

AN OVERVIEW OF HINDU WOMEN'S RIGHT TO PROPERTY

Sukanya Mukherjee

*Visiting Faculty, Sister Nivedita University, Kolkata, email:
mukherjeesukanya01@gmail.com, ORCID: 0009-0001-6693-0978*

Abstract

The significant contribution of women in the society has been in existence since the ancient times. Securing the birth right of a women would indicate a better future on our own end. Though grounds of gender inequality can be enlisted under different facets, the most tedious one relates to property rights of women. The inheritance rights in regard to Hindu women is still governed by the age-old customs of Hindu Law which pulls down the string of development in regard to the fairer gender. The Hindu Succession Act of 1957 was a welfare legislation which remodelled the whole structure of Hindu Law and codified the same. It included revolutionary concepts of testamentary and intestate succession, coparcenary property and identified the property rights of Hindu Women. Though the intent was on the positive note, there were several genders-discriminatory provisions still in the existence. The need for reforms called for an amendment and Hindu Succession (Amendment) Act, 2000 came into existence. This Act introduced the birth right of women to inherit the coparcenary property, deleted several derogatory provisions and made Hindu women eligible of testamentary disposition of the property. In this Article, the researcher has pointed out the analysis of both the Acts and also has pointed out a few reforms which is needed for better implementation of the objective with which the Amendment Act was enacted and with the hope for ensuring equality with the spirits of Indian Constitution.

Keywords: Succession, Coparcener, Inheritance Rights, Hindu Women, Heirs.

Introduction

On 17th June, 1956, a new dawn of the era began in socio legislation history when Hindu Succession Act, 1956 was enforced. It aimed at making comprehensive and uniform provisions for dealing with intestate succession for Hindus. Prior to its enactment, there were several personal laws governing different sects of Hinduism which was no less than a formidable maze in the inherently diverse community.¹

¹ POONAM PRADHAN SAXENA, FAMILY LECTURES FAMILY LAW II 271 (Lexis Nexis Butterworths, Wadhwa, Nagpur, 2011)

It was due to the decision of Rau Committee, Hindu women were vested with absolute rights over Stridhan and via a separate chapter, the Select Committee provided that after the commencement of the Code, not only it will be an absolute one under the Chapter 'Women's Property', but it can also be inherited by her heirs.²

This legislation was passed to bring a progress in the society. It aims to remove the inequalities between genders in respect of right to property and provides heirs solely based on natural love and affection and not efficacy.³ This legislation aims to empower women to acquire the property in her full power as owner and gives her liberty to dispose it at her pleasure. It also had retrospective effect regarding the acquired property before commencement of the Code.⁴

Fundamental changes brought by The Hindu Succession Act, 1956

This Enactment aimed to make the process and status of women relating to inheriting a property a reality by enacting a few fundamental changes from the ancient personal laws. Some of them are discussed as follows:⁵

- i. This Code changes the essence of Hindu Joint Family, Mitakshara School, Coparceners, intestate and to an extent testamentary succession as well.
- ii. This Code provides for a uniform code for all the sects of Hindu in relation to devolution of property by intestate succession. It is solely based on natural love and affection and not efficacy or survivorship.
- iii. The concept of limited ownership of women was abolished by this Code. She now had full and absolute ownership over her properties and was at liberty to decide on its disposal and enjoyment.
- iv. Daughters and their heirs were introduced by this Code as primary heirs over male collaterals and the marital status of the daughter was also made irrelevant.
- v. The concept of affinity was also introduced along with consanguinity in terms of inheritance.
- vi. The Code abolished the concept of property devolution by way of survivorship which was prevalent under the Mitakshara School. Under new law, it will be assumed that the death of the deceased happened after a partition which will entitle

² 2 SABZWARI, HINDU LAW (ANCIENT & CODIFIED) 1078 (2007)

³ R.K. AGARWAL, HINDU LAW, 243-244 (Central Law Agency, Allahabad, 2007)

⁴ *Supra* note 1 at 340

⁵ *Supra* Note 1 at 275-277

his share in coparcener property to be converted to separate share so that it can be devolved by the legal heirs.

- vii. Under new Code, the mother, daughter, widow and grandmother were made eligible to succeed to the interest of Mitakshara coparcener.
- viii. Grounds preventing inheritance based on mental and physical deformities and diseases were removed and the murderer of an intestate was disqualified from inheritance in accordance to public policy.
- ix. The ground of unchastity of a widow in order to disqualify from inheritance was discontinued and she was made an absolute owner of her properties.
- x. The Act gave priority to the the full blood heirs over half blood and uterine blood heirs and Class I heirs were eligible to simultaneously inherit under the said Act.
- xi. The rights of posthumous children were also specifically protected by this Code.

Women's Right to Property under The Act, 1956

1. Partition Rights

Under the Hindu Succession Act, 1956, the female member of joint family was not allowed to be coparcener and was therefore deprived from ownership in the coparcenary property. However, during actual partition of property, the female members were entitled to their share. Except for Dravida School, the female members were entitled to a share of their own. It has to be noted that female did not have the right to demand their portion. They were only entitled if there was a mutual destruction of the joint status of the property by two coparceners. if deceased before the effect of partition, the legal representatives were not entitled to claim the allotted share.⁶

The categories of female entitled to a share in partition are as follows:

- i. "Father' wife
- ii. Mother
- iii. Paternal grandmother
- iv. Coparcener's widow

⁶ *Supra* note 1 at 241

- v. Daughter⁷ of a coparcener.”

2. As Class-I Heirs

Under the Code, there are 4 categories of heirs who are entitled to inheritance.⁸ They are as follows:

- i. “Class-I Heirs
- ii. Class-II Heirs
- iii. Agnates
- iv. Cognates”

Most of the female, after Hindu Succession Act, 1956, were positioned in Class-I heirs which gave them a preference over the others. They were made entitled to equal and simultaneous property rights along with the male counterparts.

The Class-I heirs are as follows:

“Son; Daughter; Widow; Mother; Son of a pre-deceased son; Daughter of a pre-deceased son; Son of a pre-deceased daughter; Daughter of a pre-deceased daughter; Widow of a pre-deceased son; Son of a pre-deceased son of a pre-deceased son; Daughter of a pre-deceased son of a pre-deceased son; Widow of a pre-deceased son of a pre-deceased son; 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.”⁹

The property belonging to a Class-I heirs is to be divided according to the following rules: ¹⁰

Rule 1- The intestate’s widow, if one or more, shall take one share.

Rule 2- The surviving son and daughter shall take single share each.

Rule 3- Remaining heirs of both pre-deceased daughter or pre-deceased son shall take single share each.

Rule 4- According to Rule 3:

⁷ After the 2005 Amendment Act, daughter has become a coparcener with the same right of son and became entitled to claim partition in coparcenary property.

⁸ Hindu Succession Act, 1956 § 8, No. 30, Acts of Parliament, 1956 (India)

⁹ The Schedule, Hindu Succession Act, 1956 (Universal’s, LexisNexis, 2021)

¹⁰ Hindu Succession Act, 1956 § 10, No. 30, Acts of Parliament, 1956 (India)

- i. The distribution of share among the heirs of pre-deceased son shall be made accordingly to incorporate equal portions to his widow(s) surviving son and daughters.
- ii. The distribution among the pre-deceased daughter shall be made accordingly to incorporate equal portions to surviving son and daughters.

3. As Class-II Heirs

The schedule of Class-II works in according to the order i.e., one gets the chance of inheritance if the person previous to him/her is not available to inherit.¹¹ This does not include brothers or sister by uterine blood.

“Father

- i. (1) Son’s daughter’s son; (2) Son’s daughter’s daughter; (3) brother, (4) sister
- ii. (1) Daughter’s son’ son; (2) daughter’s son’s daughter; (3) daughter’s daughter’s son; (4) daughter’s daughter’ daughter.
- iii. (1) Brother’s son; (2) Sister’s son; (3) brother’s daughter; (4) sister’s daughter.
- iv. Father’s father; father’s mother
- v. Father’s widow; brother’s widow
- vi. Father’s brother; father’s sister
- vii. Mother’s father; mother’s mother
- viii. Mother’s brother, mother’s sister.”

Concept of Full Ownership for Hindu Female under Sec. 14 Of Hindu Succession Act, 1956

The vision of Hindu Succession Act, 1956 of upgrading position of Hindu female in relation to inheritance was best reflected in Section 14 of the said Act. It introduced the concept of absolute ownership for women. The section was said to have progressed toward practical recognition relating to equality in gender by elevating women to a higher pedestal.¹²

Under present Hindu law, the confusion and controversy regarding the position of the widow under law of inheritance and what was the share she is entitled upon her husband’s death was

¹¹ The Schedule, Hindu Succession Act, 1956 (Universal’s, LexisNexis, 2021)

¹² Bai Vijaya vs. Thakuribai Chelabai, AIR 1979 SC 993, 1003

converted by Section 14 of the Hindu Succession Act, 1956. She is entitled to the husband's property as a primary heir and nature and amount of her share is exactly similar to that of her son. The share is ascertained by notional partition and she is entitled to the same as an absolute Class-I heir.¹³ The section has retrospective effect. Thus, it had ended the concept of the women's estate, introduced philosophy of Vijnaneshwara on Stridhan.

Thus, Section 14 provided that female Hindu women is entitled to her property as an absolute owner and a limited owner.

Condition required for Conversion of Limited Estate to Absolute Estate

There are two condition which needs to be fulfilled before converting a limited ownership into an absolute one. They are as follows:

- i. She had the same property in possession in the capacity of a limited ownership
- ii. She must have the possession of property during commencement of the Act.

- **Possession**

The term 'possession' signifies 'possession in law', meaning having a valid title without having an absolute or constructive position of the property.¹⁴ It is immaterial whether the title was acquired by traditional Hindu Law means or statutory law.¹⁵ The term limited owner signified that mere actual possession was not eligible to be converted to an ownership which is absolute. Under the Section 14, title is not modified. It is being enlarged. The meaning of possession was given by Supreme Court in *G.T.M. Kotturwamy vs. Setra Veerava*¹⁶ as "the word possessed in Section 14 of the Act, had been used in a broader sense and in context of means the state of owning or having in one's hand or power..."

"Thus, the word 'possession' means and includes:

- i. Actual or physical possession of the property
- ii. Constructive possession of the property
- iii. Possession in Law i.e., a possession that can be recovered and regained via process of law."

¹³ *Supra* note 1 at 340

¹⁴ Mahesh Chandra Sharma vs. Raj Kumara Sharma, AIR 1996 SC 869

¹⁵ ANJALI KANT, WOMEN AND THE LAW, 356 (A.P.H Publishing Corporation, New Delhi, 2003)

¹⁶ G.T.M. Kotturwamy vs. Setra Veerava, AIR 1959 SC 577

- **Possession lost Through the Transfer of Limited Ownership**

The important feature of the limited ownership is that transferring power of widow can only be exercised during legal necessities or performance of rites related to spiritual salvation of husband. But if the same possession is lost by way of transfer in favour of third party before this Act, despite of Sec 14(1), it won't convert to absolute one. Only if the interest was re-conveyed to her before the commencement, it will not affect the conversion to absolute ownership even if there was temporary loss of possession.¹⁷ This concept was upheld by Supreme Court in the case of *Jagannathan Pillai vs. Kunjithapadam Pillai*.¹⁸

- **Possession Lost by Remarriage**

It was held by High Court of Rajasthan that in the case of *Bhuri Bai vs. Champa Bai*¹⁹ that if a widow remarries after the commencement of the Act of 1956, her estate won't be forfeited in accordance to Sec 2 of The Hindu Widow Remarriage Act, 1856. Supreme Court in *Punithavalli vs. Ramalingam*²⁰ held that rights under Sec 14(1) of Hindu Succession Act, 1956 is absolute one and cannot in any circumstance be defied. But the case won't be same if the marriage and diversion of limited estate happened prior to the commencement of the Act in 1956.²¹

In a nutshell, it can be inferred that:

- i. Section 14 of the Act does have retrospective application in case of those estates where the possession was there during the commencement of the Act.
- ii. Section 14 does not apply to those estate where the Hindu female did not have a possession during the commencement of the Act. In that case, the same will fall under the umbrella of old Hindu law.²²

Limited Estate under Award or Will [Section 14(2)]

The property absolutely acquired by a woman under Sec 14(1) is subject to Sec 14(2). It states that property received by her in form of gift, will, award, decree or any other instrument cannot be considered as absolute property if the same gives her only restricted rights.²³

¹⁷ *Supra* note 1 at 342-343

¹⁸ AIR 1987 SC 1493

¹⁹ AIR 1968 Raj. 139

²⁰ AIR 1970 SC 1730

²¹ *Velamure Venkata Sivaprasad vs. Kothuri Venkateswarlu*, AIR 2000 SC 434

²² PARAS DIWAN, MODERN HINDU LAW, 395-396 (Allahabad Law Agency, Faridabad, 2015)

²³ R.K AGARWAL, HINDU LAW, 287 (Central Law Agency, Allahabad, 2007)

The purpose of this combination was to exclude the disability under customary Hindu law regarding acquisition of property but it does not extend to the rights acquired by her via will etc. which gives her limited ownership.²⁴ It is an exception to Sec 14(1) which provides protection to the owner's power of settling the property according to wish. Therefore, when a Hindu female receives any property with limited interest, won't convert into absolute interest. In *Sharad Subramanyan vs. Soumi Mazumdar*,²⁵ the Court observed that for application of Sec 14(2), three essentials need to be satisfied:

- i. The property must be acquired by was on any instrument like gift, will, decree, award etc.
- ii. Any of the instruments executed for Hindu female should be in a restricted format in the estate in the property.
- iii. The said instruments must confer, or create a new title, interest or right and not merely recognize a pre-existing right.

The Court finally held that if the legatee does not have any pre-existing rights in the said property, she will not be allowed to claim an absolute ownership relying on Sec 14(1) rather, her rights would be controlled by the terms of the will and Sec 14(2) of the Act.

Recently, in the case of *Basanti Devi (D) by Lrs. vs. Rati Ram*²⁶ considering its earlier judgments, it was held by the Supreme Court if there is a right on a property acquired by a compromise decree in which the Hindu female had no pre-existing rights, it would not get converted to an absolute ownership and the transferee would not get a better title than the former. Therefore, Sec 14(2) would apply and her right won't mature via virtue of Sec 14(1).

Succession of Property of An Intestate Hindu Female under Section 15 of Hindu Succession Act, 1956

This section is the first one to deal with status of property for female intestate. Prior to 1956, in majority cases, her limited interest over a property would extinguish upon her death and no question of succession would arise. The primary objective of the legislature was to bring an improvement toward securing property and maintenance rights over providing an inheritance scheme. Thus, Section 15 of Hindu Succession Act, aimed at abolition of Hindu woman's estate

²⁴ Gumpa vs. Jaibai, (1994) 2 SCC 511

²⁵ AIR 2006 SC 1993

²⁶ AIR 2018 SC

and its conversion to her absolute property (applicable on properties in existence prior to commencement of the Act and over which the Hindu female had possession).

The Determining Factor

Under this legislation, there has been a line of difference drawn between devolution of property among both gender on the basis of source of property. In case of devolution of male's, there is uniform rules laid down by the Code irrespective of the source. But in the case of dying female intestate, the heirs are allotted based on source of property.²⁷

Accordingly, determining factors for the scheme of succession for her heirs in relation to the property acquired can be divided into three types:

- i. Property which is inherited in general under Section 15(1)
- ii. Property which has been inherited from parents or husband or father-in-law under Section 15(2)
- iii. Escheat

Heirs to Property in General under Hindu Succession Act, 1956

Inheritance of Hindu female's property from any source other than from "father, mother, husband or father-in-law" is mentioned under Sec 15(1), not under Sec 15(2). Under Section 15(1), the Hindu female's heirs are categorised into five 'entries.' If none available, it goes as Escheat to Government.

The rule of preference is that former entry eliminates the latter entry. They are as follows:

- i. Entry (a) – "1. Son, 2. Daughter, 3. Husband, 4. Son and Daughter of a pre-deceased son, 5. Son and daughter of a pre-deceased daughter."²⁸

Under son and daughter, it includes those by natural birth as well includes legitimate, illegitimate and adopted children. Legitimate child maybe from one or several husband. Child procreated from any marriage is included. However, though step-children are not included, it might happen that they succeed to property as heirs of husband.²⁹

In case of grandchildren, they will be included only in case of legitimate children procured by natural birth or adoption. Illegitimate children are not included. In case of husband, only those

²⁷ *Supra* Note 22 at 415

²⁸ Hindu Succession Act, 1956 § 15, No. 30, Acts of Parliament, 1956 (India)

²⁹ *Supra* Note 22 at 437-438

who is lawfully wedded at the time of death will be considered as one. Therefore, neither divorced nor husband of void or nullified voidable marriage is included.

Shares of heirs: The Entry (a) heirs have simultaneous inheritance capability. It can be deduced that there are three rules in regard to distribution of property among entry (a) heirs. They are:³⁰

- a) Daughter, Son and the husband take one share each.
 - b) In case of branches of pre-deceased sons, the rule of representation will apply i.e., they will inherit the same share which the son or daughter would have inherited, if alive.
 - c) Among heir of branch, they take per capita
- ii. Entry (b) - It goes as “Upon the heirs of the husband.”

It states that upon the failure of presence of any heir in entry (a), the property will be devolved as her husband’s property in accordance to the rules relating to Hindu male intestate.³¹

- iii. Entry (c) – Father and Mother

Under this group, there are two heirs, the father and the mother. The term “mother” includes both natural and adoptive mother, not including a step-mother. The term father does not include a putative or a step-father. Only natural or adoptive father is included.³²

- iv. Entry (d) – The heirs of Father

It states that upon absence of any heirs in entry (d), the property would devolve upon the father’s heirs. Here, the definition of father is similar as that in the Entry (c). Since the devolution will be based on the conception that property belonged to father, the heirs will be Class I, Class II, Agnates and Cognates respectively.

- v. Entry (e) –Mother’s heirs

Upon failure in Entry (d), the property will be inherited by the mother’s heirs as if it was originally the property of mother. This means a Hindu female’s heirs, from Entry (a) to Entry (c).

The Hindu Succession Act, 1956 has laid down various different schemes for devolution of Hindu female property depending on its mode, whether it is special or general. Another

³⁰ Hindu Succession Act, 1956 § 16, No. 30, Acts of Parliament, 1956 (India)

³¹ Hindu Succession Act, 1956 § 8-12, No. 30, Acts of Parliament, 1956 (India)

³² *Supra* Note 22 at 439

exception to this special rule is added via subsection 2 of section 15. This exception provides for a special succession order when the property is inherited from her husband, father-in-law or parents. But this particular exception is confined only to cases of her dying without any immediate heirs like son or daughter or grandchildren, in that case, it won't devolve upon any heirs referred in subsection (1).³³

Under Section 15(2)(a):

“Notwithstanding anything contained in sub-section (1), 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.”

Here, two things are noteworthy:

- i. The legislature here has used the term ‘inherit’ and not ‘received’. Therefore, the property received via will of gift by the daughter will be considered as general property. Whether she sells out the inherited property and purchases another one, it would still be her general property.
- ii. If she dies without having any issue, but the husband is present, the property reverts back to heirs of the father.³⁴ The step son does not qualify as a person who has the power to inherit.³⁵

In these cases, it will be assumed that after death of Hindu female, the heirs of the father would be ascertained accordingly. In case of an unmarried woman who dies after inheriting her father's property, the sisters of her father will succeed to the said property as heir.³⁶

Thus, this provision emphasizes that property inherited by Hindu female would go back to father's heir if she dies issueless. Same is in the case the property inherited is of mother as it would go back to the father's heirs and not mothers.³⁷

In another situation, the Hindu female could inherit the property from father-in-law as well as a widow of his pre-deceased son. Here, according to Section 15(2)(b), the devolution of

³³ SATYAJEET A DESAI, *MULLA HINDU LAW*, 1198 (LexisNexis Butterworths Wadhwa, Nagpur, 2012)

³⁴ *Supra* note 1 at 373-374

³⁵ *Lachman Singh vs. Kirpa Singh*, AIR 1987 SC 1616

³⁶ *Apurvi vs Suna Stree*, AIR 1963 Ori 166

³⁷ *Supra* note 1 at 374-375

property will be on to the heirs of the husband, and not one mentioned in subsection (1) of Section 15.

Under Section 15(2)(b), it is provided that:

“Notwithstanding anything contained in sub-section (1), 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 predeceased 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.”

Here, husband’s heir does not include those she could have re-married, but whose property was inherited by her as a widow.

In *Dhanishta Kalita vs. Ramakanta Kalita*,³⁸ High Court of Gauhati held that for the purpose to inherit mother’s property, the term ‘son and daughter’ would include that of the husband from whom, or from whose father, the mother inherited the property. The objective of the Court regarding Section 15(2) was ensuring that the property of Hindu female is not left without its original source. If same is not prevented, it would negate the purpose of section 15(2) and it would then be allowed to be inherited by children from other husband (whose property it was not).

It must also be noted that the term “in absence of any heirs of the deceased” means children without qualification and they so not mean children of any particular husband. It would include all children, legitimate, illegitimate, from any husband. Every child has rights of equal share over their mother’s property and only in her absence the question of source arises.³⁹

The intent of legislature can be clearly inferred from this sections that if a property belonged to the deceased female’s parents originally, it must revert back to father’s successors and if it was of the property of husband/fathers-in-law, then it should go to husband’s successors. Again, the female is perceived as an individual who has no identity of her own. This reversion shows that she is treated as a temporary owner of the properties she inherits in her lifetime.⁴⁰

Government: Escheat

³⁸ AIR 2003 Gau 92

³⁹ *Supra* note 1 at 376

⁴⁰ Archana Mishra, “*Vicissitudes of Women’s Inheritance Right- England, Canada and India at the dawn of 21st century*”, 58:4 JILI 157

If any Hindu female dies without any successor, Government as an heir inherits the property along with all liabilities and obligations on the intestate.⁴¹

Constitutional Validity: Section 15

Section 15(2) of the Act's constitutional validity was challenged stating that there was hostile gender discrimination.⁴² The Court favored the rule of reversion under the legislation and held it as clear objective in maintain unity in family. The question of protecting family unity via a single scheme was raised and it was unanimously seen that female were not treated as independent individual. In a recent case, it was held the rules of inheritance and succession governing Hindu males and females is subjected to the concept of equality provided under article 15(1) of the Indian Constitution.⁴³

Critical Evaluation of The Hindu Succession Act, 1956

The Hindu Succession Act, 1956 was a welfare legislation created to grant social upliftment to Hindu woman by granting them equal inheritance rights with absolute ownership. However, after evaluating the said legislation, it does bring out some anomalies within the provisions which might have an impact on its goal of protecting woman's rights related to succession. Some of them are as follows:

- i. Devolution of property on the principle of consanguinity –nearness to blood is recognized for only males and not for females. The heirs of female dying intestate are recognized on the basis of affinity and are categorized into five categories and husband's relatives are preferred over her parents. The distinction in the rules of inheritance based on sex is administrated by the principle of equality under Article 14 &15(1) of the Constitution.
- ii. Agnatic relation i.e., one related through male are preferred over cognates i.e., ones related through females in the property of a deceased male.
- iii. Even though under the Section 14, 1956 women 's estate was converted into Stridhan, the issue of female inheritance was still a burning question with limitation clause.

⁴¹ Hindu Succession Act, 1956 § 29, No. 30, Acts of Parliament, 1956 (India)

⁴² Somu Bai Yashwant Jadev vs. Balgovinda Yadav, AIR 1883 Bom 156

⁴³ Mamta Dinesh Vakil vs. Bansi S. Wadhwa, BOM HC, 2012

- iv. The daughter in law is only allowed to inherit the father-in law's property when she is a widow under Section 15 of the Act, and not until the husband is alive.
- v. Similarly, father's heirs are preferred over heirs of mother in the property of deceased female signify no justifiable reason.
- vi. According to Section 14 of the Act, property inherited by the way of partition was a part of Stridhan property but Section 23 discriminated the position of women while dealing with the partition of dwelling house.

Grey Areas in Hindu Succession Act, 1956

Primary intent of abovementioned legislation was uplifting the status of the women in arena of inheritance under the Hindu Law. Though the same was achieved to a considerate level, there were still several lacunas in existence which hindered the process of achieving its ultimate goal. A few of them are mentioned as below:

- i. There is an existence of overlap between the Class I and the Class II heirs. Few heirs like "Son's Daughter's daughter, Daughter's son's daughter, Daughter's daughter's son and Daughter's daughter" were promoted to the Class I but were not removed from the class II.
- ii. There is still a discriminatory provision in existence in relation to devolution of the self-acquired property of Paternal heirs. They are still not eligible to inherit the self-acquired property of Hindu Female.
- iii. There is no requirement of naming the heirs of Hindu Female on the lines of heirs of a Hindu male. The present structure of heirs marginalizes the independent identity of a Hindu female and her heirs are referred as 'heirs of husband', 'heirs of father' etc.
- iv. The aim should be to gradually abrogate the traditional coparcenary system and hence to remove the distinction between separate and joint family property.

Reforms Made in The Hindu Succession (Amendment) Act, 2005

In the light of urgency of the situation, 174th Law Commission prepared a Report on the 'Property Right of Women- Proposed Reforms under Hindu Law' on May 5th, 2000 under the Chairmanship of Justice B.P. Jeewan Reddy. The report suggested that exclusion of daughters from being a part of the coparcenary property was unjust gender discrimination. Therefore, a

primary change made in the amendment act was inclusion of daughters as coparceners under Section 6 of the said Act.⁴⁴

Various other major reforms made are as follows:⁴⁵

- i. The theory of The Doctrine of Survivorship was abolished in case of male coparceners. According to the Section 6(3) of the Hindu Succession (Amendment) Act, 2000, if any Hindu dies and his properties were governed by Mitakshara School, Doctrine of Testamentary Succession or Intestate succession shall apply in place of Rule of Survivorship and division of coparcenary property will be treated as been divided via partition.
- ii. The Amendment Act brought changes in gender-discriminatory provision of former Act and one of the essential was entitlement of coparcenary right as a birth right for female as well.

“According to Section 6(1) of Amendment Act, 2005, in a joint family governed by Mitakshara law, the daughter of a coparcener shall-

- a. by birth becomes a coparcener in her own right in the same manner as the son.
- b. have the same rights in the coparcenary property as she would have had if she had been a son.
- c. be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and further references shall include daughter of a coparcener as well. Therefore, the present case scenario states that any child, regardless of the gender, either natural born or adopted, can validly have a birthright over coparcenary property.”

- iii. The amendment also included the fact that along with the absolute interest over the coparcenary property, various incidents attached to the same can also be inherited by the child. Though the legislature has not exactly defined what are incidents in relation to a coparcenary property, the following two can be inferred:⁴⁶

⁴⁴ *Supra* note 22 at 402

⁴⁵ *Supra* note 1 at 280

⁴⁶ *Supra* note 1 at 287

- a. They have a joint title and possession to the property till the time of the partition.
 - b. The interest in a coparcenary property is inherited by surviving coparceners and not their heirs. Here, the legislation has created confusion because there is an express provision which has abolished the doctrine of survivorship in the case of male coparceners.⁴⁷
- iv. Concept of pious obligation was abolished under the amendment Act. The debts contracted by the father or great-grandfather was no longer an obligation for the son to pay subject to certain exceptions.⁴⁸
 - v. Another major amendment which happened in the Hindu Succession (Amendment) Act, 2000 was abrogating the provisions regarding dwelling house. Previously, Section 23 excluded female heirs to have right over the dwelling house unless male heirs allow such. They were only granted right of residence over the same. This gender derogatory section was abolished in Amendment Act.⁴⁹
 - vi. Under Sec. 30 of HSA, 2000, the daughters are also recognized with right to testamentary disposition of the coparcenary property which previously was only available to the male heirs.⁵⁰

Critical Analysis of The Hindu Succession (Amendment), Act, 2000

Though this Act was enacted with the intention of removing discrimination of women both sociologically and historically, the application of the same has not yet happened in full fledge. Few of the reasons are as follows:

- i. Increase the cases of female feticide- Most of the Hindu orthodox families don't accept that the portion of their joint property should go to the daughter who will take it in another house after marriage. So, before facing of this type of situation, they even do not hesitate to kill the female child in womb itself.
- ii. Increase the conflict between relations- Still in the modern society; daughter is considered the member of another family. That's why most of the Hindu families

⁴⁷ *Supra* note 1 at 288

⁴⁸ *Supra* note 1 at 291

⁴⁹ *Supra* note 1 at 292

⁵⁰ *Supra* note 1 at 294

do not want to give share to the daughters and if they demand, this results the breaking of joint family.

- iii. Women has always been considered as carrier for property to in-laws' family by means of dowry. Dowry Prohibition Act, 1961 gives enough scope to convert Stridhan into dowry in various camouflaged ways.
- iv. The Amendment of 2005 has abolished application of the rule of survivorship in any manner but reading of section 29-B of the States Amendment seems the retention of rule of survivorship in these particular States, however, with some exceptions. These discrepancies create difficulties in the application of the 2005 Act in the territories of these States.
- v. No doubt, position of women has been improved by the 2005 amendment Act by conferring birth right in the coparcenary property but their position remained same after marriage as this Act is silent on the right of women in the undivided property of her in-laws.

Conclusion

The former Act was a welfare legislation with the intent to promote women's status to a great extent in terms of societal norms. The discriminatory and derogatory gap was bridged to an extent by inclusion of the concept of coparceners, testamentary and intestate succession, abolition of the concept of limited ownership etc. Yet there were few anomalies which needed a reconsideration and hence, Amendment Act of 2005 was enacted. This Act brought the revolutionary change by identifying female heirs as coparceners, retaining the concept of notional partition and also identifying women as Karta of joint family property. But as similar to a coin, there are two sides to this Act as well. While uplifting the social status of the women, it also paved the path for increase in ill treatment of women in terms of dowry, female feticide and other unequal rights of inheritance. therefore, it can be said that even though legislature did confer right upon women, grassroot level effort should be made to remove the problems in implementation of the Act and serious efforts should be made to get the required positive results.