

**DISTRICT AND SESSIONS COURT,  
AURANGABAD.**

**WORKSHOP ON**

**CIVIL**

1. "Daughter is a coparcener - in view of the Hindu Succession (Amendment) Act, 2005 with latest case laws."
2. "Property rights of widow under the Hindu Law with special emphasis on effect of re-marriage."

**CRIMINAL**

1. "Scope, distinction and applicability of Sec.34, 149 of I.P.Code and Sec. 109 and 120-B of IPC."
2. "Code of Criminal Procedure Act, 2013."

**Held on 28<sup>th</sup> March, 2015**

## INDEX

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1. "Daughter is a coparcener - in view of the Hindu Succession (Amendment) Act, 2005 with latest case laws."
2. "Property rights of widow under the Hindu Law with special emphasis on effect of re-marriage."

Sr. No.	Subtopics	Page
1	Object to amend Hindu Succession Act, 2005.	1 to 26
2	Scope of Section 6 of Hindu Succession Act before and after Amendment Act, 2005.	
3	Right of daughter as co-parcener.	
4	Widow's right in husband's property.	
5	Hindu Widow's right to property after remarriage.	
6	Distinction between Section 14 (1) and 14 (2) of Hindu Succession Act.	
7	Accrual of rights of daughter as co-parcener.	
8	Latest case laws on the subject.	

### CRIMINAL

1. "Scope, distinction and applicability of Sec.34, 149 of I.P.Code and Sec.109 and 120-B of IPC."
2. "Code of Criminal Procedure Act, 2013."

Sr. No.	Subtopics	Page
1	Scope of common object and common intention.	27 to 50
2	Scope of abetment and conspiracy.	
3	Distinction between common object and common intention.	
4	Distinction between abetment and conspiracy.	
5	Application of criminal liability with reference to sharing of object and intention.	
6	Criminal liability with reference to abetment and conspiracy.	
7	Victims rights in Criminal Law Amendment Act, 2013.	
8	Special provisions regarding investigation in Criminal Law Amendment Act, 2013.	
9	Code of Criminal Procedure Amendment Act, 2013.	

...1...

1. **"Daughter is a coparcener - in view of the Hindu Succession (Amendment) Act, 2005 with latest case laws."**
2. **"Property rights of widow under the Hindu Law with special emphasis on effect of re-marriage."**

### **Object to amend Hindu Succession Act, 2005**

“Women constitute half the world's population, perform nearly two-third of its hours, receive one-tenth of the world's income and less than one hundredth of the property”

02. Since time immemorial the framing of all laws have been exclusively for the benefit of man and woman has been treated as subservient and dependent on male support. The right to property is important for the freedom and development of a human being. Earlier, woman in a joint Hindu family, consisting both of man and woman, had a right to sustenance, but the control and ownership of property did not vest in her. In a patrilineal system like the Mitakshara school of Hindu law a woman was not given a birth right in the family property like a son.

03. The Constitution of India provides that every person is entitled for equality before law and equal protection of the laws and thereby prohibits discrimination on the basis of caste, creed and sex. The discrimination on the basis of sex is permissible only as protective

...2...

measures to the female citizens as there is need to empower women who have suffered gender discrimination for centuries. Empowerment of women leading to an equal social status with men hinges, among other things, on their right to hold and inherit property.

04. The Hindu Succession (Amended) Act of 2005 is an attempt to remove the discrimination as contained in the amended section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu mitakshara coparcenary property as to sons have. Simultaneously section 23 of the Act disentitles the female heir to ask for partition in respect of dwelling house wholly occupied by a Joint Family until male heirs choose to divide their respective shares therein, was omitted by this Amending Act. As a result the disabilities of female heirs were removed. This is a great step of the government so far the Hindu Code is concerned.

05. This is the product of 174<sup>th</sup> Report of the Law Commission of India on “Property Rights of Women: Proposed Reform under the Hindu Law”. First, the 2005 Act, by deleting a major gender discriminatory clause – Section 4(2) of the 1956 Hindu Succession Act – has made women's inheritance rights in agricultural land equal to men's. Section 4(2) excluded from the purview of the Hindu Succession Act significant interest in agricultural land, the inheritance of which was subject to the succession rules specified in State-level tenurial laws. Especially in the north-western states, there

...3...

laws were highly gender unequal and gave primacy to male lineal descendants in the male line of descent. Women came very low in the succession order and got only a limited estate. The new legislation brings male and female rights in agricultural land on par for all states, overriding any inconsistent state laws. This can potentially benefit millions of women dependent on agricultural for survival. Second, the 2005 act makes all daughters, including married ones, coparceners in joint family property.

### **Scope of Section 6 of Hindu Succession Act before**

#### **Amendment Act, 2005**

06. The very preamble of the Act, 1956 signifies that an Act to amend and codify the law relating to intestate succession among Hindus. The Act aims to lay down an uniform law of succession whereas attempt has been made to ensure equality inheritance rights between son and daughters. It applies to all Hindus including Budhists, Jains and Sikhs. It lays down an uniform and comprehensive system of inheritance and applies to those governed by the Mitkshara and Dayabha schools as well as other schools. The Hindu Succession Act, 1956 reformed the Hindu personal law and gave women greater property rights, allowing her of ownership rights instead of limited rights in property.

07. The daughters were also granted property rights in their father's estate. In the matter of succession of property of a Hindu male

...4...

dying intestate, the Act lays down a set of general rules in section 8 to 13. Sections 15 and 16 of the act contain separate general rules affecting succession to the property of a female intestate. Under section 8 of the Act three Classes of heirs recognized by Mitakshara Law and three Classes of heirs recognized by Dayabhaga Law cease to exist in case of devolution taking place after coming into force of the Act. The heirs are divided into instead, four Classes viz :

- (i) Heirs in Class I of the Schedule
- (ii) Heirs in Class II of the Schedule
- (iii) Agnates, and
- (iv) Cognates.

08. Of course mother, widow, son and daughter are primary heirs. In the absence of Class I heirs, the property devolves on Class II heirs and in their absence first on agnates and then on cognates. Still some section of the Act came under criticism evoking controversy as being favourable to continue inequality on the basis of gender. One such provision has been the retention of mitakshara coparcenary with only male as coparceners.

09. As per the Law Commission Report, coparcenary constitutes a narrower body of persons within a joint family and consists of father, son, son's son and son's son's son. Thus ancestral property continues to be governed by the wholly patrilineal regime, wherein property descends only through the male line as only the male

...5...

members of a Joint Hindu Family have an interest by birth in the coparcenary property, in contradiction with the absolute or separate property of an individual coparcener, devolve upon surviving coparceners in the family, according to the rule of devolution by survivorship. Since a woman could not be a coparcener, she was not entitled to a share in the ancestral property by birth. Section 6 of the Act although it does not interfere with the special right of those who are members of a mitakshara coparcenary, recognizes, without abolishing joint family property, the right upon death of a coparcener, of certain members of his preferential heirs to claim an interest in the property that would have been allotted to such coparcener if a partition of the joint family property had in fact taken place immediately before his death.

10. Thus section 6 of the Act, while recognising the rule of devolution by survivorship among the members of the coparcenary, makes an exception to the rule in the proviso. According to the proviso, if the deceased has left a surviving female relative specified in Class I of the Schedule I or a male relative specified in that Class who claims through such female relation, the interest of a deceased in mitakshara coparcenary property shall devolve by testamentary of intestate succession under the Act and not as survivorship. Thus non-inclusion of women as coparceners in the joint family property under the mitakshara system as reflected in section 6 of the Act relating to devolution of interest in coparcenary property, has been under

...6...

criticism for being violative of the equal rights of women guaranteed under the Constitution in relation to property rights. This means that females cannot inherit ancestral property as males do. If a joint family gets divided, each male coparcener takes his share and females get nothing. Only when one of the coparceners dies, a female gets share of his interest as an heir to the deceased. Further as per the proviso to section 6 of the Act, the interest of the deceased male in the mitakshara coparcenary devolve by intestate succession firstly upon the heirs specified in Class-I of the Schedule-I. Under this Schedule there are only four primary heirs, namely son, daughter, widow and mother. For the remaining eight, the principle of representation goes up to two degrees in the male line of decent. But in the female line of decent, it goes only upto one degree. Thus the son's son's son and the son's son's daughter get a share but a daughter's daughter's son and daughter's daughter's daughter do not get anything.

### **The State Amendment Maharashtra w.e.f. 22-06-1994**

#### **Section 29-A Equal Rights to Daughter in Coparcenary Property:**

11. Under **Section 29-A** inserted by the Amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in a joint Hindu family governed by Mitakshara law, and shall have the same rights and be subject to the same liabilities as if she would have been a son. In the event of partition, she shall be allotted the same share as that of the son, and if she is dead at the time

...7...

of partition, her children will be allotted her share. She shall hold such property with incidents of coparcenary ownership, and shall be entitled to dispose of it by will. This amendment is not applicable to the daughters who married before 22-6-1994. Furthermore, the amendment is not applicable to a partition which has been effected before the date of commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994.

12. Under **Section 29-B**, if such daughter having share in Mitakshara coparcenary dies leaving behind a child or a child of a predeceased child, the share in coparcenary property held by her at the time of her death shall pass by testamentary succession if she has made a will disposing it, else by intestate succession. If she does not have these relatives, the share shall pass by survivorship to other coparceners.

13. **Section 29-C** deals with the right of pre-emption, referred as "preferential right to acquire property". After 22-6-1994, if any heir on whom property devolves under Sections 29-A or 29-B desires to transfer his/her share, other heirs shall have a right to acquire the interest proposed to be transferred. If the heirs cannot agree upon the amount of consideration for the share, the amount shall be determined by the court.

...8...

14. The Maharashtra amendment also made discrimination between the daughters who married before and after commencement of the said Act.

15. Keeping this position in view the Law Commission of India to ensure gender equality proposed that daughter should be made coparcener by birth and she should get a share on partition and on or death of male coparcener. It also recommended that the married daughter has already become coparcener by birth should also be given share in the ancestral property. It also recommended that a women should have equal right in respect of the family house. Accordingly, Hindu Succession (Amendment) Act came into force from 9<sup>th</sup> September, 2005.

**Scope of section 6 of the Hindu Succession Act, After Amendment Act 2005, Right/Accrual of Right of a Daughter as a coparceners**

16. Coparcener is one who shares (equally) with others in inheritance of the estate of a common ancestor. Coparcenery property means the property which consists of ancestral property, or of joint acquisitions, or of property thrown into the common stock and accretions to such property. A Joint Hindu Family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A coparcenery is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenery property. These persons

...9...

include sons, grand sons, great grand sons of the holder of the joint property for the time being i.e., the three generations next to the holder in unbroken male descent and now also daughter of the coparcener after amendment of the Hindu Succession Act in 2005.

17. The significant change that was brought by the Amendment Act was to make daughters coparceners in joint family property. After the amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and she would have the same rights in the coparcenary property as she would have had if she had been a son. With the rights that she acquire in the joint family property she also is subjected to the same liabilities in respect of the said coparcenary property as that of a son and any reference to a Hindu Mithakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

18. According to this amendment if the daughter dies intestate; her interest in coparcenary would devolve by succession in accordance with section 15 of the Hindu Succession Act, 1956. If the daughter is left alone by deceased male coparcener, she shall inherit his entire property of which she would become absolute owner and after her death, if she dies intestate shall devolve upon her heirs as per section 15. The daughter now has the right to dispose of her interest in coparcenary by making a will and if she is alone heir she shall become absolute owner of the property and shall also have a right to alienate it

...10...

during her life time. This amendment also created a right to have a share in the joint property during the partition in favour of children of the daughter and her pre-deceased daughter, in case of their death, that is to say a son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a predeceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son, are also now included in Schedule to Hindu Succession Act, 1956 as Class I heirs. The said heirs, not being coparceners, would not have right to demand partition. Any disposition, alienation, partition or testamentary disposition of property made before 20th December, 2004 shall not be invalidated by reason of the amendment of Section 6.

19. The provision was also made that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act of 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place.

20. Further 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

...11...

surviving child of such predeceased son or of such predeceased daughter.

21. After commencement of the Amending Act of 2005, no court shall recognise any right to proceed against a son, grandson or great grandson for a recovery of any debt due from his father, grandfather or great grandfather (on the ground of the pious obligation under the Hindu Law), of such son, grandson or great grandson to discharge any such debt. But if any debt contracted before the commencement this Amending Act of 2005 the right of any creditor, to proceed against son, grandson or great grandson, shall not affect or any alienation relating to any such debt or right shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if Hindu Succession Amending Act of 2005 had not been enacted.

### **CASE LAWS**

01). Ganduri Koteshwaramma and another Vs. Chakiri Yanadi and another in 2012[1] Mh.L.J. Page 613, in which it had been held that,

*“The new section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The legislature has now conferred substantive right in favour of the*

...12...

*daughters. According to the new section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.*

02). *Badrinarayan Shankar Bhandari and others Vs. Omprakash Shankar Bhandari in 2014(5) Mh.L.J. 434* in which it is held that,

*“1. The correct legal position is that section 6 as amended by the 2005 Amendment Act is retroactive in nature meaning thereby the rights under section 6(1)(b) and (c) and under sub-Rule (2) are available to all daughters living on the date of coming into force of the 2005 Amendment Act i.e. on 9<sup>th</sup> September, 2005, though born prior to 9<sup>th</sup> September 2005. Obviously, the daughters born on or after 9<sup>th</sup> September, 2005 are entitled to get the benefits of Amended section 6 of the Act under clause (a) of sub-*

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*section (1). In other words, the heirs of daughters who died before 9<sup>th</sup> September, 2005 do not get the benefits of amended section 6.*

*II. That the Amendment Act applies to daughters born any time provided the daughters born prior to 9<sup>th</sup> September, 2005 are alive on the date of coming into force of the Amendment Act i.e. on 9<sup>th</sup> September, 2005. There is no dispute between the parties that the Amendment Act applies to daughters born on or after 9<sup>th</sup> September, 2005.*

*III. Amended section 6 applies to daughters born prior to 17 June, 1956 or thereafter ( between 17 June, 1956 and 8 September, 2005), provided they are alive on 9<sup>th</sup> September, 2005 that is on the date when the Amendment Act of 2005 came into force. Admittedly amended section 6 applies to daughters born on or after 9<sup>th</sup> September, 2005.*

*IV. Decision of the Hon'ble Division Bench of in Vaishali S. Ganorkar, 2012(3) Mh.L.J. 669 is per incurium”.*

03). *Babu Dagadu Awari v/s Baby w/o Namdev Lagad 2014 (4) Mh.L.J.608*

In that case, plaintiff i.e. daughter of applicant was born prior to 9-9-2005 the date of commencement of the

...14...

Act, she had filed suit for relief of partition against the applicant father and respondents 2 and 4 i.e. sisters. The father alienated suit properties by sale deed executed in favour of respondents 2 and 3. The suit properties were ancestral properties belonging to father and his 4 daughters –The alienation took place after 9-9-2005 i.e. the date fixed for giving effect to Amendment Act, therefore, it was held that, suit is maintainable and such transaction is null and void and not protected by Act.

04). *Leelabai v/s Bhikabai 2014 (4) Mh.L.J.312,*

The daughter was married before 1994 – Her parents died before coming into force of new section 6 of Hindu Succession Act (amended in 2005) and there was no disposition or alienation of coparcenary property including any partition or testamentary disposition before 20-12-2004. Therefore, it was held that, respondent- daughter would have equal share in the coparcenary property and would be entitled to even re-open the notional partitions, which are not covered under the explanation to sub-section (5) of section 6.

### **RIGHT'S OF HINDU WIDOW IN HUSBAND'S PROPERTY:**

22. Section 10 in The Hindu Succession Act, 1956 talks about the distribution of property in situation husband dies intestate and says

...15...

that distribution of property shall take place among the heirs in class I of the Schedule wherein the Rule-1 specifically states that the intestate's widow, or if there are more widows than one, all the widows together shall take one share. For instance, if husband dies intestate and is survived by two widows and a son, heirs in Class I shall take the property simultaneously and to the exclusion of all others. Here according to the provisions of Rule-1 of section-10, both the widows of the husband shall take one-half share in the property of the husband and the other half shall go to his son. In situation a husband dies intestate leaving two widows and no sons, both of them shall inherit the property equally, i.e. both of them shall be entitled to one-half share, there being no other Class I heir.

23. A Hindu widow would get a right equal to that of sons in respect of her husband's share under the Hindu Succession Act, 1956, so that the widow's right to a share of her husband's right in the joint family continues after the succession law in 1956, but the doubt in pre-existing law gets clarified is that her share will extend only to husband's share as ascertained on a sub-partition, (so to say) deemed as between her deceased husband and her son/ sons. The change effected by the Hindu Succession (Amendment) Act, 2005 does not alter her position as legal heir to her husband's share. But then, her husband's share would shrink to the extent that her daughter is now given a share equal to that of her son. Earlier, the widow and daughter

...16...

had a share only on their father's share on deemed partition between the deceased father and his sons. Where the widow has daughters, she would find, after the recent amendment, that her husband's share would get reduced because of the rights of the daughters to a share of the joint family, so that her share gets diminished. To take an illustration, if the deceased coparcener leaves a widow, a son and a daughter, the share of the widow and daughter prior to amendment in 2005 would have been one-third of half of the share of deceased coparcener, with son getting half share on deemed partition between him and his father in the first round and further one-third of balance in the second round as legal heir of the father along with his mother and sister. After the amendment in 2005, where the death occurs on or after September 6, 2005, the husband's share will get reduced to one-third because of the right of the daughter, so that widow will get only one-third of such one-third share with son and daughter getting one-third share in the first round besides one-third of remaining one-third along with mother. She could have had the same share as son and daughter only if she was also recognized on par with son and daughter.

24. Any property that a Hindu female will get after June 17, 1956, will be her absolute property unless specifically given to her with limitation. When a male Hindu dies possessed of the property after commencement the Act (30 of 1956), leaving his widow as his sole heir, she inherits the property as class I heir. In the circumstances,

...17...

the question of applicability of section 14 does not arise on succession after the Act comes in to force. The widow inherits an absolute estate, even without calling in aid of this section. (*Sadhi singh v. Gurudwara Singh Naraike, AIR 2006 SC 3282*). The woman's estate over which she has possession when the Act came into force (June 17, 1956) is converted into her absolute estate. However, the old Hindu law of woman's estate and reversioner is still relevant in respect of the property over which she had no possession when the Act came into force.

25. What was once a special privilege, when her maintenance right was converted to absolute right by the Hindu Women's Right to Property Act and later under Hindu Succession Act has shrunk in size, probably unintended, but at the same time anomalous, requiring to be set right.

### **Hindu Women's Rights to Property Act, 1937.**

26. Thereafter, the **Hindu Women's Rights to Property Act, 1937** which come in to force on **14th April, 1937**, which is now repealed by S.31 of the Hindu Succession Act, 1956, introduced important changes in the Law of Succession. The rules of inheritance in force in the Bombay State defer in some respects from those in force in the Benares, Mithila and Madras Schools. The order of succession in the Bombay State is given separately in Chapter VI.

...18...

After 14th April, 1937, a widow takes the same share as a son. As to the devolution of property, S.3 of the Hindu Women's Right to Property Act provides that when a Hindu dies intestate leaving any property, his widow or if there is more than one widow, all his widows together, shall subject to the provisions of Sub-S.3 be entitled in respect of property in respect of which he dies intestate to the same share as a son. As such, Sub S.3 provides restrictions on widow's powers to alienate such property as that any such interest devolved on a Hindu widow shall be the limited interest known as a Hindu Women Estate. However, she has a right to claim partition as a male owner.

### **Hindu Succession Act, 1956.**

27. In the circumstances, the **Hindu Succession Act come into force on 17th June, 1956.** It amends and codifies the law relating to intestate succession among Hindus and bring about fundamental and radical changes in the Law of Succession. The Act lays down a uniform and comprehensive system of inheritance. The principal reform that was called for, and one which became a necessity in view of changed social and economical condition, was that in succession, there should be equitable distribution between male and female heirs and the Hindu Women's limited estate should be enlarged into full ownership.

**Relevant Provisions of the Hindu Succession Act.**

28. **S.4 of the Act** gives overriding effect to the provisions of the Act. As such, the Hindu Women's limited estate is abolished and any property possessed by a female Hindu, howsoever acquired, is now held by her as her absolute property and she has full power to deal with it or to dispose it of by will as she likes. The restraints and limitations on her power ceased to exist even in respect of existing property possessed by a female Hindu at the date of the Act coming into force, whether acquired by her before or the commencement of the Act, it is now held by her as full owner and not as a limited owner under S.14 of the Act. **Section 24 of the Act** dealing with the disability of a widow of a predeceased son, the widow of a predeceased son of a predeceased son or the widow of a brother, to succeed to the property in case of such widow's remarriage has been deleted, thus removing the disability and permitting succession to the property to which she is entitled. This disability under the section, was however, confined only to the categories of heirs stipulated therein.

**Re-marriage of Widows & its effects under the Law**

29. If, however, such widow inherited her husband's property and subsequently remarried, it would not cause her to be divested of the property, since she became full owner by virtue of the operation of this section, as held in Baliram Dhake vs Rahubai, AIR 2009 Bom. 57.

...20...

**RIGHT OF HINDU WIDOW REMARRIAGE:**

30. In *Cherotte Sugathan Vs. Cherotte Bharathi* *AIR2008SC1467* it was held that, right of Hindu widow remarrying to her former husbands property has been considered. Former husband had died on 2.8.1976. Succession was to be opened on that date. The widow was held to have become absolute owner of property of her husband by reason of inheritance in terms of Section 14 (1) of Succession Act.

31. In *Santosh Popat Chavan Vs. Sulochana Rajiv MANU/ MH/ 2482/ 2014*, it is held that in the light of above basic doctrine of jurisprudence, I hold that the right having been given to a widow or mother or women under the Act of 1956, she cannot be told that though she has a right to get share, but she cannot file a suit for recovery of share of her deceased husband as she has no right to file a suit. When a right is given, the remedy has to be there namely; remedy to file a suit for partition, which cannot depend upon the desire or demand of other coparceners in the family to have a partition of the joint family property. I don't think that personal law of Hindus, in this context, can be said to be affected in any manner. Any contrary interpretation would be in violence to the dicta discussed above by me on the subject, and would be a retrograde step.

**Distinction between Section 14(1) & 14(2) of  
Hindu Succession Act.**

Section 14 of the Hindus Succession Act runs as under:

32.           **“Section 14(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.

33.           **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 her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

34.           **Section 14(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 or a civil court or under an award where the terms of the gift, will or other instrument or the decree, order of award prescribe a restricted estate in such property.”

...22...

35. In case of V. TULASAMMA & ORS. Vs. SESHU REDDI (DEAD) BY L. Rs. reported in (1977) 3 Supreme Court Cases 99, the Apex Court summarized the legal position on the point in following words:

I) “A Hindu female’s right to maintenance is not an empty formality or an illusory claim but is a tangible right against property which flows from spiritual relationship between the husband and the, wife and is recognized and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is a preexisting right so that any transfer declaring or recognizing such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

II) Section 14(1) and the Explanation thereto have been couched in the widest possible terms

...23...

*and must be liberally construed in favour of the females so as to advance the object of the 1956-Act and promote the socio-economic ends sought to be achieved by this long needed legislation.*

*III) Section 14(2) is in the nature of a proviso and has a field of its own without interfering with the operation of s. 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by s. 14(1) or in a way so as to become totally inconsistent with the main provision.*

*IV) Section 14(2) applies to instruments, decrees, awards, gifts etc., which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and s. 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognizes a preexisting right, such as to a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an*

...24...

*absolute one by force of s. 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-s. (2) and would be governed by s. 14(1) despite any restrictions placed on the powers of the transferee.*

V) *The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance", "or arrears of maintenance" etc., in the Explanation to s. 14(1) clearly makes sub-s. (2) inapplicable to these categories which have been expressly excepted from the operation of sub-s. (2).*

VI) *The words "possessed by", in s. 14(1)- are of the widest amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the: property under a preliminary decree before or at the time. when the 1956-Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force*

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*of s. 14(1) she would get absolute interest in the property. It is equally well-settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.*

*VII) That the words "restricted estate" used in s. 14(2) are wider than limited interest as indicated in s. 14(1) and they include not only limited interest but also any other kind of limitation that may be placed on the transferee."*

36. The legislative intendment in enacting sub-s.(2) was that this subsection should be applicable only to cases where the acquisition of property is made by a Hindu female for the first time without any preexisting right. Where however, property is acquired by a Hindu female at a partition or in lieu of her right to maintenance in virtue of a preexisting right and such acquisition would not be within the scope and ambit of sub-s.(2) even if the instrument allotting the property prescribes a restricted estate in the property. Where property is acquired by a Hindu female under the instrument in virtue of a preexisting right such as a right to obtain property on partition or a right to maintenance and under the law as it stood prior to the enactment of the Act, she should have no more than limited interest in the property a provision in the instrument giving her limited interest in

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the property would be merely by way of record or recognition of the true legal position and the restriction on her interest being a disability imposed by law would be wiped out and her limited interest would be enlarged under sub-s. (1).