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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INDIAN SUCCESSION RULES WHICH PAY PARTICULAR ATTENTION TO WOMEN'S ROLES

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ABSTRACT

The common law of succession and the customary law of succession in South Africa were recently scrutinised in the *Bhe v. Magistrate, Khayelitsha* (Commission for Gender Equality) case. In *Shibi v. Sithole*; *South African Human Rights Commission v. President of the Republic of South Africa* 2005 1 SA 580 (CC), among other cases, the traditional the primogeniture of men was ruled to be illegal. Equality as *Amicus Curiae*. With the requirement to create the succession laws through legislative measures, the court created the Intestate Succession Act 81 of 1987, thus unifying the common and customary law of succession. Given that the intended statute has not yet been passed, it is acceptable to contrast its legal status with that of other jurisdictions.

Legal scholars frequently overlook the significance of other significant legal systems, such as those in Asia, and instead compare some characteristics of the South African legal system to those in Europe and America. Given the striking parallels between South Africa's history and India's, where legal pluralism is a common occurrence, it may be good to examine India's succession laws to see if something akin to them would be advantageous to South Africa. The women's legal status under the numerous succession laws will be the specific subject of this article, in addition to the general succession laws pertaining to Hindus, Muslims, and Jews in India.

INTRODUCTION

The common law of succession and the customary law of succession are the two systems of succession laws that apply in South Africa. Legislative efforts to create succession laws in South Africa were limited to the common law until recently. The Intestate Succession Act, which replaces the common law of intestate succession—which was once a "rather complex legal mosaic"—offers a more straightforward, rational, and fair approach to this particular area of the law. Not much was attempted to ensure that human rights and socioeconomic developments were respected by the customary law of succession. It was mostly uncodified and has eluded significant legislative

modification. Its use was formerly restricted by the disastrous Black Section 23 of the Administration Act specified when a deceased person's estate fell within the traditional succession law and when it did not. The actual succession laws are not codified and vary from one community to the next.

There are two types of customary succession: official and informal rules, which further complicates issues. Typically, this implies that expert testimony on whether a succession rule is present in a particular indigenous group must be provided. Another issue was that the judiciaries were cautious not to violate the rights of aboriginal people groups by tailoring their laws to mostly western norms and values because they were aware of the constitutionally enshrined cultural rights. But 2.5 years ago, the Constitutional Court decided in *Bhe v. The by deeming the Black Administration Act's* provision 23 and the invalidity of the male primogeniture custom, Magistrate Khayelitsha significantly altered the customary succession regulations. The majority of indigenous groups are either unaware of or disagree with the freedom of testation, which allows the customary rule of succession to only be followed if selected in this way.

Due to recent advancements, all South Africans now have access to a universal system of intestate succession, but they can still choose to use testate succession procedures, such as a will. As a result, the conflict rule that specifies when to apply each system has been modified rather than the dual system of succession law being completely eliminated. It is anticipated that South Africa's succession laws will continue to evolve. The Constitutional Court and the Law Reform Commission of South Africa both suggested that legislation in this area be enacted. Given that the planned legislation has not yet been implemented, it is useful to contrast South Africa's legal system with those in other countries.

Legal scholars frequently overlook or undervalue the significance of other significant legal systems, such as those in Asia, and instead compare some elements of the South African legal system to those in Europe and America. As previously mentioned, South Africa's history exhibits significant parallels with Indian history. Moreover, given that legal pluralism is a phenomenon that is particularly common in India, it would be beneficial to compare Indian succession legislation to enable ascertain whether South Africa would benefit from a similar strategy.

It is crucial to remember at this point that in India, a deceased person's personal law must be followed when distributing an estate. Certain religious communities have regulations regarding succession that are also present in South Africa—Hindus, Muslims, and Jews—will be the subject of this discussion, as it is not possible to cover all of the personal laws that are in effect in India. The secular Indian Succession Act of 1925 is one exception to the usual norm that a particular

religious community's succession laws must be followed. The Act's main goal was to bring all of India's succession laws together. If two people get married or register their marriage under the Special Marriage Act, the Act will be applicable. The Act does not apply to succession laws that controlled Muslim and Hindu succession.

THE HINDU SUCCESSION LAW

General Prior to June 17, 1956, Hindu succession was governed by traditional Hindu law. The Hindu intestate succession laws were codified in the Hindu Succession Act, which went into effect on June 17, 1956. It brought significant modifications to the traditional Hindu intestate succession law. The Hindu law of testate succession is governed by the clauses found in Indian Succession Act Part VI. States' ability to enact rules regarding succession is another significant feature of Indian law. Some states have changed their laws on coparcenary property as a result.

Hindu Succession Act

Hindu succession law is largely codified in the Hindu Succession Act. Although it is essentially a systematisation of the Mitakshara law of succession, it provides for some modifications to the traditional Hindu succession law and is consistently relevant to all Indian schools of Hindu law. It is based on a blood kinship and has nothing to do with religion.

The Hindu Succession Act in Practice: What Constitutes a Hindu?

Both a specified location and a defined category of people are covered by the Act. The Act's first section is applicable to all Hindus in India, with the exception of the states of Kashmir and Jammu.

According to the Act, a Hindu comprises the following types of people:

- Hindu by religion, which include adherents of Buddhism, Sikhism, Jainism, and Hinduism as well as converts and reverts to these faiths.
- A person who is Hindu by birth can also be Jain, Sikh, Buddhist, or Hindu by descent.
- An additional Hindu is someone who this law particularly doesn't apply.

Couples who have filed for divorce under the Special Marriage Act or solemnised it are not covered by section 5 of the Act. The Indian Succession Act governs how these spouses' estates would be passed down. In 1976, a provision was passed that created an exception. Regarding A Hindu, Buddhist, Jain, or Sikh who performs a formal marriage upholds their own succession law if both partners are followers of one of these religions, according to section 21A of the Special Marriage Act. This implies that only in cases where a party to the dispute practices a different religion. does the Indian Succession Act apply. Unlike The Indian Succession Act falls under the category of personal

law; it is a territorial act even if it applies to India (with few exclusions).

Alterations To The Traditional Hindu Intestate Succession Law

1. The coparcenary property's devolution

Two forms of devolution are permitted by traditional Hindu law: survivorship of coparcenary land and succession of individual properties. To a portion of the coparcenary property belong only men. When a male coparcener passes away, his portion of the coparcenary property reverts to the coparcenary, and the remaining the shares of coparceners are modified proportionately. The deceased coparcener's wife or any female successors are not entitled to any of the coparcenary property.

Prior to its 2005 revision, Section 6 of the Act brought about the first revolutionary alteration to the Hindu law of succession by providing for a female heir and the son of a daughter of a portion of the coparcenary property belonging to a Hindu deceased. In the event that a coparcener passes away and leaves a female heir, succession—rather than survivorship—will determine the coparcener's portion of the property. The coparcener's portion that survives after his death is determined by deducting his share that was earned just before to his passing. One way to explain the situation is as follows:

- B and C, two sons, and their father, A, make up a coparcenary. B passes away. B has a son, E, and a daughter, D. The survivors of his are C, D, E, and A. The laws of partition state that, if they were calculated right before B passed away, A would get one third, C would get one-third, and B and E would each receive one third. But in accordance with part 6 of the Act, B's share has to pass down based on the succession rules. D and E will share equally in B's one sixth and inherit a twelfth from B because they are both class I heirs.
- A father, A, and his son, B, make up a coparcenary. When A dies, just his son B is left. A coparcenary is a father named A and B and C, his two sons.
- There are no female Class I heirs and no son of the daughter, thus his half will pass to B. C broke away from the other coparcenary and took his share of the land with him. On with the coparcenary, A and B. After his death, A leaves behind his daughter D, two sons, B and C. In accordance with section 6, B and D will receive an equal portion of A's half. C has divided himself, thus he will not inherit. Hindu men can always avoid section 6's consequences by leaving a will, his portion of the coparcenary property to other heirs. Sivaramayya said that discriminatory practices against female heirs originated from the Hindu system of inheritance law continuation of the Mitakshara system of coparcenary.

The previously mentioned Section 6 was superseded in 2005 by a new Section 6, which abolished the discriminating towards gender elements in the 'old' section 6. Regarding the new clauses,

coparcener's daughter of a Hindu couple turns into a self-contained coparcener. She is given the same share as a son and enjoys the same rights and obligations with regard to the coparcenary property. While Indian experts have welcomed these revisions, some believe they are insufficient to completely eliminate gender discriminatory clauses found in the Hindu law of succession.

2. Restricted Woman's Estate

The second biggest change to the traditional Hindu rule of succession was the elimination of the meagre woman's wealth. According to the law, a female who received stridhana or property from another woman would only be granted a limited woman's estate, meaning that while she would be the sole owner of the asset for the duration of her life, her ownership would be restricted in every other way. She was not allowed to give the property away or sell it, or leave a bequest for it in a will, for example. Following her passing, the male heirs of the deceased woman acquired the land from him. The Act's Section 14(1) eliminated the meagre estate of the woman and turned any limited woman's estates that were already in place into full estates. In the event that a woman owns property in whatever capacity, she fully owns such property without restrictions. Moreover, limited women's estates and property acquired before to the Act's enactment are covered by section 14(1), which is retroactive. A woman will only acquire complete ownership of the belongings she possesses of in such a scenario. Diwan asserts that possession is not synonymous with actual physical possession. "A right to the property or control over the property" is what he understands it to mean. In *Jagannathan Pillai v. Kunjithapadam Pillai*, the Supreme Court also adopted this stance, holding that section 14 would apply. When a widow obtains her late husband's stake under the Women's Right to Property Act, Section 14(1) also takes effect. According to this Act, a deceased person's widow shares the same status as her spouse. If she so chooses, she is qualified to receive a share of the joint property. The Supreme Court ruled that, for the purposes of section 14(1) of the Hindu Succession Act, A Hindu family's shared property includes a woman's interest as a coparcener, which is also considered property. The Act's Section 14(2) specifies an exemption.

A woman will not obtain full ownership of the property if she receives it as a donation, made pursuant to a bequest, by order or judgement of a civil court, and the terms of those documents specify a woman with a small estate. The traditional Hindu law of succession will govern the property in such a situation.

3. Stridhana

Classical Hindu law divided stridhana into a number of types. The Act's Section 15 eliminates this

categorization and establishes just one homogeneous stridhana succession plan. Section 15 lists the beneficiaries of a deceased woman, and Section 16 lays out the guidelines for allocating her property to the beneficiaries. Regarding these sections The benefits of a female fall into five groups, which are as follows:

- Sons, daughters, the husband of the deceased, and the offspring of a deceased daughter or son: These beneficiaries inherit all at once and without regard to other recipients.
 - Husband's heirs: If there are no beneficiaries in category (a), then beneficiaries in this category inherit. They receive their inheritance all at once, ahead of other beneficiaries.
 - Mother and father: If a category contains no beneficiaries (a) and (b), then the beneficiaries in this category inherit. They receive their inheritance all at once, ahead of other beneficiaries.
 - Father's heirs: Those who fall under this category only get inheritance in the event that groups (a), (b), and (c) are devoid of beneficiaries. They get concurrently and without regard to other recipients.
 - Mother's heirs: Those who fall under this category only get inheritance if no one falls under categories (a), (b), (c), or (d). They receive their inheritance all at once, ahead of other beneficiaries.
- This succession arrangement is subject to two exceptions. The assets a woman inherited from her mother or father will pass to the father's beneficiaries if she dies without producing children. On the other hand, the property will pass to her husband's heirs if she inherited it from her father-in-law or husband. Clearly, the purpose of these regulations is to keep assets that were formerly her husband's family's out of the wrong hands and vice versa. However, it's unclear why the father's beneficiaries are given preference over the mother in the conventional line of precedence.

4. Women's Inclusion In The Heirship

According to traditional Hindu law, women were often not allowed to inherit a deceased Hindu man's separate property. The Hindu Women's Property Rights Act, that included the son's widows, a son who predeceased, and the widow of the deceased themselves in the list of those entitled to receive inheritance from the dead, provided the first relief for women in India. The Hindu Succession Act eliminated the Act. Women are now listed among the heirs under the Hindu Succession Act's Schedule to Section 8. Beneficiaries are now divided into four groups, replacing the traditional heir classification system: Class I, Agnates, cognates, and class II. As Class I heirs, the deceased's wife, daughters, mother, and sons all receive equal shares of his separate property. Eight additional heirs, who receive their inheritance from the deceased through representation, are classified as Class I heirs. It appears that there is difference between a son's and a daughter's chances of survival, even if males and females inherit equally. Son and daughter of a deceased son of a deceased daughter are not heirs

to the Class I; nonetheless, they are Class I heirs if their father and mother were died. Almenas-Lipowsky claims that the discrimination is being used to safeguard the rights of the widows and daughters of the deceased male line. His readings don't make it apparent why keeping these women out will advance the stated aims. The interests described would also be safeguarded by the same justification for keeping men out of the same ancestry.

A woman's rights surrounding her dwelling house were restricted to her right of residency under Section 23. Despite the fact that equal portions of the deceased's residence were acquired by female beneficiaries, you were not permitted to divide the house. Only male beneficiaries were granted access to this kind of privilege. Section 23 was created to defend the surviving sons' rights who support the joint family and who depend on their entitlement to live in the dwelling house with their families. The families who reside there might experience disruptions if a woman was granted the authority to partition the dwelling place. Such a claim is also applicable to the male beneficiaries of the deceased's rights. Regardless of whether such a division would interfere with the female beneficiaries' portion of the living place, they are entitled to make a claim for partition. The division of properties is a normal outcome of all succession rules, according to Kohli, and as such, it cannot be utilised to discriminate against female beneficiaries. The Hindu Succession (Amendment) Act of 2005 eliminated Section 23, making it feasible for a woman to request the division of the living place.

5. Testimony freedom

A Hindu person, regardless of gender, may use a will to distribute their property in accordance with section 30 of the Act. It is debatable whether Hindus enjoyed this kind of freedom under classical law, but it is now widely accepted that they are permitted to make testamentary dispositions. Sivaramayya takes issue with section 30, which grants a deceased Hindu the right to testify freely. His primary worry is providing for the widow following her husband's passing. The deceased might fully not inherit his wife, and she might be abandoned and departed with no means of assistance following his passing. While his worries are valid, it's important to remember that section 30 is accessible. In South African law, the idea of freedom of testation is not new. A testator is allowed to provide whatever beneficiary they choose for the entirety of their estate. He or she is not required to distribute their estate between the survivor's children and themselves. Nonetheless, there are measures in place to defend the rights of a survivor spouse and the deceased person's children. In accordance with the Maintenance of Surviving Spouses Act, a spouse may also make a claim against the deceased's assets if they are in need of maintenance, and children have a common law right to it.

FINAL THOUGHTS ON THE HINDU SUCCESSION LEGISLATION

The traditional Hindu rule of succession in relation to Hindu estates who passed away prior to June 17, 1956. The traditional guidelines have changed since then and substantially codified. Legislation has been used to implement significant modifications to the traditional regulations. With relation to Indian Succession Act, the Hindu Succession Law, which went into effect on June 17, 1956, is the most significant piece of legislation. The Hindu Succession Act deviates significantly from the traditional Hindu law of succession, but prejudice still exists. The existence of distinct succession plans for males and females could be interpreted as unfair treatment.

The deceased's father is a Class II heir and his mother is a Class I heir under the Act's schedule. As a result, in the event that Class I heirs do not exist, the deceased's father will alone get inheritance. Discrimination could also be perceived in this. In 2005, The Hindu Succession Act's Section 23 was removed, which forbade a female heir from claiming division of the house she received. Aside from these instances of prejudice The Hindu rule of succession stipulates that the current application in India demonstrates a reform that is beneficial to women's status. It demonstrates unequivocally that religiously based personal law regulations are subject to change in order to bring about them to comply with societal and legal modifications. According to Kohli, in India, women are not adequately aware of their legal rights under the Hindu Succession Act. He argues that in order for their rights to be properly exercised, they must be properly popularised.

CONCLUSION

As mentioned, India has a number of personal laws in place. Each of these personal laws has unique succession provisions that vary widely. The review of a few of these regulations makes it quite evident that discrimination against women still exists. Moreover, the variety of succession rules leads to uncertainty and it leaves room for ambiguity and allows people to switch between personal laws in search of one that suits them better. In addition, the absence of a Uniform Civil Code regarding succession rules may be viewed as a threat to the unity and integrity of the country, as well as an interference by religion with family law. The Indian legislature has been criticised for a number of times for failing to change the country's numerous succession laws. Among them are:

- Absence of the legislature's initiative to tamper with the successor legislation.
- In certain succession laws, testation is unrestricted.
- Certain minorities' refusal to have their succession laws created or changed.

Despite all of the suggestions for unification and amendment there is no sign that the government or the legislature is rushing to take any action about India's succession laws. The final significant advancement in Hindu succession law in India was the unification of law, which was progressive

when it was passed in the 1950s. The other applicable Indian succession laws remain unchanged.

From a Western perspective, this kind of situation is highly detrimental to women, and more work needs to be done in India to attain full gender equality. The concurrent personal legal systems seen in India initially appear to be the ideal fit for South Africa's diversified democracy. Despite the fact that Hindus make up the majority religion in India, they chose a secular legal system that recognises a number of different legal systems, including Muslim, Jewish, Christian, and Hindu law.

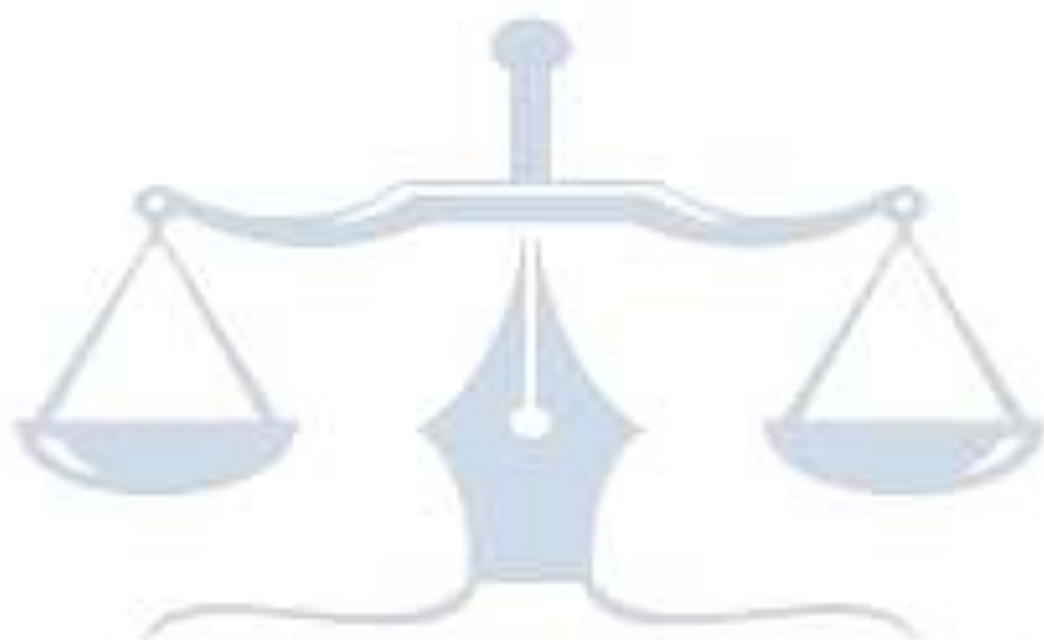
But when one looks more closely at the authorities, a completely different picture shows up. India has a complicated legal system with many recognised legal systems, making conflicts across the systems not an issue. A Uniform Civil Code has been demanded by academic writers, the judiciary, and politicians on multiple occasions due to this issue.

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