THE

HINDU SUCCESSION ACT 1956

CENTRAL ACT 30 OF 1956

WITH

COMMENT

BY

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PREFACE

The generous reception given to my previous publications by the public and the Bar has encouraged me to publish the Hindu Succession Act, 1956 with comment. An attempt is made to discuss the various provisions of the Act, with reference to previous legislation and the judicial interpretations.

Though the object of the Act is to amend and codify the law relating to intestate succession among Hindus, the Act does not seem to be compelete in itself because other important and connected subjects are not dealt with in the Act. Pious obligation and antecedent debt, adoption and partition are matters which are very intimately connected with intestate succession. Codification of Hindu law including all these aspects would have been more welcome. A perusal of the Act will clearly show that words used in Hindu law will no longer have the same legal incidents and consequences attached to them. Coparcenary property is no longer property which belongs to the joint family with the usual connotation thereof but to the individual with full rights of absolute ownership and power of disposal. Whether a person born in a joint family has a vested right or not is a matter which is not clear in the Act and must await judicial interpretation.

The Act is one step forward in implementing one of the Directive principles of the Constitution *i e*, to have a uniform civil code The term Hindu is made as comprehensive as possible and the Act is made applicable to all Hindus in India, whatever be the school of Hindu law to which they belonged.

I feel amply rewarded if the publication should be found useful by members of the legal profession, Bench and the public

Bangalore
5th August 1956

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THE HINDU SUCCESSION ACT, 1956

(30 OF 1956)

(Received Assent on June 17, 1956)

An Act to amend and codify the Law relating to intestate succession among Hindus.

Be it enacted by PARLIAMENT in the Seventh Year of Republic of India as follows :—

Chapter I—PRELIMINARY

1. Short title and extent—(1) This Act may be called the Hindu Succession Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

The Hindu Succession Act is the second instalment of the codification of Hindu law. As early as 1938, Mr Srinivasa Iyengar in his preface to the tenth edition of Mayne's Hindu Law pleaded for codification of the Hindu Law and observed that Hindu Law should be in a form readily accessible to the Indian Ministers, Politicians, Legislators, the Press and the Public. The Government of India, appointed a Committee presided over by Sir B. N. Rao They submitted a report in 1947 When the Bill was introduced in the Legislative Assembly, there was much opposition and the consideration of the Bill had to be postponed The Rao Committee's draft underwent

several changes, and for the purpose of facilitating the passage of the Code in Parliament, Government is getting the Code through in parts. The Hindu Marriage Act was the first instalment of the Code and it was placed on the Statute book on 18th May 1955. The remaining parts of the code are in varying stages of progress.

Succession is the most important and at the same time the most complicated branch of Hindu Law The object of the Act is to have a uniform Code of intestate Succession for Hindus in India. There are two broad systems of inheritance in Hindu Law *viz*, Dayabhaga and Mitakshara. There are fundamental differences of doctrine between the Mitakshara and Dayabhaga school Dayabhaga is prevalent in Bengal while Mitakshara school is being followed in other parts of India. The salient points of difference between the two schools are:- (1) Religious efficacy is the guiding factor in determining the order of succession in Dayabhaga and hence it rejects the preference of agnates to cognates. (2) Dayabhaga denies that property is by birth, which is the corner stone of the joint family system in Mitakshara. Father is the absolute owner of the property and authorises him to dispose of it at his pleasure according to Dayabhaga. It also refuses recognition of any right in the son to a partition during his father's life time The present code enacts a uniform code for Hindus throughout India, whether they were following the Dayabhaga school or Mitakshara School.

Operation of the Act—The Act does not express from which date, it shall come into operation. It received the assent of the President on 17th June 1956 and by virtue of Sec. 5 of the General Clauses Act (X of 1897) it came into operation on the day on which assent was given by the President.

Interpretation and Construction—The Act has modified and codified the existing Law to a very great extent

and complications in the adoption of the present enactment are bound to be solved by reference to the previous law of succession and the history of the present legislation. How far the intention of the legislature is to be taken into account in interpreting the Act? A speech made in the course of the debate on a bill could at best be indicative of the subjective intent of the Speaker, but, it could not reflect the inarticulate mental processes lying behind the majority vote which carried the bill. Nor is it reasonable to assume that the minds of all these legislators were in accord. The Court could only search for the objective intent of the legislature primarly in the words used in the enactment, aided by such historical material as reports of Statutory Committees, preambles etc. I attach no importance to the speeches made by some of the members of the Constituent Assembly, in the course of the debate " [1](Gopalan *vs.* State of Madras).

' Speeches made by the members of the House in the course of the debate are not admissible as extrinsic aids to the interpretation of Statutory provision. [2]

" It is a cordinal rule of interpretation that the language used by the Legislature is the true depository of the legislative intent and that words and phrases occurring in the Statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself" [3]

" The statement of objects and reasons appended to the bill should be ruled out as an aid to the construction of a Statute " [2]

The statement of objects and reasons can be referred to

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1. A. I. R. 1950 S. C. 27 Gopalan *vs* State of Madras.
2. A. I. R. 1952 S C. 369 Aswini Kumar *vs* Arabindo Bose
3. A. I R. 1953 S. C 83. Darshan Singh *vs* State of Punjab.

only for the limited purpose of ascertaining the conditions prevailing at the time which actuated the Sponsor of the bill to introduce the bill and the extent and urgency of the evil which he sought to remedy "[1].

It is a settled rule of construction that to ascertain the legislative intent all the constituent parts of a Statute are to be taken together and each word and phrase or sentence is to be considered in the light of the general purpose and object of the Act itself The title and preamble whatever their value might be as aids to the construction of a Statute undoubtedly throw light on the intent and design of the legislature and indicate the scope and purpose of the legislation, itself. [2]

The title of a Statute is an important part of the Act and may be referred to for the purposes of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment [3]

" The cardinal rule of construction of statutes is to read the statute literally *i.e.* by giving to the words used by the legislature, their ordinary, natural and grammatical meaning. If however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation[4].

If there is some defect in the phraseology used by the legislature, the Court cannot aid the Legislature's defective phrasing of an Act or add and amend or by construction make up deficiencies which are left in the Act. When there is Casus Omissus, it is for others than Courts to remedy the defect [5]

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1. A I. R 1954 S. C. 92
2. A I. R 1953 S. C. 274.
3. A. I. R. 1952 S C 369.
4. A I. R 1955 S C 376=(1955) 1- S. C. R. 1369
5. A I. R. 1953 S. C 148

Whether the Act is Retrospective—The present Enactment is prospective and there is no indication either in express terms or by necessary implication that it will have retrospective operation.

In 41 Mys. H. C. R. 315, it was held "when a Statute or an amending Act enacts substantive law it cannot have retrospective operation, so as to impair the existing rights or obligations unless the intention of the Legislature either in express words or by necessary implication is clearly said that it should have restrospective effect". The same view is expressed in another case in 11 Mysore Law Journal 404.

Every statute is primafacie prospective and it cannot affect the rights which have already vested in persons.

Pending Proceediugs—In general, when the Law is altered during the pendancy of an action, the rights of the parties are decided according to the Law as it existed when the action was begun unless a new Statute shows clear intention to vary such rights. However, where the act is passed between the trial of a case and hearing of an appeal, that act will be taken into account at the appeal though unless it is of restrospective effect it will not affect the rights of Parties" Maxwell—Interpretation of Statutes pp 221 and 222.

The Hindu Succession Act lays down the mode of Succession in a different way than what it used to be before the Act came into force The question would be, how far this Act would affect the pending proceedings? It is submitted that the provisions of this Act cannot affect the rights of the parties which they were agitating previous to the enactment of the present law In 44 Mys H C. R 392, it was held 'when the law is altered during the pendency of an action, the rights of the parties are generally decided according to the law, as it stood when the action was begun.

Every Statute which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already passed must be presumed out of respect to the legislature to be intended not to have a retrospective operation.

Further, in 51 Mys. H. C. R. 148 (Full Bench) it was held " a Statute ought not to be given a retrospective operation, unless that effect cannot be avoided without doing violence to the language of the enactment and if the enactment is expressed in a language fairly capable of either interpretation it ought to be construed as prospective only ".

Section 14 of the present Act enables a female Hindu to become the absolute owner of the property, whether acquired before or after commencement of this Act. This is the only Section which can be said to be retrospective Until this enactment, except in Mysore, a female when she suceeded to the property of the deceased, took only a limited estate, but in the present Act property acquired by her will be her absolute property. The limited estate enlarges itself into a full estate. In Mysore State, the Hnidu Law Women's Rights Act, provided that a female would become the absolute owner under certain circumstances.

In a case decided in 40 Mys. H. C. R. 85, the Suit was brought by a reversioner against the widow for a declaration that the alienations made by her did not affect reversionary rights. During the pendency of the appeal, the Hindu Law Women's Rights Act 1933 came into operation and it was held that the right of the reversioner ceased as the widow became absolutely entitled to the properties under that Act.

2. Application of Act—(1) This Act applies :—

(*a*) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayet or a follower of the Brahmo, Prarthana or Arya Samaj,

(*b*) to any person who is a Buddhist, Jaina or Sikh by religion, and

(*c*) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation :—The following persons are Hindus, Buddhists, Jainas, or Sikhs by religion, as the case may be :—

(*a*) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion ;

(*b*) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe community, group or family to which such parent belongs or belonged ;

(*c*) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to

the members of any scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

This Act is made applicable to all Hindus and the definitions of the term Hindu is made very comprehensive to include every person except a Muslim, Christian, Parsi or Jew. But the Act is not made applicable to members of the Schedule tribe and the Central Government may apply the Act by notification in the Official Gazette.

Before the enactment there were classes of Hindus who were governed by their customary laws and not by the Hindu law *e g.*, Marumakkattayam Law in Malabar and the Aliyasanthana Law in South Kanara and some Hindu communities in the Punjab by their own customary law. Subject to some of these exceptions Hindu law applied to Hindus by birth as well as to Hindus by religion. A Hindu does not cease to be governed by Hindu law by lapses from orthodox Hindu practice or by deviation or dissent from its central doctrines.

A man cannot alter the law of succession applicable to himself by a mere declaration that he is not a Hindu. "The mere fact that a Hindu—who has renounced his Hindu religion and become a Christian—makes a declaration that he has become a reconvert to Hinduism is totally inadequate to make him a Hindu in the absence of any evidence to show that he adopted the ways of a Hindu and observed the

Hindu mode of life.[1] It is a question of fact in each case, whether a given person is a Hindu or not An European does not become a Hindu merely because he professes a theoretical allegiance to the Hindu faith or is an ardent admirer and advocate of Hinduism and its practices. But, if he resides long in India, abdicates his religion by a clear act of renunciation and adopts Hinduism by undergoing formal conversion, gives up along with the Christianity his Christian name and deliberately assumes a Hindu name, marries in accordance with Hindu religious rites a person who is a Hindu by race and religion and cuts himself off from old environments and takes to the Hindu mode of life in such a case, the Court may justly come to the conclusion that he has become a Hindu within the meaning of the Indian Succession Act.[2] This passage is clearly no authority for the position that a formal conversion is a pre-requisite to a person becoming a Hindu. As Varadachariar J points in 67 M. L. J 389 this passage does not lay down that every one of the tests should be fulfilled where conversion to Hinduism is alleged.[3] The question whether the parties who are of non-Hindu origin have been sufficiently Hinduised so as to attract the provisions of Hindu law is a mixed question of law and fact. The tests to be applied for the determination of the question whether a non-hindu tribe has been so Hinduised have been pointed out in the case of "Narendra Narain V. Nagendra Narain" A.I R 1929 Cal. 577. It has been held that adoption of Hindu names, employment of priests, performance of pujas such as Durga Puja, Manasa Puja, Kali Puja, etc,, offering of Pindas,

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1. A I R 1937 Mad 172 Ramayya *vs.* Josephine Elizabeth
2. 52 Mad. 160 A I R 1928 Mad 1279 55 M. L J. 463.
3. A. I. R. 1937 Mad 172

observing of mourning, performanee of funeral ceremonies were sufficient proof of a family aboriginal in origin, having adopted Hinduism in its entirety. The test as to whether people of non-Hindu origin have become Hindus out and out consist not in their following the religious rules of Srutis and Smritis or their completely giving themselves to the Hindus and in adoptiong social usages, the retention of a few relics of their anti-hinduism period not-withstanding

By Sub Sec. 3 of this section, the expression Hindu includes a person who is not a Hindu by religion for it includes Buddhists, Jains, Sikhs, Lingayaths, Virashivas and the like except the four communities *viz*,, Muslim, Christian, Parsi or Jew.

A convert to the Hindu, Buddhist Jaina or Sikh religion is governed by the Act

3. Definitions and Interpretation—(1) In this Act, unless the context otherwise requires :—

(*a*) "agnate"—one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males ;

(*b*) "aliyasantana law" means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949, (Madras Act IX of 1949), or by the customary aliyasantana law with respect to the matters for which provision is made in this Act ;

(*c*) "cognate" one—person is said to be a "cognate" of another if the two are related by blood or adoption but not wholly through males :

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1. A. I. R. 1956 Patna 123.

(*d*) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family;

Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(*e*) "full blood", "half blood" and "uterine blood"

(i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;

(ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In this clause "ancestor" includes the father and "ancestress" the mother;

(*f*) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

(*g*) "intestate"—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect.

(*h*) "marumakkattayam law" means the system of law applicable to persons—

(*a*) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932, (Madras Act XXII of 1933); the Travancore Nayar Act (II of 1100); the Travancore Ezhava Act (III of 1100); the Travancore Nanjinad Vellala Act (VI of 1101); the Travancore Kshatriya Act (VII of 1108); the Travancore Krishnanvaka Marumakkathayee Act (VII of 1115); the Cochin Marumakkathayam Act (XXXIII of 1113); or the Cochin Nayar Act (XXIX of 1113); with respect to the matters for which provision is made in this Act; or

(*b*) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras, and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line;

but does not include the aliyasantana law;

(*i*) "numbudri law" means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933); the Cochin Nambudri Act (XVII of of 1113); or the Travancore Malayala Brahmin Act (III of 1106) with respect to the matters for which provision is made in this Act;

(j) "related" means related by legitimate kinship ;

Provided that illegitimate children shall be deemed to be related to their mother and to one another and their legitimate descendants shall be deemed to be related to them and to one another ; and any word expressing relationship or denoting a relative shall be construed accordingly.

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

Words and terms used in the Hindu Law before codification are sought to be defined with a view to have definite precise and accurate meaning of the terms and to lessen if not altogether avoid conflict of interpretations of the terms. The courts, it is submitted are to be guided by the definitions in this section and sources of Hindu Law *viz* Sruthi smrithi and custom occupy a subordinate position for the purposes of interpretation

Customs are of three kinds :— (1) local (2) class and (3) family customs. It should be established to be so, by clear and unambiguous evidence for it is only by means of such evidence that the courts can be assured of its existence and of the fact, that it possesses the conditions of antiquity and certainty on which alone its legal title to recognition depends.[1] That it must not be opposed to morality or public policy[2] has received statutory recognition in the Act The burden of proving that there is a particular custom or usage lies upon him who sets up such custom or usage [3]

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(1) 14 M I A 570 (585-86)

(2) 51 Mad 1 108 I.C 760

(3) 21 All 412, 423 , 11 Cal 463, 476 , 12 I.A 72, 88

4. Over-riding effect of Act :— (1) Save as otherwise Expressly provided in this Act :—

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediatly before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act ;

(b) any other law in force immediatly before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any Law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

The Act relates to intestate succession among Hindus. The sources of Hindu law and the judicial interpretations of Hindu law cease to be in force. The Central Govetnment and various Provinces had enacted laws for some of the matters relating to intestate Succession. They cease to apply if the provisions contained therein are inconsistent with any of the provisions contained in this Act. By Sec. 31 of the present Act, the Hindu law of Inheritance (Amendment) Act 1929 and the Hindu Women's Rights to Property Act 1937 are repealed In Mysore the Hindu Law Women's Rights Act 1933 which codified the Hindu law to a certain extent ceases to be in force, if the provisions therein are inconsistent with the Provisions of the Act

Pending Proceedings—Though the Act specifically repeals two Central enactments by virtue of Sec 31, the present Section declares that the provisions of the Act over-rides the provisions of any other enactment to the extent they are inconsistent with the provisions of the Act. To that extent all the old acts stand impliedly repealed. No saving clause is inserted in the Act. The object of a saving clause is to save all the rights the party previously had, not that it creates any new rights in his favour [1] A saving clause can only preserve things which were in esse at the time of its enactment and therefore affect transactions which were complete at the date of the repealing statute.[2] "A repeal will generally divest all inchoate rights which have arisen under the repealed Statute and destroy all accrued causes of action based thereon As a result, such a repeal without a saving clause, will destroy any proceeding, whether not yet begun or whether pending at the time of the enactment of the repealing Act and not already prosecuted to a final judgement so as to create a vested right. It is well settled that if a statute giving a special remedy is repealed without a saving clause in favour of pending suits all suits must stop where the repeal finds them. If final relief has not been granted before the repeal went into effect, it cannot be after If a case is appealed and pending the appeal, the law is changed, the Appellate Court must dispose of the case under the law in force when its decision was rendered. The effect of the repeal is to obliterate the Statute, repealed as completely as if it had never been passed and it must be considered as a Law, which never existed except for the purposes of those actions or suits which were commenced prosecuted and concluded while it was an existing law. Pending judicial proceedings based upon a statute cannot

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1 (1856) 69 E. R. 911.

2. Halsbury Laws of England 2nd Ed. Vol. 31 at pp 486.

proceed after its repeal. This rule holds true until the proceedings have reached a final judgment in the Court of last resort, for that court when it comes to announce its decisions conforms it to the law then existing and may therefore reverse a judgment which was correct when pronounced in the subordinate tribunal from whence the appeal was taken, if it appears that pending the appeal a statute which was necessary to support the judgement of the lower Court has been withdrawn by an absolute repeal. Crawford · Statutory Construction pp. 599, 600 601.

The majority opinion of the Supreme Court in Keshavan Madhava Menon's Case [1] in interpreting Art 13 of the constitution in reference to Sections 2 (6), 15 (1) and 18 (1) of the Press and Emergency Powers Act 1931 was that it did not affect pending proceedings. The petitioner in the case was being prosecuted under the Emergency Powers Act 1931. During the pendency of the proceedings Constitution of India came into force on 26-1-1950 Art. 13 provided "that all Laws in force in the territory of India, immediately before the commencement of the constitution in so far as they are inconsistent with the provisions of this part (Part III) shall to the extent of such inconsistency be void" The judges of the supreme court held :—"what Art 13 (1) provides is that all existing laws which clash with the exercise of fundamental rights shall to that extent be void. As the fundamental rights became operative only on and from the date of the constitution, the question of the inconsistency of the existing laws which (with?) those rights must necessarily arise on and from the date those rights came into being Art 13 (1) only has, the effect of nullifving or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of

1. A I. R. 1951 S. C 138

the constitution. It has no retrospective effect and if therefore an Act was done before the commencement of the constitution in contravention of the provisions of any law, which after the constitution becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out, so far as the past act is concerned, for to say it is, will be to give the law a retrospective effect." Fazl Ali & Mukerjea JJ took a contrary view.

The mode of succession to a Hindu under the Act comes into operation only when a Hindu dies intestate after the commencement of the Act. Under the Hindu Law, succession is never in abeyance and hence rights of the persons who inherited the property of the deceased before the Act came into force are not affected. But the Act enlarges the rights of a female who has succeeded to the property as a limited owner, into a full and absolute estate. The rights of the reversioners who were entitled to succeed after the death of the female are negatived

The reversioners brought a suit against a widow and her alienees for a declaratien that the alienations made by her did not affect their reversionary rights. Pending the second appeal, the Mysore Hindu Law Women's Rights Act came into force Held that the rights of the reversioners ceased and they were not therefore entitled to the relief claimed by them[1] Similarly Section 14 of the Succession Act enables the female to become a full owner if before the commencement of the act, she was only a limited owner. The rights of the reversioners to succeed after the female's death are negatived.

Enactments which provide for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of

1. 40 Mys H. C R. 85. 13 Mys L J. 79.

such holdings are not affected by the Hindu Succession Act. In the absence of such enactments, the provisions of the Act will apply. Sch. 7 list III. Entry 5 of the Constitution relates to Marriage and divorce, Intestacy and succession, etc. The Agricultural lands come within the purview of succession subject to the restrictions enumerated in Sub-section 2 of Sec. 4.

Chapter II—INTESTATE SUCCESSION

GENERAL

5. Act Not to Apply to Certain Properties— This Act shall not apply to—

(i) any property succession to which is regulated by the Indian Succession Act, 1925 (39 of 1925), by reason of the provisions contained in section 21 of the Special Marriage Act, 1954 (43 of 1954) ;

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin,

The Act is not made applicable to properties of the Hindus under the following circumstances.

1. The property of persons who have married under the special Marriage Act 1954. The succession to property of

parties married under that Act is governed by part 3 of the Indian Succession Act 1925 (39 of 1925) Provision under the Special Marriage Act is made that a marriage solemnised under that Act of any member of an undivided family who possesses the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his separatiom from such family. Consequently succession is governed by the Indian Succession Act

2 The rule of primogeniture is recognised as applicable to Rulers of Indian States to the extent of the terms of any covenant or Agreement entered into by them with the Government of India.

3. The Act will not apply to the properties included in the Proclamation 9 of 1124 promulgated bv the Maharajah of Cochin.

Except to these three properties, the Act is applicable to every other kind of property both movable and immovable belonging to a Hindu as defined in Section 2 of the Act.

6. Devolution of interest in Coparcenary Property—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act;

Provided that, if the deceased had left him surviving a female *relative* specified in class I of the Schedule or a male *relative* specified in that class who claims through such female relative, the interest of the deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship.

Explanation 1—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

Mitakshara Coparcenary Property—The Section is applicable only to Hindus governed by the Mitakshara School. A joint family and its coparcenary with all its incidents are purely a creature of Hindu law and cannot be created by act of parties as the fundamental principle of the joint family is the tie of Sapindaship arising by birth, marriage or adoption[1] Coparcenary in the Mithakshara law is not identical with Coparcenary as understood in English law. When a member of a joint family dies, his right accresces to the other members by survivorship but if a coparcener dies his or her right does not accresce to the other coparcencers, but goes to his own heirs.

A coparcenary consists of persons who take an interest in the property by birth. They are the three generations next to the owner in unbroken male descent. A coparcenary consists of persons who by virtue of relationship have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, to burden it with their debts and at their pleasure to enforce its partition[2]. A

1 25 Mad 149, 154, 32 Bom 479, 8 M I. A. 400 ; 9 Rang. 266.
2. I. L R. 1938 Nag 88

Hindu coparcenary is a much narrower body than the Hindu joint family. Outside this body, there is a fringe of persons possessing only inferior rights such as that of maintenance, which however tend to diminish as the result of reforms in Hindu law by legislation[1].

Each coparcener has a right to claim a partition if he likes. But until he elects to do so, the joint family property continues to devolve upon the members of the family for the time being by survivorship and not by succession. A coparcener cannot devise his interests by will. The right of male members which arise by birth are only ascertained on partition, for no individual member of a family can predicate of the joint undivided property that he has any definite share[2]. The interest of the member in the undivided property is not individual property but is a fluctuating interest liable to be diminished by births or increased by deaths in the family[3]. Survivorship enures only to those collaterals and descendants within the limit of the three degrees.

Coparcenary Property—The first species of coparcenary property is that which is known as ancestral property. It is that property which descends upon one person in such a manner that his male issue acquires certain rights in it as against him. All property which a man inherits from a direct male ancestor not exceeding three degrees higher than himself, is ancestral property and is at once held by himself in coparcenary with his own male issue. But where he has inherited from a collateral relation as for instance from a brother, nephew, cousin or uncle it is not ancestral property in his hands in relation to his male issue[4].

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1. Mayne Hindu Law and usage 11th Ed PP 324.
2. (1866) 11 M I. A 75, 89
3. 25 Mad. 149; 30 I. A. 165
4. Mayne Hindu Law and usage 11th Edn. PP 339

Ancestral property must be confined to property descending to the father from his male ancestor in the male line and that it is only in that property that the son acquires by birth an interest jointly with and equal to that of his father[1].

The second species of coparcenary property is that which the members of a joint family acquire by their joint labour or in their joint business, in the absence of a clear indication of a contrary intention and the male issue would necessarily acquire a right by birth in such property. For the formation of a coparcenary, a nucleus of property which has come down to the father from his father, grandfather or great grandfather is not necessary provided the persons contributing stand, in the relation of father and son or any other relation ship requisite for a coparcenary [2].

Another kind of coparcenary property is that, which has been repeatedly recognised as such by the Privy Council. Property which was originally self-acquired may become joint property if it has been voluntarily thrown by the owner into the joint stock, with the intention of abandoning all separate claims upon it. The question whether he has done so or not is entirely a question of fact[3]. A clear intention to waive his separate rights must be established and will not be inferred from acts which may have been done merely from kindness or affection [4].

The Hindu Women's Rights to Property Act 1937 (XVIII of 1937) dealt a death blow to the doctrine of survivorship perhaps the most important part of the law of coparcenary [5]. Under the Act XVIII of 1937 the undivided

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1. 64 I. A 250, I L R 1937 ALL 655
2 10 Bom. L R 175, 20 Bom. L.R. 338, 342, A I R 1927 Bom 412, 414
3 3 I A 259, 16 I A 71, 6 Cal 397.
4. 18 I A. 9, 18 Cal. 341.
5 Mulla Hindu Law 10th Edn PP 26.

interest of a coparcener who leaves a widow, does not go by survivorship to his male issue or to the other coparceners on his death, but it goes to her as his heir for the limited estate of a Hindu woman.

While she cannot be in the strict sense be a coparcener with the other members, her position will be analogous to that of a member of an undivided family under the Dayabhaga Law with this possible difference, that as she is only to have the same interest as her husband himself had, the share to which she will be entitled to at a partition may be liable to the same fluctuation caused by changes in the family as if she occupied the place of her husband or as the share of any member of an undivided Mitakshara family[1]. The widow can claim partition in her own right and independently of any partition taking place between the sons and which a creditor can attach in execution of a decree against the husbands' assets[2]. Similarly the widow of a predeceased son and the widow of a predeceased son of a predeceased son are entitled to succeed for their respective shares

Section 8 of the Mysore Hindu Law Women's Rights Act (X of 1933) enabled certain females to get a share at a partition among coparceners. According to Section 8, the share which a widow, mother or daughter or sister gets has to be fixed with reference to the share of the husband, father or brother as the case may be [4]. A widow of a deceased coparcener was not entitled to a share in the property of her husband's joint family, if the coparcenary in that property had come to an end before that Act came into force [5]. A woman is entitled to a share at a partition of joint family

1. Mayne Hindu Law and Usage 11th Edn. P 334
2. 23 Pat 760
3. 1942 Mad 630 , 201 I. C 152
4 50 Mys H C R. 171
5 43 Mys. H C. R. 415 : 16 Mys. L. J 376 ; 51 Mys. H C. R. 317

property but she is not entitled herself to enforce a partition of the joint family property[1] But where the property of a Hindu passes to his sole surviving coparcener clause (d) of Section 8 (1) makes the female members specified in the Section cosharers along with him and they will be entitled under sub-section 5 of the said section to have their shares separated off and placed in their possession, until that is done they would have a vested interest therein[2]. Under Section 10 (1) of the Mysore Act, property taken by inheritance by a female from her husband or son or from a male relative connected by blood, except when there is a daughter or daughter's son of the propositus at the time, would become her Stridhana property.

Present Law—Inheritance to a person (who was a coparcener) dying subsequent to the Act is governed by this Section. The proviso to the main section 6 takes away one of the important incidents of coparcenary. The main section states the law as it was before the Act came into force. But the proviso enables a female relative or a male relative who claims through such female relative enumerated in Class I of the Schedule to inherit the property of the deceased in accordance with this Act. Daughter, widow, mother, daughter of a predeceased son, daughter of a predeceased son of a predeceased son are the females entitled to succeed while son of a predeceased daughter is the only male relative who claims through a female. For purposes of illustration, suppose A dies leaving behind him two sons, two daughters and a widow and that A was a member of coparcenary. Under the old law after the death of A his two sons would take the property by survivorship The Hindu Women's Rights to Property Act 1937 enabled the widow to inherit the property of her husband to the extent he had a share, as a

1. 43 Mys. H C. R 361 . 16 Mys. L. J. 273 , 49 Mys H C. R 456
2 49 Mys. H. C R. 456

limited owner Under the Mysore Hindu Law Women's Rights Act the widow would take a limited estate because the propositus had left behind him a daughter. But under the present Act the sons would not succeed to the property of their father by survivorship. The two sons, the two daughters and the widow are entitled to succeed to the property of the deceased in equal shares and simultaneously. How is the share of the deceased to be ascertained? Explanation 1 states that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share that would have been allotted to him if a partition had taken place immediately before his death. In the illustration given above, if there was a partition A would have got 1/3 share in the joint family property. Under the present Act the two sons, the two daughters and the widow would inherit the 1/3 share of A simultaneously and in equal shares. The sons in addition to their 1/3 share would get an additional share of 1/15 (1/5 of 1/3) share in the father's property. The coparcener must have died after the commencement of this Act *viz* 17th June 1956. The words in Explanation I "whether he was entitled to claim partition or not" are inserted to overcome the rulings of the Bombay High Court. The right of a son, a grandson and a great grandson under Mitakshara law to a partition of movable and immovable property in the possession of a father against his consent as well as the right of every other adult coparcener to demand a partition against the managing member or other coparceners is well established in all the provinces[1] In Bombay however, this rule has been subject to the qualification laid down by the majority of the Full bench of the Bombay High Court that a son is not entitled to ask for a partition in the lifetime of his father, without his

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1. 1 Mad H C 77, 18 Mad 179; 1 ALL 159 FB, 31 Cal. 111 1922 (1) Pat 361.

consent, when the father is not separated from his father or brothers and nephews [1].

Explanation (2) is insertedby way of abundant caution. A person who has separated himself from the coparcenary before the death of the deceased cannot claim to be the heir and get a share in the property of the deceased.

The explanation to Sec. 30 gives the power to a Hindu to dispose of by will or other testamentary disposition his interest in the Mitakshara coparcenary property

The property inherited by a female becomes her Stridhana Property by virtue of Sec. 14. She is also entitled to enforce a partition and have her share separated off and to be placed in her possession The restriction not to enforce a partition under Sec 8 of the Mysore Hindu Law Women's Rights Act is taken away under this Act In the Mysore Act the words used were "that at a partition she is entitled to a share"

7. Devolution of the Interest in Property of a tarwad, tavazhi, Kutumba, kavaru or illom— (1) When a Hindu to whom the marumakkaattayam or nambudri law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a tarward, tavazhi, or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be under this Act and not according to the marumakkattayam or nambudri law.

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1 16 Bom. 29 (F.B); 46 Bom 435.

Explanation—For the purposes of this sub-section, the interest of a Hindu in the property of a tarwad, tavazhi or illom, shall be deemed to be the share in the property of the tarwad, tavazhi or illom, as the case may be. that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the tarwad, tavazhi or illom, as the case may be, then living, whether he or she was entitled to claim such partition or not under the marumakkattayam or nambudri law applicable to him or her, and such share shall be deemed ro have been allotted to him or her absolutely

(2) When a Hindu to whom the aliyasantana law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a Kutumba or Kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the aliyasanthana law.

Explanation—For the purposes of this sub-section, the interest of a Hindu in the property of a kutumba or kavaru shall be deemed to be the share in the property of the kutumba or kavaru, as the case may be, that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of the kutumba or kavaru as the case may be, then living,

whether he or she was entitled to claim such partition or not under the aliyasantana law, and such share shall be deemed to have been allotted to him or her absolutely.

(3) Notwithstanding anything contained in sub-section (1) when a sthanamdar dies after the commencement of this Act, the sthanam property held by him shall devolve upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar as if the sthanam property had been divided per capita immediately before the death of the sthanamdar among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the sthanamdar shall be held by them as their separate property.

Explanation—For the purposes of this sub-section, the family of a sthanamdar shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of sthanamdar if this Act had not been passed.

While Section 6 of the Act relates to the devolution of interest in coparcenary property governed by the Mitakshara school, the present section relates to the devolution of interest to the property of a person governed by Marumakkattayam, Aliyasanthana or Nambudri laws What is Marumukkattayam law and Nambudri law have been defined in Section 3

Marumakkattayam Law—The meaning of Marumakkattayam is inheritance through nephews and nieces. This Law prevails among the people inhabiting West Coast

of South India *viz*, South Kanara, Travancore and Cochin and Malabar. It is a customary law but the Madras Legislature and Travancore Legislature have modified the customary law so as to bring it with the growing aspirations of the people. In South Kanara, it is known as Aliyasanthanam. These systems are also known as Malabar Law and though, it is also a school of Hindu Law, still there are fundamental differences between this Law and Mitakshara Law. One is patriarchal while Malabar law is matriarchal. While in Mitakshara joint family, the members claim their descent from a common ancestor, the members of the family constituting a Marumakkathayam Tarwad are descended from common ancestress. The descent according to Marumakkathayam is in the female line [1].

Marumakkattayam and Nambudri laws include all the enactments passed by the Madras and Travancore Cochin Legislatures passed prior to the Hindu Succession Act. It is not open to a Hindu governed by the Marumakkathayam Law to get rid of the statutory prohibition under the Marumakkattayam Act of 1932 by a mere declaration that he or she does not intend to be governed by this law [2].

Tarwad is a name given to the joint family consisting of males and females of descendants in the female line from common ancestress It is an undivided family of Malabar. For the purpose of inheritance, the descendants are traced through the female line. A Tarwad may consist of two or more branches known as Thavazhis Each branch consisting of one of the female members of the Tarwad and her descendants in the female line. The Madras Marumakkattayam Act 1933 defines a Tarwad as " A group of persons forming a joint family with common property governed by the Maru-

1. Mayne Hindu Law and Usage 11th Edn. p 972
2 A.I R. 1939 Mad. 595

makkattayam Law of Inheritance. A Thavazhi in relation to a family is a group of persons consisting of that female, her children and all her descendants in the female line and a Thavazhi used in relation to a male as the Thavazhi of the mother of that male.

Karnavan in the Marumakkathayam tarwad corresponds to the Manager of a Hindu Joint family. He is the senior most male member. In his absence, the senior most female Karnavathy is entitled to carry on the management of the family.

The senior most male member in the Aliyasanthana system is the Yajaman and in his absence the senior most female member is the Yajamanathy. A Tarwad or a Thavazhi cannot be created by Act of parties [1]. It is a joint family and every member has equal right in the property by reason of his or her birth. On the death of any member, his or her interest in the porperty devolves by survivorship. As males and females have equal rights in the property, the limited estate of the Hindu women is unknown to this branch of Law [2].

Before the Marumakkattayam and Aliyasanthana Acts, one or more members of the Tarwad could not claim partition without the consent and concurrence of all members By Section 38 of the Madras Marumakkathayam Act, Thavazhis represented by the majority of the major members have been given a right to enforce partition. The right of partition is applicable to Thavazhis possessing separate properties The ascertainment of the share at the partition is per capita and not per stirpes

Under the Madras Nambudri Act 21 of 1932, a husband and wife are both members of the husband s Illom. He by

1 51 Madras 574

2. 63 M.L J. 572

birth and she by marriage. A married man is entitled to claim partition but, he must do so, both on behalf of himself and his wife They receive their shares *jointly and neither of* them can claim partition from the other except for change of religion.

The Madras Marumakkattayam Act and the Madras Aliya Santhana Act alter the Law of intestate succession among Hindus governed by the Malabar Law. Testamentary powers were given to persons governed by Marumakkattayam and Aliyasanthana Laws of inheritance by the Malabar Wills Act 5 of 1898 and the Nayar Regulations of Cochin and Travancore.

Questions of inheritance in the Marumkkattayam Law could only arise as for individual property or in respect of property left by an extinct Tarwad and inheritance in a Tarwad was always by *survivorship*

, Stanom which *literally means Station*, Rank *or* Dignity were granted to persons in the Malabar coast by the old Rulers, in appreciation of their work The grant of Stanom to a subsidiary Ruler or Public Officer was accompanied by a grant of land for the maintenance of the dignity. There were also other families possessing Stanoms, but *without* any particular dignity attached to them In every such family there could be only one Stanom and it fell to the share of the seniormost male or female member. The properties attached to each stanom were properties attached for the office for the *time being and so they descended to* successors in Office.

One important feature is that the person who takes the Stanom, ceases to have any interest in the property of the Tarwad and members of his Tarwad have in their turn only reversionary rights to the Stanom properties.

The Estate taken by the Stanee is a limited one. But, it could be encumbered or alienated for *legal necessity* by the Stanee like any other limited owner. The acquistions

made by a Stanee devolve not on the successor in office but on his personal heirs. But, it is open to the Stanee to incorporate his immovable acquisitions to the Stanom property, so as to subject them to all the incidents of the Stanom property [1].

The Madras Marumakkathayam Act does not apply to Stanoms. The succession to persons who were hitherto governed by the Malabar Law ceases under the present Act and the succession to the Property of such persons is regulated by the present Act To determine the share of persons, the explanation states that the share would be so much of the property as would have fallen to his or her share if a partition had been effected just prior to his or her death and the share which falls to such person shall be deemed to have been allotted to him or her absolutely. That means the jointness of the family has come to an end. For the devolution of the interest in the property under the present Act, the death of the person must be subsequent to the present enactment.

8. General Rules of Succession in the Case of Males—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :—

(*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 ;

(*c*) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased, and

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1 Mayne Hindu Law and Usage 11th Edn p. 994

(*d*) lastly, if there is no agnate, then upon the cognates of the deceased.

By Sections 6 & 7, the Act prescribes the mode of succession to the property of a coparcener or a person governed by Malabar law In other cases succession to the property of a male shall be in accordance with this Act. This Section enumerates the heirs, who are entitled to succeed if the deceased has not left a will at the time of his death Son, daughter, widow, mother, son of a 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 are the heirs who are entitled to the property. In the absence of these heirs, property will devolve on the heirs enumerated in clause 2 and in the absence of the heirs enumerated above, then the agnates and lastly cognates would succeed to the property. Who is an agnate and cognate is defined under Section 3.

Under the Mysore Hindu Law Women's Rights Act 1933, the male issue to the third generation, then the widow, daughters and daughter's sons, mother, father etc succeed to the property of the deceased. The widow would take the absolute estate, when there was no daughter or daughter's son. Married daughters have no share in the property and the unmarried daughters are entitled to a share inclusive of and not in addition to the legitimate expenses of her marriage including a reasonable dowry. Under the Mysore Act, the mother, the widow, the unmarried daughter are entitled to a share, though their shares are not equal to that of a son But in the present Act, mother, widow and daughter take an equal share along with the son

9. Order of Succession among heirs in the Schedule—Among the heirs specified in the schedule, those in class I shall take simultaneously and to the exclusion of all other heirs ; those in the first entry in class II shall be preferred to those in the second entry ; those in the second entry shall be preferred to those in the third entry ; and so on in succession.

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 get equal portions ; and the branch of his pre-deceased 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.

Twelve heirs enumerated in Class I of the Schedule take the property exclusively and to the exclusion of others. The daughter whether married or unmarried is also in the list of heirs. The heirs in Class II take the shares according to the entry in which they are placed Father is placed in entry 1 of Class II. If there are no heirs enumerated in Class I, father will inherit the property to the exclusion of others. Then persons in entry II and so on in succession.

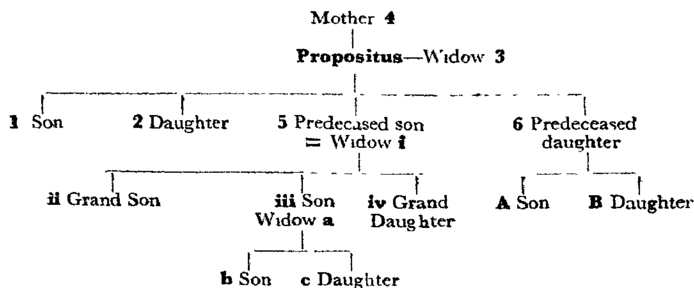
How are the shares to be determined among the heirs in Class I? The widow or if there are more than one, all of them shall take one share. The surviving sons, daughters married and unmarried and mother shall take one share each. The heirs in the branch of each predeceased son or predeceased daughter shall take one share which the predeceased son or predeceased daughter would have taken if they were alive. The heirs in the branch of each predeceased son shall inherit the share of the predeceased son in equal shares. The heirs of the predeceased daughter shall likewise inherit the property in equal shares. There is only this difference between the branch of a predeceased son and a predeceased daughter. In the case of the predeceased son, his widow along with her sons and daughters shall inherit his share, while the sons and daughters of a predeceased daughter shall inherit her share equally.

The heris given in the illustration are all Classs I heirs.

The mother, widow, son, daughter, the branch of each predeceased son and predeceased daughter will take one share each and simultaneously

The heirs in the branch of the predeceased son shall take equal persons i e the widow and her sons and daughter get one share each in the share that comes to their branch. The widow of the predeceased son of the predeceased son also gets one share along with others.

The portion that falls to the share of the widow of her predeceased grandson has to be distributed among her, sons and daughters in equal shares.



The sons and daughters of a predeceased daughter share equally between them, the portion that comes to the predeceased daughter. The husband of the daughter alive or dead, gets no share.

Daughter means both married and unmarried and includes a widowed daughter also. A male or female removed beyond three degrets from the prepositus in the male line are not included in the list of heirs in class I of the schedule.

The mode of ascertianing the shares of the heirs of the different generations is discussed in 50 Mys H.C.R 171.

Stepmother: Does mother include Stepmother also ?

According to the Mitakshara, a Stepmother cannot succeed to her stepson [1]. She is a gotraja sapinda and hence, she could come in only after all the sapindas. Accordingly in Bombay, she succeeded as a gotrajasapinda as the wife of a gotraja sapinda [2]. In other Provinces, it was held neither a stepmother nor the widow of any other gotraja sapinda

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1 (1879) 2 Bom 388 ; (1880) 4 Bom 188 (208) , 54 Bom 564 (F. B.)
2 (1880) 11 Bom 47

could succeed as an heir [1]. Under the present Act, by implication mother does not include step-mother. For, father's widow is placed in entry VI of class II heirs in the schedule. The father's widow can only mean step-mother.

Illegitimate sons :

Illegitimate sons in the three higher classes never took as heirs but were only entitled to maintenance from the estate of the father (22 ALL 191, 45 Mys H C R. 311.) An illegetimate son is entitled to maintenance as long as he lives, in recognition of his status as a members of his father's family and by reason of his exclusion from inheritance among the regenarate classes [2].

The right is a personal right and not heritable [3]. The illegitimate son of a Sudra by a permanantly kept concubine has the status of a son and is a member of the family [4], and is entitled to a share of the inheritance. But, he takes one half of what he would have taken if he were legitimate [5]. The illegitimate son of a sudra can inherit only to his father. He has no claim to inherit to collaterals i e. to his father's legitimate sons etc. and a collateral is not entitled to inherit from him [6].

The heirs are the relatives of the deceased. The term "Relative" is not defined but "Related" means related by legitimate kinship. That is illegitimate sons not entitled to inherit. But the question of legitimacy or otherwise is a question of fact. The children of a void or voidable marri-

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1 37 Mad 286, 16 All 221; 37 Cal 214
2 A I R. 1953 S C 433.
3. 7 M I A 18, 279 A. 51, 1938 Bom 779.
4. 58 I. A. 402, 55 Mad 1.
5. 50 I. A. 32, 46 Mad 167, 40 Bom 369
6 18 Cal. 151, 7 Mys C C. R. 13.

age are deamed to be their legitimate children not with standing a decree of nullity. Section 16 of the Hindu Marriage Act (Act 25 of 55) provides that such children have no rights in or to the property of any person other than the parents. Children born of incestuous connection are illegitimate and it is submitted that they continue to have no rights in or to the property of any person, other than the mother.

Atopted son:—The object of an adoption is two fold (*a*) spiritual—having a son for the purpose of offering funeral cakes and libations of waters to the manes of the adopter and his ancestors, (*b*) Secular-to secure an heir and perpetuate the adopter's name[1] Naturally, adoption confers upon the adoptee the same rights and privileges in the family of the adopter as a legitimate son. He will inherit the property of the deceased as a legitimate son. He is entitled to inherit to his relations in the adoptive family and conversely they can inherit to him[2]. But an adopted son cannot challenge the disposition of property by way of gift, made by the widow (adoptive mother) prior to the date of adoption[3]. The widow in Mysore by virtue of Sec 10 of the Mysore Hindu Law Women's Rights Act 1933 inherits the property from her husband as an absolute owner, when there is no daughter or daughter's son.

Unchastity—Unchastity was a bar only to widows inheritting the property of a male but not stridana of a female (26 Madras 509) Unchastity should be at the time, when the succession opens but the widow becoming unchaste subsequent to her husband's estate vesting in her, would not divest the estate already vested in her. (5 Cal 776; 36 Bombay 138.)

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1. 35 Bom 169, 179, 42 I A. 135. 154, 39 Bom. 441.
2. 8 Cal. 302, 43 Cal 944, 34 I C. 10.
3. A I R. 1952 Mys 129 See also A I. R 1954 S C 379.

According to the Mitakshara Law, the only female liable to exclusion from inheritance by reason of unchastity is the deceased's widow[1] A daughter, a mother or a sister are not excluded by reason of unchastity [2].

As the Hindu Women's Rights to the Property Act 1937 confers upon the widow, the right of succession notwithstanding any rule of Hindu law an unchaste widow will not be disqualified from inheritance. Similarly the rights of succession of the widowed daughter-in-law will not be subject to the condition of chastity even in the Dayabaga school; for the same reason the widow will be entitled to succeed notwithstanding any ground of disqualification of the Hindu Law in either school. (Mayne Hindu Law and Usage 10th Edn p 722.)

The 1937 Act was enacted to give better rights to women in respect of property There was no specific mention in that Act, whether unchastity would be a bar to inherit the property. The matter came up for decision in the Madras High Court which decided that unchastity was a bar to inherit the property. The Learned Chief Justice stated thus :—"Under the law as it stood before the Act of 1937, a Hindu widow who was not unchaste was entitled to inherit to the separate property of her husband, when he died intestate and leaving no son" (or son's son or son's son's son). If there was a son, she was entitled to claim maintenance against the son and if the property was joint family property against the coparceners of her husband, provided she was not unchaste Unchastity was a disqualification which, prevented her from claiming rights to which, she was otherwise entitled under the Law. If the object of the Act was to remove disqualification on the ground of unchastity, then the

1. 31 Bom. 495

2 33 All 702 (mother), 1924 Pat 420 (daughter)

appropriate language would have been different. If by any rule of law in force, at the time of enactment there is a disqualification or disability from acquiring any right unless such disqualification or disability is expressly or by necessary intendment removed by the Act, the provisions of the act must be read subject to such general rules of law. It is clear that the 1937 Act has not expressly or by implication removed the disqualification on the ground of unchastity which is based on ethical foundations and the sentiment of the people The effect of the enactment is not bringing about some-thing not intended by the legislature "[1]

Accordingly the learned judge disagreed with tha observations made in Mayne's Hindu Law and Usage The other two learned Judges who considered this aspect proceeded on the basis that the Hindu Women's Rights to Property Act was not a complete Act and therefore the law Prevailing prior to the enactment was not affected. But, the present Act is an Act to amend and codify the law relating to intestate succession among Hindus and may be said to be a self-contained Act. Effect must be given to it as it is If the observations of the learned Judges are to be followed, then it is respectfully submitted that unchastity may no longer be a bar to inherit the property of either a male or female in the context of the present Act :—See Sec. 4 of the Act.

11. Distribution of Property among Heirs in Class II of the Schedule—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

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1. A I. R 1951. Mad 954 (F B.), A. I. R. 1954, Cal. 588.

In the absence of heirs enumerated in Class I of the Schedule, persons enumerated in Class II will inherit the property in the order given When there are heirs in an earlier entry they shall take the property to the exclusion of others and so on. Persons mentioned in the same entry shall inherit the property in equal shares.

12. Order of Succession among agnates and cognates—The order of succession among agnates or cognates as the case may be, shall be determined in accordance with the rules of preference laid down hereunder ·—

Rule 1—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent

Rule 3—Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

13. Computation of Degrees—(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

Failing the heirs in the Schedule, agnates or cognates shall succeed to the property. Agnate is a person who is related to another by blood or adoption wholly through males. Cognate is a person who is related to another by blood or adoption but not wholly through males. Gotraja sapindas are all agnates and bhinagotra sapindas are all cognates. Bhinnagotra sapindas are commonly known as Bandhus. They are his blood relations connected through females who have passed into other families or gotras[1].

Under the Act Bandhus or cognates shall succeed only on the failure of sapindas or samanodakas *i e*, agnates. The sapinda relationship extends to seven degrees reckoned from and inclusive of the deceased. Samanodakas of a person include all his agnates from the 8th to 14th degree[2]. The wife becomes a sapinda of the husband on marriage. The daughter's son is a bandhu, for he is related to the deceased through the female. For the purposes of succession he is ranked with gotraja sapinda.

The number of degrees of ascent will determine the next heir whether he is an agnate or cognate. Where the degrees of ascent are the same, they inherit the property simultaneously.

14. Property of a Female Hindu to be her Absolute Property—(1) Any property possessed by a female Hindu whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

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1. 48 I. A. 349, 354 , 44 Mad. 753
2. 1940 Mad 109.

Explanation:—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintanance or arrears of maintanance, or by gift from any person, whether a relative or not, before at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a Civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Property whether movable or immovable possessed by a female is her absolute property or stridhana The acquisition of property may be by inheritance, devise, share at a partition or in lieu of maintenance, gift, by her own exertion, purchase or prescription or acquired in any other manner whatsoever. Whether she had come into possession of the property prior or after the Act is immaterial. If before the Act she was only a limited owner, she would automatically become the absolute owner of the same by virtue of Sec. 14.

The definition in Sec. 10 of the Mysore Hindu Law Women's Rights Act was more comprehensive. The only restriction in that section was that property taken by a female from her husband or son or from a male relative conected by blood was a limited estate when there was a

daughter or daughter's son of the propositus. The rights of the reversioners cease after the Hindu Succession Act. A reversioner filed a suit against a widow who was a limited owner for a declaration that the alienations made by the widow were not binding upon him. Pending the second appeal the Mysore Act 10 of 1933 came into force. Held that the right of the reversioner ceased as the widow became entitled absolutely to the properties [1].

The limitation imposed by the Act regarding the absolute property is found in Sub Sec (2) of Sec. 14 A female will not become the absolute owner if the gift or will or any other instrument or the decree or order of a Civil Court or an award definitely states that she will get only a restricted estate in such property.

Section 14 (2) to some extent corresponds to Sec 15 of the Mysore Hindu Law Women's Rights Act 1933 which was as follows— " Where property immovable or movable is bequeathed to a female, she shall be entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for her." This was the law even prior to the Mysore Act The intention of the testator was to be gathered by the words used therein. If the intetion is clearly expressed or indicated then the intention will certainly be enforced to the extent and in the form which the law allows [2]. If only a restricted interest is intended to be conferred on the donee. clear and unambiguous words to that effect must be used by the testator.

A person cannot create a new form of estate or alter the line of Succession allowed by law, for the purpose of carrying out his wishes To attempt to institute a course of

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1. 40 Mys H C R 85, 13 Mys L J. 79.
2 9 Cal. 952 P. C ; A I R. 1953 S C. 304.

succession otherwise than the law directs, is assuming to legislate, which a person cannot do. Such a disposition will fail and give place to the ordinary law of inheritance. Estates conferred in an order of succession which excludes female heirs or male heirs or daughters and their sons are all held invalid. In such cases the first will take for his life time, because the giver had at least that intention and on his death the property will revert to the testator's estate [1].

15. General Rules of Succssion in the case of Female Hindus—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(*a*) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband ;

(*b*) secondly, upon the heirs of the husband ;

(*c*) thirdly, upon the mother and father ;

(*d*) fourthly, upon the heirs of the father ; and

(*e*) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)—

(*a*) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

1. M. N. Srinivasan Hindu Law in Mysore p. 272.

(*b*) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub section (1) in the order specified therein, but upon the heirs of the husband.

Section 14 enumerates the various kinds of property that become the absolute property of a Hindu female. Except to the extent enumerated in sub-section 2 of Sec 14 all the other property of a female will be her absolute property. What was known as " a woman's estate " or "limited estate" is almost abolished. Property acquired by way of gift or under a will or any other instrument or under a decree or award of a civil court may not be absolute property if the instrument should impose a restriction that a female shall take only a restricted estate and not absolutely.

From very early times Hindu law recognised to the full the rights of women to hold separate property. From the time of Gautama, the characteristic feature of woman's property was in the matter of succession, the preference given to the female over the male children an obviously equitable rule. In the quaint phrasing of Mitakshara, woman's property goes to her daughter, because portions of her abound in her female children and the father's estate goes to his sons because portions of him abound in his male children [1].

But the Hindu Suceession Act enables, females related to a male Hindu to inherit property along with males. Hence, succession to the female Hindu is altered to the extent

1 Mayne Hindu Law & Usage 11th Edn. PP. 724 - 725.

that the sons succeed to the property of the mother along with the daughters.

Clause I of Section 15 enumerates the heirs entitled to succeed to the property of a female Hindu dying intestate. Sons and daughters including the children of any predeceased son or daughter inherit the property to the exclusion of others, whether the property is inherited by the female from her father, mother, husband or father-in-law. The order of succession in the absence of son or daughter or their children is different, according to the source of the property inherited by the female.

Property inherited by a female Hindu from her father or mother devolves on the sons and daughters including the children of any predeceased son or daughter. If there is no son or daughter or children of any one of them, the properry does not devolve on the husband but devolves upon the heirs of the father.

Property inherited by a female Hindu from her husband or from her father-in-law devolves on her sons and daughters and their children. In their absence, it devolves upon the heirs of the husband.

Property inherited by a female Hindu from any source other than those enumerated above, shall devolve as per Sec. 15 (1), by which, husband is entitled to a share along with the sons and daughters

In order to determine the heirs to a female it is an essential prerequisite to ascertain from which source the female has inherited the property. Property inherited from her father shall revert to his family in the absence of son or daughter and property inherited from her husband or father-inlaw will revert back to the family of her husband. The property held by a female is her absolute property with full rights to dispose of the property in any manner whatsoever. She has also power to dispose of the property by will.

16. Order of Succession and Manner of Distribution among heirs of a Female Hindu— The order of succession among the heirs referred to in section 15, shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely :—

Rule 1—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3—The devolution of the property of the intestate on the heirs referred to in clauses (*b*), (*d*) and (*e*) of sub-section (*1*) and in sub-section (*2*) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediatly after the intestate's death.

The order of succession and manner of distribution of shares is governed by this section. Heirs in one entry are preferred to those in the next entry. Heirs in the same entry take simultaneously and in equal shares.

Sections 14, 15 and 16 relate to the enumeration of heirs, order of succession and manner of distribution among the

heirs of a female Hindu, dying intestate. Section 15 and 16 are prospective and do not affect the property already vested in other heirs, before this enactment came into force.

Under the Mysore Hindu Law Women's Rights Act 1933 Succession to the Stridhana was governed by Sec 12. Children, male and female, grand-children male and female would inherit in the first instance Failing which, husband, then the heirs of the husband would inherit the property. To this extent the Mysore law is not altered. Children included both legitimate and illegitimate.

17. Special Provisions Respecting Persons Governed by Marumakkattayam and Aliyasantana Laws—The provisions of sections of 8, 10 and 23 shall have effect in relation to persons who would have been governed by the marumakkattayam law or aliyasantana law if this Act had not been passed as if—

(i) for sub-clauses (*c*) and (*d*) of section 8, the following had been substituted, namely :—

"(*c*) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates." ;

(ii) for clauses (*a*) to (*e*) of sub-section (1) of section, 15, the following had been substituted, namely :—

"(*a*) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother ;

(*b*) secondly, upon the father and the husband

(*c*) thirdly, upon the heirs of the mother ;

(*d*) fourthly, upon the heirs of the father ; and

(*e*) lastly, upon the heirs of the husband.";

(iii) clause (*a*) of sub-section (2) of section 15 had been omitted ;

(iv) section 23 had been omitted.

Persons who were prior to the Act governed by the Marumakkathayam and Aliyasanthana laws are governed now by the provisions of this Act. But the order and mode of succession is to some extent different from what applies to persons governed by the Mitakshara and Dayabhaga schools.

In the absence of the heirs mentioned in the schedule to the Act, the property devolves upon the relatives whether agnates or cognates. Relative is one who is related by legitimate kinship. Agnates are preferred to cognates regarding the succession to other Hindus. This is the difference in succession regarding the property of a male Hindu dying intestate who was governed by the Marumakkathayam and Aliyasanthana Laws.

The succession to a female Hindu will be in the following order (*a*) firstly upon the sons and daughters (including the children of any predeceased son or daughter) and the mother ;

(*b*) secondly upon the father and the husband ,

(*c*) thirdly upon the heirs of the mother ,

(*d*) fourthly upon the heirs of the father , and

(*e*) lastly upon the heirs of the husband.

Sons, daughters, grandchildren along with the mother inherit the property. Husband and father share the property equally in the absence of the heirs in Clause (1). The heirs of the mother, father and husband are the next heirs in the absence of the heirs (*a*) and (*b*).

The heirs entitled to succeed to the property of a female dying intestate, i e, the order of succession is the same whether the property is inherited by a female Hindu from her father or mother or from her husband or father-in-law.

A female who is entitled to a share cannot claim partition of the dwelling house in which the members of the family of the deceased are dwelling. An unmarried daughter or a daughter deserted by her husband or a daughter who is a widow has a right of residence. But persons who were hitherto governed by Marumakkathayam and Aliyasanthana laws are excluded from the operation of Section 23. That means they can claim partition of the dwelling house also

18. Full blood preferred to half blood:—

Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood, when they are descended from a common ancestor but by different wives. The preference of the whole to the half blood is recognised in the Mitakshara law of succession which rests it on propinquity of the one over the other. Heirs by full blood are preferred to heirs by half blood if the nature of the relationship is the same in every other respect. If a person dies leaving no heirs in Class I but 3 brothers, two of whom are born of his parents and the other by his stepmother, the stepbrother is not entitled to a share, because, he is related to the deceased by half-blood, because, as Mitakshara puts it, he is removed through the difference of the mothers. A paternal uncle of half-blood is preferred to sons of uncles of full blood[1];

1. 42 I. A. 177.

A father's brother of whole blood is preferred to a father's brother of the half blood [1]. Hindu law recognises no difference between the full blood and half blood except in a competition inter se. [2] In Jatindranath Roy *Vs* Nagendranath Roy, the Judicial Committee approved of the decision in Bhola Nath *Vs* Rakhal Das, a Dayabhaga case, that the sons of a step sister share equally with the sons of a full sister and observed that the rule was equally applicable to Mitakshara succession [3]. A brother by the fact of his mere living together with his deceased brother can be in no better position than another brother who was living separately and therefore the property of the deceased brother falls to be regulated entirely by the principle of succession, so as to entitle both the brothers to share it in equal shares [4].

19. Mode of Succession of Two or More Heirs—If two or more heirs succeed together to the property of an intestate, they shall take the property,—

(*a*) save as otherwise expressly provided in this Act, per capita and not per stirpes ; and

(*b*) as tenants-in-common and not as joint tenants.

Persons of the same relationship to the deceased take per capita that is the estate of the deceased is divided into as many shares as the number of heirs, each heir taking his share. Where there are several grandsons by different sons, they take per sitrpes and not per capita Under the Act sons and daughters take per capita but the heirs in the branch of

1 60 I A. 189, 64 M L J 660

2. (1896) 23 I A 83, 19 Mad 405, 19 ALL 215 (F B)

3. Mayne Hindu Law & Usage 11th Edn. PP 599

4 A I R. 1941 Nag. 297 A.I.R 1940 Cal 157.

each predeceased son or predeceased daughter take per stirpes. The reason is that the grandson or daughter grand represents the rights of his father ormother as the case may be. As between them, the grandsons and grand-daughters take per capita (See 48 Mys H.C.R. 130 for previous Mysore Hindu Law).

According to the Mitakshara school two or more persons inheriting jointly took as tenants-in-common[1], except

(1) two or more sons, grandsons and great grandsons succeeding as heirs to the separate or self-acquired property of their paternal ancestor[2],

(2) two or more grandsons by a daughter, who are living as members of a joint family succeeding as heirs to their maternal grandfather[3];

(3) two or more widows succeeding as heirs to their husband[4];

(4) two or more daughters succeeding as heirs to their father[5] who took as joint tenants.

According to the Dayabhaga school two or more persons inheriting jointly took as tenants-in-common, except only widows and daughters who took as joint tenants with rights of survivorship[6]

Persons succeeding as heirs to the deceased after 17th June 1956 take as tenants in common. The consequence is that each is entitled to deal with the property as he or she likes without reference to anybody else. Even prior to the Central Act, widows in Mysore, inheriting their husband's

1. 27 Mad. 300
2. 18 Cal. 151, (1941) 20 Pat. 904
3. 25 Mad. 678.
4. 11 M I. A 487
5. 4 Cal. 744; 25 Mad. 678.
6 Mulla Hindu Law 10th Edn. p23.

property as a limited estate took as tenants-in-common without rights of survivorship [1]. When heirs succeed to the property of the deceased simultaneously and getting equal shares, they are entitled to have their shares partitioned by metes and bounds.

20. Right of Child in womb—A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate

The rights of a child in the womb under the Hindu Law prevailing prior to the enactment has received statutory recognition with the modification that even the daughter who was in the womb shall have a right of inheritance, if she is born alive after the death of the intestate. Prior to the Act only the son who was in the womb at the time of the death of the intestate was entitled to inherit the property along with others The right of the child whether male or female born subsequently and who was in the womb at the time of the death of the intestate takes effect from the date of death of the intestate. His or her rights will relate back to the date of death of the intestate.

21. Presumption in cases of Simultaneous Deaths—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to property, it shall be presumed,

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1 20 Mys L. J. 359.

until the contrary is proved, that the younger survived the elder.

A rebuttal rule of evidence is enunciated in the section to avoid disputes relating to the time of death of two persons, if they have died under circumstances rendering it uncertain to know which of them died earlier. The rule of presumption is only for the purpose of determining the order of succession to the property. The younger is presumed to have died subsequent to the death of the elder.

22. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of this Act, an interest in auy immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the schedule, any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf and if any person proprsing to acquire the in terest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest

under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation:—In this section "court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the official Gazette, specify in this behalf

This Section relates to the transfer of property inherited by a person subsequent to 17th June 1956. Property includes both immovable property and any business carried on by him or her. The section has no application to the share in property of persons who have inherited prior to the Act.

A perferential right is given to the other heirs to acquire or purchase the share in the property or business of another, who proposes to transfer his or her share. Particularly now under the Act daughters who inherit along with the sons in equal shares and simultaneously may propose to transfer the shares. Daughters who are married and living with their husbands may find it convenient to transfer their interest in the property In such a case, the other heirs shall have a precedence over strangeres to acquire such an interest. But one heir cannot campel another to transafer his or her interest. The consideration for the transfer of share or interest may be by agreement of parties.

If there are more heirs than one, the person who offers the highest consideration shall have the right to acquire such interest or share In the absence of agreement between the parties regarding consideration, the Court shall determine the same. If no agreement is reached between the parties, one of them shall prefer an application to court to determine the

amount of consideration payable for such transfer. The Court within whose jurisdiction the immovable property is situate or the business is being carried on is the court having jurisdiction to determine the amount of consideration

The perferential right to acquire the property is conferred on the heirs enumerated in Class I only. The heirs in Class II have no such preferential rights among themselves. The preferential right may be lost by acquiescence or by agreement of parties. The preferential right conferred by the Act corresponds more or less to the right of pre-emption under the Mohamedan law. It is a right which the owner of an immovable property possesses to acquire by purchase another immovable property which has been sold to another person[1]. The law of pre-emption contemplates both a right and an obligation

23. Special provision respecting dwelling houses:—Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise untill the male heirs choose to divide their respective shares therein ; but the female heir shall be entitled to a right of residence therein ;

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been

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1 Mulla Mahomedan Law 12th Edn P 194

deserted by or has seperated from her husband or is a widow.

A dwelling house occupied by the members of the family of the deceased whether male or female is not liable to be partitioned at the instance of a female heir enumerated in class I of the Schedule. She shall have a right of residence in the house. An unmarried daughter or a daughter who is a widow or deserted or seperated from her husband has a right of residence and not in any other case. But the other female heirs have a right of residence.

If there is only one male heir, there can be no question of dividing the dwelling house This is a position which is not made clear by the Act.

Under the Mysore Hindu Law Women's Rights Act 1933, a woman who entitled to a share at a partition of joint family property was not herself entitled to enforce a partition of the joint family property [1] Under the present Act a female can enforce a partition except with regard to the dwelling house, in which, the members of the family of the deceased are living No restriction is placed on a female to have her share separated and put into her possession regarding other properties.

Previous Law:— Any coparcener could sue for a partition and every coparcener was entitled to a share. A coparcener is one who has an interest in the property by birth and he should be a descendant from the owner in the male line and not removed beyond three degrees from the owner That is, only male members constituted a joint family or coparcenary and the females had neither an interest in the property nor were they entitled to sue for partition. The right of the female to sue for partition was recognised for the first time in the Mysore Hindu Law

1. 43 Mys H. C R. 361, 46 Mys H. C. R. 503, 49 Mys. H. C. R 456

Women's Rights Act 1933. The right of a widow to a share in the property of her husband's joint family arises at the moment when her husband's death leaves of the family a sole surviving coparcener and under subsection 5 of Sec. 8 she has a right to have her share separated and put into her possession[1].

Under the Dayabhaga law the son had no right to demand a partition of property held by his father during the life time of the latter, because, he had no vested interest in it. But the Mitakshara expressly declares the right The present Act does not deal with partition except to the extent that it determines the line of succession to the property of a Hindu dying intestate. Heirs entitled to succeed have a right to have their shares separated and put into their possession Male and female heirs have the same right to enforce a partition except the females with regard to a dwelling house.

Since there is no provision in the Act regarding partition and the legal incidents there to, the previous law shall continue to be in force except to the extent modified under the present enactment.

24. Certain widows re-marrying may not inherit as widows:—Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

If on the day the succession opens, the widow of a son or the widow of a predeceased son of a predeceased son or the widow of a brother has remarried, such a widow is not

1 45 Mys H C. R. 102, 49 Mys H C R 456.

entitled to succeed to the property. This restraint or restriction does not apply to other widows

The Hindu Widow's Remarriage Act XV of 1856 was passed to give effect to the views of a reforming section of Hindus according to whom remarriage of widows was not against the precepts of Hindu religion. The Act legalises the remarriage of Hindu widows and declares the issue of such remarriage to be legitimate. But on such remarriage it cuts off her rights in the properties of her deceased husband and the members of his family [1] But it had no effect on property belonging to the widow absolutely such as lands settled on her absolutely in lieu of her claim for maintenance [2]. The Act provides that all rights and interests, which a widow may have in her deceased husband's estate shall cease and determine on her remarriage as if she had then died [3]. Even independently of the Hindu Widows Remarriage Act a widow forfeits her estate on her remarriage [4]

The Central Act XV of 1856 is not made applicable to Mysore by the Part B State Laws Act 1951. The Mysore Hindu Widows Remarriage Act XII of 1938 makes similar provision regarding the effect of remarriage of widows. Though the remarriage of a widow is legalised by Act XII of 1938, all rights and interests in her deceased husband's property by way of maintenance or by inheritance to her husband or to his lineal successors shall upon her remarriage cease and determine as if he had then died ; and the next heirs of her deceased husband or other persons entitled to the property on her death shall thereupon succeed to the same. It is not clear as to what should happen if she inherited her

1. Mayne Hindu Law & Usage 11th Edn P 74.
2 1946 (2) M L J 377 , (1938) 2 M.L.J 701
3 Mayne Hindu Law & Usage 11th Edn. P 642
4. 41 Mad 1078 (F B) ; 22 Bom 321 (F.B)

husband's estate as Stridhana and has disposed of it before remarriage [1] Except to this extent, a widow shall not by reason of her remarriage forfeit any property or any right to which she would otherwise be entitled , and every widow who has remarried shall have the same rights of inheritance as she would have had, had such marriage been her first marriage (Sec.5 of the Mysore Hindu Widows Remarriage Act 1938)

A widow does not by remarriage lose her right to succeed to the estate of her son or her daughter by her first husband [2]

But in Mysore a widow by remarriage loses her right to succeed even to the estate of her son or daughter by the first husband or to any of his lineal successor · Vide Section 6 of the Mysore Act 12 of 1938

Except the Allahabad High Court all the other High Courts have held that a widow on her remarriage (even according to the custom of her caste) forfeits her right to maintenance out of the estate of her first husband

Under the present Act the remarriage of the widow must not have taken place at the time the Succession opens or prior to it.

If she marries subsequently property vested in her will not be divested Because by virtue of Sec. 14 she becomes the absolute owner of the property. Prior to the Act second marriage entailed divesting of the widow's estate, either as being a signal instance of incontinence or as necessarily involving degradation from caste [3]

25. Murderer disqualified— A person who commits murder or abets the commission of murder shall

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1. M N. Srinivasan Hindu Law in Mysore p 38
2. Mulla Hindu Law 10th Edn p. 39
3. Mayne Hindn Law & Usage 11th Edn p. 642.

be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

On grounds of public policy a person who commits or abets the commission of a murder is disqualified from succeeding to the estate of the murdered [1]. Under the old law persons claiming through him were also excluded.

26. Convert's Descendants Disqualified:— Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such chidren or descendants are Hindus at the time when the succession opens.

Children born to a Hindu, who has ceased or ceases to be a Hindu by conversion to another religion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives unless such children or descendants are Hindus as defined in Section 2, at the time when the succession opens. The Caste Disabilities Removal Act (XXI of 1850) virtually set aside the provisions of Hindu law which penalised the renunciation of religion and exclusion from caste Accordingly, neither a convert to Mohamedanism or Christianity nor one deprived of his caste forfeits his existing interest in the joint family property and both the convert and the outcaste retain their rights of

1. 48 B 569, 576 P. C

under this Act, it shall devolve as if such person had died before the intestate

The only person disqualified under the Act from inheriting the property of an intestate Hindu is his murderer. The descendants of a convert to some other religion do not also succeed as heirs if they are not Hindus at the time succession opens. Such a disqualified person is deemed to have predeceased the intestate for purposes of succession

28. Disease Defect etc., not to Disqualify— No person, shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

The Hindu Inheritance (Removal of Disabilities) Act XII 1928 has laid down that no person other than a person who is and has been from birth a lunatic or an idiot shall be excluded from inheritance and partition by reason only of his disease, deformity or physical or mental defect. Lunacy and idiocy are the only grounds for exclusion from inheriting the property It may be congenital or at the time, succession opens. Deafness, dumbness or blindness is no disqualification to inherit the property. Leprosy, lameness or deprivation of the use of any limb or organ are not grounds for exclusion. The Hindu Inheritance (Removal of Disabilities) Act does not apply to persons governed by the Dayabhaga school

Under the present Act, any disease, defect or deformity is not a ground for exclusion from inheriting property. The Act applies to all Hindus in India. Whether lunacy and idiocy come within the terms used in the Section is a matter for judicial interpretation.

The Mysore Hindu Inheritance (Removal of Disabilities) Act V of 1933 corresponds to the Central Act XII of 1928. The Central Act is not made applicable to Mysore by the Part B State Laws Act 1951. Both the Acts are not retrospective. If a person suffering from any physical defect had been excluded from inheritance or from a share on partition, the Act did not entitle him to claim the inheritance or a share at a partition subsequent to the Act. The Hindu Succession Act is prospective and hence it does not confer any right to a person already excluded from inheritance or a share at a partition due to some physical defect or deformity.

ESCHEAT

29. Failure of heirs—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

On the failure of heirs enumerated under the Act, the property devolves upon the Government Even prior to the Act the crown took by escheat on failure of all the heirs. Where the crown claims by escheat, the burden of proof is on the crown to show that the last proprietor died without heirs[1]. When the crown has taken, its title prevails against all unauthorised alienations by the last owner, but subject to any valid trusts or charges affecting the estate, for the maintenance of persons entitled thereto[2] and debts incurred or mortgages made by the widow for legal necessity[3].

1. 12 M. I A. 448, 192 I C. 131.
2 (1860) 8 M. I. A 529, 555.
3 (1867) 11 M I A 619.

Under the present Act also the Government takes the property subject to all the obligations and liabilities to which the heir would have been subject.

The heir to the property of a hermit (vanaprastha) is his spiritual brother belonging to the same hermitage, to that of an ascetic (Sanyasi) a virtuous pupil, and to that of a student in theology (Brahmachari) his religious preceptor. These heirs are entitled to succeed in preference to the kindred of the deceased. This rule applies only to members of the twice born classes. It does uot apply to sudras unless some usage or custom to that effect is proved [1].

Under the present Act no distinction is made between regenerate classes and the sudras regarding intestate succession. The Section specifically states that on the failure of heirs in accordance with this Act, the property devolves on the Government.

Chapter III.—TESTAMENTARY SUCCESSION

30. Testamentary Succession—(1) Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, (39 of 1925) or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba

1. Mulla Hindu Law 10th Edn. p 74

or kavaru shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this sub-section.

(2) For the removal of doubts it is hereby declared that nothing contained in sub-section (1) shall affect the right to maintenance of any heir specified in the Schedule by reason only of the fact that under a will or other testamentary disposition made by the deceased the heir has been deprived of a share in the property to which he or she would have been entitled under this Act if the deceased had died intestate.

Law Prior to the Act—Wills were wholly unknown to Hindu Law. The origin and growth of the testamentary power among Hindus has always been a puzzle to lawyers. The influence of the Mohamedan rule and contact with the western nations gradually influenced the practice of executing wills. The testamentary power of Hindus has now long been recognised and must be considered as completely established[1].

Under the present section every Hindu male or female is empowered to dispose of his or her property by will or other testamentary disposition. The law prior to the enactment will be useful in interpreting the present section

Under the Hindu law a Hindu had absolute and full powers to dispose of his self-acquired and separate property in any manner he liked including by will and transfer by inter vivos. The limitation either to make a will or gift was

1. (1862) 9 M.I.A. 123, 136

imposed regarding coparcenary property only. A coparcener according to the Mitakshara school may sell, mortgage or otherwise alienate for value his undivided interest in coparcenary property without the consent of the other coparceners [1]. A father or manager has no power to alienate the ancestral property except for legal necessity or benefit of the family [2].

Though a coparcener had a right to alienate his interest in the property, he could not make a gift of the same; or dispose of it by will [3] It is now well settled by judicial decisions that it is incompetent to an undivided member of a Hindu family to alienate by way of gift his undivided share or any portion thereof [4] A coparcener cannot make a gift of his undivided interest in the family property movable or immovable either to a stranger or to a relative except for purposes warranted by special texts (Pious, religious and charitable purposes) [5]. It is open to a coparcener to sever in interest from the other coparceners by a unilateral declaration of his intention. Hence, the rule that a coparcener cannot make a gift or a devise of his undivided interest has to some extent mitigated in its severity [6]. A gift by a coparcener of his entire undivided interest in favour of the other coparceners will be valid. A coparcener can also make a gift of his interest with the consent of the other coparceners.[7]

The father's power to make gifts through affection within reasonable limits of ancestral movable property has been fully recognised. But such gifts through affection, of joint

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1 43 Bom 472, 44 Bom 341, 25 Mad 690, 703
2 Mayne Hindu Law and Usage 11th Edn p. 454.
3. 27 Mad 162, 39 Bom 593
4. 27 Mad 162, 166; 19 Bom. 803
5. Mayne Hindu Law and usage 11th Edn p 484
6. Ibid p 485
7. Mulla Hindu Law 10th Edn p. 303

family property, when they are by will are invalid because, the right of the coparceners vests by survivorship at the moment of the testator's death and there is accordingly nothing upon which the will can operate [1]. Convenience would seem rather to point to the extension to the sphere of Hindu law of the general principle of Jurisprudence that what a man can give by act inter-vivos he can give by will [2].

An undivided Hindu father has no power except for purposes warranted by special texts to make a gift to a stranger of ancestral estate whether movable or immovable [3].

Similarly a Hindu male member of a joint family could not dispose of his undivided interest by will. According to the Mitakshara law no coparcener not even a father can dispose of by will his undivided coparcenary interest even if the other coparceners consent to the disposition. The reason is that at the moment of death the right of survivorship of the other coparceners is in conflict with the right by devise Then the title by survivorship being the prior title takes precedence to the exclusion of that devise [4]. But a sole surviving coparcener may dispose of the coparcenary property as if it were his separate property. He may sell or mortgage the property without legal necessity or he may make a gift of it [5]. He can also devise it by will Any disposition of ancestral property by will is invalid as against a son born or adopted subsequent to the execution and before the testator's death as also against a son in the womb at his death. A child in the womb and a son adopted by the testator's widow after his death are in contemplation of law in existence at the death

1. 39 Bom 593
2. Mayne Hindu Law and usage 11th Edn p. 455.
3. 7 Mad. 357 (F B)
4. Mulla Hindu Law 10th Edn p. 449.
5. Ibid p. 302

of the testator [1]. There is nothing in Hindu law to prevent a Hindu from so disposing of his property by will as to defeat the right of his sons or other heirs even to the extent of completely disinheriting them [2]. This will apply only to self-acquired and separate property. But he cannot create a new form of estate or alter the line of succession provided by law for the purpose of carrying out his own wishes or policy [3]. A Hindu cannot by will so dispose of his property as to defeat the legal right of his wife or any other person to maintenance [4].

A female may dispose of by will or otherwise any property which during her life time is absolutely under her own control.

Under the Present Act—This section applies to any property including an interest in the coparcenary property.

The disability of a Hindu coparcener to dispose of his property by will is removed by this Section A coparcener may dispose of by will or other testamentary disposition any property including his share in the coparcenary property.

The words "Will or other testamentary disposition" in the section may give rise to various kinds of judicial interpretation. The Indian Succession Act (39 of 1925) defines a will "as a legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death." But testamentary disposition has not been defined The words "Will" and "Testament" and the phrase "last Will and Testament" are exactly synonymous by common usage all over the world (Law Lexicon : P. Ramnath Iyer). The old distinction between

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1. 1872 I.A. Supp. Vol 47
2. (1838) 2 M.I.A. 54; 10 Mad. 251
3. 1872 I.A. Supp. Vol 47.
4. 12 M.I.A. 38

"Will" and "Testament" is said to be that "Will" is a general term and that where lands and tenements are devised, though no executor is appointed, the instrument is properly called a Will, and that where it concerns chattels only and appoints an executor, it is called a testament. The distinction is not adhered to and the words appear to be used interchangeable [1].

A testament in its literal sense means that which testifies or in which an attestation is made Testamentary disposition in this literal sense means any document executed for the purpose of transferring property to another and required to be attested by witnesses. If liberally construed the words other testamentary disposition may refer to transfer by inter vivos The Act which specifically removes an inherent disability of a Hindu to devise by will his interest in the coparcenary property must have intended to have used the words "Other testamentary disposition" in its true literal and liberal sense, so as to include transfer of such property by inter vivos. Construed in this way, the Hindu Succession Act makes a departure from the old Hindu law in two ways. One is the mode of Succession to coparcenary property as stated in Sec 6 and the second is to devise by will or other disposition, his interest in the coparcenary property.

This section relates not only to Mitakshara Coparcenary property but also to the property of a Tarwad, Tavazhi, Illom, Kutumba or Kavaru.

On and after 17th June 1956 a Hindu disposing of his property by will has to conform to the provisions relating to wills in the Indian Succession Act 1925 39 of 1925) or in accordance with any other law applicable to Hindus. The Succession Act was made applicable to Mysore by the part B State Laws Act 1951 (III of 1951).

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1 Halsbury; Laws of England 2nd Edn. Vol. 34 p 6.

Part VI of the Succession Act applies to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina subject to the restrictions and modifications set out in Schedule III of the Succession Act 1925

Who can Execute a Will. – Every person of sound mind not being a minor may dispose of property by will. Persons who are deaf or dumb or blind are not incapacitated for making a will if they are able to know what they do by it. A person who is ordinarily insane may make a will during an interval in which he is of sound mind No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing [1].

Mode of Executing a Will.—The Hindu Wills Act 1870 was the first enactment which required Hindu Wills to be in writing. The Succession Act 1925 lays down that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction. By implication it follows that the will has to be in writing. The will shall be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to the will, and each of the witnesses shall sign the will in the presence of the testator [2].

A will neeed not be in any particular form. It has been held that no technical words are necessary for a will and that the form of a will is immaterial [3].

Once a Will is executed, it can be explained, altered or added by the testator during his life time. Such an instrument is called a Codicil and it forms part of the will. A Codicil has to be signed by the testator and attested by two or more witnesses.

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1. Sec 59 of the Succession Act 1925.
2. Sec 63 Succession Act 1925
3 A I R 1940 Bom 400, 402

Wills and codicils are not required to be stamped. They are exempt from stamp duty. Registration of the will is also not necessary.

Revocation of the Will—A will may be revoked by the testator during his lifetime The revocation of the will shall be in writing declaring an intention to revoke the same and it should be executed and attested There cannot be a revocation by necessary implication [1].

The testator may revoke the will by the burning, tearing or otherwise destroying the same in his presence and by his direction with the intention of revoking the same The power of revocation cannot be delegated nor can he ratify unauthorised destruction [2] The will of a Hindu is not revoked by the subsequent birth or adoption of a son.

When a person had deliberately and solemnly in writing has expressed his intentions, it is not in the interests of justice to allow those intentions to be set at naught as having been subsequently revoked by him, when he is not shown to have done so in an equally deliberate and solemn manner (apart from actual destruction by him of previous writing) [3]. Revocation of a will cannot be inferred from the mere fact that the original is not to be found after the death of the testator [4]

Distinction between a will and a deed—A will differs from a deed in the following respects —

(1) A Deed operates eo-instanti *i e*, from the date of its execution. A will comes into operation on the death of the testator.

(2) A Deed is ordinarily irrevocable unless there is an express power of revocation. A will can be revoked at any

1. 52 Bom. L. R 694
2. 1909 P. 157
3. 29 Mys C C. R 234 · 2 Mys L J 125, 39 Mys. Hc R 658, 12 Mys L.J 54
4. 44 Mys H. C. R 57 18 Mys L J 17

time by the testator during his lifetime. It becomes irrevocable on the death of the testator.

(3) In case of mistake in a deed, the Court has power to rectify it, a Will cannot be rectified by any Court of Law [1].

Maintenance—Sub-Section (2) is in the nature of a compromise between the old Hindu Law and the present section, for it enables a Hindu to dispose of his property by Will. The right to maintenance of any heir specified under the present Act is not affected by reason only of the fact that the deceased has by his will deprived a share in the property to the heir A heir who is otherwise entitled to maintenance does not lose her right merely because the deceased has not given a share to such heir under the will. There is nothing in Hindu Law to prevent a Hindu from so disposing of his property by will as to defeat the rights of his sons, wife or other heirs even to the extent of completely disinherting them [2]. A Hindu cannot by will so dispose of his property as to defeat the legal right of his wife or any other person to maintenance [3].

Persons entitled to maintenance—The liability to maintain others is of two kinds. —(1) Personal and (2) Legal. A Hindu is under a personal obligation to maintain his wife, his minor sons, unmarried daughters and his aged parents whether he possesses property or not The obligation to maintain these relations is personal in character The manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and children. The widow and children of any deceased male member are also entitled to be maintained. The obligation to maintain them arises from the fact that the manager is in possession of the family property. An

1. Paruck Indian Succession Act 4th Ed P 16.
2. (1838) 2 M I.A 54, 10 Mad 251
3. 12. M I. A. 38.

heir is legally bound to maintain those persons whom the deceased was legally or morally bound to maintain. The reason is that he inherits the property, subject to these obligations. A Hindu is under no personal obligation to maintain his unmarried sister or his step-mother, but he is bound to maintain them if he inherits his father's property.

The Mysore Hindu Law Women's Rights Act 1933 enabled a step-mother and un-married full sister until she attained majority (in addition to others legally entitled to maintainance, provided he was possessed of sufficient means The question whether he has inherited property from his father or not was immaterial.

The wife's right to separate maintenance and residence is regulated by the Hindu Married Women's Rights to Separate Residence and Maintenance Act 1946 and in Mysore by the Hindu Law Women's Rights Act (Section 23).

Disqualification to Claim Maintenance—An unchaste widow so long as she persists in her unchastity is not entitled even to bare or starvation maintenance[1]. A Hindu wife who lived a life of unchasity with a man of lower caste is not entitled to maintenance from her husband[2]. Starving allowance or bare maintenance can be awarded to a wife or a widow who was formerly unchaste but has repented for her misconduct and reformed her ways After the death of her husband, the widow can seek relief against her husband's coparceners in possession of the undivided family estate[3].

A charge of unchastity as disentitling a widow to maintenance must be specifically raised in the pleadings[4].

1. 33 Mys. C C. R 47 · 5 Mys L. J. 263, 51 Mys H C R. 323
2. 30 Mys C. C R. 200 · 3 Mys L, J. 266
3. 31 Mys C. C. R. 151, 4 Mys L. J. 114
4. 27 Bom 485; 30 I. A 127

A widow by remarriage forfeits her right of maintenance out of the estate of her first husband [1].

In determining the amount of maintenance to a widow, the Court should have due regard to the value of the estate, the position and status of the deceased husband, the reasonable wants of the widow and the past relations between her and her husband [2]. The same principles are to be applied mutatis mutandis in determining the amount of maintenance to be awarded to other females. Section 25 of the Mysore Hindu Law Womens Rights Act lays down more or less similar principles.

Chapter IV—REPEALS

31. Repeals—The Hindu Law of Inheritance (Amendment) Act, 1929, (2 of 1929), and the Hindu Women's Rights to Property Act, 1937, (18 of 1937)' are hereby repealed.

THE SCHEDULE.

(*See Section 8*).

HEIRS IN CLASS I AND CLASS II

Class I

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 predeceased son.

1. Vide Comment to Sec. 24
2 Mulla Hindu Law 10th Edn. p 619.

Class II

I Father.

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

III (1) Daughter's sons'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.