

ABSOLUTE IN LIFE, UNEQUAL IN DEATH: GENDER BIAS IN THE INTESTATE SUCCESSION OF HINDU WOMEN UNDER SEC 15 OF THE HINDU SUCCESSION ACT, 1956

- Bhargavi Prabhakar Kulkarni¹

Abstract:

The Hindu Succession Act, 1956 (hereinafter referred to as HSA) declares a Hindu woman as an absolute owner of her property, and the most credited amendment act of 2005 to the Hindu Succession Act places daughters on par with the sons as coparceners. Yet, one can see that the rules that assist the devolution of women's property are remarkably less favorable to her own family than to that of a man's. The present article examines this exact discrepancy under section 15 of HSA, compared with sections 8 and 10 of HSA. The article also examines key Supreme Court judgments that clarify the current stance and interpretation of these provisions. The article further elaborates on the recent developments around the provisions. Structural asymmetries are also identified by the paper, after which the paper proposes the amendment of Section 15, which will then give statutory recognition and precedence to the parents of the deceased woman who dies intestate, making the law abide by Articles 14, 15, and 21 of the Indian Constitution.

I. INTRODUCTION:

The Hindu Succession Act, 1956² governs how a Hindu's property devolves when no "will" is left behind. The Act provides for both joint family property and separate, self-acquired property, and sets out distinct rules for intestate³ succession of women and men. The Act has undergone multiple amendments, where the 2005 amendment is the most credited, which is known to make daughter coparceners in their own right and place them at par with the sons⁴.

¹ Student, DES's Shri Navalmal Firodia Law College

²Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956, (India) hereinafter HSA.

³*Id.* S.3(1)(g)

⁴ Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament (India); Vineeta Sharma V. Rakesh Sharma, (2020) 9 S.C.C. 1

The irony with regard to this law is that even though women have equal inheritance rights during their lifetime, the law treats their property differently when they die without a will. When a Hindu woman dies without a will, the way in which her property is distributed is different from how it would take place if it were a man's property. This difference occurs at the stage where often the woman's own blood relatives are put at a disadvantage. What is even more important is that, despite multiple suggestions, there remains no amendment to this rule.

This article examines that precise gap. The paper starts by setting out the statutory scheme for a woman's property and further goes on to compare it with the scheme for male intestacy. The paper also considers certain important Supreme Court decisions, demonstrating the consequences of the present statutory provision. The paper further reviews the current judicial developments and also studies the structural asymmetries. The primary argument of this article is that section 15 of HSA should be amended so as to put women's parents where a man's mother stands under the Act.

II. THE STATUTORY SCHEME FOR A HINDU FEMALE'S PROPERTY :

To understand how a woman's property devolves, it is important to understand how she holds it. Section 14(1) of the Act explicitly states that any property possessed by a Hindu female is held by her as a full owner and not merely as a limited owner⁵. This was not the case before 1956. Before 1956, a woman's estate, on her death, reverted to the heirs of the person from whom she had received it. With the express provision of Section 14(1), the above arrangement was displaced, and the Supreme Court also has read the provision generously by treating it as converting a woman's limited estate into an absolute ownership⁶. Thus, a woman has been statutorily granted the right to use, sell or bequeath what she owns with only exception under section 14 (2).

The procedure as to what happens to the property when the above statutory right is not exercised has been laid out in Section 15 of the Act. Section 15 primarily lays down five separate entries as a general order of succession⁷. These entries have to be exhausted in order as laid down. The order is as follows:

- a. Her sons, her daughters (including the children of any predeceased son or daughter) and her husband, all taking together.
- b. Heirs of her husband

⁵HSA S. 14(1)

⁶V.Tulasamma V. Sesha Reddy, (1977) 3 S.C.C. 99

⁷ HSA S. 15(1)

- c. Her father and mother
- d. Heirs of her father
- e. Heirs of her mother.

The other important conditions were that the marriage with the husband should be valid and subsisting. The children could be natural, adopted or protected by statute even though born of a marriage that is void or voidable⁸. Further, Section 15(2) subjectifies the entire scheme laid down above in one more aspect⁹. According to Section 15(2), when a woman inherits property from her father or mother, in the absence of her son or daughter, the property devolves on the father's heir, not her husband's. Similarly, if the property were inherited from her husband or father-in-law, it would devolve on her husband's heir. Section 15(2) is trying to preserve the principle that an inherited property must return to the family from which it was inherited. Looking at this approach, no such protection is offered where the property is a self-acquired one.

III. THE COMPARISON WITH MALE INTESTACY:

When looking at the treatment of a man who dies intestate, it seems considerably more favorable to his own side of the family. The statutory basis for the devolution of property when a Hindu male dies intestate is set out in Sections 8 and 10 of the Act, along with the Schedule to which they refer. Section 8 establishes a strict hierarchy of which relatives have a right to the property, and Section 10 outlines the exact mathematical rules for dividing shares among the closest relatives. The Class I heirs start with:

- a. His widow (or widows, taking together as one unit), his sons and daughters, and his mother, each of whom takes a share¹⁰.

It is worth noting that the deceased man's mother is also a primary heir alongside his wife and children, irrespective of the source of his property. When compared to the procedure for a woman dying intestate, it can be clearly seen that women's parents enjoy no equivalent standing. What is further important to note is that her parents appear directly and only in the third entry after the deceased woman's husband's heirs have been considered. Thus, the woman's own mother and father are considered as subordinate to the class of persons, the heirs of her husband who may actually be distant from her in every sense other than legal. What is also important to note is that when it comes

⁸ Hindu Marriage Act, 1955, S. 16, No. 25, Acts of Parliament (India)

⁹HSA S. 15(2)

¹⁰ HSA S. 8, S. 10 & sched

to the "heirs of her husband" being included, the provision also provides enough interpretation for including children from his other relationships who will inherit the property even before her own parents do.

Also, if a bird's-eye view is considered, when a man dies intestate, his wife's relatives have no claim whatsoever on his property at any stage of this scheme. Now, on a bare perusal, it can be seen that when a woman dies intestate, her husband's relatives not only have a claim, but are also placed ahead of her own parents. Thus, for example, a daughter-in-law has no right in the property of her mother-in-law, but the mother-in-law, through the machinery of section 15(1)(b), they take the property of her daughter-in-law. Therefore, the law treats a married woman, but not a married man, as absorbed in the spouse's family for the purposes of succession.

IV. OMPRAKASH V. RADHACHARAN:

The consequences of the above text were laid out in Omprakash V. Radhacharan¹¹. Narayani Devi, being married to Dindayal Sharma, was widowed within three months. They had no children. Her husband's family declined to keep her in their home, as a consequence of which she returned to live with her parents. While staying with her parents, she completed her education, obtained employment, and acquired property in her own name. She later died intestate. At this point, both her mother and her late husband's relatives claim the property. The principal issue before the Supreme Court was whether the admittedly self-acquired property would devolve under Section 15(1) or Section 15(2) of the HSA. A further related question was whether Narayani Devi's abandonment by her matrimonial family and her acquisition of the property through her own efforts justified giving the property to her parental heirs instead of her husband's heirs.

The Supreme Court applied Section 15(1) precisely according to its terms. As Narayani Devi had no husband, son or daughter at her death, the devolution of property was passed on to the second entry, the heirs of her husband, in preference to her mother in the third entry. Section 15(2) also could not assist Narayani Devi's mother, since the property was neither inherited from her parents nor from her husband. It was Narayani Devi's self-acquired property.

The outcome of the case was concerning, not because the court misunderstood the law, but because of what it did not consider. The court focused on the provision verbatim and did not focus on whether the legislature really intended such an outcome. Thus, despite the court having power under

¹¹Omprakash v. Radhacharan, (2009) 15 S.C.C 66 (India)

Article 142 of the Constitution to do complete justice in the matter before it¹², it did not do so. So as to reach its decision, the court relied on and recalled an earlier holding that asserted that a direction should not be issued on the basis of sympathy alone¹³. In doing so, the court exercised judicial restraint. Therefore, the burden of reform remains with Parliament, which has not yet discharged it. While commenting on the case, commentators note that a man in Narayani Devi's position would have had his property pass, through his mother as a first-class heir, within his own family¹⁴. Conclusively, the inequity is a product of the statute's design and not of the particular facts.

V. RECENT JUDICIAL DEVELOPMENTS:

Section 15's constitutional validity has been questioned before the Supreme Court several times, but there has not yet been any final decision as to the constitutionality of the provision. An important case worth noting is *Kamal Anant Khopkar v. Union of India*¹⁵. In this case, a mother of a deceased woman challenged Section 15 on the ground that it violated Articles 14 and 15 of the Constitution, which deal with equality and discrimination. But because the dispute concerning the petitioner herself had already been settled, the court narrowed the matter mainly to the validity of Sec 15(1)(b). The Supreme Court did not decide finally on whether this provision is unconstitutional.

Another important case is *Snidha Mehra v. Union of India & Ors.*¹⁶. In this case, a Public Interest Litigation petition (PIL) was filed under Article 32 of the Indian Constitution, wherein the petitioner challenged the constitutional validity of Section 15(1)(b) of the Hindu Succession Act, 1956 on the ground that it was unconstitutional and violated Articles 14, 15, and 21 of the Constitution. The petitioner also sought its removal from the statute. One of the important arguments from the government's side in this case was that Section 15 only comes into play when a Hindu female dies intestate, meaning without leaving a "will". Thus, a woman could make a will if she intends that her property should devolved upon her parents. The court in this case noted that it could not examine the constitutional validity of section 15(1)(b) in the PIL because the petitioner herself was not an affected person with a private succession dispute. However, the court here did not decide the provision to be constitutional nor did it declare it to be unconstitutional and left the

¹²India Const. Art. 142

¹³Subha B. Nair & Ors V. State of Kerala , (2008) 7 SCC 210

¹⁴ Vivek Gupta, *Gender Discrimination and the Hindu Succession Act*, The Leaflet (Sept 4, 2021)<https://theleaflet.in/analysis/gender-discrimination-and-the-hindu-succession-act>

¹⁵ Kamal Anant Khopkar V. Union of India, W.P © No. 1517 of 2018

¹⁶Snidha Mehra V. Union of India & Ors., 2025 LiveLaw (SC) 1181.

question of constitutional validity open for an appropriate case. Instead, the court acknowledged the practical problem created by Section 15 (1)(b) alongside increasing women's education, employment, entrepreneurship, and self-acquired property. The court urged women to make a will in advance to avoid the procedure under Section 15. Meanwhile, the High Courts continue to apply the provision as written. In *Santsaran Gursharan Advani Alias Papan Advani V. Nina H. Bhalla & Ors*, it was held that Section 15 (1) has not been declared unconstitutional and it still governs, while deciding a case in favor of the heirs of the deceased woman's husband that took preference to the woman's brother¹⁷.

From the above judgments, the one important defense taken against the petitioners is that Section 15 operates only when the woman has made no will. Thus, on that view, the statute leaves the woman free to protect her own parents, which is why Article 14, being one of the most fundamental articles, is not strictly engaged. This defense still feels incomplete because the default rule still expresses a legislative judgment as to whose claim seems presumptively stronger. On this note, it is also important to understand women's socio-economic growth. It becomes important to understand what percentage of women in India actually know the concept of will, its consequences, etc. Further, pre-litigation mediation may help parents negotiate, but it does not alter entitlement, as the legal priority will always remain with the husband's heirs.

VI. STRUCTURAL ASYMMETRIES AND THE CASE FOR REFORM:

In view of the present Section 15, the three important features that require criticism are as follows: Firstly, placement of the parents of the female in the third entry in case of her dying intestate would actually, in many cases, mean that they will never reach the point of inheritance, which would mean that whenever there is a surviving husband, child, or any of the heirs of the husband, the woman's parents will always be excluded. This would also apply where the parents are elderly, and the Act makes no provision for dependency.

Secondly, the category of "heirs of her husband" is both too broad and indeterminate. To determine "heirs of her husband", one would have to ask who would inherit from the husband if he had died. This can be too broad as it can also bring up stepchildren and remote relatives before the woman's own parents.

¹⁷*Santsaran Gursharan Advani Alias Papan Advani V. Nina H. Bhalla & Ors*, 2026 LiveLaw (Bom) 210.

Thirdly, Section 15(2), by restoring inherited property to its source, corrects the problem only partly. This is because this principle applies only to property inherited from parents or from the husband's side, and self-acquired property remains unaffected by this provision.

The basic conventional defense for the existing structure rests on the view that once a woman marries and enters her husband's family, she becomes part of it. However, this can be questioned. On a different note, if marriage is, as per the traditional belief, understood to be a union between two families, then it should have also been conventional enough not to treat a woman's parents as subordinates and strangers when her property is being inherited. Thus, the law does not treat men and women equally in this respect. Therefore, neither argument provides a convincing justification for treating men and women differently under the law of succession.

The law thus deserves a reconsideration because men and women are not being treated equally. Despite the Law Commission's recommendations, no changes have been incorporated into the existing law. This is evident from the 207th Report of 2008, where the Law Commission expressly suggested the amendment to section 15 of the Hindu Succession Act 1956, wherein a Hindu woman's self-acquired property, when there is no child left behind on her death, be jointly inherited by both her husband's heirs and her paternal side's heirs¹⁸. Many ways of Amendments can address the problem. One option is to amend section 15(1) directly and allow the woman's parents to join her husband and children in the first entry, similar to the position of a man's mother in the first class of heirs. Another alternative might be to place the parents of the woman in the entry right after the woman's husband and children or extend the principle of section 15(2) to include a self acquired property, thereby not placing the entire responsibility on women to protect their property by making a will, especially when they may not even know that the default rules may apply.

VII. CONCLUSION:

Section 14(1) asserts that a Hindu woman's property is her own, and at the same time, section 15 promises that after a Hindu woman's death intestate, the procedure of devolution of her property will favor her husband's family over her own. In India's current move towards building a nation that treats women and men equally, this provision seems far behind. Leaving the validity of section 15(1)(b) open to be interpreted in an appropriate case and advising women to prepare wills in

¹⁸Law 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, June 2008.

advance and go for pre-litigation mediation are only alternatives and not solutions to the present legislative problem. A sustainable remedy still lies with Parliament: amend section 15 to ensure that the absolute rights granted to women during life over their property are not curtailed at the moment of succession.