Chapter-3
SUCCESSION

3.1 INTRODUCTORY REMARKS

The rights of women to succeed to any property vary from one religion to other depending on the personal laws followed by them. The religion played a very important role in the devolution of property on the woman in the earlier days. Initially the entire law of succession was uncodified but with the advent of modern governments and legislatures, most of the succession laws have been codified and consolidated. However there is no uniformity in the succession law relating to women following different religions. Even in England, the English women did not enjoy equal rights in the property and succession until the Equity courts started applying the principles of equity.

In India, the women enjoyed a secondary status with regard to the succession. This unequal status was sought to be removed by certain legislations governing different religions like The Hindu Women's Rights to Property Act, 1937, The Hindu Disposition of Property Act, 1916, The Hindu Inheritance (Removal of Disabilities) Act, 1928, The Indian Succession Act, 1925, and The Cochin Christian Succession Act, 1902.

The law relating to testamentary succession among Hindus, Christians and parsis etc., is contained in the Indian Succession Act, 1925. It does not make any distinction between the rights of women and men under a will.
3.2 HINDU WOMEN AND SUCCESSION

The Hindu law of intestate Succession has been codified in the form of The Hindu Succession Act, 1956, which bases its rule of succession on the basic mitakshara principle of propinquity, i.e., preference of heirs on the basis of proximity of relationship. Prior to 1956, there used to be two major schools of Hindu law viz. mitakshara and Dayabhaga which laid down different principles of succession. There was no uniformity in the rights of the Hindus following different schools to succeed to the property of a Hindu who died intestate i.e., without leaving a will behind him.

Before 1956, the property of a Hindu woman was divided into two heads viz. (a) Stridhan (b) Woman's Estate. Stridhan literally means woman's property. The Hindu law interpreted Stridhan as the properties received by a woman by way of gift from relations. It included movable as well as immovable properties. The texts relating to Stridhana except in the matter of succession are fairly adequate and clear. Manu defined Stridhana as that what was given before the nuptial fire, what was given at the bridal procession, what was given in token of love and what was received from a brother, a mother, or a father”.¹ The property inherited by a woman from a male or female was not considered as Stridhana and it was not her absolute property for the purpose of inheritance.² However Bombay school considered the property inherited by a woman from a male other than a widow, and mother etc. as Stridhana. Under all schools of Hindu law, the property obtained by a woman in lien of maintenance by adverse

¹ See Mayne’s Hindu Law and Usage, 13th Ed. 1995 at p. 875.
possession and property purchased with Stridhan was considered as Stridhan.

- The Hindu woman had full rights of alienating the "stridhan", being its absolute owner. She could sell, gift, mortgage, lease or exchange the same in any manner she liked.

- On her death, all types of Stridhan passed to her own heirs and not to the heirs of her husband. Thus a Hindu woman had unlimited rights of enjoyment, alienation and possession in respect of "stridhan" as its absolute owner.

The Supreme Court has explained the meaning and nature of "Stridhana" in a recent judgment. The properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof.

The other type of property that could be devolved upon the Hindu woman was called 'woman's Estate'. It was also called widow's estate. A Hindu woman could be the owner of woman's Estate in the same way as any individual subject to two basic limitations.

(a) She could not alienate the property (Corpus) and

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3 Rashmi Kumar v. Mahesh Kumar Bhada (1997) 2 SCC 397
(b) on her death, it devolved upon the next heir of the last full owner.

In other words, she had only 'limited estate' in respect of this kind of property. She had full powers of possession, management and enjoyment of such property but she had virtually no power of alienation or transfer. However she could alienate the property in certain exceptional cases like (a) legal necessity i.e. for her own needs and for the need of the dependants of the last full owner, (b) for the benefit of estate and (c) for the discharge of indispensable religious duties such as marriage of daughters, funeral rites of husband, his 'Shraddha' and alms to poor for the salvation of his soul. In other words she could alienate the property for the spiritual benefit of the last full owner but not for her own spiritual benefit. So the rule in Hanooman Prasad v. Babooeem Mumraj4 applied to alienation of woman's estate also. The women's estate was normally taken by the woman either by way of property obtained by inheritance or as share obtained on partition.

The foregoing brief discussion makes it amply clear that the position of Hindu woman in relation to property and succession was not satisfactory and uniform. The rights varied depending on the school to which she belonged and the nature of property that devolved upon her. The Hindu Women's Right to Property Act, 1937 made some changes in succession in respect of separate property of a mitakshara Hindu and in respect of all properties of a Dayabhaga Hindu. It provided for right of survivorship and right of partition to a Hindu widow of mitakshara school in coparcenary property. However she was not accorded the

4 (1856) 6 MIA, 393. Also see Harisatya v. Mahadev, AIR 1983 Cal. 76.
status of a coparcener. This uncertainty was put to rest by codifying the entire Hindu law of succession in 1956.

The Parliament has enacted the Hindu Succession Act, 1956 to amend and codify the law relating to intestate succession among Hindus. This Act is applicable to all the Hindus, Buddhists, Janis and Sikhs by religion. Section 14 of the Act made radical changes in the rights of a Hindu woman to succeed to a property. "Property" in this context includes both movable and immovable property acquired by a female Hindu by inheritance or device or at a partition or in lieu of maintenance or by gift from any person, before or after her marriage. It is a comprehensive definition which covers all kinds of property and also covers the erstwhile women's estate.

Section 14 has been specifically made applicable to the pre-Act women's estate also and it has been given retrospective effect. Thus the rule of full ownership is applicable to all kinds of properties vested in and held by a woman when the Act came into force.

The Act abolished the limited ownership of a Hindu woman in respect of the property held by her as woman's estate, by converting it into full ownership. Limited owner commonly means a person with restricted rights as opposed to full, owner with absolute rights. In relation to property absolute, complete or full ownership comprises various constituents such as the right to possess, actual or constructive, power to enjoy i.e. determining the manner of use extending even to destroying, right to alienate, transfer or dispose off, etc. Any restriction or limitation on exercise of these rights may result in limited or limited ownership.

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5 See Explanation to Section 14 of the Act.
qualified ownership.\textsuperscript{6} Now, after 1956, no distinction could be made between the stridhana and women's estate, as the erstwhile women's estate is converted into 'stridhana' by Section 14 of the Act.

Where any property is given to a female Hindu in lieu of her maintenance before the commencement of the Hindu Succession Act, such property becomes the absolute property\textsuperscript{1} of such female Hindu on the commencement of the Act provided the said property was possessed by her, by virtue of Section 1 14 (1) of the Act. This is not withstanding the limitations, or restrictions contained in the instrument, grant or award where under the property are given to her.\textsuperscript{7}

The Mitakshara bias of preference of males over females and of agnates over cognates has been considerably whittled down by the Act. An analysis of the various provisions of the Act makes it clear that the position of women has improved considerably, as compared to the pre-Act position in the matter of succession. In the matter of succession to the property of a Hindu male dying intestates. Section 8 lays down that it shall devolve firstly upon the heirs specified in Class-I of the Schedule to the Act, secondly, in the absence of any Class-I heirs on the Class-II heirs; Thirdly in the absence of Class I and II heirs upon the agnates\textsuperscript{8} of the deceased and lastly if there are no agnates, thereupon the cognates\textsuperscript{9} of the deceased.

It is worthwhile to note that there are as many as 8 females in Class-I heirs. They are (1) daughter (2) mother (3) widow, (4) daughter of a

\textsuperscript{6} *Kalavati Bai v Sourya Bai* (1991) 3 SCC 410 at 424.
\textsuperscript{7} *Nazar Singh and other v. Jagit Kaur and others*, (1996) 1 SCC 35 See also *Kalavati Bai v. Sourya Bai* (1991) 3 SCC 410
\textsuperscript{8} 'Agnate' is defined by Section 3(a) of the Hindu Succession Act, 1956.
\textsuperscript{9} Cognate is defined by Section 3(a) of the Hindu Succession Act, 1956.
predeceased son (5) daughter of a pre-deceased daughter, (6) widow of the pre-deceased son (7) daughter of a pre-deceased son of a pre-deceased son and (8) the widow of a pre-deceased son of a pre-deceased son. All these female Class-I heirs take their shares on par with their male counter parts as per the scheme of distribution contained in Section 10 of the Act. Similarly, there are number of females among the Class-II heirs. With regard to the remote heirs, the rule of agnatic preference over cognatic heirs reasserts itself, which is an indication that there is still some degree of discrimination against females.

The Hindu Succession Act has abolished the practice of reversion. It may be recalled that one of the characteristic features of the women's estate was that the female owner had no independent stock of descent in respect of it. On her death, the estate reverted to the heirs of the last full owner as if the latter died when the limited estate ceased.¹⁰ Such heirs could be male or female. They were known as reversioners who had only a speck succession during the life time of the owner of the women's estate or till termination of such estate by other means like surrender, her remarriage etc.

Even though the Act has abolished this discriminatory practice, still it makes a distinction between the various properties inherited by the female from different sources, thus the concept of reversionary inheritance still lurks in the back ground. It could be clearly seen by the impact of Section 12 which regulates the order of succession among agnates and cognates of the deceased -male dying intestate and more particularly Section 15 (2).

¹⁰ Moni Ram v. Kerry, (1880) 7 IA 115.
Section 15 deals with succession to a Hindu Female's property of a female Hindu. This is the first statutory provision dealing with succession to the property of female Hindu. The previous enactments like the Hindu Law of inheritance (Am) Act, 1929 and the Hindu woman's Rights to Property Act, 1937, dealt with succession to the property of a male. For the purpose of succession, a female Hindu's property is divided into three categories; (1) property inherited by a female from her father or mother; (2) property inherited from her husband or father-in-law and (3) Property which she herself required any other manner from any other source as her absolute property. The property mentioned in the first two categories devolves upon her death intestate upon the heirs of her father in the absence of any son or daughter of the deceased and upon the heirs of the husband respectively. Her absolute property mentioned in the third category above devolves upon any of the five classes of the heirs described in Section 15 (1) subject to the rules set out in Section 16: Her sons, daughters who include children of pre-deceased son or daughter and husband take precedence over the heirs of the husband.

Section 23 makes special provision respecting dwelling houses. The object of the section seems to be to prevent fragmentation or disintegration of a family dwelling house at the instance of a female heir to the prejudice of the male heirs if a female Hindu inherits a dwelling house along with male heirs she has no right to claim partition of such house until the male heirs divide their respective shares. However a female heir, not being an unmarried daughter is entitled to reside in the dwelling house. A "deserted wife or a female

separated from her husband or a widow is entitled to a right of residence in the dwelling house. A share in a dwelling house cannot be claimed by married daughters.\textsuperscript{12}

The expression 'dwelling house' though not defined by the Act, is referable to the dwelling house in which the intestate Hindu was living at the time of his/her death; he/she intended his/her children who continued to normally occupy and enjoy it. He/She regarded it as his/her permanent abode.\textsuperscript{13} Under Section 23 a female heir's to claim partition of the dwelling house of a Hindu dying intestate is to be deferred or kept in abeyance during the life time of even of a sole surviving male heir of the deceased until he chooses to separate his share or ceases to occupy it or lets it out.

Section 24 lays down a disqualification for succession against (i) the widow of a pre-deceased son (ii) the widow of a predeceased son of a pre-deceased son (iii) the widow of a brother of a Hindu intestate if such widow has remarried on the date when the succession opens. The remarriage, if takes place after the opening of the succession does not divest such females of the property.\textsuperscript{14} The disqualification is confined to only three classes of widows mentioned supra and not to the other widows. In other words, once the succession is opened, a widow can not be executed from succession even if she marries again. In \textit{Velamuri Venkata Siva Prasad v. Kothuri Venkateshwarlu},\textsuperscript{15} the Supreme Court held that Section 2 of the Hindu Widow's Remarriage Act, 1856 for cesser of widows rights in deceased husband's property, remained

\textsuperscript{12} Dharam Singh v. Aso and another, 1990 (Supp) SCC 684
\textsuperscript{13} Narsimham Murthy v. Sheetala Bai (1996) 3 SCC 644.
\textsuperscript{14} Chanda v. Khubala, AIR 1983 Pat. 33.
\textsuperscript{15} (2000) 2 SCC 139.
effective and would be applicable even in case of a void marriage. The court further held that the same remained effective even after the enactment of the Hindu Succession Act, 1956 and was repealed only by Act 24 of 1983 and not by the 1956 Act.

Coparcenary means that part of a Joint Hindu family which consists of persons who by virtue of relationship, have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce its partition. A female Hindu was not considered as a coparcener. Thus she could not enjoy the right of survivorship. She had only certain inferior rights such as that of maintenance since she was not a coparcener, she was not entitled to act as the manager or karta of a Joint Hindu Family. The Hindu women's Rights to property Act, 1937, makes a serious inroad upon the rule of survivorship, by making the wives of coparceners entitled to the interests of male coparceners in a Mitakshara family on their death. However under the provisions of this Act, the male issue of the deceased coparcener remained coparceners along with the other surviving coparceners. The Hindu Succession Act, 1956 did not disturb this principle and still retained the same concept of Mitakshara coparcenary.

Certain States in India like Andhra Pradesh, Tamil Nadu and Maharashtra have realized the difficulty that arises by excluding the daughter's right to claim partition in coparcenary property. In order to confer equal rights on Hindu women along with the male members in the coparcenary under the Hindu mitakshara law, these State

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legislatures have amended the Hindu Succession Act, 1956 to achieve the Constitutional mandate of equality.

- A clear perusal of the Andhra Pradesh Amendment inserted by Andhra Pradesh Amendment Act 13 of 1986 shows that, in the State of Andhra Pradesh.

- The daughter of a coparcener shall become a coparcener by birth in her own right and her status is equal to that of a son. She enjoys the same rights in the coparcenary property as a son. She is entitled to all the rights of coparceners including the right of survivorship. She will be subject to the same habitats and disabilities in respect of coparcenary property as the son (S. 29-A).

- She becomes the absolute owner of the property inherited by her as a coparcener (S. 29-A).

- When a female Hindu dies after coming into force of this amendment (i.e. after 5-9-1985), having at that time interest in Mitakshara coparcenry, her interest will be devolved by survivorship upon the other coparceners. But if the deceased dies leaving behind any children or children of pre-deceased child at the time of death, the devolution will be in accordance with the provisions of the Hindu Succession Act and not by survivorship. (S. 29-B)

Similar amendments are made in Tamil Nadu by the Hindu Succession (Tamil Nadu Amendment) Act, 1990 (1 of 1990) w.e.f. 25-3-1989, and in Maharashtra by the Hindu Succession (Maharashtra Amendment)
Act, 1994 (46 of 1994 w.e.f. 22-6-1994). These legislations are beneficial to the women who form part of vulnerable sections of the society and it is necessary to give a liberal effect to them.\textsuperscript{18}

### 3.3 MUSLIM WOMAN AND SUCCESSION

The Muslim Law of Succession is basically different from the other indigenous systems of India. The distinction between the self acquired and ancestral properties, concepts of right by birth coparcenary property, survivorship and partition etc. are not known to Islamic law of succession which is based on the tenets of the holy Qur’an. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property in lieu of maintenance.\textsuperscript{19} Every woman who inherits some property is its absolute owner like a man. There is no concept of either stridhan or women’s limited estate. Consequently there is no scope of any reversion upon the death of a Muslim woman because it devolves upon her own shares and not on those of her husband.

The Muslim law of succession which is uncodified, makes no distinction between a property of deceased male or female. Some authors on Muslim law feel that the Muslim law of property and succession in India has been considerably influenced by the local concepts and institutions.\textsuperscript{20} Inheritance at Muslim law— position of woman:

Position of women in Pre-Islamic Law: the principles of the Pre-

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\textsuperscript{19} Dr. Tahir Mahmood: The Muslim Law in India, (1980) at p. 243
\textsuperscript{20} Ibid.
Islamic customary law may be summarized as under:

- The nearest male agnate(s) succeeded
- Females and cognates were excluded,
- Descendants were preferred to ascendants and ascendants to collaterals
- Where the agnates were equally distant, the estate was per capita.

It is clear that the females were discriminated against, as they were virtually excluded from the inheritance.

Position of women in Islamic Law: The main reforms by Islam may be stated briefly as under.21

- The husband/wife were made an heir
- Females and cognates were made competent to inherit
- Parents and ascendants were given the right to inherit even when there were male descendants
- As a general rule, a female was given one half the share male.

The newly created heirs were mostly females, but where a female was equal to the customary heir in proximity to the deceased, the Islamic law gave her half the share of the male. For example, if a daughter co-existed with the son, or a sister with a brother, the female obtained one share and the male two shares.

At present, males and females have no equal rights over property. This is manifest when there are two heirs of opposite sex in the same
degree. Then the male heir takes two shares and the female heir takes only one share. Thus, a daughter does not, however, by reason of her sex, suffer from any disability to deal with her share of the property. She is the absolute owner/master of her inheritance. The same rule applies to a widow or a mother. There is no such thing as a widow's estate, as in Hindu law, or the disabilities of a wife, as under the older English common law.

Hanafi Law of Inheritance: Under the Hanafi law, the heirs of a deceased, male or female, fall under the following classes:

I The sharers,
II The Residuaries,
III The Distant Kindred and
IV The State by escheat

There are twelve sharers in number who are given specific shares. However their shares are not permanently fixed as each heir may be affected by the presence of other sharers. Sometimes, a sharer may be totally excluded from inheritance. The sharers include Father, True Grandfather, Husband, wife, mother, True Grandmother, Daughter, Son's Daughter how so ever, uterine Brother, Uterine Sister, Full Sister, Consanguine-Sister. There are as many as 8 female sharers who could inherit the property of a deceased Muslim.

They are certain shares who are excluded from taking their specified sharer, if a residuary of equal rank co-exists. In such a case they become residuaries. They are also called chronic residuaries. They are entitled to inherit, if there are no sharers, if there are sharers, but there

is a residue left after satisfying their claims. In the presence of such circumstances either the whole inheritance or the residue as the case may be devolves upon residuaries in the order prescribed by the Koramic Text. These residuaries include:

I. Descendants viz (1) Son (2) Son's Son how so ever

II. Ascenda viz (3) Father (4) True Grandfather how high so ever


In all, only four females are included among the residuaries in the form of Full sister, consanguine sister, the daughter and the son's daughter how low so ever: No other female can inherit as a residuary. All the four females inherit as residuaries with corresponding males of a parallel grade. Of the five heirs that are always entitled to some share of the inheritance and who are not liable to exclusion in any case viz (1) the child i.e., son or daughter (2) father (3) mother (4) husband (5)

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wife, there could be three females in the form of mother, daughter and wife.

In the absence of sharers and residuaries, the inheritance is divided among 'distant kindred' which consists of four classes viz the Descendants of the deceased, ascendants of the deceased descendants of parents and descendants of immediate grand parents. There are number of females in all these four classes, who are remotely related to the deceased. The first of the class exclude the second and the second excludes the third, so on.

The Shias divide heirs into two groups, (i) heirs by consanguinity i.e. blood relations and (ii) heirs by marriage i.e. husband and wife. Among the blood relations mother, daughter, sister, grandmother, paternal aunt, and maternal aunt are the females who are entitled to inherit the property of the deceased. They are called sharers. They take different shares depending on certain conditions like existence of other sharers and relatives. However it may be noted that wife takes normally $\frac{1}{8}$th share in the property of the husband but the husband takes $\frac{1}{4}$th share in the property of the wife i.e. double the share of the wife in similar circumstances. Among the Shias, there is no separate class of heirs corresponding to the distant kindred of Sunni law.

Even though the protagonists of the Muslim law claim that there is absolute equality among the women and men in the matter of succession, there are certain provisions which are loaded in favour of the male inheritors as they take more shares, compared to their female counter parts. For example, among the Shias, a childless widow takes no share in her husband’s land but she is entitled to her one-fourth
share in the value of trees and buildings standing thereon, as well as in his movable property.  

3.4 CHRISTIAN WOMEN AND SUCCESSION

The entire Christian law of succession is codified and governed by the Indian Succession Act 1925. The Act regulates the intestate as well as testamentary succession among the Christians and also others

Part V of the Act, and Sections 29-56 deal with the intestate succession. This part is not applicable to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina. In other words this part is applicable to the property of the Christians and Parsis only. Chapter-II of Part V of the Act deals with the Rules in cases of Intestate other than parsis. According to Section 32, the property of an intestate devolves upon the wife or husband on upon those who are the kindred of the deceased.

According to Section 33, where the intestate has left a widow and also any lineal descendants, one third of his property shall belong to his widow and the remaining two thirds shall go to his lineal descendants. But if there are only distant kindred left along with the widow but no lineal descendants, one half of his property shall belong to his widow. If he has not left behind any lineal descendants or distant kindred but only the widow, she takes the entire property. Therefore the share of the wife is not fixed and is variable depending on certain circumstances.

Thus the widow is made to share the property along with the other

\footnote{Mulla: Principles of Mohammedan Law, 1990 at para 113, p. 98}
relatives of the husband in certain cases. On the whole the position of the Christian women is unhappy as was the case of the Hindu women prior to the Act of 1956. The lineal descendants and the kindred also consist of many female heirs who take their shares in the property of the intestate as per the Rules of distribution contained Sections 36 to 49 of the Indian Succession Act, 1925.