INHERITANCE RIGHTS OF HINDU WOMEN IN AGRICULTURAL LAND AND LEGISLATIVE RELATIONS BETWEEN THE UNION AND THE STATES IN LIGHT OF OMISSION OF SECTION 4(2) BY THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

Mehpara[*]

ABSTRACT

Personal laws are responsible for determining inheritance of all forms of property, but when it comes to inherit agricultural land in India, States can be classified into four categories: firstly, states expressly allowing the personal laws to govern succession of agricultural land; secondly, states silent on the order of devolution of rights in agricultural land; thirdly, states governed by the customary practises and fourthly, states providing for a completely different scheme of succession than provided under Hindu Succession Act, 1956 (HSA). The focus of this article is on the fourth category of states where a gender-discriminatory order of succession is followed in their tenancy laws. HSA was amended in 2005 to remove all forms of gender discrimination; however, it does not expressly recognise the inheritance of women's rightsin agricultural land. Omission of Section 4(2) without any reason or discussion in the Parliament has become the cause of confusion that surrounds the application of HSA on agricultural land. This article also discusses the power of Parliament to make law on the subject 'Succession Rights in Agricultural Land', which is a grey area under the scheme of distribution of legislative powers, as 'Land' is a state subject while 'Succession' is a concurrent subject. Muddle surrounding the application of the 2005 Amendment on agricultural land is interpreted differently by various high courts. The article finally discusses the important case laws which have further aggravated the situation and gives suggestions to put the controversy surfaced by the amendment to rest.

Keywords: *Agriculture Land, Hindu, Succession, Legislative, Ownership, Revenue.*

[*] Sr. Assistant Professor, CLC, University of Delhi

I. Introduction

INHERITANCE RIGHTS of women in agricultural land are complicated by legal, structural, socioeconomic, and cultural factors. Law is an important institution of social change; it regulates, controls and modifies almost all the aspects of a civilised life. In a woman's life, law has dual significance: it may crystallise the social discrimination against her or may modify or even mitigate it. Upon studying the impact of law on the position of women, it can be ascertained that the area of direct relevance for women is family law.[1] Women in every walk of life endure discrimination in various forms. The prevalence of discrimination against women is such that it occasionally becomes apparent even in the legal system. This is apparently evident in the laws of inheritance and succession.[2]

In the 20th century, when the British legislative actions resulted in the codification of some customary practices and doctrines, the emerging laws remained largely conservative in relation to the rights of women, and it was established that the influence over the land would reside in a pre-existing patrilineal and patriarchal setup.[3] Post-independence, HSA brought some progressive changes in the Hindu personal law of succession; however, it fell short considerably in introducing equal inheritance rights for women in agricultural land.

HSA was introduced as a measure to bring uniformity in Hindu succession laws throughout India. Although HSA granted women equal rights in the self-acquired or separate property of their male relatives,[4] rights in agricultural land were expressly excluded from its scope and were instead governed by state-specific tenancy and land reform laws under Section 4(2) of the HSA.[5] Succession of agricultural land was left to be administered by the different state land laws, which were gender discriminatory. Objections that the exclusion of agricultural land from HSA would defeat the object of uniformity were raised in the assembly when the Hindu Code Bill was discussed. However, it was countered by Dr. Bhimrao Ambedkar with the explanation, 'Our objective was to enact a uniform law for all Hindus and

[1]Archana Parashar, *Women and Family Law Reform in India* 17 (Sage Publications India Private Limited, 1992).
[2]Rajya Sabha Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, "7th Report on the Hindu Succession (Amendment) Bill, 2004" (2004, Section 1.1).
[3]PremChowdhry, *Gender Discrimination in Land Ownership* 11 (Sage Publications India Private Limited, 2009).
[4]The Hindu Succession Act, 1956 (Act 30 of 1956), s. 8 read with the Schedule.
[5] The Hindu Succession Act, 1956, (Act 30 of 1956), s. 4(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 the time being in force providing for prevention of fragmentation of the agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

not necessarily a uniform law for all types of property.'[6] Thus, agricultural land was excluded from the Hindu Code Bill[7] as well as from HSA by inserting Section 4 (2) in HSA. A nation where more than 2/3rd of the population lives in villages, around half of them being women, and most of the land being agricultural holdings, the exclusion of such holdings from the application of HSA has deprived the Hindu women of the very rights which they were promised under HSA.

Land laws were enacted by the various states for land reforms, e.g., fixation of land holdings, imposition of ceilings, acquisition of agricultural land and redistribution of the agricultural land. Apart from these provisions, the state land laws also provided for succession rights in agricultural land. The succession schemes under such state land laws are highly gender biased in many states. It places women at a much lower order of preference and favours females over males. Females succeeded only through the last male holder, that too, only till the time females remained unmarried.[8] The effect of women's marriage was the reversion of the property to other male heirs in the succession scheme. All such laws enacted for bringing in land reforms in the country were biased against women and were protected under section 4 (2) as well as under the Constitution.[9]

The progression of Hindu personal law on succession did not stop with the enactment of HSA. The 2005 Amendment amended the HSA to incorporate the suggestions by the Law Commission of India. In its 174th Report published in 2000, the Law Commission of India recommended addressing anomalies, ambiguities, and inequalities in law, and initiated a study to examine specific provisions of the HSA concerning the property rights of Hindu women.[10]The major objective of the study was to suggest amendments to HSA to guarantee that a woman (daughter) get equal share in the ancestral property of her father.[11] As mentioned above, the Law Commission of India took *suomotu* cognisance of the gender

[6]Government of India, "Report of the Hindu Law Committee" (1947).
[7] The Hindu Code Bill, 1947 S. 94.
[8]The Delhi Land Reforms Act, 1954 (Act 8 of 1954) ss. 50-54; The Madhya Pradesh Land Revenue Code, 1959 (Act XX of 1959) s. 164; The Maharashtra Tenancy and Agricultural Lands Act, (Act LXVII of 1948) (as modified up to 13 October, 2014); Bihar Tenancy Act 1885 (Act 8 of 1885).
[9] The Constitution of India, arts. 31A, 31 B read with Seventh Schedule.
[10]Law Commission of India, "174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law" (2000).
[11]The Hindu Succession Act, 1956 (Act 30 of 1956), s. 6.

discriminatory provisions of HSA, particularly provisions governing succession of the property among the members of the Hindu Undivided Family (HUF).[12]

Taking note of the existing provisions in HSA resulting in injustice to the Hindu women, the Law Commission conducted a study and recommended bringing gender parity in HSA.[13]The submissions of the Commission were accepted by the Union Government after consultation with the state governments and other relevant ministries and departments.Accordingly,on 20th December 2004, the Hindu Succession (Amendment) Bill, 2004 (2004 Bill) was introduced in the Upper House. The Bill initially proposed the amendment of only three provisions of HSA,*viz.* Section 6,[14] 23[15] and 30.[16] Rajya Sabha constituted a Department-related Parliamentary Standing Committee (Committee)[17] to submit a report on the 2004 Bill after considering the recommendations by the Commission.

The seventh report by the Committee suggested more changes in the 2004 Bill to make HSA free from all forms of gender disparity. One important recommendation of the committee was to omit Section 4 (2) of HSA. This recommendation is mentioned in Chapter 3 of the report under the heading 'Miscellaneous Provisions'. The Committee thought that the HSA should be made applicable to agricultural land also, and daughters should be given equal rights in agricultural land to ensure complete gender equality.[18]Section 4(1) of the HSA grants the Act overriding authority over other laws whether personal, customary, or statutory to the extent that they contradict its provisions.[19] However, under Section 4 (2), the state land reform laws like Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and Delhi Land Reforms Act, 1954, etc., which were inherently discriminatory against women and were not in conformity with HSA, were specially saved and protected from general abrogation under Section 4 (1).

Omission of Section 4 (2), which provided a safe sanctuary to the state land laws, most of which are inherently gender discriminative, keeping the right in agricultural land forever out of the reach of the Hindu women, is one of the most significant changes brought by the 2005 Amendment. In the guise of prevention of fragmentation and to avoid complexity in fixation

[12]*Supra* note 10, para 1.1.
[13]*Ibid.*
[14] To Make Daughters Coparcener in Joint Hindu Family Governed by Mitakshara Law.
[15] To Omit Provision that does not allow Female to Ask for Partition in Dwelling House.
[16] To give Right to Women to make Will of her Share in Property.
[17]*Supra* note 3.
[18]*Ibid.*
[19]The Hindu Succession Act, 1956, S. 4 (1).

of ceilings and devolution of tenancy rights, section 4 (2) had denied the Hindu women the right to the most important resource and most valuable and lucrative properties in rural India the agricultural land, which was always a male privilege. Till the 2005 Amendment, HSA did not apply to agricultural land because of the protection provided to land laws under Section 4 (2) that prevented state land reform laws from being abrogated by virtue of Section 4 (1) of HSA.

The 2005 Amendment, though it omitted the protective Section 4 (2), did not provide any express provision confirming the application of the provisions of the HSA to the agricultural land. Consequently, confusion arose as to which law would apply on inheritance of the agricultural land: HSA or the state land laws. The cause of conflict of opinions regarding the application of HSA on agricultural land after 2005 Amendment omitting section 4 (2) coupled with the question raised by high courts, like that of Allahabad, regarding the competency of the Parliament to enact legislation relating to the inheritance of agricultural land (when land is a state subject) has created confusion amongst the minds of scholars and has prevented the application of HSA on agricultural land. The author has attempted to deal with this issue in this article. Thus, despite the seemingly far-reaching reforms in Hindu inheritance laws aimed at improving the rights of women and the barriers they face in accessing land and other productive resources,the issue persists in a significant manner.[20]

II. Distribution of Legislative Powers under the Constitution

A federal constitution establishes dual polity with a Union at the centre and the states at the periphery, each endowed with the powers to be exercised in the field assigned to them.[21] India is said to have adopted a loose federal structure. It is an indestructible union of destructive units.[22]The Constitution provides for a three-fold division of legislative powers between the Union and the states, with the Seventh Schedule categorizing subjects of legislation into three lists: Union List, State List, and Concurrent List.[23]Hon'ble Supreme Court in "*State of West Bengal* v. *Kesoram Industries Ltd*."[24] has held:

[20] B. Sivaramayyn, "Women's Access to Land and other productive Resources: Legislative Policy of Hunting with Hounds and Running with Hare" 34 *Faculty of Law, University of DelhiLLM/MCL Course Material III Term on Laws of Inheritance and Succession*34 (2017-18).
[21]Narender Kumar, *Constitutional Law of India*915 (Allahabad Law Agency, Haryana, 2018).
[22]*Raja Ram Pal* v *Honorable Speaker*, (2007) 3 SCC 184.
[23]*State of W.B.* v *Committee for Protection of Democratic Rights, W.B.,* AIR 2010 SC 1476.
[24]AIR 2005 SC 1646.

> "The legislative field between Parliament and the legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, called the 'Union List'. Subject to the said power of Parliament, the legislature of any state has power to make laws with respect to any of the matters enumerated in List III, called the 'Concurrent List'. Subject to the above two, the legislature of any state has exclusive power to make laws with respect to any of the matters enumerated in List II called the 'State List'."

Parliament has exclusive authority to legislate on any matter not mentioned in any of the three lists.[25] This is called residuary power, which is vested in Parliament. The distribution of legislative powers between the Union and the states is a complicated topic to understand. Even though power is divided and listed between the two authorities, there are cases of overlap between the subjects, as none of the subjects mentioned under the Seventh Schedule exists in isolation. Entry 18 of the State List[26] includes the agricultural land, while Entry 5 of the Concurrent List[27] pertains to matters related to wills, intestacy, and succession. When it comes to the succession of Agricultural land, there is an intersection between these two entries, leading to confusion before various constitutional courts.

III. Power to Legislate on Succession of Agricultural Land under the Government of India Act, 1935

Before the enactment of the Constitution, legislation by federal and provincial (now state) governments were administered by the Government of India Act, 1935 (1935 Act). Exclusive power to enact laws relating to agricultural land was conferred upon the provincial legislative councils under the 1935 Act. The 1935 Act expressly excluded 'devolution of agricultural land' from List III and included it in List II. Therefore, women's rights to inherit agricultural land were determined by the land-related laws in force within the respective provinces.

Entry 21, List II (Provincial Legislative List) of the 1935 Act is as follows,

[25]The Constitution of India, art. 248.
[26]The Constitution of India, Seventh Schedule, List II Entry 18, the Constitution,Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
[27]The Constitution of India, Seventh Schedule, List III Entry 5, the Constitution, Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

> "Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant and the collection of rents; transfer, alienation and *devolution of agricultural land*; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove."

Succession was a Concurrent List subject both under the 1935 Act and under the Constitution of India. However, under the 1935 Act, succession under the Concurrent List was delimited by excluding 'devolution of agricultural land' from List III and placing it under Entry 21, List II.

List III - Concurrent List, the Government of India Act, 1935

Entry 7: "Wills, intestacy and succession, save as regards agricultural land."

Thereafter, with almost every province having their own special land laws containing the provision regarding devolution of the rights in agricultural land, the inheritance rights of women over agricultural land,rather than being regulated by the federal law,were contingent upon the provincial land laws. Hindu Law Committee (HLC) was constituted in 1941 to codify Hindu law on succession proposed Hindu Code Bill (HCB) was to cover the succession of properties situated in British India and properties other than agricultural land situated in the provinces.[28] The second HLC also did not propose to cover agricultural land in the provinces. Thus, the agricultural land was treated differently, and HCB on succession did not cover agricultural land.

IV. Power to Legislate on Agricultural Land under the Constitution

The above entries under the 1935 Act related to agricultural land (List II) and succession (List III) were slightly modified when the Constitution was drafted.

Entry 18, List II (State List) of the Constitution includes,

"Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."[29]

The phrase 'devolution of agricultural land' was omitted from Entry 18 of List II of the Constitution. Under the 1935 Act, 'devolution of agricultural land' was a List II subject under

[28] *Supra* note 1 at 105.
[29] *Supra* note 6, List II, Entry 18.

Entry 21. Though the power to make laws on agricultural land is with the state legislatures, 'devolution of agricultural land' was omitted from the State List. Likewise, the entry related to succession under the Constitution was also modified.

Entry 5, the List III - Concurrent List ofthe Constitution of India includes,

"Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law."

Succession under the 1935 Act was also a concurrent subject, but succession of agricultural land was expressly excluded from List III by inserting the phrase 'save as regards agricultural land'. Under the Constitution, the phrase 'save as regards agricultural land' was omitted from the Concurrent List. Thus, 'Succession of Agricultural land' is not expressly mentioned in any of the three lists in the Constitution.

The difference between the two corresponding lists, which is important for this discussion, is that the phrase 'save as regards agricultural land' was omitted from the new List III. The interpretation of this omission has far-reaching consequences in givingwomen equal rights over agricultural land after the 2005 Amendment. On one hand, 'devolution of agricultural land' was excluded from Entry 18 of the List II; on the other hand, in Entry 5 of the List III (which includes wills, intestacy and the succession), the phrase 'save as agricultural land' was omitted. A combined effect of both these changes could mean that under the Constitution, power to make law on the 'succession of agricultural land' is now a Concurrent List subject, and Parliament also has power to legislate on it. However, Mr. Hansraj Bhardwaj, the Minister of Law and Justice, while discussing 'the Hindu Succession (Amendment) Bill, 2004' in Lok Sabha, expressly declared that Parliament has no competence to legislate on 'Succession of Agricultural land' as it is a state subject.

In the case of *Babu Ram* v. *Santokh Singh,*[30]the Supreme Court observed that Entry 5, List III, shows 'succession' in its fullest sense to be a topic in the Concurrent List. The concept of 'succession' would take within its fold testamentary as well as intestate succession. It is, therefore, apparent that when it comes to 'transfer, alienation of agricultural land' which are transfers *inter vivos,* the competence under Entry 18 of the List II is with the state legislatures but when it comes to 'intestacy and succession' which are essentially

[30] (2019) 14 SCC 162.

transfers by operation of the law as per law,competency is with both (Parliament and legislatures of state). However, the Supreme Court has not remark the application of HSA on agricultural land after the 2005 Amendment.

V. 2005 AMENDMENT AND CONFUSION BEHIND OMITTING SECTION 4 (2)

The 2005 Amendment in HSA brought considerable changes in the property rights of Hindu women by giving daughters equal rights in ancestral property and elevating them to the status of a coparcener.[31]The changes introduced by the 2005 Amendment to the HSA were intended to enhance the inheritance rights of Hindu women by amending Section 6 to confer upon daughters equal status as coparceners by birth in the joint family's property. Apart fromgiving equal rights to the daughters in the coparcenary property, the 2005 Amendment also omitted Section 4 (2). Before the 2005 Amendment, HSA did not apply to agricultural land because of the protection provided by section 4 (2) in HSA,which restricted state legislation concerning the prevention of fragmentation of agricultural holdings and the devolution of tenancy rights and land ceiling legislation from being abrogated by virtue of section 4 (1) of HSA. Section 4 (2) allowed state land laws to address the issue of agricultural holdings: fixation of ceiling and devolution of tenancy in agricultural land, with the result that state laws on these issues can overrule any provisions of HSA.

While the above amendments to HSA helped to strengthen women's right to inheritance, the omission of Section 4 (2) without any discussion or clarification by the Parliament has become a cause of confusion on the issue of the application of HSA on agricultural land, especially in those states where there is a different order of succession provided by the state law. The focus of the 2005 Amendment has always been Section 6, but nothing has been said on the implications of the omission of Section 4 (2) from HSA. Section 4 (2) was a particular instance of gender discrimination since it protected discriminatory laws related to preventing fragmentation of agricultural holdings,devolution of tenancy rights and land ceilings.[32]Simply put, Section 4(2) explicitly excluded the inheritance of tenancy rights in agricultural land from the scope of the HSA, leaving such inheritance to be governed by state tenurial laws instead.

The bill tabled in the Parliament for amending HSA did not discuss the reasons for omitting Section 4 (2). Even the 174th LCR,[33] which invited public opinion for bringing changes in the inheritance rights of Hindu women, was silent on the issue of application of

[31] The Hindu Succession Act, 1956 (Act 30 of 1956), s. 6.
[32] The Hindu Succession Act, 1956 (Act 30 of 1956),s. 4.2.
[33] *Supra* note 10.

HSA on agricultural land or omission of Section 4 (2) from HSA. In fact, it was only after the recommendation of the Parliamentary Standing Committee Report[34] that Section 4 (2) of HSA was omitted from HSA. Neither the 174th LCR nor the parliamentary discussion declared anything about omitting Section 4 (2). Knowing the object behind any law or amendment helps in interpreting the law as well as its implications. The issue regarding the application of HSA on agricultural land by inserting an express provision for the same in the 2005 Amendment was raised at a later stage by SusmitaBauri[35] during the Lok Sabha Debate. However, the Minister of Law and Justice requested her to withdraw her suggestion and assured her that the government would take up the matter with the states. Thus, it becomes difficult for the judiciary to interpret such laws which are devoid of clarity and reasons as the reasons and objects of amending the law helps in purposive interpretation of the statute. Such confusion further creates hurdles in the process of achieving the legislative goal.

VI. Succession of Agricultural Land under the State Land Laws

As noted, inheritance of the agricultural land was explicitly excluded from the scope of the HSA under Section 4(2). Consequently, a significant disconnect exists in many states between state land laws governing succession of the agricultural land and the personal laws governing succession of other types of property. Rights in the tenancy land devolve according to the succession order outlined in the tenurial laws, which differ across states. While some state laws lay down a specific order of succession, others provide for the devolution as per the personal law, while the remaining states are silent on this point.Personal laws are responsible for determining inheritance of all forms of property, but when it comes to agricultural land, Indian states can be classified into four categories based on the succession schemes under their land laws: firstly, states expressly allowing the personal laws to govern succession rights in agricultural land; secondly, states silent on the order of devolution of rights in agricultural land; thirdly, states governed by the customary practises and fourthly, states providing for a completely different scheme of succession than provided under HSA. The focus of this article is the fourth category of states where gender discriminatory order of succession is followed in their tenancy laws.

Category I: Includes those states where the state laws contain provision to the effect that personal law would apply on devolution of tenancy rights, like Rajasthan, Madhya Pradesh, Chhattisgarh and Telangana. Thus, in case of a Hindu dying intestate,his tenancy rights in the

[34]*Supra* note 3.
[35]Member of Parliament from Bishnupur, West Bengal.

holding would devolved on the heirs as per the rules of succession specified in HSA, which is the personal law of the Hindus. In these states, tenurial laws specifically mention the application of personal laws of Hindus, Muslims and other religious communities on inheritance of agricultural land. Such states are very few where land law does not lay down a distinct order of succession, but instead explicitly provides for devolution of the tenancy rights in such lands to be governed by the personal law of the deceased landholder. For example, the Rajasthan law provides for the devolution of tenancy rights as per personal laws.[36] Section 40 says,

"When a tenant dies intestate, his interest in his holding shall devolve in accordance with the personal law to which he was subject at the time of his death".

Similarly, in Madhya Pradesh and Chhattisgarh, tenancy will devolve as per the personal law.[37] Section 164 says,

"Subject to his personal law the interest of bhumiswami shall, on his death, pass by inheritance, survivorship or bequest, as the case may be".

In these states, there is a clear reference to personal laws for inheritance of agricultural land and well-established succession schemes that are specific and unambiguous.[38]

Category II: Includes those states where the state land laws neither specify any distinct order of devolution nor explicitly allow the personal law of the deceased to apply over agricultural land. States falling under this category are Gujarat, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, Kerala and Tamil Nadu. Thus, in these states, by presumption, personal law of the deceased tenant is applicable. Researchers assume that in these states where state laws do not explicitly mention inheritance of agricultural land, personal laws will by default govern the succession of agricultural land.[39] In these states, tenancy laws are not clearly defined which leaves room for interpretation, and the state may either choose to promote gender equality or fail to address existing discrimination.

There are also some states, like Orissa and Bihar in which relevant tenancy law does not state any order of devolution or apply personal law, but rather lays down that the devolution of the occupancy rights shall be in the same manner as other immovable property, unless custom to the contrary is established. This leaves open the possibility of admitting gender-inegalitarian customs if established, and, thus, allows the gender biased customs to be

[36]The Rajasthan Tenancy Act, 1955, (Act 3 of 1955), s. 40.
[37]Madhya Pradesh Land Revenue Code, 1959(Act 20 of 1959), s.164.
[38]*Bhajya s/o ShyamaKanbi*v. *Gopikabai and Anr. etc.* AIR 1978 SC 793.
[39] Bina Agarwal, "Gender and Legal Rights in Agricultural Land in India"*Economics and Political Weekly*, (Mar. 25, 1995).

introduced and defeat the rights of women to inherit the occupancy rights. This clearly implies that any customary inheritance practice will prevail over the order of succession prescribed in personal laws.[40] These states prioritise traditional customs and practices in the inheritance of agricultural land, allowing for a wide range of non-egalitarian customs to be recognised and upheld.[41]

Category III: Includes those states that have a significant tribal population, such as Assam, Meghalaya, Tripura and Mizoram which are governed by Sixth Schedule of the Constitution. Sixth Schedule grants these states the power to adopt local laws based on their customary practices.[42] HSA is not applicable upon tribal population.[43] Tribal regions in states other than the above are under the Fifth Schedule.[44] Fifth and Sixth Schedules provide for governance of tribal areas.[45] In Arunachal Pradesh, Manipur, Nagaland, and Sikkim, majority population is tribal, and therefore subject to customary laws. However, most of the customary practices in these regions are not documented in codified form.[46] The customs in such regions are diverse, most of which are discriminatory towards women. Only a few tribes observe customs that are comparatively more favourable to women than those practiced in caste-based societies.[47] In 2015, in the case of *Bahadur* v. *Bratiya*, High Court of Himachal Pradesh, setting aside the customary practices, ruled that tribal women in Himachal Pradesh will inherit property as per HSA.[48] The court ruled that daughters in Himachal Pradesh's tribal areas must inherit property in accordance with HSA, rather than according to local customs and practises, to protect them from discrimination and abuse.

Category IV: It includes those states where the tenancy laws contain a distinct provision specifying an order of heirs which is different from HSA. Such states are Punjab,[49] Haryana,[50] Himachal Pradesh,[51] Uttar Pradesh,[52] Uttarakhand,[53] Jammu and Kashmir[54] and

[40]The Bihar Tenancy Act, 1885 (Act 8 of 1885),s. 26; The Chota Nagpur Tenancy Act, 1908, s. 23; The Orissa Tenancy Act, 1913, s. 30.
[41]*Supra* note 2.
[42]The Constitution of India, Sixth Schedule.
[43] Hindu Succession Act, 1956 (Act 30 of 1956),s. 2 (2).
[44]The Constitution of India, Fifth Schedule.
[45] The Constitution of India, art. 244.
[46]*Supra* note 2.
[47]*Id*.
[48] 2015 SCC online HP 1555.
[49]The Punjab Tenancy Act, 1887 (Act 16 of 1887),s. 59.
[50]*Ibid*.
[51]Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act 8 of 1974),s. 45.
[52]Uttar Pradesh Revenue Code, 2016 (Act 8 of 2012),ss. 108-110.
[53]The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Act 1 of 1951),ss. 169-173.
[54] The Jammu and Kashmir Tenancy Act, 1980 (Act 5 of 1980).

Delhi.[55] The analysis of the provisions in these states indicates the presence of systematic patriarchal biases that do not allow women to inherit agricultural land. Here, the state land laws specify a distinct order of succession for tenancy rights in agricultural lands which is highly skewed in favour of males with preference being to the agnatic males, and, at the first instance, the tenancy rights in agricultural land in these states devolve on the male lineal descendants and only in case if male lineal descendants are not present, the widow inherits.

Further, while in Uttar Pradesh and Delhi, the daughters and sisters are recognised and find a place in the order of succession, though very low in the list of heirs; in the states of Haryana, Punjab, Himachal Pradesh and Union Territory of Jammu and Kashmir, they are totally excluded as heirs from the scheme of succession to tenancy rights of agricultural land. Uttarakhand recognises widows as primary heirs, while Uttar Pradesh is the only state that recognises daughters, along with widows, as primary heirs. However, both states grant unmarried daughters stronger rights in agricultural land than those granted to married daughters. In each of these states, women's interest in land is limited. After the death of a woman, her interest goes to the heirs of the last male holder, rather than to her own heirs. Additionally, they lose the land upon remarriage or upon failing to cultivate the land for a specific period, as provided in the statutes.

Section 171 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, lays down the general order of succession.[56] Sub-section (1) of Section 171 provides that, "subject to Section 169 when a bhumidhar or asami, being a male dies, his interest in his holding shall devolve upon his heirs being the relatives specified in the sub-section (2)". 'Sub-section (2)' of Section 171 lays down a specific order of the succession of such deceased male bhumidhar or asami. The widow, unmarried daughter and the male lineal descendant takes simultaneously *per stirpes,* excluding all the other relatives. Mother and father come next in the order of succession, and it is only after them that the married daughter finds a place in the specified order.

Delhi emerged as a focal point for advocating equal inheritance rights for women during legislative discussions on the Hindu Code Bill. Similarly, under the Delhi Land Reforms Act, 1954, the prescribed order of succession which, as noted, favours male agnates applies to both bhumidars and asamis. The rules governing the inheritance of tenancy holdings in Delhi, outlined in Sections 48 to 53 of the Act, largely mirror the gender-biased pattern found in the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. Section 48(1) of the Delhi

[55]The Delhi Land Reforms Act, 1954(Act no 8 of 1954), s. 50-54.
[56]Now it is governed by the Uttar Pradesh Land Revenue Code, 2006, s. 108-110.

Act provides that "a Bhumidhar may, by will, bequeath his holding or any part thereof except as provided in sub-section (2)." Sub-section (2) puts a restriction on the right of female Bhumidhar to bequeath her holding by will in terms that, "no Bhumidhar entitled to any holding or part in the right of a widow, mother, step-mother, father's father, father's mother, unmarried daughter, or unmarried sister, may bequeath by will such holding or part".

Section 50 lays down the general order of succession for males. It provides that, "subject to the provisions of Section 48 and 52, when a Bhumidhar or Asami, being a male,dies, his interest in his holding shall devolve in accordance with the order of succession given below:

a. male lineal descendants in the male line of descent: Provided that no other members of this class shall inherit if any male descendant between him and the deceased is alive. Provided further that the son or sons of a predeceased son,however low, shall inherit the share which would have devolved upon the deceased if he had been then alive;
b. widow;
c. father;
d. mother, being a widow;
e. stepmother, being a widow;
f. father's father;
g. father's mother, being a widow;
h. widow of a male lineal descendant in the male line of descent;
i. unmarried daughter;
j. brother, the brother's having been a son of the same father as the deceased;
k. unmarried sister;
l. brother's son, the brother's having been a son of the same father as the deceased;
m. father's father's son;
n. brother's son's son;
o. father's father's son's son;
p. daughter's son."

In Punjab, the Punjab Tenancy Act, 1887, was enacted to grant the occupancy rights to tenants who had been cultivating a particular piece of land for two or more generations. Section 59 of the said Act lays down that the right of occupancy in any land of a tenant, on his death, devolves on his male lineal descendants in the male line of descent as first order heirs. The widow inherits, though a limited interest, in the absence of any of such male lineal descendants. In the absence of male descendants and a widow, the widowed mother inherits

the occupancy right in such agricultural land. If the first three successors are unavailable, the interest passes to the deceased tenant's male collateral relatives in the male line of descent from their common ancestor. No female, other than the widow and the widowed mother who only gets a limited interest, finds a place in the succession scheme of the landed property under the Punjab Tenancy Act, 1887, as applicable in both Punjab and Haryana.

After independence, the PEPSU Tenancy and the Agricultural Lands Act, 1955,were enacted on the same lines as the Punjab Tenancy Act, 1887. A similar strongly biased rule is laid down in the Section 30 of the PEPSU Tenancy and Agricultural Lands Act, 1955 which provides that, "if any tenant or sub-tenant dies before exercising his rights to acquire proprietary rights in respect of any land under this chapter such right shall, on his death, devolve upon his lineal male descendants in the male line of descent". Section 45 of the said Act lays down that, "When a tenant in any land dies, the right shall devolve-

(a) on his male linear descendants, if any, in the male line of descent; and
(b) failing such descendants, on his widow, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected there from; and
(c) failing such descendants and widow, on his widowed mother, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected there from; and
(d) failing such descendants and widow, or widowed mother or, if the deceased tenant left a widow or widowed mother, then when her interest terminates under clause (b) or (c) of this section on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives."

The same rule of succession as applicable in the states of Haryana and Punjab is provided for in the Himachal Pradesh Tenancy and Land Reforms Act, 1972. In Jammu and Kashmir, the tenancy rights are governed by the Jammu and Kashmir Tenancy Act, 1980. Chapter V of the Act deals with "Alienation of, and Succession to, Right of Occupancy". Section 67 deals with succession rights, in which preference is given to the male lineal descendants in the male line of descent. While inheritance laws generally discriminate against women, the bias is more pronounced in the tenurial laws of these states. However, despite being unconstitutional, these laws remain in force due to the protection provided to them under the Ninth Schedule of the Constitution, read with Article 31B.[57]

VII. Omission of Section 4(2) and the Conflicting Judgements

[57]The Constitution of India, art. 31.

The 2005 Amendment, though it omitted the protective section 4 (2), did not provide any express provision confirming the application of HSA to the agricultural land. Consequently, confusion arose as to which law would apply on the agricultural land after the amendment: HSA or the state land laws. The two most important cases that were decided on the question of the effect of omission of section 4(2) of the HSA are '*Nirmala* v. *Government of NCT of Delhi*'[58]by the Delhi High Court in 2010 and '*Archna* v. *Dy. Director of Consolidation*[59]by the Hon'ble High Court of Allahabad in 2015. Both cases interpreted the effect of omission of Section 4 (2) differently, and this section shall analyse the approach of the Hon'ble courts in detail. Hon'ble Supreme Court so far has not made any pronouncement on the effect of the omission of Section 4 (2) or on the competency of Parliament to legislate on agricultural land in detail.One view is that after the omission of section 4 (2), the protection to land reform legislation is no longer available, and thus, HSA should apply to agricultural land also. This view is endorsed by the Delhi High Court in the case of *Nirmala*. The second view is that land is a subject in the State List; Parliament is not empowered to make laws relating to the succession of agricultural land. Thus, even after the omission of Section 4(2) of the HSA, state land laws continue to apply to agricultural land. Allahabad High Court upheld this view in the landmark case of *Archna.*

In the *Nirmala* case, the petitioner challenged the constitutionality of Section 50 ofthe Delhi Land Reforms Act,1954 (DLR). Section 50 of the DLR provides a scheme of succession of agricultural lands, and the scheme excludes female members from inheriting rights in agricultural lands when male members are present. The challenge of the petitioner was on two grounds. First, that the scheme of section 50 violatedthe Right to Equality under Article 14 of the Constitutionand second, that after the omission of section 4 (2) vide 2005 Amendment, the provisions of HSA would be applicable on agricultural lands.

The High Court of Delhi stated that the omission of section 4(2) allows the HSA to take precedence over any other law in effect before its enactment, if it contradicts the HSA. The court held that excluding daughters as primary heirs to agricultural land under the Delhi Land Reforms Act, 1954, contradicts the 2005 Amendment to the HSA, which grants daughters coparcenary rights and establishes a specific order of succession. It also stated that in the event of a conflict between the provisions of the HSA and Section 50 of the Delhi Land Reforms Act, 1954, the HSA provisions as amended in 2005 would take precedence. Hon'ble court held that omission of section 4(2) was a mindful decision of Parliament and thus, it is

[58] 2010 SCC Online Del 2232.
[59]2015 SCC Online All 262.

clear that Parliament did not want the protection afforded to the Delhi Land Reforms Act, 1954 and similar laws to continue after the 2005 Amendment.

In '*Roshan Lal* v. *Pritam Singh*'[60], the High Court of Himachal Pradesh highlighted continuingscuffles for gender equality in the Hindu law and called for a more consistent and coherent legal framework. The court acknowledged that excluding subsection (2) from Section 4 was done with the intention of providing women with unqualified property rights. The judges also observed that interpreting the state's power to legislate on the transfer and alienation of the agricultural land too broadly would render the concurrent legislative power over succession of land meaningless. The ruling clarified that only states can legislate on transfer and alienation of the agricultural land under Entry 18 of the State List, while boththe Unionand the state legislatures have the power to legislate on succession of all types of land and property, including the agricultural land under Entry 5 of the Concurrent List.

However, the Allahabad High Court had a different opinion. In the case of *Archna* v. *Deputy Director of Consolidation*,[61]the petitioner argued that after the 2005 Amendment, she became a coparcener with equal rights in the ancestral property, including agricultural land, along with her father, her uncles, and her uncles' sons. Therefore, the alienation of the ancestral agricultural land in favour of third parties at the instance of her uncles and her uncles' sons was invalid as the alienation was without her consent. The court ruled, "the three lists in the Constitution indicate fields of legislation and not the power to legislate. As there is a high possibility of overlapping laws among the lists, it is crucial to examine the true nature of the legislation and disregard any incidental encroachment on another legislative field. The court held that HSA would only apply to jointproperty ofthe Hindu Mitakshara and not to the agricultural land, which is solely the field of the state legislature. Parliament does not have the competence to enact any law on the state list, and HSA does not automatically apply to agricultural land after the omission of Section 4(2).

Hon,ble Supreme Court provided a supplementary clarification in '*Babu Ram* v. *Santokh Singh*'[62]The court distinguished the transfer and succession of agricultural land, explaining that succession takes place by operation of law, while transfer happens through a legal instrument. The court also explained that states have the power to legislate on the transfer of agricultural land, while the Union and states share jurisdiction over the succession of all types of land (including agricultural land). Therefore, the Supreme Court meanderingly proposed

[60] 2018 SCC Online HP 2152.
[61] (2015) 111 ALR 63.
[62] (2019) 14 SCC 162

that the HSA applies to agricultural land as well, without delving into the details of the constitutional distribution of legislative powers. However, the Hon'ble Supreme Court made it clear that it has not yet ruled on whether or not HSA would supersede a pre-existing state law governing agricultural succession after the 2005 Amendment. The issue in this particular case was not succession of the agricultural land but ratherthe right ofpre-emption under section 22 of HSA, which the court held would be applicable on agricultural land in the state of Himachal Pradesh, as the state land law is silent on the issue.

Again in 2022, the Supreme Court faced a similar issue in '*Har Naraini Devi and another* v. *Union of India and others*'[63]. The petitioner urged the court to declare Section 50(a) of the Delhi Land Reforms Act, 1954, as unconstitutional, arguing that it is ultra vires Articles 14, 15, 21, and 254 of the Constitution. The petitioner asserted that the succession provisions under the Hindu Succession Act (HSA) should prevail over those in the 1954 Act by virtue of Article 254, due to a clear conflict between the two. It was further contended that with the omission of Section 4(2) of the HSA by the 2005 Amendment, there remains no justification for applying the succession provisions of the 1954 Act, as succession should now be governed by the HSA. However, in the present case, succession opened in 1997 uponthe death of Mukhtiyar Singh, when Section 4(2) of the HSA was still in force. Its subsequent omission has no bearing on inheritance rights that had already accrued and crystallised before the amendment. Hence, the deletion of Section 4(2) of the HSA does not support the appellants' case. Again, this case had left open the issue whether succession in agricultural land after the 2005 amendment would be governed by HSA or by the state laws, especially in states which fall under the fourth category of states and has different order of succession than provided in HSA.

VIII. Conclusion

The 2005 Amendment does not unequivocally address the issue of equal rights of Hindu women to inherit the agricultural land. The omission of section 4(2) after the 2005 Amendment has left the legal consequences in a state of uncertainty. The intention behind omitting section 4 (2) from the statute book was never discussed, and therefore, different high courts have differently interpreted the 2005 Amendment. The erratic judgments discussed above add to the obscurity rather than providing clarity on the issue. Therefore, it is recommended that an amendment be brought by the Parliament which clearly states that the provision of equal rights to daughters as amended by the 2005 Amendment would also apply

[63]2022 SCC Online SC 1265.

to the agricultural land and will override any law to the contrary. The recent court decisions have not fully clarified the implications of the omission of section 4 (2), particularly in the fourth category of states. As a result, there is still room for significant legal interpretation and discretion, leading to inconsistencies and inequality for women in these states.

In 2020, the Supreme Court in *Vineeta Sharma*v. *Rakesh Sharma*[64] loudly and clearly pronounced that 'daughters, irrespective of the fact that their father was alive or not at the time of commencement of the 2005 Amendment, shall enjoy equal rights as sons to inherit family property'. A similar judicial ruling is necessary to affirm the daughter's rights in the agricultural land as well. The matter needs to be taken up by the Supreme Court so that there is no inconsistency in the interpretation and application of succession laws throughout the nation.

As discussed above, the power to legislate on 'Succession of Agricultural Land' lies in a grey area, somewhere in between the Concurrent and State lists. Since the matter concerns the state governments also, the Union government, in collaboration with states, could support the move towards gender equality by constituting a land reforms agency. The Constitution is not truly federal; it has a bent towards a unitary model. Under such a quasi-federal constitution, the Parliament should have the will to make laws on a sensitive topic such as gender equality. Power is already there, and one only needs to locate the same. To achieve gender equality in land ownership, it is essential to re-examine and realign land laws in accordance with the framework of the HSA.

[64](2020) 6 SCC 162.