Chapter - 6
Judicial Attitude Towards Property Rights of Hindu Women
JUDICIAL ATTITUDE TOWARDS PROPERTY RIGHTS OF HINDU WOMEN

GENERAL

"If the law be dishonestly administered the salt has lost its flavors... if the lamp of justice goes out in darkness, how great is its darkness,"

Lord Bryce

Justice is supposed to be the key word for every country and for every form of government, but in a democratic set up its role is commendable. Due to principle of justice the importance of judiciary has been multiplied among the three important pillers of govt. In the wording of great political-legal thinker Lord Bryce "there is no better test of excellence of a government than the efficiency of its judicial system."

The democratic type of governance over the centuries has emerged as the most successful political experience in the history of human civilization. Democracy encompasses in its fold the dignified existence of all human beings advocating liberty, equality, justice, etc. as pre-requisites to enable every human being to live and progress with self-respect and dignity. It was a great challenge before independent India to evolve such system of governance with diverse languages, cultures, religions in consonance with traditions and values at different stages of development.

A strong and independent judiciary, subscribing to the highest ethical values is the greatest strength of the democracy. Judiciary is the sentinel on the qui-vive to protect the rights of the citizens and to

1 Lord Bryce James, Modern Democracies Vol. II 484 (1923).
2 Ibid. at 421.
hold the scales even between the citizens and the State."  

Legislations alone cannot make justice available to the citizens in society, but seeking equality in an unequal society is a task demanding, converted action on the part of the individuals, community, government and judiciary on a continuing basis. It is an important instrument as it plays a very active role in achieving the gender equality which is one of the basic principles of the Indian Constitution.  

Judiciary, which is the interpreter of the Constitution and the custodian of the rights of the citizens, must be independent and impartial. Judiciary has the mandate not only to interpret the laws and not to lay down general norms of behaviour for the government and the people to be considered binding on all as the law of the land. The scope of judicial review thus is confined to seek whether the impugned legislation falls within the competence of the legislature or is consistent with the fundamental rights guaranteed by the Constitution and its other mandatory provisions. Some issues on which differences have cropped up relate to the powers of courts to review the laws.

The doctrine of equality as enshrined in the Constitution of India, is not merely formal equality before the law but it embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast historical, socio-economic and customary differentiation. Courts are the protectors of the Constitutional guarantees to all the persons, without discrimination on grounds of sex, religion, caste and other forms of discrimination. If some gender unequal matters are brought before the court then it is the duty to strike them down. In public law court has ensured gender

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3 Urusa Mohsin, *Women's Property Rights in India* 223 (2010).
4 Article 14 : Equality before law.
5 *Supra* note 3.
equality and has not hesitated to strike down the discrimination against woman. Inspite of the plethora of progressive and protective legislations, we have failed to uplift the socio-economic and political status of woman and to place them at par with their male counterpart in different walks of life. In such a situation the role of judiciary in providing social justice to woman become decisive and the Indian judiciary has played a creative role in this regard. The efforts of the Supreme Court and different High Courts to ensure the gender equalities are laudable and it has been truly the champion of justice for women and protector of the Fundamental Rights of the women. For example in the employment setting, the Apex court unhesitatingly invalidated a rule that required a woman, but not a man, serving under the Indian Foreign Service (Recruitment, Seniority and Promotion) Rules, 1961 to seek permission for the solemnization of her marriage from the Government. Is it not ironical that when Indian mythology places women on a very high pedestal and they are worshipped and honoured – Goddess of learning is Saraswati; of wealth Laxmi; of power Parvati – we adopt double standards in so far as her guaranteed Constitutional and legislative rights are concerned. There has been an alarming decline over the decades in the moral values all around and that today is a great challenge which we face particularly in our country. Chief Justice Anand rightly points out that the fight of women for their rights is not a fight "against men". It is fight against unjustified social traditions and the male created Laxman Rekha which women are not supposed to cross. He advocates “CHANGE OF ATTITUDE, MOTIVATION AND AWARENESS (CAM),” of the society as the essence of ensuring gender justice in all spheres. He has dealt with different issues concerning justice for women in his various judgements and speeches.

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7 Mutamma v. Union of India, AIR 1979 SC 1868.
Before going through the role of Indian judiciary for the improvement of socio-economic conditions and the property rights of Hindu women, it would be necessary and fruitful to have a glance over the historical background and development of the Indian legal and judicial system.

**HISTORICAL EPILOGUE**

The roots of law and legal system are deeply buried in the past. It is the fruit of the endeavours, experiences, thoughtful planning's and patient labour of a large number of people through generations. Law cannot be understood properly when divorced from the history and the spirit of the nation whose law it is. It is impossible to have a correct picture of the nature of ancient Hindu law without some idea of the administration of justice in early times. Both the *Arthasastra* and the *Dharmasastras* has established the fact that the King was the fountain of justice. The King's Court was presided over by the Chief Judge with the help of counselors and assessors. There were three other courts of a popular character called *Puga, Sreni* and *Kula*. These were neither constituted by the King, nor by private or arbitration courts, but people's tribunals which were part of the regular administration of justice and their authority fully recognised. *Puga* was the court of fellow townsmen or fellow-villagers, situated in the same locality, town or village, but of different castes and callings. *Sreni* was a court or judicial assembly consisting of the members of the same trade or calling, whether they belonged to the different castes or not. *Kula* was the judicial assembly of relations by blood or

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9 Sir S. Varadachariar's *Hindu Judicial System* 14 (1946)
10 Gaut XI, 19-24; Manu VIII 1-3; Yajn I 360.
11 Manu VIII, 9-10; Yajn II, 1, 3.
13 Dr. Jolly and Sir G. Banerjee call them private or arbitration courts recognised by law, from whose decisions appeals successively lay down till the King's court was reached. Banerjee, *Hindu Law of Marriage and Succession* 4-7 (1923); Jolly Mac Muller (ed.), *The Sacred Books of Law Series* 293 (1885).
marriage.\textsuperscript{14} Kula, Sreni, Puga and Pradvivaka were the courts presided over by the Chief Judge and in these courts persons could resort for the settlement of their cases where a cause was previously tried, he might appeal in succession in that order to the higher courts.\textsuperscript{15} These inferior courts had apparent jurisdiction to decide all law suits among men, excepting violent crimes.\textsuperscript{16}

A very important feature was that the Smriti or the law books were mentioned as a ‘member’ of the King’s court. Narada says "attending to the dictates of law books and adhering to the opinion of his Chief Judge, let him try causes in due order."\textsuperscript{17} It is plain that the Smritis were the recognised authorities, both in the King’s courts and in the popular tribunals. The practical rules were laid down as to what was to happen when two Smritis disagreed. On some points either there was an option as stated by Manu; or as stated by Yajnavalkya, that Smriti prevailed which followed equity as guided by the practices of the old rules of procedure and pleading were also laid down in great detail. They must have been framed by jurists and rulers and could not only be followed due to any usage.\textsuperscript{18}

\textbf{Development of the Indian Legal System}

In India, with the advent of the British period, our tradition of the hoary past perished away though the application of the personal laws in the matter of marriage, divorce, adoption, inheritance, succession, etc. were kept untouched. With the passage of time the English judges felt that they must understand the real nature of the law. So many law books were translated into English in the guidance

\textsuperscript{14} Jnatis, Sambandies and bandhus.
\textsuperscript{15} Brishpati, I 29-30.
\textsuperscript{16} Brishpati, I, 2, 8.
\textsuperscript{17} Narada, 1-15, 35; Dr. Jolly refers to a note of Asahaya that the Smritis mean the composition of Manu, Narada, Visvarupa and others. Apparently, the Visvarupa referred to is the commentary by Visvarupa on the Yajnavalkya Smriti.
\textsuperscript{18} Mayne's, Hindu Law & Usage 11 (2003).
of the experts. The most famous work in the field of Hindu law was *A Code of Gentoo Laws*¹⁹ (which has been discussed in detail under the 1st Chapter of this work).

In the 17th Century A.D., the Britishers brought their English Common Law and their own traditional system, into its administration. At first stage, the English judicial system was designed at the Presidency towns only to deal with the Englishmen. But with the march of time, the adjustment had been made to provide the justice to the Indians also. Its beginning with Madras, which was the first Presidency town, it extended to the whole of India, with the usurping political power in various parts of the country.²⁰ Under the plan of 1772, by superimposing English administration on the established system of Qazis Courts, Warren Hastings set up, what the legal historian now call, the Adalat System.²¹ The Civil and Criminal High Courts set up under the system were called Sadar Diwani Adalat and Criminal Court. To function at the district level the Mufusil Diwani Nizamat Adalat was designated. In 1774, Bombay, Calcutta and Madras had a Supreme Court under the British Parliaments Regulations Act of 1773. With their jurisdiction defined by relevant laws, there was often overlapping and it resulted into conflicts. In Northern India, these courts of higher jurisdiction i.e. Sadar Diwani Adalat and Sadar Nizamat Adalat were set up separately for the acquisitions of the British, in North India.²²

**Role of Judiciary in the Development of Different Laws**

Introducing social reforms, through law, is always problematic because of its acceptability and implementation. Reformative laws are always imposed law because they are the product of some elite class, whose value system and culture is different from the masses. These

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¹⁹ Published at London in 1776
reformative laws have prevailed for centuries and these being followed by the religion, through its course of maturation, depict the sentiments of millions and symbolizes as their cultural identity and their very life. The role of judiciary is, to keep its eyes on the whole system and scenario as well as on the particular case. If the court focuses only on the particular people before it, it may do justice in that particular case and yet make very poor general policy.\textsuperscript{23}

So it is often said that hard cases make bad law. Sometimes the judiciary is confronted with very peculiar situation where it has to correct the Parliament’s technical error. It has to give effect to the intention of the Parliament. The public expects that the text of a statute be construed literally, but some time the judiciary has to interpret it liberally in the wider interest of public as in the case of \textit{Monika Gounder v. Arunachala}\textsuperscript{24}, where it was decided by the Full Bench of the Madras High Court that on the death of sole surviving coparcener, the widow of a predeceased coparcener did not take property from him, by survivorship. The result was that she could never have more than half of the estate. This decision was given after a long time after the passing of the Act of 1937.\textsuperscript{25} Many cases are perfectly and correctly decided on a technical basis but are wrong in principle. A case, may seem certainly bad law when looked as a piece of judicial therapy for an unhealthy society, on the other hand when viewed through telescope of stare-decisis, it may be very sound. The two distinct criteria, the technical and social, sometimes meet happily and the decision passes both the test.

Thus from the above discussion, it is evident that how the judiciary or judicial method of any legal system plays important role, in developing and moulding any particular law, social norms, legal institution, etc.

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\textsuperscript{23} Supra note 3 at 227.
\textsuperscript{24} (1964) 2 MLJ 519 (FB).
\textsuperscript{25} The Hindu Women’s Right to Property Act, 1937.
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Hindu Property Laws and Judiciary

In this backdrop, after scanning Constitutional, Statutory and all other aspects of Hindu women’s right to property in India in the preceding parts of this work, an attempt is being made in this chapter to access how Indian judiciary has played an important role with regard to it by interpreting all these statutory provisions for the achievement of desired objectives.

The court rendered a yeoman service to the cause of Hindu women's right of property. In the period of Britishers, the Hindu law underwent transformation at the hands of British Courts. Mr. Derett a great critic of Hindu law has glorified his countrymen for presenting English ruler in India as 'Patrons of Shastras'. He has given in his book a long list of, about fifty Sanskrit legal treaties in which the claims are attributable to British influence or patronage or possibly written in response to British request or encouragement.26 William Jones judge of Supreme Court of Fort William at Calcutta, himself admitted: "Pandits deal out Hindu law as they please and make it at reasonable rates when they can not find it ready made."27

The Governor Elphinstone, in 1828 had remarked, "the Dharmashastras, as it is understood, is a collection of ancient treaties neither clear nor consistent in themselves and now buried under a leap of more modern commentaries, the whole beyond the knowledge of perhaps the most learned Pandits and every part wholly unknown to the people who live under it."28 The British judges used to consult the Pandits, attached to the courts. In the case of difference of opinion, on the points of law, the courts consulted the other Pandits. Sir Francis Meneughten consulted 51 pandits on a question of inheritance, in the

26 J.D.M. Derrett, Law and State in India 225 (1968).
27 Supra note 20 at 583.
case of Gurubullub v. Person. Hindu law came to be administered by the courts, in British India, and because of numerous problems faced by the courts some cases took very long time for disposal. By administering Hindu law in India the problem with the Britishers was that they were totally unaware of the surroundings and sociological environment of the Indian Society. There were many sub-schools, by which the Hindus were governed, and they were quite different from each other. During the colonial rule, though the Supreme Court leaned towards the application of the laws of the particular school, to which the parties belonged. In Bai Kesarbai v. Hansraj Morarji, the question was, whether a co-widow could succeed to the property of a widow dying issueless, in preference to her husband's brother and brother's son. The case was decided, according to the harmonious construction between the Mitakshara and Mayukha School.

The earliest reported case of Dayabhaga was Pranballav Shaha and Another v. Smt. Tulsibala Dassi and Another. In that case the widow succeeded to the exclusion of mother (father's widow). The conflict was between the father's widow and widow of the deceased. In Perammal v. Venkatammal, the court held that the mother stands, next in order of succession on failure of other heirs and can succeed only in the absence of a widow. Once again the judiciary favoured the widow instead of father's widow. In Huroosundry v. Rajeshsurrie and Ballamma v. Puttaya, the widow was held not entitled to inherit that property which was not vested and possessed by the deceased husband at his death. In Sondaninoy Dassee v. T. Chandra, the

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29 (1834) 4 MIA 204.
30 33 IA176.
31 (1794) MIA 353.
32 (1863) 1 MHCR 223.
33 (1865) 2 WR 321.
34 (1894) ILR 18 Mad 168.
35 (1876) ILR 2 Cal. 262.
restrictions on the right, to partition on issueless widow, was relaxed by the Court.

One of the most serious deviations of the Privy Council from the Mitakshara view was regarding the status of Hindu women. The Privy Council took a much more rigid and narrow view of the women's position, based on the old texts of Manu, Katyayana and Yajnavalkya ignoring the interpretation like Vijnaneshwara. By this way the judiciary has narrowed down the concept of Stridhana, the absolute property of the women.36 Yajnavalkya had defined Stridhana restrictively but Vijnaneshwara gave it expansive meaning and include in it, every kind of property acquired by a woman from any source which was judicially recognised in India by several courts.37 On the other hand the Privy Council in a series of pronouncement38, refused to accept Vijneshwara’s view over Stridhana. Perhaps the Privy Council found, Vijneshwara’s view too radical because, in England, until 1882, the position of married women, in the matter of their rights to property, was very unsatisfactory and the Married Women’s Right to Property Act, 1882, alleviated their position.39

During British period, several judicial decisions constrained the scope of stridhan property. The Mitakshara had expanded the scope of stridhan to include property acquired by a woman through every source, including inheritance and partition. But the judiciary changed this concept and lay down that inherited property is not stridhana. A new legal principle was gradually introduced through court decisions that whether the property inherited by a woman through her male relatives (father, son, husband) or through her female relatives

37 Salemo v. Lutchmana ILR (1898) 21 Mad 103.
38 Mst. Thakur Daylee v. Rai Blak Ram 11 MIA 139; Bhawandeen Dubey v. Maina Bai 11 LAA 487; Chotey Lal v. Chunnoo Lal 6 IA 15.
39 Supra note 20 at 598.
(mother, mother’s mother, daughter), is her Stridhana and that upon whom it would devolve on the heirs of her husband or father. Women lost the right to Will or gift away their Stridhana and it acquired the character of a limited estate. Upon the widow’s death, the property reverted back to the husband’s male relatives named as ‘reversioners.’ The introduction of this concept borrowed from English law, bestowed upon the male relatives the right to challenge all property dealings by Hindu widows. To provide concrete examples of this trend, some decisions are examined below. These judgements have several commonalities. The litigations against the widows were initiated by their husband’s heirs. In a significant number of cases, following local customs, the lower courts upheld the women’s rights. These were reversed by the higher judiciary and then became binding principles of law. Significantly, in all these cases the decisions were from property disputes within the Bengal Presidency, but under the consolidated scheme of hierarchy of courts, they became the binding principles of law for the other Presidencies as well.\textsuperscript{40}

The Privy Council made a remarkable change by restricting the scope of Stridhan and excluding from its ambit the inherited property. Thus to the principle of Vijnaveswara, an important exception was attached by the decisions of the Privy Council in Bugwandeen Doobey \textit{v.} Myna Baee\textsuperscript{41}, and Mussamut Thakoor \textit{v.} Rai Balack Ram.\textsuperscript{42} After full consideration of the authorities, the Privy Council decided that under the law of the Mitakshara, a widow’s estate inherited from her husband was limited and a restricted estate. These decisions of the Privy Council were subsequently followed by the various High Courts. For example, the Bombay High Court in \textit{Harilal Marjivand’s} \textit{v.} 

\textsuperscript{40} Flavia Agnes, \textit{Family Laws and Constitution Claims} 331 (2011).
\textsuperscript{41} (1868) 9 WR (PC) 23.
\textsuperscript{42} (1868) 10 WR (PC) 3.

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Paranyalayad’s Prabhuda’s\textsuperscript{43}, and Pandharinath Vishwanath v. Govind Shivram\textsuperscript{44} followed the same principle.

In the year of 1868, in Srinath Gangopadhyā v. Sarbamangala Debi\textsuperscript{45}, the Calcutta High Court held that as per the Benaras School, once a stridhan property devolves upon a heir, it loses its character as stridhan and devolves as per ordinary rules of Hindu law. In Gonda Koer v. Kooer Gody Singh\textsuperscript{46} the widow had purchased the property out of the accumulated income from her Stridhana and pleaded that it should be considered as her Stridhana. But following the rule laid down by the Privy Council, the Calcutta High Court held that the property was not Stridhana and hence she does not have the right to dispose of it by Will and upon her death, it would devolve on her husband’s heirs. In 1873, in Deo Prashad v. Lujoo Roy\textsuperscript{47}, the Court ruled that the property inherited by a daughter from her father is not Stridhana. In Dowlut Koona v. Burma Deo Sahoy,\textsuperscript{48} the principle was extended to the property inherited by an unmarried daughter from her mother.

Later, the courts stretched this principle to include the property inherited from all female relatives, thus sealing all avenues for the continuation of property devolution in the female line. The substantial case law which had piled up made it impossible to retract from this position. In 1879 in the case of Chotay Lal v. Chunno Lal\textsuperscript{49} while holding that the property inherited from the father is not Stridhana, the Privy Council expressly stated that since this rule has been established by a series of decisions, a different interpretation of the old and obscure texts can not be followed. The Privy Council further

\begin{itemize}
  \item \textsuperscript{43} ILR (1892) 16 Bom 229.
  \item \textsuperscript{44} (1907) IX BLR 1305.
  \item \textsuperscript{45} (1868) 10 WR 488.
  \item \textsuperscript{46} (1874) 14 BLR 159.
  \item \textsuperscript{47} (1873) 20 WR 102.
  \item \textsuperscript{48} (1874) 22 WR 54.
  \item \textsuperscript{49} (1879) ILR 4 Cal 744.
\end{itemize}
stated that the courts ought not to unsettle a rule of inheritance affirmed by a long course of decisions unless it is manifestly opposed to law and reason. *Sheo Shankar v. Debi Sahai*\(^ {50} \) is a case which provides yet another illustration of the judicial trend where a woman had inherited the property from her mother. After her death, her sons claimed the property as heirs of the mother and grandmother by depriving their sister. The subordinate Judge of Gorakpur held that the property inherited through the female line was the woman's stridhana and hence her sons had no right over it. On appeal, the Allahabad High Court reversed the decision. This resulted in appeal to the Privy Council. In 1903, the Privy Council upheld the decision of the High Court and laid down that the property inherited by a woman from her mother is not her Stridhana and hence it will not devolve on her daughter who is her stridhana property's heir, but will devolve upon her son.

These judgements have revealed that how gradually the notion of stridhan property was subverted through patriarchal collusions aided by colonial judicial decisions. This right did not find a mention in the codified law that is the Hindu Marriage Act of 1955. Much later this customary right was re-introduced into legal texts through a provision, Section 406, criminal breach of trust under the Indian Penal Code, 1860.\(^ {51} \)

Under the Hindu Women’s Rights to Property Act, 1937 the widow of a Hindu and his widowed daughter-in-law and grand daughter-in-law are entitled to inherit to his estate, not only in default of but along with his male issue. The widow of a deceased coparcener in a Mitakshara Hindu family succeeds, whether her husband has left

\(^{50}\) (1903) 30 IA 202.  
male issue or not, to his interest in the coparcenary property. Thus, it defeated the right of survivorship of his collaterals. The interest devolving on a Hindu widow, under this Act was the limited interest known as a Hindu woman's estate. The nature of a woman's estate must be described by the restrictions which are placed upon it, and not by terms of duration. It is neither a life-estate, because in certain circumstances, she can not be given an absolute and complete title, nor it is in any sense an estate held in trust for reversioners. Within the limits imposed upon her, the female holder has the most absolute power of enjoyment and is accountable to no one. She fully represents the estate, and so long as she is alive, no one has any vested interest in the succession. The Privy Council observed in *Janaki Ammal v. Narayanaswami*, that “Her right is of the nature of a right of property; her position is that of owner; her powers in that character are however limited.” The more fully stated by their Lordships in *Moniram Kolita v. Kerry Kolitany*, that the whole estate for the time, vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her estate is an anomalous one and has been compared to that of a tenant-in-tail. It would perhaps be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is, it is clear that until the termination of it, it is impossible to say who are the persons that will be entitle to succeed as heirs to her husband. The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon the termination of the estate,

52 Section 3 (3) of the Hindu Women’s Right to Property Act, 1937.
53 Supra note 18 at 1056.
54 *Bijoy Gopal Mukerji v. Krishna Mohishi* (1907) 34 IA 87.
55 *Renka v. Bhola Nath* (1915) 37 All 117.
56 (1916) 43 IA 207.
57 (1880) 7 IA 115.
the property descends to those who would have been the heirs of the husband if he had lived up to and died at the moment of her death.

The limitations upon her estate are very substance of its nature and not merely imposed upon her for the benefit of reversioners. The principles which restrict a widow were laid down by the Judicial Committee in Collector of Masulipatam v. Cavaly Venkata\(^{58}\) as follows: "It is admitted, on all hands, that, if there be collateral heirs of the husband, the widow cannot by her own will alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possessed for purely worldly purposes. To support alienation for the last, she must show necessity. On the other hand, it may be taken as established principle that an alienation by her, which would not otherwise be legitimate, may become so if made with the consent of her husband's kindered. But it surely is not the necessary or logical consequence of this latter proposition, that in the absence of collateral heirs to the husband, or on their failure, the father on the widow's power of alienation altogether drops. The exception in favour of alienation with consent may be due to a presumption of law that, where that consent is given, the purpose for which the alienation is made must be proper.\(^{59}\) Though during the British period, Hindu law was much disorted, but in respect of widow's property right, it always has a soft corner. The problem to administer the Hindu law was that, there was no uniformity among Hindu laws of succession because of many schools and sub-schools which had their own rules relating to succession. In Hindu law very few females were entitled to hold and

\(^{58}\) (1861) 8 MIA 529.

\(^{59}\) The position of a widow in the Punjab appears to be exactly the same except that her power of dispositions is only to be exercised for secular objects. Sir W.H. Rattigan, Punjab Customary Law II 177-179, 203, 209 (1977).
inherit the property. The rights given by Hindu Law to the females were also not absolute and so many impediment were imposed on them. As the policy of Britishers was non-interference in the matter of personal laws, the judiciary found it difficult to apply justice, equity and good conscience.

**Role of the Judiciary during the Post Independence Period**

When India got independence from the Britishers on 28th January, 1950, and became a Sovereign Democratic Republic, then just two days after the Supreme Court came into being. The inauguration took place in the chamber of Princes in the Parliament building which also housed India’s Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises.

In the post independence period, Supreme Court has adopted liberal attitude towards the Hindu women’s right to property in comparison to the Privy Council. In Independent India, much emphasis was given on the concepts of gender justice and equality. Many legislative steps had also been taken to modernise, unify, democracratize and secularize the Hindu family law and especially to emancipate the Hindu female. Judiciary was also inclined towards the empowerment of women particularly in the sphere of economic era. Several provisions of these reformatory legislations have been challenged but upheld by the courts from time to time.60

**Women’s Claims and Constitutional Provisions**

In the post-independence period, the Indian Constitution became the benchmark for determining the scope of women’s rights.

The provisions of adult franchise, non-discrimination on the basis of sex and positive discrimination (or affirmative action) in favour of women and children placed women far ahead of even many of their Western counterparts.\textsuperscript{61} The promise of equality is not just a formal equality but an egalitarian equality. Over the years the Supreme Court has read various socio-economic rights to include them in the realm of Fundamental Rights, particularly Article 21, the right to life.\textsuperscript{62} Acknowledging the historical disadvantage suffered by women, Article 15 (3) is a departure from the established principle of equality, enables the State to make special provisions to protect women. This is a correctional measure of positive discrimination in favour of women.\textsuperscript{63} In 1986, in \textit{Maya Devi v. State of Maharashtra}\textsuperscript{64} the requirement that married women has to obtain their husband’s consent before applying for public employment was successfully challenged as a violation of Articles 14, 15 and 16. The Court emphasized the importance of economic independence of women, in overcoming traditional disadvantages. The next landmark judgment, \textit{Mackinnon Mackenzie & Co. Ltd. v. Audrey D’costa}\textsuperscript{65} addressed some of these concerns. Supreme Court held that discrimination with regard to unequal payment on the grounds of sex of the employee is illegal and directed equal pay for equal work for work of a similar nature.

\textbf{Role of Judiciary during the First Decade of Independence}

The judiciary has played a very dynamic role towards the empowerment of women in first decade of independence because the Hindu Succession Act, 1956 which is considered as a piecemeal in the

\textsuperscript{61} In contrast, Canadian Women were granted the right of equality in the year of 1982, Swiss women were granted the right to vote in 1972, and United States has not yet endorsed the Equal Remuneration Law.
\textsuperscript{62} Article 21 of the Constitution of India guarantees protection of life and personal liberty.
\textsuperscript{63} \textit{Supra} note 40 at 130.
\textsuperscript{64} (1986) 1 SCR 743.
\textsuperscript{65} (1987) 2 SCC 469.
field of women's property right, was not passed and female had very limited property right, but whenever the matter came before the court, it did not hesitate to favour the females. On an issue whether the definition of word 'property' under the Hindu Women’s Right to Property Act, 1937 includes the right of succession to shebaitship or not, the Apex Court gave its favour to the female in the case of *Angurbala Mullick v. Debarata Mullick*.66 The court said that there is nothing in the Act67, under the Section 3 (1) by which an inference can be drawn that a right of succession to shebaitship does not fall with in the definition of property. If there is no legal objection to a woman being a shebait, why she should be excluded from succeeding to the same. In 1953 on the issue of the inheritance by prostitute, the court held in *Saraswati Ammal v. Jagadabel and another*68 that though under Hindu law a maiden was a preferential heir to her married sister. But this rule did not apply to a daughter who was admittedly married to an idol and who lead a life of a prostitute.

The Supreme Court in 1955 in *Gopal Singh and others v. Ujagar Singh and Others*69 upheld the validity of customary law prevailed among agriculturist jats in the State of Punjab where daughter succeeded self-acquired property of her father in preference to collaterals. In 1957 just next year of the passing of the Act of 195670 the question before the court was whether Section 14 of the Act is retrospective in operation. This question arose because generally a substantive law is not retrospective in operation, unless it is specifically made so. But Section 14 appears on its face, to be

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66 AIR 1951 SC 293.
67 The Hindu Women’s Right to Property Act, 1937.
68 (1953) SCR 939.
69 (1955) 1 SCR 86.
70 The Hindu Succession Act, 1956.
retrospective, when it declares that the property acquired, before or after the commencement of the Act shall be held by her as an absolute owner and not as limited owner. But this retrospectivity of the Act, is given to the acquisition of the property and not to possession, as laid down by the Supreme Court in *Smt. Kamala Devi v. Bochulal Gupta*.71 In another case, *Gummalapura Taggiana Matada Kotterswami v. Setra Veerawa and Others*72 the court had made it clear, that for the application of Section 14 of the Act, it was necessary that the property must be in possession of Hindu female, at the date of the commencement of the Act, whether actual, physical or constructive.

In favour of the women’s right to property, in 1959, the Supreme Court held, in *Ujagar Singh v. Mdt. Jeo*73 that even if a custom under which a sister may claim to succeed to the property of her brother in preference of collaterals, has not been established, she was made entitle to claim the inheritance, under Section 5 of the Hindu Law of Inheritance (Amendment) Act of 1929. Under this Act a sister was a preferential heir of her brother against his collaterals.74

**Judicial Interpretations after Passing of the Hindu Succession Act, 1956**

In the year of 1956, the judiciary had got the weapon of the Hindu Succession Act, 1956 to favour the females and generally the court interpreted the provisions of the Act, to give more and more rights to women. But sometimes contrary views were also taken because in favouring the women it cannot go against the express provision of the laws. In 1962 the Supreme Court held in *Sunka Villi Suranna and Others v. Goli Surtisajue and Others*75 that where a

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71 AIR 1957 SC 434.
72 (1959) SCR 968.
73 AIR 1959 SC 1041.
74 *Supra* note 36 at 248.
75 (1962) 3 SCR 653.
Hindu holding occupancy right under the Zamindari, died leaving no son behind him, daughter could succeed to him though with limited interest. But the Supreme Court was not always bent to favour the women and in 1966, in Commission of Income Tax M.P. v. Seth Govind Ram Sagar Mills\(^76\) on the question whether widow is a Karta of joint family, the Apex court held, since coparcenership is an essential condition for the membership of Hindu joint family and a widow is not a coparcener, so she could not be a Karta of joint family, At another occasion in Satrughan Isser v. Sabijpari\(^77\) on the question whether widow acquiring property under the Act, could claim partition, Supreme Court did not give full effect to the statutory conferment upon the widow, of the same right of claiming partition as a male owner.

In Neelawwa v. Shivawaa\(^78\), the question before the Karnataka High Court was whether a daughter born prior to adoption of a Hindu male dying intestate can be considered to be 'heir' in the category of class-I of the Schedule as defined under Section 3 (f) of the Act. The property in this case was inherited by the deceased from his adoptive family. It was held that the daughter was 'heir' to the deceased. It was further observed that although adoption has the effect of removing a person from the family of his birth, but it does not and cannot sever the tie of blood relationship.

Section 4 of the Act gives overriding effect to the Act regarding matters for which provision is made in the Act and it also declares that any rule, text, interpretation of Hindu law or any custom or usage having force of law shall cease to have effect. But it was held by the Delhi High Court in Gopal Narain v. D.P. Goenka,\(^79\) that the provisions

\(^{76}\) AIR 1966 SC 24.  
\(^{77}\) AIR 1967 SC 272.  
\(^{78}\) AIR 1989 Kant 45 (DB).  
\(^{79}\) AIR 1971 Del 61.
of the Act does not affect the old law relating to joint family, like the right of mother or widow to get a share on partition in the family. Section 4(2) protects certain State legislations which are aimed at 'prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. It has been held by the Bombay High Court in *Tukaram v. Laxman* that Section 4(2) of the Act cannot be interpreted to mean that the Act is not at all applicable to regulate succession in respect of agricultural land. Sub-Section 4 has now been omitted vide Section 2 of the Amending Act of 2005.

The protection of women's right to property is not a new thing in the life of the Supreme Court or High Courts in India as Indian judiciary remained behind the philosophy of gender justice. The higher Courts by interpretational law have played a very significant role in respect of woman's right to property. The Explanation 1 to Section 6 of the Hindu Succession Act, 1956 (before 2005 Amendment) was interpreted differently by the High Courts of Bombay, Delhi, Orissa and Gujarat in the cases, where women's rights to property effected. The Supreme Court in *Gurupad v. Hirabai*, and in *Shyama Devi v. Manju Shukla*, held that the proviso to Section 6 gave the formula for fixing share of the claimant and the share was to be determined in accordance with the Explanation 1 by deeming that a partition had taken place a little before his death, which gave the clue for arriving at the share of the deceased.

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80 *Sooraj v. SDO Delhi*, AIR 1995 SC 872.
81 *AIR 1994 Bom 147*.
82 w.e.f 9.9.2005.
84 (1978) 3 SCC 383.
85 (1994) 6 SCC 342.
The Supreme Court in the case of State of Maharashatra v. Narayan Rao\textsuperscript{86}, held that it was no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the date of the death of a male member under Section 6 of the Act, but she cannot be treated as having ceased to be a member of the family without her concurrence as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such females.\textsuperscript{87}

In 1968, the Supreme Court had to consider the question, whether after coming into force of the Hindu Succession Act, 1956 the widow got rights of full ownership and could alienate the properties without the consent of the male member of the family. It was held in \textit{Sukh Ram and Another v. Gauri Shankar and another}\textsuperscript{88} that she had become full owner, by virtue of the provision of Section 14 (1) of the Act of 1956. At another place in \textit{Nagindra Prasad and Others v. Kemponan Jamma}\textsuperscript{89} the Supreme Court had, the task of interpretation of the scope of clause (d) of Section 8 of the Mysore Hindu Law Women’s Rights Act, 1933.\textsuperscript{90} In this case the superior court had widely interpreted the scope of said Section. The Supreme Court held that Section 8(d) of the Act of 1933 cannot be narrowly interpreted as giving a right, to only those females, who happen to be related to one or the other of the last two male coparceners, and the expression, mother, would include a step mother. Step grand mother was a sole surviving heir; she was made entitled to share in the joint family property. On the issue of a possession of a widow as trespasser,
Supreme Court in *Mangal v. Ratno*\(^91\) held that before any property could be said to be possess by a Hindu female as required in Section 14 (1) of the Act two things are necessary to be considered.

1) She must have a right to the possession of that property.

2) She must have been in possession of that property either actually or constructively.

The Apex Court in *Vijai Pal v. Dal Consolidation*\(^92\) interpreted the word 'possession' in wider sense that it is co-extensive with the ownership, but in *Dindayal and other v. Raja Ram*\(^93\) Supreme Court, on the issue of trespasser had held that she could not be held to acquire any right under the Act, where she had possessed property as a trespasser.

The Supreme Court in *Tulassamma v. V. Sesha Reddy*\(^94\) had recognised that Section 14 (1) must receive 'most expansive interpretation'. The facts of this most important case, in which the Supreme Court had propounded so many principles are as follows:

The husband of Tulsamma Venkata Sesha Reddy died, leaving behind Tulsamma as his widow in the State of jointness with his stepbrother V. Sesha Reddy. Tulsamma filed a petition for maintenance which was passed as an exparte decree. A settlement took place out of the court under which, Tulsamma was allotted the disputed property as a limited interest only. Tulasamma remained in possession of the property till the passing of the Hindu Succession Act 1956. By two-registered deed, Tulasamma leased out some of the properties, which was challenged, on the basis that her interest would not be enlarged into an absolute interest, under Section 14 (2) of the Act of 1956. The Munsif Court accepted it. Then Tulasamma went to

\(^{91}\) AIR 1967 SC 869.

\(^{92}\) AIR 1996 SC 146.

\(^{93}\) AIR 1970 SC 1019.

\(^{94}\) AIR 1977 SC 1944.
District Court, who reversed the findings of the trial court and held that sub-section (2) of Section 14 had no application because the compromise was an instrument in the recognition of a pre-existing right. In second appeal the High Court of Andhra Pradesh upheld the decision of trial court. At last in the Supreme Court, Justice P.N. Bhagwati, Justice A.C. Gupta and Justice S.M. Fazale Ali reached at the conclusions that:

- Hindu female's right to maintenance is not an empty formality. It is a tangible right against the property which is recognised by the Shastric Law.
- Section 14 (1) and the explanation attached with it should be given, widest possible meaning, in favour of female, to achieve the objection of the Act of 1956, which is to abridge the stringent provisions, against proprietary rights, which were often regarded as evidence of her perpetual tutelage.
- The nature of the Sub-Section (2) of Section 14 is as an exception to sub-section (1). This proviso should not be construed in a manner so as to destroy the very purpose of the Act.
- Section 14 (2) applies to instrument, decree, awards, gift, etc. which creates a new right or interest in favour of female, where the instrument only confirm the pre-existing right it has no application.
- The use of express words in the explanation to Section 14 (1) that 'property acquired by a Hindu female' at partition or 'in lieu of maintenance' or 'arrears of maintenance', etc. clearly makes sub-section (2) inapplicable to these categories of property.
- The expression "possessed by" should be given a broad meaning and wide connotation which includes the actual as well as constructive possession and symbolic possession. Judiciary
leaned towards this attitude from the beginning. But this widest interpretation could not by any way extended to such an extent as to include the trespasser.

- The words "restricted estate" used in Section 14 (2) are wider than limited as indicated in Section 14 (1) and they include not only limited interest but also any other kind of limitation that may be placed on female transferee.

Applying the principles enunciated to the facts of the present case the court find:

- that the properties in suit were allotted to the appellant Tulasamma on July 30, 1949 under a compromise certified by the court.
- that the appellant had taken only a life interest in the properties and there was a clear restriction prohibiting her from alienating the properties.
- that despite these restrictions she continued to be in possession of the properties till 1956 when the Act of 1956 came into force and
- that the alienations which she made in 1960 and 1961 were after she had acquired an absolute interest in the properties.

It was therefore, clear that the compromise by which the properties were allotted to the appellant Tulasamma, in lieu of her maintenance, were merely in recognition of her right to maintenance, which was a pre-existing right and therefore, the case of the appellant would be taken out of the ambit of Section 14 (2) and would fall squarely within Section 14(1) read with the explanation there to. It was a landmark judgment of the Supreme Court.

95 Kothiruswami v. Veerava, AIR 1959 SC 577.
96 Dindayal and Others v. Raja Ram, AIR 1970 SC 1019.
It is respectfully submitted, that the Supreme Court has misconceptualised sub-section (2) of Section 14 as a proviso of the first sub-section because both the clauses have different purposes. It is further submitted that the language of the proviso is wide enough and does not bar its application to the pre-existing rights of the widow. Another thing which draw the attention is that Supreme Court in considering the words 'possessed by' takes the meaning 'the state of owing or 'having in one's hand' or power which is not relevant because the legislature deliberately avoid to use the words 'owned by' in place of 'possessed by' in Section 14 (1) of the Act of 1956.

In Shambhu Chandra Shukla v. Thakur Ladle R. Chandra\(^97\), the question before the court was whether the widow can transfer her shebaitship right by a Will? Justice P. Mukarji, said, "that shebaitship is a property which is heritable. The right of female to succeed to the religious office of shebaitship is already recognised by the Act of 1937. Section 14 of the Act of 1956 enlarge the limited right of a Hindu female to the absolute right and there is no bar against alienation, which was imposed by the founder. In Amar Singh v. Asst. Director of Consolidation\(^98\), the nature of right and interest of a Hindu widow in her deceased husband’s estate vesting in her was recognized.

In the decade of 90’s, the judiciary had passed some very significant rulings i.e. Nazar Singh v. Jagjeet Kaur,\(^99\) Vijay Singh v. Dy Director Consolidation,\(^100\) Banarshidas v. Madhav Rao\(^101\) and Lalthachami v. Latha Chungi.\(^102\) As to favour female, it has extended the ambit of Section 14 even to include the wife of bigamous marriage

\(^98\) (1988) 4 SCC 143.
\(^99\) AIR 1996 SC 855.
\(^100\) AIR 1996 SC 146.
\(^101\) AIR 1998 P&H 3439.
\(^102\) AIR 2000 Gau. 96.
as wife. In this decade the international provisions were also taken into consideration and tried to implement.

The Supreme Court in the case of *Kalwantibai v. Sairyabai*\(^{103}\), in the matter of widow's right to property, held that a female Hindu possessing the property on the date of the Hindu Succession Act of 1956 came into force, could become absolute owner only if she was a limited owner. The legislature did not intend to extend the benefit of enlargement of estate to any or every female Hindu irrespective of whether she was a limited owner or not. In *Masilamani Mudaliar v. Idol of Sri Swaminath Swami*\(^{104}\), a very significant judgement was given by the court because it had not only recognized the absolute ownership of females, over certain properties but also discuss various International Conventions as, the Protection of Human Rights Act, 1993 and other Constitutional provisions to emphasize the concept of equality of gender. In *Ragubir Singh v. Gulab Singh*\(^{105}\), Supreme Court has reaffirmed and reiterated the females limited estate into absolute one.

An interesting question came before the Apex court in *Beni Bai v. Ragubir Prasad*\(^{106}\) whether under Hindu law the term 'wife' include the subsequent wife or not? As in Hindu law bigamy is not permitted so the third marriage is void, then the question arose that whether the benefits given to a wife could be given to the third wife or not? The facts of the case were that the third wife in favour of her daughter executed a Will. The Supreme Court held that to read a 'female Hindu' as only wife was totally misconceived. It is apparent that the attitude of the judiciary towards females was generally lenient and pro-women. In *Naresh Kumari v. Shashi Lal*\(^{107}\), the Supreme court held that if the

\(^{103}\) AIR 1991 SC 1581.
\(^{104}\) AIR 1996 SC 1697.
\(^{105}\) AIR 1998 SC 2401.
\(^{106}\) AIR 1999 SC 147.
\(^{107}\) AIR 1999 SC 928.
widow had relinquished her right, through the sale deed, her limited interest would not ripen in the absolute ownership or where she herself had surrendered her share, in favour of her only son, the benefit of Section 14 of the Act of 1956, could not be given to her. Here though the decision was not pro-women but according to law.

Similarly in Velamuni Venkata Sevaprasad v. Kothuri Venkateshwara,109 the Supreme Court, on the point of the remarriage of the widow, gave another significant judgement. The Act of 1856 said that the widow on remarriage110 would be deemed to be dead. The facts of this case were that a widow remarried in 1953 prior to the Act of 1956 though her marriage was bigamous under the Madras Hindu Bigamy (Prevention and Divorce) Act, 1949, so void. The question before the court was whether such widow was entitled to inherit or not. The court held that voidness of marriage could not be termed, as absolute nullity and also could not be taken into consideration to aid the conferment of right. The court held that she was not entitled to inherit. Here the judiciary did not allow to take undue advantage of the Act of 1949 of Madras and applied the clear provisions of the Hindu Widow's Remarriage Act, 1856.

**Current Status of Women’s Absolute Ownership**

Section 14 of the Hindu Succession Act, 1956 converted the limited interest of Hindu female into absolute right. If she gets property from her husband she can sell it and the purchaser gets absolute right in the property.111 The judiciary has played a significant role to further widen the scope of Section 14 of the Act of 1956.

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110 Section 2 of the Hindu Widow’s Remarriage Act, 1856.
111 Prior to the Act, she could sell it only for the necessities of the family or to perform religious ceremonies for the benefit of her deceased husband.
In *Palchuri Hanumayamma v. Tadikamalla*\(^{112}\), such a situation had emerged which was unforeseen by the legislature. As a result of enlarging the widow’s limited estate the original intent of the testator to give equal benefit to the third branch of his family, had been nullified. In this case by a registered Will the appellant's, maternal grand father provided that his wife ‘R’ "shall enjoy all my movable and immovable properties till her death", without making allocations. After the death of ‘R’ each of his three daughters were to be given clearly identified share in the property. In 1944, one of the three daughters, the mother of the appellant died. The appellant, till her marriage, lived with her grand mother ‘R’. In 1955, ‘R’ with a partition deed had transferred the shares to the two surviving daughters, according to the Will and kept the share of the deceased daughter with her. In 1966, ‘R’ by a gift deed had transferred that share to one of her surviving daughter and she herself died in 1977.

The appellant challenged the gift deed which was dismissed by the trial court and High court, when the case had come before the Supreme Court it was held that till 1956 R had no absolute right over the property as this right is given by the Act of 1956 and the partition deed was made in 1955 according to the intention of the testator. After the Act of 1956, the share which was decided according to the provisions of 1956, but it was not according to equity, justice and good conscience because the daughter of the pre-deceased daughter had not got the share of her mother.

In *Muthusami v. Angamma*\(^{113}\), the father-in-law of the widow made a settlement deed with the help of Panchayat for her maintenance, during his lifetime. In 1974, she executed a sale deed, which was challenged. That property was inherited by father-in-law

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\(^{112}\) (2001) 8 SCC 552.
\(^{113}\) AIR 2002 SC 1279.
through the husband of the widow. The issue in this case was that the widow's pre-existing right exists in the husband's property and not against the property of her father-in-law and the deed was made by intervention of Panchayat. The Supreme Court held that the case was covered by Section 14 (1). Though for time-being she was not in actual physical possession of the land, but she was in the legal possession, as she never parted with the right of maintenance. So the sale deed was valid.

The Supreme Court in *Gulabrao Balwat Rao Shinde v. C. Balwant Rao Shinde*\(^{114}\), has corrected, the grave injustice done by the High Court of Bombay. In this case the deceased has contracted two marriages and have children from both the wives. The second marriage was contracted after the death of first wife. The children of the first wife filed a suit for recovery of their share, in the property left by their father, which was in the possession of second wife. The plea was taken by the children of the second wife, that the property was in lieu of maintenance of second wife and she also had possession over it, which had ripen into an absolute ownership by virtue of the provision of Section 14 (1) of the Hindu Succession Act, 1956. The High Court held in favour of second wife. On appeal Supreme Court saved the interest of the aggrieved by holding that there was no proof that the deceased has given the property to the second wife in lieu of maintenance and the disputed property was also an ancestral property from which the children of first wife could not be divested by giving the benefit of Section 14(1) to the second wife. The object of Section 14 (1) is to remove the restrictions, placed by the old Hindu law, on the full enjoyment of the property of a female, but not at all, at the cost of injustice with others.

\(^{114}\) AIR 2003 SC 167.
The Kerela High Court in *Jese V. Ramakrishnan Nair v. Radha Krishnan*, has considered the two expressions "Hindu female" and "in any other manner whatsoever" of Section 14 of the Act of 1956. The question before the Court for consideration was whether the limited interest of a daughter, would get enlarged to full right after the commencement of the Hindu Succession Act, 1956 when a male Hindu following Mitakshara law died, before the said Act? This question was answered in affirmative a decade ago by K.P.B. Marar J. in *Velayudhan v. Ithavi*, there could not be any distinction between the rights claimed by the widow and a daughter in respect of self-acquired property of a male Hindu. Section 14 uses the expression "female Hindu" to include daughter as well. To read 'female Hindu' as only 'wife' is totally misconceived. The Apex Court has given a wider meaning to the expression, 'female Hindu' which is not restricted to cover the wife alone. The Court has given wider interpretation also to the expression "in only other manner whatsoever." Section 14 has to be read with Section 4 which gives overriding effect of the Act, whatever property in the possession of the female Hindu whether it has been acquired by herself or in any other manner whatsoever shall be regarded her absolute property.

Recently in *Marabasappa v. Ningappa*, the Apex Court held that Stridhana belonging to a woman is a property of which she is the absolute owner. She may dispose it of at her pleasure. Said property is the absolute property of woman and would not be available for partition among the members of joint family. It does not acquire the character of joint family property.

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115 AIR 2004 Ker 16.
116 (1994) 1 Ker LT 617.
119 2011 (2) HLR (SC) 417.
Similarly, in a very latest case *Lekh Ram v. Sunder Ram*,\(^\text{120}\) the Apex court held that the gift deed made by the father of the plaintiff is not binding on her as the father had no right, title or interest to execute this gift deed in favour of a third party on the devolution of property. In this case the petitioner claimed right on the property of her mother. Mother had filed a maintenance application against her husband which was compromised before the "Nayaya Panchayat" and the husband had parted with the possession of suit land along with a Katcha house in lieu of pre-existing right of maintenance. Petitioner's mother became the absolute owner of the property under Section 14 (1) of the Act. Recently it was held by the Patna High Court in *Ramdhar Singh & others v. Deo Sharan Singh & others*,\(^\text{121}\) it was held by the Patna High Court that the sale deeds executed by the widow cannot be held illegal, void or inoperative although at the time of death of husband in 1937 she was limited owner of his property, but after passing of the Hindu Succession Act, 1956 she became full owner by the effect of Section 14 of this Act. Very recently, in *Ashok Kumar v. C. Nagarajan and Others*,\(^\text{122}\) widow had estopped from laying a claim over two parts of the suit properties, as her husband died prior to coming into force of 1937 Act and properties reverted to his brother by survivorship. But it was held by the Madras High Court that on the third part of property, widow had elected to get benefit, on the basis of settlement deed.

In the case of *P. Bhala Subramaniam v. Pachiyammal*,\(^\text{123}\) restriction in the settlement deed was that first wife of settler cannot deal with the property and can only enjoy the same during her lifetime and thereafter, it will devolve on the male heirs born to settler from

\(^{120}\) 2012 (1) HLR (HP) 21.

\(^{121}\) AIR 2013 Pat 155.

\(^{122}\) 2014 (1) HLR (Mad) 37.

\(^{123}\) 2014 (1) HLR (Mad) 284.
second wife. Plaintiffs and their mother were enjoying the properties till her death and after her death dependants have trespassed and dispossessed them. First wife who got property was in possession of the property on the date of commencement of the Act. In the absence of any dispute with regard to the execution of settlement deed and same having been acted upon by mother of plaintiffs, this has become absolute property of first wife of the deceased and that plaintiffs, being her legal heirs, are entitled to get the same-1/3 share in property which is house site retained by father of plaintiffs and defendants and it will devolve equally on all his children, three plaintiffs and three defendants, children of the deceased through his first wife and second wife, respectively. Therefore, it was held by the Madras High Court that each of them is entitled to 1/18 share.

**Role of Judiciary in Successional Rights of Hindu Women**

Section 15 of the Hindu Succession Act, 1956 is the first statutory enactment dealing with succession to the property of a Hindu female dying intestate. Before the Act, the property of women dying intestate was governed by customary Hindu law. The property of a female Hindu dying intestate shall devolve according to the rules set out under Section 16.

The Supreme Court in *Radhika v. Aghnu Ram Mahto*, the Supreme Court in respect of property right of daughter of second wife, held that for the property inherited by a female Hindu from her father or mother, a female's paternal side in the absence of her son, daughter or children of the deceased son or daughter, the succession

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124 Section 15 provides general rules of succession in the case of Hindu females.

125 With respect to the *Stridhana* property of a female Hindu, separate rules of succession were provided under different schools of Hindu law. Succession also varied depending upon the character of the *Stridhana*, her marital status and the form of marriage. All these different rules are abrogated now and if the property, whatever may be the character, is held by a woman absolutely, is subject to the rules of Sections 15 and 16 of the Act.

opens to the heirs of the father or mother and not to the class I heirs, in the order specified in sub-section (1) of Section 15 and in Section 16 of the Hindu Succession Act of 1956. In Chatro v. Sahayak Chakbandi Meerut\textsuperscript{127}, the question came before the Supreme that who would inherit the land of a widow landholder dying intestate survived by only daughter, by the effect of Section 15. The woman purchased the land in the lifetime of husband. The husband possessed some part of the land, as tenant, after his death the widow repossessed as proprietor holder. On the death of widow, the brother of husband claimed that widow had succeeded the tenancy so her right would not get the benefit of Section 14, but Supreme Court held that in the absence of son the only daughter will inherit the property.

From the decision of the above case we have inferred that Uttar Pradesh Zamindari Abolition and Land Reform Act, 1950 will apply only when husband died leaving behind the agricultural land and only daughter as an heir. But where a female holder of an agricultural land died leaving behind a daughter as an heir then she will inherit the land as an heir and Uttar Pradesh Zamindari Abolition and Land Reform Act, 1950 and Tenancy Act will not apply.

In a case of property inherited by a wife from her second husband which became her absolute property, the widow made a Will in favour of her son from the first husband. The heirs of her second husband made the claim. The court in this case held that the property will be devolved according to the Will of the widow.\textsuperscript{128} If the property held by a female was inherited from her father or mother, in absence of any son or daughter of the deceased including the children of any predeceased son or daughter, it would only devolve upon heirs of the father and her sister who was the only legal heir of her father.

\textsuperscript{127} AIR 1997 SC 1702.

\textsuperscript{128} Chintaram v. Rushibai (2000) AIHC 1308 (MP).
Deceased female Hindu admittedly inherited the property in question from her mother. The intent of the legislature is clear that if the property originally belonged to the parents of deceased female, it should go to the heirs of the father. Further the fact that a female Hindu originally had a limited right and later acquired the full right in any way, would not alter the rules of succession, given in sub-section (2) of Section 15 of the Hindu Succession Act of 1956.129 Very recently the Delhi High Court in Ajmer Kaur v. Amarjit Kaur130 observed that the Amendment in Dowry Prohibition Act, 1961 cannot be given retrospective effect if female died in 1982 prior to the commencement of Amendment Act. So the respondent husband being class I heir of deceased wife is entitled to succeed to her estate in view of Section 15 of the Hindu Succession Act and has not been made liable to return goods and amounts to her father, presented to deceased wife at the time of her marriage.

**Judicial Response in Other Matters**

Every system of succession law provides some general rules or provisions with a view to provide solutions to certain problems that may arise on the opening of succession. Solutions to some of the problems will depend upon the social values which we want to enact in the law. The law may also consider an heir to be disqualified, for reason of public policy.

In *Dipo v. Wasan Singh*131, the property, inherited from paternal ancestor, is an ancestral property, as regards the male issue of the propositus. But if a person inheriting such property has no son, son's son or son's son's son in existence, at the time when he inherits the property, he holds the property as absolute owner thereof. In the instant case, the last male holder of the property had no male issue.

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130 2012 (1) HLR (Del) 115.
131 (1983) 3 SCC 376.
and no surviving member of a joint family, who could take the property by survivorship. The court held that the sister of last male holder has preferential right against collaterals.

There is a provision under Section 25 of the Act of 1956 that the murderer shall be disqualified from inheritance and such person shall be deemed to have died before intestate.\textsuperscript{132} In \textit{Vallikannu v. R. Singaperummal}\textsuperscript{133}, a question was raised that whether the wife of a murderer be entitled to inherit the property as the widow. The facts of the case were that his only son murdered Ramasami. There was no other survivor of Ramasami as his wife was already divorced and remarried. Under the provision of Section 25 read with Section 27 of the Act of 1956, the murderer who was the only son should be deemed to have predeceased, so not entitled to all the properties. Then question was, whether the wife of disqualified son who succeeds through the husband could be entitled to succeed the property? The answer of this question was given far back before the passing of the Act of 1956, by the Privy Council in negative, on the basis of equity, justice and good conscience in \textit{Kenchava Kon Sanyellappa Hosmeni and Another v. Girimallappa Channappa.}\textsuperscript{134}

The Supreme Court in \textit{Vellikannu v. R. Singaperumal}\textsuperscript{135}, by going negatively with women’s right to property disqualified the daughter-in-law’s right to father-in-law’s property on the ground that the son had murdered his own father. The court went through the matter on the ground of justice, equity and good conscience. Here in this case the sole male survivor, the son incurred disqualification by murdering his own father. He could not inherit property of father in view of Section 25 and 27 of the Act. His wife, who claimed to the

\textsuperscript{132} Section 27 of the Hindu Succession Act, 1956.
\textsuperscript{133} AIR 2005 Kant 194.
\textsuperscript{134} AIR 1924 PC 209.
\textsuperscript{135} AIR 2005 SC 2587.
property through him, could not have a better claim to the property of her deceased father-in-law.

The question before the Calcutta Court in the case of *Sasanka v. Amijia*\textsuperscript{136} the case was related to the issue of conversion that whether an apostate widow or daughter-in-law could claim the benefit of the Act of 1937. The answer was in negative because the benefit was only to Hindu female when she converted to another faith, she was not a Hindu, so that benefit of the provisions of the Act, could not be given to such a woman. Section 26 of the Hindu Succession Act, 1956 made the position clear.

The condition of the tribal women after 67 years of the independence is still forlorn hope to achieve equality before law. The case of *Madhu Kishwar v. State of Bihar*\textsuperscript{137}, is a landmark decision in which they asked for loaf of equality at least to get crumbs of livelihood. In this case Sections 7, 8 and 76 of the Chota Nagpur Tenancy Act, 1908, was challenged as unconstitutional and discriminatory against females. Under this Act the tribal women are excluded from inheritance. This case was brought before the Supreme Court that had directed the State Government to take necessary steps. The State level Tribal Advisory Board suggested that in case of right to inheritance to the tribal woman it would result in elevation of land to a person belonging to another tribe i.e. her husband. On the order of the Supreme Court, the matter was reconsidered by the Bihar Tribal Council, which also gave the same opinion. Thus the discrimination only on the basis of sex still prevails and tribal woman have no right to inherit because the property would pass in the hands of other tribe.

The decision rendered by a majority of two against one, is regressive in the final analysis. Ramaswami J, was of the view that

\textsuperscript{136} AIR 1974 Cal 1011.

\textsuperscript{137} (1999) 5 SCC 125.
Section 7 and 8 of the Act \textsuperscript{138} are violative of Article 14 of the Constitution. He says that in every State, there are legislations prohibiting alienation of tribal lands to non-tribals. But the majority opinion of Punchhi and Kuldip Singh JJ was though conservative, but took a cautious approach by giving limited relief to females. The exclusive right of male succession under the provision of Section 7 and 8 has to remain suspended so long as the right of livelihood and the female descendants of the last male holder remains valid and in vogue.

**STATE LAWS CONCERNING WOMEN’S RIGHTS OF PROPERTY**

Before the Hindu Succession (Amendment) Act, 2005 for giving the women their right to property in 1985 to 1994, the States like Andhra Pradesh, \textsuperscript{139} Maharashtra, \textsuperscript{140} Karnataka and Tamil Nadu \textsuperscript{141} have made provisions pertaining the women's rights to property for their respective States. Accordingly the High Courts of these States have used these provisions in favour of the women for their property rights. Besides, other High Courts have shown their very less concern over such rights of women. \textsuperscript{143} So in 2004-05, some very interesting questions were raised before different High Courts of India relating to the issue of inheritance.

In case of Mallipedy Seshaih (died) v. Narendra Tulsamma (died) \textsuperscript{144}, the Andhra Pradesh High Court gave its verdict on the property right in favour of first wife of the deceased husband. It held that second wife is entitled to the entire property since there was no other survivor.

\textsuperscript{138} The Chota Nagpur Tenancy Act, 1908.
\textsuperscript{139} The Hindu Succession (Andhra Pradesh Amendment) Act, 1986.
\textsuperscript{140} The Hindu Succession (Maharastra Amendment) Act, 1994.
\textsuperscript{141} The Hindu Succession (Karnataka Amendment) Act, 1994.
\textsuperscript{142} The Hindu Succession (Tamil Nadu Amendment) Act, 1989.
\textsuperscript{144} AIR 2005 AP 221.
The Andhra Pradesh High Court in case of *Prakash v. Pushpa Vani*¹⁴⁵, in the matter of concubine property right held that concubine is entitled to be maintained by her paramour till her death. That right was not taken away by Hindu Women’s Rights to Property Act, 1937. The life interest in the house which is given to her in lieu of maintenance before the commencement of the Hindu Succession Act, 1956, would enlarge into full estate after the commencement of the Act. The Calcutta High Court in dealing with the female’s right to property in case of *Kamal Basu Majumdar v. Usha Bhandra Choudhary*¹⁴⁶, held that right of female to hold property does not disappear if the tenant vacates premises during pendency of suit. In this case the female sought for possession and such house, was partly occupied by tenant.

In relation to the widow’s right to property, the Jharkand High Court in *Naresh Jha v. Rakesh Kumar*¹⁴⁷ has showed its concern over devolution of property. In this case male Hindu died leaving behind a widow and two sons. His death occurred prior to coming into force of the Hindu Women’s Right to Property Act, 1937 repealed by Hindu Succession Act, 1956. His property would devolve upon his two sons in equal shares and no share in property would devolve upon widow. In a case pertaining to the right of a married daughter, it was held that daughter being Class I heir is entitled for share in the property of father and her marriage 20 years back is immaterial. The Madras High Court in *R. Deivanai Ammal (Deceased by LR) v. G. Meenakshi Ammal*¹⁴⁸ where a female heir claimed the partition right, held that provision of Section 23¹⁴⁹ of the Hindu Succession Act of 1956 is not an absolute bar to claim the partition right.

¹⁴⁵ *AIR 2004 NOC 463 (AP)*.
¹⁴⁶ *AIR 2004 Cal 185*.
¹⁴⁷ *AIR 2004 Jhar 2*.
¹⁴⁸ *AIR 2004 Mad 629*.
¹⁴⁹ Now omitted by the Hindu Succession (Amendment) Act, 2005.
In *Brijendra Pratap Singh v. Prem Lata*\(^{150}\), a settlement deed made between two brothers was that on the death of either of the parties the male lineal descendants of that party alone will succeed how, low so ever to the exclusion of all female heirs. It was challenged, on the basis that it will amount legislating new law of inheritance, which was at variance of Hindu Succession Act of 1956. Though, in Hindu law, it is permissible to gift or to make a Will of whole property in favour of son or grandson excluding all female heirs. But in the instant case, there was no Will or gift, they merely laid down an abstract rule of succession, which was against law.

A Hindu cannot create the line of succession qua a settlement, because it will amount to formulation of new rules of inheritance, which is not permissible. The daughters and widow also have the right to inherit the property. This deed cannot be treated as a Will or gift under which the Hindu can make a will in favour of his son or grandson, to the exclusion of daughter or granddaughter. In *L.H. Vidayapornam v. L.H. Premavathy*\(^{151}\), a Hindu male died, leaving behind three daughters, three sons and a widow. The intestate had left self-acquired property, over which the plaintiff had no possession so it was contended that the plaintiff was not entitled to file the suit. The Court held that it would be presumed that the plaintiff had been, in possession of the said property as notionally partition among them till the actual partition took place. It was very complicated case in which by a fraudulent Will the rights of the daughters in the property of their father was tried to be extinguish, but by minute observation the Court had prevented the gross injustice to be done.

\(^{150}\) AIR 2005 All 113.
\(^{151}\) AIR 2002 Mad 193.
In *Ram Kerthi Shetty v. Jagatpata Shetty*\(^{152}\), the benefit of Section 6-A, which is inserted by Hindu Succession (Karnataka Amendment) Act, 1994\(^ {153}\), was claimed by daughter. The facts of the case were that one Raju Shetty died leaving behind two sons and two daughters. The property was divided among them, according to the provisions of Section 6 of Hindu Succession Act, 1956. But one of the daughter claimed that she was unmarried at the time of the death of her father, so she must be given the benefit of Section 6-A of Hindu Succession Act of 1956. In absence of any proof that she was unmarried, at that time, the court had not accepted her claim. It is submitted that though judiciary generally bent towards female’s right but in the absence of material proof it is bound to do justice with males.

In *Priyamvada Devi Birla v. Madhu Prasad Birla*\(^ {154}\), an interesting question in 2006 came before the Calcutta High Court for consideration regarding the caveatable interest. The second question was, whether the sister of the husband was entitled to inherit, being a class II heir, if there was no class I heir of the female Hindu dying intestate. In answering the first question, the Court has said that the existence of real interest or even bare possibility of real interest in estate of the deceased, is said to be the caveatable interest. In answer to second question the court held that where a lady dying intestate without having any class I heir of her own or of her husband, the estate would devolve on sisters of her husband who were class II heirs and after them on their heirs, husbands and sons etc.

Thus, various High Courts in dealing with the women’s right to property in the line of provisions of Hindu Succession Act, 1956, are

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\(^{152}\) AIR 2005 Kant 194.

\(^{153}\) By the provision of the Section 6-A an unmarried daughter be considered as a coparcener and is entitled to equal share to his brother.

\(^{154}\) AIR 2006 Cal 6.
concerned with the legislative intent of the Act *in toto*. But they face the problem of divergent laws of succession among the Hindu's because the succession varies with the variation of principles of different schools of Hindu law in the scale of uncodified provisions of Hindu law. This is so because before the enactment of Hindu Succession Act, 1956 the country was with fundamental concept of Hindu law and the same was not taken away fully in the said Act. Hence the conflict between codified Hindu law and uncodified Hindu law guides the courts in India to interpret the provisions of any law in the light of succession and property rights. Though not fully, the Hindu Succession (Amendment) Act of 2005 can enable the courts to protect the women's right to property without any ambiguity and passion because the amended provision of the Hindu Succession Act is the complete code for the protection of women's right to property and the omission of Section 23 and 24 can supply more fuel to serve the long awaited rights of the Hindu women.155

Moreover though very late, the Hindu women were blessed with the Amendment of Hindu Succession Act, 1956 in September 2005. Perhaps it is the commitment of Government of India for the gender justice. Though it has signed the International Convention on Elimination of All Forms of Discrimination Against Women in 1979, it was sensitised in 2000 by the Law Commission of India.156 Further, though two Bills for this purpose were drafted in 2002 and 2004, the final Act was passed in September 2005 on the basis of Parliamentary Standing Committee Report157 for this specific women's right to property.

155 *Supra* note 143 at 25.
The Apex Court in *P. S. Sairani v. P. S. Rama Rao*\(^{158}\), held that the shares of parties in the joint family property have to be determined in accordance with the provisions of Section 6 of the Hindu Succession Act, 1956 and accordingly decreed in favour of seven daughters of the joint family along with male heirs accordingly. The Supreme Court in dealing with the gift related property held that the father can make gift of ancestral immovable property within a reasonable limits in favour of his daughter.\(^{159}\)

The case of *Komireddy Venkata Narasamma v. Kondareddy Narasimpha Murthy*\(^{160}\) was related to execution of a settlement deed in respect of property. He reserved life interest in himself and created vested remainder in favour of his daughter. Thereafter he has executed a Will, creating life-interest in favour of his wife that included not only the right to maintenance but right to enjoy it during her life time without right to alienate it. After death of father the daughter has claimed to materialize the settlement deed. But Court held that by the operation of law under Section 14(1) the widow’s right has enlarged into an absolute right so the settlement deed would not be materialized.

The Bombay High Court in *Devidas Udhao Gaurkar v. Smt. Vithabai*\(^{161}\) held that to confer a better right on daughter as per Amendment Act the partition cannot be reopened. The Amended Act clearly indicates that a daughter can be considered as a coparcener only if her father was a coparcener at the time of coming into force of the amended provision. It is of course true that for the purpose of considering whether the father is a coparcener or not, the restricted meaning of the expression 'partition' as given in the explanation is to

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\(^{158}\) AIR 2004 SC 1619.  
\(^{159}\) *R. Kuppayee v. Raja Gounder*, AIR 2004 SC 1284.  
\(^{160}\) AIR 2006 A.P. 40.  
\(^{161}\) AIR 2008 Bom 183.
be attributed. Father died before 1956 and the case would be governed by old 'shastric law' and not by succession and also the daughter would not be entitled to any share.\footnote{162} It was held by the Himachal Pradesh High Court in \textit{Jagdish Kumar v. Parveen Kumar}\footnote{163} that if father has relinquished his all rights in family property accepting certain sum as consideration, he will not be regarded as coparcener. The child conceived after it cannot claim partition after his or her birth. In the case of \textit{Bhanwar Singh v. Puran}\footnote{164} it was held by the Supreme Court that the sons and daughter have equal rights to partition in the properties. In case of \textit{Nivruti Kushaba Binnar v. Sakhubai}\footnote{165} when daughter was born after the death of sole surviving male member, the right to property shall be governed under the law. In \textit{Virkumar Natvaral Patel v. Kapilaben Manilal Jivanbhai}\footnote{166} where the transaction of transfer of sale of coparcenary property in favour of defendant purchaser took place prior to enforcement of Amendment Act and by the consent terms in favour of defendant come to be confirmed by the father, the same would relate back to the date of original sale deed. In case of \textit{Jai Lakshmi Sharma v. Dropati Devi},\footnote{167} it was held that the woman has become full owner of the property possessed by her whether acquired by her before or after the commencement of the Act, irrespective of the mode of acquisition. However unamended Section 6 of the Act was a bar to a female to own the property and therefore by virtue of said Section a woman remained a limited owner. After the Amendment of Section 6 a woman has been given full coparcenary rights as a coparcener like a son and is entitled

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\footnote{162}{Meva Devi v. Omprakash Jagannath Agarwal, AIR 2008 HP 116.}
\footnote{163}{AIR 2009 HP 13.}
\footnote{165}{AIR 2009 Bom 93.}
\footnote{166}{AIR 2009 Guj 184.}
\footnote{167}{AIR 2010 Del 37.}
\end{footnotes}
to equal share and has all rights to dispose of her property including testamentary disposition.

In *Annam Ammal v. Selvanathan*, the Madras High Court held that the daughters who married before the Tamil Nadu Amendment, do not become coparceners along with father and daughters would only get equal share alongwith their brother in their intestate father’s share in coparcenary property. So the benefit of Section 29-A is not for these daughters. The Andhra Pradesh High Court has also took the same view which is related to right of unmarried daughters. In this case the father died in the year 1953 leaving behind his wife. Partition was affected at that time. The court held that sons will get their share and wife will get share of her husband. The benefit of Section 29-A is not available for partition affected before commencement of Act. Daughter will only be entitled to shares alongwith others in property of her mother. The Supreme Court observed in *B. Chandrasekhar Reddy v. State of A.P.* that the benefit of Section 29A of the Act of 1956 can be invoked only by major daughters if they are not married prior to the commencement of Section 29A of the Act.

In *Smt. Padmarani Karmakar v. Bholanath Chandra & Others*, the Calcutta High Court held that daughter can claim partition in the property of her father who has died intestate and if their brothers sold out his share, during his life-time then purchaser became co-sharer in property along with owner’s daughter’s.

**WOMEN’S RIGHT IN DWELLING HOUSE**

In order to give the same rights to the women, it is pertinent to look into the widow’s right to reside in dwelling house. The family dwelling house should not be alienated without the widow’s consent or
without providing her an alternative accommodation after she has agreed to the sell of the dwelling house.\textsuperscript{172} In order to protect such right of the women, Section 23 was omitted by the Hindu Succession (Amendment) Act of 2005.

The Madras High Court in \textit{R. Deivanai Ammal Case}\textsuperscript{173}, where a female heir claimed partition right, held that provision of Section 23\textsuperscript{174} of the Hindu Succession Act of 1956 is not an absolute bar to claim the partition right. Another important case has been decided by the Kerala High Court regarding the impact of the Amendment in Section 23. In \textit{S. Narayan v. Meenakshi}\textsuperscript{175}, the question before the court was whether omission of Section 23 of the Hindu Succession (Amendment) Act of 2005 would have any impact on a suit for partition or appeal there from pending on the date of the commencement of the Hindu Succession (Amendment) Act, 2005. The facts of the present case are that one Ramaji died leaving behind her four daughters and a son. After the death of Ramaji one of her daughter who is the plaintiff of the suit, obtained purchase certificate from the Land Tribunal in her name. The other sisters released their fractional shares in favour of the plaintiff. Thus the plaintiff claimed $4/5$ shares and contended that the defendant has only $1/5$ shares. The defendant contended that the property does not belong to Ramaji but to her husband and before the commencement of the Hindu Succession Act, 1956, all sisters were married therefore they are not entitled to any share in the property. The lower court found that the property belonged to Ramaji, the mother of plaintiff and defendant. Therefore on her death the property devolved on her children. During the pendency of the suit the son died. Before the case was decided by the court the Hindu Succession

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\textsuperscript{172} \textit{Savita Samvedi v. Union of India}(1996) 2 SCC 380.
\textsuperscript{173} \textit{R. Deivanai Ammal (Deceased by LR) v. G. Meenakshi Ammal, AIR 2004 Mad 629.}
\textsuperscript{174} Now omitted by the Hindu Succession (Amendment) Act of 2005.
\textsuperscript{175} AIR 2006 Ker 143.
\end{flushleft}
(Amendment) Act, 2005 was passed. The other questions decided by the court in this case are:

- Whether a suit for partition at the instance of a daughter could be defeated by invoking Section 23 of Hindu Succession Act, 1956 by the legal representative of a deceased son of the intestate?

- Whether Section 23 would be applicable in case where the deceased intestate has left behind him only one male issue and whether it is necessary that there must be more than one male issues to invoke Section 23?

- Whether the protection in favour of the male heir under Section 23 of the Act of 1956 would be available if he inducts a third party in the dwelling house or any portion thereof?

Though all these questions are dealt in this case but after the passing of the Amendment of 2005 these questions have lost their significance because of the omission of Section 23 of Hindu Succession Act, 1956. In answer to the first question, the court observed that the words ‘the male heirs choose to divide their respective shares’ suggest that at least two such male heirs must exist and decide not to partition the dwelling house in which event the right of the female heir is postponed and kept in abeyance until the male heirs or heirs of the Hindu intestate decide to partition it, it does not necessarily lead to the only inevitable conclusion that the operation of Sec 23 must stand excluded in the case of Hindu intestate leaving behind him/her surviving only son and daughter. This does not seem to have been desired while enacting the special provisions. The provision would have to be interpreted in such manner that it carries forward the spirit behind it.
The second question would thus have to be answered in favour of the proposition holding that where a Hindu intestate leaves surviving him a single male heir and one or more female heirs specified in class I of the Schedule, the provisions of Sec 23 keep attracted to maintain the dwelling-house impartible as in the case of more than one male heir, subject to the right of re-entry and residence of the female heirs so entitled, till such time the single male heir chooses to separate his share; this right of his being personal to him, neither transferable nor heritable.

In answer to the third question, the court observed that it has come out in the evidence and it is not disputed as well that a portion of the dwelling house is occupied by a stranger. The expansion used in Sec 23 of the Hindu Succession Act, 1956 is "includes a dwelling-house wholly occupied by members of his or her family". It was held that if strangers are inducted into the dwelling house, it must be taken that the male heir had lost his animus possedendi.

The demand to give equal right of inheritance to the daughter was taken into consideration by the Law Commission of India. In its 174th Report, the Law Commission has recommended such provisions and the Hindu Succession (Amendment) Act, 2005, has incorporated those recommendations. At the time of passing of the Hindu Succession Act, 1956, though some commendable improvement were made by that Act of 1956, but much left to be done, which is to be fulfilled by this Act of 2005. This Amendment is considered a great step in the field of women’s property right, by making a daughter the coparcener and by deleting Sections 23 and 24 of old Act of 1956. Instead of this significant progressive legislation the gender discrimination against women was not fully done away by the Amendment of 2005. It is submitted that the Section 14 of Hindu
Succession Act of 1956, should also be modified which still creates great anomalies.

In the case of *Surinder Kumar Chana v. Vijay Singh Jandrotia*¹⁷⁶, the petitioner and defendant were joint owners of suit land and defendant failed to prove his exclusive possession on it. Every co-owner is supposed to be in possession of suit land unless it is partitioned but dwelling house is not subject to partition in case it is proved to be in one’s own possession. The petitioner in this case is residing in dwelling house right from 1984. No cogent evidence had been led to prove that house was not in possession of tenants but was in possession of defendant. Since a stranger is introduced into dwelling house, protection given under Section 23 of the Hindu Succession Act, 1956 is not available to males of family. The Court held that dwelling house is liable to be partitioned. Recently in *Prathipati Jogayyamma v. Vohilineni Veera Venkata Satyanaryana & other*¹⁷⁷ the Andhra Pradesh High Court while allowing the daughter to claim partition of joint family property and also in dwelling house held that bar of Section-23, which deals with no right of daughter in Hindu Succession Act, 1956 has been omitted by the Hindu Succession (Amendment) Act, 2005.

The Case of *K.V. Sathyanarayan Das v. H.V. Ramprakash*,¹⁷⁸ is relating to the vesting of property to State Government by the effect of Section 29 of Hindu Succession Act, 1956. In this case Plaintiff’s father was given permission to manage the temple for a period of four years. However, the management of the temple continued with the father of the plaintiff, even after four years till his death. The owner of temple had not left any of his heirs and he died issueless and

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¹⁷⁶ 2012 (1) HLR (HP) 229.
¹⁷⁷ 2013 (2) HLR (AP) 141.
¹⁷⁸ 2014 (1) HLR (Kar) (D.B.) C. 341.
intestate. The defendant failed to prove that he is an adopted son of deceased. Under such circumstances, the suit schedule property vests with the Government as per Section-29.

So, on the basis of above discussion, it can be concluded that in the field of Hindu woman's property right, the judiciary has played a very creative role. The rights of Hindu female to property passes through a long channel of judicial activism and now reached at its peak by giving the daughter equal rights of inheritance. The legislature just has given a skeleton and judiciary will give the flesh, blood and soul to that enactment. It is not important that how many enactments have been passed for the empowerment of woman but it is more important that how they are implemented. The Indian Supreme Court and various High Courts have tried to achieve the legislative objective by their creative judicial decisions.