THE DWELLING HOUSE IN HINDU LAW: A POSSIBLE RE-CONCEPTUALISATION

Spadika Jayaraj[*]

ABSTRACT

The Dwelling House in Hindu Law has hitherto been viewed through the lens of patriarchy. The pre-2008 Hindu Succession Act did not grant Hindu women the right to partition and claim their share of the dwelling house. This section has subsequently been repealed. However, a mere repeal does not guarantee rights in a cultural context that still views the Dwelling House as a space for the son and his family to reside. As a result, secular laws such as the Transfer of Property Act are still interpreted in a son-centric way. This does little to protect those members of the family who are most vulnerable- the widow, the children and the elderly. Hence, there is a need for a reconceptualisation of the dwelling house as a unit that serves the interests of the most vulnerable. This must be done by analyzing where the laws and the judiciary are failing, as well as by taking a fresh look at newer social legislations such as the Protection of Women from Domestic Violence Act, 2005 and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

I. INTRODUCTION

It is universally accepted that having a roof over one's head is one of

[*] The Author is completing the B.A LLB [Hons.] at National Law School of India University, Bangalore.

the basic requirements of human life. A dwelling house, which is a common household shared by a family, caters to this basic requirement. But if one were to critically reflect on the rights that various members of the family have traditionally enjoyed with respect to the dwelling house, this simple construct raises a myriad of questions and controversies. The most controversial aspect is regarding the difference in the rights of male and female members of the family.

The dwelling house is a social construct. Physically, it is no different from any other property that is owned by individuals or families. However, personal laws as well as secular laws have looked at the dwelling house as an institution that must be protected in the interests of the family. With 'family' itself being un-definable in absolute and uncoloured terms, law has either been drafted or interpreted in ways that privilege a patriarchal view of 'family'.

It is argued in this paper that the law inadequately protects the rights of women, children and the elderly to the dwelling house and that prevalent conceptions of the dwelling house as an institution to "preserve the family" must be challenged. An alternative model is proposed, where the dwelling house is seen as an institution that protects the livelihood interests of the *vulnerable sections* of the family, such as the deserted wife, the widow, the aged parents and the minor children. A comparison is made with other countries on this front.

A significant part of the paper focuses on Hindu law, as the 2005 Amendment to the Hindu Succession Act has attempted to bring about a

revolution in female heirs' rights to the dwelling house. Whether this amendment changes ground realities is also a question that will be considered. I will also look at the Transfer of Property Act 1882, the Partition Act 1893, and some provisions of social legislations such as the Domestic Violence Act 2005, and the Maintenance and Welfare of Parents and Senior Citizens Act 2007 while analyzing the present patriarchal set-up that the dwelling house has been tangled in. Primary and secondary sources of information have been referred to, and a uniform mode of citation has been used.

II. LOCATING THE DWELLING HOUSE IN HINDU SUCCESSION LAW

In classical Hindu Law, the widow and the daughter did not receive any property through succession or survivorship. With a few exceptions such as in the Bombay state, women only received a 'limited estate'. This meant that they could enjoy their portion of the property to a certain extent, but upon their death, it would go back to the next heir of her husband or father.[1] Section 14 of the Hindu Succession Act, 1956 changed this by conferring full heritable capacity on female heirs.[2]

Hindu society was largely exogamous, which meant that daughters in the family commonly married outside the village to a different family. Hence, it was feared that granting female heirs absolute rights in her natal dwelling house would result in uncomfortable situations where the daughter's 'new'

1 Mulla, PRINCIPLES OF HINDU LAW, 81 (Sunderlal T. Desai Ed., 16th Edn., 1994).
2 §14, Hindu Succession Act, 1956.

family could partition and reside in the dwelling house.[3] Therefore, although the Hindu Succession Act gave female family members inheritance rights, Section 23 of the Act limited these rights with respect to the dwelling house. According to Section 23, where a Hindu intestate leaves behind him a dwelling house with both male and female heirs, the female heirs may not ask for partition of the house until the male heirs choose to do so. Additionally, the female heirs may be granted a right of residence in the dwelling house *only* if she is unmarried, has been deserted or separated from her husband, or is a widow. This provision was also justified by the fact that the property of married women was largely controlled not by them, but by their husbands (who are usually complete strangers to the woman's family in an exogamous setting), and *disruptive influences* would operate if he can effectuate a partition in his wife's family dwelling house.[4]

In patriarchal societies, the death of the male "head of the family" often renders the remaining members helpless and destitute. It cannot be denied that an impartible dwelling house therefore serves as a vital form of protection for the widow and children of a deceased Hindu male. It has been reiterated in various Court decisions that S. 23 of the HSA must be interpreted keeping in mind the importance of preserving the institution of the dwelling house.[5] But in *Narasimha Murthy* v. *Susheelabai*, the Supreme Court made it clear that the objective behind this section was really to privilege the comfort of

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3 J.Darrett, *The Hindu Succession Act, 1956: An Experiment in Social Legislation*, 8(4) THE AMERICAN JOURNAL OF COMPARATIVE LAW, 485,499 (1959).

4 Mulla, *supra* note 1 at 845.

5 *Srilekha Ghosh* v. *Partha Sarathy Ghosh*, AIR 2002 SC 2500; *Narasimha Murthy* v. *Susheelabai*, AIR 1996 SC 1826.

male heirs over female heirs. It was held that the object behind S. 23 was to "*prevent the fragmentation and disintegration of the dwelling house at the instance of the female heirs to cause hardship to the male heirs in occupation of the house*".[6]

This leads to two situations which demonstrate that Section 23 was more about reinforcing female subordination than anything else. *First*, when a Hindu man dies leaving behind a widow and daughters, some married and others unmarried; the married daughters can ask for partition[7] as there are no *male* heirs who will be inconvenienced. This will clearly inconvenience the most vulnerable members of the family, but is not addressed by the section. *Second*, the son of a predeceased daughter may ask for partition.[8] Even though the property devolved to him from his mother in the first place, this gives him a right that his mother never had.

The other discriminatory aspect of S. 23 is that it provided rights of residence only to unmarried, deserted, separated or widowed daughters. This, again as a consequence of exogamous marriage practices, legitimised the belief that married women are not a part of their natal families. Such a practice only ends up justifying the differential treatment of male and female children in the household, as the girl-child is seen only as a liability and a 'temporary' member of the family. While it is important for laws to respect customary beliefs and practices, the law should not ideally be reinforcing a custom that has lead to the systematic discrimination of a section of the population.

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6 *Narasimha Murthy* v. *Susheelabai*, AIR 1996 SC 1826.
7 Mulla, *supra* note 2 at 845.
8 Mulla, *supra* note 2 at 845.

In the 174th Report of the Law Commission of India, it was recommended that along with making women coparceners in ancestral property,[9] S. 23 of the Hindu Succession Act must be deleted.[10] These changes were subsequently made in the Hindu Succession Amendment Act, 2005. Hindu females now *formally* enjoy an equal right to partition their ancestral home. The question of right of residence is not mentioned in the Act, but it can be presumed that all daughters, regardless of marital status, now enjoy equal right of residence in their natal homes. While this move is commendable, it must not be given more credit than is due. The changes in law may formally grant women *rights* over the property, but these rights are meaningless without the option of exercising the rights and the ability to control any property she may receive.[11]

Cultural norms have an important role to play in determining the efficacy of a law. Presently, dominant Hindu cultural norms are still patriarchal, where women 'leave' their natal families on marriage, which may make the woman herself believe that she does not 'belong' to her natal home after marriage. The norm of the bride's family paying dowry at the time of marriage also has a role to play in a woman not exercising her right over her natal property, as male heirs may argue that she has already taken her "share" of the family wealth. This is reinforced by sexual norms which mandate that being feminine implies being sacrificial and passive to the interests of male care-

9 §5.7.3, 174th Report of the Law Commission of India, Property Rights of Women: Proposed Changes under Hindu Law (2000) (Hereinafter, "Law Commission Report").

10 §5.7.5, Law Commission Report.

11 K. Rittich, *The Properties of Gender Equality* in HUMAN RIGHTS AND DEVELOPMENT, 87, 107 (P. Alston and M. Robinson Eds.,) (Hereinafter, "Rittich").

takers.[12] The sum total of this complex set of norms is that a woman will often not claim her share of property from her natal home, and when she does, it is often not out of her own volition as much as the volition of her husband or his family.[13] The ultimate consequence is that the dwelling house is an institution that primarily protects the already powerful (male) members of the family.

III. S. 44 OF THE TRANSFER OF PROPERTY ACT & S. 4 OF THE PARTITION ACT

Apart from the above analysis of succession laws and gender roles, the conclusion that the dwelling house is an institution that primarily serves patriarchal interests can also be reached from another angle - by looking at the secular laws of property and partition. S. 44 of the Transfer of Property Act prevents the intrusion of strangers into the family residence when a share in the house has been transferred to a stranger. In such cases, the 'stranger' may not claim joint possession or any common or part enjoyment of the house. His remedy is to file a partition suit.[14] When such a suit for partition is filed, if a member of the family is willing to buy the third party's share, S. 4 of the Partition Act mandates that a sale be made to such member.[15]

It is evident that these provisions of law that 'family' is considered an important institution to preserve. However, neither section defines what family

12 *See generally*, Rittich; S. Basu, SHE COMES TO TAKE HER RIGHTS (1999).
13 S. Basu, SHE COMES TO TAKE HER RIGHTS (1999).
14 § 44, The Transfer of Property Act, 1882.
15 §4, The Partition Act, 1893.

is, paving way for the judiciary to interpret what it thinks a family should be. Before the Hindu Succession Act was enacted, the judiciary consistently took a liberal stance of interpretation. In the year 1929, in the case *Pakija Bibi* v. *Adhar Chandra,*[16] it was contended by the petitioners that two sisters living together cannot constitute a 'family' under Section 44 of the Transfer of Property Act, as they are not a Hindu undivided family. The Calcutta High Court held that family need not mean a Hindu undivided family- any persons living under one roof under one head or management can constitute a family. In 1930, in *Mantripragada Sivaramayya*'s case, [17] a family had formally partitioned the dwelling house, but were still living together under one roof. When a third party who was transferred one-third of the property sued for partition, the Madras High Court gave the family the benefit of S. 4 of the Partition Act. It was held that the phrase 'undivided family' is sufficiently ambiguous to justify the construction that is most in consonance with the object of the Act.

However, almost fifty years later, after the Hindu Succession Act, *Ram Bilas Tewari*'s case[18] came into consideration before the Allahabad High Court. The dwelling house in question belonged to Ram Bali, who before his death had executed a gift deed in favour of this daughter Mahdei. On Mahdei's death, the property devolved to her mother, Mangla. On Mangla's death, it devolved on to the remaining two children, Ram Charan and Saheb Dei. After Ram Charan's death, Saheb Dei sold her share of the dwelling house to a third party, Ram Bilas Tewari. Shiv Rani, a widow who resided in the house, claimed

16 *Pakija Bibi* v. *Adhar Chandra,* AIR 1929 Cal 231.
17 *Mantipragada Sivaramayya* v. *Kapa Venkatasubbamma*, AIR 1930 Mad 561.
18 *Ram Bilas Tewari* v. *Shiv Rani and Ors*, AIR 1977 All 437.

protection under Section 44 of the Transfer of Property Act. Here, the Allahabad High Court took a narrow interpretation of "undivided family" to hold that the lone surviving widow cannot claim protection as she is not an undivided family. Such an interpretation is problematic, as the objective behind Section 44 is to protect residents of a dwelling house. A narrow view such as the one taken by the Allahabad Court fails to protect the widow, who is the most vulnerable dweller of the house.

A similar view was taken by the Calcutta High Court in the year 1984, in *Dhirendranath Sadhukan.*[19] Here, a woman lived with her husband and his brother. On the death of the husband, the brother sold his share to a third party. When the third party claimed joint possession, the widow, again, was not granted the protection of S. 44. It was reasoned that there was "*no common bond or cementing factor bringing both of them* (the widow and her brother-in-law) *within the fold of an undivided family"*.

There is also conflicting authority regarding whether Section 44 creates a positive right for members of the family to evict a third person. It appears intuitive that without such a right, S. 44 would serve no purpose. While Courts have recognised such a positive right in some decisions,[20] in *Jogendra Nath Mondal* v. *Adhar Chandra Mondal*, the Calcutta High Court differed and held that a co-sharer can grant *amicable possession* to another co-sharer who is a stranger to the family, and the family members cannot restrain the third party

19 *Dhirendra Nath Sadhukhan* v. *Tinkari Sadhukhan and Ors*, AIR 1984 Cal 397.

20 *Paresh Nath Biswas* v. *Kamal Krishna Choudhury and Ors.*, AIR 1958 Cal 614;*Uma Shankar Chowbey* v. *Mt. Dhaneshwari and Ors.,* AIR 1958 Pat 550.

from enforcing his possession. This virtually renders S. 44 an empty provision, as the implication is that once the stranger has already taken possession of the property, the family has no remedy.

It is found that when such a narrow interpretation of the law is taken, S. 44 does little to protect vulnerable members of the dwelling house such as the widow or the daughter. One can take advantage of such a lacuna in the law to drive out widows from their marital homes, either by seeking joint possession or by partition. This is unfortunate, as given the societal stigma around widowhood that still persists in India; a house to live in is of utmost importance to the widow. Therefore, there is a great need to re-conceptualise the dwelling house as an institution that performs the important social function of protecting vulnerable members of the family. If the law and the Courts keep in mind such a framework, some headway can be made in detangling it from a patriarchal set-up.

IV. RECONCEPTUALISING THE DWELLING HOUSE- PROTECTING THE VULNERABLE

So far it has been demonstrated that though the gender-discriminatory Succession Law has been struck down and that existing partition law is *prima facie* gender neutral, the notion of the Dwelling House remains mired in a patriarchal understanding of what constitutes a family. Such an understanding, in turn, creates pockets of power and vulnerability within units of the same family. However, recognising that a generalisation of certain members of the family as de-facto vulnerable would reinforce

gendered stereotypes, it is important to unpack the concept of vulnerability itself. The 'dominance' approach,[21] propounded by noted feminist scholar Katherine Mackinnon, provides some insight in this regard. Gender neutrality of a law can ignore deeply-rooted power structures in two ways: by emphasising on 'sameness', or on 'difference'. Under the 'sameness' standard, the law would assume that all categories of people are equal and prescribe the same rules for them. The striking down of S. 23 of the Hindu Succession Act to make it 'gender neutral', ignoring existing cultural norms that make its applicability near-impossible is an effect of such a standard. The problem with the sameness standard is obvious, as demonstrated earlier in the paper.

Under the 'difference' standard, the law recognises the innate differences in different categories of persons and makes special provisions for such persons. Affirmative action is born out of such a standard. Allowing for legal reform in the law of the dwelling house to protect the widow, for example, would be a manifestation of the 'difference' principle (it recognises that widows are specially placed, as opposed to widowers). However, a legal recognition of such an inherent difference reinforces stereotypes and harmful cultural norms about women and their vulnerability.[22]

To avoid the pitfalls of either approach, Mackinnon propounds the 'Dominance' approach, which constructs vulnerability not on preconceived categories, but based on the distribution of power.[23] Cultural norms in a

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21 C. Mackinnon, *Towards a Feminist Theory of the State* (1989). ("Feminist Theory")

22 C. Mackinnon, *Substantive Equality: A Perspective*, 96(1) MINNESOTA LAW REVIEW, 2011.

23 Mackinnon, Feminist Theory, supra 21. (Please footnote correctly)

Hindu family reproduce power in familiar patterns- a male 'head' of the family, dependant spouse, children and elderly parents. However, a dominance approach to analysing vulnerability can also be expanded to protect other persons as well, such as trans* members of a family, partners in homosexual relationships, etc. With respect to the Dwelling House, reform in the law must recognise the mitigation of the suffering of vulnerable persons seen through the lens of dominance. In this regard, three approaches are analysed: the homestead model, a re-reading of social legislations specifically meant to protect women and the elderly, and existing rent-control law.

1. The 'Homestead' Model for the Widow

In a non-legal sense, a homestead is a house where a family dwells.[24] The idea of providing a homestead certain special exemptions in law originated in the State of Texas. The initial conception was that when a house is declared as a homestead, it enjoys exemption from execution and sale for the payment of certain debts. The policy behind such a measure was to recognise the importance of conserving homes and protecting the family.[25] Hence, initially, homestead rights meant that the homestead was protected from external creditors. This was gradually expanded to protect the wife against her husband, with legislations in the USA, Canada and England requiring that both spouses' consent be given while putting any form of encumbrance over the property.[26]

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24 D. Marshall, *Homestead Exemption- Oregon Law,* 20 OREGON LAW REVIEW, 328, 329 (1940).
25 Marshall, *supra* note 19 at 330.
26 A. Milner, *A Homestead Act for England?* 22(5) THE MODERN LAW REVIEW,458, 463 (1959).

1.1.1. The Model in Other Countries

In several countries, homestead rights have been further expanded to grant a surviving spouse[27] lifetime occupational rights over the homestead.[28] In most parts of Australia, the surviving spouse is granted a life-interest in the dwelling house.[29] This is also true of England, Wales, and several provinces of Canada.[30] In France, if there are children, the surviving spouse can choose between having a usufruct over the entire dwelling house, or ownership of one quarter. If there are no children, he or she is not given the option of taking the usufruct.[31] Moreover, unless expressly prohibited by a Will, a surviving spouse in France will be entitled to live in the dwelling house to the exclusion of other heirs for a period of one year after the death of the other.[32]

In the Canadian province of Alberta, there is a unique provision that protects the surviving spouse against fragmentation of the dwelling house by partition. The spouse is entitled to the entire dwelling house if the value of the estate is less than $40,000. If it is greater than $40,000, the spouse will be entitled to $40,000, and the remaining value of the estate will be divided amongst all the heirs (including the surviving spouse).[33]

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27 The gender-neutrality is worth noting.

28 Milner, *supra* note 21 at 475.

29 §49G, Australian Capital Territory: Administration and Probate Act 1929; New South Wales:§61D, Wills, Probate and Administration Act 1898; §39A, Queensland Succession Act 1981; South Australia: §72L, Administration and Probate Act 1919, etc.

30 Scottish Law Commission, Discussion Paper on Succession, 131 (2007) (Hereinafter, "Scottish Discussion Paper").

31 Art. 757, French Civil Code.

32 Art. 736, French Civil Code.

33 §s 3, 4, Intestate Succession Act, RSA 2000 (Alberta, Canada).

1.1.2. Viable Model for India?

It is worth considering if such a provision can be transplanted to India, a society where widows are highly stigmatised. Presently, the Hindu Adoptions and Maintenance Act 1956 governs matters of maintenance for the widow. The widow can claim maintenance from her husband's or father-in-law's estate.[34] As importance as this right is, claiming maintenance itself is a resource consuming process that necessarily requires the intervention of the Court. The gender and cultural norms that were previously mentioned in this paper are also factors that may prevent women from approaching the Courts to claim the remedy. Moreover, the amount given in maintenance is based on subjective considerations, and ends up being barely enough to prevent the widow from becoming destitute.[35] Therefore, a homestead model which grants the widow a life estate in the entire dwelling house (in addition to her specific share) is certainly a desirable solution. It provides much-needed security and protects her against strangers claiming joint possession. Moreover, as landholdings become increasingly fragmented in India, property when partitioned often becomes unviable as a dwelling house. Hence, homestead rights offers protection to the widow against partition as well. This suggestion is not even a radical transformation of Hindu personal law, as mentions of the practice of deferring the partition of the family estate until the death of the mother, are found even in ancient Hindu texts.[36]

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34 §19, Hindu Adoptions and Maintenance Act, 1956.

35 *See generally*, F. Agnes, *Conjugality, Property, Morality and Maintenance*, 44(44) THE ECONOMIC AND POLITICAL WEEKLY, 58 (2009).

36 MAYNE'S TREATISE ON HINDU LAW AND USAGE, 694 (16th Edn., 2008).

In countries such as Australia,[37] New Zealand,[38] Canada[39] and Scotland,[40] the homestead protection is also given to partners of civil unions and "common law" partners, who are merely *de facto* surviving spouses. If the homestead model is implanted to India, not insisting on a *valid* marriage to provide homestead rights to widows in India would be a welcome move towards protecting the second-wife in bigamous marriages as well as same-sex partners. Such a move will not be unheard of, as the Domestic Violence Act (discussed later in the paper) already protects women who are in relationships *in the nature of* marriage.[41] From the lens of dominance and vulnerability, the homestead model may be transplanted into Indian law, providing not only for widows, but also for any other members who would be left vulnerable by the partition of the Dwelling House.

2. A Re-Reading of Social Legislations

The Protection of Women from Domestic Violence Act, 2005 (hereinafter, "The Domestic Violence Act") and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter, "The Senior Citizens' Act") are social legislations which have been enacted for the benefit of women and elderly citizens respectively. They are liberal legislations providing a plethora of rights for these persons; rights over the Dwelling House can therefore easily be read into these legislations.

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37 Scottish Law Commission, Discussion Paper on Succession, , *supra* note 30 at 137.

38 Scottish Law Commission, Discussion Paper on Succession,, *supra* note 30 at 141.

39 Scottish Law Commission, Discussion Paper on Succession,, *supra* note 30at 140.

40 Scottish Law Commission, Discussion Paper on Succession,, *supra* note 30 at 28. (Please footnote this correctly)

41 §2(f), Protection of Women from Domestic Violence Act, 2005.

2.1 The Domestic Violence Act 2005

The Domestic Violence Act 2005 was enacted in order to provide effective protection to the Constitutional rights of women when they suffer from violence of any kind within the family.[42] It defines a "domestic relationship" in very broad terms, to mean "*a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family*".[43] Further, §17 of the Act ensures that every woman in a domestic relationship has a right to reside in a shared household. These two provisions taken together plainly mean that a woman, by virtue of being, or having been in a domestic relationship of any kind, has a right to reside in the shared household. Such a household is no different from a dwelling house. This implies that she can enforce this right by availing of residence orders[44] and protection orders[45] against any family member who attempts to evict her from this household.

The Courts have tried to interpret this right of the woman narrowly as well. In *Batra*,[46] the Supreme Court held that a "shared household" only means a household belonging to or taken on rent by the husband, or a household that belongs to the joint family that the husband is part of. Unfortunately, this is the law of the land at present, and has been affirmed by the Delhi High Court

42 *Preamble,* Domestic Violence Act, 2005.
43 §2(f), Protection of Women Against Domestic Violence Act, 2005 (Hereinafter, "Domestic Violence Act").
44 §2(p) *read with* §19, Domestic Violence Act, 2005.
45 §2(o) *read with* §18, Domestic Violence Act, 2005.
46 *S.R. Batra* v. *Taruna Batra*, (2007) 3 SCC 169.

even as recently as 2013.[47] However, the judgment is clearly bad law as an unreasonably restrictive reading of the scope of any of the sections of the Act is antithetical to its object. As was pointed out in a 2008 decision of the Madras High Court, a necessary implication of *Batra* is that husbands can alienate their property to third parties and then claim that the household is not a shared household.[48] Hence, a reading of the Domestic Violence Act that is in consonance with the intent behind its enactment squarely covers protective homestead rights (both in their marital home as well natal home) to daughters to the extent of a right to residence, if not a life-interest.

2.2 The Senior Citizens' Act 1956

The Senior Citizens' Act was enacted with the object of providing effective provisions for the maintenance and welfare of senior citizens.[49] It enables all senior citizens to file a claim for maintenance from their children,[50] and if they are childless, then from their relatives.[51] The Act defines maintenance to include food, clothing, medical attendance and treatment and *residence*.[52] Furthermore, the Act places an obligation on the children of aged parents to maintain the latter such that they may lead a normal life.[53] Hence, it is easy to make a case on the basis of this legislation, that aged parents can claim a right to residence in the dwelling homes of their children.

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47 *Barun Kumar Nahar* v. *Parul Nahar*, CS(OS) 2795/2011 (Delhi High Court).

48 *P. Babu Venkatesh, Kandayammal and Padmavathi* v. *Rani,* MANU/TN/0612/2008.

49 *Preamble*, Maintenance and Welfare of Parents and Senior Citizens' Act, 2007 (Hereinafter, "senior citizens' Act").

50 §4(i), Senior Citizens' Act, 2007.

51 §4(ii), Senior Citizens' Act, 2007.

52 §2(b), Senior Citizens' Act, 2007.

53 §4(2), Senior Citizens' Act, 2007.

3. Taking a clue from Rent-Control Legislation

Rent Control legislation in India offers useful insight into what law may look like if crafted through the lens of dominance and vulnerability. As they are enacted by state legislatures, there are several variations in the different state laws. However, a common feature is that of inheritability of tenancy. For instance, S.5 of the Delhi Rent Control Act provides that upon the death of the tenant, the tenancy shall devolve upon the spouse, child, parent or daughter-in-law (if widow of a pre-deceased son) provided that such member were living in the same house and were *dependent* on the deceased tenant.[54] The provision mentions categories of persons who are most likely to be vulnerable, but also mentions dependency as an additional criteria. This particular legislation does not address relationships outside marriage. However, similar protection can be given to members of the Dwelling House while expanding it to include other vulnerable categories of persons as well.

V. **CONCLUSION**

From an analysis of Hindu Succession Laws as well as the secular Transfer of Property Act, it is evident that the law around the dwelling house is currently tangled up in a patriarchal conception of family and women's autonomy. The consequence of this is that on the death of the male 'head' of the family, the dwelling house does not serve the vital function of protecting vulnerable members such as the widow, the daughter and the aged parents.

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[54] The Karnataka Rent Act, 1999 has a similar provision. In the Maharashtra Rent Control Act, 1999, S.7(15) broadens the scope of such inheritability, stating that *any member* of the tenant's family residing in the premises will be considered a tenant, upon the original tenant's death.

The 2008 amendment to the Hindu Succession Act repealing Section 23 tried to undo this patriarchy. The move is welcome and commendable, although its efficacy is hindered by the juxtaposition of prevalent cultural and sexual norms that dictate women's attitudes towards claiming their share of property.

Hence, apart from waiting for the elusive organic change to take place in society, there are some other measures that the Legislature and the Courts can undertake so that laws reflect non-patriarchal attitudes. Laws relating to the dwelling house must be interpreted with the object of protecting those members who have the most to lose if they lose their rights over the house, rather than with the object of preserving vague notions of family. Two ways to do this have been suggested. First, the patriarchal, narrow view of "family" that Courts have adopted while interpreting Section 44 of the Transfer of Property Act must be changed. Second, law and policy must consciously work towards securing the interests of the most vulnerable members of the family. This can be done by taking lessons from the homestead model that is followed in the West, and by a creative reading of social legislations such as the Domestic Violence Act and the Senior Citizens' Act. The Rent Control regime in some states also provides useful hints on how vulnerability is to be constructed, as it provides tenancy rights to the *dependant family members* upon the death of the tenant.