

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

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Critical Analysis of the Changes brought by 2005 Amendment of Hindu Succession Act

PRATEEKSHA K N¹

ABSTRACT

For decades and centuries, women have had no kind of share or ownership in father's property because of the domination of men in succession. With the codification of Hindu Succession Act, 1956 and later the Amendment Act of 2005, this disparity between males and females have been done away with. This paper has made an attempt to review and analyse the changes brought by the Amendment Act particularly and to what extent it has been successful in eradicating the notable discrimination of women's rights in property. It has also made an effort to understand the intention of the legislatures in bringing about this amendment with the help of judicial interpretations.

Keywords: Amendment Act, Judicial interpretation, Review, Succession, Women.

I. INTRODUCTION

The main object behind the 2005 amendment of the Hindu Succession Act was to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of the ever-increasing spate of legislation, and to remove confusion from the public mind². The Hindu Succession Act of 1956 aimed at codifying the law relating to intestate succession among the Hindus, Jains, Buddhists and Sikhs. It brought about changes to the rights of succession with respect to women's property which was not known until then. With the amendment enforced on 9th September 2005, the scope of these rights widened and the secondary position of the women was changed and they were treated equally to that of male's rights in property. A number of judicial pronouncements aided in determining the equal status of women's interest over the ancestral property which will be discussed later in detail.

History of Hindu Succession Act, 2005

The Act of 1956 was enacted by acknowledging the fact that women's rights are important as enshrined under Article 14 & 15 of the Indian Constitution and no personal laws can override that. It brought about changes to woman's greater property rights which meant she now had full

¹ Author is a student at Christ (Deemed to be University), Bengaluru, India.

² Krishnaprasad, "equal rights of daughters to ancestral property remains :HC", Dt 1st Oct (2015)

ownership rights over limited rights in the property she inherited. Section 6 of the Act dealt with devolution of interest in a Mitakshara coparcenary property and Section 8 dealt with the devolution of interest of male Hindu itself.

The provision regarding succession under the Hindu Code Bill, as originally framed by the B.N. Rau Committee and piloted by Dr. Ambedkar, was for abolishing the Mitakshara coparcenary with its concept of survivorship and the son's right by birth in a joint family property and substituting it with the principle of inheritance by succession³. These proposals had met with a storm of conservative opposition from the majority of the Constituent Assembly and Mitakshara coparcenary was forced to be retained in the Act with males as coparceners⁴. Hence, the Act still followed the rule of survivorship except where the deceased had left behind a surviving female relative under Class 1 of Schedule 1 or a male relative specified in that Class who claims under such a female relative, the interest shall devolve by testamentary or intestate succession⁵.

This indicates that the devolution by survivorship still had a place in the Act with respect to the deceased coparcener's interest coupled with the notional partition to ascertain the interest of the deceased in a Mitakshara coparcenary, therefore it is evident that there was no disruption in the entire coparcenary as contemplated by the legislators.

II. 2005 AMENDMENT ACT

The Amendment Act of 2005 was brought about after the recommendations made by 174th Law Commission Report considering the glaring discrimination that existed in the previous legislation Act of 1956. Property rights have been denied to women since time immemorial due to the traditional concept of Mitakshara coparcenary. It was time for this gender bias to be eradicated by giving the daughters of the Joint Hindu Family the same birth rights as that of sons in coparcenary and the property previously governed by the Mitakshara Law will now devolve by testamentary or intestate succession, not by survivorship retaining the conception of notional partition. Some of the statutory provisions which were amended in the Hindu Succession Act, 2005 are discussed in the following paragraphs.

Section 4(2) of the 1956 Act was omitted which provided an exception for agricultural property and since the provision regulated by State laws resulted in bias against women obscuring their right to empowered use of agricultural land. It was the first major step towards ensuring the

³ The Constituent Assembly of India, (Legislative) Debates Vol. VI 1949 Part II

⁴ *ibid*

⁵ Proviso to Section 6 of the 1956 Act (Before 2005 Amendment)

attainment of equality.

The restructuring of Section 6 of the Act resulted in daughters becoming coparceners by birth and acquiring all rights and liabilities in the same manner like a son. Added that this section will nowhere affect any disposition or alienation including any partition of property effected before 20th December 2004. A Hindu's property who dies intestate will now devolve by testamentary or intestate succession under this Act thereby completely eliminating the rule of survivorship. The provision of Section 6(4) was not applicable in case the debt was contracted before the commencement of the Act thereby making this amendment inapplicable for partitions taking effect before 20th December 2004⁶.

Section 23 was omitted as it disentitled female heirs from seeking partition of dwelling house until male heirs chose to divide. Further, Section 24 was also omitted which discriminated against three category of women, namely widow of the predeceased son or the widow of the predeceased son of the predeceased son or widow of the brother who shall not be entitled to succeed to the property if she was remarried when the property opened up for succession⁷. Under Section 30 of the Act, the words 'disposed by him' was substituted with 'disposed by him or by her' making it gender-neutral according to the objective of the Act.

III. JUDICIAL PRONOUNCEMENTS

The enactment of the amendment brought a lot of chaos and confusion with respect to its implication and how it would affect the women's right of property which was later on cleared with the help of judicial interpretations. The major question to be determined was whether the daughters born prior to the Amendment Act of 2005 hold an interest in the coparcenary property or not. In other words, if this amendment had retrospective or prospective application. In the case of *Vaishali Satish Ganorkar & Anr. v. Mr. Satish Kesharao Ganorkar & Ors.* AIR 2012, Bom 101, the Bombay High court held that the Hindu Succession amendment will not apply unless the daughter is born after 2005. But on this aspect a different view has been taken in the later larger Bench Judgment so court specifically focused on that is required the daughter should be alive & her father also be alive on the date of the amendment⁸.

In *Badrinarayan Shankar Bhandari v. Om Prakash Shankar Bhandari* AIR 2014 Bom 151, the court observed that there are two prerequisite conditions, firstly, the daughters must be alive

⁶ Shital Kharat, Effect of the Hindu Succession (Amendment) Act 2005 – Judicial Response, SSRN, Feb 11, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2912662

⁷ *ibid*

⁸ *Vaishali Satish Ganorkar v. Satish Kesharao Ganorkar* AIR 2012, Bom 101

on the date of enforcement of the Amendment Act, i.e, 9th September 2005 in order to claim benefit under Section 6. Secondly, the property must be available as coparcenary property on the date of the enactment of the amendment. It was further held that the amendment was retroactive in nature and that will be applicable to all daughters born prior and after 17th June 1956 but before 9th September 2005⁹.

This view of amendment was upheld in the case of Pushpalatha N. v/s V. Padma AIR 2010 Kar 124 following the above reasoning, that is, to ensure the best interests of the daughter. The Karnataka High Court stated that the amendment is retroactive in its operation. The status of a coparcener is conferred on the daughter on the date of commencement of the Amendment Act of 2005 and the right is given to her by birth. Hence, to be eligible under the amended section, she should have been born after the 17th June 1956. In other words, a woman is conferred with coparcener status by birth provided she was born after the Hindu Succession Act 1956 came into force¹⁰.

But in *Prakash & Ors. v. Phulavati & Ors.* 2015 SCC Online SC 1114, The apex court drew the distinction between the Section 6 of Hindu Succession Act and the Amendment Act and said that even after that act expressly not mentioning the retrospective application, it would not be appropriate to consider it as social legislation and apply it retrospectively. Furthermore, it was added that the Amendment can be applied to the daughters, whose father was living coparcener as of 9th of September 2005, regardless of when the daughters are born¹¹.

Nonetheless, it was in *Vineeta Sharma v. Rakesh Sharma and Ors.*, 2020 AIR 3717 SC, the Apex Court finally concluded that the verdict in the *Prakash v. Phulavati*, did not interpret the law correctly and that the 2005 amendment act was applicable retroactively, thus laying to rest an enduring controversy regarding the date of conferment of the benefits of the 2005 amendment¹². It was also held that under section 6 of the amended Act, for a female successor to claim coparcenary rights is not at all dependant on the predecessor coparcener being alive as on the date of commencement of the amendment Act.

IV. SHORTCOMINGS OF THE AMENDMENT

The Act was brought forth with the intention to bring about the necessary changes that was required contemplated as per the evolving time and scenarios. However, the amendments haven't been completely successful in eradicating all the flaws intended to be eliminated. Even

⁹ *Badrinarayan Shankar Bhandari v. Om Prakash Shankar Bhandari* AIR 2014, Bom 151

¹⁰ *Pushpalatha N. v/s V. Padma* AIR 2010 Kar 124

¹¹ *Prakash & Ors. v. Phulavati & Ors.* 2015 SCC Online SC 1114

¹² *Vineeta Sharma v. Rakesh Sharma and Ors.*, 2020 AIR 3717 SC

though the amendment has provided enormous results, it has led to a possible amount of chaos and confusion due to the vagueness and varied interpretations the words of the statute has encompassed in itself.

The most despicable flaw in the said amendment is the retention of Article 15 and it acts as a black mark on the issues of gender parity and women empowerment. The said section recognises women only on the basis of her relationship with a man, i.e. wife, daughter, etc. Therefore, it compromises the individuality and identity of a woman¹³. It focuses only on daughters and wives but sheds no light on other category of women such as daughters-in-law, sisters who haven't been included under the purview of the amendment.

Although women were given rights to hold a property and even become coparceners for that matter, she got the chance to even be the Karta of the family in case she is the eldest member of the family. However, a widow can never be a Karta of a family. In the case of *Income Tax v. G. S. Mills AIR 1966*, the Supreme Court considered whether Women can become Karta of Family. So Court held that the Widow could not be Karta of the family this does not mean that women cannot be the Karta of the joint family¹⁴.

Despite the amendment, the ambiguity contained in the words of the statute regarding the application of Section 6 of the Act, as to whether it was retrospective or prospective in operation created a lot of confusion giving rise to innumerable litigation suits. It became the duty of the judiciary to interpret the meaning and the intention of the legislators behind the statute and come to the right conclusion.

V. CONCLUSION

Traditionally the coparcenary and the Hindu undivided family were patriarchal as a whole and excluded women wholly from the family's property. It was this concept that the Hindu Code Bill and the 2005 Amendment had aimed at changing. Although it was originally intended to abolish the Mitakshara coparcenary as a whole, the Hindu Succession Act, 1956 came up with the coparcenary concept accommodated with it. The 2005 Amendment uprooted the existing norms such as a woman cannot be a coparcener and she can never be a Karta of a family. The interest of a coparcener would now not devolve by survivorship. While the interest shall continue to be diminished by births in the Hindu Undivided Family, it will not be increased by

¹³ SANCHITA MAKHIJA, *CRITICAL ANALYSIS OF THE HINDU SUCCESSION (AMENDMENT) ACT, 2005*, INDIAN LAW PORTAL, JULY 19, 2020, [HTTPS://INDIANLAWPORTAL.CO.IN/CRITICAL-ANALYSIS-OF-THE-HINDU-SUCCESSION-AMENDMENT-ACT-2005/](https://indianlawportal.co.in/critical-analysis-of-the-hindu-succession-amendment-act-2005/)

¹⁴ *Income Tax v. G. S. Mills AIR 1966*.

virtue of deaths¹⁵.

However, the recent amendment laws does not seem to achieve the equality ensured between male and female due to lack of incorporation of proper implementation laws. Despite the amendment, women are still not perceived as natural inheritors because of lack of awareness of their rights, illiteracy of laws and nill efforts on their side to know about their rights or constitution¹⁶. Most families put pressure and torture women to get their share of father's property only for the betterment of the in-laws even if it is without her consent. Hence, she only remains as a means to acquire more property out of greed and is subjected to grave injuries only to satisfy her husband's family. Thus the Act plays no role in preventing such heinous offences and protecting their rights and interests which is very common in patriarchal societies.

¹⁵ Manoranjan Ayilyath, Did Hindu Succession Act Indeed Outcast Mitakshara Coparcenary, SSRN, July 14, 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465531

¹⁶ Shital Kharat, Effect of the Hindu Succession (Amendment) Act 2005 – Judicial Response, SSRN, Feb 11, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2912662