

## **CURRENT POSITION OF HINDU WOMEN IN INDIA: WITH SPECIAL REFERENCE TO SUCCESSION LAWS**

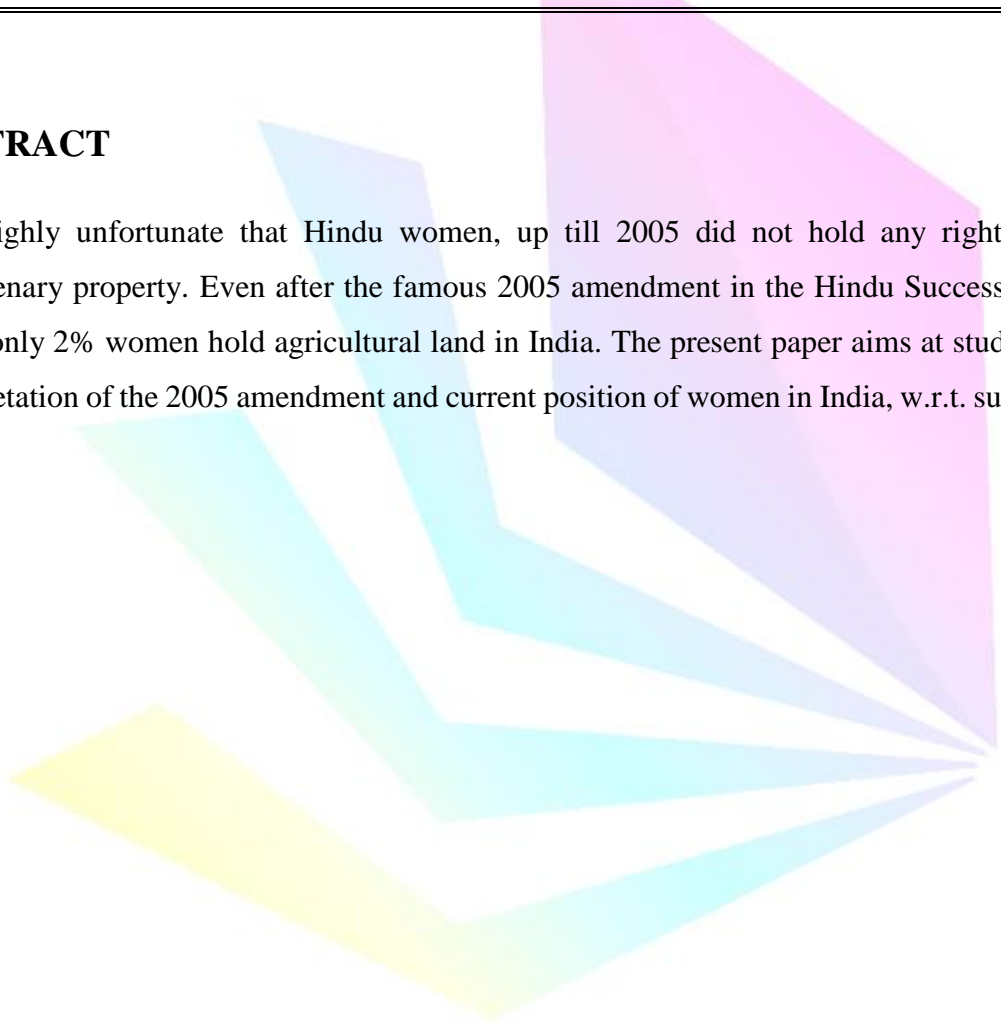
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### **ABSTRACT**

It is highly unfortunate that Hindu women, up till 2005 did not hold any rights in the coparcenary property. Even after the famous 2005 amendment in the Hindu Succession Act, 1956, only 2% women hold agricultural land in India. The present paper aims at studying the interpretation of the 2005 amendment and current position of women in India, w.r.t. succession laws.



## INTRODUCTION

Hindu succession laws before 2005, i.e. the Hindu Succession Act, 1956 was adversely discriminatory towards women. Though the Act was brought to streamline the succession laws of the Hindu community and to remove discriminations, if any, however, the 1956 law did not provide any succession rights to women in the coparcenary property. Thereafter, in the year 2005, an amendment was made in the Act to repeal this violation of right to equality.

## POSITION OF WOMEN UNDER HINDU SUCCESSION ACT, 1956 BEFORE 2005 AMENDMENT

The Hindu Succession Act, 1956 was enacted in order to streamline and codify the personal laws guiding the succession of property under the Hindu law. One of the sources of the Hindu law is the *Manu-smriti* and Manu clearly dictates that it is only the son who has a right on the property of the ancestors<sup>i</sup>. Therefore for a long period of time since 1956 to 2005 only the sons and no daughters had a right over the coparcenary property. In a coparcenary property under the Hindu Succession Act, a coparcener has a right to seek partition at any time after the death of the eldest Hindu male. Before the year 2005, this right of being a coparcener was only available to the males of the family and the females did not hold the status of a coparcener or the right to seek partition in a coparcenary property<sup>ii</sup>.

Succession under the Hindu succession act can be categorised into three kinds: partition in the coparcenary property, intestate succession and testamentary succession. It is clear that under testamentary succession, a person can leave any amount of his property for any human under a will. As discussed above, the daughters did not have any right in the coparcenary property. As far as the intestate succession was concerned, each off spring, whether a son or a daughter, had equal rights in the intestate succession of a parent. As it is now, even before the 2005 amendment, both sons and daughters formed a part of the class I heirs on whom the property of the parent who has died interstate would devolve. Though our constitution guarantees the right to equality as a fundamental right under the constitution however, such discriminations on the basis of gender are very common in the personal laws. Not only in the Hindu law, but

such discriminations are also pretty evident under the Muslim personal laws, both in the case of marriage and succession. Thereafter in the year 2005, discrimination on the basis of gender in the Hindu law was finally done away with and equal property rights in the coparcenary property were provided to the daughters as well.

## **POSITION OF WOMEN AFTER 2005 AMENDMENT**

Section 6 of the Hindu Succession Act gives the right to a coparcener to seek partition in a coparcenary property after the death of the eldest Hindu male. Before 2005, such right was only guaranteed to the male members of the Hindu family and not to the female members. It was only after the 2005 amendment that this right was then made available to the daughters of the family as well. Therefore, now according to section 6 of the Hindu Succession Act, the female counterparts (daughters) of the sons of Hindu family also have a right to inherit the coparcenary property<sup>iii</sup>. However, this amendment wasn't implemented with the ease that one may have expected. At the time of application, this amendment was met by a number of technical and practical issues. One of the issues was to interpret the amendment to see whether the women who were born before 2005 would fall under the category of coparceners or not. Further, another question for consideration was whether the daughters of the eldest male member who died before the year 2005 would fall under the category of coparceners under section 6 or not. These two questions have come before the apex court quite a lot of times<sup>iv</sup>.

The law regarding birth year of the daughters was made pretty clear. It was observed that section 6 will only come before the courts for application once the eldest male member of the family dies, and one of the coparceners decides to seek partition of the coparcenary property. Because the cause of action giving rise to a suit for partition of a coparcenary property is the death of the male member, the age for the year of birth of the daughters has no significance in its application. It was further pointed out and elaborated that every daughter alive at the time of this amendment would benefit from the said amendment.

As far as the issue of death of the eldest male member is concerned, the apex court has changed its decision multiple times. Recently in the year 2020, the apex court while reversing its

previous decision observed that irrespective of when the father has died, if a suit for partition has not been decided before the amendment then the amended provision would apply. That is to say that even if the father had died before the date of amendment, if the suit for partition has not yet been decided and is still pending adjudication before a competent court of law, then the daughters will also have to be made party to the suit and the partition will be effected in accordance with the new amended provision giving equal rights to the daughters as well<sup>v</sup>.

The said decision was however again reversed by the supreme court in the year 2020, where the apex court observed that the cause of action of a partition suit is the death of the eldest male member, and therefore any partition suit which is filed before the date of amendment due to the death of a male member before the date of amendment, would be decided in accordance with the law existing before the amendment and not the amended provision<sup>vi</sup>. That is to say that for a family whose father has died before the date of amendment, and a suit for partition was filed before a competent court, and the decision was not reached before the date of amendment, it is the older provision only that will apply in that case and not the amended provision, i.e. the daughters will have no right in the coparcenary property.

A lot of people debate that the personal laws of Hindus dictate that the women do not get a share in the property from their own father, but she only shares the property with her husband that her husband inherits from his father. The debate further suggests that though the 2005 amendment guaranteed the daughters to have equal share in the coparcenary property, such right has led to breaking up of a lot of families in which the daughters demand share in a house or in a property where the son is already residing. Such demand leads to a disturbance in the social construct of the Hindu families, and develops bitterness among siblings, leading to an overall decrease in the happiness quotient. We will discuss in the further section the position of the daughters according to the socio-cultural aspects.

## **THE INTESSTATE SUCCESSION OF A HINDU FEMALE**

Now that we have understood the role of women in the partition of a coparcenary property, it is also necessary to understand how a women's self-acquired property is inherited by her family if she dies intestate. The reason why the analysis of the intestate succession of a woman under Hindu law is necessary is because for some unfortunate reason, it is different from that of a man. While for a man, his class I heirs are his parents, his children and his wife, it is extremely unfortunate that for women, it is not her parents but her in-laws who inherit her self-acquired property. The people who fall under the category of class I heirs of a Hindu female are her children, her husband and her husband's heirs, i.e. her husband's parents, brothers and other relatives. That is to say that if a female dies intestate without any children or husband, all of a property would devolve upon her in-laws irrespective of the fact whether she was still in contact with them or not, or whether she treated them well or not. This issue came up before the Supreme Court in the case of *Omprakash and Ors. V/s. Radhacharan and Ors.*<sup>vii</sup> In this case a widow who lost her husband within three months of the marriage was thrown out by her in-laws subsequent to which she started living with her parents who raised her and educated her enough for her to secure a job. She worked all her life and had a good amount of account balance and died leaving behind her parents and her in-laws. When this issue came before the court, the apex court observed that in absence of a will of a dying Hindu female, it is pertinent that the law under the statute is followed. The court applied the provisions of section 16 of the Hindu Succession Act literally and the property devolved upon her in-laws who had very brutally thrown her out of the house.

It needs to be pointed out here that while the court had an opportunity to declare the said provision void under article 13 of the Indian constitution for being violative of article 14 i.e. right to equality, the court chose to interpret the provision literally and applied it, without taking into consideration that such literal interpretation of the provision led to gross injustice. While it is true that the rules of interpretation dictate that a provision which is not ambiguous in nature and the wording of which is clear, is to be applied literally, however it is also the duty of the court to see that such law is not unjust in nature. Unjustness in this case, was to the extent of violation of article 14 which dictates that there should not be any discrimination between people on the grounds of gender, color, caste, etc. The provision of intestate succession of women under the Hindu Succession Act is violative of Article 14 as there is no reasonable



justification for such law except the archaic and patriarchal construct of the society which gave rise to such an unfortunate provision.

It is therefore recommended that every woman should have a will however, because not every person dies leaving behind a will, it is high time that such patriarchal and orthodox provisions must be set aside and be replaced with provisions which equally apply to both men and women.

## **THE POSITION OF WOMEN FROM THE SOCIO-CULTURAL ASPECT**

While it is true that women now have equal rights under law when it comes to inheritance of property. However, like always, the society is moving at a much slower pace in comparison to the law. Even now majority women do not claim property from their parents or brothers because they're afraid of being ridiculed and boycotted by the whole family, and especially by their immediate family which has no interest in giving them their inheritance rights. A study showed that according to the India Human Development Survey (IHDS), while more than 48% of women form part of the agricultural force, hardly 2% women actually own agricultural/farm land<sup>viii</sup>. The data shows that while law has now provided women with equal inheritance rights, for some unfortunate reasons, the women are not able to claim these rights. It is seen that women are either not aware of their rights, or even they are aware, they choose not to do anything about it in order to save their family relations. Out of a total 100% agricultural land in the country, while women only hold less than 2% of the farm land, men hold more than 83% of the farm land<sup>ix</sup>. This huge gender gap in land ownership also proves that because the agricultural land is in abundance in the rural areas, it is the rural areas where the awareness regarding equal inheritance rights is the least. It is seen that women who are poor, illiterate and who belong to the lower caste, who basically form majority of the female population, are the ones who are most unaware of the developments in law, and tied in the shackles of this unequal and patriarchal society<sup>x</sup>.

## CONCLUSION

While brothers divide the property amongst themselves equally, the sisters often have to go to courts to claim their right in the property, which is both time and money consuming, and also strains their relations with their family<sup>xi</sup>. It is therefore, important that the state not only amends the law, but also spreads awareness among the ones who are poor, illiterate, and unaware. However, in this case, awareness and amendment in laws alone wouldn't do any good. A lot of women despite being aware, do not claim their right in the property, because their families are not sensitive about their rights. It is also necessary that along with spreading awareness, brothers and parents are sensitized about the fact that women need to have property in their names to lead a life of with security and dignity.

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## ENDNOTES

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