

In she shall be
entitled to a right



**ASSIGN
BUSTER**

In *G. Sarkar v. Geetha and others*, the court upheld that, the legislature intended to achieve the goal of removal of discrimination only as contained in Section (6) of the Act but also conferring an absolute right in a female heir to ask for a partition in dwelling house wholly occupied by a joint family as provided for in terms of Section 23. Now this section has been omitted and so removes the disability on female heirs. The operation of amendment Act is prospective in nature. Before omission Section 23 laid down provisions for dwelling houses.

According to the note of the Joint Committee this section has restricted the right of female heir to claim partition of the family dwelling house so long as the male heirs did not choose to effect partition of the same, but it expressly recognised her right to reside in such house. Before omission section 23 was as under. " Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling house, wholly occupied by the members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein : Provided that where such female heir is daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried, or has been deserted by or has separated from her husband or is a widow." The old Section 23 applied if the following conditions were fulfilled:— (1) Where a male or female died intestate, (2) The male dying intestate had left surviving him or her both male and female heirs as specified in class I of the Schedule.

When there were only male heirs or only female heirs of the intestate or the heirs left behind her or him belong to class II of the Schedule or agnates or cognates, the Section would not apply. (3) The property of the intestate included a dwelling house wholly occupied by the members of his or her family. If the property did not include a dwelling house, it was open to partition. In case the dwelling house was not wholly occupied by the members of the family of the intestate, there should be no snag in demanding the partition.

Thus in order to attract the provisions of this section it must be proved that the house was a dwelling house and it was occupied wholly by the members of the family of the intestate. If the dwelling house was occupied partly by members of the family of the intestate and partly by a tenant the provision was not attracted and the house was open to partition. The right to demand partition by a female heir specified in class I of the Schedule was deferred until the male heirs choose to divide their respective shares therein. Whether a particular house can be regarded as the dwelling-house contemplated by the section or not will also depend upon the facts and circumstances of a particular case. Section 23 was intended to prevent a situation in which partition of the family house by a female heir could play a havoc in family by creating hardships to the son or sons of the intestate.

It could also entail a forced sale of the house or certain partition of it to a stranger causing new problems to arise for the entire family