SUMMARY

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. Developed societies/Nations are developed because they have always taken keen interest in providing equal rights to women with that of men. Developing societies/Nations are developing because they understand the need of the hour and in every possible way trying to give women better rights.

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.

Broad distinction can be made between two types of property viz., joint family properties or ancestral property and self acquired or separate property. The joint family property is generally inherited from the male line of descent and consists of property that is jointly acquired or is acquired separately but merged into the joint property.

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. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of male in the family, the share of every other surviving male either gets diminished or enlarged.

The Mitakshara law also recognizes inheritance by succession but only to the property separately owned by an individual male or female. The females are included as heirs to this kind of property by Mitakshara Law. Under the Dayabhaga Law succession rather than survivorship is the rule. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father’s lifetime. However, on his death they inherit as tenants-in-common. Daughters also get equal share along with their brothers. Since this ownership arises only on extinction of the
father’s ownership none of them can compel the father to partition of property in his lifetime and father is free to sell the property without their consent. As females could be coparceners, they could also act as Karta and manage the property on behalf of other members.

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. As per the text of Baudhayana, women had no place in Hindu scheme of inheritance and “Females were devoid of powers and incompetent to inherit.” But by virtue of special texts specified female heirs were given the right inherit.

The Dayabhaga law and the Banaras and Mithila sub-schools of Mitakshara law recognized five females’ relations as being entitled to inherit namely; widow, daughter, mother, paternal grandmother, and paternal great grandmother and the Madras and Bombay sub-schools recognized the heritable capacity of a larger number of female heirs.

During the British period social reforms movements raised the issue of amelioration of women’s position in society. The earliest legislation brought females into the scheme of inheritance as The Hindu Law of Inheritance Act, 1929. This Act, conferred inheritance rights on three females heirs i.e., son's daughter, daughter’s daughters and sister (thereby creating a limited restriction on the rule of survivorship). During this period another landmark legislation conferring ownership right on a woman was the Hindu women’s Right to Property Act XVIII of 1937. This Act brought about revolutionary changes in the Hindu Law of all schools, and affected not only the law of coparcenary but also the law of partition, alienation or property, inheritance and adoption.

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. However, under the Act, the widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance
rights at all. But, both enactments largely left untouched the basic features of discrimination against women and were subsequently repealed. Stridhan system was totally changed by this Act.

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. Such property on her death devolved not on heirs but upon the next heirs of the last full owner. But section 14 of the Act abolished the later classification and conferred absolute ownership on her with respect to every property acquired by her through lawful means.

After the advent of the Constitution, the first law made at the central level pertaining to property and inheritance concerning Hindus was the Hindu Succession Act, 1956. The HSA lays down a uniform and comprehensive system of inheritance and applies inter alia to persons governed by Mitakshara and Dayabhaga schools as also to those in certain parts of southern India who were previously governed by the Murumakkattayan, Aliyasantana and Nambudri systems of Hindu law. The act applies to any person who is Hindu by religion in any of its forms or developments or a follower of the Brahmo Prarthana or Arya Samaj or to any person who is Buddhist, Jain or Sikh by religion. In the case of a testamentary disposition this act shall not apply and the interest of the deceased will be governed by the Indian Succession Act, 1925.

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. It was the revolutionary Act of its time. The act followed the Mitakshara coparcenary system, it contemplated the existence of a coparcenary consisting of male member only who have an interest by birth in the joint family property. Thus the enactment also did not consider the daughter as coparcener. With its provision the law by excluding the daughter from participating in coparcenary ownership not only
contributed to discrimination against females but also led to the oppression and negation of her fundamental rights guaranteed by constitution.

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: Firstly, upon the heirs being the relatives specified in class I of the schedule; secondly, if there is no heir of class I, then upon the heirs being the relatives specified in class II of the schedule; thirdly, if there is no heir of any of the two classes then upon the agnates of the deceased; and lastly, if there is no agnate, then upon the cognates of the deceased. 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. Now, class I contains a list of 16 persons out of these 16 relations 5 are males and 11 are females. Of them, the son, the daughter, the widow and the mother are the only four primary heirs and they inherit by reason of their relationship to the propositors. There are some female heirs in class II also.

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 prior to the passing of the Act, despite some stray legislative attempts for improving the social and economic status of the women nothing substantial could be achieved and hence there was a long felt need to bring about some drastic changes in law in this direction. The Act has fulfilled that object by fundamentally parting with the law prevailing before its enforcement.

The sub-section (1) of section 14 along with the explanation has given widest possible extension to the property possessed by a female Hindu. It has overridden the
erstwhile prevalent law of stridhan and declares that all such property shall be held by her as full owner. A qualification to the rule is laid down in sub-section (2) but it does not relate to the incidents of women’s property.

Section is retrospective in the sense that it enlarges the limited estate of Hindu women into an absolute estate even with regard to property inherited or held by her at the time when the Act came into force. The only requirement is that the property must be possessed by her on the date of commencement of the Act where a female Hindu inherited the property before the Act came into force and alienated the same absolutely prior to the Act. She cannot be deemed to be the owner of the property of which she made an absolute alienation and was not in possession at the time of the commencement of the Act.

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. After the commencement of the Act reversioner’s right has been abrogated. A limited interest held by a Hindu widow in the share of her deceased husband who died after the Hindu women’s right to property Act, 1937, will become her absolute property under section 14 of the Hindu Succession Act, 1956 and such interest of her in the property shall be held by her as full owner and not as limited owner. Her erstwhile limited interest will, therefore, ripen into an absolute interest.

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. According to section 15 (1) the property of a female Hindu dying intestate shall devolve firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; secondly upon the heirs of the husband; thirdly, upon the mother and father; fourthly, upon the heirs of the father and lastly, upon the heirs of the mother.
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. It applies to cases where the Hindu female has become a fresh stock of descent.

Social justice demands that women should be treated equally in both the economic and social sphere. The exclusion of daughters from participating in coparcenary property ownership merely because of their sex is unjust. After taking different opinions from different sections of society, the law commission of India’s recommendations became the basis of the amendments of the Hindu succession Act, 1956 in August 2005. The gender discrimination in Mitakshara coparcenary by including only the sons in the rights system became an end.

Before the Amendment of Hindu succession Act in August 2005, by ending the Mitakshara system of coparcenary and putting the women’s rights in coparcenary ancestral properties, the State of Andhra Pradesh in 1986, Maharashtra in 1994, Karnataka in 1994 and Tamil Nadu in 1989 have ended the Mitakshara system of coparcenary by their Amendments in Hindu Succession Act, 1956, respectively.

In our society maltreatment of a women in her husband’s family, e.g., for failing to respond to a demand of dowry, often results in her death. But the tragedy is that there is discriminatory treatment given to her even by the members of her own natal family.

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. In a major blow to patriarchy, centuries’ old
customary Hindu law in the shape of the exclusive male Mitakshara coparcenary has been breached throughout the country.

Also, as noted, women can become Karta of the property. Symbolically, all this signals that daughters and sons are equally important members of the parental family. It undermines the notation that after marriage the daughter belongs only to her husband’s family. If her marriage breaks down, she can now return to her home by right, and not on the sufferance of relatives. 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.

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 The Amending Act also in the schedule of the Hindu Succession Act, 1956 added new heirs viz., son of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased son; daughter of a pre-deceased daughter of a pre-deceased daughter. As a result the disabilities of female heirs were removed. This is a great step of the government so far as the Hindu code is concerned. This is the product of 174th Report of the Law Commission of India on “Property Rights of Women: Proposed reforms under the Hindu Law.

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.