CHAPTER III

A FEMINIST ANALYSIS OF HINDU SUCCESSION ACT AND ITS AMENDMENT OF 2005

In order to venture into an exploration of modern women’s relationship to the property an deeper and critical understanding of the Hindu Succession Act as well as the 2005 amendment is required. Hindu succession act 1956 is one of the landmark legislation of post colonial India owing to the fact that it was seen as first step forward toward achieving gender equality in property matters in a family. After years and years of subjugation deprivation and humiliation Hindu women was given right to hold, possess, acquire, sell and inherit property. She was given if not greater but at least equivalent entitlements in regard to inheritance and property. ¹

No one can deny the importance of financial and economic freedom for the attainment of basic fundamental and human rights. A Hindu women is no stranger to this concept, a greater economic power will help her in increased understanding and advancement of her other legal political as well as social rights in a society.

This chapter will analyse the position of Hindu women after the passing of Hindu succession act 1956 as well as its amendment act of 2005. Has legislature being successful in ensuring gender equality? How far are we in true sense from achieving this goal of equal opportunity and equal freedom to women with respect to property?

¹ Poonam Pradhan Saxena Family Law lectures Family law II 156(Lexis Nexis 2016).
HINDU SUCCESSION ACT 1956

The codified Hindu law for long has been seen as a revolutionary piece of legislation which freed and emancipated Hindu women. As discussed previously the objective of this reform was not only equality among genders but building a integrated nation by consolidating the powers. According to Archana Parashar\textsuperscript{2} unification of the nation and national integration was of prime importance. Furthermore the political economic condition of the country required to give supremacy to state over religious institutions. And this could only be done by redefining women rights within the family sphere. Another point of thought put by Reba Som\textsuperscript{3} is that the Hindu code bill was severely revised after the election to make it “more acceptable by whittling down the controversial points.” In The post election Hindu code Debates Nehru was dawned with the realization that the new independent Indian state was neither ready nor willing to accept the new social order and change. Thus instead of accepting defeat he worked on a model that could be at least a “symbol” of change and to give a semblance of gender equality.\textsuperscript{4} Though The Hindu code bill failed to alter the position of women as legal subordinates in the Hindu society it Hindu succession act and its provision which established a more complicated and intrinsic patriarchal structure. In the post independence and post election debates the most important revision was the excluding the coparcenary from the purview of Hindu succession act.\textsuperscript{5} This need to be understood in the larger socio-economic precepts, the existing economic structure of zamindari system and it allies has completely destroyed the agricultural economy as

\textsuperscript{2} Archana parashar \textit{Women and Family Law Reform in India} 103 (Sage Publication New Delhi,1992)
\textsuperscript{4} Ibid.
\textsuperscript{5} Ibid.
well as economic growth of the country. So to achieve this was required were radical property law reforms. The reform provided for provisions of “land to the tiller” implying that the land belongs to one who works upon it, thus in essence strengthens the individual land rights. The report provided of small land holding to the family, on which the family members will work without employing any outside labour. Thus this consolidation was only limited to people who already had lands. Furthermore the NPC did not take into consideration at any point the women rights. While supporting a new system of inheritance which will benefit the individual property owners, it did not take into consideration the participation and inheritance of women in the agricultural property. It was felt by the majority of the legislators the land reform should be completely separated from the personal law reform. Ambedkar explained it by arguing:

“I believe that there is no necessity that a uniform law of inheritance should apply to all sorts of property. Property varies in its nature, varies in its importance in social life of the community and consequently it may be a matter of no mean advantage for society to have one set of law for inheritance of agricultural property and another set for non-agricultural property. It may be that on a better consideration of the situation, indiums or Hindu society may come to the conclusion that land which is the

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6 These reforms and programmes were basically a means to consolidate the land and not redistribution. To abolish the menace of zamindari system and ease the tension between the peasant-landlord relationship. It basically aimed at a plan for economic and social democracy in India without challenging the existing structure.  
8 This system of inheritance provided “the economic holding should be heritable on condition that the heir himself cultivates the holding to the best advantage of the state. Otherwise the holding will lapse to the State” the condition when there would be a female heir was not discussed. Supra note 3 at 169  
9 Though it was accepted that women contribute to the agriculture land, there were lot of work regarded as men work like the tilling of the soil. Thus as she cannot be a tiller, she should not a owner also. Bina Aggarwal, A Field of one Own’s: Gender, and Property Rights in the South East Asia (Cambridge university press 1994).  
10 With regard to the daughter inheriting a share in the father landed property, legislators argued that this would upset that family control over the land because of the involvement of an outsider i.e. Husband. Ibid
foundation of its economic life had better be governed by law of primogeniture so that neither the junior sons nor females may take part in its inheritance.”

Thus the land reform was made exclusive of the succession laws. These land reforms though helped in freeing agricultural land from the Mitakshara coparcenary and reconfiguring the hierarchical relationship. It did not bring the egalitarian society which this progressive movement presented, as the basis of these reforms were the exploitation of non-landowning classes, women and children who were not given any right or powers. 12

While the land reforms by excluding contribution of women and established the legal subordination and exploitation of women. The Hindu succession bill created a furore in the country, the critiques of the bill argued that giving such a substantial right to women in property will result in breaking of families and complete “disruption of Hindu family system, Family property and family stability”. 14 The entire period of 1950-54 saw a downhill movement for the bill, where the conservative forces were influencing and winning the battle against gender equality. When the bill was introduced for the first time in 1951, the majority opposed the bill on the grounds of it being destructive to family and society. It’s very ironic that the stability of family

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13 This bill was criticized by a large majority of legislatures as well as different organizations: Like All India Hindu Code Committee, All India Hindu Code Review Committee. Prominent members of congress like Dr. Rajendra Prasad, Pattabhi Sitaramayya, Sardar Patel, PD Tandon to name a few. Shaheeda lateef “Defining Women through Legislation in Zoya Hasan (ed) Forging Identities: Gender, Communities and State, (Kali for women New Delhi 1994).
15 The legislators who spoke 10 supported and 19 opposed. Also women only constituted 3% of the total 335 legislator. Thus their official absence maintained the void in the understanding of women right and issues. Supra Note 12.
was taken to be dependent on the gender inequality.\textsuperscript{16} They believed that women who are advocating gender equality are “westernized, privileged, superficial and self seeking”. They have no understanding of feelings and needs of Indian women for whom family and familial relation are the top most priority. The different social roles played by men and women are the requirement of a healthy society.\textsuperscript{17} Though the bill had a huge opposition it did had certain committed members\textsuperscript{18} who believed in the ideals, Nehru believed “real progress of the country means progress not only on political plane, not only economic plane but also social plane”.\textsuperscript{19} According to Reba Som\textsuperscript{20} the bill could not be passed at the time due to the heavy conservatism among the congress and Nehru feared defeat in the general elections so he shelved the project for the time being. But due to the pressures from the different women organisations and women legislators who were working for women property right for decades now, Padmaja Naidu in 1951 during such debates said:

“Thousand of sensitive Hindu women ... for the first time in their lives left precious sanctuary of their sheltering homes (during the freedom struggle). They came to the battlefield and stood beside their brothers and faced jail and lathi charge and often enough, humiliation worse than death. If today (They) who fought for the independence of India are to be denied their just rights, and then our hard earned freedom is no more than a handful of dust”

Another support came to bill from the civil society groups and the social reformers, the reforms of the nineteenth and twentieth century paved way for acceptance toward

\textsuperscript{16} Supra Note 12
\textsuperscript{18} Jawahar La Nehru and BR Ambedkar in Reba Som at Supra note 3 at 168
\textsuperscript{19} Supra note 3
\textsuperscript{20} Supra note 3
the women rights. As Forbes argues “linked improving women status with the modernisation agenda” they improved the understanding of women rights. Also the participation of women in freedom struggle and the congress view of an egalitarian and modern post-colonial society demanded the improvement in the condition of women and change in the image of Indians abroad. The women acquired a bargaining power on account of social and moral legitimacy. The final helping in passing of the HSA 1956 was the sweeping of election by the congress in the general elections. On the strength of electoral victory of the congress, Nehru was able to pass the Hindu code bill as promised by him to the women and women organisations.

The debates ensuing to passing of Hindu succession Bill centred around four controversial points: Mitakshara coparcenary, whether to retain or abolish? Second was with regard to the property share of the daughter married as well as maiden in father’s property, third was the treatment of the agriculture property and the dwelling houses Lastly whether other matrilineal system of inheritance to be included in the bill or not?

In the final amendment bill it was generally agreed that “Mitakshara coparcenary has still a great hold on the masses, especially in the rural areas and therefore it should be retained for the time being, allowing it to disappear in course of time.” It was said that “fathers share in the coparcenary property would pass by succession, just as

21 Supra note 17
22 Forbes notes that as the Indians visibility in international organizations increased, the reformers who were aware of the issues faced by women also become concerned with the India’s image in these organizations. Supra note 17.
23 Most of the legislators believed that a married daughter should not be given share equal to son or other unmarried daughter as then she will receive double of the son, being a heir to her husband. Supra note 3
24 In south India there was matrilineal system of inheritance in form of Marrumakatayam and Aliyasanatana. Supra note 1
25 The focus of the Rau committee as well as Ambedkar was individual rights for all, whereas the HSA the reflected the strong desire of men to secure greater individual rights for them. Supra note 9.
dayabhaga and all the individual property rather than by succession.”^{27} But still the coparcenary will not affect much and wasn’t abolished. For example a coparcenary consisting of father and his son, after the death of the father coparcenary property shall be divided into three equal parts. And in 1/3 property of the father his widow and all his children shall inherit in accordance to succession laws.^{28}

The committee while discussing the daughters share in the dwelling house argued that giving daughter share in the immovable property will create difficulties for the family unit, as daughters after marriage leave their natal house and normally resides in their husband house and will also be under the influence of her husband and family. So it is better to have a “special provision respecting dwelling house”^{29} in which the female heirs does not had a right to ask for partition. They will only have the right to residence. Though this provision was contested by certain legislators as been discriminatory to women and violative of fundamental rights, majority believed the provision to be practical than gender biased. There was complete exclusion of the agricultural property from the succession Act.

In the final revised bill apart from coparcenary, no other system of inheritance was saved.^{30} Also it added few new provisions in the bill which were not there either in Rau bill or Ambedkar, the concept of testamentary succession. A Hindu was given

\(^{27}\) Ibid

\(^{28}\) Ibid

\(^{29}\) This provision was included as section 23 of the HSA 1956, which stated “Special provision respecting dwelling houses. —Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:
Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.”

\(^{30}\) Except creating a section 17 in which few features of Marukattyam and Aliyasttana systems were provided.
power to dispose of his property both moveable and immoveable without any condition.\textsuperscript{31}

The final bill was passed in June 1956 as Hindu Succession Act 1956.

**Position of Women In HSA 1956**

Despite the opposition from women group and liberal legislators, the conservatives won the battle and dual system of property- separate and joint family property was introduced in the HSA 1956 where the son’s right to inherit by birth was retained. Furthermore the Hindu law of property was also divided two an extent in two categories- codified succession laws and uncodified coparcenary laws. The Hindu succession Act along with codification aimed to rectify certain gender inequalities.

Some of the features are:

1. The act laid down a uniform law of intestate succession for all Hindus\textsuperscript{32} and abolishes the distinct rule of succession laid down in dayabhaga and

\textsuperscript{31} Testamentary disposition was not applicable to coparcenary property in the classical law. Furthermore it was argued that this provision could be used to deny daughters their legitimate right. But it was felt as a practically viable provision as well as that to believe that all fathers are bad and will try to take away her share is preposterous. K. Gill *Hindu Women Right to Property* (Deep and Deep publication, New Delhi 1986)

\textsuperscript{32} Definition as under Section 2 of the HSA 1956 This Act applies-

(a) To any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Parathana or Arya Samaj.

(b) to any person who is Buddhist, Jain or Sikh by religion, and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such persons would not have been governed by the Hindu law or by custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.- The following persons are Hindus, Buddhists, Jain or Sikhs by religion, as the case may be:-

(a) Any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jain or Sikhs by religion.

(b) Any child, legitimate or illegitimate one of whose parent is a Hindu, Buddhists, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged.

(c) Any person who is converts or re-convert to the Hindu, Buddhist, Jain or Sikh religion.
Mitakshara School of law as well local customs. The uniform law is based upon the concept of love and affection and nearness in degree.

2. This act gave Hindu women right of absolute property and abolished the concept of limited estate. She acquired full rights with regard to possession, enjoyment as well as disposal of property.

3. In this Act the heirs for male and female dying intestate varies. It has provided for two distinct scheme of succession based on the sex.

4. It has introduced daughters and her children as primary heirs and her marital status is irrelevant with regard to her inheritance rights.

5. It has introduced the concept of testamentary succession, applicable to all the properties and empowers only male Hindus.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, through not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

33 Though the Tribal communities of the north-eastern states of Arunachal Pradesh, Manipur, Meghalaya, Mizoram and Nagaland are not covered by the Act. And continue to be ruled by local customs which are still, in large part, uncodified.

34 Section 14 of HSA, 1956: Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

35 Section 8 for males and section 15 for females of Hindu Succession Act, 1956

36 Section 8 class I heir HSA, 1956.

37 Section 30 Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him ], in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.— The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tazavali, illom, kutumba or kavaru in the property of the tarwad, tazavali, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this "section."
6. The act has removed all disqualification with regard to mental and physical disabilities and deformities\textsuperscript{38}. Also only converts descendants are disqualified and not the converts\textsuperscript{39}.

7. The act applies to only legitimate children and spouses of lawful marriages. Though rights of posthumous children (both male and female) are specifically protected\textsuperscript{40}.

8. The right of the widow of an intestate cannot be defeated on the ground of her unchastity and even her remarriage cannot divest her from her property as she becomes an absolute owner the day succession is opened.

9. Apart from Mitakshara coparcenary all other system of inheritance has been substantially and effected and virtually abolished.

10. A special provision was also included with regard to dwelling houses in which daughters cannot ask for partition. They were only given residence right in case they became a widow, are deserted or divorced by husband.\textsuperscript{41}

11. This act is not applicable on the agriculture properties and that shall govern by their respect state land laws.\textsuperscript{42}

\textsuperscript{38} Section 28 : “No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.”

\textsuperscript{39} Section 27: Convert’s descendants disqualified.- Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

\textsuperscript{40} Section 20 Right of child in womb A child who was in the womb at the time of death of an intestate and who is subsequently born alive has the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.


\textsuperscript{42} Section 4(2) (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force 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.
Certain provisions of Act to understand better how it brought change in the position of women and effected joint family and coparcenary:-

Despite the high claims of “equality of law and equal protection of laws” enshrined under the Indian constitution, the personal law system continues to provide unequal rights to men and women. Though under the HSA 1956 daughters were regarded as primary heir, her position was not equivalent to male due to the continuance to dual property system under HSA also. But by virtue of introduction of section 6 an attempt was made to modify the rules of coparcenary. Section 6 read as:

“When a male Hindu dies after the commencement of this Act, having at time of his death an interest in a Mitakshara coparcenary property, his interest shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the Act

Provided that, if the deceased had left him surviving female relative specified in class I of the schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary succession or intestate succession, as the case may be under this Act and not by survivorship.”

Thus by this section though women were not made coparcenary, still they got certain share in the property which was much better than been completely excluded and ignored. The concept of notional partition introduced interrupted the application of

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43 Notional partition basically implies that if a Hindu having share in the Mitakshara coparcenary dies, it shall be deemed that there was a partition immediately before his death and it will be irrespective of whether he could claim partition or not. This a legal fiction, which has its roots in the earlier debates of Hindu code Bill, where a compromise was made instead of abolition of coparcenary completely and a part was retain and this fictional partition introduced to give females a better deal. Also t this partition shall not in any other way effect the coparcenary. Supra note 1
doctrine of survivorship to an extent. Therefore now by virtue of this fictional notional partition, the share of the deceased Mitakshara coparceners shall be ascertained and divided among its class I heirs. The concept of notional partition was introduced by legislature to ascertain the share of deceased in the coparcenary property, though this term notional partition is nowhere to be found in the Act itself. The term ‘notional partition’ or ‘fictional partition’ has been used by judges, jurist and authors. However it is ambiguous and leaves open certain pertinent questions like whether it is same as partition and will have the same effect and consequence. Implying that whether the reason for affecting notional partition is to ascertain the undivided interest of the deceased coparcener and it stops at that or it would result in an actual partition where certain females entitled to get share on partition would also get their share.

The controversy arose as whether this should be taken as partition for a specific purpose and once the share is calculated no further action required- basically a narrow approach or it should be taken as a partition has been affected and the consequence of real partition to be followed- the wider approach which could be gathered from the intention of the legislature in the language of Explanation I who wanted to give women a better deal. The reading of explanation establishes that this method is used not merely as way to calculate the share but also an ascertainment of share which is a consequence of actual partition. This can be explained by simple example

44 Now the doctrine of survivorship shall come into play only in conditions where the coparceners has not made a testamentary disposition and secondly if there are no class I female heirs or a male relative who claims through such female. DF Mulla Hindu Law, ( LexisNexis 21st edition, 2013)

45 Supra note 1 at 383

46 Section 6 Explanation I: “For the purposes of this 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”
Let’s suppose there is coparcenary consisting of father and son. Son dies leaving behind his father and mother. On following the narrow approach it shall be presumed that there was partition before his death as under all the Mitakshara School except Dravida, father’s wife has a share, thus the property will be partitioned into 3 parts. The son share will be 1/3. No share shall be given to mother as purpose here is to calculate the share of the deceased. So in this case on the 1/3 property rules of succession will applied, mother being a class I heir and father Class II heir. The final shares:

\[ M = \frac{1}{3} \]

\[ F = \frac{2}{3} \]

Now F in this scenario becomes a sole surviving coparcener, hence there will not be any more partition and M will lose her right.

But when wider approach is followed, at the time of partition M will be getting her share of 1/3 and then by rule of succession 1/3 so in this case the final shares

\[ M = \frac{1}{3}(\text{partition share}) + \frac{1}{3}(\text{succession share}) \]

\[ F = \frac{1}{3} \]

This is exactly the opposite of what happens when narrow approach is adopted.

The courts were faced with the dilemma whether to adopt a narrow or wider approach. In the case of Srirambai v. Kalagonda Bhimgonda\(^{47}\) court here held that as females are now made primary heirs the earlier rule of giving them share at the time of partition is no longer applicable.

\(^{47}\) 1964 BOM LR 351
of partition is abolished. But this erroneous judgment was overruled later by the same judge in *Rangu bai v. Laxman* that a female is entitled to get share not under the provision but pure Hindu law which gives her share on partition. The court further said that

“The intention of legislature is to be found from the words used, in their ordinary meaning. The explanation enacts in effects, that there shall be deemed to have been a partition before his death and such property as would have to is share would be divisible among his heirs. It introduced a legal fiction of a partition before his death, since without such fictional partition, his share cannot be possibly determined.”

The issue was again raised in the case of *Sushila Bai v. Narayan rao* here the court though gave a wider approach it confined it application to certain condition.

The Apex Court in *Gurupad Magdum v Hirabai magdum* put rest to controversy and held that a widow shall be entitled to both her succession share as well as the share she should get on the partition of the coparcenary property. In this case F a Hindu formed a coparcenary with his two sons. He died leaving behind a widow, two sons and three daughters. The widow in this case filed suit for 7/24 share in the property on the basis of her share received in notional partition as well as her succession share. The court remarked:

“One unwittingly permits one’s imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff’s husband and his sons. The fiction created by Explanation I has to be given its full and due effect.”

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48 1966 Bom LR 74.
49 (1978) 3 SCC383.
The outcome is that those females who would have been denied share without there being a partition of the coparcenary property will get a share now. The apex court reaffirmed its decision in the case of *State of Maharashtra v Narayan Rao Shayam Rao Deshmukh* but added that though everyone will get a share but the coparcenary shall continue till it members want to.

This section is better understood by understanding who is the heirs of a Hindu male dying intestate. Under section 8, 9, 10, 11, 12, and 13 of the HSA four types of heirs are provided along with conditions of devolution Class I heirs.

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50 AIR 1987 SC 716
51 Section 8: The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.
52 Order of succession among heirs in the Schedule Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.
53 Distribution of property among heirs in class I of the Schedule The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules: Rule 1- The intestate’s widow, or if there are more widows than one, all the widows together, shall take one share. Rule 2- The surviving sons and daughters and the mother of the intestate shall each take one share. Rule 3- The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share. Rule 4- The distribution of the share referred to in Rule 3- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion; (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.
54 Distribution of property among heirs in class II of the Schedule The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.
55 Order of succession among agnates and cognates The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder: Rule 1- Of two heirs, the one who has fewer or no degrees of ascent is preferred. Rule 2- Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent. Rule 3- Where neither heirs is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.
56 Computation of degrees (1) for the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be. (2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate. (3) Every generation constitutes a degree either ascending or descending.
57 Son, Daughter, Widow, Mother, Son of a predeceased son, Daughter of predeceased son, Widow of predeceased son, Son of a predeceased daughter, Daughter of predeceased daughter, Son of predeceased so of predeceased son, Daughter of predeceased son of a predeceased son, Widow of predeceased son of a predeceased son.
1. Class II heirs
2. agnates
3. cognates

The class I heirs basically means the widow, children (both male and female) and children predeceased children (both male and female) and their widows. Thus by reading of both sections 6 and 8 intestate widow, females also got share in the property of the deceased which was a revolutionary change from the ancient and colonial time.

**Succession to the Property of Female Intestate**

In order to bring uniformity in the laws, the HSA has removed all prevalent succession rules and gave uniform rules of succession nevertheless it created different rule of succession for male and female dying intestate. Section 15 is the first statutory provision dealing with the property of Hindu female dying intestate. It abrogated all the previous laws governing the Hindu female property. Section 15 has its roots in the old law of Stridhanam, and patriarchy can be seen in full glory. In the Indian society it is believed that a woman does not have permanent family or home, till she is unmarried she lives in the house of her father, after marriage she moves into with her husband’s family and that family is also not permanent as with death of husband,

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58 Father(1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister  
(1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter. Father's father; father's mother. Father's widow; brother's widow. Father's brother; father's sister.  
Mother's father; mother's mother. Mother's brother; mother's sister.

59 "Agnate" - one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males. Section 2(a) of HSA 1956.

60 "Cognate" - one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males. Section 2(c) of HSA 1956.

61 There were different rules with regard to devolution of stridhan property depending on which school she belongs too, also succession varies according to her marital status, form marriage etc. refer previous discussion.
divorce or remarriage she moves out to another home. And her property also moves with her, in contrast to her husband who never leaves his family and his marital status has no effect on his relationship or property. Thus as in Hindu society protection and conservation of property is of prime importance, the ability of a Hindu woman to move her property with her a lot of time away from the people she has inherited is given great importance and thus providing of two different scheme of succession on the basis of sex.\(^{62}\)

Section 15 is applicable on the absolute property of a female Hindu. It provides for different scheme of heir depending upon the source from which the female has acquired property. According to the act a property of female Hindu is divided into three categories depending upon its acquisition

1. property inherited from her parents
2. property inherited from her husband and father-in-law
3. any other general property

Section 15(1) provides for heirs who shall inherit the general property\(^{63}\) of the female. The heirs are grouped into Five categories former excluding the latter following the principle of natural love and affection. The five categories of heir are:

a) ‘firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

b) secondly, upon the heirs of the husband;

\(^{62}\) This feature is only peculiar to Hindu Society, most of other other religious communities despite having deep roots in patriarchy still provides for same rule of successions.

\(^{63}\) General property means property which a Hindu female has inherited other than from her father, husband and father-in-law, it includes property acquired by her from these relation by device of gift, will or a settlement. Also include property which she has acquired by her personal exertion and skill or gifts received from other relations or friend. A property inherited from her brother or husband brother shall be treated as her general property. See Balasaheb v. Jaimala, AIR 1978 Bom 44.
c) thirdly, upon the mother and father;

d) fourthly, upon the heirs of the father; and

e) lastly, upon the heirs of the mother”

Son and daughter mean and include women’s legitimate, illegitimate as well as adopted children. But it will not include her step children. The mother marital status or validity of marriage is of no consequence. Along with son daughter children of predeceased son and daughter also inherit as primary heir, but these children need to legitimate and born out of a valid marriage. These children will be disqualified if their parents have converted to some other religion before their birth.

The last primary heir is the Husband. It include spouse of a valid marriage. A divorced husband or annulled marriage or live-in-partner.

In the absence of the primary heirs the second category is of husband heirs how remote they may be. They are even preferred over deceased own parents and relation. In cases where the woman has been married more than once, the heirs of husband refer to her last husband. Thus for example a widow dies leaving behind her sister(s) and her husband’s brother’s son (BS), the property will devolve on the BS and not on her own sister.

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65 Lachman Singh v. Kripa Singh AIR 1987 SC 1616. It overruled the decision of Ram Katori v. Prakashwati (1968 iALL LJ 484) wherein it was held that as section says son and daughter and not 'son and daughter of the deceased' thus will include children of her husband also.
66 Children born to unwed mother, annulled marriage or adopted will inherit together and equally.
68 Section 26 of HSA 1956 Converts Descendant disqualified.
69 A bench consisting of MY Iqbal and Amitava Rao of Supreme Court in 2015 ruled that if a man and a woman have cohabited continuously for a long time, the law presumes they are married, the Supreme Court has said while holding that a woman is eligible to inherit her partner’s property after his death.
70 Specified under the Section 8 of HAS 1956.
It is very interesting to note that the rules of succession are said to be based on nearness in relationship and natural love and affection\(^{72}\) but in a case of female her “husband heirs” how far or remote they may be are given preference over her own kith and kin. This is unnatural as well as impractical. In the case of *Om Prakash v Radhacharan*\(^{73}\) the unfairness of law as well as its implementation and muteness of judiciary was witnessed. Here a 15 year old girl was kicked out of her matrimonial home after her husband death within three months of marriage due to snake poison. She went to her family, who educated her and then she took job. She died 42 years later. She had huge savings in different bank accounts and also a substantial amount in her provident fund. To the horror of her mother and brother the Apex Court gave the property to the brother of her husband as under the HSA 1956, issuless widows heirs are her husband heirs and her parents cannot inherit in their presence. In this case those same people who have kicked her out and never cared or thought about her. The Supreme Court while accepting this fact dismissed the contention of deceased mother, that her daughters in laws were not entitled to inherit stating

“*This is a hard case Narayani during her life time did not visit her in-laws' place. We will presume that the contentions raised by Mr. Choudhury that she had not been lent any support from her husband's family is correct and all support had come from her parents but then only because a case appears to be hard would not lead us to invoke different interpretation of a statutory provision which is otherwise impermissible. It is now a well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous.***”

\(^{72}\) In the initial draft of Hindu succession bill 1954, after her children and husband her own mother and father was kept and then her father heir, then mother and last were her husband heirs. These categories in true sense followed the principle of natural love and affection and treated blood relatives the closest.

\(^{73}\) 2009(7) SCALE 51
The apex court very conveniently discharged itself from all responsibilities stating that cases cannot be decided on the basis of sympathy, it is absolutely correct that a case should be decided on basis of merits not sympathy but the court forgot that apart from doing justice its duty is to see that justice is done. The court cannot be medium of injustice and discrimination. The courts should have asked and penalised those people who kicked out a mere 15 year old girl without any fault and never looked back. Then these same people conveniently came to lay right on her hard earned property.

This judgment is not just unfortunate but a very bad example; this approval from the highest court is not just detrimental to women independence and her identity but will also be a catalyst for son-preference in the society. A son blood relative will always have a connection and his marital status shall have no effect whereas daughter blood relatives are her heirs till she is unmarried. After marriage comes a new set of heirs.

The legislation and then its implementation is a severe blow to the confidence and growth of Hindu women, whose identity is merged with her husband without her consent or approval. She is stripped of her identity just to become part of her husband and his family who becomes superior to all her relations.

The next class of heirs is her parents- both her mother and father are placed on equal footing, and include biological as well as adoptive parents. But in case she is illegitimate offspring only her mother is entitled to inherit from her and not her putative father. The term mother and father do not include step parents.

74 The supreme court in this case not only ruled a gender favour decision of High Court
76 Antua v. Bajinath AIR 1974 Pat. 177
In the absence of first three categories of heir, the property shall devolve upon her father’s heir. It will be presumed that the property belonged to father and now he is dead. It includes her siblings (full as well as half), their descendants and wives and other natal relations. The last category is of mother heir, it will be presumed that she has died.

In accordance with section 15(2) the property inherited by her father and mother shall devolve in absence of children and children of predeceased children on the father heirs and not by clause 1 of section 15. The two conditions necessary for its application are:

1. The property should be inherited, that means as an heir and not received through any medium like gift, will or a settlement or purchased by selling a inherited property.

2. She should have died issueless. Even presence of husband does not change its devolution. And the property shall go to her father’s heir

In such cases their present an anomaly which have noticed by all the writers of Hindu Law. For example when an unmarried woman inherits her mother’s property and dies, and her father is alive, in this scenario whether the property will be inherited by the father or his heirs. All the writers are unanimous in their opinion that in this

77 (2) Notwithstanding anything contained in sub-section (1)- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father;

78 Ajit singh v. State of Punjab 1983 HLR 433 (P&H). Here daughter received certain property from her mother as gift. It was Regarded by court as general property.


81 Radhika v, Anugram (1994) SCC 761 A female Hindu inherited property from her mother. She died leaving behing a daughter from previous marriage and husband. The husband claimed half share in the property. The Supreme Court held that a property acquired from parent by a Hindu female cannot devolve on husband. The entire property was given to the daughter. as father heirs comes only in situation where she is also issueless.

82 Mulla, Aggarwal, Paras Diwan PP saxena.
situation the property will go to the father and only in absence of father shall devolve upon his heirs.\textsuperscript{83}

In a case where two sisters inherit property from their mother and one of them dies as an issueless widow. The property will be inherited by the other sister as a father heir and shall not devolve upon the husband heirs as the property is inherited from natal family.\textsuperscript{84} In another case an unmarried girl inherited her mother’s property and died. She was survived by her brother and a widow of another brother. Her brother contended that he will inherit the entire property as her sole heir. The widow contested his claim on ground that as the property belonged to a parent and she died issueless, it shall devolve upon her father’s heir and thus she will also inherit being a son’s widow. The Delhi High Court agreed and said that both the brother and brother’s widow shall inherit equally as class I heir of father.\textsuperscript{85}

The primary objective of adding these clause of source of women property was that the property should not go outside family and should remain within the family from where it had come, but in the section it has provided that when the property is inherited from the father, it shall revert to fathers’ heirs also in cases where the women has inherited from her mother, it will revert back to fathers heirs. This is again an anomaly as father and mother’s heirs are of two distinct categories, and if the legislature wanted to conserve the property within the origin family, here the property should revert to mother’s heir.\textsuperscript{86} This again is the result of inherent patriarchy where paternal side is more prominent and important than the maternal side. The child is said to be of his father’s side with limited connection to maternal relations.

\textsuperscript{83} Supra note 1 at 197
\textsuperscript{84} Bhagat Singh V. Teja Singh AIR 2002 SC 1.
\textsuperscript{85} Yogendra Prakash Duggal v. Om Prakash Duggal, 2000 AIHC 2905 (Del)
\textsuperscript{86} Supra note 1 at 198
Property Inherited from Husband or Father in Law

Section 15(2) provides for condition when a Hindu female inherits as widow from her husband on his demise or from her father-in-law being a son’s widow or a predeceased son’s widow, but only in condition where she does not remarries till the opening of the succession. When she inherits any property from her husband or father-in-law and dies issueless, the property will go to her husband heirs. In recent times a controversy has arose with respect to term ‘in absence of son and daughter of the deceased’ what is the connotation of this term implying that if a widow inherits property from her husband and then remarries, She later on dies leaving behind her husband and their child, in this scenario whether the property will go to her deceased husband family or the child and husband. Initially the courts were of the opinion that she has not died issueless hence her children and husband shall inherit the property. But if she dies issueless second husband will not inherit anything and the property will go to the deceased husband’s heirs. Also if a woman has inherited property from her second husband and dies leaving a child from previous husband. The child shall inherit the entire property. But Gauhati high court in the case of Dhanishta Kalita v Ramakanta Kalita wherein a women dies leaving behind two sons and one daughter. One son was begotten from the previous marriage and one son and daughter were begotten from the second husband whose property she has inherited. The court held that the son and daughter begotten from the husband whose property she has inherited are entitled to inherit and not the son from the previous marriage. the court observed:

87 Notwithstanding anything contained in sub-section (1)- any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.
88 Chinta Ram v Rushi Bai, 2000 AIHC 1308 (MP)
89 Roshan Lal v Dalipa AIR 1985 HP 8. See also KP lodhi v. Har Prasad, AIR 1971
90 AIR 2003 Gau 92.
“the object of section 15(2) is to ensure that the property left by a Hindu Female does not lose the real source from where the deceased female has inherited the property, one has no option but to hold that son or daughter (including the children of any pre-deceased son or daughter) of such Hindu female will mean the son or daughter begotten by the Hindu female from the husband whose property she had inherited and not the son or daughter whom she had begotten from husband other than the one whose property she had inherited. If such property is allowed to be drifted away from the source through which deceased female has actually inherited the property, the object of Section 15(2) will be defeated.”

This judgment is in contrary to the letter as well as intention of the legislature. The provision in section 15(2) clearly states that in ‘absence of any son or daughter of the deceased’. This is mentioned without any qualification. Thus it includes all her children (son / daughter) legitimate, illegitimate as well as adopted. All the children have equal rights in the property of their mother, and these relations are defined with respect to her, not her husband, father or father-in-law. the source of property becomes important only when there aren’t issue of the deceased. In presence of issue the source of property is irrelevant. Also the court by this interpretation has created a distinction between cl(a) and cl(b) of the section, as when the property is inherited by widow from her parents and in presence of her children it goes to them, then also the property is drifting away from the family, so this argument does not hold water. Further this kind of interpretation by courts defeat the object of making women absolute owner of property, as unnecessary restriction on transmission is again giving the property status of a limited estate. 91

91 Supra note 1
The glaring inequality of section 15 was challenged in Bombay High Court\(^{92}\) on the ground of discrimination on grounds of sex. The petition was rejected and court held that “the rule of reversion, \textit{i.e.}, property reverting to family from where it was inherited, was in furtherance of the clear objective of continuing the family unity.” Hence, it is not discriminatory.

This appears to be a very flawed argument, as other communities where there uniform and same rule of succession unable to maintain family unity. Also how different scheme and nomenclature will help in restoring the family unity. The entire section is based on the premise of her being a dependent and incapable of having her own distinct identity. A woman is known only by her relation of being a daughter, wife, mother etc. This is meaningless and on every level promotes sex discrimination and son-preference and should be scrapped.

\textit{Full Ownership in Property For Hindu Females}

Another important development bought by the HSA was making women absolute owners of their property. By virtue of section 14\(^{93}\) of HSA the concept of limited estate was abolished and women became absolute and complete owner of their property. The act had two-fold objective: firstly it removed the disability attached to Hindu women of owning property absolutely; it expressly provided that Hindu women shall be an absolute owner of her property, whatever be the mode or character of the property. Secondly it also converted the existing limited ownership into

\(^{92}\) Somu Bai Yashwant Jadeav \textit{v.} Balagovinda Yadav, \textit{AIR} 2006 Kant 44.

\(^{93}\) Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhanam immediately before the commencement of this Act.
absolute ownership. If a Hindu female was in possession of a property as a limited owner it will mature into absolute ownership after the passing of the act. Section 14 was given a retrospective operation.

Basically the act was to be applied on all the properties whether acquired before or after the commencement of the act. Two conditions need to be fulfilled in case of retrospective operation:

1. she “possessed the property”\(^\text{94}\) as limited owner at the time of passing of the act\(^\text{95}\)

2. She has not remarried.

Thus by this Act Hindu women was empowered to own, possess as well as alienate property according to her wishes. But this conversion of limited property into absolute ownership did not exceed to cases where the widow has transferred the limited interest to an alienee without sufficient reason and necessity\(^\text{96}\) then in those cases the limited interest would not mature into absolute ownership and here the alienee hold the property only as limited estate which will terminate with the death or remarriage of the widow and reverted to the reversioners (heirs of the last holder).\(^\text{97}\) Further the Supreme Court In the case of Gopal Singh v Dile Ram\(^\text{98}\) provided that “reconveyance

\(^{94}\) Here the term is possessed and not in possession implying that the women had a valid title in law with or without actual possession. Thus she was also given power to reclaim possession if it was taken by her illegally and forcibly. What is required is that it could be claimed in right. See Gummalapura Tagina v Setra Veeravva, AIR 1959 SC 577

\(^{95}\) Also See Mahesh Chandra Sharma v Raj Kumari Sharma, AIR 1996 SC 1786.


\(^{97}\) Kanthimathinatha Pillai v Vyapurudalliar, AIR 1963 Mad 37. Also see Munshi singh V sohan Bhai, AIR 1989 SC 1179, Kalawati Bai v Soiryabai, AIR 1991 SC 1581.

\(^{98}\) AIR 1987 SC 2394.
of the transferred limited interest in favour of women even after the commencement of the Act, will convert it into an absolute estate in her favour.”

The primary reason of this can be to give primacy to legislative intent which was to remove the unjust legal shackles of limited ownership and grant her absolute ownership, but the argument of court that reconveyance cure the defect of transfer creates more problems and on the face of it appears very strange. For example: let’s take case where W, Hindu women has transferred her property to an alienee before 1956, if the alienee re-transfer her the property according to the Supreme Court now she will get a perfect title, so if she now re-transfer the property it would be legal. Thus a sham conversion in this case can work perfectly. Also why can’t this analogy work in case of remarriage of the widow, if her second marriage comes to an end she should be given back the possession.99

Another condition to be fulfilled by women to become absolute owners of their limited estate is that they had not remarried. This was there due to a provision under widow’s remarriage act 1856100 which provided for ceasing of her right in her husband property on her remarriage. An interesting case before the Supreme Court101 where the widow has married her brother-in law in 1953 but her marriage was declared void under Madras Hindu (Bigamy Prevention and Divorce) Act 1949 as him being a married man. Here the question before the Supreme Court was that whether this will be called as remarriage or not? And thus terminate her right to hold property

99 Supra Note 1 at 347.

100 Section 2 of the Act provides: Rights of widow in deceased husband's property to cease on her marriage. -All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same

as limited estate and hence after the 1956 enactment the property will not be
converted into absolute property. The widow contested that marriage being void is not
hit by section 2 of widow remarriage act, thus she should be given absolute right to
property. Supreme Court disagreeing held that even if the marriage is void “it did not
obliterate the disqualification from inheritance by reason of remarriage.” The court
opined that despite the marriage not sustainable in law will work as a disqualification.
This appear to be a flawed judgment, and against the interest of justice. The court
denied her inheritance in her first husband property on the ground of being remarried
but forgot to take into consideration that she cannot claim anything from the second
husband on account of marriage being void. The Supreme Court did not take into
consideration that the very purpose of women property right act 1937 is defeated by
this decision. Further all the laws with regard to bigamy and all were created for the
benefit of women and not to deny her rights.

It has been clearly provided by the explanation attached to Section 14 that it is
applicable on all the property moveable as well as immoveable. Also it is of no
consequence as how such property is acquired: it can be through inheritance by
device, share received at a partition, by gift, by her skill or exertion, by
purchase or in lieu of her maintenance.

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102 The basic purpose for creating limited interest was the inability of women to get share in the joint
family property, thus she became a burden to other male relatives. Therefore on her remarriage this
limited estate comes to an end as now there is no question of her maintenance. It is now the duty of the
new husband to maintain her.
103 Attava akulamma v gajjelapappa, Air 1995 AP 166.
104 A device means will or settlement. A Hindu bequeathed his property in favour of his son and
created a life interest in favour of the widow. After 1956, the widow sold her share to meet the
marriage expenses of her daughter. Son challenged the sale deed on the ground of its being invalid as
she was not the owner; the court held that after the passing of the act her limited interest was converted
into absolute ownership. A.K. Laxmangounda v A.K. Jayaram, AIR 2001 Kant 123.
105 Certain females (widowed mother, Grandmother and fathers wife) under the Mitakshara school are
entitled to get a share in partition except the dravida school. Her right was of limited estate. But after
the act any possession became her absolute property. Gulab v Vithal, 2000 AIHC 913 Bom
Whereas the section 14(2) is an exception created to the general rule under section 14(1) in which the wishes and the power of owner has been protected. Thus in a case where a women has received limited interest property under a will or gift or an award, it shall not be affected by the section 14(1). The problem is the overlapping language of the two clauses which has created confusion and increased litigation. The Supreme Court expressed its unhappiness in the case of V. Tulsamma v Sesha Reddy. To provide some clarity the Supreme Court in Sharad Subramanyan v. Soumi Mazumdar where the owner created life interest in his landed property and gave absolute ownership in moveable property to his wife by a will. The question was with regard to her execution of a lease? The court held that she has only acquired a limited interest and it was not in lieu of her pre-existing maintenance rights, and gave three propositions:

1. “That the property must have been acquired by way of gift, will, instrument, decree, order of the court or by way of reward;

2. That any of these documents executed in favour of a Hindu female must prescribe a restricted estate in such property; and

3. That the instrument must create or confer a new right, title or interest on the Hindu female and not merely recognise or give effect to a pre-existing right which female Hindu already possessed.”

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106 Marabasappa v. Ningappa 2011 the Apex Court held that Stridhanam belonging to women is a property of which she is the absolute owner. She may dispose of at her pleasure. Such property is the absolute property of woman and would not be available for partition among the members of joint family. It does not take the character of joint family property

107 Any property purchased by a Hindu female out of the income or savings of the Stridhanam are her Stridhanam whether it was purchased before or after the commencement of the Hindu Succession Act, 1956. Under this Section unless it is shown that she is only a benamidar, or the purchase by her was in trust for another, it is her absolute property under Section 14 (1).

108 A women is entitled to maintenance out of her deceased husband property

109 AIR 1977 SC1944.

After the enactment of this act certain conservative sections of society were not happy as they regarded it as playing with the societal norms women to be ‘share-snatchers’ thus branded it as discrimination against the men. This provision was targeted as being destructive and discriminatory. Thus the constitutional validity of S.14 was challenged in Supreme Court in the case of Pratap Singh v Union of India\textsuperscript{111} on the ground of hostile discrimination against men. The Apex court categorically stated that section 14 was in view of Article 15(3)\textsuperscript{112} of the constitution, which empowers state to make laws for the benefit of women and children and hence valid. The section is basically a remedy provided to change the condition of vulnerable Hindu women, who were not given equal rights to enjoy property vested in them due to age-old rules and societal norms. Thus the court dismissed the petition.

This case is a clear example of how much patriarchy has entered our society, and how stereotype pattern of ownership is prevalent in India, where men is regarded as natural inheritor and protector of property and women given right is seen as a encroachment and transgression of boundaries.

**PROBLEMS IN HINDU SUCCESSION ACT, 1956**

The Hindu succession Act in its zeal to promote uniformity abolished most of the customs as well as inheritance system prevalent during the ancient as well as colonial

\textsuperscript{111} AIR 1985SC 1695

\textsuperscript{112} Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1)The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
(2)No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
(a)access to shops, public restaurants, hotels and palaces of public entertainment; or
(b)the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
(3)Nothing in this article shall prevent the State from making any special provision for women and children.
rule. All hindus, belonging to each and every community was subjected to HSA, which to a large extent was based on the Mitakshara system of inheritance which was a true patriarchal structure. Thus the communities which were earlier governed by matrilineal system\textsuperscript{113} also came under its purview. However the act has provided for a deviation in case where a female belonging to Marumakkattayam and Aliyasanatan laws dies intestate. The heirs of female were in this case different from provided under the general scheme. Under the section 17\textsuperscript{114} of the Act the women property is divided only in two categories

1. Her general and other property
2. Property inherited from husband and father in law.

With regard to her general property, the heirs are divided into five categories:

1. Children (including children of pre-deceased children) and mother
2. Husband and father
3. Heirs of the mother
4. Heirs of the father
5. Heirs of the husband

The provision is based on the principles of matrilineal system where mother is given preference over the father as well as husband. Furthermore any property which a

\begin{itemize}
\item[\textsuperscript{113}] Basically two types: Marumakkattayam and Aliyasanatan laws.
\item[\textsuperscript{114}] Special provisions respecting persons governed by Marumakkattayam and Aliyasantana laws The provisions of sections 8, 10, 15 and 23 shall have effect in relation to persons who would have been governed by the Marumakkattayam law or Aliyasanatan law if this Act had not been passed as if (i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely:-(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates.; (ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely:-(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother; (b) secondly, upon the father and the husband; (c) thirdly, upon the heirs of the mother; (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the husband.; (iii) clause (a) of sub-section (2) of section 15 had been omitted; (iv) section 23 had been omitted.
\end{itemize}
female acquires from her parents whether received or inherited shall be her general property. Only the property which she has inherited from her husband or father-in-law, in absence of issues shall revert back to her husband’s heirs. Thus this is the only section in the HSA 1956 which provide not only gender equality but also certain individuality to women.

The Hindu succession act though provided a sense of commitment to “women rights” though in practice it translated into a very nominal share and the measures were to a large extent watered down from the first Hindu law Committee as well as what Ambedkar has called for. Some scholars like Reba Som believed that “the bill severely fell short of its promises and the concessions made by Nehru and Ambedkar to accommodate the conservatives to bring codification back in line and to further some interest of gender equality” resulted in win for the patriarchal forces working within as well as outside the parliament and it was to a large extent a symbolic victory. Scholars like Eleanor Newbigin goes as far as saying that that Hindu succession Act 1956 “did more to obstruct future reform than to inspire change”

Whereas Bina Aggarwal argues that though the act fell short of gender equality, it was a very important step forward towards the non-existent field of women’s property right.

In this dissertation I present the view that though HSA was a significant step towards achieving gender equality in property right, though it fell short at numerous places owing to the pre and post colonial patriarchy in the society as well as law.

115 Supra note 3 1994
117 Supra note 19 2002
The Hindu succession act in its zeal to promote gender equality made women absolute owner of their property at one hand but still retain the Joint family system and son’s right by birth in the property hence hindering the healthy and natural development of women by tying her up in pre-defined social roles and giving importance to family over her rights. The act despite the heavy opposition provided daughter irrespective of her marital status equal share in the property of the father, but this share was limited to the father’s self-acquired property. The devolution with regard to coparcenary property was by the classical law in which she was given no right. She could only get a share when the coparcener dies and after notional partition his share is devolved on heir by succession. Thus son was given a indefeasible right in property where as daughters were denied the right.

Also a coparcener has a right to denounce his interest in the coparcenary, in such scenario his son’s right in the property remains unaffected as he has acquired an interest by birth whereas the daughters as well as all the female heirs in class I category loses all their rights.

Furthermore by providing different scheme of succession for males and females in which prominence given to husband as well as father’s heir denied her hitherto individuality as women and further promoted the culture of dependency. The addition of a special clause to dwelling house added further misery where though given right in estates she cannot ask for partition as been married she goes to another family and hence not part of the family. There is a strong prejudiced against a married daughter, she as no more part of her father’ family is viewed as an outsider who is now part of her husband family. Also the main arguments given for this special

\[118\] Supra note 75
\[119\] Supra note 116 at176
provision is firstly that the dwelling houses are impartible assets and fragmentation should not be allowed on females instance, and secondly if the males are stopped from using female shares for free, it will result in gross injustice to him. The main premise which the Supreme Court agreed was that if on demand of married daughters a family house is partitioned; it would result in him being thrown out on street without any means. It is interesting note that here a daughter is demanding her legitimate right, also the court as well as legislature did not dwell on the fact that if there were two brothers and one of them demanded his share or “pound of flesh”, in that situation also brother is thrown out on street without means. This provision which was missing from the debates of Rao Committee as well as initial drafts of Hindu Code bill, found way due to increasing influence of the traditional and conservative ideology. This provision further alienated the women from her natal family as well negatively affected her position in the society.

Another glaring defect was the exclusion of agriculture property to a large extent form the purview of HSA 1956 by virtue of 4(2) Hindu Successions Act 1956. This has created anomalies in the position of women and is also considerably responsible for the prevalent gender inequality. India is an agricultural economy consisting of 73% of total population. The exclusion of agricultural property has created a disjunction between the women legal and property rights mainly because of two reasons: firstly India being a federal state, the powers are divided between the state(provinces) and union with both having powers to make laws. Thus though the succession laws come under the purview of centre, agricultural is a state subject. Hence the laws

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120 Narsimhamoorty v. Sushilabai, AIR 1996 SC1826
121 Supra note 114
122 Succession is covered under the concurrent list, in which state also have a right of modification, but this is conditional to president assent.
123 State has full authority to make as well as amend laws in respect to agriculture and land.
with regard to agricultural land vary from state to state: depending upon the social attitudes in their legal histories and perspective. Secondly land reform policies as discussed earlier in thesis (land to the tiller, fixation of ceilings, prevention of fragmentation, etc) have been based both on the principle of redistributive justice and avoiding fragmentation of land and did not take into account the gender inequalities it promotes. Thus we women rights in regard to agriculture show vast disparity depending upon the region to region with respect to tenure as well as ceiling laws. For example the tenancy law are exempted from the HSA and thus have their own rules of devolution, in the states like Jammu& Kashmir, Haryana, Himachal Pradesh, Punjab, Uttar Pradesh, and Delhi and there is strong preference to the agnatic heirs and only in absence of male lineal descendant a widow can inherit. Also except UP and Delhi in all four states daughters are excluded in the two state daughters is in the list but as the least preferred heir. Furthermore in all these state women can hold property as only a limited owner and after death the property revert back to the heirs of last male holder. There are only a handful state where expressly or by implication succession is governed through the personal laws (HSA 1956) for example in Rajasthan and Madhya Pradesh and Andhra Pradesh there are explicit provision whereas state like west Bengal, Kerala, Karnataka, Tamil Nadu and Bombay region of Maharashtra by implication as the acts do not mention the order

124 Bina Agarwal “Gender and Legal Rights in Agricultural Land in India” 43 30 EPW (1995)
125 The Jammu and Kashmir Tenancy Act 1980
126 Punjab Tenancy Act 1887 (Act No 16 of 1887), amended up to 1969; and the Pepsu Tenancy and Agricultural Land Act 1955 (Pepsu Act 13 of 1955)
127 Himachal Pradesh Tenancy and Land Reform Act 1972 (Act No 8 of 1974)
128 Punjab Tenancy Act 1887 (Act No 16 of 1887), amended up to 1969; and the Pepsu Tenancy and Agricultural Land Act 1955 (Pepsu Act 13 of 1955)
129 Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (UP Act No 1 of 1951), amended up to 1987
130 The Delhi Land Reforms Act, 1954
131 Supra note 119
132 Rajasthan Tenancy Act 1955 (Act No 3 of 1955 In practice, however, even in Rajasthan daughters have been recognised as heirs only in some judgments, while in others male heirs alone have received recognition
133 In the telangana ,section 40 commentary clarifies that for Hindu tenant HSA shall apply.
devolution. Whereas State like Orissa and Bihar[^134] governed in accordance to their customs, thus are open to gender discriminatory custom if established.[^135] Another difficulty in these land laws is their definition of tenants is very broad, including in its ambit various categories of cultivators[^136] and includes interests arising out of most of the agricultural land, thus excluding them from the purview of Succession Act. Furthermore these land shall be governed by devolution according to the land laws which favours ‘male lineal descendants’, for example in the states of UP and Delhi Land laws. UP consisting of 1/6 of the country’s population, land is legally inheritable only males.[^137] Also most of the states do not consider married daughters as part of the family whereas son holds a special position in most of the states.

Therefore the HSA seriously fell short of it promises and was a much diluted version of what Hindu Law committee as well as woman organisation and liberals have envisaged. Another defect in the law was there were certain females[^138] who were entitled to get a share in the Mitakshara coparcenary after the partition, thus were given share at the time of notional partition also[^139], except in Dravida school of Mitakshara prevalent in southern part of India, where women were not entitled to receive any share. Thus they were not granted any share at the time of notional partition also. Consequently section 6 did not enlarge their entitlement to get share in the property.

This defect was cured by the state themselves, and revolutionary changes were introduced in the laws of coparcenary as well as joint family system. The five

[^134]: The supreme Court in Madhu kishwar V state of bihar 1996 upheld the discriminatory provisions.
[^135]: Supra note 119
[^136]: Like bhumidaars, Sridaars and Assamis, according to the object and reason of zamindari act “it is expressed that vast majority of cultivators will become Bhumidaars”
[^137]: Supra note 7.
[^138]: Father’s wife, widowed mother and paternal grandmother see Supra note 1.
[^139]: Gurupad v hirabai
southern state of the country started the work of giving due to women in property. The first in this was Kerala, which by the act of 1976 abolished Joint family system completely. By this act the right of birth in the coparcenary property provided to males in Mitakshara system and to females in marrukkattayam was extinguished. Unfortunately, in an effort to provide rights to females, the very matrilineal system which gave them identity as well as rights also came to an end.

Section 3 of the Kerala Joint Family System (Abolition) Act, 1976 states that “On and after the commencement of this Act no right to claim any interest in any property of an ancestor during his or her life-time which is founded on the mere fact that the claimant was born in the family of the ancestors shall be recognised in any court.” Further Section 7 (2) “repealed all custom or usage with respect to joint family property and repealed twelve local legislations that were prevalent in Kerala, which included all the Marumakkattayyam laws.” The major drawback of this act is that one on hand is has abolished all joint families, on the other hand there is no limit to testamentary disposition hence making daughter right a illusory right.

There were four other states which by amending section 6 gave daughters right in the coparcenary property, the four states were: Andhra Pradesh Tamil nadu Maharashtra and Karnataka. These state made daughters coparcenary in the joint family and were given equal status as son, the only condition been that they should

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142 Andhara Pradesh Hindu Succession (Amendment) Act 1986
143 Tamil Nadu Hindu Succession (Amendment)Act 1990
144 Maharashtra Hindu Succession (Amendment)Act 1994
145 Karnataka Hindu Suceesion Act 1994
have been unmarried at the time of amendment, in cases where such daughter is dead at the time of partition, her share shall devolve upon her children also it did not applied to partitions which have been effected before the amendment. Thus these five state revolutionised the coparcenary system and made her a not only a coparcenary but also member of the joint family. In simpler words, despite her marriage she would be part of her natal family and can also become a Karta or head of the family if need arises. The courts also agreed and furthermore she was made coparceners in all cases where the partition was pending. The apex court has also held that an unmarried daughter is entitled to get a share in the undivided coparcenary property. Though these amendments played a pivotal role in ending gender discrimination in succession laws, it created two categories women: one married before the act -not entitled to become coparceners and other married after the act, they were made coparcenary. This distinction was challenged and it was contended that these state amendment are unconstitutional as it creates distinction based on marital status. The Karnataka high Court while hearing such petition in the case of Nanjamma v. State of Karnataka dismissed the petition challenging the Karnataka Hindu Succession (Amendment) Act 1994 for being discriminatory and creating two classes of women based on their marital status and held that “the distinction cannot be termed as either unreasonable or irrational and without basis. The two types of married daughters as contemplated by the offending portion of the section are well defined classes in themselves. As the implications of the act were far reaching, including

146 Section 29A Andhara Pradesh Hindu Succession (Amendment) Act 1986
147 Pulla Reddy v. I. Seshi Reddy 1987 (2) ALT 210. Also see Smt. Nanjamma and Another v. State of Karnataka and Others, ILR 1999 Kar 1094 also
148 Merla Narayudu (died) per L.R. and Anr. v. M. Bramaramba and Anr. 2006 (2) ALT 730
149 S. Narayana Reddy and Others v. S. Sai Reddy AIR 1990 AP 263
152 1999 AIHC 3003 (Kar)
married daughters as coparceners would have created chaos in the society and would have resulted in upsetting the settled claims in virtually every family.” This appears to be flawed logic, the marital status of daughters does not create any difference, and it is the question of whether there has been a partition it not than the issue of “upsetting established claims” shall arise. Also this has created further confusion in the joint family. The best course of action would to abolish the concept of joint family in totality. These provision established the ancient cultural norms that daughter is not part of family, which is not healthy in today’s scenario where everything depends upon who controls the material resources.153

**Hindu Succession (Amendment) Act 2005**

Hindu women right to share in the coparcenary property have evolved after years of struggle, controversies and unending debates. From being denied a right in the coparcenary to be coparceners is not less than a miracle. Almost five decades after the passing of the Hindu Succession Act 1956, the Hindu succession amendment act 2005 was passed to counter the glaring inequalities in HSA, 1956. HSA was envisaged by the Hindu Law committee as well as the women organisation as a gender neutral enactment which will give women her long denied right in the property. But to their dismay, what was enacted was nowhere in parlance to what was desired and promised. It came a half hearted scheme, in which though daughter and widows were given right in self acquired as well as ancestral to an extent, but it did not interfere with special rights of son in the Mitakshara coparcenary. Furthermore it diminished the position of a married daughter and forwarded that orthodox view of daughters not being part of natal family. Discrimination also came in form of giving unbridled

power to Hindu males to will away his property.\textsuperscript{154} The Law Commission report\textsuperscript{155} stated:

"...The Act gave a weapon to a man to deprive a woman of the rights she earlier had under certain schools of Hindu law."

The 174th Law Commission report published in 2000, on “Property Rights of Women: Proposed Reform under the Hindu Law” highlighted the inherent inequalities in the succession and inheritance laws and suggested reforms to be undertaken to make it gender neutral. The union government understanding its obligation under the constitution as well as different international instrument passed Hindu succession amendment act 2005 to remove gender inequalities from the realm of property law in India.

Taking its cue from the LCR report 2000, women organisations as well as the amendment acts passed in five states\textsuperscript{156} the government with its legislative intervention took important steps “towards gender equality and abolition of the patrilineal system of inheritance prevailing among Hindus.”\textsuperscript{157}

**CHANGES INTRODUCED BY HINDU SUCCESSION (AMENDMENT) ACT 2005 AND EFFECT ON WOMEN PROPERTY RIGHTS**

The Hindu succession amendment bill was introduced in the parliament on December 2004 The amendment bill aimed at removing gender inequalities and ambiguities\textsuperscript{158} in


\textsuperscript{155} Proposal to Amend the Hindu Succession Act, 1956 as amended by Act 39 of 2005” Law Commission of India Government of India (2005)

\textsuperscript{156} Tamil Nadu, Kerala, Karnataka, Andhra Pradesh

\textsuperscript{157} Supra note 148

\textsuperscript{158} The Statement of Objects and Reasons of the aforesaid Bill is as follows: "The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights, which were till then
the succession laws and borrowed from the Andhra as well as Kerala model and relied heavily on the LCR 2000 on women property rights. The bill was referred to Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on 27 December 2004 for examination and report, and the act was passed by parliament in August 2005.

Key features of the Amendment Act 2005

(i) The section 4(2) of HSA 1956 dealing with the non-application of succession laws on agricultural property was deleted, though it did not made clear whether HSA shall be applied or not.¹⁵⁹

(ii) It completely abolishes the doctrine of survivorship in case of male coparceners.

(iii) It introduces daughters as coparcenary by birth irrespective of their marital status at the time of passing of act.¹⁶⁰

(iv) It modifies the conditions for application of notional partition.

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 laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahma, Prarthana or Arya Samaj, or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

¹⁵⁹ This was one of the most sought after demands in recent year as because of this provision despite gender neutrality in the succession laws; a large number of women were neglected.

¹⁶⁰ There were huge debates in LCR as well as parliamentary standing committee report as to whether to borrow the prevailing model of excluding married daughters. the ministry submitted “In so far as extending the amendments to married women, it is worthwhile to mention here that Law Commission of India in its 174th Report has adequately considered the matter ….. married daughters have already received substantial gifts from the parents and that the family has already spent considerable money on marriage expenses,…… The proposal to apply the law to unmarried daughters is just and reasonable and will cause minimum disturbance to the settled transactions and less family disputes and unrest. Hence, the Government does not consider that any change in the Bill is called for.”
(v) The concept of pious obligation of son to pay fathers debt was abolished.\textsuperscript{161}

(vi) It has also abolished the “special rules concerning the dwelling houses”. Along with it section 24\textsuperscript{162} is also deleted. This being a redundant section does not have much bearing on the property rights of a woman.\textsuperscript{163}

(vii) There is addition of four new heirs\textsuperscript{164} in class I heirs of section 8.

(viii) The testamentary disposition is extended to Hindu Female also.

\textbf{Deletion of section 4(2): provision relating to exemption of agricultural property from the purview of HSA.}

The deletion of section 4(2) is a long awaited step in the fight for female empowerment and gender neutral property law. As kirti singh\textsuperscript{165} points out “that

\begin{footnotesize}
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\item[161] Section 6(4) After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:
Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), nothing contained in this sub-section shall affect— (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 (39 of 2005) had not been enacted. Explanation.—For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005).

\item[162] “Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a predeceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date succession opens, she has remarried.”

\item[163] The section 8 makes SW and SSW primary heirs. The section states that if widow is remarried she wont be entitled. If the woman has remarried she is no more someone widow but is now someone’s wife, so even in the absence of this section she will not inherit. Cause nomenclature says Son widow.

\item[164] Son of a predeceased daughter of a pre-deceased daughter (SDD); daughter of a pre-deceased daughter of a pre-deceased daughter (DDD); daughter of a pre-deceased son of a pre-deceased daughter (DSD); daughter of a pre-deceased daughter of a pre-deceased son (DDS). There are two pertinent flaws with this addition. The first and foremost is that the four heirs added are the three great granddaughters and a great grandson. Two great grandsons have been excluded without any cogent reason, and result in discrimination between brothers and sisters. The second flaw is that these four heirs were present in the earlier scheme too, though they were class II heirs. Now without deleting them from the class II heirs, they are added in the class I heirs which appears to be illogical and hasty. It is not possible for heirs to inherit in two categories in condition when one is excludes the other.

\item[165] Kirti singh “About Matters of Inheritance” women equality (2006)
\end{itemize}
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previously court judgments have upheld special laws relating to devolution of tenancy right citing section 4(2), and one of the effects of the deletion is that they will no longer be able to rely on this section to deny women rights on agricultural land.”

However, deleting section 4(2), without expressly providing the consequence i.e., whether Hindu succession Act will be applied on agricultural property over and above the respective state law, the legislature has created more confusion and opened up a Pandora box. The land laws basically deals with “prevention of fragmentation of agricultural holdings, fixation of ceiling or devolution of tenancy rights of such holding” and are applied to all the people irrespective of their religion. In simpler terms, the whole of the agricultural land is subject to the respective land law of the state and an individual’s religion is of no consequence. So if by this amendment, it is implied that HSA will be applicable on agricultural property it will result in diverse laws with respect to laws governing agricultural properties. For example in a state where on individuals HSA is not applied, non-Hindus the state law shall apply whereas on whom HSA applies the devolution of property will be in different manner.166

The second confusion is due to the constitutional framework which has divided the subjects between the state and centre, now agriculture is a state subject where as inheritance and succession is specified is list III. The important question is whether the center has the pwer or is competent to enact law with regard to a state subject. The Article 256167 of the constitution provides that in case of conflict between the state

166 Supra note 1 at 279
167 Article 256 of the Constitution:” Obligation of States and the Union The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.”
and centre, the centre law shall prevail in conditions where the centre is competent to enact a law on it.\textsuperscript{168}

In order to solve this contentious issue HR Bhardwaj then law minister in a Lok Sabha debate in 2006\textsuperscript{169} has said that the centre will soon write to every state and if necessary will call a meeting to amend the necessary laws, as agriculture is a state subject. It has been already 12 years but nothing so far has been done. Women groups have suggested that a section 4 to be amended is such a way to provide that for agricultural property also Succession act will apply. They contend that since succession falls in concurrent list, union government has the power to legislate and it is not essentially a land issue but inheritance.\textsuperscript{170}

Delhi High court in a revolutionary judgment\textsuperscript{171} has held that the delhi Land reform act is \textit{subordinate to the Hindu Succession Act. The court held:}

\begin{quote}
“\textit{Now, the omission of Sub-section (2) of Section 4 of the HSA by virtue of the Amendment Act of 2005 has removed the specific exclusion of the DLR Act from the overriding effect of the HSA which hitherto existed because of the said Sub-section (2). The result is obvious. The protection or shield from obliteration which Sub-section (2) provided having been removed, the provisions of the HSA would have overriding effect even in respect of the provisions of the DLR Act. It is, in fact, not so much a case of implied repeal but one where the protection from repeal/abrogation which hitherto existed has now been removed. The omission of Sub-section (2) of Section 4, by virtue of the amendment of 2005 is very much a conscious act of}
\end{quote}

\begin{footnotes}
\item[168] Supra note 1 at 280
\item[169] Law and Son Preference In India: A Reality Check Report by United nation Population Fund (UNFPA) 33-51 (2013)
\item[170] Ibid
\item[171] Nirmala and Ors. v. Government of NCT of Delhi and Ors. MANU/DE/2717/2010
\end{footnotes}
Parliament. The intention is clear. Parliament did not want this protection given to the DLR Act and other similar laws to continue. The result is that the DLR Act gets relegated to a position of subservience to the HSA to the extent of inconsistency in the provisions of the two Acts.”

Thus though there is lot of confusion and still a long way to go, the hope is there that what was envisaged shall be achieved sooner or later.

Abolition of Doctrine of Survivorship in Presence of Male Coparceners

The amending act expressly has abolished the concept of survivorship, which was an important incidence of coparcenary. Earlier also in the Act of 1956, though survivorship was retained but only in limited condition, when there will be no class I female heir or male claiming from that female. Therefore despite retaining the concept the female were not given an unfair deal. But by this complete abolition under section 6(3)\(^{172}\) has served no purpose to women in essence but has rather resulted in confusion and inequality among the coparcenary. For example: F forms a coparcenary with his two sons S1 and S2. Earlier before the amendment if one of them dies the property will be divided equally between the surviving coparceners according to the doctrine of survivorship, but after the amendment, there will be a notional partition and the share of the intestate shall be calculated. Here if S2 dies, his share after notional partition will be 1/3, this share will not go by doctrine of survivorship but shall be inherited by F as S2’s legal heir (in absence of will)

\(^{172}\)Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—
according to succession Act, where father is preferred over brother. Thus now in the coparcenary father has $2/3$ share of the property whereas $S1 \ 1/3$.\textsuperscript{173}

There is one more latent problem with the provision, it provides that “his interest” shall devolve by succession rules and not survivorship, so it can be interpreted that as now daughters are also coparcenary so if they dies the doctrine of survivorship will apply. For example: a coparcenary consists of F, his daughter D1 and son S1. In this case if daughter dies, what shall happen to her share? In the light of provision it can be said that her share shall devolve upon F and S1 under doctrine of survivorship or it means that this concept is abolished from the Hindu law and now notional partition is the rule. is for all. There remains a confusion and tragedy waiting to happen.

**Daughters as Coparceners**

The most important as well as promising change brought by the amendment act is the introduction of daughters as coparceners by birth in the coparcenary property. This is a revolutionary change in the classical Mitakshara law, which was based on the exclusion of females from the coparcenary. Thus after the amendment act, three daughters have been recognised as coparceners, father’s daughter, son’s daughter and son’s son daughter.

After The amendment any child whether adopted or born in a family shall have a right from birth in the property. The section 6 provides: “On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,— (a) by birth become a coparcener in her own right the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c)

\textsuperscript{173} Supra note 1 at 281.
be subject to the same liabilities in respect of the said coparcenary property as that of
a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to
include a reference to a daughter of a coparcener:’

By this provision discrimination against daughter is completely removed and is
treated equally with son, having same rights as well as liabilities. Her position in the
family as well as society is greatly improved by the amendment. It had to a large
extent shattered the dominance and special position of a son.

Furthermore now after the amendment act daughters even after their marriages remain
the members of her natal joint family. A ‘Hindu joint family is a broader institution,
within, which it has a narrow institution of coparcenary’. As the amendment makes
daughter a coparcenary in her own right by birth, she shall remain part of her natal
joint family as it is not possible to be part of sub-unit without being part of a larger
unit. So a daughter becomes part of two joint families, the one she is born into and the
other in which she is married. Furthermore by this analogy she can also become a
karta of a joint family, so in a situation where she happens to be a senior most
member she can be a karta and her marital status has no bearing on it. Though this
may lead to practical difficulty as daughters in general leaves her natal family and
settles with her husband and his family, so managing affairs of two families
simultaneously can be difficult and physically taxing. A much better solution in all
respect would have been to abolish this concept of joint family in totality as already
done in Kerala.

174 Earlier as she cannot be a coparcener, she also cannot be a karta. Thus changing the Traditional
Hindu law where women were denied property as well as status in the family.
175 Supra note 1 at 282
176 The journey to reform was not easy. The initial bill, tabled in the Rajya Sabha in December 2004,
based on the Law Commission's 174th Report, had many shortcomings. In particular, it ignored
agricultural land and the claims of married daughters, even while indicating the government's
This amendment has also created two classes of females in the joint family— one who is born in the family (daughter and sister) and others who are married into the family (mother and wife). The daughters, sisters are given right in the property from birth, whereas for others the law is same as it was before the amendment. They shall be the part of joint as well as can claim maintenance from the joint family property and shall be entitled to share in the property after a partition. Though the amendment makes no difference between the married and unmarried daughters, in order to avoid unnecessary chaos and litigation a proviso is added which protects all partitions and transactions done before 20th December 2004. Thus a daughter who was not coparcener before 2005 and there wasn’t any partition between the family, shall be regarded as a coparceners. But if partition has been affected or there is any alienation of the property she shall be regarded as coparceners though will have no right to challenge the alienation or the partition. Here “partition implies means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court”. The apex court in the Ganduri Koteshwaramma v Chakirti yanadi Wherein a Preliminary decree was passed with regard to partition and after that amendment act of 2005 passed, the question was whether the daughters can challenge the decree or not, as now have commitment to reform. During the intervening eight months, concerted efforts for comprehensive amendment were made by particular individuals and groups committed to women's rights, land rights and livelihoods, and human rights, through newspaper articles, memoranda, depositions before the parliamentary standing committee on law and justice, lobbying MPs, garnering support in the law ministry, and so on. Thus when it culminated into act, agriculture property was included, distinction between married and unmarried daughters removed and survivorship abolished. Though despite the suggestions joint family was retained. Indira jaisingh “An Uncertain Inheritance” 20(2) Lawyers Collective 9 (2005).

177 Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

178 Paras diwan Modern Hindu Law (Allahabad Law Agency, 2007) Section 6(5) provides that nothing contained in this section shall apply to a partition , which has been affected before the 20th day of December.

become coparcener. High court was of the opinion that as the preliminary decree has been passed, it is now settled hence its is protected by the proviso but the supreme court overruling it held “it is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before a final decree cannot be altered, modified or amended by the trial court in the event of changed or supervening circumstances even if no appeal is preferred from such preliminary decree.” The daughters are entitled to get a share and decree to be modified. But where the joint family has disintegrated before the amendment act, and the member of the coparcenary has demanded for partition, and everyone has agreed to the arbitration, there is a severance of status and coparcenary has come to an end.\(^{180}\)

A startled consequence which was not envisaged by the amendment act was its conflict with the existing reformatory amendments taken prior by the state. As already discussed before the enactment of the central amendment, there were four states which had made daughters’ coparcenary by birth in a Mitakshara joint family. In simpler words, after the state amendment from 1989-1994 the daughters were made coparcenary from birth with all the rights and liabilities of coparceners: to hold and enjoy the property as joint owners, ask partition of the joint family property as well as challenge any unauthorised alienation by the karta. But with the central amendment all the partitions as well as alienation done before 20th December 2004 were expressly saved, thus the right to challenge an inequitable partition or an unauthorised alienation which was given to her by the state amendments and was available to her till 2004 was suddenly taken away and now she cannot ask any questions or enforce her

\(^{180}\) Brij Narayan Agarwal v Anup Kumar Goyal AIR 2007 Del 254
legitimate right.\textsuperscript{181} Astonishingly this limitation was only imposed on the daughters and not sons, who can still at anytime challenge the partition or alienation done by Karta and other family members. Thus a provision which aimed at gender parity and improving the position of women with regard to property resulted in severe injustice in a number of cases and situations.\textsuperscript{182}

This led to two important questions first: which act to prevail in case of conflict and whether the proviso to Sec.6(1) (c) of Hindu Succession amendment act 2005 is violative of art 14 of the constitution as it differentiate between son and daughter with regard to alienation, disposition and partition done before 20 December 2004.

The Karnataka High Court in \textit{R. Kantha v. Union of India}\textsuperscript{183} wherein an unmarried daughter has filed a suit for partition and demarcation of her share in the joint family property from the Karta/ father in 2007, and also challenged an alienation done by him without her consent. The trial court dismissed her petition as the alienation was done before 2004. She filed a writ petition challenging the constitutional validity of proviso to section 6 of amendment act as being violative of gender equality and also that it unreasonable takes away a rights accrued to a daughter by 1994 amendment.

The questions before the Court were:

1. Constitutional validity of the proviso

2. Whether the unmarried daughter can claim partition in an undivided property in the lifetime of the father.

The court while rejecting the primary contention of the petitioner held that it is the established principle that in case of repugnancy between the state and union law in

\textsuperscript{181} Poonam Pradhan Saxena “Succession laws and Gender Justice” 288 in Archana Parashar & Amita Dhanda \textit{Redefining Family Law in India} (Routledge, 2008).

\textsuperscript{182} Supra note 1 at 285

\textsuperscript{183} Air 2010 Karn 27.
accordance with the Article 254 of the constitution the central law shall prevail and also the suit has been filed in 2007 after the enactment of the amendment. Thus she is not entitle to ask for partition in the property during the lifetime of the father as “the 1956 act deals with only testamentary and intestate successions and does not confer right in the favour of daughter to claim partition and she has to wait till the death of the father to claim her share. interpreting the word devolve as becoming operative only when the succession opens, the court held during the lifetime of the father the succession cannot open and it is only on his demise, that the succession would open and daughter would also get property in the same manner as the son.”\textsuperscript{184}

With regard to the constitutional validity of the proviso the court held that this blanket ban on the daughters to question the alienations etc has no valid nexus with the objects of the amending act and violates the principle of gender parity enshrined in the constitution and is violative of Art.14 and 16 of the constitution.

But the division bench of the same high court in the case of \textit{Pushplata v Padma}\textsuperscript{185} has impliedly overruled the decision of \textit{R. kantha}\textsuperscript{186} and held that there is a reasonable nexus between the cut-off date and amendment act, as it is to avoid confusion and chaos and not affect the existing rights leading to opening of gate for plethora of litigation. Therefore all alienations, partitions and disposition done before 20\textsuperscript{th} December 2010 cannot be challenged by the daughters.

Another pertinent question which came after the enactment was whether the amendment is prospective or retrospective in nature. There has been diverging opinion, the division bench of the Karnataka High court in the case \textit{Pushpa v padma}\textsuperscript{187}

\textsuperscript{184} \textit{Supra} note 181
\textsuperscript{185} AIR 2010 kan (DB)24
\textsuperscript{186}Air 2010 Karn 27.
\textsuperscript{187} \textit{Supra} note 183
held that “......Secondly though the opening words of the section declares that on and from the commencement of the Hindu Succession (Amendment) Act, 2005, the daughter of a coparcener in a joint family governed by the Mitakshara is conferred the status of coparcener, it is expressly stated that she becomes a coparcener by birth. Conferment of the status is different from conferring the rights in the coparcenary property. The right to coparcenary property is conferred from the date of birth, which necessarily means from the date anterior to the date of conferment of status, and thus the Section is made retroactive. By such express words the amended section is made retrospective.”

The high court in its conclusion regarded all daughters born after 1956 to be coparceners in the joint family.

Whereas the full bench of Bombay High Court overruling its earlier decision in Vaishali Satish Ganorkar v. Satish Keshaorao Ganorkar\textsuperscript{188} held in the case of Badrinarayan Shankar Bhandari & others v. Omprakash Shankar Bhandari\textsuperscript{189} that the “amendment to section 6 was neither prospective nor retrospective but retroactive in nature i.e. it operated forward but it is brought into operation by a characteristic or status that arose before it was enacted. Therefore the right in coparcenary property will accrue to a daughter only on 09/09/05, but as a consequence of an event that occurred prior to the date, that event being her birth.” This decision after dwelling in detail interpreted section 6 being available to all daughters irrespective of their date of birth, the only condition be they should be alive on the date of amendment. In case where she has died prior to the amendment, her heirs shall not be entitled to claim share in the joint family property. The regarded this interpretation in lieu of the object

\textsuperscript{188} AIR 2012 Bom101 in this case the court held that the amended section 6 only applies prospectively to the daughters who were born after 09/09/05.

\textsuperscript{189} 2015 bom
as well intention of the legislature and further to foster equality as envisaged under Art.14 of the Constitution of India. The court made another comment with regard to explanation of section 6 and held that every oral or unregistered partition cannot be reopened only on ground of its being not registered, only those which are not followed by physical partition can be reopened and daughters can be given their due share.

The supreme court by its recent decision in *Prakash v. Phoolwati*\(^{190}\) has put a rest to this debate by over-ruling all the contrary opinions and has held that the section 6 is neither prospective nor retrospective, the amended section only applies to those daughter whom father was living at the time of amendment, it means only “living daughters of living coparceners are benefited from this provision” their date of birth is not important. The apex court to an extent has agreed with the full bench of Bombay High Court. The daughters whose father has died before amendment shall not be regarded as coparceners; also the daughters who died before the amendment their children shall have no right in the property of their mother’s father.

The section 6 (1) also provides that a daughter shall have same rights in the coparcenary as a son and shall be subjected to same liabilities as son. Thus does it means she shall also be subjected same limitation as of a son. According to customary practices in Bombay and Punjab, a son or a grandson does not have a right to ask for partition from the father, because according to the customary rules prevalent in the area the son does not have birth right in the property of the father.\(^{191}\) Earlier the same rule was also there in Delhi, but the courts have held that son can ask for partition

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\(^{190}\) 2017 SCC 216

\(^{191}\) *Hari kishen v Chaudhula Lal* AIR 1918 Lah 291 (FB)
from the father even in cases where he has not consented. Thus can it be said that she shall not be entitled to claim partition in these areas. Most of the high courts have held that daughters married or unmarried have an absolute right to sue their father as well as other family members for partition. Her right won’t be affected by her conversion or marriage to an non-hindu in the same manner as a son conversion or marriage to a non-Hindu shall have no effect on his right to ask for partition. This protection is by virtue of Caste disabilities removal Act 1950. The membership of the joint family as well as the coparcenary comes to an end but it shall have no effect on their inheritance and succession rights. But the Karnataka High Court in the case of R.Kantha held that a daughter has no right ask for partition as Hindu Succession Act 1956 only deals with intestate succession, and till the father is alive there is no question of devolution of the property, hence no partition can be asked.

The amendment has made it amply clearly that the coparcenary property shall be held by the daughters with the incidents of coparcenary ownership. The clause 2 of section 6 provides:

“Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.”

According to the sub-section a daughter will hold the joint family property with all the incidence of coparcenary, but the legislature has not made clear that what the

192 Nanak Chand v. Chand Kishor AIR 1982 Del 520
194 Ganachai Veeralah v. Ganachari Siva Ranjani AIR 2010 NOC 351 AP
195 AIR 2010 Karn.27
incidences of coparcenary are. Thus this need to be understood by taking help of the
definitions provided in the classical Hindu law. According to the classical Hindu law, incidences of coparcenary are:

1. Interest by birth
2. unity of possession and community of interest,
3. fluctuating interest ,
4. collective enjoyment
5. doctrine of survivorship
6. Four generation rule. 196

Now if we see the application of these incidents to female coparceners, she has an interest by birth. She shares the title of property with the other entire family member. Her share remains fluctuating and shall be definite only after partition. Now other important is that all coparceners’ holds property with the incidents of doctrine of survivorship, but the legislature has abolished the doctrine of survivorship for male coparceners, does this means that for her also survivorship is abolished.197 But this express provision is only for male coparceners as the language of section 6(3) is:

“Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and”

196 Supra note 2
197 Supra note 1
Here the words used by legislature are “his interest”, and it is fundamental rule in laws relating to inheritance and succession that “his” never includes “her”.\(^{198}\) Also the explanation attach further emphasise that use of ‘his’ creating chaos and confusion. So even if the statement “and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener”\(^{199}\) is taken the confusion created by legislature need to be looked into and till then it can be concluded that the survivorship is abolished for male coparceners and in case of female coparceners it still holds value.

Furthermore the amendment though has retained the concept of notional partition, it has significantly modified it, earlier notional partition only occurs in cases where there was any class I female heirs, but now there will be notional partition in every case of intestacies. It has also provided for the calculation of share after the notional partition\(^{200}\), in present scenario even if a minor child dies, irrespective of his sex, the share shall be calculated and will devolve in accordance with the rule of intestate succession.

Another important incident of coparcenary is four generation rule i.e. descendants up-to 3 generation including the person has right by birth, so this shall mean that daughter along with her descendants are member of coparcenary, but this is not correct as only daughters have been made coparcenary and not their descendants. Thus though she hold property with coparcenary incidents, she cannot form

\(^{198}\) Supra note 1  
\(^{199}\) Supra note 1  
\(^{200}\) a) the daughter is allotted the same share as is allotted to a son; b) the share of the pre-dec/deased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.
coparcenary with her children. Two sisters can form coparcenary but not with their descendants. Another problem is that how the property shall devolves in case a Hindu female dies after marriage. This is very important because according to section 15 of HSA 1956 the property of female is divided into three categories depending upon the source

1. Her general property
2. Property inherited by parents
3. Property inherited by husband and father-in-law

Based upon this are her categories of heir, now a daughter acquires coparcenary interest by birth in the family, thus it cannot be said the she inherited it from her parent. By this analogy this will be her general property. According to rules of succession provided under section 15 of the Act, this property if she has partitioned shall be inherited by her husband, children and children of predeceased children. In case she dies issueless after partition, by her husband or her husband’s heirs. 201 but this would mean that a strangers (means husband and his heirs) would became part of coparcenary which isn’t possible.

Another problem is that section 6(3) has abolished survivorship and retained notional partition, but the question is as earlier discussed that whether this will be applicable on her or not. Let us suppose it’s applicable on her too, so after her death it will be deemed that there was a partition and now the property shall devolve on her husband children and children of pre-deceased children. But the cl (b) and (c)202 provides that after the notional partition the interest of female coparcener shall devolve upon her children and children of pre-deceased children and not on husband, which is in

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201 Supra note 1 at 289
202 Section 6 of the HAS, 1956
contrary to section 15. Thus we see there is lot of confusion with regard to the nature of property in hands of daughters as well as its devolution.

A very significant development of the amendment is deletion of section 23 of the Act, dealing with the special rules for dwelling places. Due to the presence of this section, the daughter despite having a right in the property cannot claim her due share and was dependent on the wishes of male heirs to partition and give her rights in the house. This section was not only discriminatory on the basis of sex but also on the marital status of the women, it proved to be a serious setback to the inheritance rights of a daughter. After this step by the legislature the daughters can claim share in any property irrespective of its nature and demand partition. The question raised after the deletion of the provision was whether it will be applied on the pending proceedings? Most of the high court’s had observed that the rights of the male heir are personal in nature and are neither transferable nor heritable, thus by omission of this section this right is taken away by the legislature and the provision shall have a retroactive effect. The court observed

“No doubt the amendment shall have a prospective effect, but practically if the matter is viewed it is clear that as per the Hindu Succession Amendment Act, 2005, the plaintiff is entitled to partition of the dwelling house property and such an amendment has come into vogue during the pendency of the appeal. The appeal is deemed to be continuation of suit proceedings. It would be a mere hyper technicality if the plaintiff is driven to extent of filing a fresh suit involving the said recent amendments and in such case, I have no hesitation in construing that the erstwhile sec. 23 has no

application and accordingly partition could be ordered in respect of share of the daughter.\textsuperscript{204} There position is at par with the son. This amendment has brought us closer to the issue of gender parity.

The last but not the least feature of this amendment is providing power to female coparceners as well as females in general to dispose off their property by will. By the amendment in section 30 of the act both Hindu males as well as females have been given a right to make testamentary disposition with regard to their undivided interest in the coparcenary.

The 2005 amendment is an appreciative and applauds worthy step in realizing gender parity in inheritance laws, though it still suffers from some major flaws and drawback which takes it two steps backwards.

\textit{Problems with The Amendment 2005}

The amendment though a welcome step lacks in farsightedness and practicality. It has created to an extent chaos and confusion and has not able to achieve the goal of gender neutrality which it set for itself. As pointed out by Archana parashar\textsuperscript{205} “a number of proposal suggested has now became law. Even so the crusade is far from complete and a number of changes are still required

1. The most basic flaw in the Hindu succession Act, even after the amendment of 2005 is different scheme of succession for male and female intestate. The retention of section 15 in the statute book is a black mark on the issues of gender parity and women empowerment. The section 15 not only provides for

\textsuperscript{204} M Revathi v. R.Alamelu, AIR 2009 Mad 86

\textsuperscript{205} Archana Parashar &Amita Dhanda \textit{Redefining Family Law in India} (Routledge, 2008).
different heirs but also divides the property owned by female into different categories owing to their source. This section is not just discriminatory but also denies women individuality. In entire scheme of succession, she is recognised by her relations, basically male relations i.e. she is daughter, wife, sister, mother, widow, granddaughter etc but never a women. It should be realized that unless and until a women is treated as women, there cannot be equality between the sexes. The notion of equality presupposes individuality. In the 204 LCR in 2009\textsuperscript{206} there were suggestions to bring reform in the current scheme of succession as it is far removed from the practical realities. It suggested that in class II heirs both set of parents should get the property equally as though women get married into other family, her ties to her parents does not end. Hence both should get share in her property. But this suggestion again is incomplete as it doesn’t grant women the individuality which she craves for. To be treated as women and not in relation of one or the other person.\textsuperscript{207} 

2. Another flaw in the amendment act is that though it has deleted section 4(2) dealing with agricultural property. It has no where specified that how such property shall devolve. There is conflict between the state laws and centre laws. Until and unless this is rectified, there will be multiple interpretation, leading to chaos and litigations\textsuperscript{208} 

3. The amendment has made daughters coparceners, but still a lot of issues are not addressed like whether doctrine of survivorship will apply on them or not? If she dies intestate whether there will be notional partition? What is the nature


\textsuperscript{207} Ibid. 

\textsuperscript{208} Supra note 1
of property in their hands? What is the means of devolution of property? The legislature needs to make it clear and unambiguous.

4. Whether the daughter is entitled to claim partition or not? The different opinion of the high court’s need to be settled.

5. This amendment will only benefit one category of women: daughters, what about the others whose share has been reduced mothers and wife. 209

6. Unequal treatment of father. The father is placed in class ii heirs. There is no rationale behind it. 210

7. The amendment act only deals with coparcenary property and not the self acquired property, a person has complete right over his self acquired property, he can gift will or alienate it without any legal impediment. This poses serious problem in country like India where there is no concept of matrimonial property. 211 Even after marriage the property is viewed as individual property, and if a person dies intestate then according to the rules of succession the property is calculated and divided among the heirs or devolve as provided in the last testament of the deceased. 212 The condition of women here becomes very precarious owing to the nature and nurture set up of patriarchal society where family as well as child rearing a women responsibility. More so often in the Indian families the provider or ‘bread-winner is man and the women educated or not, leaves her job to take care of home and its responsibility furthermore this domestic work is not regarded a productive work to be paid

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209 The amendment act has only made daughters as coparcenary and not other females of the family. A wife is still treated as an outsider and has no say in the property of the husband. Same is the position with the Mother.

210 Section 8 clause II of the HSA1956 which places father as a class II heir, implying that only in absence of all class I heirs a father can inherit the property. Also there is no change in the share of other women heirs.

211 Under Section 27 of the Hindu Marriage Act 1955, though it has been provided. Bina Aggarwal “Far From Gender Inequality” 20(2) Lawyers Collective 17 (2005).

212 Kamala Sankaran “Family work and Matrimonial Property: Implication on Women and Children” in Archana Parashar &Amita Dhanda Redefining Family Law in India 258 (Routledge, 2008).
for. Thus significantly reducing her share and access to the property.\textsuperscript{213} Also in cases where the man is engaged in small scale businesses or is shopkeeper or farmer. The women as well children of the family work on that land or in shops and factories, but their labour is unpaid labour as they were working for the family. Here also the property is accumulated in the name of the male member.\textsuperscript{214} Kirti Singh in her book, \textit{Separated and Divorced Women} has highlighted the pitiful condition of women who owing to domestic violence were living separately from their husband and cases where women have been divorced. After interviewing women she concluded that in most of the cases the women during the subsistence of marriage as well as after separation earned much less than their husbands and there was severe drop in their status and lifestyle after separation or divorce. Most of them further narrated that majority of the household assets remained with their husbands including their jewellery and dowry items. The property as well as assets is also in major cases in husband’s name. All were living under extreme pressure and severe financial situations. Furthermore it was a gruesome and tiresome process to get and implement maintenance order for most of the women participants.\textsuperscript{215} Maintenance is a monthly sum which cannot be equated to right to property. This defects need to be addressed\textsuperscript{216}

\textit{Conclusion}

\begin{thebibliography}{9}
\bibitem{213} \textit{Ibid.}
\bibitem{214} \textit{Ibid.}
\bibitem{215} Kirti Singh \textit{Separated and Divorced Women in India: Economic Rights and Entitlement} (Sage Publication, 2013)
\bibitem{216} \textit{Ibid.}
\end{thebibliography}
Thus despite the revolutionary changes brought by the amendment Act the position of women in the last 13 after the coming of the act hasn’t change much.\textsuperscript{217} It is pertinent to understand that property right does not only improve the economic condition of the women but also the over-all condition of the family as well as the society.\textsuperscript{218} The more bargaining power with the access to property implies a significant decrease in the offence related to women as well as a significant increase in the education as well as standard of living of families. There is a clear rise in female education and increased age of marriage among children where the women of the household have access to property.\textsuperscript{219}

But to look at problem of economic right of women from only the point of inheritance law will be a myopic view. The discrimination with regard to property is not only because of the lack of legal provision, but it needs to be understood as a socio-legal problem. The limited access to the property is not only the result of the defective law but over-all attitude and perception of the society as well as of women herself. The result of inherent patriarchy is such that even women, who are aware about their rights, are not emotionally strong to demand their right from their natal families.\textsuperscript{220} They believe that for the betterment of the family as well as to remain a good daughter, the better course of action is to surrender their rights than fight for them. In my study itself where it is heartening to know that majority of women are aware about their rights yet are unwilling to ask for the same.\textsuperscript{221} They themselves agree that to

\textsuperscript{218} Ibid.
\textsuperscript{220} Chapter 1of the thesis and Aditi Anand “Prodigal Daughters? The politics of gender inequality and struggle for democratization of the family: Middle class women in India” Institute Of Social Studies, Netherland, (2014)
\textsuperscript{221} Supra note 217 an Women Right To Agriculture Land : Removing Legal Barriers For Gender Equality, Oxfam India Policy Brief (2016)
maintain harmony in the families it is better not to ask their legitimate right. They accept that the problem is neither law nor the implementation but the patriarchy and its after effect. 222 A women asking share in her family is deemed to be greedy troublemaker, who for her own selfish motives want to destroy the piece of the family. She firmly believes that it’s the customs and honour attached to her which does not let her exercise her rights. 223

222 Supra note 217
223 Supra note 217. Also see chapter 1 of the thesis in which majority of women feel its better to surrender their right than fight for it.