

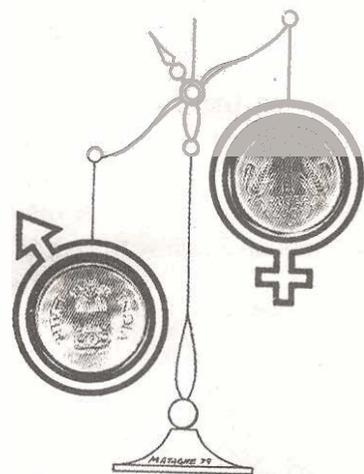
HINDU SUCCESSION AMENDMENT BILL

women's groups join to plug loopholes

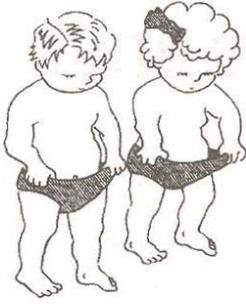
The present government's initiative to amend the Hindu Succession Act (HSA), 1956, brought together a number of women's organizations from all over the country in a strategy and mobilisation meeting held at the India International Centre in Delhi on 19th January 2005. This was preceded by an earlier meeting of a smaller group held at the Centre for Women's Development Studies on 8th January, where it was decided that the issues involved be discussed in a larger meeting before the critique of the Bill and suggestions are sent to the government. Both the meetings were called by Bina Agarwal, Institute of Economic Growth, Colin Gonsalves and Shruti Pandey, Human Rights Law Network and Miloon Kothari, Housing and Land Rights Network.

The Hindu Succession Act 1956 though generally perceived as a gender-equal law that brought sons and daughters at par with regard to inheritance rights, actually contained many gender discriminatory provisions. One was that Section 4 (2) of the Act exempts significant interests in agricultural land. This effectively means that large areas of agricultural land are outside the purview of HSA and that interests in tenancy land devolve according to the order of devolution specified in the laws relating to tenancy, which vary in different states. Many of these tenancy laws have denied women equal rights in agricultural land as they do not allow women to inherit these tenancies. Two, the Act contains unequal interests in Mitakshara coparcenary property* for several categories of women such as the deceased widow and mother (in some states), and the married daughter in all states. And three, the Act gave unrestricted right to testation, i.e. the right to will away property. Under the 1956 Act, daughters were also denied the right to ask for their share in the paternal house till the male members of the family took a decision in this regard.

The government's current proposal to amend the HSA is based on the recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reforms Under the Hindu Law". The Bill basically addressed two areas: one is to give equal rights to daughters in the Mitakshara Joint Family Property and two, to delete Section 23 of the unamended Act which has worked against daughters who cannot claim their share of a dwelling unit unless the male family members agree. While these two proposals are important steps towards bettering the rights of female heirs in family property, the proposed amendment falls short of achieving the objectives of gender equality. If amended in this form, the law will still leave several critical sources of gender inequality intact, namely: (1) inequality in rights in agricultural land, (2) unequal interests in Mitakshara Coparcenary property for several categories of women and (3) implicit inequality arising from a person's unrestricted right to will away all his/her property - a provision that is often used to disinherit female heirs, given the dominant male bias in Indian society. The need for thorough discussion of these aspects of the amendment prompted the meeting of 19th January. Women's organisations from all over the country attended, as did Saheli. In the morning session, Bina Agarwal, Mihir Desai and Malavika Karlekar set out the rationale for calling the meeting. Bina Agarwal gave a detailed presentation as to how the Bill still contains gender discriminatory provisions, especially with regard to agricultural land



* There are two schools governing Hindu succession - Dayabhaga and Mitakshara. The Dayabhaga school is more gender equal as it provides equal rights to sons, daughters, widow and mother, both in the ancestral and self earned property, in case a person dies without making a will. In case of those who are governed by Mitakshara school, while sons and daughters have equal share in father's self earned property, the sons in addition, have a direct and independent share in the ancestral or joint family property, while female heirs have a right only in the deceased man's 'notional' share. Simply, This means that sons are class one heirs in joint family property also, where as other female heirs are not. They will get their share from the share of the father, whereas the sons will get an amount equal to that of the father.



oh! that explains the difference
in our inheritancelll

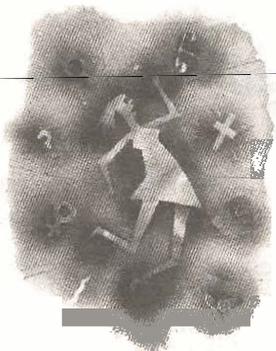
and also introduces inequalities among different categories of female heirs. This was followed by discussion on various related and larger issues, such as how do we look at the whole issue of property? What about property-less and homeless people? By bringing a Bill to amend the HAS in the Parliament, is the government privileging the Hindu law over other laws? A good discussion on discriminatory provisions in other personal laws refreshed all of us of our struggles for gender just laws in areas of property, matrimonial rights, and guardianship and custody rights. With the background of Gujarat genocide of Muslims, the selective taking up of a Hindu Law for reforms can again be used by the right wing forces to stigmatise minority communities further by propagating the notion that Hindus are progressive as they are amending their laws to better the rights of women whereas Muslims are not so progressive. Some argued for taking up the issue strategically. The argument was that

bringing reforms in Hindu Succession law will put pressure on other communities to reform their laws also. Some strongly objected to this kind of reasoning, and a spirited discussion followed on this issue. The issue of matrimonial property was also raised. People from different states shared their experiences of working with women struggling for their rights under various personal and customary laws.

The issue of state laws and customary laws governing land and their position *vis-à-vis* central laws was discussed in detail thereafter. It was agreed that a suggestion will be sent to the government to provide a directive in the amended law that any law that contravenes the provisions of the Central Law on Succession will be declared *ultra vires* (i.e. it will not be recognised as law if it comes in conflict with the Central Law). This was done to ensure that any state or customary law that denies just rights to women of any region or community gets nullified after the amended provisions of the Hindu Succession act come in force.

In the post lunch session Kirti Singh from AIDWA read out the memorandum that they had given to the law minister a day ahead of this meeting. The memo was more or less on the same lines as the one that was to be sent after this meeting except for one issue. This was in relation to restricting the right to will away property. AIDWA wanted the amendment to include a clause that any gender discriminatory will would be illegal. In contrast, the other participants wanted the restriction in the form of universal prohibition from willing away property, to ensure that the women in the family get something at least. While the argument was raised that the right to will away property should not be restricted, others pointed out that given the reality of Indian society, this clause has been most often used to disinherit daughters.

Following the discussion, it was decided that the Bill should also have a Preamble or some sort of Statement of Objectives elaborating on the gender discrimination in property, especially landed property, why and in what ways the state needs to address this question and need for the State to look into anomalies and discriminations in other laws. It was decided to send a memorandum for Comprehensive Reform of Hindu Succession law to the Prime Minister, Manmohan Singh with the following suggestions to be included in the final amendments:



1. Bringing agricultural land on par with other property by deleting Section 4(2) of the Hindu Succession Act 1956
2. Abolishing the Mitakshara coparcenary property altogether rather than going in for piecemeal amendments such as bringing in daughters alone as coparceners
3. Restricting the right of testation on a part of the property, say on 1/3rd or half which would then devolve intestate, with full freedom to will away the rest as the person wants.

The memorandum was signed by 47 organisations and 121 individuals from all over the country. In response to these efforts, the Government of India has issued a notice on 2nd

March 2005, asking for suggestions on the proposed amendments to HSA, to be sent to the Parliamentary Standing Committee on Personnel and Public Grievances.