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### REASONS BEHIND HINDU MARRIED WOMEN LEAVING THEIR LEGAL SHARE OF ANCESTRAL PROPERTY

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Abstract: - This study was conducted on 126 Hindu married women who were gone through the painful process of ancestral property distribution. As per the Hindu Succession Act (1956) and Hindu Succession (Amendment) Act, 2005 daughters are eligible to get equal portion of ancestral property as sons. However, this study shows clearly most of the Hindu married women who are uneducated and financially dependent on their spouse or sons or daughters they generally end-up losing their fair share of ancestral property at the time of property distribution. On the other hand educated Hindu married women who are capable to negotiate their own right they generally get treated much fairly. That study also shows women who leave their legal share of ancestral property they do that under emotional pressure of their siblings and in fear of losing them permanently. As a result they regret in later period since these women are financially dependent on others and therefore in case of any financial emergency they feel really helpless and regret for their decision of leaving ancestral property share. On the contrary educated and independent women are much vocal about their legal rights and negotiate successfully to get their share and above all they don't even regret for that decision. Therefore for uneducated, underprivileged women ancestral relations works as a social insurance and it's more valuable than the ancestral property. However, further study should be conducted on Hindu unmarried women and the women of other religion as well to understand the actual scenario. Meanwhile changes in legal system are also necessary to prevent such dubious practices so that patriarchal society cannot exploit the loopholes of the Indian legal system.

**Keywords:** - Indian Penal Code, Hindu Succession Act (1956), Hindu Succession (Amendment) Act 2005, Gender Equality, Gender Discrimination, Article - 15

**Introduction:** - Under the Hindu Succession Act, 1956 the unmarried Hindu women were eligible for equal share in ancestral property and later Hindu Succession (Amendment) Act, 2005 included the married Hindu women's right in ancestral property. Therefore, presently as per new amendment all Hindu women are entitled for an equal share of ancestral property.

Presently according to property right of Indian law Hindu daughters now have equal right of inheritance in their father's and mother's estate as sons and at the same time they have to bare the same liabilities as sons (Patil). The non-discriminatory nature of that new amendment ensures equal rights for both men and women in their ancestral property irrespective of their sex and marital status or any other factors which against the very core value of Indian constitution.

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Before the amendment of Hindu Succession Act, 1956 the Hindu women's property right was limited in ancestral property till they are unmarried but the moment they get married then they were no longer entitled for the equal share in ancestral property. However, the Hindu Succession (Amendment) Act, 2005 has included even married Hindu women as lawful heir in ancestral property and apart from Hindu women this same law is applicable to other religion's women such as Jains, Sikhs and Buddhists (Agarwal). However putting both sons and daughters at same platform from legal aspect does not ensure the founding stone of a more egalitarian society.

However, there were various disputes even after Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005 there were various ambiguities within the communities. In one of such cases Supreme Court has held that daughters born before the enactment of Hindu Succession Act, 1956 would be equally entitled in ancestral property (Sebastian). Though that Supreme Court verdict itself clarifies the law itself is not enough and Indian women need more then legal enactment to empower them. Our society needs empowerment and equality in women rights by providing women equal share in land and assets in particular and legal reforms itself is not going to ensure these rights. As a matter of fact society itself also needs to change its perception towards women (Deo).

In another verdict the Supreme Court clarified that the daughters born before 2005 would be a 'coparcener' (one who shares equally in inheritance of an undivided property). Therefore presently all living daughters who belongs to Hindu, Buddhist, Sikh and Jain communities of India are legally entitled for an equal share in their ancestral property.

A feminist group, Partners for Law in Development conducted a study on the current situation and found that most daughters give-up their legal rights and they give their legal share in ancestral property in order to maintain a family ties and they give their legal share to their brothers. Therefore a law and even amendment of that law does not ensure legal rights of women in their ancestral property. That deep seeded discrimination on the basis of gender is a matter of further study. The time has come when a thorough study should be conducted on the majority of Indian women who forfeited their legal rights as coparcener irrespective of their financial situation in order to figure out the actual reason behind that phenomenon (Mitta).

Gender-based discrimination has been a part of Indian culture. For instance as per ancient Hindu legal 'reformer' Manu's scripture 'Manusmriti' – "Women are supposed to be in the custody of their father when they are children, they must be under the custody of their husband when married and under the custody of her son in old age or as widows. In no circumstances she should be allowed to assert herself independently." However, perhaps most unfortunate reality is after millennial of cultural conditioning now most of the Indian women have accepted their subservient position in the society (Halder and Jaishankar).

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The succession rights and right to own property would be stronger among Hindu women if they know about their rights and liabilities from the grass root level. The Hindu Succession Act should include an exclusive provision for the 'Stridhan' or the property of women would be solely her own her own and legal provision should be included to take penal action against those who would try to grab women's property by deception. The Dowry Prohibition Act should be amended to clarify the term 'Stridhan'. Moral policing is also important to encourage the rights of the women. Constant literacy camps among all the faiths must be encouraged by the government and constant research also needed in order to identify the position of women in the modern Indian society (Halder and Jaishankar).

Research Objective: - Constitutional assurance and legal provision has ensured gender equality. Apart from that there has been a constant social movement to ensure gender equality in the society. However, despite so many efforts the study shows there is a clear and consistent difference between sons and daughters whenever it comes to the question of ancestral property distributions. The different study shows often men get preference over women. Despite all the legal and constitutional provision when socially daughters are not the obvious choice as heir then women get exploited by their own flesh and blood; but, what really compel them to make such huge sacrifice of leaving the right of their ancestral property and what really make them to go that length where they are even ready to ignore their own socio-economical backwardness or the future of their own spouse and children? Considering all these situations the fundamental research objectives of that study are as follows: -

- To know the demographic details of Hindu married women
- To know the demographical details of Hindu married women's siblings
- > To get the details estimates of ancestral property
- To know the details of their rightful inheritance status in ancestral property
- > To know the details of their socio economical and emotional status after leaving or accepting the ancestral property rights
- > To know about the most influential factors in property negotiation

Materials and Methods: - The present study was conducted on 126 (n = 126) Hindu married women aged between 18 years to 65 years and the present address of these women is city of the Kolkata mostly. The sources of these participants are two legal advisors who are dealing in property related matters for decades. The primary sources of information were the case files of these two legal practitioners.

For most authentic data the Face-to-Face Interview Method and Telephonic Interview Method were used and the data collection tool was an interview schedule consisting of a set of

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structured and unstructured type of questions. The sources of secondary data are the case files of these participants and personal observation reports of those legal practitioners.

**Results:** - Discrimination on the basis of sex has been an integral part of Indian culture and both sexes have been at 'receiving end' which was great injustice to both sexes. However, it has always been in favor of men and women have always been a type of commodity which needs to be exchanged from father's hands to husband's hands through marriage. Indian culture does not acknowledge women as a thinking human being and that attitude towards women affecting their lives from very important aspect such as career development and as a result it's affecting women's mental health as well.

#### 1. The demographic details of Hindu married women: -

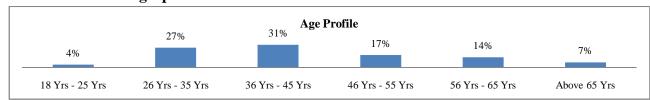


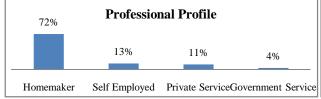
Figure – 1: Age Profile

As per Figure -1 almost six out of ten participant's age is anywhere between 26 years to 45 years and more than three out of ten participant's age is anywhere between 46 years to 65 years.



**Figure – 2: Qualification Profile** 

According to Figure -2 it is clearly visible that more than four out of ten participants' educational qualification is either equivalent to primary or secondary level education and around two out of ten participants have completed their college or university level education.



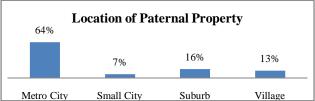


Figure – 3: Professional Profile

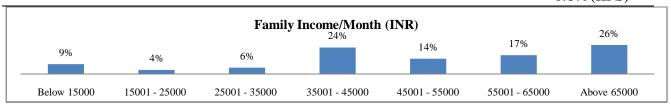
Figure – 4: Location of Ancestral Property

According to Figure -3 more than seven out of ten participants' are homemaker and barely less than three out of ten participants are earning for themselves.

As per Figure -4 more than six out of ten belong to metro cities and more than three out of ten participants belong to small cities, suburban areas and villages.

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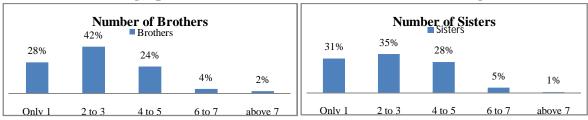
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**Figure – 5: Monthly Family Income (INR)** 

As per Figure – 5 almost six out of ten participants' family income is anywhere above 45000 INR per month to above 65000 INR per month and on the contrary only one out of ten participants' family income is below 15000 INR per month.

#### 2. The demographical details of Hindu married women's siblings: -



**Figure – 6: Number of Brothers** 

**Figure – 7: Number of Sisters** 

According to Figure -6 it is clearly visible that nearly seven out of ten participants have between one to three brothers and very few participants have 6 or above 6 brothers.

According to Figure – 7 it is clearly visible that more than six out of ten participants have between one to three sisters and very few participants have 6 or above 6 sisters.



Figure – 8: Highest Qualification of Brothers

From Figure – 8 it is clearly visible that the highest qualification of more than six out of ten participants' brothers have either completed their high school education or have left high school without completing school education.

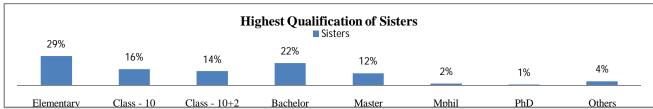


Figure – 9: Highest Qualification of Sisters

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From Figure -9 it is clearly visible that the highest qualification of nearly six out of ten participants' sisters have either completed their high school education or have left high school without completing school education.

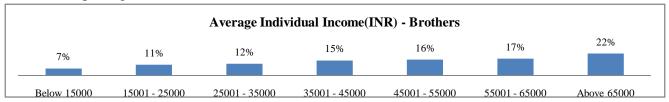


Figure – 10: Average Individual Income of Brothers

According to Figure -10 we can see around seven out of ten participants' average individual monthly income is anywhere between above 35000 INR to above 65000 INR.

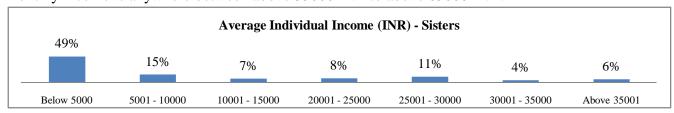


Figure – 11: Average Individual Income of Sisters

As per Figure -11 it is clearly visible that around one out of two participants' sisters average individual monthly earning is below 5000 INR.

#### 3. The details estimates of ancestral property: -

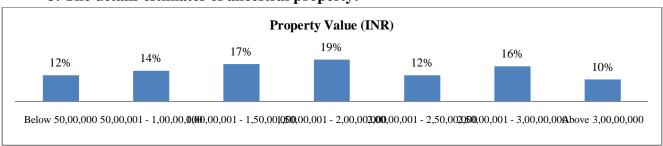
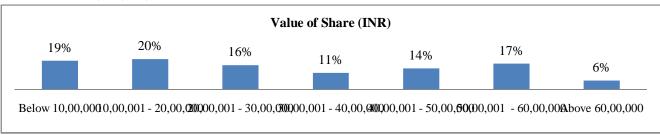


Figure – 12: Estimated Value of Ancestral Property at the Time of Property Distribution

According to Figure -12 it is clearly visible that almost six out of ten participants' estimated value of ancestral property at the time of property distribution was anywhere above 1, 50, 00, 001 INR to above 3, 00, 00, 000 INR.



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### Figure – 13: Estimated Value of Participant's Share of Ancestral Property

According to Figure – 13 around five out of ten participants' estimated value of ancestral property share was anywhere above 30, 00, 000 INR to above 60, 00, 000 INR at the time of property distribution.

#### 4. The details of their rightful inheritance status of ancestral property: -



Figure - 14: Participant's Inheritance of Ancestral Property Figure - 15: Participant's Married Sister(s) Share of Ancestral Property

According to Figure – 14 only 23% participants have managed to receive their rightful share of ancestral property and remaining 77% participants didn't received the rightful share of ancestral property.

According to Figure – 15 only 39% married sisters of participants have received their rightful share of ancestral property and remaining 61% participants didn't received the rightful share of ancestral property.

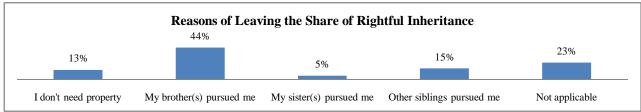
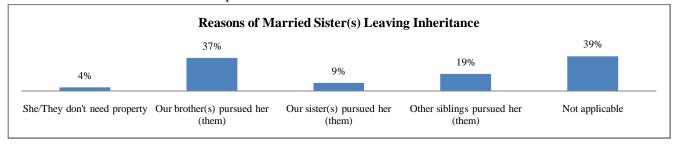


Figure – 16: Reasons of Participants Leaving Their Share of Rightful Inheritance

According to Figure – 16 we can see more than four out of ten participants left their rightful inheritance because their brothers pursued them to do so.



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Figure – 17: Reasons of Participants Married Sister(s) Leaving the Share of Rightful Inheritance

As per Figure -17 it is clearly visible that nearly four out of ten participants' married sisters left their rightful inheritance of property because their brothers pursued them to do so.

### 5. Details socio-economical and emotional status of participants after leaving or accepting the ancestral property rights:-

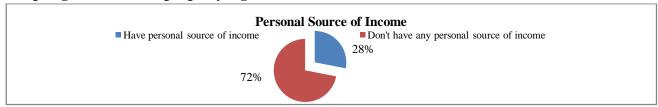


Figure – 18: Participant's Personal Source of Income

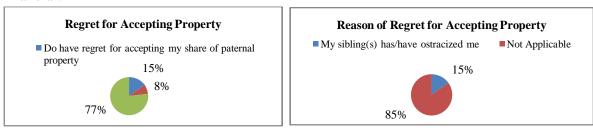
As per Figure – 18 it is extremely profound that less than three out of ten participants' have some sort of personal source of income and remaining participants do not have any personal source of income.



Figure – 19: Regret after Leaving Ancestral Propert Figure – 20: Reason of Regret for Leaving Property

According to Figure – 19 it is clearly visible that 64% participants have agreed that they are regretting for their decision of leaving their rightful share of ancestral property and only 13% of participants have agreed they don't regret for their decision of leaving the rightful share of ancestral property.

In Figure – 20 the reason of regret is clearly visible and the only reason of regret is purely financial.



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### Figure – 21: Regret after Accepting Ancestral Property Figure – 22: Reason of Regret for Accepting Property

According to Figure – 21 it is clearly visible that 15% participants are regretting for accepting their valid share of ancestral property and 8% of participants clearly admitted that they are not regretting for the consequences of accepting their valid share of property.

In Figure -22 the reason of regret is clearly visible and the only reason of regret is purely personal.

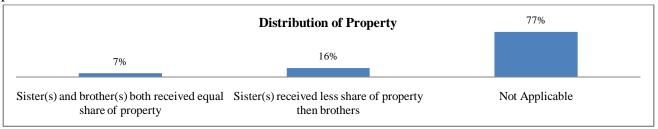


Figure – 23: Fair Distribution of Ancestral Property between Brother(s) and Sister(s)

According to the Figure -23 at the time of property distribution 7% participants has received equal share of property as their brothers and 16% participants has received less share of property than their brothers.

#### 6. Most influential factors in property negotiation: -

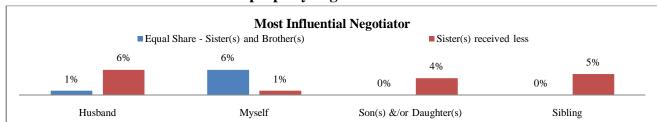


Figure – 24: Most Influential Negotiator

According to Figure -24 it's clearly visible that 6% participants has negotiated for themselves and have managed to secure equal share of property with their brothers and 15% participants' have received less share of property then their brothers where negotiators were someone else such as husband, son, daughter or other sibling.

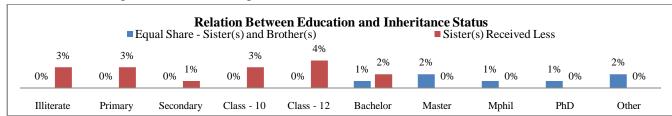


Figure – 25: Relation between Education and Inheritance Status

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According to Figure -25 it's clearly visible that 7% participants with higher education always have ensured an equal share of property with their brothers.

Discussion and Recommendation: - Under Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005 Hindu, Sikh, Buddhist and Jain daughters are equally entitled to get the parents' property as sons. However the purpose of present study was analyzing the actual scenario of property distribution among especially Hindu married women. The present study were conducted among 126 Hindu married women aged from 18 years to 65 years, mostly not much qualified and not earning any money for themselves; since they are basically homemaker. These participants are mostly from metro cities or small cities and economically they belong to modest middle class families.

The next part of the study was demographical analysis of the siblings of these participants. Most of the participants have one or two siblings but every participant has at least one brother. The highest qualification of most of the siblings are limited to high school level only; although there are many others who has completed college and even have studied in universities. Comparative analysis of individual income of brothers and sisters clearly indicates sisters of these participants earns much lesser then their brothers and the reason behind that income difference is like most of the participants their sisters are also mostly housewives and they don't have any personal source of income. The details estimation of ancestral property reveals that at the time of property distribution total estimated value of the property were up to 30 million INR and the estimated value of participants' own share of ancestral property were up to 6 million INR.

Thorough study of estimated property clarifies that all the participants are legally entitled to receive a considerable portion of the property. The present study shows less than one out of four participants have received their rightful share of property and remaining more than three out of four participants did not receive their rightful share of the ancestral property. Not only the participants, even the same study shows only two out of five participants married sisters have received their rightful share of ancestral property.

However most intriguing question is when most of the participants do not have their own source of income then why they are 'willingly' leaving their rightful share of ancestral property or are they voluntarily leaving their share? According to these participants they leave their rightful share of ancestral property because siblings pursued them to do so and most of the time those siblings are their own brothers. Not only participants, even their married sisters also were pursued by mostly their brothers. However, most remarkable part of that study is very few participants actually chose to leave their rightful share of ancestral property because they felt they don't need that property and rest of the participants have taken that decision under the influence of their siblings.

Case Example – A: - Mrs Purnima (name changed) belongs to a lower middle class family and her husband earns bare minimum on daily basis. Few years back she gave away her share of ancestral property to her two brothers under the pressure of her other sisters and her two brothers. Then her both brothers earns handsomely by selling that property. Presently she is in desperate need of money because her husband is bed-ridden after an accident and he is unable to provide for his family. She is literally begging for money from her brothers and both of them did not lend their hands to pull her out from that crisis and her sisters are unable to help her since they are also financially dependent on their husbands and sons. Presently Mrs. Purnima is repenting for her past decision of giving away her share of the ancestral property.

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Under such circumstances most relevant question remained the aftermath of that decision and more precisely the socio – economical and emotional status of participants after leaving or accepting the ancestral property rights. So far it has been cleared already that only less than three out of ten participants have agreed that they have their own source of income. However, the ratio between availability of personal source of income and the acceptance of the rightful share of ancestral property is totally disproportionate.

Most remarkably all those participants who has left their rightful share of ancestral property due to the influence of their siblings those participants are regretting for their decision and the reason behind that regret is purely inability to meet the different variety of financial liabilities they faced post-property distribution period, such as the education of daughters or sons, marriages of daughters or in case of any other emergency. All these participants who were compelled to leave their legitimate share of ancestral property are regretting for their decisions.

Case Example – B: - Mrs Anita (name changed) left her ancestral property under the immense pressure of her brothers and sisters. Presently she needs money for her daughter's marriage. She is asking for financial support from all of her siblings and they are contributing as minimum as possible. Anita's husband does not earn much and his personal savings is not enough for their daughter's marriage. Presently husband and daughter of Anita both blame her for her disastrous decision. Because, they would have get a share of property worth minimum 14,00,000 INR according to present days valuation if she could have claim her fare share of ancestral property at the right time.

On the contrary every two out of three participants who have accepted their rightful share of ancestral property are also regretting for their decision and the only reason behind that regret is losing the family. According to these participants they have lost their contact with their siblings and to be more precise mostly their brothers have deserted them and in many cases their other siblings also have deserted them.

Meanwhile the most significant part remains the distribution pattern of the property. According to law daughters are equally entitled for the ancestral property as sons, however these participants are have received their rightful share as per law or there were some anomalies in distribution of ancestral property. Only one out of three participants who have received ancestral property were fortunate enough to get the equal share as their brothers and rest are really unfortunate; because two out of three participants did not received equal share of property as their brothers and few of them received barely one-twentieth part of their actual share.

Case Example – C: - Mrs Sikha is a middle aged married woman and mother of three sons. Her husband works as a minimum wage worker in a factory. At the time of property distribution she asked for her fare and equal share of ancestral property and her siblings threatened her if she take equal share then they will shunned them from family. However, after lots of pleading and bargaining she received barely 5% of the actual share in cash and her other siblings pressurized her for the signature and even after getting her signature on the 'Gift Deed' they ostracized her from all sorts of communications with the other siblings. Presently Sikha regret her decision of accepting the property was a bad decision and she believes the value of the blood relations is 'priceless'. On the contrary her three sons believe they would have started a small business if they had that property and could have revived their socio – economical situation.

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Case Example – D: - Mrs. Anuradha is a highly educated woman. She and her husband both working in a multinational company and both of them earning in six figures. When her siblings pressurized her to leave her share of ancestral property she didn't bow down under their immense pressure and negotiate for her share with the help of legal consultant. Finally her siblings gave her equal share of property and presently she is not in talking terms with her other three siblings. Apparently she is not concern for losing her family members and she does not have any regret for her

Under such astronomical disproportionate property distribution scenarios the question remains why some participants have successfully negotiated their rightful share and at the same time some other participants failed miserably as negotiator and could not even convince their own siblings to give them their fair share of ancestral property.

The study shows that clearly participants who has negotiated for their ancestral property right have by themselves have managed to secure equal share with their brothers and on the contrary participants who has appointed their husband, sons or daughters or even other siblings they most of the time ended-up with the lesser then their brothers' share. More precisely those participants who has spoke for themselves were extremely successful and most of the time they ended-up getting their fair share of ancestral property.

However question remains why some participants chose to negotiate for themselves while most of them did not or rather could not? The present study shows the participants' educational qualification directly affected their negotiation capacity. All those participants who are not much educated failed miserably at the time of negotiation and not only illiterate participants even those participants who have completed their high school level also were deprived. Meanwhile the participants who have completed their Bachelors Degree are more likely to negotiate their rights relatively more successfully. By the meantime those participants who are educated enough and completed their higher study those participants really emerged as much more successful negotiator. Most remarkable finding is those participants who are financially independent and earning really well they prove to be better negotiators then those participants who are not financially independent.

Case Example - E: - Mrs Shruti and Mrs Divya (both name changed) are two sisters. Elder sister Shruti is school drop-out and a homemaker and younger sister Divya has completed her Mechanical Engineering Degree and working in public sector. Divya negotiated for herself and also for Shruti. The threat of shunning them could not proved effective to her and she got her fair share and on the other hand Shruti got only 10% of her fair share in cash because really didn't wanted to lose her ancestral relations.

In most of the time participants were compelled to leave their share under the influence of other siblings. Often they prefer to take that decision because they were told they would lose all their ancestral contacts if they take their rightful share of ancestral property which was enough frightening for them not to have an ancestral home after marriage. The fact of the matter is often these participants have managed to convinced their spouse, sons and daughters for the sake of ancestral relationships they should give away their fare share. These participants consider these relationships as social insurance policies and for them loosing the ancestral relationships would do more harm to them. That is the reason they risk to lose their ancestral property instead of ancestral relationships. On the contrary, those participants who are well-educated and self-independent they did not seem much influenced by the thought of loosing ancestral relationships and they were keener to secure their monetary interest instead of emotional interest.

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However present study indicates the economical difficulties does not empower these participants to ensure their financial opportunity, rather high education, exposure to outside world and moreover a stable career make them more self-aware and that empowerment ensure that they don't fall under pray of any emotional exploitation. It clearly indicates proper education and economical independence is the key to self-reliance for women and it make them more susceptible to social threat.

Meanwhile the present study is incomplete without the data of unmarried women. A study should be conducted on unmarried women as well in order to understand how they ensure their fair share of ancestral property or are they at all? Another exclusive study should be conducted on those female participants who have been deprived from their legal share of property solely because of their parents; because their parents preferred sons over their daughters. Apart from that social changes also very important. In our society elderly parents should be equal responsibility for both sons and daughters irrespective of their marital status. When parents would be able to depend on their daughters and sons equally then they would be able to change their age old perception about sons' right over property and then they would consider both sons and daughters as equal heir of the property. However, that only socio-economical independents of women can bring that trust and without that daughters will remain a burden and less valuable then sons.

There should be additional amendment in Hindu Succession (Amendment) Act, 2005 as well, because presently if daughters give their signatures on papers and give away their share of property to their siblings then it would be automatically considered as voluntary consent or 'Gift Deed', whereas the study shows in reality most of the participants were compelled to leave their share of ancestral property under pressure. Therefore 'Gift Deed' option should not be allowed in the Act and equal share of property between brothers and sisters should be mandatory so that siblings don't deprive their weak siblings under the influence of social power.

Conclusion: - In spite of law the equal rights of Hindu women is a reality which lies far behind from their reach; on the contrary whenever it comes to negotiating their legal rights then often they fall pray in the hand of patriarchy and choose relations over their legal rights. The present study shows only education and exposure to broader world only can change their perception. Women would not perceive their ancestral relationship as their 'world' if they get access to a broader world and get moral support from that world. So far it's clear from that study that women don't leave their legal right because they have money, in fact they leave their share of ancestral property because they are extremely afraid of losing their ancestral relationships. In reality giving-up their legal rights is not a mere choice to them, in fact it is their moral compulsion or rather social survival key. Therefore more flawless law needs to be introduced. Meanwhile each and every daughter should get proper education which can empower them and can give them much needed self-confidence so that they can stand-up for their own rights.

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