CHAPTER V
AN OVER VIEW OF THE HINDU SUCCESSION ACT, 1956
AND HINDU SUCCESSION (TAMIL NADU AMENDMENT)
ACT, 1989

The Law changes and flows like water,
And the stream of women’s rights
Law has become a sudden rushing torrent.

- Shana Alexander

A significant break was from the stagnation that had entered the Hindu society several 100 years previously. Customs and customary law were arising from the needs of a society that was fast becoming outdated and stood in dire need to change. In early times, as we have already stated the Hindu society was guided by the Smritis or rules of conduct, which interpreted by successive generations of commentators, as the needs of the times required.

Manu was followed by Yajnavalkya in the 4th century, Narada in the 5th century and Brihaspati in the 6th or 7th century. These changes have been greater and greater during the last 250 years under the British. Thus, law reforms were useful starting point because equality before the law was essential, especially economic equality, for developing full potential of women as participant in the total development.¹

When the British came there were no definite uniform laws, so when they set up law courts, they took the advice of pundits to determine local laws and customs. For about 100 years in different parts of Madras, Bombay and Bengal, a European judge would call two Hindu Pandits to advise him on any matter relating to the Hindus and two Kazis or Maulvis for matter relating to the Muslims. Their advice

¹ Cortes, Achieving for Women Full Equality Before the Law in Women and Law, p.3
varied and they relied on different ancient commentators and so the decision also varied in the different High courts. No uniformity in the Hindus law evolved out of these judicial decisions. We shall now make a brief evaluation of the Women’s Rights in the Hindu law.

**Evaluation of the Women’s Right in the Hindu Law**

The pioneer to this change can be attributed to the various State legislations. The foremost action in this regard was introduced in the year 1937 namely, the Hindu Women’s Right to Property Act, 1937, wherein the Act only provided the right to maintenance from and out of her husband’s property. The right is restrictive in nature and the same was provided only to the lifetime of the women, and then the property will revert back to the common pool of joint-family to the shares of other coparceners. Then, there was the culmination of various legislations and wide concept of law in the form of the Hindu Succession Act, 1956, wherein the right was conferred on the women from the right of the father and made the life-estate right of maintenance as that of absolute right of the women. The properties entrusted to the women in lieu of the maintenance were made as absolute property of the particular women. It is yet another step towards the achievement what is made now. Even then the women were kept away from coparcenaries concept and the right was allowed to flow only from the property of the father.²

The year 1947, brought an end to the British imperialism and gave India her long awaited independence. At the dawn of independence, rules of succession among the Hindus were unsatisfactory. The difference between the Mitakshara and Dayabhaga systems, the existence of sub-schools serving to emphasize local differences, prevalence of the matriarchal system, curbs on women’s freedom to

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² *Madras Law Journal*, dated, 4-5-2006, p.120
own property, perpetuation of the doctrine of women’s limited estate, denial of equal rights with males in regard to heirship, the chaotic and complicated rules governing stridhana succession, the continued existence of Mitakshara coparcener with its principles of right by birth of sons and devolution by survivorship which, however, well it might have served in other days when the country's economy was agricultural, had become unsuitable to a society switching over to industrial economy.  

The catalyst effect of the social goals envisaged in the Preamble of the Constitution, the guarantee of equality before law enshrined in the Article 14, and the abolition of discrimination on grounds of birth of sex assured in the Article 15 called for immediate overhaul of the rules of the Hindu Succession. The Hindu Succession Act, 1956 was parliament’s response to this.

Till now the Hindu women have neither been excluded from the right to inherit property, nor have they had absolute rights in property devolving on them. Women could only have a life-interest, which meant they have not been able to alienate, sell or mortgage it. For the first time a uniform law of succession applicable to all the Hindus grants the right of inheritance to the daughter. It is therefore, regarded as a significant step in achieving emancipation and equality for our women. It used to be the view, especially among western writers, that the women of India in ancient times were no better than chattels, that they were incapable of holding property in their own rights, except Stridhana and that their status and proprietary capacity were only slowly and gradually elevated in much later centuries.

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4. S. Venkataraman, Intestate and Testamentary Succession Among the Hindus, p.54
The strictly legal influences deducible from a consideration of the aphorism as a whole are thus set forth by Mitter: “Firstly, that women are persons in the eye of the law, and cannot be regarded as chattel; secondly, that there can be no purchase or sale of women, and the chariots and cows given to the bride at the time of marriage, being constant in number, do not make the transaction of sale; thirdly that women are capable owning or holding property, and in this respect no distinction is drawn between acquired and inherited property; fourthly, that the position of women cannot be linked to that of laws according to the Vedas, and if there was anything contrary to it in the Smritis, that must be disregarded; fifthly that the wife has co-ownership in the husband’s wealth and the husband has co-proprietary right in the wife’s wealth and that neither the wife nor the husband can part with property belonging to either without the other’s consent, and that a gift made by the husband without wife’s consent is invalid”.  

Males were a fighting asset; but women were abalas, weak beings, devoid of power, and utterly incapable of preserving the family property from the encroachments of powerful neighbours. In the undivided family of the early Aryans races, the whole property was vested in the males and managed by the head of the family. The women were mere dependents upon their husbands and fathers and no woman could possibly set up a claim to inherit so long as there were any males in the family. This period that we must refer the texts which represent women as absolutely without independent rights.

The principle of equality was incorporated in the objectives of the Resolution of Free India in 1947 and was later elaborated in the constitution of the Indian Republic. The improvement in the status of women was a pledge made by the

6. Mayne, Hindu Law, p.753
makers of the constitution and admitted by the Government from the beginning as one of the major tasks facing the country. Woman under the Constitution of India has been accorded equal rights with man. The ban of inferiority has been obliterated forever. Equality of sexes is enshrined in our Fundamental Rights.

The Government of India, under the leadership of Jawaharlal Nehru, had ambitious plans for the country, to make her strong and progressive. The government also realized the need to initiate a new scheme of legal reforms for the Indian Women to improve their position in society. At the same time the Government of Tamil Nadu enacted some important laws to raise the position of women, which gives property rights to them.

Schools of Succession

There are various schools / systems of succession prevailing in our country. The matriarchal system of law exists in Kerala, under several systems known as, Marumakkathayam, Aliyasanthana, Nambudiri etc., in which descent is traced through females. The daughter’s share should be equal with the sons except among the Nambudiris, where the married daughters do not inherit along with the sons and the widow. The Dayabhaga system of succession is followed in Bengal and parts of Assam. Here the sons share equally only after the death of the father, in other words, sons succeed by succession. In no case do women inherit.

The vast majority of people in India however, follow the Mitakshara law of succession. By this law, as soon as a son is born, he has a right by birth in the joint-family property. All male members of the family form what is known as the “coparceners”. No female members of the family can belong to the coparceners. The share to which a son is entitled is indefinite till such time as he may ask for
partition, when his share will be determined by dividing the coparcener’s property, equally among all the male members living at the date of the suit. Under such a system, there is no devolution of property but a system of survivorship unique in the world and special to India. But in Mitakshara law sons succeed not only by right of birth or survivorship; they also take by succession the self-acquired properties of the father and divide them equally on his dying intestate. The Hindu Women’s Right to Property Act of 1937 conferred the right to alienate property. This is what is known as limited estate. In no other case were Hindu women allowed to inherit property.

The Madras Hindu Women’s Right to Property (Extension to Agricultural Land) Act, 1947

The Hindu Women’s Right to Property Act, 1937 placed the widow in the same position as the son, and also gave the widow of a pre-deceased son and the widow of pre-deceased son of pre-deceased son, rights of inheritance together with the first three generations of male descendants.7

The Federal Court declared that agricultural land did not come within the purview of that Act.8 Hence, it became necessary for Tamil Nadu to enact separate legislation with regard to agricultural land; and the 1947 Act was enacted,9 and this Act enables a widow to inherit the agricultural land together with the male descendants.10

The constitution of independent India prohibits any discrimination against any citizen, on grounds only on religion, race, caste sex, and place of birth or any of them and not only that, and by one of the directive principles of the constitution the State is required to endeavour to secure for citizens a Uniform Civil Code through

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9. Madras Act No, XXVI of 1947
10. G.O.No.60, Legal Department dated 21-11-1946
out the territory of India. To remedy this inequality, four Acts were passed by the first Parliament. It must be remembered that the name ‘Hindu’ is used in an extended sense and included Buddhist, Jains and Sikhs in all these Acts.

In the post-independence period, many positive steps were taken to improve the socio-economic status of women. Women themselves became keenly aware of their rights and spearheaded movements across the country against social evils. This consciousness was largely due to the increase in women’s literacy although there is still a long way to travel. In the last 50 years, women in India became empowered to a large extent. It is said, rightly, that the hand that rocks the cradle rules the world, but, for long, women in India have been suppressed by law and custom.

To study the problems relating to the changes in the post-independence status of Indian women in general, and that of the Hindu women, in particular in the context of economic development, socio-political changes, legal status and its provisions, and population dynamics had resulted in questioning certain basic assumptions and methodological approaches.

Before independence, India had several systems in regard to succession among the Hindus, in most of which the position of women was one of dependent with barely any proprietary rights. Even where they enjoyed some rights, they had only a life-interest and not full ownership.11 Women were in the limited number of cases when they inherited property as widows. They got limited estate, and after their death the property passed to the persons who were known as, ‘reversioners’. The reversioners to challenge transaction entered into by such limited owners.

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Since early period women in the matriarchal family enjoyed property right. After independence various laws have been passed regarding land ceilings and ownership. These have resulted in a tendency to formal partitioning of land and often land being given to women so that the total amount of land possessed by an individual does not exceed the ceiling limit. Though some women have property, it is managed by the male members of the family. Property ownership for women has no meaning unless they have the right to enjoy the income from the property they own. Economic dependence is the root cause for women’s subordination.

The Hindu Succession Act of 1956 (HSA)

Before the passing of the Hindu Succession Act 1956 (hereafter referred as HSA) a Hindu governed by Mitakshara Law could not disperse of his undivided interest in the joint-family property either by way of gift or by will. However, after that Act, under section 30, the interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illam, kutumba or kavaru shall not withstanding 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. So the restriction contained in schedule III is superseded by the later Act. A Hindu female may dispose of by will any property which during her life is absolutely under her own control. But after the passing of the HSA, (30 of 1956), by section 14 of the Act, the limited estate of a Hindu female has been abolished and a Hindu female has as much testamentary capacity as a male.

Section 59 of the ISA, 1925 states, (i) A married woman may dispose, by will of any property, which she could alienate by her own act during her life (ii)

Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it (iii) A person who is ordinarily insane may make a will during an interval while he is of sound mind (iv) No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.\textsuperscript{13} It may be taken to be quite settled that there is no warrant for the proposition of law that the grant of an immovable property if made to a Hindu female, she does not get an absolute interest in such property unless power is expressly conferred upon her.

The position therefore is that to convey an absolute estate to a Hindu female, no express power of alienation need be given; it is enough if words are used of such amplitude as would convey full rights of ownership. Under the new Act, the daughter, the widow and the mother are all included in Class I and inherit the property of the deceased, simultaneously. As between them each takes an equal share, except that where there are more widows than one, all the widows together take one share. This is the position with respect to the self-acquired property of the deceased. With respect, however, to coparcener’s property, the son takes his own share in such property and in addition, takes a share as above in the father’s share of such property as well, unless he had separated himself from the coparceners during the lifetime of the father. This is considered inseparable from the Mitakshara system and will be relieved when the Dayabhaga system becomes the rule of the Hindus when the other parts of the Hindu law are taken up for reform.\textsuperscript{14} Nevertheless the acceptance of the right of the daughter to inherit is in itself a big step forward.

\textsuperscript{13} Indian Succession Act, 1925, Sect.59
\textsuperscript{14} Sirkar, Hindu Law, p.800
Another step forward is that women will now hold their property absolutely with full rights to sell, mortgage, give away and dispose of as they desire; schedules in the Act prescribe the list of preferential heirs. For example, the primary heirs are son, daughter, widow and mother, and they all get shares. The second class of heirs are father, son’s daughter’s son, son’s daughter’s daughter, brother, sister and son so on and can only succeed if none of the heirs of Class I are alive.

Some special provisions are made regarding the rights of daughters in the family dwelling-house or family business. In a dwelling-house wholly occupied by members of the family, a female heir, although she may be entitled to live there, cannot ask for her share until and unless the male heirs choose to divide it. Where a female heir inherits an interest in any immovable property or business, if any heir wishes to sell out his or her interest, the other heirs will have a right to purchase that interest in preference to outsiders.

**Inheritance**

The law of intestate, as distinguished from testate succession, contains rules which govern devolution of property of a deceased person upon other persons called heirs, on account of their relationship with the deceased person. The question of Hindu law of intestate succession had been before the country and the Legislature in one form or the other since 1939. The Rajya Sabha on March 22, 1955 began considering the Hindu Succession Bill, an important social legislation. The Bill, the third installment of the Hindu Code, sought to amend and codify the law relating to intestate succession. H.V.Pataskar, then Minister in the Ministry of Law, who moved the motion to refer the Bill to a Joint Select Committee, explained that, with the exception of a few orthodox sections, the measure had received generous support.

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15. *The Hindu*, 24-3-2005, p.9 ‘This Day That Age.’
from all quarters. He pointed out that the Bill did not affect the joint-family property, and succession to property which was regulated by the Indian Succession Act.

Naturally, therefore, the urge for passing a Uniform Hindu Code to guide marriage, succession, adoption and such like matters became irresistible. In free India, women are still backward educationally; superstition, ignorance and oppressive social customs retard their progress. They have not yet become economically self-reliant and it is clear that, without this, women can never become really free and equal partners with men. Nevertheless, as the struggle to achieve these rights continues, the need to establish the equality of women in family life, in marriage, succession etc., also continues even at present.

The people of Malabar who were governed by the Marumakkatayam Act were also excluded from the scope of the Bill. The two controversial aspects of the Bill, said Pataskar, related to the admission of a daughter for a share in property and to the quantum of property to be allotted to her. He maintained that those days had gone when women could be considered incompetent to deal with property. The only question was about the quantum. Those who spoke on the Bill not only supported it but went a step further demanding equal share for daughters along with sons. Others urged that even joint-family property should be brought under the purview of the Bill.

Later, the Bill was modified and instead of passing it in the form of one enactment, it was passed in four parts: (i) The Special Marriage Act, 1954 (ii) The Hindu Marriage Act, 1955 (iii) The Hindu Succession Act 1956 and (iv) The Hindu Minority and Guardianship Act 1956. These made extensive changes in the existing system of the Hindu law and brought it at par with the modern system of law in the
Justice has been done to the Hindu Women in the spheres of marriage, succession and adoption.

Women’s organizations all over the country carried on an unceasing agitation for securing support to the Hindu Code Bill. Another merit of the new legislation was that it cuts through the confusion of different schools of the Hindu Law and offers a simplified code which a layman can understand. With the passing of these laws, the Hindu social life was freed from the strong hand of the religious texts.

Under the Hindu Marriage Act, a Hindu male or female may adopt a male or a female child. The adopted child does not lose the right to property vested in him in the family of his birth nor does it divest any person in the family, in which he was adopted of any rights which were vested in the person before the date of adoption.

At the time of passing of the HSA 1956, the Hindu women occupied a very dependent position in the family and her rights to hold and dispose of property were punctuated with diverse restrictions. All this was unacceptable to the changed modern social conditions. This Act, which came into force on 17th June 1956, had provided uniformity in the rules applicable to the Hindus in respect of intestate succession and had introduced some fundamental and intestate succession and also some fundamental and radical changes improving the legal position of women. This Act applied to all the Hindus domiciled in the territory of India.

The expression, “Hindu” is used in a generic sense to include practically all those persons who are not Muslims, Parsees, Christians or Jews by religion. The persons belonging to the notified Scheduled tribes, even though professing Hindu

religion in different forms or developments are exempted from the provisions of this Act, and they are governed by their own customs. The Act also does not apply to the property of the Hindus who are married under the Special Marriage Act, 1954, and the property of their issues. The succession to the property of such persons is governed by Indian Succession Act, 1925.\textsuperscript{18}

The HSA of 1956, which has provided uniformity in the rules applicable to the Hindus in respect of intestate succession and has introduced some fundamentals and radical changes improving the legal position of women. Under the HSA, where a person dies without making any will of his property, his widow, mother, daughter and sons all classified together as class one heirs, take one share each. Thus, a married woman takes a share in her husbands’ property and a daughter in her father’s property. The Act, 1956 aimed at evolving a fairly uniform law for the entire country relating to intestate succession.\textsuperscript{19} The HSA 1956, applicable to the Hindus, listed the heirs based on the love and affection theory.

There is one important matter, which will have considerable influence on construing the nature of the interest given to a Hindu female. The recent Hindu Succession Act has been referred to as the Magnacarta for the Hindu women. Sect.14 of the said Act has abolished the limited estate of Hindu Law. Hereafter, a gift to a Hindu female will have to be considered in the same way as a gift to a Hindu male. As the Hindu Law stood prior to the 17\textsuperscript{th} June, 1956, no member of a Hindu joint-family could dispose of his share in the ancestral or family property by will. The HSA, 1956 was a landmark in the history of the Hindu Law for a number of reasons. It has made qualitative changes in the Hindu Law of succession.

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\textsuperscript{18} Section 5 of the Hindu Succession Act, 1956.
\textsuperscript{19} Madras Information, September 1956,p.30
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222
Scope of the Act

The Act has regulated the succession to all properties in respect of which a Hindu male or a female may have and the Hindu Succession Act of 1956 has brought a phenomenal change in the Hindu society in respect of the inheritance and the right to property of women. The Hindu woman who could possess only her stridhana was not elevated to a better economic position by acquiring a right to inherit property of her parents.

The Hindu Succession Bill as usual had to face serious criticism from the orthodox people. However, the Act was passed in June 1956. Section 14 of this Act converted the women’s estate into stridhana. As per this section, any property that a Hindu female gets after Sunday 17th June 1956 will be her absolute property. Unless specifically given to her with limitations, it also converts existing women’s estate into absolute estate on the conditions:

(i) the ownership of the property must rest with her and
(ii) she must be in possession of the estate when the Act came into force.

It was observed by the legal experts that (a) section 14 has qualified retrospective application and it converts only that woman’s estates into full estates over which she has possession when the Act came into force. (b) Section 14 does not apply to those women’s estates over which a Hindu female has no possession when the Act came into force; in such case the old Hindu Law continues to apply.

The object of section 14 is therefore, to remove the disability of the Hindu women and not to interfere with contracts etc... However, the HSA of 1956 proclaims that women can hold their property and have the right to sell, mortgage or give away their property, if they so wish. Some of the important provisions were

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20. Hindu Succession Act, 1956, Sec.14
decisive changes that were brought by the Hindu Succession Act of 1956,\textsuperscript{22} would become evident from the following statements:

1) The Act abolished the Dayabhaga and the Mitakshara School of the Hindu law relating to succession.
2) The Act has repealed provisions of different Acts relating to succession under matriarchal system (prevailing in the South).
3) The Act has abolished divergent kinds of stridhana and rules relating to its succession.
4) The Act has put an end to the Hindu women’s limited estate and made her absolute owner of the property, even with regard to existing properties.
5) The Act has abolished impartible estate, not created by Statute.
6) The Act has provided uniform order of succession governing the property of a male Hindu, with a few changes in respect of the Marumakkattayam and Aliyasantana law.
7) The Act has provided uniform order of succession governing the property of a female Hindu, with a few changes in respect of the Marumakkattyam and Aliyasantana law.
8) The order of succession provided by the Act is based according to the standard of love and affection, and the rule of preference based on the right to offer pinda (followed by the Dayabhaga) or propinquity of blood, (followed by the Mitakshara) has been discarded by the Act.
9) The Act provides simple rules of preference, and where no preference can be made, heirs take simultaneously.
10) The Act entitles, even remotest agnate or cognate to be the heir.
11) The Act makes no distinction between male and female heirs.

12) The Act has given right to certain female heirs to succeed to the interests of the deceased in the coparcenary property.

13) Disease, defect or deformity, is no ground of exclusion from inheritance under the Act.

14) The Act entitles a male to dispose of his interest in a Mitakshara coparcenary property by will. The HSA, 1956 guides succession in cases where a man dies without a will or as it is called intestate. If a man desires to make a will, he can dispose in any way he likes both his interest in Mitakshara coparcener’s property and his separate self-earned property. Thus by declaring that birth in the family does not give right to property, the Act shatters the foundations of the joint-family. It has placed woman on equal footing with man by making her an absolute owner of the property and not a limited power. The Act has eliminated the unreasonable distinction between various categories of daughters such as, married or unmarried, rich or poor, with or without children.

The HSA, 1956 was a landmark in the history of the Hindu Law for a number of reasons. It has made qualitative changes in the Hindu law of succession. The formulation, modification and the ultimate enactment were that of the HSA 1956, which was the result of Rao’s Committee Bill. A close study was that of the story of emergence of the Act, which was originally formulated as Rao’s Committee Bill, modified subsequently by the Select Committee in 1948. After prolonged debates in both the Rajya Sabha and the Lok Sabha, it was concluded. Finally the conflicts between the progressive and conservative forces in the Hindu Society came to an end.

The Act has abolished the distinction between the Mitakshara and the Dayabhaga schools regarding succession. A large number of female heirs have been introduced as simultaneous heirs along with male heirs. The old concept of widow’s estate was abolished and under the Act, a Hindu woman can hold her property as an absolute owner and not as a limited owner. Mitakshara coparcenary was not abolished but the various provisions of the Act, in fact, made it a part of history, except that the principle of interest by birth in ancestral property still survives.

The HSA of 1956 brought legal changes in the lot of women, and a little amount of economic freedom, and yet, women are still not members of the coparcenary under the Hindu Mitakshara law, and therefore, they are not entitled to claim partition in coparcenary property. The Act eliminates the foundation on which the Joint-Family system was standing for a long time. This system was based on declaration that birth in the family does not give right to property. It also makes woman an absolute owner of the property and not a limited owner, and by this measure, it has placed woman on equal footing with man in regard to the right of use of the property.\(^\text{25}\)

This law among other things, removed the limitations imposed by customs and tradition, on the capacity of women to hold, dispose of and transmit property. Women now can be full owners of property however, acquired. The daughter, the widow and the mother inherit property, along with the son in equal measure.\(^\text{26}\) In this context we would like to add that the incorporation of matrilineal castes from Kerala in the Hindu Succession Act 1956 went along with recognition of individual right to property among matrilineal castes.\(^\text{27}\)

\(^{26}\) B.K Vashista, \textit{Encyclopaedia of Women in India}, p.141
\(^{27}\) Sumi Krishna, \textit{Livelihood and Gender, Equity in Community Resource Management}, p.361
Before the adoption of the HSA in 1956, when a woman succeeded to the divided property of a deceased Hindu male, she took only a limited interest. A woman was denied legal capacity to be a coparcener in a Hindu Joint Family.\textsuperscript{28} The Act 1956, which applied to the Hindus, the Buddhists, the Jains and the Sikhs determined the rights, on the basis of consanguinity or affinity, without any discrimination on the ground of sex. It gave a woman full ownership in the property inherited or acquired by her. The widow, the mother, and the daughter not only inherited the property along with the son but also took an equal share with him.

Under the Travancore Christian Succession Regulation, 1916 the share of the widow in the estate of the husband was a life-interest, terminable on her death or remarriage, except where she got the whole estate in the absence of certain specified relatives of her deceased husband. Under the Cochin Christian Succession Act, 1921 the widow got share equal to two-thirds of the share of a son if the deceased was survived by a son or lineal descendants.\textsuperscript{29}

A close study of the emergence of the HSA 1956, which was originally formulated as Rau’s Committee Bill, modified subsequently by the select committee in 1948, and finally crystallized into the present form after lengthy, fiery and prolonged debates in the Rajya Sabha and the Lok Sabha, threw an interesting light on the deep seated conflicts between the progressive and the conservative forces in the Hindu society.\textsuperscript{30}

The salient features of the much trumpeted HSA, 1956 was (i) the widow’s absolute right of ownership which served to erase the harm caused to widows through the Widow Remarriage Act. (ii) the equal rights conferred on the daughters

\textsuperscript{28} S.K Pandit, \textit{Women in Society}, p.295
\textsuperscript{29} Ibid., p.296
\textsuperscript{30} Neera Desai, \textit{Women in Modern India}, p.125
in the self-acquired property of the father. But the equal inheritance proclaimed by the Act was only national. The land holdings and the agricultural property remained outside the purview of the ‘egalitarian and reformed’ Act. Further, even this limited property could be willed away or ‘thrown into the joint stock to convert into a coparcenaries, out of the reach of the female heirs.\(^{31}\)

But still discrimination exists about the right to property, which is not self-acquired. The daughters, through the 1956 Act, though get a share in the joint-family property by inheritance, theoretically it is equal to that of a son. In fact, it is a much smaller share because the son gets an additional share in the joint-family property in his own right as a member of the coparcenary.\(^{32}\) Moreover, the daughter having no right by birth cannot claim any property during the lifetime of the father. Section 30 of the Act entitles the Mitakshara coparcener to dispose of his entire interest by means of a will. There was, thus, the danger of the daughter being disinherited completely.\(^{33}\)

The HSA distinguished between a son and a daughter in its provision on dwelling houses. If a person died leaving a dwelling house, the daughter could not get share in the dwelling house until the male heirs decided to partition the property. Until partition, the daughters had only the right to residence, and this right was also restricted to daughters who were unmarried, or deserted or widowed. This distinction drawn between the family members was inexplicable and illogical.\(^{34}\)

Further more, property acquired during the marriage was mostly in the name of her husband, as he usually paid for it. Since, title followed payment, the inequity

\(^{32}\) Ram Avtar Sharma, *Justice and Social Order in India*, p.309
\(^{33}\) The Hindu Succession (Andhra Pradesh Amendment) Bill 1983, seeks to give the daughters equal rights to property
\(^{34}\) Sivaramayya, *Women’s Right of Inheritance*, p.44
was visited on women whose labour was completely discounted. Financial as well as social insecurity often prompted a woman to continue an unhappy marriage.

The Christians in India and those married under special Marriage Act, 1954 are governed by the ISA which deals with both intestate and testamentary succession. A Christian woman has absolute control over her property, and therefore, the husband on marriage neither does not acquire any right in respect of her property nor does the woman acquires any right to the property of her husband during her or his life-time. A Christian widow is entitled to one-third of the property of the deceased husband where the intestate has left lineal descendants. She gets the whole of property if there is no lineal descendant, only if the net value of the estate does not exceed Rs. 5000. But the Act confers no restriction on the power of a person to will away his property.

Under the Mohammedan Law, a woman can hold her own property in full ownership and can dispose of it by will. Marriage does entail any disability. She has the same right to inherit property. But if there are male heirs and female heirs of the same degree like a son and a daughter, the female member’s share is half that of the male. Moreover, under Hanafi Law, the widow, though has a sharer in every case is not entitled to take as a residuary. The share of widow is one-eighth. In case the deceased dies without leaving a child, the share of the widow is one-fourth but, in either case she is not entitled to hold.

The Law of Succession in India falls within the realm of Personal Law. Due to this, we have so many different succession laws, each purporting to reflect the diverse and differing aspirations, customs, and more of the community. As far as

35. The Indian Succession Act, Sec. 38(a)
36. Fyzee, Outlines of Mohammedan Law, p.408
the Muslims are concerned, the law of succession falls into two broad streams: the Shia law of succession and Sunni law of succession. Both these laws of succession form part of the common law of India and are recognized as having the force of law by virtue of the Shariat Laws Act.

In early fifties, after the constitution was promulgated, there was a strong urge in some quarters to remove the rock-bed of discrimination against women in the Hindu Law and put them on a footing of equality in all respects. However, it is fair to say that forces of conservatism and reaction, both among the Hindu men and the Hindu women were dominant and strident. The result was the attempt to have a unified Hindu Code had to be abandoned; as a legislative stratagem, separate enactments on topics of marriage and divorce, succession, adoption and maintenance, and guardianship were adopted. On major issues involving equality of women in the Hindu law, compromises had to be made with forces of reaction. The compromise is most noticeable in the provisions of the HSA, 1956. Two aspects that are to be noted in this context are (a) the exemption granted in favour of special rules providing for devolution of tenures, and (b) the retention of Mitakshara coparcenary.38 The Act regulates succession to all properties in respect of which a Hindu male or a Hindu female may have died intestate.

**Primary heirs or Class I heirs**

The heirs to succeed to a male Hindu are specified in two classes in the schedule to the Act. The primary heirs who are eligible to take up the property of a deceased Hindu male on his death are four in number: the son, the daughter, the widow and the mother, and they all share equally.39

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If, however, a son had pre-deceased his father, his widow and his sons and daughters would take the share, which would have gone to the deceased equally between themselves. Similarly, if a daughter had pre-deceased the father, her son and daughter would take the share of the deceased equally between themselves.

If, again both a son and his son had pre-deceased the intestate, the widow of the pre-deceased son of the pre-deceased son, the son of the pre-deceased son of the pre-deceased son, and the daughter of the pre-deceased son of the pre-deceased son will take the share that would have fallen to that branch equally.

All the heirs mentioned in the three preceding paragraphs are put in class I as the first preferential heirs and their total number is 12, but grandsons, granddaughters and great-grandsons come in under the doctrine of representation only in the absence of their parents and it is, therefore, unlikely that in any case all the 12 heirs will succeed simultaneously. The HSA of 1956 made drastic changes in the succession of coparcenary property, giving the share to all female relatives mentioned in Class I of schedule to the Act, in case of a Hindu male dying intestate having interest in Mitakshara coparcenary property.\(^{40}\)

**Class Two Heirs**

Failing heirs in Class I, heirs in class II will succeed in the order mentioned therein, and they are

(i) father

(ii) (a) Son’s daughter’s son (b) Son’s daughter’s daughter (c) brother, (d) sister

(iii) (a) Daughter’s son’s son (b) daughter’s son’s daughter (c) daughter’s daughter’s son (d) daughter’s daughter’s daughter

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\(^{40}\) *All India Reporter*, 1985, Vol.72, p.81
(iv) (a) Brother’s son (b) sister’s son (c) brother’s daughter (d) sister’s daughter

(v) Father’s father, father’s mother

(vi) Father’s widow, brother’s widow

(vii) Father’s brother, father’s sister

(viii) Mother’s father, mother’s mother

(ix) Mother’s brother, mother’s sister.

In this list, references to a brother or sister do not include references to a brother or sister by uterine blood. Among the heirs specified in Class II, those mentioned in the first entry will be preferred to those mentioned in the second entry, and those in the second entry to those in the third entry, and so on in succession. The heirs in the same entry will share equally.

So far as properties held by the Hindu females are concerned, the first significant change that this law has made is that, subject to certain exceptions, where a limited estate has been created by a written instrument, whatever property is in the possession of a woman, whether it has been acquired before or after the commencement of this new law, shall be regarded as her absolute property. This limited estate known as the Hindu Woman’s Estate will no longer be law.

Having given the Hindu woman an absolute estate in property, the Act provides for a slightly modified list of heirs to property in respect of which she may have died intestate. The orders of heirs of a Hindu female are, sons and daughters, and the husband, who all share equally. If any son or daughter had pre-deceased his or her parent, the share of the pre-deceased parent would be divided equally between the grand children:

41. Monica Chawla, _Gender Justice, Women and Law in India_, p.480
42. _Ibid._
(i) the heirs of the husband
(ii) mother and father
(iii) heirs of the father and
(iv) heirs of the mother. 43

As in the other case, heirs in one entry exclude those in the next succeeding entries, and heirs in the same entry share equally.

For the purpose of determining who, the heirs of the husband are, the same rules will have to be applied as would have applied if the property had been the husband’s or the father’s or the mother’s, and he or she had died intestate in respect thereof immediately after the death of the Hindu female concerned.

**Succession to property inherited by female from males in territories other than the Bombay state**

The only females who can inherit the property of a male are (i) the widow (ii) the daughter (iii) mother (iv) father’s mother and (v) father’s father’s mother. One of the very important changes made in this Bill, as has already been pointed out, is the right given to a female heir to succeed to the interest of a Mitakshara coparcener. While the coparcenary is allowed to continue so far as its undivided male members are concerned, this Act provides that on the death of a male member of the coparcenary, his interest will evolve on all the heirs, whether male or female, who would have entitled to succeed to his share in the property if it had been partitioned off immediately before his death.

At the same time, certain special provisions are made whereby unnecessary division of the family property is avoided. For example, a female, although she may be entitled to live in a family dwelling house wholly occupied by members of the

family, cannot ask for partition unless the male heirs themselves choose to take away their respective shares. Similarly, whenever an interest in any immovable property of an intestate or in any business carried on by his or her devolves upon two or more heirs mentioned in Class I, and any one of such heirs wants to transfer his or her interest in the property or business, the other heirs have a right to purchase that interest in preference to outsiders so that the property or business may be kept intact.\textsuperscript{44}

\textbf{Minor Modifications}

The Act also applies generally to persons governed by the \textit{Marumakkattayam}, \textit{Aliyasanta\textsuperscript{n}a} and \textit{Nambudiri} laws of inheritance, but a few minor modifications to suit the circumstances obtaining in that part of India where these persons are concerned were to be made, then distinction between agnates and cognates has no meaning, and therefore, with respect to the property of a Hindu male governed by any of these systems of law, the property will devolve firstly upon the heirs in Class I, and in the absence of heirs in Class I, upon the heirs in Class II, and in the absence of heirs in Class II also, upon the relatives nearest to the deceased, whether agnates or cognates.

With respect to the property of a Hindu female governed by any of these systems of law, the heirs are firstly, sons, daughters and the mother, and if son or daughter had pre-deceased, his or her parent, then the grand children secondly, father and the husband thirdly, heirs of the mother fourthly, heirs of the father and lastly, heirs of the husband.

If any property had been inherited by any Hindu female governed by any of these rights of law from her husband or from her father-in-law, it would devolve, in

\textsuperscript{44} Ibid.,
the absence of sons or daughters including grand children of pre-deceased sons or daughters, upon the heirs of the husband. And further, so far as these persons are concerned, the special provision restricting the right to claim partition in respect of a dwelling house does not apply.\textsuperscript{45}

Two of the most important rights gained by a woman as a result of a Hindu law reform were

(a) to hold property as absolute owners and

(b) to recognize daughters as Class I heirs to their father’s property at par with Sons

This was a marked improvement on the earlier position that women were holding in relation to ownership of property and share in father’s property. But since these changes were designed to be brought about in such a manner that did not disturb the stability and power relations within the family in a major way, both the above mentioned rights were limited by many other provisions of the HSA of 1956.\textsuperscript{46} The Act, gives a male and a female heir equal right of inheritance of acquired property. A Hindu male can “will” only acquired property, illegitimate Hindu children cannot claim property.\textsuperscript{47}

The main scheme of the HSA, 1956 was to establish complete equality between male and female with regard to property right, and the rights of the female were declared absolute, completely abolishing all notions of the limited estate. In many respects this Act, and the Hindu Adoptions and Maintenance Acts, 1956 were inter-related and complementary, in particular.\textsuperscript{48} These two Acts had introduced far-

\textsuperscript{45} Ibid.,
\textsuperscript{46} Sadhna Arya, Women, Gender Equality and the State, p.186
\textsuperscript{47} Gita Ramaswamy, Women Development and Child Welfare, p.14
reaching vital changes, sweeping away and cutting at the root of the old traditional and conservative notions and concepts of customary Hindu Law.

This Act not ultra vires regarding agricultural land applies even to agricultural lands. Succession to agricultural lands was covered by item no. 5 List III of the Schedule of the constitution of India.\textsuperscript{49} The Hindu Succession Act regulates succession to the property of all Hindus and as such, has been validly enacted by Parliament. The pith and substance of the Hindu Succession Act is to make a law relating to succession, and not to deal with agricultural lands as such. The provisions of sect. 14 of the Act are matters which come within the constitution, and their applicability to agricultural lands cannot be excluded.

The Hindu law of intestate succession has been codified in the form of Hindu Succession Act, 1956 which bases its rule of succession on the basis of Mitakshara principle of propinquity that is, preference of heirs on the basis of proximity of relationship.\textsuperscript{50}

Now after 1956, no distinction could be made between the \textit{stridhana} and women’s estate, as the erstwhile, women’s estate is converted into “\textit{stridhana}” by Sec. 14 of the Act. Sec. 15 deals with succession to a Hindu female property of a female Hindu. For the purpose of succession, a female Hindu property is divided into three categories namely, property inherited by a female from her father, husband or mother or father-in-law, and property which herself acquired in any other manner from any source as her absolute property.\textsuperscript{51}

\textsuperscript{49} Ibid.,

\textsuperscript{50} G. Vijayeswar Rao, \textit{Women and Society}, p. 179

\textsuperscript{51} Ibid., p. 180
**Widow’s Estate**

The widow takes only a limited interest called the Widow’s Estate, in the estate of her husband. On her death, the estate goes not to her heirs, but to the next heirs of her husband, technically called reversioners. She is entitled only to the income of the property inherited by her. She has no power to dispose of the corpus of the property except in certain cases. She may, however, alienate her life interest in the estate. The Sec. 14 of the Hindu Succession Act, 1956, subject to certain qualifications, confers full heritable capacity on a female heir in respect of all property acquired by her whether before or after the commencement of that enactment.

This Act might be a consolation to womenfolk, and instead of a fully curtailed property right the Act granted somewhat satisfying property right. The Hindu Succession Act, 1956 further amended in various States, provides equal right to women on par with men in respect of ancestral property. In Supreme Court of India, regarding the Hindu Succession Act, Vaddeboyina Tulasamma & others Vs Vaddeboyina Sesh Reddi, which was the first case in 1977, in which the woman won the case and she got the ancestral property.

**HINDU SUCCESSION ACT, 1956 - AMENDMENT IN VARIOUS STATES**

*Legislation of today is to meet The social needs of yesterday*

- Oliver Wendell Holmes

The Hindu women have four kinds of property and succession (i) Self acquired; (ii) Property acquired from her parents; (iii) Property inherited from her husband or father-in-law; (iv) Interest in coparcenary property.⁵²

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⁵². K Shanthi, *Empowerment of Women*, p.49
The exclusion of the daughter from participation in coparcenary ownership, merely by reason of her sex is contrary of the Constitution of India, which has proclaimed equality before law as a fundamental right. Such exclusion of the daughter has led to the creation of the socially pernicious dowry system with its attendant social (evil) ills. Thus, a baneful system of dowry has to be eradicated by positive measures which will simultaneously ameliorate the condition of women in the Hindu society. Hence, many states in India initiate the amendment in the HSA of 1956.

Two decades later, Kerala was the first state which corrected the unequal status of daughter under the Hindu Succession Act, 1956 by enacting the Kerala Joint Family System (Abolition) Act 1975.\textsuperscript{53} Kerala Government, as early as 1975, had abolished the joint-family itself, and thus, brought about gender equality in property rights. Though this Act still discriminates against a married daughter, and is silent about the dwelling house, it definitely is an enlightening piece of legislation.

The Andhra Pradesh Legislature introduced an amendment to the HSA. The Hindu Succession (Andhra Pradesh Amendment) Act, 1986 introduced a new chapter II-A, entitled “Succession by Survivorship” consisting of three sections, viz., 29A, 29B and 29C. The Section 29A provides for equal right to daughter in coparcenary property, and lays down that notwithstanding anything contained in section 6 of the HSA 1956, a daughter is a coparcener in her own right in the same manner, as the son, and have the same right in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship.

It also provides that she will be subject to same liabilities and disabilities as a son with respect to the coparcenary properties. Sub-section IV of the Act excludes a daughter married prior to the passing of the Act, and a partition effected prior to it, from the scope of the Amendment. The positive features of the Andhra Pradesh

legislation are: (a) it puts an unmarried daughter on par with a son, (b) the daughter’s rights under the Act cannot be defeated by executing a will.\(^{54}\)

Hindu Succession (Andhra Pradesh Amendment) Act, 1986 gives the daughter a share in the coparcenary (inherited) property. In the Hindu joint-family, four generations before (earlier), among many, only one male member was called, coparcener. No woman could be coparcener earlier. (Coparceners are entitled to joint possession and enjoyment of property. Property is not inheritable except to coparceners. Partition, however, can be demanded) The Andhra Pradesh amendment removes this ban on women being coparceners.

The Andhra Pradesh Amendment Act, 1986, provides for equal right to a daughter in coparcenary property and lays down that “not withstanding anything contained in section (6) of the HSA 1956, a daughter of a coparcenary under Mitakshara law shall by birth became a coparcener in her own right in the same manner, as the son, and has the same right in the coparcenary property as she would have and if she had been a son, inclusive of her right to claim by survivorship”.\(^{55}\) It also provided that she will be subject to the same liabilities and disabilities as a son with respect to the coparcenary properties. Sub-section (iv) of the Act excludes a daughter married prior to the passing of the Act and partition effected prior to it from the scope of the Amendment. It is here we reminded the fact that the Rau committee as early as 1956 had recommended the conversion of Mitakshara coparcenary into a Dayabhaga or to make daughters also coparceners.

At the time of Pataskar while moving the Hindu Succession Bill had stated that to retain the Mitakshara joint family and at the same time to put the daughters on the same footing as a son with respect to the right by birth, right of survivorship and the right to claim portion at any time, will be to provide for a joint family

\(^{54}\) *Ibid.*, p.98
\(^{55}\) Hindu Succession (Andhra Pradesh Amendment) Act, 1986
unknown to law and unworkable in practice. The Andhra Pradesh Government had made this unworkable practice workable. Tamilnadu Government had also brought in an amendment on the same lines.

**Hindu Succession (Tamil Nadu Amendment) Act, 1989**

Though the Constitution of India has guaranteed equality between the sexes, and even advocated special treatment for women in some areas, the women have not yet attained economic equality. In 1989, when the D.M.K. party assumed the office, it had brought a revolutionary amendment to the Hindu Succession Act of 1956. This Hindu Succession (Tamil Nadu Amendment) Act of 1989 was brought to fulfill not only the promise given in its election manifesto but also, to fulfill the resolution passed in the Self-Respect Movement Conference sixty years ago.

The Tamil Nadu Legislative Assembly had introduced the Bill in the Assembly on the 13th April 1989. Constitution of India has proclaimed equality before law as a Fundamental Right, and whereas the exclusion of the daughter from participation in the coparcenary ownership merely by reason of her sex is contrary. And such exclusion of the daughter has led to the creation of the socially pernicious dowry system with its attendant social evils.56

It would have retrospective effect from 25th March 1989 the date on which the then Chief Minister Dr.M.Karunanidhi, announced the proposal for the legislation to provide equal rights for women in ancestral property. The then Law Minister S.J.Sadiq Pasha said that any partition or sale of property subsequent to that date in contravention of the provisions contained in the amendment would be null and void.57

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56. Legislative Assembly Bill No.9 of 1989, dated 13.4.1989, p.25
57. Ibid.,
The Tamil Nadu Legislative Assembly on 6th May 1989 adopted an amendment to the HSA 1956 in its application to the state, to confer equal inheritance right for Hindu women in relation to coparcenary property in Joint Hindu families, governed by the Mitakshara Law. The total Member of Legislative Assembly (MLA’s) was 235; there were 10 women and 225 men. Among them many members were present and voted on the day of passing of the Bill.

The members who were participated in the discussion and given their suggestions have shown in below table.

### Table – 5.1

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the MLA</th>
<th>Party</th>
<th>Name of the constituency</th>
<th>Opinion about property right to women</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Alagarsamy S.</td>
<td>CPI</td>
<td>Kovilpatti</td>
<td>For</td>
</tr>
<tr>
<td>2.</td>
<td>Balasubramaniam S.R.</td>
<td>INC</td>
<td>Pongalur</td>
<td>For</td>
</tr>
<tr>
<td>3.</td>
<td>Kanchana K.</td>
<td>DMK</td>
<td>Krishnagiri</td>
<td>For</td>
</tr>
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<td>4.</td>
<td>Marappan P.</td>
<td>ADMK</td>
<td>Kangayem</td>
<td>No Suggestion</td>
</tr>
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<td>5.</td>
<td>Pandian P.H.</td>
<td>ADMK</td>
<td>Seranmadevi</td>
<td>Against</td>
</tr>
<tr>
<td>6.</td>
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<td>CPI</td>
<td>Tiruvarambur</td>
<td>For</td>
</tr>
<tr>
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<td>INC</td>
<td>Nilakkottai</td>
<td>For</td>
</tr>
<tr>
<td>8.</td>
<td>Sargunam S.P.</td>
<td>DMK</td>
<td>Dr.Radakrishnan</td>
<td>For</td>
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<tr>
<td>9.</td>
<td>Shanthakumari T.</td>
<td>DMK</td>
<td>Darapuram</td>
<td>For</td>
</tr>
<tr>
<td>10.</td>
<td>Singaram R.</td>
<td>INC</td>
<td>Peravurani</td>
<td>Against</td>
</tr>
<tr>
<td>11.</td>
<td>Seenivasan P.</td>
<td>DMK</td>
<td>Sivakasi</td>
<td>Against</td>
</tr>
<tr>
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<td>DMK</td>
<td>Tirunelveli</td>
<td>Neutral</td>
</tr>
<tr>
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<td>INC</td>
<td>Vilvankode</td>
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<td>Maduranthamagam</td>
<td>Against</td>
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<td>15.</td>
<td>Varadarajan U.R.</td>
<td>CPM</td>
<td>Villivakkam</td>
<td>Against</td>
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</table>

Source: Tamil Nadu Legislative Assembly Debates, 6-5-1989, Vol.15-No.3

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58. Tamil Arasu, June 1989, p. 32
Statement of Objects and Reasons

The Hindu Succession Act, 1956 (Central Act 30 of 1956) seeks to amend and codify the Hindu Law relating to intestate succession. At present, daughters are not members of the coparcenary under the Hindu Mitakshara Law, and therefore, they are not entitled to claim partition in coparcenary property, and such exclusion of daughters has led to the creation of socially pernicious dowry system with its attendant social evils.

The system of dowry prevalent in India is not of recent origin. The system is a social custom which consists of giving gifts in cash or kind or gifts in the shape of property, movable or immovable, as a part of marriage solemnization, from one party to another. In order to eradicate these evils by positive means which will simultaneously ameliorate the conditions of women in Hindu society, it is proposed to confer the same rights on a Hindu daughter as a son has in a Hindu joint-family, so as to achieve the Constitutional mandate of equality by suitably amending the said Act. The amendments proposed are made inapplicable to daughters married before the date of commencement of the proposed amendment Act. The provisions of clause (ii) of the proposed section 29-A will not apply to a partition which had been affected before the date of the commencement of the proposed amendment Act.

This was enacted by the Legislative Assembly of the State of Tamil Nadu in the Fortieth Year of the Republic of India. This Act was called as the Hindu Succession (Tamil Nadu Amendment) Act, 1989. It should come into force on the date on which the Hindu Succession (Tamil Nadu Amendment) Bill, 1989 was first published in the Tamil Nadu Government Gazette.\(^59\)

In the Hindu Succession Act, 1956, Chapter II Section 30 of the Act, the insertion of new Chapter II –A given equal right to daughter in coparcenary, in the Section 29 A, 29B and 29C, firstly

\(^{59\text{.}}\) Tamil Nadu Government Gazette, dated 13.4.1989, p.26
(i) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son. But the law have loophole that the daughter can be considered as coparcener only if her father was a coparcener at the time of coming into force of amended provision.60

(ii) at a partition in such a Joint-Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son, provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause 29-A (i) 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 will or other testamentary disposition.61

(iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

(v) nothing in clause 29-A (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu amendment) Act, 1989.

60. Review Petition No.37 of 2008, High Court of Madras.
Secondly, 29-B, When a female Hindu dies after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, having at the time of her death, an interest in a Mitakshara coparcenary property by virtue of the provisions of Section 29-A, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act, provided that if the deceased had left any child of a pre-deceased child, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. For the purposes of this section, the interest of a female Hindu Mitakshara coparcener shall be deemed to share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not. Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

Thirdly, 29-C  (1) Where, after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under Section-A or Section-B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

62. Part IV-Section 1, Tamil Nadu Bills, p.26
63. Tamil Nadu Legislative Assembly Debates, 6-5-1989, Vol.No. 15
(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of, or incidental to, the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.64

Thus, the Hindu Succession (Tamil Nadu Amendment) Act of 1989 allows the daughter of a family to get equal share from the parent’s property similar to the sons and also this Legislation to provide equal rights for women in ancestral property.

Everybody welcomed this move and no one was against it. The Chief Minister said that the idea of equal right for women and men was mooted in the form of a resolution at the first Provincial Conference on self-respect in Chingleput in 1929. After a lapse of six decades, the D.M.K. Government had drawn up legislation for the above purpose.

The Law Minister moved the Bill for consideration and said that at present, daughters were not members of the coparcenary, and under the Hindu Mitakshara Law were not entitled to claim partition in coparcenary property. This had led to the creation of a socially pernicious dowry system with its attendant social evils. To eradicate these evils by positive means, which would simultaneously ameliorate the conditions of women in the Hindu society, it was necessary to confer the same rights on a daughter as a son had in a Hindu joint-family.

The provision, however, would not apply to a partition which had been affected before the date of the commencement of the amending Act. The Bill was

64. Ibid., p.27
welcomed by all in the Assembly, and everybody felt that it would enhance the status of women.65 But the real problem is as to how to translate these legal rights of women into practice. Our society is still constituted of a vast majority of illiterate, ignorant and traditional minded women. They are not aware of their rights owing to their social, economic and political backwardness.

**State Panel to Help Update Laws**

The government planned to set up a Law Commission for the purpose of updating state legislations, then the Law Minister, S.J.Sadiq Pasha told the Assembly on April 13, 1989, replying to a discussion on the demands for grants for justice, that some of the state laws had become obsolete ones.66 It would also examine the Central Laws, as applicable to Tamil Nadu and recommended changes and improvements.

A Bill to amend the HSA in its application to Tamil Nadu so as to confer on daughters the same property rights as enjoyed by sons in a Hindu joint-family was introduced in the Assembly by then the Law Minister.67

According to the statement of objects and reasons attached to the Bill, at present, daughters are not members of the coparceners under the Hindu Mitakshara Law and so are not entitled to claim partition in coparcenary property. The amendments proposed are made not applicable to daughters married before the date of commencement of amending the Act. The new provision will also not apply to partitions affected already. It cannot be denied that the most significant factor that determines marriage alliances nowadays is the money and property given as dowry to the bridegroom by the bride’s family.68

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65. Tamil Arasu, November, 1989 p.5
67. The Hindu, dated 17-4-1989
68. Ibid., dated 18-4-1989
Inheritance Law Reform in Maharashtra

The government of Maharashtra State in India has passed a law in 1994, designed to promote gender equity in property inheritance and discourage the practice of offering dowry. The law provides for the right of a daughter to inherit parents’ wealth on an equal basis with sons. Until this law was implemented in Maharashtra, daughters did not have the legal right to claim an equal share of an inheritance because of a loophole in national law. In most cases they had to be content with a dowry.

Dowry is officially supposed to represent a daughter's share of her family's wealth, in the form of a pre-mortem inheritance from her parents at the time of her marriage. Dowry is also given by the parents of a daughter to compensate the groom's family for supporting her after her marriage, since she is often prohibited by social customs from earning a cash income that would contribute economically to the family into which she is married. Women may also become an economic burden in the event of widowhood, which is likely since brides are typically much younger than grooms.69

However, dowry has deteriorated into a method of extortion of wealth from the bride to the groom's parents, leaving many parents of daughters in debt and encouraging the practice of female feticide - an increasing social evil in the state of Maharashtra, as elsewhere in India. This practice occurs as a result of great social pressure on parents to arrange socially acceptable marriages for their daughters without having the economic means to do so.

69. Annabelle Perkins, *Gender Inheritance Law Reform in Maharashtra*, p.53
Simply passing a law equalizing sons' and daughters' claims to land and other immovable property will not solve the problem of offering dowry. In many regions of rural India, there is a strict social taboo on a daughter inheriting land, since if she does so the land is lost by her father's lineage and passes instead to her children, who belong to the lineage of her husband. Furthermore, women in many rural areas are economically reliant on male kin. If the woman is widowed without adult sons or brothers-in-law, and her dowry was small, or was seized by her husband's family, she may be unable to earn a self-supporting income and be forced to sell her land inheritance-share to a complete stranger.\(^{70}\)

Therefore, if a woman attempts to exercise her legal claim to her share of her parents' immovable property, she is likely to lose the affection of her brothers, together with their sense of obligation to support her in a family emergency or in the event that she is widowed without sons or responsible brothers-in-law.\(^{71}\) In this cultural context, it is very clear that the philosopher, Prabhat Ranjan Sarkar sets out the Ideal Law of Inheritance as follows:

"The son and the daughter shall inherit in equal shares the properties (movable or immovable) of their parents. The daughter shall enjoy the immovable property while she lives, but shall not transfer it to others. The property shall revert to her father's family after her death". This system, if implemented, would contribute to overcoming the practice of offering dowry; while at the same time appease those women who claim that if the practice of offering dowry (which is already illegal) were suppressed, they would get nothing at all from their parents, either before or after their death.

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\(^{70}\) Dispatch Archives, *Inheritance Reform in Maharashtra*, 1994

\(^{71}\) Minturn Sita, *Daughters Coming out of Purdah: Rajput Women of Khalapur*, p.8
The landholding by women also deserves an observation in this context. Modern agriculture, essential to India’s food supply, requires relatively large land plots. Despite the destruction of most of the wide irrigation dikes, many Khalapur landholdings are already too small to utilise modern farming equipment. Landholdings in poorer states are even smaller. Land inheritance by daughters and by daughters’ daughters would quickly divide landholdings among people living in diverse locations. Furthermore, it is the labour of sons that harvests the land and earns the money for investments such as, tube wells and tractors. Sons may put in many years of labour between the time that their sisters marry and their parents die.

Equal inheritance by daughters means that they benefit from this labour without having contributed to it. Daughters must hire people to work in parental land, becoming absentee landowners, or sell their shares. Unless they sell to their brothers, the patrilineage is deprived of ancestral property. The opposition to female land claims is understandable, and allows for equity while at the same time does not conflict with the psychology and customs of the people.

Minturn also points out that, "dowry is a consequence of cloistering or other customs that keep women from productive work. Wives who contribute to their husband’s incomes do not need dowries, since their labour over their lifespan is more valuable than dowry goods. But when wives cannot work, or when the value of their domestic work is not recognised, dowry provides a way of shifting part of the expense for their support to their parental families". 72 Therefore, it appears that the best solution at this time would be actively to uphold in the Maharashtran courts the right of women to the use of property according to Sarkar’s ideal inheritance system, while at the same time vigorously encouraging the economic self-reliance of women.

72. Frederiksberg, People’s News Agency, p.17
Effective policies towards this end must include the promotion of literacy and primary education at the most basic level for women: the right of equal access to education is neglected and remains unrealized for the majority of Maharashtra's women, let alone the equal right to inherit property. Women also need access to employment. Promoting policies to support women’s co-operatives in food processing industries would be an equitable way to provide them with paid jobs, while at the same time reducing the backbreaking workload they typically face at home in food preparation and processing. The realisation of economic self-reliance for women is a key step in the process of the social and economic development that Maharashtra will have to undergo before its equal inheritance laws can become anything more than a hollow lip service to the rights of women.

Right of Coparcenary consists of male members who acquires an interest by birth in the coparcenary property and who has got the right to demand a partition in the coparcenary right from the holder of the property. It commences with a common ancestor and includes all defendants in the female lives who are not removed from by more than 3 degrees. Thus, a grandson or great-grandson is a coparcener. The great-grandson cannot be a coparcener with him because he is removed by more than 3 degree from the holder. The coparcenary property includes ancestral property, acquisitions made by the coparcener with the help of ancestral property, joint acquisitions of the coparceners even without such help, provided there was no proof of intention on their party that the property should not be treated as joint-family property and separate property of the coparceners thrown into the common stock. It is clear from the above that females have not been included in the lists of coparceners even though under the Hindu Succession Act there are 8 female heirs mentioned in Class I of the schedule. But the experience shows that females are not given their right in the property of claimants as such as in the property of their
husband. It is, therefore, proposed that females should be made a member of the coparacenary property so that at the time of partition, they will get share in the property. Legal aid must be provided and legal education must also be greeted as the economic right makes the women independent and self-confident.

Devolution of Property of Female

Before the passing of the Hindu Succession Act, separate rules existed for the devolution of a woman’s property. Distinction existed between female property which consisted of property of her by way of gift from her relatives at any time before kindling of the nuptial fire and at the bridal procession technically called, stridhan and the property acquired by her after the marriage by inheritance or by partition in the family. In the limited number of cases, where they inherited the latter type of property as widows, they got an estate limited for their lives. Therefore, before the passing of the Act, a female Hindu possessed two kinds of property

(i) Stridhan
(ii) Hindu women estate.

Over stridhan, she had full ownership and on her death it devolved on her heirs. Then as regards property, in which she acquired Hindu Women Estate, the position was that of the owner but her power of alienation was limited and on her death, the property devolved in the next heir of the last full owner and not on her heirs. Now, under Section 14 of the Hindu Succession Act, Hindu women’s limited estate has been abolished, and the Section confers on the women absolute ownership over all her property. The effect of Section 14 of the Act is to confer absolute ownership on a female Hindu which was in her possession on the date of the commencement of the Act.\(^{73}\)

\(^{73}\) The Hindu Succession Act, 1956, Sect. 14
In the case *Fatimunisa Begum vs. Tamirasa*, the Andhra Pradesh High Court said that a Hindu widow inheriting her husband’s share under the Hindu Women’s Right to Property Act, 1937 did not by itself disrupt the joint-family status. After such inheritance, she continued to be a member of the joint-family and the Karta of the joint family can represent her in all suits. The estate taken by a Hindu female under Section 14 of the said Act is an absolute one and is not defensible under any circumstances. In *Sukh Ram vs. Gauri Shankar*, the Lordship of the Supreme Court held that a widow acquiring an interest in that property by virtue of the Hindu Succession Act was not subject to any restriction. The Section 14 is applicable only when the property acquired before the passing of the Act is in the possession of the female at the time of the commencement of the Act. She acquired some kinds of limited ownership in that property and consequently by virtue of Section 14(1), she became the full owner of that property in spite of the restrictive clause in the instrument, conferring limited right on the widow. A widow who had inherited property under the Hindu Women’s Right to Property Act, 1937 acquired absolute ownership.

**Recent Development in the Central Level**

In the year 2005, 26<sup>th</sup> February after several organizations and individuals from across the country had sought the intervention of the Prime Minister, Manmohan Singh, for a comprehensive amendment of the Hindu Succession Act of 1956 to bring about full gender equality. A delegation that met Dr.Singh and expressed the dissatisfaction about the Hindu Succession (Amendment) Bill, 2004 introduced in the Rajya Sabha on 20<sup>th</sup> December 2004.  

The memorandum, drafted by Bina Agarwal of the Institute of Economic Growth, Delhi University, in coordination with the Human Rights Law Network

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74. *The Hindu*, dated 27.2.2005, p.11
(HRLN), and the Housing and Land Rights Network (HLRN), argued that the amendments proposed would leave several critical sources of gender inequality and anomalies intact, particularly, inequality in rights to agricultural land, unequal interests in the Mitakshara coparcenary property for several categories of women, and implicit inequality arising from a person’s unrestricted rights to will away his or her property – a provision that is often used to disinherit female heirs, given the male bias in Indian society.

Colin Gonsalves and Shruti Pandey of the HRLN, pointed out that removing these inequalities would be in keeping with the constitutional guarantee against discrimination on the basis of sex and would substantially facilitate the empowerment of women. The memorandum recommends bringing all agricultural land at par with other property and abolishing the Mitakshara coparcenary property system altogether.

**Coparcenary - Meaning:** It means the joint share in inheritance/ joint heirship/co-partnership/ joint ownership/ community of interest/ unity of possession etc. It is nothing but stating about who shares equally with others in inheritance of the estate of the common ancestor. The coparcenaries consist of only those persons who have taken by birth an interest in the property of the holder, and who can enforce a partition whenever they like. It is a narrower concept than the concept of the Joint Family System. It commences with a common ancestor and includes a holder of joint property and only this male in his male line who is not removed from more than three degrees. (father, grandfather, great grandfather, then son, grandson, great-grandson). The reason why coparceners is limited is to be found in the tenet of the Hindu religion that only male descendant upto three degrees can offer spiritual ministration to an ancestor. Only males can be coparceners as per ancient practice. Every coparcener gets an interest by birth in the coparcenaries property.
This right by birth relates back to the date of conception. This however, must not be held to negate the position that coparcenaries property may itself have come into existence after birth of the coparcener concerned.

**The Coparcenary Right**

The Parent Act and the Amendment Act have been much thought about issues regarding Coparcenaries’ right and the changes in this regard, and to understand the said right is essential to go into what is coparcenaries right. Then only one can be able to follow the changes in the correct sense. The Head of the family is called “The Kartha” in the Joint Hindu Undivided Family setup. The members of the said family who live under the umbrella of the Kartha are called the Coparceners. Prior to the amendment only the male members of such Hindu joint-family were considered to be coparceners. On the death of the Kartha the eldest male member would take over as the Head of the family, otherwise he was not disqualified. Now due to the amendment brought in, the female members of the said family who come under the same tree and under the common ancestral orientation are also made to be the coparcener of said the Hindu joint-family.

**Characteristics of the Coparcenaries**

The Hindu coparcenaries have six essential characteristics viz.

1. that the lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors;

2. that the members of the coparcenaries have the right to work out their right by demanding partition;

3. that until partition, each member has no ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparceners to predicate the share, which he might receive;
4. that as a result of such co-ownership the possession and enjoyment of the property is common;

5. that there can be no alienation of the property without the connivance of the other coparceners;

6. that the interest of a deceased member lapses on his death merges into the coparcenaries property;

Through all the progressive period of human history, the condition of women had been approaching nearer to equality with men. The relation between civilization and the proprietary capacity of women was only a form of the of every one of those conquests, the sum of which we call civilization.

The position which a woman occupies in the Hindu Law is not only an index of the Hindu civilization, but it is also a correct criterion of the culture of the Hindu race. When the woman stands by the side of her husband possessing full rights, with a free and independent will, restrained only so far as not to amount to undue liberty, not merely the mother of her children but the mistress of the household, not a simple chattel but a companion and friend, only then it can be said that the people amongst whom the relation of the sexes is so developed, is a truly cultured race.

It is impossible, for a virile race to spring up and assert it against other nations so long as women are kept weak and ignorant, nor it can be denied that it would make a tremendous difference to our country if all our women enjoyed equal privileges along with men in regards to inheritance and succession, education and social status, and in the multifarious opportunities of life.