

CHAPTER – VI

CONCLUSIONS AND SUGGESTIONS

CONCLUSIONS:

By the whole study, it can be concluded that women play a significant role in the life of every individual human being. Securing her better birthrights would mean giving better future to our own society, family and to every individual. Developed societies/Nations are developed because they have always taken keen interest in providing equal rights to women with that of men. Developing societies/Nations are developing because they understand the need of the hour and in every possible way trying to give women better rights.

As discussed in previous chapters gender inequality facets in different form, but the most tedious one percept relates to the effective property rights. This disparity in property right pertaining to gender, spells from ancient times. Dharmashastra itself recites the inheritance and the traditional inheritance is the brainchild of such legal text. The two important legal doctrines viz., Mitakshara and Dayabhaga date back 12th century A.D. govern the practice of inheritance of Hindus. Besides these two legal doctrines, Vyavhar Mayukhya is common in parts of Western South India where as Marumakkatayam, Aliyasantana and Nambudri systems are followed in southern plane for guidance of Hindu inheritance.¹

The law of inheritance is of gradual growth and generally applies only to property held in absolute severality as distinctive from property within joint family. The fundamental concept of such a Hindu joint family where there is a common male ancestor with his lineal descendants in the male line. Even under early

¹ P.K. Das, Handbook on Hindu Succession (Property Rights of Women and Daughters), 2007, p. 3

Hindu law, the rights of sons were recognized and they acquired equal interest with the father in the ancestral property as coparceners.²

Broad distinction can be made between two types of property viz., joint family properties or ancestral property and self acquired or separate property. The joint family property is generally inherited from the male line of descent and consists of property that is jointly acquired or is acquired separately but merged into the joint property.

Under the old Mitakshara Law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson, and a great grandson constitute a class of coparceners, based on births in family. No female is a member of the coparcenary in Mitakshara Law. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of male in the family, the share of every other surviving male either gets diminished or enlarged.

The Mitakshara law also recognizes inheritance by succession but only to the property separately owned by an individual male or female. The females are included as heirs to this kind of property by Mitakshara Law. Under the Dayabhaga Law succession rather than survivorship is the rule. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father's lifetime. However, on his death they inherit as tenants-in-common. Daughters also get equal share along with their brothers. Since this ownership arises only on extinction of the father's ownership none of them can compel the father to partition of property in his lifetime and father is free to sell the property without their consent. As females could be coparceners, they could also act as Kartas and manage the property on behalf of other members.

As the property law is a gradual growth, it continued to be complex and continued to be discriminatory against women. The pre-independence social reform movement minimised the gender discrimination, but the issues pertaining

² Supra Note 1

to the changed socio-economic conditions as to the equitable distribution between male and female heirs and as to enlarging the Hindu women's limited estate into full ownership are not only desirable but necessary.

Under ancient Hindu Society, a woman was considered to be of low in social status and treated as a dependent with barely any property rights. As per the text of Baudhayana, women had no place in Hindu scheme of inheritance and "Females were devoid of powers and incompetent to inherit." But by virtue of special texts specified female heirs were given the right inherit.

The Dayabhaga law and the Banaras and Mithila sub-schools of Mitakshara law recognized five females' relations as being entitled to inherit namely, widow, daughter, mother, paternal grandmother, and paternal great grandmother and the Madras and Bombay sub-schools recognized the heritable capacity of a larger number of female heirs.

During the British period social reforms movements raised the issue of amelioration of women's position in society. The earliest legislation brought females into the scheme of inheritance as the Hindu law of Inheritance Act, 1929. This Act, conferred inheritance rights on three females heirs i.e., son's daughter, daughter's daughters and sister (thereby creating a limited restriction on the rule of survivorship). During this period another landmark legislation conferring ownership right on a woman was the Hindu women's Right to Property Act XVIII of 1937. This Act brought about revolutionary changes in the Hindu Law of all schools, and affected not only the law of coparcenary but also the law of partition, alienation or property, inheritance and adoption.

The Act of 1937 enabled the widow to succeed along with the son and to take the same share as the son. The widow is not a coparcener even though she possesses a right akin to coparcener's interest in the property and is a member of the joint family. However, under the Act, the widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights at all. But, both enactments largely left

untouched the basic features of discrimination against women and were subsequently repealed. Stridhan system was totally changed by this Act.

After the advent of the Constitution, the first law made at the central level pertaining to property and inheritance concerning Hindus was the Hindu Succession Act, 1956. The HSA lays down a uniform and comprehensive system of inheritance and applies inter alia to persons governed by Mitakshara and Dayabhaga schools as also to those in certain parts of southern India who were previously governed by the Murumakkattayan, Aliyasantana and Nambudri systems of Hindu law. The act applies to any person who is Hindu by religion in any of its forms or developments or a follower of the Brahmo Prarthana or Arya Samaj or to any person who is Buddhist, Jain or Sikh by religion. In the case of a testamentary disposition this act shall not apply and the interest of the deceased will be governed by the Indian Succession Act, 1925.

Sometimes laws themselves discriminated against women. This was particularly true in the sphere of family laws in India which are “Personal Laws”, that is the law applicable to a person on the basis of his/her religion. Some of these personal laws exhibit strong features of discrimination against women.

The supreme Court and the High Court’s while dealing with the joint family property rights of Hindus interpret the position of the Mitakshara law that supports such a static relation as a custom based law. The property which is inherited by a daughter from the father or great grandfather is treated as the coparcener right i.e. right on ancestral property by birth which is given only to sons under the Mitakshara law. In this respect the Mitakshra system is a system which is patrilineal system, whereby son acquires the right to family property and succeed by his sons and grandsons but not the daughter.

Even if the retention concept of Mitakshara coparcenary i.e. joint family system with its promised inequality between female and male heirs confines, after the Hindu succession Act was enacted in 1956 by establishing the

inheritance right by wiping out the estate of female heirs. Under this Mitakshara system of law property rights are given to male only.

The Supreme Court in a case of *State Bank of India V. Ghamandi Ram*³ elaborated system of Mitakshara law. This court stated that the textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter, to be born. The incidents of co-parcenership under the Mitakshara law are:

- First, the lineal male descendants of a person's up to the third generation, acquire on birth ownership in ancestral properties of such person.
- Secondly, that such descendants cannot any time work out their rights by asking for partition.
- Thirdly, that till partition each member has got ownership extending over the entire property, conjointly with the rest.
- Fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common.
- Fifthly, that no alienation of the property is possible unless it be for necessity without the concurrence of the coparceners and
- Sixthly, that the interest of a deceased member lapses on his death to the survivors.

The court in this case further explained that a coparcenary under the Mitakshara school is a creation of law and cannot arise by act of parties except in so far that on adoption the adopted son becomes a coparcener with his adoptive father as regards the ancestral properties of the latter. The court followed the relevant case referred in ILR.⁴

Justice Bhashyam Ayyangar stated the legal position as thus.

³ AIR 1969 SC 1330: (1969) 2 SCC 33: (1969) 3 SCR 681

⁴ *Sunderanam Maistri vs. Harasimbhula Maistri*, ILR 25 Mad 149.

The Mitakshara doctrine of joint family property is founded upon the existence of an undivided family as corporate body and the possession of property by such corporate body. The first requisite is, therefore, the family unity and the possession by it of property is the second requisite. For the present purpose, female member of the family may be left out of consideration and the conception of a Hindu family is a common female inheritor with his sons as descendants in the male line, and so long as that family is in its normal condition viz. undivided state it forms a corporate body. Such corporate body, with its heritage is purely a creature of law and cannot be created by act of parties. Save in so far that, by adoption, a stranger may be affiliated as a member of that corporate family.

Prior to commencement of the Act the property held by a Hindu female was classified under two heads: (1) Stridhan and (2) Hindu Women's estate. The former was regarded as her absolute property over which she had full ownership and on her death it devolved upon her heirs. The later was considered to be her limited estate with respect to which her powers of alienation were limited. Such property on her death devolved not on heirs but upon the next heirs of the last full owner. But section 14 of the Act abolished the later classification and conferred absolute ownership on her with respect to every property acquired by her through lawful means.

The Hindu Succession Act, 1956 is the landmark legislation in this field, it got all the Hindus under the one kind of joint family coparcenary system i.e. Mitakshra coparcenary. It was the revolutionary Act of its time. The act followed the Mitakshara coparcenary system, it contemplated the existence of a coparcenary consisting of male member only who have an interest by birth in the joint family property. Thus the enactment also did not consider the daughter as coparcener. With its provision the law by excluding the daughter from participating in coparcenary ownership not only contributed to discrimination against females but also led to the oppression and negation of her fundamental rights guaranteed by constitution. The matrilineal assumption of dominant male

ideology is greatly reflected in the law. The Act under section 6 laid down specified emphasis on the “interest of deceased” and provided 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 the partition of the property had taken place immediately before his death.

Prior to the recent Amendment Act, the old law section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means, the females cannot inherit in ancestral property as their male counterparts do. The law by excluding daughter from participation in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to appression and negation of her fundamental right of equality guaranteed by the constitution having regard to the need to render social justice to women. The shares of the property of the deceased dying intestate were divided by the survivorship i.e. according to notional partition. Due to that daughter gets lesser share in comparison of son and was discriminated.

“In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in the very nature of things, and as the very first step, to ascertain the share of the deceased in the coparcenary property. For, by doing that alone one can determined the extent of claimant’s share. Explanation I to section 6 resorts to the simple, expedient, undoubtedly a fictional partition, 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 that property had been taken place immediately before his death. What is, therefore required to be assumed is that a partition had in fact taken place between the deceased and coparceners immediately before his death. That assumption once made is irrevocable. In other words, assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property one cannot be back on that assumption and ascertain the share of the heirs without reference to it. All the consequences which flow from real partition have to be

logically worked out, which means that the share of the heirs must be ascertained on the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is that heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the national partition.”

Again in *State of Maharashtra v. Narayan Rao*⁵ the Supreme Court carefully considered the decision in *Gurupad's case*⁶ and pointed out that *Gurupad's case* has to be treated as an authority (only) for the position that when a female member who inherits an interest in joint family property under section 6 of the Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without the volition to separate herself from the family. A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted but it cannot be carried beyond that. It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the date of the death of a male member under section 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such females.

Section 8 of the Hindu Succession Act 1956 states that the property of a male Hindu dying intestate shall devolve according to the provisions of this chapter: Firstly, upon the heirs being the relatives specified in class I of the

⁵ AIR 1985 SC 716.

⁶ *Gurupad vs. Heerabai* AIR 1978 SC 1239.

schedule; secondly, if there is no heir of class I, then upon the heirs being the relatives specified in class II of the schedule; thirdly, if there is no heir of any of the two classes then upon the agnates of the deceased; and lastly, if there is no agnate, then upon the cognates of the deceased. Before recent amendments 8 females were in class I heirs out of total 12 heirs. Three females are recently added in the class I heirs by the amendment Act of 2005. Now, class I contains a list of 16 persons out of these 16 relations 5 are males and 11 are females. Of them, the son, the daughter, the widow and the mother are the only four primary heirs and they inherit by reason of their relationship to the propositors. There are some female heirs in class II also.

By incorporating section 14 in the Act, the narrower and restrictive connotations of the term 'stridhan' have been replaced by a wider and comprehensive meanings with a view to recognize her absolute proprietary rights and to confer full title upon her to this effect prior to the passing of the Act, despite some stray legislative attempts for improving the social and economic status of the women nothing substantial could be achieved and hence there was a long felt need to bring about some drastic changes in law in this direction. The Act has fulfilled that object by fundamentally parting with the law prevailing before its enforcement.

The sub-section (1) of section 14 along with the explanation has given widest possible extension to the property possessed by a female Hindu. It has overridden the erstwhile prevalent law of stridhan and declares that all such property shall be held by her as full owner. It also dispenses with the traditional limitations on the powers of a female Hindu to hold and transmit property. It has the effect of abrogating the cruel provisions of law, which denied her the proprietary rights for a long time and remained instrumental of her perpetual tutelage. The section has recognized her status as independent and absolute owner of the property, which she possesses on the date of the commencement of the Act. A qualification to the rule is laid down in sub-section (2) but it does not relate to the incidents of women's property.

Section is retrospective in the sense that it enlarges the limited estate of Hindu women into an absolute estate even with regard to property inherited or held by her at the time when the Act came into force. The only requirement is that the property must be possessed by her on the date of commencement of the Act where a female Hindu inherited the property before the Act came into force and alienated the same absolutely prior to the Act. She cannot be deemed to be the owner of the property of which she made an absolute alienation and was not in possession at the time of the commencement of the Act.

The property howsoever acquired by a female Hindu shall be her absolute property stated in subsection (1) is subject to provision of sub-section (2). According to sub-section (2) the female Hindu does not become absolute owner of the property acquired by a gift will or any other instrument, decree or order of a civil court or an award if such gift, will or instrument, decree order or award gives her only restricted rights. The purpose and legislative intent which surfaces from a combined reading of sub-section (1) and (2) of section 14 is that it attempts to remove the disability which was imposed by customary Hindu law on acquisition of rights by a female Hindu but it does not enlarge the right which she gets under a will etc. giving her a limited estate. Where a woman acquires right to property for the first time under some instrument or on account of some decree of the court and restrictions on her right to alienate have been imposed in such decree or instrument, it will attract the provisions of section 14(2) but in no case sub-section (1) of section 14. Thus she would be only a limited owner not an absolute owner of such property.

The combined effect of section 14 is that any property acquired by a female Hindu before or after the commencement of the Act became her absolute property and therefore any class of reversioners does not exist under the Act. After the commencement of the Act reversioner's right has been abrogated. A limited interest held by a Hindu widow in the share of her deceased husband who died after the Hindu women's right to property Act, 1937, will become her absolute property under section 14 of the Hindu Succession Act, 1956 and such

interest of her in the property shall be held by her as full owner and not as limited owner. Her erstwhile limited interest will, therefore, ripen into an absolute interest.

Section 15 prescribes the general rules of succession to the Property of female who dies intestate. Section 16 lays down the order of succession among the various categories of heirs specified in section 15. According to section 15 (1) the property of a female Hindu dying intestate shall devolve firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; secondly upon the heirs of the husband; thirdly, upon the mother and father; fourthly, upon the heirs of the father and lastly, upon the heirs of the mother.⁷

According to section 15 (2) notwithstanding anything contained in sub-section (1)

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- (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 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 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 person 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.

Section 15 does not apply to that property which is held by a Hindu female with restricted rights (in view of sub-section (2) of section 14) at the time of her death. It applies to cases where the Hindu female has become a fresh stock of descent.

⁷ Proff. UPD Kesari Modern Hindu Law, 3rd edition 2001, p. 259.

Although the Act made radical changes in the concept of inheritance and succession but yet it does not include the women or daughter in coparcenary and not give a birth right to her in the joint family property as like son.

Social justice demands that women should be treated equally in both the economic and social sphere. The exclusion of daughters from participating in coparcenary property ownership merely because of their sex is unjust. It also means that if she is not a coparcener then she cannot ever become 'karta' also. Therefore, to improve their economic conditions and social status by giving them equal rights by birth is a long felt social need. Undoubtedly, radical reform of the Mitakshara law of coparcenary is needed to provide equal distribution of property not only with respect to the separate or self acquired property of the deceased male but also in respect of his undivided interest in the coparcenary property.

The idea of making women a coparcener was suggested as early in 1945 in written statement submitted to the Hindu law committee by number of individual and groups and again in 1956, when the Hindu Succession Bill was being finally debated prior to the enactment. An amendment was moved to make a daughter and her children member of the Hindu coparcenary in the same way as a son or his children. But this progressive idea was finally rejected and the Mitakshara joint family was retained.

In Kerala the matriarchal system still prevails. Under this system, daughter rather than the son is the inheritor of property. The state abolished the joint of opinion whether the Mitakshara joint family system in 1976. The law Commission of India tried to ascertain the body of opinion whether the Mitakshara joint family should be retained or not. After taking different opinions from different sections of society, the law commission of India's recommendations became the basis of the amendments of the Hindu succession Act, 1956 in August 2005. The gender discrimination in Mitakshara coparcenary by including only the sons in the rights system became an end.

The Andhra Pradesh High Court in a case⁸ held that a perusal of the Hindu succession Act, 1956 would disclose that parliament wanted to make a clean break from the old Hindu law in certain respects consistent with modern and egalitarian concepts. For the removal of doubt, therefore, section 4(1) (a) was inserted (old amendment). That such a course was not possible was made clear by the inclusion of females in class I heirs of the schedule and according to the Andhra Pradesh High Court the property which devolved upon a Hindu under section 8 of the Act would be HUF property in his hands vis-a-vis his own sons would amount to creating to classes among the heirs mentioned in class II, vis. The male heirs in whose hands it would be joint family property vis-a-vis sons, and female heirs with respect to whom no such concept could be applied or contemplated. The intention of the courts in India is always in need of women property rights provision in Hindu law.

Before the Amendment of Hindu succession Act in August 2005, by ending the Mitakshara system of coparcenary and putting the women's rights in coparcenary ancestral properties the State of Andhra Pradesh in 1986, Maharashtra in 1994, Karnataka in 1994 and Tamil Nadu in 1989 have ended the Mitakshara system of coparcenary by their Amendments in Hindu Succession Act, 1956, respectively.

Inequalities and Anomalies Discriminating women despite the Constitution guaranteeing equality to women, there are still many discriminatory aspects in the Hindu law in the sphere of property rights. In our society maltreatment of a women in her husband's family, e.g., for failing to respond to a demand of dowry, often results in her death. But the tragedy is that there is discriminatory treatment given to her even by the members of her own natal family.

Hence, many NGO's, political parties, women organization etc. were fighting for the equal birth right to women. They get support from the 15th Law Commission's 174th Report. At last, the law has been reformed by the Parliament

⁸ Commissioner of wealth tax vs. Mukundgiji, (1983) 144 ITR, 18 (AP).

in the year of 2005 and now the daughters are also considered coparcener and have all equal right to that of male heirs. Most controversial section 6 of Hindu Succession Act, 1956 which was not included women as a coparcener in the joint family property before 2005 but with the amendment Act of 2005, daughters are now entitled to the same coparcenary rights as the son have. Section 23 of the old Act of 1956, has been deleted and equal coparcenary venture has been given to the daughter under the new law but the Mitakshara coparcenary system retained.⁹

The legislature has made a significant amendment in the Succession law in 2005 to give birthright to daughter in the Joint Family Property for the upliftment of her socio-economic status. By getting a birthright in the property, she becomes coparcener and become eligible to become 'karta' of the family. But this right also gives birth to many questions on whom the legislature is silent i.e. is it practical or possible in our traditional Hindu approach? Can they allow a woman to become 'karta'? Can she remain 'karta' even after her marriage? Although, the implementation of the amendment is a matter of time as the amendment is not retrospective in operation. It gives birthright in 2005, which mean that it applies only to women born after 2005. But for the proper implementation of the Act and to get the object behind the amendment it is necessary to remove anomalies in it and to answer the above said questions.

As alleged by the framers and supporters of Amendment Act 2005, out of many significant changes brought in for ensuring equality to Hindu women, one of the significant benefit has been to make women coparcenary (right by birth) in Mitakshara joint family property. Earlier the female heirs only had a deceased man's notational portion. As per the objective to be achieved by the amendment, both male and female will get equal rights.

⁹ 174th Report of Law Commission , 2000.

In a major blow to patriarchy, centuries old customary Hindu law in the shape of the exclusive male Mitakshara coparcenary has been breached throughout the country.

The preferential right by birth of sons in joint family property, with the offering of “Shardha” for the spiritual benefit and solace of ancestors, has for centuries been considered sacred and inviolate. It has also played a major role in the blatant preference for sons in Indian society. This amendment, in one fell swoop, has made the daughter a member of the coparcenary and allegedly is a significant advancement towards gender equality.

As per the object of the amendment act and the dreams of its supporters following significant changes and improvements will be resulted. The significant change of making all daughters (including married ones) coparceners in joint family property has been of a great importance for women, both economically and symbolically. Economically, it can enhance women’s security, by giving them birthrights in property that cannot be willed away by men. In a male biased society where wills often disinherit women, this is a substantial gain.

Also, as noted, women can become karta of the property. Symbolically, all this signals that daughters and sons are equally important members of the parental family. It undermines the notation that after marriage the daughter belongs only to her husband’s family. If her marriage breaks down, she can now return to her 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.

Now under the amendment, daughters will now get a share equal to that of sons at the time of notional partition, just before the death of her father, and an equal share of the father’s separate share. However, the position of the mother will go down, as the separate share of the father will be less as the property will

now be equally divided between father, sons and daughters in the notional partition.¹⁰

Therefore, this amendment Act of 2005 is an attempt to remove the discrimination as contained in section 6 of the Hindu Mitakshara coparcenary property as the sons have. Section 23 and 24 omitted. Likewise disentitlement of female heir to ask for partition in respect of dwelling house wholly occupied by a joint family, until male heirs choose to divide their respective share therein and the disentitlement of rights of widows remarrying, respectively omitted from the Act. The Amending Act also in the schedule of the Hindu Succession Act, 1956 added new heirs viz, son 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; daughter of a pre-deceased daughter of a pre-deceased daughter. As a result the disabilities of female heirs were removed. This is a great step of the government so far as the Hindu code is concerned. This is the product of 174th Report of the Law Commission of India on "Property Rights of Women: Proposed reforms under the Hindu Law."¹¹

Thus the Amendment of Hindu Succession Act of 1956 in 2005 is a total commitment for the women empowerment and protection of women's right to property. This Amending Act in a patrilineal system, like Mitakshara school of Hindu law opened the door for the women to have the birth right in the family property like the son. The women were vested with the right of control and ownership of property beyond their right to sustenance.¹²

These amendments can empower women both economically and socially and have far reaching benefits for the family and society, if effectively implemented. Independent access to agricultural land can reduce a woman and her family's seek of property, improve her livelihood options and ambience prospects and child of survival, education and health. As wished through

¹⁰ www.legalserviceindia.com visited on 25/06/2010

¹¹ P.K. Das, the new law on Hindu Succession 2006, p. 18.

¹² Ibid, p. 20

amendment, women owning land or house also face less spouse violence as their confidence and sense of security increases, and land in women's names can increase productivity by improving credit and input access for numerous defector female household heads.

But on the other hand the customary tribal laws as well as state level enactments like the Chotangar Tenancy Act, 1908, continue to discriminate against women in the matter of succession.¹³

Making all daughters coparceners likewise has far reaching implications. It gives women birthrights in the joint family property that cannot be willed away. Rights in coparcenary property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter. Millions of women or widows or daughter and their families thus extend to gain by these Amendments.

The objective of Article 15 of the constitution of India has been achieved by these Amendments. Article 15(2) enjoins, "To accord to women equality with men before law, in particular to administer property."

The Hindu Succession (Amendment) Act of 2005 has improved the succession rights of widows in contrast to the rights vested in her under the Act of 1956.

In brief changes brought in by the Amending Act, 2005 are as follows:¹⁴

- (i) The Act deletes the provision relating to inapplicability of the Hindu Succession Act to agricultural property, yet at the same times does not clarify whether agricultural property would be or would not be subject to the application of this Act.
- (ii) It abolishes the doctrine of survivorship in case of male coparceners who die as members of undivided Mitakshara coparcenay.

¹³ Infochange india news, "Succession, Gender Equality and Customery Tribal laws", November 2005.

¹⁴ Poonam Saxena, Family Law lectures Family Law-II, 2nd edition 2007, p. 142.

- (iii) It introduces daughters as coparceners in a Mitakshara coparcenary irrespective of her marital status.
- (iv) It retains the concept of notional partition but modifies the conditions of its application.
- (v) It abolishes the pious obligation of the son to pay the debts of his father.
- (vi) It abolishes the special rules relating to dwelling house that prevented class I female heirs from partitioning their shares, and imposed restrictions on the right of a married daughter to live in it.
- (vii) It deletes s 24 of the Hindu Succession Act that was already a superfluous provision.
- (viii) It adds four new heirs in the class I category of heirs to a male intestate.
- (ix) It empowers a female coparcener to make a testamentary disposition of her share in coparcenary property.

DOUBTS & ANAMOLIES IN THE AMENDING ACT 39 OF 2005:

The Amendment Act gives equal birthright to daughter or women on the one hand but on the other hand, it also gives rise to many questions and included many doubts anomalies flaws and drawbacks in it. The detailed explanation of these doubts, drawbacks, flaws and lacunas are as follows:

1. Prospective operation of the amendment

Section 6 of the Amendment Act gives birth right to the daughter in the Joint Family Property. It means that it applies to the girl child born after the passing of the Amendment Act and not to others. Therefore, this Act is for the future and not for the present. This is the great anomaly, which is there in the I amendment because the right has not been given to them who fought for it, but it is given to them who are yet to born.

2. No right in the joint family property of her in-laws

The position of the women after marriage remains the same. If a birthright has been given to her in Joint Family Property of her parents for her upliftment and representation than the same right should also be given to her in the Joint Family Property of her in-laws after her marriage because she has to spend the maximum of her life in her husband's house. It has been seen very well in the past that her in-laws in every family matter neglected her and no importance has been given to her. That is because she has no representation in the Joint Family Property of her in-laws.

3. Position of mother viz-a-viz the coparcenery remains the same

Mother, not being a member of the coparcenery, will not get a share at the time of the notional partition. The mother will be entitled to an equal share with other class I heirs only from the separate share of the father computed at the time of the notional partition. In effect, the actual share of the mother will go down, as the separate share of the mother will be less, as the property will now be equally divided between father, sons and daughters in the notional partition.

4. Decrease in the share of other class I female heirs

Making daughter coparceners will decrease the shares of other class I female heirs, such as the deceased's widow and mother, since the coparcenery 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 sons and daughters. 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.

5. Devolution of property of female Hindu

If a Hindu female dies intestate, her property devolves first to husband's heirs, then to husband's father's heirs and finally only to mother's heirs. Thus, the intestate Hindu female's property is still kept within the husband's lien.

6. Difficulties pertaining to territorial application of amending act

Another reason for having an all India legislation is that if the Joint Family has properties in two States, one which is governed by the Amending Act and the other not so governed, it may result in two Kartas, one a daughter and the other a son. Therefore, difficulties pertaining to territorial application of Amending Act will also arise. Thus, the need for an all India Act or Uniform Civil Code is immediate.

7. Coparcenery remains a primary entitlement of males

The law no doubt provides for equal division of the male coparcener's share on his death between all heirs, male and female but, the coparcenery remains in the hands of male heirs because they shall inherit an addition, independent share in coparcenery property over and above what they inherit equally with female heirs. The very concept of coparcenery is that of an exclusive male membership club and therefore, should be abolished to give actual equal coparcenary right to daughter.

8. Does not touch the testamentary freedom

Since the 2005 act does not touch testamentary freedom, retaining the Mitaksham system and making daughters coparceners, will not be the ideal solution in this case.

9. Over-Lapping in class I and class II heirs

As per 2005 Amendment the following relations viz.:

- 1) Son of a pre-deceased daughter of a pre-deceased daughter (i.e. daughter's daughter's son);
- 2) Daughter of a pre-deceased daughter of a pre-deceased daughter (i.e. daughter's daughter's daughter);
- 3) Daughter of a pre-deceased son of a pre-deceased daughter (i.e. daughter's son's daughter);
- 4) Daughter of a pre-deceased daughter of a pre-deceased son (i.e. son's daughter's daughter)

These heirs are added in the list of legal heirs under class-I of the Schedule provided under the said Hindu Succession Act. The above four now added in class I was already in class II prior to the amendment and though they have been elevated to class I. Under 2nd and 3rd entry respectively under class II heirs which are still present under the aforesaid provisions only in different words as son's daughter's daughter, daughter's son's daughter, daughter's daughter's son and daughter's daughter's daughter.

However, all the above entries in class II prima-facie seems to be different due to the use of word 'pre-deceased' in class I for the same. Actually meaning wise, both the relations are same and will only come into picture if their legal ascendants died prior to the opening of succession i.e. after the death of the Hindu male dying intestate, with respect of whom all the above relations are derived.

10. Discrimination against male descendants

Two of the male descendants in the daughter's line are not listed as class I heirs while their female counterparts are so listed. There is no basis or justification for this omission. The omission is not based on principles, but creates a reverse discrimination against the male descendants. The son of pre-deceased son of a pre-deceased daughter as well as son of a pre-deceased daughter of a pre-deceased son of the

intestate is not added under class I by the said amendment of 2005. The said relations are also derived through daughter and granddaughter of the intestate. But the female counterparts of these are elevated to class I heirs from class II heirs.

11. Position of father

Because of this amendment, the person in class II Entry 2 and 3 are pushed up and take place with class I heirs. By this, these 3rd generation persons remotely connected with the deceased person take preference over a very close already relative, namely Father, the only heir in class II Entry 1 and brother in class II Entry 2 item 3 and sister in class II Entry 2 item 4. Father, who is certainly a very close relative rather than anyone coming in the class II Entry 2 and 3 of the list, assumes more importance in view of the recent enactment of the Parliament to provide maintenance to parents in "The Senior Citizen (Maintenance, Protection and Welfare) Act, 2007" wherein it is now made mandatory that every person should maintain his parents and failure will result in punishment. Therefore, such pushing of 'Father' beyond a 3rd generation i.e. daughter's daughter's daughter etc, has no meaning.

12. Position of father's widow

Entry 6 in class II heirs specifies father's widow along with brother's widow and is placed below grandfather and grandmother of the deceased male coparceners dying intestate. It may be noted that the term father's widow include mother in its ambit. But mother has already been included in class I heirs. Thus, father's widow in class II, Entry 6, will logically refer to stepmother only and not real mother. However, the related entry does not expressly say so. It may be relevant to note Rule 1 and 2 in Section 10 of Hindu Succession Act in this regard. According to Rule 1, the intestate's widow, or if there are more than one, all the widows together shall take one share. The Indian law provides for monogamy and prohibits bigamy

and polygamy as a general rule. Thus, there is remote possibility for someone to have more than one widow. The Provisions of Hindu Succession Act seem to be more by way had of abundant caution. Rule 2 of Section 10 provides that the surviving sons, daughters and mother of the intestate shall each take one share. Thus, it may be seen that if mother of the intestate takes her share as class I heir, then nothing will remain for the stepmother, if any, to succeed.

From the statement of objects and reasons of the central Act 39/2005 the intention in enacting this Act seems to be to bring in a uniform system throughout the country. But it is doubtful whether this purpose is achieved. The reasons for my doubts are as follows:

- (a) The central amending Act did not repeal the state amendments.
- (b) New section 6 stands in one manner and the state amendments in section 29-A stand in another manner.
- (c) Thus there are two provisions in the Act now. One is the newly substituted section 6 and for other is the local sec 29 – A one is not able to feel certain as to which of these two sections apply after 9-9-2005.
- (d) If we try to depend on the new section 6, then why the local sections are not repealed?
- (e) Section 29 – A of A.P. Amendment starts with a non obstante clause as follows: Notwithstanding anything contained in section 6 of this Act
- (f) Even after section 6 is amended, it is coming within the purview of the opening words of section 29 – A and therefore in the states where there is section 29 – A, section 6 of the Act does not seem to negate this section 29 – A of the Act. As a result of this, one is not sure as to which section is to be made applicable to a given situation.

- (g) The new section 6 does not say that it would apply irrespective of any local amendments.

Can we take it that Act 39 of 2005 being a central Act, the amendment brought in by it would automatically prevail over the local amendment. It does not look like that because of two reasons. Firstly, new section and secondly, the words notwithstanding anything contained in section 6 of the Act in the local amendment are remaining as they are. Therefore, by virtue of the opening stand excepted even now. The parliament noticed the local amendments in the 4 states, but this aspect does not seem to have been considered.

Therefore, the Amending Act has many doubts, flaws, anomalies and drawbacks that needs attention of the legislature and must be reconsidered.

EFFECTS OF THE AMENDMENT:

As concluding the whole study, it is necessary to mention the effects of the amendment which can be there in the near future upon the status of joint family, joint family property, society and moreover on women itself.

1. Increasing the cases of female foeticide

Giving birth right to the daughter in this joint family property may increase the cases of female foeticide. Some communities among Hindus are mostly depends upon the land and joint family property. They don't even let the small portion of that to get away from them. Daughter's have to go to her husband's house after their marriage. Therefore, there is a possibility that they won't let a girl child to be born in the family. This will apparently increase the cases of female foeticide

2. Indirect form of dowry

Giving birth right to the daughter in the joint family property is an indirect form of dowry. As after the death of the married women dying intestate, the property will devolves firstly, upon the heirs of the husband, thereafter to the husband, then to the parents of the husband and at last to

the parents of the women dying intestate. Therefore, we can say that there is an indirect form of dowry.

3. Affects the concept of joint family

This right will affect the concept of joint family as among Hindus the most of the families do not want to give property to the daughter. Therefore, their right will broke the relation of brother and sister or the joint family if she demands share from the joint family property. This right will apparently increase the partitions in the joint family, which become destructive for the joint family system.

4. Affects the property or fragmentation of land

It will adversely affect the property. It will divide the joint family property in small shares even if the male members of the family don't want partition. The in-laws may pressurise the women to demand partition. This will divide property in small shares.

5. Indirect right to in-laws

With right to daughter or women, it is an indirect right in the hands of her in-laws. They can anytime demand partition in the joint family property or dwelling house by pressurising the women. Therefore, it is an indirect right in the hands of her in-laws, which increases the property of her in laws and not of the women.

6. Enhancing the cases of domestic violence

There may be cases where women do not want any share from her parental joint family property. But her in-laws want it. In this case, there is a possibility of the incidents of domestic violence to pressurise the women to demand partition or to get all share from her parental joint family property. Therefore, it will create difficulties for the women to take independent step.

7. Increasing dowry deaths

The most harmful effect, which can be there because of this right to daughter or women, is dowry deaths. If her in-laws want her to demand her share or to get her share and she does not really want, then there may be a possibility of Dowry Deaths. Even for the re-marriage of her husband with a girl having bigger share or property as compare to her, her in-laws can kill her. Therefore, this can become the major drawback of this amendment which can be there in the society because of it.

8. Destruction of social values

Hindu Succession (amendment) Act, 2005 though was enacted to improve the right of the women with respect to property and to bring her on an equal platform with men but the framers did not foresee the repercussions of such an enactment. It has generated a fear psychosis in the male community who are threatened by the presence of female heirs. They look upon them as encroachers of their share in coparcenary due to which relations among them are strained. This would further multiply the crime against women and increase female foeticide and infanticide.

Similarly the recent approval of 33% reservation to women in Rajya Sabha, newly drafted 'The Protection of Women From Domestic Violence Act, 2005 implemented in Oct 2007 recognizing living relationships are threatening the status of women rather than elevating it. The recent decision of Supreme Court approving rights of illegitimate relations in case of property & maintenance have threatened the matrimonial home and derogating the social fabric of the society.

Therefore, after making the study, the researcher can say that even though the legislature has conferred right upon the women but the work has not yet done. Efforts should be made from the grass-root level to remove the difficulties in the way of implementation of the Act in proper way and to remove the flaws from the Act. If the society and legislature

really want to achieve the real object behind the amendment, then some serious efforts should be done from both the sides to get positive results from it.

SUGGESTIONS:

It can be well provided that legislations in India has always taken a keen interest in the upliftment of women and giving them better and more equal rights to that of men. Legislations were made regarding giving women similar right of property, prevailed many lacunas against whom from time to time, voice was hailed by different NGO's, political parties, women organizations etc. and the legislature has always tried to diminish those lacunas by supporting the voice and amended legislations every time, the betterment of economic and social life of Indian women. Now the point, which always is a matter of discussion and big debates, is if the legislature has always tried with the changing time to give woman a better social, economic and political life then why the women are still downtrodden. Why women still struggling for their equal status to that of men? Why always women are discriminated, attacked and abused and victim of domestic violence? Thus, cause root of these ill happenings towards women, is not just that the laws are not properly implemented, but also because women are not aware of their rights i.e. right of succession and inheritance just because to be in the good books of their brothers and parents and with this the effectiveness of legislation has always been destroyed. Hence, to make such legislations more effective and worthwhile a joint action is needed from all the branches, member and thinkers of the society.

Recently passed The Hindu Succession (Amendment) Act, 2005 could become successful if the legislature reconsiders some of the lacunae, shortcomings, drawbacks and anomalies of it and if it is effectively implemented and rights given to women under it, are well used by them. Hence, on the basis of this study following appropriate suggestions are made for effective enforcement of the law that governing women property rights:

1) Society need to be educated

This is necessary that the society must be educated to understand these types of provisions. The attitude of the people towards the gender equality can only be changed by giving them education. Only in this way the Amending Law can work in the positive sense, otherwise it will prove to be destructive for the society.

2) Awareness of Law

To achieve the object behind the amendment it is necessary that the people and society, legal community and the women to whom the right has been given must be aware of it. This is a new law and most of the people still do not know about the new right given to the women. Therefore, efforts should be made to make people aware of the law and to tell the women about their birthright in the family property which is created by the amendment so that they become able to claim it. Legal community must also work in the field of succession so that they can understand the true nature of the law and become able to make people aware of it. Awareness can also be given through educational institutions and by organizing seminars.

3) Legal-Aid Camps

This amendment mostly affects the families living in villages. They are normally not that much educated that they can understand the technical "language of the law. Therefore, legal-aid camps must be organized by the grass-root level organizations, local bodies at grass-root level to tell the people, and to the women, about her right in the property, only in that way the property implementation of the amendment is possible.

4) Better to abolish Mitakshara Coparcenery System

The retention of Mitakshara coparcenary system while giving the equal birthright and coparcenary right to daughter will reduce the share of the other class I female heirs. This may cause the conflict between the female members of the families. Therefore, it would be better to abolish Mitakshara coparcenary system altogether to treat the all heirs equally.

5) Mother should also be included in coparcenary

There is no sufficient reason that why the mother is not included in the coparcenary. She is entitled only to an equal share with other class I heirs from the separate property of the father at the time of notional partition. Many other heirs have been included by the amendment in the list of class I heirs. In fact, the actual share of the mother will go down. Therefore, this discrimination should be removed to give equal treatment to all the women members of the family.

6) Reconsideration of devolution of property of female Hindu

Rules regarding the devolution of property of female Hindu dying intestate should also be reconsidered. If she dies intestate, her property devolves first to husband's heirs, then to husband's father's heirs and finally only to mother's heirs. Thus, the intestate Hindu women's property is still kept within the husband's lien. Therefore, these rules need reconsideration and should be amended.

7) Rule of testamentary succession should also be amended

The testamentary succession in respect of self acquired/separate property own by father shall be restricted in order to save the rights of the daughters, of that particular family. Because, as such there is no legislation to protect the rights of daughter in regard to self-acquired/separate property

8) Over-Lapping should be removed from class I and class II heirs

As it was said earlier that there is over-lapping in class I and class II heirs created by the Amendment Act. This over-lapping made it difficult to understand that who is class I heir and who is class II heir. Therefore, to make it understandable it is necessary to remove the over-lapping by deleting the class II heirs who are already there in class I.

9) All descendants should be treated equally

Some male descendants in the daughter's line are not listed as class I heirs while their female counterparts are so listed. This becomes discriminatory for the male descendants. Therefore, they should also be listed as class I heirs to treat all the descendants equally.

10) Reconsideration of position of father

By this amendment some heirs of 3rd generation who are remotely connected with the deceased, take preference over a very close relative namely 'Father'. This aspect should be reconsidered and preference should be given to father over the third generation heirs.

11) Anomalies regarding the mother's position should be removed

After the amendment Father's widow becomes a class II heir whereas Mother was already there as a class I heir. It is not possible among Hindus to have more than one wife. Therefore, it is necessary to remove the confusion regarding the position of mother so that it becomes easy to understand.

12) Effective steps should be taken to remove social evils

There is a possibility of increase in the number of dowry deaths and cases of female foeticides due to this right given to women. Therefore, efforts should be made by the Government, Local Bodies, NGO's., social organizations and women organization at grass-root level, to make people aware regarding the concept of gender equality, so that they take this right

in the positive sense and not in the negative. Awareness of society, daughter's and other family members is the only way which can help in removing social evils like dowry deaths and; female foeticide

13) Same right should also be given in the property of her in-laws

For the upliftment of the women after her marriage in her husband's household, it is necessary to give same type of right to the women in the joint family property of her husband. She has to spend maximum of her life in the family of her husband, therefore, she must also be given property there. It may also help in decreasing divorce cases. Therefore, this must be considered by the legislature to give women more representation in the family of her in-laws.

14) Sincerity of State to consider Public Opinion

State should be sincere and honest enough to consider public opinion while making law. Public opinion has an important role in making law and particularly the personal law, which includes law of succession in it. State has obligation to care for the same.

15) Sincerity of Politicians to their nation and society

Politicians should also be sincere and honest to their nation, society and legal system and not to their political interests only. Usually in the name of public opinion the state considers the opinion of leaders of the active members of the affective group. Their opinion is also considered by the state to refrain from legislation and not for enacting progressive legislation.

16) Constitute the Forums at Different Levels in Society

To discuss the socio-economic problems, which have relevance with personal laws and to discuss the advantages and the disadvantages of the proposed legislation, forums, should be constituted at villages, town, ward, district, state and at the national levels. Effective and sincere

discussions should be ensured by such these forums. Accordingly the system is to be explored.

17) Give up of the Policy of Religious Appeasement

State should give up the Policy of Religious Appeasement.

18) Give up of the Policy of not taking Decision

State should give up the Policy of not taking Decisions or to refrain from legislation when it is required.

To conclude, the researcher has theoretically analysed the law prior to and after The Hindu Succession Act, 1956, as well as Amendment to the Act in 2005 and has given a few suggestions to ensure the effective implementation of the Act, so that it could be made an authentic personal law and would be in a position to settle the litigation arising due to confusion in classification of succession rights. Though, the actual functioning of the Act could only be assessed when the Act is implemented. Still the legislation gives hope that it tends to have overcome the inherent defects and tends further to ensure equality to both men and women without discrimination within the framework, letters and spirit of the Constitution.