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An Analysis of Section 25 of the Hindu Succession Act, 1956

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ABSTRACT

This paper aims to disentangle the debate regarding the interpretation of the term 'murder' used in Section 25 of the Hindu Succession Act, 1956. The paper shall determine whether the term murder under Section 25 of the Act solely confines its definition to its technical meaning opined in the Indian Penal Code, 1860 or is subject to exposition in terms of public policy. By throwing the light on various case laws the paper will examine the cases where the accused was convicted under other sections of the Code apart from Section 302 and still disqualified under Section 25 of the Act. The paper shall also ascertain if there is a need for amendment in the provision under Section 25 of the Act to meet the present social demands of the society.

I. INTRODUCTION

The diadem for being the oldest known jurisprudence rests with the Hindu Law.² It is a personal law³ of Hindus dealing with matters which form a part of a person's religious belief⁴. India is a land of cultural diversity where people practicing different religion live together aided by comprehensive knowledge and respect for one another's faith and belief, which finds its safeguard under the Indian Constitution⁵.

The Hindu regarded law as a branch of *dharma*. It was constituted neither by any earthly sovereign nor by political authority, rather it was the human agents who established it.⁶ It was mainly the sages and the philosophers with wide and long farsightedness who formulated the Hindu Jurisprudence.⁷

Hindu law derives its authority from both ancient and modern sources.⁸ One of its real strength is that it relies on ancient law (religion) while amending it time and again to meet the

¹ Author is a student at NUSRL, Ranchi, India.

² B.K. Sharma, *Hindu Law*, Vol. 7 No. 4, ILI, (1965).

³ P.K. Menon, *Hindu Jurisprudence*, ABA, Vol. 9 No. 1 (1975).

⁴ *S.P. Mittal v. Union of India*, (1983) 1 SCC 51.

⁵ Section 25, Constitution of India.

⁶ *Supra* 2.

⁷ *Ibid*.

⁸ Paras Diwan, *Modern Hindu Law*, 24th ed., pg. 452 (Allahabad Law Agency, New Delhi, 2019).

growing social demands.⁹ The principle of justice, equity and good conscience is one of the modern sources of Hindu law, included to overrule any lacunae in the sacred law which is irksome and against the conscience.¹⁰ The importance of conscience is recognized by way of guidance in matters where the Vedas, usage and custom and divine commands do not furnish any help.¹¹

There is no parameter so extensive, or a weigh enormous enough to estimate the greed of an individual. It makes people so ferocious that they fail to see any boundaries. Its severity is such that it even leads people to murder other people, no matter if the other person is a close relative. Section 25 of the Hindu Succession Act, 1956 (hereafter Act) provides for punishment of disqualification of the person who commits a murder in furtherance of succeeding a property. This disqualification rests its jurisprudence upon the well-established rule that no person who has committed an illegal act should stand at the benefitting position facilitated by the commission of the said act.

II. DISQUALIFICATION UNDER SECTION 25

In *Sarvanabhavav. Sallemmal*¹² the High Court of Madras had observed that it is common to almost all the system of law that the person found guilty of homicide cannot succeed to the property of the person murdered. Section 25 of the Act gives statutory recognition to the abovementioned proposition.

Section 25 of the Act lays down the rule for disqualification of the person from inheriting the property in the case where he/she murders or abets the commission of the murder of another person in order to inherit his property or any other property in furtherance of succession to which he/she committed or abetted the commission of murder. In such cases, the murderer is treated as non-existent qua the estate of the murdered person and cannot inherit from the fresh line of descent.¹³

There are two facets of Section 25.¹⁴ The first part talks about a situation where the heir himself committed or abetted the commission of murder of the very person from whom he was to naturally inherit the property had the murder not taken place.

Exempli gratia, Mrs. A married Mr. B and had had four daughters. Out of her craving to have a son, she divorced Mr. B to marry Mr. C, whom she got infatuated to. Later, Mr. C out of his

⁹Harrop A. Freeman, *An Introduction to Hindu Jurisprudence*, Vol. 8 No. 1, OUP (1959).

¹⁰*Supra* 4.

¹¹*Supra* 5.

¹²(1972) 2 MLJ 49.

¹³1956 Allahabad 707.

¹⁴*Supra* 7.

vile greed and devil's cunning to obtain A's property killed her. C was disqualified under the aforementioned Section.¹⁵

In another example, 'Hum' was blessed with a daughter, 'Tum', but always wished to have a son and so adopted 'Woh'. 'Tum' instigated 'Woh' to kill 'Hum'. 'Woh' does so. 'Tum' was disqualified along with 'Woh' for abetting and actually committing the murder respectively.

The second part refers to a situation where the heir murders or abets the commission of murder of some person other than the person from whom he is to naturally inherit, i.e. the propositus, in order to facilitate the process of succession.¹⁶ Such disqualification is not direct.¹⁷

For example, 'I' and 'You' were two brothers. 'I' had an adopted daughter 'She' and a son W. 'You' instigated 'She' to kill her father, and W to murder 'She', in order to facilitate succession. 'You' is disqualified.

In the above example, had 'You' instigated the murder of 'I' and 'She' so that he could get away with the stiff competition in the business where both were amongst the top two coaching centres for the law entrance examination in the city and 'I's' business doing pretty well because of 'She's' marketing skills, then, the question of disqualification becomes highly debatable as the murder was not carried out in furtherance of succession.

The point to be inquired into is, whether the term murder is technical as defined in IPC, 1860 or is used in the general sense of justice equity and good conscience. No matter the way, Hindu law condemns evil in any form. According to Hindu philosophy, evil deeds of a human being make him fall back afresh to the lowest point in the scale of existence and he has to undergo dreadful torments.¹⁸

III. ARE SOLELY THE CONVICTS OF MURDER UNDER SECTION 302 OF IPC, 1860 DISQUALIFIED?

It has been inferred from the principles of Hindu jurisprudence, which can be traced in the Hindu Law that a man cannot take advantage of his own wrong¹⁹. This legacy can be traced back to the ancient times when even the Sages barred the murderer from seeking profits from

¹⁵Swami Shradanand v. GauhapTajNamazie and Others, 2017 SCC OnLineKar 4319.

¹⁶Supra 7.

¹⁷ C.S. Raghuraman, *Critical comment on the decision of the supreme court in Vellikannu v. R. Singaperumal*, (2011) 1 SCC J-40.

¹⁸ John Redmond, *Philosophic Hinduism*, ICQ Vol. 8, No. 29 (1915).

¹⁹KenchavaKomSanyellappaHosmani and anr.v. GirimallappaChannaipaSomasaagar, 1924 SCC OnLine PC 33.

the estate of the murdered person.²⁰ This concept has been recognized in the legal maxim *Nullus commodum capere potest de injuria sua propria*²¹.

The aforementioned principle is a principle of general policy.²² That is to say that even if the conviction has been made under Section 324, because of the benefit-of-doubt arising out of the conflicting versions of two witnesses, it does not absolve the accused from the heinous crime committed within the meaning of Section 300 of the IPC to which he had made his own infamy contribution. The disqualification attaches to him.²³

In *Nirbhai Singh v. Financial Commissioner (Revenue), Punjab and others*²⁴ the legal issue raised was whether a convict under Section 304A of IPC claims non-application of Section 25 of the Act? The Court in its judgement incorporated the paramount principle of public policy based on the principle of justice, equity and good conscience. It stated that where the petitioner inflicted several blows on the left side of his chest using a knife he would be subjected to disqualification rule. The Court had made it clear that where the accused killed the deceased, it hardly makes any difference whether he has been sentenced under Section 302 of given the benefit of the grave and sudden provocation and convicted under 304A of IPC, a man who does wrong cannot benefit from it.

Similarly, where the accused acted out of the grave and sudden provocation given to him by the deceased because of which he lost his self-control and went on to inflict various injuries on vital parts of the deceased using a sharp-edged weapon, the Sessions Court convicted him under section 304 part I of the IPC. On the question of disqualification the court opined that Section 25 uses the expression “commits murder or abets the commission of murder” and not “is convicted of the offence of murder or abetment of offence of murder”. Thereby, the Court concluded that the term murder has not been used in its technical sense as defined under IPC and shall be inclusive of culpable homicide or unlawful manslaughter.²⁵

In *M. Magarajan v. V.M. Nagammal*²⁶, the mother-in-law had filed a suit against her son-in-law who was convicted of the murder of her daughter. The deceased was employed as a typist in Excise department and so the mother-in-law filed the present suit claiming that she be declared the sole heir of her deceased daughter's property and benefits such as gratuity, general provident fund, etc. from the Excise Department. It was pointed out by the Court that

²⁰*Ibid.*

²¹ Black's Law Dictionary.

²²*Supra* 7.

²³*Mst. Biro and another v. Banta Singh*, 1979 SCC OnLine P&H 230.

²⁴ 2017 SCC OnLine P&H 2432.

²⁵*Minoti v. Sushil Mohansingh Malik and another*, 1981 SCC OnLine Bom 107.

²⁶ 2011 SCC OnLine Mad 2547.

Section 25 does not specifically debar the murderer from receiving the services or death benefits of the victim. Still, the Court passed a decree in her favour following the principle of justice, equity and good conscience. It observed that the aforementioned principle can be applied in case where there is no specific law.

In *Suresh Kumar v. Sanjana and others*²⁷ the petitioner who was charged for abetment of suicide of his son under Section 306 of IPC, filed this revision petition stating that since he is disqualified from inheriting the property under Section 25 of the Act, he be also disqualified from giving interim maintenance to the respondent who was his daughter-in-law. The Court observed no infirmity or illegality in the impugned order passed by the Trial Court to grant interim maintenance.

The Supreme Court in *Board of Muslim Wakfs Rajasthan v. Radha Kishan*²⁸ expressed that unless two Acts are in *pari material*, it is not a sound principle of construction to interpret the expression used in one Act with reference to their use in another Act. The Privy Council in *Laurence Arthus Adamson v. Melbourne and Metropolitan Board of Works*²⁹ observed that even if two acts are passed by the same legislature, it is always unsatisfactory and usually unsafe to construe the meaning of a term used in one Act in reference to its definition clause in another Act. And therefore, in the case of *Ram Chatterjee & Anr. v. Smt. Tapati Mukherjee & Anr.*³⁰, where the legal issue about the interpretation of the statutory provision under Section 25 was raised, it was laid that since the two enactments are neither cognate nor in *pari material* and covers different fields, the meaning of the murder in popular sense. In popular sense, murder means unlawful killing of human being. Hence, as can be deduced from the above discussion, the technical meaning of the term murder as appearing in IPC, 1860 shall not be applicable while interpreting murder under section 25 of the act. It would be construed and interpreted harmoniously keeping in view the object of the legislation.

IV. TECHNICAL V/S PRINCIPLE OF JUSTICE, EQUITY AND GOOD CONSCIENCE

Hindu Law imbibes principles of its own exposition³¹ and so it has adopted 'justice, equity and good conscience' as a concept to deciding cases where other statutory laws are silent. The jurisprudence which follows is that:

"The importance of 'natural law' and of conscience is recognized by way of guidance in matters of doubt where the Vedas, usage and custom and divine commands do not

²⁷ 2012 SCC OnLine P&H 2469.

²⁸ AIR 1979 SC 189.

²⁹ AIR 1929 Privy Council 181.

³⁰ 2002 SCC OnLine Cal 61.

³¹ *Bhyah Earn Singh v. BhyanUgur Singh*, 1870 SCC OnLine PC 13.

furnish any help. . . . Dharma is obeyed as such because of the coercive might of the State and the Dharma Sastras of India (the legal text books) like those of Manu, Vaynavalkya, Narada, Brihaspathi and others acquire the validity of statutes on the recognition of their authenticity and authority by the State.’³²

The term ‘justice’ here means, being just, impartial, fair and right. It does not merely point to the right determination and adjudication of the disputes and enforcement of the law, but it is more comprehensive and includes within its ambit the whole of political, social, juristic and moral idealism, but it also refers to a comprehensive. The term ‘equity’ is used in accordance with the principles of natural law. And ‘conscience’ refers to the moral faculty; moral sense of the person.

In *Central Bureau of Investigation v. Ashok Kumar Aggarwal and Another*³³ where the accused who had abetted the commission of murder of his family members by hiring a professional criminal and later turned into approver and pleaded for grant of pardon so that he could succeed in inheriting the entire property of the family, the Court took into consideration the principles of public policy so as to avoid abhorrent consequences. The Court observed two Doctrines and maxims of public policy, firstly, *ex turpicausa non oritur action*, which means no person should get benefited from his own wrong, and, *ex dolomalo non oritur action*, which means no court will lend its aid to a man who founds his cause of action upon immoral or an illegal act. The Court has opined that those procedure and actions cannot be said to be in the interest of justice which are prejudicial to an accused as he may be the brain behind the crime or the worst offender and it was upheld that substantial justice should not be defeated on mere technicalities.

In *M. Nagarajanv. V.M. Nagammal*³⁴ where the husband had murdered his wife, it was held by the Court that disqualification of the murderer from inheriting the property of a person murdered should be extended to receiving of service or death benefits of deceased in consonance with the principle of ‘justice, equity and good conscience’ or say the paramount principle of public policy.

Similarly in *Vellikannuv. R. Singaperumal and another*³⁵ where the only son, being a coparcener in a joint Hindu family governed by Mitakshara law, murdered his father, who died intestate the son was totally disqualified from inheriting any interest in the coparcenary property it was held that:

³²*Supra* 8.

³³ (2013) 15 SCC 222.

³⁴ 2011 SCC OnLine Mad 2547.

³⁵ (2005) 6 SCC 622.

“..even if a murderer is not disqualified under Hindu law from succeeding to the estate of the person whom he has murdered, is so disqualified upon the principles of justice, equity and good conscience.”

Hence, it can be deduced that the term murder under Section 25 of the Act has to be comprehensively interpreted keeping in mind the paramount principle of public policy that a person should not benefit from his own wrong or illegal act. Therefore, it does not follow the technical definition as given under Section 300 of IPC, 1860 rather is based upon the concept of justice, equity and good conscience.

As has been well elucidated in *Laxmipat Choraria v. State of Maharashtra*³⁶:

“.....to keep the sword hanging over the head of an accomplice and to examine him as a witness is to encourage perjury.” And so technicalities shall in no case overshadow substantial justice.”

V. SUGGESTION

From the above discussion, it can be derived that Section 25 of the Act invites controversies. Disqualification of an heir is a very serious issue as it is a labyrinth of difficult moral questions and conflicting legal principles. Therefore, giving a narrower definition to an act which covers wider range heinous crimes which extend to grievously injuring another person, or abetting the suicide of a person or committing culpable homicide not amounting to murder, is somewhat debatable and reflects no real distinction between the technical meaning and one interpreted in accordance with the public policy.

It is thus important to call for an amendment to the abovementioned Section of the Act to not allow any escape to the criminals and also protect the rights of inheritance of innocent legal heirs of the murderer. Thus, the disqualification rule should be such that it covers all other abovementioned crimes which are equally grievous in nature and thus it is proposed that the term “homicide”, which means causing or accelerating the death of a human being by another human being³⁷, should be used instead of the term “murder” in the aforementioned section.

Section 25 of the Act should be read as:

Disqualification - *If a person has been convicted of commission of murder or culpable homicide not amounting to murder or has been convicted for abetment of murder or culpable homicide not amounting to murder shall be disqualified from*

³⁶ AIR 1968 SC 938.

³⁷ PSA Pillai, *Criminal Law*, 14th ed. (Lexis Nexis, 2019, Delhi).

inheriting the property or any benefits thereunder of the person murdered, or any other property in furtherance of the succession or benefits related therein, either under intestate or testamentary succession, to which he or she committed or abetted the commission of murder or culpable homicide not amounting to murder.

The abovementioned definition makes the law related to disqualification more specific thereby depriving it of any ambiguity.

VI. CONCLUSION

“Justice goes its way, and it will not swerve aside: it slays the weak, it slays the strong, it has a deadly stride: with iron heel it slays the strong, the monstrous parricide!”³⁸

Oscar Wilde has explained in the abovementioned words that justice forgives none, be it a weak person or a strong person, and it slays with the most grievous punishment the one who kills his parent or other near relatives.

To attain Substantial justice it is required that in certain matters where laws are silent, the principles of public policy should be given due weightage. As we derive that Section 25 pardons none who has committed a heinous offence against another person in order to succeed to the murdered person’s property. Interpreting the section pursuant to the principle of justice, equity and good conscience, assists in achieving the objective of the said section which is that no persons shall benefit from his own wrong.

Albeit, comprehensive interpretation of the laws plays a vital part in accelerating justice, the first step in acquiring it is to have specific laws on point. Section 25 of the Act thus requires an amendment so as to widen its scope and cover within its ambit all those crimes which are equally heinous as murder. When laws are specific and articulate in itself, it gives no opportunity for an escape to the criminals and also protects the innocent ones.

³⁸ Oscar Wilde, *The Ballad of Reading Gaol*.