



CRITICAL ANALYSIS OF SECTION 15 OF HINDU SUCCESSION ACT, 1956

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In India, individuals who follow different religions have their own personal laws related to marriage, separation, guardianship, inheritance, adoption and are governed by these laws. Related to the succession, the Hindus are governed by the Hindu Succession Act which came in 1956. The position of Hindu woman changes from time to time and improves their position in the society as when we look into the history the Hindu woman's property rights are limited and their position related to the property have always been poor. But after the Hindu woman's Right to Property's act, 1937, the position of a woman increases a little bit but they are not considered as equal to men. But the position escalated in 1937 when the Hindu Succession Act, 1937 came and the rule of survivorship was abolished. Later, the Hindu Succession Act, 1956 came and a lot of changes occurred that we can observe in relation to the property of a Hindu woman. On 9th September 2005, the amendment act 2005 tried to bring women right related to property equal to men. But still we can see that in various sections women are not regarded equal to men. But the enormous flaw in the Hindu Succession Act 1956, is in section 15, where her husband's heir give preference over her own natal family. And for self- acquired property the law is silent. We are here to analyse the constitutional validity

of section 15 of the Hindu Succession Act, 1956, which is a personal law applicable to the Hindus of India. We have attempted to explain the defaults of the section 15 of the act. And the solutions to improve the stance of a Hindu woman in the society and give them equal rights related to Succession similar to men.

Who is known as Hindu?

No certain legal definition of a Hindu is there but section 2(1)(a) of Hindu Succession Act 1956, says that "any person who is a Hindu by religion in any form and any person who is Buddhist, Jain or Sikh by religion and any person who is not a Muslim, Christian, Parsi or Jew by religion is considered as a Hindu."¹ A person who was born in Hinduism and converted to another religion and then reconverts to Hinduism will be treated as Hindu.²

Succession

Succession means an action or process of inheriting a title, property or right. It is of two categories,

1. Intestate Succession: When an individual dies without leaving a will, then court manages the deceased estate through the intestate succession statute. The property belonging to the deceased will be transferred onto his heirs.
2. Testamentary Succession: When a person dies leaving behind a will, this grants the right of inheritance to the person mentioned by the testator.³

¹ The Hindu Marriage Act, 1955 (Act No. XXV of 1955)

² Hinduism, available at www.history.com (last visited on 15th October 2020)

³ Prakriti Agarwal, "Is the Hindu Succession Act, 1956, constitutional?", available at <https://www.youthkiawaaz.com> (last visited on 15th October 2020).



Personal Laws

Personal laws are the laws which are governed by the religious beliefs and are applicable to the citizens following a particular religion. *Nar Singh Pratap Deo v. State of Orissa*⁴, in this case the Supreme Court held that personal laws should come under the definition of law. Personal laws, include, codified and uncodified laws both. These laws will continue to be in effect as long as they are struck as unconstitutional and treated as void under Article 13 of Indian Constitution. If there is any law, which is unconstitutional or contravention of part III of the Indian Constitution then that law will be struck down.⁵ In the case of, *Masilamani Mudaliar v. Idol of Sri Swaminatha Swamy Thirukoil*⁶, the court held that the personal laws which are against the Indian Constitution should be held invalid to the extent of that contravention.

History of Women Property Rights in Hindu Law.

When we turn the pages of our history we can find the position of women in the society as in Manusmiriti it has been stated “*pitho rakshathi kaumare, bhartho rakshathi youvane, puthro rakshati vardhaky, na sthri swathanthriyamarhathi*”, this shloka of manusmiriti explains the importance of protecting women in different stages as she being considered mentally and physically inferior to men but it is being misinterpreted even in current times and doing all sorts of exploitations towards her including in the inheritance and succession of property rights.⁷

In the earlier times, Hindus were governed by their various customs and Shastric laws. Among the Hindus the inheritance practices are governed by the Mitakshara and Dayabhaga, both schools have been found in medieval Hindu law and the approach adopted by both is different.

Under Mitakshara law, the coparceners are only son, grandson and great grandson, daughters are not included. Only sons acquire the right and interest in the property of the family. They did not recognise females as coparceners. Females takes only limited estate whereas male take absolute interest in the estate. She could also not make a gift of the property nor could she sell it unless there was some legal necessity. On her death, the property would pass not to her heirs but to the next heirs of her husband.

Further, according to Manu, ‘a wife, minor son and a slave are declared to have no property and if they happened to acquire it, it would belong to male under whom they are in protection’.

Before the Hindu Succession Act, 1956, the property of the Hindu woman was divided into two:

1. Stridhan
2. Woman’s estate

Stridhan means the property of the woman but the woman being denied the use of her property as an absolute owner. Woman’s estate is further divided into two categories:

⁴ 1964 AIR 1793

⁵ Ibid.

⁶ 1996 AIR 1697

⁷ Tanya Sree, “Property Rights of Women in Vedic vis-a vis Modern Times”, available at <https://www.indusscroolls.com> (last visited on 17th October 2020).



- a) Property obtained by inheritance which means the property which is inherited by a woman from another woman also considered as stridhan.
- b) Shares which are obtained on partition means a woman is entitled to obtain her share in the property but she is considered as a limited owner.⁸

A lot of improvements have made in the laws such as the Hindu woman's right to property Act, 1937, the Hindu Succession Act, 1956 (Amendment Act 2005) which has been known to increase women's position in the society as a result of increasing demand from well-wishers of women in the society.

Hindu Succession Act.

Hindu Succession Act was passed by the Parliament of India in 1956 to codify the laws relating to the unstilted succession among the Hindus, Jains, Sikhs and Buddhists.⁹ This act brings uniformity in the system of inheritance and succession. Before the Hindu woman's right to property act, 1937, there was a rule of survivorship by which the succession to the property of male was governed. This rule means that when one member of joint family dies, his share in the property of the joint family transfers to the next surviving male member who is commonly known as coparceners. Coparceners have unity of possession and they jointly inherit the property. Joint family and coparcenary are definitively different because coparcenary is restricted to three generations but the joint family has no bounds like this. Because joint family includes several generations. The Hindu woman's right to property act, 1937,

abolished the rule of survivorship.¹⁰ The deceased coparcener's widow of the Mitakshara undivided family will now have the same interest like her husband had. The position of a Hindu female was initiated from Hindu woman's right to property act. It was further improved through the Hindu Succession Act, 1956, which bifurcated the property into four categories,

1. Coparcenary property
2. Dwelling house
3. Property of a Hindu male
4. Property of a Hindu female.

In this act, the position of women in terms of property grew, as in this act Hindu Woman's limited estate is abolished and any property which is possessed by a Hindu female is her absolute property and she have the right to deal with it and also dispose it off by her will.¹¹ After the amendment act 2005, when a Hindu dies his interest in the property of the joint family which was governed by the Mitakshara law will be transferred by intestate succession or testamentary succession. And after this amendment, the position of women was elevated, where the daughters can also be the coparceners and they have the same rights in the coparcenary properties like sons. And this advantage is not available to daughters married prior to or to a partition which earlier was effective before the commencement of the Hindu Succession (Karnataka Amendment) Act in 1990. This also avoids unnecessary litigation. Section 23 denies a Hindu female the right to seek partition of an inherited dwelling house but this amendment of 2005 removed this gender discrimination provision in the Hindu

⁸ Dr. Paras Diwan, Modern Hindu Law, pg 398, (Allahabad Law Agency) 24th edn., 2019.

⁹ Ibid.

¹⁰ Woman's right to property, available at <https://www.deccanherald.com> (last visited on 17th October 2020).

¹¹ Ibid.



Succession Act, 1956. The female heir can claim partition against the male heirs and the restriction put on the female heirs right to claim partition in relation to the dwelling house seized to be effective from 2005, in the light of omission of section 23. The effect of omission of section 23 of the Hindu Succession Act, 1956 should apply to all proceedings whether appellate or original, involving adjudication of rights of the parties and pending as on September 9, 2005 or initiated after 9th September 2005.¹² The amendment of 2005 also repeals section 24 of the act, which rejects widow's right to inherit her husband's property upon the remarriage. But when we look into the section 15 of the Hindu Succession Act, we found discrimination between male and female and diabolical point of views. As section 15 says, "General rules of succession in the case of female Hindus. — (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, — (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband; (c) thirdly, upon the mother and father; (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the mother. (2) Notwithstanding anything contained in sub-section (1),— (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."¹³

Section 15 and 16 are unfair, biased and also violates various provisions enshrined in the constitution of India.

Section 15 (1) of Hindu Succession Act as if a Hindu woman without creating a will dies her estate is divided in the following order, Firstly, husband and their children (and children of any of her children who may have died before her). And if there is no husband or children then upon the heirs of her husband and if there are no heirs of the husband then to the husband's parents. Further, if there are no husband's parents then to the heirs of the deceased woman's father and if there are no heirs of the father then upon the heirs of the woman's mother. The properties are classified in two groups,

1. Any property the woman acquires on her own.
2. Any property which she inherits from anyone other than her husband or her parents.

This rule also applies to the property she inherits from brother and sister and also distant relatives. The husband's family has been given preference over her own family. Section 15(2) of Hindu Succession Act says if a widow dies and she is without a child then any property she inherits from her husband will be transferred to the heirs of his parents.

¹² Rathnagar Rao Sindhe v. Leela Ashwat, AIR 1981 MAD 62.

¹³ The Hindu Succession Act, 1956 (Act No. 30 of 1956).



The property she inherits from her husband will be devolved to her husband's heirs.¹⁴ In the case of *Keshri Parmai Lodhi v. Harprasad*¹⁵, the court held that Section 15 clearly says that the intention of the legislature was to allow the succession of the property of a female Hindu to her sons and daughters and in the absence of such heirs, then the property will go to the husband's heirs.

It is found yet again there is a discrimination as after the children and the husband's family have the right to claim over all the property which belongs to the man. The woman's family has not been stated. When we see section 8 of the Hindu Succession Act, it defines that "General rules of succession in the case of males. —The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter— (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased."

After looking at section 8, we can see that the male's property will devolve solely to his heirs and his wife's heirs have not been given preference. But when we look into section 15, it clearly gives preference to the husband's heirs.

And we can see in both section 15 and section 8, the father and the heirs of the father have been given preference over the mother. The discrimination in this section is seen in the case of *Om Prakash v. Radha Charan and ors*¹⁶. This is a landmark case, as it was the first case where an issue pertaining to the above mentioned was discussed before the court.

Facts of the case:

After the death of the husband, the widow was immediately was thrown out of her husband's house, the widow went to live with her family and never came back to her husband's house. she was provided education by her parents, further she got a job. The widow died. After her death her mother claimed the right over the widow's property and her husband's heirs also claimed the same. The property of the widow was a self-acquired property and was undisputed by both the parties. The question is whether the court pertained to the mode of transfer of the self-acquired property of an intestate Hindu female. The claim of the widow's mother is that no member of the widow's husband's family including the heirs of her husband's had made any contribution and the property acquired by the widow must devolve according to the rule laid down in section 15(2) of the Hindu Succession Act, 1956. And the claim made by the widow's husband's heirs is that the Hindu Succession Act, 1956 does not lay down specific rules for the transfer of the self-acquired property of a Hindu female, so therefore the property must be transferred according to the rule laid down in section 15(1).¹⁷

¹⁴ Devendra Damle, "Hindu Succession Act, 1956: The Fight to end Gender Based Discrimination continues", available at <https://www.livelaw.in> (last visited on 25th October 2020).

¹⁵ AIR 1971 M.P. 129.

¹⁶ 2009 SCC 66.

¹⁷ Upasana P., "Devolution of the Self-acquired property of an intestate Hindu female-A grey area



The judgement given by supreme court:

The court after considering the matter stated that the issue is difficult to solve and stated that “only because a case appears to be difficult would not lead us to invoke different interpretations of a statutory provision which is otherwise allowed”. Further, the court said “it is now well settled principle of law that sympathy and sentiment alone would not be a guiding factor in determining the rights of the parties which are otherwise crystal clear.” The court cited various cases like *Subha B. Nair and ors. v. State of Kerala and anr*¹⁸, *H. S. I. D. C. and ors. v. Hari Om Enterprises and anr*¹⁹, *Ganga Devi v. District Judge, Nainital and ors.*²⁰, *Bhagat Ram v. Teja Singh*²¹. And court held that the statute is silent related to the self-acquired property of a Hindu female’s devolution and the general rules of succession laid down in section 15(1) will apply and the court dismissed the appeal of the widow’s mother.²²

Failure of the Justice:

The court’s decision was not appropriate, it is positivistic application of the law which led to the devolution of the self-acquired property to the widow’s husband’s heirs and not her heirs. Instead of the fact that the widow’s husband’s heirs had done nothing to support the widow and even threw her out from the matrimonial home. In this case, the court limited itself to the statutory provisions in spite of having various other constitutional

provisions for e.g., Article 142, which would help it arrive at a legally apt decision by the testification of complete justice. They simply ignored Article 142. The court bound itself to the literal reading of the statute and gives the decision which contravenes the principle of justice, equity and good conscience. Therefore, the decision of the court has found the miscarriage of justice as it failed to adopt a fair, just and logical manner and fails to satisfy the expected threshold of soundness.²³ No one noticed this problem until the 174th report of the Law Commission of India acknowledged that this law is discriminatory in nature and reflects patriarchal assumptions and a woman should be capable of acquiring property of her own, through her own efforts and skills.²⁴ The 207th report of the Commission also noticed that the Hindu Succession Act is damaged for the woman because it does not recognise their self-acquired property and this report also proposed for the amendment in the woman self-acquired property.²⁵ Also, in the 19th report of National Commission for Women on the review of laws and legislative measures affecting women has proposed that in order to make the transfer of self-acquired property to be equal to male and female both.²⁶ Section 8 of the Hindu Succession Act must be amended and made gender neutral and remove the word male and also section 15 of the Hindu Succession Act must be revoked. In 2013, the bill was tabled and sought to

that needs immediate legislative attention”, Vol 2 Issue 8 JCIL.

¹⁸ 2008 (9) scale 16.

¹⁹ 2008 Insc 964.

²⁰ 2008 (2) SCC 300

²¹ 1999 237 ITR 364

²² Om Prakash and ors. V. Radha Charan and ors., on 5th May 2009, available at <https://www.indiankanoon.org> (last visited on 27th October 2020).

²³ Supra Note 17.

²⁴ Dr. Justice AR. Lakshmanan, “Let Us amend the Law, it is only fair to Women”, available at <https://www.thehindu.com> (last visited on 27th October 2020).

²⁵ Law Commission of India, Report No. 20, available at <https://lawcommissionofindia.nic.in> (last on 27th October 2020).

²⁶ Supra Note 17.



include section 3(k) of the Hindu Succession Act which explains self-acquired property as the property which includes both movable and immovable property which is acquired by a Hindu by her own capability. Further, it sought to amend the section 15 of Hindu Succession Act to make a system of devolution of self-acquired property wherein her husband and children died, the first preference would be given to her parental heirs over her husband's heirs but the bill lapsed and there has been no further legislative measure.

Is Section 15 of The Hindu Succession Act Constitutionally Valid?

Section 15 and 16 of the Hindu Succession Act, 1956 are discriminatory and contravenes to the different provisions enshrined in the constitution of India. It is coherent that there is a gender discrimination as Section 15 clearly gives preference to the husband's heirs over the female's heirs. Male relatives get preference over female relatives. Section 15 violates Article 14 of the Indian Constitution as it clearly says "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

And whenever the court found discrimination, they struck down that rule as we can see in the case of *Haji Ali Dargah v. Dr. Noorjahan Safia Niyaz*²⁷, where the woman entry was banned in the dargah, the court found it discriminatory in terms of gender and struck down this rule. Similarly, in the case of *Indian Young Lawyers Association v. State of Kerala*²⁸, which is popularly known as Subrimla case in which

the court held that the custom violated article 14 and struck it down. The Constitution of India is above all and if any custom or personal law violates any provision of the constitution then it will be struck down. Therefore, we noticed gender discrimination in section 15 of the Hindu Succession Act.

Article 15 of the Indian Constitution says "Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Looking above, Article 15 (1) clearly says that there should be no discrimination of any citizens on the basis of religion, race, caste, sex or place of birth and section 15 of Hindu Succession Act clearly a discrimination of sex, therefore section 15 of Hindu Succession Act violates both Article 14 and 15(1) of the Indian Constitution.

²⁷ 2016 SCC 5394

²⁸ 2018 SCC 1960



In the case of *Mamta Dinesh Wakil v. Bansi S. Wadhwa*²⁹ the court determined that in the matters of devolution of property the Hindu Succession Act is biased on the basis of gender and therefore violative of article 15(1) of the Indian Constitution. The Bombay High court referred the question of constitutionality to the larger bench which has so far not been constituted so therefore the question whether the section opposed the constitution or not is not yet settled. When the court held these provisions to be ultra vires of the constitution of India then legislature will amend the law.

*Sonubai Yashwant Jadav v. Bala Govinda Yadav*³⁰, in this case, the court held that the classification of heirs of the husband was under the presumption of unity of the woman with the husband's family. The court found it not satisfied and held that the discrimination was only among the gender and not among the family lines because the concept of keeping the property within the family it came from, exist only in the cases of female succession and not for the male. It was therefore, held that the section is invalid and unconstitutional. The section is still there in statute book but the fact that the High court has found it void and unconstitutional and raises hope in the community and a step towards the amendment of this section.

Suggestion

After looking at the constitution and section 15 of the Hindu Succession Act 1956, it should be amended so that when the Hindu female dies intestate leaving her self-acquired property with no heirs as stated in section 15(1), the property should transfer to her husband's heirs. Subsequently, looking above, we can say that the Hindu Succession

Act has been male centric and patriarchal in nature. The legislature tries to make changes in the law to bring equality but the amendment of 2005 changed only some aspects which are discriminatory in nature but some are still left. There is still an irrational discrimination towards women is giving the preference to the male heirs over her own family's heirs even in the self-acquired property. There is no logical explanation for this hierarchy. Female intestate succession in Hindu law is extremely discriminatory in nature and the present law has led to arbitrary results. Section 15 of the Hindu Succession Act, 1956, is clearly arbitrary in nature and unconstitutional in nature. Hence, this section should be amended and the preference should be given to her own heirs over her husband's heirs so therefore the general rules of succession related to Hindu women must be changed so that it will bring equality and elevate the position of women in the society and turn constitutionally valid.

²⁹ 2000 T.P. 917/2000

³⁰ AIR 1983 Bom. 159