



The Hindu Succession (Maharashtra Amendment) Act, 1994

Act 40 of 1994

Keyword(s):

Hindu Succession, Joint Hindu Family, Property

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[THE HINDU SUCCESSION (MAHARASHTRA AMENDMENT) ACT, 1994.]

(This Act received the assent of the President on the 25th November 1994; assent was published in the *Maharashtra Government Gazette*, Part IV, on the 6th December 1994.)

An Act further to amend the Hindu Succession Act, 1956, in its application to the State of Maharashtra.

WHEREAS the Constitution of India has proclaimed equality before law as a Fundamental Right;

AND WHEREAS the exclusion of the daughter from coparcenary ownership merely by reason of her sex is contrary to the Constitutional mandate;

AND WHEREAS such exclusion of the daughter has led to the creation of the socially pernicious dowry system with its attendant social evils;

AND WHEREAS this baneful system of dowry has to be eradicated by positive measures which will simultaneously ameliorate the conditions of women in the Hindu Society;

AND WHEREAS the Government of Maharashtra has recently announced a policy with a view to promote the welfare of the women;

AND WHEREAS the said policy for women, *inter alia*, provides for the conferment of coparcenary right on the daughter of a coparcener in a Joint Hindu Family governed by Mitakshara Law;

AND WHEREAS it is considered necessary further to amend the Hindu Succession Act, 1956, in its application to the State of Maharashtra, for the purposes aforesaid; It is hereby enacted in the Forty-fifth Year of the Republic of India as follows :—

1. (1) This Act may be called the Hindu Succession (Maharashtra Amendment) Act, 1994. Short title and Commencement.

(2) It shall be deemed to have come into force on the 22nd day of June 1994.

2. After section 29 of the Hindu Succession Act, 1956, in its application to the State of Maharashtra (hereinafter referred to as "the principal Act"), the following Chapter shall be inserted, namely :— Insertion of Chapter II-A in Act 30 of 1956.

" CHAPTER II-A

SUCCESSION BY SURVIVORSHIP

29-A. Notwithstanding anything contained in section 6 of this Act,—

(i) in a Joint Hindu Family governed by the Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son; Equal rights to daughter in coparcenary property.

¹ For Statement of Objects and Reasons, see *Maharashtra Government Gazette*, 1994, Part V, Page 548.

(ii) at a partition in a Joint Hindu Family referred to in clause (i), the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had 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 :

Provided further that the share allotable to the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, if such child had 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 of the pre-deceased daughter, as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) 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 will or other testamentary disposition ;

(iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994; Mah. XL of 1994.

(v) nothing in clause (ii) shall apply to a partition which has been effected before the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994. Mah. XL of 1994.

Interest to devolve by survivorship on death. **29-B.** When a female Hindu dies after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994, having, at the time of her death, an interest in a Mitakshara coparcenary property by virtue of the provisions of section 29-A, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act : Mah. XL of 1994.

Provided that, if the deceased had left any child or child of a pre-deceased child, 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 I.—For the purposes of this section, the interest of a female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

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

Preferential right to acquire property in certain cases. **29-C.** (1) Where, after the date of the commencement of the Hindu Succession (Maharashtra Amendment) Act, 1994, an interest in any immovable property, of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under section 29-A or section 29-B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred. Mah. XL of 1994.

(2) The consideration for which any interest in the property of the deceased, may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the Court on an application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of, or incidental to, the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, then the heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section “ Court ” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the *Official Gazette*, specify in this behalf. ”.

3. Notwithstanding anything contained in the principal Act or in any other law for the time being in force, where, on or after the 22nd June 1994 and before the date of the publication of this Act in the *Official Gazette*, any partition in respect of coparcenary property of a joint Hindu family has been effected and such partition is not in accordance with the provisions of the principal Act, as amended by this Act, such partition shall be deemed, to be, and to have always been, null and void. Certain Partitions to be null and void.