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Changes Under British Rule

The attitude and behavior pattern of Hindu society changed drastically during British regime due to education and western impact on socio cultural life in India.

The above mentioned laws are not the only one passed by Britishers in order to overhaul the Hindu law but these are laws which were in some ways related to the inheritance among Hindus. The Hindu Law of Inheritance (Amendment), 1929 was the first legislation which properly dealt with inheritance among Hindus and added the son's daughter, the daughter's daughter and the sister in rank of heirs in all parts of India which were under Mitakshara law. Earlier, only Bombay and Madras states recognised their status. This was the most important change introduced by the law and by this it was thought that more and more women would be able to get their overdue in property.

The most significant legislation passed by the Britishers regarding inheritance was the 1937 act which was later amended in 1938. While the object of the act was to confer new rights of succession upon the widows, it not only alters the order of succession, but involved in many far reaching consequences in many areas of Hindu law, particularly for Mitakshara coparcenaries. It was prospective in application and applied to property other than agricultural property and impartible estates which went to a single heir either due to custom or otherwise. This act was revolutionary in the sense that it over rode all earlier customs which were against the provisions of this act and thus, was a bold step by the Britishers. It was passed basically to convert the liability of maintenance from the responsibility of others, to her own concern. This concept of limited ownership was to help the female to maintain herself without being dependent on others for sustenance. The act governed the devolution of the property of a male Hindu only and didn't talk about property inherited from females. By leaving the property inherited from females untouched, this act only resulted in further increasing of the gap between the successions as female property was devolved on the basis of traditional Hindu principles. This act made widows eligible to ask for their shares from the son and entitled a widowed daughter-in-law and a widowed grand-daughter-in-law to share along with the male issue and the widow. The widow was given the right to inherit along with the male issue the deceased's property, if governed by Mitakshara law or all the deceased's property along with the male issue if governed by

Dayabhaga law. If there are more than one widows, then everybody together will be entitled to the share of the son. The words “the same shares as a son” means that she will inherit in a manner similar to a son so as the relevant section will apply both when there are multiple heirs or widow is the only heir. The rights granted to the widow in the coparcenary property were *avant garde* and made major inroads into the concept of coparcenary. In a Mitakshara undivided family, the widow of a deceased coparcener was given the same interest as he himself had in the joint family property. Also, this defeated the doctrine of survivorship as was declared by Madras High Court in *Saradambal v. Subbarama Aiyar*, “The act has taken away the rule of survivorship and allowed the property to descend to his wife. Once the rule of survivorship no longer operates, there is nothing to preclude a creditor from attaching the property.” Her introduction in the place of her husband did not make her a coparcener but just made her a member of the joint family with some special statutory rights which didn’t exist before the act. However, she was conferred the right to claim partition and demarcation of her share as a male member and she acquired the status of a coparcener in possession for filing a suit for partition though that is to acquire rights to a Hindu women’s estate. The succession of the widow to her husband is by inheritance and not by survivorship as she didn’t have any right since her birth and became co-owner only after her husband’s death. Though act provided widows with many rights, there was no overall change in the coparcenary and it left the rights of other family members untouched. While the deceased coparcener’s interest was vested with his widow, his male issue still continued to be coparcener along with other male family members with mutual rights of survivorship. Under classical Hindu law, an unchaste widow was disqualified from inheriting the property but this act was completely silent on this issue and didn’t anywhere recommend for disqualification. In *Akoba Laxshman v. Sai Genu*, it was held by the court that the act confers upon the widow a right of succession notwithstanding any rule of Hindu law, an unchaste widow wil not be disqualified from inheritance. This view was also upheld by the Calcutta High Court in *Suraj Kumar Sardar v. Manmadhanath*. Though, now this view has been struck down by the decision of full bench of the Madras High Court in *Ramayya v. Mottayya*, where it held that S. 2 of the act did not have the effect of abrogating the rule excluding an unchaste widow from succession to her husband’s property. Though the act conferred many rights on the widow but it could not be considered to have made further inroads into traditional Hindu law than was warranted. Also, the right of a widow to demand maintenance automatically rejected as she got

the property in lieu of maintenance and could demand maintenance only in cases where the act didn't apply i.e. families having only agricultural land or/and impartible estates.

It can be easily concluded that during the women had been denied their right to inheritance since traditional Hindu law has been recorded. Under traditional Hindu law, they were not considered to be appropriate to inherit the property of their father or their husbands. It was thought that if women would be given charge of any property than they will neglect all the duties accorded to them under traditional law. Dayabhaga seemed like providing some respite to the women but Mitakshara was very much biased against the women. Though, some changes were introduced by the Britishers by enacting some hard hitting legislations but they didn't prove to be far-reaching. Under British rule, women were provided with a right to inherit and also, they were considered to be of equal level as that of co-parcener in certain situations regarding inheritance. But still these laws didn't confer too many rights on the women and in certain situations they were still governed by Mitakshara and Dayabhaga. It was only after the passage of The Hindu Succession Act, 1956 and its amendment in 2005 that women were given equal rights as son and their share was recognised. But it was these laws which paved way for the Hindu Succession Act and all other progressive acts. It was only after the Britishers dared to encroach upon this forbidden field of personal law that the rights of women were recognized

MCQ.

1.

The income of the joint family property can be consider as _____-- by its holder.

Separate

Joint

A and B both are correct

None of the above

2.

A gift to unborn person is

Valid

Void

Voidable

None of these

3.

Any hindu is entitled to dispose of _____ property at will.

Self acquired and separate

Inherited

A & B both are correct

A & B both are wrong

4.

Can any woman gift her "Stridhan"?

Yes

No

By consent of her husband

None of the above

5.

Who can gift?

A competent person who can make a contract

Property owner

Who has power to dispose property

All of the above persons