



**HINDU WOMEN'S RIGHT TO
INHERIT PROPERTY PRE AND POST
HINDU SUCCESSION
(AMENDMENT) ACT, 2005- A
COMPARATIVE STUDY**

By *Rahul Rathore*
From *Indore Institute of Law*

Abstract

The Constitution of India provides that every person has the right to equality before law and equal protection of the laws & thereby prohibits discrimination on the basis of caste, creed & gender. In India, women's rights have suffered serious setbacks among all communities. The Hindu Succession Act, 1956 has been enacted to amend & codify the law relating to intestate succession among Hindus. It lays down a uniform & comprehensive system of inheritance. The Hindu women's limited estate is abolished by it. Under the Act, for the first time, absolute property rights were granted to women. The Act is basically based on Mitakshara law, under which coparcenary rights are in favour of male child by birth. This provision was against the principle of gender equality. Therefore, the Hindu Succession (Amendment) Act, 2005 was enacted to enlarge the rights of a daughter, married & unmarried both & to bring her at par with a son or any male member of a joint Hindu family governed by the Mitakshara law. In this paper, comparative analysis of Hindu women's right to inherit property pre and post-Hindu Succession (Amendment) Act, 2005 has been done.

Introduction

Gender equality is recognised as a basic human right in all civilised nations. The concept of gender equality is considered as a universal principle. At the international level, the Universal Declaration of Human Rights, 1948 also recognises the principle of equality. Article 1 of the Universal Declaration of Human Rights, 1948 provides that all human beings are born free and equal in dignity and rights. In India also, attempts have been made to raise the status of women in accordance with these universally accepted principles. The Indian Constitution enshrines the principle of gender equality in its Preamble & Parts III, IV & IVA relating to Fundamental Rights, Directive Principles of State Policy & Fundamental Duties respectively. It provides that every person has the right to equality before the law and the equal protection of the laws within the territory of India. It also empowers the State to make special provisions for women as there is a need to empower women who have suffered gender discrimination for centuries. The Constitution of India is the supreme law of India. Certain laws were also enacted to raise the status of women. But a significant change took place when the Parliament in 1955-56 enacted a series of Acts better known as the Hindu Code, which significantly improved the status of Hindu women to a great extent. The principle of equal social status to women also includes their right to hold & inherit property like the male members of the family. In spite of the equality guaranteed by the supreme law of India, women in India had suffered a lot of inequalities.

The Hindu Succession Act, 1956 has been enacted to amend & codify the law relating



to intestate succession among Hindus. According to the Hindu Succession Act, 1956, the expression "Hindu" in any portion of this Act is construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in section 2 of this Act. Thus, the Act is applicable to any person who is a Hindu, Buddhist, Jaina or Sikh by religion & applies to those governed both by the Mitakshara & the Dayabhaga Schools & also to those in South India governed by the Murumakkattayam, Aliyasantana, Nambudri and other systems of Hindu Law. It lays down a uniform & comprehensive system of inheritance. The Hindu women's limited estate is abolished by it. Under the Act, for the first time, absolute property rights were granted to women. However, under the Act, Hindu women could not inherit ancestral property by birth right & was excluded from joint family coparcenary under Mitakshara system merely by reason of their biological identity (i.e., gender). This resulted in the violation of their right to equality. Thus, the Hindu Succession (Amendment) Act, 2005 was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956 & to give equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. The daughter has been made a coparcener by birth in the joint property after commencement of the Hindu Succession (Amendment) Act, 2005.

Constitutional Provisions ensuring Gender Equality

The framers of the Indian Constitution were well aware of the adverse condition of women in the society. Thus, they

incorporated a number of provisions for the upliftment of the status of women. The principle of gender equality is incorporated in the Constitution of India in its Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties.

The Preamble of the Indian Constitution contains various objectives including "the equality of status and opportunity" to all the citizens. This objective has been incorporated with the view to give equal rights to men & women in terms of the status & opportunity.

Part III (Articles 12 to 35) of the Indian Constitution deals with the Fundamental Rights. The provisions regarding fundamental rights are applicable to all the citizens. However, certain fundamental rights contain specific provisions to protect the rights of women.

Article 14 of the Indian Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15(1) of the Indian Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(3) of the Indian Constitution provides that nothing in the article 15 shall prevent the State from making any special provision for women and children.

Article 16(1) of the Indian Constitution provides that there shall be equality of opportunity for all citizens in matters



relating to employment or appointment to any office under the State.

Part IV (Articles 36 to 51) of the Indian Constitution deals with the Directive Principles of State Policy. They are fundamental in the governance of the country. Article 39(a) of the Indian Constitution provides that the State shall, in particular, direct its policy towards securing that the citizens, men & women equally, have the right to an adequate means of livelihood. Article 39(d) of the Indian Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men & women. Article 39(e) of the Indian Constitution provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 42 of the Indian Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.

Part IVA (Article 51A) of the Indian Constitution deals with the Fundamental Duties. Article 51A (e) provides that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.

Hindu Women's Right to inherit Property Pre-Hindu Succession (Amendment) Act, 2005

Prior to the Hindu Succession Act, 1956, Hindus were governed by shastric &

customary laws that varied from region to region. Sometimes such laws varied even in the same region due to different castes. This resulted in multiplicity of laws with diversified nature. As a result, in the matters of succession also, there were different schools. Amongst the Hindus, there were two major schools which governed the inheritance. These are Mitakshara & Dayabhaga. The Mitakshara School prevails in the whole of India except Bengal & Assam. The Dayabhaga School prevails in Bengal & Assam.

Under the Mitakshara law, a son, grandson & a great grandson acquire a right by birth in the joint family property. They constitute a class of coparceners, based on birth in the family. Under the Mitakshara law, female members are not considered as a part of the coparcenary. Under the Mitakshara law, the devolution of joint family property is based on the principle of survivorship. It means that the joint family property does not devolve by inheritance but it goes to those who, among the group called as coparceners, survive others, that is, are able to live longer than others. It means that with every birth of a male in the family, the share of every other surviving male gets diminished and with every death of a male in the family, the share of every other surviving male increased. However, in case of property separately owned by an individual male or female, inheritance by succession is allowed under Mitakshara law. Females are allowed to inherit separate property under Mitakshara law.

Under the Dayabhaga School, sons do not have right by birth in any property & all properties devolve by inheritance. Thus, the



Dayabhaga School has only one mode of succession, irrespective of the kind of property. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father's lifetime. But, on his death, they can inherit the property. Under the Dayabhaga School, daughters also get equal shares along with their brothers.

With the advent of independence, the framers of the Indian Constitution took note of the adverse discrimination perpetuated against women and incorporated many provisions in the Indian Constitution for ensuring gender equality. For implementing those provisions, many laws were enacted. Thus, the Hindu Succession Act, 1956 was enacted in 1956. It extends to the whole of India except the State of Jammu and Kashmir. It tries to bring an end the discrimination between sons & daughters followed in inheritance laws. It aims to integrate the Mitakshara & Dayabhaga schools of Hindu law. It codified personal laws of Hindus as before this Act came into force, they were governed by shastric & customary laws which varied from region to region. Now, the Hindu Succession Act, 1956 is a principal Act which applies to all Hindus in India.

Section 6 of the Hindu Succession Act, 1956 deals with the devolution of interest of coparcenary property. Before the enactment of the Hindu Succession (Amendment) Act, 2005, section 6 of the Hindu Succession Act, 1956 provided that after the commencement of the Act, when a male Hindu dies intestate, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the

property shall devolve by survivorship upon the surviving members of the coparcenary & not in accordance with the Act.

But, proviso to section 6 provided that if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under the provisions of the Act & not by survivorship.

Explanation 1 of the section 6 further provided that for the purposes of section 6, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2 of the section 6 further provided that nothing contained in the proviso to section 6 shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

This meant that the principle of survivorship applied in the devolution of interest of Mitakshara coparcenary property. It meant that Hindu females were not entitled to inherit Mitakshara coparcenary property by birth right & were excluded from joint family coparcenary under Mitakshara law. For example, if a joint family property was



divided, then each male coparcener took his share & female has no right to get any share.

Illustration- a Mitakshara Coparcenary consists of A, the father & his two sons, B & C. A dies leaving his undivided interest in the coparcenary property & leaving behind his two sons B & C & a daughter D. A's interest devolves upon B & C, the surviving coparceners by the principle of survivorship. The daughter has no right to get any share as she is not a coparcener as under Mitakshara Law, no female is a coparcener.

Under Section 14 of the Hindu Succession Act, 1956, the disability of a Hindu female to acquire & hold property as an absolute owner is removed and the existing Hindu woman's estate (existing prior to the commencement of the Act & over which Hindu woman has possession) which is held by her as a limited owner is converted into her absolute estate.

Section 14 provides that any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof & not as a limited owner.

However, this provision shall not apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

In section 14, property includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or

arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of the Act.

For Section 14, the following conditions are necessary:

- (i) Ownership of property must vest in her, and
- (ii) Section 14 has qualified retrospective application. It converts only those women's estates into full estates over which she has possession (possession is used in the widest possible sense, including actual and constructive possession) when the Act came into force. In the wider sense, the term "possession" is co-extensive with the ownership. Therefore, whenever the woman has the ownership of property vested in her, she will be deemed to be in its possession & if the ownership does not vest in her, even if she is in actual or physical possession, she will not be deemed to be in its possession within the meaning of the section.

Before the enactment of the Hindu Succession (Amendment) Act, 2005, section 23 of the Hindu Succession Act, 1956 provided that where a Hindu intestate has left surviving him or her both male & female heirs specified in class I of the Schedule & his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in the Act, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares



therein; However, the female heir shall be entitled to a right of residence therein:

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

Before the enactment of the Hindu Succession (Amendment) Act, 2005, section 24 of the Hindu Succession Act, 1956 provided that any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

Hindu Women's Right to inherit Property Post-Hindu Succession (Amendment) Act, 2005

The Hindu Succession Act, 1956 has been amended by the Hindu Succession (Amendment) Act, 2005. It has undergone many changes by the Hindu Succession (Amendment) Act, 2005. The Constitution of India makes provision for ensuring gender equality. But, before the enactment of the Hindu Succession (Amendment) Act, 2005, the provisions of the Hindu Succession Act, 1956 were discriminatory towards women and thus, against the principle of gender equality enshrined in the Indian Constitution.

Due to the fact that the provisions of the Hindu Succession Act, 1956 were discriminatory towards women, certain States of India, namely, Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra & Karnataka made State amendments in the

Hindu Succession Act, 1956 to ensure gender equality.

The State amendments only made reforms in their respective States. However, Hindu women in other States of India continued to be subjected to inequality in relation to their property rights due to the shortcomings of Hindu Succession Act, 1956.

To improve the status of Hindu women, initiative was taken up by the Law Commission of India which in its 174th Report on "Property Rights of Women: Proposed Reforms under Hindu Law" under the Chairmanship of Justice B. P. Jeewan Reddy made important recommendations for the removal of anomalies & ambiguities with regard to property rights of Hindu women under the Hindu Succession Act, 1956. According to the view of the Law Commission, the exclusion of the daughters from participation in coparcenary Property ownership merely by reason of her gender was unjust.

Thus, the Hindu Succession (Amendment) Act, 2005 was enacted to provide full-fledged property rights to daughters in coparcenary property along with sons. It was enacted on 5 September, 2005 & came into force from 9 September, 2005 incorporating the reforms suggested in the 174th Report of the Law Commission of India.

The Hindu Succession (Amendment) Act, 2005 omitted sub-section (2) of Section 4 of the Hindu Succession Act, 1956 and has made women's inheritance rights in agricultural land equal to men's. Section 4(2) excluded, from the ambit of the Hindu Succession Act, 1956, significant interests in agricultural land, the inheritance of which



was subject to the succession rules mentioned in state-level tenurial laws.

Especially in the north-western states, these laws were highly gender unequal and gave primacy to male lineal descendants in the male line of descent. Women came very low in the succession order and got only a limited estate. The new legislation brings male and female rights in agricultural land on par for all states, overriding any inconsistent state laws. This can potentially benefit millions of women dependent on agriculture for survival.¹

The Hindu Succession (Amendment) Act, 2005 has addressed a very important issue relating to the rights of daughters in the Mitakshara coparcenary & thus, elevated daughter's position by amending section 6 of the Hindu Succession Act, 1956. The amended Section 6 deals with the devolution of interest in coparcenary property.

The section 6 of the Hindu Succession Act, 1956 has been completely replaced by a new provision. After the enactment of the Hindu Succession (Amendment) Act, 2005, section 6(1) of the Hindu Succession Act, 1956 provides that in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, on & from the date of commencement of the Hindu Succession (Amendment) Act, 2005, by birth become a coparcener in her own right in the same manner as the son. She shall

have the same rights in the coparcenary property as she would have had if she had been a son. She shall be subject to the same liabilities in respect of the said coparcenary property as that of a son & any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in the sub-section (1) of section 6 shall affect or invalidated any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20 December, 2004.

Section 6(2) of the Act provides that any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in the Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

Section 6(3) of the Act provides that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under the Act & not by survivorship, & the coparcenary property shall be deemed to have been divided as if a partition had taken place &:

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have

¹ *Whether Amendments Made To The Hindu Succession Act Are Achieving Gender Equality?*, Legal Service India, available at <http://www.legalserviceindia.com/articles/gehsa.htm>, last seen on 22/07/2018.



got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; &

(c) the share of the pre-deceased child of a pre-deceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

For the purposes of the sub-section (3), the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Section 6(4) of the Act provides that after the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in the sub-section (4) shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, & any such right or alienation shall be enforceable under the rule of pious obligation in the same manner & to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

Section 6(5) of the Act provides that nothing contained in the section 6 shall apply to a partition, which has been effected before 20 December, 2004.

For the purposes of section 6, partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a Court.

Section 23 of the Hindu Succession Act, 1956 has been omitted by the Hindu Succession (Amendment) Act, 2005, as a result of which, at present all daughters, both unmarried and married, are entitled to same rights as sons to reside in & to claim partition of the parental dwelling-house. Section 23 disallowed married daughters (unless separated, deserted or widowed) even residence rights in the parental dwelling-house. Unmarried daughters had rights of residence but not of partition.

Section 24 of the Hindu Succession Act, 1956, which had disqualified certain widows



from inheriting the property of the intestate, if they had remarried, has been omitted by the Hindu Succession (Amendment) Act, 2005. Now the widow of a pre-deceased son or the widow of a pre-deceased son of a pre-deceased son or the widow of the brother can inherit the intestate's property even if she has remarried.

Also the Hindu Succession (Amendment) Act, 2005 has added some more heirs to the list of Class I heirs who are son of a pre-deceased daughter of a pre-deceased daughter, daughter of a predeceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a predeceased daughter, & daughter of a pre-deceased daughter of a pre-deceased son.

Case laws

Danamma @ Suman Surpur & Anr. v. Amar & Ors.²

In this case, the Supreme Court has held that daughters who were born before the enactment of the Hindu Succession Act, 1956 are entitled to equal shares as son in ancestral property.

Prakash v. Phulavati³

In this case, the Supreme Court has held that the rights under the Hindu Succession (Amendment) Act, 2005 are available to

daughters living on the date of amendment, irrespective of when they were born.

Comparative analysis of the Hindu women's right to inherit property Pre & Post-Hindu Succession (Amendment) Act, 2005.

The comparative analysis of the Hindu women's right to inherit property pre & post-Hindu Succession (Amendment) Act, 2005 can be done under the following heads:

(1) Agricultural lands (Section 4(2))

Before the enactment of the Hindu Succession (Amendment) Act, 2005, inheritance of agricultural land is subject to state-level tenurial laws & not to the Hindu Succession Act, 1956. Many of the tenurial laws specify inheritance rules that are against the principle of gender equality. But after the enactment of the Hindu Succession (Amendment) Act, 2005, inheritance rights in all agricultural lands are subject to the Hindu Succession Act, 1956. The Act overrides such State laws which are inconsistent with the Hindu Succession Act, 1956. The Hindu Succession (Amendment) Act, 2005 omitted sub-section (2) of Section 4 of the Hindu Succession Act, 1956 and has made women's inheritance rights in agricultural land equal to men's.

(2) The Mitakshara Joint Family Property (Section 6)

Before the enactment of the Hindu Succession (Amendment) Act, 2005, Hindu females were not entitled to inherit Mitakshara coparcenary property by birth right & were excluded from joint family coparcenary under Mitakshara law. But a son, grandson & a great grandson acquired a right by birth in the joint family property. They constitute a class of coparceners, based

² *Daughters Have Equal Rights In Ancestral Property, Even If They Were Born Before Enactment Of Hindu Succession Act, Holds Supreme Court*, LiveLaw.in, available at <http://www.livelaw.in/daughters-equal-rights-ancestral-property-even-born-enactment-hindu-succession-act-holds-supreme-court-read-judgment/>, last seen on 22/07/2018.

³ (2016) 2 SCC 36.



on birth in the family. Female members were not considered as a part of the coparcenary. Also, the devolution of joint family property was based on the principle of survivorship.

After the enactment of the Hindu Succession (Amendment) Act, 2005, sons and daughters both have independent equal birth rights and liabilities as coparceners in joint family property. Also, the joint family property devolves by testamentary or intestate succession, as the case may be, under the Act & not by survivorship.

(3) Class I heirs

Before the enactment of the Hindu Succession (Amendment) Act, 2005, the Class I heirs of a Hindu male included the children of predeceased children, but these were recognised upto two generations for predeceased sons and only upto one generation for predeceased daughters. But, after the enactment of the Hindu Succession (Amendment) Act, 2005, the Schedule amended to include as Class I heirs, the children of predeceased children going down to two generations for both sons & daughters.

(4) Parental Dwelling-House (Section 23)

Before the enactment of the Hindu Succession (Amendment) Act, 2005, under section 23 of the Hindu Succession Act, 1956, in a dwelling-house wholly occupied by members of the deceased's family, no female heir can claim partition, until the male heirs choose to divide their respective shares. Daughters only had rights of residence, only if she is unmarried, or deserted, separated or widowed.

Section 23 has been omitted by the enactment of the Hindu Succession (Amendment) Act, 2005. Now daughters, whether unmarried or married, have the same rights as sons to reside in & to claim partition of the parental dwelling-house.

(5) Rights of certain widows (Section 24)

Before the enactment of the Hindu Succession (Amendment) Act, 2005, under section 24 of the Hindu Succession Act, 1956, the widow of a pre-deceased son or the widow of a pre-deceased son of a pre-deceased son or the widow of the brother, was not entitled to inherit the intestate's property as a widow, if on the date the succession opens, she has re-married. Section 24 has been omitted by the enactment of the Hindu Succession (Amendment) Act, 2005. Now such widows can inherit the intestate's property even if they have remarried.

Conclusion

The provisions of the Hindu Succession Act, 1956 were discriminatory towards Hindu women. Earlier, Hindu women could not inherit ancestral property by birth right & was excluded from joint family coparcenary under Mitakshara system merely by reason of their biological identity (i.e., gender). The Constitution of India provides for the gender equality. Thus, the Hindu Succession (Amendment) Act, 2005 was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956 & to give equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. The Hindu Succession (Amendment) Act, 2005 is a significant step towards gender equality.
