

Colonial and post-colonial engagement with Daughters Inheritance rights in India

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Received: 12 May Revised: 19 May Accepted: 25 May

Abstract

The present Indian legal system have taken shape under the garb of colonialism whereby its nature, scope and elements have been altered to suit the needs of the governed. The extent of the influence is so pervasive that numerous legal, civil and criminal codes still remain unchanged and those which are amended; the colonial spirit resonates even today. The sphere of Family law that includes marriage, adoption, inheritance attracted colonial reform and various laws were enacted and passed therefore. The irony of the reform lies in the colonial interpretation of the ancient Hindu texts which was done according to the principles of English jurisprudence. This 'misinterpretation' lead to severe civil and legal anomalies in country manifested by multiple religions, cultures, ethnic communities and caste categories. In this light, the paper attempts to explore the colonial engagement with multiple property statues in general and women inheritance rights in particular. It also analyze the colonial undertones of post-colonial juridical setup and enactments therefore. The analysis reveal the intricate colonial connection and continuity in laws related to women inheritance and also account for the non-implementation of legal rights to their full potential.

Keywords: Colonialism, English Jurisprudence, Family Law and Inheritance.

Introduction

The British denied identifying India as a 'nation' rather emphasized it as 'one in the making'. This was essentially true because the pre-colonial India was characterized by a pluralistic and fragmented cultural, religious, and political structure in which there was no monolithic Hindu and Muslim authority. Multiple tribes, castes, sects and family groupings crossed religious and political lines, creating a heterogeneous population that may have had a definite notion of authority but no corresponding notion of legality (Chitnis,2007). Large body of the law was customary, antique and pervasive, compounded by local and regional variations gave the impression to the colonial master that India as society lacked law and its dictates altogether. The British conquest of India, initially began in the garb of trading East India Company and the subsequent shift to crown rule from 1858, all along cared to devise a new politico-legal structure to facilitate the administrative consolidation and convenience. To this end, they encountered the complex and plural legal statues and personal laws operating within the territory of India, the understanding of which need proficiency in the language and rediscovery of antique and pristine Indian tradition. The Shastric sources of Hindu law and Muslim law, thus rediscovered and interpreted, did not stand ground to the British ideals of jurisprudence, thereby attracted the reform. As a consequence of this search of 'tradition' and consequent reform, the threshold of the personal laws was crossed. The Victoria's proclamation of

non-interference with the religious beliefs, personal laws and customs hardly produced wanted non-interference. Firstly the British had little idea what non-interference meant, given the imperial expansion of the Raj. Secondly, the notion that religion and custom could be genuinely exempted from any interference fell apart in the face of two fundamental flaws in the colonial reason; the first was that the British did not know how to define either religion or custom, and the second was that the phase of high imperial rule required the state to appropriate the civilizing mission, to justify itself both at home and in colonies (Dirks, 2001). Throughout the Victoria period, the colonial authority was largely premised on an ideology of the civilizing mission, both in Indian and English terms (Chitnis, 2007). This civilizing mission on which the rationale and legitimacy of the colonial rule was premised, portrayed and understood India as stagnant, backward and unequal society worthy of reform.

After the transfer of power to the English crown in 1858, there were two competing groups vying for the political and legal legitimacy within India: the British colonial authorities and the native male elite (Agnes, 1999). Several customs like sati, female infanticide etc. were testimonial to British of the backward and helpless condition of Indian women, while the elite male reformers interpreted them as corrupt practices crept in to Hindu society owing to the external influence. Both traced back the antiquity of 'tradition', whereby male reformers invoked the myth of India's 'glorious past' thus, became nationalist revivalist and the British found their logic to secularize and enlighten Indian society and protect its women. Nationalist revivalism regarded the household and specifically conjugality, as "the last independent space left to the colonized Hindu" (Nair, 1996). Newly compiled digests of Hindu and Muslim law of land, along with the class of loyal intelligentsia, the justice began to be delivered as per the English juridical interpretations. Although the British claimed that they only interpreted Hindu or Muslim law and did not interfere with it, in fact by setting up their law courts, the British altered the law in some ways beyond recognition and irretrievably. The court judgments, overtime, became more authoritative than the Shastras from whom the supposedly derived their authority (Kishwar, 1994). This stands true with regard to the property rights of women in India as well. The irony of the reform lies in the colonial interpretation of the ancient Hindu texts which was done according to the principles of English jurisprudence. This 'misinterpretation' led to severe civil and legal anomalies in country manifested by multiple religions, cultures, ethnic communities and caste categories. In this light, the paper attempts to explore the colonial engagement with multiple property statutes in general and women inheritance rights in particular. It also analyzes the colonial undertones of post-colonial juridical setup and enactments therefore. The analysis reveals the intricate colonial connection and continuity in laws related to women inheritance and also account for the non-implementation of legal rights to their full potential.

Colonialism, Law and Women Inheritance Rights

In pre-British India, both Hindus and Muslims had followed the inheritance practices of their respective castes. These practices were not usually based on text, but were shaped by the traditions of each caste. Two characteristics of inheritance law then must be stressed: first, there was considerable variation in inheritance practices by region and caste, and second, Islamic inheritance practices were rarely implemented in the region and Muslims engaged in inheritance practices which were not dissimilar to those of their Hindu neighbors. It was only in the middle of the nineteenth century that the British insisted on following interpretations of Hindu and Islamic family law which closely resembled the classical legal texts of the two faiths. This caused the inheritance practices of the region's Hindus and Muslims to diverge. While Hindu laws had largely excluded women from inheriting a portion of the estate and also utilized various mechanisms to prevent its fragmentation, the implementation of Islamic laws provided women with shares of the estate and led

to the increasing fragmentation of Muslim-owned estates (Singh,2017). This highly fragmented and branched property rights statues of women are attributed to various canonical (shahstric) Hindu laws prevalent in the form of various schools of succession. Prominent among them are Mitakshara and Dayabhagha. Dayabhagha ruled in Bengal in eastern India and adjoining areas while Mayukhya in Bombay, Konkan and Gujarat and Marumakkattayam or Nambudri in Kerala in South. On the other hand, Mitakshara operated in rest of India with slight variations in the form of sub- schools of Benaras, Mithila, Madras (Dravida), Bombay (Maharashtra) and Punjab. All the sub-schools regarded the authority of the Mitakshara as supreme but some differences between them particularly relating to adoption and inheritance made their emergence quite conspicuous. Every sub-school under the Mitakshara preferably acknowledged the authority of certain treatises and commentaries, written in a particular region (Ghosh). It is important to point out that the Punjab variant of Mitakshara law was chiefly governed by customs and usages.

Important changes were, however introduced in the law of succession by the passage of the Hindu Women's Right to Property Act, 1937. According to this act, better rights were given to women in respect of property. it states that where a Hindu dies intestate leaving separate property, his widow shall be entitled to the same share as a son. This law further states that when a Hindu dies having an interest in the joint family property; his widow shall have in the property same interest as he himself. any interest that devolves on a Hindu widow in this manner was to be considered as the limited interest to a Hindu woman's estate (Sethi,2009). The characteristic feature of a woman's estate is that she takes it as a limited. i.e. she is the owner of the property subjected to these two limitations: a) she cannot ordinarily alienate the corpus, and b) on her death the property devolves upon the next heir of the last full owner (Dutta,2014) However, she is an owner of the property in the same way as any other individual can be owner of his or her property but above mentioned restrictions were strictly adhered to. She can alienate the property for a legal necessity, or for the benefit of estate; and for the discharge of the indispensable religious duties such as marriage of daughters, funeral rite of her husband, Sraddha etc. In short, she can alienate her estate for the spiritual benefit of the last full owner, but not for her own spiritual benefit (Diwan,2014)

Primarily two kinds of property constituted the woman's estate or so to say Hindu females limited estate, these were as enumerated earlier; 1) property obtained by inheritance; and 2) share obtained on partition. Hence, viewed in this light, the property rights of Hindu woman were contingent on the school of inheritance she followed, her marital status, origin and the nature of property. This exactly was what Hindu Succession Act of 1956, in post colonial era designed to alter.

Post-colonial Indian State and Women Property Rights

The newly independent Indian state, still in its infancy, had the prerogative to ensure equality and justice to women folk of the country in the wake of the constitutional mandate. On one hand, the Fundamental Rightsⁱ and the Directive Principles of State Policyⁱⁱ on the other, created a congenial political environment to enforce laws to emancipate the women and culminate the 'reform' question centered around the women since first quarter of nineteenth century. In early 1950s, Jawaharlal Nehru initiated the process of the enactment of the Hindu code bill, a measure demanded by women since 1930s. A committee under the chairmanship of B.N. Rau, the constitutional expert had already gone into the matter and submitted the draft code in 1944. Another committee chaired by B.R. Ambedkar,ⁱⁱⁱ submitted a bill in 1948 which gave women maintenance and inheritance among other provisions. The presence of women movements leaders in the committee and the uncompromising posture of Ambedkar produced a more radical Hindu Code Bill (HCB) (Everett,1981). In a clear

departure from the B.N. Rau committee report, the Amdekar report envisaged the fixation of daughters share as equal to that of a son's share in inheritance.

The first General Elections in 1951 and the consequent first provisional parliament debated vigorously the Hindu Code Bill (HCB). Numerically more congress members opposed the changes than those who supported it^{iv}. The narrative centered around Hindu Code Bill (HCB) explained not only the marginal situation that plagued women in formative years of independence, but also the feudal, biased and patriarchal mind set of those who advertised to reverse the same. Giving women equal rights in inheritance was taken to be an attack on the shastric Hindu religion^v, through the dictates of 'western' encroachment of Indian culture and detrimental to the structure and ethos of Hindu society. Such a strong opposition from the conservative sections of the society, and hesitation on the part

of some senior congress leaders including Rajendra Prasad, led to the bill being postponed, despite strong support from a majority of women activists and social reformers (Chandra & Mukherjee, 1999). The protracted debate occurred over the Hindu Code Bill with widespread participation across all regions and segments of the Indian society between 1941 and 1956. The Hindu Code Bill (HCB) debate climaxed in the family law reforms of the mid 1950s and enacted as four separate acts namely; Hindu Marriage Act of 1955, Hindu Succession Act of 1956, Hindu Minority and Guardianship Act of 1956 and the Hindu Adoptions and Maintenance act of 1956 (Sinha). It is important to realize that this phasing out of Hindu Code Bill (HCB) resulted in losing the spirit of reform with which Hindu Code Bill was constituted and put forward at first place.

The Hindu Succession Act of 1956

Although several significant dilutions crept in, where by the phased acts of Hindu Code Bill could not yield much benefit to women. Law, education and new economic and political opportunities, could have altered the situation rapidly, but the State moved cautiously, perhaps because it did not want to tread on the cultural sensitivities of communities in a tradition bound society. (Dube, 1990). But even then, it showed the commitment of Indian State to women equality albeit limited and narrow. As a consequence, the Hindu Succession Act of 1956 which dealt with the inheritance rights of women in all three capacities; daughter, wife and widow, was by far the most controversial part. It was also perceived as the key part of the Hindu Code Bill (HCB), as no other rights could be effectively claimed by women unless they had economic rights (Kishwar, 1994). The act came into force on 17th June 1956 with the object to amend and codify the laws in relation to intestate succession among Hindus (Dutta, 2014). It laid down a uniform law of succession for all the Hindus. Old Hindu laws and customary laws of succession stood abrogated (Diwan, 2013). It even invalidated the woman's limited estate and objects to end the disparity regarding property rights among the Hindu male and Hindu female. The act in a fit of creating uniform and comprehensive system of inheritance removed the distinction between the Mitakshara and the Dayabhaga rules of inheritance, and even subsumed Marumakkattayam, Aliyanatana and Nambudri systems of Hindu law. The act stipulated a female Hindu to acquire and hold property as an absolute owner, and converted the right of a woman in any estate already held by her on the date of the commencement of act as a limited owner, into an absolute owner (Section 14 of the Hindu Succession Act, 1956).

The provision is given retrospective effect to the extent that it enlarged the limited estate into absolute estate even if the property was inherited or held by woman as limited owner before the act came into force (Pandey, 2005). Important is to note that, the expression 'female Hindu' is defined widely to include all Hindu woman irrespective of their marital status, i.e. married, unmarried and widows. Similarly the term 'property' denotes includes both movable and immovable acquired by a

female Hindu, also any such property held by her as Stridhana. In case of her death intestate, she becomes the fresh stock of descent and the property devolves by succession on her own heirs. This section enlarges the maintenance rights of women by providing them absolute rights upon it (Manjunath,2014). Apart from this, the act clarified the devolution of interest of a male Hindu in the coparcenary property and while recognizing the rule of devolution by survivorship, it made an exception to the rule in the proviso. The proviso said that the if the deceased has left surviving him a female relative in Class I heirs of schedule I to the act (Section 6 of the Hindu Succession Act, 1956.), or a male relative in the class who claims through such female relative, then the interest of the deceased in the Mitakshara Coparcenary property shall devolve by testamentary or intestate succession under the Hindu Succession Act, 1956 and not by survivorship (Dutta,2014). This change conferred on women an equal rights with the male members in the coparcenary. The devolution of property was based on the principle of consanguinity i.e. nearness to blood. The property will be firstly given to the heirs specified within Class I^{vi}. If there are no heirs in class I, then Class II^{vii} heirs will succeed the share. Subsequently agnates^{viii} of the deceased will be given the property, if there are no agnates, then the property will be given to cognates^{ix} of the deceased.

Despite hailed as a watershed development in the discourse of inheritance rights to women in India, the act itself was beset with number of legal ambiguities and anomalies. These vague and often complex provisions can be attributed to the clear patriarchal nature of the post colonial state in India, which acted as the patron of ruling male class, primarily agricultural. To start with, one of the most serious pitfall of the act, though encouraging female right to property is the conferring of uncontrolled testamentary powers under Section 30. A Hindu male may disinherit the daughter by executing a will and given the son bias in Indian society, this results in obvious loss to daughters. Another significant loophole was the retention of Mitakshara coparcenary: According to Mitakshara coparcenary, a son, grandson and a great grandson constitute the class of coparceners. No female is member of coparcener. The act by virtue of section 6 recognizes inheritance by succession but only to property separately owned by an individual (Kahlon,2008). Due to strong opposition during the discussion on Hindu Code Bill (HCB) among the congress members for conferring rights to females in coparcenary property, the system of coparcenary was left untouched under Hindu Succession Act, 1956 (Mishra,2016). Another important aspect of the act is underlined in Section 23, whereby if a Hindu estate has left surviving him or her both male and female heirs specified in Class I of the schedule and his or her property includes a dwelling house wholly occupied by the members of his or her family, then the right of any such female heir to claim partition of dwelling house shall not arise until the male heirs choose to divide their respective shares.(Diwan, Hindu Law and Usage) The female heir is only entitled right to residence, that too if she is unmarried or has been deserted or separated from a husband or is a widow. Meaning thereby an unmarried daughter cannot enforce the partition of the dwelling house. This shelving of the right of female to claim partition finds reasoning in order to avoid problem in the family in case such claim is invoked. Moreover, a coparcener can renounce his rights to coparcenary, thereafter his share will be divided by others. His female heirs are thus excluded from inheritance (Jain,2003). The similar characteristic to reduce the right of female heir was conversion of self-acquired property into coparcenary property .The patrilineal assumption of a dominant male ideology is clearly reflected in laws governing a Hindu female who dies intestate. Section 15 of the Act, which deals with succession of Hindu female property, makes a distinction between the property inherited by her parents and from husband and father in law. The former devolves on the heirs of the father and the latter devolves on the heirs of the husband provided she is issueless. This provision is indicative again of the tilt towards the male as it provides that the property continues to be inherited through male line from which it came either back to her father's family or back to her husband's family.

Last but not the least under section 4(2) of the act, state can pass rules " providing for the fragmentation of agricultural holding or for fixation of ceiling or for the devolution of tenancy rights in respect of such holdings" even if such enactments are passed subsequent to the commencement of Act. (Kahlon,2008) Agricultural states like Punjab and Haryana have often devised tenancy law to avoid the implementation of the act and disinherit females. In 1967, within months of its formation as a new state, Haryana passed a resolution, requesting the centre to amend the act. Punjab followed suit. The centre did not oblige. In 1979, Haryana assembly passed a bill, amending the act unilaterally, and sent it for president's approval the president did not give his assent. ten years later in 1989, the renowned farmer's leaders from Haryana, Chaudhari Devi Lal, proposed an amendment to the act during his tenure as deputy prime minister. The demand was dropped following protests (Mahapatra,2015). Apart from the sharp resistance of men whose interests were drastically affected, women too appear to resist the implementation of the enabling law, as the reigning ideology culturally and morally excluded them from inheriting property. It was only with the passage of considerable time that a certain reversal of opinion became visible (Chowdhry, 2013).

The Hindu Succession (Amendment) Act, 2005

Nearly half a century later in 2005, the blatant discrimination pronounced in the Hindu Succession Act of 1956, of excluding daughters' from coparcenary, was considered negating women the very fundamental right to equality culminating into the greater challenge of empowering women economically. The Law Commission, took up the subject suo motto in the view of the pervasive discrimination prevalent against the women in relation to laws governing the inheritance viz-a-viz succession of property amongst the members of a Joint Hindu Family. The commission worked out the provisions of the right to property on the ground of social justice on one hand and the amendments made by some states like Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu^x on the other. These states removed the discrimination inherent in Mitakshara coparcenary. Consequently, 174th report on property rights of women proposed reforms under the chairmanship of B. P. Jeevan Reddy, amended Section 6 (The Hindu Succession (amendment 2005) Section 6: Devolution of Interest in Coparcenary Property) of the Hindu Succession Act, 1956 to treat the daughter of a coparcener as a coparcener, by birth same manner and right as the son. It is to be observed that, the expression daughter of a coparcener used in section 15 (1) (a) also includes adopted daughters falling within the category of Class I heirs (Kumar,2014) as well as illegitimate daughter and they are deemed to be related to the mother and any word in the said section discussing any relationship is assumed to have been construed accordingly (Patel,2007). Thus the classical notion of coparcenary underwent a radical change with the inclusion of daughters as coparceners, first in certain States and then at the national level, thus the religious and spiritual basis of a coparcenary that admitted only males were undermined and subsequently transformed by the legislature (Singhal,2007) The amendment also omitted the Section 23 of the Hindu Succession Act, 1956 that denied women to claim partition of an inherited dwelling/house until male heirs choose to do it. Also, the disability on married women to stay in such a dwelling/house was lifted. Besides this, in order to clear the confusion and doubts regarding the impunity of State laws to provide for the prevention of fragmentation of land holdings or for the fixation of ceilings or for the devolution of tenancy rights, the act brings all agricultural land on par with other property and makes Hindu women's inheritance rights in land legally equal to that of men across states, overriding state-level discriminatory tenurial laws (Nayar,2005). Another revolutionary change in the position of women, effected by the amendment is the recognition of women as Karta of the joint family property. Women therefore can manage, the property as the male heirs were doing since ages (Halder&Jaishankar,2009).

However, a close critical evaluation of the amendment reveal that, despite the stated objective, it failed to solve the problem perfectly in all respects. Rather it may be said that it has added to the hitherto existing ambivalence and complexity. Several legal issues emerge out of this, the most pertinent being whether the daughters children are coparceners along with her. Section 6(1) provide that any reference to coparcener should include reference to daughter of coparcener, thereby meaning that when a daughter succeeds to her share in fathers ancestral property, becomes her separate property and this property would no longer be ancestral property against her children. Thus it is primarily the daughter whose interest is sought to be protected and not her children (Singhal,2007) Such a legal mischief could be explained by the efforts of the law makers to facilitate that only males interest in coparcenery is well protected. Moreover under section 6 (3) of the amending act, 2005 doctrine of survivorship was altogether abolished. Doctrine of survivorship was one of the important characteristic of coparcenery, owing to which the interests of coparceners fluctuated. The abolition of the doctrine of survivorship and retention of Mitakshara coparcenery has created a great deal of confusion. It is not clear whether the doctrine of survivorship applies only to female coparceners and not male coparceners. thus the abolition of doctrine of survivorship creates unequal rights between surviving coparceners viz as viz each other, which is contrary to the basic concept of coparcenery. Here no purpose seems to be served by the abolition of this doctrine (Sexena,2007). Inclusion of daughters into coparcenery, has made daughters members of two coparcenaries, one belonging to mother and one belonging to father, giving rise to numerous litigations.(Kahlon,2008). Opposition to the claim also came in the form of 'dual inheritance' women are entitled to. A women is entitled to two shares, first in her father's property and second in her deceased husbands property. It is this dual inheritance which the patriarchal forces are determined to curb. (Chowdhry,1997).

As opposed to demolishing the concept of coparcenery, its retention along with inclusion of daughters have multiplied the ambiguities. It remains to be clear whether a daughter ceases to be a coparcener in family of her birth or not. And the fact that married and unmarried daughter do differ in terms of membership of family and the consequent dimensions of coparcenery needs clarification. The presumption of daughter as the member of the family of birth attracted wrath from conservative social forces that attribute family feuds and tensions to it. The amendment fails to offer much to women in terms of self-acquired property since such property can be disposed of by gift or will. Hence it is possible that a daughter can be disinherited by father. Moreover, the new amendment does not alter Section 15 of the principal act. So the discrimination under section 15 still goes on. Rather the impact of new amendment on Section 15 tends to create more problems. Now if the daughter gets the property at the time of the partition as a coparcener, thus it would be governed by section 15 (1) (a)^{xi} now if a daughter dies issueless her husband would inherit the property and in the absence of husband it would go to the heirs of husband thus, her father's property which was so dear to the joint family up till 9-9-2005 would immediately goes into the hands of the strangers through their own daughter, thus resulting in the fragmentation of joint family property at the instance of strangers (Kahlon,2008). Under the said section, the devolution is more favorable to the heirs of the husband, sometimes even when the property that is devolving was acquired from the natal family (Singhal,2007).

Another legal discrepancy that emerged right after the promulgation of the Hindu succession Act (amendment) 2005 was whether it is retrospective in nature or prospective? The crucial issue was setting up the date from which the promulgation of the amendment was to made final. The Karnataka High Court interpreted the Amendment Act to have retrospective effect from the date of the coming into force of the Hindu Succession Act, 1956, whilst the Full Bench of the Bombay High Court

interpreted the Amendment Act to have effect from the date of coming into force of the Amendment Act (Dhyan,2018). The Supreme court laid down the controversy to rest by stating that "the rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born" (Prakash v. Phulavati's case,). In other words, if the coparcener (father) had passed away prior to 09.09.2005, the living daughter of the coparcener would have no right to coparcenary property. Whilst the correctness of this view is debatable, it ensured certainty in proceedings before the courts. If a daughter made a claim for partition of joint family property, her father ought to be alive as of 09.09.2005; if not, she was not entitled to any share in the coparcenary property. The issue was reignited in *Danamma v Amar* (Danamma's case)^{xii} when the Supreme Court applied the principle that partition is not complete with passing of a preliminary decree and attains finality only with the passing of the final decree. By fixing a date i.e., 09.09.2005, the Supreme Court in Phulavati's case has made the crystallization of the right to a female coparcener prospective and dependent on the date of death of the father. The matter is still debated as the Delhi High Court while disposing an appeal, observed that there are conflicting decisions of the apex court with regard to the prospective or retrospective nature of the 2005 amendment. Therefore a three judge bench is set to look into the issue.

Conclusion

Given that the 2005 reform is only about ancestral properties, the Hindu father continues to enjoy unfettered discretion to bequeath his self-acquired properties to whoever he wishes. In case of self-acquired property, fathers generally make a testament in favor of sons depriving daughters (Sethi,2009). This is a loophole that still allows Hindu patriarchs to discriminate against daughters with impunity (Mitta,2015). Moreover the principal of agnatic kinship, village and clan exogamy prevent daughters from inheriting the agricultural land in succession. The net result of all these factors is that a very small proportion of women have acquired proprietary rights in land. In the north India, specially Punjab, most of the women who have acquired proprietary rights are either widows or mothers of minor children (Ibid). All in all, it is revealed that the amendment though historic is not a holistic one. It does not take into the consequence of making daughters coparceners in terms of the other provisions of the Hindu Succession Act (Singhal,2007). Typically, Hindu Succession (amendment) Act 2005 falls far short of synchronizing with democratic ethos promised and social justice envisaged in the Indian constitution. The long awaited but half hearted attempt of amending the act, has open flood gates of litigations without giving anything substantially to women. Instead of out rightly abolishing the joint family institution like Kerala, the amendment retained Mitakshara coparceny on which the joint family property is contingent. The logic of retention was to enable daughters to inherit their share as coparcener in ancestral property. Abolishing of the institutions of joint family property altogether would have rendered daughters property less, therefore in such schema of things, firstly daughters needed to be equalized as sons and then the institution of coparcenary can be done away with gradually. The main point for consideration and elucidation of the consequences of the result of statutory inclusion of a daughter in the category of Mitakshara coparcenary were that the anomalies and inconsistencies must be eliminated (Kumar,2011). In the light of these serious anomalies and ambiguities, the Law Commission of India, in its 204th Report (February 2008), recognised those omissions as a part of "legislative inadvertence," and, therefore, recommended rectification. However, the said Report, while having a second look at the amending Act, made some suggestions that were regressive in nature, inasmuch as they tend to weaken the support provisions for females, particularly mothers as compared to fathers. For preventing the pervasive discrimination prevailing against women in relation to laws of inheritance and succession of property amongst the members of a joint Hindu family, what is really required is not just making daughters as "coparceners," because that only "upsets the existing arrangement of the family without

providing its viable substitute.” (Mahapatra). The Law Commission of India in its 208th Report (July 2008) recommended the amendment of 'Explanation' appended to the new Section 6 by the amending Act of 2005. The recommendations were “unfair to the fair sex.” Acceptance of the Law Commission's recommendations for widening the scope of Explanation, by including oral partition and family arrangement within the ambit of the definition of partition, therefore, would nullify the strategic protection of the daughter's interest in the Hindu Joint family system just in the name of preserving peace, happiness, honour and welfare of family (Kumar,2015). Having said this, the only way to acknowledge the significance of the amendment act 2005 along with its legal and terminological anomalies is to regard the amendment as part of the larger process of achieving gender equality. The amendment is not the final word in any sense, the statutes are constantly evolving and active judicial entities hand in hand with civil society would find its way in ensuring what the constitution of India has long promised to the women of the country.

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- NOTES

ⁱ Article 14 and 15 embodies right to equality before law and the endeavor of the State to abolish all discriminations on the basis of religion, race, caste, sex or place of birth.

ⁱⁱ The Directive principles of the state policy enshrined in part IV of the Indian constitution are guidelines to State while framing laws and policies to establish a just society in the country.

ⁱⁱⁱ The Ambedkar committee was composed of 17 legislators of which three were women; G. Durgabai, Renuka Ray and Amu Swaminathan.

^{iv} Those members who opposed the Hindu Code Bill in September 1951, fared better in 1952 elections than those who supported it.

^v There was no clarity regarding what constituted pristine *shastric* tradition still it was reinforced.

^{vi} As per the act, Class I heirs total 12 in number included: 1. son 2. daughter 3. widow 4. mother 5. sons of a predeceased son 6. daughter of predeceased son 7. son of a predeceased daughter 8. daughter of a predeceased daughter 9. widow of predeceased son 10. son of a predeceased son of a

predeceased son 11. daughter of predeceased son of a predeceased son 12.widow of predeceased son of a predeceased son.

^{vii} The Class II heirs included nine entries as under: 1.father 2.(i) son's daughter's son (ii) son's daughter's daughter(iii)brother (iv) sister 3.(i)daughter's son's son (ii)daughter's son's daughter (iii)daughter's daughter's son (iv)daughter's daughter's daughter 4.(i)brothers' son (ii)sister's son's (iii) brothers' daughter (iv)sister's daughter 5. father's father; father's mother 6.father's widow; brother's widow 7. father's brother; father's sister 8. mother's father; mother's mother 9. mother's brother; mother's sister

^{viii} *Agantes* are those persons who are related by blood or adoption wholly through males,

^{ix} *Cognates*^{ix} are those persons who are related by blood or adoption but not wholly through males.

^x These Acts were namely: the Hindu Succession (Andhra Pradesh Amendment) Act, 1986, the Hindu Succession (Karnataka amendment) Act, 1994, the Hindu Succession (Maharashtra Amendment) Act, 1994, the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

^{xi} The property of a female Hindu dying intestate shall devolve firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.

^{xii} The father (male coparcener) in this case passed away in 2001 and thereafter one of the sons initiated proceedings for partition of joint family property in the year 2002. The son claimed that the daughters were not entitled to a share in the joint family as the father had passed away prior to coming into force of the Amendment Act. But the Supreme Court held that although the suit was filed in the year 2002, the preliminary decree was passed in the year 2007 and therefore, the daughters were entitled to the benefit of the Amendment Act.

Read about the inheritance rights of India, property inheritance laws and the division of property.Â In this blog, we shall discuss how a person can succeed or inherit a property, with special coverage on the inheritance rights of daughters, children, and grandchildren. Written by: Prachi Darji. 22,399. Published on 24-Jul-18. What does inheritance mean? Inheritance can very loosely be defined as the property given to a descendant upon the death of a relative. Right of Inheritance is devolution of the property, titles, debts, rights, and obligations to another person on the death of an individual.