



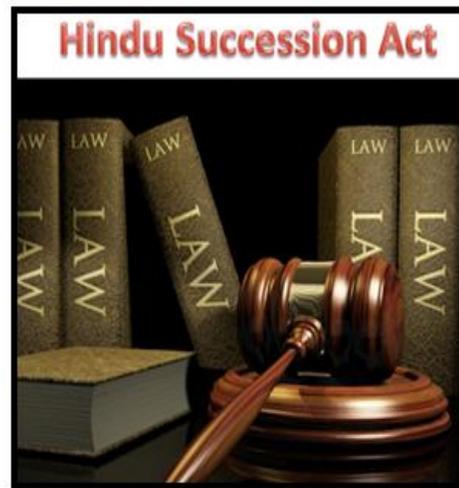
## *Intra Legem*

*February 10, 2016*

# SUCCESSION AMONG HINDUS

### **Introduction**

Hindu law is a vast body of knowledge derived from various ancient sources which govern and prescribe guidelines for Hindus. Originally there were many different schools of philosophy which had followings in different parts of the Country. Some of the prominent schools were the Mitakshara and the Dayabhaga schools.



Traditionally, a joint and undivided family ("HUF") was the normal condition of Hindu society. A HUF is joined not just in estate but also in food and worship.

Hindus acquire a joint family status by birth and the joint family property is only an adjunct of joint family. During the Vedic times, the head of the family, who was a male, had absolute control over the family property and partition of property was unknown. With the efflux of time and the influence of the British rule in India, efforts were made to simplify and codify laws governing numerous facets of Hindus.



Post independence the Indian Government made a bold attempt to codify the law and provide for a uniform and comprehensive system of inheritance to persons of both Mitakshara and Dayabhaga schools by enacting the Hindu Succession Act, 1956 (the "HSA"). The very preamble of HSA signifies that it is an Act to amend and codify the law relating to intestate succession among Hindus. The Act aims to lay down a uniform law of succession where an attempt has been made to ensure equal inheritance rights among sons and daughters. It applies to all Hindus including Buddhists, Jains and Sikhs. It lays down a uniform and comprehensive system of inheritance; and applies to those governed by the Mitakshara and Dayabhaga schools as well as others namely Marumakkattayam, Aliyasantans and Nambudri schools. The HSA reformed the Hindu personal law and gave women greater rights in property, allowing her ownership rights instead of limited rights in property.

Within the HUF, is a narrower body consisting of the eldest male member and three (3) generations; e.g. Son, Father, Grandfather, Great Grandfather. This

lineal group of people are called coparceners and the coparceners have a definitive right in ancestral property immediately upon their conception. A coparcener can get his share culled out by filing a suit for partition at any time. A coparcener's interest is not fixed and it fluctuates by births and deaths in the family.

### **Right of a female to a coparcenary**

#### **Prior to the Amendment of 2005**

Section 6 of HSA, dealt with devolution of interest of a male Hindu in coparcenary property and recognized the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females meant that the females could not inherit ancestral property in the same way as their male counterparts.

The law, by excluding the daughter from participating in the coparcenary not only discriminated against females on the ground of gender but also led to



oppression and negation of her fundamental right of equality guaranteed by the Constitution of India.

Section 23 of the HSA provided for rights of female heir to seek partition in respect of a dwelling house wholly occupied by a joint family only when the male heirs chose to divide their respective shares therein.

The Supreme Court in Gurupad vs. Hirabai<sup>1</sup> observed that ignoring a woman's right to get a share at the time of notional partition essentially means that: "One unwittingly permits one's imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff's husband and his sons...."

### **Amendment to the HSA – Hindu Succession Amendment Act, 2005**

The Amendment Act was enacted to enlarge the rights of a daughter both married and unmarried and to bring her at par with a male member of a joint

Hindu family governed by the Mitakshara law. A daughter now has the same rights in the coparcenary property as that of a son and is subject to the same liabilities as that of a son in respect of the said coparcenary property.

In the case of Ganduri Koteswaramma and another v. Chakiri Yanadi and another<sup>2</sup>, the Supreme Court dealt with section 6 of HSA which brought about important changes in the law of succession without affecting the special rights of the members of a Mitakshara Coparcenary. The Parliament was of the opinion that non-inclusion of daughters in the Mitakshara Coparcenary was discrimination against women.

The amended Section 6 provides for parity of rights in the coparcenary property among male and female members of the HUF on and from September 9, 2005. The Legislature conferred substantive rights in favour of the daughters. As per the amendment to Section 6, the daughter of a coparcener becomes a coparcener by birth and acquires her own rights and liabilities in the same manner as the son.



The intent of Section 6 to guarantee the daughter of the coparcenary the same rights and liabilities in the coparcenary property as if she were a son is unambiguous and unequivocal. Therefore, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

The basic object of the amendment to Section 6 of the HSA was to guarantee equal inheritance rights for all. A daughter of a coparcenary, whether married or unmarried in a HUF governed by Mitakshara Law, now is coparcener by birth in her own right in the same manner as a son. She has a right of claim by survivorship and has same liabilities and disabilities as a son. The coparcenary property is to be divided and allotted equally among sons and daughters.

### **Equal rights to coparcenary property**

The major question that repeatedly came up before the various Courts was whether HSA is retrospective or prospective in its application?

The aforesaid question was raised before the Division Bench comprising of Hon'ble Mr. Justice M.S Shah and Hon'ble Ms. Justice R.S Dalvi of Bombay High Court in the case of Vaishali S Ganorkar & Anr. v. Satish kesharao Ganorkar & Ors.<sup>3</sup>, wherein the court upheld the prospective application of the Amendment Act.

However, when the same issue came up before the single Bench of Bombay High Court, Hon'ble Mr. Justice R. G Ketkar<sup>4</sup> disagreed with the view taken by the Division Bench and held that the Amendment Act has retrospective operation, applicable from June 17, 1956 and will apply to all daughters of coparcenary irrespective of their birth dates *i.e.* daughters, who are born either after September 09, 2005 or daughters born before or after June 17, 1956.

Thereafter, a larger bench was constituted on the reference of His Lordship, Mr. Justice R.G Ketkar to clarify the uncertainties on the scope and applicability of the Amendment Act. A Larger Bench comprising of Hon'ble Chief Justice Mr. M.S



Shah, Hon'ble Mr. Justice M.S Sanklecha and Hon'ble Mr. Justice M.S Sonak of the Bombay High Court<sup>5</sup> by their Judgement dated August 14, 2014, confirmed the view expressed by the single judge bench of Hon'ble Mr. Justice R.G Ketkar and held that the amended section 6 of Amendment Act is retroactive in operation.

The Larger Bench judgement explained what a retroactive statute is and relevant paragraph of the Judgement is reproduced below:



"There is the intermediate category called "Retroactive Statute" which does not operate backwards and does not take away vested rights. Though it operates forwards, it is brought into operation by a characteristic or status that arose before it was enacted. For example, a provision of an Act brought into force on 1 January 2014, the Act applies to a person who was employed on 1 January 2014 has two elements:

- a) *that the person concerned took employment on 1 January 2014- an event;*
- b) *that the person referred to was an employee on that day- a characteristic or status which he had acquired before 1 January 2014. Insofar as the Act applies to a person who took employment on 1 January 2014, the Act is prospective. Insofar as the Act applies to a person who had taken employment before 1 January 2014, the Act is retroactive.*

### Can a female be Karta of an HUF

In addition to the rights given to females to be coparceners of the HUF and enjoy an equal status and share the rights and liabilities of the HUF in same way as a male, the Amendment Act recognised the right of a senior most female coparcener to take charge of the HUF as its Karta, if there is no elder most male to occupy the position of Karta.

The same question arose before Hon'ble Mr. Justice Nazmi Waziri of the Delhi High Court in Mrs. Sujata Sharma v/s. Shri Manu Gupta<sup>6</sup> was whether the eldest female member of an HUF coparcenary could become the Karta of an HUF?



After going through all the arguments and contentions put forward before him, the Hon'ble Judge held that the Plaintiff can be the Karta of D.R. Gupta & Sons HUF and the relevant paragraph of his finding is reproduced below:

*"...is that the impediment which prevented a female member of a HUF from becoming its Karta was that she did not possess the necessary qualification of co-parcenership. Section 6 of the Hindu Succession Act is a socially beneficial legislation; it gives equal right of inheritance to Hindu males and females. Its objective is to recognize the rights of female Hindus as co-parceners and to enhance their right to equality apropos any endeavour to curtail or fetter the statutory guarantee of enhancement of their rights. Now that this disqualification has been removed by the 2005 Amendment, there is no reason*

*why Hindu women should be denied the position of a Karta. If a male member of an HUF, by virtue of his being the first born eldest, can be a Karta, so can a female member. The Court finds no restriction in the law preventing*



*the eldest female co-parcener of an HUF, from being its Karta..."*

## Conclusion

It would not be out of place to mention that even after more than 10 years since the Amendment Act, women are still not aware of the rights conferred on them by the amendment. The legislation cannot be effective unless and until there is social awareness amongst the women about their rights. Women themselves relinquish their rights and tend to suffer deprivation. The law originally started from shastric and customary laws and at present the position in law is to recognise the daughter's right as equal and at par with son as a coparcener. This change which took about 49 years to bring daughters at par with the sons with respect to their right in their ancestral property cannot be lost sight of just because of ignorance of people. Focused efforts have to be made to implement the law so as to achieve the objective behind the amendment of the law. Above all it is the woman herself who has to be aware of and assert her rights.



The Judiciary has come to the rescue of females and attempted to carefully iron out the creases and latent rucks in the texture of the provisions of the HAS relating to equal applicability of rights and liabilities among males and females. Thus, upon analysing the judgments



cited above, we are of the view that the Judiciary has been proactive in recognising and guaranteeing the rights of Hindu females through a series of judgements, which is a progressive step towards women empowerment and this, will have considerable and overall positive effects on society.

## Citations

1. Gurupad v. Hirabai AIR 1978 SC 1239
2. Ganduri Koteswaramma and another v. Chakiri Yanadi and another ((2011) 9 SCC 788)
3. Vaishali S Ganorkar & Anr. v. Satish kashaorao Ganorkar & Ors. (2012 (5) Bom CR 210)
4. Shri Ashok Gangadhar Shedge v. Ramesh Gangadhar Shedge (Second Appeal no. 25 of 2013-Bombay High Court)
5. Shri Badrinarayan Shankar Bhandari and Ors. v/s. Ompraskash Shankar Bhandari-(AIR 2014 BOM 151)
6. Sujata Sharma v. Shri Manu Gupta CS(OS) 2011/2006-Delhi High Court

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