Q-1 Explain the Concept of Stridhan. How far the concept of stridhan has been Incorporated in the Hindu Succession Act, 1955 ?

When a male dies leaving no male members then the property goes to his wife, who is a legal representative. Prior to the Hindu Women's Right to Property Act, 1937, women had no right in the property. Since a widow is put to sufferings after the death of her husband it was found necessary to give her a limited right for her maintenance till her death, over the property of her deceased husband. It gave rise to a property called woman's estate or widow's
property.

The property of a Hindu woman can be divided into two categories:

(1) Those properties over which she has absolute ownership; and

(ii) Those properties over which she has limited ownership

Property falling under the former category are termed as 'stridhan' and that falling under the latter category are termed as 'woman's estate'. However under the scheme of the present Hindu Succession Act, 1956 any property acquired by a Hindu female either before the commencement of the Act or subsequent to it and which has been in her possession on the date of such commencement, would be her absolute property, which can be termed as Stridhan in the modern sense. The Act has dispensed with the distinction between the Stridhan and woman's estate'. It also dispenses with the distinction with respect to the order of succession between Stridhan and women's estate and a general rule of succession has been laid down under it.

Meaning of Stridhan

The term 'Stridhan' is the conjunction of two words 'Stri', i.e., woman and '**Dhan**', i.e., property and thus conjunctively these two words imply that property over which a woman has an absolute ownership. By the authors of different schools and sects it has been used in different senses, yet it connotes a meaning which comes out from the word itself. This term was for the first time used in Smritis and in the Dharmasutra of Baudhayan which meant 'woman's absolute property'. Under the modern Hindu law Stridhan does not represent any specific property but it includes all those properties of a Hindu woman over which she has absolute ownership and which is inherited by her successors. The two important differences between the term woman's estate and Stridhan are —

(1) A woman has a limited right of alienation with respect to the properties coming under term "woman's estate." The right of alienation can be exercised by her only in dire necessity, legal necessity, or in the interest of the estate itself; however, with respect to Stridhan she has an absolute right of voluntary alicnation of the property coming under it.
(2) In case of woman's estate the property after the death of the woman owner, is inherited by the descendants of the male known as reversioners, and not by the descendants of the woman but in case of stridhan the property is inherited by the descendants of the woman herself as was the rule under the old Hindu law. In due course of time the term Stridhan came to be understood through the meaning given in the following three sources :
(i) according to smritis,
(ii) according to commentators, and
(iii) according to judicial decisions.

Stridhan according to Judicial decisions.-According to Privy Council, any property inherited by a Hindu female either from a female or male did not constitute stridhan. But in the State of Bombay, a property recieved through inheritance was placed in the category of Stridhan provided that it was not inherited from a person in whose family she enters.

It was laid down by Privy Council in Bhagwan Das v. Maina Bai,? that property inherited by a Hindu female from her husband is not Stridhan. Hence such property is inherited by her husband's collaterals and not by her own heirs. In the same way in Shivshanker v. Devi,' it was laid down that property received by daughter from her mother is not her Stridhan even if that property has been the Stridhan of her mother and thus it reverts to the heirs of her mother. Again in Devimangal v. Mahadeo Pd." the Privy Council further laid down that the share coming under the possession of a woman after partition is also not Stridhan. Even in Mitakshara, property received by a widow after partition is not her Stridhan, and after her death it riverts to her husband's heirs, unless there has been any contract to the contrary.

It has also been held that where a widow retains her possession for more than 12 years over a joint family property against the heirs, it becomes her Stridhan. Similarly that property is also included under Stridhan which is obtained by a widow from government with permanent or alienable rights. Where a property is gifted to a woman at the time of her marriage, is included in Stridhan but if the donor is not known to her previously then the husband has a superior authority over the property gifted. According

to Dayabhag immovable property gifted to wife by her husband is not Stridhan. However earnings from Stridhan or savings therefrom fall under the head Stridhan. In the same way the clothes and ornaments of a woman are also treated as Stridhan.

In a later case, namely, Pratibur Rani v. Suraj Kumar, the Supreme Court disagreed with the above view of the Punjab High Court and held that whatever gifts, presentations and dowry articles are given to a woman in marriage, would be regarded as her absolute property. All the gold ornaments, clothes and other items of dowry given at the time of marriage to a Hindu female are her Stridhan and she enjoys complete control over it. The mere fact that she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over them. The view of Punjab High Court that the dowry goods become joint property of the husband as well as of the wife and both of them exercise equal right and control over them, is incorrect. The court observed:

"It cannot be said that once a woman enters her matrimonial home she completely loses her exclusive Stridhan by the same being treated as a joint property of the spouses. In other words, if this view is taken in its literal sense the consequence would be to deprive the wife of the absolute character and nature of her Stridhan and make the husband a co-owner of the same, such a concept is neither contemplated nor known to Hindu law of Stridhan, nor does it appeal to pure commensense. It cannot also be said that once a married woman enters her matrimonial home her Stridhan property undergoes a vital change so as to protect the husband from being prosecuted even if he dishonestly misappropriates the same."

Stridhan, its succession under Hindu Succession Act, 1956

The Hindu Succession Act, 1956 has abrogated the law relating to Stridhan which existed prior to the incorporation of Section 14 in the Act. Section 14 provided that every property which Was in possession of a iindu female at the time of the enforcement of the Act, whether acquired prior to or subsequent to the Act, became her absolute property. The old law relating to the order of succession to such property has been done away with and a new order of succession has been introduced in its place, which included females as well. A uniform law relating to various categories of heirs has been contained in Section 15 of the Act. Since every property validly in her possession became her stridhan, a full uniform law of succession to such property had become essential. Thus on the death of a

Hindu female intestate, her stridhan devolved according to the rules contained in Section 15 and 16, but in no case according to the old law.

Section 15 lays down that when a Hindu female dies intestate leaving her stridhan, it would devolve upon the following categories of heirs according to the rules provided in Section 16 of the Act:

Firstly, upon sons and daughters (including the children of a predeceased son or daughter) and husband;

Secondly, upon the heirs of husband;

Thirdly, upon father and mother;

Fourthly, upon the heirs of father;

Fifthly, upon ther heirs of mother.

Q-2 Explain essential elecments of Gift. what is the difference between gift and will? discuss.

Introduction

According to the Transfer of Property Act, a voluntary transfer of a movable or an immovable property without consideration is referred to as git. This gift should be accepted by the donee also. In common parlance gift is the renunciation of the property right by the owner (donor) in favour of donee. In a valid gift there should be a donor, donee and a property (Datavya) and it should be accompanied by certain formalities. The question arises as to whether there can be a valid gift when the property is renounced but is not accepted by the donee ? According to the view of Jimutvahana, that in gift ownership is not created by acceptance but by renunciation by the donor. This is liable to be defeated by the refusal of the donee from accepting the property. However, till the refusal or acceptance is not there the inchoate ownership vests in the donee. According to the Mitakshara, gift is incomplete without acceptance. Donor can divest himself of the ownership, but he cannot impose the ownership upon the donee without the consent of the donee. So between the making of the gift and acceptance of the gift the ownership is not of the donee.

Definition of Gift under Mitakshara law

Under Mitakshara law gift is the renunciation of his proprietary interest in favour of some other person without consideration. In this way, a right is created in favour of donee. However, the right of donee accrues only after acceptance and in no other way. Dr. Sen too is of the view that the ownership merges in the gift but the right of the other person arises only after he accepts the gift.

According to **Mitakshara**, gift can either be oral or written because under Hindu law it is not essential for the gift to be in writing. For the validity of the Gift the acceptance by the other party is an essential element and the taking of possession is a mode of accepting the gift, however this kind of gift can be by registered deed also. Under the Transfer of Property Act vide its Section 122 the term 'gift' has been defined. According to it, gift is a voluntary transfer of an immovable property by its owner without consideration.

"In it the donee himself or by some person on his behalf accepts the gift and thereby the gift is complete. Such an acceptance should be given during the litetime of donee till he is capable of giving the consent."

Under Hindu law the followings are the elements of gift-

(1) Donor,
(2) Donee,
(3) Property of gift,
4) Acceptance,
5) Formalities.

Donor-The person who makes a gift in the property is referred to as donor. He should be of sound mind and major. He should possess the right to make the gift i.e., he must have absolute ownership over the subject matter of gift.

Donee.-The person who receives the gift is referred to as donee. The gift is completed by the acceptance of the donee. He must be in existence. He can even be an incapacitated person, however in that case some one else should accept the gift on his behalf.

Subject matter of gift.-Following properties can be validly and legally gifted to a person-

(1) Separate or self acquired property, whether governed by Mitakshara or Dayabhag.
(2) Stridhan.
(3) Impartible estate if not prohibited by custom.
(4) Coparcenary interest under Dayabhag.
(5) Whole of the ancestral property by the father in Dayabhag.
(6) Any part of the property received by a Hindu widow in inheritance, which can be given by her to her daughter or son-in-law at the time of marriage.
(7) Movable properties inherited by a widow under Mayukhavidhi

Acceptance.-There is difference of opinion between Dayabhag and Mitakshara with respect to the necessity of acceptance for a gift. Under Mitakshara law the acceptance is must for the completions of a gift whereas it is not so under Dayabhag.

Formalities.-Possession of the property was treated necessary to be transferred to the donee. With respect to movable properties, the transfer of possession to the donee was sufficient. But for immovable, Vijnaneshwara has dealt with some special formalities for

a valid gift. He has emphasised the need of consent of villagers, relatives, neighbours and heirs and gold and water for the gift of property (land). In this way the consent of the persons of these categories was necessary from several angles. If any person of the above category raised any objection to the gift he could get it decided in a court of law in his favour.

When gift is complete.-Under Hindu law, thus the gift is completed only after the transfer of possession of the property.

Main Differences Between Will and Gift

1. A will is active only after the death of a person who is responsible for the duration of the will, whereas the gift is in action, while the person who initiated the deal is alive.
2. Registration and stamp duty are not required for the will. For a gift deed, stamp duty is of 2 percent is a charge for movable properties, and 3-5 percent stamp duty of market value of stamp duty is chargeable.
3. The presence of executor and witness is essential when drafting a will. Whereas, while writing a gift witness and registrar is necessary.
4. The gift deed is an impulsive action, mostly done without any consideration. The acceptance by the person to whom the gift is gifted is vital. In a will, the beneficiary can contest and claim the terms in a court of law. The decision of what goes into the will depends solely on the testator.
5. A gift deed made to the relatives is exempted from the income tax act. Will need to be registered. Hence the income tax act is not applicable.

Q-3 What is Meant by Pious obligation of the sons to discharge father's debts? is the son bound to pay all types of debts? Explain-

RELIGIOUS OBLIGATIONN

Meaning of Pious Obligation

'Pious obligation' means the moral liability of sons to pay off or discharge their father's non-avyavaharik debts. The debts borrowed may not be of legal necessity or for benefit of estate. Thus, if the father is the Karta of a Hindu joint family, he may alienate the coparcenary property for discharging the antecedent debts. The sons are under the obligation to recover such alienated property by repaying the debts.

The ancient doctrine of pious obligation was governed by Smriti law. There is a pious obligation on the sons and grandsons to pay the debts contracted by the father and grandfather. According to Privy Council this obligation extends To great grandsons also because all the male descendants upto three generations constitute coparcenary and every coparcener is under a religious obligation to pay the debt contracted by their ancestor, provided such debt was not taken for an immoral or unlawful purpose.

The concept of pious obligation has its origin in Dharmashastras, according to which non-payment of debt is a sin which results in unbearable sufferings in the next world. Hence the debts must be paid off in all circumstances provided it was not for immoral and illegal purposes. Vrihaspati has said, "if the father is no longer alive the debt must be paid by his sons. The father's debt must be paid first of al, and after that a man's own debts, but a debt contracted by the paternal grandfather must always be paid before these two events. The father's debts on being proved, must be paid by the sons as if their own, the grandfatiher's debt must be paid by his son's son without interest, but the son of a grandson need pay it at all. Sons shall not be made to pay (a debt incurred by their father) for spirituous liquor, for idle gift, for promises made under influence of love or wrath, or for suretyship, nor the balance ot a fine or toll liquidated in part by their father. Yajyavalkya says, "A son has not to pay in this world father's debt incurred for spirituous liquor, for gratification of lust or gambling, nor a fine, nor what remains unpaid of a toll; nor idle gifts. But in case of debts for purposes other than the above, on the death of the father, or on his going abroad, or suffering from some incurable disease, the debt contracted by him would be payable by his sons and grandsons. The Mitakshara has

presented the entire proposition in stronger words. According to it when the father has gone abroad or is suffering from some incurable disease the liability to pay the debt contracted by him would lie on the sons and grandsons irrespective of the fact that the father had no property. There are reasons for fixing this liability on sons and grandsons. The liability to pay the debt is in the order, viz., in absence of father the son and in absence of son the grandson.

It is worth noting that the doctrine of pious obligation does not extend the liability to females notwithstanding she has been given a share in the joint family property on partition. Where the wife gets a share on partition between husband, sons and herself, still she would not be under any obligations to pay the debt of the ancestor (father).

Effect of judicial decisions on the doctrine.-The doctrine as formulated by the original texts has been modified in some respects by judicial decisions. Under the present law there is no personal liability on the sons to pay the debt irrespective of the fact that he has received some assets from the father. It is liability confined to the assets received by him in his share of the joint family property or to his interest in the same. The obligation exists whether the son is major or minor, whether the father is alive or dead. If the debts have been contracted by the father and they are not immoral or irreligious, the interests of the sons in the coparcenary property can always be made liable for such debts. The Allahabad High Court reaffirmed the same rule in Nan **Bachchan v. Sitaram**, and held that the doctrine of pious obligations binds the interests of the sons in the joint family property only when the debts have not been contracted for immoral or illegal purposes. The creditor can legally get attached the claims, rights and interests of the sons in joint family property and execute the sale thereof.

Duration of Liability-The pious obligation of the sons to pay the father's debts subsists only so long as the liability of the father subsists. Their liability is neither joint nor several. It arises even in father's lifetime and not merely on his death.

Son's liability to pay the Debt.-The liability of the son to pay the debts of his father is not personal, it is limited only to the son's intercst in the coparcenary property.

The liability of Hindu sons in a Mitakshara coparcenary to discharge the debts of the father, the Karta, which are not tainted with immorality is based on the pious

obligation of the sons wlhich continues to exist even after the death of the father and which does not come to an end as a result of partition of joint family property unless a provision has been made for the payment of just debts of the father. Therefore, even though, the father's power to discharge his debt by selling the share of his sons in the property may no longer exist as a result of partition, the right of the judgment-creditor, who has obtained a decree against the father, to seize the erstwhile coparcenary property remains unaffected and undiminished because of the pious obligations of the sons.

Privy Council on son's liability,- Their Lordships of the Privy Council have laid down the following five propositions in respect of father's power to contract the debts and the son's liability to pay it:-

1. The managing member of a joint undivided estate cannot alienate or burden the estate qua manager except for purposes of necessity, but,
2. If he is the father and other members are sons, he may by incurring debt so long as it is not for an immoral purpose lay the estate open to be taken in execution of a decree for payment of that debt.
3. If he purports to burden the estate by mortgage then unless that mortgage is to discharge antecedent, it would not bind the estate.
4. Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached.
5. There is no rule that this result is affected by the question whether father, who contracted the debt or burdened the estate, is alive or dead.

The Supreme Court has decided two important cases, namely, **Sideheshroar Mukerjee v. Bhuwaneshwar Prasad'** and **Pannalal. Mst. Narayani,** on the doctrin of pious obligation of the sons to pay the father's debt. The Court held that under Mitakshara Law the son's obligation to pay the debt is not personal which can be said to be separate from the property received from the father. In fact the liability is confined to the extent of the share, he has inherited from him. The liability is on the sons in every condition whether he is major or minor, whether the father is alive or dead. The only condition is that the debt should not have been contracted for immoral purposes.

2 Moral obligation-It is also a moral duty of the sons to pay the debt of the father as they inherit the property from him. One, who inherits the estate of another, must pay such

other's debt. A Hindu heir is, therefore, liable to pay the debts of the deceased out of the asscts, he has inherited from the deceased.

3. Legal obligation.-Besides religious and moral duties, there is also a legal obligation to pay back the debt secured by the father. With respect to a money debt of the father, sons may be bound by proper proceedings taken in a Court of law by a creditor against the father, although the sons are not made parties to the suit. The whole family property is liable for debts, incurred for the benefit of the family, by the father as manager. Reasonable interest on such debt is also payable by the family.

Definition.-A debt ordinarily means the liability to pay a liquidated or ascertained sum of money as distinguished from the liability to pay
unliquidated damages for breach of contract for tort. A decree against a person for damages for breach of contract or for tort is also a 'debt' due by him. A debt is composed of two elements: (a) the legal obligation or liability to pay; and (b) the quantum of that liability, fixed in term of money. Payment of a sum money or the passing of value to a person does not create a debt due by him unless a liability to repay in terms of money is also imposed on him; and a liability to pay does not become a debt unless ascertained in terms of money. A debt may arise from contract. The liability to pay such a debt cannot rest upon a person not party to the contract. Where a debt is a decretal debt, as in the case of decree for damages for breach Of contract or for tort, the liability to pay it rests on the judgment-debtor alone.

A-Mitakshara law

A debt may be contracted by a Hindu male for his private purposes or for purposes of joint family Debts contracted for joint family purposes and the liability of Karta to pay the debt including the liability of joint family property have been discussed in the chapter on joint family and coparcenary. The present chapter deals with debts contracted for private purposes under the Mitakshara law A Hindu male is under a pious obligation to pay the private debts of his father, grand father and great grand father, provided the debts are not of an immoral character. This is a special liability attached to sons, grandsons and great grand sons but the liability is not personal, i.e., their separate property is not liable to pay the personal debts of the three immediate ancestors. On the other hand their liability is confined to their undivided interest in their joint tamily property

Nature of liability-There is a deep moral sense behind the concept of payment of debts under Hindu law. It has been considered mandatory for the salvation of was regarded as a sin, the consequences of which follow the debtor after his death. According to a text of Katyayana, "He who having received a sum lent or the like does not repay it to the owner, will be born hereafter in the creditor's house a slave, a servant, a woman or a quadruple.

according to Myne the liability of a Hindu to pay debts contracted by his ancestors come out from three considerations:-

(1) Religious;
(2) Moral;
(3) Legal;.