

Unraveling The Paradox Of Inequality: Exploring Hindu Women's Inheritance Rights In Agricultural Land And Ownership In India

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ABSTRACT

Social justice necessitates that woman be afforded equal treatment in both economic and social domains³. Women possess a mere 20 percent of land globally, while constituting over half of the world's population, contributing the bulk of the world's food supply, and doing 60% to 80% of agricultural labor in underdeveloped nations⁴. According to the Indian Agricultural Census of 2015-16, the percentage of female operational holders rose from 12.79% in 2010-11 to 13.87% in 2015-16, and further increased to 14% in 2023, indicating a growing involvement of females in the administration and operation of agricultural lands⁵. Despite women constituting over 42 percent of the agricultural workforce in the entire nation, less than 2 percent of agricultural land is said to be inherited by female family members, while 83 percent is inherited by males, with the remainder acquired through alternative means. Agricultural land is the predominant portion of real estate in India. Indian women have been deprived of the right to inherit this vital resource, notwithstanding the constitutional guarantees of equality and freedom from bias.

Hindu women, comprising about 40% of the entire Indian population, have been negatively impacted by the restriction of ownership rights to agricultural land. The inheritance of property among Hindus is regulated by the Hindu Succession Act of 1956 (HSA, 1956). The legislation was enacted to ensure daughters had identical inheritance rights as sons and to provide absolute property rights to females; yet, it also imposed significant restrictions on agricultural land. Agricultural property was explicitly excluded from the provisions of HSA, 1956 until 2005, as stipulated in section 4(2)10 of HSA, 1956. The legislative deletion of section 4(2) of the HSA, 1956, due to the change, has engendered ambiguity about the applicability of the HSA, 1956 to agricultural property, since the legislature has not explicitly affirmed its application to such property. This study examines several state tenurial laws, the legislative authority of the government to enact legislation for the succession of agricultural land, and the impact of the removal of section 4(2) of the HSA, 1956 on the rights of Hindu women in agrarian property⁶. The paper also examines the gender-based gap in property ownership in India, where women have traditionally been denied the ability to inherit property, including land.

Inheritance Rights of Hindu Women in Agricultural Property

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³ *Law Commission of India, 174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law (May 2000)*

⁴ *Women produce up to 80% of food in developing countries | FAO.* (n.d.). <https://www.fao.org/family-farming/detail/en/c/1634537/>

⁵ Sally, M. (2018, October 1). More women getting into farming, show agriculture census. *The Economic Times*. <https://economictimes.indiatimes.com/news/economy/agriculture/government-releases-agriculture-census-data-for-2015-16-female-participation-rising-in-farm-sector/articleshow/66031822.cms?from=mdr>

⁶ Tomita, N. (2021, November 9). *Inheritance Of Agricultural Land By Women: There Is Distance Yet To Travel - Landesa*. Landesa. <https://www.landesa.org/inheritance-of-agricultural-land-by-women-there-is-distance-yet-to-travel/>

The inheritance rights of Hindu women regarding agricultural property in India are inconsistent. Although several modifications have been implemented in Hindu legislation, Hindu women have yet to achieve full equality of rights with males. The Hindu Succession Act of 1956 was intended to provide equal inheritance rights to Hindu women; nevertheless, it excluded two significant rights: rights to agricultural land and coparcenary status in coparcenary property. The evident rationale seems to be the preservation of familial unity and the prevention of the fragmentation of agricultural holdings or the diversion of tenancy rights. The exclusion of Hindu women's inheritance rights in agricultural property is not standard throughout India, as seen during the discussions on the Hindu Code Bill. Although several modifications have been implemented in Hindu legislation, Hindu women have yet to achieve full equality of rights with males. The Hindu Succession Act of 1956 was intended to provide equal inheritance rights to Hindu women; nevertheless, it excluded two significant rights: rights to agricultural land and coparcenary status in coparcenary property. The apparent rationale is to preserve family unity and avert the fragmentation of agricultural holdings or the diversion of tenancy rights. In the discussions over the Hindu Code Bill, Dr. Ambedkar emphasized that any central regulation concerning agricultural property would be extra vires in relation to the provincial topic of 'land'. His rationale was:- *"I believe there is no necessity that a uniform law of inheritance should apply to all sorts of property. Property varies in its nature, varies in its importance in the social life of the community and consequently it may be a matter of no mean advantage for society to have one set of law of inheritance for agricultural property and another set of law for non-agricultural property ... land which is the foundation of its economic life had better be governed by the law of primogeniture so that neither the junior sons nor females may take part in the inheritance"*⁷.

Land for agriculture and coparcenary property constitute a significant percentage of property in India. The traditional Hindu law, shaped by a patriarchal worldview, recognized only males as possessing claims over immovable property. The exclusion of women from such assets caused significant unfairness to them. The enactment of the HSA in 1956 legally granted women the ability to inherit property⁸.

However, its advantageous effect was mostly limited by the removal of agricultural land and coparcenary property. Subsequently, Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka enacted legislation regarding Mitakshara coparcenary property to ensure women get equal shares in such property. The reform of the central Act - HSA, 1956 in 2005 introduced significant improvements, enhancing women's rights and ownership in coparcenary property. Following the modification, the daughter acquires ownership rights in coparcenary property, is entitled to demand division of such property, and may also assume the role of Karta within the family. Some female legal heirs of Class II, connected via the daughter, have been elevated to Class I by the modification. The exclusion of the authority to claim division of the dwelling home by Class I female heirs, the exemption of the right of residency for married daughters, and the removal of the clause that disqualified some widows from inheritance have legally fortified the status of women within the family. The clause exempting the applicability of HSA, 1956 to rights in agricultural property has also been removed.

The rights to agricultural property of a Hindu prior to the omission were:

- (a) Governed by explicit provisions of state regulations concerning the prevention of fragmentation of agricultural holdings, the establishment of ceilings, or the transmission of tenancy rights;
- (b) Governed by HSA, 1956 in the absence of state legislation addressing the prevention of agricultural holding fragmentation, the establishment of ceilings, or the transfer of tenancy rights.
- (c) Regulated by the HSA, 1956, for all other facets of agricultural property.

Mulla⁹ states that prior to the revision of the HSA in 1956, it lacked an overriding impact over any federal or state legislation regarding (i) the avoidance of fragmentation of agricultural holdings, (ii) the establishment of ceilings, or (iii) the devolution of tenancy rights for such holdings. It is noted that, although section 4(2) stipulates that the Act shall not influence any law governing the devolution of tenancy rights concerning agricultural holdings, the legislature retains the authority to statutorily impose personal law on the devolution of such rights. The sub-section

⁷ Dr Babasaheb Ambedkar Writings and Speeches Center. (n.d.). https://baws.in/books/baws/EN/Volume_14_01/pdf/54

⁸ Reba Som, "Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?" Vol. 28, *Modern Asian Studies*, pp. 165 (Feb., 1994)

⁹ Satyajeet A Desai (ed.), *Mulla Hindu Law* p. 1095, (LexisNexis, India, Updated 21st edition 2013)

only safeguarded the specified issues and did not pertain to the right to inherit agricultural property.

The exemption implied that, despite the commendable provisions of the HSA, 1956, gender-discriminatory statutes could persist in the crucial domain of agricultural land, thus leaving many women in their pre-Act circumstances. Inequities continued in the gender-biased state laws on the devolution of agricultural land and the establishment of limits on agricultural landholdings. The ineffectiveness of the progressive central legislation concerning the regressive restrictions on women's rights in agricultural landholdings has prevented a significant number of women from accessing their rights under the HSA, 1956.

Tenancy rights in agricultural property

Tenancy rights in agricultural land were explicitly exempted from the HSA of 1956 to safeguard the regulations established by state legislations. According to legislative debates, the rationale for this exemption may be twofold: firstly, tenancy laws, being property laws, apply universally regardless of religion, and secondly, the HSA of 1956, as a personal law, should not supersede the provisions of property law enacted for the benefit of the agricultural economy. Secondly, state governments have primary responsibility for agricultural legislation, and the central government should refrain from encroaching upon the powers of state governments. It is important to note that neither the HSA of 1956 nor the General Clauses Act of 1897 provides a definition for "tenancy right," so delegating the responsibility of defining the word to state legislators. The codification of tenurial laws by various governments entrenched Hindu patriarchal practices by conferring rights exclusively to males and refusing women any stake in agricultural holdings under the rationale of preventing "fragmentation of the land"¹⁰ Madhu Kishwar argues that allocating a portion of the family's land to daughters would lead to excessive fragmentation, rendering each holding economically unviable; this has been a prevalent and enduring rationale for denying women a stake in this kind of property. She correctly asserts that no one disputes that allocating a portion to all boys would lead to fragmentation¹¹. During the deliberation on the bill that resulted in the enactment of the HSA, 1956, proponents who vehemently contended for the explicit exclusion of land used for agriculture from inheritance by daughters insisted that the minister provide a clear declaration that the new clause would effectively equate to such exclusion. The inconsistency and lack of coherence in tenurial legislation across several states have resulted in disparities in the rights of women in different jurisdictions. The Hindu Succession Act of 1956 established that a daughter is a legal successor comparable to a son. The daughter was denied the favorable effects of the HSA, 1956, due to the exception under section 4(2). Numerous state administrations have used various legal mechanisms to further obstruct women's property ownership. The predominance of agricultural property in India results in the exemption that denies equal inheritance rights to females over a substantial portion of inherited property, so undermining the concept of equality. The clause prohibiting the transfer of tenancy rights perpetuated the ongoing unequal treatment of female heirs.

The state legislature's authority to establish regulations for the devolution of agricultural interests resulted in discrepancies in the laws governing the devolution of agricultural holdings. Certain state tenancy rules prohibited women from asserting a claim to agricultural property. For instance, Himachal Pradesh¹², Jammu and Kashmir¹³, Punjab and Haryana¹⁴, Delhi, and Uttar Pradesh¹⁵ have defined gender-discriminatory regulations on devolution. In Himachal Pradesh, Jammu and Kashmir, Punjab, and Haryana, daughters and sisters are entirely excluded from inheritance, but in Delhi and Uttar Pradesh, their position in the hierarchy of heirs is subordinate. The majority of state tenurial legislations exhibit a pronounced bias towards male lineal descendants, permitting widows of the dead to take title only in absence of these male heirs. The First Amendment to the Constitution of India in 1951, under Article 31B, safeguards the validity of the Acts listed in the Ninth Schedule from constitutional scrutiny, even if they violate fundamental rights; consequently, efforts were made to incorporate the discriminatory ceiling

¹⁰ Department of Social Welfare, "Towards Equality", Report Of The Committee on The Status of Women in India, (1974).

¹¹ Madhu Kishwar and Ruth Vanita, "Inheritance Rights for Women: A Response to Some Commonly Expressed Fears", *Manushi*, No. 57 (March-April 1990).

¹² See Himachal Pradesh Tenancy and Land Reform Act, 1972.

¹³ See Jammu and Kashmir Tenancy Act, 1980.

¹⁴ See Punjab Tenancy Act 1887 as amended up to 1969; and Pepsu Tenancy and Agricultural Land Act, 1955 (Applies to both Punjab and Haryana)

¹⁵ See Delhi Land Reforms Act, 1954

statutes into the Ninth Schedule. This document addresses some specific state tenurial legislations.

(a) Uttar Pradesh:

Uttar Pradesh (UP) establishes specific legal rules for the transfer of property of male bhumidhars or asamis under the U.P. Zamindari Abolition and Land Reforms Act, 1950 (UPZALR Act, 1950). It regulates land rights regardless of the tenure-holder's faith¹⁶. To enhance social protection for women, the UPZALR Act of 1950 was revised in 2008 to confer upon unmarried daughters the main right to inherit agricultural land, alongside widows and male descendants. Notwithstanding the change, the UPZALR Act, 1950 exhibits discrimination between unmarried and married daughters, since a married daughter may inherit only in the absence of a widow, male lineal descendants, unmarried daughter, mother, and father of the dead bhumidhar. The sons of a predeceased son are principal heirs, but the female child of a predeceased son is regarded as a subsidiary heir. Agnatic heirs are favored over cognatic heirs, and male heirs are prioritized over female heirs. Such overt discrimination cannot be supported by any legal premise. The sequence of succession is addressed in Section 171 of the UPZALR Act, 1950, which stipulates the following:

Section 171 - General order of succession – (1)...

(2) the following relatives of the male bhumidhar or asami are heirs subject to the provisions of sub-section (1), namely :-

(a) widow, unmarried daughter and the male lineal descendant per stripes

Provided that the widow and the son of a predeceased son how low-so-ever per stripes shall inherit the share which would have devolved upon the predeceased son had he been alive;

(b) mother and father;

*(c) [***];*

(d) married daughter;

(e) brother and unmarried sister being respectively the son and the daughter of the same father as the deceased; and son of a predeceased brother, the predeceased brother having been the son of the same father as the deceased;

(f) son's daughter;

(g) father's mother and father's father;

(h) daughter's son;

(i) married sister;

(j) half sister, being the daughter of the same father as the deceased;

(k) sister's son;

(l) half sister's son, the sister having been the daughter of the same father as the deceased;

(m) brother's son's son;

(n) mother's mother's son;

(o) father's father's son's son.

(b) Uttarakhand

The Uttar Pradesh Zamindari Abolition and Land Reforms Act (Uttaranchal Adaptation and Modification) Order, 2001, which extends the UPZALR Act of 1950 to the State of Uttaranchal, does not confer primary inheritance rights to daughters in agricultural property, restricting such rights solely to male lineal descendants and widows. This law demonstrates significant gender prejudice by revoking the inheritance rights of daughters in the presence of sons. Daughters inherit in the absence of male lineal descendants, as well as the widow, father, and mother. It further distinguishes between unmarried and married daughters by prioritizing unmarried daughters for inheritance.

Although females are acknowledged as legal heirs entitled to inherit agricultural land, they do not possess absolute rights to the property. The land does not pass to her heirs upon her death, but instead transfers to the heirs of the most recent male bhumidhar. Upon the death of a female bhumidhar, her stake in the property is inherited by her son, grandson, great-grandson (with closer relatives taking precedence over more distant ones), the widow of a predeceased son, the widow of a predeceased grandson, and the unmarried daughter, all sharing equally per stirpes. The Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 was enacted to establish limits on land

¹⁶ R.R. Maurya, *Uttar Pradesh Land Laws*, Central Law Publications, 21st edition (2015).

ownership and enhance agricultural output in Uttar Pradesh. It allocates land to landless agricultural laborers. The Act defines a tenure holder as any individual possessing a holding, except women whose husbands are tenure holders.

(c) Delhi

The Delhi Land Reforms Act, 1954 (DLR Act, 1954) was modeled after the UPZALR Act, 1950 in its legislative formulation. Gender bias is evident in sections 48, 50, 51, 52, and 53. The Act grants bhumidhar the ability to transfer his holding, excluding his mother, unmarried daughter, unmarried widow, unmarried sister, stepmother, and paternal grandmother, among others. Subsequent daughters possess no inheritance rights, and a widow inherits only in the absence of all male descendants. Certain discriminatory clauses of the DLR Act of 1954 include:

Section 48. Bequest by a Bhumidhar. –

(1) A Bhumidhar may by will bequeath his holding or any part thereof except as provided in subsection (2).

(2) No Bhumidhar entitled to any holding or part in the right of a widow, mother, step-mother, father's father, father's mother, unmarried daughter, or unmarried sister, may bequeath by will such holding or part.

Section 50. General order of succession from males. –

Subject to the provisions of section 48 and 52, when a Bhumidhar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below :

(a) Male lineal descendants in the male line of the descent:

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:

Provided further that the son or sons of a predeceased one shall inherit the share which would have devolved upon the deceased if he had been then alive:

(b) Widow

(c) Father

(d) Mother, being a widow;

(e) Step mother, being a widow;

(f) Father's father

(g) Father's mother, being a widow;

(h) Widow of a male lineal descendant in the male line of descent;

(i) Brother, being the son of same father as the deceased;

(k) Unmarried sister;

(l) Brother's son, the brother having been a son of the same father as the deceased;

(m) Father's father's son;

(n) Brother's son's son;

(o) Father's father's son's son;

(p) Daughter's son.

(d) Punjab and Haryana

According to the Punjab Tenancy Act of 1887, upon the death of a tenant with occupancy rights, only male lineal descendants inherit the land, excluding female descendants from any rights. The tenant's widow might claim inheritance only in the absence of a male descendant. The widow's claim is forfeited upon her death, remarriage, or abandonment of the land. The pertinent clause of the Punjab Tenancy Act, 1887 is as follows:

Section 59 - Succession to right of occupancy - (1) When a tenant having a right of occupancy in any land dies, the right shall devolve- (a) on his male lineal descendants, if any, in the male line of descent; and (b) failing such descendants, on his widow if any until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom; and (c) failing such descendants and widow, or widowed mother, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom.

The Pepsu Tenancy Agricultural Lands Act, 1955 confers the right to obtain proprietary rights only to the lineal male descendants of a tenant or sub-tenant in the male line of succession, should the tenant or sub-tenant neglect to use this right prior to their demise.

The HSA of 1956 is automatically applicable in certain states that have not explicitly established tenancy

legislation¹⁷. States include Gujarat¹⁸, the Bombay area of Maharashtra¹⁹, West Bengal²⁰, Karnataka²¹, Kerala²², the Andhra region of Andhra Pradesh²³, and Tamil Nadu²⁴ do not address the sequence of devolution in their tenancy laws, hence permitting the devolution of such property under the Hindu Succession Act of 1956. Legislation in states like Rajasthan and Madhya Pradesh specifically stipulates that the devolution of tenanted land is to be regulated by personal law. In the Telangana area of Andhra Pradesh, the commentary following Section 40 of the relevant Act clarifies that the Hindu Succession Act of 1956 would apply to Hindu tenants. Numerous overtly discriminatory elements of the state land ceiling Acts have been contested throughout the years on the basis of gender discrimination, rendering them illegal; nonetheless, the courts have upheld their constitutional validity. The protective provision of Schedule IX of the Constitution has served as the foundation for rejecting petitions contesting the legitimacy of ceiling legislation.

Legislative authority of the Central Government to legislate on matters concerning the "succession" of agricultural land:

The Hindu Succession (Amendment) Act, 2005 does not clearly affirm the applicability of the Hindu Succession Act, 1956 to agricultural property. Ambiguity exists over the applicability of the HSA, 1956 (central Act) to agricultural land, since the item "land including transfer and alienation of agricultural land" falls within the State List, but "intestacy and succession" is included in the Concurrent List of the Constitution.

Before the implementation of the Constitution, based on the idea of federalism, legislative authority was allocated between the union and provincial or state legislatures by the Government of India Act, 1935 (hence referred to as the "Act of 1935"). The Act of 1935 conferred onto state governments exclusive legislative authority to enact rules concerning the alienation and devolution of agricultural land; hence, women's inheritance rights in agricultural land were contingent upon the land laws established by the respective province in which the property was situated. List II - Provincial Legislative List included issues for the provincial legislature, whereas List III - Concurrent Legislative List under the Seventh Schedule encompassed matters for both federal and provincial legislatures. The pertinent entries, according to the Act of 1935, are delineated as follows:

"List II - Provincial Legislative List:

Entry-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; Court of wards; encumbered and attached estates; treasure trove.

List III - Concurrent Legislative List:

Entry 6: -. Marriage and divorce; infants and minors; adoption Entry

7: Wills, intestacy and succession, save as regards agricultural land." After Constitution came into force the relevant entries under Seventh Schedule of the Constitution were amended as under:-

List II - State List.

"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."

List III - Concurrent List. ...

"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.

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land."

¹⁷ *Initiative to Sustain Land Resources Development*, Arpita Sharma (ed.) *Irrigation Resources*, Sawalia Bihari Verma, Arvind Kumar Shrivastawa, Jeebu Kumar Jha, Scientific Publishers, India, pp. 302-308 (2014).

¹⁸ *See Bombay Land Tenancy and Agricultural Lands Act, 1948*

¹⁹ *ibid*

²⁰ *See Bengal Tenancy Act, 1885; and West Bengal Land Reforms Act, 1955*

²¹ *See Karnataka Land Reforms Act, 1961 as amended up to 1980.*

²² *See Kerala Land Reforms Act, 1963*

²³ *See Andhra Pradesh (Andhra area) Tenancy Act, 1956*

²⁴ *See Tamil Nadu Tenants and Ryots Protection Act, 1949; and Tamil Nadu Cultivating Tenants (Protection Act), 1955*

The Act of 1935, as delineated in Entry 7 of List III – Concurrent List, addressed "wills, intestacy, and succession, excluding agricultural land." Conversely, Entry 5 of the same List in the Constitution removed the phrase "excluding agricultural lands" and substituted it with "intestacy and succession; joint family and partition," indicating that only the Provincial Legislature possessed the authority to legislate concerning agricultural property under the Act of 1935. The term "devolution of agricultural land" included in Entry 21 of the Provincial Legislative List is absent from the comparable Entry 18 of the State List in the Constitution.

According to the Constitution, Parliament aimed to exert comprehensive authority over succession affairs, including agricultural land, with the only exemption outlined in the Act; hence, state legislatures may persist in enacting legislation pertaining to tenancy rights, ceiling regulations, and similar issues. The Orissa High Court has noted that Parliament, to confer greater authority solely to the Central Government for legislating on agricultural land, has removed the phrase "save as regards agricultural land" from item No. 5 of the Concurrent List, leading to the establishment of uniform personal law for Hindus across India²⁵. Mulla asserts that the Act's provisions also regulate succession to agricultural lands, since the missing sub-section pertained only to specific topics; hence, it is inaccurate to claim that the excluded sub-section does not apply to agricultural property. He further notes that:

Considerable legislation by various States, aimed at prevention of fragmentation of agricultural holdings and securing their consolidation and for the purpose of fixing ceilings and devolution of holdings, has found place on the statute-book in recent years and this deleted sub-section was not intended to override or disturb such legislation. Land policy in different States, though founded on the concept of a socialist welfare state, cannot be expected to be uniform and section 4(2), therefore, leaves such legislation relating to agricultural land undisturbed..... It may be said that this provision detracts from the fundamental objective of uniformity of legislation. However, the explanation is that what is aimed at is a uniform law for all Hindus and not necessary a uniform law for all forms of property²⁶.

The Supreme Court has addressed the legislature's authority to enact legislation pertaining to property, including agricultural land and held²⁷:

There is no exclusion of agricultural lands from Entry 5 which covers wills, intestacy and succession as also joint family and partition. Although Entry 6 of the Concurrent List refers to transfer of property other than agricultural land, agriculture as well as land including transfer and alienation of agricultural land are placed under Entries 14 and 18 of the State List. Therefore, it is quite apparent that the Legislature of the State of Hyderabad was competent to enact a Legislation which dealt with intestacy and succession relating to Joint Family Property including agricultural land. The words 'property' as well as 'interest in Joint Family Property' are wide enough to cover agricultural lands also. The beneficial interpretation would clearly cover agricultural lands under the word 'property'.

The Division Bench of the Himachal Pradesh High Court recently ruled in *Roshan Lal v. Pritam Singh*²⁸ that the provisions of the Hindu Succession Act, 1956, are applicable to agricultural properties. The Division Bench said that Item No. 18 of List -II used the term "land" instead of "property," indicating that the State's legislative competence pertains only to land, rather than property, concerning tenure and tenancy. It has been determined that, particularly concerning agricultural land, the authority pertains to transfer and alienation, with "transfer of property other than agricultural land" explicitly identified as a topic in Entry No. 6 of the Concurrent List. Consequently, regarding the transfer and alienation of agricultural land, it is evident that Parliament asserts that only the State possesses the requisite competence. However, in matters of succession, including intestacy or testamentary issues, there are no limitations on legislative competence concerning the nature of the property, whether movable or immovable, including "land" or "agricultural land," as delineated in Entry No. 18 of List II. It culminates by asserting:

Succession" falls within the scope of entry No. 5 of List-III and in case a narrow and pedantic or myopic view of interpretation is adopted by accepting succession to an agricultural land, bringing it within the scope of "rights in and over land", impliedly no meaning would be attached to entry No.5 as each and every word of the list must

²⁵ *Laxmi Debi v. Surendra Kumar Panda & others*, AIR 1957 Orissa 1

²⁶ *Satyajeet A Desai (ed.)*, *Mulla Hindu Law* p. 1095, (LexisNexis, India, Updated 21st edition 2013)

²⁷ *Vaijanath v. Guramma*, (1999) 1 SCC 292.

²⁸ High Court of Himachal Pradesh, RSA No. 258 of 2012 and Cross Objections No. 417 of 2012, delivered on March 1, 2018

be given effect to. If there is no local law on the subject, then the special law will prevail which in the instant case is the Succession Act.

It has been noted that following the repeal of section 4(2) of the HSA, 1956, by the 2005 amendment, no local legislation concerning the prevention of agricultural holding fragmentation, the establishment of ceilings for the devolution of tenancy rights, or succession related to such holdings remains in effect.

The recent ruling of the Supreme Court in *Babu Ram v. Santokh Singh*²⁹ (dead) via his legal representatives has definitively resolved the question of the legislative authority's competence to enact legislation concerning the devolution of agricultural land. The Supreme Court, after observing the amendments to the Constitution under various Entries of the Lists, has clarified that both the Central and State governments possess the authority to legislate on the succession of agricultural property. Entry 5 of List III indicates that "succession" in its comprehensive definition is a subject inside the Concurrent List, including both testamentary and intestate succession. The court elucidates that the concept is unequivocal: regarding the "transfer and alienation of agricultural land," which pertains to inter vivos transfers, the authority under Entry 18 of List II lies with the State legislatures. Conversely, concerning "intestacy and succession," which fundamentally involves transfers by operation of law according to the applicable legal framework of the deceased, the jurisdiction is shared by both the Union and State legislatures to legislate.

The recent Supreme Court ruling has enabled Hindu females to acquire succession rights to agricultural property under the central legislation of the Hindu Succession Act, 1956, since both Parliament and State Legislatures are empowered to legislate on the devolution of agricultural land. Agricultural land is regarded as the most vital kind of real estate in India's largely agricultural economy. Granting equal rights to Hindu women in agricultural property would empower a significant number of rural women to own agricultural land and fulfill the Constitutional right to equality.

Rights of Hindu women in agricultural land after the removal of section 4(2) of the Hindu Succession Act, 1956

The 174th Report of the Law Commission³⁰ of India suggested the Hindu Succession (Amendment) Bill, 2000, to recommend modifications to the Hindu law of succession, although it did not address the provision of statutory rights for women in agricultural land. The Standing Committee³¹ deemed the preservation of section 4(2) an impediment to gender equality and recommended its removal from the original Act or the introduction of future legislation to rectify the problem. The HSA of 1956 was changed in 2005 to confer coparcenary rights to daughters in coparcenary property and to repeal section 4(2) from the original Act. Nonetheless, the Act nonetheless affords women diminished rights compared to males³².

The Delhi High Court addressed the meaning of the deletion of subsection (2) of section 4 of the HSA, 1956 in *Nirmala v. Government of NCT of Delhi*³³ when examining the provisions of section 50 of the DLR Act, 1954. Section 50 of the DLR Act, 1954 stipulates that upon the death of a male bhumidhar or asami, the property shall

²⁹ Supreme Court of India, Civil Appeal No. 2553 of 2019, delivered on March 7, 2019

³⁰ *Law Commission of India, 174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law (May 2000)*

³¹ *7th Report on The Hindu Succession (Amendment) Bill, 2004, Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, presented to the Rajya Sabha on May 13, 2005*

³² Poonam Saxena, "Succession Laws and Gender Justice," in Archana Parashar and Amita Dhanda et.al.(eds.), *Redefining Family Law in India*, Routledge, New Delhi, pp. 282–305 (2008)

³³ *WP (C) 6435/2007, High Court of Delhi, delivered on June 4, 2010*

primarily pass to male lineal descendants, regardless of their status, thereby excluding female descendants from inheriting such land assets when male lineal heirs are present.

Prior to the exclusion of section 4(2) of the HSA, 1956, the Delhi High Court in 1973³⁴ determined that the DLR Act, 1954 was preserved by section 4(2) of the HSA, 1956, as the DLR Act, 1954 contains stipulations for establishing ceilings on holdings, as well as provisions to avert the fragmentation of holdings and to facilitate the devolution of tenancy rights. The rule of succession for bhumidhars is delineated in section 50 of the DLR Act, 1954, rather than in the HSA, 1956. Section 50 of the DLR Act, 1954 was significantly biased against male heirs of a bhumidhar. The legislature has not altered the DLR Act of 1954, but it has revised the HSA of 1956, effective from 9th September 2005. It has eliminated sub-section (2) of section 4, so rescinding the statutory inapplicability of the HSA, 1956, to legislation aimed at preventing the fragmentation of agricultural holdings, the devolution of tenancy rights over such holdings, or the establishment of ceilings³⁵. Subsequent to the exclusion of section 4(2) of the HSA, 1956, the Delhi High Court, in a prior ruling predating *Nirmala*, determined that the Amendment Act, 2005 could not be applied retroactively, as it lacked retrospective effect; consequently, all successions under the DLR Act, 1954 prior to the enactment of the Amendment Act remained undisturbed.

The petitioners in *Nirmala*'s case was the widow and 2 minor daughters of the late Shri Inder Singh, the owner of the contested land with bhumidhari rights in agricultural property, who passed away intestate on December 15, 2006. He married the widow in 1997 after the loss of his first wife in 1995. The defendants were the offspring of his first spouse. Section 50 of the DLR Act, 1954 was safeguarded by section 4(2) of the HSA, 1956. The DLR Act of 1954 has been included in the Ninth Schedule of the Constitution of India (Entry 61) by the Constitution (Seventeenth Amendment) Act of 1964, effective from June 20, 1964. The inquiries presented to the Delhi High Court were:

"Whether section 50 of the DLR Act, 1954 has been repealed by the Amendment Act inasmuch as by omitting section 4(2) of the HSA, 1956, it has removed the immunity that the DLR Act had with respect to the laws of succession in respect of agricultural land? Also, if that be the case, do the petitioners, being female, now have the right to succeed to the disputed agricultural land?"

The Delhi High Court has elucidated that the rule of succession articulated in Section 50 of the DLR Act, 1954 has been abrogated due to the removal of Section 4(2) of the HSA, 1956 in 2005, hence establishing that the applicable rule of succession is that which is delineated under the revised HSA, 1956. Thus, the female petitioners possess the right to inherit the contested agricultural property, since succession commenced on December 15, 2006, after the death of the late Inder Singh. It has been noted that the protection against extinction afforded by section 4(2) of the unamended HSA, 1956 has been eliminated. Therefore, the provisions of the amended HSA, 1956 will take precedence over the DLR Act, 1954, resulting in the application of the succession rules outlined in the amended HSA, 1956, which entitle the petitioners to inherit the contested agricultural land. It is believed that Parliament has deliberately excluded section 4(2) to revoke the protections afforded by the DLR Act, 1954, and other legislation.

The Delhi High Court, in the subsequent case of *Bimla Devi v. Zile Singh*³⁶, clarified that the Amendment Act of 2005 is not retrospective. Consequently, when the son of a bhumidhar passed away prior to the enforcement of the Amendment Act, 2005, the Class I female heirs of the deceased son could not assert claims under the Hindu Succession Act of 1956, and such cases would not be governed by the ruling in *Nirmala v. Govt. of NCT of Delhi*. The Allahabad High Court has examined the contrasting opinions in *Archana v. Dy. Director of Consolidation*³⁷ about the application of the UPZALR Act, 1950, vs the provisions of the HSA, 1956, concerning agricultural property. It has maintained:

"State Legislature alone has jurisdiction to make law in respect of rights in or over land, and land tenures as the words "right in or over the land and land tenure" under Entry-18 of ListII-State List have to be given widest-possible interpretation and include "right of inheritance" also; the word "succession", under Entry-5 of List III Concurrent List do not cover subject inheritance of "rights in or over land and land tenure" also, as Entry-5 of List III -- Concurrent List, uses phrase "all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law", thus applicability of

³⁴ *Ram Mehar v. Mst. Dakhan*, 9 (1973) DLT 44

³⁵ *Chand Ram v. Financial Commissioner, High Court of Delhi*, LPA No. 92/2005, delivered on August 9, 2012

³⁶ *High Court of Delhi*, CS (OS) No. 340 of 2005, delivered on October 28, 2013

³⁷ *High Court of Allahabad, Writ - B No. - 64999 of 2014*, delivered on March 27, 2015

personal law of succession is limited in respect of which judicial proceeding were pending immediately before the commencement of this Constitution. Agricultural land is in exclusive domain of State Legislature and Parliament has no power to enact any law in this respect. Section 4 (2) was only by way of clarification. On its basis, it cannot be said that after its deletion, Hindu Succession Act, 1956 suo moto applies to agricultural land."

The contested land was an agricultural holding classified as "bhumidhar with transferable right" on December 20, 2004, the date stipulated by the Amendment Act, 2005, which restricted the method of partitioning coparcenary property. The court addressed the jurisdiction of the State legislature and Parliament to legislate concerning rights in and over property and land tenure by referencing the various articles in List II and List III of the Seventh Schedule. The text pertains to the objective of the state tenurial legislation - UPZALR Act, 1950, which addresses the facilitation of land reform, the rationale for denying property rights to women, and the safeguarding of the state Act by its inclusion in the IX Schedule of the Constitution. The court elucidated that in any instance where members of a joint Hindu family possess bhumidhari rights, the principles of Hindu Law cannot be applied to ascertain their status; they must be regarded as tenants in common rather than joint tenants in such holdings, and Hindu Law cannot be invoked to establish that status. Every member of such a family must be regarded as an individual entity for the purposes of exercising the right of transfer and for the succession of a dead member's bhumidhar interest. The transfer of a member's stake in bhumidhari land is only governed by section 152 of the UPZALR Act, 1950, without any further restrictions. Consequently, the stipulations of Hindu law concerning the limitations on the transfer of coparcenary land, such as the need of legal necessity, are inapplicable. The language of Section 4 and Section 6 of the HSA, 1956 indicate that the modified Act pertains only to coparcenary property and does not extend to agricultural land, which is entirely within the authority of the State Legislature. The court has determined that Parliament lacks the authority to legislate about agricultural land, and the stipulation in section 4(2) serves just as a clarification. The court has noted that, following the omission of section 4(2) of the HSA, 1956, it does not automatically apply to agricultural land. Therefore, the coparcenary rights conferred upon daughters after the amendment are restricted solely to Mitakshara coparcenary property and do not extend to agricultural property. The question of whether the exclusion of section 4(2) incorporates the devolution of agricultural property under the HSA, 1956 may only be definitively resolved upon explicit clarification from the Supreme Court or a change by Parliament. Conflicting rulings from several high courts restrict women's rights on agricultural property. The social rationale for the Amendment Act, 2005 suggests that the exclusion of section 4(2) should be construed to include agricultural property within the purview of the HSA, 1956. The Hindu Succession Act of 1956, enacted by Parliament, equalizes inheritance rights for Hindu men and women across states, superseding any conflicting state laws, so benefiting millions of women reliant on agriculture for their livelihood³⁸.

Omission of section 4(2) of HSA, 1956 and extension of pre-emptory right in immovable property to agricultural property

The HSA of 1956, under section 22, grants a certain class of heirs the mandatory right to buy the inherited property shares of other heirs within that class. Class I heirs have been allowed preferential rights to acquire interests in inherited immovable property or businesses when another Class I heir intends to transfer their stake in such property or company³⁹. The term "immovable property" is not defined in the HSA, 1956, leading to ambiguity on whether it encompasses agricultural property, especially when preferential rights to acquire interests in immovable property are conferred. Multiple High Courts have expressed differing opinions about the applicability of Section 22 to agricultural areas. Certain High Courts have affirmed the validity of section 22 to agricultural properties⁴⁰, while others have rejected its application to such areas⁴¹. All High Court rulings that rejected the application of section 22 to agricultural property were issued while section 4(2) remained a legislative requirement under the

³⁸ Bina Agarwal, "Landmark step to gender equality", *The Hindu*, September 25, 2005

³⁹ See Section 22 of HAS, 1956

⁴⁰ *Smt. Laxmi Debi v. Surendra Kumar Panda*, AIR 1957 Orissa 1; *Nidhi Swain v. Khati Dibya*, AIR 1974 Orissa 70; *Amar Singh v. Baldev Singh*, AIR 1960 Punj 666 (FB); *Venkatalakshamma v. Lingamma*, 1984 SCC OnLine Kar 141; *Tukaram Genba Jadhav v. Laxman Genba Jadhav*, AIR 1994 Bombay 247 and *Bharat v. Anjanabai*, 2007 (6) Mh.LJ 706

⁴¹ *Jaswant and ors. v. Smt. Basanti Devi*, 1970 Punjab Law Reporter Vol. 72 page No. 958; *Balkaur Singh v. Gurmail Singh*, 2007 SCC OnLine P&H 1257; *Prema Devi v. Joint Director of Consolidation (Head quarter) at Gorakhpur Camp*, AIR 1970 Allahabad 238; *Nahar Hirasingsh v. Dukalhin*, AIR 1974 MP 141; *Jeewanram v. Lichmadevi*, AIR 1981 Rajasthan 16

HSA, 1956.

The dilemma persists over the application of section 22 to agricultural property and the implications of the deletion of section 4(2) of the HSA, 1956 on the devolution of agricultural property. The matter has just been resolved by the Supreme Court in Babu Ram v. Santokh Singh (dead) via his legal representatives⁴². The issue before the court was whether the preemptory right under section 22 of the HSA, 1956 includes interests in agricultural land and is limited only to "immovable property." It has been determined that in Himachal Pradesh, the succession of agricultural lands is governed by Section 22 of the HSA, 1956, since no state law addresses succession to interests in agricultural lands. The Supreme Court noted that the removal of section 4(2) of the HSA, 1956 has not established any exemption to the application of section 22 of the Act concerning agricultural property.

The court determined that if heirs acquire ownership or a stake in agricultural property only via succession granted under the Act, the same statute delineates the method by which such rights may be exercised.

It further observed:

When the Parliament thought of conferring the rights of succession in respect of various properties including agricultural holdings, it put a qualification on the right to transfer to an outsider and gave preferential rights to the other heirs with a designed object. Under the Shastrik Law, the interest of a coparcener would devolve by principles of survivorship to which an exception was made by virtue of section 6 of the Act. If the conditions stipulated in section 6 were satisfied, the devolution of such interest of the deceased would not go by survivorship but in accordance with the provisions of the Act. Since the right itself in certain cases was created for the first time by the provisions of the Act, it was thought fit to put a qualification so that the properties belonging to the family would be held within the family, to the extent possible and no outsider would easily be planted in the family properties. In our view, it is with this objective that a preferential right was conferred upon the remaining heirs, in case any of the heirs was desirous of transferring his interest in the property that he received by way of succession under the Act.

The preferred entitlement of Class I heirs under section 22 of the HSA, 1956, is applicable to agricultural land as well. The recent Supreme Court ruling safeguarding the preferred rights of Class I heirs in agricultural land, after the removal of section 4(2) of the HSA, 1956, would be significantly advantageous for women, who represent the majority of Class I legal heirs. The Parliament's intentional removal of the exemption for agricultural property through an amendment to the HSA, 1956, aims to supersede state-level discriminatory tenurial laws and ensure equal inheritance rights for daughters in agricultural property. However, this action may create ambiguity regarding the applicability of state tenurial laws solely to the agricultural properties of non-Hindus.

The newly issued Law Commission's Consultation Paper⁴³ indicates that the deletion of section 4(2) of the Act of 1956 now unequivocally places the devolution of agricultural lands within section 8 of the HSA, 1956. The text pertains to the Supreme Court's ruling in Accountants and Secretarial Services Pvt. Ltd. v. Union of India⁴⁴, in which the Court articulated that a more harmonious interpretation indicates that any matter involving the transfer, alienation, or devolution of property, excluding agricultural land, is categorized under the Concurrent List rather than the State List.

Conclusion

Considering the importance of agricultural land rights in India, if the legislature aims to provide financial stability, independence, and autonomy for women, it is essential to grant them the rights to own, control, and transfer agricultural land. The exclusion is certain to empower rural women. The lack of land rights not only marginalizes landless women and female agricultural laborers but also deprives them of access to loans, insurance, irrigation, and other benefits associated with agricultural programs. Researchers have observed that gender equality in agricultural land ownership diminishes not only a woman's poverty risk but also that of her entire family; expands her livelihood opportunities; improves child survival, education, and health outcomes; mitigates domestic violence; and ultimately empowers women agricultural workers at the grassroots level. Therefore, if agricultural land is included under the HSA, it will effectively tackle the problem of women's poverty and their control over familial resources, therefore improving their status and position within their natal family.

⁴² Supreme Court of India, Civil Appeal No. 2553 of 2019 delivered on March 7, 2019

⁴³ Consultation Paper on Reform of Family Law, Law Commission of India, published on August 31, 2018

⁴⁴ AIR 1988 SC 1708

