



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CONFLICT OF RIGHTS IN PROPERTY LAW: FAMILY ARRANGEMENT VERSUS TESTAMENTARY SUCCESSION IN INDIAN JURISPRUDENCE**

AUTHORED BY - RISHABH DUSAD

## **Abstract**

*The study places deeper emphasis on analysing the succession laws governing Hindus and other categories covered under Hindu Succession act, 1956 while focusing on the applicability of the Laws in real world. The study will also show the applicability of succession laws in the current world dynamics by differentiating it with the personal laws of succession for Muslims and the Indian Succession Act 1925 governing the categories not covered under the Hindu Succession Act 1956. The study specifically focuses on determining the property rights in case of dispute arise within the family and existence of controversial rights over the immovable property. Several laws are discussed in detail in the study which will highlight the key position and execution of the succession laws governing Hindus in India. The study aims at deriving the rights of the family members over an immovable property within family through various modes of transfer of property, however the study places primary focus on the property passed down through the Family Arrangements and the Wills. The two primary categories involving the succession of property having contesting rights over the property will be discussed in detail in this study. The research study shows the conflict between these two categories and highlights the basic problems in determining legal title over the property and parallelly analysing the current legal framework.*

Key words: Ancestral Property, Succession, Inheritance, Will, Codicil, Partition Deed, Family Arrangement



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HSA	Hindu Succession Act
ISA	Indian Succession Act
HWA	Hindu Wills Act
NP	Notional Partition
HUF	Hindu Undivided Family
FS	Family Settlement
HMA	Hindu Marriage Act
HAMA	Hindu Adoptions & Maintenance Act

## **Chapter-1: Classification & Division of Property: Customs and the evolution of the Hindu Succession laws**

### **1.1 Introduction**

The Hindus laws are divided into various segments and they are shaped by the customs followed in the country before the enactment of the specific laws. The customs were considered as the one of the major source of Law; however a custom to be recognised as a valid custom needs to be followed from a long time, must be reasonable, and continuous.<sup>1</sup> There were several customs prevalent in the society and later converted into laws, some of the laws are law of marriage, divorce, maintenance, succession, adoption etc. with the changing times in the society, certain laws were established and amended to resolve the ambiguities in the execution of laws and accordingly the laws were modified and came into existence to serve the need of the society. Many customs and schools were existed as far as law of succession is concerned but the same was converted into separate acts by the legislature deriving the rights and interest of the person in the property. Currently there are two codified laws into place named as the Hindu Succession Act, 1956<sup>2</sup> and the Indian Succession Act, 1925<sup>3</sup> which governs Hindus in India.

The succession in the generic sense is the devolution of property to the lineal descendants from one generation to another by way survivorship, inheritance, or devise, and which is governed by the succession laws in India. The law of succession regulates the devolution of property of the deceased after his/her death. The Hindu Law of Succession talks about the rules governing inheritance rights, partition deeds, and testamentary successions. The Hindu Succession Law is framed by the social influence, prevalent customs, cultural values, and economic structure in India. The procedure of succession plays an ultimate guide in deciding the contrasting rights over the property and it gives systematic strength to the family structure.

Traditionally the society followed patrilineal inheritance rights in case of distribution of property within family; however the need emerged to codify the law and make a separate law for the succession of property governing Hindus in the country. The first time a codified law

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<sup>1</sup> Bijai Narain Mani Tripathi, *An Introduction to Jurisprudence (Legal Theory)* (16th edn, Allahabad Law Agency 2005) 179–180.

<sup>2</sup> The Hindu Succession Act 1956 (India)

<sup>3</sup> The Indian Succession Act 1925 (India)



was framed during the British era and was known as the Hindu Wills Act of 1870<sup>4</sup> and the Hindu Disposition of Property Act of 1946<sup>5</sup>. That after Independence, the parliament framed new laws for succession and it came into being as the Hindu Succession Act 1956. The evolution of Succession laws has taken place since the ancient times in the society and now made a progressive shift towards protecting the rights for both genders while focusing on creating individual rights within traditional succession practices. The Succession Laws had undergone thorough various amendments and came up with the modernised law securing the rights for sons as well as daughters in the immovable property. The latest amendment to the Hindu Succession Act 2005 removed the gender based discrimination by granting various rights to the daughter in the ancestral property which will also be discussed in detail in the study. The initial chapters reflect the basic understanding of succession taking place from a long time and the establishment of the statutes, the study highlights the shift in the trends where the customs acted as a guiding light in framing the statutes and the current shift towards giving the daughter equal right in the coparcenary property. The succession by inheritance and by other means is discussed in detail in the initial chapter by focusing on the devolution of property by various modes of transfer as well as all the situations by which the devolution takes place is analysed in detail highlighting the roles played by the customary law and the statutes, additionally few terminologies are thoroughly described in study. The research study aims at analysing the operation of succession laws and disputing rights over property in Hindus only i.e. the Hindu Succession Act 1956 were analysed while a comparative analysis were also presented where a comparison were made with the Indian Succession Act 1925 and English legal frameworks. The controversial topic in this study is the discussion of the application of the statutes in existence and the failure of judiciary to interpret the present statutes and in which the contravening opinions were expressed by the Supreme Court of India in deriving the title in the property. The problem lies where the person loses his claim in the property due to the defective title or defect in the document, the case where concurring title exist, the case where the interpretation of the statute becomes difficult, and the case where the person having long term holding or possession in the property defends title, all of these are addressed in detail in this study.

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<sup>4</sup> The Hindu Wills Act 1870 (India)

<sup>5</sup> The Hindu Disposition of Properties Act 1946 (India)

### **1.1.1 Criticism highlighted in the study**

Despite of well established laws, the study provides in-depth analysis of the major issues relating to the property disputes existing in India. The critical analysis of the Hindu Succession Act 1956 and the Indian Succession Act 1925 is presented and evaluated the role of family settlements and operation of Wills in the Indian families. The moral and legal consideration balancing the rights under wills and family settlements is shown in the study and highlighted the key differences in approach. The courts find difficulty in deciding the better title of the parties in the property and in defining the nature of the property. The parties holding the title in the property on the basis of a family settlement, wills, partition deed, or any other mode at the same time would create ambiguity in deriving the actual title in the property. The court of law today finds it very difficult to determine the title in the immovable property where both the parties have undeniable right over it. The court will look into the nature of property firstly and determine the suitable title in the property; however, the courts have laid down contradictory judgments due to the ambiguity in the interpretation of laws which will also be discussed in detail in the study. The contradictory title in the property arises when the legal heirs claim title in the property on the basis of rights accrued being a coparcener in the family property whereas the similar undeniable rights hold by the person having will in his/her name and therefore the courts finds it difficult to create/decide a suitable title in the property. The study will show the long term conflicts between the family settlements and the wills operating in the country and delve deep into the case laws for drawing critical analogy. The study explores the cultural dimensions in property disputes involving the family settlements and the wills while focusing on the shift that the present law has created by recognising daughter's right in the property. The role of the Registration Act, 1908<sup>6</sup> in resolving the family property disputes were also shown and highlighted the importance of registration in deciding the lawful title in the property, the parties not holding a better title or securing an unregistrable document, where it needs compulsory registry, would fail to have legal title in the property by rendering the document invalid in the eyes of law, therefore the claims in the property is also dependent on the registration of the document which will be discussed in the present study. The other aspect covered in the study relating to the evidentiary challenges and the burden of proof while resolving the title dispute in the property which is thought to be captivating.

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<sup>6</sup> The Registration Act 1908 (India)

### **1.1.2 Research Aim**

The research is significant in the field because it draws attention to the shortcomings in the current Hindu succession system and its governance. The study intends to address the legal ambiguities and complexities in enforcing succession laws, the challenges the judiciary faces in interpreting the laws, and the ambiguities in legislative acts, while also offering a workable solution. In this regard, the study focuses on determining the status of a legitimate family settlement and the Will. The study aims to answer the following questions.

Whether the traditions that existed prior to the implementation of the new law i.e. the Hindu Succession Act of 1956, would still hold relevance when determining the devolution of a property? Whether the property is self-acquired or ancestral in nature, does it deserve to be devolved in accordance with the laws and traditions of the past? Additionally, do the customs still hold true when the devolution of ancestral property occurs after the Act of 1956? Whether the right in the property is dependent on the nature of the property and not on the simple alienation of property? Whether the existence of deferring title in property is resolved by opening the back chain of the property notwithstanding the parties holding the will or a family settlement? When determining a property right that has existed since ancestry or the formation of a joint family, does the Hindu Succession Act of 1956 have retroactive effect? Whether a balance can be created between the Family settlement and the Wills operating in the country?

### **1.2 Research Methodology & Hypothesis**

This paper primarily employs doctrinal research to analyse relevant legal texts, including statutes, judicial opinions, and legal commentaries. This method allows for in-depth analysis of legal arguments, interpretations, and precedents related to Succession laws operating in India governing specifically Hindus, giving more emphasis on the devolution of immovable of property and the conflicting rights under it. Doctrinal research is well-suited to examining the legal framework surrounding the succession laws and the potential conflicts with its applicability under different situations according to their suitability.

### **1.3 Property**

It is vital to describe the property in all its aspects before beginning to critically examine laws and provisions and the existence of conflicting rights in the property. The SC of India gave a



very comprehensive definition of property in the case of *R.C Cooper Vs. UOI*<sup>7</sup> and observed as: “Property means the highest right a man can have to anything being that right which one has to lands or tenements, goods or chattels which does not depend on other’s courtesy. It includes ownership, estates and interest in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in personal capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having money values, especially with reference to transfer or succession, and of their capacity of being acquired.”<sup>8</sup>

However, under succession laws the property is divided into two heads and described as the Coparcenary property and the Separate property. The Coparcenary property is considered as a property shared between the coparceners and a coparcener would mean the family member who has a right over the property by way of inheritance. The SC of India in the case of *Vineeta Sharma Vs. Rakesh Sharma & Ors.*<sup>9</sup> has observed that “Coparcenary property is the one which is inherited by a Hindu from his father, grandfather, or great grandfather. Property inherited from others is held in his rights and cannot be treated as forming part of the coparcenary. The property in coparcenary is held as joint owners.”<sup>10</sup>

### 1.3.1 Coparcenary Property & Ancestral Property

The coparcenary property is also divided into two parts i.e. ancestral property and the joint family property. The SC of India in the case of *Shyam Narayan Prasad Vs. Krishna Prasad*<sup>11</sup> defined ancestral property as the property inherited by the male Hindu from his father, father’s father or father’s father’s father. The ancestral property will be discussed in detail in this study. In case of Joint Hindu Family property, the property is not pre-existed from a long time but it has the same essence of the ancestral property where it is passed down to the descents and the coparceners also have right in the property. The pre-existence of the joint family is needed to make the property as a coparcenary property whereas in case of ancestral property the process of 4 degrees follows which will be discussed further in this study. The Joint Hindu Family property revives the character of ancestral property and the same has to be treated as ancestral property in the hands of whole family. The coparceners get the rights over the property by birth

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<sup>7</sup> R C Cooper v Union of India (1970) 1 SCC 248

<sup>8</sup> Ludo Rocher, ‘Introduction and Historical Background’ <https://shodhganga.inflibnet.ac.in/bitstream/10603/325594/8/4.%20chapter%201%20introduction%20and%20historical%20background.pdf> accessed 4 February 2025

<sup>9</sup> Vineeta Sharma v Rakesh Sharma & Ors (2020) 9 SCC 1

<sup>10</sup> Ravi Kumar HR, ‘An Analysis of Hindu Succession Laws in View of the Decision Rendered by the Hon’ble Apex Court in Vineeta Sharma’s Case’ (Karnataka Judicial Academy) <https://kjablr.kar.nic.in/assets/articles/Hindu%20Succession%20Act.pdf> accessed 5 February 2025.

<sup>11</sup> Shyam Narayan Prasad v Krishna Prasad (2018) 7 SCC 646

in both cases. The property can still hold the separate character in the initial generation but the time it is thrown into the common pool of family by the individual possessing it in his/her own name then such property would change its character to a Joint Hindu Family property by operation to a doctrine of blending. The act by which a coparcener throws his separate property in the common pool is a unilateral act.<sup>12</sup> The intention of the person holding separate property in his name would decide the subsequent nature of the property in future. There must be proved a clear intention of waiving of the right of separate holder of the property and the other members of the family must be allowed to jointly hold the property in their name. The self acquired property, also known as separate property, is a property held by a person in his/her name and all the properties excluding the joint Hindu family property, coparcenary property or ancestral property would be considered as a self acquired property. The self acquired property would mean a property owned by the coparcener or person without any assistance of family funds. The person holding the immovable property derived the title over the property from his own exertion and spending. The rule of succession also plays a major role in deciding the nature of property, whether a self acquired property can be converted into ancestral property or not, which will be discussed further in this study.

### **1.3.2 Succession and the Inheritance of a Property**

The succession of a property in its generic sense is the transfer of rights from one person to another where the rights continue to exist but the person vested with rights changed after the commencement of new generation or a new line.<sup>13</sup> As per the *Bouvier's Law Dictionary and Concise Encyclopedia*<sup>14</sup> the term "Succession" means the transfer of rights & obligations of the deceased. The succession of a property is dependent on the mode of devolution and it can be whether by devise or inheritance. In case of intestate succession, the succession usually depends on the death of a person holding property in his name that after the death the first order of succession would take place where the successors see if the property is free from any alienation or if any will is not created by the deceased, and if the estate is left without any prior alienation then the property will be distributed according to the law of intestate succession. The coparceners succeed the property from their above generation, however, if a coparcener dies, the interest of other coparceners would be enlarged because of the reason of survivorship. In case

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<sup>12</sup> Ibid 10

<sup>13</sup> Edward Poste, *Institute of Roman Law by Gaius* (4th edn, The Clarendon Press 1904) 255.

<sup>14</sup> **John Bouvier**, *Bouvier's Law Dictionary and Concise Encyclopedia* (8th edn, West Publishing Company 1914) 3175.

of testamentary succession, the order of succession does not follow and the legal heirs do not get any right in the property but instead the property devolved according to the will of the deceased.

### **1.3.3 Succession and Inheritance; Difference**

The rights left by the deceased person vest in the representative which are governed by the law of inheritance, the property is devolved on the successors, however, the law of inheritance comes into play when the specific rights are assumed by the successors and distribution of the property takes place accordingly, therefore the law of inheritance talks about the manner in which the devolution takes place in the legal heirs. In case of devolution of property both succession and inheritance are used, and that the law of intestate succession is more similar the law of inheritance.<sup>15</sup> The basic difference between the succession and inheritance is that the law of succession has broader interpretation and can be used in the sense that after the death of a person or an stranger the property goes through a devolution process, however, in law of inheritance it describes about the mode of devolution by which the property deserves to be devolved on the basis of relationship with the deceased. It can be said that the law of inheritance lays down clearly defined objectives by which the devolution of property takes place whereas succession has a wider description and talks about both testamentary and intestate succession. The inheritance can only take place by birth whose spot is guaranteed when the birth of the successor takes place whereas the succession is not predetermined but it is expected to have taken place after the death of a person, for example the position of chairmen is expected to be succeeded by the next in line on the basis of voting & promotion however the board of directors may avoid doing so by not voting for the successor for the concerned position.<sup>16</sup> It is established that the succession can take place by the operation of law or by the testamentary succession i.e. the creation of will.

### **1.3.4 Testamentary Succession**

Testamentary succession known as Will, is created by the deceased before his/her death to transfer the ownership of his entire property or any part of it by making a will. The will is defined under section 2(h)<sup>17</sup> of the Indian Succession Act 1925. A person holding title over the

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<sup>15</sup> Ibid

<sup>16</sup> 'What is the difference between succession and inheritance' [http://www.answers.com/Q/What\\_is\\_the\\_difference\\_of\\_succession\\_and\\_inheritance](http://www.answers.com/Q/What_is_the_difference_of_succession_and_inheritance) accessed 14 February 2025.

<sup>17</sup> The Indian Succession Act 1925, s 2(h) (India).



property may choose to transfer the ownership of a property after his death through a will and the devolution of property can take place according to the directions given under the will. Earlier, the concept of testamentary succession was prevalent in ancient times followed by the Muslims only however the Hindus started to follow the custom with the change of time.<sup>18</sup> A will is neither the transfer of ownership of the property during the lifetime of the deceased nor is it effected at the time of creation of will, however it is the expression of interest of the will maker to look after the properties after his death. Therefore, a Will comes into force after the death of the will maker and the person in favour of whom the will is prepared can hold the ownership of the property surpassing all the legal heirs in line. If a person dies without making a will then he is said to have died intestate. The person in whose favour the will is made is known as the beneficiary or legatee, the one who writes the document of will is called the testator, and the written document by which the property is devolved is known as the Will.

### **1.3.5 Intestate succession**

Intestate succession has been recognised from a long time and its essence is found in the ancient books, main text or old books. The people were following the custom prevalent in the places and accordingly the schools were established to govern intestate succession. The two recognised schools which will be discussed in the study were Mitakshara School and the Dayabhaga School which were the determining factor for the order of succession in the male Hindus earlier. Now, the intestate succession is governed by the codified law known as the Hindu Succession Act 1956 and the devolution takes place according to the rules established there under. The intestate succession takes place when the person holding an immovable property is said to have died intestate without making a will or transferring the property in any mode during his life. That under this kind of succession the heirs next in line would succeed over the property and the heirs are to be determined according to the rules stipulated under the succession laws. If the Will fails to operate then in that case the succession opens and the property is devolved according to the rules of intestate succession.<sup>19</sup>

### **1.4 School of Hindu Law**

The school of Hindu law has been holding relevance for a long time and followed in every part of the country in case of devolution of property in a joint family. There are two main schools

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<sup>18</sup>Sahil Shah, 'An Overview of Wills under Hindu Law' [http://www.legalserviceindia.com/articles/will\\_hindu.htm](http://www.legalserviceindia.com/articles/will_hindu.htm) accessed 13 July 2014.

<sup>19</sup>KD Gangrade, *Social Legislation in India* (Vol II, Concept Publishing Company 2011) 50.

of Hindu Law which will be discussed in detail in the study. The two schools are Mitakshara School and the Dayabhaga School.

#### 1.4.1 Mitakshara school

The term 'Mitakshara' is the combination of two terms *mit* and *akshara* in which the *mit* means 'few' and the *akshara* means 'words'. The Mitakshara is a *vivrti* i.e. legal commentary on the *YajnavalkyaSmriti* known for its theory of "inheritance by birth".<sup>20</sup> It was authored by *Vijenshwra* and was written in the 11<sup>th</sup> century.<sup>21</sup> The rules of Mitakshara School along with the text of *YajanavalkyaSmriti* were reduced in writing comprising of 492 pages. The Mitakshara system was prevalent between 1050CE and 1126CE said by the *Kane* that there is no specific period during which the Mitakshara system came into being.<sup>22</sup> Several commentaries were made during the period and later these rules were set as governing principle for determining the property rights. The school holds a prominent position in the ancient hindu system and the rules set under the school was followed all over the country except Punjab, Assam, and Bengal. After the formation of independent states in the late 11<sup>th</sup> century the legislators read down the ancient texts and with the time formed four sub schools. The sub-schools were: (i) Banaras School, (ii) Mithila School, (iii) Maharashtra School, and (iv) *Dravida* or Madras School. Each of these schools covered several parts of the country and have its operation until the codified law came into existence i.e. the Hindu Succession Act, 1956. The present law find its foundation from the customs practiced earlier under the Mitakshara school and it was made the base of Succession.

#### 1.4.2 Obstructed and Unobstructed Heritage

The property under this school is divisible in two parts known as the *apratibandha daya* i.e. unobstructed heritage and the *sapratibandha daya* i.e. obstructed heritage and therefore the devolution takes place accordingly.<sup>23</sup> The properties inherited by a Hindu male directly from the ancestors not exceeding three degrees higher to him are called *apratibandha daya*. In this case the son, son's son, and son's son's son acquire an interest by birth. For instance a person name 'C' is born to 'B' who inherits property from 'A' is said to acquire the right by birth only.

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<sup>20</sup> Ibid 8

<sup>21</sup> **Rajkumar Sarvadhikari**, *Tagore Law Lectures 1880: The Principles of the Hindu Law of Inheritance* (Thacker Spink and Co 1882) 331.

<sup>22</sup> **Difference Between Mitakshara & Dayabhaga: Inheritance, Coparcenary & More** <https://thelegalschool.in/blog/difference-between-mitakshara-and-dayabhaga> accessed 14 February 2025.

<sup>23</sup> **D Pathak**, *Hindu Law and Its Constitutional Aspects* (4th edn, Capital Law House 1986) 212.

It is said that 'C' will become coparcener to the property sooner his birth took place and is entitled to undivided share in the property. On the other hand, when the property is acquired from any relation such as maternal or paternal family than such inheritance is known as *sapratibandha daya* where the right to the property does not accrue on birth of the descendants i.e. the son, son's son or son's son's son does not acquire an interest in the property by birth. Supposedly, a person name 'A' has no male issue, but only has a separated brother whose interest in the property does not arise until A's death, therefore the property in the hands of 'A' would be considered as an obstructed heritage.<sup>24</sup>

#### **1.4.3 Classification of a Property under Mitakshara School of Law**

A property is divisible in the shape of a Joint Family or Coparcenary property and the Separate or Self Acquired property. Property which is owned and controlled by two or more persons, with the incidents of survivorship, is known as the joint property. The major rule of joint property or a coparcenary property is that the right accrues at the time of birth in the family i.e. a 'Right by Birth' is a fundamental rule of inheritance of the property. The co-owners have the possession of property and enjoy the possession jointly without concurrence of others. The division of such property could only take place through partition or settlement in the family to avoid collusion in the future and on that basis share in the property is divided respectively. As we have already discussed, the Coparcenary property is the narrower term and is discussed to the extent of defining rights of the family consisting of father, son, son's son or son's son's son. Whereas, the joint family property would include the property held by more than one individual and it can be of ancestral nature or a property thrown into a common pool or obtained on partition. In case of a Self acquired property, the property will directly devolve through the rules of succession under the succession laws in case the person died intestate. The main ingredients of a self acquired property is that the property is held by the person in his own name and he can dispose of the property as per his wish through will, gift, sale or in any other manner.<sup>25</sup> The coparceners in the self acquired property cannot object the transfer of property and if the person died intestate the devolution of property can take place through the inheritance laws and not by survivorship.

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<sup>24</sup> RK Agarwal, *Hindu Law* (Central Law Agency 2006) 299.

<sup>25</sup> Manicka Poosali v. Anjalai Ammal, (2005) 10 SCC 38.



#### 1.4.4 Dayabhaga School

The text under this school was written in the later half of the twentieth century and focuses primarily on the procedure for inheritance. The text was commented on by *Jimutavahana* and highlighted the critical aspects of Mitakshara. The text was considered as prominent script under the reign of britishers and was prevalent in the regions of Bengal. The scholars also thought that the description given under Mitakshara School was of orthodox nature and needed reformed version. The Dayabhaga script is the reformed version of all previous texts describing the inheritance rights.<sup>26</sup> *Jimutavahana* was known for his three of the prominent scripts i.e. Kalaviveka, Dayabhaga, and Vyvaharamatrka. The text was followed in Bengal and Assam.<sup>27</sup> The rules of Mitakshara would ultimately follow in several aspects where the rules of Dayabhaga are silent and therefore the Mitakshara School has wider reach. The Dayabhaga school primarily involves the rules for partition and inheritance which was followed in few regions of the country. However, under Mitakshara School the author gave a brief description about inheritance and succession using direct approach.

#### 1.4.5 Classification of Property under Dayabhaga School of Law

The Mitakshara School was predominantly operated in many regions of the country irrespective of the fact that it followed conservative approach but considered to be the progressive one. The composition of a Joint Family under both the schools was same however the classification or division of property is different. It is said that the Dayabhaga system does not follow the same approach of Mitakshara system. The Dayabhaga School recognise all the properties as Sapatibandha Daya i.e. obstructed heritage and the devolution of properties takes place irrespective of the nature of property being a joint family property or a self acquired property.<sup>28</sup> The method followed under the Mitakshara system was to share the undivided and undefined interest in the joint family property dependent on the surviving members as coparceners in the joint family and the share passes on the death of the coparceners. The Dayabhaga System follows a different approach and described as the more efficient one when comes to execution and it lays down a predefined interest in the property free from the fluctuation of rights on death and birth of the coparcener as in the case of a Mitakshara system. It is therefore said that under Dayabhaga school the pre-defined share in the property removes

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<sup>26</sup>**Ludo Rocher**, *Jimutavahan's Dayabhaga: The Hindu Law of Inheritance in Bengal* (Oxford University Press 2002) 23.

<sup>27</sup> Rohan v. Luchuman AIR 1976 Pat 286.

<sup>28</sup>**BM Gandhi**, *Hindu Law* (Eastern Book Company 2003) 191.

ambiguity and complexity in devolution of the property, and the property is pass down to the legal heirs and not the surviving coparceners.<sup>29</sup> Here, the son does get a right in the property by birth and cannot demand for partition of property during the lifetime of his father, therefore the father have right over the property and can manage or alienate or transfer the property without the permission of other family members of the next in line. The owner in the joint family property and the self acquired property enjoys equal rights i.e. the right to transfer by way of sale, gift, will or any other manner which he thinks suitable.

#### **1.4.6 Formation of Coparcenary**

The coparcenary in the property can only form upon the death of a person holding the property i.e. the property will only pass down on the death of the previous generation and not on the birth of the next generation, and the coparcenary will only form between the immediate generation in line irrespective of the presence of next generation in line. That no coparcenary would form till the death of a father holding a property in his name or the property coming from the ancestry, and upon the death of a father the property will immediately devolve upon the son or next generation in line. The process of inheritance of property on the death of a father takes place under this system and all the members in the same generation would divide their interest accordingly and enjoys the property rights excluding others in the family. A coparcenary will cover both males and females under this system and is free from the conservative approach that is followed under Mitakshara System. The primary essence of this school is that it follows the approach of unity of possession and not the unity of ownership as in the case of Mitakshara system.<sup>30</sup> There are few other elements of this school which includes the partition by metes and bonds, no partition could take place between father and son on son's demand, on partition the wife is entitled to a share in the property, etc.

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<sup>29</sup>**Prem Nath Chadha**, *Hindu Law* (3rd edn, Eastern Book Company 1971) 17.

<sup>30</sup>**Rameshwar Dial**, *Commentaries on the Hindu Succession Act, 1956* (1st edn, Eastern Book Company 1964) 35–36.

## **Chapter 2: Succession Laws and the Jurisprudence developed over time: A critical analysis of the Hindu Succession Act, 1956 and the Indian Succession Act, 1925**

### **2.1 Statutory laws relating to succession among Hindus**

It is the established fact that the law changes with time according to the changing times in society and the succession laws were emerged as the consequence of ambiguity arises in the execution of personal laws all over the country. The need emerged to frame a unified law applicable to all Hindus in the country and determined the rules for succession. The traditional rules of succession under Mitakshara and Dayabhaga were followed from a long time and the statutory laws came into existence to frame a unified applicable on all Hindus over the country. The statutory laws are influenced by custom or usage or statutory laws itself. The Hindu Succession laws are the consequence of revolutionary change in the personal succession laws during the British period or just after independence and the traditional rules are transformed into codified statutory laws. It is said that Hindu laws were originally located in the *shastras* and thereafter took a shape of customs with some modifications over time. The two predominant communities in the country i.e. Hindus and Muslims govern by their own personal laws in the matters of marriage and succession. The Indian Succession Act 1865 came for the first time during the British era but the applicability of the laws remained into question because the people were reluctant to admit or force the new laws and therefore the law was not applicable to Hindus and Muslims as the government were not inclined towards interfering with the personal laws of both the communities. The statutes were framed to provide a statutory framework for the inheritance or succession laws among Hindus.

### **2.2 The Indian Succession Act, 1925**

The Act came into existence applicable to all minority communities where the personal laws were prevalent. The object of framing this law is to confine all the personal laws and make one unified law applicable to all minority groups in the country. That many personal laws were into force during the British regime and the British government passed a law to deal with these communities. With the change of time, the need arose to consolidate all the personal laws especially the law of succession and therefore the law came into being. The Indian Succession Bill was introduced by the British government and received the assent of Governor General on September 30<sup>th</sup> 1925. The act divides the succession laws into two categories i.e. the intestate succession and the testamentary succession. The provisions of intestate succession are

applicable to certain classes but the provisions of testamentary succession are made applicable uniformly to all the categories except the communities which are expressly excluded from the act. The date of the commencement of the act is not known so under the section 5 of the General Clauses Act, 1897<sup>31</sup> and it came into existence after receiving the assent of the Governor-General. The act was made applicable to all the states and union territories of India and the provinces that time.

### **2.3 The Hindu Succession Act, 1956**

The act is influenced by the Historical practices i.e. custom or usage for a long time and enacted as a separate act which is made applicable to all the Hindus in the country. The act is controversial in nature because of its crucial aspect of determining the property rights in the case where the property is ancestral or separate. The courts are experiencing many cases and disputes regarding the determination of property rights under law. The courts which entertain such cases are civil courts and are currently burdened with so many cases of this kind. The act's basis purpose is to frame a uniform law and consolidate all the ancient texts determining property rights into a statutory law applicable to all the Hindus. The law's scope were limited earlier to the extent of deriving rights in few instances however the courts with the help of judicial interpretation removed some ambiguities and widened the law in its actuality. The reason for wider interpretation of laws is to widen the scope of laws and apply it in the conditions where law fails to operate or where the law is silent on different situation. The strict interpretation of law could not be possible and the law needs to be interpreted by the courts to satisfy the current needs of the society. A complete code is formed for governing the Hindus and the succession laws. The primary objective of the act is to provide a framework for intestate succession in addition to the testamentary succession.

#### **2.3.1 Origin of the Hindu Succession Act, 1956**

From region to region different customary laws were followed and the caste were made basis for determining the laws. The Hindus were earlier governed by the *shastras* and followed it independently excluding other forces. Due to the diversity in the country, the law was not static but was followed differently which also influenced the succession laws in the joint family. From earlier times, the Hindus were majorly governed by the two schools discussed in the former parts of this chapter Mitakshara School and Dayabhaga School. Each school has

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<sup>31</sup>The General Clauses Act 1897, s 5 (India).



followed different approach in case of devolution of property and the application of laws most of the times becomes the matter of dispute which is also criticised in the study. The difference in the interpretation of these two schools is because of the difference in approach in describing the word '*sapinda*'. The mitakshara school was also classified in four sub parts and each part has followed different approach in determining the succession among Hindus. All the sub-schools were prevalent in the ancient times and followed by the communities depending on the regions they live in. The rules were framed from the ingredients established under Customs, commentaries, precedent and the established law is influenced by these sources of law. Earlier, in case of dispute within the family with reference to property it is to be resolved internally or through panchayat and the panchayat was considered as the ultimate authority for resolution of disputes within family.

### **2.3.2 Establishment of British Courts**

With the advent of britishers, the English courts were established to deal with the property cases and resolve the dispute between parties. The people faced problems due to complexity in the procedure and English language used in the English courts. The English courts also lacked the knowledge of property laws applicable to Hindus and they used to consult *pundits* and read ancient texts to determine rights in the property and this was the initial difficulty faced by the people and English courts. The ancient texts were influenced by the Brahminical superiority and the need arose to frame a separate sect which promotes equality and brotherhood and therefore a codified law was established catering the need of every community in the society among Hindus. With the help of judicial pronouncements, more clarity on the property laws has taken place which satisfied the need of the society and reformed the personal laws of the Hindus. The positive effect of these precedents can be seen today which led to the establishment of current statutes.

### **2.3.3 Statutory development of the Hindu Succession Laws**

The need for change in the ancient laws was taken place during earlier nineteenth century which necessitated to frame a well functioning laws easy to execute all over the country. Earlier, the expert committee was established comprising of leaders and jurists in the year 1941 and was known as "Rau Committee" headed by B.N. Rao, a judge of the Calcutta High Court and three other lawyers as its members namely D.N Mittar, Gharpur and Rajratna Vasudev Vinayak

Joshi.<sup>32</sup> The committee advise a Hindu Code in which the ingredients of this code were deeply influenced by the various schools of Hindu law. Various private bills were made on the property during the British era and formed a final act on property which provided for the intestate succession for all Hindus in that period. The first code recognised the equal status for both male and female.<sup>33</sup> The Rau committee suggested that the Hindu code must be divided in parts allocating or discussing particular segment in each part or statute and therefore the need arose to make separate laws for Hindu Marriage, Hindu Succession, Hindu Minority and Guardianship, and Hindu Adoption and Maintenance. The features of the Hindu Succession Bill were that a uniform law for all the Hindus across the country were created defining their property rights and intestate succession, secondly the Hindu women's rights were earlier not recognised but with the change of time and well established statute it has become possible to frame provisions for Hindu Women discussing their rights in the ancestral property and coparcenary property. That on submission of report by the Joint committee, the notification was issued by the government of India on 21<sup>st</sup> of January 1944, to complete the codification of bill for Hindus. The Bill was then sent to the select committee in 1948. The Bill was discussed in the legislative assembly on 24<sup>th</sup> February 1949 and the discussion taken place till 1951. That certain communities favoured the bill and the communities include Brahmo samaj, Arya Samaj and Hindu Women's Conference and a certain Atma Raksha Committee, however the communities who gave their opinions on the bill were very limited part of Hindus.

#### 2.3.4 Division of Hindu Codes into sub-parts

The Hindu code were broken into four parts and later specific statutory laws were framed in that respect. The initial break down took place between Marriage and Succession laws. The very first part was established as the Hindu Marriage Act 1955<sup>34</sup> and the provisions for marriage and divorce in the act were framed and following this act the Hindu Succession Act 1956 was enacted and the provisions for intestate succession were framed. The next in line were the Hindu Minority and Guardianship Act, 1956<sup>35</sup> concerning the provisions for minority and guardianship. The last act framed was Hindu Adoptions and Maintenance Act, 1956<sup>36</sup>. The date of commencement of the Hindu Succession Act, 1956 is 17<sup>th</sup> June 1956 after receiving the

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<sup>32</sup>Rishindra Nath Sarkar, *Hindu Women's Right to Property Act* (SC Sarkar and Sons 1938) 3.

<sup>33</sup>Mrs Parminder Kaur, *Women's Rights under the Hindu Succession Act, 1956 – A Critical Evaluation* (PhD thesis, Guru Nanak Dev University 2009) (unpublished).

<sup>34</sup>The Hindu Marriage Act 1955 (India).

<sup>35</sup>The Hindu Minority and Guardianship Act 1956 (India).

<sup>36</sup>The Hindu Adoptions and Maintenance Act 1956 (India).

assent of the President of India. It is said that the preamble of any act describes its objective and purpose which it intends to achieve.<sup>37</sup> The Hindu Succession Act, 1956 is also made for some purpose and the preamble speaks the basic objective.

### **2.3.5 Purpose of the Act, 1956**

The preamble of the Act of 1956 mentions that “An Act to amend and codify the law relating to intestate succession among Hindus” speaks about the law relating to intestate succession among Hindus. The law differed from place to place depending on the operation of laws in different parts of the country and the new legislation has attempted to codify the law of intestate succession. Several amendments were made till date in the act and the most prominent amendment giving property rights to daughter is discussed in the study in the later chapters. The act discusses about the rules of intestate succession but also covers few provisions of testamentary succession in the last section.<sup>38</sup> The act while defining the property rights and other ancillary provisions talks about the application of the act in sub-section 2 of the Act. Though the act does not apply on the foreign nationals or country however the act’s application is extra-territorial in nature and governs people residing outside the country as well. The person governed under the act includes the Hindus in the country as well as Hindus domiciled outside India as per the rules established under Private International Law. The present succession law’s applicability does not depend on the domicile or region but is applicable to every Hindu residing outside the country or within the territory of the country. The act is applied everywhere irrespective of the fact that the deceased is died outside the country and the act is applicable depending on the domicile and caste of the deceased.

### **2.3.6 Exceptions to the Act, 1956**

There are some exceptions to which this act does not apply such as the Hindu domiciled in Goa, Daman and Diu<sup>39</sup> and Renocants of Pondicherry who are governed by their own personal laws.<sup>40</sup> The Indians were also given option to adopt the French Civil Code, 1804 and renounce their personal laws, the Indian in some areas even adopted the laws and the French laws still have its applicability in few parts of the country. The people who have renounce their personal laws and adopted the French laws are considered as Renocants and the word Renocants came

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<sup>37</sup> **IC Golak Nath v State of Punjab** AIR 1967 SC 1643 (Subba Rao CJ).

<sup>38</sup> **Sundari v. Laxmi** AIR 1980 SC 198.

<sup>39</sup> **The Constitution (Twelfth Amendment) Act 1962**, s 5(1) (India).

<sup>40</sup> **Regulation 6 of 1963**, (India) extended *The Hindu Succession Act 1956* to Pondicherry but did not apply to the Renocants of Pondicherry.

from the term “Renunciation”. According to the treaty established between countries such as the ‘Treaty of Cession’, the people of India were given choice to renounce their laws and adapt to the French laws. The Hindus of Goa were also governed by the Portuguese Civil Code, 1867 in the same manner, however they follow some basic elements of Hindu personal law.<sup>41</sup> The Hindus of Daman are also governed in the same way by the Portuguese Civil Code, 1867 however they have an option to follow the personal laws to protect their rights in a Joint family and institutions made in that respect.<sup>42</sup> Similarly, the Hindus of Diu are also subject to the applicability of rules of the Portuguese Civil Code, 1867 and they also follow the rules of institution of Joint family in certain aspects<sup>43</sup>, the difference also lays in the applicability of laws to a married and unmarried Hindu i.e. an unmarried Hindu is subject to the applicability of the Portuguese Civil Code, 1867, and a married Hindu is subject to the Diu Code.<sup>44</sup>

### **2.3.7 Application of the Act, 1956**

The Hindu Succession Act, 1956 is passed to bypass all the personal traditional laws and make unified code governing the succession rights of a property among Hindu families. The act entails the list of Heirs and the provisions for division of property within family by following the certain terms in an efficient manner removing ambiguity. The act also removed the inequalities in the distribution of property by giving rights to both the genders and the right in property is evolved over time and included the list of heirs who can succeed the property based on natural love. The act is applicable to Hindu by religion and who does not fall under the category of exception, the act applies to communities or Hindu samaj such as Virashaiva, a Lingayat or a Brahmo, Prarthana or Arya Samaj, as well as to any person who is Buddhist, Jaina or Sikh by religion, or to any person who is not Muslim, Christian, Parsi or Jew by religion, unless it is proved that such person would not have been following the Hindu personal laws if the act were not into existence.<sup>45</sup> The Hindu Succession Act, 1956 comes to be the best means for determining property rights in Hindus and best fitted to the Hindus in the country, however, the law has some legal loopholes which are addressed in the later chapters and that how it becomes difficult to apply the law and in different situation by analysing the current world dynamics. The entire chapter in the study is dedicated in analysing the applicability of law in the real world and addressed the key issues in the applicability of the present succession

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<sup>41</sup>Decree of Usage and Customs of the Gentile Hindus of Goa 1880, arts 16–24 (India).

<sup>42</sup>Code of Usages and Customs of the Non-Christian Inhabitants of Daman 1854, arts 24–37 (India).

<sup>43</sup>Usages and Customs of the Non-Christian Inhabitants of Diu 1894 (India).

<sup>44</sup>Usages and Customs of the Non-Christian Inhabitants of Diu 1894, arts 31–32 (India).

<sup>45</sup> Hindu Succession Act, 1956, s 2(1) (India).



laws.

### 2.3.8 Features of the Act, 1956

1. The transferable estates of Indian state rulers that are governed by unique contracts, agreements, or other laws are exempt from the Hindu Succession Act, 1956.<sup>46</sup>
2. The Act lays down new provisions for the devolution of the property of a male Hindu and of a female Hindu, dying intestate.<sup>47</sup>
3. Under the Hindu Succession Act of 1956, the idea of a restricted estate in relation to the property rights of females has been eliminated.<sup>48</sup>
4. The descendants of the convert are no longer eligible to inherit their Hindu relatives' property.<sup>49</sup>
5. It is no longer possible to be disqualified due to a disease, defect, or deformity.<sup>50</sup>
6. It is clear that Will has the legal right to dispose of the property.<sup>51</sup>
7. Every blood relative has an opportunity to succeed to the deceased before escheat in the government's favor can occur.<sup>52</sup>
8. The only exception to illegitimacy is when illegitimate children inherit from their mother and their own legal descendants.<sup>53</sup>
9. The Act ensures that male and female heirs are treated equally.<sup>54</sup>
10. A widow's remarriage after receiving an inheritance from her ex-husband no longer entitles her to the inherited property.<sup>55</sup>
11. The Act has excluded the rule of survivorship.

### 2.3.9 The Hindu Succession (Amendment) Act, 2005

The position of women before this amendment was different and this amendment comes to be the major mile step towards achieving equality and exercising the fundamental rights in its true sense. The women's right in the property were not recognised earlier after the commencement of law and this created urgency to pass a gender neutral law which could

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<sup>46</sup> Hindu Succession Act, 1956, s 5 (India).

<sup>47</sup> Hindu Succession Act, 1956, ss. 8 and 15 (India).

<sup>48</sup> Hindu Succession Act, 1956, s. 14 (India).

<sup>49</sup> Hindu Succession Act, 1956, s. 26 (India).

<sup>50</sup> Hindu Succession Act, 1956, s. 28 (India).

<sup>51</sup> Hindu Succession Act, 1956, s. 30.

<sup>52</sup> Hindu Succession Act, 1956, s. 8 read with s. 3(a) and (c).

<sup>53</sup> Hindu Succession Act, 1956, s. 3(j).

<sup>54</sup> Arumugha v. Valliammal AIR 1969 Mad 72.

<sup>55</sup> Hindu Succession Act, 1956, s. 24.

recognise the right of women as well in the intestate succession. The law was earlier passed with some latent loopholes however, this amendment has made a change in the legal arena by changing the succession line in the family. The position of women will also be discussed in the study before and after the amendment could take place. A female earlier were not considered a coparcener in the Hindu coparcenary and because of this reason they were not made a Karta of the Hindu joint family. The female could not form the coparcenary in the property and could not choose for partition because the rights of a female in the property were missing. The amendment came into place in the year 2005 in the Hindu Succession Act, 1956 and this amendment came into being on 9<sup>th</sup> September 2005. The change was possible because the Indian Parliament has take a not from the state legislature on changing or amending the law and recognising the women's right in the property. There were some state legislatures which made a change in their laws and recognised the women's right for the first time after the Hindu Succession Act, 1956 was enacted, the states were Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka who have made gender neutral laws in property laws and in all of these four states the coparcenary formed in the same manner between the son and daughter as it is followed between the male coparceners within family under the Act of 1956. The Supreme Court of India has also held that the amendment has no retrospective effect.<sup>56</sup> The amendment was majorly influenced by the 174<sup>th</sup> Report of the Law Commission of India on the subject of "Property Rights of Women: Proposed Reforms under the Hindu Law".<sup>57</sup> The application of the laws is discussed in detail in the later chapters highlighting few loopholes in the present law of succession.

### **2.3.10 Recognition of a Women's right in property**

The amendment has changed the position of women's right in property by changing the composition of Coparcenary formed under Mitakshara school, it has also changed the partition law and law of succession, and made daughter a coparcener in the joint family. Several studies have found the basis of succession and recognised the rights of a female in journals, periodicals, newspapers, etc and the attempt has been made to simplify the law of succession and realise the rights of women and therefore the amendment has taken place. A deep research was conducted earlier in the matter of intestate succession and testamentary succession among Hindus. The provisions of Hindu Succession Act, 1956 and the Indian Succession Act, 1925

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<sup>56</sup> Makineni Venkata Sujatha v. Land Reforms Tribunal (2000) 8 SCC 196.

<sup>57</sup> Ibid

were analysed in the study and classification is conducted in the later chapters of the paper. The rules relating to succession of the Hindu male and female has been worked. The attitude of the judiciary towards recognising the rights of the women being coparceners is also analysed in the study. The other aspects covering the rights of the coparceners has been touched upon in the study and highlighted the loopholes in the practical implementation of the succession laws. Before the passing of the Hindu Succession (Amendment) Act, 2005 the Hindu laws was found to be gender biased and discriminated towards women however after passing of the act it is determined that the women came to the same level in the matter of coparcenary in Joint Family and realisation of rights in the property.

### **Chapter 3: Testamentary Freedom vs. Family Obligation: A critical examination of Equity in Property Disputes- Discussing the moral and legal consideration balancing wills and family settlements**

#### **3.1 Intestate Succession and Family Arrangements**

The existence of succession laws from a long time in Hindus took place of the statutory law which derived the specified rules of succession. These rules were earlier followed by the different classes in the society by using different approach. The devolution were different depending on the nature of the property i.e. the property of ancestral nature followed different approach in devolution whereas the property of separate or self acquired nature would follow the different mode of devolution. There was no uniform law followed in every case of property devolution. As we have already discussed in the earlier chapter the rules of two prominent schools were followed from a long time and taken a shape of a statutory law i.e. the Hindu Succession Act, 1956, and in few southern parts of country other succession laws were prevailing at that time. The Hindu Succession Act, 1956 takeover all the succession rules prevailing in the country by making a uniform code applicable to all the Hindus in the country except the exception listed in the statute itself. The act primarily applies to all the Hindus following the two prominent schools as well the Hindus living in southern part of the country which were previously governed by Marumakkatayam, Aliyasantana, and Nambudri system of Hindu law.<sup>58</sup> The act aimed at the uniformity and also provided suitable modification for those who were rigid to follow and adapt to the new law. The patriarchial approach were followed in the country with respect to the division of property and in the succession laws as favoured by the Hindus in the society. The act lays down only one scheme of succession applicable to all

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<sup>58</sup>**D Pathak**, *Hindu Law and Its Constitutional Aspects* (4th edn, Capital Law House 1986) 230.

the Hindus and the provisions in this respect were laid down for the efficient succession of the property and its division. The old customary law of succession is abrogated with the commencement of the well functioning law i.e. the Hindu Succession Act, 1956.<sup>59</sup> The definite scheme of succession is laid down in the act describing the devolution of property under certain conditions of a person dying intestate after the enactment of the act. Before dwelling into the scheme or rules set out under the law of succession few terminologies are defined in detail below.

### **3.2 A Hindu**

The word “Hindu” for the first time expressed in the Ancient Vedic Scriptures and it should be noted that the word “Hindu” is not a religious word but a word given by the Persians. The ancient Persian Cuneiform inscriptions gave the reference of the word “Hindu” and said that it is a geographic name and not a religious name. The very first time when the Persians referred to the people India as “Hindus” at around 517BC. The land of India became *Al-Hind* for the Arabs in the ancient period. After India was invaded by the Muslims in the Medieval period it referred the Indian sub-continent as “Hindustan” and the people of the country as Hindus. The Historical meaning of the term “Hindu” is different from what has been described under the Hindu Succession Act, 1956. The title specifically describes about Hindu and the applicability of the Act on them, however, it initially difficult to arise in describing who is a Hindu and whom the act applies to. The country like India follows diverse religions and different traditions in Hindus itself and therefore it becomes difficult to describe a Hindu. A Hindu follows a different lifestyle, wears different clothing, follow different traditional practise etc. to consider one a Hindu. It becomes easier to categorise a Hindu when the question comes to the applicability of the Hindu Law.

#### **3.2.1 Hindus under the Act, 1956**

The definition of Hindu under the Act is not exhaustive in nature but is open for the entry of other religions as well who does not fall under the exception category i.e. the Christians, Muslims, Parsis, and Jews. The reason for excluding the exception categories under the Act is that the religions were following their own personal law from a long time and a separate act has been made for these categories and named as the Indian Succession Act, 1925 and the personal laws for Muslims and other religions respectively. The act, 1956 applies to Hindus,

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<sup>59</sup>**Kesharbai Jagannath Gujar v State of Maharashtra and Ors** AIR 1981 Bom 115.



Buddhists, Jains or Sikhs and if the parents of the descendants fall under any of these categories then the descendants will be categorised as Hindus only. The child whose one of the parents are Hindu if brought up as a Hindu will be considered as Hindu and it has nothing to do with the legitimacy of the child i.e. no matter if a child is legitimate or illegitimate In deciding his religion.<sup>60</sup> The conversion or re-conversion to a Hindu religion would also be included under the definition of a 'Hindu' under this Act, however, the Supreme Court in its earlier judgment found that the converted Hindus will have the option to follow their old law and in that case the Hindu law would not be applicable to them.<sup>61</sup> The requirement for a valid conversion is that the person renouncing a religion will have to adopt a new religion to adopt the customs & laws followed in that religion and that in case the person after conversion does not adopt the new religion then the laws of former religion would still apply to them. After marriage, the religion is dependent on the adoption of the ceremonies by wife which will be considered a proof of a conversion.

### **3.2.2 Hindus defined by the Supreme Court of India**

The position was changed after the Judgment by the Supreme Court of India on Hinduism where it observed that the mere allegiance of the Hindu tradition and custom does not convert one a Hindu but there must be a bonafide intention to convert and which can be determined by the way of life as Hindu only. The applicability of the act is also dependent on the registration of the marriage under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 and the application of the laws Hindu Succession Act, 1956 and the Indian Succession Act, 1925 respectively. If the marriage is registered under the Hindu Marriage Act, 1955 then the Hindu Succession Act, 1956 would be applied. If the marriage is registered under the Special Marriage Act, 1954 then the Indian Succession Act, 1925 would be applied. The Hindu Succession Act, 1956 does not apply to the Scheduled Tribes because they are governed by their own personal law as the powers given under Article 142 of the Constitution of India. The term Hindu is described in detail and the application of law on Hindus in every aspect is discussed in detail.

### **3.3 Rules of Succession**

The two ways by which the property is disposed of by a Hindu are as follows:

1. By operation of law i.e. Intestate Succession
2. By Will

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<sup>60</sup> **Poonam Pradhan Saxena**, *Family Law Lectures: Family Law II* (2nd edn, Lexis Nexis Butterworths 2007) 358.

<sup>61</sup> *Chatturbhuj v. Moreshwar* AIR 1954 SC 236.

The law of intestate succession would only be applicable if the property is not devolved by way of a Will and if the nature of property is ancestral or coparcenary. In case the property is devolved by way of Will then the Section 8 of the Hindu Succession Act, 1956 would not be applicable. The section 8 of the Hindu Succession Act, 1956 is only applicable to the kinds of properties described below:

### **3.3.1 Separate or Self Acquired Property**

The self acquired property is considered a property which is earned by the person from his/her own spending or share in the profits. The property could also be received from the person holding property by way of gift, or a will, or through inheritance, or by receiving a lottery or prize. The grant from the government will also be considered to be a separate property for the grantee. The property also includes the property which is received from the father or grandfather after the commencement of the act but there are some legal loopholes which fail to determine the rights in the property specifically and it has made possible through the judicial intervention only. The rules under the Act do not apply to the property specifically excluded from the act's application as per the section 5 of the Act.<sup>62</sup> The Supreme Court of India has laid down a landmark decision and observed that the property devolved as per the section 8 of the Act would be the self acquired property of an individual. Therefore, the sons having rights in the property with the application of the section 8 of the Act will hold the property as their own and treat the property as per their wish. The property becomes a self acquired one in the hands of the successor if the devolution takes place as per the rules set under the Hindu Succession Act, 1956.<sup>63</sup> The amended act has added few provisions under the act such as Section 6 of the act which has abolished the rule of survivorship. The result of the act is that the property which is to be devolved as per the Mitakshara system by forming a coparcenary has changed and now the property has to be devolved through the rules set under the Hindu Succession Act, 1956 either by testamentary succession or by intestate succession. In case if there is no will then the property would be devolved as per the section 8 and the nature of property does not come into question. Therefore the property will ultimately change the nature irrespective of it being a self acquired property or inherited property. It is important to note that section 8 would apply to the undivided share of a male Hindu and the division later takes place as per the rules set under the provision of the Act. The Doctrine of Survivorship will no more hold significance in

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<sup>62</sup>The Hindu Succession Act 1956, s 5 (India).

<sup>63</sup>M Palaniappan v Nachimuthu 2017 (2) LW 343.

determining property rights and the fluctuation in the rights of the property upon the death and birth of an individual would no more holds legality as per the succession law.

### **3.3.2 Sole surviving coparcener**

The concept of four degrees have already discussed in the previous chapter and observed that the coparcenary can be constituted counting four degrees comprising between the ancestors and lineal descendants within four degrees only. The coparcenary cannot form without a common male ancestor and sooner the completion of four degrees the coparcenary operates within family between the brothers, nephews, cousins etc. A sole-surviving coparcener is one who outlived all the coparceners and holds the property individually in his hands. It is the established precedent by the Supreme Court of India in the case of *Commissioner of Income Tax v. Anil J. Chinai*<sup>64</sup> and held that the sole surviving coparcener will enjoy the same rights of property as in the case of a self acquired property and he can sell, gift, will, or mortgage the whole or part of a property without involving other family members. The property of the sole-surviving coparcener will pass down by intestate succession on his death as per the provisions of the law and the same property must be treated as his self acquired property.

### **3.3.3 Division of share under the partition or the Family settlements**

The partition of a joint family property means the splitting of a property or makes the share divisible into the coparceners. The elements of the partition of a property are that it gets separate status and each coparcener would get definite share in the property which they owe at the time of succession.<sup>65</sup> The primary purpose of making a partition agreement is to create a definite interest in the property divisible in nature. Under the Mitakshara system the division of property takes place into specific shares. It is noted that the coparcenary property only is subject to the partition by the family members and the separate property is not bound to be partitioned in the family as it is dependent on an individual's will who is holding the property. In case where the partition of a property takes place within family then the share allotted to each member would hold their share in the property as the self acquired one or separated and does not hold any qualities of an ancestral property. The properties obtained on partition would be governed by the rules of intestate succession and not by the rule of survivorship. The partition of the property takes place by drafting a well structured Partition Deed or Agreement which gives a brief

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<sup>64</sup>*Commissioner of Income Tax v Anil J Chinai* AIR 1984 Bom 12.

<sup>65</sup>'Partition Deed: Meaning, Format, and Registration Process' <https://www.bajajfinserv.in/what-is-partition-deed> accessed 15 February 2025.

description about the division of the property. The partition deed specifies the interest of family members and recognises it in the legal document completing the basic formalities of the agreement. The partition agreement is needed to be compulsorily registered as per Section 17<sup>66</sup> of the Registration Act, 1905. The partition agreement will only become legally enforceable if it is free from defects and is registered during the time period specified under the act itself. The partition deed can also be questioned in the court of law on various grounds and the court has duty to determine the legal validity of the agreement which is discussed in the later chapter.

### 3.3.4 Notional Partition

The concept of Notional Partition is retained in the amended clause of Section 6(3) of the Hindu Succession (Amendment) Act, 2005. It is made on the death of the coparcener who died with the intention of making a partition agreement of the divisible share within the lineal descendants in the family. The share is divisible in nature and the actual partition does not take place before the death and therefore such partition is considered as a deemed partition. It has the same effect as if the division or partition of the property takes place during the lifetime of an individual or coparcener.<sup>67</sup> The shares were allotted already during the lifetime of coparcener but the actual division takes place after the death of the sole surviving coparcener. The shares are to be allotted to the family members who would have gained the interest on real partition. The share which was predefined will pass down through intestate succession in the same manner as if the partition has taken place. This formula must be reserved because it delineates the deceased coparcener's share based on the assumption that the request of partition has already made prior to the death of coparcener.

### 3.4 Family Settlement or Family Arrangement

As per the Halsbury's Laws of England, "A Family Arrangement is an agreement between the members of the same family that is basically formed for the benefit of the family with the intention of preserving the family property, avoiding litigation, preserving the family's honor, or by compromising disputed or doubtful rights. The Family arrangement has all of the above stated elements to become a genuine agreement between family. The term 'Family Arrangement' is placed as heading at the top of the document to derive its legal validity."<sup>68</sup> A

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<sup>66</sup>The Registration Act 1905, s 17 (India).

<sup>67</sup>Amrito Das, 'Notional Partition: A Critique Section 6 of Hindu Succession Act, 1956' (2004) 10 *AIRJ* 152–153.

<sup>68</sup>Derin Joy, 'Property Disputes & Memorandum of Family Settlement in India' (Volume 2, Issue 2) *Indian Journal of Law and Legal Research* (JEMTEC School of Law, Affiliated to GGSIPU Delhi).



family settlement is made for a purpose to maintain harmony within family by distributing the rights in the property. The intention of making a family arrangement is to balancing rights within family, free from the litigation, and maintain unity and solidarity of the family. The arrangement is basically made to divide the share in the joint family property or coparcenary property by way of compromise or adjustment in the share to avoid litigation in the future. It is important to note that the member of joint family does not hold the property in their own name and they cannot dispose of the right in the property because the ownership is not transferred in the Family Arrangement of the property. The transfer of rights only in the property takes place which is also not transferrable further but will be inherited later within the family only. Since the family settlements, in the legal sense, preserves goodwill and maintain harmony among family members, it is to be treated differently than any other formal commercial settlement. The courts approve the family settlement when they are free from fraud or coercion in the family.<sup>69</sup> The Supreme Court ruled that such settlements are subject to a unique equity principle.

#### **3.4.1 Registration and Stamping of Family Settlement**

The registration of a Family settlement sometimes plays a key role in determining the rights in the property. There are some legal loopholes due to which it becomes difficult to execute such agreement.

#### **3.4.2 Classification of the Family Settlement**

The family arrangements are of two types and are described as under:

- (i) When the family settlement is made 'Orally' in the past and recorded in writing as memorandum of what has been already agreed between the parties.
- (ii) When the family settlement is made for the first time and the respective shares are divided at the time of agreement only.

#### **3.4.3 Composition of a valid Family Settlement**

The reason for making an Oral settlement and reducing it into writing as memorandum is to save the parties from disputes in future. The oral and the written family settlement have key features which are discussed and criticised in later chapter. To determine a valid family settlement the contents must be read thoroughly and ascertain the requirement of registration

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<sup>69</sup> Ibid

and stamping of such agreement. It is to be noted that the requirement of registration and stamping of the agreement depends on the nature of agreement itself. The document must be scrutinized to know whether the same needs to be registered or not. There may arise a situation where the document is only stamped, but not registered, and in that case the validity of the Family settlement comes into question. The purpose of the agreement also matters in case of registration, if the agreement is used for collateral purposes then the registration is not necessary depending on the facts and circumstances of a case. If the document needs to be properly registered and stamped, but is not registered and stamped at the moment, then it loses its purpose. A family settlement requires no registration if the family settlement was made oral and memorandum is prepared in written form.<sup>70</sup> However, the family settlement if made in the written form only without making any predetermined division of the property in oral form, then the registration is compulsory for the document to have its legal validity. The unregistered family settlement will not be admissible in the court of law as evidence.<sup>71</sup> The distinction should be made in the recitals and terms of a family arrangement by which the nature of family settlement is determined. The differences can be observed by seeing the terms of the family settlement and the terms of both the categories are described below:

- (i) Where the agreement is a mere memorandum of the pre established agreement between parties, the agreement is considered as a ‘Oral Family Settlement’.
- (ii) Where the agreement is made for the first time describing all the terms and condition of the agreement with the division of property, the agreement is considered as a ‘Written Family Settlement’.

The memorandum does not fall under the compulsorily registry category and therefore escape from the mischief of Section 17(2) of the Registration Act. The oral family settlement is also not needed to be stamped whereas a partition deed is needed to be properly stamped under schedule 1 of Article 45 r/w Section 2(15) of the Stamp Act.

In the case of *Tek Bahadur v. Debi Singh and Ors.*<sup>72</sup> the constitution bench of the Supreme Court of India gave a brief description about the validity of the family settlement. The question before the court was whether the family settlement is compulsorily registered under Section 17

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<sup>70</sup>**Kale and Ors v Deputy Director of Consolidation and Ors** AIR 1976 SC 807.

<sup>71</sup>**‘Whether Registration of Family Settlement Not “Affecting” Immovable Property is Compulsory? Supreme Court Decides Admissibility of Such Settlement as Evidence’** (SCC Online, 5 October 2021) <https://www.sconline.com/blog/post/2021/10/05/is-a-family-settlement-not-affecting-immovable-property-compulsorily-registrable-document-will-it-be-admissible-as-evidence-supreme-court-decides/> accessed 17 February 2025.

<sup>72</sup>**Tek Bahadur v Debi Singh and Ors** AIR 1966 SC 292.

of the Registration Act. The court observed that when the family settlement is reduced into writing then it would become necessary to register it to have its legal validity in the eyes of law. However, if the oral family settlement is reduced into writing as a mere memorandum, after the arrival of a family settlement, for the court's record for making necessary mutation then in such case the registration is not compulsory.

### 3.5 Operation of Wills in India

We have so far discussed about the devolution of property by way of intestate succession in detail and now the devolution of property through testamentary succession i.e. by will is discussed in detail. In testamentary succession the devolution of property takes place by the individual choice of transferring the rights in the property by way of will. After the death of a person, the property is devolved to the person in favour of whom the will is made. The intention for creation of will is necessary and it should be put into action by writing a will before the death of the will maker to have its execution after the demise of a will maker. A will is a significant instrument through which an individual a testator give away his property as per his wishes.<sup>73</sup> The two types of succession have been discussed in this study i.e. the will and intestate succession with reference to family arrangements. The testamentary document is just like a reward and it is needed to ascertain if it is a good or bad testament depending on the effects of the document. The bad testaments are open to be scrutinized by the courts and it will see if there are no dependents that were wholly dependent on the property and not received the legacy.<sup>74</sup>

#### 3.5.1 Origin of the Wills

The origin of a will in India could not be found as there was no text existing during the period recognising the law of wills. The influence of European countries made the change in the legal landscape surrounding the Will, it has been made possible for the first time to make a formal testamentary instrument.<sup>75</sup> A Sanskrit expression *Sankalpa* was the nearest term for a Will as explained by *Jagannatha*. Later the will is defined as per the modern expression in statutory laws and the description is made in that respect. The Hindu families were feeling reluctant to adopt the concept of will because they believed in inheritance rights in which the property is only divided when pass down to generation and this was been followed as per the Mitakshara

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<sup>73</sup>The Indian Succession Act 1925, s 2(h) (India).

<sup>74</sup>J Duncan M Derrett, *A Critique of Modern Hindu Law* (NM Tripathi Private Limited 1970) 225.

<sup>75</sup> Ibid

school of succession by Hindus. The Muslim law still could not adapt the change and follows the same tradition of the reasoning that a Muslim could not be disentitled from the property and cannot be deprived of their rights as a legal heir in the property. The very first time when the concept of 'Will' in India is recognised is after the independence when the need arose to dispose the self acquired property as per the one's will. The opinions of *Pundits* were taken in the matter of recognition of a Will in India and the Bengal was the first state which recognised the concept of a Will. A gift of will takes effect after the lifetime of a will maker and he always has an option to revoke the will during his lifetime. It is said that the Law of Wills is emerged from the Law of Gifts.<sup>76</sup>

### **3.5.2 Capacity of person for making a Will**

The capacity to make a Will involves an individual's capacity to make a will or testamentary disposition. It is said that a person who has lived his full age generally makes a will and the position of will and its procedure is described under the Indian Succession Act, 1925 including the person's capacity of making a will. The section 59<sup>77</sup> of the Indian Succession Act, 1925 deals with the persons capable of making wills.

### **3.5.3 Provisions on Wills**

The power to make a will is provided under Section 30<sup>78</sup> of the Hindu Succession Act, 1956 however it is controlled by the provisions of the Indian Succession Act, 1925. To create a proper will to a Hindu it should comply with the provisions of the Indian Succession Act, 1925. The act consists of eleven parts and some of the parts also applies to Hindus. The testamentary succession is described under Part VI of the Act which comprises Section 57 to 191 in which few of the provisions do not applicable on Hindus. The next step is determining the capacity of the testator for making a will that is dependent on the power of disposition as discussed above. It is noted that a Hindu male cannot alter the line of succession by creating a will and forfeiting the rights of coparcener in the property which will be discussed in detail in the later chapter. A will is not a valid will if it is made with fraud or coercion or by any means which takes away the free will of the testator.<sup>79</sup> It is also mentioned that a will at any time during the lifetime of the will maker can be revoked or alter.<sup>80</sup> The will must be executed just after the

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<sup>76</sup>**Tagore v Tagore** (1872) 18 WR 359 (PC).

<sup>77</sup>**The Indian Succession Act 1925**, s 59 (India).

<sup>78</sup>**The Hindu Succession Act 1956**, s 30 (India).

<sup>79</sup>**The Indian Succession Act 1925**, s 61 (India).

<sup>80</sup>**The Indian Succession Act 1925**, s 62 (India).



death of the testator. An unprivileged will<sup>81</sup> or Codicil<sup>82</sup> can be revoked in two ways as per the Act. The two ways are as follows: (i) By operation of law; marriage under Section 69 of the Act (ii) By act of parties i.e. by making other will surpassing the existing will, or by destroying or tearing the existing will. The modes of revocation are exhaustive as held by the Calcutta High Court.<sup>83</sup> A will must be free from any defects and in case any ambiguity arises and where there is any deficiency in the will the intentions of the testator shall not be admitted<sup>84</sup> however the true intention of testator should be highlighted on the bare reading of a will, the intention of the testator must be given effect accordingly. In case the testator make two will and one of the person in whose favour the will is made died before the will could take effect then the other will take the whole property on the death of testator.<sup>85</sup> All wills falls within clause (c) of Section 57 of the Indian Succession Act, 1925 governing the Hindus and their Wills under the Hindu Succession Act, 1956.

#### **3.5.4 Features of a valid Will**

The Hindu Succession (Amendment) Act, 2005 have also made radical change in the law of will. Section 30<sup>86</sup> of the Act is no exception to amendment. The words “disposed of by him” were replaced by “disposed of by him or her”. The daughter also gets a right in the property and is free to dispose of the property according to her will i.e. a female can dispose of the property by way of testamentary disposition. The act is prospective in nature i.e. only the creation of will after the commencement of the Act will operate in country. It is important to note that a Will is not bound to be compulsorily registered as per the Section 16<sup>87</sup> of the Registration Act, 1905 therefore the will still holds a legal validity in the eyes of law if not registered as per the Act. It can be concluded that a Will is an important document through which a person can bequeath the property of his or her free will. However, there exist a lot of complexities in the actual execution of will as well as loopholes exists in the act highlighted in the study and in case of contesting rights where the contents of will comes into question which is discussed later in the study.

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<sup>81</sup>**The Indian Succession Act 1925**, s 63 (India).

<sup>82</sup>**The Indian Succession Act 1925**, s 2(b) (India).

<sup>83</sup>**Surendra Nath Chatterjee v Sivasdas Mookherjee** AIR 1922 Cal 182.

<sup>84</sup> **The Indian Succession Act 1925**, s 81 (India).

<sup>85</sup> **Indian Succession Act 1925**, s. 106 (India).

<sup>86</sup> Ibid 78

<sup>87</sup>**The Registration Act 1905**, s 16 (India).

### **3.5.5 Balancing Wills and Family settlements**

The two documents have their own legal validity as described above, however, the dispute takes place when the contradictory claims in the property exists. The wills are the creation of a self acquired property whereas the family arrangement basically takes place between the family members of a coparcenary property or joint family property. The clashes are resolved with the help of judicial intervention however there still remains ambiguity in the field of study which is described in detail in the present study. The Wills and the Family settlements are balanced in a way that the part of the property owned exclusively by the Will maker can be transferred by way of making of the Will whereas the rest of the portion of the property is divisible between coparceners by way of creation of a valid Family Settlement or Partition Deed. However, the transfer of property is questioned when the right in the property already exist but the title in the property is transferred wholly by way of creation of a Will which is the primary bone of contention in the study. The issue of which law ought to govern and control these kinds of transactions comes up.

## **Chapter-4: Judicial Trends and Analysis of Landmark Case Laws on Property Disputes in India**

### **4.1 Evolution of Judicial Interpretations in property disputes**

As far we have understood the basic laws for the succession and the applicability of these laws on Hindus in the country. The law has been influenced from various customs followed from a long time and the Hindu Succession Act, 1956 is the consequence of these customs prevalent in the society before independence. The succession laws are framed but the applicability of laws is still under question. The Judiciary has played a major role in interpreting the laws and have made precedents in the legal arena which is analysed in this chapter. The succession laws has been framed in India which talks about the inheritance rights as well as testamentary succession as discussed in the previous chapters in detail. There have been few loopholes in the succession laws which create ambiguity for the judiciary to interpret the laws and ascertain the correct title in the property. The validity of the two primary documents i.e. Will and Family Settlement were analysed and it was found that both the documents have relevancy in India and specific laws are there to govern such documents. The provisions for a Will is briefly described and it was discovered that the said provisions are applicable depending on the nature of property which is also a key problem highlighted in this chapter in detail. The difficulty

arises when it becomes difficult to determine the nature of the property that whether a property is self acquired or ancestral property.<sup>88</sup> The family settlement is the outcome of the willingness of the family members to divide the rights in the property which is necessary to maintain harmony among family and to maintain reputation of the family by limiting the future arising disputes. The difficulty arises when two contesting rights in the property exist and the courts find difficulty in applying the statutory laws for succession.

The family settlement takes place between the family members who seek to divide the property with the free will and for the enjoyment of the property rights as a whole. The right is generally created to maintain the well being of the family and settle the property rights bonafidely without fraud or coercion.<sup>89</sup> The categories of the family settlement has been discussed in previous chapter and analysed how the general character of the family of the settlement plays a major role in registration of the agreement. In case of a Will the testator need not to register the document but the will is needed to be attested by two witnesses and a valid Will is made out of free will of the testator. The differences arise when the parties have contradictory claims over the property. There arises a condition when the parties carry both the family settlement and the will which makes it difficult for the court to determine the rights in the property and this was the major difficulty observed by the court in case of a dispute between parties or family members.

## 4.2 Critical evaluation

The law is silent on several aspects when we talk about the intestate succession which again makes difficult for judiciary to interpret the laws. The Hindu Succession Act, 1956 is influenced by the customs followed earlier such as the Mitakshara School where the property is divisible as per the rules of Mitakshara system which later on has taken a shape of the Hindu Succession Act, 1956.<sup>90</sup> The rules under succession laws today are exhaustive in nature as observed by the law commission however the law miss out on various paths in which the courts find difficulty to find out the true and valid rights in the property. The first step for the courts is to see if the valid contesting rights in the property exists and later it will ascertain the nature

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<sup>88</sup>'Self Acquired vs Ancestral Property – Supreme Court Answers' (SBS and Company LLP) <https://www.sbsandco.com/images/documents/Ancestor-Property-vs-Self-Acquired-Property.pdf> accessed 20 February 2025.

<sup>89</sup> Ibid

<sup>90</sup>Aishi Majumder, 'An Insight into the Hindu Succession Act, 1956' (ALSC Institute) <https://aslcinstitute.com/blogs/an-insight-into-the-hindu-succession-act--1956-QxzaWiJO> accessed 22 February 2025.

of property. There exist some defect in the documents and due to which the other party takes benefit of the defect and contest such document. The property document is been made with fraud or coercion which becomes the initial contention of every party in a case. In the case where the validity of a document comes into question the judiciary fails to consider the other aspects involved in the transfer of property and the opposite party takes benefit by objecting on such defect in the title and by making a contesting or forged document in their favour. The common practice of making a forged document been followed from a long time by the parties to get the title in the property and sometimes the courts face difficulty in addressing such issues. A will and a family arrangement were the primary contesting documents which comes into question before the court and the rights of the parties are dependent on various conditions which should be looked upon by the courts. A mere observance of rights is not sufficient to give a property title to a person; the court has to see several aspects on the basis of which the property right is recognised. There exist contradictory claims in the property which makes a tough decision for the courts to establish the property rights and the key issue exists in determining the validity of the documents whether they are true and fair in nature and is free from the coercion or fraud.

#### **4.3 Judicial Approach**

The Judiciary plays a major role in interpreting the laws and safeguarding the rights for every citizen in the country. The judiciary also plays important role in advising the executive and legislature for the proper implementation of laws and to meet the changes in the society. It is said that the disputes can only be resolved through courts or the ADR mechanisms which comes to be the ultimate solution to the problem. The courts themselves hold power to determine the property rights by interpreting the existing laws. In case of succession laws the Indian courts apply their minds to interpret the laws and deal with the disputes of different categories. Despite of the bundle of rules, regulations, and procedures, the dispute always settled in the court of law. The courts are expected to preserved the human rights, gender justice, minorities interest, and perform other functions for the welfare of citizens of the country. In the context of declaring the title in the property, the court will take reference of the customs prevalent, in addition to the statutory law, and scrutinize the evidence shown by the parties. The Supreme Court of India also holds with them the power of Judicial Review to see if the rights of disputing parties are declared correctly. The courts also make sure that the legislature and executive does not curtail the fundamental rights of the citizen of this country. The Judiciary has changed the legal landscape by holding few constitutional judgments and laid down key principles. The Supreme



Court in the case of *Kesavananda Bharti v. State of Kerala*<sup>91</sup> evolved the doctrine of basic structure and held that even the constitution amendment could be invalidated in case it misses out the fundamental feature of the constitution. The Judiciary have been playing a prominent role in the Indian system of governance.

The Judiciary is working efficiently in protecting the rights of the parties to the case. The personal laws of the Hindus are interpreted in a way that the rights of the party holding better title in the property are preserved. The Hindu Succession Act, 1956 is influenced from the customs followed since the ancient times however the laws are based on the cultural dimensions and traditions such as there is a specific law of succession governing the Muslims as studied earlier, a separate act for Christians and other castes in the matter of succession. The Judiciary plays an active role in deriving the rights in the property for all the castes in the society by looking at the region based laws and customs.

#### **4.3.1 Application of Section 8<sup>92</sup> of the Act, 1956**

The succession to the property is majorly governed by the following provisions of the Hindu Succession Act, 1956 which are Section 6, 8, 9, 10, 11, 12, and 13 of the Act. We are not concerned with the rules of succession followed among the heirs because the rules are exhaustive in nature and no ambiguity arises in the division of property when these provisions are applied. The actual concern is if the property is liable to be disposed of as per the provisions stipulated under this act or not. The difficult part is if the application of the Hindu Succession Act, 1956 is applicable in all situations uniformly or not. The section 8 of the Act talks about the general rules of succession among heirs of the Hindu male. The act's actual application would only become possible when applied to various situations and the Supreme Court in the case of *M. Yogendra and Others v. Leelamma N. Others*<sup>93</sup> laid down the application of Section 8 of the Act and observed that the provision does not have a retrospective effect and where a Hindu died before the commencement of the Act i.e. where the succession is opened before the enactment of Act the act failed its application. A Will's effect cannot take place if the execution of the Will is not proved and then the property would be dissolved according to the rules established under Section 8 of the Act.<sup>94</sup> The failure to execute the Will give effect to

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<sup>91</sup>*Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461.

<sup>92</sup>*The Hindu Succession Act 1956*, s 8 (India).

<sup>93</sup>*M Yogendra and Others v Leelamma N and Others* (2009) 15 SCC 184.

<sup>94</sup>*Indu Paintal v General Public and Others* 2011 (1) RCR (Civil) 126.

Section 8 of the Act. The party to the suit cannot escape the applicability of the Act but it has to prove the a custom prevailing in the society to avoid the applicability of Act as held in the case of *Neela v. Saroja and Others*.<sup>95</sup>

#### 4.3.2 Case laws

The Supreme Court in the case of *N. Padmamma and Others v. S. Ramakrishana Reddy and Others*<sup>96</sup> held that the possession by co-heir is also presumed to be the possession by other co-heirs in the property. The co-heir will hold the joint title in the property and the concept of adverse possession does not operate here. The possession by one co-heir would be considered as joint possession on behalf of other co-heirs and therefore no co-heir could hold the property in their own name excluding the right of other co-heirs in the property. The Madhya Pradesh High Court has held in the case of *Patiram v. Mula and Others*.<sup>97</sup> that the property in the hands of a son is considered as his self acquired property and he enjoys the right to dispose of the property without involvement of any heirs or coparceners in the property as per the rules of succession under Section 8 of the Act. Therefore the scope of section 8 is described by the court and established that the self acquired property of the father would still remain the self acquired property in the hands of the sons or legal class I heirs.

The High Court in the case of *V. Rajamma v. A. Rami Reddy and Ors.*<sup>98</sup> held that a Will executed by the deceased father of a ancestral property in his possession is invalid and the sons, widow, sons of a predeceased daughter have filed a partition suit and it was observed by the court that the heirs cannot exclude from the ancestral property therefore the deceased does not have a right to dispose of the property as per his will. The heirs are entitled to the right in the property and obtain their shares by way of a partition deed or settlement. Even the portion which belongs to the deceased would also have fallen under the category of ancestral property and therefore the portion which belonged to father would also become divisible as the part of ancestral property only. The Hon'ble Supreme Court in the case of *M. Arumugam v. Ammaniammal and Ors*<sup>99</sup> has observed that when the two or more heirs succeed together to the property of an intestate then the property does not change its nature and it cannot be treated as a joint family property though it may be held jointly by the legal heirs however, the property changes the

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<sup>95</sup>*Neela v Saroja and Others* AIR 2008 Kant 132.

<sup>96</sup>*N Padmamma and Others v S Ramakrishna Reddy and Others* (2015) 1 SCC (Civil) 527.

<sup>97</sup>*Patiram v Mula and Others* AIR 2007 MP 131.

<sup>98</sup>*V Rajamma v A Rami Reddy and Others* MANU/AP/0865/1997.

<sup>99</sup>*M Arumugam v Ammaniammal and Others* (2020) 11 SCC 103.

nature when it is divided, partitioned within family, or make a family settlement.

#### **4.4 Effect of an Oral Partition**

According to Mitakshara School of law the partition is the numerical division of the property defining the rights and shares of the coparceners in the joint family property.<sup>100</sup> As discussed earlier, the oral partition can also be effected if reduced into writing as ‘Memorandum of Partition’ as an evidence of partition, here the registration of the partition is not required. As per Section 6(5) of the Hindu Succession (Amendment) Act, 2005 the term “Partition” is described as partition deed executed by the parties duly registered under the Registration Act, 1908 or partition effected by a Decree of Court. The Succession law is followed differently in different states such as the Hindu Succession (Karnataka Amendment) Act, 1990 where the coparceners entering into partition have to register their documents as per the provisions of Registration Act, 1908, or by way of final decree of the court. The Hindu Succession (Amendment) Act also changed legal footing of the family settlement or partition deed and recorded as follows: if oral partition or family settlement has taken place depriving the rights of daughter coparcener, then such settlement has no legal validity in the eyes of law and such mode of divisions are not have no legal binding on the parties. It is also said that the mutation entry is itself not a sufficient evidence to prove the validity of the family settlement, but it also have to prove other evidence on record. The parties to the family settlement must also have possible claim in the property which preserves their right in the property.

#### **4.5 Criticism of the Act with reference to the Family Settlement and the Will**

The question analysed in this chapter is whether a property rights is transferrable on the basis of a Will or a Family settlement. The situation arises when both the documents of the same property exist and it is upon the courts to scrutinize both the documents and derive the actual title in the property. The court has to see if the old custom was applicable in the property and if the statute for succession is sufficient to establish right in the property. We have already discussed about the rule of four degrees in the above chapters however there still remains ambiguity in describing if the concept is still applicable on the properties in India. The major difficulty is ascertaining if the rule of four degrees applied before or after the commencement of the Hindu Succession Act, 1956. In case if the rule of four degrees started at some time before the commencement of the Act but completed just after the enactment of the Act then the

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<sup>100</sup>Mulla, **Hindu Law** (23rd edn, reprint 2019) 508.

question arises is if the succession takes place according to the rules established under the Hindu Succession Act, 1956 only or if the rule of four degrees operates by changing the nature of property as the ancestral property and therefore the division takes place by following the rules of coparcenary property established under customs. The concept of ancestral property and self acquired property is described in detail, however, there still remains problem in defining the nature of property. The property converts its nature sooner the succession laws come into play, the problem exists when the property was earlier self acquired property but after throwing it into a common pool it changes its nature and becomes a joint family property as per the customs prevalent from a long time.

#### **4.5.1 Elements of Customs in Hindu Succession Laws**

The Hindu Succession Act, 1956 though follows few elements of Mitakshara School but sets a rule that a property would no longer be considered an ancestral property because the rules of devolution of the property are stipulated under Section 8 of the Act. The next step is to classify the property into an ancestral or self acquired property, it is very well established that the rule of ancestral property has no relevance if the succession of a self acquired property has taken place after the Hindu Succession Act, 1956 came into effect. However, if the property were of an ancestral nature before the passing of the act then it continues to operate as an ancestral property and therefore all the coparceners in the property would have a right and obtain share in the property. The concept of coparcenary still exists and can also be found in the latest amendment of the Hindu Succession (Amendment) Act, 2005 when talking about the daughter's right in the property. The classification between a coparcenary property and joint family property were already discussed and found that the joint family property cannot become self acquired property in any manner whereas the property inherited as per the Section 8 of the Hindu Succession Act, 1956 would become self acquired in the hands of legal heirs.

#### **4.5.2 Judicial decisions and their criticism**

There are few contradictory judgments of the Supreme Court which made it difficult to establish a legal right in the property. The parties may possess multiple documents at the same time which makes it difficult for the courts to decide a valid title in the property. The reason for such ambiguity is that a party's right should not be curtailed in the property when making division or deriving title in the property. The concept of joint family property is of old tradition and followed by the families by way of making family arrangements in the property. The portions under the family settlement are predetermined which gives surety to the coparcener's



right or share in the property. However, the position changed after the Hindu Succession Act, 1956 came into being which established the rules of succession wherein the legal heir only will qualify to become the coparcener in the property and excluded all the other coparceners whose share in the property were earlier existed. It is to be noted here that the coparceners holding the property having possession thereto would still have the right after passing of the Act. However, the parties right depends on the situation and the nature of property i.e. the property of ancestral nature prior to the passage of the Act will remain ancestral and cannot become a self acquired property on devolution of the said property. If the property passes down to the lineal descendents then it automatically becomes the self acquired property as per the provisions of the Act and therefore the person holding his share is free from any objection by the grandsons and their sons in the family. The time the property becomes a separate property the disposition of the property can take place through a person's willingness to transfer the property by way of a gift, sale, mortgage or will. The descendents will no longer have right in the property and therefore cannot ask their forefather for partition because of failure to prove the property as a joint family property existed before the passing of the act. The major issue comes before the court is determining if the joint family existed before the passing of the Act and if the property could not be divisible easily between coparceners, then in that case the partition deed and family settlement plays a major role in declaring the shares in the property. "The Supreme Court in the case of *Yudhishter Vs. Ashok Kumar*<sup>101</sup>, and in para 10 of the said judgment the Supreme Court has made the necessary observations with respect to when HUF properties can be said to exist before passing of the Hindu Succession Act, 1956 or after passing of the Act in 1956. This para reads as under"<sup>102</sup>:-

*"10. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. ChanderSen and Ors.<sup>103</sup> where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu*

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<sup>101</sup>**Yudhishter v Ashok Kumar** (1987) 1 SCC 204.

<sup>102</sup> Surender Kumar Khurana vs. Tilak Raj Khurana and Ors. MANU/DE/0135/2016

<sup>103</sup>**Commissioner of Wealth Tax, Kanpur and Others v Chander Sen and Others** 1986 INSC 143.

*Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity...*<sup>104</sup>

*“7(i). As per the ratio of the Supreme Court in the case of Yudhishter (supra) after passing of the Hindu Succession Act, 1956 the position which traditionally existed with respect to an automatic right of a person in properties inherited by his paternal predecessors-in-interest from the latter's paternal ancestors upto three degrees above, has come to an end. Under the traditional Hindu Law whenever a male ancestor inherited any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him had a right in that property equal to that of the person who inherited the same. Putting it in other words when a person 'A' inherited property from his father or grandfather or great grandfather then the property in his hand was not to be treated as a self-acquired property but was to be treated as an HUF property in which his son, grandson and great grandson had a right equal to 'A'. After passing of the Hindu Succession Act, 1956, this position has undergone a change and if a person after 1956 inherits a property from his paternal ancestors, the said property is not an HUF property in his hands and the property is to be taken as a self-acquired property of the person who inherits the same...”<sup>105</sup>*

However the Supreme Court of India has expressed different opinion in the case of *K.C. Laxmana vs. Chandrappa Gowda and Ors.*<sup>106</sup> In which the alienation by the father is challenged by the son as he has the coparcenary right in the property and the property is ancestral in nature and the parties are governed by the Mitakshara law. The gift was executed by the father in favour of defendant no. 2 who is not his son in the instant case. The questions arise that if the father has a right to alienate his share of property to any person without considering the claims of the son in the ancestral property. The Court has observed as below:

*“9. The word 'alienation' in this Article includes 'gift'. In order to attract Article 109, the following conditions have to be fulfilled, namely, (1) the parties must be Hindus governed by Mitakshara; (2) the suit is for setting aside the alienation by the father at the instance of the son; (3) the property relates to ancestral property; and (4) the alienee has taken over possession of the property alienated by the father. This Article provides that the period of limitation is twelve years from the date the alienee takes possession of the property.”<sup>107</sup>*

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<sup>104</sup> Ibid 101

<sup>105</sup> Ibid

<sup>106</sup> **KC Laxmana v Chandrappa Gowda and Others** (2022) 18 SCC 483.

<sup>107</sup> Ibid 106

*“11. The question for consideration is whether the transfer of property made by the first Defendant in favour of the second Defendant under Ex. P-1 was for a pious purpose.”<sup>108</sup>*

*“13. In the instant case, it is admitted by the second Defendant that the settlement deed dated 22.03.1980 (Ex. P-1) is, in fact, a gift deed which was executed by the first Defendant in favour of the second Defendant 'out of love and affection' and by virtue of which the second Defendant was given a portion of the joint family property. It is well-settled that a Hindu father or any other managing member of a HUF has power to make a gift of ancestral property only for a 'pious purpose' and what is understood by the term 'pious purpose' is a gift for charitable and/or religious purpose. Therefore, a deed of gift in regard to the ancestral property executed 'out of love and affection' does not come within the scope of the term 'pious purpose'. It is irrelevant if such gift or settlement was made by a donor, i.e. the first Defendant, in favour of a donee who was raised by the donor without any relationship, i.e. the second Defendant. The gift deed in the instant case is not for any charitable or religious purpose.”<sup>109</sup>*

The conflicting judgments have rendered it challenging to determine whether the alienation of the property can occur in the personal capacity of an individual possessing the property, or if he remains prohibited from alienating the property (his respective share in the property) due to the restrictions imposed by the coparceners, and consequently, the provisions of the Hindu Succession Act, 1956, and the Mitakshara law are applied.

#### **4.5.3 Conflict in rights under the Family settlement and the Wills operating in the country**

The clash generally takes place between two documents i.e. the family settlement and the Will which is also dependent on the category of property. A Will can only make of a self acquired property whereas the family settlement can be made of coparcenary or joint family property as well. Most of the disputes in the civil courts are of establishing the property rights and to see the correctness of a document. The courts find difficulty in discovering whether the property is of ancestral nature or self acquired nature and on that basis it establishes title. The parties form contradictory claim in the property which makes it more difficult for courts to establish actual claim in the property. Supposedly, the property is claimed to be a self acquired property and the Will was made thereafter for the said property and at the same time the family settlement is established for the property to contradict the claims in the property specifying reason that the property is an ancestral property and the devolution of the property is not

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<sup>108</sup> Ibid

<sup>109</sup> Ibid

possible in favour of one individual only, then it becomes difficult for the court to establish the legal claim in the property.

#### **4.5.4 Contradictory claims**

The matter of dispute nowadays is contradictory claims in the property in a manner that makes it difficult for the courts to decide the legal claim. The court to address such issue has to see the back chain of the property establishment and the property rights which existed in the starting, if the property rights are determined by looking at the earlier registry of property then the question comes whether the property should be considered as a self acquired property or an ancestral property in the eyes of law and the rule of four degrees has to be established in that reference. Once, it is proved that the property is established prior to the commencement of the Act the next question comes if the rule of four degrees still applies after the Act came into play. The Act has made no reference to the general problem in hand and the Judiciary has to lay down principles to ensure the party's rights are protected. The reason for calculating the lines of succession before and after the commencement of Act is to make easier for the courts as well as parties to resolve the dispute in the property. Below is the illustration describing the present difficulties for Hindus in obtaining the title in the property.

#### **4.5.5 Illustration**

Suppose, 'A' has build a property with his hard earned money before independence of India. 'B' was born during the period and simultaneously 'A' died intestate before the passing of the Hindu Succession Act, 1956, leaving the property in the hands of 'B' to take care of the property. 'B' gave birth to sons and daughters, the time the birth has taken place the rules of Mitakshara school and various customs were prevalent. The 'B' was considered as Karta of the family and the joint family were existed from a long time. The sons and daughters claim their share in the property with the passing of time. However, the Hindu Succession Act, 1956 came into effect changing the legal landscape for succession laws and inheritance rights. 'B', the Karta of the family simultaneously died by making a Will of the whole property in favour of his grandson who were the son of one of his ideal son. The Will is contested by rest of the family members with the reason that the property rights already existed with the coparceners in the family and therefore the Will is invalid in the eyes of law.



**The question before the court would be as follows:**

- (i) The sons and daughters have right in the property or if they can claim their share in the property.
- (ii) Does the right of the children of 'B' is created by birth only as per the rules under Mitakshara School of succession.
- (iii) If the property should be considered as a coparcenary property divisible between all the coparceners within family.
- (iv) The property held by 'B' after acquiring it from his father 'A' is still remains a self acquired property of 'B' or if it changes its nature to a joint family property.
- (v) 'B' has a right to make a Will in favour of his grandson curtailing the rights of the other family members.

In describing whether a property becomes an ancestral property or if it still remains the self acquired property is the important question which courts find difficult to explain. As per the rules of Mitakshara school, the sons and daughters were born to 'B' and became coparcener in the property by birth. However, the said property is not divided between the coparceners because the property was solely held by Karta of the family at that time. The primary contention of the sons and daughters would be that the coparcenary was established in the property and the right accrues at the time of devolution of property. The property were divisible between the coparceners i.e. the sons and the daughters of 'B', as per the rules of succession under Mitakshara School. However, 'B' held the property in the favour of his grandson with the reason that the 'B' holds the property in his individual capacity and has every right to dispose of the property as per his wish. The argument of the person in favour of whom the Will is established would be that the property is transferred by 'B' according to his wish and no ancestral property is found before the act came into force, a property to become an ancestral property has to complete the chain of four degrees without interruption. The next step is the deciding factor for the courts that who will have the right in the property in the present situation. The courts are facing numerous cases with the same situation and the loopholes in the law makes it more difficult for the courts to interpret the laws in the correct form. The Succession law is silent on various aspect including the one discussed above. The Hindu Succession Act, 1956 has made a radical change in the society by establishing rules of intestate succession and testamentary succession which transformed the customary laws into statutes; however, the Judiciary still undergo analysing the customs when the ambiguity arises in interpreting the statutory law.

#### **4.5.6 Difficulty in ascertaining the actual nature of the property upon which the Family Settlement and the Wills rely for their applicability**

The rules of testamentary succession have essence in both the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 and the operation of Wills are governed by these statutes only. The Hindus are specifically governed by the Hindu Succession Act, 1956 however few provisions of the Indian Succession Act, 1925 also applies there. The testamentary laws are applicable to the separate properties only and the Wills are governed by testamentary succession under the succession law for Hindus. In the present case, the complexity arouse due to the fact that the coparcenary already existed at the time of making a Will of the property, however, the property no longer be the coparcenary property when the cycle of four degree breaks, and the property rights in the instant case was transferred by executing a will by the second degree in line i.e. 'B' held the absolute property rights being in the second degree of line. Hence, we can say that the application of the succession laws depends on the situation to situation, in the present study we have discussed two conflicting rights which even the courts find difficult to explain. The rights of Will is governed by the Hindu Succession Act, 1956 whereas the ancestral property is still governed by the customary laws in place, the partition deed or family settlement are the consequence of division of coparcenary or ancestral property within family. There may arise various situations where these two contradictory claims take place because of the loopholes in law which should be addressed by the legislature and judiciary.

### **Chapter- 5: Conclusion and Recommendation of future reforms in Succession Laws**

#### **5.1 Conclusion**

The Hindu succession laws have changed significantly over time, moving from traditional customs to formalized legal frameworks designed to guarantee an equitable and just transfer of property. Inheritance rights were largely restructured by the Hindu Succession Act, 1956, which superseded the various and frequently contradictory customs that were in place prior to its passage. A historic change was brought about by the amendments, especially the 2005 amendment, which recognized daughters' coparcenary rights and ended gender-based discrimination in the inheritance of ancestral property. Notwithstanding these legal developments, difficulties still exist because of the intricacy of succession laws, the interaction of various legal systems, including the Indian Succession Act of 1925 and the Hindu

Succession Act of 1956, and the coexistence of contemporary laws and customs. Additionally, ambiguity in interpreting statutory provisions, conflicts between testamentary succession and family settlements, and evidentiary issues pertaining to proving title ownership are frequently the root causes of legal disputes surrounding property rights. Although the judiciary has been instrumental in elucidating inheritance laws, inconsistencies in court decisions have occasionally led to additional complications. The complexity of succession disputes is exacerbated by the difference between ancestral and self-acquired property, the relevance of survivorship and inheritance laws, and the function of registration under the Transfer of Property Act, 1882. Furthermore, inheritance rights are still influenced by the divergent perspectives of the Mitakshara and Dayabhaga schools, especially when it comes to deciding coparcenary interest and the method of devolution in various Indian regions.

The present study critically analyses the laws governing property rights in India, particularly focusing on the Hindu Succession Act, 1956, and the Indian Succession Act, 1925. The research delves into the historical and contemporary perspectives on family arrangements and testamentary succession, highlighting the conflicts between two modes of property devolution. Despite the presence of well-established legal framework, the dispute in the properties remain a significant challenge, the judicial intervention becomes necessary for the resolution of disputes as highlighted in the study. However, the judiciary has also find difficulty in interpreting the true intent of the legislation and because of which the legal system faces such problem addressed in the present study. The parliament has framed the gender neutral laws but still could not address few of the major issues which the Hindu society is facing today. The initial difficulty faced by most of the civil courts in country is establishing the validity of the document under question which is wholly dependent on certain conditions. The conditions which are looked upon by the courts primarily are the nature of property and the proper registration & stamping of property documents.

India's succession laws have evolved from customs to codified legal frameworks, especially under the Hindu Succession Act of 1956 and the Indian Succession Act of 1925. The Hindu succession laws, which had their origins in religious texts and customs, were drastically changed to create a standardized framework that applied to all Hindus. Inheritance matters were made clear and predictable with the shift from the Mitakshara and Dayabhaga schools to statutory laws. In contrast, the Indian Succession Act, 1925, was a piece of colonial-era legislation designed to harmonize minority communities' succession laws. Despite offering a

methodical approach to testamentary and intestate succession, it mainly disregarded Muslims and Hindus, who were still subject to their own laws. But as the need for a thorough legal system for Hindus grew, the Hindu Succession Act of 1956 was passed in an effort to eliminate contradictions and guarantee a more methodical approach to property rights and inheritance. The Hindu Succession Act's attempt to strike a balance between conventional wisdom and contemporary jurisprudence was a noteworthy feature. Although the law acknowledged Hindu men and women's property rights, it nevertheless reflected ingrained gender biases. By giving daughters equal coparcenary rights, the Hindu Succession (Amendment) Act, 2005, addressed historical gender-based discrimination and signaled a turning point. This amendment further enhanced women's inheritance rights and brought succession laws into line with gender equality principles found in the constitution. Furthermore, the limitations of a truly uniform law are illustrated by the exceptions made for specific regions, such as Goa, Daman, Diu, and Pondicherry. The study of succession laws demonstrates how legal frameworks are constantly changing to satisfy the demands of society. Even though gender equality and legal certainty have greatly improved as a result of the Hindu Succession Act of 1956 and its later amendments, more work is required to close any remaining gaps and guarantee that the law is fair, understandable, and flexible enough to change with society. The future of India's inheritance laws will continue to be greatly influenced by the judiciary's interpretation and extension of succession rights.

In property law, the relationship between family responsibilities and testamentary freedom is still very important, especially when considering Hindu succession. The current legal framework controlling inheritance and property devolution has been influenced by the historical transition from customary laws to statutory regulations. An organized approach to intestate succession was ensured by the historic Hindu Succession Act, 1956, which upheld the testator's right to distribute property through a will while also unifying and codifying the succession laws that applied to Hindus. With the repeal of the survivorship doctrine and the granting of inheritance rights to female heirs, the concept of intestate succession has experienced substantial change. The equitable distribution of property within families has been further strengthened by the introduction of notional partition and amendments like the Hindu Succession (Amendment) Act, 2005. In a similar vein, the idea of family settlements has become a popular way to keep peace, prevent conflict, and guarantee a fair distribution of joint family property. However, compliance with legal requirements, such as registration and stamping when required, is essential to the legitimacy of such settlements. Courts serve a vital

function in maintaining a harmonious relationship between the rights of inheritance recipients and the deceased's wishes, thereby enforcing justice and fairness. In situations where the testator's testamentary freedom clashes with family settlements, judicial intervention is essential to clarify uncertainties and resolve conflicting demands. The harmony of wills and family arrangements illustrates the importance of a complex legal strategy. Although the right to self-determination in asset distribution is fundamental, the extended family's structure and duties cannot be overlooked. The difficulty lies in finding a balance that honors the deceased's intentions while fostering family fairness and stability. Future legal advancements should persist in fine-tuning these principles, filling existing gaps, and ensuring that the legal system remains responsive to the changing socio-economic environment.

The study underscores the critical role of succession laws in maintaining the harmony within family while ensuring equitable distribution of property. The complexities highlighted in the present study includes the determination of validity of two modes of devolution i.e. the will and the family settlement. Whether a property is ancestral or not is wholly depended on the observation of court. It is imperative to understand that the property is devolved according to the method stipulated under the succession law but the issue arises when there are two contradictory laws which gives or takes away the right of the party. It is not deniable that the customs are the basis of statutory law but when it comes to proper execution of both the laws at the same time in the present case then it would have a whole different effect. It can be said that when these laws are applied at the same situation then it would change the character of the property by favouring one of the conflicting rights in question. The conflicting documents in this study are the family settlement and the Will and the bone of contention is deciding which document should have relevancy in deciding a right of the party. The judiciary plays an important role in interpreting the laws and resolving disputes; however inconsistent judicial decisions have sometimes added to the ambiguity in determining property rights.

The study examines the impact of the Hindu Succession (Amendment) Act, 2005, which marked a paradigm shift in recognising gender equality in succession laws. By granting daughters coparcenary rights in ancestral property, the amendment sought to correct historical injustices and promote social equity. However, challenges persist in the practical implementation of these provisions, particularly concerning retrospective claims and evidentiary challenges. The law has been static for a long time but the change taken place after the independence when the need arose to codify the law and make a uniform statute applicable



to all Hindus in the society. The Hindu Succession Act, 1956 is greatly influenced from the customs followed from a long time, however, the rules were framed with a slight change in the inheritance rights which changed the position of a Hindu family. The rights were limited to the extent of granting legal rights or share in the property to one class of heirs when the inheritance of the property takes place. The legislature on one side has made a change in the succession by laws by recognising the daughter's right in ancestral property but it failed to give deeper explanation for the class of properties coming into question. The property would be an ancestral property or not depends on the change in legal landscape and the law should not be applied uniformly in all the situations but has to be applied differently in different events. The Judiciary also made it very clear that the law of ancestral property is applicable when it is impossible to club the property in the hands of one individual and where the property belongs to family only. The division of the property takes place generally by way of framing a partition deed or a family settlement as held in the instant case, however, we are still few miles away from framing an efficient law for succession.

The research evaluates that the legal validity and applicability of family arrangements as an alternative dispute resolution mechanism within families. While such settlements are expected to promote harmony and prevent prolonged litigation, issues regarding registration and enforceability often lead to disputes, necessitating judicial scrutiny. The family settlements are also categorised in two parts which becomes an important question for its enforceability. Most of the disputes arise when these family settlements or partition deeds are contested due to the lack of stamping or registration of the document. The ancestral property can only become divisible within family and each coparcener will get a definite share in the family as discussed in the earlier chapters. The dispute arises when the share of the family member is curtailed by Karta of the family and the share is transferred to other person. The process of inheritance succession with respect to an ancestral property or a separate property is explained in detail and observed that the rules established under inheritance succession are followed uniformly when the person dies intestate whereas the ancestral property have different division when the devolution takes place.

In analysing testamentary succession, the study highlights the significance of wills in property devolution. The creation, execution, and contestation of wills present intricate challenges, especially when conflicting claims arise between testamentary beneficiaries and heirs claiming property through intestate succession. The study also emphasises the need for stringent

safeguards to prevalent wills and ensure that the testator's true intent is honoured and takes effect. The testator's wish should be given priority over the rights of other family members is the matter of issue discussed in the study. The property if jointly held by others cannot disposed of by way of testamentary succession however if the property hold by a person having individual rights can be transferred or disposed of by way of gift, will, and sale etc. Though a Will is not mandatorily registered under the Registration Act, 1908, but a Will to be considered a valid Will must be written in a form that describes the true intent of the testator and that is possible by looking at the contents of the document and the attestation of witnesses to give it a legal validity in the eyes of law. A legal claim arise when the testator dies after writing a Will which makes it necessary to be executed. There may arise few instances when the Will is immediately contested after it came into effect, the contesting parties are majorly the family members who seek share in the property. The family members contest the rights transferred in a Will with the reason that they have a right to partition of the property and the rights must be declared dividing the share within the coparceners of the property. In this case the burden to prove if the right accrues is upon the family members who contest for their rights on the basis of a family settlement or partition deed. In case of failure to prove any document on their behalf, there still remains a contention that the property is not of a nature to be transferred in favour of one individual by curtailing the rights of the family members and therefore the property is necessarily divisible between coparceners only as per the succession law. The general argument in favour of the contesting party would be that a person cannot transfer the property which he himself does not owe.

While statutory laws have evolved significantly, practical challenges remain in their implementation. The divergence between legislative intent and judicial interpretation often leads to prolonged legal battles, causing financial and emotional distress on families. Therefore, there is urgency for a more uniform and predictable approach in adjudicating succession disputes. Most of the times the dispute takes place within families for the property rights and apart from deriving the rights by the courts the parties experience emotional strain and disputes within the family. Many Hindu families are facing the same problem because of the existence of rights in the family property which cannot be declared by an individual in other party's favour. In case such rights are transferred then the court has to see the validity of such transfer with the application of succession laws into force. The ambiguity in succession law for Hindus makes the rights in the property uncertain within families. The consequence of these loopholes in the succession laws are the parties involved in prolonged litigation. The two contesting

documents i.e. the family settlement and the Will are described in detail in the study, the operation of both the documents in various situations are analysed and observed that the courts have power to establish rights on the basis of the documents. The problem lies when the claims in the property are difficult to rationalise and the court have to give logical reason for holding the property rights in the favour of either of the party. The party holding better title in the property would take away any other right existing in the property by virtue of holding the document in their favour. Despite significant legislative advancements, gaps remain in the practical implementation of succession laws. Various events were adjudged in the present study with reference to the two primary conflicting documents i.e. the family settlement and the will and analyse the role of statute and judiciary in embracing changes and dealing with current challenges. The family settlement and the Will have their own features on the bases of which the rights in the property are established among Hindus. Both the rights in the property were critically evaluated in the study and findings were laid down that the functioning of succession laws could be more efficient and smooth in deciding the succession rights, the role played by judiciary in deciding title suits is also analysed in depth and observed that due to the improper explanations and loopholes in law the dubiety arises. Hence, there is an urgent need for greater clarity, uniformity, and efficiency in adjudicating succession disputes.

## **5.2 Suggestive measures**

1. India still has distinct succession laws for different communities which lead to ambiguity and inconsistent application of laws. A Uniform Civil Code that standardizes succession laws across all communities could provide legal clarity and predictability. The Indian Succession Act, 1956 and the Indian Succession Act, 1925 were analysed and the rules of testamentary succession is followed uniformly in both of these laws by removing ambiguities. However, in case of inheritance succession the property inherited by the male Hindu becomes his personal or separate property only as per the Hindu Succession Act, 1956. The customs does not follow the same approach in ascertaining the property rights, the rule of coparcenary is followed where a member in family becomes coparcener by birth or death of a family member and the right is fluctuating in nature. The law must use the consistent approach in resolving the dispute in a Hindu family. The reason for making a uniform law is to restrict the devolution of property in different manner by establishing a certain rules for devolution applicable to every kind of property. This does not mean that the rights of a woman are curtailed in the property divided between other family members. In case the division of a property

is taking place then surely the female's share in the property shall also be recognised as per the amendment act.

2. The Judiciary also plays an active role in deciding the disputing title of the property. It must strive for uniformity in its rulings on property disputes by establishing clearer guidelines for determining the nature of property and succession rights. This step would minimize the chances of contradictory judgments by ensuring fair adjudication in future. The courts are today burdened with civil cases and most of the cases are of family disputes for marriage and property. The court has to evaluate every situation and the documents on table to define the right of the party in the property, however, the court in order to do so have to examine the legal validity of the documents and find the property records to ascertain the actual title in the property. Most of the times, the parties find difficulty in disclosing the property records especially of the property which was existed before independence. It is not possible to get the property or land records of the property existing since independence because of the inexistence of expressed right during the period of independence. The Hindus in the country have also realised their rights in the property on the basis of possession and the people were not aware about the registry of properties and other aspects related thereto. Hence, the courts play a major role in framing guidelines for effective execution of succession laws to deal with every kind of succession or title disputes.
3. To prevent fraudulent claims in the property, all Wills and family settlement should be made compulsorily registered with the appropriate authorities established under the Registration Act, 1908. With the growing technology and emerging change, the land records are made available on the government websites and the digital record must be kept of every property which will also determine the authenticity of the legal documents into play. A biometric verification can enhance the validity of such documents. The disputing party holding property documents free from defects would get a chance to win the dispute. The present situation of dispute takes place because the parties carry a document that goes through a tough scrutiny by the courts. In case, if either of the parties have some defects in their documents, then it is upon the courts to establish the property rights solely on the basis of property documents in question and therefore the determination of nature of the property in that respect becomes secondary choice of evaluation. The dispute can easily take place when the family settlement comes into



question, the registration of family settlement is not necessary if it is made oral and the dispute arise when the frauds takes place where the parties themselves involves in preparing a forged document of family settlement to contradict the claims of the Will holder in the case study described in the previous chapter. Therefore, malice could easily establish when the registration of the document is not mandatory. A party holding unregistered document should not be given priority over the party holding a registered document and it can be one aspect of evaluating property rights notwithstanding the nature of property.

4. The retrospective application of the Hindu Succession Act, 1956 and the amendment of 2005 are necessary and remains a contentious issue. The law must be applicable uniformly to all kinds of intestate succession irrespective of the nature of property just after the commencement of the act. The act must be applied to all category of property whether ancestral or separate and accordingly the devolution takes place. A well-defined legislative framework should address pending disputes fairly and provide clear guidance on its application. The Act if have the retrospective effect would remove the ambiguity in declaring the disputed title in the property. The property must be divisible or pass down to the legal heirs of the property holder as per the Hindu Succession Act, 1956 only and no other custom prevalent till then should be followed in that respect. The property devolution taking place before the commencement of the Act should change the way of devolution and follow the rules of the statutory succession law in the matter of devolution of the property. Therefore, the procedure established under the for intestate succession among Hindus should be followed uniformly among all Hindus after the commencement of Act no matter how the devolution has been taking place till the enactment of the statute.
5. The Courts are flooded with the cases of family disputes and the Hindu families find court the appropriate remedy to resolve the property disputes. The parties to the dispute must be encouraged to resolve their dispute through mediation and arbitration as it is considered effective way for resolving property dispute easily and expeditiously. The parties to the dispute face many problems involved in the property case within family especially the mental suffering for a long time till the litigation is over. The litigation last for a long time because the evidence produced before the court goes through a tough scrutiny and the case is decided after a long time. Therefore, the burden from the courts

will be removed and the parties get free from the prolonged litigation if chose this alternate dispute resolution as a viable option to resolve a dispute. The primary purpose of resolving the family disputes through ADR's are that the family could settle the dispute amicable without hampering the family relations between disputing parties.

6. The primary documents analysed in the study on the basis of which right in the property are contested are the family settlement and the Will. The legal provisions regulating both of these documents should be strengthened and the law governing the family settlement and the Will should enforced strictly to prevent framing of fraudulent documents. Stricter evidentiary requirement, such as video recording of wills, registration of all kinds of family settlements, could help ensure that a document is free from any defect and can easily get legally enforced.
7. The primary issue raised in the study is that the judicial ambiguity regarding whether inherited property remains ancestral or becomes self-acquired has led to numerous disputes. The property devolution is majorly dependent on the nature of property and there remains ambiguity in describing the category of property. Once the nature of property is established the application of laws comes into action. The customs were followed in case of an ancestral property and the devolution takes between the coparceners in the Hindu joint family. The procedure of devolution followed from a very long time is that the property ancestral in nature can only be divisible between all the coparceners however, the concept of ancestral property would no longer have relevance after the commencement of the Act for the share which is held by an a person in his individual capacity no matter the property was separate or inherited from ancestors until then. The right by birth no longer operates today; the only thing which might have taken place is to divide the property of a father between next line of succession i.e. within the sons and daughters of the family excluding the rights of grandsons and great grand sons of the family. Earlier, the properties were divisible between coparceners which include many generations among a Hindu family i.e. the sons, grandsons, and the great grandsons and the rights in the property were fluctuating in nature. Hence, the legislative amendments should provide explicit guidelines on this issue to eliminate conflicting interpretations. The property disputes often remain unresolved for decades, leading to prolonged legal battles and strained family relations.

Introducing statutory time limits for filing succession-related cases would expedite case resolution and prevent unnecessary delays.

8. A significant number of property disputes arise due to a lack of awareness about succession laws. Even the judiciary is sceptical about proper application of succession laws in few cases then it is not expected from the parties to the case to have knowledge about the same. The succession laws are prevalent in the society from a long time however when it comes to actual application of laws in the dynamic situations it becomes difficult to apply the laws uniformly due certain barriers. The law is silent on various aspects where the judiciary finds difficulty to interpret and apply the laws in different category of cases. The specific guidelines should be framed by the judiciary to mitigate such loopholes in the law. The government and legal institutions should conduct awareness campaigns to educate individuals about their property rights, the significance of Wills, and the consequence of intestate succession where the concept of family settlement operates on the basis of pre-determined rights established in the property. A uniform precedent should be set by the Supreme Court of India to make it a base for property devolution and fill the gaps of the legislative frameworks.

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