THE CONSTITUTIONAL VALIDITY OF SECTION 15 OF THE HINDU SUCCESSION ACT, 1956

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The status of women in India with respect to succession has undergone a variety of changes from classical times to the present. As the time passed they were brought closer to the equality mark in usually the patriarchal set up whose deep rooted impact could be seen in the way succession laws in India has evolved. Over the years the laws have been amended quite a few times to make it as equal keeping in mind the **Article 14**, of the constitution and remove the gender bias as much possible. However, there is one area still left untouched in this regard. This paper is an attempt to bring to the fore the way the intestate succession of women in India is still an area where a substantial amount of thought is needed to be put in, in order to make it just, fair and equitable for women in India.

Succession Laws in India for Hindu Women

The consideration that women were always a lower gender with respect to the male, is actually not absolutely correct. The ancient texts of Hindus like *Manusmriti* and Vedas have references where women were given rights in property. In fact, *Rigveda* stated that a daughter has an equivalent right as a son to inherit property. However, that was restricted to an unmarried daughter or a married daughter without a brother.[2] In the post Vedic era, women began to be considered lower to men, and it was believed that women do not have the prowess to inherit the property. They only had a right of maintenance out of that property, but they do not own it, nor could they hypothecate, or discharge the property without the sanction of the corresponding male member. However, there was an exception to this with respect to women having the absolute ownership of '***stridhan'***. It was a property on which the husband had no rights whatsoever and the wife could do whatever she wished to with that property without any sanction from anybody. *"The properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore,*

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[2] Rigveda II, 17, 7

stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof."[3]

Stridhan are of two types one which is acquired by virtue of the skill of the woman on her own known as Vashista, while the others given to her as a gift by the family at the time of marriage or otherwise called Devala. The classical Hindu law gave a minute legitimacy to something called self-acquired property in the form of stridhan for a woman. The idea during this time was that the woman is supposed to be maintained by her father before marriage and after she gets married this responsibility shifts on to the husband. Consequently, when the husband died in those times the responsibility of maintaining his widow shifted on to the male member of the husband's family on whom his share devolved due to doctrine of survivorship. However, following this there were two laws **Hindu Law of Inheritance (Amendment) Act 1929** and **Hindu Women's Right to Property Act 1937**, which on the husband's death gave a limited ownership of his share in the estate to his widow for her to be able to maintain herself. This ownership however, ended on her death.

After the independence of the country it was decided to codify the Hindu laws and therefore the **Hindu Succession Act 1956** saw the light of the day. **Section 15** [4] of the Hindu Succession Act speaks about the manner of succession for a female Hindu dying intestate. Here, property refers to all those properties of which she is an absolute owner. It could be a property inherited by her in any manner as well as her self-acquired property. There is a subsequent clause 15(2) in this section. When the Hindu succession bill 1954 was originally debated, this section was not present in the draft. However, on the recommendation of the joint committee of the parliament this section was added. The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father, which is clarified under Section 15 (2) (a). *So also under clause (b) of sub-section (2) of Section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband*.[5] The reason behind this addition was a simple one which was to send the property back to its ***source***.

[3] Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397 [415]
[4] The Hindu Succession Act 1956 s 15
[5] The Law Commission of India, *Proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a female dies intestate leaving her self acquired property with no heirs* (Report No. 207, 2008) para 3.4

The Law Commission of India after almost five decades of passing of the Hindu Succession Act, in the year 2000 came up with its 174th report titled ***Property Rights of Women: Proposed Reforms under the Hindu Law***. While mentioning **Section 15,** in passing it categorically mentioned the reflections of "***patrilineal assumptions*** *of a male ideology in the laws governing the Hindu female that dies intestate*"[6] According to **Section 15** the order of succession in the absence of children first devolves upon to the husband, second to the husband's heirs, third to the father's heirs and lastly to the mother's heir. It clearly underlines an assumption that even if the woman inherited the property from the natal side, it was always from the side of her father or his heirs, and not from mother's lineage. As a result, the preference is given to the male lineage on both the sides. Therefore the Law Commission recommended to make reforms in succession laws in India to make it more gender neutral. This need was felt keeping in mind the evolution of the Indian society over the years in general and of women in particular. When the act was enacted it was difficult for the legislature to comprehend for women to work and be independent financially to acquire properties on their own.

The Hindu Succession (Amendment) Act 2005[7] brought about some much awaited and needed changes in the succession laws to make it gender equal. It made women as equal coparceners as their brothers. "*The new* ***Section 6*** *provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from 9-9-2005. The legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from 9-9-2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.*"[8] *The Amendment Act, 2005 also did away with exclusion of married daughter from getting the benefit of the amendment*.[9]

[6] The Law Commission of India, *Property Rights of Women: Proposed Reforms under the Hindu Law* (Report No. 174, 2000) para 2.5
[7] The Hindu Succession (Amendment) Act 2005
[8] Ganduri Koteshwaramma v. Chakiri Yanadi (2011) 9 SCC 788 [880]
[9] Badrinarayan Shankar Bhandari v. Ompraskash Shankar Bhandari AIR 2014 Bom 151 [25]

In more than one ways the amendment act 2005 changed the appearance of Hindu succession laws in India and made it more equalising for females. In the previous paragraphs we have seen how this disparity had been existing since classical times and gradually we have been able to achieve some parity. But the question to be looked into is, on the plain reading of the act does it pass the standards of being equal in all respect as conceived by the drafters of the Constitution of India under **Article 14** of the constitution. The answer is unfortunately in negative. "*Section 15 of the Hindu Succession Act lays down the general order of succession to the property of a female intestate who dies after the commencement of the Hindu Succession Act and states the scheme of succession to her property which* ***is different from that of order of succession to the property of a male intestate.***"[10]

This brings us to point out to a feature of the Hindu Succession Act, which is unique in its existence. It differentiates the succession laws on the basis of gender. It is interesting to note that all but one succession laws existing in the country have a uniform scheme and set of heirs for the intestate. "*The reason for not providing a uniform scheme under Hindu law, is linked closely to the emphasis on the conservation and protection of the property in the family of a male Hindu*."[11] As we have established from the discussion that succession laws in particular have been seen through a patriarchal lens, therefore by virtue of that, women in our society are not considered to have a permanent home. Until they marry, they live in their natal home, after that they live in the husband's house. For men on the other hand, the status of family or permanent residence does not change due to marriage, divorce, death of a wife or remarriage. In the case of marital breakup it is the woman who leaves the first husband's house to live in the second husband's house. The concept of stridhan still exist in minute occurrences in Section 15 and 16 of HAS and since stridhan is inheritable therefore women will take it with them wherever they go. This seems to be a hindrance in keeping the property in the family and therefore this distinction occurs. "*It was accepted that the basic aim of Section 15(2) is to ensure that inherited property of an issueless female Hindu dying intestate goes back to the source. It was enacted to prevent inherited property falling into the hands of strangers.*"[12]

[10] Durga Prasad v. Narayan Ramchandaani AIR 2017 SC 915 [11] emphasis added
[11] Poonam Pradhan Saxena, *Kusum and Poonam Pradhan Saxena – Family Law* (Volume II, LexisNexis India) 89 <https://advance.lexis.com/document/searchwithindocument/?pdmfid=1523890&crid=bed59ff2-f124-4d5b-a12b-3505f74d5491&pdsearchwithinterm=Section+15&pdworkfolderlocatorid=NOT_SAVED_IN_WORKFOLDER&ecomp=2s27k&prid=080c4b51-7a82-4f97-a53b-78389f0589b3> accessed on 17 May 2020
[12] S.R. Srinivasa v. S. Padmavathamma (2010) 5 SCC 274 [34]

Succession Laws for Muslim Women

The Muslim community is generally divided into two sects' Sunnis and Shias. The Indian Muslims are generally governed under Shariat law. The succession laws of Muslims are not codified. However, when we compare them to the Hindu laws they are different especially on two grounds:

1. The Hindu laws on succession, post the 2005 amendment made daughters as equal coparceners that is they are supposed to get share equal to their brothers. *Muslim also does not create any distinction between the rights of men and women. On the death of their ancestor, nothing can prevent both girl and boy child to become the legal heirs of inheritable property. However, it is generally found that the quantum of the share of a female heir is half of that of the male heirs.*[13] The reason behind this is that the Muslim women at the time of marriage are given 'mehr' by the husband whereas the men only receive the property inherited by the ancestors.

2. It is only under the Hindu succession act that the scheme of inheritance is different for males and females. In contrast, "*if a Muslim woman dies leaving behind property, it is her blood relatives, her mother, her father who inherit her property even in presence of her husband, or her husband's relatives*."[14]

Succession Laws as per Indian Succession Act, 1925

The Indian Succession Act, 1925 applies to all those who are not covered under Hindu Succession Act and Shariat Law as regards to intestate succession. Broadly is Indian Christians, Parsis and Jews on which this act applies with respect to intestate succession. This act is a gender neutral act where the gender of the deceased dying intestate is of no relevance. Any person on whom this act applies irrespective of the gender dying intestate leaving no lineal descendants i.e. children or widow/widower, then according to the **Section 41** of the

[13] < https://districts.ecourts.gov.in/sites/default/files/jcj%20palakondawrkshp1.pdf > accessed on
[14] Poonam Pradhan Saxena 'Notes and Comments: Reinforcing Patriarchal Dictates Through Judicial Mechanism: Need to Reform Law of Succession to Hindu Female Intestates' (2009) Journal of the Indian Law Institute [JILI] 225

Indian Succession Act, 1925,[15] will devolve upon the blood relative of the deceased which is done in by the virtue of **Section 42**[16] to **Section 48**[17] of the **Indian Succession Act, 1925**.

With this discussion, it is safe to conclude that apart from the Hindu succession Laws in India all the other laws whether it is for Muslim women as in Shariat or for others in Indian Succession Act, it is the blood relative of the deceased which are preferred over the heirs of the husband. The same applies to the Hindu men as well. When a Hindu man dies intestate his wife's relatives can never inherit his property. His property will only go to his heirs which are his blood relatives.

"*None of the inheritance laws anywhere in the world confer inheritance rights in favour of the relatives of the spouse of any intestate. This is an unique feature of hindu law, giving preference to in-laws over blood relations of the deceased woman therefore is devoid of any rationality and logic and rather than questioning it, a confirmation of the same by the judiciary is extremely unfortunate*."[18]

The Law Commission of India in 2008 in its 207th report took the same subject of a proposal of amending **Section 15 of the Hindu Succession Act, 1956** suo moto for consideration and went on to discuss the inequality and bias against women in the said section at length. However, this suggestion given in this report are yet to be materialised. It is important to note that one of the reason mentioned by the commission in order to discuss this subject was that when a woman post 2005 amendment have a right to inherit from the parental as well as husband's property, it would be only fair and justified that the same right should be given to her as well as her husband's heir when she dies intestate.

The commission in its report provided for *three alternatives* to solve this issue which it called as grey area. Here is the reproduction of the extract from the report

> *"1. Self-acquired property of a female Hindu dying intestate should devolve first upon her heirs from the natal family.*

[15] The Indian Succession Act 1925 s 41
[16] The Indian Succession Act 1925 s 42
[17] The Indian Succession Act 1925 s 28
[18] Poonam Pradhan Saxena 'Notes and Comments: Reinforcing Patriarchal Dictates Through Judicial Mechanism: Need to Reform Law of Succession to Hindu Female Intestates' (2009) Journal of the Indian Law Institute [JILI] 225

2. Self-acquired property of a female Hindu dying intestate should devolve equally upon the heirs of her husband and the heirs from her natal family.

3. Self-acquired property of a female Hindu dying intestate should devolve first upon the heirs of her husband."[19]

The option found most suitable by the commission was the second option which talks about devolving the property equally upon the heirs of her husband and natal family. However, if we look it through the lens of the discussion held in previous sections of the paper, we realise that it will still be unfair on two grounds *firstly*, in all other succession laws in India blood relatives trump over heirs of the husband and *secondly*, when we compare this with Hindu men, then there also his property is never considered to be divided equally between his heirs and his wife's heirs. By this logic, it seems unfair and irrational to consider this option. Similarly, taking up the third option would do nothing but just maintain the status-quo, thereby negating the whole point of discussion done by the Law commission itself in this report. Therefore, what seems most logical and rational is to take the first option and make the succession laws for Hindus gender neutral which is the need of the hour.

In a case *Omprakash v Radhacharan*, a fifteen year old girl got married, after 3 months her husband died and she was thrown out of her marital home. She then went to her parental house where she was provided with education which led her to gain a job. She worked and at the age of 42 she dies leaving behind various funds and properties. The matter went through lower court, High court and then to supreme court where the in laws claimed over her property by virtue of **Section 15 of the HSA**. The contentions of her mother and later her brothers were negated by the Supreme Court stating that "*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.*[20]" Here in this case the in laws who abandoned a 15 year old girl turned back on her death just to satisfy their greed of having financial benefit out of her estate. Poonam Pradhan Saxena in her book *Family Law* rightly stated that "*The legislature or the judiciary cannot choose or impose relatives on a married woman alone. It is determined by blood or through the ties of marriage but only as between the spouses and cannot extend to the relatives of the spouse. The proclamations of*

[19] The Law Commission of India, *Proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a female dies intestate leaving her self acquired property with no heirs* (Report No. 207, 2008)
[20] Omprakash v Radhacharan (2009) 15 SCC 66 [11]

unity of spouses, and the merger of the wife into that of the husband or her becoming a member of his family are outdated concepts that can be referred to as the cherished ideals of the bygone era and even in the name of preserving Hindu society cannot and should not be enforced by the Indian judiciary in the 21st century."[21]

Again this matter was highlighted in 2013 when in *Mamta Dinesh Vakil v. Bansi S. Wadhwa*, the constitutional validity of **Section 15** of Hindu Succession Act came under scrutiny. It was challenged on the grounds of violation of **Article 15** of the constitution The Bombay High Court in the judgment held that **Section 15** is unconstitutional stating that

"*The provisions in Sections 8 and 15 show discrimination between Hindu males and females. They show discrimination only on the ground of gender. The family unit or the tie may be a justification, but the discrimination is not upon family ties. The classification made is not upon family ties. The classification is wholly and only between males and females. The female acquiring property by her own skill and exertion would deprive herself of allowing it to succeed to her own heirs being her mother and father or their heirs in preference to the heirs of the husband under Section 15(1) (b) as was the lot of the Petitioners in the case of Omprakash Vs. Radhacharan 2010(1) All MR 453 in which the Constitutional Validity was not brought up for consideration. Years of toil and skill would, therefore, be watered down as would be seen in Suit No.86 of 2000. Conversely a Hindu female who would otherwise hope to succeed to an estate of another Hindu female as an heir would receive a setback from the distant relatives of the husband of the deceased not even known to her or contemplated by her to be her competitors except upon claiming precedence as class II heirs under Section 8 or as preferential heirs under section 15(1).*

Such discrimination cannot stand the principle of equality as the basic feature of the Indian Constitution. It is, therefore, required to be declared ultra-vires the Constitution."[22]

[21] Poonam Pradhan Saxena, *Kusum and Poonam Pradhan Saxena – Family Law* (Volume II, LexisNexis India) <https://advance.lexis.com/document/searchwithindocument/?pdmfid=1523890&crid=bed59ff2-f124-4d5b-a12b-3505f74d5491&pdsearchwithinterm=Section+15&pdworkfolderlocatorid=NOT_SAVED_IN_WORKFOLDER&ecomp=2s27k&prid=080c4b51-7a82-4f97-a53b-78389f0589b3> accessed on 17 May 2020

[22] Mamta Dinesh Vakil v. Bansi S. Wadhwa (2012) 6 Bom CR 767

Conclusion

The Hindu Succession laws have evolved since classical times. However, the lacunas are still evident. The Supreme Court's stance in Narayani Devi's case is unfortunate. The SC by the virtue of **Article 142**[23]of the Constitution has the power to interpret a law in order for doing complete justice, if after judicial application of mind it feels a law is going against the basic principles and intentions of our Constitution. The property of a 15 year old woman going back to the in-laws who threw her out, post her death is neither just, fair nor reasonable. The legislative lethargy is also to be blamed, despite the law framed by the Parliament reeking of inequality in comprehensive manner, directly contravening **Article 14**[24] and **Article 15**[25] of the Constitution which categorically talks about equality before law, and no discrimination on the grounds of sex among others, substantial steps are not being taken in order to amend it. The judgment given by the High Court gives a ray of hope, but it is very faint until this is taken up by the legislature to finally make a law which is gender neutral in every sense.

[23] The Constitution of India a 142
[24] The Constitution of India a 14
[25] The Constitution of India a 15