

CHAPTER –III

THE HINDU WOMEN’S RIGHT TO PROPERTY ACT, 1937 & ITS EFFECTS

The law of Property of a Hindu female is marked by vicissitudes starting from the Vedic society when female enjoyed equal status economically and wife enjoyed equal rights in husband’s house¹ to a very inferior position when Manu declared: a wife, son and a slave are declared to have no property and if they happened to acquire it would belong to male under whom they are in protection.² The daughter’s right to inherit the patrimony was also disputed and she inherited only when she was a putrika, a brother less girl. In the joint family, the position of female was relegated as only entitled to maintenance in the family. But whatever rights were given by the Smritikaras to a female to inherit the property she was limited owner of the property and could enjoy it only during her lifetime and the property reverted back from where it came. It was due to the fruitful efforts of social reformers in the British period, the Hindu Law of inheritance (Amendment) Act, 1929 and Hindu Women’s Right to Property Act, 1937 were passed to amend the law of all schools materially to confer greater rights on women.

INTRODUCTION:

The Hindu women’s Right to Property Act came into force on the 14th April, 1937 and has no retrospective operation. As the Act was considered to be defective, it was amended by the Hindu Women’s Right to property (Amendment) Act XI, 1938, which was declared to have retrospective effect, from the 14th April, 1937. Ever after the amendment, the Act remained defective and obscure in some respects.

¹ Sir Gooroodas bannerjee in Marriage and Stridhana, remarks, “nowhere were proprietary rights of women recognized so early as in India; and in very few ancient systems of law have these rights been so largely conceded as in our own”. P.V. Kane has quoted some passages form the Vedas which support the view that women owned property in those times, Kane HDS, Vol. III (1968). Ch. XXX.

² Supra Note 1

The Act does not confer upon Hindu widow of any interest in agricultural land (Ante para 52), succession to shebaitship, in which an element of beneficial or personal interest is normally involved is governed by the provision of the Act.³ The act applies to moveable properties in foreign countries.⁴

As there was no specific legislation extending the Act to the erstwhile Indian State of Kutch it was held that the old Hindu Law applied and the nephew would be preferential heir to a son's widow.⁵

The Act of 1937 conferred new rights on the widows in modification of previous decisions. It recognized three widows, viz. intestate's widow, his son's widow and the widow of a predeceased son of a predeceased son.

SCOPE AND OPERATION OF THE ACT:

The Act has no retrospective operation⁶. It has no application to properties situated in foreign countries⁷, or to properties which did not belong to the deceased in his own right but were vested in him as a trustee⁸. The Act does not apply to the property of a Hindu female⁹. The Act applies only when a Hindu dies intestate either partially or wholly.

Under the Act a Hindu widow had no doubt a demonstrable right to obtain the entitlement to which her husband was entitled to either in his self-acquired property or in the coparcenary in which he was a member. She could demand a partition of her share from the other sharers or coparceners. But the overall limitation or circumscription which was conceived by the Act was that she should not for reasons not contemplated and accepted by the then personal law of the

³ Angurbala vs. Debarata (1951) SCJ. AIR 1951, SC60, 1952 SCJ

⁴ Commenting upon Umaval Achi vs. LaxmiAchi (1945) FCR I.

⁵ Bhano Bai vs. Dheoji Dhana 1950 Kutch, 43.

⁶ Manohar Lal vs. Bhuri Bai, 1972 S.C. 1369, also see N.R. Raghvachariar, Hindu Law: Principles and precedents, 8th Ed. 1987 pg. 576.

⁷ Umayal vs. Lakshmi, (1944) 1 M.L.J. 70

⁸ Hazarilal vs. Mahesh, 1961 M.P.L.J. 519

⁹ Sham Lai vs. Amar Nath, (1970) 1 S.C.J. 503

Hindus, sell or alienate her share except for accredited and sanctioned purposes.¹⁰

The provisions of the Act so far as succession to the separate property of a Hindu is concerned may be summarised as follows:

- (i) His sons, his widow, the widows of his predeceased sons, his son's sons and son's son's sons and the widows of predeceased sons of predeceased sons, succeed together to that property with this qualification that if the parties are governed by the Dayabhaga School in the presence of the son his own son cannot claim any interest in the property inherited.
- (ii) The share of the widow of a propositus is equal to that of a son where there is a son or son's widow or grandson or grandson's widow or great-grandson. If the propositus has left more than one widow of his, then all such widows together will take the share of a son. If the propositus has left only his widow or widows and none of the other heirs mentioned in the Act, then she or they take the whole estate.
- (iii) The share of the widow of a predeceased son is equal to that of a son provided that in the case of the existence of more than one widow of a predeceased son, all such widows are entitled to claim only one such share and provided further that if there is a son of such predeceased son all such widows will take together a share which is equal to that of a grandson.
- (iv) Similar provisions apply in the case of the widow or widows of a predeceased son of a predeceased son.
- (v) Each of the widows above-mentioned is entitled to claim and sue for partition and delivery to her of her share under the Act.

¹⁰ Narasimhachari vs. Andalammal, (1978) 2 M.L.J. 524

In the case of a widow of a member of a Mitakshara coparcenary she virtually steps into the shoes of her husband and is entitled to claim a separation and delivery to her of his share both as against his sons and as against his other coparceners, whether they be ascendants, descendants or collaterals of her husband. Her existence suspends the rule of survivorship as to the deceased's interest but the rule continues to operate quoad the other coparceners and their interest as also the interest of the widow is liable to fluctuate by births and deaths in the coparcenary as before subject only to her statutory right.¹¹

The term "widow" necessarily denotes the relationship with a deceased husband who before his death was her husband. She may be a widow of her deceased husband for purposes of Section 3 of the Act and she may continue as the wife of her other husbands who had married her along with her deceased husband in a community where polyandry was permitted.¹²

APPLICABILITY OF THE ACT:

Section 1- Hindu Women's Right to Property Act, 1937 applies only to the separate property left by a Hindu male. It does not apply either to the coparcenary property or the property of a Hindu female.¹³

OBJECT OF THE ACT:

Section 1 in investing the widow of a member of a coparcenary with the interest which the member had at the time of his death has introduced changes which are alien to the structure of a coparcenary. The interest of the widow arises neither by inheritance, nor by survivorship, but by statutory substitution. By the Act certain antithetical concepts are sought to be, reconciled. A widow of a coparcener is invested by the Act with the

¹¹ Bondhu vs. Ramdayal, AIR 1960 M.P. 51 (F.B.)

¹² Krishna vs. Ammalu, 1971 Ker. L.T.599: 1972, Ker. 91

¹³ Shamlal vs. Amarnath, AIR 1970 se 1643: (1970) 1 sec 33: (1970) 1 SCJ 803: (1970) 2 Mad LJ (SCL: (1970) 2 Andh WR 5

same, interest which her husband had at the time of his death in the property of the coparcenary. She is thereby introduced into the coparcenary, and between the surviving coparceners of her husband and the widow so introduced, there arises community of interest and unity of possession. But the widow does not, on that account, become a coparcenary though invested with the same interest which her husband had in the property; she does not acquire the right which her husband could have exercised over the interest of the other coparceners.¹⁴

ACCORDING TO SECTION 3 OF THE ACT:

- (i) When a Hindu governed by the Dayabhaga school of Hindu law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow or if there is more than one widow all his widows together shall subject to the provisions of sub section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son.

Provided that the widow of a predeceased Son shall inherit in like manner as a son if there is no son surviving of such predeceased son and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son.

Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

- (ii) When a Hindu governed by any school of Hindu Law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property his widow shall subject to the provision of sub section (3), have in the property the same interest as

¹⁴ Satrughan Isser vs. Subujpari, AIR 1967 SC 272: (1967) 1 SCWR 179: (1966) 2SCA 340: (1967) 1 SCR 7: 1967 SCD 388.

he himself had.

(iii) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Women's estate, provided however, that she shall have the same right of claiming partition as a male owner.

(iv) The provision of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian succession Act, 1925 applies:

AMBIT AND SCOPE OF SECTION 3(2):

The persona of the husband after his death continues through his wife who is the surviving half of the husband and the husband continues to live through the widow so long as the widow is alive. It was this concept of the Hindu law which was sought to be recognised and given effect to by the Act of 1937. In these circumstances, therefore, when the Legislature used the expression "the same interest as he himself had" it would include all the bundle of rights possessed by the husband which would devolve on the wife and if there were to be any limitations on those rights they were spelt out by sub-section (3) itself. Sub-section (2) of Section 3 of the Act further conferred on the widow the right to demand partition and on partition she was entitled to get the same share as her husband. Thus the position appears to be that a Hindu widow was introduced for the first time into the Hindu coparcenary having the same rights as her husband and became as it were a member of the Hindu coparcenary with two qualifications, viz.; (1) that she had only a limited interest; and (2) that she could not be a coparcener because having regard to the nature of her entry into the family after marriage with her husband there was no question of her getting interest in the Hindu coparcenary by birth which is one of the most important incidents of a Hindu coparcenary. All the other rights of a

coparcener were duly conferred on her by the Act of 1937.

NATURE OF WIDOW'S ACQUISITION OF INTEREST:

Section 3 (2) - It is not similar to that interest which female of Hindu joint family acquires on partition, The interest which widow acquires under Section 3(2) of the Act has no analogy with the interest which a female member of a joint Hindu family acquires in the property of the joint family allotted to her on partition between her sons or grandsons. Hindu widow acquires under Section 3(2), even before division of the property, an interest in property and that interest gets defined as Soon as an unequivocal demand for partition is made by her.¹⁵

AMBIT AND SCOPE OF SECTION 3 (3):

The right to claim partition which a male owner may exercise is conferred upon a Hindu widow by Section 3(3). On the making of a claim for partition, the interest of the widow gets defined. The right which the widow may claim is not different from the right which her husband could claim if he had been alive; therefore, the right of the coparceners to take the joint property by survivorship on the death of a coparcener does not service a demand for partition by the widow in the coparcenary.¹⁶

ACCORDING TO SECTION 4 & 5:

S.4 nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this act S. 5 For the purpose of this Act, a person shall be deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Thus where a Hindu male governed by Mitakshara law died, his separate property and where a Hindu male governed by Dayabhaga School died, all his

¹⁵ Supra Note 14

¹⁶ Supra Note 15

property, the widow would inherit along with the male issue. The Act gave the widow equal share as that of her son in the intestate's separate property and in default of a son she inherited the entire property. With respect to joint family property she was given "the same interest as he himself had." If there were more widows than one, all of them together took one share. In all cases, the widow took a women's estate in the property. The widow was given the same right of claiming partition as a male owner and this marks the abrogation of the right of survivorship.

Before the passing of the Act she was not entitled to inherit any property but was entitled only to maintenance.¹⁷

CHANGES EFFECTED BY THE ACT:

The Act replaces the rule of Hindu law recognized in all the states except in Madras where it has become obsolete, that a widow was entitled to share when her sons or her step son have actually divided the estate between themselves.¹⁸ Under the Act the widow on her husband's death gets a right to the same share as a son along with her sons or step-sons, independent of any partition which may or may not be entered into by them. In Madras, of course, the change effected by the Act is much greater. What is more, it repeals in the States, the older rule according to which a widow succeeds only on failure of male issue. For instance, even where her husband leaves an only son and there can be no question of partition, she succeeds along with him for the share of a son. Evidently following the view of Visvarapee (para 457), the Act makes a widowed daughter-in-law and a widowed-grand-daughter-in-law entitled to share along with, or in default of, the male issue and the widow. It brings the Mitakshara and Dayabhaga system closer together by conferring upon the widow of a member of an undivided family the right to inherit his coparcenary interest. In every case she will be entitled to enforce a partition also.

¹⁷ Naresh Jha vs. Rakesh , AIR 2004 Jhar 2.

¹⁸ Partap Mull Aggarwala vs. Dhanabati Bibi (1936) 631A 33; 63 cal.

While the object of the Act is to confer new rights of succession upon the widows mentioned in it¹⁹, it not only alters the order of succession, but involves far reaching consequences in many departments of Hindu law, particularly in law relating to Mitakshara coparcenary, where the provisions of the Act are clear.

But the legislature may well be presumed to have left Hindu Law unaltered in other respects. The Act must therefore be so construed as not to create a greater departure from Hindu Law as it necessarily implies.²⁰ The definition introduced by the amending Act of "Intestacy" in Sec. 5 does not remove the difficulty created by the words "dies intestate" in Sec. 2 as to the scope and operation of sub sec. (2) of Sec.3. The intention of the legislature evidently is that sub section (2) of section 3 should apply in every case and that is why the inappropriate words "dies intestate" which stood in that sub section was repealed. Those words should also have been omitted from Sec. 2. As the Act stands, on a strict construction sub sec. (2) of Sec. 3 can apply only when under Sec. 2 a Hindu dies intestate; especially as those words are not required in connection with Sec. 3(1), as they are already there, if therefore a man has made a complete and valid disposition of all his separate and self acquired property he cannot be said to have died intestate. But as intestacy cannot by any legal possibility be a condition for the operation of sub sec. (2) of sec. 3 the words "dies intestate" in sec. 2 must be treated as surplusage having no meaning.

EFFECT OF THE ACT ON THE LAW OF DEVOLUTION UNDER THE DAYABHAGA:

The only change is that on the death of a Hindu, not only his sons succeed but also his widow and the widows of predeceased sons and the widows of predeceased sons of predeceased sons can succeed.

¹⁹ Jabaobar v Puranmal ILR (1944) Nag 832, AIR 1944 Nag 243, 244.

²⁰ Secretary of State for India v Bank of India Ltd. (1938) 65 IA 286, 298; Maxwell, 7th ed. P. 71.

A widow or the widowed daughter-in-law can succeed to the property of a Hindu under the Act freed from the restriction imposed by the Dayabhaga School that she should be chaste at the time the succession opens. On remarriage she forfeits the interest that she has taken, her share then going to the persons who would be the heirs of the person as whose heir she had originally taken the property. The same rule applies if she dies. Thus if on the death of a Dayabhaga Hindu, his widow, his son, the son of a predeceased son and the widow of another predeceased son had succeeded to his property, the subsequent death of the widowed daughter-in-law would enable the rest of the heirs of her father-in-law to take that interest by succession as the property of the father-in-law and not by survivorship as coparceners under the Mitakshara. If in this illustration the son subsequently dies, his share would be taken only by his mother as his own heir and not by his co-heirs.

In one case²¹, however, before the Calcutta High Court, it was held that where a Hindu died leaving two sons, a widowed daughter-in-law, and her husband's daughter and the daughter-in-law died subsequently, the share taken by her would go to her father-in-law's heir to the exclusion of her husband's daughter, and if instead of a daughter, the daughter-in-law's husband should have left a son, the daughter-in-law's share would devolve on all the heirs of the father-in-law and not merely on that son. The latter part of the decision does not commend acceptance.

EFFECT OF THE ACT ON DEVOLUTION OF SEPARATE PROPERTY UNDER THE MITAKSHARA FAMILY:

Introduction of new heirs

Under the law prior this enactment, the widow of a Hindu was no heir to his property in the presence of his sons. This Act not only makes her an heir along with the sons, but also introduces the widowed daughter-in-law and the

²¹ Provash Ch. Roy vs. Prokash, 50 C.W.N. 559

widowed grand-daughter-in-law as new heirs. These widows succeed with the sons and before the daughter, the daughter's son and the parents²². The widowed daughter-in-laws right to come in as the heir of the father-in-law under the Act was held by the Federal Court to be claimable only in respect of his separate property in the sense of self-acquired property, and not in respect of property held by him as sole surviving coparcener²³ even the interpretation by the Federal Court is not without anomalies.

Widows

A widow is entitled under the Act to the same share as a son either in competition with a son or in competition with a widowed daughter-in-law or in competition with any other lineal male descendant or his widow entitled to succeed under this Act. If the propositus has left more than one widow all the widows together will be entitled to the same share as that which would come to a sole widow. But where the widow is the only relation left and there is neither a son nor any of the other relations mentioned in the Act as entitled to heir ship, then the widow takes the whole estate, though only as a qualified owner²⁴.

Separate property

According to the decision of the Federal Court in *Umayal Achi vs. Lakshmi Achi*²⁵, the expression "separate property" meant only the self-acquired property of the deceased Hindu. Property held by a person as a sole surviving coparcener of a joint Hindu family was not his separate property within the meaning of section 3(1) of the Act so long as there was a woman in the family who can bring in a new coparcener by adoption²⁶. As pointed out by the Privy Council in *Anant vs. Shankar*,²⁷ a coparcenary must be held to subsist so long

²² *Bhagwan vs. Jai Devi*, I.L.R. (1944) A. 401

²³ *Umayal vs. Lakshmi*, (1945) 1 M.L.J. 108 (F.C.)

²⁴ N.R. Raghvachariar, *Hindu Law: Principles and precedents*, 8th Ed. 1987 pg. 577.

²⁵ (1945) 1 M.L.J. 108

²⁶ *Manohar Lal vs. Bhuri Bai*, 1972 S.C. 369

²⁷ *Phulia vs. Narpal* I.L.R. (1944) A. 116

as there was in existence a widow of a coparcener capable of bringing a son into existence by adoption. In that very case, the Judicial Committee refers to the property held by surviving coparceners as joint family property in his hands. Likewise it should be held that the property which a coparcener obtains at a partition is joint family property though the coparcener may, after the partition, have absolute powers of alienation so long of course, there is no son born to him, after the partition, which would on birth be entitled to a share in such property. The Orissa High Court has construed section 3(2) of the Act in the same manner as indicated above in the case of Visalamma vs. Jagannadha Rao²⁸, and also in Pandab Panigrahi vs. Laxmi,²⁹. In that case the learned Judges held that where a Hindu has effected a partition with his only son and the parties are governed by the Madras school of Hindu Law the properties which fell to the share of the father are not his separate properties for the purpose of section 3(1) but are joint family properties within the meaning of section 3(2) of the Act.

In Lakshamma vs. Kodayya³⁰, it was held that ancestral property which had been allotted to one of the sons and subsequently dealt with by him under a settlement between him and his daughter and widowed daughter-in-law could not be considered as his separate property. Where a Hindu died in 1926 his predeceased son's widow would not succeed under the Act even though the widow of the deceased died after the Act³¹.

Shebaitship like any other heritable property follows the line of inheritance from the founder and hence attracts the applicability of the provisions of this Act Angur Bala Mullick vs. Debabrata³². The right to trusteeship or the right of management of trust property whether the trustee has or has not a beneficial interest in the dedicated properties can pass to a woman by

²⁸ 1955 Orissa 160

²⁹ AIR 1979 Orissa 74.

³⁰ 1961 A.P. 507

³¹ 1954 All. 307

³² 1951 S.C. 293

succession except where the functions to be discharged involve spiritual duties which a woman cannot properly discharge *Karthiah Kone vs. Bagayammal*.³³

The widow does not obtain her right under the Act either by survivorship or by inheritance and hence she is not bound to obtain a succession certificate in respect of moneys due to her husband.³⁴ See contra in *Jadavbai vs. Pummommai*,³⁵ she is not a coparcener with the surviving coparceners.³⁶ The widow taking an interest in the joint family of her husband under the Act is his legal representative and is entitled to continue a partition suit filed by her husband.³⁷ A widow succeeding to the interest of her husband under the Act does not become the manager of the family in the right of her husband. Nor does the fact that she happens to be the eldest member of the family invest her with such a right. If there is an adult male member, he is the manager in spite of the fact that he is junior in age to the widow.³⁸

Where pending a partition suit between father and sons the father died, his widow was held entitled to a share under the Act and not as mother to an additional share.³⁹ The right which a widow gets under the Act cannot be defeated by her husband making a will of his interest to his sole surviving coparcener.⁴⁰ It was held that the Act did not abolish the widow's right to maintenance and it was still available after the Act, there being an option in her to claim maintenance or a share but not both⁴¹.

³³ (1969) 82 Mad. L.W. 425

³⁴ *Natarajan vs. Perumal*, 1943 Mad. 246

³⁵ 1944 Nag. 243

³⁶ *Parappa vs. Nagamma*, 1954 Mad 576

³⁷ *Shankar vs. Gangaram*, 1952 Bom 127; *Ingal Kishore vs. Wardhasa*, 1955 Nag. 166; *Dansuk vs. Sandagar*, 1955 Pat. 240

³⁸ *Rakhmabai vs. Sitabai*, 1952 Bom 160; *Mahadu vs. Gajasabai*, 1954 B. 442; *Radha Ammal vs. Commissioner of Income-tax*, 1945 Mad 306

³⁹ *Shyam vs. Viswanath*, 1955 Bom 410

⁴⁰ *Palani Ammal vs. Kareepakkal*, (1955) 1 M.L.J. (N.R.C.) 52; *Rathinasabapathy vs. Saraswathi*, 1954 Mad. 307; (1950) 2 MLJ 459; *Gajavalli Ammal v Narayanaswami*, AIR 1962 Mad. 187; *Venkatamma vs. Ammathalli*, AIR 1959 A.P. 150

⁴¹ See also *Parappa vs. Nagamma*, 1954 M. 576, and see *Shyamu vs. Vishwanath*, 1955 Bom. 410

The ornaments which are the separate property of the widow cannot be taken into account in determining her share in the property left by the husband whether the property is joint family property or the separate property of the husband⁴². The interest taken by a widow under the Act is alienable by her like any other property⁴³ and when she alienates it without necessity the alienee gets the right to enjoy the property during the widow's lifetime and can claim partition and possession of the widow's share⁴⁴.

In *Ramaiya Konar vs. Mottaiah Mudaliar*⁴⁵, a Full Bench of the Madras High Court held that a Hindu married woman who is unchaste at the time of her husband's death is disqualified from inheriting his interest in the joint family property under Section 3 of this Act. It cannot be said that the Act has either expressly or by necessary intendment done away with the personal disqualification like unchastity imposed by Hindu Law on widows claiming to succeed to the estate of their deceased husbands. The rule of Hindu Law to the contrary referred to in Section 2 must be construed as confined to the rule of Hindu Law excluding a widow from succession to her husband's estate if he had left a son or grandson or great-grandson or if he had died a member of a joint Hindu family leaving him surviving his coparceners. It is this rule of Hindu Law that must be held to have been superseded by Section 3 of this Act and to that extent and no further can Section 3 be held to be contrary to and in supersession of the rule of Hindu Law. This view has been followed by other decisions of other High Courts as well.⁴⁶ It is a fortiori that a widow re-marrying should forfeit her right of succession to the property of her deceased husband.⁴⁷

⁴² *Baburao vs. Savitribai*, 1952 Nag. 270; *Hanuman vs. Tulsabai*, (1955) M.L.J. (S.N.) 169

⁴³ *Kunja Sahu vs. Bhagaban*, 1951 Orissa 35; *Harekrishna vs. Jujeshti*, 1956 Orissa 73; *Prem Mahton vs. Bandhu*, 1958 Pat. 20

⁴⁴ *Dagadu vs. Namdeo*, (1955) Bom 151:1.L.R. (1954) Bom 1069

⁴⁵ I.L.R. 1952 Mad. 187:1951 Mad. 954; (1951) 2 M.L.J. 314

⁴⁶ See *Kanai Lal vs. Pannasashi*, 1954 Cal. 598. See contra in *Akoba Laxman*, 1941 Bom. 204

⁴⁷ *Manabai vs. Chandan Bat*, 1954 Nag. 284

In *Surja Kumar vs. Manmatha*,⁴⁸ it was held that if unchastity of the wife had been condoned by the husband the unchastity would not be a bar.

Unchastity and re-marriage of the widow

The opening words of Section 2 namely, "notwithstanding any rule of Hindu Law or custom to the contrary", would, on their strict construction, suggest that the normal rule of Hindu Law which disables an unchaste widow from succeeding to her husband's property can no longer be operative. It is doubtful if the legislature had really intended to abrogate that rule. While the Bombay High Court *Akoba Laxman vs. Sai Genu*⁴⁹ has held that unchastity of the widow would not be a bar; other High Courts have held differently. In *Ramaiyya vs. Motayya*⁵⁰ if widow was unchaste no estate would vest in her under the Act, which could claim benefit of sec. 14 of the H.S. Act, 1956.

Status of the statutory co-heirs

In places governed by the Mitakshara school, in the interest taken by a son in the separate property of a deceased father that son's son and grandson get a right by birth; and in cases governed by the Dayabhaga, where a father's property is inherited by a son, the latter's son does not get an interest by birth in that property. So also the existence of the managership in the eldest male member should still be postulated with all the privileges and powers of management and alienation appertaining to that position and the corollary and concomitant disabilities and obligations of the junior members *Kalian Rai vs. Kashi*.⁵¹ But if there is no adult male member, there is nothing to preclude a female member of the family who is competent and willing from taking up the rights and duties flowing from the position or managership. She can contract

⁴⁸ 1953 Cal. 200

⁴⁹ AIR 1941 Bom. 204

⁵⁰ I.L.R.(1952) Mad. 187; AIR 1951 Mad. 954 (FB); *Kanai Lal vs. Pannasashi*, AIR 1954 Cal. 588; *Appa Saheb vs. Gurubasawwa*, AIR 1960 Mys. 79; Cf., *Kuppu vs. Kuppuswami Mandiri*, (1984) 2 MLJ 224;

⁵¹ I.L.R. (1943) A. 307; 1943 A. 188; *Safyanarayana vs. Narasamma*, (1943) 2 M.L.J. 282; 56 LW. 487; (1943) M.W.N. 478; 1943 Mad 708.

debts and alienate the family property for the benefits or necessity of the family of which she is the manager and the junior members of the family, both males and females, would be bound by such debts and alienations. She can sue Natarajan vs. Perumal,⁵² and be sued as representing the entire family and can generally do all acts which can be said to be acts of prudent management. But she cannot claim to be a coparcener with her sons.⁵³

Nature of the interest taken by the widow

In *Satrughan vs. Sabujpari*,⁵⁴ it was observed that the interest of the widow arose not by inheritance nor by survivorship but by statutory substitution. The widow by reason of her introduction into the coparcenary could not be held to have become a coparcener. But being clothed with all the rights and concomitants of a coparcener's interest it would be futile to contend that the widow could not be treated either as a member of the coparcenary or as having been conferred coparcenary interest in the property. In *Controller of Estate Duty vs. Alladi Kuppaswamy*,⁵⁵ the question was whether the interest the widow of a coparcener took on the death of her husband in the family property was a coparcenary interest and whether on her death that interest would be liable for estate duty. In answering the question in the affirmative the Supreme Court held that by virtue of the provisions of the Hindu Women's Rights to Property Act, 1937, the widow undoubtedly possessed a coparcenary interest as contemplated by Section 7(1) of the Estate Duty Act; she was also a member of a Hindu coparcenary as envisaged by Section 7(2) of that Act and on her death her interest merged in the coparcenary property becoming eligible to estate duty.

⁵² 55 L.W. 823; (1942) 2 M.L.J. 668; 1942 M.W.N. 703; 1943 M. 246. (No succession certificate is necessary to entitle her to sue on a promissory note in favour of the husband); but see *Fagas vs. Puran*, I.L.R. (1944) Nag. 832; 1944 Nag. 243, where it was held that a succession certificate would be necessary

⁵³ *Seetha Bai vs. Narsimha* 58 L.W. 24; *Natarajan vs. Perumal*, supra

⁵⁴ 1967 S.C. 232. see also *Controller of Estate Duty vs. Alladi Kuppaswamy*, (1977) 2 S.C.J. 336; (1977)2 M.L.J. (S.C.)30:1977S.C. 2069

⁵⁵ Supra Note 54

Nature of the widow's right to claim partition

The interest which the widow takes is an alienable right and the alienee can ask for partition and possession of her share.⁵⁶ Again a suit for partition affects a severance in interest of a coparcener and if anything the widow's position must be a fortiori. The proper view to take seems to be that if there is a suit for partition either at the instance of the widow or at the instance of her husband's coparceners she must be considered to possess her interest as a separate coparcener and on her death whether pending the suit or after a decree for partition the interest of her husband which she had taken under the Act must be held to go to her husband's heirs and not to the other coparceners of the quondam undivided family. *Ramaswami Cherry vs. Lakshamma*,⁵⁷ *Parappa vs. Nagamma*,⁵⁸ which consider the law on the point contains the following passage on the question. Section 3(2) of the Act does not bring about a severance of interest of the deceased coparcener. Certainly the widow is not raised to the status of a coparcener, though she continued, to be the member of the joint Hindu family as she was before the Act. The joint family would continue as before subject only to her statutory right. The Hindu conception that the widow is the surviving half of the deceased husband was invoked and fiction was introduced, namely that she continued the legal persona of her husband till partition. From the standpoint of the other members of the joint family, the right of survivorship was suspended. The legal effect of the fiction was that the right of the other members of the joint family would be worked out on the basis that the husband died on the date when the widow passed away. She would have during her lifetime all the powers which her husband had save that her interest was limited to a widow's interest. She could alienate her widow's interest in her husband's share: she could even convey her absolute interest in the same for necessity or other binding purposes. She could ask for partition and separate possession of

⁵⁶ *Hare Krishna vs. Jujeshi*, 1965 Orissa 73, *Prem Mahton vs. Bandu*, 1958 Pat. 20

⁵⁷ (1962) 2 Andh. W.R. 238;

⁵⁸ 1955 Mad. 576

her husband's share. In case she asked for partition, her husband's interest would be worked out having regard to the circumstances obtaining in the family on the date of partition. If she divided herself from the other members of the family during her lifetime, on her demise the succession would be traced to her husband on the basis that the property was his separate property. If there was no severance it would devolve by survivorship to the other members of the joint Hindu family. This conception of the legal persona of the husband continuing to live in her steers clear of many of the anomalies and inconsistencies that otherwise would arise. See also *Keluni Dei vs. Jagabandhu*.⁵⁹

Section 3(2) - The widow does not, by virtue of the interest given to her by the new law become a coparcener. She being entitled to claim partition of the joint family property is in the same position in which her deceased husband would have been in the matter of exercise of that right. That is to say, her interest is a fluctuating one and is liable to increase or decrease according as there are deaths in or additions to the members of the family or according as there are accretions to or diminutions of the property.⁶⁰

Widow's share when determined?

The fact that one of the coparceners is dead leaving his widow who gets his interest under the Act does not put an end to the joint family or continuance of its property as joint family property and therefore the question of determining the extent of her share does not arise at the time of her husband's death and can arise only when the right to claim a partition is exercised either by her or by some other member of the family. It is therefore that date which is a crucial one for determining the quantum of interest or extent of her share *Lakshmi Perumallu vs. Krishnavenammalu*.⁶¹ If on the date she exercises her right to partition new mem-

⁵⁹ 1958 Orissa 47; *Laxman vs. Gangabai*, 1955 M.B. 138; *Kedar Nath vs. Radha Shyam*, 1963 Pat. 81. See contra in *Bhagobai vs. Bhaiyalal*, 1957 M.P. 29

⁶⁰ *Patti lakshmi Perumallu vs. Patti Krishnavenammalu*. AIR 1965 SC 825: (1965)2 SCJ 620:1964SCWR 317: (1965) 2 Marr. L.J. 105 1965)2 Andh WR (SC) 105

⁶¹ AIR 1965 S.C. 825

bers have come into the coparcenary by birth or members have left it by death, her share will be calculated with reference to the number of members entitled to share on that date and not with reference to the members entitled to share on the date of her husband's death *Ramachandra vs. Ramgopal*.⁶² The Andhra High Court has in *Saryanarayana vs. Sugunavathi*,⁶³ held that the widow of a coparcener could not be deemed to be in a better position than her husband if he had lived and that her right to a share should be determined as on the date of her demand for partition and not as on the date of her husband's death because until a partition is demanded it is not possible to predicate the share to which she would be entitled under Section 3. In *Manicka Goundar vs. Arunachala Goundar*,⁶⁴ the Madras High Court has held that where a family consisted of the last surviving coparcener and the widow of a deceased coparcener, the half share of the surviving coparcener goes to his own heirs and not to the widow. The Madhya Pradesh High Court has however held that a widow who had under S.3(2) of the Act obtained interest in her husband's estate and held it with her minor unmarried son would take upon the death of the son the whole estate by survivorship.⁶⁵

Widow's share liable to fluctuation by survivorship

In *Manick Goundar vs. Arunachala Goundar*,⁶⁶ A and B were brothers constituting a coparcenary. A died leaving a widow C and two days later B died unmarried and leaving a sister D as his heir. D sold the property to the plaintiff and C sold the same property to the defendant. In a suit for possession or in the alternative for partition it was held: (i) that on the death of A his widow C succeeded to his interest in the family property under the provisions of the Act; (ii) that though C's interest would be a fluctuating interest if there was a

⁶² 1956 Nag. 228; *Harekrishna vs. Jujesthi*, 1956 Orissa 73, *Parappa vs. Nagamma*, 1955 Mad. 576; *GurDayalvs. Sarju*, 1952 N. 43; *Nagappa vs. Makumba*, 1951 Bom. 309; I.L.R. (1951) Bom. 442; *Gangadharvs. Subashini*, 1955 Orissa 135; *Sitamma vs. Veeramma*, 1950 M. 785

⁶³ (1961) Andh. Pra. 393

⁶⁴ (1965) Mad. 1 (F.B)

⁶⁵ *Bhondu vs. Ramdayal*, AIR 1960 M.P. 51 (F.B.)

⁶⁶ 74 LW. 585; I.L.R. (1961) Mad. 1016; (1961) 2 M.U. 483

coparcenary, since there was only one member of the coparcenary after A's death, namely B, on the latter's death his interest did not augment the interest of C; (iii) that on the death of B his heir, namely, his sister succeeded to his half interest and the plaintiff who was the purchaser of her share was entitled to maintain the suit for partition of her half share in the suit property. It may be pointed out by way of criticism that this decision ignores the right of C to take B's interest by survivorship of B's death. It has been however held in a later case that where a joint family was reduced to only two members the widow of a deceased coparcener and the last surviving coparcener, the death of the latter would result in his interest devolving on his own heirs and not by survivorship on the widow of the deceased coparcener *Manicka Goundar vs. Arunachala Goundar*⁶⁷. The view is untenable; see the observations of the Supreme Court in *Lakshmi vs. Krishnaveniamma*,⁶⁸ where the Supreme Court points out the fluctuating nature of the widow's interest in the joint family depending on the births and deaths in the family and the changes in its fortune add the share of the widow at the partition being determinable with reference to the conditions existing at the time when the share has to be determined.

Widow's right to challenge alienation of family property

Since under Section 3 (2) the widow gets the same interest as her husband had, that interest includes the right to challenge an improper alienation by the managing member of the family without any necessity or benefit, because she having the right to partition and to get a share of the property undiminished except for proper reasons her right can be best protected only by her being conceded the right of preservation of the property with the concomitant right of challenging a non-binding alienation *Potharaju Pappayamma vs. Gopalakrishnamurthy*⁶⁹. She may not choose to file a suit for partition and that ought not to take away her right to see that the property in which she may claim a share

⁶⁷ 1965 Mad. 1 (F.B); See however *Bhonda vs. Ramdayal*, AIR 1966 M.P. 51 (F.B)

⁶⁸ 1965 S.C. 825

⁶⁹ 1969 A.P. 341; of., *Ahuja vs. Rameshwar Lal*, 1971 Raj. 269

when it suits her in future is left intact *Ramalingam Pillai vs. Ramalakshmi Ammal*⁷⁰ a coparcenary consisted of S and his son L. L died in 1945 leaving behind a widow LW. In 1946, S made a gift to his daughter of the major portion of the lands belonging to the joint family. After the death of S, LW adopted P. LW and P filed a suit challenging the gift on the ground that S was not competent to make a valid gift of the joint family property. It was held that when the gift was made by S, LW had a share in the properties under the Hindu Women's Rights to Property Act of 1937, and therefore S, although he was the sole surviving coparcener was not entitled to make the gift. It was contended that the only effect of sub-Section (2) and (3) of the Hindu Women's Rights to Property Act is in substance to give the widow a right to demand a partition and that until this right was actually exercised by the Hindu widow, the sole surviving coparcener could deal with the property in any manner he liked. That contention was repelled. Gajendragadkar, J., who delivered the judgment of the Bench said: "The position of a Hindu woman's interest in the family properties is, in our opinion, somewhat analogous to the undivided right of the coparcener at least so far as the manager's powers of management and alienation are concerned; so that if the said interest of the Hindu widow is sought to be defeated by an unjustified alienation, she would be entitled to challenge it just in the same manner as a coparcener would. It may be that the effect of this Act is not to cause the severance of status automatically on the death of a coparcener, and that the family may continue to be joint; in that case the manager would still be entitled to exercise his ordinary powers under Hindu Law. But it is clear that it is beyond the competence of a manager to make a gift of immovable properties belonging to the family."

The decision in *Ramasaran Rao vs. Bhagwa Shukul* takes the same view and in *Madhu Kashiba vs. Gajarabai Shankar*,⁷¹ the decision in *Shivappa*

⁷⁰ (1957) 2 M.L.J. 382: 70 L.W. 837; *Parvathamma vs. Subadramma*, 1963 A.P. 236]. In *Sivappa Laxman vs. Yellawa*, 1954 B. 47

⁷¹ 1954 B. 442

Laxman vs. Yellawa,⁷² was followed. In Udai Narain Rao vs. Dharmaraja,⁷³ a suit was brought on a mortgage executed by the manager of a joint Hindu family. One of the parties was the widow of a deceased coparcener who was entitled to an interest under the Hindu Women's Rights to Property Act and the question was whether she could put the plaintiff to proof that the mortgage was binding on the joint family property. The learned Judges held that she was so entitled. Malik, C.J. said: "Under the Hindu Women's Rights to Property Act, Smt. Muna Kuer has been given the same interest in the property as her husband had. It is not necessary to define the extent of that interest but there seems to be no good reason why she should not have the right to plead that the mortgage is not binding as it was not executed for legal necessity, that is to say, why she should not have the same right as her husband had of challenging the mortgage."

In that case the mortgage had been executed before the death of the widow's husband. A fortiori she would have such a right where the alienation was made long after her husband's death. In Mst. Gujarativs. Mst. Ramdevi,⁷⁴ the inequitable results which would follow by taking the other view are well pointed out.

"Even if it be conceded, as it must be, that the Act does not make the widow a Hindu law coparcener and does not invest her directly with the rights of a coparcener, the Act does confer upon her the same interest as her husband had subject to the limitation that the interest, so far as she is concerned, is the limited interest known as a Hindu woman's estate and that she has a right to claim partition as a male owner.....After she has obtained partition, there could be no doubt that she as the holder of a Hindu woman's estate, would have full rights to protect that estate. Must the rights of protecting that estate be denied to her before she seeks partition? If so, her limited interest itself would be at the mercy of the coparceners.....If the rights under the Hindu Law which appertain to

⁷² 1954 B. 47

⁷³ I.L.R. (1954) 1 All. 204

⁷⁴ (1955) A.L.J. 354

the surviving coparceners are such that they could destroy the limited estate itself of the widow by exercising those rights, then those rights must be curtailed in view in Section 2 of the Act. In this view the surviving coparcener would have no authority to do acts which would destroy the limited estate of a Hindu right to maintenance out of that property in the hands of his heirs. By obtaining under this Act the more concrete right to a share, her former right only to sue for maintenance must now be held to have been taken away. But this right to a share is only in respect of the separate property of the father-in-law left undisposed of by him.

Immorality and remarriage of daughter-in-law

As in the case of the widow, so also in the case of the widowed daughter-in-law her unchastity may prevent her from succeeding to the father-in-law's property; but her unchastity does not operate to entail the forfeiture of the share which she has taken. But if at the time the succession opened to her father-in-law she had already remarried, then she is not entitled to succeed to him because by her re-marriage she has ceased to be his daughter-in-law and hence cannot claim that relationship for purposes of claiming the succession. So also if subsequent to her succeeding to her father-in-law she contracts a remarriage she forfeits the interest which she has taken, for re-marriage unlike mere unchastity, takes her away from the family of her husband and brings into operation the general Hindu Law rule of forfeiture on re-marriage by the widow, and in this respect that the re-marriage has been according to the custom of the would not make any difference even though the provisions as to forfeiture in the Hindu Widow's Remarriage Act are not in terms applicable to an estate inherited by a widow from a person other than the husband. The rules applicable to the devolution of the estate taken by the widowed daughter-in-law in case of her remarriage are the same as the rules applicable to the devolution of that estate in case of her death. In a case before the Calcutta High Court *Provash Ch. Roy vs.*

Prokash,⁷⁵ it was held that the share taken by the widowed daughter-in-law would, on her death, devolve on the heirs of the father-in-law existing on the date of the daughter-in-law's death unaffected by the question whether the said heirs were in her husband's line or not. It is submitted that the correct way of distributing the daughter-in-law's share when there is a son to her husband, is to give that share to that son to the exclusion of the other heirs of the father-in-law.

EFFECT OF THE ACT AS REGARDS THE COPARCENARY INTEREST OF DECEASED HINDU:

Position of the coparcener's widow

On the death of a Hindu as a member of a Mitakshara coparcenary, his widow takes his interest in the family property subject to the coparcenary incidents of the right of survivorship, right to claim partition and right to maintenance. It would however be a misnomer to describe her as a coparcener⁷⁶. She takes the same interest as her husband" and not "the same right as her husband" *Dagduvs. Namdeo*⁷⁷. She gets the right to demand a partition; but she cannot predicate the exact share which she might receive until partition; until partition is made her dominion extends to the entire property conjointly with the other members of the coparcenary; her possession and enjoyment is common; the property cannot be alienated without the concurrence of all the members of the family except for legal necessity; and like other coparceners she has a fluctuating interest in the property which may be increased or decreased by deaths or additions in the family. It is manifest that she cannot have a right by birth because she enters the coparcenary long after she is born and on her husband's death. Thus short of this, she possess all the

⁷⁵ 50 C.W.N. 659

⁷⁶ N.R. Raghvachariar's Hindu Law: Principles and precedents, 8th Ed. 1987 pg. 584.

⁷⁷ ILR (1954) Bom. 1069: AIR 1955 Bom. 152. She does not gets his status or position in the family *Ramji Sharma vs. Deoshaki*, 1983 Pat. L.J.R. (HC) 132. See also *Sukh Ram vs. Gourishankar*, (1968) 2 S.C.J. 122 AIR 1968 S.C. 375; *Satrugnan vs. Sabujpari*, (1967) 2 S.C.J. 712: AIR 1967 S.C. 272.

indicia of a coparcenary interest. Though she cannot be a coparcener she has a coparcenary interest and she is also a member of the coparcenary by virtue of the rights conferred on her under the Act *Controller of Estate Duty vs. Alladi Kuppaswamy*⁷⁸. The interest of the widow vis-a-vis her husband's undivided interest arises not by inheritance nor by survivorship but by statutory substitution *Satrugnan vs. Sabujitpari*.⁷⁹ If the coparcenary ceases to exist by virtue of a partition among the coparceners during the lifetime of the widow, her interest becomes defined, which, on her death will not survive to the erstwhile coparceners *Padmanabha vs. Harsamoni*.⁸⁰ Unless the widow claims partition of the share to which her husband would be entitled had he been alive, her pre-deceased son's wife will be preferred to her own daughters *Anandi Devi vs. Shyam Kishore*⁸¹.

Widow's liability for her husband's debts

The question of the widow liability for the husband's debts in case he has died as a member of a coparcenary is beset with doubts and difficulties but appears to depend for its determination on the circumstance whether he died leaving sons or not and whether the debts is a simple debt or a mortgage debt. If the debt is a valid mortgage debt then his share is taken by his widow burdened with the debts and is therefore liable for its satisfaction. But if the debt is a simple debts, then the share which she has taken in the family property is freed from the obligation of paying that debt if the coparcenary as a member of which he died consists of only his collateral relations, for in that case the rule of survivorship in favour of such relations defeats the creditor's right unless his interest has been attached during his lifetime in execution of a decree obtained in respect of that debt, and the fact that the personality of the husband is in a sense continued by the widow is no ground for holding that the husband's interest is still liable for his

⁷⁸ (1977) 2 S.C.J. 336: (1977) 2 M.L.J. (S.C.) 30:1977 S.C. 2069.

⁷⁹ 1967 S.C. 232; *Soliappa Mudaliar vs. Meenakshi Ammal*, (1970) 1 M.L.J. 383.

⁸⁰ 1972 (1) C.W.R. 775.

⁸¹ 1973 All. W.R. 523

simple debt, inasmuch as to so hold would, instead of the Act operating in favour of the widow which obviously is the intention of the Act, make it operate to her detriment. The chief idea underlying the scheme of the Act is that the right to maintenance which the widow of a coparcener had prior to the Act must be converted into a right in specific property as a shareholder and if ignoring the fundamental foundation of the enactment one is to hold that her share would be liable for the simple debts of the husband, it would very often deprive her of her means of maintenance. It has been held that the interest of the husband taken on his death by the widow under the Act is taken by her not as a surviving coparcener in the husband's joint family but as his heir under a statutory provision and is liable for his simple debts though there had been no attachment and decree against him during his life-time.⁸² In view of the decisions in Satrugan's case,⁸³ the assumption that the widow takes under the Act as the husband's heir and is therefore liable for his debts is not warranted]. But if the husband has left also sons, son's sons or son's son's sons, then her share must be held liable for the simple debts in the same way as her sons' shares would be. The contrary construction would place the widow in a more advantageous position, than that of the sons, for the sons would be liable for the debts under the pious obligation but the widow would not be liable, a result which it is difficult to hold is the intention of the Legislature. It may, however, be asked, why should a widow be in a worse position when she has sons than when she has no sons? The answer is otherwise there would be anomalies, and it is one of the fundamental canons of construction to interpret a statute in such a way as to avoid anomalous results. The construction favoured in the discussion here does not take away the rights of persons which they formerly possessed, and where possible secures to the widow the benefit intended by the Act. The position that in the case the husband died as a coparcener leaving a widow and no sons the

⁸² Saradamban vs. Subbarama I.L.R. (1942) M. 630:1942 M. 212: 54 L.W. 651: (1941) 2 M.L.J. 862; Siveshwar vs. HarNarain, 23 Pat. 760:1945 Pat. 116; Shankar vs. Gangaram, (1952) Bom. 127; Co-operative Society vs. Vasanth, (1946) Nag.434.

⁸³ 1967 S.C. 232 and Controller of Estate Duty vs. Alladi Kuppuswamy, 1977 S.C. 2069

husband's share in the widow's hands is not liable for the simple debts of the husband in respect of which no decrees had been obtained and no attachments effected during his lifetime, while operating beneficially to the widow does not take away any right which the creditors formerly had, for, the creditors formerly had none as on the death of the coparcener his interest in the family property became freed from the obligation of paying those debts as a consequence of the existence of the right of survivorship of the other coparceners. So also the latter position of the liability of the widow's share for those debts in the presence of the sons, while not taking away any right of the widow which she formerly possessed, leads to the reasonable construction that the sons should not be placed in a worse position than the widow. The nature of the right which the widow gets being the limited interest with all its incidents in the hands of the widow inheriting that interest it is open to her to alienate her own undivided interest in the joint family property and-if such alienation is not for necessity approved by the Hindu Law it will be valid for her lifetime.⁸⁴ In *Narayan Vadraj Katti vs. Belgaum Bank*,⁸⁵ it was held that when a Hindu died leaving sons and a widow and his creditor filed a suit and obtained a decree as against the sons only in respect of the assets of the father in their hands, the said decree would not be binding on the share of the widow in the husband's property.

Alienation by widow

The interest which the widow of a deceased coparcener takes in the share which she gets under the Act is the limited interest of a female heir under the Hindu Law, and she can therefore alienate her share only for necessity or benefit, the words necessity and benefit including spiritual purposes as considered in Chap. XVI. Even the fact that a simple creditor of her husband has lost his remedy as a result of the operation of survivorship in favour of the surviving coparceners of her husband would not preclude her from alienating her

⁸⁴ *Mahipat vs. Ganpath*, 1963 Patna 277

⁸⁵ (1968) 2 Mys. L.J. 66

interest for the purposes of satisfying such a debt, for such act of the heirs is considered by the religious law of the Hindus as conceived in the interest of the departed soul of the husband and certainly does not stand on a worse footing than the barred debt of the husband which the law says a Hindu widow can discharge by an alienation of the husband's estate. When she validly alienates her interest, the alienee is only entitled to her share as it stood on the date of the alienation and not to any augmentation which her share would have received subsequently by reason of any death in the family, such addition to that share ensuring only to the benefit of the widow and not to the alienee.

Apostacy of the widow

Under the strict Hindu Law the apostacy of the widow would operate as a forfeiture of her right to succeed to the property of another Hindu, because by her conversion from Hinduism she has ceased to be a Hindu so as to render that law inapplicable to her. But this rule of Hindu Law was abrogated by the Caste Disabilities Removal Act and is no longer in force. But that Act, while it removed a disability, did not confer any new right to the apostate. The question then is whether this Act which confers new rights can be so construed as to permit a widow who has become an apostate to Hinduism to claim such rights. The answer would appear to be in the negative. The Act applies to Hindu women, or to be more accurate to Hindu widows. If at the time the succession opens she has embraced some other faith, it is impossible to say she is a Hindu for the purpose of the applicability of the Act. To hold that conversion of a widow from Hinduism would not operate as a bar to her succession under the Act would lead to the position of daughters-in-law and grand-daughters-in-law who, prior to the opening of the succession had become converts to Christianity or Mahomedanism, claiming successfully to succeed to the property of a Hindu, a position which is sure to be abhorrent to all social and religious sentiments of the Hindus which no reasonable man would attempt to bring about. Therefore the proper construction of the Act would be that an apostate widow or daughter-in-

law would not be entitled to claim the benefit of this Act since she is not a Hindu woman to whom alone the Act is applicable Cf., *Sasanka vs. Amiya*,⁸⁶ where a Christian woman who had married a Hindu under the Special Marriage Act, 1872, was considered entitled to a share as a predeceased son's widow in her Hindu father-in-law's property as heir under the Hindu Women's Rights to Property Act, 1937, But if at the time of the opening of the succession she had reverted to Hinduism it would appear that there is nothing to prevent the reconverted widow from claiming the benefit of the Act as a Hindu widow with the meaning of the Act.

IT'S EFFECT ON THE MITAKSHARA COPARCENARY:

The Act affected the Mitakshara coparcenary fundamentally and introduced far reaching changes in its structure. Section 3(2) laid down that in the joint family property the widow of the deceased coparcener would have “the same interest as he himself had”. This was irrespective of the fact whether the deceased coparcener left behind a son or not. This virtually mean abrogation of the rule of survivorship Section 3(3) gave her the same right of claiming partition as a male owner.⁸⁷

These provisions led some controversy among the High Courts. The Supreme Court has now resolved the controversy and clarified some issues.⁸⁸ As to whether the interest of the widow arose by inheritance or by survivorship or by statutory substitution, the Supreme Court held that it came into existence by the statutory substitution.⁸⁹ She was given the same power of partition as any coparcener had, but thereby she did not become a coparcener. A widow of deceased coparcener is thereby introduced into the coparcenary, and between the surviving coparceners of her husband and the widow so introduced, there

⁸⁶ (1974) 78 Cal. W.N. 1011

⁸⁷ Paras Diwan, Modern Hindu Law, 9th Ed. 1993 p. 359.

⁸⁸ *Satrugan vs. Sabjpuri*, 1967 S.C. 272.

⁸⁹ *Lakshmi vs. Krishanvenamma*, 1965, S.C. 825; *Satrugan vs. Sabjpuri*, 1967 S. C. 272

arises community of interest and unity of possession. But the widow does not, on that account, become a coparcener. Though invested with the same interest, which her husband had in the property, she did not acquire the right which her husband could have exercised over the interest of the other coparceners. Because of statutory substitution or her interest in the coparcenary property in place of her husband, the right which the other coparceners had under the Hindu law of the Mitakshara School of taking that interest by the rule of survivorship remains suspended so long as that estate endures. But on the death of the coparcener there is no dissolution of the coparcenary so as to carve out a defined interest in favour of the widow in the coparcenary property.⁹⁰

Since a widow took the same interest as her deceased husband had, her interest was subject to all the incidents of coparcenary interest. If she did not ask for partition, her interest was subject to fluctuations, and on her death, passed by survivorship to other coparceners.⁹¹ An alienation made by the Karta for legal necessity was binding on her share.

When she asks for partition, "her husband's interest should be worked out having regard to the circumstances obtaining in the family on the date of partition."⁹² Once she demanded partition, severance of status took place irrespective of the fact as to whether she got or did not get the possession of her share of properties. If severance took place, the succession would be traced to her husband on her demise, on the basis that the property was his separate property.⁹³ Shah, J., said that "to assume that the right of the coparceners to take her interest on determination of the widow's interest survives even after the interest has become definite, because of a claim of partition, is to denude the

⁹⁰ Satrughan's case, 1967, S.C. 272; per Shah, J. at 275; Padmanabha vs. Harsamoni, (1972) ICWR 775.

⁹¹ Lakshmi vs. Krishanvenamma, 1965, S.C. 825; D.P. Raj vs. Rameshwar, 1971 Raj. 269; Fatimaanisa vs. Tamirsa, 1977 A.P. 24.

⁹² Parappagari vs. Parappagari, 1954 Mad. 567, per Subha Rao, J; see also Laxmi's case, 1965 S.C. 825 (most of the decisions of the High Courts have been referred to).

⁹³ See parappagari's case, Laxmi's case and satrughan's case referred to in the preceding foot note.

right to claim partition of all reality.”⁹⁴

The most important alteration in fundamental principle of Hindu law is that introduced by sub Sec. (2) to Sec. 3 in a Mitakshara undivided family, the widow of a deceased coparcener will have in the joint family property “the same interest as he himself had.”⁹⁵ This devolution of his interest on her abrogates the rule of survivorship and makes the undivided interest of a coparcener pass to his widow, even when he leaves male issue. This Act has taken away the rule of survivorship and allowed the property to descend to his wife. Once the rule of survivorship no longer operates, there is nothing to preclude a creditor from attaching the property⁹⁶. The language of section is comprehensive, and applies both to cases where her husband and his sons alone form a coparcenary and to cases where a coparcener in a joint family dies leaving either his widow and male issue or his widow only. As under sub.sec. (3), the interest case of Mitakshara family, are treated as a coparcener in the strictest sense along with her sons and the other coparceners though she is undoubtedly a member of the joint family with certain special statutory right⁹⁷. But she is conferred the right of claim partition as male owner, and she acquires the status of a coparcener in possession for the purpose of filing a suit for partition, though she may not acquire the full right of a coparcener but only a Hindu Widow’s estate.⁹⁸ When a widow succeeds to her deceased husband's interest in a joint family, she takes it only by inheritance and not by survivorship⁹⁹, for she had no right by birth and she was not a Co-owner prior to his death, there are no words in the Act by which she can be deemed to be a co-parcener. The interest which devolves upon her is declared to be a Hindu woman’s estate. This means that on her death it

⁹⁴ Satrugan’s case, at 175.

⁹⁵ Radhi Bewa vs. Bhagwan Sahu I.L.R. (1951) Cut. 177: AIR 1951 Ori378; 1951 I.L.R. Ori 272 AIR 1951 Oudh, 378.

⁹⁶ Saradambat. V Subba J. Aiyer I.L.R. (1942) Mad (her interest is liable to be attached by her husband's creditors).

⁹⁷ Commissioner of Income Tax, Madras v Laxman Chettair ILR (1941)

⁹⁸ Rosamma v Chenchiah (1943) 2 MLJ 172, Court fee payable will be under Art 17 (b) of Schedule II, and not under Sec. 7 (V) of the court Fee Act.

⁹⁹ Katama Nachiar vs. Rajah of Shivaganga (1863) 9 MTA 539, 543, 611: Baij Nath v Tej Bali (1921) 48.

will go to her husband's heirs which cannot mean all this coparceners. In other words on her death, whether before or after partition, her interest will go to her daughter, daughter's son, or other heirs of her husband.

Under section 3(2) of the Act, the widow of a member of Hindu joint family was put in place of her husband and the husband's interest in the coparcenary property though indefinite would vest immediately upon his death in the widow.¹⁰⁰ This section of the Act does not bring about a severance of interest of the deceased coparcener, and his widow is not raised to the status of coparcener though she continues to be a member of the joint Hindu family as she was before the Act. The joint family would continue to exist as before subject only to her statutory rights and that the rights of other members of the family would be worked out on the basis that the husband died on the date when the widow passed away, the right to survivorship being suspended till then.¹⁰¹ The right conferred by this section was a new right in modification of the pre-existing one. The widow was entitled to claim a share not only in the property owned and possessed by the family at the time of his death but also in the accretions.¹⁰² Though by virtue of the new right the widow does not become a coparcener, she being entitled to her deceased husband would have been in the manner of exercise of that right.

Before the decision of the Supreme Court in *P. Lakshmi Perumallu vs. P. Krishanavenamma*,¹⁰³ there was a conflict in the decisions of the various High courts as to the interest of the widow under section 3(2) of the Act of 1937. One view was that it is to be determined as on the date on which she seeks to enforce partition. The other view was that it was to be determined on date on which her husband died, that is to say, that it was not a fluctuating interest

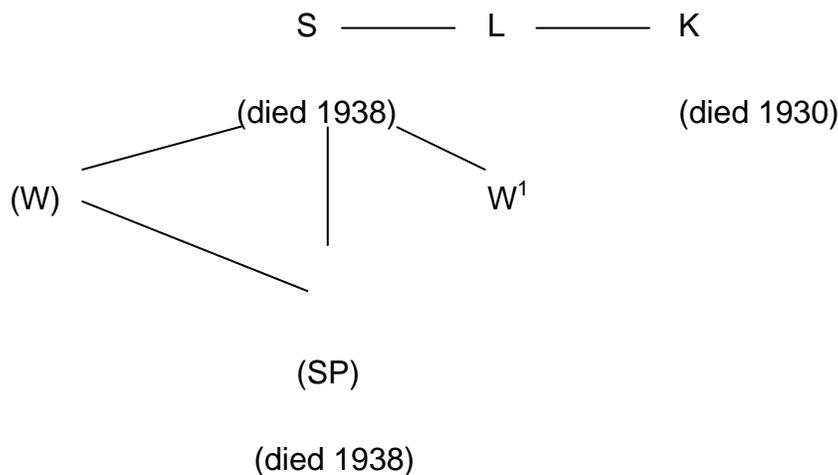
¹⁰⁰ *Suketu Jayantilal Shah vs. Cont. Estate Duty*, (1978)10 ITR439

¹⁰¹ *Lakshmi Permallu vs. Krishan* AIR 1965 SC 825.

¹⁰² *Parappa vs. Nagamma*, AIR 1954 Mad 576 (FB) *Bhagabai vs. Haimabati Devi*, AIR 1990 Ori 70 (DB).

¹⁰³ AIR 1965SC 825; *SC C.E.D. vs. Radheshyam*, (1996) 133 CTR 426 (Raj)

increasing or decreasing as a result of deaths or births in the family.¹⁰⁴ In the instant case there were three brothers S, L & K S died leaving a son SP from his first wife and his second wife W1 SP died in the year 1939. W1 filed suit in 1950 against L claiming half share in the entire property. It was held by the Supreme Court that her share did not get fixed at the time of death of her husband in 1938, which was $\frac{1}{4}$ at that time as his son SP was alive) but was one half when she claimed partition in 1950¹⁰⁵.



On the same principles the position of Karta in the joint family remains unaffected so long as there is no partition and Karta had right to deal with the joint family property including the interest of the widow. He was empowered to alienate the joint family property including widow's interest.¹⁰⁶ If the widow got her share partitioned, on her death the succession would be traced to the husband's heirs on the basis that the property was his separate property. But if she died, joint family property would pass survivorship.¹⁰⁷ Mere severance of status is enough to carve out her interest in the family, though there was no division by metes and bounds.¹⁰⁸ If two or more widows inherit the property, on

¹⁰⁴ Jadoabai vs. Puranmal (1944) Nag832.

¹⁰⁵ B.K. Sharma, Hindu Law, 2nd Ed. 2008, pg. 365

¹⁰⁶ Seethamma vs. Veerana, AIR 1950 Mad 785; Ahuja vs. Rameshwarlal, AIR 1971 Raj 269.

¹⁰⁷ Ramaswami vs. Lakshamma, AIR 1963 AP 199; Lakshmi vs. Krishnavenamma, AIR 1965 SC 825

¹⁰⁸ Satrughan vs. Sabujpari, AIR 1967 SC 272.

the death of one would go by survivorship to other.¹⁰⁹

IT'S EFFECT ON LAW OF SUCCESSION:

In respect of separate property of Mitakshara Hindu and in respect of all properties of a Dayabhaga Hindu, the Act introduced three categories of widows, viz, intestate's own widow. His son's, son's widow and his son's widow as heirs along with the son, grandson and great grandson, as also in default of them. The widow took a share equal to the share of a son and, in default of the son took the entire property. If there were more than one widow, all of them together took one share. In the case Mitakshara joint family property, the widow of a deceased coparcener took the same interest in the property which her deceased husband had in the joint family property at the time of his death. In all cases, the widows took a woman's estate in the property¹¹⁰.

For instance, if a Hindu dies leaving being his separate property and his own widow, son's widow and grandson's widow each of the widows will take 1/3 share in the property.

Or, take another example, P dies leaving behind two widows, W1 and W2 and two son's S1 and S2. He leaves behind separate property, S1 and S2 each will take 1/3 and W1 and W2 each will take 1/6 (both widows together taking one-third share).

The deceased coparcener's interest taken by widow, after her death, reverted to the heirs of the last male holder. As to the devolution of the interest of the daughter-in-law and the grand-daughter-in-law, Mayne said: "on the death of the daughter-in-law and grand-daughter-in-law, her interest would pass to the whole of the male issue and the surviving female heirs."¹¹¹

¹⁰⁹ Bhikabai VS. Mamta Bai AIR 2000 Bom 172.

¹¹⁰ Paras Diwan, Modern Hindu Law, 9th Ed. 1993 pg. 359.

¹¹¹ Mayne, Hindu Law and Usage, 13th Ed. 1995 at p. 706

THE CONSTITUTION OF INDIA AND THE ENACTMENTS UNDER HINDU LAW:

After the constitution of India was enacted, in *Haridas vs. Hukmi*¹¹², the Punjab High Court has held that under Article 372, the Act continued to be in force, but until it was suitably amended by parliament or fresh legislation was enacted under item 5, list 3 Schedule 7, the law not applicable to agricultural lands.

In *Bhagwan Kunwar vs. Nanhiduliya*¹¹³, the Madhya Pradesh High Court has held that the Hindu Women's Rights to property Act, 1937 applies to agricultural land in Vindhya Pradesh, a part C State as the parliament under the constitution could legislate for a part C State with respect to any matter notwithstanding that such matter was enumerated in the State List, Article 246 (4)

SCANNING OF THE HINDU WOMEN'S RIGHTS TO PROPERTY ACT, 1937:

Hindu Women's Right to Property Act, 1937, though a reformatory measure was subjected to a good deal of criticism. The reason appears to be that the Act, though well intentioned, was not happily worded and resulted in certain ambiguities and anomalies, 'not easy to reconcile. It can be said that it was a glaring instance of how a piecemeal legislation on one of the many aspects of an integrated and complicated structure like Hindu law could create difficulties, or that it showed how an unregulated tinkering with law could lead to confusion unless made in a systematic manner. True, it was passed for removing some obvious anomalies and for making progressive changes in Hindu law, but it was not easy to reconcile the changes made by it, with the notions: of the Hindus based on the principles of Hindu law prevalent for centuries.¹¹⁴

¹¹² 1965 Punj 254. Also see Dr. S.R. Myneni, Hindu law (family law -I) 1st Ed., 2009 Pg.34

¹¹³ 1980 HLR 462 (MP) Also see supra note 113 Pg. 35

¹¹⁴ Dr. Kulwant Gill, Hindu women's rights to Property In India, 1986, 137.

The phrases "same share as a son" and the same interest as he himself had" used in sub-sections (1) and (2) of Section 3 were ambiguous in their meaning and were capable of different interpretations. The word "share" connoted a determinate or ascertained portion of the estate whereas the word "interest" connoted a fluctuating portion of the estate as was held by the Bombay High Court in Nagappa Naryan vs. Hukambe¹⁴ and Orisa High Court in Gangadhar vs. Subhashini: It was said that the word "interest" did not mean a woman's right, and therefore, the same interest would not include the same right. It is thus evident that the phrases used in the Act looked fair and beneficial to the widows but were not comprehensive or clear enough. For example they did not provide as to:

- (i) Whether the widow could become Karta of the family in case she happened to be the elder member of the joint family?
- (ii) Whether the interest of the widow would fluctuate by births and deaths occurring in the family after her husband's death?
- (iii) What would be the rights of the co-widows inter se where the deceased left more than one widow?
- (iv) Whether the interest in the joint family, property developed on the widow of a coparcener by survivorship or by inheritance or because of the continuance of her deceased husband's personal in her?
- (v) Whether the Act brought about severance or disruption of the joint family or merely provided for a statutory devolution of property?

The provisions of the Act were not easily comprehensible because the draftsman did not take care to define adequately what the Act sought to create. The phrases used in the Act were capable of diverse and conflicting interpretations with the result that even the justice creation, as has already been discussed in the preceding pages. Chief Justice Chagla, speaking for the

Division Bench in *Dagadu Balu Cavade vs. Namdeo Rakhmaji Khatke*,¹¹⁵ made the following observation:

"Although the Act is a very short one. All questions of interpretation of that Act usually raise serious difficulties. Some judges have observed that the provisions of the Act are obscure. And more charitable minded judges have said that drafting of the Act was not happy".

The learned Chief Justice went on to say, "Now, in construing this Act what has got to be borne in mind is that it was an Act ameliorative in Character and intended to carry out an important social reform. Its express intention was to give better rights to women in respect of property and therefore the various provisions of the act must be construed in the light, of the intention which the Legislature had in placing this piece of legislation upon the statute book."¹¹⁶

Professor Derrett did not agree with the view of the Orissa High Court in *Kunja Sahu and others vs. Bagaban Mohanty and others*¹¹⁷ and of the Bombay High Court in *Dagadu Balu vs. Namdeo*¹¹⁸ that the widow had the absolute right to alienate her undivided interest for legal necessity. Moreover, the alliance was held entitled to partition of the joint family property even though he had purchased only the widow's life interest in the presumptive share. The difficulty raised by the Act. According to Professor Derrett, is that it gives the "same interest" subject to the statements that the interest shall be the limited interest, known as the "Hindu women's estate" and further says:

"This is a patent contradiction, like saying that X shall have, a mango, provided that it shall be a sweet-lime. The nonsensical conclusion can be avoided simply only by taking the course taken in *Kunja Sahu's case*¹¹⁹ of saying

¹¹⁵ (1954) 56, Bom. LR, 513, AIR, 1955, Bom.152.

¹¹⁶ AIR 1955. Bom. 152 (para 3).

¹¹⁷ AIR 1951 ,Orissa 35.

¹¹⁸ (1954) 65, Bom L.R. 513, AIR, 1955, Bom 152.

¹¹⁹ AIR 1951 Orissa 35.

that "same interest" is not qualitative but quantitative. And means the share the husband would have taken. It is not absolutely necessary that this share should be assessed at the husband's death, not that it should be exempted from fluctuation, but once we admit, as all High Court except Orissa have admitted, that the interest fluctuates like a coparcener's interest we are more than half-way to admitting that the same qualitatively and not quantitatively. The Bombay High Court in Dagadu Balu' s case¹²⁰ faced by the realization that a "women's estate" (i.e. a widow's estate in particular) is ,essentially different from a coparcener's interest, have said in effect that the Act makes a gift of a mango provided that it shall be a sweet-lime, and have implemented to Act by giving sweet-lime."

According to the learned jurist the plain words of the Act give a women's estate, which involves not only that a widow may alienate absolutely for legal necessity, but she may alienate her interest without justification provided that it be for her life. The Act seems to have given wider power to alienate to the widow in one respect as well as narrower power in another as compared with the coparcener who cannot make a real or camouflaged gift of coparcenary property.

The opening words of Section 2 of the Act, namely, 'notwithstanding any rule of Hindu law or custom to the contrary' created confusion in the minds of the jurists and the judges as to whether the Act had abrogated the rule of Hindu law that chastity was a sine qua non to widow's competence to inherit the property of her husband and his sapindas. The antagonists criticized that the words, if interpreted in' the literal sense, would no longer be operative. If that be so, the Act had offended all ethical sentiments and gave free licence to the widow to indulge in Vice and wickedness without fear of disinheritance, i.e. the Act had want only and shamelessly thrown to the winds the solemn vows of matrimony. But if we look to the judicial pronouncements we find that there was difference of opinion as to whether an unchaste widow was entitled to inherit or acquire any interest in the husband's property under the Act. Take for example the opinion of

¹²⁰ (1954) 56, Bombay Law Reports 137 at p. 142.

Hr. Justice Divatia in *Akoba Laxman Pawar vs. Sai Kom Cenu Pawar*.¹²¹ His Lordship, while considering whether the unchaste widow of a Gotraja Sapinda could inherit the property of her husband's kinsmen or not observed that the bar of unchastity seemed to have been removed even with the regard to the widow inheriting her husband's property because the Act of 1937 provided that the provisions would apply notwithstanding any rule of Hindu law or custom to the contrary. His lordship summarized the whole position as follows:

"The position, therefore, is that there is no authority for the proposition that any widow inheriting any kind of property must be chaste, that the bar was confined to only one particular case, namely, the widow inheriting her husband's property and even the bar is now removed by legislation. Is the Hindu community desire that the bar of unchastity should be applicable to all widows inheriting property, it might invoke the aid of legislature, but on law as it stands at present, it is clear that the unchaste widow of Gotraja spinda is not incompetent to inherit property of her husband Kinsmen" ¹²²

A different view, however, was expressed by a full bench of Madras High Court in *Ramaiya vs. Mottayya Mudaliar*¹²³ and by a division bench of Calcutta High Court in *Kanai Lal Mitra vs. Panna Shashi Mitra*.¹²⁴ The point for consideration for those cases was whether a Hindu married woman living in adultery at the time of her husband's death was disqualified by reason of her unchastity from succeeding to his interest in the joint family property under section 3 of Hindu Women's right to Property Act, 1937 or not?

The facts of *Ramaiya Konar's case*¹²⁵ were that Sabapathy Padyachi and Muthuvelu were undivided brothers. Muthuvelu died on August 17, 1943, leaving behind his widow Alamulu. The fact that she was leading an unchaste life and

¹²¹ ILR 1941, Bombay 438.

¹²² ILR 1941, Bombay 438, at p 440

¹²³ AIR 1951, Madras, 954.

¹²⁴ (1953-54), 58, Cal. W. N. 73

¹²⁵ AIR 1951, Madras 954.

was living; in adultery at the time of her husband's death was found by the Court.

The contention was based on Section 2 of the act which declares that the provisions of Section 3 should apply notwithstanding any rule of Hindu law or Customs to the contrary.

Rajamannar C.J., while repelling the contention, said that we must not interpret a provision in a statute so as to give it an effect which, we can clearly see, was not intended. We should be doing this if we import into the Hindu Women's Right to Property Act a provision removing the disqualification of unchastity. According to, his lordship is the legislature intended to confer rights even on widows who were otherwise disqualified under the rule of Hindu law, than it would have given expression to that intention by using appropriate language. Moreover, the important thing to note that the language was not withstanding any rule of "Hindu or Custom" it was "Not withstanding any rule of Hindu or Custom to contrary." Which meant that any rule of Hindu law or Custom which was contrary to provision of section 3 of the Act was abrogated and not every rule of Hindu law even if it was not directly contradicted by the provision of Section 3. To illustrate it was pointed out that the general rule of Hindu law that a son excluded the widow in respect of separate property and the surviving Coparceners excluded her in respect of joint family property was contrary of to the provision of section 3 should be deemed to have been abrogated. His lordship concluded as follows:

"I have, therefore, come to the conclusion that we are not obliged to hold that the effect of enactment is to bring about something not intended by legislature, as the learned editor of edition 11 of Mayne's Hindu law opined. On the finding of fact that alamelu was unchaste at the time of her husband death, she was disqualified from acquiring any interest under the Hindu Women's Right

to Property Act.”¹²⁶

Shastri, J., another member of the bench also expressed his opinion that though the act conferred new rights of succession on Hindu widows it did not purport to abrogate the pre-existing rule of Hindu law excluding an unchaste widow from succession to the property of her husband. It was never touched by the Act. Rather the object of the Act as the preamble indicated, was to give "better rights to women" and "not to confer rights on unchaste women". His Lordship further observed as under:

“I also venture to think that it could not have been the intention of the Act to give a charter of unchastity to married woman or to abrogate the inhibitions of law designed to preserve the purity and sanctity of family life.”¹²⁷

Mr. Justice Aiyar the third member of the Bench, also said that nowhere in the Act there was any whisper about removing that cornerstone of Hindu Law about wife’s capacity to inherit. Rather chastity was considered by all school of Hindu law, and by all Hindus as truth in action. His Lordship further observed:

"This is the land where it is proclaimed that God is truth and truth is God. For Hindus, chastity in a wife is the first thing required, all other qualifications paling into insignificance besides it ...”

The same question arose in *Kanailal Mitra vs. Pannasashi Mitra*¹²⁸ before a Division Bench of the Calcutta High Court and the above view of the madras High Court¹²⁹ was affirmed in the following words:

"We respectfully agree with the above view as to the scope and effect of the Hindu Women’s Right to Property Act, of 1937 and we hold that Section 2 of the Act has not removed disqualification of Hindu widow form succeeding to the

¹²⁶ AIR 1951, Madras 954, at p. 957.

¹²⁷ A.1.R. 1951, Madras 954, at p. 960.

¹²⁸ (1953-54) 58 Cal. W.N. 743.

¹²⁹ Supra Note 128

estate of her husband if she was found to be unchaste.”¹³⁰

Professor Derrett, a renowned jurist on Hindu Law, in his treatise ‘A Critique of Modern Hindu Law’¹³¹ also stated that it was never settled whether a widow might succeed, though unchaste, under the Hindu Women’s Rights to Property Act, 1937. According to him the better view, undoubtedly, because, wholly traditional, was that she should be disqualified though the Act did not say so.

The view of the Full Bench of the Madras High Court¹³² and the Division Bench of the Calcutta High Court¹³³ appears to me to be more correct, logical and in consonance with the basic tenets of Hindu Law and general understanding of the same by an average Hindu. It cannot, therefore, even be contemplated that our legislators intended to subvert the very sanctity of marriage by abrogating the rule of chastity. No doubt, they wanted to give better rights to the widows in respect of property so as to afford them security during widowhood but without interfering with the basic of Hindu marriage, i.e. marriage as sacrament. In other words the rules of Hindu law prescribing personal disqualification to inherit by a woman were not derogated.

The word ‘intestate’ used in sub-section (2) of Section 3 (though later on omitted by the amendment of 1938) was violative of the basic rule of Hindu Law. For example sub-section(2) of Section3 provided that the provisions of Section 3 should apply where a Hindu died intestate, forgetting or overlooking the basic rule that no will could be made by a coparcener in respect of coparcenary property. The criticism that its wording was too loose and not strictly legal was justified and the rectification was made in 1938.

Another objectionable expression was the term ‘lineal descendants’ used

¹³⁰ (1953-54)58 58 Cal. W.N. 743. At p. 18.

¹³¹ Ed.1970 p. 255.

¹³² Ramaiya Konar vs. Mottayya Madalla. A.I.R. 1951 Had. 954.

¹³³ Kanailal Mitra vs. Pannasashi Mitra (1953-54)58 Cal. W. N. 743.

in sub-section (1) of Section 3 of the Act (later omitted under the Amendment of 1938). The critics were of the view that the expression was used without properly comprehending its meaning as was rather a contradiction in terms. Dr. C.D. Deshmukh himself agreed to restrict the scope of his bill only to widows and expressed his sympathies for daughters for their exclusion. But one wonder why the term 'lineal descendants' was used which term includes both male and female progeny of a person as was held by the Privy Council in *Safelar Ali vs. Mirza Maksudali Beg.*¹³⁴

The Act made inadequate provision even in respect of the matter dealt with therein. For example, the Act did mention that the widow would have the same interest that her deceased husband had and granted her the right of partition like a male owner but said nothing about survivorship, about her being a coparcener and her liability for the debts etc.

Another objectionable feature of the Act was that it perpetuated the distinction between male and female heirs and gave only a limited estate to the widow. The antagonists of the limited estate were of the view that there was no legal basis for the continuance of a truncated estate in the face of the changes social structure. When women, in ancient times and under Vedic Law, were capable of owning and holding Stridhan properties with absolute power, i. e., they could dispose them of at their sweet will, why was only limited estate allowed to them in 1937, when our women had already reached the near standard of equality in educational, professional cultural, political and other spheres of life. It was in fact discriminatory, hostile and absolutely indefensible to stick to the theory of limited estate for women in the property inherited by them. However, the protagonists of the limited estate for women were of the opinion that such conferment of the limited rights was not on the bias of sex alone, but was designed to be protective measure for the Hindu Women of this country, who might otherwise allow the estate to be dissipated and spent away during their

¹³⁴ AIR 1930, P.C. 41.

lifetime by men on whom they had to depend. By the doctrine of limited estate the property was intended to be retained in the family. They based their contention on the early sacred texts of the law-givers like Manu, Katyayana and others who fixed only a limited estate for sonless widows. The reason for giving limited estate to the widows appears to me, to be the society and the prevailing circumstances of the time. The people were very orthodox and rigid. Had the Legislature given absolute estate to the widow there would have been a great revolt. Moreover, it was not possible to take such a drastic step of conferring absolute ownership on women when even the male members did not enjoy it. This limited estate was, however, abolished by the Hindu Succession Act, 1956.

Was it not a misnomer to name the Act as Hindu Women's Rights to Property Act when the rights were conferred only on certain widows specifically named in the statute i.e. the widow of the deceased, the widow of a pre-deceased son and the widow of a pre-deceased son of a pre-deceased son and the other females i. e., the daughter, mother and the sister were not given any rights. The Act was criticised as to why the daughter, the very flesh and blood of the deceased was not taken into consideration. So, it would have been more appropriate to christen it 'as Hindu widow's Rights to Property Act.

To sum up the scope of the Act, was limited; it was concerned with improving the status and condition of a widow of a copartner in the family so as to make her secure in her husband or father in law or grandfather in law left property as copartner out of which she was given a share to enable her to maintain herself without being at the mercy of the surviving copartners. The purpose of the Act was achieved in a great measure, i.e., bringing a change in the general outlook of the Hindus towards the widow of the family and the widow was given an honourable place in the family as well as in the society. The Act did not relate to succession to property but only defined rights of a widow to property. The criticism that it has adversely affected the rights of the daughter is

misconceived. The rights of the daughter, whatever they were during the period prior to the enactment, were not interfered with by this Act as it did not deal with the daughter's right to property. A Bill was brought before the Legislative Assembly¹³⁵ by Mr. Akhil Chandra Datta on November 22, 1940 for defining the rights of the daughters to their father's property but it was not accepted on the ground that piecemeal legislation on an important subject like succession would lead to confusion. It was therefore decided to appoint an expert committee to consider the matter as a whole. The result was the enactment of the Hindu Succession Act, 1956, which gave the rights to the widow, the mother, the daughter and the sister, i.e., to the females of the family.

The woman's estate has now been converted into stridhan by s. 14, Hindu Succession Act, 1956. Any property that a Hindu female will get after June 17, 1956, will be her absolute property unless specifically given to her with limitation.¹³⁶ The woman's estate over which she has possession when the Act came into force (June 17, 1956) is converted into her absolute estate. The old Hindu law of woman's estate and reversioner is still relevant in respect of property over which she had no possession when the Act came into force.

¹³⁵ Legislative Assembly Debates 1940, Vol. V, Delhi p. 983.

¹³⁶ See sub-section (2) section 14, Hindu Succession Act, 1956.