Prodigal Daughters?

The politics of gender inequality and struggle for democratization of the family: Middle class women in India

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Aditi Anand (India)

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Signature Members of the Examining Committee:
Dr. Amrita Chhachhi Dr. Wendy Harcourt
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Inquiries:

Postal address:
Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

Location:
Kortenaerkade 12
2518 AX The Hague
The Netherlands

Telephone: +31 70 426 0460
Fax: +31 70 426 0799
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List of Acronyms

HSAA  Hindu Succession Act Amendment 2005
HSA   Hindu Succession Act 1956
UCC   Uniform Civil Code
Abstract

The research concerns urban middle class women in Delhi who were made equal to their male kins and brothers in rights to inheritance and succession from their fathers following the 2005 Amendment to the Hindu Succession Act 1956.

This research provides evidence from the ground about the difficulties faced by such women, who, despite their empowered position, are not able to convert their de jure rights in property to de facto effective control over it.

The middle class women though economically better off, are still denied rights. Even upper middle class women though born in well-to-do families, end up like their lower class sisters when they are ousted from their inheritance by their own brothers in a ‘rightful’ act of a threatened hegemonic masculinity.

In a world where women are socialized in a culture of self-abnegation in the name of the brothers and family, we see the workings of a hegemonic patriarchy at work that denies teeth to a ground-breaking law. Family pressures give way to women’s disinherance and poverty while the brother gets rich at the cost of sister(s)’s disinherance and subsequent impoverishment.

This study will contribute towards understanding the kind of difficulties women are likely to face on the social, legal and economic front and hence help women who wish to assert themselves in this arena. It will hopefully provide insights to be stronger when facing the men they love most – their brothers.

Relevance to Development Studies

Adds to the 1999 work of Srimati Basu in middle class women property rights, mine however focuses on Hindu women and brings out the debate on personal law.

Keywords

India, Upper Middle class, Women, Patriarchy, Delhi, Hindu Succession Act, personal law
Chapter 1 Introduction

"Women constitute half the world's population, perform nearly two-thirds of its hours, and receive one-tenth of the world's income and less than one hundredth of the property." The United Nation's Report, 1980 in Law Teacher (n.d.)

I write this paper about my own kind of women from Delhi, upper middle class, brown, highly educated career-oriented women. Our tradition encourages us to let go of our father’s landed property upon marriage in a patriarchal bargain that involves ‘dowry’ or gift to the bride. If I have a brother, he will get the entire share of my father and all the daughters will be deprived of their share in my father’s property. Social activism in India’s democracy promotes an egalitarian justice system in India with the passing of a landmark act in 2005 called the Hindu Succession Act Amendment. It allows daughters of proper-tied men to access the court in the event of disinheritance. I write this paper to unearth the truth of the efficacy of this law in making women’s lives easier in their access to property and the many many constraints that women of this standpoint and demographic cohort face in access. These go beyond the institutional to the social and the cultural to promote this practice.

Figure 1: Middle class women in Delhi

The seriousness of the issue is highlighted by a major piece of fiction on educated upper middle class women living in India’s thriving capital city was published in May 2014 in Delhi called ‘Daughter by court order’ by journalist Ratna Vira. Based on the author’s personal experience, it tells the story of lies, deceit, in the aftermath of the death of the head of a Hindu joint family head over inheritance of his sprawling property by various family members. While the immediate daughters of Eshwar Dhari get their rightful share, his granddaughter is deleted from the family tree in the court battle that ensues over inheritance. In a patriarchal setup, one would assume that it is patriarchy alone that causes the subjugation of women, but in reality, more powerful women in the family play larger roles at times in suppressing interests of the less powerful women in the same family. These could include the wives of the brothers who want to ensure that their husband’s sisters should relinquish their share in their husband’s father’s property.
My research will focus on the coparcenary property rights of urban middle class women in India. This is in consequence of the landmark change in the Hindu personal law, called the Hindu Succession Act (Amendment) 2005. The Hindu Succession Act (Amendment) 2005 is an amendment to the HSA 1956 and puts women at par with men as coparceners or rightful co-inheritors by birth in joint Hindu family property. Also, agricultural land has been added as property in coparcenary rights. However, widows are not considered coparceners. (Act appended)

Even though India’s National Capital Region, represented by Delhi NCR has the highest incomes in the country and is fast urbanizing to become an industry hub yet, the women continue to face inequality in inheritance.

Despite shortfalls in the law, it is the most gender equal and progressive law amongst all other religions in India. Giving equal right to daughters as coparceners in joint Hindu family property constitutes a watershed moment in the women’s movement in India as it puts Hindu women at par with their brothers as inheritors of family property. The right to property inheritance is critical for gender equality in many spheres. Scholars such as Bina Agarwal have drawn linkages between rural women holding property, specifically land rights, as being less vulnerable to violence. (Agarwal and Panda 2005: 836-837). “Gender equality in … land (ownership) can reduce not just a woman’s but her whole family’s risk of poverty, increase her livelihood options, enhance prospects of child survival, education and health, reduce domestic violence and empower women.” (Agarwal 2005). Women’s education and household poverty reduction has led to lesser intimate partner violence in lower and middle income countries (Vyas and Watts 2008) however, violence remains present under the seams for such women too when they assert their rights to property as I discuss later in this paper. My focus remains, on the urban middle class Hindu women from Delhi across two generations: 20 to 40 years and 40 to 60 years old respectively and I compare and contrast their assertiveness under HSAA 2005.

The middle class in its educated and empowered position, has a history of invoking social egalitarianism in the context of India. However there exists gender inequality also in the middle class which I feel is an area that needs investigation. Ensuring gender equality also in the middle class can have a progressive role in creating a climate of democratisation within the family. Women’s almost tangible sense of empowerment in their marriages is seen in situations with independent land ownership. “We had tongues but we could not speak, we had feet but could not walk. Now that we have the land, we can speak and walk”(Alaka and Chetna in Agarwal 2002:7). The same would apply to other forms of immovable property in particular in the urban setting.

1.1 Contextual background, relevance and justification

A peculiar feature of India is that while a common civil law governs every citizen, areas related to marriage, property, divorce, adoption etc. fall under the realm of personal laws which are religious laws that apply separately to each religious community in the country. There are Hindu, Muslim and Christian personal laws. There have been major reforms in the property rights of Hindu women recently. While little has changed in this direction for Christian women, the Muslim women have faced the most resistance in legal reform in inheritance. Governed by the 1936 Shariat Law to this day, the share of Muslim women cannot be devolved in joint family property, it is always lower than that of men and they are placed very low in the order of succession. (Agarwal 2005). What is worse is that it does not include agricultural land. This is a big disadvantage as 78% of rural families hold agricultural land (NSS in Law-
yer’s Collective Women Rights Initiative 2007) and the Muslim women lose out on a share in it while the Hindu women have rights to this. However despite laws which promise more equality for Hindu women, it is not ensured by the state that they in fact exercise this right.

1.2 Women’s Property Rights in India: Political History, Relevance and Justifications

“In 1956, in the course of the parliamentary debate on the Hindu Succession Bill, Smt Ammu Swaminadhan, MP, arguing in favour of the Bill and of equal inheritance rights for women, said “I would ask the hon. Members to turn to Kerala... If you will only see what is happening and what has happened there all these years when women have had equal rights, I am sure that you will agree that... nothing terrible will happen in this country if they had equal rights.” (Kishwar and Vanita 1990). Despite the law being in existence, there are many fears due to which fathers continue to disinherit the daughters from family property. These include fragmentation, however, when a property can be divided between three sons, there is no reason why it can’t be divided amongst two sons and a daughter. It is compounded by treating the daughter as “stranger’s wealth” or a “migrant bird” which uproots her, even if she gets married close to her natal family. A major reason for daughter’s disinheretance is that sons take care of aged parents, which is untrue. To add to it, dowry is considered to add to the son’s kitty and makes a woman more dependent on her husband as an incentive of keeping her in his house. They say that women will inherit doubly, both from her parents and also from her in-laws, but the sons also do the same. (ibid.)

Figure 2: Woman giving away her property share to her brother.
Self-abnegatory discourses of femininity serve to “naturalize male entitlement to property and women’s subservience” (Basu 1999). It is reinforced by a state. There is the incident of the Indian minister for Agriculture who told Bina Agarwal in a Planning Commission Seminar on Law Reform “Are you suggesting that women be given equal rights in land? What do women want? To break up the family?” (ibid : 9). Now even though the law is in existence, it remains as a mere “pocket of equity that have seldom been utilized by Hindu women”. (ibid : 10). In such a scenario the law turns out to be a resistor to radical change and incorporates only superficial changes to reinforce hegemonic principles.

In a more recent account Madhu Kishwar incorporates the aspect of violence and its counter-strategies inherent in a woman’s act of self-assertion. Wrong diagnosis has so far been the cause of misguided counter-actions to violence. To counter violence against women, if only the neighbours come together to hold the man to account that such behaviour will not be accepted in their locality, the man is more likely to concede than he is by police action. (Kishwar 2005).

1.3 Lives of Middle-class Women in Delhi

To document the lives of the middle class women from Delhi, one needs to go back to history. It is of particular interest to me as I am a part of this group of women, born, educated and restricted by the cultural norms of this society.

Upon Independence of India, Hindu women’s property rights were decided by the code bill of Dr. B.R. Ambedkar, which saw devolution of property to daughters upon marriage as a bad corollary with South Indian Hindus and Muslims themselves. They said that it will lead to marriages among kins and the daughters will stay too close to the natal families. (Newbigin 2013). Politically, India may be the most economically advanced, democratic society, but here too the position of women is subservient to men and often takes the form of violence against women.

In the backdrop of the Hindu woman’s property rights is marriage of an upper middle class couple in Delhi. These weddings are overtly ostentatious and are accompanied by a money exchange. Fathers of the bride have to bear a huge expense for the wedding according to the earning potential of the groom. Such weddings are preferably between people from the same or similar castes. Marriage is accompanied by the paraphernalia of the pandit or the astrologer who foretells whether the match is suitable and conducts ritual pujas to ward off evil. It is important to know what happens to women in such households to know the reasons behind their silences and anxieties for a correct diagnosis. Women inhabit the Hindu joint or undivided family. It encompasses the proximity of aunts and uncles and denies the privacy and suppresses the sexuality of these women through taboos and censure. Daughters from this background are supposed to let go of their claims on their natal property in exchange for a heavy dowry. Dowries include cash, gold jewellery, automobiles, household items like furniture, televisions, pashmina shawls etc.

To make things worse, after their marriage, women depend upon their brothers to count on as friends from outside her in-laws family to prevent her abuse in her new home.
However, it must be noted that daughters do not actually control how this dowry is spent. Often her mother-in-law will keep all her gold jewellery for “safe keeping”. Women therefore face multiple constraints in a gendered socialization process.

Bollywood songs abound with imagery of objectification of women. These songs, called ‘item numbers’ are hip-hop songs played in radios, televisions and marriages and set women in their place of a sexual object for the men. Literal translations of these songs include :-

Fevicol Se is a blockbuster Hindi song from 2012 bollywood film Dabangg 2. This song is composed by Sajid-Wajid. Lyrics below:-

“Main to tandoori.. haaye...
Main to tandoori murgi hoon yaar
Gatka le saiyaan alcohol se aye.. hey..
Mere photo ko seene se yaar
Chipka le saiyaan fevicol se”

Literally translated as:-
I am a chicken tikka, eat me with alcohol,
Stick my photo to your heart with glue

The bollywood songs reinforce a culture of women objectification and validate a culture of violence against women, so often encountered in rape cases against women. In this culture, when women assert their rights to their father’s property, the consequences cannot be non-violent.

Violence is experienced by women of all classes in India and none are exonerated from it. “Following the Vishaka rape case in December 2012, India saw its biggest outcry against violence on women. At this stage, media, student organizations, schoolchildren, college students, both men and women,
came out in thousand at the President’s grounds at India Gate in Delhi, the Rashtrapati Bhawan. The success of this movement was because of its nature of being a “bottom-up”, inter-class (middle class and lower class), hybrid and multi-stakeholder struggle.” (Anand 2014)

It is this context of the culture of violence against women, that I write my paper. Personal law has granted rights to one section of the women (Hindu majoritarian) and the personal law of another religion denies it to the Muslim minority women. The position of both sets of women however, remain the same, as the environment for both is steeped in a threatened hegemonic masculinity that seeks to exert itself subliminally by denying HSAA 2005 social acceptance at one level, and exerting itself in brutal forms of physical, sexual and psychological violence against women.

I see the role of the middle-class as important here. It fights for its rights and does not settle for shabby policies. Educated men and women like me are upwardly mobile and also slightly reactionary toward the mobility of the lower classes through jobs available in the cities.

1.4 The legal and political context

Before the Hindu Succession Act was passed in 1956, Hindus in different parts of India followed traditional Hindu beliefs in the Mitakshara and Dayabhanga schools of thought that determined inheritance. Dayabhanga was more gender neutral and followed in matriarchal societies in South India. In Dayabhanga, the son has no right to father’s property till the father is alive. Tribal and matriarchal communities had their own laws. (Lawyer’s Collective Women Rights Initiative 2010). In Mitakshara, the son gets rights to father’s property with the very fact of being born his son and also has rights of property individuation while the father is alive.

The Hindu Succession Act 1956, as a preclude to the HSAA 2005, while giving property rights to a Hindu daughter, limited access to her lifetime and a clause that disabled her from willing it. Also, it restricted married Hindu women from using their constitutional right to divorce their husbands by using language as discourse to distance the married woman from her natal family geographically, thereby, symbolically distancing her literally from financial resources required to file suits for divorce and natal property both. It severed the ideals of the Hindu male landowner and business community that held most of the money and seats in the legislature (Newbigin 2013).

174th report of the 15th Law Commission in 2000 attempted to address the unequal law where women were still not considered coparceners at birth, holding the same profit and liabilities as the son, in the Mitakshara system. It also grants daughters the right to be kartas in joint Hindu family property. In the advent of death of a Hindu after September 2005, the daughter’s share in joint Hindu family property is the same as that of the son, considering as if a partition has taken place. In the 1956 act, the female heir only had the deceased man’s notional portion (Law Teacher n.d.). Exclusive male mitakshara is a thing of the past all over India. This introduces daughters as coparceners in the ambit of the Mitakshara school, it retains the joint Hindu family property and abolishes the exclusive pious obligation of the son to repay his father’s debts. The daughter is not only a coparcener and prospective karta, she also has a right to demand individuation, to dispose property through a will or a testamentary disposition. However, it gives no rights to a daughter-in-law beyond maintenance out of family property as it was prior to the amendment in 2005 (Lawyer’s Collective Women Rights Initiative 2010)
This is an important step in India where preference for the male child and practices such as pre-birth sex-detection and female infanticide has loomed large. This allows for women to be more empowered in their birth and marital families with greater bargaining power. This can stop the provision of dowry for women.

Deficiencies of the amendment include non-inclusion of widow as coparcener as she is not entitled to an equal share in the pre-death notional partition and only holds a share in the father’s separate share. She effectively holds a share much lesser than that of her own children. Also, there can be instances that the woman’s in-laws can force her to claim a share from her father’s property. Another point of contention is that as a karta or manager of the joint-hindu family property, the woman can be influenced by her husband and his family while making decisions for her father’s family (ibid).

Secondly, land is a state subject while inheritance is a central subject. Also, there are different inheritance laws that have been passed by different states, Karnataka, Kerala and Tamil Nadu being among the more gender-equal and progressive states. The amending act expresses that the decision of the centre will prevail in case of conflict in these items in the concurrent list.

However, the position of tribal women is precarious as their inheritance and succession is not codified and is dictated by custom (Lawyer’s Collective Women Rights Initiative 2010)

North-western India is a difficult terrain regarding women property inheritance. As against communities in Northern and central Kerala and Meghalaya, where matrilineal inheritance is followed, this worsens when one goes from South to North India. This is because close kin marriages are not the norm, women usually settle in villages other than the paternal village to which they belong and it is taboo for parents to take economic support from their daughters. In this sense, giving inheritance rights to women gives no return and the land is considered gone waste. Here, brothers are considered a reliable social security net, when in practice, brothers are not willing to support sisters for prolonged periods. Women are often expected to avoid spaces where men congregate and there have been cases of threats and physical violence by brothers to threaten women to forego their shares in property. These are compounded by high fertility, low literacy and constraints on women mobility and societal interaction (Agarwal 2002 :16).

The political context of India has strong religious undertones with the majority religion vying for maintaining its political power against a secular rubric of a democratic state. Hindutva gender discourse is relevant in current Indian political climate. India’s new Prime Minister was once a part of the Hindu nationalist Rashtriya Swayamsevak Sangh. It is a right wing volunteer Hindu nationalist group that was formed in 1925 “to train young men on character-building to counter British colonialism and to suppress Muslim separatism” (RSS: 2014). By 1990’s it had many schools, clubs and charities to spread its message. It is said to have the main aims of upholding “Indian culture and civilizational values more than anything else” (ibid.). Hindutva then, aims for a Hindu state and its ideology and is forwarded by organizations like Bharatiya Janta Party (BJP), Rashtriya Swayamsevak Sangh(RSS) and Vishva Hindu Parishad (VHP), known together as the Sangh Parivar, together with the highly anti-Muslim Vishwa Sena. Communalism is the ideology that because a group of people follow a particular religion, they also have common social, economic and political interests.
I want to know how far Hindu revivalist communal ideology in a Hindu majoritarian state works as an impediment to women’s emancipation agenda in India, with special reference to women property rights under the purview of the Hindu Succession Act Amendment 2005. Familial ideology is deeply enmeshed in the way women are regulated legally in India. The political agenda of the Hindu Right uses the legal discourse to advance itself. Hindutva under the purview of the political body Rashtriya Swayamsevak Sangh, is a set of beliefs and ideologies that legitimizes social and political power, dangerously “rearticulated through familial ideology” (Kapur and Cossman 1996: 232-283). Women are again told of their primary roles as wives and mothers in a Hindu revivalism that recalls the days before Muslims invaded India. These strategies dangerously purport to naturalize themselves by a version of history that claims itself to be natural, even in courts. In cases like Manohar Joshi v. Nitin Bhaurao Patil, the court equated Hindutva with Hinduism, despite the fact that the term Hindutva has predominantly belonged to the Hindu Right. (Kapur and Cossman 1996: 264). However, one positive thing that the presence of law plays is that it works in the direction of “production of consent”…(that) “plays a positive and educative function which orchestrates public opinion” (Smart in Kapur 1996: 284-342).

1.5 Objective of the research

The purpose of the study is to fill a gap in the literature and contribute to policy. My aim is to intend to expose processes, institutional, community, family and otherwise, that come in the way of women claiming coparcenary property rights. I also seek to solve the puzzle where law permits and social practices of misogyny prohibit access.

1.6 Statement of the Problem : Research Question

1.5.1 Main Research Question

What are the potentialities and the obstacles for urban middle-class Hindu women to assert their property rights under Hindu Succession Act (Amendment) 2005.

1.5.2 Research Sub-questions

1. What are the constraints in the Hindu Succession Act (Amendment) 2005 law and the justice system for women claimants?
2. What are the institutional factors within family and community that either facilitate or constrain women from asserting their rights?
3. How do women themselves feel about the law?

My research project aims to understand the societal and institutional processes that work against upper class Hindu women in Delhi in their claims to paternal property despite a landmark law that puts Hindu women as the most legally empowered of all women in India in their claim to “effective property rights” (Agarwal 1993) through the amendment in 2005 to the Hindu Succession Act 1956.

My focus will be on middle-class women in Delhi for the following reasons:

- Larger percentage of middle class population resides in Delhi (graph below). 60% of India’s middle class stays in its urban areas (CGD 2012).
- Delhi lies in the North-west province of India, which along with Pakistan and Bangladesh, is notorious for lower sex ratios as compared with rest of India, particularly, South India. It is on the list of the states with the lowest sex ratio in India despite being the national capital.
- Lower sex ratio
  Source: Census of India 2011 (See Annexure 2)

1.7 Many facets of Gender inequality

Such a study is important since Indian women in general are subject to multiple kinds of inequality and disadvantages that Amartya Sen elucidates in ‘Many faces of gender inequality’ (2001) to which the latest data has been added in relation to India namely :-

1. Mortality inequality

The life expectancy of women is two years more than that of men despite little control over economic resources. “The mortality rate among females across all ages is 6.8 and that among males is 8.0 for the year 2008. The female mortality rate in the age-group 0-4 years has declined to 16.1 in 2008 from 20.6 in 2000. The majority of women go through their life in a state of nutritional stress - they are anaemic and malnourished. Poverty, early marriage, malnutrition and lack of health care during pregnancy are the major reasons for both maternal and infant mortality.” (CSO 2011: xxi)

2. Natality inequality

Sex determination and preference for the male child is unusually high in South Asia. “The sex-ratio (number of women per 1000 men) was 933 in 2001 and is projected to be 932 in 2010” (CSO 2011: xxi). The sex ratio in my research area, Delhi, is among the lowest in the country. It is 866 females to every 1000 males in Delhi, while the Indian national average is 932 females to every 1000 males.

3. Basic facility inequality

Deficiencies in the basic facilities given to women including the opportunity of schooling. “Census of India, 2001 indicates that only 54% women are literate as compared to 76% men (female literacy was 39% in Census 1991). Female literacy is highest in Kerala (88%) and lowest in Bihar (33%). (CSO 2011: xxi). “The majority of women go through their life in a state of nutritional stress - they are anaemic and malnourished. Poverty, early marriage, malnutrition and lack of health care during pregnancy are the major reasons for both maternal and infant mortality.” (CSO 2011: xxi)

4. Special opportunity inequality

Inequality in higher education and professional education for women is seen in the global north as well. The Indian constitution encourages “Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)” (CSO 2011: xiv). However, “Women are under-represented in governance and decision-making positions. At present, women occupy less than 8% of the Cabinet positions, less than 9% of seats in High Courts and the Supreme Court, and less than 12% of administrators and managers are women. In June 2009, out of 40 Cabinet Ministers, there were only three female Cabinet Ministers. There were only 4 female Ministers of State(MOS), out of 38 MOS in 2009. As on June 2009,
there was no Female Judge out of 24 Judges in the Supreme Court. In the High Courts, there were only 51 Female Judges among the total of 649 judges.” (CSO 2011: xxv).

5. Professional inequality

As per Census 2001, Women constitute 90 per cent of the total marginal workers of the country. According to Quarterly Employment Review, Ministry of Labour, the total employment of women in organized sector was 19.5% in 2007. (CSO 2011: xxiv). There remains resistance to women’s entry into the workforce as seen in the sermon by Fordyce who has warned “those masculine women that would plead for your sharing any part of their province with us” in provinces involving professional dexterity, land rights, et al. (Fordyce 1766 in Sen 2001).

Women are known to be driven out faster in the formal sector and they join the informal sector there driving down prices. Women have lesser access to social safety nets. Knowing that women hold take up more responsibility in shielding their family from recession, and when they do not have access to the requisite safety nets, the entire family suffers. (Elson 2000).

6. Ownership inequality

Property has largely been the domain of men the world over and there is great resistance to granting women land rights. For example on the idea of a woman owning land in the Jat community of fertile northern plains of Punjab, “if she should insist on her right to inherit land equally under civil law, she would stand a good chance of being murdered” (Razavi 1992 in Ka-beer 2002).

“While 86% of rural Indian women are dependent on agriculture for their livelihood, they own less than 10% of the land”. (FAO in RDI 2009: 41). “Less than 10% of privately held land nationwide belongs to women”. (FAO in RDI 2009:49).

7. Household inequality

There is a cultural dichotomy of the spaces that men and women occupy. The domain of the breadwinner is with the man while that of the woman is that of the home, engaging largely in unpaid care work at home. Intra household inequality leads the girl child to be denied educational opportunity. The reasons usually cited for females never attending school are “‘expensive cost of education’, ‘not interested in studies’, ‘education is not considered necessary’ and ‘required for household work’”. (NFHS-III 2005-06 in CSO 2011:xxiii).

There are hence multiple constraints coming in the way of women’s empowerment. Some of these are institutional while others also arise from subjectivities formed through a gendered socialisation process.

For women of all religions in India, effective rights in property are critically important, not just for their economic well-being but also for their political and social empowerment. However there are many institutional barriers as well as subjective barriers developed through gender socialisation and imbibing of cultural codes that constrain the exercise of their agency especially in the middle class. This relates to the concept of “doxa” discussed further. Middle class women continue to remain second class citizens particularly due to the operation of personal laws. Em-
powering middle class women contributes towards democratisation of the family as well as society generally.

Why do I study the middle class and not the peasant women who can be seen as the most vulnerable at least in economic terms? One, this class in the urban areas is in a position where the concept of ownership of land, property and other immovable and movable assets like cars arises.

A second reason for my focus on middle class women is the recent shift in development policy towards seeing the middle class as important in support for anti-poverty policies. Amartya Sen has said that “policies meant for the poor are poor policies”. The middle classes have an ideological inclination for better services and for economic reform. These middle classes will not accept “poor quality” in social policy and it is therefore very important to seek their buy-in in anti-poverty schemes (Deacon, 2009). An investigation of middle class women can provide an insight into the nature of the middle class in India in relation to issues of inequality and democracy.

Literature abounds in the “de facto” against the “de jure” status of women ownership in property. (Kabeer 2002). These, Agarwal (1993) calls “legal” and “effective” rights in property. My study focuses on whether women can in fact exercise effective rights to inheritance as given in the law Hindu Succession Act Amendment 2005.

Women exercise their agency by “cooperative conflict” (Sen 1998 in Alkire 2010) by maximizing their gains in a mutually beneficial partnership, like a marriage or a brother-sister relationship as is the case with HSAA 2005.

I investigate issues of agency and cooperative conflict through a qualitative study of urban middle class women to see if they do wish to assert their new legal rights, and what are the reasons they do not assert their right to property. A majority of India’s urban middle class is working in the services sector. These private sector jobs are unlike government jobs of yester years. It makes people vulnerable to loss of jobs in an economic crisis. In this context, if a woman does not have income from outside, then property is the only source of income security for her. This raises the question of dependency of women on men as the male bread winner. Therein is another question on what happens when the position of hegemonic masculinities is threatened. Does it lead to women exercising their agency in the empowering way as in Naila Kabeer’s (2010) argument or do they remain a slaughter animal of hegemonic masculinity, or what we categorically call the ‘system’ colloquially, in a silent resentment that Saba Mahmood (2001) purports? This exercise of agency given by the law or the absence of its use for ‘access’ is my question.
Chapter 2 Literature review and conceptual framework

With this section, I form the framework of my research paper. I cover the following elements and they get stitched together to form the argument of the multiple constraints women in India face to gain access to parental property which is rightfully promised to her by law. I start with a brief background to the women’s movement in India as it forms the basis on which the Hindu women’s property rights is based.

1. Women’s movement in India
2. Placing property rights in the ambit of the women’s movement
3. Middle class and its potentialities
4. Gender
5. Hegemonic masculinity and multiple patriarchies
7. Agency
8. Doxa
9. Women’s property rights recent debates

2.1 The Women’s Movement in India

To provide you the context of the women’s movement in which the women’s struggle for property rights is based, I go back to its historical context.

According to Radha Kumar, contemporary Indian women’s movement covers a range of campaigns from urban to rural and radical to reformist. Phase 1 participation of women was spontaneous because the women did not consider themselves as part of a larger over-arching women’s movement. Yet there were a sum of campaigns around issues of importance to women falling under the rubric of a single movement. The campaigns fell into a network of women’s groups and were a part of the process of change and development in feminist thinking. As far as the public impact of women’s campaigns is concerned, awareness of women’s problems and rights has accumulated through these campaigns. The focus of the women’s movement can be evaluated under the following heads:

1. The context or the circumstances which gave birth to the contemporary women’s movement
2. The growth, development and maturing of the movement.
3. Limitations of the feminist movement.

After India gained independence in 1947, the Congress government made partial attempts to fulfil the promises it made to women by declaring in the constitution the equality of women and men. Yet, currently, women techies earn 20% less than male techies in metropolitan cities like Delhi (The Hindu 2014).

In the 1950’s and 1960’s there was a lull in feminist campaigning. The movement that started in the 1970s was very different from its predecessors, for it grew out of a number of radical movements of that time. In the early 1970’s the Indian Left propounded new Leftist ideas that caused movements to develop on a smaller scale.
Self-employed women’s association in Gujarat has been the first attempt to form a women’s trade union attached to the Textile Labour Association. Formed in 1972 by Ela Bhatt, SEWA was an organization which worked in different trades of the informal sector but shared a common experience of extremely low earnings, poor working conditions, harassment of the police, and lack of their work as socially useful labour. The aims of SEWA were to improve women’s working conditions through training, technical aid and collective bargaining and to introduce member to Gandhian ideals of honesty and simplicity of life goals. However, the declaration of State emergency in 1975 by Indira Gandhi interrupted the development of the fledgling women’s movement.

The women’s movement has had a long chequered history in terms of perspectives, issues and ideological trends. It was not movement but a conflation of multiple women’s groups that were formed after the lifting of emergency in India. These declared themselves to be feminists and consisted of members of the bourgeoisie. They built networks amongst themselves and declared themselves to be autonomous while belonging to the far left. These were however loosely organized and without formal structures or funds.

However the Contemporary women’s movement of the 1980s has a lot to thank the movement in 1970s. The negative impacts on women of policies pursued in Independent India were highlighted through studies and agitations from the early 1970s itself. The persistent decline in the sex-ratio was indicative of gender inequality. The committee on the status of women in India tried to show how the degraded status of women were linked to the macro-policies which denied land, employment, education, health, security and legal rights to the vast mass of Indians. This period saw a great amount of violence against women both in the public arena and domestic sphere.

Three issues took prominence in the contemporary women’s movement. These are the anti-dowry, anti-sati and women’s bill. The anti-dowry campaign in the late twentieth century again gained importance in 1980s due to the murder of young women who failed to fulfil increasing demands for dowry made by their marital families. Women found themselves alone in face of crisis when their natal families dreaded the economic burden and social stigma of the women returning to their natal homes. Regulated to their homes, and with lack of access to the outside world, they found themselves isolated in times of crisis. Delhi has remained the site of perpetual agitation against dowry harassment and murder largely because it has the highest amounts of murders of women for dowry in India.

Dowry deaths by fire for example, were categorised as private affairs not requiring the attention of the state. The dowry cases increasingly began to be filed and it was taken out of the conception of being a civil issue and began to be recognised as a crime against humanity.

Dowry is therefore not an isolated phenomenon, but is associated with the inferior status of women in India. It is an indication of a growing socio-economic crisis where the black money power rules the roost accentuating structural socio-economic inequalities.

It is shocking that practices like sati exist in India even today. The death by immolation of Roop Kanwar in 1987 stands as a symbol of Rajput identity politics. When her marital family announced that she would become a sati in a public spectacle, her natal family was not informed. There was an organised effort at the justification and glorification of sati in discourse with the site of sati considered a popular pilgrimage spot in the days after her immolation by drugging, hypnosis and dying on the pyre of her husband. The Rajput community garnered support from the political parties the BJP, VHP and RSS who used the issue for their vote bank politics. Feminists have said that sati is not a voluntary suicide but a murder and have since been isolated by being called capitalists, who are not able to understand that sati is a representation of true desires of women.
Newer issues of woman-woman relations came up and it has again taken a backseat. Section 377 of the Indian Constitution that criminalised homosexuality, has been again treated as a criminal offence with the control of the powerful orthodox segments of Indian polity.

Also, there were mass agitations against police rapes in custody. In 1979, there was a police rape of a seventeen year old girl Mathura in Maharashtra. The reasons for the acquittal were stated that since Mathura was a loose woman, she could not be raped. After nationwide agitations in seven states, there was a retrial and a new bill by the government defined categories of custodial rape. However, the law only focused on the technical definitions of rape, not recognizing it as an act of violence.

Further, in minority communities, Muslim women’s bill represented by the Shah Bano case in 1985 exposed the drawback of the religion and community based personal laws still in existence in India. Bano was a seventy-five year old woman who was asking for maintenance by her husband of forty three years who divorced her. In India, personal law falls under the purview of religion, although a person can choose secular alternatives.

2.2 Placing Property Rights in the ambit of Women’s Movement in India

Within this perspective can be understood the demand for women’s rights to natal property, registration of gifts to the woman, a common civil code, and the woman’s custody of her children.

The agitation surrounding the Muslim women’s bill has not been able to achieve the unity of multiple sections because of the fundamental debates surrounding it.

2.3 Middle Class

Definition, Difficulties, Methods, My study method

It is difficult to define the middle class. Income is one method. World Bank definition for developing countries of middle class is defined as the proportion of population living between $2-$13 a day (Ravallion, 2009) or those people living above the median poverty line of developing countries, even if still poor by rich-country standards. “NCAER’s current definition identifies the middle class as comprising of two sub-groups: “seekers” with annual household income between Rs. 200,000 and Rs. 500,000, and “strivers” with annual household income between Rs. 500,000 and Rs. 1 million at 2001/2002 prices. Assuming an average household size of 5 people and converting into constant 2005 purchasing power parity (PPP) dollar, these numbers would be about $8 to $20 per capita per day for seekers, and $20 to $40 per capita per day for strivers” (Birdsall and Mayer 2012).

Based on data from National Council of Applied Economic Research, India’s middle class constitutes around 153 million people, or 12.8 percent of India’s population (Birdsall and Mayer 2012).

Size of India’s Middle class NCAER estimates (2009/10)
South Asian middle class is “relatively smaller in size, and in between a vast poor population and a tiny but powerful rich (elite) class” has benefited from globalization and the private service sector jobs that it brings with it. (Karim 2012). South Asian middle-class can be characterised by a culture of higher education and economic security through regular income. It is a self-categorization by way of self-identification, more than anything else. The middle classes I study will fall in the upper rung of this category, or NCAER’s “strivers” in the urban area of National Capital Territory of Delhi.

The middle class in India creates the ideology of the dominant block. It intersects with the new political regime that has gained power in India in 2014. The Hindu nationalist agenda has politically given space to the new middle class of India that has been upwardly mobile in the last two decades of Indian neoliberal history. It is important for it has the potential to shape future “democratic processes”. (Fernandes and Heller 2007).

An essential of middle-class feminity is the kitty-party, where a group of housewives and friends pool money to meet once a month to play cards. A draw decides who gets the lump sum kitty for the year. This is a way for middle-class housewives to save money for personal purchases like buying jewellery for a child’s marriage and for personal indulgences like foreign vacations with friends or for buying a gift for the husband. (Waldrop 2011). The kitty party satisfies the needs of the moral police wherein the women do not leave their home environment and are among women. It serves the interests of women as it is their precious exposure to the outside world and a way to socialize.

Potentialities of the middle class
The middle-class in India runs across religious, caste and region boundaries and unifies in its relation to the state and its political opinions. This middle class is different from the European bourgeoisie that broke through feudal relations. Earlier, it was “a countless multitude of almost identical men, neither exactly rich nor poor, [who] own sufficient property to desire order but not enough to arouse the envy of others” (de Tocqueville 2003 in Ray 2010). The capitalist middle class of India is reactionary due to the upper mobility of the social classes and is often the voice of the people who earn the top 10 to 15 per cent of the incomes, yet, the potential of the middle class to rouse social change in a country like India is plausible.

While we have studies that suggest a sense of cohesion that comes from the middle class, other scholars are sceptical of the cohesive role that middle class can potentially play. They say that the modern
middle class in India is not a representative of the aam aadmi but is actually dominant to it. This nouveau middle class separates itself from the older middle class and from the present poor by way of being modern and urban. This new middle-class of India derives its value “not from the state, but from the market”. This new middle class who ostensibly “represents” the common man in India is actually earning in the top 10 to 15 percent of the income distribution. The old middle class was the one fed by the Indian civil service, high on government institutional perks and low on cash. The nouveau managerial middle class, on the other hand, is governed by a capitalism. Even though the Indian middle class is a large class in terms of numbers, when compared globally, they represent a very small portion of the Indian population. (Ray, 2010).

The development agenda is to a large extent dependent on the middle classes says Norwegian Environment and Development minister Erik Solheim, who links middle classes with social policy. Economic growth of the middle class is fundamental as they are the “engines of growth” (Solheim in Claire et. Al. 2010). Poverty, is best eradicated in policies that cut across classes, and not by policies that focus solely on the poor. (Solheim in Claire et. al. 2010)

At a time when the future of the middle class is itself tenuous, it remains to be seen whether the middle classes will support anti-poverty initiatives as it always has, as the very notion of middle class is reducing into oblivion due to rising inequalities, some one step away from wealthy citizens and the others, receding into poverty. (Clair et al. 2010)

When I study the property politics of the middle class, I am looking at not just the ‘middle class’ as a representational category, but also the heterogeneous ‘middle classes’ with differences of caste, class and regions, each with a dominant category within it. Being middle class also denotes a certain “orientation toward modernity” (Ray 2010).

All middle classes demand equality, yet are reactionary in a desire to maintain the hierarchical power relations. In India, middle classes are said to be the connecting links between capitalism and democracy, however, the middle classes have a reactionary attitude toward revolution. They recreate a class where one class exists in its relation of domination over the other.

Despite debates to the contrary, I believe that the middle classes, though representing the elite, form the ground where a revolutionary attitude can contest. This revolutionary potential of the middle classes is also indicated in Pierre Bourdeau’s “unconscious unity of a class” with similar political dispositions and desire for social order. (Ray, 2010).

Women in the middle class, however, form a separate category. They may or may not subscribe to ‘the class as a whole’ due to their own unequal position. I plan to provide a gendered lens to this middle class in India.

2.4 Gender

Gender is a social construct culturally produced and historically variable which has a material structure and is reproduced through symbols/ideologies (Scott 1998). It signifies power relations. I will explore it at different levels in relation to the domestic politics around property rights. Four fields in which it operates are:-

1. Institutional
2. Ideological
3. Symbolic
4. Subjective identity

Gender is a structure of dominance/subordination and is the battle ground where the battle for access to resources, property, employment, incomes, health and education is contested.

It is due to the gendering of positions of authority against that of women, the unequal division of labor and the productive, reproductive and unpaid care work of the women, that women continue to be economically subjugated.

In gender debates today, there is a re-visitation of a derailed gender agenda whose original focus of “transforming unequal and unjust power relations – seems to have fallen by the wayside” (Cornwall 2007:74). There are suggestions that “we need to go back to what we originally wanted: equality and rights”. (Maitrayee Mukhopadhyay, at the Gender Myths and Feminist Fables conference in Cornwall 2007: 74). My paper attempts to answer these “calls for paying closer attention to everyday lives and struggles in diverse contexts, understanding and articulating better what it takes to make a real difference to the relations of power that all that euphemistic talk about ‘gender equality’ obscures” (Cornwall 2007:74).

Gender ideology in India abounds in patriarchal reactionary attitudes toward the uniform civil code. Minorities oppose the Uniform Civil Code due to the fear of Hindu majoritarianism and see their personal laws as crucial to preserve their own identities. The issue of the UCC has again come up for discussion soon after the BJP came to power in 2014. Positions against uniform civil code are therefore deflecting women’s struggles against inequalities. In India’s Hindu majoritarianism, Sangari in 1995, argued against the assumptions that defend personal laws against a uniform civil code. She argues that the community personal laws are in itself an ideological patriarchy adding to the religious patriarchy, thus constituting multiple patriarchies.

There must be a uniform civil code that is common for women across all religions in India. Yet, this uniform law should also address the idiosyncrasies of subjugation of women from different religions. Currently, in India, with BJP coming to power in 2014 elections, the state has become synonymous with religion, and to speak against the Hindu majoritarian religion, is to speak against the state. It is dangerous as in the domain of women legal rights, a consent in one religion, means a tacit agreement with the other too. In personal laws, women claim as wives, daughters, and daughters and have an obtuse relationship with the state and not a direct one. Here, “male individuation was sought even within coparcenary systems but female individuation-was blocked off in the name of preserving the family and the personal affairs of religious communities.” (Sangari 1995:3297) Further to this, another set of feminists believe that a uniform civil code will be against minorities so they support reform within each personal law.

In the secular, democratic state of India, the Uniform Civil Code leaves women torn between choosing their own religion and community represented by their personal laws and the uniform civil code offered by a democratic (Sunder Rajan 2003) albeit Hindu majoritarian state which is represented by the Bharatita Janta Party which has won by absolute majority every state election in India that has happened in India since it came to power in May 2014. Ruling out a leader of opposition, it threatens to give a deathly blow to alternate opinions.
2.5 Hegemonic Masculinity and Multiple patriarchies

Hegemonic masculinity is a personal and collective project for the subordination of women that “involves the dread of and flight from women” (Connel et al. in Donaldson 1993: 645). “priests, journalists, advertisers, politicians, psychiatrists, designers, playwrights, film makers, actors, novelists, musicians, activists, academics, coaches, and sportsmen” are the weavers of this project. (Donaldson 1993: 645).

Multiple patriarchies is the differentiation of different forms of oppression, religious, social and personal that work in the dominant anti-feminist project. Multiple patriarchies is a further development of the concept of ‘patriarchy’ which found significance in early feminist literature. Early notions of patriarchy saw it as homogenous and universal. Multiple patriarchies breaks away from that trend by allowing for a system of domination and variation amongst different patriarchies (Sangari 1995).

In the Indian middle classes of today, even when both the persons in the couple earn the same, the woman is relegated to responsibility of the house and the man continues to take upon himself the responsibility of the breadwinner. In a study on middle class homes and domestic servants in Kolkata, the “utopian patriarch” stands as the ideal for both male and female domestic servants. In this culture, women both the domestic servant and the wife are regulated by the supremacy of the male patriarch. Women, in this sense going out to work are considered “prostitutes” and male servants working in the domestic sphere are considered emasculated male failures (Ray et. al. 2009).

In the heteronormative middle-class context of India, I study the notion of hegemonic masculinity and its processes working in the structures of :-

1. The State
2. Family
3. Community

2.6 Amartya Sen’s Household Bargaining Model and the feminist critique

Amartya Sen talks about the household as the site for co-operation and conflict. Decision making is the bargaining process between different parties. A person has better bargaining power if the person has a better fall back position. A person will get a better bargain of he/she has a better fall back position. (Sen 1990). Sen’s recommendations for policy-makers include earnings from outside for a better break down position in the family and a higher perceived contribution to the family will also amount to a clearer perception of well being of the individual.

However, feminists have critiqued Sen’s position on the ground of the assumptions that Sen makes that the market place is gender neutral and that women’s unpaid care work is valued. It turns out to be an economist’s understanding of gender relations. Women tend to subordinate their needs to the needs of the family in the bargaining process as women have been trained to be altruistic in a gendered socialization process. Also, we can go beyond Sen’s model to transgress into the territory of political economy for sustainable changes in law and institutions.

In the bargaining with patriarchy model, feminists argue that women in South Asia are much more dependent on traditional patriarchy. Women from South Asia prefer the protection of an unemployed
man than divorce while women in Costa Rica prefer poverty rather than compromise on their autonomy. (Kandiyozi 1998)

Bina Agarwal takes Sen and adds the cultural element missing in his analysis. She gives examples of everyday forms of resistance like joking about the landlord but not explicitly rebelling against him. Women have in their hands these tools to challenge patriarchal power covertly. In the South Asian scene then, the exit option is not necessarily the best option. (Agarwal 1997)

Therefore while Sen offers women the economic tools of income to create change in our bargaining power, Agarwal goes beyond his economic mindset into the cultural and other external tools to create change.

For a holistic understanding we need to converge the feminist analysis and the bargaining model as domestic politics also needs empirical investigation, as I do in this paper.

2.7 Agency

“The emancipator impulse of feminism … depends on recognizing the possibility that as collective agents we can do something to change the conditions which continue to generate profound injustices and inequalities.” (Sue 2006)

Women in the context of this new law have the legal right to property but are they willing to assert this right is the main question in this context.

There are ongoing debates in the Gender and Development circles on the notion of agency and how women themselves perceive rights to potentially demand right to property. I will attempt to add to this debate on agency, also using the concept of silence to add weight to my argument.

Kabeer and Parapart debate the notion of silence. Kabeer sees silence is a strategic coping strategy, such as not cooking husband’s food, opening separate bank accounts in contempt. In her view, it may serve to cope with silent resistance, yet it may only serve to reproduce the inequality as there has been no direct challenge to it. (Kabeer, 2010:17).

I contend Kabeer’s notion of agency as rooted in an action that poses a direct challenge against Parapart’s silent resistance, which is more a tool for survival rather than a weapon for resistance.

Also, Kabeer sees voice is a powerful weapon in the hands of the women. Yet, Parapart argues that in an increasingly violent world, where the WHO has warned of extreme sexual violence against women in the coming decades, here then, silence and secrecy is the other weapon available to women. For example, symbolic performances of collective violence have taken shape in vigils in Palestine on gender mainstreaming issues. (Parapart, 2010: 5).

However, the question of agency can be empowering only when it “challenges” gender inequalities. Women empowerment in gender mainstreaming literature forwards the idea of women empowerment as a harbinger of their “choice”. Agency, in this context, is the “operationalizing of choice”. Women’s agency can be covert, overt, collective and individual (Kabeer, 2010:17). “Silence is the absence of protest in the face of injustice”. (Kabeer 2010:18). Kabeer says that what for Parpart is silence as a strategic coping strategy, is for Kabeer a closing down of alternatives leading to a “judicious silence”.

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In this contested domain of the household, even when women speak, disempowerment of women persists due to the “infantilizing” of women’s voices by the policy makers (Kabeer, 2001).

Through my work, I aim to add to the debate on the coping strategy women in India use as assertion weapons in their quest for coparcenary property in an otherwise empowered, educated and middle-class world. It thrives on the notion of the patriarchal bargain. In a Hindu world where women are naturally expected to forego their rights to landed property upon marriage, in hope of their brother’s favour post marriage. In the Muslim world where women are considered individual owners, they too forego their rights to land in favour of better bargaining power with their husbands. This naturalisation tendency of the patriarchal bargain can best be understood in Bourdieu’s “doxa”.

The “natural” differences between men and women are maintained, while the “artificial differences” between Hindu women and Muslim women are erased. In this sense, despite the fact that women from both religions have different legal rights to property, they are treated the same. Under this regressive form of treatment of women under a hegemonic masculinity, does women’s agency take the form of silent resentment or does it pose a real challenge towards reform? Further to the debate on silence, there is the debate on agency itself. Will legally empowered women wish to turn their de jure resource into de facto property ownership? To understand this, we got to Naila Kabeer.

Naila Kabeer in 2002 has talked of the three stages of empowerment for women:

1. **Resources** which can move beyond potential/de jure to actual de facto ownership of resources, social, material and human.
2. **Agency** by way of intra-household bargaining, manipulation, deception and negotiation.
3. **Achievement** outcomes in terms of women well-being.

Kabeer’s argument adds weight to the ownership of property as a means to women’s achievement of well-being. Women’s autonomy and share in decision making is often influenced by their access to and control over material resources. In modern middle class India, other factors also have a role to play. In northern part of India, in the closed patriarchal society of Uttar Pradesh, women’s role in family decision making is influenced by the extent of her dowry, bearing of children and employment. In Tamil Nadu, a more liberal society, women’s education and employment determined their decision-making ability. (England 1997 in Kabeer 2002). Employment has given women in US the autonomy to leave unhappy marriages (ibid).
Resources, agency and achievements are three indivisible means towards women’s empowerment (Kabeer, 2002). My study method will give voice to the women who wish to convert their de jure rights in land to de facto ownership. Feminist scholars McNey, Kabeer and Mahmood elaborate on these notions of agency and I will explore their work in my study.

2.8 Doxa

In the context of the communalized ideological dominant discourse of Hindutva, attempting to naturalize itself through popularizing itself in Hindu masses, using organized consent and production of common sense for its perpetration. It normalizes and formalises the peculiar inequality between women and men. (Kapur and Cossman 1996: 235).

One way of conceptualising this deeper reality is to be found in Bourdieu’s idea of ‘doxa’, the aspects of tradition and culture which are so taken-for-granted that they have become naturalised. Doxa refers to traditions and belief which exist beyond discourse or argumentation, ‘undiscussed, unnamed, admitted without argument or scrutiny’ (Bourdieu, 1977).
Chapter 3 Research Methodology

I employed the intersectional methodological approach. Since women do not form a homogenous group I have adopted an intersectional approach. It is a tool to understand and analyse “multiple discrimination, exclusion and inequalities”. It has been used “to understand or dismantle the violent capacities in gender inequality, caste & class based discrimination, or of multiple face of discrimination” (Yuval-Davis 2006). In this study the focus is on the middle class which has its own specific characteristics. In addition I bring in a generational dimension by interviewing two sets of women in the age groups 40 to 60 and 20 to 40 years old.

During the process of my research, I talked to middle-class women just like me about what they thought about the law and its effects on their lives. I interviewed women from Delhi’s middle class – both married as well as unmarried. Many, shockingly, were unaware of the existence of this law. I have kept these women outside of purview of my research.

3.1 Methods of Data Collection

The study is based on qualitative data from primary research. The data for the study was collected from urban middle class women and lawyers based in Delhi, India during the month of June and July. In addition to primary data I have drawn on a fictionalised account of struggle for property rights based on a true story plus newspaper reports of court cases and compared and contrasted these with my findings.

3.1.1 Sample

Low on time and resources, random sampling technique could not have been employed. Purposive sampling technique and snowball sampling techniques were employed to get special information from only certain members of the community by ascertaining that the informants are qualified to do justice to the research questions and are as close as possible to the theoretically desired norm of the sample population. Following the snowball sampling technique, these qualified informants will be able to connect me with more such informants. However, I had to tread with caution and was aware that the interpretations of purposive sample cannot be applied as generalizations to the whole population (Dolores, 2007).

The respondents include:-

- 4 Family Lawyers practicing in Delhi
- Women claimants to coparcenary property
  5 women from the current generation
  5 women from the previous generation

These categories of women helped me to compare a possible generational shift in women’s agency. The findings were completely different from my assumptions of the generational shift.

3.1.2 Unstructured and structured interviews

I employed unstructured interviews in their ability to “know about the lived experience of fellow human beings” (Kvale and Brinkmann, 2009). I used this form of interviewing in my field work in India to “build rapport” with women who have won or lost their legal battle for co-parcenary property rights in
India. It made my respondents more comfortable in conversing with me. This was followed by semi-structured interviews (see matrix below). It allowed me to assess the legal framework that allows for the capability yet it is the social framework of the joint family structure, that forbids access to “effective” property rights.

I undertook case interviews of family lawyers and claimant women for the purpose of arriving at conclusion regarding the roadblocks in women’s new legal access to coparcenary property.

3.1.3 Secondary data analysis
Research reports, case studies etc. were used.

3.2 Ethical considerations and political choices
This research matters to me as this lets me positively intervene in the life of someone like me from urban India. Through this research I will be contributing to the life worlds of women by making it easier to understand, why, is it so difficult to achieve rights, when laws to the same exist. Another question is whether women are in favour of asserting their legal rights.

I am writing with the positionality of a brown, middle-class Indian female, who is a Hindu. I am a part of the religious majority. However, my position may not be in congruence with the ruling party as the rules of the Hindu majoritarian hegemonic masculinity are written by the Hindu right women, who aim at a revivalism of the old age with the rhetoric of women as “wives and mothers” (Kapur and Cossman 1996: 264).

The purpose of this study is limited to how urban middle class women respond to this act and not in the intricacies of the act itself. That is outside of scope of this research project.

I followed all ethical practices of research. These include taking the consent of the respondents on using a tape recorder and for using the interview data for the purposes of the research and to keep their personal details confidential. They were free to refuse to answer questions and also to stop the interview if they did not wish to participate in it anymore.

3.3 Coordination Matrix between research questions and Methodology
Main research question : What are the potentialities and the obstacles for urban middle-class Hindu women to assert their property rights under Hindu Succession Act (Amendment) 2005.

<table>
<thead>
<tr>
<th>Research Questions</th>
<th>Information set</th>
<th>Data Gathering Methods</th>
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<tbody>
<tr>
<td>What are the institutional factors within family and community that either facilitate or constrain women from asserting their rights?</td>
<td>Women interviews awareness of new law, family reactions, men's reactions, source of law awareness, outlet within family, family support or lack thereof, family reactions, female support within family or lack thereof, male reactions, family negotiation, means of dissuasion, role of community, access/barriers by</td>
<td>Unstructured and semi-structured interviews with women respondents Unstructured and semi-structured interviews with Delhi family court lawyer-respondents</td>
</tr>
</tbody>
</table>
| How do women themselves feel about the law? | **Women Interviews.**  
Success in intra-household bargaining on access, positive influence or otherwise of other financial means in access, difficulty in filing suit against family.  
**Lawyer Interviews**  
comfort of women in court, apprehensions | Unstructured and semi-structured interviews with women respondents  
Unstructured and semi-structured interviews with Delhi family court lawyer-respondents |
| --- | --- | --- |
| | state, potential role of state/family/community in granting easier access, access to other sources of income  
**Lawyer Interviews**  
Impact of financial factors on women success, importance of family support, law/state facilitating mechanisms, limitations for women, institutional mechanisms, landmark case(s), state/family/community constraints, number of cases filed/won increased post HSAA 2005, empowerment through law.  
Fictional account ‘Daughter by court order’ by Ratna Vira 2014 and newspaper reports of ongoing court cases | |
Chapter 4  
Father, brother, husband: Intra-household power relations and the patriarchal bargain in middle class families

A fieldwork marked with the ambivalence of reconstructing one's own familiar culture as an outsider and the knowledge that I will never be able to return to comfortable territory of the 'naive' native (Basu 1999)

In this section I cover my findings from interviewing two different generations of women from 20 to 40 years and 40 to 60 years in total interviewing ten women. There is also an analysis from interviewing four family rights lawyers practicing in Delhi. I then discuss the domain of intra household power dynamics citing two examples with the help of their family trees. And further to the coping strategies used by women.

4.1 Women’s awareness and action in relation to the law

WOMEN INTERVIEWS

I interviewed five women from the current generation and five women from the previous generation.

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<thead>
<tr>
<th>How do women themselves feel about the law?</th>
<th>Previous Generation</th>
<th>Current Generation</th>
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<td>How far have you been able to achieve success in intra-household bargaining and negotiation, in accessing property under HSAA 2005?</td>
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<td>Does having a job help in intra-household bargaining over property rights? Do you feel this law has helped you in a way that intra-household bar-</td>
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gaining could not?

| Did/do you find it difficult to file a case against your own family/brothers to have access to financial resources? | yes | yes | Yes | I have not tried and not thought about it | Yes | Yes | yes | I will if I have to | yes | Yes |
|---|---|---|---|---|---|---|---|---|---|---|---|

| Do you feel justified in asking your parents for your right to patrilineal property? | no | yes | not sure | no I feel that my education is enough | Yes | Yes | No | Not sure | yes | No |

*Due to the sensitive nature of the information and confidence involved, the names of the interviewees have been changed.

FROM THE PREVIOUS GENERATION

Three of the women of the previous generation fought and lost the battle of access to their father’s property to their single brother. One does not want to fight for her share and is single and survives on her salary. Another is a housewife and has tried to assert herself among her hostile brothers who refuse to acknowledge the legitimacy of her claim.

FROM THE CURRENT GENERATION

Two are married, one is divorced and two are single of the five women I interviewed, only two out of five feel justified in asserting themselves and the rest of them have reconciled themselves to the social practices of male inheritance in exchange for a dowry.

In the fictional account ‘Daughter by Court Order’ by Ratna Vira in 2014, the Hindu joint family has a new daughter-in-law Kamini, the name also means a swear in colloquial Hindi, whose only aim and ambition in her life is to “set her throne on his son’s chest, suffocating his family” of all joint family finances. She is called the “manicured vulture” by Baby Singh the divorced daughter of the business
tycoon Eshwar Dhari. The female rivalry in the Hindu joint family is present in a game of woman up-
manship. Kamini debunks Baby Singh’s claim to her own father’s property by saying “what business
does she (Baby Singh) have, eyeing a share in our (her father in law’s) property?”

How do women of the current generation feel about the law?

Many are not even aware of the presence of this law. Despite the constraints of the small sample size of
women who were aware of this empowering law, it was noticed that unmarried women are more likely
to assert their rights than married women in the current generation.

There were mixed responses to what they felt about the law.

A. Lack of Assertiveness

Women of the current generation are as educated as women from the previous generation and are
more sure of themselves. In the idealism of their youth they are willing to fight their brothers, if the
need arise. However, they lack the practical experience in this arena and their confidence does not take
into account social practices and pressures that they might face in a real act of assertion.

B. Dismal Acceptance

I would like to point out that many from the current generation have already entered the patriarchal
bargain. They are married and consider themselves cut off from their father’s family. They have already
accepted the fact that their brother will be given their share.

How do women of the previous generation feel about the law?

I asked a few women who had a decade long feud with their brothers over their share of their deceased
father’s expansive estate in Delhi. Their responses below:

A. Stoical Silence

I got no answer. Women of the previous generation are so ingrained in the concept of self-
abnegation for the benefit of the “family” that they refuse to assert themselves to even speak about it.

B. Fought and Lost

The respondents did not want to let go of their father’s property but they were forced to sign the le-
gal documents by their brother. I would like to point out that though the women of the previous gen-
eration seem more passive, yet they display a real picture of women empowerment in Delhi upper mid-
dle class for they have fought and lost. However, it is important to note here, that the battle was never
allowed to reach the court. HSAA 2005 in this case, was rendered unreachable. The non acceptability
of going to court and fighting in public is considered unbecoming of a woman and even her husband
encourages her to let go of her share. This is most unfortunate because the judges and legal system
supports women in such cases. (Basu 1999).

Women of the previous generation and the current generation have very different outlooks on the is-
ue. Women of the current generation are more in tune with knowledge of existence of the law and
they are more confident of their ability. However, this confidence does not spillover into the territory
of property rights. They continue to be governed by the same taboos and social norms as their previous
generation. Hence, social norms and pressures ensure that the social access to law courts is denied to
both generations.
ANALYSIS OF WOMEN INTERVIEWS OF BOTH GENERATIONS

To this day, women of both generations, married as well as unmarried face social constraints when they in so far as “think” of asserting their rights vide this act. I have noticed the faces of my interviewees turn to silent rage, disbelief and dismay when they narrated their tales. The fact that their views are not given due cognizance in the areas beyond the kitchen is shocking. The fact that women of stature are unable to assert themselves before their brothers is conditioned by older women in the family who knowingly perpetrate patriarchy, for their own gain.

It’s a patriarchal bargain that runs its course in a vicious cycle. It is considered normal practice, like Bourdieu’s doxa, for the woman to let go of her share in her father’s property and accept what she gets from her husband’s family. This works perfectly well when the resources given by the husband are equal. However, in case of divorce and widowhood, the woman has literally nowhere to go as brothers are notorious for not helping their sisters in the times of long-term need.

4.2 Intrahousehold power dynamics: discussion on other women and the brother-

I met lawyers working for women lobbying organizations like Lawyer’s Collective and Human Rights Law Network and independent lawyers who gave me rich information on this issue.

True empowerment requires the prerequisite of resources which are there in upper middle class Hindu families. However, agency in the form of household bargaining is diluted by older women of the family themselves. Women set boundaries of ambition of younger women in the family as it serves their own interests. I would like to explain this to you in the form of the example of the upper middle class Hindu family in Delhi that I interviewed.
If we look at the above example of an upper middle class family based in Delhi and its pattern of inheritance, in Figure 8 above, we see that social pressure has led to three daughters of a man with an expansive estate, who are coerced to sign away their share in the name of the great grand son. This one act wipes out inheritance claims of 10 women - one less woman for she lost her life in foeticide.

In similar vein, there is a pattern of disinheritance to be seen in Indian households. It encompasses both psychological as well as physical violence against women. Bourdieu’s idea of ‘doxa’relates to those “aspects of tradition and culture which are so taken-for-granted that they have become naturalized”. (Bourdieu, 1977). Men, brothers in this case, use doxa to explain that when women have never inherited property in the presence of a male kin, how can they inherit it now. The very assertion of a woman is this case is said to be going against the tradition.

**Daughter by court order**

There is a lot of similarity with Ratna Vira’s fictional account and that of my findings in the interviews. ‘Daughter by court order’ by Vira in 2014 is the first rendition on the topic of Hindu women’s property rights. She writes the story of Aranya, a single mother of two children, juggling a corporate job, who unearths a decade-long legal battle of her mother over her grandfather’s expansive estate. This is important for Delhi is the second most populated city in the whole world and property prices have sky-
rocketed in the past few decades. Aranya’s existence was kept hidden by her own mother who has always wished her dead. There is deceit, treachery and lies in her house by women who set boundaries for their own daughter’s ambition that wishes to equal their son’s. Vira delves more into the element of female rivalry in the Hindu joint family. The family tree of the tycoon Eshwar Dhari is detailed below.

After the death of Sir Eshwar Dhari, his warring family members approach the court. With the complicity of the family, Kamini, the dominating younger daughter-in-law manages to get her daughter Arnie’s name struck off the family tree so that Kamini gets a bigger piece of the pie for herself and her gay son Randeep. Dhari’s both daughters’ marriages break and they return to his sprawling house in Civil Lines. Kamini, the younger daughter-in-law is very dominating and has made her husband an unemployed cuckold. In the politics of the family the two daughters of Eshwar Dhari manage to have their names on many of his properties and are living a comfortable life. From a lesser affluent family, Kamini
as the younger daughter-in-law thinks of infanticide with the help of her brother Yudi to kill little Arnie, the ‘blue mite’. Brought up by a mother to despise herself, Arnie grows up very unsure of herself.

Her husband leaves her a single mother of two kids as he was having a relationship with Arnie’s gay brother Randy’s wife Dolly. Arnie works hard in the corporate sector to bring up her two children all of the while ignorant of the family court case that has been fought in Ranchi and Delhi for decades. At the end of the court case, Arnie’s aunt Baby Singh tells her of the case and her right under Hindu Succession Act 2005. Arnie is fired from her job for the time that it has taken her and partly due to her mother’s powerful influence. She has little money left from the hefty lawyer fees. She faces emotional stress going against her family that tries to emotionally blackmail her to withdraw her suit. In the end of a long fight, Arnie wins her share of family property and gets back her dignity as a member of the Dhari family and ensures financial protection for her two children.

There are two different notions of the concept of agency and these are propounded by Saba Mahmood and Naila Kabeer. Though Kabeer offers a more empowering concept, unfortunately, the fact in the field is that women from upper class Delhi cannot fight openly like women from the lower class do. Brought up on feminine values of self-abnegation, they fight in silence. Though Saba Mahmood considers silence as rebellion, I feel that silence is a tool of the weak and is a marker of self-denial. It denies one self-assertion that is a pre-requisite for attainment of these rights.

The institutional factors within family and community that either facilitate or constrain women from asserting their rights under HSAA 2005 :-

My assumption during this research was that the HSAA 2005 was a landmark act and it has not been used so far by women from the previous generation due to the lack of their assertion and bargaining power in “co-operative conflict” (Sen 1998). However I have been proven wrong. The women of my generation may be more assertive, however, they too do not have the required emotional strength to sever ties with her family. The costs of a middle class family to go against her family are too high. She does not have the resources to go to court, for what is considered a small amount.

The Hindu Succession Act Amended is a landmark act that largely serves the interest of the uber rich who have properties worth over 100 crores.

My primary research resulted in the following barriers which were the reasons cited for the women’s voluntary relinquishing:

Social barriers

“At the time of conception you got (property) rights that cannot be taken away” (Baby Singh to her niece Arnie in Vira 2014)

Threat of severance of family ties and health concern of family members due to extreme stress are primarass the woman asserting herself will be morally responsible for it. Also, is the threat of physical violence by the brothers on the sister and her family, in the event she asserts her equal share on any joint family property being sold. In Ratna Vira's fictional account, Arnie as the younger female in the Hindu joint family attempting to lay a claim on her late grandfather’s fortune was referred to as a “tiny mite”. In cases such as these language works as a tool for power to debunk female legiti-
macy. Arnie was also put in a trap of spoiling the name of her maternal uncle, of threatening the health of her parents, and “causing grief to old parents” (Arnie in Vira 2014).

During the course of research, the threat of physical violence among the lesser educated middle classes was so acute that a girl was shot dead at Najafgarh by her brother in return for her act of assertion.

There is a problem with the women themselves where they are negligent about their rights, and the fact that as daughters do not ask these questions, as they are afraid of asserting themselves. The whole mental setup is that I am living in reasonable conditions and therefore I am not interested in going to court. There is a very basic lack of respect for women to be grabbed in areas outside the city by men in the event of their assertion. There is a patriarchal complex of ‘how dare she’.

**In the eyes of law : a forbidden right**

**LAWYER INTERVIEWS**

**Legal barriers**

*Property cases are a “game of snakes and ladders” (Arnie’s lawyer in Vira 2014)*

Property is not considered fundamental to existence by law courts. It is considered a civil case and not a criminal case like domestic violence and loses out on long judicial delays amounting to even decades. Access court is only available in divorce cases when existence in family is threatened, as property is not fundamental to existence. It is treated as a personal matter between the woman and her brother(s) or her parent(s). The assertion of the woman, both of the current generation and of the previous generations, is contained at these two levels and does not reach the court.

Unfortunately the court process is too slow and the information dissemination about women rights in this area is confined to the legal cells. NGOs help legal aid cell in court, financial help is not there. Every court has district legal aid cell, lawyer will be paid by government. It is free by the state, government lawyers are provided free of cost yet a fee of five hundred rupees is part of practice, depending on financial status of persons, while lawyers charge a fee of forty thousand rupees as a minimum which is prohibitive for women of the lower middle classes.

To add to that, there is a stigma in society for women to approach court and there is a very glaring ignorance of not being aware that multiple laws are applicable for one case. The fact is that HSAA 2005 can be invoked in domestic violence and maintenance cases is ignored. Judge’s credibility is at stake and they are supposed to be neutral when emotionally tortured women approach them. The law, at least on this count, is neutral and seems to favour women (Basu 1999).

The legal system in India needs an overhaul. They have to create jobs for lawyers. There are 25000 registered lawyers in court and out of these, very few get government jobs. Despite the availability
of legal aid, agencies like legal services authority not fully functional as with the advocates, hand-
holding has to happen throughout, but the crisis centre civil litigation no handholding facility
throughout the case.

The condition of the women is that they are graduates but they do not have awareness of their
rights. Also, in these cases, evidences are required. The women are already under emotional stress
with the expiry of their father, and all the mutation of the property has been done in the name of
her brothers and in situations that are worse, her husband has left her. Duration of case proceed-
ings depends on evidence produced, cases take 1.5 years, which involve legal summoning of re-
spondents. The endemic slow legal system of our country is to blame also as there are 250 cases
each day in court and all we get is six dates in a year. This is because it is treated as a simple civil
case, not criminal domestic violence case. In many instances, within six months of getting the no
objection certificate signed, the brothers sell property.

There is a problem with attrition where women get frustrated with system as it is hard to approach
lawyers and they need to continue a prolonged process and they end up leaving midway.

4.3 Agency circumscribed? : on the coping strategies

The coping strategies used by women are stoical silence to maintain family integrity. They are made
aware by other women in their family, their mothers, their brother’s wives, that one step toward self-
assertion means the end of the family ties. Hence, from being called greedy to being chastised for
breaking the unity of the family, women have no recourse but to sign away their substantial shares in
property and their continuance in penury post marriage.

4.4 A room of one’s own : My view

In the absence of adequate state social security nets, women of all classes in India are subject to the
ostensible protection of their male relatives, father, husband, brother and son. Women at marriage
forego their right to parental property and land to their brothers to be solely dependent upon her hus-
band. However, research has shown that in case of widowhood, when the women go to their natal
houses, they end up working as day labourers in their parental land (Rao 2011 in Lawyers Collective
Women Rights Initiative 2010). “Thus despite these state endorsements, legislative advances often meet
social, religious, political and economic resistance” (ibid). This happens despite strong laws like HSAA
2005 where women are under social pressure to relinquish parent’s property to their brothers in e-
xchange for protection by brothers later. Dowry to women in the form of jewellery legitimises the patri-
archal bargain and strengthens the wheels of hegemonic masculinity.

This mires women further into the cycle of violence as they have very little bargaining power within
the household, especially when they do not have access to external sources of income.

Household strategies in proletariat and poor Indian families comprise giving more food to male
children as compared to female children. Power, resistance and inequality lie behind the processes of
household bargaining and a lot of difference even amongst females is made by exercising ‘agency’ to resist. (Wolf 1997).

Unfortunately as we see in the case of HSAA 2005, “despite these state endorsements, legislative advances often meet social, religious, political and economic resistance” (Rao 2011 in Alston 2014).
Chapter 5 Recommendations

“My story will not be hers, she (my daughter) will have a different life” (Arnie in Vira 2014)

My research unearths a lie that the ground-breaking Hindu Succession Act Amendment 2005, which gives equal rights of inheritance to women is socially empowering for women. My research started with two main assumptions. First, that the Act is empowering for women and second, that the middle class women benefit from it. Both of my assumptions have been overturned.

Recommendations from experts like Bina Agarwal (1993) speak on this issue regarding what needs to be done for improving women’s claims in property:

1. Change in social mindset
2. Legal literacy and legal support services
3. Social and economic support for women from outside the family including an effective social security system
4. Changing social attitudes

After my research, I would like to point out here that there is lack of adequate state sponsored social security net in India. There are nets for a few sections of the population but these are certainly not enough for all. Even for a working population, the sixth pay commission of the government of India has done away with the concept of government pensions in University of Delhi for example.

The need for financial security in the form of HSAA 2005 is all the more important in the changing demographic milieu of India. Delhi has the best healthcare in India. People now live till ninety to ninety five years, whereas the retirement age is fixed at 60 years. In this scenario, people have to fend for themselves from 60 to 90 years. In addition, at the age of 60, a person is already fending for the health needs of elderly parents aged 90.

We have therefore, an aggressive law by a state made egalitarian by social activism in the world’s largest democracy. However, women of the middle classes are not using it to go to court because of the multiple constraints faced by them – financial, social, legal-institutional, most of all because they do not want to challenge their brothers.

The overwhelming hold of patriarchy and hegemonic masculinity has encouraged women to change sex to become ‘man’ enough to inherit. Women change sex as they gain legitimacy as a male to ask for their father’s property. The founder of the affluent industrial group, Yogindra Mafatlal died in 2005. Since then his family has fought the battle for controlling shares in his group and access to his 10,000 square feet bungalow in Mumbai. “Yogindra's daughter Aparna Mafatlal, joined them in 2005 after her divorce, and soon became Ajay, the ‘eldest son’ of the family after a sex-change operation at Mumbai’s Breach Candy hospital. It made him a claimant to the property and family fortune - at least whatever was left of it.” (Sify, 2011). Ajay is fighting his brother Atulya Mafatlal over the controlling shares in the “legitimate” position of the eldest son. Women therefore do desire to assert themselves, only when the social stigma of asserting as a woman is removed. She is after-all wo-man, meaning, not man, finding her feet after being stigmatized in the male ideological discourse and male dominated world she inhabits.
State, society, law and institutions come in the way of women’s defacto access to property. I sum up my recommendations for each of these below.

5.1 The State

Despite the law, the state continues to support the property ownership to pass from the father to the son. What is required is a public acknowledgement by the state it supports equal inheritance rights for women at par with men (Kishwar and Vanita 1990).

Being a part of the system and also like one of the subjects that I talk about, I feel the state has the most important role to play. The state must attempt to change people’s ideology at the grassroots level. They need to teach women to respect themselves first, as women end up compromising a lot. The state must make the women feel empowered and not afraid and educate the women on the way and manner law should be used. Currently, the state simply creates a system that appoints people to check. The state needs to go beyond this to work to change ideology.

5.2 The Society

In most cases, women are not aware that this act exists. Women from more equal communities from the South of India are more akin to going to court. This is because of the traditional social practice of marrying the daughter with her brother's son. This ensures that property stays in the family and daughters are not deprived. The awareness level of the women is unusually low.

Gender sensitizing through the media, educational institutions, etc., for changing social norms and social perceptions”, abolishing the joint family property provision in the HSAA 2005. Unless and until women’s claims begin to be seen as socially legitimate, parents who have a male bias are likely to use the right of making wills to disinherit daughters, even if the laws are made fully gender-equal. Policymakers generally assume that farms will be cultivated on a family basis.” (Agarwal 2002: 19) which is myopic in its conception of altruism and intra household equality in provisioning.

Further required is to “educate people to change their attitude towards the concept of gender equality. The need of the hour is also to focus attention on changing the social attitudes in favor of equality for all by enacting a uniform law. The difficult question of implementing the 2005 Act remains. Campaigns for legal literacy; efforts to enhance social awareness of the advantages to the whole family if women own property; and legal and social aid for women seeking to assert their rights”. (Law Teacher n.d.). Unfortunately the middle class ideal of a marriage has still not changed (Donner 2010) that makes women as practice relinquish their share in their father’s property in the name of her brother in exchange for dowry or gifts at her marriage, which at many times are not controlled by her and are directly gifts to the groom’s family.
Daughters are treated like migratory birds who break their relation with their paternal family upon marriage. A theory always serves the purpose of someone and forwards the subjugation of another. There is a theory of daughters as “paraya dhan”, which literally means “she is the property of someone else”. This theory, propounded by our “culture” serves the best interests of patriarchy where it is considered justified to not invest in the daughter, for she is a property that needs to be relinquished upon her marriage. Marriage of daughter comes with the social prescription of blocking off eldercare linked property inheritance of daughters as it is considered customary for the sons to do eldercare (Srimati Basu 1999).

“The criticism that property right in land to daughters would increase fragmentation again is baseless because most of the fragments even if individually owned, are often cultivated collectively by the families”. (Report of Sub Group on Land Related Issues submitted to : Working Group on Gender issues, Panchayati Raj Institutions, Public Private Partnership, innovative Finance and Micro Finance in Agriculture for the Eleventh Five Year Plan 2007-2012 in Lawyer’s Collective Women’s Rights Initiative 2007).

5.3 The Law

There is a loophole that still exists in the law that daughters can be disinherited by writing a will and excluding the daughter’s (or son’s) name from it. In a testamentary disposition or in a will the male has the right to allot his property to anyone he wishes. This can be used to disinherit daughters from family property. The provision of the Muslim personal law can be included here, as they do not allow more than 1/3rd of the property to be bequeathed in testament. “The legal processes for realizing women’s claims must also be reworked so as to remove any psychological and social barriers to women who want to approach the law. The desired change will be brought about once social legitimacy is established. For this purpose, programmes have to be developed and sustained.” (Lawyer’s Collective Women Rights Initiative 2007). The anti-dowry law in mid twentieth century has so far been defunct because
despite the fact that giving and receiving dowries is a punishable offence, at the same time, the law allows for the give and take of “gifts”. (Kishwar 2005). It is a similar case with the Hindu Succession Act Amendment 2005 which gives equal rights of inheritance to daughters, but at the same time allows the father to cut her off in his will.

The state has facilities like the 181 helpline where women can be counselling women about multiple problems, interventions they require at 181 are of different levels, women do not have the information about these.

The courts hold Lok Adalats or common man courts which have under their purview the motovehicle act etc. Similarly, there can be women related Lok Adalats. This will help those women who do not have the financial means.

Unfortunately, the law has retained the provision of the joint Hindu family property as this is not gender sensitive when we think of the implementation of HSAA 2005. “Kerala was the first state to launch an attack on the right to joint family property by birth and the discrimination inherent in it.” (Lawyer’s Collective Women Rights Initiative 2007) where daughters are usually the silent subjects in the patriarchal discourse of the joint hindu family business unit who are kept away from family gatherings about resources, their use and business discussions.

5.4 The Institutional Framework

Legal awareness on rights is desperately wanting. Different forums, like the National Commission for Women should give lectures, what is law, ladies who are actually in need can get free counselling from these government bodies.

Despite the act being in place, there are not enough mechanisms provided for women to use it. It seems to me a struggle for women property rights has been relegated to NGOs only. I see activism wanting in the public spaces of interaction. The success of this law will be because of its nature of being a “bottom-up”, inter-class (middle class and lower class), hybrid and multi-stakeholder struggle for women property rights. Here too the debate between personal laws and a uniform civil code is important. The ideal of equal rights in all spheres starts from activism from the bottom up in a women’s collective (Kabeer 2001) but must not be restricted to it.

However, a different argument is presented in an earlier work on women property by Srimati Basu in 1999 on Delhi middle class women’s property rights. She speaks of the wide gulf between women of the propertied class and the non propertied class. For the two sets of these women to come together, therefore, is a gargantuan task that would involve a common goal orientation that looks beyond myopic inter-class interests.

5.5 Effective Access

There is a shocking pattern that is omnipotent. I do not know of a single woman in my upper middle class surrounding that actually used this law. Women from the south of India enjoy better gender relations as the weddings happen within the family, which is not so in Delhi. North western India is the
land of the khap panchayats that punish with death if women are married to their 'brothers' in the same village. It really intends to cut the women off from the family by getting her married in a village outside the radius of influence of her on her natal family. To this effect, it has led to overturning my previous assumption about the generational shift in assertiveness. Women of both the previous generation as well as the current generation find the law to be defunct as barriers prohibit entry - these are enumerated in social and legal dimensions in previous sections. It is the fact that the law is applicable only to the uber rich women of Delhi who have excess financial resources to fight court battles simultaneously in multiple locations and are outside the purview of the Hindutva discourses that plague middle class femininity in India. These hindutva norms are applicable on middle class women who are embroiled in the politics of an ostensible cultural revival which actually is a beacon call of a threatened hegemonic masculinity. Violence in the form of murder is the share a middle class woman gets for her assertiveness in a misogynistic landscape.

To conclude, the ideal is the abolition of private property and a sense of fairness and justice, regardless of gender. That however, is far from reality. I would like to be optimistic and view the current state of affairs as that of delayed access to property rights for women of my demography. In the 1850’s when social reformers like Raja Ram Mohun Roy worked on women’s access to education, they had to go door to door to beg parents to send their daughters to already paid-for girls-only schools. There was delayed acceptance to the abolition of sati too. There has been a case of sati in 1987 in India, a practice that was abolished in mid 1850’s. In all such cases of women’s empowerment in India’s history, law has preceded social acceptance. There has been a time lag of acceptance by society, but women have been emancipated tremendously since then.

My research validates Srimati Basu’s 1999 research where women in middle class Delhi themselves are “unable to conceive of a system of property distribution in which each couple could get property from both sides of the family, or visualize a gender neutral world in which women could have equal economic power and responsibility (of eldercare) and would not need looking after”. The fact that this mindset continues to exist after HSAA 2005 is shocking in the unchanging social milieu of India despite the processes of women emancipation and globalization. In addition to her research is my view on the impact of personal laws in subliminally differentiating religions while at the same time according the same low status to women of both Hindu and Muslim religions, despite the fact that Hindu women are far more empowered through HSAA 2005.

Also, there is a major difference in Hindu Succession Act Amendment 2005 and other leaps in women’s emancipation. Hindu Succession Act Amendment 2005 is a direct attack on the hegemonic position of the son in terms of property ownership. I fear a non-acceptance of this law by society in the long run. The deep problem of doxa might take centuries of a struggle exposing women to the whole spectrum of violence from the emotional to the physical. This will be a hard climb - socially, economically, emotionally and physically. If we make it, it will go down in history as a breathtaking victory.

Our brothers can wail with all their might
It is our right to fight
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Appendix 1

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

NO. 39 OF 2005
[5th September, 2005.]
An Act further to amend the Hindu Succession Act, 1956.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

Short title and commencement.
1. Short title and commencement.—(1) This Act may be called the Hindu Succession (Amendment) Act, 2005.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 4.
2. Amendment of section 4.—In section 4 of the Hindu Succession Act, 1956 (30 of 1956) (hereinafter referred to as the principal Act), subsection (2) shall be omitted.

Substitution of new section for section 6.
3. Substitution of new section for section 6.—For section 6 of the principal Act, the following section shall be substituted, namely:

6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—
(a) by birth become a coparcener in her own right in the same manner as the son;
(b) have the same rights in the coparcenary property as she would have had if she had been a son;
(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

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

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

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

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—
(a) the daughter is allotted the same share as is allotted to a son;
(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the
child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.- For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.'.

Omission of section 23.
4. Omission of section 23.-Section 23 of the principal Act shall be omitted.

Omission of section 24.
5. Omission of section 24.-Section 24 of the principal Act shall be omitted.

6. Amendment of section 30.
6. Amendment of section 30.-In section 30 of the principal Act, for the words "disposed of by him", the words "disposed of by him or by her" shall be substituted.

7. Amendment of Schedule.
7. Amendment of Schedule.-In the Schedule to the principal Act, under the sub-heading "Class 1", after the words "widow of a pre-deceased son of a pre-deceased son", the words "son of a pre-deceased daughter of a pre-deceased 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" shall be added.

T. K. VISWANATHAN, Secy. to the Govt. of India.
Appendix 2

**Top five and bottom five States/UTs by sex ratio - 2011**

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Top Five States/UTs</th>
<th>Sex ratio (females per 1000 males)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kerala</td>
<td>1,084</td>
</tr>
<tr>
<td>2</td>
<td>Puducherry</td>
<td>1,038</td>
</tr>
<tr>
<td>3</td>
<td>Tamil Nadu</td>
<td>995</td>
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<tr>
<td>4</td>
<td>Andhra Pradesh</td>
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<tr>
<td>5</td>
<td>Chhattisgarh</td>
<td>991</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Bottom Five States/UTs</th>
<th>Sex ratio (females per 1000 males)</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Daman &amp; Diu</td>
<td>618</td>
</tr>
<tr>
<td>2</td>
<td>Dadra &amp; Nagar Haveli</td>
<td>775</td>
</tr>
<tr>
<td>3</td>
<td>Chandigarh</td>
<td>818</td>
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<td>4</td>
<td>NCT of Delhi</td>
<td>866</td>
</tr>
<tr>
<td>5</td>
<td>A &amp; N Islands</td>
<td>878</td>
</tr>
</tbody>
</table>

Figure 8: Bottom five states in India in terms of sex-ratio. Source: Census of India 2011

**Female Sex Ratio in India**

![Female Sex Ratio in India](image)

Figure 9: Female sex-ratio in India. Source: mapsofindia.com
Figure 10: Middle Class Population Share in India (on map of India) Source: mapsofindia.com
Appendix 3

Checklist for key informants: Women Interviews

The above checklist shows the basic questions for the respondents, but it is important to remember that the different categories of respondents will not know all the aspects and context of the Hindu Succession Act Amendment 2005. So depending upon the responses of the respondents, the interviewer will ask appropriate questions.

What are the potentialities and the obstacles for urban middle-class Hindu women to assert their property rights under Hindu Succession Act (Amendment) 2005.

What are the institutional factors within family and community that either facilitate or constrain women from asserting their rights?

Are you married/unmarried?
Do you have other sources of income (like salary that make person economically independent) or not?
Did you know of HSAA 2005 before you approached your lawyer?
Would you ask for your right to your parents’ property?
For yes and for no, give reasons for your answer.
If yes, when did you come to know of it and who told you about it? Lawyer/friend/family/media?
Who was the first person you spoke to about your desire to claim your share in property?
What were and have been the key reasons for your obstacles in getting access?
Were the people in your family supportive of your wish?
What were their initial reactions?
Was a support necessary amongst the men in your family?
What was the reaction of the females in your family?
Did women in the family support you?
Did the men in your family feel threatened by your claim?
Did men use intra-household bargaining to stop you from access?
Were you threatened or emotionally blackmailed in the family?
Did the community stop you in your quest?
Did you feel barriers by the state in your quest for access?
Do you feel the state/law could have helped you better to overcome the barriers posed by family and community?

How do women themselves feel about the law?

How far have you been able to achieve success in intra-household bargaining and negotiation, in accessing property under HSAA 2005?
Does having a job help in intra-household bargaining over property rights? Do you feel this law has helped you in a way that intra-household bargaining could not?
Did/do you find it difficult to file a case against your own family/brothers to have access to financial resources?
Do you feel justified in asking your parents for your right to patrilineal property?
Appendix 4
Checklist for key informants: Lawyer Interviews

The above checklist shows the basic questions for the respondents, but it is important to remember that the different categories of respondents will not know all the aspects and context of the Hindu Succession Act Amendment 2005. So depending upon the responses of the respondents, the interviewer will ask appropriate questions.

What are the potentialities and the obstacles for urban middle-class Hindu women to assert their property rights under Hindu Succession Act (Amendment) 2005?

What are the institutional factors within family and community that either facilitate or constrain women from asserting their rights?

How long have you been practicing?
How many women have approached you for their parent property rights?
Do all the women who come to you know about HSAA 2005?
Do women with access to external sources of income, like jobs, etc. have a better chance of winning cases?
What factors, beyond financial factors help women in court success?
What are the factors that help women get access to their rights under HSAA 2005?
How far do you feel family support is necessary?
Are there enough facilitating mechanisms (in state, family, and community) for the women to access HSAA 2005?
What according to you are the state/family/community constraints that women face in their access to rights under HSAA 2005?
What are the limitations for women to access HSAA 2005 currently?
What is still wanting in HSAA 2005?
Could there be an institutional mechanism to help women without financial means to file suits under HSAA 2005?
What are the landmark court cases under the ambit of HSAA 2005?
Has the number of cases filed/won increased post HSAA 2005?
Has the law empowered the women truly, or has it just increased their bargaining power?
What are the potentialities in the HSAA 2005 with regard to women’s status in the family?

How do women themselves feel about the law?
Are women claimants under HSAA 2005 comfortable with going to court?
Do women claim under immense financial need or do they claim as their right?
I am studying how different women feel about asking for their property rights from their parents—un/married and have no/external sources of income.
Do you feel unmarried women and women with no external sources of income are more likely to ask for their rights?
Appendix 5

Informed Consent

*It is obligatory to take consent of the respondent before interviewing. If they give consent prior to the interview, then they have rights not to honour the words and they can change their minds at any time even at the time of interview.*

“The information extracted from the discussion will be used only in research purpose. The confidentiality of the information provided by you will be highly restricted. Your name and profile will not be used in any analysis of the report. I shall take almost one hour to complete the interview. During the interview if you do not want to answer to any particular questions, then you can discontinue the interview or if you do not feel free to respond to the certain questions, you may restrain yourself to answer the particular questions. We will not pay you any money for participating in the interview.”
## Appendix 6

Interviews with key informants

<table>
<thead>
<tr>
<th>Name</th>
<th>Position and Organization</th>
<th>Date and Place of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LAWYERS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anindita Pujari</td>
<td>Advocate at Lawyer’s Collective</td>
<td>10 July, Telephonic</td>
</tr>
<tr>
<td>Madhulika Sharma</td>
<td>Advocate erstwhile Human Rights Law Network</td>
<td>30 June, Saket New Delhi</td>
</tr>
<tr>
<td>Manjari Digwany</td>
<td>Feminist Lawyer</td>
<td>8 September, Telephonic</td>
</tr>
<tr>
<td><strong>WOMEN</strong></td>
<td><strong>PREVIOUS GENERATION</strong></td>
<td><strong>MARRIED/UN MARRIED</strong></td>
</tr>
<tr>
<td>Sunita</td>
<td>Not working</td>
<td>Married</td>
</tr>
<tr>
<td>Shakuntala</td>
<td>Working</td>
<td>Married</td>
</tr>
<tr>
<td>Somika</td>
<td>Not working</td>
<td>Married</td>
</tr>
<tr>
<td>Mohini</td>
<td>Working</td>
<td>Unmarried</td>
</tr>
<tr>
<td>Kaushalya</td>
<td>Not working</td>
<td>Married</td>
</tr>
<tr>
<td><strong>WOMEN</strong></td>
<td><strong>CURRENT GENERATION</strong></td>
<td><strong>MARRIED/ UN MARRIED</strong></td>
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<tr>
<td>Advaita</td>
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<td>Unmarried</td>
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</tr>
<tr>
<td>Sonakshi</td>
<td>Not working</td>
<td>Unmarried</td>
</tr>
<tr>
<td>Rupali</td>
<td>Working</td>
<td>Married</td>
</tr>
<tr>
<td>Kanika</td>
<td>Not working</td>
<td>Divorced</td>
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