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**Status of Women under Hindu & Muslim Law Pertaining To Intestate  
Succession**

**Kartikeya Awasthi**

## ABSTRACT

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*The author tries to analysis the status of women under Hindu Laws pertaining to succession of property. The law governing intestate succession within Hindu is The Hindu Succession Act,1956 as amended 2005 & what else can be done to enhance the status of women in Law pertaining to succession. Lastly, the author compared the status of women between Hindu and Muslim Law strictly pertaining to intestate succession.*

**Keywords:** Hindu succession act, Muslim law of inheritance, women rights, succession, partition, intestate succession.

## INTRODUCTION

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To begin with, we should understand the domain of this Act. The Hindu Succession Act, 1956 (herein referred as “Act”) is strictly governing intestate succession. Succession are of two types intestate and testamentary. Intestate succession come into picture when one dies without leaving any will or testamentary document for the purpose of the disposal of the property. Whereas the testamentary succession is one of a kind where the testator, before dying leaves behind a will, which will come to an effect or executed after his death. Women is one of the genders which are the victims of society. As a prudent man, the need of law is to distinguish between ‘right’ and ‘wrong’ and determining what sort of penalties must be attracted to the person who are committing or committed ‘wrong’.

Succession is a form of inheritance. In cases where disposal of property has to come into effect without having any testamentary document. It becomes impossible to dispose off the property in a set protocol. Therefore, this act provides and serves as an assistance to address the aforementioned problem i.e. disposing off the property in form of intestate succession. Generally, in law the amendments have prospective effect. But in this act it is interesting to note that the amendments have retrospective effect in order to balance the position of woman under the law. The amendment of 2005 recognises women as a gender to represent and have equal share as to the men, when it comes to succession of the property.

How ironic is this, Parent having one son & daughter, and after the death of that parent without leaving any will behind. Property will be inherited solely by the son. Isn’t that injustice to the other heir? Isn’t the discrimination is on the basis of gender?. To address this problem in the said act, amendment was passed in 2005. By the virtue of 2005 amendment in the Hindu Succession Act, 1956 it brought spirit of Article 14 of The Constitution of India i.e. equality before law.

## STATUS OF WOMEN IN HINDU LAW- KEY AMENDMENTS IN 2005 ACT

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Firstly, **Section 4(2)** The said section shall be omitted as the said provision provided that the act shall not override the provisions laid down in any other act to avert the division or fragmentation of the agricultural or sealing the ceiling or creation of tenancy rights in spite of such holding. Since this section excluded rights on agricultural lands from its purview and was regulated by the State- level tenure laws, it was creating a discriminatory in favour of women as the women were not getting any entitlement or interest in the agricultural lands. So with the removal of this provision, the women’s interest in agricultural land as that of men is ensured.



Secondly, new **Section 6** was introduced where equal rights were granted to daughters as to the sons provided that the family is governed by Mitakshara School of Law. The daughter is also recognised as coparcener by birth, have same rights in the coparcenary property and subject to same liabilities as she would have been a son. The property she will receive by the virtue of this section, she shall be entitled to dispose it of by her by testamentary disposition. She shall be allotted with equal share as to son, so far as a partition of coparcenary property is concerned. The share of the pre-deceased son/daughter or pre-deceased of child of pre-deceased son/daughter shall be allotted to the surviving child of the pre-deceased son/daughter or pre-deceased of child of pre-deceased son/daughter, as the case may be. This section shall not have effect to any partition or testamentary disposition of property which took place BEFORE 20<sup>th</sup> December,2004. (the partition must be in form of deed duly registered under The Registration Act,1908 or Decree by the court)

Thirdly, **Section 23** was omitted from the Act, it was discriminatory against female heirs who seeks for Partition in the Dwelling house. They would ask for partition provided they were unmarried, separated, deserted or a widow not otherwise.

Fourthly, **Section 24** was omitted from the Act, it was discriminatory to three category of women i.e. widow of pre-deceased son, widow of pre-deceased son of a pre-deceased son or widow of the brother. By the virtue of their remarriage, their right in the property was diverted. Interestingly, widow of a brother is a part of an agnate i.e. they can inherit property after the dead of the intestate. Once the right is invested in the property then she would become sole owner of the property. In order, to reduce the ambiguity they removed the section.

Lastly, **Section 30** was operated by this amendment to make it gender-neutral by adding “disposed by her”. This section talks about Testamentary succession i.e. any Hindu can dispose the property as long as s/he are capable of doing so. And certain addition of heirs were made in SCHEDULE CLASS-I.

## **IMPACT OF AMENDMENTS**

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This alteration was authorized on September 9, 2005 and made a set of experiences in the particulars of ladies' privilege in property under Hindu Law. The effect of this alteration was that the optional or subbed position of which the ladies were normally liable to under Hindu law was eliminated and made comparable rights or position of a girl child that of a child. According to section 6, girl child were perceived as coparcener since birth, in this manner she practices all

privileges of a coparcener and by ideals of that she can likewise turn into a Karta, in the event that she is the senior-most individual from the family.

With the ongoing Judicial profession and translation given by the Courts upon the correction addresses identified with the ramifications of this revision and how it would influence the situation of ladies and property after the implementation turns out to be clear and particular. As the girl child conceived on or after ninth September' 2005 gather an enthusiasm for the genealogical property by ethicalness of turning into a coparcener as that of child. Despite the fact that this inquiry of the impact of this correction whether would be review or forthcoming in nature is in question for quite a while. As the Bombay High Court if there should be an occurrence of Ms. Vaishali Satish Ganorkar and Anr. v. Mr. Satish Kesharao Ganorkar and Ors.<sup>1</sup> The Division seat saw that the demonstration ought to be applied reflectively except if unequivocally referenced as the words "on and from" in Section 6 (1) of the Act after alteration shows its planned nature. What's more, they held that the girls conceived on or after ninth September' 2005 may be considered as coparceners and the individuals who are brought into the world before the previously mentioned date will lapse an enthusiasm for the coparcener property simply after his passing by implies succeeding his advantage.

Yet, this view was questioned by the Full Judge seat of a similar court in the event of Shri Badrinarayan Shankar Bhandari and Ors. v. Omprakash Shankar<sup>2</sup>, where the court saw that for the ramifications of changed section 6(1) of the demonstration, there are two essential conditions. Right off the bat, the girl child guaranteeing advantage under Section 6 of the Act must be alive on the date of authorization of the revision demonstration. Furthermore, besides, the property being referred to must be accessible as the coparcenary property on the date of order of the correction. The Court held that the change is retroactive in nature and will be material to each one of those girl child who were brought into the world earlier and after seventeenth June' 1956 however before ninth September' 2005. Notwithstanding, it is moulded to just a single certainty that at the hour of beginning of 2005 Amendment, the girl was alive. As when the Principal Act was authorized, it was material to all Hindus brought into the world earlier or after seventeenth June' 1956, however was dependent upon the way that the individual was alive at the hour of such implementation. The Parliament will institute this correction has explicitly utilized "on and from", so to ensure that the effectively settled rights as far as coparcenary property won't be upset by a guaranteeing as a beneficiary to a girl child who had

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<sup>1</sup> AIR 2012 BOM 101

<sup>2</sup> 2014 SCC OnLine Bom 908

died before this revision came into power. Hence, the girl child brought into the world preceding ninth September' 2005 will be secured under this correction subject to given conditions.

This perspective on change being applied reflectively so as to guarantee the wellbeing of the girl child was additionally upheld the Supreme Court in the event of Danamma at Suman Surpur v. Amar Singh<sup>3</sup>, the Hon'ble court held that the revision is relevant to all living girls of living coparceners as on ninth September' 2005 and can't be questioned further for its suggestion. In spite of the fact that the demeanour either in type of parcel or distance made sure about before twentieth December' 2004 by the use of law won't be influenced.

Presently a similar court on account of Ganduri Koteswaramma and Anr. v. Chakiri Yanadi and Anr<sup>4</sup>, the held that a primer request passed by the Court with respect to a partition suit, don't biases the privileges of girls presented by the amendments. Taking everything into account, it gets last just with the death of the last announcement. Hence, the court may cause fundamental changes in the starter order so as to re-establish the rights presented by the law. Consequently, it tends to be presumed that a suit for parcel recorded before 2005, yet was forthcoming under the watchful eye of the Court for its last pronouncement. At that point in such suits the girl's privilege in the property is additionally being made by the excellence of her being alive after the correction was authorized.

## **ADDITIONAL DRILL DOWN ANALYSIS OF THE ACT**

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The Act has 30 section in total and one Schedule. The Schedule is further bifurcated in 2 parts with heading "HEIRS IN CLASS 1"<sup>5</sup> & "HEIRS IN CLASS 2"<sup>6</sup>.

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<sup>3</sup> (2018) 3 SCC 343

<sup>4</sup> (2011) 9 SCC 788

<sup>5</sup> Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a P deceased son;[son of a predeceased daughter of a predeceased daughter; daughter of a predeceased daughter of a predeceased daughter; daughter of a predeceased son of a predeceased daughter; daughter of a predeceased daughter of a predeceased son.]

<sup>6</sup>I. father

II. (1) Son's daughter's son, (2) Son's daughter's daughter, (3) brother, (4) sister

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's mother.

Firstly, This Schedule in an internal aid to Section 8 of the act i.e. general rules of succession in the case of Hindu males dying intestate then the property will devolve accordingly. The preferential sequence is first, heirs in Class-I; second, heirs in Class-II; third, to agnate of the deceased; fourth, to cognate of the deceased.

Among the heirs specified in the Schedule those in Class-I shall take simultaneously and to the exclusion of all other heirs. For the purpose for explanation of this point let's consider one example: Mr. A dies intestate. He has only two sons and one father. The property shall devolve first to 2 sons and later to Mr. A's father. The property taken by two sons will be one share and share it amongst them. The other share will be given to father. The share taken up by the sons and the father must be equal. It is worth to note that the share taken by the two sons shall be on the basis of *per capita* and not *per stripes* and as tenants-in-common and not as joint tenants.

Secondly, It is not false to say that The Act was and is inclined towards one gender i.e. male. To back author's Argument Section 3(2) clearly states that words importing the masculine gender shall not be taken to include females. One of the famous Maxims of Interpretation of statute is *Expresso unius est exclusion alterius* means that expression or reference to one thing is the exclusion of other, in other words direct reference or something is an implied exclusion of other.

Applying this interpretation and harmoniously considering Section 3(2) & Section 6(4) which states that after the commencement of the amended act 2005, no court shall recognise any right to proceed against the son, grandson or great grandson for the recovery of any debt due to his father, grandfather, great grandfather solely on the grounds of pious obligation under the new law, of such son, great son, great grand-son to discharge any such them. Opens the radiation of court to recognise any right against females. Even this is discriminatory against women. For example if there is a debt incurred for pious obligation by mother & mother died then daughter has to repay the debt amount to the creditor because the immunity is only granted to the males.

Thirdly, At prima facie level the Schedule having Heirs in Class-I looks like granting upper hand to mother over father as Class-I person are given priority over Class-II, to a certain extend it was justified because the age gap between husband and wife use be 7 to 15 years. So, rather property going somewhere else mother/widows had second and first right over the property to inherit it. But if we read Section 10 Rule 2; it states that the surviving sons and daughter and the mother of the intestate shall each take one share. Whereas Section 11 grants complete one share solely to father. Henceforth, this drafters were smart enough to put mother in Class-I but can't claim an

independent share in the said property which is subject to devolve by the virtue of intestate dying.

Fourthly, Section 15 talks about the property of a female Hindu dying intestate shall devolve according to the rules set out by section 16: first, upon the sons and daughter and husband and so on. It is worth to note that the classification of female is different from Section 8 i.e. male Hindu dying intestate.

Lastly, the whole act is silent about the validity of adopted daughter and her rights in intestate succession.

## **STATUS OF WOMEN IN MUSLIM LAW**

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For the sake of comparison of status of women pertaining to intestate succession. From dying as intestate to being a person in claim of intestate property.

It is an uncodified personal Law, what we have is the act which governs the applicability of Shariat Law. The act is Muslim Personal Law (Shariat) Application Act, 1937.

Muslim law doesn't perceive the idea of a Joint family as a different element or the differentiation between the different or the joint family property, independent of whether the property was acquired from the dad or some other fatherly familial. The child doesn't have directly by birth in the dad's property. Selective possession with full powers of distance is a basic element of property proprietorship under Muslim law.

Muslim law gives a solitary plan of progression independent of the sex of the intestate. A lady gets an outright right in the property that she acquires, regardless of whether as a girl, sister or mother, with full powers of estrangement. She is allowed to keep her character and distinction even after her marriage, and her relations are characterized and learned regarding her own self and not with her regard to her better half or guardians dissimilar to under Hindu law. The lady's blood family members are her beneficiaries and the beneficiaries of her better half are not given any inclination.

A Muslim isn't allowed to pass on more than 33% of his domain without the assent of his beneficiaries. So by and large, regardless of whether he makes a Will, two-third of the property would pass by intestate progression. Where he doesn't cause a Will to the whole property would pass by intestate progression.

**Shia Law of Inheritance:** Shias isolate the whole gathering of beneficiaries into sharers and residuary. There is no comparing class to inaccessible fellow under Shia law. There are nine sharers three of them are guys and six are females and incorporate the guardians, enduring

companion (spouse or wife all things considered), girl, full and associated sister and uterine siblings and sisters.

On the passing of as Shia female, her significant other has a fixed one-fourth offer in presence of the lineal relatives and half offer in their nonappearance. Under Sunni law, the variety relies on the presence or nonappearance of youngsters or any offspring of a child, yet under Shia law, a kid or lineal relative (Including that of the little girl) would influence the portion of the enduring life partner. Where the expired is a male, the widow accepts one-eighth as a sharer in presence of lineal relatives and one-fourth in their nonattendance Both the dad and the mother acquire alongside the companion and relatives. The Father acquires as sharer, taking a fixed one-sixth offer in presence of lineal relatives and in their nonattendance acquires as a residuary. Mother's offer is one-sixth, in presence of lineal relatives.

Under Shia law, a little girl without a child acquires as a sharer. In the event that there is just a single little girl or just a single relative of such girl, she will take half of the property and if there are multiple girls or their relatives they take two-third of the property. With the child, a little girl acquires as a residuary and takes an offer that is equivalent to half of his offer. The child acquires as residuary.

Despite the fact that ladies are granted an offer, their privilege is a large portion of that of the male beneficiaries in a similar classification. For instance, the girl's offer is a large portion of that of child's offer. Since, the privilege of legacy was presented when ladies were not autonomous and were not fit for caring for their own budgetary needs, this solution is the premise of value as opposed to equity. A Muslim man thusly, can't deny his better half or girl of their legitimate offer either by shaping a Hindu unified family (HUF) or through a Will which will deny ladies of their offer in property. This is seen as a positive element interesting to Muslim law.

**Sunni Law of Inheritance:** The child is residuary however the standards of legacy are intended to such an extent that he would consistently acquire property. Guardians additionally are the essential beneficiaries and acquire alongside the kids and companion of the expired taking their fixed offers. Where the enduring companion is the single man or the spouse of the expired lady, he takes one-fourth of her property in presence of a youngster or the offspring of a child, and in their nonappearance it is half of the complete property. In the event that a man passes on, his widow takes one-fourth of his property without a youngster or offspring of a child, and in their nonattendance it is one-eighth, share. Where more than one widow is available every one of them by and large will take one-fourth or one-eighth all things considered and will isolate it similarly among them.

A girl acquires as a sharer just without a child. A lone girl takes one-half offer in the property, and if there are at least two girls they would together take two-third of the property. Without the child she doesn't acquire as a sharer yet turns into a residuary alongside him and takes an offer equivalent to half of his offer. The Father is an essential beneficiary and has a fixed one-6th offer as a sharer which he acquires alongside a youngster or the offspring of the child. In their nonappearance he acquires as a residuary and takes to the degree of the absolute property without some other sharer.

The Mother's offer is fixed as one-6th in presence of a kid or offspring of a child or when there are at least two siblings and sisters or even one sibling and one sister, regardless of whether they were identified with the expired by full blood, affiliated or uterine relationship and her offer is improved to 33% without youngster or offspring of a child or where just a single sibling or sister could conceivably be available.

Muslim Law	Hindu Law
<ul style="list-style-type: none"> <li>• Concept prevalent Hindu Undivided Family</li> <li>• Single Scheme of Succession</li> <li>• Sunni Law &amp; Shia Law</li> </ul>	<ul style="list-style-type: none"> <li>• No Concept of Joint Family and joint Family property</li> <li>• Different Schemes of Succession for Male &amp; Female</li> <li>• Mitashara Law &amp; Dayabhag Law</li> </ul>

All other difference are pointed out by the author. Therefore, the contents aren't being repeated for the sake of brevity

Lastly, it is not wrong to say that the position of women in Hindu Law is better than Muslim Laws of Succession and Inheritance. Some credit must be given to the codification of law in Hindu personal Law. It is not be construed that females as gender are at even plane when compared to males in both the personal laws. The author consider the comparison between the Laws strictly for the purpose of understanding the status of women is like comparing weak and weaker.

## CONCLUSION

The author is of the opinion that the legislature is well within the preview of exercising power to enhance the standards of children and women. The power is exclusively granted by The Constitution of India to Legislative wing. Due to lackadaisical attitude of legislature the right of women are still to be addressed to its fullest. Since, the judiciary is the ultimate interpreter of the

Laws, atleast they can struck down provision like Section 3(2) in the Act. By virtue of this, the judiciary can interpret words pointing masculine gender even as feminine gender. The law needs to be improvised to the extend that they are having an uniform scheme of inheritance or intestate succession as far as gender is considered within respective personal Law. The amendment was mere an enhancement to the position of females in succession but a long journey is yet to be covered.

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