



# Rights Of Female Under Hindu Succession Act 1956: An Overview

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## Abstract

In this research paper the present teacher wish to highlight some of the factors relating to the right of female under the foregoing pages. The Hindu Succession Act 1956 bases its rule of succession the principle of propinquity i.e. preference of heirs on the basis of proximity of relationship under the above Act again there are also testamentary succession which depend on the wishes of testator who made the will and intestate succession who are the heirs and the rules of preference among various relations The law of intestate succession is properly the law of inheritance. Sec.6 also lays down that any property to which a female Hindu becomes entitled by virtue of the above provision shall be held by her with the incidents of coparcenary ownership and shall be regarded as property capable of being disposed of by her by testamentary disposition not withstanding anything contained in the Hindu Succession Act of in any other law for the time being in force.

**Keywords : Coparcener, Instate, Devolution, Women estate, Heir**

## I. Introduction

The framers of the Indian Constitution have guaranteed, as a fundamental right of every person, including women, that state shall not deny to any person equality before the law on the equal protection of the laws within the territory of India. To further emphasise such equality, the state has been prohibited from discrimination against any citizen on grounds only of religion, race, cast, sex place of birth or any of them shall be ineligible for or discriminated. These provisions categorically lay down for the legal equality of all the persons, including women within the territory of India.

Furthermore, the two major personal law system of India the Hindu Law and the Muslim Law while dealing at length with marital rights, including divorce and legal separation, are silent on the property rights of the spouses in the event of divorce. Property earned or acquired by husband belongs to him and properties earned or acquired by wife belongs to her. Since the concept of a common matrimonial property, which could be subject to division in the event of divorce could not be developed as yet, the personal laws have not provided rules for division of such property.

The Hindu Succession Act, 1956 has been passed to meet the needs of a progressive society. A vigorous attempt has been made to bring some reforms of far reaching consequences in the system of inheritance and succession. The Hindu succession (Amendment) Act. 2005 has effected a change of far reaching importance in the concept of Mitakshara coparcenary. By this amending act. daughter of a Mitakshara coparcener has been made a coparcener in the Mitakshara joint family property with the same rights and obligations, which a male coparcener has and she is now entitled to dispose of her interest in the Mitakshara coparcenary property by will. The devolution of interest of a Mitakshara coparcener in the joint Hindu family property has been done away with by this amending Act. Moreover, sections 4(2), 23 and 24 of the Hindu succession Act, 1956 have been omitted by the amending Act. <sup>1</sup>

Under the previous un-codified law, succession to Stridhan (Women's property) Varied according as a woman was married or unmarried, and if married, according to the form of the marriage. It also varied according to the source of the Stridhan. Further, the rules of descent of the different schools also varied. All these distinctions are now abolished. and S.15 of the Act lays down a uniform scheme of succession to the property of a female Hindu who dies intestate after the commencement of the act prior to the passing of the act, according to the Mitakshara law no coparcener could dispose of by will, his undivided coparcenary interest, even if the other coparceners consented to the disposition This rule is now abrogated by the explanation to Sec.30.

Which expressly lays down that such interest is to be deemed to be property capable of being disposed of by a Hindu under a will.<sup>2</sup>

## **II Intestate Succession**

Under Hindu Law the word "intestate" Implies a person who dies without making any testamentary disposition capable of taking effect. It also refers to property which an intestate leaves behind him to pass to his heirs. The chapter deals with both. It also deals with heirs who are entitled to succeed and also the mode of devolution of property.

Their Lordships of the Supreme Court held that by virtue of section 4 of the Act the legislature has abrogated the rule of Hindu law in all matters in respect of which there is an express provision in the Act<sup>3</sup> this view was again confirmed in a subsequent pronouncement by the Supreme Court<sup>4</sup>.

The Act applies to all property of the deceased Hindu except those mentioned in section 5 of the Act. Section 5 runs as follows.

Section 5 - This Act, shall not apply :-

- i) Any property, succession to which is regulated by the Indian succession Act, 1925 (39 of 1925) by reason of the provision contained in section 21 of special marriage Act, 1954 (43 of 1954)
- ii) Any estate which descends to a single heir by the terms of any covenant or agreement entered into by the ruler of any Indian state with the government of Indian or by the terms of any enactment passed before the commencement of this Act.
- iii) The viliamma thampuran kovilagam estate and the palace fund administered by the palace administration board by reason of the powers conferred by proclamation (IX of 1124) dated 29<sup>th</sup> june 1949, promulgated by the maharaja of cochin”

The Orissa high court has held that the Act will apply to agricultural lands also<sup>5</sup>. But the Allahabad high court has taken the view that the provisions of the Act cannot be made applicable to agricultural plots governed by the U.P Zamindari abolition and land reforms Act<sup>6</sup>. The correct view on this point has been given by the supreme court in Bajya V.Gopikabai<sup>7</sup> The apex court held that if the land laws make any special provision for devolution of rights to agriculture lands then the provision of that Act shall prevail but if such land legislation itself provides that personal laws of parties shall apply on devolution of agricultural lands then provisions of the Hindu succession Act must apply<sup>8</sup>.

### **III Succession to Mitakshara Coparceners instate**

Section 6 of the Act has been extensively amended by the Hindu Succession (Amendment) Act, 2005. The 2005 Amendment has deleted the original Section 6 of the Act and substituted a new selection in its place.

### **IV Devolution of interest in Coparcenary Property**

Section 6 of the Act, as it now stand provides that, after the 2005 amendment in a Hindu family governed by the Mitakshara law, the daughter of a coparcener.

- a) Shall, by birth, become a coparcener in her own right in the same manner as a son.
- b) Shall have the same rights in the coparcenary property as she would have had if she had been a son, and
- c) Shall be subject to the same liabilities in respect of such coparcenary property as that of a son. Sec. 6 also clarifies that any reference to a Hindu Mistakshara coparcener would include a reference to a daughter of a coparcener.

It is also provided that what is stated above shall not affect or invalidate any disposition or alienation (including a partition or testamentary disposition) of property which had taken place before 29<sup>th</sup> December, 2004

Sec.6 also lays down that any property to which a female Hindu becomes entitled by virtue of the above provision shall be held by her with the incidents of coparcenary ownership and shall be regarded as property capable of being disposed of by her by testamentary disposition notwithstanding anything contained in the Hindu Succession Act or in any other law for the time being in force.

When a male Hindu dies after the 2005 amendment, his interest in the property of a joint Hindu family governed by Mitakshara law devolves by testamentary or intestate succession, as the case may be, under the Hindu succession act, and not by survivorship. In such cases, the coparcenary partition had taken place, and

- a) the daughter is allotted the same share as is allotted to a son,
- b) the share of a pre-deceased son or a pre-deceased daughter (as they would have got if they had been alive at the time of the partition) is to be allotted to the surviving child of such pre-deceased son or pre-deceased daughter and.
- c) the share of the pre-deceased child of a pre-deceased son or a pre-deceased daughter (as such child would have got had he or she been alive at the time of the partition) is to be allotted to the child of such pre-deceased child of the pre-deceased son or the pre-deceased daughter, as the case may be<sup>9</sup>,

This entire amendment was challenged in *Dr. G. Krishnamurthy V, Union of India*<sup>10</sup>, in the Madras High Court. The High Court while upholding the validity of the Act observed that this amendment was enacted to remove inequality meted out to women.

This section was once very strictly and narrowly interpreted and then very widely interpreted by two decisions of the Bombay High Court<sup>11</sup>. Later the Supreme Court in *Prakash V. Phulavati*<sup>12</sup> has given the following interpretation.

- i) An amendment of a substantive provision is always prospective unless either expressly or by necessary intention it is retrospective.
- ii) Contention that the amendment should be read as retrospective being a piece of social legislation cannot be accepted.
- iii) Rights under the amendment are applicable to living daughters of living coparceners as on 9<sup>th</sup> September 2005 irrespective of when such daughters are born.
- iv) Disposition or alienation including partitions which may have taken place before 29<sup>th</sup> December 2004 as per law applicable prior to the said date will remain unaffected—any transaction of partition affected thereafter will be governed, by the explanation.

Hence, it is now settled that this provision would apply in cases where both father and daughter were alive at the relevant time.

We are retaining the commentary on the old section 6 as it is still relevant for successions which opened before the relevant date and for academic purposes<sup>13</sup>.

## V Rights of Female Hindu

Under the Hindu law, before the commencement of the Act, separate rules existed for the devolution of a women's property prior to the act a female Hindu possessed two kinds of property ; (1) Stridhan (2) Hindu women's estate over Stridhan, she had full ownership and on her death it devolved on her heirs. with regard to the property which she acquired as women's estate her position was that of owner but her power of alienation was limited. on her death, such property devolved not on her own heirs but upon the next heirs of the last full owner but now section 14 of the act abolished the Hindu women's limited estate and confers on the women the absolute ownership over all her property howsoever acquired by her, section 14 of the act runs as follows. Section 14-(1) Any property possessed by a female Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner"

Explanation:- In this sub-section "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not. Before, at or after her marriage or by her own skill or exertion, or by purchase or by prescription or by any other manner whatsoever and also any such property held by her as Stridhan immediately before the commencement of this Act.

2) Nothing contained in sub-section (1) Shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree order of a civil court or under an award where the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

**Effect of section 14 –** Section 14 of the Act contains revolutionary provision in respect, of hindu woman's proprietary rights and is a step towards gender justice, The effect of the rule laid down in this section is to abrogate the stringent provisions against the proprietary rights of a female which are often regarded as evidence of her perpetual tutelage and to recognise her status as independent and absolute owner of property<sup>14</sup>.

Before the enactment of this Act, the Hindu woman's property commonly known as Stridhan was of two kinds ; (i) absolute property and (ii) limited estate she had the absolute right to deal and dispose off the former kind of property but with respect to limited estate, no such rights were available. It was a peculiar kind of property almost unknown in any other system of jurisprudence The present Act has conferred absolute ownership on Hindu females with respect to also that kind of property which was known as her "limited estate" In this way, this section has enlarged the limited estate of Hindu woman into her absolute property. Moreover, the pre-Act

textual and judicially developed law of woman's limited estate, which was very complicated, has now been simplified. It may be noted that the enhancement of woman's limited estate into absolute interest is within the spirit of the constitution of India and is not violative of fundamental right (to equality) guaranteed under articles 14 or 15 (1) of the constitution<sup>15</sup>.

## VI Succession to the property of a Hindu Female

Although Hindu women's limited estate has been abolished and so long as the woman is alive, she has absolute power over all types of property (she is also free to dispose it off by will) yet for the purpose of intestate succession, the source of property is still material.

For the purpose of succession, the property of a Hindu female falls under the following three heads:-

- i. Property inherited by a female from her father or mother.
- ii. Property inherited by a female from her husband or father-in-law, and
- iii. Property obtained by her from any other sources by inheritance or otherwise.

If the Hindu female dies leaving behind her children, the distinction between the source from which she got the property is immaterial.

### Heirs to property under III

Succession to the property of a Hindu female from whatever source, except from father, mother, husband or father-in-law, she might have got it is governed by Sec. 15 (1) and not by Sec. 15 (2). Thus, when a female inherits the property from her brother, inheritance to it is governed by Sec. 15 (1)<sup>16</sup>.

Under the sub-section (1) of Sec 15, heirs of Hindu female are divided into five categories called 'entries' the property goes to the government by escheat. The general rule of preference is that heirs in an earlier entry excluded heirs in later entries.

**Entry (a)** – In entry (a), there are the following heirs (1) Son, (2) daughter, (3) Husband, (4) Son and daughter of a predeceased son and (5) Son and daughter of a predeceased daughter.

**Son and Daughter** – Under this entry, Sons and daughters are used in a wide sense. They include son and daughter by natural birth, legitimate or illegitimate<sup>17</sup> as well as adopted children. Legitimate children may be by one husband or more than one husband children of void and voidable marriages are also included. However, stepchildren<sup>18</sup> are not included in the expression are not included in the expressions son and daughter, though it is possible for a step son or daughter to succeed to her property in entry (b) as an heir of her husband. But stepchildren are not preferential heirs. In the presence of their father who was the husband of deceased female Hindu, they do not succeed<sup>19</sup>.

**Grandchildren** :- The sons and daughters of a predeceased son will include only legitimate children or step children of the son are excluded. Children of a son whose marriage is void whether declared void or not are not included. Similarly, children of a son whose marriage is voidable will not be included if the marriage has been annulled. It is because Sec. 16 (3), Hindu Marriage Act provides that such children can inherit the property of their parents alone. This applies to the children of the predeceased daughter also, with his exception that her illegitimate children will be entitled to inherit, as in Sec. 3(i), Hindu Succession Act, illegitimate children are related to the mother, i.e. they are the children of the mother. Under this entry, sons and daughters of a predeceased son inherit as the representative of their mother or father, as the case may be.

**Husband** :- Husband means the husband who was a lawfully wedded husband of the proposita at the time of her death. Thus a divorced husband is not included. Similarly the husband of a void marriage or of an annulled voidable marriage is also not included.

### Share of heirs in entry (a)

The heirs of entry (a) are simultaneous heirs. They inherit the property of proposita simultaneously. From Sec. 16 Rule I and Rule II, we may deduce the following three rules relating to the distribution of property among the heirs of entry (a)

- (1) Son, daughter and husband, each takes one share.
- (2) Among the heirs of the branches of predeceased son and daughter, the doctrine of representation applies, i.e. the children of predeceased son take the same share which the daughter or son would have taken had she or he been alive.
- (3) Among heirs of a branch, they take per capita.

We may explain the above rule with the aid of the following example. P leaves behind her husband, three sons, S1, S2, S3 and a daughter D. Each will take  $1/5^{\text{th}}$  share in the property.

**Entry (b):-** On the failure of heirs in Entry (a) the property will devolve on the heirs of entry.

Entry (b) runs as under-

“Upon the heir of the husband”

This means that the property will devolve as if it is the property of her husband. In this entry “husband means the last husband of the proposita, i.e. the one who was her lawful husband when she died. Since the property is deemed to be that of her husband the inheritance will be determined by the scheme laid down in the Act relating to succession to the property of a Hindu male<sup>20</sup>. In other words order of succession will be first to class I heirs; on their failure to class II heirs, on their

failure to agnates; on their failure to cognates<sup>21</sup>. On the failure of cognates, property will devolve on the heirs of Entry (C).

**Entry (c) :-** In this entry, there are only two heirs father and mother of the proposita. The expression mother means natural mother as well as adoptive mother. Even if the proposita was an illegitimate daughter of the mother, mother will inherit. Mother does not include a stepmother. Father does not include a putative father or step father, Natural or adoptive father is included.

When the proposita is survived by both father and mother, they inherit simultaneously and between them take proposita per capital.

**Entry (d) :-** Upon the failure of heirs in Entry (c), the property of the intestate female devolves upon the 'the heirs of father'. The devolution of the property under this entry will take place assuming that the property is that of the father. This means heirs will be heirs of a Hindu male.

**Entry (e)-** Upon the failure of heirs in entry (d), the property will devolve upon the heirs of the mother. The devolution of property of the proposita will take place here as if it is the property of the mother. This means heirs of a Hindu female.

### **Property inherited from father or mother**

Under section 15(2) only the inherited property is included. The property which she gets in gift at the time of her marriage from her mother or father is not included. such a property is her Stridhan and succession to it is governed by section 15 (1)<sup>22</sup> similarly, if she has converted the property she inherited from her parent into some other property, succession will not be governed under section 15 (2)<sup>23</sup>.

If a proposita had inherited property from father or mother, the heirs fall in the following two categories :

Category (1)- Sons, daughter, sons and daughter of a predeceased son and sons and daughters of a predeceased daughter.

In this category, it may be noted, husband is not a heir<sup>24</sup>.

The rule of distribution of property among the heirs of this entry are the same as of entry (a) discussed above.

Category (2) Upon heirs of the father<sup>25</sup> on the failure of heirs in category (1) the property devolves upon the heirs of father if as if was property of the father where property was inherited by the deceased female hindu from her mother in the absence of her own children, it would devolve on her sister and not on the brother of her predeceased husband<sup>26</sup>.



## Property inherited from husband or father in law.

In case proposita had inherited properties from her husband or the father in law, her heirs fall in two categories<sup>27</sup>.

Category (1)- Sons, daughters, sons and daughters of predeceased sons and sons and daughters of predeceased daughters.

Category(2) Upon the heirs of the husband on the failure of heirs in category (1) the property devolves upon the heirs of the husband i.e as if was the property of the husband, which means heirs of Hindu male.

### Government: Escheat.

Just as in the case of a Hindu male, in the case of a Hindu female, if she dies leaving no relation; the government takes her property as an heir, subject to all obligations and liabilities of the intestate. It is essential that a female Hindu should not have any heir under both the sub-sections of section 15<sup>28</sup>

## VII CONCLUSION AND SUGGESION

Unfortunately a matrimonial property regime could not develop in India because of reasons more than one, the marital rights in India are governed by diversified personal law systems which for the most part, rest on religion and traditional practices. And, these personal laws still continue to maintain that family is the domain only of the husband, ignoring totally the socio-economic realities of life today. Under the Hindu succession Act, sections 8 to 12 lay down rules relating to the succession of a Hindu dying intestate, sections 15 and 16 of the Act deal with the succession to a Hindu female dying intestate with respect to property of which she has absolute right<sup>29</sup>. Section 15 of the Act provides for general rules of succession and section 16 provides for order of succession and distribution of shares amongst the heirs of the female. Thus, section 15 provides the rules relating to ascertainment of heirs as to who would inherit the property of a female Hindu. Section 15 applies to property of which the female is absolute owner and not to the property which is held by her with restricted rights. Any property which devolved on a female Hindu as limited owner before the commencement of the Act, has now become her absolute ownership under section 14 (1) of the Act, therefore would devolve in accordance with the provision of section 15. After the coming into force of the Hindu Succession Act when a widow succeeds to the property of her husband she becomes absolute owner of the property. Subsequent adoption of a son by her does not convert it into coparcenary property and son does not have any birth right in this property<sup>30</sup>.

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