If women is strong, 
Nation strong too!
If women is weak, 
Nation weak too!
If men are the pillars of Nation, 
Women are its basic Foundation!
Men and Women both are Supplementary & Complimentary, 
One is as important as the other!
In women’s grace and prosperity 
Lies every one’s own prosperity!

This chapter throws light on the two Schools of Hindu religion i.e. Mitakshara and Dayabhaga that outline people’s property rights including those of women. The stridhan and women’s estate, that discusses what is stridhan, how it is different from dowry and women’s estate are also analyzed here. The history of property Acts of women, The Hindu Succession Act of 1956 is dealt with in detail. The land rights related to women, property rights of widow are also discussed to some extent. The issue of Women Disqualification Bill of J&K which deals with the right of women to marry outside the state and retain their property right status is also discussed in detail.

What is the role of law when the rights of a subgroup result in the violation of the rights of some of its individual members, that is, women? How can law ensure the rights of the individual without, at the same time, alienating her from her community? What are the land rights related to the women? What are the property rights of women in J&K? These are questions which must now be addressed by those who create, administer and critique the law.

The alleged fears associated with women’s claims to natal family property, make the woman responsible for taking an infinite parade of prestations from her family. This specter of daughters’ insatiable greed and one-sided lifelong drainage or resources from the natal family is used to construct a good/bad daughter model that valorizes women’s refusals of inheritance shares and demonizes those who would pursue claims to property or resources.
Chapter III: Property Acts of Hindu Women

SCHOOLS OF HINDU RELIGION

The Codified Hindu law lays down uniform law for all Hindus. In the codified areas of the Hindu law, there is no scope for existence of schools. The schools of Hindu law have relevance only in respect of uncodified areas of Hindu law.

The schools of Hindu law emerged with the emergence of the era of commentaries and Digests. The commentator put his own gloss on the ancient texts, and his authority having been received in one and rejected in other part of India, schools with conflicting doctrines arose. There are two main schools of Hindu law:

1. The Mitakshara School, and
2. The Dayabhaga School or Bengal school.

Mitakshara and Dayabhaga Schools

The two men whose interpretations have determined the practice as regards inheritance and the rights to property of different members of the Hindu joint family were Vijnaneshwar from Andhra Pradesh and Jeemutavahana from Bengal (Karve, 1968:342).

Vijnaneshwar wrote a commentary on the Yajnavalkya Smriti. This commentary is called Mitakshara - “measured words”. Jeemutavahana wrote on inheritance only. His book called Dayabhaga (“division of inherited property”) has been an authority in Bengal and Eastern Bihar (Ibid: 343)

The Mitakshara School prevailed in the whole of India except Bengal and Assam. The Dayabhaga School prevailed in Bengal and Assam. But such was the paramountcy of the authority of the Mitakshara that it prevailed even in Bengal and Assam on all those matters on which the Dayabhaga was silent.

Main Difference between the two Schools

The Mitakshara and Dayabhaga Schools fundamentally differed on certain matters. The basic differences between the two were:

(a) Ownership in the joint family

The question of ownership is based on two different principles by the two authors. Ownership in this context refers to a share in the joint family.

In the Mitakshara School, Vijnaneshwar held that there were two different kinds of property. A man could give away to whom he willed his selfearned property
while in the case of ancestral property the principle of *janma-svatva-vada* held. *Janma* means birth and the whole expression means “the principle of ownership by birth” (Karve, 1968: 344).

The doctrine of son’s (i.e., son, son’s son and son’s son’s son) right by birth in the joint family property was a unique contribution of this school to Hindu jurisprudence. This doctrine meant that the moment a son was born; he acquired an interest in the joint family property which, by partition, could be, at any time, converted into separate property. No system in the world had anything near the doctrine of son’s birthright. In other words the joint family property did not pass by inheritance but it goes to those who, among the group known as coparceners, survive others, i.e., are able to live longer than others.

Under the Dayabhaga School Jeemutavahana enunciated a principle called *uparamasvatva-vada*. *Uparma* means death, *svatva* is ownership and *vada* is principle. The whole expression means the “principle of ownership by death”. It means that the rights to ancestral property accrue only after the death of the person who was in possession of it. Jeemutavahana also said that a man can, during his lifetime, give away his property (Karve, 1968: 344). The doctrine of son’s birthright and the devolution of property by survivorship did not find any place. Under the Dayabhaga School, sons had no right by birth in any property, and all properties devolve by inheritance. So long as the father is alive, he is the master of all properties whether ancestral or self-acquired (Diwan, 2006: 56).

The concept of the joint family property under the Mitakshara School implied the notion of community of ownership and unity of possession. This expression meant that before partition, no individual coparcener could say that he owned so many shares in the joint family property. The interest of each coparcener was a fluctuating interest, the deaths may augment it, and births may diminish it. In other words, if there are more births of son’s there are more persons having an interest in that property, and if at that stage partition took place, their shares would be less. But if some coparceners died and then partition took place, the share of surviving coparceners in the property would be more. Since there was no concept of birthright under the Dayabhaga School, coparceners had specified and ascertained shares in the joint family property and their interest did not fluctuate on births or deaths in the
family property. Under both the schools the principle of unity of possession is the same (Ibid: 57).

From the aforesaid two notions, it follows that under Mitakshara School neither the father nor any other coparcener can ordinarily alienate the joint family property. Under the Dayabhaga school there is no such restriction and each coparcener has full right of alienation of his undivided share in the joint family property, though the karta, like the Mitakshara karta, can alienate joint family property only in certain special cases.

(i) The Consequences of the Two Principles

Vijnaneshwar was equally clear in his position, the consequences of which were as follows: (1) a man had absolute ownership of self-earned property but he was only a part-owner of his ancestral property. His rights of disposal of the latter were very restricted. (2) only the self-acquired property could be gifted away or spent by a man. (3) ancestral property was held in common by a man and his descendants – they were co-shares and co-holders of the property. (4) the proper time for division of property wished to effect partition. The rule of partition as laid down by Vijnaneshwar works in such a way that any member of a joint family could demand partition. A person had a right in the joint property from the moment of conception. Supposing a partition had occurred and a brother was born to say F within nine months of the partition he would have got his share (Karve,1968:344-345).

Jeemutavahana’s principle “ownership by death”, had the following implications: (1) a man had absolute, unconditional ownership of whatever he owned, (2) he could give the property, to whom he chose – he could spent it as he liked, (3) all property, self-earned and ancestral, was of the same kind as far as rights of ownership and inheritance were concerned, and (4) the proper time of division of property was at the death of the owner (Ibid:344).

The way in which Jeemutavahana’s principle was commented on by his later followers and by the Calcutta and Patna courts of justice, with the help of Pundits during the British times worked out as if a man having two sons died, his sons could divide the estate equally. Once the partition was made the holder remained the sole and absolute owner of the property during his life-time and nobody could demand partition.
(ii) The Principles of Division

The way in which property was divided was very simple in the Dayabhaga scheme. Each time a man died intestate the property held by him was divided equally among his sons. If he was holding property in common with the brothers then the property (a share equal to his own) of the brothers would be first set aside and his share would be divided between the sons (Karve, 1968:346).

In the Mitakshara region on the other hand a family was also joint because property was held jointly by all the male members.

Mitakshara joint family and coparcenary

*Coparcenary:* Coparcenary is narrow body of persons within a joint family, and consists of father, son, son’s son and son’s son’s son. Like joint family, to begin with, it consists of father and his three male lineal descendants; in its continuance the existence of the father-son relationship is not necessary. Thus, a coparcenary can consist of grandfather and grandson, of brothers, of uncle and nephew and so on. The rule is that so long as one is not removed by more than four degrees from the last holder (senior most living lineal male ancestor) of the property, howsoever removed one may be from the original holder, one will be a coparcener. But if one removed by more than four degrees, one will not be a coparcener. For example, A is the father and B to H are his seven lineal male descendents. It is evident that coparcenary consists of A, B, C and D and E, F, G and H are not coparceners.

*No female can be a coparcener:* Hindu Women’s Right to Property Act 1937. In Mitakshara coparcenary, no female can be its member, though they are members of the joint family. It means that no female had any interest by birth in the joint family property. She had no right of survivorship or partition, though if a partition took place certain females were entitled to a share.

In the coparcenary system some complications were created by the Hindu Women’s Right to Property Act, 1937. Under the Act the undivided interest of a coparcener on his death did not go by survivorship to coparceners, but his widow took it as heir, though she took it as a limited succession his interest in the joint family property as it stood at the time of his death. Section 3(3) gives the widow a right to partition also. The quantum of interest to which a Hindu widow is entitled is to be
determined as on the date on which she seeks partition. The result of the Act is that
the right which the other coparceners had under the Mitakshara School of taking that
interest by survivorship remains suspended so long as that estate enures. On the death
of a coparcener, there is no dissolution of coparcenary, so as to carve out a defined
interest in favour of the widow. If she claims partition she is severed from the other
coparceners and her interest becomes a defined interest in the coparcenary property,
and the right of the coparceners to take by survivorship is extinguished. But if she
does not ask for partition, on her death, their interest will pass by survivorship to other
coparceners. The Hindu Women’s Right to Property Act has been repealed. A new
rule succession of certain females to the undivided interest of the coparcener has been

(b) In respect of law of succession

The Mitakshara School based its law of inheritance on the principle of
propinquity (nearness of blood-relationship or community of blood), while the
Dayabhaga school based its law of succession on the principle of religious efficacy or
spiritual benefit.

But the Mitakshara did not give full effect to the principle, and limited it by
two subsidiary rules: (i) exclusion of females from inheritance, and (ii) preferences of
agnates over cognates. These subsidiary rules made the Mitakshara law of succession
reactionary. Thus, if a Hindu died leaving behind a son and a daughter, by application
of the first rule, daughter would be excluded and son would get the entire property.
Similarly, if a Hindu died leaving behind a son’s son and daughter’s son, the son’s
son would succeed to the entire property and daughter’s son would be excluded by the
application of the second rule.

Under the modern Hindu law, this difference between the two main Schools is
no longer tenable. Under the Hindu succession Act, 1956, there is one uniform law of
succession for all Hindus, to whatever school or sub-school they may belong.

Vijnaneswar who came before Jeemutavahana took a position consciously
against such a point of view. He said that the matter of division of property (daya)
was not a religious transaction involving certain samskaras. Even those who had no
samskaras had property to divide. This was a purely secular matter falling within
what is termed Vyavahara. The right to property could not rest on the duty of sraddha
but rested on consanguinity. He used the age-old word *sapindya* and gave it a novel interpretation, *spinda* were those who shared common body particles. On this definition the right of the son, the grandson etc., was established as immediate successors to property. This definition of *sapindya* did not make clear why an own brother with whom one shared body-particles should come later than the son or grandson, i.e., the descendants. On Jeemutavahana’s principle it is understandable as the son and son’s son brought the largest spiritual benefit as givers of *pinda* (Karve, 1968: 350).

Vijnaneshwar performed another feat of logical irrelevance in that he declared that those who together brought a person to life were *spinda* as they were creators of one *pinda*. The word *pinda* here has the connotation ‘individual’ which one finds in late classical Sanskrit. By this definition he made the wife a *sapindya* of the husband; the wives of different brothers *sapindya* of their husbands, husband’s brothers and husband’s brother’s wives. These queer gymnastics were performed in order to justify the right of a widow in the property in case a man died without heirs (Ibid).

Jeemutavahana said that the property of a dead person went to him who brought the greatest spiritual benefit to that person. A dead person got spiritual benefit when he was offered *pinda* (the food-ball) on certain days prescribed by the Hindu ritual. Food called *pinda* was offered by a man to his father, grandfather, great grandfather and their wives. A minute portion (what remained sticking to the hand, *lepa* – in the action of making a ball – is then offered to the great – grandfather and two further ancestors, merely water is given to further three ancestors. Apparently, at some later date it was permitted to offer *panda* to one man by name. This was called *ekoddista* offering. Those who gave and received a *pinda* were called *sapindya*. Jeemutavahana said that those who had the duty to give *pinda* had the right to inherit. The widow of a man dying without an heir could inherit of she offered *pinda*. Once sonship was established he had to perform the *sraddha*, i.e., the giving of *pinda* (Ibid: 349-350).

Jeemutavahana’s position is more logical and more consistent with older usage. The *sraddha* ritual performed to give *pinda* to an ancestor is performed by a man in such a way that he gives *pinda* to many of his ancestors and their wives including his father and mother. A *sraddha* could be performed by a widow for her
husband only. Presumably, the king inheriting a property also performed an *ekiddista sraddha* (Ibid:352). This attitude is also reflected in the *pinda* offering because a man gives *pinda* by name to his three immediate ancestors only. If the daughter has a son, the estate remained in her son’s line once she had inherited. The rights of the widow and the daughter were established through the *ekiddista-sraddha* they were allowed to perform according to Jeemutavahana. The right of the daughter’s son rested on the fact that he could give *pinda* to his mother’s ancestors and so the mother’s father was spiritually benefitted (Ibid: 355).

The Mitakshara principle of consanguinity held good as regards the daughter and the daughter’s son and his special principle of consanguinity explained the widow’s position. The commentators made no distinction between inheritance and succession. The distinction was made but not in the *Smriti* literature. Inheritance is coming into possession of certain material and spiritual goods belonging to somebody connected by blood and/or ritual bonds. Succession is coming into possession of a certain status and the right to do certain things following that status. In the case of women, the difference between inheritance and succession became clear in practices which were followed at least since the above commentaries were written right through the British period upto the present (Ibid:355-356).

A widow was not allowed to visit the innermost sacred shrines of the temples, she could not preside at any familial ritual which had the sacred fire as part of it. All ritual had the fire and so she could not take part in it. As a widow she was inauspicious and could not be present at celebrations. Marriage, thread ceremony etc., were done with the sacred fire as the main deity. At these ceremonies an invitation is given to god for whom a procession goes to a temple. In former times, invitations were given personally by a man and a woman – a husband and wife preferably but otherwise by a man accompanied by a kinswoman whose husband was alive. Thus a widow could inherit property but through the death of her husband lost all the rights to perform certain rituals. If her daughter was to marry, she had to call the husband’s brother or uncle to give away the daughter. On such occasion the brother-in-law and his wife perform the fire worship and give away the bride. On the occasion of the marriage of a widow’s son again the uncle (father’s brother) and his wife would ‘receive’ the bride.
The familial and public rituals could not be performed by a man if he had no wife. Though a man had a position independent of his wife, he lost status when he became a widower. As men practiced polygyny, the chances of a man becoming a widower were few. But there are enough evidences in ancient literature and modern practice to show that a widower did lose some right which he would otherwise have as a head of the family. All familial and public Hindu rituals were always performed with the help of the wife. A man who had no wife could not perform a public sacrifice or a domestic ritual but apparently from ancient times men had found a way out of this difficulty. The first such reference is made by Kalidasa who said that Rama, after abandoning his wife Sita, performed many sacrifices without getting married again. This he could do by placing beside him a golden image of Sita.

So it is clear how property was distributed in the Mitakshara School as well as in the Dayabhaga School. In the former, the joint family property did not pass by inheritance but it went to those who, among the group known as coparceners, survive others, i.e., are able to live longer than others. No female had any interest by birth in the joint family property where as in the latter, the rights to ancestral property accrue only after the death of the person who was in possession of it. Sons had no right by birth in any property, and all properties devolved by inheritance. A query raised in these Schools which is to be clarified is what consists of the stridhan of women. Is it her absolute property which she can give to others too?

**STRIDHAN AND WOMAN’S ESTATE**

*Stridhan* is as defined as *Yajnavalkya* with the expansion of the word ‘adya’. The result is, according to Mitakshara, property of any description belonging to a woman is *stridhan*. It may be a gift from relations or strangers, or it may be property acquired by inheritance or partition or her earning or property acquired from any other source.

**Concept of stridhan under Vedic literature**

The concept of Stridhan is as old as the Rigveda. The references of Rigveda indicate that the woman did hold separate property and had dominion over it. Secondly, the Rigveda Society seems to have recognized the following items of property as constituting a woman’s Stridhan:
(a) Gifts from parents and brothers,
(b) Gifts before the nuptial fire,
(c) Gifts in the bridal procession,
(d) Earning by mechanical arts,

There are also references to daughters’ growing old in their father’s house and getting a share and to a childless widow claiming husband’s property.

In marriage hymns of the Atharva Veda, evidence of giving dowry to bride by brother or parents is also clear. The Mantra is recited at the time of marriage telling the bride “blest be the gold offered to thee.” In the “Taittiriya Samhita of Yajur Veda” there are references of father making gifts to daughter at the time of daughter’s marriage. It is said that these gifts would become her own property which means that she had, even after marriage absolute dominion over such property unfettered by her husband. The Hindu woman of Vedic society did hold property independently and effectively. She, further, had a right to dispose it off according to her own choice (Kant, 2008: 335).

The difficulties besetting an enquiry into the question what constitutes stridhan, arise from the fact that majority of sages and commentators give neither an exact definition of stridhan, 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 (Diwan, 2006:365).

According to the Smritikars, the stridhan constituted those properties which women received by way of gift from relations which included mostly movable property (though sometimes a house or a piece of land was also given in gift), such as ornaments, jewellery and dresses. The gift made to her by strangers at the time of the ceremony of marriage (before the nuptial fire), or at the time of bridal procession also constituted her stridhan.

From the tenth century onwards, Vijnanesvara’s Mitakshara (1080-1100) and the Dayabhaga of Jumitvahana (1100-1150) became the chief source of Hindu law. The former gave priority to the unmarried as well as to the unprovided though married daughters, while the latter accorded ownership rights of stridhan to the woman which, if not willed, was to devolve equally upon sons and unmarried daughters. While the
Mitakshara included in *stridhan* any property belonging to a woman, the Dayabhaga School did not include immovable property within its scope. Dayabhaga of Jimutavahana is the leading authority in Bengal. It rejects the definition of *stridhan* given by Mitakshara and defines it as: “That alone is *stridhan* which she has power to give, sell or use independently of her husband’s control”. These differences in opinion of the jurists show the absence of any uniform pattern. The scope of *stridhan* was wide and liberal to some and quite limited according to others. This cleavage in the opinions remained throughout.

On the basis of Manu and the Mitakshara’s comments on stridhan, Indra maintains that women in ancient India, in keeping with their circumscribed religious, political, and social rights and status, enjoyed only a limited legal status over it. Manu had enjoined women to consult their husband before using stridhan. If borrowed by the husband for purposes of religious matters, illness, or if imprisoned, then he was not under obligation to return it. But if he seized it in any other manner or under other circumstances, he must make it good. Two categories were made to distinguish ownership rights of women over *stridhan*: *Saudayika* over which women had complete control and *Asaudayika* which may have included immovable property gained through inheritance. The latter could be used by women but could not be alienated (Sheel, 1999: 7). Property inherited by a woman, obtained by her on partition, gifts from strangers, property acquired by her by mechanical arts and gifts of movable property made by the husband are not *stridhan* according to Dayabhaga.

The imperatives of a patrilineal order, however, limited women’s rights in property to rights over her *stridhan* as well as gifts given at the time of marriage. It is important to note that even in modern time *stridhan* or women’s property consisting of gifts given at the time of marriage constitutes women’s property rights. Property for women is thus even now linked to her marriage despite the constitutional dictum of equal rights for men and women in all aspects. Why is there a need to uphold the notion of a separate property for women? In the changed circumstances of present times, the upkeep of *stridhan* as women’s separate property appears redundant and with little justification. The reformulations and rearticulations of tradition and beliefs that these Acts upheld ultimately has had far-reaching consequences on the institution of modern dowry.
Enumeration of Woman’s property

The women’s property is enumerated as below:

1. Gift and bequests from relation: From the early time this has been a recognized head of the stridhan. Such gifts may be made to 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.

2. Gifts and bequests from strangers: Property given by gift inter vivos or by will by strangers (i.e., other than relations) to a woman, during maidenhood or widowhood, constitutes her stridhan. The same is the position of gifts given to a woman by strangers before the nuptial fire or at the bridal procession.

3. Property acquired by self-exertion and mechanical 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.

4. Property purchased with stridhan: In all schools of Hindu law, it is a well settled law that the properties purchased with stridhan, or with the savings of stridhan, as well as all accumulations and savings of the income of stridhan, constitute stridhan.

5. Property acquired by compromise: When a person acquires 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 where under she gives up her rights to her stridhan will be stridhan. When she obtains some property under a family arrangement, whether she gets as stridhan or woman’s estate will depend upon the terms of the family arrangements.

6. Property obtained by adverse possession: In all Schools of Hindu law, it is a settled law that any property that a woman acquires at any stage of her life by adverse possession is her stridhan.
7. **Property obtained in lieu of maintenance:** Under all schools of Hindu law, the payments made to a Hindu female in lump sum or periodically for her maintenance, and all the arrears of such maintenance constitute her *stridhan*. Similarly, all movable and immovable properties transferred to her by way of an absolute gift in lieu of maintenance constitute her *stridhan*.

8. **Property obtained by inheritance:** A Hindu female may inherit property from a male, or a female. She may inherit it from her parent’s side or from husband’s side. The Mitakshara considered all inherited property as *stridhan*. But the Privy Council in a series of decisions held such property as woman’s estate. In one set of cases, the Privy Council held that the property inherited by female from males, is not her *stridhan* but woman’s estate. In another set of cases, it took the same view in respect of property inherited from the females. This is the law in all the schools except the Bombay school. According to the Bombay school, the property inherited by a woman from females, is her *stridhan*. As to the property inherited from a male, the female heirs are divided into two: (a) those who are introduced into the father’s *gotra* by marriage, such as intestate’s widow, mother, etc., and (b) those who are born in the family such as daughters, sisters, brother’s daughters, etc. In the latter case the inherited property is *stridhan*, while in the former case it is woman’s estate. After the coming into force of the Hindu Succession Act, 1956, she takes all inherited property as her *stridhan*.

9. **Share obtained on partition:** When a partition takes place, except in Madras, father’s wife, (not in the Dayabhaga School) mother and grandmother take a share in the joint family property. In the Mitakshara jurisdiction, including Bombay and the Dayabhaga School, it is an established view that the share obtained on partition is not *stridhan* but woman’s estate. This property is also now her absolute property along with *stridhan* after the coming into force of the Hindu Succession Act, 1956 (Diwan, 2006: 366-368).
Characteristic features of stridhan

The property falling under heads (1) to (7) is stridhan property and (8) and (9) is women’s estate. In a Bombay school, certain categories of inherited property are also stridhan.

The pre-1956 Hindu law classified stridhan from various aspects so as to determine its characteristic features; such as source from which the property was acquired, the status at the time of acquisition, i.e., whether the female was maiden, married or widow, and the school to which she belonged. Without going into details, broadly speaking, the stridhan has all the characteristics of the absolute ownership of property. This implies two features:

1. The stridhan being her absolute property, the female has full rights of its alienation. This means that she can sell, gift, mortgage, lease, exchange or if she chooses, she can put it on fire. This is entirely true when she is a maiden or a widow. Some restrictions were recognized on her power of disposal, if she was a married woman. If she was a married woman, the stridhan, was classified under two heads : (a) the saudayaka (literally it means gift of love and affection), i.e., gifts received by a women from relations on both sides (parent’s and husband’s), and (b) the non-saudayaka, i.e., all other types of stridhan such as gifts from stranger, property acquired by self-extertion or mechanical art. Over the former she had full rights of disposal, but over the latter she had no right of alienation without the consent of her husband. The husband also had the power to use it.

2. She constituted an independent stock of descent. On her death all types of stridhan passed to her own heirs.

The pre-1956 Hindu law laid down a different law of succession to stridhan. The law was different in different schools and it was different for different kinds of the stridhan (Ibid: 368). The new law of succession to woman’s property has been laid down in sections 15 and 16 of the Hindu Succession Act, 1956.

Woman’s Estate

In the olden days, woman as a general rule was considered incapable of holding any property. Several Smriti writers held that a woman was incompetent to perform religious rites on account of her impurity, and it was argued that as riches
were ordained for sacrifices. They should be allotted to the persons who were concerned with religious duties and not be assigned to women, to fools and the people neglectful of holy obligations. Accordingly it was produced for the sake of solemn sacrifices, and they who are incompetent for the celebration of these rites cannot participate in the property but are entitled to food and raiment (Kant, 2008 :342).

Manu says “never shall women secret form the wealth of the family common to many or even from the property of her own family without the permission of her husband, and a wife, son, a slave, these three even are ordained destitute of property; whatever they acquire becomes his property whose they are” Taittirya Samhita allowed her no share in her deceased husband’s property. As her position subsequently improved she was assigned certain amount of movable property. In the Mahabharat her right to her deceased husband’s wealth is restricted to two thousand panas and the right allowed to her by Vyas is similar. According to Manu a woman was incapable of holding any property. Any property acquired by her belonged to his heirs whose slave she was. But subsequently her position improved, the religious notion was imported to deprive her of the right of inheritance (Ibid: 342-343).

In contrast to stridhan, female possessed another kind of property known as ‘Estate’ as:

“A special form of Estate inherited by a woman from a male is what is commonly known as the widow’s estate. The Hindu Women’s Rights to Property Act, 1937 under section 3(3) has mentioned it as the united interest known as a Hindu Woman’s Estate. Such interests are derived if woman inherit as daughter, mother, grandmother, sister or as any other relation.” For example, if according to the will of the testator it is provided that wife shall hold it during her life time and the remainder should go to the heirs of her husband. In such case the wife shall take life estate and she shall enjoy it throughout her life”. Thus, the distinctive feature of the estate is that (a) it reverts to the heirs of the last male owner or to the heirs of the last full female owner and (b) she cannot dispose of the property but she is entitled to the beneficial enjoyment of the Estate. Woman’s estate generally refers to the immovable property of the family, e.g. House, Land, etc. (Ibid: 342).

The term “woman’s estate” in its larger connotation means all property which has come to a woman by any means and from any source whatsoever and includes
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both property in which she has absolute interest (*stridhan*) and property in which she has limited or qualified interest. A Hindu female may inherit property from a male or a female either her parent’s side or her husband’s side. The Mitakshara School considered all inherited property as *stridhan* but the Privy Council held that property inherited by a female from males is not her *stridhan* but the woman’s estate. Also, when a partition takes place, under the Mitakshara and Dayabhaga school it was an established view that the share obtained on partition was not *stridhan* but the woman’s estate (Rao, 2006: 325).

The Hindu Woman’s Right to Property Act, 1937, conferred on the widow of a Hindu and his widowed daughter-in-law and granddaughter-in-law entitlement to inherit his estate, not only in default of but along with his male issues. Their shares were stated in the Act. The widow of a deceased coparcener succeeded, in a Mitakshara family, to his interest in the coparcenary property whether her husband had left a male issue or not. The Act thus defeated the right of survivorship of his collaterals. The interest devolving on a Hindu widow in the above case was limited interest known as Hindu woman’s estate.

The characteristics of a woman’s estate is that she takes it as a limited owner, she is an owner of this 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.

**Characteristic features of woman’s estate**

Property obtained by inheritance and share obtained on partition constituted the Hindu female’s limited estate, known as woman’s estate, sometimes also called as widow’s estate.

**Power of Management:** 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 *stridhan*. 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 re-marriage, adoption, death, or surrender.
Power of Alienation: The female owner being a holder of limited estate has limited powers of alienation. She can alienate the property for: (a) legal necessity, i.e., for her own need and for the need of the dependents of the last full owner, (b) for benefit of estate, and (c) for the discharge of indispensable religious duties such as marriage of daughters, funeral rites of her husband, his sraddha and gifts to Brahmans for the salvation of his soul. In short, she can alienate her estate for the spiritual benefit of the last full owner, but not for her own spiritual benefit (Diwan, 2006: 369).

So stridhan is the absolute property of the woman and she can use according to her own will. No one else have the right to own it without her consent.

PROPERTY ACTS RELATED TO WOMEN

The right to property held by women differs from religion to another in India. They differ among Hindus, Muslims, Parsis, Christians and others. During the British period and after, a number of laws have been passed to improve the position of women in relation to property. The effects of these laws are briefly assessed.

The Married Women’s Property Act of 1874

The Married Women’s Property Act (Act III of 1874) was one of the earliest laws which widened the scope of stridhan.

Under the Act, the separate property of the woman included:

1. Wages and earnings of married woman in any employment, occupation or trade carried on by law;
2. Money acquired through literary, artistic and scientific skill;
3. All savings from and investment of such wages; and
4. A Policy of Insurance effected on her own behalf.

This extension of the definition of stridhan increased the right to own and acquire property and thereby provided an incentive to women for being engaged in remunerative outside work (Raj and Sharma, 1994: 80).

The Hindu Law of Inheritance (Amendment) Act, 1929

The next legislation in the direction of extending her property rights was the Hindu Law of Inheritance (Amendment) Act, 1929. This Act extended to the whole of India, except the then Part ‘B’ State. The Part B states were former princely states or
groups of princely states, governed by a *rajpramukh*, who was often a former prince, and an elected legislature. The *rajpramukh* was appointed by the President of India. The Part B states were eight i.e. Hyderabad, Saurashtra, Mysore, Travancore-Cochin, Madhya Bharat, Vindhya Pradesh, Patiala and East Punjab States Union (PEPSU), and Rajasthan. It was applicable to persons who belonged to the Mitakshara School and ‘to property of males not held in coparcenary and not disposed of by will’. This law recognized son’s daughter, daughter’s daughter, sister and sister’s son as among the heritable *Bandhus* and were placed immediately after father’s father and before father’s brother (Ibid: 90-91).

**The Hindu Women’s Right to Property Act, 1937**

One of the most important enactments ‘to give better rights to women in respect of property, was the Hindu Women’s Right to Property Act, 1937 passed mainly due to the efforts of Mr. Deshmukh. The Act extended to the whole of India except the then Part ‘B’ States. It was applicable in the case of a Hindu dying intestate. The provisions of the law as embodied in Section 3, were applicable to a Hindu who died intestate notwithstanding any rule of Hindu Law or Custom to the contrary. According to the Law, a widow was entitled to the same share which a son received in the case of property in respect of which he died intestate (Ibid: 91).

Mayne aptly pointed out the advantages of the Act. According to him, the Act made “Mitakshara widow succeed to the coparcenary interest of her husband in the partable of the Joint family and along with his male issue to his separate property and to enable a Dayabhaga widow to succeed along with the male issue in all case.” As for the self-acquired property of an individual, the wife, the daughter and the mother were as usual recognized as heirs. It should, however, be noted that the property they inherited was in the nature of a restricted estate, for at the death, it passed on the next heir of the male from whom she inherited (Ibid: 91-92).

In respect of separate property of a Mitakshara Hindu and in respect of all properties of a Dayabhaga Hindu, the Act introduced three widows, viz., intestate’s own widow, his son’s widow and his son’s son’s widow as heirs along with the son, grandson and great grandson, as also in their default. The widow took a share equal to the share of a son and, in default of the son took the entire property. If there were more than one widow, all of them together took one share. For instance, if a Hindu
dies leaving behind his separate property and his own widow son’s widow and grandson’s widow, each of the widows will take 1/3 share in the property. Or, take another example, P dies leaving behind two widows, $W_1^1$ and $W_2^1$ and two sons $S_1^1$ and $S_2^1$. He leaves behind separate property, $S_1^1$ and $S_2^1$ each will take 1/3 and $W_1^1$ and $W_2^1$ each will take 1/6 (both widows together taking one-third share (Diwan, 2006: 372).

The Woman’s estate has now been converted into *stridhan* by S. 14, Hindu Succession Act, 1956. Any property that a Hindu female will get after June 17, 1956, will be her absolute property unless specifically given to her with limitation. The woman’s estate over which she has possession when the Act came in to force (June 17, 1956) is converted into her absolute estate. The old Hindu law of woman’s estate and reversioners is still relevant in respect of property over which she had no possession when the Act came into force (Ibid: 373).

**The Hindu Code, 1948**

On 9 April 1948 a revised Hindu Code was introduced in the Constituent Assembly (Legislative). Its main provision regarding women’s right to property and inheritance consisted of the following changes:

1. The proposed law of inheritance deferred the Mitakshara coparcenary and adapted to Dayabhaga rule which accorded absolute ownership rights to the heir, male or female.

2. Succession was to be based on blood relationship to the deceased rather than on cognatic or agnatic relationship.

3. The widow of a deceased Hindu, the daughter and the widow of a predeceased son were to be accorded the same rank as a son in the matter of inheritance. The daughter was to be provided half of the son’s share in parental property.

4. A large number of female heirs were introduced than either under the Dayabhaga or the Mitakshara.

5. Abolition of all conditionalities in the inheritance of female heirs in practice earlier such as their marital or economic status. They were to inherit by virtue of being heirs. Besides inheritance, the Bill legitimized civil marriage in addition to sacramental marriage. It also recognized a marriage as valid irrespective of the caste or the sub-caste of the parties entering into the
relationship. In addition, it contained significant provisions for maintenance, adoption, divorce and prescribed monogamy (Sheel, 1999: 11).

But, in spite of the incorporation of suggestions regarding the re-introduction of Mitakshara joint family among other measures, the Bill failed to appease the orthodox groups and was finally dropped by the Government on 26 September 1951. Ambedkar resigned in protest. The Bill was passed only in a piecemeal fashion after a few years with its radical edges rounded off to render it less offensive to its opponents. The half-hearted approach revealed the patriarchal state’s compulsions, ambivalence and the lack of will to make social justice a reality (Ibid).

Hindu Succession Act, 1956

The Hindu Succession Act 1956 is a landmark in the history of Hindu Law for a number of reasons. It has made qualitative changes in the Hindu Law of Succession.

Sub-section (1) of Section 14 to the Hindu Succession Act runs as under:

Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section ‘property’ includes both movable and immovable property acquired by a female Hindu by inheritance or devices, or at a partition or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill exertion, or by purchase or by prescription or in any other manner whatsoever, and also any such property held by her as stridhan immediately before the commencement of this Act (Diwan, 2006:374).

It may be seen that the above definition of property includes all the heads of Vijnaneshwar’s enumeration of property.

Acquired Property

The legislature wanted to cover all modes of acquisition of property by a woman known to Hindu law and if the property so acquired was possessed as a limited estate or widow’s estate, it is now enlarged into an absolute estate. The
different ways in which the property can be acquired are enumerated in the explanation. These different ways are through:

(i) **Inheritance:** Where a female Hindu acquired property by inheritance she did so only as a qualified owner. Where the husband died after the Hindu Women’s Rights to Property Act, 1937, the widow’s limited estate became her absolute estate under Section 14(1) of the Hindu Succession Act.

(ii) **Partition:** When the property was given to the female Hindu at the time of partition it was only a limited estate. The exception was when it was specifically given to her to be held by her as absolute *stridhan*. After the commencement of the Hindu Succession Act, 1956, vide Section 14, she takes as full owner.

(iii) **Maintenance:** The property, if given in lieu of maintenance falls within the scope of section 14(1) as the right of maintenance of a Hindu female in the family is a pre-existing right.

(iv) **Acquisition by own skill exertion:** The property acquired by skill and exertion fell within the expression “Stridhan”. In Dayabhaga, however till the death of the husband, the woman could not exercise absolute rights in such property also. Under Section 14(1) it has been clearly expressed that the property acquired by skill and exertion is her absolute property which can be disposed of at any time as per her desire.

(v) **Purchase and Prescription:** The property purchased by the woman was her *stridhan* and she had absolute title unless it was proved that it was purchased from the funds of the estate inherited from her husband. Now, unless it is shown that she is only a *benamidar*, or the purchase by her was in trust for another, it was her absolute property under Section 14(1).

(vi) **Acquired in any manner whatsoever:** This is a wide expression to cover the property acquired by a female by any method whatsoever (Rao, 2006: 331-333)
Possession of Property

Section 14(1) is applicable only when the property acquired before the Act is in possession of the female at the time of commencement of the Act. The expression ‘property’ and ‘possession’ are to be given the widest possible interpretation. The use of the expression “possessed by” instead of “in possession of” in Section 14(1) was intended to enlarge the meaning of the expression to cover cases of possession in law where land has descended to a female Hindu but she has not actually entered into it. Thus, this provision would become applicable to any property which is owned by a female Hindu even though she is not in actual, physical or constructive possession of that property (Ibid:333-334).

Sub-section (2) of s. 14 retains the power of any person or court to give limited estate to a woman in the same manner as a limited estate may be given to any other person (Diwan,2006: 374). A deception is given to Section 14(1) in the form of Section 14(2). Where a property is possessed by a female Hindu as a limited estate it would become on and from the date of commencement of the Act her absolute estate. However, if she acquires property after the Act with a restricted estate Sub-section (2) would apply. These acquisitions may be under the terms of a gift, will or other instrument or a decree or order or award (Rao, 2006: 334).

Post-Act Women’s Property

Property given in lieu of maintenance: A Hindu female can also be granted property for her maintenance under a family arrangement, or under a partition. “The right of a Hindu widow to get maintenance out of the joint family property is an indefinite right, yet it is a right and she does not get maintenance gratis or by way of charity. She gets it in her right under Hindu law. If she is put in possession of certain properties in satisfaction of that right for her life, she is not a trespasser of property (Diwan,2006: 380).

Dowry

Dowry and traditional presents made to wife at the time of the marriage constitute her stridhan, and if the husband or her in-laws refuse to give it back to her, on her demand, they would be guilty of criminal breach of trust. Similarly, any item of Stridhan entrusted to them at the time of the marriage or thereafter and if they
refuse to give it to her on demand, they would be guilty of criminal breach of trust under section, Indian Penal Code (Ibid:383).

Succession

A person, so long as he is alive, is free to deal with his property in any way he likes. He is, by making a will, free to lay down his own scheme of distribution of his property after his death. This is known as a testamentary disposition. If he dies without leaving a will, it is the purpose of the law of inheritance to determine the persons who will take his property. In our contemporary world, someone must be the owner of the property, an individual, corporate person or state. The law of succession is classified as under:

1. Testamentary succession, and
2. Intestate succession.

The law of testamentary succession is concerned how best the effect could be given to the wishes of the testator (i.e., the person who made the will); what are the rules relating to making of a will and allied and subsidiary matters. The testator enjoys full freedom of bequeathing his property (Ibid:385).

The law of intestate succession is concerned with matters such as: who are the persons entitled to take the property i.e., who are the heirs; what are the rules of preference among the various relations; in what manner the property is to be distributed in case a person has more than one heirs; what are the disqualifications of heirs and the allied and subsidiary matters (Ibid: 385).

The law of intestate succession is more properly the law of inheritance. The law of inheritance consists of rules which determine the mode of devolution of the property of the deceased on heirs solely on the basis of their relationship to the deceased (Ibid).

The Hindu Succession Act, 1956 deals with intestate succession among Hindus. The subject matter is discussed under the following heads: (1) Succession to a Hindu male, (2) Succession to a Hindu female, (3) Disqualifications of heirs, and (4) General rules of succession.

Section 3, Hindu Succession Act

Some terms are important to understand viz.,
In the context of the extract provided, the following points are noted:

Intestate – A person who dies without making a will is known as “intestate”.

Heir: A person who is entitled to inherit property after the death of the intestate is known as heir.

Descendants: Descendants mean the offspring of a person. Immediate descendants of a person are his sons and daughters. The children of sons and daughters and their children, and so on, are also descendants. A person may have descendant through his sons or daughters up to any degree of descent. (See the Figure)

![Figure 3.1](image1)

Here ‘P’ stands for deceased person, ‘D’ for daughter and ‘S’ for son.

Ascendants: Ancestors of a person are known as ascendants. Immediate ascendants of a person are his father and mother. The father and mother of his father and mother are also his ascendants, and so are their parents up to any degree of ascent. (See the Figure)

![Figure 3.2](image2)

Here ‘P’ stands for deceased person, ‘M’ for mother, ‘F’ for father.
Collaterals: Collaterals are descendants in parallel lines, from a common ancestor or ancestress. For instance, brother is collateral, so is sister. Similarly, paternal uncle and paternal aunt and their children, maternal uncle aunt and their children are collaterals.

Agnates: When a person traces his relationship with another wholly through males, he or she is an agnate. For instance, brother, brother’s son, son’s son, son’s son’s son, father or mother, son’s daughter; son’s son’s daughter, etc. are agnates.

Cognates: Whenever in the relationship of a person with another, a female (or more than one female) intervenes anywhere in the line; one is a cognate to another. Number of cognates is larger than that of agnates. For instance, sister’s sons and daughters; daughter’s sons and daughters; mothers’ mother and father; father’s mother father and mother, mother’s father’s son and daughter (i.e. maternal uncles and aunts) are all cognates.

Devolution of interest in coparcenary property

1. On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara Law, the daughter of a coparcener shall—
   (a) by birth become a coparcener in her own right in the same manner as the son;
   (b) have the same right in the coparcenary property as she would have had if she had been a son;
   (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son (Diwan, 2006: 389).

2. Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

3. Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family
governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property had taken place and, -

(a) the daughter is allotted the same share as is allotted to a son;
(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation: For the purpose of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not (Ibid:389-A).

Succession to Hindu Male

Under the Hindu Succession Act, 1956, heirs of a Hindu male fall under the following heads:

Class I Heirs

In these pages the deceased Hindu, i.e., propositus is indicated by letter ‘P’, mother by ‘M’, widow by ‘W’, son by ‘S’ and daughter by ‘D’. The predeceased relations have been put in brackets in Figures (Ibid: 390).

Figure 3.3

In the Figure 3.3, the share will be divided into seven equal parts. One part shall be distributed to mother, propositus may be her legitimate son or adopted son or illegitimate son, she will inherit. She may be unchaste, she might have remarried, she might have been divorced, she remains a mother, and it is also immaterial whether her marriage with the propositus was void or voidable. But a stepmother is not in this category, she is included in Class II heir (Ibid: 391-392).

One part shall be given to the propositus’ widow i.e. wife of a valid marriage only. It is submitted that The Hindu Marriage Act, 1955, confers a status of legitimacy on the children of annulled voidable marriage and not on the wife of such marriage. A divorced wife will also not be his widow (Ibid: 392). Rest of the sons and daughters even deceased will get equal share.

Class II heirs

These are divided into nine categories. The rule is that an heir in an earlier category excludes all heirs in later categories. All heirs in one category take simultaneously between and take per capita (Ibid: 395).
Succession of the Property of a Hindu Female

Section 14, Hindu Succession Act, introduces fundamental changes in the concept of woman’s property. It abolishes Hindu Woman’s estate and converts existing woman’s estate (existing prior to the coming into force of the Act and over which Hindu female has possession) into her absolute property.

Section 15, Hindu Succession Act- Although Hindu woman’s limited estate has been abolished and, so long as the woman is alive, she has absolute power over all types of property (she is also free to dispose it off by will), yet for the purpose of intestate succession, the source of property is still material. The old Hindu law of succession to the property of a Hindu female (stridhan) was extremely complicated. The modern law of succession to the property of a Hindu female is simple though it suffers from some bad draftsmanship.

For the purpose of succession, the property of a Hindu female falls under the following three heads:

(a) property inherited by a female from her father or mother,
(b) property inherited by a female from her husband or father-in-law, and
(c) property obtained from any other source, by inheritance or otherwise.

It should be noted that the former two heads would become operative only if the female dies issueless. If she has her issues, the distinction between the sources from which she got the property is not material (Ibid: 414-15).

Heirs to property as specified under (c) above

This should be carefully noted that succession to the property of a Hindu female from whatever source except from father, mother, husband or father-in-law, it might be derived is governed by S. 15(1) and not under S. 15(2). Thus when a female inherits property from her brother, inheritance to it is governed by S. 15(1)

Under sub-section (1) of S. 15 heirs of Hindu female are divided into five categories called, ‘entries’. If there are no heirs in any of these five entries, property goes to the government by escheat. The general rule of preference is that heirs in an earlier entry exclude heirs in latter entries.

Entry (a) – In entry (a) there are the following heirs:
(1) Son, (2) daughter, (3) husband, (4) son and daughter of a pre-deceased son, and (5) son and daughter of a predeceased daughter (Diwan, 2006:415).

\[ (P) \rightarrow H \]

\[ S \quad D \quad D \quad S \]

\[ DS \quad DD \quad SS \quad SD \]

**Figure 3.4**

*Shares of heirs in entry (a):* The heirs of Entry (a) are simultaneous heirs. They inherit the property of *proposita* simultaneously. From S. 16, Rules 1 and 2, following three rules can be deduced relating to distribution of property among the heirs of entry (a):

1. Son, daughter and husband each take one share.
2. Among the heirs of the branches of predeceased sons, the predeceased daughter, the doctrine of representation applies, i.e., the children take the same share which the daughter or son would have taken had she or he been alive.
3. Among heirs of a branch they take *per capita*.

The above rule can be explained with the aid of following illustrations:

\[ (P) \rightarrow H \]

\[ D \quad S_1 \quad S_2 \quad S_3 \]

**Figure 3.5**

In the above Figure, P leaves behind her husband H, three sons, \( S_1 \), \( S_2 \), \( S_3 \), and a daughter D. Each will take 1/5 share in the property.
In the above Figure, H will take 1/5, S\(^1\) will take 1/5 and D\(^1\) will take 1/5. Had D and S been alive, they would have taken 1/5 each. Since D and S are dead they will transmit their shares to their representatives, who will take per capita. Thus, D’s 1/5 will go to DD, DD\(^1\) and DS, each will take 1/15, S’s 1/5 will go to SS\(^1\), SS\(^2\), SS\(^3\) and SD, each will take 1/25 share (Ibid:416).

**Entry (b)**: On the failure of heirs in Entry (a), the property will devolve on the heirs of Entry (b) Entry (b) runs as under:

“Under the heir of the husband”

This entry lays down that on the failure of heirs in Entry (a), the property will devolve as if it is the property of her husband. In this Entry ‘husband’ means the last husband of the *proposita*, i.e., the one who was her lawful husband when she died. Since the property is deemed to be that of her husband, the inheritance will be determined by the scheme laid down in the Act relating to succession to the property of a Hindu male. In other words, order of succession will be: first to Class I heirs; on their failure to Class II heirs; on their failure to agnates; on their failure to agnates; on their failure to cognates. On the failure of cognates, property will devolve on the heirs of Entry (c).

**Entry (c)**: In this Entry there are only two heirs: father and mother of the *proposita*. Mother does not include a stepmother. Father does not include a putative father or stepfather. Natural or adoptive father is included.
When the *proposita* leaves behind both father and mother, they inherit simultaneously and between them take *per capita*. In diagram, M and F will take $\frac{1}{2}$ each.

**Figure 3.7**

*Entry (d):* Upon the failure of heirs in Entry (c), the property of the intestate female devolves upon ‘the heirs of father’. Here the expression father means the same thing as in Entry (c). The devolution of the property under this Entry will take place assuming that the property is that of the father. This means that heirs will be the heirs of a Hindu male, i.e., Class I, Class II, agnates and cognates.

*Entry (e):* Upon the failure of heirs in entry (d), the property will devolve upon ‘the heirs of the mother’. The devolution of property of the *proposita* will take place here as if it is the property of the mother. This means heirs of a Hindu female, from Entry (a) to Entry (c) (Ibid: 417).

**Property inherited from father or mother**

Under S. 15(2) (a), only the property that a female inherits from her father or mother is included. The property which she gets in gift at the time of her marriage from her mother or father is not included. Such a property is her *stridhan* and succession to it is governed by S. 15(1). Similarly, if she has converted the property she inherited from her parents into some other property; succession will not governed under S. 15(2).

If a *proposita* had inherited property from father or mother, the heirs fall in the following two categories:
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Category (1): Sons, daughters, sons and daughters of predeceased son and sons and daughters of a pre-deceased daughter.

In this category it may be noted, husband is not an heir.

The rule of distribution of property among the heirs of this category are the same as of Entry (a) discussed above, under the head, “Heirs to property as specified under (c)” above (Ibid: 417).

Category (2): Upon heirs of the father. On the failure of heirs in category (1), the property devolves upon the heirs of father, i.e., as if it was the property of the father. Here there seems to be a flaw in draftsmanship. Suppose, P inherited properties from her mother, when P died, the father survived her. Does it mean that the father will not take the property and it will go to his heirs? It is submitted that the clause should be read, “Upon the father and in default of the father, upon his heirs.”

Where a female Hindu had inherited property from her mother on her death, it would devolve on her sister as per section 15(2) and not on the heirs of her pre-deceased husband (Ibid:418).

Property inherited from Husband or Father-in-Law

In case proposita had inherited properties from her husband or the father-in-law, her heirs fall in two categories.

Category (1): Sons, daughters, sons and daughters of predeceased sons, and sons and daughter of predeceased daughters. (This is the same as under the preceding head).

Category (2): Upon the heirs of the husband.

On the failure of heirs in category (1), property devolves upon the heirs of the husband, i.e., as if it was the property of the husband, which means heirs of a Hindu male. Here also, there seems to be apparently a flaw of draftsmanship of the same nature as stated above. If proposita has inherited property from her father-in-law and her husband survives her, and does it mean that he will not inherit the property, but his heirs will? However, it should be noted that under the Hindu Succession Act, 1956, the daughter-in-law inherits only when she is a widow. Therefore, she cannot inherit from her father-in-law as well be survived by her husband. Thus, in factual operation of this category there is no flaw. Then another difficulty may arise: suppose, proposita inherited property from her father-in-law. Subsequently she remarried.
Under this head, the heirs of the husband mean the heirs of the first husband or heirs of the second husband? It seems clearly the intention of Parliament that the property would devolve upon the heirs of the first husband. In case she has also inherited property from the second father-in-law, property will go to the heirs of the second husband. This will mean that if a woman had inherited property from two fathers-in-law or two husbands, there will be different set of heirs in each case. In the former case, they will be the heirs of the first husband, and in the latter case, they will be heirs of the second husband. Where the contest was between the children of her predeceased brother, it was held that the latter will be preferred (Ibid: 418-419).

Section 16 sets out the rules for intestate succession in the case of female Hindus. The order and distribution of an intestate’s property shall be as follows:

1. Among the heirs specified in Section 15(1), those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

2. If any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate’s death, the children of such son or daughter shall take between them the share which such son or daughter would have taken of living at the intestate’s death.

3. The devolution of the property of the intestate on the heirs referred to an Section 15(1) shall be in the same order and according to the same rules as would have applied if the property had been the father’s son or the mother’s or the husband’s as the case may be, and such person had died intestate in respect thereof immediately after the intestate’s death (Rao, 2006: 338).

Discrimination in succession to dwelling houses

Section 23 deals with the special provisions respecting dwelling houses. The purpose of this section is to prevent fragmentation or disintegration of a family dwelling house at the instance of a female heir to the prejudice of the male heirs. If a female Hindu inherits a dwelling house along with male heirs she has no right to claim partition of such house until the male heirs divide their respective shares. However, a female heir, not being an unmarried daughter, is entitled to reside in the dwelling house which means a house or residence or a permanent abode in which the
intestate Hindu was living at the time of his/her death. Thus, the right can be claimed only by one of the following:

1. If she is unmarried; or
2. If she has been deserted; or
3. If she has separated from her husband; or
4. If she is a widow

Disqualifications

Section 24 lays down a disqualification for succession against –

1. Widow of a predeceased son;
2. Widow of a predeceased son of a predeceased son;
3. The widow of a brother of a Hindu intestate if such widow has remarried on the date when the succession opens. The remarriage if it takes place after the opening of the succession does not divest such female of the property. The disqualification is confined to only three classes of widows (Ibid).

Lacuna in this Act

Section 30 lays down that the father can will out whole of the property to any child of the family or to anyone else with exclusion of others, in self acquired property. This was not changed in 2005 also. In the nuclear family system father can say that he has self acquired property in order to distribute it to his sons only. If this section is diluted then it will lead to gender justice as father will give property to his sons and daughters.

Government: Escheat

Just as in the case of a Hindu male, in the case of a Hindu female, if she dies leaving behind no relation; the Government takes her property, as an heir, subject to all obligations and liabilities of the intestate.

Changes brought by The Hindu Succession Act

D.H. Chaudhary in his recent publication on “The Hindu Succession Act, 1956” has very pointedly indicated the decisive changes brought about by this Act. According to him:
1. The Act abolished the Dayabhaga and the Mitakshara Schools of Hindu Law relating to succession.

2. The Act has provisions of different Acts relating succession under matriarchal system, prevailing in the South.

3. The Act has abolished divergent kinds of Stridhan and rules relating to its succession.

4. The Act has abolished Hindu Woman’s limited estate, and made her absolute owner of the Property, even with regard to existing properties.

5. The Act has provided uniform order of succession governing the property of a male Hindu, with few changes in respect of the marumakkattyam (matrilineal system) and aliyasantana (system of law applicable to the persons who, if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949, or by the customary Aliyasantana law with respect to the matter for which provision is made in this Act) law.

6. The Act has provided uniform order of succession governing the property of a female Hindu, with a few changes in respect of the marumakkattyam and aliyasantana law.

7. The order of succession provided by the Act, is based according to the standard of live and affection, and the rule of preference based on the right to offer panda (followed by the Dayabhaga) or propinquity of blood, (followed by the Mitakshara) has been discarded by the Act.

8. The Act provides simple rules of preference, and where no preference can be made, heirs take simultaneously.

9. The Act entitles, even, remotest agnate or cognate to be the heir.

10. The Act makes no distinction between male and female heirs.

11. The Act has given right to certain female heirs, to succeed to the interests of the deceased in the coparcenary property.

12. Disease, defect or deformity is no ground of exclusion from inheritance under the Act.

13. The Act entitles a male to dispose of his interest in a Mitakshara coparcenary property by will”. 
The Act eliminates the foundations on which the Joint family was based by declaring that birth in the family does not give right to property. It also makes woman an absolute owner of the property and not a limited owner. By this measure, it has placed woman on equal footing with man with regard to the right of use of the property. The Act provides a powerful weapon in the hands of the progressive forces of the Hindu Society. It has given a powerful blow to the traditional authoritarian, male-dominated Hindu social edifice. It closes a big chapter of women’s oppression with regard to property rights and inaugurates a new phase in the history of women’s struggle for equality with men in the Hindu Society (Raj and Sharma, 1994: 93-95).

PROPERTY RIGHTS OF WIDOWS

Inheritance rights have diverged greatly over time and place, not only in regard to gender but also in regard to birth order. Women have always had a double relationship to inheritance, as daughter and as widows. The institution of inheritance has served as a major source of retaining established dominance of men over women, an older generation over a younger and the rich over the poor (Schweitzer, 1990: 100).

A widow’s rights to her life estate in the colonial period for which she had put up was visible to change in the post-colonial period. The independent Indian state directly and positively intervened in the inheritance rights of women to remove the disabilities experienced by them through the enactment of the Hindu Succession Act, which was brought into force on 17th June 1956. This Act amended and codified the law relating to intestate succession among Hindus and brought about fundamental and radical changes in the law of succession in breaking violently with the past. Section 14 of this Act applied to women and granted them equal inheritance rights along with the male members. For the first time the Act enabled daughters, sisters, widows and mothers to inherit land with full proprietary rights to its disposal. The earlier limited ownership right afforded to the widows was converted into full and absolute ownership.

In the present study it is seen that there was no notion whatsoever of a woman (widowed or not) having any property rights in her parental home. Since it was believed that a daughter must get married and leave the house to go elsewhere, it was felt that there was no point in giving her any share of the property. The family’s duty
towards the daughter was seen to be restricted to marrying her into a good family and paying dowry, to enable her to have a ‘good marriage’ which was her share of the property. Apart from this, it was completely unacceptable to almost everybody that a girl should be given any share in her father’s property nor could any case is cited where girl got her share easily after she asked for it.

They all thought that giving girls a share of the property was wrong and would mean depriving the brothers of what was meant to be rightfully theirs. They clearly stated that they would never, of their own accord, give their daughters a share of the land or property. If a daughter wanted to share she would have to go to court and that would mean her doing so at the cost of breaking off all relations with her parental family, and running her relationship with her brothers. She would not be able to visit her brothers’ homes after taking a share. All the widows in the village also said that they would not give their daughters any share.

In a study by Misra and Thukral of two villages, Aropur and Hariharpur of Saraiya block in Muzzaffarpur district of Bihar they found that the widows reflected the societal perceptions. All widows, irrespective of caste or economic background, had the same perceptions, which were: the widow is considered to be the rightful heir to her husband’s share of the property after his death; all her rights are in her marital home; a widow or any woman has no property rights whatsoever in her father’s home (Misra and Thukral, 2005: 139).

The general opinion is that a widow with no sons but only daughters can manage to get her husband’s share of the property. This is so because the daughters have to be looked after and get married. The widow can sell or mortgage the land to get her daughters married off. This is done to ensure that the entire burden to marry the daughters off does not fall on the brothers-in-law. Misra and Thukral came across one such widow with a daughter who had received a share of the property. She had asked for partition and was given a share of land equal to that of her brother-in-law. This was Sunila Devi, Rampari Devi’s young daughter-in-law; a number of factors may have contributed to her getting a share. First, she was educated and worked as an *anganwadi* (crèche) teacher; second, her in-laws agreed that she had a rightful share, and lastly, the fact that her parental family was influential cannot be entirely discounted. The in-laws held no grudge because she had taken her share. What
seemed to upset them was that after having opted for partition, she had asked her own
brother to manage her property, who in turn had given it to a third person for
management. They felt slighted and said that she should have let her brother-in-law
manage her land. They also felt that since she was given her share of the land and her
mother-in-law had agreed not to take her share because of Sunila has objected, she
should now share the responsibility of looking after her mother-in-law. Rampari Devi
said that, after all, Sunila’s husband would have had to share this responsibility in
case there had been a partition in his lifetime (Ibid: 144-145).

Despite the fact that the widows were very categorical about their rights, and
that some had even demanded a partition from their in-laws, that it was they who were
also managing the property on their own, and that some of them had even gone to the
land registry office to sell the land, etc., it was found that widows rarely got their own
names entered in the land records. As long as there was a male in the family - husband
or son – the women saw no reason to put their own names on the land records.

Custom of karewa: remarriage, inheritance and law

There is a custom of widow-remarriage which is followed in Haryana and
Punjab and had special features of its own. Known as karewa, karao, or chaddar
andazi, the custom was a throwback to the old Rig – Vedic niyog (levirate marriage)
which was prevalent in the geo-graphical region of Harayana-Punjab and associated
with the early Vedic Aryan settlements. Karewa, a white sheet with coloured corners,
was thrown by the man over the widow’s head, signifying his acceptance of her as his
wife. Symbolically this gesture brought the widow once again under male protections;
she being given “his shelter” or “roof” and receiving colour in her life. The popularity
of karewa among the overwhelming majority of landowning classes emanated, apart
from other reasons, out of the need to retain landed property within the family. The
main reason for making the marriage arrangements within the family was to transfer
control of the deceased husband’s land from the widow (who succeeded to a life
estate in the absence of male lineal descendants) to his brother or to a patrilineal
family member, because a widow who remarried lost all her rights to property, even if
she married her husband’s brother (Choudhary, 2005: 172-173).
Strengthening of *karewa*

The clarity of the 1956 Act in granting an absolute right of inheritance to widows meant that they could not be deprived of their property by any counter claims. The establishment of a widow’s right to property during the post-colonial period did not help to arrest the practice. In fact it led to the strengthening of the practice of *karewa* as there was property at stake over which the husband’s family sought to firmly retain its control. Even the benefits awarded to war widows by the Indian state, which has been increasingly involved in military activity during the post-colonial period, has only intensified the effort to keep the widow’s wealth inside the husband’s family (Ibid: 188-189).

At the same time the pressure to perform *karewa* has increased, other laws such as those outlawing polygamy have not been enforced with any rigour, thus legitimising the practice of *karewa* and the practice of *karewa* that has resulted from it(Ibid). In turn, *karewa* has become a refuge for widows who are otherwise forced to confront threats of violence and sexual abuse from her husband’s family and face social ostracism.

Therefore, the role of law in this context has not operated to empower widows, but to further drive them into the folds of their husband’s family. There they have found some social protection, but have simultaneously lost control of land rights. In focusing primarily on economic empowerment, the law neglected to address the social and political disempowerment of widows which have effectively undermine their rights.

So widows have equal rights in their husband’s property. In some of the places the system of *kawera* is followed customarily. It has been seen that those daughters who are brotherless get property of their parents unlike those who have brothers.

**PROPERTY RIGHTS OF WOMEN IN J & K: THE PERMANENT RESIDENT (DISQUALIFICATION) BILL**

The Jammu and Kashmir Hindu Succession Act, 1956 is Act No. XXXVIII of 1956 (see Annexure). In case of J&K the property rights of Hindu women are the same as in the rest of the country, mentioned earlier in this chapter. In 2002 in the State subject “Valid till marriage” was removed so an issue was raised here after it by introducing The Permanent Resident (Disqualification) Bill during the coalition
Government of People’s Democratic Party (PDP) and Congress in 2004 where it was put forth that the women of the State if married outside the state shall lose their right to hold property as they will not be regarded as the residents of the State.

**Rights privileges of women as permanent residents of Jammu & Kashmir**

Dr. Abha Jan is resident of the State having born here and her parents and fore-father also belonged to the State who had enjoyed the status of State Subject. She was married out of the state. After completing her M.B.B.S. degree and serving the State Government, she applied for selection to Post-Graduate Course in the discipline of Gynaecology. For the purpose of determining her eligibility for Post-Graduation course, she was called upon to produce a permanent resident certificate after her marriage. Although she was permitted to appear in the entrance test at her own risk and responsibility yet her application for issuance of permanent resident certificate had been rejected by the Deputy Commissioner. She too sought protection of her legal, statutory and fundamental rights as being the permanent resident of the State and enjoyment of consequential benefits on the mandate of Article 226 of the Constitution of Jammu and Kashmir (Gupta: 68-69).

Anjali Khosla possessed permanent resident certificate which was made valid till her marriage. She was married to one Raj Khosla, a resident of Delhi and being married to a non-State-Subject, her application for grant of permanent resident certificate was also rejected by the Additional Deputy Commissioner, Jammu. The action was also challenged in the High Court of Jammu and Kashmir under writ petition (other) No. 171 of 1996 (Ibid: 69).

As Substantial questions of law were involved in these cases, therefore, the matter landed before full Bench comprising Hon’ble Justice V.K. Jhanji, Hon’ble Justice T. S. Doabia and Hon’ble Muzaffar Jan to adjudicate upon the issues raised in. All these cases titled State of Jammu and Kashmir and Others Vs Dr. Susheela Sawhney and Others came to be decided on 07-10-2002. These are in two parts – one part, the judgment written by Hon’ble V.K. Jhanji for himself and for Hon’ble Justice T. S. Doabia while in the second part, Hon’ble Justice Muzaffar Jan who was pleased to add his own views with regard to the controversial issue (Ibid: 73).
Hon’ble Justice V.K. Jhanji with whom Hon’ble Justice T.S. Doabia concurred, held that-

(i) Note No. Ill to the notification No. 1-L/84, dated 20th April, 1927, does not deal with the rights of a female state subject marrying a non-state subject, and, therefore, her losing this status on account of note Ill would not arise;

(ii) Note Ill deals with a wife who acquires for the first time, the status of state subject and this status which she acquired the status, would lose the same if she moves out of the State for permanent residence outside the State. A female who comes from a State other than the State of Jammu & Kashmir can be cited by way of illustration.

(iii) The word ‘acquire’ would mean acquiring something for the first time. What is inherited is never acquired. It cannot be lost unless a positive disqualification is mentioned in the Statute in question. No such positive disqualification can be spelled out from Note Ill.

(iv) The question as to whether Note Ill suffers from discrimination becomes an academic issue in view of the interpretation placed in Note Ill.

(v) The concept of domicile has nothing to do with the concept of citizenship and the concept of state subject. Domicile has something to do with the residence but residence and citizenship are not synonyms. State Subject status is nearer to the concept of citizenship and one can lose this status in the same manner as in the case of citizenship (Ibid:74-75).

The judgment on the controversial issues that clinches the same by holding that the daughter of a permanent resident of the State of Jammu and Kashmir marrying a non-permanent resident does not lose her status as a permanent resident of the State for the purpose of holding, inherit and acquiring immovable property in the State. Likewise, a woman who is in employment of the State and at the time of her initial appointment is a permanent resident of the State can continue to be in employment of the State even after her marriage with a non-permanent resident.

Besides, reference to the Personal Law and Islamic Law has also been made in this part of the judgment. Under Islamic Law, property devolves upon the successor.
according to the prescribed principles of inheritance which do not recognize the question of ‘citizenship’ or ‘permanent resident’ as the basis for inheritance. Likewise, according to the mandate of Hindu Law, persons inherit property according to the Succession Act. Therefore, based upon the mandate of the said provisions, the judgment refers to different situations confronted by a woman with respect to immovable property namely:

(i) A woman, before her marriage may already be holding any immovable property on the basis of her being a permanent resident of the State;

(ii) A woman may come to inherit immovable property by way of succession or inheritance, at a time when she is already married to a non-permanent resident but has lost her status as a permanent resident of the State;

(iii) A woman who already owns property before her marriage, at the time when she is a permanent resident of the State, who will inherit her property consequent to her death, and whether the successor will acquire the status of permanent resident?

Considering various questions on facts and law, the Hon’ble High Court went into the crucial question with regard to her rights of ‘inheritance’ and distinguishes it from ‘acquisition’. It was held that a woman who acquires any property and on the date of acquisition, she is a permanent resident of the State, the transfer in her favour is valid and cannot be questioned.

Further, it stood that after such a woman married a non-permanent resident and acquires the status of her husband, she cannot acquire ‘by way of transfer any immovable property’ but if she succeeds as a legal heir, by way of inheritance under Personal Law, she can hold and own such property which has fallen to her share. A substantial question still remained to be dealt with and settled on the mandate of law and that is ‘what happens to the property owned by her, after her death’?

On the debatable question, the court held that in the ordinary course, under the Personal Law, the property would be inherited by her children, if any, and may be by her non permanent resident husband too. Out of this theory, another question arose for determination as to whether’ her children or the husband or any other person who inherits the property of such a woman, can acquire the status of a permanent resident?
Dealing with such a crucial question of controversy, the Court held that the children will acquire the status of their father and not that of their mother, and that being the position, having inherited immovable property of their mother, whether they still get the status of a permanent resident of the State on the premised of owning the immovable property?

While dealing with foregoing questions of controversy, another serious question arose as to ‘what will happen in the event of divorce of a woman who before the marriage is a permanent resident of the State and in the event she marries a non-permanent residence, does she lose her status as such? Will her status revive or is lost forever? Replying to this query, the Court observed that since it is the marriage which resulted in loss of status, with a non-permanent resident, and when the marriage no longer exists, there is no reason as to why her status should not be restored and by implication, the Court perhaps means restoration of all her rights, interests and privileges. At the same time, another view stood also expressed that acquiring status is a matter exclusively based on him and desires of a woman. Having voluntarily contracted marriage with a non-permanent resident, she cannot restore her earlier status even after divorce or death of her husband which question or proposition is correct and supported by law – it has been left out (Gupta: 87-88).

In regard to any impact on appointment i.e. holding the post or office in connection with the affairs of the State under the aegis of the State Government, it had been placed that on the mandate of Rule 17 of Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 read with Article 35 of Jammu & Kashmir Civil Service Regulations (for short, CCA Rules, 1956 and J&K CSRs.), it stood envisaged that the basic requirement for appointment on any post in the State Government is permanent resident of the State as a pre-requisite. On the basis of such a status, when the appointment is made and the incumbent joins or is allowed to join the Service, the question of any disqualification does not arise as no such law exists in this behalf. Therefore, the Court had been pleased to hold that at the time of initial appointment, if a person qualifies for appointment being a permanent resident of the State, such person does not lose his continuance in the employment by virtue of his losing the status as a permanent resident as there is no rule or regulation to provide for such a disqualification? The judgment on this issue concluded is that:
“A woman who in employment of the State and at the time of initial appointment is permanent resident of the State can continue to be in employment of the State even after she marriages with non-permanent resident.”

Hon’ble Mr. Justice Muzaffar Jan finally concluded that a female non-permanent resident of the State on her marriage to permanent resident of the State will have the right to inherit the property in accordance with the Personal Law of the deceased but he did not fall in line with the judgment of Hon’ble Justices V.K. Jhanji and T.S. Doabia in so far as they held that “a female will not lose the status as a permanent resident on her marriage with a non-permanent resident of the State on the disabilities, expressed by him in his separate judgment” (at paras. 22, 23, 26, 27 and 29) (Ibid: 90).

The Judgment of the Full Bench came to be examined /considered by the Government for the purpose of implementation or taking further course of action. The State Government took a decision to file Special Leave Petition before Hon’ble the Supreme Court of India, apparently the State Government was aggrieved by the Judgment. Thereafter, on one fine morning, the Government of Jammu & Kashmir moved an application before the Supreme Court of India seeking permission for the withdrawal of their Special leave petition which was also allowed. There are reactions to the said course of action adopted by the Law Department, albeit, the Law Department is understood to have taken the Chief Minister into confidence advancing one of the grounds that it was open for the State Legislature to enact laws on the question of ‘Permanent Resident’ of the State (Ibid: 90-91).

Re–action of women within and outside Jammu & Kashmir

It is an accepted principle that whenever there is any action, ‘re-action’ thereto is natural. After judgment by the Full Bench on 07-10-2002 on the controversial issues hinging around ‘State Subject/Permanent Resident’ status of a woman in the state and impact thereto after marriage, re-marriage with non-state Subject/Permanent Resident, and more particularly after withdrawal of special leave petition by the State Government in the Supreme Court of India, it resulted in sharp criticism from public, legal luminaries in whatever profession, form etc. these are connected. People expressed great concern over the effect on their rights, interest and privileges particularly the women of the state who got support from the woman-world
throughout India, irrespective of caste or creed. The issue has been a subject matter of sharp criticism not only on the Floor of the House (State Legislative) but also on the platforms arranged publicly and politically. Even Mehbooba Mufti, then Vice-President of PDP in Jammu & Kashmir did not hesitate to plead that if woman’s rights, interests and privileges are taken away, then such rights of man should also be cancelled if he chooses to marry a woman from outside the State, while applying the same ratio of justice. This, she had said on 24th February, 2004.

There had been clash over arguments from and on behalf of the National Conference Party, People Democratic Party and other political parties like the Congress and the BJP. Prior to this uproar on the Floor of the Legislative Assembly, even heated arguments had taken place on the question of ‘withdrawal of the Special Leave Petition from the Supreme Court and two Cabinet Ministers clashed with each other, accusing one and the other of sabotage, leakage of official documents, playing with sentiments of the people of the State, committing mockery/with the rights of the people, and so on. While the Finance, Planning and the Law Minister strongly defended action of the Government for withdrawal of Special Leave Petition (SPL) from the Supreme Court, on the ground that it was within the powers of the State Legislature, as also held by the Full Bench, to frame laws on the subject, the Chief Minister, Mufti Mohammad Sayeed tried his utmost to mollify the ruffled feelings of the MLAs by saying that “two options to deal with the dilution of the State Subject rights would be available-one, to constitute a Committee of the House with leader of the Opposition and other law knowing MLAs as its member and or to consult the legal experts for framing a legislation. Such suggestion was made to the House on 25th February 2004. However, Mr. M.H. Baig, Law Minister reiterated that Article 14 of the Indian Constitution does not allow any discrimination with anyone on the basis of caste, creed, colour, religion and sex.

As a result of this commitment by the Government on the Floor of the House, a Bill was also introduced which was meticulously drafted by the Law Minister himself, yet reaction thereto from women could not subside. Demonstrations were held throughout the State, some supporting and some opposing the issue with regard to the status of women after their marriage with non-state subject/non-permanent residents. This change in the status evoked forceful opposition throughout the country
as well considering sharp differences over this issue between the Congress Party and People Democratic Party (PDP). Viewing the concern of women throughout India, the then Prime Minister, Mr Atal Behari Vajpayee had a detailed telephonic discussion with the then Chief Minister of Jammu & Kashmir Mufti Mohammad Sayed, belonging to PDP on 8th March 2004. Besides Mrs. Sonia Gandhi, President of All India Congress Party also discussed the controversial Women’s Disqualification Bill with the said Chief Minister and sensing further escalation of the problem, the Government of Jammu & Kashmir thought it proper to accept the proposal for referring the controversial Bill to a Select Committee of the House. Separately, this matter figured as a course of criticism in big rally arranged at New Delhi on the eve of International Women’s Day.

The Jammu & Kashmir National Panther Party (NPP) having only four MLAs tried to take a lead by threatening to withdraw from the partnership of Council of Ministers in the State. Some leading Organisations at the national level also expressed anguish over the manner in which the rights of women were infringed, who also threatened to organize agitation throughout the country. The Prime Minister of India, whom those leading organisations met, held out assurances that nothing would be done in this great country which would affect the rights and privileges of women wherever they reside or belong to on the basis of caste, colour and sex. The Central Government, while realizing its responsibility to ensure that the situation would not go out of control, also built up pressure on the Government of J&K to act prudently. Likewise, some other leading Organisations in the country were assured by the Prime Minister of India on the question of providing due protection to women in the entire country. Out of the foregoing situation, the women got an opportunity to raise the issue of reservation in the Parliament and other Legislative bodies of the States.

Even if the J&K Legislative Assembly passed the Bill on 5th March, 2004, yet it could not be placed before the upper House. What would be the legal fate of the Bill if it is not introduced in the J&K Legislative Council is quite obvious considering the provisions contained in the Constitution of Jammu & Kashmir. That being the position of law, it is clear that the verdict of the majority of the Hon’ble Judges constituting the Bench hearing all such matters would prevail particularly after the withdrawal of the appeal from the Supreme Court of India. That is why the
opportunities of women despite their having married with the non-permanent resident of the State remained undisturbed (Gupta: 96).

By implication of the majority judgment, even if the State Legislature i.e. Upper House at any later stage, passes the Bill and law is enacted, whether it would be possible for the state Government to take away the rights which stood protected by the High Court. In other words, a serious question would arise whether the new enactment, if any passed later, would render the judgment of majority of Hon’ble Judges of no help to those women who enjoyed all usufruct from the said appointments or who may dispose of their inherited or acquired property by the time. This aspect of the matter requires answer from the law makers of the nation at the state level or national level considering the following examples:

Two villages situated at the extreme end of two states namely, State ‘A’ and State ‘B’. In between the two, there is one common bridge. At the middle half of the bridge, Guards of the respective States have a joint patrolling Point. There is restriction on the people of Village ‘X’ of state ‘A’ from carrying ‘Desi ghee’ to the other village ‘y’ of state ‘B’. Even five grams of ghee is not allowed. A lady carries 100 grams of ‘desi ghee’ contained in a small copper box from village ‘x’ but the guards of both the states repatriate her and she comes back to village ‘X’. She then puts 100 grams of ‘desi ghee’ in a small polythene bag, keeps it in her mouth and successfully crosses over the village ‘Y’. Checks by the guards of State ‘B’ failed in stopping the carriage of restricted ‘desi ghee’ to its territory. This is just to demonstrate that “what cannot be acquired legally is attempted or permitted to be acquired through illegal means” (Ibid: 96-97).

If a female who possesses state subject certificate or permanent resident certificate, which is valid till marriage, disposes of her entire inherited or acquired property just before leaving the State for permanent settlement outside the state of J&K for the purpose of contracting marriage with a non-state subject/non-permanent resident, virtually, she enjoys usufruct there-from and no law can take away such benefits from her. Now rightly or wrongly, when it has been contended that if at all such rights of men are duly protected irrespective of their permanent settlement both in the state and outside the state, then such protections must also be provided to the
women without any discrimination in view of the mandate of Articles 14, 15, 16 and 21 of the Constitution of India.

When the controversial Permanent Resident (Disqualification) Bill, moved by the Government of J&K before the State Legislative Assembly, was taken up for consideration on August 27, 2004, it met its tragic end and various suggestions and amendments put forth by different MLAs belonging to the Peoples Democratic Party, National Panthers Party, National Conference etc. were over-ruled by the Hon’ble Speaker, Shri Tara Chand. The Bill was put for voting because it involved constitutional amendment and it ultimately fell down because 47 members belonging to Congress + Panthers + Bhartiya Janta Party and Ladakh Union Territory Front opposed the Bill. Heated exchange of words between the Law Minister and Mr. Mangat Ram Sharma took place. Likewise, in the Upper House, the Chairman was also of the view that the Bill in question was a Constitutional amendment, thus requiring two-third majority in support for its passage. Hence the Bill introduced by the Government met with fatalizing end in such a suffocating atmosphere.

There could not be any enactment of laws further on the question of Permanent Residence (Disqualification) Bill or otherwise, hence the law laid down by Constitutional Bench of High Court of J&K shall be deemed, have overriding effect in as much as the rights and privileges of women of the state marrying with a non-permanent resident are concerned.

In January, 2005, the Revenue Department of the State Government, issued a Circular bearing No. Rev (LB) 87/74, laying down the following condition:

“The certificate issued to the daughter may be issued after their marriage to indicate if the lady had married a state subject or non-state subject”.

By implication, it means the same condition that used to be incorporated in the certificate of a lady that “it is valid till marriage”. Since the judgment of the Hon’ble Full Bench(Supra) has attained finality in law, no functionary of the Government could take any action like issuance of the aforesaid Circular to defeat the law or to over-reach the said judgment (Gupta: 99).

Dr. Hari Om, a social reformer and professor in University of Jammu, took notice of the said circular and in order to protect the rights of women and also to get the functionaries punished, filed a contempt petition in the High Court which was
listed for order before Divison Bench on 12-07-2005 when after hearing the Counsel for the petitioner (Dr. Hari Om), stayed the operation of the said Circular and the respondents were issued notice. Shri A.H. Qazi learned Addl. Advocate General accepted the notice on behalf of respondents (Ibid).

Sensing some serious trouble because of the contempt petition, aforesaid, the state government had, in the month of August, 2005, withdrew the controversial circular, allowing the law to take its own course. That could be considered as a prudent exercise on part of the Government.

**Landmark and historic decision of Government of India and of State**

It is really a landmark decision rather a historical development for Indian women when Prime Minister Dr. Manmohan Singh took a lead by introducing a Bill known as the “*The Hindu Succession (Amendment) Bill, 2005*” in the Indian Parliament for the purpose of providing due protection to women in respect of their share in property, being the legal heirs of their parents and ancestors. This Bill is also intended to provide women due place in our society and family. It contains the provisions of equal rights in inheritance of property, removing gender bias as it provided that daughter from now would be coparceners in the joint family property i.e. they can ask for the partition which was earlier the right of the sons thus bringing daughters at par with sons. Daughter’s daughter can also claim from her maternal grandfather and Daughter’s daughter’s daughter too, provided her mother’s mother has not claimed her share from her father (Ibid: 111). Still a lacuna which is in Section 30, of The Hindu Succession Act,1956 that father can will out his whole self acquired property to any of his child in exclusion to others was not removed in 2005 too. If this Section is diluted then it will be a gender justice because otherwise he could distribute this property to his sons only.

In this whole context, women’s rights are totally sidelined. Some questions are still lying loose like what about the widows of the sons of the State?

The Report of the Inter-Parliamentary Union is reported to have conducted a comprehensive exercise on the subject and collected necessary data, as reflected in an editorial note captioned “Giving a Voice to Women” by Ms. Meenakshi Sundram, published in the *Daily Excelsior of Friday, the 7th Oct, 2005*. According to that report, *India ranked 134th among 182 countries of the entire world in terms of the percentage*
of the women-legislature (8.3%) in the National Parliament (Lok Sabha), even Pakistan is reported to have better position as compared to India with 21.3% women parliamentarians, placing it at a highly respectable rank of 40, higher than many western countries (Gupta: 111).

On the question of cruelty, the National Crime Records Bureau (NCRB) is understood to have maintained data which shows that 50,703 cases of cruelty by the husbands and other relatives were registered during the year 2003. This position became worst during the year 2004 when as many as 55,439 cases were reported. These figures established an increase of 9.3%. Likewise, during the year 2004 i.e. upto end of March this year, the number of cases have been of the order of 11,563. According to NCRB a total of 1, 06,980 persons were charge-sheeted and 12,558 stood convicted in 2003. Likewise, 1, 23,367 persons were charge-sheeted and 14,224 persons were convicted during the year 2004. These cases included 6,006 relating to dowry and deaths whole during the year 2004, the figures on this account went to 6,208 (www.ncrb.nic.in).

Whatesover stringent legislation is made, it would be quite necessary for the law-enforcing agency which shall have to exhibit its role quite sincerely in conducting investigations without leaving an iota of any doubt in investigations so as to register maximum number of cases of conviction of different offences, whether of dowry related cruelty, rape or any kind of inhuman treatment. Efforts are also required to be made for handing down judgments of convictions within the shortest possible time, otherwise legislation would be rendered meaningless if a case of murder, rape, kidnapping, etc. is decided after decades and decades by that time, the sufferer dreaming for justice too dies by inches without seeing justice.

The Indian as well as State Constitutions provide the right to the women. But still in the State of Jammu and Kashmir women are denied the right to equality while issuing Permanent Resident Certificate with a condition thereon as “Valid Till Marriage” in violation of Article 14 and 15 of the Indian Constitution and Section 5 of Jammu & Kashmir Constitution. It is true that notifications issued by His Highness Maharaja Bahadur regarding issue of State Subject was also discriminatory for the women who married to non-state subject but that was in the Eighteenth Century. Now in the Twenty First Century, there is a need to relax the law relating to issue of
Permanent Residence Certificate to the women of Jammu & Kashmir. The good law of the land is that which takes care of Social Engineering.

Presently, there is much propaganda regarding giving special privileges, equality, reservation etc. to women but practically still there is discrimination against them. The women are working usually with men even by joining the defense forces, which is supposed to be the male dominated service. On the other hand, women of the J&K state were denied the right to equality especially in issuing the permanent resident certificate by putting a condition on it “Valid Till Marriage”. The worse hit by this clause are those women of the state who are married outside Jammu & Kashmir. If the Permanent Resident (Disqualification) Bill, 2004 is converted into the enactment then women would be deprived of the right to equality which they have won after long struggle from the judiciary.

The women married outside the State of Jammu & Kashmir may be allowed to continue their Permanent Resident Certificate for at least two generations. The said discrimination is required to be removed for ever and the cancerous approach towards our women causing dis-advantageous position at any stage, like the present one, needs to be discouraged right now.

The Bill, as introduced in 2004 was resurrected in 2010, has been used to generate political emotions in Kashmir. It has been argued that restrictions on women’s rights are necessitated to preserve the political identity of Kashmir. The right of women to marry outside the state and retain their property right status is seen as contradictory to the autonomy and special status of the state. There is a campaign that such a right, given to women, would ultimately lead to demographic change in the state. The fear is expressed that the right of women to hold their PR status of the state even when they are married outside the state would open the flood gates for the non-permanent residents to swamp the state and control the property and employment within the state (Choudhary,2010:16).

The discourse in Jammu was also based on the lines of regional, communal and national identity. The Bill to disqualify married women from holding the PR status was opposed not as much from the perspective of women’s rights as on the grounds that it was “anti-Jammu”, “anti-national”, and anti-Hindu”. The campaign, both within as well as outside the legislature, against the Bill was carried out mainly
by the forces of the Hindu right whose major objection to the Bill was its pro-Kashmir and anti-Jammu basis (Ibid).

Chaman Lal Gupta, senior Bharatiya Janta Party (BJP) leader thus described the Bill: “The Bill is anti-Jammu and anti women and will deprive our girl’s ancestral rights to own land, property and jobs if they marry outside the state. Not only the BJP but many other organizations found in this Bill another instance of discrimination against Jammu. The Bar Association of Jammu (BAJ) actually called for a Jammu bandh to agitate against the “anti-Jammu” and “anti-Hindu” nature of the Bill. According to Sunil Sethi, the President of the BAJ, the Bill is a conspiracy against the people of Jammu. To quote him: “This Bill is discriminatory to women of the state, particularly of Jammu region. It is anti-Jammu as most of the girls here marry outside the state with people who are non-state subjects (non-permanent residents of J-K)” (Ibid:16).

The Mufti Mohammad Sayeed-led government has said it will pass the controversial Permanent Resident (Disqualification) Bill, denying property rights to women marrying outsiders, as per the aspirations of the people of Jammu and Kashmir. The Permanent Resident (Disqualification) Bill will be passed in the assembly as per the aspirations of the people of the state, minister for finance, law and parliamentary affairs Muzaffar Hussain Beig said addressing a PDP workers' convention at Bandipora in Baramulla district, "The blood of Kashmiris won't be allowed to go down the drain and the Permanent Resident (Disqualification) Bill will be passed which will automatically mean strengthening of Article 370, guaranteeing special status to the state in the Indian union," he said. Attacking Opposition National Conference, he said: "We won't change colours like chameleon as National Conference did. They used to talk in one tone in the state and in yet another tone at New Delhi." PDP president Mehbooba Mufti, addressing the convention, said her party was seriously working for safeguarding the human rights of people.

Rejecting the charge, Law and Parliamentary Affairs Minister Ali Mohammad Sagar said there is no violation of the Constitution as any member can introduce a private members Bill. On whether, ruling National Conference supported the Bill, he said, "The fate of the Bill will be decided after discussions and the opposition is making a hue and cry before the measure is debated."
As the Chairman adjourned the Council, the fissures in the ruling coalition were covered for the time being but it has kept controversy over the Bill alive.

The issue has polarised the state politics on regional lines with communal overtones. It is a typical case of two opposite poles which apparently oppose each other but actually support each other. For in this war of regional chauvinism, the arguments used by Kashmir based parties — the PDP and the National Conference — are exploited by Jammu based parties and vice versa. In Jammu the BJP is leading the anti-Bill movement as Congress is on the defensive being in the government that had sponsored the Bill. While the Kashmiri parties defend the Bill in the name of preserving Article 370 of the Indian Constitution and special status of the state, the BJP finds in the Bill justification for its demand for abrogation of the Article 370 under the cover of which women are being discriminated. It describes the Bill as a hindrance to national integration. The RSS has called it as anti-national and secessionist which further helps the Kashmiri parties to enlist the support of the secessionist elements in Kashmir.

Number of Muslim eligible bachelors is fast declining in Kashmir. Firstly thousands of young men have been killed during last fourteen years of violence. Secondly on account of turmoil in the valley, brighter boy or sons of better off people go outside for higher education where they get an opportunity to choose their life partners from among their class or college mates. Thirdly a large number of Muslim Bihari, Bengali and UP women come as a part of the migratory labour who marry local boys of poor families.

If PR (Disqualification) Bill becomes a law, avenues for Kashmiri young women would further shrink. Mehbooba rightly warns that Kashmiri Muslim girls may then have to settle down as second wife. She, therefore, suggests that unless and until people give a thought to put restrictions on boys marrying outside the state, the adverse ratio of women to men will become very disturbing.

In a panic reaction, the Government placed a hastily drafted Bill in the assembly which was passed soon after with a voice vote without any discussion. As controversy over the issue started snowballing, the Congress, Communist Party of Marxists (CPM), Panthers Party, Bhartiya Janta Party (BJP) and many independents withdrew their support to the Bill which they had offered earlier, with the result that it
could not be passed in the legislative council with the requisite two-thirds majority. So the issue of disqualifying the daughter of the state from the parental property if she marries outside the state was shelved though not completely resolved.

Thus is it seen that there are various Property Acts which are related to women formed from time to time. The inheritance laws for women earlier were different from The Hindu Succession Act, 1956 and from 2005 women are coparceners in the father’s property. In the State of J&K the issue of Women Disqualification is discussed which stressed on disqualifying the daughter of the state from the parental property if she marries outside the state.
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