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The Conflict Between Communal Religious Freedom and Women's Equality: A Proposal for Reform of the Hindu Succession Act of 1956

By
Archana Sridhar*

I.

INTRODUCTION

The Hindu Succession Act of 1956 ("the Act"),¹ as part of a movement to codify the system of religious personal laws after India gained its independence in 1947, revolutionized the legal rules governing gender and inheritance.² However, as a codification of ancient Hindu law and colonial amendments, the Act retained many limitations on women's rights regarding full ownership of ancestral and other property. Despite the drafters' intent to equalize the property and inheritance rights of Hindu women, a tension persists between the rights granted to women and the limitations preserved within the Act.

In this Article, I seek to investigate the provisions in the Act that enshrine gender discrimination in one of the most important legal aspects of personal law: inheritance. In particular, I would like to view the Act's operation and effects on the Hindu joint family from a social and religious standpoint, and also study the impact of modernization and legal codification on this ancient institution. I advocate for changes to the Hindu Succession Act that would equalize the position of men and women in relation to joint families and property rights. Such changes may have a lasting effect on the institution of the joint family itself, but any negative impact is outweighed by the need for women to achieve economic parity with men in the modernized nation-state of India.³

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1. Hindu Succession Act, No. 30 (1956) (India), *available at* <http://sandesh.org/hindus.htm>.

2. Section 1.5.1 of the Law Commission of India's 174th Report cites the Act as having been enacted against the resistance of orthodox Hindus in order to reform the situation of women in India. LAW COMMISSION OF INDIA, 174TH REPORT ON "PROPERTY RIGHTS OF WOMEN: PROPOSED REFORMS UNDER THE HINDU LAW," D.O. No. 6(3)(59)/99-LC(LS) (May 2000), *available at* <http://lawcommissionofindia.nic.in/kerala.htm> (hereinafter LAW COMMISSION REPORT).

3. I consciously avoid in this paper detailed discussion of the Uniform Civil Code mandated by Article 44 of the Indian Constitution because I believe that the Code's creation and adoption is not a realistic objective in the near future. Parliament and courts should make changes in the current religious personal laws to assist women, and perhaps plan long-term for the institution of a uniform code, as provided in INDIA CONST. pt. IV, art. 44.

Through this Article, I seek to provide a broad framework for the Act, both religious and socio-historical, then consider the Act itself more closely, and finally analyze possible reform proposals. In Part II, I provide a background discussion of ancient Hindu religious law with regard to inheritance and the particular concept of the joint family. In Part III, I present an outline of the Hindu Succession Act of 1956 and the specific provisions that discriminate between Hindu males and females for purposes of inheritance. Included are some important state law modifications that have addressed and reformed some of these discriminatory provisions. In Part IV, I discuss a recent Law Commission report recommending changes to the Act to bring about equality between men and women in relation to family inheritance. The government of India should adopt these proposed changes, despite possible negative effects to the Hindu joint family institution, thereby following its own precedent of enacting laws that have affected Hindu marriage and family structure.⁴ Additional changes such as those proposed by the Law Commission would be part of a slow process of modernization that preserves certain Hindu characteristics in the system of personal laws while allowing all of India's citizens—men and women—to enter modernity on equal footing.

II.

RELIGIOUS LAW AND SOCIO-ECONOMIC CONSIDERATIONS

The current codification of Hindu personal law stems from thousands of years of tradition enmeshed with religious and social understandings of gender, family construction, and spiritual merit. The present Indian government has preserved religious tenets in the realm of personal law, which governs inheritance, marriage, and other intrareligious issues.⁵ By championing personal religious laws, the government attempts to reconcile "claims for group integrity with claims for individual fulfillment and gender equality."⁶

India is organized as a federalist government, much like the United States, with a powerful federal government and separate state governments, each having authority over certain areas of law.⁷ Only particular legal issues continue to be governed by religious codes, by which differences in religious traditions are preserved.⁸ These religious laws are confined to areas of personal law such as marriage, divorce, inheritance, and adoption, while criminal, corporate, and other civil laws continue to apply equally to all Indians.⁹ Hindus and Muslims

4. The Dowry Prohibition Act of 1961 is one example of such an enactment. Dowry Prohibition Act, No. 28 (1961) (India).

5. See, e.g., Hindu Succession Act, *supra* note 1; Hindu Adoption and Maintenance Act, No. 78 (1956) (India); Hindu Marriage Act, No. 25 (1955) (India).

6. Marc Galanter & Jayanth Krishnan, Personal Law Systems and Religious Conflict: A Comparison of India and Israel (unpublished article on file with author).

7. Gita Gopal, *Gender and Economic Inequality in India: The Legal Connection*, 13 B.C. THIRD WORLD L.J. 63, 66 (1993).

8. *Id.*

9. *Id.*

are governed by separate codes, and some areas of the law also provide for separate laws for Christians and people of other faiths.¹⁰

This separation between religious groups when it comes to matters of personal law has been a subject of great contention in India, particularly in the past thirty years. An alternative course to the current personal codes system would be the adoption of a "Uniform Civil Code" that would govern people of all faiths in India—an instrument to which there is a commitment in the Indian Constitution.¹¹ Such a uniform code could have the effect of increasing gender equality since uniformity among individuals would be given a higher priority than religious practices by groups.

To fully understand both the 1956 Hindu Succession Act and the Law Commission's recommendation, it is necessary briefly to investigate the Hindu religious texts, which are the origins of these laws, an investigation that sheds light on the preservation of religious tenets in Indian personal law.

A. Ancient Hindu Legal Precedents¹²

1. Manusmriti

The *Manusmriti*, otherwise known as "The Laws of Manu," is a widely respected Hindu legal text with many verses containing practical tenets for a person's religious and everyday practices. The *Manusmriti* is considered a practical primer on ancient Hindu laws and addresses the caste system, marriage, inheritance, and many other topics. The Sanskrit text was probably composed around the first century C.E.¹³ and brings together many previous writings on topics of *dharma*, the spiritual-religious duties of Hindus living in different worldly situations. The *Manusmriti* discusses the place of women in Hindu society and defines the duties of families and married couples.¹⁴ A few particular sections shed light on policies in the Hindu Succession Act and set the context for the provisions dealing with gender.

Chapter 5 of the *Manusmriti* includes laws detailing the duties of women, stating in perhaps its most famous quotation:

In childhood a woman should be under her father's control, in youth under her husband's, and when her husband is dead, under her sons'. She should not have independence. A woman should not try to separate herself from her father, her husband, or her sons, for her separation from them would make both (her own and her husband's) families contemptible.¹⁵

10. GERALD J. LARSON, INDIA'S AGONY OVER RELIGION 219-20 (1995).

11. INDIA CONST. pt. IV, art. 44.

12. In this section, I discuss only the *Manusmriti* and the legal texts of the Mitakshara and Dayabhaga schools in reference to inheritance and family law. There are numerous other local texts that greatly affected the construction of such laws, but these three sources are considered of major influence. See, e.g., Lotika Sarkar, *Reform of Hindu Marriage and Succession Laws: Still the Unequal Sex*, in FROM INDEPENDENCE TOWARDS FREEDOM: INDIAN WOMEN SINCE 1947, 100-01 (Bharati Ray & Aparna Basu eds., 1999).

13. See THE LAWS OF MANU at xvii (Wendy Doniger trans., Penguin Books 1991).

14. See Gopal, *supra* note 7, at 63 n.1 (stating that Hindu law is based upon the *Manusmriti* and giving two examples of women's roles within families).

15. THE LAWS OF MANU, *supra* note 13, at 115.

Relatedly, it is the father's duty to give away his daughter in marriage, which severs the ties between her and her natal family.¹⁶ This belief in female dependency continues to form the basis for current understandings of a woman's permanent place with her husband's family after marriage.

Chapter Nine of the *Manusmriti* discusses inheritance in great detail. A few of its provisions are the direct root of the 1956 Act's statutory scheme. The Laws of Manu characterize joint family living as the most common form of family structure, with the eldest brother in charge of maintaining the family property.¹⁷ On the death of the parents, the living brothers are to divide the estate equally, but the eldest brother may take all of the property and act as a father towards the rest of the family.¹⁸ This reflects the later articulation of the Act's all-male coparcenary,¹⁹ which perpetuates the pattern of joint family property that remains undivided to care for the entire family.

In a joint family, a senior male coparcener, typically the father or eldest son or brother, assumes the role of the *karta*, or manager, of the jointly held property.²⁰ Currently, this male senior coparcener is deemed to be the custodian of a family's finances under the Succession Act and the Indian tax statutes.²¹ He is not accountable to anyone and is entrusted with such authority to care for the rest of the family responsibly under the guidance of *dharma*, or religious duty.²² Coparcenership is a prerequisite for holding the *karta* position, so women are excluded from this role, as they are prohibited in the *Manusmriti* from participating in such co-ownership.²³ Verse 118 of Chapter 9 calls for the brothers to see to the maintenance of "virgin sisters," which duty is reflected currently in the Act's provision of a right of maintenance in joint family property for unmarried sisters.²⁴ This seems to indicate that although women cannot participate directly in decision making with regard to the family property, they should be protected through the property's ownership and management.

In a striking contradiction, however, Verse 111 of the *Manusmriti* extols the spiritual merit that flows to a family that lives separately from the joint family: "They may live separately if they wish for religious merit; for religious merit increases in separation, and so separate rituals are conducive to religious merit."²⁵ This curious provision does not seem to have taken hold in Hindu India, probably because of the economic benefits associated with joint family living.²⁶ However, Verse 111 does indicate that joint families do not have to be

16. See *id.* at 208.

17. See *id.* at 209.

18. See *id.*

19. A coparcenary is an estate that is inherited by a number of individuals, who all share in the property with equal rights of title and possession. See BLACK'S LAW DICTIONARY 336 (7th ed. 1999).

20. S.R. KHARABANDA & PREM NATH, H.U.F. TAX PLANNING AND ASSESSMENT 26 (1985).

21. See *id.*

22. *Id.*

23. *Id.* at 27-28.

24. THE LAWS OF MANU, *supra* note 13, at 211.

25. *Id.* at 210.

26. See *infra* Part B.

the norm of Hindu living. If local laws and other religious texts could be found to say the same, these sources could be used collectively by reformers to promote the idea that individual property rights, as opposed to joint family institutions, are viable under Hindu religious law. Such a textual reinterpretation could justify moving away from an emphasis on joint family property. However, such a course would be difficult, because an interpretation of Hindu law that emphasizes individual property rights is outweighed by the many religious texts that assume joint family living as the norm, and by the economic benefits of shared income and expenses.

Finally, the *Manusmriti* provides that if a father has no sons who can receive the property after his death, he may appoint a daughter, whose son would eventually receive a share of his grandfather's property.²⁷ However, if the appointed daughter has no sons, her husband "may take her property without hesitation."²⁸ This preference for sons-in-law over daughters in relation to female-held property interests is reflected in the Act as well, particularly in the differences between the statutory heirs of deceased Hindu males and females. As further discussed below, schedules defining statutory succession allow a daughter's husband's family to take control of her property interest in natal family property ahead of her own parents.

2. *Mitakshara and Dayabhaga*

Like the *Manusmriti*, ancient legal texts from the Mitakshara and Dayabhaga schools of legal scholarship continue to exert a powerful influence on the law and policy of Hindu inheritance.²⁹ The *Manusmriti* is the basis for both the Mitakshara and Dayabhaga schools, which differ on certain key issues of family law.³⁰ The Mitakshara school is prevalent in most parts of India, except West Bengal, where the Dayabhaga school is authoritative.³¹ Other local schools also exist, such as the Mayukha in Bombay and Nambudri in Kerala.³²

The Mitakshara texts codified the duties of joint family members in the 11th century,³³ including the duty to maintain the joint family's ancestral property for estate and religious purposes by means of a continuous, all-male coparcenary.³⁴ Such a coparcenary grants equal rights of survivorship to all males in a family; a father and son would hold equal shares in family property.³⁵ The eldest male usually served as the *karta*, or manager of the estate; women were prohibited from this role, just as they were in the *Manusmriti*.³⁶

27. THE LAWS OF MANU, *supra* note 13, at 212-13.

28. *Id.* at 213.

29. See, e.g., LAW COMMISSION REPORT, *supra* note 2, at § 1.3, 1.5.1.

30. KHARABANDA & NATH, *supra* note 20, at 8.

31. See LAW COMMISSION REPORT, *supra* note 2, at § 1.3.

32. *Id.*

33. See RAGHUVIR SINHA, DYNAMICS OF CHANGE IN THE MODERN HINDU FAMILY 26 (1993).

34. See LAW COMMISSION REPORT, *supra* note 2, at § 2.3.1.

35. See KHARABANDA & NATH, *supra* note 20, at 29-31.

36. *Id.* at 31-32.

The Dayabhaga school, whose main authority is the *Jimutavahana* text, originated in West Bengal and contains some provisions at odds with the Mitakshara school.³⁷ According to the Dayabhaga school, the origin of a coparcenary was the death of the father (instead of ownership-by-birth, as in Mitakshara), leading to joint ownership by males and females, who could also act as *kartas* of the family property.³⁸ The 1956 Act incorporates the Mitakshara school's jurisprudence in its codification of Hindu inheritance law, presumably because Mitakshara governs a larger part of the country.³⁹

Various rules of interpretation resolve conflicts between Mitakshara, Dayabhaga, and other Hindu schools of law. These rules, used by the courts and Parliament since 1947, provide the following interpretive priorities: (i) conforming with the *Manusmriti* as the highest authority of religious law; (ii) favoring what is reasonable and logical; (iii) favoring what is equitable; and (iv) acknowledging custom, usage, and tradition.⁴⁰ These rules show the resilience of ancient Hindu religious law, which affects jurisprudence even today, as illustrated in the Act.

Courts and Parliament have made significant changes away from the Laws of Manu, perhaps evincing a willingness to weigh factors (ii) and (iii) above—what is reasonable, logical, and equitable—more heavily than religious doctrine in certain cases.⁴¹ The courts and Parliament should adopt an articulable balancing test that emphasizes policy interests in certain cases, such as gender discrimination, while continuing to preserve some ideals specified in Hindu texts, such as service to family and religious practice.

Overall, the *Manusmriti* and the legal schools of Mitakshara and Dayabhaga continue to influence legal decision making in the realm of Hindu inheritance law. A balancing test according to the priorities listed above would respect these ancient religious schools while creating change with regard to women's rights and the goal of economic equality.

B. Socio-Economic and Historical Considerations

Many who oppose amending the Hindu Succession Act to grant greater inheritance rights to women do so because they fear these changes would have a destabilizing effect on joint families.⁴² As discussed above, early Hindu family structure was "joint," focusing on the relationships among people in the family as a source of spiritual practice and merit. This sharing of food, space, and possibly income in the same dwelling house or compound is a common feature

37. See DAYA-BHAGA & MITAKSHARA: TWO TREATISES ON THE HINDU LAW OF INHERITANCE xv (H.T. Colebrooke trans., Parimal Publications 1984).

38. See S.K. RAY, HINDU SUCCESSION ACT, 1956 2-3 (1985); LAW COMMISSION REPORT, *supra* note 2, at § 1.3.4.

39. LAW COMMISSION REPORT, *supra* note 2, at § 1.5.1.

40. KHARABANDA & NATH, *supra* note 20, at 9. These rules of descending authority are particularly important in the context of tax planning but are followed in the realm of inheritance law as well; for example, custom can be a factor in deciding disputes. See Sarkar, *supra* note 12, at 100.

41. See generally, KHARABANDA & NATH, *supra* note 20.

42. See Lalit Sethi, *Reforming Property Rights of Women*, Press Information Bureau, Government of India, at <http://pib.nic.in/feature/fe1099/f1210992.html> (last visited June 11, 2002).

of many Hindu families in India. Amending the Act to offer women inheritance rights equal to men's would definitely affect this basic social structure by decentralizing authority from the eldest male family member to include females. However, I argue that this effect will not destroy joint families; rather, the amendments could create a new way of living jointly in India, one that is more democratic, rooted in religious understandings, and beneficial to women.

A "joint family" could be defined as "a set of at least two brothers with their wives and children, and possibly their parents and unmarried sisters, who usually share the same dwelling and a common hearth."⁴³ "Joint families" include complex families and extended or multiple family households.⁴⁴ Joint families are usually contrasted with the typical Western family structure of husband and wife with children in a house separate from the husband's parents and brothers, often known as a "nuclear family."⁴⁵ Within the joint family, there are hierarchies that govern administration of the family land and household. As discussed above, in relation to the Mitakshara law, the *karta* is the family manager, or decision maker of highest authority for the joint collective. He is responsible for ensuring the economic health of the joint family and the maintenance of all the family members from the joint income pool.

The continuing existence of an ancient agricultural lifestyle relies on a joint family structure, since under this arrangement land is jointly owned by an entire family.⁴⁶ Originally, this model was economically efficient, allowing one manager to supervise household costs, and shared incomes to care for the entire family.⁴⁷ Because larger plots of unspoiled property are more valuable, particularly in a developing nation like India, there is a strong economic interest in keeping land undivided as long as possible.⁴⁸ Such economic interests, combined with the tax incentives created by the government for joint family living and income calculation, encourage joint families to remain intact even today.⁴⁹ Indian tax statutes refer to the "Hindu United Family" as a taxable entity, which is left undefined by the tax statute and is governed by Hindu law depending on the particular religious school of the citizen.⁵⁰

The British colonialist government often criticized the tradition of joint family living for philosophical reasons, even while tacitly supporting it for practical ones. Colonialists such as Sir Henry Sumner Maine, an Englishman living in India in the 1880s, claimed that "the authoritarian, tradition-bound, and collectivist family structure kills individual initiative, innovation, accumulation of

43. Minna Saavala, *The Hindu Joint Family: Past and Present*, in CHANGING PATTERNS OF FAMILY AND KINSHIP IN SOUTH ASIA: PROCEEDINGS OF AN INTERNATIONAL SYMPOSIUM ON THE OCCASION OF THE 50TH ANNIVERSARY OF INDIA'S INDEPENDENCE 61, 62 (Finnish Oriental Society ed., 1998).

44. *Id.* at 64.

45. Galanter & Krishnan, *supra* note 6 (describing the intent behind the enactment of the 1956 H.S.A.); *see also* Saavala, *supra* note 43, at 61-62.

46. *See* SINHA, *supra* note 33, at 20.

47. *See id.* at 22.

48. *See* Saavala, *supra* note 43, at 67.

49. *See* KHARABANDA & NATH, *supra* note 20, at 1-5.

50. *Id.* at 1-2.

capital, and social and spatial mobility.”⁵¹ The Hindu emphasis on collectivity and family responsibility conflicted with the Western Enlightenment ideals of individualism and the self-made man. Nevertheless, the British probably encouraged and supported joint families and intrafamily hierarchies because they understood the economic efficiency of such family structure, which made their colonialist endeavors more profitable and administrable.⁵² The British oversaw demands for partition of joint family property through their Anglo-Indian courts.⁵³ These courts usually supported the traditional authority of the eldest brother, allowing partition demands in cases of common decision approved by such a hierarchical authority figure.⁵⁴

Some signs show that modern changes in the joint family have affected its status in India. Due to the government’s family planning initiatives, large joint families may be on the decline, disintegrating into smaller joint family units, such as one brother living in a household with his parents, wife, and children.⁵⁵ The entrance of many women into the Indian industrial workforce and the effects of industrialization and resulting urbanization have affected joint families, particularly those in big cities.⁵⁶ The influence of Western-style income accounting, separated according to nuclear family, is becoming more common, sometimes even occurring within the same compound or house.⁵⁷ However, some statistics show that the average household size in India may actually be increasing, and the belief in an erosion of joint family obligations may merely be an exercise in the “discourse of nostalgia,” as Western media continue to influence Indian culture.⁵⁸

Women in India have been contributing to household income since ancient times, participating in agricultural work as laborers alongside men, but women have not been compensated equally for their labor or financial contributions to the family. The joint family structure forces women to contribute their income to the pool of money earned by other family members in the household. In one study, Judith Bruce and Daisy Dwyer analyzed the differences between the contributions of men and women to joint families in developing countries, including India. They concluded that powerful family systems and discriminatory inheritance and divorce laws add to the economic difficulties faced by women in developing nations, who have fewer choices regarding the use of their income due

51. Saavala, *supra* note 43, at 62.

52. *See generally id.* at 61-63 (discussing British attitudes towards and the effect of British rule on the Hindu joint family); KHARABANDA & NATH, *supra* note 20, at 1-2.

53. Saavala, *supra* note 43, at 63.

54. *See id.* at 62-63.

55. However, this is merely a structural change involving numbers, not really a functional one, because it does not completely adopt a Western-style nuclear family model. *See* Saavala, *supra* note 43, at 66. This transition may simply be a cyclical process, since new nuclear or small joint families become more complex over time when sons marry and start their own families. *See* SINHA, *supra* note 33, at 31.

56. Within my own extended family in Bangalore, this phenomenon is clear, with brothers of one joint family splitting into nuclear homes and considering partition and alienation of inherited family property.

57. *See* Saavala, *supra* note 43, at 71.

58. *Id.* at 65-69.

to their required contribution to the household income pool. Thus, they receive less compensation over time in return for their contribution to the household in inheritance and property rights.⁵⁹

One researcher studying landless agricultural laborers in South India concluded that while women's income is most often automatically used for collective purposes, particularly child care and food, men's income is often split between individual spending money and that which enters the joint family pool.⁶⁰ A larger proportion of money earned by women goes toward household maintenance, thus disrupting the traditional developmental theory that men's wages alone control the economic stability of a joint family.⁶¹ Women also serve as managers of household income and expenses, particularly where children's expenses are concerned, sometimes even using their own incomes to supplement their husbands' personal spending budgets.⁶²

Amendments to the Hindu Succession Act, therefore, are equitable compensation for the great contributions made by women to their families. Despite the religious and social beliefs that women are to be cared for by their husbands in joint families, sociological research shows that women often care economically for their joint families and are surely capable of being *kartas* of joint families.⁶³ Inheritance laws permitting women to take control and demand partition of family property may thus promote the economic growth of joint families.

Some fieldwork studies show that the Act's provisions regarding a daughter's property rights in her parents' non-ancestral properties may have helped to improve basic attitudes towards women, particularly in urban areas.⁶⁴ Differential treatment of sons and daughters is less reasonable if both will continue to own economic interests in the family's properties.⁶⁵ However, in practice, few married daughters may actually assert the right to their parents' properties: "The influence of tradition and convention still governs feelings of Hindu girls who are encultured not to seek their fortune in their father's family."⁶⁶

This enculturation limits the possible effect of legal reform without accompanying social reform. More radical changes to the Act regarding women and ancestral property could have a great effect on the joint family institution itself. However, as the author above pointed out, certain traditions are so enshrined that women may not be able to exercise their own property rights, even if those

59. See Judith Bruce & Daisy Dwyer, *Introduction*, in *A HOME DIVIDED: WOMEN AND INCOME IN THE THIRD WORLD* 1-2 (Daisy Dwyer & Judith Bruce eds., 1988).

60. Joan P. Mencher, *Women's Work and Poverty: Women's Contribution to Household Maintenance in South India*, in *A HOME DIVIDED: WOMEN AND INCOME IN THE THIRD WORLD* 99-100 (Daisy Dwyer and Judith Bruce eds., 1988). It is noteworthy that women contribute 36 percent of India's net domestic product, exclusive of their services as housewives. Bruce & Dwyer, *supra* note 59, at 4.

61. Mencher, *supra* note 60, at 114.

62. *Id.* at 116-19.

63. See generally *id.* (exploring the economic contributions Indian women make to their households).

64. See Saavala, *supra* note 43, at 68-70 (discussing the transformation of family relations in urban areas).

65. See SINHA, *supra* note 33, at 126.

66. *Id.* at 101-02.

rights are written into law.⁶⁷ Legal reform of the Act will thus require coincident educational and political reform if families are fully to regard their daughters as independent decision makers and property owners. Otherwise, legal reform alone could serve merely to perpetuate the son-in-law's control over his wife's family properties.

Injury to the current notion of joint families should not be a deterrent to further reform. Joint families are finding new manifestations in smaller joint living arrangements or separate income joint households;⁶⁸ ideally, these arrangements would continue to evolve with changes in inheritance law. If the Western market effect and movement away from a strictly agricultural economy have not fully disintegrated the joint living ideal, changes to improve women's economic status probably would not do so either. Perhaps a new construction of joint families could emerge through reforms that simultaneously emphasize both Hindu collectivity and gender equality.

III.

THE HINDU SUCCESSION ACT OF 1956

The Hindu Succession Act provides that daughters and sons will inherit their fathers' and mothers' intestate non-ancestral property equally radically departing from previous law.⁶⁹ Despite the progressive nature of the broad framework of the Act at the time of its initial drafting, however, Parliament chose to retain many provisions that limited equal rights for women in *ancestral* property, probably as a compromise to pass the larger amendments.⁷⁰ Although this paper is concerned mainly with issues of joint family succession, it would be helpful to first examine one of the many other discriminatory provisions in the Act.

Under the Act, inheritance of non-joint family property from a Hindu female is governed by a different line of statutory succession than inheritance from a Hindu male.⁷¹ These differences, however minor and technical, perpetuate societal gender discrimination. The schedule of "Class I heirs," the first line of descent looked to on a Hindu's death, includes the deceased's parents in the case of a male, but not in the case of a deceased female.⁷² Therefore, if a Hindu male dies, his parents have a higher priority claim to his property than his other kin. However, when a Hindu female dies, her property interests devolve to her husband and *his* heirs, including his parents, *before* her own parents are reached, preserving patrilineal succession to and management of property interests.⁷³

67. *Id.*

68. See Saavala, *supra* note 43, at 70-71.

69. Gopal, *supra* note 7, at 79-80 (Hindu Succession Act provides "significant changes" from previous traditional law).

70. See *supra* note 2 and accompanying text.

71. Compare RAY, *supra* note 38, at 58-59 (discussing section 8 of the H.S.A., "General rules of succession in the case of males"), with *id.* at 131 (discussing section 15 of the H.S.A., "General rules of succession in the case of female Hindus").

72. *Id.* See also LAW COMMISSION REPORT, *supra* note 2, at § 2.5.

73. LAW COMMISSION REPORT, *supra* note 2, at § 2.5.

This seemingly slight difference perpetuates "son preferences" because a daughter's parents realize on her birth that they do not have any chance of economic compensation in case of her unforeseen death.⁷⁴ Instead, property that was in their family will go to their son-in-law's family first. This discourages parents from gifting property to daughters who will get married, perhaps causing conversion of that property to another family. There is no justification for such differences, apart from the belief that women themselves represent a type of property interest that enters their husbands' families, taking economic benefit away from their natal families. This provision should be changed to ensure incentives to devise property to women as well as men.

A. Coparcenary

Returning to the issue of joint family succession, the Act preserves certain provisions that clearly discriminate against women. "Joint family property" or "ancestral property" is defined as property acquired through inheritance, distinct from property gained from individual effort.⁷⁵ The Indian Supreme Court recently held that female family members cannot combine their own separate property with joint family property, although men may do so.⁷⁶ In addition, a Hindu female cannot create a joint Hindu family or coparcenary by agreement with other female family members.⁷⁷ To benefit from the legal protections afforded the joint family, particularly in the area of income tax, the presence of a male family member is required by traditional Hindu law.⁷⁸

Section 6 of the Act retains the idea of an all-male coparcenary in cases of ancestral property, adopting the Mitakshara point of view.⁷⁹ When a male Hindu dies leaving an interest in ancestral or jointly held property, his interest devolves by survivorship equally upon the surviving members of the coparcenary, which can only be joined by males born into the family.⁸⁰ Exceptions to this rule arise in a few Southern states.⁸¹ Males' rights in the property include an equal share of the income therefrom, a right to demand partition of the land, and a right of residence.⁸² In terms of policy interests, the Mitakshara coparcenary system is thought to protect the financially weaker members of the family through centralized authority.⁸³ It is also believed to help the agricultural activi-

74. Sarkar, *supra* note 12, at 109.

75. KHARABANDA & NATH, *supra* note 20, at 17-18; RAY, *supra* note 38, at 2.

76. Narashimaha Murthy v. Susheelabai (1996) 3 S.C.C. 644, 651.

77. *Id.*

78. See Comm'r of Income Tax, Bihar-II, Ranchi v. Smt. Sandhya Rani Dutta, J.T. 2001 (3) S.C. 163, 166-67 (2001).

79. Hindu Succession Act, *supra* note 1, at § 6.

80. *Id.*

81. Nilima Bhadbhade, *State Amendments to Hindu Succession Act and Conflict of Laws: Need for Law Reform*, 1 S.C.C. (Jour.) 40 (2001), at <http://www.ebc-india.com/lawyer/articles/2001v1a4.htm>. See also *infra* Part III.C.

82. See KHARABANDA & NATH, *supra* note 20, at 24-25.

83. See Sethi, *supra* note 42.

ties of the family through undivided lands and to promote family harmony through shared income and hierarchical decision making.⁸⁴

Women in the family receive only notional partition upon a male Hindu's death, meaning that their inherited property interest is considered "carved out of" the joint family property, but without any accompanying legal right to use the property in their individual interests.⁸⁵ There is no precedent for such a structure of notional partition and nominal ownership in ancient Hindu legal texts.⁸⁶ This provision seems to be a compromise that allows women title in name yet withholds any real economic interest to avoid disruption of the joint family. Since unmarried women also only have a right to maintenance, even their nominal ownership is rendered truly ineffective. Alongside limitations like Section 23, discussed below, women are greatly limited by the coparcenary rules.

B. Section 23

Section 23 of the Act places a strict limitation on a woman's right to demand partition of land in which she inherits a property interest, whether through coparcenary means, as in some Southern states, or by notional partition, as explained above. Under Section 23, if the property includes a dwelling house that is occupied by members of the female heir's family, that female heir does not have a right to claim partition until the male heirs first decide to divide their shares.⁸⁷ In addition, she has a right to reside in the dwelling house only if she is unmarried, deserted, separated, or widowed.⁸⁸ It is noteworthy that if the house is even partially occupied by a tenant, Section 23 has no application; the family must wholly occupy the dwelling house.

A few policy reasons have been cited for Section 23, which is rooted in the primarily religious understanding that females leave the natal home upon marriage to be supported by their husbands' families. In interpreting this provision, the Madras High Court said that since married women generally live in their husbands' families' houses, male heirs "may be put to great hardship and be compelled to alienate the house if it is incapable of division" upon a female's demand.⁸⁹ This would leave male members of the family without a place to live in the event of a female's demand for partition.⁹⁰

Another major concern is that women are susceptible to the influence of their husbands or husbands' families after marriage and would demand partition because of the selfish interests of in-laws.⁹¹ This same concern animates the

84. *Id.*

85. See RAY, *supra* note 38, at 45-47; Hindu Succession Act, *supra* note 1, at § 6. See also LAW COMMISSION REPORT, *supra* note 2, at § 2.3.

86. See RAY, *supra* note 38, at 47.

87. See Hindu Succession Act, *supra* note 1, at § 23.

88. *Id.* See also RAY, *supra* note 38, at 169.

89. RAY, *supra* note 38, at 175 n.9, citing *Janabai v. T.A.S. Panali*, A.I.R. 1981 (Mad.) 62.

90. See LAW COMMISSION REPORT, *supra* note 2, at § 2.11.

91. Sethi, *supra* note 42.

opposition to allowing women to be *kartas* in their family properties.⁹² However, the Law Commission of India argues, "This [rationale] seems to be patently unfair as women are proving themselves equal to any task and if women are influenced by their husbands and their families, men are no less influenced by their wives and their families."⁹³ It would also seem likely that in most cases, families with both sons and daughters would recognize the broad reciprocal danger inherent in trying to control another family's property through a daughter-in-law, and that such a custom would not take hold.

The overarching policy interest in Section 23 is the preservation of the institution of the joint family.⁹⁴ Despite giving daughters greater rights to succession, the legislature "took care to ensure that the traditional Hindu family system was not unnecessarily strained and disrupted."⁹⁵ It seems that this provision reflects the view of the family dwelling house as representative of the joint family itself. The Supreme Court said that the objective of Section 23 is to "prevent fragmentation or disintegration of the family dwelling house at the instance of the female heir to the hardship and difficulties which the male heir may be put to."⁹⁶ Thus, for unexplained reasons, the limitations embodied in Section 23 reinforce the male heir's power position in the natal family, hearkening back to the "Laws of Manu."

Section 23 actually diminished the existent property rights of Hindu females,⁹⁷ which previously had included an unrestricted right to residence, whether the female was married or not. The provision also currently discriminates between daughters on the basis of marital status. The proviso to Section 23 prohibits a married daughter from retaining a right to residence in the family dwelling house.⁹⁸ A married daughter's property interest in ancestral property is thus limited to a notional partition that does not entail any coparcenary rights, such as right to income or even a residential right of enjoyment.

The High Court of Karnataka denied the right of residence to a married daughter who left her husband and returned to the natal family, strictly construing the condition that the daughter be either widowed, abandoned, or divorced at her husband's behest.⁹⁹ The implications of this ruling are especially dangerous for women who may face domestic violence or dowry harassment in their marital families. Women in such circumstances currently have no legal recourse with regard to their natal families, perpetuating the oppression of women through outmoded inheritance laws. This subsection of Section 23, and its unusually strict interpretation, seems especially unnecessary to any policy interest in the preservation of the joint family. The return of daughters to the natal

92. *Id.*

93. LAW COMMISSION REPORT, *supra* note 2, at § 3.2.12.

94. See RAY, *supra* note 38, at 170.

95. *Id.*

96. Narashimaha Murthy v. Susheelabai (1996) 3 S.C.C. 644, 651, *cited in* Sarkar, *supra* note 12, at 115. See also RAY, *supra* note 38, at 173.

97. See Sarkar, *supra* note 12.

98. See Sarkar, *supra* note 12, at 116.

99. See *id.*

family would not disrupt family structure in the same way as partition, particularly if their rights were limited to residence only. This proviso should be abolished as a first step towards granting women full rights in their family property.

C. State-Specific Amendments

A few southern states have amended the all-male coparcenary provisions of the Act in order to begin to achieve equality between the genders. There have been two main approaches to such reform. First, in Kerala, the state Parliament abolished the joint family institution completely in 1976, equalizing inheritance between sons and daughters in cases of intestate property, but no longer tying such property to the "ancestral" definitions that forced such property to remain jointly held.¹⁰⁰ Dr. B.R. Ambedkar and others promoted this approach to Hindu inheritance laws at the time of the codification prior to 1956; however, conservative politicians fiercely opposed such a national reform.¹⁰¹

The state parliaments of Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka chose a different approach to equal rights between men and women. These states retained the coparcenary-by-birth system regarding ancestral property, but extended property rights thereunder to include females.¹⁰² Thus, females and males are equal coparceners in joint family property. However, this property right is almost completely vitiated by the limitations on partition and residence rights in Section 23 of the Act, discussed above, and the prohibition against women *kartas*.¹⁰³

D. Constitutional Concerns

Due to these inequalities with regard to women and property rights, the very constitutionality of the Act is questionable. Part III of the Indian Constitution guarantees to India's citizens certain fundamental rights, and Article 13 therein voids "laws in force" that are in derogation of these rights.¹⁰⁴ The Hindu Succession Act seems to contravene some of these fundamental rights, particularly the right to equality between women and men. Article 14 says, "The State shall not deny to any person equality before the law or the equal protection of the laws."¹⁰⁵ Article 15(1) prohibits discrimination on grounds of sex, and Article 15(3) allows the State to make special provisions for women and children.¹⁰⁶ Part IV of the Constitution, "Directive Principles of State Policy," includes a provision mandating the State to direct its policies towards securing equal economic rights to all citizens, regardless of sex.¹⁰⁷ In combination with the "Fundamental Rights" section, the Constitution seems to

100. *See id.* at 114.

101. LAW COMMISSION REPORT, *supra* note 2, at § 2.6.

102. Sarkar, *supra* note 12, at 114-15.

103. *See id.* at 114.

104. INDIA CONST. pt. III, art. XIII.

105. *Id.* pt. III, art. XIV.

106. *Id.* pt. III, arts. XV(i) and (iii).

107. *See id.* pt. IV, art. XXXIX(d).

set forth inalienable rights that should force both Parliament and the judiciary to amend the current state of succession rights for Hindu females.

However, this has not been the case, presumably due to Articles 25 and 26 of the Constitution. These articles guarantee to all Indians the liberty to freely practice their religions and grant to religious denominations the freedom to manage their own affairs, providing the justification for the existence of a separate system of personal laws based on religion.¹⁰⁸ The Parliament has the power under Article 44 to amend the current personal law system and create a Uniform Civil Code, but this power does not extend to the courts. Thus, the courts have no power to use gender discrimination claims to declare the personal law system to be *per se* unconstitutional.¹⁰⁹

In *P.E. Mathew v. Union of India*, the High Court of Kerala upheld certain provisions of the Indian Divorce Act that created an extra burden only for Christians, who challenged the Divorce Act under the "Fundamental Rights" articles of the Constitution.¹¹⁰ The Court held that personal laws do not fall into the category of "laws" or "laws in force" encompassed by Article 13 in its definition of laws subject to fundamental rights limitations.¹¹¹ This same holding probably also applies to claims of gender discrimination in personal laws.¹¹²

Although the Constitution leaves room for abolishing religious personal laws through Article 44's mandate for a Uniform Civil Code, it is not necessarily unconstitutional to continue giving effect to these laws, presumably because of the power of Articles 25 and 26 protecting religious custom and practice. The Law Commission of India (see Part IV below) argues that this stance on the conflict between fundamental rights and the personal laws is a "blatant disregard and unjustified violation" of the equal rights guaranteed to women by the Indian Constitution.¹¹³

The courts should take a more activist reading of Articles 13, 14, and 15, as well as of the Constitution's "Directive Principles of State Policy," in order to create greater economic protections for women. The judiciary should protect women's economic rights through the laws that are already in force, using as a starting point Parliament's intent in codifying the Succession Act in 1956 to include greater rights for women.¹¹⁴

IV.

LAW COMMISSION PROPOSAL

The Parliament should adopt the recent recommendations of the Law Commission as soon as possible because the Commission's report is a thorough and balanced analysis of the policy ramifications of specific amendments to the

108. See John H. Mansfield, *The Personal Laws or a Uniform Civil Code?*, in RELIGION AND LAW IN INDEPENDENT INDIA 139, 153 (Robert D. Baird ed., 1993).

109. *Id.*

110. A.I.R. 1999 (Ker.) 345, 353.

111. *Id.*

112. See Mansfield, *supra* note 108, at 153.

113. LAW COMMISSION REPORT, *supra* note 2, at § 1.5.

114. See *id.*, at § 1.5.1.

Hindu Succession Act. The Law Commission of India is a panel of judicial scholars assembled by the government of India in 1955 to recommend ongoing revisions of laws inherited from the colonial period and before.¹¹⁵ The 16th Law Commission is currently convening from 2000 to 2003.¹¹⁶ In May of 2000, the Law Commission released its 174th report, entitled *Property Rights of Women: Proposed Reforms Under the Hindu Law*.¹¹⁷ This report investigates discriminatory provisions in the Hindu Succession Act of 1956, and recommends changes to elevate the position of women.¹¹⁸

In general, the Law Commission sought to enact general social reform to improve women's "economic condition and social status by giving equal rights by birth" through inheritance laws.¹¹⁹ The Commission cites the mandate for gender equality found in the Indian Constitution's Fundamental Rights and Directive Policies sections as its motive in recommending reform of the 1956 Act.¹²⁰ The Commission discusses the historical institution of the joint family in some of its recommendations, but dismisses concerns about family disintegration as outweighed by the interest in women's equal rights.¹²¹

The Commission's main recommendation is to create an equal coparcenary-by-birth for males and females with respect to ancestral property, following the model of the state legislation of Andhra Pradesh and other Southern states.¹²² Constitutional concerns and equitable principles regarding equal rights for women seem to animate this recommendation:

The law by excluding the daughters from participating in coparcenary ownership (merely by reason of their sex) not only contributed to an inequity against females but has led to oppression and negation of their right to equality and appears to be a mockery of the fundamental rights guaranteed by the Constitution.¹²³

The Law Commission discusses its difficulties over whether to adopt the "Andhra Model" or to abolish coparcenary structure altogether, as was done in Kerala.¹²⁴ The Commission advocates adoption of the Andhra Model, allowing daughters, like sons, to be coparceners because this model avoids the negative transitional consequences inherent in the immediate abolition of all coparcenary.¹²⁵ The Kerala Model, on the other hand, by totally and suddenly abolishing the coparcenary structure, would leave all the property in the hands of men upon enactment.¹²⁶ The Law Commission seems to favor abolition of the coparcenary system in theory, but recognizes the negative policy ramifications of such an action.

115. Law Commission of India, *Early Beginnings*, at http://lawcommissionofindia.nic.in/main.htm#EARLY_BEGINNINGS; (last visited June 11, 2002).

116. *Id.*

117. LAW COMMISSION REPORT, *supra* note 2.

118. *Id.*

119. *Id.* at § 3.1.

120. *See id.* at §§ 1.5, 2.8.

121. *Id.* at §§ 1.3-1.6.

122. *See id.* at § 3.2-3.2.12.

123. *Id.* at § 2.8.

124. *Id.* at ch. 3.

125. *Id.* at § 5.7.

126. *See id.*

The Law Commission returns to the arguments against the amendments that were presented in 1955 and 1956, when the Hindu Succession Act was first before Parliament. Three main arguments are presented and rejected by the Commission. First, the Commission examines the complaint that the state amendments allowing female coparceners have so altered the concept of the Mitakshara joint family as to contravene the original policy intent, which was to preserve the traditional joint family and a woman's place away from her natal home after marriage.¹²⁷ Under the proposed amendments, a woman would continue to be a member of her natal family by virtue of her participation in the coparcenary, as well as allowing her a place in her marital family. However, this is no different than the current state of the law with respect to sons, who have coparcenary rights in their ancestral property, plus rights in their wives' families' properties upon their wives' death. Also, as evidenced by the sociological research discussed above, market influences are already beginning to transform the ancient joint family institution. Perhaps an amendment making daughters equal coparceners would contribute to this reconstruction of joint families in a positive sense.

A second criticism was made by Mr. Pataskar in the 1955 parliamentary debates. He argued that equal coparcenary rights for daughters would "provide for a joint family unknown to the law and unworkable in practice."¹²⁸ This argument illustrates the concern that equal coparcenary rights would not be administrable. However, such arrangements have been successful in the four Southern states where they are now accepted law.

Finally, in Tamil Nadu, many properties were partitioned between the male coparceners just before the amendment to the Hindu Succession Act, so as to deprive female family members of equal ownership rights.¹²⁹ A third criticism of the Law Commission's proposal centered on the concern that such last-minute behavior would ensue all over India, rendering gender-related reforms moot. The Law Commission recommends strict investigation of and enforcement against such "fraudulent partitions" in order to stay true to the amendments' objective of granting women equal property rights.¹³⁰ These recommendations could also be used in establishing a national administrative office to oversee claims and conduct policy analyses of the amendments' consequences.

The Law Commission retained one gender distinction in its recommendation, after "a great deal of deliberation and agonizing."¹³¹ Daughters married before the commencement of the Act would not be granted the right to retroactively become coparceners, although unmarried daughters would gain that right upon future entry into marital families.¹³² The Commission justifies this distinction on the grounds that women who are already married would have received "substantial gifts" from their natal families that substitute for lost

127. *See id.* at § 3.2.4.

128. *Id.* at § 3.2.5.

129. *Id.* at § 3.2.6.

130. *Id.*

131. *Id.* at § 5.7.1.

132. *Id.*

property interests.¹³³ The Commissioners felt that such a distinction “appears to be reasonable and further would prevent heart-burning and tension in the family.”¹³⁴ Perhaps this distinction between married and unmarried daughters is necessary, but Parliament should further investigate the need for such a limitation.

Finally, the Commission recommends deleting Section 23 entirely: “[A daughter’s] right as a coparcener should be real in spirit and content. In that event section 23 of the HSA should be deleted.”¹³⁵ The Commission rejects Section 23 because of its facial discrimination against women:

The main object of the section is said to be the primacy of the rights of the family against that of an individual by imposing a restriction on partition. Why is it that this right of primacy of family is considered only in the case of a female member of the family?¹³⁶

With this final rhetorical question, the Commission underscores the fact that one male member of a coparcenary can demand partition of ancestral property, thus himself interfering with the “primacy of family” and contravening the stated policy interest in joint family preservation.

The Law Commission has undertaken a thorough investigation of the Hindu system of inheritance law. Its proposition to delete Section 23 should be taken seriously and implemented in each Indian state. However, the decision to deny retroactive coparcenary rights to women who married before the enactment of any reform requires further examination by the Parliament. The denial of property rights to married women contributes to the mistaken analysis that the current joint family system deserves a certain amount of protection at the expense of women’s rights. The Commission’s decision sacrifices the rights of married women and evidences a willingness to succumb, at least to a certain extent, to conservative Hindu political opinion.

V. CONCLUSION

No coherent policy justifies the current system of inheritance laws enacted by Parliament in the Hindu Succession Act of 1956, incorporating certain traditional gender differences while abolishing others. Two general principles underlie the Act’s discriminatory provisions: the preservation of an ancient notion of joint families, and the pervasive belief in a woman’s exit from her natal family upon marriage. However, joint family structure has sustained many changes over time, particularly within the last fifty years of independence and post-colonial industrialization; it is inaccurate to think that the remaining provisions in the 1956 Act are primarily responsible for this structure’s survival. In light of the

133. *Id.*

134. *Id.* But see Flavia Agnes, *Law and Women of Age*, *ECON. & POL. WKLY* (Oct. 30, 1999), available at <http://www.epw.org.in/34-44/rws2.htm>.

135. LAW COMMISSION REPORT, *supra* note 2, at §§ 3.2.9, 5.7.4.

136. *Id.* at § 2.9.

sociological data discussed above, it seems that the institution of the joint family may itself be undergoing a period of transformation.

Adoption of the Law Commission proposals to amend the Act is an excellent preliminary step in achieving economic and social equality for women in India. The Commission's recommendation is legitimate and based on detailed research and even-handed consideration of the policies at stake. Ultimately, however, there is a need for a Uniform Civil Code, authorized under Article 44 of the Indian Constitution. A Uniform Civil Code would benefit women in all religious groups by acknowledging that the current system of personal laws is an unworkable relic of the British colonial period. However, a Uniform Civil Code potentially threatens many religious groups, particularly minorities, and seems unlikely to be passed in India's current politically charged atmosphere.¹³⁷

The Law Commission's proposal, in contrast, seeks to equalize rights among Hindus first, promoting gender equality through the religious system of personal laws itself. Such amendment of the Succession Act fits into the Indian government's pattern of instituting changes that affect tradition. Codification in 1956 made many changes to benefit women, including the extension of a widow's estate to an absolute property right and the removal of unchastity as a disqualifying factor for inheritance.¹³⁸ The government has also instituted legal reform to end other social practices that had been justified by religious tradition, such as untouchability, sati, and dowry.¹³⁹

Legal reform in inheritance may have many other incidental benefits in terms of relieving the oppression of women. First, extending inheritance rights to females would promote dowry reform, diminishing the prevalence of the practice to new caretakers.¹⁴⁰ Since women would be seen as valuable in and of themselves given their control and rights in family property, their entrance into marital families would not be viewed as a final exit from natal families requiring compensation.¹⁴¹ Difficulties in enforcing dowry prohibition laws could be alleviated by amendments to the Succession Act; such amendments would make women more economically stable, with greater potential for economic independence, rather than the traditional dependence on the marital family.¹⁴²

137. See generally Mansfield, *supra* note 108.

138. See Hindu Succession Act, *supra* note 1, at § 14.

139. See, e.g., Dowry Prohibition Act, *supra* note 4; see generally Mansfield, *supra* note 108.

140. Although I do not have sufficient space in this Article to address the importance of dowry reform, I believe that reform of Hindu inheritance law will have a negative effect on the practice of dowry and many of the related negative consequences, such as dowry burnings and harassment of women and their families. See generally Angela K. Carlson-Whitley, *Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights*, 17 U. PUGET SOUND L. REV. 637 (1994) (discussing the failure of Indian law to effectively address the problem of dowry deaths); Gopal, *supra* note 7, at 69-72 (arguing that the practices of bride burning and dowry death have not been curtailed by legislative reforms); Namratha S. Ravikant, *Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations*, 6 MICH. J. GENDER & L. 449 (2000) (discussing India's failure to enforce dowry death laws and prevent dowry death).

141. See LAW COMMISSION REPORT, *supra* note 2, at § 5.7.1.

142. See Carlson-Whitley, *supra* note 140, at 651.

The extreme poverty facing many women in developing nations could also be affected by the Commission's proposed amendments to the Succession Act. The level of poverty among women in developing nations has been linked to their degree of direct access to land and other economic resources.¹⁴³ Women may be economically vulnerable individually, even within joint households that seem to have adequate resources.¹⁴⁴ Therefore, amendments to the Succession Act in order to equalize women's rights will ensure that at least some women facing poverty will have recourse to a source of economic power in their natal family property interests.¹⁴⁵

Finally, the practice of sex-selective abortion has become more accepted all over India, with many families terminating pregnancies that will yield baby girls.¹⁴⁶ Numbers of baby girls born per one thousand boys has fallen dramatically, into the seven hundreds in some parts of India such as Punjab: "Longer life spans for women and rising literacy rates have not yet changed the strong cultural preference for sons, who will . . . inherit ancestral property, [and] care for parents in old age."¹⁴⁷ This practice dramatically illustrates the cultural belief that a woman is a liability for her natal family. Equal property rights for boys and girls could lead to a decline in the practice of sex-selective abortion, since girls would become valuable property owners and would be able to participate in and care for natal family property even after marriage.

These are only a few examples of possible incidental benefits for the women of India through adoption of the Law Commission's proposal to amend the Hindu Succession Act of 1956. Ultimately, social patterns and attitudes regarding the treatment of women and the preferences for boys over girls must change alongside any legal reform of inheritance laws. Otherwise, the danger exists that women's property interests will be in name only, will be usurped by scheming in-laws just like dowry demands, or will not get exercised at all. These prevalent attitudes and practices will only change through economic equality and equal incentives regarding both boys and girls from birth. Symbolic extension of coparcenary rights to daughters alongside their brothers could have a positive effect on these societal attitudes, but education and political reform about the rights of women are necessary as well. Legal reform would hopefully promote change in policies and attitudes in order to abolish the view of women as a liability to joint families.

143. Donna Sullivan, *Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution*, 24 N.Y.U. J. INT'L L. & POL. 795, 840 (1992).

144. *Id.*

145. See Gopal, *supra* note 7, at 86.

146. Celia W. Dugger, *Abortions in India Spurred by Sex Test Skew the Ratio Against Girls*, N.Y. TIMES, April 22, 2001, at A12.

147. *Id.*