CHAPTER-VI
CONCLUSION AND SUGGESTIONS

1. INTRODUCTION:

The classification of women as the ‘other’ or the ‘inessential’¹, not including them within the meaning of the term ‘person’, assigning them only the traditional and stereotyped roles like bearers and nurturers of the children and the unpaid house keepers, it all facilitates the continuation of low expectation for females. This confined them within four walls of their house and thus lowered down their status to a considerable extent.

But gradually, during the 19th and early 20th centuries, with the impact of industrialization, various feminist campaigns for the elimination of discriminatory laws started. These campaigns created new roles for women which in turn led to expansion of their social influence. Further to give impetus to these movements, the Universal Declaration of Human Rights of 1948 was adopted by the General Assembly of the United Nations which is meant to reinforce all human rights instruments and extend protection against all types of discrimination. This led to the era of gender justice jurisprudence which further led to the passing of various women oriented conventions and charters at the international level.

This international scenario, e.g. the feminist movements in the west, industrialization, passing of various conventions had its impact in India also. But in India the ground realities are different. Indian society being patriarchal in its nature, everything is controlled by males; they adopt their own patriarchal values and attitudes and assigned only marginal roles to females. In this patriarchal set up all types of activities, whether social, economic or political, are controlled by male head of the family. Women are treated merely as chattels having no individual identity of their own. Men folk invent various devices to exercise their unbridled authority over them. These include polygamy, purdah system, child marriage, sati system, ban on widow remarriage, succession rules etc. In the backdrop of this type of social set up,

where even the basic human rights were denied to females, talking of property rights of the females is just like a long cherished dream to be fulfilled.

2. HISTORICAL PERSPECTIVE OF WOMEN'S PROPERTY RIGHTS IN INDIA

2.1 Vedic Period: - As regards the property rights of the women during the Vedic period, the unmarried daughter had the right to get a share out of her paternal property but married daughter had no such right. Where the daughter was the only child she could even perform the funeral right of her father. This gave her the right to inherit the father’s property. But dharmasastras hold the opinion that in the presence of the son, daughter could not exercise any such type of rights. So far as the position of wife was concerned, husband and wife were treated as joint owners. Though this joint ownership gave only minor advantage to the wife, she was given the right to enjoy the husband’s property only up to a limited extent as she was not the successor of her husband’s property.

The later Vedic period witnessed much more deterioration in the status of female. She could never enjoy an independent status of her own, and did not posses any socio-economic rights. Regarding her proprietary position, she possessed right to maintenance only and no right of ownership and inheritance. Though during this period Gautama included the widow, Apastamba - the daughter and Sankha – the mother and the eldest wife as the heirs, but they are included as heirs only after exhausting the long list of male kindred and even strangers.

2.2 Under Mitakshara and Dayabhaga Schools: - During the era of commentaries, two important schools – Mitakshara and Dayabhaga emerged. These two schools differ from each other in various aspects, but one of the major differences among these schools relates to the law of inheritance. Regarding the law of inheritance Mitakshara system was based on consanguity or nearness of blood relationship whereas Dayabhaga was based upon the religious efficacy. Both the schools vest the succession to the property of the deceased only among the male heirs.

In the Mitakshara School, the law of succession was connected with the special incidence of the coparcenary property, where son, son’s son and son’s son’s son acquired the birth right. The salient feature of Mitakshara coparcenary was that it consisted of male members’ up to four generations only, i.e., father and his three lineal
male descendents constituted coparcenary. The other incidents have been the community of interest, unity of possession and right of survivorship. The members of the coparcenary were obligated to maintain the female members. But the joint family property devolved only upon the male coparceners, according to the doctrine of survivorship.

In Dayabhaga School right by birth and principle of survivorship are not recognised though joint family and joint family property is there. In Dayabhaga succession was determined by spiritual benefit theory which provides that property should be inherited by that relative who is entitled to perform rituals (sharaddha ceremony) for the ancestors. Obviously, in the Hindu society males were always considered superior to females while performing the last rituals of the ancestors.

Regarding the inheritance rights of the females, earlier one thing common between the two schools was that females do not possess inheritance right. The Mitakshara School which is regarded as comparatively secular in its approach and based its succession scheme on nearness of blood relationship, also excluded daughters from the inheritance rights. Even though the daughters are also the particles of the same body of which the son's are but still only the sons are given the birth right in the father’s property. In Mitakshara School, three females, i.e., father’s wife, mother and grandmother were permitted to take share in the property whenever the partition took place, but this share was only in form of limited estate. These females hold this share only during their life time with restriction on alienations. After their death, it went back to the presumptive reversioners. In Dayabhaga as the sharaddha ceremony is performed by the male members only, so female members including the daughters are totally excluded from inheriting the property.

2.3 Stridhan and Women's Property Rights: - So far, as the concept of stridhan is concerned, which literally means women’s property; women were entitled to hold property under this concept. But even to this stridhan limitations were imposed upon the women’s power to dispose it off, which reduces the women’s actual enjoyment even of her stridhan. During her maidenhood, female could dispose off her stridhan according to her sweet will, but after marriage she can dispose off only saudayika stridhan (i.e. gift from relations except those made by husband). Regarding non-saudayika stridhan, (i.e. gifts from strangers and property acquired by mechanical arts etc) she has no power to dispose it without the consent of her husband. During
widowhood even she could not dispose off her stridhan comprising of immovable property.

About succession to stridhan, it varies according to the status of the women i.e. married or unmarried status. Rules regarding succession to married women’s stridhan are different in different schools. Unmarried women’s property passes in the same order in all the schools. The succession about the married women’s property goes first of all to her children. If she dies issueless and the marriage was in unapproved form, then firstly the mother inherit the property in preference to other relation and if the marriage was in approved form the husband is preferred to others.

2.4 Customary Law: - Under the customary law the southern states especially Dravidian regions adopted various pro-women customs regarding the property matters as compared to the Brahminical-Aryan customs followed in north India. Besides this female headed joint family system is also prevalent there, these are called Tarwaad and Tavazi. The Marumakkathayam and Aliyasanthana, matrilineal inheritance system was also present at that time.

In this type of social set up, when British established their control over India, they brought with them western concepts and practices in administration of justice. Initially the Britishers adopted the policy of non interference in personal laws and these matters were decided by Maulvis and Pundits, but gradually, when they firmly established themselves, consulting of Hindu Pundits and Maulvis on question of personal matter ceases and judges decided these matters on the basis of available texts. Though with their interference various women oriented laws were passed during the British regime e.g. Prevention of Sati Act 1829, Widow Remarriage Act 1856, Prevention of Female Infanticide Act 1870, and Sharda Act 1929 etc.

3. LEGISLATIVE MEASURES AND WOMEN'S PROPERTY RIGHTS

So far, as property rights were concerned, first such Act was the Caste Disabilities Removal Act 1850. It is a general statute which was applicable to all the communities. Through this Act conversion of a person from one religion to another ceases to be disqualification in the matters of succession. Then Hindu Wills Act 1870 was passed providing for the first time testamentary succession to the Hindus. After this, the Married Women’s Property Act 1874 was passed which extended the scope of stridhan. The Act though radical in its approach but it was applicable only to
Indian Christian women. In order to include Hindu women within the ambit of this Act, it was amended in 1923. Then the Hindu Inheritance Removal of Disabilities Act 1928 was passed which removed the congenital lunacy and idiocy as disqualification for inheriting the property of the deceased. Then, the Hindu Law of Inheritance Act 1929 was passed. Section 2 of this Act provides that a son’s daughter, daughter’s daughter, sister and sister’s son shall, in the order so specified be entitled to rank in the order of succession next after a father’s father and before a father’s brother provided that a sister’s son shall not be included, if adopted after the sister’s death. This Act was very limited in its scope and did not make any radical change in Hindu law in favour of women. In this Act neither daughters nor widows were provided with the right of inheritance. The Act only emphasized that certain degrees of remoter male heirs should be deferred in favour of the closer degrees of female heirs and nothing more. So the provisions of the Act were not particularly radical in support of women’s right to property.

After the Act of 1929, the Hindu Women’s Right to Property Act 1937 was passed with the efforts of Raisaheb Harbilas Sarda. This Act provides that:

(a) When a Hindu governed by the Dayabahga School or by any other school of Hindu Law died intestate leaving separate property; it would devolve upon his widow along with his lineal descendants, if any, in the same manner as it devolved upon a son. Provided, that the widow of a predeceased son would inherit in like manner as a son. Provided, further that the same provision should apply *mutatis mutandis* to a widow of a predeceased son of a predeceased son.

(b) When a Hindu governed by any school of Hindu Law, other than the Dayabhaga School died intestate, having at the time of his death an interest in a Hindu joint family property, his widow would have in the property the same interest as he himself had.

(c) Any interest which devolves on a Hindu widow would be limited interest known as ‘Hindu Women’s Estate’ provided, however, that she would have the same right to claim partition as a male owner. Before the passing of this Act she was not entitled to inherit any property but was entitled to maintenance only.

The Act of 1937 was passed to provide better property rights to helpless widows, but this Act was criticized as it contains various uncertainties and anomalies.
After this Act various private bills also came up for consideration, but setting aside these private bills, the Government of India constituted the Hindu Law Committee on January 25, 1941 with B.N. Rau, as its chairman. The Committee recommended codification of Hindu Law by stages, starting with succession and marriage law. The committee submitted two draft bills on March 1942, the first dealing with the law of intestate succession and second with the law of marriage. The Government of India passed a resolution on January 1944 by which Hindu Law Committee was again revived as it ceased to function after the submission of above said two draft bills. The Government also directed to formulate a comprehensive code of Hindu law. The final report of the Rau committee with the title Hindu code was placed before the cabinet on March 1947. The bill was referred to Select Committee on April 1948 and Select Committee submitted its report on August 1948.

The revolutionary proposals introduced by Hindu Code Bill evoked mixed response of the society. The people of the country were equally dividing for and against the bill. Lots of discussions, protests and criticism of the bill led to the idea to split up the bill into fragments as it was not possible to have comprehensive codification of Hindu Law in one stroke. Thus the Hindu Code Bill was divided into four parts, the third part seeks to amend and codify the law relating to the intestate succession. This part received the assent of the President and became the law of land on 17 June 1956 with the name of the Hindu Succession Act, 1956.

The Act brought some radical and fundamental changes to improve the women’s succession and property rights. Through this Act, the old rules of intestacy and testamentary succession were considerably altered. The Act introduced new scheme for succession based upon love and affection by introducing daughter as a simultaneous heir along with son, widow etc. the share of daughter is also equal to that of a son in the separate property of the father and she was also entitled to get a share in the Mitakshara coparcenary property. Besides this, Mother was introduced as class I category heir. Further through this the Hindu women’s estate with limited ownership has been abolished and she became the full-fledged owner of all the properties inherited by her.
4. LOOPHOLES UNDER THE HINDU SUCCESSION ACT, 1956

Though, this Act conferred much sought property rights upon the females for the first time, but still it contained a number of discriminatory features due to which females could not reap the benefits provided under the Act. These features are:-

1. One of the serious drawbacks of the Act is the absence of any provision which could nullify the action meant to defeat or reduce the right of female heirs. On the contrary, the Act itself leaves the door open to help those who want to divest the females of proprietary rights. It gives uncontrolled testamentary powers under section 30. Thus women can be disinherited by execution of will by all Hindus under the Act whether they are governed by Mitakshara, Dayabhaga or Marumakattayam Law.

2. Second aspect under the Act, which enhances the gender discrimination, was under section 4(2) of the Act. It provided that the state can pass rules “providing for the fragmentation of agricultural holding or for fixation of ceiling or for the devolution of tenancy rights in respect of such holdings”. This provision amounted to deny the beneficial effect of the Act to the females as these laws contained features, which are more discriminatory than the existing laws.

3. The Act retained Mitakshara coparcenary and son’s birth right in the family property. According to Mitakshara School, a son, grandson and a great grandson constitute a class of coparceners. No female was to be member of Mitakshara coparcenary. The Act by virtue of section 6 recognized inheritance by succession but only to the property separately owned by an individual. It provided that if the male Hindu governed by Mitakshara Law dies, leaving his undivided interest in coparcenary property, his undivided interest will devolve according to the rules of survivorship and not according to the Act. The proviso to section 6 provided that if the deceased had left behind him any female relative specified in class I of the Schedule or male relative claiming through such female relatives, the interest of the deceased would devolve not by survivorship but by testamentary or intestate succession as provided under the Act. To determine the share of the deceased person at the time of his death, explanation to section 6 resorts to the simple, expedient, undoubtedly a
fictional or notional partition. It said that the interest of the Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted if the partition of that property had taken place immediately before his death. So to know the share of deceased coparcener one had to resort to old rules of partition and the net result was unequal distribution among sons and daughters because the son by virtue of being coparcener is entitled to have greater share, one as a coparcener with the father and other as a class I heirs whereas the daughter is again given only one share in the separated share of the deceased father. Thus though section 6 was projected to show that daughters have been given the right in Mitakshara coparcenary but the real picture under the Act was that ancestral property continued to be governed by a wholly patriarchal regime and thus leading to gender discrimination.

4. Along with this aspect, the right of coparcener to renounce his interest in coparcenary also defeats the right of female to inherit. In order to do this, no particular formality is required except the expression of clear intention and the result of renunciation was that on the death of renouncee, he will have no interest in the joint family property which could be distributed among the heirs. The similar characteristic to reduce the right of female heir was conversion of self-acquired property into coparcenary property. This conversion is frequently resorted to reduce the burden of income tax. Again, no formalities are necessary in order to bring this conversion and the only question was of intention on the part of the owner of separate property to abandon his separate rights and invest it with the character of joint family property. So the availability of these mechanisms in favour of male descendents has been the major point of discrimination that enhanced discrimination.

5. The patrilineal assumption of a dominant male ideology is again clearly reflected in laws governing a Hindu female who dies intestate. Section 15 of the Act, which deals with succession of Hindu female property, makes a distinction between the property inherited by her from her parents and from her husband or father-in-law. The former devolves on the heirs of the father and the latter devolves on the heir of her husband provided she died issueless.
This provision is indicative again of a tilt towards the male as it provides that the property continues to be inherited through the male line from which it came, either back to her father’s family or back to her husband’s family. Further section 15 does not specifically mention about the properties earned by a female out of her own exertion or gains of learning. Thus, where a widow dies issueless, her property will devolve on the heirs of her husband and not on her blood relations. In view of practical reality, this provision is not consistent with equity and fairness. Usually, a widow does not find her deceased husband’s house as a fit place to live in and she quite often turns to her parent’s place for help. This fact has been recognized even by legislature as section 23 of the Act conferred on a widowed daughter the right of residence in the dwelling house of a deceased father. The irony is that because of section 15(1) whatever little income she had, passed on her death to a distant relations of her husband’s side and not to her blood relations i.e. parents, brothers and sisters, etc.

6. The provision under section 23 relating to the right of inheritance to a dwelling house was again discriminatory one. It provided that where a Hindu dies intestate and his property includes a dwelling house wholly occupied by the members of the family, then the female heirs are not entitled to claim partition of it unless male members choose to divide their share in the dwelling house. Female heirs were entitled to the right of residence only. Even there is discrimination as this right of residence was restricted only to unmarried and widowed daughters or those separated or deserted by their husbands, married daughters did not get the right of residence.

7. Further, the List of class I heirs did not contain the grandchildren of a deceased daughter, while it included the grandchildren of a deceased son.

5. EFFECT OF LOOPHOLES AND PASSING OF THE STATE AMENDMENTS

To overcome these discriminations, four states namely Andhara Pardesh, Tamil Nadu, Maharashtra and Karnatka have taken cognizance of the fact that women need to be treated equally in respect of undivided interest in the coparcenary property

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also. So these States introduced amendments in the Hindu Succession Act, 1956, but these amendments became applicable in these respective States only. As per the law of these four States, in a joint Hindu family governed by Mitakshara law, the daughter of coparcener shall by birth become a coparcener in her own right in the same manner as the son and have similar rights in the coparcenary property and be subject to similar liabilities and disabilities.

On partition, she will be allotted a share equal to that of a son. The share of the predeceased son or a predeceased daughter on such partition would be allotted to the surviving children of such predeceased son or predeceased daughter, if alive at the time of the partition. This property 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 or other testamentary disposition. These states enactments are prospective in nature and do not apply to a daughter who is married prior to, or to a partition which has been effected before the commencement of the Act.

Besides this, the State of Kerala altogether abolished the concept of coparcenary. Section 4(1) of the Kerala Joint Family System (Abolition) Act, 1975 lays down that all the members of Mitakshara coparcenary will hold the property as tenants in common as if the partition had taken place and each hold his or her share separately from the date when the Act came into force.

6. PASSING OF THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

The above mentioned five State legislatures in order to provide better property rights to women adopted the mode of amendment in their respective states, but having these different laws in different states on property matter again created confusion in the society. Thus the need was felt at the national level to have one uniform law on succession matter to be enacted by the Parliament under Article 246 of the Constitution. Considering this need the Law Commission of India prepared a draft of Hindu Succession (Amendment) Bill, 2000. After being passed by Parliament, this bill received the assent of the President of India and became Hindu Succession (Amendment) Act, 2005 and came into force on 9 September 2005.

This amendment introduced comprehensive changes in those provisions of Hindu Act 1956, which were discriminatory in nature. The changes introduced by this amendment Act include deletion of section 4(2) of the Act of 1956. Further the
Amendment Act has inserted new section 6 by deleting the existing one. Under new section 6 daughter of a coparcener by birth becomes a coparcener like a son and has same rights, same liabilities as that of a son. Any property to which the female becomes entitled by virtue of section 6(1) shall be held by her with all the incidents of coparcenry ownership and she can dispose off the property the way she likes. Further, rule of survivorship is also abolished and the coparcenry property shall be deemed to have been divided as if the partition had taken place. In this partition again the daughter is allotted the same share as is allotted to a son. The share of a predeceased son and predeceased daughter shall also be allotted to their surviving children. Similarly, the share of the predeceased child of a predeceased son or predeceased daughter shall also be allotted to the children of such predeceased child of predeceased daughter or predeceased son. Doctrine of pious obligation of the son to pay back the debt of father is also abolished under section 6(4). Section 6(5) provides that only registered partition deeds or partition by a decree of the Court made before 20th December 2004 would be recognized. It is meant to avoid oral and fake partitions which could be made to exclude the daughters from claiming a share in coparcenary property.

Section 23 and section 24 of the Act of 1956 has also been omitted by the Amending Act of 2005. Lastly the Amendment Act also introduces four new cognatic relations in the list of class I heirs. These relations are:

(1) Son of a predeceased daughter of a pre-deceased daughter.

(2) Daughter of a predeceased daughter of a pre-deceased daughter.

(3) Daughter of a pre-deceased son of a predeceased daughter.

(4) Daughter of a predeceased daughter of a pre-deceased son.

Thus, the new Amendment takes very bold steps to provide better property rights to the females. By making daughters as a member of coparcenry and giving them equal rights with other male coparceners is indeed a very appreciative step which enhances the proprietary status of Hindu females to a considerable extent. The Act brought much sought changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women’s property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a
deceased male in certain cases. The Act lays down a uniform and comprehensive
system of inheritance and applies, inter alia, to persons governed by the Mitakshara
and Dayabhaga Schools and also to those governed previously by the
Murumakkattayam, Aliyasantana and Nambudri laws³.

7. CONFUSIONS AND ANOMALIES UNDER THE AMENDMENT ACT, 2005

While going through the Amending Act, it is noticed that there are certain
legislative inadvertences which need rectification. Besides this the provisions of the
Amendement Act lead to various types of confusions, anomalies, ambiguities and
inequities when it is applied practically. Some of the respective provisions are pointed
out as under:

1. The Amendment Act, 2005 deleted section 4(2). Earlier section 4(2)
provided as under:

“For the removal of doubts, it is hereby declared that nothing contained in this
Act shall be deemed to affect the provision of any law for the time being in force
providing for the prevention of fragmentation of agricultural holdings or for fixation
of ceilings or for the devolution of tenancy rights of such holdings.”

The apparent object of section 4(2) is to protect the rules in state legislation
from the overriding effect of the Act, which otherwise would have governed the
succession to tenurial interests. The reasons behind this exemption, as they appear
from the legislative debates were two fold⁴. First that tenancy laws being property
laws, apply to all whether a Hindu or non-Hindu. As the Hindu Succession Act is a
personal law, it should not override the provisions of property law enacted in the
interest of agricultural economy. Second, the states are responsible for agricultural
laws and the Central Government is conscious not to encroach on the rights of State
Government. But, the serious objection is that the beneficial effect of the Hindu
Succession Act can be denied by applying this interpretation.

In those States where no express provision existed with respect to the above
mentioned aspects, then provisions of Hindu Succession Act would apply. Now
section 4(2) has been deleted but the legislatures no where provides specifically that
whether now Hindu Succession Act would be applicable to these properties or not. If

on the basis of implied presumption it is presumed that the Hindu Succession Act applies, then with the deletion of this section, now the diversity has been created State wise regarding the law providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. After this Amendment, the residents of a particular State who are Hindus would be governed by the Hindu Succession Act and to those who are non-Hindus the respective State law would be applicable to them. Thus with this Amendment two laws governed the residents of the same State and it led to conflicting situations. Further it is also not clear that whether the Central Law prevails over these matters or not. As inheritance and succession are included in entry 5 of the Concurrent list while land is state subject, so in case of conflict which law would prevail? So it is suggested that the legislature should take notice of this situation and evolve the way to resolve this state of affairs.

2. (a) The major change introduced by the Amending Act of 2005 is the substitution of new section 6 which make a coparcener’s daughter a coparcener by birth in her own right in the same manner as a son and have same rights and liabilities as that of a son. To sum up the daughter’s position now under section 6 is that all the privileges and distinctiveness which was earlier available to son is now available to daughter also. But by this interpretation now the children of a coparcener become the members of two coparcenaries, one that of their father and the other that of their mother. In order to explain it let have a look at the following example. Suppose P has two children one son S and one daughter D. Now after amendment coparcenary consist of P, S and D. Suppose son SS is born to S he will also become coparcener. Further if great grandson is born to P i.e. SSS he will also become a coparcener. Similarly daughter of S is also a coparcener. On the other hand along with daughter D her daughter DD will also become a coparcener. Similarly, if DD is a coparcener then her daughter DDD will also become coparcener in her maternal great grand father's family. Thus now the coparcenary consists of:

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By this interpretation some strange results would appear, because now six type of daughters would become coparceners i.e. D, SD, SSD, SDD, DD, DDD. Thus some of these daughters like DD would become coparcener in two families namely her father and maternal grand father and some of these like SDD and DDD would become coparcener in three families i.e. father, maternal grand father, maternal great grand father.

This amendment also does not clear the situation regarding the position of daughter's son (DS) whether along with the daughter, he also become a coparcener. Going by the language used in section 6, only the daughter of a coparcener is included in the coparcenery. So on the basis of logical interpretation; can we say that along with the daughter's daughter, daughter's son is also included in the coparcenery? Here it is better if it is provided in section 6(1) that the 'children of a coparcener shall become the coparcener' instead of using the word 'daughter of a coparcener'.

Further, another anomaly is also created here i.e., the daughter being a wife will inherit the property of her husband also. Thus now she will be getting the double share one from her father’s family another from her husband and husband’s family, whereas the sons are able to get share only from their father’s property.

2. (b) Section 6(2) which provide that any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenery ownership. Here if we analyze the incidents of coparcenery ownership these are community of interest, unity of possession, rule of survivorship etc. but
under section 6(3) rule of survivorship is altogether abolished. This sub-section provide that where a Hindu dies after the commencement of 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, as the case may be, under this Act and not by survivorship---. Here again confusion has been created because by going through the above provision, it means that doctrine of survivorship is abolished only for male Hindu coparceners, where as for a female Hindu doctrine of survivorship is still relevant as she will hold the property with the incidents of coparcenery ownership and rule of survivorship is one of the basic incident of coparcenery. So the confusion has been created by the language used in the Act.

2. (c) Further, explanation to section 6(3) which provides that for the purpose of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. When the daughter is also become a coparcener by virtue of section 6 (1), the use of the words ‘him’, ‘his’, ‘he’ in the explanation again creates confusion. Here the words ‘her’, and ‘she’ needs to be added as the legislature has done in the Amended section 30 by adding the word ‘her’ (disposed of by him or by her).

2. (d) By abolishing the rule of survivorship and retaining the concept of coparcenery, it creates unequal distribution of property between the surviving coparcener with regard to each other. For example, if the joint family consists of father F, his wife W, two sons S1 and S2 and a daughter D1. As F, S1, S2 and D1 are the coparceners after the Amendment, now if S2 dies then in order to calculate his share notional partition has to be done. In notional partition his share comes out to be 1/5th as whenever partition took place father’s wife is also entitled to take a share. Now as rule of survivorship is abolished so his share will devolve by testamentary or intestate succession. If he dies without making a Will, then his share will devolve by intestate succession. By virtue of intestate succession his 1/5th share will go to his mother as she is class I category heir, where as the father, the brother and the sister are class II category heirs. Thus, among the surviving coparceners, the share of the mother increases by 1/5th as compared to other coparceners, even though she is not a
coparcener. In the same example if there is no mother then the share of deceased comes out to be $1/4^{th}$ and if this $1/4^{th}$ will go by intestate succession then this $1/4^{th}$ share will go to his father as he is class II entry I category heir. Thus, among the surviving coparcener the share of father increases by $1/4^{th}$ as compared to other coparceners and it creates unequal distribution of the property, which goes against the basic tenets of coparcenery.

2. (e) The Amendment retains the concept of notional partition with respect to the division of coparcenary property, but in a modified form. Prior to the Amendment, notional partition effected only if the male undivided coparcener dies leaving behind any of the female heirs of class I category. But the present Amendment applies notional partition in all the cases. Now the interesting question is that after the judgment of Supreme Court in *CWT vs. Chander Sen*\(^6\), where is the coparcenary property? Even before this case, when *Gurupad v. Hirabai*\(^7\) was decided by the Supreme Court then also Supreme Court tries to give to the notional partition, the effect of real partition. In this judgment it is clearly mentioned that in order to determine the extent of deceased's share. Explanation 1 to section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if partition of that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death? The assumption once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one’s imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained. On the basis, that

\(^7\) A.I.R., 1978 S.C,1239.
they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition.

So, by this judgment the notional partition will be treated as real partition for all intents and purposes. It means that joint family will automatically come to an end and so the joint family property because in CWT v. Chander Sen⁸ Supreme Court categorically mentions the character of the property, i.e., the property inherited by the son from his father under section 8 of the Hindu Succession Act would be the separate property qua his own sons because now by virtue of this section new list of heirs is created. Further, section 19 of the Act also provides for the mode of succession of two or more heirs and they shall take the property as tenants-in-common and not as joint tenants. The result of this rule is that the heirs will no longer inherit the property as ancestral property as joint tenants. But when ever the partition took place, they will inherit the property as tenants-in-common. Thus now gradually after two or three generations there will be no joint family property left in which the daughters (or son’s) have the birth right. Due to this fact the whole object with which the amendment has been passed would be ruined.

2. (f) Through, this Amendment distinction is created between the female members of the same family. In every family two types of females are there, first those who were introduced into the family by way of marriage and second those who were born within the family. This Amendment gave birth rights in the coparcenary property to the daughters and the daughters of the coparceners i.e., who are born within the family whereas those females who falls in the first category would still be governed by the old law and their rights would be determined on the pattern of old law. Thus between the females of the same family the differentiation is there.

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2. (g) Section 6(4) of the Amendment Act abolishes the doctrine of son's pious obligation to repay the debt due from his father. Regarding the origin of this doctrine Supreme Court in the case of Sideshwar Mukherjee v. Bhubneshwar Prasad Narain Singh\(^9\) said that this doctrine is well known, has its origin in the conception of Smriti writers who regards non payment of debt as a positive sin. This aspect of the doctrine is religious in nature and it is not based for the benefit of creditors or of the protection of third parties. It is based on pious obligation of the sons to see their father's debt must be paid\(^10\). But along with this doctrine has an other aspect also which is based on the logical corollary to the doctrine of the son's birth right in the ancestral property. As rights and duties are always correlated with each other, so under the Mitakshara Law if the sons are given birth right in the property, it is their duty also to repay the debt of their father. The Amendment Act does not abolish son's birth right in the property but it also recognizes daughter's right in the ancestral property. Therefore, logically both the children i.e. son and the daughter should be brought under this obligations because justice demand that rights and duties should go hand in hand\(^11\).

2. (h) Under the Punjab Customary Law, son cannot claim partition of the joint family property during the life time of his father without his father’s consent. Now as per the amendment the daughter of a coparcener is also made a coparcener in her own right in the same manner as the son. Therefore, now a daughter as a coparcener has the same right to claim partition as that of a son. But the question is that whether in Punjab also, she can claim partition during the life time of her father without her father’s consent? Whether the custom prevalent in Punjab, whereby son cannot claim partition, is applicable to daughter also?

So far as the applicability of custom is concerned, custom being matter not of mere theory but of fact cannot be established or extended by logical process, or upon theoretical generalization, or by a priori method. It must be established inductively and not deductively, in the absence of any authoritative statement of the custom, it can be established only by instances and not by priori method. So custom cannot be extended by analogy, but must be founded on evidence\(^12\).

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\(^9\) AIR 1953 SC 487.
On the basis of these above said principles relating to custom, it can be said that in Punjab, daughters can claim partition of the joint family property during the life time of their father without their father’s consent, because the custom of not claiming the partition is applicable only to sons, it cannot be extended by analogy to the daughter also. Thus now with amendment, discrimination is created between the right of son and daughter under the customary law.

3. (a) Under section 8 by the Amending Act of 2005 four new heirs in class I category of the schedule has been added. The four new included heirs are:

Son of a predeceased daughter of a predeceased daughter (DDS); daughter of a predeceased daughter of a predeceased daughter (DDD); daughter of a predeceased son of a predeceased daughter (DSD); daughter of a predeceased son of a predeceased daughter (DSS). These new heirs have been added to end gender discrimination, but while adding these heirs legislature inadvertently missed two heirs i.e. son of a predeceased son of a predeceased daughter (DSS) and the son of a predeceased daughter of a predeceased son (SDS). Though these heirs were also included in section 6(3) (c) as this sub section provides that the share of the predeceased child of a predeceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of partition, shall be allotted to the child of such predeceased child of the predeceased son or of a predeceased daughter as the case may be. Thus, by virtue of section 6 (3) (c), even the two missed heirs i.e. DSS and SDS were also included along with SSS, SSD, SDD, DSD, DDS, DDD. Besides this the newly four created heir were also included in class II entry I and III category heirs. So their inclusion in class I category and in class II category creates conflicting situation. But now fortunately Law Commission of India has taken note of this mistake and in its 204th Report submitted on February 5, 2008 recommended the incorporation of two left out heirs in class I category and to remove them along with other four heirs from class II category from the schedule.

3. (b) Law Commission in its 204th Report also proposes the replacement of the position of Father of the deceased. At present the father is included in class II entry I category. The Commission proposes that father should be included in the class I category heirs like the mother on the basis of nearness of blood relationship. the reason given by the Law Commission is that it assumes more importance in view of the recent enactment of the Parliament to provide maintenance to parents in “The
Senior Citizens (Maintenance, Protection and Welfare) Act, 2007” wherein it is now made mandatory that every person should maintain his parents and failure will result in punishment. While so, it is but natural and logical to expect that a father should be given the right of inheritance of the property of his son like a mother. Further, almost all (Class I heirs) sons, daughters and grand children have the duty to maintain the parents or grand parents as per the 2007 Act. There is no duty cast upon the great grand children to look after their great grandparents, whereas they have been given equal right to share as Class I heirs. This is certainly an anomaly. This can be rectified only by including the 'Father' in Class-I.

This is indeed a good proposal but while relocating the position of father the Commission also proposes the incorporation of the rule that if both mother and the father survive the intestate, they shall together take one share. This proposal tries to reduce the share of mother to \( \frac{1}{2} \) in the presence of the father which is regressive in nature. This should not be done because it leads to discrimination among the class I category heirs regarding the amount of the share. Besides this by doing so on one hand we try to improve the position of father and on deteriorate the position of the mother on the other.

4. (a) Section 15 of the Act provides for succession to female heirs. Under the Hindu Succession Act females are governed by separate rules of succession as compared to their male counterparts, which is governed on the basis of the source from where the female gets the property. The patrilineal structure of the society subjugated towards the male ideology is crystal clear in section 15. Because if the female inherits the property from her parents or from her husband or father-in-law, then if she dies issueless the property which she inherits from her parents devolves upon the heirs of father and the property which she inherits from her husband or father-in-law devolves upon the heirs of her husband. So through this provision an inclination is provided towards the males as the above mentioned property of the females continues to be inherited by the male, which is either the heir of the father (to the total exclusion of the mother) or the heirs of the husband. Where as in the case of the male intestate the mother is class I category heir i.e. the preferential heir.

4. (b) Further, after the Amendment of 2005, it will also become difficult to determine the character of the property under section 15 of the Act. Earlier under

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section 15, the devolution of property held by female depends upon the source from where she gets the property. As per section 15(2) (a), if she inherits the property from her father or mother, then in the absence of the children including the children of any pre-deceased children, the property will devolve upon the heirs of the father. Similarly as per section 15(2) (b), if she inherit the property from her husband or father in law, then in the absence of children including the children of pre-deceased children, the property will devolve upon the heirs of husband. There is another source of property which female receive from any other source except mentioned in section 15(2) (a) and (b) that property will devolve in accordance with the heirs mentioned in section 15(1).

Now by amendment another source of property is also added i.e. that property which a female will get as a coparcener. But unfortunately, the amendment fails to specify the mode of devolution of this property, so the question is that whether this property would be covered under section 15(1) or under 15(2) (a).

As per the language of section 6(2) any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenery ownership. But here an anomaly is there. Suppose a female demands partition of coparcenery property, get her share and dies after her marriage. If she dies leaving behind her children or children of any pre-deceased children, the no problem arises. But if she dies without leaving any such children, then curious question is who will succeed to her interest?

As the coparcenery interest is acquired by the daughter at the time of partition, so obviously it will be covered under section 15(1), as it is not the property which she has inherited from her father, rather it is her birth right. That means, if she dies issueless this property will go to her husband to the total exclusion of her father or mother side. So the effect of amendment is socially disastrous. The property which is so dear to the father, on the death of her own daughter will immediately go into the hands of a stranger because in our society the husband of a daughter will never be accepted as a member of family especially when the brothers of a female is also present.

Now coming to the next situation, suppose if female dies without claiming any such partition, then after her death, as per section 6(3) the interest in the property of a joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or
intestate succession, as the case may be, under this Act and not by survivorship. That means her share will be determined by affecting a notional partition. Section 6(3) further lays down that if such notional partition takes place then the daughter is allotted the same share as is allotted to the son, and if there is any pre-deceased child the share of the pre-deceased child shall be allotted to the surviving child of the pre-deceased child. Here there is a contradiction between section 6(3) and section 15(1), because as per section 15(1) along with the children, including the children of any pre-deceased son or daughter the husband is also the heir. But if the property is divided under section 6(3), the husband is not at all included.

In the similar situation, if she dies issueless, then again the question is that who will succeed to her interest? Again as per section 6(3) after her death her share would be determined by affecting a notional partition. As it is the notional partition of a coparcenery property, can we say that this is the property, which a female inherits from her father, So it must be devolved in accordance with section 15(2) (a) or as this property is obtained by the female on partition, can we say that this is her ancestral property? Obviously, it is the property which female received on partition. So it is not covered under section 15(2) (a), the share which a coparcener receives by partition of ancestral property is ancestral property, as regards his or her children. But here, if she dies without leaving any children, then property received on partition ceases to be the coparcenary property and would on his/her death pass to the heirs by succession and here again her interest would be succeeded by her husband.

In the above discussion, the whole problem revolves around the institution of coparcenery. The main objective of the Amendment made in the Hindu Succession is to give fair deal to the daughters, to attain this objective there is no need to retain the concept of coparcenery at all. But the new Amendment gives a fatal blow to coparcenary and yet retained it which leads to lot of above mentioned controversies and confusions.

5. The motive behind the amendment in the Hindu Succession Act is to empower the women and to provide security to the girl child, but the fear is also expressed that this amendment may result in exactly the opposite, where by the girls will be put on harmful side. With this amendment now the people having property

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especially the landed property will become more prone in committing foeticide of the girl child in order to save their properties and land from sub-division and going to girl’s in-laws. On the other side in a country like India where for the marriage of the daughter dowry is regarded as obligatory, the in-laws of the girl will always put more pressure on the girl to get her share out of her paternal property. This will lead to cruelty on unwilling brides and increase the incidents of killing the brides by the greedy in-laws and suicide by frustrated brides. If the bride agrees to get share from her ancestral property, then the brother sister bonds will be shattered and there is a strong possibility that her share may be grabbed by her in-laws.

Further, this amendment has put adverse impact on agricultural economy as well. Now with the deletion of section 4(2), Hindu Succession Act is applicable to the agricultural holdings. If the law operates in its letter and spirit then every land holding will get sub-divided and fragmented with passing of one generation. Because, in our society daughters are married not in the same village and if the daughters would claim partition of the property especially land then obviously after getting her share, she will sold this land and try to purchase the property at her husband's place. This will destroy the economy of the agricultural sector.\(^\text{15}\) Thus looking from all the angles, it is apparent that the impact of the 2005 Amendment on the females is likely to be adverse. It is full of defects and contradictions.

8. WOMEN'S PROPERTY RIGHTS IN DIFFERENT PERSONAL LAWS

Leaving behind the anomalies and confusions, the changes brought about by under the Hindu Succession Act including the Amendment Act of 2005 is a good attempt to improve the condition of Hindu females. Here, now if we compare the proprietary position of Hindu female with that of non-hindu, we find that their position is far better than the females of other religious communities.

8.1 Muslim Law: Under Muslim law one primary principle, which grossly discriminate against the women under the law of inheritance is that if there are male or female heirs of the same degree like a son and a daughter, full brother and full sister, then the share of female member is reduced to half then that of the male. Similarly, among the Sunnis in the presence of the child or descendants of the son the share of a widow (or widows if there is more than one) is \(1/8^{th}\). If the deceased died

issueless, then her share is 1/4th. Among the Shias the childless widow has no right to inherit any share in her husband’s landed property but she is entitled to only 1/4th share in the values of trees and buildings or in movable property. Under the Muslim law among the Sunnis the mother of the deceased also occupies very inferior position. If a person dies without any issue leaving behind the mother, father and husband or wife then husband or wife take his or her allotted share and out of the remaining part then mother takes only 1/3rd. When there are two or more brothers or sisters co-existing with the mother, then the mother takes only 1/3rd. Under the Hindu law there is no such discrimination regarding the position of these females and daughter, widow, mother all are class I heirs of a Hindu male and inherit equal share with son.

8.2 Christian Law: Under the Indian Succession Act, 1925 the christian daughters inherit share equally along with the son. But so far as widow is concerned she takes fixed 1/3rd share only. In the absence of the lineal descendents she takes fixed 1/2 only. Besides this widow is entitled to take Rs. 5000/- out of the whole property of the intestate. Regarding the position of the mother she is totally excluded in the presence of the lineal descendents and father. When mother co-exists with the spouse, the spouse takes 1/2 and the other half is shared by the mother, brothers and sisters and the children of deceased brothers and sisters. Thus, again under the Hindu law the widow and the mother enjoy much better position.

8.3 Parsi Law: Under the Parsi law (before the amendment made in 1991) the daughter enjoys very inferior position, because where the male intestate dies leaving behind the widow and the children, each of the son and the widow takes double the share of each daughter. Where the intestate dies leaving behind sons and daughters the share of each son shall be double then that of the each daughter. In case of the females dying intestate the position of daughter is satisfactory as she inherits a share equal to that of a son. But now under the Parsi law the daughter's also inherit equally along with the widow and the sons. Regarding the position of a widow under Parsi law she is one of the primary heirs and takes a share which is equal to that of a son. In case the intestate dies leaving no lineal descendent but a widow or widower then the widow shall take half of the said property. This share is further reduced to 1/3rd if the intestate dies leaving behind a widow or widower and also a widow or widower of any lineal descendents. The mother under the Parsi law also shall not inherit a share equal to that of the lineal descendents. Where Parsi dies leaving no lineal descendents
then also the mother inherit only the half of the father and other half goes to the widow. Where the Parsi female dies her mother inherits with her father only in absence of her widower and the lineal descendents. Here also the share of the mother is equal to half of the share of father. Thus, the females under the Hindu law enjoys a much satisfactory proprietary status in comparison to the Parsi law.

9. EMPIRICAL STUDY WITH RESPECT TO WOMEN'S PROPERTY RIGHTS

Though, with the amendment of Hindu Succession Act, 1956 all the discriminatory features that were existing between male and female heir are removed and both the sexes are placed on equal footing. But here question remains the same i.e. whether the legislation providing equal proprietary rights is sufficient in itself? Report of the Committee on the status of women in India in December 1974 had found that a large number of women are completely ignorant about their rights of inheritance, even where they know these rights, those females were reluctant to exercise their rights due to various social pressures.

During the course of empirical study the researcher observed that the male lobbyists want to keep the property intact for their sons only. In the empirical study a questionnaire was prepared and served to 150 respondents out of which only 100 respondents replied. The replies of these respondents have been analyzed and tabulated. Out of these 100 respondents, majority are of the view that if the sister/daughter sacrifices her share in favour of their brother/son, it will strengthen the bound of love and affection between them and if they claim the share, it will spoil the relationship between brothers and sisters. Out of these 100 respondents, 41 respondents are females and due to the abovementioned fact only 1 female respondent claimed the share and only 4 female members are interested to take their share in e future plan to inherit the share. Remaining female respondents do not want to inherit or claim any share in their father’s property, even though a large percentage of them were not in affluent economic position. Thus these results indicate that due to certain pre-determined notions and conventions the daughters/sisters themselves do not want to claim any share. They have a kind of emotional insecurity in their mind that if they claim their share it will affect a brother-sister relationship and then nobody from her natal family will be in her company at the time of distress and even of happiness.
Regarding the question, that should the daughters claim their share in the father’s property, the respondents who gave negative response are of the view that if daughter is economically independent she must forego her share in favour of brother. She became economically independent only because of her father’s spending on her higher education. Secondly, these respondents gave the view that in the present social scenario father spends a lot of money on the occasion of marriage of his daughter. Further parental side of the girl continues to spend huge amount of money on various occasions such as festivals, birth of the child, children's marriage etc. of the daughter even after marriage. Thirdly, in some cases married daughter became sharers in the huge property of her husband, so they should not reduce the share of their brothers if they were equally well off. Thus, these views of the respondents gave the stimulus to the argument that daughters must not claim their share in the father’s property.

10. SUGGESTIONS

At this level, now the question arises is that whether the females actually obtain the benefit that was provided to them by the Hindu Succession Act read with the Amendment Act, 2005? Is it a fact that under the social pressures and keeping in view our social set up these rights were not at all exercised by the females themselves and the inheritance rights granted to the females remained only on papers? Thus to provide better property rights, the researcher has assessed the whole situation, and by going through whole of the study suggested the following two fold measure to be adopted. First are the legal measures and second are the social measures.

10.1 Legal Measures:

By the legal measures, we mean those steps which should be taken to improve the statutory provisions, i.e. by plugging the loopholes and by removing the confusion created by the Amendment Act, 2005. These are:

10.1.1 Uniform Law Relating to Land Holding:

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

10.1.2 Abolish Coparcenary on the Pattern of Kerala Law:

The confusions and anomalies which are created by the Amending Act of 2005 are only because of the retention of the concept of Mitakshara coparcenery. The amendment considerably alters the concept of the Mitakshara Joint Hindu family and coparcenery by elevating a daughter to the position of a coparcener. Once a daughter becomes a coparcener, she naturally continues to be a member of her natal Joint family, even after her marriage. Even in the Parliamentary debates, at the time of passing of Hindu Succession Bill, the views were expressed that "To retain the Mitakshara Joint family and at the same time put a daughter on the same footing as a son with respect to the right by birth, right of survivorship and the right to claim partition at any time, will be to provide for a Joint family unknown to the law and unworkable in practice\(^\text{16}\)"

Thus, to resolve all the confusions, it is better to abolish the concept of coparcenary and to adopt the Kerala model. The State of Kerala has abolished the concept of coparcenary following the recommendations of Hindu Law Committee. Section 4(1) of the Kerala Joint Family System (Abolition) Act, lays down that all the members of a Mitakshara Coparceney will hold the property as tenants in common on the day the Act comes into force as if a partition has taken place and each member holding his or her share separately. The notable feature of the Kerala Law is that it has abolished the traditional Mitakshara family and right by birth.

The main objective behind making the daughter as a coparcener is only to provide equal rights to the daughter in the division of her paternal property. For achieving this objective, there is no need to stick to the concept of coparcenary. Further, after the amendment, question is that where is the coparcenary? Where is the coparcenary property? Because, after the decision of the Supreme Court in CWT vs. Chander Sen, it has already made it clear that the property inherited under the Hindu Succession Act, is the separate property of the person who inherit it and under 6(3) of the Act, it is provided that the interest of the Hindu in the Joint Hindu family property shall devolve by testamentary or intestate succession under this Act and not by

\(^{16}\) Lok Sabha Debates, p. 8014, 1955.
survivorship. Thus, the spontaneous channel to create the coparcenary property is already blocked, where the daughter should claim the equal share along with the son. Thus, in reality, the retention of Mitakshara coparcenary would only lead to ambiguities, anomalies and litigation. So, it is suggested that Mitakshara coparcenary should be abolished on the pattern of Kerala model.

10.1.3 Addition of Word 'her' in sub-sections (2) & (3) of Section 6 alongwith 'him':

It is also suggested that the confusions which were created by the language used in the Act should also be taken care of. When the daughter has also become a coparcener by virtue of section 6 (1), the use of the words ‘him’, ‘his’, ‘he’ in the explanation to section 6(3) again creates confusion. Here the words ‘her’, and ‘she’ needs to be added as the legislature has done in the Amended section 30 by adding the word ‘her’ (disposed of by him or by her). Similar type of confusions prevails while abolishing the doctrine of survivorship. Because section 6(2) says that any property to which a female Hindu becomes entitled shall be held by her with the incidents of coparcenary ownership, where as section 6(3) provides that where a Hindu dies after the commencement of this Act, his interest would devolve not by survivorship but by testamentary or intestate succession. So it seems that doctrine of survivorship is abolished only for male heirs as the words used are 'his' and not for female heirs. So, to have a clear cut view of the provision mentioned above it is necessary that the sub-section be corrected.

10.1.4 Mother and Father must be given the Equal Share:

Law Commission in its 204th Report submitted in 2008 proposes to elevate the position of the father to include him in the list of class I heirs. The reason given by the Law Commission is that it assumes more importance in view of the recent enactment of the Parliament to provide maintenance to parents in “The Senior Citizens (Maintenance, Protection and Welfare) Act, 2007” wherein it is now made mandatory that every person should maintain his parents and failure will result in punishment. But while relocating the position of the father Commission also purposes the incorporation of the rule that if both mother and the father survived the deceased then they together took one share. Thus, it tries to reduce the share of the mother to ½.
Here it is suggested that share of all the Class I heirs should remained be equal, otherwise it would lead to discrimination among the Class I heirs. Further, by doing so the position of the parents weakens as compare to the other class 1 category heirs.

10.1.5 Mother should also be included in the List of Heirs, if the Female intestate dies Issueless:

The Amending Act of 2005 does not make any change in section 15 of the Act which provides for succession to female heirs. The male supremacy is crystal clear in section 15, because if the female dies issueless, the property which she inherits from her parents would devolve upon the heirs of father and if she inherits the property form her husband and father in-law, then on her death, it would devolve upon the heirs of her husband. So through this provision only the male members would be her heirs to the total exclusion of the mother. Whereas in case of the male intestate the mother is class I category heir. By the 204th Report of Law Commission, now the suggestion is also put forward to make the father also as class I heir of the male intestate. So here, it is also suggested that on the similar lines the mother should also be included as a heir along with the father regarding the female intestate also.

10.1.6 Restrictions should be imposed upon Testamentary Succession:

So far as Testamentary succession under Section 30 of the Act is concerned even the Report of the committee on the status of women in India, 1974 recommended that the right of testation should be limited under the Hindu Succession Act, so as not to deprive legal heir completely. In this respect, Muslim law is better as under Muslim law there are restrictions on person’s right of testation. A Muslim can bequeath only one-third (1/3) of his estate. Further under Muslim law a bequest to a stranger is valid without the consent of heirs, (if it does not exceed one-third of the estate) but a bequest to an heir without the consent of other heirs is invalid. The consent of heirs to a bequest must be secured after the succession has opened, and any consent given to a bequest during the lifetime of the testatory can be retracted after his death. As the testamentary power exercised by a deceased in favour of an heir operates at the expense of other heirs, it is not an unnatural attitude to refuse consent to such bequests. But unfortunately so far as Hindu Succession Act is considered this device, which intended to defeat, inheritance to female heir is still available and the Parliament has not taken a note of Committee's suggestion while passing the Amendment Act of 2005. Consequently, here it is suggested that the restriction to
some extent (like in Muslim Law) should also be provided on the power of testator, so that some property should be available for division as intestate succession.

10.1.7 Females should equally Share the Property of her Husband:

Practically, if we consider the effect of this amendment then the motive with which this amendment was passed seems to be defeated. In the empirical study also, it is observed that inspite of the amendment very small percentage of female wants to claim share in their father's property. Socially also this amendment put the female on weaker side, because if they claim any share then it will shatter the bond of love and affection between brother and sister. On the other hand, if they do not claim then the greedy in-laws put undue pressure on daughter in-law. Further, even the girls themselves put it in writing that they will not claim any share after their marriage in their father's property. If this thing does not happen then the unrestrained power of testamentary disposition will automatically defeat the objective of the amendment. By making a will of the property the father can easily reserve the property for his sons only. Thus, it is suggested that if the economic conditions of the females is to be improved then it is better to enact a law by which immediately on the marriage of the girl, she should become an equal partner in the property of her husband.

10.2 Social Measures:

Besides this, where there is need to plug the above mentioned legal loopholes; there is the dire necessity to adopt some measures at the social level also. Law has played its role very efficiently first by enacting the Hindu Succession Act, 1956 which is regarded as Magna Carta, so far as the women’s property rights are concerned. Then further amending it by the Amendment Act of 2005 whereby even the gender discrimination existed under the Act of 1956 is also removed in one stroke.

Thus, now it is the turn of the society to accept and implement the present law for the overall benefit and upliftment of the females as in our society there is difference between percept and practice. Thus to achieve the intended results of the enactment at the social level the researcher suggests the following social measures:-

10.2.1 Education to change the Mindset of the People:

There is a genuine need to change the heart and the mindset of the people. Openness in the attitude of the society is also required today.
10.2.2 Need to Mobilize Public opinion:
For this there is need to mobilize public opinion in this direction, so that the people should shred off there conservative attitude and must accept the objectives due to which the new rights have been created for the female.

10.2.3 Steps should be taken at the grass root level:
For this Panchayati Raj Institutions, Non-Governmental Organizations, Women Oriented organizations can play an effective role. These institutions can provide legal knowledge at village level regarding the property rights available to the female. For this purpose the present law should be interpreted in simple language and be circulated widely in the rural as well as urban areas. Seminars should be conducted at the village level to provide knowledge to the illiterate females regarding their property rights. These steps should inculcate the spirit of confidence among the females

10.2.4 Active Role of Religious Organizations:
In this direction Religious Organizations and Religious leader can also play an important Role in molding the views of the peoples towards giving equal property rights to their Daughter.

10.2.5 Self Help is the Need of the Day:
Lastly, women herself should also come forward by accepting and implementing the law in her own family. May be at one time because of the strong hold of traditional notions, women as a mother does not able to get a share for herself from her father’s property but by changing her own attitude she should create an atmosphere in her own family where by she can provide equal property rights to her own daughter at par with the son.

Thus, there is an urgent need to revolutionize the thinking of the society and to channelize the energies especially of younger generation to help them in creating the conditions which could provide an atmosphere where the female could exercise their rights without of any sort of social pressure. Law obvious has its own limitations while enacting these types of laws. Alongwith these legal enactments, social awareness among common masses is the need of the day.