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BLOG

MARRIED UNDER ONE LAW, INHERITED UNDER ANOTHER: THE HIDDEN SUCCESSION TRAP

~D. Kavim

In most marriages, the registration is seen as just another piece of paperwork and succession as a problem that comes later with age. There is a connection between the two that is established in Indian law. The law determining how the marriage is solemnized-sometimes even the state in which the marriage is registered-can determine inheritance from one person to another. This trap remains hidden as no registrar warns about it, and there is no warning in the certificate itself.

THE SPECIAL MARRIAGE ACT AS A SUCCESSION SWITCH

Special Marriage Act, 1954 (SMA) is India's secular marriage law, a route to marriage without ceremony and religious tag. However, it creates a succession trap. Section 21 provides that notwithstanding any provisions of restriction in the Indian Succession Act, 1925 (ISA) on particular communities, the succession to the property of a person who is married under the SMA, and the issue of that marriage shall be governed by the ISA.¹ On its face, the Muslim who registers under the SMA shall be governed by the ISA, and the prohibition on Muslim wills in section 58(1) of the Act should give way.² It is a reasonable inference, as those marrying outside religious ceremony may wish to have a secular inheritance law. The problem is that the choice is made by the registrar as a result of choosing to marry and is not a conscious choice regarding the property. Nobody asks whether the choice out of the personal law was an informed or accidental decision.

¹ The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954, S 21 (India).

² The Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925, S 58(1) (India).

For Hindus, the trap is more subtle. According to Section 19 of SMA, the marriage of a Hindu, Buddhist, Sikh or Jain member of an undivided family under the SMA shall operate as a severance of his status in that family.³ Consequently, the birthright coparcenary interest protected by *Vineeta Sharma v. Rakesh Sharma* may cease to exist because of registry entry.⁴ The section refers only to "him", so how does it apply to a girl? Suppose a Hindu woman marries a Muslim colleague in registry. Whatever the legal effect of Section 19 on the issue, her children will inherit according to the ISA rather than the Hindu Succession Act. Section 21A provides that for the spouses both Hindus, Buddhists, Sikhs or Jains sections 19 and 21 are inapplicable, and their personal law continues.⁵ Two Hindus at the registry office preserve their inheritance regime while a Hindu and a Christian making the same decision will not.

VALIDITY DECIDES THE CHILDREN'S INHERITANCE

Marriage law determines who the children are. The bigamous Hindu marriage is invalid, but according to section 16(1) of the Hindu Marriage Act, 1955 (HMA) its children are legitimate.⁶ However, section 16(3) limits the rights of those children to the property of their parents.⁷ For decades, the Supreme Court interprets it in a manner which excludes joint family property from these rights; in *Revanasiddappa v. Mallikarjun* a three-judge bench reviewed previous decisions and allowed such children their share in parents' property.⁸ Such children still have no rights beyond their parents, so none come from grandparents and other relatives. Section 31 of the Uniform Civil Code of Uttarakhand provides otherwise: each child of void or voidable marriage is legitimate, with no analogue to section 16(3).⁹

WHEN MARRIAGE DECIDES WHO INHERITS FROM THE WIFE

Similarly, marriage affects the heirs of a woman. If an unmarried Hindu woman dies intestate without a husband and children, her property will pass to the heirs of her husband and, only afterwards, to her parents.¹⁰ Meanwhile, if a man dies intestate, he does not have the wife's natal family among the heirs to his property.¹¹ In *Omprakash v. Radhacharan*, a woman widow

³ Special Marriage Act S 19.

⁴ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 S.C.C. 1 (India).

⁵ Special Marriage Act S 21A.

⁶ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, SS 11, 16(1) (India).

⁷ *Id.* S 16(3).

⁸ *Revanasiddappa v. Mallikarjun*, (2023) 10 S.C.C. 1 (India).

⁹ The Uniform Civil Code, Uttarakhand, 2024, Act No. 3 of 2024, S 31 (India).

¹⁰ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956, S 15(1) (India).

¹¹ *Id.* S 8.

in three months after marriage was chased out of her marital home, brought up and employed by her parents, and she died leaving behind self-acquired property. The Supreme Court ruled that the provision of section 15(1) of the SMA applied rather than section 15(2), which put the woman's husband's heirs in front of her mother. Nevertheless, the court admitted it was a difficult case.¹² In November 2025, a bench considering a public interest petition questioning the validity of section 15(1)(b) left this matter open and urged Hindu women to prepare wills.¹³ Until the law is changed, it remains a necessary measure.

SAME MARRIAGE, DIFFERENT STATE

In addition to religious affiliation and consanguinity, geography comes into play as well. The Uniform Civil Code, Uttarakhand, 2024 applies to residents of Uttarakhand living outside the State, excluding Scheduled Tribes and creating a unified scheme of intestacy in which spouses, children, and parents form Class-1 heirs together.¹⁴ As a result, the law regulating the fate of a couple's property might depend on their place of residence rather than religion, while the marriage certificate remains the same. The adoption of similar codes in other States and their interaction with the Hindu Succession Act and ISA remains to be seen.

CLOSING THE TRAP

The trend is clear. A marriage law determines succession; however, consent is obtained only in relation to marriage. There are three measures that may be helpful. First of all, registrars should inform couples about the provisions of sections 19 to 21 of the SMA in writing before solemnization. Secondly, the Supreme Court or Parliament should interpret section 19 regarding daughter coparcener. Thirdly, section 15 of the Hindu Succession Act should exclude ranking of heirs depending on the marriage fact. In the meantime, it is necessary to consider marriage registration as just the first stage of estate planning and draw up wills in order to avoid that the marriage law becomes the law of inheritance automatically.

¹² *Omprakash v. Radhacharan*, (2009) 15 S.C.C. 66, ¶¶ 2, 10 (India).

¹³ Indian Apex Court Urges Hindu Women to Make Wills to Avoid Future Disputes Between Parents and In-Laws, Asia News Network (Nov. 20, 2025), <https://asianews.network/indian-apex-court-urges-hindu-women-to-make-wills-to-avoid-future-disputes-between-parents-and-in-laws/>.

¹⁴ Uniform Civil Code, Uttarakhand SS. 1(3), 2, 49-51.