INHERITANCE RIGHT OF HINDU WOMEN IN AGRICULTURAL PROPERTY: UNCERTAIN JUSTICE

*Archana Mishra**

Abstract

Hindu women who constitute almost 38% of the total Indian population had been hostilely affected by the statutory denial of ownership in agricultural property under Hindu Succession Act, 1956. Later the Hindu Succession (Amendment) Act, 2005 amended Hindu Succession Act, 1956 and omitted the provision dealing with agricultural property. Since the Indian Constitution gives both Parliament and state governments the power to make laws on agricultural property, with state governments having exclusive authority to legislate on agricultural land, after amendment, the ambiguity over the legislative competence of both the Centre and the states has been highlighted by conflicting high court opinions. The Supreme Court's latest position with regard to application of Hindu Succession Act, 1956 to agricultural property, is shrouded with uncertainty. The present paper analyses the Supreme Court's decision regarding the effect of omission of exemption granted to agricultural property under HSA, 1956 and the uncertainties surrounding the inheritance rights of Hindu women in such property.

I Introduction

THE INDIAN Supreme Court's recent dismissal of a review petition[1] challenging the topical decision in *Babu Ram* v. *Santokh Singh*[2] which confirmed the preferential right of heirs of Hindu under section 22[3] of the Hindu Succession Act, 1956 (hereinafter

* Assistant Professor, Faculty of Law, University of Delhi .

1 *Babu Ram* v. *Santokh Singh*, Supreme Court of India, RP (C) No. 1408 of 2019 decided on July 23, 2019.

2 AIR 2019 SC 1506.

3 Hindu Succession Act, 1956, s. reads: 22. (1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

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

Explanation.—In this section, "court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

referred to as 'HSA, 1956') after its amendment, even in agricultural property, has reignited the debate over Hindu Succession Act's applicability to agricultural property and its consequences on Hindu women's right to inherit agricultural property. The Hindu Succession Act, 1956, prior to its amendment by Hindu Succession (Amendment) Act, 2005 (hereinafter referred to as 'Amendment Act, 2005') exempted its applicability to agricultural property under section 4(2). The Amendment Act, 2005 has omitted section 4(2) of HSA, 1956. Since the issue in *Babu Ram's* case concerned the preferential rights of Hindu heirs in agricultural property following the omission of exclusion clause dealt with under section 4(2), it has raised a much larger question about whether the codified law under HSA, 1956 now governs the devolution of agricultural property for Hindus, thereby affecting and granting rights also to Hindu women in agricultural property. Prior to omission, section 4(2) of HSA, 1956, read as:

> (2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

The dilemma over the rights of Hindu women in agricultural property is now new. Hindu women's right to property has been restricted since time immemorial. Their rights to acquire, inherit, claim and control property in India are decided fundamentally by socially acceptable values and standards, as well as the decision-making and distribution structures within the family.[4] The uncodified law under Mitakshara system, which existed in almost whole of India, had restricted her right in immovable property in the form of limited estate. She had no right to alienate the property but could only use it during her lifetime after which it devolved on the heirs of last owner of the property. Restricting a woman's right in an agrarian society where the majority of immovable properties were agricultural lands was a huge blow to her socioeconomic status.

Though the equalization of inheritance rights may be a powerful instrument for the empowerment of women,[5] Hindu women were not given equal rights even by the codified laws. The codification of the old Hindu law has not kept pace with the constitutional mandate of gender equality and in removing gender disparity completely.[6] The first statutory legislation that granted rights to widows in separate and coparcenary

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4 Kanaklatha Mukund, "Women's Property Rights in South India: A Review", 34 *EPW* 22 (June 1999).

5 Sonia Bhalotra, Rachel Brulé, Sanchari Roy, "Women's inheritance rights reform and the preference for sons in India" (146) 102275 *Journal of Development Economics* (Sep.2020).

6 Archana Mishra, "Devolution of Property of the Hindu Female: Autonomy, Relationality, and the Law" 29(2) *International Journal of Law, Policy and the Family* (2015).

property was Hindu Women's Rights to Property Act, 1937 (Act XVIII of 1937) (hereinafter referred as "Act XVIII of 1937") but the status of applicability of the Act to agricultural property was not clear. It's applicability to agricultural property was clarified judicially by the by the Federal Court in *In re Hindu Women's Rights to Property Act*[7] wherein court decided that Act XVIII of 1937 regulated succession of property other than agricultural land since agricultural land was beyond the legislative powers of the Central Government. Later the Amendment Act 26/1947 made the Act XVIII of 1937 applicable to agricultural land.

II Legislative developments with regard to section 4(2) of Hindu Succession Act, 1956

Act XVIII of 1937 is regarded as a major milestone in the development of the Hindu Code Bill.[8] Hindu Law Committee had not included 'agricultural land' under Hindu Code nor was it included under Hindu Code Bill of 1948. It was also excluded from the purview of Hindu Succession Bill (No. XIII of 1954) drafted by the Rau Committee. The Rajya Sabha adopted the idea that a female heir should be entitled to a portion of her father's property in all agricultural properties while passing the resolution to refer the Hindu Succession Bill to select committee. The select committee's report also stated the committee's determination to bring all landed properties, including farms and agricultural lands, within the Act's purview. However, when the matter was debated in the Rajya Sabha, H.V. Pataskar proposed the inclusion of section 4(2) in the Hindu Succession Bill, 1954, claiming that the exemption was necessary to avoid jeopardising states' efforts to enact tenurial laws and to clarify that personal law would not be affected. All tenancy rules, including the mechanism of devolution of tenancy rights, applied uniformly to everyone, regardless of whether he was a Hindu, Muslim, Christian, Parsi, or anyone else, and so superseded all their family or personal laws. A majority of Rajya Sabha members voted in favor of the amendment, which was later confirmed by the Lok Sabha. The purpose of section 4(2) of the original Act, according to legislative debates, was solely to clarify that HSA, 1956, as personal legislation, had no bearing on the States' ability to enact laws concerning tenancy rights, succession, ceilings, or the prevention of agricultural holdings fragmentation. It was done to avoid interfering with progressive agrarian reform legislation that had been passed in some states.

III Legislative competence of Parliament and state governments over agricultural land governance in India

The Constitution of India is federal in nature and the legislative powers are distributed between Centre and state government. The Parliament has exclusive power to legislate on subjects under Union List, State has exclusive jurisdiction to rule over subjects

7 AIR 1941 PC 72.

8 John Duncan M. Derrett, *Hindu Law: Past and Present* (A Mukherjee and Co., Calcutta, 1957).

under State List whereas both Parliament and State could legislate on subjects contained in Concurrent List. Different aspects of land governance falls under different lists. For example, subjects such as succession, wills, intestacy, partition and transfer of land excluding agricultural land falls under Concurrent List over which both Parliament as well as States have the power to make laws. State has the power to make laws over agricultural land including transfer of agricultural land.

Since 'succession' falls under Concurrent List, the Parliament enacted the Hindu Succession Act, 1956. HSA, 1956 was enacted to grant equal inheritance rights to Hindu females in property but it expressly exempted its application to fragmentation of agricultural holdings, tenancy rights and ceilings which consequently deprived Hindu women of their statutory rights in agricultural properties, though it converted Hindu female's limited right in property to absolute right, made daughter simultaneous heir with son, laid down rules for devolution of property, expanded the meaning of *stridhan*, recognised descendants through female line of descent among many others. But conservative ideology of male domination over property was strong enough to undermine their inheritance rights. It did not grant equal inheritance right to Hindu women as it retained male-centric coparcenary and joint family system with the rights by birth and survivorship with no inclusion of females within it and at the same time expressly exempted its application to agricultural properties. The grant of absolute rights in property to females under HSA, 1956 was balanced by excluding the application of HSA, 1956 two most important forms of property - joint family property and agricultural property. The continuance of *Mitakshara* coparcenary without females, was a big setback for Hindu female's right.

Further, at the time of the HSA's enactment in 1956, the majority of India's holdings were rural and agricultural. The agriculturist classes made up the majority of the population.The HSA of 1956 had no effect on state-enacted tenurial legislation that prevented the fragmentation of agricultural holdings, fixed ceilings, and governed the devolution of tenancy rights of such holdings. The state tenurial laws apply uniformly regardless of the religion of the land owner or tenant. The state government may lay down express legislation for tenurial laws or may rule for the application of personal laws to deal with agricultural properties while others remain silent on the order of devolution of agricultural property where the courts have applied personal law for devolution of agricultural property. In absence of state legislated tenurial law, HSA, 1956 applied to agricultural properties of Hindus. Majority of state tenurial laws governing agricultural property shows strong preference for agnatic succession *i.e.,* the rights regarding agricultural property devolves on lineal male descendants in the male line of descent. Widow and daughters get right in absence of such descendants. Thus, the state tenurial laws are generally gender biased and against giving rights to females in agricultural property. They are purposely placed in Ninth Schedule of the Constitution to escape constitutional challenge. Due to different kinds of state tenurial

laws, women's rights in agricultural land show vast disparity by region. The non-application of HSA, 1956 to agricultural property denied rights to a significant number of Hindu women in rural India whose parents owned nothing else but agricultural property. Exemption of agricultural property from HSA, 1956 further widened the gap between Hindu males' and Hindu females' rights in property.

The focus of lawmakers in matter of agricultural property was more on protecting state's tenurial laws than its effect on Hindu women's right in agricultural property. Whatever may be the intention of lawmakers when they included an exemption clause for agricultural property, one of the most serious consequences was the denial of Act's beneficial provisions to Hindu females in agricultural estates. Non-application of the Act to joint family property or coparcenary and agricultural property defeated in fact, the very purpose of enacting HSA, 1956. Refusal of all beneficial rights conferred by HSA, 1956 in coparcenary and agricultural property to female heirs, left them very little to inherit. After few decades of enactment of HSA, 1956, some state governments amended Hindu law of succession to grant coparcenary rights to daughter. None of the state amendments[9] which had granted coparcenary right to unmarried daughter in their states or had abolished joint family system, had made any change to the provisions on agricultural land. At the time of amendment to HSA, 1956 in 2004 the legislature realised that having denied Hindu women right to own agricultural property, the most important form of rural property, have prevented women from achieving social and economic advancement. As a result, the Rajya Sabha proposed the repeal of section 4(2) of HSA, 1956 in Hindu Succession Bill (Amendment) Bill, 2004 which was approved by the Lok Sabha. The Bill after assent of the President of India, became Hindu Succession (Amendment) Act, 2005.

The Hindu Succession (Amendment) Act, 2005 significantly increased women's likelihood to inherit land, although it did not fully compensate for the underlying gender inequality.[10] Land reform policies (land to the tiller, fixation of ceilings, prevention of fragmentation *etc.*,) have been based both on the principle of redistributive justice and on arguments regarding efficiency; but on neither count are gender inequalities taken into account.[11] Women in India do cultivate land but the titles are held by others.[12]

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9 Hindu Succession (Andhra Pradesh Amendment) Act, 1986, Hindu Succession (Tamil Nadu Amendment) Act, 1989, Hindu Succession (Maharashtra Amendment) Act, 1994, Hindu Succession (Karnataka Amendment) Act, 1994, Kerala Joint Hindu Family System (Abolition) Act, 1975.

10 Klaus Deininger, Aparajita Goyal, and Hari Nagarajan, "Women's Inheritance Rights and Intergenerational Transmission of Resources in India" 48(1) *J. Human Resources* (2013).

11 Bina Agarwal, "Gender and Land Rights in Agricultural Land in India" 30 *EPW* 12 (Mar 25, 1955).

12 K. C. Roy, C. A. Tisdell, "Property Rights in Women's Empowerment in Rural India: A Review" 29(4) *International Journal of Social Economics* (2002).

IV Uncertainty surrounding effect of omission of section 4(2) of Hindu Succession Act

Gender inequality in inheritance of agricultural land in India continues to pose a problem.[13] The deletion of section 4(2) by the Amendment Act, 2005 which came after more than six decades of the parent Act, did not ease the situation, but rather has created confusion over the inheritance under HSA, 1956 to agricultural property. Instead of stating unequivocally that HSA, 1956 will apply also to agricultural property, the legislature simply omitted the provision. Is it reasonable to presume that HSA, 1956 now applies to agricultural property since the provision has been deleted? The issue becomes more significant as it has direct bearing on the rights of Hindu women in the agricultural property. Does the omission result in the restoration of their statutorily withheld rights? As a result, the Hindu women's claim to agricultural property under HSA, 1956 is in jeopardy.

Contradictory opinions of various high courts prevailed on the effect of omission of section 4(2). The High Court of Delhi held[14] that Delhi Land Reforms Act, 1954 had protection under section 4(2) of HSA, 1956, therefore after the shield from obliteration given by sub-section (2) was removed, the provisions of the HSA would take precedence over the provisions of the Delhi Land Reforms Act, 1954. On the other hand, the High Court of Allahabad[15] has held that agriculture land is exclusively in the jurisdiction of the state legislatures, and Parliament has no authority to pass legislation on that subject, therefore section 4(2) was merely for the purpose of clarification, and it cannot be stated that the HSA, 1956 *suo-motu* applied to agricultural land after the exemption was repealed.

Larger issue of the effect of section 4(2)'s omission as well as the smaller question of whether heirs of Hindu had preferential right to claim agricultural property under section 22 of HSA, 1956 were yet to be settled by the Supreme Court, though conflicting view of High Courts existed on the applicability of section 22 to agricultural property. Some high courts[16] held that section 22 of HSA, 1956 applied to agricultural land

13 Shipra Deoi, Akansha Dubey, "Gender Inequality in Inheritance Laws: The Case of Agricultural Land in India" (2019) *available at*: https://cdn.landesa.org/wp-content/uploads/Gender-Inequality-in-Inheritance-Laws-The-case-of-agricultural-land-in-India-1.pdf (last viewed on Apr. 30, 2023).

14 *Nirmala* v. *Government of NCT of Delhi*, WP (C) 6435/2007, High Court of Delhi decided on Sep. 4, 2010.

15 *Archna* v. *Dy. Director of Consolidation*, Writ - B No. - 64999 of 2014, High Court of Allahabad decided on Mar. 27, 2015.

16 *Laxmi Debi* v. *Surendra Kumar Panda,* AIR 1957 Orissa 1; *Basavant Gouda* v. *Channabasawwa*, AIR 1971 Mysore 151; *Nidhi Swain* v. *Khati Dibya*, AIR 1974 Orissa 70.

whereas other high courts[17] had contrary opinion, therefore the issue needed final adjudication. The recent ruling of Supreme Court in *Babu Ram's* case settles the larger issue of the effect of the omission of section 4(2) of HSA, 1956 on agricultural property as well as on the issue whether heirs of Hindu could claim preferential right in agricultural property.

Babu Ram v. *Santokh Singh* preferential rights of Hindu heirs in agricultural property

In the instant case, two sons, Santokh Singha and Nathu Ram inherited certain agricultural lands after the death of father. Nathu Ram executed a registered sale deed in respect of his share of land in favour of Babu Ram which was challenged by Santokh Singh in 1991 on the ground that he had preferential right under section 22 of HSA, 1956 to acquire the suit land. The suit was dismissed by the trial court and was partly allowed by the appellate court. The substantive question before the high court of Himachal Pradesh on the second appeal was whether section 22 of HSA, 1956 excluded an intestate's interest in agricultural land, and whether the preferential right over "immovable property" as contemplated in the said provision was confined only to business and such immovable property did not include agricultural land? The suit was filed before trial court in 1991 and while the matter was still pending before the high court, the Amendment Act, 2005 omitted section 4(2) of HSA, 1956.The Division Bench of High Court of Himachal Pradesh in *Roshan Lal* v. *Pritam Singh,*[18] has observed that immovable property under section 22 was broad enough to include agricultural land. The high court citing the decision of *Roshan Lal*, held that section 22 would apply to agricultural land and dismissed the second appeal against which the appeal came before the Supreme Court. The high court made no mention of legislative developments or the impact of section 4(2) deletion on agricultural property.

Issues involved in *Babu Ram* v. *Santokh Singh*

On appeal to Supreme Court, the issue before the court was whether an heir could exercise preferential right under section 22 to agricultural property. The Supreme Court divided the issue into three parts:

(i) Whether section 4(2) of HSA, 1956, prior to its omission, exempted the application of the Act to all aspects of agricultural property;

(ii) Whether succession of agricultural property was governed by HSA, 1956 and the effect of omission of section 4(2); and

(iii) Whether preferential right of heirs of Hindu under section 22 also applied to agricultural property?

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17 *Jaswant* v. *Basanti Devi*, 1970 PLJ 587; *Prema Devi* v. *Joint Director of Consolidation (Head quarter) at Gorakhpur Camp*, AIR 1970 All 238; *Jeewanram* v. *Lichmadevi*, AIR 1981 Raj 16.

18 R.S.A.No. 258 of 2012 decided on Mar. 1, 2018.

Supreme Court's observation over applicability of Hindu Succession Act, 1956 to agricultural property

The Supreme Court had first to decide on broader question of whether the devolution of agricultural property was governed by HSA, 1956. The question becomes more pertinent in light of omission of section 4(2) of HSA, 1956. The court affirmed the decision of High Court of Bombay in *Tukaram Genba Jadhav* v. *Laxman Genba Jadhav*[19] wherein the high court hadstated that the unqualified notion that the HSA, 1956 did not apply to agricultural property was incorrect since it lead to the consequence that succession of Hindu agricultural property was not governed by the HSA, 1956. Section 4(2) did not intend for this to happen, as it only addressed particular features of agricultural property such as prevention of fragmentation of agricultural holdings, fixation of ceilings and devolution of tenancy rights in such holdings. The Supreme Court thus ruled that only those laws which fell within the category of laws specified in section 4(2) of the Act were excluded from the scope of HSA, 1956 and section 4(2) could not be interpreted to mean that HSA, 1956 did not apply to succession in respect of agricultural property.

With regard to second issue of whether succession of agricultural property was governed by HSA, 1956 and the effect of omission of section 4(2), the Supreme Court traced the historical and legislative developments with regard to the competence of State legislature as well as Parliament's power for enacting laws on succession, intestacy, devolution of agricultural properties among others. The Supreme Court then referred to the entries mentioned under Government of India Act, 1935 (hereinafter referred to as 'GOI Act, 1935') and the corresponding changes brought in the Constitution of India.

Entry 21, List II under Government of India Act, 1935 mentioned:

> 21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove.

Whereas, corresponding Entry 18, List II of Constitution of India mentions:

> 18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

Entries 6 and 7 of List III of Government of India Act, 1935 mentioned:

19 AIR 1994 Bom 247.

> 6. Marriage and divorce; infants and minors; adoption.
>
> 7. Wills, intestacy, and succession, save as regards agricultural land.

and corresponding Entry 5 of List III under Constitution of India mentions:

> 5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

The Supreme Court opined that under GOI Act, 1935 the Provincial legislature was exclusively entitled to make laws relating to '*transfer, alienation and devolution of agricultural land'* which was further clarified by Entry 7 of List III by use of expression '…*succession, save as regards agricultural land'* under the Concurrent List. Thus the provincial legislation had exclusive competence to deal with the transfer, alienation and also devolution of agricultural land. The Constitution of India, 1949 brought changes in List II and List III of GOI Act, 1935 *e.g.,* Entry 18 under List II of Constitution retained *'transfer, alienation of agricultural property'* but expression '*devolution*' was taken out as a qualification, the expression '…*save as regards agricultural land'* was absent under Entry 5 of List III of the Constitution which was earlier present under Entry 7 of List III of GOI Act, 1935. The Court emphasised that the State with respect to Entry 18 List II could make laws for transfer, alienation of agricultural land, which were *inter-vivos* transfers, but that when it came to '*intestacy and succession*,' which were essentially transfers by operation of law as per the law applicable to the person whose death was to open the succession, both the Union and State legislatures were competent to deal with the topic, therefore section 22 could be applied to succession of agricultural land in the State. In the absence of any state legislation dealing with the succession to an interest in agricultural land in the State of Himachal Pradesh, the Supreme Court upheld the applicability of section 22 to succession of agricultural property in that state. The court also believed that before the omission of section 4(2), the provision made it clear that it did not apply to the devolution of tenancy rights in respect of agricultural holdings, implying that it applied to the general field of succession, including agricultural property, but section 22 was not applicable to the devolution of tenancy rights in respect of agricultural holdings. The court observed that the exception to the applicability of section 22 has been removed with the repeal of Section 4(2).

The court then returned to the issue of the applicability of section 22 to the succession to agricultural lands particularly when '*right in or over land, land tenures…..'* are within the exclusive competence of the state legislatures under Entry 18 of List II of the Constitution. The state legislatures enact pre-emption laws to confer certain categories and classes of holders in cases of certain transfers of agricultural land. The court agreed that when different persons, unrelated to each other, jointly purchased an agricultural holding and one wished to sell of his interest, then the State enacted law,

if any, for preemption granting right of pre-emption to joint holders, could be applied. Similarly, if the joint holders were brothers and sisters who had invested their own funds in jointly purchasing the agricultural property, then in presence of any state enacted preemption laws granted to joint holders would apply. But, if the brothers and sisters instead of purchasing agricultural property out of their own funds, had inherited agricultural holdings, and one of them desired to dispose of his or her interest, then it would be governed by section 22 of HSA, 1956 as the source of interest in such property was only on the basis of succession which was recognised by section 22 of HSA, 1956, the court held. The court further opined that since the right or interest itself was created by HSA, 1956, the manner of exercise of such right could be by that very legislation, therefore the preferential right given to heir of Hindu under section 22 was applicable even when the property was an agricultural land.

V Conclusion and Suggestions

The Supreme Court decided on the issue of the applicability of section 22 of the HSA, 1956 to agricultural property, as well as the effect of omission of section 4(2) and held that devolution of agricultural property is to be governed by HSA, 1956, but the court's primary focus was on the issue brought before it. It stated specifically that section 22 would apply to agricultural property, as Himachal Pradesh had no state statute controlling the preemption right of agricultural property. While looking into the issue brought before the court, it looked into various aspects covered under section 4(2) as well as section 22 of HSA, 1956 that it is difficult to comprehend clearly the decision of Supreme Court on the applicability of HSA, 1956 to agricultural property.

The Supreme Court's observation, based on the difference in language and content of Entry 5 in List III of the Constitution versus Entry 7 in List III of the Government of India Act, 1935, could be interpreted to mean that the succession of agricultural property, including those aspects of agricultural property that were exempted under section 4(2) prior to the Amendment Act, 2005, is now governed by HSA, 1956.The decision implies that heirs of Hindu to have the right to inherit all kinds of Hindu's property, including his agricultural property under HSA, 1956. Though the Supreme Court's decision in *Babu Ram's* case does not specifically address Hindu women's right to agricultural property, the fact that the decision recognizes the rights of heirs of Hindu in agricultural property could be interpreted to mean that Hindu women also have rights to claim agricultural property under the HSA, 1956.

Inheritance rights securing land property to women, being denied or violated, should be protected and promoted by law through a robust legal framework and an effective enforcement system.[20] The codification of Hindu law of succession was to grant better

20 Archana Mishra, "Vicissitudes of Women's Inheritance Right – England, Canada and India at the dawn of 21st Century" 58(4) *Journal of Indian Law Institute* (2016).

rights in property to Hindu females, accordingly the heirs of male under HSA, 1956 are classified in such a way that more number of females are his heirs in first category.[21] Class I comprises of 16 heirs of which 11 heirs are females. These include mother, widow, daughter, widow of a predeceased son, daughter of a predeceased son, widow of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son, daughter of a predeceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son. More number of female members of the Hindu family could inherit agricultural property, if HSA, 1956 applies to agricultural property. The Amendment Act, 2005 has further omitted the provision that had disentitled females of Class I from claiming partition of dwelling house and had taken away the residence right of married daughter in father's property. Due to omission of section 4(2), the females also will have the right to claim partition of agricultural property. Section 14 of HSA, 1956 grants absolute right to females in property. The application of HSA, 1956 to agricultural property would entitle her to claim partition of her share in agricultural property, and to control, manage, use it according to her wish. Women generally forgo their claim in property in anticipation of support from their natal family if their relationship gets strained in her matrimonial family. The share to them in agricultural property will boost their self-confidence and increase their bargaining power both within and beyond the family. It may even boost agricultural productivity (in face of male outmigration especially in south India) by enabling women to take loans to invest on their land to which they have formal entitlement and thereby enhance family income.[22] They would be in better position to understand the nuances of agricultural activities and agricultural markets *e.g.,* taking decision on matters related to agricultural activities *e.g.,* what to sow, whom to sell products *etc.*, understand the different policies framed by the government for agricultural land *etc.*

The right to women in agricultural property would ensure more equal power within home and community. 60.4 percentage of India is agricultural land[23] and Hindu forms majority of the population in India. Granting of rights in agricultural property to Hindu female will benefit large percentage of women living in India. Rights in arable land can significantly lower women's risk of poverty and destitution, particularly among

21 The heirs of male under HSA, 1956 are classified as Class I heirs, Class II heirs, agnates and cognates. A person is said to be an 'agnate' of another if the two are related by blood or adoption wholly through males and is 'cognate' of another if the two are related by blood or adoption but not wholly through males.

22 Sanchari Roy, "Female empowerment through inheritance rights: evidence from India." *London School of Economics*, London (2008).

23 *Available at*: https://data.worldbank.org/indicator/AG.LND.AGRI.ZS (last visited on Oct. 29, 2021).

impoverished households, partially due to the general positive effect of women having independent access to economic resources, and partly due to the specific advantages connected with rights to such land.[24] The effect of omission of section 4(2) of HSA, 1956, will bring the agricultural land at par with other property, overriding the gender-inconsistent state tenurial laws. The rights in agricultural property will make a significant contribution to Hindu women's empowerment. Clear ruling of Hindu women's right in agricultural property by Parliament or by Supreme Court would be a remarkable step that would remove the gender inequalities in true sense.

Instead of amending the provision that clearly stated the applicability of HSA, 1956 to agricultural property, the lawmakers chose to omit the exemption clause under section 4(2), the effect of which has now been judicially settled to mean that HSA, 1956 also applies to agricultural properties. But the question then arises is whether the Parliament is competent to make laws on subjects mentioned under the State List. Article 246 of the Constitution of India expressly states that the state legislatures have exclusive legislative powers over any of the matters listed in the State List (List II) of the Seventh Schedule to the Constitution. A closer look at the Seventh Schedule to the Constitution shows that the term 'agriculture' appears at 15 places. Under List I it appears at 4 places at Entries 82, 86, 87 and 88 where Parliament's power has been restricted by use of the expression "other than agricultural income" in Entry 82, "exclusive of agricultural land" in Entry 86, "other than agricultural land" in Entries 87 and 88. Under List II it finds place at 6 places in Entries 14, 18 (transfer and alienation of agricultural land), 30 (relief of agricultural indebtedness), 46 (taxes on agricultural income), 47 (duties in respect of succession to agricultural land) and 48 (estate duty in respect of agricultural land). The prohibition in List I by use of words "other than" or "exclusive of" makes it very clear that Parliament is prohibited to enact laws regarding 'agriculture' as 'agriculture' has been categorically placed under State List. The state government has exclusive power to make laws relating to taxes on agricultural income, taxes on the capital value of agricultural land, estate duty in respect to agricultural land and duties in respect of succession to agricultural land. Under List III, agriculture finds mention at Entries 6 (transfer of property other than agricultural land), 7 (contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land) and 41 (custody, management and disposal of property (including agricultural land) declared by law to be evacuee property). The analysis of various entries makes it very clear that Parliament lacks legislative competence under articles 245 and 246 to frame laws with regard to "agriculture" which is clearly covered under Entry 14 of State List except through the gateway of

24 Bina Agarwal, Widows versus Daughters or Widows as Daughters? Property, Land, and Economic Security in Rural India, 32(1) *Modern Asian Studies* (1998).

Entry 41 under Concurrent List (List III). The Supreme Court in *Babu Ram's* case focused exclusively on few entries under List II and List III but ignored the larger context of State's exclusive jurisdiction to rule on agricultural matters.

Further, Entry 18 of State List (List II) includes "land, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents and transfer and alienation of agricultural land" over which only the state legislature has competence to frame laws. The Supreme Court in *Babu Ram's* case mentions Entry 18 of State List and recognises the right of State to make laws on the subjects mentioned in the Entry giving an example of State enacted pre-emption laws conferred on certain categories and classes of holders in cases of transfers of agricultural lands. The court distinguished between joint owner's pre-emption right in purchased property and the heir's right in succeeded property created by State enacted statute and HSA, 1956, respectively, but goes no further to clarify on the Parliament's competence to enact law on List II's entry "land, rights in or over land" under what circumstances.

The only constitutional way by which Parliament could legislate on matter listed in State List is when Rajya Sabha passes a special resolution as per article 249 in the national interest or under article 252 when two or more states passes a resolution requesting it to legislate on any specific State subject. The uncertainty surrounding Parliament's legislative competence in enacting laws over state subjects combined with lack of a direct judicial precedent guaranteeing Hindu women's right in agricultural property, taking into consideration the various Entries under the Schedule to the Constitution, defeat the very purpose of the Amendment Act, 2005. Further, even if it assumed that deletion of section 4(2) results in Hindu's agricultural properties is subjected to HSA, 1956, it leaves persons of other religions to be governed by state enacted tenurial laws. The best way to address all uncertainties about devolution of agricultural property for everyone, including people of any religion or gender, is for Parliament to pass a uniform statute in consultation with state legislatures.