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Section 15 of the Hindu Succession Act, 1956 and Women's Property Rights in India: A Critical Analysis

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ABSTRACT

This paper predominately focuses on section 15 of the Hindu Succession Act, 1956 and the Property Rights of Women in India. This paper encloses the aspects of property rights of women in all the legislations available so far through the judicial pronouncements. It also mentions the constitutional validity of section 15 of the Hindu Succession Act, 1956 and why it is considered to be discriminatory in nature. Finally, the paper addresses the jurisprudence notion behind the property rights of women in world by giving an overview of the requisite theory related to. The author extensively will use the judicial pronouncements in order to prove the hypothesis and full fill the objectives of the research paper.

Keywords: *Property Rights, Hindu Succession Act, Liberal Feminism, Females, Males.*

I. INTRODUCTION

Women across the world have struggled since time immemorial for their rights in all aspects of life. It has been related to having safe conditions at workplace, voting rights, property rights etc. As this paper deals with the property rights of women, the idea behind not providing women equal rights over property as compared to men is that, women are never a permanent part of the family as they are destined to get married and go their 'own' house. Hence, the idea becomes clear that male being the permanent part of family will have edge over female pertaining to the property rights in India. But then with the evolution of time and the perceptions of the people changing the rights of women with regards to property evolved gradually and significantly.

As mentioned, women have been fighting and struggling for their rights not just in India but also around the world. Now, when it comes to the property rights of women around the world it was decided in the case of *Reed .V. Reed*², where it was held that women's have a right to have control over their estate. Further, the theory which governs up this saying is the liberal feminism theory. This theory puts focus on the gender equality and thus is pronounced as the

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² 404 U.S. 71 (1971)

mainstream theory. In this theory, the highest standard of gender equality is achieved through political and legal reforms. Therefore, it can be seen that the struggle for property rights has not only been restricted to India but has spread across the world.

The legislations which govern the property rights of women under the Hindu Law in India are the Hindu Succession Act, 1956 and the Hindu Women's Right to Property Act, 1937. But then the latter act only talks about the property rights of Hindu widows and is silent on the property rights of women in India as a whole. Thus, negating the name of the act as a whole. Also, in the former act mentioned above, certain recommendations were mentioned to it by the 174th Law Commission Report and the same were enacted in the year 2005. These recommendations acted as breakthrough to provide equal property rights to women as compared to male counterpart. Thus, acted as an initial step to blur out the gender disparity in India. The landmark judgement of *Vineetha Sharma .V. Rakesh Sharma*³ speaks through it. Apart from the Hindu Law, there are different acts of the Christian Law, Parsi Law, Muslim Law and Indian Succession Act, 1927 which deal with the property rights of women in their individual capacity.

But even after the amendments done to the Hindu Succession Act, 1956 there are certain lacunas which are present within the act under the veil of section 15 of the Hindu Succession Act, 1956⁴. Under this act, the property acquired by the female by her own efforts are not evolved upon her own heirs but this vice versa for the males. Thus, making this section discriminatory in nature and time and again the constitutional validity of this section has been challenged in many courts around India. There is requirement of certain amendments which is required to this section. So that, the concept of gender disparity pertaining to the property rights is blurred out.

(A) Literature Review

1. Devendra Damale and Viraj Joshi, *Gender Discrimination in devolution of property under Hindu Succession Act, 1956*⁵

In this paper, the authors have explained about the provision 15 of the Hindu Succession Act, 1956 and how it is discriminatory in nature. The authors further states how this section excessively pritorise the male over the female in the Indian society under the Hindu law. This discrimination of property rights violates Articles 14 and 15 of the Constitution of India and it also violates India's commitments towards the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. Thus, leading to several consequences in those

³ AIR 2020

⁴ General rules of succession in the case of female Hindus.

⁵ Devendra Damale and Viraj Joshi, *Gender Discrimination in devolution of property under Hindu Succession Act, 1956*, 305 NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY 12-30 (2020)

cases where the property is acquired by the woman through her own skillsets and efforts.

2. J. Starli, *Critical Analysis of Disparity in Property Rights of Women in India*⁶

In this paper, the author gives the view of the gender disparity which is mentioned in all the legislations against the property rights of women in India. The author gives an overview of the Hindu Law, Muslim Law and strikes to compare these family laws with the Indian Succession Act. The author further states the consequences which take place due to such discrimination and how this violates the provisions mentioned under the Constitution of India.

3. Savio P. Xavier and Lenna Joshy, *Analysis of Intestate Succession to a Female under section 15 of Hindu Succession Act from Gender Perspective*⁷

In this paper, the authors have explained about how the succession laws give women certain rights under the Hindu Law. The authors further discuss about section 15 of the act along with section 14. According to the authors equal status needs to be provided to both the genders and it is the duty of the law to do so.

4. Aziz Sayeeda and Iman Khan, *Critical Analysis of Section 15 of the Hindu Succession Act, 1956*⁸

In this paper, the authors talk about the ambiguity and gender bias present with regards to the intestate succession under the Hindu Law. Further, the authors also discuss about the various kinds of property mentioned under the Hindu Succession Act, 1956. Finally, the authors also make a brief note about the constitutional validity of section 15 of the Hindu Succession Act, 1956.

5. Reena Patel, *Hindu Women Property Rights in India: A Critical Appraisal*⁹

In this paper, the author talks about the rights of a Hindu female under the Hindu succession act, 1956. The author further discusses about the concept of intestate succession while mentioning about the coparcenary interest mentioned under section 15 (1) of the act.

6. Sarita Kumari, *Women Inheritance Rights in India: Some Reflections*¹⁰

⁶ J. Starli, *Critical Analysis of Disparity in Property Rights of Women in India*, 2 TAMIL NADU STATE JUDICIAL ACADEMY 01-11 (2019)

⁷ Savio P. Xavier and Lenna Joshy, *Analysis of Intestate Succession to a Female under section 15 of Hindu Succession Act from Gender Perspective*, 2 JOURNAL FOR LAW STUDENTS AND RESEARCHERS 05-07 (2020)

⁸ Aziz Sayeeda and Iman Khan, *Critical Analysis of Section 15 of the Hindu Succession Act, 1956*, 24 SUPREMO AMICUS 01-08 (2021)

⁹ Reena Patel, *Hindu Women Property Rights in India: A Critical Appraisal*, 12 THIRD WORLD QUARTERLY 1255-1268 (2006)

¹⁰ Sarita Kumari, *Women Inheritance Rights in India: Some Reflections*, 01 INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS 336-343 (2019)

In this paper, the author expresses its views about the inheritance rights available to women in India. The author states that, even though equal property rights for men and women are important to reduce the gender disparity. But even though women face discrimination in all aspects of acquiring the property. The author has gone one step ahead and also explained the developing conditions circumscribing the inheritance rights of women in India.

7. Women's Land Title Ownership and Empowerment: Evidence from India¹¹

In this paper, the author has explained about the role of women participation in the decision-making process with regards to land rights in India. The author in this paper has conducted an analytical study in certain parts of India and discussed how has the study differed from the practical aspects.

(B) Existing Legal Situation

The Hindu Succession Act, 1956 was amended in the year 2005 based on the recommendations of the 174th Law Commission Report. It suggested to amend section 6 of the 1956 act so as to give equal rights to daughters as compared to sons and place them on the same pedestal. Another recommendation put forward by them was to omit section 23 of the act which removes the rights of the female to ask for partitioned land in the dwelling house.

(C) Research Problem

The Section 15 and Section 8 of Hindu Succession Act, 1956 talk about the devolution of property of Hindu female and male on dying intestate respectively. But on further analyzing these sections it can be seen that rules of succession for both the genders are different as the property acquired by Hindu male through his own skills and efforts will devolve over his natal family but if the property that a Hindu female has acquired through her own skillsets and efforts will not be devolve upon her own natal family. Thus, creating a gender disparity in the name of laws and putting a question in front of us regarding the position of women pertaining to the property rights in India.

(D) Objectives of the Research Paper

The research objectives of the research paper are as follows:

- 1) To examine the law pertaining to the devolution of property of Hindu Female mentioned under the Hindu Succession Act, 1956.

¹¹ Women's Land Title Ownership and Empowerment: Evidence from India, 559 ASIAN DEVELOPMENT BANK - ECONOMICS PAPER WORKING SERIES 10-20 (2018)

- 2) To analyze the constitutional validity of section 15 of the Hindu Succession Act, 1956.
- 3) To appraise the judicial precedents for the in-depth study of the subject matter.
- 4) To study the women's property rights in India.

(E) Research Questions

Q1) What is the position of women when it comes to property rights in India?

Q2) Whether Section 15 of The Hindu Succession Act, 1956 leads to gender disparity?

(F) Hypotheses

Q1) The position of women with regards to property rights in India is not well defined because the traditional setup and outlook of certain legislations towards the patriarchal notion.

Q2) Section 15 of the Hindu Succession Act, 1956 needs to be amended so as to provide equal footing for both males and females with reference to intestate succession.

(G) Scope and Limitation of the Research Paper

The scope of the research paper is limited to the critical study of section 15 of the Hindu Succession Act, 1956 and women's property rights in India.

The limitation of the research paper is only circumscribed to women's property rights in India.

(H) Methodology

The paper is based on doctrinal research method. The paper has followed the secondary data collection. The researcher has utilized various books, articles, notes and commentaries, international journals, websites, judgements so as to incorporate the views of many juristic scholars with an intention to present a holistic view.

II. POSITION OF WOMEN PERTAINING TO THE PROPERTY RIGHTS IN INDIA

This section of the research paper discusses about the jurisprudence behind the property rights of women while putting a light on the international conventions regarding it. Further, it discusses about the position of women in India with regards to property rights under the Hindu Law, Muslim Law, Christian Law and Parsi Law. Lastly, it throws light on the judicial interpretations pertaining to the women's property rights in India. This section is based on the research question; **What is the position of women when it comes to property rights in India?**

(A) Jurisprudence of the Property Rights of Women

The core of liberal feminism is based on the notion that women are rational being and hence they are entitled to human rights and have the freedom to choose their path of life and be in

equality with men. This theory advocates the issues which a woman goes through at workplace, at house, in education sector, private sphere of life etc. The main goal of this theory is to put an end to the gender disparity and make man and woman to be placed at the same pedestal in front of the society. Liberal feminism embraces the quality of liberty and put more emphasis on the individual liberty and insists on providing freedom to women in all sectors. Putting it more briefly, the main focus of this theory is about the legal rights of women and gender equality. According to this theory, it is believed that if there is integration of women in the public sphere of life, then there is a need of integration of men into the private sphere of women as well.¹²

The famous feminist scholar, Betty Friedan, in her work “The Feminine Mystique” talks about the sacrifices about the women in the society and makes a remarkable comment stating as;

*“This question has been lurking in the minds of American women for years. It is a strange agitation, a resentment, a longing for American women in the middle of the 20th century.”*¹³

Thus, from this statement of hers it becomes very much clear that the struggle of women to have equality in all spheres of life and to be treated as equal to men is just not limited to a community or territory but has extended beyond that. Hence, giving birth to the second wave of feminism which sparked the issues of equality at workplace, abortion rights, women’s education etc.

The most important philosopher of the liberal feminism theory is Harriet Taylor. She has the perspective that women had the right to education and self-development. Also, when they are talking about the notion of equality between men and women, they are per say not referring it to the physical equality as it is not possible due to the law of nature. Rather they are mentioning about the cerebral equality, as if the men and women have the same caliber, ability then they should be treated equally in all spheres of life irrespective of being it a private space or a public space.

a. Three pillars of Liberal Feminism

The three pillars of liberal feminism are individualism, legal and political reforms and pragmatism.¹⁴ They can be further elaborated as;

- 1) Individualism can be defined from the point of liberal feminism as the individual freedom and liberty. Under this pillar it puts focus to recognize the women’s rights through legitimate purpose and there needs to be equality when it comes to the property

¹² Women’s Land Title Ownership and Empowerment: Evidence from India, 559 ASIAN DEVELOPMENT BANK - ECONOMICS PAPER WORKING SERIES 10-20 (2018)

¹³ Lines of The Feminine Mystique by Betty Friedan

¹⁴ Ruchika Ria, *Women’s Rights in India*, WOMENLAWSINDIA, (Nov. 11, 2022), <http://www.womenlawsindia.com/legal-awareness/women-rights-in-india/>

rights of both men and women.

- 2) Legal and political reforms can be defined from the point of liberal feminism as to put more focus on using the existing legal and political reforms existing in the society to secure equal rights and opportunities between men and women.
- 3) Pragmatism can be defined from the point of liberal feminism as to approach towards seeking equality between men and women in a practical way rather than on relying on the theoretical approach.

b. Liberal Feminism in India

When it comes to liberal feminism in India it can be traced back to the modern times. India is considered to be a patriarchal society at large with struggle for women at each stage of life rather than it is fighting for right to vote, seek education, right to choose contraceptive, right to abortion or having the equal property rights between men and women. The first liberal feminist of modern India is Savitri Bai Phule. She is considered to be the first female teacher of India and has an agenda to educate all the girls of the country without a caste hurdles. The next feminist in the line is Tarabai Shinde whose works are still considered to be of apt consideration. Her classic work is named as "*Stri Purush Tulna*"¹⁵ in which she has elaborately talked about the struggles of women to have equal rights as compared to men.

In all, there has been a different wave of liberal feminism in India and in every action of the authorities the significance of this theory is present.

c. International Conventions on the Property Rights of Women

There exists a set of international conventions which on the property rights of women at large. They are as follows;

- 1) **Universal Declaration of Human Rights-** In this international instrument under Article 2¹⁶ it talks about the notion and recognizes the rights of property and education which needs to be provided to all gender and must be based on the principle of non-discrimination.
- 2) **International Covenant on Civil and Political Rights-** In this international instrument under Article 2¹⁷ it recognizes the rights of women to life, personal property and equality

¹⁵ Classic work of Tarabai Shinde focusing on the providing equal rights to women as compared to men.

¹⁶ Article 2 of the Universal Declaration of Human Rights- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹⁷ Article 2 of the International Covenant on Civil and Political Rights- The right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity.

before courts and tribunals etc. This article is read along with Article 3¹⁸ of the instrument which talks about the equality between men and women and prohibits any kind of discrimination based on sex.

- 3) **International Covenant on Economic, Social and Cultural Rights-** In this international instrument under Article 3¹⁹ it makes sure that the states under this instrument ensure to bring certain laws into picture which provide equal rights to both men and women for enjoying the economic, social and cultural rights existing in the society.
- 4) **Convention on Elimination of All Forms of Discrimination against Women-** In this international instrument parties are called upon to end the discrimination against women in all laws, policies of the government. Under Article 2²⁰ it puts an obligation on the states to make certain laws which puts an end to the discrimination against women in all forms and in all sectors of life. Under Article 5²¹ it talks about the appropriate measures which needs to be taken by the state parties so as to modify the cultural and the social patterns of the conduct of both men and women. Further, under Article 15²² it puts obligation on the states to make accord women with equality with men in the eyes of law. Lastly, under Article 16²³ the states are asked to take appropriate measures to eliminate discrimination against women.

(B) Position of women in India with regards to property under Hindu Law, Muslim Law, Christian Law and Parsi Law

When it comes to the position of women with regards to property under Muslim Law, Christian Law, Parsi Law and Hindu Law it has all different setting and understanding point of view.

- **Muslim Law-** Under the Muslim Law, the property rights of women are very complexed. As the succession is based on 4 notions that Quran decides the shares in the

¹⁸ Article 3 of the International Covenant on Civil and Political Rights- The right to equality between men and women in the enjoyment of their civil and political rights.

¹⁹ Article 3 of the International Covenant on Economic, Social and Cultural Rights- The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

²⁰ Article 2 of the Convention on Elimination of All Forms of Discrimination against Women- States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

²¹ Article 5 of the Convention on Elimination of All Forms of Discrimination against Women.

²² Article 15 of the Convention on Elimination of All Forms of Discrimination against Women- States Parties shall accord to women equality with men before the law.

²³ Article 16 of the Convention on Elimination of All Forms of Discrimination against Women- States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

property, 1/3rd property can be given in the name of the will, the residue will go the agnates, then uterine heirs and lastly inheritance rights began only after the death of the person²⁴. In India the predominant school of Muslims is the Sunni school of thought and Hanafi is a part of that school which is primarily followed in India. The Quran's guidance on inheritance of wealth left by a deceased person states that all surviving male and female relatives have definite shares in inheritance²⁵. There has been no distinction pertaining to succession in males and females regarding property. But there is no equality in shares of son and daughter. But it has provided constant shares to the mother and wife.²⁶

- **Christian Law-** Under the Christian Law the property rights are governed by the Indian Succession Act, 1925.²⁷ Under this act under section 35²⁸ it provides the natal family of the wife the complete rights over the intestate property of his deceased wife, rather than providing the same rights to the husband.
- **Parsi Law-** Under the Parsi Law the property rights are governed by chapter III of the Indian Succession Act, 1925.²⁹ Under this, the intestate succession between the Parsi male and female is the same and thus place them on the same pedestal.
- **Hindu Law-** Under Hindu Law, the property rights of women are governed by the Hindu Succession Act, 1956 and the Hindu Women's Right to Property Act, 1937. But then the latter act only talks about the property rights of Hindu widows and is silent on the property rights of women in India as a whole. Thus, negating the name of the act as a whole. Also, in the former act mentioned above, certain recommendations were mentioned to it by the 174th Law Commission Report and the same were enacted in the year 2005.³⁰ These recommendations acted as breakthrough to provide equal property rights to women as compared to male counterpart. Thus, acted as an initial step to blur out the gender disparity in India. Thus, by this addition in the former act a daughter also became as coparcener like a son in the Hindu undivided family. But however, when it

²⁴ J. Starli, *Critical Analysis of Disparity in Property Rights of Women in India*, 2 TAMIL NADU STATE JUDICIAL ACADEMY 01-11 (2019)

²⁵ Ibid

²⁶ J. Starli, *Critical Analysis of Disparity in Property Rights of Women in India*, 2 TAMIL NADU STATE JUDICIAL ACADEMY 01-11 (2019)

²⁷ Savio P. Xavier and Lenna Joshy, *Analysis of Intestate Succession to a Female under section 15 of Hindu Succession Act from Gender Perspective*, 2 JOURNAL FOR LAW STUDENTS AND RESEARCHERS 05-07 (2020)

²⁸ Ibid

²⁹ Reena Patel, *Hindu Women Property Rights in India: A Critical Appraisal*, 12 THIRD WORLD QUARTERLY 1255-1268 (2006)

³⁰ Ibid

comes to the intestate succession under the Hindu Succession Act, 1956 that's where the gender disparity lies. Accordingly, section 8³¹ of the act talks about the intestate succession in males and section 15³² of the act talks about the intestate succession between females. But for this kind of succession, the method followed by both males and females is not the same. Thus, creating gender disparity in the name of laws.

III. JUDICIAL INTERPRETATIONS PERTAINING TO THE WOMEN'S PROPERTY RIGHTS IN INDIA

There are various judicial interpretations pertaining to the women's property rights in India. Some of the important ones are discussed below. They are as follows;

- 1) **Vineetha Sharma.V. Rakesh Sharma**³³- In this case, the appellant's father had died in the year 1999. After the death of the father, she was left with three brothers and a widowed mother. Eventually, one of her brother died unmarried in the year 2001. Thus, she filed a suit claiming coparcenership and also one-fourth share in her father's property. But the High Court rejected her claim stating that her father had passed away before the amendment of 2005 to the act and moreover, the amendment does not have a retrospective effect. When this matter went in the Apex court , a three-judge bench of the Supreme Court of India led by Justice Arun Mishra put forward a landmark verdict on the 11th of August, 2020 stating that a daughter is a coparcener by birth, irrespective of whether her father is alive or not and hence also added that the 2005 amendment has both retrospective and prospective affect as well.
- 2) **Mary Roy.V. State of Kerala**³⁴- In this case, Mary, a Christian widow was staying at her father's house in Travancore. She was harassed and forced by her brothers to evacuate the property. But she refused to leave the house. Her brothers threaten her to leave the house. The contention of the brothers was that the property belonged to them as per the Travancore Succession Act, 1916 (the Act) and stated that a married daughter who received *Stridhan* has no right on the father's property. Her case was rejected in the lower court. However, the High Court ruled in her favor and held that she has equal rights over the property of her father. But then the harassment did not

³¹ Dr. Justice A.R Lakshmanan, *Let us amend the law, it is only fair to Women*, THE HINDU, (Nov. 11, 2022), <https://www.thehindu.com/>

³² Section 15 of the Hindu Succession Act- Devolution of Property among Hindu Female dying intestate. 33 (2020) AIR 3717 (SC)

³⁴ 1986 AIR 1011, 1986 SCR (1) 371

stop. So, she filed moved to the Supreme Court of India under Article 32 of the Constitution of India. She challenged the constitutional validity of Section 24 of the Act. The Supreme Court in this matter held that- Section 24 of the Act violates Article 14 of the Indian Constitution and no personal law is above constitution. Such an act is void in nature. There will be application of Indian Succession Act, 1925 in the present case and 1/3rd of the father's property belongs to Mary. Thus, eliminating the difference between the property rights under Christian Law between sons and daughters.

Thus, it can be stated that the hypothesis for this research question turns out to be false and negative.

IV. SECTION 15 OF THE HINDU SUCCESSION ACT, 1956 AND GENDER DISPARITY

This section of the research paper discusses about the analysis of section 15 of the Hindu Succession Act, 1956, its constitutional validity with the help of various judicial pronouncements. Lastly, this section discusses about the required amendment which needs to be done to section 15 of the Hindu Succession Act, 1956 in response to the gender disparity. This section is based on the research question; **Whether Section 15 of The Hindu Succession Act, 1956 leads to gender disparity?**

The Hindu Succession Act, 1956 talks about the devolution of property between the Hindu males and females. So accordingly, the intestate succession in Hindu males is done under section 8³⁵ of the act while in females it is done under section 15³⁶ of the act. There are have been many judicial pronouncements, law commission reports which have clearly demarcated the unconstitutional nature of section 15 of the Hindu Succession Act, 1956 as it is believed that it is discriminatory in nature and violates Article 14 and 15 of the Constitution of India. But no such amendment with regards to it has yet be done to the act rather amendment was done in the year 2005 pertaining to providing equal coparcenary rights to both sons and daughter of Hindu undivided family.³⁷

(A) Analysis of Section 15 of the Hindu Succession Act, 1956

Before analyzing section 15 of the Hindu Succession Act, 1956 we need to understand the section 8 of the same act and consecutively followed by the footing of both the sections. So,

³⁵ Section 8 of the Hindu Succession Act- Devolution of property of Hindu Male dying intestate

³⁶ Section 15 of the Hindu Succession Act- Devolution of property of Hindu Female dying intestate

³⁷ Devendra Damale and Viraj Joshi, *Gender Discrimination in devolution of property under Hindu Succession Act, 1956*, 305 NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY 12-30 (2020)

when it comes to section 8 of the Hindu Succession Act, 1956 it talks about the devolution of property of Hindu male dying intestate. It states that;

“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.”

So accordingly, the property of the Hindu male who has died intestate will devolve upon:

Firstly, to the class I heirs (Wife, mother, children and the children of pre deceased children),

Secondly, to the class II heirs (father, siblings of the deceased, grandparents of the deceased),

Thirdly, upon the agnates of the deceased,

Fourthly, upon the cognates of the deceased.

Accordingly, when it comes to section 15 of the Hindu Succession Act, 1956 it talks about the devolution of property of Hindu female dying intestate. It states that;

“(1) The property of a female Hindu dying intestate shall devolve

(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.”

So, the property of the Hindu female who has died intestate will devolve upon:

Firstly, upon the children and the husband of the deceased,

Secondly, upon the heirs of the husband (specified in section 8 of the act),

Thirdly, upon the upon the parents of the deceased,

Fourthly, upon the heirs of the deceased’s father,

Fifthly, upon the heirs of the deceased's mother.

So, after looking at both the sections briefly and analyzing section 15 of the act it can be seen that section 15 is discriminatory in nature. This is because it can be seen that the husband's heirs are given more priority over the natal family of the Hindu females but whereas on the other hand under section 8 the natal family of the Hindu female is not included. Furthermore, the inference can be drawn that the list of heirs of the husband is quite prolonged that the property of the female Hindu may never devolve upon the natal family of the female even though they are mentioned in the section.³⁸ Moreover, these rules of devolution apply to all situation even though the woman acquires property through gifts, wills or through her own skills.³⁹ Thus, this becomes very clear that the first rights on the property of the Hindu female after her death is of her husband, her children and the heirs of the husband and the natal family of the Hindu female is given last priority.

But when it comes to section 15 (2) of the act, it carves out two exceptions to the devolution of the property of the Hindu female dying intestate. (Only in case of no surviving children). Section 15 (2) of the act states that;

“(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 predeceased 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.”

So accordingly, the exceptions are as follows:

- 1) If the female dying intestate has inherited the property from her father or her mother than the property will devolve upon the heirs of the father.
- 2) If the female dying intestate has inherited the property from her husband or her father in law, then the property will devolve upon the heirs of the husband.

There have been many judicial pronouncements which have talked about section 15 of the

³⁸ Devendra Damale and Viraj Joshi, *Gender Discrimination in devolution of property under Hindu Succession Act, 1956*, 305 NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY 12-30 (2020)

³⁹ Ibid

Hindu Succession Act, 1956 and its nature at large. The judicial pronouncements are as follows;

- 1) **Om Prakash.V. Radhacharan⁴⁰**- In this case, Narayani Devi was married in the year 1955 and she moved into her matrimonial home. Her husband died within three months of her marriage. Hence, she was banished from the matrimonial home. She returned back to her parents, who supported her and provided her an education in coming years. Eventually, Narayani Devi gradually got a lot of substantial property. She died childless in the year 1996 and she was the sole owner of bank accounts, provident funds and land. Her mother claimed the right to inherit her property, but the same was challenged by the brothers of Narayani's late husband. So, the Court in this case relied upon provision 15 of the Hindu Succession Act,1956 to grant all her properties to her late husband's nephews whereas her mother received nothing who supported all these years with education and care. Thus, this case shows the discriminatory nature of section 15 of the act.
- 2) **Jayantilal.V. Chhanalal⁴¹**- In this case the court held that, the property which a Hindu female receives from her parents devolves accordingly depending pertaining to whether it has been received through intestate succession or testamentary and also if she has received the property through gift then it will devolve as per Section 15(1) of the act.
- 3) **Dr. Shashi Ahuja.V. Kulbhushan Malik⁴²**- In this case the court held that, Section 15(1) will also apply if the Hindu female inherits the property because of her parent dying intestate. But if the Hindu female inherits the property because of her parent dying intestate and she is childless, it will devolve as per section 15 (2) of the act.
- 4) **Balasaheb.V. Jaimala⁴³**- In this case the court held that, the property inherited from a brother will not revert to the natal family of the Hindu female rather it follows the rules of devolution laid down under section 15 (1) of the act.

(B) Constitutional Validity of Section 15 of the Hindu Succession Act, 1956

The constitutional validity of section 15 of the Hindu Succession Act, 1956 has been challenged in various judicial decisions. It violates Article 15 of the constitution of India. This is because it discriminates on the ground of sex and hence the devolution of property and its rules for both Hindu male and female dying intestate are different.⁴⁴ Moreover, this section is unable to

⁴⁰ (2009) 15 SCC 66

⁴¹ AIR 1968 Guj 212

⁴² AIR 2009 Del 5

⁴³ AIR 1978 Bom 44

⁴⁴ Reena Patel, *Hindu Women Property Rights in India: A Critical Appraisal*, 12 THIRD WORLD QUARTERLY 1255-1268 (2006)

differentiate between the inherited property and the acquired property of the Hindu female. This section provides more priority to the heirs and the natal family of the husband rather than giving priority to the natal family of the Hindu female.⁴⁵ Hence, due to this above-mentioned reasons, section 15 of the Hindu Succession Act, 1956 is considered to be unfair and discriminatory in nature as it has not demarcated the distribution of the acquired property of Hindu female dying intestate.⁴⁶ When it comes to constitutional validity of section 15 of the Hindu Succession Act, 1956 it has been stated and also been observed in various judicial pronouncements that the discrimination done under section 15 (1) of the act is unconstitutional in nature as it leads to unfair and undesirable outcomes as happened in the case of Omprakash .V. Radhacharan. Moreover, it negates with India's commitments towards the international treaties. The constitutional validity of section 15 of the Hindu Succession Act, 1956 has been discussed in various cases so far. The judicial pronouncements pertaining to the constitutional validity of section 15 of the Hindu Succession Act, 1956 is as follows:

- 1) **Sonubhai Yashwant Jadhav.V. Bala Govind Yadav**⁴⁷- This case was heard by a single judge bench and in this case the Bombay High Court held that discrimination under section 15 of the act is constitutional in nature. The court was of the reason that, the objective behind the discriminatory schemes of devolution was to ensure unity of the family consisting of closer blood relation over the distinct blood relations. Hence, the court concluded that the classification is based on the gender and not on family ties. After this decision by the single bench, this matter was referred to the division bench of the Bombay High Court but still the decision is pending in this case till today's date.
- 2) **Mamta Dinesh Vakil .V. Dinesh Wadhwa**⁴⁸- This case was heard by the single judge bench of Bombay High Court and it stated that discrimination under section 15 of the act is unconstitutional. In this case, there were 2 suits being heard in the court which were challenging the constitutional validity of Sections 8 and 15 of the Hindu Succession Act, 1956. In the first suit, the maternal aunt of a deceased Hindu male challenged the validity of Section 8 stating it as being unreasonable as it gave preference to paternal aunt over the maternal aunt. Whereas, in the second suit, the self-acquired property of a deceased Hindu female was claimed by her brother-in-law thus her siblings challenged this claim. Now, the court had to answer two questions in this case. Firstly,

⁴⁵ Aziz Sayeeda and Iman Khan, *Critical Analysis of Section 15 of the Hindu Succession Act, 1956*, 24 SUPREMO AMICUS 01-08 (2021)

⁴⁶ Devendra Damale and Viraj Joshi, *Gender Discrimination in devolution of property under Hindu Succession Act, 1956*, 305 NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY 12-30 (2020)

⁴⁷ AIR 1983 Bom 156

⁴⁸ 2012 BOM 748

whether section 8 is lines with Article 15 of the Constitution of India? Secondly, whether section 15 is discriminatory in nature? So, now the court observed that, there is no gender discrimination in section 8 of the act and it is in line Article 15 of the Constitution of India but while answering the second question the court observed that there is gender discrimination which persists within section 15 of the act as the natal family of the female is given lesser priority than the male's family in the devolution of the property of the Hindu female dying intestate. Also, the court made a remarkable observation that, even though the Indian Succession Act, 1925 has come into picture much before the Hindu Succession Act, 1956 then too such kind of discrimination is not observed in the act.

- 3) **Tarabai Nitaware and Ors .V. Narayan Keru Nitaware and Anr**⁴⁹ In the case, the petitioners had challenged the order passed by the lower court with regards to section 15(2) (a) of the Hindu Succession Act, 1956. The Bombay High Court held that if a Hindu female dies childless or without any heirs then the property which was given to her by her parents will be inherited by her parents and shall devolve upon the legal heirs of her father and not of her husband.
- 4) **Bhagat Ram .V. Teja Singh**⁵⁰- In this case, a female Hindu and her sister inherited the property of her mother after her death but one sister died after inheriting the property. Under section 15(2)(a), the other sister took the property as her father's heir and then agreed to sell the same to person A and due to this reason, the deceased sister's husband's brother challenged the validity of this sale and claimed the property as an heir under section 15(1)(b). According to section 15(1)(b) of Hindu succession act "if a female dies without making the will and issueless, the devolution of the property has to be based on the source from which property was inherited by females. If the property held by a female was inherited from her father or mother in nonexistence of any children of the deceased and it would only devolve upon the heirs of the father. The court in this case said that the property of the deceased which she acquired through her mother would only be devolved to her sister or any other legal heirs of her parents and the sale of such property done by the sister of female Hindu is valid. The court said that the source is always important from which the female inherits the property and which would further control the situation or else person who are not even slightly related to the person who

⁴⁹ (2009)15 SCC

⁵⁰ SCC 210: AIR 2002 SC

held the property originally would acquire rights to inherit the property.

- 5) **Lachman Singh .V. Kripa Singh**⁵¹- In this case it was ruled that ruled the female Hindu's stepsons or stepdaughters will be also considered as heirs but only under section 15 (2) (b) of the Hindu Succession Act, 1956.
- 6) **Raghubir .V. Janki Prasad**⁵²- In this case it was held that the husband will not receive the property left behind by his wife, when she earned such property through inheritance from her parents. Such property reverts to the parents or, in their absence, to the parent's heirs.

Looking at the various judicial pronouncements mentioned above it can be understood that section 15 of the Hindu Succession Act, 1956 is considered to be a loophole in the act and its constitutional validity is challenged time and again mainly due to 2 reasons;

- 1) **Not upholding the principles of equity and good conscience**- As per section 25 of the Hindu Succession Act, 1956 a murderer is barred from inheriting the property. So, from this it can be inferred that the property should never be dwell upon a person whom the justice believes that it should never pass⁵³. But the exact opposite happened in the case of Omprakash.V. Radhacharan as discussed in the previous section of the paper.
- 2) **Not able to invoke powers under Article 142 of the Constitution of India**- As per article 142 of the Constitution of India it states that the Supreme Court has the complete power to pass any decree or such an order so as to make complete justice in any matter. But section 15 of the Hindu Succession Act, 1956 has failed to do and also not followed the principles of justice, equity and good conscience.⁵⁴

a. Need of an amendment to Section 15 of the Hindu Succession Act, 1956

The problem of discrimination has not gone unnoticed by the authorities. There are a lot of amendments suggested to be done to section 15 of the act so as to eliminate its discriminatory nature. The list of the suggested amendments for section 15 of the Hindu Succession Act, 1956 is as follows;

- 1) **The 174th Law Commission Report of India (2000)** – This report mentioned about the gender discrimination which exists in the Hindu Succession Act, 1956. It has not

⁵¹ AIR 1987 SC 1616

⁵² AIR 1981 MP 39

⁵³ Aziz Sayeeda and Iman Khan, *Critical Analysis of Section 15 of the Hindu Succession Act, 1956*, 24 SUPREMO AMICUS 01-08 (2021)

⁵⁴ Ruchika Ria, *Women's Rights in India*, WOMENLAWSINDIA, (Nov. 11, 2022), <http://www.womenlawsindia.com/legal-awareness/women-rights-in-india/>

specifically talked about the section 15 but it has talked about providing equal coparcenary rights to both Hindu males and females in the Hindu undivided family. Surprisingly, this suggestion was taken and acted upon in the year 2005.⁵⁵

- 2) **The 207th Law Commission Report of India (2008)** – This report mentioned about there is strong need of the hour to recognize the self-acquired property of Hindu females under the Hindu Succession Act, 1956. It also stated that, the self-acquired property of the Hindu female must first devolve upon her natal family and then the heirs of her husband.⁵⁶
- 3) **Hindu Succession (Amendment) Bill, 2013-** In this a bill was introduced in the Parliament by Anurag Thakur in the year 2013 stating the amendments which needs to be done to the Hindu Succession Act, 1956 looking at the development and growth of the women in today's era.⁵⁷ It stated that, the self-acquired property of Hindu female must be first devolved upon her natal family and section 15 of the act needs to undergo certain changes.

Unlike the Hindu Succession Act, 1956 there are many other legislations which ensure gender equality such as the Civil Code of Goa. It is also called as the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012. Under this act under section 52 it talks about the order of succession and this section is gender neutral.⁵⁸ The next legislation which promotes equality with regards to the intestate succession is the Indian Succession Act, 1925 and is far more progressive than the Hindu Succession Act, 1956.⁵⁹ The intestate succession under the Indian Succession Act, 1925 is governed under section 23 to 56 of the act.

Thus, it can be stated that the hypothesis mentioned for this research question comes out to be true and positive.

V. SUGGESTIONS AND CONCLUSION

The suggestions which can be provided forward are as follows;

- 1) The recommendations provided under the 207th Law Commission Report of India (2008) needs to be taken into consideration.

⁵⁵ Devendra Damale and Viraj Joshi, *Gender Discrimination in devolution of property under Hindu Succession Act, 1956*, 305 NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY 12-30 (2020)

⁵⁶ Reena Patel, *Hindu Women Property Rights in India: A Critical Appraisal*, 12 THIRD WORLD QUARTERLY 1255-1268 (2006)

⁵⁷ Ibid

⁵⁸ Devendra Damale and Viraj Joshi, *Gender Discrimination in devolution of property under Hindu Succession Act, 1956*, 305 NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY 12-30 (2020)

⁵⁹ Ibid

- 2) There is a need of clear differentiate between the inherited and the self-acquired property of the Hindu females.
- 3) The Hindu Succession Act, 1956 needs to undergo excessive amending so as to make it gender neutral and for this purpose there is a need to consider the Indian Succession Act, 1925 as the parent act as it is far more progressive than the Hindu Succession Act, 1956.

The property rights of women in India is considered to be debated topic. The journey of women to have right on her estate started in the Reed.V. Reed case and it still continues to be a struggle. The liberal feminism theory acts as jurisprudential torch so as to show path to women in their struggle towards acquiring equal rights to property as men. When it comes to the property rights of women in India it can be seen that every religion have their own set of rules governing succession and they also have the support of the Indian Succession Act, 1925. Bit when it comes to the Hindu Succession Act, 1956 it can be seen that there is discrimination particularly under section 15 of the act. As it fails to be fair and just and violates the principle of natural justice. Every now and then the constitutional validity of the section is challenged and amendments are proposed for the section. But still, the authorities are under the veil of confusion whether to invoke section 15 to amendments or not. Accordingly, its high time to make certain changes to the Hindu Succession Act, 1956 and make it gender neutral. So that it fits to the present conditioning of the developing Indian society where women are considered to be at a par with men and they have the ability to acquire anything with their skills and efforts. So let the law play a complementary role while doing the needful required.

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