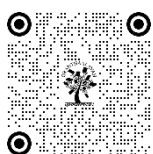


# A COMPREHENSIVE OVERVIEW OF HINDU WOMEN'S RIGHT IN PROPERTY:AN OVERVIEW

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## ABSTRACT

"It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society."

Hon'ble Justice Sujata V. Manohar

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## 1. INTRODUCTION

The Hindu succession law has witnessed the dynamics in the matters of right to property, possession, ownership, control and acquisition due to the diversified Hindu culture it is believed that prior to the Hindu Succession Act 1956 there were two different schools like *Dayabhaga* and *Mitakshara* having the applicability across the India with the variations both schools were being made governing bodies in respect of succession matters. So there was the multiplicity of the succession law in India As far as property rights of the women are concerned earlier in a Joint Hindu Property women being not a coparcener were having only limited interests in the coparcener property they were just given the right to be maintained, control, possession and ownership as to the property were not at all vested with the Hindu females even prior to the Hindu Women's Right to Properties Act 1937 the doctrine of the survivorship was being prevalent in the matters of the succession.

There was notion of stridhan and non- stridhan basically stridhan comprised of property received by ways of gifts and presents given to such women by her parents, husband, close relations as it is believed that a Hindu women was having the disposal rights and full interests over such stridhan but enjoyment over non-stridhan was limited. It was observed that the position of the women is discriminatory in the society Sate came up with

the amendment in order to liberate the women and to overcome the economic subjugation ensuring the equality of law between men and women by way of 174th Report of the Law Commission of India on "Property Rights of Women: Proposed Reform under the Hindu Law". Then the Hindu Succession Act 1956 enacted as it ensured the Hindu women to hold the property and dispose it of being as an absolute owner as this very act reformed the Hindu Personal law and gave the greater weight age to the women as far as their property rights are concerned. It firstly distinguished the separate and joint Hindu family property.

## 2. THE HINDU WOMEN'S RIGHT TO PROPERTY, 1937

The Hindu Women's Right to property Act was passed in 1937 and was amended in 1938. It was prospective in application and applied to property other than agriculture property and immoveable estate, which either under a custom or otherwise, went to a single heir. It applied to Hindus governed by the *Mitakshra*, *Dayabhaga* and customary law of Punjab. Section 2 of the Act expressly repealed the pre-Act customs and rules of the laws that were contrary to the provisions of this Act. The Act stated in the preamble, that it was expedient to amend the Hindu law in order to give better rights to women with respect to the property, section 3 provided that :

When a Hindu governed by the Dayabhaga school of Hindu Law dies in state leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, shall subject to the provision of sub section (3) be entitled in respect of property of which he dies intestate to the same share as a son.

Provision that the widow of a son shall inherit in like manner as a son's if there is no son surviving and shall inherit in like manner as a son's son if there is no surviving son of such predeceased son. Provided further that the same provisions shall apply mutatis mutandis, to the widow of a predeceased son.

When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall subject to the provisions of sub section (3) have in the property the same interest as he himself had.

Any interest devolving on Hindu widow under the provision of this section shall be the limited interest known as a women's estate provided however, that she will have the same right of claiming partition as a male owner.

The provision of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of grant applicability thereto, descend to a single heir, or to any property to which the Indian Succession Act 1925, applicable.

## 3. CRITICAL ASSESSMENT OF SECTION 14 OF THE HINDU SUCCESSION ACT, 1956.

Section 14 of the Hindu Succession Act 1956 provides that any property possessed by a female Hindu whether acquired before or after the commencement of the act shall be held by her as full owner thereof and not as a limited owner. It is also to be reckoned that by the Hindu succession amendment act 2005 section 6 was inserted to the Hindu Succession act which deals with the devolution of the interest in coparcenary property as it is provided that in a joint family governed by the Mitakshara law, the daughter of a coparcener shall by the birth of become the coparcener in her own right and she would have had same rights and liabilities had she been the son. Section 14 has been given the retrospective effect for the applicability of the this very section two preconditions must be satisfied that are (1) ownership of the property must vest in her (2) she must be in possession of the estate when the act came into force<sup>1</sup>.

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<sup>1</sup> Deendayal v Rajuram 1970 SC 1019.

It is very well settled principle of law that to be the absolute owner for property you must have the title to the property even you have possession of it you can't be said to be enjoying the absolute ownership. Explanation appended to the section 14 speaks of modes of the acquiring the property, kind of the property to which Hindu female would have the absolute ownership all rights and liabilities would vest with her. It has been explicitly provided what modes by which property may be acquired by a Hindu female: -

**By Inheritance:** it is observed that section 14 (1) has enlarged the limited interest into the full interest when the a widow hold an estate as an heir of her husband, on the coming into the force of the act it can be conclusively said that she has the absolute property. When the woman gets the limited interest, and shares in the property of her deceased husband under the Hindu widow's right to property Act 1937. such limited interests would be converted into the absolute one by the virtue of the Hindu Succession Act.<sup>2</sup>

**By Device:** If a woman gets the limited interest in the property by way of a device of the will or a family settlement or compromise. Such property will also be covered under the section 14 (1). If she was put in the possession of that such property it would be conclusively believed that she has got right to hold, and have control, management, absolute ownership over it. If there happens to be case of the disposal or alienation of such property. Validity of such alienation cannot be challenged by the heirs of her husband<sup>3</sup>. So, we must be clear here that once the women got the property, she would all the rights attached or vested with the property. Even it has been observed by the court that she is competent enough to alienate the property as well women has got right to execute the sale deed being an absolute owner of the property having the full management over that. As the object of the section 14 was to remove the inability to inherit the property like a male as an absolute owner. so now the position is very clear that a woman who has got the property even under the device of will and family settlement she would the right to dispose it of as such property is separate property of her she can do whatever she wants to do with such property. No one can question the validity of the alienation or disposition while dealing with the property.

**At a Partition:** A Hindu Female is entitled to receive a share at the partition in certain specific situations. If she was not a coparcener, she can't be claiming the right to get the share in the partition. This is the hard and fast rule in respect to the partition. If she has received any property by way of partition after 1956 in which if she is allotted the life interest, she would be having the absolute ownership though such property was given with the restrictions or conditions attached to.<sup>4</sup> If any direction is being made that on the death such property would revert to the family.<sup>5</sup>

**In lieu of Maintenance:-**The incapability of a Hindu woman to acquire an absolute ownership in the property was very closely linked to her sole entitlement to the assets for her personal maintenance. Her economic dependence on men was a well entered and deep rooted practice in the Hindu society and was viewed by the conservation as essential for her subjugation, lest she become too independence and assertive , a sign that was seen as a danger mark to the stability of the family and even for the protection of marriage as an institution The Act 1937 provided that women gave her share in the husband's property but in lieu of her maintenance and that is why on her death, it reverted to the husband's heir. Because she got the property in lieu of her maintenance she lost the right to claim maintenance once she inherited the husband's property or acquired his individual share in Mitakshara coparcenary.

In *V Tulasamaa v/s V Sesha Reddy*<sup>6</sup> Supreme Court held that the occasion to determine whether the property received by Hindu widow, in lieu of maintenance under an instrument that restricted the nature of interest given to her, would be held by her as an absolute owner after the commencement of the Act, and whether be section 14(1) and 14(2) that would apply to such cases. Where the property comes on the female

<sup>2</sup> Atava Akulamma v Gajjelapappa AIR 1995 AP 166.

<sup>3</sup> Agasti Karuna v Cherukuri Krishaish 2000 AIHC 85 AP.

<sup>4</sup> Lachhaia v Ramsankar AIR 1966 Pat 191.

<sup>5</sup> Saraswati v Krishana Iyer AIR 1965 Ker 226.

<sup>6</sup> (1977) 3 SCC 99, AIR 1997 SC 1944.

in recognition of her per-existence right of maintenance she will acquire full ownership in it under section 14(1).<sup>7</sup> The mode of acquisition is immaterial if it is received in lieu of maintenance. It may be revived under will.<sup>8</sup> However where a widow had no pre-existing right of maintenance but was given the right of possession of the property for her limited out of love and affection such right will not mature into an absolute interest. Here the maternal uncle and aunt of a widow give her the possession of a property for her life.

**By Gift:** - The property that a female may be received under a gift can be from her friends or relatives or from any other person. Any property that she receives under a gift would be held by her as an absolute owner. prior to 1956 a woman held these properties as her Stridhan and had absolute right over it at all times, except where the consent of her husband was necessary for its disposal.

**By Personal Skill or Exertion:-** Any property that was acquired by a woman by her skill or exertion or thought or a special learning, in the nature of a salary or share in profits, with the help of a trade or business was always considered her exclusive property and continues to be so even now. However her absolute power of disposal over it was constrained by marriage as she was subject to the consent of a woman is free to dispose of her own property for her pleasure.

**Acquired in Any other Manner:** - A property that a woman acquires in any other manner than the ones specified above will be held by her as an absolute owner. It is a very wide clause and would cover property received under a decree or award.<sup>9</sup> A widow received under the compensation from the government in lieu of the ancestral property that was held by her family in Pakistan<sup>10</sup> this amount was used by her to purchase property in India. In 1966 she gifted this property to her son. On a challenge to the validity and therefore competent to gift it to anyone. The gift was accordingly held valid.

**Property Acquired After the Commencement of the Act:** - Section 14(1) of the Act removes the incapability of a woman to acquire property as a full owner. The property could have been acquired by her before the commencement of the Act as a limited owner or after the commencement of the Act. It is interesting to note that except for section 14 there is no other provision in the entire Hindu Succession Act 1956 which specifies the nature of interest that a Hindu woman takes in the property that she may inherit under this Act. Had it not been for the phrase used in the section, "whether acquired before or after the commencement of the Act, controversies and conflict genuine or due to vested interest of the parties were bound to surface. It is these words that enable a woman to inherit the property as an absolute owner under the Act.

#### 4. CONSTITUTIONAL VALIDITY OF SECTION 14(1) OF THE HINDU SUCCESSION ACT, 1956.

As it has been provided under the section 14(1) of this very act that any property possessed by a female Hindu whether acquired before or after the commencement of the act shall be held by her as full owner and not as a limited owner<sup>11</sup> as under the explanation stipulated in section 14 explicitly provides that the word 'property' includes both the movable and immovable acquired by a female Hindu by way of inheritance or devise or at a partition, or in lieu of the maintenance or arrears of the maintenance or by gift from any person whether a relative or not, before, at or after her marriage or by her own skill and exertion or by purchase and prescription in any other manner whatsoever, and also any such property held by her by her as Stridhan immediately before the commencement of the act<sup>12</sup>. As the rationale behind the introducing such provision under the very act was to ensure the equality of law, and to liberate the Hindu women from the chains of predominant male and in order to overcome the economic subjugation such provision provided the full rights

<sup>7</sup> Kuthala Kannu Ammal v L nadir AIR 200 Kant. 396.

<sup>8</sup> Beni v/s Raghubir Prasad AIR 1999 SC 1147.

<sup>9</sup> Banu Sahib v Gayathri AIR 1972 Bom 16.

<sup>10</sup> Gulab Chand v Sevo Karan AIR 1961. Pat. 45.

<sup>11</sup> Sec 14 (1) of the Hindu Succession Act, 1956.

<sup>12</sup> Explanation appended to the Section 14 of the Hindu Succession Act, 1956.

in the inherited property. As it is well believed that male are supposedly to be the rightful successors of the father property on the contrary women just have the right to be maintained they are not supposed to be inheriting or having the control and management of property simply they are just perceived to have limited interests in the property when there happens to be the case of inheritance.

The constitutionally validity of this very section was challenged in the supreme court on the ground that it mandated the hostile discrimination against the men as it was argued that such provision only benefited one section of the community viz, the women<sup>13</sup> as it was also alleged by the petitioner that provisions of the section 14 were vague and uncertain. Court simply dismissed the petition and decided that such provision did not contravene the constitution and held to be in conformity with the constitutional mandate of the gender equality even it removed the existing discrimination stipulated by the earlier laws favouring only the men.

As the word **“property”** and **‘Female Hindu’** have been given the wider interpretation under the explanation given in the section 14. as it was observed by the court that any property possessed by the women irrespective of how it was acquired being irrelevant point as she becomes her absolute property<sup>14</sup> and the words any property possessed by a female Hindu would also include actual as well as the constructive possession even when the property is in the possession of the trespasser it would be deemed that she is in the constructive possession.<sup>15</sup> And the word female would also include the daughter also therefore the limited interest of the daughter in the property would also get enlarged to the full right.<sup>16</sup> If this happens to be the case wherein the property given to the widow in lieu of the maintenance after the coming into the force of Hindu Succession Act in such case also the widow would be the absolute owner of that property with the ambit of section 14.<sup>17</sup> But if no property is given in lieu of the maintenance and only the sum of the money is being given then this very section would have no applicability.<sup>18</sup> So the section 14 (1) of the Hindu succession Act 1956 has removed the discrimination and established the inheritance rights in the property same as the male have. As the very constitutionality of this section was upheld in various judicial pronouncements and section 14 of the Hindu secession Act 1956 was held to be in the conformity with the constitution it nowhere contravene the constitutional mandate even it does make an attempt to remove the gender inequality putting the women at par with the position of the male so far as the inheritance rights in the property of the women are concerned.

## **5. 174TH REPORT OF THE LAW COMMISSION OF INDIA ON THE “PROPERTY RIGHTS OF THE WOMEN: PROPOSED REFORM UNDER THE HINDU LAW”**

The Hindu Succession Amendment Act 2005, is the initiative taken by the Law Commission of India was an attempt to overcome existing discriminatory gender inequality and to liberate the women form the economic suppression. This very amendment gave the equal inheritance rights to the Hindu Females in respect of the Hindu mitakshara coparcenary property as the males have. It was the revolutionary change that was made by the insertion of the section 6 under which daughter was considered to be the coparcener by the birth in the same manner as the son and she would also have the same rights and liabilities as she would have had had she been a son. In respect of the coparcenary property. As it is also provided by this amendment that the daughter is allotted the same share as is allotted to a son.

The provision was also made that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter. This very amendment deleted a major gender discriminatory clause - Section 4 (2) of the Hindu Succession Act, 1956 it has made women's inheritance rights

<sup>13</sup> Pratap Singh v Union of India AIR 1985 SC 1695 (1985) 4 SCC 197.

<sup>14</sup> Chaudhary v Ajudhia AIR 2003 NOC 126 (HP).

<sup>15</sup> Mangal v Ratno AIR 1967 SC 1786.

<sup>16</sup> Jose v Ramakrishnan Nair Radhakrishnan AIR 2004 ker 16.

<sup>17</sup> Santosh v Saraswathibai AIR 2006 Kant 85.

<sup>18</sup> Sulabha v Abhimanyu AIR 1983 Oris 71.



in agricultural land equal to men's. Section 4(2) excluded from the purview of the Hindu Succession Act significant interests in agricultural land, the inheritance of which was subject to the succession rules specified in state-level tenure laws.

This amended legislation even removed the discriminatory and hostile section which explicitly barred the widows from inheriting the deceased's property, if they had remarried. More or less it can very safely be said that rationale of this amended legislation was to empower the women by breaking the chains of the predominance and dependency of women on the males. This very amending has taken the intuitive to protect the property rights of the women. By virtue of this amending legislation now the women can have the absolute ownership in the property simply it can safely be said that now the women would have all the rights and interests attached to the property so acquired by the women being the separate one. She would have the exclusive control and management over it once she acquired it.

The recent legislative initiative in the form of the amendment is really the serious step toward the gender equality, empowerment to the women and liberating the women from the shackles of the economic suppression. Somehow, we have been able to abolish the formidable patrilineal system of the inheritance among the Hindus. By the various judicial pronouncements, we may say that we are moving toward to achieve the very legal pluralism.

**Smt. Jayasri Guha Nee Ghosh vs Smt. Shukla Ghosh & Another<sup>19</sup>** :-It was observed by the court that Section 14 of the said Act is the heart of the statute, continuing a conscious Endeavour to remove the inequalities between the sexes in the Hindu law of inheritance. The same purpose is reflected in the amending Act of 2005 by which some of the provisions that maintained the imbalance were removed. So, it can safely be reckoned that the section 14 of the Hindu Succession Act has tried to establish the equality of law between the man and women. It very well ensured the protection of the women inheritance property rights.

**Smt. Jayasri Guha Nee Ghosh vs Smt. Shukla Ghosh & Another<sup>20</sup>**:-In this case court decided that "In the Constitutional era, Articles 14, 15(2) and 15(3) and 16 of the Constitution down upon the discrimination and provide the State with the authority to accord protective discrimination in favor of women. The Directive Principles ordain that the state shall strive to ensure equality between man and woman."

**Cherotte Sugathan Lrs. & others v/s Cherotte Bharathi & others High Court 2008**:-In this case the court decided that the Act brought about a sea change in Shastri Hindu Law. Hindu widows were brought on equal footing in the matter of inheritance and succession along with the male heirs. Section 14(1) stipulates that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, will be held by her as a full owner thereof. Certain widows remarrying may not inherit as widows. Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow.

**Hardev Singh v/s Gurmail Singh High court 2007**:- it was observed that "the women had been in possession of the property in lieu of maintenance, she was 'entitled to enjoy the fruits thereof only during her life time.

**A. K. Kumaraswamy v/s B.K. Kaleeswaran 2003 HC Madr.** :- Madras High Court also decided that the Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding any restriction placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applies to instruments, decree, awards, and gifts etc., which create an independent or a new title in favor of the female for the first time. It has no application to cases where the

<sup>19</sup> Decided on 30 April 2008.

<sup>20</sup> Decided on 30 April 2008.

instrument/document either declares or recognizes or confirms her share in the property or her "*pre-existing right to maintenance*" out of that property.

**V. Laxmana Rao vs V. V. Ramana Rao and Others.<sup>21</sup>** - Court said that "to convert the interest which a Hindu female has in property however restricted the nature of that interest under the Sastric Hindu law may be, into absolute estate". This Court pointed out that the Hindu Succession Act, 1956 "is a codifying enactment and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu Females full rights of inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate", Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner the court went on to say that Whatever be the kind of property, movable or immovable and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Sastric law.

## 6. CONCLUSION

Having proved the hypothesis being drawn it may be concluded that by virtue of the Hindu succession act 1956 now the Hindu Women have got right to hold the property absolutely and she would have the exclusive control and management over that inherited property. Even the Hindu Succession amendment Act 2005 has made the daughters to be the coparceners in the coparcenary property. This much amended legislation has given impetus to the social reform as women have been the victims of the economic suppression and being ignored with respect of inheritance rights in the property. This social reform movement would strengthen the women position in the contemporary era and liberate them from the tight shackles of predominant male. It is observed that it is high time we empowered the women socially and economically to get the equal social status this very legislation is an attempt to embolden the women and to ensure the very equality of law in the women and male. It is believed that rule of law is supposedly to be observed to run the democratic machinery. If such legal reforms happen timely considering the existing gaps to be filled in the dynamic Hindu family it can safely be concluded that we are committed to achieve the legal pluralism as envisaged in the very preamble of the Indian Constitution.

## CONFLICT OF INTERESTS

None.

## ACKNOWLEDGMENTS

None.

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<sup>21</sup> Decided on 4 Jan 2002.