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# Evolution and Impact of Hindu Succession Act 1956 in Shaping the Hindu Law of Inheritance in India

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## ABSTRACT

*Hindu succession law, primarily governed by the Hindu Succession Act of 1956, outlines the legal framework for inheritance among Hindus in India. This legislation, applicable to Hindus, Buddhists, Jains, and Sikhs, encompasses both intestate (without a will) and testamentary (with a will) succession. A significant milestone in this domain was the Hindu Succession (Amendment) Act, 2005, which aimed to rectify gender biases by granting equal inheritance rights to daughters, thus transforming the traditional coparcenary system. Key aspects of Hindu succession law include the classification of heirs, the rights of women and children, the concept of coparcenary property, and the disqualification criteria for heirs. Despite legislative advancements, the practical realization of these laws faces challenges due to persistent socio-cultural norms and lack of awareness. This study explores the intricacies of Hindu succession law, highlighting its evolution, current legal provisions, and the ongoing challenges in achieving equitable property distribution. The analysis underscores the role of judicial interpretations in shaping the law and the need for continued reforms to ensure justice and equality in inheritance matters among Hindus.*

**Keywords:** *Inheritance, survivorship and property rights.*

## I. INTRODUCTION

Every person has the right to receive equal treatment in all facets of life. But women are viewed as inferior to men in our culture, and they are forced to feel this, especially when it comes to their property rights. Hindu women's property rights are disregarded by India's patriarchal society, which also views them as less valuable in social and professional spheres. Hindu women's property rights faced numerous restrictions in the past. However, with various legal enactments both before and after India gained independence, efforts have been made to ameliorate the status of Hindu women with relation to their rights to succession and inheritance.<sup>3</sup>

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<sup>3</sup> Hindu Succession Act: Property Rights of Women in India, <https://cleartax.in/s/hindu-succession-act> (Last Visited On May 19, 2024)

It is highlighted that Manu, the first lawgiver, ruled that a woman "must be dependent upon her father in childhood, upon her husband in youth, and upon her sons in old age" in order to bolster this theory. She must never be allowed to be free. Throughout history, she has been viewed as a lesser being in comparison to men. Not only does this lower status of women exist in their homes and in society, but it also affects their rights and advantages. According to our Constitution, women who are citizens of India will be treated equally with males in all spheres of life.

## **II. ANCIENT SCHOOL OF HINDU LAW GUIDING THE LAW OF INHERITANCE**

The Hindu population in India follows two distinct systems of inheritance: the Mitakshara system and the Dayabhag system. All of India is under the Mitakshara system, with the exception of Bengal and the areas that surround it, which are under the Dayabhag system.

The foundation of both systems is found in the text of Manu, which states that "the inheritance belongs to the nearest Sapinda, after them, the Sakulyas, the preceptor of the Vedas, or a pupil." The Mitakshara system regards the rule of consanguinity as its guiding concept, but the Dayabhag school regards the doctrine of religious efficacy as its ruling premise of inheritance. This is where the two systems diverge. The primary distinction between the two schools stemmed from their disparate approaches to interpreting the term "sapinda."

The law of consanguinity, or the proximity of blood relationship, formed the basis for deciding the line of succession. To Mitakshara, this meant the person closest in blood. The notion of propinquity, with the crucial qualification that no cognate can succeed above an agnate unless it is a daughter's son, is what distinguishes Mitakshara's law of succession. The Virmitrodaya system formulates and uses the rule of religious or spiritual efficacy as the basis of succession, but this system does not mention it. Instead, it finds a place for the great grandson among the deceased's direct male descendants, on whom the property devolves before the widow and the rest can claim succession.

The Manu scripture mentioned above is interpreted differently in the Dayabhag system. As per the author of Dayabhag, a person who possesses the ability to offer an oblation to men is known as sapinda. Consequently, the concept of religious or spiritual gain has emerged to establish the line of succession. Therefore, in Mitakshara's view, the preferential right to inherit is established by a family's relationship or by the community of physical particles, whereas in Dayabhag's view, it is established by an individual's ability to carry out burial rites. In the case

of *Katuma Nachiar v. Raja of Shivaganga*<sup>4</sup>, the Privy Council noted that when a man passed away as an intact member of a joint family without leaving male issue, the Mitakshara's rule of inheritance ought to, in theory, be applied to his separate property as well. Because of this, the law of succession in the Mitakshara areas followed the characteristics of the property: in cases where the property was coparcenary, it adhered to the guidelines established by the law of partition, and in cases where it was separate property, it did so in accordance with the tightly defined guidelines of the law of inheritance. There might be two paths of property devolution for a male Hindu ruled by the Mitakshara, as there was no unification of succession in this situation.<sup>5</sup>

Under the Mitakshara School of law, two modes of devolution of property are recognised as:

- a. Devolution by survivorship,
- b. Devolution by Succession.

Former is applicable in relation to the joint family property or coparcenary property however, later one is applicable in relation to property self-acquired by the last owner.

Under the Dayabhag School, following principle for the succession is being followed as:

- a. Rule of religious benefit i.e. capacity to confer religious benefit,
- b. Single mode of succession i.e. devolution of the deceased male Hindu property by succession.

In Dayabhag school, the basis of determining the order of heirs is capacity to confer religious or spiritual benefits on the paternal and maternal ancestors.

### **III. POST-INDEPENDENCE REFORMS IN SUCCESSION LAWS**

On June 17, 1956, the Hindu Succession Act was enacted. It completely and drastically alters Hindus' intestate succession law. It was perfectly in line with the altered socioeconomic landscape of Hindu society. The much-needed legislation that improved the lot of Hindu women was finally passed, completely recognizing their right to inherit on an equal footing with men. There has been a strong effort to implement various changes to the inheritance and succession system that will have broad effects.<sup>6</sup>

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<sup>4</sup> (1864) 9 MIA 539.

<sup>5</sup> Women's Property Rights Under Traditional Hindu Law and the Hindu Succession Act, 1956: A Few Observations, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4407565](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4407565) (Last Visited on May 12, 2024)

<sup>6</sup> Evolution of Hindu Women right to property, <https://blog.ipleaders.in/evolution-of-hindu-womens-right-to-property/> (Last Visited on May 19, 2024)

This Act establishes a uniform inheritance system that applies to everyone who is either within the jurisdiction of Dayabhag School or Mitakshara School, as well as those who live in the southern region of India.

***(A) Devolution of Interest in Coparcener Property before Hindu Succession (Amendment) Act 2005.***

An interest in the Mitakshara coparcenary property or his own unique, self-acquired property may comprise a male Hindu's property, or both. Section 6 of the Hindu Succession Act, 1956 offers an answer in cases where the question concerns the manner in which a Mitakshara Coparcener's coparcenary interest may be devolved. Prior to the Amendment Section 6 was as mentioned below:

*“Whenever a male Hindu dies after the commencement of this Act, having at the time of his death, an interest in the Mitakshara Coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act :*

*Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative, specified in that class who claims, through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.*

***Explanation 1.***-For the purposes of this Section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

***Explanation 2.***-Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein. This section may be read with Sections 8 and 30 of the Act.”

One of this Act's most innovative modifications is contained in this Section. It first establishes a rule of survivorship that will be applied to an undivided portion of a Mitakshara coparcener's property in the event of an intestate death. In the second case, it offers a unique rule about the undivided portion of a Mitakshara coparcenary property owner who passes away intestate. In the second instance, the devolution will follow the provisions of this Act, which state that the rule of survivorship will not apply in cases where a Mitakshara coparcener passes away intestate, leaving behind a female heir of class I or a male heir claiming through such female

heir, and that the undivided interest will instead devolve in accordance with this Act i.e. according to intestate succession under section 8.

Thus, two modes of devolution of undivided coparcenary interest of a Mitakshara coparcener has been laid down in Section 6.

- i. Rule of Survivorship as dealt in First Part of Section 6.
- ii. Rule of Succession as dealt in proviso of section 6.

The first part of the section makes it clear that in case a Mitakshara coparcener dies intestate leaving behind only male heirs of class I of the Schedule and there is no female heir mentioned in that list of Class I, the rule of survivorship shall come into operation with respect to undivided share of the deceased coparcener in the Coparcenary Property. In the case of *Kenchegowda v. K.B. Krishnappa*<sup>7</sup>, the Hon'ble Apex Court held that an illegitimate son who is admitted to be a legitimate son by a virtue of section 16(1) and (2) of Hindu Marriage Act will have a right only in the properties of the Parents and none else.

The proviso to the section confers new rights upon the specified female heirs mentioned in class I of the Schedule and superimposes upon the entire structure of Mitakshara law of survivorship a rule whereby female heirs would replace such coparceners who have not found place in class I of the Schedule. Thus, for practical purposes, the rule of survivorship has become redundant.<sup>8</sup>

***(B) Devolution of Interest in coparcenary property under section 6 after the Amendment Act of 2005.***

The notion of Mitakshara Hindu coparcenary has been greatly impacted by the Hindu Succession (Amendment) Act, 2005, which was enacted by the Rajya Sabha on August 16, 2005, and the Lok Sabha on August 29, 2005. The President of India subsequently signed the act on September 5, 2005. Because the daughter is now treated like a son under the Hindu Succession (Amendment) Act of 2005, the idea of Mitakshara coparcenary has completely been destroyed. From birth, she acquires the right to a portion of coparcenary. She shares the same fate as the son in that she is born into coparcener status. Not only does she have the same coparcenary rights as a son, but she also has all of the rights that a son has in the coparcenary, and she is also subject to the same obligations as a son. The main accomplishment is that all women, particularly married daughters, are now co-owners of joint family property.

The 2005 Act does not touch separate property (except broadening the Class I heirs). But it

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<sup>7</sup> AIR 2017 SC 494.

<sup>8</sup> Supra Note 5.

includes daughters as coparceners in the Mitakshara joint family, property, with the same rights as sons to shares, to claim partition and (by presumption) to become Karta (Manager), while also sharing the liabilities.

Furthermore, the Act creates greater parity between the heirs of deceased boys and girls by designating as Class I heirs two generations of the offspring of deceased daughters, as was previously the case for males. For women, the most important change is that all daughters, married or not, now coparceners in joint family property. This has major symbolic and economic implications. It can improve women's security economically by granting them birthrights to property that cannot be taken by force. In a male-based society where wills often disinherit women, this is a substantial gain. Also, as noted, women can become Kartas of the property. Symbolically, all this signals that daughters and sons are equally important members of the parental family. It undermines the notion that after marriage the daughter belongs only to her husband's family. If her marriage breaks down, she can return to her birth home by right, and not on the sufferance of relatives. This will enhance her self-confidence and social worth and give her greater bargaining power for herself and her children, in both parental and marital families.

The removal of Section 23 of the Hindu Succession Act, 1956 would also benefit married daughters under the 2005 Amendment Act, as it grants them the right to remain and divide their inheritance in the parents living house. Women who are victims of domestic abuse in particular will have somewhere to go. The main drawback is that enabling division can make aging parents more vulnerable. If the family had only one home, the preferable course of action would have been to prevent both sons and daughters from requesting partition during the lifetimes of their parents.

#### **IV. HINDU WOMAN'S RIGHT TO PROPERTY**

The removal of Section 23 of the Hindu Succession Act, 1956 would also benefit married daughters under the 2005 Amendment Act, as it grants them the right to remain and divide their inheritance in the parents living house. Women who are victims of domestic abuse in particular will have somewhere to go. The main drawback is that enabling division can make aging parents more vulnerable. If the family had only one home, the preferable course of action would have been to prevent both sons and daughters from requesting partition during the lifetimes of their parents.<sup>9</sup>

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<sup>9</sup> Women's Property Rights-Hindu Succession Act, <https://articles.manupatra.com/article-details/Women-s-Property-Rights-Hindu-Succession-Act> (Last visited on May 16, 2024)

The property owned by a female Hindu has been given the broadest feasible scope by sub-section (1) of Section 14 and the Explanation. It states that she will be the entire owner of all such property and has superseded the previous Stridhan statute. It also does away with the customary restrictions on a Hindu woman's ability to possess and inherit property. It essentially nullifies the harsh legal rules that had long since denied her the opportunity to own property and served as a catalyst for her ongoing tutelage. The section has recognised her status as independent and absolute owner of the property, which she possessed on the date of the commencement of the Act. A qualification to the rule is laid down in sub-section (2) but it does not relate to the incidents of woman's property.

This section is retroactive in that it expands a Hindu woman's restricted estate into an absolute estate, including property that she may have inherited or possessed at the time the Act went into effect. All that is needed is for her to be "possessed" of the property on the day the Act starts. In cases where a Hindu woman who is female inherits property that was completely alienated before the Act's implementation.

In the Case of *Koppurawami v. Veeravva*<sup>10</sup>, the Hon'ble Apex held that "the opening words of Section 14, i.e., property possessed by a female Hindu, obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession when the Act came into force.

## V. JUDICIAL PRONOUNCEMENTS QUA INHERITANCE LAWS

In the case of *Mokundero v. Kartar Singh*<sup>11</sup>, the Apex Court held that where any property is held by a female Hindu as a limited owner and becomes its absolute owner after the commencement of the Hindu Succession Act, 1956, Sections 15 and 16 would apply with respect to devolution of such property. In case she dies intestate leaving behind her the daughter of the predeceased son and the husband's sister, then under the scheme of Sections 15 and 16, her son's daughter will be the only heir entitled to inherit her property not the sister of the husband, because the former comes within the category of heirs specified in Section 15(1)(a) and will exclude all other heirs specified in subsequent categories.

In case of *Kothi Satyanarayan v. Galla Seethayya*<sup>12</sup>, the Apex court observed that certain property was given to the widow of the brother for life interest with a condition that the property

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<sup>10</sup> AIR 1959 SC 34.

<sup>11</sup> AIR 1991 SC 257.

<sup>12</sup> AIR 1987 SC 353.



will revert back to the heirs of the giver, it was held that such property will not be regarded as her absolute estate under Section 14(1) but on the other hand it would remain as a restricted estate in the hands of the widow. Whereafter the partition was effected among the brothers, the mother was granted the right to residence in the house of one of the brothers till she was alive, while this right was not related to her right to maintenance, it was held that Section 14(1) will not be attracted in that case.

In *Bhagwat Prasad Bhagat & Ors. v. Sanker Bhagat & Ors.*<sup>13</sup>, the Court held that in case of self-acquired property of male Hindu dying intestate, the inheritance after his death cannot legally be governed by Section 6 of Hindu Succession Act or its explanation. That would be governed only by rule of succession as provided under Section 8 of Hindu Succession Act, so that the widow, sons and daughters would inherit property in equal shares. In the case of *Sachin v. Jhabbu Lal & ors.*<sup>14</sup>, the court has held that, if the father's property is a self-acquired house, the son whether married or unmarried has no legal right to live in that house. He can live in that house only at the mercy of his father and upto the time the father allows. If the parents have allowed him to live in the house it does not mean that the parents have to bear his burden throughout his lifetime.

## VI. CONCLUSION

The examination of inheritance laws in India highlights the need for ongoing legal modifications and societal shifts to guarantee fair property distribution. Even though there has been a lot of progress, especially in the area of women's rights, it is still imperative that these laws be implemented effectively. India's laws pertaining to inheritance are a reflection of the nation's heterogeneous society, in which various religious sects are subject to separate legal frameworks. While this diversity guarantees the preservation of cultural and religious traditions, it also presents difficulties for the coherence and uniformity of the law. Gender equality has come a long way, especially after the Hindu Succession (Amendment) Act of 2005 gave daughters in Hindu families equal inheritance rights.<sup>15</sup>

Notwithstanding the progress made in legislation, issues including ignorance, financial limitations, and opposition to change continue to exist. It is particularly difficult for women to assert their inheritance rights because of social constraints and resistance from family members. Through important rulings, the judiciary has significantly contributed to the interpretation and

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<sup>13</sup> AIR 2009 Pat. 2204

<sup>14</sup> AIR 2017 Del. 1

<sup>15</sup> A Guide to Hindu Law of Inheritance, <https://www.ezylegal.in/blogs/know-all-about-hindu-law-of-inheritance> (Last Visited on May 19,2024)

development of inheritance laws. In questions of inheritance, courts have frequently served as catalysts for societal change by upholding the values of fairness and equality.

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