

## PROPERTY RIGHTS OF WOMEN: ANALYSIS

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### Introduction

The report seeks to realize the issue related to the property rights of women, the objective of this report is to examine whether, the Hindu Succession Act, 1956 (the “HSA”) actually gave women an equal right to property. The Hindu Succession Act, 1956 marks a new era in the history of social legislation in India. A vigorous attempt has been made to bring some reforms of far reaching consequences in the system of inheritance and succession. The law in these areas needed complete overhauling as some of the legal provisions under the old textual law had become obsolete. The Law Commission of India in its 174th Report on “Property Rights of Women: Proposed Reforms under the Hindu Law” in May 2000 mentioned in the introduction itself that:-

*“Discrimination against women is so pervasive that it sometimes surfaces on a bare perusal of the law made by the legislature itself. This is particularly so in relation to laws governing the inheritance/succession of property amongst the members of a Joint Hindu family. It seems that this discrimination is so deep and systematic that it has placed women at the receiving end. Recognizing this the Law Commission in pursuance of its terms of reference, which, inter-alia, oblige and empower it to make recommendations for the removal of anomalies, ambiguities and inequalities in the law, decided to undertake a study of certain provisions regarding the property rights of Hindu women under the Hindu Succession Act, 1956. The study is aimed at suggesting changes to this Act so that women get an equal share in the ancestral property.”<sup>3</sup>*

Women have a huge contribution in the overall development of the country, particularly in the significant achievements where human development indicators are concerned. Even then they are referred as well as considered to be very much inferior to men in the present patriarchal society.

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<sup>3</sup> 174th Report on “Property Rights of Women: Proposed Reforms under the Hindu Law”, Law Commission of India, May 2000

This was revealed in recent research findings which suggested that 70% of the women in the country were bereft of property.<sup>4</sup> The law in this respect needed some revolutionizing changes so as to recognize the long felt right of inheritance of Hindu females at par with males.

Proposals for reforming the Hindu Personal Law particularly, relating to property, have been before the country in one form or the other since the forties and the setting up of Rau's Committee to inquire into and suggest reforms in Hindu Law. The question of codifying the Hindu Law of succession was engaging the attention of the Government since 1941 when a Committee was formed which is known as Rau's Committee to report on the desirability of codifying Hindu Law and more particularly to examine the Hindu Women's Rights to Property Act, 1937, to remove the doubts as to the construction of the Act and so to remove any injustice that might have been done to the daughter. The Committee while suggesting amendments in the existing law, recommended that the best course would be to codify the entire Hindu Law in successive stages. The Rau's Committee's Hindu Code of 1947 was the result of that recommendation. The draft Hindu Code prepared by the Rau's Committee underwent substantial changes in the course of its examination by a Select Committee of Provisional Parliament in 1948. But the positive problem of modernization of Hindu Law on important issues could not be dealt with except by a straight legislation. The Hindu Code Bill introduced in the Provisional Parliament based on the recommendation of Rau's Committee, was in part vigorous attempt to incorporate radical reforms.

In pursuance of its accepted policy to codify Hindu Law in gradual stages, the Legislature passed the Hindu Marriage Act in 1955 dealing with the law relating to marriage and divorce among Hindus and it thus facilitated the passage of the Hindu Code Bill. The second of such positive measures is the enactment of the Hindu Succession Act, 1956, which became law on 17th June 1956, the day which received the assent of the President (Published in the Gazette of India Extraordinary, part II section 1 dated 18/06/1956).<sup>5</sup>

The Hindu Succession Act, 1956 made a revolutionary change in the position of female Hindus. For the first time, a hindu female could become an absolute owner of property. She could inherit equally with a male counterpart and a widow was also given importance regarding the succession of her husband's property as also to her father's property. The 2005 Amendment made the daughter, like a son, a coparcener in a joint family. The amendment was meant to ensure that women and men became equal heirs to ancestral property.

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<sup>4</sup> Salma khan: Economist and women activist <http://en.prothom-alo.com>

<sup>5</sup> R.K. Aggarwala, Hindi Law, 22nd Ed. 2007

Before 1956, woman's property was divided into:

- '*Stridhan*' is her absolute property over which she has full rights of disposal or alienation e.g. gifts from relations/strangers; property acquired by self-exertion; property acquired by compromise; property obtained in lieu of maintenance.
- '*Woman's/ widow's estate*- She is a 'limited' owner of it, as she can't ordinarily alienate it (like karta, she can alienate it only in exceptional cases); and on her death it devolves upon the reversioners (viz. husband's brother) e.g. property obtained by inheritance and a share obtained on partition (Sec. 3 Hindu Women's Right To Property Act, 1937)<sup>6</sup>

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

The Hindu Succession Act, 1956 (Act No. 30 of 1956, hereinafter referred to as the Act) has been passed to meet the needs of a progressive society. It removes inequalities between men and women with respect to rights in property and it evolves a list of heirs entitled to succeed on intestacy based on natural love and affection rather than on efficacy. The Act has been passed to codify and amend the Hindu Law regarding succession<sup>7</sup>.

The Hindu Succession Act, 1956, deals with successions to the property of a Hindu female intestate. Prior to 1956, there were varied rules under the uncodified Hindu law. Secs. 15 and 16, H.S. Act, are applicable to the absolute property of a female 'including an undivided interest in a Mitakshara coparcenary in which a female was a coparcener' (2005 Amendment to the Act). Only that property will be subject to the application of these sections which are heritable and over which woman had full powers of disposal.

### **Changes Brought About by the H.S. Act**

H.S.A., 1956 introduced fundamental changes in the concept of woman's property:

- a) In old- law there was a distinction between male and female heirs, but the Hindu Succession Act. 1956 makes no distinction between male and female heirs.
- b) The old law gave the benefit of the doctrine of representation only to the sons, grandsons and great grandsons of predeceased sons. But

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<sup>6</sup> A.K. Jain, Family Law II

<sup>7</sup> R.K. Aggarwala, Hindi Law, 22nd Ed. 2007, p. 243,244

the Hindu Succession Act, 1956 extends the benefit of this doctrine also to the children of predeceased daughters and also to daughters of predeceased sons and daughters of a pre-deceased son of a predeceased son as also to the widow of a pre-deceased son and the widow of a predeceased son of a predeceased son.

- c) Under old law, there were no rights to certain female heirs to succeed to the interest of a Mitakshara coparcener, but the Hindu Succession Act, 1956 has given the rights to a certain female heirs to succeed to the interest of a Mitakshara coparcener.

The above are only some of the broad lines on which changes have been effected under the Hindu Succession Act, 1956.

### **Devolution of Interest in Coparcenary Property Before Hindu Succession (Amendment) Act, 2005, Section 6:**

After the advent of the Constitution, the first law made at the central level pertaining to property and inheritance concerning Hindus was the Hindu Succession Act, 1956. This Act dealing with intestate succession among Hindus came into force on 17th June 1956. It brought about changes in the law of succession and gave rights, which were hitherto unknown, in relation to a woman's property.

According to sec 6, H.S.A., read with the proviso – If a hindu male dies, his undivided interest in the coparcenary property shall devolve by survivorship upon the surviving members of the coparcenary and not according to this act unless the deceased had left him surviving a female relative or a male claiming through such female relative in class I, in that case the interest shall devolve by Intestate/ Testamentary succession.

Thus, if there is any of the following nine heirs the coparcener's interest shall devolve according to secs 8, 9 and 10. These heirs include:-

- a. Widow
- b. Mother
- c. Daughter
- d. Daughter of a predeceased son
- e. Widow of a predeceased son
- f. Daughter of a predeceased son of predeceased son
- g. Widow of a predeceased son of predeceased son
- h. Daughter of predeceased daughter

- i. Son of predeceased daughter (only male who can defeat survivorship).

As pointed out above that the main provision of this section deals with the devolution of the interest of a coparcener dying intestate by the rule of survivorship and the proviso speaks of the interest of the deceased in the Mitakshara Coparcenary Property. Now, in order to ascertain what the interest of the deceased coparcener is, one necessarily needs to keep in mind the two Explanations under the proviso. These two Explanations give the necessary assistance for ascertaining the interest of the deceased coparcener in the Mitakshara Coparcenary Property. Explanation I provides for ascertaining the interest on the basis of a notional partition by applying a fiction as if the partition had taken place immediately before the death of the deceased coparcener. Explanation II lays down that a person who has separated himself from the coparcenary before the death of the deceased or any of the heirs of such divided coparcener is not entitled to claim on intestacy a share in the interest referred to in the section.

In *Gurupad v. Hirabai* (AIR 1978 SC 1239) the court observed that explanation to sec 6 i.e. legal fiction should be given its due and full effect. The assumption which the statute requires to be made is '*that a partition had taken place*' between the deceased and coparceners immediately before the death. This interpretation will further the legislative intention with regard to the enlargement of the share of the female heirs, qualitatively and quantitatively. Sec. 6 is an assurance to ameliorate or improve the lot of Hindu women.

The widow's share must be ascertained by adding the share to which she is entitled at a notional partition during her husband's lifetime and the share which she would get in her husband's interest upon his death.

The Supreme Court in 1978 reiterated *Gurupad v. Hirabai* in 1994 in *Shyama Devi v. Manju Shukla* wherein it has been held that the proviso to section 6 gives the formula for fixing the share of the claimant and the share is to be determined in accordance with Explanation I by deeming that a partition had taken place a little before his death which gives the clue for arriving at the share of the deceased.

However, section 6 did not interfere with the special rights of those who are members of a Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by Mitakshara and Dayabhaga Schools as also to those in certain parts of southern India who were previously governed by the Murumakkattayam, Aliyasantana and Nambudri Systems. The Act applies to any person who is a Hindu as defined in section 2 of HSA. But now the question the question is whether, the Hindu Succession Act actually gave

women an equal right to property or did it only profess to do so. Significantly, the provisions regarding succession in the Hindu Code Bill, as originally framed by the B.N. Rau Committee and piloted by Dr. Ambedkar, were for abolishing Mitakshara coparcenary with its concept of survivorship and the son's right by birth in a joint family property and substituting it with the principle of inheritance by succession. These proposals met with a storm of conservative opposition. The extent of opposition within the Congress or the then government itself can be gauged from the fact that the then Law Minister Mr. Biswas, on the floor of the house, expressed himself against daughters inheriting property from their natal families.<sup>8</sup>

The retention of the Mitakshara coparcenary without including females in it meant that females couldn't inherit ancestral property as males do. If a joint family gets divided, each male coparcener takes his share and females get nothing. Only when one of the coparceners dies, a female gets a share of his share as an heir to the deceased. Thus the law by excluding the daughters from participating in coparcenary ownership (merely by reason of their sex) not only contributed to an inequity against females but has led to oppression and negation of their right to equality and appears to be a mockery of the fundamental rights guaranteed by the Constitution.

Hence this very fact necessitated a further change in regards to the property rights of women, and which was done by the Hindu Succession (Amendment) Bill, 2004.

#### **Section 14 of the Hindu Succession Act, 1956:-**

The Hindu women's limited estate is abolished and any property possessed by a female Hindu howsoever acquired is now held by her as absolute property and she has full power to deal with or dispose of it by will as she likes. The restraint and limitations on her power cease to exist even in respect of existing property possessed by a female Hindu at the date of the Act coming into force whether acquired by her before or after the commencement of the Act. It is now held by her as full owner and not as limited owner (Section 14)<sup>9</sup>

Sec 14 brought about fundamental changes in the concept of woman's property:-

- a) *Any property* possessed by a female hindu, whether acquired before or after the commencement of this act, shall be held by her as a full owner thereof and not as a limited owner.(Sec14)

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<sup>8</sup> Shelly Saluja and Soumya Saxena - NLIU Law Student  
[http://www.legalserviceindia.com/articles/hsa\\_w.htm](http://www.legalserviceindia.com/articles/hsa_w.htm)

<sup>9</sup> Mulla, Hindu Law 20th Ed. 2007, Vol. II p. 393.

Explanation:- The term “property” includes both movable and immovable property acquired by a female hindu by inheritance or device / or at partition / or in lieu of maintenance or arrears of maintenance/ or by gift from any person, before, at or after her marriage/ or by her own skill or exertion/ or by purchase or prescription/ or in any other manner/and also any such property held by her as stridhan immediately before the commencement of this act.

- b) Property given with limitations- Nothing contained in Sub-sec (1) shall apply to any property acquired by gift under a decree or any 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.

Note:- There is nothing in sec 14(2) or other sections to qualify the absolute ownership or led to forfeiture of estate on her remarriage. The HSA override the Widow Remarriage Act or any other act. Once her limited (woman’s) esatate becomes her full or absolute estate (i.e. Stridhan) by virtue of sec 14, a Hindu female can alienate it by gift or otherwise.<sup>10</sup>

An analytical look at the section reveals that the female Hindu is conferred the absolute Right to her property. In V Tulasamma vs. V Sesha Reddy<sup>11</sup>, the Hon’ble Apex Court held that:

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

In a recent judgment<sup>12</sup>, the Madras High Court observed that “mere possession does not attract Sec. 14. No evidence was led to substantiate the

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<sup>10</sup> A.K. Jain, Family Law II

<sup>11</sup> Tulasamma v. Seshareddi (1977)3SCC99

<sup>12</sup> G.Rama Vs. T.G.Seshagiri Rao (D) by Lrs. 2009-2-L.W. 385

plea that the appellant was occupying the premises in lieu of maintenance and hence the Appeal by the wife was dismissed.

The court has laid down that the Act of 1956 has made revolutionary changes in the Hindu society so as to emancipate women in India. Provisions of sec. 14 must be liberally construed so as to advance the object of the Act which is to enlarge the limited interest of widow. Sec 14(2) is merely a proviso to Sec. 14(1).

### **Rules of Succession of the Property of Females:**

The Hindu Succession Act, 1956, deals with succession to the property of a Hindu female intestate (Sec. 15). Prior to 1956, there were varied rules under the uncodified Hindu law. In majority of cases, the limited interest a woman had in her own property terminated with her death and the issues regarding succession to her property did not even arise. The unique feature of the Act, although not an encouraging one, is that it provides for two entirely different schemes of succession, based on the sex of the intestate. The reason for not providing a uniform scheme under Hindu law is linked closely to the emphasis on the conservation and protection of the property in the family.<sup>13</sup>

Section 15 lays down certain rules of succession to the property of a female Hindu. Section 16 supplements and elaborates the working of these rules. As the section says it applies when a female Hindu dies intestate leaving behind property of which she was an absolute owner. Section 15 will not apply where she leaves property over which she had only a limited right. The section gives a list of 5 broad groups who can inherit one after another and fixes their order of priority.<sup>14</sup> Secs 15-16 are prospective in operation and does not govern succession to the property of a female Hindu whose death took place before the Act came into force.

Section 15 of the Act provides for general rules of succession in the case of Hindu Females which reads:-

*“(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16-<sup>15</sup>*

*(a) firstly upon the sons and daughters (including the children of any predeceased son or daughter)*

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

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<sup>13</sup> LCWRI Inheritance report MAPPING WOMEN'S GAINS IN INHERITANCE AND PROPERTY RIGHTS

<sup>14</sup> B.M. Gandhi, Hindu Law 1999 P 312

<sup>15</sup> R.K. Aggarwal Hindu Law 22nd Edition, 2007 p 290

- (c) *thirdly, upon the mother and father*
- (d) *fourthly, upon the heirs of the father; and*
- (e) *lastly, upon the heirs of the mother*

*Section 15(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 from her father-in-law shall devolve, in the absence of any person or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein. but upon the heirs of the husband."*

A closer look at this section reveals that not only a separate scheme of succession is provided in case a female intestate but there is further divergence linked with the source of acquisition of property and on considerations of her marital status, and factors like whether she dies leaving behind children or not. Section 15 does not apply to that property which is held by a Hindu female with restricted rights [in view of sub-section (2) of section 14] at the time of her death. It applies to cases where the Hindu female has become a fresh stock of descent.

In *Keshri Lodhi vs. Harprasad*<sup>16</sup> the Court laid down that from the language of sub-sections (1) and (2) of Section 15, it is clear that the intention of the Legislature was to allow the succession of the property of the Hindu female to her sons and daughters. Only in the absence of such heirs the property would go to husband's heirs. Consequently the female's property would devolve on her sons and daughters even where the sons and daughters are born of the first husband and the property left by the female was inherited by her from the second husband.

**Position of women under the various sub schools of Mitakshara:**

1. Benaras and Mithila sub-schools of Mitakshara- follow the above noted general principles. Delhi school also follows them.
2. In Madras school no share is given to any female member at the time of partition and the only right is that of maintenance.

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<sup>16</sup> AIR 1971 MP 129

3. The Kerala school follows the Benaras school i.e. females were given a share. But the Kerala joint Hindu Family (Abolition) Act, 1976, changed the position.

According to sec. 3 of this act, on and after the commencement of this act, no right to claim any interest in any property of an ancestor during his/her lifetime( which is founded on the mere fact that the claimant was born in the family of ancestor) shall be recognized. The right of inheritance has replaced the doctrine of survivorship in which daughters have equal share with the sons.

4. In Andhra Pradesh, females get a share. The position has undergone a change with the Hindu Succession Act (Andhra Pradesh) Amendment Act, 1985, which came into force on 5<sup>th</sup> Sept, 1985.

According to sec. 29-A of this act, notwithstanding anything contained in sec 6 H.S.A., in a joint Hindu family, the daughter of a coparcener shall by birth become a coparcener in the same manner as the son. Thus on a partition, the daughter is to be allotted the same share as is allotted to son. However, nothing contained in this provision shall apply to a daughter married prior to, or to a partition affected before the commencement of this amended Act. If at the time of partition, the daughter is dead, but has left behind a child, the share that would have been allotted to the daughter would be given to the child (*Pulla Reddy v. I. Seshi Reddy*<sup>17</sup>)

#### **Effect of Central Amendment (2005) on State Amendments:**

While states like Andhra Pradesh, Karnataka, Tamil Nadu and Maharashtra had introduced unmarried daughters as coparceners and married daughters were left out, as per the 2005 Amendment to the central Hindu Succession Act, 1956, all daughters(irrespective of their marital status) were made coparceners. The Central Amendment would prevail over the state enactments. Thus, all daughters would be coparceners in these states as well (*Pushpalatha N.V. v V. Padma* AIR 2010 Karnt. 124). But the Central Amendment shall not affect or invalidate any disposition or alienation, including any partition or testamentary disposition of property, which had taken place before the 20<sup>th</sup> December, 2004.<sup>18</sup>

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<sup>17</sup> A.K. Jain Family Law pg.217

<sup>18</sup> A.K. Jain Family Law II, Pg. No. 219

## **Implications of the Amendment Act of 2005**

### **Introduction of daughters as coparceners/Karta:**

One of the major changes brought in by the amendment is that in a Hindu joint family, the exclusive prerogative of males to be coparceners has been changed altogether and the right by birth in the coparcenary property has been conferred in favour of a daughter as well. This radical change has fundamentally altered the character of Mitakshara coparcenary. Now, the daughters have been made coparceners in the Mitakshara joint family property, with the same rights as sons to shares, to claim partition and to become Karta, while also sharing the liabilities. The discrimination against daughter has been brought to an end, as her rights and liabilities are the same as that of a son.<sup>19</sup>

Further, daughters would not only be empowered to form coparcenary along with their other siblings (irrespective of gender), but would also be competent to start a joint family herself. She can even be a karta. The rule that females cannot form or start a joint family on their own but can continue it even on the death of a male member in the family but provided they have the capacity to add a male member to the family stands abrogated now<sup>20</sup>. It may be noted that the daughters have been made coparceners irrespective of their marital status. Thus, after the marriage of a daughter, she will continue to be a coparcener as well as member of joint hindu family because all the members of a coparcenary are necessarily members of a joint hindu family too. *According to sec. 6 HAS, after the amendment, daughter becomes the coparceners in the same manner as a son implies not only the daughters but also her children will be coparceners.*

### **Sec. 6 Devolution of Interest in Coparcenary Property (Legal Position After 2005 Amendment):**

The Hindu Succession (Amendment) Act, 2005 seeks to make two major amendments in the Hindu Succession Act, 1956. First, it is proposed to remove the 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. However in the instant project we have focused specifically on the changes brought in Section 6 in regards to the position of woman and has made a clause-by-clause consideration of the section thus amended.

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<sup>19</sup> P. Pradhan Saxena, Family Law II, 2<sup>nd</sup> ed., p.338(2007)

<sup>20</sup> A.K. Jain, Family Law II, p. 15(2013)

- 6 (l). *Devolution of interest in coparcenary property.*
- (1) *On and from the commencement of the Hindu Succession (Amendment) Act, 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.*

As noted above, after the amendment, a daughter is allotted the same share as is allotted to a son. Further, the surviving child of the predeceased son would get the share of his or her predeceased father or mother, as the case may be.

Under the 2005 amendment, a daughter of a coparcener is included as a coparcener herself without any reference or limitation with respect to her marital status. Therefore, after 6<sup>th</sup> September, 2005 a daughter who was married even before this date would be a coparcener<sup>21</sup>. However to avoid unnecessary confusion and litigation, proviso to sec. 6(1) states that married daughter even though might have been a coparcener, would not be entitled to reopen the partition Already effected, nor would be entitled the challenge the alienation effected before such date i.e. 20<sup>th</sup> December, 2004. She could succeed if the male members have not affected partition before such date<sup>22</sup>. Further, under section 30 a coparcener may make a testamentary disposition of his undivided interest in the joint family property.

### **Decisions of Courts on Property Rights of Women:**

In *Bhagat Ram v. Teja Singh*<sup>23</sup> the court observed that section 15(2)(a) uses the word 'any property inherited by hindu female from her father or mother'. Thus property inherited by a female hindu from her father and mother is carved-out from a female Hindu dying intestate. In other words any property of female hindu, if inherited by her from her father or

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<sup>21</sup> P.P. Saxena Family Law II, 2<sup>nd</sup> edition.

<sup>22</sup> P.P. Saxena Family Law II, 2<sup>nd</sup> edition

<sup>23</sup> AIR 2002 SC 1

mother would not fall under Sec. 15(1), and, it should go the legal heirs of her father under sec. 15(2)(a).

The more important observation was made by Supreme Court in a case<sup>24</sup> where it was held that the eligibility of married daughter must be placed at par with an unmarried daughter for, she must have been once in that state, so as to claim the benefit. Hence once a daughter is made a coparcener on the same footing as a son then the right as a coparcener should be real in spirit and content. Hence his spirit inspired the Indian Parliament to omit section 23 in toto from the Hindu Succession Act of 1956.

The Supreme Court in *R. Mahalakshmi Vs. A.V. Anantharaman and Ors.*<sup>25</sup> held that: “Perusal of the aforesaid provision of law makes it abundantly clear that the daughters who have got married prior to 1989 may not have equal share as that of a son but the daughters who got married after 1989 would have equal share as that of a son. In other words, daughters who got married after 1989 would be treated at par with son having the same share in the property.”

#### **General Comments on 2005 Amendments:**

This amending Act of 2005 is an attempt to remove the discrimination as contained in the amended section 6 of The Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Simultaneously section 23 of the Act as disentitles the female heir to ask for partition in respect of dwelling house wholly occupied by a joint family until male heirs choose to divide their respective shares therein, was omitted by his Amending Act. As a result the disabilities of female heirs were removed. This is a great step of the government so far The Hindu Code is concerned. This is the product of 174th Report of the Law Commission of India on “Property Rights of Women: Proposed reform under the Hindu Law”<sup>26</sup>. In a patriarchal society where wills often disinherit women, this is a substantial gain.<sup>27</sup>

Through our research we have observed that the amendments made in 2005 are definitely a step in the right direction towards setting up an equal basis of property ownership at birth. However, there are still several unresolved issues that must be explained and debated on, some critics are of the view that what the Amendment will achieve is only marginal

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<sup>24</sup> Savita Samvedi vs. Union of India, 1996 JT (1) 680

<sup>25</sup> (2009)9SCC52

<sup>26</sup> [http://shodhganga.inflibnet.ac.in/bitstream/10603/7870/12/12\\_chapter%205.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/7870/12/12_chapter%205.pdf)

<sup>27</sup> Sec 30 of the HAS allows any hindu to dispose off his property including his share in the HUF property by a Will. This section can and has been used to disinherit women.

improvement on the existing state of affairs. A major drawback of the amendment is that it covers only ancestral property. It does not take a father's self-acquired property into account. The bulk of property and wealth at least in urban areas (increasingly dominated by nuclear families) falls outside joint family property addressed by the law (Amendment).<sup>28</sup>

There will be hurdles in the implementation of the amendments on account of opposition from the men. It may lead to an increase in disputes amongst brothers and sisters. Some people are worried that the move could exaggerate the problem of female infanticide. Even the enhanced rights enjoyed by women in Maharashtra are largely on paper. The mind-set in Indian society still has no change<sup>29</sup>.

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<sup>28</sup> The Hindustan Times, New Delhi. 19 February 2005.

<sup>29</sup> The Times of India. New Delhi. 10 March 2005.