

DE JURE NEXUS LAW JOURNAL

Author:

Jaya Jha

University of Petroleum and Energy Studies, Dehradun.

BSc. LL. B(H), 3rd Year.

**Law of Inheritance- Property of Male Person dying intestate
under Personal Laws- A Comparative study of Hindu and
Muslim Laws.**

ABSTRACT

The phraseology of Succession and Inheritance go hand -in -hand. The aftermath of which is followed upon by the death of the person. Entry 5 in List 3 of the Constitution of the India endorses the personal laws and adjudicates in the matter relating to intestacy, partition, marriage, divorce, adoption etc., thereby, making Centre and State a competent authority to umpire over the matters falling under the canopy of personal laws.

Secularism is one of the most celebrated features of Indian Constitution which inflicted major challenges for the codification of a common inheritance law in the country. The Indian Succession Act, 1925 (from here on wards referred as The Act), capacitates every Indian to equal shares on inheriting the property, on the death of the person. As for the persons of different faiths than Hinduism and Mohammedan, The Act, applies. The Act, abrogates over the Indian Succession Act, 1865 which was certainly based on the English laws, inter alia subjected to certain exceptions, thus, encompassing all the classes of intestate and testamentary succession. The provisions of The Act relating to intestate

succession are applicable to particular classes or communities of people leaving the personal law, statutory and otherwise, of the major communities in India, namely, Hindus and Muslims untouched.

KEYWORDS

Succession, Inheritance, Intestate, Testament, Partition, Marriage, Divorce, Adoption, Secularism.

INTRODUCTION

India is known for its archaic and ethnic diversity along with the ingredient of personal laws serving as a cherry on the top. The multi mosaic model of the country continued its peaceful existence until the challenge of succession emerged which owed its origin to religion and the customary practices. Succession laws were guided by the religious scriptures or texts for devolution of proprietary rights of the two major religions namely Hinduism and Islam being practiced and professed by the population in those times. This engendered a major predicament for the other religious clans like Christians, Jews, Parsis, Armenians and Anglo-Indians. English laws were applied to combat the situation but they were applicable in presidency towns only and the laws were quite ambiguous on Mofussil level until the Indian Succession Act, 1865 came into being. It regulated all the testamentary and intestate succession with subject to certain exceptions. These exceptions were so exhaustive in nature that it excluded all the native Indians from its purview.

Inheritance rights play a pivotal role in institutionalizing the very framework of family by controlling the family resources, affecting the futuristic opportunities of the coming generations.¹Property laws in India reflected a skeptical attitude

¹ MAITRAYEE MUKHOPADHYAY, LEGALLY DISPOSSESSED: GENDER, IDENTITY AND THE PROCESS OF LAW 97 (1998).

due to dominance of patriarchy in personal laws.² The position of women in India with respect to succession is quite discriminatory in almost every religion practiced and requires immediate divorce from religions and a uniform civil code to ensure that the laws are just in real sense.

SUCCESSION AND WOMEN

Since the inception of human civilization, women were webbed into a division of labor which assigned her domestic chores and their male counterparts were assigned physically demanding work, serving the foundation for patriarchy in the society. This practice continued through generations and as a result woman got stuck within the four walls while men continued with their usual chores, eventuating women to a **status-quo** of vulnerability. Thus, through the development of society, women have reached a position to be under the thumb of patriarchy.³

The frame work for property laws had been manipulated in such a way that it created a monopoly for men to twist and turn laws in their favor and lead to a sorry state of affairs for women. This ensured the secondary status of women in the society, making it impossible for them to be self-dependent under any circumstance.⁴ All these laid to development to Woman's right to property issue and cornerstone of social justice. After the adoption of the Constitution, the enactment of Hindu Succession Act, 1956 (Herein after called as HSA) assisted women to through her subversive image by granting them much greater rights in property. The said Act granted women full ownership rights in the property⁵ inherited from their husbands⁶ and eventuated daughter's claim to inherit property from their father. In *Dharam Singh v. Aso*⁷, it was inferred that the daughters after getting married had no right to claim the father's property. The

² KAPUR ET AL., *SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH LAW IN INDIA* 133 (Sage Publications 1995).

³ KABITA CHAKRABORTY, *GENDER JUSTICE AND HINDU SUCCESSION LAW*, IN *GENDER JUSTICE* 8 (Nirmal Kanti Chakraborty & Shachi Chakraborty, R.Cambray & Co. Private Limited 2006).

⁴ DR SAXENA & POONAM PRADHAN, *WOMEN LAW AND SOCIAL CHANGE* 103 (Dr.Shamsuddin Shams, Ashish Publishing House, New Delhi 1991).

⁵ Hindu Women's Right to Property Act, 1937.

⁶ Sec 14 (1) & (2) of Hindu Women's Right to Property Act, 1937.

⁷ AIR 1990 SC 1888.

HSA, though helped women in acknowledging their rights, yet was enshrined with discriminatory principles of the Mitakshara School which excluded women from establishing their claim in the ancestral property⁸. The protraction of preferential laws with respect to devolution of tenures⁹, dwelling house¹⁰, distinct schemes of intestate succession for Hindu men¹¹ and Hindu women¹² were some of the dubious characteristics of HAS. In order to end this tyranny, a major amendment was made under the Hindu Succession (Amendment) Act, 2005 (Herein after called as HSAA, 2005), amending section 6 of HAS, 1956 eventuating daughters with sons in the Joint coparcenary property. It was made after an amendment made after 2005 under Article 23 of the Constitution of India initiating the daughters' equal claim in the partition of dwelling house. Section 6 of HSAA, 2005 ended the restriction against a remarried woman's property rights and established it legally to claim inheritance property rights which was something curtailed in HSA operating within a Joint Hindu Family governed by Mitakshara Law system.

HSAA, 2005 took a great leap in taking down the patrilineal system of inheritance until the case of Prakash v. Phulavati¹³, came before the S.C. The division bench held that the amendment of 2005 encompassed to existing daughters of existing coparceners as on 09-09-2005, irrespective of when such daughters were born. This decision was overruled by a three-judge bench stating that, the daughter was entitled to be a share-holder after HSAA, 2005, irrespective of her father existing or not at the time of the amendment. The development of the recent decision was stirred by a conflict of opinion observed between Prakash v. Phulvati and Danamma Suman Surpur v. Amar¹⁴ in the interpretation of section 6 of HSAA, 2005.

⁸ Sec 6 Hindu Succession Act, 1956.

⁹ Ibid, Sec 4 (2).

¹⁰ Ibid, Sec 23.

¹¹ Ibid, Sec 8-13.

¹² Ibid, Sec 15-16.

¹³ 2 SCC 36 (2016).

¹⁴ 3 SCC 343 (2018).

The holy Quran is the source of Islam and a Muslim is a person believing in Islam considering that there is one God and Mohammed is his prophet.¹⁵ Thus, making them obligated under the Muslim Personal law (Muslim Law of Succession) where the parties are Muslims¹⁶. The Muslim Personal Act (herein after called as MPA) does not apply to Muslims whose marriage is solemnized under the Special Marriage Act, 1954 which is a secular territorial act. Hence, the devolution of property will fall under the ambit of Indian Succession Act, 1925.

Muslims of India are regulated by the uncodified Islamic principles of Inheritance Rights. These laws are rooted to favor the prevalence of patriarchy within the society and an attempt to undermine the property rights of women. Although, the women in Islam are considered equal to men but in contrary to that they receive only half of that as compared to their male counterpart¹⁷ according to the rules of Muslim Intestate Succession. A Muslim widow is deprived of her inheritance rights if the marriage remains unconsummated. This brings us to the sorry state of affairs for women who are treated like second class citizens of India. A Muslim woman enjoys her share of inherited shares only and after meeting with the expenses of the funeral of her husband. Bequests are limited only till 1/3rd of the property. In Islam there is no distinction between movable and immovable property unlike Hindu law and no concept of coparcener is enjoyed. The property devolves on heirs only after the death of the father.

NEED FOR UNIFORM CIVIL CODE

India is a pluralistic country which enjoys the feature of secularism conferred to it by the Constitution framers. Part IV of the Constitution under article 44 talks about a Uniform Civil Code (herein afterwards called as UCC) throughout the territory of India. Unfortunately, it is guaranteed to us not as a fundamental right rather than as a Directive Principle of State Policy which cannot be challenged in Court of law to be implemented.

The personal laws in the present era contradict with the development of society and hamper the growth of exploited section of the society, thus, leading to

¹⁵ BABU RAM VERMA & B MALIK B.R. VERMA'S MOHAMMEDAN LAW: IN INDIA AND PAKISTAN 58 (5ed 1978).

¹⁶ Section 2 of Muslim Personal Law (Shariat) Application Act, 1937.

¹⁷ Exception: when father and mother inherit 1/6th share each in case of lineal descendant.

stagnation. Article 44 of the Indian Constitution clearly states that there is no explicit relation between personal laws and religion. There are two different sides of a same coin and this statement can be drawn in relation with Article 25¹⁸ guaranteeing freedom to practice any religion as opposed to public order, morality and health whereas Article 44 demarcating religion and personal laws. Succession being a secular feature cannot be brought under the ambit of Article 25, 26 & 28 as highlighted as religious matter under the Constitution of India.

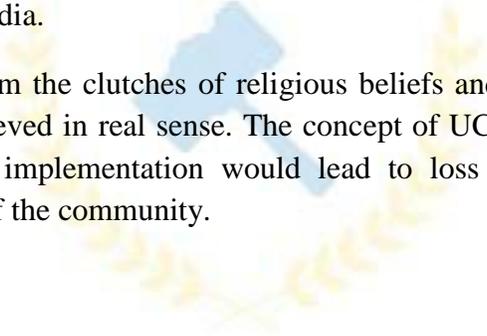


¹⁸ Freedom of Conscience and free profession, practice and propagation of religion.

CONCLUSION

The intestate succession laws for Muslims are still uncodified making it ambiguous whereas for Hindus the laws are codified and governed by Hindu Succession Act. The only exception is for Muslims solemnizing their marriage under Special marriage Act, 1954 are governed under Indian Succession Act, 1925. However, under normal circumstances Muslims are governed by Muslim Personal laws or the Shariat. This invites for immediate attention of UCC to help equality prevail in India.

UCC has to free from the clutches of religious beliefs and thoughts only then equality can be achieved in real sense. The concept of UCC is still a matter of hanging fire as its implementation would lead to loss of the cultural and traditional essence of the community.



De Jure Nexus

LAW JOURNAL