

Family Laws in India

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Abstract

The importance of a family is advocated in Dharmasastras. Family law is the law relating to family disputes and obligations. It also defines succession in terms of Will and inheritance.

A joint Hindu family consisting of several generations residing, working, eating and worshipping together was highly valued in the earlier times. An important aspect of such a family is the interdependence between members and the practical and emotional support it provides. However, in the present nuclear setup the non-presence of such an effective mediator is deeply affecting the family atmosphere a lot. Such nuclear setups are highly valued by young couples because of the freedom it offers. It is the result of family members moving about to take advantage of additional schooling, job opportunities or other reasons like the demise of elderly parents, when there is no longer a single authority figure to hold the family factions together. This is also the result of lack of space and high cost of living in the cities. Though these young couples establish their own homes, they still retain ties with their family's home and remain a part of the joint family. However, even in the present times numerous prominent Indian families, such as Tatas, Birlas and Sarabhais retain joint family arrangements as they work together to control some of the country's largest financial empires.

In light of this change from joint families to nuclear setups, this paper discusses various laws affecting families in India, including laws related to succession and resolution of family disputes.

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Devolution of Property

Mitakshara School recognizes two modes of devolution of property, namely, survivorship and succession. The rules of survivorship apply to the joint family property and the rules of succession apply to property held in absolute severalty by the last owner. The right of survivorship determines what happens to a certain type of co-owned property after one of its owner dies. Co-ownership is when two or more persons hold title to the same property. Any transaction relating to the property requires consent of the co-owner as well. Co-owners will have a share in the property that is proportionate to the funds contributed by them in buying it, unless there is a contract to the contrary between the parties. As such, in case of any income from the property any gains received on the transfer of such property, the returns can be divided in the respective proportions of ownership. Co-owning a property can be beneficial for married couples because if one partner dies, the surviving spouse automatically becomes the sole owner of the house. So, the transfer of rights becomes easy.

Joint tenancy i.e. shared ownership of a property between two or more persons is a type of co-ownership. It provides a right of survivorship; meaning that when the owner dies, the owners' get the deceased owners' interest. Such a transfer of interest gives the surviving tenant the right to make use of the property as he/she likes, including sale or mortgaging the same. Brothers who have inherited property from their father have a right of survivorship in the Mitakshara joint family.

Agriculture being the main source of income in earlier times, which required many hands to work together, led to the evolution of the joint family system. It includes persons lineally descended from a common ancestor and includes their wives and unmarried daughters. Also, daughters-in-law and widowed daughters who have returned back to their parental side are part of a joint Hindu family. If a joint family gets divided, each male coparcener takes his share and the females get nothing.² According to the true notion of an undivided family governed by Mitakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share. If a person dies without a Will, succession takes place according to the personal laws of the person's religion and his property will devolve by way of law of intestate succession and not testamentary succession. Intestate succession is the devolution of property according to the respective laws of succession when no Will is made. Testamentary succession is succession by way of Will.

²RomitAgrawal, *Whether Amendments Made to the Hindu Succession Act Are Achieving Gender Quality*, LEGALSERVICEINDIA (May 29, 2018), <http://www.legalserviceindia.com/articles/gehsa.htm>.

The Hindu Succession Act, 1956

The Hindu Succession Act which came into force on June 17, 1956, repealed certain Acts passed during the British era like Hindu Gains of Learning Act and Hindu Women's' Right to Property Act. It was passed by the Parliament of India to amend and codify the laws relating to intestate or unwilled succession among Hindus. It got all the Hindus under one kind of joint coparcenary system i.e. Mitakshara coparcenary. A coparcenary is a narrow body of persons within a joint family and a coparcenary property is an ancestral property under the Hindu Law. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in the 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. The Act applies to Hindus, Jains, Sikhs and Buddhists. Under this Act, the property of a Hindu male dying intestate devolves, in the first instance, equally on his sons, daughters, widow and mother amongst others. This Act also states that there are no succession rights if the widow remarries on the date of succession.

The Hindu Succession (Amendment) Act, 2005, which came into force on 9th September, 2005, amended Section 6 of the Hindu Succession Act, 1956, allowing daughters of the deceased equal rights with sons, i.e. it elevated the daughters as Class I heirs. According to the Supreme Court of India, Hindu female inheritors not only have the same succession rights but also the same liabilities fastened on the property along with the male members. This change has been of great importance for women, both economically and symbolically.³ Symbolically, it signals that daughters and sons are equally important members of the parental family. It undermines the notion that after marriage a daughter belongs only to her husband's family.

Prior to this Act, Shastric and Customary laws that varied from region to region governed Hindus resulting in diversity in the law. There were also different schools like Dayabhaga in Bengal and other adjoining areas, Mayukha in Bombay etc. Dayabhaga law recognizes only devolution by succession. Here no member of a family has a right by birth and every member hold his property as a tenant in common and on his death the property passes on to his heirs. That is to say, as long as the father is alive, the son does not have interest in the family property. The father has overall and uncontrolled power over the family property till death.

The Indian Succession Act, 1925

Where there is a Will, the Indian Succession Act which came into operation on 30th September 1925 will apply. It consolidates the law of intestate and testamentary succession. It

³Vijendar Kumar, *Coparcenary Under Hindu Law, Boundaries Redefined*, 4 NALSAR LR27, 37 (2008-09).

also applies to Hindus, Buddhists, Jains and Sikhs except Mohammedans. However, Mohammedans are not governed by this Act and they can dispose their property according to the Shariat Act. This Act defines Will as “a legal declaration of the intention of the testator, with respect to his property, which he desires to be carried into effect after his death.” Under the Shariat Act, 50% of the property goes to the widow irrespective of the number of other legal heirs and rest is shared in equal parts between children.

Law of succession in case of inter-faith marriages is the Special Marriage Act, 1954. When a Hindu family migrates from one state to another, law draws a rebuttable presumption that it carries with it its personal law i.e. the law and customs prevailing in the state from which it came. The main laws of succession and inheritance by foreigners in India are: The Foreigners’ Act (provision for the government to make orders restricting or prohibiting rights of a foreign citizen) and the Foreign Exchange and Management Act (Acquisition and Transfer of Immovable Property in India).

The Family Courts Act, 1984

The Family Courts Act, 1984 was passed to facilitate satisfactory resolution of matrimonial disputes concerning the family i.e. disputes between husband and wife, through a forum expected to work expeditiously in a just manner. The need to establish the Family Courts was first emphasized by the late Smt. DurgabaiDeshmukh after her visit to China in the year 1953, where she had the opportunity to study the working of family courts. She discussed this matter with the then Prime Minister Pundit Jawaharlal Nehru. In view of increase in the evidence of matrimonial disputes and increasing pendency of the cases in civil and criminal courts, several women associations, welfare organizations and individuals also mounted pressure for setting up of these courts to provide a forum for speedy settlement of family related disputes. The Law Commission vide its reports 54 and 5 (1974) recommended the Government to pass a special enactment for establishment of Court/ Courts to deal with family matters.

Laws Governing Marriages

The two principle family law legislations in India are the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. Britannica- Webster defines marriage as “the institution whereby a man and a woman are joined in a special social and legal relationship for the purpose of making a home and raising a family. Family law in India is rather unique as it needs to be very specific to the various religions that are practiced here. This area of law needs to take into consideration the customs and beliefs of religions such as Hinduism, Islam etc.

Therefore, it was an established rule during the British period, that custom overrode the written law as is evident in the case of Heeramonie and Bikal V. Manjura, where the Privy Council observed that customs followed by a family have long been recognized as Hindu Law.

Issues like residence decisions, wills and estates are the most common ones leading to family breakdowns. The worst affected in proceedings of divorce and family breakdowns are the children. The term custody is not defined in any Indian family law, whether secular or religious. Also there were no specific legal rules dealing with guardianship and custody as they were not thought to be necessary in the earlier times since in those times, in the joint Hindu family, the Karta or manager was responsible for the overall control of all dependents and management of their property by recovering rents and paying expenses by way of taxes.

The Karta and His Role

The Karta is ordinarily the senior most male member provided he is fit and does not suffer from any physical or mental deficiency and no outsider can become the Karta. An adopted son who is the eldest in the family can become the Karta. With the consent of the others a junior member of the family may become the manager of the family property.

The father has a power to divide the family property at any time during his life provided he gives his sons equal shares with himself. Also it is competent for a father to make a gift of immovable property to a daughter if the gift is of a reasonable extent having regard to the property held by the family.

Family Dispute Resolution

Family Dispute Resolution is the process through which people who are in conflict can be helped to communicate with each other about what is important for them and how to make decisions about resolving their dispute. It can be used in various situations ranging from family law to parent- adolescent conflict. Provisions for settlement of disputes outside the court find a prominent place in the Civil Procedure Code, the codified marriage laws and the Family Courts Act. The Supreme Court of India directed Family Courts in view of Section 9 of the Family Courts Act to make all possible efforts to settle matrimonial disputes especially in relation to child custody, through the process of mediation and also to set reasonable time limit for the completion of mediation. Settling disputes within the family fold is advisable so as not to disrupt the family structure. Also it is more amicable and pocket- friendly.

Acquisition of property in India can take place in various ways including by way of gifts which is done through the execution of a gift deed by the owner in the favor of another family

member. A family settlement is applicable in cases where two individuals claim to be owners of a property having equal share therein. Such a family settlement is not only in relation to the title of the property but also in relation to the use and possession thereof. Settling such disputes over property is necessary as in some cases they may become a motive for murder as in the murder case of MM Kalburgi where the police have pushed the narrative of family dispute over property as a motive. However, settlement and mediation in family law matters are highly unutilized.

Conclusion

However, the working environment for the family court staff must be improved. There is an urgent need to provide proper infrastructure facilities. To conclude, as the largest democracy in the world; India has an opportunity to be a role model in various aspects of family law; family being the most important social organ.