

In rule of survivorship  
has been given a



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In view of large number of female heirs in class I of the Schedule, it is generally not possible to find a family which does not have female relatives of class I, and thus gives a room to the rule of survivorship. As a matter of fact this situation will scarcely arise and hence it can be said that Mitakshara rule of survivorship has been given a mortal blow in the scheme of present Hindu Succession Act.

**Effect of Section 6 of the Hindu Succession (Amendment) Act, 2005:**

The Hindu Succession (Amendment) Act, 2005 is a landmark, after 50 years, the Act, finally addressed some persisting gender inequalities in the Hindu Succession Act, 1956 which itself was path-breaking.

The 2005 Act covers inequalities on several fronts: like agricultural land, Mitakshara joint family property, parental dwelling house and certain widow's rights. The major achievement lies in including all daughters especially married daughters as coparceners in joint family property. The 1956 Hindu Succession Act, distinguished between separate property and joint family property. The separate property of a (non-matrilineal) Hindu male dying intestate devolves, in the first instance, equally on his Class I heirs, namely, son, daughter, widow and mother (plus specified heirs of predeceased children). If previously governed by Dayabhaga, this rule applied also to joint family property. But, if previously governed by Mitakshara, a different rule applied. In the deceased man's "notional" share in Mitakshara joint family property, the Class I heirs were entitled to equal shares. But the sons as coparceners in the joint family property additionally had a direct birth right to an independent share: while female heirs e.

g., daughter, widow, and mother) had claims only in the deceased's "notional" portion. Also, sons could demand partition daughter could not. The Hindu Succession (Amendment) Act, 2005 does not touch separate property. But it includes daughters as coparceners in the Mitakshara joint family property, with the same birth rights as sons to shares to claim partition, and (by presumption) to become Karta (Manager), while also sharing the liabilities. In addition, the Act makes the heirs of predeceased sons and daughters more equal, by including as Class I heirs two generations of children of predeceased daughters, as was already the case for sons.

In nut-shell the changes which are brought by the Amending Act of 2005 are the following: (a) The daughter is coparcener by birth in the same manner as the son. (b) She has the same right in the coparcenary like a son. (c) Her liabilities in Mitakshara coparcenary are like the liabilities of "son" under the new Amendment Act, the Mitakshara coparcenary includes daughter also. (d) The daughter and other females are now not only coparceners but they are also entitled to bequeath their share in the coparcenary like their male counter-parts for this reason under Section 30 a change has been made.

(e) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act, and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and, the daughter is allotted the same share as is allotted to a son. (f) By the new Act in the list of heirs of Class I the following heirs have been added:— (i) Son of pre-deceased daughter of pre-deceased

daughter (Daughter – Daughter's Son); (ii) Daughter of the pre-deceased daughter of a pre-deceased daughter (Daughter's Daughter's Daughter); (iii) Daughter of pre-deceased son of pre-deceased daughter (Daughter's Son's Daughter); (iv) Daughter of a pre-deceased daughter of pre-deceased son shall be added (Son's Daughter's Daughter). (g) Due to change, the Act 2005 not only affected the pious obligation of son, son's son, son's son's son, to pay the debt of father's, grand-father's or great-grand-father's. The debt contracted before the 20th day of December, 2004 shall not be governed by the present law. As given under the provision of Section 6(4) as substituted by the Amendment Act, 2005 the debts contracted after the commencement of the said Act cannot be recovered merely on the basis of pious obligation as given under Section 6(4) that no Court shall recognize any right to proceed against the son, grand-son and great grand-son for the recovery of any debt.

The separate property of the father, grand-father, great grand-father would be liable and the share of the father's would be liable, but coparcenary share would not be liable.