CHAPTER 6

DATA ANALYSIS OF BOTH SURVEY AND DOCTRINAL METHODS AND STUDY OF EFFECTIVENESS OF THE AMENDING ACT, 2005

“Man can only think, women have a way of understanding without thinking woman was created out of God’s own fancy man, he had to hammer into shape.”

-Rabindranath Tagore

6.1 Analysis of Secondary Data :

As discussed under the previous chapters the method of data collection is both empirical and non empirical. From the secondary data we come to the end that there is no paucity of law in protection of women’s right, nevertheless subject to their proper implementation is a question of great concern. Law makers have taken the importance of matter at the time of drafting of the legal
provisions in favour of womenfolk. Though laws are in numbers in their place of papers, but their application in reality is yet a matter of assessment. During the study it is revealed that judiciary is always functioning for the sake of justice, whoever has come before it for the same. In this respect the role of Supreme Court is very commendable, as it always has been trying vigorously for the welfare of the fair sex. Instances of error on part of judiciary, however, cannot be ignored at all.

Law commission of India is rendering continuously its service for the betterment of female figure. It has taken the matter with great caution and deliberation to find out the optimum solution towards the problems confronted by the women. Regarding property rights of Hindu women law commission has come out with number of recommendations and suggestions.

6.2. Analysis of Primary Data:

Primary data have been collected by way of survey among the population with the help of questionnaire. During the survey attitudes of respondents has been tried to assess regarding the women’s right to property. In many of the given statements the respondents are seemed to support the hypothesis and in some other statements they proved the hypothesis to be wrong. Mixed responses are gathered from the different sections of people among the homogenous group with the differences in variety of independent variables.
During the survey it has come to the focus that regarding the women’s right to property the attitude of people has changed with the change of their sex, education and income. The women seem to give more emphasis on their rights than their male counterpart do (table no. 1A and 1B). Survey speaks that there is no doubt that women are discriminated against more often regarding property rights.

Regarding married women’s right to property in her father’s house, though major section of the total respondent group is of view of favouring the statement, however a considerable minor group is there who opposed the statement given in the question no. 9 of the questionnaire.

Again, the attitude towards the right of illegitimate child has seemed to favour the statement. The attitudes of the majority conceded that they are not willing to give the property to the illegitimate children at par with natural son and daughter. The similar responses are also received for the step sons and daughters. However the similar section of people with the same variables are supporting the view to give property to adopted sons and daughters. Though major section of the respondent group has supported to give property right to the adopted child, yet a considerable fraction is available in the group of whole respondent who does not support that adopted child should get equal share of property of father like his natural sons and daughter.

The group of people under the survey believed that the law has a positive
role in the society. Laws are generally obeyed by the people and there are adequate laws in India in support of giving property rights to Hindu women. They observed that judges generally decide the cases on merit. However, still it needs more effort to spread legal awareness among the masses and especially the women have to be made more aware of their rights to property.

So far dowry death and domestic violence is concerned, a huge group has conceded towards the statement that if Hindu women’s right to property of her father is given, then the number of such cases of domestic violence will go down automatically. However a considerable section of the male and female with higher education and high income opined that there are some other reasons behind the happenings of dowry death and domestic violence.

The respondents with less income and lower education seemed to favour to give greater share to the son than the daughter as he is to bear the responsibility to maintain his parents. But such view seemed to be changed with the change of income to higher one.

It is observed in the last but not the least statement of the questionnaire (Q. No.27 of the questionnaire in the Appendix I) which says that people with less income and lower education prefers to have different sets of laws for women’s right to father’s property for people with different levels of socio-economic status, which has been proved as wrong by the attitudes of people
with high income and higher education.

6.3 **Comparison of Both Primary and Secondary Data:**

The data which are gathered from the secondary sources and from the primary sources by means of survey expressed great concern that women are discriminated regarding property rights from the ancient period till today like an inseparable tradition of the Hindu society. Though British has pioneered the matter of women advancement in the society which has been supported by the then westernized influenced Hindu social reformers and developed by the framers of the constitution, still the status of women in the society regarding property rights is not satisfactory. The law makers have enacted the laws considering the position of women in the Hindu society. But the opinions of public at large highlighted another picture of the status. People want to breathe under the patriarchal dominion. Even the women does not prefer to assert their due rights in the property which has been proved by data gathered during survey. They do not dare to lift the veil of patriarchal terrorism. To evaluate the data and to make an assessment thereon a comparison on some key areas has been selected for discussion and is briefed down below.
6.3.1. Property Rights of Women:

Tracing the development of women’s right to inheritance from the period of Vedas, there is no single authority exclusively for the position of women regarding inheritance. Various commentators have proposed often conflicting opinion on the relevant portions of the Vedas concerning women’s right to property.

All sections of people under the survey seem to strongly agree in giving property right to women. Not a single response is found opposing of giving property right to women. Irrespective of any differences of independent variables of income, sex and age, all conceded towards property rights of women.

Section 6 and 14 of the Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005 provides equal ownership right to Hindu female as like male.

However the survey reveals that there is discrimination to give property rights to women. Such attitude of respondent indicates that law may not be able to reach the population at its utmost altitude. The laws are in written to provide benefit to women yet it needs to spread more legal awareness for the consumption of the benefit of the same.

Table No.5.5.1A and 5.5.1B of chapter 5 speaks loudly that women are
6.3.2. Will:

Regarding property rights by way of “will” are preferred more and maximum score is assigned to making of it as per the table no.5. 5.10 A&B Will, as we all know, is a legal instrument by which an executants’ wish after his death regarding regulation and devolution of his property as per his intention has been written down, which is protected by law.

There is no end and limit of people’s wish, hence it is not possible to measure the level of testator’s intention. No one has any right to control the manner in which his property shall be enjoyed after his death except by him. However by way of will he can make the wish, as how his property will be divided and distributed after him. Law pays the respect to his will. The testator can make the will in perpetuity for someone’s favour. However there is a restriction on the limit of perpetuity as per section 35 of transfer of property Act 1872. A permissible limit is prescribed by the law regarding maximum limit of perpetuity.
Construction of a will may vitiate the interest of legal heirs of the testator. Sometimes it happens that it totally destroys, diminishes or ignore the legitimate entitlements of the heirs. In addition to this making and execution of a will may deprive the interest and right of women heirs or in other words it can be said that with an intention to create impediments in inheritance by women someone can opt for execution of a ‘will’.

It is the law which gives safeguard to the property of people of the country and it is the law which took the vow to elevate the position of women in the society and to bring equality between male and female. But at the same time it would be next to impossible to follow the letters of a will in one end and give equal property rights to women in other end as per Hindu Succession (Amendment) Act, 2005.

Undue influence behind making a will may perform a key role in forfeiting the rights of women. Will may be instrumental in defeating the legitimate expectation of a legal woman heir. It may reduce the equivalent portion which a daughter is entitled like a son to inherit. Such intention may add fuel in degenerating the status of women in the society, instead of elevating and strengthening her position by providing economic support in terms of property rights. So will sometimes behaves like a clog on the right of inheritance of the female folk.

Will is not within the purview of Hindu Succession act 2005, only intestate
succession is under the scope of the Act. The law of intestate succession is based upon the doctrine that the estate of the deceased should pass to those amongst his survivors who have the best claims by virtue of their needs and their merits (specially the enlisted legal heirs). And right to property of women is broadly mentioned under the Act who cannot interfere with the exercise of a will. In such situation the provision made for the welfare of the women under the Act will not yield any productive output to enrich their position if will is given much weightage. More attention towards will would definitely violate the basic feature of the Hindu Succession (Amendment) Act, 2005.

Hence to maintain the balance from both end that is keep the spirit of will as well as women empowerment simultaneously a harmonized application has to be made so that both purpose can be served smoothly. Here a suggestion can be made that a minimum legal restriction in forms of guideline can be framed in consideration of due share of property of female heirs at the time of making ‘will’.

6.3.3. Adopted Child:

Adoption of child is not a new trend. It is an ancient concept existing from time immemorial. There were not codified laws available regarding
appointment and inheritance of adopted child. However the Hindu adoption and Maintenance Act, 1956 removes that absence and gives equal status to an adopted child like a natural child.

During the survey the question incorporated in the questionnaire regarding the equal property rights given to an adopted child like a natural child. And the responses are tabulated in the table bearing no.5.5.3A & 5.5.3B

The majority of response is in favour of giving equal right to the adopted child at par with natural child. However a sizable section of people seems to not in preference to give property rights to be adopted child at par with natural child.

There is a separate Act, i.e., Hindu Adoption and Maintenance Act, 1956 which broadly deals with the adoption of child by a Hindu, and the inheritance of such child is regulated by the Hindu Succession (Amendment) Act, 2005. Under old Hindu law it was a belief that the son (adopted son) recovers his father from hell (punnama narakan) and offers pindas and liberations of water to the names of the adopter and his ancestors. The law of adoption enables a childless person to make somebody else’s son as his own to perform all the duties of an aurasa son. The notion that only a son can recovers his father and ancestors from all the miseries of hell after the death led the sonless person to adopt a son before his death.
It was in faith that the pious obligation of a son was to recover his father from debt after former’s death. Because it was considered as a sin if anyone meet the last enemy without repaying the debt incurred in one’s life. Hence the remedy was to have a son, in absence of the same, to adopt a son. So adopted son was in vogue largely between Hindu people. Adopted son replaces the place of natural son, so all rights were bestowed on the son like a natural son and also the liabilities imposed on the same. The tradition of giving equal importance to an adopted son like a natural son is in continuity till today. The position before the Act and after the Act is intact. However the Act has made uniformity in the law of adoption and also made it possible to adopt a female figure.

The data gathered both from survey and doctrinaire method shows similarities that adopted child is treated similarly without any discrimination between natural and adopted child. Both are giving to the adopted child, equal treatment in the family as well as in the society. Moreover adopted child are empowered with the equivalent right of inheritance under the Hindu Succession (Amendment) Act, 2005 at par with an organic child without any distinction.
6.3.4. Steps Sons and Daughters:

In the questionnaire a question regarding property rights of step sons and step daughters in the property of step father at par with the natural sons and daughters is included to seek the attitude of different sections of people under the survey.

Table no.5.5 2 A and 5.5.2 B of the previous chapter has entered the attitude of different section of people accordingly. The majority of the respondents have given negative responses in giving equal property rights to the step sons and daughters along with natural sons and daughters of their step father. They are not agreeing with the stated statement of the questionnaire to give property to step sons and daughters. They are disagree with the statement. However a considerable section demands their favour to give equal right to the step sons and daughters at par with natural sons and daughters.

The effectiveness of Hindu Succession Act 1956 and Amended Act of 2005, is more or less not comfortable in favour of step sons and daughters. The lists of legal heirs in Class I and Class II of the intestate are given in the Schedule under the Hindu Succession (Amendment) Act2005, where step sons and daughters are seemed to have not found any place. In this regard similarity can be underlined as a common feature between statutory provision and

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The common attitude of the people. Attitude shows negative result towards giving property of step father to the step sons and daughters at par with the natural one.

The trend of disfavouring the concept of step children is still continuing in the era of globalization. We are strictly sticking with the age old notion of disentitling the step sons and daughters. In one side we feel glad to welcome the adopted child coming from another family with much enthusiasm and give equal right at par with natural one, whom we sometimes adopt without knowing the past and what about of the child, whereas the gloomy side of the another end is that we dislike to provide any share to the step sons and daughters. The society accepts the mother of the step sons and daughters but hesitate to accept her offspring whom we ought to know much better than the adopted one. The womb bearer is same but the fruit of the same womb by different creator has sour taste among them. The long run conceived notion of step child has compel the people to behave in different way.

6.3.5. Illegitimate Child:

Illegitimate sons and daughters should not get equal share in the property of their father along with the natural sons and daughters is the
question under the questionnaire has been framed to seek the opinion of the people. And the table no.5.5.3A & B speaks that most of the persons are not in favour of giving property right to the illegitimate child.

The legal position relating to illegitimate sons and daughters are not satisfactory. Section 6 of the Hindu Minority and Guardianship Act, 1956 makes no departure from the established Hindu law that the mother is the natural guardian of her illegitimate child whether male or female even if the father is known. It is only possible when the mother is dead or is not capable of being natural guardian because she ceases to be Hindu or is not capable of being natural guardian because she ceases to be a Hindu or has renounced the world, the putative father if known, become the natural guardian of the illegitimate minor.

The word illegitimate is itself illegitimate so far legitimate child is concerned. Without any of its own fault such child has to bear the tag of bastardisation. Hence the Hindu Marriage Act 1976 made an effort to remove the label of illegitimate child. Section 16 of the Act says “ notwithstanding that a marriage is null and void under section 11 any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate (1) whether such child is born before or after the commencement of the Marriage Law (Amendment) Act, 1976, and (2) whether or not a decree of nullity is granted in respect of that marriage under the Act, and (3) whether or
not the marriage is held to be void otherwise than on a petition under this Act.

But section 16 of the Act is silent as to what children are legitimate. It only refers to the child of such marriage “who would have been legitimate if the marriage has been valid”. However, section 16(3) provides that the children born of void and voidable marriages, who have acquired the status of legitimate children by virtue of the provisions of sub-section (1) and (2) of Section 16 of the Act, cannot claim to succeed to persons other than the parents. Illegitimate children are entitled to a share in the property of their parents only and not from ancestral property. They have no right to succeed to the collaterals of the parents or ascendants of the parents either. If a child was conceived at the time of marriage with the contact of a person other than the husband and he has later obtained a decree of nullity on this account under section 12 of the Act, such child cannot be given the benefit of section 16 of the Hindu marriage Act, 1955.

Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005 has expressed silence in giving property right to illegitimate child of the property of father along with natural child. But it provides for the right of inheritance in the property of mother. By giving property rights to the illegitimate child in the family of mother, the Hindu Succession Act, has indirectly speaks that there is no provision for inheritance by illegitimate child in the property of the father. A striking point here is that the women
have to bear the responsibility of the illegitimate child for which she is not alone responsible for procreation. A death blow is given by the society in the position of women by throwing the exclusive responsibility of the illegitimate child upon her shoulder to make her weaker financially in the so called patriarchal Hindu society. Anyhow illegitimate child is not forfeited from inheritance of the property of the mother.

An illegitimate daughter of a male Hindu dying intestate is not entitled to any share of inheritance, but she is entitled to claim maintenance from her father.

Here one practice is thought provoking that in the name of humanity and torch bearer of the family no one bothers to adopt a child of another from unknown family and do not hesitate to give equal property rights along in the line of natural children. But hesitate to accept the child born out of one’s own fault, which too is his natural child.

Under old Hindu law the son of a permanently kept concubine can ask for partition. In this connection a big departure has been noticed under Hindu Succession Act from the age old practice. There is no space for illegitimate child to inherit the property of father. There is no mentioned of such child in Class I and Class II heirs of the schedule under the Act as a legal heir. Such disqualification to inherit the property will demotivate the children and compel them to lead a revengeful life. And exclusive burden on women will
deteriorate her position more in the society. On the other hand exemption from all kinds of responsibility will encourage the male section of the society to indulge in the illicit relations and encouraged them to be an escapist.

Above all it is a personal law, and hence more emphasis should be given to the attitude of people. During my survey almost major section of the respondent is strongly disagree to give property rights to illegitimate child except a small group of responses. It may also be a fact that the major section under the survey may not be related in reality with the problems faced by any illegitimate. Law is for the welfare of the people. It is equal for all. And no one should be punished for the guilt of others. However law is seemed to be not in favour of the welfare of the illegitimate child and not given equal treatment to the same at par with natural children under the law, which needs reconsideration for kind favour towards the rights of illegitimate child.

6.3.6. Half-Blood Heirs:

In the era of nuclear family the concept of having more brothers and sisters is reducing rapidly. Besides this if we define the half-blood, which means descendants of common father but different mother, for having half-blood it needs minimum two wives of a person. But Hindu marriage Act 1955, has made bigamy as a punishable offense. Hence to have two wives at a time is not permissible under the law, though a married person can enter in the
second marital alliance on the death of the first wife, or getting divorce or in some another ground as permissible under the law. However such legal position will not retrospectively affect the situation before the Act. But before 1955 Act to have more wives among the Hindus were not unsound and consequences are to have half-blood brothers and sisters.

The Hindu Succession Act 1956, section 3(1)(e)(i) defines half-blood as, two persons are 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.

Section 18 of the Act expressly provides a preference to relations by full-blood over half-blood. It says as:

‘Heirs related to an intestate by full-blood shall be preferred to heirs related by half-blood, if the nature of relationship is the same in every other respect.’

Thus the step-brothers or step-sisters born of their father’s different wives are related to each other by half-blood. The mothers are used in the sense of legal wives of the father. A son born out of a lawfully wedded wife cannot be said to be related to a son born to the concubine of the father, either by full blood or half-blood, such son will be regarded as illegitimate begotten from concubine. The relation between half-blood and full-blood relations are

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conceivable only in the case of the parents having been lawfully married, but not otherwise.

The attitude inferred from the survey (5.5.2.A & B) speaks that a considerable major group of respondents are not in favour of giving property right to the half-blood heirs, however exception is still within it as per the survey’s data.

6.3.7. Greater Share for Son:

This is a very interesting question among all the question of the questionnaire given in the question no.19. All the people are strongly in favour of giving property rights to women. Equal distribution of property too gets positive responses from the all section of the people. But the implication of this question, however raise a doubt on the proper execution of the will and attitude of people to give property right to women in reality.

Majority of the male section with less income and lower education is inclined to give more shares to the son as per the table no.5.5.14 A, though a considerable group of high income and higher study has not supported the view as incorporated in the questionnaire. In Hindu patriarchal society, from the time immemorial the practice of giving daughters in marriage to other house and son will be at home with the parents is the prevailing norm. Hence
it is in the mindset of people that son will look after the parents and will bear the responsibility of them. In such situation much privilege should be given to the son to take more property, which too has been seen in the survey. Although the females are given mixed response in favour of giving son greater share than the daughter. One section of female who are having high income and higher education is seemed during survey to not to support in giving more share to the son on the ground of bearing of responsibility of the parents.

We had and have Karta system under the old Hindu law. The trend is still following in the joint family from the ancient period. Karta was considered as the manager of the family. To be a Karta certain qualifications are mandatory like he is the head of the family, only male member can be karta, elder brother can be a Karta, in absence of elder brother then the younger can be karta. Above all, a woman could not be a karta. Being a Karta, he bears all the responsibility of the house and he received all the income of the other member of the house for smooth running of the house. A woman was not allowed to be a karta.

However with the coming of Hindu Succession Act, the trend in the letters of law has been towards change in the prevailing system. Section 6 of the Hindu Succession (Amendment) Act, 2005 brings out a sea change in the field of intestate succession. Section 6 of the Act gives equal rights and liabilities to the Hindu daughters at par with the son. So now there is no bar on
the women to be and act as a Karta.

Hindu law is a personal law, so the opinion of persons should be given more weightage. Because these legal provisions will be applicable to person to person. To sail the ship in between attitude and law a harmonized means have to develop in distribution of property. Some flexibility should have included as exception under the specified provision of law considering the elements like, maintenance of parents, maintenance of other liabilities etc. If the matter is related to only the ‘maintenance’ of the parents, then it does not mean any son and daughter. Whoever will take the responsibility of parents be it son and daughter a fund can be created for the maintenance of parents from the contribution of parent’s property inheritors or by a path of mutual agreement between the heirs to give a proportionate share to the person who take care of the parents and by way of keeping a portion of property for the parents that whoever will take the care of their parents will get part.

But law cannot make such favour directly to son, however law can make the welfare provision, considering the matter of maintenance and economic condition of the person who will take the care of the parents in mind.
6.3.8. Domestic Violence

Domestic violence and dowry death are two serious offences prevailing in the society which mostly and greatly affect the progress of women folk at large.

The Protection of Women from Domestic Violence Act was enacted by parliament in 2005, with an object that the “phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain”. It is a general law applicable to all. Its statement of objects and Reasons said that it was being enacted to fulfill the requirements of international human rights documents on women’s rights like the CEDAW of 1989 and Vienna Accord of 1994, and the provisions of the Constitution of India like those of Articles 14-15 and 21. So the Act has been made at the tune of international as well as national legal provisions with an intention to provide safeguard to the women folk from all kinds of violence at her home. The word domestic violence expresses the fact that women are not safe at her own home, which is considered as the safest place for a female. In the Act, domestic violence includes actual or the any kind of threat of abuse like, physical abuse, economic abuse, verbal abuse, emotional and sexual abuse. Harassment of women for unlawful dowry demands is also included under the definition.

The responses received for question no.25 of the questionnaire as
tabulated in the table no.5.5.9A&B, reveals the fact that still it is believed that
domestic violence will be reduced if the women gets property in the house of
her father. A considerable major group of person who has less income and
lower education has stated that domestic violence will be reduced with
ascertained property rights of women. However, a sizable section of response
having higher education does not think so. They believed that there are
another reasons for committing domestic violence.

However, the fact in practice which cannot be ignored that though laws
are there to give protection to women, even then, ascertained property rights in
the father’s property of the female can considerably reduce the instances of
domestic violence. In such situation Hindu Succession Act has done a
praiseworthy act by giving the daughter same position like a son and by
providing absolute ownership right to the property of Hindu women.

6.3.9. Dowry Death:

Dowry is the most crucial form of social menace in the country. Bride
torturing, beating and burning are the common form of demanding dowry.
According to Cambridge Dictionary, Dowry is a property which woman
brings to her husband at marriage and includes the land, all sorts of properties,
valuable securities given or agreed to be given directly or indirectly at the time
of marriage.
The ancient Hindu law recognized eight forms of marriages, among which Brahma form is in its continuity. In this form of marriage the father gifted his daughter to the groom after decking her with expensive jewellery and clothes. As per Dharmasatra a bridegroom has also to be given some presents in cash or kind known as varadakshina. The bride is presented with ornaments, cash, clothes, and other articles at the time of marriage constituted her stridhan, which was given to her out of love and satisfaction. These two elements of Hindu marriage, gift to bride and bridegroom in course of time, entangled and assumed the frightening name ‘dowry’, and for obtaining dowry compulsion, coercion etc., has started to use as a means to get it.

To get rid of giving dowry the female foetus are aborted in the womb of mother. Baby girls are nipping in the bud in various forms in most of the rural area of the country, which is another cause for decreasing ratio of girls in comparison with boys.

As per the empirical analysis, we found that dowry death is related with the property law. One section of respondents believes that dowry death will be reduced if the married daughter is given due share of property of her father as per laws, whereas an another section of respondents does not think that the reason behind dowry death is giving property rights to the women. There may be some other cause for the happenings of dowry death.

By considering the growing evil of dowry, with an intent to prohibit the
Parliament has passed the Dowry Prohibition Act, 1961, which has been substantially amended by the amending Acts in 1984 and 1986. However this is not the first legislative effort to eradicate the pernicious dowry system, numbers of steps have been taken by the Legislature even before the Act came into force, to handle this issue. The Joint Committee of Parliament has pointed out that the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to its perpetuation. The Committee went into whole matter in great depth and its proceedings have helped in focusing the attention of the public and rousing the consciousness of the public against this evil. The Committee indicated the role which legislation can play in tackling with such evil by the following observation made by the Pandit Jawaharlal,

“Legislation cannot by itself normally solve deep-rooted, social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give push and have that educative factor as well as the legal sanction behind it which help public opinion to be given a certain shape”.

The Supreme Court has explained the alarming increase in a number of dowry related offences in a case as under:

“The alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides have always sent shock waves to the civilized society but unfortunately the evil has continued
unabated. Awakening of the collective consciousness is the need of the day, Change of heart and attitude is needed. A wider social movement not only of educating women of their rights but also of the men folk to respect and recognize the basic human values is essentially needed to bury this pernicious social evil. The role of the Courts, under the circumstances, assumes a great importance.”

The outcome of data analysis as did in the previous chapter, focused on the fact that rights of women in her father’s property can reduce the numbers of happenings of such incidents. Property rights can affect the demand of dowry, which has been supported by table no. 5.5.8A&B under the previous chapter.

Hindu Succession Act, has been able to provide relief to the married daughters as per section 6 of the Act, economic privilege by way of giving property rights at par with the son, which is seemed to reduce the instances of dowry death, as supported by the view of survey.

**6.3.10. Role of Human Rights Bodies:**

It has been incorporated in the questionnaire regarding the role of human rights activist in protection of female rights to property. Table no.5.5.16 shows the level of expectation of people from the human rights activists towards —
protecting female rights to property.

All the responses are considering the support of human right activist in giving Hindu women’s right to property of her father. Human rights activists are performing significant role in giving justice to the victim. Perhaps it is easy to approach the human rights activists to get justice in violation of women’s right to property.

The preamble of the Universal Declaration Of Human Rights, 1948 advocates in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom. Articles 7 of the same laid stress that all are equal before law and are entitled without any discrimination to equal protection of law.

Again World Conference on Human Rights urges the full and equal enjoyment of women of all human rights and that this is a priority for Governments. India being the signatory of CEDAW is concerned about the violation of human rights. Hence in the same line under Article 14 of the Constitution of India put the stress on giving equality before law and equal protection of law towards everyone, which include all male and female. And this right is a fundamental right.

So it is in the mind set of the respondents at large that human rights activist has inseparable role in protecting human rights. Therefore they feel the
need of human right activist in giving property rights to women.

In this point both survey and doctrinaire method shows similarities, for the interference of the human rights activists.

6.3.11 Married Women’s Property Right:

It is a hard question to answer whether married women should get property of her father along with the other male members in the family. The answer comes both in positive and negative form. A mixed response has been observed for the question which is in detail in the table no.5.5.4A&B

Daughter is always a daughter. Marital status cannot be a clog on the right of a daughter to inherit the property of father. As per the Hindu Succession Act, the daughter whether married or unmarried inherits simultaneously with a son, widow, mother and the other heirs specified in class I of the schedule. Each daughter takes one share equal to that of a son.

The decision of Supreme Court lends support towards such view, in Savita Samvedi vs. Union of India¹, it was held that the distinction between a married and an unmarried daughter may be unconstitutional. The relevant observation made by Justice Punchi in this regard as, “the eligibility of a

1. (1996) 2 SCC 380
married daughter must be placed on par with an unmarried daughter (for she
must have been once in that state), so as to claim the benefit.....”

One of the social phenomenon prevalent in the society is that the son
continues to live in the house of the parents, with them, even after his
marriage. His separation ordinarily, is due to reasons of his employment in a
different city or if he wants better positions and life outside his paternal
home. It stems from the practical convenience of the arrangement that a
common residence would enable the son and his family to look after the
parents in their old age, which is also seen as one of the duties of the son, but
has now been recognized by the judiciary as the duty of a daughter as well,
including that of a married daughter. In contrast, it is advocated that a
daughter, on marriage, leaves the house of the parents and joins the husband’s
household. Her residence changes on marriage and till she is unmarried her
residence in her father’s house is seen as merely temporary.

Though it is a fact that the daughter leaves the parental house on and goes
to her in- law’s house, the disability should not have imposed for that reason.
The Court recognizes the duty on the daughter at par with son to maintain his/
her parents, but it adopts a different attitude when it comes to give her the
rights of inheritance in the property of her very parents.

At last by comparing the opinion of Courts and the majority responses of
the survey, it is possible to come to conclusion that a woman on the ground of
her marital status should not be deprived. If a son on the ground of being married or unmarried is not discriminated then a daughter too should not be discriminated on the fact of being married or unmarried. Her marital status should not be stand in her right to inheritance. The statement is also supported by the legal provisions as given under section 6 of the Hindu Succession (Amendment) Act, 2005.

Therefore all conceded that married women should get the property of her father. And divesting from the right is unconstitutional and unfair.

6.3.12 Relation between Socio- Economic Status And Women’s Right to Property:

Socio-economic status plays a key role in changing attitude of people. People persuade to think according to their status be it social or financial. In matters of distribution of property socio-economic status of intestate as well as of legal heir plays a significant role.

During the analysis of survey question No. 27 of the questionnaire as per table no.5.5.17 A,B,C &D , reveals that all opinions are not at one. Two opinions are able to form during the analysis. One section of opinion opts for some kind of elasticity in matters of distribution of property according to their
social status. Whereas the another section specially the higher income group is preferring to have uniform laws by disagreeing with the statement of having different sets of law for different levels of socio-economic status.

As the socio-economic status is a dynamic concept, no one can ignore the fact that there will not be any change in the socio-economic status in their life. In such situation considering even the viewpoint of the small group, elasticity can be kept as an option up to certain extent of income as because it is a welfare legislation the welfare of the person and family cannot be underestimated.

6.3.13. Role of Judiciary:

Generally everybody keeps faith on the role of judiciary which has been proved by going through the responses of two questions bearing no. 21 and 22 of the questionnaire.

No one is disagree with the stated question as per the table no.5.12. Irrespective of any age, sex, education and income status all are agree that laws are obeyed by people. It means that high respect is paid to the law, who are regarded as the regulator and protector of the wishes and aspiration of people at large.
All section of stated population under the study irrespective of any differences strongly agreed that law has an active role in the mind set of the population because of its character of obligation. It is obeyed by people. If it is obeyed by people then it is beyond doubt that it can perform actively to work for the elevation and empowerment of women.

Even the secondary source which has been analysed chapter IV of this work of judicial decisions proved the same that whoever seek justice by knocking the door of the Court are getting their due, exceptioon of error of justice however are not absent. But justice is giving to the applicant. In matters of women welfare the court is very conscious about their role, so that women should not be deprived on the ground of sex.

So it is proved that both secondary and primary data is highlighting almost similar view regarding the role of the Judiciary as satisfactory.
Summary:

In this chapter the researcher has tried to evaluate and compare the data collected by both the sources that is secondary and primary sources. The chapter has focused on certain key areas which influence the rights of women as well as the right of illegitimate child, step child and the adopted child. The result found during survey has been analyzed under this chapter and come to the conclusion that there is absence of uniformity in the opinions of persons with the variations of the independent variables. However, it is found that it has been supported by the secondary as well as primary sources that women’s right to property needs more attention to have practical implication in full swing.