

PROPERTY RIGHTS OF DIVORCED WIFE AND WIDOW UNDER HINDU LAWS

-S.B MD ASHWAQ¹

Abstract:

This Article discourses on the Protection of women in general and for widows or divorced women specific Acts like Hindu Succession Act where women are equally entitled to inherit property along with their brothers, for protection against domestic violence and harassments, hostels for working single women etc. But in practice very few are aware of these statutes and women's right and are given proper protection. A good number of destitute women are left alone to their fate who suffer inhuman treatment in the society. Our Constitution has made provisions for such women. In its preamble as well as in Article 14 it provides equality for women in all spheres of life and personal liberty in Article 21. Also in the Directive principles of state policy provisions for upliftment of women in suffering and destitute are present. Act like Hindu Marriage Act, Special Marriage Act, Code of Civil Procedure, section 125 in the Code of Criminal Procedure Code as well as Dowry Prohibition Act are meant for protection of fair sex and to enable them to lead a dignified and independent life. The Article first discusses about the Rights of Divorced Women in the property and to claim maintenance amount in the course of divorce. Secondly, it discusses about the Rights of a Widow in the property of her husband both Self-Acquired and in the Ancestral Property.

Introduction:

“The distress woman out of her in-laws’ get predicting the ruin of their Estate sometimes have, sometimes not for her desire and justice knocking at door of court, sometimes succeed sometimes loose, waiting for date after date but without any hope, Justice and Law made her unlaw.

In her eyes with tear and long run fear for a great hope and personal liberty sees the sky.

Her hope is last to die”– P.K. Das²

¹ Student, B.B.A LL.B ICFAI Law school, hyderabad

In India, as per the Hindu Dharma Shastra, institute of marriage is given a lot of importance. According to the Hindu Law, a man is incomplete without his wife and vice versa. Even the people in the West say that the wife is the better half of her husband and vice versa.

Once married, the property of the couple which they buy together is termed as the spousal property. But this does not include the property which the wife had got as a part of her stree-dhan³.

Divorce is still considered to be an inauspicious or unpleasant thing in India. So, what the Indian women know is that they are entitled to maintenance after divorce from their husband so that they can maintain the same standard of life. But what very less number of women know is that they too are entitled to get a share in the property (spousal) upon divorce. It is a well-known fact that every woman has got a right to residence as guaranteed under the Indian Constitution in the case of divorce if she has not remarried. The confusion regarding the property arises when the property has been bought by a man after marriage in the name of his wife but she has not contributed anything financially in the buying of the property or bought jointly.

Thus, there are many Statutes in India which deals with settlement of spousal property.

RIGHTS OF DIVORCED WIFE IN HINDU LAW

Maintenance and Alimony

Maintenance

Maintenance rights for divorced women in India are governed by various religious personal laws. Accordingly, it is a duty of the husband to pay to his wife a lump sum or monthly payment, known as maintenance, after their divorce or separation. The amount of maintenance as per the Hindu Law is either decided by a mutual settlement between the husband and wife, or in accordance with the order received from the court.

Meaning of Maintenance:

² P. K. Das Rights of Divorced Wife and Windows 1(2013 edition) Universal Law Publication

³PrantiPai, Settlement of Spousal property: A Brief Overview, July 16, 2018

<https://blog.ipleaders.in/settlement-spousal-property/>

The maintenance has neither defined in the Hindu Marriage Act, 1955 nor it is stated between the parents whose duty is to maintain the children. The Hindu Marriage Act, 1956, the Hindu Minority and Guardianship Act, 1956, the Hindu Succession Act, 1956 constitute a law in a coded form for Hindus. Unless there is any repugnant to the context, a definition of particular word could be lifted from any of the four Acts constituting the law to interpret a certain provision.

According to the Law of the Land with regard to maintenance, therein an obligation of the husband to maintain his wife which does not arise by the reason of any contract, expressed or implied, but not of jural relationship of husband and wife consequent to the performance of marriage. The duty of the parties to maintain them according to the Hindu law is personal, legal and absolute in character and arises from the very existence of the relationship between the parties.

In simple words maintenance is the provision of financial support for a person's living expenses, or the support so provided? Generally, it's not only the wife who is entitled to get the amount of maintenance, even the parents, children are also supposed to get it. But when we talk specifically about a wife, there are some provisions which give her the right to claim maintenance from her husband.

Maintenance as a personal obligation

As per the ancient text **Manu declared: "The aged parents, a virtuous wife and an infant child must be maintained even by doing 100 misdeeds."**

Brihaspati said, "A man may give what remains after the food and clothing of the family: the giver or more (who leaves his family naked and unfed) may taste honey at first but afterwards find it poison".

According to the **Mithakshara Law** it has been stated that where there may be no property but what has been self- acquired, the only persons whose maintenance out of such property is imperative, or aged parents, wife and minor children.

The obligation of the husband to maintain his wife does not arise out of any contract, and wife created by the performance of the marriage.

Thus, a **wife's right to maintenance may arise in the following three situations as per the Hindu law:**

1. When the wife lives with her husband and
2. When the wife lives separately (not under a decree of the court), and
3. When the wife lives separate from her husband under the decree of a court (Judicial separation) or when the marriage is dissolved.

Maintenance under Hindu Law

The right of maintenance as governed under the Hindu law is very old and it was one of the basic necessities of the joint family system. According to my understanding the maintenance of the women in the joint family system was an important system and this was followed by ages which governed the families. It was the duty of the head of the Hindu Joint Family (KARTA) to look after the women of the family that is their wives and their daughters until they get married. Later when the women grew older it was the duty of their children to mother and other old women of the family. The unchastity on part of the women will bar them from getting maintenance.

Section 24 provides of Hindu Marriage Act, (HMA) 1955 provides for maintenance.

According to this act, only a wife has a right to claim maintenance. The Hindu husband has a legal duty to maintain his wife during his lifetime. However, if she (wife) ceases to be Hindu or lives separately under no legal grounds she loses the right to claim maintenance. Also, a Hindu wife under this act shall not be entitled to separate residence and maintenance from her husband if she is proved unchaste or converts to any another religion. Wife can claim separate residence only if husband remarries and the other wife resides in the same house.

According to the **Section 19⁴ of this act**, a Hindu wife after the death of her husband is bound to be maintained by her Father in-law, provided she has no means of her own earnings. However, the right cannot be enforced if her Father in-law does not have any means to do so and if the wife remarries.

Types of Maintenance

⁴ Section 19 of Hindu Marriage Act ,1955

There are two types of maintenances:-

- (1) Interim maintenance and maintenance pendente lite
- (2) Permanent maintenance

Hindu divorce and alimony. How much alimony should a wife get after divorce:

In Hindus, when there is a question of divorce and alimony, they are governed by personal laws and as well as the central acts. According to **Section 25 of the Hindu Marriage Act, 1955**⁵ it enables the provision of alimony or maintenance. This provision cannot be restricted only to decree of **judicial separation under Section 10**⁶ or **divorce under Section 13** of the ⁷said act. It encloses within the expression of all kinds of decrees such as the **restitution of conjugal rights under Section 9**⁸, **the judicial separation under Section 10**, and **the declaring marriage as null and void under Section 11**, **the annulment of marriage as voidable under Section 12**⁹ and **the divorce under Section 13** of the act.

Alimony under various Acts in Hindu Law

Alimony under Hindu Marriage Act, 1955

Any court in India operating or exercising its jurisdiction may, on application made by either the wife or the husband, can order either the husband or the wife as the case may be, to pay the amount to the applicant for his or her maintenance and support (financial) such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as stated.

The things which court keep in mind while deciding the quantum for maintenance are,

- The income of the party in contrary to whom alimony has been claimed,
- Property of the party in contrast to whom the alimony amount has been claimed,
- The income and other property of the applicant as the court may deem fit,

⁵ Section 25 of the Hindu Marriage Act, 1955

⁶ Section 10 of the Hindu Marriage Act, 1955

⁷ Section 13 of the Hindu Marriage Act, 1955

⁸ Section 9 of the Hindu Marriage Act, 1955

⁹ Section 12 of the Hindu Marriage Act, 1955

- The conduct of both the parties and other circumstances of the case.

If the Honourable court is convinced that there is a change in the circumstances of either party at any time after the quantum of alimony has been fixed by the court. The Honourable court may, at the occurrence of either of the party, vary, modify or rescind any such order in such manner as the court may deem fit.

A Right of alimony for Divorced woman as per the provisions of the Hindu Adoption and Maintenance Act, 1956

According to this act, a Hindu divorced wife shall be entitled to live separately without forfeiting her claim to maintenance and alimony will be granted to her on the basis of the following grounds-

- If the husband is found guilty of desertion, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her;
- If the husband treats his wife with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband and it may lead to mental torture or trauma;
- If the husband is suffering from a virulent form of leprosy as stated in the Hindu Marriage act, 1955;
- If the husband has any other wife living as mentioned in the aforesaid act;
- If the husband keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere then she has the right to claim;
- If the husband has ceased to be a Hindu by conversion to any another religion;
- If there is any other justifiable cause for living separately.
- A Hindu wife will not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Quantum of alimony decided on the following basis:

The following factors are looked at while deciding the quantum for alimony.

- Position and status of the parties,
- The wants of the person are taken into account while deciding alimony,
- If there is any other justifiable cause for living separately.
- The present value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other sources are taken for consideration.

A Right of alimony for Divorced woman as per the provisions of Code of Criminal Procedure

According to the **Section 125 of the Cr.P.C.**, which talks about alimony rights to wife given by her spouse. Section 125 of this act, along with the alimony rights, grants the right of Interim maintenance also. The Honourable Supreme Court in numerous of its judgment has made it clear that interim maintenance can be awarded before the final disposal of the case. Though there is no specific provision in the Code regarding interim maintenance but judicial activism has helped in evolving this law as it respects the rule of law.

Rights of Divorced Wife and Widows To Residence Under Rent Control And Property Laws**1. Right to Maintenance and Residence:**

In case of **B.P. AchalaAnand v. S. Appi Reddy**¹⁰ the Supreme Court held that the position of the law which emerges on a conjoint reading of the Rent Control Legislation and personal laws providing right to maintenance which would include the right to residence of a wife including a deserted or divorced wife might be examined. The Rent Control Law makes provision for protection of the tenant not only for his own benefit but also for the benefit of all those residing he must provide for. A decree or order for eviction would deprive not only the tenant of such protection but members of his family including the spouse would also suffer eviction. So long as

¹⁰B.P. AchalaAnand v. S. AppiReddy[AIR 2005 SC 986: 2005 AIR SCW 934: (2005) 3 SCC 313.]

the tenant defends himself, the interest of his family member merges with of the tenant and they too are protected.

2. Rights of Residence of Divorced Wife is the Part and Parcel of Wife's Right to Maintenance

The right to maintenance is a part and parcel of wife's right to maintenance,¹¹ the right to maintenance cannot be defeated by the husband executing a will defeat such a right.

3. Right of Residence of Divorced Wife and Personal Laws

The right of to reside in matrimonial home is stand-point of personal laws. A Hindu wife is entitled to maintain by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence, if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence.¹²

RIGHTS OF DIVORCED WIFE AND WIDOW TO PROPERTY AND SHARED HOUSEHOLD

1. Position of Co-Widows in Respect of property

The co-widows are entitled to obtain a partition of separate portion of property so that each may enjoy her equal share of incoming accruing therefrom.¹³

2. Widow's Absolute ownership in Property Where in record it is mentioned that the widow last proprietor of lands and during the time the Succession Act had not been passed, then after passing of the Act, the widow became the absolute owner in the said property.¹⁴

3. Widow's Right to receive Rent out of a House Property

¹¹Mulla Principles of Hindu Law, vol. 1, 18thEdn., 2001 para 554 and 555 .

¹² B.P. AchalaAnand v. S. Appi Reddy, AIR 2005 SC 986: 2005 AIR SCW 934: (2005) 3 SCC 313.

¹³ Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balakrishna, AIR 1960 SC 1172: (1960) 3 SCR 513: 1961 (1) SCJ 153.

¹⁴Bishwant Pandey v. Badami Kaur, AIR 1980 SC 1392: (1980) 2 SCC 349: 1980 ALL LJ 580.

Where the widow had acquired a right to receive rent out of a house property and husband died before enactment of Hindu Women's Right to Property Act, then she had no pre-existing right of interest in the house, but had a restricted estate for her in the House.¹⁵

4. Estate and Property Rights of Widow

The widow who had definite share in property, has right to dispose of her share in property. And the limited right of woman was enlarged under the Hindu Succession Act.¹⁶

5. Widow's right to suit in coparcenary property and property in possession

Where the property is in Co-Parcenary, the widow can have right to suit for partition. And the property possessed by a female Hindu shall be held by her as full ownership.

6. Widow has Equal share with Sons of Husband's Father

According to Mitakshara law, in case a male Hindu dies having at the time of his death an interest, in a Mitakshara Co-Parcenary property, his interest in the property shall devolve by testamentary or interstate succession and not by survivorship.

7. Remarriage of Widow

A Hindu widow succeeding to the properties left by her husband as a widow after the passing of the Hindu Succession Act, 1956 would not be divested of the properties on her re-marriage thereafter.

RIGHTS OF DIVORCED WIFE AND WIDOW TO RE-MARRY AND ITS EFFECT ON PROPERTY RIGHTS

1. Determination of Share of each coparcenary property between Daughters, Widow and Sons

Where a Hindu died leaving behind him his widow, three sons and three daughters, the devolution of his Mitakshara coparcenary property would be in equal share.¹⁷

¹⁵Narain Devi v. Ramo Devi, AIR 1976 SC 2198: (1976) 1 SCC 574: (1976) 3 SCR 55.

¹⁶M. Jana Bhai v. M. Govardhanagiri Naidu @ M.G. Giri, 2008 (62) AIC 501: AIR 2007 Kant 140: ILR 2007 Kant 4328

2. Re-marriage of Widow does not debar of her Right vested in her First Husband's property

A widow of son of original tenure-holder at the time of his death is entitled to share in property though she re-marries.¹⁸

3. Re-marriage of Widow- Property Possession of Holdings

The son was born to a widow after re-marriage. The widow remained in possession of holding till her death in 1965. The interest in holding will devolve upon her son and not upon sister of her first husband. The fact that her name was shown as widow in family register till the time of her death was not relevant.¹⁹

Prior to the Hindu Succession Act:

Prior to the Hindu Succession Act, Hindus were governed by the various shastric and custom laws that varied in different regions. These laws would vary from region to region, and would differ even in the same region due to different castes. The ancient texts of dharmasthras and commentaries and legal treaties influenced the traditional Hindu inheritance laws. Amongst the Hindus, the inheritance practices are mostly governed by the Mitakshara and Dayabhaga legal doctorines. Dayabhaga and Mitakshara schools, which are both schools of medieval Hindu law, are built on the scriptures of the learned sage Manu, and though the approach adopted by both schools is wholly different, they are essentially different connotations of the same idea.

Mitakshara law is predominantly prevalent in most of northern and parts of western India. As per the Mitakshara law, on birth, the hinduson acquires a right and interest in the family property. According to this school, coparceners would include a son, grandson and a great grandson born in the family. Mitakshara law does not recognise female members as a part of the coparcenery. Mitakshara law promulgates the concept of survivorship for the devolution of joint Hindu property. It is clear that with every birth or death of a hindumale in the family, the share of every other surviving male either gets curtailed or enlarged. The Mitakshara law does however allow

¹⁷ Raj Rani v. Chief Settlement Commissioner, Delhi, AIR 1984 SC 1234: (1984) 3 SCC 619: (1984) 1 Ori LRR 44.

¹⁸ Gajodhari Devi v. Gokul AIR 1990 SC 46: 1990 ALL LJ 1: JT 1989 (4) SC 36.

¹⁹ Mainia v. Deputy Director of Consolidation, AIR 1989 SC 1872: 1989 ALL LJ 1117; Badri Prasad v. Dy. Director of consolidation, AIR 1978 SC 1557: 1978 ALL LJ 1010 : (1978).

inheritance by succession. This only applies to the property separately owned by an individual male or female. Women are allowed to inherit separate property under Mitakshara law.

Mitakshara and Dayabhaga schools of law only differ on the point of who a sapindais. While both schools agree that the property should be inherited only by sapindas, they differ on their understanding of who a sapinda is. In the Dayabhagaschool, any person who can offer pindas (balls of rice) during the funeral of the deceased would constitute a sapinda and hence can inherit the property. This definition of sapinda would also include cognates and female relatives, therefore allowing them to inherit coparcenary property.

Mitakshara law also recons the rights of succession of separately owned property under which even females were legal heirs of the property. However, the Dayabhaga School of law has only one mode of succession, irrespective of the kind of property.

In case of Males:

According to Hindu Succession Act, the succession process of the property of a Hindu male dying intestate, or without a will, would be given first to heirs within Class I. In case if there are no heirs categorized as Class I, the property will be given to heirs classified within Class II. And in case of no heirs in Class II, the property will be given to the deceased's agnates or relatives through male lineage. And the same follows in case if there are no agnates or relatives through the male's lineage, then the property is given to the cognates, or any relative through the lineage of males or females.

According to this act there are two classes of heirs that are delineated by the Act.

Class I heirs are classified as follows those includes sons, daughters, **widows**, mothers, sons of a pre-deceased son, widows of a pre-deceased son, son of a, pre-deceased sons of a predeceased son, and widows of a pre-deceased son of a predeceased son.

If there is more than one widow, multiple surviving sons or multiples of any of the other heirs listed above, each shall be granted one share of the deceased's property. Also if the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother has remarried, she is not entitled to receive the inheritance.

Class II heirs are classified as follows and are given the property of the deceased in the following order: It starts with the, 1.Father 2. Son's / daughter's son3. Son's / daughter's daughter4. Brother5. Sister 6. Daughter's / son's son 7. Daughter's / son's daughter 8. Daughter's / daughter's son 9. Daughter's /daughter's daughter 10. Brother's son11.Sister's son12. Brother's daughter

In case of Females:

As defined under the provisions of the Hindu Succession Act, 1956, females are granted ownership of all property acquired either before or after the signing of the Act, abolishing their "limited owner" status. However, in the 2005 Amendment that daughters were allowed equal receipt of property along with the sons. This invariably grants females property rights.

The property of a Hindu female in case of dying intestate, or without a will, shall devolve in the following order:

1. upon the sons and daughters (including the children of any pre-deceased son or daughter)andthehusband,
2. upon the heirs of the husband.
3. upon the father and mother
4. upon the heirs of the father, and
5. upon the heirs of the mother.

Certain exceptions :

Where a person is guilty of murder is disqualified from receiving any form of inheritance from the victim.

Where a relative converts his religion from Hinduism, he or she is still eligible for inheritance. And the descendants of that converted relative, however, are disqualified from receiving inheritance from their Hindu relatives, unless they have converted back to Hinduism before the death of the relative.

General Rules of succession

Section 15 of the Hindu Succession Act, 1956 lays down the list of heirs who stand to inherit in case of the death of a female intestate. The property shall devolve:

1. Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
2. Secondly, upon the heirs of the husband;
3. Thirdly, upon the mother and father;
4. Fourthly, upon the legal heirs of the father; and
5. Lastly, upon the heirs of the mother.

The general rule of thumb in this case is that for entries (a) to (e) in this sub-section (1) applies to all the property of a female intestate acquired by any means, except in case of property inherited from her father, mother, husband, or father-in-law.

If a female intestate dies leaving a son or daughter (both legitimate and illegitimate), or a child of a predeceased son or of a predeceased daughter (i.e. issue), all of her property will be devolved on such issue, irrespective of the source of acquisition of property. This will take place simultaneously. If the husband of the intestate is alive, he will be part of this simultaneous process.

If she dies leaving no issue, but her husband, her husband will get all her property except that acquired from her father or mother. The property in that case will revert to the heirs of her father alive at the time of her death.

Under clause (b) of sub-section (2) of section 15, the property inherited by a female Hindu from her husband or father-in-law shall devolve upon the heirs of the husband.

Order of succession among heirs of female Hindu:

Section 16²⁰ is divided into three rules detailing the order of succession and manner of distribution of property among the heirs of a female Hindu.

Rule 1 clearly states that among the heirs given in sub-clauses (a) to (e) in sub-section (1) of section 15, the heirs referred to in the prior entry and to be given preference over the heirs in the

²⁰ Section 16 of Hindu Succession Act,1956

subsequent entries. Those people included in the same entry are to succeed simultaneously as provided by this act.

Further, **rule 2** states that the son or daughter or the intestate predeceased her, their children shall succeed to the property as if the predeceased son or daughter was alive at the time of succession.

Finally, **rule 3**, which becomes applicable only when the succession is in terms of sub-clauses (b), (d) or (e) of section 15(1), is to be invoked when under rule 1, the heirs of the husband, father or mother are to be ascertained for the purpose of distribution of property.

The Amending Act of 2005 was seen as a way to undo the discrimination contained in section 6 of HSA by giving daughters equal right in the Hindu Mitakshara property as sons have.

Changes brought about by the Hindu Succession Act of 1956 in case of the Property

The Act has changed the old Hindu law of inheritance. The modern law is applicable to all Hindus irrespective of whether they belong to Mitakshara or Dayabhaga school. Now it is clear that no longer are the schools and sub-schools of Hindu law relevant in respect of the law of succession. The modern law also prevailed over the customary mode of succession. However in the case of , if the intestate died before this Act came into force or existence, his succession would obviously be governed by pre- Act customs.

1. Sections 8, 9 and 10: Succession to the property of a Hindu male –

The Hindu Succession Act, 1956, still preserves the dictionary of the old Hindu law where succession to the property of a Hindu male and a Hindu female was dealt separately. Sections 8 to 13 of the act, deal with succession to the property of a Hindu male. The heirs of a Hindu male are broadly classified under four types – Class I, Class II, agnates and cognates. The persons included in these categories are mentioned in the Act.

Section 8 of the act lays down the order of succession among these classes of heirs by laying down that the property will first go to the Class I heirs and in their default to Class II heirs, failing which to agnates and thereafter to cognates as prescribed by the act.

Section 9 lays down that Class I heirs are simultaneous heirs, i.e., no one excludes the other, all take simultaneously in accordance with the rules of distribution of property among them, while

in the case of Class II heirs, they are listed in nine categories in the Schedule, the heirs in the previous category are preferred to later categories.

Section 10 of this act lays down rules of distribution of property among the Class I heirs. **Section 11** of this act lays down rules of distribution of property to be followed among a category of Class II heirs. **Section 12** of this act lays down that agnates, however remote, will always be preferred over a cognate, however proximate. **Section 13** of this act lays down the modes of computation of degrees among the agnates and cognates for the purpose of determining their order of succession.

Hence it is that this is a divarication from the classical Hindu law, where all the coparceners succeeded to the property of the deceased and all other relations, however proximate and all the legal heirs of the deceased were excluded.

2. Section 14: Property of a female Hindu to be her absolute property

In traditional Hindu law, a female Hindu's property were of two kinds; stridhana and women's estate. The said Section of the Hindu Succession Act, 1956 has abolished the division of property belonging to a woman into the two categories. It has transformed a woman's estate and stridhana into her full estate. This Section is the extension of the main object of this Act, namely to grant better rights to women. The application is to those women's properties which were in the possession when the Act came into force.

Sections 15 and 16 of the Act lays down the general rules of succession to the property of a Hindu female dying intestate and the order of succession as prescribed by the act. It is exotic to note that although there is no such thing as stridhana and woman's estate after the coming into force of this Act, the source of acquisition of a female Hindu's property is still considered to be important, as the order of the heirs in Hindu law still depends upon the source of the property of a Hindu female.

3. Section 24 repealed: Certain widows remarrying may not inherit as a widow –

According to the classical Hindu law, where certain female heirs if they had remarried after the death of their spouses, before the succession opened were disqualified from inheriting the property of the deceased intestate, for being unfaithful to their obligations widows. According to

the Hindu Widow Remarriage Act, 1956, if a Hindu widow remarried, she could not inherit the property of her deceased husband.

According to this Section, only three female heirs were bared on such grounds, namely:

(i) Son's widow(ii) Son's son's widow(iii) Brother's widow

Now, this Section has been omitted, rendering such disqualification null and void, which is a great diversion from Hindu traditional law.

Conclusion

While there are numerous cases in India where women are deprived of their share in wealth at the time of divorce in India and there was a requirement of strong laws that targets on rights of women in the case of divorce in India, this amendment seems to have gone beyond what it wanted and has loopholes which can be exploited by women. It is with the due respect to each gender, it would be great if there would have been some balanced law, and some thought should have gone for worst cases.

What is recommend is that, India should start following the concept of a pre-nuptial agreement because it would take care of all the rights and shares of both the spouses in the marriages and after the marriage ends. In such case there would be no confusion either as to whether a wife will get 50% or less or more than that, it will not be problem to calculate the share of a housewife and a wife who is earning and the court also will not have to waste its time in matters like to determine whether a property is separate or joint and as to how will the contribution of the housewife be converted in quantities when it is known to everyone that mental and emotional contribution cannot be quantified. Hence the separate property of women should always remain separate property and no law should try to merge it in the realm of joint or marital property.