



The Hindu Succession Act 1956: Gender Bias and the Need for Reform

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Introduction: The merit of a civilization can be gauged from the status of women in its ongoing era. Since Vedic times, the status of women in Indian society has always been considered secondary to that of men. Throughout history, Hindu women have faced inequality in terms of rights related to their inheritance. Justice Sujata V. Manohar has said that since independence several legal reforms have been implemented in India with regard to women's rights, including giving daughters the same share as a son in property, however, the same status is still elusive.

In India, the subject of inheritance is governed by personal law, which governs how a person's property is inherited. In addition, there are also state laws, which govern the inheritance of certain properties, such as land. It can be seen that many social issues develop from gender inequality as well as individual religious laws. This presence of various religious laws is described as legal pluralism. In this context, properties succession cases between Hindus, Sikhs, Jains and Buddhists are governed by the Hindu Succession Act, 1956 (HSA).

The Hindu Succession Act provides for property rights and inheritance. 1860-1937 was the period of classical law in India and it brought forth one of the first significant changes related to laws for women in the Hindu Undivided Family (HUF). In 1937, the Hindu Women's Right to Property Act, 1937, was passed regarding widows stating that no widow can ask for partition, but the widowed mother can get a share in such a division when there is a division between brothers in the family. This was a huge development with regard to the rights of widows in HUF and it was stated that the right to partition would also be given to widowed mothers. It gave widows the right to step in place of deceased coparcener, but this right was limited and they were not given the right to ask for partition.

Let us now move on to the Hindu Succession Act, 1956, when the Hindu Woman's Right to Property Act was amended. This was one of the most important developments related to women's rights to property in a HUF. In the amended Act of 1956, widows, mother and daughter were also included in class 1 heirs, which meant that if there was a division into a HUF, a widow, daughter and mother would also now be in the first row to get the property of the deceased man. After the amendment, Section 14 of the 1956 Act has retrospective effect on women, including widows.

This section states that any property owned by a Hindu woman, whether acquired before or after the commencement of the 1956 Act, shall be held by her as the absolute owner. It was a prodigious move that enabled women to get equal rights with regard to property in India. Section 2 of the Hindu Succession Act 1956 says that the Act applies to any person who is a Hindu, Jain, Buddhist or Sikh by religion.

The Hindu Succession (Amendment) Act, 2005 has gone further to provide equal rights and obligations to women, but still many controversies have arisen about the nature of the amended Act, 2005. There is confusion as to whether this law is retrospective in nature. The second ambiguity that emerges was whether the survival status of women's fathers at the time of the amendment has affected women's rights. The Hindu Succession (Amendment) Act, 2005 was introduced in India with the aim of amending the already existing Hindu Succession Act, 1956, in compliance with the Constitution of India.

Confusion still prevails as different benches of the Supreme Court have given conflicting views about these questions in different cases. Relying on such conflicting views as 'binding precedent is not the right solution to the problem of gender bias. The Hindu Succession (Amendment) Act, 2005 was brought in by the Central Government with an understanding of its obligation under the Constitution of India as well as various international instruments that India has ratified. The amended Act provides for equal treatment of a daughter and a son with respect to co-operative rights. The sections which were amended were mainly Section 4, Section 6, Section 23 and Section 24 of HSA, 1956. The doctrine of survival was abolished altogether and women were also given the right to dispose of inherited property as fully as they wished the consent of their husbands or fathers.

With the amendment to the 1956 HSA, the HSA has also undergone progressive amendments such as: Section 6 of the amended Act gives daughters the right as coparcener in property of a joint Hindu family from birth, giving them the same rights and obligations as a son. It has also given daughters the right to seek partition in joint Hindu property. Removal of Section 23 of the HSA, 1956, which bars a female heir from seeking the division of a housing house (Dwelling House) unless there is a male heir to do so for her.

Section 24 of the HSA, 1956, was struck down by amendment as it was based on a morally absurd and arrogant assumption that on remarriage of a widow deprived her of the rights of heir to her husband's property.

Vinita Sharma vs Rakesh Sharma (2020) In this case, in August 2020, the Supreme Court of India gave a historic verdict. The Supreme Court said that the Hindu Succession (Amendment) Act, 2005 will now have retrospective effect.



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The 2005 Amendment Act amended Section 6 of the Act to align with the Indian Constitution, adding provisions for gender equality.

Fact: In this given case, the coparcener had died before the Amendment Act of 2005 came into existence, and therefore, it was held that the daughter (Vinita Sharma) was not entitled to a share in the coparcener property as she was not the daughter of a living coparcener.

Issues: Did the 2005 Amendment Act consider the daughter to be entitled to the same rights as the son in the cooperative property? And is the amended Section 6 of the 2005 Act retrospective, prospective or retrospective?

Verdict: A constitutional bench of 3 judges had correctly interpreted Section 6 of this Act. Based on previous judgments and cases, the court held that the property of the joint Hindu family is unobstructed heritage and their right to divide is absolute, which is given to an individual on the basis of his birth. The court also said that the inheritance rights are not restricted by birth. It depends on the death of the original owner of that separate property. The Supreme Court further, set aside its judgment in the case of Phulavati vs Prakash (2015) and held that coparceners rights are transferred from a father to a living daughter. They cannot be transferred from a living sibling to a living daughter. Talking about the implications of the provisions of Section 6, the court said that these provisions are pre-emptive in nature.

Relevant constitutional provisions ensuring gender equality are enshrined in the fundamental rights and duties in the Constitution of India, the Directive Principles of State Policy and the Preamble. The Constitution guarantees equal rights to women, and it also authorizes the union (union) to take effective action against inequality in support of women. The laws, various schemes and initiatives of our country are aimed at benefiting women in various fields in the context of democratic polity. In order to ensure equal protection for women, the Central Government has also recognized several international treaties and agreements on human rights.

The Women's Succession Rules are stated under Section 15 and Section 16 of the Hindu Succession Act, 1956. Section 15 of the Hindu Succession Act provides for intestate succession (when someone dies without making a will) for the property of a Hindu woman. Before ascertaining the part that will go to which legal heir, it is necessary to know about the origin of the property, in order to find out which provisions will apply for the succession of the female property. If the property of a Hindu woman is inherited property and her children and grandchildren are alive, Section 15(1) of the HSA, 1956 will apply, but Section 15(2) applies when a child or grandson is not alive. Section 15(1) shall apply if the said property is self-acquired property.

According to Section 15(1) of the HSA, 1956, when a Hindu woman dies without making a will, the transfer of her property is done in accordance with the rules laid down in Section 16: over sons and daughters, including the children of any pre-deceased son or daughter and husband. On the heirs, who belong to the husband, the woman's parents, on the father's heirs, on the heirs of the woman's mother.

If the property is acquired by the woman from her father's family then in the absence of son and daughter and children of son and daughter the transfer of property is done to the heirs of the father. However, if the property is inherited from her husband's family then the heirs of the property are the heirs of her father-in-law and this happens only when the husband is already dead.

Om Prakash and others v. Radhacharan and others (2009) In this case, Mrs. Narayani Devi was expelled from her in-laws' house after being widowed only after 3 months of marriage. She then returned to live in her ancestral home where she studied further and also received an employment. In 1996, she died of intestate leaving behind a large amount of money in various bank accounts and her provident fund. His mother Ramkishore had applied for a succession certificate. The respondents (son of narayani devi's deceased husband's sister) had also applied for the same.

The apex court held that the argument that the husband's family had not extended any support to the deceased was correct, but added that just because the matter was difficult, a separate interpretation of a statutory provision which is otherwise impermissible would not be made. In this case, Narayani's mother died, and her brother became the appellant. The issue in this case was whether the transfer of self-acquired property of the deceased falls under the application of Section 15(1) and Section 15(2) of the Hindu Marriage Act, 1956. Section 15(1) lays down the general rule of succession. Section 15(2)(a) provides for a non-binding clause, when the property is transferred to the deceased on behalf of her parents, on her death it shall belong to the family of her parents. The law regarding a woman's self-acquired property is silent. Section 15(1) does not distinguish between self-acquired property and property inherited by a woman. A woman's self-acquired wealth will be her absolute property, not the property that she inherited her parents.

The Court relied on the judgments delivered in the cases of HSIDC v. Hariom Enterprises (2008), Subha B. Nair v State of Kerala (2008), and Ganga Devi v. District Judge, Nainital et al. (2008) to convey the well-settled principle of law, that empathy and emotions would not be the only factors determining the rights of the parties. Which are clear and unambiguous. The court said sub-section 15(1) of the Act shall apply and not sub-section 15(2). Sub-section 15(1) shall apply only in case where a Hindu woman has died intestate. In such a situation, the general rule of succession, as provided by the statute, must prevail. The court found no merit in the appeal and thus the appeal was dismissed. Here



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the court gave the property to the same people who treated the deceased cruelly and did not even have a relationship with her when she needed it the most.

Tarabai Dagdu Nitnavare and others v. Narayan Keru Nitnavare and other (2018) In this case, the petitioners had challenged the order that the Sessions Court had passed arguing that the provisions of Section 15(2)(a) of the Hindu Succession Act, 1956, which says that if a Hindu woman is inherited property from father/mother, the accused has been identified as the defendant may have no share in the disputed property and if she have no children it will be transferred to the father's heir. Here, the husband of the deceased, who is the respondent, had filed a suit for declaration, division and injection in the property of the deceased. This disputed property suit was received by the deceased from her parents. The defendant had children (not from the deceased but from his second wife) who were claiming a share in the said property. According to the petitioners, the deceased Sundarabai died without any children, and the husband's children were not born from the deceased, but from the defendant's second wife (whom he himself had admitted). So, these children will have no share in the disputed property. Section 15(2)(a) of the Hindu Succession Act, 1956 applies here as this provision prohibits a husband from inheriting the property that a Hindu woman acquired from her parents if she has no children of her own.

The court admitted that the deceased had received the disputed property from his parents and since the children were not her, this leads to the fact that Sundarabai died without any heir and in a situation where a son or daughter is absent, her husband cannot be the heir to her property. But the property will be transferred to his father's legal heirs. Therefore, the husband had no reason to file a suit for the division of Sundarabai's property. Finally, the High Court of Bombay held that if a Hindu woman dies childless or without any heirs, the property given to her by her parents will be inherited by her parents and transferred to her father's legal heirs and not to the husband or his heirs.

Gender bias and Section 15 of the HSA, 1956 Generally, in India and around the world, women move into her husband's family after marriage. A woman leaves her innate family relationship and considers her husband's name as her name after marriage. Therefore, interstate succession for Hindus (women) has taken into account this ground reality. In reality, considering the current Hindu Succession Act, a Hindu woman's wealth is unlikely to ever be held by a woman's parents, as the list of husband's heirs is very detailed. However, there is no such provision when it comes to transfer of property of a Hindu man. Further, any property that is transferred to a woman through her husband will be returned to the heirs of the husband upon her demise. However, the same consideration is not given to the property that a woman acquires through her skills. It is so absurd that upon the death of a Hindu woman, without will and childless and without a living husband, relatives of the husband's family have a greater claim on the property of the Hindu woman than the family of her own birth.

It can be said that Section 15 is extremely discriminatory as the woman's property, is not inherited by her original heirs even if she is self-acquired. Moreover, the mother of the proposita can inherit property only after relatives of the deceased woman's husband, whom she does not even know. Therefore, Section 15 should be considered as ultra vires of the scheme of the Constitution and hence invalidated.

Conversely, if a Hindu man dies without a living wife, his wife's relatives cannot make any claim in her husband's property. His mother's top priority in succession is his father and siblings, distant relatives, etc. However, his wife's paternal family does not have any claim on such property. It is highly discriminatory.

In the case of Mamta Dinesh Vakil v Bansi S. Wadhwa (2012) It was argued that the disparity present in Section 15(1) of the Act is not based solely on gender but also on family relations, and in keeping with this reality, the legislature has provided for the husband's heirs in the woman's property. The Bombay High Court dismissed the reason in this case and held that discrimination in this section is based only on gender and not on family relations. The Court, in order to examine the possibility of nexus, considered the succession scheme of intestate male under HSA, 1956. It was observed that keeping the property within the family was not being taken up in the case as the property of a Hindu man would then not be inherited by his daughters, sons and daughters of his sister. It was thus argued that the sole basis of this classification was gender.

Gender equality within other Indian succession laws

The two other laws given in the Indian legal system have more gender-equality than Section 8 and Section 15 of the HSA, 1956. The first is the Goa Succession, Special Notary and List Proceedings Act (Goa Succession, Special Notaries and Inventory Proceedings Act), 2012 (GSSNIP) and the second is the Indian Succession Act, 1925 (ISA). Goa became a part of the Union of India after the HSA came into force in 1961. The state of Goa was earlier governed by the Portuguese Civil Code in matters related to personal law and the same law has been in force there even after joining the Union of India. Goa's Civil Code is based on the Portuguese Civil Code, which includes the gender-equality scheme of transfer. The ISA also regulates testamentary succession for citizens of all faiths. The law also governs the will succession for all religions except Hindus, Muslims, Buddhists, Jains and Sikhs.



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Here, there are two pieces of legislation and they are compared to Section 8 and Section 15 of the HSA, and this exercise has a twofold purpose. The first comparison is how it can improve HSA. Second, is that HSA serves as a demonstration for dividing property without discrimination, which would not be a new idea. Examples of such reforms already exist in India.

Constitutional validity of Section 15 of HSA, 1956: Article 15(1) of the Constitution of India says that no citizen can be discriminated against on the basis of religion, race, caste, sex, place of birth or any of these as it is against the principles of the Constitution. There are different laws for different religions but there cannot be different laws for different genders.

When the Hindu Women's Property Rights Act was enacted in 1937, the socio-economic status of women was different. But today women have a good share of private wealth, acquired by themselves and their relationships with their in-laws are very similar to their own family due to the developing concept of nuclear families. There is no relevancy in adopting a century-old law in modern and apply it on women in modern time and it seems to be discriminatory and ambiguous.

The term property is not specifically defined by the Hindu Succession Acts, but for the purpose of Section 15 of the 1956 Act, it means the property of a deceased Hindu woman under the Act. The property here is moveable and immovable property owned and acquired by a Hindu woman. It can be by inheritance, on division, by gift, or by purchase.

There is a legislative bias over a Hindu woman's blood relations with her in-laws. The heirs of husbands are considered to be more closely regarded with respect to an intestate Hindu widow than her paternal and maternal heirs and are given preference in order of succession of their property. The source of acquisition of a Hindu woman's property is a deciding factor in determining the heirs, but this is not the case with a Hindu man. Here, gross discrimination can be seen when a married Hindu man dies, his mother gets an equal share in the property along with his widow and children, while in the case of the death of a Hindu woman, the heir of the husband is placed even before her mother.

Section 15 of the Act is discriminatory with regard to self-acquired property of a deceased Hindu woman. It appears that women will always be subjugated because enacting the law, legislators did not imagine that Hindu women would also have self-acquired property.

Sonubai Yashwant Jadhav vs Bala Govinda Yadav (1983) In this case the constitutional validity of Section 15 of the HSA, 1956 was brought before the judiciary. It held that the purpose of the law was to maintain property within the joint family over marriage that brings men and women together, forming an institution. Therefore, it is clear that in recognition of the position when the wife's succession remained open, the heirs of the husband were allowed to take inheritance. This was as a result of the unity of the wife in the husband's family over marriage.

It is ironic that even when Hindu society is moving towards gender equality, discrimination in succession laws continues in our country, and such a law discriminating only on the basis of gender should be questioned.

The State cannot make laws dealing with people differently on the basis of the distinctions mentioned in Article 15 of the Constitution of India. The HSA discriminates against Hindu women. These provisions excessively and incorrectly prefer the husband's family in succession over the woman's own family, regardless of whether the property belongs to the woman or is acquired by herself. This law is the result of an era when it was impossible for Indian women to own and acquire property.

Hindu women should be made aware of their property rights through legal literacy (literacy) campaigns and social awareness programmes. This is a necessary step so that they can fight for their rights. Collaborative efforts should be made by the government, NGOs, the public and women themselves to bring about a change in the mindset and attitude of the people to promote equal rights based on humanity to achieve gender equality.

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