ABSTRACT

The women play a significant role in the life of every individual human being. Securing her better birthrights would mean giving better future to our own society, family and to every individual. The gender inequality facets in different forms, but the most tedious one percept relate to the effective property rights. This disparity in property right pertaining to gender, spells from ancient times.

Under ancient Hindu Society, a woman was considered to be of low in social status and treated as a dependent with barely any property rights. Under the old Mitakshara Law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson, and a great grandson constitute a class of coparceners, based on births in family. No female is a member of the coparcenary in Mitakshara Law.

The earliest legislation brought females into the scheme of inheritance as The Hindu Law of Inheritance Act, 1929, conferred inheritance rights on three females heirs i.e., son’s daughter, daughter’s daughters and sister. During this period another landmark legislation conferring ownership right on a woman was the Hindu women’s Right to Property Act XVIII of 1937. The Act of 1937 enabled the widow to succeed along with the son and to take the same share as the son. The widow is not a coparcener even though she posses a right akin to coparcener’s interest in the property and is a member of the joint family.

Prior to commencement of the Act of 1956 the property held by a Hindu female was classified under two heads: (1) Stridhan and (2) Hindu Women’s estate. The former was regarded as her absolute property over which she had full ownership and on her death it devolved upon her heirs. The later was considered to be her limited estate with respect to which her powers of alienation were limited. The Hindu Succession Act, 1956 is the landmark legislation in this field, it got all the Hindus under the one kind of joint family coparcenary system i.e. Mitakshara coparcenary.
Prior to the recent Amendment Act, the old law section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary. The shares of the property of the deceased dying intestate were divided by the survivorship i.e. according to notional partition. Due to that daughter gets less share in comparison of son and was discriminated. Section 8 of The Hindu Succession Act, 1956 states that the property of a male Hindu dying intestate shall devolve according to the provisions of this chapter. Before recent amendments 8 females were in class I heirs out of total 12 heirs. Three females are recently added in the class I heirs by the amendment Act of 2005.

By incorporating section 14 in the Act, the narrower and restrictive connotations of the term 'stridhan' have been replaced by a wider and comprehensive meanings with a view to recognize her absolute proprietary rights and to confer full title upon her to this effect. The combined effect of section 14 is that any property acquired by a female Hindu before or after the commencement of the Act became her absolute property and therefore any class of reversioners does not exist under the Act.

Section 15 prescribes the general rules of succession to the Property of female who dies intestate. Section 16 lays down the order of succession among the various categories of heirs specified in section 15. Section 15 does not apply to that property which is held by a Hindu female with restricted rights (in view of sub-section (2) of section 14) at the time of her death.

Social justice demands that women should be treated equally in both the economic and social sphere. Hence, many NGO's, political parties, women organization etc. were fighting for the equal birth right to women. They get support from the 15th Law Commission’s 174th Report. At last, the law has been reformed by the Parliament in the year of 2005 and now the daughters are also considered coparcener and have all equal right to that of male heirs. Most controversial section 6 of Hindu Succession Act, 1956 which was not included women as a coparcener in the joint family property before 2005, but with the amendment Act of 2005, daughters are now entitled to the same coparcenary rights as the sons have. Section 23 of the old Act of 1956, has been deleted and equal coparcenary venture has been given to the daughter under the new
law but the Mitakshara coparcenary system retained. Also, as noted, women can become Karta of the property.

Therefore, this amendment Act of 2005 is an attempt to remove the discrimination as contained in section 6 of the Hindu Mitakshara coparcenary property as the sons have. Section 23 and 24 omitted. As a result the disabilities of female heirs were removed.

Symbolically, all this signals that daughters and sons are equally important members of the parental family. This will enhance her self-confidence and social worth as well as give her greater bargaining power for herself and her children, in both parental and marital families. Economically, it can enhance women’s security, by giving them birthrights in property that cannot be willed away by men. These amendments can empower women both economically and socially and have far reaching benefits for the family and society, if effectively implemented.