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IMPACT OF THE HINDU SUCCESSION (AMENDMENT) ACT, 2005 ON WOMEN'S ACCESS TO CAPITAL- PERSISTENT INEQUALITIES OR REVOLUTIONARY CHANGE?

INTRODUCTION:

The Indian society, one previously imbued with patriarchal norms and practices extensively, has gradually begun shedding deep-rooted discriminative practices against women. The realm of inheritance law has seen major statutory reformation over the years that recognized a woman's equal right in the family property. The Hindu Succession (Amendment) Act, 2005 (hereinafter HSAA, 2005) can potentially be considered a progressive legislation that aimed to modify certain prejudiced provisions of the 1956 Act. It allowed daughters to become a coparcener by birth and share rights and liabilities over coparcenary property. The ubiquity of gender inequality in ancient Hindu laws, particularly inheritance in the present case, has significantly declined since the Amendment propelled the law in bridging the status between men and women to get equal share in property.

WOMEN'S RIGHT TO INHERITANCE- A HISTORICAL ANALYSIS:

The present codified Hindu personal law stems from many years of religious tradition and tenets that continue to govern the law and policy of Hindu inheritance. Legal barriers whose foundation rests upon historical customs and practices often put women at a strong disadvantage and are the primary cause for broader patterns of inequality in the law.

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(1) Ancient Hindu Precedents:

The position of women in shastric and customary laws was one of dependence and subservience to the male members of the family owing to the fact that the Smrutis declared them incompetent to perform religious ceremonies and the essential obligation of any person holding property was to perform these rites, thereby forcing women to occupy a peripheral status in the family. Ancient legal texts from the Mitakshara school of Hindu law, prevalent in most parts of India, did not acknowledge female members as coparceners and only allowed them to inherit property separately owned by an individual. Under the Dayabhaga school of Hindu law, both sons and daughters could inherit equal share in the family property upon the death of their father.

(2) Married Women's Property Act, 1872, The Hindu Law of Inheritance (Amendment) Act, 1929, The Hindu Code of 1948:

The above legislations aimed to perpetuate a balance that would respect ancient religious beliefs while attempting to create a change in women's rights of inheritance. It altered certain views under the Mitakshara school and reformed prevailing property rights to give effect to women's right to property and inheritance in the Indian legal system. However, a considerable change in the structure of Hindu Succession laws was following the enactment of the Hindu Succession Act, 1956.

(3) The Hindu Succession Act, 1956:

This Act laid down a broad system that incorporated intestate succession and laid down distinctive rules for inheritance by survivorship. It provides that daughters and sons will inherit their parents' intestate non-ancestral property, contravening orthodox Hindu practices. However, Section 6 of the Act retained the notion of an all-male coparcenary in the case of ancestral property. Women in the family were only allowed notional partition on the death of a Hindu male member, but without a legal right to enforce the use of the property for individual purposes. Section 23 of the Act restricted a woman's right to demand partition of property, citing the reason that females leave their natal home after marriage and will be supported by their husbands thereafter. The Supreme Court stated that the objective of Section 23 is to "prevent fragmentation

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or disintegration of the family dwelling house at the instance of the female heir to the hardship and difficulties which the male heir may be put to."¹

Many who opposed amending the Hindu Succession Act to grant greater inheritance rights to women did so because they feared these changes would have a destabilizing effect on joint families.² Provisions that blatantly derogated from fundamental rights guaranteed under the Constitution, such as Article 14 which provides for right to equality between men and women, Article 15(1) which prohibits discrimination on the grounds of sex and Article 15(3) which allows the State to make special provisions for women and children, were called for a reform as the very constitutionality of the Act was debatable. The 174th Law Commission Report made pertinent recommendations to remove ambiguities in Hindu inheritance rights and improve the status of Hindu women. The HSAA, 2005 integrated these suggestions to alleviate the rigid dichotomy in the treatment of males and females in the Hindu family.

WOMEN'S RIGHT TO INHERITANCE- A DISTINCT REALITY:

Under the HSAA, 2005, the daughter of a coparcener can by birth become a coparcener in her own right in the same manner as the son³ and placed daughters on par with sons by permitting daughters to have the same rights in coparcenary property as she would have had if she had been a son⁴, thereby substituting a new section in place of Section 6 and omitted Section 23 of the principal Act.

A long-standing debate on whether women born before the enactment of the Act were entitled to the family property was addressed by the Court in *Prakash & Ors. v. Pulavathi & Ors.*⁵ in 2016, by introducing two benchmarks- (1) a daughter cannot reinstate a partition that occurred prior to December 20, 2004 and (2) a daughter can only reap the benefits of the amended section on the condition that her father was alive on the date of the Amendment, September 9, 2005. In 2018, the Supreme Court delivered a judgment inconsistent with the previous assertions in the case of *Danamma & Ors. v. Amar & Ors.*⁶ by granting equal coparcenary rights to a daughter whose father died in 2001. The Court observed that Section 6 stated "on and from the commencement

¹ Narashimaha Murthy v. Susheelabai, (1996) 3 S.C.C. 644.

² Lalit Sethi, Reforming Property Rights of Women, Press Information Bureau, Government of India.

³ Section 6(1)(b) of The Hindu Succession (Amendment) Act, 2005.

⁴ Section 6(1)(c) of The Hindu Succession (Amendment) Act, 2005.

⁵ A.I.R. 2016 S.C. 769.

⁶ A.I.R. 2018 S.C. 721.

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of the HMAA, 2005” which was construed to mean that a daughter was granted coparcenary rights by the mere incident of her birth and hence the question of when she was born is immaterial as the devolution of property only occurred on the death of a coparcener.

To address these contradictory views, the interpretation of Section 6 of the Act was the focal point in *Vineeta Sharma v. Rakesh Sharma*⁷, where the Supreme Court held that a daughter is a coparcener by birth and the time of her father’s death was irrelevant, i.e. whether he died prior to the Amendment or on the date of the Amendment. The Court overruled previous judgments and clarified the retroactive nature of women’s coparcenary rights. This landmark judgment bridged gender disparity in Hindu Inheritance laws to a substantial extent and encompassed the constitutionally envisaged goal of gender equality.

IMPACT OF THE HSAA, 2005:

The 2005 Amendment and the subsequent Supreme Court decision upheld constitutional imperatives to bring about equality of status. Although it has uplifted women’s position with respect to the law and increased the probability of women inheriting property, considerable bias continues to persist in this sphere. A study conducted by the World Bank on the impact of changes in inheritance legislation especially in rural areas stated that “the HSAA significantly increased women’s likelihood to inherit land, although it did not fully compensate for the underlying gender inequality. At the same time, there was a significant increase in girls’ educational attainment after the HSAA that suggests the Act led to genuine improvement in women’s socio-economic status, rather than a substitution away from human capital to physical capital transfers by parents to their daughters following the legislative amendment.”⁸

The HSA still considers the Hindu joint family vital in all matters of inheritance; consequently the implementation of the HSAA is a tough challenge due to the conventional nature of the Hindu community which is greatly influenced by the principles of Manusmriti. Awareness of rights is the fundamental presumption by which rights can be availed by the injured party, clubbed with the accessibility of financial resources. It proves to be a difficult task for women to

⁷ 2020 (5) KarLJ 1.

⁸ Klaus Deininger et al Aparajita Goyal, Hari Nagarajan, Inheritance Law Reform and Women’s Access to Capital: Evidence from India’s Hindu Succession Act, The World Bank Development Research Group Agriculture and Rural Development Team, June 2010.

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oppose their natal family in order to inherit property and in remote or rural areas women do not have the required awareness to engage in dispute for their inheritance rights.

HSA allows the husband's family to retain the self-acquired property of women who die intestate, in the absence of her husband and children. The natal family of the women has weaker claims over her property and ultimately she cannot provide for her family even if she wanted to. The HSAA was contrasting in nature due to its non-patriarchal undertone when compared to preceding laws, thus it was met with huge resistance from traditionalists who viewed it as a threat to the family system. Although persistent inequalities can be identified in the existing laws, the HSAA is a step in the right direction for India as the pros definitely outweigh the cons.

CONCLUSION:

Inheritance is the predominant avenue to land ownership. The HSSA, 2005 recognizes the right to inheritance for all women. However, there are incessant gaps between the legal rights granted to Hindu women and their actual inheritance of coparcenary property. Hurdles to the successful implementation of the HSAA are prevalent in the formal institution of the law as well as in social practices and norms. To overcome these social barriers and complex administrative procedures, legal literacy camps should be conducted to spread awareness about the same and the social stigma surrounding this area should be abolished.