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Hindu Succession: Rights of Daughters and Children of Void Marriages

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Under modern **Hindu Succession: Rights of Daughters and Children of Void Marriages** have emerged as two of the most progressively litigated areas of inheritance law.

While the landmark 2005 amendment permanently secured coparcenary equality for daughters, recent landmark Supreme Court rulings have dramatically redefined the legal standing of children born from invalid relationships.

Part A: Rights of Daughters

Position under the Original 1956 Act

Under the Hindu Succession Act, 1956, a **daughter is classified as a Class I heir to her father's self-acquired property under [Section 8](#)** and thus receives equal share along with her siblings, mother, and widow when the Hindu male dies without a will.

But in original [Section 6](#), **the daughter was not treated as a member of the Mitakshara coparcenary, which means only male heirs are acknowledged as coparceners by birth.**

Thus, a son gets the right to ancestral property by birth, *whereas a daughter receives no right over ancestral property until the death of her father.*

Original [Section 23](#) further brought in a restriction. It prohibited female heirs to demand partition of a house until male heirs opted for its division and married daughter *could only live there if she was unmarried, deserted, separated, or widowed.*

The 2005 Amendment: Section 6

The Hindu Succession (Amendment) Act, 2005 has *replaced Section 6 effective from 9 September 2005. Section 6(1) makes a coparcener's daughter a coparcener right from birth with same rights and liabilities like that of a son.*

Section 6(2) says she owns the coparcenary property at the same time holding the same coparcenary ownership, and ***she has the power to transfer it through a will.***

Section 6(3) deals with a coparcener's death after the amendment. *The interest then devolves by testamentary or intestate succession rather than survivorship, and the property is treated as divided through a notional partition, with the daughter taking the same share as a son.*

Section 6(5) excludes **any partition effected before 20 December 2004, and the Explanation confines "partition" to a registered deed or a court decree.** The amendment also omitted Sections 23 and 24, which removed the dwelling-house restriction.

Judicial Interpretation

The Supreme Court, in the case of **Prakash v. Phulavati**, opined that the **amendments were to be applied prospectively, and thus, a daughter would have coparcenary rights only if her father was alive on 9th September 2005.**

In the subsequent case of **Danamma v. Amar**, the findings of the prior judgment were challenged, wherein it was held that **daughters would have a share regardless of the death of father before the amendment.** This created some conflict until the issue was finally settled by a three-judge bench.

In the case of **Vineeta Sharma v. Rakesh Sharma**, the court opined that the **coparcenary right of a daughter arises from birth itself, and therefore, does not depend upon the father being alive on 9th September 2005.**

It rejected the restrictive reasoning in **Prakash v. Phulavati**. Additionally, the court also ruled that no oral partition could defeat the daughter's claim unless there are *exceptional circumstances along with public documents supporting such partition.*

The Court, in its ruling of **Arunachala Gounder v. Ponnusamy**, extended the rights of women on the self-acquired property. It ruled that the **self-acquired properties of Hindu male and the properties obtained through or property he received on partition, devolves by inheritance and not by survivorship**, and a daughter inherits it in preference to collaterals.

The Court also applied this principle to a father who had died before 1956, relying on customary Hindu law. On the daughter's later death without issue, **Section 15(2)** sends the property back to her father's heirs.

Limit: Testamentary Freedom

A daughter's coparcenary right does not restrict a valid will. Section 30 of the Act lets a Hindu male dispose of his interest in Mitakshara coparcenary property by will.

Consequently, daughters benefit from the amendment only in cases of intestate succession, and they cannot challenge a validly executed will on the ground of their coparcenary status.

Part B: Children of Void and Voidable Marriages

Statutory Basis: Section 16, Hindu Marriage Act, 1955

According to [Section 11 of the Hindu Marriage Act](#), **certain marriages, including bigamous marriages and marriages that occur between sapindas or on the basis of prohibited relationships**, will become void. [Section 12](#) has laid down provisions for voidable marriages.

As a consequence, without any corrective provisions, children born out of such marriages would become illegitimate since their marriages are declared void under the statute. However, [Section 16](#) provides protection to the children.

Section 16(1) lays down that a child born out of a void marriage is a legitimate child regardless of whether a decree of annulment is obtained or not and whether the child is born before or after the enactment of the Marriage Laws (Amendment) Act, 1976 by virtue of the provisions of Section 16(2) the **illegitimate child of a voidable marriage that is annulled by a court will also enjoy the same status as a child from a void marriage.**

Section 16(3) provides that the **illegitimate child has rights in the property of the parents only** and he has no claim upon the property of any other person.

The Restrictive Line of Cases

For years, the Supreme Court read Section 16(3) narrowly. In [***Jinia Keotin v. Kumar Sitaram Manjhi***](#), the Court held that such a child could not claim ancestral or coparcenary property.

[***Bharatha Matha v. R. Vijaya Renganathan***](#), was in line with the above stated view and restricted the child from the parent's own outcome property.

In ***Revanasiddappa v. Mallikarjun***, the judges expressed doubts about this view, as Section 16(3) does not give the application 'property' an ancestral or self-acquired attribute. The judges turned to a higher bench on this issue.

Revanasiddappa v. Mallikarjun

The issue was resolved by a larger bench consisting of Chief Justice D.Y. Chandrachud, Justice J.B. Pardiwala as well as Justice Manoj Misra on 1 September 2023.

The court announced that the **child legitimized under Section 16(1) as well as 16(2) is entitled to receive his share from his parent's both own outcome property as well as ancestral or coparcenary property.**

The argument is based on the statement which states that *Section 16(3) does not differentiate types of properties and legislation intends to remove the stigma of illegitimacy.*

The Court then fixed two limits. First, such a child does not become a coparcener by birth in a Mitakshara joint family. Second, the child has no claim on the property of other family members, because Section 16(3) confines the right to the parents' property.

The Court harmonised the Hindu Marriage Act with the Hindu Succession Act through the notional partition in Section 6(3): the parent's share, carved out on that fiction, *becomes the parent's property from which the child inherits.*

Illustration: A, a member of a Mitakshara joint family with his brother B, dies leaving a legitimate son S and a child C from a void second marriage. On notional partition, A's share goes to S and C equally, assuming no other Class I heir. C takes nothing from B's share, and C cannot claim to be a coparcener.

Benefits Beyond Property

Courts have extended similar protection to service benefits. In ***Rameshwari Devi v. State of Bihar***, the Supreme Court held that *children of a void marriage are entitled to a share in the deceased government servant's family pension and gratuity*, while the second wife of the void marriage is not.

Relationship with the Mother

Section 3(1)(j) of the Hindu Succession Act, through its Explanation, treats illegitimate children as related to their mother and to one another. Therefore, such children inherit from the mother as Class I heirs, and the mother can inherit from them under Section 15. This rule applies even where Section 16 does not.