Under the Hindu law the property of women was divided into two heads: (a) stridhan, and (b) woman's estate. During the entire history of Hindu law, the right to hold and dispose of property by the maiden, wife or widow had been recognised. The property upon which females had absolute rights was known as 'stridhan'. The Mitakshara considered all inherited properties as 'stridhan' but according to Privy Council the property inherited by a female from a male or female was

1. See Mitakshara II, IX, 2; Manu Smriti, IX, 191; Vishnu XVII, 18; Vajnavalkaya, II, 743; See also Gautama, XXVIII, 24-26.

2. Like gifts and bequests from relations and strangers, property earned by self exertion and mechanical art, property purchased with stridhan, property acquired by compromise, property obtained by adverse possession, property obtained in lieu of maintenance.

3. Bhagwandeen v Maya Banee (1867) 11 M.I.A. 487; Thakur Deyhee v Raj Baluk Ram (1866) 11 M.I.A. 140.
held to be woman's estate under all the schools except the Bombay School. When share was allotted to father's wife, mother and grandmother on partition in the joint family property that share was also as woman's estate except in Madras school. In the Mitakshara jurisdiction, including Bombay and the Dayabhaga school, the share obtained on partition is woman's estate. The characteristic feature of woman's estate was that the female took it as

4. Sheo Shankar V Devi Saha (1903) 25 All. 468; in Bombay school, the property inherited by a woman from females is her stridhan and as to the property inherited from a male, the female heirs are divided into two: (1) those who are introduced into the gotra of the deceased male by marriage, such as intestate's widow, mother, father's mother etc., and (2) those who are born in the family, such as daughters, sisters, brother's daughters etc. In the latter case the inherited property is stridhan while in the former case it is women's estate - see Kasserbai V Hansraj (1906) 30 Bom. 431; Gangadhar V Chandrabagabi (1893) 17 Bom. 690.

5. Subramania V Arunachalam (1905) 28 Mad. 1.


7. Ibid.
limited owner i.e., she could not ordinarily alienate the corpus and on her death it devolves upon the heir of the last full owner. Her powers of disposal over the property were limited even if there were no reversioners.

This distinction of "absolute" and "limited" ownership of property held by the females has now been done away by the enactment of Hindu Succession Act, 1956.

In this chapter we will discuss the implications of the Hindu women's Right to Property Act, 1937 and Hindu Succession Act, 1956 on the woman's property and the tax incidence on it. We would also discuss the powers of the females under the Hindu Minority and Guardianship Act, 1956, so far as these are related to tax purposes.

(i) Nature of Interest under the Hindu Women's Right to Property Act, 1937

The women's Right to Property Act, 1937 sought to improve the legal position of the surviving widow, predeceased.

8. Vijai V Krishna (1917) 44 I.A. 87; See also Janki V Narayansami (1916) 43 I.A. 207; Mont Ram V Kerry (1889) 7 I.A. 115.

son's widow and widow of predeceased son's predeceased son of male Hindus. In all properties of males governed by Dayabhaga law, and in the separate property of males governed by the Mitakshara or customary law, it gave them specified shares. In the ancestral property of males governed by the Mitakshara law, it created an interest for the widows of deceased coparceners. The rights of all three were restricted by the Act to limited interest known as "Hindu woman's estate", though it gave them equality with men in respect of right to claim partition.

Section 3(2) of the Act does not bring about a severance of interest of the deceased coparcener. His widow is not raised to the status of a coparcener though she continues to be a member of the joint Hindu family as she was before the Act. The joint family would continue to exist as before subject only to her statutory rights. The rights of other members of the family would be worked out on the basis that the husband died on the date when the widow passed away, the right to survivorship being suspended till then. Further a widow can under the Act claim a share not only in the property owned and possessed.

10. Section 3(1).
11. Section 3(2).
12. Section 3(3).
by the family at the time of his death but also in the accretions, arising therefrom, irrespective of the character of accretions.\textsuperscript{13}

The interest which the law has conferred upon the widow is in substitution of her right under the pre-existing Hindu law of maintenance. Though the widow does not by virtue of the interest given to her by the new law become the coparcener she being entitled to claim partition of the joint family property is in the same position in which her deceased husband would have been in the matter of exercise of that right. That is to say, her interest is a fluctuating one and is liable to increase or decrease according as there are deaths in or additions to the members of the family or according as there are accretions to or diminutions of the property.

\textsuperscript{13} A significant question can be raised in this regard: Is the widow entitled to the interest of her husband as it stood at the time of his death or is she entitled to the share to which the husband would have been entitled, had he been alive, at the time of partition? The courts have answered in favour of the later proposition - See Chinniah Chettiar V Shivagami Achi, I.L.R. (1945) Mad. 402.
Though the widow does not become a coparcener, her interest in the family property is to be the same as that of her deceased husband except that she takes it as woman's estate or limited estate. But a coparcener has no defined interest in the joint family property and the right which he has is to claim partition. The quantum of his interest would be determinable with reference to the date on which such member unequivocally declares his intention to separate and thus put an end to the coparcenery. But it cannot even be suggested that the event of death of a coparcener is tantamount to an unequivocal declaration by him to separate from the family.

According to the theory underlying the Hindu law, the widow of a deceased Hindu is his surviving half and therefore as long as she is alive he must be deemed to continue to exist in her person. This surviving half had under the Hindu law texts no right to claim partition of the property of the family to which her husband belonged. But the Act of 1937 has conferred

14. Section 14 of the Hindu Succession Act 1956, has enlarged her interest from limited owner to full owner.
the right upon her. When the Act says that she will have
the same right as her husband had it clearly means that
she would be entitled to be allotted the same share as her
husband would have been entitled to had he lived on the date
on which she claimed partition.\(^{15}\)

(ii) *Mother as Manager*

Under the Hindu law no female can act as *Karta* of
Hindu undivided family\(^{16}\) and can bind the minor coparceners
interests in the Hindu undivided family by entering into
partnership with others representing the minors. But we cannot
deny the fact that widow is the natural guardian of the minor
children under the Hindu Minority and Guardianship Act, 1956,
and in that capacity she can do all the acts which are for
the benefit of the minors though she cannot bind the minors
by a personal covenant. The same are the powers of the father
as *Karta* under the Act. Not only the widow is the natural

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15. See *Potti Lakshmi Perumallu V Potti Krishna Uemma*,
A.I.R. 1965 S.C. 825 at 829; See also *Perrappa V
Nagamma*, A.I.R. 1954 Mad. 576; *Satrughan Isser V Sabujpari,

*Smt. Champa Kumari Singh V Additional Member, Board of
Revenue (A.B.) (1952) 46 I.T.R. 311; *Rudhi Jena V Dhobai
Naik, A.I.R. 1956 Orissa 7; C.I.T. V Seth Govindram Sugar
guardian of her minor children but even mother can be treated as natural guardian during the life time of her husband under certain circumstances. In *Jijabai v Pathankhan*, where the father and mother of the minor daughter had fallen out and the mother was living separate from the father for over twenty years and mother had been looking after the affairs of her minor daughter and managing her properties and daughter was all along under her protection and care. Mother leased out minor daughter's land from time to time and daughter on attaining majority challenged her action on the ground that mother was not a natural guardian during the life time of the father under section 6(a) of Hindu Minority and Guardianship Act, 1956, so she is not bound by the lease. It was held that where the father fails to function or refuses to function as guardian, he should be treated as if non-existent and the mother should be treated as the natural guardian of the minor and she would be entitled to exercise all powers and functions of a natural guardian. Under the circumstances it was held that she had power to bind the minor by granting lease of her land in the proper course of the management of the property. We feel that the mother being natural guardian of the minor children can represent the Hindu

undivided family. She may not be a coparcener but she is one of the members of the joint Hindu family. In her capacity of natural guardian in our view she can represent the Hindu undivided family for the purposes of assessment and recovery of tax under the Income-tax Law. The question is not whether upon the death of a coparcener in a Hindu undivided family leaving behind a widow and minor children, the widow can act as Karta or manager of the Hindu undivided family, but whether she could represent the Hindu undivided family as a manager thereof, for the purposes of the assessment of the Hindu undivided family to Income-tax. In Privy Council case, Kalyanji Vithaldas V Commissioner of Income-tax, a question arose as to what was the meaning of the words 'Hindu Undivided Family', for purposes of the Income-tax Act. It was held that if the income belonged jointly to the assessee, his wife and daughter, then it would be the income of the Hindu joint family and the phrase 'Hindu Undivided Family' in this Act was a wider phrase and should not be treated as equivalent to a "Hindu Coparcenary".

18. In Radha Ammal V C.I.T., A.I.R. 1950 Mad. 538 (All that the learned Judges said was that she could not enter into a partnership with outsiders as Karta of a Hindu Undivided Family). See also Sushila Devi Rampuria V Income-tax Officer, A.I.R.1959 Cal.697; Smt. Champa Kumari Singh V Additional Member, Board of Revenue [M.B.] (1952) 46 I.T.R. 81 at p.83 (Cal.).

It was further held that a Hindu undivided family as recognised by the Indian Income-tax Act, a female can be a member. The judicial committee expressly stated that they did not agree with the notion that a Hindu joint family necessarily consists of male members only. A female can be a member of a Hindu undivided family, which may even consist entirely of females, where, however, the male members are all minors, and of whom the natural guardian is their mother. There is nothing in the Indian Income-tax Act to prevent her from representing a Hindu undivided family for the purposes of assessment under the said Act. In such a case there should not be confusion with the term "manager" as used for purposes of the Act with the term "Karta" as used in Hindu law. The word "Karta" is a technical term of the Hindu law. Only a male coparcener can be a Karta. But, where in a Hindu undivided family there exists no Karta, or where the male members are all minors, and there is no one who can act as Karta, or where there are no males at all, there seems to be no legal bar to a female acting as a manager representing the Hindu undivided family for purposes of assessment of Income-tax. All that the learned Judges said in *Radha Ammal's case*\(^\text{20}\) was that she could not enter into a

\[^{20}\text{A.I.R. 1950 Mad. 538.}\]
partnership with outsiders as Karta of Hindu undivided family. This involved the technical notion of a Karta, because only such a person could enter into contracts of partnership with outsiders, such as would be binding on minors of the joint family. In this case the family was assessed as Hindu undivided family before the partnership agreement as represented by widow but it was not held that this was irregular.

The unit of assessment under Income-tax Act is the Hindu undivided family of which female can be a member. When it comes to the assessment of income-tax of such a unit which consists of mother and her minor children, it is plain that the mother alone would be the person who could represent the minors, as their natural guardian, there is no objection to her representing the Hindu undivided family as a manager.

21. Under the basic principles of Hindu law no female can act as "Karta" in the strict technical sense of Hindu undivided family, but there is no harm that she be designated as Manager of the Hindu undivided family in the ordinary sense. Though the words "Karta" and "Manager" are synonymous and are used invariably one for the other but they still have different connotation. When a widow is managing the affairs of the Hindu undivided family consisting other females or minor sons, then there is no harm that she may be called manager in the ordinary sense of the word instead of "Karta" in the technical sense.
It is submitted that Hindu law concept that 'no female can be Karta of the Hindu joint family' should not stick in our mind while dealing with the cases of assessment of Income-tax of Hindu undivided families represented by the females and for that purpose we may deem these females as managers.

(iii) Effect of section 14 of H.S.A. 1956

In R.P.S.S. Munnalal v S. Raj Kumar the widow died while the suit for partition was pending, and she was not in actual or constructive possession of the property which was held to be possessed by her at the time of her death. Only a preliminary decree declaring her right to share had been passed. The decree was passed before the Act came into force and the widow died after the Act came into force. On these facts, the court came to the finding that the disputed property was possessed by the widow; and this finding was given despite the circumstances that she was not in actual possession or constructive possession of the property, but had merely obtained the right to the property under the preliminary decree.

By Section 14(1) the legislature sought to convert the interest of a Hindu female which under the Shastric Hindu Law would have been regarded as a limited interest into an absolute interest and by the explanation thereto gave the expression "property" the widest connotation. The expression includes property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever.... By Section 14(1) manifestly it is intended to convert the interest which a Hindu female has in property however restricted the nature of that interest under the Shastric Hindu law may be into absolute estate. Though in Pratapmull Aggarwalla's case, undoubtedly it was laid down that till actual division of share is declared in her favour by a preliminary decree for partition of the joint family estate a Hindu wife or mother, was not recognised as owner, but that

23. Section 14 has virtually reintroduced Vijnaneswara's interpretation of the words "and the like" used by Yajnavalkya in his text (II, 143), including properties obtained by inheritance, purchase, partition, seizure and finding.

24. (1936) 63 I.A. 33.
rule cannot apply after the enactment of the Hindu Succession Act.

The Act is codifying enactment, and has made far reaching changes in the structure of the Hindu law of inheritance and succession. The Act confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate. She is under the Act regarded as a fresh stock of descent in respect of property possessed by her at the time of her death.

It is true that under the Shastric law, the share given to a Hindu widow on partition between her sons or her grandsons was in lieu of her right of maintenance. She was not entitled to claim partition. But the legislature by enacting the Hindu Women's Right to Property Act 1937 made a significant departure in that branch of the law; the Act gave a Hindu widow the same interest in the property which her husband had at the time of his death, and if the estate was partitioned she became owner in severalty of her share, subject of course to the restrictions on disposition and the peculiar rule of extinction of the estate on death actual or civil.
Manifestly, the legislature intended to supersede the rules of Hindu law on all the matters in respect of which there was an express provision made in the Act. Normally a right declared in an estate by a preliminary decree would be regarded as property, and there is nothing in the context in which section 14 occurs or in phraseology used by the legislature to warrant the view that such a right declared in relation to the estate of a joint family in favour of a Hindu widow is not property within the meaning of section 14.

In the light of the scheme of the Act and its avowed purpose it would be difficult, without doing violence to the language used in the enactment, to assume that a right declared in property in favour of a person under a decree for partition is not a right to property. If under a preliminary decree the right in favour of a Hindu male be regarded as property the right disclosed in favour of a Hindu female must also be regarded as property.

Object of Section 14

The property possessed by a female Hindu, as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the explanation to section 14 sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however, restricted the nature of her interest may be. The words as "full owner thereof and not as limited owner" as given in the last portion of sub-section (1) of section 14 clearly suggest that the legislature intended that the limited ownership of the Hindu Female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called "Limited Estate" or "Widow's Estate" in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The explanation to Section 14(1)
defines the word "property" as including "both movable and immovable property acquired by a female Hindu by inheritance or devise ...." Section 14(2) also refers to acquisition of property. It is true that the explanation has not given any exhaustive connotation of the word "property" but the word "acquired" used in explanation and also in Section 14(2) clearly indicates that the object of this Section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of a Hindu female and it does not confer any title on a mere trespasser. In other words the provisions of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property 26. The interest

26. Erramma V Veerupana, A.I.R. 1966 S.C. 1879 at p.1882; Mangal Singh v Ratna, A.I.R. 1967 S.C. 1786 (the above case classifies that the expression "possessed by" is not intended to apply to a case of mere possession without title, and that the legislature intended this provision for cases where the Hindu female possessed the right of ownership of the property in question. Even mere physical possession without the right of ownership will not attract the provisions of this Act.... The section will not apply at all to cases where the Hindu female may have parted with her rights so as to place herself in a position where she could, in no manner, exercise her rights of ownership in that property any longer).
to which a widow becomes entitled on the death of her husband under section 3(2) of the Hindu Women's Right to Property Act, 1937, in the property of the joint family indisputably her "property" within the meaning of Section 14 of the Hindu Succession Act, 1956, and when she becomes "full owner" of that property she acquires a right unlimited in point of user and duration and uninhibited in point of disposition.²⁷

Under the Hindu Women's Right to Property Act, 1937, upon the death of her husband, widow inherited, along with the son, the husband's separate property and she also acquired in the joint family property the same interest which the husband had.²⁸ As now this Act has been repealed by the Hindu Succession Act, 1956. Under the later Act the share which the widow inherits in the coparcenary property as well as in the separate property of her deceased husband is taken by her as a "full owner."²⁹

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Assessment

Hindu Women's Right to Property Act, 1937, dealt a severe blow to the doctrine of survivorship. It conferred upon the widow of a deceased coparcener the interest of her husband. Indeed, the widow succeeded to her husband's interest even if the deceased husband left a son as a coparcener. Though the statute conferred on the widow certain rights of his deceased husband, it did not treat the widow as a coparcener. Despite making many inroads into the principles of Mitakshara joint family, the Hindu Succession Act, 1956 has left the right by birth theory untouched. Section 6 of the Hindu Succession Act although confers upon the daughters and certain other persons the right to inherit concurrently with the son, the son gets his share as a coparcener and only the interest of the father does not survive to him completely. For example A, dies leaving behind his widow, two sons and three daughters. According to Section 6, sons would get their shares as coparcener and widow would get a share equal to the son i.e., each would get \( \frac{1}{4} \)th and the interest of A, the deceased i.e., \( \frac{1}{4} \) would go to the

30. Sections 6, 14 and 30 of Hindu Succession Act, 1956.
widow, sons and daughters equally and each would inherit 1/24 of the interest of the deceased. Sections 6 and 30 of the Hindu Succession Act, 1956 interfere principally with the coparcenary, but they are loaded with such grave consequences that are themselves sufficient to complete the annihilation of the system in a wealth oriented society.31

As Hindu Women's Right to Property Act is repealed and now the cases for assessment in most of the cases would come where we have to decide the liability to tax of a widow under the provisions laid down in the Hindu Succession Act, 1956. For instance, if Karta of Hindu undivided family who is the father dies intestate leaving behind widow, three adult sons and three unmarried daughters, under section 6 of the Hindu Succession Act, 1956, his interest in the joint family property as well as separate property would devolve upon all the members of Hindu undivided family as provided in the section as all of them belong to class I of the Schedule. If the partition takes place the position would be that three sons

and widow and the deceased (under notional portion) would be entitled to 1/5 share each and the 1/5 of the deceased would be divided equally amongst 3 sons, widow and three daughters each having 1/35 share and in the separate property all the seven heirs would get equal share. Widow would be full owner of her share under section 14, so is the case of daughters. In this case there will be individual liability of each member to pay tax in individual capacity.

The ultimate analysis relating to Hindu undivided family females and widows is:

Neither the Hindu women's Right to Property Act 1937 affected the Mitakshara coparcenary nor the Hindu Succession Act 1956 abolished coparcenary but retained it under section 6 of the Act. But the decision of the Supreme Court in Gurupad v Hirabai has created more problems effecting violently not only the concepts of coparcenary, joint Hindu family, partition under the Hindu law but it will surely change the mode of decisions under the Income-tax Act relating to assessment of Hindu undivided family. Supreme Court while interpreting the Notional Partition envisaged under

33. Emphasis supplied.
explanation to Section 6, declared it to be Actual Partition by holding that the assumption which the statute required to be made that the partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of heirs, through all stages. If this notional partition is actual partition and the shares of the widows and other members are specified, then where remains the coparcenary or the Hindu undivided family. If they don't divide the property by metes and bounds we can say that they are jointly enjoying the property to which they have specified shares because the basic features of (I) communal ownership of Mitakshara coparceners in the joint family property and (II) unpredictable and fluctuating interest of the coparceners is lost.

In spite of the effect of the decision under the Hindu law in the Gurupad's case, we are of the view that the assessment would continue to be in the status of Hindu undivided family unless it is claimed by any or on behalf of any member of the Hindu undivided family that disruption of the Hindu undivided family has taken place under section 171(2) of the Income Tax Act 1961 and accepted by the Income-tax Officer in the manner provided under section 171(3).

34. Emphasis supplied.
35. Emphasis supplied.
36. Supra f.n. 32.