

Inheritance and Succession

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Hindu Succession Act, 1956

Introduction:

The **Hindu Succession Act 1956** deals with property rights and inheritance. This act gives a broad view of who can be given the property and the rights available for both males and females while acquiring a property.

Section 2 of **Hindu Succession Act 1956** talks about the applicability of this law. This law is applicable to anyone who is a Hindu, Jain, Buddhist, Sikh by religion. Any person who is not a Muslim, Christian, Parsi or Jew by religion unless otherwise proven by law that this particular person does not come under the ambit of this law. This section is not applicable to the Schedule tribes.

Important changes brought by Hindu Succession Act, 1956

The Hindu Succession Act, 1956, brought about many important changes in the Hindu intestate succession of properties apart from introducing a uniform law of succession among Hindus, in the entire territory of India, These important changes can be enumerated as follows:—

(1) Changes in the Hindu joint family:

Firstly, under the pre-existent law in the Hindu joint family, a coparcener could not write in respect of his interest or property in the family. But Section 30 of the Hindu Succession Act enables a coparcener to write a will in respect of his property. Secondly, on the death of coparcener, the principle of survivorship was recognised. So that the property went to other coparceners. The widow or the daughter or daughter's daughter of the pre-deceased coparcener cannot inherit his share in the joint family property. But under section 6 of Hindu Succession Act the widow, daughter etc., can inherit his share and so the principle of

survivorship is indirectly abolished.

(2) Abolition of Sapindas Relationship:

The past sapindas relationship was totally abolished. In that place love and affection theory has come into the existence and as such both males and females could inherit the property of the deceased. It is based on the principles of justice.

The old law discriminated a male and female heir in the case of inheritance. Females were not at all given the right of inheritance and were totally excluded. But a limited right namely; widows estate or limited estate was given to the widows. By that they could neither sell nor gift the property.

After the widows death, the property will not go to her daughter or near relationship but will revert back to the relations of the deceased husband. Now this is totally abolished and females are equally entitled with the males in the inheritance of property.

(3) Removal of Disqualifications:

The pre-existent law disqualified the following persons from inheritance:

(a) Lunatics, (b) Idiots, (c) Unchaste widows. Now such disqualifications are abolished.

(4) Separate Property of Male Propositus:

Under the old law, simultaneous succession of different types of heirs was not recognised, e.g., when son was living the daughter, mother, father, etc., should not inherit. Succession of different types of heirs is partly recognised. Now the class I heirs namely, son, daughter, widow and mother can inherit the properties of deceased simultaneously and in equal proportion.

But in the simultaneous succession it is partly because only class I heirs can simultaneously inherit the property. The class II heirs, Agnates and Cognates cannot inherit when Class I heirs are existing. The old preferential succession is recognised in the succession of classes. Agnates will inherit in the absence of class I and II heirs, etc.

(5) Changes in Illegitimate Sons

Under the pre-existing law, the right of succession of illegitimate son varied from school to school. It also depended on the caste to which the parents belonged. But now illegitimate son is recognised only with reference to mother and not at all connected with father's property.

So the position of illegitimate son is simplified and he cannot claim as heir at all. In the same way, the illegitimate son of the legitimate son cannot claim any right to the grand-father or

grand-mother's property. But the legitimate son of illegitimate son can claim right to the grand-mother's property alone.

(6) Consanguine and Uterine Blood Relations:

The heir-ship under the Succession Act is restricted to blood relations only. But consanguinity was recognised in the old law. A Hindu female could not have two husbands in her life time. So the prior Hindu Law did not recognise uterine blood relationship. But in the present Act, uterine relations are also recognised.

But both must be legitimate or adopted, it should not be illegitimate. Consanguine means one husband having more wives and the relationship of children among themselves is called consanguinity. Uterine relationship means wife having more than one husband and relationship of children among themselves in such a case.

(7) Others changes:

(1) The female heirs except in Bombay took only life estate. Now all females take absolute estate.

(2) In the previous law, the benefit of doctrine of representation was given only to sons, grandsons and great grandsons of the pre-deceased sons. But now this doctrine of representation is extended to daughters, children of pre-deceased daughters, daughters of pre-deceased sons and daughter of a pre-deceased son of a pre-deceased son etc.

(3) The previous degree relationship namely five degrees on the mother's side and seven degrees on the father's side marked the limits of cognatic relationship. But now the above limits are removed for cognates.

(4) In the same way, 14th degree of samonadakas marked the limits of agnate's relationship. Now the limit is completely removed.

(5) The Act has abolished impartible estates except those created by statute.

(6) The Act does not apply to properties of a person who married under the provisions of the Special Marriage Act, 1954.

(7) The Act does not apply to Mitakshara coparcenary property. But when coparcener dies leaving female heirs mentioned in class I of the Act or male relative of the claim claiming through such female relative, the property of the ancestor is subjected to rules of inheritance under the Act and the coparcenership is abolished.

(8) The Act abolished the difference between male and female heirs.

(9) The Act entitles a male Hindu to dispose of heir's interest in Mitakshara coparcenary property by will.

Kinds of Property under Hindu Succession Act 1956

According to **Hindu Succession Act 1956** there are two kinds of property

1. **Ancestral Property**– This kind of property is passed down from by four generations of the male lineage and the property should be undivided during this time.
2. **Self-acquired Property**– These kind of properties are bought by an individual with his own earning and without the assistance of family funds. The property which is acquired through a will is also a self acquired property.

Dipo v. Wassan Singh & Others

A person who has to inherit property from his immediate paternal ancestors up to 3 lines, holds it in coparcenary and to other relations he holds it and is entitled to hold it, as his absolute property. Hence, the property inherited by a person from any other relation becomes his separate property.

The scope of the Hindu Succession Act 1956 covers the division of ancestral property in a Hindu joint family. In a Hindu Joint family there are members and co-parceners.

Members And Co-Parceners

The basic structure of any Hindu joint family comprises of the Karta or the head of the family, his wife, his son, his daughter, daughter-in-law, son-in law, grandson etc. All of them are members of the family but not co-parceners.

In Case of Males

If a male dies intestate, the property would go to-

1. Class I heirs- this class basically consists of the deceased's wife, son, daughter. They would have the very first claim on the property.
2. Class II heirs- in the absence of the class I heirs, the property can be claimed by the class II heirs which consist of the deceased's father, sibling, sibling's children, living children's children.
3. Class III heirs- In the absence of class I and class II heirs the property can pass down to class III heirs which are called as Agnates or the distant blood relatives of the male

lineage

4. Class IV heirs- In the absence of the class I, class II and agnates the property can be claimed by Cognates or the distant blood relative of the female lineage.

5. Son

The expression 'son' can include both a natural born son or adopted son but does not include a stepson or illegitimate child. In Kanagavalli v. Saroja AIR 2002 Mad 73, the appellants were the legal heir of one Natarajan. Natarajan was earlier married to the first respondent, the second respondent was the son and the third respondent was the mother of Natarajan. The first respondent obtained a decree of restitution of conjugal rights but still no reunion occurred between them. The first appellant claimed to have married Natarajan in 1976 and the appellants 2 to 5 were born through them. Natarajan died afterwards. The suit was filed for declaration that the appellants were the legal heirs of the said Natarajan along with respondents 1 to 3, and they were entitled to the amounts due from the Corporation where Natarajan worked. The Court held that a son born of a void or voidable marriage that is declared to be annulled by the Court, will be a legitimate child and would thus inherit the property of his father. A son has absolute interest in the property and his son cannot claim birthright in it. Therefore, 'son' does not include grandson, but does include a posthumous son.

Daughter

The term 'daughter' includes a natural or adopted daughter, but not a stepdaughter or illegitimate daughter. The daughter of a void or voidable marriage annulled by the Court would be a legitimate daughter and thus would be eligible to inherit the father's property. The daughter's marital status, financial position etc is of no consideration. The share of the daughter is equal to that of the son.

Widow

The widow gets a share that is equal to that of the son. If there exists more than one widow, they collectively take one share that is equal to the son's share and divide it equally among themselves. This widow should have been of a valid marriage. In the case of Ramkali v. Mahila Shyamwati AIR 2000 MP 288, it was held that a woman who was in a voidable or void marriage, and that marriage was nullified by the Court on the death of the husband, would not be called his widow and would not have rights to succeed to his property.

If the widow of a predeceased son, widow of a predeceased son of a predeceased son or the widow of a brother has remarried, then she shall not be given the term of 'widow', and will not have the inheritance.

If no one from the Class I heirs takes the property, then Class II heirs fall in line to get the property. In *Kalyan Kumar Bhattacharjee v. Pratibha Chakraborty* AIR 2010 (NOC) 646 (Gau), the property fell into the share of the defendant brother named Ranjit, who was unmarried. However, he became traceless and the property was divided amongst two other brothers in equal shares. The plaintiff's brother called Jagadish then executed a will in favour of both the plaintiff and died afterwards. However, the defendants then asked them to vacate the land, contending that *inter alia* that the land has been purchased in the name of three brothers; namely Jagadish, Ranjit and Kalyan, the defendant number 1. It was held that when a Hindu male is unmarried and he dies, and is not survived by a Class I heir, the Class II heirs would get the property.

Similarly, when heirs in Class III and IV are there, the property would only go to them if no one from the Class II is present.

Class III heirs

This consists of the agnates of the deceased. Class III heirs only inherit the property when none from the earlier classes gets the property.

An agnate is a person who is related to the intestate only through male relatives. An agnate can be a male or a female.

Rules of preference among agnates

- Each generation is referred to as a degree. The first degree is intestate.
- Degrees of ascent mean ancestral or upwards directions.
- Degrees of descent means in the descendants or downwards direction.
- Where an agnate has both ascent and descent degrees, each has to be considered separately.
- An agnate having descent degree will be preferred over the one having ascent degree.

- When two agnates have ascent and descent degrees, the one having lesser number of ascent degrees will be preferred.

Class IV heirs

A cognate (Class IV) is someone who was related to the intestate through mixed relatives, in terms of sex. For example, an intestate's paternal aunt's son is his cognate, but his paternal uncle's daughter will be an agnate. Therefore, to sum up it can be said that the property of the Hindu male devolves in the following manner:

In Case of Females

If a female dies intestate, the property goes to-

1. The very first claim of the property would go to her husband, son, daughter.
2. In case of their absence, the property would go to the heirs of the husband.
3. The property would pass down to the parents of the deceased in absence of the above mentioned claimants.
4. The fourth claimants of the property will be the heirs of the father.
5. The fifth claimant of the property will be the heirs of the mother.

In the case of any property being inherited by a female Hindu by her father or mother and there is no son or daughter of the deceased (including a child of predeceased son or daughter), then it shall devolve in favour of the heirs of the father.

Similarly, in the case of any property being inherited by a female Hindu by her husband or her father in law, and there is no son or daughter of the deceased (including the child of a predeceased son or daughter), it shall devolve in favour of the heirs of the husband.

Cases Which Solved This Confusion

1. The case of *Prakash & others vs Phulavati & others*, which came in 2016, dealt with the above question that whether this law will have a retrospective effect or no. This case was headed by a two judges bench Justice Anil Dave and Justice A K Goel in the Supreme Court and they held that the rights under this amendment would be available to those daughters whose fathers were living on the date of enforcement of this

amendment. This has been declared as a landmark judgement for it held that only living daughters of living co-parceners are entitled to the property.

2. The second case regarding the same question came up in 2018. In the case of *Danamma vs Amar*, the Supreme Court was headed by a two judges bench- Justice AK Sikri and Justice Ashok Bhushan, this time held that the rights under the 2005 amendment would be applicable to the daughter even if the father is not alive on the enforcement date of the amendment, thus making both the daughters and sons equally liable for the property and this right is given to both of them since birth.
3. Even though in 2018, the judgement was passed in favor of daughters having equal rights over the father's property, there were still some confusions and confusions on whether to follow the 2016 judgement or the 2018 one. Finally, in 2020 the case of *Vineeta Sharma vs Rakesh Sharma* put an end to all the speculations surrounding the applicability of this amendment. The earlier cases were headed by a two judge bench but in this case it was headed by a three judge bench and they were Justice Arun Mishra, Justice Abdul Nazeer and Justice M.R Shah. The Supreme Court in this case clearly said that daughters and sons have an equal liability over a property and that this right is given to them since birth and whether the father is alive or dead, it doesn't affect the right of the daughter.

Conclusion

The case of *Vineeta Sharma vs Rakesh Sharma* was declared a landmark case as it finally settled the confusions regarding property rights. The current status of the law is that both the son and daughter have an equal liability and right over the property irrespective of whether the father was alive in 2005 or not and there will be equal division of the property. This amendment was instrumental in bringing a change in society and women's right.