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**FROM TRADITION TO TRANSFORMATION CHARTING THE
COURSE OF GENDER EQUALITY THROUGH THE HINDU
SUCCESSION AMENDMENT ACT, 2005**- Ishita¹**Abstract**

This paper delves into the Hindu Succession Amendment Act of 2005, assessing its effectiveness in bridging gender disparities in inheritance rights within India's intricate social fabric. It moves beyond the confines of legal reform to evaluate the tangible impact on societal norms and gender equality. Through a detailed exploration, the analysis identifies both marked improvements in women's property rights and the persistent societal and systemic challenges that temper these gains. Despite these hurdles, the paper strongly concludes that the amendment significantly advances gender equality. It has catalyzed positive shifts in women's autonomy, participation, and recognition in family and societal contexts, underscoring its importance as a landmark reform. Acknowledging the complexity of fully realizing its potential, the discussion emphasizes the amendment's role as a crucial step forward. Thus, while mindful of the ongoing challenges, the paper affirms the amendment's substantial contribution to the pursuit of gender justice in India, highlighting its pivotal role in the broader movement towards equitable legal and social landscapes.

Introduction

In the complex background of cultural and religious diversity, tradition and modernity intertwined to bring in The Hindu Succession Amendment Act of 2005, which has been a significant step towards gender equality in inheritance rights. This was prompted by the 174th Law Commission report of 2000² which brought into light the discrimination in the Hindu

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² Law Commission Of India, 174th Report on Property Rights of Women: Proposed Reforms under

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Succession Act, 1956³ and aimed to bridge the gap between the constitutional guarantee of equality and its manifestation in real life. This paper delves into the changes brought in by the amendment to section 6 of the Hindu Succession Act and examines the intended and practical implications of these changes. It argues, that despite its challenges, the amendment is a significant step towards the achievement of gender equality in India.

Pre-2005 law

Prior to the amendment, HSA, 1956 was fundamentally built on the traditional mitakshara law. Under this law, daughters were treated unequally and were deprived of the coparcenary rights, which were only available to the men in the society. Under the patriarchal structure of this law, daughters were sidelined in the division of property in their natal homes as they were considered to belong to some other family after marriage. Even after marriage, the woman had rights as a widow, that too under the umbrella of maintenance. This was based on the idea that women are financially dependent on men, and the continuance of this law further perpetuated the cycle of economic dependency.

Another doctrine in effect was that of “pious obligation”. Under this rule, sons were held accountable for the debts taken by their ancestors. They had an obligation to repay the antecedent debts, regardless of whether they were for the benefit of the estate or the family. This meant that this debt could also be extracted from their property on non-payment of the loan. Thus, along with property right, financial liabilities were also inherited.

Additionally, rule of notional partition was applied in the presence of class-1 female heirs. This rule, although theoretical, offered a semblance of inclusion for women in the primarily patriarchal succession laws. On the other hand, male family members would inherit the property by survivorship if there were no heirs.⁴ Because of this, women were essentially kept from inheriting, which further institutionalised their exclusion from the inheritance process and highlighted the urgent need for reform. Hence, the state stepped in to change the legislation in this patriarchal and gender-discriminatory environment. This was accomplished

the Hindu Law (2000), available at <http://lawcommissionofindia.nic.in/reports.htm>

(last visited March 16, 2006).

³ Hindu succession act, 1956

⁴ K. N. Prateeksha, Critical Analysis of the Changes Brought by 2005 Amendment of Hindu Succession Act, 4 INT'L J.L. MGMT. & HUMAN. 3921 (2021).

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with the help of the Hindu Succession Amendment Act of 2005, which sought to replace these antiquated customs with a more equal legal framework for inheritance rights.

Post-2005 law

6(1) Coparcenary Rights: the amendment grants daughters the same rights as sons, they are able to inherit a portion of the joint family property. It also allows women to take on the Karta role, which was previously only assigned to the oldest male.⁵ This is a drastic break from patriarchal traditions that hitherto governed the management and succession of property.

Retroactive application: The amendments made to Section 6 are not applicable to partitions that took place prior to December 20, 2004, as stated clearly. However, it grants rights to all daughters, regardless of when they were born, as long as their father and the daughter were still alive at the time the amendment was passed.⁶ Thus, this clause seeks to redress historical wrongs, but it strikes a clear boundary to keep previously resolved divisions from being reopened, striking a balance between practical constraints and legal equality.

6(3) Abolition of Survivorship: By mandating notional partition as the norm for property division, the amendment effectively abolishes the law of survivorship. By guaranteeing that every child receives an equal portion, this eliminates previous gender-based exclusions and shows a commitment to justice.

6(4) Pious obligation: The notion of pious obligation is eliminated as part of the adjustment, meaning that coparceners are no longer automatically liable for family obligations unless they are incurred for the family's benefit. Notably, this law does not apply to obligations signed prior to 2005 and is not retroactive, treating potential financial liabilities with a sophisticated notion of justice and accountability. Since it is not retrospective, it still bounds sons to pay off debts taken before the amendment.

6(5) Non-retrospective: To emphasise the non-retrospective character of some provisions, the modifications highlighted in Section 6 do not apply to alienations that took place prior to December 20, 2004. This restriction guarantees that the law's application upholds previous transactions while advancing equity for future transactions.

⁵ Sujata Sharma v. Manu Gupta (2016) 226 DLT 647

⁶ Vineeta Sharma v. Rakesh Sharma(2020) 9 SCC 1

Sociological Impact

This amendment aimed to bridge the gap between legal equality and provision of actual rights to women. The traditional laws were based on the assumption that sons were the only worthy successors of the state and that women are not actually part of the family since they have to leave after marriage. The property rights women had were what they got as widows as maintenance which perpetuated a cycle of economic dependency among women. Thus, this amendment legally acknowledged the importance of women in the family by making them coparceners and giving them equal rights as sons. It also allowed them to be kartas, recognizing them to be equally important as men to continue the family legacy. This provision thus provided them with a security net and an asset base which they can leverage to improve their social and financial conditions, like investing in business or education.

This shift is not just symbolic, it also affects the existing social fabric by encouraging social units like families to reconsider traditional gender roles and contribution of females, thereby making the society and the laws more inclusive and promoting a faster social development.

Another way how this amendment affects women is by giving them higher negotiating powers during marriage. Possession of property raises their social status in both their birth and married households. Furthermore, these balanced negotiations lead to a decrease in the dowry-related tradition as the premise of considering women as financial liabilities is obliterated.⁷

However, along with the advantages, it is necessary to acknowledge the difficulty in implementation, majorly due to the resistance owing to deeply entrenched cultural and social beliefs and practices. Regardless, it is a significant step to start resolving the innumerable gender-conflicts and inequalities existing in the law.

⁷ AN ANALYSIS OF HINDU SUCCESSION LAWS IN VIEW OF THE DECISION,
<https://kjablr.kar.nic.in/assets/articles/Hindu%20Succession%20Act.pdf> (last visited Mar 29, 2024)

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Does the intended sociological impact manifest in reality?**Positive impact:**

Studies have indicated that the amendment has significantly improved women's autonomy and social positions. According to a study, for example, women now have more influence over household decision-making following the amendment (Heath and Tan, 2019). Similar to this, a different study (Panda & Agarwal, 2005) demonstrates a link between the amendment and a decrease in domestic abuse events, demonstrating that the amendment's effects extend beyond a woman's financial independence to other facets of her well-being.

The HSAA significantly increased women's likelihood to inherit land, which, combined with improved educational attainment for girls, indicates genuine enhancement in women's socioeconomic status rather than a mere substitution of physical capital for human capital.⁸

Women have also benefited economically from the amendment, as seen by an increase in the number of higher-paying jobs they hold within the labour force. The importance of economic empowerment extends beyond the women to their families. According to research, women are more inclined to dedicate their resources to their families, which benefits their children's health, nutrition, and educational outcomes. In particular, there is proof that the amendment has improved women's marital prospects and increased educational attainment while lowering the risk of underweight, stunted, or wasted infants. This extends to enhanced intrahousehold bargaining power, where women's increased inheritance rights have correlated with the likelihood of marrying spouses with higher education or professional careers, without a compensatory reduction in other forms of transfers.⁹

The study by Sofia Amaral highlights how directing income or land resources towards women significantly bolsters female empowerment, contributing to a spectrum of positive outcomes including enhanced fertility rates, higher infant-survival rates, improved labor, and political participation, as well as narrowing the gender wage gap. Remarkably, women impacted by the amendment experienced a 17% decrease in the likelihood of facing intimate-

⁸ Klaus Deininger et al., Women's inheritance rights and intergenerational transmission of resources in India, 48 *Journal of Human Resources* (2013)

⁹ Joseph B. Ajefu et al., Women's inheritance rights and Child Health Outcomes in India, 58 *The Journal of Development Studies* (2021)

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partner violence. This reduction is partly attributed to marriages with partners who exhibit lower alcohol consumption, identified as a major risk factor for domestic abuse. Additionally, the study shows a tendency for weddings to take place nearer to the daughters' birthplaces, frequently in the same neighbourhood, indicating a higher degree of compatibility and alignment in marital partnerships. Beneficiary women perceived an increase in their alternatives outside of marriage in addition to marrying "higher-quality" spouses. This change suggests a wider acceptance by society of women's autonomy and worth, which is further supported by the encouraging rise in women's decision-making authority in families. The amendment has also been associated with a rise in female labour force participation, demonstrating the complex effects of expanding women's rights at the individual, family, and social levels. Together, these results support the amendment's huge real-world advantages and represent a major advancement for women's empowerment and gender equality in India.¹⁰

Challenges: gap between law and practice

The full potential of the amendment remains unrealized despite these progressive steps. The frequent instances of women being forced to relinquish their legally ensured rights highlight the patriarchal norms that still persist in society. Women in these cases are not left with much choice and give up their rights¹¹ either to preserve unity within the family or to avoid conflicts. Lack of awareness about their rights under the new law further exacerbates this issue, leaving many women unable to claim their inheritance.

Furthermore, there's a deep-rooted belief in some quarters that sons, being the traditional caregivers for parents in their old age, deserve a larger share of the inheritance. This not only undermines the legal provisions but also the spirit of gender equality the amendment seeks to promote. Moreover, the stigma associated with litigation, coupled with the financial and temporal costs, deters many women from pursuing their legal rights, effectively leaving their newfound rights unclaimed.

¹⁰ Sofia Amaral, Do improved property rights decrease violence against women in India?, SSRN Electronic Journal (2014)

¹¹ Florence Laroche-Gisserot, Women's Inheritance According to the 2005 Amended Hindu Succession Act, 2007 INT'L SURV. FAM. L. 121 (2007).

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An additional and disturbing challenge is the potential for increased dowry harassment, where husbands or in-laws may pressure women to claim their share of property as a form of dowry.¹² This coercion can create a problematic situation for women, as their resistance can lead them to become victims of abuse, including domestic violence. These situations highlight a twisted interpretation of the law's purpose, transforming it from a tool for women's empowerment into a weapon that increases their susceptibility to verbal, emotional, and physical abuse.

Conclusion

In essence, this paper reflects on the evolutionary path of succession laws among hindus. It talks about the changes made to section 6 that made daughters coparceners in their natal homes. It traces the intended and actual implications of the amendment. Despite its fair set of problems in implementation, the paper shows how it was an extremely crucial step that brought in gender equality and reform in Hindu succession laws. It shows, with adequate research and studies how the amendment has positively affected women's social and financial autonomy, and has improved their personal and professional lives. Thus, by giving women equal coparcenary rights as men, the amendment marks a historical step in ongoing struggle for gender-equality in India.

¹² Debarati Halder & K. Jaishankar, Property rights of hindu women: A feminist review of succession laws of ancient, medieval, and Modern India, 24 Journal of Law and Religion (2008)

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