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## POSITION OF FEMALES AS KARTA AFTER HINDU SUCCESSION (AMENDMENT) ACT, 2005

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### ABSTRACT

The Hindu Succession Act of 2005 marked a significant shift in the landscape of inheritance and property rights for women in India. This research article delves into the transformative effects of the Act, specifically focusing on the position of females as Karta within Hindu Undivided Families (HUFs). The Act, which aimed to rectify historical gender biases and promote gender equality, has led to a paradigm shift in the traditional male-centric roles and practices concerning HUF management. This article explores the implications, challenges, and successes in the new era of female Karta under the Hindu Succession Act (2005).

The analysis of women's rights before 1956, after the Succession Act was passed, and after the Act was amended in 2005 is covered in this article. Prior to 2005, Hindu law predominantly favoured male members as Karta of a Hindu Undivided Family (HUF), granting them exclusive control over family assets and decision-making. However, the Hindu Succession Act 2005 challenged this age-old practice by introducing significant reforms. The Act's main objective was to promote gender equality and put women on an equal footing with men concerning property rights. The article highlights the current state of affairs and rights of females as Karta and coparcener and the rights and power of a widow.

One of the key provisions of the Act was the abolition of the Mitakshara coparcenary system, which had previously excluded daughters from inheriting ancestral property. This change was a monumental step towards gender equality, allowing daughters to have equal rights to their ancestral property. Furthermore, the Act also abolished the right of a male member to act as Karta solely based on gender, opening the door for female members to take up this role.

**Keywords:** Hindu Women Rights, Gender Equality, Female as Karta, Hindu Succession (Amendment) Act, 2005

## RESEARCH QUESTION

Question – Dose Amendment of 2005 in Hindu Succession Act give rights to women to be Karta in Hindu Undivided Family?

Question – Can women be a Karta in Hindu Undivided Family?

Question – Can a widow be a Karta?

## RESEARCH METHODOLOGY

The research design used for the study will be qualitative. The primary data for this study will be gathered from a variety of sources, such as relevant books, academic journals, court records, and news articles. Thematic analysis will be used to examine the gathered data. Finding themes or patterns in the data is part of this process. Understanding the concept of "Karta" in a Hindu Undivided Family, the place of women in this context, and the relevant laws and court decisions will be the main topics of discussion throughout the analysis.

## INTRODUCTION

The Hindu Succession Act of 2005 was a landmark legislation that sought to bring gender equality in matters of inheritance and property rights within Hindu Undivided Families (HUFs). Karta is the head of the family and is responsible for overseeing the Hindu undivided property. when lineal descendants of a certain family unit together, they form a Hindu undivided Family, Which is a distinct entity. Karta is the family's oldest male member. He is in charge of every action and activity that takes place within the family. Karta's position is **sui generis**<sup>1</sup>. Often referred to as the manager, they oversee the daily costs of the family and their properties. Compared to other family members, the Karta possesses greater powers. The family's coparceners are limited to becoming Karta. One of the significant changes brought about by this Act was the recognition of females as Karta, a role historically reserved for male members of the family. This marked a crucial departure from tradition and heralded a more inclusive and equitable approach to family governance.

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<sup>1</sup> Sui generis is a Latin expression that translates to “of its own kind.”

## EVOLUTION OF THE CONCEPT OF FEMALE AS KARTA

As already discussed, the meaning and application of the name "Karta" have always been very distinct and were not typically associated with women in India. Because they haven't resolved on a position, the previous position on the female being Karta was unclear. This is evident from the fact that there have been several situations where a woman demanded to be a Karta and was granted permission under certain conditions. The **Pandurang Dahake v. Pandurang Gorle**<sup>2</sup> ruling was among the first to rule that a woman was a Karta. The plaintiff in this case filed a lawsuit against the defendant to recover his debt, which was advanced on pro notes that their mother—who served as both their manager and guardian—had executed. In this instance, the mother of the minor, acting as their guardian and family manager, was really looking after the property on their behalf and took out the contested loan for uses that would have an impact on the entire family. Because the minor son was unable to handle matters, the widow in this case requested that she be appointed as Karta in the current case before the court. In spite of this, the widow was only allowed to remain Karta until her son reached majority, according to the court's ruling in her favor. Hence, the court in this instance acknowledged a woman as Karta, albeit with further limitations.

Later, the court heard other instances involving the granting of management authority to female members and their designation as coparceners. "It is true under Mitakshara law, no female can be coparcener, presumably because she does not possess the right by survivorship, but we do think that either this right or the status of a coparcener is a sine qua non of competency to become the manager of a joint Hindu family of which she is admittedly a member," the ruling stated in one of the cases, **Income Tax Commissioner v. Laxmi Narayan**<sup>3</sup>. She was considered as Karta of a family in which she has a personal interest."

Thereafter, there was a case known as **Commissioner of Income Tax v. Govindram Sugar Mills**<sup>4</sup>, in which the mother requested to become the Karta because her sons were not getting along and were constantly fighting. In the Karta case, the court decided that the co-partnership rather than the individual's gender matters. In a Hindu undivided family, only a Coparcener can become the Karta, with a few exceptions. For example, if the son is a minor and unable to make decisions, the mother may act as his representative until the son reaches majority,

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<sup>2</sup> Pandurang Dahake v Pandurang Gorle (1945) AIR Nag 178

<sup>3</sup> Income Tax Commissioner v. Laxmi Narayan [1949] AIR Nag 128

<sup>4</sup> Commissioner of Income Tax v. Govindram Sugar Mill AIR 1966 SC 24.

because the mother is not eligible to be a coparcener and, thus, cannot be a Karta in a Hindu undivided family.

### **FEMALE AS KARTA POSITION BEFORE 1956**

Hindus in India are subject to a variety of customs that are taught in various schools and vary depending on the region. Women have traditionally been thought to be mentally and physically weaker than men. Hindu women's property rights are frequently disregarded by Indian society due to its patriarchal structure, which results in their inequality and subjugation. As a result, property laws typically discriminate against women and favor men. Stridhana and Women's Estate are the two categories of property that women are normally only permitted to own and have limited control over. They were unable to inherit from their father and had no authority over the family property, so they were unable to become Karta or have any involvement in it.

### **THE HINDU SUCCESSION ACT, 1956<sup>5</sup> (A Precursor to change)**

This act was established to consolidate laws related to property and succession, introducing a standardized system for inheritance and succession. It abolished the limited estate and restricted ownership rights of Hindu women. With the implementation of this act, women were granted complete authority and absolute rights to manage and dispose of their property. Despite the fact that the meaning of Stridhana was made clearer, there were still a lot of uncertainties that restricted the power of women. Daughters who were married had no claim to their father's assets or division. In addition, a woman was not acknowledged as a coparcener or Karta.

### **HINDU SUCCESSION AMENDMENT ACT, 2005<sup>6</sup> (A Turning Point)**

The Amendment, Hindu Succession Amendment Act, 2005 is one of the most remarkable and essential amendments which has been brought in when it comes to eradicating gender-biasness and discrimination which have been too prevalent in the Indian society. The purpose of the Amendment was to improve the standing of women in India. This change was necessary to end the struggle and suffering of women.

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<sup>5</sup> Hindu succession Act 1956

<sup>6</sup> The Hindu succession (Amendment) Act 2005

The Hindu Succession Amendment Act, 2005 was enacted by following the points in the 174th report of the 15th Law Commission. From this amendment onwards, the daughters were conferred with the property rights of the Hindu Joint Family. Major changes or amendments can be pointed out in three points:

1. “Abolition of Survivorship”
2. “Abolishing the Son's Pious Obligation”
3. “Equal rights of daughters and sons.”

“Due to a lack of co-partnership requirements, a female member of the Hindu Undivided Family (HUF) was unable to become its Karta. This was resolved by the case of **Mrs. Sujata Sharma v. Manu Gupta & Ors**<sup>7</sup>. Due to Section 6 of the Amendment Act, Hindu men and women now have equal rights to inheritance, which is a socially beneficial law<sup>8</sup>. Because of this, if a male member of a HUF can become a Karta by virtue of being the oldest born member of the family, the same will apply to the oldest born female member of the family as well. It was further made clear that the Plaintiff's marital status has no bearing on her ability to inherit the coparcenary, which she succeeded in after the death.”

Briefly stated, **Section 6(1)** of the Amended Act states that a **daughter** of a **Joint Hindu Family** of Mitakshara law becomes a **coparcener (I) by birth, just like a son; (ii) she has the same rights in the coparcener property as a son; (iii) she has the same liability in the coparcener property as a son; and (iv) she is included in any reference to a Hindu coparcener.**

Each member of the Joint Hindu Family is entitled to their share, including a daughter, mother, widow, predeceased son's daughter, and daughter's daughter. Wives and widowed mothers are not entitled to demand a division of property, but in the event that one is made, their share will be equal to that of their children.

Following the amendment, it was decided in the case of **Shreya Vidyarthi v. Ashok Vidyarthi & Ors.** that a daughter could be a Karta with all the same rights and privileges as a son because she was a coparcener at the time.

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<sup>7</sup> Sujata Sharma vs. Manu Gupta (2016) 226 DLT 647

<sup>8</sup> Section 6 of the Amendment Act, Hindu men and women now have equal rights to inheritance, which is a socially beneficial law

## **CASE ANALYSIS**

### **Mrs. Sujata Sharma vs Shri Manu Gupta & Ors. (2016)**

#### **Facts of the Case**

D.R. Gupta & Sons, Hindu Undivided Family (HUF), with D.R. Gupta as their Karta. 5 sons were born to him. The eldest son succeeded D.R. Gupta as the Karta. Eventually, each son also passed away. Being the oldest male member still alive, the defendant claimed to be the family's Karta. The plaintiff contested this claim, citing her position as the family's eldest following the passing of her father and uncles. She is the family's eldest member and coparcener.

#### **Judgement**

As per the aforementioned amendment, daughters are entitled to the same privileges as their sons in a family. The plaintiff's gender would not automatically disqualify her from the Karta position. She must be accorded the same rights as a son, including the ability to serve as a Karta for the HUF, since she is now also a coparcener by birth. The defendant raised some objections, saying that giving a daughter the authority to manage the HUF property did not fall under the definition of equal rights. In addition, he argued that the plaintiff was married and could not make these kinds of claims. This Landmark judgement made it very clear that a woman who is a coparcener can also become a Karta of the family.

#### **Can a widow be a Karta?**

### **Shreya Vidyarthi vs Ashok Vidyarthi & Ors (2015)**

#### **Facts of the Case**

Two wives were owned by one Hari Shankar Prasad. After his death, the second wife managed day-to-day affairs and provided care for the family. In addition to receiving monthly maintenance from a trust, she was the nominee for an insurance policy. It was argued that she purchased the property using both joint family and her own funds. Later, disagreements over property arose.

#### **Judgement**

The court noted that a Hindu widow cannot act as a Karta since she is not a coparcener in her husband's Hindu Undivided Family. However, if there are no male coparceners or family members left after his husband's passing, the widow may take on the role of manager to oversee day-to-day operations. The minor male coparcener's mother may assume responsibility for running the household. Under certain conditions, she is also capable of making decisions pertaining to the family.

## **VINEETA SHARMA VS RAKESH SHARMA AND ORS MANU/SC/0582/2020<sup>9</sup>**

### **Facts of the Case**

Vineeta Sharma filed a case against her family as well as her brother Rakesh Sharma to claim coparcenary rights on her ancestral property. The High Court upheld the case of Prakash Vs Phulavati which stated that section 6 is not retrospective in operation and required the coparcener and the daughter to be alive at the date of the commencement of the amendment act. Since her father died before the commencement of the Hindu Succession (Amendment) Act, 2005 she could not claim coparcenary rights on her ancestral property. Later she approached the Apex Court with the issue.

### **Issues Raised**

- Whether Section 6 of the Hindu Succession (Amendment) Act, 2005 require the father to be alive as of 9th November 2005?
- Whether the amendment to Section 6 is retrospective, prospective, or retroactive.
- Can women be given equal rights as coparceners?

### **RELATED CASES**

**Prakash Vs. Phulavati**, the respondent claimed partition and possession of a certain percentage of her ancestral properties, which were acquired by her father. The respondent's father acquired the ancestral property on 18th February 1988. The supreme court rejected her claim stating that the legislature has expressly made the amendment act applicable from 9th November 2005 and only if the death of the coparcener in question is after the said date, The

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<sup>9</sup> Vineeta Sharma Vs Rakesh Sharma And Ors Manu/Sc/0582/2020

Amendment would be applicable. There is no scope for any other interpretation because of the express language of the Amendment Act.

In 2001, **Danamma Vs. Amar**, Gurulingappa Savadi passed away, leaving behind two daughters, two sons, Vijay and Arunkumar, and his widow Sumitra. After his death, Amar, son of Arunkumar filed the suit for the partition and separate possession of the suit property. Stating that 2 sons and a widow were the coparceners of the property and asserted that Mr. Savadi's daughters were not entitled to any share of the property, since they were born before the Hindu Succession Act, and could not be treated as coparceners. The trial court agreed that the daughters cannot be treated as coparceners. Later the case reached the supreme court. The supreme reversed the judgment of the lower stating the amendment states that any daughter of a coparcener by birth becomes a coparcener and is entitled to the same rights and liabilities to the property as a son.

**In a landmark judgement, the court by a three-judge bench held that:**

- the provisions of the amended Section 6 of the Hindu Succession Act, 1956 grant daughters born before or after the amendment the status of coparcener, with the same rights and obligations as a son<sup>10</sup>.
- With effect from 9.9.2005, the daughter born earlier may assert her rights, saving as stipulated in Section 6(1) regarding the division, alienation, and disposal of property.
- It is not required that the father of the coparcenary be alive as of 9.9.2005, since the right in coparcenary is based on birth.

The **Vineeta Sharma v. Rakesh Sharma** ruling was a good example of how the 2005 amendment act could be applied retroactively. It grants daughters rights from the moment of their birth, regardless of whether the birth occurred before the amendment, and the father coparcener need not have been alive at the time.

## **WOMEN AS A KARTA (CURRENT POSITION)**

The concept of the Joint Hindu Family must be thoroughly understood before attempting to

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<sup>10</sup> the amended Section 6 of the Hindu Succession Act, 1956 grant daughters born before or after the amendment the status of coparcener, with the same rights and obligations as a son.



understand the concept of Karta. A group of people united by their sapindaship—which can arise through birth, marriage, or adoption—is referred to as a joint Hindu family. The term Hindu Undivided Family refers to the cohesive and unbroken set of immediate ancestors of a typical progenitor, which includes their spouses (if any) and unmarried daughters (if any), but excludes married daughters.

**a) KARTA:**

According to Hindu law, the oldest member of a joint family is called the Karta. He is in a special position. In a Hindu joint family, Karta is not the ultimate owner. He merely serves as the family's head. Every family member in the Joint Hindu Family must agree to the decision made by the family as a whole. It is Karta's responsibility to support the family. Indian courts frequently make comparisons between the role of a Karta and that of a manager, trustee, principal, master, etc., but a Karta's position is distinct and cannot be described by formulas. He has a trusting and confident relationship with each other and the other members. In the past, women were not considered coparceners, and only coparceners are eligible to become Kartas, according to Hindu saints. However, a woman can now work as a coparcener on her family's land. Because previous laws were written with the benefit of male members in mind and treated women as submissive and dependent on male support, the position of women has changed. The status of a daughter as a coparcener has changed, nearly eliminating this position. As a result, things are favorable for the women. With the aid of the judicial rulings, we can now comprehend the status of women as Karta.

**b) JUDICIAL PRONOUNCEMENTS:**

**1) Pandurang vs Pandurang:**

- In 1947, for example, women were not granted the status of coparceners. Previously, it was believed that only the oldest male coparcener in the family could be a Karta. As a result, there was no senior male member.
- being the first case to discuss the question of whether or not women can be Kartas in joint Hindu families. In this instance, the Joint Hindu family's eldest member was a woman with a small son. The administrator would be appointed by the court until the son turns majority.

- In this instance, the mother begged to not appoint a third party since she is familiar with the property and has the necessary qualifications to take care of it.
- In this instance, the court acknowledged the woman's argument and gave her permission to manage the property until her son reaches legal adulthood. This judgement was not appreciated by the members of the legal community.

**2) Mrs. Sujata Sharma vs Shri Manu Gupta & Ors (Delhi High court, 2016):**

- The Hindu Succession Act was amended in 2005, which raised issues for this case. The property in GTB Nagar, Delhi, was at issue in this particular case. Dr. Gupta and Sons was listed as the owner of the property.
- Gupta had five sons. He died in 1971. Krishan Mohan Gupta, who had two daughters named Sujata Sharma and Radhika Seth, was the oldest of them. Manu was the oldest male coparcener, and Sujata Sharma was the oldest sibling.
- Manu argued that, as the family's oldest male coparcener, he should be the Karta of the family property, but Sujata countered that, as sons of the amendment, section 6 grants equal rights to women, including managerial rights. This argument gave rise to their argument.
- In this instance, there was a conflict with Section 6 of the Hindu Succession Act. Regarding women being Karta, Section 6 remains silent. This was not specifically mentioned because even parliament was unsure.
- Based on the submissions of Sujata Sharma, the Delhi High Court decided that a daughter could also be a Karta of a Joint Hindu Family property; marriage would not be a barrier; and a daughter's blood relationship could not be dissolved by marriage alone<sup>11</sup>.

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<sup>11</sup> The Delhi High Court decided that a daughter could also be a Karta of a Joint Hindu Family property; marriage would not be a barrier; and a daughter's blood relationship could not be dissolved by marriage alone.

**c) CHALLENGES FACED:**

While the legal framework had changed to support gender equality within Hindu Undivided Family (HUF), the practical implementation faced resistance and challenges. Deep-seated patriarchal attitudes, resistance from family members, and societal norms often hindered women from exercising their rights as Karta. There were concerns about women's readiness, experience, and understanding of financial and legal matters.

**POWERS AND RESPONSIBILITIES OF FEMALE AS KARTA**

A woman now possesses the same powers as a male Karta as a result of legislative changes. A Power and Responsibilities of Female as a Karta are Discussed in this Article.

**1) Powers<sup>12</sup>****1. Revenue and Expenditure Authority**

Karta has quite an extensive control over the income and expenses of a family. Since her role differs from that of a trustee or agent, she is not required to save money; instead, she is free to use the family's income for the benefit of all family members.

**2. Power to manage a joint family business****3. Power to contract the debt for family purposes****4. Power to enter into a contract****5. Power to refer to Arbitration****6. Power to enter into a compromise**

Karta is willing to reach a consensus on any matter concerning shared homesteads. He is entitled to settle accounts with debtors and to reduce interest or principal in a way that serves the family's best interests, but he is not allowed to give up a debt owed to the common family or to abandon a valuable item without receiving payment or other consideration.

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<sup>12</sup> Paras Diwan, Hindu Law (Twenty-fourth Edition, Allahabad Law Agency, 2019)

## 7. Power to give discharge

## 8. Power to pay debts

The Karta can extend the statute of limitations by recognizing the debt or by making a partial payment. To reinstate a time debt, however, she is unable to sign a fresh promissory note or bond.

## 9. Power of Alienation

To bind the interests of the other coparceners, the Karta may alienate to the value of the common family property, provided that it is done as follows:

1. With the consent of all co-partitioners
2. Legal reasons
3. For benefit of the state

## 2) Responsibilities

### 1. Maintenance

Regardless of gender, Karta bears the duty of guaranteeing that all family members who work as domestic help receive their fair share of maintenance. A person may be sued for both maintenance and maintenance stops if they unjustly exclude a member from maintenance or fail to maintain a member in a proper manner.

### 2. Marriage

According to the ruling in the **Chandra Kishore Family v. Nanak Chand** case, the Karta of the family is in charge of arranging the marriages of the unmarried family members, particularly the union of the daughters, as this is considered a sacred obligation under Hindu law. In addition, it stated that "Marital expenditures are not included in joint family ownership." The joint funds must be used to reimburse any externally incurred costs.

### 3. Division of Ownership

In the event of a partition, the Karta divides ownership and is also accountable for all prior property-related transactions.

According to Mitakshara law, Karta is only obligated to reveal the accounts in the event that he is accused of embezzlement, fraud, or the conversion of his own or the family's joint property against him. The coparcener pursuing the partition cannot demand the disclosure of Karta's previous relationships with joint and family property in the absence of proof of embezzlement, fraud, or conversion against Karta.

#### **4. Representation**

Karta's responsibilities also included representing the family to the government and the outside world. In light of this, he is liable for taxes and fees as the family's representative and may face legal action.

### **SUCCESS STORIES AND EMPOWERMENT**

Despite the challenges, numerous women have successfully assumed the role of Karta within their HUFs. Their stories serve as a beacon of hope and empowerment. These women have not only managed family assets effectively but have also set examples for future generations.

### **CONCLUSION**

The Hindu Succession Act of 1956 was a significant step towards gender equality in India, as it sought to provide equal rights to women in the context of inheritance and succession. Women's rights in a Hindu Undivided Family (HUF) have changed significantly since the amendment passed in 2005, though.

The law acknowledged the coparcenary system, which was exclusive to male members, prior to the amendment. The Karta, the oldest male family member, was entitled to oversee the resources and matters of the family. With limited property rights, women were mainly left out of this system.

The 2005 amendment challenged this patriarchal structure by recognizing daughters as coparceners, giving them the same rights and liabilities as sons. This meant that women could now inherit property equally and were no longer dependent on the goodwill of their male

relatives for their financial security.

Additionally, the amendment made it possible for women to take on the role of Karta in their families. This was a significant change because it gave women authority over family decision-making as well as property. It questioned conventional gender norms and acknowledged women as capable managers and leaders.

But there are still a lot of obstacles in the way of these legal adjustments. Due to societal attitudes and a lack of legal awareness, women's rights are frequently not fully realized. Numerous women still encounter pressure from their families to give up their portion of the property because they are not considered natural inheritors.

In conclusion, even though women's equal rights in Hindu Succession Families have been recognized by the 2005 amendment to the Hindu Succession Act, there is still more work to be done to ensure that these rights are fully realized in reality.

## **SUGGESTIONS**

The 2005 amendment in the Hindu Succession Act, 1956 was introduced with the aim of promoting equality and to eradicate the discrimination between male and female in the society. But the position of women of Karta was controversial even after the decade of passing of this amendment and when it became clear that women can also be a Karta then also there are quite a few cases wherein women are not aware of this provision and in many families, women are not given powers of Karta or even a right of coparcener. Women are also not considered as natural inheritor of Hindu joint family property and this is because of lack of knowledge, unawareness, illiteracy. We just have made the legislation but to make it successful we have to implement it properly so that more women can get the benefits of this legislation. This can be done by educating people and by organizing large scale campaigns to promote awareness and also, we can provide free legal and social aid to the people whose rights have been violated.

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