

Hindu Succession (Amendment) Act, 2005

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Hindu Succession (Amendment) Act, 2005

[The Hindu Succession (Amendment) Act (39 of 2005) amends the Hindu Succession Act, 1956. By the amending Act, sections 4, 23 and 24 have been omitted. The existing section 6 has been substituted with new section 6 providing for same rights in the coparcenary property to a daughter of a coparcener as she would have had if she has been a son. By birth, she would become a coparcener in her own right in the same manner as the son. She would also be subjected to the same liabilities in respect of the said coparcenary property as that of a son. The amendment Act received the assent of the President on 6th September, 2005. The Act was published in the Gazette of India dated 6-9-2005, Extraordinary, Part II, Section 1, pages 1-3. Act is reproduced as below :] An Act further to amend the Hindu Succession Act, 1956. Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

1. Short Title And Commencement :-

- (1) This Act may be called the Hindu Succession (Amendment) Act, 2005.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment Of Section 4 :-

In section 4 of the Hindu Succession Act, 1956 (hereinafter referred to as the principal Act), Sub-section (2) shall be omitted.

3. Substitution Of New Section For Section 6 :-

For section 6 of the principal Act, the following section shall be substituted, namely:-

"6. Devolution of interest in coparcenary property. - (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, -

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a joint Hindu family governed by the Mitakshara law, shall devolve by

testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and, -

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the predeceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the

child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. - For the purposes of this sub-section, the interest of the Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no Court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt : Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect -

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. - For the purposes of clause (a), the expression "son", "grandson", or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation. - For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a Court..

4. Omission Of Section 23 :-

Section 23 of the principal Act shall be omitted.

5. Omission Of Section 24 :-

Section 24 of the principal Act shall be omitted.

6. Amendment Of Section 30 :-

In section 30 of the principal Act, for the words "disposed of by him", the words "disposed of by him or by her" shall be substituted.

7. Amendment Of Schedule :-

In the Schedule to the principal Act, under the sub-heading "Class I", after the words "widow of a pre-deceased son of a pre-deceased son", the words "son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son" shall be added.