CHAPTER 1

INTRODUCTION

‘Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind’ – Swami Vivekananda

The Constitution of India guarantees equality of status and equality of opportunity to all citizens within the country, irrespective of the fact that whether they are male or female. It provides that the State shall not deny to any person equality before the law and equal protection of the laws within the territory of India and prohibits discrimination on the ground of sex, race, place of birth etc. There is a growing demand for making laws free from gender bias and to provide legal equality in all spheres of life. It directs that women shall have equal rights and privileges along with men and that the State may make special provision for the welfare of the women. But in practice equality is a far cry.

The entry of British in the land of India had made a revolutionary change

1. Article 14 of the Constitution of India
2. Article 39 of the Constitution of India
in the social life of the people of this country. They made challenging effort towards the legal system of the country. In the early years of British rule, the family and the succession laws and customs of the Hindus, Buddhists, Jains and Sikhs had come to be known by the compendious expression ‘Gentoo’ which means the laws of native. Later they were called the ‘laws of the shastras’ and finally referred to as ‘Hindu law’ after the popular name of the numerically largest and predominant group among these four communities.

From the very beginning of their rule in India the British had adopted the policy of non-interference to all Indian communities and apply their religious based laws. The earliest Regulations of that period had laid down that the ‘Gentoos’ would in matters of family law be governed by the ‘Law of the shastra’.

The ancient legal texts of India had given custom and usage an overriding status over religious law, and this legal position was to be maintained by the British-Indian courts. Taking note of this feature the Privy Council of England, had observed in the case of Collector of Mathura vs. Moottoo Ramalingam as “under the Hindu system of law clear proof of usage would

4. ibid
5. ibid
6. ibid
7. (1868) 12MIA 397
outweigh the written text of the law”.

The dictum however, was translated into the provisions of Acts passed since 1872 to regulate the working of the Civil Courts. For instance, section 5 of the Punjab Laws Act 1872, laid down as,

“In questions regarding succession, special property of females, betrothal, marriage, dower, divorce, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, wakfs, partitions or any religious usage or institution, the rule of decision shall be:

(a) Any custom applicable to the parties which is not contrary to justice, equity and good conscience and has not been by this or any other enactment altered, abolished and has not been declared to be void by any competent authority”;

The Bengal, Agra and Assam Civil Courts Act 1887 had issued direction to the courts to apply personal laws, without reference to custom, but in practice custom was allowed by the courts supremacy over personal law also in the regions covered by it\(^8\).

Hindu law and custom with priority for the latter, were thus recognized, but both were subjected to the contrary provisions of State legislation.

\(^8\) supra, note 5
With the passage of time and development in the field of law, a number of legislation has been passed by the British to bring the reformation in the field of women emancipation. Although the legislature has enacted number of laws for protecting the interest and dignity of women, conversely these laws have not able to protect the women from the sphere of injustice. The discrimination against women is increasing day by day.

Traditionally the birth of a daughter within the household is not welcomed, as the various references in the religious texts will reflect in the upcoming chapters. The traditional undesirability towards a female child, at least in preference of boys, is made clear through the distribution of property and rights of females in the Hindu household.

The study is related with the women’s right to property under Hindu legal system. If to traced the concept of Hindu legal system from their origin in elaboration, the sources, the development, the decided cases and the commentaries, have to be analysed, among which, sources and decided cases too numerous that it may not be practicable to cover all of them. However, an attempt has been made in concise to analyse and better understanding of the position of women under Hindu society.
1.1 Nature of Study:

The position of women has varied in different periods of Indian history. The Hindu women were not always without rights, nor constantly in subjection. The subordination of women is most clearly seen in the context of family. Women were the main supporters of the Hindu joint family though under a strict patriarchy where the man’s wishes were supreme. Men in the typical Indian families are performer and providers of basic financial resources. Women are nurturers and enablers whose key contribution to the family well being is in running the household smoothly. Man can be the manager of the family whereas women are not.

The basic concept of Hindu joint family\(^9\) is a common male ancestor with his lineal descendants in the male line. Again under Coparcenary\(^10\) family male members acquired interest by birth which excludes women from them. Male dominance in the family as also in the society led to the growth of customs which further ensured the women’s continued dependence on men. Due to the social and economic reasons she was not able to assert herself beyond certain limits.

Unequal treatment of gender spreads in different forms but the most

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tedious one percepts is the effective property rights. From the ancient period the difference in property right pertaining to gender has spells. The dictates of ancient texts were multifarious with regards to property right of women, some recommended the granting of a share to her and some imposed restrictions on her rights to even acquire it herself or hold it as an absolute owner\textsuperscript{11}. From the time immemorial Dharmasastras recites the inheritance and the traditional inheritance is the brainchild of such legal text. In general parlance the two important legal schools viz., Mitakshara\textsuperscript{12} and Dayabhaga\textsuperscript{13} which date back about 12\textsuperscript{th} century A.D. regulate the practice of inheritance of Hindus. The Dayabhaga School operated mainly in Assam and Bengal, while the Mitakshara school was in motion in the rest of the country. Both these systems of law were derived from sastras and based upon the digest and commentaries by sages. The Mitakshara was based on Vijnaneswara commentaries on the Yajnanvalkya Smriti, and the Dayabhaga was founded upon the text of Jimutavahana.

Besides these two schools, practice of Mayukha is prevalent in parts of Western India whereas Marumakatayam, Aliyasantana and Nambudri systems are followed in Southern part of the country.

\textsuperscript{11} Mayne’s, Hindu Law & Usage, Bharat Law House, New Delhi, 16\textsuperscript{th} edition, p.1101

\textsuperscript{12} R.K. Mishra, A Spot Light On Mitakshara School, the law House, Bhubneshwar, 1\textsuperscript{st} edition, 2002

\textsuperscript{13} Poonam Pradhan Saxena, Family Law Lectures Family Law II, LexisNexis, Gurgaon, 3\textsuperscript{rd} edition, 2011, p.9
Under the law of Mitakshara, the son acquires a right and interest in the family property by birth. According to the view of this school a son, a grandson and a great grandson constitutes as coparceners, by their very birth in the family. A female is never considered as a member of coparcenery under the Mitakshara Law. Under such system joint family property devolves by survivorship within the coparcenery, which means that with every birth or death of a male in the family, the share of every other surviving male gets affected either enlarged or reduced. For example a father and his three sons, each would own one fourth of the property. If another one is born in the family, automatically the share of each male is reduced to one fifth.

The Dayabhaga School neither asserts a right by birth nor by survivorship though it recognized Joint family and Joint family property. It prescribes only one mode of succession and the same rules of inheritance apply whether the family is divided or undivided and whether the property is ancestral or self-acquired. Under the Dayabhaga law neither the son nor the daughter become coparcener by birth nor do they have rights in the family property during the lifetime of the father. But on the death of father they inherit as tenants-in-common. It is a significant feature of the Dayabhaga School that the daughters also get equal shares along with their brothers. However their ownership arises only on the demise of the father’s ownership. No one child can compel the father to partition the property during his lifetime. And hence father is the
master of his own to give or sell the property without their consent. If one male member of the family dies, his heirs, including females like wife and daughter would become members of the joint property not in their own right, but by representing him. So succession is the rule under the Dayabhaga law. Under Dayabhaga law females could act as a Karta. There is no restriction on females to become a Karta and manage the property on behalf of the other members in the family.

The nature of the study is to analyze the development of property right of women in the Hindu joint family system from the period of sastric laws to codification of Hindu personal laws. A drastic change has been brought by enactment of Hindu Women’s Rights to Property Act, 1937. Under section 3 (2) of this Act, when a Hindu Governed by any school of Hindu law other than the Dayabhaga law or by customary law dies leaving an interest in a Hindu joint family property, his widow shall subject to the provision of sub-section (3) have in the property same interest as he himself had. Codification of Hindu law has been done after independence of the country. The law makers have paid more heed on reformation and bring down the equality before law. They have brought Hindu Succession Act, 1956 with various reformations, and give absolute rights over property to the women. The appropriate example can be gathered from the language of the Judge of Madras High Court in
Additional Commissioner of Income-tax vs. P.L.Karuppan Chettiar’s\textsuperscript{14} case. In this case the Court showed concern over the existence of women’s property rights in Hindu Law and therefore held that the Mitakshara law concepts are clearly on the way out and the system is sure to cease.

With an intent to close down the Mitakshara system of coparcenry and to advance the women’s rights, the Hindu Succession Act has been amended in 2005\textsuperscript{15}. According to this Amending Act of 2005, in a Hindu Joint family governed by Mitakshara system the daughter of a coparcener, shall also by her birth become a coparcener in her own right, in the same manner as the son as an heir. But before the amendment of the Hindu Succession Act, the State of Andhra Pradesh in 1986, Maharashtra in 1994, Karnataka in 1994 and Tamil Nadu in 1989 have ended the Mitakshara system of coparcenry by their Amendments in Hindu Succession Act, 1956, respectively.

1.2 Purpose of Study:

The study seeks to evaluate the extent to which the current law in India provides a framework for independent ownership rights of Hindu Women. A

\textsuperscript{14} AIR 1979 Mad 1 (FB)

\textsuperscript{15} Hindu Succession (Amendment) Act, 2005
discussion will be made on the legal provisions relating to the position of women, resided within the wider historical religious context, in view to show that the development of codified Hindu law has been towards the incorporation of a new principle, to legitimate women’s independent right of ownership of property.

A brief history of the development of property rights of women under Hindu Law and the central role of religious text will be presented to argue that the development of Hindu law has resulted in the institution of religious norms as binding within the contemporary legal system.

The study will deal with the laws relating to Hindu Women’s right to Property. Tracing in brief the statutory development of the right first, to a Hindu widow to hold a limited estate and subsequently its conversion to an absolute estate, and the inclusion of the mother and the daughter as equal heirs with the sons and the widow of a Hindu male, the relevant provisions will be outlined and the changes brought to be effected. Any succession law has importance of its own. Hindu Succession Act, 1956 is not exception to it. It has an added importance as it has brought uniformity in the law relating to Mitakshara and Dayabhaga School, of Hindu people throughout India maintaining the distinctive features of the system prevalent. The Act overrides all other rules of succession, applicable to Hindus. This Act has laid down
some of the simple rules relating to succession to the property of a Hindu male and female. The limited estate of Hindu woman is abolished and she is entitled to deal with the property inherited by her as full owner\textsuperscript{16}. The property of a male Hindu dying intestate after the commencement of this Act devolves in equal shares between his son, daughter, widow and mother. Male and female heirs are treated at par as per the Act. Another significant feature of this Act is that any property possessed by female Hindu will now be regarded as her absolute property. Being the absolute owner of the property, she has full power to deal with it and dispose it in any manner as she likes. The restraint and limitation imposed on her power have ceased to exist even in respect of existing property so that any property possessed by a female Hindu whether acquired by her before or after the commencement of the Act, is now held by her as full owner and not as limited owner\textsuperscript{17}.

The Act envisages the conferment of equal rights on daughters and other Hindu females with the sons and other male heirs of the Hindus. Limited interest of the Hindu female prior to the Act has been enlarged into absolute interest under section 14(1) of the Act except in cases where sub-section (2) of section 14 is attracted. Before passing of the 1956 Act broad disparity was prevalent in the laws of inheritance between Mitakshara and Dayabhaga.

\textsuperscript{16}Section 14 of the Hindu Succession Act, 1956

\textsuperscript{17}ibid
Though on passing of Hindu Succession Act, 1956, uniform rules of succession or inheritance to the property of Hindu law have been laid down but gender discrimination is still observed in practice.

To advance the condition of female heir and to remove the lacunae creeping in the Hindu Succession Act 1956, the Centre has amended the law and brings the Hindu Succession (Amendment) Act, 2005.

The provisions of Hindu Succession Act, 1956 and retention of Mitakshara coparcenary which restrict the rights of female has been included under the study. The study will further focus on the effect of the statutory development of the Hindu Law relating to female’s right, held time to time changes only limited areas, and the practical implication of Hindu Succession (Amendment) Act, 2005 in ameliorating the position of women in the society.

The study will focus mainly on the position of women after the passing of Hindu Succession (Amendment) Act, 2005. This Act is an attempt to remove the discrimination as contained in the amended section 6 of the Hindu Succession Act, 1956 by giving equal right to daughters in the Hindu Mitakshara coparcenary property as to sons have. At the same time section 23 of the Act as disentitle the female heir to ask for partition in respect of dwelling house wholly occupied by a Joint Family until the male heirs choose to divide their respective share therein, was omitted by this Amending Act, resulting the removal of the disabilities of female heirs, which is a
commendable step indeed.

As per the amending Act, the separate property of a male Hindu dying intestate went equally to his Class I heirs, viz., son, daughter, widow and mother (and specified heirs of predeceased children)\textsuperscript{18}. In view of this Act, in a Joint Hindu Family governed by the Mitakshara Law, the daughter of a coparcener shall, also by birth become a Coparcener in her own right in the same manner as the son heir. She shall have the same rights in the coparcenary property as she would have had if she had been a son. She shall be subject to the same liabilities and disabilities 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. But this provision shall not apply to a daughter married before the commencement of the Hindu succession (Amendment) Act, 2005.

This provision shall not affect or invalidate any disposition or alienation including partition of testamentary disposition of property which had been taken place before 20.12.2004. Further any property to which female Hindu becomes entitled by virtue of said provision shall be held by her with the incidents of coparcenary ownership and shall be regarded as property capable of being disposed of by her by will and other testamentary disposition. The provision was also made that where a Hindu dies after the commencement of

\textsuperscript{18} Section 8 of the Hindu Succession Act, 2005
the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place.

Further, the daughter is allotted the same share as is allotted to a son. The provision was also made that the share of the pre-deceased son or a pre-deceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter. Besides these the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter as such child would have got, had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter. The most important fact is that the interest of a Hindu Mitakshara Coparcener shall be deemed to have the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. The Amending Act of 2005 has also clear provision that after commencement of the Amending Act of 2005, no Court shall recognize any right to proceed against a son, grandson or great grandson for the recovery of any debt due from his father, grandfather or great grandfather (on the ground
of the pious obligation under the Hindu Law), of such son, grandson or great grandson to discharge any such debt. But, if any debt contracted before the commencement of the Amending Act of 2005 the right of any creditor, to proceed against son, grandson or great grandson, shall not affect or any alienation relating to any such debt or right shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if Hindu Succession Amending Act of 2005 had not been enacted.

In addition to the above for the purpose of creditors right, the expression son, grandson, or great grandson shall be deemed to refer to the son, grandson or great grandson of the Amending Act of 2005 the right of any creditor, to proceed against son, grandson or great grandson, shall not affect or any alienation relating to any such debt or right shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if Hindu Succession Amending Act of 2005 had not been enacted.

In addition to the above for the purpose of creditors right, the expression son, grandson, or great grandson shall be deemed to refer to the son, grandson or great grandson who was born or adopted prior to the commencement (9.9.2005) of the Amending Act, 2005. Such provisions shall not apply to a

19.Section 6 (4) of the Hindu Succession Act, 2005
partition which has been done before 20\textsuperscript{th} December, 2004. Sections 23 and 24 has been omitted\textsuperscript{20}. Similarly, special provisions relating to rights in respect of dwelling house and the disentitlement rights of widow’s remarrying, respectively omitted from the Act. The Amending Act also added in the Schedule of the Hindu Succession Act, 1956 new heirs viz., son of a pre-deceased daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased daughter, son of a pre-deceased daughter, daughter of a pre-deceased son.

Thus, the amendment of Hindu Succession Act of 1956 in 2005 is a total commitment for the women empowerment and protection of women’s right to property. The Amending Act of 2005 in a patriarchal system, like a Mitakshara School of Hindu Law opened the door for the women, to have the birth right in the family property like son. The women were vested right of control and ownership of property beyond their right to sustenance.

1.3 Research Methodology:

It is a pre-requisite in any scientific enquiry to have methodology. In any kind of research work different methods are applied. Research methodology is a systematic investigation to gain horizon of new insights about the

\textsuperscript{20}Hindu Succession(Amendment)Act,2005
phenomenon or problem in question.

In other words methodology includes the philosophy and practice of the entire research process. It imparts the level which the researcher uses for integrating data and research conclusion.

In the present work, the methodology consists of doctrinal and survey study. The doctrinal study requires in depth study of various text books, and reported cases to find out various fact- situations of the subject matter.

The topic for this investigation as has been selected in view of hard fact that the law relating to Hindu women’s property needs to be analysed and reoriented in such a manner that most suited to the changing needs, ideals and aspiration of the contemporary society.

The significance of this study is that whether law relating to Hindu women’s right to property after Hindu Succession Amendment Act, 2005 has picked up momentums both in theory as well as in practice. For this doctrinal method will be adopted along with a mini survey method taking certain representative samples of Guwahati.

In this study one research hypothesis is formed to be proved or disproved as it is felt necessary. Research Hypothesis:

\[ H_a \] – There is a relationship between attitude toward right to property of Hindu women and background variables of age, sex, education, income and marital status. And accordingly Null Hypothesis is,
H₀ - There is no relationship between attitude towards right to property of Hindu women and the stated variables.

In this study a questionnaire will be used as a part of survey, among the respondents to measure the attitude of them towards the property rights of women, rights of married daughters, rights of illegitimate child, step sons and daughters and half blood relations and above all the effectivity of laws in promoting property right to women in practice. The details of the questionnaire and sampling procedure for the study is analyzed in chapter 5.

1.4 Scope of Study:

Half of the world’s population is women but their courses of sufferings are much more than their proportion as compared to their male counterpart. The discrimination against women is quite high. Women are confined to within the four walls of home. But they are not even allowed to take breath of liberty in their own home. They are discriminated again and again. They have to remain dependent economically on the male members of the house. Women were often deprived of getting property right in the family of both father as well as of husband.

The study is an attempt to map the issue of gender and law reform relating to the personal law of Hindu upon a broad canvas of history and development.
and explore strategies which could safeguard women’s right to property within a sphere of complex social and legal boundaries. While the aim of this study is not to form a complex code for women’s property right, however it is expected that the thumbnail sketch of the origin and development of rights of female in the family of Hindu society along with an exploration of state interventions at various strategic points in history will provide the necessary backdrop, against which the demand for gender equality in practice can be reformulated.

The under-current beneath the rhetoric of women’s rights are examined under this study. The property and its regulation forms the basis of all civil laws, the legal systems located within the patriarchal moulds would necessarily stand upon anti-women conditions to varying degrees. But within this world of gender bias, it is interesting to observe that at particular historical junctures, certain bias of a particular system is over-minded or under-minded.

The quote from Yajnavalkya that a woman is not entitled to independence in any period of her life, her father shall protect her when she is maiden, her husband when she is married, her son when she is old and in their default their kinsmen shall protect her\(^2\). So at no stage of her life she gets freedom.

Besides Manu expressed a wife, whatever they acquire becomes the

\(^2\)Yajnavalkya, I, V, 85
property of the person to whom she belongs. Therefore economic independence was not in the fortune of Hindu Women. Apart from these, subordination, child marriage, widow burning was in fashion of the earlier Hindu society which has limited the power and role of women in the society. These kinds of projection of women in the society compels the colonialist as well as the Indian social reformers moral justification to interfere in the personal laws of the land and bring the reformation to upgrade and enhance the position of women in the society.

The British remained the rulers of India in the eighteenth, the nineteenth and the first half of the twentieth centuries. During the British rule a number of changes were made in the economic, legal and social structures of our society.

In the end of the nineteenth century, women in India suffered from disabilities like child marriage, sale of girls for marriage purposes, severe restrictions on widows, non-access to education, and restricting oneself to domestic and child rearing function. By this time some of the educated Indian reformist has played a significant role in raising voice for elevation of women in the society. The Indian National Conference started in 1885 by Justice Ranade condemned these disabilities. Raja Ram Mohan Roy, played an active role in abolishing the sati system from the society. He raised his voice against

22. Manu VIII-416
child marriage and purdah system and fought for the right of inheritance of women. Ishwar Chandra Vidyasagar launched a movement for the right of widows to remarry and also pleaded for educating women. Maharishi Karve took up the plight of widow remarriage and education of women. Maharaja Sayaji Rao Gaekwar, ruler of Baroda state, worked for preventing child marriages, right of education to women and the right of remarriage to widows. Swami Vivekananda, Swami Dayanand Saraswati, Annie Besant, and Mahatma Gandhi took interest in the social and the political rights of women. Gandhiji was of the opinion that women should labour under no legal disability not suffered by man. He was in favour of treating daughters and sons on a footing of perfect equality. The merits of the movements started by various social reformers and leaders was that they succeeded in raising social consciousness for the liberation and equal right to women.

Due to the constant concern of British administration few legislations have been brought out to provide the Hindu women relief from the discriminating nature of existing society, for example Sati Prevention Act, 1829, Hindu Widows Remarriage Act, 1856, Child Marriage Restraint Act, 1929, Hindu Women’s Right to Property Act, 1937 etc.

Though these legislative measures have improved the status of women to a large extent but the legislations are not extremely satisfactory and touches only the fringe of the problem and some laws are so loose to be properly
implemented. And also the machinery to implement legislation was too costly, inefficient and complicated. Therefore it may be said that the legislations have not been effective to wipe out the hardships suffered by women. Theoretically women might have been given more freedom but in practice they are suffering from inhuman dignities and unworthy treatment causing shame or loss of respect.

Finally, India achieved its independence and took vow to give equal status to both sexes. And the Supreme Law of the Land i.e., the Constitution of India has declared equality before the law irrespective of any sexual bias under Article 14 resulting various committees to have been set up to analyze and upgrade the position of women, so that the Hindu law has been codified as a symbol of reform, glossing over the fact that this codification has not been able to arrest the trend of increasing violence and discrimination against Hindu women, but made effort to lessen the discrimination against women.

1.5 Sources of Information:

The research is grounded within the contemporary Hindu women’s right to property in the family of both her father and in-laws. The analysis of legal texts is undertaken within the framework of feminism. To empower the women by giving economic liberty and rights is the subject of this study. The study is primarily a legal exploration and the legal discourses are located within historical developments and contemporary legal provisions for equality
of sexes.

The research is based on published material, such as legal texts, law journals, reported and unreported judgments, constituent assembly debates and parliamentary debates, official document, drafts and bills prepared by legal luminaries, women’s group and various official papers, informal presentations and discussions at legal workshop and media, be it paper or print.

Apart from the secondary sources a survey was conducted of about 1000 population in and around the Guwahati city taking as representative samples. Hence the methodology here is applied both doctrinal as well as survey type. Of course, more stress will be given on doctrinal study. By way of survey primary data will be collected directly from the people to seek their attitude towards women’s right to property.

An examination of the practice of the Hindu succession (Amendment) Act, 2005 in recent years is the main and significant feature of this research. This will expectedly enhance the process of arriving at the minimum level of consensus among the masses for the women’s welfare which is a prime precondition for reform in the sphere of family laws, and to douse the fire of inequality and discrimination against women which will hope to open the path of women emancipation and empowerment by giving equal rights and opportunity in the economic field by way of giving property rights.
Smriti, Srutis, Puranas, Dharmasastras, Manu Smriti, Commentaries of Narada, Yajnavalkya, Viganeshwara, may be referred in the context of present study. In this regard the school of Mitakshara and Dayabhaga in general also may be mentioned.

There had been certain commentaries with special reference to certain parts of this country. The customary practices in relation to the different concepts governing the Hindu legal system prior to the crystallization to those concepts into different legislations from the olden days to till current days also may have to be mentioned while dealing with the subject.

Certain legislations, though are not in force at present for verification and for better understanding of the subject, brief of those legislation specially the provision which are related with the subject of the present research has also been incorporated within.

The secondary materials have been collected from various libraries and social institutions like Indian Law Institute, New Delhi; Library of Law Department, Banaras Hindu University, Sri Narayana Rao Memorial National Law Library the NLSIU, Bangalore; K.K. Handique Library, Gauhati University, Library of University Law College, Gauhati University etc.
1.6 Literature Review:

During the course of the study many literatures have been studied. Mainly the works on Hindu women’s property right by different authors have been studied to find out the ancient and present position of Hindu women regarding her property rights.

The following four literature reviews attempt to describe the proprietary position of Hindu women.

In a work prepared by Rooplal Choudhury, “Hindu woman’s right to property past and present”27 an extensive study was done on the Hindu women’s property right. This work has studied the position of women in general and her property rights in particular. An elaborative attempt on different directions of Hindu women’s limited rights, her power of alienation, her right to surrender, woman’s estate and rights of revisioners has been studied in this work.

The work focussed on the Hindu Succession Act, 1956. However only section 14 has been discussed in the work in exclusion of other provisions of the Act.

Another work has been reviewed by the researcher is in the work written by B.M. Buzarbaruah on ‘Principles of Hindu Jurisprudence vis-a-vis

27. Hindu Woman’s Right to Property, Firma k.l.Mukhopadhyay, Calcutta, India, 1961
Daughter’s inheritance\textsuperscript{28}. This work has studied the ancient part of the Hindu law in relation to daughter’s right over property. The scope of this work however, is very limited. The more stress in this study is given only on the daughter and what has been expressed by ancient gloss regarding daughter. Conversely, less stress is paid to explain the legal provisions regarding the rights of daughter under the Hindu Succession Act 1956.

One another work which has been reviewed by the researcher is in the work ‘A spot light on Mitakshara School’\textsuperscript{29} by R.K Mishra is a work which have elaborately dealt with Mitakshara school of law. The work has exclusively discussed some important concepts such as coparcenery, joint family, succession etc. of the Mitakshara school of Hindu law. Coparcenery which is a blank check to masculine gender finds a major place in the work. Conversely the women’s right to property is discussed in a very confined manner.

The other work have been reviewed by the researcher is the case decided by the High Court of Gauhati in Smt Basant Jaiswal and Anr. vs. Sri Gauri Shankar Gupta (2012 (1) GLD 840 Gau) and Ors. In this case, the Gauhati High Court has decided to give the property equally to both sons and daughters of the deceased. The most striking feature of this case is that this

\textsuperscript{28}. Principles of Hindu Jurisprudence vis-à-vis Daughter’s Inheritance, GULS, 1998 Vol.I, no.4

\textsuperscript{29}. A Spot Light On Mitakshara School, 1\textsuperscript{st} edition, 2002the Law House, Bhubneswar.
case has included the married daughters to be entitled for the equal distribution of their father’s property.

These four literatures are related with the present study as the present study is concerned with the property rights of Hindu women and the applicability and effectivity of Hindu Succession Act, 1956. However the researcher agrees with other literatures also.

The literature mentioned above have explicit connection with the present study and the researcher tries to make the subject matter of the present study more viable and what was not considered by the other literature reviewed and studied throughout the course of research. Empowering women leads to an equal social status in the hinges of society, among other things, on their right to hold and inherit property. Several legal measures have taken place since independence in India, including on equal share of daughters to property. Still equal status remains elusive. Framing of laws and bringing practices in conformity thereto is necessarily a long run process. The Government, the legislature, the judiciary, the media and civil society have to perform actively their roles, each in their own field of competence and in a concerted manner for the process to be speedy and effective. The Amendment can empower women both economically and socially and have far-reaching benefit for the family and society. Right to agricultural land can reduce a woman and her family’s risk of poverty, improve her livelihood options, and enhance
prospects of child survival, education and health. Women owning land or a house also lessen the risk of domestic violence and dowry death. Making all daughters Coparceners have far-reaching effect, like it gives women birth-rights in Joint family property that cannot be willed way. Rights in coparcenary property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter.

1.7 Scheme of the Chapters:

Chapter 1:

An introduction of the research topic has been made in this chapter. The chapter is divided into six sub-headings. The nature and purpose of the research and the scope of it have been explained in this chapter. The nature of this study is to analyze the position of Hindu women regarding her rights over property in the Hindu family system and therefore the main object of the study is to measure the status of Hindu women in the society. The research methodology applied for the present study is both doctrinal and empirical which has been applied in the course of data collection and analysis, is also incorporated under chapter 1. Literature review of other authors in regards to property rights of Hindu women has also finds place under the same chapter.
Chapter 2:

In this chapter, a brief history of the development of Hindu women’s right to property and central role of religious text has been provided. The writings of Smriti writers, the position of women regarding their right to property in the Joint family as well as in the Coparcenary, under different sub-schools of Hindu law are discussed in detail in the chapter. Two kinds of property which were in vogue in the earlier period of Hindu Law i.e., Stridhana and women’s estate are discussed here. The role of international instrument and national Commission for women in protecting rights of Hindu women are matter of discussion hereunder.

Chapter 3:

In this chapter a detail analysis has been made on the legislative developments of Hindu women’s right to property. This chapter has included the rise of Hindu women’s right to property from the Hindu Widow’s Remarriage Act, 1858 to Hindu Succession (Amendment) Act, 2005. Section 14 of the Hindu Succession Act, 1956 and its constitutional effect has been described in this chapter. Apart from that the merits and demerits of the Act have form the part of this chapter. The report of joint committee on the, the role of 174th law commission report, constitutional assembly debates, Hindu Succession Bill too are included in the chapter. The right of reversioner and notional partition is explained under the chapter. Section 6 of the Hindu
Succession (Amendment) Act, 2005 has been studied in detail in this chapter.

Chapter 4:

In this chapter the researcher makes an attempt to measure the role of Judiciary in protecting the Hindu women’s right to property. The pioneering role performed by Privy Council to give property right to female has been discusses in this chapter. The Privy Council had made an attempt to resolve the issues came before it relating to rights over property after making proper enquiry of the existing rules and prevailing customs among the disputed parties. After that it applies the rule of equity, justice and good conscience in solving the disputes in absence of proper laws. However the Privy Council had been seen to pay more reliance on customs. As because initially the British did not wanted to interfere in the personal laws of the people.

The High Courts of different states have given different judgement time to time which sometimes seems to be in conformity of the law and sometimes to be contradictory of the interest of women’s right to property. However the Supreme Court of India is seemed to control the sphere of injustice towards women’s right to property. It is always in supreme and utmost service to provide safeguard to the women’s right to property. Discussion on the decisions of the Privy Council, High Courts and Supreme Court are the matter of discussion of this chapter.
Chapter 5:

Under this chapter the researcher has tried to analyse the data collected during the survey and interpreted the same to measure the attitudes of the people towards right to property of Hindu female in relation to which a brief note has been provided on method of study and data collection in the chapter. In this chapter the data collected during survey has been refined, tabulated and analysed on the basis of different variables, dependent or independent. Hypothesis has been tested in this chapter with the help of various variables as mentioned in the questionnaire. The most interesting outcome of this chapter is that the opinions vary for the same question but for different independent variables.

Chapter 6:

In this chapter an evaluation has been made from the data collected by different sources. The data which are gathered from the secondary sources and from the primary sources by means of survey are analysed here and a comparative study has been made on key issues like the rights of illegitimate child, step child and adopted child over the property. It is found that the evaluation of both the sources expresses great concern that women are discriminated regarding property rights from the ancient period to till today like an inseparable tradition of the Hindu society. To map the frequency of
the problem relating to Hindu women’s right to property a comparative analysis is made on some vital areas relating to right to property among Hindu people and has been selected for discussion.

Chapter 7

Last but not the least chapter deals with the findings and conclusion of the work. In this chapter a brief conclusion has been made with findings and possible suggestions have been offered.

Summary:

The researcher has made an attempt to give an introduction of the projected work on the topic “An Analytical Study of Right to Property of Hindu Women with Special Reference to the Hindu Succession (Amendment) Act, 2005” in the first chapter so that an idea about the research work could be ascertained. In this chapter the researcher has made in detail the nature and purpose of the present study. The scope of this study is confined to Hindu women’s right to property. To explore the scope the writings of various smriti writers, legislative enactments, decided cases, constitutional provisions, role of law commissions etc., have to be analysed. In the present chapter the researcher has tried to review the existing literatures on the property rights of
Hindu women. The methodology adopted for this research is both doctrinal and empirical for which the data have been collected from secondary as well as primary sources too and are made a part of the first chapter.