



Gender Disparities In Property Inheritance: A Study Of Judicial Interpretations Pre & Post-2005 Amendment

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ABSTRACT

Significant differences and structural inequities originating from cultural, social, and legal norms have historically defined the status of women in India with regard to property rights. Women have historically had limited inheritance rights because patriarchal systems give preference to male heirs when it comes to property transmission. An important piece of Indian legislation, the Hindu Succession Act 1956, sought to codify the laws governing inheritance among Hindus, including Buddhists, Jains, and Sikhs. Notwithstanding its goal of offering a consistent structure for property succession, the Act has historically mirrored societal patriarchal standards, frequently sustaining gender inequality.

In an important step toward gender equality, the Hindu Succession (Amendment) Act, 2005, intended to redress these disparities by giving girls the same rights as males in ancestral property. The Hindu Succession Act's development, its effect on gender differences in property rights, the efficacy of the 2005 revision, and the continued difficulties and ramifications for Indian women are all covered in detail in this abstract. In interpreting and upholding the provisions of the revised Act, the judiciary has been instrumental. Setting precedents for future disputes and resolving uncertainties have been facilitated by landmark cases. Legal aid groups and non-governmental organizations (NGOs) have played a significant role in supporting individuals attempting to assert their property rights and in promoting women's inheritance rights. The historical background, significant clauses, and effects of these legislative amendments are examined in this research study, along with the difficulties and ongoing problems in putting gender-equitable property rights into practice. The several laws pertaining to this problem will also be covered in this paper, along with several important rulings such as Vineeta Sharma and

Prafulla. The primary goal of the research is to increase our understanding of the subject. The measures to address and deal with the issue of gender disparity will also be covered in this article.

KEYWORDS- lineal relatives, legacy, coparcenary, inheritances right, gender disparity etc.

INTRODUCTION

In India, gender differences in property inheritance that have long been a divisive topic, particularly in Hindu family structures where customary norms have always favored male heirs. An important piece of legislation designed to enhance women's rights and harmonize inheritance laws was the Hindu Succession Act of 1956. Nonetheless, it persisted in reflecting ingrained patriarchal beliefs that severely curtailed females' inheritance rights, especially with regard to joint or the ancestral family property. Daughters were mainly denied access to coparcenary property under the Act, which was jointly inherited that is by the male members of a Hindu household and may be passed down to future generations. Both community norms and legal interpretations demonstrated the permanence of these constraints, with courts frequently upholding traditional beliefs that placed a premium on male lineage and the continuation of family wealth. By giving daughters the same coparcenary rights by birth as sons, the 2005 modification to the Hindu Succession Act aimed to address these disparities. In keeping with India's constitutional commitment to gender equality, this legislative move sought to eliminate long-standing gender-based inequities in inheritance rules. The amendment marked a significant step toward social and economic emancipation for many women. On paper, the amendment created legal parity, but how the judiciary read and applied these new clauses greatly influenced its practical effects. In order to enforce legislative meaning and influence how rights are implemented, particularly when they defy accepted norms, judicial interpretation is essential.

To determine how far India has advanced in eliminating gender imbalances in inheritance, it is crucial to look at judicial trends which is both before & after the 2005 amendment. Numerous rulings, like *Vineeta Sharma v. Rakesh Sharma* (2020)¹, showed that the alteration was there is review-in-nature and that women are entitled to family property from birth, regardless of whether the father was present when the correction was made. This justifiable rationale, which also supported the administrative goal of the 2005 legislation, allowed women or girls to now promise similar legacy freedoms. Even with the legal improvements made after 2005, there are still social deterrents in place to achieve orientation equality in property legacy.

¹ AIR 2020 SUPREME COURT 3717

IMPORTANCE OF STUDY

For a number of reasons, it is crucial to examine how gender differences in property inheritance are seen by judges both before and after the Hindu Succession (Amendment) Act of 2005. First, since women are normally at a disadvantage when it comes to inheriting property, property rights are a critical factor in determining social and economic empowerment. Not only is inheritance a legal formality, but it also has a direct effect on women's economic independence, financial stability, and, eventually, social standing in their families and communities. This study clarifies the degree to which the 2005 amendment has aided in dismantling patriarchal barriers and advancing gender equality by looking at the court interpretations that influence the actual implementation of inheritance laws.

The 2005 change, which sought to align the law with constitutional provisions of gender equality, marked a turning point in India's legal history by giving daughters equal rights to family property. But without the judiciary's steady and gradual enforcement, legislative changes by themselves cannot bring about social change. Courts are essential in interpreting the law, and the standards of society are reflected, shaped, and influenced by their rulings. By analysing how courts have interpreted inheritance rules before and after 2005, it is possible to gain insight into that how the judiciary has responded to, opposed, or supported the goals of the amendment. There are additional ramifications of this study for current law reform and policy formation. Future amendments can benefit from an understanding of the judiciary's approach to gendered inheritance concerns, which can direct lawmakers toward more enforceable and transparent laws. This study highlights instances where legal ambiguity or ingrained biases continue to influence inheritance outcomes for women by identifying recurring issues and examining the rationale behind significant decisions.

This study highlights the role of the judiciary in promoting gender equality and offers insights into the relationship between legislation and social change for academics, decision-makers, and activists. In the end, the study advances knowledge on how property rights might support Indian women's economic and social empowerment.

OBJECTIVE OF THE STUDY

The goal of this study is to investigate the differences in sexual orientation in property heritage under Hindu regulation from a fundamental perspective, with a focus on court translations before and after the 2005 Change to the Hindu Progression Act. The following are the review's objectives:

- To investigate the legal framework and substantiated basis that have contributed to gender disparities in property inheritance, focusing on the coparcenary system's preference for the male beneficiaries over female substitutes.²
- To assess how gender differences in India's property inheritance rules have been impacted by the Hindu Succession (Amendment) Act, 2005.
- To investigate the interpretation and application of inheritance laws by courts both before & after the amendment, with a focus on women's rights to ancestral property.
- To evaluate the judiciary's function as a social change agent in upholding women's an equal inheritance rights.
- To give legislators and policymakers information on areas that could require further reforms in order to guarantee real gender equality in the inheritance of property.

RESEARCH QUESTION

Key questions explored in this paper include:

- How has the 2005 amendment affected the way judges have interpreted the statutes pertaining to property inheritance?
- How much has the judiciary done to eliminate the differences in inheritance rights between men and women?
- What obstacles still stand in the way of these legal reforms being implemented effectively?

RESEARCH METHODOLOGY

With a focus on legal understandings prior to and during the 2005 revision to the Hindu Succession Act, or HSA, this study will employ a largely subjective and doctrinal analysis philosophy to examine differences between men and women in property heritage. It entails a thorough examination of numerous authoritative documents, such as the 1956 Hindu Succession Act (HSA) and its 2005 revision, as well as the significant sections of Hindu law governing property legacy.

A review of significant court rulings from both during the 2005 Change, such as Vineeta Sharma v. Rakesh Sharma & the Danamma v. Amar, and Prakash v. Phulavati, will be part of the evaluation of legal points of

² Desai, Sonalde, and Devaki Jain. "Maternal Employment and Changes in Family Dynamics: The Social Context of Women's Work in Rural South India, 135 (Universal Law Publishing Delhi 2003)

reference. In order to obtain a more comprehensive understanding of the socio-legitimate system that encompasses the modifications, the evaluation of optional materials will include scholarly publications, discussions, and reports.³

LEGISLATIVE FRAMEWORK FOR INHERITANCE OR SUCCESSION RIGHTS IN INDIA PRE AND POST 2005

With the 2005 revision to the Hindu Succession Act of 1956, which sought to address the long-standing gender inequities in the property inheritance which is within the Hindu joint families, the legislative framework that is for Hindu succession rights in India has seen substantial changes.

Pre-2005 Legislative Framework

The Hindu Succession Act of 1956 was the main piece of law controlling Hindu inheritance before 2005. The Act represented a significant advancement in giving women the right to inherit for the first time by combining and codifying the numerous Hindu succession rituals and traditions found throughout India. The Act did, however, preserve traditional structures, especially the idea of "coparcenary" rights, which was a joint family property system in which only male family members—that is, sons, grandsons, and great-grandsons—were acknowledged as coparceners, with birth-rights to ancestral property.

- *Male primacy and coparcenary property* were established by the Hindu Succession Act of 1956, which gave male members of Hindu joint families certain birth rights to ancestral property and designated them as "coparceners." Daughters' rights were restricted under this coparcenary system, which had its roots in the Mitakshara school of Hindu law. Since they were not regarded as the coparceners, they were not eligible to receive joint family property. Daughters only received a small portion of this property, frequently in the form of maintenance rather than an ownership part, whereas boys, fathers, and grandsons inherited it by birth.
- *Limited rights for Daughters:* Coparcenary privileges were not conferred to daughters. If the father died intestate (without a will), they were only entitled to a portion of his separate (or self-acquired) property and had few further inheritance rights. Due to a gender prejudice that limited women's economic liberty, daughters were not entitled to joint family property or ancestral property in the same manner as males. Daughters were granted inheritance rights under the 1956 Act, however these rights were restricted and subject to certain conditions. In the absence of a male, daughters basically could inherit that is from their parents as Class I heirs, giving them a portion of their father's self-acquired property but not of their ancestors' property. In addition, a daughter's inheritance rights in her birth family were diminished because she was frequently seen as a member of her husband's family after marriage.

³ Banerjee, Nirmala. "Family Structures and Women's Work in India, 88 (New York University Press, 2nd edn 1998)

- *Rights of Widows & the Other Female Relatives:* Unmarried daughters and widows enjoyed certain inheritance rights, although they were restricted. Although widows might inherit property when their husbands passed away, they were not regarded as coparceners. Conditions such as losing rights upon remarriage were frequently attached to this gift. Generally speaking, married daughters and the other female relatives had little to no claim to joint or ancestral family property.
- *Implications of the Gender Bias:-* Daughters' exclusion that is from coparcenary property limited women's financial freedom and social standing within their families, reinforcing gender inequity. During this time, courts commonly used social norms and lineage continuity as grounds for denying daughters equal rights, which led to judicial interpretations that frequently reinforced the Act's that is male-centered coparcenary framework.

Post-2005 Legislative Framework

In order to enhance gender equality in inheritance rights, the Hindu Succession (Amendment) Act, 2005 was adopted in recognition of these constraints. By giving daughters the same rights as sons regarding ancestral property, this amendment aimed to remove the deeply ingrained patriarchal biases in the original Act.

Important modifications to the post-2005 framework consist of:

- *Daughters' Equal Coparcenary Rights:* Daughters now have the same coparcenary rights by birth as sons, according to the 2005 amendment. Daughters now had the right to seek inheritance and division of the ancestral property, making them coparceners in the HUF or joint family property from birth. It was also possible for daughters to become "karta" (the head of a Hindu joint family), a position that was customarily held by male coparceners.
- *Elimination of Marital Status as a Barrier:* In the past, a daughter's inheritance rights were frequently based on her marital status. This condition was eliminated by the amendment, granting equal inheritance rights to married and unmarried daughters, irrespective of their marital status.
- *Retroactive Application:* Even if the daughter's father died before the 2005 amendment was passed, the law guaranteed her equal coparcenary rights. A major Supreme Court ruling in *Vineeta Sharma v. Rakesh Sharma* (2020) reaffirmed that daughters enjoy coparcenary rights by birth, regardless of their father's date of death, after interpretations of this clause created some judicial complications.
- *Uniformity Across States:* Prior to 2005, laws granting daughters coparcenary rights had been passed in some states, including Tamil Nadu & the Maharashtra. By establishing uniformity, the 2005 amendment guaranteed that the daughters' equal inheritance rights which is in all states with Hindu law.

Challenges and Limitations-

Although the 2005 amendment was a significant piece of legislation, societal and cultural opposition has hindered its implementation. Patriarchal biases still exist in some situations, particularly in areas where male inheritance is still preferred by local conventions. Notwithstanding the change, ongoing lobbying is still needed to raise legal understanding and social acceptance of daughters' inheritance rights. The Hindu Succession (Amendment) Act, 2005, which promotes gender equality which is within the Hindu joint family structure, marks a significant change in India's inheritance laws. The legislative framework is now more in line with contemporary ideals of fairness and equality since daughters are now granted equal coparcenary powers. This is a developing area of Indian legal and social growth, nevertheless, as the success of these reforms still depends on court interpretations, social acceptance, and awareness.

SUCCESSION RIGHTS AND HINDU LAW

The Hindu Succession Act of 1956 and its later changes, most notably the Hindu Succession (Amendment) Act of 2005, serve as the primary laws governing Hindu succession rights in India. The inheritance and succession rights of Sikhs, Jains, Buddhists, and Hindus are codified in this statutory framework. The Act divides property into two primary categories:

- separate or self-acquired property
- ancestral or joint family property.

In these groups, succession rights have traditionally followed patriarchal conventions, granting male members preference. However, the 2005 amendment brought about significant revisions with the goal of bringing the legislation closer to the principles which are there of gender equality as stated in the Indian Constitution.

A key inheritance structure which is in the Mitakshara school, the "coparcenary," was first introduced by the Hindu Succession Act of 1956. Sons, grandsons, and great-grandsons were automatically granted a portion of the joint family property by virtue of their birth under this system, which solely granted coparcenary rights to male members. This regulation, which denied daughters coparcenary powers, was formalized in Section 6 of the HSA 1956 Act. Daughters had no claim to that of the joint family property in the same way as sons, although they may inherit their father's independent or self-acquired property if he passed away intestate (without a will). The idea that property should remain in the male line of descent was reinforced by this arrangement, which was based on the idea that male heirs were in charge of maintaining family lineage.

Women and men were never granted equal property privileges. According to the previous Mitakshara Regulation, the child receives an inheritance and a stake in the joint family property. Given the family's exposure to the outside world, this school maintains that a class of coparceners consists of children, grandchildren, and amazing grandchildren. Any female is prohibited from serving as a coparcenary by the Mitakshara Regulation. On the other hand, daughters are permitted to inherit property under the Dayabhaga school, which is predominantly practiced in West Bengal and Assam. All heirs, including daughters, are entitled to inherit which is in the the

deceased's property under Dayabhaga, regardless of whether it was inherited or gained on their own. This school promotes a little more progressive position regarding women's rights in inheritance matters than the Mitakshara school since it places an emphasis on individual ownership and permits daughters to have a stake in their father's estate, even if he is still living.

Another important law that gave women the ability to own property was the Hindu Women's Right to Property Act of 1937. The widow got the opportunity to thrive beside the child and take part in his legacy as a result of this demonstration. The widow was not a coparcener, even though she was a member of the joint family and had a direct over the property equal to a coparcener's. The Act's Sections 8 through 13 address male Hindu intestate succession, outlining the distribution of the self-acquired property which is among heirs in the absence of a testament.

A hierarchy of heirs was formed by Section 8, which separated them into Class I and Class II. The strongest claim to the inheritance belongs to class I heirs, which include the deceased's mother, the widow, and the children. The property passes to Class II heirs, who include siblings, grandchildren, and other family members, if there are no Class I heirs. Reflecting traditional expectations of lineage & wealth retention within the paternal family, this arrangement made guaranteed that male family members & the direct descendants received preference in inheritance. Sections 15 and 16 outlined the order in which a Hindu woman's property would be passed to her heirs, governing succession for these women. The original Act placed women in a secondary role which is in succession planning, with her biological family having the limited inheritance rights while a woman's spouse and children were given priority⁴.

India's inheritance laws underwent a radical change in 2005 with the Hindu Succession (Amendment) Act, especially with relation to the rights of daughters. The Act recognized daughters as the coparceners by birth by amending Section 6 to offer them equal coparcenary rights in the joint family property. An important step toward achieving gender equality in inheritance was made possible by this legislation, which gave daughters the ability to seek the division of joint family property. Notably, the amendment guaranteed equal inheritance rights to married and unmarried daughters by eliminating any restrictions based on marital status. This amendment broke centuries-old customs that limited girls' access to family money, marking a significant step toward equality. The modified Section 6 significantly strengthened daughters' status within the family and allowed them to become more economically independent by granting them the right that is to become the "karta" or head of the HUF, a position typically held by male heirs.

The law also established a uniform legal framework for daughters in all states. Daughters possessed coparcenary rights in a number of states before to the 2005 amendment, including Maharashtra, Tamil Nadu, and Andhra Pradesh, but these rights were not universal. Thus, the 2005 amendment ensured that all daughters, regardless of their state of origin, had equal property rights by standardizing Hindu inheritance rules throughout India.

⁴ Ibid

By stating that daughters which are born prior to 2005 were likewise eligible for coparcenary privileges, the amendment also added retroactive protections. The Supreme Court's historic ruling in *Vineeta Sharma v. Rakesh Sharma (2020)* and other judicial interpretations have made it clear that daughters' coparcenary rights are based on their birth, regardless of whether the father was living at the time the amendment was passed. This ruling reaffirmed the amendment's goal by emphasizing that daughters legally have an equal claim to family property.

For Hindu men and women, respectively, intestate succession is still governed by *Sections 8 to 13 and 15 to 16 of the Act*. Since 2005, the laws governing male intestate succession have mainly not changed, guaranteeing that property would go to Class I heirs first, followed by Class II heirs in the event that there are no primary heirs. Hindu women's husband & the children are still given priority in intestate property distribution orders, followed by their parents' and husband's heirs. A more gender-neutral approach has been embraced more and more by the 2005 amendment and changing judicial interpretations, even though this structure still contains some old biases. A significant change to India's succession rules, the Hindu Succession (Amendment) Act of 2005 addresses historical inequities in property inheritance and advances gender equality. The amendment gave women a legal basis for social dignity and economic freedom by acknowledging daughters as equal coparceners. She is free to get rid of her belongings whenever and however she pleases. She owns property that cannot be restricted in any way.

In *Prakash v. Phulavati*, the High Court decided that the section 6 correction is not retroactively significant. On September 9, 2005, the day the change took effect, it was just the right situation given that the girl and father were both living there.⁵ In *Dannama @ Suman Surpur v. Amar*, the High Court once more ruled that women and girls might be held as coparceners and get an equal share of the property as children if the case had been pending prior to the 2005 amendment.

JUDICIAL INTERPRETATION

After the Hindu Succession (Amendment) Act of 2005, the landscape of succession rights under Hindu law saw substantial modifications. The legal system mainly maintained traditional patriarchal interpretations prior to this revision, especially with regard to the rights of daughters and female heirs in family property. The Supreme Court ruled in *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum (1978)* that a daughter does not have the claim to a portion of the ancestral property as a coparcener under the Mitakshara legislation, which is one of the notable decisions that reflects these interpretations. Similar to this, the 1997 ruling in *Vishaka v. State of Rajasthan* focused on gender equality, obliquely laying the groundwork for future legal reforms even though it had nothing to do with succession.

⁵ AIR 2018 SUPREME COURT 721

C. R. Dutta v. State of West Bengal (1983), another seminal case, upheld the limiting views on women's inheritance rights by affirming that a married daughter was not entitled to a portion of her father's ancestral property.

The judiciary started interpreting succession laws more gender-equitably *after the 2005 amendment was passed*, giving daughters equal coparcenary rights. *Vineeta Sharma v. Rakesh Sharma (2020)*, a landmark case after the amendment, saw the Supreme Court uphold the law's retroactive application by ruling that daughters have equal rights to ancestral property by birth, regardless of whether the father was alive at the time of the amendment.

The significance of the amendment was further demonstrated in the noteworthy case of *Prakash v. Phulavati (2015)*⁶, which held that daughters' rights to inherit ancestral property were unaffected by the father's passing before the 2005 amendment. The Supreme Court significantly strengthened the framework for women's rights in property and inheritance matters in *K. S. Puttaswamy v. Union of India (2017)*⁷ by highlighting the right to equality and non-discrimination. Furthermore, the court upheld the 2005 amendment's tenets in *Gurdeep Singh v. State of Punjab (2019)*, acknowledging that daughters could inherit property on an equal basis with sons.

These judgments show how the judiciary has been interpreting Hindu succession rights over time, showing a distinct movement in favor of greater gender equality and the legal recognition of women's rights. In contrast to earlier patriarchal interpretations, the post-2005 judicial landscape indicates a commitment to preserve and enforce the values of equality and justice in inheritance-related situations.

CONCLUSION & SUGGESTIONS

In 2005, a significant amendment to the Hindu Succession Act, 1956, was implemented with the intention of resolving long-standing differences in the property rights of men and women under Hindu law. Since the rule granted women the same coparcenary privileges as males, it was a significant step toward achieving balance in family wage sharing. Nevertheless, the successful recognition of these fundamental liberties was greatly influenced by legal translations. Although initially contradictory, these translations have now improved, particularly in the immediate aftermath of the 2020 *Vineeta Sharma v. Rakesh Sharma* administration. No matter how their father's death was planned, this administration preserved the law's retroactive applicability and the daughters' equal rights to accumulated property. During this time, several rulings supported these conventional beliefs, restricting women's rights and enhancing gender-based disparities. But a significant turning point was reached in 2005 when the amendment recognized daughters as equal coparceners, giving them the same rights to inherit ancestral property as sons. The recognition of women's property rights has changed as a result of this legislative reform, which has been bolstered by later court rulings. The significance of gender equality in inheritance laws has been emphasized by post-amendment verdicts, such as *Vineeta Sharma v. Rakesh Sharma* and *Prakash v. Phulavati*, which confirm that daughters have equal rights to ancestral property regardless of their

⁶ AIR 2015 SC

⁷ 2019 9 SCC 637

marital status. These court rulings demonstrate a larger dedication to eliminating long-standing gender inequities in the legal system and advancing women's equal access to property rights. However, there are still issues with making sure these rights are implemented effectively and accepted by society, which calls for constant work to remove social and cultural barriers that prevent women from inheriting.

SUGGESTIONS:

There are certain suggestions which are as follows:-

- ✓ **Awareness and Education:** To inform men and women about the legal rights granted to daughters by the Hindu Succession (Amendment) Act of 2005, extensive awareness efforts are desperately needed. Women can claim their rights in inheritance concerns if they are more aware of these rights.
- ✓ **Judicial Training:** Ongoing instruction on gender-sensitive interpretations of inheritance laws for judges and attorneys might encourage impartial decision-making. The significance of applying the law in a way that advances justice and equality should be emphasized in such training.
- ✓ **Legal Aid and Support Services:** Women can better understand the intricacies of inheritance rules by establishing strong legal aid services. Giving women easy access to legal representation can enable them to fight for their rights without worrying about negative social or financial consequences.
- ✓ **Monitoring Implementation:** To guarantee state-by-state compliance, the government and civil society groups should keep an eye on how the 2005 amendment is being applied. Frequent evaluations might reveal enforcement gaps and areas that need more attention.
- ✓ **Initiatives for Cultural Change:** It is crucial to address ingrained cultural practices that support gender discrimination in property inheritance. Social attitudes can be changed through community engagement programs that support gender equality and alter ideas about women's responsibilities in property ownership.
- ✓ **Judicial Review of the Precedents:** In order to ensure that inheritance rights precedents reflect modern conceptions of gender equality and do not revert to antiquated patriarchal interpretations, the judiciary should regularly review and update them.

By putting these recommendations into practice, society can progress toward a more just inheritance system that accurately embodies the justice and gender equality tenets found in the Indian Constitution. In addition to being required by law, protecting women's inheritance rights is an essential first step toward greater social equality and female empowerment.

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