

Assessing Gender Equality – A Critical Analysis of the Hindu Succession (Amendment) Act

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Abstract

This study explores the development of inheritance rights governed by Hindu law in India, with a focus on legislative reforms targeting the eradication of long-standing patriarchal customs. The Hindu Succession Act of 1956, despite being forward-thinking, failed to grant daughters the same coparcenary rights as sons, thus maintaining gender inequality. Significant progress towards gender equality was achieved in 2005 with the enactment of the Hindu Succession (Amendment) Act, which was shaped by changing state laws and advice from the 174th Law Commission Report. This change in law gave daughters equal rights to inherit property, representing a significant change in legal and societal standards. The paper closely analyses the effects of the 2005 amendment, focusing on its successes and persistent weaknesses.

In spite of progress in laws, traditional and family systems still hinder the protection of women's property rights. Strongly held beliefs and customs frequently lead women to give up their rightful entitlements in order to preserve family unity, ultimately subverting the intentions of the law. Moreover, the study examines the challenges brought about by the revision, like discrepancies in how agricultural assets are handled and the unfair implementation of inheritance entitlements among various groups of female beneficiaries. The

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examination highlights the importance of implementing a Uniform Civil Code to unify inheritance laws among different regions and guarantee genuine gender equality. By extensively examining literature, legal analysis, and the societal legal context, the study aims to offer a detailed insight into the Hindu Succession (Amendment) Act of 2005. It promotes a comprehensive strategy involving education, societal changes, and proactive legal intervention to create a culture that upholds and enforces gender equality in inheritance rights.

Introduction

The development of inheritance rights within Hindu law in India has been a intricate and revolutionary process, characterized by legislative changes intended to break down deep rooted patriarchal customs. Significant progress has been made in addressing gender inequalities in succession and inheritance from the Hindu Succession Act of 1956 to the Hindu Succession (Amendment) Act of 2005. The Hindu Succession Act of 1956, although innovative in several ways, did not grant daughters equal coparcenary rights, thus maintaining a system that put women at a disadvantage. According to the Hindu Succession Act, heirs are divided into four groups who have the right to inherit:

- · Class-I Heirs
- · Class-II Heirs
- · Agnates
- · Cognates

After the Hindu Succession Act of 1956 was implemented, numerous women were identified as Class-I heirs. This categorization gave them precedence over other beneficiaries, providing them with the same property rights as their male relatives at the same time. Only with the passing of the HSAA in 2005, which was shaped by changing laws in different states and the advice of the 174th Law Commission Report, did a significant move towards gender equality occur. This change not only provided daughters with equal rights to inherit property alongside male descendants but also allowed women to manage their inherited assets independently. Even with these progressions, the intersection of official legal rules and individual laws still presents difficulties, requiring a constant evaluation of whether these changes effectively encourage real equality and

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eliminate persistent discrimination. This paper aims to analyse thoroughly the effects of the HSAA of 2005 on the Hindu Succession Act of 1956, focusing on its achievements and existing shortcomings in the wider scope of gender equality in India.

Property is essential in shaping the lifestyle and social standing of people, households, groups, and countries. Yet, the issue of women's property rights has been a point of disagreement since early civilization and continues to be a topic of discussion in modern times. While laws have been passed to give women property rights, their enforcement often does not fully achieve the desired outcomes. Gender discrimination continues to blemish the reputation of a contemporary welfare state. In India, the societal hierarchy diminishes women's entitlement to inherited land. There is a common belief that when a woman gets married, her ownership of ancestral property terminates and she should depend completely on her husband for support and property.

When a woman demands her fair portion of inherited property, it is commonly viewed as encroaching on her brothers' entitlement, causing tension within the family. Many women choose not to assert their rights even though they are aware of them in order to preserve peace within the family. Laws can set standards in society, but they are ineffective without backing from societal customs. Hence, it is essential to not just promote education on women's property rights but also to emphasize that gender should not dictate ownership rights. These beliefs must be embedded in families starting at a young age.

Research Objectives

1. To critically evaluate the changes introduced by the Hindu Succession (Amendment) Act, 2005, with a focus on gender equality.
2. To analyse the extent to which the Amendment Act has addressed gender disparities in inheritance rights.
3. To assess the role of judiciary in interpreting and enforcing the provisions of the Hindu Succession (Amendment) Act, 2005, and its influence on gender equality in inheritance laws.

Research Questions

1. What challenges and barriers continue to hinder substantial equality in inheritance rights under the amended Act?
2. What are the gaps and limitations in the current legal framework of the Hindu Succession (Amendment) Act, 2005, and what areas require further legislative improvements to enhance gender equality in inheritance laws?

Analysis

When the Hindu Succession (Amendment) Act, 2005 was passed, it brought about a major change in the property rights of women by giving daughters coparcenary rights. This amendment, in effect since its enactment, granted daughters the authority to become coparceners and request partition, a privilege that is part of coparcenary. A significant progress for women's property rights occurred when the old provision under Section 6 of the Act was replaced with a new one, giving daughters the status of coparceners by birth, granting them equal rights and duties as sons.

A woman's property rights in Hindu law depend on her position in the family, marital status, and the type of property, such as ancestral, self-acquired, land, dwelling house, or matrimonial property. The revision also removed Section 23, which had previously prohibited female heirs from requesting division of a house inherited from a deceased person until the male heirs chose to do so. In addition, Section 24 was eliminated, which had unfairly treated three groups of women: the widow of a deceased son, the widow of a deceased grandson, and the widow of a brother, depending on whether they had remarried when inheritance was being decided.

The Hindu Succession (Amendment) Act, 2005, upholds the belief that equality is essential for justice in the legal system. Therefore, the amendment aimed to address the discrimination experienced by specific groups of women as outlined in Section 24. It is worth mentioning that the 2005 amendment does not apply retroactively, as it is considered a change in real law rather than just a clarification. The Supreme Court noted in *Anil Kumar Goel v. Kishan Chand Kaura* that laws impacting substantive rights generally apply only to

future situations, and there is a strong preference against retroactive application unless there is clear legislative intention.

Issues and discrepancies in the Hindu Succession (Amendment) Act of 2005

The HSAA of 2005 has received significant backlash for its ongoing inconsistencies and anomalies. The removal of section 4(2) resulted in a major problem related to how state laws applied to agricultural properties. The exclusion has caused confusion over whether the Hindu Succession Act (HSA) takes precedence over state laws concerning agricultural property. This uncertainty could lead to a wide range of laws governing agricultural property in one state, causing significant confusion. While not directly tied to gender equality, this matter highlights the need for more changes to the Act.

In addition, the Act shows bias against female relatives. Although the Hindu Succession (Amendment) Act of 2005 gave daughters inheritance rights to ancestral property, a privilege traditionally limited to male family members, it did not provide the same rights to mothers and other women who join the family through marriage. The continuation of this gap is a result of long-standing beliefs regarding family and blood connections in Hindu culture. Moreover, courts have faced challenges in determining whether to apply the Act retroactively or prospectively. The court ruled in the case of *Ms. Vaishali Satish Ganorkar & Anr. v. Mr. Satish Kesharao Ganorkar & Ors.* that the Act is applicable to daughters who are born on or after 9 September 2005.

Additional uncertainty arises from section 6, specifically subsection 2, which declares that women own property with coparcenary rights without detailing what these rights entail. The concept of survivorship, a

component of coparcenary, prompts inquiries regarding how it pertains to female individuals who have not left a will. Additionally, the elimination of this principle for male coparceners in section 6(3) has resulted in unequal rights among surviving coparceners. In the case of a Hindu family consisting of a father and two sons, if one son passes away, the father would inherit two-thirds of the property and the remaining son would inherit one-third. This goes against the basic principle of coparcenary, bringing into doubt the efficacy of getting rid of the doctrine.

The succession plan in section 8 gives preference to agnates over cognates, even if agnates are distantly related, and completely disregards uterine siblings. This part demonstrates a favouritism towards male relatives over female relatives and omits specific equivalent heirs from the class-I group. Despite the inclusion of four class-I heirs to improve gender equality, the continued exclusion of similar heirs, like the son of a deceased son of a deceased daughter and the son of a deceased daughter of a deceased son, is unjustified discrimination. The ruling in *Shri Badrinarayan Shankar Bhandari & Ors. v. Omprakash Shankar* overturned the previous interpretation, stating that the amendment impacts all living coparceners, regardless of their date of birth, and some clauses are applied moving forward while others are applied retroactively.

The Influence of Women's Right to Inheritance on Investment in Human Capital

Having the right to receive ancestral property can greatly increase a woman's bargaining power in the household, which could impact choices about investing in her human capital, such as health, education, and nutrition. The connection between human capital and physical capital, like inherited property, plays a crucial

role in determining if fairer inheritance laws can result in better socio-health outcomes for women. If human capital and physical capital are seen as working well together, fair inheritance laws are expected to lead to improved investments in women's health and education.

Inheritance Rights of Women in India

In India, inheritance regulations are shaped by both geographical and religious aspects, causing significant differences in legal customs among various groups. After gaining independence, the Hindu Succession Act was introduced to systematize and manage laws regarding inheritance for Hindus. This law combines Western legal concepts with traditional Hindu law, which is classified into two main schools: Mitakshara and Dayabhaga. The Mitakshara school distinguishes between 'joint family property' and 'separate property,' while the Dayabhaga system views all property as separate and does not acknowledge coparcenary rights. According to the Hindu Succession Act, when a Hindu dies intestate, their separate property and their 'notional' portion of family joint property must be distributed equally among immediate heirs, such as sons, daughters, and the spouse. Even with these rules in place, daughters have traditionally not been able to inherit joint family property directly.

On the other hand, while sons do receive part of the father's personal assets, they also have a natural entitlement to their own portion of the family's collective property. This system essentially establishes a 'Hindu Coparcenary,' compared to a men-only club, denying women access to coparcenary rights. This gender imbalance highlights the difficulties in attaining fair inheritance practices and reflects persistent issues in execution. If a Hindu woman dies without a will, her inherited property will be passed on to her heirs as

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outlined in Section 15 of the Hindu Succession Act. The property belongs legally to her husband and children as the main heirs. If the female does not have children, the property will go back to where she originally got it from. In this situation, the term 'child' includes all of the woman's offspring, regardless of where the property comes from.

As per Section 15(1) of the Act, in the absence of a living husband or children, the assets of a deceased Hindu woman without a will go to her husband's heirs, placing them above her parents in the inheritance hierarchy. Furthermore, the law does not specifically deal with the matter of a female Hindu's property obtained by herself. In situations where a woman is evicted from her marital home after her husband's death and goes back to her parents, a legal loophole can cause unfairness if her personal property goes to her husband's relatives instead of her own parents. As a result, the family of the late husband, who may have mistreated her, inherits her possessions instead of her parents, who may have cared for her until she passed away.

One significant change brought about by the Hindu Succession Act was its acknowledgment of daughters' equal rights to inheritance. This significant rule established that daughters have the right to inherit their parental property, allowing them to receive a fair portion of their father's assets, both movable and immovable. This major shift in inheritance legislation not only promoted the concept of gender equality, but also questioned long-standing norms that had been sustaining the unequal treatment of women in terms of property rights. Before this change, daughters had little to no entitlement to receive inheritance from their parents' estates, as inheritance was usually only granted to male heirs.

The Act's novel provision was groundbreaking as it gave daughters equal rights in the law, enabling them to demand their fair share of the family's property. This change not only gave women more strength by

acknowledging their role and rights in the family unit, but also reflected a larger societal shift towards gender equality. Furthermore, the Act also dealt with the matter of a widow's entitlements in a joint family environment. It brought in a rule that provided a widow with a partial share in the joint family property to guarantee her economic stability. This rule aimed to achieve a delicate equilibrium by offering essential assistance to widows, recognizing their requirement for financial security, while also safeguarding the rights of other coparceners. The Act maintained the economic unity of the joint family by defining the widow's rights, preventing property distribution from unfairly affecting other family members.

Coparcenary is an institution dominated by males

The idea of a coparcenary in a joint Hindu family was based on a shared male ancestor and his male descendants across three generations. A coparcenary could not start unless there is a shared male ancestor. The main focus of this coparcenary was the ancestral property passed down to a Hindu from his grandfather and father. On the other hand, assets passed down from non-spousal family members were seen as belonging solely to the individual. The main characteristic of ancestral property was that the offspring - sons, grandsons, and great grandsons - of the inheritor became co-owners from birth. As a result, the father, son, grandson, and great-grandson together established a coparcenary, with shared ownership of the ancestral property. This idea is in accordance with the ancient Manusmriti, which designated ancestral property for meeting family responsibilities. The Hindu Succession Act was introduced to consolidate the law on intestate inheritance among Hindus. At first, only the interest in coparcenary property of a male Hindu was included in Section 6 of the Act, thus maintaining the traditional essence of ancestral or coparcenary property. Therefore, the traditional Hindu law persisted, allowing only men to be coparceners.

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Nonetheless, the amendment made in 2005 to the Hindu Succession Act brought about a notable difference by enabling daughters to become coparceners, broadening the range beyond just males. The status continued to exclude other women, such as the wife, daughter-in-law, and mother. Even with progress in laws, the idea of coparcenary still primarily focuses on men. Present laws require equal division of a deceased male coparcener's property among all male and female heirs. Nevertheless, male descendants still benefit from receiving an extra self-governing portion of coparcenary assets, further solidifying the concept of a male-only inclusion in the coparcenary structure. This structure, which is inherently oriented towards males, indicates a necessity for it to be abolished.

Eliminating this system would require imposing restrictions on personal choice, similar to regulations seen in some European nations like Germany, Italy, and Austria, which frequently limit inheritance rights. Nevertheless, women could still be left out of inheritance entirely within these frameworks. On the other hand, upholding the Mitakshara system alongside giving daughters coparcenary rights could protect women's stake in ancestral property. The 2005 amendment to the Hindu Succession Act, despite granting women additional rights, fails to tackle concerns regarding freedom to write wills, potentially allowing for uneven distribution of inheritance. In the current legal system, if a Hindu woman dies without a will, her property will be inherited by her husband's offspring, then by her husband's father's offspring, before finally going to her own maternal relatives. This procedure prioritizes her husband's family over her own, highlighting the restrictions imposed on women's property rights.

Furthermore, the complexity of applying inheritance laws increase in cases where a joint family's property is spread across different jurisdictions, especially when one state follows the Amending Act and another does

not. This geographical disparity emphasizes the necessity of a Uniform Civil Code to guarantee equal inheritance rights for all heirs, regardless of gender or location, by maintaining consistency in its application nationwide.

The Role of the Judiciary in Guaranteeing Women's Property Rights

The effectiveness of a law is not solely based on its formal approval but also on how it is put into practice and enforced. The gender gap in property ownership, as seen in our observation, points to a notable difference between the laws and the reality, which is frequently influenced by cultural norms and parents' hesitation to give immovable property to their daughters. This resistance often stems from outdated social norms and traditions. It is essential to investigate if women turn to the legal system when their rights within the family are violated. Many women might decide against pursuing legal action, choosing to either give up their rights entirely or participate in settlements or mediations outside the courtroom. Often, the decision is influenced by the possible expensive economic and social consequences that come with legal action.

However, some women do pursue legal action. These women are faced with several relevant inquiries: Do regional variations exist in the frequency of case submissions? What are the common opponents in these legal disputes? Which kinds of properties are typically contested? What is the typical duration for courts to settle these disagreements, and what are the usual results? In addition, it is crucial to assess if the language used in court rulings exposes the presence of gender stereotypes and prejudices held by judges. Recognizing these biases is essential to grasp the wider impact of judicial rulings on gender equality. Moreover, it is crucial to contemplate possible tactics for assisting women in these legal disputes. These inquiries are important not

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only in situations where women are claiming their property rights but also when women are being sued by others, especially family members.

The court plays a key role in ensuring justice but cannot assume government duties or overlook administrative failures. The Indian legal system is known for being fair and attentive, especially when it comes to ensuring women have equal rights to property. It has been actively involved

in explaining the Hindu Succession (Amendment) Act, 2005, to clarify the inheritance rights of women. Ironically, this amendment, meant to guarantee equal property rights for women, has created legal uncertainties.

The Supreme Court has taken steps to ensure equality in the inheritance of property for Hindu women, highlighting the necessity of a revised societal system that upholds women's rights and eliminates bias against women in inheritance laws. The Court has consistently explained Section 14 of the Hindu Succession Act, 1956, in order to support the property rights of women.

Munna Lal v. Raj Kumar confirmed that legislative provisions take precedence over traditional Hindu law in the presence of explicit provisions. It was decided by the Court that reversioners are not required to initiate a declaratory suit while a female holder is alive if she makes unauthorized property transfers; they have the right to contest the transfer after her passing. The topic of whether a restricted estate given in a will transforms into a complete estate according to Section 14(1) was discussed in *Kamri v. Amru*, where it was ruled that a life estate provided by a will doesn't upgrade to a full estate unless specifically mentioned. *Danamma v. Amar* established that daughters have the right to a share of inheritance even if their father passed away prior to the

amendment. In order to settle the contradictory decisions, a larger panel in the Vineeta Sharma v. Rakesh Sharma case decided that daughters are entitled to equal coparcenary rights from birth, irrespective of whether their father was living when the amendment took place. This ruling confirmed that daughters maintain their rights for their entire lives, removing the final obstacle to achieving gender equality in Hindu women's property rights.

Conclusion & Suggestions

Women's property rights have been controversial for centuries. Despite legislative efforts to address this issue, the implementation has been inadequate, reflecting ongoing gender discrimination. In Indian society, it is commonly believed that a woman's property rights end with marriage. This belief pressures women to rely on their husbands for property and maintenance, discouraging them from claiming their ancestral property. Women who assert their property rights are often seen as taking away from their brothers' inheritance, which can lead to family discord. As a result, many women, despite being aware of their rights, choose to avoid conflict and maintain peaceful relations with their brothers. While laws can set normative standards, their impact is limited without corresponding changes in social practices. It is essential to educate society about the importance of gender equality in property rights and to foster values that transcend traditional gender roles.

To ensure the effective implementation of women's property rights, there must be a cultural shift. Families should teach children from a young age that property rights are not determined by gender. Men play a crucial role in supporting and advancing women's property rights. They must understand that gender equality in

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property rights benefits society as a whole. Men should actively work towards ensuring that women enjoy the same property rights as men. Addressing gender discrimination in property rights requires a multifaceted approach that includes changes at the family, societal, state, national, and international levels. Only through a comprehensive and inclusive effort can true gender equality in property rights be achieved.

Despite generating positive benefits, the amendment still possesses specific shortcomings. The amendment failed to achieve all of its goals and resulted in significant confusion and disruption. The addition of Section 15 is a mistake in the amendment that raises questions about gender equality and the promotion of women. Section 15 recognizes women solely based on their connections to men, like wives or daughters, which diminishes their distinctiveness and personal identity. Another issue with the amendment is its main focus on daughters, wives, daughters-in-law, and sisters who are not covered by its provisions. Another issue with the amendment is the absence of clarification on whether the mentioned legislation will override state laws. A new change in Section 4(2) has excluded agricultural land from coparcenary property. As a result of agricultural land being part of the State List, a problem arises. The condition of Hindu women has always been determined by male relatives even in Dharmashastras.

Therefore, when the Hindu Succession Act was implemented in 1956, lawmakers saw no reason to grant daughters inheritance rights from their father's property due to the belief that once married, a daughter becomes part of her husband's family and shouldn't inherit from her father. However, the 2005 amendment restored equality guaranteed by the Constitution, granting equal status to sons and daughters in a Joint Hindu Family. Ambiguity remains regarding the rights of validly adopted daughters as they are not mentioned in the amended Act in relation to inheriting their father's property.

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