
HINDU SUCCESSION (AMENDMENT) ACT, 2005: A STEP TOWARDS FORMAL OR SUBSTANTIVE EQUALITY?

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ABSTRACT

The Hindu Succession (Amendment) Act, 2005 was an initiative to eliminate gender discrimination from the Hindu personal laws of inheritance. Giving daughters an equal right as sons in inheriting, was a way to ensure that succession laws can be aligned with the constitutional ideals of equality as under Article 14 and 15 of the Indian Constitution. The amendment is perceived as a big step towards attaining gender justice, but the real question that still lingers is whether it could achieve substantive equality or is it just a step ahead towards formal equality.

This paper tries to critically examine whether the Hindu Succession (Amendment) Act, 2005 transcended the constitutional ideals of equality into the real-world application so as to have some positive impact for the women. The major emphasis of the paper is on evaluating the amendment, through a theoretical framework on formal and substantive equality, in light of the legislative intent and the judicial precedents. The paper argues that although formal equality may have been attained through this amendment, substantive equality lags far behind.

The judicial approach has been illustrated through the evolving opinions of the courts by various precedent cases, which displays how the interpretation of the amendment and ambiguities revolving around it have been approached by the court of law. Despite the clear stance taken by the courts, several factors, such as familial arrangements, procedural intricacies, testamentary freedom and the deep-rooted patriarchal norms in society, continue to undermine the effective implementation of these inheritance rights.

The paper finally concludes that the amendment is a progressive step towards attaining gender justice, which it accomplished on a formal level. But the substantive equality is still illusionary due to the societal structures and the loopholes in the law. There is a need for more legal reforms in order to ensure that this right can actually be used for the empowerment of women.

Introduction

Inheritance laws help to determine women's financial and social status in the society as well as in their families. Personal laws, including succession laws, have always been heavily gender biased and most of them are deeply entrenched in the patriarchal norms. The Hindu Succession Act of 1956 was the first step towards ensuring few rights were granted to the women. However, its scope was very limited in nature, it denied females the equal coparcenary rights thus ensuring the male dominance can continue over the ancestral property.

The Hindu Succession (Amendment) Act, 2005 was a step ahead to ensure equal rights were granted to daughters by making them coparcenary at the birth in the Hindu joint family. This was made to make sure that the gender-based discrimination in the inheritance related matters could be addressed and women could be given equal rights as enshrined under the constitutional principles of Article 14 and 15. Thus, the amendment was seen as a step forward in making the society more gender just. However, having rights is not the same as being able to exercise them. The principles of equality enshrined in the constitution have moved beyond the formal notion of giving equal treatment to all and now encompasses substantive equality. Succession laws can be viewed through this critical lens of the principles of equality.

Although the courts have intervened and articulated the extent and usage of the amendment of 2005, there are still many barriers which affect the demands of women in achieving their inheritance rights. The effects of statutory equality are usually watered down by legal loopholes, procedures and socio-cultural pressure.

This paper argues that although the Hindu Succession (Amendment) Act, 2005 has been successful in bringing formal equality, that is, by giving daughters equal coparcenary rights but it has failed to bring substantive equality since structural, legal and social obstacles are still experienced that have not allowed women to access inherited rights effectively.

Formal and Substantive Equality

Articles 14 and Article 15 are enshrined in the Indian Constitution as its foundational values. Article 14 grants equality before law and equal protection of law¹ whereas Article 15 forbids discrimination on various grounds, including sex.² These provisions try to ensure equality in treatment of individuals. However, the idea of equality has evolved from a one-dimensional

¹ INDIA CONST. art. 14.

² INDIA CONST. art. 15.

concept, to include both formal and substantive equality.

Formal equality is based on the idea of treating the like cases alike. Formal equality focuses on abstract individuals, who are judged on their personal merit. It holds that the group-based characteristics are irrelevant and it tries to replace the use of group-based characteristics to make decisions based on merit. It does not operate on the ground reality and therefore has failed to address the entrenched patterns of social disadvantages.³

Substantive Equality, on the other hand, is not concerned with identical treatment of all rather it is concerned with obtaining equality in the outcomes. It acknowledges that the societal discrimination extends beyond the individual acts and societal norms and the power imbalances create an obstacle to exercise the rights effectively. To bring equality positive steps need to be taken, rather than just treating everyone on the same ground.⁴

The law of inheritance illustrates that formal equality in the text of the law can be accompanied by substantive inequality. Although women have the same right to inheritance, their right to property is often limited by the social norms and power structures, so it is one of the important points to evaluate the constitutional perspective of equality through reforms like the Hindu Succession (Amendment) Act, 2005.

Key Amendments made in 2005

The initial significant progressive move towards codification was realised in the form of the Hindu Succession Act, 1956 that codified rights of the women to some degree but, the denial of the daughter's rights in coparcenary was still outright discriminatory. A comprehensive system including succession and inheritance was established in the Act. The amendment in 2005 brought a series of changes, the biggest one being that the daughters of the Hindu joint family became equal partners with that of son. The aim of the legislation of the 2005 Amendment was to do away with the gender discrimination of the daughters, as they were afforded equal rights to property as the sons.⁵ The main legislative intent of the amendment was to ensure that personal laws reflect the ideas enshrined in the constitution under Article 14 and 15, such as the right to equality.

³ S. Sarath Mathilal de Silva, *The Concept of Equality: Its Scope, Developments and International Legal Regime*, 61 J. ROYAL ASIATIC SOC'Y SRI LANKA 31, 39-41 (2016).

⁴ *Ibid.*

⁵ Siddhant Tokas, *Lack of Substantial Equality: Critical Analysis of Hindu Succession (Amendment) Act, 2005*, INDIA LEGAL LIVE (June 8, 2023), <https://www.indialegallive.com/laws-research-indepth/lack-of-substantial-equality-critical-analysis-of-hindu-succession-amendment-act-2005/>.

This was based on the recommendation of the 174th Law Commission Report⁶, which suggested that the exclusion of women from the coparcenary was not correct and it needed an immediate rectification. The amendment was based on the model adopted by the state of Andhra Pradesh followed by other states such as Kerela, Tamil Nadu and Karnataka. These states made daughters the equal coparceners as the sons in the joint family, but it excluded the married daughter from coparcenary which was based on the sociological ideology that once a women is married all her bonds with her family are severed and she becomes a part of her husband's family, so it would not be correct to give her the share in the father's coparcenary.⁷ But the 2005 amendment did not make this sort of discrimination and granted equal coparcenary rights to both married and unmarried daughters.

The doctrine of survivorship was abolished post this amendment and many new heirs were added to the Class I of the Schedule⁸, this included daughters if a pre-deceased daughter and son of a predeceased daughter.⁹ This expansion to the list was also made through the amendment.

Judicial Precedents

Even after the amendment, there was prevalent ambiguity in the words of the act, specifically with respect to the application of Section 6¹⁰. The central issue was whether the amendment was retrospective or prospective in nature. This led to a lot of confusion leading to filing of several suits. It thus, fell upon judiciary to determine the intent of the legislature and describe the true nature of the amendment.¹¹

*Prakash v. Phulavati*¹² (2016): This was one of the first cases to interpret the 2005 amendment to section 6 of the act. The main issue revolved around the nature of amendment, whether it was prospective or retrospective in nature. The court took a prospective approach and held that for a daughter to gain coparcenary rights, her father should be alive on September 9, 2005, i.e., prior to the amendment. The court interpreted the amendment using the phrase 'on and from' in the amendment. This helped to narrow down the scope of the amendment to exclude the

⁶ 174th Report, *Property Rights of Women: Proposed Reforms under the Hindu Law*, (2000)

⁷ *Ibid.*

⁸ Hindu Succession Act, 1956, sched. I, No. 30, Acts of Parliament, 1956 (India).

⁹ 174th Report, *Property Rights of Women: Proposed Reforms under the Hindu Law*, (2000)

¹⁰ Hindu Succession Act, 1956, § 6, No. 30, Acts of Parliament, 1956 (India), as amended by the Hindu Succession (Amendment) Act, 2005.

¹¹ Prateeksha K. N., Critical Analysis of the Changes Brought by the 2005 Amendment of the Hindu Succession Act, 4 INT'L J. L. MGMT. & HUMAN. 3923 (2021).

¹² *Prakash v. Phulavati*, (2016) 2 SCC 36.

daughter who had lost their father before the said date. This interpretation brought in much dissatisfaction and seemed to bypass the legislative intent behind the amendment, which was to make the law more inclusive and fairer.¹³

*Danamma Suman Surpur v. Amar*¹⁴ (2018): In this case, Supreme Court tried to clear the ambiguities created in the case of *Prakash v Phulavati*. The main question to be answered was whether the daughter can claim coparcenary rights if the father was alive at the time of amendment but died before the suit was initiated. The court here ruled out that the coparcenary right was granted to the daughters by birth and could not be extinguished on the subsequent death of the father. Although the ruling was a relief against the restrictive ground taken in *Prakash v Phulavati*. It did not resolve, the ambiguity related to the retrospective application, such as whether the survival of the father was necessary at the time of the amendment for daughters to have coparcenary rights.

*Vineeta Sharma v. Rakesh Sharma*¹⁵ (2020): This was a landmark judgment which cleared all the inconsistencies and ambiguities that arise from the amendment and the previous judgements. Irrespective of whether the fathers were alive, during the amendment, the Court decreed that daughters are by birth coparceners. The previous stance of *Prakash v. Phulavati* was overruled. It was emphasized that daughters born either prior to or after the amendment enjoy identical coparcenary rights since the privileges provided by the 2005 amendment are not dependent on the existence of the father. The ruling of *Vineeta Sharma*, however progressive in its legal merit, did not fully cover legal hurdles that women face in an actual situation where they seek to assert their rights to property. The focus of the judgment was on the interpretation of the law. Social resistance, procedural delays and lack of knowledge about the rights by women were still unaddressed.

Persisting Inequality

Even though the amendment seems one step ahead in the way of equality, the act still has many persistent grey areas that reflect the gender-based inequality

The act discriminates between the female members of the family. The 2005 amendment gave coparcenary rights to the daughters, however, the position of women who were brought into

¹³ Ritesh Dhar Dubey, *Critical Analysis of Interpretation of Succession Rights of Women Post Prakash v. Phulavati Judgment*, 13 INT'L J. CREATIVE RSCH. THOUGHTS (IJCRT) g143, 145–46 (2025).

¹⁴ *Danamma @ Suman Surpur v. Amar*, (2018) 3 SCC 343.

¹⁵ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

the family through marriage remained unchanged. The main reason for this was blood relations being seen as the central to the Hindu Society.¹⁶

Another problem is with Section 15¹⁷, which outlines how the women's property would be distributed when she dies intestate. Different methods were followed for women, depending upon the source of their property and the presence of the children. Such distinctions were not made in case of a male dying intestate. This compromises the identity of the women, by treating them as second class citizens. This also creates a discrimination towards the natal family of the women, since the rights of the husband's family is place over them.¹⁸

Section 8¹⁹ poses another such problem, it prefers agnates over cognates, even if the agnates are more remotely related to the deceased. This clearly shows how male relations are preferred over the female ones. The section also excludes some analogous class I heirs. Even though the addition of 4 class I heirs in the Schedules makes it more gender neutral, but the exclusion of two analogous heirs, i.e., son of predeceased son of a predeceased daughter and the son of a predeceased daughter of a predeceased son, as suggested by the 204th Law Commission Report²⁰ is still discriminatory.²¹

All of this shows that a lot more must be done to achieve true gender equality in practical sense but at the same the efforts that have been taken through this amendment don't bring forward the outcomes that were intended by the legislature. Although on paper, daughters have been given an equal footing by making them the coparceners. But the ground reality hits different. Granting women rights does not give them real power for several reasons. Some of which include:

Family Pressure Overpowers the Legal Rights: Even though women possess equal rights as men, in most cases they cannot assert these due to family pressures. Women are told to prioritise family relations over other rights, hence, demanding a share in the ancestral property can be seen to disrupt harmonious relations of the family. This leads to lot of voluntary

¹⁶ Siddhant Tokas, *Lack of Substantial Equality: Critical Analysis of Hindu Succession (Amendment) Act, 2005*, INDIA LEGAL LIVE (June 8, 2023), <https://www.indialegallive.com/laws-research-indepth/lack-of-substantial-equality-critical-analysis-of-hindu-succession-amendment-act-2005/>.

¹⁷ Hindu Succession Act, 1956, § 15, No. 30, Acts of Parliament, 1956 (India).

¹⁸ Prateeksha K. N., Critical Analysis of the Changes Brought by the 2005 Amendment of the Hindu Succession Act, 4 INT'L J. L. MGMT. & HUMAN. 3925 (2021).

¹⁹ Hindu Succession Act, 1956, § 8, No. 30, Acts of Parliament, 1956 (India).

²⁰ 204th Report, *Proposal to Amend Section 6 of the Hindu Succession Act, 1956*, (2008).

²¹ Siddhant Tokas, *Lack of Substantial Equality: Critical Analysis of Hindu Succession (Amendment) Act, 2005*, INDIA LEGAL LIVE (June 8, 2023), <https://www.indialegallive.com/laws-research-indepth/lack-of-substantial-equality-critical-analysis-of-hindu-succession-amendment-act-2005/>.

relinquishments of their rights over the property to save familial ties.²² Also, women are not ready to fight for their rights due to the fear of social stigma and lack of support from the parents.²³

Economic Limitation in Enforcing Rights: Many women are financially dependent on their families, especially on the male members of the family. This makes it very difficult to pursue litigation to ascertain their rights. The cost of litigation and the fear of social isolation hinder them from pursuing the enforcement of their rights. Having a right does not matter if you have no means to enforce it.²⁴

Testamentary Privilege: Even though the act grants equal coparcenary rights to females, this can be easily bypassed by people by creating a will and thus excluding the female heirs from getting any property through succession. While making a will is fully lawful and valid, by it displays how a legal mechanism can be used to surpass the formal rights and the equality created by the law. This loophole in the law it used to deny women their right in the coparcenary.²⁵

Oral Partitions and other Family Settlements: Oral partitions made by the families are hard to challenge, or to prove before the court of law. They can easily exclude women from getting rights in the ancestral property, without any need for documentation.²⁶

Lack of Awareness and Procedural Intricacies: There is a complete lack of awareness in women about their property rights. A larger number of women in India are illiterate and thus ignorant of their rights. Lack of awareness leads to women suffering a great deal.²⁷ To assert their rights, it is essential they people must be aware of it. It also requires dealing with procedural complexities such as documentation, registration etc. Illiteracy and lack of complete awareness in term of legal field, makes it difficult for the women to try to litigate for their right. The burden of dealing with it seems greater than losing out their share in the ancestral property.

Patriarchal Norms: Patriarchy is deeply entrenched in our society. Making the male lineage dominate over the ancestral property. The idea of women having equal rights as men and having

²² Bina Agarwal & Shruthi Naik, *Do Courts Grant Women Their Inheritance Shares? An Analysis of Case Law in India*, 182 WORLD DEV. 106688 (2024).

²³ Vikas Singh Yadav & Prashant Kumar Chauhan, *Impact of the Hindu Succession (Amendment) Act, 2005 on Women's Property Rights*, 8 INT'L J. L. MGMT. & HUMAN. 559 (2025)

²⁴ Bina Agarwal & Shruthi Naik, *Do Courts Grant Women Their Inheritance Shares? An Analysis of Case Law in India*, 182 WORLD DEV. 106688 (2024).

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ Vikas Singh Yadav & Prashant Kumar Chauhan, *Impact of the Hindu Succession (Amendment) Act, 2005 on Women's Property Rights*, 8 INT'L J. L. MGMT. & HUMAN. 559 (2025)

ownership of property has not yet gained acceptance from the society even if it has been recognised by the law. This forms a disassociation between the legal perspective and the prevailing social norms, thus, making it difficult for women to asset their rights.²⁸

The aggravated impact of all these factors leads to the denial of substantive equality to the women. The amendment merely confers rights over the women without looking the structural and social barriers that would cause hindrance in its effective implementation. Legal recognition of right alone is not sufficient to be able to exercise it efficiently. The amendment is a clear example of how formal equality does not necessarily lead to substantive equality.

Need for Reforms and Conclusion

The paper, thus, concludes that the Hindu Succession (Amendment) Act, 2005 which was brought into meet the gender equality norms in personal laws, failed to meet its target on one level. It may be seen quite progressive on the face of it, but it has not reached the ground realities. Although, women were recognised as equal coparceners in the amendment, there is still lack of substantive equality due to certain existing loopholes and the discriminatory practices of the society at large, which yet remain to be addressed. The judiciary sorted out the inconsistencies in the amendment through the case of *Vineeta Sharma v Rakesh Sharma*, but the issues related to the practical implementation of these rights are yet to be ascertained.

Some real measures need to be taken to ensure substantive justice is served to the women. Laws need to be more comprehensive so that women do not lose their inheritance rights due to family settlements, oral partition or through wills. Enforcement mechanisms should be easier and widely accessible to all. At the same time, effort must be made to raise legal awareness of the rights. Discriminatory clauses the act must be reconsidered to make it more gender neutral.

Finally, to conclude, Hindu Succession (Amendment) Act, 2005 is a step forward to eliminate the formal obstacles in making gender just laws. However, structural challenges persist which point towards the short comings of the formal equality. The only way to empower women is by guaranteeing substantive equality to women, so that they have rights which not only exist but can actually and practically be realised.

²⁸ Bina Agarwal & Shruthi Naik, *Do Courts Grant Women Their Inheritance Shares? An Analysis of Case Law in India*, 182 WORLD DEV. 106688 (2024).