

Hindu Women's Property Rights

REPORT
OF THE
COMMITTEE APPOINTED
BY
HIS HIGHNESS THE MAHARAJA
GAEKWAD



1930

BARODA

PRINTED AT THE GOVERNMENT PRESS

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With compliments from the Chairman and members of
the Committee.

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REPORT
OF THE
**Committee on Hindu Women's
Property Rights.**

CHAPTER I.

PRELIMINARY.

As pointed out by the late Dr. Gurudas Bannerjee in his
Dharmashastra. "Hindu Law of Marriage and Stridhana"
the distinction drawn by modern jurists,
between municipal or positive law and moral or ethical law
was not observed in the early Hindu jurisprudence. The whole
body of rules regulating the life of a Hindu in relation to civil
conduct as well as to the performance of religious ceremonies
was included in the general name of Dharmashastra, or religious
ordinances.

2. The original sources of Hindu Law are the Shrutis or
the Vedas, the Smrities or the Codes
Sources of Hindu Law. of Law, and custom or approved usage.
To this may be added a modern source,
viz:—judicial decisions of courts established under modern system
of Government, which have played a great part not only in as-
certaining what Hindu Law is, but in some respects, even in
modifying it, while interpreting it. The law which was origi-
nally administered for the most part by private tribunals was
elastic and had grown by assimilation of new usages and the
modifications of ancient texts under the guise of interpretation
by commentators, such as Vijnaneshwara, Jimutavahana and
others. But this growth was to a large extent arrested by the
establishment of regular courts of justice, which were bound to
administer the law as it existed, and not as, in their opinion, it
should have been. It is quite possible, however, that by liberal

interpretation and twisting the texts so as to make them compatible with their own view of the propriety of things, judges may modify law, but this could not be, and has not been to any large extent.

3. The Dharma Shastras laying down Hindu Law do not profess to be ordinances, promulgated by the supreme authority of the State. They profess to be the command, not of any sovereign but of the supreme Ruler of the Universe, which even kings were bound to obey. This theory of the divine origin of Hindu Law, was sought to be set aside by its codification in the form of a modern Act, but the idea was given up, in British India, under the fear that such action may arrest its further growth, and may also offend the religious susceptibility of the Hindus. Undaunted by such fears which should have no place if a vigilant eye is kept for amending the code from time to time in accordance with popular opinion and progress of society, His Highness the Maharaja Gaekwad with his usual progressive policy ordered the preparation of a codification of Hindu Law in 1905. The work has already been successfully carried through, and it is no longer necessary for people in Baroda to wade through complicated old text books, all the essential principles having now been embodied in a few simple rules. Codification does not necessarily stop the growth of law. A code of law gives a good workable material on which such reforms as may be deemed necessary could easily be engrafted as has been done in Baroda from time to time after the codification of Hindu Law. Social necessities and social opinions are always in advance of law and the agency through which law in modern times is brought into harmony with society, is legislation.

4. Both before and after its codification, Hindu Law has been amended in Baroda from time to time as necessity for the same arose. The Hindu Widow Remarriage Act (1901) validates the marriage of a Hindu widow notwithstanding any custom or religious precept to the contrary, and enacts that the issue of such a marriage shall be deemed legitimate and the rights of the widow to inheritance in her

Hindu Law amended from time to time in Baroda.

father's family shall be unaffected. The Dharmic Swatantrya (Freedom of Religion) Act of 1901 A. D. removes any disability which would otherwise attach by force of any law or custom to a person who becomes a convert to any other religion or who is excommunicated in the matter of acquiring interest in any property by way of succession or in the matter of vested interest which he might have acquired at the time of such conversion. The Infant Marriage Prevention Act (1904), which forestalled the recent legislation in British India, known as the Sharda Act, amended by Act No. 23 of Samvat 1985 (A. D. 1929) prescribes the marriagable age of boys and girls at 16 and 12 respectively and declares marriages void in cases in which the age of the bride or the bridegroom is less than 8 years on the day of the marriage. Moreover, persons bringing about marriages in which either party is below eight years of age are liable to the punishment of simple imprisonment not exceeding one month or Rs. 500 or both. Persons who bring about the marriages of girls below 12 and of boys below 16 years of age are liable to a fine upto Rs. 200. This is a bold step in advance of Hindu Law which regarded such infant marriages as valid and held that once a marriage was performed, it was always valid except when there were special circumstances such as force or fraud. The Hindu Son's Liability Act (1908) has brought about a radical change in the old Hindu Law which required a son to pay his father's debts, whether he had received any property or not and brought it into conformity with the prevailing notions of equity and justice by freeing Hindu sons from their personal liability for such debts. The Civil Marriage Act of 1908, marks an advanced step in social legislation, and legalises marriages under contractual forms unfettered by any ceremonial scruples enjoined by old Hindu Law. The Hindu Adoption Act of 1910 allows a sister's son or a daughter's son to be adopted which was not allowed till recently even in British India. The Hindu Purohit Act of 1915 enjoins a Hindu Purohit to pass an examination test and prohibits a person to act as a Purohit at a Hindu religious ceremony without a certificate of having passed the test. The Hindu Marriage Amendment Act (1928) makes it obligatory on a Purohit officiating at a Hindu marriage to translate the essential Slokas and Mantras to the bride and

bridegroom in their mother tongue with a view that they should understand clearly the heavy responsibilities enjoined by the marriage sacrament, and breach of these directions makes him punishable with a fine. The Hindu marriage is generally recognised as a sacrament and hence inviolable, but now the Hindu Divorce Bill is on the legislative anvil and if passed into law, will allow divorces to Hindu husbands and wives under certain circumstances even in those castes in which they were not previously allowed. It will be seen from this that Hindu Law has thus been already amended in this progressive State from time to time, with a view to bring it on a line with the advance of Hindu Society and into harmony with the ideals of the people and such amendments have sometimes been against the long cherished notions of the Hindu Dharma and Vyavahar Shastra.

5. Even in British India, Hindu Law has undergone vast changes in its time-honoured principles by legislative enactments passed from time to time. A list of the more important of these statutes is as under :—

- (1) Freedom of Religion Act. (No. XXI of 1850.)
- (2) Hindu Widow's Marriage Act (XV of 1856).
- (3) Native Converts' Marriage Dissolution Act (XXI of 1866).
- (4) Hindu Liability for Ancestral Debts (Bombay Act VII of 1866).
- (5) Special Marriage Act, and Amendment Act thereof (No. XXX of 1923).
- (6) The Legal Disabilities Removal Act (XII of 1928).
- (7) An Act to alter the order of succession of heirs (II of 1929).
- (8) Child Marriage Restraint Act (XIX of 1929).
- (9) Hindu Gains of Learning (No. XXX of 1930).

6. There is a growing tendency to modify Hindu Law, to suit the requirements of modern society which explains such legislative enactments, and several Bills for the same purpose which are now before the British Indian Legislature. Rao Saheb Harabilas Sharda of the Infant Marriage Restraint Act fame, introduced, in the Legislative Assembly, on the 16th September 1929, a Bill (No. 22 of 1929) to reserve a share for Hindu widows in their husbands' family property. In the statement of objects and reasons he stated that the Hindu Law of inheritance, so far as women are concerned, is unsatisfactory and unjust, and the position of Hindu widows under it is deplorable. He further stated that a widow in Hindu Society, is, in practice, at the mercy of co-parceners. Even though her husband may have amassed the entire wealth of the family and she may, during his life time, have lived a life of affluence and luxury, as soon as he dies, the entire property goes to the surviving male members of the family and she becomes therefore only entitled to maintenance, which as popularly understood demarks the very means of living. He, therefore, proposed the law to be so amended that in a joint family a widow should be entitled to such share of the joint family property as her husband would have been entitled to, had a partition taken place in his life-time; when the husband of a widow was not at the time of his death a member of a joint family, she should take all his property absolutely; her share should be exclusive of her independent personal property or *stidhan*, and her claim to maintenance from the funds of the joint family should cease on the partition and separation of her share. Another Bill was introduced in the Legislative Assembly on the 26th September 1929 by Mr. V. V. Jogiah (No. XXXIII of 1929) to make better provision for certain heirs under Hindu Law, especially with respect to women regarding their rights to inheritance. It proposes among other things that notwithstanding any provisions of Hindu Law to the contrary, a daughter whether married or unmarried, indigent or wealthy, chaste or unchaste and widowed or not, shall be entitled to have a share, equal to that of a son, from her father's property, ancestral or otherwise, and also a right to partition; it also proposes that a widow should

be entitled to enjoy during her life time any share of property to which her husband would have been entitled. In the statement of objects and reasons, Mr. Jogiah says: "As regards the existing rights of inheritance of women under Stridhan Law, there is a large body of public opinion which desires that her position should be improved especially that of daughters and widows. I have thought out the matter and have consulted friends on the subject, and I must confess that while the desire to improve the position of daughters, widows, etc., is strong in them, there is not only no concensus of opinion as to what should exactly be their position and status with respect to succession, but there is a great divergence of opinion. I have therefore to draft the Bill, from time to time, on different considerations. At last, I consider it better to provide a share to these as heirs." Every Hindu now recognises the hardships to which a predeceased son's widow or a brother's widow is put when the property passes to distant relations. To remedy this hardship, Mr. Narayan Prasad Asthana, introduced, on the 25th September 1929 in the Council of State, a Bill (II of 1929) to alter the existing order of succession in which he has proposed that a son's widow shall be entitled to rank next after a widow and before a daughter, and brother's widow next after a daughter's daughter and before a sister.

7. His Highness the Maharaja Gaekwad is always prepared for further amendment of Hindu Law whenever necessary. Having noticed from discussions in the press and on the platform that the difference in the rights of inheritance enjoined in Hindu Law between males and females requires to be harmonised with the improved status of females, brought about by education and other ameliorating causes, His Highness was pleased to direct that the following should form themselves into a Committee,

Appointment of Committee.

- (a) to examine the question of the property rights of women under Hindu Law, and
- (b) to suggest amendments, if any, called for under modern conditions for removing defects in the existing Law :—

President.

Rao Bahadur Govindbhai Hathibhai Desai. B. A. LL. B.
(Chief Justice, and Naeb Dewan, retired.)

Members.

1. Mrs. Sushilabai Modak. B. A.
2. Mrs. Dipakba Himatbhai Desai.
3. Sheth Dahyabhai Maganbhai Haribhakti (Nagar Sheth, Baroda City).
4. M. R. R. The Legal Remembrancer.
5. Mr. Vasudev Vinayak Joshi. B. A. LL. B.
(Varisht Court Pleader, Baroda).
6. Sheth Mahasukhbhai Chunilal (Banker, Visnagar).
7. Mr. Dwarkanath Rangnath Shethji (High Court Pleader, Navsari).

Secretary.

The Assistant Legal Remembrancer.

Mr. V. K. Dhurandhar B. A. LL. B. (Advocate), was a member as Legal Remembrancer from the commencement of the Committee's work till the receipt of replies to its questionnaire; and on his deputation to the Revenue department on special duty in september last was succeeded by Mr. A. A. Kehimkar B.A.LL.B. retired judge of the Varishta Court. Mr. Manjulal Sevaklal Dave, B.A.LL.B., the Assistant Legal Remembrancer, worked as Secretary throughout the whole period (Appendix No. I).

8. With a view to ascertain public opinion, the Committee prepared an exhaustive questionnaire (Appendix II) which, in view of the technical nature of the subject and of the expediency of confining discussion and information to relevant matters, was based on a short and connected account of the law as it now stands. The questionnaire was published both in Gujarati and in English in the Adnya-Patrika (State Gazette) and the opinion of the public was invited thereon. Copies were also specially

sent for opinion to persons and associations well-known for their interest in the subject matter of the inquiry. They included judges and lawyers, members of the Legislative Councils, and many well known ladies and gentlemen inside and outside Baroda State. A period of two months was allowed for replies, but it was extended from time to time nearly upto six months so as to give ample time to those who may choose to reply. Six hundred and forty five copies were sent out, but replies were received from only seventy six persons. The response, though small, was, however, fairly representative. Of the replies received, sixty four were from within the State, and twelve from outside the State. Of the replies received from the State, sixty one were from males and three from females. Of the replies received from persons outside the State, eleven were from males and one from females. Of the total number of persons who replied, seventy four were of opinion that change is necessary in the existing law and only two were of opinion that no change was necessary. The replies, that we have received to our questionnaire, are widely divergent. At one end, some are extremely conservative and do not propose any change, while at the other, some propose a revolutionary change setting aside all sex differences and putting women on a par with men in their rights of inheritance. Between these two extremes, there are some, who, while advocating the removal of the inferior status assigned to females in Hindu Law, propose only such changes as are absolutely necessary to achieve that object. We have carefully considered these divergent views and have also endeavoured to adjust differences of opinion among ourselves in a spirit of compromise and have thus the satisfaction to submit a report containing recommendations which, except in a few points on which Mrs. Depakba Desai has recorded a note of dissent, are practically unanimous, and sufficiently progressive and go a great way to remove the present glaring inequality under which Hindu women, especially widows, have to suffer in their rights to property. Moreover we believe that our suggestions carry with them some important principles which, if accepted, will be found helpful for effecting such further reforms as may be deemed advisable after further experience of this first instalment.

PRELIMINARY

9. The task assigned to us is as important as it is difficult and delicate. To accomplish it as satisfactorily as possible, we have endeavoured to carefully examine the law relating to Hindu women's right to property as it now stands in the State, and to fully consider the fairly large and widely representative body of opinion that we have received to our questionnaire, regarding the points in which its amendment is called for. In this we have been greatly helped by the work done in the same direction by ladies and gentlemen who have, by their speeches and writings, awakened public interest in the subject and also of our colleague Mr. V. V. Joshi who had compiled and published a clear and concise brochure on Hindu Women's Property Rights long before his appointment on this committee. It has lightened our labours to a great extent and made it unnecessary for us to go over the same ground in this report. We have therefore deemed it proper to publish it as an appendix to it, so that it may be read along with it (Appendix III). At about the time of the appointment of our committee, the Mysore Government also had appointed a similar committee and although the problem there is somewhat different from ours owing to our following the Bombay School which is more liberal towards the property rights of females, the deliberations of the Mysore Committee have also been helpful to us, and we are grateful to the Chairman of that Committee who promptly placed at our disposal such literature as we asked for from him.

10. Before considering what the present Hindu Law in the State is and what changes in it are called for, we shall premise by stating that Hindu Law had never been fixed and immutable and that changes had been made in it in the past to suit different times and places and can be made now and in the future, whenever it is found necessary to do so. In fact no law can be fixed and immutable for ever. Law must be amended from time to time so as to make it suitable to the existing condition of society; otherwise, it would become a dead letter, and fail in its highest mission of controlling the human

action. The Hindu Law of the Vedic period, when women enjoyed equality with men, changed in the Smriti period, when their position was degraded owing to a variety of circumstances which are enumerated in para 12. Even in the Smriti period and after, when Hindu Law had undergone considerable changes according to the prevailing notions of the time, it was differently interpreted in different provinces, and the commentators, while professing to interpret the texts, put upon them interpretations which brought about different Schools of Hindu Law. In spite of this changing nature of Hindu Law, there is yet a section of Hindu community which holds that the authors of the Hindu Legal Institutes were *trikaldnyani*, (omniscient), and therefore infallibly authoritative for all times, but when we look to the history of Hindu Law we find that this claim is without a foundation, Manu the most ancient and respected law-giver has himself observed that the Dharna Shastra is Smriti while it is Vedas which is Shruti, thus indicating that the Vedas may be infallible, but Smritis are not, since they vary with varying times. It is also stated in the Manu Smriti (Chapter I verse 85) and Mahabharat-Shanti-Parva (Chapter 259, verse 8), that the laws were different in Kritayuga and that they also varied in Tretayuga; again they changed in Dwapara, and further they differ in the Kali-age, in accordance with the disappearance of the spirit prevalent in each age. It is stated in the Mahabharata, that there is no custom which prevails uniformly at all times. It is superseded by another, and then, again, in its turn, it is annihilated by a third. The author of the Parashara Smriti observes that, in the Krita-age the law of Manu prevailed, in Treta Gautam was the authority, and Shankha and Likhita in the Dwapar age, while in the Kali (present age) Parashar is the authority. The Parashar and the Narada Smritis legalise widow remarriage and remarriage of even married women in certain circumstances. The Parashar Smriti also lays down that in addition to the six well-known duties enjoined for the Brahmins, agriculture should, also, be followed as an avocation by them. Finally, it is stated in the Mahabharata (Vana-Parva, Chapter 115, verse 312) that pure reason is bottomless, the precepts of the Vedas are conflicting, there is not a law-giver

whose word can be called authoritative and final ; the principles of Dharma are imbedded in the human conscience, and, therefore, that path should be followed which is trodden by the *Mahajana* (enlightened leaders of society). Vasisht says, “श्रुतिस्मृति वेदितो धर्मः । तदभावे शिष्टाचारः प्रमाणम् ।” meaning : “Law is laid down in Shrutis and Smritis, and in their absence, the conduct of the wise is law.” The importance attached to the conduct of the wise (शिष्टाचारः) as being the law along with the law to be found in the Vedas and the Smritis, indicates clearly that the law-givers encouraged the progress of the society and did not want to hamper it by the Vedic or Smriti law which has been archaic and unsuitable to the present time. It thus appears that Hindu Law is changeable and it owes its survival to this adaptability.

11. A historical survey of the position accorded to women in Hindu Law indicates several distinct stages of development and decay. During the Vedic period, women were treated almost on par with men. We have the clearest indications of women's rights over property acquired not merely by themselves but also by their husbands. Their right to acquire property is not merely indicated, but is protected against violation. At the time of marriage, the husband is asked to promise that he will not prevent his wife from acquiring property ; when the wife goes to the husband's house, she is said to become the owner of the household property along with the husband. The Vedic injunction by the father of the bride to the bridegroom “ धर्मं च कामे च अर्थं च भवान् नातिचरेदिनाम् । ” (you should not prevent her from acting meritoriously, from acquiring wealth and from performing virtuous acts) and his reply “ नातिचरामि ” (I shall not prevent) clearly shows her right to hold property. Various passages in the Vedas and Vedic rituals confirm this view. Of these, we shall quote only one, viz. the benediction on the bride while starting for her husband's house.

संराज्ञी श्वशुरे भव, संराज्ञी श्वश्रुवान् भव ।

ननान्दरि संराज्ञी भव, संराज्ञी अर्धदेवेषु ॥

(i. e. Be a queen to your father-in-law, mother-in-law, sister-in-law and all other members of the family.)

This recognises in her a present ability to manage and govern her husband's house. Subraswami bases on this theory of co-ownership the inability of the husband to make any gift even to the gods, without his wife's consent and her entire participation. Jaimini refers to the wife as co-owner of her husband's property. Hindu Law recognises the exclusive right of women over their "*stridhan*" which, even if limited merely to gifts, could well be landed estate of large extent also. It was after the Vedic period that women gradually lost their rights over property. A post-Vedic writer, Baudhayana, endeavoured to show on the authority of the *Brahmans* that women owing to their congenital unfitness for rough work of life and the consequent incapacity to manage property, had no right over property even in Vedic times. But it is now placed beyond doubt that the interpretation put by him on the text relied upon is wrong. It is true that the *Brahmans* following the Mantra declare that women are "*nirindriyah*" and "*adayadah*" i. e. "lacking in energy" and "unfit to share". The text relied upon is "तस्मात् स्त्रिया निरन्द्रिया अदायदाः ॥" (Baudhayana). But it occurs in Taitariya Samhita, when in dealing with the Soma sacrifice, it is declared that as "Women do not possess the capacity, they are not to obtain a share" (Tait, Sam. VI, 5,8,2). But the "*Indriya*" or capacity and "*Daya*" a share, referred to therein do not really refer to physical capacity or a share in property, in general, but merely to share in *soma* juice and the capacity to drink it. The inability to stand intoxication was interpreted as an inability to manage property, and the direction not to share in the drink was interpreted as an authority for denying a share in property. Baudhayana's view is opposed to the text of Vedas and to the very context wherein the passage relied upon by him appears. Vidyaranya exposed the error of Baudhayana's interpretation and explained that the term "*Indriya*" in the text has no connection with the management of property, but refers only to the *soma* drink. (इन्द्रियशब्दस्य इन्द्रियं वै सोमपीतः) i. e. "The word "*Indriya*" in its context refers to one who drinks *soma*." says he, and declares that the Vedic text does not deny rights of inheritance to women. In this view are agreed all the great scholars of Hindu Law, Prof. Max Muller, Dr. Jolly, Sarvadhikari, Sadashiva Aiyar and others.

12. If women of the Vedic period enjoyed rights over property the question would naturally arise how did they come to lose them subsequently and why did they acquiesce in their being reduced from the height of co-ownership of property to the depth of being themselves treated as property by man? How did it happen that men who treated women as their compeers became so demoralised as to disregard the rights of their wives and daughters? How did the women of the Aryan household allow such demoralisation to creep in? The answer is that they had the rights in Vedic times, but they lost them gradually afterwards, till by the time of Baudhayana they had very few left. Their fall began with the migration of the Aryans to the south and culminated with the warfare with the aborigines on the plains as has been fully explained by Mr. K. T. Bhashyam Iyengar of the Banglore Bar, in his learned contribution to the Indian Daily Mail of 19th October 1929, and we think we cannot do better than summarise what he says therein. He says that in the cold and comparatively peaceful regions of the north, where the Aryans lived in the Vedic period, men and women had developed social conventions and proprietary rights of a highly just and equitable character. But when they migrated to the plains, it was only a handful of them that could reach the distant valley of the Indus and the still more distant Gangetic plains. The problem of food soon yielded place to the problem of life, and it became a matter of the greatest concern to this tiny group of Aryans how best to protect themselves from being killed by the savage onslaughts of the aborigines. Incessant warfare became the feature of life. Women who could not take part in the brutality of such conflicts naturally took a secondary place in the society of those times. It was also impossible for them to move in freedom since there was ever the danger of their being carried away by the aboriginal hordes against whom the Aryans who were but a handful, were content to be as far as possible on the defensive. It was only to be expected therefore that at such a stage of society the Aryan women would keep themselves to their homes, and that men would dominate society and decide all questions. Physical valour became the

most predominant virtue and the increase of man-power the all absorbing problem of the Aryan household. Men, and still more men, were needed to fight the aborigines, while women were a source of anxiety and an object of protection. Women could only be of help in keeping the home and in producing more and more sons. Whenever a girl was married, Gods were invoked to bless her with ten sons. Sons and grandsons, uncles and nephews, distant agnates and cognate male relations all were prized and treated with preferential regard, women receding the while quietly to the background. They naturally took a place subordinate to men and for a time ceased to manage properties. The subordination of women thus begun was accelerated by the *somapana* incident mentioned in the Taittiriya Samhita and referred to in the preceding para. Women ceased to gather together with men round sacrificial fires, and confined themselves to the home. Then began an intellectual cleavage in society that rendered women ignorant drudges of the household, while men increased their knowledge and retained the mastery of society. In capacity as much as in freedom to exercise right over property men became easily the superior of women. Still another circumstance added its weight against women. Whenever the Aryans by reason of their superior skill and intelligence gained a victory, they captured the defeated men and women and assimilated them into their society. The men were treated as a subordinate caste and the women were treated as "*dasis*" or maids of household. These *dasis* were an additional source for getting sons in the Aryan family. Slowly thus the non-Aryan idea of polygamy and *niyoga* entered the Aryan mind which laid the axe deep at the root of women's high status in society, apart from all considerations of proprietary rights. A man could take as many women as he pleased; and a woman should beget children if not by her husband at least by his brother or some relation of his. Women were gradually losing esteem and the only function for which they were prized was the production of children. Society was so much in need of men that if a woman was barren it allowed her husband to desert her and take to another. Men became all powerful and injustice to women followed in its wake. Girls were married

even in their infancy and wives became liable to be deserted if only they were quarrelsome. The period of conflict was so long and the demoralisation of the Aryan so complete that when society was again at peace, women were no-where in the intellectual field. The temporary suspension of the exercise of their rights continued even thereafter. The large influx of the *dasyu* element, the contact with the lower civilisation of the aborigines, the imminence of war, all led to the permanence of women's ceasing to exercise any rights in property. It was at such a time as this, that Aithisayana rose with the query, "Have women any rights at all in property?" and himself answered it in the negative. His contention was that marriage not being between equals who chose each other as they did in Vedic times, but a gift of a girl avowedly known as such by the term *kanyadana*, women were only property to be gifted or purchased; and that *shulka* or bride-price was the value paid by a man for the purchase of his wife. One would expect women of the Vedic society to have protested against such ideas. But the women of this period were too ignorant and too domesticated to appreciate the legal aspect of the question. Jurists of Vedic learning such as Badarayana and Jaimini protested against such debasing views, but the practice in society was far deeply established against the exercise of proprietary rights by women. The discussions had no effect in unsettling the practice and ultimately social conscience sought consolation in the adjustment of theory to the practice as interpreted by Baudhayana. People had become accustomed to look upon women as devoid of proprietary rights, and it came in handy to them to be told that their view was supported by the Vedas. Then came the Smriti period, with its endeavour to further limit the rights of women. They were treated with respect and regard so far as their social rights were concerned; but not only no attempt was made to free them from the many disabilities already forced on them, but a positive propaganda was launched to curtail their rights still further. The Smrities were very harsh on women's rights. Women were regarded by them as being on a par with slaves, and were declared to have no right of inheritance, no personal independence, as being immoral and criminal by nature, fit to be protected

not for their own sake but for the sake of preserving the purity of the lineage. They had always to be subservient to men's interest and after the death of their husbands they had no purpose in life, and were enjoined to burn themselves with the deceased. Propagation of the pedigree was regarded as the highest goal, and a sonless widow was allowed to take the property of her husband only if she undertook to beget a son by *niyoga*. Women were recognised as owners of the property known as *stridhan*, but there was a systematic attempt made to limit its connotation, and if possible to stifle it altogether. This depraved condition attracted the attention of the great sages and law-givers, and they in their own way, tried to ameliorate the condition of women as far as possible. Yajnavalkya championed Women's cause, and declared them entitled to inherit, to receive a share on partition, as mother and daughter, and finally put at rest the controversy about *stridhan* by hinting that the enumeration given by the former lawgivers was only illustrative and not exhaustive. His spirit of reforms was imbibed by his able commentator Vijnaneshwara, who exploded the various doctrines which formed the ramparts of the impregnable citadel of opposition. He refuted the idea that wealth was meant for sacrifices only and a person who was not allowed to perform it could not hold property. He condemned the immoral practice of *niyoga* and proved that widow's right of succession could not be made dependent on this filthy principle. He maintained that wife, widow, and daughter have as good an interest in the joint family property as any other co-parcener and asserted their rights on their status as co-owner. He extended the connotation of the word "Stridhan", and included under it property of every description which came into the hands of women by inheritance, gift, partition, purchase etc. His theory harks back to the Vedic times, and strives hard to revive the status of women with all its grandeur and stability enjoyed by them in the Vedic times. His doctrines were hailed by his contemporaries and successors, yet public opinion remained restive, and, in order to gain its approval, he limited the widow's right of inheritance to the case of a separated male dying without a male issue. In those

times, joint holding was the rule, and separate holding an exception; and so, his reform must have passed unnoticed. Jimutavahana took up Vijnaneshwar's theory of wife's co-ownership in husband's property, and asserted that even in a coparcenery, the widow must succeed to the interest of her deceased husband. He gave a clean sweep to the joint family system, and did away with a number of difficulties it creates for women. He was a reformer of outstanding merit but his theory of limited ownership over property held by women takes away much of the credit he deserves, and one can say safely that with all his endeavour to push forward the theory started by Vidnyaneshwar, his own theory of limited ownership has been the most harmful measure affecting women's rights. He enunciated this theory in order to disarm the immense opposition which his reform was bound to create and it is an unfortunate occurrence that this great reformer failed to appreciate its far reaching effects. His period may be reckoned as the thirteenth century and the subsequent history of the question upto date is but a lamentable account of misunderstanding, misconception and narrowmindedness that have endeavoured to curtail women's rights one after another.

13. Considerations of expediency coupled the Hindu Law of inheritance with religion, and it came to be regarded as based on the necessity for having sons, the continuation of the joint family system and the capacity to confer spiritual benefits on the deceased proprietor by performing *shraddha* and other religious ceremonies. The joint family is a phase of that tendency to hold property in joint ownership which is to be found in the early history of every part of the world, when men had once settled down to an agricultural life. The system does not owe its origin to Brahmanism or even Aryanism, for, it is found even in those provinces where there was no Brahman or Aryan influence. Even the principle of capacity to confer spiritual benefit, though of Aryan origin, is not of universal application. As Mr. Mayne has pointed out in his Hindu Law (Page 7, ninth edition) it is of universal application in Bengal, but not so elsewhere. Among the Hindus of the Punjab the order of succession is determined by

custom and not by spiritual considerations. Throughout the Presidency of Bombay and the Indian States intermixed with it, numerous relations and especially females inherit to whom no ingenuity can ascribe the slightest religious merit. According to the Mitakshara, consanguinity in the male line is the test of heirship, not religious merit. All those who follow its authority accept agnates to the fourteenth degree whose religious efficacy is little in preference to cognates, such as sister's son, whose capacity for making sacrifices ranks very high. We mention this only to show that it is not necessary to strictly adhere to Sanskrit texts which merely record what existed as customary Hindu law when they were written, or which only indicate what should have been the ideal state of things according to their view in their times. Example and influence of those with whom the Hindus have come in contact coupled with the general progress of society have largely modified ancient usages. The Joint Hindu system is breaking up, if not already broken, and the faith in the spiritual benefit to be conferred by religious ceremonies is also breaking up, if not already broken.

14. The Joint Family System had no doubt its advantages in early times in keeping the family property and the family strength united; but it has outlived its importance and is now doing positive harm. The Hindu joint family was another form of the ancient patriarchal groups in other parts of the world of which the chief characteristics were the superiority of the eldest male, the agnatic kinship and the resulting law of inheritance which excluded females from getting a share. Thus the present joint family system represents a primitive institution which was common to many races and nationalities and had its origin in the necessities of a remote age. In fact, each family was a state in itself and the powerful opposition which the first Aryan settlers in India experienced from the aboriginal inhabitants made it necessary that the family should embrace as many persons as could be kept together. This explains the absolute authority vested in the eldest member of the family and exclusion of women from inheritance. But under the changed circumstances of modern life which send men away from their families for employment outside the family, e. g.

Evils of joint family system.

in trade, service etc. joint family is no longer necessary. On the contrary, its existence gives rise to a class of idle population, and is producing incalculable evils to progress. It takes away all incentive to a sense of self-reliance and a desire to be independent. Not only does it discourage enterprise, but puts a premium on idleness. It is the cause of many a family quarrel, and many vexations and worries to the earning member of the family who has to leave his own wife and children helpless because while he was alive all his earnings were eaten up by his brothers, nephews and cousins, who, in turn, most cruelly eject, from their doors, the destitute widow of their late benefactor. The Joint family system degrades the position of women. Instead of ruling the family as a queen commanding obedience and reverence, a Hindu woman is a drudging slave in it even during her husband's lifetime, and is left destitute after his death. It is a happy sign for India's progress that this unnatural system is fast dying out. It is a matter of satisfaction that the Gains of Science Act recently passed in British India will soon annihilate the joint family, and will be a forerunner of a number of onslaughts which the system has courted for itself.

15. The joint family system, whatever be its advantages in the past, has been a fruitful source of all the harshness and misery that fall to the lot of Hindu women and we have to consider whether the reform should strike at this institution, that has stood for several hundred years in the past, and establish, in its place, the Dayabhaga system of law, which prevails in Bengal and does not recognize the joint family system as recognized under Mitakshara. Mr. P. K. Pendse (M. A. LL.M., advocate, Bombay) a scholar of ancient literature and Hindu Law, emphatically urges to abolish the institution at once and usher in the Dayabhaga theory of property. Mr. Ratanji D. Master, a retired Judge of the Baroda High Court, also, thinks that the Dayabhaga system of law would better the lot of Hindu widows. We might have been tempted to consider this proposal with all the seriousness it deserves, but in the face of the limited scope of reference to

Joint family system
and the Dayabhaga
theory.

our committee, we do not think ourselves justified in adopting a theory which would take away the vested rights of all the coparceners in the Mitakshara joint family. It is no doubt a good suggestion, in as much as it would work slowly to demolish the joint family system. The suggestions that we propose to make, hereafter, if adopted, would, we think, go a great way to remove the hard lot of Hindu women if not to accelerate the annihilation of the joint family system which is already breaking up.

16. A comparison of the rights of women under Hindu Law with those under the Christian, English Law, Mahomedan and Parsi laws shows that the latter are more liberal and equitable. To afford material for comparison, we give here a brief summary of these different systems. We shall first take English law. It is well known that old ideas of the propriety of things in matters of inheritance linger long, and are hard to change, and so the idea of primogeniture based on the old Feudal System continued in English law till recently. It was only in 1925 that the English Law regarding landed property was radically changed by the various statutes passed in 1922 and after, under the initiation of the late Lord Birkenhead, and all the inequalities, disabilities, and complexities that existed have been swept away. The new law abolished the inequitable rule of primogeniture and declared all children, whether son, or daughter as the heirs entitled to inherit in equal shares, in the intestacy of their parents, and thus did away with the preferences on the score of sex and age, and laid down a uniform rule of succession for all of them. It finally uprooted the ugly disabilities of married women that lingered despite the various laws passed to remove them, and thus put the females on equal footing with the males as regards the ownership over their property. Under the English Law, during the life-time of her husband, a wife has no rights over his property. If the husband makes a will, he may dispose of all his property, and give it to whomsoever he pleases, though his wife and children get nothing. But if no will is made, out of what remains after paying debts, if any, the widow gets

(1) all the personal chattles (furniture, plate etc),

- (2) £ 1000 clear with 5% interest from the date of the husband's death,
- (3) the income of the whole residue for life, if there is no issue,
- (4) the income of half the residue for life if there be issue, and
- (5) the whole estate absolutely in default of other heirs such as parents, brothers, sisters, grandparents, uncles and aunts.

Subject to the rights of her father and mother in each other's property, a daughter inherits the property of her parents along with her brother, her share being equal to his. Subject to the rights of husband and wife in each other's property if there be no issue of the intestate, his mother inherits the whole property along with the father in equal shares, and in default of the father the whole of the property. In default of the parents, sister succeeds to the property along with her brothers, their shares being equal. So also does the aunt with the uncles in equal shares. During the life of her husband, a wife has no rights over his property. If the husband makes a will, he may dispose of all his property and give it to whomsoever he pleases though the wife and children get nothing. If he dies intestate, his widow becomes entitled to the provision as stated above.

18. Under the Mahomedan Law, women can possess property and have absolute power of disposal over it. There is nothing like joint family system among the Mahomedans and nobody acquires any interest in property of others by birth. The shares of the heirs both according to the Hanafi and Shia law are definite and ascertained, and vary according to the existance or otherwise of other heirs. According to Hanafi law, daughter, widow, mother, sister, aunt are recognised heirs along with the males; and there is no disability attaching to sex. The heirs are subdivided into three classes:—(1) Sharers i.e. those entitled to a prescribed share; (2) Residuaries, those who take the residue that remains undisposed of after the claims of sharers are satisfied and (3) the rest i. e. Distant kindred. Wife (whether one or more, not exceding four)

gets $\frac{1}{8}$ th share and $\frac{1}{4}$ th when there is no child or child of a son. Mother gets $\frac{1}{6}$ if there is a child of a son or of a brother or sister but in default of them she gets $\frac{1}{3}$. Maternal grandmother in default of mother, and paternal grandmother in default of father, gets $\frac{1}{6}$. Daughter in default of a son takes $\frac{1}{2}$; if more than one, they take $\frac{2}{3}$. If a son is living, she becomes a residuary with him, she taking half of the son's share. Son's daughter takes $\frac{1}{2}$ and $\frac{2}{3}$ if more than one, in default of son and daughter. So also son's son's daughter takes $\frac{1}{2}$ and $\frac{2}{3}$ if there be more than one. With son or son's son, she becomes a residuary heir, the son taking double her share. Full sister in default of full brother takes $\frac{1}{2}$ and $\frac{2}{3}$ if more than one. If there is brother, she becomes a residuary heir, the brother taking a double portion. Uterine sister in default of child, father or grandmother takes $\frac{1}{6}$; if more than one, they take $\frac{1}{3}$ equally among them. Succession according to the Shia law is with some variation to the same effect, all heirs, including females, having definite shares.

18. Among the Parsis, when the intestate leaves a widow and lineal descendants, the son gets four shares, the widow gets two shares, and the daughter one share. When there are no lineal descendants, but there are parents or either of them living, the widow takes $\frac{1}{2}$, and the parents jointly take the other half. So also when there are only relatives on father's side, she takes $\frac{1}{2}$ and the relatives get $\frac{1}{2}$. Daughter inheriting property from males along with her brother takes $\frac{1}{4}$ of that of her brother's share; but when she inherits the property of a female, daughter gets equal share with the son. In default of the lineal descendants, the mother inherits the property along with the father of the deceased. If the father and mother are alive, the father's share is double of that of the mother.

19. According to the Indian Succession Act of 1925 which is applicable to persons except Hindus, Parsis, and Mahomedans, who have their own personal law of inheritance, if the intestate has left a widow and any lineal descendants, $\frac{1}{3}$ of his property belongs to the widow and the remaining two-thirds

goes to the lineal descendants. Where he has left no lineal descendants and dies intestate in respect of his whole property, and the nett value of his property does not exceed five thousand rupees, the whole of it belongs to the widow. When the nett value of the property exceeds the sum of five thousand rupees, the widow is entitled to five thousand rupees thereof, and has a charge upon the whole of such property for such sum of five thousand rupees, with interest at 4 p. c. thereon from the date of the death of the intestate until payment. This provision for the widow is in addition to her share of the residue of the estate remaining after payment of the five thousand rupees with interest, and such residue is divided between the widow and the kindred of the deceased. But where there are no kindred, the whole property belongs to the widow. Daughter is recognised as an heir to her father's property, and she shares equally with her brother. Sex-disqualification and sex-preference are not recognised at all. A daughter of a predeceased son or daughter gets the share of her father or mother. So long as the father is alive, mother cannot inherit, but when he is dead and there are brothers and sisters of the deceased, the mother and each of the brother or sister or their children in case of their previous demise, inherit the property in equal shares. If there be no brother or sister or their children the mother gets the whole of the property; sister inherits along with her brothers in equal shares. Her rights arise only when there is neither father, nor mother, nor lineal descendants.

20. The Indian Christian women under the Indian Succession Act hold property with absolute right. The chief sources of acquiring property are inheritance, marriage settlement, gift and personal exertions. They also get some property under the marriage settlements which the husband and wife may enter into. The males have absolute power of disposal by will. Widow succeeding along with the lineal descendants gets $\frac{1}{3}$ share, the latter getting $\frac{2}{3}$, and gets $\frac{1}{2}$ share in default of any lineal descendants, the other half going to the kindred. If there be no kindred, the whole property belongs to the widow. Daughter enjoys the right of inheriting her father's property, and her share is

equal to that of her brother. The daughter of a predeceased son or daughter gets the share of her parents. So long as the father is alive the mother cannot inherit, but if he is dead and there are also brothers and sisters of the intestate, the mother and each living brother or sister succeed to the property in equal shares. The children of predeceased brother or sister get the share of their parents. If there be no brother or sister or child of either sex, the whole property belongs to the mother. Sister inherits along with the brothers in equal shares, when there is neither father, nor mother, nor lineal descendants.

21. It will be seen from the above that under non-Hindu systems, women are not merely entitled to maintenance, but have definite shares in inheritance and have absolute power of disposal over property thus acquired. A comparison of women's right to inheritance under Hindu Law with those under the other systems shows that under the Hindu Law women are treated miserably. They are not only not entitled to claim a share of their own accord, but even when they get a share on the sons deviding the family property, the share that they get is hedged round with so many restrictions to safeguard the interest of reversioners that their share is really not a share but something given with a life interest only, in lieu of maintenance. Even when a woman succeeds to the property of her husband who has left no issue, she has only limited interest in it, and has to leave the corpus of the property in tact for those distant relations of her husband, who never cared for him or for her during their life-time and even during his last illness. As a daughter a woman is completely at the mercy of her father and father's relations, and gets no share in his property however extensive he might have left behind. The Joint family system has practically taken away all the rights of the widow and the daughter and has reduced them to the condition of mere dependents. Even if there be no male issue, the interest of a deceased coparcener devolves on the other coparceners and the widow only becomes entitled to maintenance and residence in the family house while the daughter is only entitled to be maintained and married at

Hindu Law illiberal
to women.

the cost of the family property. Even the right of residence and maintenance is not recognised as creating any legal charge on the property; and it can be defeated by the disposal of the property by other coparceners, which may reduce a widow to a condition of abject helplessness.

22. After these preliminary remarks, we proceed to examine what the present law is, what are its defects, and the manner in which, in our opinion, it should be amended. In doing so, we do not propose to justify our suggestions or make them acceptable solely by making them compatible with the system of law as laid down in the old texts, or by giving them convenient interpretations, as is sought to be done by some reformers of late. It would no doubt be a relieving feature of our suggestions if they find support from the old texts; and if they do so, we might be saved from offering a lengthy apology for justifying the propriety of our proposals. We shall rely upon the old texts so far as it may be possible to do so. But texts or no texts, we propose to examine the existing law from common sense point of view, and to make proposals which, though they may not quite fit in with the old texts, would fit in with our present attitude towards women, and strike at the root of the legal disabilities, under which they suffer. In doing so, we have no wish to import foreign ideas, or western notions, which would be out of place, and may do more harm than good. We want to keep in mind, as far as possible, the notions and traditions which form the foundations of Hindu Law and society.

23. This leads us to consider some suggested lines of reform which have been proposed by some persons consulted by us. Mrs. B. L. Nehru, the General Secretary, All-India Women's Conference, expressing the representative opinion of the educated women of to-day, says: "I would like to point out, that sex equality is the main principle which has guided me in forming my opinion with regard to the questions raised in the questionnaire. My recommendations have been made, not with a view to mitigate the miseries of the suffering wives

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and widows only, but with a view to bring the status of women on the same level with men. It is quite possible that with this angle of vision I have made certain recommendations which go contrary to the very principles on which the Hindu Law is based. It may be that the chances of the family property remaining long intact for the joint use of the whole of the family are reduced when the right of unqualified inheritance and partition is given to the widows and the daughters; but I feel, it is not worth while to preserve the property at the sacrifice of the great principle of sex equality, and thereby help in creating a mentality which debases the whole of our social system and is harmful to both for the moral growth of men and women. The utter injustice of the Hindu Law as it is practised to-day in relation to women may perhaps be mitigated by making slight changes here and there. It may be argued that amendment of the Hindu Law in consonance with the underlying spirit will bring about the necessary relief as well as the property. But as I believe that properties are meant for human beings, and not human beings for properties, the basic idea governing the amendment of the law should be that of justice and equality, and if, in bringing our laws more in conformity with these principles, we lose certain of their other characteristics, we should be prepared to lose them". To the same effect is the opinion of Mrs. Yashodabai Bhate of Baroda who states that she does not desire to call in aid of the texts of Hindu Law and maintains that appropriate reforms must be adopted even if they run counter to the doctrines laid down in such texts. The emphatic protest of Mrs. Bhaktilaxmi Desai of Vaso against the injustice and inequality done to women which she attributes to the partiality of men who drafted the codes to suit their narrow views about women's rights bears also an eloquent testimony to her desire displayed in her suggestions to work out a change on the principles of equality and justice. Her husband Darbar Gopaldas Ambaidas Desai adopts the same principles of justice and equality. Mr. B. K. Bhate, Commissioner of Education, Baroda State, Raosaheb N. G. Chapekar (retired First Class Sub-judge) and many others look more to the requirements of modern times and offer proposals accordingly without seeking to justify them by any

strained reference to the texts. This school of reformers, whether it requires reforms because of the sense of equality and justice, or because of the requirements of modern times, is undaunted in its attitude towards the opposite opinion. But there is another school of reformers of whom Principal J. R. Gharpure of the Poona Law College and a recognized authority on Hindu Law and the enlightened Chief of Aundh can be noted as the typical exponents of its attitude towards the reforms. Mr. Gharpure says: "As regards the general considerations regarding any change in the law as it exists at present either as a result of judicial decisions or of long undisturbed course of conduct, or even of a usage in departure of the express text, it is to be borne in mind that, as far as possible, any change that is proposed or contemplated must not have the appearance of newness. Continuity is a strong force which, if properly manipulated, would furnish a good shield against all attacks for innovation. In the replies, therefore, care has been taken to see that no suggestion works a violent departure from the past and that all suggestions would have an 'azure appearance of a continuity'". Both the sides are, however, equally anxious for a change, and whatever their standpoint in approaching the question, their conclusions have been similar with but slight variations. Though we are concerned with their conclusions more than their standpoint in approaching the questions, we have not lost the opportunity of appreciating the valuable principles which they had to urge. We have approached the question in a spirit of justice and equality which the former of these schools breathes, and have made such proposals as would do no violence to the basic principles of Hindu-Law, a measure of caution which Mr. Gharpure wants us to follow. It will be seen that our proposals in the following pages indicate the golden mean between these two ostensibly different but really the same schools of thought.

24. As observed above, we had before us a variety of views ranging from a radical change to no-change whatsoever and we propose to analyse the different schools of objectors. The absolute

Opposition analysed.

no-change policy in nearly every detail regarding the question, advocated by the committee of the Baroda High Court Judges does not give us any rationale of their policy, and it is not possible to answer the objections, because they have raised none, and have merely given their opinion. It is possible that they deem the present state of things to be the ideal one, and think that Hindu women ought to be satisfied with the happy lot they are in, if they are not satisfied already. This attitude appears to us to be untenable. The more frank expression of similar attitude, which at least deserves credit for the fearlessness in putting the opposite view, may be described as shared by such people as have utter distrust in the morality and sensibility of women in general. Shrimant Pilajirao Gaekwar, the Suba of Okhamandal, expresses his fears that a regime of terror, confusion and corruption would follow by granting more rights to women. He also hints that the life of a husband would be in danger if his wife has the chance of inheriting his property absolutely. There is another class of people whose respect for the golden past outweighs the inconveniences of the present time, and who think they would set matters right by putting the clock back in every respect. They think the miseries should be borne, if any, under the present law, by women with the spirit of a martyr and that it would be a sacrilege to lay one's hands on the fabric of Hindu Law which they identify with religion. They lay the whole blame on the changed conditions brought about by western education, and advocate a return to the old order of things. To say the least of them is, that they aim at an impossibility in refusing to acknowledge the actualities and potentialities of the present state of society and shutting themselves up in the blissful thought of the past. There is another class of people, self contented who have neither any great reverence for the past nor any hope for the future, and who would therefore stick fast to the present and look with horror to any proposal calculated to bring about a change in the present state of things. They abhor reforms because they fear they cannot rise up to the occasion called for by the changed circumstances. We have only briefly referred to the view point of the objectors to any reform. Such of their objections as deserve special attention will be dealt with laterly

in their appropriate places. Suffice it to state that the dismal picture placed before us and the solemn warning given by the objectors has failed to create any misgiving in our mind. We have dealt with the situation according as we thought proper, and feel that we are justified in brushing aside the false alarm raised by a few, and in following the general opinion that is pulsating with an urgent demand for reform. We have formulated such suggestions as appear to us to be just and reasonable. We fear that they may not be regarded as full and complete in themselves; but we hope that they will not be considered illiberal at least as a transitional stage for the present.

25. The whole idea of women's position in Hindu social life and their ability to take their place in society independently of any question of sex has radically changed during the last thirty years. This is due primarily to the contact with the west where women are held in high respect, and to the movement for female education. The resultant change is so complete that, the only curious thing now is, to see in what spheres women may not enter more or less equally with men, but in what they should restrict themselves in the interest of society. People's ideas about the inferior position and status of women in society, and the consequent inequality in their rights have undergone vast changes from what they were before; and women themselves seem to be wholly dissatisfied with the inequitable provision in law concerning them. They raise their voice against them, all over the country. They have formed themselves into associations, and hold meetings, and pass resolutions to the effect that the present inequality in law regarding inheritance and other rights, should be promptly removed. Hindu males have also shown their sympathy towards them and have espoused their cause as can be seen from the resolutions passed in this respect in the Social Reform conferences. Even the Baroda Prajamandal session held in Baroda in 1929 adopted a resolution which condemned the present status of women under the Hindu Law, and urged on His Highness' Government to appoint a committee to inquire into the question of women's rights and remove the hardships they are labouring

Unsuitability of
Law at present.

under. The law based upon notions of bygone ages does not suit the present age; and its unsuitability is prominently marked out by leading lawyers and reformers like Mr. M. R. Jayakar and others who take keen interest in the question. There is even an active propaganda all over the country to alter the law so as to suit the modern day ideas, and raise women from the inferior position assigned to them under Hindu Law.

26. It may be conceded that women's right to property was restricted in olden times, and that there were then very good reasons for so doing. But those times are past. Now there is a settled life, and almost an equality of status. The question that we have to consider is, whether, the law which restricted women's right to property requires to be changed, and if so, to what extent. We find that there is unanimous opinion in the country that the lot of a Hindu widow, so far as inheritance is concerned, is most wretched. She is like a queen in her house when her husband is alive, and is a partner with him in the ownership and management of the household property. But after his death, she is entirely at the mercy of the other coparceners, and is reduced to the position of a menial entitled only to maintenance out of the Joint family property. Even when her husband has left his self-acquired property, she is not entitled to claim a partition, and it is only when her sons divide the family property, that she can claim a share. Moreover, when there is an only son, natural or adopted, no opportunity ever crops up for partition, and, therefore, in such a case, she has no chance of getting a share at all. She has to live under the constant supervision and annoying interference of her reversioners, and eke out a miserable life. There is no justification now for restricting a Hindu woman in her rights, when, like her Christian, Parsi and Mahomedan sisters, she is educated and can take part in public life as a Municipal corporator or a member of Legislative Councils. The Law of inheritance made applicable to her, thousands of years ago, has ceased to be applicable under the present changed conditions of life. Fashioned according to the requirements of olden times and also according to the old misconceived interpretations of texts,

Hindu Law is petrified and requires to be amended according to the present changed conditions of society. There can no longer be any justification for denying women the right in law to which not only are they naturally entitled, but which they enjoyed in the hey-day of Indian civilisation. We need no longer rely upon the old texts laying down rules which have ceased to have application to present day conditions. There should be no hesitation in setting aside old and archaic law, if it is not suitable to present conditions of society. We have already thrown overboard the old law regarding evidence, which depended upon ordeals of fire and water and the caste of the witnesses of the accused. We have also laid aside the archaic criminal law of old with its crude punishments which varied according to the caste of the offender. Why then continue the old rule of inheritance when it appears to us to be unjust? It is our duty to arrange without further delay the Hindu Law of inheritance according to sound principles of justice, equity and good conscience.

27. It is a matter of great gratification to the people of the Braoda State that under their enlightened and progressive ruler, some steps have already been taken to raise the position of women. His Highness the Maharaja Sayajirao Gaekwad was the first to give them the right to vote and to consider them eligible for membership in Local Boards and Municipal Institutions, and even in Legislative Councils. He has freed them from the tyranny of custom. As pointed out in para 4 of this Report His Highness has by legislative enactments already made necessary changes in the old Hindu Law, so as to remove unnecessary restrictions that hampered individual liberty, and customary practices that took away the vitality of the people. These changes are not based solely on the interpretation of old law texts, but on the present requirements of society, by even giving a go-by to the commands of the old Hindu Law. There has been no hesitation to set aside the express commands of the Shastras, which might have been suitable thousands of years ago when they were framed, but which have now become quite obsolete. In the early period of society, a son was naturally

Baroda State view
point.

considered more valuable than a daughter, for he would remain with the family and add to its strength and that of the tribe to which he belonged. On the contrary, a female child would have to be guarded, and in spite of all efforts for her protection, might be even captured and taken away by some other tribe. The old ideas of the tribal and family property have changed to a large extent, and division rather than unity in the family is the prevailing idea. New conditions of things have arisen and consequently we beg to submit that the law must be changed so as to suit changing conditions of society, and the liberal policy already adopted in this behalf by His Highness the Maharaja Saheb.

28. In the following pages for convenience of discussion, we have divided the subject into several

Division of the subject into parts.

subdivisions as under:—

- (1) Daughter.
- (2) Married woman.
- (3) Stridhan.
- (4) Maintenance and residence.
- (5) Succession.

The legal status of a woman can be viewed from three different standpoints viz, daughter, wife or a widow. The rights of the sister which are similar to those of a daughter have been treated in the chapter on daughter. The consideration of the rights of a wife and a widow are more or less correlated and interdependent, and, therefore, we have treated them in one chapter. In the same chapter have also been included the rights of the mother, grandmother, the widow of the Gotraja Sapinda and of all those women who come into the family by marriage, which are similar to those of a widow.

CHAPTER II.

DAUGHTER.

29. By the terminology " Daughter's right " we want to signify the rights of a Hindu woman in the family in which she was born.
 Daughter's rights under existing law. According to the present Hindu Law, (section 6 and 28 of the Baroda Joint Hindu Family Act) an unmarried daughter, whether in a joint or separated family, is entitled to be maintained till she is married, and to be married at the expense of the family, and such expenses are regarded as items of legal necessity for which the joint family property can be alienated if necessary. In a joint family, the undivided interest of her father does not devolve upon her even though he may not have left any male issue or his widow. But if her father was separated and dies leaving no male issue, she becomes an heir and inherits the property after the lifetime of her mother if she is alive or immediately if she is already dead (section 23 of the Baroda Hindu Inheritance Act). If she remains unmarried at a time when her brothers divide the patrimony, she becomes entitled to property upto a fourth share of her brother in lieu of her marriage expenses. (Section 58 of the Baroda Joint Family Act).

30. In the Vedic period, we find that not only could a daughter get a definite share in the property of her father, but if she intended to remain unmarried, she could claim her share even from her father. Even in Manu there are indications that in Vedic times the daughter was entitled to a definite share of her father's estate, which was either a third or a fourth of that following to the share of a son (Paul Apasamy, page 101-102). These liberal rights enjoyed by a daughter were lost in the transitory period during which Hindu society went on degenerating in its attitude towards women, and in subsequent ages she was looked upon as a thing only to be given in
5 W. R.

marriage. The difficulty of finding a suitable husband for her, and the system of dowry for payment to the bridegroom's parents that grew up made a daughter undesirable as an issue. She came to be considered as an encumbrance on the paternal family to be transferred at the earliest possible opportunity to the house of her husband. This notion led to the belief that a daughter was someone else's property and an object of gift in marriage, and as much only should be spent on her account as was necessary for her marriage. The provision for marriage expenses and maintenance upto the time of marriage came to be believed to be the only right of a daughter. This idea has been beautifully expressed by the Sage Kanva, in the following verse in Shakuntala. He said at the time of sending her off to her husband's house :—

“ A daughter is a boon, a precious jewel,
Lent to a parent till her husband claims her.
And now that, to her rightful lord and master,
I have delivered her, my burdened soul
Is lightened, and I seem to breathe more freely. ”

31. Although religious considerations controlled the right of inheritance, and capacity to offer Unjustly degraded. *pinda* was regarded as the test of heirship, it was not easy to throw away a daughter's claims on paternal affections and the faint memory of her exalted position recognised in the Vedic period still lingered. She was recognised as an heir to a sonless separated male, her right being recognised on her capacity to perpetuate the name of her father and offer funeral oblations. She was looked upon just as a son, when she was appointed a *putrika*. The ground on which this consideration for her was based is thus stated in the texts. “ As a son, so does a daughter proceed from his several limbs. How then should any other person take her father's wealth ? ” (Mit : II 2,2,). The next stage of degeneration followed Jeemutavahana's doctrine of limited ownership. We have observed elsewhere how the text of Katyayana was misread and misunderstood in formulating the theory of limited ownership of Hindu women over the property in their hands, the reason why Jeemutavahana readily picked up the theory, and the

great havoc this doctrine has wrought up to date. Even taking that Katyayana did mean to hedge with limitations a widow's power of disposal over property inherited from her husband, there could be no justification for extending the doctrine so as to include the case of a daughter who was recognised as an heir to her father and looked upon just as a son. Happily, Jeemutavahana's theory was not recognised in the Bombay School of Hindu Law and that school has in a way refused to be carried away by the great tide of the ignoble principle which has elsewhere washed away daughter's absolute ownership in property inherited from her father. In the Baroda State, we are not much concerned with enlarging her power of disposal because she enjoys absolute power of disposal in our code as under the Bombay School. But we have cited this as an instance to show how women's rights have been curtailed from time to time in a way not warranted by the texts or tradition. To those who would call it a sacrilege to enlarge the existing heritable rights of daughters, it would be pertinent to ask : " Have not Smrutikaras committed sacrilege in laying aside the law, as laid down in the Vedas ? Are not the commentators guilty of the same in changing the Smriti Law under the guise of interpreting it ? Was it the less sacrilege because committed by the sages and the commentators, who must appear to us as infallible because remotely removed from us ? "

32. A good deal of confusion and misunderstanding prevails as regards the fundamental right of a daughter to get her marriage expenses from the family. We have seen that in the Vedic period she could ask for partition even against her father, and this right of hers is only compatible, if we grant her interest by birth in her father's property. As we have said before, Hindu Society fell from its high standard, and wedlock came to be regarded as the ideal for a daughter. She had yet some interest in the father's property, the ancient law made no distinction between paternal estate and ancestral property, and if she continued unmarried, she was looked upon as a member of the family and was given one-fourth share on

Right in joint family property.

partition effected between her brothers. It is wrong to suppose that this share was given only as a provision for her marriage expenses. Mitakshara enters into an elaborate discussion of this topic and ably refutes this proposition. It lays down that she is given her share not merely to cover her marriage expenses but because she has some interest in the property, and after her marriage, her husband's property is alone liable for her rights. The same mistaken view that was exploded by the Mitakshara seems to have been accepted as correct one by some even now. But Justice Ramesan in the Full Bench case of *Chedalvada Subbayya V. Chedalvada Ananda Ramayya* reported in 53 Madras 84 sets at rest the controversy, and finally lays down that a daughter gets her share not by way of provision for marriage expenses which was a religious obligation, but because of her interest in the joint family property which she acquires by birth; and the provision for her marriage expenses is the historical remnant of her right that was once recognised for a share because of her such interest. Thus it will be seen that a daughter has got an interest in the coparcenary property, and we have got this important principle on which we can sustain the proposal we are making, should any one call upon us to justify it by the authority of the texts. We have already observed elsewhere that the present needs of society and of women in particular have appealed to us more than the old texts; and we have not allowed ourselves to be carried away with the programme of now reinstating the old Hindu Law of the Vedic period. The daughter does get an interest in the coparcenary and has as much interest in it as the son.

33. Equality of status between males and females has been the ideal of modern legislation all over the world, and even the proverbially conservative English Law had to yield itself to the principle with the result that the several statutes passed in 1925 have levelled down the difference in sex, and both daughter and son now inherit the property of their parents in equal shares. Under the law applicable to Mohamadens, Parsis and Indian Christians, a daughter is regarded as an heir to her father's property. Her share under these systems though

Daughter entitled to inherit.

small and varying with the existance of certain conditions is definite and indefeasible. Similarly it would not be too much to give a Hindu daughter certain rights of inheritance which her sisters of other religions enjoy in India. Moreover as we have seen in the preceding para she acquires interest in coparcenery property by birth, just like a son, and therefore it is inconceivable that she should not possess the lesser right of inheriting her father's self-acquired property along with her brothers. A daughter is as much the child of her father as the son himself, and that the latter alone should succeed to the property to the total exclusion of the former is an inequality which is hard to support.

34. But the weight of opinion that we have received is not for widening the daughter's right of inheritance. Most of the witnesses think that a married daughter should have no right to inherit with her brothers, but should have her right only in her husband's family. Bearing in mind the principle that we have followed, viz, that no reform should be so much advanced as to create a chasm between the actual and the ideal, we refrain from proposing any drastic change in this matter. Having regard to the marriage customs prevailing in the various Hindu communities in the State, and the fact that we have widened her right of inheritance along with her brothers, she may retain her present right of maintenance and marriage expenses, and when once she is married, her husband's family is responsible for her legal rights. No difficulty ordinarily arises during the lifetime of her father because the paternal affection does more than what the legal or moral obligation can exact, and therefore, no right need be given to a married daughter during her life-time except the right of maintenance which we have proposed for a widowed daughter in para 72. During her father's life-time and even after his demise, a married daughter is given occasional presents, and in some castes notably among the land-owners and agricultural classes which form the bulk of the State population, she is provided annually with clothes for her own and her children's wear. No provision in law need therefore be made for giving her anything after her marriage. Moreover, when a daughter is married she

Unmarried daughter entitled to one fourth share.

is regarded even by the *shastras* to have ceased to be a member of the family and to have become a member of her husband's family, wherein she becomes the co-owner of her husband's property. The right, therefore, that she has acquired by birth in the ancestral property of her father should be regarded to have come to an end on the date of her marriage. In practice, also, she gets an equivalent of her interest in the form of marriage expenses paid by her father's family. This is not the case with regard to an unmarried daughter. We propose therefore to give an unmarried daughter the option of either getting maintenance and marriage expenses from the ancestral property, or getting her share separated which will be equal to $\frac{1}{4}$ th of that of her brother, if she has, or would have a brother. Similarly, we propose to give an unmarried daughter after her father's death, the option of getting maintenance and marriage expenses from her father's self-acquired property, or the right of inheriting her father's separate property and getting her share partitioned which will be equal to $\frac{1}{4}$ th of that of her brother, if she has, or would have a brother. If she gets the share in either case, then she can claim neither her marriage expenses nor maintenance. To day, also, after the death of the father, if the sons divide the patrimony, their unmarried sister is entitled to get property upto one fourth of the share of her brother. This may solve another difficulty which is pressing upon our mind, and it is this. Marriage is a universal practice for Hindu girls, but now-a-days under the influence of modern education and the ideas of independence, some girls choose to remain unmarried and their number is likely to go on increasing. So that if a girl wants to remain unmarried, she will not be required to pass a life of dependence on the family. She can take her fourth share by effecting a partition and remain self supporting. This suggestion definitely postulates that a daughter gets as much interest in the property of her father as her brother, and this fundamental principle might be used later on, when public opinion so-far develops as to treat sons and daughters as equals for heritable rights for effecting further reforms. The Judges of the Baroda High Court in their joint reply to our questionnaire state as their opinion that no right of inheritance need be given to a daughter if she wants to remain unmarried even though a suitable marriage is

possible, that no legal obligation be placed on the father's family with regard to her and that she must seek her own livelihood. They are, however prepared to make a concession in favour of a widowed daughter destitute of means from her husband's family, by giving her a right of maintenance from her father's property. To a subsequent question asked with a view to ascertain whether an unmarried sister is given a share on partition between her brothers because of her interest already existing, they reply that though "generally speaking it may be said that there is some principle, but Hindu Law is not based upon such principles." This opinion has been found unacceptable by us. As pointed out in para 52 we think the correct exposition of law is made by Justice Ramesan in 53 Madras 84 wherein he lays down that not only was such a share given to her because of her interest in the joint family property, but also that the provision for marriage expenses and maintenance is but the remnant of her higher right of receiving a share because of such interest.

35. We have now to consider the character and extent of a daughter's share of inheritance. In the opinion of Justice Ramesan in 53 Mad 84 (F. B.) a daughter has as much interest in the coparcenary property of her father as a son, and the fourth share originally allowed to her at partition or its recent remnant in the shape of the provision for marriage expenses, is allowed to her because of her interest in the joint family property. He has shown in his elaborate judgment the early history of the question and the fundamental principle on which her right is based. In short, according to him a daughter is a co-parcener in her father's ancestral property. The same view was expressed by our colleague Mr. V. V. Joshi in his booklet (Appendix III) when it was first printed, and it is gratifying to note that his view has got support in the recent authoritative pronouncement of Justice Ramesan. We had invited opinions as regards the nature of the right of a daughter with a view to elucidate this point. Those who were opposed to giving a daughter any right of share in her father's property have not sufficiently explained the significance of the fourth share or property upto fourth share which an unmarried sister becomes entitled to on partition between her brothers, and many of them

found a ready answer in stating that the share was given by way of provision for marriage expenses. The opposite view that it was given in lieu of her interest in the joint family property, has also been expressed by a number of people, whose readiness to give her a share could not fail to easily accept the suggestion thrown out in the questionnaire and supported by highest authority. According to Mitakshara, a daughter acquired an interest in the joint family property and she was given the fourth share because of her such interest. He refuted the idea that the share was given by way of marriage expenses. As the point is treated at some length in Appendix III with which we agree, we have come to the conclusion that such right was given to her because of her interest in the joint family property. The more pointed question is whether she should be regarded as a co-parcener and considering the question in the right of the pronouncement of Justice Ramesan, we think she should be regarded as a co-parcener. During the life time of the father she has no right to ask for a share but as Justice Ramesan puts it, even the sons under Mitakshara law had no right to demand it against the father. Sons and daughters stood formerly on much the same level, but when the son's right came to be recognised more and more, that of the daughter came to be curtailed. The point assumes greater significance when we have to consider the nature of an unmarried daughter's right to ask her one fourth share. It is our considered opinion that she should be regarded as a co-parcener as regards her share. We could have as well suggested that she should be regarded as a sharer but we are alive to the difficulty this position would create as regards the management of the joint family property. We also think that the principle of co-parcenary status if once recognised would prove useful as a handle for further reforms with respect to a daughter's rights, such as may be required according to the needs of the society in the near future.

36. Express opinion was invited of every gentleman on the question as to what provision should be made with respect to a daughter's claim when she wants to remain unmarried, and the replies received are of a diverse nature. The Chief of

Daughter remaining
unmarried.

Aundh states that motherhood and wedlock ought to be the ideal of every girl and no provision ought to be made for unmarried girls, in as much as it would encourage them to remain unmarried. This view is shared by many others also, but it does not take any account of a possibility that a proposed match may not be suitable to a girl, or owing to some constitutional defect, wedlock might prove dangerous to her life. It is equally possible that she may have no chance of marrying at all. To say that in all such cases, a girl must go through a form of marriage whatever penalty she may have to pay for it, or otherwise she would stand the chance of being driven out of her father's house by his relatives, is cruel. It would be a wicked form of social persecution which does not consider a human being of any value before the ideal and delights in leading the innocent to be sacrificed at its altar. Mr. K. M. Gupte, Naeb Suba, Amreli, recognizes the necessity of making some exceptions in favour of unmarried girls, and thinks that such daughters as must remain unmarried because of some defect should have a right of maintenance. He does not subscribe to the opposite view in all its entirety. The real controversy arises when we have to consider a daughter's legal position in case she refuses to enter into married life, or accept the offer of a match which appears to her elders as suitable, but not to her. Such a difference of opinion is bound to take place, with the advance of female education and the performance of adult marriages. According to the present law, it is doubtful whether a girl can claim maintenance as of right when the elders are ready to marry her, but she refuses to accept the proposal. She must accept the offer of marriage however unsuitable it may appear to her or in the alternative must seek her own bread outside the family. The real question, therefore, is whether such helplessness should go unredressed. To say that even the higher education we give to our daughters must inculcate in them the ideal of motherhood is to deny it the claim of moulding independent individuality; to say that women ought only to be mothers is to betray utter ignorance of the higher ideal of self-sacrifice in the country's cause, that has an all absorbing fascination for educated Indian women of to-day. This position is difficult, and yet the committee of the Varishth Court

Judges, call the law as it exists to-day an ideal one! They say:—"If daughters want to remain unmarried even though a suitable marriage is possible there should be no legal obligation placed on the father's family with regard to them. In that case they must seek their own livelihood". The majority of opinion, however, is in favour of giving a daughter a right of maintenance, while the rest would cut the matter short by giving her a right to have one fourth share of her brother's in the family property. The giving of a share would not only be a simple affair but would also, later on, lead to a proper solution of the whole question; when the present ruinous customs will disappear under the changing circumstances, a daughter, whether married or unmarried, will have to be given a share equal to her brother's in the family property. That is an ideal to be reached ultimately, but as a transitory measure we suggest that an unmarried daughter should be given one fourth of her brother's share in the joint family property as well as in the intestacy of her father, and that she should be entitled to have her share partitioned if she likes.

37. Really speaking, the exclusion of married daughters from inheritance is not so great a hardship as would require immediate relief. Ordinarily Hindus as a rule spend more money than they can afford on the marriage ceremonies, and in almost all cases the bride's father has to spend more than the bridegroom's father, as a large amount of money in the form of *paithan* or *hunda*, is given to the bride-groom or his elders as consideration for marriage. In the same way in some castes, a large amount is exacted from the father of the bride-groom which really ought to be considered as the bride's *stridhan*. It is an unfortunate circumstance that such money, except the *palla* which is comparatively small, is appropriated by the parents to their own use. Among the Daccanies and the Patidars of Gujarat a daughter who might have brought in with her dowry by thousands, and thus enriched the bride-groom's family in a substantial way, can claim nothing out of it; and when she becomes a widow, she is often left without any means of subsistence. This is really

Reasons for excluding married daughters from inheritance.

deplorable, but in considering the desirability or otherwise of giving a share to a daughter as such, we ought to see, also, how much burden the father's family can sustain, and this consideration has outweighed the hardship that has to be borne. With the advance of civilised ideas, this evil practice of exacting money from the bride's father will be considered ignoble and die out; and when this happens, the question of giving a share in her father's property to a married daughter will naturally crop up, and then proper solution of it will be possible.

38. With a view to put a wholesome check on the evil practice of exacting dowry or other consideration from the bride's father that is so rampant in some castes such as Patidars, Garashias, Prabhus, Marathas and Anavil Brahmans and which causes their ruin and indebtedness and makes the birth of girls unpleasant to them, we had invited opinion as regards the advisability or otherwise of making all such presents, money or other kind of property, given to the bride-groom or his father or relative, the property belonging to the bride; and we are glad to note that the unanimous opinion of all of them is that some check must be put on this evil practice. But they all apprehend that no useful purpose will be served by enacting that such property belongs to the bride because the greedy parents will find means to circumvent the purpose by devising other means to evade the law. This evil practice has ruined many families and the tragic stories of girls or their parents committing suicide on account of their inability to find funds for bridegroom price are frequently heard. It is mainly due to it that a girl is considered undesirable and of less importance than a boy; and it even led to female infanticide amongst the Rajputs and Patidars. We have referred to this custom merely to show what a great drain it causes to the family property, and so long as it exists, how unfair it would be to cause further drain by giving a share in inheritance to a married daughter. It is very surprising that the evil practice of exacting bridegrooms' price is prevalent even among those who call themselves educated. We note that, of late, there is a change for the better and a time may come in the near future

when the evil custom may disappear in toto. It will be time then to revise the law regarding a married daughter's right of inheritance.

39. We shall now deal with certain objections urged against the proposal we have made. The ultra reformists of the type of Mr. and Mrs. Sex inequality. Darbar Gopaldas, Mr. P. K. Pendse, Mr. D. P. Joshi, Raosaheb Chapekar, Mr. and Mrs. Bhate, Mrs. Nehru, and Mr. Gupte in proposing that daughter and son should inherit in equal shares have echoed the principle of sex equality that has found its way in the recent legislation of some advanced countries, and they may be expecting the same adoption of the rule here or at least our explanation for reducing it to a fraction. Sex equality especially between the children inheriting the property of their parents is a sound principle no doubt, but besides being a transitory measure, our proposal would be found just and proper when the circumstances we have mentioned in para 37 are taken into consideration. We hope time may come when consideration of sex and status will be eliminated from the rules of inheritance, making it possible for all children to inherit the property of their parents in equal shares. Our proposal for giving a less share to a daughter has got ample support from distinguished lawyers like Principal J. R. Gharpure, Professor S. Y. Abhyankar, Mr. D. P. Joshi, Mr. Jogiah (ex. M. L. A.) and of judges like Mr. Zala (the District and Sessions Judge, Baroda) and Mr. N. B. Padate (Assistant Judge, Baroda) and Munsiffs like Messrs Y. M. Korade, B. S. Daulatjada, and H. V. Riswadkar.

40. Some persons seriously object giving to an unmarried daughter any share in her father's property along with the son. They say that unless there is a corresponding right given to daughters in British India, the Baroda State people will be losers inasmuch as an unmarried daughter will take away the property with her, and marry a person in British India and thus property may be lost to the Baroda State people. To say the least, the objection smells of that narrow-mindedness which regards the interest of the family, caste people, or the

State people of such importance as to nip in the bud any measure of just reform. The objection betrays profound provincialism and utter ignorance of the fundamental rules of personal law, which controls an individual's claim to inheritance as distinguished from International Law. In the first place, all unmarried daughters will not go out of the Baroda State. Even in British India legislation of a like nature is quite in sight, and some Bills are before the legislature concerning the matter. If this argument has to be given its full force, then even a son, who does not want to keep the whole of his property here in Baroda State must be deprived of his right of inheritance, for if he takes away the property to British India, the State will lose it also. It may be some consolation for such narrow-minded persons to think that there may be an equal number of brotherless daughters in British India who will marry subjects of the Baroda State and bring into the State property which they inherit! The Baroda State has never waited for British India in matters of urgent social legislation like the Divorce Bill, and Child Marriage Prevention Act. Such trifling objections need not therefore be given any weight. We do not regard them as of any importance and would not have referred to them had they not appeared in some local papers.

41. Our view therefore on the rights of a daughter is that the ultimate goal should be that a daughter whether married or unmarried should have the right of getting an equal share with her brother from her father's property, but owing to the ruinous custom now prevailing of giving *paithan*, *hunda* etc, which drains away the family property, a married daughter need not be given a right equal to that of an unmarried one, till that custom disappears under the influence of education; and an unmarried daughter should have the right of getting her share partitioned at her will, from the joint family property, as well as, from her deceased father's self-acquired property, and should get a share equal to $\frac{1}{4}$ th of that of a brother, if she has, or would have any, and when she does so, she will have no further right of maintenance and marriage expenses.

CHAPTER III.

MARRIED WOMAN.

(a) Wife.

42. According to the present law, a wife has a subordinate co-ownership in her husband's property, and the husband has no ownership in his wife's *stridhan* (Section 13 Baroda Hindu Marriage Act). A wife does not acquire a definite separate right in her husband's property during his life time, but she is entitled to be maintained by him (Section 26), and ask separate maintenance and residence upto $\frac{1}{3}$ rd share of her husband's income when there are any of the justifying causes (Section 28). The husband cannot transfer or will away all his property, with the intention of depriving his wife of her means of subsistence (Section 12). But her right of maintenance and residence does not of itself create any charge on the property, and can be easily defeated by a transfer effected by her husband. Unless a charge is created by a decree or an agreement on the family property, a wife's right of maintenance and residence is affected by the husband's debts (Section 28). She cannot protect her right and has no authority to question the propriety of her husband's debts or his transfers for such debts. She has no right to ask for a share of her husband's property, but if her husband and sons divide it among themselves, she has a right to get a share equal to that of one of her sons from which the value of the *stridhan* obtained from her husband or his family is deducted. So long as the property is not divided, she has only a right of maintenance (Section 14). When there is no male issue, she can inherit the separate property of her husband, and in case of joint family, is entitled only to maintenance (Section 15). Property obtained before or at the time of marriage belongs to her absolutely, but it does not include ornaments or clothes given to her for use on ceremonial occasions. She has no ownership over property acquired by her own skill, art or exertion and over property

Wife's rights under the present law.

obtained as gift from strangers during coverture, and she cannot transfer such property without the consent of her husband (Section 18). She becomes full owner of such of his property as remains after her husband's death (Explanation II to section 16). Her husband has no right to use her *stridhan* property except in case of absolute necessities such as religious rites, medical treatment etc. She can, however, claim back the property utilised by her husband for these purposes only if he deserts her or refuses to maintain her for no fault of hers.

43. Before proceeding to discuss the rights of a wife under Hindu Law it is necessary to examine the principle on which her right in her husband's property is based. We have seen that in the Vedic times, a wife was regarded as a co-owner in her husband's property. It is this fundamental idea of co-ownership which made it possible for Vijnaneshwara and Jimutavahana to reestablish a widow's right of succession that was denied to her at a time when Vedic culture and civilisation fell into degeneration. The earlier Smritis denied heritable right to the widow and gave preference to other relations of her husband in inheritance to his property. This reduced a widow to such a destitute condition that she had either to die as a Sati or live as Yati. It was Yajnavalkya who recognised for the first time widow's preferential right of succession to that of the relations of her husband, but it was Vijnaneshwara who maintained her right of succession on the theory of co-ownership in her husband's property. Jimutavahana went further and asserted that since a wife becomes a co-owner in her husband's property from the time of her marriage, it did not stand to reason that her right should be extinguished by his death. In the Mitakshara law, her right came to be recognised when her husband died separated; but in case he died joint or reunited with other coparceners, her right was extinguished on the death of her husband, and gave way to the other co-parceners' right of survivorship. The Dayabhaga did not recognise joint family system and so there was no difficulty, but in its very elaborate discussion, it successfully attacked the halting theory of Vijnaneshwara which laid down that wife's co-ownership continued when her husband was separated, and was lost when he died joint with others.

Though the efforts of the two great reformers failed to elevate a wife's status to full-fledged co-ownership, enjoyed by her in the Vedic times, the idea was there and has been used for making reforms. Today also it assumes great importance in deciding not only what rights a wife should have during her husband's life time but also what she should have as a widow in his property. No other personal law recognises that a wife becomes a co-owner of her husband's property from the time of her marriage, and this important distinction must be borne in mind in deciding what rights she should have. We are apt to think from a comparative study of other systems of Law applicable to Mahomedans, Christians and Parsis, that a wife's right to get inheritance springs up as if from nothing after her husband's death, while during his life time she has absolutely no right to his property, and her right to claim maintenance is a personal obligation only. But as a matter of fact, a Hindu wife possessed higher rights of co-ownership in her husband's property, though in a subordinate sense, and her right of claiming maintenance during coverture and of claiming inheritance after his death are merely incidents of that higher right. We need not enter here into a long discussion of this subject, as it is exhaustively treated in appendix III. We had put in detailed questions no. 66 and 67 in our questionnaire with a view to ascertain the full implication of the term "subordinate co-ownership" to which a wife is entitled under the present law. Those prepared for conferring on women equal rights with men had no hesitation in answering them in all details; but those not prepared to give them equal rights had to explain that the term "co-ownership" indicates nothing more than the right of maintenance and residence. We propose to discuss some of the replies on this point. Mr. Sarabhai V. Majmudar, a retired Varisht Court Judge, states that a wife is entitled to a share equal to that of a son on partition in virtue of her co-ownership in her husband's property which she acquires from the moment of her marriage. It is erroneous to suppose that partition creates in her a right to get a share. He further states that according to Mitakshara, partition does not create any new right, but only divides preexisting ones. She gets her share as her *stridhan*. It is owing to subordinate ownership, that though a widow cannot enforce

partition, she gets a share when her sons divide. Mr. Sharangpani (District Judge, Mehesana) Mr. Tamhne (Assistant Judge, Mehesana) Mr. Pranlal Joshipura (Munsiff, Mehesana) and Mr. Uplap (Suba of Mehesana) state that the term 'subordinate ownership' is opposed to independent ownership, for a wife cannot dispose off her husband's property without his consent and that partition only divides pre-existing rights, and the share that she gets is given to her because of her status as a coparcener. Mr. Jogiah (Ex. M. L. A.) is of opinion that the phrase 'subordinate ownership' means that ownership which a wife possessed in the property of her husband but which was subordinated to her husband during his life time and is such as would assert itself after his demise. The same is the view of Mr. V. N. Patkar (District Judge, Baroda) Mr. M. P. Saraiya (Advocate, Nadiad) Mr. and Mrs. Darbar Gopaldas, Sardar Janardan Pathakji (a prominent Nagar gentleman of Surat) and Messrs. Thakorlal M. Desai and Lallubhai Kishorbhai. There are others who hold a different view and say that a wife's subordinate ownership means her right to get residence and maintenance, and that she is given a share on partition not because of her previous co-ownership but only because she should have provision for maintenance. Chief among those who hold this view are Messrs. M. M. Zala (District Judge, Baroda) and Madhusudanrai Majumundar, a pleader of Pattan. They say that a wife as a dependant of the family is entitled to residence and maintenance only, but because she happens to be the wife of the owner of the property, she is styled as a subordinate owner. The Judges of the Varisht Court have thrown no light on this question; they have not answered it but merely said :— "We do not think it necessary to give any reply to this question. Our replies to other questions make adequate provision for a wife. One has to remember that law is not always logical." This implies that in their opinion Hindu Law stands divorced from reason.

44. We have given a careful consideration to these different views, and have come to the conclusion that the correct interpretation of the words "subordinate co-ownership" is that suggested by Mr. Sarabhai Majumundar and others of his view. A wife gets an

Committee's view.

interest in her husband's property from the time of her marriage. She is described as a subordinate owner only because the husband is the principal person in the house, and is the main earning member of the family. As manager of the house, she has to consult her husband in important matters of expenditure, wherein her opinion has due weight, and in minor matters, she is free to act on her own initiative in incurring family expenses. The subordination of a wife's co-ownership implies only that she cannot dispose off her interest in the family property, or get it partitioned at her own instance. That she was given one third share on supercession and an equal share on partition indicates the occasions when her right as a co-owner was recognised. Even to-day her right to obtain a share on partition effected by her husband between himself and his sons can only be explained on the theory of such a right. So also the right of a mother and a grandmother to receive a share equal to that of one of their sons indicates the same principle. The very notion of partition revolts against the opposite view. Partition, as described by Vijnaneshwara is an adjustment of pre-existing rights. It does not create new rights, but divides rights that had already been created in favour of several individuals in the family. The very fact that a wife or a widow gets a share on partition equal to that of her son establishes beyond doubt her co-ownership which she acquires in her husband's property from the time of her marriage. It is not right to suppose that a wife's co-ownership is extinguished by the death of her husband. As a widow she gets a regular share in partition effected between her sons after her husband's death. If her interest as co-owner was extinguished on her husband's death, there was no propriety in giving her a share. If her interest is not lost on her husband's death, it must survive and cannot be defeated by the rule of survivorship which gives her husband's and her interest to other coparceners. The husband's interest, with that of his wife should pass on jointly to the sons and to the widow, and in the absence of sons should devolve on the widow and not to other coparceners. It is not right to say that she receives a share by way of a provision for maintenance because those dependants who have a right of maintenance and residence are not given any share, and a like provision for maintenance

in favour of the wife or widow would have served the purpose. It is not correct to say, also, that the term 'co-ownership' signifies the right of maintenance and residence, for those dependants who get these rights are never recognised as co-owners. The opposite view has been refuted at length by Vijnaneshwara and Jimutavahana, and to stick to it would be to refuse to take their interpretation as correct and claim for oneself higher authority and better knowledge than what the two great commentators possessed. The logical and rational view seems to be that a wife acquires some interest in her husband's property from the time of her marriage, and it is to signify this that the word "Co-ownership" is used.

45. It may be asked that when a wife is a co-owner with her husband in his property, why she should not have the right of having the property divided at her will. But it has to be remembered that husband and wife have to live together, and no division between them is possible or advisable so long as their normal relation as husband and wife continues. A wife's incapacity to ask for partition proceeds upon the old and approved dictum of Apastamba that there should be no partition between husband and wife at the will of the latter. It is essential for the happiness of the home, the prosperity of the couple and the upbringing of the children that the property belonging to the husband should remain joint, and therefore we are not prepared to give the wife the full share of the coparcenary status during coverture. She is entitled to residence and maintenance, not as mere dependent, but because she is a co-owner; and it is, therefore, proper that her right of maintenance and residence should be protected against the vagaries of her husband. With that object in view we have proposed in para 68 to give her the right of challenging those transactions of her husband, which are without lawful consideration, or which are not for family purposes. This right as also her right over property acquired by her during coverture have been treated separately in the chapters on Maintenance and Stridhan, respectively, and we need not, therefore, discuss them here in detail.

Wife's rights reform
proposals.

(B) WIDOW.

46. According to the Baroda Hindu Inheritance Act, a distinction is made between a widow's right over property in a joint family and in a separated one. In a joint family, if the husband dies leaving a son or without leaving any, she is not entitled to any share but only to maintenance. But when her sons divide their share, she is entitled to a share equal to that of a son. If the sons do not separate from the joint family or divide their father's separate property, she is not, of her own initiative, entitled to claim a separate share, and has to be satisfied with maintenance only. She has only limited ownership over the share which she thus gets on partition. Similarly when her husband dies separated and without leaving any male issue, she inherits his property with limited ownership. She can maintain herself out of the income of the property inherited or obtained on partition, but cannot transfer it except for a legal necessity which includes :—

Present Law.

- (a) The preservation or benefit of the family: or of the family property ;
- (b) Maintenance and education of the members of the family ;
- (c) Necessary religious ceremonies concerning such members ;
- (d) Marriage expenses of daughters of the family ; and
- (e) Such other necessary purposes.

47. The questions that arise for consideration are :—

Questions for consideration.

- (1) should not the undivided interest of a husband devolve on his widow when he dies without leaving a male issue ?
- (2) What should be her position when her husband dies in a joint family leaving sons behind ?

- (3) What should be her position with regard to her husband's separate property, when he dies leaving male issues ?
- (4) Should she not be entitled to ask for partition of her own initiative, and get her share separated ?
- (5) What should be her power over property obtained by her on partition or by inheritance ?

48. As regards the first question for consideration we have seen that a widow's right of inheriting her husband's property was recognized in the Vedic period, but subsequently came to be disallowed in the Smriti period for reasons which we have given in para 12. Yajnavalkya was the first to recognise her right and place her next after the male issue in the order of succession. He did not make any difference between her status in a separated and a joint family. It was Vijnaneshwara who tried to reconcile this advanced view with the backward one of the other Smritis which either denied the widow any right of inheritance, or postponed it to the most distant kindred of the deceased. In doing so, he arrived at a compromise between these two extreme views. By laying down that the view of the other Smritis was right in so far as it concerned devolution of her husband's interest in joint or reunited family, he asserted that Yajnavalkya's view was also correct in so far as it applied to inheritance to the property of a separated member. The distinction which Vijnaneshwara wanted to make between a widow's heritable right when her husband was separated and when he was joint or reunited with the other members of the family was a distinction without a real difference, and Jimutavahana has shown how it was open to serious objections on principle and reason. He extended the rule so as to include devolution of interest in a joint and reunited family. We cannot do better than summarise his reasoning for this view. According to Mitakshara, a widow has a right to inherit the property of her husband who died separated and was not joint or reunited at the time of his death. Jimutavahan says, this arrangement is against the dictum laid down by Bhrihaspati according to whom the share

of a reunited member is not lost but survives and devolves upon his sister. This implies that though the deceased's interest in the reunited family cannot be demarkated as attaching to some specific property or portion of such property, it is ascertainable and separable. So long as it is not separated, it extends over the whole of the joint property and is definite and ascertainable. What is true of the reunited family is also true of the joint family, and, therefore, it is wrong to infer that the undivided interest of a husband, on his death, merges into that of other members, and nothing is left which can devolve upon his widow. Jimutavahana further argues that the interest which a wife acquires in her husband's property from the time of her marriage cannot be extinguished on his death. There is neither any reason nor any authority for holding that a wife's interest in her husband's property is extinguished on his death. According to the opinion of Vyasa, a widow, in the absence of a male issue, is entitled to perform *shradha* and other rites for her husband's spiritual benefit, and therefore possesses all the religious efficacy necessary for an heir to inherit property. It was wrong to make an exception to the general rule of inheritance which Vijnaneshwara wanted to make in favour of the joint and reunited family. Jimutavahana concludes that the doctrine propounded by Jitendriya, that a widow inherits the property of her husband, whether he dies joint, separated or reunited, is unquestionably a correct proposition. Once it is admitted that a wife becomes the co-owner of her husband in his property, it is inconceivable how her ownership over such property can be extinguished by his death. Marriage is a mode of acquiring by wife an interest in her husband's property just as birth is one for a co-parcener for acquiring interest in joint family. Any interest thus created cannot be subsequently extinguished. Obligation to pay debts for legal necessity and similar other things may bind such interest, but it cannot be said that they extinguish it. If a wife's right to get her interest in the joint property of her husband who dies leaving no male issue is to be superseded by the other co-parceners' right of survivorship, it implies that she had no interest at all in her husband's property. This is a position which is not tenable on principle and authority. If a wife is a co-owner of her

husband's property, his death has the effect of enlarging her interest rather than curtailing or extinguishing it. Husband and wife are either joint tenants or tenants in common; in either case a wife is entitled to take the full undivided interest of her deceased husband. In cases where there are male issues, they are looked upon as consubstantial of her husband. The distinction between her right in a joint family and in a separate family has been sufficiently refuted by Jimutavahana, and we need not further dilate on the subject. An undivided coparcener has an interest in the joint family property though it is not attached to any specific property, and he can sell, or mortgage, it and a purchaser or a mortgagee can get his share ascertained by asking for partition. In the same way, there is no reason why a widow should not get such interest in the joint family property or in the separate property of her husband along with her sons.

49. We place a widow's claims upon justice and equality and even in face of any pedantic argument that may be advanced in support of the existing practice, we are of opinion that the present rule of Hindu Law denying her just rights to a widow ought to be modified. At present the other coparceners get the whole of the property along with the interest of her deceased husband leaving her helpless as mere dependent, entitled merely to get maintenance and residence. It often happens in a joint family that a widow whose husband left a large fortune and raised the status of the family, gets nothing out of such property and those who did not care a fig for him during his life time step into management after his demise and take possession of the whole property leaving the widow quite destitute. It also happens that those relations who did not care for the dying man even during his illness, take over his interest after his demise, while the poor widow who lovingly cared for him and nursed him is driven out mercilessly. Right of mere residence and maintenance makes a widow's life miserable; she has to beg even for her necessary requirements and bear the taunts of her deceased husband's brothers and their wives. Even in a separate family where

Widow, a coparcener
entitled to partition.

in her husband's life time she was supreme, she has to be at the mercy of her daughter-in-law. Her position becomes the most miserable when she has a step-son or an adopted son. Even her right of maintenance and residence is frustrated by unjustifiable transfers effected by coparceners and accepted by purchasers having no notice of their definite intention of defeating her rights. This is so well known in Hindu society, that we need not further dilate upon it. If the husbands of Hindu widows were to come to life again and see for themselves what their dear spouses have to suffer after their demise, at the hand of their co-parceners, they would certainly take back from them their share of the property, and make their widows the sole owners of it. It is not the injustice to a wife, daughter, or sister that has attracted so much public attention and led to agitation for improving women's rights as the cruel fate to which Hindu Widows are relegated in Hindu Society. It is mainly for ameliorating widow's hard lot that agitation is made and committees are appointed not only here but elsewhere. The present position of Hindu widows is intolerable, and requires a bold measure to set it right. We propose, therefore, that the undivided interest of her deceased husband in the coparcenery property should devolve on her along with the sons, and exclusively on her when there are no sons. She should come in the place of her husband and be regarded a coparcener so long as she prefers to remain joint with others, and should have the right of getting her share separated at her pleasure. So long as she chooses to remain joint, the manager will find no difficulty in transacting the business of the family with all the powers he possesses, and her interest will also be bound for those items of expenditure which the law recognises as necessary. We also propose that she should inherit her husband's separate property along with her sons, and be regarded a coparcener with them as regards that property, and entitled to partition at her own will. In all these cases, in presence of sons, she should get, on partition, a share equal to that of a son, and in a Joint family, in absence of sons, she should get a share equal to that which her husband would have got had he been living. We do not enter into detailed reasoning about this, here, as it is sufficiently dealt with in Appendix No. III.

50. At present a widow succeeding to the property of her husband, son, or her husband's relation takes a limited interest in such property (section 49, the Baroda Hindu Inheritance Act). We have seen that in the Vedic times there were no such restrictions, and women had unrestricted power of disposal over such property as came in their hands, either by partition, inheritance, or gift etc. It was in the later times of degeneration that the law-givers like Manu voiced the sentiment of the people of his times on the famous *shloka*, which affirms that son, wife and slave are all incapable of possessing property. Women in Smriti period were regarded as incompetent to perform sacrifices, and, therefore, to inherit property. Vijnaneshwara had to fight hard against the opinion that was expressed in the Smritis, and his able refutation of all the objections displays his ardent desire to advance women's cause. Women had property of their own from the olden times, and their absolute ownership was also recognised by the Smriti writers. They called it *stridhan*, and recognised it as their absolute property. Though women's right to hold property was recognised in the early system of Hindu law, the subsequent writers went on so limiting the scope of such property as to reduce it to a few items. The whole controversy that centered round the subject of *stridhan*, whether the enumeration of it was exhaustive or illustrative, whether it was technical or non-technical, gives a record of the two combating schools of thought one of which was pledged for curtailment of women's rights and the other for maintaining if not for enlarging such rights. And the idea of including the inherited property under the category of *stridhan* occurred to the great reformer Vijnaneshwara. He gave absolute ownership to women in property inherited by them, interpreting the word अद्य (Adya) occurring in Yajnavalka Smriti as including property obtained by partition, purchase, gift, inheritance, finding etc.. Vijnaneshwara's view is very clear as regards the character of ownership over such property, and though he has been accused by subsequent commentators and the Courts of justice, of having overlooked the text of Manu and Katyayana, nobody has appreciated the spirit of his positive reform with regard to women's property rights. The Mitakshara doctrine of unlimited

ownership was, however, opposed by Jimutavahana and his view of limited ownership was due to the low position assigned to women in those degenerated times. Jimutavahana knew the highest regard the Mitakshara did command, and, in order to fortify his theory, he took the help of a couplet of Katyayana, misread it so as to suit his purpose, and ran down Vijnaneshwara's theory of unlimited ownership. The Dayabhaga theory of limited ownership of a widow has been, since then, the last word and has secured universal recognition by all the Schools of Hindu Law. The reasons for such treatment do not exist now, and, in fairness, women should be given full rights of ownership over property inherited or obtained in partition, by them.

51. The limited ownership assigned to a widow over property inherited from her husband or his relations, is practically devoid of all the incidents which the term "ownership" implies. There is no parallel to this anomalous sort of ownership in any other system of law. Its existence cannot be justified by reason or necessity. A widow is not a mere trustee for the reversioners. She has power of disposal over property. But an examination of the items of legal necessity shows that they really amount to depriving her of the right of ownership. She has to manage the property, maintain herself and the other members of the family, perform religious rites, and provide for the marriage expenses of the daughters of the family, and she can dispose of the property in her hand for defraying the expenses for such purposes. She can manage property and has the powers of a manager in discharging the obligations which attach to the property in her hand. In spite of all this, it is strange that she should be under the restraint of the relations of her husband, who miss no opportunity to hamper her at every step and terrorise her. This practically reduces her to the status of their agent, and a dependent, intitled only to maintenance and residence. Under the present restraints, her ownership is only nominal, for limited ownership is no ownership at all. Under the present law, the true owner is the distant relative of her husband possibly not known to her and, if known at all, known for his inveterate enmity towards her

Evils of limited ownership.

husband. It is not merely the near relatives of her husband such as the daughter, daughter's son, father, mother or brother under whose constant control she has to live, but a host of distant relations upto the fourteenth degree including no less than 257 souls. The idea that she has to preserve the property for the benefit of these persons is naturally disagreeable and irksome to her, and, therefore, under the cloak of legal necessity, she tries to convert the immovable property into hard cash which she can use unfettered. The stringent restrictions placed upon her power of disposal are well known and no honest and straight-forward man comes forward to advance a loan to her or purchase property from her even when there exists real necessity for selling it. Sometimes the property is either very small or unproductive, and even then the widow has to eke out her living from the scanty income of such property, for the corpus must be preserved for the benefit of the reversioners. When she wants to dispose of the property for her daily wants, the law requires her to show actual pressure of necessity justifying the course. Even when she stands in need of a small loan for her daily wants, she may transfer property, sufficient to cover that amount only and she should rather mortgage than sell off the property. The existence of actual necessity alone justifies a transfer, and unless she is in a position to assure the creditor or transferee, with unfailing certainty, she has no chance of raising money even for items of legal necessity. The creditor or the purchaser stands the chance of losing everything, if it turns out that what was represented to him by the widow was false or unjustifiable and this keeps people back from dealing with the widow. The effect of all this is, that only the crafty and unscrupulous gamblers in litigation come forward to advance money to a widow. They see that no substantial amount is staked on transactions with widows, and assure themselves that if they lose, they do not lose much. Fabulously high prices are mentioned in the conveyance deed but only a small fraction of it goes into the hands of the widow, and illusory grounds of legal necessity supported by transactions equally sham have to be invented as justification for the transfer. The consent of the nearer reversioner, a shield of unquestionable strength, is purchased secretly at a high price, to be paid by the

widow out of the very small amount she realises. The whole matter becomes a sad scene of a mean scramble among the various parties concerned, for securing a major portion of what the widow realises by transfer of property in her possession. This demoralises all concerned, and the sooner the limitations imposed upon widows in dealing with property inherited by them in their just right are removed, the better for both the widows and the reversioners. A woman, who contributed in no small degree to the accumulation of her husband's wealth by economy would not be so foolish as to squander away what has taken her years of self sacrifice, to lay by. Contrast this with the case of a daughter inheriting the property of her father. Not being burdened with any restrictions in dealing with it, she has not to resort to any trick in its disposal. Whenever she wants to raise money, she can do so by dealing with her property in a straight forward manner. She has not to make a show of justifying causes and has not to account to anybody except to herself. There are very few instances of a daughter being defrauded by even the most crafty. There cannot be any difference between the moral equipment of a daughter and a married woman. Both are females, with equal calibre, and she who is a daughter in one family, is a wife or a widow in another. A woman left to herself is thoughtful, economical, thrifty and cautious and ordinarily would not squander away her property. She knows she and her dependents have to live upon it, and will naturally preserve it. Limited ownership leads to chicanery and useless litigation, and the widow is unnecessarily hampered in her enjoyment of the property. Even admitting that some widows may squander away their property, instances are not wanting of men doing the same, and yet when they are not hampered in the free enjoyment of their property why should widows be subjected to such treatment? It is no body's concern if she squanders away her property and comes to grief. Her reversioner does not undertake to support her in case she has no property. Then why should a widow be inconvenienced and compelled to preserve property for his benefit? A large majority of the opinions received from lawyers, judges, prominent ladies, and gentlemen, advocate that a widow should have absolute ownership over property received by

her in inheritance or partition. These include the Chief of Aundh, and Mr. P. K. Pendse, Principal Gharpure, Prof. Abhyankar, Mr. Kalidas Zaveri, Mr. D. P. Joshi and Mr. Kalidas Ramchandra from amongst pleaders; Messrs. K. N. Panimanglore, K. M. Gupta and B. K. Bhate amongst Revenue officers; Rao Saheb Chapekar, Messrs. Sarabhai Majmundar and Ratanji Master amongst the retired Judges; Messrs. N. B. Padate, Y. M. Korde, H. V. Riswadkar, K. S. Majmundar amongst the Judiciary; Mrs. Nehru, Mrs. Bhate and Mrs. Bhaktilaxmi Desai among ladies; Darbar Gopaldas and Messrs. Bhailal Amin, and Govindlal Harivallabhadas amongst leading citizens. Eleven gentlemen signing themselves as residents of Chanasma also subscribe to the view that women should be given absolute power of ownership. The opposite view is held by Messrs. Bhave, Vidyashankar Karunashankar, Madhusudanrai Majmundar, M. M. Zala and V. N. Patkar. They do not see anything wrong in the limited ownership now given to widows. They do not admit that it causes them any hardship or inconvenience and are not prepared to give them absolute ownership over property. The Varisht Court Judges also seem to be of the opinion that limited ownership does not restrict a widow in the enjoyment of her property and does not lead to chickenery and litigation. In their opinion, litigation generally affects only the reversioners and transferees from a widow; but the widow personally is very rarely affected or obstructed and therefore no special measures for her protection are required. They are probably led to this belief because a widow is not dispossessed of the property during her life time and only declaratory decrees are passed to the effect that the transactions entered into by her are not binding on the reversioners. We think they have not given adequate consideration to the various difficulties which a widow has to put up with on account of limited ownership.

52. This limited ownership has been the root cause of all the misery that has befallen to the lot of Hindu women and the sooner it is completely abolished, the better. We shall answer some of the many futile objections that are raised against giving absolute ownership to widows. Some of them display

Some objections considered.

lack of broader outlook, while all of them indicate a desire to wreck the reforms by raising phantoms of fears. To begin with, it is seriously urged even by some educated people, that as women are incompetent to manage property, they are incompetent to possess absolute rights. To say the least, the objection must fall into insignificance, because of the very leading part that women have now been taking in social, political and civic institutions. Illiteracy cannot be brought in aid of this objection, as in literacy Hindu women do not lag behind their Mahomedan sisters, and yet the latter do enjoy absolute powers of disposal. Such an argument can have no place in the Baroda State where compulsory primary education has been in force for the last thirty years. Moreover the objection is not consistent with existing facts, and the percentage of literacy among females has been increasing, year by year. A daughter, whether literate or illiterate, has full powers of disposal over property inherited by her. It is surely not because she is wiser than her widowed mother or sister-in-law. There is absolutely no justification for making any such distinction between a daughter and a widow in the management of property. It cannot be that a woman who is capable to manage property inherited from her father becomes incapable to manage property inherited from her husband. A desire to keep the property intact for the use of relations who are known as reversioners, is at the bottom of the specious objections regarding a widow's incapacity to manage property. It is sometimes urged that women would go astray if they are made absolute owners of property, as if the legal restrictions on her power of disposal have any ethical significance in keeping her under restraint. Besides betraying a very bad outlook of the purity of Hindu homes and modesty of Hindu women, it reflects a great deal on the ethical standard of the objector. The more blunt and unartful of them state that by giving absolute ownership to women, the property in their hand will pass out of the family. This objection, also, is untenable. When a daughter inherits property, she takes it away to her husband's house, and yet she is not deprived of her rights on that account. There is no ground for the fear that a widow inheriting the property will leave her husband's place and pass it off to her father's

house. She has her own associations in her husband's place, where she has probably stayed longer than at her father's. She would have her husband's status in his place, but none in that of her father's. It is for selfish reasons of getting property that the relations of a widow's husband want to urge objections and hedge round her rights with all kinds of unjust restrictions.

53. We have given a careful consideration to these divergent views, and have come to the conclusion that the only right course would be to free a widow from her present incapacity and give her absolute ownership over property that comes to her. Such restrictions as are imposed upon a widow under the Hindu law are without a parallel under any other system of law. We feel that we would not be doing her full justice unless we give her full ownership. But having regard to the long time under which the present restrictions have prevailed, and the unwillingness of a large number of people to remove them all at once, we propose that as a transitional measure, full ownership may be given over property yielding a certain amount of income which may be taken as sufficient for an ordinary middle-class family. It is difficult to ascertain what this amount should be, as it depends upon varying circumstances in different classes and places. Under the English Law, £ 1000 in cash and all household property is set aside for the exclusive use of a widow, and only the rest is divided among the heirs of the intestate (see para 16). Under the Mahomedan and Parsi Laws a widow gets only a fraction of a share as her absolute property (see para 17 and 18). Under the Indian Succession Act, Rs. 5000 are to be set aside for the exclusive use of a widow before the property of the intestate is divided among the heirs of which she is one (See para 19). Messrs. M. K. Sarangapani, R. A. Tahmane, Pranalal Joshipura (Judges), and Mr. K. V. Uplap, (Suba) have suggested that a widow should be given full ownership if the inherited property is worth five thousand rupees, and life-interest over property exceeding that amount. But this limit is too low. Ordinarily, property worth five thousand rupees would yield about Rs. 240 annually i. e. about Rs. 20 a month. This amount would

barely suffice for the maintenance of one person. We think, therefore, the limit should be raised to at least twelve thousand rupees, so that the annual income may be Rs. 600 i. e. Rs. 50 per month. Provision made in law applies to persons of all grades whether poor, middle class or rich; and therefore the limit, if any is to be put up, should be as high as possible, so that nobody may be inconvenienced. As we have said before, in our opinion, a widow's right should be absolute and unrestricted over the whole of the property inherited by her. That is the ideal to be reached, but having regard to the views prevailing among certain class of people who still adhere to the old views, we suggest, that till public opinion is further educated, as a transitory measure, the present provision of law may be so amended as to give a widow absolute ownership over property inherited or obtained by her in partition if the value of such property is rupees twelve thousand, and limited ownership, as at present, over property exceeding that limit.

54. If a widow were to be given absolute ownership to the full extent of the property that comes to her, no further question for consideration would remain. But if the proposal to keep limited ownership over property exceeding the limit of Rs. twelve thousand is accepted, a further question would remain for consideration as to who should be the reversioners to control her in the disposal of property above that limit. The present list of reversioners as pointed out in para 51 includes persons of very remote kinship upto the 14th degree and beyond. In reply to our question No. 70 calling for opinion as to whether and how far the number should be reduced, Principal Gharpure says that by curtailing the list of reversionary heirs, we would make the crown as the nearer heir than the *sakulya* and *samanodakas* and therefore objects to curtailing it. What however we wanted to suggest by the question was to limit the right of challenging the action of the widow only to some of the nearer among the many heirs admitted under the present Hindu Law. Rao-Saheb Chapekar goes a step further, and suggests that there should be no reversioners at all, and that, in case any property is left behind by a widow, it should be inherited by the compact

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series of heirs, and in their absence, it should escheat to Government. Both these gentlemen have missed the mark. Our question did not imply that the list of heirs should be curtailed for the purpose of inheritance. What we wanted to know was whether for the purpose of controlling a widow in her transactions, the present long list of reversioners should continue or should be curtailed. Messrs. Patkar and Zala from the District Judges, Messrs. Vidyashankar Karunashankar, Ramchandra Kalidas, Madhusudanrai Majmundar and Jogiah from the lawyers, and Mr. Panubhai, Padra Munsiff, and Messrs. Lallubhai Girdharlal and Bhailal Amin from among the leading citizens, are for curtailing the list of reversionary heirs upto the compact series of heirs. The Varishtha court Judges and Messrs. Bhave, Yashashchandra Mehta and Lallubhai Kishorbhai do not propose any change in the existing law. After a careful consideration of these divergent views, we have come to the conclusion that only those coming within the compact series of heirs should be entitled to challenge the alienations made by a widow, and that, when there do not exist any of such heirs or when they do not choose to take objection, the next heirs who call themselves as distant reversioners should not have any right to challenge her transactions. We think that this opinion is reasonable, and may be accepted. As the law now stands, even the most distant reversioner can bring an action alleging that the immediate or intermediate reversioners have colluded with the widow, or that they are negligent in not taking action. Such heirs may take the property by right of inheritance as at present; and they may have the property as heirs before the crown takes it by escheat. But they should have no right to call into question such transactions as have taken place during the widow's life time. Such an arrangement would make a widow absolute owner not only of the property over which we have proposed to give her absolute control, but also over property exceeding the proposed limit, in case there are no heirs of the compact series. No injustice will be done to the heirs who are outside the compact series as regards their right of inheritance, for this right will continue in case any property remains undisposed of by a widow. The curtailment proposed is only with regard to their right of challenging her transactions, as

such very distant heirs should really have no such right. We have absolutely no objection to their continuing as heirs and claiming the property in due course. What we object to is their right to challenge a widow's power of disposal over property inherited from her husband or husband's relations.

55. As pointed out in para 46, a widow has the right of transferring property among other things, for necessary religious ceremonies concerning the members of the family. This includes such acts as feeding Brahmins, giving them cows, visiting holy places where *shraddha* can be performed etc, but does not include giving donations for education, medical relief, and such other benevolent acts, which are regarded as real charity in modern times. We think, therefore, that the present connotation of legal necessity specified in sec. 11 of the Baroda Hindu Disposition of Property Act should be so extended as to include contributions to such charities which are considered meritorious in modern times.

56. We have next to consider the case of a widowed daughter-in-law. According to the present law, if her husband was a member of a joint family or joint with his father at the time of his death, the other coparceners or her father-in-law are bound to maintain her out of the joint family property. In case of separated family wherein her father-in-law did not possess any property which can be called ancestral in his hands, or when her husband has left no property which her father-in-law takes by survivorship, she has no legal claims of maintenance against her father-in-law, but has only a moral claim, which, on his death, ripens into a legal obligation that binds the property in the hands of his successors. This is her present position. We think a widowed daughter-in-law should succeed to the undivided interest of her husband in the joint family, and should have a right to ask for partition of her share, her power of disposal being the same as that of any other widow of the family. In case her husband has left no joint family property which her father-in-law has taken, her claim if maintenance should

continue as a moral claim only, which will ripen into a legal claim after his death and bind the property in the hand of his heirs and successors. If her father-in-law dies intestate and leaves a son or sons behind him, the widowed daughter-in-law should have the right to come in the place of her deceased husband, and ask for a partition of her share in the intestacy.

57. The proposal which we have made for a widow is general, and will include cases of *gotraja* Gotraja widows, widows, such as a daughter-in-law, brother's widow, uncle's widow, mother, grandmother and such others. They should, also, have the same rights as we have proposed for a widow.

58. In the case of the three higher castes illegitimate children are not allowed to inherit the property of their father or mother; but the illegitimate sons of Shudras are allowed to inherit such property. It is not within our reference to propose whether this distinction should or should not be removed, and the law made uniform for all the castes. The illegitimate sons of the three higher castes cannot become members of coparcenary with regard to ancestral property, but those of the Shudras who live with the natural-born sons of their father form coparcenary with them, and both inherit the property of their father jointly i. e. they become coparceners of one another; and if, afterwards, a natural-born son dies while continuing undivided, his interest descends to the illegitimate sons, and not to his widow, nor to his daughter nor to his daughter's son (Section 20 of the Baroda Hindu Inheritance Act). This requires some change. Retaining the law which permits legitimate and illegitimate sons of a Shudra to form a coparcenary, we think, when a legitimate son dies undivided, his interest should descend to his widow as we have proposed in the case of a coparcener of the other three castes; i. e. the widow of such a legitimate son of a Shudra should also come in the place of her husband, and become a coparcener with the surviving illegitimate sons. Such a widow, if she likes to separate, should also have the right of demanding partition

and take that share which her husband would have got, had he been living; and in her case, also, our proposal of the limit regarding absolute ownership should prevail. The majority of the replies to our question on this point are, also, to this effect. Section 20 of the Baroda Hindu Inheritance Act may therefore, be amended accordingly.

CHAPTER IV.

STRIDHANA.

59. Section 40 of the Baroda Hindu Inheritance Act enumerates two kinds of women's property viz., (1) *stridhana* or women's special property, over which she has absolute power of disposal, and (2) her other property, over which she has only a limited power. The first includes *yautaka*, *ayautaka* and *shuka* property. The *yautaka* property includes :—

- (1) anything obtained in the presence of the nuptial fire at the time of the marriage *homa*, called अग्नि स्त्रीधन;
- (2) anything given to her at the time of being sent to her husband's house, called अथावाह्निक स्त्रीधन;
- (3) anything given to her out of love, either by the husband, or by the parents, brothers or relatives of her father's side soon after the marriage ceremony was over, or by members of her husband's family after she went to his house at the time of bowing to her father-in-law, mother-in-law and such other relatives of her husband called प्रीतिदत्त or परिणय स्त्रीधन;

The *ayautaka stridhana* includes :—

- (1) anything obtained from her husband's family after marriage, called अन्नाधेय स्त्रीधन;
- (2) anything obtained by her in her unmarried or married state from any person of either her husband's family or her father's family, called सौदायिक स्त्रीधन;

- (3) anything obtained by her by way of appeasement at the time of her husband marrying another wife, called अधिवेदनिक स्त्रीधन ;
- (4) anything obtained by her in lieu of maintenance and garments.

shulka stridhana means dowry or anything obtained by a woman in lieu of articles of domestic use. Any property obtained with the help of any of these three classes of Stridhana was also regarded Stridhana.

The second kind of Stridhana includes property obtained by a woman.

- (1) by way of inheritance from a male or a female,
- (2) by way of gift from strangers,
- (3) by way of partition,
- (4) by labour, art, skill or otherwise, and
- (5) property purchased or found.

Property included in items Nos. (2) and (4) does not become a woman's Stridhana till the death of her husband (section 42 of the Act). The property included in the remaining items can be used by her during her lifetime, but after her death it devolves not upon her heirs but upon those of her husband. Her ownership over this kind of property is limited. There are different orders of succession for different kinds of Stridhana.

Apart from a married woman's Stridhana, there is also a maiden's or unmarried woman's Stridhana which has got a different order of succession.

60. The points that we have to consider are as under :—

Points for consideration.

- (1) Whether property acquired by a married woman during coverture by way of
 - (अ) gift from strangers, and
 - (आ) her own labour, art, skill or otherwise

should be considered her Stridhana during the life-time of her husband.

- (2) Whether property acquired by a woman by inheritance or partition should be considered such Stridhana as would give her absolute ownership over it.
- (3) Whether the orders of succession laid down for different kinds of Stridhana should be uniform.

61. The third of these points has been considered in Chapter VI on Succession, where it is shown that there should be one uniform order of succession for all the kinds of Stridhana property included under the headings, Yautaka, Ayautaka and Shulka, and a separate one for property obtained by a woman from her husband's family either by inheritance or partition.

62. Hindu Law recognized married woman's property from very early times. So far as Yautaka, Ayautaka and Shulka property were concerned she had absolute mastery over them and could dispose of them in any way she liked. Even after her death, such property devolved on her own heirs, and not on those of her husband. In this respect, Hindu Law was more liberal than other contemporary systems of law. The restrictions upon the proprietary rights of married women were, until lately, very stringent in English Law, and separate property was not allowed to a woman even though acquired by her. The only restriction which Hindu Law imposes on a woman's separate property is that when during coverture, property is acquired by her own labour, art or skill and by way of gift from strangers it does not become her separate property during the lifetime of her husband. But such of this kind of property as may remain after the demise of her husband becomes her absolute property. The question, therefore, that we have to consider is whether this restriction should be allowed to remain or done away with.

We think it may be allowed to remain as it is. A married woman is regarded as a part and parcel of her husband's body. The interests of both are identical in the household. A woman was, therefore, not thought of as having separate interest either from her husband, sons or other male relations on her husband's side, or from her father, brothers or other male relations on her father's side. A woman's time is deemed to be absolutely at the disposal of her husband, and consequently whatever is acquired by her at the expense of that time is deemed to belong to both of them and not to her alone. The social existence of a woman is so completely merged in that of her husband that none could be a stranger to her who was not a stranger to her husband. If anyone outside the family gave her a gift, it must be deemed to have been given on account of the donor being not only her friend but also that of her husband. Consequently any gift or present which a woman receives from her relatives on the occasion of her marriage is regarded as her own property, but anything received by her after her marriage from strangers is regarded as having been given only on account of her being the wife of her husband, and so, she is not regarded as the absolute owner of such property without the husband also being a participator in it. In the same way, any property which she acquires by her personal labour, or skill, or art, during her married life, is also not regarded as her *Stridhana* or special property during the life-time of her husband, just as the earnings of her husband do not belong exclusively to him but are used by both of them for family purposes. The money that a married woman can earn during her leisure hours in her married life would ordinarily be small, as her skill is generally used in the preparation of articles of household use by spinning, weaving, knitting, embroidery etc. Her husband does not ordinarily mind her using such earning of hers for her own use such as buying a *sari* for herself or her daughter. But on principle such earnings cannot be regarded as her own property to the exclusion of her husband. Even if she earned good salary by working as a teacher or as a doctor, it would hardly be fair to her husband that she should keep her earning as her separate property unless she is separated from him,

63. By the Code Napoleon, the parties to a marriage are declared competent to enter into any special agreement (provided it is not contrary to good morals) respecting their property, or enter into a general agreement as to whether they intend to be married under the law of Community or under the law of Dowry. In the absence of any general or special agreement to the contrary, their proprietary rights are regulated by the Law of Community. By the Law of Community, all movable belonging to the married parties on the day of their marriage, or acquired subsequently during married life and all immovable property acquired during married life (otherwise than by title of succession or by gift in favour of only one of the parties) belong jointly to both. But the husband alone administers such property, and he alone has the right of alienating it, though the consent of the wife is necessary in certain cases. Property subject to the Law of Dowry resembles the *dos* of the Roman Law. The husband alone has the management of it during the marriage; but immovables forming part of such property cannot be alienated either by the husband or by the wife or by both conjointly, except when the alienation thereof is necessary in order to relieve either party from prison or to provide subsistence for the family, or to serve some other like purpose. Independently of any express contract, the French Code therefore does not allow a woman independent power over her property during coverture.

64. By the English Law as it stood previous to the passing of the Married Women's Property Act, generally speaking, all the property of the wife became vested in the husband who acquired absolute power of disposal over chattels, and a limited power over real estate; and the only property over which she possessed independent and absolute power were her paraphernalia, consisting of her bed, apparel and personal ornaments suited to her status, and property settled on her to her separate use. But the Married Women's Property Act (45 and 46 Vict, Chapter 75.) and the corresponding Indian Act (Act III of 1874) provide that the wages and earnings of any

married woman, acquired or gained by her in any employment, occupation, or trade and also any money or other property acquired by her through the exercise of literary, artistic or scientific skill, shall be deemed to be her separate property, over which she has absolute right. But Hindu Society is based upon a different footing and English Law cannot be made applicable to it. Here, marriage is not a contract but a sacrament, and husband and wife are not free to dissolve the sacred tie of marriage so easily as in the West. The present provision of law in Section 42 of the Baroda Hindu Inheritance Act is consistent with section 13 of the Baroda Hindu Marriage Act which declares that a woman has co-ownership in her husband's property during his life time. Just as a wife is a co-owner in her husband's property which may be the result of his labour, her husband should also be a co-owner in property acquired by her by her own exertions during their married life.

65. The second point which relates to women's right over property acquired by inheritance or partition from her husband's family has been fully dealt with in Chapter III. Such property is a woman's Stridhana so far as its enjoyment is concerned; But unlike other kinds of Stridhana, her ownership over it is not absolute, and therefore after her death, such property descends not to her heirs but to those of her husband. As regards property inherited from her father's family, she has absolute right over it, and after her death, it descends to her heirs. This is in advance over Hindu Law prevailing in other parts of the country, where, she has only a limited right even over such property. The property inherited from her husband's family, however, stands on a different footing, and it is proper that it should descend after her death to her husband's heirs as at present. The only question for consideration is whether she should be free to deal with such property as an absolute or a limited owner. As shown in Chapter III, the ideal arrangement would be to make her an absolute owner and free her from all the restrictions imposed under the present law (section 11 of the Hindu Disposition of Property Act). But for reasons fully given in that chapter we have proposed that as a

Property obtained by inheritance or partition.

transitional measure, she should have absolute ownership over the property if its value does not exceed rupees twelve thousand, and limited ownership over property exceeding this amount. It need not be said that although it is proposed to give a married woman absolute ownership over property of the value of rupees twelve thousand, such of this property as remains undisposed of after her death will descend, as at present, to her husband's heirs and not to her own.

CHAPTER V.

MAINTENANCE

66. (1) All those persons who are dependents in a joint family are entitled to maintenance from the family property and to residence in the house belonging to the family (Section 28 and 31 of Baroda Joint Hindu Family Act). The dependents of the family include wives, widows, mothers, grand mothers and great grand mothers of the coparceners, unmarried daughters widows, concubines, the disqualified heirs, their wives and unmarried daughters (section 6). Unchaste wives and widows leading immoral life are not entitled to maintenance or residence. The right of maintenance and residence does not create a legal charge on the family property, and is not enforceable against a purchaser of the property without notice of an intention to defeat such right or when the transfer is for a legal consideration. A woman has no right of maintenance if her husband has not left any family property, or when the property is sold for such debts as are binding upon him or upon the joint family. A widow is not entitled to separate maintenance when the income of the property is small, or when her husband directed her to live with the family and there are no proper or sufficient grounds for her living apart (section 30). A widow or a wife cannot assert her right against debts for which the family property is sold if the debt is incurred by her husband, while in other cases, she can challenge the transaction and protect her right by showing that the debt was not for a family necessity. When a woman gets a share on partition, she has to maintain herself from it.

(2) The right of maintenance of unmarried daughters ceases in the event of their marriage. In a separated family, a separated family, the husband is bound to maintain his chaste wife according to his means., while to an

unchaste wife he has to give merely bare maintenance if she gives up her unchaste life (section 26, Hindu Marriage Act). A wife has no right to ask for separate maintenance when she is living apart from her husband without his consent, but when there are valid reasons for separate residence, or when her husband has abandoned her for no proper reason, she can claim maintenance upto one third of her husband's income by way of separate maintenance (section 28). Such a claim is not regarded as a legal charge on her husband's property and husband's debts have priority over it, except when a legal charge is created by an agreement or a decree (section 28). Besides a wife and unmarried daughters, a person is also bound to maintain his aged parents and his minor children (section 7 of Baroda Hindu Parents and Sons Act). A widowed daughter who has no means for maintenance in her husband's family has also no such right against her father even though he possesses sufficient means. Illegitimate sons of a person of any of the four castes are regarded as dependents of the family of their father; and as such are entitled to be maintained not only from the separate property of their father but also from his undivided interest in the Joint family property. This right is not given to illegitimate daughters (section 6).

67. With a view to see whether any amendment is called for, we shall have to consider the following points :—

Points for consideration.

- (1) Whether the right of those who are entitled to residence and maintenance should be a legal charge and take precedence over transfers effected neither for a lawful consideration, nor for family purposes ?
- (2) Whether concubines and illegitimate sons should have the right of maintenance as at present ?
- (3) Whether a widowed daughter without means of maintenance in her husband's family should have a right of maintenances in her father's family ?

68. The present provision in law for giving maintenance and residence to those who are entitled to it is ample, and requires, as we shall show hereafter, rather curtailment than enlargement. It is a right which is dependent upon the existence of property. It is clear therefore that when there is no property there is nothing out of which maintenance and residence can be provided. It is also clear that debts should have priority over it, and their proper discharge may reduce it partially or wholly. The right of maintenance cannot be given precedence over family debts; but it is conceivable that this right may be frustrated by effecting transfers without lawful consideration or by creating debts solely for defeating the right, and not for any family necessity. There is no provision in law at present for the protection of the right of maintenance of a wife or a widow of the person who effects such transfers or incurs debts, though such a right is given to other dependents of the family (section 33 with illustration No. 2 of the Baroda Joint Family Act and section 28 of the Baroda Hindu Marriage Act). A wife becomes the co-owner of her husband's property from the time of her marriage, (section 13 of the Baroda Hindu Marriage Act) and therefore her right of maintenance which depends upon this co-ownership should have, in our opinion, sufficient protection against unjustifiable transfers by her husband. It is not competent to the husband to transfer his property by will or gift with the object of rendering his wife destitute. Similarly he should not have the right of incurring such debts as would frustrate that right. Debts incurred for legal necessities of the family have priority over the wife's co-ownership, for husband and wife are looked upon as one individual in the eye of law, and both of them are regarded as two partners of the property, just as they are partners in religious merit. The husband is the manager of the co-parcenary composed of himself and his wife, and has all the powers of a manager, but at the same time, it is essential that he should have no more powers than those of a manager. If he exceeds his power as a manager so as to affect his wife's right for maintenance and residence, she should surely have the right of challenging such a transaction but strangely enough she has no such right at present. It is only

when there is an agreement or a decree for maintenance that her right is not affected by subsequent debts incurred by her husband (section 28). If there is neither a decree nor an agreement which is possible only when she is living apart for valid reasons, her right may be defeated at any time by her husband by incurring debts and transferring property at his pleasure. Since the obligation to maintain his wife is not merely personal to the husband, but arises also from her co-ownership, the husband should not have the right of defeating it by incurring unnecessary debts. We, therefore, think that a wife should have the right of challenging the propriety of such transactions of her husband as would affect her right of maintenance, even when there is neither any express agreement nor a decree creating a charge. Almost all replies to our questionnaire including those from judges like Messrs. Patkar, Zala, Padate, officers like Messrs. Bhate, and Uplub, pleaders like Messrs. Lallubhai Kishorbhai, Vidyashankar and Madhusudhanrai, and leading gentlemen and ladies like Mrs. Bhate, Mrs. Nehru and Bhaktibai Desai are in favour of making the right of maintenance and residence a legal charge on the family property, so as to make it indefeasible against a purchaser or a creditor with or without notice and giving a wife the right to challenge the transactions of her husband by showing that the debt incurred was not for any legal necessity, or for any lawful consideration.

69. The charge for maintenance proposed to be created in favour of a wife should also be available to all the other dependants who are entitled to maintenance and residence. Ordinarily, no necessity for such a safeguard arises, for natural love and affection are generally a strong incentive for the preservation of a such right. But hard cases, especially when there are step-mothers and step-children, arise and some provision in law as proposed is required as a safe-guard.

70. Some of the gentlemen consulted by us object to the creation of a legal charge for maintenance. It is argued by Mr. P. K. Pendse, Prof. S. Y. Abhyankar and Mr. Thakorlal Desai that instead of liberating the family property from the rammels of the various interests which the joint family system

Some objections answered.

creates our proposal would aggravate the evil by creating a legal charge as regards right of maintenance and residence. They also contend that these restrictions would hamper an individual's power of dealing with his property, and its effect would be disastrous from an economic point of view. These objections appear to us to be untenable. There is a fundamental difference between other systems of law and Hindu Law ; the former do not recognise any right in the property of a person in favour of another individual during his life time, while Hindu Law recognises such a right by birth in favour of a son and the right of maintenance and residence in favour of a wife from the date of her marriage. If any scheme for demolition of the joint family system is ever introduced, and sons are deprived of the interest they acquire by birth, surely Hindu women's lot will also be thrown along with them in the crucible of reconstruction. But so long as males enjoy their present rights, females should have theirs also. Then it is further urged by the objectors that if the family property is burdened with several charges, it will depreciate in value. But there is an easy remedy to get out of the difficulty. The parties may enter into an agreement creating a charge on a definite portion of the property, and can thus free the bulk of the family property from such charges. It is also contended that the creation and enforcement of a charge will defraud creditors and even a bonafide purchaser may lose a substantial portion of his property. But it is the duty of a creditor or a purchaser to make proper inquiries and satisfy himself before advancing money on the property that it is not burdened with a charge, and if he does so, he will have the same protection which he enjoys when dealing with family property. The creditors or purchasers must inquire into the existence or otherwise of such rights and the propriety of the transaction, and if they do so, they will be entitled to the same degree of protection which they enjoy with regard to the interests of coparceners in a joint family.

71. A reference to para 12 will show that there was a time in Aryan society when it was necessary for it to have as many sons as possible, and even to contract marriages with women of aboriginal tribes. This led further to the institution

Concubines and illegitimate sons.

of concubines and slaves who together with children born of them were kept in the family and had to be maintained as dependants. It is due to this that concubines, female slaves and illegitimate sons were included in the term *samashritas*, and family property was made liable for their maintenance. It is curious that though the old state of things has disappeared, the old provision of law still continues as if such immoral and revolting practices were to be tolerated and recognized in law even under modern conditions. The continuance of provision for maintenance of concubines and illegitimate sons has a very demoralizing effect, and should, in our opinion be, removed without further delay.

72. The last question for consideration is whether a widowed daughter without means of maintenance in her husband's family should have such a right in her father's family.

Unprovided widowed daughter.

Under the law as now constituted, a daughter has no right of maintenance from her father's property after her marriage and so, even when she becomes a widow and has no means of obtaining maintenance from her husband's family, she has no right to get it from her father or his heirs. We inquired whether such a right should be created when means exist in the property of her father. The Varishtha Court Judges in reply say that the contingency is too remote, but in the circumstances mentioned in the question, legal obligation may be imposed. That seems, also, to be the opinion of several other persons consulted by us. Two extreme cases are conceivable of a destitute widowed daughter; one, in which, after marriage, she has resided in her father-in-law's family for a considerable period, and has been a widow subsequently and then resided in her father's house; the other, in which she has not at all gone to reside in her father-in-law's family and has been a widow, or if she has gone, she has resided there only for a short period, and since her widowhood has stayed with her father's family. In both the cases, such a daughter has no right of maintenance from her father and his obligation to support her would be only moral; but the circumstances of such an unfortunate widowed daughter who may be, perhaps, a child-widow, amount to something more.

Such a widow, if she cannot get any maintenance from her father-in-law's family ought to be maintained in her father's family if it can afford. That a widowed daughter who used to live and be maintained in her father's house should not be entitled to be maintained, and that her father's heirs should turn her out into public street in a destitute condition seems to be abhorrent to Hindu feelings, and some provision in law is necessary to be made in such a case. We propose, therefore, that a widowed daughter living from her widowhood as a dependant in her father's family should not be turned out either by her father or his heirs, and should be entitled to maintenance and residence from her father's property if it can afford to do so.

CHAPTER. VI.

SUCCESSION.

73. There are some anomalies in the present Hindu Law of Succession which require consideration. The principal of these are:—

- (1) Disqualification of certain persons on account of their physical defects.
- (2) Priority of inheritance among daughters according as they are married or unmarried, and rich or poor.
- (3) Exclusion of children of a predeceased daughter or sister.
- (4) Succession in a re-united family.
- (5) Difference in order of succession in different kinds of Stridhan.
- (6) Order of succession.

74. According to section 52 of the Baroda Hindu Inheritance Act an heir is disqualified to inherit, and is regarded as non-existent if—
Disqualified heirs. at the time of inheritance he or she is,

- (a) (1) impotent,
(2) blind,
(3) dumb,
(4) deaf from birth, or
- (b) afflicted with a loathsome, contagious and incurable disease,
- (c) a lunatic or imbecile,
- (d) a recluse,
- (e) a widow, leading an immoral life,

This exclusion is mainly based on the theory of religious efficacy of an heir to perform *shradha* ceremony of the propositus as if inheritance was given for the sake of defraying the expenses of *Shradha* and consequently one who is unable or unworthy to perform it is incapable of inheriting. Degradation from caste, the highest penalty for sin, was also accompanied with forfeiture of inheritance. Out-castes have already been relieved from this incapacity by the Baroda Freedom of Religions Act (Act II of Samvat 1968), but it is strange that the other incapacities enumerated above, should have still continued. That a person should have got incurable and congenital blindness or deaf-mutism is surely no fault of his. Such helpless persons stand most in need of pecuniary help, as they are hardly able to earn it for themselves. It is cruelty therefore to deprive them of their inheritable right by applying to them the archaic principle of conferring religious merit on the propositus in this civilized age, when the efficacy of *shradha* itself for giving celestial beatitude is doubted, and it is gradually becoming a thing of the past.

75. The disabilities for inheritance due to physical defects except lunacy and idiotcy have been recently removed in British India by the Hindu Inheritance Removal of Disabilities Act (Act XII of 1928), which enacts that no person governed by Hindu Law other than a person who is and has been from birth a lunatic or idiot shall be excluded from inheritance, or from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect. The old reason has disappeared, but the old disability remains, though its propriety has been judicially doubted. We are of opinion that the Baroda Law should be so amended as to remove not only the disabilities such as blindness etc. which have been removed under the British Act but also the disability on account of lunacy or idiotcy. There are no such disabilities under any system of law, and their existence in Hindu Law disfigures it and makes it harsh and unjust. We see no reason why even those suffering from lunacy or idiotcy should be continued as incapable for inheritance. There is no provision in law to prevent them from marrying and

Removal of disqualification for physical defects.

begetting children. On the contrary section 53 of the Baroda Hindu Inheritance Act makes provision for the inheritance of property by their children. Section 52 (ग) not only does not exclude those who are idiots from birth, but even those who may become so subsequently. A person who has once inherited, and subsequently becomes incapable is not divested of the inheritance (Sec. 54). Similarly there is no reason why he who has acquired any physical or mental defect before the inheritance opens should be deprived of his rights. If he is not able to manage the property, provision can be made for the appointment of a guardian to look after it. We therefore propose that clauses (क), (ख) and (ग) of section 52 should be deleted.

76. It remains now to consider the case of a recluse and an uchaste widow regarding exclusion from inheritance. A *sanyasi* may be taken as civilly dead, and to have voluntarily given up his civil rights and the case of such a person requires no further consideration.

77. As regards an unchaste widow, the disqualification for inheritance is just and proper. A widow who has sullied the bed of her husband during his life-time should have certainly no right of inheritance to his property.

78. When daughters inherit the property of their father or mother, under section 23 and 45 of the Baroda Inheritance Act, they take in the following order:—

- (1) Unmarried daughter;
- (2) Married daughter, who is poor;
- (3) Married daughter who is rich.

Experience has shown that it is very difficult to discriminate between a poor and a rich daughter. The present provision of law causes unnecessary bricking and odious comparisons regarding the status of the families of the contending sisters. Moreover, a girl who is married in a rich family is not necessarily rich

herself. The property to be inherited is Stridhan and it is desirable that it should go equally among all the daughters, rich or poor. The distinction between married and unmarried daughters is also unnecessary. A daughter who is unmarried will be either married at the expense of her father's property or if she chooses to remain unmarried will receive her share in partition as proposed in para (41). All the opinions that we have received are in favour of removing the present distinction between married and unmarried daughters as well as rich and poor daughters. We agree with them and propose that the distinctions laid down in section 23 and 45 of the Baroda Hindu Inheritance Act should be removed and property should be equally divided among all the daughters whether rich or poor, married or unmarried.

79. Under the present law the children of a predeceased daughter or sister inherit in absence of any daughter or sister. The result is that as long as any daughter or sister is alive she alone inherits, and the children of a predeceased daughter or sister are excluded. This appears to be unjust. The children of a deceased daughter or sister should come in the place of their mother and share the property along with the existing daughters or sisters.

Children of predeceased daughters or sisters should inherit.

80. Very few Hindu families reunite after having once separated in living and property. But when any does so, the order of succession with regard to a widow and a daughter is changed to their detriment. In a separated family, the order of succession upto daughter's son is as follows:—

Succession in a reunited family.

- (1) Sons (including grandsons and great grandsons)
- (2) Widow,
- (3) Daughter,
- (4) Daughter's son.

But when the separated family reunites, the order takes the following form:—

- (1) Reunited sons.
- (2) Divided sons.

- (3) Reunited mother.
- (4) Reunited father.
- (5) Reunited full brother.
- (6) Reunited full sister.
- (7) (a) Reunited step brother. } These
 (b) Reunited uncle. } succeed
 (c) Reunited father. } together.
 (d) Reunited full brother. }
- (8) Any reunited coparcener.
- (9) Widow.
- (10) Daughter.

It will appear from this that a widow in a reunited family is relegated, to a position below a reunited coparcener. From being an heir just after sons in a separated family, she becomes an heir in a reunited family after mother, father, brother, full sister and any other reunited coparcener. In the same way a daughter who immediately follows a widow in both the cases is set back in a reunited family. There is no justification for postponing a widow's and a daughter's right of inheritance in a reunited family to other heirs who in the ordinary course of succession come far below them. We propose that in a reunited family, the ordinary rule should be followed, and widow and daughter should come in the order of succession next after the male issues of the deceased.

81. The order of succession laid down for Yautak, Ayautak and Shulka Stridhana is different. Under section 45 of the Baroda Hindu Inheritance Act, daughters are given preference over sons in the order of succession to Yautak Stridhan, while under section 46 and 47 of the Act sons and daughters inherit together both the Ayautak and the Shulka Stridhana. The difference in the order of succession giving preference to daughters in the case of Yautak Stridhana was probably due to the fact that it consisted of property given to a bride at the time of her marriage, while Ayautak property consisted of property obtained after marriage. We are of opinion that this distinction need not be kept up. In the Chapter

Uniformity in order of succession to Stridhana.

on Daughter, we have already suggested that the policy of law should be to put sons and daughters as far as possible on a footing of equality so far as their right of inheritance to their parents' property is concerned. To the mother both son and daughter should be alike, and this principle is actually observed in the order of succession to Ayautak Stridhana. It is desirable that there should be as few varying orders of succession as possible especially when property is of the same kind. Whether it is called Yautak, Ayautak or Shulka it is all a woman's real Stridhana over which she has absolute control, and it is therefore just and proper that it should have one uniform order of succession. We propose, therefore, that the order of succession laid down under section 46 for Ayautak and Shulka Stridhana should also be made applicable to Yautak Stridhana, and the different order laid down for the latter under section 45 be deleted. We have already suggested that the distinction between married and unmarried, rich and poor, amongst daughters, in the order of succession to Stridhana should be deleted (Para 78), and we do not, therefore, repeat it here. Similarly our proposal in para 79 to allow children of predeceased daughters to succeed along with living ones should apply to the cases of sons and daughters in the order of succession for Stridhana.

82. We have now to consider whether any alteration is necessary in the general order of succession with regard to females. In the general order of succession, a son's daughter, daughter's daughter and sister's son, though near relatives, are given a very low order, and placed after those who are far removed from the propositus. This is unjust, and in British India the injustice has been removed by Act II of 1929 which places these heirs next after father's father and before a father's brother, provided that a sister's son is her own issue and not an adopted one by her husband after her death. We propose that a similar amendment may be made in the Baroda Hindu Inheritance Act.

CHAPTER VII.

SUMMARY OF RECOMMENDATIONS.

83. We have considered all the points covered by the terms of reference, and in conclusion, it only remains for us to summarize the various recommendations made in the previous chapters. Such of them as are found acceptable by Government will have to be incorporated in the various Acts on Hindu Law to which they relate. With a view, however, that our proposals may be easily grasped, we give them below in a tabular form showing side by side what the present law is, and the amendments to be made therein according to the proposals of the committee:—

Serial No.	Present law.	Committee's proposals.
1	2	3
DAUGHTER.		
1	An unmarried daughter has a right of maintenance only, and a right to get marriage expenses. When the joint family property is divided, or when her father's property is divided after his death, by her brothers, she has a right to get $\frac{1}{4}$ share of that of a brother in lieu of maintenance and marriage expenses. (Sections, 6, 28 and 58 of the Baroda Joint family Act.)	An unmarried daughter should have the right of getting her share partitioned at her will from the joint family property as well as from her deceased father's self-acquired property, and she should get a share equal to $\frac{1}{4}$ th of that of a brother, if she has, or would have any; and when she gets it, she will have neither right of maintenance nor of getting her marriage expenses in future. (Para 41.)
2	Married daughters have no right of maintenance in their father's family, because they are not regarded as <i>samashritas</i> . (Sec. 6 of the Baroda Joint family Act.)	A widowed daughter living in her father's house from the time of her widow-hood, and having no means of maintenance in her father-in-law's family should have it in her father's house if it can afford. (Para 72.)

Serial No.	Present law.	Committee's proposals.
1	2	3
3	<p>When daughters inherit the property of their father or mother, preference is given to unmarried daughters, and in their absence, when married daughters inherit, preference is given to poor daughters.</p> <p>(Sections 23 and 45 of the Baroda Hindu Inheritance Act.)</p>	<p>The distinction between married, unmarried, rich and poor, amongst daughters in the matter of getting preference in inheritance should be removed, and all daughters should get equal shares without any such distinction. (Para 78)</p>
4	<p>The children of a predeceased daughter do not inherit along with the living daughters; they inherit only in the absence of any living daughter. (Secs. 24 and 45 of the Baroda Hindu Inheritance Act.)</p>	<p>The children of a predeceased daughter should be allowed to inherit along with the living daughters, and should get the share which their mother would have got, if alive at the time of inheritance. (Para 79.)</p>
SISTER.		
5	<p>The children of a predeceased sister do not inherit along with the living daughters; they inherit only in the absence of any living sister. (Sections 28 and 31 of the Baroda Hindu Inheritance Act.)</p>	<p>The children of a predeceased sister should be allowed to inherit along with living sisters, and should get the share which their mother would have got, if alive at the time of inheritance. (Para 79.)</p>
WIFE.		
6	<p>A wife has got the right of maintenance from her husband's property, but she has no charge over the property for this right; again, she has no right of challenging such alienations of her husband as are not for family purposes or legal necessities. (Section 28 of the Baroda Hindu Marriage Act and secs. 28, 32 and 33 of the Baroda joint Hindu Family Act.)</p>	<p>A wife's right of maintenance in her husband's property should be a charge upon it, and she should have the right of challenging such alienations as are without lawful consideration or not for family purposes, or legal necessity. (Paras 45, 68.)</p>

Serial No.	Present law.	Committee's proposals.
1	2	3
WIDOW.		
7	<p>When the propositus dies leaving sons and a widow, the widow has got the right of maintenance only from the property of her husband, be he joint or separated. It is only when the sons divide the property that she is given a share equal to one of the sons; she has limited ownership over property obtained thereby; and if any property is left undisposed of by her at the time of her death, it descends to the heirs of her husband. (Section 15 of the Baroda Hindu Marriage Act, sections 6, 28 and 58 of the Baroda Hindu Joint Family Act, and section 50 of the Baroda Hindu Inheritance Act.)</p>	<p>A widow should inherit the self acquired property of her husband along with her sons; she should get the undivided interest of her husband in the joint family property along with her sons, and also where there are no sons; she should have the right of asking for partition and get her share separated at her own will. Her share should be equal to that of one of the sons if she has any, or if she has none, equal to that which her husband would have got, had he been living. The property that she will thus obtain should be her absolute property, if the same does not exceed Rupees twelve thousand in value; and if it exceeds that limit, the excess will be her property with limited ownership as at present. Anything remaining undisposed of out of both these kinds of property, should descend to her husband's heirs. (Paras 49-53 and 65.)</p>
8	<p>When a sonless widow inherits the property of her husband, she inherits the whole property with limited rights only. (Section 49 of the Baroda Hindu Inheritance Act.)</p>	<p>The above principle should apply when a sonless widow inherits the property of her husband. (Paras 49, 53 and 65.)</p>
9	<p>When the legitimate son of a Shudra dies undivided from his illegitimate brother, his interest in coparcenary property goes to the illegitimate brother by way of survivorship and not to his widow. (Section 20 of the Baroda Hindu Inheritance Act.)</p>	<p>The widow of a legitimate son of a Shudra should get her husband's interest in coparcenary property, and it should not go to his illegitimate brothers. She should then have the same rights over it as are proposed for a widow of any other caste. (Para 58.)</p>

Serial No.	Present law.	Committee's proposals.
1	2	3
	WIDOW OF A SAGOTRA SAPINDA AND MOTHER.	
10	A widow of a Sagotra Sapinda or a mother when she inherits the property of a propositus, inherits it with limited ownership. (Section 49 of the Baroda Hindu Inheritance Act.)	A widow of a Sagotra Sapinda or a mother should be regarded, in the matter of inheritance, like the widow of the propositus. (Para 57.)
	WIDOWED DAUGHTER-IN-LAW.	
11	When the propositus dies leaving behind him sons and the widow of a predeceased son, the widow gets the right of maintenance and residence only. (Sections 6 and 28 of the Baroda Hindu Joint Family Act.)	The widow of a predeceased son should be allowed to inherit along with the existing sons of the propositus, and should be allowed the right of partition and the share which her husband, if alive, would have got; property thus obtained by her will have the same limitation as is proposed for other widows. (Para 56.)
	WIDOW'S ESTATE.	
12	A widow can alienate property over which she has limited interest only for the purposes of legal necessities. These necessities do not include the right of giving donations for schools, hospitals and such other benevolent acts. (Section 11 of the Baroda Hindu Disposition of Property Act.)	This scope of legal necessities for which a widow can alienate property over which she has limited ownership should be extended so as to include in it the right of giving donations for schools and for similar other benevolent acts. (Para 55.)
	REVERSIONERS.	
13	The right of challenging alienations made by a widow is given to all the heirs of her husband howsoever remote they may be. (Section 13 of the Baroda Hindu Disposition of Property Act.)	The right of challenging alienations made by a widow should be limited only to those heirs of her husband who form the compact series; viz. daughter, daughter's son, mother, father, true brother, nephew, father's mother, true sister, step brother, step-nephew and step-sister. (Para 54.)

Serial No.	Present law.	Committee's proposals.
1	2	3

MAINTENANCE.

- | | | |
|----|--|--|
| 14 | The right of maintenance given to dependents is sometimes frustrated by alienations of the family property by the manager of the family which are neither for lawful consideration nor for legal necessities. (Section 32 of the Baroda Hindu Joint Family Act.) | The right of maintenance of dependents should, like that of a wife, be a charge upon the family property, and it should prevail over transactions which are neither for lawful consideration nor for legal necessity. (Para 69.) |
| 15 | Concubines who lived with a coparcener till his death and illegitimate sons have the right of maintenance. (Secs. 6 and 28 of the Baroda Hindu Joint Family Act.) | Concubines and illegitimate sons should have no right of maintenance. (Para 71.) |

SUCCESSION.

- | | | |
|----|---|---|
| 16 | Those who are labouring under some congenital physical or mental defects such as the blind, the deaf, the dumb, the impotent, and also the lunatic and the idiot are disqualified from inheritance. (Section 52 of the Baroda Hindu Inheritance Act.) | They should not be so disqualified (para 75). |
| 17 | The order of succession as regards a widow in a reunited family is different from that in a separate family; the widow is relegated to a very low position and is allowed to inherit her husband's self acquired property only when all the reunited members are exhausted. (Sections 34, 35 and 36 of the Baroda Hindu Inheritance Act.) | The order of succession as regards a widow in a reunited family should be the same as that in a separate family. (Para 80.) |
| 18 | The order of succession for Yautaka, Ayautaka and Shulka Stridhana is different; the Yautaka property is inherited by daughters | The order of succession for Yautaka, Ayautaka, and Shulka Stridhan should be made uniform, and that laid down for |

Serial No.	Present law.	Committee's proposals.
1	2	3
19	<p>alone, and the Ayautaka as well as the Shulka property is inherited by sons and daughters together. (Secs. 45 to 47 of the Baroda Hindu Inheritance Act.)</p> <p>The order of succession for a son's daughter, daughter's daughter, and a sister's son is very low in the general order of succession; i. e. even though they are nearer relatives of the propositus than <i>sagotras</i> and <i>sapindas</i> they inherit only after them being regarded as <i>bandhus</i>. (Secs. 30 and 31 of the Baroda Hindu Inheritance Act.)</p>	<p>Ayautaka should be applied to all of them. (Para 81.)</p> <p>The order of succession for a son's daughter, daughter's daughter, and sister's son who is not adopted after the death of the sister, should be so revised as to place them next after father's father and next before father's brother in the general order of succession. (Para 82.)</p>

84. In conclusion, we have great pleasure in recording our sense of thankfulness to those ladies and gentlemen, who have taken the trouble to reply to our questionnaire. Their opinions have been of great help to us in arriving at conclusions on questions of a very difficult and delicate nature. Finally, we wish to place on record our high appreciation of the work of our secretary Mr. Manjula Sevaklal Dave B. A. LL. B. Assistant Legal Remembrancer, who in addition to the usual heavy and arduous duties of his office had to work hard out of it to help the Committee.

Baroda, 7th November 1930.

Govindbhai H. Desai.

(Chairman.)

A. A. Kehimkar.

Sushilabai Modak.

V. V. Joshi.

Dwarkanath Rangnath Shethji.

Mahasukhbhai Chunilal Sheth.

Dahyabhai Maganbhai.

M. S. DAVE.
Secretary.

सौ. दीपकबा देसाई.

(इलायदा भिन्न मतने पात्र रहीने).

NOTE BY MRS. DIPAKABA DESAI IN GUJARATI WITH ITS
TRANSLATION.

85. एक स्त्री तरीके स्त्रीओने वधु हक्क मळे ते जोवा हुं इन्तेजार होउं अने हुं ए कुदरती छे. पण समितिना सभ्य तरीके म्हारी
Mrs. Dipakaba's note. एटलीज फरज छे एम हुं धारती नथी. तेथी समितिनी वधु मते थएली भलामणो उपरांत आवेला अभिप्रायो तथा जनसमाजनी परिस्थितिना हिंदुधर्मशास्त्र प्रमाणेना हाल मान्य थएला सिद्धांतोनो पण विचार करवो जोईए एम हुं मानु छुं. आ आदर्श लक्षमां राखी समितिनी वधु मते थएली भलामणोमां केटलीक बाबतमां हुं दीळगिरी साथे जुदी पडुं छुं.

जे सुधारा थवा जोईए ते एकदम एटला उदाम न होवा जोईए के जे जनसमूह झीलवा अशक्त नीवडे. वळी म्हें करेली भलामणथी स्त्रीओने पडती महत्त्वनी हरकतो दूर थई थकशे एम मानुं छुं. केटलीक बाबतोमां समितिनी भलामणथी पण म्हारी भलामणो आगळ जाय छे ए जणाववानी रजा लउं छुं.

जे जे भलामणोमां म्हारो जुदो मत थयो छे ते आ नीचे दर्शावुं छुं. बाकीनी भलामणो साथे, म्हें आ नीचे जणावेली भलामणथी विरुद्ध न जाय ए रीते, हुं संमत छुं.

भलामण २ जी— जो परणेली पुत्री विधवा थाय पळी ते पिताना के पतिना कुटुंबमां रहेती होय तो पण जो पतिना कुटुंबमां निर्वाहनुं साधन न होय अने पितानी मिलकत होय तो ते पुत्रीना भरणपोषणनो हक्क पितानी मिलकत उपर पण ल्हेने आपवो जोईए.

भलामण ७ मी— विधवाने फावे त्यारे व्हेंचणी कराववाना तथा एक पुत्र जेटलो भाग लेवाना संबंधमां हुं संमत छुं. परंतु ते भाग मर्यादित हक्कथीज ले. अत्रे स्पष्टता करवानी जरूर छे के विधवाने मळतो आ हक्क तेना निर्वाहने बदले छे; नहि के सहभागी तरीके. तेथी सदर हक्क मर्यादित राखवा अभिप्राय छे; पण आ मर्यादित हक्कमां वधारो करवो जोईए. जेवो के पोतानां देहना कल्याण माटे पण विधवा व्रत, उजवणुं विगोरे करी शके. ए अने एवा बीजां काम माटे विधवा ते मिलकत वापरी शके. कदि अमर्यादित हक्क आपवोज होय तो उपर दर्शाव्या प्रमाणे ल्हेना भागे आवेली मिलकत पैकी अर्धी मर्यादित राखवी; कारण समितिनी भलामण प्रमाणे जो रु.

१२००० वार हैजरीनी मिळकत अमर्घदित राखतामां आबे
 अने बाकीनी मिळकत मर्घदित रहै एम बाप ती घणान
 थोडा कसमां मर्घदित मिळकत रहै. एठले आडकतरी रीते
 बाधी मिळकत अमर्घदित मळे एम थरो. तेम थरुं हेठजा
 वेरुं नथी. बळी श्रीमंत कुटुंबमां आठले आंठ राख्यथी जे
 खीना भाग पचीस हजारथी वधु आठवा संभव होय तेजा
 कसमां उठरुं ते खीने चुकदानामां मुकमां जेठुं थरो. एठले
 कोडेपण रीते जे रकम समितिए अमर्घदित राखी छे ते
 बरोबर नथी एवी मारी नम अमिप्रथ छे. एठले जी विव-
 वाने अमर्घदित हेक आपजोव होय ती हेने मळता थाननी
 अडवी भाग अमर्घदित राखवी जोडेए.

मजमण ८ मी—

आ बाबतमां एण उपर जणव्या प्रमाणे मर्घदित अधिकारथी
 मिळकत छे; अने जी अमर्घदित हेक आपजोव होय ती
 उपर जणव्या प्रमाणे अर्धी मिळकत अमर्घदित राखवी
 अने अर्धी मर्घदित राखवी.

मजमण ९ मी—

शुद्धा औरस पुत्रनी विधवाके जे हेक आपवा समितिनी
 वधु मते मजमण छे ते उपरित तेथोव हेक औरस
 पुत्रनी दीकरीने एण आपथी जोडेए.

मजमण १० मी—

मरनरनी विधवाके जे हेक आप्या छे तेथी हेक आपवा
 बकरे नथी, एण हेत जे कापदी छे तेव प्रमाणे राखवुं
 जोडेए.

मजमण ११ मी—

मजमण ७ मां जणव्या प्रमाणे.

मजमण १२ मी—

समितिनी मजमण उपरित सार्वजनिक न होय परंतु
 एताना आरमना कल्याण माडे एण ते मिळकत वापरी
 थोके एथी अधिकार वधारवी जोडेए.

मजमण १३ मी—

समितिनी मजमणने मळवी थाऊं छे, विधोवमां व्हेनना
 दीकारने विधिष्ट वारसोमां दाखळ करी हेने एण आ हेक
 आपथी जोडेए.

मजमण १४ मी—

समितिना वधु मते जोडे संमत छे, एण ते उपरित दीकरी
 दीकरी, पौत्र अने पौत्रीओनी माध्यमिक केळवणी परती
 एण बीबी राखवी जोडेए. कारण हेतना जमानामां आठले
 केळवणी ती केवळ बावस्यक छे.

આ ઉપરાંત કન્યાના લગ્ન વચ્ચે હુંડો, વાંકડો, પૈઠળ જ્યાં આપવામાં આવે છે ત્યાં લેના યોગ્ય લાગે તેટલા અંશ ઉપર દીકરીનો હક્ક રાખવો જોઈએ. કારણ દીકરીનો બાપ આ રકમ આપે ને દીકરીને લેનો કાંઈ લાભ મળે નહિ તે બરોબર નથી. તેથી આ સૂચના કરી છે. પણ તે પ્રમાણે થવા શક્ય ને યોગ્ય લાગે તો યોગ્ય તે થવા નમ્ર વિનંતિ છે.

પરમ કૃપાલુ શ્રીમંત મહારાજા સાહેબ હંમેશ સ્ત્રીઓની બાબત અત્યંત કાઠજી રાખે છે તેથી આ સમિતિ અસ્તિત્વમાં આવી છે. અને આવી મહત્વની ઉપયોગી સમિતિમાં મ્હને સમ્ય તરીકે નીમી મ્હારા નમ્ર વિચારો દર્શાવવા મ્હને જે તક આપી છે તે માટે શ્રીમંતનો તથા શ્રોમંતની સરકારનો અંતઃકરણપૂર્વક આભાર માનવાની રજા લઉં છું.

વઢી આ સમિતિના પ્રમુખ રાવબહાદુર મુરબ્બી ગોવિંદભાઈ સાહેબે જે પ્રોત્સાહન તથા સાહ્ય આપી છે તે સારૂ તેઓ મુરબ્બીની પણ હું વળી આભારી છું.

પરમ કૃપાલુ પરમાત્મા પરમ કૃપાલુ શ્રીમંતને રાજકુટુંબસહ દીર્ઘાયુ રાખો એવી ઈશ પ્રત્યે મારી અહોંનિશ પ્રાર્થના છે.

તા. ૭ નવેમ્બર ૧૯૩૦.

સૌ. દીપકબા દેસાઈ.

ENGLISH TRANSLATION OF MRS. DIPAKABA DESAIS'

NOTE IN GUJARATI.

It is but natural that I, as a woman, should be and am eager to see that women get more rights; but I do not think it is my only duty as a member of the Committee. I, therefore, believe that besides the recommendations made by the majority of the Committee, opinions received and the condition of people as well as the principles of Hindu Law recognised up to now should also be considered. Keeping this ideal in mind I make my descending note, with regret, with regard to certain recommendations made by the majority of the Committee.

The reforms which should be made should not be so radical that the people would be unable to adopt them. Again I believe that by adopting the recommendations which I make, some of the important hardships to which women are put will be removed. I take leave to state that some of my recommendations are in advance of those which the majority of the Committee has made.

I state my opinions in those matters only in which I differ. I agree to the other recommendations in a way which does not go contrary to the recommendations made by me as shown below:—

Recommendation No. 2:—If a married daughter becomes a widow and if she has no means of maintenance in her husband's family but has means in her father's property, she should have the right of maintenance from that property even though she may be residing in her husband's family and not in her father's family.

Recommendation No. 7:—I agree to the proposal of giving the widow the right of partition at her will and allowing her a share equal to a son, but she should take it with limited ownership. It is necessary to make it clear, here, that the right to be given to a widow is in lieu of her maintenance and not as a coparcener, and, therefore, I am of opinion that it should be limited. But at the same time I am of opinion that the scope of limited right should be so widened that a widow can also perform religious ceremonies etc, for her own spiritual benefit. A widow should be allowed to use the property for this as well as such other purposes. If unlimited ownership is to be given, half of the property that may come to her share as shown above should be with limited rights, because, if, according to the opinion of the majority, property up to the value of Rs. 12000 is given with

absolute rights and property exceeding that value is given with limited rights, it will be only in a few cases that the property will be given with limited rights; and the indirect result will be that all the property will be given with unlimited rights. It is not desirable that it should be so. Moreover, by providing such a limit a woman of a rich family to whose share property worth more than twenty-five thousand is likely to come would be put to a disadvantage. My humble opinion is, therefore, that the limit of the amount which the majority has fixed is not in any way proper. If, therefore, a widow is to be given unlimited rights over property, she should be given absolute right over half the property that would come to her share.

Recommendation No. 8 :—In this matter, also, she may take property with limited rights as shown above; and if unlimited right is to be given at all, half the property should be given with unlimited right and half should be given with limited right as shown above.

Recommendation No. 9 :—A daughter of a legitimate son should be given the same right as is proposed by the majority for the widow of a legitimate son of a Shudra.

Recommendation No. 10 :—It is not necessary to give the right which is proposed to be given to

the widow of the propositus; the present law on this point should be retained.

Recommendation No. 11 :-Just as recommended with regard to recommendation No. 3.

Recommendation No. 12 :-Over and above the recommendation of the majority, a right should be given to a widow to use the property for a purpose which may not be for public benefit but for her own spiritual benefit.

Recommendation No. 13 :-I agree with the proposal of the majority; but in addition to it a sister's son should also be included in the compact series of heirs, and he should also be given this right.

Recommendation No. 14 :-I agree with the opinion of the majority; but besides that, a charge should be created for the secondary education of sons, daughters, grandsons and grand-daughters, because in the present age this much education is a sheer necessity.

Besides this a daughter should be given a right in such proportion as may be deemed proper over the *hunda*, *wankada* or *paithan* which is given at the time of marriage; because it is not proper that she should not get any benefit from the amount although her father gives it. With this view I have made this recommendation; but I humbly request that it may be adopted if deemed proper and feasible.

His Highness the Maharaja Saheb with his usual generosity is always sympathetic to females, and it is due to it that this Committee has come into existence. I crave leave to express sincerely my sense of obligation to His Highness and his Government for the opportunity that is given to me to express

my humble views by appointing me as a member of such an important and useful Committee.

I also take this opportunity to express my sense of obligation to the President Rao Bahadur Govindbhai Saheb whom I look upon with respect for the encouragement and help that he has given to me in the discharge of my work in this Committee.

My humble prayers day and night to Almighty God are that He the ever benevolent Lord may confer long life to our gracious Maharaja Saheb and to the members of the Royal Family.

Dated, 7th November 1930.

(Sd.) Sv. DIPAKBA DESAI.

APPENDIX I.

ORDER.

A committee consisting of the following ladies and gentlemen is appointed to examine the question of the rights of women under the Hindu Law and suggest amendments, if any, called for under modern conditions:—

Chairman.

Rao Bahadur Govindbhai H. Desai, B. A. LL. B.

Members.

Mrs. Sushilabai Modak. B. A.

Mrs. Dipakba Himatbhai Desai.

The Legal Remembrancer (ex-officio.)

Sheth Dahyabhai Maganbhai Haribakti.

Mr. V. V. Joshi, B. A. LL. B.

Mr. Dwarkanath Shethji, (High Court Pleader).

Sheth Mahasukhbhai Chunilal.

The committee should examine the whole question of the rights of Hindu women and submit proposals for removing defects in the existing law.

Baroda.

13th June 1929.

(Sd.) K. R. A.

(Sd.) V. T. KRISHNAMACHARI,

Dewan.

Huzur Central Office,
Baroda, 13th June 1929.

Advance.

Copy forwarded with compliments to M. R. R. the Nyayamantri Saheb, for information and favour of taking necessary action.

(Sd.) K. R. ANJARIA.

For Chief Assistant to the Ministers.

(Supplementary Order.)

From,

The Chief Secretary to Govt., Baroda State,
 DAMAJIRAO VITHALRAO GAEKWAR,
 B. A. (Oxon).

To,

M. R. R. The Nyayamantri Saheb,
 VISHNU KRISHNARAO DHURANDHAR,
 Advocate.

No. 158/14

Huzur Central Office, Section.

Dated 21st August 1929.

Reference :—

Office.

No. 72.

9th August 1929.

SUBJECT :—*Revision of rights of women under Hindu Law.*

Sir,

With reference to your letter No. 72 dated the 9th instant regarding the subject noted in the margin, I have the honour to state that on the matter being submitted to His Excellency the Dewan Saheb, he has been pleased to pass the following order :—

“The question to be considered is property rights.”

2. I request, therefore, you will be so good as to take necessary action in the matter.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) K. R. ANJARIA,

For Chief Secretary to Govt.

APPENDIX II.

COMMITTEE'S QUESTIONNAIRE.

(अ) Inheritance.

(1) SPECIAL HEIRS.

1. If a male dies leaving sons and a widow, the sons inherit his property, and the widow becomes, entitled to maintenance ; and when the sons divide the property, the widow is entitled to a share equal to that of a son with limited rights thereover; this is the present law. Do you think it necessary to suggest any amendment therein? If so, what?
2. In like manner, when a male dies leaving sons, his mother or his step-mother and his father's mother or step-mother, the sons inherit his property, and the said ladies are entitled to the right of maintenance; and when the sons divide the property, the said ladies are entitled to a share equal to that of their own son with limited rights thereover; this is the present law. Do you think it necessary to suggest any amendment therein? If so, what?
3. In the cases cited above, the question of partition arises only when there are more sons than one. If there is only one son no such question arises, and therefore the women mentioned above are entitled to maintenance only for the duration of their lives. Do you think it necessary to suggest any amendment herein? If so, what?
4. The women mentioned in questions Nos. 1 and 2 above receive a share only in the event of partition by the sons; so long as there is no partition, they have the right of

maintenance only. Do you propose that they should be entitled to any other right up to the time of partition, and if so, what?

5. (अ) If you propose that at the time of inheritance, a widow of the propositus or any other surviving woman mentioned above should inherit together with the sons, should their respective shares be equal or proportionate? If the latter, what should be the proportion?
- (आ) According to the proportion (if any) which you make hereunder, do you further propose that all these heirs (including the women) should inherit as coparceners, or that the women should inherit individually their particular shares and that the sons only should inherit as coparceners?
6. If you propose that the women mentioned above should inherit proportionately, do you propose that they should inherit with limited rights or absolutely?
7. If you prefer to retain the provisions of the present law whereby these women are entitled to a share only in the event of partition by the sons, do you propose that they should receive this share in absolute ownership instead of with limited rights as at present?
8. If at the time when a Shudra father dies, his legitimate son and his Dasiputra are living jointly, they inherit together as coparceners, and, if, afterwards, the legitimate son dies, the property, being then undivided vests in the Dasiputra as the survivor. In that event neither the widow of the deceased Shudra nor his daughter is entitled to any share, (vide section 20 of the Hindu Inheritance Act). Do you suggest any amendment of the rights of such widow or daughter?
9. In the absence of sons of a propositus, his widow inherits under the present law; she inherits with limited rights. Are you of opinion that she should inherit with absolute rights?

10. (अ) Do you think that a widow is unduly obstructed in the enjoyment of property which as a widow in the family she inherits with limited rights ?
- (आ) Do you think that such limited ownership gives rise to chicanery, useless litigation and disputes ?
- (इ) If you think that she suffers such obstruction and that such results arise therefrom, what remedy do you suggest ?
11. (अ) If a propositus leaves more widows than one, they inherit together as coparceners but if the deceased has left any impartible estate, only the senior widow (first married) inherits it according to the present law. (vide section 21 of the Hindu Inheritance Act). Do you suggest any amendment therein ?
- (आ) Do you propose that the other widow or widows should receive a share of the income of the estate? If so, what share ?
- (इ) If a joint family property is indivisible, and is inheritable by one person only, the dependants of the family have a right of maintenance, and other persons who, if the property had not been indivisible, would have been coparceners have an independent right to a settlement, according to the prestige of the family, from the property, (Vide section 15 of Joint Hindu family Act); similarly if indivisible property shown in clauses (अ) and (आ) is inherited by the senior widow, do you propose that the other widows should be given the right of maintenance? and for that purpose, the right to an independent settlement from the property ?
12. (अ) If a propositus has left a daughter along with sons the daughter has no right of inheritance according to the present law. Do you suggest any amendment therein?

- (आ) If you suggest that she should also inherit, should she share equally with the sons, or in less or greater proportion ?
- (इ) And in either event do you further propose that she should inherit as a coparcener with the sons, or that the sons only should inherit as coparceners, the daughter inheriting not as a coparcener but separately as an independent sharer ?
13. (अ) If a propositus leaves a widow, daughter and sons, the present law is that the inheritance, goes to the sons only, the widow has the right of maintenance and residence, and the daughter, if she is unmarried is entitled to her marriage expenses, and if she is unmarried and a minor, she has the right of maintenance and residence ; if the daughter is married, she has no rights. Do you suggest any amendment of these provisions ?
- (आ) If you suggest that they all should inherit, how and in what proportion should they inherit ? and should all or any of them inherit as coparceners ?
- (इ) If you suggest that such widow should inherit in any proportion, do you suggest that they should inherit absolutely ?
14. (अ) Are you of opinion that a daughter should receive a right in property from the time of her birth as sons acquire a right in ancestral property from the time of their birth ?
- (आ) If you are of that opinion what should be the nature and extent of such right ?
- (इ) Daughters have at present, the right to marriage expenses etc. Should they be entitled to the right abovementioned in addition thereto or in lieu thereof ?
- (ई) If you consider that they should receive in lieu thereof, what have you to say as regards Mitakshara's

statement that they should receive a fourth share in addition to their marriage expenses? (Vide Mitakshara on verse 124 of Yajnavalkya, Daya Vibhag Chapter).

15. (अ) Do you think that family property should remain liable to any extent for the education of daughters ?
 (आ) If so, to what extent and how ?

16. If you are not of the opinion that daughters should receive any share, and if daughters want to remain unmarried what legal provision do you suggest therefor ?

17. (अ) Daughters do not acquire any right over funds or property given to their husbands or their relatives by their fathers or their father's relatives on occasions of marriage, such as the Hundas among the Daccanees. Do you suggest any amendment herein ?

(आ) Should the above be regarded as the daughter's Stridhan or not ?

18. (अ) When partition is effected among sons
 (1) during their father's lifetime, or
 (2) afterwards,

the present law is that an unmarried daughter is to be given a share equal to $\frac{1}{4}$ th of that of a son in lieu of maintenance and marriage expenses. (Vide section 58 of Hindu Joint family Act). Can you say on what principle of law such share is given to her ?

(आ) (1) If you say that it is given in lieu of her marriage expenses would it not have sufficed if the law had merely stated that she is entitled to marriage expenses ?

(2) The law has however provided that she shall receive such share. Can you state the reason ?

(इ) Some believe that a daughter is regarded as a coparcener in the family till the time of her marriage, and for this reason only, she is allowed a

share of the family property at the time of partition
Do you agree with this opinion? State your reasons
for agreement or disagreement.

- (६) (1). Do you agree with the principle that partition does not create new rights, but separates the respective shares of those persons who previously had a joint interest in the joint family property, and that persons who had no such interest are not entitled to shares?
- (2) If you agree, do you further believe that a daughter acquires an interest in the ancestral property from the time of her birth, and that she continues a coparcener of the family till she is married, and that she has a legal right to demand a share till that time?
- (७) (1) When the law has provided that an unmarried sister shall receive a one-fourth share when her brothers partition, what is your opinion as regards granting her the right to ask for partition if she so desires?
- (2) (अ) Do you believe that her right to $\frac{1}{4}$ th share is abrogated,
- (1) because no such share is obtained by her
- (अ) when she has only one brother, or
- (आ) when her brothers do not partition and while the family is undivided she is married; and also
- (2) on account of the fact that she herself cannot ask for partition?
- (आ) If such is your belief, is it expedient to allow her on such account the right to ask for partition?

19. A daughter has no right of maintenance from her father's property after her marriage, as a consequence of which
- (अ) when she becomes a widow and when there are no means of obtaining maintenance from her husband's family, and
- (आ) when such means exist in the self-acquired property of her father, her father is under the moral obligation to maintain her, but is not so compelled by law, are you of opinion that a legal obligation should be provided ?
20. The interest of a coparcener in the joint family property devolves, after his death, upon the other coparceners by survivorship and his daughter receives no such interest at that time. Do you think there is any necessity for amendment herein ? If so, what ?
21. If a propositus has left a widow, a daughter, sons, his mother and his father's mother, what do you suggest regarding their rights according to question No. 13 ?
22. (अ) If a propositus has left a widow and a daughter, only the widow inherits his property ; the daughter inherits in the absence of the widow. Do you suggest any amendment herein ?
- (आ) If you suggest that both should inherit together, should they inherit in equal or unequal shares ? and with limited or unlimited rights ?
- (इ) Do you suggest any amendment in the order of succession in which a daughter inherits at present ?
23. (1) (अ) When daughters inherit in the absence of the widow of a propositus, the inheritance goes
- (1) to unmarried in preference to married daughters, and
- (2) among married daughters to poor in preference to rich, and
- (3) if the property is indivisible, to the eldest daughter in the respective class subject

to the provisions of clause (1) and clause (2) above.

(Vide section 23 of Hindu Succession Act).
Do you suggest any amendment in this law ?

(आ) If you suggest that the distinction between the rich and the poor should be removed, do you further suggest that the marriage expenses of unmarried daughters should first be set apart, and that the remaining property should then be divided equally ?

(2) (अ) In the case of indivisible property, what have you to say as regards the grant of maintenance or an independent settlement therefrom to other daughters as mentioned in question No. 11 ?

(आ) If you consider that such a right should be given, to whom should it be given and how ?

24. (अ) In the absence of sons and a widow the daughters of a propositus inherit at present ; but if a daughter has predeceased him her son or daughter does not inherit along with the surviving daughters. Do you consider that the children of such deceased daughter should also inherit along with the surviving daughters ?

(आ) Similarly, in the case of sisters succeeding, what do you suggest as regards the children of a predeceased sister succeeding along with the surviving sisters ?

25. (अ) The right of maintenance and residence which is given to a widow, a daughter and others, is lost by the transfer of the property, or auction-sale through the Courts or by the Government for debts not incurred for the necessity of the family. What provision do you suggest for the protection of this right ?

- (अ) Do you think that hardship thus caused would be removed by the recognition of these women as coparceners or by granting them any other similar rights ?
- (इ) If you are of opinion that only the right of maintenance and residence should be allowed, do you consider it necessary that the principle should be legally introduced that such right is a charge on the property ?

26. According to the present law, the mother of a propositus inherits in the following order of succession :—

- (1) sons,
- (2) widow,
- (3) daughter,
- (4) daughter's son,
- (5) father,
- (6) mother.

In the absence of the preceding heir, the next heir succeeds. Do you suggest any amendment in this order as regards the widow, the daughter and the mother ?

27. (अ) Other Sagotra Sapinda widows succeed as if they were in the place of their husbands, the nearer in degree being preferred to the remoter. The following is the order of succession :—

- (1) sons,
- (2) widow,
- (3) daughter,
- (4) daughter's son,
- (5) father,
- (6) mother,
- (7) full brother,

- (8) full brother's son,
- (9) full brother's son's son (the order of succession is here doubtful),
- (10) father's mother,
- (11) sister,
- (12) son's widow,
- (13) son's son's widow,
- (14) son's son's son's widow,
- (15) step-mother.

Thus the order of succession is different in the case of a mother and a step-mother. Do you see any necessity for amendment therein as well as in the order of succession of the widows of sons, grandsons and greatgrandsons ? If so, what ?

(अ) Is there any necessity for amendment in the order shown above regarding a father's mother and a sister ? If so, what ?

28. When Sagotra Sapinda widows inherit, they inherit with limited powers. Are you of opinion that they should inherit with absolute powers ?

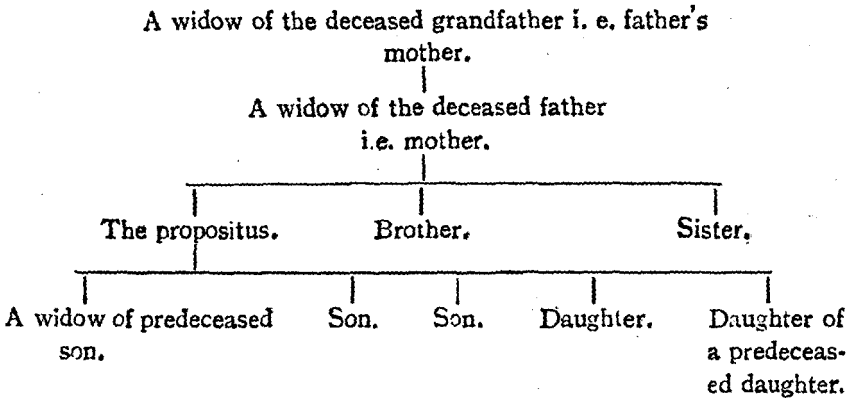
29. (अ) If a propositus leaves sons and a widow of a pre-deceased son, only the sons inherit at present and the widow has the right of maintenance and residence. Is there any necessity for amendment herein ? If so, what and how ?

(आ) If you are of opinion that she should also be given a right of inheritance, in what proportion should it be given ?

(इ) And are you of opinion that she should become a coparcener with the sons as to her share in the proportion you suggest ?

(ई) Whatever share or right you suggest, should she obtain it with limited or unlimited powers ?

30. A propositus has left surviving the following :—



How and to what extent do you consider that each of these persons should inherit ?

31. A step-sister inherits in the absence of and after a step-brother. (Vide section 29 of the Hindu Inheritance Act). Do you suggest any amendment herein ?

(2) SUCCESSION TO A RE-UNITED MEMBER OF A FAMILY.

32. The succession to a re-united member of a family descends in the following order i. e. the next heir succeeds in the absence of the preceeding heir :—

(Vide sections 34 to 36 and 38 of Hindu
Inheritance Act.)

- (1) re-united sons,
- (2) divided sons,
- (3) re-united mother,
- (4) re-united father,
- (5) re-united full brother,
- (6) re-united full sister,
- (7) (अ) re-united step-brother,
(आ) re-united uncle,
(इ) re-united father,
(ई) re-united full brother.

} These
succeed
together.

- (8) any re-united coparcener,
- (9) widow,
- (10) daughter.

Do you see any necessity for amendment in the order shown above as regards the mother, sister, widow and daughter ?

33. (अ) In the case of succession to a re-united member, a special order of inheritance is prescribed which differs from the general order of succession. Is there any special reason for retaining this difference ?
- (आ) If there is not, what is your opinion as regards this order of succession being prescribed as the general order ?
- (इ) According to the general order, a widow inherits in the absence of sons, while according to the special order, she inherits in the absence of a number of other heirs as shown above. What is the reason for this ? Is it expedient to retain this order or to amend it ? If so, what amendment should be made ?

34. When the coparcener mentioned in serial No. 8 in the order shown in question No. 32 inherits, the widow of the propositus and his daughter till she is married have the right of maintenance and residence. (Vide subsection (2) of section 38). Do you see any necessity for amendment herein ? If so, what ?

(3) WOMAN'S PROPERTY AND HEIRS THERETO.

35. Section 40 of the "Hindu Inheritance Act" enumerates two kinds of Woman's property viz.,

- (क) Stridhan, or Woman's special property, and
- (ख) her other property.

What is your opinion as regards changing this description and calling them

- (क) Stridhan i. e. property with absolute ownership, and

(ख) property with limited ownership ?

Do you suggest any other description ? or are you of opinion that the present description should be retained?

36. (अ) Do you suggest any amendment as regards the kinds of property which are included in Stridhana according to the present law ? (Vide section 41 of the Hindu Inheritance Act).

(आ) Do you, also, suggest any amendment as regards the kinds of property which are included in property with limited ownership ? (Vide section 42 of the Hindu Inheritance Act).

37. Property other than Stridhana which is

(क) obtained by gift from strangers, or

(ख) (1) earned by a woman's own art and craftmanship, or

(2) otherwise,

is included in Woman's property with limited ownership ; and if such property remains after the death of the husband, it then becomes the Stridhana of the widow. (Vide section 42 of the Hindu Inheritance Act). Do you suggest any amendment herein ?

38. What do you think should be the character of the estate whether absolute or restricted, which devolves upon the mother, father's mother or any other widow of the family as an heir to a daughter, sister or any other female heir who had held the property in absolute right ? (Refer to case reported in 46 Bombay 17).

39. (अ) What should be the nature of the estate, in your opinion, whether limited or absolute, in property both movable and immovable which a woman acquires from her husband by way of inheritance or otherwise ?

(आ) Do you desire to make a distinction between these categories of property ? If so, what ?

40. The order of succession of the heirs to the Stridhan of an unmarried daughter is as follows :—

- (1) Full brothers,
- (2) mother,
- (3) father,
- (4) other relations on the father's side according to the ordinary rule of succession.

Do you suggest any change with regard to the order of succession of the mother or any other female heir ?

41. The following is the order of succession amongst the heirs to the Yautaka Stridhan of a married woman.

- (1) Unmarried daughters,
- (2) Married daughters who are poor,
- (3) Married daughters who are rich,
- (4) Daughter's daughter,
- (5) Daughter's son,
- (6) Son,
- (7) Grandson,
- (8) (अ) if her marriage was performed according to an approved form of marriage,
 - (1) Husband,
 - (2) Husband's relations,
 - (3) Parents and their relations, according to the ordinary rule of succession ;
- (अ) if her marriage was otherwise performed,
 - (1) Mother,
 - (2) Father,
 - (3) Father's relations,
 - (4) Husband and his relation according to the ordinary rule of succession.

Do you suggest any change in this order of succession ?

42. According to the order given in question No. 41 a daughter's daughter inherits the property only when there is no daughter living. Do you suggest that a

- daughter and a daughter of a deceased daughter should together inherit the property ?
43. According to the order of succession given in question No. 41 when there are no husband's relations, the parents of the woman inherit the property. Do you suggest any amendment therein ?
44. Is it necessary to define what is meant by "Poor" if you are of opinion that the distinction between "Rich" and "Poor" should be retained in questions Nos. 23 and 41 ? If so what definition do you suggest ?
45. (अ) Sons and daughters inherit the Ayautaka Stridhan of a married woman in equal shares. Do you think any amendment is necessary herein ? If so, what ?
- (आ) Among such daughters the unmarried inherit first and the married inherit in her absence. (Vide Hindu Inheritance Act section 46). What is your opinion as regards abolishing this distinction ?
46. As heirs to Yautaka or Ayautaka Stridhan a daughter's daughter takes precedence over a son's daughter. Do you suggest any amendment herein ? If so, what ?
47. The succession to the Shulka Stridhan descends first to the full brothers and then to the mother. Is it necessary to make any amendment herein ? If so, what ?
48. Males have priority over females of the same degree as heirs to a woman's Stridhan property, other than the Yautaka, Ayautaka and Shulka. (Vide Hindu inheritance Act sect. 48); the order of succession is as follows :—
- (1) Son,
 - (2) Son's son,
 - (3) Son's Son's Son,
 - (4) Daughter,
 - (5) Daughter's son,
 - (6) Daughter's daughter,

(7) in their absence according to the order specified in question No. 33 the male heirs having priority over the female heirs.

Do you suggest any amendment in this order of succession ? If so, what ?

49. (अ) Different kinds of Stridhan descend in different orders of succession. Do you think it desirable to settle a uniform order of succession for every kind ?
 (आ) If so, will you state the order of succession you propose ?

(4) HEIRS DISQUALIFIED.

50. According to the present law disqualified heirs, males or females, cannot inherit and they are regarded as non-existent. An heir is disqualified to inherit, if at the time of inheritance he or she is,

- (क) (1) impotent,
 (2) blind,
 (3) dumb,
 (4) deaf,
 from birth
 (ख) afflicted with a loathsome, contagious and incurable disease,
 (ग) lunatic or imbecile and who is incapable of discriminating between right and wrong,
 (घ) a recluse,
 (ङ) when a widow, leading an immoral life.

Do you suggest any amendment herein ?

51. (अ) According to Mitakshara only a widow is excluded from inheritance on the ground of unchastity and other women though unchaste are not excluded. Do you suggest any amendment herein ?
 (आ) If you suggest a uniform rule for all such women, do you suggest that all should be disqualified ? or that the existing disqualification should be removed ?

(आ) Regarding the joint family property.**(1) JOINT FAMILY.**

52. (अ) According to the present law only males can become coparceners in a joint Hindu family. What is your opinion as to making the wives or widows of the coparceners and their daughters coparceners ?

(आ) If you so propose, from what time should they be regarded as such ? that is

(1) whether from the date of marriage in the case of those who enter the family by marriage, or from any other date ? and

(2) whether from the date of birth in the case of those who are born in the family, or from any other date ?

(इ) If you think that they should not be regarded as coparceners, please state on what principle the following women, viz :—

(1) mother,

(2) step-mother,

(3) father's mother,

(4) father's stepmother,

(5) grand-father's mother,

(6) grand-father's step-mother, and

(7) unmarried sisters

receive a share at the time of partition of the joint family property under the present Law ? (Vide sect. 58 of the " Hindu Joint Family " Act). i. e. whether they are entitled as coparceners or dependants ?

(ई) Some persons hold that they are entitled as coparceners. Do you agree ?

(2) THE RIGHT AND LIABILITIES OF COPARCENER IN
RESPECT OF THE JOINT FAMILY PROPERTY.

53. (अ) When a coparcener dies, his unascertained interest in the joint family property devolves in his sons, grandsons and great-grand-sons if living, and in their absence on the other surviving coparceners. (vide Joint Hindu Family Act sect 12.) What is your opinion as regards the devolution of this interest on the widow of the deceased ?

(आ) If you think, the interest should devolve on the widow, then in what way and to what extent should it devolve,

(1) when there are sons, grand-sons or great-grand-sons living, and

(2) when none of these are living in the latter case, should it devolve in precedence of or to-gether with the other coparceners ?

54. (अ) According to the present law a coparcener can obtain money, according to the prestige of the family, from the joint family property for,

(क) maintenance of

(1) his wife,

(2) children,

(3) persons whom he is bound to maintain;
and for,

(ख) performing religious ceremonies concerning such persons,

(ग) education of his children, and

(घ) marriage expenses of his daughters and other female dependants.

This right he can exercise only during his life time and he has no right to make arrangements to take effect after his death. (vide Hindu Property Disposition Act Sect. 4). What is your opinion as regards this ?

- (आ) If he has insured his life from the joint family property for any such purpose, what is your opinion as regards allowing such arrangement to stand ?

(3) DEPENDANTS RIGHTS.

55. (अ) Wives, widows and mistresses who are dependants of the family lose their right of maintenance and residence, if they are leading an immoral life. (vide Joint Hindu Family Act sect. 28). Do you propose any amendment herein ?
- (आ) A wife leading an immoral life is not entitled to maintenance but if she returns to a moral life, then she is entitled to bare maintenance. (Hindu Marriage Act sect 26). In the same manner, if the other women described in clause (अ) return to a moral life, what is your opinion as regards granting them starving maintenance ?
56. (अ) The widow of a coparcener, who resides or wants to reside apart¹ for reasons other than unchastity, can claim separate maintenance only
- (1) (अ) if her husband has not enjoined her to stay in the family, or
- (आ) so enjoined she has sufficient and proper grounds for not staying with the family. (vide Joint Hindu Family Act. sect. 30).
- Instead of the above provision, is there any objection to granting her separate maintenance ?
- (अ) if she is so enjoined ; or
- (आ) even when there exist no such grounds.
- (आ) If there is any objection, what is your opinion with regard to the suggestion that such injunction by her husband should be recognised only if made in writing ?
57. (अ) According to the present law the right of residence and maintenance of those who are entitled to claim it from the joint family, is not made a legal charge

on the joint family property. (Vide Joint Hindu Family Act sect. 32). What is your opinion as regards making it a legal charge on the property ?

- (आ) Since the right of residence and maintenance is dependent upon the existance of property, is there any objection to making it a legal charge thereon ?
- (इ) Do you believe that the right of residence and maintenance is frustrated by
- (1) alienations of the property made without legal necessity; as well as
 - (2) sale by order of the Court, because of its not being a legal charge and that the widows, daughters etc., are put to great hardship.

If so, what remedy do you suggest to remove this hardship ?

58. (अ) All women in the family who possess the right of residence and maintenance, except the wife or widow of a member for whose debt the family property is sold, can raise the objection that the debt was not incurred on account of family necessity and can protect their right on proof of such allegations, but the said wife or widow has no right to challenge the transaction, (vide Joint Hindu Family Act sect. 33 and illustration No. 2), and thus her right of residence and maintenance is lost. Is there any objection to granting her such right of challenge ? If there is any objection, what remedy do you suggest to protect her right of residence and maintenance ?

- (आ) The sons have a right to contend that the debt of their father was an immoral debt. What objection is there to giving the same right to the wife or widow ?
- (इ) If you believe that she should not be given such right because she is under a pious obligation to pay her husband's debt, then since the son, who

was also under a pious obligation to pay his father's debt, is now allowed, by amendment of the law, to raise the aforesaid contention. Is there any objection to a similar amendment of the law in favour of the wife or widow ?

59. When women such as the

- (1) Wife,
- (2) Widowed mother,
- (3) Unmarried sister, and
- (4) Widow of a joint deceased brother,

have a right to residence and maintenance, and if under these circumstances the family property is sold either by the husband, or a descendant, or a brother who is a coparcener or by order of the Court, for a debt not incurred on account of family necessity, what remedy do you suggest to enable them to contend that the debt was not incurred on that account and so to protect their right ?

(इ) **Regarding Parents and Sons.**

60. According to the present law a son is bound to maintain his aged parents who are destitute of any means of livelihood, (vide Hindu Parents and Sons Act Sect 7), but no duty is cast upon him to maintain his parents who are not aged but who are infirm. What is your opinion as regards imposing such liability ?

(ई) **Adoption.**

(1) **WOMAN HAVING POWER TO ADOPT.**

61. If a widow, whose husband had not separated from the joint family, wants to adopt a son who would have interest in the joint family property of her husband, she cannot do so.

(क) except with express permission from her husband ;
or

(ख) when she is not prohibited by her husband, expressly or impliedly, except with the express consent of

- (1) the majority of the coparceners, or
- (2) her father-in-law or the karta of the family.

(Vide Hindu Adoption Act 8).

When such consent is not required for adoption with respect to the separate estate, is there any necessity for retaining such requirement with regard to the interest in the joint family property ?

(2) LIMITATION OF ADOPTIVE RIGHTS.

- 62. According to the present law only a son can be taken in adoption. (Vide Hindu Adoption Act sect. 20). If it is desired to adopt a daughter, should there be any objection thereto ?
- 63. The widow's power of adoption is lost for ever if her son succeeding to her husband's estate leaves an heir other than the widow herself, in whom it vests by right of inheritance. (vide Hindu Adoption Act sect. 13). Is it necessary to make any amendment therein? If so, what?
- 64. Except in the case mentioned in question No. 63, when the estate of her husband vests in any heir other than herself or her co-widow, the widow has no power of adoption which would affect the rights of such heir without the express consent thereof. (Hindu Adoption Act sect. 9). Do you think it necessary to make any amendment herein? If so, what?

(३) Regarding Marriage.

(1) RIGHTS OF HUSBAND AND WIFE REGARDING PROPERTY.

- 64. (अ) According to the present law a husband cannot so alienate his property as deliberately to render his wife destitute of any means of livelihood, (Vide Hindu Marriage Act sect. 22), but if an alienation thereof made without such intention has the same effect, is there any objection to declaring that such alienation should not take effect ?

- (अ) Transfer of property not made under legal necessity or for the benefit of the family tend to have the same effect. Do you think it necessary to place any restrictions thereon? If so, how?
- 66 (अ) A wife is given subordinate rights of ownership over her husband's property from the time of her marriage. (Vide Hindu Marriage Act sect. 13). What do you consider to be the meaning of this subordinate ownership ?
- (आ) If the intention of the legislature was to give her the right of residence and maintenance as a dependant only, during the life time or after the death of her husband, what is the propriety of using the phraseology " subordinate ownership ? "
- (इ) When partition is effected among her sons during the life time or after the death of her husband, she is entitled to a share equal to that of a son. Do you consider that she is so entitled as the subordinate owner? or as a dependant entitled to a settlement of her right of residence and maintenance ?
- (ई) (1) If the intention was to give her a share in lieu of the right of residence and maintenance only, does there exist any proper reason for giving her a share equal to that of her son ?
- (2) When other dependants who are entitled to the right of residence and maintenance are not given subordinate ownership, what is the reason for making an exception in favour of the wife and for giving her a share ?
- (3) Do you believe that the widow, mother and father's mother is each given a share equal to that of her son at the time of partition, because of the subordinate ownership she acquires in the property of her husband from the time of her marriage ?

- (३) (1) What is your opinion as to whether by partition existing rights are adjusted or new rights are created?
- (2) If you believe that no new rights are created, is her right not already existent?
- (3) and has she not for the same reason subordinate ownership?
- (4) If so, is it not inconsistency to regard her as a dependant?
- (४) (1) If so, she is entitled to a definite interest on account of the subordinate ownership which takes effect only at the time of partition. Do you consider that she receives the share not as a dependant but as coparcener? and
- (2) that her ownership is regarded as being of a subordinate character in so far as she cannot demand partition of her own accord?
- (५) (1) Do you consider that the subordinate ownership recognised in law, can be put into effect only during the life-time of her husband and that it is extinguished by the death of her husband?
- (2) If so, on what principle and for what reason is she given a share as a mother when partition takes place among her sons after the death of her husband?
- (3) Does it follow from this that her right is not extinguished on account of her husband's death?
- (६) (1) If you so consider, do you further consider that her ownership, that is, her joint ownership which has already accrued, should not be extinguished by the death of her husband?
- (2) If it is not extinguished, do you object to the suggestion that it should survive and that she should be allowed to succeed as the nearest

coparcener to the whole interest of her deceased husband when he dies without leaving male issue ?

(अं) According to Vijnaneshwar the share, given to a wife, a widow, a mother and a father's mother is not given in lieu of maintenance. What have you to say in this regard ?

67. (1) What is your opinion with regard to the suggestion

(अ) that the wife should be regarded as a coparcener in her husband's property from the time of her marriage, and

(आ) that she should not be given the right to demand partition of her own accord during the life time of her husband ?

(2) (अ) to what share should she be entitled at the time of partition if she be so regarded as a coparcener ?

(आ) Do you suggest that she should receive a share equal to that of her son ?

68. A woman has absolute ownership over (a) Stridhana property obtained from her parents or their relatives before or after the marriage, (b) property acquired with the help of such Stridhan property, and (c) movable property acquired from her husband.

As regards other kinds of Stridhan property she cannot, during the life time of her husband effect a transfer except with his consent, (Vide Hindu Marriage Act Sect. 18). Do you consider it necessary to require such consent ? If not, is there any objection to dispensing therewith ?

(क) DISPOSITION OF PROPERTY.

(1) WOMAN'S INTEREST.

69. (अ) According to the present law a woman has only the right of enjoyment over the property in which

she takes a limited interest and she can transfer such property for any of the following purposes :—

- (क) for the preservation (protection) or benefit of the family or of the family property,
- (ख) for the maintenance and education of the members of the family,
- (ग) for necessary religious ceremonies, concerning such members,
- (घ) for the marriage expenses of the daughters of the family,
- (ङ) and for such other legal necessity, (vide Hindu Property Disposition Act Section 11)

Do you consider it expedient to add to the cases that are regarded as legal necessity and enlarge her power of disposition over such property ?

- (आ) For instance, if she desires to give donations, in memory of her husband, in memory of herself or for any other motive, to public charitable institutions, such as medical dispensaries, schools etc., what is your opinion as regards granting her the right to dispose of the property for such purposes ?
- (इ) What is your opinion as regards granting her the right to dispose of the property for the marriage expenses of a son since she has such right in respect of the marriage expenses of a daughter ?

(2) REVERSIONERS.

70. (अ) What is your opinion as regards curtailing the class of reversionary heirs and declaring that all persons outside a defined limit shall not be counted as reversionary heirs ?
- (आ) The order of reversionary heirs follows the ordinary rule of succession. The Sapind Sagotra heirs come first, then Samanodaks and then the Bandhus. Do you consider it necessary to make any amendment

therein whereby the relations of near degree should alone be recognised as reversionary heirs? If so, what?

- (इ) What is your opinion as regards recognising the heirs of compact series only as reversionary heirs?

(ए) **General.**

71. Among the heirs of the same degree of relationship

- (क) a male heir is given precedence over a female heir,
 (ख) the relations on the father's side are given precedence over relations on the mother's side only.
 (vide Hindu Inheritance Act Sec. 13).

Do you suggest any amendment herein? If so, what?

72. (अ) Do you consider it necessary to make any amendment in the provisions of the law as regards the limitation of suits to enforce the right of maintenance? if so, what?

- (आ) Do you consider it necessary to suggest any amendment as regards the valuation for the purpose of Court-fees of such suits for maintenance?

Do you suggest that whatever be the amount of maintenance claimed a uniform stamp of Rs. 5 or 10 should be sufficient to discharge the court-fees in such suits?

73. It is a settled principle of Hindu Law that none of its provisions shall affect any valid custom having the force of law, which prevails in any family or country regarding inheritance, joint family property or marriage. Do you hold the opinion that this principle should be retained or do you hold that the provisions of the law should be applied irrespective of any such custom?

APPENDIX III.

HINDU WOMEN'S PROPERTY RIGHTS.

REFORM SUGGESTIONS

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THE subject of ameliorating the condition of women under Hindu law has assumed much importance recently and is being discussed in the press and on the platform with such frequency and urgency as to indicate that public opinion leans towards granting them some rights. It is the legal rights an individual is clothed in that determine the sphere of his evolution of character, and any amount of higher education would do but little good to him if he be denied those rights, in respect of personal independence and full proprietary ownership. If public men are sincere in their utterances, it behoves them to carry on a vigorous campaign for removing the legal disabilities women are labouring under. The following suggestions are put forward for consideration. They are, it is submitted, *acceptable*, because they are compatible with the system of law to be found either in the form of express texts or immemorial customs and traditions which have been bequeathed to us; they are *workable* because they can be best made to fit in with the existing system of law and, therefore, do not require creating of a new system of its own; they are *practicable*, because being few and very simple they would prove radical in striking at the root of the legal disabilities. Time has come for formulating some demands and mere re-

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petition of the "oft repeated and little heeded" woeful tale of the Hindu woman's hardships would not advance the matter any further. Though true reforms ought to aim at removing legal disabilities, a social reformer, without sufficient knowledge of Hindu law, is baffled by a simple question from his adversary, who happens to be a lawyer, as to how he proposes to implant the reforms on the existing system of law without upsetting it from top to bottom. This is, perhaps, the field wherein the legal practitioner can join hands with the social reformer and discharge in his humblest way the responsibilities of his high calling by helping him in overcoming the difficulties. It is only with the desire to set the ball in motion that some suggestions are offered here.

It is proposed to approach the question from the standpoint. point which would be, as far as possible, consonant with the notions and traditions which form the foundation of Hindu law. To those of us who seriously think of implanting foreign notions in this branch of social reform, my answer is that not only such an attempt would meet with precipitate failure but even if it ever succeeds, the remedy would be more harmful than the disease itself. The implanting of foreign ideals and western notions would lead to the annihilation of the joint family system and every attempt of like manner would set up in arms the whole of the Hindu community which is proverbially conservative. Hindu law is primarily a system of law applicable to families and takes notice of individuals only as constituents of the family it has to deal with. Though the complexity of modern society and the keenness of the struggle for existence are fast dissolving the joint family system, and though some predict even of its total extinction in the near future, the institution must remain as the last stronghold of orthodox Hinduism. The idea of joint ownership of property, of joint liability as regards the outsiders, and of centralisation of the whole power of management in the hands of a single individual, has survived many a rude shock in the past and would stand, even at present, challenging the onslaughts of the western civilisation. The western ideas would never satisfy our aspirations even if it be assumed that

they are workable: and though the joint family system might dwindle away yet its fiction will linger on and control our legal position. Hindu law carries a distinct civilisation, a distinct tradition of its own behind it, and the old texts and the scriptures have got such a firm hold on the public opinion that no reform in any branch would be tolerated if it disregards them. Even the martyrs of social reforms have not dared to set at naught the Shrutis and the Smritis which crystallise in themselves the oldest traditions, but they have fought out the orthodox public opinion with authorities drawn from the scriptures and the texts. The widow remarriage was a social necessity; but the programme was pushed on, not on the score of necessity alone, but because it has had some support from the old texts. So also the present Shuddhi movement, so indispensable for preserving the communal interest, is securing public approval as it has got support from the texts. Therefore, any reform in the status of women must be consonant with what is laid down in the old texts, and in approaching the question I have tried to observe this principle. Neither should it be assumed that an attempt is being made of capturing the popular opinion by making any strained reference to what has been held as revered by the Hindus; nor should it be supposed that I am less imaginative or less informed so as not to pick up western ideas for incorporating them bodily in our system of law, but I think, we ought to feel proud that our legal codes in the form of the Smritis and the commentaries yield us principles which would surpass even the most advanced notions any people have ever reached. Persons, tempted to import western notions in aid of reforms, must bear in mind that, even the present highly advanced western legal conceptions as regards woman's rights are not perfect in themselves but are only transitional in character and thus they would afford but scanty relief, should one be prepared to hazard this dangerous experiment. The absolute independence of husband and wife in their properties, which the western law aims at achieving, has its baneful disadvantage, in so far as the woman is denied the right of owing property jointly with her husband who as a matter of fact earns more and possesses more. The westerners have neither immemorial traditions nor old scriptures to fall

back upon, and, therefore, they have to create and construct for themselves, and carry on the never ending programme of experimenting with the society. We have got the advantage of having traditions, that can be traced from the hoary antiquity, and scriptures as old as mankind itself, and therefore, not only every reform must be consistent with them but must be shown to evolve out of them, as far as possible, if it aims at being acceptable to the public.

Right in Husband's Property.

The solution of the problem of a wife's or a widow's right in the property of her husband presents numerous difficulties which cannot all be easily bridged over. The modern case-law reduces her to the position of a mere dependant on the family, entitled to maintenance and residence; and a superficial student of Hindu law is led to believe that she has never been accorded any higher rights. If anything is primarily responsible for the great hardship which has fallen to the lot of the Hindu women, and for reducing them to an utterly helpless condition as regards their legal rights, it is the false notion, harboured in the present system of Hindu law, that a woman has got absolutely no right in the property of her husband except the claim of charity in the form of the right of maintenance. This was not what the law-givers of the ancient times ever meant, much less can they be accused of having ever preached it; and in order to clear away the cloud of misunderstanding that has gathered thickly around this point, I cannot do better than begin by examining the import of the texts of Hindu law. By marriage a girl is cut off from her father's family and introduced into the family of her husband as if she were born therein at the date of marriage, her *gotra* being the *gotra* of her husband's family, she is united with her husband in blood and body and her deepest interests are soldered with those of her husband. In the Vedas women were described as possessing full proprietary rights and were regarded as co-owners of the property of their husbands with the result that whatever was acquired by one was considered as belonging to the other (Jaimini VI. 1, 3, 14, 17). The word *patni* is explained

as one who possesses equality of rights with the husband.⁽¹⁾ Husband and wife were looked upon as constituting one individual and as sage Datta puts it "Wealth is considered as common to the married pair⁽²⁾". Not only wealth was regarded

as being owned by husband and wife jointly but whenever occasion arose for dividing the estate among those having an

interest in the family estate, the wife or mother was counted as a sharer, as if she were a co-parcener, and this is exactly the reason why the mother was given a share equal to that of her son on partition effected amongst her sons either in the lifetime of her husband or after his death. "If he makes the allotment equal", says Yajnyavalkya, "his wives to whom no Stridhan had been given by the husband or father-in-law must be made partakers of equal portions, and if the partition be made after the father's death, the mother shall also have equal share"⁽³⁾. The share given on partition to the wife or mother, is regarded by the courts as if given in lieu of maintenance. Though this is an erroneous supposition, we find that the same view was propounded by Devannabhata, the author of Smṛiti Chandrika and a contemporary of Vijnaneshwara, who concludes, after considering the authorities, that when property is very small, share is ordained, but when the property is very large maintenance should be given. Vijnaneshwara, taking notice of the proposition, dismisses it thus: But it is argued, that under the terms of the text, his wives must be made partakers of equal portion and let the mother 'also take an equal share', a woman takes only as much wealth as is sufficient for maintenance. That is wrong, for the words 'portion' and 'equal' would be then deemed meaningless. Or again it may be argued that if the wealth is great she takes precisely enough for her subsistence but, if small, she takes a share equal to that of a son, for variableness in the precept will be the consequence⁽⁴⁾. As late Babu Golap Chandra Sirkar, an acute

१ दम्भ्यो सहाधकात् ।

२ दम्भ्योर्मध्यं धनम् ।

३ यदि कुर्यात्समानंशान् पत्न्यः कार्याः समांशिकाः । न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा ॥ पितृरुष्वं विभजतां माताऽयंशं समं हरेत् । (याज्ञवल्क्यः २. ११५. १२३)

४ तथा ह्यौरसेषु पुत्रेषु सत्स्वपि जीवद्विभावे

अजीवद्विभागे च पत्न्यः पुत्रसमांशग्रहणमुक्तम् ।

अथ पत्न्यः कार्याः समांशिकाः इत्यत्र माताप्यंशं

समं हरेदित्यत्र च जीवनोपयुक्तमेव धनं स्त्री

हरतीति मतं तदसत् । अंश शब्दस्य समशब्दस्य

चानर्थव्ययप्रसंगात् । स्यान्मतं बहुधने जीवनोप-

युक्तं धनं गृह्णाति ७. ह्ये तु पुत्रांशसमांश

गृह्णातीति तच्च न । विधिवैषम्यप्रसंगात् ।

lawyer and profound oriental scholar, puts it, she gets the share in virtue of the co-ownership she acquires from the moment of her marriage, in her husband's property, by reason of her being the lawfully wedded wife. It is erroneous to suppose that partition creates her right to get a share for, according to the Mitakshara, partition does not create any right but it proceeds upon the footing of pre-existing rights. Mitakshara makes the point clearer enough; and besides, if we refer to the definition given therein of the word 'daya' and 'vibhag' there will be no scope for speculating about its import. 'Daya' is defined as 'signifying that wealth which becomes the property of another solely by reason of his relation to the owner' and 'vibhag' is 'the adjustment of diverse rights regarding the property held jointly by assigning to individuals severally particular portions of it⁽¹⁾. Thus, it would seem beyond doubt that the fact that a wife is the co-owner of her husband's property, is the basis on which her right to a share on partition can be explained. If maintenance was to be all what she was entitled to, surely, that might have been secured by making a provision as is ordained in favour of those who are regarded as dependants on the family. Besides, there was no necessity for giving her a share equal to that of her son or husband unless it was as an assertion of her right as a co-owner in his property. The fact, that she is to receive it, if no Stridhan is given, either by her husband or father-in-law signifies, that in cases where she has received some portion out of the family property by way of Stridhan, she has had the equivalent of her portion of it. It is important to bear in mind that the Stridhan given to a woman excludes property given to her by her father or brothers. The same view of the matter is further supported by the texts while considering her right of succession to the property of her deceased husband. It will be interesting to note that she was denied the right of inheriting the property of her deceased husband who left no male issue, but her right, though first recognised in unequivocal terms by Yajnyavalkya, was asserted by Vijnaneshwara ardently and vigorously. Her right of inheriting the property of her

१ दाय शब्देन यद्धनं स्वामिसंबन्धदेव निमित्तादन्यस्य स्वं भवति तदुच्यते । विभागो नाम द्रव्यसमुदायविषयाणामनेकस्याभ्यानां तदेकदेशेषु द्रव्यस्य व्यवस्थापनम् ।

deceased husband was maintained on the basis of her status as a co-owner with her husband and Mitākshara expresses it in so many words. 'If it be objected that jointness is declared even as regards ownership of property in the texts : yes, the wife's ownership in the (husband's) property is certainly shown by the text therefore the ownership of the (husband's) property is vested in the wife also.'⁽¹⁾ Jimutavahana, who next championed the cause of women, makes it clearer still. While criticising the position taken up by some commentators he states: 'Nor is there any proof for the proposition that the wife's ownership in her husband's property, accruing to her from her marriage, ceases on his death.'⁽²⁾

In spite of the very liberal conception about her status in the family of her husband, as co-owner of his property, that was formulated by the text writers, as the foundation of all her rights either as a wife or a widow, English judges, who decided the earlier cases, misunderstood this fundamental basis of her right, either because the whole legal literature was not placed before them or because of the faulty translations of the texts on which they had to rely, with the result that woman's legitimate rights have been curtailed to an alarming extent, not warranted by the true interpretation of the texts. That wife is a co-owner of her husband's property in a subordinate sense was, acceded to in *Janna v. Machul Sahu*⁽³⁾; but, this right was modified by the Bombay High Court in *Narmadabai v. Mahadeo Narayan, Kashinath Narayan and Shamabai*,⁽⁴⁾ by implying, that the co-ownership does not involve independent or equal powers of disposition or exclusive enjoyment and is not of a kind that accepts the rules applicable to ownership in the ordinary sense; while the Calcutta High Court curtailed it still further in *Purna Bibee v. Radha Kissen Das*⁽⁵⁾ by stating that wife cannot be regarded as co-owner so as to be able to enforce a claim for maintenance against a purchaser for value.

१ ननु द्रव्यस्वामित्वेऽपि सहत्वमुक्तं । भर्तृभरणात् नश्यतीत्यत्र च प्रमाणाभावात् सति ।
द्रव्यस्वामित्वं पत्न्या दर्शितमनेन तस्मात्भार्या-

(3) (1879) I. L. R. 2 All. 315.

यामपि द्रव्यस्वामित्वमस्ति ॥

(4) (1880) I. L. R. 5 Bom. 103.

२ परिणयनोत्पन्नं भर्तृधने पत्न्याः स्वामित्वं

(5) (1903) I. L. R. 31 Cal. 476.

Thus it will be seen that according to the text-writers and commentators a wife is regarded as a co-owner of her husband's property; and because of the prohibition against partition between husband and wife at the will of the latter,⁽⁴⁾ she is entitled to be maintained out of the joint property and has a right to reside in the family house. These rights are, none the less, the only modes of her enjoyment of the joint property and hence, it is wrong to suppose, from these, that her right, either during the life-time or after the death of her husband, is only limited to the right of residence and maintenance. But, unfortunately, this grave mistake has crept into the system of law and has been the fruitful source of all those inequitable principles that have defeated her legitimate rights one after another. During the life-time of her husband she cannot demand partition and, therefore, she is maintained by her husband because of her interest as co-owner in the property in his hands; but when occasion arose for dealing with her right, for instance, at partition, or supersession, she was given not only maintenance but regular share of her husband's property if he possessed any.⁽⁵⁾ The absolute duty cast upon a husband to maintain his wife, whether he be possessed of property or not, is erroneously supposed to be personal obligation only, which did not attach to his property by way of a charge such as can be enforced against the purchaser. Her right in her husband's property is liable to be defeated easily by his dispositions of the property. Besides, the debts of the husband, contracted for whatever purposes, though tainted with immorality, incurred in speculation and by no means for any justifiable causes, take precedence over her claim of maintenance and thus she is ruined completely. She has absolutely no means to put a check on the reckless and ruinous career of her profligate and prodigal husband; she cannot even protect her interest from the inevitable ruin. Her son, who

४ जायापत्योर्विभागो न विद्यते । आप-
स्तंबः । तस्माभर्तुरिच्छया भार्यायाऽपि द्रव्य-
विभागो भवत्येव न स्वेच्छया । निताक्षरा

५ यदि कुर्यात्समानंशान् पत्युः कार्यः
समाशिकाः । आज्ञासंवादिनीं दक्षां वीरसू-
प्रियवादिनीम् । त्यजन्दप्यस्तृतोयांशमद्रव्यो भरणं
स्त्रियाः । याज्ञवल्क्यः

has much the same interest as his mother in the property, can impeach any transaction of his father on the score of want of necessity and immorality, and the fear of ultimately losing everything keeps back the unscrupulous creditors from lending too lavishly and recklessly to a person caught in the vortex of vices. Here as in many other respects the texts have been misunderstood with a result detrimental to the woman's cause.

After the death of a person, who was joint with other co-parceners at the time of his death, his widow ought to succeed to his interest in the undivided property, she being a co-owner with her husband. As Vridhha Manu states : 'A sonless widow, who keeps unsullied the bed of her lord, should alone offer the cake and succeed to his *entire share*' (1). Here the widow's right of succession to the entire share of her husband's property is definitely and very clearly asserted. In deciding the legal effect of death of either husband or wife on each other's rights, Brihaspati lays down : 'A wife, deceased before the husband, takes away his consecrated fire ; but if the husband dies before his faithful wife, she takes his property'. (2) In the face of these texts, it is absurd to assume, as has been unfortunately the case with the present case-made law, that on the death of her husband, wife's interest as co-owner in the property of her husband vanishes altogether. Taking either view of her status, whether she be treated as joint-tenant or tenant-in-common with her husband, it is inconceivable how her co-ownership is extinguished on the death of her husband. As co-owner she would be entitled to succeed to the interest of her husband and would thus be entitled to the whole property partly in her own right and partly by the right of succession; and her partial interest would naturally enlarge so as to cover the full interest her husband owned in the property during his life-time. Brihaspati makes clear the whole legal position in stating thus: 'In the Veda, by the traditional law of the Smritis, and by popular usage, the wife is declared to be half the body (of her husband) equally sharing the outcome of good and evil act. Of him, whose wife

१ अपुत्राशयनं भर्तुः पालयन्ती व्रते २ पूर्वं प्रमीताग्निहोत्रं मृते भर्तुरि तद्धनं ।
स्थिता । पत्नेव दद्यात् तत् पिण्डं कृत्स्नमंशं विन्देत्पतिव्रतां नारी धर्म एष सनातनः ॥
लभेतच ॥ बृहस्पतिः

is not dead, half his body survives. How should any one else take his property ; while half (his) body lives? Although kinsmen, although his parents, although uterine brothers be living, the wife of him, who dies without leaving a male issue, shall succeed to his *share* ⁽¹⁾". Babu Golap Chandra Sarkar Shastri, while commenting upon her right, summarises the whole situation thus : 'Her right as co-owner in her husband's interest of the joint family subsists even after her husband's death, although her husband's right, as distinguished from hers, may pass by survivorship or by succession to sons or even to collaterals : these simply step in into the position of her husband, and she is required by Hindu law to live under their guardianship after her husband's death. The reason for recognising her right continues even after the husband's death. The inferior dependant status of her sex prevents her from taking the husband's interest by survivorship while she is surviving half of her husband's body, a male issue is his consubstantial ; and in a joint family, the female members occupy an inferior position and must live under the protection of the male members but their interest in the family property remains unaffected by the husband's death. Besides, it is contrary to the reason for recognising this right and contrary to the Mitakshara and to its fundamental doctrine, namely, that partition cannot create any right but proceeds upon the footing of pre-existing rights and that, it is by virtue of the wife's right to the husband's property that she obtains a share even when partition is made by her sons after the husband's death, and that it is by virtue of this right that she continues to enjoy the family property so long as it remains joint after the husband's death'.

The idea, that a wife becomes the co-owner of her husband's property from the moment of her marriage, has been the foundation on which the liberal views of the commentators have worked in the direction of reform, and must, in our opinion, form the basis of any reform to be suggested hereafter. This

१ आम्नाये स्मृतिं च लोकाचारे च जीवति । जीवत्यर्थशरीरेऽर्थकथमन्यः समानुयात् ॥
 सूरिभिः । शरीरार्थं स्मृता जाया पुण्यापुण्यफले सकुल्यै विद्यमानैस्तु पितृमातृसमानिभिः । अमुतस्य
 समा ॥ यस्य नोपरता भार्या देहार्थं तस्य प्रमीतस्य पत्नी तत्भागहारिणी ॥

central idea has been, unfortunately, lost sight of in the present case-made law and a superficial student of Hindu Law is apt to think that Hindu Law has got no enlightened principles so far as women's claim is concerned. To dispel this misunderstanding and to bring the point prominently before the readers, it was necessary to deal with it at some length. It is proposed to work on the line of this great principle embodied in our texts and in order to make the proposal readily acceptable its full discussion was needed also. To those, who regard the Hindu Law as invested with that degree of immutability, which defies every attempt of working a change in its established principles, my answer is twofold. Firstly, though, what is proposed may appear at variance, to some extent, with the current principles of law I am doing nothing more than reinstating the incontestable import of the highest authorities which have been lost sight of in the present law. Secondly, the history of the question of women's right shows that such attempts of effecting alterations to suit the requirements of the times have been made as old as the eleventh or thirteenth century and it would not be out of place, therefore, to sketch a short history of the movement for the emancipation of women's rights.

Though in the Vedic Period women were regarded as co-owners of their husband's property and were allowed full proprietary rights, in subsequent era of degeneration they came to be deprived of all these rights, were declared incapable of owing or inheriting the property and were relegated to the position of dependants. Yajnavalkya Smriti was the first of the Smrities to embody liberal views as regards women's rights, yet Vijnaneshvara, the leading exponent of its doctrine, deserves the palm of championship in his endeavour to advocate the women's cause in face of adverse authorities of no mean standing and weight. Vijnaneshvara advanced the woman's cause in two respects. He asserted the right of woman as co-owner of her husband's property and on this central idea based her claims to a share on partition and her right of succession. Secondly, he enlarged the connotation of the term Stridhan so as to denote every kind of property of a woman obtained by her by

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partition, inheritance, purchase, gift, or finding. Vijnaneshvara must have been aware of the stout opposition his momentous innovation was bound to excite, and therefore, as Babu Trailokyanath Mitra in his Tagore Law Lectures on Hindu Widow suggests, he must have modified his proposition so as to bring it on the line of least resistance; thus widow was allowed to succeed to the property of her sonless husband who died separated and as in those days (eleventh century) joint family was the rule and separate holding an exception, the innovation of the Mitakshara passed off without much opposition. Jimutavahan, who succeeded him only two centuries after (i.e., in the thirteenth century A. D.,) worked out to its logical conclusions the theory started but left unfinished by Vijnaneshvara; and asserted her right of succession to her husband's property even when he died joint and undivided. But as Mr. Sirvaya, the author of Hindu Woman's Estate, remarks, the author of the Dayabhaga could not have without opposition introduced this innovation unless he hemmed in such rights with restrictions as were necessary to gain public favour, and, therefore, he in his turn restricted her right to limited interest in the property inherited. Unfortunately, Jimutavahan is the last of the reformers so far as the woman's rights are concerned, and the long period of six centuries that followed without a reformer of outstanding merit may speak for the troublous and anxious times the Hindu society passed through. The British Government had, for gaining support and tempering down the bitterness of feelings, to proclaim to the people, with whom religion was identical with politics in those days, the policy of non-interference in matters of personal law and religion, at a time when the intervention policy had achieved everything in the political sphere. They followed this policy very solemnly and scrupulously. With the establishment of the judicial courts, *Pandits* were engaged to advise on topical points of Hindu law and the Judges implicitly followed their *Vyavastha*. The *Pandits* were approached by the litigants and their opinions were not always correct and impartial. Besides, the Judges read the law for themselves from the translations of the texts as they could procure them, and, without discriminating about their relative value, their authenticity, and, correctness of the translations of the

texts, they went on deciding the cases according to the texts as they read them. More often the whole legal literature was not placed before them. Their decisions have since become the law which is unimpeachable even when it is in direct opposition to the positive provisions of the texts. Such is the short history of the development and the existence of the present case-law and, therefore, those who attribute absolute sanctity to the present case-made law should understand clearly that instead of correcting the mistakes that have crept into it they are, in a sense, trying to perpetuate them. The broad-minded English Judges, no doubt at times feel oppressed with the iniquity of the principles of Hindu law embodied in the case-made law, but they are hampered in their inclination to work out a change by the uniform trend of decisions of the courts binding on them. Thus there is no hope left for any reforms except by positive enactment. This was what Russell J. said in *Pandarinath v. Govind*⁽¹⁾, 'possibly with the spread of education amongst and the general emancipation of their women they may be led to call in aid of the relief of legislature.'

Therefore, with a view to confer upon women the legal status they formerly enjoyed under Hindu law and find out an effective remedy for removing the legal disabilities, it is suggested as follows :—

- I (A) The wife should be regarded, from the time of her marriage, as a coparcener with her husband, her share being equal to that of her son if she has got or would have got, entitled to all the incidents thereof except the right to ask for partition during the life-time of her husband.
- (B) When her husband is a co-parcener of the joint family at the time of his death leaving no lenial descendants, the widow should get her husband's interest in the joint property.
- (C) When her husband dies without a male issue, the widow, succeeding to her husband should inherit the whole of his property and take absolute

(1) (1907) I. L. R. 32 Bom. 59, s. c. 9 Bom. L. R. 1205.

interest in the property except in cases when there are husband's heirs (1) under the Bombay school those constituting the compact series of heirs, (2) under other Schools of Mitakshara up to paternal grand mother; and (3) under Daya-bhaga up to the sister's son. In cases where there are the heirs enumerated above, the widow shall have the option of making herself full owner of half of the property by surrendering the other half to the immediate next reversioners from amongst the class enumerated above.

Notes on the Suggestions. The above suggestions would solve many of the difficulties that present themselves to us in the solution of the problem, and would afford complete protection to the woman's rights in the property. The present Hindu law allows her the rights of residence and maintenance no doubt, but at the same time it holds that these rights do not create any legal charge on the family property so as to make them enforceable against a purchaser for value even with notice of such claims, and the effect of this is, that these rights are easily frustrated by even the most unjustifiable alienations, effected by the husband or other co-parceners. Often it happens, that the widow of the co-parcener, who has augmented the wealth and status of the family, gets nothing in the property acquired by her husband and her flimsy right of maintenance is defeated by the transfer of the whole property for no family purpose whatsoever, effected either by her sons or by other co-parceners; and instances are not wanting of those hard cases of widows who rolled in luxury during the lifetime of their husbands but were reduced to abject helplessness because of the alienations made by the manager for purposes avowedly tainted with immorality and without the slightest show of any justifiable cause. Therefore, if the status of the woman is to be raised so as to make it difficult for any other member of the family including her husband, to deprive her of her rights at his sweet will, she must be given equal rights with the male members, that is, she must be given the coparcenery

rights in the property of her husband. Apart from the hardships that emanate from her legal disability, her social status in the family is equally pitiable. As soon as her husband is dead, she becomes a burden to the family and becomes a target at which even the most insignificant person in the family can hurl with impunity any number of insults and of any degree. Apart from such cases, take the most normal case of a family consisting of the mother and sons, and we find that the treatment meted out to the mother is, in almost all cases, just the deplorable treatment described above, especially when the sons act on the counsels of their wives. To contrast with this, take the case of a co-parcener who does nothing except squandering away the money in vices and who is therefore really a worthless and an objectionable member, but the mere fear that he will ask for his share by partition keeps back all others from slighting him. Wife and widow in order to secure the respect of the other members of the family must possess the co-parcenary status, and the legal consequences emanating from that status would alone command respect and secure reasonable treatment for them. The creditor, who to-day never cares to enquire into the claims of the wife or widow against family property because of the secure position he enjoys as against their rights, would, as soon as she is ranked as a co-parcener, inquire into the propriety of the debt, the character of the transaction and would refrain from lending money for items not for the benefit or the necessity of the family in just the same way as he does when he has to deal with the Karta of a family consisting of several co-parceners.

It may be objected that if the wife or the widow is to be regarded as a co-parcener, the husband or the manager would be hampered a great deal in the ordinary dealings, and as her consent would be necessary, if she takes into her head to oppose, the matters would be brought to a stand-still. The objection appears plausible but is without any substance in it. Even if the wife and the widow are ranked as co-parceners, they will just have the same rights and liabilities as any other co-parcener in the joint family. The husband or the Karta of the family would retain

Objections answered.

all the powers of the manager for transacting ordinary business and also for entering into transactions which are binding on other co-parceners according to law; and in so far as he is acting within the legitimate limits of his authority the interest of the wife or the widow would, no doubt, be bound by his transactions. All what I want is that her rights must have the same security as is available in favour of the rights of any other co-parcener and should not be limited to those of maintenance and residence which can be easily defeated because they do not by themselves create a legal charge.

The prohibition against asking for partition by a wife during the lifetime of her husband that is suggested would silence the apprehensions of many of us. I am alive to the necessity of avoiding a cleavage between

husband and wife during coverture and centralising the whole power in the hands of the husband, and with that object in view I have adopted the golden rule laid down by Apasthamba and explained by Vijnaneshwara that partition does not take place between husband and wife at the instance of the wife. Her share is also limited to the share her son gets or would have got by partition and, therefore, the uncertainty of her claim is removed. In

Her share definite. giving her the status of a coparcener entitled to a share equal to that of her son, I am not proposing any great change but I am only demonstrating prominently her right which is tacitly admitted by the texts and the present case-made law; for even, to-day a wife or a mother gets a share when partition takes place between the husband and the son or amongst the sons only. The right to receive a share is no doubt admitted, but by providing that she herself cannot ask for partition the right is practically taken away. So long as her sons remain undivided, she cannot get anything except maintenance out of the family property. In the case of widowed mother with an only son there is no chance of partition at all and she has to submit to the ill-treatment from her son if she wants to remain in the family or must rest content with widow's maintenance as the alternative. The root cause

of all the ill-treatment a widow gets at the hands of her husband's relatives or her sons, both natural and adopted, is the very inferior position assigned to her as a dependant of the family, and the moment she is given the coparcenary rights she will acquire some status in the family and nobody thenceforth would dare molest her. This was what the texts have impliedly granted to her and we will be only reviving this valuable principle. To my mind any suggestion aiming at removing the legal disabilities must postulate her coparcenary status and the proposals which overlook this important principle would not be worth the experiment.

The principle embodied in the present case-made law that a wife's interest in her husband's property as co-owner is extinguished on the death of her husband offends against the very spirit of Hindu law, and for an authoritative refutation of that doctrine the reader may well refer to that portion of the Dayabhaga. Taking either view of the matter, whether the wife be regarded as joint-tenant or whether she be taken to be tenant-in-common with her husband, what would happen at the most would be, that her husband's heirs, in the joint family would take by succession or survivorship the husband's interest as distinguished from the interest of his lawfully wedded wife, which therefore must remain unaffected. It is proposed therefore, that she should be entitled to retain her husband's share of the joint property. In case her husband leaves male issue then her share according to the first provision would be equal to that of a son. Of course, the Dayabhaga allows that much to the widow and also gives her the right to ask for partition and an attempt is made on the same lines to work out the Mitakshara doctrine of succession to its logical conclusions and carry out in detail the proposition which Vijnaneshwara seems to have left unfinished, possibly because of the opposition he anticipated.

The last clause of the suggestions would require a somewhat lengthy note to commend itself to the readers. It involves two important points, namely (1) curtailing the class of reversionary heirs entitled to challenge the widow's transactions,

Reversionary heirs
curtailed.

up to a certain relation; and (2) making it possible for the widow to acquire absolute ownership in half the property if she is prepared to forego the limited ownership over the whole of the property inherited. Judging by the principles either of propinquity—nearness of relation—which forms the basis of the right of succession according to the Mitakshara or of the capacity to offer oblations upon which the Dayabhaga theory of succession hinges or by the combined test of these two principles, as was done by the Privy Council in *Buddha Sing v. Lattu Sing* ⁽¹⁾, one thing appears conclusive that the long list of reversionary heirs, comprising not less than two hundred souls all told, ranking from the nearest blood relations up to the most distant agnates, having no affinity with the deceased except of having the same name of the family and who can trace their descent from the remotest common ancestor of the deceased, must be curtailed in so far as they prove a menace to the widow's rights of enjoyment of the property. The law goes even so far in stating that simply because there are no reversioners the widow cannot get full ownership over the property and in this bold proposition it shows to the world the height of absurdity, the principle, of limited ownership would legitimately lead to. This large class of the expectant heirs all of whom are equally sanguine though none of them is certain about getting the property, includes persons who were never known to the deceased as being his relations or if known, they were known for their inveterate spite which had made it hot for him to live, flocks round the widow like a swarm of vultures for tearing to pieces the life interest that stands between themselves and their prey, and makes it equally hot for her to enjoy the property peacefully. Having nothing to lose and being ever anxious to see that the widow is harassed, they stoop to the lowest means in carrying on the litigation in the courts. There are no traces of any provision made for any declaratory action of the reversioners in the times of commentators or in the pre-British times and by the special protection given to them under the equitable jurisdiction of the British courts, the courts are continuously flooded with

(1) (1915) I L R. 37 All, 604 s. c. 17 Bom. L R. 1022 p. c.

suits for asserting the most inequitable obligations. The very idea that the widow in possession of the property is to preserve it for these distant reversioners, who were known as the most deadly enemies of the deceased, is revolting in itself and it tries to assert itself by resorting to those contrivances which defeat their rights. Thus, the widow is tempted to enter into transactions of doubtful morality and the reversioners are also defrauded. It will be seen, therefore, that according to the present law neither the widow nor the reversioner is profited. While trying to lessen the hardship by curtailing the number of reversioners entitled to challenge the transactions of the widow I have taken care to see that those nearer relations of the deceased who can be considered, on applying both the standards of propinquity and the capacity to offer oblations, as the legitimate heirs, are not excluded but included in the class of heirs I want to retain. The other reversionary heirs such as are recognised by law today, may be allowed to inherit such property as remains undisposed of after the death of the widow but they should not have any right to challenge the transactions of the widow either in her life time or after her death.

The provision, for giving the option to a widow of acquiring full ownership over half the property, by electing to surrender the other half in favour of the immediate reversioners from amongst the class enumerated, when she is prepared to throw off the accursed limited interest, is thought necessary in the interests of both, the widow and the reversioners. The doctrine of surrender at present is assuming that character so as to include transactions which offend against either the true conception of renunciation or the limits laid down by Privy Council in *Ragaswami v. Nachiappa* and under its guise the property is divided between the widow and the reversioner. The widow is anxious to put an end to the galling ownership she has and is ever ready to cash it out at any price; the reversioner is equally anxious to have in his hands the present worth of his uncertain future right of succes-

(1) (1919) I. L. R. 42 Mad. 523, s. c. 21 Bom. L. R. 840, P. C.

sion and is prepared to allow any discount. When they both agree, they can divide the property among them. Secondly, though the law does not admit the principle, that the widow and the immediate reversioner together make up full ownership, it affirms those transactions whereby the whole property is transferred by the widow and the reversioner jointly in favour of a stranger either on the principle of estoppel or surrender. The widow procures the consent or concurrence of the reversioner to the transaction by paying for it and the property passes out of the family. The contrivance of joining the immediate reversioner in the transaction as the executant along with the widow takes it out of the reach of the next reversioners to impeach it. The widow's claim to absolute ownership in the property inherited will be discussed in detail at a subsequent stage. Suffice it to state for the present that according to the unambiguous statement of the Mitakshara—an authority of the highest weight—she must be given full ownership in such property. Since the circle of reversioners is limited and the widow and the reversioners get half the property each, the terms would appear most amicable, if one is disposed to look at the suggestion as compromising the two extreme views, namely, of the absolute ownership of the widow and her complete limited ownership over the property, which is to be preserved for the whole body of the reversioners up to the fourteenth degree. Keeping apart the discussion whether she gets or not full ownership in the property inherited from her husband, the proposal embodies the principle, that the wife's interest, in her husband's property as co-owner which she acquires from the moment of her marriage, is not extinguished on the death of her husband but survives in her favour; but where she retains the whole property she holds in her hands property partly in her own right and partly by the right of succession both the rights being unascertained and extending over the whole property she must hold the property as a limited owner.

The Nature of Woman's Estate.

It is proposed to deal with the nature of the estate a woman takes under Hindu law in the property
 Historical Survey. that comes into her hands either by inheritance, partition, gift or purchase. Her ownership over pro-

perty of every kind was recognised in the early system of Hindu law; and the word 'Stridhan' which signifies 'that peculiar property which she has power to give, sell or use independently of her husband's control'⁽¹⁾ denotes the marked development in the conception concerning woman's property rights. But when the Hindu Society fell down from its high level of civilisation and culture, into the depths of degeneration, her proprietary rights came to be questioned and the subsequent writers tried to squeeze out the connotation of the word Stridhan so as to limit it to a very few items of property. The controversy that ranged round the subject as to whether the list of Stridhan was exhaustive or illustrative, and as to what was technical, and what was non-technical, gives the record of the continued fight between two combating schools of thought, one of which was pledged for curtailment of women's rights and the other for maintaining, if not for enlarging such rights. The right of succession in favour of the females was not recognised but the daughter's claim on natural affection seems to have first asserted itself and she was looked upon as if she were a son.⁽²⁾ Widow's right of succession to her husband's property who died without a male issue was not admitted by a host of lawgivers including Vridhamanu, Narada, Manu, Shankha and others but Yajnyavalkya definitely asserted her right when he stated thus:—'The lawfully wedded wife and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student; on failure of the first among these, the next in order is heir to the estate of one who leaves no male issue'⁽³⁾. Mitakshara was first to enter the field in defence of woman's rights and it ably refuted all those objections that were levelled against. The woman's right of inheritance was accepted no doubt but the public opinion seems to have revolted against the bold step taken up

(१) तदेव च स्त्रीधनं यत्र भर्तुतः स्वातंत्र्येण दानविक्रयभोगान्कर्तुमधिकारोस्ति । दायभागः

(२) यथैवात्मा तथा पुत्रः पुत्रेण दुहितासमा । तस्यामात्मनि तिष्ठत्यां कथमन्यो धनं हरेत् ॥ बृहस्पतिः

(३) पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा तत्सुता गोत्रजा बंधुः शिष्यः सब्रह्मचारिणः ॥ एषामभावे पूर्वस्याधनभाग्युत्तरोत्तरः । यज्ञवल्क्यः

by Vijnaneshvara and it engaged itself in the controversy as regards the nature of the estate taken by her till at last the opposite view found its able exposition in the theory of limited ownership propounded by the author of Dayabhaga. Under

Mitakshara view.

Mitakshara a female is entitled to acquire property in the same manner as a male; she can acquire property by inheritance, purchase, partition, seizure or finding and according to its opinion there appears no inherent incapacity in a female to hold or acquire property. Therefore Mitakshara classed the property obtained by inheritance or on partition under the term Stridhan and gave to the woman absolute ownership over such property. In doing this it resorted to the fiction of legal interpretation, in construing the word '*adya*' in Yajñayalkya's statement of Stridhan, What is given by her father, mother, husband, or brother or what is received before the nuptial fire or what is presented to her on her husband's marriage to another wife or the like (*adya*) is denominated Stridhan—a woman's property⁽¹⁾. Vijnaneshwara explains that the word like (*adya*) includes property which she may acquire by inheritance, purchase, partition, seizure or finding⁽²⁾. Vijnaneshwara's view has been subjected to severe criticism, especially by the courts of law and he has been accused of having misread the import of Manu Smriti and having overlooked the text of Katyayana whom he regards as a lawgiver. But it is gratifying to note that this view of Vijnaneshwara was accepted by several commentators of his own times and those who succeeded him. Devannabhata, a contemporary of Vijnaneshwara, also partly accepts this view while the plain meaning of Mitakshara has been accepted by Viramitrodaya, a treatise according to the Privy Council of high authority in Benares. Sarasvati Vilasa follows the definition given by Mitakshara, and several other authors like Apararka, Kamalakara, Nanda Pandita and Vishveshara class the inherited property under the term 'Stridhan'. Taking all the authorities as a whole there is no

(१) पितृमातृपतिभ्रातृदत्तमध्यम्युपागतम् ।
आधिदेदिकाद्यं च स्त्रीधनं
परिकीर्तितम् ॥ याज्ञवल्क्यः

(२) आद्य शब्देन रिक्थत्कयसंविभा-
गपरिग्रहाधिगमप्राप्तमेतत्स्त्रीधन-
म् ॥ मिताक्षरा

doubt that the passage in Mitakshara is an unambiguous statement of the law on the point. The general restrictions placed by Yajnyavalkya on alienations by females were supposed by the author of Mitakshara to be sufficient safeguards against the abuse of the power of disposition.

The theory of limited ownership of a widow, over the property inherited from her husband, is based mainly upon a couple of solitary *slokas* of Katyayana and, therefore, it becomes necessary to examine the text. Katyayana while defining '*Saudayika*' states. The husband's gift a woman may deal with according to her pleasure when the husband is dead. but when he is alive she shall carefully preserve it or if she is unable to do the same, she shall commit it to the care of his kindred. A sonless widow keeping unsullied the bed of her lord and abiding by her venerable protector shall, being moderate, enjoy until death, afterwards the heirs shall take it⁽¹⁾. This couplet refers to property gifted to a wife by her husband and so it deals with such property only. The whole of the text of Katyayana is not available and so it cannot be inferred from this that Katyayana wanted to impose the same restrictions on property inherited as he wanted to do in respect of property given to a wife by her husband. We have seen that the author of Dayabhaga wanted to disarm the opposition, which he was bound to arouse by his great change, and he took the help of the text of Katyayana for substantiating his theory of limited ownership and hence there is no wonder that he could not resist the temptation of misapplying the only text he could find in his favour. The word '*daya*' in the said Katyayana's couplet is expressive of two meanings, viz., gift or heritage, and though Katyayana originally intended the restriction to apply only to the property given away to a wife by her husband, the same limitations were made applicable to the husband's property inherited by her. The logic was plain

Limited ownership
Katyayana misread.

Commentators chicanery.

(१) भर्तृदायं मृते पत्यो विन्यसेत्स्त्रो यथेष्टतः । विद्यमाने तु संरक्षेत् क्षपयेत्तत् कुलेऽन्यथा ॥ ऋत्राशयनं भर्तुः पालयन्ती गुरौ स्थिता । भुञ्जीतामरणात् क्षान्ता दायदा उर्ध्वमाप्नुयुः ॥ कात्यायनः

and simple; 'daya' means gift or heritage, and since the verse uses the word 'daya' restrictions apply to both inheritance and gift alike. The commentators have spun a long yarn out of this flimsy support, and for avoiding the shock to the expectancy and for preserving the equality of sense, it is asserted that in the property gifted or inherited the woman has got only life interest and after her death the heirs of her husband take the property. To avoid the disappointment of the inquisitive reader, whose expectation would be roused by

Property inherited.

the double meaning the word 'daya' yields and who would therefore ask to himself the question, if so about the gift from the husband, then what about the inheritance from him⁽¹⁾, the commentator strikes with one bold dash of his pen at the rights of the women over the property inherited. The chicanery cannot go further than this; the implicit observance of the rules of interpretation has had thus the effect of curtailing the substantive rights of the women in a manner not warranted by the texts. This doctrine of limited ownership of a widow over the property inherited from her husband was extended by the commentators so as to include not only the case of a daughter inheriting her father's property but also the case of a daughter's son inheriting the property of his maternal grandfather. It will be remembered, that the daughter's right of inheritance was recognised because she was looked upon as if she were a son, and it becomes therefore difficult to appreciate the propriety of the reasoning advanced by Jimutavahana in maintaining his theory of limited ownership in case of a daughter and a daughter's son. He at first extends the operation of his interpretation of Katyayana's text to the daughter and then to the daughter's son upon the ground that they being inferior to the widow with respect to the inheritance, the restrictions imposed by that text on a widow's estate should *a fortiori* apply to them also. The language of Katyayana applies strictly speaking to the widow only but on a false analogy

(१) एवं च मृतस्य पत्युः स्थावरे भार्यासंक्रान्तेऽपि न तस्यादानादौ स्वातंत्र्यम् आकांक्षा तौह्यात् । अन्यथा तत्र कीदृशो व्यवस्थाश्चात् इत्याकांक्षा अयुर्वैव तिष्ठेत् । यथा पति दत्ते स्थावरे अनाधिकारः तथा पत्युः स्थावरेऽपि स्त्रीसंक्रान्ते । विवादिर्चितामणि

it was made applicable to the cases of a mother and a grandmother; so that, even when they succeed to the property of their sons or grandsons they acquire but limited interest. The Bengal High Court has gone further and held that even Stridhan inherited by female heirs does not become latter's Stridhan or absolute property but they get limited interest in such property and the Madras High Court has adopted the same view.

This theory has been also made applicable to the share a mother or a grandmother gets on partition.

Share on partition. I have discussed above the reason for giving a share to her on partition of the estate and the share is given in assertion of her right as a co-owner along with the other male co-parceners. Partition does not create new rights but is only an adjustment of the rights which the individuals do possess in the joint property. According to Mitakshara this share is her Stridhan because it has expressly mentioned it as such and because it states that on the mother's death, this share devolves on her daughter and in default of a daughter, on her sons. When on partition shares are allotted to different persons, the right of each to his or her share must prima facie be of the same character in the absence of any express restriction, and hence the right of the mother in her share must be of the same character as that of a son in his share, since no distinction is anywhere expressed. Besides, the share is given not as a provision for her maintenance but because of her interest in her husband's property as a co-owner which she acquires from the date of her marriage. The theory that the share is given in lieu of maintenance, has been exploded long before by Vijnaneshvara, and the same has been unfortunately made the basis for declaring her limited ownership in such property. The same reasoning would also apply to cases of inheritance, and if there is no distinction made between the rights of the male and female heirs, they both ought to get the same interest in the property inherited, and it would be absurd to say that the widow, daughter or mother gets limited interest while the other male heirs enumerated get absolute property, when their heritable rights are defined in one and the

21 W. R.

same statement. So what applies to males applies to females also. Moreover there is another point to be considered. The heir succeeds to the right, title and interest, the deceased has got in the property, and therefore, the female heir ought to succeed in the same right as the deceased himself. The same principle is

made applicable to cases of gifts, and unless an intention to give absolute property is unambiguously stated the gift in her favour gives her only limited interest. Even in cases of wills the Courts presume that the estate given to a widow or wife is only limited one unless it can be shown clearly from the words used in the document that an absolute ownership was contemplated.

Jimutavahana picked up this doctrine of limited ownership for making his proposals, of giving the widow the right of inheritance and the right of partition even in cases of undivided families, acceptable but this fact is overlooked and the Dayabhaga doctrine of limited ownership became the last word in all the cases of inheritance, partition, gift etc. Really speaking Dayabhaga is authority only in Bengal and in other provinces Mitakshara rules supreme and in face of the unambiguous statement of Mitakshara, there was no scope for applying there the Dayabhaga theory. But unfortunately everything that adversely affected the women's rights was welcome and thus without discriminating between the authorities of the various schools and the provinces they govern; the Bengal theory was first made applicable to Mithila School in cases where very small

property was involved and when once the case-law determined the character of the ownership, the rule of law was applied in cases where larger interests were involved, and thus the Dayabhaga theory of limited ownership was accepted in all the schools even where Mitakshara has been assigned supreme authority. A Hindu woman in other provinces is doubly affected. She has no right of inheritance if her husband died undivided and even when she inherits the property of her separated husband she takes only limited interest. Dayabhaga is in a sense harsh on women's rights in so far as it gives them limited ownership but that system has also this relieving feature that it

makes no distinction between a widow of the divided or of the undivided coparcener, but gives them a right of inheritance and partition alike.

The Bombay School makes distinction between the rights of a woman born in the family and one brought into the family by virtue of marriage and holds that the former of these gets absolute rights in the property inherited while the latter only gets limited interest. Thus the daughter, sister, daughter's son or daughter get full ownership. It would appear that in some way the Bombay School of Mitakshara has not felt it wise to follow letter by letter the Dayabhaga theory of limited ownership but has adopted it only in cases of the widows of the family.

This doctrine of limited ownership has been the root cause of all the misery that falls to the lot of Hindu woman especially the Hindu widow. The theory implies that she is to enjoy the income of the property for life and preserve the corpus for the benefit of her husband's heirs and secondly, it implies that after her death the husband's heirs are the rightful owners of the property. These two implications give rise to the most vexatious litigation. No doubt the widow is allowed to sell or mortgage the property for expenses that can be classed as being for necessity, yet the reversioners have always the remedy of dragging the widow and the transferee into court for questioning the validity of the transaction. The reversioner can institute suits immediately or can wait up to the death of the widow and sue the transferee at a time when possibly the best evidence available is not to be found. This creates a sense of insecurity in the minds of the transferees and as a rule no honest and straightforward man is ready to enter into any transaction with her. So even when a widow is pressed with real necessity she has to deal with crafty creditors and persons trafficking in litigation. She never gets the fair price; and more often she gets nothing absolutely. The idea that she is to preserve the property for the most distant relations of her husband is revolting enough and, under

the guise of transferring the property for an apparent necessity, she tries to transform the property into hard cash which she can shuffle away easily. The reversioner is also defrauded and I have already discussed at some length the evils of the limitations imposed on her power of transfer. In conclusion it might be stated that all reform in this branch must begin by stamping out this most objectionable principle of limited ownership and one may caution that even if the coparcenery status is bestowed upon a woman, no reform would be substantial and worth the name if it perpetuates the hardship of limited ownership. The experiment of introducing substantial reforms with certain limitations to make them acceptable has been tried once by the author of Dayabhaga with the result that his principle of limited ownership has achieved undying pre-eminence and the remedy proved to be more dangerous than the disease itself. And therefore without trodding on the same ground and bartering with the public opinion one should suggest such reforms as would remove this disability altogether, and, therefore, it is suggested that;

- II Whatever property comes into the hands of a Hindu woman either by inheritance, purchase, partition, gift or otherwise, should be her absolute property, i. e., Stridhan, subject to suggestions in I.

Right in Father's Property.

Lastly, I propose to deal with the rights of a daughter. By using the word daughter I want to signify the same meaning that is attached to it, in the legal conception of her rights in the family in which she is born. I have already discussed the daughter's right of succession to a separated Hindu male who dies without a male issue and I have shown in what respects the right ought to be enlarged. I have also pointed out how daughter's right came to be recognised first and the reason thereof. Now what remains to be discussed is the daughter's ordinary rights in the property of her father. According to the arrangement we find in ancient times an unmarried daughter was given a share out of the paternal property and the oldest traces of this arrangement are to be found in the hymn of Rig Veda: 'O Indra,

as the daughter living with her parents, asks for a share of wealth from her father's family (1)'. There were cases of daughters remaining unmarried for ever, and so long as they remained so, they were looked upon as the constituents of their father's family, and they were also given a regular share at the time of partition. Narada states the rule thus: To the eldest son a larger share shall be allowed and a lesser share is assigned to the youngest son, the rest shall take equal shares and so unmarried sisters (2). Vishnu affirms the same view in stating 'mothers shall receive shares proportionate to their sons' share; and so shall unmarried sisters (3)'. It seems that her right of receiving a share was further defined with better accuracy and she was given one-fourth share of her brother. This rule we find laid down in the text of Manu thus: 'but to the maiden (sisters) the brothers shall severally give portions out of their shares, each out of his share one-fourth part: those who refuse to give will become outcast (4)'. Brahaspati states also that 'but on his death, the mother shall take a son's share, the mothers shall share equally with the sons, the maidens shall take fourth part shares (5)'. Yajnyavalkya enjoins that 'uninitiated brothers should be initiated by those brothers who have been initiated before and the sisters also but by giving them, as an allotment, the fourth part of their own share (6)'. The girl up to her marriage was regarded as a member of her father's family but after marriage she became the member of her husband's family and thereafter her husband's family was liable for her rights. The text cited in Medhatithi sounds the same sense when it states 'up to her marriage, a daughter or sister takes a share, after that her husband supports her (7)'. But unfortunately the import of the above texts was

- (१) अमात्रुव पिता सचा सती समानादा सदस्तामिये भगम् । ऋग्वेदः मं २ सू १०
 (२) ज्येष्ठस्यांशोऽधिको देयः कनिष्ठ- (५) तदभावे तु जननी तनयांशसमांशिनी ।
 स्यावरः स्मृतः । समांसभाजः शेषाः समांशमतस्तेषां चतुर्थीशाश्चक्रन्धकाः ॥
 स्युरदत्ताभगिनी तथा ॥ नारदः बृहस्पतिः
 (३) मातरः पुत्रभागानुसारिण भागहारिण्यः । अनृदाश्च दुहितरः ॥ विष्णुः
 (६) असंस्कृतास्तु संस्कार्या भ्रातृभिः पूर्वसं-
 स्कृतैः । भगिन्यश्चनिजदंशादत्वांशं
 (४) स्वेभ्यांऽशेभ्यस्तु कन्याभ्यः प्रदद्यु-
 भ्रातरः पृथक् । स्वात्त्वादंशाच्च-
 तुभागं पतिताः स्युरदित्सवः ॥मनुः (७) आसंस्काराद्धरेद्भागं परतो विभृयात्
 पतिः ॥ मेधातिथी.

misunderstood and the commentators appear to have engaged themselves in a controversy as to whether the share was given for her marriage expenses or it was given over and above her marriage expenses. Mitakshara refutes the view that the share is given to her to cover her marriage expenses and sets at rest the controversy prevalent in its own times. It states as follows: 'Thus it appears that daughters also participate after the death of their father.....Nor is it right to interpret the text by giving the fourth part of his own share etc. as signifying 'giving money, sufficient for her marriage, by construing the word 'fourth' as having no special significance as this would contradict the text of Manu. If it be alleged that here also the mention of a quarter has no special significance and the allotment of property sufficient to defray the expenses of the nuptials is all that is meant to be expressed, the answer is no: there is no support for the assertion that the allotment of a quarter of a share has no special significance in both (Yajnyavalkya and Manu) the Smritis, and moreover the withholding of it is pronounced to be sin. Therefore, after the death of father, a maiden is also entitled to a share. But if it be before, she obtains that only, whatever it be which her father gives. Since there is no special precept respecting this case, thus all is unexceptionable⁽¹⁾'. West and Buhler remark that the Mitakshara lays down that she gets it independently of its sufficiency for defraying the marriage expense while Virmitrodaya asserts that this share is given to her in addition to the expenses to be incurred at her marriage. This right of maidens to receive fourth share on partition effected after the death of the father has been recognised in the old case of *Lalljeet Singh v. Raj Coomar Singh* ⁽²⁾, still however the exploded

(१) अनेन दुहितरोऽपि पितुरुर्ध्वं
अशभागिन्य इति गम्यते । न च
निजादंशात् ' दत्वाऽंशं तु
तुरीयकमिति ' दुर्याशाविवक्षया
संस्कारमात्रोपयोगी द्रव्यं दत्वेनि
व्याख्यानं युक्तम् । अत्रापि चतुर्भाग
वचनमविवक्षितं संस्कारोपयोगि
द्रव्यदानमेव विवक्षितमिति चेन्न ।

स्मृतिद्वयेऽपि चतुर्थांशदानाविवक्षयां
प्रमाणभवाद्दाने प्रत्यवायश्रवणाश्चेति ।
तस्मात् पितुरुर्ध्वं कन्याऽप्यंशभागिनी ।
पूर्वं चेद्यत्किंचित्पिता ददाति तदेव
लभते विशेषवचनाभावादिति सर्वमन-
वद्यम् ॥ भिताक्षरा ॥

(2) (1873) 20 W.R.336.(P.C.)

doctrine, namely, that it is given as a provision for her marriage expenses is regarded by some to be the basis of her right to a share. Justice Ramesam in the full Bench case of Subbayya vs. Anant Ramayya ⁽³⁾ has dealt with this question in detail and it would be better to quote some passages from that judgment. He states; 'But whatever may be the true view as to the liability of a father to marry his daughter considered by himself and by reason of the paternal relation and apart from the possession of the joint family property, so far as the possession of the joint-family property is concerned, there is no doubt that the father is bound to marry his daughter, and that, not because of a religious injunction about pre-puberty marriage but because of a better reason, namely, the daughter's right to be married is really the historical remnant of a larger right. It is not clear to me that the right in the son to compel partition was recognised in the Mitakshara. It seems to me that it is the inference in the modern times from the right by birth. If in the Mitakshara sons themselves have no right to partition, much less could the daughters. But this of course does not mean that the daughters have no interest in the property. Though it is not expressly stated that they have a right by birth, we have got the fact that after the father's death the daughters had a right to a one-fourth share against the brothers. How does this right arise? It cannot be said that the sons only were sharers in the property during the father's life-time and that the daughters had no share, but after the father's death new shares are introduced and that the sons' share is diminished. Now it is settled law that the daughters are not entitled to a share, but all the same the discussion shows that the right of the daughter for maintenance upto her going to the husband's house and for marriage expenses is the present remnant of the right to a share. Therefore the right of the daughters in the father's lifetime, however much it cannot be enforced by partition, must still be described as a right or interest in the property. In Sarkar's Hindu Law, the unmarried daughter's right is thus described; similarly an unmarried daughter acquires an imperfect right in the father's property by virtue of which she enjoys the same and

(3) 53 Mad 84.

is maintained out of it until marriage and is also entitled to a quarter share, if partition takes place before her marriage, that is to say, when she continues as a member of the family. I agree with this passage. It seems to me that in the early law both the rights of the sons and the daughters were imperfect rights in the property which could not be materialized by compelling partition against the wishes of the father, but whereas the sons' right gradually developed into a right to compel partition the daughters' right first became a right to compel partition against the brothers only and not against the father, and latterly degenerated into merely a right to maintenance and marriage expenses'

According to the present arrangement, she is entitled to be maintained and married at the cost of the family property only and she does not possess any higher rights than those of a dependant of the family. No doubt, while her father is living, there is no ground to complain for the paternal affection does even more than what her legal rights would legitimately demand, and this appears to be the reason, as hinted by the author of Mitakshara, for making no provision for giving her fourth share during the life time of her father. Even while her father is living there is no guarantee that so much as would reasonably come up to her fourth share would be spent on her account and the chief difficulty arises when it falls to the lot of her uncles or other relatives to discharge these obligations. Even the father at times sacrifices the best interest of his daughter for his personal gains. The uncle or other relations are not prepared to spend decently on her marriage even in cases wherein they are not bent on making profit out of her marriage concern. She has no voice in the matter, she being a thing to be gifted away in marriage. As there is no definite ratio of her marriage expenses determined with regard to the bulk of the family property, we find cases where the expenses are not proportionate to her father's property. Many a time it so happens that the girl whose father dies a millionaire in a joint family gets absolutely nothing in proportion to her father's wealth, and other members get the whole of it by survivorship.

Present state unsatisfactory.

There is another difficulty which is staring at us as being of pressing necessity. It is the result of changed circumstances and progressive ideas. We have been imparting higher education to the girls and as the natural consequence thereof there is a growing a tendency among the educated girls to remain unmarried. Suppose a girl remains un-

married it is very doubtful whether under the present Hindu law she can claim even bare maintenance as of right from her

Daughters remaining unmarried.

father or his relations when they are ready and willing to perform her marriage ceremony. Even when the girl aspires to acquire higher education, no provision can be made for such expenses out of the family funds. The reader will perhaps realise more clearly how the legal disabilities would set at naught even the useful programme of imparting higher education to the girls. Whatever education they receive is merely a matter of concession they get from their relations and if the relations refuse to give them any, they will have either to obey them or provide for their maintenance and education. To contrast with this the reader might note that the higher education of a coparcener is an item of family necessity for which the joint family is liable. It is suggested therefore that :—

- III The daughter should have the right to ask for a share in the ancestral property in the hands of her father or brother, and the share should be equal to one-fourth of her brother's share, if she has one or would have got one; and her marriage expenses should be deducted therefrom.

I have suggested that she should be given only one fourth share and this is in keeping with the old arrangement and the present provision of giving the same share at the time of partition effected by her brothers after the death of the father. The right no doubt exists but in so far as she herself cannot ask for a share, it is seldom put in effect, and moreover if the brothers do not partition the property at all, she has no occasion to exert her right. One may not be prepared to accept fully the opinion of Mitakshara that the one-fourth share is given independently of the marriage expenses and I have therefore suggested a

golden mean that the marriage expenses should be deducted from such share. This proviso would, it is hoped, make the proposal acceptable. The suggestion would solve another difficulty which have not touched up till now. After marriage the father's family is not bound to maintain the helpless daughter and it works an hardship where she has nothing to fall back upon from her husband's side while the father's family is comparatively well off. In a way, it will put a wholesome check upon the prodigal fathers who spend all they have after the marriage ceremonies of their daughters and reduce the sons to abject poverty.

Conclusion.

One cannot close the discussion on the subject without answering some of the possible objections
 Objections answered. which might be urged against the suggestions which have been submitted herewith for the opinion of thoughtful readers. The old and familiar argument based upon the incapacity of the woman to hold and manage property does not deserve special reply, as it has been long before exploded by the commentators and text writers in their treatment of the subject of Stridhan. The Hindu woman of to-day is taking leading part in the social life and political activity in India, and the objection based on her incapacity must pale into insignificance. The high percentage of illiteracy that prevails among them cannot be made a ground for refusing them their rights, for, if that be accepted as a test in such matters, we shall have to deprive several of our brothers of their property rights. Literacy has never been accepted in jurisprudence as a measure of the individual's right to property and rightly so, because the capacity to manage one's own concern is distinct from one's capacity to read or write. The Mahomedan women are more illiterate as compared with the Hindu women yet the former do enjoy property rights independently of the males. One can concede that the rights of the ignorant and the weak ought to be protected from treacherous and unscrupulous persons but to ensure that one should rather suggest better safeguards than postpone the granting of legitimate rights. It would be pertinent of the objectors to answer

whether they have moved their figure an inch to check the abuse of the power of disposition in a male and stop the total ruin of his wife and children? It is sometimes urged that women would go astray if more rights are given to them, as if the legal restrictions have any ethical significance in keeping them under restraint. Besides betraying a sad outlook of the purity of Hindu homes and the high moral standard of Hindu women, it reflects a great deal on the ethical standard of the objectors. It might be contended that by giving the woman coparcenary rights in the joint family, we shall be introducing proposals for further division of the joint property but if there be no other remedy we ought to be prepared for that even. Every male member of the family can demand partition and the joint property never remains joint for ever. The property is held jointly for the enjoyment of all the persons interested and it would be absurd to suggest that one class of such members—for instance the women—should get nothing out of it when it becomes impossible for them to enjoy the property jointly with others. What about the unrestricted power of dispositions over property the male members wield and the calamity they court for their wives and children? All what is wanted is the equality of rights and that the woman's rights ought to be given the same protection and security, and if ever in the distant future any scheme is adopted for tying up property for generations together or for demolition of the joint family system then of course their rights will be curtailed by the same pruning knife which would cut down the rights of the males. There is absolutely no justification for withholding from them the rights they were enjoying in good old times and of which we have robbed them without any sufficient reason. One thing remains to be answered and that is who

Who is to lead.	is to bring about the change. The sages have laid down that what is observed by the wise is the rule of law for the rest and such conduct of the wise over-rides the express provision of law. Even in the Smriti period the high principles which were found to be at the basis of the practice of the wise, were taken to be the law which would control the most barbarous of the race. Whatever the wise people do, so must do all the rest, that seems to be
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the rule. Therefore it will be seen that the whole responsibility, of bringing about the change, rests entirely on those who are invested with legislative powers and those of us whom we regard as the wise or the advanced. This is not a matter dependent upon the opinion of the majority of the Hindus but it depends upon the opinion of the majority of the advanced section. Just as the few leaders have to settle amongst themselves what would best satisfy the political ambition and bring about the national uplift of India and the bulk of the masses remain as ignorant as ever, so also in this branch of social reform the leaders have, to decide and sign the Magna charta of the Hindu Women's Rights for the whole of the Hindu community. We trust that the public will consider this question with due weight which it amply deserves. I have only made suggestions for further discussion. All I am anxious is that the question be discussed and the necessary changes be brought about.

APPENDIX IV.

List of Ladies and Gentlemen who replied to the Committee's Questionnaire.

I. WITHIN THE BARODA STATE.

Ladies.

1. Mrs. Bhakti Laxmi Gopaldas Desai,
(Vaso Taluka, Petlad.
2. Mrs. Yahshodabai Bhate,
" (Baroda.)
3. Mrs. Kashibai Herlekar,
(Baroda.)

Gentlemen.

4. Mr. Sarabhai V. Majmundar, B.A., LL.B.,
Retired Varisht Court Judge, Baroda,
Kalol (District Kadi.)
5. Mr. Ratanji Dosabhai Master, B.A., LL.B.,
Retired Judge, Varisht Court, Baroda.
6. Mr. Justice Gopal Krishna
Dandekar, B.A., LL.B. }
7. Mr. Justice Motilal Chhotalal
Desai, B.A., LL.B. } Chief Justice
8. Mr. Justice Vithal Dadaji
Satghare, B.A., LL.B. } and Judges of
9. Mr. Justice Dahyabhai Kasanji
Naik, B.A., LL.B. } the Baroda
High Court.

10. Mr. Vamanrao Narayan Patker, B.A., LL.B.,
District Judge, Baroda City.
11. Mr. Manilal Mohanlal Zala, M.A., LL.B.,
District Judge, Baroda.
12. Mr. Moreshwar Krishnarao Sarangapani, B.A., LL.B.,
District Judge, (Kadi District.)
13. Mr. N. B. Padate, M.A., LL.M.,
Assistant Judge, Baroda.
14. Mr. Ramchandra Aanaji Tahamne, B.A., LL.B.,
Assistant District Judge, Mehsana.
15. Mr. Narayan Shivram Gorhe,
Retired Sub-Judge, Baroda State,
Baroda.
16. Mr. Mangesh Kamalaji Nadakarni, B.A., LL.B.,
Suba (Navsari Prant.)
17. Mr. Krishnarao Vithal Uplap, B.A., LL.B.,
Suba (Kadi District.)
18. Mr. Bhaskar Kashinath Bhate, B.A. (Cant.),
Suba (Amreli Prant.)
19. Shrimant Pilajirao Vithalrao Gaekwar,
Suba (Okhamandal Prant.)
20. - Mr. Thakorlal Mohanlal Desai, B.A.,
Naib Suba, Vyara Vibhag.
21. Mr. Ramshanker Vaikunthram Trivedi, B.A.,
Naib Suba, Kadi Vibhag.
22. Mr. Kashinath Martand Gupte, B.A.,
Naib Suba, Amreli.
23. Balwant Shridhar Bhawe, B. Ag.
Naib Suba, Kodinar.
24. Mr. Yashaschandra Motibhai Mehta, B.A., LL.B.,
Joint Munsiff, Patan.
25. Mr. Kulinchandra Sarabhai Majmundar, B.A., LL.B.,
Joint Munsiff, Kalol, (Kadi Prant.)
26. Mr. Bhanushankar Dhirajram Bhatt, B.A., LL.B.,
Munsiff, Visnagar.

27. Mr. Panubhai Jaswantraï Desai, B.A., LL.B.,
Munsiff, Padra.
28. Mr. Yashwant Mahadhev Korde, B.A., LL.B.,
Munsiff, Sankheda.
29. Mr. Pranlal Karasanlal Joshïpura, B.A., LL.B.,
Munsiff, Mehsana.
30. Mr. Sevaklal Punjabhai Shah, B.A., LL.B.,
Munsiff, Vyara.
31. Mr. Hathïbhai Amthabhai Patel, B.A.,
Vahivatdar, Damnagar.
32. Mr. Ganpatrao Krishnarao Kadam,
Vahivatdar, Savli.
33. Mr. Gajanan Yeshavant Pradhan,
Mahalkari, Beyt, Okhamandal.
34. Mr. Madhusudanraï Girdharraï Mujmundar,
B.A., LL.B.,
Government Pleader, Patan.
35. Mr. Amrit Shivram Khopkar, B.A., LL.B.,
Asstt. Govt. Pleader, Baroda District.
36. Raja Ratna Mr. Bhailal Dajïbhai Amin, B.A., M.S.C.I.,
Managing Agent,
The Alembic Chemical Works Co., Ltd., Baroda.
37. Dr. Chandulal Sevaklal Dwivedi, M.B. B. S.,
Petlad.
38. Mr. Mulshankar Maneklal Yagnik, B.A.,
Head Master, Baroda Sanskrit Mahavidyalaya.
39. Mr. Narharishankar Shivshankar Shastri, B.A.,
Head Master, Kathor High School.
40. Mr. Govindlal Harivalabdas,
Ex-member of the Baroda State,
Legislative Council.
41. Mr. Vidyashankar Karunashankar Vakil,
Ex-member of the Baroda State
Legislative Council, Patan.
42. Mr. Chhotabhai Motïbhai Bhatt,
Head Clerk, Baroda
Mahal Vahivatdar Office.

43. Mr. Swamiraj Vayudev Upadhyay,
Head Clerk, Vahivatdar Office, Dhari.
44. Mr. Kashishankar Kesavshankar Joshi,
Head Clerk, Vahivatdar Office, Chanasma.
45. Mr. Narbheram Gopalji,
Govt. Pleader, Dhari.
46. Mr. Lallubhai Kishorebhai Patel,
Pleader, and member of the State
Legislative Council, Karjan.
47. Mr. Ramchandra Kalishanker Pathak,
Pleader, Savli.
48. Sardar Appajirao Jotyajirao Shinde, Fankde,
Baroda,
49. Darbar Gopaldas Ambaidas Desai,
Vaso (Taluka Petlad).
50. Mr. Jamnadas Gangaram Mehta, B.A.,
Retired Chief Accountant and Auditor,
Khangi Department, Baroda.
51. Mr. Narsinghbhai Ishwarlal Patel,
Sojitra (Taluka Petlad).
52. Sheth Lallubhai Girdharlal Parikh,
(Baroda.)
53. Mr. Naranbhai Shedhabhai Patel,
Teacher, Shihi (Taluka Siddhpur).
54. Mr. Purshotam Zaverdas Patel,
(Siddhpur.)
55. Mr. Mohanlal Lallubhai Shukla,
Teacher, A. V. School, Vijapur.
56. Mr. Chunilal Maganlal Patel,
Teacher, Rupal (Taluka Kalol.)
57. Mr. Ambalal Trikamlal Patel,
(Chanasma.)
58. Mr. Narandas Amichand,
(Chanasma.)
59. Mr. Somnath Kaodidas,
(Chanasma.)

60. Mr. Pochabhai Jesingdas,
(Chanasma.)
61. Mr. Ishwardas Valdas,
(Chanasma.)
62. Mr. Atmaram Khodidas,
(Chanasma.)
63. Mr. Dalpatbhai Khodidas Dalal,
(Chanasma.)
64. Mr. Valjibhai Manchharam Dalal,
(Chanasma.)

II. OUTSIDE BARODA STATE.

Ladies.

65. Mrs. B. L. Nehru,
Secretary to All India Women's Conference,
(Lahore.)

Gentlemen.

66. Shrimant Balasaheb Pant Pratinidhi, B.A.
(Chief of Aundh.) (Satara).
67. Prof. Shripad Yeshwant Abhyankar, B.A., LL.B.,
Advocate, High Court, Bombay.
68. Mr. D. P. Joshi, B.A., LL.B., Advocate, (O.S.)
(Baroda).
69. Mr. Kalidas Jaskaran Jhaveri, B.A., LL.B.,
Advocate, High Court, Bombay.
70. Principal J. R. Gharpure, B.A., LL.B.,
(Advocate, Bombay).
Principal, Law College, Poona.
71. Mr. Pandurang Kashinath Pendse, M.A., LL.M.,
Advocate (O.S.), High Court, Bombay.
72. Mr. Dattatraya Wamanrao Kathalay B.A., LL.M.,
Advocate, (Nagpur).
73. Mr. V. V. Jogiah, (Ex. M.L.A.),
Advocate, Berhampure (Ganjam).
(Madras Presidency.)

74. Sardar Janardan Virbhadra Pathekji,
Hon. Magistrate, (Surat.)
75. Rao Sahab N. G. Chapekar, B.A., LL.B.,
Retired First Class Sub-Judge,
Badlapur (Dist. Thana.)
76. Mr. Mohanlal P. Saraiya, B.A., LL.B.,
Pleader, Nadiad.

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