RELINQUISHING A MINOR'S SHARE IN DEVOLVED PROPERTY: A CASE COMMENT ON M. ARUMUGAM V. AMMANIAMMAL

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In order to protect minors' rights in their property, the Hindu Minority and Guardianship Act was introduced in 1956. At the same time, the Hindu Succession Act was introduced to provide inheritance rights to women. In 2005, the Hindu Succession Act was amended to give daughters rights with respect to ancestral property by making them coparceners, placing them on the same footing as sons. The combined effect of these two legislations was that a minor daughter's share in the ancestral property was protected. However, in 2020, the Supreme Court in M. Arumugam v. Ammaniammal dissolved this protection. The court allowed a minor daughter's share to be relinquished in favour of her two brothers through a release deed which was signed by her mother. This paper argues that this position is not only unsound in law, but also goes against the interests of justice.

First, the paper argues that the nature of property upon devolution was as a separate property, and the natural guardian was the representative of the minor. However, the representative did not have the right to sign the release deed because prior sanction was not taken from the court, which is a statutory requirement, and in any case, the relinquishment was neither for evident benefit nor legal necessity. Second, even if the property is considered to be coparcenary property, neither the Karta nor the natural guardian of the minor could have relinquished the property; the Karta can represent a minor's interest in coparcenary property to the outside world only, and the natural guardian cannot represent a minor's interest in coparcenary property at all. Thus, within the coparcenary, neither the Karta nor the natural guardian can represent the minor, because it goes against fiduciary principles.

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INTRODUCTION

After the death of an intestate property holder, family members of the property-holder have a right to succeed to the property. Vedic literature prescribed inheritance rights only to unmarried daughters and married daughters with no brothers.[1] Married daughters with brothers were not given any inheritance rights. Over time, it became a societal belief that women could inherit only in the absence of male heirs.[2] However, the Hindu Succession Act, 1956 (**Succession Act**) provides daughters of the deceased the same right to inherit as sons.[3] In 2005, the Succession Act was amended to give daughters rights with respect to ancestral property by making them coparceners, placing them on the same footing as sons. Despite statutory protection, societal beliefs still persist. To protect minors' rights over their property, the Hindu Minority and Guardianship Act, 1956 (**Guardianship Act**) imposes a mandatory requirement of sanction by the court, before the property of a minor can be mortgaged, sold, or exchanged

[1] Rigveda, II, 17,7 - "Amuja, who lived her whole life at her parents' house, generally demanded and got a share of the ancestral property for inheritance".
[2] Prakash Chand Jain, *Women's Property Rights Under Traditional Hindu Law and The Hindu Succession Act, 1956: Some Observations*, 45(3) JOURNAL OF THE INDIAN LAW INSTITUTE 509 (2003).
[3] § 6, Hindu Succession Act, 1956.

among other things.[4] Thus, the Succession Act protects daughters' inheritance rights in ancestral property, and the Guardianship Act protects the alienation rights of minor daughters.

When society holds strong beliefs, the mere introduction of legislation contrary to these beliefs may not be enough to change them, and people find ways to evade the law. Thus, the judiciary has to ensure strict compliance with reformist legislations. To displace the strong patriarchal beliefs that resulted in minor daughters not receiving their fair share in the property of their ancestors, the Succession Act and the Guardianship Act were introduced. However, society has held on to its patriarchal beliefs, and families evade their responsibility to bestow minor daughters with their share of property. For example, the practice of 'haq tyag' (literally translated as 'sacrifice of rights') is undertaken by many women to waive their property rights in favour of their brothers in Rajasthan, Haryana and other parts of north India.[5] In situations where people attempt to evade the law, the judiciary must ensure that legislations are complied with and that minor daughters receive their share of the property.

However, in *M. Arumugam v. Ammaniammal* (**Arumugam**) the judiciary failed to ensure such strict compliance. In *Arumugam*, the right of a minor daughter in her intestate father's property was considered to be relinquished to her two brothers through a release deed signed by the mother on her behalf.[6] Allowing guardians to relinquish a minor's property raises grave concerns. Such relinquishment may dissolve all rights that the minor has in the property. This is especially detrimental for minor daughters, who are more likely to lose their property rights because of strong patriarchal beliefs. Thus, it impedes the reform that the Succession Act and Guardianship Act intended to introduce.

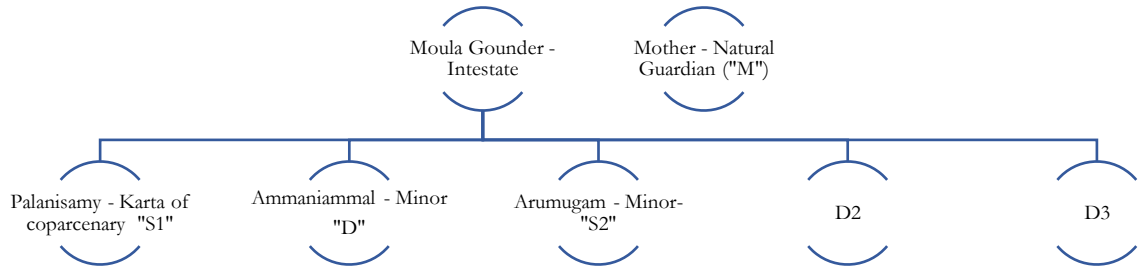
This paper argues that when property devolves to a minor upon the death of an intestate ancestor, the property devolves as a separate property and cannot be relinquished by the natural guardian or the Karta. In doing so, I argue that the position laid down in *Arumugam* is not legally sound. *First*, even though the court rightly held that the natural guardian has the power to represent the minor's separate property, it erred in holding that the natural guardian has the power to relinquish the minor's property; *second*, even if it is assumed that the devolved

[4] § 8, Hindu Minority and Guardianship Act, 1956.
[5] *See*, Rina Chandran, *Forced By Tradition To Give Up Inheritance, Indian Women Court Property Ownership*, LIVE MINT, 3 November 2016, https://www.livemint.com/Politics/IblyPUxBjkNJAIpYrdhSgK/Forced-by-tradition-to-give-up-inheritance-Indian-women-cou.html (last visited 4 October 2020). I would like to thank the anonymous peer reviewer for their kind suggestion with respect to this example.
[6] M. Arumugam v. Ammaniammal, 2020 SCC OnLine SC 15.

property is a coparcenary property, neither the Karta nor the natural guardian has the power to relinquish it, due to their fiduciary duties.

I. THE NATURAL GUARDIAN CANNOT RELINQUISH A MINOR'S SHARE IN A SEPARATE PROPERTY

Ammaniammal (**D**) was the daughter of an intestate who had died in 1971 leaving behind six heirs – his widow, two sons, and three daughters. Thus, the property was to devolve to the heirs of the deceased according to the Succession Act. The proviso to Section 6 of the Succession Act (prior to the amendment made in 2005) states that interest in coparcenary property devolves through succession to female relatives specified in Class 1 of the Schedule to the Succession Act.[7] This Schedule includes daughters of the deceased,[8] and thus, on application of this law, the property should devolve upon all six heirs.



However, the two sons claimed that D's right in the ancestral property was relinquished through a release deed. This release deed was signed by their mother (**M**) who was the natural guardian of the minor D when the deed was executed. Arumugam (**S2**), the younger son of the intestate, was also a minor at the time of execution. Palanisamy (**S1**), the elder son of the intestate, was the Karta of the joint family. Two questions arise here: *first*, regarding nature of the devolved property; and *second*, regarding the powers of the representative of the minor's

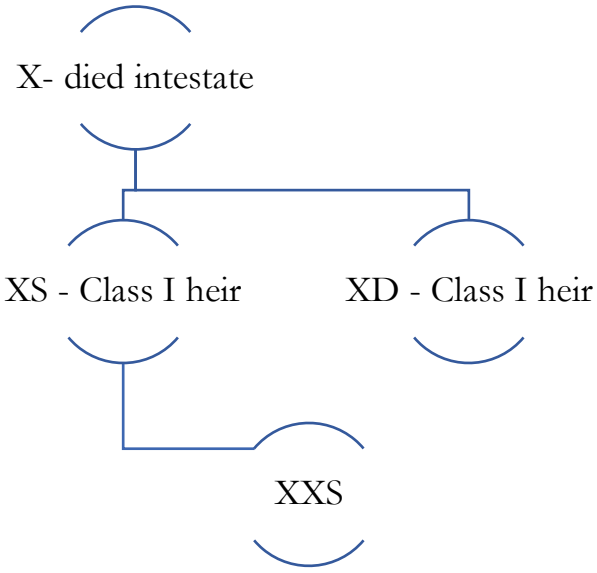
[7] § 6, Hindu Succession Act, 1956.
[8] Schedule, Hindu Succession Act, 1956

property. This paper agrees with the court that it is a separate property, but disagrees on the second question, arguing that the natural guardian cannot relinquish minor's property.

A. Characterization as Separate Property

Regarding nature of the property, the Supreme Court held that post-succession, the heirs have separate shares in the property as opposed to coparcenary interests.[9] The Supreme Court and different high courts have previously arrived at the same conclusion that property devolves in the form of separate property, based on the adverse consequences of considering the devolved property to be coparcenary property.[10]

To understand the consequences, consider the following example. A property holder (**X**) dies intestate leaving behind a son (**XS**), a daughter (**XD**) and a son's son (**XSS**). In this example, the property would devolve upon the son XS and the daughter XD on application of Section 6 of the Succession Act, as both of them are Class I heirs.[11] However, the son's son XSS would not be eligible to inherit as he is not a Class I heir.



If the devolved property is considered to be coparcenary property, other members of XS's coparcenary, including XXS, would become entitled to share in XS's devolved-property. According to Mitakshara law, the right of the son's son can arise only at the time of the son's

[9] M. Arumugam v. Ammaniammal, 2020 SCC OnLine SC 15.
[10] Appropriate Authority (IT Deptt) v. M. Arifulla, (2002) 10 SCC 342; Commissioner of Wealth Tax, Kanpur v. Chander Sen, 1986 SCC 3 567; Additional CIT v. P.L Karuppan Chettiar, 1978 114 ITR 523 Mad; Shrivallabhdas Modani v. CIT, 1982 138 ITR 673 MP; Addl. CIT v. P.L. Karuppan Chettiar, [1978] 114 ITR 523 [FB].
[11] § 6, Hindu Succession Act, 1956.

son's birth,[12] in this case XSS's birth. However, in this scenario XXS's right arises at the time of X's death. Thus, if the property post-devolution is considered to be coparcenary property, it would violate the principles of Mitakshara law. Second, the Succession Act does not obligate the son, in this example XS, to share the property with members of his coparcenary. However, treating the devolved property as coparcenary property would obligate the son to share the devolved property with other members of his coparcenary. Thus, if the property was construed to be coparcenary property, the shares of other members of the coparcenary would act as a limitation on the son's share in the devolved property.[13] Therefore, even though XXS would not have been entitled to a share in X's devolved property on application of Section 6 and Section 8[14] of the Succession Act, considering X's devolved property to be coparcenary property, would entitle XXS to a share in XS's part of X's devolved property.

On the other hand, when the property is considered to be separate property, neither Mitakshara law nor the provisions of the Succession Act are violated. Firstly, Mitakshara law is not violated as the rights of the son's son, in this example XXS, do not arise at any time other than birth because the son's son does not get any share in the devolved property at all. Secondly, the provisions of the Succession Act are not violated, as a separate property is not shared with the coparcenary or used for the benefit of the coparcenary. Thus, it does not impose any limitation on the son's share in the property. Therefore, since the consequence of considering the devolved property to be coparcenary property is in violation of Mitakshara law and the Succession Act, devolved property should be considered to be separate property.

Prior to this case, courts had not considered the direct application of provisions regarding the nature of property.[15] Section 19 of the Succession Act provides that in cases where two or more heirs succeed to the property together, they take it as tenants-in-common.[16] This means that the property devolves as the separate property of the heirs and not as interests in the coparcenary property.[17] Although there is an explicit provision stating the nature of devolved property to be separate property, courts arrived at their findings through

[12] Commissioner of Income Tax, U. P. v. Ram Rakshpal, Ashok Kumar, 1966 SCC OnLine All 429.
[13] *Id.*
[14] Section 8 provides the order of succession for the property of a male Hindu dying intestate. It shall devolve firstly, upon the heirs, being the relatives specified in class I of the Schedule—which includes the sons; but does not include son's son, unless the son is predeceased.
[15] Even though this provision was considered in Commissioner of Wealth Tax, Kanpur v. Chander Sen, 1986 SCC 3 567, it was not directly applied to arrive at the conclusion.
[16] § 19, Hindu Succession Act, 1956.
[17] Radhey Shyam Sri Krishna v. Commissioner, 1978 SCC OnLine All 80; Venkatesh Emporium v. Commissioner of Income Tax, 1981 SCC OnLine Mad 335.

consequential reasoning. Using consequences to arrive at the conclusion that devolved property must be considered separate property has caused some High Courts to reach a contrary outcome in the past.[18] For example, in *CIT v. Dr. Babubhai Mansukhbhai*, while noting that the scheme of Hindu law prior to the Succession Act was such that the property devolved as coparcenary property, and not separate property, it was held,

> "*It is impossible to read into the words of any provision which interferes with the scheme of Hindu law as it prevailed prior to the enactment of the Hindu Succession Act. Neither Section 6 nor Section 8 nor Section 30 affect this principle of Hindu law as to in what capacity or in what character the son would enjoy the property once he received it from his father in succession*".

As this position has been settled on the basis of the direct provision in the *Arumugam* decision, any digression can hopefully be avoided in the future. However, as is argued in the next parts, this is the only correct contribution of the judgment.

B. Limited Powers of the Natural Guardian

Regarding the second question, the Supreme Court in *Arumugam* held that the natural guardian could relinquish the minor's share in property. I argue that this conclusion is incorrect. The Hindu Minority and Guardianship Act, 1956 provides that after the father, the mother automatically becomes the natural guardian.[19] Thus, in *Arumugam*, M is the legal representative of both D's and S2's shares in the devolved property.

The natural guardian of the minor has limited powers in representing the minor in transactions related to the minor's estate. Section 8 of the Guardianship Act provides that the natural guardian is entitled to carry out all acts "for the realization, protection or benefit of the minor's estate".[20] A two-level protection is laid down for the same.

First, the natural guardian cannot "*mortgage or charge, or transfer by sale, gift, exchange or otherwise*" the property of the minor without the prior sanction of the court.[21] The use of the term "otherwise" implies that it is an inclusive provision. To ascertain what may be

[18] CIT v. Dr. Babubhai Mansukhbhai, [1977] 108 ITR 417; Ayodhya Sah v. The Joint Director of Consolidation, AIR 1992 Pat. 97.
[19] § 6, Hindu Minority and Guardianship Act, 1956; Minor Mahema v. E.K. Lingamoorthy, 2014 SCC OnLine Mad 8891.
[20] § 8(1), Hindu Minority and Guardianship Act, 1956, 1956.
[21] *Id.*

included by the virtue of the term "otherwise", tools of statutory interpretation may be employed. Ejusdem generis, a rule of statutory interpretation employed by Indian courts in interpreting inclusive provisions,[22] suggests that when there is a general term followed by specific terms, the general term must include specific terms of a similar nature. "Otherwise" is a general term in Section 8 that may be extended to include specific terms similar to "sale", "gift" or "exchange". "Relinquish", which means giving up rights in the property, is of a similar nature to gifting or exchanging the property.[23] Thus, even though "relinquish" is not explicitly mentioned in the provision, on application of ejusdem generis, "relinquish" can be read into this provision. Before the introduction of the Guardianship Act, when statutory provisions were not applicable, courts have held that the guardian does not have the power to relinquish a minor's right in her separate property.[24] Since "relinquish" can be read into Section 8 of the Guardianship Act, the natural guardian cannot relinquish the property of the minor without prior sanction from the court. Such an interpretation is also necessary in order to protect the rights of minor daughters. If such an interpretation is not adopted, it would allow the natural guardian to simply evade the application of Section 8 of the Guardianship Act. Thus, any contrary interpretation defeats the purpose of Section 8 of the Guardianship Act, which was to displace patriarchal societal beliefs discouraging the proper devolution of property to minor daughters.

Second, pursuant to Section 8(4), the court is allowed to sanction acts done only "in case of necessity or for an evident advantage to the minor".[25] The role of the court is one of *parens patriae*; the court must examine all the property-related transactions of a minor to ensure that they are in the minor's best interest. This is because minors do not have the access or means to protect themselves from disadvantageous situations. Therefore, to ensure equity, it is imperative for the courts to act as 'parents' of the minors to protect them. Section 8(4) lays down guidelines for the court to decide in which cases sanction to gift, exchange or, as established, relinquish the property can be granted. Relinquishing the minor's property, which entails giving up the minor's rights in a property without any monetary return, can neither be

[22] Rajasthan SEB v. Mohan Lal, (1967) 3 SCR 377; Gaurav Aseem Avtej v. U.P.State Sugar Corporation Ltd, 2018 Indlaw SC 226.
[23] PARAS DIWAN, LAW OF ADOPTION, MINORITY, GUARDIANSHIP AND CUSTODY (5th edn, Lexis Nexis 2016).
[24] *Id. See also* Rangaswami Iyer v. Marappa, AIR 1952 Mad 30; Rama Sethi v. Ibbaba Sethi, AIR 1954 Mys 56; Binda Kuer v. Lalita Pd., AIR 1936 PC 304.
[25] § 8(4), Hindu Minority and Guardianship Act, 1956.

a necessity nor for the advantage of the minor.[26] Thus, the court could not have granted sanction to relinquish the property either.

In *Arumugam*, the Supreme Court did not consider that M could not have relinquished D's right in the devolved property without prior sanction from the court. Additionally, had there been an attempt at receiving the court's sanction, the court would have been averse to granting a sanction, because, as argued, there can be no legal necessity or evident advantage to the minor in relinquishing their property. Thus, the registered deed was voidable at the instance of minor.[27]

II. NEITHER THE KARTA NOR THE NATURAL GUARDIAN CAN RELINQUISH MINOR'S INTEREST IN COPARCENARY PROPERTY

In the second part of the judgment, the Supreme Court held that even if the property was coparcenary property, the natural guardian was the correct representative. This was because the deed was in favour of the Karta, and the Karta could not have signed the deed due to a conflict of interest.[28] However, assuming that the property devolved is a coparcenary property,[29] I argue that neither the Karta nor the natural guardian can relinquish a minor's share in coparcenary property on her behalf, because neither the Karta nor the natural guardian have the legal power to do so, and such an act would be contrary to the principle of fiduciary duties.

A. Neither the Karta nor the Natural Guardian Have the Power to Relinquish the Minor's Share

There is a statutory bar prohibiting a natural guardian from representing a minor in her undivided share in joint family property.[30] Coparcenary property is represented by the Karta. However, such representation by the Karta is limited to the outside world.[31] This means that the Karta is not the representative for transactions within the coparcenary. In *Arumugam*, S1 was the oldest male in the coparcenary, making him the Karta. However, since the transaction was within the members of the family, S1 could not have represented D.

[26] Rama Sethi v. Ibbaba Sethi, AIR 1954 Mys 56; Binda Kuer v. Lalita, AIR 1936 PC 304.
[27] Saroj v. Sunder Singh, (2013) 15 SCC 727.
[28] M. Arumugam v. Ammaniammal, 2020 SCC OnLine SC 15.
[29] CIT v. Dr. Babubhai Mansukhbhai, [1977] 108 ITR 417; Ayodhya Sah v. The Joint Director of Consolidation, AIR 1992 Pat. 97; Ammaniammal v. M. Palanisamy, 2008 SCC OnLine Mad 532.
[30] § 8, Hindu Minority and Guardianship Act, 1956.
[31] Ahuja v. Rameshwarlal, AIR 1971 Raj 269; Fathamunnisa Begum v. Rajagopalacharilu, AIR 1977 AP 24; DINSHAH FARDUNJI MULLA AND SATYAJEET ATUL DESAI, MULLA HINDU LAW (21st edn. Lexis Nexis).

In any case, there are certain limits on the representative functions of a Karta.[32] A Karta can alienate coparcenary property in only three cases – necessity in legal terms, for the estate's benefit, and religious or charitable obligations.[33] If a Karta alienates the coparcenary property in any other case, especially if it is in his own interest, the Karta is obligated to reimburse the members of the coparcenary.[34] As argued previously in this paper, relinquishing the property, which is giving up the property without monetary return, cannot be for the legal necessity or benefit of the minor.[35] Relinquishing the property to the two brothers is not a religious or charitable obligation. Therefore, neither the Natural Guardian nor the Karta could have acted as the minor's representative or relinquished her share in the property.

B. Fiduciary Duty of the Representative

Since neither the natural guardian nor the Karta can represent the minor within the coparcenary, it may seem like there is a lacuna in the law. However, this is not so; the Karta and the natural guardian cannot represent the minor's interest within the family because they are bound by fiduciary principles.[36] Fiduciary principles assume that the representative of a property will act in a prudent manner.[37] Within a family, the term "prudent manner" indicates that representatives should act equally and loyally towards all members.[38] However, actions of representatives within a family may be guided by subconscious emotive notions, including those built by society. This is exactly what ensued with the release deed in the *Arumugam* case. Relinquishing the shares of all the daughters and the mother in favour of the two sons shows that the mother did not act equally towards all her children. These actions indicate conformity to the societal belief that women should inherit property only in the absence of male heirs. Thus, to avoid situations where societal notions affect the decisions of members within a family, neither the Karta nor the natural guardian can represent a minor within the family.

The question still remains as to who can represent a minor within the family, in case of a legal necessity. When the property is a part of a coparcenary, the interests in the property are

[32] POONAM SAXENA, THE FAMILY LAW LECTURES: FAMILY LAW II, Ch 8 (LexisNexis Butterworths. 2004).
[33] *Id.*
[34] JOHN D. MAYNE, A TREATISE ON HINDU LAW AND USAGE 308 (5th edn, Higginbotham Madras).
[35] Rangaswami Iyer v. Marappa, AIR 1952 Mad 30; Rama Sethi v. Ibbaba Sethi, AIR 1954 Mys 56; Binda Kuer v. Lalita, AIR 1936 PC 304.
[36] EVAN J. CRIDDLE, PAUL B. MILLER, ROBERT H. SITKOFF, THE OXFORD HANDBOOK OF FIDUCIARY LAW 637 (OUP 2019).
[37] Elizabeth S Scott and Ben Chan, *Fiduciary Principles in Family Law*, COLUMBIA FACULTY SCHOLARSHIP (2016) https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3087andcontext=faculty_scholarship> (last visited 30 March 2020).
[38] *Id.*

not crystalized with different members of the coparcenary.[39] It remains as a single whole. Thus, even in case of legal necessity or evident advantage, since the share is not crystalized with the minor, the specific portion of a minor's property cannot be ascertained. Therefore, if there is a transaction concerning the coparcenary property or a part of it, the transaction is only of proportionate interests of different members and not the minor's interest specifically.[40]

A transaction specifically in relation to the minor's share in a coparcenary property would require the crystallization of the shares of the members of the coparcenary.[41] To crystalize the shares, the coparcenary must be partitioned. Once the coparcenary property is partitioned, it becomes a separate property of the minor,[42] in which case the statutory bar on the natural guardian's power to represent the minor is elevated, as it does not remain coparcenary property. Thus, a transaction in relation to the minor's specific interest in the coparcenary property is not possible, and upon partition, the natural guardian can represent the minor's share in the separate property. Therefore, there is no lacuna in the law.

CONCLUSION

The property rights of minor daughters were protected by the virtue of the Succession Act and the Guardianship Act. This protection was necessary, considering the vulnerable position of minor girls in society. In *Vineeta Sharma v. Rakesh Sharma*, the Supreme Court has declared that daughters have the same right to inherit ancestral property as sons do, and the right to ask for a partition of the coparcenary property, irrespective of whether the father is alive or not.[43] However, this right that has been widely celebrated[44] has no protection as per the position of law laid down in *Arumugam*. Even though the right to inherit property was provided through the decision in *Vineeta Sharma v. Rakesh Sharma*, the same right can now be relinquished by the natural guardian.[45] It appears that on the one hand, the Supreme Court has tried to protect women's rights through the decision in *Vineeta Sharma v. Rakesh Sharma*, while on the other hand, it has dissolved and diluted those rights through its decision in *M.*

[39] JOHN D. MAYNE, A TREATISE ON HINDU LAW AND USAGE 221 (5th edn, Higginbotham Madras).
[40] *Id*. at 221.
[41] JOHN D. MAYNE, A TREATISE ON HINDU LAW AND USAGE 249 (5th edn, Higginbotham Madras).
[42] *Id*. at 221.
[43] Vineeta Sharma v. Rakesh Sharma, 2020 Indlaw SC 412.
[44] Poornima Advani, *A Giant Step To Address Gender Injustice*, https://www.livemint.com/opinion/online-views/a-giant-step-to-address-gender-injustice-11597478771696.html (last visited 3 October 2020); Arshita Aggarwal, *Towards Gender Equality*, THE HINDU, 6 September 2020, https://www.thehindu.com/opinion/open-page/towards-gender-equality/article32530848.ece (last visited 3 October 2020).
[45] I would like to thank the anonymous peer reviewer for inspiring me to link this judgment with the Vineeta Sharma v. Rakesh Sharma judgment.

Arumugam v. Ammaniammal. Thus, the societal beliefs that ought to have been transformed by the law have instead transformed the law to align with them.

The nature of property that devolves upon Class I heirs upon the death of an intestate ancestor is of a separate property. While the Supreme Court's decision is correct in this regard, its conclusion with respect to the relinquishment of the minor's right is incorrect, as pursuant to Section 8 of the Guardianship Act, prior sanction of the court was not taken.

Even if the property devolved as a coparcenary property, neither the Karta nor the natural guardian can relinquish the minor's property. While a natural guardian cannot represent the minor in case of undivided interest in coparcenary property altogether, the Karta can represent the minor to the outside world only. The representation of a minor's property by the Karta within the family is against the Karta's fiduciary duties.

In addition to the legal inconsistencies examined in this paper, the Supreme Court did not consider that the natural guardian, the mother, did not represent the other minor, her son S2, in the release deed; instead, S1, the Karta, represented S2, even though it was a separate property. Since only natural guardians can represent minors in case of separate property, the deed itself was invalid.

Thus, the Supreme Court's decision on both the point discussed in this paper is incorrect. The position of law laid down by the Supreme Court in the case is bad in law and against the interests of justice.