# MAPPING WOMEN'S GAINS IN INHERITANCE AND PROPERTY RIGHTS UNDER THE HINDU SUCCESSION ACT, 1956

LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE

ACKNOWLEDGEMENTS

This report has been written by the team from Lawyers Collective Women's Rights Initiative spearheaded by Ms. Indira Jaising and with substantial contributions from Mr. Nirmalkumar Suryavanshi, Ms. Jayna Kothari, Ms. Ujwala Kadrekar, Ms. Paroma Ray and Ms. Aileen Marques.

Special thanks are due to Prof. Poonam Saxena for her insightful comments and expert guidance.

The report has been edited by Ms. Paroma Ray under the guidance of Ms. Indira Jaising.

TABLE OF CONTENTS

## CHAPTER I

## LAW OF PARTITION AND SUCCESSION WITH REFERENCE TO FEMALE MEMBERS OF JOINT HINDU FAMILY UNDER THE HINDU SUCCESSION ACT, 1956

The objective of this report is to examine whether, the Hindu Succession Act, 1956 (the "HSA") actually gave women an equal right to property.

The Law Commission of India in its 174th Report on "Property Rights of Women: Proposed Reforms under the Hindu Law" in May 2000 mentioned in the introduction itself that

> "Discrimination against women is so pervasive that it sometimes surfaces on a bare perusal of the law made by the legislature itself. This is particularly so in relation to laws governing the inheritance/succession of property amongst the members of a Joint Hindu family. It seems that this discrimination is so deep and systematic that it has placed women at the receiving end. Recognizing this the Law Commission in pursuance of its terms of reference, which, *inter-alia*, oblige and empower it to make recommendations for the removal of anomalies, ambiguities and inequalities in the law, decided to undertake a study of certain provisions regarding the property rights of Hindu women under the Hindu Succession Act, 1956. The study is aimed at suggesting changes to this Act so that women get an equal share in the ancestral property."

The Report[1] further mentions that:

> "The Law Commission is concerned with the Discrimination inherent in the Mitakshara coparcenary under Section 6 of the Hindu Succession Act, as it only consists of male members. The proviso to section 6 of HSA also contains another gender bias. It has been provided therein that the interest of the deceased in the Mitakshara Coparcenary shall devolve by intestate succession if the deceased had left surviving a female relative specified in class I of the Schedule or a male relative" specified in that class, who claims through such female relative. In order to appreciate the gender bias it is necessary to see the devolution of interest under section 8 HSA. The property of a male Hindu dying intestate devolves according to section 8 of the HSA, firstly, upon the heirs being the relatives specified in class I of the schedule. However, there are only four primary heirs in the Schedule to class I, namely, mother, widow, son and daughter. The remaining eight represent one or another person who would have been a primary heir if he or she had not died before the propositus. The principle of representation goes up to two degrees in the male line of descent; but in the female line of descent it goes only up to one degree. Accordingly, the son's son's son and son's son's daughter gets a share but a daughter's daughter's son and daughter's daughter's daughter do not get anything. A further infirmity is that widows of a pre-deceased son and grandson are class I heirs, but the husbands of a deceased daughter or grand-daughter are not heirs."

---

[1] 174th Report on "Property Rights of Women: Proposed Reforms under the Hindu Law", Law Commission of India, May 2000

Keeping this background in mind, the Hindu Succession Amendment Act, 2005 (the "amendment Act") was enacted to enlarge the rights of a daughter, married and unmarried both and to bring her at par with a son or any male member of a joint Hindu family governed by the Mitakshara law. It also sought to bring the female line of descent at an equal level with the male line of descent, including children of pre-deceased daughter of pre-deceased daughter.

By the way of the amendment Act, the daughter of a coparcener has been admitted in coparcenary and after the commencement of the Amendment Act the daughter is a coparcener in her own right. The daughter now has the same rights and liabilities in the coparcenary property as the son. This means that a daughter along with a son is liable for debts of joint family. The daughter is also entitled to dispose of her share of the coparcenery property or her interest thereof by way of a will.

## 1. DEVOLUTION OF PROPERTY OF A HINDU INTESTATE

On the event of death of an intestate Hindu (male or female) the interest in the coparcenary property thereof devolves in the following manner.

### 1.1 First Step

Firstly the coparcenary property should be notionally partitioned and the shares in the property would be first determined as below-

1) Daughter- The daughter, being a coparcener, shall get same share as allotted to the son.

2) Child of a pre-deceased son – The same share that would have been allotted to pre-deceased son had he been alive at the time of the partition.

3) Child of a pre-deceased daughter – The same share that would have been allotted to pre-deceased daughter had she been alive at the time of the partition.

4) Child of Pre-deceased child of a pre-deceased son – The child would be allotted the same that share that would have been allotted to pre-deceased child had he or she been alive at the time of the partition.

5) Child of Pre-deceased child of a pre-deceased daughter – The child would be allotted the same that share that would have been allotted to pre-deceased child had he or she been alive at the time of the partition.

### 1.2 Second Step

After effecting the notional partition the interest of the Hindu person shall devolve, if he or she dies intestate , by succession and not by survivorship, and in accordance with the provisions of the HSA ( as amended from time to time) .

## 2. EFFECT OF AMENDMENT OF SECTION 6 OF THE HSA

The Section 6 of the amendment act has an overriding effect, so far as the partition of a coparcenary property and succession of interest of deceased member (male or female) is concerned. It also supersedes all customs and usages or Shashtric Law in this regard.

The amended Section 6 has an overriding effect so far as the constitution of coparcenary is concerned. The basic concept of coparcenary is that only male members of a joint Hindu family can constitute a coparcenary completely excluding the female members of the family, This concept has not been substantially modified with the amendment of Section 6 of the HSA However, although the daughter has been included as a coparcener by way of this amendment the wife, mother and widow are still standing in queue for their admission in the coparcenary. The details of the effect of the amendment of Section 6 of HSA have been discussed in detail in Chapter II[2].

## 3. PROPERTY OF FEMALE TO BE HER ABSOLUTE PROPERTY

Section 14 of the Hindu Succession Act 1956, makes it clear that any property possessed by a female Hindu (whether acquired before of after the commencement of the Act) becomes her absolute property to be held by her as full owner thereof and not as a limited owner. This section recognizes equality of sexes and elevates the women from subservient position in the field of economy to a higher pedestal.[3] Whatever share or property she received in lieu of her maintenance became her absolute property after 1956[4].

Section 14 of the Act provides that the property of a female Hindu is to be her absolute property:

*(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*

*Explanation:- In this sub-section "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhan immediately before the commencement of this Act.*

*(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.*

---

[2] Page number _____

[3] Bai Vijaya v. Thakuribai Chela Bhai AIR 1979 SC 993

[4] Family Law Lectures Family Law II, Poonam Pradhan Saxena, 2004 at p. 429.

An analytical look at the section reveals that the female Hindu is conferred the absolute right to her property. In V Tulasamma vs. V Sesha Reddy[5], the Hon'ble Apex Court held that:

> "Besides possessing an existing right of maintenance, a woman in the Hindu family is also conferred right in the family property. It cannot be said that partition deed is something creating a new right in her in so far as the property is not concerned; nor it amounts to acquiring of the property by her by virtue of partition deed when the facts are so, there would be the application of sub-s. (1) Of s.14 and not of sub-s. (2) Of the said section. The Court further held that a widow is entitled to maintenance out of her deceased husband's estate, irrespective of whether that estate is in the hands of his male issue or other coparceners."

In another historic judgment[6], the Apex Court opined:

> "Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).

In a recent judgment[7], the Madras High Court observed that "mere possession does not attract Section 14. No evidence was led to substantiate the plea that the appellant was occupying the premises in lieu of maintenance and hence the Appeal by the wife was dismissed.

---

[5] Tulasamma v. Seshareddi (1977)3SCC99

[6] Komalam Amma vs. Kumara Pillai Raghavan Pillai and Ors. MANU/SC/8262/2008

[77] G.Rama Vs. T.G.Seshagiri Rao (D) by Lrs. 2009-2-L.W. 385

## CHAPTER II

## INTERPRETATIONS BY COURT: OBSERVATIONS

### 1. LAW PRIOR TO THE AMENDMENT ACT OF 2005

The Hindu Succession Act provided for a comprehensive and uniform scheme of intestate succession for the Hindus while expressly retaining the concept of *Mitakshara* coparcenary and a right by birth in favor of the son, son of a son and son of a son of a son. The Act explicitly approved the continued application of the traditional concept of the joint family and the preferential rights of the male heir.

Section 6[8] of the Act dealt with *Devolution of interest in coparcenary property* and stood as under:

"*When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:*

Provided that*, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in Mitakshara coparcenary property shall devolve by testamentary and intestate succession, as the case may be, under this Act and not by survivorship.*

Explanation 1- *For the purposes of this Section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.*

Explanation 2- *Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.* "

The Act not only recognizes the application of the doctrine of survivorship but also mentions that the undivided interest of the coparcener in a *Mitakshara* coparcenary shall devolve by survivorship, upon the surviving members of the coparcenary. "Members of a coparcenary, in relation to a deceased male can only mean male relations since as per the traditional concept no female can be included in this category. However, the proviso to the above mentioned section contains a basic departure from this general application of doctrine of survivorship by stipulating an alteration of the devolution of the undivided interest by automatic devolution by survivorship to a conscious testamentary devolution. The proviso contains four parts:

1. A Hindu male dies as an undivided member of a *Mitakshara* coparcenary
2. He had an interest in the undivided coparcenary property

---

[8] Substituted by **Act 39 of 2005**, sec. 3 (w.e.f. 9-9-2005)

3. The deceased leaves behind him, a class I female heir, or a class I male heir claiming through a female
4. His undivided interest in the *Mitakshara* coparcenary will devolve by testamentary or intestate succession and not by the doctrine of survivorship"[9].

Explanation I of the section clarifies what interest of an undivided member of a coparcenary would be available for succession in the event of death of such member. This part of the section incorporates the concept of legal or fictional partition which means that the partition had not actually taken place but since the member died as an undivided member, the law would presume that he died after asking for a partition i.e., a partition had taken place in the joint family at his instance.

However, for the application of notional partition and to defeat the doctrine of survivorship, the primary condition is that the deceased must have left behind him either a Class I female heir or a Class I male heir claiming through a female heir. The nine heirs whose presence would change the mode of devolution of the undivided interest in the *Mitakshara* coparcenary, from survivorship to succession, preceded by notional partition, are:

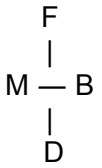
1. Mother
2. Widow
3. Daughter
4. Son of a predeceased daughter
5. Daughter of a predeceased daughter
6. Daughter of a predeceased son
7. Widow of a predeceased son
8. Widow of a predeceased son of a predeceased son
9. Daughter of a predeceased son of a predeceased son

"The only three heirs in the Class I category who have been left out are the coparceners themselves i.e., the son, son of a predeceased son and son of a predeceased son of a predeceased son. Their interests have been well protected since they are coparceners themselves and would take the interest by survivorship and hence their presence should not change the devolution of the undivided coparcenary interest of the deceased from survivorship to succession.

It is relevant to note at this point that the very objective of introducing the concept of notional partition in Act was to offer a fair arrangement to the near female heirs and the cognates of the intestate, and to prevent the passing of the interest in the coparcenary property to the coparceners to the exclusion of such female and cognate relations. The notional partition actually determines the exact share of the deceased which then devolves by intestate or testamentary succession, as the case may be. For example, if a Hindu male (M) is an undivided member of a *Mitakshara* coparcenary consisting of his father (F) and brother (B) and he leaves a daughter (D) at the time of his death, then it will be presumed that M has asked for a partition before his death since D is a Class I heir and M's share in the coparcenary property would then be demarcated and the same would devolve by intestate succession.

---

[9] Family Law Lectures Family Law II, Poonam Pradhan Saxena, 2004 at p. 429




Therefore on division of the coparcenary property, M's share would be 1/3rd of the whole and D, being the sole Class I heir, would take this entire property since F and B would fall into Class II heirs. Before the codification in 1956, in the absence of notional partition, the daughter would not have received any share out of the property and as under the doctrine of survivorship the undivided interest would have been taken by the surviving coparceners, the father and the brother in this case. The daughter would have had the right to claim maintenance only.

It is interesting to note that the exact phrase of "notional partition" has not been used anywhere in the Act whereas it has been used repeatedly by the judiciary for explanations. Time and again it has been asked if the actual purpose of effecting a notional partition is only to ascertain the share of the deceased coparcener and to stop at that or is the purpose to go a step ahead and deduce that a partition has indeed taken place and all those, including females who would have been entitled to get a share in the event of a real partition would be allotted a share in case of such notional partition"[10].

The best approach that is followed by courts gives standing to the actual intent of the legislature that was followed while incorporating section 6 in the Act. As per the liberal interpretation[11], the effects of a real partition should follow once the share of the deceased has been ascertained and if there are female members who would have been entitled to receive a share if a real partition had taken place, they must be given such share, irrespective of whether the primary purpose of presuming this partition was only to determine the share of the deceased coparcener[12].

The Supreme Court in *Gurupad v Hirabai*[13] observed that ignoring a woman's right to get a share at the time of notional partition essentially means that:

> "One unwittingly permits one's imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff's husband and his sons. The fiction created by Explanation I has to be given its full and due effect."

The Court also quoted a passage from Lord Asquith[14]:

---

[10] *Supra* at pages 454- 456

[11] "Liberal interpretation" means interpretation according to what the reader believes the author reasonably, intended, even if, through inadvertence, the author failed to think of it. Black's Law Dictionary, 8th ed., 2004

[12] *Rangubai Lalji Patil v Laxman Patil* (1966) 68 Bom LR 74. Also see *Govindram Mithamal Sindhi v Chetumel Villardas* AIR 1970 Bom 251; *Ananda v Haribandhu* AIR 1967 Ori 194; *Vidyaben v JN Bhatt* AIR 1974 Guj 23; *Chandralata v Sarat Kumar* AIR 1973 MP 169; *Kanahaya Lal v Jamna Devi* AIR 1973 Del 160; *Karuppa Gounder v Palaniammai* AIR 1963 Mad 245; *Controller of Estate UP v Anari Devi Halwasaiya* AIR 1972 All 179

[13] AIR 1978 SC 1239

> "If you are bidden to treat an imaginary state of affairs as real, you must also imagine as real, the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accomplished it, and if the statute says that you must imagine a certain state of affairs, it cannot be interpreted to mean that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of the state of affairs".

The Court interpreted section 6 to mean that in fact that a partition had taken place between the deceased and the coparceners immediately before his death. This assumption, as per the Court, is irrevocable once made and all the consequences that would flow from a logical partition would follow which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. Thus, the heir would get her share at the time of notional partition and will also receive a share at the time of inheritance, if entitled.

It was specifically noted by the Court in this case that all the reforms that had taken place earlier were with a view to improving the property rights of women and a narrow approach would lead to taking a step backwards. The Court went on to mention that it would render fruitless the social reform that has enabled Hindu women to acquire an equal status with men and as such the interpretation that should be preferred should be the one that furthers the intention of the legislature and remedies the injustice from which Hindu women have suffered over the years. This approach of the Court was later reaffirmed in *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh*[15].

It is pertinent to mention here that a narrow approach has been also followed by the Courts in some cases[16] where the basic principle has been to presume that a partition had been effected only for a specific purpose which is to ascertain the interest of the deceased coparcener as available for succession. It was further presumed that in this particular approach that once the said interest was ascertained there was no need to allot shares to the members, whether male or female, to the family.

## 2. ORDER OF SUCCESSION FOR A HINDU MALE DYING INTESTATE

It is important to consider section 8 of the Act at this point which lays down the general rules of succession in the case of males and provides that:

"*The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:*

*(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;*
(b) *secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*

---

[14] *East End Dwellings Co Ltd. v Finsbury Borough Council* [1952] AC 109, 132
[15] AIR 1985 SC 716
[16] *Yethirejulu Neelaya v Mudummuru Ramaswami* AIR 1973 AP 58; *Sriram Bai v Kalgonda* (1964) 66 Bom LR 351; *P Govinda Reddy v Golla Obulamma* AIR 1971 AP 363

(c) *thirdly, if there is no heir of any of the two of classes, then upon the agnates of the deceased; and*
(d) *lastly, if there is no agnate, then upon the cognates of the deceased*"

This section applies to the property of a male Hindu dying intestate after the commencement of this Act. Section 6, as discussed above, permits coparcenary property to devolve on heirs by survivorship, and hence where the main provision of section 6 applies then section 8 would not have any application. However, if the deceased is the sole surviving coparcener at the time of his death there being no other surviving member of the coparcenary then the proviso of section 6 would apply and the divided sons will get their shares by succession as if it were the separate property of the propositus[17]. The property that is governed by the provisions of this section is

(1) the separate property of a Hindu male
(2) the share of a Hindu male in the joint Hindu family property dying intestate and governed by the Mitakshara leaving a female heir mentioned in Class I heirs or any male in Class claiming through such female heir (vide proviso to section 6)

**3. ORDER OF SUCCESSION FOR A HINDU FEMALE DYING INTESTATE**

Section 15 is the first statutory enactment dealing with succession to the property of a Hindu female intestate. Before this provision came into being, the property of a woman always devolved as per the rules of the uncodified Hindu law. In majority of cases, the limited interest a woman had in her own property terminated with her death and the issues regarding succession to her property did not even arise. The unique feature of the Act, although not an encouraging one, is that it provides for two entirely different schemes of succession, based on the sex of the intestate. The reason for not providing a uniform scheme under Hindu law is linked closely to the emphasis on the conservation and protection of the property in the family.

Section 15 of the Act provides for general rules of succession in the case of Hindu females:

"*(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16-*

*(a) firstly upon the sons and daughters (including the children of any pre deceased son or daughter)*
*(b) secondly, upon the heirs of the husband*
*(c) thirdly, upon the mother and father*
*(d) fourthly, upon the heirs of the father; and*
*(e) lastly, upon the heirs of the mother*

*(2) Notwithstanding anything contained in subsection (1)*

*(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children*

[17] *Eramma v Veerupana* (1966) 2 SCR 626

*of any pre deceased son or daughter) not upon the other heirs referred to in subsection (1) in the order specified therein, but upon the heirs of the father; and*

*(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre deceased son or daughter) not upon the other heirs referred to in sub section (1) in the order specified therein, but upon the heirs of the husband*".

A closer look at this section reveals that not only a separate scheme of succession is provided in case a female intestate but there is further divergence linked with the source of acquisition of property and on considerations of her marital status, and factors like whether she dies leaving behind children or not.

It is to be noted that the rules of inheritance are based on the principles of nearness in relationship and love and affection and they are no longer based on religious efficacy or spiritual benefit of the intestate. The legislative presumption that the entire group of heirs of the husband are near in relation to a childless widow, in comparison to her parents and brothers and sisters, is surprising and also impractical. The entire scheme of succession and the rule of preference appear unnatural and laden heavily with a patriarchal and orthodox outlook.

Section 15(2) provides that the property inherited from the father, would revert to the heirs of the father in case the Hindu female dies issueless. It also provides that where she inherits the property from her mother, it would also revert to her father's heirs and not to her mother's heirs. If the sole objective of the legislature was to conserve the property within the family from where it had come, the appropriate provision should have been that where the property was inherited from the father, it would revert to the father's heirs and where it was inherited from the mother, it would revert to her mother's heirs as both categories are distinct from each other.

## 4. RESTRICTIONS IMPOSED BY SECTION 23 OF HSA

Under section 23, the right of female class I heirs was limited to a right of residence in the dwelling house. Their ownership did not vest in them a right to have the house partitioned and specifying of their shares, till the male heirs chose to destruct their joint status themselves. In case the female heir was a married daughter, her ownership was without even right of residence unless she was unmarried, widowed or was deserted by or separated from her husband. In other words, her marital status and her relations with her husband had a direct reflection on her need to have residence in her own property.
The purpose envisaged by the legislature in enacting this provision was to defer actual partition of the dwelling house that was actually and wholly in occupation of the male heirs until they themselves decided to break up their joint status.

## 5. IMPLICATIONS OF THE AMENDMENT ACT OF 2005

### 5.1 Introduction of daughters as coparceners: Amendment to section 6 of the Hindu Succession Act

Since the daughter has been made a coparcener by way of the amendment she has been put at par with the son and gets a birth right in the ancestral property owned by the coparcenary. For example, the daughter would have a birth right in the property

separately owned by her paternal grand-father, and if he dies intestate leaving behind his son (the father of the daughter) then the daughter shall have an interest in the said property as a coparcener and she would be entitled for partition along with the right to demand partition from her father.

According to this amendment if the daughter dies intestate; her interest in coparcenary would devolve by succession in accordance with section 15[18] of the HSA and if the daughter is left alone by deceased male coparcener, she shall inherit his entire property of which she would become absolute owner and after her death, if she dies intestate shall devolve upon her heirs as per section 15[19]. Further, the daughter now has the right to dispose of her interest in coparcenary by making a will and if she is a lone heir she shall become absolute owner of the property and shall also have a right to alienate it during her life time.

This amendment also created a right to have a share in the joint property during the partition favour of children of the daughter and her pre-deceased daughter, in case of their death, that is to say a 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; daughter of a pre-deceased daughter of a pre-deceased son, are also now included in Schedule to HSA as Class I heirs. The said heirs, not being coparceners, would not have right to demand partition but they would be entitled to their share as provided in amended section 6 of the HSA.

**5.1.2 Case- Law Review:**

Since the amendment Act, there it was expected that women approaching the Courts to ascertain their right in the coparcenary property. However very few of such cases have been decided and reported.

**5.1.2.1 Supreme Court:**

The Supreme Court in the case of *Sheela Devi and Ors. v. Lal Chand and Anr*[20]. dealt with the question of right of a coparcener of a Mitakshara family under the old Hindu Law vis- a`- vis Hindu Succession Act, 1956. The contention raised therein that the provisions of the Amendment Act, 2005 will have no application as the succession had opened in 1989 was negatived, holding:

> "The Act indisputably would prevail over the old Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of Amendment Act, 2005 would have no application. Sub-section (1) of Section 6 of the Act governs the law relating to succession on the death of a coparcener in the event the heirs are only male descendants. But, proviso appended to Sub-section (1) of Section 6 of the Act creates an exception. First son of Babu Lal, viz., Lal Chand, was,

[18] General rule of succession in case of female Hindus
[19] *Ibid*
[20] MANU/SC/4318/2006

> thus, a coparcener. Section 6 is exception to the general rules. It was, therefore, obligatory on the part of the Plaintiffs-Respondents to show that apart from Lal Chand, Sohan Lal will also derive the benefit thereof. So far as the Second son Sohan Lal is concerned, no evidence has been brought on records to show that he was born prior to coming into force of Hindu Succession Act, 1956. Thus, it was the half share in the property of Babu Ram, which would devolve upon all his heirs and legal representatives as at least one of his sons was born prior to coming into force of the Act".

In *M. Yogendra and Ors. Vs. Leelamma N. and Ors*.[21], the Supreme Court held that

> "The Act indisputably would prevail over the Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of Amendment Act, 2005 would have no application…
>
> It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement o the Act. It is manifest that the language of Section 8 must be construed in the context of Section 6 of the Act. We accordingly hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e. where succession opened before the Act. Section 8 of the Act will have no application."

In *Anar Devi and Ors. Vs. Parmeshwari Devi and Ors.*[22]*s*the Supreme Court held that

> "Thus we hold that according to Section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class I of the Schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener, by survivorship but upon his heirs by intestate succession. Explanation 1 to Section 6 of the Act provides a mechanism under which undivided interest of a deceased coparcener can be ascertained and, i.e., that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. It means for the purposes of finding out undivided interest of a deceased coparcener, a notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the coparcenary property which he could have got in notional partition. In the case on

---

[21] 2010(1)ALLMR(SC)490
[22] AIR2006SC3332

> hand, notional partition of the suit properties between Nagarmal and his adopted son Nemi Chand has to be assumed immediately before the death of Nagarmal and that being so Nagar Mal's undivided interest in the suit property, which was half, devolved on his death upon his three children, i.e., the adopted son Nemi Chand and the two daughters who are plaintiffs in equal proportion. Nemi Chand, the adopted son, would get half of the entire property which right he acquired on the date of adoption and one third of the remaining half which devolved upon him by succession as stated above. This being the position, each of the two plaintiffs was not entitled to one-third share in the suit property, but one-sixth and the remaining properties would go to the adopted son, Nemi Chand.
>
> The suit properties in the hands of Nagar Mal were ancestral one in which his son Nemi Chand got interest equal to Nagar Mal after his adoption and from the date of adoption, a coparcenary was constituted between the father and the adopted son. Upon the death of Nagar Mal, the property being ancestral, the half undivided interest of Nagar Mal therein devolved by rule of succession upon his three heirs, including Nemi Chand. This being the position each of the daughters would be entitled to one-sixth share in the suit properties and the remaining would go to the heirs of Nemi Chand, since deceased."

The Supreme Court in *R. Mahalakshmi Vs. A.V. Anantharaman and Ors.*[23] held that:

> "Perusal of the aforesaid provision of law makes it abundantly clear that the daughters who have got married prior to 1989 may not have equal share as that of a son but the daughters who got married after 1989 would have equal share as that of a son. In other words, daughters who got married after 1989 would be treated at par with son having the same share in the property."

In *G. Sekar Vs. Geetha and Ors*[24]., the Supreme Court held that

> "It is, therefore, evident that the Parliament intended to achieve the goal of removal of discrimination not only as contained in Section 6 of the Act but also conferring an absolute right in a female heir to ask for a partition in a dwelling house wholly occupied by a joint family as provided for in terms of Section 23 of the Act. "
>
> It is now a well settled principle of law that the question as to whether a statute having prospective operation will affect the pending proceeding would depend upon the nature as also text and context of the statute. Whether a litigant has obtained a vested right as on the date of institution of the suit which is sought to be taken away by operation of a subsequent statute will be a question which must be posed and answered.
>
> We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless

---

[23] (2009)9SCC52
[24] AIR2009SC2649

made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statue and further a statute is not to be construed t have a greater retrospective operation than its language renders necessary, but an amending act which affects the procedure is presumed to be retrospective, unless amending act provides otherwise".

### 5.1.2.2 High Courts

**Madras High Court:**

In the case of *Smt. Bhagirathi and Others v. S. Manivanan and Anr.*[25], the Madras High Court has held as under :

> "A careful reading of S. 6(1) read with 6(3) of the Hindu Succession (Amendment) Act clearly indicates that a daughter can be considered as a coparcener only if her father was a coparcener at the time of coming into force of the amended provision. It is of course true that for the purpose of considering whether the father is a coparcener or not, the restricted meaning of the expression 'partition' as given in the explanation is to be attributed.
>
> In the present case, admittedly the father of the present petitioners had expired in 1975. S. 6(1) of the Act is prospective in the sense that a daughter is being treated as coparcener on and from the commencement of the Hindu Succession (Amendment) Act, 2005. If such provision is read along with S. 6(3), it becomes clear that if a Hindu dies after commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property shall devolve not by survivorship but by intestate succession as contemplated in the Act."

The Madras High Court, in *Smt. Bagirathi and Ors. vs. S. Manivanan and Anr.*,[26] opined that:

> "a careful reading of Section 6(1) read with 6(3) of the Hindu Succession (Amendment) Act clearly indicates that a daughter can be considered as a coparcener only if her father was a coparcener at the time of coming into force of the amended provision. It is of course true that for the purpose of considering whether the father is a coparcener or not, the restricted meaning of the expression "partition" as given in the explanation is to be attributed. In the present case, admittedly the father of the present petitioners had expired in 1975. Section 6(1) of the Act is prospective in the sense that a daughter is being treated as coparcener on and from the commencement of the Hindu Succession (Amendment) Act, 2005. If such provision is read along with Section 6(3), it becomes clear that if a Hindu dies after commencement of the Hindu Succession

[25] AIR 2008 Madras 250
[26] Smt. Bagirathi and Ors. vs. S. Manivanan and Anr AIR2008Mad250

> (Amendment) Act, 2005, his interest in the property shall devolve not by survivorship but by intestate succession as contemplated in the Act."

Further in the case of *Valliammal v. Muniyappan*[27],the Madras High Court has observed as under :

> "In the plaint, it is stated that the father of the plaintiffs died about thirty years prior to the filing of the suit. The second plaintiff as P.W.1 has deposed that their father died in the year 1968. The Amendment Act 39 of 2005 amending S. 6 of the Hindu Succession Act, 1956 came into force on 9-9-2005 and it conferred right upon female heirs in relation to the joint family property. The contention put forth by the learned Counsel for the appellant is that the said Amendment came into force pending disposal of the suit and hence the plaintiffs are entitled to the benefits conferred by the Amending Act. The Amending Act declared that the daughter of the coparcener shall have the same rights in the coparcenary property as she would have had if she had been a son. In other words, the daughter of a coparcener in her own right has become a coparcener in the same manner as the son insofar as the rights in the coparcenary property are concerned. The question is as to when the succession opened insofar as the present suit properties are concerned. As already seen, the father of the Plaintiffs died in the year 1968 and on the date of his death, the succession had opened to the properties in question. In fact, the Supreme Court in a recent decision in Sheela Devi and Ors. v. Lal Chand and Anr., 2007 (1) MLJ 797 (SC) considered the above question and has laid down the law as follows :
>
> The Act indisputably would prevail over the old Hindu Law. We may notice that the Parliament, with a view to confer the right upon the female heirs, even in relation to the joint family property, enacted the Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of Amendment Act, 2005 would have no application. In view of the above statement of law by the Apex Court, the contention of the appellant is devoid of merit. The succession having opened in the year 1968, the Amendment Act 39 of 2005 would have no application to the facts of the present case."

In *Angammal and Chinnammal Vs. C. Sellamuthu and Senthilkumar*[28]**,** , the Madras High Court while rejecting an amendment application to enlarge the shares of the daughters held that

> "Admittedly, the plaintiffs have got married in the years 1965 and 1970 respectively. In these circumstances, as per law which is relied upon by the plaintiffs, the plaintiffs are not entitled to larger share since the Amendment Act is prospective in nature and there is no question of enlargement of devolution of share to the plaintiffs. When that is so, the amendment has to be necessarily rejected."

The High Court of Madras, in the same case, went on to say that:

---

[27] 2008 (4) CTC 773
[28] MANU/TN/9458/2007

> "In any event, inasmuch as under the amended provision, especially the provisos to Section 6(1) and 6(5) of the Act, any partition effected before 20th December, 2004 has been saved and on the facts of the case as it is narrated in the written statement that in the partition suit there has been a final decree passed on 11.8.1999 itself and on the basis of memo of compromise filed in which Chennimalai Gounder, who was a coparcener, ultimately died on 23.6.2004. Even as per the explanation, notional partition has taken effect from the date of his death, viz., 23.6.2004 before which time the partition has already been effected by way of final decree and therefore, as rightly pointed out by the learned trial Judge, there is no substance in the contention of the petitioners that by advent of law, viz., by way of amendment, the division of shares gets enlarged. In view of the same, there is no illegality or irregularity in the order of the learned trial Judge and the revision fails and the same is dismissed."

**Orissa High Court**

In *Pravat Chandra Pattnaik and Others vs. Sarat Chandra Pattnaik and Another*[29]*,* the Orissa High Court had occasion to consider the effect of the Amending Act and the new S. 6 of the Act. It was a case relating to partition of Hindu Mitakshara coparcenary property. After decision by the lower Court, an appeal was preferred to the High Court.

The Court held that the Amending Act was enacted to remove the discrimination contained in S. 6 of the Act by giving equal rights and liabilities to the daughters in the Hindu Mitakshara Coparcenary property as the sons have. The Amending Act came into force with effect from 9-9-2005 and the statutory provisions create new right. The provisions are not expressly made retrospective by the Legislature. Thus, the Act itself is very clear and there is no ambiguity in its provisions. The law is well settled that where the statute's meaning is clear and explicit, words cannot be interpolated. The words used in provisions are not bearing more than one meaning. The amended Act shall be read with the intention of the Legislature to come to a reasonable conclusion. Thus, looking into the substance of the provisions and on conjoint reading, Ss.(1) and (5) of S. 6 of the Act are clear and one can come to a conclusion that the Act is prospective. It creates substantive right in favour of the daughter. The daughter got a right of coparcener from the date when the amended Act came into force *i.e.,* 9-9-2005.

The Court also did not accept the contention that only the daughters, who are born after 2005, will be treated as coparceners. The Court held that if the provision of the Act is read with the intention of the legislation, the irresistible conclusion is that S. 6 (as amended) rather gives a right to the daughter as coparcener, from the year 2005, whenever they may have been born. The daughters are entitled to a share equal with the son as a coparcener.

**Karnataka High Court**

In Sugalabai Vs. Gundappa A. Maradi and Ors.,[30] the Karnataka High Court observed that:

---

[29] AIR 2008 Orissa 133

[30] Sugalabai vs. Gundappa A. Maradi and Ors. 2008(2)KarLJ406

> "Since the change in the law has already come into effect during the pendency of these appeals, it is the changed law that will have to be made applicable to the case on hand. A daughter, therefore, by birth, becomes a coparcener and there is nothing in the Central Amendment Act, 2005 to indicate that the said Amendment Act will be applicable in respect of daughter born on and after the commencement of the Amending Act of 2005."

While the Courts have so far promoted the benefits to female coparceners as endowed by the Amendment Act 2005, some practical challenges have met women in assessing their rights post the 2005 Amendment.

**Delhi High Court**

In Shri Brij Narain Aggarwal vs. Sh. Anup Kumar Goyal and Ors.,[31] the Delhi High Court held that "the very opening words of Section 6(1) are 'On and from...in a Joint Hindu Family'. Thus, Sub-section 1 envisages existence of a Joint Hindu Family, when the amendment came into force and right of the daughter in the HUF coparcenary is to be determined if HUF is in existence. Thus, the very first condition of the application of this amended provision is that on the day when amended Act came into force, an HUF, governed by Mitakshara law must be in existence. If Joint Hindu Family is in existence on that day, the daughter shall be a coparcener in the Joint Hindu Family like any other son and shall have same right in the coparcenary as that of a son and shall be subject to the same liabilities in respect of the said coparcenary property as a son would be. If no HUF is in existence on that day, when amendment came into force, the question of daughter being coparcener does not arise."

**5.2 Abolition of special rules relating to dwelling house**

Prior to the amendment of 2005, the right of female class I heirs was limited only to a right of residence in a dwelling house under Section 23. If the female heir was married, then she did not even have a right of residence unless she was unmarried, widowed or deserted by her husband. The joint status of the household could be destructed only by the male members and the female heirs did not have the right to ask for a partition.

However, with the amendment of 2005, this provision has been repealed altogether enabling daughters to demand a partition in the dwelling house. Also, children of daughter and her pre-deceased daughter, in case of their death, that is to say 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; daughter of a pre-deceased daughter of a pre-deceased son would also get their share in dwelling house if its partition is effected.

---

[31] Shri Brij Narain Aggarwal vs. Sh. Anup Kumar Goyal and Ors., AIR2007Delhi254, 2007(97)DRJ433

**5.3 Deletion of provision relating to certain widows re-marrying may not inherit as widows**

Under section 24, the widow of a pre deceased son, widow of a pre deceased son of a pre deceased son and a brother's widow could inherit as widows only when they had not remarried on the date on which the succession opened. If they were remarried, on the date of opening of the succession, they would not be considered to be the widows of respective relatives of the intestate and would thus be disqualified from inheriting the propeorty of the intestate.

With the deletion of Section 24 of the HSA the widow of a predeceased son or widow of a predeceased son of a predeceased son or a brother's widow shall have a right to succeed the estate of male Hindu dying intestate even if she has remarried on the date of the opening of succession. .

While the amendment Act is momentous for many reasons, we will proceed to contemplate on the benefits to women in terms of assess to property and inheritance rights.

The Hon'ble Supreme Court in the case of *S. Sai Reddy vs. S. Narayanan Reddy and Ors*.[32] held that the legislation is beneficial, and placed on the statute book with the avowed object of benefiting daughter which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. Among the many significant benefits brought in for women, one of the significant benefit of the Amendment has been to make women coparcenary (right by birth) in Mitakshara joint family property.

Earlier the female heir only had a deceased man's notional portion. With this amendment, both male and female will get equal rights. This amendment making the daughter a member of the coparcenary is a significant advancement towards gender equality. Under the amendment, daughters will now get a share equal to that of sons at the time of the notional partition, just before the death of the father, and an equal share of the father's separate share. It undermines the notion that after marriage the daughter belongs only to her husband's family. If her marriage breaks down, she can now return to her birth home by right, and not on the sufferance of relatives. This will enhance her self-confidence and social worth and give her greater bargaining power for herself and her children, in both parental and marital families.

While the Legislature in its capacity gave a momentum to the property rights of women, the Judiciary took a leap forward by acknowledging the change in law and making it applicable to pending property disputes in courts. It is observed in *Assistant Commissioner of Gift Tax vs. C. Krishnan and Ors.*[33] that:

---

[32] S. Sai Reddy vs. S. Narayanan Reddy and Ors. (1991) 3 SCC 647

[33] Assistant Commissioner of Gift Tax vs C. Krishnan and Ors. 109 TTJ 516

"…the difference between daughter and son of the Mitakshara Hindu Family is removed and the daughter is conferred the coparcenary rights in the joint family property by birth in the same manner and to the same extent as the son. In view of the new provisions, daughter is entitled to claim partition of the Hindu undivided family."

### 5.4 Deletion of provisions exempting agricultural holdings: Deletion of section 4(2)

There seems to be two different opinions regarding this deletion by the amendment of 2005. One point of view is that, by deleting this section confusion has been created since the legislature has failed to provide any express provision that states or confirms the application of HSA to agricultural property over and above any state law that also deals with the same. These laws, which provide for prevention of fragmentation of agricultural holdings, fixation of ceilings and devolution of tenancy rights, apply to the inhabitants of the state uniformly, irrespective of their religion. For example, the whole of the agricultural land (unless otherwise provided) would be subject to a uniform law, and the religion of the land owner or the tenant, as the case maybe, will be of no consequence. The deletion of Section 4(2) along with an implied presumption that after amendment the HSA would apply to all kinds of property including rights in agricultural land would now mean that diversity would exist state wise with respect to laws governing agricultural property. Moreover, a conflict may also arise over central or state legislations that are diverse in content. Inheritance and succession is specified in list III, entry (v) while land is a state subject. Whether the Center is competent to legislate on agricultural land is itself a matter of dispute. Normally, if there is a subject on which both Center as well as state can legislate, in case of conflict, the central legislation prevails. But as provided under Art 256 of the Constitution, the Center should be competent to legislate on it. This confusion is bound to crop up paving way for immense litigation in this area.

However, the other point of view explains that deletion of Section 4(2) from the HSA is definitely a right step towards removal of gender inequalities in the inheritance of agricultural land. Previously, Section 4(2) had exempted from the overview of HSA significant interests in agricultural land, the inheritance of which was subject to the devolution rules specified in State level tenurial laws. In States where these laws were silent on inheritance HSA would apply. But, in Delhi, Himachal Pradesh, Punjab, J&K and UP the tenurial laws specify inheritance rules that were highly gender unequal. Here, primary preference was given to male lineal descendants in the male line of descent and the women came very low in the order of preference of heirs. But the amendment of 2005 brought all agricultural land at par with other property and made Hindu women's inheritance rights in land legally equal to men's across the states, overriding any inconsistent state laws.

## CHAPTER III

## THE POSITION UNDER STATE AMENDMENTS

This chapter will look at the five State Amendments made to the Hindu Succession Act 1956 since the seventies in the states of Kerala, Karnataka, Maharashtra, Andhra Pradesh and Tamil Nadu. All the state amendments are identical except for Kerala, which completely did away with the joint family structure. While trying to understand the State Amendments, this chapter would look as the rationale behind these amendments, how they have worked in practice and if they had the desired effect to improve the status of women within the family.

### 1. The Kerala Model – the abolition of the Joint Hindu Family

In Kerala the customary Marumakkattayam laws governed a considerable section of Hindus. The customary Marumakkattayam law was codified primarily by the Madras Marumakkattayam Act 1932 and other local statutes.[34] Under the Marummakkattayam law, the household or the 'Tarawad" consisted of the group of persons forming a joint family with joint property rights. The lineage was traced through the female line and thus daughters and their children were an integral part of the household and of the property ownership. The Tarawad consisted of the mother, her brothers and younger sisters and her children. The oldest brother was known as the Karanavar and was the head of the household and managed the family property, which was jointly owned.

In 1976 the Kerala State government passed the Kerala Joint Family System (Abolition) Act, 1976 ("Kerala Act"). Kerala was the first state to launch an attack on the right to joint family property by birth and the discrimination inherent in it.[35] The Kerala Act followed the language of the draft Hindu Code Bill very closely and followed the recommendations of the Hindu Law Committee set up in 1944 - the Rau Committee - and abolished the right of birth under the Mitakshara as well as the right by birth vested in females under the Marumakattayam law.[36] By this legislation, the joint family system among Hindus in the State of Kerala was extinguished. Unfortunately, along with the abolition of the Mitakshara system, all Marumakkattayam families were also embraced by the Kerala Act and even this matrilineal system of joint family property ownership was abolished.

Section 3 of the Kerala Act states that no right to claim any interest in any property of an ancestor during his or her lifetime which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognized in any court. Further Section 7 repealed all custom or usage with respect to joint family property and repealed twelve local legislations that were prevalent in Kerala, which included all the Marumakkattayyam laws.[37]

---

[34] The various laws were The Malabar Marumakkattayam Act 1896, The Madras Marumakkattayam Act 1932, The Mapilla Marumakkattayam Act 1939

[35] B. Sivaramayya, "Law: Of Daughters, Sons and Widows" (India Together) available at http://www.indiatogether.org/manushi/issue100/sivarama.htm Accessed on 8th August 2010

[36] B. Sivaramayya, "Coparcenery Rights to Daughters: Constitutional and Interpretational Issues" (1997) 3 SCC (Jour) 25

[37] The Acts repealed under Section 7(2) of the Kerala Joint Hindu Family System (Abolition) Act

By force of Section 4[38] of the Kerala Act, joint family ownership was converted into tenancy-in-common as if partition had taken place among all the members.[39] From the date the Act came into force, a division in status and a quantification of shares per capita was deemed to have occurred between all the family members, being both brothers and sisters i.e. it would be as if a partition had taken place and each member of the family holding his or her share separately as his or her self-acquired property. Thus the Kerala Act has abolished the Joint Hindu family system altogether enacting that joint tenants be tenants in common.[40]

It has been stated by critics that one of the major drawbacks of this legislation is that it fails to protect the share of the daughter from being defeated by making a testamentary disposition in favour of another, or by alienation and in the absence of any restriction on testation, the abolition of the right by birth may prove to be illusory.[41]

**2. The Andhra Model – The Equality Model**

The Andhra Pradesh Hindu Succession (Amendment) Act 1986 ("AP Act") elevated a daughter as a coparcener in a Mitakshara coparcenary. This amendment was brought about to remove discrimination against women on the basis of sex and to bring about equality. Indeed, the opening statements of the preamble of the AP Act state:

*"Whereas the constitution of India has proclaimed equality before law is a fundamental right;*

*Whereas the exclusion of the daughter from participation in coparcenary ownership merely by reason of her sex is contrary thereto."*

This model was followed by Tamil Nadu in 1990, Maharashtra in 1994 and Karnataka in 1994, which passed identical legislations amending the HSA. It was thought by many that elevating a daughter to the position of a son and a coparcener would be doing away

---

1975 were: The Madras Marumakkathayam act, 1932 (XXII of 1933], The Madras Aliyasanthana Act, (IX of 1949), The Travancore Nayar Act, II of 1100, The Travancore Ezhava Act, III of 1100, The Nanjinad Vellala Act of 1101 [VI of 1101], The Travancore Kshatriya Act of 1108 (VII of 1108), The Travancore Krishnavaka Marumakkathayee Act, (VII of 1115), The Cochin Thiyya Act, (VII of 1107), The Cochin Makkathayam Thiyya Act, (XVII of 1115), The Cochin Nayar Act, (XXIX of 1113), The Cochin Marumakkathayam Act, (XXXIII of 1113) and The Kerala Nambudiri Act, 1958 (27 of 1958)

[38] *Section 4(2)- All members of a joint Hindu family, other than an undivided Hindu family referred to in sub-section (1) holding any joint family property on the day this act comes into force, shall, with effect from that day be deemed to hold it as tenants in common, as if a partition of such property per capita had taken place among all the members of the family living on the day aforesaid, whether such members were entitled to claim such partition or not under the law applicable to them, and as if each one of the members is holding his or her share separately as full owner thereof.*

[39] *The Palace Administration Board v. Rama Verma Bharathan Thampuran & Ors.* AIR 1980 SC 1187

[40] The Law Commission of India, "Property Rights of Women: Proposed Reforms under the Hindu Law" (174th Report May 2000)

[41] B. Sivaramayya (n 3 above)

with the entire joint family system itself. Hon. Pateskar's statement at the time of moving the Hindu Succession Bill was as follows:

*"To retain the Mitakshara joint family and at the same time to put a daughter on the same footing as a son with respect to the right by birth, right of survivorship and to claim partition at any time, will be to provide for a joint family unknown to law and unworkable in practice."*

However there was one striking feature of all these four state amendments[42] – they held that only a daughter who was unmarried at the time of the amendment would be entitled to be a coparcener. The amending Acts of Andhra Pradesh, Tamil Nadu and Maharashtra add three sections namely 29A, 29B and 29C and Karnataka adds them as Sections 6A, 6B and 6C of the Act.

Thus, these amendments state that a daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son. Thus, a daughter will also be entitled to be a karta of the joint family, and will by virtue of that position exercise the right to spend the income for joint family properties for legal necessity of benefit of the estate.[43]

Another feature of these amendments was that they would not apply to partitions effected prior to the amendments coming into force, so as to not re-open settled partitions. However, it was noticed in Tamil Nadu that many properties were partitioned between the coparceners immediately before the Tamil Nadu (Hindu Succession Amendment) Act 1989 came into force, with a view to defeat the daughter's right to become a coparcener. The 174th Report of the Law Commission of India finds that these partitions were by and large fraudulent partitions, which were pre-dated so that no coparcenary property was available to the daughters.[44] Therefore in order to invalidate such fraudulent partitions, the Tamil Nadu Act provides that partitions effected after 25.3.1989 will be deemed to be void, although the Tamil Nadu Act received the President's assent only on 15.1.1990.

**3. Success Stories**

The new amendments to the HSA in these four states considerably alter the concepts of the Mitakshara joint family and the coparcenary. In the old Hindu law, a daughter ceases

---

[42] a) the daughter of a coparcener in a Joint Hindu Family governed by Mitakshara law, shall become a coparcener by birth in her own right in the same manner as the son and have similar rights in the coparcenary property and be subject to similar liabilities and disabilities;
b)On partition of a joint Hindu family of the coparcenary property, she will be allotted a share equal to that of a son. The share of the predeceased son or a predeceased daughter on such partition would be allotted to the surviving children of such predeceased son or predeceased daughter, if alive at the time of the partition.
c) This property shall be held by her with the incidents of coparcenary ownership and shall be regarded as property capable of being disposed of by her by will or other testamentary disposition.
d)The state enactments are prospective in nature and do not apply to a daughter who is married prior to, or to a partition which has been effected before the commencement of the Act.

[43] B. Sivaramayya (n 3 above)

[44] The Law Commission of India (n 7 above)

to be a member of her father's family on marriage and becomes a member of her husband's family.[45] But after these amendments a daughter will continue to be a member of the natal joint family and will be so even after marriage– a unique feature that was not known in matrilineal or patrilineal joint families in India.[46] She continues to be a member of the natal joint family after marriage as a coparcener due to these amendments and can even be the head of the natal joint family.[47]

These state amendments led to an actual affirmation of the daughter's share in the joint Mitakshara coparcenary as a son. The courts consistently held in cases where the daughter claiming her share in the joint family as a coparcener was unmarried at the time of the amendment that "in light of the clear language of Section 29-A of the Act and also in view of the fact that the daughter was an unmarried daughter as on the date of the enactment, the daughter is also entitled to a share on par with the other coparceners, the brothers."[48]

The emphasis on the removal of discrimination against daughters and the equality perspective was enunciated by the A.P. High Court in *Pulla Reddy v. I. Seshi Reddy*[49], which held:

> "By operation of Sub-section (iv) of Section 29-A of the Amendment Act, an unmarried daughter is entitled as a coparcener to seek partition. The Amendment Act provides that notwithstanding Section 6 of the Hindu Succession Act, Section 29-A resurrects the lost place to a daughter declaring that in a joint Hindu family governed by Mitakshara law, the daughter by birth became a coparcener in her own right as a son and shall have the same rights in the coparcenary in her own right in the same manner as a son; in the coparcenary property she shall be entitled by survivorship to an equal share along with the son with the same liabilities and disabilities enjoined in that regard on the son; that she is entitled at a partition of coparcenary property to be allotted an equal share with the son and shall in terms of Sub-section (iii) thereof, she holds the property obtained at a partition as a full owner."

Thus the amendments made by AP, Karnataka, Maharashtra and Tamil Nadu resulted in the courts granting equal shares to daughters in the coparcenary property, after the enactment and even in pending cases for partition where final decrees were not passed the courts upheld the rights of the daughters to claim a share as per Section 29-A and section 6-A of the amendments[50].

---

[45] *Smt. Nanjamma and Another v. State of Karnataka and Others,* ILR 1999 Kar 1094
[46] B. Sivaramayya (n 3 above)
[47] B. Sivaramayya (n 3 above)
[48] *Merla Narayudu (died) per L.R. and Anr. v. M. Bramaramba and Anr*. 2006 (2) ALT 730
[49] 1987 (2) ALT 210
[50] *S. Narayana Reddy and Others v. S. Sai Reddy* AIR 1990 AP 263

## CHAPTER IV

## LITERATURE REVIEW

The ancient texts had given different dictates for property rights of a Hindu woman. While some were liberal and granted specific shares to women there were others that severly restricted a woman's right to property. However, whatever might have been the recommendations of the Dharmashastras, there is no dispute about the fact that the interpretations and selective pickings of its provisions and the influence of customs placed severe impediments on her right to own property[51]. The woman, as per ancient scriptures, mostly had only right to maintenance and no rights to absolute ownership and the issue of chastity was emphasized repeatedly in all the texts.

It was in this backdrop that the Hindu Women's Right to Property Act, 1937 was enacted. This legislation was landmark to the extent that it changed the traditional concept of coparcenary under which the docrine of survivorship applied strictly on the death of a coparcener. As per the provisions of this Act, if a male member of a Mitakshara Joint Hindu family died and was survived by his widow then the latter could claim a share of the deceased coparcener subject to certain conditions. Under this Act, the widow was also conferred the right to deman a partition and claim the share that the deceased coparcener was entitled to. This legislation was later repealed by the HSA.

The Constitution of India enshrined this principle of gender equality in its preamble by not only granting equality to women, but also empowering the state to adopt measures of positive discrimination in favour of women. It is the tireless efforts of women's movement, women activists, lawyers, that has resulted in India becoming more aware of the need for equal rights for women, both in private and public domain. Since time immemorial the framing of all property laws have been exclusively for the benefit of man and woman has been treated as subservient and dependent on male. The need is felt to dispense gender justice in all spheres, in order to bring in equality in the status of both men and women. The [52]first Central legislation pertaining to property and inheritance concerning Hindu was the HSA which took care of women's property rights too, but to its minimal. The retention of Mitakshara coparcenary without including females in it meant that females could not inherit ancestral property as males do. Thus the law by excluding the daughters from participating in coparcenary ownership (merely by reason of their sex) not only contributed to an inequity against females but has led to oppression and negation of their right to equality and appears to be mockery of the fundamental rights guaranteed by the Constitution. Giving equal rights to women in father's property has raised several political debate and most times bitterness in legislative forums. However post 1956, five states in India namely Kerala(1975), Andhra Pradesh(1986), Tamil Nadu

---

[51] Family Law Lectures Family Law II, Poonam Pradhan Saxena, 2004 at p. 127.
[52] Legalserviceindia.com/articles/has_w.htm

(1989), Maharashtra (1994) and Karnataka (1994) took cognizance of the fact that woman need to be treated equally both in the economic and social spheres. Out of these five southern sates, four states excluding Kerala, took initiative and made state amendments stating that the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. Kerala has gone one step further and abolished the right to claim any interest in any property of an ancestor during his or her life time founded on the mere fact that he or she was born in the family. Thereafter further to Law Commission Reports, "concerted[53] efforts made by individuals and groups committed to women's rights, land rights and human rights, through memorandums, dispositions and lobbying' the openness of the standing Committee on Law and Justice to civil Society inputs; the support of some lawyers and MPs, all contributed to the shift from the limited 2004 Bill to the wide ranging 2005 Act. Several efforts was made by our Parliamentarians to move a bill to make amendments in the Hindu Succession Act, to secure the rights of women in the area of property and which was done by the Hindu Succession (Amendment) Act, 2005. This Act covers inequalities and brings in basic changes in property rights women relating to joint family property, agricultural land and dwelling house.

Hence we see that laws are enacted and further amended to bring in equality. Laws generally reflect the face of the society and it responds to the needs of a dynamic social system. Let us see whether this enactment and amendments has made changes in the actual status of women in the society. Does it in any way helped in empowering women, both socially and economically?

Mr Madan Mohan[54] in his article on 'Gender Imbalance in India: Causes and Consequences' has observed that sex ratio among Hindus has not improved, rather further declined, in spite of the changes in the system of heritance under the HSA. It has concluded that the Act of 1956 remains ineffective in spite of the female entitlement to share ancestral property. Even today the patriarchal ideology prescribes sex segregation, female dependency, high value to female virginity, ritual inequality, the cultural norms, distribution of privileges by ascription, etc. Such ideological prescriptions are the basis of a hierarchically arranged structured form of gender inequality and the social division between the male and the female patrikin of the patriarchal system.

'Succession, Gender Equality and Customary Tribal laws' by Rakesh Shukla[55] has significantly welcomed the Hindu Succession Amendment Act, 2005, however he has strongly expressed that it will make no difference to tribal women, since customary tribal laws continue to discriminate against women in the matter of succession. In 1991 the

---

[53] Report of Sub Group on Land Related Issues submitted to : Working Group om Gender issues, Panchayati Raj Insttutions, Public Private Partnership, innovative Finance and Micro Finance in Agriculture for the Eleventh Five Year Plan (2007 - 2012) Planning Commission January 2007

[54] dnabusinessinfo.com/gender-imbalance-in-indiacauses-and-consequences/ Economic and Political Weekly

[55] http://groups.google.co.in/group/glrf-tribal Gender, Livelihood and Resources Form (GLRF) - Tribal

State level enactments like the Chotanagpur Tenancy Act, 1908 was reviewed by the State level Tribal Advisory Board and it was opined that the female member has the right of usufruct in the property owned by her father till she is married, and in the property of her husband after marriage. However, she does not have any right to transfer her share to anybody. In case a widow dies issueless, the property will revert to the legal heirs of her late husband. The board felt that if the right of inheritance were granted to female descendants it would increase the threat of alienation of tribal land to non-tribals. It said giving female members the right to transfer would give rise to malpractices like dowry prevalent in non-tribal societies. Further the majority judgments of the court have assented to this justification, as it felt that this would lead to a plethora of similar claims to bring personal laws in line with the HSA and the Indian Succession Act, 1865. Moreover it also took the view that it was undesirable to declare the customs of tribal communities violative of the right of equality. In his article, Mr. Shukla has also emphasized on dissenting minority judgment of K. Ramaswamy which notes that "property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. The judgment holds that the reasons for denial of the right to succession to women, like the preservation of integrity of rural society, the unity of family life and the agnate theory of succession are irrelevant today. Sale by female tribals to non tribals can only be made subject to permission from competent authority under the law. Justice Ramaswamy has viewed that in light of these provisions the apprehensions expressed by the Board that giving the right to succession to female heirs would lead to alienation of tribal lands to non tribals, were unfounded. In case a tribal woman wants to alienate the land she would first offer it for sale to the brother or, in his absence, to any male lineal descendant of the family. In case the brother or lineal descendant is unwilling to purchase the land, either by mutual agreement or as per the price settled by the civil court, then the female tribal would be entitled to alienate the land to a non-tribal, subject to the permissions and provisions of the law applicable in the area. It is the majority judgment upholding the exclusive right of male succession, but giving a limited right of livelihood to tribal women in the land, which presently governs inheritance in tribal communities. Yet history is replete with examples where the minority view has proven to be more enduring and in tune with moving towards a less discriminating society.

Adv Rakesh Shukla in his article on 'Equality among unequals: A critical look at Hindu Succession'[56] has tried to analyzed that for almost half a century since the passing of the Hindu succession Act, 1956, there has been the widespread belief that under Hindu Personal law daughters are equal to sons. Hence this amended Act of 2005 was a major blow to patriarchy, wherein centuries-old customary Hindu law in the shape of the exclusive male Mitakshara coparcenary has been breached throughout the country. He

[56] http://infocahngeindia.org/20050907157/Women/Analysis/Equality-among-unequals-A-critical-look-at -Hindu-succession.html

has also expressed that a considerable section of society is totally against equal shares to daughters with respect to land. However the inclusion of agricultural land in the amendment, giving equal shares to daughters and overriding state-level discriminatory tenurial laws, is a great credit to parliament and effective lobbying of women's group.

The Report of the sub group submitted to Planning Commission in January 2007[57] has affirmed that the HSA can have far reaching implications not only for women's status but also for agriculture. There is considerable evidence to show that the lack of assets enhances vulnerability and also poverty. The women who do not own any assets are subject to threats of violence and allocational inequalities within the household. It is also reported through a study in Kerala which concluded that among property less women, 49% experienced psychological violence. In contrast, those who owned both land and house reported dramatically less violence – physical and psychological – 7% and 16% respectively. (Panda and Agarwal 2005) If one sees empowerment as a process moving towards equality, from welfare and access through conscientisation to participation to control, the conferment of equal rights to inheritance of agricultural land denotes a control over decision-making process at par with men[58]. The report further establish that millions of women stand to benefit because NSS data show that 78%of rural families own some land and if we include homestead plots 89% own land. Tough tiny, access to these small fragments of land too provides supplementary earnings. Further, the West Bengal's land reform experience shows that the average size of surplus agricultural land distributed was about 0.4 acres and a large proportion of beneficiaries received about 0.25 acres, which not only improved the bargaining power of these households but also enhanced their productivity. Also the criticism that property right in land to daughters would increase fragmentation again is baseless because most of the fragments even if individually owned, are often cultivated collectively by the families.

Bina Agarwal in her article 'Landmark step to gender equality'[59] has raised the concerns that while the Hindu Succession (Amendment) Act, 2005 is a milestone, and will it give the security they seek? Though the amended Act covers inequalities on several fronts some anomalies still persist. It is observed that in Delhi, Haryana, Himachal Pradesh, Punjab, Jammu and Kashmir and Uttar Pradesh, the tenurial laws specify inheritance rules that are highly gender unequal. In these states women come very low in the order of heirs, hence get only a limited estate and lose the land on remarriage. However the 2005 Act brings all agricultural land on par with other property and makes Hindu women's inheritance rights in land legally equal to men's across states, overriding any inconsistent Sate Laws.

Bina Agarwal's studies have further brought out a number of positive effects of conferring inheritance rights over agricultural land. She has expressed that gender equality in agricultural land can reduce not just a woman's but her whole family's risk of

---

[57] Report of Sub Group on Land Related Issues submitted to : Working Group om Gender issues, Panchayati Raj Insttutions, Public Private Partnership, innovative Finance and Micro Finance in Agriculture for the Eleventh Five Year Plan (2007 – 2012)

[58] Nitya Rao 2005

[59] Article in Hindu dated 25/09/05 http://www.thehindu.com/thehindu/mag/2005/09/25/stories/2005092500050100.htm

poverty, increase her livelihood options, enhance prospects of child survival, education and health, reduce domestic violence and empower women. It has been concluded in her Kerala study that land in women's hand can also increase agricultural productivity, given male out-migration and growing female-headedness. Calculations based on NSS data for all India indicate that at least 78% of rural families own some agricultural land. Hence in fact, millions of women as widow and daughters stand to gain. The risk of fragmentation and women's migration upon marriage are some arguments put forth, however this can be studied in the light of fragmentation can occur even when sons inherit and they too retain their claims despite job related migration.

In the said article , Bina Agarwal has expressed that some other anomalies also persist. By retaining the Mitakshara Joint Property system, making daughters coparcenors will decrease the shares of other Class I female heirs, such as the deceased widow and mother, since the coparcenary share of the deceased male from whom they inherit will decline. In States where the wife takes a share on partition, as in Maharashtra, the widow's potential share will now equal the son's and daughter's. But where the wife takes no share on partition, as in Tamil Nadu or Andhra Pradesh, the widow's potential share will fall below the daughter's. Hence it is suggested that abolishing the *Mitakshara* system altogether would have been more egalitarian. However such abolition needed to be dovetailed with partially restricting the right to will (at least 1/3$^{rd}$ of the property) as women inherit little, as wills often disinherit them.

Bina Agarwal further states in her article "Women's inheritance: next steps' A look at the disabilities non-Hindu women face"[60] that the amended Act 2005, benefit only Hindu Women, leaving intact the disabilities faced by non hindu women, especially Muslim and tribal women. Muslim women in India fall under the Muslim Personal Law (Shariat) Application Act, 1937 and it superceded custom or usage on the contrary for all property texcept agricultural land. Further a daughter and widow cannot be excluded by any other heir and are protected by the overall testamentary restrictions, even though their shares are always lower than men's. Tribal women are another category which faces substantial disabilities in inheritance. Because of non codification of their laws, tribal communities are governed by customs which (except matriliny) discriminate against women. Attempts have been made at gender unequal codification in some north eastern states, which have been strongly opposed by women's groups.

Poonam Pradhan Saxena, Professor, Faculty of Law, University of Delhi has brought out into limelight significant transformation in the status of women through Hindu Succession Act 1956 to amended Act 2005[61]. Post 2005, daughter would be a member of two Hindu joint families and also her children. Poonam Saxena has critically analysed the amended law as she strongly feels that such peculiar and unforeseen implication is bound to pave way for immense confusion and litigation. However, Professor Saxena, in her book on

---

[60] Article in The Indian Express, October 17, 2005- Women's inheritance: next steps http://www.indianexpress.com/full_story.php?content_id=80167

[61] Family Law Lectures Family Law II Second Edition, LexisNexis – Butterworths Wadhwa

Family Law Lectures has been of the opinion that the legislative steps taken to improve the position of a Hindu woman have been reformative in nature and in terms of her ability to acquire property and that a Hindu woman has come a long way from the late 19th century to the present day, at least on paper[62].

[62] Supra at Fn 51

## CHAPTER V

## POLICY RECOMMENDATIONS FOR THE HINDU SUCCESSION ACT, 1956

The Hindu Succession Act, 1956 (HSA) came into force on June 17, 1956 with the objective of codifying and providing a comprehensive uniform scheme of intestate succession for Hindus. Before HSA was enacted, the divergent Hindu community in India followed different inheritance laws as per their customs and religious beliefs. The two broad categories that existed were the Mitakshara school of inheritance and the Dayabhaga laws of inheritance. Besides this, the communities that followed matriarchal system were subject to a different set of laws altogether. Apart from these, the tribal communities among the Hindus adhered to their own unique rules of succession inheritance.

In all its efforts to provide for a uniform rule among the Hindu community, the HSA retained the traditional Mitakshara coparcenary concept which drew a distinction between Hindu males and females in respect of property rights. The continuance of this is antithetical to females' proprietary rights, yet this is precisely where the law attempts to locate its introduction of females' right to independent ownership of property.

The primary aim of the Hindu Succession (Amendment) Act, 2005 was to remove gender inequalities under the Act, as it stood before the amendment. The Amendment incorporates changes that are a combination of the model existing in Kerala and in Andhra Pradesh. It retains the concept of joint family and introduces daughters as coparceners but abolishes the pious obligation of the son to pay the debts of his father. Besides these basic changes, it amends the concept of coparcenary, abolishes the doctrine of survivorship, modifies the provisions relating to devolution of interest in Mitakshara coparcenary, the provisions relating to intestate succession, the category of class I heirs, rules to disqualifications of heirs and marginally touches the provision relating to testamentary succession. This amendment had overall intended to be an empowering tool for women.

Through our research we have observed that the amendments made in 2005 are definitely a step in the right direction towards setting up an equal basis of property ownership at birth. However, the context of law must take into account the material aspects of women's lives in addition to the ideological, where an analysis shows that gender and property and completely intertwined. There are still several unresolved issues that must be explained and debated on.

### (I) Ambiguity regarding self acquired property and ancestral property

The other issue that comes forth is the ambiguity regarding ancestral property and self acquired property. Self acquired property or self acquisitions generally include the property that the deceased may have left earned, i.e., his salary or share in profits or what he may have received through a gift or will or through inheritance from another relative or by way of lottery etc. It is still not clear whether this self acquired property can

form a part of the larger ancestral property. There is also no clear definition of ancestral property available and it is essential that the terms ancestral property and self acquired property be statutorily defined. This definition is also required since there is a dire need for placing certain restrictions on alienating self acquired property. In the absence of any such restriction Hindu women stand a chance to be completely disinherited of property.

**(II) Gurupad's case as statutory law**

It is in the case of *Gurupad Khandppa Magdum v. Hirabai Khandppa*[63] that the Supreme Court had rightly endorsed the intention of the legislature behind the concept of notional partition.

In a notional partition, partition is effected as if it is real partition and share of deceased coparcener should be determined or fixed. The separated share of deceased be distributed among all heirs, both male and female as per section 6 of the HSA. In a notional partition the share of wife mother is enlarged and they get just share in whole of join family property. The interpretation is logical and acceptable. The intent of Legislature was to put female members on the same footing as of male members. This interpretation is in complete agreement of the objects and intent of the legislature.

However, certain discrepancies still exist as to the interpretation of the concept of notional partition. Hence in order to protect the interests of the female heirs it would be best if the ruling of the Supreme Court in the Gurupad case was put down formally in the statute as a part of the law. This could possibly put an end to restrictive interpretations of notional partition.

**(III) Restrictions on testamentary disposition**

One issue arises with testamentary succession[64] under the Hindu law. A Hindu male or female has the right to make a will of all or any part of his/ her property, including of a share in the undivided Mitakshara coparcenary, in favour of anyone[65]. This power of making a will works as a double edged sword. The right to will property gives the opportunity to male members to bequeath property to his widow and daughters and other female members. However, it is this same power which also gives the male members the right to disinherit his widow, daughters and other female members from inheriting any property at all. Once a valid will[66] is made for the whole of the property the rules of intestate succession are not followed Under the general rule of traditional Muslim law, there is a restriction that testamentary disposition should not exceed 1/3rd of the property. This rule was embodied in the *Hadith* and was made for the primary benefit of the beneficiaries so as not to disturb their rightful claim to the property[67].

---

[63] (1978) 3 SCC 383
[64] Where succession is governed by a testament or a Will, it is called testamentary succession
[65] Subject to provisions of Indian Succession Act, 1925
[66] Supra
[67] Baillie, Digest of Mohammedan Law, Part I, 1875, p 625

**(IV) Status of wife of a coparcener**

One of the major changes brought about by the amendment to change the exclusive prerogative of males to be coparceners and conferring right by birth in the coparcenary property in favour of a daughter as well. This has altered the fundamental framework of Mitakshara coparcenary and a daughter is now *inter alia* capable of acquiring an interest in the coparcenary property, demand a partition of the same, and dispose of the same through testamentary disposition. However, a distinction is still maintained between the two classes of females- (a) who are born in the family and (b) who become members of the joint family by marriage to coparceners. The former now have the right by birth in coparcenary property but the latter are still subject to the same law as it stood before the amendment. Their rights over the joint family property continue to be the same, like maintenance out of its funds, a right of residence in the family house, etc. So essentially, wives married into the family are still deprived of any share in the coparcenary property as a matter of right. On the other hand the share of the daughter would diminish the share of the wife married to a coparcener.

**(V) Confusion regarding agricultural land**

One more point that maybe considered in this context is the deletion of Section 4(2) by way of the amendment in 2005. By deleting this section confusion has been created since the legislature has failed to provide any express provision that states or confirms the application of HSA to agricultural property over and above any state law that also deals with the same. These laws, which provide for prevention of fragmentation of agricultural holdings, fixation of ceilings and devolution of tenancy rights, apply to the inhabitants of the state uniformly, irrespective of their religion. For example, the whole of the agricultural land (unless otherwise provided) would be subject to a uniform law, and the religion of the land owner or the tenant, as the case maybe, will be of no consequence. The deletion of Section 4(2) along with an implied presumption that after amendment the HSA would apply to all kinds of property including rights in agricultural land, would now mean that a diversity would exist state wise with respect to laws governing agricultural property. Moreover, a conflict may also arise over central or state legislations that are diverse in content. Inheritance and succession is specified in list III, entry (v) while land is a state subject. Whether the Center is competent to legislate on agricultural land is itself a matter of dispute. Normally, if there is a subject on which both Center as well as state can legislate, in case of conflict, the central legislation prevails. But as provided under Art 256[68] of the Constitution, the Center should be competent to legislate on it. This confusion is bound to crop up paving way for immense litigation in this area.

---

[68] 256. Obligation of States and the Union The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose

However, there is another point of view that exists regarding the deletion of provisions regarding agricultural lands. It explains that deletion of Section 4(2) from the HSA is definitely a right step towards removal of gender inequalities in the inheritance of agricultural land. Previously, Section 4(2) had exempted from the overview of HSA significant interests in agricultural land, the inheritance of which was subject to the devolution rules specified in State level tenurial laws. In States where these laws were silent on inheritance HSA would apply. But, in Delhi, Himachal Pradesh, Punjab, J&K and UP the tenurial laws specify inheritance rules that were highly gender unequal. Here, primary preference was given to male lineal descendants in the male line of descent and the women came very low in the order of preference of heirs. But the amendment of 2005 brought all agricultural land at par with other property and made Hindu women's inheritance rights in land legally equal to men's across the states, overriding any inconsistent state laws.

It is our suggestion that a separate study be carried out of all the existing land laws and understand the gender discriminations that underlie the same. Once such a study is made, appropriate reforms can be recommended. However, at the moment for the sake of clarification, it would be best if it is clarified explicitly that HAS would apply uniformly notwithstanding the existing land laws. At the same time this suggestion would also have to be considered from a constitutional point where land is a state subject but inheritance and succession are central subjects and center is authorized to make laws on the latter but not on the former.

**(VI) Issues regarding infrastructure, legal aid etc.**

The changes brought about by the Hindu Succession Act, 1956 and the amendments thereto will not by themselves enable full equality in property ownership. The impediments regarding entitlement of property among Hindu women need to be considered from a practical point of view. Legal amendments on paper alone would not make the law a success in the country. Women must be provided with more awareness about their rights to property and should have access to better legal aid. This apart the perception of women's right to property also needs to be changed. The law is not only a theoretical issue but it is an issue of people's everyday lives. If the issue of access to justice and awareness among the intended beneficiaries is not addressed then the law and the amendments per se will have nominal impact. The legal processes for realizing women's claims must also be reworked so as to remove any psychological and social barriers to women who want to approach the law[69]. The desired change will be brought about once social legitimacy is established. For this purpose, programmes have to be developed and sustained.

[69] Reena Patel, Hindu Women's Property Rights in Rural India, 2007, p 121