

**“EVOLUTION OF GENDER BIASED SUCCESSION,  
UNDER THE HINDU SUCCESSION ACT, 1956”**

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**ABSTRACT**

The majority of the customs, traditions and religious structures in India and around the world have been a victim of gender discrimination. This gender discrimination also reflects in the laws, which ultimately results in grave deprivation of rights to women. The legislation of 1956 namely, the Hindu Succession Act was one such law that excluded the daughters or the female members of the family while conferring the rights in the coparcenary property and accorded women, a status of a dependent. However, the Amendment Act of 2005 sought to overthrow these inequalities and render relief to the daughters by giving them equal rights in the coparcenary property. However, certain lacunae still exist. This paper aims to address various aspects of the Hindu law and the importance of the amendments of the Act with special reference to daughters' rights by bringing into light the pre- and post-amendment conditions of succession.

**Keywords:** Hindu; succession; daughter; discrimination; amendment.

**1. INTRODUCTION**

**1.1. Dayabhaga and Mitakshara**

The Hindu law is classified into two major schools namely the 'Dayabhaga' and the 'Mitakshara', which governs the law of succession of Hindu Undivided Family (HUF). The Mitakshara law as applicable, applies to the whole of India except West Bengal and Assam, whereas the Dayabhaga Law applies to Bengal and Assam.

Under the Mitakshara law, succession law is intimately connected to the coparcenary property. Coparcenary property is such a property in which every coparcener<sup>2</sup> has a joint interest and over which they have a joint possession. Prior to the amendments of 2005<sup>3</sup> to the Hindu Succession Act, only the sons acquired an interest in the coparcenary property by birth. As per Mitakshara, only male members were considered to be the coparceners. Due to the presence of

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<sup>2</sup> A coparcener is an individual of a Hindu undivided family who acquires a interest in the joint family property by birth.

<sup>3</sup> Hindu Succession Amendment) Act, 2005. No. 39, Acts of Parliament, 2005 (India).

unity of possession and right of survivorship among the coparceners in a Mitakshara coparcenary property, no individual coparcener could predict his specific share in the joint family property until the family remains undivided.

Whereas, in Dayabhaga, the son's right in the ancestral property arises not by birth but on the death of the father. Neither son nor daughter becomes the coparceners at birth or acquires any right in the joint family property during the father's lifetime. The property, thus, devolves only by inheritance. It upholds the doctrine of religious efficacy in respect of inheritance which is related to the Shraddha ceremony<sup>4</sup> where again daughters are excluded as only male members of the family have the right to perform the rituals under the same.

## 1.2. Hindu Joint Family

*A joint Hindu family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The daughter, on marriage, ceases to be a member of her father's family and becomes a member of her husband's family. The joint Hindu family is thus a larger body consisting of a group of persons who are united by the tie of sapindaship arising by birth, marriage, or adoption.*<sup>5</sup> This is evidently a patriarchal approach towards the status of women in the family. Female members were always accorded the status of a 'dependent' as a result of which, Hindu law did not recognize their right to inheritance.

One of the key role players is the 'Karta' of the family. He is the representative of the family as he is responsible to manage and oversee the income and assets of the joint property. As per the ancient Hindu law, the senior-most 'male member' is generally the Karta of the joint family. Thus, as per this setup of the Hindu joint family, earlier, the ancestral property used to devolve only through the male line and thus, the advantage of ownership was confined only to male members.

## 1.3. The law of Inheritance, 1929.

The wheel set a roll after the commencement of this Act which favoured Hindu women in their quest for searching rights in matters relating to inheritance under the Hindu laws. It was the first legislation that dealt with inheritance among Hindus, and also conferred the right of inheritance upon three categories of female heirs namely, *the son's daughter, the daughter's*

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<sup>4</sup> It is a ceremony performed by the 'male' descendants in honor of the dead ancestors for protecting and nourishing the spirits of the dead in their pilgrimage from the lower to the higher realms.

<sup>5</sup> Surjit Lal Chhabda vs Commissioner of Income Tax, AIR 1976 SC 109.

*daughter and the sister*,<sup>6</sup> in all parts of India that were governed under the Mitakshara law. This was a significant change introduced by the law as it paved the way for women to get their due share in the property.

However, the Act had a limited scope in terms of inclusion of degrees of female heirs and also in the sense that it conferred right on female heirs not in the 'ancestral property' but only in the 'separate property' of a Hindu male, dying intestate.<sup>7</sup> The legal status of women in the succession and ownership of the property was far from satisfactory.

Therefore, with the view to reform the law of succession and to introduce the principle of equality in it, various other legislations like *The Hindu Women's Right to Property Act, 1937*; *The Hindu Succession Act, 1956*, came into force.

## **2. BACKGROUND OF THE HINDU SUCCESSION ACT, 1956**

In order to meet the needs of the progressive society, the Hindu Succession Act (HSA) aimed at amending and codifying the law relating to intestate succession among the Hindus, including Marumakkatayam<sup>8</sup> and Nambudiri laws<sup>9</sup> of inheritance. This Act applies to all Hindus<sup>10</sup> and to any person who is Buddhist, Jain or Sikh by religion<sup>11</sup> and extends to the whole of India<sup>12</sup>

The Hindu Succession Act, abolished a number of customs as well as the then-existing inheritance systems, thereby establishing uniformity. Its objective was to regulate the succession of the intestates' property and also to check the inequalities between the male and the female heirs with respect to the proprietary rights. Intending to confer better proprietary rights on women, the Act brought in some fundamental changes.

Some of the definitions laid down in the Act are important to be noted in order to understand the inclusion of women in the purview of the law.

- **Section 3(1)(f)** defines the term '**heir**' as *any person, male or female, who is entitled to succeed to the property of an intestate under this Act*;

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<sup>6</sup> The Indian Inheritance Act, 1929, § 2, No. 30. Acts of Parliament, 1929 (India).

<sup>7</sup> The Indian Inheritance Act, 1929, § 1(2), No. 30. Acts of Parliament, 1929 (India).

<sup>8</sup> A system of succession where by the inheritance runs in the female and not in the male line, as property goes to his sister or his sister's son and so forth

<sup>9</sup> The probable origin of the usage being some doctrine as it stood at the date of immigration into Malabar or some Marumakkatayam usage.

<sup>10</sup> Section 2(3) The expression "Hindu" in any portion of this Act shall be 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 this section.

<sup>11</sup> Hindu Succession Act, 1956, § 2 (1)(b), No. 30, Acts of Parliament, 1956 (India).

<sup>12</sup> Hindu Succession Act, 1956, § 1 (2), No. 30, Acts of Parliament, 1956 (India).

- Here the word ‘intestate’ is defined in **Section 3(1)(g)** as *a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect.*

## 2.1. Types of succession

Succession simply means inheritance. It is a transmission of a person’s vested property to some other person or persons, on his death. Succession excludes survivorship.<sup>13</sup> The property in modern times is devolved in the following two ways under the Act.

The Hindu Succession Act lays down 2 types of succession

2.1.1. Intestate Succession<sup>14</sup> - one without a will

2.1.2. Testamentary Succession<sup>15</sup> - one with a will.

### 2.1.1. Intestate Succession

The law of intestate succession regulates the devolution and distribution of the undisposed property of a deceased person.<sup>16</sup> When a person dies without making a Will, the property of such a person is devolved upon the heirs, as per the order and rules laid down by the Hindu Succession Act. The heirs are classified into four categories that are mentioned in the Schedule of the Act (Class I – Class IV). The law of intestate succession is similar for males and females to a certain extent.

However, the devolution of the property of the female, dying intestate, appears to be unfair. **Section 15**<sup>17</sup> of the Act lays down a general rule of the succession of property of a Hindu female dying intestate. **Section 16**<sup>18</sup> of the Act sets out the order in which the heirs will succeed the property of the Hindu female. (Section 16 is to be read along with Section 15 of the Act). However, **Section 15** did not take into account the fate of the ‘self-acquired property’ of a Hindu female. *The law is silent with regard to the self-acquired property of a woman*<sup>19</sup> The legislation failed to contemplate that a Hindu female could hold self-acquired property. As a

<sup>13</sup> Sankarabati v. Pila Devi, 76 CWN 400 (404) (Aran K. Mukhejjea, J.)

<sup>14</sup> Hindu Succession Act, 1956, Chapter II, No. 30, Acts of Parliament, 1956 (India).

<sup>15</sup> Hindu Succession Act, 1956, Chapter III, No. 30, Acts of Parliament, 1956 (India).

<sup>16</sup> GOPALAKRISHNAN, LAW OF WILL; 7 ed.

<sup>17</sup> General rules of succession in the case of female Hindus. (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband; (c) thirdly, upon the mother and father; (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the mother.

<sup>18</sup> Hindu Succession Act, 1956, § 16, No. 30, Acts of Parliament, 1956 (India).

<sup>19</sup> Omprakash and Ors. v. Radhacharan and Ors. (2009) 15 SCC 66.

result of which even her own entire 'self-acquired property' would vest in the heirs of her pre-deceased husband and not on her maternal heirs (such as her own parents or siblings). In other words, if a female Hindu dies intestate and in the absence of the heirs in the first entry of section 15, her property would devolve totally upon her husband's heirs.

### 2.1.2. Testamentary succession

Testamentary succession is a disposition by the testament or a Will of such a property that is capable of being disposed of by the respective person.<sup>20</sup> Under the Hindu Succession (Amendment) Act, 2005, a Hindu male or female<sup>21</sup> can make a will for the disposal of the property including a share in the undivided Mitakshara coparcenary property or creating rights over the interest or the property, in favour of anyone. This Will should be valid and legally enforceable. The distribution of the deceased person who has made such a will be as per the provisions of the Will and not through the laws of inheritance. However, if the Will is invalid, or not legally enforceable, then the devolution of the property can be done through the law of inheritance.

## 3. OWNERSHIP OF MALES UNDER THE ACT

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### 3.1. The property of a male Hindu dying intestate shall devolve according to the following provisions mentioned in section 8 of the Act:<sup>22</sup>

- a. firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- b. secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- c. thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- d. lastly, if there is no agnate, then upon the cognates of the deceased.

**Section 9** of the lays down the definite order of succession which gives preference to the heirs that are mentioned **Class I** and only on the absence of whom the **Class II** heirs shall be preferred in the order of the entry. And further, **Section 10** states the rules<sup>23</sup> for the division of the share of the property among the heirs.

<sup>20</sup> Hindu Succession Act, 1956, § 30, No. 30, Acts of Parliament, 1956 (India).

<sup>21</sup> Hindu Succession (Amendment) Act, 2005, § 30, No. 39, Acts of Parliament, 2005 (India).

<sup>22</sup> Hindu Succession Act, 1956, § 8, No. 30, Acts of Parliament, 1956 (India).

<sup>23</sup> *Rule 1.* The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

*Rule 2.* The surviving sons and daughters and the mother of the intestate shall each take one share.

### 3.2. Position of the heirs (son; daughter; widow)

It is to be noted about the Class I, that in the case of *Dudhnath Kallu Yadav vs. Ramashankar R. Yadav*<sup>24</sup> it was held that the expression "son" under the Hindu Succession Act does not include a step-son. Since the Hindu Succession Act does not define the term "son", **Section 2(57)** of the *General Clauses Act* is to be referred to.

Further, in the case of *Lachman Singh Vs. Kripa Singh and ors.*<sup>25</sup> the Supreme Court held that the stepdaughter or the stepson cannot be considered within the expression of son or daughter in **Section 15(1)(a)** of the Act, [however they are covered under **clause (b)** of **section 15 (1)**].-In the case of the daughter's position, the law is well established that her share in the property is equal to that of the son, regardless of her marital status or financial background.

Even a widow's share is equal to that of a son.<sup>26</sup> In the case of more than one widow as a result of a valid marriage, they collectively share that is equal to the son's share.

### 4. OWNERSHIP OF FEMALES UNDER THE ACT

Cultures in India and around the world are gripped by gender discrimination, and the Hindu Succession Act of 1956 was not an exception to such discrimination. However, over a period of time, with the change in the dynamics of the Hindu system, a need was felt to bring some radical changes by amending the provisions of the Act and bring both males and females at the same footing. Thus, the **Amendment Act of 2005** came into force. This Act, conferred upon the women some revolutionary rights in relation to their property.

Earlier, **Section 6**<sup>27</sup> of the Act dealt with the devolution of interest of a male Hindu in coparcenary property at the exclusion of daughter from coparcenary ownership. Further, recognized the rules of devolution by survivorship among the members of the coparcenary. However, after the amendment in 2005, the interest in the property of a Joint Hindu Family

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*Rule 3.* The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

*Rule 4.* The distribution of the share referred to in rule 3:

- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widow together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;
- (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

<sup>24</sup> (2017) 1 SCC 252.

<sup>25</sup> (1987) 2 SCR 933.

<sup>26</sup> Hindu Succession Act, 1956, § 10, Rule 4(i) No. 30, Acts of Parliament, 1956 (India)

<sup>27</sup> Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

which is governed by the Mitakshara law, shall devolve under this Act and not by survivorship. However, **section 6(1)(a)** under the amendment Act emphasized that, the daughter can also become a coparcener by birth, in her own right just like a son. Moreover, with the inclusion of **section 6(1)(b)**, the daughter is allotted the same rights in the coparcenary property as the son. **Section 6(1)(c)** confer equal rights and liabilities with respect to the coparcenary property. Thus, any reference to Hindu Mitakshara coparcener will be regarded to include reference of a daughter coparcener.

In the case of *Anar Devi and Ors. Vs. Parameshwari Devi and Ors*<sup>28</sup> “...according to Section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class I of the Schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener by survivorship but upon his heirs by intestate succession.”

Since the daughter has the same rights and liabilities in the coparcenary property as she would have had if she had been a son, she is now also entitled to request partition in coparcenary property and seek equal share with her siblings and other coparceners.

## **5. RETROSPECT OR PROSPECTIVE: WHERE DOES THE AMENDMENT PROVISION LIE?”**

### **5.1. Prakash and others v. Phulavati**<sup>29</sup>

In the present case, the apex court overruled the judgment passed by the High Court of Karnataka which had delivered the judgment in favour of retrospective applicability of the Amendment Act of 2005. One of the main issues raised in the present case was whether the amendment Act of 2005 could be applied retrospectively in relation to the rights and status of being a coparcener. For which the apex court differentiated between the provisions of **Section 6** of the Hindu Succession Act and the Amendment Act, 2005 and stated, that owing to the absence of the express mention of the retrospective applicability, it would be inappropriate to consider it retrospective, even under the pretext of being a social legislation.

### **5.2. Danamma v. Amar**<sup>30</sup>

The main issues that were raised in the case were, whether the appellants could be denied their share on the grounds that they were born before the enactment of the Hindu Succession Act,

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<sup>28</sup> (2006) 8 SCC 656.

<sup>29</sup> (2016) 2 SCC 36.

<sup>30</sup> (2018) 3 SCC 343.

1956<sup>2</sup> and whether with the passing of the Amendment Act of 2005, the Appellants would become coparcener by birth in their own right in the same manner as the son and will they, therefore, be entitled to an equal share as that of a son?

Based on the judgment passed in the *Prakash and others v. Phulvati's* case, the Trial Court and subsequently even the High Court did not grant the share in the coparcenary property to the appellants. The Appellants were not taken to be coparceners as they were born before the enactment of the Hindu Succession Act, 1956.

However, the Supreme Court, even after considering the decision of Phulvati's case, managed to successfully grant the appellants their rightful share in the property by applying the principle that the partition of the property between the appellants and the respondent is not complete with the passing of a preliminary decree and attains finality only with the passing of the final decree. The court held that the daughter is entitled to the benefit of the Amendment Act and laid down that a daughter would be a coparcener from the time of her birth and will be at par with her male counterparts, and is also entitled to dispose of her coparcenary property. Thus, the court in the present case explored the reasoning behind the amendment and upheld the rights of the daughter by relying on the simplistic logic of the date of the passing of the decree.

### 5.3. Vineeta Sharma v. Rakesh Sharma & Ors.<sup>31</sup>

The ambiguity caused by the previous judgments about the retrospective or prospective applications of the Hindu Succession Act was put to rest with the passing of this judgment. The Apex court overruled the decision of Phulavati's case and concluded that the Amendment Act, 2005 was to be applied retroactively. The legislation is applicable retroactively when it prescribes benefits that are conditional upon eligibility which may arise even prior to the passing of such legislation.

It was held that the coparcener's right to claim a share in the coparcenary property shall remain constant, nevertheless, the specific share available to the coparcener may keep fluctuating with the births or deaths in the family till the time of the partition. Thus, it was made clear that the notional partition under the proviso to the unamended Section 6 of the Act only affects the extent of share and not the right to claim in itself.

Further, the court expressly laid down that any claim for partition in which the final decree is yet to be drawn will be decided as per the verdict passed in Vineeta Sharma's case.

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<sup>31</sup> (2019) 6 SCC 162.

## 6. CONCLUSION

Since ancient times, women have never been accorded an independent status. Women were always seen to be as 'dependents', and therefore even the legislators, while passing the Hindu Succession Act, did not deem it necessary to confer on the daughter, the right in the father's property. But with the wave of progression in the 21<sup>st</sup> century, the 2005 Amendment granted relief and brought about equality. However, the delivery of justice suffers due to the ambiguity that still exists. The Act needs to be amended and interpreted with the view to put an end to these ambiguities arising due to unexpressed provisions in the law.

The attempt of 2005 was laudable and proved its grounds but for achieving the goal of equality and for the deliverance of true and speedy justice there is a need to recognize and address the issues and further laying down women-oriented provisions.



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