

The amend and
codify the entire law
of



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The law relating to property and its succession required complete overhauling particularly in the context of women's right to property. After passing of Hindu Women's Right to Property Act, 1937 the Government had set up Rau Committee to suggest reforms also on this aspect of law. The Committee after studying the existing rules of Hindu Succession suggested some revolutionary changes in the system in order to remove inequalities and injustices to women folk amongst Hindus and accordingly recommended for the codification of the law relating to Succession. It also suggested for the codification of Hindu law in successive stages. On the basis of the suggestions and recommendations of the Rau Committee several legislations were adopted by the legislature, the most outstanding of which is Hindu Succession Act, 1956, which represent the biggest reformative outlook of modern Indian Society.

Object:

The Hindu Succession Act, 1956 has been passed to meet the needs of a progressive society. The old law despite several innovations brought about in it by stray legislations and judicial decisions did not fulfil the desired ends and remained hardly acceptable to a dynamic Hindu society of contemporary era. Hence there was a need for a uniform system of law of succession which may be acceptable to all sections of Hindus and be equally enforceable upon them. With this end in view the Hindu Succession Act, 1956 came into existence. It removes inequities between men and women with respect to rights in property and it lays down a common list of heirs entitled to succeed on intestacy. The Act has been passed to amend and codify the entire law of succession.

Main features of the Act:

(1) The Act lays down a uniform system of inheritance equally applicable to persons governed by the Mitakshara and Dayabhag schools as also those in the Southern India who are governed by the Marumakkattayam, Aliyasanthana and Nambudri systems of Hindu law. The Act applies to all Hindus and the term Hindu includes Buddhists, Jains and Sikhs.

It has further been extended even to those persons whose parents are Hindu, Buddhist, Jain and Sikh and who are brought up as Hindus (Section 2). The Act does not apply to the property of a person to whom the provisions of the Special Marriage Act, 1954 apply (Section 5). (2) Section 4 of the Act gives overriding effect to the provision of the Act. It abrogates all the rules of the law of succession hitherto applicable to Hindus, whether by way of any text, customs or usage, having force of law. Any other law contained in the Central or State legislation shall cease to have effect in so far as it is inconsistent with any of the provisions contained in the Act. (3) The Act has abolished impartible estate and the special mode of its succession.

(4) The Act has extensively affected the entire concept of Mitakshara coparcenary which was governed by the rule of survivorship. In this scheme female heirs did not have any place and the property devolved only on the male heirs of the coparcenary on the death of a male member under the Act. The rule of survivorship has a limited application. It would apply only in those cases where a male member on his death left coparceners only. In case such male member of a Mitakshara coparcenary dies intestate leaving behind a female heir mentioned in Class I of the Schedule, the property of the deceased would devolve not according to the rule of survivorship but

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according to the provisions of this Act, which provides for a specific share to such female heir.

Order of Succession:

(5) The order of succession provided by the Act is broadly based on the doctrine of propinquity or nearness of blood and accordingly the heirs are divided into four categories instead of three, which are as follows: (i) Heirs in class I of the Schedule (ii) Heirs in class II of the Schedule (iii) Agnates (iv) Cognates The property devolves firstly upon the twelve preferential heirs mentioned in class I of the Schedule to the Act and failing such heirs upon the second, third and fourth class of heirs in that order as laid down in Section 8 and 9. The outstanding feature of the above division is that the heirs in class I of the Schedule inherit the property simultaneously and according to the doctrine of representation in case of predeceased sons or daughter. Another important point to be noted is that class I of the Schedule contained that a list of twelve heirs out of which eight are females and four are males of which one male claims through a female.

All of them inherit in equal shares. All the heirs in class II do not succeed simultaneously but the heirs placed in one Entry would be entitled to inherit simultaneously. In the case of third and fourth categories of heirs, i. e., agnates and cognates, the rules of preference has been adopted in order to determine the priority.

(6) The Act has abolished Hindu women's limited estate and made her absolute owner of the property irrespective of its source of acquisition. Any property acquired by a Hindu female in any lawful manner whatsoever and

possessed by her became her absolute property and she enjoys absolute power to dispose of it in a way she desires. (Section 14 of Hindu Succession Act, 1956). (7) The Act has also provided uniform order of succession with respect to property of female Hindu. On her dying intestate her property shall devolve on her children and husband and thereafter upon her parents and the heirs of parents. In absence of any issues to her, the property inherited from her parents would revert back to the heirs of parent instead of devolving upon the husband or heirs of husband. (8) The right of child in womb at the intestate's death and subsequently born alive shall relate back to the date of intestate's death.

(Section 20) (9) The Act lays down some general rules of succession inter alia to the effect that heirs related to a male or female intestate by full blood are to be preferred to those related by half blood if the nature of relationship is the same in every other respect (Section 18). Another rule is that if two or more heirs succeed to the property of an intestate, they shall take their share per capita and not per stripes. Such heirs take the property as tenants-in-common and not as joint tenants.

(Section 19) (10) The Act has thoroughly revised the law relating to exclusion from inheritance. Section 28 discards all the grounds of exclusion based on physical defects, deformity or disease. The disqualifications are confined to the case of remarriage of a widow of a predeceased son, widow of a predeceased son of predeceased son and widow of the brother.

Another disqualification stated in the Act relates to a murderer who is excluded on the principles of justice and equity. Conversion is no longer a

ground to exclude a person from inheriting the property but a converts descendants have been disqualified from inheriting the property of their Hindu relatives. (11) The right of illegitimate children to inherit the property of their mother has been preserved but such children are disqualified to succeed to their father's property.