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## **THE LAW THAT FORGOT HER: PATRIARCHY, PROPERTY, AND THE HINDU SUCCESSION ACT**

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### **ABSTRACT**

The Hindu Succession Act, 1956 governs the inheritance rights of Hindus in India but operates on a foundational asymmetry: it prescribes entirely different rules for men and women dying intestate. Section 15, which determines how a Hindu woman's self-acquired property devolves upon her death, places her husband's heirs above her own parents in the order of succession. This paper examines that provision through the lens of *Omprakash & Ors. v. Radhacharan & Ors.*, where the Supreme Court awarded the self-earned property of a widow, who had lived independently for over four decades, to her deceased husband's nephews rather than to her own mother. The paper argues that Section 15 encodes patriarchal assumptions about a married woman's permanent belonging to her marital family, assumptions the 2005 Amendment left entirely untouched. It traces the legislative history, the Law Commission's proposals in its 174th and 207th Reports, and the constitutional challenge currently pending before the Supreme Court in *Kamal AnantKhopkar v. Union of India*. The paper concludes that Section 15 is not merely an anomaly but a structural defect, one that the legislature has repeatedly had the opportunity to correct and has not.

**Keywords:** *Hindu Succession Act, intestate succession, Section 15, women's property rights, gender discrimination*

### **PROLOGUE**

Narayani Devi married Dindyal Sharma in 1955. Within three months, her husband died. His family drove her out of the matrimonial home immediately after his death. She never went back. At her parents' house, she was given an education, found employment, and over the following four decades built a life entirely her own: bank accounts, provident fund savings, and property. She died intestate on 11 July 1996.

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Her mother, Ramkishori, filed for a succession certificate. So did Radhacharan and others, the sons of Dindayal's sister. People Narayani had no meaningful relationship with, from a family that had expelled her the moment her husband died, claimed everything she had earned. The Supreme Court of India, in *Omprakash & Ors. v. Radhacharan & Ors.* (2009) 15 SCC 66,<sup>2</sup> awarded the property to Dindayal's nephews. Ramkishori received nothing. The judges called it “a hard case.” They said sentiment and sympathy could not be a guide to interpretation of law. They were right, technically, the law was perfectly clear. That is precisely the problem.

### **THE ARCHITECTURE OF DISCRIMINATION**

The Hindu Succession Act, 1956 (HSA) was, at the time of its enactment, considered a reform. It gave Hindu women the right to own property outright for the first time in codified law. The 2005 Amendment went further, granting daughters equal coparcenary rights in ancestral joint family property alongside sons. But beneath these headline reforms is a structure shaped by one foundational assumption: that a woman, upon marriage, belongs permanently to her husband's family.

The most revealing fact about the HSA is that it is the only major succession law in India that prescribes entirely different rules depending on whether the person who died was a man or a woman. The Indian Succession Act, 1925, which governs Christians and Parsis, applies the same devolution scheme regardless of the deceased's sex. The HSA explicitly bifurcates: one set of rules for a man, a different and substantially worse set for a woman.

### **WHAT SECTION 15 ACTUALLY SAYS**

Section 15(1) of the HSA sets out the order in which a Hindu woman's property passes if she dies intestate:<sup>3</sup> first, to her sons, daughters, and husband; second, to the heirs of the husband; third, to her mother and father; fourth, to the heirs of the father; and finally, to the heirs of the mother. Her own parents come third. The heirs of a husband she may have barely known come second.

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<sup>2</sup>*Omprakash&Ors. v. Radhacharan&Ors.* (2009) 15 SCC 66.

<sup>3</sup>Hindu Succession Act, 1956, s 15(1).

The husband's family does not only mean the husband himself. It means his entire line: his mother, father, siblings, and distant relatives. A nephew of a deceased husband, if alive, can claim priority over the woman's own parents. In *Om Prakash*, this is exactly what happened.

Now look at Section 8, which governs how a Hindu man's property is distributed when he dies intestate.<sup>4</sup> His Class I heirs, the very first tier, include his mother. The mother of a Hindu male inherits alongside his wife. The mother of a Hindu female is parked at tier three, behind the entire universe of her son-in-law's family. The asymmetry runs in one direction only, and that direction is always away from the woman's natal family.

### **THE SOURCE-OF-PROPERTY RULE AND ITS LIMITS**

Section 15(2) provides what looks like a partial concession to fairness.<sup>5</sup> It carves out two exceptions: property that a woman inherited from her own parents, if she dies childless, goes back to her father's heirs; property she inherited from her husband or father-in-law, if she dies childless, goes to his heirs. The logic, sometimes called source-tracking, is that property should return to the family it originally came from.

But this exception is considerably narrower than it appears. Section 15(2)(a) covers only property that was inherited from her parents. It does not cover property she earned. It does not cover gifts. It does not cover money she saved over decades of independent employment. All of that falls under Section 15(1).

The Supreme Court acknowledged this gap in *Om Prakash* directly: “The law is silent with regard to self-acquired property of a woman. Sub-section (1) of Section 15, however, apart from the exceptions specified in sub-section (2) thereof does not make any distinction between a self-acquired property and the property which she had inherited.”<sup>6</sup> *Narayani's* property was entirely self-acquired. Section 15(2)(a) did not apply. Her wealth, built over forty-one years of independent life, went to the people who had expelled her.

### **READING OM PRAKASH CLOSELY**

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<sup>4</sup>Hindu Succession Act, 1956, s 8.

<sup>5</sup>Hindu Succession Act, 1956, s 15(2).

<sup>6</sup>*Omprakash&Ors. v. Radhacharan&Ors.* (2009) 15 SCC 66, para 14.

The counsel for the appellants argued that since the husband's family had contributed nothing to Narayani's education or earning capacity, while her parents had contributed everything, Section 15(2)(a)'s underlying logic should be read purposively to cover her situation. The court rejected this: "If the contention raised by Mr. Choudhury is to be accepted, we will have to interpret sub-section (1) of Section 15 in a manner which was not contemplated by the Parliament."<sup>7</sup> The court also noted that a woman is free to execute a will, and that Section 15(1) only applies where she has died intestate.<sup>8</sup> In other words, the answer to a patriarchal default rule is that women should have anticipated their own deaths and made wills.

The court was technically correct that it cannot rewrite a statute. But it stopped there. It did not suggest that Parliament revisit the provision. It did not engage with the constitutional dimension. What the judgment does inadvertently, however, is prove the critics' point. As one commentary on the case observes, the court granted the property to "the very people who behaved cruelly with the deceased and did not maintain the relationship when she needed it the most."<sup>9</sup>

If Narayani had been a man, the outcome would have been entirely reversed. A man dying childless and intestate, filtered through Section 8 instead of Section 15, produces a completely different result, one in which his own natal family inherits.

### **THE 2005 AMENDMENT AND WHAT IT LEFT UNTOUCHED**

The Hindu Succession (Amendment) Act, 2005 is genuinely important.<sup>10</sup> It made daughters equal coparceners in joint family property, repealed Section 23 (which had prevented women from demanding partition of a family dwelling until male heirs chose to divide it), and repealed Section 24 (which had stripped widows of inheritance rights upon remarriage). These changes were real and meaningful.

But the amendment did not touch Sections 15 and 16. A woman could now inherit coparcenary property on equal terms with her brother, but if she died without a will, everything she had earned herself would still go to her husband's family before her own parents. As one legal

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<sup>7</sup>ibid, para 18.

<sup>8</sup>ibid, para 21.

<sup>9</sup>Mulla, Principles of Hindu Law (21st edn, LexisNexis 2010) commentary on s 15.

<sup>10</sup>Hindu Succession (Amendment) Act, 2005, ss 6, 23, 24.

commentary puts it, “It is still unclear why the 2005 Amendment Act, which aimed to eliminate survivorship, did not attempt to amend and bring Section 15 in line with Section 8.”<sup>11</sup> The answer is probably political rather than principled.

### **THE CONSTITUTIONAL QUESTION AND WHAT REMAINS PENDING**

The Law Commission of India's 174th Report (2000) noted that the rules governing intestate succession for women “reflects patriarchal assumptions.”<sup>12</sup> The 207th Report (2008) proposed reform but, remarkably, declined to fully correct the imbalance on the grounds that “the social ethos and the mores of our patriarchal system demand that the existing system should not be totally reversed.”<sup>13</sup> The Commission used the persistence of patriarchy as justification for not fully dismantling patriarchal law. Two private member's bills followed, in 2013 and 2015. Neither passed.

The pending case of Kamal AnantKhopkar v. Union of India<sup>14</sup> asks whether Section 15 violates Article 15(1) of the Constitution, which prohibits discrimination on the grounds of sex. On 31 January 2022, the Supreme Court directed that the petition be listed before a three-judge bench; it was last heard on 6 November 2024 and remains pending. In Mamta Dinesh Vakil v. Bansi S. Wadhwa,<sup>15</sup> a single-judge bench of the Bombay High Court found the unequal treatment unconstitutional, concluding that the discrimination was “solely based on sex and cannot plausibly be said to serve any other rational purpose.”<sup>16</sup> The Union of India, in its response to the Khopkar petition, has defended Section 15's constitutionality, arguing that the classification reflects social realities. This argument has a circular quality: it uses the persistence of patriarchal structures as justification for patriarchal law. India ratified CEDAW in 1993, which requires

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<sup>11</sup>Poonam Pradhan Saxena, Property Rights of Women: Proposed Reforms under Hindu Law (LexisNexis 2004) 112.

<sup>12</sup>Law Commission of India, 174th Report: Property Rights of Women- Proposed Reforms under Hindu Law (2000) para 2.6.

<sup>13</sup>Law Commission of India, 207th Report: Proposal to Amend the Hindu Succession Act, 1956 as Regards Devolution of Property (2008) para 1.9.

<sup>14</sup>Kamal AnantKhopkar v. Union of India, SLP (Civil) No. 28280/2018, order dated 31 January 2022; last heard 6 November 2024.

<sup>15</sup>Mamta Dinesh Vakil v. Bansi S. Wadhwa, (2012) 2 BomCR 1 (Bombay High Court).

<sup>16</sup>ibid, para 27.

states to ensure equal inheritance rights regardless of sex.<sup>17</sup> Section 15 falls afoul of that commitment.

### **EPILOGUE**

Section 15 makes a statement: that a woman's permanent family is her husband's, not the family that raised her. This has been noticed. The Law Commission flagged it in 2000. Reform was proposed in 2008. Private member's bills were introduced in 2013 and 2015. The Bombay High Court declared Section 15 unconstitutional in 2012. A petition has been before the Supreme Court since 2018. And yet, as of 2026, the section is unchanged.

Ramkishori died while the case was still in the courts. She never received a rupee of her daughter's property. The law did not weigh the forty-one years she spent raising, educating, and supporting Narayani against the three months of a marriage that had already destroyed itself. It did not ask what justice required. It asked only what the statute said.

That is both the law's defence and its indictment.

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<sup>17</sup>Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 16(1)(h); India ratified 9 July 1993.