

Critical Analysis of Disparity in Intestate Succession of Women Under Hindu Succession Act, 1956, With Special Reference to Devolution of Property

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“Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind” – Swami Vivekananda

The property rights of Indian women is determined depending on which religion and religious belief she follows, whether she is married or unmarried, which part of India she comes from, if she is a tribal or non-tribal and so on and so forth. Ironically, what unifies Indian women is the fact that across all these divisions, the property rights of Indian women are immune from protection of the Constitution; the various property rights may be, as they indeed are in various ways, discriminatory and arbitrary, notwithstanding the Constitutional guarantee of equality of all. The property rights of the Hindu women are highly fragmented on the basis of several factors apart from those like religion and the geographical region which have been already mentioned. Property rights of Hindu women also vary depending on the status of the woman in the family and her marital status: whether the woman is a daughter, married or unmarried or deserted, wife or widow or mother. It also depends on the kind of property one is looking at whether the property is hereditary/ancestral or self-acquired, land or dwelling house or matrimonial property.

India being secular State, each person has right to follow their own religion in their own way as per the Article 25 of Indian Constitution¹. As the property right has specified in their religion, each people

permitted to follow their personal law and the same has included in Concurrent List². The Indian Succession Act, 1925 and Muslim Law provided right to female also but Hindu Law had not provided property right to female Hindu before 1956. Therefore, on applying principle which enshrined in Article 14³ and Article 15⁴ of Constitution of India, the Hindu Succession Act, 1956, emerged as the first regulation in India, it has provided property right to the female Hindu also. However, son alone becomes eligible to acquire property right by birth in respect of coparcenary property. This disparity also removed by way of Hindu Succession Act (Amendment) Act, 2005 by giving birth right to the daughter and abolition of pious obligation which was available to the son alone⁵.

NATURE OF PROPERTY

The property acquired by male Hindu under Section 6 of the Act alone retained as coparcenary property along with other properties by way of applying the principles of blending⁶. The properties acquired from the ancestral nucleus is also ancestral property. Once the property put into common hotchpots of ancestral property, then it will lose the nature of separate property and it also has to be construed as ancestral property. But the same principle does not apply in respect of considering ‘inherited property’ for deciding applicability of Section 15 (2) of the Act. If the nature

1Article 25 (1) – Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

2Entry 5 in Seventh Schedule of Constitution of India

3The state Shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

4Article 15 (1) – The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

5Section 6 of Hindu Succession Act, 1956, which was amended by Act 39 of 2005

6The doctrine of blending rule postulates a coparcener deliberately and intentionally throwing his independently acquired property into the joint family stock so as to form a part of it.

of property inherited has been changed, then it will lose the character of inherited property and it will not continue as inherited property like ancestral property in respect of male property⁷.

ACT 39 OF 2005

Though, Act 39 of 2005 is a significant advancement towards gender equality and economic security of daughters in Hindu Law, yet other females such as mother and widow have not been given recognition as coparceners. In the absence of such recognition, the property acquired by a female Hindu cannot be construed as coparcenary property in respect of her child because in such circumstances, her status became a mother⁸. Section 15 (2) (a) of the Act also causes disparity relying upon sex by providing right to father and denying right to the mother even in respect of property acquired from mother. Section 15 (1) denied any inheritance right to mother in the presence of heirs of husband. Consequently, by uplifting the share of daughter injustice caused to mother and widow. Justice and equality cannot be secured for one category of women at the expense of another. Therefore, law must be changed to confer equal property right to all Hindu women in ancestral as well as separate property.

PRIOR TO HINDU SUCCESSION ACT, 1956

Before codification of the Hindu Succession Act, 1956, the women have absolute right in respect of *stridhana* property only but in respect of women's estate that is inherited property, she had life-estate only. The *stridhana* acquired during maiden and gift at the time of marriage of married women, will devolve on her blood relatives including mother and father but in respect of other *stridhana* only, in the absence of

children, it will devolve husband, thereafter, heirs of husband⁹. Like *stridhana*, the properties acquired using the source of income of *stridhana* also became same nature of *stridhana* and it will devolve like *stridhana*¹⁰. The inherited property in the name of women's estate will revert back to same male or female heirs after her demise¹¹. As per Section 14 of the Act, any property¹² possessed by a Hindu female, whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as limited owner. This property will devolve under Section 15 of the Act after her demise. As per this provision, the property will devolve on children and husband. In their absence, heirs of husband, then only father and mother.

RIGHTS OVER SULKHA PROPERTY

The entire property, whether acquired during maiden or acquired as *Sulkha*, it will devolve on children and husband¹³ and in their absence, it will devolve on heirs of husband¹⁴ but her father or mother or their heirs does not have any right in her property during the presence of heirs of husband by way of S.15 (1) (b) of the Act. The property purchased using the income of *stridhana* property also devolved in same manner. In the absence of children or grandchildren, the property inherited from father or mother will devolve on heirs of father under Section 15 (2) (a) of the Act. But, if the nature of inherited property is modified or changed or using such source of income another property was acquired, the above provision does not apply but it will devolve on heirs of husband only. Further, the above special rule of succession does not apply to the property received by way of gift, will, release or any other form from father or mother or inherited from any

⁷*Emana Veeraraghavamma v Gudiseva Subbarao*, AIR 1976 AP 337

⁸Sec. 6(1) – the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son.

⁹Mulla Hindu Law by Sir Dinshaw Fardunji Mulla 23rd Edition, Satyajeet A Desai, published by Lexis Nexis, Haryana, India, 2017, Chapter X, s. 147, p.226

¹⁰*Sham Koer v Dab Koer* (1902) 29 Cal 664, 29 IA 132; *Mohim Chunder v Kashi Kant* (1897) 2 CWN 161; *Sheon Singh v Ramchandra Bai* AIR 1957 MB 138.

¹¹*Ram Khelaram v Lakshmi*, AIR 1950 Pat. 194

¹²Property includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of arrears of maintenance, or by gift from any person, whether a relative or not, before or at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act. (S. 14 (1) Explanation)

¹³Section 15 (1) (a) of Hindu Succession Act, 1956

¹⁴Section 15 (1) (b) of Hindu Succession Act, 1956

other person like sister, brother and others also¹⁵, therefore, it causes injustice to the dependence of women that is mother and father, it necessitates amendment of law regarding devolution of property of female Hindu. The Hindu Succession Act, 1956 has codified for the purpose of giving property rights to the female but denying successory right to father or mother whatever available before 1956 itself also, has caused injustice and it negativate the purpose and object of the Act.

SUCCESSION UNDER HINDU LAW

In Hindu Law, a man and a woman have different schemes of succession. While for a man it is his blood relations who take preference and none of his wife's relative can ever inherit the property¹⁶, for a married woman her blood relatives are pushed back in comparison to her husband's relative even with respect to her hard-earned money¹⁷. The devolution of property of men is not influenced by his marital status and the source of acquisition of property. For a woman, the multiple categories suggest her possession and ownership of her own property as its temporary custodian as upon her death property goes back to the family from where she inherited the property.

SECTION 15 OF HINDU SUCCESSION ACT

Section 15 of the Act gives priority to the husband's family over the women's parents and siblings in devolution of self-acquired property of woman and also, in respect of any property, which she inherits from any relatives who are not her parents, the husband's family has a stronger claim than her parents and siblings. For example, if a woman has a brother and a sister, and she inherits land from her deceased brother, upon her own death, her sister will not inherit that property, it will devolve on her husband's family. As per Section 8 of the Hindu Succession Act, any property that he inherits will always go to his family. Similarly, relatives connected to the deceased through male relatives have a stronger claim than those connected through female relatives. So, for example,

15 *Pushpa v N. Venkatesh*, (2018) 3 LW 249; *O.M. Meyyappa Chatter v. Kannappa Chettiar* (1975) 88 L.W. 743; AIR 1976 MAD 154; *Ayi Ammal v Subramania Asari*, (1966) 79 LW 192; AIR 1966 Mad 369; *Pamulapati Venkata*

for a deceased male, his father's siblings (his paternal aunt and uncle) have a stronger claim to his property than his mother's siblings (his maternal aunt and uncle). Women's natal families have suffered a great deal in the past because of the discriminatory nature of the provision. The possible origins of this provision, and other similar sections of the Act lay in the archaic assumption that women cannot acquire and own property through their own efforts, and only stand to inherit it through deceased relatives.

PROPERTY RIGHTS UNDER SECTION 8 OF HINDU SUCCESSION ACT

The devolution scheme for a man is governed by Section 8 of the HSA. It states that Class I heirs – his mother, wife and lineal descendants – have the first claim to his property. Class II heirs – his father, siblings, lineal descendants of his siblings, and the siblings of his parents – have a claim if there are no surviving class I heirs. The schedule to the Act contains a detailed list of heirs in each class and subclass. All property belonging to the man devolves as per this scheme, and it largely keeps all the man's property within his natal family. The devolution scheme for a woman's property is different. Section 15 (2) applies to any property which the woman inherited from her husband, her husband's family and her parents. Under Section 15 (2) (a), if a widow dies childless, any property she inherited from her husband or his family returns to the heirs of the husband. 'Heirs of the husband' refers to the list of heirs given in Section 8. Section 15 (1) gives a general devolution scheme, which applies to all other properties. Under Section 15 (1), a woman's husband and children have the first claim to her property.

PROPERTY RIGHTS ON FEMALE PROPERTY

Under Section 15 (1), if a widow dies childless, the heirs of the husband have a stronger claim than her parents and siblings over all her property that she did not inherit from her parents. This includes all self-

Subbamma vs Gogineni Veeraiah, 2003 (2) ALT 4; *Komalavalli Ammal v. T.A.S. Krishnamachari*, 1990 (2) LW 598; (1990) 106 MLW 598

16 Section 8 of the Hindu Succession Act, 1956

17 Section 15 (1) (b) to (d) of Hindu Succession Act, 1956

acquired property, gifts, bequest through wills, and property inherited from siblings and other relatives.

The source from which a female inherits the property is important and that would decide its mode of devolution¹⁸. There is no reciprocal provision for the devolution of scheme for male deceased's property. Moreover, if a childless widow, has inherited property from her mother or father, in each instance, the devolution could be upon the 'heirs of the father', in different phrases, despite the fact that she inherits from her mother, the 'heirs of mother' cannot succeed.

OBJECT OF SECTION 15(2) HAS

The intent of the legislature to incorporate Sec. 15 (2) (a) of the Act¹⁹ is that the property originally belonged to the parents of the deceased female Hindu should be inherited by only those descendants of the parents' family and such property shall not go either to the husband or his heirs unless deceased has left behind her a son or daughter²⁰. In *Bhagat Ram v. Teja Singh*²¹, the Supreme Court of India held the source from which she inherits the property is always important that would govern the situation, otherwise persons who are not even remotely related to the person and who originally held the property would acquire right to inherit the property. This would defeat the intent and purpose of Sec. 15 (2) which gives special pattern of succession. In *Emana Veeraraghavamma v Gudiseva Subbarao*²², the Court held that the special rule of succession under Section 15 (2) (a) of the Act applies in case, the very same property inherited by a female Hindu from her father or mother was still available at the time of her death and not in other circumstances.

In *Dasari Sainath vs Mareddy Bujanga Bhushanam*²³, the court held that once the inherited properties were divided by partition, then it lost their character as 'inherited property', therefore, Section 15 (1) (a) of the Act came into operation and her husband succeeded to the property and her father heirs had no right in this property. In *O.M. Meyyappa Chattier v. Kannappa Chattier*²⁴, *Pushpa v N. Venkatesh*²⁵, *Ayi Ammal v Subramania Asari*²⁶, *Pamulapati Venkata Subbamma vs Gogineni Veeraiah*²⁷, *Bobbalapati Kameswararao v. Kavuri Vasudevarao*²⁸, *Komalavalli Ammal v. T.A.S. Krishnamachari*²⁹, *V.Nagalingam v. N. Venkatesh*³⁰, the courts held properties acquired by way of gift or will or any other device from her father or mother or siblings or any other person held to be devolved upon her husband heirs under Section 15 (1) and not upon her father or mother or siblings under Sec. 15 (2). In *Balasaheb Anant Rao v Jaimala Sanaji Raje*³¹ the property inherited from brother held does not come under inherited from father or mother, therefore, it devolves on heirs of husband under Section 15 (1) (b) and not on brother. The plain interpretation of section 15 of the Act is not fulfil the real object and purpose of insertion of Section 15 (2) of the Act.

DISCREPANCIES VESTED UNDER HAS

The inconsistencies in the devolution provisions of the Hindu Succession Act were brought to light in *Om Prakash v. Radhacharan*³², in which, after the death of husband of female Hindu, she was forced to leave her matrimonial home and move back to her parents' home, wherein she was supported financially by her parents and she acquired substantial amount of assets

¹⁸*Bhagat Singh v Teja Singh*, AIR 2002 SC 1

¹⁹Reason of Joint Committee of the two Houses of Parliament to incorporate Section 15 (2) in clause 17 of the Bill – While revising the order of succession among the heirs to a Hindu female, the Joint Committee have provided that, properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her husband or father-in-law reverts to the heirs of the husband in the absence of issue. Int the opinion of the Joint Committee such a provision would prevent properties passing into the hands of person to whom justice would demand they should not pass.

²⁰ *Thippeswamy v Sri Rangappa*, 2014 (2) ICC 276: 2014 ILR (Karnataka) 3266

²¹ 2002 (1) SCC 210

²² AIR 1976 AP 337

²³S.A. 544 of 1995, dated 31.12.2012, Andhra Pradesh High Court, <https://indiankanoon.org/doc/175855364/> accessed on 20.11.2021

²⁴(1975) 88 L.W. 743: AIR 1976 MAD 154

²⁵(2018) 3 LW 249

²⁶(1966) 79 LW 192: AIR 1966 Mad 369

²⁷2003 (2) ALT 4

²⁸AIR 1972 Andhra Pradesh 189

²⁹1990 (2) LW 598: (1990) 106 MLW 598

³⁰S.A.151 of 1999, dated 06.02.2018, available at <http://www.indiankanoon.org/docfragment/98232594>, accessed on 12.01.2020

³¹AIR 1978 Bom 44

³²2009 (15) SCC 66

but died childless intestate. The supreme court on the basis of plain reading of Section 15 of the Hindu Succession Act held all of the properties are her self-acquired property and it will go to her husband heirs and not to her mother.

It is now a well-settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous. It opined that the self-acquired property of a female is her absolute property and not the property which she had inherited from her parents, therefore, her property was given to the relatives of her husband rather than to her own blood relations. This strict interpretation views a man's and a woman's estate through different spectacles, giving less autonomy to the woman. To avoid such circumstances, the law has to be amended enabling parents or blood relatives of female intestate succeed her self-acquired properties.

DIFFERENTIATE SEPARATE AND SELF ACQUIRED PROPERTY

Separate property, apart from including self-acquired property, also includes a share by way of partition, gift, by will, or purchase. Yet the HSA 1956 does not differentiate between separate property and self-acquired property. The Act lays down same general rules of succession for both separate and self-acquired property of females dying intestate, wherein it first devolves on her children or children of her predeceased child and husband then to the second class, i.e., to her husband's heirs. The relations of her husband are given preference over her own parents. The legislators did not contemplate that Hindu woman would later have self-acquired property. It is generally the parents who provide facilities for a girl child to become capable of earning her own income, but when it comes to devolution of such property, statutory preference is given to the husband's relatives rather than her own parents.

POST HINDU SUCCESSION (AMENDMENT) ACT, 2005

After the Hindu Succession (Amendment) Act, 2005, a woman would inherit property from her parental side

as well as from her husband's side. In case, she dies intestate leaving self-acquired property, it is justified if equal right is given to her parental heirs with the heirs on her husband's side to inherit her property earned by her own skill. Further, social justice demands that the women should be treated equally both in the economic and social sphere. In *Omprakash v. Radhacharan*³³, court observed that women have been entitled to inherit property from her parental side as well as from husband's side, it will be quite justified if equal right is given to her parental heirs along with her husband's heirs to inherit her self-acquired property.

Law Commission of India in its report has recommended an amendment in Section 15(2) of the Act. If a woman dies issueless leaving behind self-acquired property, it would be justified if equal rights are given to her parental Heirs and heirs on husband's side. At present the position is different. Necessary amendment in this regard must be made.

A Hindu female, who would otherwise hope to succeed to an estate of another Hindu female as an heir would be defeated by the distant relatives of the husband of the deceased. Giving preference to husband's heirs may to an extent be justified in the case of separate property on the ground that after marriage she becomes part of her husband's family, but giving them preferential rights over her parents regarding her self-acquired property is not justified, particularly when she may not have acquired property with the support of her husband or his family member.

RULES RELATING TO SUCCESSION

The general rule of succession goes in favour of blood relations only. No other succession law in India gives statutory preference to the in-laws of a married woman over her own blood relatives. Muslim law and Indian Succession Act lay down uniform rules of succession irrespective of sex of the intestate, giving primacy to the intestate's blood relatives. When a Hindu male dies, his blood relations are given preference and his wife's relatives do not even figure in the order of succession, despite the manner in which he may have acquired the property. But when a Hindu female dies, the property can be claimed by even distant relatives of the husband and not by her own parents. This provision also goes against the reciprocity of

332009 (15) SCC 66

inheritance, as the entire group of husband's heirs, howsoever remote, has been made her heirs, but she is not entitled to inherit from them. But, Section 17 of the Hindu Succession Act has given preference right to mother and father and heirs of father before the heirs of husband in respect of persons who would have been governed by the *marumakkattayam* and *aliyasantha* law but this principle of devolution in favour of blood relatives does not apply to other Hindus, whose section 15 of the Act will apply. With more and more women becoming economically independent, socio-economic changes warrant corresponding changes in the law on this subject as well.

ARTICLE 14 OF CONSTITUTION OF INDIA

Article 14 of the Constitution of India guarantees all person's equal treatment under the law and Article 15 (1) explicitly prohibits the state from discriminating between citizens solely based on religion, race, caste, sex, or place of birth. This means the state cannot make laws that treat citizens differently solely based on the aforementioned distinctions, except in specific circumstances. In *Mamta Dinesh Vakil v Bansi S. Wadhwa*³⁴, a single judge-bench of the Bombay High Court held that Section 15 of the HSA was unreasonable as discriminatory and, therefore, unconstitutional and ultravires as being violative of Article 15 of the Constitution of India. The court, however, referred the questions of constitutionality to a larger bench, which has yet to be constituted. While the question of constitutionality may not be settled, judgments such as *Om Prakash v. Radhacharan*³⁵ highlight the fact that discrimination under HSA is, in the least, extremely unfair to women.

JUDICIAL ACTIVISM

This question has just come back into prominence in an ongoing case of *Kamal Anant Khopkar v Union of India*³⁶, wherein the discriminatory nature of Section 15 of Hindu Succession Act is pending before the three-judge bench of the Supreme Court of India. The bench noted that this discrimination has remained in the statute books for a long time. The court also noted that a judicial and or legislative intervention is

necessary to remedy it. The discriminatory provision in the HSA has profoundly impacted many Hindu women.

LEGISLATIVE APPROACH ON SUCCESSION

As per Section 125 of Criminal Procedure Code, 1973, Section 20 (3) of the Hindu Adoptions and Maintenance Act, 1956 and Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, each children have duty to maintain his/her parents during their old age but there is no succession/inheritance provided to mother in Section 15 (1) of the Act. As per Section 6 (1) (c) of the Hindu Succession Act, 1956, the daughter is having same liabilities as that of son. Old Shastric Law and Mitakshara law states that son has duty to maintain her mother from ancestral property. Now the daughter also became coparcener like son, therefore, she also has duty to maintain her mother and father. In the absence of any right in property, it is impossible to enforce such duty against their property. In old age, the mother being exclusive dependence of children, she has to be provided with equal and adequate right by making appropriate amendment in personal law of Hindu Succession.

SUGGESTIONS

To strengthen the property rights of women, the following is suggested:

Socio-economic changes warrant corresponding legislative changes by laying down uniform rules of succession for both Hindu males and females dying intestate. The rules applying for succession from males could be made to apply to females also. There is no reason to continue the different schemes of succession for males and females dying intestate. As the Personal Laws (Amendment) Act 2010 amends Hindu Adoption and Maintenance Act 1956 by making uniform rules for both male and female Hindus with respect to their capacity for adoption, similarly amendments could be brought to lay down uniform rules of succession for both males and females, thereby complying with the mandate of the Constitution.

34LNIND 2012 Bom 748
352009 (15) SCC 66

36WP(C). 1517/2018

Laying down uniform rules of succession for both males and females would remove the discrimination faced by women in regard to the devolution of their property and also the source of its acquisition. There should be single scheme of intestate succession for males and females under the Hindu Law. Section 8 and 15 (and related provisions, and schedules) of the HSA can be amended to treat men and women equally in matters of devolution. Section 15 of the Hindu Succession Act should be suitably amended so that the blood relatives of a female dying intestate can inherit her separate property along with her in-laws and 'mother and father' should be placed before the 'heirs of the husband'. As per Section 14 (1) of the Act, the properties received from all sources are blossomed as absolute property. In these circumstances, the introduction of discrimination based on acquisition of property will affect the object of this Act regarding furnishing uniform rule of succession to the properties of females. Section 8 read with Class I heirs recognised wife and his mother are successors in respect of properties inherited by a male Hindu from any sources including from his parents as well as wife also. Therefore, the same rule is followed in respect of female Hindu, then it will not cause discrimination based on source of property or status of female that is childless or not. If the parents of female Hindus also included in the first category of devolution like class I heirs and restrict the second category in respect of parents-in-law alone, then the discrimination in the

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