

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005: A SKETCHY SUCCESS

SOMESH SHARMA

RISHANK TIWARI

NATIONAL LAW UNIVERSITY ODHISA

ABSTRACT

Law is a dynamic concept; it has to undergo changes to meet the aspirations of the people for whose governance it is enacted. If the law remains stagnant, it starts giving birth to various mischiefs which often leads to dilution of its primary objectives; the Indian legislature took a very long time to understand the mischiefs inherent in the Hindu Succession Act, 1956 and amended it in 2005 through the Hindu Succession (Amendment) Act, 2005 which has modified, deleted and introduced some provisions. The Amendment had been embraced by women rights activists as an avant-garde move with far-reaching implications for it has improved the economic status of Hindu women, spanning over their membership in the Coparcenary, an abode in the ancestral dwelling house, agricultural rights, widows being entitled to the property after remarriage, conferring the power of testamentary disposition upon women, and abolish the doctrine of survivorship. Besides women's upliftment reforms, it has also done away with the indefensible and archaic doctrine of pious obligation and released the son from the bondage of ancient Shastric tenets and reshuffled the classes of heirs to advance their interests. Though the amendment succeeded to remove the mischiefs existing in the Principal legislation to a large extent there are some mischiefs which it has failed to cure i.e. non-conferment of right to a woman to act as a Karta, classification of the father as a class-II heir, ambiguity regarding the meaning of term father's widow under entry VI of class-II and in the backdrop of its progressive nature, the ambiguities created by the Act cannot be overlooked. The present paper attempts to provide glimpses of mischiefs cured by the Hindu Succession (Amendment) Act, 2005, mischiefs and ambiguities created by it and mischiefs which it fails to rectify.

Keywords- *The Hindu Succession Act, 1956, The Hindu Succession (Amendment) Act, 2005, coparcenary, survivorship, pious obligation, Karta, mischiefs.*

INTRODUCTION

“The law must be stable and yet it cannot standstill. Hence all thinking about the law has struggled to reconcile the conflicting demands of the need for stability and the need for change.”

- Roscoe Pound

The drafters of the Indian Constitution referred to it as an ‘organic living document’ by which they intended to throw light on its dynamic nature.¹ The Constitution is considered as the Grundnorm of all the statutes as the legislature draws its power of legislation from it. The parliament has many a times made changes in the constitution to serve interest of the society and to keep its spirit alive.

In India apart from secular statutes, there are separate personal laws for every religion. The State, by preserving personal laws of different religions has been trying to uphold the heterogeneity of the nation. However, in a path to establish heterogeneous society, it has neglected the rights of citizens and specifically the women who, for eternity have been sidelined in nearly every culture. As far as Hindu personal laws are concerned, there are several statutes related to marriage, divorce, adoption, succession, and guardianship.² The joint family system is a pivotal mechanism that involved the Hindu matters of inheritance and these matters were governed by customary laws that varied from region to region. In order to bring a uniform codified law for governing the matters of Hindu succession, the parliament enacted the Hindu Succession Act, 1956. The said Act was able to serve the interests of people up to a substantial extent but it contained certain provisions that were gender-biased in nature and caused injustice to the people of a particular section of the society, these provisions were related to the concept of coparcenary, survivorship, pious obligations, etc.³

To cope up with mischiefs of the Principal Act, the parliament enacted the Hindu Succession (Amendment) Act, 2005.⁴ Though the Act of 2005 eliminated some of the mischiefs present in the Principal Act but it is not free from certain fallacies. For instance, the unsettled position of

¹ JUSTICE HR KHANNA, *MAKING OF INDIAN CONSTITUTION* 237 (2d ed. 2008).

² D. K. Srivastava, *Personal Laws and Religious Freedom*, 18 *J. INDIAN L. INST.* 551, 560 (1976).

³ J. Duncan M. Derrett, *The Hindu Succession Act, 1956: An Experiment in Social Legislation*, 8 *AM. J. COMP. L.* 485, 497 (1959).

⁴ Shivani Singhal, *Women as Coparceners: Ramifications of the Amended Section 6 of the Hindu Succession Act, 1956*, 19 *STUD. T B. REV.* 50, 57 (2007) [hereinafter Shivani Singhal].

women with respect to being a Karta of Hindu Undivided Family, unjust classification of the father as Class-II heir, ambiguity regarding the term 'father's widow', dichotomy pertaining to the applicability of the Act, etc. As literature regarding ambiguities in succession laws of Joint Hindu family is available in bits and pieces, the authors in this paper have tried to provide a holistic view by analyzing the situations through different perspectives.

Thus, the authors take this opportunity to critically analyze the Hindu Succession (Amendment) Act, 2005 in order to throw light on the aspects which require to undergo changes to give gender neutrality and clarity to Hindu Succession Laws. Through the course of this paper, the authors attempt at giving a glimpse of mischiefs in the Principal Act, progressive reforms brought up by the amendment Act, mischiefs created by it and the mischiefs and ambiguities which it fails to eliminate.

MISCHIEFS IN PRINCIPAL ACT

The Hindu Succession Act, 1956 was welcomed by people with huge applause and high hopes as it settled down the hustle and bustle created by the customary practices that varied from region to region. However, with the passage of the time, mischiefs of the Act became apparent as it contained various provisions that were against the virtues of equality and reasonableness enshrined in the Indian Constitution. The provisions which were replete with the deficiency can be described in the following manner:-

- (a) **Gender inequality in the matters of agricultural holdings-** Section 4(2) of the Hindu Succession Act, 1956 provided that "nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."⁵ After the enforcement of Constitution, the debate about agrarian reforms was triggered which lead to the enactment of many central and state legislations regarding land holdings, fixation of ceilings, etc. The laws which were made thereof were not free from customary tenets and were gender-biased⁶ and non-applicability of this Act on those legislations clearly defeated the objectives of its enactment.

⁵ *Hindu Succession Act 1956, No. 30, Acts of Parliament, 1956 §4(2) [hereinafter Hindu Succession Act 1956].*

⁶ *Paroma Sen, Customary Laws over land & land rights of women in Haryana Science' 20 INT'L ORG. SCI. RES. J. HUMAN. & SOC. SCI. 10,15 (2015).*

- (b) **Gender discrimination in inheritance rights-** The inheritance rights were denied to the daughters since they were not considered as coparceners in the Joint Hindu Family Property.
- (c) **Indefensible and arbitrary provision of the doctrine of Survivorship-** Section 6 (3) of the Hindu Succession Act, 1956 provided for an unreasonable and arbitrary doctrine of survivorship which provide that if male Hindu dies then his interest in the property shall devolve upon his surviving members i.e. his brothers and not on his wife or children.
- (d) **Gender biasness in the devolution of property-** Sections 8 & 15 of the Hindu Succession Act, 1956 which provided for devolving of male Hindu dying intestate and female Hindu dying intestate respectively were gender biased in nature as they gave preference to agnates over cognates. These sections were indicative of gender discriminatory practices prevalent in the Indian legal system.⁷
- (e) **Unequal rights in claiming partition of a dwelling house-** Section 23 of the Hindu Succession Act, 1956 was gender biased in nature as it deprived female heirs to claim partition of the dwelling-house of a Hindu intestate.
- (f) **Unreasonable deprivation of certain classes of widows to inheritance-** Section 24 of the Hindu Succession Act, 1956 provided that “the three classes' widows specified in the section shall not be entitled to succession if they have remarried”, which was unjust and discriminatory in its very nature as it was based on unreasonable classification.

PROGRESSIVE REFORMS BROUGHT BY THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

To cope up with the mischiefs of the Principal Act, the parliament enacted the Hindu Succession (Amendment) Act, 2005. The amendment Act set up a platform for dealing with inheritance matters in a more gender-neutral manner and it also averted the undue hardships created by the Principal Act. This Amendment has been enacted after almost five decades since the Hindu Succession Act of 1956 was passed and the government's move was considered a "milestone" by many feminists and legal thinkers. There are following remarkable changes brought up by this Act:-

⁷BIDHU BHUSAN MALIK & SUDHIR TALWAR, *B. MALIK'S COMMENTARY ON THE HINDU SUCCESSION ACT, 1956* 257 (2nd ed. 2010).

- (a) **Daughters made coparcenary-** The daughters have been made coparcenary along with sons which means they will enjoy all the rights and will be subjected to all the liabilities similar to that of the son with respect to ancestral property.⁸
- (b) **Abolition of the doctrine of survivorship-** As per the survivorship doctrine, the property of a deceased coparcener was divided among the surviving male coparceners of the same generation only but now after the amendment, this doctrine has been abolished.⁹
- (c) **Abolition of the doctrine of pious obligation-** The principle of pious obligation has been effaced which made it mandatory for the son to pay all debts contracted by his father before his death on the premise that he will not attain salvation if the son fails to discharge this obligation.¹⁰
- (d) **Brought gender parity in matters of agricultural holdings-** Sec. 4 (2) of the Hindu Succession Act, 1956 has been deleted which brings agricultural land at par with all other forms of property.¹¹ This reform has overridden inconsistent state laws and customary practices that have governed the inheritance of agricultural land.
- (e) **Gender neutrality in claiming partition of the dwelling-house-** Female heirs have been conferred a right to claim partition of the dwelling-house of a Hindu intestate.¹²
- (f) **Conferred inheritance rights on the widows-** It has omitted section 24 of the Hindu Succession Act, 1956 which barred certain widows from inheriting the Hindu intestate's property if they remarried.¹³
- (g) **Inclusion of new heirs in Class-I-** It has introduced four new heirs in Class-I category with respect to male intestate. This leads to addition of following four heirs; "son of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter and daughter of a pre-deceased daughter of a pre-deceased son."¹⁴

⁸Groundbreaking Legislation, 40 *ECON. & POL. WKLY.* 4487, 4488(2005).

⁹Shivani Singhal, *supra* note 4.

¹⁰A.Gladius & S.Bhuvanewari, *An appraisal on doctrine of pious obligation and its competent responsibility upon daughters*, 120 *INT'L J. PURE & APPLIED MATHEMATICS* 4481, 4490 (2018).

¹¹Hindu Succession (Amendment) Act 2005, No. 39, *Acts of Parliament*, 2005§ 2.

¹²HAJIRA KUMAR, *WOMEN'S EMPOWERMENT, ISSUES, CHALLENGES, AND STRATEGIES* 433 (2005).

¹³ Hindu Succession (Amendment) Act 2005, *supra* note 11, § 5.

¹⁴ Hindu Succession (Amendment) Act 2005, No. 39, *Acts of Parliament*, 1956 §7.

CONFERRING OF COPARCENARY RIGHTS ON DAUGHTERS: A PATH-BREAKING EFFORT TOWARDS GENDER EQUALITY

Indian society has always put restrictions on women's rights, whether fundamental or legal. Women have always been considered as subordinate to their male counterparts. Despite worshipping deities like Goddesses Durga, Shakti, Mahalakshmi, etc. the society forgot to cherish the presence of the deity like structure in the form of women. The status of women was so downgraded in the society that they were considered to be below Shudras.¹⁵ Women have always been portrayed as powerless and it has been substantiated in Manusmriti by saying that a woman is protected by different persons at different stages of her life. For example, in childhood by her father, in youth by her husband and in old age by her son. He went on to say that a woman is never fit for independence.¹⁶ Keeping this in mind, one can easily understand the mindset of the ancient lawmakers as to why they put a restriction on the rights of women while making laws. Such restrictions can evidently be seen in the property rights which have been given to women since ancient times.

Patriarchy was so prevalent in the society that the female were not given any share or ownership rights in the property of her father as the land was divided only among the coparceners.¹⁷ The property was divided amongst only the male members of the family as women lacked the fate to be considered as the coparceners. Property rights for the women were like pie in the sky, they could only dream of having them, but the society was adamant on its prevailing customs.¹⁸

Moreover, the reason for such exclusion of women as given by people back then was that women were not allowed to perform any funeral rituals of the ancestors, then how can they claim a right in their property. With such restriction on inheritance rights of women, they were subjected to unmitigated discrimination, and they were regarded as someone less than a fully human.¹⁹ There have been numerous legislations to uplift the status of women in Hindu Undivided Family (hereinafter referred to as HUF), e.g., Hindu Law of Inheritance Act, 1929 and the Hindu

¹⁵ B. Agarwal, *Far From Gender Equality*, 20 *LAWYER'S COLLECTIVE* 16, 17 (2005).

¹⁶ Shivani Singhal, *supra* note 4.

¹⁷ Seema Dalal, *Ownership of property by a Hindu Female: An overview*, 2 *INT'L J. ADVANCED EDUC. RES.* 18, 22 (2017).

¹⁸ J.D.M. Derrett, *The Development of the Concept of Property in India*, 2 *ESSAYS CLASSICAL & MOD. HINDU L.* 18, 23 (1977).

¹⁹ Debarati Halder & K. Jaishankar, *Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India*, 24 *J. L. & RELIGION* 663, 675 (2008-2009).

Women's Right to Property Act, 1937 but none of them have been able to stop the discrimination prevalent in the society against the women.²⁰ Another attempt was made by bringing the Hindu Succession Act, 1956, into force, but it omitted to provide a substantive change in the position of women in the HUF. Females were still devoid of the same property rights as compared to males. Provisions relating to inheritance of property by women under all these laws mentioned above were against one of the basic principles enshrined in the constitution, i.e., equality. The need of the hour was a law that could give women their rights, which they did not possess since the inception of ancient laws. To fill the lacunas in existing law, the government decided to amend the law relating to the succession under HUF.

The Hindu Succession (Amendment) Act, 2005, was welcomed with open arms by the people as it addressed the imperative issue relating to the inheritance rights of women in HUF.²¹ It was for the first time that any such legislation had attempted to secure the property rights of females in particular by making daughters coparcenary. This legislation gave daughters a strong foundation to claim their rights and to ensure that law abides by the fundamental norms enshrined in the constitution, i.e., the principle of equality. This amendment is a major setback for the patriarchal Indian society which has always regarded men's right superior to those of women's.

Through this amendment, women have not only gotten equal rights, but have also been economically empowered.²² Economically empowered means that now they have a birthright to inherit the property, and they are now secured from getting willed away by men. The economic empowerment of women is a progressive growth because in the patriarchal Indian society inclusion of females in will was a dream for many, and it has now been turned into reality only through the amendment act.

ABOLITION OF DOCTRINE OF SURVIVORSHIP: TORCHBEARER FOR GENDER-NEUTRAL LAWS

Since the inception of Indian society, traces can be seen that it has always believed in a patriarchal regime. Whether it be laws or social status, it is males who have always had an upper hand over the females. Lawmakers are believed to have an excellent acumen because it requires

²⁰Jogendra Kr. Das, *Reflections on Human Rights and The Position of Indian Women*, 64 *INDIAN J. POLITICAL SCI.* 203, 212 (2003).

²¹ Florence Laroche-Gisserot, *Women's Inheritance According to the 2005 Amended Hindu Succession Act*, 2007 *INT'L SURV. FAM. L.* 121, 134 (2007).

²² Klaus Deininger Aparajita Goyal Hari Krishnan Nagarajan, *Women's Inheritance Rights and Intergenerational Transmission of Resources in India*, 48 *J. OF HUM. RES.* 114, 121 (2003).

mastering the art of having the ability to understand and to reason their decision. In ancient times the lawmakers had the ability to influence the mindset of general masses.²³ Whatever was decided by these lawmakers became a line drawn on a rock for people and within no time it used to get transformed into mob mentality. What is more shocking to the general conscience is that how can a person who possesses such an amazing acumen can neglect the rights of females while making laws which were made to guide the society to lead a healthy life. The law relating to succession of property through survivorship under Hindu Law was one such law that ignored the rights of women. In the case of survivorship, women were not treated at par with men; laws relating to survivorship were biased towards males.²⁴

As per the survivorship doctrine, the property of a deceased coparcener was divided among the surviving male coparceners. For example, suppose there are 3 persons in a family i.e. a father and his two sons each having 1/3rd share in the ancestral property. Now, on death of one of the sons, the share of that son will devolve upon the surviving coparceners who in this case are his father and his brother and nothing was left for his female heirs. This marked the problem for females as they did not get any share in the property of deceased; it used to be devolved among the surviving male coparceners only.

In order to recognize the rights of women and to pull her out of the disadvantageous situation created by the rule of survivorship, the Hindu Women's Right to Property Act, 1937 was enacted. This Act provided that it is only after the death of the widow of the deceased person that the doctrine of survivorship can be applied meaning hereby that the widow has right to access the property until she survives and only after her death the devolution of the property will be done according to survivorship doctrine. After the 1937 Act, a ray of hope was seen in females and this Act along with the Hindu Succession Act, 1956 became torchbearer for females in diluting the doctrine of survivorship. The 1956 Act, added a condition that in order to invoke the doctrine of survivorship it is mandatory that the deceased does not leave behind any class 1 female heir or predeceased daughter. In case this condition is not fulfilled then the devolution of the deceased's property will be done through intestate succession. Though the abovementioned statutes tried to bring the succession rights of women at par with men, they could not completely bridge the existing gap.

²³SATYAJEET A DESAI, *MULLA'S PRINCIPLES OF HINDU LAW* 456 (2007).

²⁴P.K. DAS, *HAND BOOK ON HINDU SUCCESSION (PROPERTY RIGHTS OF WOMEN AND DAUGHTERS)* 18 (2007).

Therefore, in order to get rid of lacuna in the existing laws, the government came up with the Hindu Succession (Amendment) Act, 2005 which abolished the doctrine of survivorship in totality. This enactment brought a wave of happiness amongst the female fraternity as earlier they could not claim any right in the property of the deceased but now with the abolition of the doctrine of survivorship the property would devolve after doing notional partition and through intestate succession in which women will have the same right as that of the males.²⁵

ABOLITION OF DOCTRINE OF PIOUS OBLIGATION: END OF INDEFENSIBLE ANCIENT SHASTRIC TENETS

Pious means something that is regarded as devoutly religious, pure, etc. The bond that is shared by a son and a father is also regarded as a pious bond created by the god himself. The scholars of ancient era have provided the reason why the fathers used to demand of having a male child. Actually, it was believed that the son is born to bring the father out of hell called 'put', it is because of this reason why the sons are called as 'put-tra'.²⁶ With the passage of time, the beliefs of people also got modified and they started believing that it is the duty of the son to discharge the debts incurred by his father during his lifetime. The doctrine of pious obligation revolves around this belief only. It says that, if the father has contracted any legal debt and he has become unable to repay it, then it is the duty of his son to repay the debt.²⁷ Does not it sound unreasonable to make son pay for the mistakes of his father?

It is a general principle of law that one is liable only for the acts committed by him and until and unless he has any interest in the act committed, he cannot be held liable for the same. For example, A and B are two friends, A has borrowed some money from B for his personal purposes and fails to repay the same. Now, the sole liability to repay is of A only and he cannot shift the same on any other person. But according to the doctrine of pious obligation liability of this nature used to get shifted to the son even if he had no interest in the transaction entered into by his father. He was bound to repay the amount borrowed by his father and in case the son could not repay it then his son would be under the same bondage. It was unreasonable to impose

²⁵Ms. Indira Jaising, *Mapping women's gains in inheritance and property rights under the Hindu Succession Act, 1956*, LAWYER'S COLLECTIVE (Feb. 18, 2020, 03:30 PM), <https://docplayer.net/19363816-Mapping-women-s-gains-in-inheritance-and-property-rights-under-the-hindu-succession-act-1956-lawyers-collective-women-s-rights-initiative.html>.

²⁶P.V. KANE, *HISTORY OF DHARMASTRA* 414 (1972).

²⁷Vijendra Kumar, *Basis and Nature of Pious Obligation of Son to Pay Father's Debt Vis-A-Vis Statutory Modifications in Hindu Law*, 36 *J. INDIAN L. INST.* 340, 353 (1994).

the liability of repaying the debts on the son if he did not have any interest in the concerned debt. A person should get punished only for the liabilities which emerge through his own actions or if he has any indirect nexus to that matter. But if he has kept himself out of any benefits arising out of that transaction then how can he be held liable? It would be unjust and unreasonable to make son pay his father's debts and be liable for his father's liability. Thus, for being unjust and unreasonable this doctrine was repealed by the Hindu Succession (Amendment) Act, 2005 which led to son's freedom from arbitrary and unreasonable bondage of the doctrine of pious obligation.

EXISTING MISCHIEFS AND AMBIGUITIES POST AMENDMENT ACT OF 2005

Though the amendment Act of 2005 eliminated several mischiefs present in the Principal Act, there are certain mischiefs or fallacies it fails to cure which rests on several counts:-

- (a) **The unsettled position regarding post of Karta-** Though daughters have been made coparcenary along with the sons, the Act is silent on the point that whether women can act as Karta of the Joint Hindu Family? Because as per customary practices, only the eldest male member can become a Karta. The Supreme Court in *CIT v. Seth Govindram Sugar Mills*²⁸, held that only coparcenary can act as a Karta of Joint Hindu Family and now after conferment of coparcenary right on daughters it can be inferred that they may act as a Karta of her family but a question that whether a woman can become a Karta in her husband's family still remains unanswered. Delhi High Court in *Sujata Sharma v. Manu Gupta*²⁹ held that "the eldest woman member of a Mitakshara Hindu Undivided Family (HUF) can be its Karta." Though this judgment is a progressive piece of law but it fails to remove the dust stick on women's position as a Karta in its entirety for two reasons; *firstly*, it is only applicable to the territory of Delhi; *secondly*, it is only related to daughter's eligibility to act as a Karta and not to women in general.
- (b) **Gender discrimination with analogous heirs-** Section 7 of the amendment Act, 2005 introduced four new heirs in Class-I category; "son of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter and daughter of a pre-deceased daughter of a pre-deceased son" but it excludes two analogous heirs without any justification. Two of the male

²⁸*CIT v. Seth Govindram Sugar Mills*, 1965 SCR (3) 488.

²⁹*Sujata Sharma v. Manu Gupta*, CS (OS) No. 2011/2006.

descendants in the daughter's line are not listed as Class-I heirs while their female counterparts are so listed. Thus "son of predeceased son of a predeceased daughter" as well as "son of a predeceased daughter of a predeceased son" of the intestate are not added under Class-I.³⁰

- (c) **Overlapping in Class-I and Class-II heirs-** The amendment has created an overlap in Class-I and Class-II heirs. Some people who were included under Class-I heirs now find their mention in the category of Class-II heirs as well because even after being elevated to the Class-I heirs their names have not been deleted from Class-II. This has created a serious ambiguity in the process of succession and confusion in the minds of people. These persons include "Son of a predeceased daughter of a predeceased daughter (i.e. daughter's daughter's son); Daughter of a predeceased daughter of a predeceased daughter (i.e. daughter's daughter's daughter); Daughter of a predeceased son of a predeceased daughter (i.e. daughter's son's daughter) and Daughter of a predeceased daughter of a predeceased son (i.e. son's daughter's daughter)."³¹
- (d) **Unjust classification of father as Class-II heir-** The position of father has been blatantly disregarded in relation to the succession of property. The status of father has been the same since the inception of the Hindu Succession Act, 1956, he had been classified under Class-II while on the other hand his female counterpart has been put under the category of Class-I heirs. This classification presents prima facie inequality. Moreover, The Senior Citizens (Maintenance, Protection, and Welfare) Act, 2007 makes it compulsory that every person should maintain his/her parents and any default with respect to the same will result in punishment. Therefore, it is logical to expect that the inheritance right of the father and the mother should be the same. Thus, the amendment Act, 2005 was expected to remove this ambiguity but it fails to ponder on this issue and which still remains a symbol of unreasonableness and inequality in the Succession law.
- (e) **Ambiguity regarding the term 'father's widow'-** Another significant mischief which the amendment Act has failed to rectify is the meaning of the term 'father's widow'. There exist certain ambiguity in the meaning of this term as father's widow (who has been put under Class-II heirs) might include mother but the mother has already been put under the category of Class-I heirs. One might think that the term 'father's widow' logically refers to step-mother but there exists a dilemma in this case too. For example, it has been already provided in the law that the surviving sons, daughters, and mother of the intestate shall take one share each. Thus, if the

³⁰THE LAW COMMISSION OF INDIA, REPORT NO. 204 (2008).

³¹Id.

mother of the intestate takes her share as Class-I heir then nothing will be left for the step-mother, if any, to succeed.

MISCHIEF AND AMBIGUITY CREATED BY THE AMENDMENT ACT OF 2005

Undoubtedly the amendment Act of 2005 is a progressive piece of legislation but it contains certain fallacies that tend to dilute its primary objectives:

- (a) **An undue advantage to married daughters-** It can be stated undoubtedly that by giving daughters a status of coparcenary, the amendment Act of 2005 brought watershed changes in the sphere of Hindu personal laws but at the same time, the other perplexities and injustice created thereof cannot be brushed aside. After the amendment Act, daughter will become a coparcenary in her father's family and even after her marriage, she will retain that status which allows her to enjoy membership of two Joint Hindu Families simultaneously i.e. one of her father and other of her husband. This leads to dilution of shares of Class 1 female heirs such as the deceased's widow and mother.
- (b) **Dichotomy pertaining to applicability of the amendment Act-** The reading of Sec. 6 (5) of the Hindu Succession (Amendment) Act, 2005 along with its proviso can be explained in the following words that, "this Act has no application on partitions which has been affected either by a registered deed of partition or decree of court before the 20th December 2004." This provision leaves untouched a situation where the father passed away prior to 9th September 2005 (the date of application of the amendment Act) which takes a shape of ground wire with the passage of time as Supreme Court has taken two different views on this point. In the case of *Prakash v. Phulavati*³², it held that "if the coparcener (father) had passed away prior to 9th September 2005, the living daughter of the coparcener would have no right to coparcenary property" and in *Danamma v Amar*³³ it was held that "if the father had passed away prior to 9th September 2005 and a prior suit is pending by a male coparcener for partition, the female will be entitled to a share in the partition."

CONCLUSION

The laws are made to regulate various spheres of society; they cannot remain stagnant for a longer period. Otherwise, the interest of the people will get compromised. An amendment is a

³²*Prakash v. Phulavati*, (2016) 2 SCC 36.

³³*Danamma v Amar*, AIR 2018 SC 721.

tool by which laws are brought in consonance with the needs of people in the society. The Hindu Succession (Amendment), Act 2005 is considered as a progressive piece of legislation as it did away with several mischiefs associated with the Principal Act for which it had been welcomed by the people with huge applause. But after critical analysis of this amendment Act, we found that there are some ambiguities associated with this Act.

The conferring of coparcenary right on the daughter leads to her enjoyment of dual membership in two Joint Hindu Families i.e. one of her father and other of her husband which could result in indirect dowry because pragmatically, in Indian society when the daughter leaves her maternal house and shifts to the house of her husband then she leaves all the responsibilities associated with her by virtue of being daughter and completely becomes a part of her husband's family. Moreover, if the girl takes away her share, the brother-sister bond will be shattered, and in times of difficulty or trouble created by the in-laws, her family may not come to rescue her.

Apart from this, some perplexities also revolve around the issues that (a) whether women can act as a Karta of a Joint Hindu Family? (b) Whether the daughter would have any right in the coparcenary property if the coparcener (father) had passed away prior to 9th September 2005?

After analyzing the progressive reforms brought by the Amendment Act of 2005 and ambiguities associated therewith, it can be observed that apart from rectifying technical glitches and elucidating upon nebulous areas of the Act, there is a need to interpret the law more benignly to realize the primary objectives behind the amendment. The onus of giving effective interpretation to the Act and clearing the ambiguities associated therewith lies on the judiciary and for its effective implementation the society also has to contribute in ways like spreading awareness about legal education, setting up legal forums for discussion of the problems encountered in the implementation of the new laws, etc.

Therefore, it is high time that legislature should come up with a new amendment Act to cure the ambiguities which are still persisting despite the progressive amendment Act of 2005.

SUGGESTIONS

According to the authors, there are following changes which could be incorporated in the Hindu Succession Act, 1956 to make it more pragmatic and gender-neutral:-

- 1) The conferring of coparcenary right on a daughter leads to her enjoyment of dual membership in two Joint Hindu Families i.e. one of her father and other of her husband which leads to dilution of shares of Class I female heirs such as the deceased's widow and mother. Therefore, in order to overcome this unjust enrichment it is suggested that only unmarried daughters should be given the status of coparcenary in the Joint Hindu Family so as to avert injustice done to Class-I female heirs such as the deceased's widow and mother.
- 2) The position of woman i.e. whether can she act as a Karta of a Joint Hindu Family is dubious. The amendment Act remained silent on this proposition and the Judiciary too lacks a precise stand on this issue. Therefore, the authors suggest that a specific provision be inserted by which a woman should be conferred a right to become a Karta of the Joint Hindu Family.
- 3) The amendment Act came into force on 9th September, 2005, it is considered to be a progressive reform but the position regarding daughter's right in the coparcenary property if the coparcener (father) had passed away prior to 9th September, 2005 is ambivalent. Therefore, it is suggested that a new legislation should contain a clear stand on the daughter's right in the coparcenary property if the coparcener (father) had passed away prior to 9th September 2005.
- 4) Sections 8 & 15 of the Hindu Succession Act, 1956 lack gender-neutrality and are discriminatory in nature. Therefore, to stamp out the existing discrimination, it is suggested that both the sections i.e. 8 & 15 of the Hindu Succession Act, 1956 which provide for devolving of male Hindu dying intestate and female Hindu dying intestate respectively should be made gender-neutral by placing both agnates and cognates on equal footing.
- 5) The present list of Class-I heirs is not exhaustive and it requires incorporations of some new analogous heirs. Therefore, the authors suggest that "son of predeceased son of a predeceased daughter" as well as "son of a predeceased daughter of a predeceased son" of the intestate should be added under Class-I heirs.
- 6) At present, there exists an overlapping between some Class-I and Class-II heirs as some Class-II heirs have been promoted to Class-I heirs but their names have not been removed from the list of Class-II heirs. This has become the main source for the confusion and is acting as a hindrance in

the succession process. Therefore, it is suggested that the new legislation must remove the existing overlapping between Class-I and Class-II heirs and delete the promoted heirs from Class-II.

- 7) The law at present discriminates between inheritance rights of a father and a mother. A mother has been given an edge over the father as she has been classified as a Class-I heir while the father has been put under the category of Class-II heirs. This parity might result in feud between the couple and sometimes it may even become a cause for dissolution of their marriage. Therefore, in order to reduce the disparity, it is suggested that the father should be elevated to Class-I to bring parity between the inheritance right of the father and the mother.
- 8) The non-explanation of meaning of the term father's widow (who has been put under Class-II heirs) creates an ambiguity at the time of devolution of deceased's property. Thus, a clear explanation of this term should be made to facilitate the devolution of property.