HINDU SUCCESSION ACT, 1956 – DEFECTS AND ANOMOLIES IN THE AMENDING ACT 39 OF 2005

By

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1. The Hindu Succession Act, 1956 is the 2nd enactment codifying the Hindu Law, after Independence. Readers are aware that the Bill was attempted to be introduced in 1948 but it could not be passed as Act due to many reasons. Ultimately, after 26-1-1950, the Hindu Code Bill was introduced and the Parliament passed the same as The Hindu Succession Act, in 1956 as Act No.30/1956 and it is brought into force from 17-6-1956. The various provisions of the Act are the subject-matter of many decisions by the Supreme Court as well as the various High Courts.

2. While so, in Andhra Pradesh, the Telugu Desam Party came into power in 1983 and introduced The Hindu Succession Act (A.P. Amendment) Bill No.26 of 1985 in the Legislature and published the same in the State Gazette Part IV–A dated 5-9-1985. Later, the State Legislature passed it and the President of India gave his assent on 16-5-1986. The assent was published in A.P. Gazette on 22-5-1986 and the Act is given retrospective effect from 5-9-1985. The competence of the State Legislature to amend the main Act cannot be doubted because the subject relating to joint family and partition …….. is in the Concurrent List. (*Vide* item No.5 of Concurrent List in the seventh schedule of the Constitution). Therefore there is no doubt that A.P. Amendment is *intra-vires*.

3. The Statements of Objects and Reasons for this A.P. Act are as follows :—

The Hindu Succession (Andhra Pradesh Amendment) Act, 1986

(Published in A.P. Gazette Part IV-B (EO) dated 22-5-1986)

The Hindu Succession Act, 1956 governs the property rights of Hindus and provides for devolution of property. Women are not members of the Coparcenary under the Hindu Mitakshara Law and therefore they are not entitled to claim partition in coparcenary property, and such exclusion of daughters has led to the creation of socially pernicious dowry system with its attendant social ills. In order to eradicate this ill by positive means which will simultaneously ameliorate the conditions of women in Hindu Society; it is proposed to confer equal rights on Hindu women along with the male members so as to achieve the constitutional mandate of equality by suitably amending the said Act.

This Bill seeks to give effect to the above proposal.

(Bill No.26 of 1985 published in A.P. Gazette Part-IV-A (Eo) dated 5-9-1985.)

4. After the passing of the A.P. Act in the State, rights of parties in the property are being worked out on the basis of the said amending section.

5. After the State of A.P. amended the main Act, the States of Tamil Nadu, Karnataka and Maharashtra also brought in similar local amendments to the parent Act. Therefore, both Section 6 of the main Act as well as the amended provisions in the above 4 States are in force.

6. Several years after the above State amendments, the Union Government focused its attention on the main Act and amended Section 6 of the Act by virtue of Central Act

No.39/2005 passed on 5-9-2005 and brought it into effect from 9-9-2005. By this amending Act, Section 6 is substituted by new section, and Sections 23 and 24 of the main Act are omitted and the word 'her' is inserted in Section 30. Some more women heirs are also included in the schedule under the sub – heading class – I.

7. Now the questions that have arisen on account of the amending Central Act are –

a. What is the effect of the present Central amendment on Section 29 – A of the State ?

b. Are the two provisions, *viz.*, Section 29 – A of the State Section 6 brought in by Central Act 39 of 2005 in conflict with each other ?

c. Which provision prevails in the above 4 States whether the local amended Section 29 – A, or, the new Section 6 substituted by Act 39 of 2005 ?

8. Before we can find an answer to the above points, it is necessary to read the Statements of Objects and Reasons for the 2005 Act, which are as follows :—

The Hindu Succession (Amendment) Act, 2005

Received the assent of the President on September 5, 2005 and published in the Gazette of India, Extra, Part II, Section-I, dated 6th September 2005. pp.1-3, No.45.

(Act No.39 of 2005)

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 :—

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 relating 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.

Section 6 of the Act deals with devolution of interest of a male Hindu in Coparcenary property and recognizes 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.

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.

The above proposals are based on the recommendations of the Law Commission of India which is contained in its 174th report on "Property Rights of women proposed reform under the Hindu Law".

The bill seeks to achieve the above objects.

9. From the above S.O. & R of the Central Act 39/2005 the intention in enacting this Act seems to be to bring in an uniform system throughout the country. But it is doubtful whether this purpose is achieved.

The reason for my doubts expressed in the above para are as follows :

(a) The Central amending Act did not repeal the State amendments (Section 29-A *etc.*,)

(b) New Section 6 stands in one manner and the State amendments in Section 29-A *etc.* stand in another manner.

(c) Thus there are two provisions in the Act now. One is the newly substituted Section 6 and the other is the local Section 29-A. One is not able to feel certain as to which of these two sections apply after 9-9-2005.

(d) If we try to depend on the new Section 6, then why the local sections are not repealed ?

(e) Section 29-A of A.P. Amendment starts with a *non-obstante* clause as follows :

"Notwithstanding anything contained in Section 6 of this Act……."

(f) Even after Section 6 is amended, it is coming within the purview of the opening words of Section 29A and therefore in the States where there is Section 29-A, Section 6 of the Act (Whether original or substituted) does not seem to negate this Section 29-A of the Act. As a result of this, one is not sure as to which section is to be made applicable to a given situation.

(g) The new Section 6 does not say that it would apply irrespective of any local amendments.

10. Can we take it that Act 39 of 2005 being a Central Act, the amendment brought in by it would automatically prevail over the local amendment. It does not look like that because of two reasons. Firstly, new section did not remove or repeal the local section; and secondly, the words "not withstanding anything contained in Section 6 of the Act" in the local amendment are remaining as they are. Therefore by virtue of the opening words of Section 29-A, Section 6 of the Act stands excepted even now. The Parliament noticed the local amendments in the 4 States, but this aspect does not seem to have been considered.

11. Let us try to examine the point from this angle. It is seen from the above discussion

that there is a conflict between the provisions of the State Act and the provisions of the Central Act. In such a case what is to be done ? Does it automatically follow that Parliament being superior to State Legislature, the law brought in by the Parliament alone stands ?

12. (a) It is a well known principle that for ascertaining the correct meaning and intendment of the statute, it must be read as a whole. This is done above and both the provisions are referred to.

(b) In the case of inconsistency or conflict between the two parts of the same section, the section should be read as a whole and an attempt should be made to reconcile both the parts (AIR 1960 SC 47 and AIR 1962 SC 1543).

(c) If both sections are clear, then there is head-on-clash. It is the duty of Courts to avoid that and construe such provisions in a harmonious way (AIR 1954 SC 202).

(d) The Supreme Court also observed in AIR 1997 SC 1006, that after reading the whole section attempts should be made for avoiding any inconsistency or repugnancy between two sections of the same Act so that head-on-collision between the two sections is avoided.

(e) If two sections are repugnant or conflicting, it must be done to construe the provisions, *whenever it is possible*, in a harmonious manner in order to fulfil the object of the section (AIR 2003 SC 3942).

13. In the decision reported in AIR 1975 SC 1835, the Honourable Supreme Court took the view that where the amendment in the previous Act, does not get imported into the subsequent Act, it would render the subsequent Act wholly unworkable and ineffectual. The above principle is laid down with reference to an Act (one, the previous one and the other the subsequent same Act. If this principal of the Supreme Court applies to Acts themselves, do not the same principles apply to two different sections of the same Act, particularly when the first introduced section starts with a *non-obstante* clause and it is still there in the statute book in spite of the 2005 amendment ? This peculiar situation staring at us has to be considered from the above angle.

14. The above are some of the guidelines laid down by the Supreme Court. Even taking the above, in the present case the situation in my view does not appear to have been solved. While laying down the guidelines, the Supreme Court used the words "*if it is reasonably possible*" and "*whenever it is possible*". These situations cannot be brought in into the present context because the opining words of local Section 29-A remained as they are even after 9-9-2005. Further, the position decided by the Supreme Court mentioned above is also to be taken into consideration. Therefore it is evident that there is conflict apparent between the new Section 6 (main Act) and Section 29-A of A.P. Act and this anomaly seems to be beyond any solution. This is a difficult situation which either the Parliament or State Legislature should rectify and until then the anomaly would create more difficulties.

15. As per Section 29-A in A.P., in a joint family governed by Mitakshara Law, the daughter is made a coparcener thus equating her position to that of a son, subject to the exception in clause (iv) of that section. Consequent on the treatment of daughter as a coparcener, she is brought within the fold of pious obligation and rights of Survivorship if, there are no children, and a right to a share in the joint family properties is conferred. The power to dispose of such interest by a Will by the daughter is also there.

16. Under the new Section 6,

(a) the daughter is made a coparcener with the incidence of right by birth just like a son;

(b) same rights as those of the son are given to the daughter.

(c) Such rights are subjected to the same liabilities as that of a son.

(d) The scope of survivorship is modified.

17. By sub-section 4 of Section 6 now, after 9-9-2005 the applicability of pious obligation is removed. But in respect of debts contracted prior to 9-9-2005, the rights of creditors or alienees based on the Law prevailing by 9-9-2005 is maintained as it is.

18. Here one aspect is to be noticed. In sub-section (1) of Section 6 the daughter's position as a coparcener is brought in but in sub-section (4) the word "daughter" is not included and the words "son, grandson and great grandson" are used. Does this not show a conflict between the earlier part of Section 6 (sub-section 1) and later part of Section 6 (sub-section 4) ?. Thus there is an apparent conflict between the clauses of the same section. Therefore it is desirable and necessary to amend Section 6 to remove or remedy the above anomalies in the matter. If the two sections, *viz.*, Section 6 (main Act) and Section 29-A (A.P. Act) or sub-sections 1 and 4 of Section 6 of main Act stand as they are, it may be difficult for the learned Judges of Superior Courts to construe them and settle the Law.

19. In this connection, it will be useful to refer to the Division Bench decision of the Honourable A.P. High Court which interpreted and construed Section 29-A and Section 6 (before amendment) – 2002 (6) ALD 415 (DB).

In Para 51 of the judgment, the two sections *i.e.* Section 6 and Section 29-A were considered based on the fact of that case, and the Bench held in Para 52 of the judgment as follows :

> "The legislative background of this enactment is that while male coparceners are entitled for a share in the ancestral property by virtue of birth upto four generations, such a privilege was not extended to the female children professing Hindu Religion. For the first time an inroad was made into the Hindu Law and the female children of a person were given a share in the property of that person if he dies intestate, but not otherwise. As far as the State of A.P. is concerned, for the first time, the Legislature conferred the benefits of coparcenary property rights on the female children also by introducing Section 29-A of the Act, which was inserted by Amendment Act No.13 of 1986 w.e.f. 5-9-1985. As per the amended section, coparcenary rights are conferred only on the female children who are not married prior to 5-9-1985. Hence we are of the firm view that the rights of the daughters who are married prior to 5-9-1985 are identified and protected under Section 6 of the Act, barring coparcenary rights more so in the absence of an indication in the State amendment that the rights accrued to them will be taken away……"

In Para 53 of the judgment, the Bench further observed as follows :—

> "*Non-Obstante* clause used in Section 29A of the Act is intended to carve out on exception in favour of the daughters who remained unmarried till 5-9-1985 by conferring coparcenary rights on them. The intention of the Legislature is not to abrogate the rights that were already conferred under Section 6 of the Act, but intended to confer additional benefits by keeping the benefits under the parent Act in tact. If any other interpretation is given, it runs counter to the aims and objects of the parent Act."

20. The above reasoning was given by the Bench based on the facts of that case and the original Section 6 of the main Act. The effect of death of father prior to 5-9-1985 entitling a daughter for a share arose in this case. Now, a major change is brought about by virtue of the 2005 amendment bringing in new situations. But Section 29(A) with its *Non-Obstante* clause is still there as it is which means that Section 29A continues to except the applicability of Section 6. The reason is, now Section 6 of the Act is on lines with Section 29-A but Section 29-A is applying notwithstanding Section 6. Can it therefore be said that the two sections would apply ? If Section 6 applies to the whole of India, where is the need for retaining Section 29-A in the Act ? Therefore it looks as though that the central amendment under Act 39 of 2005 is incomplete and requires to be remedied so as to harmonise that section with the State amended sections by taking necessary measures. Till then the apparent anomaly persists causing hardship to the sharers.

21. There seems to be another conflict also. While Section 29-B of A.P. Act provides for devolution by Survivorship in some cases, this is changed in Section 6(3) of Central Act.

22. Previously, as per Section 24 of the main Act, re-marriage of widow was a bar to succession to property. Now this Section 24 of the main Act is deleted. The bar was originally under The Hindu Widows Remarriage Act, 1856. The reason for this deletion of the 1856 Act is because that 1856 Act itself was repealed by Central Act No.24 of 1983 w.e.f. 31-8-1983.

23. From the above discussion, I feel that there is lacuna existing between Section 29-A of the State and the new Section 6 of the main Act. It is for the Parliament or the concerned State Legislatures to consider this and bring uniformity in the Act as early as possible to remove the anomalies and give finality of the statute.

CONSUMER PROTECTION ACT, 1986 – SUGGESTIONS FOR AMENDMENTS

By

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The Consumer Protection Act, 1986 should be renamed as "*The Protection of Consumer Rights Act, 1986*" and the preamble must be amended to state that the Act is for the better protection of the rights of consumers and for that purpose it provides for the establishment of Consumer Councils and "*Consumer Rights Fora and Commissions*" for the protection and enforcement of Consumer Rights and for redressing the consumers' grievances and for matters connected therewith or incidental thereto.

The Act is a remarkable piece of social welfare legislation and an innovative blend of the principles of the law of contracts, sale of goods and torts. Though it is in addition to and not in derogation of the provisions of any other law for the time being in force (Section 3), the clause in certain enactments ousting the jurisdiction of a Court or Tribunal or other authority in relation to matters referred to would come in the way of invoking remedy under the Act. The Act should, therefore, be given an overriding effect