CHAPTER-4

LAW OF INHERITANCE AND SUCCESSION AND HINDU WOMEN’S RIGHTS

(I) Before 1956 and Hindu Women’s Right

During the early period, there was no distinction between religion, law and morality. They were cumulatively referred to as Dharma. The three sources of dharma are Shruti (the divine revelations or utterance, primarily the Vedas), Smriti (the memorized word – the dharmasutras and the dharmaashastras) and Sadachara (good custom).

Tracing the development of women’s right to inherit from Vedas, there is no single authority for the general position of women regarding inheritance. Various commentators have proposed different, often conflicting opinions on the relevant portions of the Vedas. The study of the legal system of the world, ancient and modern, reveals one thing in common that the females have been denied the proprietary status under all the male dominated legal systems, which resulted in deteriorating their social status and reducing them into the ‘other’ class, definitely of inferior human
beings. As far as property rights of the members of the Hindu family are concerned, there is a marked difference between the rights of the men and women.  

Hindu Society reflects a deep-rooted adherence to values based on the precepts and fundamental principles of the religion. Religion clearly has a positive function in Hindu Society, as norms and values from it affect the everyday lives of Indian women in very tangible ways. The development of Hindu law is reflective of a process whereby principles embodied in the Hindu Shastras and religions texts became instituted as legal rules. From ancient times, Hindu society has preferred the birth of a son to a daughter. Since son is needed to pay three debts, of which debt to ancestors is most important. The son always remained with the parents, continued the family line, offered oblations to the ancestors for the spiritual benefits, was a support to the parents in their old age and helplessness and added glory to the good name of the family by his noble and brilliant achievements.

---

As for the daughter, she was considered more a liability than an asset. After her marriage she migrated to another family and changed her gotra and therefore ceased to have any direct spiritual benefit for her parents. Manusmriti declares that women are not expected to act independently as they like, whether they be girls, in youth or old aged women. She was a burden in the family. It was the duty of every father to secure the marriage of his daughter and a substantial amounts of money had to be spent on the occasion of her marriage. In the event of her remaining unmarried or in the case of the death of her husband she had to be maintained. The idealisation of the daughter as a non-independent acting subject is again made clear by holding that form of marriage as the highest of the light recognised form, where the girls is a gift of the father, pure and simple.4

In the Vedic age, the status of women was better than in the subsequent period. In those days, a woman was held in great respect and enjoyed considerable rights and privileges. The only disability from which she referred in those days was that she did not in general, have the right of inheritance5. Dharma Sutras indicate that sons succeeded to the father. Sons got the inheritances and daughter was to get no share of it.6

---

4 Ibid.
6 N.C Sen Gupta, Evolution of Ancient Indian Law, University of Calcutta Tagore Law Lectures, pp. 150 &170
The Vedic literature prescribed inheritance to a brother less daughter. The daughters with brothers, however, were excluded from the rights to inheritance. Originally the daughter's right to her father's property was limited only to the marriage portion. Her right to inheritance gradually came into existence through the institution of Putrika. In the first stage a son born to her marriage would be her father’s son. This son of putrika had alone the status of a son to his grandfather. In the subsequent period/stage putrika herself became an heir in her independent right.\textsuperscript{7}

In the Vedic age, after marriage a girl was regarded as a part of her husband. The husband and wife were treated as joint owners of the household and in that way, of its property. However, it did not secure for her an absolute equality with the husband in the ownership of the property.

This concept of joint ownership helped the wife only in securing a number of minor rights. It did not secure for her an absolute equality with the husband in the ownership of the property. The only properties she enjoyed ownership were some utensils and ornaments.\textsuperscript{8}

\textsuperscript{7}Ibid. p. 194.
\textsuperscript{8}Flavia Agnes, \textit{Law & Gender Inequality, The politics of Women's Rights in India}; (1999 Ed.), p. 12.
During the Vedic period, the widow was not given any right of inheritance in her husband's property. When the custom of *Niyoga* came into existence it followed that until a son was begotten on the wife by *Niyoga*, the inheritance would not pass to the sapindas or other relations. It would remain, therefore, in the hands of the widow until the son was born, the widow was becoming the custodian of the inheritance. Consequently widows without sons were very few. Sometimes, widows submitted to *Niyoga* merely from the desire to retain the inheritance in their hands.  

In the Smriti period, the widow, the daughter and the mother were expressly named as heirs. But their rights to inheritance were only in the absence of the male heirs and were also subject to certain conditions such as chastity, not marrying again, etc. Their rights in the inherited property were not absolute. They could not alienate such inherited property.

In the gradual development of the status of women from being incapable of holding property to being enabled to do so in the

---

9 *Niyoga* means appointment of a wife or widow to procreate a son on an appointed male, preferably her younger brother in-law or any *sapinda* relation
10 Supra note 4, pp. 102, 103 & 110.
12 Supra note 6.
later periods, the Smritikars assigned a special category of property to Hindu Women which was termed as *stridhana*. The term *stridhana* is derived from Stri, woman and dhana wealth. According to Manu it consisted of “What was given before the nuptial fire, what was given on a bridal procession, what was given in token of love and what was received from her brother, mother or father. Regarding *stridhana* Sir Gooroodas Banerjee observed that because of the existence of great diversity of doctrine, the law of *stridhana* had become a rather complicated subject.\(^{13}\)

Narada’s description of *stridhana* differs from Manu’s by saying “husband’s donation’ instead of “gift in token of love”\(^{14}\).

Vishnu, a later smritikar, added more categories to the Manu’s enumeration-gifts by the husband to his wife on supersession, gift to her by her relation, her fee and a gift subsequent are “*stridhana*”\(^{15}\).

Katyayana includes the same six sorts of *stridhana* as Manu and he also added some of ten sorts enumerated by Vishnu. He says that what is obtained by a married woman or by a maiden, in the


\(^{14}\) Ibid.

\(^{15}\) Ibid.
house of her husband or her father, from her brother, husband and parents is Saudayika stridhana. She is the exclusive ownership both in terms of sale or gift. Nobody has the authority over this stridhana to take it or to give it away. But he expressly excluded those wealth which was earned through strangers during the subsistence of marriage was categorized as asaudayika stridhana. No doubt these were also her stridhana which she could use according to her will. But at the time of disposing off the property of this category she has to obtain her husband’s consent.

Coming to the commentaries of different schools as they have authority on the subject, Mitakshara is the universally respected one throughout India. Vijaneshwor has defined the stridhana in the Mitakshara as following “That, which was given by the father, by the mother, by the husband or by a brother and that which was presented by the maternal uncles and the rest at the time of wedding before the nuptial fire; and a gift on a second marriage or gratuity on account of supersession and as indicated by the word “adya” (and rest), property obtained by (i) inheritance (ii) Purchase (iii) partition, (iv) seizure i.e. g. adverse possession (v) finding; and this stridhana according to Manu and the rest. Thus, Vijaneshwor made a change in the ancient smriti law and tried to place, Hindu women almost on a footing of equality with men regarding the holding of property.

---

16 Supra Note 6.
There are four sub schools of Mitakshara School namely – (i) Benaras School, (ii) Mithila School, (iii) Maharashtra or Bombay School, (iv) Dravida or Madras School.

**Banaras School:**

The Banaras School extends to the whole of Northern India except in rural Punjab. The main authorities of the School are Viramitro Daya and Nirmaya Sindhu. Viramitrodaya adopts and supports the definition of *stridhana* as given in the Mitakshara

**Mithila School:**

The Mithila School operates in Tirhut and certain district of Northern Bihar. The main authorities are Vivada Chintamani and the Vivada Ratnakara. The Vivada Chintamani enumerates eleven kinds of property under the heading namely:-

1. The six kinds as enumerated by Manu and defined by Katyayana;
2. Gifts made on supersession, gifts and Sulka or woman’s perquisite.
3. Ornaments

---

18 Supra Note. 1, pp. 92 & 93.
4. Food and Vesture mentioned by Devala and interpreted to mean "Funds appropriated to a woman’s support."¹⁹

**Maharastra or Bombay School:**

This school extends to Western India including the states of Gujarat and Bombay. The main authorities of the School are Vyavahara Mayukha, the Viramitrodaya and Nirmaya Sidhu.

Vyavahara Mayukha adopts the definition of *stridhana* as given in the Mitakshara.

For the purposes of succession, Bombay School divided stridhan into two classes (i) technical and (ii) non-technical. Technical *stridhana* refers to the kinds of property expressly recognised as *stridhana* by the old sage that is to say (i) gifts from relations made at any time and (ii) gifts from strangers if made before the nuptial fire or at the bridal procession. Non-technical *stridhana* comprises every other kind of property belonging to a woman.²⁰

As to the succession to this non-technical *stridhana*, the Mayukha has a special rule i.e. “even if there are daughters, the

---

¹⁹ Ibid.
sons and other heirs alone succeed to the mother’s property. Therefore, the order of succession of such property shall be as follows: -(i) Sons (ii) Son’s son (iii) Daughter’s (iv) Daughter’s son (v) Daughter’s daughter (vi) Husband and his heirs (vii) Father and his heirs. This was also approved by Hon’ble Bombay High Court in Manilal Vs Bai Rewa (1893) 17 Bombay 758 and by Privy Council in Kesserbai Vs Hunsraj (1906) 33 I.A., 176.21

Dravida or Madras School:

The Dravida or Madras School covers Southern India including the state of Tamilnadu, Karnataka, Andhra Pradesh and Kerela. The principal authorities are the Smriti Chandika, the Parashars Madhaviya, the Saraswati Vilasa and the Vyavahara Nimaya. The Smriti Chandrika enumerates certain kinds of property as stridhana, being the kinds of property recognised as stridhana by the Smriti writers. The Parashara Madhaviya makes its own interpretation on the term “adya” (the rest) in the text of Yajnavalkya by making reference to property purchased by a woman with gifts made to her at the bridal procession.22

21 Ibid.
22 Ibid.
**Stridhana according to the Dayabhaga or Bengal School:**

This school is represented by its founder Jimutavahana and his followers Raghunandana and Srikrishna.

There are two propositions which have been accepted by all the Mitakshara Sub-schools i.e.

1. every kind of *stridhana* belonging to a woman passes on her death to her heirs;
2. but every kind of *stridhana* cannot be disposed of by a woman at her pleasure.

After examining the various definitions of *stridhana* given in the old smriti texts, he amends the texts of Yajnavalkya and defines *stridhana* in these words “that alone is *stridhana* which she (a woman) has power to give, sell or use independently of her husband’s control”. The result is, it may be said –

1. Affirmatively, that all gifts from relations constitute *stridhana*, except a gift of immovable property made by the husband; and that gifts from strangers who constitute *stridhana* if made before the nuptial fire or at the bridal procession.
2. Negatively, that properties are not *stridhana*, namely (a) property inherited by a woman (b) property obtained by her on partition; (c) gifts from strangers except those made before the nuptial fire or at the bridal procession and (d) property acquired by her by mechanical arts.\(^{23}\)

Thus in the olden days, woman as a general rule was incapable of holding any property.

In the smriti period the term "*stridhana*" was used in very limited sense. And in the commentary period the term "*stridhana*" was expanded as much as it can be included all types of property which a Hindu woman possesses specially according to the Mitakshara School\(^{24}\). Broadly speaking, once any property is identified as *stridhana*, it has all the characteristics of absolute ownership.\(^{25}\)

Again new principles emerged according to the expressed views of Privy Council and other courts. In *Debi Mangal Prasad Vs Madho Prasad*\(^{26}\) it was held by the judicial committee that


\(^{24}\) Ibid.


\(^{26}\) (1912) 391 All.121 Cited & quoted in Ibid.
immovable property obtained by a Hindu woman on partition of Joint Family Property was not her *stridhana* in the sense that on her death it did not pass on to her *stridhana* heirs but reverted on her death to the next heir of the husband.

A woman may inherit ordinarily the property of a male i.e. of her husband, father, son etc. she may also inherit the *stridhana* of a female. Both these kinds of inherited properties are her *stridhana* according to Mitakshara. But in "Bachiraju Vs Venkatapadu" their lordships held that property inherited by woman from a male was not her absolute property, and it passed on her death not to her *stridhana* heirs but to heirs of the male from whom she inherited it. Again in "Sheo Pertab Vs Allahabad Bank" it was also held that the property which a woman had taken by inheritance from a female was not *stridhana* for the purpose of inheritance.

Thus it was resulted in the emergence of the concept of woman's estate. Two kinds of woman's property came into existence i.e. *stridhana* and woman's estate. The distinctive feature of the woman's estate is that (a) it reverts to the heirs of the last male owner, or to the heirs of the last full female owner and (b) She cannot dispose of the property but she is

---

entitled to the beneficial enjoyment of the estate during her lifetime. Woman’s estate generally refers to immovable property of the family i.e. House, land etc.  

Hindu women were always subjected to restrictions in the matter of enjoyment of proprietary right. The problem of restriction on her right of disposal or of regulating further succession did not probably arise immediately. The widow in ancient society would be expected to lead an austere life in the home of her husband. On her death her husband’s immediate relations with whom she lived would normally step into the ownership of the property, even during her lifetime would normally have been looked after by turn. But, in the course of time, these conditions changed and widows began to have the protection of their husband’s house and to make substantial gifts and sale of property, society would be stirred up by these departures from previous natures of the widow and seek remedies by imposing restraints which would save what society had looked upon as the normal and proper order of things. The restrictions of her powers of disposition and enjoyment which were originally only moral, now hardened into legal rules. These new laws were far from revolutionary. They were in the nature of conservative reaction against breaches of approved social properties. The effect of these limitations was

---

to rise a new problem about the meaning of the word *stridhana*. Now, there was a species of property which women owned but in which her rights were now limited. Further, some of the schools succeeded in reducing her right to inherit to a bare right to the use of the usufruct. It was, however, only by judicial decisions by British Indian Courts that the last phases of the history were finally conducted by laying down a law for all India on the basis of the Dayabhaga and carrying the law further backward than was attempted in any commentary.\(^\text{30}\)

The nature of a woman’s estate is described by Privy Council in *Janaki Ammal Vs Narayanasami Aiye*\(^\text{31}\) that “a widow or limited heir was not a tenant for life but was owner of the property inherited by her, subject to certain restrictions on alienation subject to its devolving upon the next heir of the last full owner upon the her death. So, long as she is alive no one has vested interest in the succession.

In *Moniram Kalita Vs Kerry Kolitany*\(^\text{32}\) it was held that “the whole estate is 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


\(^{32}\) (1880) 7 IA 115, cited & quoted in Ibid.
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 who will be entitled 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 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.

Thus, Hindu women was the owner of the property in the same way as any other individual can be owner of his or her property, subject to two basic limitations -- (a) she cannot be ordinarily alienate the corpus; and (b) on her death it devolves upon the next heir of the last full owner.

Hindu woman can alienate such property only in certain circumstances i.e. (i) for legal necessity; (ii) for benefit of estate; and (iii) for the discharge of indispensable religious duties such as marriage of daughters, funeral rites of her husband, his Shradha and gifts to Brahmans for the salvation of his soul. But she cannot alienate the property for her own spiritual benefit. But she can alienate such property with the consent of presumptive reversioners.33

33 Sahu Vs Mukand AIR 1955 SC 481.
In *Bai Vajia Vs Thakorebhai Chellabhai*\(^{34}\) Supreme Court observed that when a widow holds property for her enjoyment, as long as she lives nobody is entitled to deprive her of it or deal with the property in any manner to her detriment. The property is for the time being beneficially vested in her and she has the occupation and usufruct of it to the exclusion of all others. Such relationship with the property falls squarely within the meaning of the expression “limited owner”.

Regarding the power of Hindu woman in respect of the limited estate, she has power to represent the estate fully. She could institute suits in respect of the property and she could be sued in respect thereof representing the estates in respect thereof. Decrees passed against her as representing the estates were binding not only on her, but the reversioners though they were not parties to the suit. She also could sue to recover though they were not parties to the suit. She also could sue to recover possession even from a third person. The Hindu woman has also full power to manage the estate of which she is the limited owner. The karta of the Hindu joint family is merely the co-owner but she is the sole owner of income of the entire estate. Her power of spending is absolute with no binding to save but if she saves, it is her stridhan. She could claim partition from the collaterals. She also has the right to enter into a compromise for the benefit of estate and not for personal advantage.\(^{35}\)

\(^{34}\) AIR 1979 SC 993.

An improper alienation made by a Hindu woman is not void but voidable. In any case, an alienation made by her is binding on her during her life-time. As the reversioners have no right to get it set aside until the estate is dissolved upon them. The Supreme Court in *Kamla Devi Vs Bachula Gupta* observed that one of the principles which clearly emerged from the decisions on the subject was that a Hindu widow in possession of the estate of her deceased husband can make an alienation for religious acts which are not essential or obligatory but are still the bliss of the deceased husband's soul. In the case of essential or obligatory acts, if the income of the property or the property itself is not sufficient to cover the expenses, she is entitled to sell the whole of it.

The estate inherited by a widow from her husband may be enlarged otherwise than by savings from the income. Thus, it may be enlarged by action of Government or by compromise or otherwise. In such cases, the enlarge estate is still a woman limited estate. Where a widow sells the entire property by her husband and from sale proceeds acquires new property, the property so acquired still partakes of the nature of her husband's estate / woman estate.

---

36 Kalishanker Vs Dhirendra AIR 1954 SC 505.
37 AIR 1957 SC 434.
39 Tod Singh Vs Begam Bai (60) A.M.P. 64; Ayyangouda Vs Godigeppagouda (40) A.B. 200, cited & quoted in Ibid.
Another characteristic of women’s estate is on the death of the Hindu female, the estate reverts to the heir or heirs of the last full owner as if latter died when the limited estate ceased. Such heirs may be male or female. They are known as “reversioners”. But as long as the estate endures, there is no reversioner, though there is always a “presumptive reversioner”\(^\text{40}\)

A Hindu woman could withdraw herself from the woman’s estate or could renounce the interest therein, thus accelerating the succession of the next heirs of the last full owner to such property. This is known as the surrender of interest by a limited owner which has the effect of self-effacement by the limited heir. But it should be voluntary act of the Hindu female. It is self-effacement by woman that forms the basis of surrender. For a valid surrender the first condition is that it must be of the entire estate though she may retain a small portion for her maintenance. The second condition is that it must be made in favour of the nearest reversioner. The third and last condition is that it must be bonafide, and not a device for dividing the estate among the reversioners.\(^\text{41}\) Privy Council in *Bhagwan Kaur Vs Dhanudhari*\(^\text{42}\) held that when a Hindu female surrenders her estate, the estate vests in the reversioners by the operation of the law, and

---

\(^{40}\) Kalippa Vs Palani, AIR 1953 SC 195.

\(^{41}\) Natwar Vs Dadu, AIR 1954 SC 61.

no act of acceptance by the reversioner is necessary. No formalities are necessary. But sale of estate for consideration cannot be regarded as surrender.

So as long the Hindu woman is alive, none of the reversioners have any vested interest in the estate. Reversioner’s interest is expectant on the death of the Hindu female. But in the following circumstances reversioners had some rights during the lifetime of the limited owner –

(a) A suit could be brought by them to restrain the limited owner from making an improper alienation;

(b) They could sue for a declaration that any alienation made by Hindu woman was not valid after her lifetime.

(c) If any grant by will was prejudicial to the interest of the reversioners, then he could oppose the grant of probate.

(d) Where a widow claimed to be absolute owner of the limited estate, reversioners could file a suit for declaration that she was only a limited owner of the estate.

(e) A suit could be filed by the reversioners against the trespassers of the woman’s estate or a suit could also be filed
against the person claiming adverse possession for the declaration to the effect that such possession was not binding upon them. But they could not institute a suit for a declaration that he was the next reversioner during the lifetime of the Hindu woman.

The Hindu Women's Right to Property Act, 1937:

The position of Hindu female's right was not very clear on the contrary, males in the joint Hindu family enjoyed a far superior position as they formed an inner circle, commonly known as coparcenary, a predominant part of the bigger circle known as the Joint Hindu family. Joint ownership being the privilege of the male members in the family, females were precluded from acquiring any interest in the coparcenary property. Very restricted rights were conferred upon the females with regard to succession, partition and interest in joint family property. The courts could not interpret the set law in absence of any legislative enactment. Thus, it resulted in the passing of the "Hindu Women's Right to Property Act, 1937". The Act of 1937 was the end result of the social discontent expressed against the unsatisfactory position of the legal status of

---

44 Ibid.
property rights women inspite of the existence of a number of previous enactments.\(^{45}\) The object of the Act, as exhibited by its title, was to confer fresh rights on Hindu women, but it covered only the widows and not all Hindu Women. It was criticised in some quarters as it would lead to a break up of Hindu Joint Family System. The Act introduced important changes in the law of succession. This Act was not retrospective in its operation and did not apply to the property of any Hindu who died intestate before the commencement of this Act. Nor did it apply to the widow of any coparcener who died before the Act come into force. The Act was also not applicable if the deceased had disposed of his property by will. It was also not applicable to agricultural lands.

In respect of separate property of a Mitakshara Hindu and in respect of all properties of a Dayabhaga Hindu, the Act introduced three categories of widows namely intestate’s own widow and his son’s widow. The main features of the Act were:-

1. The widow along with sons was entitled to equal share with that of the son.

2. A pre-deceased son’s widow inherited in like manner as the son, if there was no son surviving of such pre-

deceased son, and in like manner as a son's son if there is surviving a son or son's son of such pre-deceased son.

3. The same provision applied mutadis-mutandis to the widow of a pre-deceased son of a pre-deceased son.

In the case of Mitakshara Joint Family, the widow took the place of her husband.

The Act conferred new rights on the widow. The general effect of the Act was to put the three females heirs mentioned in sub-section (i) of Section 3 on the same level as the male issue of the last owner. The Act put the widow of a member of the joint family in the place of her deceased husband and the husband's interest in the joint family property under the Mitakshara, though undefined, vested immediately upon his death in the widow and did not devolve by survivorship.

Sub-Section (4) of Section 3 conferred upon the widow the same right of claiming partition of the joint family property in the same way as any other coparcener entitled to do so under the general law. The acquisition by the widow of the same interest as her deceased husband in the joint family property did not of itself
disrupt the Mitakshara Joint Family and the widow continued as before to be a member of the joint family. Where she did not enforce partition, the joint family continued as before without any severance of the joint status; the incident of the coparcenary continued to apply to all members including the widow. And even then the rule of survivorship continued to operate upon the other coparceners, and their interest as also the interest of the widow was liable to fluctuate by births and deaths in the joint family which continued as before but subject to her statutory right Madhya Pradesh High Court held that the widow who had under Sub-Section (2) of Section 3 obtained interest in her husband’s estate and held the estate with minor (unmarried) son, took upon the death of the son the whole estate by survivorship.46

Regarding the unchasisty of widow Bombay High Court has given the view that it was not a disqualification to inherit or acquire any interest on her husband’s property under the Act. The Madras, Calcutta, and Mysore High Courts have given contrary view. As under the prior law, so under the Hindu women’s Right to Property Act 1937, a widow on remarriage lost her right to her deceased husband’s property.47
In any such case if there was no son the widow would become immediately entitled to the same interest in the property which the husband himself had and on partition takes the share that he would have taken. And if there was a son, the widow would be entitled to the same share as the son. Difficulty, however, arose where the husband held property which was ancestral and was survived by the widow and a son or sons who had separated from him. A question thus arises whether in any such cases widow would be entitled exclusively to the property left by the husband or should share it equally with his divided son or sons. The High Courts of Orissa and Madras, had taken the view that in such cases widow would be entitled to the entire interest to the exclusion of the divided son or sons. The High Court of Bombay had left the question open.\footnote{Ibid.}

But the interest devolving upon a widow under section 3 of the Act, 1937 was a limited interest known as a “Hindu Women’s Estate”. She held an estate of inheritance to herself and heirs of her husband. Upon the termination of the estate, the property descended to heirs of the husband as if he died at the moment of her death. The widow could not alienate her own property except
for special purposes. “Special Purposes” means for religions or charitable purposes, for spiritual welfare of the husband etc. She was not given absolute estate but only a limited estate and was not made a coparcener. 49

Under this Act of 1937, a daughter had no inheritance rights. Despite these enactment having brought important changes in the law of succession by conferring new rights of succession on certain females, there were still found to be defective in many respects and gave rise to a number of anomalies and left untouched the features of discrimination against women.

Thus, under the Hindu Law in operation prior to the coming into force of the Hindu Succession Act, 1956 a woman’s ownership of property was hedged in by certain limitations.50

49 Lala Duni Chand Vs Anar Kali (1946) 73 I.A. 187
To consider the best way of resolving anomalies and uncertainties regarding the Hindu Women’s Right, the government of India constituted the Hindu law committee on January 25, 1941. This committee expressed itself in favour of codification of Hindu law by stages starting with succession and marriage and submitted two draft Bills in March 1942. The first was dealing with the law of intestate succession and the second with the law of marriage. The bills were referred to a Joint Committee of the central legislature. The Joint Committee recommended that a comprehensive code covering all branches of Hindu law would be more apt to formulate a code of Hindu law. A fresh committee was appointed with Mr. B.N. Rau as Chairman by govt. of India on January, 20, 1944. This committee was entrusted with the task of framing the Hindu Code. The Rau Committee submitted its report and draft of the Code in 1947. In the Hindu Code, 1948 the position of Hindu Women remained the same though it provided for the abolition of the Joint Family System. But this Code could not be enacted due to strong opposition from the members of the Assembly.
It was necessary to make reform in the Mitakshera law of coparcenary and that where one of the Coporaceners died it was necessary that not only in case of his separate property but also in respect of his undivided interest in the coparcenary property there should be equitable distribution of that share between his sons and daughter. The Rau Committee considered the matter at length and suggested reforms in the Miskakshera Joint Family.

The constitution of India has given new dimensions to Indian society in certain spheres. The distinction and discrimination on the basis of sex, colour, creed etc, have been done away with, and according to Article 13 all the laws inconsistent with or in derogation of the fundamental rights have been declared void. Article 15 removes prohibition or discrimination on the ground of religion, race sex, caste or place of birth etc and also gives a direction to the state to make provisions for women and children. Also modern thinking did not favour continuance of the old concept of Joint Family and Mitakshera coparcenary.

Property is the source of fulfillment of our desires in our lives. No person can be without property. There were thousands of
ways to deprive a women from her right to property.\textsuperscript{51} As a result of this growing need, it was to propose for the uniform law governing all the Hindus. Various independent Acts dealing with different aspects of Hindu women were thus enacted. The Hindu Succession Act, 1946 was one of them.

The Hindu Succession Act came into force on June 17, 1956 with a view to confer absolute ownership on Hindu female in the property which was in her possession when the Act came into force. The British legislation simply gave her a limited estate which on her death reverted to her reversioners. It did not go to her heirs as is the case with full owners whose property on their death passes to their heirs. The ideal of the Indian constitution was based on the rule of parity i.e. same and equal treatment to males as well as females. The females were to be granted a new status and a new position at par with men. The females were allowed to stand on the same footing.

The Indian parliament respecting the feeling of Hindu Women thus in section 14 of Hindu Succession Act, 1956 conferred full fledged status of ownership in property held by her either

before 1956 or after 1956. Thus the people of India saw a new beginning and initiation of a movement to her advantage.

The far reaching change made by the Act is the abolition of the Women’s limited estate. The result is that the property in possession of a Hindu female, whether acquired by inheritance, or partition, or by way of gift, or by purchase, or in any manner whatsoever, can be held by her absolutely and her right to deal with it cannot be questioned merely on the ground that she had only a limited estate therein. The only exception to this rule is in respect of property where, under a gift, will, other instrument, or any decree or order of a court or under any award, restricted estate is given to a Hindu female. The Act also lays down a list of heirs who are entitled to succeed to a female Hindu. This list is different from the list of heirs to a male.

Section 14 of the Hindu Succession Act, 1956 states as follows:-

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
Explanation :- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu 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 prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (i) shall apply to any property required by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Section 14 (i) of the Act has the effect of converting the limited ownership of a female Hindu into her full ownership of a female Hindu provided the following conditions are fulfilled viz :-
(i) The female Hindu must have been or must be in the possession of the property, when the Act came into force and further she must continue to posses it after the commencement of the Act and

(ii) her possession of property should not be that of a trespasser but it must be supported or accompanied with some kind of lawful title\(^52\).

But still an alienation made by a widow without legal necessity could still be challenged by the reversioner if it was made before the commencement of the Act. The reason for this is, that the reversionary rights have not been fully wiped out or abolished by the Act. They do exist, thought in a lingering form.

Sec. 14 of Hindu Succession Act, is partly retrospective in effect because it makes a Hindu female the full owner of that property too, which she acquired before the commencement of the Act, provided she was in possession of it on June 17\(^{th}\), 1956 and continued to possess it after the commencement of the Act.

The ancient concept of stridhan as expounded by texts and commentaries and in the later period certain judicial pronouncements of the

\(^{52}\) Bindoo Vs Munshi, AIR 1971 J&K. 142.
Privy Council rendered the social and economic status of Hindu women very much pathetic. Therefore, a need for the change in the law became the pressing necessity. Section 14 of the Hindu Succession Act, 1956 in its present form is the obvious offshoot of that necessity.

It is essential to qualify the word "possession" and "property" without which are would not be able to appreciate the nature of Section 14. In Dwarkadas Vs Sholapur Spinning and Weaving Co. the Supreme Court observed that the expression "property" must be construed in the widest possible sense as connecting a bundle of rights exercisable by the owner in respect thereof and embracing within its purview both corporal and incorporeal rights. In the absence of a restrictive definition in the relevant statute it is not proper to restrict its scope and comprehensiveness.

Regarding the scope of Section 14 of the Hindu Succession Act, 1956, Supreme Court in Eramma Vs Veerupana observed that 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(1) sets out the various mode of acquisition of the property by a Hindu female and indicates that the Section applies only to

---

53 AIR 1954 SC 119.  
54 AIR 1970 SC 1730.
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 a limited owner" as given in the last portion of Sub-Section (I) of the Section clearly suggest that the legislature intended that the limited ownership of a 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 a limited owner of the property, will now become a 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, full owner of the property will have 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. It does not in anyway confer a title on the female Hindu where she did not in fact possess any vestige of title.

It is obvious that Section 14 is aimed at removing restriction on limitation on the right of a female Hindu to enjoy, as a full owner of the property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a title. It makes no difference whether the property is acquired by inheritance or device or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or
exertion or by purchase or by prescription or in any other manner whatsoever. The explanation expressly refers to property acquired in lieu of maintenance and we do not see what further title the widow is required to establish before she can claim full ownership under Section 14(1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. Sub-Section (2) of Section 14 is in the nature of an exception to Section 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of court and not where such acquisition is traceable to any antecedent's right. When the court uses the word limited estate, the words are used to connote a right in the property to which the possession of the female Hindu may be legitimately traced, but which is not a full right of ownership. If a female Hindu is put in possession of property pursuant to or in recognition of a right to maintenance, it cannot be denied that she has acquired a limited right or interest in the property and once that position is accepted it follows that the right gets enlarged to full ownership under Section 14(1) of the Act.

55 Air 1987 SC 2251.
This is true that Section 14 of the Hindu succession Act consolidates the concept of stridhana under various schools of Hindu law to mean one uniform body of property that can be acquired and owned by Hindu women. Some property that was earlier only considered to be women’s limited estate is now included within the definition of women’s absolute property. The object of enacting Section 14 of the Hindu succession Act has been reiterated by the courts repeatedly. In Muradakkal Vs Aramugha 57 the Madras High Court declared that the reason for enactment of Section 14 was to ensure equality of status and of opportunity for women with men in relation to title to and enjoyment of property.

Punjab High Court has also observed that Section 14 shows the concern and object of the law to remove all fetters on the ownership of property by a Hindu female and confers absolute ownership on her with regard thereto.58

The expression “possessed” has been used in the Section 14 in abroad sense and in its wide connotation. In Badri Prasad Vs Kanso Devi59 a Hindu widow inherited certain property under the Hindu Women’s Right to Property Act, 1937 from her husband after his death. Later on, there was partition in the family and the widow received a share in the property and

57 AIR 1958 Mad. 257.
remained in its possession at the date of the commencement of the Hindu Succession Act. Supreme Court held that such property became her absolute property within the meaning of Section 14(1). Supreme Court further observed that the word "possessed in Section 14(1) is used in its widest connotation and it may be either actual or constructive or in any form recognized by Law. The word "acquired" has also to be given the widest possible meaning. Section 14(2) is more in the nature of a proviso or an exception to 14(1). It comes into operation only if the acquisition in any of the method indicated therein is made for the first time without there being any pre-existing right in a Hindu female who is in possession of the property. The property got by a Hindu female under Hindu Women’s Right to Property Act will be covered by Section 14(1) of the Act and she will become the absolute owner thereof.

The property possessed by a female Hindu referred to Section 14(1) includes property both movable and immovable property. It may be acquired by a female Hindu by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance, etc. The deed or any other arrangement by which the husband gives the property to his wife for maintenance need not specifically state that it is given in lieu of maintenance. It is not an act of charity the husband does. It is out of his personal obligation to maintain her. The right to maintenance of a Hindu
woman is a personal obligation of the husband. If, therefore, the wife is put in exclusive possession of the property with the right to take the income for her maintenance, it must be presumed that the property is given to her in lieu of maintenance. The very right to receive maintenance which is inherent in her is itself sufficient to enable the ripening of possession of any property into full ownership under Section 14(1) of the Hindi Succession Act. Section 14(1) and the explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the Hindu female and promote the socio-economic ends sought to be achieved by this long needed legislation. In *Dayal and others Vs Bhaiyalal and others* the court held that right to maintenance of the Hindu Family, a pre-existing right, was existed under Shastric Hindu Law even if 1937 Act does not apply. If widow is in possession of property of her husband and she having acquired right in suit property by way of succession, she becomes absolute owner after coming into force of Hindu Succession Act. Because word “acquired” used in Section 14 of Hindu Succession Act includes right acquired by succession and alienation of property by widow is valid. Again in *V. Tulsamma Vs B. Sheshareddi* the appellant claimed maintenance out of the joint family properties in the hands of the respondents who was her deceased husband’s brother.

---

62 AIR 2007 M.P. 72.
63 AIR 1977 SC 1944.
claim was decreed in favour of the appellant and in the execution of the
decree for maintenance, a compromise was arrived at between the parties
allotting the properties in question to the appellant for her maintenance and
giving her limited interest in such properties. It was held that since in the
present case the properties in question were acquired by the appellant under
the compromise in lieu of satisfaction of her right of maintenance, it was
sub-section (1) and not sub-section (2) of Section (1) and not sub-section
(2) of Section 14 which would be applicable and hence the appellant must
be deemed to have become full owner of the properties notwithstanding
that the compromise prescribed a limited interest for her in the properties.

The real reason for the enactment of Section 14(1), therefore, was to
ensure to women equality of status and of opportunity with men in relation
to title to and enjoyment of property. In *Koppusurami Vs Veeravva*\(^{64}\)
Supreme Court observed that “the opening words of Section 14 i.e.
property possessed by a Hindu female, obviously mean that to come within
the purview of the date of the commencement of the Act. The possession
must have been either actual or constructive or in any form recognized by
Law. The object of the Act was to improve the legal status of Hindu
women, enlarging their limited interest in the property inherited or held by
them to an absolute estate/interest, provided they were in possession of the

\(^{64}\) AIR 1959 SC 577.
property when the Act came into force. But the Act did not intend to benefit alliance who with their eyes open purchased the property from the owners without justifying necessity before the Act came into force and at a time when the vendor had only a limited interest in the property.

In Bhagwas Dattatraya Vs Viswa Nath Pandari Nath, a widow inherited certain property and sold it away before the commencement of the Act. The sale was challenged by the reversioners and held invalid by the Court. After invalid, she purchased the property and sold it away again. It was challenged by the reversioners again. The Court held that in spite of its previous declaration, as the property came in her possession after the enforcement of the Act, it became her absolute property and, therefore, the reversioners could not challenge the alienation thereafter, as the widow had become absolute owner of the property and enjoyed full right of dealing with it. It Gopal Singh Vs Dile Ram where in a suit for declaration at the gift of properties made before coming into force of Hindu Succession Act was invalid, a compromise decree was passed and it declared that the gift was invalid, the effect of that declaration was that the widow continued to be the limited owner of the properties after the decree until 1956 when Hindu Succession Act came into operation and by virtue of Section 14, it was held by the Supreme Court, her limited estate became absolute estate

---

65 AIR 1979 Bom. 1.
66 AIR 1987 SC 2394.
and as such, the will of the properties made by the widow subsequent to the coming into force of the Act was a valid will.

The expansion of Hindu women’s right to property is not intended to apply to a case of mere possession without title. Mere physical possession of the property without the right of ownership will not attract the provisions of Section 14. Where a widow succeeds to the property of her deceased husband after his death and sometimes later validly gifts away the same to the daughter and after the death of the daughter takes possession of the property, her possession is that of trespasser and continues to be so when the Hindu Succession Act later on comes into force and even thereafter till her death. She cannot be held to have acquired under the Hindu Succession Act because before any property can be said to be “possessed” by the Hindu woman, two things are necessary – (a) She must have had a right to the possession of that property; and (b) She must have been in possession of that property either actually or constructively.\(^\text{67}\)

Section 14(2) of Hindu Succession Act is in the nature of a proviso or an exception to Section 14(1) and comes into operation only if acquisition in any of the methods indicated is made therein is made for the first time without there being any pre-existing right in the female Hindu to the property. The purpose and legislative intent which surfaces from a

\(^{67}\) Dindayal Vs Raja Ram, AIR 1970 SC 1019.
combined reading of sub-section (1) and (2) of Section 14 is that it attempts to remove the disability which was imposed by customary Hindu law on acquisition of rights by a female Hindu. It would depend on the nature of the right acquired by her. If while getting possession of the property after the Hindu Succession Act has been passed under a devise, gift or other transaction, any restriction is place on her right, the restriction will have play in view of Section 14(2) of the Act. In Sadhu Singh Vs Gurdhwara Sahib Narike and ors. 68 Supreme Court held that when a male Hindu validly disposes his property by providing for a limited estate to his heir, the wife or the widow has to take it as the limited estate. This restriction on her right so provided, is respected by the Hindu Succession Act. It is provided in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act. It also further held that male Hindu disposing of his property by will in favour of his wife – stipulated in the will that property must go to his nephew after death of wife; that wife cannot testamentarily dispose of property in favour of anyone

68 (2006) 8 SCC 75.
There is consensus of judicial opinion with regard to the ambit of sub-section (2) of the Section 14 of the Act. It covers only those cases of grants where the interest in the grantee is created by the grant itself or in other words, where the gift, instrument, decree, order or award is the source or origin of the interest created in the grantee. The object of sub-section (2) of Section 14 is only to remove the disability on Hindu woman imposed by law and not to interfere with contracts, grants, etc. by which a restricted right is created in her favour. Sub-section (2) is based on the principle of sanctity of contracts and grants. The clear object of Section 14(2) was not to interfere with contracts, grants or decree, etc. by virtue of which women's right was restricted though the disability on woman imposed by law was removed by Section 14(1). Sub-section (2) of Section 14 will only apply when the property itself is acquired by means of a decree. If the property had not been acquired by a decree, but it had been acquired by inheritance and, therefore, any decree which had been passed declaring a right therein would not be effective.

According to Section 2 of Hindu Widow's Remarriage Act, 1856 the rights and interest in properties which a widow gets from her husband as limited estate, shall cease upon her remarriage and shall devolve as if

---

70 Sampuran singh Vs Labh Singh, AIR 1977 Punj. 17.
71 Smt. Janak Dulari Vs District Judge, AIR 1961 All. 294.
she had died. But the Rajasthan High Court in *Bhuri Bai Vs Champi Bai*\(^{72}\) held that even if there is some inconsistency between the provisions of two enactments i.e. Hindu Succession Act, 1956 and Hindu Widow’s Remarriage Act, 1856, the provision of Hindu Succession Act, 1956 will have override effect. Hindu widow’s limited estate which she got from her husband becomes her full/absolute estate by virtue of Section 14 of Hindu Succession Act, 1956. Madra High Court also in *Chinappa Vs Meenakshi*\(^{73}\) held that Section 14 of Hindu Succession Act, 1956 makes it clear that “any other law in force immediately before the commencement of the Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act. Since Section 2 of Hindu Widow’s Marriage Act, 1856 is in conflict with Section 14(1), Hindu Succession Act, 1956, it will not prevail. Supreme Court further expanded the scope of Section 14 in *Mangal Singh Vs Rattno*\(^{74}\) by observing that the female owner need be neither in actual or in constructive possession of her property provided she had not parted with her rights in that property and was capable of obtaining possession of the property. In that case the Hindu widow was wrongfully dispossessed prior to the Hindu Succession Act. She had filed a suit for possession before the Act came into force. The

\(^{72}\) AIR 1968 Raj. 13.
\(^{73}\) AIR 1971 Mad. 453.
\(^{74}\) AIR 1967 SC 11786.
Court said that she must be regarded as being possessed of the property for the purpose of Section 14.

Clearly a very broad interpretation was given to Section 14 by the Courts to ensure that all rights of limited ownership of female Hindus became absolute rights.

**Hindu Women’s Right of Inheritance under Hindu Succession Act:**

The fundamental concept of the Hindu joint family is a common male ancestor with his lineal descendants in the male line. Under early Hindu Law only sons acquired equal interest with the father in the ancestral property as coparceners under Mitakshara Joint Hindu Family System there are types of property viz. joint family properties or ancestral property and self-acquired or separate property. According to Mitakshara School, father, son, grandson and great grandson constitute a class of capaceners based on births in family. No female is a member of the coparcenary. The joint family properties are generally inherited by the coparceners by way of survivorship. The Mitakshara law also recognises inheritance by succession but only to the separate or self-acquired property of male or female owner. The females are included as heirs to this kind of property.
Under the Dayabhaga law succession rather than survivorship is the rule. Neither sons nor daughters become coparceners by birth. They do not have rights in the family property during their father’s lifetime. However, on the death of the father, both sons and daughter inherit equally. Under Dayabhaga School, females can be coparceners.

India gained independence from British rule in 1947, but it was partitioned into India and Pakistan. The codification and reform of Hindu law was not taken up in response to public demand. The State assumed the responsibility for reform of Hindu Law. Many Hindu were unhappy about the codification. There was a good deal of hostility exhibited at several places through black flag demonstration as the orthodox opinion was aroused by certain proposed provisions particularly the provision for divorce and the provision for daughter’s share in her father’s property. Even President Rajendra Prasad opposed to the move to codify Hindu law. Therefore, instead of enacting the code in one piece, it was broken up into separate parts dealing with separate matters, and separate Acts were thus enacted. Hindu Succession Act, 1956 is one of them. The Hindu Succession Act while effectuating basic changes in the law has adopted some ideas alien to the Hindu society. The Act makes a radical departure from the traditional Hindu law in several ways. Under the traditional Hindu law, the son took the whole of the property and excluded all other heirs,
now under the Act, the son, daughter, widow and mother inherit the property of the deceased simultaneously, and the father is excluded as he belongs to Class II. Thus, the son and the daughter both inherit.\textsuperscript{75} It was generally felt that radical reform was required in the Mitakshara law of coparcenary and the where one of the coparceners died it was necessary that not only in case of his separate property but also in case of his undivided interest in the coparcenary property there should be equitable distribution of that share between his sons and daughters.

The Hindu Succession Act came into force on June 17, 1956 with a view to confer absolute ownership on Hindu female. The very preamble of the Act signifies that an Act to amend and codify the law relating to intestate succession among Hindus. The Act aims to lay down a uniform law of succession whereas attempt has been made to ensure equality of inheritance rights between sons and daughters. It lays down a uniform and comprehensive system of inheritance and applies to those governed by the Mitakshara and Dayabhaga schools as well as other schools. It also reforms the Hindu Personal Law and gave women greater property rights.

In the matter of succession of property of a Hindu male dying intestate, the Act lays down a set of general rules in Section 8 to 13. Sections 15 and 16 of the Act contain separate general rules affecting

\textsuperscript{75} M.P. Jain, \textit{Outline of Indian Legal History}, (5\textsuperscript{th} Reprint Ed. 2003), pp. 637-41.
succession to the property of a female intestate. The Act has extensively
affected the entire concept of Mitakshara coparcenary which was governed
by the rule of survivorship. Under the rule of survivorship female heirs of
the coparceners did not have any place and the property devolved only on
the male heirs of the coparcenary on the death of the male members. But
under the Hindu Succession Act, in case such male member of Mitakshara
coparcenary dies intestate leaving behind a female heir in Class I of the
schedule, the property of the deceased according to Section 6 would
devolve not according to the rule of survivorship but according to the
provisions of this Act, which provides for a specific share to such female
heirs (before 2005 Amendment of Hindu Succession Act).

Regarding the order of Succession to Hindu male provided by
Sections 8 and 9 of the Act is broadly based on the doctrine of propinquity
and accordingly the heirs are divided into four categories, which are as
follows:

(i) Heirs in Class I of the schedule.
(ii) Heirs in Class II of the schedule.
(iii) Agnates.
(iv) Cognates.

The outstanding feature of the above division is that the heirs in
Class I of the schedule inherit the property simultaneously. And in the
Class I of the schedule contains a list of twelve heirs out of which eight are females and four are males of which one male claims through a female. All of them inherit in equal shares.

Most of the time judiciary is behind the gender justice. Supreme Court in *State of Maharashtra Vs Narayan Rao*\(^6\) held that it was no doubt true that the right of 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.

In *Subbayyajoga Naik Vs Narayanai*\(^7\) it was held that in a case pertaining to the right of a married daughter, daughter being Class I heir is entitled for share in the property of father and marriage before 20 years back is immaterial.

---
\(^6\) AIR 1985 SC716
\(^7\) AIR 2004 Karn. 430
The widow daughter-in-law can claim a share in the coparcenary interest of her father-in-law after he dies intestate in a joint family as she is Class I heir to him as mentioned in the schedule to Sections. 78

Section 15 of the Hindu Succession Act, 1956 provides general rules of succession in the case of female Hindus. Section 15 is the necessary evidence and consequence of conferring absolute, right in the property of such female Hindus. It enables intestate to devolve on her own heirs. According to Section 15(1) subject to the rules set out in Section 16, her sons, daughters who include children of pre-deceased son or daughter and husband take precedence over the heirs of the husband.

According to Section 15(2) any property inherited by a female Hindu from her father or mother shall devolve in absence of any son or daughter of the deceased including the children of any predeceased son or daughter, upon the heirs of the father. Any property inherited by her from her husband or father-in-law shall devolve in the absence of any son or daughter of the deceased including the children of any predeceased son or daughter upon the heirs of the husband.

Section 15 does not apply in respect of property held by a female Hindu within the meaning of Section 14(2) as it is her restricted estate.

78 Basavalingamana Vs Shardamma, AIR 1984 Karn. 27.
The word "son" includes natural and adopted children. In *Roshan Lal Vs Dalip* 79 the widow inherited certain land from her second husband after his death. She had a son from her first husband. After the death of the widow, that son was held to be entitled to inherit her property, although he was her first husband's son. The court held that the son of the widow would inherit the property of his mother under Section 15(1)(a) irrespective of the fact that the property was inherited by her from her second husband. In such cases it does not make a difference as to whether the son was born to her from the first or second husband. In *Mt. Mokundero Vs Kartar Singh* 80 Supreme Court held that where any property is held by a female Hindu as a limited owner and becomes its absolute owner after the commencement of the Hindu Succession Act, 1956, Section 15 and 16 would apply. In case she dies intestate leaving behind her the daughter of the predeceased son and the husband's sister, then under the scheme of Section 15 and 16, her son's daughter will be the only heir entitled to inherit her property not the sister of the husband, because the former comes within the category of heirs specified in Section 15(1)(a) and will exclude all other heirs specified in subsequent categories.

---

79 AIR 1985 H.P. 8.
80 AIR 1991 SC 257.
In *R.A. Patil Vs A.B. Redekar*\(^8^1\) the court held that the words “son” and “daughter” of the deceased used in sub-section (1) of Section 15 of the Act mean a son or daughter of the female, dying intestate, born to her of any husband, former or later. The definition includes even illegitimate children. But Supreme Court in *Lachman Singh Vs Kirpa Singh and Ors.*\(^8^2\) held that the “son” in clause (a) of Section 15(1) of the Act does not include stepsons and stepsons fall in the category of the heirs of the husband referred to in clause (b) of Section 15(1).

Hindu Succession Act, 1956 is widely acclaimed as one of the progressive legislations. Truly, this law has brought revolutionary changes by conferring inheritance rights to female Hindus like widow, daughter, mother, etc.

Section 23 of the Hindu Succession Act, 1956 made a special provision in respect of division of dwelling houses of a joint family now omitted by the Hindu Succession (Amendment) Act, 2005. This section laid down that in the case of dwelling house left behind by the Hindu intestate, his or her female heirs can claim partition thereof only if the male heirs choose to effect a division of their respective shares.

---

\(^8^1\) AIR 1969 Bom. 208.
\(^8^2\) AIR 1987 SC 1616.
The objective of the proviso to Section 23 of the Act is to make a provision for residence in the family dwelling house to a daughter who is unmarried or if married has been deserted by or has separated from her husband or is a widow and not to render her homeless in case she is not entitled to seek her share in such house.

The Supreme Court in *Narashimha Murthy Vs Sushilabai* 83 held that a female heirs right to claim partition of the dwelling house of a Hindu dying intestate under Section 23 of the Hindu Succession Act, 1956 would be deferred or kept in abeyance during the lifetime or even a sole surviving male heir of the deceased until he chose to separate his share or ceases to occupy it or lets it out. The idea of this Section is to prevent the fragmentation and disintegration of the dwelling house at the instance of the female heirs, the detriment of the male heirs in occupation of the house, by rendering the male heir homeless or sheltered.84

Sometime judiciary tried to make up the Hindu Female’s Right. In *Hari Singh Vs Anil Kumar* 85 the court held that Section 23 deals only with the dwelling houses wholly occupied by the members of the family of the intestate. Where some portion of the dwelling house is occupied by persons...

---

83 AIR 1996 SC 1826.
85 AIR 1974 Raj.197.
other than the members of the family, the female heir can claim partition and that this Section will not come in her way.

Right of a Hindu female heir to claim partition in the dwelling house of the intestate under Section 23 should be referable only to the female heir specified in Class I of the schedule. Under Section 23 so far as the daughter is concerned, her right of residence is subject to certain limitations contained in the proviso. They are (i) if the daughter is unmarried she is entitled to residence until she is married; (ii) if the daughter is married but has been deserted by or has separated from her husband she is entitled to residence. Where the married daughter refused to reside with her husband and it was not her husband who had deserted her and so she would not be entitled to a right of residence under the provision.

The expression "until the male heirs choose to divide their respective shares" is unhappy. If the above interpretation is placed the female heir will be constrained to wait until all the male heirs divided the property before enforcing her right to partition. This would cause considerable hardship to her. It was also held by the court that a female heir cannot claim partition even where one of the two male heirs remained exparte in the partition suit.

---

87 Kamallam Vs Veeramma, AIR 1992 Karn. 362.
88 Supra Note 83, p. 1134.
89 Bhumidi Goverdhan Vs Subhadramma, AIR 1994 AP. 87.
The Hindu Succession (Amendment) Act, 2005:

Hindu Succession Act, 1956 is widely acclaimed as one of the progressive legislations. Truly, this law has brought revolutionary changes by conferring inheritance right to female Hindu heirs. Despite this fact the need is felt to amend some of the provisions of the Act.

Hindu Succession Act retained Mitakshara coparcenary. Women are not members of the coparcenary. Therefore, they are not entitled to have any right in the coparcenary property except as provided under Section 6 of the Hindu Succession Act, 1956. Section 6 provides that if the deceased left him surviving a female relation or a male relative who claims through such a female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession and not by survivorship. The result of the Section 6 is that father and sons hold the joint family property to the total exclusion of the daughters and mother. Daughter is only entitled to inherit a part of the property that constitutes the share of the father once he dies. The son, in addition to being the joint owner of the coparcenary property, takes an equal share with the daughter and widow in the self-acquired property of the deceased. Daughter’s share in inheritance is not the same as that of the son.
The father has the right to partition his family property amongst the coparcenary during his lifetime without reserving any share for himself. If he does so, his female heirs are affected adversely.

The Mitakshara coparcenary is empowered to dispose off according to Section 30 of the Hindu Succession Act by will his interest in the coparcenary property. By exercising this right he can defeat the rights of female members who are entitled to inherit under Section 6.

The Amending Act of 2005 is an attempt to remove the discrimination as contained in the Hindu Succession Act, 1956 by giving equal rights to Hindu females. This is a great step of the government. This is the product of 174th Report of Law Commission of India on “Property Rights of Women: Proposed Reform under the Hindu Law”.

By amending Section 6 of the Act, in a joint Hindu family governed by the Mitakshara law, the daughter of coparcener shall also by birth become a coparcener in her own right in the same manner as the son. She shall have the same right in respect of the coparcenary property as that of son. She shall be subject to the same liabilities and disabilities in respect of the said coparcenary property as that of son and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter.
Further, any property owned by virtue of above provision female Hindu can disposed of by her by will or by other testamentary disposition. After the commencement of the Hindu Succession (Amendment) Act, 2005 where a Hindu dies his or her interest in the property of Mitakshara joint family shall devolve by testamentary or intestate succession according to the provision of the Act and not by survivorship.

Before passing Hindu Succession (Amendment) Act, 2005, Section 23 of the Act disentitles the female heirs to ask for partition in respect of dwelling house wholly occupied by a joint family until male heirs choose to partition their respective shares therein. Thus, if they choose to indefinitely defer their right to partition, the female heirs specified in Class I, which includes daughter as well, cannot ask for their shares. Such Class I female heir’s right to reside in the natal dwelling house is available only to a daughter who is unmarried or deserted or separated from her husband or a widow. Therefore, even if she is harassed and tortured in the matrimonial home, she has no choice but to stay under the roof of the husband unless she is legally separated. It is common knowledge that for reasons social or economic or for the sake of children or family grace, women are reluctant to go to court for legal separation. Beside sometimes, legal proceeding
could extend to several years. In such circumstances, Hindu females are helpless. 90

Prior to amendment of 2005, under Section 24 of the Act, certain widows were disqualified to inherit the property of intestate, if they remarried on the date the succession opened. They are widow of a predeceased son, widow of a predeceased son of a predeceased son or the widow of a brother.

The Hindu Succession (Amendment) Act, 2005 omitted Section 23 and 24 of Hindu Succession Act, 1956. The Amending Act also added new heirs in the schedule as Class I heirs viz. son and daughter of a predeceased daughter of a predeceased daughter; son and daughter of a predeceased son of a predeceased daughter.

Thus, Hindu Succession (Amendment) Act, 2005 is a total commitment for the women empowerment and protection of Hindu Women's Right to Property. Now, in *Nagammal Vs N. Distyappan* 91 (FN: Foot Note) the Madras High Court held that unmarried daughters of Hindu coparcenary shall become coparcener by birth and unmarried daughters of deceased are to be treated equally with son and is entitled to equal share.

91 AIR 2006 Mad. 265.
Now, Hindu women are vested the right of control and ownership of property beyond their right to sustenance. But for a formal right to transform into a substantive one, social reform must move with the reform of the law.\textsuperscript{92}