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## WOMEN'S ESTATE

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### ABSTRACT

*This article is an examination of the history of women's property rights. The maximum impact of the Hindu succession act 1956, is visible in the area of a Hindu women's right to hold property and dispose of it as an absolute owner. This concept, as suggested, is over 60 years old. It was indeed a miracle how firm steps were taken by the legislature to correct the imbalance in the area of property rights. Overall, we conclude that the concept of women's property rights is a big step towards a better world.*

### INTRODUCTION

The Stridhan and women's estate drew large litigation before the codification under section 14, Hindu Succession Act<sup>2</sup>, and even after the codification, The provisions continue to draw litigation in one form or the other, so much so that full Benches have to be constituted by the High Courts and the Supreme Court too was called upon to adjudicate over the matter. Stridhan means woman's property<sup>1</sup>. In the entire history of Hindu Law, women's rights to hold and dispose of property has been recognized.

#### 1. Kinds of Woman's Property

What is the character of property, whether it is a Stridhan or a woman's estate, depends on the source from which it has been obtained? They are:

- **Gifts and bequests from relations-** Such gifts may be made to women during maidenhood, coverture or widowhood by her parents and their relations or by the husband and his relation. Such gifts may be inter vivos or by will. The Dayabhaga School doesn't recognize gifts of immovable property by husband as Stridhan.<sup>2</sup>

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<sup>2</sup> Mitakshara II ix, 2.

- **Gifts and bequests from non-relations-** Property received by way of gift *inter vivos* or under a will of strangers, that is, other than relations, to a woman, during maidenhood or widowhood constitutes her Stridhan. The same is the position of gifts given to a woman by strangers before the nuptial fire or at the bridal procession. Property given to a woman by a gift *inter vivos* or bequeathed to her by her strangers' during coverture is Stridhan according to Bombay, Banaras and Madras schools.
- **Property acquired by self-exertion, science and arts-**A woman may acquire property at any stage of her life by her own self exertion such as by manual labor, by employment, by singing, dancing etc., or by any mechanical art. According to all schools of Hindu Law, the property thus ac<sup>3</sup>acquired during widowhood or maidenhood is her Stridhan. But the property thus acquired during coverture does not constitute her Stridhan according to Mithila and Bengal Schools, but according to the rest of the schools it is Stridhan. During the husband's lifetime it is subject to his control.
- **Property purchased with the income of Stridhan-** In all schools of Hindu Law it is a well settled law that the properties purchased with Stridhan or with the savings of Stridhan as well as all accumulations and savings of the income of Stridhan, constitute Stridhan.
- **Property purchased under a compromise-** When a person acquires property under a compromise; what estate he will take in it, depends upon the compromise deed. In Hindu Law there is no presumption that a woman who obtains property under a compromise takes it as a limited estate. Property obtained by a woman under a compromise where she gives up her rights, will be her Stridhan. When she obtains some property under a family arrangement, whether she gets a Stridhan or a woman's estate will depend upon the terms of the family arrangement.
- **Property obtained by adverse possession-** Any property acquired by a woman at any stage of her life by adverse possession is her Stridhan.
- **Property obtained in lieu of maintenance-** Under all the schools of Hindu Law payments made to a Hindu female in lump sum or periodically for her maintenance and all the arrears of such maintenance constitute Stridhan. Similarly, all movable or immovable properties transferred to her by way of an absolute gift in lieu of maintenance constitute her Stridhan.

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<sup>3</sup> BANERJEE, HINDU LAW OF MARRIAGE AND STRIDHAN, 321 (Wentworth Press 2016).

- **Property received in inheritance-** A Hindu female may inherit property from a male or a female; from her parent's side or from husband's side. The Mitakshara constituted all inherited property as a Stridhan, while the Privy Council held such property as a woman's estate.
- **Property obtained on partition-** When a partition takes place except in Madras, father's wife, mother and grandmother take a share in the joint family property. In the Mitakshara jurisdiction, including Bombay and the Dayabhaga school it is an established view that the share obtained on partition is not Stridhan but woman's estate.

## 2. Stridhan has all the characteristics of absolute ownership of property. The Stridhan being her absolute property, the female has full rights of its alienation.

This means that she can sell, gift, mortgage, lease, and exchange her property. This is entirely true when she is a maiden or a widow. Some restrictions were recognized on her power of alienation, if she were a married woman. For a married woman Stridhan falls under two heads:

- the *sauadayika* (gifts of love and affection)- gifts received by a woman from relations on both sides (parents and husband).
- the *non-sauadayika*- all other types of Stridhan such as gifts from strangers, property acquired by self-exertion or mechanical art.

Over the former she has full rights of disposal but over the latter she has no right of alienation without the consent of her husband.<sup>4</sup> The husband also had the power to use it.

On her death all types of Stridhan passed to her own heirs. In other words, she constituted an independent stock of descent. In *Janki v. Narayansami*<sup>3</sup>, the Privy Council aptly observed, "her right is of the nature of right of property, her position is that of the owner, her powers in that character are, however limited... So long as she is alive, no one has vested interest in the succession."<sup>5</sup>

### Legal Provisions Regarding "Women's Estate" under Hindu Law

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<sup>4</sup> Janki v. Narayansami, (1906) 43 IA 87.

<sup>5</sup> *Id.*

After the enactment of Section 14 under Hindu Succession Act, 1956 the women's estate has come to an end. Now all the properties acquired prior to, or after the passage of the Act have become the absolute and unrestricted estate of a Hindu female. Section 14 is retrospective in effect.

In fact this chapter has lost its significance now, yet a brief study of the chapter is still required. Under the old Hindu law women's estates were of two types—

1. Stridhan, of which she was the absolute owner
2. And women's estate over which she had limited ownership.

### 3. Powers of A Hindu Female Over Her Woman's Estate

- a) **Power of Management**- like the *Karta* of a Hindu joint family she has full power of management. The *Karta* is merely a co-owner of the joint family, there being other coparceners, but she is the sole owner. She alone is entitled to the possession of the entire estate and its income. Her power of spending the income is absolute. She need not save and if she saves, it will be her Stridhan. She alone can sue on behalf of the estate and she alone can be sued in respect of it.<sup>4</sup> Any alienation made by her proper or improper is valid and binding so long as she lives. She continues to be its owner until the forfeiture of estate by her re-marriage, adoption, death or surrender.<sup>6</sup>
- b) **Power of Alienation**- She has limited powers of alienation, Like *Karta* her powers are limited and she can alienate property only in exceptional cases. She can alienate the property for the following:
  - **Legal necessity** (that is, for her own need and for the need of the dependents of the last owner)
  - **For the benefit of estate**, and
  - **For the discharge of indispensable duties** (such as marriage of daughters, funeral rites of her husband, his shrada and gifts to brahmans for the salvation of his soul; that is, she can alienate her estate for the spiritual benefit of the last owner, but not for her own spiritual benefit.)

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<sup>6</sup> Sitaji v. Bijendra, AIR 1964 SC 601.

Under the first two heads her powers are more or less the same as that of the Karta. Restrictions on her powers of alienation are an incident of the estate and not for the benefit of the reversioners.<sup>7</sup> As to the power of alienation under the third head, a distinction is made between the indispensable duties for which the entire property could be alienated, and the pious and charitable purposes for which only a small portion of property can be alienated. She can make alienation for religious acts, which are not essential or obligatory but are still pious observances which lead to the bliss of her deceased husband's soul.<sup>8</sup>

- c) **Surrender**- means renunciation of estate by the female owner.<sup>9</sup> She has the power of renouncing the estate in favor of the nearest reversioner. This means that by a voluntary act she can accelerate the estate of the reversioner by conveying absolutely the estate thereby destroying her own estate. This is an act of self-effacement on her part and operates as her civil death.

For a valid surrender, the first condition is that it must be of the entire estate<sup>10</sup>, though she may retain a small portion of her maintenance<sup>11</sup>. The second condition is that it must be in favour of the nearest reversioner or reversioners, in case there are more than one of the same categories. Surrender can be made in favour of female reversioners also. The third condition is that the surrender must be bonafide and not a device of dividing the estate with the reversioners.<sup>12</sup>

- d) **Reversioners**- On the death of the female owner the estate reverts to the heir or the heirs of the last owner as if the latter died when the limited estate ceased. Such heirs may be male or female known as reversioners. So long as the estate endures there are no reversioners though there is always a presumptive reversioner who has only a *spes successionis*<sup>13</sup> (an exception). The property of the female devolves on the reversioners when her estate terminates on her death, but it can terminate even during her lifetime by surrender.

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<sup>7</sup> Jaisri v. Rajdewan, (1962) SCJ 578.

<sup>8</sup> Smt. Kamala Devi v. Mukund Ram, AIR 1955 SC 481.

<sup>9</sup> Dayabhaga XI, I, 56-57.

<sup>10</sup> Natvarlal Punjabhai v. Dahubhai Manubhai, AIR 1954 SC 61.

<sup>11</sup> Chinna Marappa Goundar v. Narayammal, AIR 1906 Mad 169.

<sup>12</sup> Bhagwant Koer v. Dhanukdhari Prasad Singh, AIR 1919 PC 75.

<sup>13</sup> Dauyati Upadhiya v. Ram Bharos Pande AIR 1930 All109.

- e) **Right of Reversioners**- the reversioners have a right to prevent the female owner from using the property wastefully or alienating it improperly. It is this context that the expression “**presumptive reversioner**” came into vogue<sup>14</sup>. The reversioners have the following three rights:
- They can sue the woman holder for an injunction to restrain waste.
  - They can in a representative capacity sue for a declaration that alienation made by the widow is null and void and will not be binding on them after the death of the widow. However, by such a declaration the property does not revert to the woman nor do the reversioners become entitled to it. The alienee can still retain the property so long as the widow is alive.<sup>15</sup>
  - They can after the death of the woman or after the termination of estate, if earlier, file a suit for declaration that an alienation made by the widow was improper and did not bind them. The **Supreme Court**, observed that when a Hindu female holder of a woman's estate improperly makes alienation, the reversioners are not bound to institute a declaratory suit during the lifetime of the female holder. After the death of the woman, they can sue the alienee for possession of the estate treating alienation as a nullity.<sup>16</sup>

#### 4. Sources of woman's property

##### a. Property Received in Lieu of Partition

The Karta can grant some property to a member of the family for his or her maintenance. A Hindu female can also be granted property for her maintenance under a family arrangement or a partition. In *Chinnappa Govinda v. Valliammal*,<sup>17</sup> a father-in-law gave some properties for the maintenance of his widowed daughter-in-law under a maintenance deed. Subsequently, in 1960 he died. Since he died leaving behind the daughter-in-law his interest devolved by succession. The daughter-in-law sued for partition so as to get her share of inheritance. Other members said that she could get her share only if she agreed to include the properties given to her for maintenance in the suit properties. The Court held that she need not surrender the properties held by her under the maintenance deed.

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<sup>14</sup>Bakshi Ram v. Brij Lal AIR 1995 SC 395.

<sup>15</sup>Bijoy Gopal Mukherji v. Krishna Mahishi Debi (1907) 34 IA 87.

<sup>16</sup>Radha Rani Bhargava v. Hanuman Prasad Bhargava AIR 1966 SC 216.

<sup>17</sup>Chinnappa Govinda v. Valliammal, AIR 1969 Mad 187.

**Section 14** lays down that any property which a Hindu female gets on partition after the commencement of the Act will be her absolute property and any property which she got at a partition before the commencement of the Act will also become her absolute property provided it was in her possession at the commencement of the Act. The **Kerala High Court** in *Pachi Krishnamma v. Kumaran Krishnan*<sup>18</sup> observed that the share a woman got on partition would be her absolute property on account of her pre-existing right to maintenance enlarged to an absolute title to property by virtue of **section 14(1)**.”

**b. Property Given Under an Award or Decree**

In *Badri Prasad v. Kanso Devi*,<sup>19</sup> where a partition under an award was subsequently embodied in a decree, certain properties were allotted to a Hindu female as her share, the Supreme Court said that section 14(2) did not apply. Their Lordships said that section 14 should be read as a whole. It would depend on the facts of each case whether the same is covered by subsection (1) or sub section (2). The crucial words in the subsection are ‘possessed’ and ‘acquired’. The former has been used in the widest possible sense and in the context of section 14(1) it means the state of owning or having in one’s hand or power. Similarly, the word acquired has also been given the widest possible meaning. The **Supreme Court** was of the view that a share obtained by a Hindu female in a partition under section 14(1) even though her share is described as a limited estate in the decree or award.

**c. Property Under an Agreement Or Compromise.**

The test that if the decree or award is the recognition of a pre-existing right then sub-section (1) will apply and if property is given to the Hindu female for the first time under an award or decree sub-section (2) will apply. It has been applied to the acquisition of property under an agreement or compromise. This distinction has been clearly brought out by *Mahadeo v. Bansraji*<sup>20</sup> and *Lakshmichand v. Sukhdevi*.<sup>21</sup>

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<sup>18</sup> Pachi Krishnamma v. Kumaran Krishnan, AIR 1982 Ker 137.

<sup>19</sup> Badri Prasad v. Kanso Devi, AIR 1970 SC 1963.

<sup>20</sup> Mahadeo v. Bansraji, AIR 1971 ALL 515.

<sup>21</sup> Lakshmichand v. Sukhdevi, AIR 1970 Raj 285.

**d. Property Received in Inheritance**

Any property that a Hindu female inherited from a male or female relation was taken by her as limited estate except in the Bombay school. Section 14 lays down that any property that a Hindu female inherits from any relation after the commencement of the Act will be her absolute property. On her death it will devolve on her heirs under the provisions of section 15 and 16. If any property has been inherited by her before the commencement of the Act and if it is in her possession then that property also becomes her absolute property.

**e. Property Received in Gift**

Under the Act, there is no distinction between the gifts received by her from relatives or strangers and at any stage of her life, and all gifts that she receives will be her absolute property. Ornaments received by her at the time of her marriage are ordinarily her Stridhan property. A full bench in *Vinod Kumar Sethi v. State of Punjab*<sup>22</sup> held that dowry and traditional presents made to a wife at the time of the marriage constitute her Stridhan. In *Gopal Singh v. Dile Ram*<sup>23</sup>, a widow having a life estate purported to make a gift of the property before the **Hindu Succession Act 1956** came into force.

**f. Property Received Under a Will**

In *Karmi v. Amru*<sup>24</sup> A Hindu, under a registered will, conferred a life estate on his wife Nihali, with the direction that after the death of Nihali, properties would devolve on Bhagtu and Amru, two of his collaterals Nihali took possession and died in 196. On her death her heirs claimed property on the assertion that after the coming into force of the Hindu Succession Act, Nihali's life estate became her full estate. It was held that where only life estate is conferred under a will, Section 14(2) will apply, and the estate will not become full estate. But if a will confers on her full estate, she will take it absolutely. Properties given under a settlement to the widow which were to revert to the settlor on his brother on her death, do not get enlarged into full estate.

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<sup>22</sup> *Vinod Kumar Sethi v. State of Punjab*, AIR 1982 P&H 372.

<sup>23</sup> *Gopal Singh v. Dile Ram*, AIR 1987 SC 2394.

<sup>24</sup> *Karmi v. Amru*, AIR 1971 SC 745.

## CONCLUSION

Section 14 of **The Hindu Succession Act 1956** has abolished certain women's estate and in respect of women's estate which are outside the purview of section 14, a reversioner's right under old Hindu Law still endures. Section 14(1) has qualified retrospective application; it converts only those women's estates into full estates over which she has possession when the Act came into force. It does not apply to those women's estates over which the Hindu female had no possession when the Act came into force; in such a case old Hindu Law continues to apply. Section 14(2) uses the words "any other instrument". Applying the principle of *ejusdem generis*, these words should be read along with the preceding words, "acquired by way of gift or under a will" and would thus, mean the instruments under which title to property has been conveyed to the Hindu female.<sup>25</sup>

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<sup>25</sup> Chinamma v. Lingamma, AIR 1972 Mysore 333.