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# Anomalies in Class I & II Heirs of Hindu Succession Act, 1956: An Analysis

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## ABSTRACT

*There are various types of properties under the Indian law. The most common known properties are Ancestral property and Self acquired property. What constitutes an ancestral property has not been clearly defined by the Hindu Succession Act of 1956 or any other legislations. However, the Supreme Court has ruled in a number of its rulings that a Hindu male's inherited property from his father, paternal grandfather, or paternal grandfather's father constitutes ancestral property. In a similar vein, self-acquired property refers to a person who purchases a home using their own earnings. Self-acquired property is any property a person purchasing with his own money. The property becomes his/her absolute property and he/she can sell it whenever they want. The Court noted that in order to identify the property as self-owned, documentation in the form of a sale deed and evidence of payment of the sale consideration must be presented. This being the position, I have analysed in this paper who are all coming as legal heirs in class I and II after the death of an Hindu male under section 8. In the class I heirs and Class II heirs certain heirs have been repeated and omitted. I have discussed in this article about it*

**Keywords:** Succession, Intestate, Male Hindu, Repetition, Omission.

## I. INTRODUCTION

The self acquired property of a person can be disposed according to their wish in their life time. Not only the property purchased by his own funds come under the head self acquired but also the below list of sources. They are:

(a) Even though if the property is not acquired from any paternal ancestor but from some other individual, then it comes under self acquired category.

(b) If the property is acquired by Hindu as it is divided during the partition of a joint family when there is no other heir for inheritance, it also comes under self acquired category.

If there arose any dispute between the legal heirs of a Hindu male, he can rectify it by disposing the property to the heir by way of Testamentary Will, who looked him during his old age and maintaining him. The property shall be distributed in accordance with the provisions of the will,

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not the law of inheritance, when a person makes a will establishing his willingness of to whom the property will go after his death. The will ought to be valid and enforceable by law as per Act<sup>2</sup>. This is called Testamentary Succession. Let's say a person dies without leaving a will specifying how his property will be divided upon his death. In such a case, the property will be divided according to inheritance law. The term for this is Intestate succession.

The legal principle of asset distribution is connected to the law of succession. The Law connecting with intestate succession among Hindus is classified under Hindu Succession Act, 1956. The Act establishes a comprehensive and uniform succession plan, and efforts have been made to ensure that all legal heirs have equal inheritance rights. It is applicable to all Hindus, including Sikhs, Buddhists, and Jains. So it is necessary to understand the list of legal heirs promulgated under the Hindu succession Act.

## II. REVIEW OF MALE HINDU SUCCESSION HEIRS

A perusal of *Section 8 of the Hindu Succession Act, 1956*, shows the self acquired property will devolve upon:

Primarily, with regard to the heirs, who are the relatives listed in Schedule class I;

Succeeding, if there is no class I heir, then the relatives listed in class II of the Schedule are the heirs;

Next, if neither of the two classes has any heirs, then the agnates of the deceased; also,

Lastly, on the off chance that there is no agnate, upon the cognates of the dead male hindu.

In the Schedule of the act<sup>3</sup>, the Class I heirs are “Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son; [son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son]<sup>4</sup>”.

Class II heirs are “I. Father. II. (1) Son’s daughter’s son, (2) son’s daughter’s daughter, (3) brother, (4) sister. III.(1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s daughter’s son, (4) daughter’s daughter’s daughter. IV (1) Brother’s son, (2) sister’s son, (3)

<sup>2</sup> Indian Succession Act 1925.

<sup>3</sup> Hindu Succession Act, 1956

<sup>4</sup> Additional 4 heirs amended and included in 2005.

brother's daughter, (4) sister's daughter. V. Father's father; father's mother. VI. Father's widow; brother's widow. VII. Father's brother; father's sister. VIII. Mother's father; mother's mother. IX. Mother's brother; mother's sister".

Next in sections 9 and 10<sup>5</sup> the rules to be followed among class I are mentioned. It is mentioned that the intestate's widow, or if there are more widows than one, all the widows together, shall take one share. Next the surviving sons and daughters and the mother of the intestate shall each take one share. Then the heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share. Similarly (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion; (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

Section 11 says that the property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally. Those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

### **III. ANOMALIES IN CLASS & CLASS II HEIRS**

Mere Repetition in Class-I and Class-II Heirs<sup>6</sup> :

The following 4 heirs were added in class I in 2005 amendment:

- i. Son of a predeceased daughter of a predeceased daughter, which is already in Class II, 2<sup>nd</sup> entry (i.e.) daughter's daughter's son.
- ii. Daughter of a predeceased daughter of a predeceased daughter, which is already in Class II, 3<sup>rd</sup> entry (i.e.) daughter's daughter's daughter.
- iii. Daughter of a predeceased son of a predeceased daughter, which is already in Class II, 3<sup>rd</sup> entry (i.e.) daughter's son's daughter
- iv. Daughter of a predeceased daughter of a predeceased son, which is already in Class II, 3<sup>rd</sup> entry (i.e.) son's daughter's daughter are now included in the list of legal heirs in Class-I of the schedule provided by the aforementioned Act as amended in 2005. The four new heirs presently included in Class I are as of now in Class II preceding the change and however they have been raised to Class I, they have not been yet deleted from Class II.

<sup>5</sup> Hindu Succession Act, 1956

<sup>6</sup> Section 8 schedule of Hindu Succession Act 1956.

But the aforementioned relationships had to be omitted from their entries prior to 2005, namely under second and third entries under Class-II beneficiaries.

However in Class-II though by non utilization of the word "pre-deceased" it is mentioned but really meaning wise, the two relations are same and will possibly come into picture if their legitimate ascendants come into share picture after their death of their predecessors. Therefore the relations included in Class-II of the schedule, which are already covered in Class-I, by amendment need to be removed and confusion to be clarified.

In the 2005 amendment "son of predeceased son of a predeceased daughter" as well as "son of a predeceased daughter of a predeceased son" of the intestate are not included under Class-I heirs. Two of the male descendants in the daughter's line are not listed as Class I heirs while their female counterparts are so listed. There is no basis or justification for this omission.

Under the 2005 amendment<sup>7</sup>, Daughter of a predeceased daughter of a predeceased son, who is Entry 2 in Class II, has been elevated to the status of a Class I heir. But son's daughter's son i.e. son of a predeceased daughter of a predeceased son, even though they are both in the same degree of relationship to the intestate, not shifted to Class I heir.

Similarly Daughter's son's daughter, who was previously in Class II, has been moved up to Class I as the daughter of a predeceased son of a predeceased daughter. But daughter's son's son (i.e.) son of a predeceased son of a predeceased daughter is remaining in Class II and not shifted to Class-I.

They are also derivatives through daughter and granddaughter of the intestate. So they also have the eligibility to be as Class I heirs as others have been included in 2005 amendment.

This omission brings an inequality among derivatives of sons and daughters of the male hindu. This has to be corrected and added as beneficiaries.

#### **IV. CONCLUSION**

I suggest that the four descendants listed as Class I heirs are also listed as Class II heirs, as previously stated and son's daughter's son as well as daughter's son's son may also be added in Class-I as 17<sup>th</sup> and 18<sup>th</sup> heir and removed from class II heirs as aforesaid.

The turmoil brought about by this reiteration requires remedy. To restore clarity and avoid unnecessary litigation, the repetition must be eliminated because it is glaringly obvious.

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<sup>7</sup> Hindu Succession act, 1956