
THE UNSETTLED POSITION OF HINDU SUCCESSION LAW

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ABSTRACT

The Hindu Succession Act, 1956, was enacted to modernize Hindu inheritance by codifying uniform principles and promoting gender equality within a reformed statutory framework. Yet, nearly seven decades later, the law continues to confront persistent ambiguity, as courts oscillate between the statutory text, moral reasoning, and customary principles. This paper examines the unsettled position of Hindu succession law through a doctrinal and analytical study of key provisions and judicial interpretations that reveal its internal contradictions. It analyses five enduring questions: whether a widow's chastity affects her entitlement; how legitimacy is determined for children born from live-in relationships; whether property devolving under Section 8 retains its coparcenary character or becomes separate; how Section 15(2) operates in cases involving multiple marital ties; and the weak enforceability of the preferential right of pre-emption under Section 22. The discussion further evaluates Section 30, which allows unrestricted testamentary freedom and may undermine the egalitarian purpose of granting women coparcenary rights. Drawing on Supreme Court and High Court rulings, as well as scholarly commentary, the paper argues that judicial reliance on moral assumptions, combined with legislative silence on crucial interpretive questions, has led to fragmented outcomes and doctrinal uncertainty. The analysis demonstrates that the Act remains trapped between tradition and reform, with courts often prioritizing equity and morality over legal coherence. The paper concludes by recommending targeted legislative reform and a purposive interpretive approach that aligns Hindu succession law with its intended goals of equality, certainty, and justice in contemporary property relations.

Introduction

The enactment of the Hindu Succession Act, 1956, marked a reformative attempt to bring coherence to Hindu inheritance by codifying uniform principles and dismantling the gendered hierarchies embedded in customary Hindu law. Yet, this legislative transformation has not been reflected in the practice. Courts frequently face competing demands between the text of the statute and enduring social values, resulting in judgments that diverge on fundamental legal questions. Understanding why these ambiguities persist is crucial to assessing the success of the codification project. Despite the Hindu Succession Act, 1956, not being a total failure of reform, as only some issues persist. Some issues are as follows:

Will a widow's chastity affect her entitlement?

Section 8 of the Hindu Succession Act, 1956, provides rules for determining the succession of a Hindu male who dies intestate, including a widow, who is a class I heir under the Act.¹ Now, the difficulty arises in determining whether it includes a widow who left her husband during his lifetime and remarried, or is engaged in an extramarital relationship. The judiciary has given diverging views, as most courts have held that a person's unchastity is not a statutory ground for disqualification after the enactment of the 1956 Act, which excluded chastity as a ground for disqualification.²

While in some cases, Courts have invoked equity to deny inheritance on moral grounds, for a woman who has broken the sanctity of the marriage.³ Such reasoning raises doubts about whether the provision's liberal intent is compromised by moralistic interpretation as to whether the intention was aimed at the welfare of the widow, even when she has committed adultery or left the man and his family.

Is a child born out of a live-in relationship entitled to a share?

The children born out of voidable and void marriages are entitled to a share in the father's property as per section 16 of HSA, 1956.⁴ Do children born out of a live-in relationship fall under the definition as per Section 16, or are they considered children born of a valid marriage, which is something courts have found difficult to navigate? According to Section 114 of the Indian Evidence Act, it is presumed that a child is legitimate if the parents have lived as

¹ Hindu Succession Act, 1956, § 8, No. 30, Acts of Parliament, 1956.

² Daljit Kaur v. Amarjit Kaur, AIR 2009 P&H 118.

³ Krishnamma v. P. Subramanyam Reddy, AIR 2008 (NOC) 482 (AP).

⁴ Hindu Succession Act, 1956, § 16, No. 30, Acts of Parliament, 1956.

husband and wife and appeared to be such to society.⁵ The courts have held that this is a wrong presumption of law, as legitimacy can be conferred only on valid marriages, and there is a special provision for void/voidable marriages. Live-in relationships do not fit under the definition and are not in the nature of marriage.⁶ But in the case of *Bharatha Matha v. R. Vijaya Renganathan*, the court held that children born out of a live-in relationship can claim ancestral property.⁷

The courts, despite reasoning that the legislative intent behind enacting Section 16 is that children should not suffer for their parents' wrongdoing, have failed to overlook this principle when it comes to children born out of live-in relationships, as they struggle to balance moral notions of validity and legitimacy with the liberal purpose of the legislation.

What happens to the nature of property after devolution through section 8?

If a property of a male dying intestate devolves through section 8, does it remain coparcenary property or become separate property? This is also important to determine whether a Hindu Undivided Family (HUF) exists. The court in the case of *Chander Sen vs CWT* held that even if it is coparcenary property upon devolution by the statute, it will be treated as the heir's separate property.⁸

Paras Diwan claims that it should not be the case, as it is doctrinally bleak, since the nature of property must be dependent on its source of origin, not on how it devolves.⁹ The courts have supported his view in some cases, but the majority of the cases have not agreed on this principle.¹⁰ He further contends that unless there is voluntary and evident severance, it shall remain as ancestral.¹¹ Here, the courts are not concerned with the significance and usefulness of joint family property for the construction of the HUF, as the provision never explicitly mentions the nature of the property or the rules for its devolution.

How does property devolve under 15(2) of HAS, when there are multiple husbands?

Section 15 of the Hindu Succession Act provides the rules for succession when a female dies intestate. As per Section 15(2), the property inherited from a husband or father-in-law shall

⁵ Mohan Singh v Rajni Kant, AIR 2010 SC 2933.

⁶ Babulal v Natthi Bai, AIR 2013 MP 134.

⁷ Bharatha Matha v. R. Vijaya Renganathan, (2010) 11 SCC 483, AIR 2010 SC 2685.

⁸ CIT v. Chander Sen, AIR 1986 SC 1753, (1986) 3 SCC 567.

⁹ Paras Diwan, *Ancestral Property After Hindu Succession Act, 1956—Joint Family Property or Separate Property? A Muddle Under Tax Cases*, 25 J. INDIAN L. INST. 1 (1983).

¹⁰ CIT v. Hiralal Manilal Mody, (1981) 131 ITR 421 (Guj).

¹¹ Hindu Succession Act, 1956, § 15, No. 30, Acts of Parliament, 1956.

revert to the husband's heir.¹² However, if she remarries after the death of the first husband without any issue and has issues with the second husband, on her death, it will devolve to her issues.¹³ The reasoning is that the provision is liberal enough, and only in the "absence of any son," it can devolve to the husband's heir.

In the case of *Dhanishta Kalita vs Ramanatha Kalita*, it was held that the purpose of section 15(2) is to protect the origin and not to lose its original source. So, if a woman dies issueless from her first husband and has heirs from her second husband, it shall revert back to the first husband's heir. The expression "son and daughter" refers only to the form that the father, through which it had been inherited. Again, the court has struggled to balance and interpret the statute in a coherent manner due to ambiguity between fairness and the intent of the provision.¹⁴

Right to Pre-emption – a weak right?

As per Section 22 of HSA, 1956, there is a preferential right to acquire the interest of the property where it is shared by class I heirs.¹⁵ The conditions that must apply to avail this right are that it must be an inseparable property and the claimant must have an interest in the property. The goal of this provision is to prevent the fragmentation of the joint family property.¹⁶

However, in reality, this remains a weak right, as courts do not favour the pre-emptor, as it is neither illegal nor fraudulent for the seller to avoid or defeat the claimant's rights. The right is also only available to class I heirs, but not the representatives of heirs.¹⁷ Again, if the goal is to maintain ownership of the property in the hands of family members rather than a stranger, then such a legal position goes against the intent of the provision.

There is a major flaw in the drafting, as it uses the word "property" possessed by "her". However, according to HSA, a female intestate heir does not have class I heirs, unlike their male counterparts.¹⁸ So, the courts have refrained from allowing the property possessed by a

¹² Sashidar Barik v. Ratnamani Barik, AIR 2014 Ori 202.

¹³ Dhanishta Kalita v. Ramakanta Kalita, AIR 2003 Gau 92.

¹⁴ POONAM PRADHAN SAXENA, FAMILY LAW – II 405 (LexisNexis, 5th ed. 2020).

¹⁵ Hindu Succession Act, 1956, § 22, No. 30, Acts of Parliament, 1956.

¹⁶ Arati Das v Bharati Sarkar, AIR 2009 Cal 8.

¹⁷ Bishan Singh v. Khazan Singh, AIR 1958 SC 838, 1959 SCR 878.

¹⁸ Poonam Pradhan Saxena, Family Law – II 461 (LexisNexis, 5th ed. 2020).

female to be claimed through pre-emption. It appears superfluous and requires clarification through an amendment.

Has Section 30 added more chaos to Hindu succession law?

Section 30 of the Hindu Succession Act, 1956, allows a male to make a will that was not previously available to Hindus.¹⁹ There are multiple issues in this provision. Firstly, it does not impose any restriction on will and leaves it to the absolute discretion of the property holder. Muslim law requires consent from all other members if the will exceeds more than one-third of the testator's property.²⁰ Since there is no similar bar under the provision, it appears that granting testamentary freedom without any limits might circumvent succession rules by statute, as parents can now favour their son “legally,” which could defeat the purpose of granting women coparcenary rights.

Secondly, whether the “interest” to be transferred includes his/her share of the coparcenary property or only separate property. The provision specifies property that “could have been alienated during their lifetime”. The problem is that with Mitakrashtra co-parcenary, the shares fluctuate, and the co-parcener cannot alienate their share except in cases of legal necessity, for the benefit of the estate, or for other similar reasons. Only after the death, not during the lifetime of a coparcener, does the share become definite due to notional partition. Now, at the time of granting a will, how can a co-parcener transfer their interest without knowing their definite share, which becomes definite only after their death? This appears to be a contradiction between the plain text of the law and its application in the real world.

Conclusion:

The Hindu Succession Act, 1956, though a landmark in codifying Hindu inheritance law, continues to face significant interpretative challenges. Judicial inconsistency and legislative ambiguities have collectively blurred the Act's liberal intent. Issues such as a widow's entitlement, the legitimacy of children from live-in relationships, and the nature of property after devolution reveal deep doctrinal uncertainty. Similarly, ambiguities in Sections 15(2), 22, and 30 demonstrate how the Act oscillates between tradition and reform, often compromising coherence in favour of compromise. Courts have struggled to harmonize equity, morality, and legislative intent, resulting in case-specific outcomes rather than consistent legal principles. To

¹⁹ Hindu Succession Act, 1956, § 30, No. 30, Acts of Parliament, 1956.

²⁰ POONAM PRADHAN SAXENA, FAMILY LAW – II 528 (LexisNexis, 5th ed. 2020).

ensure predictability and fairness, the law requires a comprehensive review that aligns its language and purpose with modern realities, balancing individual rights with family structures—only then can Hindu succession truly reflect the egalitarian vision envisioned by its framers.