# CHANGING NOTIONS OF PROPERTY RIGHTS OF HINDU FEMALES - AN APPRAISAL

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# INTRODUCTION

In early Hindu society, women had no legal status. The Hindu law of inheritance had deprived women of the right to property and as a result, their economic security was completely dependent on the pleasure of the man- husband, father, and brother.[[3]](#footnote-3)Rather women were themselves treated as property. In thecoparcenery a hindu female was not a member. On the other hand a son was born with a birth right in the coparecenery.Under the old hindu law hindu women had no right in the property .The only she had was right to maintenance and right to residence in the dwelling house.Property rights of hindu women have undergone a sea change over a period of time. This paper is an attempt to discuss the various stages of development and also highlight upon the lacunas existing in the present property laws of hindu women.

# The Hindu Women’s Rights to Property Act, 1937

The act came into force on the 14th April, 1937 and has no retrospective operation.[[4]](#footnote-4) As the act

was considered to be defective, it was amended by the Hindu Women’s Rights to Property (Amendment) Act, XI of 1938, which was declared to have retrospective effect as from the 14th April, 1937. The act was repealed by section 31 of the Hindu Succession Act, 1956. The repeal however did not affect any right privilege, obligation or liability acquired, accrued or incurred under the repealed act.[[5]](#footnote-5) The widow of a coparcener dying before 1937 Act as a member of undivided Mitakshara coparcenary was entitled to only a right of maintenance from the joint family property in the capacity of a member of such joint family. The main enactment as in terms stated in Sec.4, is not retrospective in operation and does not apply to the property of any Hindu who dies intestate before the commencement of this act.[[6]](#footnote-6) As the Doctrine of Survivorship applied, the share of the deceased coparcener was taken by the surviving applied, the share of the deceased coparcener was taken by the surviving coparceners under the doctrine of survivorship and nothing was given to the widow of such undivided deceased coparcener out of the share he held in the coparcenary property during his life time.[[7]](#footnote-7) As the act did not apply to agricultural property, a widow who did not receive a share out of such property still remained her maintenance rights out of his property.[[8]](#footnote-8)

The Hindu Women’s Right to Property Act 1937 changed the traditional concept of coparcenary under which the Doctrine of Survivorship applied strictly on the death of a coparcener. Under the provisions of the act where a coparcener died as a member of the Mitakshara Hindu Joint Family and was survived by his widow, his widow stood in his shoes7 and prevented his undivided interest to go to the surviving coparceners. The object of the act was to confer new rights of succession upon the widows mentioned in it[[9]](#footnote-9); it not only alters the order of succession, but involves far-reaching consequences in many departments of Hindu Law, particularly in the law relating to a Mitakshara coparcenary.[[10]](#footnote-10) The women was given the right to claim partition the only difference which was there was that the property under taken by her was not absolute ownership but a limited estate terminable on her death or remarriage.10 Subsequent to the partition, a woman was holding the property in the capacity of a limited owner, i.e., she could enjoy it during her lifetime and appropriate the income coming out of the property for her use. However, she was incapable of alienating it by will, gift or even a sale. On her death or remarriage the interest would go to heirs of her deceased husband as if he had died on the day when the interest of the woman terminated.[[11]](#footnote-11)

The act provided the provision that even though after the death of the coparcener, though his widow occupied his place, the death of the coparcener and his widow stepping into the shoes of the coparcener had no adverse effect on the status of the joint family as such.[[12]](#footnote-12)

# Hindu Succession Act, 1956

The Hindu Succession Act came into force on 17th June 156, with the basic objective of providing a comprehensive and uniform scheme of intestate succession for Hindus. Prior, to the enactment of this act, different religious communities were governed by different succession laws, within the Hindu community itself, there was a wide divergence with respect to application of inheritance laws.[[13]](#footnote-13) There were three broad categories, besides the co-existence of a number of sub-communities. The Hindus which were to subject to Mitakshara law were governed by the Mitakshara law and those who were subject to the Dayabhaga law were governed by the Dayabhaga system of inheritance. Some of Hindus which were adhering the matriarchal system were subject to different rules.

* One of the prime reason for the coming up of the act is to establish the equality between the male and female in regard to rights of property. Prior to the coming up of this act there were lot of inequalities in regards to the rights of property conferred upon the male and female in case of succession. Females were deprived against the males whenever there was a succession. Although the Hindu Women’s Right to Property Act, 1937 tried to fill the gap between the males and females. But, the provisions were not so effective enough to remove the disparities between the males and females.The Act modifies the laws of Mitakshara coparcenary and its devolution by survivorship in a situation where an undivided coparcener dies leaving behind class I heirs, other than the son, son of a predeceased son and son of a pre-deceased son of a pre-deceased son. In such a case, the law presumes that the deceased had died after demanding a partition, which would determine his share in the coparcenary property, convert it into his separate share, so that it would no longer go by survivorship, but will go to the legal heirs in accordance with the rules of intestate succession.
* It abolished the concept of limited estate for Hindu women and replaced it with the full ownership. (Section 14)
* The widow of an intestate became the primary heir, and her rights to succeed cannot be defeated on the grounds of her unchastity.
* The act empowers the Hindu male or female with respect to testamentary disposition of the totality of properties, in favour of any one.

**CHANGES INTRODUCED BY THE AMENDMENT OF 2005 EFFECTING**

**FEMALE PROPERTY RIGHTS**

The Hindu Succession (Amendment) Bill was introduced in the parliament on 20th December 2004 and was passed by the RajyaSabha on 16th August, 2005 and the LokSabha on 29th August

2005 respectively. Based on the recommendations of the 174th report of the Law Commission on

‘Property Rights of Women- Proposed Reforms Under Hindu Law’, its primary aim was to remove gender inequalities under the Act,as it stood before the amendment.[[14]](#footnote-14) The amendment had also become necessary in the view of the changes in Hindu Succession Act 1956, in 5 Indian States namely, Kerala, Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra.[[15]](#footnote-15) The changes were introduced in the various sections of the Hindu Succession Act, 1956

The changes which were introduced are as follows:

# 1.Changes made in Section 6

The most changes made in the Hindu Succession Act, 1956 based on the recommendations made by the 174th law commission report on ‘Property Rights of Women- Proposed Reforms under Hindu Law’ were in the Section 6 only.

The changes made in the sec.6 are as follows: -

***Abolition of Doctrine of Survivorship in case of male Coparceners.***

By the changes made in the Sec. 6 (3)[[16]](#footnote-16) the doctrine of survivorship was abolished. The amending act, by a specific provision, abolishes the incidents of survivorship- one of the primary incidents of coparcenary- when a male coparcener dies.[[17]](#footnote-17)

## Introduction of Daughters as Coparceners

One of the major changes brought in by the amendment is that in a Hindu joint family, the exclusive prerogative of males to be coparceners has been changed altogether and the right by birth in the coparcenary property has been conferred in favour of a daughter as well.[[18]](#footnote-18)Thus, the traditional concept that only males could be members of the coparcenary and ‘no female could ever be a coparcener nor could own coparcenary property’ is no longer the law. According to Sec. 6(1)[[19]](#footnote-19)

*On and from the commencement of the Hindu Succession (Amendment) Act,2005, in a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, a) by birth become a coparcener in her own right in the same manner as the son;*

1. *have the same rights in the coparcenary property as she would have had if she had been a son;*
2. *be subject to the same liabilities in respect of the said coparcenary property as that of a son,*

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a

daughter of a coparcener.

According to this provision, the discrimination against daughter has been brought to an end, as her rights and liabilities are the same as that of son.

### *1.3 Property held by daughters with the incidents of coparcenary ownership*

The amendment made clarifies that the joint family property would be held by the daughters, as they have become coparceners, with the incidents of coparcenary ownership. Sec. 6(2)[[20]](#footnote-20) states:

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

Thus, according to Sec. 6(2), a female would hold the property with the incidents of coparcenary ownership. A distinction has been created between female members of a joint family in relation to their rights over the joint family property. The two classes of females are one, who are born in the family and secondly, those who become members in the joint family by marriage to the coparceners.[[21]](#footnote-21)

## Retention of the concept of notional partition

The amendment retains the concept of notional partition but modifies its application. Prior to the amendment, notional partition was effected only if the undivided male coparcener had died leaving behind any of the eight class I female heirs or the son of a predeceased daughter and did not apply generally in every case of death of a male coparcener.[[22]](#footnote-22) The present amendment makes the application of notional partition in all cases of intestacies. Sec. 6(3)[[23]](#footnote-23) states:

*Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a joint family governed by the Mitakshara Law, shall devolve by the testamentary or intestate succession as the case may be under this act and not by survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place.*

From the language of the section, two things are clear. First, the doctrine of survivorship stands abolished in case of male coparceners, and secondly, in all cases where a Hindu male dies, his interest in the Mitakshara coparcenary would be ascertained with the help of a deemed partition or a notional partition.

**Critical Evaluation:**

### 1. Position of Mother has no effect

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.[[24]](#footnote-24)

### 2. Testamentary Disposition

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.

### 3. Women born in the family only benefited

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 selfacquired 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.

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.

### 4. Definition of Daughter

The daughters are included within the coparcenary and have been given the birth right in the Joint Hindu family property equivalent to that of the son. But, the definition of the daughter does not include the adopted daughters, so this still remains a controversial feature even after the amendment. Sec. 6(1) (a)[[25]](#footnote-25) reads as:

*On the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-*

*a) By birth become the coparcener in her own right in the same manner as the son*

The expression that ‘by birth’ states that the adopted daughters are not included within the purview of the provisions of this section and hence the adopted daughters are denied of the privileges which are conferred upon the daughters.

### 5. Gender Inequality in regards to the Succession of Male and Female

Even though lot of changes have been introduced by the amendment of 2005, but still there can be found traces of gender inequality between the succession of males and females. The prevalence of the gender inequality can be found on the basis of the following provisions:

* In the case of the intestate succession of the Hindu male, an illegitimate son or daughter born to him will not inherit the property but this an exception in case of the intestate succession of the Hindu female where the illegitimate children of her will get the share equivalent to that of the legitimate children.
* Although the amendment of the 2005 has omitted the Section 23 of the Hindu Succession Act, 1956 but still the position remains the same. Even, today if a widow re-marries before the opening of the succession she ceases to inherit the property.

# 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. A beautiful piece of legislation framed by the legislatures in the guise of the Hindu Succession Act, 1956 was a masterpiece and a great step towards the upliftment of the status of women; a step to curb the gender inequality prevailing in the society and to bring the women and men on the equal footage.

 With the time due to the dynamic character of the society a need was felt to regulate the preexisting laws and give them the new touch of the fragrance, to do this an amendment was made in 2005 in the Hindu Succession Act, 1956. The position of women has strengthened much more after the amendment as lot of provisions were imparted to strengthen the position of women in the society. Although, many efforts have been made to remove the gender inequality but still it seems to illusionary on the grounds that still there are loopholes remaining in the act and it has left many provisions by which a women can be easily exploited. So, there is a need of another amendment in the Hindu Succession (Amendment) Act, 2005 which has been very well pointed out by the 204th, 207th and 208th reports of the Law Commission of India.

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1. Student, Indore Institute of law [↑](#footnote-ref-1)
2. Student, Indore Institute of law [↑](#footnote-ref-2)
3. Flavia Agnes and others, *Women and law in India*, 1st Edition, Oxford University Press, New Delhi, 2004, p.121 [↑](#footnote-ref-3)
4. Vidyavathi Devi *v.* CGT (1986) 169 ITR 708 (Raj.) [↑](#footnote-ref-4)
5. Mayne, *Hindu Law and Usage*, 16th Edition, Bharat Law House, New Delhi, 2008, p. 1056 [↑](#footnote-ref-5)
6. UmayalAchi*v.*LashmiAchi AIR 1945 FC 25 see also: RatanKumari*v.* Sunder Lal AIR 1959 Cal 787. [↑](#footnote-ref-6)
7. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II*, 2nd Edition, Lexis NexisButterworths, New Delhi, p. 130 [↑](#footnote-ref-7)
8. Sarojini Devi *v.*Subramayam ILR (1945) Mad 61. 7Sec 3 (2), Women’s Right to Property Act, 1937. [↑](#footnote-ref-8)
9. Jabaobai*v.*Puranmal ILR (1944) Nag 832 [↑](#footnote-ref-9)
10. Mayne, *Hindu Law and Usage*, 16th Edition, Bharat Law House, New Delhi, 2008, p. 1059 10Sec 3 (3), Women’s Right to Property Act, 1937. [↑](#footnote-ref-10)
11. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II*, 2nd Edition, Lexis NexisButterworths, New Delhi, p. 131 [↑](#footnote-ref-11)
12. KallianRai*v.*Kashinath (1943) ILR All 307,310,312. [↑](#footnote-ref-12)
13. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II*, 2nd Edition, Lexis NexisButterworths, New Delhi, p. 329 [↑](#footnote-ref-13)
14. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II*, 2nd Edition, Lexis NexisButterworths, New Delhi, p. 338 [↑](#footnote-ref-14)
15. Ibid, [↑](#footnote-ref-15)
16. Hindu Succession Act, 1956 [↑](#footnote-ref-16)
17. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II*, 2nd Edition, Lexis NexisButterworths, New Delhi, p. 342 [↑](#footnote-ref-17)
18. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II*, 2nd Edition, Lexis NexisButterworths, New Delhi, p. 342 [↑](#footnote-ref-18)
19. Hindu Succession (Amendment) Act, 2005 [↑](#footnote-ref-19)
20. Hindu Succession (Amendment) Act, 2005 [↑](#footnote-ref-20)
21. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II*, 2nd Edition, Lexis NexisButterworths, New Delhi, p. 343 [↑](#footnote-ref-21)
22. Poonam, Pradhan, Saxena, *Family Law Lectures, Family Law II,* 2nd Edition, Lexis NexisButterworths, New Delhi, p. 346 [↑](#footnote-ref-22)
23. Hindu Succession Act, 1956 [↑](#footnote-ref-23)
24. http://www.legalserviceindia.com/articles/gehsa.htm [↑](#footnote-ref-24)
25. Hindu Succession (Amendment) Act, 2005 [↑](#footnote-ref-25)