



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

GENDER, KINSHIP AND SOCIETY: ANALYSING FEMALE INTESTATE SUCCESSION AND INHERITANCE UNDER HINDU SUCCESSION ACT 1956

-Shambhavi Pushkar Gokhale

ABSTRACT:

The concept of succession has always been a central topic when it comes to Hindu Law. Decades before the introduction of Hindu Succession Act, many independent schools of law existed in India which governed succession and inheritance of individuals. These regional schools like Dayabhaga, Mitakshari, Mithila, Banaras, Bombay, Nanduri followed various practices leading to different laws throughout the country. The difference in law of inheritance of these schools, the matriarchal system in South India, the dissimilar local and family customs prevalent in India made the application of one uniform law a necessity leading to the conception of the Hindu Succession Act in 1956. The Hindu Succession Act brought pivotal changes like uniform regulations, inclusion of Jain, Sikh and Buddhist converts and reconverts and abolition of the concept of survivorship however one of the most significant changes it brought was in regard to female inheritance and succession. The Dayabhaga and the Mitakshari schools neglected females when it came to succession and were notorious for being patrilineal in nature. The Act attempted to fill in this gap with better frameworks and provisions which benefitted women. The 2005 amendment to the Act became revolutionary due to the inclusion of both married and unmarried women in coparcenary property. This paper attempts to highlight the role of kinship and gender as an institution in influencing inheritance of women and emphasizes various sociological aspects of the same. It also strives to explain how intestate property is devolved upon female relations on the death of Hindu male or female under HSA Act 1956.

Key Words: inheritance, succession, kinship, female, coparcenary property

INTRODUCTION:

Long before modern legal statutes addressed female succession and inheritance of family property, classical Indian texts recorded instances of the same. The *Brihadaranyaka Upanishad* narrates the tale in which Sage Yajnavalkya divides his estate between both of his wives, Maitreyi and Katyayani, before he sets forth on the path of material renouncement. Maitreyi refuses to inherit the said material estate of her husband, pronouncing her desire to gain spiritual knowledge over material assets, whereas Katyayani accepts the inheritance and decides to live in the material world. This tale not only symbolizes the position of women in terms of inheritance but also highlights the autonomy and choice provided to women in order to make their own decisions. Maitreyi and Katyayani had the independence to make financial decisions; sadly, this right is a privilege for many women in modern-day India.

When it comes to society, kinship and gender play a vital role in influencing the aspects of distribution of rights and resources. Kinship is a concept which can be defined as a joint entity consisting of consanguine and conjugal relatives. Naturally, we can see a heavy influence of kinship on the aspects of inheritance and succession. Dayabhaga and Mitakshari schools of law majorly influenced the application of inheritance customs and rules in India, and both of them were primarily influenced by the concepts of kinship and gender.

The Dayabhaga school of law originated from the writings of Jimutavahana, a 12th-century Bengali scholar, and was a digestible synthesis of treatises like the *Yagnavalkya*, *Narada*, and *Manu Smritis*. The word “Dayabhaga” originated from the root words “*daya*,” which means wealth, and “*bhaga*,” which means division, and is thus loosely translated as “Partition or Division of property.” When it came to inheritance, the main philosophy of this school was based on the concept of *Pindadaan* or providing oblation to the ancestors. Those who had the capacity to offer full oblation upon the death of a person took precedence over those who could offer only partial oblation in terms of division of property. The school thus primarily divided heirs into three segments: *Sapindas*, *Sakulyas*, and *Bandhus*. *Sapindas* consisted of all the lineal ascendants, descendants, and collateral relations, including all cognates of a close degree. *Sakulyas* consisted of all distant paternal relatives, like distant cousins belonging to the fourth to sixth generations beyond the *Sapinda* boundary, and *Bandhus* included all cognate relations or relatives who were connected to the deceased through a female member. These were further broken down into *Atma Bandhus* (paternal aunt’s son, maternal aunt’s son), *Pitra Bandhus* (paternal grand-uncle’s son), and *Matru Bandhus* (maternal grand-aunt’s son).

The Dayabhaga system followed an *Upamswatvada* mechanism, which meant that ownership of property was not given by birth but was provided only after the demise of the male owner of the property. The owner of the property had absolute, unqualified ownership of the property and had the right to sell and alienate the same. This was not seen in the Mitakshari system, where the right to property was by birth to a male heir.

The Mitakshari system followed a joint ownership model when it came to coparcenary property. The definition of coparcener here included four generations of males in an unbroken

chain of lineage. The school followed the system of propinquity, where nearness of blood or order of heirs was based on consanguinity, and the closest relative by descent was considered. It also divided kinship relations into three categories: *Gotraja Sapindas*, *Samanodaks*, and *Bandhus*. *Gotraja Sapindas* are relatives who belong to the same *gotra* (clan or family lineage) and are bound by blood or marriage through a common male ancestor; because wives took the *gotra* of the husband upon marriage, they were included in *Gotraja Sapindas*. However, married daughters and sisters were completely excluded from this category because of the change in *gotra*.

When it came to succession by women, the only category allowed in the Mitakshari school was that of a widow, who could ask for a right to maintenance charged against the joint property. The Dayabhaga school allowed a widow to succeed to the share of her deceased husband in coparcenary property; however, it did not provide her rights to sell or alienate the same without legal necessity. Nevertheless, the school provided absolute ownership of *Stridhan* to females and emphasized two distinct categories of the same. *Yautaka* was the *Stridhan* received during the marriage of the female and was thus her exclusive property; unmarried daughters were given precedence to this kind of *Stridhan*. On the other hand, *Ayautaka* was *Stridhan* received in the form of gifts from relatives on ceremonial or other occasions; this kind of *Stridhan* could be passed upon to the husband and his relatives on the death of the female. Other than these few provisions, female members were not provided any other form of inheritance¹.

Sociologists like Irawati Karve, who studied the forms and roles of kinship in India, highlighted that there is an inherent difference in how kinship functions across Northern, Southern, Central, and Eastern/Western India. While Northern India observes strict village exogamy and avoids cross-cousin marriages, Central and Southern India demonstrate a tendency toward village endogamy and preferential cross-cousin marriages. This distinction can be directly attributed to practices of inheritance and succession; endogamous marriages among close relatives were often practiced keeping property and ancestral estates within a specific family or kin group.

If we apply this framework to other social scenarios, it becomes evident that inheritance and property play a pivotal role in governing many such social actions and omissions, especially regarding women. For instance, one of the primary reasons why widow remarriage was historically discouraged was to retain the widow's maintenance claims or property rights within the deceased husband's family. Similarly, the denial of inheritance and formal status to illegitimate children served to prevent the devolution of coparcenary property to individuals outside the recognized patrilineal kin. Furthermore, women were often relegated to a subordinate position regarding real property due to religious doctrines surrounding their inability to perform last rites and offer full spiritual oblation (*Pindadaan*) to ancestors. Thus, this suggests that religion and the classical schools of law had a profound impact in shaping societal organization and the material lives of women.

¹ Hindu Law: Mitakshari and Dayabhaga schools, Ipleaders blog, September 15th, 2026, and Dayabhaga, Wikipedia and Mitakshara, Wikipedia.

PROVISIONS AND SHARE OF FEMALE RELATIONS ACCORDING TO HINDU SUCCESSION ACT 1956:

The devolution of property upon female members can be through two types:

1. Through a Hindu male intestate ascendent
2. Through a Hindu female intestate ascendent

In order to cover and understand the various relationships and the shares and provisions for the same, it is essential that we cover these relations categorically.

Category 1: On death of an intestate Hindu male individual

A. Widow/Widow

A widow can be defined as the legitimate wife of the deceased individual and is categorized as a Class I heir in the HSA Act. The Hindu Marriage Act 1955 penalized bigamy and thus prohibits a person from having multiple wives however as the law does not apply retrospectively, all marriages before the implementation of the act remain to be valid in the eyes of law. Thus, it is entirely possible for multiple widows to exist. In such case, the Act under Section 10 provides one share of the property to the widow/s that is if there are multiple widows they must all distribute that one share equally. In case of mistresses, there is no provision for inheritance or succession of property.

B. Mother

The Hindu Succession Act categorizes the biological mother of a Hindu male as a Class I heir under Section 10 and provides her one share of the property. A stepmother is defined as father's widow rather than mother and is categorized under Class II entry four. She only gets a share if there are no Class I and Class II heirs before her. The mother of an adopted Hindu male enjoys the same position as that of a biological mother under the Act.

C. Daughter

Under the Hindu Succession Act, a daughter can be of four types: biological legitimate daughter, illegitimate daughter and stepdaughter and daughter born out of a void marriage. A legitimate biological daughter is a Class I heir and inherits one share of the property of her father. A stepdaughter and an illegitimate daughter do not succeed anything because of lack of legitimate kinship. A daughter born out of a void or voidable marriage is statutorily legitimate and thus can inherit the share from her father's self-acquired property however she cannot inherit coparcenary property rights by birth in a joint family property. After the 2005 amendment, both unmarried and married daughters inherit equal rights in the property of their father.

D. Sister

Under the Hindu Succession Act, a sister can be of four types: full blood sister, half blood sister and uterine sister, illegitimate sister. A full blood sister is one who is related to the Hindu male by a common ancestor and is born from the same wife of that ancestor. She is categorized as a

Class II Entry I heir and gets a share if Class I heirs are not present. A half blood sister is one who is related by a common ancestor but is born from a different wife. Half blood sisters are classified under Class II Entry I but are only given a share if a full blood sister is absent. A uterine sister is the one who is related through a common ancestress but born through different husband, as she is not related to the Hindu male by male lineage, she can only inherit as a cognate after all the Class I, Class II, and agnate heirs. An illegitimate sister cannot inherit any property due to lack of legitimate kinship.

E. Granddaughter

A legitimate granddaughter is categorized under Section 10 and inherits a share of the property per stripes. If she has a predeceased father or mother, she can inherit a share from their part of the property after the death of her paternal or maternal grandfather.

F. Aunt

A paternal aunt inherits a share as a Class II Entry V heir if Class I and all preceding heirs are absent whereas a maternal aunt inherits a share under Class II Entry VII as a cognate if all before her are absent.

Category II: On death of an intestate Hindu Female

Section 15 and Section 16 govern the succession laws when it comes to a Hindu female. These rules are a little different and instead of classes there are entry categories for the heirs under the section 15.

Entry (a) - Children and husband

Entry (b) - Heirs of the husband

Entry (c) - Mother and Father

Entry (d) – Heirs of father

Entry (e) – Heirs of mother

A. Daughter

A legitimate daughter takes one share from the property of her mother as an entry (a) heir. Stepdaughters are included in entry (c) as the relative of the husband and can only inherit if primary heirs before her are absent. Unlike in the case of a Hindu male, the illegitimate daughter can inherit under entry (a) as well because of her legitimate kinship and relation with the mother. A son also follows the same pattern as that of a daughter when it comes to succession.

B. Husband

A legitimate husband is a primary heir and takes one share alongside the children under entry (a). An ex-husband of a void or voidable marriage does not have any inheritance right.

C. Mother and Father

The mother and father of the women are entitled to one share equally and are listed under entry(b). They will get their share if entry (a) heirs are absent. A stepmother may inherit under entry (d) as an heir of the father on absence of all other heirs and a stepfather may inherit under entry (e) as an heir of the mother on absence of all heirs.

D. Mother-in-law, Father-in-law, Brother-in-law, and Sister-in-law

All these conjugal relations will fall under the entry (c) under Heirs of husband. They will only inherit a share if entry (a) and entry (b) heirs are absent.

E. Grandchildren and daughter in law

If the son or the daughter of a Hindu female is predeceased, then the share of that individual is distributed between his or her heirs per stripes. Thus, the grandchildren and widow of the son or widower of the daughter can claim under entry (a) in case of a predeceased husband or wife, respectively.

F. Sisters and Brothers

Full blood sisters and brothers can inherit share under entry (d) as heir of the father on absence of any other preceding heirs and half blood sister and brothers can inherit share under entry (d) as well however full blood siblings will take precedence over half blood siblings. Uterine sisters and brothers can only inherit under entry (e) as heir of mother on absence of all other heirs.

Section 15(2) prescribes some rules to be followed in case the Hindu female dies intestate and childless. If a Hindu female dies intestate and childless with no surviving children or grandchildren from predeceased children, then anything she has inherited from her father reverts back to the heirs of the father under entry (d). On the other hand, if she has inherited anything from her father-in-law and mother-in-law, all of it reverts back to the heirs of the husband under entry (b) and does not go to her natal family. This provision was added to keep the property of one family in the same family itself and to avoid the devolution of the property of the women's natal family to her conjugal family and vice versa.²

CRITICISM AND CONCLUSION

Although the Act aids in making succession laws easier, efficient, and universally applicable, there are some pivotal issues which remain unaddressed:

1. The property of a Hindu female dying intestate devolves upon the heirs of her husband under entry (b) however the same does not happen with the heirs of the wife when it comes to property of a Hindu male. Additionally, the mother and father of the Hindu female are positioned after the heirs of the husband, making it difficult for them to inherit anything from their daughter's property. This signifies a crucial gender bias and inherent patrilineality.

² Hindu Succession Act 1956 and Dinshaw Fardenji Mulla, Principles of Hindu Law, Volume II, Nineteenth Edition, S.A Desai, Lexis Nexis Butterworths

2. Under section 15(2) the reversion of property to the heirs of the father only happens if the property is inherited by the daughter from her father but this does not apply if the property is self-acquired. If a childless, widowed women die intestate, the inheritance is bestowed upon the heirs of the husband and not her own parents who might need the same.
3. The mother of a Hindu male is placed as a primary Class I heir whereas the father is placed under Class II category. However, when it comes to a Hindu female, both her parents are placed in the same category of entry (c) below her mother-in-law and father-in-law. This shows a patriarchal approach where the parents of the husband are given priority over biological parents of the wife and also highlights how women are given precedence to inheritance when it comes to succession from a Hindu male due to the inherent assumption of women being dependent on their male relatives.
4. The Act considers inheritance of the illegitimate children only from the mother's side as it considers it to be a direct blood relation and kinship however the property of a father does not devolve upon his illegitimate children in case on intestate succession. This distinction completely neglects the responsibility of a father towards the wellbeing of his children regardless of their legitimacy.³

To conclude we can say that although the 2005 Amendment tackled coparcenary rights under Section 6 it left some regressive provisions untouched. There is a need for such provisions to be amended in order to ensure that property and rights are distributed in accordance with principles of equality and equity. Several changes need to be made especially when it comes to asymmetrical inheritance rights between the natal and conjugal family, status of illegitimate children and responsibility of the biological father, acknowledgement of patriarchal notions in the act and rectification of the same etc. Despite all these shortcomings, the Hindu Succession Act remains to be pivotal step towards making inheritance laws more uniform and efficient especially when it comes to application.

³ Shivani Singhal, Women as Coparceners: Ramifications of the Amended Section 6 of the Hindu Succession Act 1956, 19 Student B Rev 50 (2007)

