Chapter - 2
Property Rights of Hindu Women Under Uncodified Law
PROPERTY RIGHTS OF HINDU WOMAN UNDER UNCODIFIED LAW

GENERAL

It is generally believed that ancient Hindu law was particularly harsh towards women and denied them sexual and economic freedom. In support of this premise, it is emphasized that Manu, the first lawgiver stipulated; "A women must be dependent upon her father in childhood, upon her husband in youth and upon her sons in old age. She should never be free."\(^1\) It is also believed that the modernity ushered in during the colonial era helped loosen out this strict sexual control by granting women the right of property ownership.\(^2\)

The Smritis and Commentaries, with their roots in a feudal society of agrarian landholdings, prescribed a patriarchal family structure within which women’s right to property was constrained. Under Hindu Law, the law of property has a close relationship with the composition of family.

HINDU JOINT FAMILY UNDER MITAKSHARA LAW

The Hindu joint family is a normal condition of the Hindu society. Its origin can be traced to the ancient partriarchal system where the patriarch or the head of the family was the unquestioned ruler, laying down norms for the members of his family to follow, obeyed by everyone in his family and having an unparallel control over their lives and properties. Therefore, under Hindu law the joint family system came first in historical order and the individual recognition of a person distinct from the family thereafter. The ancient system generally treated the property acquired by the member of the family as family property or the joint property of the family with family members.

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having one or the other right over it. With gradual transformation of the society and recognition of the members of the family as independent in their own right, concept of separate property and rules for its inheritance were developed. This dual property system, though considerably diluted, has survived the lashes of time, the judicial and legislative onslaught and the Hindu society still recognizes the joint family and joint family property as unique entities having no similar concept alive elsewhere in the world.

**Constitution of Hindu Joint Family**

The institution of a Hindu Joint Family is peculiar to the Hindu jurisprudence and has its origin in ancient orthodox texts and writings of Smritikars etc. Though, it originated in the propagation of the theory of despotism and autocracy in the father, yet by efflux of time, such a concept considerably loped down so as to confer equal rights on his sons by birth. The introduction of coparceners by birth into the family considerably whittled down the absolute power of the father. Several other inroads into such unitary rights and privileges of the father, where incursions had to be made with the growth of society and the appreciation of the value of individual rights, resulted in the enlargement of the body constituting the joint Hindu family.

A joint Hindu family consists of all male members lineally descended from a common male ancestor and includes their wives unmarried daughters and adopted children. A daughter on marriage ceases to be a member of her father's family and becomes a member of husband's family. The Smritis and Commentaries make a mention of

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3 While in the State of Kerala the concept of joint family has been abolished, four States to begin with by introducing unmarried daughters as coparceners. The Hindu Succession (Amendment) Act, 2005 has brought equality and presently a daughter and a son are members of their father's joint family in an identical manner.

4 The expression "Hindu Joint Family" is synonymous with the expression "Hindu Undivided Family" used in the Income Tax Act, 1961.

the words *kutumba* or *avibhakta kutumba* for joint or undivided family.⁶ A joint or undivided family is the normal condition of Hindus which is ordinarily joint in food, worship and estate (Creature of Law). In *Surjit Lal v. Common. I.T.*,⁷ the Supreme Court elaborates that outside the limits of coparcenary, there is a fringe of person males and females, who constitute an undivided family. There is no limit to the number of persons who compose it, nor to their remoteness from their common ancestor and to their relationship lineally or laterally with one-another. To be a member of the family one may be added by birth, marriage or adoption. A female who comes in the family by marriage becomes sapinda of her husband. The joint family is thus a larger body consisting of a group of persons who are united by the knot of sapindaship arising by birth, marriage or adoption.

**Presumption of Union**

The joint and undivided family is the normal feature of Hindu society. There is a presumption in Hindu law that a family is living in a state of union, unless the contrary is proved.⁸ The presumption is stronger in case of nearer relationship but gets weaker in case of remoter relationship.⁹ The general principal is that every Hindu family is presumed to be joint unless the contrary is proved, but this presumption can be rebutted by direct evidence or by course of conduct. But there is no presumption that a joint Hindu family possesses joint family property, it is only an adjunct of the joint family. In *M. Gowdappa v. Ramachandra*¹⁰, the Supreme Court has held that the burden of proving that any particular property is joint family property is therefore, in the first instance upon the person who

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⁶ *Yajanvalka*, II, 45, 175.
⁷ 1976 HLR (SC) 146.
¹⁰ AIR 1969 SC 1076.
claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to the joint family property.

Hindu joint family is not a corporation and it has no legal entity distinct and separate from its members.\textsuperscript{11} It is also not a juristic person\textsuperscript{12}, and is represented by Karta or head of the family in relation to the affairs of the family in relation to others.\textsuperscript{13}

**Concept of Composite Family**

The concept of a joint family also differs from that of a composite family. The latter has come to be recognised in law on the basis of custom prevailing in certain parts of South India, especially in Andhra Pradesh. A joint family is a creation of law whereas a composite family is constituted by an agreement, express or implied, between a number of families for the purpose of living and working together. These families are not mentioned by the *Smritikaras*. The resources of all the families are pooled together, their gains are thrown into the joint stock, the common risks are shouldered together, and the resources of the units are exploited for the entire composite family without discrimination.\textsuperscript{14} The joint family is purely a creature of law. It cannot be created by the act of parties.\textsuperscript{15} Where the female heirs of a male inherit his self-acquired property in their individual capacity, they cannot constitute a joint Hindu family by entering into an agreement and throwing their shares into the "Joint family Property."\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{11} Chotelal v. Jhandelal, AIR 1972 All 424.
\item \textsuperscript{12} Ram Kumar v. CIT, AIR 1953 All 150.
\item \textsuperscript{13} Basant K. Sharma (Dr.), *Hindu Law* 277 (2011).
\item \textsuperscript{14} Ramesh Nagpal, *Modern Hindu Law* 641 (2008).
\item \textsuperscript{15} R. Ramagopal Reddy v. Padmini Chandrasekaran (1990) 2 HLR (Mad) (DB) 485.
\item \textsuperscript{16} CIT v. Sandhya Rani Dutta (2001) 3 SCC 420.
\end{itemize}
Hindu Coparcenary

The primary purpose of understanding the concept of Mitakshara coparcenary was spiritual in nature. A coparcener in relation to the father is a person who can offer a funeral cake to him. This capability to offer spiritual salvation by the performance of funeral rites was with the son, son of a son (grandson), and son of a son of a son (great-grandson) and as a consequence of it they were conferred a right by birth in the property of the father. This religious aspect that associated it primarily with relationship and spiritual benefits and not merely from the property perspective was totally sidelined later by the legal aspect. The revenue authority’s view was that coparcenary purely from the property angle. Presently it is understood to ascertain the rights and obligations of the members in the joint family property that is also called as ancestral property or the coparcenary property.¹⁷

A Hindu coparcenary is a much narrower body than the Hindu joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property and these are the sons, grandsons and great grandsons of the holder of the joint property for the time being, that is to say, the three generations next to the holder in unbroken male descent.¹⁸ The essence of a coparcenary is unity of ownership with the necessary appendage of unity of possession. No coparcenary can commence without a common male ancestor, though after his death it may consist of collaterals such as brothers, uncles, cousins, nephews etc. A coparcenary is purely a creature of law and

¹⁷ The sages declared the partition of the heritable property to be co-ordinate with the gifts of funeral cake. Since it was said that the son can offer a funeral cake to the father and the grandfather, there was a conflict of opinion on whether the class of coparcener would include only the sons and grandsons or would also include a great grandson. However, Vyavahara Mayukha says that the term grandfather refers to a class as including the great-grandfather also and therefore a man’s sons, sons of sons and sons of sons of sons can offer spiritual salvation to him and would be his coparceners.

¹⁸ Supra note 5 at 602.
cannot be created by contract. But the adopted person may be introduced as a member of the coparcenary\textsuperscript{19} and after the death of common ancestor coparcenary of brother can be created.\textsuperscript{20} Ordinarily, a coparcenary will end with the death of the surviving coparcener, very interestingly but if surviving coparcener dies leaving a widow having authority to adopt a son to him, coparcenary will be continued. The reason is that a family cannot be ended if there is a possibility of adding any male member to it. It should be very well remembered that though every coparcenary must have a common ancestor to start with, it is not to be supposed that every coparcenary is limited to four degrees from the common ancestor.\textsuperscript{21} After the death of common ancestor or any other last holder of the property, the fifth in descent from him would become a member of the coparcenary, provided his all three immediate male ancestor i.e., the father, grandfather and the great grandfather had not predeceased the last holder, for that is another important rule of Hindu law that whenever a break of more than three degrees occurs between any holder of property and the person who claims to enter the coparcenary after his death, the line ceases in that direction.\textsuperscript{22}

**Incidents of Coparcenership**

The main incidents of coparcenership under the *Mitakshara* law are:

1) The lineal male descendants of a person upto the third generation acquire on birth ownership in the ancestral properties of such person.

2) Such descendants can at any time work out their rights by asking for partition.

\textsuperscript{19} Section 12 of the Hindu Adoptions and Maintenance Act, 1956.


\textsuperscript{21} The original holder of the coparcenary property.

\textsuperscript{22} *Supra* note 20 at 148.
3) Till partition, each member has got ownership extending over the entire property conjointly with the rest.

4) As a result of such co-ownership, the possession and enjoyment of the properties is common.

5) No alienation of the property is possible without the concurrence of the coparceners unless it is for necessity.

6) The interest of a deceased member lapses on his death to the survivors.

7) A coparcenary under the Mitakshara School is a creature of law and cannot arise by act of parties except in so far that, on adoption, the adopted son becomes a coparcener with the adoptive father as regards the ancestral properties of the latter.23

**Distinction between Joint Hindu Family and Hindu Coparcenary**

A Hindu coparcenary is distinct from a Hindu undivided family. There are two schools of Hindu law, the *Mitakshara* and *Dayabhaga*.24 A Hindu coparcenary is a special feature of *Mitakshara* law and there is a clear distinction between a joint family and a Hindu coparcenary. As observed by the Supreme Court in *Surjit Lal v. V. CIT*,25 a Hindu coparcenary is a much narrower body than the joint family. The main points of distinction between these are that joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. On the other side, all those members of the joint family who get an interest by birth in the joint family property are the members of the coparcenary.26 The *Mitakshara* School entitles a son to a right equal to

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24 These Schools will also be discussed in detail in the next part of this chapter.
25 *AIR 1976 SC 109*.
his father in the joint family property by birth. Under the Hindu law the word "son" has a technical meaning. Son includes the son, the son's son and the son's son's son. Coparcenary commences with a common ancestor and includes a holder of joint property and only those males in his line who are not removed from him by more than three degrees.27 The daughter was not given a right by birth in the joint family property.28

Both the concepts of "Mitakshara Coparcenary Property" and "Hindu joint family property" are often mistaken for each other. There may be some degree of overlapping between the two, but yet they are distinct from each other in some respect. The issue of their differentiation has come into focus in Hardev Rai v. Shakuntala Devi and Others.29 In this case, the appellant and the respondent's father entered into an agreement for the sale of some immovable property.30

**Rule of Survivorship**

According to the principles of Hindu Law, there is coparcenership between the different members of a united family and survivorship following upon it. But this right of survivorship is lost31 if the marriage of the coparcener is solemnized under the Special Marriage Act of 1872.32 In the classical words of Lord Westbury in the well known case of Appovier v. Rama Subbayyan33, "according to the true notion of an undivided family in Hindu law, no individual

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27 Under the Hindu Law the mode of computation of degrees of generation is that the person from whom degrees are to be counted is placed at the first degree. (Section 3(f) & (i) of Hindu Marriage Act, 1955). This is unlike the common law under which the person whose generations are counted, are excluded from the counting.
28 But in the States of Andhra Pradesh, Tamil Nadu and Maharashtra, the law it amended by inserting Sections 29-A, 29-B and 29-C and in Karnataka by inserting Section 6-A in the Hindu Succession Act, 1956. Inspired by the Amendment of these four States, Parliament passed the Hindu Succession (Amendment) Act, 2005 for the whole of India by which daughter is made a coparcener with all consequential effects.
29 AIR 2008 SC 2489.
32 This Act has been repealed by the Special Marriage Act, 1954.
33 (1866) II MIA 75.
member of that family, while it remains undivided property, that particular member, has a certain definite share." He has an interest in the coparcenary and on his death, this interest lapses to the coparcenary; it passes by survivorship to the other coparceners. He, therefore, has no power to devise it by Will, nor is there any question of succession to it. In no part, of the coparcenary property has he left an ‘estate’ of his own. The right of survivorship rests upon the text of Narada and is recognised in the Mitakshara.\textsuperscript{34} Narada says: "If among several brothers, one childless should die or become a religious ascetic, the other shall divide his property, excepting the Stridhana.”\textsuperscript{35} In other words, survivorship consists in the exclusion of the widows and other heirs of the coparcener from succeeding to his undivided interest in the coparcenary property. Even a disqualified person is a member of the coparcenary and even though he has no rights at a family partition, he is entitled, when he becomes the last surviving male member of the joint family, to take and enjoy the whole estate by survivorship.\textsuperscript{36} However, the Hindu Women’s Right to Property Act, 1937 makes a serious inroad upon this rule of survivorship for the interests of male coparceners in a Mitakshara family by providing to this share devolve on their death, upon their widows as for a Hindu woman’s estate which they are entitled to work out by partition.\textsuperscript{37}

\textbf{Women’s Proprietary Rights in Joint Hindu Family}

In the general body of the Hindu joint family, the Hindu coparcenary was a much narrower body. A coparcenary was a creature of law and could not be created by agreement except that a male could be inducted by way of adoption. No female could be a coparcener. A female member of the family might be lineal descendant being daughter, granddaughter or great grand daughter but was not

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\textsuperscript{34} Mit. II, i, 7, quoting Nar XIII, 25; II, i, 30;II ix, 4.
\textsuperscript{35} Narda XIII, 25; Viramit, IV, 4 (Setlur, II 428); Madana Parijata, Setlur’s ed. 534.
\textsuperscript{36} Muthuswami Gurukkal v. Meenammal (1919) 43 Mad 664.
\textsuperscript{37} Mayne’s, Hindu Law & Usage 667 (2003).
considered as coparcener and did not acquire any right in the joint Hindu family property by birth as compared to male members.\textsuperscript{38} The coparcenary property includes ancestral property, acquisitions made by the coparcener with the help of ancestral property, joint acquisitions of the coparceners even without such help provided there was no proof of intention on their part, that the property should be treated as joint family property and separate property of the coparceners thrown into the common stock. It is crystal clear that females have not been included in the lists of coparceners even though under the Hindu Succession Act, 1956 there are eight female heirs\textsuperscript{39} mentioned in class I of the Schedule. But the experience shows that females are not given their right in the property of claimants as such as in the property of their husband.\textsuperscript{40}

When we speak of a Hindu joint family as constituting a coparcenary, we refer not to the entire number of persons who can trace descent from a common ancestor, and amongst whom no partition has ever taken place : we include only those persons who, by virtue of relationship, have the right to enjoy and hold the property, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce its partition.\textsuperscript{41}

In the Vedic times, the head of the family had absolute control over the family property and partition of the property was unknown. With the flux of time, due to industrialization and urbanisation the coparceners started going out for employment and individual families came into existence where the coparceners could retain the property which they earned with their own skill and exertion even if they were given a specialised training at the cost of the family. As a result,

\textsuperscript{38} Now the position is changed by the Hindu Succession (Amendment) Act, 2005.

\textsuperscript{39} Before 9-9-2005, i.e. the date of enforcement of Hindu Succession (Amendment) Act, 2005.

\textsuperscript{40} Supra note 13 at 281.

individual property and women's property emerged and gradually expanded in scope and interest but the Hindu family continued to be joint and did not disintegrate into individual families. Under the traditional Hindu law, no female could be a coparcener though they were included in the joint family and were given certain proprietary rights, yet they did not have many rights vis-a-vis men and their position had been somewhat inferior as compared to their male counterparts, since times immemorial. They acquired no interest by birth and were not entitled to claim partition but some females were entitled to a share when partition took place by metes and bounds. A widow of a deceased coparcener could not be treated as coparcener and could not be a Karta of the family. An alienation made by her would not be binding on the other members except to the extent of her share. Though a female could not act as manager or Karta of an undivided Hindu family as she was not a coparcener but she could be taken as a manager for the purpose of the Income Tax Act, 1961 representing the family.

By way of a social reform, the Hindu Women's Right to Property Act, 1937 put the widow of a member of Mitakshara joint family in the place of her deceased husband and the husband's interest in the joint family, though un-defined, vested on his death in the widow. She became entitled to receive the coparceners share by statutory substitution and could ask for the partition but by virtue of Section 3(3) her interest was a limited estate.

Now, the Hindu Succession (Amendment) Act, 2005 has introduced radical changes by touching the law of coparcenary and

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42 Supra note 13 at 282.
45 Section 3(2) of the Hindu Women's Right to Property Act, 1937.
joint family property, alienation, partition and succession among Hindus. Under Section 6(1) (a) and (h) the daughter of a coparcener has "by birth become a coparcener in her own right in the same manner as that of a son; and has 'the same rights in the coparcenary property as she would have had if she has been a son." Thus now a female is a coparcener with all the "incidents of coparcenary ownership" in the joint family.

**Rights of Coparceners**

Coparceners have the following rights with respect to the coparcenary property:

(i) Co-existing with the ability of the coparceners to perform funeral rites of the father enabling him to attain spiritual salvation is the right by birth in the coparcenary property. The moment a coparcener is born, he acquires an interest in the coparcenary property.46

(ii) The coparceners together possess the title to the coparcenary property. This property is not owned by joint family or coparcenary as a unity. The ownership vests with the members of the coparcenary. All coparceners together have a joint or common title or ownership of this property and till they work out their shares, the extent of their ownership is not discernible.

(iii) Each coparcener has a right to possesses and enjoys the coparcenary property by virtue of being a coparcener and therefore, a co-owner of it. The right is of common enjoyment which means that till a partition by metes and bounds takes place, no coparcener can claim an enjoyment exclusively of a specific portion of the property. He can neither predict his exact share nor his specific portion in the property.47 A temporary

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absence of a coparcener does not mean an ouster from possession.\textsuperscript{48}

(iv) Coparceners have a right by birth in the coparcenary property and the moment a son is born he acquires on interest in the property. The right of the surviving coparceners to enlarge their shares in the property is due to the application of the doctrine of survivorship.

(v) In a joint family, Karta has the authority to manage the affairs and also the property in the best interests of the family. He is not accountable to the other members except in three situations:

(a) He is conducting the family business and the nature of business is such as necessitates maintenance of proper accounting;
(b) There are charges of fraud or misappropriation of income or conversion;
(c) When a coparcener asks for a partition.

In such cases, the coparcener can ask the Karta to render the account, but, the Karta cannot be asked to give the past accounts and he would be within his rights to render only the then existing accounts.

(vi) A coparcener can hold an interest in the coparcenary property and possess separate property of his own at the same time. Law does not restrict him from acquiring property in his individual capacity and for this the consent of the other coparceners is not an essential requirement.

(vii) The interest of a coparcener in the coparcenary property is a fluctuating interest that changes with the deaths and births of other coparceners in the family. A coparcener is competent to

\textsuperscript{48} Gopala Krishnan v. Meganathan (1972) 2 MLJ 481.
convert this fluctuating and probable share to a fixed and specific share in the property by demanding a partition. Except in Bombay\(^4\) and Punjab\(^5\), where a son cannot demand a partition from the father, if he is joint with his own father without his consent, every coparcener has a right to demand a partition.\(^5\)

(viii) A coparcener cannot ordinarily transfer his undivided share except under some specific situations, but a coparcener is empowered to renounce his undivided share in the joint family property, in favour of all the remaining coparceners. Two things are important here; firstly renunciation should be of the entire undivided interest of the coparcener,\(^6\) either he renounces his total interest or none at all; secondly such renunciation must be in favour of all the remaining coparceners.\(^7\)

(ix) A coparcener, who commits an act that is improper, illegal or prejudicial to the interest of the joint family members or the coparcenary property including common enjoyment and possession, can be restrained by an injuction from doing such an act.

(x) As a general rule of Mitakshara coparcener does not have a right to dispose of his undivided share in the coparcenary property by alienation\(^8\) unless all the coparceners give a valid consent to it.\(^9\)

(xi) The power of alienation of joint family property is with the Karta. Where Karta sells the joint family property for an unauthorised purpose, the coparceners have three remedies in the alternative:

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\(^4\) Ahaji v. Ramchandra (1812) 16 Bom 29.
\(^5\) Gahru Ram v. Hardevi, AIR 1926 Lah 85.
\(^7\) Alluri Ventatapathi v. Dantaluri Venkata Narasimha, AIR 1936 PC 264.
\(^5\) Where all the coparceners agree, the complete or part of the joint family property can be sold.

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(a) A coparcener can seek partition and separate from the family.

(b) Where the act of Karta amounts to a waste or an ouster,\textsuperscript{56} he can be restrained by an injunction obtained from the Court from committing such waste.

(c) Where an alienation of the property is already effected, it can be challenged by the coparceners as invalid and not binding on their shares. However, where the property is sold by the father to pay his antecedent debts and the sons claim that such alienation was not binding on them as the debts were contracted by the father for an illegal or immoral purpose, not only do they have to prove the immoral or illegal character of the debt but also that the creditor had notice of it.\textsuperscript{57}

**Legislative Inroads into the Concept of joint family**

One of the basic incidents of the concept of joint family is the existence of joint as well as separate property in the family. At the time of the discussion on the Hindu Succession Bill in Parliament in the year of 1954-55, several parliamentarians recommended its abolition as it treated women unfavourably, but a considerable majority favoured its retention in the name of it, symbolising the very essence of Hindu religion. The concept of notional partition was introduced in the Hindu Succession Act, but the result was still an unequal treatment to women. In the light of the Constitutional mandate of gender parity, these property related provisions stood out as discriminatory and to remove that, two options were available with the legislature. First, to abolish the joint family and separate property distinction by abolishing the very concept of joint family system and the other to make the daughter also a coparcener in the same manner

\textsuperscript{56} Kailash Chand v. Bajrang Lal, 1997 (1) HLR (Raj) 342.

as a son with a right by birth in the coparcenary property. The Kerala legislature opted for the former and passed the Kerala Joint Hindu Family (Abolition) Act in 1975. The enactment was equally applicable to matriarchal families and also to patriarchal families governed by the Mitakshara law.

SCHOOLS OF HINDU LAW

The codified Hindu law lays down uniform law for all Hindus where, there is no scope for existence of schools and these have relevance only in respect of the uncodified areas of Hindu Law. Now we shall discuss the property status of Hindu women under these schools. The Schools of Hindu law emerged with the emergence of the era of commentaries and digests. The commentators put their own gloss on the ancient texts, and their authorities having been received in one and rejected in another part of India, the schools with conflicting doctrines arose. There are two main schools of Hindu law:

1. The Mitakshara School, and
2. The Dayabhaga School.

These two Schools do not see eye to eye with each other on several points, e.g. the constitution of the coparcenary, the time when a Hindu gets interest in the joint family property, the time when the coparcenary comes into existence, the nature and the extent of interest that each coparcener has in the joint property, the power he has in respect of disposing of his own interest in it, the definition and mode of the partition of the joint family, etc.

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59 Supra note 57.
60 Mitakshara school owes its name to Vijneshwara’s commentary on the Yajnavalkya Samriti by name of Yajnavalkya Samriti but it is also a digest of practically all the leading Samriti’s and deals with all titles of Hindu Law. Kane places the date of composition of the Mitakshara between A.D. 1100-1200. [Kane, P.V., History of Dharamastra 2nd ed. 609 & 709 (1968)].
61 The Dayabhaga owes its origin to Jimutavahana., Kane places the date the date of composition of the Dayabhaga between 1090-1130 A.D. [P.V. Kane, History of Dharamshastra 609 & 709 (1981)].
62 Supra note 14.
**Mitakshara School**: The Mitakshara School owes its name to Vijneshwara’s commentary on the *Yajnavalkya Smriti* by the name of "Mitakshara". *Mitakshara* is commentary on *Yajnavalkya Smriti* by Vijnaneswara as told to him by his Guru Visvarupa and written in the later half of the eleventh century. It is also called Riju Mitakshara Tika or Riju Sam Mitakshara or ParMitakshara. Vijnaneswara, in the introduction to his commentary, mentions that the Code of *Yajnavalkya* was explained to him by his Guru Visvarupa in a hard and diffused language and the same has been abridged by him in a simple and concise style. This school prevails in the whole of India except Bengal and Assam.

The Mitakshara School bases its law of inheritance on the principle of propinquity. It means that one who is nearer in blood relationship succeeds. The principle, when applied, would mean that, for instance, sons and daughters would succeed to the property equally and simultaneously as they are equally near to their deceased parent. But the Mitakshara did not give full effect to the principle, and limited it by two subsidiary rules:

(a) Exclusion of females from inheritance, and
(b) Preference of agnates over cognates.

In Mitakshara law property is divided into two classes' unobstructed heritage or *apratibandh daya* and obstructed heritage or *sapratibandh daya*. The property in which the son, grandson and great grandson had a birthright was called unobstructed heritage, which means that without any obstruction the male issue had a right by birth. This was also called the doctrine of son’s right by birth in joint family property where each son on his birth acquired an equal

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63 An Ascetic also bearing the name of Vijnana Yogin of Kalyanpura in the present Hyderabad state. He was contemporary of King Vikramaditya 1076-1127 AD.
65 The Mitakshara is not merely a running commentary on the *Yajnavalkya Smriti* but it is also a digest of practically all the leading Smritis, and deals with all titles of Hindu law.
interest with his father in the joint family property.\textsuperscript{66} On the other hand the property in which, the right accrued not by birth but on the death of the last owner without leaving male issue was called obstructed heritage.\textsuperscript{67} The unobstructed heritage devolved by the rule of survivorship, the obstructed heritage by succession.

**Sub-divisions of Mitakshara School:** The Mitakshara School is subdivided into four minor schools:

(a) **Benaras School:** It covers practically the whole of Northern India except Punjab where the Mitakshara law has, on certain points been considerably modified by custom. If nothing is known about their origin, Hindus residing in the Districts of Madhya Pradesh will be governed by the Benaras School. If the origin is known to be from north or east, and not from Maharashtra or Gujarat, then also the Benaras School will be applicable to them.

(b) **Mithila School:** It prevails in Tirhut and certain districts in the northern part of Bihar.

(c) **Bombay School:** It covers western India including the whole of the old Presidency of Bombay, now Maharashtra as also the Berar.

(d) **Dravida School:** It covers Southern India including the whole of the old presidency of Madras.

These sub-schools differ between themselves in some matters of detail relating particularly to adoption and inheritance. All these sub-schools acknowledge the supreme authority of the Mitakshara.\textsuperscript{68}

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\textsuperscript{66} This doctrine is no longer applicable as now by virtue of the Amendment of 2005 both son and daughter acquire an equal interest by birth in the coparcenary property in the Mitakshara joint family.

\textsuperscript{67} It was called obstructed heritage, because the accrual of the right to it was obstructed by the existence of the owner.

\textsuperscript{68} Supra note 5 at 610.
**Dayabhaga School**: The Dayabhaga school owes its origin to Jimutavahana's digest on leading Smritis by the name of "Dayabhaga". It prevails in Bengal and Assam. The Dayabhaga is not a commentary on a specific work but a digest of all the Codes. It was part of a larger work titled 'Dharmaratna' and is a valuable work on the laws of inheritance and succession. The Dayabhaga School bases its law of succession on the principle of *religious efficacy or spiritual benefit*. It means that the one who confers more religious benefit on the deceased is entitled to inheritance in preference to the others who confer less benefit.

Under the Dayabhaga School, the distinction between unobstructed and obstructed heritage does not exist as the principle of son's birth right is not recognized and all properties devolve by succession on the all properties devolve by succession on the demise of the father. So long the father is alive, he is the master of all properties whether ancestral or self acquired. Dayabhaga coparcenary comes into existence for the first time on the death of the father. When sons inherit their father's property, they constitute a coparcenary. And if son dies leaving behind a widow or daughter without a son, then she will succeed and become a coparcener. Thus under Dayabhaga school a coparcenary could consist of males as well as females. The only difference between a male and a female coparcener was that the property in the hands of a female coparcener was her limited estate and after her death the property passed not to the heirs, but to the next heir of the male from whom she inherited.

The peculiarity of schools of Hindu law is that if a Hindu governed by a school migrates to another religion (where different school has jurisdiction), he will continue to be governed by his own school, unless he gives up his school and adopts the law of the place where he has settled. In the modern Hindu law, schools have
relevance only in respect of the uncodified Hindu law; they have lost
all their relevance in regard to the codified Hindu law. Another
important aspect of Hindu law is that a person will be governed by
custom if he is able to establish a custom applicable to him, even
though such a custom is in derogation to Hindu law. Although the
codified Hindu law overrides all rules and customs of Hindu law, yet
such has been the impact of custom that in certain areas custom has
been expressly saved.

**Distinction Between Mitakshara And Dayabhaga Schools**

The distinguishing features of the two principal schools of
Hindu law, i.e., *Mitakshara* and *Dayabhaga* may be summarized as
follows: A Joint Hindu family under the *Dayabhaga* is, like a
*Mitakshara* family, normally joint in food, worship and estate. In both
systems, the property of the joint family may consist of ancestral
property, joint acquisitions and of self-acquisitions thrown into the
common stock. In fact, whatever be the school of Hindu law by which
a person is governed, the basic concept of a Hindu joint family in the
sense of who can be its members is just the same. *Mitakshara* and
*Dayabhaga* Schools thus remain the primary Schools of law and differ
on the following basic aspects:

**(a) Foundation of Coparcenary** : According to the *Mitakshara* law,
the foundation of a coparcenary is first laid on the birth of a
son. Thus, if a Hindu governed by the *Mitakshara* law has a son
born to him, the father and the son at once become
coparceners.

According to the *Dayabhaga* law, the foundation of a
coparcenary is laid on the death of father. So long as the father is
alive, there is no coparcenary in the strict sense of the word between

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71 Supra note 5 at 611.
him and his male issue. It is only on his death leaving two or more male issues that a coparcenary is first formed.

(b) **Inheritance**: The doctrine of *sapinda* relationship is insisted upon by the *Mitakshara* whereby community of blood is to be preferred to community in offering of religious oblations and which is the governing factor whereby under the *Mitakshara* law, the right to inherit arises. Under the *Dayabhaga*, the right to inherit arises from spiritual efficiency, i.e., the capacity for conferring spiritual benefit on the names of paternal and maternal ancestors.

(c) **Incidents of Joint family**: According to the *Mitakshara* law, each son acquires at his birth an equal interest with his father, and on the death of the father, the son takes the property, not as his heir but by survivorship. According to the *Dayabhaga* School, the son’s rights arise for the first time on the father’s death by which he takes such of the property as is left by the father, whether separate or ancestral, as heir and not by survivorship. Under the *Mitakshara* law, there is a presumption that until the contrary is proved, the joint family continues to be joint. There is a very great difference in the legal positions of the members of the *Mitakshara* and *Dayabhaga* joint families. The right of a *Mitakshara* coparcener is like that of a joint-tenant whose interest, until partition, is undefined and passes by survivorship to the other coparcener, except when he leaves male issue. The right of a *Dayabhaga* coparcener is that of a tenant-in-common.\(^{72}\)

Accordingly, under the *Dayabhaga* law, where a family consists of the father, son and grandsons, the father is the absolute owner

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\(^{72}\) *CWT v. Gouri Shankar Bhai* (1968) 68 ITR 345 (Cal).
even of the property that has devolved on him from his father and of its income. None of the sons can interfere with the father's title to or control over the family property or his enjoyment of its income. Thus, though the father and sons may be described as a family, there is little significance in describing such a family as an 'undivided family'. Accordingly, after the death of a Dayabhaga father, his successors may live as a Hindu joint family; they merely own the inherited property as joint property, that is to say, as tenants-in-common but do not form a joint family. A joint family amongst brother, under the Dayabhaga School of law, is a creation not of law but of a desire to live jointly. The income in Mitakshara family belongs to all the members as a group and no member is entitled to claim absolute right in respect thereof. According to Jimutavahana, his wife or sons or daughters had no ownership in his property during his lifetime for "sons have not ownership while the father is alive and free from defect." Ownershiep of wealth is however, vested in the heirs "by the death of their father," when they become co-heirs and can claim partition. It is on this basis that "Dayabhaga" (partition of heritage) has been expounded by Jimutavahana. According to him, "since any one coparcener is proprietor of his own wealth, partition at the choice even of a single person is hence deducible." The heritage does not, therefore, become the joint property of the heirs, or the joint family, on the demise of the last owner, but becomes the fractional property of the heirs in well defined shares.

As a corollary of this doctrine, negating the son's right by birth, is another peculiar doctrine of the Bengal school, that of what is called the 'fractional ownership' of the heirs, contrasted with the doctrine of

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73 Hindu Law by Colebrooke, 9, 16, 54.
74 This concept of fractional ownership has been stated as follows by Krishna Kamal Bhattacharya in "Law Relating to the Joint Hindu Family" with reference to the doctrine of negation of the son's right by birth.
'aggregate ownership' expounded by all the other Schools :” That is why "partition" in Dayabhaga is defined as an act of particularising ownership and is not the Act of fixing diverse ownerships on particular parts of an aggregate of properties as in Mitakshara.

This is why Mitakshara is designated as the school of "aggregate ownership" while Dayabhaga is known as the school of "fractional ownership".\textsuperscript{75}

(d) **Right to partition**: According to Dayabhaga law, sons do not acquire any interest by birth in the ancestral property and they cannot demand a partition of such property from the father as they can do under the Mitakshara law where they take interest in property by birth.

(e) **Share in property**: The essence of a coparcenary under the Mitakshara law is unity of ownership but under the Dayabhaga law it is unity of possession. Every coparcener takes a defined share in the property, and he is the owner of that share. That share is defined immediately the inheritance falls in. It does not fluctuate with births and deaths in the family. Even before partition, any coparcener can say that he is entitled to particular share, one-third or one-fourth.\textsuperscript{76}

(f) **Alienation of Property**: Until the passing of the Hindu Succession Act, 1956, no member of a Mitakshara family was entitled to dispose of his interest in the Hindu joint family property by will, the power has now been granted by Section-30 of that Act.\textsuperscript{77} If the property is alienated by the Karta of Hindu joint family without any legal necessity or for the benefit of the minors, it is only voidable and not void.\textsuperscript{78}

\textsuperscript{76} CIT v. Balai Chandra Paul (1976) 105 ITR 666 (Cal).
\textsuperscript{77} Supra note 5 at 614.
\textsuperscript{78} R.C. Malphani v. C.I.T. (1994) 2 GLR 392 (Gau).
Under the modern Hindu law the difference between the schools is no longer tenable and we have one uniform law of succession for all Hindus, to whatever school or sub-school they may belong.

**CONCEPT OF STRIDHANA**

The subject of woman’s property occupies a large place in Sanskrit law books. It would appear that women’s separate property was, from the most ancient times, known as *Stridhana* and Mr. Kane says passages in the *Vedas* refer to it.\(^7^9\) *Stridhana* has been the most of controversial term of Hindu Jurisprudence. Upon matters such as what constitutes *Stridhana*, what are the rights of women over *Stridhana*, and what is the order of succession to *Stridhana*, there existed great diversity of doctrines, in consequence of which the law of *Stridhana* has become a complicated subject. In this regard Kamalakara’s apt observation in the *Vivad Tandava*, is noteworthy: "the lawyers fight tooth and nail." *Jimutavahana*, in concluding his chapter on this branch of law, complacently observes, "Thus has been explained the most difficult subject of succession to childless woman’s *Stridhana*."\(^8^0\)

The controversy and complicacy may be due to the belief of the ancient law givers that a woman is not entitled to hold any property. There is great difference of opinions about the *Stridhana* among *Smritis*, *Vedas* and *Shastras*. The germs of the *Stridhana* can be traced back to the Vedic literature. As Derrett says,\(^8^1\) that Indian jurists have been proud rightly, that at least in theory their indigenous jurisprudence allowed women (*Stridhanam*) assets at their disposal or at least generally available for their enjoyment and for their security at a time when in the west wives were unable to own property, separately from their husbands except as beneficiaries under some trust or

\(^7^9\) Kane, 4. (1968)
\(^8^0\) Sir Gooroodas Banerjee, *Hindu Law of Marriage and Stridhana* 290 (1923).
settlement. Though Muslim women have traditionally enjoyed the absolute right to own and to dispose of or to manager the property in whatever manner they like. It is a novel feature of Hindu jurisprudence because Stridhana is women’s absolute property with all rights to dispose of at her own pleasure though not in all cases, as during covertures or widowhood.82

Sir Gooroodas Banerjee remarks,83 nowhere proprietary rights of women recognised so easily as in India, and in very few ancient system of law have these rights been so largely conceded as in our own. It was a hard fact that there was a period when women were considered incapable of holding any independent property. The doctrine of perpetual tutelage of women existed and Smriti text84 was that, "three persons—a wife, a son and a slave are declared by law to have no wealth in general not exclusively their own and whatever they earn must be given up to him who owns them." Rather, the degraded position of women in ancient India precludes entirely the idea of their having been regarded as heirs of the family property in ancient times.85

**Origin and History of Stridhana**

The settled property of a married woman, incapable of alienation by her husband, is well known to the Hindus under the name of Stridhana, and it is certainly a remarkable fact that the institution seems to have been developed among them at a period relatively much earlier than among the Romans.86 Instead of being nurtured and improved as it was in the Western Society, under various influences which may partly be traced, in the East it has been gradually reduced to dimensions and importance far inferior to those which at one time

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82 Urusa Mohsin, *Women’s Property Rights in India* 68 (2010).
83 Supra note 80 at 290.
86 Maine’s, *Early History of Institutions* 36 (1875).
belonged to it. Thus, when the Code of Manu was drawn up, the female sex had fallen to a distinctly lower position. A woman was never to seek independence, no religious rite was allowed to her apart from her husband; she must sever him as a God. According to both, Manu and Katyayana, a woman's earning was absolutely at the disposal of the man to whom she belonged.

**Meaning of Stridhana**

The term *Stridhana* is derived, according to Macnaghten and Sir Thomas Strange, from Stri (woman) and Dhana (property). In this way *Stridhana*, etymologically means woman's property. It is used, however, in different senses in different schools and it has a technical meaning. This term is referred by different names as 'Manjal Kanio', in south, *bangdicholi* in Bombay, 'Kalnam' in Andhra Pradesh and 'Patnibhagam' in Madras. In an ancient Smiriti the literal meaning of the *Stridhana* was restricted to certain kinds of property given to woman on certain occasions or at different stages of her life. Gooroodos Banerjee has very openly remarked in his famous work Hindu Law of Marriage and *Stridhana* - "The difficulties besetting an enquiry into the question what constitute *Stridhana*, arises from the fact that majority of sages and commentators give neither an exact definition of *Stridhana*, nor an exhaustive enumeration, and if the *Mitakshara* gives a simple and intelligible definition, that definition has been qualified and restricted in its application by our courts, in consequence of its disagreement with the view of other authorities."

According to Julius Jolly, the term *Stridhana*, which occurs first in the Dharma Sutra of Gautama, is a compound word made of Stri-woman and Dhana-property. He further states that judging from its derivation, it is capable of denoting any species of property belonging

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87 Ibid.
90 Sir Thomas Strange, *Hindu Law* 228 (1945).
91 Supra note 80 at 280.
to a woman. The term *Stridhana* first occurred amongst Smritis and in the Dharmasutra of Gautama and literally means woman’s property, that is to say, properties over which a woman has got absolute power of disposal. Such properties are, therefore, fundamentally different from the other kinds of property held by a woman which is known as her woman’s estate.

**Stridhana in Vedic Period**

In order to have the vivid or clear picture of the concept of Stridhana, one has to peep into past and go to Vedic period.

**Stridhana according to Smritis:** In order to know what kind of property is *Stridhan*, it is imperative to know how it has been defined in the Smritis. Apastamba defines *Stridhan* a as follows:

"Ornaments are the exclusive property of a wife, and so is wealth given to her by Kinsmen or friends according to same legislators."

The texts relating to *Stridhana* except in matter of succession are fairly adequate and clear; The principal definition is that contained in Manu: "what was given before the nupital fire (adhyagni), what was given at a bridal procession (adhyavahanika), what was given in token of love (datham pritikarmani) and what was received from a brother, mother, or a father, are considered as the six-fold property of a woman."

Kautilya defines, "*Stridhana as means of subsistence and what could be tied up on the body (i.e. ornaments or jewellery) constitute Stridhana.*" The *Katyayana Smriti* lays great emphasis on *Stridhana* and discusses the concept elaborately.

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92 Julius Jolly, *(Tagore Law Lectures, 1880)* Outlines of the History of Hindu Law of Partition, Inheritance and Adoption 228 (1883).
93 Mitakshara II, IX, 21.
94 Colebrooke's Digest, V, 476.
95 Manu, IX, 194.
96 111.2, p. 152.
Katyayana defines the Stridhana in most comprehensive way, "what was given to woman at the time of marriage before the nuptial fire is declared by the wise to be 'adayagni'; 'Stridhana', what was obtained at the time of procession from her father's house is declared to be 'adhyagnika','" Stridhana, what was given to a woman through affection by her father-in-law or mother-in-law at the time of doing obeisance at the feet is said to be 'pritidatta' Stridhana. What was given to her as the price of household utensils, of beasts, of milch cattle, ornaments and slaves is declared to be 'sulka'. What was given to her after marriage from the family of her husband and also from the family of her kinsmen is declared to be 'anvadheya'. Katyana’s definition has been accepted by all digests. At another place Katyana restricts the literal sense of the Stridhana over that wealth that is obtained by a woman by mechanical arts or from a stranger through affection.100

'Saudayika' is a synonymous of Stridhana in the technical sense. The Stridhana is also defined by Yajnavalkya, Narada and Vishnu. But Vishnu and Yajnavalkya add to the list, the compensation which is given to a superseded wife (adhivedanika).101 The text of Yajnavalkya is: "what was given to a woman by the father, mother, her husband or her brother, or received by her at the nuptial fire or presented on her super session (adhivedanika) and the like (adi), is denominated woman's property that which is given (to the bride) by her bandhus, sulka, anvadheyaka, these her Kinsmen (bandhavas) take if she dies without issue."102

97 Colebrooke's Digest V, 464.
98 Colebrooke's Digest V., 466.
99 Colebrooke's Digest V. 468.
100 Quoted in Dayabhaga, IV, I, 21.
102 Yajnavalkya II, 143, 144 as explained by Katyayana cited in Mit., II, XI, 7.
**Stridhana according to Commentaries**

The *Smriti* period stands out in the history of Hindu law as golden age, an age of richness and creativeness. But history also bears testimony to the fact that in the history of Hindu law creative and critical periods succeeded each other. So what was created in the *Smriti* period was systematized, consolidated and analysed in the post-*Smriti* period. The reason for systematising and consolidating the material might be due to the vagueness, ambiguity of law and lacunae contained in *Smritis*. As a result of all this the law contained in the *Dharmashastra* formed the subject of frequent explosion by learned exponents of Hindu law which took the form of either commentaries on a particular *Smriti* or *Nibandhas* or Digests of the entire body of *Smriti* material. The commentators were conscious of the lacunae of the *Smritis* and so they resorted to construction by implication or inference, or supplied such omissions or did both. As the facts of geography were massive, in different parts of country different commentaries came to be referred as the chief guides on law. There comes into existence the *Mitakshara* and the *Dayabhaga*, the two schools of Hindu law.\(^{103}\) The two schools, though born out of the diversity of doctrines, marked a new stage in the evolution of Hindu law. In this background it is proposed to discuss *Stridhan* during the period of commentaries and digests.\(^{104}\)

**Mitakshara**: The *Mitakshara*, one of the oldest and most authoritative Hindu juridical treatise, which prevailed in the whole of India, defined *Stridhana* in its literal and non-technical meaning as:

"That, which was given by the father, by the mother, by the husband, or by the brother; and that which was presented (to the bride)"

\(^{103}\) *Mitakshara*, a brief compendium, was a running commentary on the Code of Yajnavalkya and a veritable digest of *Smriti* law written by Vijneshwara in the eleventh century. The *Dayabhaga*, the celebrated treatise of Jimutavahana, was not a commentary on any particular Code but a digest of all the Codes written in twelfth country.

\(^{104}\) Supra note 85 at 306.
by the maternal uncles and the rest (as paternal uncles, maternal aunts etc.) at the time of the wedding, before nuptial fire; and a gift on a second marriage, or gratuity on account of supersession ("to a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession") and also property which she may have acquired by inheritance, purchase, partition, seizure or finding are denominated by Manu as Stridhana and the rest 'woman's property."\textsuperscript{105}

The first part of Mitakshara commentary had the concurrence of all the schools but the latter part of the proposition did not mentioned elsewhere. Even the cursory glance over the Mitakshara's definition of Stridhana shows that it included all the known methods of acquisition and thus widened the scope of the woman's property. It will be seen that the first, second and third portions of the above definition are the production of the definition of Stridhana as given by Yajnavalkya. The fourth is the expansion of the word 'adya' occurring the Yajnavalkya's definition.

**Dayabhaga**: Dayabhaga of Jimutavahana defined Stridhana as, "that alone is Stridhana which she (a woman) has power to give, sell, or use independently of her husband's control."\textsuperscript{106} On reading the above definition naturally the question arises as to what kinds of properties are those that can be disposed of by a woman without her husbands consent. The Jimutavahana is silent on this point. However, on the basis of two texts quoted by him immediately after the definition and what he has said in the chapter on Stridhana we may have an enumerative list of properties that are Stridhana and those that are not. Dayabhaga divides Stridhana for purposes of succession into the three classes:

\textsuperscript{105} Mitakshara, Chapter II and Section XI, Verse 2 as citied by (H.T. Colebrooke, Mitakshara and Dayabhaga 110 (1883).
\textsuperscript{106} Dayabhaga IV, (i), 18, 19.
1. **The Yautaka**: It consists of gifts "given in presence of the nuptial fire". The High Court of Calcutta held that this is only a term to signify all gifts during the continuance of the marriage ceremonies.  

2. The Anvadheyaka or gifts and bequests made by the father subsequent to marriage.

3. **The Ayautaka**: It includes not only gifts and bequests made by relations including the father before the marriage, but also gifts and bequests made by relations other than the father after the marriage.

Property inherited by a woman, property obtained by her on partition, gifts from strangers, property acquired by her by mechanical arts and gifts of the immovable property made by the husband are not *Stridhana* according to *Dayabhaga*.  

**Distinction between Mitakshara stridhana and Dayabhaga stridhana**

In the case of *Sheo Shankar v. Debi* their Lordships of the Privy Council referring to the term *Stridhana* said: "The Bengal school of lawyers have always limited the use of the term narrowly, applying it exclusively, to the kinds of woman's property enumerated in the primitive sacred texts. The author of *Mitakshara* and some other authors seem to apply the term broadly to every kind of property which a woman can possess from whatever source it may be derived."

The Privy Council, however, by its decision in *Debi Mangal Prasad v. Mahadeo Prasad*, discarded the whole of Vijnaneshwara's
expansion i.e. five means of detaining property and that became the law of the land since then. The importance of the definition lay in the fact that while Stridhana absolutely belonged to the female and she had absolute power of disposal of it which on her death passed to her heirs, in respect to other properties she had only five interest and they, on her death, passed to the heirs of the person from whom she had received those properties of course.

It is very important to remember that the Explanation to sub-section (1) of Section 14 of the Hindu Succession Act, 1956 now removes all distinctions between properties so far held by her as Stridhana and other properties received by her as gift. On the one hand properties received by her by inheritance or by partition, etc. and on the other, the textual definition of Stridhana or the female's property is no more of much consequence. Now all properties possessed by a female Hindu shall be held by her as an absolute owner and not as the limited owner.\textsuperscript{113}

From the above discussion it can be safely concluded that during the period of commentaries and digests 'Stridhana' was interpreted in two ways, i.e., technical and non-technical. As a result, the divergent opinions of the two schools created a problem for the judges also. So after critically evaluating from the views of the Commentators and Digest writers, the judges removed the existing doubt and confusion about Stridhana by dividing the acquisitions of the property of woman into two broad categories, i.e., Stridhana and woman's property. The former was known as her absolute property and the latter as Durante Vits, i.e., she could enjoy only during her life time.\textsuperscript{114}

\textsuperscript{113} Supra note 20 at 138.
\textsuperscript{114} Supra note 85 at 316.
Judicial Decisions on Stridhana

During the colonial rule, several judicial decisions constrained the scope of Stridhan property. We will discuss this heading under the sub-headings:

1. Property inherited by a woman: According to Privy Council the property inherited by a woman whether from a male, or from female, does not constitute her Stridhana in any case. But in Bombay, inherited property is Stridhana except where it is inherited from a male into whose family she has entered by marriage. 115

The rule of Bombay remains unaffected by this decision of the Privy Council. In Bhugwandeen v. Myna Baee, 116 the Privy Council held property obtained by a widow from her husband was not her Stridhana property and therefore, it passed to the heirs of the husband after her death, and not to her heirs. Similarly, in Sheo Shankar v. Devi, 117 the property obtained by a daughter from her mother which property was Stridhana in the hands of the daughter and, therefore, on the death it passed to the heirs of the mother and not to her heirs. It was held by the Supreme Court in A. Perumalakkal v. Kumaresan Bal Krishna 118, that the gift of immovable ancestral property by husband out of affection, to his wife and in fulfilment of his father’s wishes, cannot be considered as one mode for pious purposes or be treated as Stridhana.

2. Share obtained by a widow on partition: The share obtained by a widow on partition of the joint family property, is according to

116 (1867) 11 MIA 487.
117 (1903) 25 IA 468.
118 AIR 1967 SC 569.
Privy Council not her _Stridhana_ even under _Mitakshara_ law\textsuperscript{119} and it passed on her death to the next heirs of her husband, in the absence of any agreement to the contrary.

3. Property given in lieu of maintenance, periodically or in a lump sum, all arrears of maintenance and property transferred absolutely as gift in lieu of maintenance is _Stridhana_.

4. Property which was given as a gift to a woman by her parents and their relations during maidenhood, coverture or widowhood is _stridhana_. _Dayabhaga_ School does not recognise gifts of immovable property by husband as _Stridhana_.

    Property given to a woman by strangers whether by a gift or by a testamentary disposition during coverture is _Stridhana_ according to Madras, and Bombay schools, but it is not _Stridhana_ according to Bengal and Mithila Schools.

5. Property acquired by a Hindu woman either during maidenhood or coverture, by mechanical arts or otherwise by her own exertions, is _Stridhana_.

6. Property acquired by a Hindu woman by adverse possession or purchased with her _Stridhana_, is _Stridhana_.\textsuperscript{120}

**Special Features of Stridhana**

The most important feature of _Stridhana_ was that she was the full owner of the property. Under the old Hindu law _Stridhana_ was classified from various aspects so as to determine its characteristic features. The principal features of _Stridhana_: 

a). **Tests of finding the Stridhana property**: A Hindu woman may acquire property from various sources. But all properties acquired by her are not _Stridhana_. To ascertain whether a particular

\textsuperscript{119} Debi Mangal Prasad v. Mahadeo Prasad (1912) 39 IA 121.

\textsuperscript{120} Supra note 88 at 355.
kind of property is *Stridhana* or not, depends on three tests laid down by jurists and commentators which are as follows:

(i) the source from which property was acquired;
(ii) woman’s status at the time of acquisition, i.e. whether she acquired it during maidenhood, coverture, or widowhood; and
(iii) lastly, the school to which she belongs.

**b). Succession**: In respect of *Stridhana* property, the woman forms a fresh stock of descent and such property devolved on her death to her own heirs. In case of widow’s estate it was not so. Now this distinction between *Stridhana* and Woman’s estate has been abolished by the Hindu Succession Act, 1956.  

**c). Power of alienation**: *Stridhana* is such a property of a female Hindu of which she is the absolute owner and which she may dispose of at her pleasure, if not in all cases during coverture, in all cases during widowhood. This was not the case with woman’s estate.

Section 14 of the Hindu Succession Act, 1956, has now conferred absolute ownership on woman in respect of all the properties possessed by her before the commencement of the Act or after its commencement. Thus she has now got the full power of disposition over all kinds of her properties.

Broadly speaking the *Stridhana* has all the characteristic of the absolute ownership of property like alienation. This means that she can sell, gift, mortgage, lease, exchange or if she chooses, she can put it on fire. On her death all types of *Stridhana* pass to her own heirs. In other words she constituted an independent stock of descent. (It is not so with regard to woman's property which is not *Stridhana*).

As a general rule, *Stridhana* went by succession to female, though it was not a rule of universal application. It seems that in

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121 Section 14 of the Hindu Succession Act, 1956.
122 Supra note 88.
respect of certain kinds of Stridhana, the rule that the females are preferred over the males, was not followed uniformly, otherwise the general rule that the female were preferred over the males was followed.

**Various Sources of Woman's Property**

The character of the property, whether Stridhana or Woman’s estate, depends upon the source, from which it has been obtained. Following are the various sources:

**(a) Gifts and bequests from relations**: Gifts from relations has been recognised head of the Stridhana. Such gifts may be made to a woman during maidenhood, coverture or widowhood by her parents and their relations or by the husband and his relations. Such gifts may be made inter vivos or by Will. All schools accept this type of Stridhana except that Dayabhaga does not recognise immovable property given or bequeathed by a husband to his wife as Stridhana.

Gifts from relation constitute 'technical' Stridhana. These gifts bear various names according to the occasion on which they are made. Those names are:

(i) **Adhyagni**, that is, gifts made before the nuptial fire;
(ii) **Adhyavahanika**, that is, gifts made at the bridal procession.
(iii) **Padavandanika**, that is, gift made to a woman when she makes obeisance at the feet of elders;
(iv) **Anvadheyaka**, that is, gifts made after marriage;
(v) **Adhivedanika**, that is, gifts made on suppression;
(vi) **Sulka**, that is, gratuity or marriage-fee;
(vii) **Pritidatha**, that is, gifts of affection made by the father-in-law or mother-in-law;

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123 Sambasiva v. Venkateshwara (1908) 31 Mad 179.
124 Dayabhaga Chapter 4, 1, 18 and 21.
125 Supra note 111 at 210.
(viii) Bhartridatta, that is, gifts from the husband.

Where the gift is under a deed or Will, the nature or her interest will depend upon the construction of the terms of the deed or Will. If it is transferred absolutely, it would be Stridhana, if only limited, it would not be her Stridhana.\(^{126}\)

(b) Gifts and bequest from Strangers: A gift may be received by a Hindu woman from stranger, that is, from one who is not in a relation, (1) during maidenhood; (2) at the time of marriage; (3) during coverture, or (4) during widowhood. Property given or bequeathed to a Hindu woman by strangers during maidenhood is her Stridhana according to all the schools.\(^{127}\) Property given by stranger to a Hindu female before the nuptial fire or at the bridal procession is Stridhana according to all schools. Such property, like property given by relations, constitutes 'technical' Stridhana. Property given or bequeathed by strangers to a Hindu female during coverture is Stridhana according to the Bombay, Benaras and Madras\(^{128}\) Schools, but not according to the Mithila and Dayabhaga Schools. Dayabhaga first cites the text of Katyayana relating to gifts from strangers and acquisitions by mechanical arts and then says, "He (the husband) has a right to take it even though no distress exists. Hence, though the property is hers, it does not constitute Stridhana because she has no independent power over it.\(^{129}\)

(c) Property given in lieu of maintenance: Devala, "Her sustenance, her ornaments, her perquisite and her gains, are the separate property of a woman."\(^{130}\) Under all the Schools of Hindu law, payments made to a Hindu woman in lump sum or

\(^{126}\) Suraj Prasad v. Gulab Dei, AIR 1937 All 197.

\(^{127}\) Dayabhaga 4, 1, 1, 20.

\(^{128}\) Salemma v. Lutchmana, (1898) 21 Mad 100 a case of service inam enfranchised by government in favour of a married woman during coverture.

\(^{129}\) Dayabhaga IV, 1, 20.

\(^{130}\) Dayabhaga IV, 1, 15.
periodically for her maintenance, and all her arrears of such maintenance constitute her *Stridhana*. Similarly, all movable and immovable properties transferred to the by way of an absolute gift in lieu of maintenance constitute her *Stridhana*.

The *Mitakshara* law concerning the property which the woman received for maintenance was followed by the Privy Council in *Sowdaminee Dossee v. The Administration General of Bengal* held that the property given to a woman in lieu of her maintenance was her *Stridhan* and she had a right to dispose it of according to her own sweet will.

(d) **Property obtained on partition**: When a partition takes place, except in Madras and *Dayabhaga* School, father's wife, mother and grandmother take a share in the joint family property. In the *Mitakshara* jurisdiction, including Bombay it is an established view that the share obtained on partition is not *Stridhana* but Woman’s estate. The property received by a female as mother or father’s wife on partition of joint Hindu family property is her limited estate and not *Stridhana* and on her death reverts back to family from where it came. It has been held by the Privy Council that a share allotted to mother on partition is not her *Stridhan* but stands on the same footing as property inherited by her from her husband.

(e) **Property obtained by compromise**: When a person acquires a property under a compromise, what estate he will take in it, depends upon the compromise deed. In Hindu Law there is no presumption that a woman who obtains property under a compromise takes it as a limited estate. Property obtained by a woman under a compromise whereunder she gives up her rights

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131 Debi Mangal Prasad v. Mahadeo Prasad (1912) 39 IA 121.
132 (1892) 20 IA 12.
133 Debi Mangal Prasad v. Mahadeo Prasad (1912) 39 IA 121.
to her Stridhana will be Stridhana. When she obtains some property under a family arrangement, whether she gets a Stridhana or Woman’s estate will depend upon the terms of the family arrangement. Where coparcenary consisted of two brothers and on the death of one brother, the other claimed his share by survivorship and his widow claimed it as his heir, the matter was referred to arbitration and certain properties under the award were allotted to the widow. It was held by the Privy Council in Nathulal v. Baburam134, that it was her absolute property to limit her interest on title. Where a daughter who was not an heir by custom received property from a reversioner under a compromise, it was held to be her Stridhana.135

(f) **Property obtained by adverse possession**: In all Schools of Hindu law it is settled law that any property that a woman acquires at any stage of her life by any adverse possession is her Stridhana, because acquisition of title by adverse possession is creature of law and is independent of Hindu law. Where on the death of the father-in-law, the widow of his pre-deceased son assumed possession of the property, after her death it would devolve on the Stridhana heirs of the widow.136 The period of prescription may be before the passing of the Act of 1956 and some period after the passing of the Act provided there is no break between the two periods.

(g) **Property received in inheritance**: A Hindu female may inherit property from a male or a female and she may inherit it from her parent’s side or from husband’s side. The Mitakshara law considers all such properties as Stridhana. A woman may inherit the ordinary property of a male such as her husband,
father, son and the rest. She may also inherit the Stridhana of a woman such as her mother, daughter, and the rest. According to Dayabhaga School, as well as the Benares, Mithila, and Madras Schools, property inherited by a woman whether from a male or from a female, does not become her Stridhana. She takes only a limited interest in the property, and on the death, the property passes not to her heirs, but to the next heir of the person from whom she inherited. In Devendranath v. Premlabai, the property was inherited by female governed by Mayukha law from her father and was held to be her absolute property.

In the princely State of Mysore the law relating to limited ownership of female was amended according to which property taken by inheritance by a female member from another female or from her husband or from a son or a male relative, constituted her Stridhana property having absolute ownership except when there is a daughter or daughter’s son alive at the time of inheritance in which event she would inherit only as limited estate. Therefore, when a daughter inherited the property in 1938 from her mother, the property which her mother had inherited from her husband taking it as limited estate, the daughter became absolute owner and sale by her would be valid and the reversioners would have no right in that property.

(h) **Property acquired by self exertion, science and arts** : A woman may acquire property at any stage of her life by her own self exertion, such as by manual labour, by employment, by singing, dancing etc. or by any mechanical art. According to all Schools of Hindu law, the property thus acquired, during

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137 AIR 2003 Bom 424.
138 Mysore Hindu Law Women’s Rights Act, 1933.
139 w.e.f. 1-1-1934
140 Thilliammal v. Thardavamurty, AIR 2008 NOC 190 (Kar).
widowhood or maidenhood is her Stridhana. During husband's lifetime it is subject to his control. Property acquired during coverture, it is not Stridhana in Dayabhaga and Mithila Schools, but if she survives her husband it becomes her Stridhana.

(i) **Property purchased with the income of Stridhana**: In all Schools of Hindu Law, it is well settled law that properties purchased with Stridhana or with the savings of Stridhana, as well as accumulations and savings of income of Stridhana constitute Stridhana. It does not make any difference that the property purchased is immovable property. Nor does it make any difference that it was purchased by her in the exercise of a right of pre-emption, though she could not have claimed the right had she not been in possession of her husband's property which adjoined the property purchased by her. If it was purchased with her Stridhana, it is her property.\(^\text{141}\) Where the main estate was in the hands of a receiver appointed under a decree and the widow was only receiving a pension, purchases of properties made by the widow out of her savings would be her Stridhana and would pass to her Stridhana heirs.\(^\text{142}\)

If woman obtains property in exchange for property, which is her Stridhana or advances money, which forms her Stridhana on a mortgage, or takes an assignment of leasehold property with her Stridhana, all such property, constitutes Stridhana.

(j) **Property acquired by mechanical arts**: Property acquired by a Hindu woman by mechanical arts or otherwise by her own exertion during maidenhood, or during widowhood is Stridhana.

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141 Dhorpati v. Ram Bharos (1930) 52 IA 222.
142 Sri Ram v. Jagdamba (1921) 43 IR 374.
according to all the Schools. This type of property acquired during coverture is *Stridhana* according to the Bombay, Benaras and Madras Schools.

**(k) Property acquired from other sources:** Under the heading of other sources may be brought property acquired by a woman under a compromise and gains of prostitution. If a limited property holder woman enters into a bonafide compromise of disputes with the reversioners and obtains certain properties thereunder, the question whether she takes them as *Stridhana* or only as a qualified owner depends upon the intention of the parties and the nature of the claim put forward by the woman. If she had put forward the claim as an absolute owner of certain properties and obtains some of them in her own personal character and not as the representative of the last holder, she takes them as absolute owner. If, on the other hand, both the claim and the compromise proceeded on the footing of her being only the representative of the estate of the last holder, she takes the property only as a qualified owner.¹⁴³ This test, however is applicable only where the language of the deed of compromise under which she obtains the property is not clear as to the quantum of the interest given to her as an absolute property, and hence, if on that language it is clear that what is given to her is an absolute estate she is entitled to it.¹⁴⁴

**Rights of Woman over her Stridhana**

The development of *Stridhana* and the property rights of woman in general can be said to have gone hand in hand. Those writers, who denied the right of woman to the inheritance in every case, or admitted them as heirs in some exceptional cases only, took an

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¹⁴³ *Karimuddin v. Gobind* (1881) 31 IA 497.
equally narrow view of the right of woman to possess separate property or did not recognise any such right at all. Those on the other hand, like Katyayana, Yajnavalkya, Brihaspati, Devala and others, who recognised the widow as an heir, acknowledged equally the right of woman to possess considerable independent property, which must never be taken by any male relative except the husband, who had a right to use it in certain cases of distress. Earlier the separate property of woman did not include in its ambit the property acquired by manual labour and inherited property. Rather it consisted entirely of gifts received from relations.\textsuperscript{145}

Katyayana indicates a cross classification of Stridhana properties, with reference to a woman’s independent powers of disposal over it, into saudayika and non-saudayika. The whole law relating to the rights of woman over her Stridhana has been evolved from the following four texts of which the first three are the texts of Katyayana and the last is the text of Narada:

1. ‘What a woman, either after marriage or before it, either in the mansion of her husband or of her father receives from her lord or her parents called Saudayika, that is, a gift from affectionate kindred; and such a gift having by them been presented through kindness, that the woman possessing it may live well, is declared by the law to be her absolute property. The absolute exclusive dominion of woman over such a gift is perpetually celebrated; and they have power to sell and give it away as they please, even though it consists of lands and houses. Neither the husband. Nor the son, nor the father, nor the brother has power to use or to alienate the legal property of a woman.’\textsuperscript{146}

\textsuperscript{145} Julius Jolly, \textit{Outlines of History of the Hindu Law of Partition, Inheritance and Adoption} 245 (1885).

\textsuperscript{146} Katyayana, Colebrooke’s Digest, V, 475.
2. The wealth which is earned by mechanical arts or which is received through affection from a stranger is subject to her husband’s dominion.\textsuperscript{147}

3. What a woman has received as a gift from her husband she may dispose of at pleasure after his death, if it be movable; but as long as he lives, let her preserve it with frugality or she may commit it to his family.\textsuperscript{148}

4. Property given to her by her husband through pure affection, she may enjoy at her pleasure after his death, or may be given away except land or houses ;\textsuperscript{149}

From the above texts, it follows:

(i) that during maidenhood, a Hindu female can dispose of her Stridhana of every description at her pleasure;

(ii) that during coverture, she can dispose of only that kind of Stridhana which is called saudayika, that is, gifts from relations except those made by the husband;

(iii) that during widowhood, she can dispose of her Stridhana of every description and movable property given by the husband at her pleasure but not immovable property given by him.

**Rights over stridhana during maidenhood**

A Hindu daughter could dispose of her Stridhana of every description at her pleasure. Rather during maidenhood, excepting the disqualification by reason of minority, unmarried daughter suffered from no other incapacity as regards her power of alienation of her Stridhana. Even her father had no control over her Stridhana except only in the capacity of a guardian. Westropp, C.J. in the case of *Tulja Ram Morarji v. Mathuradas*\textsuperscript{150}, held that the rule which, in the

\textsuperscript{147} Katyayana, cited in Dayabhaga, IV, SI, 19.

\textsuperscript{148} Katyayana, Colebrooke’s Digest Book, V, 477.

\textsuperscript{149} Narada, Colebrooke’s Digest, V, 476.

\textsuperscript{150} ILR (1881) 5 Bom 662.
Presidency of Bombay, restricted the alienation of property by a widow succeeds to her husband or a mother succeeding to her son, did not apply to a woman who had not become member of the family by marriage.

**Rights over stridhana during coverture**

'Saudayika' under Hindu law, 'Parapherna' under Roman law and 'Paraphernalia' under English law were considered to be the woman's property over which she had absolute power during coverture and she could dispose of that property at her sweet will. 'Saudayika', 'Parapherna' and 'Paraphernalia' consisted of gifts from the relations in various forms and these gifts were considered to be exclusively for the use of the wife, e.g., 'Paraphernalia' in English law consisted of her bed, apparel and personal ornaments depending upon the status of family. It simply means that woman's absolute property was limited only to the gifts from the relations and in general she had no power of alienation over the property without her husband's consent.\(^{151}\) The narrow ambit or the circumstance of Stridhana hedged with limited power of alienation for the woman during coverture was perhaps because of the reason that husband and wife were considered as one. In fact the wife had no independent existence. The idea existed in the English law also and it was thought that it was due to the influence of law which introduced the notion that husband and wife constituted, as it were, a single person, so that the very legal existence of the wife, as a distinct person, was also suspended during coverture, rendering her incapable of holding any separate property or asserting any right not only against him but also against others without his concurrence. Of course, these disabilities were subsequently greatly

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modified by the intervention of the Court of Equity even before the enactment of the Married Women's Property Act, 1874.\textsuperscript{152}

Though there existed a number of limitations concerning woman's power of alienation during coverture, yet we feel proud of it that the idea of property right of woman developed at much earlier stage in the Hindu system as compared to the other systems, e.g. English, Roman and French. The power of a woman to dispose of her Stridhana depends on the character of Stridhana. For this purpose Stridhana is divided into two classes; Saudayika literally means, a gift made through affection. It is a term applied to gifts made to woman at, before or after marriage, by her parents and their relations, or by her husband and his relations. In other words, it means gift from relations as distinguished from gifts from strangers. It also includes bequest from relations.

A woman has absolute power of disposal over her Saudayika Stridhana even during coverture. She may dispose of it by sale, gift, Will or in any other way, she pleases, without the consent of her husband. Her husband has no control over it. He cannot bind her by any dealings with it. However, he can take it in case of distress as in a famine, or during illness or imprisonment. This right to take the wife's property is personal to him and if he does not choose to take it, his creditor, in execution of decree against him, cannot take it.\textsuperscript{153}

As regards Stridhana other than Saudayika, at times referred to as Non-saudayika Stridhana, e.g., gifts from strangers, property acquired by mechanical arts etc. the rule is that she has no power to dispose of it during coverture without the consent of her husband. It is subject to her husband's dominion, and he is entitled to use it at his pleasure even if there be no distress. The non-saudayika,

\textsuperscript{152} Ibid.

Stridhana referred to above is subject only to her husband’s control and not to the control of any other person. After the husband’s death, her power to dispose of it become absolute, and she may dispose of it by act inter vivos or by Will. On the death whether she dies before or after her husband, it passes to her Stridhana heirs. The Judicial Committee of the Privy Council in Luchman Chunder Geer Gessain v. Kalli Charn Singh\textsuperscript{154}, opinioned that under Hindu law a married woman was at liberty to make any disposition she liked of the money constituting her Stridhana or separate and peculiar property and if she had purchased immovable property with such Stridhana, she had every right to sell even the immovable property.

**Rights over stridhana during widowhood**

The admit of the power of alienation over the Stridhana property during widowhood was wider as compared to that during coverture. Even the property acquired by a widow by her own skill or labour or by gift from a stranger was considered as Stridhana with absolute power of disposal by almost all the Schools of Hindu law, whereas woman during coverture had no such power over this kind of property without her husband’s consent. It was mostly the opinion of scholars that a maiden and widow, provided they were not minors, had absolute power of disposition over Stridhana property, either by transfer inter-vivos or by Will. Hindu widow can also of her own will, put restrictions on her rights of Stridhana property, as she is the full owner of Stridhana property. Over the property other than the Saudayika Stridhana widow had no right of alienation. According to Katyayana she used to take only a restricted estate, as her dominion over her husband’s property did not extend to the right to make gift, mortgage or sale, and she was expected to make a sharing use of it. The only power she had was to make gifts for pious purposes.\textsuperscript{155}

\textsuperscript{154} (1873) 19 WR 292.
\textsuperscript{155} Supra note 145 at 240.
The Full Bench of the Bombay High Court had shaken the general belief that a Hindu woman had the power of alienation over the movable property got from her husband in Gadadhar Bhat v. Chendrabhaga Bat\textsuperscript{156} by making the distinction between the property acquired from the husband and that got by inheritance. It was observed by their Lordships that the movable property inherited from the husband was Stridhana of the widow only to the extent that she could enjoy it during her life and after her death the property was to devolve on the heirs of her husband, i.e., she could not change the nature of devolution by bequeathing it.

**WOMAN’S ESTATE : CONCEPT AND SOURCES**

The proprietary status of woman in any system of law represents the thought and the feelings of the community. Hence, the proprietary status which a woman occupied in Hindu law was not only an index of Hindu civilization but also correct criterion of the culture of the Hindu race. The Shastras position of the woman in general and widow in particular was a state of dependence and submission both in her family and society, "Day and night" says Manu, "must women be held by their protectors in a state of dependence; even in lawful and innocent recreations, being too much addicted to them, they must be kept by their protectors under their own dominion.\textsuperscript{157} "Through independence, that women go to ruin though born in noble family..."\textsuperscript{158} As we know the women were declared by the Smritis to be incompetent to perform religious ceremonies,\textsuperscript{159} therefore, her right to property was very nominal and whatever little she used to get, that too

\textsuperscript{156} ILR (1893) 17 Bom 690.
\textsuperscript{157} Colebrooke's Digest, IV, I, 1, 3.
\textsuperscript{158} Narada, XIII, 30.
\textsuperscript{159} Manu, IX, 18. "Women have no business with the texts of the Vedas; thus is the law fully settled: having therefore no evidence of law, and no knowledge of expiatory texts, sinful women must be as foul as falsehood itself; and this is a fixed rule." Manu, IX, 19. To this effect, many texts which show their true disposition are changed in the Vedas.
was hedged with limitations. The *Smritis* are the foundations or the sole repository of Hindu law and the Woman's Estate cannot be an exception to it.\(^{160}\) So the other type of property that could devolve upon the Hindu woman is called 'Woman's Estate'. The woman's estate means any typical form of estate inherited by a woman from a male.\(^{161}\) It was also called widow's estate. The characteristic feature of woman's estate is that the woman takes it as a limited owner. However, she is owner of her property, subject to two basic limitations:

(a) She cannot ordinarily alienate the corpus, and  
(b) On her death it devolves upon the next heir of the last full owner.\(^{162}\) The same limitations apply to all estates derived by a female, whether she inherits as daughter, mother, grandmother, sister or as any other relation. In case of *Stridhana*, a female had absolute right of disposition but so far as the limited estate was connected she had limited power of disposition.

Under the *Mitakshara* law the nature of interest acquired by a widow on partition is the same as acquired by her by inheritance. She has no absolute right or interest in the share allotted to her and on her death there is a reversion of the property back to the coparcenary with all interest of the deceased coparcener ceasing. In *Mitakshara* law the there was right of a widow to succeed to the entire estate of her husband in default of a male and she was entitled to receive a share equal to a son even at the partition which took place either during the life time of the husband or thereafter. But in spite of all this, it should not be forgotten that the *Mitakshara* recognised the widow's right only when her husband was separated from his kinsmen  

\(^{160}\) *Supra* note 85 at 44.  
\(^{161}\) The Hindu Women's Rights to Property Act, 1937 (Act XVIII of 1937) describes it as, the limited interest known as a Hindu woman's estate. [Section 3(3)]  
\(^{162}\) *Bijoy Gopal Mukerji v. Krishna Mahishi* (1909) 34 IA 87.
and said nothing expressly as to the extent of the interest in the estate inherited by her or the order of succession to it after his death.\textsuperscript{163}

**Meaning and Nature of Woman’s Estate**

The term ‘Woman’s Estate’ in its larger connotation that means all properties which has come to a woman by any means and from any source whatsoever, and includes both property in which she has absolute interest (\textit{Stridhana}) and property in which she has only a limited interest. The term ‘woman’s estate’ in this discussion is used only in the latter sense of property in which she takes only a limited or qualified interest. A widow or limited heir was not tenant for life but was owner of the property inherited by her, subject to certain restrictions on alienation and subject to its devolving upon the next heir of the last full owner upon her death.\textsuperscript{164}

The Supreme Court has described full ownership as a sum total of all the rights which may possibly flow from title of property while limited ownership, as a bundle of rights constituting in their totality not full ownership, but something less. When a widow holds property for her enjoyment as long as she lives nobody is entitled to deprive her of it or to 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’.\textsuperscript{165}

**Incidents of Widow’s Estate**

The expression ‘\textit{Stridhana}’ signified an absolute estate; the expression ‘widow’s estate’ implied a limited estate. The following were the incidents of a widow’s estate:

\textsuperscript{163} Supra note 80 at 311.
\textsuperscript{164} Janki Ammal v. Narayana Swami (1916) 43 IA 207.
\textsuperscript{165} Bai Vajai v. Thakorebhai Chellabhai, AIR 1979 SC 993.
1) Widow was the owner of the property inherited by her from her husband except that she could not sell, mortgage, or effect any transfer of the corpus of the property unless it was:
   (i) for legal necessity, or
   (ii) for the benefit of the estate, or
   (iii) with consent of the next reversioners, or
   (iv) for religious or charitable purposes.
2) She fully represented the estate. She could institute suits in respect of the property and she could be sued in respect thereof. Decrees passed against her as representing the estates were binding not only on her, but on the reversioners though they were not parties to the suit.
3) She could sue to recover possession from even third person. But if she allowed the possession of third person to become adverse to her, the reversioners were not affected by such adverse possession.\(^{166}\)
4) She was entitled to manage the estate as a prudent owner.
5) The restriction over the powers of the disposition of property did not depend upon the existence or non-existence of the reversioners.\(^{167}\)
6) She could sell, mortgage or make gift of her life interest in such property.
7) She could spend the whole income and was not bound to save anything.
8) She could claim partition with collaterals.\(^{168}\)
9) Her right was not lapsed by her re-marriage or adoption by her of a son.

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\(^{166}\) *Kishan Lal v. Mohd. Ishaq*, ILR (1938) IA 761 (FB).
\(^{167}\) *Collector of Masulipatoni v. Cavaly Tencata* (1860) 9 MIA 520.
\(^{168}\) *Janki v. Mathura*, ILR (1909) 9 Cal 580.
10) She could not, by any act or declaration, give her possession or estate, a character different from that attaching to the possession or estate of a Hindu widow.169

**Basic Features**

The basic features of the woman's estate are as under:

(a) **Not a life estate** : It was at one time common to speak of a widow's estate as being one for life. But this was wholly incorrect. It would be just true to speak of the estate of a father under the *Mitakshara* law as being one for life. Hindu law knew nothing of estates for life, or in tail, or in fee. It measured estates not by duration but by use.170 In explaining the true nature of a Hindu woman's limited estate the Supreme Court makes the following observation, 'Though loosely described as a 'life-estate' the Hindu widow's interest in her husband's property bears no analogy to that of a 'life-tenant' under the English Law. The estate which the Hindu widow takes is a qualified proprietorship with powers of alienation for purely worldly or secular purposes only when there is a justifying necessity and the restrictions on the powers of alienation are inseparable from her estate. The Hindu law certainly does not countenance the idea of a widow alienating her property without any necessity, merely as a mode of enjoyment. If such a transfer is made by a Hindu widow, it is not correct to say that the transferee acquires necessarily and in law an interest commensurate with the period of natural life of the widow or at any rate with the period of her widowhood. A Hindu widow has a larger rights than those of a life estate holder, in as much as,

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169 *Kashi Prasad v. Inder Kumar*, ILR (1908) 30 All 490.
170 *Vasonji v. Chanda Bibi* (1915) 37 All 369 PC.
in case of justifying necessity she can convey to another an absolute title to the properties vested in her."\textsuperscript{171} Her estate is not an indefeasible life estate, but an estate liable to be defeated on the happening of certain events, e.g. her remarriage and adoption of a son to her husband. A Hindu widow is entitled to full beneficial enjoyment of estate, she is not bound to economise. So long as she is not guilty of any wilful waste of the estate, she is answerable to no one.\textsuperscript{172} She is not a trustee of the estate for the reversioners. She fully represents the estate and so long as she is alive no one has any vested interest in succession.\textsuperscript{173}

(b) **Rule of Reversion**: The distinctive feature of the estate is that, at her death, it reverts to the heirs of the last male owner, or to the heirs of the last full female owner in case of *Stridhana* property. She never becomes a fresh stock of descent. The restrictions on the powers of disposition are the same whether she inherits from a male or a female.\textsuperscript{174}

Although the Sanskrit authorities states that widow has restricted powers in dealing with the estate as she may inherit from her husband, but they nowhere lay down in terms that the same restrictions apply to other female heirs. Again, the course of inheritance laid down in the earlier texts seems to assume that the estate reverts after a widow to the heirs of the last male; but until we come to Jimutavahana, we are nowhere told that it is the rule. The wording of the *Mitakshara* suggests that except in the case of the widow or mother it is not the rule.\textsuperscript{175}

\textsuperscript{171} *B. Hanuman Prasad and Ors. v. Mst. Indrawati and Ors.*, AIR 1958 SC 304.
\textsuperscript{172} *Renuka v. Bhol Nath* (1915) 37 IA 177.
\textsuperscript{173} Mayne’s, *Hindu Law & Usage* 1054 (2003).
\textsuperscript{174} *Sheo Shankar v. Debi Sahai* (1903) 30 IA 202.
\textsuperscript{175} *Dayabhaga* XI, i, 57-59; XI, ii, 30,3; *Viramit*, III, i, 3.
Limited Power of Alienation

*Katyayana* says, "Let the widow preserving unsullied the bed of her lord, and abiding with there venerable protector, enjoy with moderation to the property until her death. After her, let the heirs take it. But she has no property therein to the extent of gift, mortgage, or sale."176 A widow or other limited heir has no power of the corpus of immovable property inherited by her except in the four cases mentioned under:

1) that there was legal necessity.
2) that the alienee, after reasonable inquiry as to the necessity acted honestly in the belief that the necessity existed; or
3) that there was such consent of the next reversioners to the alienation as would raise a presumption that the transaction was a proper one; or
4) that she had surrendered her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of alienation.

A widow may alienate her husband's property to pay debt incurred by her for legal necessity though that debt is barred at the time of alienation.177 In the territories other than the Bombay State, a widow or other limited heir has no greater power of disposal over moveable property inherited by her than over immovable property, and she cannot dispose of it by deed or will. The immovable property obtained by a Hindu widow in a partition with her son stands on the same footing as movables acquired by inheritance and therefore, may be disposed of by her during her lifetime unrestricted by any rights of other persons.178 A widow or other limited heir cannot in any case dispose of property inherited by her or any portion thereof by will

176 *Brihaspati*, cited in *Smriti Chandrika*, XI, 1, 28.
177 *Darogi Rai v. Basdeo Mahto* (1937) 16 Pat 45.
178 *Chamanlal v. Bai Parvati* (1934) 58 Bom 246.
whether the property is moveable or immovable.\textsuperscript{179} The Privy Council very aptly observed:

"Her right is of the nature of a right of property; her position is that of owner; her power is that character are however limited... as long as she is alive, no one has visited interest in the succession."\textsuperscript{180}

**Powers of Hindu Woman Over Woman’s Estate**

The Hindu women has following powers with regard to woman’s estate:

(a) **Power of management**: Like the Karta of a Hindu joint family, she has full power of management. Her position in this respect is somewhat superior to the Karta. The Karta is merely a co-owner of the joint family, there being other coparceners, but she is the sole owner. She has not to look after or bother about others. Thus she alone is entitled to the possession of entire estate and she alone is entitled to its entire income. Her power of spending the income is absolute. She need not save, and if she saves, it will be her *Stridhana*. She alone can sue on behalf of the estate and she alone can be sued in respect of it. She continues to be its owner until the forfeiture of estate, by her remarriage, adoption, death or surrender.

(b) **Power of alienation**: A female has limited powers of alienation. Like Karta her powers are limited and she can, like Karta, alienate property only in exceptional cases. She can alienate the property for the following:

i) **legal necessity**, i.e. for her own need and for the need to the dependents of the last followers;

ii) for the benefit of estate, and

iii) for discharge of indispensable religious duties, such as marriage of daughters, funeral rites to her husband, his

\textsuperscript{179} *Thakoor Deyhee v. Rai Bhek Ran* (1866) 11 MIA 139.

\textsuperscript{180} *Janki v. Narayanaswami* (1916) 43 IA 207.

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Shraddha, and gifts to Brahmans for the salvation of his soul. In short, she can alienate her estate of the spirituals benefit of the last full owner, but not for his own spiritual benefit.

Any alienation made by her, which is not covered under any of the purposes, is not void but voidable and alienation made by her binding on her during her lifetime, as a grantor can not derogate from her own grant. As the reversioners have no right over it until the estate devolved upon them by improper alienation is valid and binding on her for the duration of her life. She can also acknowledge liability is respect of estate.

(c) **Surrender of estate by the widow**: Surrender mean renunciation of the estate by the female owner. She has the power of renouncing the estate in favour of nearest reversioners. This means that by a voluntary act, she can accelerate the estate of the reversioners by conveying the estate absolutely thereby destroying her own estate. This is an act of self-effacement on her part and operates as her civil death. It is important to point out here that surrender by the widow and acceptances by the reversioners are not matters of contract. The estate vests in the reversioner by operation of law without any act of acceptance by the reversioner. Though it is open to a widow to surrender the estate to the next reversioner even where the latter is a female heir. A widow cannot validly surrender in favour of the next female heir and her husband jointly.

182 Section 3 of the Limitation Act, 1908.
183 *Supra* note 111 at 293.
First condition for a valid surrender is that it must be of the entire estate, though she may retain a small portion for her maintenance. Secondly, it must be in favour of the nearest reversioner or reversioners, in case there is more than one of the same categories. Surrender can be made in favour of female reversioners also. Third and last condition is that the surrender must be bonafide and not a device of dividing the estate with the reversioners. The doctrine of surrender has received a number of judicial interpretations. In Natwarlal v. Dadubhai, B.K. Mukerjee, J., of the Supreme Court held that a person, who had prior to the date of surrender acquired an interest in the widow's estate by adverse possession, could be ousted from possession of the property during the lifetime of the widow. The widow is not bound to surrender the estate; nor is the reversioner bound to accept that. Surrender is not an alienation of an interest of the widow in favour of the reversioner and no acceptance by reversioner is necessary as a condition precedent to the vesting of the estate in him. The estate vested in the reversioner under operation of law without any act on his part. "Where the surrender is made in favour of next heirs with whom a stranger is associated and the widow purports to relinquish the estate in order that it may vest in both of them the surrender not being of the totality of the interest of the widow in favour of the next heir, cannot operate as a valid surrender and the relinquishment cannot, as a law, operate as an extinction of her title in the estate."

(d) **Power of disposal:** The property which has passed to a female, not as heir, but by deed or other arrangement, expressly or impliedly empowers her to appropriate the profits. The savings of such property, and everything which is purchased out of such

184 AIR 1954 SC 61.
savings, belong absolutely to her. It may be disposed of by herself at her pleasure and at her death, it pass to her representatives, and not to the heirs of the last male. But the mere fact that a Hindu female takes under a Will or a deed of gift or arrangement, that to which she is really entitled as heiress, does not necessarily enlarge her powers. An estate given to a widow of an undivided family by way of maintenance lapses into the family property at her death\textsuperscript{186}, but not if it was an absolute grant in full satisfaction of the claim to maintenance.\textsuperscript{187}

(e) **Full power of enjoyment**: Within the limits imposed upon her, the female holder has the absolute power of beneficial enjoyment of the estate. It is probable that, in early times, a widow was morally, if not legally, bound to restrain her personal expenditure within the modest limits which were considered suitable to her bereaved condition. But whatever may in former times have been the force of the injections contained in such passages of the Shastras, or whatever may now be their effect as religious or moral percepts, they cannot be regarded at the present day as of any legal force, in restricting a widow in the use and enjoyment of her husband’s property while she lives.

(f) **Representation of the estate**: A widow or other limited owner during her lifetime represents the whole estate and a decision in a suit by or against the widow as representing the estate is binding on the reversionary heir. It was held that where the estate of a deceased Hindu has vested in a female heir, a decree fairly and properly obtained against her in regard to the estate is, in the absence of fraud or collusion, binding on the

\textsuperscript{186} Dhup Nath v. Ram Charitra (1932) 54 IA 366.
\textsuperscript{187} Sri Raja Venkata v. Sri Raja Rao (1894) 17 Mad 150.
reversionary heir. But the decree against the female holder must have involved the decision of a question of title, and not merely a question of the widow’s possession during her life.\textsuperscript{188} As was observed in the \textit{Shivaganga} case, “the whole estate would for the time be vested in her, absolutely for some purposes, though in some respect for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed ... it is obvious that there would be to greatest inconvenience in holding that the succeeding heirs were not bound by a decree fairly and property obtained against the widow."\textsuperscript{189}

\textbf{(g) Power of Compromise}: Where a widow or other limited heir entered into a family settlement or compromise which involved an alienation of the estate, the reversioner who had been a party to and had been benefited by the transaction was precluded from questioning the alienation and so were his descendants. The power of a widow or other limited owner to compromise claims by or against the estate represented by her was established in \textit{Mohendra Nath v. Shamsunnessa}\textsuperscript{190}, which was approved by the Judicial Committee in \textit{Ramsumran Prasad v. Shyam Kumari}\textsuperscript{191} and by the Supreme Court of India in \textit{Mt. Phool Kuer v. Mt. Pem Kuer}.\textsuperscript{192} A compromise in the nature of family arrangement entered into by a widow or other limited heirs used to bind the reversioners though they had not been parties thereto provided it amounted to a bonafide settlement of disputes in respect of the estate. Even if it was not in the nature of a family arrangement, a compromise entered into by her

\begin{itemize}
\item \textsuperscript{188} \textit{Risal Singh v. Balwant Singh} (1918) 45 IA 168.
\item \textsuperscript{189} \textit{Katamma Nachiar v. Raja of Shivaganga} (1863) 9 MIA 539.
\item \textsuperscript{190} (1915) 21 CLJ 157.
\item \textsuperscript{191} (1922) 49 IA 342.
\item \textsuperscript{192} (1952) I MLJ 823 (SC).
\end{itemize}
bonafidely for the benefit of the estate and not for her personal advantage, used to bind the reversioners quite as much as a decree against her after litigation though they had not been parties to transaction. In either case, the fact that the compromise involved an alienation of the estate did not affect its validity. An alienation which was the result of a compromise or the mode by which a compromise was carried into effect, fell within the power of the holder of a Hindu woman's estate either as being an alienation which was to be deemed to be induced by necessity, or as being in a parallel position to alienation included by necessity.193

REVERSIONERS

Upon the termination of the widow's estate, the property descended on those who would have been the heirs of the husband if he had lived upto and died at the moment of her death. The persons who would be entitled, after the widow's death, to succeed to the estate as the heirs of the last male owner were called reversioners,194 and could be a male or a female. The term 'reversioner' is born of Anglo-Indian law. It is not found in Sanskrit texts. Reversion, in a general sense, means a returning, a return to a pre-existing or former state or place. The words195 reversioner and reversion came to us from English Law. Dr. C.V. Deshmukh in the Legislative Assembly debates also pointed out that the idea of limited property came to us as an importation from our rulers and it did not come alone. Side by side with it, we also got the so-called reversioners. According to him there is nothing like reversioner in Hindu law and there is no Sanskrit word

193 Ramsuman Prasad v. Shyam Kumari, AIR 1922 PC 356.
194 Supra note 88 at 554.
The word reversion in English law meant ulterior estate in fee-simple, which a tenant in fee-simple reserved to himself having granted away a particular estate either for years or for life or in tail. On the basis of this definition it would be said that the residue of the estate which remained in the grantor, after he had carved out the particular estate, was called the reversion, and he himself, as an owner of that residue, was called the reversioner.

Thus it can be said that the reversioners are the persons in whom the residuary interest of the estate is vested. Though Johnstone, J. in *Sadhu Singh v. Secretary of State* did not relish the word residuary interest and considered it to be inaccurate, misleading and juristically unsound, he held that mere contingent interest cannot be residuary.

**Presumptive and Contingent Reversioners**

Those person who were entitled to succeed, if the women were to die at the moment, were called the next or presumptive reversioners, while those who come after them were called remote or contingent reversioner. There was no privity of estate between one reversioner and another. The interest which a reversioner possesses in the estate so long as the widow is alive is a mere chance of succession, which cannot enlarge her estate into an absolute one by its being relinquished in her favour. He has no right or interest in prassanti in the property which the female owner holds for her life. Until it vests in him on her death and he should have survived her, he has nothing to assign.

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197 Quoted in *(Tagore Law Lectures, 1879)* The Law Relating to Hindu Widow 361 (1890).
198 (1908) 18 PR 328.
199 *Supra* note 85 at 279.
200 Section 6 (a) of the Transfer of Property Act, 1882. But if the transfer of the reversioner’s interest is part and parcel of a family arrangement or a compromise between rival claimants, it will not necessarily be invalid.
Nature of Reversioner's Interest

So long as the limited owner was alive, no one had any vested interest in property. None of those reversioners could be said individually to possess any certain and tangible interest in the reversion. Hence the interest of a reversioner was an interest expectant on the death of a limited owner and a bare chance of succession or a *spes successionis* within the meaning of Section 6 of the Transfer of Property Act, 1882. Rather no body had vested right so long as the widow was alive, i.e., his right could become concrete only on her demise. Until then, it was mere *spes successionis* and was not transferable or attachable property. In fact the right was neither properly clothed with the alienability incident thereto. Reversioners could not thereupon purport to convey the said interest or otherwise deal with it.

Where a reversioner sold his rights of expectancy in regard to the estate, which was in possession of a widow, to the plaintiff who, on the death of the widow, sued for possession, it was held by their lordships of the Punjab and Haryana High Court that a right of expectancy or *spes successionis* being non-transferable both in accordance with the principles of Hindu law as well as under Section 6 (a) of the Transfer of Property Act, could not form the subject matter of a contract and such a contract was unenforceable, and the suit not being for specific performance the agreement could not be specifically performed. Thus the cause of action accrued only on the death of the female heir. The right of reversionary heirs was in the nature of *spes successionis* and as reversioners did not trace their title through or from the widow, the reversioners did not lose their rights simply

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201 Sashi Kanthe Acharjee v. Promode Chandra Roy, AIR 1932 Cal 600.
203 Mahendra Narayan Roy Choudhury v. Dakshina Rajan Roy Choudhury, AIR 1936 Cal 34.
because she was out of possession because of adverse possession of somebody else. The reversioners had the right to sue for possession within 12 years of her death.\textsuperscript{204}

There was no doubt that reversioners had no vested right in property but that did not mean that they were helpless spectators to the wanton destruction of the estate. The reversioners, who were entitled to the property after the death of the widow, though had some inchoate rights, had a substantive right, even during the lifetime of the widow, to prevent her from committing waste, and in case she alienated the property, they could file a suit for a declaration that the impugned alienation was null and void and was not binding on their reversionary rights. Though the declaration did not entitle them to acquire or possess the property immediately, it entitled them to seek possession thereof after her death. The Privy Council in \textit{Hunooman Parsad v. Mst. Baboee}\textsuperscript{205} held that a widow, like a manager of the family estate, should be allowed reasonable latitude in the exercise of her powers. The court should not interfere in her management unless there was danger to the estate from her management of or dealing with the property. But in case she committed wilful waste or her acts endangered the property, the reversioners had the right to file suit to restrain her from doing so. The mere fact that such enjoyment would diminish the value of the property was not sufficient to restrain her. The reversioners had to prove specific acts of waste or mismanagement or other misconduct resulting in the diminution of the estate. Although she cannot alienate properties unless there is legal necessity but this restriction on her powers is not for the benefit of reversioners but is an incident of the estate as known to Hindu law.\textsuperscript{206}

\textsuperscript{204} \textit{Article 141 of the Limitation Act, 1908.}
\textsuperscript{205} \textit{(1857) 6 MIA 393.}
\textsuperscript{206} \textit{Narayan Govind v. Kamalakara, AIR 2001 SC 3861.}
Rights of a Reversioner:

During the life-time of the limited owner, the reversioner had the following rights:

1. He could bring a suit to restrain the limited owner, from making an improper alienation.

2. He could bring a suit for a declaration that any alienation made by her was not valid beyond her lifetime.

3. He could oppose the grant of probate to the limited owner if such grant was prejudicial to the reversioner.

4. In case widow claimed the property as her absolute property, the next reversioners could file a suit for declaration that she was entitled only to a widow's estate.

5. He could file a suit for declaration against the widow's trespasser or those who claimed adversely. Their adverse possession was not binding on the reversioner.

It is important to point out here that a reversioner during the lifetime of the limited owner was not entitled to sue for a declaration that he was the next reversioner.

Reversioner's right to challenge the unauthorized acts of the widow

A reversioner had a right to challenge the unauthorised acts of the widow; like, to incur a debt without legal necessity was an unauthorised act of the widow. The High Court of Allahabad in *Anant Bahadur Singh v. Tirathraj*,\(^\text{207}\) stated that an unauthorised alienation by the widow could be challenged by each of several nearest reversioners individually. The right was not joint right shared by them in common. Their Lordships of the Privy Council in the case of *Kuar Mata Prasad v. (Kuar) Mageshar Sahai*\(^\text{208}\) held that since spes was

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\(^{207}\) *AIR 1939 All 526.*

\(^{208}\) *AIR 1925 PC 272.*
common to them all, so was the danger by the widow's act against the interest of the reversioners. The right to sue to set aside that common danger was given to the person who, if the widow died at that moment, would take the estate. But the result favourable or otherwise affected the reversioner as a body. Thus a decree passed would bind all the reversioners.

**Right of reversioner to sue for possession**

The nearest reversioners, who succeeded to the estate after the death of the limited holder, were entitled to recover possession of the property of the last full owner from all those in possession thereof under alienations not binding upon them. They were entitled to bring a single suit against any number of such persons who were in possession of different portions of the estate under different title deeds executed by the limited owner on the same or different dates. The reversioner's right to recover property devolved on his heir, and if the reversioner died subsequent to the widow's death, it was open to his legal heir to bring a suit for the recovery of the property alienated by the widow for purposes not binding on the reversion.\(^{209}\) The extinction of widow's right did not extinguish that of a reversionary heir for the reason that he did not claim his right through the widow.

The Supreme Court in the case of *Ram Krishto Mandal v. Dhankisto Mandal\(^{210}\)* held that a person who had been in adverse possession for twelve years or more of the property inherited by a widow from her husband by an act or omission on her part was not entitled on that ground to hold it adversely as against the next reversioners on the death of such a widow. The next reversioner was entitled to recover possession of the property, if it was immovable, within twelve years from the widow's death.\(^{211}\) The reversioners in

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209 *Thakur Prasad v. Mt. Dipa* (1931) 10 Pat 352.
210 AIR 1969 SC 204.
211 Article 141 of the Limitation Act, 1908
matter of limitation had the right to rely upon Article 141 of the Limitation Act, 1908 and claim that their title was not extinguished by lapse of time against the widow.212

But when it was found that the alienation made by the widow was for legal necessity and the reversioners had instituted a suit for the recovery of the property so alienated, it was laid down that the payment of the borrowed amount was a condition precedent for recovering the possession of the property.213

Right of reversioner for mesne profits

The reversioners are not entitled to mesne profits prior to the institution of the suit for the reason that the Hindu widow is not tenant for life but is owner of the property inherited by her from her husband, subject to certain restriction on alienation and subject to its devolving upon the next heir of her husband upon her death. The whole estate is for the time being vested in her and she represents it completely. An alienation made by her without legal necessity is not void ab initio, but voidable at the instance of the reversioner. Hence, if the reversioner succeeds, he is not entitled to any mesne profits prior to the institution of any suit.214

Remote Reversioner's Rights

It was general rule that the nearest reversioner could challenge an alienation made by the proprietor. The Privy Council in Rani Anand Kuer v. Courts of Wards215 had very aptly enunciated the principle by stating that "it cannot be the law that every one who may have possibility of succeeding can sustain a suit of the present nature; for it So, the right to sue would belong to every one in the line of succession, however remote. The right to sue must be limited."

213 Jagannath Singh v. Damodar Singh (1931) 133 IC 472.
214 Supra note 85 at 289.
215 (1881) 8 IA 14.
The remote reversioner could sue in the following circumstances:

(a) where the nearest reversioner happened to be a minor.
(b) where the nearest reversioner was a female or a person who was the immediate male reversioner.
(c) when he has refused without sufficient cause to institute proceedings, or he has precluded himself by his own act or conduct from suing.
(d) where he has waived his right to sue in favour of remote reversioners.
(e) when he was in collusion with the alienee.

But in all such cases, the nearest reversioners must be made a defendant in the suit.

**Burden of Proof**

It is incumbent on a plaintiff seeking to succeed to property as a reversioner to establish affirmatively the particular relationship which he puts forward. When a suit was brought by a person alleging to be the next reversioner either for a declaration that certain alienation was not binding on the estate or for recovery of possession consequent on such declaration on the widow’s death, the burden of proving that he was the next reversion was on the plaintiff. He was also bound to satisfy the Court that to the best of his knowledge, there was no nearer heir\(^\text{216}\) i.e., the reversioner claiming the estate of the husband of a Hindu widow must prove not only his descent from the common ancestor and the last male holder but also that there was no other intermediate heir having a better title. In fact in a suit by a reversioner to set aside alienation after the death of the widow, he must prove that he was the only possible claimant. He had to prove not only the pedigree but also that there was no nearer relation to the last holder.\(^\text{217}\)

\(^{216}\) *Kanshi Ram v. Sarda Nand*, AIR 1916 Lah 179.

\(^{217}\) *Mahipal Singh v. Durbijai Singh*, AIR 1955 NOC 2693 (All).
When the Reversioner was Estopped from Challenging the Alienation

Once a reversioner had affirmed or ratified or consented or otherwise was estopped or precluded from challenging the succession by any of his act during his life time, he would not be able to challenge it. But the non-consenting reversioner could not sue the vendee for the possession of whole property. Sale as regards consenting reversioners share was valid and the other reversioner could recover only his share. In this regard three different aspects of the principle of estoppel have to be considered:

1. That which is embodied in Section 115 of Indian Evidence Act, 1872.218
2. Election in the strict sense of the term whereby the person electing takes a benefit under the transaction; and
3. Ratification, i.e., agreeing to abide by the transaction.

Thus, a presumptive reversioner, coming under any of the aforesaid categories was precluded from questioning the transaction when succession opened and when he became the actual reversioner.

But, if the presumptive reversioner is a minor at the time he had taken a benefit under the transaction the principle of estoppel would be controlled by another rule pertaining to the minors. A minor is incapable of entering into a contract or giving his consent to a transaction and therefore, cannot be held to have taken a benefit under a transaction during his minority which would have estopped him from claiming his legal rights, when succession opens. But a minor can certainly, after attaining majority, ratify transaction entered

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218 Section 115 of the Indian Evidence Act, 1872 "When one person has by his declaration, act or omission, internationally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."
into on his behalf by his guardian during his minority. If he ratifies the transaction entered into by his guardian, he will be bound by it under the rule of election.

From the above discussion, it can be said that the Hindu Succession Act, 1956 has abolished the practice of reversion. Prior to this Act, on widow’s death, the estate reverts to the heirs of the last full owner as if the latter died when the limited estate ceased.\textsuperscript{219} Even though the Act has abolished this discriminatory practice, still it looks in the background by the impact of Section 15(2) of the Act. \textsuperscript{220} Sub-section (1) of Section 14 of the Hindu Succession Act, 1956 has abolished the woman’s limited estate in respect of property not acquired or possessed under a Will, gift, Award, document or a decree of the Court prescribing limited estate. After passing of the Act of 1956 whatever property is possessed by her in a lawful manner whether acquired before or after commencement of the Act, becomes her absolute property and she becomes its absolute owner. But subsection (2) of Section 14 preserves the limited estate, in respect of properties where a limited estate has been prescribed by the document\textsuperscript{221} under which the widow comes into possession thereof.

\begin{itemize}
\item \textsuperscript{219} Moni Kaur v. Kerry (1880) 7 IA 115.
\item \textsuperscript{220} Bakshi Ram v. Brijlal (1995) 1 SCC 395.
\item \textsuperscript{221} Decree, Will, Award, Instrument, etc.
\end{itemize}