

**MULLA
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HINDU LAW**

Eighteenth Edition

Satyajeet A Desai

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MULLA PRINCIPLES OF HINDU LAW

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PREFACE TO THE EIGHTEENTH EDITION



It gives me great pleasure in placing the latest edition of this classic work before the legal fraternity. A build up of new and important case law has necessitated this new edition.

I have added to the commentary, while updating the case law. Some parts of the commentary have had to be changed in view of some important decisions.

I am honoured that the earlier edition was well-received and I owe a deep debt of gratitude to the members of the Bench and the Bar for their support. A word of thanks is also due to my publishers, who on their part have been instrumental in publishing the book with their traditionally well-known professionalism.

The case law has been brought up to date as on March 2001.

AHMEDABAD
31ST MARCH 2001

S A DESAI
ADVOCATE

PREFACE TO THE SEVENTEENTH EDITION



Since the publication of the last edition of this work a number of important decisions have been rendered by the Supreme Court and by High Courts all over the country. Many of these decisions have broken new ground in as much as they show an emerging trend of a radical interpretative process in the interpretation of laws as regards marriages, succession and also laws relating to guardianship and adoptions as are applicable to persons professing and following the Hindu religion. These decisions are indicative of an emerging trend of a liberal approach and a greater degree of latitude which have given an impetus to some of the ameliorative provisions engrafted into the laws by the legislature.

It is also taking note of the fact that on the one hand, when a liberal approach is adopted in the analysis of a particular provision of the laws of this branch of personal law legislation, on the other hand, the trend of the courts has been to see that the intention of the legislature must be construed in its strict sense whereby the original intent is not rendered nugatory or otiose. This is so, since, according to the courts, the legislative intent cannot be negated by stretching the interpretation to such an extent that the intention of the legislature in drafting a provision in a particular manner is too eclipsed and set at naught. It has become necessary to incorporate the decisions rendered by the courts since the last edition was published, since, the above trend is reflected in many such decisions and a critical analysis of such decisions, where necessary, will prove beneficial in construing the legislative intent as interpreted by the courts.

Any enactment dealing with the personal law of a class of society has to be dealt with in a manner, which endeavours to interpret and analyse the precise import of various judicial pronouncements. Any individual who professes a particular religion or faith has certain rights and obligations, and it is incumbent that every individual should be aware of such rights

and obligations imposed by the law of the land. Before the enactment of the four acts laying down the law as to Marriage, Succession, Adoptions & Maintenance and Minority and Guardianship, these complex questions were regulated by Dharma, the Holy Scriptures namely, the Shrutis and Smritis and also by the Vedas amongst others, which were believed to be either of divine origin or were formulated by Acharyas and Rishis well-versed in the art and study of religion and its various intricacies which were recognised as the 'law'. This was because it was strongly believed that morals and ethics when combined with self-imposed conditions and restrictions were expedient to regulate society. These were, in the past, the law of the land and any breach of such norms and ethics was considered to be a breach of the law. This was, then, the foundation of the law relating to Hindus, which, with the passage of time has evolved into the present legislation, as we know it today.

After the enactment of the four acts relating to Marriage, Succession, Minority & Guardianship and Adoptions & Maintenance, these laws govern persons professing and following the Hindu religion. The evolution and development of the laws as they stand today are indicative of the development of this branch of law which is acknowledged as having one of the most ancient pedigrees of any known system of jurisprudence. In the enactment of the four acts, care has also been taken to incorporate various complexities emergent from custom and usage and also state-wise peculiarities due to particular modes of marriage, succession etc wherever the legislatures of the Union and the states have thought it necessary to so.

To edit the work of another author is a delicate and a critical task because of the fact that the treatment of various judicial dicta as well as the commentary have to be dealt with in such a way so as not to bring about any major changes in the manner and methodology adopted in the treatment of various facets of the commentary, and in order to ensure proper continuity of a book which has come to be accepted as a classic treatise on the subject by the Bench and the Bar alike, ever since the first edition of this work was published. I have, to the greatest extent possible, endeavoured to maintain the same method of treatment of the subject as was adopted by my illustrious predecessors. Care has been taken to incorporate a number of decisions which provide a critical and analytical insight into the subject since these judicial pronouncements provide the reader with a critique on the law as interpreted by the courts.

I have striven hard and long to put up before the legal fraternity what I hope will fulfill the requirements of all concerned with the subject, and in doing so, I hope that I have been successful in maintaining the high standards set up by my illustrious predecessors the Rt Hon'ble Sir Dinshah

Mulla and the late Sunderlal Trikamlal Desai J. I dedicate this edition and the preface to the memory of my grandfather the late ST Desai J.

The introduction to the treatise and the subject by the late ST Desai J, being a classic treatise in itself, has been left untouched, for, to do so would impair the authoritative comments therein, since the introduction is an intrinsic part of the book and gives a valuable and rare insight into the sources, evolution and development of this branch of law since its inception.

AHMEDABAD
AUGUST 1998

S A DESAI
ADVOCATE

PREFACE TO THE TWELFTH EDITION



Since the publication of the last edition of this work fundamental changes and substantial modifications have been brought about in Hindu law by a series of enactments, intended to endure a uniform civil code of personal law for Hindus in the whole country. History of legislation by democratic process presents no parallel to basic changes in any system of personal law of the nature of the extensive alterations made by the recent legislation embodied in the Hindu Marriage Act 1955, the Hindu Succession Act 1956, the Hindu Minority and Guardianship Act 1956, and the Hindu Adoptions and Maintenance Act 1956. These Acts abrogate and override all the rules of Hindu law previously applicable to Hindus, whether by virtue of any text or rules of Hindu law or any custom or usage having the force of law in respect of matters dealt with in them. These Acts also supersede any other law contained in any Central or State legislation in force immediately before they came into operation, in so far as such legislation was inconsistent with the provisions contained in them. Bentham wrote of 'law reform' by codification and its stimulating and humanising effect. Bentham's conception of codification was that it should be a complete digest of the law on the subject dealt with and its style should be characterised by force and harmony. It should cause the debates of lawyers and the bad laws of former times to be forgotten and commentaries, if written, should not be read. This is indubitably an ideal to be pursued by any law-maker. It will be for the reader to judge how far Parliament has succeeded in giving complete self-sufficient enactments which, as Bentham phrased it, 'should not require schools for their explanation or casuists to unravel subtleties'. Bentham has probably underrated the difficulties of carrying codification into execution.

The editing of another author's work is always a delicate task and more so when it has long been recognised as a standard work on its subject. This is specially true of a work when a good deal of the law on the subject has undergone unmatched transformation and radical changes and the editor hopes to serve the need of the reader, who turns to it for the new law, and of the reader who only wants the old law with notes and citations to date, as well as of one whose requirement touches

both the new and the old law. I hope that in my efforts to meet these requirements I have not in any manner impaired the high authority of this work.

The outstanding feature of the changes made in the law is that all disparity in the rights of men and women and disabilities based on caste or sex are eliminated in matters of marriage, succession and adoption. Even though some of the changes may seem to break violently with the past it cannot be denied that the fast moving conditions and the social, economic and political upheaval in the country had rendered imperative substantial and radical alterations in Hindu law. Far-reaching and fundamental changes had become inevitable, for they alone could furnish fair and equitable solutions to some of the most controversial questions relating to the law of marriage and succession.

These recent enactments could not be and are not (except on certain matters expressly so stated) retroactive in their operation and even in respect of past matters to which they apply, it will often be necessary to know the law as it previously existed. A part of Hindu law and usage as has hitherto been applicable—for instance, much of the law affecting joint family and joint family property—remains unabrogated by statute. Moreover these recent enactments leave an undetermined residue and the importance and necessity of knowing the entire system cannot be minimised. Reference to the recognised sources of Hindu law including the texts of the Smritikars and the authoritative works of the Commentators and Nibandhakars will, therefore, continue to be made.

These considerations and the unusual nature of the changes brought about in the law by these recent enactments are my apology for adding to this work a general introduction to Hindu law with particular reference to the sources of Hindu law and the great juristheologians and jurisprudents who compiled the Smritis and composed commentaries and Digests of which the leading ones have acquired almost *ex cathedra* character. Otherwise I would deem it presumptuous on the part of an editor like me to write an Introduction to this standard work of Sir Dinshaw Mulla. I dedicate the General Introduction to Hindu law and the Commentaries on the new enactments which I have written to the memory of the Right Honourable author of this work.

One inevitable consequence of the new legislation is a considerable increase in the length of this edition as compared with its predecessor. This is mainly due to the general introduction added to this work and the commentaries on the four recent enactments. The arrangement and text of the previous edition have been preserved though on a number of points the matter has been condensed. Despite changes in the law most of the text of the work of the eminent author and the illustrious editions of the previous editions will continue to be of the same usefulness and guidance until the lapse of a considerable time when the old law and in particular the old law of succession ceases to be of current

importance. I have generally revised the book and it has been my endeavour to bring it up to the date of its going to press by reference to all the relevant cases reported since the last edition. The new statutes and commentaries on the same have been added as a separate part of the book though in the text of the original book, I have taken care to draw attention to the new law wherever it was felt necessary to do so. I have also added some short preliminary notes to the Chapters of the original work.

The volume of case law that has grown up since the publication of the last edition is considerable. The Hindu Women's Rights to Property Act 1937, introduced far-reaching changes in the law of succession. It was ameliorative in character and enacted to carry out important social reform but unfortunately the rules of devolution set out in it were so penned that there have arisen anomalies and a number of conundrums and equally great if not greater difficulties in other cases and raised problems which do not admit of logically consistent answers. Although that enactment is now repealed by the Hindu Succession Act of 1956, a number of questions affecting succession and titles to property governed by that enactment, some of them hard to deal with, have arisen since the last edition and there is a mass of case-law on the subject. These questions even now continue to crop up. This has required a new arrangement and § 35 has been rewritten so as to analyse and interpret the sections of that Act in the light of a number of recent decisions on the subject.

A number of important decisions of the Supreme Court and some Full Bench decisions of High Courts were given after the last edition came out. Although they do not come strictly within the category of judicial pronouncements which have totally altered the law on the topics dealt with in them they did require remodelling and recasting of a number of paragraphs in the text of the work.

It is difficult for me to say anything about the contents of the 'General Introduction to Hindu law and the Commentaries. I have written on the new enactments to draw attention to any features of the same, though tradition permits it and perhaps requires it to be done in a preface. But I may say that I have striven hard and long to write what I hope may be found dependable.

I am thankful to Mahamahopadhyaya Dr Kane for reading and discussing with me the introduction and making valuable suggestions. I am also thankful to Mr Hemendra K Shah, MA, LLB, Advocate (OS) and Mr KS Shavaksha, Barrister-at-Law, for their assistance in the preparation of this edition.

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