Section 4 of the Hindu Succession Act of 1956

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The fact that the right to property is vital for freedom and development of a human is well known to all, and is also accepted by a majority of the thinkers.

The right to property by way of inheritance, in India, is a very complex and multifarious affair, owing to the diversification of practises and customary laws. The Shastric and customary laws varied from region to region, and sometimes varied within a same region due to differences in the caste of the person being governed. There were different schools of thought, under the area under discussion of succession, like the Dayabhaga school of thought, in Bengal, the Mitakshara, in the major parts of India, etc. The Hindu Succession Act of 1956 has tried its best to bring about uniformity in such array of usages, by codification of the process of inheritance, both testate and intestate.

Ever since the act has been enforced, it has been subject to severe criticisms and has also been amended several times. One such amendment that has been crucial for the Act and its framers’ objectives to have brought out this Act was the 2005 amendment, which has improved the position of the Hindu women in matters of succession.

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This 2005 amendment was an attempt to remove the discrimination against women, by amending Sections 4, 6, 23, and some others. This law has not only brought about changes in the succession laws of Hindus, but has also paved the way for some positive modifications in the law of partition, alienation of property, inheritance and adoption. The 2005 amendment of the Act, was the fruit of the 174th Law Commission report published in 2000, on “Property Rights of Women: Proposed Reform under the Hindu Law”, which aimed at removal of any incongruities, ambiguities and inequalities in the law, towards the women, and decided to take up a study of certain provisions regarding the property rights of Hindu women.

The Section 4 of the Hindu Succession Act, 1956, as it reads now is given below:

“Section 4: Overriding effect of Act :- (1) Save as otherwise expressly provided in this Act:

(a) any test, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceiling or for the devolution of tenancy rights in respect of such holdings.”
Section 4 of the Hindu Succession Act is of utmost importance as it seeks to give an overriding effect to the provisions of the Act, thereby abrogating all the rules and regulations of Hindu succession hitherto applicable to all Hindus owing to their region, or caste, etc, whether based on texts, Shastraic laws, customs, or any other such source, in respect of all matters dealt with in this Act. This act has reformed the social position of the women in cases of inheritance rights, and has allowed them a right to full ownership rights instead of limited rights in the property she inherits under Section 14, with renewed list of heirs under Section 15 and 16 of the Act. The daughters were also granted property rights in their father's estate. In the matter of succession to the property of a Hindu male dying intestate, the Act lays down a set of general rules in Sections 8 to 13.

One of the most significant amendments in the 2002 Amendment Act is deleting the gender discriminatory Section 4(2) of the Hindu Succession Act of 1956. The Section 4(2) being exempted from the purview of the Hindu Succession Act, is significant for interests of the agricultural properties, the inheritance of which was subject to the devolution of rules specified in State-Level tenurial laws. In states where the law is silent about such inheritance, the revamped Hindu Succession Act applies, as also, to states where such laws are explicitly mention the provisions for governing and regulating such inheritance.

The 2005 amendment Act, has been functional in deleting a major gender discriminatory clause - Section 4 (2) of the 1956 HSA, and has thereby made women's inheritance rights in agricultural land equal to that of the men. The 2005 amendment has also
successfully brought agricultural properties in par with other properties, and thus has made women’s inheritance rights in land legally equal to that of the men across the states, overriding any inconsistent state laws. The amendment has thus benefited a million women dependant on agricultural lands for survival. Gender equality in agricultural lands can not only reduce the women’s and her family’s risk of poverty, increases her livelihood prospects of child survival, education and health, reduces domestic violence, and empowers women.

However, the proposed changes are not comprehensive enough and women will still be subjected to unequal property rights in agricultural land as Section 4(2) of the Hindu Succession Act allows for special State laws to address the issue of fragmentation of agricultural holdings, fixation of ceiling and devolution of tenancy rights in these holdings.

The amendment had three basic needs to cater to, which as per the 174th Law Commission Report on “Property Rights of Women: Proposed Reform under the Hindu Law” are as follows:

i. granting daughters coparcenary rights in the ancestral property; or to totally abolish the right by birth given only to male members;

ii. allowing daughters full right of residence in their parental dwelling house; and

iii. restricting the power of a person to bequeath property by way of testamentary disposition extending to one-half or one-third of the property.
The newly amended legislation, nevertheless, does aim at bringing male and female rights in agricultural land on par for all states, overriding any inconsistent state laws. Such a step by the legislators can be a resolute tool for potentially benefiting millions of women dependent on agriculture for survival.

It can thus be concluded that the Hindu Succession Act, prior to the amendment, the agricultural land was subject to devolution based on the state-level tenurial laws, and not to the Hindu Succession Act, and many such local laws were inconsistent to gender equality, and were highly gender-biased. Following the 2005 amendment, the inheritance laws regarding all agricultural lands are made accountable for their validity on the touchstone of the provisions under the Hindu Succession Act, which overrides the laws inconsistent with the Act, and thus makes the legislation more gender equal.