

THE HINDU SUCCESSION (KARNATAKA AMENDMENT) ACT, 1990.

ARRANGEMENT OF SECTIONS

Sections :

1. Short title and commencement.
2. Insertion of new sections in Central Act XXX of 1956.

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STATEMENT OF OBJECTS AND REASONS

Act 23 of 1994.- Social justice requires that a woman should have economic independence and social security. The Mitakshara personal law in respect of Mitakshara Coparcenary property, while conferring right by birth to sons in coparcenary property excludes the daughters. The exclusion of daughters from participating in coparcenary ownership merely by reason of their sex is unjust. Improving their economic condition and social status by giving them right by birth equal to that of sons is a long felt social need. It will also go a long way in eradicating the evils of dowry system prevailing in our society. It is proposed to amend the Hindu Succession Act, 1956 in its application to the State of Karnataka suitably to achieve the object.

Hence this Bill.

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KARNATAKA ACT No. 23 OF 1994.

(First published in the Karnataka Gazette Extraordinary on the Thirtieth day of July, 1994)

THE HINDU SUCCESSION (KARNATAKA AMENDMENT) ACT, 1990.

(Received the assent of the President on the Twenty-eighth day of July, 1994)

An Act to amend the Hindu Succession Act, 1956 in its application to the State of Karnataka

WHEREAS the Constitution of India has proclaimed equality before law as a fundamental right;

And whereas the exclusion of the daughter from participation in co-parcenary ownership merely by reason of her sex is contrary thereto;

And whereas the baneful system of dowry has to be eradicated by positive measure which will simultaneously ameliorate the condition of women in the Hindu society;

BE it enacted by the Karnataka State Legislature in the Forty-first year of the Republic of India as follows ;

1. Short title and commencement.- (1) This Act may be called the Hindu Succession (Karnataka Amendment) Act, 1990.

(2) It shall come into force at once.

2. Insertion of new sections in Central Act XXX of 1956.- In the Hindu Succession Act, 1956 (Central Act XXX of 1956) after section 6, the following sections shall be inserted, namely:-

"6A. Equal rights to daughter in co-parcenary property.- Notwithstanding anything contained in section 6 of this Act,-

(a) in a joint Hindu family governed by Mitakshara law, the daughter of a co-parcener shall by birth become a co-parcener in her own right in the same manner as the son and have the same rights in the co-parcenary 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;

(b) at a partition in such Joint Hindu Family the co-parcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:

Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter:

Provided further that the share allottable to the predeceased child of the predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;

(c) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall be held by her with the incidents of co-parcenary 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;

(d) nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.

6B. Interest to devolve by survivorship on death.- When a female Hindu dies after the commencement of the Hindu Succession (Karnataka Amendment) Act, 1990, having at the time of her death an interest in a Mitakshara co-parcenary property, her interest in the property shall devolve by survivorship upon the surviving members of the co-parcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the Mitakshara co-parcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation.- (1) For the purposes of this section the interest of female Hindu Mitakshara co-parcener 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.

(2) 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 co-parcenary, or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

6C. Preferential right to acquire property in certain cases.- (1) Where, after the commencement of Hindu Succession (Karnataka Amendment) Act, 1990 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 sections 6A or 6B 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.

(2) The consideration for which any interest in the property of the deceased may be transferred under sub-section (1) shall, in the absence of any agreement between the parties, be determined by the court, on 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, that 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 immoveable 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".

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