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Can a Hindu woman Inherit Ancestral Property?: An Analysis

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Over the years, society's opinions, ideologies, and beliefs have been substituted for those that are not patriarchal and stereotypical towards women and their rights. Women have been considered inferior to their male counterparts for decades, so we have had laws and legislation that have placed females on a lower footing than males. One instance of such is the succession rights over women's property compared to males. The Hindu Succession Act, 1956, and Hindu Succession (Amendment) Act, 2005 deal with the property rights of a Joint Hindu Family. This paper investigated those rights, emphasizing women's rights to ancestral property in a Joint Hindu Family. It points out the progressive nature of succession-related acts concerning women's rights. Over the years, multiple legislations have defined the rules for women to inherit property. The paper deals with the hierarchy of amendments made in the Hindu Succession Act to be devoid of the discriminatory nature of the Act regarding male and female heirs. This paper attempted to comprehend the judicial interpretations of the amendments made in the Act and to what extent these amendments have achieved the goal of eliminating the gender bias that has been prevalent for ages.

Keywords: *property, succession rights, joint Hindu family, amendments, discrimination.*

INTRODUCTION

For many years, women in India have faced various problems relating to denying fundamental human rights and equal opportunities compared to their male equivalent, including the right to ancestral property. In early Hindu society, daughters and unmarried women were not qualified

to inherit any share in any property, whether movable or immovable, from their own ancestral family in contrast to sons and unmarried men. The daughter would be wed off and sent to another household where she would be eligible to receive a portion of either property; such property is known as '*Stridhan*'.¹.

With time, society began to recognize that women's economic disadvantage was a significant contributor to unfathomable disparities that women play an important economic role, and that women's rights must be upheld in every manner possible. About inheritance, laws were needed to evolve and comply with the current scenario, and to do that; various legislations have been passed in recent decades, such as *Hindu Women's Right to Property Act, 1937*, *Hindu Succession Act, 1956*, and *Hindu Succession (Amendment) Act, 2005*. Before 1937, no such laws dealt solely with Hindu women's property rights. Until the enactment of the Hindu Women's Right to Property Act, 1937, which granted women several rights, giving the widow of a dead husband control over his estate following his passing. To narrow the gender disparity, the law advanced by allowing widows inheritance rights. However, it stated that in obtaining the property under such circumstances, the legislation could not close the gender gap altogether. In this Act, the concept of the limited estate of women was acknowledged, but it was scrapped with the passing of *the Hindu Succession Act 1956*, where the absolute estate of women over property was granted.

This gender inequality gap was then covered by the passing of the Hindu Succession Act in 1956 and abolishing Hindu Women's Right to Property Act, wherein the law governing intestate or unwilled succession rights among Hindus, Buddhists, Jains, and Sikhs was granted. Although this Act did not provide birthright on the property to daughters as compared to sons, this was still gender bias, and to avoid this discrimination, the Hindu Succession Act was revised in 2005, and Section 6 of the Act states that daughters by birth will be able to inherit property in the same way as sons.²

¹ Debarati Halder and K. Jaishankar, 'Property Rights of Hindu Women: A feminist review of succession laws of Ancient, Medieval, and Modern India' (2008) 24(2) *Journal of Law and Religion* <<https://www.jstor.org/stable/25654333>> accessed 31 October 2022

² Srishti Bannerjee, 'Comparative Analysis of Change in the Succession Rights of Women under Hindu Law' (*Academike*, 16 November 2014) <https://www.lawctopus.com/academike/comparative-analysis-of-change-in-the-succession-rights-of-women-under-hindu-law/#_edn17> accessed 31 October 2022

RESEARCH QUESTIONS

In this paper, the authors have tried to tackle the following questions:

- Why women were in the early period not granted property rights?
- Why did society need to bring in laws on women's succession rights?
- Whether there are any limitations of the Hindu Succession (Amendment) Act 2005.

RESEARCH METHODOLOGY

The research methodology adopted in the study is a doctrinal, library-based approach. The necessary information is obtained from papers, journals, and books, and the information included in the documents is used. For this work, doctrinal research was chosen because many articles, portions of the Constitution and Acts, newspaper articles, journals, and a few legal databases giving information on the subject were consulted.

RESEARCH OBJECTIVES

The authors, through this paper, intended to understand the following points listed below:

- To analyze how the property rights of women have progressed over the decades.
- To analyze how legislations and enactments give women equal rights to men on ancestral property.
- To analyze whether women's status has increased after passing legislation on succession.

RESEARCH CONNECTIVITY

As stated earlier, this research paper has research questions that need to be answered and objectives that need to be accomplished. These questions and objectives link and correlate: Hindu women's property rights. The connectivity between the two is how the succession rights of women under Hindu Law have evolved. One of the objectives is to analyze whether the status of women has uplifted after the passing of the legislation is interlinked with one of the research questions, are there any limitations of the Hindu Succession Act 2005 as it would help the reader to comprehend both the elements of legislation passed.

SCOPE OF THE STUDY

The authors of the paper have dealt with gender equality as the subject matter of sharing property has been discussed in the 'Hindu Succession Act of 1956' and 'The Amendment Act of 2005' is concerned. The researchers have tried to examine the provisions of both acts, which relate to the distribution of property amongst the heirs in a Joint Hindu Family. The radar of this research is restricted to analyzing property rights of women under Hindu law, which includes Hindu Women's Right to Property Act 1937, Hindu Succession Act 1956 & Hindu Succession (Amendment) Act 2005 along with some case laws provided in the paper in which various courts held different rulings, observations, and interpretations had been made regarding the property rights. The paper discusses the judicial interpretation of the *Vineeta Sharma v Rakesh Sharma* case concerning women's property rights. Apart from this, the paper covers historical aspects that society used to practice in the current scenario with the passage of legislation.

LITERATURE REVIEW

Critical Analysis of the Changes Brought by the 2005 Amendment of the Hindu Succession Act³ by Prateeksha K N: This research paper provides a detailed analysis of the Hindu Succession (Amendment) Act, 2005, along with case laws where the applicability of this Act has been referred to in disputes regarding the division of property amongst Hindu families. The author of this paper did a complete overview of the Hindu Succession (Amendment) Act, 2005, including the interpretation of the Act and its shortcomings of the Act. **Daughters have coparcenary rights by birth even if the father died before the Hindu Succession (Amendment) Act, 2005 came into force⁴:** This article available at SCCOnline mentions a brief analysis of the *Vineeta Sharma v Rakesh Sharma*⁵ case in which the Supreme Court noted some interpretations mentioned in this paper. This paper helped us to comprehend section 6 of the Hindu Succession

³ Prateeksha KN, 'Critical Analysis of the Changes brought by 2005 Amendment of Hindu Succession Act' (2021) 4(4) International Journal of Law and Management Studies <<https://doi.org/10.1000/IJLMH.111774>> accessed 31 October 2022

⁴ Prachi Bharadwaj, 'Daughters have coparcenary rights by birth even if the father died before the Hindu Succession (Amendment) Act, 2005 came into force' (SCC Online Blog, 11 August 2020) <<https://www.sconline.com/blog/post/2020/08/11/daughters-have-coparcenary-rights-even-if-parents-died-before-the-hindu-succession-amendment-act-2005-came-into-force/>> accessed 01 November 2022

⁵ *Vineeta Sharma v Rakesh Sharma & Ors* (2020) AIR 3717 SC

(Amendment) Act, 2005, with the help of those interpretations. **Case Analysis: Vineeta Sharma v Rakesh Sharma and Ors**⁶: This article had a detailed analysis of the Vineeta Sharma v Rakesh Sharma case provided with the arguments supporting whether the applicability of the Act is retrospective and retroactive. The author did determine the nature of the relevance provided with the reasoning given by the apex court in their interpretation given in the above case. The source has the author's views on how the Amendment had impacted women's inheritance rights under Hindu law. **Comparative Analysis of Change in the Succession Rights of Women under Hindu Law**⁷: This source of literature provides a historical overview of the Succession rights of women dating back to medieval times. The paper mentions the discriminatory and patriarchal laws concerning women's property rights in our legal system under the Mitakshara and Dayabhaga schools of Hindu Law. It also had a comparative analysis between the ancient and modern laws and aided us in realizing the status of women. **Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India by Debarati Halder and K. Jaishankar**⁸: This piece of literature explained the concept of 'stridhan', considered a critical aspect in the Hindus and their marriage. This paper's author provided women's point of view regarding the succession laws that existed in ancient, medieval, and now modern India. It provided that the need to consider women equal had gradually been considered after the passing of the Amendment of laws.

HISTORICAL OVERVIEW

The ancient saying, "*Na stri swatantramarhati, swatantram na kachit striyah*"⁹ Means that women should be protected by their male counterparts and guardians¹⁰. They should not be granted an independent charge, and so was the rule of the ancient Hindu society.¹¹ The ancient scriptures do not mention the rights of an unmarried woman over property, but there is a little share of the

⁶ Devesh Saxena, 'Case Analysis of Vineeta Sharma v Rakesh Sharma and Ors' (*S & D Legal Associates*, 30 August 2020) <<https://www.sndlegalassociates.com/post/case-analysis-vineeta-sharma-v-rakesh-sharma-and-ors-sc>> accessed 07 November 2022

⁷ Shristi Banerjee (n 2)

⁸ Debarati Halder (n 1)

⁹ AM Bhattacharjee, *Hindu Law and the Constitution* (2nd edn, E L House 1994)

¹⁰ Debarati Halder (n 1)

¹¹ *Ibid*

property for a married woman called the stridhan. Such property could be either movable or immovable. Although the stridhan was never absolutely owned by the woman, it had been stated in the *Manusmriti* that the woman and her property belonged to her husband. Eminent jurists like *Yajnavalka*, *Narada*, and *Katyayana* have defined a more refined form of rights for women over the property. These jurists tried to further the idea of women exercising their rights over property.¹²

The concept of 'stridhan' has been described as one which means a 'woman's wealth'. Smritikars coined this term. The Streedhan was a woman's sole property, and as per Jimutavahana, the woman possessed absolute control over this property, irrespective of her marriage. Even though such was not the case, in reality, considering the practices prevalent at the time. Women were not prohibited from using their property but were also not given complete control over it.¹³ According to Manu, "three persons, a wife, a son, and a slave are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong."¹⁴ Therefore, even after being entitled to stridhan, women had limited authority over it because they needed their husbands' permission to dispose of a specific portion of the stridhan. At that time, males treated women like mere chattels or as their slaves.

HINDU WOMEN'S RIGHTS UNDER THE 'HINDU WOMEN'S RIGHT TO PROPERTY, 1937'

Before this Act's enactment, no such provisions or a codified law would have favored a Hindu woman's entitlement over property. Therefore, any dispute concerning the subject matter would be decided or dealt with per customary laws and practices. But later in 1937, the Hindu Women's Right to Property Act came as a breath of fresh air for all those who raised their voice for women's empowerment. The public outcry over the unfair treatment of women regarding property rights led to the uncovering of this Act. By giving a widow the same inheritance rights

¹² Ayushi Singhal, 'Right to Property of Hindu Women' (*Academike*, 19 March 2015)

<https://www.lawctopus.com/academike/right-property-hindu-women/#_edn2> accessed 31 October 2022

¹³ Devesh Saxena (n 6)

¹⁴ 'Manusmriti with the Commentary of Medhatithi' (*Wisdom Library*)

<<https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-comment>> accessed 15 November 2022

as a son, the legislators made progress in closing the gender gap. Unlike in the past, when the rule of survivorship divided the property among the other coparceners, the widow now had the only title to such property. However, she imposed some restrictions on this land, which she maintained until her death. As per the provisions, "*a Hindu man's widow, his widowed daughter-in-law and widowed granddaughter-in-law are entitled to inherit to his estate, not only in default of but along with his male issues.*"¹⁵ It is worth mentioning that a Hindu widow in possession of the estate has the right to full beneficial enjoyment and is not liable to anyone as long as she does not waste the estate wilfully. The estate is distinct in that, in the situation of stridhan property, the estate is obtained following the death widow's death, the widow of the last complete male owner, or the previous full female owner, as witnessed in a case, whichever is applicable. Even though the Act attempted to eliminate the gender gap by including clauses that guaranteed widows under any law other than Dayabhaga would have the same interest in the property as the owner, the Act declared that after Hindu women obtained the property, their interests would be 'restricted' or known as Hindu women estate. Nonetheless, the Hindu widow would have the same right to partition as the male owner.¹⁶

CHANGE IN THE STATUS OF WOMEN THROUGH THE HINDU SUCCESSION ACT 1956

To abolish the long-standing custom of barring Hindu women from inheriting property from male heirs, a more progressive law was created. This was a more progressive act of independent India as it had expanded the scope of the concept of stridhan and granted absolute rights over property to women. The Supreme Court, in one of the cases, had to define the provisions of the Act clearly. According to the Supreme Court's ruling, which sought to end all debate, the Act had two distinct advantages.¹⁷ The apex held that section 14 of the Act¹⁸ has completely removed women's deficiency to hold the property as its owner. Furthermore, it converted a female owner's limited estate into an absolute estate, irrespective of when the estate was established than the said legislation's passing because it was retroactive in nature. "*The Hindu Succession Act,*

¹⁵ John Dawson Mayne and N. Chandrasekhara Aiyar, *Mayne's Hindu law and Usage* (Higginbotham 1986)

¹⁶ Monmayee Basu, *Hindu Women, and Marriage Law* (Oxford 2001) 33

¹⁷ Shristi Banerjee (n 2)

¹⁸ Hindu Succession Act 1956, s 14

1956 repeals all the rules of the law of succession hitherto applicable to Hindus whether by any text or rule of Hindu law or any custom or usage having the force of laws in respect of all matters dealt with in the Act. Therefore no woman can be denied property rights based on any custom, usage, or text, and the said Act reformed the personal law and gave women greater property rights. The daughters were also granted property rights in their father's estate."¹⁹ The Supreme Court, in a case, had interpreted section 14(1) and observed that the provision was not in contravention of Articles 14²⁰ and 15(1)²¹ and was therefore held constitutional. Women are absolute owners, and this position cannot be contested, the Supreme Court found in *Radha Rani Bhargava v Hanuman Prasad Bhargava*²². When it was established that the widow had sold or transferred the property before the passage of the statute without a valid reason, it might be contested.

The definition provided by the Act for women's property has been vague and concerning. The provision states that a property inherited by the female through inheritance, maintenance, partition, or in any other way, before or after getting married or if she acquires it either by her skill, by purchasing or by prescription or any property that is held by her which she might have received in the form of stridhan 'immediately' before the commencement of this Act. Before this legislation was enacted, women were not granted their right to the alienation of property.²³

Section 6 of the Act²⁴ has dealt with the concept of survivorship. It recognized the concept of devolution by survivorship and devolved a male Hindu's stake in coparcenary property. According to the clause, females in the family could not inherit a share of the ancestral property in contravention of the rights of their male counterparts. But the Act has managed to retain the coparcenary under the Mitakshara school of law in exclusion of women, which means that the father and his son have the right to hold the property, and the mother and her daughter had

¹⁹ 'WOMEN'S RIGHT TO PROPERTY' (*Indian Law*, 25 February 2011)
<<http://newcenturyindianlaw.blogspot.in/2011/02/womens-right-to-property.html>> accessed 01 November 2022

²⁰ Constitution of India 1950, art 14

²¹ Constitution of India 1950, art 15

²² *Radha Rani Bhargava v Hanuman Prasad Bhargava* (1966) SCR (1) 1

²³ Debarati Halder (n 1)

²⁴ Hindu Succession Act 1956, s 6

been excluded from the share despite providing the scheme for intestate succession.²⁵ In the case of *B. Chandrasekhar Reddy v State of Andhra Pradesh*,²⁶ It was held that women are denied their right to equality compared to male heirs and should not be denied their right to coparcenary. Coming to section 23²⁷, women were not entitled to reside at their paternal home except when she was divorced or widowed. In addition to this, she only had the preemptive declaration for partition once a male member or member took a stand for it.²⁸ Despite being progressive in its meaning and aim, the Hindu Succession Act 1956 remained gender biased and discriminatory.

THE 174TH LAW COMMISSION REPORT

Even though the Hindu Succession Act of 1956 provided various inheritance rights to women and was a step taken to counter discrimination among the coparceners, despite the passing of the Hindu Succession Act 1956, injustice to women in terms of inheritance still existed in society. The statute had some clauses denying women their legal entitlements to joint family property. According to Section 23 of the Act, married daughters were prohibited from living in their parents' residences unless they were widowed, deserted, or divorced from their husbands. The clause had been noted as the leading cause of legal constraints imposed on women and the need for the 174th Law Commission Report's recommendation.²⁹ was urged. Sections 6 and 23 of the 1956 Act received particular attention in the report since they were the two that underwent the most significant and radical modification following the 2005 Amendment.

The law commission drafted a model amendment legislation after its 174th report, in which they suggested reforming the Hindu Succession Act of 1956. This Amendment was intended to bring two significant changes, firstly, it would upgrade daughters' position to that of 'coparceners',

²⁵ Amrita Das, 'Notional Partition, A critique, Section 6 of The Hindu Succession Act 1956' (Air Online, 2004) <<https://www.aironline.in/legal-articles/Notional+Partition+%3A+A+Critique+Section+6+of+Hindu+Succession+Act%2C+1956>> accessed 01 November 2022

²⁶ *B. Chandrasekhar Reddy v State of Andhra Pradesh* (2012) 3 SCC 654

²⁷ Hindu Succession Act 1956, s 23

²⁸ PK Das, *Universal's Handbook on Hindu Succession* (3rd edn, Universal Law Publishing Co Ltd 2011) 345

²⁹ Siddharth Priyadarshi Sharma, 'A Critical Analysis of the 174th Report of the Law Commission of India' (*Academia*, 2014)

<https://www.academia.edu/7575974/A_CRITICAL_ANALYSIS_OF_THE_174TH_REPORT_OF_THE_LAW_COMMISSION_OF_INDIA_Subject_Family_Law> accessed 20 November 2022

and secondly, it would completely repeal Section 23 of the Act³⁰. In 2000, these suggestions were made and were put into effect when The Hindu Succession (Amendment) Act was passed in 2005.

OVERVIEW OF THE HINDU SUCCESSION (AMENDMENT ACT), 2005 AND WAY AHEAD

As pointed out earlier, the intent behind bringing about this Amendment was to reform the provisions of the previous Act as it had violated the norms of the Constitution. Section 6 of the Act had the most criticized and concerning rules. But with the Amendment, women's equality and security have been restored. It has widened the scope of women's property rights and discarded the consequential position of women.³¹ The law has been based on the principles of the Mitakshara school of law, which is why it is in line with the traditional beliefs that did not comply with the new, modern-age societal norms. But this age-old gender bias and discrimination had to be ceased. The only way to achieve the same objective was to give the daughters, in a Hindu Family, birthright over the ancestral property equivalent to the sons. The statutory provisions that changed have been discussed beneath. Section 4(2) first dealt with an exception regarding agricultural land. As per the exception, women were obscured from using agricultural property regulated under State laws, which resulted in bias against women. Under the Amendment, this provision restricting women from using agricultural property was omitted, leading to a significant step towards ensuring equality.

Secondly, the Amendment to Section 6 of the Act has raised the position of women to that of coparceners by birth, with all the rights and duties of a son. The property of a Hindu who dies intestate will now transfer either by testamentary or intestate succession, nullifying the survivorship rule. This change is irrelevant to partitions that take effect before December 20, 2004, because Section 6(4) only applies to debts committed before the Act's inception.³²

³⁰ Law Commission, *Property Rights of Women: Proposed Reforms Under the Hindu Law* (Law Com No 174, 2000)

³¹ Prateeksha KN (n 3)

³² Shital Kharat, 'Effect of the Hindu Succession (Amendment) Act 2005 - Judicial Response' (2017) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2912662> accessed on 01 November 2022

Next is the exclusion of section 23 from the Act. It prohibited female heirs from requesting the division of a dwelling until male heirs had decided in furtherance. Additionally, section 24 was also eliminated, which was biased against three types of women: widows of deceased sons, widows of deceased sons of deceased sons, and widows of deceased brothers who would not be qualified to inherit the property if they had remarried when it became available for succession.³³ Also, the term '*disposed of by him*' was changed to '*disposed of by him or by her*' in Section 30 of the Act, making it gender-neutral by the Act's goals.

THE JUDICIAL INTERPRETATION OF THE ACT

There were numerous doubts among the public, which concerned the implementation of the Act and whether it had a retrospective or prospective application. This was when the court had to intervene to clear the chaos. The Hindu Succession Amendment would not be relevant in *Vaishali Satish Ganorkar & Anr. v Mr. Satish Kesharao Ganorkar & Ors.*³⁴ According to the Bombay High Court, unless the daughter was born after 2005. However, later a larger Bench took a different stance on the issue, prompting the court to emphasize the importance of the daughter and her father being alive on the Amendment's effective date.

As per the case of *Badrinarayan Shankar Bhandari v Om Prakash Shankar Bhandari*,³⁵ there must be a fulfillment of two prerequisites need to be fulfilled. Additionally, the daughter had to be alive when the law took effect, and the disputed property had to be attainable as a coparcenary property. The Amendment, according to the court, would be retroactive and would apply to all girls born before and after June 17, 1956.³⁶

The High Court of Karnataka also established that the Amendment would be applied retroactively. On the day the Amendment Act of 2005 went into effect, the daughter was accorded the status of a coparcener and was also awarded the right at birth. Therefore, she must have been born after June 17, 1956, to qualify under the modified clause. In other words, if a

³³ *Ibid*

³⁴ *Vaishali Satish Ganorkar & Anr v Mr Satish Kesharao Ganorkar & Ors* (2012) Bom CR 210

³⁵ *Badrinarayan Shankar Bhandari v Om Prakash Shankar Bhandari* (2014) Bom 151

³⁶ *Ibid*

woman is born after the Hindu Succession Act of 1956 came into effect, she is given coparcener status by birth.³⁷

The Supreme Court stated in *Prakash & Ors. v Phulavati & Ors.* that the contrast between Section 6 of the Hindu Succession Act and the Amendment Act, adding that even if that Act expressly disclaimed the ability to be applied retroactively, it would not be permissible to do so. Additionally, it was added that the Amendment would apply to daughters, regardless of when they were born, whose father was a living co-parent as of September 9, 2005. The High Court of Karnataka delivered a similar pronouncement in *Lokamani & Ors. v Mahadevamma & Ors.*³⁸ wherein it was held that the provisions of the 1956 Act³⁹ have a retrospective effect and the position of daughters to be considered as a coparcener as per the 2005 act⁴⁰ has been left undecided. Therefore, the matter was further referred to the Supreme Court. In *Balchandra v Smt. Poonam & Ors.*⁴¹, the main issue raised was regarding the status of the 2005 act- whether the same was retrospective in its applicability. The court had decided that even though the father did not exist when the following 2005 act came to be, the daughter would still be considered a coparcener in a Joint Hindu Family.

THE CASE THAT CHANGED THE COURSE OF INHERITANCE BY WOMEN

The Hindu Succession (Amendment) Act, 2005, with its amendments, has eliminated various irregularities and discriminatory provisions that were illogical to comply with the modern scenario. The most crucial alteration done to section 6 of the Act, which has been questioned time and again regarding its applicability, is discussed below in the case of *Vineeta Sharma v Rakesh Sharma and Ors.*⁴² in 2020.

In this case, Vineeta Sharma, the appellant, sued her relatives, including her brother Rakesh Sharma, for a portion of the family's ancestral property. Before September 9, 2005, their father,

³⁷ *Pushpalatha N. v V. Padma* (2010) Kar 124

³⁸ *Lokamani & Ors v Mahadevamma & Ors* (2020) 9 SCC 91

³⁹ Hindu Succession Act 1956

⁴⁰ Hindu Succession Act 2005

⁴¹ *Balchandra v Smt. Poonam & Ors* (2019)2 SCC 681

⁴² *Vineeta Sharma v Rakesh Sharma and Ors* (2020) AIR 3717 SC

Mr. Dev Dutt Sharma, had died. According to the High Court of Delhi, Section 6 of the 1956 Hindu Succession Act had been amended in 2005 and thus prevented the appellant from claiming the property. Later, a Supreme Court appeal was made. In this case, the Supreme Court considered some issues, firstly, whether a daughter can claim coparcenary rights under the 2005 amendment if the father is deceased, and lastly, whether the applicability of section 6 after the Amendment is retrospective or retroactive.

The Supreme Court, in its judgment, overruling *the Prakash v Phulavati*⁴³ case and the *Danamma* case⁴⁴, held in this case that the appellant had the right to claim a share in the property under section 6 of the *Hindu Succession (Amendment) Act, 2005*. The court also determined that under section 6, the rights granted by birth are unrestrained heritage.⁴⁵ As a result, the father need not still be alive on the date of the Amendment for the provision to be enforceable.

In light of this, the court determined that even while the provisions are *retroactive* in nature and the rights can be asserted as of September 9, 2005, it is still possible to do so⁴⁶. The court also noted that the amendment act provides the status of daughters' as '*coparceners*' regardless of whether the daughter was born before or after the commencement of the Act and will have to be treated the 'same as sons'.

In this instance, the judiciary has taken a more liberal approach, broadening the scope of Section 6 of the Hindu Succession (Amendment) Act, 2005, to facilitate sons' and daughters' equal rights. The present ruling has resolved several questions about the applicability of Section 6. The Hon'ble Supreme Court has finally answered the conflict of whether this provision is applicable. Additionally, it reflects the notion of gender equality in a general sense.

CONCLUSIONS AND SUGGESTIONS

All the acts were brought into existence to bring about pertinent changes with the change in time as well as the reformation of the people's ideologies. However, not all of the intended

⁴³ *Prakash v Phulavati* (2016) 2 SCC 36

⁴⁴ *Danamma @Suman Surpur and Anr v Amar* (2018) 3 SCC 343

⁴⁵ Devesh Saxena (n 6)

⁴⁶ *Ibid*

defects have been wholly removed despite the modifications' best efforts and the legislators' better intentions. The Amendment's most egregious mistake, which brings gender equality and women's empowerment into doubt, is the retention of Article 15. Only women in relationships with men – such as wives, daughters, etc. – are acknowledged in the section mentioned above. It compromises a woman's identity and uniqueness as a result. Other groups of women, such as sisters and daughters-in-law, who are not included in the Amendment, are ignored and solely addressed as daughters and wives.

Even though the Act has allowed women to become the 'Karta' of the family, a widow was still deprived of this. In *Income Tax v G. S. Mills*⁴⁷, the Supreme Court debated whether women may hold the position of head of the family. In light of this ruling, women are still permitted to serve as joint family Kartas, according to the court. Apart from this, there needs to be more clarity about the nature of the 2005 act, especially section 6. There has yet to be a definitive answer as to whether the section is retrospective, which has led to several legal disputes and cases before the court.

The system of the Hindu undivided family and the coparcenary structure had been traditionally patriarchal, which had excluded women from taking a share in the family's wealth. The Hindu Code Bill and its 2005 Amendment were enacted to alter this notion. The Hindu Succession Act of 1956 was enacted, coupled with the coparcenary doctrine, even though it was initially supposed to eliminate the Mitakshara coparcenary. A coparcener's interest would no longer deteriorate during survival. While the interest in the Hindu Undivided Family will continue to decline due to births, it won't rise due to deaths.⁴⁸

Women are still not recognized as natural heirs of ancestral property years after the legislation. This is due to the lack of education and awareness among women who are so ignorant of the newly formulated laws, favoring them that they accept the injustice, therefore, do not attempt to know what the laws and the Constitution have to say imply about their rights.⁴⁹ In most

⁴⁷ *Income Tax v GS Mills* (1966) AC 685

⁴⁸ Manoranjan Ayilyath, 'Did Hindu Succession Act Indeed Outcast Mitakshara Coparcenary' (2014) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465531> accessed 02 November 2022

⁴⁹ Shital Kharat (n 32)

families, women are reduced to being merely a means of acquiring more and more property without their consent. They are pressured, subjected to grave hurt/injuries, and tormented by husbands and in-laws to receive/get a share in their father's property. Unfortunately, the Act has no provision that could prevent the same and protect women against such heinous crimes. The patriarchal interests and beliefs of society still bog them down.