

Comparative study of succession under Indian succession act 1925 and Hindu succession act 2005



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Abstract

The Indian Succession Act 1925 and the Hindu Succession Act 2005 which was unanimously taken as an improvement, are major acts that lay several rules and regulations relating to succession. The Indian Succession Act 1925 was relevant at the point of time when it was enacted. This is the reason why it worked as a mile stone in the field of succession for such a long time. The only flaw or demerit of this Act was that it did not treat the Indian women equal to men as a result of which sex discrimination continued to increase in the Indian society.

As change in everything is inevitable, the change in the approach of the fundamentalists and the women activists as well as feminists was also noticed through the decades that followed. The voice against the prevailing Indian Succession Act was raised calling it responsible for the element of patriarchy, sex-discrimination and partiality against the women of India. The demand for the amendment in the provisions of the Indian Succession Act was very high all over India, and it was demanded that the women must be allowed to get the property rights for the sake of maintaining equality between man and woman.

The independence of India and especially the Constitution of India that guaranteed the right to equality to all its citizens made the voice stronger than earlier. As a result of all this, the Hindu Succession Act was enacted in 2005 making the Indian women blessed with the property rights in the ancestral property.

The paper is a comprehensive study on the comparison of the Indian Succession Act 1925 and Hindu Succession Act 2005. The findings of the study reveal that the Hindu Succession Act 2005 is greater and better than the Indian Succession Act 1925 because it works on the principle that both men and women are equal, and so both must have an equal right on the ancestral property.

Keywords: Succession, Comparison, Act, Property, Widow, Hindu, Rights.

Introduction

The persons whom the The Indian Succession Act 1925 applied to, included- the born Hindu, Buddhist, Jain or Sikh, converted Hindus, Buddhists, Jains or Sikhs, legitimate and illegitimate children having at least one Hindu, Buddhist, Jain or Sikh parent, members of Scheduled Castes and Scheduled Tribes. However, it did not apply to those other than the specified people.

Succession-Related General Provisions

1. Priority will be given to one's own children over the step children in succession
2. In case of two or more heirs to the same property, it will be divided per person and not according to the share of their parents
3. The born child would get the same share in the deceased's property when he was born before the deceased's death.
4. In case of the unknown death of two brothers, it would be deemed that the elder one died first
5. In case one of the heirs of the deceased's property is interested in giving his share to another person, he will be allowed for it
6. In case two or more heirs are interested to take the property from the main heir, the heir who pays more will be given the property

The persons enlisted below will not be allowed to get the succession rights

1. The persons who murder someone or incite him to die for the sake of getting his property, the Hindus who have converted themselves into the followers of some other religion renouncing Hinduism,

However, the children of the Hindus who have converted into some other religion-followers will get the succession rights if at the time of their birth, their father was a Hindu. Similarly, on the ground of illness, nobody will be deprived of the succession rights.

The Indian Succession Act 1925 was later believed to be gender-biased and responsible for gender discrimination. This particular flaw in the Indian Succession Act 1925 brought forth the Hindu Succession Act 2005 which empowers women to get succession rights in the movable and immovable ancestral property.

The Hindu Succession Act 2005 allows the Indian women to acquire rights from the public in the same way as a son acquires; they will have an equal share of land: they have a right to demand division of joint family property and can have their own share. The most notable provision of the Hindu Succession Act 2005 is the one which says that even after remarriage, the son's widow or the widow of the brother will be entitled to get property rights in the ancestral property.

Objectives of the study

1. To go through the Hindu law and concentrate on its major aspects that are relevant in the context of the present times
2. To make a special focus on the provisions relating to succession among the Hindus
3. To study and produce the brief summary of the Indian Succession Act 1925
4. To interpret the relevant contents of the Indian Succession Act 1925
5. To discuss the relevance of the Indian Succession Act 1925 in the present context
6. To study and produce the brief summary of the Hindu Succession Act 2005
7. To explore the causes of the enactment of the Hindu Succession Act 2005
8. To discuss and interpret the various major aspects of the Hindu Succession Act 2005
9. To take up the relevance of the Hindu Succession Act 2005
10. To compare the Indian Succession Act, 1925 and Hindu Succession Act 2005

Review of literature

1. Christa Rautenbach (2006), in *Indian Succession Laws with special reference to the Position of Females: A Model for South Africa*, holds that India's history, its people and the phenomenon of various personal laws make it an ideal legal system to compare with the South African scenario. There is a generally applicable Indian law that applies to all Indians irrespective of their religion. In the personal law sphere, we find a system of concurrent personal laws that applies to members of the various communities in India. As part of this personal law system, we find an optional system of personal law, which is secular

in nature. On the other hand, the religious communities of South Africa are served by a national law (state law), which purports to be secular in nature, and the customs and usages of religious communities (non-state law). South Africa is in the process of recognising Islamic marriages and it is, therefore, necessary to compare the South African situation with other jurisdictions grappling with similar issues.

2. Vaibhav Choudhary (2010), in *A Proposal for Uniform Civil Code for Law of Succession in India*, explains that Uniform civil code (hereinafter UCC) of India is a term referring to the concept of an overarching Civil Law Code in India. A uniform civil code administers the same set of secular civil laws to govern all people, even those belonging to different religions and regions. This supersedes the right of citizens to be governed under different personal laws based on their religion or ethnicity. Such codes are in place in most modern nations. There is no doubt that the idea of UCC is by and large, a child of independent India.
3. Anutosh Pandey (2012), in *Has Matriarchy Influenced Succession Laws in India?*, enumerates that in India, matriarchy is found in certain part of Assam and certain parts of Kerala. The social structure of these communities have various elements which are different from other communities of India. Keeping in mind the requirements of these communities, various personal laws related to succession and other family matters had been amended to meet the requirement of these communities.
4. Gakul Kasturi (2013), in *Hindu Women's Property Rights under Hindu Succession Law: Past and Present*, observes that in India, the Hindu women's struggle for being conferred with property rights both in matrimonial and natal families, not only in name but also in spirit, in the patrilineal system, is not a new phenomena but dates back to the shastric laws where her status as maiden, widow or married defined her property rights burdening her with more restrictions than privileges. With the passage of time certain laws were enacted during pre-independence period to improve the conditions of Hindu women with regard to inheritance, succession and partition. With the advent of independence certain changes were brought into effect for providing property rights to Hindu women.
5. Shristi Banerjee (2014), in *Comparative Analysis of Change in the Succession Rights of Women under Hindu Law*, traces the progress made in the field of Hindu law with regard to women's right in property. The study evaluates the discriminatory laws that existed in the ancient times. It moves further with the introduction of different laws which tried to bridge the gender gap in property rights. Then, a comparative analysis has been done by citing the present amendments and laws and the earlier existent condition of law. After shedding light on the historical context of laws that differentiated on the

basis of gender, the paper elaborates on the current position of wives, daughters and widows. This analysis covers the path travelled by Hindu law to provide justice to the fairer sex.

6. Archana Mishra (2014), in *Breaking Silence - Christian Women's Inheritance Rights Under Indian Succession Act, 1925*, shares that Christian constitute the third major population in India after Hindu and Muslim but still has been not able to act as influential group either socially or politically to draw sufficient attention of the Legislature to their problems in personal law particularly in field of succession. Majority of Christians are governed by the Indian Succession Act, 1925 (ISA, 1925) in matters of succession. The ISA, 1925 guided by patriarchal mindset allows unfairness to women in intestate succession. The irony is that the law framed more than one and a half century ago discriminating women in succession rights continues even today. The share of Christian widow fluctuates with the presence or absence of lineal descendants, she gets rights over entire property only in absence of distant kindred of the deceased husband extending up to great great uncle or great uncle's son, widowed daughter-in-law has no right in her father-in-laws property. Mother has been relegated to lower position as she inherits only in absence of father and even when she inherits she gets rights with the deceased's brother and sister. There appears no justifiable reason to continue with such provisions which do not give equal rights to women.
7. Jasvir (2015), in *A Comparative Study of the General Provision of Indian Succession Act, 1925 and The Hindu Succession Act of, 1956*, concludes that India is a country which abounds in personal laws; each community has its own personal laws. The Indian Succession Act is more general in application more secular, but it still cannot be called uniform law on succession. The Hindu Succession Act, which is applicable to only Hindus though has kept traditional notions like Joint Hindu Property, 2005 Amendment has given better rights to women, it is still not gender neutral. However as our study show that it very difficult to ascertain laws when such large and important enactments on the Statute Books, its time that India in spite of being diverse should aim towards a Uniform Civil Code which would be applicable to all Indians alike in the matter of Succession.

Working hypothesis

1. The Hindu law meant for the protection of the Hindus in India, is a personal law
2. Of the various parts and aspects of the Hindu law, succession is a major aspect
3. There are several provisions relating to the succession among the Hindus
4. The change in the succession provisions is made from time-to-time
5. In the Hindu patriarchal society, the Mitakshara and Dayabhag are two methods of determining succession

6. The males have more rights to succession than the females
7. Indian Succession Act 1925 lays several rules and provisions under its various sections and subsections
8. In the present times, some of the provisions of the Indian Succession Act 1925 are found irrelevant
9. The Indian Succession Act 1925 is gender-biased, and allows the women to get right in the property only in a limited way
10. The Hindu Succession Act 2005 is an improvement over the Indian Succession Act 1925
11. Of the major provisions laid down in the Hindu Succession Act 2005, the major aspect is the one that allows the Hindu women to get the same property rights as are given to the Hindu males
12. The Hindu Succession Act 2005 is much better than the Indian Succession Act 1925

Research Methodology

The roots of the present study that is in the form and shape of a review article, lie in the secondary data gathered and compiled from the various text books and research studies available on the various internet sites. The research studies selected for the purpose enabled the author to develop an understanding of the Hindu law and to add new knowledge to the existing knowledge.

The contents compiled from the selected studies on the theme allowed the author to peep into the matter and to capture the spirit of the works and methodology used therein. In addition, personal observation and perception were also used were also used to define the problem, to determine the specific objectives and to formulate the hypothesis that formed the basis of the study. In addition, data-collection, data-classification, data-analysis, data-interpretation was also used.

The method adopted for the study was inductive scientific method. Scientific spirit of the study was kept up through the adherence to all the prescribed steps of scientific method that facilitate the scientific and systematic studies.

Major findings of the study

1. As the personal law, the Hindu law is very significant because it is quite helpful and supportive in boosting up the Hindus to prove their hidden potential and to enjoy their life quite successfully claiming the rights and availing the provisions laid down under different sections
2. The Hindu law protects the rights of the Indian Hindus and imparts them certain privileges
3. Succession is one of the major issues among the Hindus for which there are the Indian Succession Act, 1925 and Hindu Succession Act 2005
4. The Indian Succession Act 1925 worked successfully in India for several decades
5. The Indian Succession Act 1925 was male-oriented and made the Hindu males superior to the Hindu females in terms of succession
6. It deepened the roots of the Patriarchal society in India by providing much more succession rights to Hindu males than the Hindu females

7. The traditional Hindu families make the sons successors, and hence, give them the property rights, and deny such rights to the daughters and other female members of the family
8. The Indian Succession Act 1925 was believed to be responsible for sex discrimination in India
11. The Hindu Succession Act 2005 was taken as an improvement over the Indian Succession Act, 1925 because it treated both the sons and daughters, that is, the males and the females equal considering the right to equality guaranteed to all the citizens of India by the Constitution of India
12. The Hindu Succession Act 2005 has started a new chapter in the life of the Hindu females who had long been denied any property right
13. Both the Indian Succession Act 1925 and the Hindu Succession Act 2005 have their own merits and demerits, and the significance of each of the two cannot be set aside and ignored in a given period of time
14. The Hindu Succession Act 2005 is incredibly better than the Indian Succession Act 1925.

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