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## MITAKSHARA LAW AND SHARES TO FEMALE MEMBERS

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The allotment of shares to female members at a partition of Mitakshara coparcenary, gives rise to considerable confusion and doubt, especially after the passing of the new enactments codifying the law of succession and, adoption and maintenance. Much of this stems from partial codification of the Hindu Law. While codifying the Hindu Law of marriage, succession, adoption and maintenance, the legislature, generally speaking, left untouched the law of partition, and even overlooked to amend the law of partition *mutatis mutandis*. The Rao Committee, in view of their recommendation to convert the Mitakshara coparcenary into a Daya-Bhaga coparcenary, did not contemplate radical changes in the law of partition. But section 6<sup>1</sup> of the Hindu Succession Act, in principle, envisages the retention of a Mitakshara coparcenary, while conferring rights of succession to female members of the Class I of the Schedule or to male members claiming through such female members. Also in the North shares are allotted to specified female members at a partition. The question would arise: Whether the rights of female members at a partition can be deemed to subsist and whether the share to a female member like a mother, on succession, is in addition to or in substitution for her share on partition? In general,<sup>2</sup> the text books on the subject refrained from discussing this question which is

of considerable importance in the North of India.

It is also to be remembered that this question has an important bearing on the determination of a daughter's share under the Hindu Succession Act, 1956, and *prima facie* subjects it to considerable fluctuation in the North. For, Explanation 1 to Section 6 of the Hindu Succession Act lays down that for the determination of the share of a deceased in a coparcenary, we must proceed on the assumption that "a partition had taken place just before his death." This reference to the existing law of partition without any qualification or elucidation gives rise to anomalies and inconsistencies. For in the South the practice of allotting shares to female members like wife and mother, at a partition, had become obsolete, and therefore a larger share would be available to a coparcener at a partition. Consequently, under the Act a female heir would also be entitled to a larger share in view of the larger share of a deceased coparcener. As the allotment of shares to specified female members, at a partition, continues to exist in other parts of India, the ultimate share available to a female heir stands diminished, involving thus in a regional disparity. Such is the categorial view taken by the learned Editor of Mulla.<sup>3</sup> This position runs counter to one of the main objects of the Act, viz., to achieve uniformity. Braving the wrath of purists it must be said, that the retention of a maimed Mitakshara coparcenary despite the weighty views of Srinivas Iyengar<sup>4</sup> and the Rao Committees<sup>5</sup> is an iniquity to a daughter. Dr. Kane also expresses a similar view to give a go-by to Mitakshara coparcenary. But to import the existing law of partition is to add an injury, for in the North a daughter will become an inferior amongst the heirs of her own sex like the mother and widow of the deceased. Dr. Jolly states that the right of female members of a joint family to claim a share at a partition, though they cannot enforce a partition, did not belong to them originally, and it is not