

Dear Students

I have already discussed the rules regarding a male Hindu dying intestate in the first and second part of e-content. Now we are going to discuss the rules regarding female Hindu dying intestate.

As I have already told that one of the unique feature of the Hindu Succession Act, 1956 is that it provides two entirely different list of succession based on sex. No other system i.e., Muslim succession and any other succession lay down only one list so the either male dies or female, property will devolve according to the one list. But Hindu Succession Act provides two different list. If male dies then Section 8 list will be applicable whereas female dies then Section 15 list will be applicable.

The reason may be that women have a dual role regarding to the property which has possession. She is born in her father's family and remains there till she gets married. Whereupon, she joins her husband's family. Her stay in none of these families is permanent. Even in her husband's family, in the event of a marital breakup due to the death of the husband or even divorce, she can marry and move out of this family and join the second husband. In contrast, the husband's family does not change with his marriage or remarriage or death of the wife or divorce.

A closer look at Section 15 and Section 16 also reveals that not only is a separate scheme of succession provided in case of a female intestate, there is further divergence linked with the source of acquisition of the property and on consideration of her marital status, and factors like whether she died leaving behind children or issueless.

With respect to the categorization of heirs, in case of a married woman, her blood relations are relegated to a very inferior placement in comparison to the entire category of the heirs of her husband

Scheme of Succession

The Act provides for three different sets of heirs depending upon the source of acquisition of the property of a female that is available for succession. Her property is divided :

- i. Property that a female Hindu had inherited from her parents;
- ii. Property that a female Hindu had inherited from her husband or her father-in-laws; or
- iii. Any other property or general property.

Dear students, pl. look at the term **“general property” (third para)** which has a very significant meaning and object here. The terms general property refers to the property of a woman other than that which was inherited by her from her parents, husband or her father-in-

laws home. It will cover the property which she earns by her own efforts or self acquired property

General Rules of Succession in the case of Female Hindu

Section 15 of the Hindu Succession Act, 1956 :

The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16 :

- a. Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband
- b. Secondly, upon the heirs of the husband
- c. Thirdly, upon the mother and father
- d. Fourthly, upon the heirs of the father and
- e. Lastly, upon the heirs of the mother

The heirs are grouped into these five categories, the former excluding the later. So long as a single heir in the prior category is present, the property will not go the next category.

Rules for Calculation of Shares

On the death of a female intestate, her property devolves on her primary heirs, in accordance with the following rules:

- i- Each surviving son and daughter and the husband takes one share
- ii- Where a son or daughter had predeceased the intestate, but is survived by a child, his/her branch has to be allotted a share.
- iii- Such surviving grandchild takes the share of the deceased parent and if there are more than one, they will divide the property equally among themselves.

Illustration :

1. A Hindu female W, dies and is survived by her husband H, two sons S1 and S2 and a Daughter D. then the property will be divided into four equal parts, one each going to H, S1, S2 and D.
2. A Hindu female W, dies and is survived by her husband H, son S and unmarried daughter D, two children S1 and S2 of a predeceased daughter D2 and an illegitimate son S3. Then property will be divided into five equal parts, one each going to H,S,D and S3. The branch of the deceased daughter D2 will be given one-fifth (1/5) of the property, out of which S1 and S2 will take one tenth (1/10) each.

Important Case

Om Prakash v. Radha Charan (AIR 2009) a 15 years old Hindu girl was thrown out of the matrimonial home after her husband died of snake bite after three months of the marriage. She took shelter with her parents, was educated by them and then took a job/business. Her in laws never bothers to inquire of her. She died intestate 42 years later, leaving behind huge

sums in various bank accounts besides her provident fund and a substantial property. Her parents and brother-in-law both had claimed the property. Ironically, all the property went to brother-in-laws who had kicked her out at the time of her becoming widow. Because brother-in-law came under the category of heirs of husband which fall into second category while parents fall into third category of the general rule of succession.¹

No doubts aforesaid judgment appears to be one of the great injustice by the Supreme Court. But due to disparate succession law court was no other option left. It is noted here that no other succession law including Muslim law gives statutory preference to the in-laws over a woman's blood relatives. For example, if a Muslim, Christian or a Parsi woman dies leaving behind property, it is her blood relatives, her mother, her father who inherit her property even in the presence of her husband or her husband's relatives. The deceased woman's husband's relatives can never be her heirs.

Now the time has come that Parliament should amend the contentious provisions in aforesaid case.

Section 15 (2) provides :

Notwithstanding anything contained in sub-section (1), any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased not upon the other heirs referred to in sub-section (1) in the order specified therein but **upon the heirs of her father.**

any property inherited by a female Hindu from her husband or from her father-in-law, shall devolve, in the absence of any son or daughter of the deceased not upon the other heirs referred to in sub-section (1) in the order specified therein but **upon the heirs of the husband.**

After the whole discussion now in a nutshell we can say that there are three major rules, if she died leaving behind her father (parents) property then in absence of her children property will go the father side, if she died leaving behind the property which she had acquired from her husband or in-laws home, then property will never go to her parents side and if she died leaving behind her self acquired property or as a gift, will then general rule of succession i.e., 15 (1) will be applicable.

Disqualification under the Hindu Succession Act, 1956

The present Act provides three type of disqualification :

- A. **Remarriage of Widow : (Section 24)** Under Hindu law, heirs need not be related to the intestate by blood but can be relatives introduced in the family by marriage to a male members. Under the Act, five widows described : 1. Widow (deceased husband), 2. His father widows 3. brother's widow (class II heirs), 4. widow of a predeceased son 5. Widow of a predeceased son of a predeceased son.

¹ Family Law II by P.P.Sexena p.363-75

As per the Hindu Succession Act, 1956 above three widows, who have been specified by their relationship, namely, the widow of a predeceased son, the widow of a predeceased son of a predeceased son and brother widow, shall not be entitled to succeed to the property of the intestate as such widows, if on the date of the succession opens, they have remarried.

Note : Above provision of the Act of 1956 has been deleted by Hindu Succession Amendment Act, 2005 it means there is no section 24 of Hindu Succession Act, 1956.

B. Murderer (Section 25) : Section 25 provides that if a person commits the murder of the intestate he cannot succeed to this property. This section incorporates the principle of “Nemo ex suo delicto meliorem suam conditionem facere potest” and is based on public policy, “equity, justice and good conscience”. The commission of murder of the intestate or the abetting of the commission of murder has the same consequences.

C. Difference of religion

Convert’s descendants disqualified :

The Hindu Succession Act, 1956 applies to Hindus. Therefore, not only the intestate, but the heirs must also be a Hindu. So if the heir is of a different religion, he or she is not eligible for inheriting the property of the Hindu relative under the Hindu Succession Act, 1956. This general rule was modified by the enactment of the Caste Disabilities (Removal) Act, 1850 this Act was also known as the Freedom of Religion Act, 1850 and it removed the disabilities that a person suffered from, on his conversion to his another religion. Therefore, a convert irrespective of his/her religion, inherits from the Hindu intestate, not because Hindu law permits it, but because of statutory provisions conferred on him by the Caste Disabilities (Removal) Act, 1850.

A convert’s descendants, born to him after such conversion, if not Hindus, will be disqualified from inheriting the property of the intestate. So for the descendants to be disqualified, two element should co-exists :

- a. They should be born after the conversion and
- b. They should not be Hindus.