Nonetheless, in the last decade, India brought a drastic and much-needed change in its legislation and through precedents which were never seen before.<sup>4</sup>

## II. THE ANCIENT VIEW

The Ancient era can be further divided into four parts: The age of Shruti; The age of Smriti; The age of Commentaries and Digest and the age of Customs. The age of Shruti (what was heard) is very obscure and ambiguous and no statements can be made very authoritatively, hence the rights of daughters relating to coparcenary property cannot be determined, what we can say about this age is with the help of Vedas, that women enjoyed some basic rights in this era. Then comes the age of Smritis (what was remembered), in this era, two very important sources emerged (i) Manusmriti and (ii) Yajnyavalka Smriti.

### 1. MANUSMRITI ON DAUGHTER'S RIGHT TO PROPERTY

The Manusmriti was written somewhere around 200 B.C.E. and has 2694 slokas divided into 12 chapters, in it, discourse V Section XIV talks about the duties of women but no mention of any property has been made in this chapter if we move further to Discourse IX (Duties of the King concluded) of the Manusmriti.

To quote *section XI (A) verse 104* which says,

***“After the death of the father and of the mother, the brothers, being assembled, shall divide equally the paternal property; while the parents are alive, they have no power.”***

and *section XII verse 105*;

***“The eldest brother alone may take the entire paternal property; the rest shall live under him, just as under their father.”***

The above stated clearly states that all the paternal property shall go to their sons and that too, to the oldest son and no mention of the daughter has been made, discourse 9 section 24 talks about inheritance and verse 185 again states that a paternal property must go to the sons of the

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<sup>4</sup> Debarati Halder and K Jaishankar, “Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India” 24 *Journal of Law and Religion* 665 (2008).

dead father. Verse 187 says that if there are no sons then the property must go to that who is nearest to the dead, which will be a sapinda if there is no sapinda, then to a *Sakulya*, if there is no sakulya then to a pupil<sup>5</sup> and 188 says, in the absence of all the people mentioned in 187 the property shall go to the Brahmanas, and no mention of the daughters or widows or mother etc is to be found anywhere. These laws show how daughters and women in general were disregarded and had no social standing in that era in matters of property and inheritance, in verse 133 of discourse 9 a daughter's son gets the same standing as a son's son, then why is a daughter not on the same footing as a son is a matter to ruminate about. However, two things are mentioned in the Manusmriti which were in some way, in the favour of the daughters, these were (i) Appointed Daughters and (ii) Stridhan.

### APPOINTED DAUGHTERS

The term appointed daughters comes under discourse 9 section XVII of Manusmriti which is titled "Property of one who has no sons: Appointed Daughters". Verses 127 – 139 talk about the said topic. *Verse 127 states –*

***"He who has no son may make his daughter an 'Appointed daughter' in the following manner [He shall mark the declaration] – 'The child that may be born of her shall be the performer of my funeral rites'."***

*Verse 127* may seem like it gives a daughter some right to property but in reality, it just makes a daughter a child bearer and a contingency plan in polite words, the interesting verse which can be said to be the most important and neglected verse, in the whole of Manusmriti, for women is verse 130 which states –

***"The son is as one's own self, and the daughter is equal to the son; hence so long as she is there in her own real character, how can anyone else take his property?"***

This verse seems to be the first in any of the sections of the Manusmriti, where a daughter (a woman) is set on the same platform as a son. Though one can say that this verse justifies the fact of appointing a daughter as an heir in the absence of a son and saving one's property from going to the sapinda and other people who are in line; because if this is not the case then the question arises why a daughter does not come in the line of inheritance of coparcenary

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<sup>5</sup> Ganganatha Jha, VII *Manusmriti with the Commentary of Medhatithi* (Motilal Banarsidass, 2nd ed., 1999).

property? Why are they not considered the equal of a son in normal circumstances? Anyhow the next verse, 131 states -

***“Whatever may be the separate property of the mother is the share of the unmarried daughter alone, and the daughter’s son shall inherit the entire property of the man who has no son.”***

The above verse states two things, first that an unmarried daughter gets the whole property which belongs to her mother, hence, it hints at the fact that women did have right over some kind of property and an unmarried daughter alone enjoys the right over her mother’s property, the second thing it states is that if the father of such daughter dies sonless, i.e., if, there are no brothers of that daughter then the male offspring of that daughter gets the whole property of her maternal grandfather.<sup>6</sup>

Verse 133 states that -

***In this world, between the son’s son and the daughter’s son, there is no difference, in law; for the father and mother of each of them were both born of his own body.***

It is the second verse after 130 which puts the daughters (women, in general) on the same platform as the sons. By saying that a son and a daughter are both born of the same blood they are both equal, and they both are born of the same father then why shall there be any distinction between a son’s and a daughter’s son they are equal as well, though it again can be said that this part of the verse is present in the verse to prove just the importance of the daughter’s son and no rights are bestowed on the daughter.

## **STRIDHAN**

Verse 194 to 200 of Section XXV (25) of Discourse 9 of the Manusmriti talks about Stridhan. Out of the seven verses only two are important in the context of this article as they talk about what can be constituted as the property of a daughter, these verses are 194 and 195. Stridhan basically means a gift that is given to a daughter during her marriage by different people these people include her father, mother and brother and the gifts that are given before the holy fire during her marriage and during her departure. Verse 194 gives the definition of stridhan, which

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<sup>6</sup> Ganganatha Jha, VII *Manusmriti with the Commentary of Medhatithi* (Motilal Banarsidass, 2nd ed., 1999).

is –

***“(1) What is given before the fire, (2) what is given at the time of departure, (3) What is given in token of love, and what is received from (4) the brother, (5) the mother and (6) the father, - has been declared to be ‘Strīdhana’ (the exclusive property of the woman).”***

As mentioned above, the people and the time when a gift can be said to be stridhan is mentioned in this verse, it is also to be noted that no specification has been made as to what those gifts can be, so it can be a movable as well as an immovable property and so anyone can give anything to a daughter or a sister a woman during her marriage before the fire and during the time of her departure as a sign or symbol of affection or love and given by a father, mother, and/ or brother can said to be Stridhan. Hence, a daughter can have property through this law but it is not as a coparcener.

Verse 195 further states that what is given to the bride by her loving husband as a gift after the marriage shall go to her heirs, so, it can be said that the daughter of such bride/ wife/ daughter can possess property from her mother but again this property is not of a coparcenary nature.

Other than the verses mentioned above only one section talks about a daughter’s property rights which is mentioned in discourse IX (9) Section XXIV (24) verse 193 which says that a daughter’s daughter shall also receive some property from her grandmother. Therefore, one can say that even though there are provisions present in the Manusmriti for a daughter to enjoy some form of property right, they are not of a coparcenary nature. And all the property she acquires is through gift and albeit the fact that she is put on an equal footing as their male counterparts, it is not them who get the right over the property of her ancestors but her son no daughter or daughter’s daughter has any say in any ancestral property.

## **2. YAJNAVALKYA SMRITI & ITS SCHOOLS**

After the Manusmriti comes Yajnavalkya Smriti, both in date and authority. It is closely based on Manusmriti and is connected to Brihadaranyak Upanishad. Though, it can be said that it is more logical and concise than Manusmriti. It was written at around the beginning of the Christian era. It is also to be noted that this smriti has more liberal views on women inheriting property. The Yajnavalkya Smriti is divided into three parts: *Achara*, *Vyavahara*, and *Prayaschitta*, out of these three, the *vyavahara adhyay* talks about inheritance and a

daughter's right to inheritance. It is important to note here that though it is the source of modern Hindu law, this article will not delve into the Yajnavalkya Smriti directly but will rather talk about the commentary and the digest that was written or was based on this Smriti which was and still (in a way) is in practice at present. There were several commentaries and digest written on this Smriti but the two which have been the most prevalent are the (i) The Mitakshara (commentary) and (ii) The Dayabhaga (digest).

## **MITAKSHARA ON DAUGHTER'S RIGHT TO PROPERTY**

Mitakshara, as mentioned above, is a legal commentary (vivirti) on the Yajnavalkya Smriti. It was written by Vijñanesvara, between the late eleventh century and early twelfth century. It is widely known for its theory on inheritance by birth. In Mitakshara, daughters are mentioned in two instances where they get a right in paternal property, which was not so, in the case of, Manusmriti, these two instances are mentioned in Chapter 1 Section VII and in Chapter 2 Section II. Let us see what these sections say:

### ***Chapter 1 Section VII of Mitakshara***

This section's heading is – "Shares allotted to provide for widows and the nuptials of unmarried daughters." It is evident from the heading of this section as to why a daughter gets any share in the paternal property, i.e., for her wedding. There are two points in this section which talk about the above-mentioned topic and they are points 5 and 14 of this section;

Point 5 – *"Regarding unmarried sisters, the author states: But sisters should be disposed of in marriage, giving them a fourth part of a brother's share."*

Point 14 – *"Therefore, after the decease of the father, an unmarried daughter participates in the inheritance. But before his demise, she obtains that only, whatever it be, which her father gives."*

Point 5 is the starting point of a daughters right in a property in this section and it ends in section 14. To sum up, the whole thing point 5 gives rise to the right of the daughter and the next point, i.e., 6 states that they (daughters or sisters) shall be given a quarter of a brother's own share<sup>7</sup>, for example, if there is a plot of land which is 16 decimals in size and a brahmin

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<sup>7</sup> Rajendro Misrry and Opproakash Chunder Mookerjee (eds.), *The Law of Inheritance According to Mitacshara* 41 (Thacker Spink & Co, Calcutta, 1869).

brother and sister are to divide that property, the sister will get a brother's 4<sup>th</sup> part of the share, in our example, it will be:

$$\frac{16}{2} = 8 \Rightarrow \frac{8}{4} = 2$$

Hence, a sister's share in the property of 16 decimals, will be of 2 decimals and the remaining plot of land will be given to the brother, i.e.,  $8 + 6 = 14$  decimals. Further, point 7 explains how, if the brother and sister are of different varna, the shares will be divided among them. For example, a Brahmin brother gets 4 shares in a property and a Kshatriya brother 3 shares and so on. So, if there is a Brahmin brother and a Kshatriya sister, the Brahmin brother will get four parts and the sister will get the fourth part of the 3 shares that a Kshatriya brother would have gotten. Point 8 -13 speaks of different scenarios as well such as a tribal sibling's share and if there are too many sisters the brother will be entirely deprived of wealth, so, what shall be done then etc.

### ***Chapter 2 Section II of Mitakshara***

This section's heading is – “Right of the Daughters and Daughter's Son”. In this section, the Mitakshara states what is inherited by a daughter. There are a total of three points which deal with the above-mentioned topic which are 1, 3 and 4.

Point 1 – On the failure of a wife/ widow present, the daughter inherits.

Chatyayna and Vrihaspati were of the view that, if a widow who is to succeed her dead husband is not chaste, the daughter shall inherit, if unmarried;

Point 3 – *“If there is a competition amongst an unmarried and a married daughter, the unmarried daughter shall win the succession under point 1 mentioned above.”*

Point 4 – *“If the competition is amongst a poor and a rich daughter, the poor one shall inherit; and only on the failure of such, the rich one wins.”*<sup>8</sup>

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<sup>8</sup> Rajendro Misrry and Opproakash Chunder Mookerjee (eds.), *The Law of Inheritance According to Mitacshara* 105 (Thacker Spink & Co, Calcutta, 1869).



## DAYABHAGA ON DAUGHTER'S RIGHT TO PROPERTY

The Dayabhaga was written sometime between 1090 – 1130 C.E. by Jimutavahana and this school was practised in Bengal and Assam, unlike Mitakshara, Dayabhaga stated that the father is the sole owner of all the property, ancestral or self-acquired, and has absolute right over all the property and only upon his death, such property will be inherited by the closest sapinda, who performs the last rites of the deceased father; the important point that shall be noted is that according to the Dayabhaga School, a daughter is also a sapinda and can perform the last rites/ funeral oblations of the father, through her son; therefore, giving her the rights to ancestral property.

### ***SANKAR DOME V. KALIDASI DAS (1960)***

In this case, in point 6 of the plaintiff's appeal, an important point was mentioned in support of the above-made statement, which is:

*“In Dayabhaga School of Hindu Law, five females are considered as special sapindas on the theory of spiritual benefit. A daughter is a special sapinda after a widow on the ground, through her son, she offers funeral oblations to her father. Confirmation of this is to be found in Mayne's Hindu Law, 11<sup>th</sup> Edition, p. 684, where the author says, “So too, a daughter is a sapinda as she offers funeral oblations by means of her son” referring to Dayabhaga, chapter 11, Section (ii) verse 1, 2 and 15, in support of his above statement.”*

### ***KRISTO BEHARY DUTT V. SARAJINI DASSI (1933)***

In this case, it was mentioned:

*“That in Dayabhaga, Chapter 4 Section ii, 9 – It is stated that a son and an unmarried daughter have an equal right to succession and on the failure of any one of them, the property belongs to the other, and if, both of them shall fail, the succession devolves with like rights on the married daughter, who has a son; as through her son, she may perform the oblation.”*

### III. CONTEMPORARY VIEW

It nearly took India, another millennium to progress from Mitakshara and Dayabhaga and recognize the disparity against women. Daughters or women, in general, were provided with certain rights only at the end of the modern and the beginning of the contemporary era, through some codified laws like the “Hindu Women’s Right to Property Act, 1937” and “Hindu Succession Act, 1956” respectively. And it almost took five decades after this to actually put women on the same footing as men in matters relating to property through the “Hindu Succession (Amendment) Act, 2005”. In this article, only “Hindu Succession (Amendment) Act, 2005 will be discussed as it is the only breakthrough after Mitakshara and/or Dayabhaga.

#### 1. HINDU SUCCESSION (AMENDMENT) ACT, 2005

Post 2005, Amendment Act daughters were given the same rights in property as sons under Section 6. As coparceners by birth, daughters have equal rights and responsibilities as sons, and both are classified as Class I heirs. Married daughters also have the right to seek partition of coparcenary property without any restrictions. If a Hindu person dies after this amendment, their property will be passed down through testamentary or intestate succession.

Testamentary succession occurs when a will is in place, while intestate succession occurs when no valid will exists.

Under Hindu Law, a Hindu male or female has the right to create a legally binding will for their property. The will specifies the distribution of property, and inheritance laws do not apply in this case. However, if the will is invalid, inheritance laws will determine the property's distribution among legal heirs.

In the Amendment of 2005, Section 3 of the Hindu Succession Act of 1956 was removed, allowing women to seek partition within a house. However, it did not address whether a daughter has property rights after her father's death. This question is answered by the following case laws.

#### ***PRAKASH V. PHULVATI & ORS (2016)***

The Supreme Court’s ruling in the case of *Prakash v. Phulavati and Ors.*, it was said that the amendment Act of 2005 will come into effect only from 09-09-2005 and will have a

prospective effect. Hence, a daughter will be considered as a coparcener and have an equal share as a son in a Joint Hindu Family property.<sup>9</sup>

### ***DANAMMA V. AMAR (2018)***

The case of *Danamma v. Amar*, a two-judge bench, concluded that daughters are also entitled to a share in their father's property, despite their father dying before the date 09-09-2005. However, the ruling raised a conflict with the previously mentioned court judgments, which needed to be resolved.<sup>10</sup>

### ***VINEET SHARMA V. RAKESH SHARMA & ORS (2018)***

In order to resolve the conflicting judgments on the issue, a three-judge bench was convened. After hearing the case of *Vineet Sharma v. Rakesh Sharma & Ors.*, gave a clear interpretation of Section 6 of the Hindu Succession Act. The court said that section 6 gave daughters a birth right over their ancestral property, thereby granting her the status of a coparcener. It was also clarified that the father of the daughter does not have to be living on 9 September 2005, the date of the Amendment Act.<sup>11</sup> This is because the right of a coparcener is granted by birth, and the daughter's status as a coparcener is not affected by the death of her father prior to 09-09-2005.

## **IV. CONCLUSION**

Through this research, one can say that daughters, in ancient times, were never given their birth right to possess the land and that changed only recently through the Amendment Act of 2005 and the precedents set by the courts in the above-mentioned cases. But a question still persists, as, on one hand, it is clearly evident through Manusmriti, Mitakshara and Dayabhaga that daughters were recognised the same as sons and had the same value in the eyes of ancient laws as sons but on the other hand, they were not given absolute right over landed property, is it because land in that era had no commercial value and was only used for limited purposes such as farming and cattle grazing etc, and it did not come under the defined duties of women in general and hence, had no value for a daughter or is it actually discrimination? Or maybe

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<sup>9</sup> Prakash v. Phulvati & Ors, 2016, available at: [https://blog.ipleaders.in/daughters-right-property-depth-study-explained-landmark-judgements/#Prakash\\_and\\_Ors\\_v\\_Phulavati\\_and\\_Ors\\_2016](https://blog.ipleaders.in/daughters-right-property-depth-study-explained-landmark-judgements/#Prakash_and_Ors_v_Phulavati_and_Ors_2016) (Visited on May 17, 2023).

<sup>10</sup> *Danamma Suman Surpur v. Amar*, Civil Appeal Nos. 188-189 of 2018

<sup>11</sup> Prakash v. Phulvati & Ors, 2016, available at: [https://blog.ipleaders.in/daughters-right-property-depth-study-explained-landmark-judgements/#Prakash\\_and\\_Ors\\_v\\_Phulavati\\_and\\_Ors\\_2016](https://blog.ipleaders.in/daughters-right-property-depth-study-explained-landmark-judgements/#Prakash_and_Ors_v_Phulavati_and_Ors_2016) (Visited on May 17, 2023).

gradually, in due course of time, it changed from being of no value to a daughter to just being discriminatory! The answers lie in the past which may never see the light of day but one does not need to know the actual reasons for the existence of such ancient laws because it has been set right according to the current societal norms and values and just like any other law it has evolved to be just and fair with the current societal needs and moral dimensions. Though one can still argue that majority of daughters in India still may not know about their coparcenary right in the ancestral property and this amendment, this change needs to be promulgated amongst the Hindu Daughters and they shall be made aware of their rights. But as stated above some change is better than none and this issue may resolve sooner rather than later.