



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Analyzing the Hindu Succession Act, 1956 from a Feminist Perspective

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Received 18 June 2022; Accepted 01 July 2022; Published 12 July 2022

Women have been generationally oppressed due to the patriarchal nature of society. Such nature of the society is attributable to the religious rules and beliefs from which law has originated. However, in recent times we have witnessed an attempted shift in such laws to be more inclusive towards women, one such law is the Hindu Succession Act, 1956 (‘The HSA’). The HSA was fundamentally based on the Hindu religious texts- Manusmriti, which are known to be highly patriarchal. Subsequently, in 2005 The HSA went through a drastic amendment in an attempt to be more inclusive of the rights of women within a Hindu Family. This paper is an attempt to analyze the nature and the effectiveness of The HSA pre and post-2005 amendment from a feminist perspective.

Keywords: *succession, feminism, patriarchy, family law.*

INTRODUCTION

The Constitution of India provides for equality of all citizens and allows the state to create special provisions for the advancement of women, but due to the dependency of the Indian laws on religious Hindu texts such as the Manusmriti, we observe a high degree of discrimination against women. And certain laws have been framed in a manner that

discriminates against women in a way that leads to violation of their fundamental right to equality. The Human rights Committee at its meeting held on 30th July 1997 remarked that women in India "are subjected to personal laws which are based on religious norms, and which do not accord equality in respect of marriage, divorce and inheritance rights,"¹ and stressed that "the enforcement of personal laws based on religion violates the right of women to equality before the law and non-discrimination."² The Hindu religious texts are known as 'Manusmriti' form a basis for the Hindu Succession Act, but Manusmriti in itself discriminates against women as ancient India had a strong element of patriarchy, where a man was painted as worthy while a woman was looked down upon. So, while it is true that a woman does get rights in the property, those rights are restricted in comparison to that of a male member. This paper will be a comparative study of the rights of a male member and a female member of a Hindu family pre and post the infamous 2005 Amendment of the Hindu Succession Act, 1956 and an analysis of the rights of a woman from a feminist perspective. Prior to the formation of the Hindu Succession Act of 1956 (further referred to as HSA), Hindus continued to be largely governed by various customary laws which differed from region to region, and this diversity caused complexity in governance, therefore, leading to the formation of the HSA which is a balanced integration of the British common law and the customs from the Hindu schools of law. The amendment was implemented to reduce the disparities between the rights of male and female members. Nonetheless, before the enactment of the Hindu Succession Act, 1956 multiple other laws with regards to inheritance were formed, such as the Hindu Law of Inheritance Act, 1929 which gave inheritance rights to three female heirs- sister, daughter's daughter, and son's daughter. In furtherance of this the Hindu Women's Right to Property Act, 1937 brought radical changes in Hindu law and the position of women in terms of inheritance, partition, adoption, and alienation of property.³

¹ Jyoti Rattan, 'Uniform Civil Code in India: A Binding Obligation under International and Domestic Law' (2004) 46 (4) Journal of the Indian Law Institute, 577 <<https://www.jstor.org/stable/43951938>> accessed 07 May 2020

² *Ibid*

³ Shelly Saluja & Soumya Saxena, 'Changes brought in the position of women specifically in Sec 6 of the HSA, 1956 after the 2005 Amendment' (*Legal Service India*) <[https://www.legalserviceindia.com/articles/hsa_w.htm#:~:text=2005%20Amendment\(431\)-,Changes%20brought%20in%20the%20position%20of%20women%20specifically%20in%20Sec,after%20the%202005](https://www.legalserviceindia.com/articles/hsa_w.htm#:~:text=2005%20Amendment(431)-,Changes%20brought%20in%20the%20position%20of%20women%20specifically%20in%20Sec,after%20the%202005)>

HINDU SUCCESSION ACT- SCHOOLS OF LAW

The HSA is based on two major legal doctrines of the 'Mitakshra' and 'Dayabhaga' schools of law. While the Dayabhaga School of law is largely followed in Bengal and Assam, the Mitakshra School of law is observed in the other parts of India (essentially northern India). Under the Mitakshara School of law, only the male members benefit from the coparcenary rights within the joint family and the son acquires interest in the ancestral property by birth while in the Dayabhaga school of law the son acquires such right only after the death of his father. The rights of a woman are restricted under both schools of law as while a female is assumed to be a member of the joint family she cannot be a coparcener and can therefore not ask for partition herself unlike the male member, but if the partition does occur between a female's husband and her son(s) she does have a right to ask for a share. Such limitation of the rights given to a woman shows how a woman was never given any authority in decision-making regarding matters of the joint family which would affect her and was only expected to follow the settlement made by the male members. After observing explicit discrimination against women through the HSA a recommendation was made by the Law Commission of India which proposed the abolishment of the pious obligation of a daughter, the amendment was enacted in 2005 to bring about some equality between the rights of the male and female member. The key changes incorporated through the amendment were in Section 6⁴ which now allowed women to be co-parceners by birth and exercise the same rights as the male member. Further Section 23⁵ which laid down the doctrine of survivorship and Section 24⁶ which laid down inheritance rights of a widow from her deceased husband's property were omitted.

RIGHTS OF A DAUGHTER UNDER THE AMENDED SECTION 6

Prior to the 2005 amendment, a daughter would not be given coparcenary rights and the Section 6 amendment changed this by giving them the same co-coparcenary rights and

[5%20Amendment\(431\)&text=The%20Constitution%20of%20India%20provides,of%20caste%2C%20creed%20and%20sex>](#) accessed 31 May 2020

⁴ Hindu Succession Act, 1952, s 6

⁵ Hindu Succession Act, 1952, s 23

⁶ Hindu Succession Act, 1952, s 24

liabilities as that of a son. Furthering the case of *Prakash & Ors. v Phulvati & Ors.* it was held that the rights established by the 2005 amendments would apply to 'living daughters of living coparceners as on 9th September 2005 irrespective of when such daughters are born.'⁷ However, if a Hindu dies before the amendment is enacted her heirs will have no right in the coparcenary property since they will be continued to be governed by the pre-amendment Section 6 of HSA. The HSA further made a distinction between married and unmarried daughters, we will be discussing the rights of an unmarried daughter post-amendment. This amendment proved to be symbolically and economically beneficial to daughters since it boosted their financial security by giving them their individual rights in the property.⁸ The first question that arose concerning the rights of a daughter was would the coparcenary rights also get transferred to her children, applying the mischief rule it was observed that while in the case of a son the coparcenary rights in the ancestral property also get vested in the son & grandson the same does not hold for a daughter, as section 6 merely allows a stake in the ancestral property to the daughter herself and not her children since before partition the daughter holds the property as joint holders along with other coparceners and post-partition it becomes her separate property.⁹ The other question was in relation to whether a woman can be a Karta of a Joint Hindu Family, the term Karta was defined in the case of '*Suraj Bansi Koer v Sheo Prasad*' as the 'manager of the joint family'¹⁰ that is, someone who manages and takes decisions with regards to the internal matters of the family. As held in the case of *Tribhuvan Das Haribhai Tamboli v Gujarat Revenue Tribunal and Ors*¹¹. under a HUF a coparcener and the oldest member of the family may secure the position of a Karta therefore as held in the case of *Sujata Sharma v Manu Sharma*¹², post the 2005 amendment it was established that a woman may enjoy the right of becoming the Karta of the family as long as she is a coparcener and the oldest living member of the family, the said right allowed women to be in a more reputable position within the family unlike what is usually seen within the chauvinistic Indian society.

⁷ *Prakash v Phulavati* (2015) Civil Appeal No. 7217/2013

⁸ Hindu Succession Act, 1952, s 23

⁹ Shivani Singhal, 'Women as Coparceners: Ramifications of the Amended Section 6 of the Hindu Succession Act, 1956' (2007) 19 (1) Student Bar Review, 50 <<https://www.jstor.org/stable/44308350>> accessed 18 June 2022

¹⁰ *Suraj Bansi Koer v Sheo Prasad* LR (1878) 6 IA 88, 101

¹¹ *Tribhuvan Das Haribhai Tamboli v Gujarat Revenue Tribunal and Ors.*, (1991), AIR 1538

¹² *Sujata Sharma v Manu Sharma* (2010) 116 DRJ 97

Yet it was observed that there was continued reluctance in making a woman the Karta on the grounds that once a woman gets married into another family, she may become inefficient at managing her family as a Karta. Moreover, if women are too involved in the business matters of a family it will disturb the working of the domestic sphere of the household. The male members also reasoned not making a woman a Karta is not reliable as a woman in all likelihood will be unable to manage the business matter, properties, etc.¹³This shows that even though the government made attempts at bringing equality and giving rights to women, due to the historical patriarchal conditioning of the society it seems extremely difficult to improve the mentality of the patriarchal and chauvinistic society for the betterment. It was observed that although coparcenary rights were given to women it remained as a principal prerogative of the male members of the family since the HSA overall continued putting men on a higher foothold as they not only inherited equal coparcenary share as the women but also inherited a higher independent share in the property.¹⁴This shows that even though the amendment was meant to bring equality between the rights of a female and male member of a HUF, there continued to be discrimination towards women as the male members of the family could not let go of their patriarchal ideologies and weren't willing to share power with women as they not only thought that women were incapable of exercising any power but they also did not want to lose their rights as well as control and authority over the family. Further, Clause 3 of Section 6¹⁵ initially provided for the devolution of coparcenary property through the doctrine of survivorship which was amended to abolish this doctrine and was replaced with the doctrine of succession wherein the interest of the coparcener now devolved through testamentary or intestate succession upon his death. However, the scheme of intestate succession to females under Section 15¹⁶ of the HSA tends to favour the heirs of the husband over her blood own blood relation, and thus when a female dies intestate a greater preference is given to her husband and his heirs over hers.

¹³ Law Commission of India, *Property Rights of Women: Proposed Reforms Under the Hindu Law* (Law Com. No. 174 2000) <<https://lawcommissionofindia.nic.in/kerala.htm>> accessed 18 June 2022

¹⁴ Hindu Succession Act, 1952, s 23

¹⁵ Hindu Succession Act, 1952, s 6(3)

¹⁶ Hindu Succession Act, 1952, s 15

OMISSION OF SECTION 23 AND 24

Section 23¹⁷ of the HSA laid down that if a Hindu intestate left both female and male heirs under Class I of the schedule and his/her property includes a dwelling house then a female heir cannot claim partition of the dwelling house unless the male heirs choose to do so, although she was allowed residence in the dwelling as long as she was either an unmarried daughter or had been deserted by her husband, such a rule was initially made since it was considered that if a daughter was given a share in the property then it would lead to a disintegration of the property as women were expected to leave their own family and settle into the family of her husband post marriage. After the 2005 Amendment, this section was omitted from the HSA to allow Class I female heirs to claim partition in the dwelling house, this amendment was implemented since often when women would get deserted by their husbands due to personal domestic issues they would have no shelter for themselves since even their natal homes would not be willing to accept them back since a woman returning to her natal home post marriage is a sign of a broken marriage and is usually looked down upon.

Section 24¹⁸ essentially stated that a widow who remarried would not be entitled to any share in her deceased husband's share and would stop being a member of his family and due to her exclusion from the family her heirs were also included. The 2005 amendment led to the omission of this section since it was seen to lack a legal base and caused gender inequalities as no such restrictions were placed on widowers. Another reason for such an amendment was that although women in today's time are growing to be more independent some women still largely dependent on men and there needs to be some provision for them for their safety and care post the death of her husband. Furthermore, widow remarriage is now encouraged in the new modernized India, unlike the previous traditional India which imposed societally created boundaries on women. In the case of *Charlotte Suganthan v Cherotte Bharath*,¹⁹ the court emphasized how due to the enactment of the amendment a widow post remarriage could also

¹⁷ Hindu Succession Act, 1952, s 23

¹⁸ Hindu Succession Act, 1952, s 24

¹⁹ *Cherotte Suganthan v Cherotte Bharath* (2008) Appeal (Civil) No. 1323/2008

claim a share in the property of her deceased husband putting her in an equivalent position to that of a widower.

CRITICISMS OF THE 2005 AMENDMENT

Apart from the various inadequacies discussed above the amendment was also criticized on multiple other grounds such as the Section 6 amendment is criticized on the grounds that making daughters coparceners and giving them a share in the property by birth will cause a reduction in the shares of the class I heirs including the mother since the inheritance of the coparcenary share of other members will decline due to addition of member/s within the coparcenary arrangement.²⁰ Another anomaly that was observed was that under Section 15²¹ was that even though the doctrine of survivorship (section 23) was abolished and replaced by succession there was no clarification provided on the succession from a Hindu female, therefore whenever a female dies intestate and without a child, her share of the inherited property devolves into her husband or father or to their heirs making it a clear drawback for her other female heirs such as her mother, sister, etc. ²² A key issue that persisted was that due to the ambiguity in the laws its interpretation was completely varied and men usually chose to interpret it in a manner that best suited to their wishes and further imposed it on women, which led to lasting disparity within both genders irrespective of the amendment and the changes made in favour of women. Multiple legal scholars have also criticized the amendment on the grounds that is not comprehensive and leaves room for question, for instance, there is often confusion with regards to whether the children of a woman also get coparcenary rights when she becomes and coparcener.

CONCLUSION

In conclusion, although the rights of women and gender equality are now being encouraged and the 2005 amendment was a step towards establishing an equal space for women, it was not enough since it was a molehill in comparison to the mountain of unequal texts and laws

²⁰ Hindu Succession Act, 1952, s 23

²¹ Hindu Succession Act, 1952, s 15

²² Ishita Khare, 'Tracing the Process of Structuring of a Hindu Woman's Right to Inheritance' (*India Law Journal*) <<https://www.indialawjournal.org/archives/volume8/issue-1/article7.html>> accessed 31 May 2022

that are imposed on women. It is quite evident that irrespective of the amendment and its attempt to improve women's position within the Hindu society women are still discriminated against and are not able to exercise their rights to its complete efficiency, the two essential reasons for this are, firstly, the ambiguous nature of the laws allows for men to interpret such laws in a manner suitable to them since they live in denial of losing their authority and power within the Hindu society and allowing women to stand at an equal footing with them, as due to the nature of the traditional Hindu society its members have been developed in a manner to believe that women must remain below and within the control of men due to their lack of capabilities. Secondly, due to such a patriarchal nature of the society women are not groomed from the very beginning which is why they remain oblivious to their own rights and even amendments made for their advancement remain inefficient. Therefore, what is essentially required is repairing the problem from a grassroots level, and the first step to initiate that would be educating women about their rights and empowering them to exercise such rights. So, while the 2005 amendment was a crucial step toward establishing gender equality and empowering women through Indian law there is still a substantial volume of work essential to achieve complete equality.