

## BIAS NATURE OF HINDU SUCCESSION ACT, 1956

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Women's rights to property are ignored in India's historic patriarchal culture, placing them in a position of insufficiency in socio-economic interaction. Under ancient Hindu law, women were particularly forbidden sexual and financial freedom. "A woman must be dependent on her father in childhood, upon her husband in youth, and upon her sons in old age," This premise is supported by Manu, the earliest lawgiver. She should never be given a free environment. A woman has always been regarded as an inferior entity to their men counterparts. Not just in their homes and communities, but also in terms of advantages and rights, women confront discrimination.

The Hindu Succession Act, 1956 section 15 and 16 provides forth the rules for Hindu women's succession rights. Section 15 of the Hindu Succession Act, deals with the intestate succession of Hindu women. If a Hindu woman's children and grandchildren are still alive, they will inherit her property, then section 15(1)<sup>1</sup> of the HSA, 1956 will apply. However, if no surviving children or grandchildren exist, section 15(2)<sup>2</sup> will apply. Whereas if the asset is self-acquired, such as by a legacy, present, or stridhan, section 15(1) applies. "If a female Hindu dies without leaving a will, her property passes to the following people, according to Section 15(1) of the Hindu Succession Act of 1956-

1. First, onto the sons and daughters of the husband, including the children of any pre-deceased son or daughter, and second, upon the heirs of the husband,
2. Finally, the female's mother and father are considered.
3. Finally, upon the father's heirs,
4. Finally, upon the heirs of the female's mother,"<sup>3</sup>

A wedded Hindu woman dies intestate, leaving behind her self-made assets. Let's assume she died a widow with no children. Her property would pass to her husband's heirs in the second group, according to the current legal status. If the deceased Hindu

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<sup>1</sup> Hindu Succession Act, 1956, § 15(1), No.30, Acts of Parliament, 1956. (India).

<sup>2</sup> Hindu Succession Act, 1956, § 15(2), No.30, Acts of Parliament, 1956. (India).

<sup>3</sup> *Supra note 1.*

female's husband's mother is still alive, her entire self-acquired property will transfer to her mother-in-law. If the mother-in-law also passes away, the estate will be split according to Hindu laws for an intestate Hindu male. If her late husband's father is still alive, her property will go to her father-in-law; if her father-in-law is also deceased, her property will go to her late husband's brother and sister. Even if the Hindu female has living relatives, the Hindu female's whole self-acquired assets will pass to the pre-deceased partner's brothers and sisters, not the Hindu female. As a result, if a Hindu woman dies without a will, keeping behind her self-acquired assets, and her first-generation heirs fail, her property will be transferred to her partner's heirs, which may or may not be possibly related or even uninformed of each other's existence.

In the significant case, *Omprakash and Ors v. Radhacharan and Ors*<sup>4</sup> Victim's in-laws were given the property, even though they had treated the dead horribly and failed to keep the relationship continuing when she needed it most. The law is silent when it comes to a woman's self-acquired assets. Section 15 does not distinguish between property earned via self-acquisition and property inherited by the woman. A Hindu woman's self-acquired property, rather than inheriting it from her parents, would be her absolute property.

Section 15(1) of the Hindu Succession Act, 1956 applies to all situations, with the exceptions listed in article 15(2)<sup>5</sup>. That takes into consideration, the assets acquired as present or earned by the woman's capability and labor. This means that even if the Hindu female purchases the property with her own, self-acquired money, the husband's heirs have a higher priority than her parents and siblings in the division of all such ownership. Even if the Hindu woman's family is entitled to succeed in her property, the successors of the father take precedence at a top of those of the mother. The dad's distant cousins supersede the maternal family. The Hindu Succession Act, sec23<sup>6</sup>, is yet another example of gender bias in the law. One of the main motivations for creating the Hindu Succession Act was to grant women property rights. However, Section 23 severely restricts women's ability to enjoy their property. The female heirs have no legal right to divide against their brother. The sisters can only acquire a piece of the property if one of the brothers chooses to partition it.

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<sup>4</sup> *Omprakash and Ors v. Radhacharan and Ors*, (2009) 15 SCC 66.

<sup>5</sup> INDIA CONST. art.15 (2).

<sup>6</sup> Hindu Succession Act, 1956, §23, No.30, Acts of Parliament, 1956. (India).

These are some of the areas where legislation still has a long way to go in achieving gender equality to meet the obligations of international agreements as well as the Indian Constitution. The state has no right to pass laws that discriminate against people based on the disparities outlined in Article 15 of the Indian Constitution. The existing process has contributed to absurd outcomes, such as property passing to someone who the intestate would never want to inherit her assets if she would have been living. As sec.15 of the Hindu Succession Act, 1956, is unconstitutional legislature and government should take a step forward to amend it.

