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The 2005 Amendment: Analysis on the changes to the Hindu Succession Act

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Introduction
Succession Laws are those laws that cover how the property of a person shall pass on after his or her death. It also covers how family property shall pass on through the family. After a person dies, his property passes on in two manners. The first manner is through a Will. “A legal document containing instructions as to what should be done with one's money and property after one's death”\(^1\). If a person dies with a Will, then the property passes on according to the shares he has mentioned of all persons. However, if a person dies without any such Will, the property passes according to the succession laws the person follows. Succession Laws state the percentage of property the family members get when a person passes away. These are based on the relations in the family the person was born in. In India, these laws are based on religion majorly. Each religion can be governed by its laws. However, Hindus, Sikhs, Buddhists, and Jains are governed by a codified Hindu Succession Act.\(^2\)

Hindu Succession Laws: Past
In the past, laws relating to Succession were very vast. Laws governing people were mostly based on their religion. These religious laws were also based on the region or community of persons. Muslims were following the Muslim law while Hindus were governed by the Shastric Law that differed according to one’s region and school of thought. With the advent of the Britishers, there was a need felt by them to unify all the existing laws and bring about common law. For this reason, Sir Henry Maine, a law member of the Viceroy’s council enacted the Indian Succession Act of 1865\(^3\).

However, this Act came as a huge failure. This had many reasons. First, the Act infused in it Roman and English Laws. These laws were completely foreign to India and did not suit at all the Indian context of diverse religions and regions. Second, due to the use of foreign law principles, ideas like providing the woman with equal property were brought in. This was foreign to and not at all associated with the laws that governed Hindu, Muslims, and Parsis. Third, the law did not

\(^1\) LEXICO OXFORD DICTIONARY
\(^2\) Section 2, Hindu Succession Act, 1956
\(^3\) PRADHAN POONAM, FAMILY LAW LECTURES FAMILY LAW II (Lexis Nexis 4th) (2018)
recognize Joint Family for succession. This meant the complete end of the son-centered succession rights in India which gave them rights over the property by birth.

The dominant class was not ready to give up its dominance. Strong resistance by all classes resulted in these laws being followed only by Jews and some Christians. As native Christians were not prepared to accept this foreign law, their resistance led to the promulgation of two Acts for them⁴. With the accession of various regions, there was the introduction of the Portuguese and the French Legal System. This led to the various laws being in existence, to the already existing Indian Religious Personal law and the Roman and English Law.

These various laws could be summarised into two categories- one, the earlier laws that were based on religion, and two, the western laws that were brought to India by the British, the Portuguese, and the French. The most major difference that one can view between them is that the former believed in a patriarchal system. They did not consider women’s inheritance right important and did not want to bring any change to that, with some exceptions of a matriarchal system in some parts of South India. The latter however completely believed in women’s rights and believed them to be as much a contender to a property as a man.

**Hindu Succession Laws: Codification**

The Hindu Succession Act was enacted on 17th June 1956⁵. The main objective of this Act was to codify Hindu laws concerning succession. But why was this codification required? The Hindu laws of succession were brought in by Manu and Yajnavalkya. It was surprising that even though these laws were century old, they hadn’t been changed in a dramatic perspective. With the coming in of western ideologies, it was high time to amend the laws. It was realized that it was high time to put ancient laws at a test and bring in a newer modified version of the same, something that could bring the east at par with the west at giving rights to the people. To do the same, an expert committee was brought in headed by Sir Bengal Narasinga Rau⁶. They were asked to codify Hindu Law so that they can govern all the various sections that came from the broad perspective of Hindus, along with Sikh, Jain, and Buddhists.

The Act successfully discarded the differences between the Dayabhaga and Mitakshara school’s way of inheritance. It was made with the view of unifying the laws between not only Dayabhaga and Mitkashara schools but schools of thought prevalent in the South of India as well including Marumakkattayam and Namburi system of laws. The Act makes no distinction between movable and immovable property. It only applies to intestate succession (where there is no will) and to anyone who converts to Hinduism. It has no application in the case of testamentary

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⁴ Ibid
⁵ Hindu Succession Act, 1956
succession (where there is a will). The concept of Gotraja, Sapinda, and Bandhus have been long forgotten and discarded. They have been replaced by the concept of agnates and cognates. Agnates refer to those relationships that can be traced to have male members. These include relationships such as the son’s son, grandson’s son, son’s daughter, father’s mother, etc. Cognates on the other hand refer to those relationships that can be traced to have been linked through a female member. These include relationships such as daughter’s son, sister’s son, mother’s father, etc.

The limit of degrees has been removed. It is however in the closed nature of ancestry in which changes of fundamental nature have been brought. Initially, succession according to ancient Mitkashara Law took place according to the closest in terms of spiritual connection. This was replaced by a saner outlook. The new scheme of succession is based on the humane qualities of natural love and affection. This way, simultaneous heirship is recognized. People that come under the classification of Class I heir can now inherit property at the same time. Therefore, relations like a mother, widow, daughter, and son can inherit together the property at the same time. They all come under the common classification of Class I heir.

The doctrine of Representation has become the basis of bringing some Class I heirs. This doctrine states that when there is any heir present of any ancestor during his lifetime, and the heir passes away, then in that case, the heir of the deceased can avail the property. This way, representation of the children of a pre-deceased son or pre-deceased daughter can take place. The widow of a predeceased son shall also be given representation.

Let us look into some important provisions of the Act. Section 8 of the act talks about the classification of heirs. It states that the property of a deceased person shall first be transferred to his Class I heirs. If there is no Class I heirs, only then the property will be transferred to the Class II heirs. In the absence of both, the property will then be transferred to agnates, and in the absence of them, to cognates. Class I heirs include one’s mother, widow, daughter, son, etc. Class II heirs include one’s father, sister, brother, etc.

When a person does not have any heir, i.e. if he has no Class I heir, Class II heir, agnate, and cognate, in that case, the property is given to the government. In such a case, since the property is rewarded to the government, any liability that arises from the property, including any debt, etc, the government is liable to pay the amount. This provision is mentioned in Section 29 of the Act.

9 Garima Parashar, ABSTRACT DOCTRINE OF REPRESENTATION UNDER HINDU LAW, , https://www.academia.edu/22553939/ABSTRACT_DOCTRINE_OF_REPRESENTATION_UNDER_HINDU_LAW
10 Section 8, Hindu Succession Act, 1956
11 Section 29, Hindu Succession Act, 1956
namely as Escheat.

Section 9 of the Act talks about Simultaneous heirs.\(^\text{12}\) This principle means that no heir eligible under this principle can exclude another heir of the same class. It also states that these heirs shall devolve the property at the same time, together, according to the norms put down for the distribution of the property amongst them. These Class I heirs are put above the class II heirs.

Section 10 to Section 13 carry a lot of provisions. Firstly, the division of property among heirs is discussed\(^\text{13}\). Secondly, it discusses the laws regarding the allocation of property amongst the various members of Class II heirs\(^\text{14}\). Thirdly, it discusses the importance of property amongst cognates\(^\text{15}\). It states that no matter how close a cognate is by relationship; the property shall first be allocated to the agnate. And finally, fourthly, it discusses the various methods through which the calculation of gradation of cognates and agnates to determine the order of allocation of property to them\(^\text{16}\).

This was a divergence from the Ancient Hindu Law. Initially, all the members of the coparcenary would receive an amount from the property of the deceased no matter how far or close they were through relations.

Section 14 declares that any property that is being possessed by a woman, before or after the commencement of the act, has absolute control over the property\(^\text{17}\). Section 15 further explains how the property of a woman shall be distributed among her heirs after her death\(^\text{18}\). It creates the order like the following: son or daughter – heirs of the husband – mother and father – heirs of the father – heirs of the mother.

It further explains that when a woman inherits her property from her father or her mother, in such a case in the absence of her son or daughter, the property shall not follow the order of inheritance as mentioned but shall be inherited by the heirs of her father. It also explains that when a woman inherits her property from her husband or her father-in-law, in such a case in the absence of her daughter or son, the property shall be inherited not according to the order mentioned but inherited by heirs of her husband.

The next section\(^\text{19}\) talks about the direction in which the property of a Hindu Female shall be transferred. It states three rules. It also mentions that an illegitimate child of a lady has equal rights in the succession of property as that of a legitimate child.

With these laws coming into place, it can be stated that the faults of the archaic laws have been

\(^{12}\) Section 9, Hindu Succession Act, 1956

\(^{13}\) Section 10, Hindu Succession Act, 1956

\(^{14}\) Section 11, Hindu Succession Act, 1956

\(^{15}\) Section 12, Hindu Succession Act, 1956

\(^{16}\) Section 13, Hindu Succession Act, 1956

\(^{17}\) Section 14, Hindu Succession Act, 1956

\(^{18}\) Section 15, Hindu Succession Act, 1956

\(^{19}\) Section 16, Hindu Succession Act, 1956
tried to be corrected. By stating that the property received through father and mother shall go back to the father’s heir, the chances of the maternal property of a woman getting lost in the in-laws' family have been reduced. 20

To focus on some important sections specifically concerning succession in the Act. These are set down between Section 18 to Section 28 of the Legislation. These laws are implemented commonly among property left by men and women, the common ground being dying intestate. These sections discuss firstly, succession amongst half-blood and full-blood relations21. Being related full blood means that the persons have common parents, i.e. same mother and the same father. However, being related through half-blood means that the persons have the same father but different mothers. 22 This section regulates between such relationships.

The next section deals with Per Stirpes and Per Capita Rule. 23 Per Stirpes is the concept in which when a person passes away, his or her assets are allocated equally to his surviving heir. 24 To understand this better, let us take the following instance. If A has three children, C1, C2, and C3. If she decides on leaving her assets to her heirs per stirpes, in that case, the assets shall be equally given to the surviving heirs i.e. 1/3rd each. However, if say C1 does not survive, in that case, the property shall be divided taking into consideration whether C1 had any surviving heirs. If he did have surviving heirs, say 2 children, then the assets shall be divided into 1/3rd for C2, 1/3rd for C3, and 1/6th each for both C1’s children. However, if C1 died without any heir, the assets will be 1/2th and 1/2th each for C2 and C3.

Per Capita on the other hand oversees the idea of death. According to the concept of Per Capita, the assets are allocated equally among all the surviving heirs of the deceased. 25 For example, if A had three children and two grandchildren, and she stated in her documents per capita, the property would be divided 1/5th among each of them. Furthermore, if any of A’s child died predeceased her, it would be immaterial to see whether such child had any surviving heir and that the property will be divided among the surviving children and their surviving heirs.

Hindu Succession Laws: Amendment from 2005
The Act covered most of the aspects regarding succession among Hindus. However, it had its drawbacks. The Act did not reflect modern ideas of equality and did not recognize women’s rights. To amend these mistakes, the enactment of the Hindu Succession (Amendment) Act of

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21 Section 18, Hindu Succession Act, 1956
23 Section 19, Hindu Succession Act, 1956
25 *ibid*
2005. The Act commenced on 9th September 2005. This Amendment was brought in as a revolutionary step towards woman’s rights. There were several errored laws in the Act due to which the amendments were made.

In Pre 2005 era, the Hindu Succession Act recognized daughters only as members of the HUF, not as a coparcener. This was also however subjected to her marital status. Once the daughter was married, she was no more part of the HUF. After the amendment, the daughter has been recognized as a coparcener and her marital status makes no difference to her right.

Section 4 of the unamended Act stated that the Act was not to be applied with regards to any legislation that was enforceable at the time being and which provided for the prevention of fragmentation of agricultural holdings or fixation of ceiling or transfer of tenancy rights in respect to such property.

Section 6 of the Act stated that after the death of a male member who was following the Mitakshara system of coparceners, his property would be transferred to all the surviving members of the family by the idea of survivorship. However, if the deceased person left behind him any female heir as per Class I of the schedule or any male relative who would claim in the property through a female relative, then in such a case, his property shall be transferred through testamentary or intestate succession, accordingly, but not through the doctrine of survivorship.

Section 23 of the Act created limitations on women from claiming their share of the property when the property was being dwelled by people until the mean of the house decided on partitioning the property to receive their shares. A remarried woman had no rights over the property of her deceased husband according to Section 24 of the old Act.

These laws generated among women, a lot of difficulties and hardship in achieving economic independence. To help with these hardships that women faced, governments of various states came up with their laws. They tried doing so by altering the status of daughters prospectively. They conferred on daughters the birthright on par with the sons regarding coparcenary property and for daughters to claim under survivorship. The first state to come up with such a law was the undivided state of Andhra Pradesh. This was followed by the state of Tamil Nadu, Karnataka, and Maharashtra. The amendments that were brought by these states were similar. Kerala came

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26 Hindu Succession (Amendment) Act, 2005
28 Section 4, Hindu Succession Act, 1956 (unamended)
29 Section 6, Hindu Succession Act, 1956 (unamended)
30 Section 23, Hindu Succession Act, 1956 (unamended)
31 Section 24, Hindu Succession Act, 1956 (unamended)
32 TRANSFORMATION OF WOMEN’S RIGHTS UNDER SECTION 6 OF THE HINDU SUCCESSION ACT, 1956 RESEARCH GATE,
up with stricter laws. Kerala passed the Kerala Joint Hindu Family System (Abolition) Act of 1975. In this act, it was stated that the system of the right to claim any interest in any property of the ancestor during his or her lifetime founded on the mere fact that the claimant was born in the family of the ancestor shall not be recognized post the passing of this Act. This was a hit on the Mitakshara School of Hindu Law as well as the Marumakattayam Law of Kerala.

Though such initiatives made by the State Government were commendable and were a small step towards the economic liberty of women, fraudulent partitions were created to receive protection from the Act. These acts also had their share of discrimination. Firstly, they created a classification, the difference between married and unmarried daughters. Only unmarried daughters were made to have an equal stand to that of a son. Secondly, since the act deemed only daughters as coparceners of the property, and the transfer was then made according to Section 6 of the old Act, there was a significant reduction in the shares of the other female relatives as under Class I heirs was reduced. The Kerala act was also put under the radar in bringing discrimination as by ending the Joint Family System as a whole, it would lead to exclusion of daughter even through testamentary disposition.

The state amendment was the starting step towards the quashing of the rules brought by the Mitakshara school of law. They established the base towards the empowerment and liberation of women in India. These steps however were not brought uniformly in all states. Only a few states came up with these ideas. It was believed that the steps taken by the states like Maharashtra, Karnataka, and Andhra Pradesh would be followed by all the states. The Department of Women and Child Development made it a mandate for states to come up with such revolutionary laws. However, later on, the Law Commission, on its own started dwelling over these subject matters and asked for the opinions on the same. Their goal was to achieve a uniform Hindu Succession Law. The commission tried its best to bring the widest arena of questions for a better discussion and valuable suggestion.

The questionnaire tried to cover some major issues. These included: Whether coparcenary rights should be granted to daughter as equally as sons; Whether it was advisable to completely abolish the rights of a male child by birth; Whether it was appropriate for the daughter to be given the right to live in their parental house whenever they wished for and to give them their right in the partition of the property; and finally, whether to restrict bequeathing the property by way of testamentary disposition to 11/2 or 11/3 of the total property.

The committee finally ended up with a compromise formula after listening to and analyzing the various opinions and suggestions. The 174th Report did not suggest the application of the Kerala


33 Kerala Joint Hindu Family System (Abolition) Act, 1975
Model nationally. They did do as they believed that it made only male members as tenant-in-common on the day of abolition of the Joint Family. 34 The committee also wanted to get away with the idea of only unmarried daughters taken into consideration in the Andhra Pradesh legislation. They wanted to create no classification within daughters of marriage or no marriage. The committee also wanted to remove the Doctrine of Pious Obligation. Pious means35 “Dutiful or loyal, especially toward one's parents”. The doctrine of Pious Obligation states that the son has to discharge any debt that has been incurred by the father. This is immaterial to the fact on whether discharging such a debt, will cause any profit for the son. Such liability can be blessed upon the son, the grandson, and the son’s grandson, as all of them come under the Hindu Idea of Coparcenary. 36 The committee also suggested the removal of Section 23 of the pre-existing Act.

**Analysis**

It was a well-known fact in the pages of history, that to bring men and women to an equal stand in society, there was the requirement of economic liberation of women. Both Nehru and Gandhi who lead the freedom struggle from the forefront realized that the economic disadvantage of women was at the root of indescribable inequality.37 But during the making of the Constitution, the framers did not confer any special rights to women. Under the influence of Western democratic ethos, the Indian Leadership continued with its ideology of sameness of treatment which was unable to answer the maladies of the person who are inherently unequal from time immemorial. The need of the hour, the implementation of the Uniform Civil Code was sacrificed to the nation’s ideology of secularism, which continued the Personal Laws and its regional and sub-regional divisions. This helped in becoming the major form of discrimination against women in India and became an obstacle for their development and growth. Even after the recommendations made by the Rau Commission, the Mitakshara idea of Coparcenary was made the rule of law over the Doctrine of Survivorship, as followed in the Dayabhaga School of Hindu Law. This meant that Mitakshara law was perpetuated in the codified Hindu Law.38

The Act was successful in amending the archaic Section 6 of the Hindu Succession Act of 1956. The act now provides Rights for the daughter. This can be considered as a revolutionary step against what was set by Manu and his contemporaries. This act strikes out the previous Section 6. The principal Act which deals with devolution of interest of a coparcener and rule of survivorship was re-casted and modified. The addition of women’s rights took place. The section

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34 See infra note 37
35 See supra note 1
36 DOCTRINE OF PIOUS OBLIGATION – SITE TITLE.
37 G C V SUBBA RAO, FAMILY LAW IN INDIA (Narender Gogia & Company 10th) (2016)
38 ibid
now states that a daughter would get the same rights over property as a son would through coparcenary rights. Coparceners now include daughters as well. This finally established that sons weren’t superiors and keep them at an equal stance with daughters. But with every right comes some duties and liability. To keep up with the equality, daughters have the same liability as sons when it comes to Coparcenary Properties. The amendment also stated that daughters shall have the same rights on the shares, at par with sons. The section also talks about the right of a deceased child. It states that the property of the deceased son and deceased daughter shall be given to the child, son, and daughter of the deceased son or deceased daughter. This also stated that the property of a per deceased child of a per deceased parent shall give to the child of the per deceased, son, or daughter. It amended the concept as in Mitakshara Law, making daughter a coparcener into the property.

Section 4 of the principal Act was removed. This section spoke with regards to any legislation that was enforceable at the time being and which provided for the prevention of fragmentation of agricultural holdings or fixation of ceiling or transfer of tenancy rights in respect to such property.

The Doctrine of Pious Obligation was also repealed under the new Amendment Act. However, the provisions should not apply to a person if the debt was agreed upon before the commencement of the Amending Act. For a general rule, the provisions of this Act were not applicable over an agreement effected before the 20th day of December 2004.

Section 23 had was omitted under the new Act. This was the very clause that did not allow women to have the right to seek partition in a property in which people dwell. It only allowed the male heir of the family to exercise their right to partition in the family.

Section 24 was omitted as well which provided that any person who is related to a person who has died before the creation of a will as the widow of a pre-deceased son or the widow of a brother shall not be eligible to take the property of intestate as such widow if on the date of the succession is opened, the widow has remarried.

**Suggestions and Recommendations**

This amendment was a very revolutionary step in the world of women’s rights in India as mentioned earlier. It finally recognized that the laws of the past were fundamentally so discriminatory against women that they were left with nothing to keep. Though this law has still not been followed by a lot of patriarchal families of India, it was a step facilitated by the law. At least now there was a legal right woman received which they could base their claims on, unlike the past when they had no one to help them, not even the Just Legal System of our country.

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39 Section 6, Hindu Succession Act, 1956 (Amended)
However, there are various errors and irregularities in the present act which can not be ignored. To start with, the Act has a prospective effect, not a retrospective effect. This leads to injustice with those women who had fought for their rights. An only girl child born after this Act can be governed under this Act and therefore discrimination remains for all the girls born before its which means that the situation remains the same in these cases.

Property rights in the in-law’s family property have not been given to women. This becomes an issue as women live the majority of their life in the in-law’s family and work over the development of that family as well. When women are required to put effort into both the family, the daughter should get a share in the property of both as well.

The position of Mother has also not changed. Since she is not a part of the coparcenary system, her share in the property has only decreased. Since she is eligible for an equal property as that of other Class I heirs, the addition of daughters only decreases her share in the property.

The 2005 Amendment also does not talk about Testamentary freedom. Since the deceased has full freedom while dividing his property through a Will, due to the patriarchal thinking of the society, women shall not get any amount of property in these scenarios. This way, the Mitakshara system of thinking is not freed from society.

Though this amendment was brought to bring inequality, it has also caused its share of inequality. This inequality is towards the male class, and therefore shall be considered to be as much of inequality as the reverse would. The male child of s pre-deceased son and a pre-deceased daughter has not been added to the list of Class I heir. This comes as direct discrimination as their female counterparts has been added to the Class I heir.

These were errors in the act on a legal per se. But with women getting rights in a society governed by patriarchal ideology, these rights have also caused harm to women. The first for this would be Female Foeticide. A strong population of Hindu families is agricultural and land-based work. They are very careful with the amount of land they have and would not want even a part of it to go away. In such a situation, giving away their land to the daughter who traditionally becomes part of the in-law family will not be accepted by them. This will lead to an increase in the number of female foeticides.

The idea of an indirect form of dowry also comes into the picture. Since after the death of a woman, her property passes away accordingly to the heir of her husband’s family, this becomes a long way process of extracting dowry from a woman.

Fragmentation of Property also takes place. In most joint families, the members do not believe in the partition and though they reserve their parts in the property, they do not end up breaking it. However, since the daughters shall also have their share in the property, the in-laws shall force her into breaking and taking away her share. This will create smaller parts of the property.
No joint family would also want any sort of interference in their property. With daughters getting access, the in-laws would also get an indirect say in the matters of her family. This will cause a lot of mess in the family business.

To solve these problems, the government should first start with educating society. Awareness of gender equality should be the main aim in this. Awareness of the legislation should also be put forward. When new legislation is brought, very few strata of society are aware of it and an even smaller chunk understands the point of the law. The government should make efforts into awareness. The backward society, especially the women are the one most affected. They should be the ones who should be taught how their rights have been improved.

This can also be done through Legal Aid Camps. These camps can work towards making women of the backward class understand their rights and using local languages and in a simplified manner.

The Mitakshara System of Coparcenary should be completely abolished. This system does little good and more harm. Rights of Class I female heirs apart from the daughter are reasonably affected and therefore it will be advisable to abolish it. If, however, they do not believe in so, they should work towards including Mother in the Coparcenary system. As mentioned above, mothers are not given smaller shares now due to not being a part of the coparcenary and therefore suffers economically.

Rules regarding testamentary succession should also be worked on. Right now, there is no legislation governing the father when he is dividing his self-acquired property. Here, the father can continue discriminating against his daughters. Laws for the same should be made.