

TO BE INTRODUCED IN THE RAJYA SABHA  
AS INTRODUCED IN THE RAJYA SABHA

**Bill No. LV of 2004**

THE HINDU SUCCESSION (AMENDMENT) BILL, 2004

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BILL

*further to amend the Hindu Succession Act, 1956.*

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Hindu Succession (Amendment) Act, 2004.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

30 of 1956. 5 2. For section 6 of the Hindu Succession Act, 1956 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Substitution of new section for section 6.

'6. (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2004, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

Devolution of interest in coparcenary property.

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

(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 and disabilities in respect of the said coparcenary property as that of a son, 5

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

Provided that nothing contained in this sub-section shall apply to a daughter married before the commencement of the Hindu Succession (Amendment) Act, 2004. 10

(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 in, as property capable of being disposed of by her by will or other testamentary disposition. 15

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2004, 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,— 20

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

(b) the share of the pre-deceased 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 25

(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 so or a pre-deceased daughter, as the case may be.

*Explanation.*— For the purposes of this sub-section, the interest of a 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. 30

(4) After the commencement of the Hindu Succession (Amendment) Act, 2004, 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 on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: 35

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2004, nothing contained in this sub-section shall affect— 40

(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, 2004 had not been enacted. 45

*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, 2004.

5 (5) Nothing contained in this section shall apply to a partition, which has been effected before the commencement of the Hindu Succession (Amendment) Act, 2004.'

**3.** Section 23 of the principal Act shall be omitted.

Omission of section 23.

**4.** 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.

Amendment of section 30.

## STATEMENT OF OBJECTS AND REASONS

The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, *inter alia*, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.

2. Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of the Mitakshara coparcenary property without including the females in it means that the females cannot inherit in ancestral property as their male counterparts do. The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution. Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.

3. It is proposed to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein. It is also proposed to omit the said section so as to remove the disability on female heirs contained in that section.

4. The above proposals are based on the recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reform under the Hindu Law".

5. The Bill seeks to achieve the above objects.

NEW DELHI;

H. R. BHARDWAJ.

*The 16th December, 2004.*

ANNEXURE

EXTRACTS FROM THE HINDU SUCCESSION ACT, 1956

(30 OF 1956)

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**6.** When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: Devolution of interest in coparcenary property.

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship.

*Explanation 1.*—For the purpose of this section, the interest of a 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.

*Explanation 2.*—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

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**23.** Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein: Special provision respecting dwelling houses.

Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow.

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CHAPTER III

**30.** Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus. Testamentary succession.

39 of 1925.

*Explanation.*—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* in the property of the *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.

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further to amend the Hindu Succession Act, 1956.

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*(Shri H. R. Bhardwaj, Minister of Law and Justice)*