

# **COPARCENARY RIGHTS OF HINDU WOMEN IN UTTAR PRADESH (1956-2011)**

## **THESIS**

Submitted to  
Babasaheb Bhimrao Ambedkar University  
(A Central University)  
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## **CERTIFICATE**

This is to certify that the thesis titled "**COPARCENARY RIGHTS OF HINDU WOMEN IN UTTAR PRADESH (1956-2011)**" submitted by **Ms. Asmita Yadav** is an original research work and has not been previously submitted in part or full for the award of any other degree or diploma to this or any other university.

This thesis submitted to Babasaheb Bhimrao Ambedkar University Lucknow. satisfies all the requirements as stipulated in the *Doctor of Philosophy (Ph.D.) regulations - 1999 as amended in 2008/2010/2013* and it is fit for submission and evaluation for the award of the degree of Doctor of Philosophy of the University.

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## **DECLARATION**

I, Asmita Yadav, declare that the work embodied in this thesis entitled "COPARCENARY RIGHTS OF HINDU WOMEN IN UTTAR PRADESH (1956-2011)" has been carried out by me, under supervision of Prof. S. Victor Babu, Head, Department of History, Babasaheb Bhimrao Ambedkar (A Central University), Lucknow.

The work included in this thesis has not been submitted for any other degree and unless otherwise stated, is all original. I have duly acknowledged all the sources used by me in the preparation of this thesis. I also declare that the thesis is essentially free from all kinds of plagiarism.

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*Chapter-1*  
*Introduction*

# CHAPTER-1

## INTRODUCTION

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*'Every though women constitute nearly half of the population, have all the characteristics of a minority viz. inequality of (economic situation), status (social position) and political power.'*<sup>1</sup>

The seminal work of Simone de Beauvoir, "The Second Sex" was published in 1949 and formed a foundation for the much-needed feminist analysis. Through her work, she approached the question of gender justice. Simone observed that the structure of society, language, thought, religion and family are formed assuming the world is male. The man became the standard against which everything is judged and they control the meaning given to society. The women are being treated so the 'other' (sex). They are excluded from these constructions. This is visible in law's construction also where the law as well the subjects are male.

In her words," She is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential. He is the subject; he is absolute- she is the other."Considering this phenomenon with law, women being the 'other' has been for long at worst oppressed and at best ignored by the laws.

### **Property Rights of Women Under International Law**

The position of women in the society was recognized only as of the homemakers and bearers and nurtures of the children. The role of women was

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<sup>1</sup> Towards Equality: Report of the committee on the status of women in India: Government of India, Ministry of Education and Social Welfare, New Delhi (December 1974), p.301.

confined within the four walls of the house and even the educated strata were hesitated to treat women as persons. This further perpetuated the low expectations and lesser involvement of women in other areas such as social, economic and political. The need of the hour was understood globally and many international conventions and declarations came up in support of women's right. These also attempted to equalize the status of women regarding property rights. United Nations Organization ranks first among such attempts for its commitment to protecting the property rights of women globally. The discrimination against women is multi-faceted around the globe which was addressed by many conventions, declarations and resolutions.

1. UN Convention on Elimination of all forms of Discrimination Against Women (CEDAW), 1979 is the main foundation of rights in respect to women to which 189 states including India are parties till date. It is often described as the International Bill of Rights for Women. The convention recognizes that the detrimental treatment meted out to women is not just injustice but it also affects the economic and social growth at large.

The preamble of CEDAW declares,

“Recalling that discrimination against women violates the principles of equality of rights and respect of human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity.”<sup>2</sup>

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<sup>2</sup><http://www.hrcr.org/docs/CEDAW/cedaw2.html>

Article 1 of this convention states that "For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or propose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field."<sup>3</sup>

Article 16 of the convention states that "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular, shall ensure, on a basis of equality of men and women: (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."<sup>4</sup>

But this convention was not unprecedented and earlier many attempts have been made to address this particular problem of women placed on an unequal footing in terms of property.

2. Universal Declaration of Human Rights, 1948: Article 17 of UNHR explicitly says that "Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property."<sup>5</sup>

3. The Rome Convention for the Protection of Human Rights and Fundamental freedom was held at Rome on 4<sup>th</sup> November 1950. It came into force on 3<sup>rd</sup>

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<sup>3</sup><http://www.hrcr.org/docs/CEDAW/cedaw3.html>

<sup>4</sup><http://www.hrcr.org/docs/CEDAW/cedaw6.html>

<sup>5</sup>[http://www.hrcr.org/docs/universal\\_decl.html](http://www.hrcr.org/docs/universal_decl.html)

September 1953. Article 14 specified the prohibition of discriminations. Its first protocol in 1952 dealt with the protection of property in Article 1.

4. The European Social Charter, 1961 came into force on 18<sup>th</sup> July 1978. Article 16 deals with the right of a family to social, legal and economic protection and Article 17 deals with the right of mothers and children to social and economic protection. These collectively address the women's property rights and allied rights respectively.
5. The International Convention on Civil and Political Rights, 1966 specifically its Article 1 and Article 23 dealt with the rights of women in respect of marriage and property. It opened for signature at New York on 19<sup>th</sup> December 1966.
6. The American Convention of Human Rights, 1969 (Pact of San Jose, Costa Rica) has Article 21 which spells about the property rights.
7. The African Charter on Human and People's Right 1981, guarantees the right to property in its Article 14 and may only be encroached upon in the interest of the community or public need. It would be under the provisions of the appropriate laws.
8. Vienna Declaration and Programme of Action, 1993 states the equal status and human rights of women, particularly in Chapter 3, from Article 36 to 44. The conference concluded that "The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the

eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.”<sup>6</sup>

The conventions, declarations and resolutions are there to protect the interest of women and to remove the disparity and gender inequality which is multi-faceted and is visible at the global level. Due to absence of any enforcing agency to implement these laws in the member countries the laws are not enforceable making it seem like they are just a rope in the sand but still they serve their purpose which is to promote and compile the domestic laws for social progress of all the nations. These international laws helped to create a mindset of state parties to pledge and achieve cooperation. Also obligated the Government of India to reform its succession and inheritance laws to protect the women's right to property.

## **Property Rights of Women in India**

Tracing the development of women's right to inherit from Vedas, there is no single authority for the general position of women regarding inheritance. Various commentators have proposed different, often conflicting opinions on the relevant portions of the Vedas. The study of the legal system of the world, ancient and modern, reveals one thing in common that the females have been denied the proprietary status under all the male-dominated legal systems, which resulted in deteriorating their social status and reducing them into the 'other' class, definitely of inferior human beings<sup>7</sup>. As far as property rights of the members of the Hindu family are concerned,

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<sup>6</sup><https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

<sup>7</sup> Vijendra Kumar, “Proprietary Rights of Females under Hindu Law: Strains and Stresses”, J.I.L.L Vol. 39, April-December 1997, p. 376.

there is a marked difference between the rights of the men and women<sup>8</sup>. Hindu Society reflects a deep-rooted adherence to values based on the precepts and fundamental principles of the religion. Religion has a positive function in Hindu Society, as norms and values from it affect the everyday lives of Indian women in very tangible ways. The development of Hindu law is reflective of a process whereby principles embodied in the Hindu Shastras and religious texts became instituted as legal rules. From ancient times, Hindu society has preferred the birth of a son to a daughter. Since the son is needed to pay three debts, of which debt to ancestors is most important. The son always remained with the parents, continued the family line, offered oblations to the ancestors for the spiritual benefits, was a support to the parents in their old age and helplessness and added glory to the good name of the family by his noble and brilliant achievements<sup>9</sup>.

Hindu jurisprudence in its earlier stages comprised legal, moral and religious rules. There was no distinction and it was only during the era of Dharmashastras when the legal rules and moral religious rules were demarcated. According to Manu, "Vedas, Smritis, Sadachara (approved customs and usages) and what is agreeable to one's conscience are the four sources of Dharma."<sup>10</sup>

As there are many smritis and conflicts in the rules were frequent, the practice of writing commentaries and digests started during the period between 700 AD to 1700 AD which constitutes the most significant source of Hindu law. The last commentary was written by Nanda Pandit on Vishnu Dharmashashtra called 'Vaijayanti'. Out of many prominent legal treatises, Mitakshara and Dayabhaga occupy a very high

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<sup>8</sup>Usha Tandon, "Gender Bias in the Property Rights of Women in Hindu Law", Delhi Law Review, Vol. XXII, 2000, p.163

<sup>9</sup> Dr Paras Diwan & Peeyushee Diwan, Hindu Law, (1st Ed. 1995), p. 15.

<sup>10</sup> Manu, ii. 12

position from the point of their acceptability as authoritative sources of law and govern the practice of inheritance of Hindus. As the country is vast with many regional disparities, apart from Mitakshara and Dayabhaga, the practice of Mayukha was accepted in parts of western India whereas Hindu inheritance in southern parts of India was guided by Marumakkatayam, Aliyasantana and Nambudari systems.

## **Schools of Hindu Law**

### **Mitakshara**

It's a running commentary on the Yajnavalkya Smriti written by Vijaneshwara in the latter part of the 11<sup>th</sup> century. Mitakshara prevailed over the whole of India except Bengal and Assam. Mitakshara school of Hindu law is further subdivided into five main schools which materially differed on the law of adoption and inheritance.

- Benaras School: - This school prevails in the whole of northern India including Orissa with Mithila and Punjab as an exception.
- Mithila School: - It prevails in Tirhut and North Bihar.
- Dravida or Madras School: - Under this School of Hindu Law, the whole of the Madras state is governed. Further sub-division of this school was done at one point of time into a Tamil, Karnataka and an Andhra School, but there was a lack of justification for it.
- Bombay or Maharashtra School: - This school prevails in the state of Bombay which also included Gujrat, Kanara and the parts where Marathi is the local language.
- Punjab School: - This school of Hindu law prevails in East Punjab and it is chiefly governed by customs.

## **Dayabhaga**

This is the second main branch of Hindu personal Laws which was prevalent in the Bengal and Assam part of the country. The code of Dayabhaga was authored by Jimutvahana in the 13<sup>th</sup> century i.e. about two centuries later than the Mitakshara. It's not a commentary on any particular code rather a digest of all the codes. Both the systems are based upon the text of Manu that "to the nearest Sapinda the inheritance next belongs; after them the Sakulyas, the preceptor of the Vedas, or a pupil".<sup>11</sup>

The main difference between them is particularly in the law of inheritance and the joint family system. Traditionally, a joint Hindu family consists of every person lineally descended from a common ancestor including wives and unmarried daughters. Dayabhaga is accepting the rule of religious efficacy. Mitakshara is propounding the doctrine of consanguinity in the matter of succession. Dayabhaga being the more dynamic system of law is an improvement upon Mitakshara. By examining both systems, it can be seen that while Dayabhaga has permitted women to let in the coparcenary whereas the Mitakshara has discarded any such notion.

When we talk about coparcenary, it refers to a narrower body consisting of male members only within a joint family who holds common ownership property which devolves survivorship. The primary purpose of coparcener was spiritual. A coparcener is a person who can offer a funeral cake to his father. This capability to offer spiritual salvation was with the son, grandson, great-grandson and as a consequence of it, they have conferred a right by birth in the property of the father.<sup>12</sup> Women were not a coparcener and thus were not worthy of any right to inherit ancestral property. There was no likelihood of their attaining any estate either by

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<sup>11</sup> Manu, IX, 187.

<sup>12</sup> Saxena, Poonam Pradhan. (2011). Property Law. New Delhi: Lexis Nexis Butterworth's

inheritance or by a partition which is further verified by the concept of stridhana divulging that it is only by the way of gifts from relatives that woman could acquire property at marriage or subsequent to it. This put women under a subordinate position as property law is a gradual growth which continued to be complex and discriminating against women.

### **Pre-independence Legislations**

The social reforms during the pre-independence period somewhat addressed the issue and sensitized gender discrimination. The socio-economic conditions had changed a lot. During the British regime, the country grew into politically and socially unified one, but the British Government did not gamble to intrude with the personal laws of Hindus or other communities. During the colonial period, however, social reform movements brought up the problem of improvement of the women's situation in society. The earliest legislation taking women into the structure of inheritance is the Hindu Law of Inheritance Act, 1929. This Act, granted inheritance rights on three female heirs i.e. son's daughter, daughter's daughter and sister (thereby constructing a controlled restriction on the rule of survivorship). Another landmark legislation bestowing proprietorship rights on women was the Hindu Women's Right to Property Act (XVIII of) 1937. This Act brought about radical modifications in the Hindu Law of all schools and revised not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. The Act of 1937 aided the widows to succeed along with the son and to take a portion equal to that of the son. But the widow did not become a coparcener even though she had a right parallel to a coparcenary interest in the property and was a member of the joint family. The widow was allowed only to a limited estate in the property of the deceased husband with a right to claim partition. A daughter had effectively no inheritance entitlements.

Regardless of these enactments having brought significant deviations in the law of succession by bestowing new rights of succession on certain female members of the family, these were still found to be jumbled and flawed in many ways and gave rise to several incongruities and left intact the basic structures of inequity against women. These enactments now stand repealed.

### **Post-independence Scenario**

The framers of the Indian Constitution took note of the challenging and unfair position of women in the social order and paid singular attention to confirm that the State took constructive steps to give her equal standing. Articles 14, 15(2) and (3) and 16 of the Constitution of India, consequently not only constrain injustice against women but in apt settings provide a free hand to the State to deliver protective discrimination in favour of women. These provisions constitute as the parts of the Fundamental Rights safeguarded by the Constitution. Part IV of the Constitution encompasses the Directive Principles which are no less fundamental in the governance of the State and inter-alia also offer that the State shall attempt to safeguard parity between men and women. Nevertheless, these constitutional command's directives given more than seventy years ago, women are still ignored in their own natal family as well as in the family they get married into for the reason that of blatant contempt and unwarranted violation of these provisions by some of the personal laws.

### **Hindu Succession Act, 1956**

Pandit Jawaharlal Nehru, the then Prime Minister of India stated his explicit liability to carry out required restructurings in the law to remove the inequalities and incapacities suffered by Hindu women. As a consequence, in spite of the

confrontation of the orthodox segment of the Hindus society, the Hindu Succession Act, 1956 was enacted and came into force on 17th June 1956. It applies to all the Hindus together with Buddhists, Jains and Sikhs. It lays down a uniform and all-inclusive system of inheritance and concerns with those presided by both the Mitakshara and the Dayabahaga Schools and also to those communities present in South India governed by the Murumakkattayam, Aliyasantana, Nambudri and other systems of Hindu Law. Many steps were taken to provide women more rights, yet in section 6 of the Act, the Mitakshara Coparcenary was retained.<sup>13</sup>

Thus, non-inclusion of female heirs as coparceners in the joint family property according to the Mitakshara system as echoed in section 6 relating to devolution of interest in coparcenary property, has been under denigration for not coinciding with the equal rights of women assured under the constitution related to property rights. This means that females cannot receive ancestral property as males do. If a joint family gets divided, each male coparcener takes his portion and females get nothing in that partition. Only when one of the coparceners deceases, a female gets a share of his interest as an heir to the deceased.

Again as per the Section 23 of the Act, married daughter is deprived of the right to residence in the paternal home except widowed, deserted or separated from her spouse and female heir has not been entitled to request for partition in respect of dwelling house wholly inhabited by members of joint family until the male heirs wished to split their corresponding shares therein. These provisions have been recognized as chief causes of incapacities shoved by law on women heirs. On the whole, the Hindu Succession Act gave a tool to strip away a woman of the rights she earlier had under certain schools of Hindu law.(Das, 2013)

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<sup>13</sup> 174<sup>th</sup> Report of Law Commission of India.

## **The Hindu Succession (Amendment) Act, 2005**

This amendment was an effort to eliminate injustice as contained in section 6 of the Hindu succession act, 1956 by conferring identical rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. At the same time, section 23 of the Act was omitted by this amending Act as it disentitled the female heir to demand partition in respect of dwelling house wholly engaged by a joint family until male heirs took up to split their shares in that removing the disabilities of female heirs. This is a great measure by the government so far the Hindu code is concerned. This is the outcome of 174<sup>th</sup> report of the Law Commission of India on “Property Rights of Women: Proposed reform under the Hindu Law”.

Consequently, the amendment of the Hindu Succession Act of 1956 in 2005 is a step ahead for the women empowerment and protection of women's right to property. This amending act in a patrilineal system unlocked the doors for the women to exercise their birthright in the ancestral property like the son. The women have conferred the right of control and ownership of property beyond their right to sustenance.

### **Contextualization of the Study**

The study attempts to locate the dynamics of the issues regarding women coparcenary rights in particular and property rights in general. It will help to develop a better understanding of the complex interplay of factors and rational working at the level of individual, community and society violating the basic rights of women of inheritance. The findings could be utilized in designing better programs to enhance gender equity in society.

## **Area of Study**

Uttar Pradesh, literally translated as “Northern Province” in English, is a state situated in Northern India. Uttar Pradesh is surrounded by Bihar in the East, Madhya Pradesh in the South, Rajasthan, Delhi, Himachal Pradesh and Haryana in the west and Uttaranchal in the north and Nepal touch the northern borders of Uttar Pradesh, it assumes strategic importance for Indian defence. Its area of 2,36,286 sq km. lies between latitude 24 degrees to 31 degrees and longitude 77 degrees to 84 degrees East. Area wise it is the fourth largest State of India. It is a secular state with many multi-religious and diverse communities of people living here. The major religions are Hinduism, Islam and Christianity. Hindus comprise approximately 80% of the population in the state. Thus, Hindus are the majority in society. Hence the Hindu women have been taken for study.

## **Scope of Study (Universe)**

The present investigation covers a span of 55 years, from 1956 to 2011, a period that was significant in the history of empowerment of women. The year 1956 is a milestone because The Hindu Succession Act, 1956 gave women equal inheritance rights with men. But the daughters were not given a birthright in the ancestral property under the Mitakshara coparcenary. The latter year of the study 2011 is also a landmark in the history as the census was done which may be utilized as a measurement of economic empowerment of women since The Hindu Succession (Amendment) Act, 2005 was passed to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and to give equal rights to daughters in Hindu Mitakshara coparcenary property as the sons have. The passing of this act was a great achievement of the Government which has given a new life to women.

## Review of Literature

It is important to study some of the important works in this area in order to contextualize this study.

1. **Flavia Agnes** in her work **Law and Gender Inequality** has masterly carried out historical as well as the legal perspective of gender injustices in Indian legal system. She critically studies the role of traditions and customs in ancient as well as the medieval period for safeguarding the interests of the fairer sex. She refuses to accept that Uniform Civil Code is the answer to all the problems the females are facing in Indian social and legal structure. She challenges that the so-called Uniform Civil law is a modified adaptation of Hindu laws as envisaged by the colonial masters. She finds some patriarchal elements working in new laws framed for the protection of women. She argues that many a time even the women have emerged as the champion of older patriarchal values. She laments that in the name of Hindu laws, the customs and traditions were sacrificed. According to her, the customs went a long way to protect the rights of women in a household. She compares how traditionally women were entitled to a large amount of movable and immovable stridhana, but the same right was conspicuously absent in newly framed Hindu laws. She mocks that claim of woman's maintenance by her divorced husband as this maintenance is again based on the concept of sexual purity of the woman. She interestingly studies how monogamy has hampered the prospects of many women who are now not able to demand their legitimate share of maintenance from their husbands. She remarks that earlier, man was responsible for maintaining the second wife but now he is exempted from this as the second

lady is at the difficulty to prove that she is legally married in light of new limited code of Hindu marriage law. She finds that traditionally women rights were depended on the inalienability of certain property rights in a family, but the modern laws have made the position of women more vulnerable. She aptly concludes that the legal system has to look for the dynamics in modern society which is rapidly evolving and changing. Women are therefore also undergoing many changes. She stresses that Indian laws must address these questions and only then it can redress gender injustice.

2. **Sudhir Chandra** in his work **Enslaved Daughters** has studied a famous case of Rukhmabhai<sup>14</sup> of 1885 in which the later dared the society and law against becoming the property of her husband. He finds the wife Rukhmabhai against her husband Dadaji who had filed a suit for the restitution of conjugal rights against her wife. The author studied the response of contemporary liberal as well as conservative camp. He critically studies the law points involved in the case and how such arguments can force a lady to go against her will to submit her physical and mental faculties before her husband. Through Rukhmabhai, the author in a way highlights the evils of the child marriage and how such marriages rob opportunity of education to the girls. She is forced into matrimonial alliance even before her maturity and as a result, the wife remained in perpetual confinement throughout her life. Though outwardly the study seemed confined to a case yet the work has raised many questions. The author has studied the question of widowhood and divorce in Hindu marriage laws. He finds the plications of English law being imposed on the Indian society which is guided by many customs and rituals. For example, he finds

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<sup>14</sup> Dadaji v. Bhikaji, IX ILR 529 (Bombay Series of 1885).

widow remarriage prevalent among many lower castes and even the mother of Rukhmabhai married Dr Sakharam after the death of her first husband. He explores how restitution of conjugal right was implied in the minds of Hindu lawmakers yet its execution with the help of force, like in English law, was never even dreamt by ancient sages. On the wider horizon, the author has attempted to highlight the injustices women face in the name of religion, culture and morality in a given society.

- 3. Lotika Sarkar** in her article, **Reform of Hindu Marriage and Succession Laws: Still the Unequal Sex** traces how women have contributed even in the pre-Independence era and fought shoulder to shoulder with men against oppressive colonial rule. But her greatest stress lay on the evolution of the Hindu laws in the pre-and post-independence era. She asserts that Hindu Laws were "confused" before Independence era. She finds the only rule governing the Hindus Laws in the pre-Independence era was the inequality bestowed upon Hindu woman. She correlates many oppressive and anti-woman provisions for Hindu woman in the matter of marriage, property, adoption and succession under Hindu laws. She goes on to trace the women movement which culminated in the Hindu Code Bill presented in 1955-56. However, she finds many shortcomings and loopholes in it and bemoans that it also failed to ensure equality of Hindu woman viz a viz her counterpart. She finds that the Hindu Bill is unable to completely remove the anomalies in the status of the woman. She attributes many reasons for such a scenario. She blames the socio-economic structure which is so decisively tilted against women. She concludes that Gender could not be singled out and redefined without threatening the very integrity of the community. Thus, it is an analytical work

and Lotika Sarkar has interestingly succeeded in interrelating socio-economic mindset of the Hindu community to the subversive role accorded to woman even after so many hailed reforms in Hindu Laws. She has successfully concluded that in real sense Hindu women still lag behind men and this would continue as long as the serious attempt is not made to change the Hindu social structure.

4. **Sharad Chandra Mishra (2013)**, in his book **“Property Rights of Hindu Women”** has dealt with changes brought in the women's property rights in Mitakshara joint on the position of women, loopholes in the amendment, its advantages and disadvantages and few suggestions to make it more effectual.
5. **Eleanor Newbigin (2013)**, in the book **“The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community”** traced the origins of the Hindu Law reform project to changes in the political economy of late colonial rule. The work considers how questions regarding family structure, property rights and gender relations contributed to the development of representative politics, and how, in solving these questions, India's secular and state power structures were consequently drawn into a complex and unique relationship with Hindu law. Newbigin demonstrates the significance of gender and economy to the history of twentieth-century democratic government, as it emerged in India and beyond.
6. **Reena Patel (2013)**, in her work **“Hindu women's property rights in rural India: Law, Labour and Culture in Action”** addressed the issue of Hindu peasant women's ability to effectuate the statutory rights to succession and assert ownership of their share in family land. This work combines a critical evaluation of law with economic analyses into the allocation of resources in

the family as a means of addressing gender relations and explaining gender inequalities.

7. **Debarati Hadder and K. Jaishankar,(2008)**, in their article “**Property Rights of Hindu Women: A Feminist review of succession laws of Ancient, Medieval and Modern India**”, critically examined the development of succession rights of Hindu women from the ancient to the modern period, from feminist perspective. It also analyses the present status of Hindu women as property owners.

8. **Sanchari Roy (2011)**, in her paper “**Empowering women: Inheritance rights, female education and dowry payments in India**”, examines the impact of gender progressive reforms to the inheritance law in India on women's outcomes. Despite stipulating that daughters would have equal shares as sons in the ancestral property have found that the reform failed to increase the actual likelihood of women inheriting property. Instead, parents appear to be "gifting" their share of land to their sons to circumvent the law. However, parents also appear to be compensating their daughters for such disinheritance by giving them alternative transfers in the form of either higher dowries or more education following the reform.

9. **Werner F. Menski’s Hindu Law Beyond Tradition and Modernity**

This book pours over the Hindu Law and how it has progressed from the past and has achieved and emerged as a post-modern event. It examines our lack of knowledge and understanding about the law which is composite, critically flexible and constantly growing and advancing that it has extended to the stage of post-modernity. In his work, Werner has discussed different aspects of Hindu Law into three separate bits. The first bit deals with the Historical and

conceptual background of Hindu Law within the classical, post-classical, colonial and post-colonial context. Second bit focuses on the factors of Hindu Law that are beyond tradition and modernity. The third bit is the conclusion and analysis and discussion the post-modernity in Hindu Law.

#### **10. Janaki Nair's Women and Law in Colonial India a social history**

The book provides a perfect picture of the condition of women and the gradual reaction of British regarding women's issues. It talks about the laws and their gradual changes in the colonial period regarding women. The introduction throws light on the condition of women in the post-independence period.

The introduction describes the forms of discrimination faced by Indian women and the way they are supported by the legal-judicial framework. The second chapter mentions the rise of orientalist and also the brahmin interpretations of native law. The Hindu code of law regarding women's conduct was the major issue to be tackled. Soon after the imperialists became the critique of Indian womanhood and started abolishing norms like sati. All these movements supplemented by Indian reformers helped women to speak for themselves. Sarda bill infused their campaign with new vigour. This book also deals with the women belonging to the working class since colonial times. 'Labor to legislation and the women workers' chapter is about working-class legislation in various sectors-mills, coal mining etc. then it proceeds to the politics and representation: Indian women and the vote. The struggle for the women's vote in India was embedded in the broader mobilization of women in the movement for national liberation. Before Montague Chelmsford reforms, a committee of 1917 the women's Indian association had already been set up. It also talks about nationalist patriarchy and women's sexuality. There is mention

of various ceremonies like talikittukalyanam during the pre-colonial and colonial era and the abolition of the devadasi system and suppression of immoral traffic act. There is a discussion regarding various personal laws passed such as the special marriage act 1872, the Indian divorce act 1869, property and succession acts etc. The chapter on signposts deals with development on women's since independence and raises various questions on many debates and cases.

The work done by Janaki Nair is a very comprehensively approached to take on the subject and not only describe the gradual evolution of women's movement but also compares it with post-colonial developments.

#### **11. Gender and Politics in India, edited by Nivedita Menon**

The book by Nivedita Menon is a collection of essays dealing with significant aspects of gender equality, rights and political approach. What is commendable about this volume is its efficiency in giving voice to a variety of views and disciplines on gender issues. The essay, 'On Women Equality and the Constitution: Through the Looking Glass of Feminism' by Ratna Kapoor and Brenda Cossman is a beautiful essay that points about how much the constitution has to say about equality for women. This chapter discusses as to what extent Indian constitutional law is informed by a model of equality and how substantial attempts have been made towards improvisation. It criticizes how formal equality differs from substantive equality and thus how and where we lag. The essay further reviews the judicial approaches to the equality rights guaranteed by the Indian constitution. The judicial lanes to deal with the sex discrimination cases have also been discussed further and thus concluded that there is a huge gap between formal and substantive equality.

The essay, 'Rights, Bodies and the Law: Rethinking Feminist Politics and Justice' by Nivedita Menon criticises how far laws and rights can achieve social justice for women. She talks about the topics from female infanticide and foeticide to sexual violence and probes a question to the readers how far have laws and rights succeeded or fulfilled their purpose of enabling equality and Justice. The essay is a critical viewpoint of Menon which aims to differentiate between constitutional equality and social equality.

### **12. Property rights of Women, edited by Dr K. Uma Devi**

This edited volume by Dr K. Uma Devi contains a collection of eleven articles on women's property rights which analyses the position of women in respect to their rights of property in a male-dominated society. The property rights of Indian women is the same as many other women personal rights, highly complex, unfair and unequal. These laws have come a long way ahead in the last century, Indian women continue to get an unequal share in property than men, both in forms of quality and quantity. In the book, the property rights of Christian women, Parsi women, Muslim women and Hindu women have been examined according to their respective personal laws. Also, many chapters deal with matrimonial property. Special study regarding the cultural practices of property rights of women in tribal India has also been taken up.

### **13. Rina Verma Williams' Postcolonial Politics and Personal Laws colonial legal legacies and the Indian state**

This book investigates the postcolonial state in India from a longitudinal viewpoint. It focuses on the religious legal system of personal laws in India. These laws are a prime case of congruity between the colonial and

postcolonial Indian state. What's more, this book explores how the postcolonial state in India has framed arrangements on the personal laws through the 1990s. It attempts to improve the comprehension of how the postcolonial state has applied power in the post-independence period and the degree to which that exercise of power has been affected by the influences of the colonial state. Freedom of India came as a legal statute and it is accurate for such reasons that the instance of India can give comprehensive and significant understanding into the structures and limitations of legal progression between the colonial and postcolonial periods. Moreover, the individual laws in India are vital for the investigation of this coherence. Further, the book reviews the advancement of the Indian government's policy on the personal laws to distinguish the degree to which colonial legal institutions endured after independence and moulded the policies of the postcolonial government.

#### **14. 'Signposts' Gender issues in post-independence India edited by Rajeswari**

##### **Sunder Rajan**

It is a book consisting of several essays written by different scholars and edited by Rajeswari Sunder Rajan. The book focuses on issues such as gender, untouchability, how modernity has affected the gender as well as caste through the essays such as 'gender development and the women's movement', 'Gender caste & modernity', 'Cutting to size' etc. in the post-independence era. The emphasis that the book puts on 'Gender' can be seen from the introduction part written by Rajeshwari, "issues of gender are central to post-colonial national culture & politics". The work also showcased the problems that women had to face and are still facing. The essay 'Gender cleansing' focuses on the schemes

that the Tamil Nadu Government had introduced whose aim was to protect the women and stop the elimination of that particular gender. But these schemes were ineffective to some extent. The essay 'Gender Development and the Women's movement' show how had a role in building nationalism and development. Also, 'Virgin Mother Beloved Other' explains how it is always not necessary that nationalism has to be achieved through and desire. Other essays also deal with topics such as violence against women, the impact of Mahabharat in 'The story of Draupadi's disrobing', the legal rights that the women have and have not ('cutting to size'), the role of advertisements in the lives of middle class and how they control middle class' desire. ('Thinking about the new Indian middle class'), etc.

#### **15. Srimati Basu's She Comes to Take Her Rights Indian women, property and propriety**

This book examines the contemporary workings of property law in India through the lives and thoughts of the middle class and poor women. This is the study of how cultural practices and particularly notions of gender ideology guide the workings of the law. The writer studied property rights in several neighbourhoods in New Delhi in the early 1990s and finds out a close reading of decisions by women that appear to be contrary to material interests and that reinforced patriarchal ideologies. Using interview and close observatory data drawn from various households in Delhi, this book explores the difficulty of women's decisions about the family property. Although legally men and women are now supposed to inherit equally in India, what the writer found was that the majority of the time, only sons would inherit from their parents. The daughters would forego their rights to any property. When studied deeper,

it was found that because daughters were considered to be part of their husband's family and thought to inherit through his family, they were expected to let their brothers have all the property from their natal family. Even women who were single or widowed were expected to give up their natal legacy because they could marry again. Women who tried to claim what was legally theirs rarely won court cases and even the attempt cut them off their natal family. An examination of recent legal cases also reveals that the formal legal dominion can be hospitable to women's right-based claims but judgments are still coded in terms of customary provisions despite legal criteria to the contrary.

**16.** The book “**The Position of Women in Hindu Civilization**” by **A.S. Altekar** deals with the topic of the position that has been granted to women by the Hindu civilization since its inception, and how it has changed and evolved with time, and also the causal factors of these changes. With the nature of the topic being of sentimental and religious sensitivity, it is easy for authors writing about it to get at least a little swayed by their own opinions and bias. But Altekar does a remarkably good job of remaining objective while examining and presenting facts.

The book surveys and evaluates the position of Hindu women in the last 4000 years. It indicates subtly why some of the backward practices and problems of the past still prevail, and what can be done to solve them. Both, the limitations as well as the excellence of the Hindu society have been highlighted, without undue emphasis on either, which makes it a very informative read, enabling the reader to form his or her view on the matter. One important aspect of this

book is its ability to comprehensively survey the state granted to women by the Hindu society, throughout the thousands of years of the Hindu civilization.

Beginning with the description of the status of Hindu women during the prehistoric times, it covers the entire span of the Hindu civilization, until modern times. In a very systematic and structured manner, the book begins by recounting the problems confronting women and their childhood education in the initial chapters, moving on to deal with problems related to marriage and married life, the position of widows in the society, the role of women in

Hindu public life and religion, their property rights, etc., in the following chapters. The final chapters deal with the approach of the Hindu society towards women in various situations, and how it has changed over time.

Owing to its unprejudiced narration, the book gives the reader ample opportunity to explore his or her thoughts on the facts and form his or her perspective. The information presented is real, accurate and comprehensive, and can be trusted since the author uses material from religious texts such as the Jatakas, the Milindapanha, the Vinay Pitaka, and the Therigatha, and the content is well-researched, giving information supported by evidence and reference.

Unlike other books related to this topic, which deal with the position of Hindu women at one point in time in the history of the Hindu civilization, this book provides one with a comprehensive view of the whole matter, thus cementing its status as an indispensable read to all those interested to learn more about it.

## **Objectives of the Study**

1. To trace the general position of Hindu women in the Indian society from the Rigvedic era to post-independent India.
2. To examine the evolution of the personal laws governing property rights of Hindu women.
3. To understand the codification of Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act,2005.
4. To study the coparcenary rights of Hindu women in Uttar Pradesh.
5. To find the extent of awareness of the general public regarding the legislations on coparcenary rights.
6. To identify the factors inhibiting Hindu women to exercise their economic rights.
7. To suggest for amendments for eradicating barriers and bringing equality in the inheritance of property rights by Hindu women.

## **Research Questions**

1. What was the general position of Hindu women in the Indian society from the Rigvedic era to post-independent India?
2. How the personal laws evolved governing property rights of Hindu women?
3. How the Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act,2005 was codified?
4. What are the coparcenary rights of Hindu women in Uttar Pradesh?
5. What is the extent of awareness of the general public regarding the legislations on coparcenary rights?

6. What are the factors inhibiting Hindu women to exercise their economic rights?
7. What amendments can be done for eradicating barriers and bringing equality in the inheritance of property rights by Hindu women?

### **Assumption of The Study**

Historically, women were denied of their coparcenary right.

1. The Laws granting women right to property are still not completely free from the inherent patriarchal mindset.
2. These legislatives attempts do not always translate to the change in the grass root reality.
3. Social setup is such that women, whether aware of their rights or not, refrain from asking their share in the ancestral property due to the fear of spoiling their relationship with natal home.
4. People prefer to give higher education and dowry to their daughters in place of share in the property.
5. There is a belief that property is the right of sons only as they would take care of the family while daughters would marry off to different family wherein their interests should lie.

### **Sources and Methodology**

In this study, a variety of sources both primary and secondary have been used. Primary data were collected from contemporary administrative records, proceedings, reports and records of departments of census etc. Along with other official and non-official records, Gazetteers published by the state of Uttar Pradesh which gives information related to this study also taken into consideration. During the study in fieldwork few personal interviews were conducted to collect first-hand information to

have an in-depth analysis of the topic. Thus, primary sources were mainly collected from state archives of Uttar Pradesh, National Archives etc.

Secondary sources such as books, journal and newspaper reports and articles published in this regard were used in our study that consists of published books, articles, journals and unpublished works. These works helped us in formulating the conceptual and theoretical framework that is employed in the process of our study.

## **Organisation of the Study**

The present study has been divided into six chapters. Each chapter deals with an aspect on the issue and provides an insight for the better understanding.

### **Chapter 1. Introduction**

The first chapter of the study deals with the general introduction to the topic which explains the inherent discrimination towards women in Hindu personal laws and how the non-inclusion of women as a coparcener played a role in the subservience of women historically. The chapter includes the review of the existing literature relevant to the issue along with this also explains the universe of the study, objectives, sources and methodology and organization of the study.

### **Chapter 2. Hindu Women through the Ages**

This chapter throws light on the status of Hindu women in society through various periods in the history of Indian civilization. The period taken into the study is further divided into the Rigvedic age, the age of the later Samhitas, Brahmanas and Upanishads, the age of sutras, epics and early smritis, the age of later smritis, commentators and digest writers, the era of colonial rule, and post-independent India. The status of women as a daughter, wife, widow and in general has been studied.

### **Chapter 3. Evolution of Proprietary Rights**

The third chapter traces the evolution of rights regarding succession rights since the ancient period to the colonial era. It introduces with the Hindu philosophy of law under which the personal laws governing proprietary rights come. By examining the proprietary rights prescribed in Ancient smritis it then proceeds to look the daughter's right as a coparcener.

### **Chapter 4. Hindu Succession Act, 1956 and Amendment Act (2005)**

The fourth chapter analyses the women's coparcenary rights under Hindu Succession Act, 1956 by studying the sections dealing with it and also contains the implications of the new amendment made in the 'Hindu Succession (Amendment) Act' passed in September 2005.

### **Chapter 5. Translation of Women's Coparcenary Rights**

In the fifth chapter deals with the empirical study conducted regarding the women's property rights which through a questionnaire method and observation method tries to analyze the level of awareness of the respondents regarding the socio-legal scenario and other issues on the rights of women.

### **Chapter 6. Conclusions**

The sixth chapter concludes the study by stating the findings and stating some suggestions and altered approaches to adopt so that the constitutional mandate of equality of status and opportunity would be transformed into reality.

## *Chapter-2*

# *Hindu Women through the Ages*

## **CHAPTER-2**

### **HINDU WOMEN THROUGH THE AGES**

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The term 'status' denotes the aggregation of multiple culturally ascribed roles and rights and duties one has to exercise while playing those roles. In addition to the notion of ascribed status is the 'achieved status' which can be earned from one's efforts and achievements. The idea of status is to stipulate the position of the person in terms of various aspects such as education, occupation, income etc. The general opinion regarding the freedom enjoyed and restrictions imposed upon one person are considerable attributes too. To ascertain status enjoyed by women while focusing on aforesaid attributes, one must be aware of the wide difference in the levels of women in developed and developing countries. Women in developed countries enjoy many privileges which are still considered as a luxury by women residing in the developing country. Sometimes, there is still a protest going on for those rights which are considered fundamental in the modern era. Even within a country, women of urban areas enjoy a better status than their counterparts in rural areas due to various reasons. The rural women are underprivileged because they are destitute of all the advantages of urban women. The most significant factor is the scarce exposure of her parents/family to modern amenities and sometimes even basic facilities such as transportation, electricity, media, hygiene, health care and access to education.

If we look back to the history of various nations, the fact which is hard to ignore is the consistent and relentless strive of women throughout the time for the betterment of their status. They demanded legitimate rights while proving themselves an important asset to the respective countries. Issues commonly associated with

notions of women's rights include the right to bodily integrity and autonomy; to be free from sexual violence; to vote; to hold public office; to enter into legal contracts; to have equal rights in family law; to work; to fair wages or equal pay; to have reproductive rights; to own property; to education. (Lockwood, 2006)

Nonetheless, the present situation when examined shows that even now many basic rights are denied to women around the world. The so-called developed countries are not devoid of the cases where discrimination against the fairer sex is visible. Women in developed countries are now more educated than men, yet they still earn less, are poorly represented in politics, and less likely to join the top ranks in business or become an entrepreneur, according to the Paris-based Organization for Economic Cooperation and Development (OECD).<sup>15</sup>

Taking the case of India poses a challenge as she stood as a paradox where the brilliancy of many women achievers makes one blind to the plight of a vast multitude of women. That makes them, by their small numbers, an elite. Unfortunately, the term “elite” has been employed to categorize, and then dismiss, women who struggled to become literate. Anandibai Joshi is a case in point. Married at age nine, she endured a difficult life, often filled with privation, abuse, and social ostracism, before she finally came to America, studied at Philadelphia Women's Medical College, and became India's first foreign-trained woman doctor. Haimavati Sen was a child widow who was thrown out of both her brother's home and brother-in-law's home. That she finally became a medical doctor, trained in the vernacular system, and then wrote a detailed memoir makes her part of an elite in the sense of having obtained higher education and a profession and writing about her life. But it was not an elite status that gave her or Anandibai Joshi this chance. They achieved what they did by sheer force of will.

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<sup>15</sup> <https://www.reuters.com/article/us-global-women-pay/women-in-developed-countries-more-educated-than-men-but-still-earn-less-oecd-idUSKCN1C911P>

Many of the women who found a voice and left records did not lead privileged lives. They lived and worked within patriarchal societies but were not crippled in the process.(Forbes, 1998)

Womenfolk here, in India, are settling in a submissive status in society. They are unaware of the rights granted to them. Facilities and opportunities to exercise these rights are also ignored. Many time writers forget or conveniently ignore to examine the status enjoys by women throughout the stages. It's both astonishing and shameful at once that even a passing remark has not been made about the women's social, political, religious, legal position in any chronicle of some gravity. Occasionally Indian texts and historical narratives singled out one woman for special attention but usually, this was because her accomplishments were significant by male standards. Viswavara, Apala, Lopamudra, Ghosha, Indrani and Sachi are examples of such practice where they were mentioned among others as composers of hymns. Their achievements were acknowledged because those were looked upon as important by their male counterparts. Topics that were intimately interwoven with women's lives- household and agricultural technology; religious rituals and sentiments; fertility and family size; furnishings, jewellery and clothing; inheritance and property rights; and marriage and divorce – were largely overlooked(Forbes, 1998).

To ascertain the society's development in India, women's status in the legal, social, domestic, political and economic aspect of life has to be assessed by reviewing the social history which concentrates upon the social, economic, and cultural institutions of a people.<sup>16</sup>

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<sup>16</sup> Social history. In The Merriam-Webster.com Dictionary. Retrieved November 26, 2019, from <https://www.merriam-webster.com/dictionary/social%20history>

The question that presents itself is to ascertain the position of women throughout Indian history vis-a-vis the men. Whether the general status was of inferiority or equality? The answer is difficult to arrive upon. There are many considerations and factors which play a role and should be kept in mind before giving a concluding remark. The first thing is the limited sources of our knowledge of by-gone ages. The second factor is that even these limited sources which possess any important information have not come to us uncorrupted. There is no way to ascertain the original form of the works. Thirdly, Indian literature which is regarded as a source of historical reconstruction is full of contradiction and so we cannot claim to arrive at any precise conclusion. Therefore, an open mind and a receptive spirit are pre-requisite to approach the subject.

Also, examining the status of Indian women in the colonial setting comes up with additional challenges. The first historical accounts studying the women in India date from the nineteenth century. These accounts are undoubtedly a product of the colonial experience where women were held in high esteem in the past followed by a long period of decline of that high status. Colonial historians have portrayed the subject in such a way to give an impression of the British rescuing women from the shackles of their own culture and suppression of society by European forms of governing, technology and values.(Forbes, 1998)

### **Periods of the Survey**

The deviations that have taken place in the position of women are a part of the course of transformation of an orthodox society. For the sake of convenience and clarity in understanding, the practice of dividing the period into the blocks and then

analyzing the status of women in accordance to various attributes has been accepted in this study as well.

The history of the changing position and role of women in India, as taken into account in the study, are given under five categories, viz.,

1. c. 2500 B.C. to c. 1500 B.C. (The age of the Rigveda)
2. c. 1500 B.C. to c. 500 B.C. (The age of the later Samhitas, Brahmanas and Upanishads)
3. c. 500 B.C. to c. 1800 A.D. (The age of Later smritis, Commentators and Digest writers)
4. c. 1700 A.D. to c. 1947 A.D. (The age of Colonial rule)
5. c. 1947 to present (Post Independence period)

It should be considered that these periods often overlap and scholars differ as to the precise dates.

### **1. c. 2500 B.C. to c. 1500 B.C.**

#### **(The age of the Rigveda)**

Unlike other early uncivilized societies, women used to enjoy a much better position during this era. Generally, a girl child was less welcome than a boy but there were certain special religious rituals which some parents perform with the desire of having learned and capable daughters. There was no discrimination in the education between boys and girls and girls had to pass through a period of brahmacharya. Women were not only educated but were free to choose a life in academics. We find examples of many distinguished women poetesses whose poems are included in the canonical literature to honour them such as Visvavara, Ghosha and Apala.

The marriage ceremony was conducted at a fairly advanced age of 16 or 17 years. Naturally, the educated girls of this age have more of a say in the choosing of their partners. Love marriages or marriage by choice was quite common, which was later blessed by parents. Though there are few indications that brides were somehow sold or forced into a marriage without their consent these practices were condemned and called as unholy and unworthy. The ideal marriage of the Vedic period was a religious sacrament, which made the couple the joint owners of the household (Altekar, 1959). The idea of husband and wife is an equal half of one substance and equal in every respect and both took equal parts in all works is forcibly expressed in book 5 hymn 61 and verse 8 of Rigveda. But the old notion of a wife being the property of the husband was still lingering as the famous hymns about gambling in Rigveda (X, 34-2-4) states that sometimes wives were staked at dice to the opponents. In that verse, the gambler laments that he had to abandon a wife who was not only beautiful and loving but highly serviceable to him and his friends. In another verse, he says that when the love of gambling gets the better of his reason, other persons lay their hands on his wife." (Ralhan, 1995) The hymn also gives advise against it showing the social disapproval of the practice.

The women were not put in seclusion and used to move freely, many times in the company of their lovers, in the society. In social and religious assemblies, women occupied an honoured position. Religion considered women absolute equal to men. Women could perform sacrifices separately. They were not seen as a deterrent in the religious aspirations. Marriage was necessary for both men and women as they would not be able to enter heaven without being associated with their duly married consort.

The position of the wife was held in great respect. She was the joint owner of the household. But in actual practice, she was the subordinate companion. Monogamy was the general rule. Polygamy was found in rich and royal families to some extent. Some indications to polyandry are visible when the Ashvin brothers are showed to be living with the daughter of sun god 'Surya'. The Sati custom was not in the fashion and if the widow desired to remarry, she could do so either in a customary manner or under the custom of Niyoga.

Not all the rights were recognized by then. Women were not able to hold or inherit any property. 'Landed property could be owned only by one who had the power to defend it against actual or potential rivals and enemies. Women were unable to do this and so could hold no property. The transition from the communal to the family ownership of land was taking place; the conception of the rights of the different members of the family, even when males, was yet to crystalize. Naturally, therefore, women, like many other male members of the family, were incapable of owning property; the patriarch was its sole owner and guardian.'(Altekar, 1959)

Also, there are not any examples or evidence of any queens ruling in her own right independently which was not as surprising if we reflect that Aryans were slowly gaining a foothold in a foreign country with a large and hostile indigenous population. Considering the circumstances, the queen reigning independently or as a regent was still an unthinkable concept.

The women's position in the Vedic society was satisfactory. There are some mentions in the Vedic literature which describes women as fickle-minded and easily won over by a handsome man who can sing and dance well.

Whatever be the real import of these passages there can be no doubt that in the very early stages of civilization, the position of the wife, as a rule, was scarcely better than that of a slave. No wonder, therefore, that she entertained scarcely any love or good feeling towards her husband and often went astray and proved faithless- giving occasion for the expression of such uncomplimentary sentiments as the following: 'Woman's love is never stable and her heart is like that of a hyena (RV-X-95-15).'

(Ralhan, 1995) These poems only point out to a small segment of light-hearted cynical poets. Leaders of the society did not embody those views. The community of the Vedic period was liberal in its attitude towards women and gave social and political freedom. The women were given proper concern and respect.

## **2. c. 1500 B.C. to c. 500 B.C.**

### **(The age of the Later Samhitas, Brahmanas and Upanishads)**

The references from the later Samhitas, Brahmanas and Upanishads gave information regarding the condition of women in ages following the Vedic period. During this period, gradual changes took place in the status of women. Though women were objects of respect, patriarchy was getting stronger and father could even disinherit his son which underlines his increasing authority. Rule of primogeniture was making its place slowly and male ancestors were worshipped. With the strengthening of patriarchal tendency, deterioration in the position of women was taking place simultaneously. When a daughter is born, she was looked down as the source of misery to her parents. A verse of the Atharva Veda rightly echoes the general desire for the birth of a son and not of a daughter, “The birth of a girl, grant it elsewhere, here grant a boy. ” in a prayer to Pinga God it is fervently

sought that He may ‘preserve the babe at birth and make not the boy a female child.’ The same prayer has been repeated in another form in which a husband asks for the birth of a male child to his wife. And male children, it is again prayed, be followed by male offspring only and never by female progeny.(Ralhan, 1995)

The Aitreya Brahman also lays down the daughters are the cause of misery. In an interesting legend of Shunashepa, the sage Narada discourses on the importance of having a son, before Harishchandra in the following words:

*“In him a father pays a debt.*

*And reaches immortality.*

*When he beholds continence*

*Of a son born to him alive.”*

But about the female issue he has only to say, “his daughter causes him pity.”(Ralhan, 1995)

Upanayana samskara or the sacred initiation was common in the higher section of the society and consequently, women had to go to attain education. Many women were opting for teaching as a career. Some even got distinction in the realm of theology and philosophy like Maitreyi and Gargi. Maitreyi comes into sight in a dialogue with Yajnavalkya where she explores the Hindu concept of Atman (soul) in the Brihadaranyaka Upanishad. According to this dialogue, love is driven by a person's soul, and Maitreyi discusses the nature of Atman and Brahman and their unity, the core of Advaita philosophy. Maitreyi is quoted as an example of the educational prospects accessible to women in the Vedic era, and their philosophical accomplishments. She is looked upon as a symbol of Indian intellectual women. Likewise, Gargi Vachaknavi was a prominent woman scholar of the ancient times

born around 700 BC. She is praised in the Vedic literature as a highly knowledgeable natural philosopher and an expounder of the Vedas. One of the most coveted titles, 'Brahmavadini', meaning a woman possessing the highest knowledge of Brahman, was given to her by the Vedic literature. References about her are stated in the eighth Brahmana of 'Brihadaranyaka Upanishad' that mention of her participation in a philosophical debate with highly learned scholar Yajnavalkya in discussions organized in the court of King Janaka. She is mentioned in the Grihya Sutras of Asvalayana. It is also said that she could awaken her Kundalini powers which is one of the highest achievements of Yoga practitioners.<sup>17</sup>

But as the period advanced, a decline in female education was taking place. The system in which a girl goes to some centre of education or some famous teacher for receiving the education was being discouraged now. No one but only near relations like father, brother or uncle should take up the responsibility of educating the girl at home. The natural consequence of this arrangement was that only the families, rich and cultured, were able to provide education to their girl child. With no education, women were not able to exercise their rights or perform their duties. The tendency of curtailing rights and privileges of common women was on the rise, some of the functions and rituals were performed by the husband in the place of the wife. Some sacrifices were performed by women alone like Rudrayaga and Sitayaga. If the husband was out, the wife was also entrusted with the responsibility of serving the sacrificial fire. In cultured families, when husbands are preoccupied with other duties and could not offer the morning and evening prayers, then the women used to recite them on their behalf. Women had some voice in the selection of bridegrooms and the

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<sup>17</sup> <https://www.speakingtree.in/allslides/gargi-vachaknavi-biography>

practice of svayamvara<sup>18</sup> was quite common among kshatriyas. The average age suitable for marriage continued to be 16 as well as other ideals, which were more or less same as the previous age. The provision of availing divorce was there but not commonly practised. Sati pratha was not there at all. Widow had the right to remarry. She had the choice of marrying her brother-in-law or someone else. The tonsure of widows was altogether unknown. Purdah did not exist, though women had ceased to attend public meetings.

The proprietary rights had not yet granted to women. They could not own the property along with the Shudras and their earning was taken up by either their husband or son. But they were given moveable property as marriage gifts. The attempt to place the men superior to women in the context of rituals by differentiating and ensuring the subordination of women was clearly to establish a gender hierarchy.

### **3. c. 500 B.C. to c. 500 A.D.**

#### **(The age of Sutras, Epics and Early Smritis)**

The period of sutras, epics and early smritis was no doubt a turbulent one for India not only in spheres of politics but also acted as a catalyst for the deterioration of the position of women that was enjoyed earlier. Many causes were leading to it. When Aryans conquest the indigenous population and established their rule over a greater part of India, they incorporated the local populace into the social structure as a fourth varna i.e. Sudra. This class whose only duty was to serve the conquerors. This subsequently affected women as

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<sup>18</sup> Svayamvara, in Sanskrit, refers to the practice where a girl of marriageable age chooses her husband from an assembly of suitors. Sometimes suitors had to complete a given task to compete for the hand of the girl. The literal meaning of 'Swayam' is self and 'vara' is a groom. One finds mention of this practice in epics where Sita and Draupadi chose their husband.

they ceased to be a productive member of the family. Another factor working against was the inter-marriages between the two races. There is no documentation or indication of Arya-shudra marriage during the Rigvedic period. This was not the case with Brahmanas and the epics. There are ample pieces of evidence in these texts to highlight the fact that Aryans chiefs were marrying non-Aryan princesses during the later period. Here the noteworthy fact is that early dharmashastras writers had no objection to this practice unless the man already has an Aryan wife, unlike the later writers. This practice was the key to the retrogression of the status of women. This deterioration was gradual and imperceptible which started at around 1000 B.C. and was quite visible in about 500 years. Introduction of a non-Aryan wife into the Aryan household presented another complication as she would not be able to perform the religious sacrifices and duties owing to her ignorance of Sanskrit language. She would not be able to enjoy the same religious privileges as the Aryan wife. At first, several authorities declared the non-Aryan wife unfit to perform religious rituals to maintain purity and prevent anomalies and mistakes. But then they felt the remedy to be ineffective. To realize the object they proclaimed that women, as a whole, were not eligible. Now the problem of offending the non-Aryan wife by rejecting her the right to perform duties and sacrifice was solved. One of the scholars advocating it was Aitiasyana by about 200 B.C. which indicates the presence of a much older school advocating this view.

Another factor which also played a role was increasing complexities of Vedic sacrifices. During Vedic age, the rituals were simpler and a girl could devote 6-7 years for the Vedic studies before the age of 16-17 years which

was an average age of getting married. But later, these sacrifices became a complex affair. The recitation of the hymns, the performance of the rituals, the formulae etc. had to be accurate and in accordance otherwise, there would be dire consequences. No girl had that much time to get adequate knowledge unless she remained a spinster. Also, the marriageable age was being lowered. In those days, having a son became a religious duty for every household for which the age fit to be married was lowered. Naturally, the practice of upanayana<sup>19</sup> and education of girl was discouraged and gradually started fading away. Upanayana became a formality to be done just before the marriage and about 200 A.D. it was declared that marriage was the substitute for the upanayana samskara. Girls do not need any separate initiation. Earlier at the age of 9-10 years, upanayana was performed which now has become the age of marriage for girls. Parents used to marry their girl before they attain puberty. This often resulted in ill-suited matches.

An uneducated young girl would have no say in the choice of partner. Smriti writers have preached that the wife should revere her husband as God, no matter whether he is worthy or not. According to Manu Smriti, “She who shows disrespect to (a husband) who is addicted to (some evil) passion, is a drunkard, or diseased, shall be deserted for three months (and be) deprived of her ornaments and furniture. But she who shows aversion towards a mad or outcast (husband), a eunuch, one destitute of manly strength, or one afflicted

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<sup>19</sup> Upanayana ceremony is one of the sixteen sanskaras. It is a Hindu ritual of initiation that marks the child's entrance upon the life of a student. This ceremony was restricted to the three upper varnas, or social classes i.e. Brahmans (priests and teachers), Kshatriyas (warriors and rulers), and Vaishyas (merchants and tradesmen). The samskara is performed between the ages of 5 and 24 as the educational requirements of the three upper classes in Hindu caste stratification varied.

with such diseases as punish crimes, shall neither be cast off nor be deprived of her property.”<sup>20</sup>

Widow remarriage and Niyoga were permitted at the beginning of the concerned period but the public opinion was not in the favour of these customs. So, the practices ceased by the 500 A.D. Women were also not permitted to get the divorce, unlike the husband who could discard his wife for the slightest of offence. This discrimination was not opposed by women as most of them are uneducated and not aware of their former privileges.

The Purdah system was confined to only a small segment of royal families. Not many kings had found a liking for this custom.

The period between 200 B.C. and 300 A.D. saw a wave of political and economic commotion in northern India. The Mauryan Empire which used to cover a great part of the Indian sub-continent and also encompassed Kandahar in modern Afghanistan met its end in around 187 BC. There are voluminous political and cultural developments in the Indian subcontinent from the end of the Mauryas to the rise of the Guptas, i.e., from BC 200 and 300 AD. In these five hundred years, not only the rise of multiple political powers in different parts of the subcontinent but also the introduction of new features in art, architecture and religion. it was subjected to one foreign invasion after another.

This period also witnessed another adverse development affecting the positions of widows. Niyoga and widow remarriage were greatly opposed and become disreputable. Widows were advised to accept their misfortune as fate. They should abstain from all worldly pleasures. In the case of a childless

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<sup>20</sup> <https://www.sacred-texts.com/hin/manu/manu09.htm>

widow, it had been said that they must not think of getting a son as a means of securing heaven as prescribed in the Vedas. They should aim at the higher ideal of salvation or moksha and not of a lower one of Swarga or heaven. A widow was advised to live a life of chastity and purity. She was forbidden to remarry. The absurdity was that the same advice was not extended to the lot of men. On the contrary, they were permitted to remarry immediately after the demise of the wife. The revival of the custom of sati did not help the condition of women either. It was restricted to warrior class at first. Later it caught the fascination of the masses as it was associated with great religious merit. Widows committing sati were come to be regarded as a 'Devi' or Goddess to be worshipped. Sati was not rampant in the epic age but some incidents are mentioned in the Mahabharata. Madri, younger one of the two wives of Pandu, burnt herself on the funeral pyre of her husband, leaving Kunti with five sons to take care of.

Although some schools, more rational one, were not in favour of this monstrous practice. The efforts of these schools helped to check the spread of the practice, if only for a while.

The fading practice of Niyoga or widow remarriage was giving way to an entirely new class of childless young widows in the society. Society had to think about the means to enable them of their maintenance. This brought a change in the proprietary rights of the women which were almost non-existing earlier. Childless widows could now possess a life estate in the deceased husband's share and permitted to stay separately. But they were only sanctioned with the right of enjoying the income generated by their inheritance. They could not dispose of its corpus. It was also suggested by a

group of jurists at the beginning of the Christian era that a widow should be recognized as an heir to the deceased husband. There was the condition of him having separated from the joint family before his death. The reform was opposed by those who were not benefitting from it. Eventually, it gained greater support in society.

#### **4. c. 500 A.D. to 1800 A.D.**

##### **(The age of Later Smritis, Commentators and Digest writers)**

The deterioration in the position of women continued owing to the same factors working earlier. Upanayana samskara was ceased to be performed for a girl child making her equivalent to the status of shudra<sup>21</sup> from a theological point of view. For a girl child, marriage ceremony corresponded to the upanayana in the case of boys. The proper age of marriage was already set at before the onset of menarche which further lowered in the period. At first, it was maintained that girls become mature at the age of 10 or 11, i.e. before the appearance of menses, when the preliminary symptoms of puberty manifested. But the ideal age of marrying off a daughter was the age of 8 years. The reason behind considering it as an appropriate age was that 8 years was the ideal age of upanayana samskara for boys. However, kshatriya girls continued to get married at the age of 14-15. Those were the times of frequent

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<sup>21</sup> ‘Apastmbha Dharma’ sutra states that,

*“aśūdrāṅām aduṣṭāṅām upāyanaṁ vedādhyayanam agnyādheyaṁ phalavanti ca karmāṅi.”*

meaning Shudras and criminals are not let for upanayana ceremony, making them unfit to study Vedas and to perform sacrifices.

warfare and remarriage had been prohibited for widows. Sati custom<sup>22</sup> was regarded as a great religious sacrifice and had become common in kshatriyas.

Therefore, the suitable age for marriage among the warrior class was after their daughters had come of age. Also, many a time, women of kshatriya families had to act as regent and perform necessary military duties and exercises. This required proper training and education. The result was a postponement of marriable age.

Non-kshatriya girls were married at the age of 10-11 years. The education imparted, if any, till that age was not worth the name. In rich families, some literary education was provided by special teachers. Down to 10<sup>th</sup> century A.D., we find mention of a few such women as distinguished poetess and critics. But after the establishment of Muslim rule, the tradition failed to survive as the old aristocracy lost the place of importance in the new regime. The daughters in ordinary families were brought up in unenlightenment as the possibility of imparting any education worth the name was negligible before the 10-11 years of age i.e. the marriageable age of the day. As India came under the British raj, literacy was confined to the women of dancing class only. Women, in general, remained illiterate and ignorant and ceased to command any respect. As a result of child marriage, girls neither had any choice nor they could find any intellectual companionship with their husbands owing to their inferiority.

Hindu smritikars declared at the same time that the husband was the head of the wife. According to Manu, “Though destitute of virtue, or seeking

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<sup>22</sup> The first inscriptional evidence of the practice has been found in Eran dating 510 CE. The inscription is considered to be a Sati stone mentioning the wife of Goparaja who was a vassal of Bhanugupta burning herself on her husband's pyre.

pleasure (elsewhere), or devoid of good qualities, (yet) a husband must be constantly worshipped as a god by a faithful wife.”<sup>23</sup> And the only duty of her was to serve and obey him as a god. Polygamy became fashionable as people started following the example set by the royal harem. Marital faithlessness was also one of the side effects of child-marriage. Early maternity was the result of early marriage and it again led to an increase in mortality among women of 14 to 22 years of age. To make the situation worse young widowers aged 25-30 years were permitted to remarry by Manu but the brides were again quite young as 9 or 10 years old. The disparity helped the growth of concubine culture in society. The moral tone of the society took a dip and no objection was put forward to the practice of dancing girls singing and dancing on any holy occasions like marriage and upanayana or religious service in temples. Gradually, the custom of Devadasis became a common practice in various parts of the country.

Down to 500 A.D., only child widows were allowed to remarry while it was a taboo in general. But in this period, the permission extended to child widows was also withdrawn. It became a matter of prestige. At first women from high families were the victims of this prejudice but later as widows from lower castes wanted to enhance their respectability, the practice of widow remarriage stopped completely. This prohibition was so deeply ingrained in the consciousness of the society that even when the widow remarriage act<sup>24</sup> passed in 1856 A.D., the remarrying of a widow was not realized with any appreciable effect.

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<sup>23</sup> <https://www.sacred-texts.com/hin/manu/manu05.htm>

<sup>24</sup> The Hindu Widows' Remarriage Act, 1856 (Act XV, 1856) was enacted on 26 July 1856. It legalized the remarriage of Hindu widows in all jurisdictions of India under East India Company rule. It was drafted and passed by Lord Dalhousie.

Regarding sati custom, smritis were condemning the practice and considered it equal to suicide. Majority of the thinking sections of our society refuted the claim that it could bring any spiritual salvation. Initially, this custom was followed by the warrior classes only but as the appreciation of ascetic ideals and practices grew, the practice of sati was started making a wider appeal. We find in smritis that it is a sinful act for a brahman widow, down to about the 11<sup>th</sup> century, to be sati on the funeral pyre of her husband. The reason given behind prohibiting brahman widow to commit sati is that people believed that by committing sati, women have died chaste which means she would have good karma. This further translates to being reborn in a much better life according to Karma theory. But this justification would not sound reasonable as a brahmana woman already belonged to the highest caste. Hence there is no need of them practicing it because they could not benefit from sati.

But as the religious value of this custom grew, Brahmanas class began to follow this practice too. If we see this practice from the widow's point of view, we could understand how they chose this practice over widowhood. The torture of widowhood, the aggrandizement of the reputation of the family, thirst for immortality because it was believed that a woman who did not observe sati and lead the life of a widow was not supposed to get salvation, were the factors acting behind this custom.<sup>25</sup>

The remarriage was not an option anymore now and the life of widowhood was not so easy. The practice of the tonsuring had been introduced in the society and became an acceptable custom around 8<sup>th</sup> century A.D. which would help the widows in the difficult path of strict chastity and

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<sup>25</sup>Singh, B. (2010). INSTITUTION OF SATI IN MEDIEVAL INDIA WITH SPECIAL REFERENCE TO PRE-COLONIAL PUNJAB. *Proceedings of the Indian History Congress*, 71, 256-265. Retrieved from [www.jstor.org/stable/44147493](http://www.jstor.org/stable/44147493)

ascetic life. Along with the tonsure, many prohibitions were there to follow by the widow. They only wear simple white saris and discard any jewellery as a widowed woman is not supposed to look attractive. They can no longer use sindoor which is a symbolic mark of that woman being married. Some restrictions were regional like in Southern part of the country widows were prohibited to wear a blouse under the saree. There were rules for their restrictive diet. They should avoid eating onions, garlic, pickles, potatoes and fish because according to the orthodox beliefs these foods stimulate blood in the body and arouse sexual feelings. A widow was not only looked upon as a burden on the family but also a sexual threat to other marriages. They were considered as inauspicious and were prohibited to participate in weddings and other such functions. And to add to the misery, they were considered responsible for their situation because their husband's death was their fault. So, many widows voluntarily ascended the funeral pyre as they preferred a revered death than to live a tiresome dependent life. But not always the widows opted for the horrific death but forced and burned alive by the relatives who were certain that the woman would fail to adhere to chaste life and would bring dishonour to the family name.

Another motive was the intention of keeping her share in the family property for themselves. Thus, the recognition of the right for inheritance was a mixed blessing. This was the only front where the condition was a bit better. Widow's right to inherit the share of her husband was recognized by 1200 A.D. all over the country. In Bengal, even if the husband had not separated from the family before his death, the widow will get the share by right.

Mitakshara school<sup>26</sup> extended the scope of stridhana by including property acquired by inheritance and partition to it. The widow's estate remained a limited one. Except for some parts in south India where widows could grant the property for religious purposes. She did not need the consent of the reversioners for gifting away the property.

Puranas were being written during the taken period. They took up the basic principles of Hinduism and enunciated them by illustrating edifying stories. Puranic literature emphasized on ardent faith and many pious people took up the task to take these to public audiences. In a manner, this proved detrimental to the rationalism, more so in women as they were excluded from the study of higher theology and philosophy.

The invasion of the country by the Muslims brought about further deterioration in the position of Indian women. Restrictions on her rights and freedom and her resultant hardships were aggravated. On one hand, the foreign Muslim conquerors attempted to impose their coercive norms on the conquered Hindu population; on the other hand, the Hindu society itself became more and more rigid curtailing thereby the rights and freedom of the lower castes and women. Due to this two-fold reason, this period was one of the darkest periods for women in Indian history. The steady deterioration of their status continued until the 19<sup>th</sup> century. (Meenakshi, 2007)

Polygamy and the purdah were two of the most important social institutions of the Muslim conquerors of India. Under the purdah system not

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<sup>26</sup> P. V. Kane in his 'History of Dharmashastra' states that "The Mitākṣ arā is a vivṛ ti (legal commentary) on the Yajñavalkya Smṛiti best known for its theory of "inheritance by birth." It was written by Vijñāneśvara, a scholar in the Western Chalukya court in the late eleventh and early twelfth century. Along with the Dāyabhāga, it was considered one of the main authorities on Hindu Law from the time the British began administering laws in India. The entire Mitākṣ arā, along with the text of the Yājñavalkya-smṛī ti, is approximately 492 closely printed pages."

only were women required to live in a secluded apartment in the house but also, they had to dress in apparel which completely covered their body excepting the eyes. The particular system made the women participating in public discussions on vital and social or philosophical problems or in popular festivals only memory of the past.(Meenakshi, 2007)

Purdah prutah found a little acceptance in a few royal families but mainly it was opposed to down to the 12<sup>th</sup> century. But the arrival of Turks became conducive for the purdah custom's popularity as the customs and manner of the conquerors were imitated with zeal. Adopted by the noble families in the beginning, the custom gradually became widespread in entire north India. The popularity was somewhat less in the southern part of India owing to the less contact with the Muslims.

The conditions of women Hindu women were not changed much and the new rulers did not bother much about it. One exception, however, was the Mughal rulers attempted to put down Sati. Humayun introduced a system of licensing to bring it under some control. Akbar actively pursued the opposition and outlawed the Sati practice in 1500 AD. Jahangir abolished it by law, and in 1663, Aurangzeb pursued the implementation of this law. But none of them succeeded, probably because they were preoccupied with conquests, wars and revolts and could not pursue their reform vigorously.(Meenakshi, 2007)

Underlining the lack of rationalism were the emerging pseudo-puritanical notions of the society around 1000 A.D. which rejected the advice of smritis and refused to take back women into the old family and religion once they

were carried away in captivity or dishonoured or/and converted. Al-beruni<sup>27</sup> wondered the ridiculousness and the social callousness to women he argues a simple proposition that if one's hand gets dirty, one should clean it and not cut the hand down. This distorted social vision vitally affected the well-being of women.

## **6. c. 1700 A.D. to c. 1947 A.D.**

### **(The Age of Colonial Rule)**

In 1498, Vasco De Gama landed at Calicut with three ships marking the beginning of a new era in the history of the world. Simultaneously redefining the relations between Asia and Europe. Though the British were the one to rule India for about 200 years, they were not the only nation seeking trade relations. Portuguese, Dutch and French were a few other European nations aspiring to establish commercial associations with India.

Industrialization fueled the capitalist desire of the European societies by increasing their economic, military and political strength. Advancement of the navigational technologies at the time facilitated their quest of the expansion of the markets and vast wealth of India lured them. The heavy demand of the Indian commodities in European markets was seen as a

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<sup>27</sup> Abu Raihan Muhammad ibn Ahmad, widely known as Al-Biruni (or Al-Beruni) was one of the scholars of the medieval Islamic world. He was born at Kath (in modern-day Uzbekistan), then part of Khwarizmian empire in Persia under the Samanid Empire in 973 ACE and died in 1048 ACE at Ghazni (in modern Afghanistan) under the Ghaznavid Empire. His book entitled *Kitab fi Tahqiq mali'l Hind min Maqala Maqbola fil' Aqlao Mardhula*, popularly known as *Kitabu'l Hind* or *Tarikh Al-Hind* is one of the most illustrious accounts of India by a non-Indian. This book was made available to the readers worldwide by Edward C. Sachau who first translated it into German and then to English, in the last quarter of the nineteenth century.

business opportunity by these trading companies and they came to fructify it. However, fragmented regional powers of India and weak rulers in these states paved the way for political upheaval because the companies rightly understood that by grabbing the political power, where they can maximize their economic profit. This was the background behind the power struggle which ultimately ended with the colonization of India.

When the European set foot on the soil of India, they saw not only an economic prospect but also a land full of ridiculous superstitions, rigid belief and social backwardness. The status of women had reached the maximum deterioration and it caught the attention of the new rulers in the face of British East India Company. The social institutions and customs were smothering the fundamental rights of women. They were subjected to the atrocities of polygamy, purdah, child marriage, denied property rights, sati custom, widowhood and patriarchal joint family to name the few. Not only the status allotted to women was inferior to men, but they were also considered as lacking any ethical fibre and instinctively evil in nature. The British men were interested in establishing a modern capitalist economy only and their sole concern was to extract the highest possible amount of profit. But they had to replace the existing structure for an environment based on the principles of liberty, equality and other modern values to realize their objectives. They adopted these ideologies in theory only and brought the changes in social structure to the extent that helped to protect their interests. But, even theoretically, these steps and modern ideas facilitated the movements against permanent subjection of women. Some enlightened Indians and sometimes

few sympathetic Europeans took up the herculean task of removing one evil at a time for the reconstruction of Indian society on the new principles.

At first, the attention was paid to the position of women in the family by the reform movements. The practice of child marriage and the age of consent for girls was a much-debated issue as well. Even before passing of the Sharda Act of 1929 which raised the age of consent to 15, in 1860 and 1891, the bar was raised to 10 and 12 respectively. These reforms were legal in nature and the society was reluctant to adapt accordingly. In rural areas, the girl child was still married off by the age of 8-10 years, followed by a second ceremony at the age of 13-15 where she migrated into groom's family and entered into conjugal relations.

The harsh treatment meted out with the widows was also targeted. The Widow Remarriage Act of 1856 tried to better the position of widows by legalizing the remarriage. The step, though not as successful, at least provided a platform for social change.

In addition to these customs, Sati Pratha was attacked too. Not only British but the Portuguese, French too tried to stop sati. The British hardened their rules against it when Sir Charles Napier in 1850, ordered to hang to death any Hindu priest who presided over a widow burning. The Princely States of India were also pressurized to rule out this practice entirely.

Raja Ram Mohan Roy became the harbinger of the endeavours to improve the stagnant society. He led Brahma Samaj in Bengal and raised his voice against the cruel custom of Sati Pratha. His efforts gave fruit when Governor-General Lord William Bentick outlawed the practice on December

4<sup>th</sup>, 1829 by passing the Bengal Sati Regulation in all jurisdictions of British India.

Education was also emphasized upon as it creates preconditions for the development of the women's status. The Ramakrishna mission and other Hindu revivalist movements emphasized upon the position of honour given to women in Hinduism. Hindu social reformers favoured the imparting of education to women too and felt it a pre-requisite to a permanent restructuring of the society. The reformer's labour bore fruit and many schools and colleges were opened for womenfolk, setting a different trend than early British School which were for boys only. Not much later, D. D. Karve founded Women's University in Bombay. D. D. Karve married a widow which again highlights his commitment for the social reforms. In the beginning, medical colleges were the colleges for women. Bombay emerged as the centre of social reform as well as the centre of education for men and women generally. These were initial steps and the education, though coming to the central stage, was still confined to a very small upper elite class.

Another force driving the reform was the struggle for National Independence. Women came out of the boundaries of their home and participated in the movement. The fact that they were raising their voice against colonial rule and not for women's movement was setting the case of India apart from many developed countries where women had to fight to their male counterparts for their rights. Inclusion of women was made possible by the M.K. Gandhi who invoked the suppressed power of half population and utilized it in the freedom struggle. He included the 'equality of women' in his Nine-point program, but never maintained it as a primary goal of the

movement. This resulted in the extension of the horizon and exposure of women beyond the home. They gained political consciousness and confidence from the active participation in the national movement for freedom. This awakened political consciousness was expressed in the foundation of “Women’s India Association” in 1917 and “All India Women’s conference” in 1927. The Indian National Congress elected an Irish woman Annie Besant as its first woman president in 1917 and not long after that Sarojini Naidu became first Indian woman president in 1925.

## **5. (c. 1947 to Present)**

### **Post-independent India**

The reforms brought by social reformers, the introduction of the modern values in society and women's participation in the national movement together paved the way to a new understanding of the issue at hand. Independence inaugurated a new chapter in the struggle of women empowerment. Constitution of free India envisaged the ideal of equality and negated the inequality based on sex which was inflicting the Indian society to the core.

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of the law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters

relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.<sup>28</sup>

With the laying down of such ideals, the Constitution of India encouraged the legislative enactments at both Central and state level. These legislations aimed at overcoming social disabilities particularly in the aspect of marriage and property.

Hindu Marriage Act was passed in 1955 abolishing polygamy and specifying the marriable age of girls and boys at 15 and 18 respectively. It also allowed seeking a divorce to both husband and wife on the same grounds. 'Special Marriage Act of 1954' legalized secular and mixed marriages. In the series of reforming acts, next came 'The Hindu Succession act of 1956' the act provided that son, daughter and widow mother could inherit equally. 'The Hindu Adoption and Maintenance Act, 1956' came out to address the problem of separate maintenance for women under such circumstances where legal separation or divorce was not sought.

Although the practice of sati was not as prevalent as before, an incident of sati in 1987 forced to revisit the laws regarding the practice. In a village named Deorala in Rajasthan, an 18-year-old married woman, Roop Kanwar, was forced to commit sati when her husband died after just eight months of marriage. When Roop Kanwar refused, a group of men forcefully drugged her and then set her on fire. Police investigated and arrested these men. In lieu of this heinous crime, the Government of Rajasthan enacted the 'Sati

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<sup>28</sup> [http://mospi.nic.in/sites/default/files/reports\\_and\\_publication/cso\\_social\\_stactices\\_division/Constitutional&Legal\\_Rights.pdf](http://mospi.nic.in/sites/default/files/reports_and_publication/cso_social_stactices_division/Constitutional&Legal_Rights.pdf)

(Prevention) Act, 1987', making it illegal to force or encourage a woman to commit sati. Anyone doing so would be punished by death.

A more pressing problem was of dowry. To curb this practice, 'The dowry prohibition Act' was passed in 1961 (Act no. 28 of 1961). Some major and more recently legislative acts are 'Maternity Benefit Act' 1961 and 'The Medical Termination of Pregnancy Act, 1972' (Act no. of 34 of 1971). The Maternity Benefit Act, 1961 preserves the employment of women during the time of her maternity. It entitles her of a 'maternity benefit' i.e. full paid absence from work enabling her to take care for her child. The act applies to all establishments employing 10 or more employees. The Maternity Benefit (Amendment) Act in 2017 brought some changes in the original act which are Increased Paid Maternity Leave, Maternity leaves for both adoptive and commissioning mothers, option to work from home after the maternity leave ends and Crèche facility.

The Medical Termination of Pregnancy Act, 1972, is to provide for the termination of certain pregnancies by registered medical practitioners and matters connected therewith or incidental thereto. The Act states that a pregnancy can be legally terminated if it is under 20 weeks. But it is subject to several conditions including the person's ability to get it and requires a doctor's assessment as to whether these conditions are being fulfilled. Otherwise, such an action would be illegal and considered a crime.

In India, there is unbalanced sex-ratio of male and female. As per Census 2011, there are 943 females per 1000 males. Among many other factors, the practice of foeticide also played a major role behind it. In the desire of having only a male child, many people started to misuse the diagnostic tools of

medical science to check the sex of their foetus and if it is going to be a girl child, they used to abort it. To curb this practice ‘the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994’, was enacted. Under the Act, it is crime to conduct any kind of test or procedure to try and make sure the foetus is of a particular sex or to check the sex of your foetus. Any procedure or technique performed on a man or woman for sex-selection is illegal or sex-determination is illegal. This act considers both the person and doctor guilty for the crime of conducting a diagnostic test to figure out the sex of the child. One is allowed to get such tests done only to check certain anomalies of the foetus. One can also avail these procedures if one is above 35 years of age or suffer from certain health-specific problems.

These legislative efforts strive to materialize the promise made in the Preamble of the constitution, that is “equality of status and opportunity”.

The surveying of Indian history justified the objective of getting a clearer picture of women in it and understanding the changes in the status enjoyed by the women. The history of women has been recounted as a slow but progressive march towards modernity following a long period of stagnation and decline which is a defective method of observation and conclusion. The degradation in the status of women cannot be pinpointed to any specific period as the traces of such deterioration are visible throughout Indian history. Although the degeneration is much more pronounced and rapid in the later ages.

Both European-inspired histories and the Indian texts they cited shared a belief in a unique female nature. Indian texts essentialized women as

devoted and self-sacrificing, yet occasionally rebellious and dangerous. Texts on religion, law, politics and education carried different pronouncements for men depending on caste, class, age, and religious pronouncements for men depending on caste, class, age, and religious sect. In contrast, women's differences were overshadowed by their biological characteristics and the subordinate, supportive roles they were destined to play. (Forbes, 1998)

In the pre-independence and post-independence period, the plea of women was heard and reforms were brought out to address the social anomalies. The main weapon of the enlightened reformers was the law. There were many acts passed which intended to liberate the women from the centuries of suppression and empower them with a vision to bring back the glory of the golden age of India back. The golden age where women were not only respected but also free to take decisions about their own life, simultaneously contributing constructively to society and nation. But, in the patriarchal social structure of India, laws implemented were remained as the token measures taken on paper as the reach of education and public awareness is yet to penetrate to the fullest extent. Despite having laws for Prohibition of Dowry and child marriage, the cases in the present society are not unheard of. Today many a woman are still in the role of sufferers just because they are women. The changes will only be becoming truly if society changes the traditional mindset towards women's role. As Plato opined, "as far as the state is concerned there is no difference between natures of men and women." His plea remains unheard. The unjust and unequal laws are not capable of bringing a just and equal society and it certainly will not materialize by stating a promise of equality into the constitution. These are just steps towards that ideal of equality which is yet to be realized.

## *Chapter-3*

# *Evolution of Proprietary Rights*

## **CHAPTER-**

# **EVOLUTION OF PROPRIETARY RIGHTS**

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The position of women in India vis a vis proprietary rights is not much different from her counterparts in any other part of the world. The right to property has evolved from a continuous struggle between the status quo and progressive forces. The women's right to property has expanded much in the last century to compensate for the unequal and unfair system in the past. Nevertheless, women still are subjected to discriminatory attitude when it comes to the inheritance of paternal property. Historically speaking, the law has given fewer or less secure rights than men leaving them almost entirely dependent. They have to rely upon the men in their lives, vulnerable to violence, poverty and food insecurity.

Proprietary position of a woman in any system of law represents the thought and the feelings of community and Hindu legal system is not an exception in this regard. The proprietary status, which a woman occupied in Hindu law, was not only an index of Hindu civilization but also a correct criterion of the culture of the Hindus. (Gill, 1986)

The study of the evolution of proprietary laws is a subject of vital importance. More so for the historian of the women, as economic freedom is an important indicator while analyzing the well-being of a class. Position of women in Indian history went on deteriorating but the proprietary rights were gradually becoming more extensive. If one analyses the early times, it is apparent that the proprietary rights of women were recognized much later than expected. Especially in patriarchal societies,

where a woman was nothing more than another item in the moveable property of the patriarch in the family, eliminating any question of her holding any property.

The analysis of laws for property rights is not possible without a review of the ancient laws as they are the base of the present legal provisions. An introspection into the Hindu law in the context of property rights of women reveals the paradox inherent in the philosophical attitude of Indian society towards them. The eulogizing of feminine qualities and motherhood simultaneously with the accordance of secondary status to women in every possible field was the typical feature of Indian society. Similarly, the Hindu law from ancient times stated the rights of women to own property, earn it and transfer it. But in reality, the property rights of women always remained nominal. Despite being the owner of the property, a woman could not exercise her full rights on the use of all kinds of property. In most of the cases, she could inherit the property and use it but could not transfer the same. (Tapan, 2006)

## **Hindu Philosophy**

Hindu Law has a very ancient ancestry. It was bestowed upon by Hindu seers and sages of ancient India who after their extensive penance and meditation comprehended specific rules of conduct. The rules are essential for a peaceful coexistence of society according to them.

The principles of law discovered by these ancient seers, who were sociologists in the essence, have great relevance even today. It had been aptly stated by J. D. Mayne that Hindu Law has the oldest pedigree of any known system of jurisprudence and has not shown any signs of decrepitude even today. The law was equated with Dharma and was alleged to have its origin from Divine itself. The Hindu seers and sages regarded the law as Divine revelations and thus it had been paid the ultimate

respect within the society. The King and his subjects were equal in the eyes of law. To bring certainty to them the laws were codified by the Dharmashastras writers.

The ultimate aim of life, consistent with Hindu philosophy, is to realize salvation i.e. Moksha from this physical world. The physical body is mortal but the soul is immortal. When a person dies, his soul stays in a free state and takes another form at rebirth. Thus, the cycle of birth and death continues until the soul attains moksha or salvation from this world.

According to the Dharmashastras, there are four goals of Human life, Artha, Dharma, Kama and Moksha in which Moksha, that is, salvation is that the ultimate objective. Before the accomplishment of Moksha man has got to undergo three other stages of human life, i.e. Artha, Dharma and Kama. Dharma stands foremost. Artha and Kama are concerned with the temporal world, whereas Dharma and Moksha are concerned with the metaphysical world. A life in harmony with Dharma results in happiness and pleasure during this life also.

Encyclopedia Britannica defines Dharma as “the religious and moral law governing individual conduct and is one of the four ends of life. In addition to the dharma that applies to everyone (sadharana dharma)—consisting of truthfulness, non-injury, and generosity, among other virtues—there is also specific dharma (svadharma) to be followed according to one's class, status, and station in life. Dharma constitutes the subject matter of the Dharma-sutras, religious manuals that are the earliest source of Hindu law, and over time has been extended into lengthy compilations of law, the Dharma-Shastra.”<sup>29</sup>

## **Hindu Concept of Law**

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<sup>29</sup><https://www.britannica.com/topic/dharma-religious-concept> accessed on 5.1.2020

Hindu law is considered to be as divine revelation. It had been revealed by the omnipotent Divine to our great sages, philosophers and jurists who had conquered spiritual heights by their Tapasya and Yoga. Dharma Shastras declared that the Hindu Law is sacrosanct, inviolable and immutable implying that its violation would be deemed as sin. As it is divine law, it cannot be altered by any human agency. It would always be enforceable for the reason that it is an eternal law. Its legitimacy cannot be denied because it has the sanction of the Supreme power.

Dharma has been defined as a compilation of duties to be performed by the people in general for their good. Medhatithi<sup>30</sup> describes Dharma as duly created by God himself for people. But the term Dharma doesn't suggest the legal duties alone, it refers to moral, religious and also as social duties. Hence, as it is a unique combination of various sorts of duties that the character of sanctions also differed. In the case of the legal duties, the sanctions came from the state itself and those who showed disregard were to be punished by the King.

It should be noted that the Hindu concept of law is sort of different from the Austinian<sup>31</sup> concept, "law is that the command of the sovereign". But the law as per the Hindu philosophers and sages is not the king-made law. The monarch himself is not outside the jurisdiction of Dharma. The sovereign was not thought to be lawgiver, but simply the law enforcer. He only had to execute the law as prescribed by the Dharmashastras as well as the judgements pronounced by his courts. The ruler was deemed to be subordinate to Dharma, i.e. Law. Law was deemed to be the

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<sup>30</sup> Medhatithi was the commentator of Manu Smriti.

<sup>31</sup> John Austin is deemed by many as the founder of the school of analytical jurisprudence as well as the approach to the law known as "legal positivism." Austin's particular command theory of law has been a matter to extensive criticism, but its uncomplicatedness gives it an evocative authority that continues to attract adherents.

supreme authority. In Satapatha Brahmana<sup>32</sup>, the law has been stated to be the “king of kings.” The authority of law was ascertained due to its origination from God himself. No human agency, except the seers and sages, was deemed to be capable enough to enunciate law.

Hindu jurisprudence, at earlier stages, didn't differentiate between legal, moral and religious laws. Moral rules are so intermingled with legal rules that every so often it becomes problematic to separate them. It was only at a later period of development of Dharmashashtra that the distinctive nature of legal and religious-moral rules was recognized. Regarding the sanction behind compliance of law K.R.R. Shastri observes:

“In ancient Hindu society where religious and secular elements were interwoven, and where civil and criminal sanctions were found within the state of non-separation, fear of consequences within the other world was as much a reality as in the present existence, a certain dread of divine displeasure always acted upon the human mind.”<sup>33</sup> It implies that the fear of grave consequences and anguishes after death was the core sanction behind the compliance of Hindu Law. The Austinian concept of law also stressed upon the sanction but it emanated from the ruler. As per the Austinian concept of law, the fear of penalty by the State just in case of non-adherence of the laws is that the only persuasion behind the compliance to the law. The Hindu concept, in comparison, provided not only for the State sanction but also provided for the sanction by the divine disapproval.

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<sup>32</sup> The Satapatha Brahmana is a Hindu sacred text which describes components of Vedic rituals including philosophical and mythological backdrop. It was committed to writing about 300 B.C.E., although it includes far ancient sections, communicated orally from unknown antiquity.

<sup>33</sup> Shastri, K. R.R. (1961): Hindu Jurisprudence: A Study in Historical Jurisprudence, Eastern Law House, Calcutta, p. 26.

The virtuous Dharmashashtra writers of ancient time have segregated their whole work under three heads as- *Achara*, *Vyavahara* and *Prayashchitta*. *Achara* deals with the Karmas i.e. actions of a person. The *Vyavahara* refers to civil law. Smritikar Narada laid much emphasis on the *vyavhara* or civil law. Lastly, the *Prayashchitta* is the procedure of purification which aids a wrong-doer to cleanse himself from all the sins by carrying out penance. For instance, as P. N. Sen writes, where if a person killed a cow intentionally, he was compelled to perform the *Prayashchitta* to immunise himself from the results of his sin, otherwise he would suffer in hell. The Dharmashastras have dealt comprehensively with the rules of *Prayashchitta*.

The later Dharmashastras realized the significance of *Vyavahara* as an independent entity and therefore classified it separately and adequate stress was laid on its sanctity. Every individual was mandated to observe *Vyavahara* in letters and spirit. In the case of its non-compliance, the monarch had to take cognizance and bring the offenders to book. Manu laid down eighteen titles of litigation, to encompass all kinds of cases in the king's court. Thus the concept of positive law, i.e. *Vyavahara* separated from religious or moral laws, and a developed system of *Vyavahara* came before us.

## **Sources of Hindu Law**

Dharma is an expression of wide import insinuating the aggregate of duties and obligations. These duties and obligations can be religious, moral, social and legal. Following Manu, there are four sources of Dharma, namely, the Vedas, the Smritis, Sadachara (approved customs and usages) and what is agreeable to one's conscience. As Yajnavalkya stated, "The Shruti, Smriti, the approved usage, what is agreeable to

one's good conscience and desire, sprung from due deliberation are ordained as the foundation of Dharma (Law)." The sources of Hindu Law, from which understanding of Hindu law is to be derived, are the guides of dharma and those can be abridged as follows;

### **Ancient Sources**

Before the codification of Hindu law, ancient literature was the only source of the law. These sources can be enumerated as 4 categories:

#### **1) Shrutis**

Shruti literally means," what is heard" and is understood as the Vedas. The term is derived from the root 'Sru' (to hear). It is believed in the Hindu philosophy that the sages and seers had attained the height of spirituality where they were revealed the wisdom of Vedas. Shrutis are deemed to be the primary and paramount source of law theoretically. Vedas do mention certain rights and duties, forms of marriage, the necessity of a son, barring of women from inheritance and partition but these are not very well-defined laws. Thus, Vedas are practically of no legal significance. The Shrutis consist of the four Vedas and the Upanishads dealing primarily with religious rites and the means of accomplishing true knowledge and salvation.

#### **2) Smriti**

Smriti means "what is remembered" and is considered of human origin. With smritis, a methodical study and instruction of Vedas started. Several sages, from time to time, have inscribed the concepts given in Vedas. So, it can be said that smritis are the recollections of the rishis handed down to us, constituting the principle sources of Law. They comprise rules whose authority is unquestionable but whose meaning is open to several interpretations and has to be established by the ordinary process of

reason. The Smritis can be divided into Primary and Secondary Smritis based on their period, the latter being later in date. The primary Smritis are again classified into Dharmashashtras. *Gautama, Baudhayana, Apastamba, Harita, Vasishtha* and *Vishnu* are the chief Sutra writers whereas *Manu, Yajnavalkya, Brihaspati* and *Narada* are noteworthy of the writers of the Dharmashashtras.

The Smritis are of two kinds, in prose style and poetry style. Those in prose are called as 'Dharma Sutras' and are before those in verse. *Gautama, Baudhayana, Apastamba, Vashishtha, Vishnu and Harita* are principle authors. Dharma Shastras are smritis in verse. Some of the eminent authors are *Manu, Yajnavalkya, Narada, Vishnu, Devala, Vrihaspati, Katyayana and Vyasa*. Among these, the Code of Manu has always been treated as a being of paramount authority by Hindu sages and commentators.

### **3) Commentaries and Digest**

Owing to the Obscurity, incompleteness and not infrequent conflicts in the rules of the Smritis and the desirability of interpretation of the injunctions of the Smritis in a manner to suit prevalent customs and usages of different parts of the country, there was a necessity to reconcile them on the points of difference. In this process there arose what constitutes the most significant source of Hindu law, namely, the commentaries. The commentaries and the digests were also the records of the traditional customs recorded in the Smritis as well as the new customs claiming for and found worthy of recognition. The commentaries, though professing and purporting to rest on the Smritis, explained, modified and enlarged the traditions recorded therein to bring them into harmony and accord with prevalent practices of the day to suit the felt necessities of the time.<sup>34</sup>

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<sup>34</sup>Bhattacharjee, A.M., Hindu Law and the Constitution Ed. II., (1994), p. 36.

The Commentaries and the digests (*Nibandhas*) were written between the period of 700 A.D. to 1700 A.D. the last commentary was written by Nanda Pandit on Vishnu Dharmasutra named *Vaijayanti*.

The principal commentaries are:

1. *Dayabhaga by Jimutvahana*
2. *Mitakshara by Vijnaneshwara*
3. *Viramitrodaya by Mitra Misra*
4. *Vivada Chintamani by Vachaspati Misra*
5. *Vivada Ratnakara by Chandeshwara*
6. *Dayatattwa by Raghunandana*
7. *Dayakramasangraha by Sri Krishna Tarkalankar*
8. *Smrti, Chandrika by Devan Bhatta*
9. *Parashara Madhaviya by Madhavacharya*
10. *Vyavhara Mayukha by Nilkantha Bhatt.*

Out of all the commentaries, the Mitakshara and Dayabhaga take up a prominent position from the point of their acceptability as authoritative sources of law. Dr Kane says, 'the Mitakshara is not only a commentary explanatory of the verses of Yajnavalkya, but it is like a Digest of Smriti material. It brings together numerous Smriti passages, explains away contradictions among them by following the rules of interpretation laid down in Purva Mimansa<sup>35</sup> the system brings about the order by assigning to various dicta their proper scope and province and effects a synthesis of apparently disconnected Smriti injunctions.

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<sup>35</sup> Mīmāṃsā is a Sanskrit word that means "reflection" or "critical investigation". It refers to a tradition of contemplations reflecting upon the meanings of certain Vedic texts. This tradition is also called as Pūrva-Mīmāṃsā because of its focus on the earlier (pūrva) Vedic texts dealing with ritual actions. Similarly, Karma-Mīmāṃsā due to its emphasis on ritual action (karma).

In the due course of time, the commentaries gained more significance than Shrutis and Smritis. The reason behind was that they kept pace with not only the customary law but also their usages prevalent in various parts of the country. This made commentaries more useful than any other work of law and in the event of a conflict between the ancient text writers and these commentaries, the opinion of the latter was accepted. However, “ from long before the end of the British period and the inauguration of the constitution and the enactment of the Hindu Law Acts of 1955-1956, the Shrutis, the Smritis or even the Nibandhas ceased to be sources of the Law in any view and the case-laws and the few statutory laws were the paramount sources.”<sup>36</sup>

#### **4) Customs**

Custom is the parent of personal law in all countries and India, a country with diverse customs is not an exception to it. Custom is regarded as one of the most important sources of laws. Custom is a rule, which in a particular family, a particular class, community or in a particular district, has owing to prolonged use, obtained the force of law. The importance of custom in Hindu Law has been so great that Privy Council laid down that clear proof of usage will outweigh the written text of the law. Custom is believed to be based on unrecorded revelation and its observance is insisted on by the ancient writers. (Agarwal, 2016)

Most of the Hindu law is founded on customs and practices prevalent all across the country. Even smritis have regarded customs significant and held them as transcendent law. They have directed the rulers to give decisions based on customs after due religious consideration. According to Narada, “Custom decides everything

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<sup>36</sup> Bhattacharjee, A.M., Hindu Law and the Constitution, Edition II, p. 39.

and overrules the sacred Law.” The modern authorities are equally insistent on the binding authority of customs.

## **5) Modern Sources**

The modern Hindu law has been shaped by colonial rule. The British impact could be seen where the Dharmashashtra's inherent concepts of equity and justice were infused with the modern sense of the terms. The modern sources of Hindu law are;

**i) Equity, Justice and Good conscience:** Equity as a branch of the legal system, may be said to mean the principles or rules emerging in the course of administration of justice particularly in those cases, where on account of inadequacy of law, the judges evolve certain general principles on basis of justness, fairness and propriety. In India, the origin of equity is traced back to Hindu Period when jurists explained the old laws and gave new rules of interpretation. In case of a conflict between the rules of Smritis, one should follow the rule which is based on reason, justice and principles of equity. Brihaspati declared that no decision should be made exclusively according to the letter of Shastra for, in a decision devoid of *yukti* (reason), failure of justice occurs, Kautilya has said that if Dharma text is found opposed to judicial reasoning, the Dharma text fails and the authority of reason prevails. According to Yajnavalkya, "if there is a conflict between two Smritis, the equity should supersede the law. The law is that a Religious Code (Dharmashashtra) is superior to a Secular Code (Arthashashtra). Given the above observations, it will not be incorrect to mention equity, justice and good conscience as an important source of Hindu Law. However, the principles of equity, justice and good conscience acquired a peculiar, arbitrary and narrow meaning at the hands of the British administrators of justice who understood

by it the principles of English law, as far as they were applicable to the Indian circumstances.(Agarwal, 2016)

**ii) Judicial Decisions:** It cannot be gainsaid that the early English Judges who administered the law to the Hindus with the help of the Pandits had brought to bear their own notions and thus influenced the development of the Hindu Law. Their ignorance of Sanskrit might, to some extent, had the effect of imparting a rigidity to what has always been a very pliable legal institution, but in many cases, for the sake of justice, logic or harmony, the effect of original texts had either been altered or modified by them in their judicial pronouncements. These judicial decisions constitute an important source of law.(Agarwal, 2016)

**iii) Legislation:** is a modern source and has been an important factor in the development of Hindu Law. Some of these legislations supersede Hindu Law but most of them are in the direction of reformation. Before the British regime, there were different rules and practices in different parts of the country and it was difficult to find fixed principles of law in several areas. Hindu Law was scattered. To rectify the situation, many important laws have been passed. These Acts have the effect of changing the religious nature of Hindu Law at several places.

### **School of Hindu Law**

Schools of Hindu Law came into being when different commentaries appeared to interpret 'Smritis' regarding different local customs in vogue in different parts of India. Privy Council observed that the different local customs prevailed in different provinces of India. The commentators of the Smritis could not ignore the local customs and usages and while interpreting the texts, they eventually incorporated different local customs. The local conditions and customs of the different provinces

have, therefore, gone to mould the principles of law prevailing in each province.(Agarwal, 2016)

There are mainly two schools of prominence namely, Mitakshara and Dayabhaga School. The Dayabhaga school is also known as the Bengal School of Hindu Law as it is prevalent mostly in the Bengal area. Mitakshara school has found acceptance in the rest of the country as the authority of Hindu Law. The Mitakshara is a running Commentary on the code of *Yajnavalkya*. It is authored by *Vijnaneshwara* in the latter part of the eleventh century. Dayabhaga is written by *Jimutvahana* about two centuries later than Mitakshara as a digest of all codes.

The main point of difference between both of the schools is in the law of inheritance and the joint family system. The Dayabhaga has permitted the women to let in the coparcenary whereas the Mitakshara has discarded this very notion. The former one accepted the rule of religious efficacy whereas the latter propounded the doctrine of consanguinity in the matter of succession. (Agarwal, 2016) Survivorship and succession are the two modes of devolution of property recognized by Mitakshara school. The rule of survivorship applies to the joint family property while the rule of succession applies to property held in absolute severalty by the last owner. In comparison, the Dayabhaga School recognizes only one mode, i.e. succession, of devolution of property.

The Bombay Sub-School of Mitakshara branch of Hindu Law acknowledges not only the widow, daughter, mother, father's mother and father's father's mother as heirs but also sister, father's sister. The law regarding the succession by female heirs is not consistent. Males heirs who are succeeding the property become absolute owner while succeeding females take the limited estate in the property. If a separated Hindu dies leaving behind a widow and a brother, then under the Mitakshara, the widow

succeeds to the property as heir. But the widow, being a female, does not own the property absolutely unlike male heirs and is entitled only to the revenue of the property. She cannot gift the property as per her wish. Neither can she sell it unless there is a legal requirement. The property will revert to the next heirs of last full owner, her husband, after the death of the widow.

A joint Hindu family comprises of all persons linearly descended from a common ancestor including the wives and unmarried daughters. However, a Hindu coparcenary is a much narrower body than the joint family. It consists of only male members of the family who acquire by birth an interest in the coparcenary property. Thus, only sons, grandsons and great-grandsons are the coparceners. Under the Mitakshara School, the property inherited by a Hindu from his father, father's father, father's father's father is his ancestral property. Such ancestral property is considered as unobstructed heritage as regards his male issues. A property inherited by a Hindu from other relations is considered as his separate property. The most central rule of the coparcenary is that a female cannot be a coparcener under the Mitakshara School of Hindu Law. Even a wife is not her husband's coparcener. Although she is entitled to maintenance out of her husband's property and has, to that extent, an interest in his property. A mother is not a coparcener to her son's property. There can be no coparcenary in between a mother and a daughter. While reflecting the status of a woman within the family, a reference must also be made to the concept of Stridhana. Stridhana can be defined as a property which was presented by the father, mother, brother or husband to the girl at the time of the wedding before the nuptial fire and is a gift. It is the absolute property of a woman which she may dispose of at her pleasure.

## Classification of Women's Property

The property of a Hindu woman can be classified into two kinds, namely:

- i) Those properties over which she has absolute ownership (Stridhana).
- ii) Those properties over which she has limited ownership (woman 's estate).

### Stridhana

The term Stridhana is composed of '*Stri*' (woman) and '*Dhana*' (property). The word means the property belonging to a woman or woman 's property<sup>37</sup>. It has a very technical meaning and is used in a different sense in different schools. Gooroodass Banerjee has very aptly remarked in his famous work Hindu Law of Marriage and Stridhana<sup>38</sup>, "The difficulties besetting an enquiry into the question what constitute Stridhana, arises from the fact that majority of sages and commentators give neither an exact definition of Stridhana, nor an exhaustive enumeration, and if the Mitakshara gives a simple and intelligible definition, that definition has been qualified and restricted in its application by our courts, in consequence of its disagreement with the view of other authorities." The first occurrence of the term Stridhana can be found in Smritis and the Dharma sutra of Gautama. In modern Hindu Law, Stridhana denotes the specific kinds of property enumerated in the smritis, as well as other types of property, acquired or owned by woman over which she has absolute control. She forms independent stock of descent in respect to such property which accordingly devolves on her heirs.

As Stridhana means property over which a woman has absolute control, such properties are fundamentally different from other types of property held by a woman which are known as her 'woman's estate'. One may find the difference between these two types of property on two principle points: -

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<sup>37</sup> Mitakshara II, ix, 2.

<sup>38</sup> 3<sup>rd</sup> Ed. P. 280.

1. While in the case of Stridhana a woman has absolute power to dispose the property at her will, in the case of woman's estate her right of alienation is circumscribed by legal necessity or benefit of estate giving only a limited power of disposal.
2. In the case of woman's estate, the property passes on to the heirs of last male owner on the death of female owner while in the case of Stridhana the property passes on to her heirs as laid down under the Hindu Law.

### **Special Features of Stridhana: -**

1. **Tests of finding the Stridhana property-** A Hindu female may acquire property from various sources. But all property acquired by her is not Stridhana. Whether a particular kind of property is Stridhana or not, depends on:
  - i. The source from which the property was acquired.
  - ii. Woman's status at the time of the acquisition, i.e. whether she acquired it during maidenhood, coverture, or widowhood and lastly
  - iii. The school to which she belongs.<sup>39</sup>
2. **Succession-** in the case of the female owner's death, the Stridhana devolves to her heirs, unlike the widow's estate.
3. **Power of alienation-** a female Hindu is an absolute owner of her Stridhana and can dispose of it at her own will. If not in all cases during coverture, in all cases during widowhood.

### **Sources of Stridhana**

Properties acquired from the following sources fall under the Stridhana of a Hindu female: -

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<sup>39</sup> Mulla, Principles of Hindu Law Ed. XVI (reprint, 1994) p. 163.

- a) Gifts received from relatives is Stridhana
- b) Gifts and bequests from strangers during maidenhood is Stridhana.
- c) Property obtained in a partition is Stridhana.
- d) The property got in lieu of maintenance is Stridhana.
- e) Property acquired by inheritance is Stridhana.
- f) Property acquired through technical skills and mechanical arts is Stridhana.
- g) Property acquired by compromise is Stridhana if established by the terms of compromise.
- h) Property acquired by adverse possession is Stridhana.
- i) Property purchased with the earnings of the Stridhana or with savings of income from Stridhana.
- j) Property acquired lawfully from sources other than those mentioned above is Stridhana if determined by the school concerned.

### **Rights of Women over Stridhana**

The rights of a woman depend upon the marital status of a woman and sources of the Stridhana.

**Unmarried Status:** Any Hindu woman can dispose of the Stridhana voluntarily. Except when she is a minor as minority renders the incompetency to the right of disposal.

**Married Status:** The right of disposal of the Stridhana varies with the nature of the Stridhana. For this purpose, the Stridhana has been divided into Saudayika and Asaudayika Stridhana. During the marriage, the Saudayika Stridhana could be alienated freely by her, but Asaudayika Stridhana could be alienated by her with the consent of her husband only. This rule is subject to the condition that where husband and wife live together. Where both have departed, Asaudayika Stridhana can be

disposed of by the wife even without the consent of her husband. Generally, the husband has no control over the Stridhana of his wife, yet in an emergency, he could still use and dispose of the same without the consent of his wife. In calamities or for religious purpose or if the wife has taken the Stridhana, then its return or repayment depended upon the wishes of the husband<sup>40</sup>.

**During widowhood:** During widowhood, the woman had an absolute and unrestricted right of alienation of property, irrespective of the fact whether it has been acquired prior or after the death of the husband.<sup>41</sup>

The authority of the Mitakshara says that property inherited by a woman is her Stridhana. But the Privy Council had caused a great deal of injustice to Hindu women in matters relating to their proprietary rights. In several decisions, their lordships expressed that the property inherited by a widow did not become her Stridhana in the technical sense and that a mother's share allotted to her in a partition was not her Stridhana. Thus, a Hindu woman was always subjected to restrictions in the matter of enjoyment of proprietary rights.(Satyanarayana, 2006)

### **Stridhana after the Hindu Succession Act, 1956**

The Hindu Succession Act, 1956 overrides *inter alia* the old laws relating to stridhana which existed before the integration of section 14 in the Act. Section 14 declares that all such property which was in possession of a Hindu female at the time of the enforcement of the Act, whether she acquired prior to or subsequent to the commencement of the Act, shall be held by her as absolute property. The ancient law on the subject of the order of succession to such property has been revoked and a new uniform order of succession has been provided in its place encompassing female heirs as well in Section 15 of the Act. So, if a Hindu female dies intestate, irrespective of

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<sup>40</sup> Kesari U.P.D., Modern Hindu Law, 3rd edition, 2001, p. 362.

<sup>41</sup> Ibid, p. 362.

the school (*Mitakshara, Dayabhaga* or any other), her Stridhana property shall devolve upon heirs by uniform order of succession in accordance to the rules contained in Section 15 and 16 and not as per the rules enforced before the Act came into force.

Section 15: - “(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, —

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1), —

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (I) 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 her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.<sup>42</sup>

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<sup>42</sup> <http://egazette.nic.in/WriteReadData/1956/E-2173-1956-0038-99150.pdf>

The property shall devolve by Section 16 of the Act.

Thus, Sections 15 and 16 have simplified the most difficult and complicated branch of Hindu Law.

## **(II) Women's Estate**

A Hindu female may inherit the property from either a male or female. According to the Bengal, Banaras, Mithila and Madras Schools, every female who succeeded as an heir whether to a male or female, took a limited estate in the property inherited by her, and on her death, the property passed not to her heirs, but to the heirs of the last full owner from whom she had obtained it. (Agarwal, 2016) Widow, who is a limited heir, acquires the property for her life but she is only the owner of the property thus inherited as a tenant. her right of alienation is limited and after her death, the property does not pass to her heirs rather to heirs of the last full owner thereof.<sup>43</sup> Therefore, she similarly owns this property as any other individual is the owner of his or her property except the basic limitations that:

- a.) She cannot ordinarily alienate the corpus;
- b) On her death, it devolves upon the next heir of the last full owner.

It would perhaps be more correct to mention that she holds an estate of inheritance to herself and also the heirs of her husband. But whatever her estate is, it is clear that until its termination, it is impossible to mention who are the people that are going to be entitled to succeed as heirs to her husband. The property does not devolve upon to the heirs of the husband until the termination of the widow 's estate.

Her power of the disposal over the property is restricted and it is this limitation which defines the character of her estate. However, these limitations do not seem to be imposed for the benefit of the reversioners as even when there are no reversioners,

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<sup>43</sup> Kesari U.P.D., Modern Hindu Law, 3rd ed., 2001, p. 364.

the estate continues to be a limited estate. A Hindu Woman holding such limited estate had no power to alienate the property except for the legal necessity, benefit of estate or religious or charitable purposes.

**Effect of the Hindu Succession Act, 1956:** -Sub-section (1) of Section 14 of the Hindu Succession Act, 1956, has abolished the woman's limited estate in respect of property not acquired or possessed under a will, gift, award, document or a decree of the court prescribing limited estate. After passing of the Act of 1956 whatever property is lawfully possessed by her whether acquired before or after the commencement of the Act, becomes her absolute property and she becomes its absolute owner. But sub-section (2) of Section 14 preserves the limited estate, in respect of properties where a limited estate has been prescribed by the document under which the widow comes into possession thereof. (Agarwal, 2016)

### **Coparcenary Rights of Hindu Daughter**

Hindu law was first formulated in a tribal society and it was based largely on customary practices and relationships. As is frequent in kin-societies, social controls had the force of laws. The central problem at this stage was to maintain peace between the tribes rather than to protect the rights of the individual. The acceptance of a monarchical system by these tribes introduced two new features. The political structure required by kingship encouraged an element of authoritarianism amongst the law-makers. The close association of kingship with divinity was projected into the realms of laws and provided a supernatural sanction for the laws whenever necessary. The status of the individual in society came to be conditioned by these new factors. (Thapar, 1996)

By combing through the pages of law books formulated on the then requirements, one may get the idea of the general condition of the society and also the women's place in it. But to ascertain the legal status of women in these law books one must keep in mind that the law books are both a reflection of early Indian society as well as attempts at working out what was believed to be a perfect social system. Therefore, the aspirations of the law-makers are also to be considered. Nevertheless, the danger can be mitigated somewhat by testing from historical sources the actual validity of the legal systems codified by the law-givers.(Thapar, 1996) The law of legacy contains rules which oversee devolution of property on the demise of an individual upon different people exclusively by their relationship to the former.

### **Joint Hindu Family or Hindu Undivided Family**

Traditionally, Hindu society characterizes the joint and undivided family. A joint Hindu family is a group of relatives tied together by ties of kinship & marriage and descended from a common ancestor. It includes children, children's children down the line, spouses. A joint Hindu Family is normally joint in worship/kitchen/business. Even daughters-in-law/widowed daughters who have returned to their parental side are part of a Hindu joint family. A joint family may encompass countless generations. A joint family is headed by a Karta<sup>44</sup> who is normally the eldest living male member of the family. Karta has some peculiar rights and obligations under traditional Hindu Law, he has the power and duty of superintendence of how the joint family is run, who is getting what? how the

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<sup>44</sup> After 2005 amendments by which women have been given equal proprietary rights in the ancestral property even women can be Kartas

members are being maintained? He is also entitled to dispose of the property in times of dire need/necessity.<sup>45</sup>

The origin of this joint and undivided family system can be traced back to its patriarchal origin. The law of heirship was connected with the doctrine-

*‘He who inherits the property also offers the pinda’*

The person offering salvation is the one worthy of a share in the ancestral property. Historically, only a male member of the family could offer salvation to the ancestors and hence the rightful heir.

As evident from the study of the status of women, the angle of looking upon a daughter, a wife and a widow was varied in different ages. Therefore, the development of rights relating to inheritance and partition took place on different lines as well. Given the nature of the study, only the daughter’s property laws relating to inheritance and partition has been taken.

## **Daughter’s right of inheritance**

There is a well-known adage that a child, a spouse and a slave can possess no property independently of the father, the husband and the master<sup>46</sup>. The daughter is planned to be incorporated here under the child. In more than one place in the later Vedic writings, it is seen that women have no privilege of inheritance.<sup>47</sup> There is no uncertainty that in all respects in early times there was a general partiality against

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<sup>45</sup> Workshop paper on Civil: - “Concept of partition in Hindu Law in view of Sec.6 of the Hindu Succession Act, 1956.” held on 10th January 2016 at district court Osmanabad. [http://mja.gov.in/Site/Upload/GR/Title%20NO.159\(As%20Per%20Workshop%20List%20title%20no159%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.159(As%20Per%20Workshop%20List%20title%20no159%20pdf).pdf)

<sup>46</sup><http://www.sacred-texts.com/hin/manu/manu08.htm>  
Manusmriti, VIII, 416

<sup>47</sup><https://www.sacred-texts.com/hin/yv/yv06.htm> Taittiriya Samhita VI, 5, 8, 2.

property degenerating upon female beneficiaries by inheritance. the daughter framed no special case. She was frequently expected to build and increase the assets of her father's family by bringing a bride-price. That she ought to get a share in and decline the corpus of her father's property would have seemed ridiculous to men at the beginning of human civilization. The very inception of Stridhana demonstrates that women could typically get property just by the method of blessings from their relations at or after their marriage. There was no plausibility of their procuring any bequest either by inheritance or by partition.

### **Inheritance Right of the Daughter with no brother**

The daughter who has no brother was first to establish her right of an inheritance among female heirs to inherit the paternal property due to obvious reasons. In that patriarchal mindset of the society, circumstances were more favourable for her claim than others. As it is established that the wife was not in a condition to claiming her share in competition with her husband. In the case of a widow, the prevalence of the practice of Niyoga and remarriage made sure that the problem of her inheritance did not take any serious form. Another fact was that in Vedic age a girl child was not only properly educated but even allowed to exercise full religious privileges, and even if she may not be able to perform the funeral oblations to her father, it could be done by her son<sup>48</sup>. So, a Vedic father regarded a daughter equal to a son for all religious purposes. As adoption was not much desired in that time, other arrangements were sought after for fulfilment of these religious duties. The father had the option of marrying off the daughter as son-in-law would be regarded as an adopted son. Other option being an agreement with his son-in-law to

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<sup>48</sup><http://www.sacred-texts.com/hin/av/av11005.htm>

give his son back to the maternal grandfather's family to perpetuate the lineage of the family. Thus, amongst all female heirs, a daughter with no brother was able to secure her share in the inheritance. This started as early as the time of Rigveda which is established by one of the early hymns referring to a daughter having no brother getting her share of patrimony.

*abhrāteva pumsa eti pratīcī gartārugiva sanaye dhanānām /  
jāyeva patya usatī suvāsā usā hasreva ni rinīte apsaf //*<sup>49</sup>

One may suppose that the recognition of the right of property was an indicator of a better status but it was a mixed blessing. In the Vedic time, there was a high premium put on son. So, the prospective grooms were afraid of handing over their first-born son. Even if the father assured them that this was not the case and he would not claim his maternal grandson for his own family's perpetuation, the bridegrooms usually refuse the offer. They would not accept the brother-less daughter as their bride and her estate also. Thus, the girls found difficulties in getting married and often had to remain a spinster.

The evidences of a female heir's right of inheritance who has no brother can be found in 'Therigatha', where a mother is trying to dissuade her daughter from renouncing the worldly life and becoming the nun by stating the fact that she, having no brother, has become the sole heir of her father's inheritance who has become a monk. So, she should not be thinking of a life of nunnery and penance but of a life of marriage and pleasure. This story clearly indicates that during the 5<sup>th</sup> century B. C. a brother-less daughter was recognized as an heir in north-eastern India.

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<sup>49</sup><https://theveda.org.in/rigveda/01/124/7>

This trend could be traced up to 200 B. C., where the majority of the jurists continued to advocate the old tradition of allowing the brother-less daughter to inherit. In Mahabharata, one can find that it would be unfair to the daughter to not letting her have the property in the absence of a son and it would be manifestly unfair to have a subsidiary son have it. If she is not getting the full share, she must get half of it. The same stand was taken by Kautilya where he recognized the claim of a daughter, though perhaps to a smaller share.

But as it is evident that by this time, women's general status somewhat deteriorated. They ceased to be educated and were gradually losing their religious privileges too. This decline could be detected in their right of inheritance too. Scholars like Apastamba were reluctant to recognize the claim of a daughter and had allowed it only if there is no '*sapinda*' or teacher or disciple to inherit. As agnates include relatives up to the 7<sup>th</sup> degree, the possibility of a daughter inheriting the property became very remote. He even stated that it is better to donate the property for a public cause than to give it to a daughter. This trend too had many supporters such as Vasishtha (XV, 7), Gautama (XXVIII, 21) and Manu who didn't mention the daughter in their lists of heirs.

The school in favour of recognizing the right of brother-less daughter have jurists like Yajnavalkya, Brihaspati and Narada. Yajnavalkya mentioned that a daughter's place in the list of heirs is next to the son and the widow. Brihaspati reasoned that like son, a daughter also springs from one's own body and thus is worthy of inheritance before anyone else. Narada's argument to disarm the opposition is similar to Brihaspati's stand. A daughter is as much the child of her parents as the son so how an absence of a son weakens her claim to inherit?

Another school of jurists was there which suggested that a daughter should only be recognized as an heir until she is married and well settled in life. One of the prominent exponents of this school of jurists was Katyayana. But this opinion could not garner much support from the Hindu society. The school of Yajnavalkya, Narada and Brihaspati was the most accepted one and prevailed since then. From c. 500 B.C., the claim of a daughter, in the absence of a brother, in the property of the father has not been questioned. Modern courts accepted this view also.

The nature of the proprietorship of the estate which the daughter inherits is usually a limited one. Only Bombay state allowed to become an absolute owner, unlike other states where she is only acquiring a life-estate. This custom can be traced back to at least 13<sup>th</sup> century which can be confirmed by an inscription, discovered in Kolhapur, referring to the sale of an estate by a woman who had inherited it from her father.

### **Inheritance Right of Daughters with Brothers**

Patriarchal traditions were prevalent during the dawn of Aryan civilization. Any idea of a right claiming inheritance for a daughter was not much entertained. In competition with a brother, the daughter's claim was not recognized. As evident from the study of the status of women throughout the time, from circa 300 B.C. obligation of marriage for girls created a general opinion in the society that a girl should not have any claim in the property of their father. They should get proprietary rights in the families of their husbands.

Examination of an earlier period tells that girls were fairly well educated and had an option of staying unmarried. Sometimes, they remained spinster by the force of circumstances as well. These cases demanded to allow the daughters to have a

share in the paternal property. In a Rigvedic stanza referring to an old maiden claiming a share in her patrimony. But this was not the norm and if the daughter gets married, she was not eligible to claim any share in the paternal property. Another Rigvedic stanza by a Vedic poet asks the brother not to share the property with the sister as she would migrate to another family after getting married.

An argument of the presence of a small school of jurists recommending to provide an inheritance to the daughter with brothers around 500 B.C. has been forwarded based on a passage in the '*Nirukta*'<sup>50</sup> as the only evidence. However, the passage is a clear interpolation and their claim was relying on the authority of two old verses. The first verse is from Rigveda where an agreement has been made between a father and husband of his only daughter to revert the first-born son to the maternal grandfather for the continuation of his family. This stanza is very obscure and its clear interpretation is difficult. Again, this does not prove the jurists' argument as there is no reference to the right of inheritance of daughter with brothers. Another stanza quoted by this particular minority of jurists is attributed to Manu by them. But this argument sounds hollow as nor this verse occurs in the present Manu Smriti, neither it coincides with the views enunciated in the book in general. Furthermore, the verse in question has the term '*mithunanaam*' which means parents according to modern interpretation but the jurists argue that it means the children of both sexes which is hardly justifiable. The verse says that the parents should divide their property among all of their sons equally and should not be biased towards the firstborn one by assigning him special status and share in patrimony. The thing to be clarified is that it does not support the claim of a daughter's right in the share along with the sons. The

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<sup>50</sup> Nirukta Vedanga is known as the ears of the Veda Purusha. 'Nirukta' literally means 'etymology' and it explains the meaning of usage of any particular word in the Sanskrit grammatical tradition. The only work surviving as a specimen of this Vedanga 'etymology' is the Nirukta authored by Yaska.

only conclusion which can be deduced is that even if such school of jurists existed around sixth century B.C. which longed to assert the claims of daughter's inheritance, who has brothers as well, they did not find support from any authoritative text. Another possibility is the later interpolation of the passage in the '*Nirukta*' which brings the entire existence of such school into question.

The period of Dharma Shastras saw some commotion on this front. The general opinion regarding the inheritance of a daughter was that if they have brothers, the sisters should not get any share in the paternal property. This stand of Hindu society echoed in the Dharmashashtra literature as well. Kautilya concurs with this view. Only Smriti writer to assign some share to daughter along with sons was Shukracharya. It is said that he loved his daughter Devyani so much and this was the reason he laid down the scheme where a person dividing his property during his lifetime should assign one share each to his wife and sons, half a share to his daughters and one-fourth a share to his daughters' sons. Whereas if the division is taking place after the death of the said person, the daughter would get one-eighth of the share of the brother. The general practice at the time was to divide the property after the death of the father which meant that the daughter would receive the much smaller share in the patrimony than Shukracharya intended.

Shukracharya held his unique place as the only jurists championing the cause of right of inheritance of a daughter even if she has brothers. Some of the other jurists like Vishnu and Narada also recommended daughters to receive share but only before their marriage. Narada clarified his opinion that this provision of daughter's share in patrimony was only for her maintenance till marriage.

Shukracharya's scheme of inheritance appealed to some sections of the community where fathers followed it and divided his property among both sons and daughters. Most probably it was a case of self-acquired property. The evidence to back it was found in the form of an inscription. A Mysore epigraph, dated 1188 A.D., refers to the settlement of the dispute between the sons of sons and daughters of a gentleman named Machi who had partitioned his landed property among them. This was clearly in accordance with the principle recommended by Shukracharya.

The general rule of the society was that women should get a share in the property of their husbands and not of their father's either directly or indirectly. The smritis and jurists attesting the right of daughter's share in the patrimony were exceptions. There were no cases of spinsters as well because the marriages had become obligatory for the girls. Naturally, the expenses of their marriage should be charged on the family property. The father would bear the expenses and, in his absence, the brothers were bound to spend a reasonable sum out of the family estate to get his sister married in a suitable family.

There are no clear instructions in the Hindu law regarding the amount that should be spent in the sister's marriage by the brother. As it varied according to the circumstances and status of the concerned family, no law book laid down the precise amount. There was a general rule followed in society that it should be equal to one-fourth of the share of the brother. But again, there is ambiguity visible in this rule and susceptible to several interpretations. The first interpretation of the rule was that each brother should give away one-fourth of his share to a common pool to be used in the marriage expenses of all the sisters in the family. The problem with this principle was that the number of brothers and sisters in a family is not necessarily equal always. If there were more brothers than sisters, they would receive a greater share than the

individual share of her brothers. In the opposite scenario, if there are more sisters than brothers in the family, each sister is bound to receive lesser marriage portion than the individual share of the brother and which may not be sufficient for the marriage requirements. The second interpretation states that the property should be equally divided among the children, and daughters should be given one-fourth of the share ascertained in this manner. But even this interpretation of the rule is not free from the anomalies one encounters in the first interpretation where the number of brother and sister is not equal in the family. So, that leaves one with the third interpretation which might be the one that jurists had in mind while suggesting the rule. This interpretation asks to divide the patrimony in such a manner that every sister gets one-fourth of the share of each brother for her marriage expenses. As this tackles the problem of the unequal number of brothers and sisters, it might be the intended one by the jurists.

However, the rule was there only to make some provision for the marriage of the daughter. The jurists did not intend to assign that one-fourth share as her right to inherit the patrimony. Getting the sister married was the sacred duty of the brother in the case father is deceased. And it should be adequately done, the rule of assigning a share for marriage expenses came out by jurists. Even if the family estate is not enough to cover the marriage expenses, the sister's marriage expenses should be met with the brother's self-acquired property. But this should not give the impression that if the family estate is large enough to cover the expenses within that one-fourth of the share and if some of the shares remained unspent, it belonged to the concerned sister. The jurists of Hindu law did not approve that the sister should inherit the share to carry it with her after the marriage.

This stand of contemporary jurists can be understood by seeing the then conditions. There was a general prejudice against the introduction of an outsider

among the landholders of the village. If the daughter was to be allowed to claim the share in the immovable property of the family, the land would go to the son-in-law who will be an outsider for the landholder's community in the village. Also, it was not practically convenient for the daughter and son-in-law to manage such property situated in a distant village. As far as the share in the immovable goes, the daughter would receive presents at the time of her marriage and also as an heir to Stridhana estate. So, the general social opinion was that a daughter should not claim any share in her ancestral property which was reflected in the views of Hindu jurists of the contemporary times.

It is perceptible that the ancient lawmakers blatantly discriminated against women in case of property rights excluding for a few liberal writers. The core philosophy underlying such gender injustice can be traced back to biological, sociological, psychological, economic and religious motivations.

The biological difference between men and women gave the privilege to the male thinkers to presume that women do not have enough strength to guard the assets. On the other hand, the social system constructed upon this biological discrimination classified the stereotypical roles of men and women. The restriction of women to such activities as child-bearing and rearing; looking after the household chores and satisfying the sexual needs of her husband was the main essence of female life. While, the provision of physical, economic and social security to his family was the responsibility of a man. This resulted in a psychological sense of subordination and superiority of the two sexes respectively and was reflected in the laws governing their rights. The patriarchal system of society and excessive weightage to a son in the family were again some related factors responsible for such discrimination.(Tapan, 2006)

## **Modern Legislations Regarding the Law of Succession**

Till the middle of the nineteenth century, the Hindu Law of Succession in its conventional structure stayed in the application in the nation with no change. The Mitakshara law just as the Dayabhaga law stayed in power in different parts of India. The courts in British India and Indian states continued applying and translating their rules and provisions. The women were leading a life of subjugation and oppression in Indian patriarchal society as their right to property was blatantly violated in the court of law.

Certain laws were enacted to bring women out of the ditched orthodox life. The Britishers, as far as since 1850, had been endeavouring to grant more rights to Hindu women so that they could lead a respectable life in the society. **The Caste Disabilities Removal Act, 1850** was the first enacted Act concerning property rights. It was the first effort to adjust the property rights in resonance with modern settings. It was a general statute applicable to all the communities. Although this Act was enacted by the Britishers for their advantage yet some Indians were also benefitted from it. This Act eliminated conversion of a person to another religion as a disqualification in the matters of succession. The next attempt in the series was the **Hindu Wills Act 1870** which provided for the first Testamentary Succession to Hindus for the first time. **The Married Women's Property Act, 1874** extended the scope of Stridhana. It had to be amended in 1923 to include Hindu women within its extent. **Hindu Inheritance (Removal of Disabilities) Act in 1928** was another step in this direction. The Act changed the conventional standards of Hindu law that precluded beneficiaries on the ground of certain bodily and mental sicknesses and distortion from acquiring the property. Then, the **Hindu Law of Inheritance Act 1929** was enacted. Section 2 of

this Act stated that a son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified be entitled to rank in the order of succession next after a father's father and before a father's brother provided that a sister's son shall not be included if adopted after the sister's death. The Act was very limited in its scope and did not cause any radical transformation in Hindu law favouring women. It only emphasized that certain degrees of remote male heirs should be deferred in favour of the closer degrees of female heirs and neither daughters nor widows were provided with the right of inheritance. So, the provisions of the Act were not particularly revolutionary in favour of women's right to property. **Hindu Women's Right to Property Act, 1937** looked to improve the lawful position of women concerning Inheritance of property being survivors of male Hindus under the laws of succession and joint family.

These legislations conferred certain women with new rights of succession but all in all, failed to safeguard them against discrimination. It was felt that the Hindu Code ought to be readied. The Hindu Law Committee which was framed to set up the Hindu Code in 1914 was restored in 1944. It was directed by Sir Benegal Narsing Rau. This, the third portion of the Hindu code, looked to correct and arrange the law identifying with intestate succession. The first draft of the arrangements identifying with intestate progression contained in the Rau's Committee Bill experienced substantive changes in the hands of the Select Committee which considered the Rau's Committee Bill in 1948. The bill pursued to a large degree the plan received by the Select Committee, however, also considered the different proposals suggested from time to time for the revision of the Select Committee's variant of the Bill. Specifically, special provisions have been incorporated for regulating succession to the property of intestates represented by the marumakkattayam, Aliyasantana or Nambudri Laws of

Inheritance. Because of the plan received by the Select Committee the Hindu Succession Bill was presented in the parliament.

With the commencement of the independence, the framers of the Indian constitution attended the issue of discrimination against women in social and economic aspects of life. To promote gender justice, some constitutional mandates had been encompassed in the Preamble to the Constitution of India, Fundamental Rights in Part III (Articles 14, 15, 16), Directive Principles of State Policy in Part IV (Articles 38, 39, 39A, 44) and Fundamental Duties in Part IVA [Article 51 A (e)]. Despite all these steps, women continued to be destitute of their rights including the right to property. A much-determined step was taken in this direction as the “Hindu Succession Act, 1956”. This Act faced relentless resistance from orthodox Hindu sections. The Hindu Succession Bill having been passed by both the Houses of Parliament got the consent of the president on seventeenth June 1956. It went ahead in the Statute book as The Hindu Succession Act, 1956 (30 of 1956) and came into power on 17-6-1956.

Throughout history, Hindu women were economically dependent on the male members of the family which were one of the major factors responsible for their subjugation. Hindu legal system could be held responsible for this to some extent as women's proprietary rights were not duly recognized. Patriarchal setup of the society favoured the sons to daughters since Hindu philosophy placed more emphasis on attainment of Moksha. As only a male member of the family could offer salvation by offering the pinda to the ancestors, they are the rightful heir of the share in the ancestral property and not female members of the family.

For salvation or Moksha, one should follow the Dharma in temporal life as well. Dharma is not only a religious concept but could be understood as a code of religious, moral and legal rules. Thus, Hindus were governed by Dharma prescribed by Dharmashastras in their public as well as personal conduct. Shrutis, Smritis, Commentaries, digests and customs were the accepted sources of the Hindu Law until the modern sources (legislation, judicial decisions and equity, justice and good conscience) took their place. Naturally, a vast country such as India was witness to many customs suitable for local requirements. This caused the origin of many schools of Hindu Law in which Mitakshara and Dayabhaga were the prominent ones. One of the major points of difference between them was the law of inheritance. Mitakshara was the accepted authority over all of India except Bengal area where Dayabhaga was prevalent. In the Mitakshara School of Hindu Law, the concept of coparcenary was not favourable to the daughters. It favoured son as they would be offering pinda to the deceased family members and thus freeing them from the birth-death cycle. A woman could only own two types of property namely Stridhana and Women's estate. Stridhana was her absolute property unlike women's estate but these provisions were not enough to make a Hindu woman economically independent. The discrimination to daughters in succession to paternal property was visible to the Smritikars. Their non-inclusion in coparcenary has not gone unnoticed but ancient Smritis only talked about allotting some of the shares to daughter's marriage and maintenance till marriage. Some Smritikars talked about the daughter's rights but it was not acceptable socially owing to its patriarchal foundation. However, daughters having no brother were able to establish their right to inheritance. In cases where sons are there to claim their share, daughters were not eligible to claim any share in the paternal property. Keeping given the contemporary times, this stand is understandable as mainly land used to be

the immovable ancestral property and there was a general prejudice against the introduction of an outsider among the landholders of the village. Granting a share to a daughter would mean to give land to the son-in-law – an outsider to the landholder community of the village.

This condition was continued until the middle of the nineteenth century. The colonial masters, in an attempt to restructure the social conventions suitable to own needs, enacted several laws. Each law shifted the paradigm a little bit towards the modern notion of gender parity. Later, when the question of women's emancipation arose, some serious efforts were taken. Hindu code was one such attempt which aimed at revolutionizing the succession laws by addressing female heirs' inheritance.

The post-independence era saw giant leaps in this direction when the supreme law i.e. the Constitution of India mandated non-discrimination based on sex through its preamble and reinforced the idea in various other articles. The Hindu Succession Act, 1956 passed keeping these objectives in view and imparting women right to property. The retainment of the Mitakshara coparcenary was later rectified through Amendment Act of 2005.

*Chapter-4*  
*Hindu Succession Act, 1956 and*  
*Amendment, 2005*

## CHAPTER – 4

### HINDU SUCCESSION ACT, 1956 AND AMENDMENT ACT, 2005

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Change is nature's law. With time, every society keeps transforming and adjusting with contemporary requirements. The social structure and status, position, rights, obligations of individuals in it keep on altering as well with the developments in the society. Consequently, the status of women belonging to different religious communities has gone under changes owing to various factors. In the case of India, political, social and economic causes behind the changing status of Hindu women might be found. Like any civilized nation, gender equality has been accepted as a basic human right and a universal principle and no longer considered as a characteristic of any particular culture.

The status of a woman in any society is defined mainly by her access to resources and role in decision making. Unless a woman is engaged in gainful employment, her major source of economic independence is the property that she owns. In ancient Indian society, women were mostly confined to their households and so their security lay only in their right to property. Even in modern times, the property is a big source of financial support for a woman who is uneducated, unemployed or not so well employed and especially for the one who has responsibilities to fulfil besides her subsistence. Moreover, the right to property without gender discrimination is in itself a matter of equality of human beings. (Tapan, 2006)

When the nations of the world reaffirmed their faith in the Universal Declaration of Human Rights, 1948 in the dignity and worth of human person and the equal rights of men and women, they made a moral commitment to bring about a

social, economic and political justice, where each person would be treated fairly and provided with equal and good opportunity for development. Article-1 of the Universal Declaration of Human Rights, 1948 states, "All human being born free and equal in dignity and rights". The importance of the status of women was also reflected in the resolution of the United Nations General Assembly passed unanimously on 7<sup>th</sup> November 1967. It states that for the full development of nations; the world's general welfare and the cause of peace all require full equality of both sexes everywhere. The resolution in particular calls upon the nations that it is the duty of all nations to take necessary steps and measures to abolish any custom or law which tends to differentiate against the females<sup>51</sup>

Undoubtedly, Indian intellectuals also made laudable attempts to raise the status of women in accordance with these universally accepted principles. Their attempts were fructified through the enactment of certain legislations, like the Sati Prohibition Act, 1829 Hindu Widow's Remarriage Act, 1856 and Hindu Widow's Right to Property Act, 1937. However, a significant change was visible when the Parliament in 1955-56 passed a series of Acts better known as the Hindu Code, which significantly improved the status of Hindu women to a great extent. These laws try to make a direct attack on those patriarchal notions and opportunities which recognizes the superiority of manly power within the social and legal structure of society.<sup>52</sup>

### **Legislative Changes in the Law of Inheritance**

Laws mirror the face of society and its evolution with time. To act in response to the requisites of a dynamic social system, laws have to be altered and amended, at regular intervals.

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<sup>51</sup>Subhash Chandra Singh, Post-independence Gender culture in India - Sex discrimination and the legal regulation of the family, (2002), 1 SCJ p. 40.

<sup>52</sup>Ibid., p. 43.

*Hindu Law of Inheritance Amendment Act 2 of 1929:*

By the Act of 1929, three female heirs have been specified a distinct place in the scheme of Inheritance under the Mitakshara law. They are Son's daughter, daughter's daughter and sister and placed immediately after a father's father and before a father's brother. By this Act, the sister became an heir and she inherit with the *gotraja sapindas* in all the schools. Thus, this Act sought to improve the status of sister in all the schools except the Bombay school.

*The Hindu Women's Right to Property Act, 1937<sup>53</sup>:*

The said Act was deemed as the beginning of a new chapter in the history of Hindu women's right to property. However, it was also criticized for various reasons in different sections. Some called it a half-hearted attempt to tackle the issue concerning economic liberation of women while others opined it would lead to breaking up of Hindu Joint Family system. The Hindu Women's Right to Property Act, 1937 changed the law of succession significantly. But it was not retrospective and didn't apply to the property of any Hindu who died intestate before the commencement of the Act. It also did not apply to the widow of any coparcener who died before the Act came into effect.

The key features of the Act were:

1. Concerning separate property:
  - i. The widow along with sons was entitled to an equal share with that of the son.
  - ii. A pre-deceased son's widow inherited in like manner as the son, if no son was surviving of such pre-deceased son, and in like manner, as a

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<sup>53</sup>(XVIII of 1937)

son's son if there is surviving a son or son's son of such pre-deceased son.

iii. The same provision applied to the widow of a pre-deceased son of a pre-deceased son.

2. In the case of the Mitakshara joint family, the widow took the place of her husband. (Kant, 2003)

The object of this Act is to improve the legal position of a widow to make her co-heir with the son, grandson, or great-grandson, as the case may be. Earlier, she had no right of inheritance in the presence of a son, grandson or great-grandson. However, the Act allowed them only a limited estate in the inherited property. It affected the rights of widows in Mayukha and other schools where they inherited the property absolutely from their husbands. The Act also gave the Hindu widow the same interest as her husband possessed in the Mitakshara joint family with the right of claiming partition as a male owner. But she was not given absolute estate and was also not made a coparcener. (Satyanarayana, 2006)

Regrettably, the rules of devolution set out in the Act were so outlined that an effort to resolve one impediment had often instigated misconception and great difficulties in other areas.

In 1940, a federal court judge ruled that Hindu Women's Right to Property Act is not valid in the devolution of Agricultural land. This is because the agricultural property falls in the "jurisdiction of provincial legislation" while the Hindu Women's Right to Property Act of 1937 was central legislation, provincial reforms were also necessary to bring into its fold the crucially important property of agricultural land in a predominantly agrarian society like India. In the wake of the controversial ruling of

the federal court, the government was quick to appoint a four-member committee to look into limitations of the Hindu Women's Right to Property Act, 1937. (Ray, 1952)

So, many branches of Hindu law were affected by this Act such as joint family and partition, adoption, maintenance and disqualifications from the inheritance. It also illustrated how piecemeal legislation could gainsay and gave way to unexpected situations. It resulted in problems which do not give logically consistent answers. Many decisions pointed towards the difficulties in interpreting the enactment.

### **Hindu Code Bill**

The proposal to modify the Hindu legal code was the first-ever endeavour in sovereign India by the Constituent Assembly that addressed the issue of gender justice concerning property rights of Hindu Women. Dr B. R. Ambedkar observed that India was in much need of a social revival beyond the constitutional framework.

The interpretation of the Act, 1937, gave rise to several anomalies and uncertainties. In 1941 a committee was set up by the government under the chairmanship of Sir B. N. Rau to inquire into problems of legal reform. This committee drafted two bills, dealing with Hindu intestate succession and Hindu marriage. The two houses of the central legislature then recommended, through a joint committee, that the Rau Committee be revived and entrusted with the task of codifying all Hindu law. The committee was reestablished early in 1944, and during the following year, it made a tour of the country to elicit public opinion on the two proposed bills and codification of Hindu law as a whole. Evidence and opinions were gathered from representative organizations and prominent lawyers, and based on this investigation the Hindu Code Bill was drawn up. It was introduced on August 1, 1946, in the old central legislature, but not acted on. After independence, it was

reintroduced by the Government in the Constituent Assembly in 1947 but encountered unexpectedly strong opposition from conservative Hindu groups which succeeded in preventing its passage by delaying tactics.(Banningan, 1952)

In the Hindu Code, 1948 the position of Hindu women remained the same though it provided for the abolition of the Joint Family System. It was generally felt that the radical reform was required in the Mitakshara law of Coparcenary and that was one of the Coparceners died it was necessary that not only in case of his separate property but also in respect of his undivided interest in the coparcenary property there should be equitable distribution of that share between his sons and daughters. The Rau Committee considered the matter at length and suggested reforms in the Mitakshara Joint Family. The Committee impartially considered them. The Committee was pre-disposed to usher the changes as was clear from its observations. (Kant, 2003)

### **Women's Gain under the Proposed Hindu Code:**

The Hindu woman had been legally assumed to be the property of her husband till then and so guarded in practice. if the Hindu Code Bill becomes law, the following changes would be introduced:

1. Husband will be unable to take another wife while the first wife is alive. Hitherto polygamy has established in Hindu law, although in practice economic factors and "enlightened conscience" have severely constrained its exercise.
2. The wife will have the legal right to claim separate maintenance from her husband on grounds of infidelity, cruelty, or abandonment, or if he has converted to another religion, or if there is any other cause justifying her in living separately. Hitherto,

under the provisions of Hindu law, a wife was not entitled to demand maintenance from her husband if she does not live with him in his house.

3. The property given to the daughter by her parents as a dowry on her marriage will be considered as trust property. She will be entitled to claim it once she reaches the age of eighteen so that neither her husband nor his relatives will have any interest or opportunity to waste it.

4. Daughter is given a share, prescribed as half that of a son, in the property of her father if he dies intestate.

5. A Hindu woman's right to inherit property is declared to be absolute and not dependent on circumstances. Under the then-existing law, female heirs were discriminated based on their status. There was different treatment according to whether they are rich or poor, married or unmarried, at the time of the decedent's demise. The proposed bill would abolish all these considerations.

6. Under the existing Hindu law, when a woman inherits property from a female relative dying intestate, she gets only a "life estate" expressing that she can enjoy the income of the inheritance but cannot deal with the "corpus" of the property except in case of legal necessity. The bill proposed to convert this limited estate into an absolute estate as in the case of a male heir. (Banningan, 1952)

In 1948 the Hindu Code Bill comprising the Committee's recommendations were placed before parliament and caused a furore among the traditional sections. The major objections advanced by the opposition to the Hindu Code Bill were:

(1) It interfered with Hindu religious law.

(2) It broke with custom and tradition.

- (3) It would lead to endless litigation over inheritance rights.
- (4) It would break up the joint family.
- (5) Women do not need equality because in many respects in family relations they are considered superior by Hindu custom.
- (6) Monogamy would prevent a Hindu man from having a son (which according to orthodox Hindu belief is essential to salvation) if his wife were barren.
- (7) The setting up of specific grounds for divorce would lead to a condition of promiscuous marriages and divorces as in the United States.
- (8) The court action required for divorce by the Code Bill would be beyond the financial means of the tribal and low-caste peoples, whose present customary procedures involve only simple formalities and little expense.(Banningan, 1952)

For three years the House debated the Bill and despite strong opposition, there was also support for it, in the Parliament under the leadership of the then Prime Minister Jawahar Lal Nehru. However, in 1951, just before the elections he chose to abandon it as a total package and leaving out property rights preferred to deal with immediately less controversial areas like adoption, marriage, divorce etc. The Law Minister Baba Sahib Ambedkar resigned from the Cabinet on this issue. It was only in 1956 that in spite of opposition the Hindu Succession Act finally became law. (Balu, 2006) Various independent Act dealing with different aspects of Hindu Women e.g. the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Adoption

and Maintenance Act, 1956 and the Hindu Minority and Guardianship Act, 1956 were thus enacted in piecemeal legislation.

### **Constitutional Provisions for Gender Parity.**

The system witnessed a major overhaul in the post-independence era. The supreme law of the land, the Constitution of India, enshrined the principles of gender equality and provided that every person is entitled to equality before law and protection of the laws. It prohibited discrimination based on caste, creed and sex. Fundamental Rights (Part III), Fundamental Duties (IV) and Directive Principles (Part IV-A) of the Constitution not only grant equality to women but also empower the state to adopt measures of positive discrimination in favour of women.

In view of the rights of women, a reference to Article 14, 15 and 16 of the Constitution of India is a must and crucial. Article 14 guarantees equality before the law and equal protection of the law. Article 15 prohibits the discrimination on the ground of religion, race, caste, sex and place of birth. Article 16 as well as guarantees equality of opportunity and prohibits discrimination in matters of employment. Part IV of the Constitution encompasses the Directive Principles of the State Policy which are no less fundamental in the governance of the State. Among many things, it also provides that the State shall make an effort to ensure equality between man and woman.

As India became gradually aware of the need for equal rights for women, the government could not afford to neglect the impact of property rights on the national economy. The necessity to bestow gender justice raised deep political debate and at times animosity in legislative forums. Still, something was missing and that came with certain major enactments.

## **The Hindu Succession Act, 1956**

To appreciate the impact of the Hindu Succession (Amendment) Act, 2005 on the status of women regarding their rights in coparcenary property, it is required to comprehend the legal position existing immediately before the said Amendment.

The Hindu Succession Act, 1956 is welfare legislation under which, for the first time, absolute property rights were conferred on the women and an equal share of the inheritance was guaranteed to her. Hindu Succession Act, 1956 was enacted and came into force on 17<sup>th</sup> June 1956 to lay down uniform and comprehensive system of inheritance. It applies to all the Hindus including Buddhists, Jains and Sikhs. The Act reformed Hindu personal law and gave woman greater property rights allowing her ownership rights instead of limited rights in the property.<sup>54</sup>

It was the intention of the framers of the original project that all property (saving-at that stage-that of matrilineal joint families in Malabar) should be subject to the same law of succession. The driving force was not so much to "tidy up" the disordered and inconsistent mass that were the rules of the Anglo-Hindu law, though this academic aim was present, as to place women upon an approximately equal footing in respect of property rights with men.(Derrett M., 1959)

An effort is made to inspect the provisions of Hindu Succession Act 1956 (hereinafter to be referred as principal Act), dealing with women's coparcenary rights and to assess the effect of changes made in the principal Act by the amendment of

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<sup>54</sup> Workshop paper on Sec.6 Hindu Succession Act, Sec.9-A and Order XIV Rule 2 of the Code of Civil Procedure and Obstructionist Proceedings in Execution held on 22nd Nov.2014 at District Court Buldhana.  
[http://mja.gov.in/Site/Upload/GR/Title%20NO.35\(As%20Per%20Workshop%20List%20title%20no35%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.35(As%20Per%20Workshop%20List%20title%20no35%20pdf).pdf)

Hindu Succession (Amendment) Act, 2005 (hereinafter to be referred as Amendment Act).

## **Section 4**

Section 4 gives overriding effect to the Act by abrogating any other law in force concerning any matter which is covered under this Act. It implies that the Shastric Hindu Law, customs and usages as well as the statutory laws inconsistent with any of the provision contained in the Hindu Succession Act, 1956 will be ceased to that extent.

Thus, the customary law is abrogated only in those cases where the matter is covered by the provisions of this Act. Under Section 4(1) (a), so far as custom or usage is concerned, it is only that custom or usage which forms the part of Hindu law in force before the Act shall be ceased. Any other custom or usage which excluded the Hindu law or which does not form part of Hindu law is not affected by the provisions of the Act. For examples, certain aboriginal tribes have their customs. Some of the tribes have become hinduised in course of time and have been held to be governed by Hindu law, but others were still not governed by the Hindu law and governed by their custom, which is not part of the Hindu law. Regarding such type of categories, the provisions of this Act will not apply<sup>55</sup>.

## **Section 6:**

It is an important provision, which deals with the property matters of women. This section gives deathblow to Mitakshara coparcenary, one of the basic factor responsible for gender discrimination. Section 6 declared that when a Hindu die and at

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<sup>55</sup>Mayne's, Hindu Law and Usages, Revised by Justice Alladi Kuppaswami, Bharat Law House (1991), p. 1060.

the time of his death having an interest in a Mitakshara coparcenary then his interest shall devolve by survivorship, according to the Hindu law and not under the provision of this act.

It would seem that Mitakshara Coparcenary has been left untouched, but a look at the proviso broke such belief. The proviso to section 6 was attracted where a Mitakshara coparcener has died and left him surviving a female relative specified in clause (1) of the schedule or a male relative specified in that clause who claims through such female relatives. Then proviso incorporates that the interest of the deceased Hindu in Mitakshara Coparcenary shall devolve not by survivorship but by testamentary or intestate succession as the case may be under the Hindu Succession Act. The Schedule attached to the Principal Act contained a list of 12 heirs belonging to class 1 category. Of these 8 heirs were female, one was a male claiming through a female relative i.e. daughter's son and the remaining 3 heirs were males. Therefore, as the chances of a person dying without leaving behind a daughter or a widow are remote, succession in most cases would be ruled by the proviso and not by the law of survivorship.

Section 6 interpreted with the proviso in effect gives a deathblow to the whole concept of joint family property under the Mitakshara School. Apart from joint possession, the main attributes of the system are the right to acquire an interest by birth in the property and the right of the coparcener to take the undivided interest of a deceased coparcener by the survivorship mode of devolution and not by the succession. The proviso to section 6 destroys, though to a limited extent, the right of the surviving coparceners to take the undivided interest of a deceased coparcener (in the Mitakshara School) and prescribes succession as the mode of devolution. The proviso to section 6 affects only the law of the Mitakshara School, for, under the

Dayabhaga school, the undivided interest in the joint family property as well as the separate property of deceased Hindu always recognized devolution by succession.

Due to its consequence on Mitakshara coparcenary, Section 6 was always deemed as a stumbling piece of legislation which causes certain anomalies. Firstly, it prescribes the mode of devolution by succession in certain circumstances and secondly, as a consequence, the sons and other persons who succeed to the property would be the effect of section 19 take it between them as tenants-in-common. Thus, Section 6 has the effect of not only terminating the joint family character qua the undivided interest of the deceased coparcener but also the status of the members of the joint family. The sons who succeed to the undivided interest of coparcener would, however, still hold that interest qua their sons, grandsons and great-grandsons as ancestral property. They would continue to hold the share on devolution by succession as ancestral property qua the issue who were in existence at the date of the succession or who may thereafter be born, for there is nothing in section 6 which stops the operation of the role of the Hindu law as to the acquisition of interest by birth. Another incongruity is that a daughter or a widow would take her share absolutely in the undivided interest of her father or husband, as the case may be, while the son would have to hold it qua his male issue as ancestral property.

Section 6 does not inhibit a son, grandson or great-grandson from acquiring an interest in the joint family property so the joint family property as it is presently understood would continue to exist. Taking into consideration large number of female heirs in class 1, there must be a fragmentation so that in place of male issue and unmarried daughters (entitled to maintenance and marriage expenses only) the widow, mother and grandmother (taking a share on partition), a large number of females such as the daughter of predeceased son and others would obtain a share in what was joint

family property till the death of the intestate. Hence the right to demand partition becomes available to a large number of persons and the continuance of the joint family, if that was the real intention behind the legislature, is threatened at the whim and caprice of every such person. If the object of the legislature was to continue the concept of joint family property, that is defeated by the proviso.

The effect of the proviso to Section 6 was to bring compulsory, through notional partition of the joint family property on the death of a coparcener leaving female relatives and male relatives claiming through female mentioned in Class 1, in respect of his share in such property, but only to the extent it was necessary to determine the interest or the share of deceased coparcener and not to affect either the status of jointness of the shares of the others. The right to take the shares of others by survivorship is however effectively destroyed. It would have been better if this result had been obtained by the Legislature directly avoiding the complications and the outbreak of litigation, especially within the joint families particularly where big estates are involved.

One of the two courses should have adhered that is either the mode of devolution by the survivorship should have been destroyed altogether or that it should have applied to the devolution of an undivided interest in all the cases. If this course were to be taken, the proviso to section 6 would have had to be omitted altogether. On the other hand, if the rule of succession embodied in the proviso was to be applied, it should have been applied in all conditions, and all the rules of succession mentioned in section 8 to section 15 should have been made applicable to the same extent. Thus section 6 was a dispassionate attempt to preserve the old rule of survivorship.

The proviso also affects an important change in the old law regarding the liability of a coparcener's share in the joint family property for his debts. Under the old law, a coparcener ceased to have any interest in the joint family property after his death as his undivided share passed by survivorship and therefore the debt incurred by him could be enforced against the property during his lifetime only and his share could not be attached after his death. It is however submitted that because of the proviso and the first explanation, it would now be possible for a creditor of a coparcener to attach his determination of interest of deceased coparcener: Notional Partition: undivided share in coparcenary property even after the death of the coparcener where he has died leaving any of the female heirs or heirs claiming through females mentioned in Class 1<sup>56</sup>.

### **Section 23**

It is a special provision respecting dwelling houses where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein :provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.<sup>57</sup>

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<sup>56</sup> S.V. Gupte, Hindu Law of Succession, N.M. Tripathi Pvt. Ltd., Bombay (1972), p. 473.

<sup>57</sup> Hindu Succession Act, 1956

## **Section 24**

According to this section, certain widows remarrying may not inherit as widows. Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a predeceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as to such widow if, on the date the succession opens, she has re-married.<sup>58</sup>

The Sections discussed above were criticized as they are not free from gender bias. Later these were reformed by the amendment Act of 2005. But apart from the criticism, the Act reformed the personal law of Hindus. Some positive reforms concerning women's right to succession and inherit are as follows.

## **Section 14**

Section 14 of the Hindu Succession Act, 1956 commences a new era for Hindu women's property rights. It ends the concept of limited ownership to females and initiates absolute ownership of property rights to females. Upon analyzing the status of the women's property right before section 14 of Hindu Succession Act came into effect, a clear picture emerges that although property rights were conferred to women regardless of their marital status, these rights were not absolute. Restrictions have been imposed on their power of disposal and only limited ownership rights are given to those females.

Even in the case of Stridhana, women have limited power to dispose of it. Stridhana comprised property received by ways of gifts and presents offered to a woman by her parents, husband, close relations of parents or husband, either at the

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<sup>58</sup> Ibid

time of marriage or on other occasions, or at the time of the performance of ceremonies, of '*sulka*' or bride price, of property acquired by her exertions and ability or by adverse possession of bequests from strangers or relations, of money or property given to her in lieu of maintenance or its arrears, and of savings or purchases made with Stridhana.

Non-Stridhana included properties which she inherited from a male or a female relation. There was a bifurcation within this category of Stridhana into '*Saudayika*' and '*non-Saudayika*', concerning the power of a woman to alienate it. *Saudayika* refers to the gifts, presents or property received by way of bequests from parents and other relations which conferred on her an absolute power of alienation irrespective of her marital status. While *non-Saudayika* included property received from non-relations where her power of alienation was curtailed during coverture, as the husband's consent was obligatory before she could part with it by way of a transfer.

Non-Stridhana property was the one that was inherited by her from a male or a female relation or property received at the time of partition. She was a limited owner of this property. The limitation was to the power over its disposal and the inability to pass on this estate to her heirs. She had full powers to enjoy it and appropriate the income coming out of it. It was the power to dispose of the property that was disallowed to her. Except in the case of need, or for the performance of essential religious and charitable purposes, including for according spiritual benefits to her husband, she could not transfer it. During her lifetime, no person had any vested right of succession in it, as her restricted powers of alienation were not for the benefit of the heirs of her husband, but where the essential feature of the estate that she took.

The heirs of the husband had no powers to dispose of it till she was alive<sup>59</sup>. Regarding succession to Stridhana women constitute an independent stock of descent.

The object of section 14 is two-fold, firstly to remove the disability of a female to acquire and hold property as an absolute owner. The second objective is to convert any estate already kept by a woman on the date of commencement of the Act as a limited owner, into an absolute estate. In the case of her death intestate, she becomes a fresh stock of decent implying that the property devolves by the succession on her heirs.

Section 14 is not in the contradiction of Article 14 of the Constitution. Section 14 was questioned as being discriminatory and hence violative of Article 14 of the Constitution on the ground that while the restrictions on the power of a male to alienate coparcenary property were maintained, similar restrictions on the powers of a Hindu female were removed. The Court negated the contention and held that women form a distinct category for which Article 15(3)<sup>60</sup> of the constitution especially permits legislation.

Section 14(1) provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. It is clarified in explanation to section 14 which provides that the term 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her skill or

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<sup>59</sup> Sexana, Poonam Pardhan, Family Law Lectures, Family Law II, (2007), pp. 400-401.

<sup>60</sup> Article 15 (3) of the Constitution of India states, "Nothing in this article shall prevent the State from making any special provision for women and children."

exertion, or by purchase or by prescription, or in any other manner whatsoever. Also includes any such property held by her as Stridhana immediately before the commencement of this Act.

Under the Hindu Widow's Right to Property Act, 1937, a Hindu woman inherited a limited interest in the property of her deceased husband and received his share in the coparcenary property that he held as an undivided member of a Mitakshara coparcenary. Likewise, a woman might have inherited a limited estate from her husband or father-in-law, under any other Act. Such limited interest would be changed into absolute interests by the virtue of this Act.

Section 14(2) is an exception to sub-section (1). Sub-section (2) would not come in the way of operation of sub-section (1). Sub-section (1) speaks about the property owned by a female Hindu in whatever manner the property was acquired by the date of the Act. This acquisition is further defined in the explanation by referring to various methods of acquisition. On a reading of sub-section (1) with Explanation, it is clear that limited estate possessed by female Hindu would become, on and from the date of commencement of the Act, her absolute owner thereof. Nevertheless, if she acquires property after the Act with a restricted estate, sub-section (2) applies. Such acquisition might be under the terms of a gift, will or other instrument or a decree or order or award.

## **Section 15 and 16**

General rules of succession in the case of female Hindus are discussed in Section 15.

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

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children 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 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.

## **Section 16**

This Section declares that order of succession and manner of distribution among heirs of a female Hindu The order of succession among the heirs referred to in section 15 shall be and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely: -

Rule 1- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

Thus, these aforementioned provisions of the Hindu Succession Act, 1956 deal and have an effect on the women's coparcenary rights in India.

### **Reforms in Succession Law Through State Amendments**

Retention of Mitakshara Coparcenary was seen against the principle of equality enshrined in the Constitution as it discriminated based on sex by not recognizing the daughter a coparcener in Joint Hindu Family. By acknowledging the discrepancies, Kerala took cognizance and enacted 'The Kerala Joint Hindu Family (Abolition) Act, 1975'<sup>61</sup> which completely abolished the male's right by birth to property and ended the Joint Hindu Family system. Thus no one has any interest by birth in the ancestral property. Further, to rectify the effect of the Act, 1956, the State of Andhra Pradesh<sup>62</sup> in 1986, the State of Tamil Nadu<sup>63</sup> in 1989 and States of

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<sup>61</sup> Act 30 of 1976, it received the assent of President on 10<sup>th</sup> August 1976.

<sup>62</sup> The Hindu Succession (Andhra Pradesh Amendment) Act, 1986 (13 of 1986), received the assent of President on 16<sup>th</sup> May 1986, published in the Andhra Pradesh Gazette on 22<sup>nd</sup> May 1986.

<sup>63</sup> The Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) received the assent of the President on 15<sup>th</sup> January 1990.

Maharashtra<sup>64</sup> and Karnataka<sup>65</sup> in 1994 added Chapter II-A to the Hindu Succession Act, 1956. By adding Sections 29A, 29B and 29C, daughter is recognized as coparcener by birth in Joint Hindu Family governed by Mitakshara law. Now she has the right in the same manner as the son has in coparcenary property which she would have had if she had been a son, inclusive of the right to claim survivorship subject to same liabilities and disabilities in respect thereto as that of a son.

The language of these amendments is identical. The amendments of Tamil Nadu, Andhra Pradesh and Karnataka are prospective. The Maharashtra Amendment added to the Principal Act (the Hindu Succession Act) a new Chapter II A entitled "Succession by Survivorship". Despite its incorporation in a law relating to succession (the Hindu Succession Act), any reference to "succession" in the title of the Chapter, the Amendment confers rights upon daughters inter Vivo and deals with matters of property irrespective of death of any person or succession.<sup>66</sup>

Under Section 29A added by the Amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in a joint Hindu family governed by Mitakshara law, and shall have the same rights and be subject to the same liabilities as if she would have been a son. In the event of a partition, she shall be allotted the same share as that of the son, and if she is dead at the time of partition, her children will be allotted her share. She shall hold such property with incidents of coparcenary ownership and shall be entitled to dispose of it by will.<sup>67</sup>

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<sup>64</sup> The Hindu Succession (Maharashtra Amendment) Act, 1994 (40 of 1994) came into force from 22<sup>nd</sup> June 1994.

<sup>65</sup> The Hindu Succession (Karnataka Amendment) Act, 1994 (23 of 1994) came into force from 30<sup>th</sup> July 1994.

<sup>66</sup> Workshop paper on "Rights of Women in Hindu Joint and Coparcenary property after the 2005 Amendment" held on 28th February 2015 at District Court Pune.

[http://mja.gov.in/Site/Upload/GR/Title%20NO.78\(As%20Per%20Workshop%20List%20title%20no78%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.78(As%20Per%20Workshop%20List%20title%20no78%20pdf).pdf)

<sup>67</sup> Ibid

Under Section 29B, if such daughter having a share in Mitakshara coparcenary dies leaving behind a child or a child of a predeceased child, the share in coparcenary property held by her at the time of her death shall pass by testamentary succession if she has made a will disposing of it, else by intestate succession. If she does not have these relatives, the share shall pass by survivorship to other coparceners.<sup>68</sup>

The policy of these State Legislatures to confer upon daughters the hitherto denied right in coparcenary property has been lauded widely, yet the amendments have been criticized for ambiguous language and interpretational difficulties. Doubts have also been expressed regarding their constitutionality, particularly in the exclusion of daughters married before such amendment came into force. So, this exclusion of married daughters again became a big hurdle for the female Hindu and still, the irrights were not fully recognized.<sup>69</sup>

### **Law Commission of India**

The Hindu Succession Act, 1956 did not provide any independent right to the daughter in respect of partition and to demand the partition. The daughter would only be able to get a share in father's share and the same would arise only on the death of her ancestor. This led to gender discrimination and daughters were left out from enjoying the coparcenary property being violative of Article 14 and 15 of the Constitution of India. Realizing the dichotomy and gender discrimination, Law Commission of India undertook the study of provisions of Hindu Law with regards to the Laws of inheritance and with regards to the rights of daughters. Apprehension was also raised that a whole generation of woman contemporary to the passage of this important enactment will lose out all their property rights.<sup>70</sup>

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<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> Ibid

The Law Commission of India tendered its 174th report to the Government of India on 5th May 2000 titled “Property Rights of Women: Proposed Reforms under the Hindu Law.”<sup>71</sup> It started with,

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

## **The Hindu Succession (Amendment) Act, 2005**

The Hindu Succession (Amendment) Act, 2005 is a landmark. After 50 years, the parliament finally removed gender inequalities in the 1956 Hindu Succession Act (1956 HSA), which itself was path breaking. The 2005 Act covers inequalities on several fronts: agricultural land; Mitakshara joint family property; parental dwelling house; and certain widow's.<sup>72</sup>

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<sup>71</sup><http://www.lawcommissionofindia.nic.in/kerala.htm>

<sup>72</sup> Workshop paper on Hindu Succession Act amended in 2005 held on 8th November 2014 at District Court Gadchiroli. [http://mja.gov.in/Site/Upload/GR/Title%20NO.27\(As%20Per%20Workshop%20List%20title%20no27%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.27(As%20Per%20Workshop%20List%20title%20no27%20pdf).pdf)

The Parliament felt that non-inclusion of daughters in the Mitakshara Coparcenary property was causing discrimination to them and, accordingly, decided to bring in necessary changes in the law. The statement of objects and reasons of the 2005 Amendment Act, inter alia, reads as under:

".....The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property."<sup>73</sup>

The Hindu Succession (Amendment) Act, 2005 seeks to make two major amendments in the Hindu Succession Act, 1956. First, it is proposed to remove gender discrimination in section 6 of the original Act. Second, it proposes to omit section 23 of the original Act, which disentitles a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein.<sup>74</sup>

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<sup>73</sup> Workshop paper on "Succession to women with reference to the 2005 Amendment to Hindu Succession Act." held on 28th February 2015 at District Court Akola. [http://mja.gov.in/Site/Upload/GR/Title%20NO.85\(As%20Per%20Workshop%20List%20title%20no85%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.85(As%20Per%20Workshop%20List%20title%20no85%20pdf).pdf)

<sup>74</sup> Ibid

## **Effect of the Amendment Act, 2005**

Some of the provisions were amended, some substituted and few were completely omitted to end the gender bias in the Hindu Succession Act, 1956. The sections impacted by Hindu Succession (Amendment) Act, 2005 are as follows:

### **Section 4**

The Amendment Act, 2005 deleted the Section 4 (2). The deletion of section 4(2) implies that after the amendment, the Hindu Succession Act applies to all kinds of property agricultural lands. Moreover, it would mean that now an inconsistency would exist state-wise regarding laws governing the agricultural property. Residents of a particular state, to whom Hindu Succession Act does not apply, such as non-Hindus would still be ruled by the state laws while the property of those subject to Hindu Succession Act would devolve in a dissimilar manner. Therefore, an exception would be created in favour of Hindus diversifying the application of laws governing the agricultural property.

The second point of confusion due to deletion of section 4(2) and absence of a provision extending the application of Hindu Succession Act over the agricultural land, even if a parallel law enacted by a state exists, is with respect to the conflict that may arise over central or state legislation that are diverse in content. Inheritance and succession are subjects specified in list III, entry (v), while the land is a state subject. Whether the Centre is competent to legislate on agricultural land is a matter of dispute. Normally, if there is a subject on which both the Centre as well as the state can legislate, in case of conflict, the Centre legislation prevails. But as provided under

Art 256 of the Constitution, the Centre should be competent to legislate on it. This confusion is bound to crop up paving way for immense litigation in this area<sup>75</sup>.

## **Section 6**

The major loophole in Section 6 of Hindu Succession Act, 1956 was that to know the share of the deceased coparcener one has to resort to old rules of partition and the result was unequal distribution among the brothers and sisters. The son being coparcener was entitled to have a greater share, one as the coparcener with the father and the other as a class 1 heir while the daughter was again given only one share in the separated share of the deceased father. Therefore, the projected image of section 6 suggests that the daughters have given the right in Mitakshara coparcenary but in reality, the ancestral property continued to be governed by a wholly patriarchal regime and thus accountable for gender discrimination. To terminate this discrimination section 6 is altogether amended by the amendment Act, 2005.

The most important change announced by the Amendment Act,2005 is the substitution of Section 6. Section 6(1) makes the daughter of a coparcener as a coparcener by birth in her own right in the same manner as a son and have the same rights and liabilities as of that of a son. Further, any reference to Hindu Mitakshara coparcener shall be deemed to include a reference to the daughter of a coparcener.

Under this provision, the rights and liabilities of a daughter are the same as that of a son ending the discrimination against the daughter. Consequently, a daughter now has the right to acquire an interest in the coparcenary property, demand a partition of the same, and dispose of it through a testamentary disposition. Moreover,

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<sup>75</sup> Saxena, Poonam Pradhan, Family Law Lectures, Family Law II, Lexis Nexis, Butterworths (2007), p. 340.

daughters would also be competent to start a joint family herself and can even be a 'Karta' through her acquired earning into the joint family fund. The traditional approach that female cannot form or start a joint family on their own but can continue it on the death of a male member in the family, provided they can add a male member to it by the birth or through adoption, stands revoked now. That is to say, all the prerogatives and uniqueness of a son's position in the family is accessible to a daughter as well.

To understand it better through illustration an example might be taken. Suppose P has two children, a son S and a daughter D. Now after the Amendment Act, 2005, coparcenary unit of the family consists of P, S and D. Suppose if a son SS is born to S, he will be a coparcener. Further, if great-grandson SSS is born to P, he will also become a coparcener. Likewise, daughter of S is also a coparcener. Consequently, along with daughter D her children's whether son DS or daughter DD will also become a coparcener.

simultaneously, this interpretation would make them members of two coparcenaries, one belonging to their father and one belonging to their mother. Thus, the fear is that this new law would give rise to numerous litigations if this liberal interpretation shall be given to the word 'Daughter of coparcener shall be a Coparcener' so to avoid this litigation there is need to enact correct and proper law<sup>76</sup>. But the amusing feature of the amending Act is that it seeks to demolish the concept of coparcenary, and the same is retained. Its demolition may be perceived in two principles ways, by opening the male bastion alike to females and by abandoning the principle of survivorship.

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<sup>76</sup> Kaur, Bhajan, The Hindu Succession (Amendment) Act, 2005: An Appraisal, Punjab University Law Review, Vol. 47, (2005-06), p. 67.

A coparcenary, in its classical exposition, represents 'a community of interest and unity of possession'. In it, the interest of one is the interest of all, and the possession of one is the possession of all. The proximity of a Hindu joint family is organized and maintained on the patriarchal principle in which the daughters on their marriage cease to be a member of their parents' family. By making the daughter by birth a coparcener for all intents and purposes, are we envisaging the creation of a new joint family unit in which the husbands of their daughter (along with other kindred) will also be an integral part? Alternatively, the daughter is deemed to be a coparcener only for equal apportionment of patrimony? The latter view is intended, and for achieving this objective, we need not continue to cling to the concept of coparcenary, it is likely to create confusion<sup>77</sup>.

Section 6(2) states that a female would hold the property with incidents of coparcenary ownership. The legislature has not explained nor provided anywhere as to what these incidents of coparcenary ownership are, so the natural course of action would be to seek their explanation under the classical law under which there are two basic incidents of coparcenary ownership. Firstly, each coparcener holds the property with the incidents of the unity of possession and communities of interest, that is, all coparceners jointly have the title to the property and joint possession of the property. No one can predict what his share is, until the time of the partition. Secondly, all coparceners hold the property with incidents of the doctrine of survivorship. In the sense that, on the death of a coparcener, his interest in the coparcenary property is taken by the surviving coparceners and not by his heirs. Does this mean that the doctrine of survivorship would apply just in case of female coparceners and not male coparceners because the legislature expressly provides, that the women coparceners

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<sup>77</sup> Kumar, Virendra, The Hindu Succession Act: Ending gender bias, The Sunday Tribune (April 9, 2006), p. 12.

would hold the property with incidents of coparcenary, survivorship being one amongst such basic incident, or does it mean that if the legislature has abolished the appliance of doctrine of survivorship for male coparceners, and female coparceners would hold the property and that they share exactly within the same manner like the males, it stands abolished for them too? By abolishing of the doctrine of survivorship concerning male coparceners, the legislature has created perplexity. A fundamental rule in legal matters relating to inheritance and succession is that the term 'his' does not comprise 'her'. This must have been the reason behind the amendment of section 30 of the Act to add 'her' after 'him'. The use of the term 'his' interest and not 'his or her' interest as has been used in section 30, indicates that it is only in case of an undivided male Hindu dying that doctrine of survivorship is not applicable and if a female coparcener dies, the doctrine of survivorship may apply.

Besides, explanation to Section 6(3) states, 'For this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not'.<sup>78</sup> Even presuming that any statement concerning a Mitakshara coparcener includes a reference to a daughter of a coparcener, the use of the term 'his', 'him' throughout leads to a misunderstanding that the doctrine of survivorship has been abolished for male coparceners but has been retained for females.

Moreover, a distinction has been created by Section 6(2) between female members of the joint family in relation to their rights over the joint family property. The two classes of females are, firstly, who is born in a family and secondly, those

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<sup>78</sup> Hindu Succession Act, 1956  
<http://egazette.nic.in/WriteReadData/1956/E-2173-1956-0038-99150.pdf>

who become members of this joint family by marriage to the coparceners. Females, who are born in the family i.e., daughters, sisters have a right by birth in the coparcenary property. those women who become members of the joint family by marriage to the coparcener are subject to the same law as it stood before the amendment. The rights over the joint family property of the second set of female members continue to be the same, like maintenance out of its funds, a right of residence in the family house, etc.<sup>79</sup>

Under Section 6(3) of the Amendment Act, 2005, the doctrine of survivorship was abolished. The doctrine of survivorship was one of the significant incidents of the coparcenary. This doctrine mandates that if Mitakshara coparcener dies leaving behind his undivided interest in the Mitakshara coparcenary property, it will devolve on other surviving coparceners. That was the reason that Mitakshara coparcenary interest of coparceners kept fluctuating. It surges with the death of other coparceners and declines with the birth of coparceners in the family.

Section 6 (4) abolishes pious obligation of the son to pay the debts of the father. One of the features of classical Hindu law was the liability to pay their father's debts upon a son, grandson or great-grandson. This has been abrogated by the present amendment. The concept to pay the father's debts was so stressed upon that if the son had to pay his and his father's debts, it was mandated that he should pay his father's debts first to end the possibility of him leading a life of bondage in the next birth. The doctrine has its origin in the conception of Smriti writers who considered nonpayment of debt as a positive sin. This aspect of the doctrine is religious in nature and is not for the benefit of creditors or of the protection of third parties. It is based on a pious

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<sup>79</sup> Poonam Pradhan Saxena, Family Law Lectures, Family Law II, Lexis Nexis, Butterworths (2007), pp. 345-46.

obligation of the sons to ensure that their father's debt must be paid. But the doctrine has another aspect also which is based on the logical corollary to the doctrine of the son's birthright in the ancestral property. As rights and duties are always correlated with each other, so under the Mitakshara Law if the sons are given birthright in the property, it is their duty also to repay the debt of their father. The Amendment Act, 2005 does not abolish the son's birthright in the property but it also recognizes the daughter's right in the ancestral property. Therefore, logically both the children i.e. son and the daughter should be brought under this obligation because of justice demand that rights and duties should go hand in hand<sup>80</sup>.

Concurrently, as a logical rule, the debts contracted before the enforcement of the Amendment Act, 2005, are subject to the directives of classical Hindu law. It is the date of contracting of debts that would be conclusive to determine as to which law would apply, the law prior to the amendment or subsequent to it. So, at present, the repayments of debts contracted by any Hindu would be his liability.

Section 6(5) states that the amending Act is prospective in its applications and therefore its provisions would not apply to any partition that was put on before 20th December 2004. Further explanation to section 6(5) declares that after the amendment only the written partition, duly registered under the Registration Act, 1908, or the partitions which are affected by a decree of Court, are recognized. Earlier the partitions can be oral also.

## **Section 8**

By the Amendment Act of 2005 to end the inequality between sons and daughters, the 4 new heirs in Class 1 of the schedule have been added. Currently, the

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<sup>80</sup> Gandhi, B. M., Hindu Law, Eastern Book Company, Lucknow, (2008), p. 129.

total number of class I heirs is 16, out of which 11 are female heirs and 5 are male heirs.

These 4 new heirs are:

- (i) Son of a predeceased daughter of a predeceased daughter (DDS);
- (ii) Daughter of a predeceased daughter of a predeceased daughter (DDD);
- (iii) Daughter of a predeceased daughter of a predeceased son (SDD);
- (iv) Daughter of a predeceased son of a predeceased daughter (DSD).

But even after consideration, the legislature missed two heirs, namely the son of a predeceased son of a predeceased daughter and the son of a predeceased daughter of a predeceased son, to the disadvantage of the daughter. There seemed to be no rationale for this omission. The Law Commission of India has now taken note of this omission in its 204th Report presented to the Union Minister of Law and Justice by the Chairmen of the Commission on February 5, 2008, and recommended the incorporation of the said two heirs in Class 1 by removing them along with four others from Class II of the Schedule. The Commission calls this omission as a part of “legislative inadvertences” which need rectification<sup>81</sup>.

The Amendment Act of 2005 has not brought any change in this class II category heirs and father is still class II category heir. But now the Law Commission of India has recommended in its 204th Report regarding the relocation of the position of ‘Father’ of the deceased. In this respect, the Commission has rightly suggested that the ‘Father’ as heir should be shifted from Class II (Entry I) to the category of ‘preferential heirs’ included in Class I of the schedule. The reason given by the Commission is mainly two-fold;

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<sup>81</sup>Virendra Kumar, Gender Matters; Tackle persisting bias in Hindu succession law, The Tribune (9 April 2008).

Primarily, 'Father' is certainly a closer relative than anyone else placed in Class II, and there seems to be no purpose to prefer him over the third-generation heirs remotely connected with the deceased in the matter of succession. Secondly, if it is the utmost legal obligation of the children to maintain their parents, say, under the recently enacted "Senior Citizens (Maintenance, Protection and Welfare) Act, 2007," it would be logical to include 'father' along with 'mother' who is already placed in Class I i.e. the class of preferential heirs.

The Commission has further proposed for the revision of the distribution of property among heirs in Class I of the Schedule. This requires the revision of the many rules as laid down in Section 10 of Act of 1956. Also, the commission has recommended the incorporation of a rule whereby if both the mother and the father survive the intestate death, they shall take one share between them together.

Such a proposal, however, is regressive in character. It shrinks the share of the mother to one-half in the presence of the father. Do we wish to demean her dignity or lower her status as a mother while raising the status of the father as an heir? This is not done even in the case of a partition between the father and the sons. If in the Hindu joint family governed by the Mitakshara law partition takes place between the father and his sons, the mother takes an equal share along with sons. Therefore, the mother should continue to take one share despite the elevation of a father from Class II to Class I, who should of course also be given one share quite independently of the mother<sup>82</sup>.

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<sup>82</sup> Ibid.

The Law Commission in its present Report has recommended amending the Hindu Succession Act, 1956 as amended by the Act of 2005. These relate to 'Father's widow' and the up-gradation of step-mother.

Among the class of Agnatic and Cognatic heirs, the Amending Act of 2005 has not brought any change in the preference of agnates and therefore this discrimination continues. The Hindus were governed by personal laws codified in the Smritis and Commentaries since ancient times. The status of Hindu women was subpar with their men counterparts as deducible from their right to property. They could hold property but in practice, in comparison to men's holding, their right to dispose of the property was qualified. Despite some legislative attempts in this direction, before 1937, no such law was codified to bring the Hindu women at par regarding proprietary rights.

The Hindu Women's Right to Property Act, 1937 was enacted to bring about changes in the pathetic condition of women and provide better rights. The discontent expressed by a considerable section of the society against the disappointing state of affairs concerning the women's right to property was the reason behind the enactment of the said Act. Nevertheless, the Act came short of the objective and failed to give an absolute right to women. Under the 1937 Act, a widow was only entitled to the limited interest over the property of her deceased husband. Such property was termed as 'Hindu widow's estate' and it reverted to the heir of her husband after the demise of the widow. In 1938, the Act was further amended to exclude the widow from any interest in agriculture land.

Near the end of the colonial era, the discussions to codify Hindu Law intensified. The Hindu Code was prepared and presented too but could not pass owing

to immense protest against it. Later Hindu Code was enacted in piecemeal legislation. The inheritance and succession were dealt with in the Hindu Succession Act, 1956. Although the Act was revolutionary and gave better rights to women, it was not completely free from the inherent gender bias. Mitakshara School's concept of coparcenary was retained in the Act and daughters were denied the status of coparceners as against the sons. It was contemplated to give them share in the property out of the father's share. It was declared that the coparcenary property of a deceased Hindu male of a Joint Hindu Family would devolve by survivorship and not by succession. Here, the coparceners are grandfather, father, son and son's, son. On the other hand, if a deceased had left him surviving a female relative, the interest of the deceased in the coparcenary shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. Female relative here refers to the daughter, widow, mother, daughter of a pre-deceased son, widow 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.

The exclusion of female heirs from the coparcenary was against the spirit of the Constitution of India. Not only the Constitution provides for equality before the law, but it also prohibits discrimination based on caste, creed, religion and sex. The principle of gender equality is enshrined in it. The Preamble, Fundamental Rights (Part-III), Fundamental Duties (Part-IV) and Directive Principle of the State Policy (Part-IVA) not only strive to ensure the equal treatment of women but also empower the States to adopt measures of positive discrimination supporting women. The demand of giving daughters equal property rights as that of the sons gradually gained momentum. Correspondingly, the lawmakers felt the need to answer the social clamour by incorporating appropriate provisions.

By acknowledging the incongruities, Kerala took cognizance and enacted 'The Kerala Joint Hindu Family (Abolition) Act, 1975' which abolished the male's right by birth to property and ended the Joint Hindu Family system. Consequently no one has any interest by birth in the ancestral property. States of Maharashtra, Karnataka, Andhra Pradesh and TamilNadu amended the Hindu Succession Act, 1956. It acknowledged the daughters as the coparceners and treated them at par with sons. Law Commission of India also in its 174<sup>th</sup> report titled 'PropertyRights of Women: Proposed Reforms under the Hindu Law' recommended to amend the Hindu Succession Act, 1956 to remove the gender bias out of the provisions. All these efforts finally fructified in the form of Hindu Succession (Amendment) Act, 2005 which came into force on 9<sup>th</sup> September 2005. The Amendment Act declared that a daughter shall become a coparcener in her own right and have equal rights in coparcenary property in the same manner as the son. The daughter shall also be subjected to the same liabilities in the respect of such coparcenary property as that of a son, and any reference to a Hindu coparcener shall be deemed to include a reference to a daughter of a coparcener.

Section 6 has eliminated all the discriminations based on schools, marital status and nature of Stridhana after the amendment. The Hindu Succession Act brought a revolutionary change concerning succession laws for women. Now, a Hindu woman could possess the property and become an absolute owner of it. She could inherit equally just as a male counterpart. A widow was given importance regarding the succession of her husband's property as also to her father's property. The daughter of a coparcener in a Joint Hindu Family, governed under the Mitakshara law, shall become a coparcener in her own right in the same manner as a son. She shall have the same rights and liabilities in respect of the said property as that of a son.

However, it would not be out of place to state that even after 15 years of the amendment women are still not conscious about the rights conferred on them by the Hindu Succession (Amendment) Act, 2005. But the legal measures cannot be efficacious unless and until there is social awareness amongst the women relating to their rights. Women themselves, more often than not, renounce their rights and tend to suffer deprivation. The denial of property rights to a woman was cited in Shastri and Customary Laws and now, by the legislature, daughter is given rights at par with son as a coparcener. From the era of limited rights in the estate as a trustee to having absolute rights in the coparcenary property, this change which took about 49 years. The great effort to bring daughters at par with the sons concerning their right in their ancestral property cannot be lost sight of just because of unawareness of people. Effective steps should be taken to implement the law to achieve the objective behind the amendment of the law. Above all, it is the women themselves who have to be aware of and assert their rights.

*Chapter-5*

*Translation of Women's*

*Coparcenary Rights*

## CHAPTER-5

### TRANSLATION OF WOMEN'S COPARCENARY RIGHTS

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The proprietary position of woman in any system of law represents the thought and the feelings of the community. Hence the proprietary status which a woman occupied in Hindu law was not only an index of Hindu civilization but also the correct criterion of the culture of the Hindu race.<sup>83</sup>

Primarily the prevalent social norms, accepted values and customs dictate the personal laws including women's right to inherit, own and control the property. In ancient times women had 'Stridhana' as their only property. It consisted of the gifts given to her at the time of her marriage by her natal family and relatives. It also included the various gifts given to her by her in-laws and husband as a token of love. But it was not always the woman who exercised her right over such gifts when the question of proprietary rights arose and her husband was the one controlling the reins. This put women at a detrimental place economically. In a patriarchal Hindu society, women were prescribed to always be under the caring observation of the men in the family, be it her father, her brother, her husband or son. This social dependency made them vulnerable to the discrimination and suppression which was further reinforced when they have no economic strength to stand up against it.

The relationship between law and society involves both the actual and the ideal. To the extent that particular laws are related to a particular society, they can be

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<sup>83</sup> Dr Kulwant Gill, Hindu Women's Right to Property in India, 1986 p. 528.

regarded as a reflection of its value system. But law (both customary and codified) is also seen as a means of controlling societal function and, as such, an attempt is made to perfect the legal framework, which then becomes a reflection of the aspiration of that society. The Universal Declaration of Human Rights reflects the values of modern man but the implementation of these rights in full demands a society which has yet to emerge. Article I state: 'All human beings are born free and equal in dignity and rights.' This in itself indicates the large degree of idealism manifested in such documents. Even though the declaration is acceptable to a large number of nations it would be difficult to find amongst them a single nation where this article is adhered to, implicitly and in practice, outside the strictly legal context.(Thapar, 1996)

The core issue was the succession or inheritance rights of women. Women did not get a share in the ancestral property due to the patriarchal attitude of society. In general, it was preferred to keep the property in the family only by giving it to male heirs and excluding the women from the coparcenary. Although this issue was not hidden as such and some measures have been taken but not much could be done until the Hindu Succession Act, 1956 and later the Amendment of 2005. Here, by the aforementioned legislation, the Hindu women legally became a coparcener and got better property rights than their ancient counterparts.

But the question now arises whether the legislative emancipation translated to the improved condition of women at the root level as well. Are women exercising these rights in their favour in this patriarchal set up of society?

### **Ownership of Assets**

National Family Health Survey (NFHS-4) 2015-2016, indicates that in India, more men than women age 15-49 own property. Thirty-seven per cent of women and

65 per cent of men own a house and 28 per cent of women and 49 per cent of men own land either alone or jointly with someone else.

### **Patterns by Background Characteristics**

1. Ownership of property increases sharply with age for both women and men. However, the increase is much greater for men than for women. For example, for men, ownership of a house increases from 44 per cent among men age 15-19 to 86 per cent among the men of age 40-49; whereas the corresponding increase for women is from 26 per cent to 47 per cent.
2. Ownership of a house and land varies with the residence. Rural women and men are more likely than urban women and men to own a house and to own land.
3. Property ownership declines with schooling and wealth for both women and men. For example, ownership of a house declines from 43 per cent for women in the lowest wealth quintile to 35 per cent in the highest wealth quintile, and for men, the corresponding decline is even greater, from 74 per cent to 59 per cent.
4. Women's ownership of property is most common in several of the states in the East and Northeast. House ownership among women is most common in Manipur and Odisha, where more than 3 out of 5 women own a house alone or jointly with some else, and land ownership is most common in Arunachal Pradesh and Bihar, where 1 in 2 women own land alone or jointly. In the South, women's ownership of property is most common in Karnataka and Telangana.<sup>84</sup>

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<sup>84</sup><http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

International Institute for Population Sciences (IIPS) and ICF. 2017. National Family Health Survey (NFHS-4), 2015-16: India. Mumbai: IIPS.

According to National Family Health Survey (NFHS-4) conducted in Uttar Pradesh, “Thirty-three per cent of women own a house alone or jointly with someone else, and 26 per cent of women own land alone or jointly with someone else. Ownership of both a house and land among women as well as men is more common in rural than urban areas.”<sup>85</sup>

The picture that comes in front after the survey is indeed very different than expected. The education of women does not translate directly into increased ownership of assets as ownership declines with schooling. Also, women in rural areas are more likely to own a house or land alone or jointly. This again proves that urbanization is not a deciding factor for the improved status of women when it comes to ownership of assets. Thirty-three per cent of women in Uttar Pradesh own a house alone or jointly and 26 per cent of women own land alone or jointly in contrast to the national count of 37 per cent and 28 per cent respectively. The decline in the ownership of assets by women shows that status of women in Uttar Pradesh is considerably lower than other states when one examines in respect to proprietary rights.

The present chapter is an attempt to conduct an empirical study of the problem that even though legislative measures are being taken to empower the women through its various provisions, why women are still not getting their due inheritance rights? What is the extent of awareness of the general public regarding the legislations on coparcenary rights? What are the factors inhibiting Hindu women to exercise their economic rights? Whether there are social pressures that prohibited them to gain the

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<sup>85</sup><http://rchiips.org/nfhs/NFHS-4Reports/UttarPradesh.pdf>  
International Institute for Population Sciences (IIPS) and ICF. 2017. National Family Health Survey (NFHS-4), India, 2015-16: Uttar Pradesh. Mumbai: IIPS.

benefits of law? What is the general approach of the society towards giving equal rights of inheritance to women?

To answer these queries, a questionnaire was prepared to seek the opinion and views of the general public on these problems. The said questionnaire was taken up by one hundred Respondents from Lucknow in Uttar Pradesh. In total questionnaire consists of 16 queries. Out of those, twelve questions are common for male and female respondents, the last 04 questions are particularly designed for female respondents. The replies of those respondents have been analyzed and tabulated in this chapter.

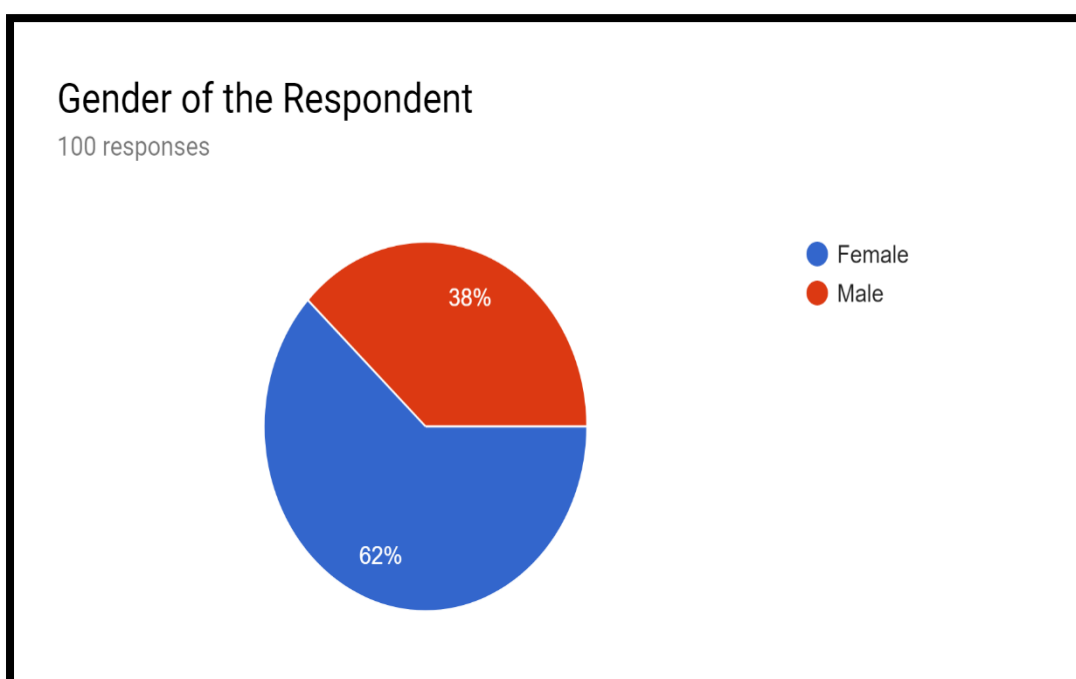
## **Lucknow**

District Lucknow ranks 5th in terms of population in the state. The percentage share of the urban population in the district is 66.2 as against 22.3 of the population in urban areas of the state. Lucknow district has a population density of 1,816 persons per sq.km. which is much more than the state average of 829 persons per sq. km. Lucknow district ranks 24th in terms of sex ratio (917) which is higher than the state average (912) females per thousand males. Lucknow district ranks 6th in literacy with 77.3 per cent which is higher than the state average of 67.7 per cent. There are only 4 uninhabited villages out of a total of 807 villages in the district. The decadal growth rate of district 25.8 is higher to the state average of 20.2 per cent. Mohan Lal Ganj tahsil has the highest number of inhabited villages (229), while Malihabad and Bakshi Ka Talab each tahsil have the lowest number (185). The district has 12 towns out of the 10 are statutory towns and 2 Census towns. One new statutory town, Bakshi Ka Talab (NP) has been added after 2001 Census. There are 806,703 households in the

district accounting for 2.6 per cent of the total households in the state. The average size of the household in the district is 5.3 persons.<sup>86</sup>

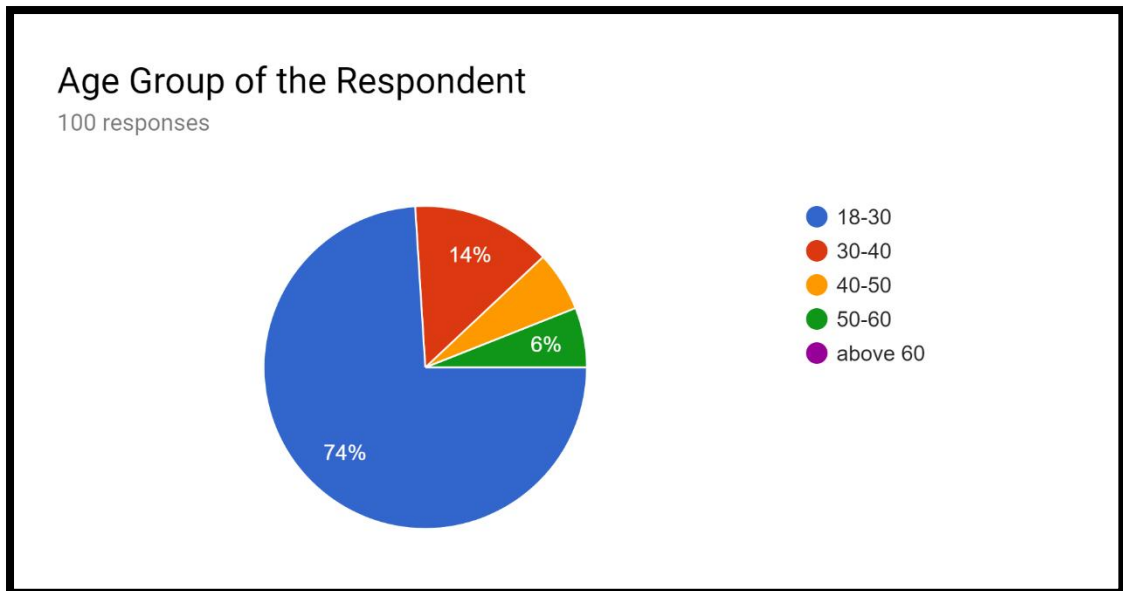
## 1. RESPONDENTS PROFILE

**1.1 Gender:** Out of the total of 100 respondents 38 are male respondents are 62 are female respondents. The gender-based distribution of the respondents is shown as under:



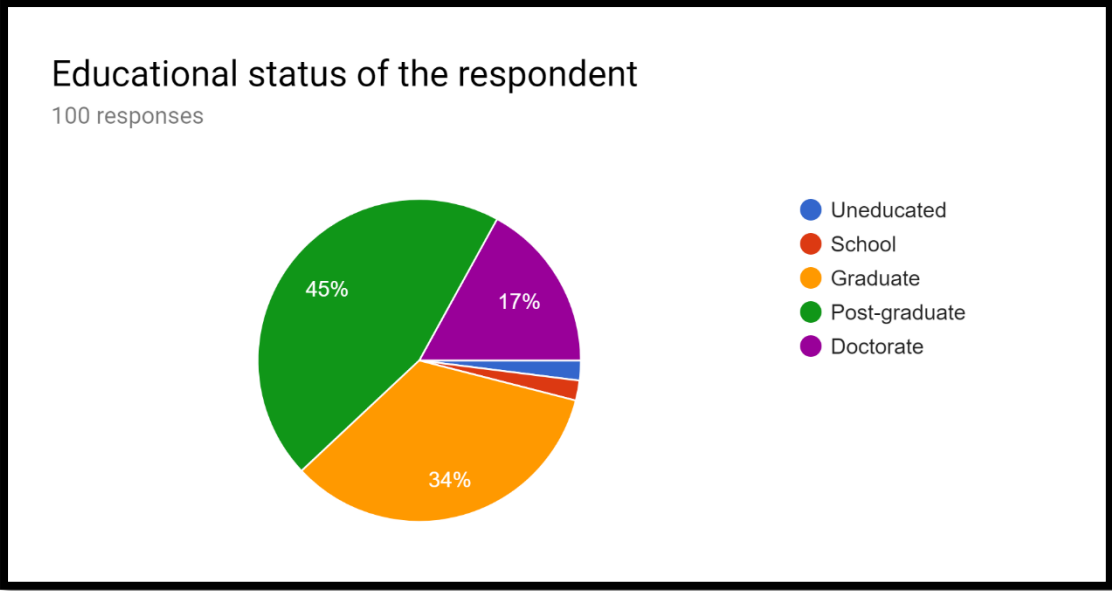
**1.2 Age:** The age profile of the respondents is divided into five categories. The number of respondents between 18-30 years of age is 74, in 30-40 categories there are 14 respondents, between 40-50 years of age there are 06 respondents, from 50-60 there are 06 respondents and above 60, there are 00 respondents. The age-based distribution of these various respondents is as under:

<sup>86</sup> [http://censusindia.gov.in/2011census/dchb/DCHB\\_A/09/0926\\_PART\\_A\\_DCHB\\_LUCKNOW.pdf](http://censusindia.gov.in/2011census/dchb/DCHB_A/09/0926_PART_A_DCHB_LUCKNOW.pdf)

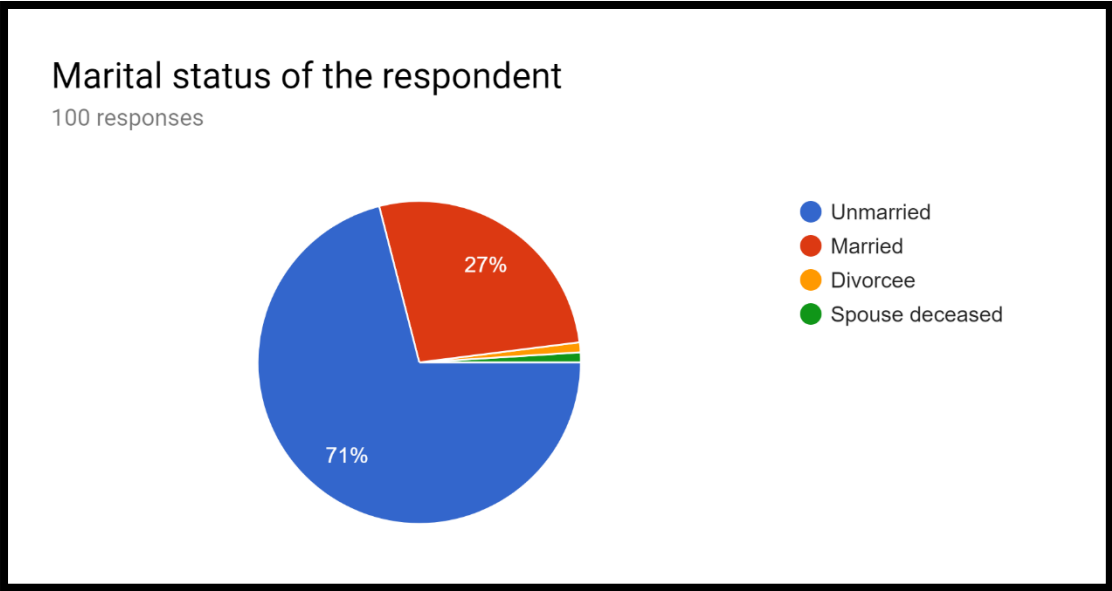


**1.3 Education:** Majority of respondents belongs to the educated strata of society.

Regarding the educational qualification of the respondents, they are divided into five categories. In uneducated category, there are only 2 respondents. School category has 2 respondents. The undergraduate category has in total 34 respondents, in the post-graduate category, there are 45 respondents, among doctorate, there are 17 respondents and 32 respondents have a professional qualification. The distribution of the respondents on the bases of their educational qualification is as under:

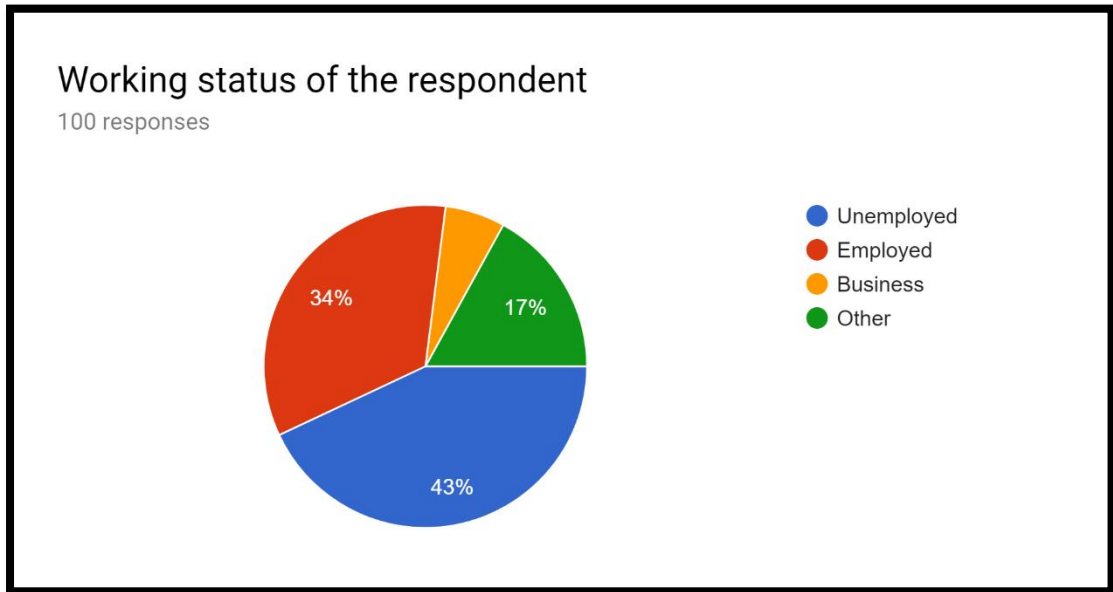


**1.4 Marital Status:** Out of the total of 100 respondents 71 are unmarried respondents and 27 are married respondents. Under Divorcee category, there is 01 respondent. Under spouse deceased category, there is 01 respondent. Their marital status-based distribution is as under:

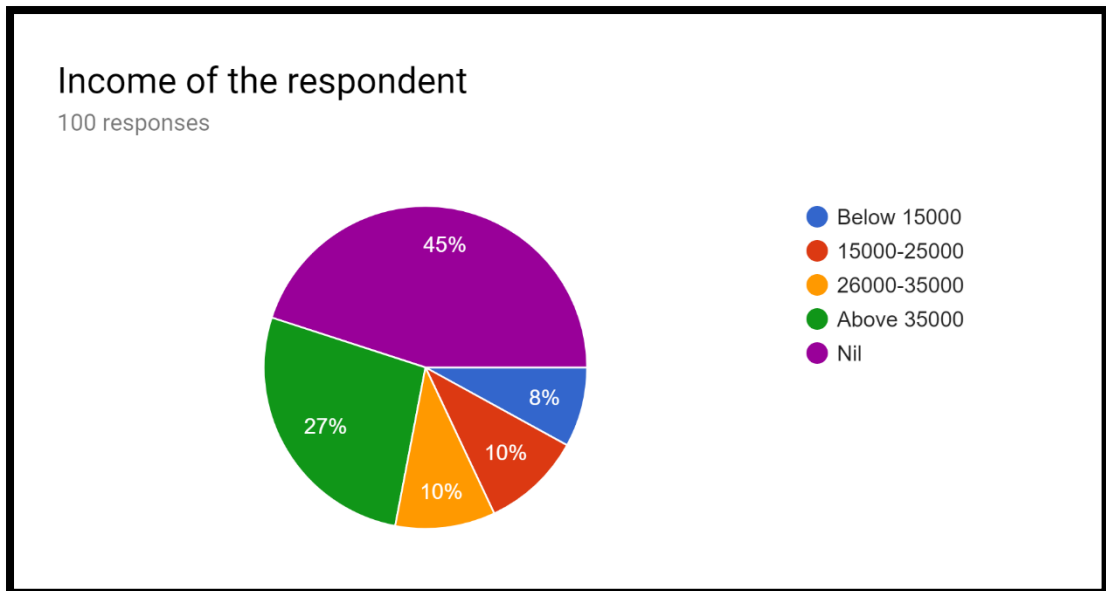


**1.5 Working Status of the Respondent:** In this profile, respondents have been categorized according to their working status. There are four categories. The unemployed category has 43 respondents. The employed category has 34 respondents. In the business category, 6 respondents are there. And the last

category 'Other' has a total of 17 respondents. The distribution based on the working status of respondents is as under:

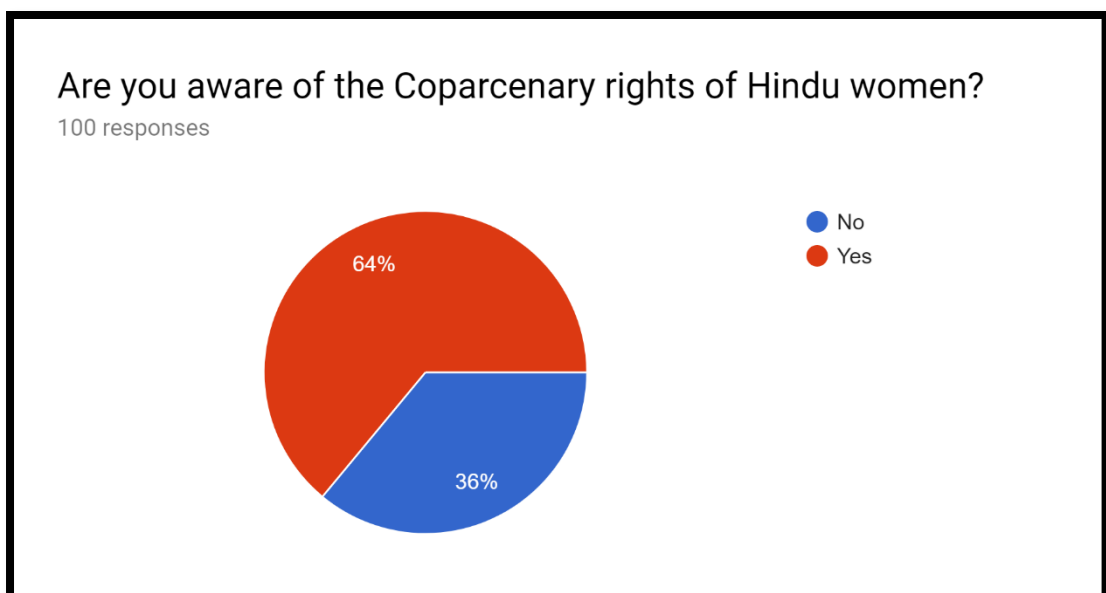


**1.6 Income:** The next profile of the respondents is based on their income. The income of the respondents is divided into five categories. In the first category the respondents who earn below 15000/- are included, in total there are 08 respondents. 10 respondents belong to that category who earns between 15000-25000. 10 respondents earn between 26000-35000 and the income of 27 respondents is above 35000. 45 respondents fall in the 'Nil' category i.e. at present they are not earning anything. This group consists of the young generation, above the age of 18 who are getting their education and thus belongs to the student's category. Also, many homemakers have given the responses who also fall in this category as they aren't earning at the moment. The income-wise distribution of the respondents is as under:



## 2. LEVEL OF AWARENESS

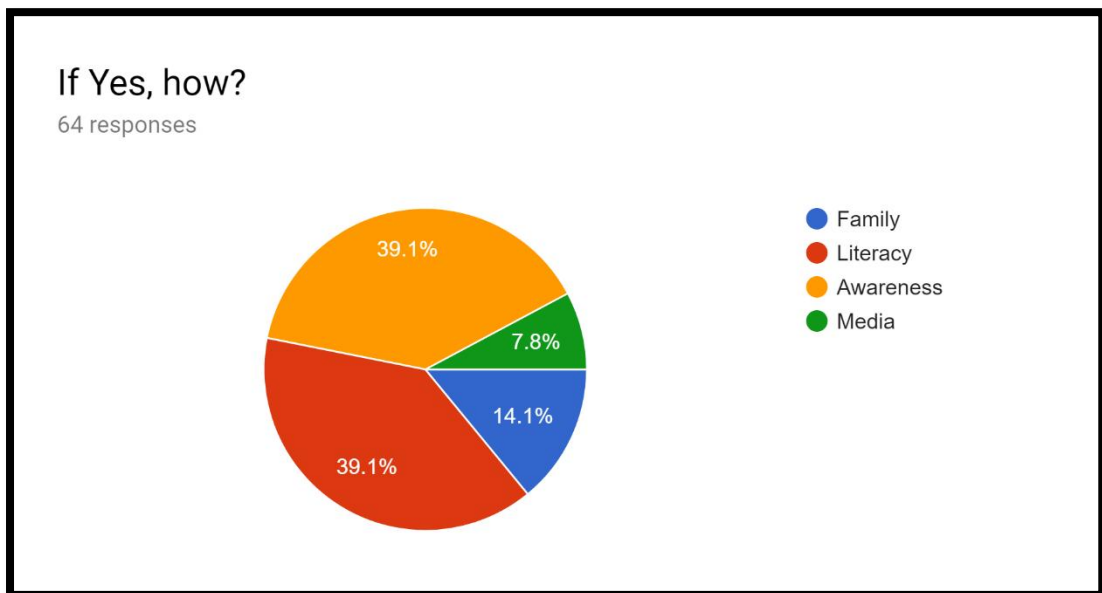
In the questionnaire regarding the level of awareness of the Coparcenary rights of Hindu women under the Hindu Succession Act, out of 100 respondents, 64 respondents are aware of these rights.



### 2.1 Distribution of respondents regarding the awareness

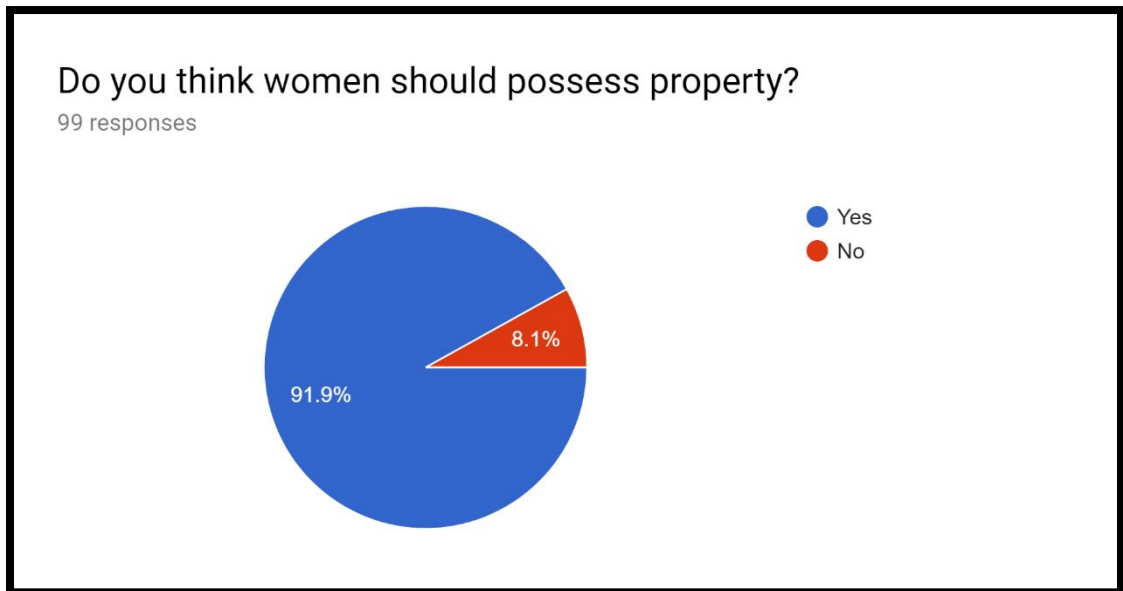
Out of 64 respondents who are aware of the coparcenary rights, 25 respondents attribute to the awareness. Other 25 respondents said literacy is the reason. 09

respondents claim to come to know about these rights from their family and 05 respondents said it was media by which they came to know about it. The data thus proves the importance of awareness and education in propagating the consciousness regarding the legislative efforts to bring gender parity.



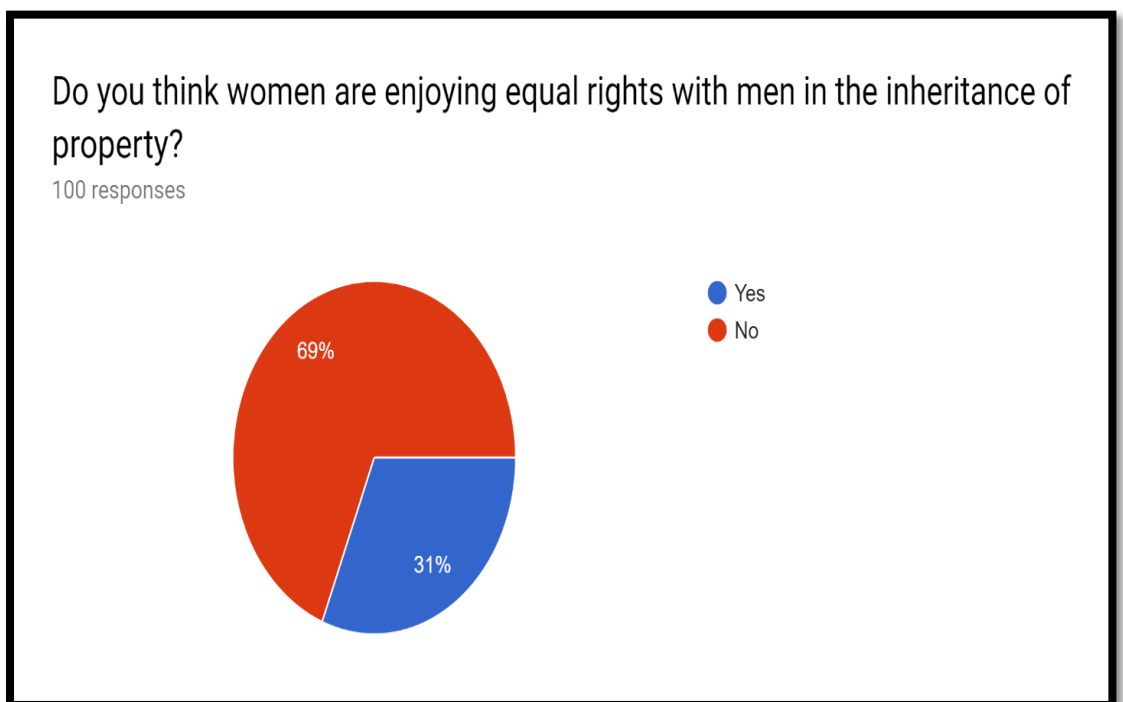
### 3. WHETHER THE WOMEN SHOULD POSSESS PROPERTY

To the next question that whether the women should possess property, 91 respondents gave a positive response and 08 respondents gave the negative response. One respondent gave no response to the query. This draws attention to the fact that women possessing the property are no longer considered an absurd idea, proven by the majority of favourable responses. However, negative responses, although much less quantitatively in comparison, still indicate towards the remnants of the patriarchal mindset where women were deemed unfit to own property.



**4. WHETHER WOMEN ARE ENJOYING EQUAL RIGHTS WITH MEN IN THE INHERITANCE OF PROPERTY**

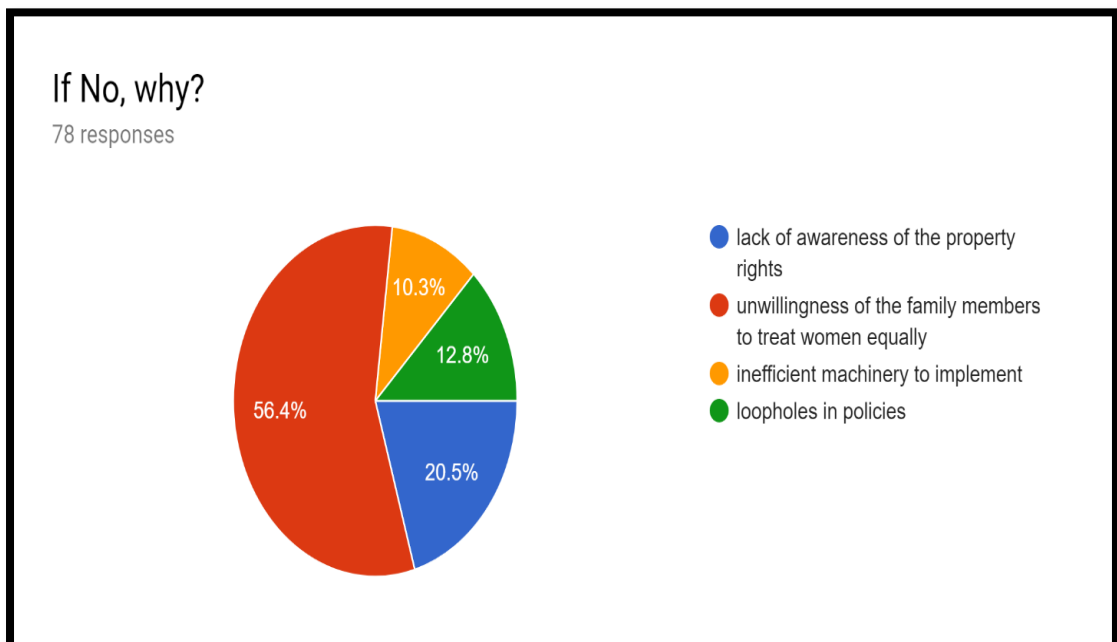
In the next question regarding the perspective of respondents as to the status of women vis a vis property inheritance rights, out of 100 responses, 69 respondents said that women are enjoying equal rights as that of men. 31 respondents denied it.



#### 4.1 REASON OF WOMEN NOT ENJOYING EQUAL RIGHTS

Out of 78 responses, 44 respondents cited unwillingness of family members to treat women equally as the reason behind women not enjoying equal rights. 16 respondents attributed this to the lack of awareness of property rights. 10 of the respondents said loopholes in policies is the reason women fail to acquire a property. 08 respondents blamed the inefficient machinery which fails to implement the laws giving women the right to inherit causing them to suffer from inequality.

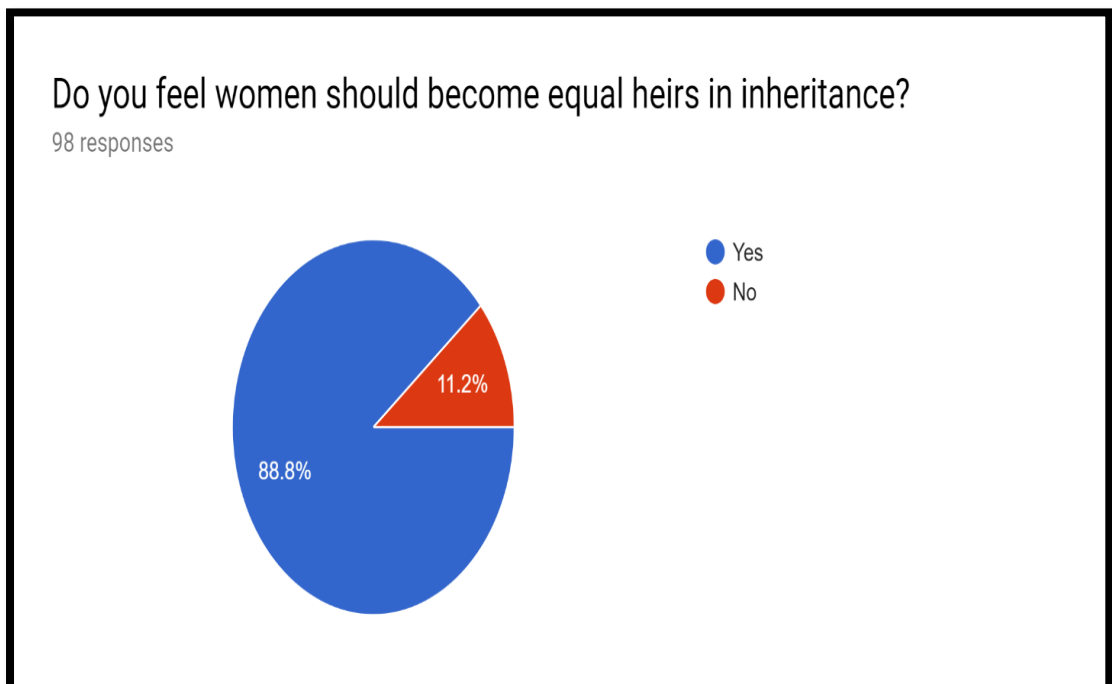
The unwillingness of family members is a greater cause than flawed policies and inefficient machinery showing that the patriarchy is operating through the institution of family itself. Granting rights to property through laws and its awareness is unable to shift the social mentality towards women claiming their share. In family, women who talk about exercising their rights are still frowned upon.



## 5. WHETHER WOMEN SHOULD BECOME EQUAL HEIRS IN INHERITANCE

Another related question which was asked to the respondents is that whether they are in favour of women becoming equal heir in the inheritance? About 87 of the respondents are in favour of giving equal share out of 98 responses, while 11 respondents have given a negative response. 02 of the respondents gave no response. The relevant detail regarding the willingness of the respondents to give an equal share to son and daughter is given below.

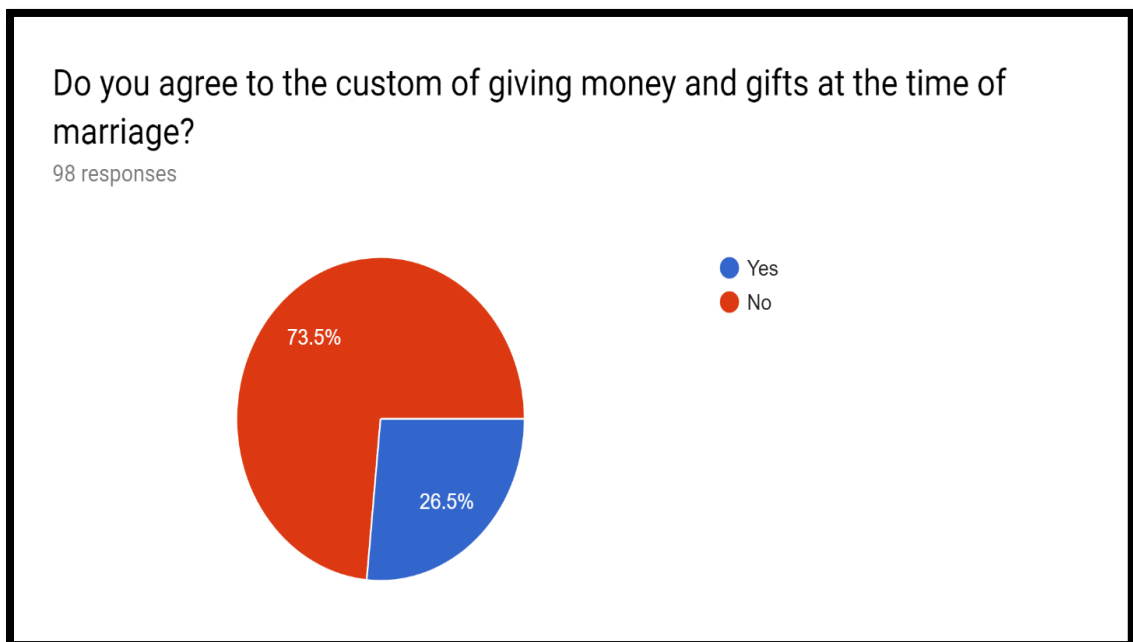
Greater number of positive responses points to the fact that the modern notions of gender equality has been accepted and is considered as the politically correct answer. Whether this translates to action or not is unclear. Nevertheless, it should be considered as a step ahead in a positive direction.



## 6. RESPONDENTS WHO AGREE TO THE CUSTOM OF GIVING MONEY AND GIFTS (DOWRY) AT THE TIME OF MARRIAGE

This question was asked to see if the respondents see dowry- a custom of giving money and gifts at the time of marriage, as acceptable. There were 98 responses to this query where 72 respondents gave a negative response. 26 respondents said that they agree to this custom. 02 of the respondents chose to not give any response.

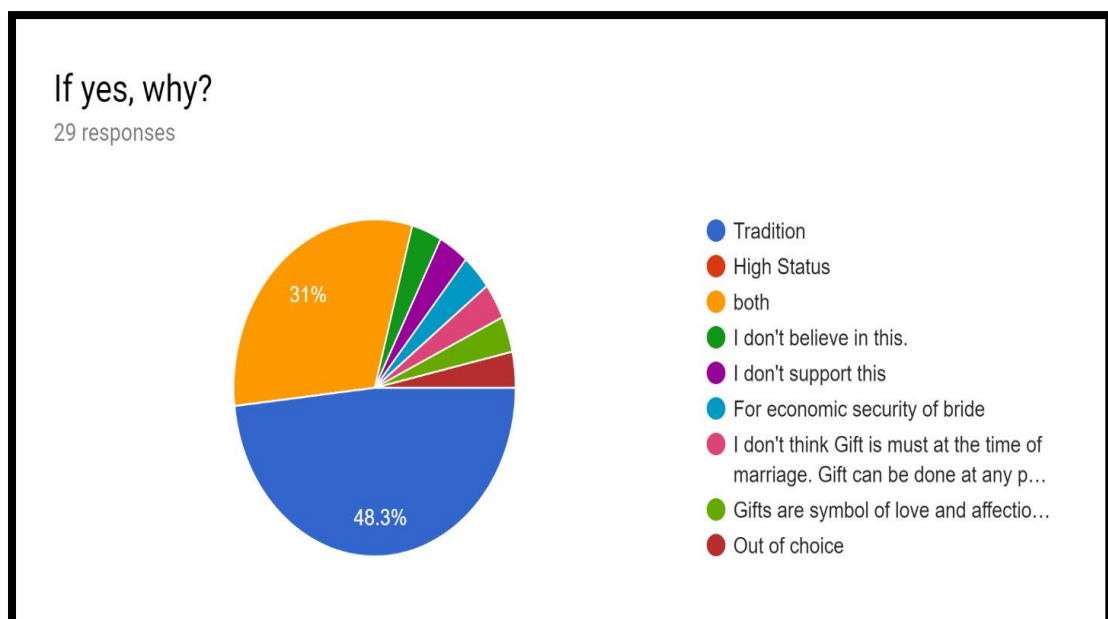
Dowry still has social acceptance though more awareness regarding the negative aspect of the custom is gradually being understood.



### 6.1 REASON BEHIND THE RESPONSE TO THE QUESTION

Although this question was aimed to the respondents who agreed to the custom of dowry, some of the respondents who were not in the favour also gave the reason behind their response which is combined in the analysis to not neglect the other side of the coin. In total there are 29 responses with the varied reason behind them. Highest opted reason with 48.3% was 'Tradition' which was given by 14 respondents. Another 09 respondents with 31% opted for 'Both Tradition and High Status' as the

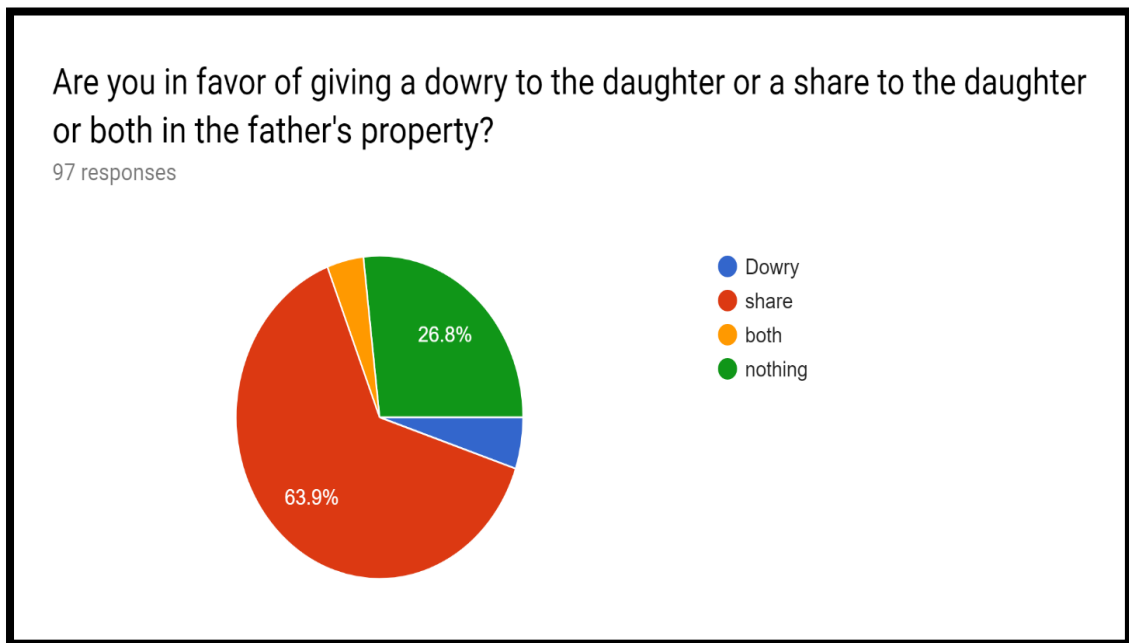
reason behind their acceptance of dowry practice. Other respondents gave their answers as it was a semi-structured question. 01 respondent (3.4%) said it's for High status. Another respondent said that dowry is necessary for the economic security of the Bride. 01 respondent simply stated it out of choice. 04 respondents responded negatively to the question of accepting the practice of Dowry. Each of them gave their reason. 02 of the respondents said they don't believe/support dowry. 01 respondent said the custom of giving gifts and money is bad for the society when it is given under any kind of pressure. Another respondent said that the practice of giving is not bad but it should not be restricted to the time of marriage only.



Highest opted reason being 'Tradition' indicates the inclination of social mindset towards age-old customs. It proves that practical relevance to contemporary time comes secondary when it comes to the customs. Also, 'higher the dowry, higher is the status' thinking is detrimental to the attempts of rooting the evil custom. Interestingly, the necessity of dowry for the economic security of the bride means that daughter's share in the paternal property is still not recognized by a section of the society which thinks dowry as the remedy of the said problem.

## 7. PREFERENCE TO DOWRY/ SHARE OR BOTH TO THE DAUGHTER

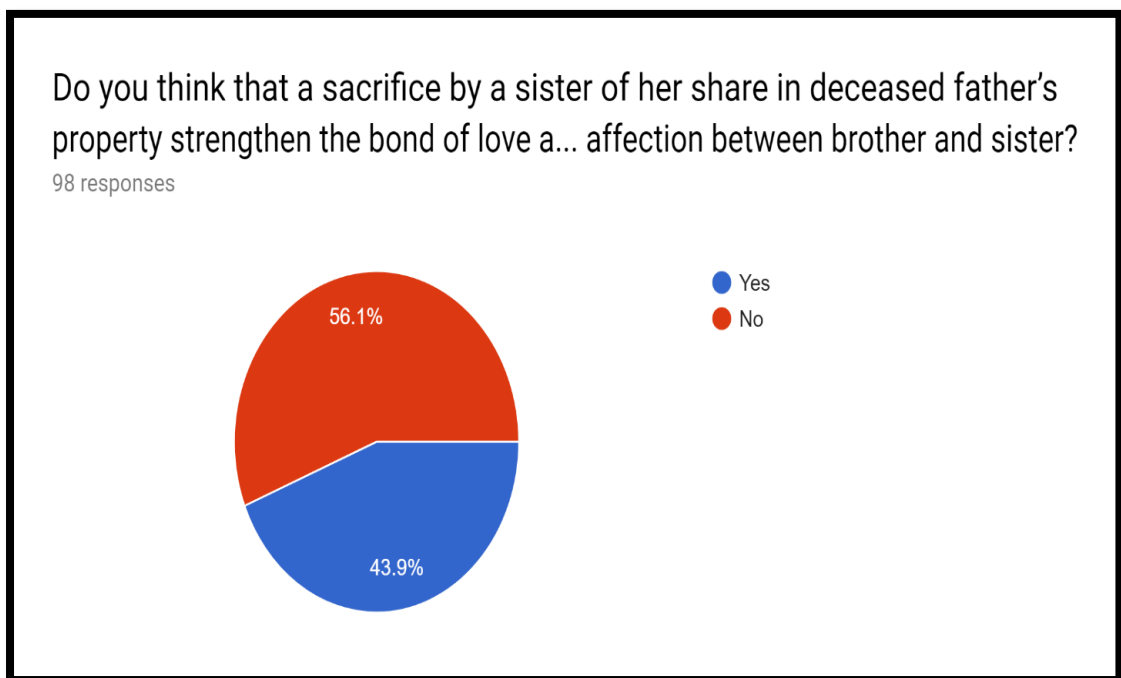
The next question is whether the respondents are in favour of giving a dowry to the daughter or share to the daughter in the father's property or both dowry and share. Out of 97 responses, 05 of the total respondents (5.2%) prefer dowry to the share, 62 respondents prefer to share to dowry and 04 respondents (4.1%) are in favour of giving both dowry and share. 03 of the respondents withheld the response. While 26 of the respondents (26.8%) said they are in favour of giving neither share nor dowry. Thus, the results are pleasantly surprised because the majority of the respondents want to give a share to the daughter. The following table shows the preference level of the respondents.



The data shows that society is in a state of transformation where the notion of the daughter's share in the ancestral property is gaining support but dowry as a custom and tradition is still prevalent.

## 8. WHETHER A SACRIFICE BY A SISTER OF CLAIMING a SHARE AFFECT POSITIVELY THE BROTHER SISTER RELATIONSHIP

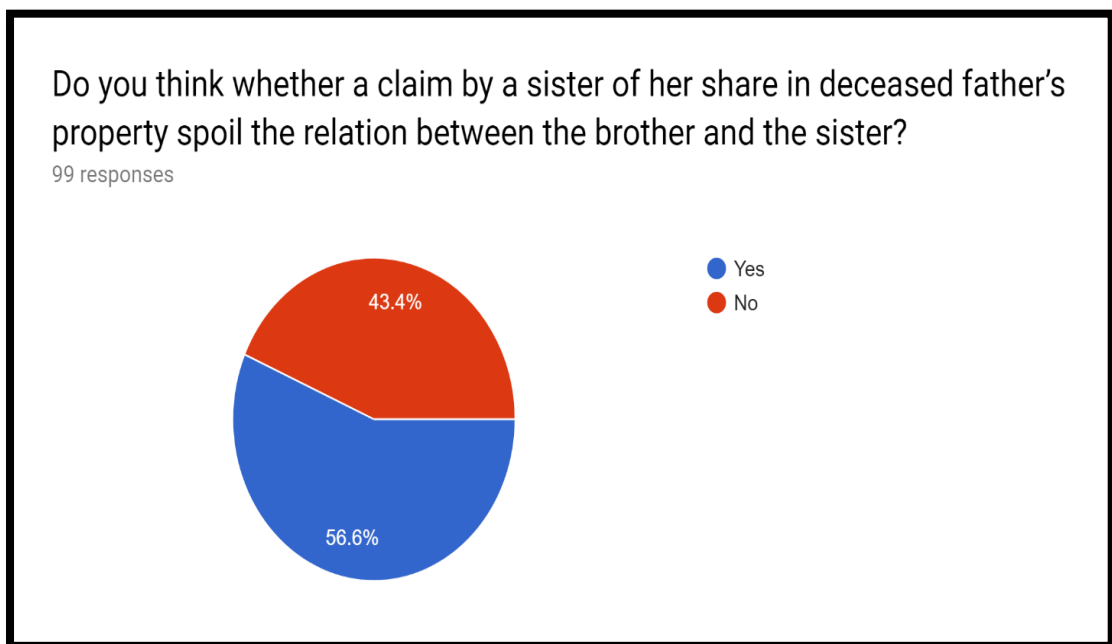
To the next query, that whether a sacrifice by a sister of her share in the deceased father property strengthens the bond of love and affection between the brothers and sisters, out of 98 respondents, 43 respondents give the reason for sacrificing the share that it will strengthen the relationship between them. 55 respondents give the reason that if the daughter claims the share it will spoil the relationship. Two of the respondents gave no response. In this background the following data contains the relevant detail: -



This data again reiterates the point that one of the major reasons for women not enjoying equal property rights is the unwillingness of family members.

## **9. WHETHER AN ACT OF CLAIMING HER SHARE SPOIL THE BROTHER SISTER RELATIONSHIP**

Respondents were asked if they think that a claim by a sister of her share in deceased father's property spoils the relationship between the brother and the sister, out of 99 respondents, 56 respondents said that it will spoil the relationship between them. 43 respondents thought that if the daughter claims the share it will not spoil the relationship. One of the respondents gave no response.



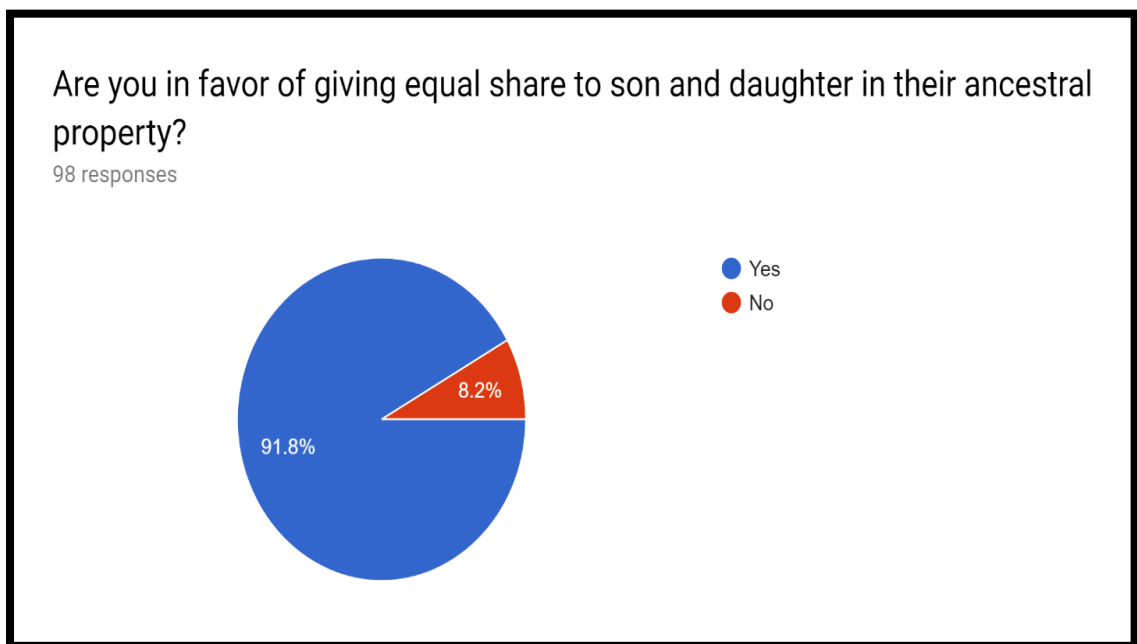
By renouncing their rights, daughters seek acceptance and loving relations with their brothers. Exercising their rights would mean cutting off their ties from their natal home.

## **10. RESPONDENTS WHO ARE IN FAVOUR OF GIVING EQUAL SHARE TOSON AND DAUGHTER IN THEIR ANCESTRAL PROPERTY**

Another correlated question which was asked by the respondents is that whether they are in favour of giving an equal share to son and daughter in the coparcenary

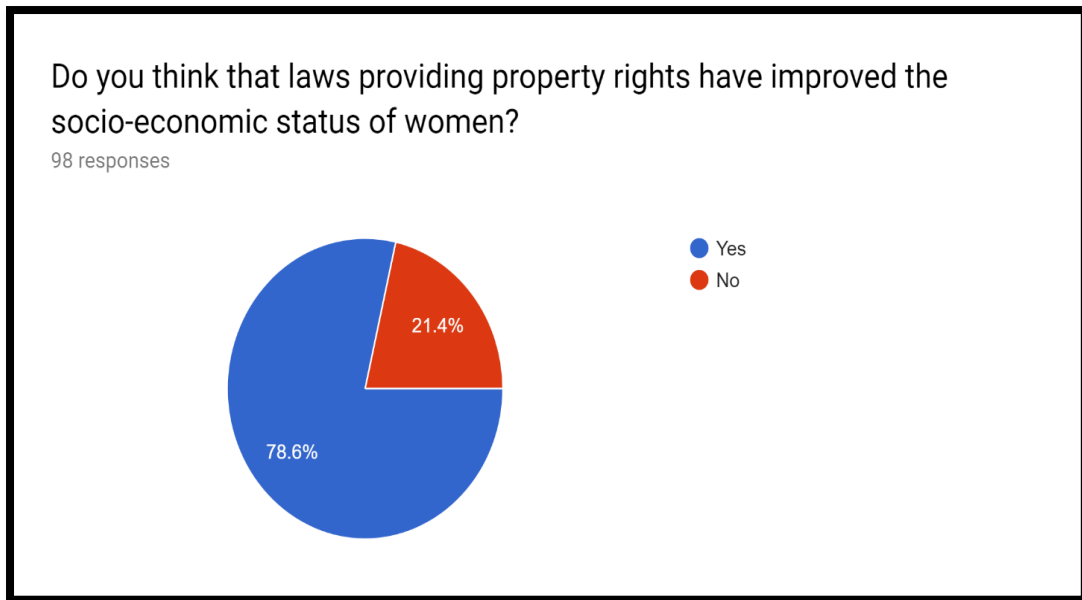
property? About 91.8% of the 98 respondents i.e. 90 respondents are willing to give equal share, but this inclination seems to be in their mind only. When the reality comes it all together shows the opposite side of their mind as it is clear from the above-illustrated chart.8.2% that is 08 of the respondents said they are not in favour of giving an equal share to son and daughter in their ancestral property.

The relevant chart regarding the willingness of the respondents to give an equal share to son and daughter is given below.



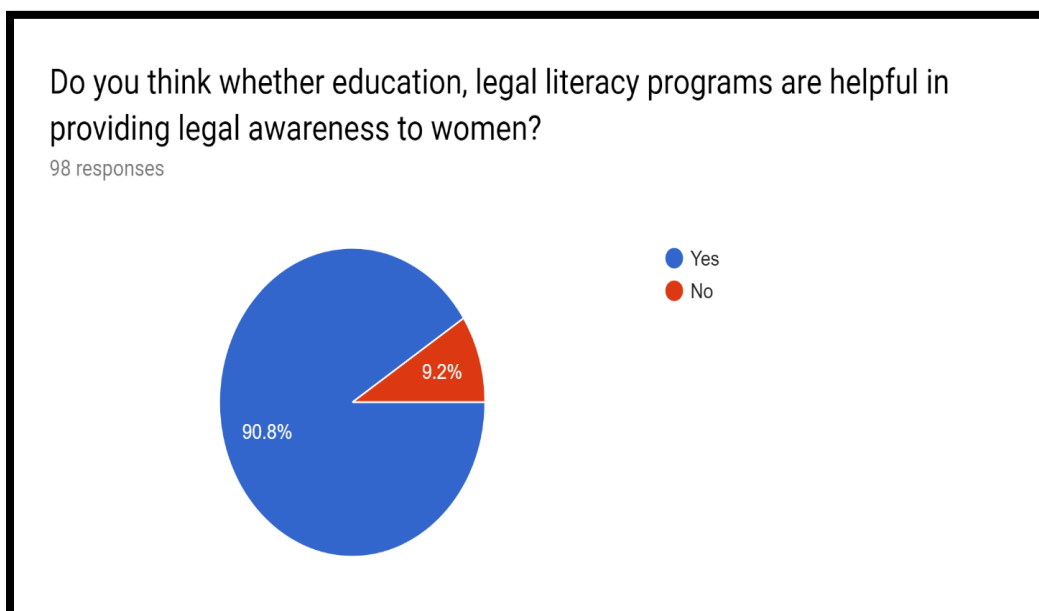
## **11. WHETHER LAWS PROVIDING PROPERTY RIGHTS HAVE IMPROVED THE SOCIO-ECONOMIC STATUS**

Regarding the question that does Laws like Hindu Succession (Amendment) Act 2005 by giving the inheritance and property rights to women have upgraded their socio-economic status, out of 98 respondents 77 responded positively and 21 respondents replied in the negative, two of the respondents give no response to this query.



## 12. WHETHER EDUCATION, LEGAL LITERACY PROGRAMS ARE HELPING IN PROVIDING LEGAL AWARENESS TO WOMEN

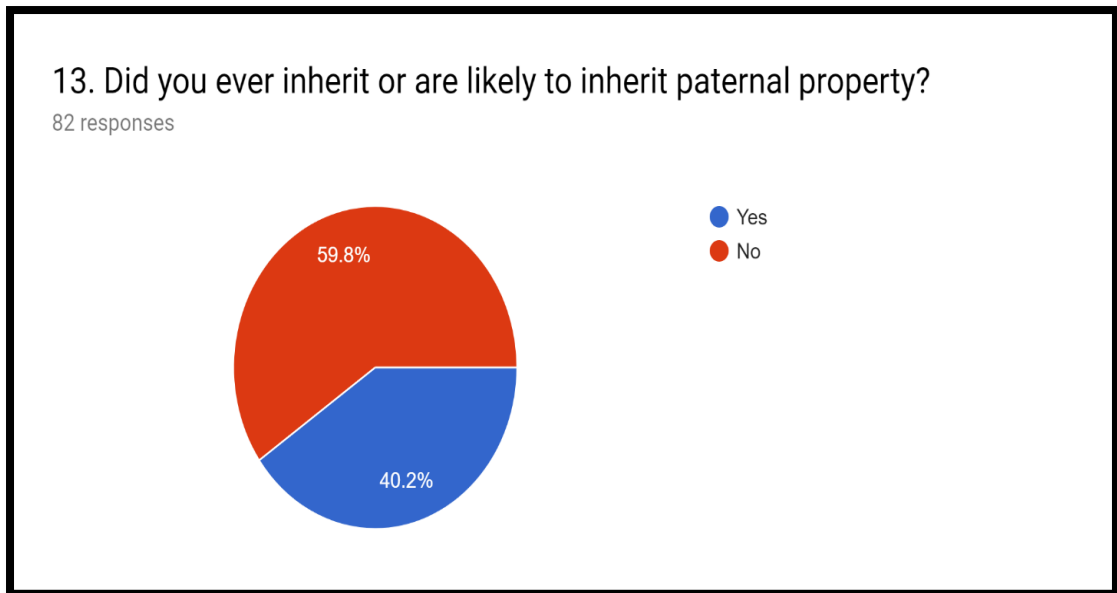
The subsequent common question which was asked to both male and female respondents is whether education, legal literacy programs help impart legal awareness to women. To this question, out of 98 respondents, 89 gave the affirmative response and only 09 respondents gave the negative response. The following chart shows the relevant detail.



### **13. RESPONDENTS WHO HAVE ALREADY INHERITED A SHARE AND WHO ARE LIKELY TO INHERIT**

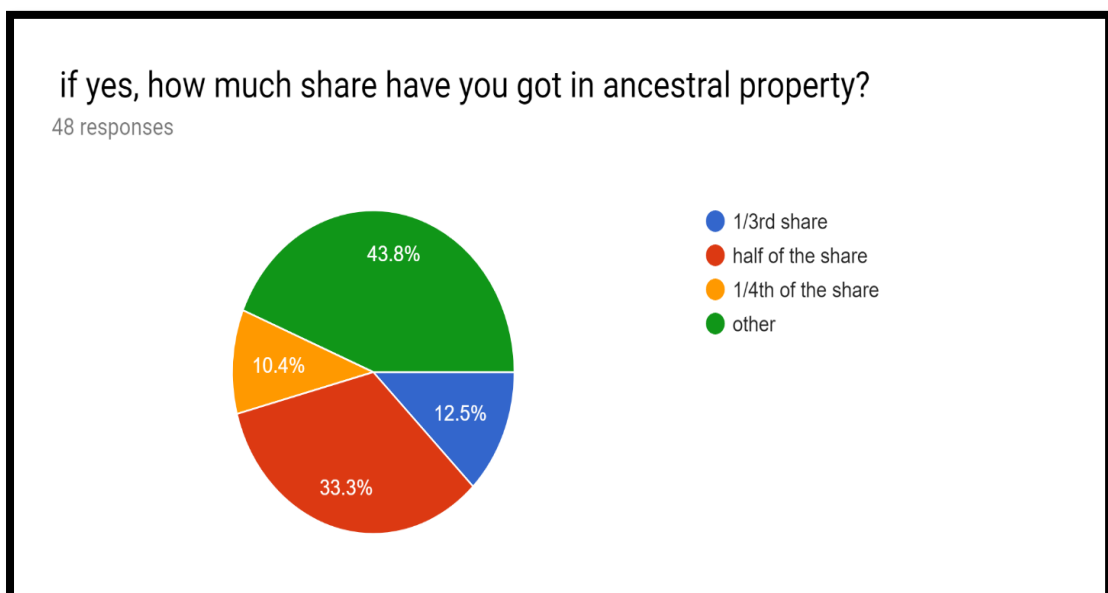
Regarding the question that whether the respondents inherit any share from their father's property, the question is divided into two categories; the first category comprises of those respondents who have inherited the share, the second category consists of those respondents who are likely to inherit the share from their father's property. In this background data relating to the question of inheritance may be presented in this distribution out of 82 respondents, only 33 respondents have inherited or are likely to inherit the share in their father's property. Out of these 37 respondents, 29 are male members and only 8 female members are interested to take their share in the father's property. 49 respondents responded negatively to the question. Out of these respondents, majority are of the female who do not want to claim their share in the father's property. The male respondents, who do not want to take the share, give their reasons. Majority of these male respondents want to leave their share for their brothers who have lower financial status comparatively. But none of the respondents shows towards giving their share to their sisters regardless of their financial position in the society.

The following chart shows the relevant details.



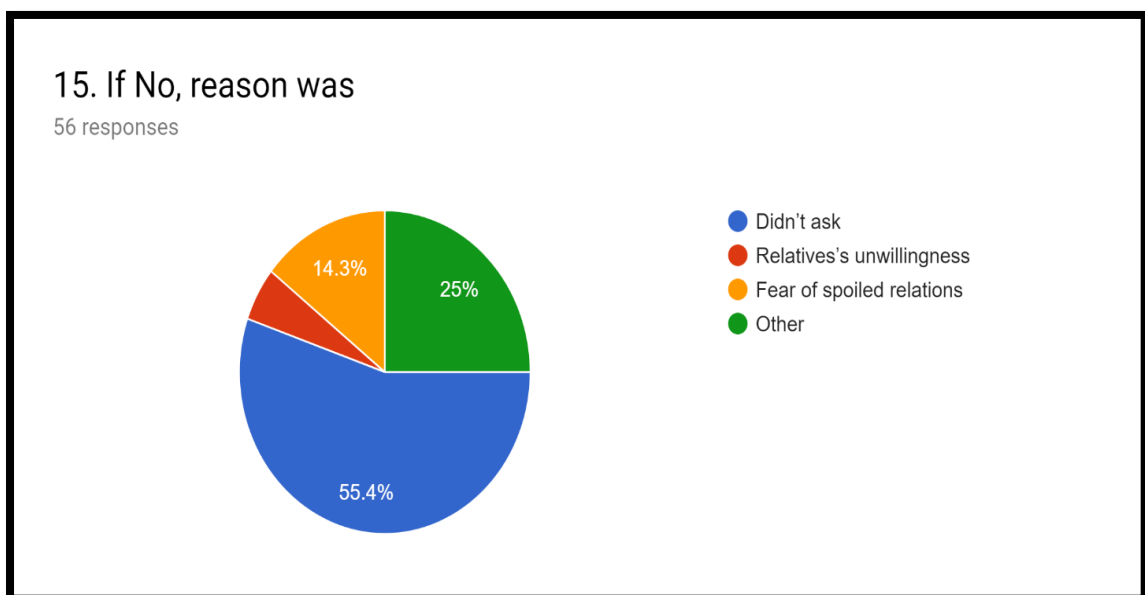
### 13.1 SHARE RECEIVED IN THE ANCESTRAL PROPERTY

The next question is related to the previous one regarding the acquiring of a share in ancestral property. Respondents were asked how much share did they receive or likely to receive in their ancestral property. Out of 48 responses, 16 respondents said it is half of the share. 06 respondents have received 1/3<sup>rd</sup> of the share. 05 respondents have got the 1/4<sup>th</sup> of the share while a majority of the respondents i.e. 21 respondents chose the option 'Other'.



#### 14. RESPONDENTS WHO HAVE RECEIVED THEIR SHARE IN THE PROPERTY

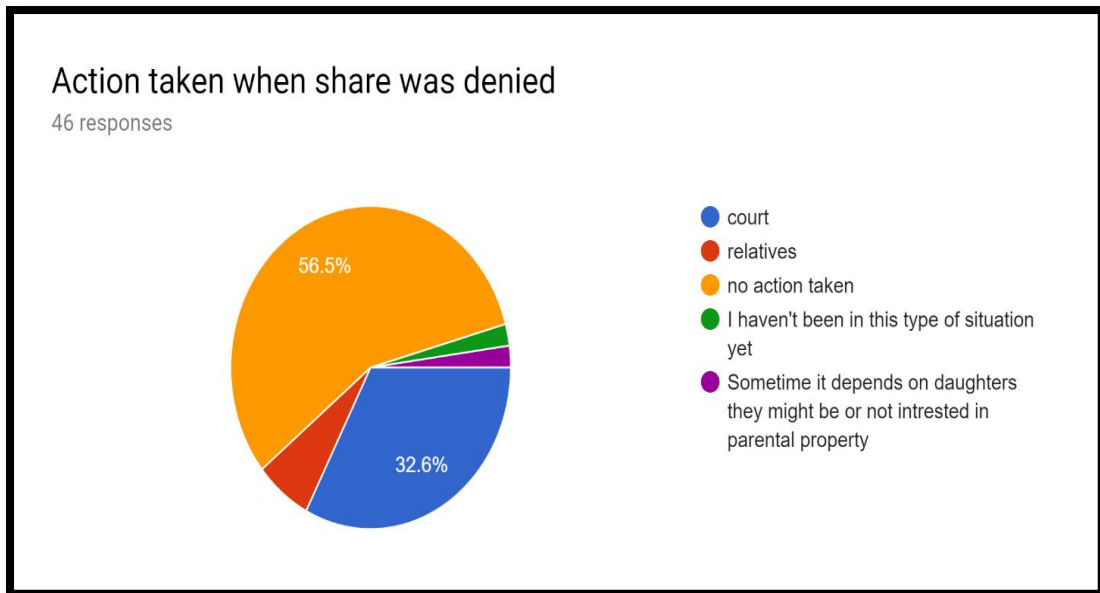
The related question which is asked to the respondents is that if they have not got their rightful share in the ancestral property, what was the reason behind it? To this question out of 56 responses, the majority of them i.e. 31 respondents said that they didn't ask for it. 08 respondent said it was the fear of spoiled relations. 03 respondents said it was the unwillingness of the relatives which made them not receive their respective share. 14 such respondents chose the option 'Other' to this query. Two of the respondents gave no reason and left the matter undecided which means that the respondent himself was not clear whether he wants to get the share or not. The other reason given by 01 respondent was that she lives in a joint family. 01 respondent said that her father thinks that daughters should be able to build up their property. Another respondent said that she is well-educated and would prefer to build her property than to inherit it.



Respondents who have given up their share or plan to relinquish the same in the future are economically self-reliant. Thus, they feel obligated to their parents. Some of the respondents feel that they have already received their fair share in the form of dowry and do not expect more from their brothers. Majority of the daughters also feel that claiming their share would only spoil their relations with their brothers and sisters-in-law. This again works as an important factor of them leaving their right. Only a small percentage of the respondents have the opinion that when receiving higher education and being economically independent is not stopping their brothers to claim their share, why should girls be the one to relinquish their equal share. Thus, only a small section of the respondents shows the courage to claim their share.

#### **15. ACTION TAKEN WHEN THE SHARE WAS DENIED**

The respondents were asked if they have taken any action when the legally rightful share was denied to them in the last question of the questionnaire. Total 46 responses have been recorded of which the 56.6% i.e. 26 respondents denied having taken any action. 15 respondents said that they went to the court which made another 32.6%. 03 respondents (6.5%) said they went to the relatives to mediate the conflict regarding the issue. One respondent said she has not been in this situation yet. One respondent (2.2%) said she is not interested in the property anyway.



The majority of the respondents did not take any action as it is socially frowned upon. Demanding their right would only portray them in a negative light and hence act as a detriment to the exercise of it.

Thus, from this empirical research, it is found that while most participants are informed of the Hindu Succession Act and roughly similar numbers of participants agree that the socio-economic status of women will be strengthened with the passing of this law, however, the majority of participants also want this to remain in the papers alone. If we take the into account application of the provisions of this Act in the society it presents entirely contrary side of the situation.

Women's refusal of property is strongly affected by the persistent trend in the society whereupon marriage, the daughter's financial severance from her natal family can be seen. While the son continues to enjoy privileges and handling responsibilities in the family. There is a belief that as sons only handle responsibilities in the family, they alone are worthy of the right in parental property and by that very same reason daughters of the family do not have any claim on the property. This idea is not only in the mind of male members but daughters themselves do not feel that they have any

kind of claim to the share just because they do not assume any corresponding responsibilities. Some women who do take care of their parents, sometimes get the share or a part of it. Equal property rights are granted to Hindu women within the Hindu Succession Act, 1956 and its amendment in 2005. The legal rights bound to Hindu women to independent ownership in a share in the family property have by and large not exercised by them. Property rights of Hindu women are an extremely contested issue. Struggles over property are as much about the scope and constitution of authority as about access to resources. it's primarily a struggle over power relations.

When the Hindu Succession Act 1956 was passed, it faced the severe resistance of the orthodox sections of the society. They claimed that it will destroy the fabric of Hindu society. The act aimed to change the attitude and patriarchal domination over women. The Act was not accepted by the masses heartily as the changes brought by the Act were too radical in the eyes of these conservative groups. Still, the legislature was respected. But later it came to light that some provisions of the Hindu Succession Act, 1956 have not completely been freed from the inherent discrimination of the customary laws which were the basis of Hindu personal laws contained in it. It was the 174th Report of Law Commission which not only discussed these provisions promoting gender discrimination but also suggested the remedies to address the same. These guidelines given by the said report formed the basis of Hindu Succession (Amendment) Act, 2005 which was an attempt to rectify the shortcomings of the Hindu Succession Act 1956.

However, the legislative measures do not guarantee the better position of the women in the patriarchal Hindu society. The question remains the same whether these laws and amendments benefit their claim to property or not. The legislation has fulfilled its duties by enacting the laws providing equal inheritance rights to both

males and female members of the family, but legislation alone is not enough. There are some limitations to the legal system too. The need of the day is the awakening of the collective social consciousness of the society. The understanding that claiming a share in the ancestral property is not a hostile act towards the natal family of the daughter needs to be strengthened in the masses. It is only possible by a wider social movement changing the heart and attitude of the people.

*Chapter-6*  
*Conclusions*

## CHAPTER-6

### CONCLUSIONS

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One cannot emphasize more clearly than Lord Denning when he said that, "*A woman feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries, she doesn't become the husband's servant but his equal partner. If his work is more important in the life of the community, she is more important in the life of the family. Neither can do without the other. Neither is above the other nor under the other. They are equals.*"<sup>87</sup>

Likewise, Mahatma Gandhi reiterated the women's right to equality by stating that, "*Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in every minutest detail in activities of man and she has an equal right to freedom and liberty with him.*"<sup>88</sup>

By the entire analysis, it can be concluded that to be treated equally in every aspect of life is the right of every human being. However, the position of women is not that of equality when compared to men in our society. This feeling of inferiority and subordination prevails in every area of her life in general and her right to property in particular. A woman plays a substantial role in the life of every individual. Safeguarding her birthrights would lead to a better future to the society, family and each individual.

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<sup>87</sup> Lord Denning, *The Due Process of Law*, 194-195, Butterworths, London, 1980.

<sup>88</sup> Gandhi, M.K., *Women and Social Injustice*, Navjivan Publishing House, Ahmedabad, 1954, pp. 4-5.

This research has dealt with the issue of coparcenary rights of the Hindu women in Uttar Pradesh. The study is carried out in Lucknow district. Information on these issues was largely drawn from the sample of 100 households selected randomly and NHFS-4 survey reports, material from secondary sources is collected through various libraries, online sources etc.

The status of women regarding the social and economic aspects of human relationship is considered inferior in this patriarchal society in India Since ancient times. The right to property and to inherit was beset with manifold limitations. Although many legislative attempts were made in pre-independent and independent India addressing this issue the scenario remained more or less the same and not much improvement showed. This issue was reflected in the 174<sup>th</sup> Report of the Law Commission of India on “Property Rights of Women: Proposed Reforms under the Hindu Law”

*“Discrimination against women is so pervasive that it sometimes surfaces on a bare perusal of the law made by the legislature itself. This is particularly so in relation to laws governing the inheritance/succession of property amongst the members of a Joint Hindu family. It seems that this discrimination is so deep and systematic that it has placed women at the receiving end...”*

On the recommendation of law commission, the amendment of 2005 had been brought to the Hindu Succession Act, 1956 to further improve the status of women vis-à-vis right to property.

In India, every religion has their laws governing laws related to marriage, divorce and succession etc. in case of Hindus, personal laws were governed by shashtric and customary laws which varied from region to region. This essentially

meant a plethora of multiple laws of diversified nature governing Hindus. These laws were prevalent under different schools and further divided into sub-schools like Mitakshara and Dayabhaga. These two sub-schools were governing majority of India. They mainly differ in the law of inheritance and joint family system. The Mitakshara school identifies two means of devolution of the property namely, survivorship and succession. These rules have a different application on a different property like survivorship applies to joint family property and rule of succession applies to property held by the last owner. On the other hand, Dayabhaga recognizes the only succession as an only mode of devolution of property. The nature and implications of these laws rendered the property laws among Hindus very complex.

The Mitakshara school states that the property can be bifurcated into two kinds i.e.

1. Joint family property
2. Separate property

A joint Hindu family consists of all persons lineally descended from a common ancestor which includes the wives and unmarried daughters in the family. Coparcenary is a much narrower body than joint family. It consists of only those persons who acquire an interest in the ancestral property by birth. It includes sons, grandsons and great-grandsons.

The ancestral property is the property inherited by a Hindu from his father, father's father, father's father's father. It means an unobstructed heritage as regards his male issues. Any other property inherited is his separate property.

The point to be emphasized here is that no female member of the family can be a coparcener under the Mitakshara Law. A wife was entitled to maintenance out of her

husband's property and to an extent has a right in his property but even she is not her husband's coparcener. A mother is not a coparcener with her son. A mother and a daughter cannot have a coparcenary in between them.

A reference to the concept of Stridhana must be given while analyzing the position of women in the family. The notion of Stridhana is as long-standing as the Rigveda. The references from the Rigveda suggest that the woman did hold separate property and had control over it. "how many is a maid pleading to the suitor who fain would marry for her splendid riches?"<sup>89</sup> In this verse, it is quite obvious that the woman owns a separate property which she could take along with her after marriage. There are references of a childless widow going to the place of judgement for getting wealth.<sup>90</sup>

A Stridhana can be described as an absolute property of woman which she receives as gifts before, at the time of marriage or afterwards from various sources. The stridhana was recognized as her sole ownership and she may dispose of it off as she desires. Thus, the position of women in a Hindu family was minimal having no independent rights and unrecognized as a coparcenary.

Women's right to hold and dispose of the property has been recognized in the entire history of law. The property which could be held by women were divided into Stridhana and women's estate. Stridhana was considered as absolute property of a female Hindu and she enjoyed full powers to alienate, sell, gift, mortgage, lease or exchange during her maidenhood and widowhood. There were certain restrictions imposed on her power over Stridhana if she was married. The Stridhana was passed to her heirs after she deceased.

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<sup>89</sup> Rigveda, X, 27, 12.

<sup>90</sup> Rigveda, I, 124, 7.

In the case of women's estate or widow's estate, the female owner of the property does not enjoy the same powers as Stridhana. She had limited power of disposal and could not ordinarily alienate the corpus except for legal requirements, the benefit of the estate and in observing religious duties. The women's estate devolved back to the heir of the last full owner on the death of Hindu female owner. These heirs were known as 'reversioners' who could be both males or females.

So, a female family member of a joint Hindu family had no ownership right to property and was not vested with any control over it. Under a patriarchal system like Mitakshara coparcenary in the joint family system, women were not admitted into the coparcenary. Thus, she was excluded from inheritance as the doctrine of son's birthright was followed, associated to the principle of devolution by survivorship of the joint family property to a faction called coparceners comprising son, grandson and great-grandson.

Thus, it is detected that the condition of the female's right was indistinct. The widow's estate was in its uncertain position. The courts were not able to interpret the set law in the absence of any legislative enactment. Further, the female owner had only restricted rights over such property. Hindu women's plight was addressed in the pre-independence period with two legislations namely Hindu Law of Inheritance, 1929 and Hindu Women's Right to Property, 1937.

### **Pre-independence Development**

Earliest legislation addressing the issue of inheritance in pre-independence India was the "Hindu Law of Inheritance Act", 1929. With this legislation, Hindu females were brought into the scheme of inheritance and three female heirs – son's

daughter, daughter's daughter and sister were conferred the right of inheritance under the Act.

Another landmark legislation was "Hindu women's Right to Property Act", 1937. It was hailed as the beginning of a new episode in the history of women's right to property. It was disapproved in some sections as it would lead to the disintegration of the Hindu Joint Family System. According to some, it was not more than a lukewarm effort to challenge the crisis of women's right to property. The Act introduced significant changes in the law of succession. This law tried to ensure that in the Mitakshara coparcenary, the widow of the deceased would take the same interest which her deceased husband had in the joint family property at the time of his death. It brought revolutionary changes as she was made entitled to claim partition as a male owner. But remained only a limited owner and not became a coparcener. This was not retrospective in its operation implying that the Act did not apply to the property of any Hindu who died intestate before the commencement of this Act.

These legislations conferred certain women with new rights of succession but all in all, failed to safeguard them against discrimination. The interpretation of the Act of 1937 resulted in an upsurge of several anomalies and ambiguities. The Government of India constituted the Hindu Law Committee on January 25, 1941, to understand the best way of resolving these anomalies and ambiguities. This committee voiced in support of codification of Hindu Law. It should be done in stages starting with succession and marriage as per its recommendation. The committee submitted two draft bills in March 1942, the first draft dealt with the law of intestate succession and the second with the law of marriage. Thereafter the committee terminated to function.

The bills were consigned to a Joint Committee of the central legislature. The Joint Committee recommended that a comprehensive code covering all branches of Hindu law would be more apt to formulate a code of Hindu Law. The committee also opined that a fresh committee is constituted for this task. The Government of India, following its recommendations, appointed a committee, with Mr B. N. Rau as Chairman, on January 20, 1944, for framing the Hindu Code. The Rau Committee consequently put forward its report and draft of the Code in 1947.

### **The Hindu Code Bill**

In the Hindu Code, 1948 the status of Hindu women stayed unchanged though it stipulated for the abolition of the Joint Family System. But this code could not be ratified due to strong obstruction from the orthodox sections of the assembly. The bill was seen as a threat to the age-old structure of Hindu culture.

### **Post-independence Developments**

With the dawn of independence, the framers of the Indian constitution addressed the issue of discrimination against women in social and economic aspects of life. To impart justice, some constitutional mandates had been included in the Preamble to the Constitution of India, Fundamental Rights in Part III (Articles 14, 15, 16), Directive Principles of State Policy in Part IV (Articles 38, 39, 39A, 44) and Fundamental Duties in Part IVA [Article 51 A (e)]. In spite of all these steps, women continued to be deprived of their rights including the right to property. A much firmer step was taken in this regard as the “Hindu Succession Act, 1956”. This Act faced severe resistance from orthodox Hindu sections. Nevertheless, it came into force on 17<sup>th</sup> June 1956.

## **The Hindu Succession Act, 1956**

The Hindu Succession Act, 1956 laid down a uniform and comprehensive system of inheritance. It applies to all the Hindus who were governed by Mitakshara and Dayabhaga as well as other sub-schools of customary law. The term 'Hindu' includes Buddhists, Jains and Sikhs as well in the Act. The Hindu Succession Act answered the need for a progressive society. It was a much-awaited improvement upon the old Hindu textual law as it tried to remove the existing inequality between the male and female member of a joint Hindu family regarding the right to inherit the ancestral property. It recognizes the rights of a female member in the joint Hindu property which brought revolutionary changes as it was a custom to give preference to male members in inheritance and non-inclusion of female relatives to inherit the property. However, the traces of pre-existing biased social norms could still be detected in this Act.

The Hindu Succession Act, 1956 was heavily criticized for accommodating the joint family Mitakshara coparcenary without any change. It retained only males as coparceners. Section 6 of the Act provided that whenever a male Hindu, having an interest in a Mitakshara coparcenary died after the commencement of this Act, then his interest in the property would devolve by the rule of survivorship and not by the Act. However, Proviso to Section 6 incorporates that when Mitakshara coparcener died leaving behind a female heir of Class I or a male heir claiming through her, then the interest would devolve by testamentary or intestate succession under the Act and not by the rule of survivorship.

This was evident from the Act that Hindu female was excluded from joint family coparcenary under the Mitakshara system. They could not inherit ancestral

property by birthright. For instance, in a scenario where the division of joint family property takes place, only male members get their share in it. As female members are not coparceners, they get nothing in the division. but if one of the coparceners deceases, then the female members acquire share as an heir to the deceased coparcener.

Section 4 (2) of the Hindu Succession Act also gives unequal rights to females in comparison to males when it comes to inheritance rights in agricultural lands. Moreover, by Section 23 of the Act, women are disentitled to demand partition of the dwelling house occupied by the joint family until the male heirs decide to do so. Further, Section 24 disqualified the widows in succeeding to the intestate's property if they remarry during the lifetime of the intestate. It included three kinds of widows – intestate's pre-deceased son's widow, widow of a pre-deceased son of a pre-deceased son or widow of the brother.

Thus, some of the provisions of the Hindu Succession Act, 1956 perpetuated gender discrimination. To promote gender equality, some of the provision of the Hindu Succession Act, 1956 has been amended by Hindu Succession (Amendment) Act, 2005.

But it cannot be denied that the Hindu Succession Act, 1956 brought reform to personal laws of Hindus. Before the commencement of the Act, women only had limited rights to the property instead of absolute and full ownership of property. Section 14(1) of the Act provided that if a female Hindu possess any property, it shall be held by her as a full owner and not as a limited owner. No matter whether she acquires it before or after the commencement of the Act.

Further through the Explanation appended to Section 14(1), different ways by which woman may have acquired property are numbered or would acquire a property. It also states that property' includes both movable and immovable property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person whether relative or not, before, at or after her marriage, or by her skill or exertion, or by purchase or by prescription, or in any other manner whatsoever. Also, such property held by her as Stridhana immediately before the commencement of this Act.

The objective of section 14 is to remove the disability of a woman to acquire and hold property as an absolute owner and to convert any of the estates into an absolute estate already held by a woman on the date of the commencement of the Act as a limited owner.

However, if a Hindu female acquires any property with certain limitations after the commencement of this act, she would have to abide by those limitations. She cannot acquire those properties as an absolute owner. Sub-section (2) of section 14 sets out the limitations which runs as follows:

"Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or a decree or order of a civil court or an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."<sup>91</sup>

Section 14(2) enacts a well-established principle that if a grantee receives any grant with some limitations, he/she will be subjected to those limitations. This is an exception to Section 14(1). So, if any female Hindu owner had an estate without those

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<sup>91</sup><https://indiacode.nic.in/bitstream/123456789/1713/1/195630.pdf>

limitations in the will, decree, gift, award, an order of civil court etc., she will become the absolute owner of such estate. Section 14(2) applies to instruments, decrees, gifts, award etc. which may create a new title or an independent right in favour of Hindu women for the first time and not in recognition of pre-existing rights.

Next section 15 is regarding the general rules of succession to the property of a Hindu woman dying intestate. The order of succession is given in section 15 and section 16 according to which it will devolve upon the heirs. Section 15(1) states that if a Hindu female dies intestate, then the devolution of her property will take place according to the rules set out in Section 16. It will devolve upon to her sons and daughters (including the children of any pre-deceased son or daughter) and husband first. Secondly, it will go to the heirs of the husband. Third in the list of heirs are the mother and father. Fourthly, upon the heirs of father, and lastly come the heirs of the mother. Section 15 does not apply to the property held by a Hindu female with restricted rights i.e. provided in Section 14(2) at the time of her death. But the section applies to cases where she becomes a fresh stock of descent.

If a Hindu female dies issueless with no child or grandchild behind her, the different set of rules will govern the succession to her property. This will depend on the fact that the property she inherited from was her father or mother or from husband or father-in-law. Under subsection 2 (a) of section 15 states that if a Hindu female inherits any property from her father or mother, and she dies without children or grandchildren, then her property devolves on the heirs of her father.

## **REFORMS IN SUCCESSION LAW THROUGH STATE AMENDMENTS**

The Hindu Succession Act 1956 retained the Mitakshara coparcenary resulting in the discrepancies regarding Hindu women's position. Certain states took cognizance of this problem as equal treatment of women is crucial for economic and social justice to prevail. These states were Kerala, Andhra Pradesh, TamilNadu, Maharashtra and Karnataka. Kerala was the first to introduce 'The Kerala Joint Hindu Family System (Abolition) Act, 1975'. By this Act, Kerala completely and fully abolished male's right by birth to property. It brought an end to the Joint Hindu Family system and no one could now claim any interest in the ancestral property on the ground of birth in the family. The states of Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka also brought an amendment to Section 6 of the Hindu Succession Act, 1956 respectively in 1986, 1989, 1994 and 1994. By bringing this amendment, they declared that daughters are coparceners in Joint family property. According to the amendment Acts of Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka only unmarried daughters at the time of amendment were entitled to be a coparcener by birth in her own right in coparcenary property. They would also be subject to similar liabilities and disabilities as incurred by sons. Therefore, these amendments conferred dual rights for daughters. On one hand, she becomes the right owner in the coparcenary property in her natal family. On the other hand, she becomes a member of the marital joint family after her marriage.

### **Law Commission of India**

States like Andhra Pradesh, Maharashtra, Tamil Nadu, Karnataka and Kerala took steps to reform the incongruity of Hindu Succession Act, 1956 and brought

sweeping reforms in their respective places. But women in other states continued to face the brunt of discrimination about their property rights because of the shortcomings inherent in the Hindu Succession Act, 1956. Law Commission of India took the initiative to ameliorate the position of Hindu women. In its 174<sup>th</sup> report on “Property Rights of Women: Proposed Reforms under Hindu Law” under the chairmanship of Justice B. P. Jeevan Reddy, the commission made many important recommendations. It stated that in relation to social justice and property rights, women are facing discrimination. It recommended treating women equally in both economic and social system. These recommendations led to the Hindu Succession (Amendment) Act, 2005 which reflected as the amendment of Section 6 and omission of Section 4(2), Section 23 and Section 24. These were the Sections in the Hindu Succession Act, 1956 which perpetuated a gender bias and inequality.

The Law Commission of India further gave few more recommendations in 2008 in their 207<sup>th</sup> report under the chairmanship of Justice A. R. Lakshmanan. This was a proposal to amend Section 15 of Hindu Succession Act, 1956 which deals with the case when a Hindu female dies intestate leaving her self-acquired property with no heirs. This proposal has still not been incorporated in the Act to date.

### **The Hindu Succession (Amendment) Act, 2005**

The anomalies in the Hindu Succession Act, 1956 were addressed and the Hindu Succession (Amendment) Act, 2005 was passed to ensure the social and economic equality to Hindu women. The Amendment Act, 2005 deleted Section 4(2) of Hindu Succession Act, 1956. It paved the way for an equal inheritance to women in agricultural lands to that of the males. The state-level tenurial laws were done away

with by the removal of this amendment removing the discriminatory treatment to women dependent on agriculture for their sustenance.

The pertinent matter of the rights of daughters in Mitakshara coparcenary has also been addressed by the Hindu Succession (Amendment) Act, 2005. By amending Section 6 of the Hindu Succession Act, 1956, the position of the daughter has elevated. Section 6 is related to the devolution of interest in coparcenary property. Section 6(1) states that the daughter of a coparcener in a joint family governed by the Mitakshara law shall, on and from the date of commencement of the Hindu Succession (Amendment) Act, 2005, by birth become a coparcener in her own right in the same manner as the son.

She will be subjected to the same disabilities and have the same rights as that of a son regarding coparcenary property. any reference to a Hindu Mitakshara Coparcenary shall be deemed to include a reference to a daughter of a coparcener. But this provision is applicable to both married and unmarried daughters before the commencement of Hindu Succession (Amendment) Act, 2005.

If any disposition or alienation had taken place before 20<sup>th</sup> December 2004 including any partition or testamentary disposition of property, it shall not be affected or invalidated by the provision in Section 6(1). Section 6(2) states that if under Section 6(1) a female Hindu becomes entitled to any property, it shall be held by her with the coparcenary ownership. It shall be regarded as capable of being disposed of by her by will and other testamentary disposition.

Further, Section 6(3)(a) states that a daughter will get the same share as is allotted to a son. Section 6(3)(b) provides that the share of the pre-deceased daughter as they would have got it, had they been alive at the time of partition, shall be allotted

to the surviving child of such pre-deceased son or of such pre-deceased daughter. Section 6(3)(c) further says that the share of the pre-deceased child of a pre-deceased son or a pre-deceased daughter as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.

There is an appended explanation to Section 6(3) highlighting an important fact that the interest of a Hindu Mitakshara coparcener have been allotted to be the share in the property that would have been allotted to him if such partition had taken place immediately before his death, whether he was entitled to claim partition or not. Thus, by Amendment of Section 6 of the Hindu Succession Act, 1956, the daughter of a coparcener becomes a coparcener in the Mitakshara joint family property. She has the same birthright as that of the son with equal rights and liabilities. Daughters will acquire an equal share as that of sons and an equal share of the father's notional share of the father's separate share at the time of notional partition just before the death of the father.

The Hindu Succession (Amendment) Act, 2005 is a significant advancement towards gender equality and economic security for daughters. But the amended Section 6 fails to recognize mothers as coparceners. The concept of justice and equality would be meaningless if secured for a category of women at the expense of another. Therefore, the law should be rectified to confer all Hindu women equal property rights in ancestral as well as separate property.

The Amendment Act brought in 2005 also omitted Section 23 of the Hindu Succession Act, 1956. This omission gave all married and unmarried daughters same rights as that of sons to reside in and to claim partition of a parental dwelling home.

The Hindu Succession (Amendment) Act, 2005 has given rights to widows as well by omitting Section 24 which had disqualified certain widows on remarriage from succeeding to the property of intestate. After the commencement of the Act, even if the widow is married, she can inherit the intestate's property. It applies to the widow of a pre-deceased son, widow of a pre-deceased son of a pre-deceased son, and widow of the brother.

Besides, the Amendment Act, 2005 has added some more heirs to the list of class I heirs. The added heirs to the list are daughter's daughter's daughter, daughter's son's daughter and son's daughter's daughter and daughter's daughter's son.

## **EMPIRICAL STUDY WITH RESPECT TO WOMEN'S COPARCENARY RIGHTS**

With the amendment of Hindu Succession Act, 1956, the unfair features that were existing due to Mitakshara coparcenary between male and female heir are eliminated and both the sexes are placed on equal footing. Nevertheless, the question remains the same i.e. whether the legislation providing equal proprietary rights is adequate in itself? 'Towards Equality' was the title of the report of the Committee on the Status of Women in India (1974-75) signifying the emphasis on gender parity. Report of the Committee on the status of women in India in December 1974<sup>92</sup> had established that a significant number of women are entirely ignorant about their rights of inheritance. Even when they are aware of these rights, those females were unwilling to exercise their rights due to numerous social pressures.

During the progression of empirical study, the researcher observed that the male lobbyists want to keep the property intact for their sons only. In the empirical

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<sup>92</sup> <http://pldindia.org/wp-content/uploads/2013/04/Towards-Equality-1974-Part-1.pdf>

study, a questionnaire was prepared and served to 150 respondents out of which only 100 respondents replied. The replies of these respondents have been analyzed and tabularized. Out of these 100 respondents, the widely held view is that if the sister/daughter give up her share in favour of their brother/son, it will strengthen the bond of love and affection between them and if they demand the share, it will ruin the relationship between brothers and sisters. Out of these 100 respondents, 62 respondents are women and due to the abovementioned fact, only some female respondents claimed the share. Remaining women respondents do not want to inherit or claim any share in their father's property, even though a large section of them were not in affluent economic position. Thus, these results show that due to certain pre-existing notions and conventions the daughters/sisters themselves do not want to demand any share. They have a sort of emotional timidity in their mind that if they ask for their share it will hamper the brother-sister relationship and then no one from her natal family will stand with her at the time of sorrow and even of happiness.

Regarding the issue that whether the daughters should demand their share in the father's property, the respondents who gave negative response are of the understanding that if a daughter is economically independent, she must relinquish her share in favour of the brother. She became economically independent only due to her parent's expenditure on her higher education. Secondly, these respondents gave the opinion that in the present social set-up parent devotes a lot of money on the event of the marriage of his daughter. Further parental side of the girl continues to spend huge sum of money on several instances such as festivals, the birth of the child, children's marriage etc. on the daughter even after marriage. Thirdly, in some incidents, the married daughter becomes a shareholder in the substantial property of her husband, so they should not lessen the share of their brothers if they were equally well off. Thus,

these interpretations of the respondents gave the impetus to the argument that daughters must not claim their share in the coparcenary property.

## **SUGGESTIONS**

After the examination of historical status of women vis-a-vis the coparcenary rights and the empirical study to map the ground reality in today's society, the question that remains to be answered is that whether the legislative measures like Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005 have made the intended impact at the grass-root level? Unfortunately, the answer is not so distinct as in the study. It became clear that though many are aware of the laws and their right to succession granted legally to them, few got to exercise those rights in their favour. Even after more than a decade of passing the Amendment Act, 2005, granting the women inheritance rights and coparcenary rights, women seem to fold under the pressure of patriarchal social setup when they thought of actually claiming their fair share in the ancestral property. But the worst part is that there still exists an outlook that women should not have a right in their ancestral property which is visible in both men and women in the society. The fact is that these laws, though making a dent in the age-old patriarchal structure, are not sufficient to make a revolutionary transformation and remain only on paper unless determined concrete steps are taken to bring social justice and economic equality.

Consequently, to provide better coparcenary rights, the researcher has assessed the whole condition, and by going through the whole of the study, recommended the following two-fold measures to be implemented. First are the legal measures and second is the social measures.

## **Legal Measures:**

Legal measures refer to those steps which should be taken to improve the statutory provisions, i.e. by plugging the loopholes and by eliminating the misunderstanding created by the Hindu Succession (Amendment) Act, 2005. These are:

### **1. Uniform Law Relating to Land Holding**

Section 4(2) which has been omitted by the Amendment Act, 2005 create contradictory circumstances. Now all the residents of a particular State who are Hindus would be governed by the Hindu Succession Act while to those who are non-Hindus, the respective State laws relating to land holdings etc. would apply to them. So, it is proposed that the Parliament should take note of this situation and must frame a uniform law so far as the law providing for the prevention of fragmentation of agricultural holdings or the fixation of ceilings or the devolution of tenancy rights in respect of such holdings are concerned.

### **2. Abolish Coparcenary on the Pattern of Kerala Law**

The misunderstandings and anomalies which are created by the Hindu Succession (Amendment) Act of 2005 are only because of retaining the concept of Mitakshara coparcenary. The amendment substantially modifies the concept of the Mitakshara Joint Hindu family and coparcenary by elevating a daughter to the position of a coparcener. Once a daughter becomes a coparcener, she naturally remains to be a member of her natal Joint family, even after her wedding. Even in the Parliamentary debates, at the time of passing of Hindu Succession Bill, the opinions were voiced that " To retain the Mitakshara Joint family and at the same time put a daughter on the same footing as a son with respect to the right by birth, right of survivorship and the

right to claim partition at any time will be to provide for a Joint family unknown to the law and unworkable in practice.<sup>93</sup>"

Hence, to resolve all the conflicts, it is better to abolish the concept of the coparcenary and to adopt the Kerala model. The State of Kerala has abolished the concept of coparcenary following the recommendations of the Hindu Law Committee. Section 4(1) of the Kerala Joint Family System (Abolition) Act, provides that all the members of a Mitakshara Coparcenary will hold the property as tenants in common on the day the Act comes into force as if a partition has taken place and each member holding his or her share separately. The note worthy characteristic of the Kerala Law is that it has eliminated the traditional Mitakshara family and right by birth. The primary intention behind making the daughter as a coparcener is to impart equal rights to the daughter in the division of her paternal property. For accomplishing this purpose, there is no requirement to stick to the concept of the coparcenary.

Moreover, after the amendment, question is that where is the coparcenary property? As the decision of the Supreme Court in CWT vs .Chander Sen<sup>94</sup> has already made it clear that the property acquired under the Hindu Succession Act, is the separate property of the person who inherits it and under 6(3) of the Act, it is provided that the interest of the Hindu in the Joint Hindu family property shall devolve by testamentary or intestate succession under this Act and not by survivorship. Hence, the spontaneous channel to generate the coparcenary property is already obstructed, where the daughter should claim the equal share along with the son. Thus, in reality, the holding of Mitakshara coparcenary would only direct to ambiguities, anomalies and litigation. Therefore, it is recommended that Mitakshara coparcenary should be eliminated on the pattern of the Kerala model.

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<sup>93</sup> Lok Sabha Debates, p. 8014, 1955.

<sup>94</sup> [http://jajharkhand.in/wp/wp-content/judicial\\_updates\\_files/03\\_Personal\\_Law/04\\_Succession/Commissioner\\_Of\\_Wealth\\_Tax....vs\\_Chander\\_Sen\\_Etc\\_on\\_16\\_July,\\_1986.PDF](http://jajharkhand.in/wp/wp-content/judicial_updates_files/03_Personal_Law/04_Succession/Commissioner_Of_Wealth_Tax....vs_Chander_Sen_Etc_on_16_July,_1986.PDF)

**3. Addition of Word 'her' in sub-sections (2) & (3) of Section 6 along with 'him':**

It is also proposed that the confusions which were generated by the language used in the Act should also be taken care of when the daughter has also become a coparcener by section 6 (1). The use of the words 'him', 'his', 'he' in the explanation to section 6(3) again creates misunderstanding. Here the words 'her', and 'she' needs to be included as the legislature has done in the Amended section 30 by adding the word 'her'(disposed of by him or by her). Similar type of misperceptions prevails while abolishing the doctrine of survivorship because section 6(2) says that any property to which a female Hindu becomes entitled shall be held by her with the incidents of coparcenary ownership, whereas section 6(3) provides that where a Hindu dying after the commencement of this Act, his interest would devolve not by survivorship but by testamentary or intestate succession. So, it gives the impression that the doctrine of survivorship is abolished only for male heirs as the words used are 'his' and not for female heirs. So to have an unambiguous view of the provision mentioned above, the subsection must be corrected.

**4. Mother and Father must be given the Equal Share**

Law Commission in its 204th Report submitted in 2008 propositions to elevate the status of the father to include him in the list of class 1 heirs. The purpose behind the recommendation given by the Law Commission is that it undertakes more significance given the recent enactment of the Parliament to provide maintenance to parents in “The Senior Citizens (Maintenance, Protection and Welfare) Act, 2007” wherein it is now made obligatory that every person should look after his parents and failure will lead to punishment. But while repositioning the father, Commission also proposes the assimilation of the rule that if both

mother and the father survived the deceased then they together took one share. Thus, it attempts to diminish the share of the mother to half. Here it is advocated that share of all the Class I heirs should continue to be equal, otherwise it would lead to injustice among the Class I heirs. Additionally, by doing so the position of the parents grows weaker as compared to the other class 1 category heirs.

#### **5. Mother should also be included in the List of Heirs if the Female intestatedies Issueless**

The Amending Act of 2005 does not render any alteration in section 15 of the Hindu Succession Act which provides for succession to female heirs. The male supremacy is quite evident in section 15 because if the female dies issueless, the property which she inherits from her parents would devolve upon the heirs of father and if she inherits the property from her husband and father-in-law then, on her death, it would devolve upon the heirs of her husband. Consequently, through this provision, only the male members would be her heirs to the total exclusion of the mother. Whereas in case of the male intestate, the mother is a class I category heir. one of the recommendations of the 204<sup>th</sup> Report of Law commission is to include father as class I heir of the male intestate. So, on a similar line, it can be suggested that a mother should also be included as an heir along with father regarding the female intestate.

#### **6. Restrictions should be imposed upon Testamentary Succession:**

So far as Testamentary succession under Section 30 of the Act is concerned even the Report of The Committee on the Status of Women in India, 1974 suggested that the right of testament should be limited under the Hindu Succession Act, 1956 so as not to divest legal heir entirely. Unfortunately, so far as Hindu Succession Act is considered, this mechanism which can be used by those who

intend to deny inheritance to a female heir is still existing and the Parliament has not taken note of Committee's proposition while passing the Amendment Act of 2005. Therefore, here it is proposed that there should be some form of restriction to some extent (like in Muslim Law) on the power of testator so that some property should be accessible for the division as intestate succession.

#### **7. Recommendation of the Law Commission, 2018**

Implementation of the recommendations of the Law Commission of India presented in a consultation paper released on August 31, 2018, should seriously be considered. The paper recommended many reforms to family law intending to bring about real gender parity at the ground level.

Some of the key recommendations in this consultation paper are:

- i. An equal share in the marital property to women, regardless of whether she contributes to the family income
- ii. The abolition of the HUF structure wherein the Karta, who is usually the male head of the family, exercises fierce centralized control over the family assets.
- iii. The necessity to reform personal laws of all religions in India to ensure true gender parity in terms of inheritance and to safeguard rights of widows and unmarried women.
- iv. It also recommended protecting Parsi women's inheritance rights, even if they marry outside their community.

Upholding women's inheritance rights and rights to own assets will result in an economically empowered populace of women, and studies have made known that there is a positive correlation between the economic empowerment of women and escalation in household income, healthcare, education and childcare expenses for a household.

## **Social Measures**

Apart from the need for plugging the above-mentioned loopholes and introducing new legislatures, there is a dire necessity to adopt some measures at the social level also. Law has played its role very proficiently first by enacting the Hindu Succession Act, 1956 which is deemed as Magna Carta so far as the women's property rights are concerned. Then further amendment of the Act by the Amendment Act of 2005 removed the gender discrimination which existed under the Act of 1956 in one stroke. Accordingly, now it is the responsibility of the society to acknowledge and implement the existing laws for the overall advancement and upliftment of the Hindu women as in our society there is a contrast between perception and practice. So, to realize the intended outcomes of the enactment at the social level the researcher submits the following social measures: -

### **1. Education to Change the Mindset of the People**

There is a genuine requirement to transform the heart and the mindset of the people. Sincerity in the attitude of society is also essential today. It can be done by educating the children regarding the importance of economic justice for a progressive society.

### **2. Need to Mobilize Public opinion**

There is a necessity to mobilize public opinion positively in this direction so that the people should shed off their conservative attitude. They must realize the need for the objectives due to which the new rights have been created for the female in the first place.

### **3. Steps should be taken at the grass-root level**

For the materialization of this aim, Panchayati Raj Institutions, Non-Governmental Organizations, Women Oriented organizations can play an active

role. These institutions can impart legal knowledge at village level regarding the property rights available to the female. For this purpose, the present laws should be interpreted in simple and lucid language and be circulated extensively in the rural as well as urban areas. Seminars should also be conducted at the village level to deliver this knowledge to the illiterate women regarding their property rights. These steps should inculcate the spirit of confidence among the women which is essential for them to understand that the claim to share is their right even if they feel societal pressure against this step.

#### **4. Active Role of Religious Organizations**

To shape the public opinion favourably in this direction, religious organizations and religious leaders can also play a significant role. They should be active in moulding the views of the peoples towards giving equal property rights to their daughters as it would not only help women but society in general.

#### **5. Self Help is the Need of the Day**

Last of all, women themselves should come forward by accepting and implementing the laws in their own family. The traditional approach that the daughter is not a part of the natal family once she gets married needs to be challenged and womenfolk of the family should take it as their responsibility. They may have not acquired their due share in ancestral property but they should strive to reform this attitude by helping their daughters get a share in their family. She should change the traditional notions by creating an atmosphere in the family where sons and daughters are at par and both get equal coparcenary rights.

Hence, there is a pressing need to revolutionize the conviction of the society and to channelize the vitalities, especially of the younger generation to help them in constructing the circumstances which could provide a progressive atmosphere

where the women could exercise their rights without any sort of societal pressure. Law has its limitations in terms of the reach to the public while enacting these legislatures. So, along with these legal enactments, social awareness among common masses is the need of the day.

Legislations in India have always been in the direction of safeguarding women's interest, their upliftment and giving them better and more equal rights to that of men. Laws granting women equal right to hold property have been enacted to serve the same purpose. Still, there remained many lacunas against which different NGO's, political parties and women organizations raised their voice from time to time. These objections and recommendations were not unheard and the legislature addressed the loopholes by amending the concerned laws for the betterment of the economic and social life of Indian women. Thus it raises the question as to why still women face discrimination and have unequal status while the legislature has always strived to give them a better social, economic and political life.

The position of Hindu woman in respect of her right to property has undergone unparalleled alteration from ancient times to the Hindu Succession (Amendment) Act, 2005. The journey from prohibition to the acknowledgement of Hindu daughters in Mitakshara coparcenary has been outstanding, but non-inclusion of other Hindu females is irrational and unfair, for all women are equally entitled to economic and social justice which the Constitution of India decrees. In spite of some advancement brought by the Hindu Succession (Amendment) Act, 2005, women are still deprived of their lawful rights in the predominantly patriarchal society. Reticence and self-denial on the side of women on being suppressed to unequal property rights reinforce and further perpetuates injustice.

Despite all the long strides, the Indian society has taken towards women empowerment and in particular their rights to property and inheritance, there are still matters that require more effort. For instance, the law itself requires more precision on aspects like whether a woman's children get a share into her father's family property by way of her inheritance? This is an intensely disputed issue as the maternal grandchildren have a share in their father's family inheritance. Whether they would acquire a share into the family wealth of both, their maternal and paternal grandparents, is a grey area in the legislation that still needs to be clarified.

The favourable effect of the legal changes is beyond any doubt due to the robust evidence obtained. However, there are various aspects where further research could improve the general understanding of the dynamics of legal and behavioural change. For example, since the legal measures fall significantly short of the objective of fully aligning women's status to that of men, endeavours to identify factors leading to differential impact could deepen the understanding of channels through which such legislative changes impact behaviour. Moreover, strategic behaviour on the part of parents in terms of swapping property away from joint to separate and increase in will writing could potentially disinherit daughters. This could lead to an adverse effect on women's asset ownership in the future. Exploration of these incidents and their cause also would allow a better comprehension of the magnitude and frequency of associated welfare effects.

Hindu women are still toiling hard to stand equally to their men counterparts. They are discriminated, attacked and physically and mentally abused. Hence, the factors playing behind the scene are not just the absence of law or that the laws are not properly implemented, but also because women are not aware of their rights i.e.

the right of succession and inheritance. To be in the good books of their natal family, they counter the positive impact of legislation.

Hindu women must be made conscious through legal literacy campaigns and social awareness programs about their property rights so that they may strive for what is lawfully theirs by being born as human beings. Intensive endeavours on the part of the government, non- governmental organizations, public in general and lastly women should be taken up to bring about attitudinal change in the mindset for promoting equal rights based on humanity for achieving gender equality.

At the end of the twentieth century, it could be argued that Indian women still have a long way to go to attain gender justice. The problems of the present time and the unresolved issues must not be allowed to negate the achievements of the past. It is vital to acknowledge the present situation with an appreciation of the multitude of sacrifices Indian women have made to bring about a difference. This would not be the first time that legislative measures have been found lacking. Neither when women's concerns have been set aside in favour of other matters. Women's education and participation in political action have reformed India's social and political landscape. Women have progressed from being objects of legislation to initiators. For many women, the family no longer exercises absolute authority over their existence. A general awakening has commenced which cannot be permanently repressed.

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- 1) [www.legalserviceindia.com](http://www.legalserviceindia.com)
- 2) [www.stpl-india.in](http://www.stpl-india.in)
- 3) [www.lawyerscollective.org](http://www.lawyerscollective.org)
- 4) [www.dnaindia.com](http://www.dnaindia.com)
- 5) [www.advocatekhoj.com](http://www.advocatekhoj.com)
- 6) [www.urbanresearch.in](http://www.urbanresearch.in)
- 7) [www.inflibnet.ac.in](http://www.inflibnet.ac.in)
- 8) [www.caravanmagazine.in](http://www.caravanmagazine.in)
- 9) [www.soppecom.org](http://www.soppecom.org)

# *Appendix I*

# QUESTIONNAIRE

Dear Respondent,

I am doing Ph.D. on 'Coparcenary rights of Hindu Women in Uttar Pradesh (1956-2011)' from Babasaheb Bhimrao Ambedkar University, Lucknow. All the information collected through this questionnaire will be used for academic purposes only and shall be kept strictly confidential. Kindly spare a few moments and fill in the questionnaire. I shall be highly grateful to you for this kind act.

## **Socio-Economic Profile of the Respondent:**

- Gender:  
a) Male      b) Female
- Age Group:  
a) 18-30      b) 30-40      c) 40-50      d) 50-60      e) above 60
- Education:  
a) Uneducated      b) School      c) Graduate      d) Post-graduate      e) Doctorate
- Marital status:  
a) Unmarried      b) Married      c) Divorcee      d) Spouse deceased
- Working status:  
a) Unemployed      b) Employed      c) Business      d) Other
- Income  
a) Below 15000  
b) 15000-25000  
c) 26000-35000  
d) Above 35000

1. Are you aware of the Coparcenary rights of Hindu women?

- a) No      b) Yes  
If yes,

- b.i) Family
- b.ii) Literacy
- b.iii) Awareness
- b.iv) Media

2. Do you think women should possess property?
  - a) If No
  
  - b) If Yes
  
3. Do you think women are enjoying equal rights with men in the inheritance of property?
  - a) Yes
  - b) If No, why?
    - b.i) lack of awareness of the property rights
    - b.ii) unwillingness of the family members to treat women equally
    - b.iii) inefficient machinery to implement
    - b.iv) loopholes in policies
  
4. Do you feel women should become equal heirs in inheritance?
  - a) Yes
  - b) No
  
5. Do you agree to the custom of giving money and gifts at the time of marriage?
  - a) No
  - b) Yes
  
6. If yes, why?
  - a) Tradition      b) High status      c) both      d) other\_\_\_\_\_
  
7. Are you in favor of giving a dowry to the daughter or a share to the daughter or both in the father's property?
  - a) Dowry              b) Share              c) Both              d) Nothing
  
8. Do you think that a sacrifice by a sister of her share in deceased father's property strengthen the bond of love and affection between brother and sister?
  - a) Yes              b) No
  
9. Do you think whether a claim by a sister of her share in deceased father's property spoil the relation between the brother and the sister?
  - a) Yes              b) No
  
10. Are you in favor of giving equal share to son and daughter in their ancestral property?

- a) Yes      b) No

11. Do you think that laws providing property rights have improved the socio-economic status of women?

- a) Yes      b) No

12. Do you think whether education, legal literacy programs are helpful in providing legal awareness to women?

- a) Yes      b) No

### **Female Respondents Only**

13. Did you ever inherit or are likely to inherit paternal property?

- a) Yes
- b) no

14. How much share have you got in ancestral property?

- a) 1/3<sup>rd</sup>      b) half      c) 1/4<sup>th</sup>      d) other

15. If No, reason was\_

- a) Didn't ask
- b) Relatives's unwillingness
- c) Fear of spoiled relations
- d) Other, specify.

16. Action taken

- a) Court
- b) Relatives
- c) No action taken
- d) other

Thank you for your cooperation.

# *Appendix II*

# **THE HINDU SUCCESSION ACT, 1956**

## **ARRANGEMENT OF SECTIONS**

### **CHAPTER I**

#### **PRELIMINARY**

##### **SECTIONS**

1. Short title and extent.
2. Application of Act.
3. Definitions and interpretation.
4. Overriding effect of Act.

### **CHAPTER II**

#### **INTESTATE SUCCESSION**

##### **General**

5. Act not to apply to certain properties.
6. Devolution of interest in coparcenary property.
7. Devolution of interest in the property of a tarwad, tavazhi, kutumba, kavaru or illom.
8. General rules of succession in the case of males.
9. Order of succession among heirs in the Schedule.
10. Distribution of property among heirs in class I of the Schedule.
11. Distribution of property among heirs in class II of the Schedule.
12. Order of succession among agnates and cognates.
13. Computation of degrees.
14. Property of a female Hindu to be her absolute property.
15. General rules of succession in the case of female Hindus.

16. Order of succession and manner of distribution among heirs of a female Hindu.

17. Special provisions respecting persons governed by marumakkattayam and aliyasantana laws.

General provisions relating to succession

18. Full blood preferred to half blood.

19. Mode of succession of two or more heirs.

20. Right of child in womb.

21. Presumption in cases of simultaneous deaths.

22. Preferential right to acquire property in certain cases.

23. [Omitted.]

24. [Omitted.]

25. Murderer disqualified.

26. Convert's descendants disqualified.

27. Succession when heir disqualified.

28. Disease, defect, etc., not to disqualify.

Escheat

29. Failure of heirs.

### **CHAPTER III**

#### **TESTAMENTARY SUCCESSION**

##### **SECTIONS**

30. Testamentary succession.

### **CHAPTER IV**

#### **REPEALS**

31. [Repealed.]

THE SCHEDULE.

# THE HINDU SUCCESSION ACT, 1956 ACT NO. 30 OF 1956<sup>1</sup>

[17th June, 1956.]

An Act to amend and codify the law relating to intestate succession among Hindus.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

## CHAPTER I PRELIMINARY

**1. Short title and extent.**—(1) This Act may be called the Hindu Succession Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

**2. Application of Act.**—(1) This Act applies—

(a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

*Explanation.*—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

(c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

**3. Definitions and interpretation.**—(1) In this Act, unless the context otherwise requires,—

(a) “agnate”—one person is said to be an “agnate” of another if the two are related by blood or adoption wholly through males;

(b) “aliyasantana law” means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949, (Madras Act 9 of 1949) or by the customary aliyasantana law with respect to the matters for which provision is made in this Act;

(c) “cognate”—one person is said to be a “cognate” of another if the two are related by blood or adoption but not wholly through males;

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1. The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and First Schedule and to Pondicherry by Reg. 7 of 1963, s. 3 and First Schedule.

(d) the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(e) full blood “half blood” and “uterine blood”—

(i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;

(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

*Explanation.*—In this clause “ancestor” includes the father and “ancestress” the mother;

(f) “heir” means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(g) “intestate”—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect;

(h) “marumakkattayam law” means the system of law applicable to persons—

(a) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act 22 of 1933); the Travancore Nayar Act (2 of 1100K); the Travancore Ezhava Act (3 of 1100K); the Travancore Nanjinad Vellala Act (6 of 1101K); the Travancore Kshatriya Act (7 of 1108K); the Travancore Krishnanvaka Marumakkathayee (Act 7 of 1115K); the Cochin Marumakkathayam Act (33 of 1113K); or the Cochin Nayar Act (29 of 1113K); with respect to the matters for which provision is made in this Act; or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore Cochin or Madras <sup>1</sup>[as it existed immediately before the 1st November, 1956], and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line; but does not include the *aliyasantana* law;

(i) “nambudri law” means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932 Madras Act (21 of 1933); the Cochin Nambudri Act (17 of 111K); or the Travancore Malayala Brahmin Act (3 of 1106K); with respect to the matters for which provision is made in this Act;

(j) “related” means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly.

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

**4. Overriding effect of Act.**—(1) Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

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1. Ins. by the Adaptation of Laws (No. 3) Order, 1956.

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

## CHAPTER II

### INTESTATE SUCCESSION

#### *General*

**5. Act not to apply to certain properties.**—This Act shall not apply to—

(i) any property succession to which is regulated by the Indian Succession Act, 1925 (39 of 1925), by reason of the provisions contained in section 21 of the Special Marriage Act, 1954 (43 of 1954);

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

**<sup>2</sup>[6. Devolution of interest in coparcenary property.**—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- (a) by birth become a coparcener in her own right 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 any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

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1. 1. Omitted by Act 39 of 2005, s. 2 (w.e.f. 9-9-2005). 2.Subs. by s. 3, *ibid.*, for section 6 (w.e.f. 9-9-2005

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

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted.

*Explanation.*—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004

*Explanation.*—For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]

**7. Devolution of interest in the property of a *tarwad*, *tavazhi*, *kutumba*, *kavaru* or *illom*.**—(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad*, *tavazhi* or *illom*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri* law.

*Explanation.*—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad*, *tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwad*, *tavazhi* or *illom*, as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *tarwad*, *tavazhi* or *illom*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

*Explanation.*—For the purposes of this sub-section, the interest of a Hindu in the property of a *kutumba* or *kavaru* shall be deemed to be the share in the property of the *kutumba* or *kavaru*, as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyasantana* law, and such share shall be deemed to have been allotted to him or her absolutely.

(3) Notwithstanding anything contained in sub-section (1), when a *sthanamdar* dies after the commencement of this Act, the *sthanam* property held by him shall devolve upon the members of the family to which the *sthanamdar* belonged and the heirs of the *sthanamdar* as if the *sthanam* property had been divided per capita immediately before the death of the *sthanamdar* among himself and all the members of his family then living,, and the shares falling to the members of his family and the heirs of the *sthanamdar* shall be held by them as their separate property.

*Explanation.*—For the purposes of this sub-section, the family of a *sthanamdar* shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of *sthanamdar* if this Act had not been passed.

**8. General rules of succession in the case of males.**—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

**9. Order of succession among heirs in the Schedule.**—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

**10. Distribution of property among heirs in class I of the Schedule.**—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—

*Rule 1.*—The intestate’s widow, or if there are more widows than one, all the widows together, shall take one share.

*Rule 2.*—The surviving sons and daughters and the mother of the intestate shall each take one share.

*Rule 3.*—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

*Rule 4.*—The distribution of the share referred to in Rule 3—

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

**11. Distribution of property among heirs in class II of the Schedule.**—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they, share equally.

**12. Order of succession among agnates and cognates.**—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:—

*Rule 1.*—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

*Rule 2.*—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

*Rule 3.*—Where neither heir is entitled to be preferred to the other under *Rule 1* or *Rule 2* they take simultaneously.

**13. Computation of degrees.**—(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

- (2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.
- (3) Every generation constitutes a degree either ascending or descending.

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

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

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

**15. General rules of succession in the case of female Hindus.**—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

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

(2) Notwithstanding anything contained in sub-section (1),—

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

**16. Order of succession and manner of distribution among heirs of a female Hindu.**—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate’s property among those heirs shall take place according to the following rules, namely:—

*Rule 1.*—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

*Rule 2.*—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate’s death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate’s death.

*Rule 3.*—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and

- (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father’s or the mother’s or the husband’s as

the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

**17. Special provisions respecting persons governed by *marumakkattayam* and *atiyasantana* laws.**—The provisions of sections 8, 10, 15 and 23 shall have effect in relation to persons who would have been governed by the *marumakkattayam* law or *aliyasantana* law if this Act had not been passed as if—

(i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely:—

“(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates.”;

(ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely:—

“(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother;

(b) secondly, upon the father and the husband;

(c) thirdly, upon the heirs of the mother;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the husband.”;

(iii) clause (a) of sub-section (2) of section 15 had been omitted;

(iv) section 23 had been omitted.

*General provisions relating to succession*

**18. Full blood preferred to half blood.**—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

**19. Mode of succession of two or more heirs.**—If two or more heirs succeed together to the property of an intestate, they shall take the property,—

(a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes*; and

(b) as tenants-in-common and not as joint tenants.

**20. Right of child in womb.**—A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

**21. Presumption in cases of simultaneous deaths.**—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

**22. Preferential right to acquire property in certain cases.**—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

*Explanation.*—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

**23.** [*Special provision respecting dwelling-houses.*]—Omitted by the Hindu Succession (Amendment) Act, 2005 (39 of 2005), s. 4 (w.e.f. 9-9-2005).

**24.** [*Certain windows re-marrying may not inherit as windows.*]—Omitted by s. 5, *ibid.* (w.e.f. 9-9-2005).

**25. Murderer disqualified.**—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

**26. Convert’s descendants disqualified.**—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

**27. Succession when heir disqualified.**—If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

**28. Disease, defect, etc., not to disqualify.**—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

#### *Escheat*

**29. Failure of heirs.**—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

### CHAPTER III TESTAMENTARY SUCCESSION

**30. Testamentary succession.**—<sup>1\*\*\*</sup> Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so <sup>2</sup>[disposed of by him or by her], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

*Explanation.*—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* in the property of the *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this <sup>3</sup>[section.]

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1. The brackets and figure “(1)” omitted by Act 58 of 1960, s. 3 and the Second Schedule (w.e.f. 26-12-1960).

2. Subs. by Act 39 of 2005, s. 6, for “disposed of by him” (w.e.f. 9-9-2005).

3. Subs. by Act 56 of 1974, s. 3 and the Second Schedule for “sub-section” (w.e.f. 20-12-1974). 4. Omitted by Act 78 of 1956, s. 29 (w.e.f. 21-12-1956).

CHAPTER IV REPEALS

31. [Repeals.]—*Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and the First Schedule (w.e.f. 26-12-1960).*

THE SCHEDULE

(See section 8)

HEIRS IN CLASS I AND CLASS II

*Class I*

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<sup>1</sup>[son of a predeceased 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].

*Class II*

- I. Father.
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.
- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.
- V. Father's father; father's mother.
- VI. Father's widow; brother's widow.
- VII. Father's brother; father's sister.
- VIII. Mother's father; mother's mother.
- IX. Mother's brother; mother's sister.

*Explanation.*—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

1. Added by Act 39 of 2005, s. 7 (w.e.f. 9-9-2005).



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### RESEARCH ARTICLE

#### GENDER RIGHTS AS CONJECTURED FROM FOLKSONGS OF UTTAR PRADESH.

Asmita yadav.

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Gender rights, folklore, safety-valve function, rural women, land rights.

#### Abstract

This paper is based on an empirical study of women's folksongs of Uttar Pradesh. Folksongs are a rich source for understanding the place of women in Hindu society. The significance of these folksongs lies in their suggesting and hinting at themes, rather than directly addressing them, women sing what they often cannot talk about. Folksongs deal with women's common wishes, unfulfilled desires, hopes, disappointments, unexpressed emotions, and their reactions to their social environment. These voices also highlight rural women's relationship with land, and their own perceptions of significance of independent land rights in their lives. Women would not answer direct questions but freely sing about labor practices and rights to land. This paper highlights the very important safety-valve function of these folk songs in which women are afforded an opportunity to express their bottled-up feelings and their longings in a socially acceptable form.

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Folksongs form the universal legacy of the entire mankind and binds together the different social groups together propounding their cultural identity. Scholars from different backgrounds are realizing the fact that folksongs bring traditions close while helping shape our future and should be documented and preserved as an inheritance for the forthcoming generations. For the last three decades, there has been a rise in the number and variety of studies done on the south Asian countries. The rituals, verbal traditions, worldviews and religious performances have provided new perceptions to the issues of religion, gender and caste in India. Most of the works done in this field in Indian context offer a rich empirical data on folksongs but they lack in analysis. This article portrays women as described in the women's folksongs of Uttar Pradesh. Women's folk songs of India chiefly describe the household environment and the domestic rituals connected with the rites of passage, festivals, and ceremonies. Nevertheless, there are also songs that, instead of focusing on the domestic rituals, deal with women's common wishes, their unexpressed emotions, unfulfilled desires, hopes, and disappointments, and their reactions to their social environment. Even though there is no description of the domestic rituals pertaining to a particular ceremony or festival in these songs, they are, nevertheless, sung on these occasions and festivals. No ceremony, festival, or ritual in India is complete without women's songs. They are also sung while women do such household chores as milling grain, churning curd, or working in the fields. Related work on North Indian folklore has been done by many writers. These authors have dealt with folklore from various angles, but none have discussed them specifically from the woman's point of view, a viewpoint that is the main focus of this paper. Mishra (1959) has, admittedly, touched upon women's conditions, but only briefly, and has left many aspects related to women's emotions untouched. Wade (1971) emphasized only the wedding songs. Chauhan (1972) and Srivastava (1982), on the other hand, have studied folk songs only in an anthropological and cultural context. Kuldeep (1972) and Upadhyaya (1978) have given only a general view of folk songs and have not dealt with them from the woman's point of view. Henry (1976) mentions the names of a few

types of women's songs, but he does not give any texts or discuss women's feelings as expressed in these songs. Jain's work (1980) is almost exclusively centered on chaiti songs, which are mostly composed by men, even though the text usually describes women's feelings and predicaments. Tewari (1974, 1988) has given some folk songs of women, but he focuses mainly upon those that describe domestic rituals and traditions. Avasthi (1985) gives a good variety of women's folk songs, but his contribution remains restricted to anthology. Singh (1983) has made a comprehensive study of avadhi folk songs, and Tripathi (1962) has done the same for the bhojpuri songs, but they have not studied them from the specific stand-point of women. How a woman is portrayed in women's folklore and what she desires, wishes, and aspirations she cherishes, what frustrations and injustices she suffers, is a subject that has received till now little or no attention in the literature. The present paper attempts to fill this gap.

This article is based on a study of folk songs sung by Hindu women in North India. These songs are in the avadhi, bhojpuri or khariboli dialects of Hindi. My study is restricted to those folksongs that depict women's wishes, feelings, emotions, unfulfilled desires. Folk songs that describe only rituals, festivals or ceremonies without touching upon the wishes and feelings have been excluded.

In cultures that do not openly discuss inner emotional condition, songs are the shared tradition through which emotions are expressed, thus providing a medium for the expression of what might be taboo in everyday conversation. For instance, in the emotionally charged segment below, about a visiting brother's distress at his sister's misery, we also learn that women are prone to hide details about ill treatment in their marital homes, so as not to alarm their natal family.

*'Sonva ta jarai bahini sonara dukaniya  
Bahini jarat hin sasurariya ho Ram  
Lohara ta jarai bahini lohara dukaniya  
Bahini ta jarat hin sasurariya ho Ram  
E dukh jani kahiya bhaiya Baba ke agva  
Sabhava baithi pachtaihen ho Ram  
E dukh jani kahiya Maiya ke agava  
Chhatiya piti mari jaihen ho Ram.'*

Gold melts at the goldsmith's. Sister burns away at her in-laws. Iron thaws at the ironsmith's. Sister wastes away at her in-laws. Brother, do not say of this pain to father. In the assembly, he'll be filled with self-reproach. Brother, do not speak of this to mother. Beating her bosom, she'll die of heartache.

Urmila Maurya and friends, Chachakpur, Jaunpur.

It's been found that women, despite being silenced in other spheres and contexts and hesitant to volunteer information on contested issues such as the nature of rights and entitlements to land or to share their opinions even when persuaded to do so, nevertheless participate in song sessions with great enthusiasm and lack of inhibition. Women were often unable to connect the culture of disinheritance with the immediate marginality they were experiencing. The political explosiveness of the subject also hampered frank expression. In this setting, marked by the systematic negation of women's rights to land, marriage songs wherein brides claim their shares from fathers spoke volumes. The song below is an astounding example, elucidating the sleight of hand by which women are refused rights in natal properties. We hear both complacency and relief in the father's tone as he elicits the bride's vermilion, the symbol of matrimony that will eradicate the threat to the property of the patrilineage that unmarried daughters pose.

*'Je kuch arajihe e baba, adhiya hamar  
Adhiya adhiya jini kara beti  
Sabhe dhan tohar chutki bhar sindurva e beti  
Tu ta jayebu kauna par'*

In all you earn, Father, I stake a claim for half.  
Insist not on half your share, daughter,  
This entire wealth is yours, after all  
Just a pinch of vermilion, daughter, before long, far and away you'll be gone.''  
Jassal, 2001.

**Conclusion:-**

The songs of women discussed above give a dappled picture of Hindu women. They do not depict only a conventional stereotype of a Hindu woman, they also portray her as exuberant and capable of expressing her emotions freely and with abandon. The songs tell us about her longings and wishes, her frustrations, and the quandaries that accompany different facets of her life. The songs lay bare her status in Hindu society. Some describe her as submissive and acquiescent, others depict her as audacious, daring and rebellious. Some show us that girls are unwelcome and can only bring misery to the family, while others describe how tenderly and with what loving care they are raised up. In these folk songs, we also see the contradiction between daughter who is so adored that her going away can be heartrending, while, on the other side, once she gets married she cannot come to meet her parents without a proper invitation. The conventional stereotype of a Hindu woman portrays naïve, gullible, and superstitious, as a person who looks sorrows of life, disease, and death as stemming from the wrath and goddesses. She is deemed to be devout and god-fearing. stereotype of the Hindu woman finds its confirmation in the but also its refutation, for on occasion the Hindu woman appears individualist who is disdainful of social restraints, as someone is prepared to challenge the established authority of social customs, and is willing to forcefully enunciate the injustices and inequities to which she is subjected. While she can be docile, she can be tough and indomitable as well.

Women's folk songs are a kind of safety valve meant to be vent for women through which they can express their animosity against the social order. From their earliest girls are taught to be respectful and submissive to their husbands as well as their relatives. In contrast to this, we often hear in the strongly disparaging and accusatory words against these same who in real life would be treated with great respect. Normally daughter-in-law does not dare squabble with her mother-in-law, but in the folk songs these rules of normal conduct get separated with indemnity. Anything, however unacceptable in real life, finds an acceptable outlet in the folk songs. It is these folk songs that women give vent to their passions, their frustrations, their anger, and their love. It is through them that they show the grievances and show their hurt. The folk songs provide vignettes through which we can look into the complex motley we call culture. Folk songs, particularly women's folksongs are indeed a rich source for understanding the place of women in the society.

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## **AMBEDKAR'S VISION FOR ECONOMIC LIBERATION OF WOMEN**

**Asmita Yadav\***

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**Abstract:**

The present article strives to throw light on the ideas of Dr. BabasahebBhimrao Ambedkar regarding the empowerment of women through his works and his life. He dedicated his life to end the oppression of one fellow human being to another. As he himself was the victim of caste-ridden Hindu patriarchal society, he understood perfectly the plight of Dalits and women. Through the medium of his Hindu Code Bill, he aimed for a more egalitarian hindu law and religion which gives women an opportunity to stand on the same platform as his male counterpart. The article shows his intentions and stand and has used his words to back the same.

**Keywords:Ambedkar, women's right, economic independence, egalitarianism.**

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## Introduction

Dr. B. R. Ambedkar was indeed an emancipator of women who rose like a polar star from tatters in Maharashtra and strived tirelessly for the upliftment of depressed class, including women. He burnt the Manusmriti on 25<sup>th</sup> December, 1927 and blew bugle of fight against the Brahmanical patriarchy which placed women on the lowest rung of society ladder. He said, while addressing largely attended Depressed Classes Women conference on 18-19 July 1942 that, “He measured the progress of a community by the degree of progress made by the women of that community.” He understood very well that true equality will come only when the women were no longer be economically dependent on the men. On becoming Chairman of Constitution Drafting Committee & First Law Minister of Independent Indian, he continued with zeal and dedication to frame laws to break the chains of age old religious customs which were limiting the women to reach their full potential as an equal citizen of free India. He understood that Hindu religion and laws are inextricably interwoven and so he tried to reform the religion by bringing the Hindu code bill.

*“from a sociological point of view the variety of religions that we have in India or elsewhere seems to me to fall into two categories. There are religions which have as their part a legal system, which you cannot sever from those religions. There are religions which have no legal system at all, which are just pure matters of creed. The peculiarity about the Hindu religion, as I understand it, is this, that it is the one religion which has got a legal framework integrally associated with it.”<sup>1</sup>*

Dr. Ambedkar received the sobriquet ‘Modern Manu’ as he tried to restructure the links between caste, kinship and property which make the very core of Brahmanical patriarchy. By studying the dharmashastras, he had come to the conclusion that the patriarchal domination in the Hindu society was gradual and the position of women regarding property was not altogether pathetic.

*“You examine the position of Hindu women. Our Hon. friend Dr. Maitra. I think, who was a member of the Rau Committee, for the purpose of a thesis for a Doctorate degree of the Calcutta University wrote a book called The Position of Women in the Hindu Shastras. Anyone who reads this book will find that women had an equal share in property with men. She was entitled to hold*

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<sup>1</sup>Dr. Babasaheb Ambedkar: Writings and Speeches, BAWs, vol. 14 part two, Government of Maharashtra, Department of education, Bombay, 1995, pp. 887.

*property. Even in Manu you find this statement. Today, what do we find as a result of the changes that have taken place in the Hindu society? Women are completely deprived of property. Do you call this change progress or do you call it deterioration? Therefore, it is time, I think that we consider this question in a different light, the point on which I wish to proceed is the fact that unless law makes society move, this society will not move.”<sup>2</sup>*

Ambedkar fought a difficult battle for the cause of women and to strike the last nail in coffin of discrimination against women he brought forth The Hindu Code Bill in the Constituent Assembly on the 11<sup>th</sup> April 1947. In his eyes, the codification of Hindu law was not only a tool for correcting the injustices done in the past, it was also the need of the hour as true integration of India could only be achieved when its citizens could live in peace and harmony among themselves. In his own words:

*“The integration of India, therefore, has in a very pointed manner brought before us the problem of the codification and the modification of Hindu Law and what I want to suggest to the House is that this is a problem which could not be postponed nor could it be avoided if we want to bring about harmony among the variety of people who would be coming and becoming the citizens of the Indian Dominion.”<sup>3</sup>*

The Hindu Code Bill was an also an attempt to organize the perplexing bundle of laws in smritis focusing on the matters on women’s property among other seven different matters of personal laws namely marriage, divorce, guardianship, maintenance laws, adoption and the minorities. The issue of women’s property was considered as the one of the most intricate and complicated issues as there were at least 137 smritis, variously opinioned on stridhan. This gave rise to utter confusion and constant litigation on part of the common man. As Ambedkar put it,

*“Sir, this Bill, the aim of which is to codify the rules of Hindu Law which are scattered in innumerable decisions of the High Courts and of the Privy Council, which form a bewildering motley to the common man and give rise to constant litigation, seeks to codify the law relating to seven different matters. Firstly, it seeks to codify the law relating to the rights of property of a deceased Hindu who has died intestate without making a will, both female and male. Secondly, it*

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<sup>2</sup>Dr. Babasaheb Ambedkar: Writings and Speeches, BAWS, vol. 14 part two, Government of Maharashtra, Department of education, Bombay, 1995, pp. 1160-61.

<sup>3</sup> Dr. Babasaheb Ambedkar: Writings and Speeches, BAWS, vol. 14 part one, Government of Maharashtra, Department of education, Bombay, 1995, pp. 771

*prescribes a somewhat altered form of the order of succession among the different heirs to the property of a deceased dying intestate.”<sup>4</sup>*

He took up the unprecedented issues such as abolition of birthright to property, property by survivorship, half share for daughters, conversion of women’s limited estate into an absolute estate, abolition of caste in matters of marriage and adoption, and the principle of monogamy and divorce. His cherished ideal of equality was evident from the bill as it proposed the equality of inheritance for both men and women. He asked for equal share for the widow, the daughter, the widow of a pre-deceased son in the father’s property. These clauses of bill reiterate the Dr. Ambedkar’s stand for betterment of women on the economic front.

*“In addition to this general change in the order of succession to a deceased Hindu, the Bill also seeks to make four changes. One change is that the widow, the daughter, the widow of a pre-deceased son, all are given the same rank as the son in the matter of inheritance. In addition to that, the daughter also is given a share in her father’s property; her share is prescribed as half of that of the son.”<sup>5</sup>*

As is evident from the bill itself that Dr. Ambedkar were adamant about supplanting traditional structures of domination with political modernity but he founded equally intense opposition to the bill from the House. During discussion Dr. Shyama Prasad Mukherjee said “The Hindu Code Bill would shatter the magnificent structure of Hindu culture---.” The opponents argued that the bill was a blind imitation of ‘uncontrolled western modernity’ and poses the imminent threat to ancient Hindu social structures. Rajendra Prasad said that his wife would never support it and it was only ‘over-educated’ women who favoured the bill. They pointed towards the antiquity of Hindu civilization and claimed the inherent rectitude being the reason behind the survival through time. To that Dr. Ambedkar reasoned,

*“This is not the first time that I have heard this argument. I have heard this argument a long time ago and not only heard it from men in the streets, but men who have been occupying most eminent positions such as those who are called the historians of India. This is an argument which had been presented all the time by those who believe in the sanctity of the ancient structure of this society. I must very frankly say that I too have been a student of India’s history,*

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<sup>4</sup>Ibid, pp. 5.

<sup>5</sup> Ibid, pp. 6

*although I cannot claim that I am as good a student as many others who adorn the chairs of history in many of our universities. I believe, I have a sufficient understanding of the Indian history and the point that I would like to raise is this. Is survival enough or whether it is necessary for us to consider whether the plane on which we survived is more important than the mere survival itself? A man who mixes with his opponent in battle vanquishes him, obtains victory on him also survives. A man who meets his opponent, runs away from him like a coward and he also survives. Is the survival of the victor of the same value, of the same character as the survival of a coward? I think we ought to consider this question on what plane has the Hindu society survived.”<sup>6</sup>*

The Hindu Code Bill was the protest against Manu’s code. Bitter opposition from congress members, the Hindu Mahasabha, and other Hindu religious leaders reiterates the Bill’s challenge to the very basis of Brahmanical patriarchy. They termed this code a manifesto of unfettered freedom for women and susceptible to dividing every family. He resigned from the cabinet law ministry on Sept., 27, 1951. In his resignation, he explained the delay for the action he took as well as the reasons why he relinquished.

*“The Hindu Code was the greatest social reform measure ever undertaken by the Legislature in this country. No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it in point of its significance. To leave inequality between class and class, between sex and sex which is the soul of Hindu Society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code. It is for its sake that I stayed on notwithstanding my differences. So, if I have committed a wrong it is in the hope of doing some good. Had I no ground for such a hope, for overcoming the obstructionist tactics of the opponents?”<sup>7</sup>*

Ambedkar’s statements in parliament in defence of the Hindu Code Bill and his statement in the explanation of his resignation from the cabinet need to be given their due recognition in the history of democratic struggles for women’s rights against the Brahmanical patriarchy of the state. In various speeches during this period, Ambedkar highlighted the importance of the bill for

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<sup>6</sup> Dr. Babasaheb Ambedkar: Writings and Speeches, BAWs, vol. 14 part two, Government of Maharashtra, Department of education, Bombay, 1995,, pp. 1158-59

<sup>7</sup> Ibid, pp. 1325-26

women's freedom. In 1952, for instance, at a meeting organized by the Belgaum district of Scheduled Caste Federation in Kolhapur, he claimed: 'on wealth depends her independence and a woman must be very particular to retain her wealth and rights, to help retain her freedom.'

Although Dr. Ambedkar could not succeed in getting passed the full Hindu Code Bill, he successfully put the ball rolling & laid the foundation of equality for the women of India in all spheres of life.

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