

85. Welfare of minor to be paramount consideration.— In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration and no person shall be entitled to the guardianship by virtue of the provisions of this Part or of section 24, if the Court is of opinion that his or her guardianship will not be for the welfare of the minor.

**Part V,
sec. 12,
page 22.**

(90)

PART V.—JOINT FAMILY AND CO-PARCENARY**CHAPTER I***General***86. Abrogation of right by birth and survivorship generally.—**

Except in the cases and to the extent expressly provided in this Part, no Hindu shall, after the commencement of this Code, acquire any right to, or interest in—

(a) any property of an ancestor during his lifetime merely by reason of the fact that he is born in the family of the ancestor, or

(b) any joint family property which is founded on the rule of survivorship.

(91)

87. Joint tenancy to be replaced generally by tenancy-in-common.—Except in the cases and to the extent expressly provided in this Part,

* * * all persons holding, on the commencement of this Code, any property jointly as members of a joint family shall be deemed to hold the property as tenants-in-common, as if a partition had taken place between them as respects such property on such commencement and as if each one of them is holding his or her own share separately as full owner thereof;

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Code had not been passed.

* * * * *

PART V.—JOINT FAMILY PROPERTY

86. Birth in family not to give rise to rights in property.—On and after the commencement of this Code, no right to claim any interest in any property of an ancestor during his lifetime, which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any Court.

**Part IIIA,
sec. 2,
page 12.**

Explanation.—In this section, “property” includes both movable and immovable property, whether ancestral or not and whether acquired jointly with other members of the family or by way of accretion to any ancestral property or in any other manner whatsoever.

(90)

87. Joint tenancy to be replaced by tenancy-in-common.—On and after the commencement of this Code, no Court shall recognise any right to or interest in any joint family property, based on the rule of survivorship ; and all persons holding any joint family property on the day this Code comes into force shall be deemed to hold it as tenants-in-common as if a partition had taken place between all the members of the joint family as respects such property on the date of the commencement of this Code and as if each one of them is holding his or her own share separately as full owner thereof:

**Part IIIA,
sec. 2,
page 11.**

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold their shares separately, and any such right can be enforced as if this Code had not been passed :

Provided further that in the case of any female who becomes entitled to hold any share separately under the provisions of this section, she shall only take the limited estate known as the Hindu woman's estate under the law in force before the commencement of this Code and on her death such estate shall revert to the persons entitled thereto under the law in force prior to the commencement of this Code.

**Part II,
sec. 3,
proviso p. 3.**

(91)

(92)

88. Rule of pious obligation * * * * abrogated.—(1) After the commencement of this Code, no court shall, save as provided in sub-section (2), recognise any right to proceed against any male lineal descendant for the recovery of any debt due from any of his paternal ancestors or any alienation of property in respect of or in satisfaction of any such debt on the ground of the pious obligation of such descendant to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Code, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against any such descendant,
or

(b) any alienation made in respect of or in satisfaction of any such debt,
and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case if this Code had not been passed.

Explanation.—For the purposes of sub-section (2) the expression “such descendant” shall be deemed to refer to the male lineal descendant who was born or adopted prior to the commencement of this Code.

(93)

89. Liability of members of joint family for debts before Code not affected.—Where a debt has been contracted before the commencement of this Code by the manager or *Karta* of a joint family for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefor in the same manner and to the same extent as would have been the case if this Code had not been passed.

88. Rule of pious obligation of Hindu son abrogated.—(1) After the commencement of this Code, no court shall, save as provided in sub-section (2), recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great grandfather any alienation of property in respect of, or in satisfaction of, any such debt on the ground of the pious obligation of the son, grandson or great-grandson to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Code, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be, or,

(b) any alienation made in respect of, or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case if this Code had not been passed.

Explanation.—For the purposes of sub-section (2) the expression “son, grandson, or great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of this Code.

(92)

89. Liability of members of joint family for debts before Code not affected.—Where a debt has been contracted before the commencement of this Code by the manager or *Karta* of a joint family for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefor in the same manner and to the same extent as would have been the case if this Code had not been passed.

(93)

(94)

CHAPTER II

Mitakshara Co-parcenary

90. Application of Chapter.—This Chapter applies to Hindus who would have been governed by the mitakshara school of Hindu law if this Code had not been passed.

90A. Definition.—In this Chapter,—

“ancestral property” means any property acquired by a male Hindu by way of inheritance from his father, father’s father or father’s father’s father, and includes—

(a) any share in the property of any such paternal ancestor allotted to him on partition, and

(b) any accretions to ancestral property;

but shall not be deemed to include—

(i) any gains of learning as defined in the Hindu Gains of Learning Act, 1930 (XXX of 1930), acquired by him;

(ii) any property acquired by him otherwise than by way of inheritance;

(iii) any property acquired by him by way of inheritance from any person other than any of the three immediate paternal ancestors, and

(iv) any other separate property in his possession,

although all or any of such properties are for the time being shared by him jointly with a co-parcener.

Explanation.—Accretions to ancestral property include income from such property, property purchased or acquired out of such income or with the assistance of such property, the proceeds of sale of such property, and property purchased out of such proceeds;

90B. Co-parcenary.—(1) A person becomes a co-parcener if the following conditions are fulfilled, namely:—

(i) that he—

(a) has either inherited any ancestral property, or

(b) is born in the family of the person who has inherited any such property and is a lineal descendant of such person in the male line ; and

(ii) that in the case of any person referred to in sub-clause (b) of clause

(i) he is not for the time being removed more than four degrees—

(a) from the person who has inherited any such property, or

(b) from any of the descendants of any person who has so inherited and who is the oldest living paternal ancestor of that person in the male line.

(2) For the purpose of computing the number of degrees under sub-section (1), the person concerned and the person with respect to whom the relationship is to be traced shall each be counted as one degree.

(3) When there is a partition among the members of a co-parcenary, the co-parceners who have separated shall cease to be co-parceners with respect to each other; but it shall not be presumed, until the contrary is proved:—

(a) that each of the persons so separating has, by reason only of such separation, ceased to be a co-parcener with respect to his own descendants in the male line; or

(b) that, where only one co-parcener has so separated, the remaining members of the co-parcenary have, by reason only of such separation, ceased to be co-parceners as amongst themselves.

(4) “Co-parcenary” is a body of two or more male persons who are for the time being co-parceners.

(95)

90C. Incidents of co-parcenary property.—The following rules shall apply to any ancestral property acquired, whether before or after the commencement of this Code, by a member of a co-parcenary :—

(a) every co-parcener shall by reason of his birth in the family of the person acquiring ancestral property have an interest in the property equal to that of his father;

(b) all the members of the co-parcenary shall hold the property as joint tenants;

(c) on the death of any co-parcener (other than the sole surviving member) his interest in the property shall devolve by survivorship on the surviving members of the co-parcenary and not by succession on his heirs ;

(d) notwithstanding anything contained in clause (c), where a coparcener dies, his widow and daughter shall amongst themselves have in the property—

(i) in the case of the widow, an interest equal to that of the son,

(ii) in the case of an unmarried daughter, an interest equal to onehalf of that of the son and, in the case of a married daughter, one quarter of that of the son.

(96)

90D. Extent of right of co-parcener to alienate co-parcenary property.—Neither any co-parcener nor any female who acquires an interest in any ancestral property by reason of the provisions contained in clause (d) of section 90C shall, by reason merely of the fact of being a co-parcener or of having acquired such interest, be entitled to transfer or charge in any way the property except his or her undivided or other interest therein, and no court shall, in execution of any decree passed against any such member or female, proceed against any ancestral property otherwise than against the interest in the property belonging to such co-parcener or female, as the case may be.

(97)

90E. Right to claim partition of to-parcenary property.—(1) Any co-parcener and any female who has acquired an interest in ancestral property by reason of the provisions contained in clause (d) of section 90C may, at any time, claim partition and separate enjoyment of his or her share in the property whether or not the other parties concerned are agreeable thereto.

(2) Where any female who has acquired any such interest as is referred to in sub-section (1) dies without claiming partition and obtaining separate enjoyment of her share in the property, her interest in the property shall, on her death, revert to the members of the co-parcenary.

(98)

90F. Right of co-parcener to buy off the share of another co-parcener, etc., in certain cases.—Notwithstanding anything contained in section 90D a co-parcener may require any other co-parcener who has ceased to be a Hindu by conversion to another religion or a female who has acquired an interest in ancestral property by reason of the provisions contained in clause (d) of section 90C to take his or her share in the ancestral property for separate enjoyment and thereupon the provisions of the Partition Act, 1893 (IV of 1893), shall apply as if there was a partition and as if the co-parcener who has ceased to be a Hindu or the female, as the case may be, were the transferee of a share of a dwelling house belonging to the co-parcenary.

(99)

90G. Allotment of shares on partition.—The following rules shall apply to regulate the allotment of shares to the members of a co-parcenary on a partition being made amongst them, namely:—

(a) where the partition is between a father and his sons, each son shall take a share equal to that of his father;

(b) where the partition is between brothers, they, shall take equal shares;

(c) where the partition is between co-parceners belonging to different branches of the family, the property shall be divided amongst the branches equally *per stirpes*;

(d) where the partition is between co-parceners belonging to the same branch, the property shall be divided equally amongst them *per capita*.

(100)

90H. Termination of coparcenary.—So long as there is no other coparcener in the family, every person who acquires any ancestral property shall be entitled to hold the property as an absolute owner, and on his death, the property shall devolve on his heirs by succession and not by survivorship.

DR. AMBEDKAR AND THE HINDU CODE BILL

(101)

CHAPTER III

Marumakkattayam, Aliasantana and Nambudri joint families

90I. Special provisions respecting Marumakkattayam, Aliasantana and Nambudri joint families.—Nothing contained in this Part shall apply to any *tarwad*, *tavazhi*, *kutumba*, *kavaru* or *illom* to which the Marumakkattayam, Aliasantana or Nambudri law would have applied if this Code had not been passed, and, notwithstanding anything contained in this Code, all matters relating to the rights (whether by way of succession or otherwise) of any person in, or the management or partition of, any such *tarwad*, *tavashi*, *kutumba*, *kavaru* or *illom* and of its properties shall continue to be regulated by the law which was applicable thereto immediately before the commencement of this Code, as if that law had not been repealed by this Code.

(102)

CHAPTER IV

Miscellaneous

90J. Savings.—Nothing contained in this Part shall apply to—

(a) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment; or

(b) any estate attached to a *sthanam* (position of dignity) and enjoyed by a single person from time to time in accordance with any law, custom or usage in force in the State of Travancore-Cochin or in the districts of Malabar, South Canara and Nilgiris of the State of Madras ; or

(c) the following estates situated in the State of Travancore-Cochin, namely:—

Idapally, Poonjar and Kilimanoor Estates and the Valiamma Thampuran Kovilagam Estate including the Palace Fund.

90. Saving of impartible estates.—Nothing contained in this Part shall apply to any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment.

(103)

PART VI.—WOMAN'S PROPERTY

91. Nature of woman's property.—(1) Any property acquired by a woman after the commencement of this Code shall be her absolute property.

(2) Nothing in sub-section (1) shall apply to any property acquired by a woman by way of gift or under a will where the terms of the gift or the will, expressly or by necessary implication, prescribe a restricted estate in such property :

Provided that no such implication shall arise by reason only of her sex.

Explanation.—In this section “property” includes both movable and immovable property acquired by a woman, whether such acquisition was made before, at or after marriage or during widowhood and whether by inheritance or devise, or on partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever.

(104)

92. Devolution of woman's property.—(1) Where any woman dies after the commencement of this Code any property acquired by her whether such acquisition was made before or after the commencement of this Code, shall, in so far as it consists of heritable property, devolve on her own heirs in the manner laid down in Part VII.

(2) Nothing in sub-section (1) shall apply to the property of a woman in which she had, at the time of her death, only the limited estate known as the Hindu woman's estate, and such property shall devolve as hereunder—

(i) where such limited estate was obtained by inheritance it shall devolve on the persons who under Part VII would have been the heirs of the last full owner thereof if such owner had died intestate immediately after her;

(ii) where such limited estate was obtained by partition or in any other manner not herein provided for it shall devolve on the persons who would have been entitled to it if this Code had not been passed.

PART VI.—WOMAN'S PROPERTY

91. Nature of woman's property.—(1) Any property acquired by a woman after the commencement of this Code shall be her absolute property. **Part II, Sec. 13, page 9.**

(2) Nothing in sub-section (1) shall apply to any property acquired by a woman by way of gift or under a will where the terms of the gift or the will, expressly or by necessary implication, prescribe a restricted estate in such property:

Provided that no such implication shall arise by reason only of her sex.

Explanation.—In this section “property” includes both movable and immovable property acquired by a woman, whether such acquisition was made before, at or after marriage or during widowhood and whether by inheritance or devise, or on partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever.

(103)

92. Devolution of woman's property.—(1) Where any woman dies after the commencement of this Code any property acquired by her whether such acquisition was made before or after the commencement of this Code, shall, in so far as it consists of heritable property, devolve on her own heirs in the manner laid down in Part VII. **Part II, Sec. 3, page 3.**

(2) Nothing in sub-section (1) shall apply to the property of a woman in which she had, at the time of her death, only the limited estate known as the Hindu women's estate, and such property shall devolve as hereunder—

(i) where such limited estate was obtained by inheritance it shall devolve on the persons who under Part VII would have been the heirs of the last full owner thereof if such owner had died intestate immediately after her,

(ii) where such limited estate was obtained by partition or in any other manner not herein provided for it shall devolve on the persons who would have been entitled to it if this Code had not been passed.

(104)

(105)

93. Dowry to be held in trust for wife.—(1) In the case of any marriage solemnized after the commencement of this Code, any dowry given on the occasion of or as a condition of or as consideration for such marriage shall be deemed to be the property of the woman whose marriage has been so solemnized.

(2) Where any dowry is received by any person other than the woman whose marriage has been so solemnized as aforesaid such person shall hold it in trust for the benefit and separate use of the woman and shall transfer it to her on her completing the age of eighteen years or if she dies before completing that age to her heirs as specified in Part VII.

Explanation.—In this section, “dowry” includes any property transferred or agreed to be transferred by or on behalf of, either party to the marriage or any of his relatives, to any relative of the other party, whether directly or indirectly on the occasion of or as a condition of or as consideration for such marriage, but does not include any small customary presents made to the bridegroom or to any relative of either party to the marriage.

93. Dowry to be held in trust for wife.—(1) In the case of any marriage solemnized after the commencement of this Code, any dowry given on the occasion of or as a condition of or as consideration for such marriage shall be deemed to be the property of the woman whose marriage has been so solemnized. **Part IV, sec. 28, page 20.**

(2) Where any dowry is received by any person other than the woman whose marriage has been so solemnized as aforesaid such person shall hold it in trust for the benefit and separate use of the woman and shall transfer it to her on her completing the age of eighteen years or if she dies before completing that age to her heirs as specified in Part VII.

Explanation.—In this section, “dowry” includes any property transferred or agreed to be transferred by or on behalf of, either party to the marriage or any of his relatives, to any relative of the other party, whether directly or indirectly on the occasion of or as a condition of or as consideration for such marriage, but does not include any small customary presents made to the bridegroom or to any relative of either party to the marriage.

(106)

PART VII.—SUCCESSION**CHAPTER I***Application*

94. Certain estates excluded from operation of Part.—This Part shall not apply to * * *,—

(i) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment, or to any other estate specified in section 90J, or

(ii) any property which devolves by survivorship on the surviving members of a co-parcenary in accordance with the provisions of Part V, or

(iii) any property belonging to a tarwad, tavazhi, kutumba, kavaru or illom to which the provisions of section 901 apply.

(107)

95. Application of Part.—Save as otherwise expressly provided in section 94, this Part regulates the succession to the property of a Hindu dying intestate after the commencement of this Code in the following cases, namely:—

(a) where the property is movable property, unless it is proved that the intestate was not domiciled in the territories to which this Act extends at the time of his or her death ;

(b) where the property is immovable property situate in the said territories, whether the intestate was domiciled in the said territories at the time of his or her death or not.

Explanation—For the purposes of this Part, the domicile of a Hindu shall be determined in accordance with the provisions contained in section 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925).

(108)

96. No distinction between divided and undivided sons, etc., for purposes of succession.—For purposes of intestate succession, no distinction shall be made,—

(1) between a son who was divided and a son who was undivided from the intestate or between a son who was divided and a son who was reunited with him;

(2) between a female heir * * * who is a widow and one who is not a widow or between a female heir who is poor and one who is rich or between a female heir with issue and one without issue or possibility of issue.

PART VII.—SUCCESSION**CHAPTER I***General*

94. Certain estates excluded from operation of Part.— **Part II,**
This Part shall not apply to.— **sec. 1,**
page 2.

- (i) agricultural land in Governors' Provinces; or
- (ii) any estate which descends to a single heir by a customary rule of succession or by the terms of any grant or enactment.

(106)

95. Application of Part.—Save as provided in section 94, **Part II,**
this Part regulates the succession to the property of a Hindu **sec. 3,**
dying intestate after the commencement of this Code in the **page 3.**
following cases, namely :—

- (a) where the property is movable properly, unless it is proved that the intestate was not domiciled in any of the Provinces of India at the time of his or her death ;
- (b) where the property is immovable property situate in any of the Provinces of India, whether the intestate was domiciled in any of the Provinces of India at the time of his or her death or not.

Explanation.—For the purposes of this Part, the domicile of a Hindu shall be determined in accordance with the provisions contained in section 6 to 18, both inclusive, of the Indian Succession Act, 1925 (XXXIX of 1925).

(107)

96. No distinction between divided and undivided sons, etc., for purposes of succession.—For purposes of **Part II, sec. 7, (Rules 2 and 4, page 6.**
intestate succession, no distinction shall be made,—

- (1) between a son who was divided and a son who was undivided from the intestate or between a son who was divided and a son who was reunited with him;
- (2) between a female heir who is married and one who is unmarried or a female heir who is a widow and one who is not a widow or between a female heir who is poor and one who is rich or between a female heir with issue and one without issue or possibility of issue.

(108)

(109)

CHAPTER II

*Intestate succession to the property of males**General Provisions*

97. Definitions.—(1) In this Part, unless the context otherwise requires.—

(a) “agnate”—a person is said to be an agnate (*gotraja*) of another if the two are related by blood or adoption wholly through males;

(b) “cognate”—a person is said to be a cognate (*bandhu*) of another in the two are related by blood or adoption wholly through males;

(c) “heir” means any person, male or female, who is entitled to succeed to the property of an intestate under this Part.

(d) “intestate”—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect;

(2) In this Part, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

(110)

98. General rules of succession in the case of males.—Save as otherwise expressly provided in sections 105A to 105J inclusive, the property of a male Hindu dying intestate shall devolve according to the rules set out in this Part:—

(a) firstly, upon the preferential heirs, being the relatives specified in class I of the Eighth Schedule;

(b) secondly, if there is no preferential heir of class I, then upon the preferential heirs being the relatives specified in class II of the Eighth Schedule;

(c) thirdly, if there is no preferential heir of any of the two classes, then upon his relatives being the agnates specified in section 102 ; and

(d) lastly, if there is no agnate, then upon his relatives being the cognates specified in section 103.

(111)

99. Order of succession amongst preferential heirs.—As amongst the preferential heirs those in class I of the Eighth Schedule shall take together, and those standing in the first entry in class II shall be preferred to those standing in the second entry, and those in the second entry to those in the third entry and so on in succession.

CHAPTER II*Intestate succession**Succession to the property of a Hindu male*

Part II,
sec. 2,
page 2. Part
II,
sec. 5,
page 2.

97. Definitions.—(1) In this Part, unless there is anything repugnant in the subject or context,—

(a) “agnate”—a person is said to be an agnate (*gotraja*) of another, if the two are related by blood or adoption wholly through males;

(b) “cognate”—a person is said to be a cognate (*bandhu*) of another in the two are related by blood or adoption but not wholly through males;

(c) “heir “ means any person, male or female, who is entitled to succeed to the property of an intestate under this Part.

(d) “intestate”—a person is deemed to be an intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect ;

(2) In this Part, unless there is anything repugnant in the subject or context, words importing the masculine gender shall not be taken to include females.

98. Rule of succession in the case of male Hindu.— Subject to the provisions of this Part, the property of a male Hindu dying intestate shall devolve according to the rules set out in this Part:—

Part II,
sec. 4,
page 4

(a) firstly, upon the preferential heirs, being the relatives specified in class I of the Schedule VII;

(b) secondly, if there is no preferential heir of class I, then upon the preferential heirs being the relatives specified in class II of Schedule VII;

(c) thirdly, if there is no preferential heir of any of the two classes, then upon his relatives being the agnates specified in section 102; and

(d) lastly, if there is no agnate, then upon his relatives being the cognates specified in section 103.

(110)

99. Order of succession amongst preferential heirs.— As amongst the preferential heirs those in class I of Schedule VII shall take together, and those standing in the first entry in class II shall be preferred to those standing in the second entry, and those in the second entry to those in the third entry and so on in succession.

Part II,
sec. 6,
page 6.

(111)