

Law of Succession under Hindu Law

Dear Students,

First of all I will like to welcome you all of this forum. In the view of the prevailing situation in the country, as per the instruction of our Hon'ble Vice chancellor, we are providing e-content to the students. You can consult with me on my mobile no. 9415027528 during 10 am to 4 pm. or email no. dr.rksingh2007@gmail.com. It is also advisable to all to adhere to the instructions issued by the Govt. from time to time.

Now we will start Unit II.

Unit II talks about Hindu Succession Act, 1956.

Significant features of Hindu Succession Act, 1956

1. Separate succession for male and female : Hindu law, unlike Muslim Law, had different heirs for the male and for the female intestates. Though the Hindu Succession Act has brought about a revolutionary change in the categories of heirs of both, yet it has retained the principle of difference of heir ship to them.

2. Equality between son and daughter : Under the old Hindu law the daughter was not an equal heir with the son to the property of her father. And the son did not get the property of his mother in the presence of daughter. The Hindu Succession Act has made them equal co-heirs to the property of both the parents.

3. No limits on agnates and cognate heirs : Agnates and cognates were also recognized as heirs. There was a limit of degrees beyond which the agnates ceased to inherit. There was a limit to cognate relations too. But the Hindu Succession Act confers inheritance on agnates *ad infinitum*. Only when there is no agnate, comes the turn of the cognate relatives.

4. Stranger cannot inherit : The old Hindu law recognized three strangers also as heirs when there was no relative to succeed. They were the spiritual preceptor, the spiritual disciple and the spiritual co-student. They are now derecognized as heirs.

5. Heirs of intestate female : Under the old Hindu law the succession of a female intestate was a very complex matter. It depended upon the school of law, the marital status of the female, the form of her marriage and the nature of the stridhan which was to descend. The Hindu Succession Act makes simplify the rules. However, it also makes different rules

regarding (a) the property inherited from the mother or father, and (b) the property inherited from the husband or father-in-law. The distinction on the basis of the marital status cannot be removed because marriage creates many relatives which cannot come into existence otherwise.

6. Disqualified heirs : The old Hindu law disqualified an heir from inheriting on three ground; (i) physical defects : want of some limb, deformity or disease; (ii) mental defect : idiocy or lunacy, and (iii) mortal lapse : conversion, excommunication and unchastity. The Caste Disabilities Removal Act, 1850 removed the disqualification on the ground of conversion or excommunication. The Hindu Inheritance (Removal of Disabilities) Act, 1928 removed the disqualification on the ground of physical defects. The mental defects and unchastity continued to remain disqualification. The Hindu Succession Act, 1956 has codified the disqualifications. Idiocy, lunacy and unchastity are no more disqualification. Conversion disqualifies the non-Hindu descendants of the convert. Remarriage is made a disqualification for the son's widow, son's son's widow and the brother's widow.

7. Testamentary Succession : Although the Preamble states that the Act relates to intestate succession, yet it devotes one section to testamentary succession also. It has empowered a Hindu who has undivided interest in the joint family property in the Mitakshara or Marumakkattayam or Aliyasantana or Nambudiri joint family that he can make a will in respect of that interest. The old Hindu law did not permit that. It merged his interest on his death into the interest of the other joint members of the family concerned by the rule of survivorship.¹

As I have already discussed in the classroom that there are two type of the list under the Hindu Succession Act, 1956.

If a male Hindu dies intestate, then Section 6 and Section 8 will be applicable whereas if a female Hindu dies intestate, then Section 15 and 16 will be invoked.

Succession to the Property of a Male Hindu

Succession is of two type :

- (i) Testamentary Succession
- (ii) Intestate Succession

¹ R.C.Nagpal, Modern Hindu law,

Testamentary Succession: Where succession is governed by a testament or a will, it is called testamentary succession. Under Hindu Law, a Hindu male or female has the capability to make a will of his/her property in favour of anyone. In such cases, the property will devolve according to the will of the deceased. Hindu law of inheritance will not be applied here.

Intestate Succession : Where a person dies, leaving behind some property, but no will or testament capable of taking effect in the law, his property will be distributed among his heirs in accordance with the laws of inheritance.

Classes of Heirs : The heirs are classified under four heads :

- (i) the relatives enlisted in Class I of the Schedule;
- (ii) the relatives enlisted in Class II of the Schedule;
- (iii) the agnates; and
- (iv) the cognates.

Class I of the Schedule:

This class enumerates 12 heirs. They are as follows :

(1) son, (2) daughter, (3) widow, (4) mother, (5) son of a predeceased son, (6) daughter of a predeceased son, (7) son of a predeceased daughter, (8) daughter of a predeceased daughter, (9) widow of a predeceased son, (10) son of a predeceased son of a predeceased son, (11) daughter of a predeceased son of a predeceased son, (12) widow of a predeceased son of a predeceased son.

Now after the passing of Hindu Succession Amendment Act, 2005 four new heirs incorporated here.

The son, the son of a predeceased son and the son of a predeceased son of a predeceased son have always been admitted as the principal heirs. On par with these were placed the widow, the son's widow and the son's son's widow by the Hindu Women's Right to property Act, 1937. The Hindu Succession Act has taken a step forward by giving them a status equal to the daughter, mother, son's daughter, daughter's son and daughter, and lastly son's son's daughter.

Class II of the Schedule :

There are as many as 23 relatives in this class. They are sub-divided into 9 categories as follows :

I. Father

- II. 1. Son's daughter's son,
2. Son's daughter's daughter

- 3. Brother, and
 - 4. Sister.
- III.
 - 1. Daughter's son's son,
 - 2. Daughter's son's daughter
 - 3. Daughter's daughter's son, and
 - 4. Daughter's daughter's daughter.
 - IV
 - 1. Brother's son
 - 2. Sister's son,
 - 3. Brother's daughter, and
 - 4. Sister's daughter.
 - V.
 - 1. Father's father, and
 - 2. Father's mother
 - VI.
 - 1. Father's widow, and
 - 2. Brother's widow
 - VII.
 - 1. Father's brother, and
 - 2. Father's sister
 - VIII.
 - 1. Mother's father, and
 - 2. Mother's mother
 - IX.
 - 1. Mother's brother, and
 - 2. Mother's sister

In this class some relatives are agnates and some are cognates. This section places agnates before cognates in clauses (c) and (d), when succession goes farther than the Class II heirs. It implies that for the purposes of Class II the legislature thought that some cognates in Class II are preferable to those agnates who would be covered by clause (c) of this section.

It is recommended you all to pursue the whole matter carefully, we will discuss other rules in later contents.