Whether Amendments Made To The Hindu Succession Act Are Achieving Gender Quality?

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The United Nation's Report in 1980 presented that:
"Women constitute half the world's population, perform nearly two-thirds of its hours, receive one-tenth of the world's income and less than one ?hundredth of the property."

Since time immemorial the framing of all laws have been exclusively for the benefit of man, and woman has been treated as subservient, and dependent on male support. The right to property is important for the freedom and development of a human being. Prior to the Hindu Succession Act, 1956 shastric and customary laws that varied from region to region governed Hindus and sometimes it varied in the same region on a caste basis resulting in diversity in the law. Consequently in matters of succession also, there were different schools, like Dayabhaga in Bengal and the adjoining areas; Mayukha in Bombay, Konkan and Gujarat and Marumakkattayam or Nambudri in Kerala and Mitakshara in other parts of India with slight variations The multiplicity of succession laws in India, diverse in their nature, owing to their varied origin made the property laws even mere complex. Earlier, woman in a joint Hindu family, consisting both of man and woman, had a right to sustenance, but the control and ownership of property did not vest in her. In a patrilineal system, like the Mitakshara school of Hindu law, a woman, was not given a birth right in the family property like a son.

Discrimination against women is so pervasive that it sometimes surfaces on a bare perusal of the law made by the legislature itself. This is particularly so in relation to laws governing the inheritance/succession of property amongst the members of a Joint Hindu family. It seems that this discrimination is so deep and systematic that it has placed women at the receiving end. Recognizing this the Law Commission [1] in pursuance of its terms of reference, which, inter alia, oblige and empower it to make recommendations for the removal of anomalies, ambiguities and inequalities in the law, they decided to undertake a study of certain provisions regarding the property rights of Hindu women under the Hindu Succession Act, 1956.

Background

A woman in a joint Hindu family, consisting both of man and woman, had a right to sustenance, but the control and ownership of property did not vest in her. In a patrilineal system, like the Mitakshara school of Hindu law, a woman, was not given a birth right in the family property like a son. Under the Mitakshara law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson and a greatgrandson constitute a class of coparcenars, based on birth in the family. No female is a member of the coparcenary in Mitakshara law. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of a male in the family, the share of every other surviving male either gets diminished or enlarged. If a coparcenary consists of a father and his two sons, each would own one third of the property. If another son is born in the family, automatically the share of each male is reduced to one fourth.

The Mitakshara law also recognises inheritance by succession but only to the property separately owned by an individual, male or female. Females are included as heirs to this kind of property by Mitakshara law. Before the Hindu Law of Inheritance (Amendment) Act 1929, the Bengal, Benares and Mithila subschools of Mitakshara recognised only five female relations as being entitled to inherit namely - widow, daughter, mother, paternal grandmother, and paternal great-grandmother [2]. The Madras sub-school recognised the heritable capacity of a larger number of females heirs that is of the son's daughter, daughter's daughter and the sister, as heirs who are expressly named as heirs in Hindu Law of Inheritance (Amendment) Act, 1929 [3]. The son's daughter and the daughter's daughter ranked as bandhus in Bombay and Madras. The Bombay school which is most liberal to women, recognised a number of other female heirs, including a half sister, father's sister and women married into the family such as stepmother, son's widow, brother's widow and also many other females classified as bandhus.

The Dayabhaga school neither accords a right by birth nor by survivorship though a joint family and joint property is recognized. It lays down only one mode of succession and the same rules of inheritance apply whether the family is

divided or undivided and whether the property is ancestral or selfacquired. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father's life time. However, on his death, they inherit as tenants-in-common. It is a notable feature of the Dayabhaga School that the daughters also get equal shares along with their brothers. Since this ownership arises only on the extinction of the father's ownership none of them can compel the father to partition the property in his lifetime and the latter is free to give or sell the property without their consent. Therefore, under the Dayabhaga law, succession rather than survivorship is the rule. If one of the male heirs dies, his heirs, including females such as his wife and daughter would become members of the joint property, not in their own right, but representing him. Since females could be coparceners, they could also act as kartas, and manage the property on behalf of the other members in the Dayabhaga School. However, during the British regime, the country became politically and socially integrated, but the British Government did not venture to interfere with the personal laws of Hindus or of other communities. During this period, however, social reform movements raised the issue of amelioration of the woman's position in society.

The earliest legislation bringing females into the scheme of inheritance is the Hindu Law of Inheritance Act, 1929. This Act, conferred inheritance rights on three female heirs, i.e., son's daughter, daughter's daughter and sister (thereby creating a limited restriction on the rule of survivorship). Another landmark legislation conferring ownership rights on woman was the Hindu Women's Right to Property Act (XVIII of) 1937.

This Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. [4] The Act of 1937 enabled the widow to succeed along with the son and to take a share equal to that of the son. But, the widow did not become a coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition [5]. A daughter had virtually no inheritance rights. Despite these enactments having brought important changes in the law of succession by conferring new rights of succession on certain females, these were still found to be incoherent and defective in many respects and gave rise to a number of anomalies and left untouched the basic features of discrimination against women. These enactments now stand repealed.

The framers of the Indian Constitution took note of the adverse and discrimnatory position of women in society and took special care to ensure that the State took positive steps to give her equal status. Articles 14, 15(2) and (3) and 16 of the Constitution of India, thus not only inhibit discrimination against women but in appropriate circumstances provide a free hand to the State to provide protective discrimination in favour of women. These provisions are part of the Fundamental Rights guaranteed by the Constitution. Part IV of the Constitution contains the Directive Principles which are no less fundamental in the governance of the State and inter alia also provide that the State shall endeavor to ensure equality between man and woman. Notwithstanding these constitutional mandates/directives given more than fifty years ago, a woman is still neglected in her own natal family as well as in the family she marries into because of blatant disregard and unjustified violation of these provisions by some of the personal laws. Pandit Jawaharlal Nehru, the then Prime Minister of India expressed his unequivocal commitment to carry out reforms to remove the disparities and disabilities suffered by Hindu women. As a consequence, despite the resistance of the orthodox section of the Hindus, the Hindu Succession Act, 1956 was enacted and came into force on 17th June, 1956. It applies to all the Hindus including Buddhists, Jains and Sikhs. It lays down a uniform and comprehensiye system of inheritance and applies to those governed both by the Mitakshara and the Dayabahaga Schools and also to those in South India governed by the the Murumakkattayam, Aliyasantana, Nambudri and other systems of Hindu Law.

The Hindu Succession Act, 1956 : - Gender Position Before 2005 Amendment

The very preamble of the Act signifies that an Act to amend and codify t law relating to intestate succession among Hindus. The Act aims to lay down an uniform law of succession whereas attempt has been made to ensure equality inheritance rights between sons and daughters. It applies to all Hindus including Budhists, Jains and Sikhs. It lays down an uniform and comprehensive system of inheritance and .applies to those governed by the Mitakshara and Dayabha schools as well as other [6] schools. The Hindu Succession Act reformed the Hindu personal law and gave women greater property rights, allowing her f ownership rights instead of limited rights in property.

The daughters were also granted property rights in their father's estate. In the matter of succession of property of a Hindu male dying intestate, the Act lays, down a set of general rules in sections 8 to 13. Sections 15 and 16 of the

act contain separate general rules affecting succession to the property of a fem intestate. Under section 8 of the Act three Classes [7] of heirs recognized by Mitakshara Law and three Classes[8] of heirs recognised by Dayabhaga Law cease exist in case of devolution taking place after coming into force of the Act. The heirs are divided into instead, four Classes viz:
(i) Heirs in Class I of the Schedule
(ii) Heirs in Class II of the Schedule
(iii) Agnates, and
(iv) Cognates.

Of course mother, widow, son and daughter are primary heirs. In the absence of Class I heirs, the property devolves on Class II heirs and in their absence first on agnates and then on cognates. Still some sections of the Act came under criticism evoking controversy as being favourable to continue inequality on the basis of gender. One such provision has been the retention of mitakshara coparcenary with only males as coparceners [9].

As per the Law Commission Report, coparcenary constitutes a narrower body of persons within a joint family and consists of father, son, son's son and son's son's son. Thus ancestral property continues to be governed by a wholly patrilineal regime, wherein property descends only through the male line as only the male members of a Joint Hindu Family have an interest by birth in the coparcenary property, in contradiction with the absolute or separate property of an individual coparcener, devolve upon surviving coparceners in the family, according to the rule of devolution by survivorship. Since a woman could not be a coparcener, she was not entitled to a share in the ancestral property by birth.Section 6 of the Act, although it does not interfere with the special rights of I those who are members of a mitaksltara coparcenary, recognises, without abolishing joint family property, the right upon death of a coparcener, of certain members of his preferential heirs to claim an interest in the property that would have been allotted to such coparcener if a parititon [10] of the joint family property had in fact taken place immediately before his death.

Thus section 6 of the Act, while recognising the rule of devolution by survivorship among the members of the coparcenary, makes an exception to the rule in the proviso. According to the proviso, if the deceased has left a surviving female relative specified in Class I of the Schedule I or a male relative specified in that Class who claims through such female relation, the interest of a deceased in mitakshara coparcenary property shall devolve by testamentary of intestate succession under the Act and not as survivorship [11]. Thus non-conclusion of women as coparceners in the joint family property under the mitakshara system as reflected in section 6 of the Act relating to devolution of interest in coparcenary property, has been under criticism for being violative of the equal rights of women guaranteed under the Constitution in relation to property rights. This means that females cannot inherit ancestral property as males do. If a joint family gets divided, each male coparcener takes his share and females get nothing. Only when one of the coparceners dies, a female gets share of his interest as an heir to the deceased. Further as per the proviso to section 6 of the Act, the interest of the deceased male in the mitakshara coparcenary devolve by intestate succession firstly upon the heirs specified in Class I of Schedule I. Under this Schedule there are only four primary heirs, namely son, daughter, widow and mother. For the remaining eight, the principle of representation goes up to two degrees in the male line of descent. But in the female line of descent, it goes only upto one degree. Thus the son's son's son and the son's son's daughter get a share but a daughter's daughter's son and daughter's daughter's daughter do not get anything.

Again as per section 23 of the Act married daughter is denied the right to residence in the parental home unless widowed, deserted or separated from her husband and female heir has been disentitled to ask for partition in respect of dwelling house wholly occupied by members of joint family until the male heirs choose to divide their respective shares therein. These provisions have been identified as major sources of disabilities thrust by law on woman. Another controversy is the establishment of the right to will the property. A man has full testamentary power over his property including his interest in the coparcenary.

On the whole the Hindu Succession Act [12] gave a weapon to a man to deprive a woman of the rights she earlier had under certain schools of Hindu Law. The legal right of Hindus to bequeath property by way of will was conferred by the Indian Succession Act, 1925.

The Hindu Succession (Amendment) Act, 2005 - A Prologue:
This amending Act of 2005 is an attempt to remove the discrimination as contained in the amended section 6 of the

Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu mitakshara coparcenary property as to sons have. Simultaneously section 23 of the Act as disentitles the female heir to ask for partition in respect of dwelling house wholly occupied by a Joint Family until male heirs choose to divide their respective shares therein, was omitted by this Amending Act. As a result the disabilities of female heirs were removed. ?This is a great step of the government so far the Hindu Code is concerned.

This is the product of 174th Report of the Law Commission of India on "Property Rights of Women: Proposed Reform under the Hindu Law". First, the 2005 act, by deleting a major gender discriminatory clause - Section 4 (2) of the 1956 HSA - has made women's inheritance rights in agricultural land equal to men's. Section 4(2) excluded from the purview of the HSA significant interests in agricultural land, the inheritance of which was subject to the succession rules specified in state-level tenurial laws. Especially in the north-western states, these laws were highly gender unequal and gave primacy to male lineal descendants in the male line of descent. Women came very low in the succession order and got only a limited estate. The new legislation brings male and female rights in agricultural land on par for all states, overriding any inconsistent state laws. This can potentially benefit millions of women dependent on agriculture for survival. Second, the 2005 act makes all daughters, including married ones, coparceners in joint family property. The 1956 HSA distinguished between separate property and joint family property.

The separate property of a (non-matrilineal) Hindu male dying intestate (without leaving a will) went equally to his class I heirs, viz, son, daughter, widow and mother (and specified heirs of predeceased children). On joint family property, those previously governed by `Mitakshara' (prevailing in most of India) differed from those governed by `Dayabhaga' (prevailing in Bengal and Assam). For the latter, joint family property devolved like separate property. But in Mitakshara joint family property, while the deceased man's "notional" share went intestate to all class I heirs (including females) in equal parts; sons, as coparceners, additionally had a direct birthright to an independent share. Sons could also demand partition of the joint family property; daughters could not. The 2005 act does not touch separate property. But it makes daughters coparceners in the Mitakshara joint family property, with the same birthrights as sons to shares and to seek partition. In addition, the act makes the heirs of predeceased sons and daughters more equal. Third, the 2005 act by deleting Section 23 of the 1956 HSA gives all daughters (including those married) the same rights as sons to reside in or seek partition of the parental dwelling house. Section 23 disallowed married daughters (unless separated, deserted or widowed) even residence rights in the parental home, and unmarried daughters had rights of residence but not partition. Fourth, the legislation removes a discriminatory section which barred certain widows from inheriting the deceased's property, if they had remarried.

According to the amending Act of 2005, in a Joint Hindu Family governed by the mitakshara Law, the daughter of a coparcener shall, also by birth become a coparcener in her own right in the same manner as the son heir. She shall have the same rights in the coparcenary property as she would have had if she had been a son. She shall be subject to the same liabilities and disabilities in respect of the said coparcenary property as that of a son and any reference to a Hindu mitakshara coparencer shall be deemed to include a reference to a daughter. But this provision shall not apply to a daughter married before the commencement of the Hindu Succession (Amendment) Act of 2005.

This provision shall not affect or invalidate any disposition or alienation including partition or testamentary disposition of property which had taken place before 20th December, 2004.Further any property to which female Hindu becomes entitled by virtue of above provision shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition. The provision was also made that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act of 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place.

Further the daughter is allotted the same share as is allotted to a son. The provision was also made that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter.

Further the share of the pre-deceased child of a predeceased 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. The most important fact is that the interest of a Hindu mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property bad taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. This amending Act of 2005 has also clear provision that, after commencement of the Amending Act 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 (on the ground of the pious obligation under the Hindu Law), of such son, grandson or great grandson to discharge any such debt. But if any debt contracted before the commencement this Amending Act of 2005 the right of any creditor, to proceed against son, grandson or great grandson, shall not affect or any alienation relating to any such debt or right 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 Hindu Succession Amending Act of 2005 had not been enacted.

Further for the purpose of creditors right stated above the expression son, grandson or great grandson shall be deemed to refer to the son, grandson or great grandson who was born or adopted prior to the commencement (9th September, 2005) of the Amending Act of 2005. Such provisions shall not apply to a partition which has been done before 20th December, 2004. Sections 23 and 24 omitted. Likewise special provisions relating to rights in respect of dwelling house and the disentitlement rights of widow's remarrying, respectively omitted from the Act. The Amending Act also in the Schedule of the Hindu Succession Act, 1956 added new heirs viz, son of a pre-deceased daughter of a pre-deceased daughter of a pre-deceased daughter daughter of a pre-deceased daughter, son of a pre-deceased daughter, daughter of a pre-deceased son.

Thus the amendment of Hindu Succession Act of 1956 in 2005 is a total commitment for the women empowerment and protection of women's right to property. This Amending Act in a partrilineal system, like mitakshara School of Hindu Law opened the door for the women, to have the birth right in the family property like the son. The women were vested the right of control and ownership of property beyond their right to sustenance.

Amendments To The Hindu Succession Act And Gender Equality

The recent legislative proposals amending the Hindu Succession Act are important steps towards gender equality and abolition of the patrilineal system of inheritance prevailing among Hindus. These proposals are based on the 174th Report of the Law Commission published in 2000 and seek to give Hindu women equal rights in the Mitakshara Joint Family Property. The proposed Bill also seeks to do away with Section 23 of the Hindu Succession Act which denies a woman the right to seek partition of an inherited ?dwelling? unit / house if other male heirs are residing in it and further restricts her right to reside in the inherited residence unless she is a widow or has been separated from or deserted by her husband.

However, the proposed changes are not comprehensive enough and women will still be subjected to unequal property rights in agricultural land as Section 4(2) of the Hindu Succession Act allows for special State laws to address the issue of fragmentation of agricultural holdings, fixation of ceiling and devolution of tenancy rights in these holdings. Thus, State laws exist in Delhi, U.P, Madhya Pradesh, Punjab & Haryana, which deny women equal rights of succession in tenancy rights. Further, certain other Sections of the Hindu Succession Act discriminate against women through the discriminatory order of succession for male & female heirs. The proposed Amendments to the Mitakshara Joint Family Property laws making women equal coparceners are sought to be made applicable only to women who are not married at the time the law is passed and is thus patently unjust also.

When the Hindu Succession Act was passed in 1956, the Mitakshara coparcenery system was retained and the then Government refused to abolish this system of Joint family in spite of contrary recommendations by the Select Committee and protest by AIWC. Under the Mitakshra System of Joint Family, which prevails in all parts of India apart from Bengal only males are members (coparceners) of the Joint Family and the right to inheritance was by way of survivorship and not by way of succession . The son acquired a right and interest in Joint Family Property on birth while a woman family member only had a right to maintenance.

However the Hindu Succession Act gave a share to the first class female heirs (daughters and wives) in the share of the father / husband in the joint family property who died intestate (without making a will). However this share was not equal to the share, which a son inherited, since the son was deemed to be coparcener (member of the joint family) by birth. For e.g. in a joint family consisting of a father, a son and a daughter, both the father and the son,

according to the Mitakshara coparcenary system , would be equal owners of the property. Thus when the father died, after the 1956 Act, his share would devolve equally on both the son and daughter. However the daughter in this particular case would only get 1/4th share of the property whereas the brother who was already a co owner would have his half share plus 1/4th share of the property. The Amendment cleared by the Union Cabinet proposes to make the daughter also a coparcener in the Joint Family Property. It is pertinent to point out that some states like Karnataka, Andhra Pradesh, Maharashtra and Tamilnadu have already passed laws making the daughter a member (coparcener) of the joint family while other states like Kerala have completely abolished the joint family system.

This could be done as laws of succession fall in Entry 5 of the concurrent list of the VIII th Schedule to the Constitution. It is relevant to note that the Hindu Code Bill, as originally framed by the B.N.Rao committee and piloted by Dr B.R.Ambedkar, had recommended abolishing the Mitakshara coparcenery with its concept of survivorship and the son?s right by birth in a joint family system and substitute it with a principle of inheritance by succession. In fact, AIDWA had also during the Dowry Prohibition Act amendments in early 1980s, asked for abolition of the Joint family System. In this sense the Amendment doesn't go far away. The other Amendment, which was cleared by the Cabinet, was to abolish Section- 23 of the Hindu Succession Act 1956. This provision denies a married daughter the right to residence in an inherited parental home unless she is widowed, deserted or separated from her husband. The section further denies the daughter, who has inherited a house along with a male member of a family from asking for her share of the property if any member of the family resides in the inherited house, until the male heirs also agreed. However, no such restriction has been placed by the Section 23 on a male heir.

Apart from this the proposed amendment seeks to make the new law applicable only to those women who are not married at the date of the amendment. This provision is based on the Maharashtra Law and is said to be made on the presumption that women, who are married have already received their share of property etc. as dowry / gift during their marriage. This is patently unfair not only because many women may not have received dowry but also because the amount of dowry received can hardly be equated to equal rights in property. In reality this is a devise to restrict the number of women, who inherit and to maintain status quo as far as possible.

Apart from the obvious discrimination in Section 6 and Section 23 discussed above, certain other sections of Hindu Succession Act also blatantly discriminate against women and require amendment. The most important section, which has been used to deny property rights to women in agricultural land, is Section 4 (2) of the Hindu Succession Act, which allows for State legislation to prevail over the Hindu Succession Act. This Section states that the Act shall not apply to laws ?providing for the prevention of fragmentation of agricultural holdings or for fixation of ceilings or for the devolution of tenancy rights in respect of such holdings?. Judgments under this Section have upheld laws under Section 4 (2) of the Hindu Succession Act and have mostly denied women equal rights in agricultural land. While some courts have held that the Hindu Succession Act will apply to agricultural holding, this can only be in the absence of State laws for the purposes mentioned in Section 4 (2) or if the States laws under Section 4(2) themselves apply the Hindu Succession Act or personal laws to ?devolution of tenancy rights?. Courts have upheld the State Land Reform Acts, relating to devolution of tenancy rights even though these do not allow women to inherit these tenancies. Some courts have further interpreted the term ?devolution? of tenancy rights broadly / comprehensively to include devolution of tenure holder's right and have thus also denied women ownership rights over agricultural land.

Thus even laws meant for land reform and to enforce ceiling have resulted in denying to women equal rights over land and a chance to improve her disempowered status. Section 30 of the Hindu Succession Act allows any Hindu to dispose off his property including his share in the Joint Family Property by will. As has been pointed by women's organizations/ groups and activists this Section can and has been used to disinherit women. It has been recommended by many that a limitation should be placed on the right to will. Such a provision exists in Muslim law where a Muslim can only Will away up to a maximum of -1/3rd of his property.

Section 15 of the Hindu Succession Act which specifies how the property of a female Hindu will devolve also contains certain discriminatory provisions. It states that in the absence of class I heirs(son, daughters & husband) the property of a female Hindu will go to her husband's heirs and only if these heirs are not then will the property devolve upon her mother and father. However, in the absence of the mother and father, the property will again

devolve upon the heirs of the father and only if there are no heirs of father will the property devolve upon the heirs of the mother.

The proviso to Section-6 of Hindu Succession Act contains another instance of gender bias. The proviso states that the property of the deceased in the Mitakshara Coparcenary shall devolve by intestate succession if the deceased had a female heir or a male heir who claims through such female relative. In order to appreciate the gender bias it is necessary to see the rules of devolution of interest under section 8 of the Hindu Succession Act. In this section there are only four primary heirs in the Schedule to class I, namely, mother, widow, son and daughter. If, however, for example the son or daughter has already died, their children can inherit the property. The principle of representation goes up to two degree in the male line of descent; but in the female line of descent it goes only upto one degree. Accordingly, the deceased son's son's son and son's son's daughter get a share but a deceased daughter's daughter's son and daughter's daughter's daughter do not get anything. A further infirmity is that a widow of a pre-deceased son and grandson are class-I heirs, but the husbands of a deceased daughter or grand-daughter are not heirs.

Critical Appraisal Of Amendments To The Hindu Succession Act

The recent amendment to the Hindu Succession Act has made the daughter a member of the coparcenary. It also gives daughters an equal share in agricultural property. These are significant advancements towards gender equality. The Hindu Succession (Amendment) Bill 2004, passed unanimously by the Lok Sabha, comes after a long gap: the Hindu Succession Act was passed in 1956. The present debate about removing discrimination against women to a large extent remains confined to the experts. The law, obtuse at the best of times, takes on an even more tedious character when it comes to inheritance laws.

For almost half a century since the passing of the Hindu Succession Act, 1956, there has been the widespread belief that under Hindu personal law daughters are equal to sons. This belief was based on Section 10 of the Act dealing with the distribution of property of a Hindu who has died without making a will, referred to as ?intestate? in law. The provision unequivocally declares that property is to be distributed equally among Class I heirs, as specified in the schedule. The schedule clearly lays down daughters, mothers and widows as Class I heirs entitled to a share equal to that of sons. This, though seemingly a huge step in favour of gender justice, was in fact more a sleight of hand.

The mischief lay in customary Hindu law and the concept of mitakshara coparcenary property. A Hindu joint family consists of a common ancestor and all his lineal male descendants, together with wives or widows and unmarried daughters. The existence of a common ancestor, necessary to bring a joint Hindu family into existence, continues even after the death of the ancestor. Upper links are removed and lower ones are added; the joint family can continue indefinitely. Except in the case of adoption, no outsiders are permitted and membership to the joint family is by birth or marriage to a male member. A Hindu joint family is a unit and is represented by the karta or head.

The Hindu Succession Act retained the coparcenary. In fact, Section 6 specifically declares that, on death, the interest of a male Hindu in mitakshara coparcenary property shall devolve by survivorship to other members of the coparcenary and not by succession under the Act. However, it laid down that the separate share of the deceased, computed through the device of a deemed partition just before his death, would devolve according to the Succession Act.

The Act did not clearly spell out the implications of exclusion from membership to the coparcenary in respect of inheritance of property. Thus, if a widowed Hindu male died leaving a son and a daughter, then, according to the explanation in Section 6 of the Act, there will be deemed to be a partition just before the death of the person. In this deemed or ?notional? partition, the father and son share equally and each gets half the property. The father's half will be shared equally by his son and daughter as Class I heirs. In effect, therefore, the daughter gets one-fourth of the property, while the son gets his own half from the deemed partition as a coparcener and an additional half from the share of his father. Together that would be three-fourths of the property. It is this inequity between son and daughter that has now been removed by the amendment.

The preferential right by birth of sons in joint family property, with the offering of shradha for the spiritual benefit and solace of ancestors, have for centuries been considered sacred and inviolate. It has also played a major role in

the blatant preference for sons in Indian society. This amendment, in one fell swoop, has made the daughter a member of the coparcenary and is a significant advancement towards gender equality.

After the amendment, daughters will now get a share equal to that of sons at the time of the notional partition, just before the death of the father, and an equal share of the father's separate share. However, the position of the mother vis-a-vis the coparcenary stays the same. She, not being a member of the coparcenary, will not get a share at the time of the notional partition. The mother will be entitled to an equal share with other Class I heirs only from the separate share of the father computed at the time of the notional partition. In effect, the actual share of the mother will go down, as the separate share of the father will be less as the property will now be equally divided between father, sons and daughters in the notional partition.

The original bill, introduced in 2004, exempted agricultural land from the purview of the amendment. A considerable section of society is totally against equal shares to daughters with respect to agricultural land. The inclusion of agricultural land in the amendment, giving equal shares to daughters and overriding state-level discriminatory tenurial laws, is a great credit to parliament. Effective lobbying by women's groups must also be given due credit.

The equal sharing of the father's property applies in cases where he dies intestate -- that is, without making a will. Given the bias and preference for sons and notions of lineage, discrimination against daughters in inheritance through wills is bound to remain. In most cases, the terms of the will would favour the son. Perhaps the share of property that can be willed by a person could be restricted, as a step towards greater gender equality. For example, Islamic jurisprudence lays down that a person can only will one-third of his property. Provisions to check the prevalent practice of ?persuading? daughters to give up their share in joint family property is another area that requires attention. This is an opportune time to keep up the momentum for further reforms to reduce gender inequities and move towards a more equal society.

The amendment will only benefit those women who are born into families that have ancestral property. There is no precise definition of ancestral property. Given the fact that families have long since been fragmented and the fact that the joint family system is on the decline, it is not at all clear whom this law will benefit. It cannot apply to self-acquired property. No person by birth will acquire any rights in self-acquired property. In today's context, most property is self-acquired and that property must follow principles of succession under the different succession laws. Moreover, its owner can dispose off such property during his lifetime by gift. It can be bequeath by will to anyone of his choice. The proposed amendment notwithstanding, a Hindu father can disinherit his wife or daughter by will, in his self-acquired property. The amendment therefore by itself cannot offer much to Hindu women. What is more, under the laws of certain states, it will actually disadvantage widows, as the share of the daughter will increase in comparison to the widow. The amendment is not at all well thought out and can play women against each other. There is no equity in that. Thus, though seemingly progressive, it does nothing more than make a political point, that the state is committed to abolishing discrimination against women, but only Hindu women. The position of women married into the joint family will actually become worse.

The proposed amendment only makes the position of the female members of the joint family worse. With a daughter along with the sons acquiring a birthright, which she can presumably partition at any time, the rights of other members of the joint family get correspondingly diminished. While the reforms of the 1950s disadvantaged a divorced wife, the reforms of the present times will disadvantage married women as well. Until now, the only protection women had in the marital home was the status of being married, which carried with it the right to be maintained, not only by the husband, but by the joint family and its assets as a whole. Thus married women who lived in a joint Hindu family had the protection of the family home. This protection will now stand eroded, to the extent that the total divisible amount gets reduced. Something similar will happen to Hindu widows. Daughters will acquire a birthright in Hindu joint family property, mothers stand to lose a portion of the cake, as an inheritance. Since Hindu law does not grant any rights to wives in marital property, their only chance of getting anything was on an inheritance, as equal share with the sons and daughters, if the marriage was subsisting on the death of the husband. On divorce, of course, even that right to inheritance disappears. It is birthright in Hindu law that is the root of the problem. Birthright by definition is a conservative institution, belonging to the era of feudalism, coupled as it was with the rule of primogeniture and the inalienability of land. When property becomes disposable and self-acquired, different rules of succession have to apply. It is in the making of those rules that gender justice has to be

located. What the proposed amendment does is to reinforce the birthright without working out its consequences for all women.

Justice cannot be secured for one category of women at the expense of another. It is impossible to deal with succession laws in isolation. One has to simultaneously look at laws of matrimonial property, divorce and succession to ensure a gender just regime of laws. The present bill does nothing of the kind. The exercise should be abandoned in toto.

Conclusion

Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Several legal reforms have taken place since independence in India, including on equal share of daughters to property. Yet equal status remains illusive. Establishment of laws and bringing practices in conformity thereto is necessarily a long drawn out process. The government, the legislature, the judiciary, the media and civil society has to perform their roles, each in their own areas of competence and in a concerted manner for the process to be speedy and effective.

These amendments can empower women both economically and socially. and have far-reaching benefits for the family and society. Independent access to agricultural land can reduce a woman and her family's risk of poverty, improve her livelihood options, and enhance prospects of child survival, education and health. Women owning land or a house also face less risk of spousal violence. And land in women's names can increase productivity by improving credit and input access for numerous de facto female household heads.

Making all daughters coparceners like wise has far-reaching implications. It gives women birthrights in joint family property that cannot be willed away. Rights in coparcenary property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter. Millions of women - as widows and daughters - and their families thus stand to gain by these amendments.

End Notes

1. 174th Report of Law Commission of India under the Chairmanship of Justice B.P. Jeevan Reddy, vide D.O. No. 6(3)(59)/99-LC(LS), dated 5th May, 2000.
2. Mulla, Principles of Hindu Law (1998 17th ed. by SA Desai), p. 168.
3. Ibid.
4. Mayne's, Treatise on Hindu Law & Usage, (1996 14th Edn., edt. by Alladi Kuppuswami p. 1065.
5. M. Indira Devi, "Woman's Assertion of Legal Rights to Ownership of property" in Women & Law Contemporary Problems, (1994 edt. by L. Sarkar & B. Sivaramayya) p. 174; also section 3(3) of Hindu Women's Right to Property Act, 1937.
6. Murumakkattayam, Aliyasantans and Nambudri.
7. Gotraja, Sapindas, Samanodlakas and Bandhus
8. Sapindas, Sakulyas and Bandhus
9. 7th Report of Parliamentary Standing Committee dated 13th May, 2005.
10. Notional partition.
11. 7th Report of Parliamentary Standing Committee
12. Before amendment of Hindu Succession Act, 1956 in 2005