

Ownership of property by a Hindu Female: An overview

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Abstract

There is a great significance to understand the legal rights of the women which determine their claim over the property. This enables them to claim their due place in the society which is necessarily a function of the economic strength and independence in property matters. Herein, an attempt has been made to consider the evolutionary journey of various laws determining the right of a woman to hold the property.

Keywords: succession rights, Hindu law, Hindu marriage act, *stridhan*, Hindu women's right to property act, 1937, coparcener

Introduction

Traditional Perspective

During the Vedic age, the concept of private property was not prevailing in strict sense and as such not being considered as a threat for the male the Indian women enjoyed a comparatively better position vis-à-vis the subsequent times. She was considered a deity and enjoyed several rights and privileges^[1] available to the males. Before her marriage she was granted an important position in the household although not similar to the son of the house. After her marriage she was considered as the mistress of the house and shared equal rights and responsibilities with her husband^[2]. However even after being considered a divine figure the females during the vedic age were not provided the right of inheritance in general and as such they were dependent on the men. It is only the unmarried or a brotherless married daughter who were granted the right of inheritance in the property of the father^[3]. Although being considered equal to her husband and a joint owner of his property yet she had only minor and limited rights and privileges. The lady had no absolute right over the property in which she was the joint owner and was only concerned with the property for the purpose of enjoying it jointly with the husband and for claiming maintenance out of it.

The widows also did not have any right of inheritance in the husband's property and it was only the childless widow who could succeed to her husband's estate. However because of the prevailing practice of *niyoga*, practically there were very few childless widows.

With the evolution of the concept of the private property the social status enjoyed hitherto by the women was lost and her physical weakness as compared to her male counterparts and her incapacity to perform the religious ceremonies provided a sort of justification for her inferior status in the society. It is

for this reason that *Baudhayan*, propounder of one of the *Yajurvedic* School excluded a Hindu woman from inheritance^[4].

During the middle ages some legislators such as Gautama, Apastamba and Sankha included the widow, mother and daughter in the list of heirs^[5] However, the said inclusion was practically of no purpose and was made with a reluctant and forced mindset. The aforesaid female heirs were included after a long list of kin and even strangers such as spiritual brother, teacher, pupil or priest and practically it was rare that the deceased never belonged to a spiritual brotherhood or did not have a teacher or a pupil or a priest.

Thereafter, during the *Smriti* period legislators such as Manu, Yajnavalkya, Brihaspati and Narada brought considerable change in the inheritance laws of the Hindus and admitted certain female heirs in the order of succession. However, there were certain conditions which were imposed on the said female heirs before they could inherit the property of a deceased. For example, a female could succeed in the property of a man only in absence of male heirs and her entitlement was subject to the conditions like chastity and not marrying again. Moreover, her rights were not absolute in the inherited property as she could neither appropriate the share inherited by her by way of gifts, mortgage or sale etc. the property was inherited by the female as her widow's estate or limited estate or women estate.

After the *Smriti* period, the law of female succession was embodied in the commentaries like *Dayabhaga* and *Mitakshara*. Both of the given commentaries granted heritable capacity to five females viz. the widow, daughter, mother, paternal grandmother and the paternal great grandmother. Nevertheless, the commentaries also followed the aforesaid principles of the *Vedic* and the *Smriti* periods practically refusing the females as heirs in the scheme of devolution of property in the absence of special texts of the *Sastras* in favour of the females.

1 There are numerous references in the vedic literature that the women during the time were undergoing *upanayan sanskara*, read holy scriptures and recited mantras.

2 In *Tattirya Samhita* it is stated that the wife was the mistress of the house.

3 *Rigveda* mentions about a lady who remained unmarried and on demand got a share in the ancestral property for inheritance.

4 *Baudhayan Dharmasutra*

5 *Gautama, Apastamba* and *Sankha* cited in *Mitakshara*

Stridhana and Non-Stridhana

The property of a Hindu female was categorized under two heads: 'stridhana' and 'non-stridhana'. The Bombay High Court has held that *stridhana* includes the property received by way of gifts and presents given to a woman by her parents, husband, close relation of parents or husband, either at the time of marriage or on other occasions ^[6] or at the time of the performance of ceremonies, of 'sulka' or bride price, of property acquired by her own exertions and liability or by adverse possession, of bequests from stranger or relations ^[7], of money or property given to her in lieu of maintenance or its arrears and of savings or purchases made with stridhan. Non-*stridhana* comprised what she inherited from a male or female relation. A study of the concept of *stridhana* and non-*stridhana*, its acquisition, devolution and the extent of the hold of a woman has been a subject matter of detailed studies. However, for the purpose of the present paper it would suffice to say that a Hindu female enjoyed greater powers of disposal over her *stridhana* and had a limited interest in her non-*stridhana* property.

The *stridhana* was further divided into 'saudayika' and 'non-saudayika' as regards the power of a woman to alienate it. The former included gifts, presents or property received by way of bequests from parents and other relations, conferred on her an absolute power of alienation, irrespective of her marital status. However, over the latter category, which included property received from non-relations, the consent of the husband was necessary before a woman could alienate it.

The non-*stridhana* property included the one inherited from a male or female relation including the husband, or property received at the time of partition. A woman was a limited owner of such property and could not alienate it as her independent property, but otherwise she had complete powers to enjoy the said property. However, during her lifetime no person had any vested right of succession in such property and the limited interest of the woman in a non-*stridhana* property terminated on her death or remarriage.

Traditionally, the responsibility of maintaining the near female relations was always on men, and on the death of men they became the responsibility of either the whole body of male members in the family or those who took interest in the estate of the deceased husband or father by survivorship. As such in place of granting a woman a share of the deceased husband or father, she was allowed only a right to claim maintenance out of the share. To convert the liability of maintenance from others' responsibility to the concern of the widow the Hindu Women's Right to property Act, 1937 was passed. As per the provisions of the said Act, on the death of a male Hindu, in the presence of his widow or the widow of a predeceased son and widow of a predeceased son of a predeceased son, the property of the deceased Hindu did not go by survivorship to the surviving coparceners but went to the widow for her maintenance.

Hindu Women's Right to Property Act, 1937

The Act was prospective in application and applied to property other than agricultural property. The Act governed

the devolution of the property of a male Hindu only and not the property of a female which continued to devolve as per the rules of the Hindu law and the distinction between the *stridhana* and non-*stridhana* property continued to exist. As such, the difference between succession to the property of a female and male Hindu continued as before. Further, like the right of a son, a widow also had the right to claim partition. However the widow still enjoyed a limited right in the property and if she died without there being a partition, the doctrine of survivorship applied and her interest was taken by surviving coparceners.

Effect of the Hindu Women's Right to Property Act, 1937

Although the changes made by the aforesaid Act can be termed as a modification of the earlier laws, yet the remarkable feature of the Act was that for the first time the Act gave legislative recognition to the rights of the widows albeit of a limited nature. After the passing of the Act, the maintenance right of the widow was her concern and she was no more on the mercy of the existing male family members after the death of her husband.

The Act substituted the widow in place of her deceased husband in the coparcenary and until the time of her death her presence defeated the doctrine of survivorship. However, her position was in a way unique as far as her substitution did not disrupt the unity of possession in the coparcenary, nor the joint family. She could not be called a coparcener, nor could she be a Karta although she remained a member of the joint family and was empowered to claim partition and demarcation of her share. She was owner for life and on her death or remarriage, her share reverted back to the surviving coparceners. It was judicially decided that the share of the widow had a fluctuating interest in the joint family property, till she ascertained it by asking partition, and if she died without seeking a partition, the interest would be taken by survivorship, by the surviving coparceners. The Madras High Court has held that the property taken by a widow after the death of her husband was taken by way of inheritance ^[8].

Nevertheless the 1937 Act was significant for the reason that it was through this Act that her rights were concretized in clear terms for the first time and it is through this Act that she could take the place of her husband in a Mitakshara coparcenary.

Contribution of the Hindu Women's Right to Property Act, 1937 in the Field of Maintenance Rights of the Hindu Widow

The main objective of passing of the 1937 Act was that after the death of her husband, the widow should not have to be dependent on others for her sustenance. Under the classical law she only had the maintenance rights out of the property and the inheritance rights from the joint family property were denied to her. Under the 1937 Act, a widow got inheritance rights 'in lieu of maintenance' and her right to claim maintenance was extinguished.

However, the journey towards grant of absolute right of property to a woman was still undergoing and it was only after the passing of Hindu Succession Act, 1956 that the absolute

6 *Gandhi Maganlal v Bai Jadab* (1990) ILR 24 Bom 192 FB

7 *Damodar v Parmanand Das* (1883) ILR 7 Bom 155

8 *Natarajan v Perumal* (1942) 2 Mad LJ 668

right to property was given to a female in its true sense.

Effect of Passing of the Hindu Succession Act, 1956 on the Right of Property of a Hindu Female

The Hindu Succession Act, 1956 converted the limited ownership hitherto granted to a widow into a complete and absolute ownership. Section 14 of the Act in addition to granting the absolute and complete ownership to a Hindu widow, further settled the controversy regarding the exact share that the widow took on death of her husband as an undivided member in the Mitakshara Coparcenary.

Section 14 provides here asunder:

Property of a female Hindu to be her absolute property:

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

Explanation: *In this sub-section, 'Property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after the marriage, 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.*

2) *Nothing contained in sub section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.*

As such Section 14 of the 1956 Act, by removing expressly the disability imposed under Hindu law on a woman to hold the property only as a limited owner, enabled her to acquire any property from whatever means as her absolute property. Consequently, the Act empowered the female to dispose of her property at her pleasure.

After the passing of the 1956 Act a Hindu Widow on death of her husband inherits his separate property as his primary heir and the quantum and nature of her share are absolutely identical to a son. Moreover, the presence of the woman defeats the doctrine of survivorship over the undivided share of the husband and prevents it from going to the surviving coparceners.

The 1956 Act further abolished the *concept of reversioners* since the property inherited by the widow on the death of her husband, could be transmitted by her to her own heirs instead of being taken by her husband's heirs.

The Act provided wider definition to the term 'property' and the distinction between the *stridhana* type of property and non-*stridhana* type of property was completely abolished. The Act further abolished the different modes of the acquisition of property and of its devolution.

Section 14 provides that for the purpose of maturity of the limited estate into an absolute estate of a Hindu female it is necessary that:

a) She possessed the property as a limited owner; and

b) She had not remarried.

Hereafter, an attempt has been made to explain the various terms as used under Section 14 and as interpreted by the judiciary while deciding the issues arising out of the application of the said provision.

Possession

The term used in Section 14 is 'possessed by' and not 'in possession of a Hindu female'^[9] which indicates a possession in law that is a valid title to the property. As explained by the Supreme Court it must be a possession or a right to claim possession that can be sustained in law for the application of Section 14^[10].

Actual physical possession without the right of ownership would not attract the application of this Act. The Supreme Court of India, in a case where a Hindu female was in actual physical possession of the estate, but as a trespasser, has held that her possession will not enlarge into an absolute ownership^[11] Moreover, a mere actual physical possession, without limited ownership, would not convert it into an absolute ownership.

Before the passing of the 1956 Act, a widow had limited power of alienation of her limited estate which could be exercised by her only in times of dire need viz. a legal necessity or for the performance of indispensable religious duties including the ceremonies for the spiritual salvation of the deceased husband. And this sale would be valid only in those cases where the widow did not have alternate resources for funding these functions. As such the widow could not alienate her limited estate on the basis of her whims and fancies.

After the passing of the 1956 Act, a question arose as to whether a limited estate of a widow bought by a person from her before the 1956 Act on the basis of a transaction which the widow was not entitled to enter into, would convert into an absolute estate so as to confer a full ownership in favor of the alienee. Settling the position in these types of cases the Supreme Court of India has held that if, prior to 1956, a Hindu widow alienated her limited estate beyond the permissible limits, she could not acquire a full estate in it, as she was 'stripped of her rights' in it. With respect to the rights of the alienee the Court observed that his position was very vulnerable and precarious. It could be called a temporary ownership, it was a life interest, but not of the life of the alienee but of the widow^[12].

However, a temporary loss of possession by a widow before the passing of the Act of 1956, which has been regained after transfer of the limited interest, but before 17 June 1956, would not adversely affect the conversion of the limited ownership, into a full ownership under the Act^[13].

Similarly in cases where the limited estate alienated by the widow before the passing of the 1956 Act and reconveyed to her after the Act, it has been held that the reconveyance of the transferred limited interest in favour of the widow, even after

9 *Mangal Singh v Ratno* AIR 1967 SC 1786

10 *Ibid.*

11 *Eramma v Veerupanna* AIR 1959 SC 1879

12 *Kalavathi v Soiryabai* AIR 1991 SC 1581

13 *Gopal Singh v Dile Ram* AIR 1987 SC 2394

the commencement of the Act, will convert it into an absolute estate in her favour, if her right was called in question subsequent to it^[14]. The Supreme Court has held that there was nothing in the language of Section 14(1), which suggests that the widow must be possessed of the limited estate on the date of the commencement of the Act. Rather, the possession is to be seen on the date or time when her right is called in question, when she has an occasion to claim or assert a title thereto. As per the Court, the expression, 'any property possessed by a Hindu female, whether acquired before or after the commencement of the Act' means:

- 1 any property possessed by a female, acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner; and
- 2 any property possessed by a Hindu female, acquired after the commencement of the Act, will be held by her as a full owner thereof and not as a limited owner.

The court concluded that there is no mandatory requirement that the widow must have possessed the property on the date of the passing of the Act and she can acquire it subsequently as well. The court has further emphasized that the primary purpose of the Act is to convert the limited estate of the widow in to an absolute estate and to remove the disability imposed on the widow to own the property as an absolute owner.

Acquisition of property

The term 'property' has been given a very wide connotation under Section 14 and the provision expressly provides that it would include property acquired in any manner whatsoever. As such the connotation given to the term 'property' under the Act is very comprehensive.

The explanation to Section 14(1) provides that:

In this sub-section, 'Property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after the marriage, 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.

As such property inherited by a widow as limited estate from her husband or father-in-law or her share in the coparcenary property that her deceased husband has held in the *Mitakshara* coparcenary would be converted into her absolute estate after the passing of the Hindu Succession Act, 1956.

Similarly, a limited interest in a property received by a Hindu Women under a device of Will or settlement will be covered by the Explanation to Section 14 and would convert into her absolutely owned property. However, it is to be seen that subject to what conditions the property has been transferred under a Will or an instrument. If the property has expressly been given to the female only as a limited/life estate then as held by the Supreme Court^[15] it would remain a limited estate and would not mature into her absolute interest. In the said case the widow had received a life estate under a Will executed by her husband in 1941. Under the terms of the Will,

on the death of the widow, the property was to vest in the step-daughter. The validity of the disposition of the property made by the widow in 1966, was challenged by the step-daughter. The Supreme Court held that the widow could not get a larger interest than what was bequeathed to her and she had only a limited interest, she could not validly dispose it of. In another case the Supreme Court has held that where the widow receives a life-estate from the husband under a will, with the vested interest going to the collaterals of the husband, it will not convert into an absolute estate, even if she was in possession in 1956 and upon her death post 1956, the collaterals and not her heirs will be entitled to the property^[16]. As such it is clear that where the language of the will indicates that the conferment is in lieu of her pre-existing rights of maintenance, such life-interest only, will mature into an absolute interest.

Before the passing of the Hindu Succession (Amendment) Act, 2005, a Hindu female was entitled to receive a share at a partition in certain cases only. She was not a coparcener and hence could not claim a right to ask for a share in the coparcenary property. In all the sub-schools of *Mitakshara* except the *Dravidian* sub-school, certain females were entitled to receive a share out of the property as and when an actual partition took place in the family. In the rest of the regions governed by the *Mitakshara* law the father; s wife would get a share equal to the share of the son, when a partition took place between the father and the son. The mother would get a share equal to the share of the son if a partition took place among the brothers and the paternal grandmother would get a share equal to that of the grandson, where they effected a partition amongst themselves. The said females had a right to approach the courts in case they were not given their share when the partitions took place. However, they only had a limited interest in their shares which were terminable on their death. Moreover, under the Hindu Women's Right to Property Act, 1937, a widow of an undivided coparcener was entitled to the same share as that was of her husband, and was capable of receiving such share on partition and could even demand a partition and ascertain the share herself. After the passing of the 1956 Act, any of the aforesaid property received by the given females at a partition, in which she had only a life interest, would be her absolute property even if she was given the property under some restrictions.

The Hindu woman has traditionally been considered inferior to males and it was considered that it was the duty of the males to maintain her. Before the marriage it was the father and the brothers; during the marriage, the husband and after him, the heirs who took his property who were held responsible for the maintenance of the women. The said social structure of subjugation of the women was very deep-rooted in the society and was considered necessary to keep the women in a dependant position so that the existing patriarchal social fabric could be preserved and the institution of the marriage could be sustained lest the women would become independent and self-confident. It was the Act of 1937, that for the first time granted a widow a limited/life estate in the husband's property in lieu of her maintenance and resultantly, after her death, it reverted to the husband's heirs. After the passing of

14 *Jagannathan Pillai v Kunjitha padam Pillai* AIR 1987 SC 1493

15 *Gumpha v Jaibai* (1994) 2 SCC 511

16 *Karmi v Amru* AIR 1971 SC 745

the 1956 Act, whatever share or property she received in lieu of her maintenance became her absolute property.

The Supreme Court in the case of *V Tulasamma Reddy v V Sesha Reddy* ^[17] has held that a widow is entitled to maintenance out of her husband's estate irrespective of whether that estate is in the hands of his male issue or other coparceners. The Court further held that where the widow receives property in lieu of her maintenance, under a compromise before the Act, her limited rights mature into absolute rights.

However, where the widow had no pre-existing right of maintenance, but was given the right of the possession of the property for her lifetime out of love and affection, such rights will not mature into her absolute rights.

As per Section 14, the property received by a Hindu female by way of gift, before or after the passing of the 1956 Act, is her absolute property. Before the passing of the 1956 Act, the woman held gifted properties as her *stridhan* and had absolute right over them always, except coverture, where the consent of the husband was necessary for its disposal.

Similarly it was always accepted that the property acquired by a woman by her personal skill or exertion or art or a special learning, is her absolute property. However, after the passing of the 1956 Act, she is free to dispose of the said property at her own will and she no longer requires the consent of her husband before disposing it off, which was necessary before the passing of the 1956 Act.

On the similar lines any property acquired by a woman by purchase or prescription are her absolute properties under the 1956 Act.

Explanation to Section 14 by prescribing that 'property acquired in any other manner' by a woman would be covered by provisions of the Section, gave a wide amplitude to the legislative intent of giving absolute right to a woman in the properties acquired by her. As such, the properties acquired by a woman through adverse possession and under a decree or award of a court would be her absolute properties.

Section 14(2) deals with the situation where only a limited estate in a property has expressly been conferred to a woman under a Will or an Award of the court. Section 14(2) provides here asunder:

Nothing contained in sub section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Thus, it can be said that Section 14(2) is an exception to the general rule as provided under Section 14(1) and protects the right of a person to settle his property in accordance with his wishes. Since, Section 14(1) is an enabling, benevolent and empowering provision, as such, it has to be liberally construed and as a corollary, Section 14(2) which is in the nature of limiting the scope of Section 14(1) requires to be construed strictly. According to Section 14(2), where a Hindu female receives only a limited interest in a property under a decree of a court or an Award or under a Gift or a Will, such limited interest would be covered by Section 14(2) and would not

mature into her absolute estate. In the case of *V Tulasamma Reddy v V Sesha Reddy* ^[18] the Supreme Court has expressed displeasure over the incomprehensive language of Section 14(1) and Section 14(2). The Court observed that it is difficult to decide those cases, on the basis of the abovesaid provisions of the law, where the property was received by a Hindu female in lieu of her maintenance and the instrument granting such property provides for a restricted estate for her in the said property. The Court further held that the real test to determine whether a case falls under Cl. (1) or Cl. (2), is that, irrespective of whether a woman receives the property under a gift or a Will, if she receives the property in recognition or in lieu of her pre-existing rights, then it is covered by Section 14(1) and if she has received it because the grantor wanted her to have a limited interest, then Section 14(2) shall cover the said settlement.

Disqualifications for maturity of a limited estate into absolute property

Thus we see, that Section 14 of the Hindu Succession Act 1956 grants the right of absolute ownership to a Hindu female in the property possessed by her as her limited estate. At the same time there are certain conditions which prohibit the conversion of a limited estate into an absolute ownership.

Following are the cases in which a limited estate would not mature into an absolute estate:

- 1 Where the widow dies before the passing of the Act and
- 2 Where the widow relinquishes her estate or transfers it in favour of another person and parts with the possession (in case of sale or gift but not in case of lease or mortgage).

In the first case there would be no question of conversion of the estate, because the reversioners would get a vested title to it in the event of the death of the widow before the passing of the 1956 Act.

The second condition is self explanatory and as such merits no further explanation.

It is the third condition where the widow remarries which demands some explanation because of its technical nature and for the reason that the legislature has given it special attention in many regards.

Under the 1956 Act, upon her remarriage the limited estate terminates as if she had then died. The same was due to the specific provision under the Hindu Widow Remarriage Act, 1856 which legalized the remarriage of the Hindu Widows.

Section 2 of the said Act provided that the right of a widow in the deceased husband's property has to cease before her remarriage. A remarried widow had to be presumed dead and the right of the reversioner's to succeed in the deceased husband's property would be immediately activated.

The 1856 Act has been repealed by the Hindu Widow's Remarriage (Repeal) Act, 1983. In a recent judgment the Supreme Court has strangely held that even if the re-marriage of a widow is null and void yet it did not obliterate the disqualification from inheritance by reason of remarriage. ^[19]

The aforesaid judgment fails to appeal to the reasoning since a widow whose remarriage is void and if she is deprived of the right of absolute ownership in the property of her deceased

17 (1977) 3 SCC 99

18 AIR 1977 SC 1944

19 *Velamuri Venkata Sivaprasad v Kothuri Venkateswaslu* AIR 2000 SC 434

husband, she would stand in a precarious position as now she would not have any permanent source of her maintenance in the event of the failing of the subsequent marriage of the widow. Hence, in such cases the widow would not be here nor there.

Moreover, the aforesaid judgment is discriminatory against the women in the light of one of the earlier judgment^[20] of the Apex Court wherein, while deciding the issue of commission of the offence of bigamy by a Hindu Man, observed that, "prima facie, the expression 'whoever marries' must mean 'whoever ...marries validly or whoever marries and whose marriage is a valid one'."

Secondly the whole purpose of granting a limited estate in favour of the widow was that under traditionally prevailing Hindu law the widow was a burden upon the existing male family members who were required to maintain her as she was incapable to hold property of her deceased husband absolutely. As such the conferment of the limited estate in the property was with an objective of maintaining herself. And in the event of her death or remarriage the limited estate got terminated for the reason that now she was no longer required to be maintained out of her former husband's property or estate. As such the termination of the limited estate on the remarriage of the widow was not with an intention of depriving her of the resources available to her but was due to the availability of an alternative to her, who would take care of her maintenance. Also, a void marriage is no marriage in the eyes of law, and a party to a void marriage retains her single woman status. In view of the aforesaid facts it is respectfully submitted that the decision of the Hon'ble Supreme Court in the case of *Velamuri Venkata Sivaprasad* merits reconsideration on the part of the judiciary in order to align the precedent with the true legislative intent.

Constitutional validity of Section 14, Hindu Succession Act, 1956

The Constitutional validity of Section 14(1) of the Hindu Succession Act, 1956 was challenged before the Apex Court was challenged in the case of *Partap Singh v Union of India*^[21]. The petitioner alleged that provisions of Section 14 are discriminatory against the males as they benefit only one community that is the female. The petitioner further alleged that the provisions of Section 14 were vague and uncertain.

Facts

A male Hindu died in 1932, leaving behind two widows, and the petitioner, an adopted son and a considerable measure of agricultural land. In pursuance of an agreement, each of the widows was given one-third share of the property, in lieu of their maintenance. One of the widows relinquished her one-third share in favour of the petitioner, in 1943. In 1945, the petitioner filed the suit against the other widow, seeking declaration that she had no right, title or interest, of any sort, in property of her deceased husband, including in the share that she was given in lieu of her maintenance. During the pendency of the litigation, a compromise was effected, pursuant to which, the parties agreed that the widow would be

permitted to retain the one-third share in the property in lieu of her maintenance and on her death, the petitioner would be entitled to take the possession of the property. However, after the commencement of the 1956 Act, the widow bequeathed the property in her possession to one of her relatives. The petitioner challenged the said transaction entered into by the widow on the ground that the widow did not have a pre-existing right of maintenance and had secured the possession on the basis of the compromise, as such her limited interest in the property cannot mature into an absolute ownership by the operation of the Act of 1956. In view of the above the widow was not an absolute owner of the property in question and hence the will executed by her in favor of her relative was incapable of taking effect in law. The petitioner took the stand that his case falls under Section 14(2) and not under Section 14(1). The petitioner further challenged the Constitutional validity of Section 14 itself. In doing so the petitioner relied on certain earlier observations of the Supreme Court in cases like that of *V Tulsamma v V Sesha Reddi*^[22] wherein the Apex Court has expressed its displeasure over the difficulties encountered by the courts in interpreting Section 14(1) and (2).

The Apex Court while deciding the case of the petitioner observed that the earlier displeasure of the Court was with respect to the 'clumsy' language of Section 14 which often resulted in the conflict of judicial opinion of various courts. As such the observations were made with a hope that the legislature would intervene in order to recast the language of the Section.

As far as the substance of Section 14 is concerned, the Court made it clear that there has never been an adverse comment from the side of the Supreme Court which could indicate that the Court has any hostile view against the Section.

While deciding upon the contention of the petitioner that Section 14 is discriminatory as it favors only the females, the Court held that the State, under Article 15(3), is empowered to enact special legislation in favor of the women and children. Thus, the petition of the petitioner was rightfully dismissed by the Apex Court.

The aforesaid case depicts the typical mindset prevalent in the Indian society which necessitated the passing of a provision like Section 14 of the Hindu Succession Act, 1956. The males have traditionally been considered as the rightful owner of the property and the females have always been considered incapable of acquiring and holding the property absolutely, enjoying all the rights qua the alienation of the property as per her own will. The inheritance rights as granted by the Act of 1956, are still not considered as an entitlement of the widow rather they are perceived as an encroachment over the rights of the males. It is therefore, necessary that the judiciary and civil society remains vigilant in granting and enforcing the benevolent provisions of Section 14 of the Hindu Succession Act, 1956 and strive in giving the widows their rightful share in the property of their deceased husbands so that they don't remain dependant anymore on the mercy of the male relatives of their husbands and are not considered as a burden.

20 *Bhaurao Shankar Lokhande v State of Maharashtra* AIR 1965 SC 1564
21 AIR 1985 SC 1695

22 AIR 1977 SC 1944

Conclusion

The Indian woman has traditionally been kept at an inferior position vis-à-vis her male counterpart. There were given numerous justifications for her inferior position. However, the real intention has always been to keep the patriarchal hegemony alive. The birth of a son has always been an occasion of rejoice. It could be said that during the tribal ages, the necessity of physical strength to protect one's own tribe gave importance to the desire of the sons. But, in a civilized society, the woman plays an equal and sometimes a greater role, as compared to a man, in upholding the fabric of the institution of family and at a larger scale, of the society in whole. In this background it is the demand of the law that women should be conferred their due recognition and share in the property, similar to what a male gets. The Section 14 of the Hindu Succession Act, 1956 is a revolutionary step, which has been taken in this regard by the legislature. By accruing absolute rights in the property acquired by a female, the Section is a salutary step in ameliorating the condition of the Hindu women. However, still the demand of the women of their legal rights provided to them under Section 14 of the Act, are not taken in a natural and healthy overtone. The conservative Hindu society perceives any such demand from a female as selfish and hyper ambitious on the part of the female. A lady who wants her rights under Section 14 is considered as ungrateful and share grabber of her male relatives. Thus, the reformative legislative or judicial interventions apart, what the need of the hour is, that the society should be encouraged and made aware to acknowledge, accept, praise and repay the contribution of one-half of its constituent and endeavors to grant equal rights to a woman from her conception in the womb till her death, and even after her death, should be carried on.

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