



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

VINEETA SHARMA v. RAKESH SHARMA & ORS. 2020

AUTHORED BY - JIYA SARKAR

2ND YEAR, BBA. LLB (HONS.)

Sister Nivedita University, Kolkata, West Bengal

ABSTRACT

This landmark judgment of the Hon'ble Supreme Court in Vineeta Sharma v. Rakesh Sharma and Ors. (2020), has settled an ongoing indecision surrounding certain coparcenary rights of daughters, in terms of Section 6 of the Hindu Succession Act, 1956 (amended in 2005). The court took the view that daughters have equal birth rights in HUF property and act in different capacities (daughter and coparcener) even if the father died before the amendment came into effect. The Court laid to rest conflicting judgments like Prakash v. Phulavati and Danamma v. Amar based on the definitions and constructions of Section 6 reiterating that the amendment operates retrospectively. The Court endorsed constitutional values of gender-equality under Article 14 by removing discriminatory qualifications based on marital status or whether the father was alive when the amending legislation came into effect, while also placing a higher burden of proof on oral partitions to curb misuse. This case comment critiques the factual background, legal reasoning, and socio-legal implications of the ruling keeping in view its effects on property law and inheritance disputes and ultimately the empowerment of Hindu women in India.

Keywords

Hindu Succession Act, 2005 Amendments; Coparcenary Rights; Gender Equality; Vineeta Sharma v. Rakesh Sharma; Oral Partition; HUF; Supreme Court of India; Section 6 HSA; retrospective operation; inheritance rights; women's property rights

INTRODUCTION

- **BRIEF SUMMARY:** The Vineeta Sharma v Rakesh Sharma case dealt with interpretation of the reformed Section 6 of the Hindu Succession Act, 1956, which had granted daughters coparcenary rights equally with sons. The amendment, effective from

9th November 2005 had created doubts on whether daughters who were born prior to 9th November 2005 would be able to claim this right and whether both father and daughter had to be alive in 2005 in order for the provision to apply.

Earlier decisions such as *Prakash v. Phulvati* and *Danamma v. Amar* differed on whether such rights were retrospective or prospective in nature. These were settled by establishing a three-judge bench to determine the proper interpretation of Section 6 and decide ancillary cases so that the law was consistent.

FACTS OF THE CASE

In this case the family consisted of, Shri Dev Dutt Sharma, his wife, one daughter, and three sons. The father passed away in 1999, and one son passed away unmarried in 2001.

The daughter, Vineeta Sharma, sought one-fourth property in the coparcenary property. The remaining family members contested her claim that the father passed away before the 2005 amendment and her marriage would also end her coparcenary right.

Vineeta Sharma sued her mother and brothers, insisting on coparcenary rights.

Controversial interpretations of the Hindu Succession Act, especially of the retrospective application of a daughter's coparcenary rights, arose in matters like *Prakash v. Phulavati*¹ and *Danamma v. Amar*.²

A three-judge bench was formed to decide these inconsistencies and offer a uniform interpretation of Section 6 in order to create a well-settled legal precede

LEGAL ISSUES

The Supreme Court addressed the following main legal concerns:

1. Whether the father (coparcener) must have been alive as of 9th November 2005 in order for the daughter to inherit coparcenary rights?
2. Whether daughters who were born before 9th November 2005 can claim equal rights and liabilities in a coparcenary?

¹ 2016 AIR SC 769.

²2018 AIR SC 721

3. Whether the "fiction of partition" brought about by the proviso to Section 6 of the Hindu Succession Act, 1956 led to actual partition or determined merely the share of a predeceased coparcener on a notional basis?
4. Whether the Section 6 amendment to the Hindu Succession Act, 1956, is retroactive, retrospective, or prospective?
5. Whether an oral partition after 20th December 2004 would be considered a legally recognized mode of partition under Hindu law?

• **CONTENTIONS/ARGUMENTS OF THE PETITIONER (VINEETA SHARMA) SIDE:**

1. Equal Coparcenary Rights from Birth:

- The petitioner contended that the 2005 amendment was retrospective and accepted an existing right of daughters, i.e., their coparcenary rights are available from birth, regardless of when their father passed away.
- As sons have always been coparceners by birth, to deny the same to daughters would be discriminatory and against Article 14 (Right to Equality) of the Constitution.

2. The Death of the Father Prior to 2005 Should Not Be Material:

- The petitioner argued that a daughter's coparcenary right is not contingent upon the survival of her father on 9th November 2005.
- Giving daughters equal status with sons in 2005, denying them rights simply because their father passed away prior to 2005 would go against the intention of gender equality under the amendment.

3. The Fiction of Partition Does Not Form an Actual Partition:

- The petitioner contended that the fiction of partition under the pre-amended Section 6 was only a legal fiction to ascertain the share of the father for the purpose of succession—it did not imply that there was an actual partition.
- If there was no actual partition, daughters must be given their legitimate share in the coparcenary property.

4. Oral Partition After 20th December 2004 Is Not Valid:

- The 2005 amendment only recognized registered or legally documented partitions in order to avoid fraudulent claims.
- Any partition made orally after 20th December 2004 should not be legally enforceable unless established with documentary evidence.

- **CONTENTIONS / ARGUMENTS OF THE RESPONDENTS (RAKESH SHARMA & OTHERS)**

1. Daughters Could Not Inherit If Father Died Before 9th November 2005:

- The respondents have taken support from the ruling in Prakash v. Phulavati (2016), holding that the father should have been alive on 9th November 2005 in order for the daughter to inherit coparcenary rights.
- They reasoned that the Hindu Succession Act, 1956, initially did not extend coparcenary rights to daughters, and the amendment introduced in 2005 cannot be applied to situations where the father was dead prior to the amendment taking effect.

2. The Amendment Should Not Be Retrospective:

- The respondents argued that the right over properties cannot be made retrospective so as to upset settled divisions or family settlements.
- They contended that acknowledging daughters' rights from birth would create legal uncertainty and undue litigation, upsetting Hindu Undivided Families (HUFs).

3. The Fiction of Partition Had Already Determined Inheritance Claims:

- The respondents asserted that the fiction of partition under the previous Section 6 resulted in an automatic partition at the death of the father.
- They asserted that if a father had passed away prior to 2005, his share had already been fixed and distributed among legal heirs, with no coparcenary property remaining for daughters to inherit.

4. Oral Partition Must Be Validated If Established:

- The respondents contended that oral partitions were an accepted and valid practice in Hindu families, particularly when performed in the presence of family elders and witnesses.
- They argued that prohibiting oral partitions on or after 20th December 2004 would unjustifiably deprive numerous families of genuine past arrangements.

JUDGEMENT

The Supreme Court judgment in Vineeta Sharma v Rakesh Sharma settled a number of important issues as far as coparcenary rights of daughters in Hindu joint family property are concerned. The court specified that joint Hindu family property is unobstructed heritage, where the right to partition is born. This implies that whether the father coparcener was alive or deceased on the date of the amendment to the Hindu Succession Act in 2005 is irrelevant to the

right of the daughter to inherit. The court held that the amendment making daughters equal coparcenary owners is retrospective, i.e., it takes effect from the date of birth of the daughter, not from the date of the amendment.

The Vineeta Sharma v Rakesh Sharma court also discussed the idea of notional partition, a term that refers to the fact that it does not lead to an actual partition of the property. Notional partition is a fiction legal concept employed to ascertain coparceners' shares in the coparcenary property and does not deprive the daughter of her share. The court made it clear that even when a preliminary decree for partition has been ordered, it is not final and can be altered in accordance with later events like the birth of a new coparcener or the death of one already in being.

To avoid fraud and misuse of partition, the court held that any partition from 20 December 2004 onwards would have to be genuine and registered or decreed by a court. Oral partitions cannot be relied upon as a defense unless coupled with cogent evidence like exclusive possession of family members, varying appropriation of income, entries in revenue accounts or other public records proving the partition.

The court in Vineeta Sharma v Rakesh Sharma explained that an oral partition could not be a defense unless it is established to be genuine through certain proof. Not all oral partitions are good, however, and the onus of proof is greatly on the defense. In order to prove an oral partition, one or more of the following pieces of evidence must be provided to the court:

- **Separate residence of family:** Members should be residing separately, meaning a break-up of the joint Hindu family prior to the partition.
- **Appropriation of income:** In case the family is separated and a partition has taken place, income should be appropriated otherwise or in the event of a business, the business must have been divided and distributed.
- **Entry in revenue records:** There must be adequate entries in revenue records establishing the separation of members of the family.
- **Other public documents:** A public document attesting to the partition having been actually effectuated is necessary. In its absence, a court will not accept an oral partition as valid to ensure daughters are not denied their equal rights by fraudulent partitions.

IMPACT OF THE JUDGEMENT

1. Gender Equality in Hindu Succession Laws:

- The judgment made daughters equal to sons in property of their ancestors, putting an end to discrimination.

2. Greater Legal Clarity:

- The decision gave absolute direction on the interpretation of the 2005 amendment, ending earlier inconsistencies.

3. Practical Challenges:

- Families may now be confronted with litigation on properties that were partitioned prior to this judgment.
- It can lead to greater litigation as daughters establish rights that were previously not recognized.

4. Effect on Hindu Undivided Families (HUFs):

- As daughters have obtained equal rights, HUF compositions can be altered, as women can now file for partition and claim their rightful share.

PERSONAL ANALYSIS

The Vineeta Sharma judgment is a forward-looking and long-overdue reform in Hindu succession laws. In declaring daughters as equal coparceners since birth, the Supreme Court did away with decades of gender discrimination that had deprived women of their rightful share in inheritance.

Why This Judgment Was Necessary?

Traditionally, Hindu personal laws have discriminated against male heirs, limiting the rights of women in family property. The 2005 amendment sought to rectify this legal imbalance, but divergent court interpretations had slowed its implementation. This judgment ends that confusion and ensures daughters are no longer excluded from their legitimate share.

Challenges in Implementation

Although the judgment is legally correct and socially equitable, it has the potential to pose practical challenges:

1. Increase in Family Conflicts:

- Property has already been partitioned or sold in many families without daughters' rights. The judgment can revive old disputes over inheritance, and there can be long litigation.

2. Burden of Proof in Oral Partitions:

- The Court made oral partitions after 20th December 2004 dependent on cogent evidence, but most families might not have documented evidence of earlier property partitions.
- This might lead to actual partitions being questioned, leading to legal uncertainty and delay.

3. Financial and Legal Consequences for HUFs:

- Hindu Undivided Families (HUFs) might have to alter their property and tax planning strategies since daughters can now seek partition.
- This judgment could affect patterns of property ownership, business structures, and financial planning within joint Hindu families.

Balancing Gender Equality with Practical Realities

Though the judgment is a big stride towards gender justice, courts should deal with ensuing conflicts with care to see that:

- True family divisions are not unnecessarily interfered with.
- Rights of daughters are maintained without unjustly punishing other legal heirs.
- Legal services are extended to women who had no knowledge of their rights.

CONCLUSION

The Vineeta Sharma judgment is a forward-looking and long-overdue judicial correction that does away with gender discrimination in Hindu succession law. Although implementation challenges persist, its effect ensures daughters are no longer discriminated against in inheritance claims, aligning India's property laws with contemporary constitutional and human rights norms.

REFERENCES

1. INDIAN KANOON [Vineeta Sharma vs Rakesh Sharma on 11 August, 2020](#) (last visited 30/5/25)
2. LAW BHOOMI [Case Study: Vineeta Sharma v. Rakesh Sharma](#) (last visited 30/5/25)

3. [CASE COMMENT ON VINEETA SHARMA V. RAKESH SHARMA - The Amikus Qriae](#) (last visited 30/5/25)
4. AEQUITAS VICTORIA, <https://www.aequivic.in/amp/aijacla-vineeta-sharma-v-rakesh-sharma> (last visited 30/5/25)
5. IPLEADERS, <https://blog.ipleaders.in/case-analysis-vineeta-sharma-v-rakesh-sharma-others-along-7-matters/> (last visited 30/5/25)
6. Legal WIRES [Case Study: Vineeta Sharma v. Rakesh Sharma](#) (last visited 30/5/25)

