

**Q-1 What are the various changes Introduced in Hindu Law of succession by the Hindu Succession (Amendment) Act, 2005.**

**Devolution interest in coparcenary property before Hindu Succession Amendment Act, 2005.**

**Section 6.**

This provision deals with the question of devolution of undivided share of a Mitakshara coparcener property. who dies intestate after coming into operation of this Act.

It is worthwhile to note that the Mitakshara law recognised two modes of devolution of property namely, survivorship and succession. The rule of survivorship applied with respect to coparcenary property, whereas the rule of succession applied to property held a separate or self acquired property by male Hindu who may be a member of joint family. The property of a male Hindu may consist of his own separate or self acquired property or an interest in the Mitakshara coparcenary property or both. Whenever a question arises as to mode of devolution of coparcenary interest of a Mitakshara Coparcener, section 6 of the Hindu Succession a Act, 1956, provides the solution. Section 6 runs as under :

"Whenever a male Hindu dies after the commencement of this Act, having at the time of his death. an interest in the Mitakshara Coparcenary property, is interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and net in accordance with this Act :

Provided that, if the deceased had left him surviving a fent relative specified in class I of the Schedule or a male relative, specified in that class who claims, through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship.

Explanation 1.-For the purpose of this 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.

Explanation 2. Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein. This section may be read with Sections 8 and 30 of the Act"

The Section contains one of the most revolutionary changes in this Act. First of all, it provides a rule of survivorship to be applied with respect to an undivided share in the Mitakshara coparcenary property of a Mitakshara coparcener who dies intestate. At the second instance, it provides a special rule of devolution of undivided share of Mitakshara coparcener in Mitakshara coparcenary property who dies intestate. In the second case the devolution will be in accordance with the provisions of this Act which lay down that where a Mitakshara coparcener dies intestate leaving behind a female heir of class 1 or a male heir claiming through such female heir, the rule of survivorship will not.

apply, instead the undivided interest will devolve in accordance with this Act. *i.e.*, according to intestate succession under Section 8. Thus two modes of devolution of undivided coparcenary interest of a Mitakshara coparcener has been laid down in section 6.

- (i) The rule of survivorship- (first part of Section 6)
- (ii) The rule of succession- (Proviso to Section 6)

The first mode, as given above, is strictly binding to Mitakshara law. Whereas the second mode the creation of this Act which includes the Image heirs of class 1 also, along with the male heirs, who shall be entitled to claim equal shares in the coparcenary interest of Mitakshara coparcener dying intestate.

The implication of the first mode would be that where the Mitakshara Coparcener dies intestate leaving behind only the male heirs of class I the rule of survivorship will apply. This kind of situation can hardly be conceived, as the rule of survivorship will come into operation only if there is complete absence of female heirs of class I. On the other hand, the presence of any of the female heirs of class I would demolish the rule of survivorship and the entire law of devolution will be governed by intestate succession laid down in Section 8-12.

In any case the concept of Mitakshara coparcenary and copy property remains relevant in the context of Section 6 of the Act. It would be desirable to explain these two concepts :-

**Mitakshara Coparcenary.-** Coparcenary consists of male members who acquire an interest by birth in the coparcenary property and can claim partition of his interest in such property from its holder. It commences with the ancestor and includes a holder of joint property and all his descendants in male line who are not removed from him by more than three degrees. Thus a son, grandson and great grandson are coparceners along with the last male holder of the joint property but a great grandson cannot be a coparcener with him because he is removed by more than three degrees from the holder. Besides only males can be coparceners and all females are excluded from the coparcenary. Though a common ancestor is necessary for the origin of a coparcenary it may yet continue without him.

In the above diagram M is the common male ancestor. ABCD are four sons. In the lifetime of M, A B C D his four sons, s<sup>1</sup> and s<sup>2</sup>, s<sup>5</sup> and s<sup>6</sup>, s<sup>7</sup> and s<sup>8</sup>, *i.e.*, his grand sons and great grand sons are coparceners with him. S<sup>3</sup> s<sup>4</sup> s<sup>5</sup> and are not coparceners as they are beyond three degrees from M, the common ancestor. But if M dies during the life time of above-mentioned descendants and will enter the coparcenary and would become coparceners, but S and S" would be out from the coparcenary as both of them are beyond three degrees from A and D.

**Coparcenary property.**-Coparcenary property means and includes (i) ancestral property, *t.*, a property which a person has inherited from his father, father's father and father's father's father.

- (ii) acquisition made by the coparceners with the help of ancestral property;
- (iii) joint acquisition of the courts even without such help provided there was no proof of intention on their part that the property should not be treated as joint family property, and
- (iv) Separate property of the coparceners thrown into common Stock

The Section contemplates the existence of a coparcenary consisting of *propositus* and one or more males at the time of death of the *propositus*. Once the coparcenary comes to an end by partition there is no question of one member of the erstwhile coparcenary taking the property obtained by another member of that coparcenary at the partition by survivorship. The section does not apply to separate property obtained at partition of coparcenary.

**Rule of survivorship.** The first part of the section makes it clear that in case a Mitakshara coparcener dies intestate leaving behind only male heirs of class of the Schedule and there is no female heir mentioned in that list of class 1. the

rule of survivorship shall come into operation with respect to undivided share of the deceased coparcener in the coparcenary property.

### **Illustrations**

(1) A dies leaving behind his three Sons, B, C and D. The share of A in the undivided coparcenary property after his death shall devolve on B, C and D according to rule of survivorship, hence each will get 1/3 share in the entire coparcenary property. Had there been a partition during the lifetime of A each one would have got 1/4 share.

(2) A Mitakshara joint Hindu family consists of three brothers B C and D only. B dies intestate. The share of B in the joint family property (coparcenary property) that is 1/3 shall devolve on C and D. Accordingly C and D will get 1/2 share each.

In Mitakshara, the rule of survivorship applied with respect to coparcenary interest of a coparcener who dies intestate. According to the rule, coparcenary Interest devolved upon only male surviving coparceners not on females For example, A, B, C three brothers constitute a coparcenary. On the death of A, his interest in the coparcenary property devolved on B and C, ie, his two surviving brothers not on heirs that his widow and daughter.

In *Bhaga Pruseth v. Purni Devi*, the court observed that if a member of joint family died during jointness of family without male issue, his married daughter will not be entitled for any sum in coparcenary property because devolution of property is by survivorship.

In *Kenchegowda v. K.B. krishnappa*, the Court observed that, an illegitimate son who is admitted to be a legitimate son by the virtue of Section 16(1) and (2) of Hindu Marriage Act will have a right only in the properties of the parents and none else. During the lifetime of the father, illegitimate son has

no right to claim share in father's property by filing a suit and such right arises only after death of the father. Thus, the conferring of the states did not reflect the rights of the persons other than the parents in the property because Section 16 of the Hindu Marriage Act contains a legal fiction it a by a rule of fictions that the Legislature has provided that children through illegitimate shall nevertheless be treated as legitimate not with standing that the marriage was void or voidable However, it is legal fiction with limitation, the reason behind such limitation in that the Parliament had no intention of eclipsing the settled concepts of Hindu Law such as coparcenary and the right of coparcener to acquire by-birth and the interest in the coparcenary or Joint Family Property under Mitakshara Law Consequently, such a child did not acquire any right by birth in any property much less copercenary or joint family property

Where joint Hindu family can exist and if the daughter's father died before coming into force of Hindu Succession act. 1956. In that position the case would be governed by old Hindu Law and the share of the father would be devolve by survivorship, not by accession, consequently his share goes to his brother, who is surviving coparcenary and his daughter would not be entitled to any share.

**Proviso to Section 6.** The proviso to the section confers new rights upon the specified female heirs mentioned in class of the Schedule and superimposes upon the entire structure of Mitakshara law of survivorship a rule whereby female heirs would replace such coparceners who have not found place in class I of the Schedule. Thus for practical purposes the sale of survivorship has become redundant. Class I of the Schedule includes 12 heirs out of which 8 are female heirs and four are male heirs but out of them one male heir claims through a female i.e., deceased daughter's son. The list is as under:

(1) Daughter (2) Widow (3) Mother (4) Daughter of a predeceased son (5) Daughter of a predeceased son of a predeceased son (6) Widow of a predeceased son (7) Widow of a predeceased son of a predeceased son (8)

Daughter of a predeceased daughter. The only male relative claiming through such female relatives is the son of a predeceased daughter.

In view of above large number of female relatives it is hardly conceivable that there would be an occasion to attract the rule of survivorship. Thus where a Mitakshara coparcener dies intestate having his interest in the coparcenary property and leaves behind him any of the above female relatives or a male relative claiming through female, his interest would devolve according to the provisions of this Act which provides for the equal shares among the male and female relatives of class I of the Schedule.

### **Devolution of Interest in coparcenary property under Section 6 of Hindu Succession (Amendment) Act, 2005.**

The Hindu Succession (Amendment) Act, 2005 which was passed from rajya sabha on 16<sup>th</sup> August, 2005, and from Lok Sabha on 29<sup>th</sup> August, 2005 and later assented by President of India , on September 5, 2005, has widely affected the concept of Mitakshara Hindu coparcenary. Hindu Succession Amendment Act, (2005) has totally damaged the concept of Mitakshara coparcenary because the daughter has been treated like a son under the Hindu Succession Amendment Act of 2005. She becomes entitled to a share in coparcenary by birth. She by birth becomes a coparcener in her own right in the same manner as the son. she is not only conferred the coparcenary right as the son; she has been given all the right possessed by son in the coparcenary and similarly she is also bound by the similar liabilities as a son. The major coparcener in joint family property.

The 2005 Act does not touch separate property (except broadening the Class I heirs). But it includes daughters as coparceners in the Mitakshara joint family property, with the same rights as sons to shares, to claim partition and (by presumption) to become Karta (manager), while also sharing the liabilities.

**A. Comparative Chart of Woman's Inheritance Right, Under Hindu Succession Act.**

|   |  |
|---|--|
| <p><b>1. The deceased man's separate property</b><br/>                 Equal shares for class I heirs, viz., son, daughter, widow, mother and specified heirs of predeceased sons and daughters.<br/>                 The heirs of both sexes have full right to alienate inherited property.</p> <p><b>2. Agricultural Land (section 4(2))</b><br/>                 Inheritance of agricultural land is subject to state-level tenurial laws and not to the Hindu Succession Act. Many of the tenurial law specify inheritance rules that are highly gender unequal.</p> <p><b>3. The Mitakshara Joint Family Property (Section 6)</b><br/>                 Class I heirs (male and female) as specified above have equal claims in a man's "notional" share of the undivided joint family property. A man can however, will away his "notional" share.<br/>                 Son has additional independent birth right in joint family property, as a coparcener. Daughters cannot be coparcener.</p> <p><b>4. Definition of Class I heirs (Schedule: reference to Section 8)</b></p> | <p>no change, except for expanding, the list of Class I heirs for gender equality.</p> <p>No change.</p> <p>Inheritance rights in all agricultural land are subject to the Hindu Succession Act (overriding State laws inconsistent with the Act), and so effectively are now gender equal.</p> <p>No change except in the specification of class I heirs.</p> <p>Substituted Section 6: sons and daughter both have independent birth rights (and liabilities) as coparceners in joint family property. (These shares cannot be willed away by the father.)</p> |
|---|--|



|  |   |
|--|---|
| <p>The Class I heirs of a Hindu male include the children of predeceased children, but these are recognised upto two generations for predeceased sons and only upto one generation for predeceased daughters.</p> <p><b>5. Family Dwelling House (Section 23)</b></p> <p>In a dwelling house wholly occupied by members of the deceased's family, no female heir can claim partition, "Until the male heirs choose to divide their respective shares" Daughters only have rights of residence, and only if unmarried, or deserted, separated or widowed.</p> <p><b>6. Certain categories or widows (Section 24)</b></p> <p>The widow of a pre-deceased son of a pre-deceased son or of a brother, is not entitled to inherit the intestate's property as a widow, if on the date the succession opens she has re-married.</p> <p><b>7. Testamentary Rights (section 30)</b></p> <p>Both men and women have full rights to will away their property, including their shares in joint family property.</p> | <p>Schedule modified to include as class I heirs the children of predeceased children going down to two generations for both sons and daughters.</p> <p>Section 23 omitted: Now daughters (unmarried or married) have the same rights as sons to reside in and to claim partition of the parental dwelling house.</p> <p>Section 24 omitted: The mentioned categories of widows can inherit even if they have remarried.</p> <p>No change</p> |
|--|---|

**Devolution of interest in the property of Tarwad, Tavazhi, Kutumba Kavaru or Illom** --Section 7 of the Act which deals with the devolution of interest in such property as follows:

“(1) When a Hindu to whom the *Marumakkattayam* or *Nambudri law* would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an interest in the property of a tarwad, tavazhi or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *Marumakkattayam* or *Nambudri law*

(2) When a Hindu to whom *Aliyasanatana law* would have applied if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of **Kutumba** or **Kavaru**, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession as the case may be, under this Act and not according to the *Aliyasanatana law*.

**Explanation** --For the purposes of this sub-section the interest of a Hindu in the property of a **Kutumba** or **Kavaru** shall be deemed to be the share in the property of the **Kutumba** or **Kavaru** as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the **Kutumba** or **Kavaru**, as the case may be, then living whether he or she was entitled to claim such partition or not under the *Aliyasanatana law*, and such share shall be deemed to have been allotted to him or her absolutely

(3) Notwithstanding anything contained in sub-section (1) when a *Sthanamdar* dies after the commencement of this Act, the *Sthanam* property held by him shall devolve upon the members of the family to which the *sthanamdar*

belonged and the heirs of Sthanamdar as if the Sthanam property had been divided per capita immediately before the death of sthanamdar among himself and all the members of his family the living, and the shares falling to the members of his family and the heirs of the Sthanamdar shall be held by them as their separate property

**Explanation.** For the purpose of this sub-section, the family of a sthanamdar shall include every branch of that family whether divided or undivided, the male members of which have been entitled by any custom or usage to Exceed to the Sthanamdar if this Act had not been passed

Marumakkattayam is a body of customary laws applicable to people living in Travancore Cochin, Malabar and South Kerala. It is followed by the non-Brahmin community. In South Kerala the system of law applicable is known by the name of Aliyasanta. The outstanding characteristic of Marumakkattayam and Aliyasanta systems is that inheritance is based on matriarchy that is, the members trace their descent through a common female ancestress, i.e., through a female line.

Both systems like the Joint family or coparcenary of the Mitakshara school, have their units Tarwad, which is equivalent to the Mitakshara joint family. But the basic difference between the two is that the Mitakshara system is based on patriarchal system while the tarwad" or the Marumakkattayam is based on the matriarchal system. In the words of **Myne Tarwad** is the name given to the joint family consisting of male and females, all descended in the female line from a common ancestress. It is an undivided family governed by the Marumakkattayam, the customary law of Malabar. Its outstanding feature is that for the purpose of inheritance descent is traced through the female line. A tarwad may consist of two or more branches known as tavazhies, each tavazhi or branch consisting of one of the female members of the tarwad and her descendants in the female line.

**Q-2 Discuss the main features of Hindu succession Act – 1956.**

**SUCCESSION**

The Hindu Succession Act came into force on 170 June 1956. It brings about comprehensive and radical changes in the law of intestate succession amongst Hindus. It was very much in tune with the changed socio- economic of Hindu society. The long felt need of improving the lots of Hindu females through an effective legislation was fulfilled and their right of inheritance at par with males was fully recognised. A vigorous attempt has been made to bring some reforms of far reaching consequences in the system of inheritance and succession.

The law relating to property and its succession required complete Overhauling particularly in the context of women's right to property. After passing of Hindu Women's Right to Property Act, 1937 the Government had up Rau Committee to suggest reforms also on this aspect of law. The Committee after studying the existing rules of Hindu succession suggested revolutionary changes in the system in order to remove inequalities and injustices to women folk amongst Hindus and accordingly recommended for the codification of the Jaw relating to succession. It also suggested for the codification of Hindu law in successive stage.

On the basis of the suggestions and recommendations of the Rau Committee several legislations were adopted by the legislature, the most outstanding of which is Hindu Succession Act, 1956, which represent the biggest reformative outlook of modern Indian Society.

**Object.** The Hindu Succession Act, 1956 has been passed to meet the needs of a progressive society. The old law despite several innovations brought about in it by stray legislations and judicial decisions did not fulfil the desired ends and remained hardly acceptable to a dynamic Hindu society of

contemporary era. Hence there was a need for a uniform system of law of succession which may be acceptable to all sections of Hindus and be equally enforceable upon them. With this end in view the Hindu Succession Act, 1956 came into existence. It removes inequities between men and women with respect to rights in property and it lays down a common list of heirs entitled to succeed on intestacy. The Act has been passed to amend and codify the entire law of succession.

### **Main features of the Act:**

(1) The Act lays down a uniform system of inheritance equally applicable to persons governed by the **Mitakshara** and **Dayabhag** schools as also those in the Southern India who are governed by the **Marumakattayam**, **Aliyasanthana** and **Nambudri** systems of Hindu law. The Act applies to all Hindus and the term Hindu includes Buddhists, Jains and Sikhs. It has further been extended even to those persons whose parents are Hindu, Buddhist, Jain and Sikh and who are brought up as Hindus (Section 2). The Act does not apply to the property of a person to whom the provisions of the Special Marriage Act, 1954 apply (section 5).

(2) Section of the Act gives overriding effect to the provision of the Act. It abrogates all the rules of the law of succession hitherto applicable to Hindus, whether by way of any text, customs or usage, having force of law. Any other law contained in the Central or State legislation shall cease to have effect in so far as it is inconsistent with any of the provisions contained in the Act.

(3) The Act has abolished impartible estate and the special mode of its succession.

(4) The Act has extensively affected the entire concept of Mitakshara coparcenary which was governed by the rule of survivorship. In this scheme

male heirs did not have any place and the property devolved only on the male heirs of the coparcenary on the death of a male member under the Act. The rule of survivorship has a limited application. It would apply only in those cases where a male member on his death left coparceners only. In case such male member of a Mitakshara coparcenary dies intestate leaving behind a female heir mentioned in Class I of the Schedule, the property of the deceased would devolve not according to the rule of survivorship but according to the provisions of this Act which provides for a specific share to such female heir.

### **Order of Succession**

(5) The order of succession provided by the Act is broadly based on the doctrine of propinquity or names of blood and accordingly the heirs are divided into four categories instead of three, which are as follow:

- (i) Heirs in class 1 of the Schedule
- (ii) Heirs in class II of the Schedule
- (III) Agnates
- (iv) Cognates

The property devolves firstly upon the twelve preferential heirs mentioned In class I of the Schedule to the Act and failing such heir upon the second third and fourth class of heirs in that order as laid down in Section 8 and 9. The outstanding feature of the above division is that the heirs in class of the Schedule inherit the property simultaneously and according to the doctrine of representation in case of predeceased sons or daughter. Another important point to be noted is that class 1 of the schedule contained that a list of twelve heirs out of which eight are females and four are males of which are male claims through a female. All of them inherit in equal shares. All the heirs in class II do not succeed simultaneously but the heirs placed in one Entry would be entitled to inherit simultaneously. In the case of third and fourth categories

of heirs, t.e. agnates and cognates, the rules of preference has been adopted in order to determine the priority

(6) The Act has abolished Hindu women's limited estate and made her absolute owner of the property irrespective of its source of acquisition. Any property acquired by a Hindu female in any lawful manner whatsoever and possessed by her became her absolute property and she enjoys absolute power to dispose of it in a way she desires (Section 14 of Hindu Succession Act, 1956).

(7) The Act has also provided uniform order of succession with respect to property of female Hindu. On her dying intestate her property shall devolve on her children and husband and thereafter upon her parents and the heirs of parents. In absence of any issues to her, the property inherited from her parents would revert back to the heirs of parent instead of devolving upon the husband or heirs of husband.

(8) The right of child in womb at the intestate's death and subsequently born alive shall relate back to the date of intestate's death (Section 20)

(9) The Act lays down some general rules of succession inter alia to the effect that her related to a male or female intestate by full blood are to be preferred to those related by half blood if the nature of relationship is the same in every other respect (Section 18). Another rule is that if two or more her succeed to the property of an intestate, they shall take their share per capita and not per stripes, Such heirs take the property as tenant- in-common and not as joint tenants. (Section 19)

(10) The Act has thoroughly revised the law relating to exclusion from inheritance. Section 28 discards all the grounds of exclusion on physical defects, deformity or disease. The disqualification is confined to the case of remarriage of a widow of a predeceased son, widow of a predeceased son of predeceased son and widow of the brother. Another disqualification stated in the Act relates to a murderer who is excluded on the principles of justice and

equity. Conversion is no longer a ground to exclude a person from inheriting the property but a converts descendants have been disqualified from inheriting the property of their Hindu relatives. (11) The right of illegitimate children to inherit the property of their mother has been preserved but such children are disqualified to succeed to their father's property.

PGS National College Of Law



**Q-3 What is the nature of property held by Hindu by Female under the Hindu Succession to the property of a female Hindu dying intestate.**

The Hindu Succession Act is a pioneer legislation in respect of proprietary rights of a woman amongst Hindus. By incorporating Section 14 in the Act, the narrower and restrictive connotations of the term 'stridhan' have been replaced by a wider and comprehensive meanings with a view to recognise her absolute proprietary right and to confer full title upon her to this effect. Prior to the passing of the Act, despite some stray legislative attempts for improving the social and economic status of the women nothing substantial could be achieved and hence there was a long felt need to bring about some drastic changes in law in this direction. The Act has fulfilled that object by fundamentally parting with the law prevailing before its enforcement.

Under the law before the commencement of the Act, the property held by a Hindu female was classified under two heads:

(1) stridhan; (2) Hindu women's estate. The former was regarded as her absolute property over which she had full ownership and on her death it devolved upon her heirs. The latter was considered to be her limited estate with death devolved not on her own heirs but upon the next heirs of the last full owner. But Section 14 of the Act abolished the latter classification and conferred absolute ownership on her with respect to every property acquired by her through lawful means.

It is important to note that the ancient law as laid down in the Smritis and commentaries was considerably liberal in the matter of interpretation of stridhan and her power of alienation.

➤ The interpretation given to the term 'stridhan' by the author of Mitakshara was so comprehensive and wide that it covered every kind of

property obtained by way of gift, inheritance, purchase, partition, seizure or by finding within the ambit of Stridhan, *i.e.*, property of which she was regarded as absolute owner. In this way it can be very safely concluded that there was hardly any need of redefining Stridhan under the present Act and the enlarged meaning of Stridhan as declared in the Mitakshara continued to be the accepted law until the Act came into existence. But because of the distortion of the text and its meaning in the later period as also certain judicial pronouncements of the Privy Council the ancient concept of Stridhan as expounded by texts and commentaries received a setback and murdered the social and economic status of women very much pathetic and hence a need for the change in the law became the pressing need. Section 14 of the Hindu Succession Act, 1956, in its present form is the obvious result of that necessity.

**Section 14 runs as under:**

“(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 relative or not, before, at or after marriage, or by her own skill or exertion or by purchase or by prescription, or in any other manner whatever, and also any such property held by her as Stridhan immediately before the commencement of this Act.

(2) Nothing contained in 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 gift, will or other

instrument or the decree, order or award prescribe a restricted estate in such property.

Sub-section (1) of Section 14 along with the Explanation has given widest possible extension to the property possessed by a female Hindu. It has overridden the erstwhile prevalent law of Stridhan and declares that all such property shall be held by her as full owner. It also dispenses with the traditional limitations on the powers of a female Hindu to hold and transmit property. It has the effect of abrogating the cruel provisions of law, which denied her the proprietary rights for a long time and remained instrumental of her perpetual tutelage. The section has recognised her status as independent and absolute owner of the property which she possessed on the date of the commencement of the Act. A qualification to the rule is laid down in sub-section (2) but it does not relate to the incidents of woman's property.

In *Eramma . Veerupana* the Supreme Court examining the scope of Section 14 of the Act observed:

“The property possessed by a female Hindu, as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title however restricted the nature of her interest may be. The words as full owner thereof and not as a limited owner as given in the last portion of section (1) of the section clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words Section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision would have been a limited owner of the property, will now become a full

owner of the same by virtue of this section. The object of the section is to extinguish the estate called "limited estate or 'widow's estate in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property will have all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder does not in any way confer a title on the female Hindu where she did not in fact possess any vestige or title."

Thus the estate taken by a female Hindu under Section 14(1) is an absolute one and is not defeasible under any circumstance. The ambit of that estate cannot be cut by any text, null or interpretation of Hindu law. In *Super v. Gauri Shankar*, the apex Court held that though a male member of a Hindu family governed by the Banaras School of Hindu law is subject to restriction qua alienation of his interest in the joint family property but a widow acquiring an interest in that property by virtue of Hindu Succession Act is not subject to any such restriction. The property possessed by a female Hindu on the date the Act came into existence whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof. The provisions under Section 14 makes a clear departure from the Hindu law text or rules. Those texts or rules cannot be used for circumventing the plain intendment of the provisions.

In *Bhoop Singh x Financial Commissioner* and others, the Court further observed that, words "property possessed by female Hindu" means that property must be in possession of female concerned on the date of commencement of Act, in this case the widow on the date when Act was enforced had neither any title to property nor she was in possession, Therefore a gift made in favour of widow would be nullity and successions of donee cannot derive any benefit. She would have only right of maintenance from the property. so then a mere right of maintenance without actual a not sufficient to attract Section 14(1).

Hence, her daughter also would not be enticed thane in the property widow herself had no share in property.

**Section is retrospective.-** Sections retrospective in the sense that it enlarges the limited estate of Hindu woman into an absolute estate even with regard to property inherited or held by her at the time when the Act came into force. The only requirement is that the property must be by her the date of the commencement of the Act Where a female Hindu inherited property before the Act came into force and alienated the same before the Act. She cannot be deemed to be the owner of the property of which she made an absolute alienation and was not in possession at the date of the commencement of the Act.

In *Koppurawami v. Veerava*, the Supreme Court approving the view of Calcutta High Court observed that "the opening words of Section 14, property possessed by a female Hindu obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female possession when the Act came into force. The possession must have been either actual or constructive or in any form recognised by law, but unless the female Hindu, when limited estate in the disputed property was claimed to have been transformed into absolute estate under this particular section, was at least in such possession, taking the word possession in its widest connotation when the Act came into force, the section would not apply. The court further observed that the object of the Act was to improve the legal status of Hindu women, enlarging their limited interest in property inherited or held by them to an absolute interest, provided they were in possession of the property when the Act came into force and therefore, in a position to take advantage of the beneficial provisions, but the Act did not intend to benefit alienee who with the eyes open purchased the property from the owners with it justifying necessity before the Act came into force and at a time when the vendors had only a limited interest in the property

In 1987 the Supreme Court decided a landmark case in *Jagannathan Pillai V. Kunjithapatdam Pillui*, in which the scope of Section 14(1) was considerably enlarged. The court observed that the expression possessed has been used in the sense of having a right to the property or control over the property. The expression any property possessed by a Hindu female whether acquired before or after the commencement of the Act on an analysis yields to the following interpretation: (1) Any property possessed by Hindu female acquired before the commencement of the Act will be held by her as a full owner thereof and not as a limited owner.

In the above case a widow before the commencement of the Act inherited certain property of which she was a limited owner. She disposed of that property through a registered sale deed before the Act came into force. After the commencement of the Act the transfer again transferred the same property to the widow for consideration. The Court held that she became absolute owner of the property. She has gained possession of the property subsequent to the commencement of the Act upon the retransfer of the very same property to the transferee in whose favour she had transferred it prior to the commencement of the Act. He would become its absolute owner, when he bought the property from the alienor to whom she had sold the property prior to the enforcement of the Act. She acquired the property within the meaning of the Explanation to Section 14(1) of the Act. Where the property was alienated before the commencement of the Act and the widow trespassed on the property and had physical possession as a trespasser without any title, she cannot claim the benefit of Section 14(1).

**Property possessed by female Hindu Meaning of-** The expression "possessed" has been used in the section in a broad sense and in its widest connotation. It means the state of owning or having in one's hand or power. The possession may be actual or constructive or in any form recognised by law. It has been held in *Mahesh Chandra Raj Kumar Sharma* that a plea based on

Section 14 can be allowed to be raised for first time before Supreme Court base Section 14 operates on its own force once the facts requisite to attract its application are established. Moreover "possessed" in Section 14 meant right to possess and not actual physical possession. Where a property comes into the possession of a female Hindu under certain will and she gets only the life interest in it for her maintenance the court has held that it will convert into absolute estate.

In the case of *Badri Prasad v. Kanso Devi*, a Hindu inherited certain property under the Hindu Women's Right to Property Act, 1937 from her husband after his death. Later on there was partition in the family and a settlement about the division of shares was reached by arbitration. The widow received a share in the property and remained in its possession at the date de the commencement of this Act. The Court held that such property became her absolute property within the meaning of Section 14(1), It was further observe that the term "possessed" includes cases of simple possession as well a constructive possession, where a person has been illegally dispossessed or any property. In *Mangal Singh v. Rattno* the Court reiterated the above view and s that the section covers all cases of property owned by a female Hindu although

she may not be boy and actual physical on constructive possession that property. provided of course that she has net parted with her tights and is entitled to getting possession of the property. In this case a widow inherited certain land and came into its possession on the death of her husband in 1917. Het possession continued till 1954 when she was wrongfully deported and consequently she filed a to March 1956 and died in 1958. It was held that she must be regarded to have possessed the property on the date of the enforcement of the Act in 15 for the purposes of this section and such become full owner of it. In such a case the female owner would be regarded as being "possessed" of the property if the trespasser has not perfected his title by adverse possession before the act came into force. Since she died in 1958, legal representative must be deemed have to those rights.

The female Hindu must be alive and be in possession of the property on the date of the commencement of the Act for getting the benefit of the section. If she had died before the Act came into existence or had conned to be in possession of that property, the provisions of section would not be attracted. When she had sold away the property before the Act and they divested herself of that property, Section 14(1) would not help.

Thus nly such property becomes absolute which has been in her possession at the date of the comment of the Act. In *Mahesh chand sharma v. Raj kumari Sharma* house was bequeathed to wife of testator for life. There was a compromise between wife of testator and her son. Wife gave up her right to house except first floor of house. Meanwhile Hindu Succession Act came into force. It was held that the wife became absolute owner of only of the first floor of house and not the whole house, When the widow acquires life interest in some property in lieu of maintenance and she gets limited ownership in it, such property also becomes her absolute property within the meaning of Section 14(1). notwithstanding her limited interest in it. Where a provision is made for the maintenance of a female Hindu by giving a life interest in property for the purposes of residence that provision is made in lieu of a pre-existing right to maintenance and the female Hindu acquires far more than a vestige of title which is deemed sufficient to attract Section 14(1). In *Mangal Mal v. Smt. Punni De* the Supreme Court reversing the decision of Rajasthan High Court held that where a widowed daughter-in-law through an arbitration was given a residential home for life only in lieu of her right to maintenance and she remained in possession of the said property on the day of the enforcement of the Hindu Succession Act, 1956, her limited interest blossomed into full ownership rights: If she has sold away a part of that property after the Act came into force, the sale would be upheld as she became entitled to sell it.

In *Bhagwan Dattatraya v Viswa Pandari Nath* a widow inherited certain property and sold it away before the commencement of the Act. The sale was challenged by the reversioners and held invalid by the court. After this declaration by the court, holding the sale invalid, she purchased the property



and sold it away again. It was challenged by the reversioners again. The Court held that in spite of its previous declaration, as the property came in her possession after the enforcement of the Act, it became her absolute property and therefore the reversioners could not challenge the alienation there after, as the widow had become absolute owner of the property and enjoyed full right of dealing with it.

In **Maged Singh v. kehar singh** and others, the Court observed that a widow's inheriting certain property right is only limited for benefit of reversioners. She can transfer property by way of will after the commencement of the Act. The husband of widow died issueless. In the absence of any other heir and reversionary right in his estate it could not be claimed by anyone. widow would become absolute owner of estate of her husband and as such she was entitled to transfer of property by way of will.