

GOVERNMENT OF INDIA

**LAW
COMMISSION
OF
INDIA**

**Proposal to Amend the Hindu Succession Act, 1956
as amended by Act 39 of 2005**

Report No. 204

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**THE LAW COMMISSION OF INDIA
(REPORT NO. 204)**

**Proposal to Amend the Hindu Succession Act, 1956
as amended by Act 39 of 2005**

**Presented to the Union Minister for Law and Justice, Ministry of Law
and Justice, Government of India by Dr. Justice AR. Lakshmanan,
Chairman, Law Commission of India, on 5th day of February, 2008.**

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D.O.No. 6(3)138/2007-LC(LS)

Dear Dr. Bhardwaj ji,

**Sub: Proposal to amend the Hindu Succession Act, 1956
as amended by Act 39 of 2005**

I am forwarding herewith 204th Report of the Commission on Hindu Succession Act, as amended by Hindu Succession (Amendment) Act, 2005 (39 of 2005).

The aforesaid Amending Act was passed to give effect to the recommendations made by the Commission in its 174th Report on Property Rights: Proposed Reforms under the Hindu Law. This subject was taken up by the Commission suo motu in view of the pervasive discrimination prevalent against women in relation to laws governing the inheritance/succession of property amongst the members of a joint Hindu family.

While going through the Amending Act, the Commission noticed certain legislative inadvertences which need rectification. In pursuance of its terms of reference, which, inter alia, enjoin upon the Commission to make recommendations for the removal of anomalies, ambiguities and inequities in the law, the Commission undertook this study suo motu with a view to remove anomalies that have afflicted the Amended Act.

We hope that the recommendations in this Report will further the objects underlying the constitution of the Commission.

With kind regards,

Yours sincerely,
Sd/-
(Dr. Justice AR. Lakshmanan)

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LAW COMMISSION OF INDIA**PROPOSAL TO AMEND
THE HINDU SUCCESSION ACT, 1956
AS AMENDED BY ACT 39 OF 2005****TABLE OF CONTENTS**

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1. BACKGROUND

In spite of the constitutional mandate for gender equality, gender bias and discrimination continue to be prevalent in the Indian society in one form or another. Though there are distinct signs of gradual reduction of inequalities on the basis of sex, yet these could not be eliminated altogether. There is no denying of the fact that the fight against gender inequalities has to be pursued with sustained rigours on a long term basis until the ultimate goal of gender equality is attained. Towards this end, the Commission suo motu took the study of reforms in respect of property rights of women under the Hindu Law in its 174th Report as discrimination against women has been glaringly discernible in this area. In order to give effect to the recommendations made by the Commission in the aforesaid 174th Report, the Hindu Succession Act, 1956 (30 of 1956) was amended by the Hindu Succession (Amendment) Act, 2005 (39 of 2005). The statement of Objects and Reasons of the Amendment Act 39 of 2005 read as follows:

“The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women’s property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the

Murumakkattayam, Aliyasantana and Nambudri laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognizes the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counter-parts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution, having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

3. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to

daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.

4. The above proposals are based on the recommendations of the Law Commission of India as contained in its 174th Report on “Property Rights of Women: Proposed Reform under the Hindu Law”.

5. The Bill seeks to achieve the above objects.”

2. THE PRESENT STUDY

Section 8 of the Hindu Succession Act, 1956 (in short HSA) contains general rules of succession in case of males. Accordingly, the property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter¹:-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

¹ Chapter II on Intestate Succession, containing Sections 5 to 29.

- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

The heirs in class I and class II in the Schedule to HSA, as amended by the Act 39 of 2005, are as follows:

Hindu Succession Act, 1956
THE SCHEDULE
(See Section 8)
Heirs in Class I and Class II
Class I

Son; daughter; widow; mother; son of pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son [son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son]².

Class II

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

² Added by Act 39 of 2005, Sec. 7 (w.e.f. 9.9.2005)

- 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 sister.

Explanation:- In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

A bare perusal of the aforesaid two classes reveals certain anomalies that seem to have inadvertently crept in. For example, daughter's daughter's son and son's daughter's daughter find mention in both the classes. Further, whereas mother is included in class I, father's widow is included in class II. There is apparent ambiguity that needs clarification. The reading of class I ex-facie is quite complex and cumbersome. The terms of reference with which the Commission has been set up, inter alia, enjoins upon it to revise the Central Acts of General Importance so as to simplify them and to remove anomalies, ambiguities and inequities. In view of this, the Commission considered it appropriate to take up further revision of the amended HSA with a view to simplify the two classes and remove the anomalies resulting from legislative inadvertences.

3. OVER-LAPPING IN CLASS-I AND CLASS-II HEIRS, NEED FOR RECONCILIATION

As per 2005 amendment in the aforesaid Act following relations viz:-

1. Son of a predeceased daughter of a predeceased daughter (i.e. daughter's daughter's son);
2. Daughter of a predeceased daughter of a predeceased daughter (i.e. daughter's daughter's daughter).
3. Daughter of a predeceased son of a predeceased daughter (i.e. daughter's son's daughter);
4. Daughter of a predeceased daughter of a predeceased son (i.e. son's daughter's daughter)

are added in the list of legal heirs under Class-I of the schedule provided under the said Act. The above four now added in Class I are already in Class II prior to the amendment and though they have been elevated to Class I, they have not been deleted from Class II. However, the said relations were required to be omitted from their entries present prior to 2005 viz. under 2nd and 3rd Entry under Class-II heirs which are still present under the aforesaid provisions only in different words as:-

Class-II, Entry II (2) son's daughter's daughter (Check S.No.4
above u/cl-I)

Class-II, Entry III (2) daughter's son's daughter (Check S.No.3
u/cl-I)

- (3) daughter's daughter's son (Check S.No.1 u/cl-I)
- (4) daughter's daughter's daughter (Check S.No.2 above u/cl-I)

Though both the above entries in Class-II prima-facie seem to be different due to the use of the word “**pre-deceased**” in Class-I for the same, actually meaning wise, both relations are same and will only come into picture if their legal ascendants died prior to the opening of succession i.e. before the death of the Hindu Male dying intestate, with respect of whom all the above relations are derived. Hence, in our opinion, a definite correction is required in Class-II of the schedule and the relations provided under the same, which are already covered in Class-I, must be deleted.

As already stated, the four of the descendants included as Class I heirs are listed as Class II heirs as well. The confusion caused by this repetition requires correction. The repetition is perceptibly obvious and requires elimination to restore clarity and to avoid unnecessary litigation.

Two of the male descendants in the daughter's line are not listed as Class I heirs while their female counterparts are so listed. There is no basis or justification for this omission.

The omission is not based on principle, but creates a reverse discrimination against the male descendants and this has to be rectified.

Thus “son of predeceased son of a predeceased daughter” as well as “son of a predeceased daughter of a predeceased son” of the intestate are not added under Class-I by the said amendment of 2005. The said relations are also derived through daughter and granddaughter of the intestate. On the basis of the same logic used for remaining insertions made in Class-I u/2005’s amendment, the said relations too should have been included in class I heirs. Daughter of a predeceased daughter of a predeceased son who is item number 2 of Entry 2 in Class II has been elevated as a Class I heir under the amendment. However, son’s daughter’s son i.e. son of a predeceased daughter of a predeceased son is retained in Class II though both of them are in the same degree of relationship to the intestate.

Daughter’s son’s daughter who was formerly in Class-II has been elevated in Class-I as daughter of a predeceased son of a predeceased daughter. While daughter’s son’s son namely Entry 3 in item 2 is retained in Class II though both of them are in the same degree of relationship to the intestate, and, therefore, in our opinion above said 2 relations, which are mentioned as “daughter’s son’s son” and “son’s daughter’s son”, under Class II – 2nd and 3rd items (Entry) respectively, be omitted from there and be added in Class-I.

In our opinion, the mistake we have noticed while scanning through the Hindu Succession (Amendment) Act, 2005 is definitely the result of a legislative inadvertence. We therefore suggest that son's daughter's son as well as daughter's son's son may be added in Class-I, deleting them from Class-II, based on the same logic used for remaining insertions in Class I under the 2005 amended provisions. We therefore request the Law Department to take appropriate steps to rectify the defect pointed out by us as above.

4. FATHER – NEED FOR RELOCATION

The other point that may be considered is that –

Because of this amendment the persons in Class-II Entry II and III are pushed up and take place with Class-I heirs. By this, these 3rd generation persons remotely connected with the deceased person take preference over a very close relative, namely

“Father” the only heir in Class II Entry 1 and

“Brother” in Class II Entry II Item 3 and “Sister” in Class II Entry II Item 4.

“Father”, who is certainly a very close relative rather than any one coming in the Class II Entry 2 and 3 list, assumes more importance in view of the recent enactment of the Parliament to provide maintenance to parents in “The Senior Citizens (Maintenance, Protection and Welfare) Act, 2007” wherein it is now made mandatory that every person should maintain his parents and

failure will result in punishment. While so, it is but natural and logical to expect that a father should be given the right of inheritance of the property of his son like a mother. As such pushing “Father” beyond a III generation “Daughter’s daughter’s daughter” etc., has no meaning. Why a preference to the more close relatives should be given-up, in place of 3rd generation relatives who in our society may not have any contact with the person dying intestate – is not known.

Further, we have to see one more point that is almost all (Class I heirs) sons, daughters and grand children have the duty to maintain the parents or grand parents as per the 2007 Act. There is no duty cast upon the great grand children to look after their great grand parents, whereas they have been given equal right to share as Class I heirs. This is certainly an anomaly. This can be rectified only by including the “Father” in Class-I.

As suggested earlier, we have to consider that the desirability of elevating the father as a Class I heir with the mother was that he may not be the lesser heir than a daughter’s daughter in the list particularly when we are now thinking of enforcing, by law, of obligation of the children to maintain their parents.

5. FATHER'S WIDOW

Entry VI in Class II heirs specifies Father's widow along with brother's widow and is placed below grand father and grand mother of the deceased male coparcener dying intestate. It may be noted that the term father's widow' include 'mother' in its ambit. But 'mother' has already been included in Class-I heirs. Thus, father's widow in Class-II, Entry-VI, will logically refers to step-mother only and not real mother. However, the related Entry does not expressly say so. It may be relevant to note Rule 1 and Rule 2 in Section 10 of HSA in this regard. According to Rule 1, the intestate's widow, or if there are more widows than one, all the widows together shall take one share. The Indian Law provides for monogamy and prohibits bigamy and polygamy as a general rule. The Hindu Marriage Act, 1955 too prescribes that neither party has a spouse living at the time of marriage as a condition for Hindu marriage. Thus, there is remote possibility for some one to have more than one widows. The provisions of HSA seem to be more by way of abundant caution. Rule-2 in Section 10 provides that the surviving sons, daughters and mother of the intestate shall each take one share. Thus, it may be seen that if mother of the intestate takes her share as Class-I heir, then nothing will remain for the step mother, if any, to succeed.

The expression 'father's widow' therefore needs to be clarified as referring to step mother (s) and not real mother, i.e. father's widow other than real mother. But this entry may be upgraded to the level of

Entry 2 and father's widow other than real mother be placed after 'brother and sister' in Entry 2 under class II in the Schedule.

6. REVISION OF CLASS-I HEIRS

Class I heirs in the Schedule contain a large list of successors, going down upto three degree of descent of the deceased intestate, that is, upto his great grand children. The list presents quite a complex reading and is not amenable to easy understanding. We feel that this needs to be simplified, particularly in view of the general principles of succession contained in Sections 9 and 10 of HSA. According to the order of succession, among the heirs specified in the Schedule those in class I shall take simultaneously in succession and to the exclusion of all other heirs. It will now be appropriate to refer to the rules for distribution of property among heirs in Class I of the Schedule as contained in Section 10 of HSA. Section 10 of HSA reads as under:

“10. Distribution of property among heirs in class I of the Schedule.- The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:

Rule 1.- The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.- The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.- The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.- The distribution of the share referred to in Rule 3 –

- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters gets equal portions; and the branch of his predeceased sons gets the same portion;
- (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.”

From the aforesaid, it follows that the surviving sons and daughters of the intestate take one share each. If any son or daughter dies before the intestate, then his, or her children, as the case may be, will take between them one share that would have gone to the pre-deceased son or daughter, as the case may be, had he or she been alive at the time of intestate’s death. In other words, if any of such

child pre-deceased the intestate leaving his or her children alive at the time of intestate's death, the children of such child as aforesaid will take between them the share which the said child would have taken if living at the intestate's death. This rule is also embodied in Section 16 in respect of order of succession among heirs of a female Hindu. This is percolated down the line of succession and is inherent in the scheme of Section 10 read with Class I heirs in the Schedule.

Besides, the widow of a pre-deceased son will also take one share.

Accordingly, the law in these provisions can be suitably revised with a view to simplify it further as follows. The following Rule shall be inserted in Section 10.

Rule 2. The mother and father, if both survive at the intestate's death, shall take between them together, one share.

Mother shall be deleted from existing Rule 2.

The existing Rules 2 and 3, 4 shall be renumbered as Rule 3, 4 and 5 respectively. The words "and so on in succession" shall be added at the end of renumbered Rule 4.

The Class I heirs in the Schedule may be revised as under.

Class-I

1. Son, daughter, widow, mother and father.
2. Where any son or daughter pre-deceased the intestate, then children of such pre-deceased son or daughter, as the case may be, and widow of a pre-deceased son, if any.
3. And so on in succession among the heirs of the descending branch of successors pre-deceasing the intestate.

7. SUMMARY OF RECOMMENDATIONS

1. The following entries should be deleted from class II (as these have been elevated to class I) in the Schedule.

Entry (II) (2)	son's daughter's daughter
Entry (III) (2)	daughter's son's daughter
Entry (III) (3)	daughter's daughter's son
Entry (III) (4)	daughter's daughter's daughter

2. The following entries should be deleted from class II and be added to class I heirs in the Schedule.

Entry (II) (1)	son's daughter's son
Entry (III) (2)	daughter's son's son.

3. 'Father' should be deleted from Entry I under class II and be inserted in class I after 'mother'.

4. Father's widow be deleted from Entry VI and included in Entry II after 'sister' as father's widow other than real mother.

5. (1) The following Rule shall be inserted in Section 10, after Rule 1,

Rule 2 – The surviving parents at the intestate's death shall together take between them one share.

(2) The following Rules 2, 3 and 4 shall be renumbered as Rules 3, 4 and 5 respectively.

(3) Mother shall be deleted from existing Rule 2 and renumbered Rule 3.

(4) The words "so on in succession" shall be added at the end of renumbered Rule 4.

6. Amendments recommended at Serial No. 1 to 3 above except to the extent to which these relate to the deletions in Class-II will not be necessary, if the alternative recommendation of revising class I heirs in the Schedule as follows is accepted.

Class I

1. Son, daughter, widow, parents (or mother and father).
2. In case any son or daughter dies before the intestate's death, then children of any such pre-deceased son or daughter, as the case may be, and widow of the pre-deceased son, if any.

3. And so in succession, among the heirs of the descending branches of successors being grand children and great grand children and widow of any grandson or great grandson, and so on, as the case may be, in the case of their pre-deceasing the intestate.

(Dr. Justice AR. Lakshmanan)

Chairman

(Prof. (Dr.) Tahir Mahmood)
Member

(Dr. D.P. Sharma)
Member-Secretary