CHAPTER 7

FINDINGS AND CONCLUSION

“Of all the evils for which man has made himself responsible, none is so degrading, so shocking or so brutal as his abuse of the better half of humanity; the female sex”  
- Mahatma Gandhi

Woman is never a woman in her own right in the world of man. She is first the daughter, next the wife and lastly the mother of the man. The position of woman in India is not better when compared to other places of the globe. In absence of respect and accorded equal treatment to the female with the male, no society can claim to be a just society. History bears the witness of undeniable reality of masculine superiority over and above the subordination of female. However the reformist has taken bold step and endeavour to eradicate the subordination of woman and decrease the masculine superiority. Women were treated throughout in all ages and in all societies in a manner different from men which was never ever in her favour.

‘In childhood a woman should be under her father’s control, in youth her husband’s and when her husband is dead, under her son’s’  

1. Manu V, 148
It is undoubtedly true that ancient Hindu society was well associated with Manu and the rules laid down by him were considered as supreme and binding on everyone who follows and practice Hinduism.

In most of his authority courage of man is shown to command and that of a woman is to obey the given command by her opposite sex, which is emphasized by Socrates as, ‘silence is a women’s glory’.

The framers of the Constitution of India wanted to give the Indian women better facilities through which a total halt could be brought to any kind of discrimination against the female folk. Hence utmost care has been adopted to avoid any kind of discrimination on the basis of sex, birth, opportunities remuneration etc. The constructors of the Constitution also wants to ensure that the provisions were made for the benefit and upgradation of woman folk in India, so that the Freedom, for which India had fought tooth and nail for century, results in freedom in every case. They made sure that the fair sex were freed from the shackles of drudgery so that they may be more educated, better aware and secure citizens of the world.

The legislative framework provided in the Constitution provides for equality in society between men and women. In order to attain this constitutional mandate the Parliament and the Judiciary have from time to time framed laws and interpreted the existing ones that would guarantee the
Since law and society are closely connected with each other, hence it is next to impossible to enforce the rights provided in law without changes in social institutions, values and attitudes of the people at large. The change in the society cannot be brought about only through laws. It is possible to enforce the rights provided in law through the process of sensitizing various branches of Government and more significantly the members of society to the rights and concerns of women can bring gender justice into a reality. Law is the only weapon by which the various grievances of women can be sorted out. Law can empower women at one stage, but it is the society who will continue the concept of empowerment in the long run.

The Indian democratic state is committed to the protection of individual rights within the context of citizenship, a closer look at how it operates in respect of women reveals that these rights are not accessible in the public and private spheres in their full application to all the women in India. There are historical, social and cultural factors that have limited the capacity of women and chances to exercise their freedom to great extent.

The States of Andhra Pradesh, Tamil Nadu, Maharastra and Karnatak have amended the provisions of the Hindu Succession Act, 1956 declaring the daughter to be a coparcener. Kerala has abolished the joint Hindu Family
system. As a result, members of a family who are governed by Mitakshara law, irrespective of their sex, becomes tenants-in-common. In the rest of the states daughters are excluded from inheritance of ancestral property.

To eradicate all sorts of disparity against women international conventions, Constitutional provisions, legislative measures, judicial activeness etc., are not enough. To bring fruitful changes regarding the status of the women in the society there should be a positive mindset of the members of the society advocating women rights.

7.1. Findings:

Women of India have lesser economic rights as compared to men in the context within of family. Their work is undervalued and unrecognized. Women work longer hours than men and carry the major share of household and community work which is not -paid, not-visible and underestimated. Men and women earn unequal wages though they have to work for the equivalent time. Women face violence inside and outside the home throughout her life. The findings which are gathered after analysis of secondary data are given below:

1. Manu the law giver seems to draw a poor picture of women in the society. Not only the Manu, along with him the other commentators of
contemporary period had depicted a sorry figure for women. In their writings we are able to find that women have restrictive rights over the property. In their period women were not entitled to any kind of independent rights over property except the right over her ‘stridhana’.

2. The role performed by the British rule was praiseworthy in connection with women’s emancipation and empowerment. They can be regarded as the pioneer for upliftment of women’s right to property. They had abolished the systems of child marriage, widow burning and introduce widow remarriage in the society. For the first time, in the history of Hindu law brought the Hindu women’s right to property within a legal framework namely the Hindu Women’s Right to Property Act, 1937. With this initiation they went on making further legislations one after another for the advancement of the women in the society. They laid stress on considerable development of the women folk from all around.

3. Hindu conservatives opposed a lot on the floor of the house to give equal property right to the women at par with men. They did not favoured the concept of equality regarding the daughters at par with son. They protest for such reformation.
4. Although the reformed Hindu law is projected as the ideal piece of legislation which liberated Hindu women, the underlying motive of the reform was consolidating the powers of the state and building an integrated nation. This crucial aim could be possible to achieve only by diluting women’s right to arrive at a level of minimum consensus so that the agenda of reform could be effected without much opposition.

5. There is a gap between the formal idea of women’s right to property and their meaningful use in practice. Unwillingness of male to break the monopoly of patriarchy is emerging as impediment in the path of women’s right to property.

6. Role of law commission of India is praiseworthy in highlighting the problem faced by the women and come out with the applicable suggestions and recommendations to get rid of prevailing problems by framing appropriate reformation after thorough study and analysis.

7. Until 2005, a Hindu female was not treated as a coparcener entitled to a share in the joint family property along with her brothers, except in the state of Maharastra, Andhra Pradesh and Tamil Nadu, where there was a limited admission of a daughter into the coparcenery, subject to some condition.
8. However in the year 2005 with an intent to provide equal rights on property the parliament has amended the Hindu Succession Act, 1956, by duly conferring the status of a coparcener on all daughters of Hindu Joint Family governed by the Mitakshara School.

9. Section 6 of the Hindu Succession (Amendment) Act, 2005 has advanced the position of daughters of Mitakshara Coparcenery and brought them at par with the son. And to elevate the position of women, section 23 of the same Act has been deleted, which prohibit the women to ask for partition without male consent. Section 24 of the Act was omitted which put bar on female heir towards dwelling house. Patriarchal terrorism, which is in practice almost in majority states in India prefer not to give their property to daughters.

10. Father as class II heir is not a good law. In the Hindu Succession Bill 13 of 1954 introduced in the Rajya Sabha, the father and the mother were placed together in Entry (i) of Class II. The Joint Parliamentary Committee, by majority, included the mother in Class I and relegated the father to Class II. But it is not proper and just to place mother in class I and father in Class II heir. In Leela Prasad vs. Bhavani, Justice

2. (1995)1 Andh Lt 814
Maruti has pointed out the anomaly in including the mother in Class and father in Class II, thereby depriving the father of this right to get a share from the son who dies during his lifetime. Making daughters coparceners will decrease the shares of other class I female heirs such as the deceased’s widow and mother, since the coparcenary share of the deceased male from whom they inherit will reduce. Hence there will be unequal portion among the class I heir.

11. Making a charge of the marriage expenses, including any dowry paid to daughter, on the shares of the sons and daughter alike should be added in the Act. The expenses on a son’s marriage also has to be deducted on ground of equality. Besides as both sons and daughters are to get equal shares, the old idea of distinction on the basis of marriage expenses on their account has to abandoned.

12. One glaring error crept under section 7 of the Hindu Succession (Amendment) act, 2005 is that four new heirs are added in Class I are already heirs in Class II of the Schedule. The fact is that the draftsmen have lost sight of deleting from Class II by the amendment. And they are, son of a pre-deceased daughter of a predeceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter and
daughter of a pre-deceased daughter of a pre-deceased son.

13. The amendment has benefitted those women who are born into families that have ancestral property. There is no precise definition of ancestral property given under the Act. It cannot apply to self-acquired property. No person by birth will acquire any rights in self-acquired property. In present context, most property is self-acquired and that property must follow principles of succession under the different succession laws.

14. Right by birth and disposition of property by any means like will, gifts etc are contradictory. If rights by birth is given to the female and to keep them at bay by way of will, then the equality between male and female will not be come to reality.

After analysis of primary data collected during survey, under chapter 5, the researcher has come to some added findings, which are given below:

1. Reluctance on the part of married women to ask for rights over property in her parents’ house. In fear of degrading and destroying the unity and integrity of family bonding the married female hesitate to ask their due share. It has been found that during survey irrespective of any marital
status of majority the women respondents are of the view of feeling hesitation to ask her due share. Even the male respondents too are agree with the statement that women are reluctant to fight for her due rights in the family.

2. Son is still regarded as the torch bearer of the house. It is a considered view that he will forward the family. So the parents prefer to keep the heritage of the property in the hands of the son. Moreover they believed that the son will remain with parents, whereas the daughters have to send to others house as a practice because of marriage, hence it will be preferable to keep the heritage of the property with son, who will remain with them for forever and so is the property.

3. Long time practice of sending daughters to other home by way of marriage and proverbs like “Beti to paraya dhan hoti hain” has encroached the mind of people in such a way, that as soon as a girl takes birth in one’s family they start their preparation for her marriage expenses. Guardians of daughters feels relief once they have been able to hand over to a suitable groom. Such preconceived notion regarding daughters have hampered the attitude of parents to give the property in favour of their daughters.
4. Again physical strength is also a question mark in case of female. Doubt has been frequently arising regarding the capacity of female to protect the property from the outsiders. Such doubt never comes to mind in case of male counterpart. Such attitude compels the parents to take decision in favour of son.

5. Unawareness of having laws regarding equal right to property among the masses is also a matter of grave concern, in the path of ameliorating the woman status in the society. Most of the people are not aware about the equal distribution of property under the law. Both male and female in large numbers are not acquainted with the available legal remedies. Even some literate persons are not aware of the Hindu Succession Act, 1956 and Amended provision of Hindu Succession Act, 2005, which has completed almost a decade of its existence and implementation.

6. The rights of illegitimate child in the property of father is not favoured by a large number of respondents. The Hindu Succession Act too is silent in this matter. However there is provision in the law to claim in mother's property, although maintenance can be asked from the father too. Survey reveals that illegitimate child still is getting unfair treatment from the society without having any of its fault. The members of society instead of asking the father for the illegitimate deeds, ill treat the progeny who are
innocent at all.

7. Adopted child, during survey, has been preferred by the major section of the population to give equal treatment at par with the natural child. The data interpreted in survey speaks that almost all section of people in the survey showing their favourableness to give property to the adopted child as like as a natural child of the father.

8. Step children are still continue to get step treatment in the society. Survey speaks that people are reluctant and mostly hesitate to treat the step child at par with the natural child.

9. Again the full-blood heirs are preferred more than the half blood. Major section of the study is of view that half-blood heirs should not get equal property rights in the father’s property.

10. Regarding Dowry Death, the survey made it clear that, irrespective of any sex, income, education, difference a major section of the population is of view that the incidents of dowry death can be decreased if property rights are given to the female in the house of their father. So the survey focuses that there is direct relation between dowry death and rights over property.

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11. Domestic violence can be reduced to a considerable amount if property rights of daughters in the house of father made ascertained as per the data interpreted from the survey. Though a considerable size of member of the survey viewed that there are other causes too which plays a significant role in adding fuel to the commission of domestic violence instances.

7.2. Suggestions:

On the basis of the analysis made in the previous chapters and considering the sensitivity and importance of the issue under the study, the researcher in depth feels that to curb the menace of discriminating women relating to property rights in the family, proposes to present few suggestions and recommendations towards bringing its importance and deserving changes in the premises of implementation of law and traditional practices prevailing in the nook and corner of the country.

1. This type of study needs to be carried out in the other districts of Assam to evaluate the position of women in regard to her right to property. The researcher took Guwahati as a representative sample, to get useful and better results for the entire subject (right to property of Hindu women), such survey should be carried in other places too.
2. The present study is a fertile ground to understand the economic and social position of female being. Hence it is need based to conduct such study in the other states of the country. So that proper analysis can be made and appropriate steps can be adopted to elevate the position of womenfolk.

3. There is anomaly in drafting the Act. The newly added four heirs in Class I are still heirs in Class II. They are now simultaneously class I and class II heirs, which is not logical at all. Such entry in the Act needs rectification.

4. The word legitimate and illegitimate is creating a border in the concept of offspring. Such division leads to confusion in distribution of property. Apart from this inconsistency has been noticed that the Hindu Marriage Act, 1976 has abolished the difference between legitimate and illegitimate child by making both legitimate and illegitimate child of void and voidable marriage under one category namely ‘legitimate’. On the other hand the Hindu Succession Act, 1956 amended in 2005 remains silent regarding the concept of illegitimacy. However, only legitimate offspring can claim the right over property under the Act in exclusion of illegitimate child. Though such illegitimate child can claim in the property of his or her mother
but not father. To do away with such inconsistency between the two Acts, it is advisable to reconsideration and reformation, with necessary amendment to give effect and rethink on the right of illegitimate child.

5. The matter of Illegitimate daughter be should given special consideration. Because being illegitimate and also women she has to carry a sorrowful and pathetic life. An illegitimate daughter of a male Hindu dyeing intestate is not entitled to any share of inheritance. However she is entitled to claim maintenance from her father. If the right of maintenance is given to her then right to claim at least some ascertained property will be a justified one. An ascertained amount of property in the property of the father can however be suggested, to give her relief from the stigma of illegitimacy and dependency.

6. Women gets more than men if they are allotted equal status both in the house of father and husband. Her share will be more then the men. As per the data of survey, it has been proved that a sizable section of the population, does not in favour of that. In such situation at the time of passing judgment the judiciary should take into consideration the economic condition of the applicant and respondent, and try to continue the ethos of equality enshrined under Constitution. To
overcome such situation the legislature should make some framework under which judiciary can work without affecting the interest of anyone.

7. Married women before 2005 are not coparceners. This would violate the interest of married women. Marital status of the daughter should not be detrimental in the path of inheritance. It cannot function as a bar to create interest in the property of father. So married women should be included with retrospective effect. Daughter is always a daughter, be married or unmarried.

8. Testamentary succession is a bar on equality of opportunity relating to property between male and female heir. There is no doubt that Will is protecting the interest of testator regarding his own earned property, that is also supported by the analysis made out of survey. But at the same time if we want to see the elevation of women’s property then it is the need of the hour to put at least minimum favour for the women heir in the will. Testamentary disposition without can reveal the hidden agenda of depriving the women. Therefore a partial restraint is advisable on testamentary disposition to secure the interest of the female.

9. In absence of Fixed assured share for female in the family property so
far testamentary succession is concerned the equal distribution of property will remain only a nightmare. Hence an assured amount of property is advisable to keep for the female.

10. Remarriage of widows can violate the interest of the deceased husband. A widow after inheriting the property of her husband, may enter into another marital knot and still retain the inherited property from her first husband. If the second husband expires issueless, she will inherit the property of her second husband also. After that she may again enter into another marital relation for the third time. If she dies intestate after this marriage leaving issues, her issues will inherit her entire property, being class I heir as per the Hindu Succession (Amendment) Act, 2005, which will be not fair at all. In such situation the provision can be suggested that devolution of the property to the original family if in case she choose for remarriage, though remarriage is not a bar to inherit as per the Hindu Succession (Amendment) Act, 2005.

11. Father is made a Class II heir under the Hindu Succession Act, 1956 and continued to be same under the Amended Act of 2005. Under the Mitakshara law he came immediately after the mother and under the
Dayabhaga law mother follows father. The unfortunate father continues to be the victim of neglect and discourteous. He still continues to linger in Class II Entry (i). The Hindu Adoption and Mainteneance Act, 1956 cast an obligation on the son to maintain his aged or infirm father. Even section 145 of Criminal Procedure Code, 1973 puts obligation on the son to maintain his parents unable to maintain themselves. But the Hindu Succession Act even after its amendment deprives his of his right to inherit his son as long as there is one heir out of the sixteen heirs catalogued in Class I as amended. For such treatment to father the procreator there seems not any concrete reason. Father and mother are considered to be same person in Hindu philosophy of law as such the wife of a person is called to be ‘ardhangini’, which may be the reason that even in the case of defamation the husband and wife is not considered to be third party. Besides parents includes both husband and wife i.e., father and mother of a child which makes father in the same footing of mother. Moreover, if father dies then the child inherits his property being class I heir, so the vice versa is the demand of just treatment. Therefore his position should be elevated and bring him in the same footing as in the mother have.
12. Step mother is an heir under entry VI in class II but step father is totally excluded from any kind of inheritance. Under the Hindu Succession (Amendment) Act, 2005 a step mother is termed by different words, she has been denoted by the word, “father’s widow”. On the same line of step mother the step father can also be included under the same entry of the schedule.

13. During survey it has been seen that many people are not aware of the existing legal provision available for women. In lack of proper awareness they do not dare to take sound decision in favour of women. In such situation it can be suggested that by way of organizing seminars, workshops etc., time to time in remote areas can enhance the awareness of the people regarding rights of women.

14. Lack of education or illiteracy is no doubt a stumbling block in achieving the aim under the study. In our country girls education is not attaining high altitude. Even in remote areas it is preferred, better to keep the girls to do household works instead of sending her to school. In such situation from her tender age she is unable to evaluate her status and have to live a subordinate life. The basic legal education can
be made part of curriculum in the schools and colleges to enthuse legal knowledge among the students who will be the future citizen of the country.

15. Small fragmentation of holdings due to many shares may possess threat in the integrity of the family and its heritage. But in fear of fragmentation women’s right to property cannot be neglected. In such situation to maintain the harmony of the family, adjustment of property value and realization is advisable.

16. Change in the attitude of women itself. As per the survey it is supported by the most of the women that they are reluctant to assert their right over the property. In such situation no one can give them their due share if they themselves taking their step back. will power is the main power. Women should develop their will power to get their claim. In such situation legal and social aid for women seeking to assert their rights should be imparted even by the NGO’s. Survey also supports this fact that the role of human rights activist can bring a change in the women’s right to property.

17. Legal Aid Clinic may prove to be an inexpensive effective means to provide legal services for resolving the disputes within the locality to
the poor, marginalized and weaker sections of the society. It can be a useful machinery to provide legal assistance and relief easily to the weaker section of the society. So far woman’s right to property is concerned establishment of legal service clinic in each village can help the woman to ask for her own rights in the family. Legal aid clinic can provide necessary assistance to the women to get her due rights and share in the property.

18. Self help group also can strengthen the position of its female members in this respect. Being the member of a group, the deprived female can share the matters easily with the other members. And the other member can easily provide a helping hand by taking her to the appropriate authority to ask for legal relief.

19. Panchayat can perform an active and rapid role in resolving the disputes relating to property within their jurisdiction. The members of Panchayat’s are elected from the locality, and assumed to be better aware about the facts and situations of the each house of the locality. Hence in violation of just treatment among the male and female in any house, they can suo moto take up the matter and suggest for amicable settlement thereof and act accordingly to provide justice to the female
20. Media can perform an ancillary huge role in creating awareness among the masses advocating women’s equal right to property as like as male. This is a popular platform which can leave an imprint in the mind of people to think for the welfare of woman. For this the media can telecast short documentary film in frequent interval by showing the story of courageous women who got their property right after giving proper effort. Besides this, talk show can be hosted where legal advisor can be interviewed and phone-in-line programme can be included to make the programme more lively and effective, where from different parts of the state, people can participate and can seek legal remedies of their problems directly without incurring any cost.

It is expected that the Law makers will reconsider the above mentioned amendment in the Act and rectify the anomalies and incongruities.

A mere legal approach by way of special laws is not suffice to check in equal treatment towards women. The community as a whole has a crucial role in this regard. Therefore, there is need to have seminars, conferences, workshops in various colleges and schools to discuss and analyze the topic related with the women’s right.
The Government and Non-Governmental agencies dealing with the interest of the women must have executed an action plan, which must have preventive and remedial approach. In this regard women’s group should associate with the various institutions and non-governmental organizations to provide equal right to any member of the group or within the vicinity of the group where they belong.

After analysis of the data collected from different sources in this work reveals that the Hindu women’s right to property passes many stages of its own to attain the present status. It has faces many confrontation by the smriti writers, orthodox Hindu people and patriarchal chauvinism. However many international organization, constitutional provisions and law commission performed aggrevly to ameliorate the position of women in the society. Besides the Privy Council, High Courts and Supreme Court of India is trying to help the women at distress come before it. The attitude of people at large determines the fruitfulness of the prevailing laws. And during survey it happens that uniformity is not in practice. Moreover it is observed that the responses varies with the variety of situation. So the property rights of Hindu women cannot be said that it is applied in full swing. However change in practice and attitude has been noticed due to awareness of legal remedies among educated masses which will definitely establish equal property rights between male and female on such day which is not far at all.
At the end, in concise, it must be said that a comprehensive approach be undertaken by all concerned be it social, political, cultural to bring out the necessary changes in the mindset of the people towards the women’s right to property.