

GENDER DISCRIMINATION IN SUCCESSION LAW WITH SPECIAL REFERENCE TO SECTION 15 OF HINDU SUCCESSION ACT

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Introduction

The domestic laws dealing with testamentary and intestate succession are not uniform. There are variety of laws and their applicability depends on multiple factors. Before advent of the British Rule, majority of the laws of succession in India had their roots in religion and were influenced by personal and customary laws which originated from religion and customs. Muslims followed the Muslim law, while Hindus were governed by Shastric and the customary law depending on the region and the specific school or community a particular family adhered to, displaying a large variation. The Parsis had their own customary laws. Maximum diversity prevailed in the case of Indian Christians. Following the advent of the British, two major Christian communities were present in India. East Indian Christians who followed the European customs and the native Christians who were either converts or descendants of the converts from the non-Christian communities mainly the Hindus and Muslims and followed their distinct customary laws which were also given judicial recognition.¹ If a convert became westernized, which he need to establish, then English laws were applicable to him.² With a view to simplifying and unifying the innumerable diverse and conflicting succession laws, Sir Henry Maine who was a law member of the Viceroy's Council caused the enactment of the Indian Succession Act in 1865. Though this Act was intended to be the general law of succession for all Indians, it failed in its attempt to bring in the desired uniformity due to the reason that it incorporated the principles of Roman and English laws that were foreign not only in their content but also totally unsuited to the Indian cultural and religious environment. Another reason being the Act recognized women as an absolute owner of property and preferred her to male collaterals. This Act did not discriminate between agnates and cognates³ and even conferred succession rights on daughters, treating them on equal footing with sons. These provisions were totally different from the laws applicable to the Hindus, Muslims and Parsis. Finally, the Act did not recognize the idea of traditional Hindu joint family property or coparcenary property and consequently no right by birth was granted to the son in the uniform scheme laid down under the Act.

This total negation of the superiority of males struck at the root of the son-centered economy the inheritance laws then portrayed. Efforts to extend the application of this Act to all Indians were strongly resisted by the Hindus, Muslims, Parsis and even native Christians.

Further, inheritance laws in India are deeply connected with personal laws, religious customs and patriarchal traditions. Despite constitutional guarantees of equality, women's inheritance rights remain precarious, particularly under the scheme of succession given in Section 15 of the Hindu Succession Act. Sections 8 lays down the rules of succession for males and 15 of lays down rules of succession for females.

Critical Analysis of Section 15 of the Act with Reference to Women

The rights of Hindus, Sikhs, Buddhists and Jains are governed under this Act.⁴ Section 15 states the rules of inheritance for Hindu women dying intestate. This rule states that the intestate property of the female Hindu woman shall be inherited firstly by her sons and daughters, including pre-deceased sons and daughters and her husband, secondly by the heirs of the husband, thirdly by her mother and father, fourthly by the heirs of the father and then by the heirs of the mother. Also, if the property was inherited from her father or mother, it shall be devolved on the heirs of her father and if it was inherited from her husband or father-in-law then it devolves on the heirs of her husband.⁵ Some obvious discriminations can be observed from language of the section itself. Husband's heirs are given priority over the women's parents. This clearly shows patriarchal bias which is in contrast to Section 8 which deals with intestate succession of Hindu men. It gives equal priority to his parents and children.⁶ The honourable Supreme Court of India in *Omprakash vs. Radhacharan* gave strict interpretation to this section resulting in woman's self-acquired property devolving onto her husband's nephew instead of her own mother.⁷ In this case, Smt. Narayani Devi was married in 1955 and later was widowed within three months of marriage. She was driven out of her matrimonial home immediately. After returning to her parental home, she completed her education and got an employment. When she died intestate in 1996, she had various bank accounts and a huge sum in her provident fund account which was all her self-acquired property. Narayani's mother and her husband's nephew both claimed her property. Supreme Court decided in favour of husband's nephew as per the plain language of the Section 15. Subsection 2 starts with a non-obstante clause and goes on to provide two exceptions for property inherited from her parents and property inherited from her husband or father-in-law. Section 15 is silent with regard to the self-acquired or inherited property and does not distinguish between the two. Thus, it was deduced by the Court here that the exception in Subsection 2 would not be applicable for woman's self-acquired property.

This verdict raises some serious doubts regarding working of this Section and how it can result in miscarriage of justice in cases where her husband or his family has not contributed at all towards her education or employment nor supported her in her entire lifetime, but still inherited her property. This contradicts the intention of the legislature behind Subsection 2 of Section 15. It can be argued that the main guiding factor behind this provision was to acknowledge the contributions of natal or marital family towards her lifelong development.

Subsection 2 of Section 15 denies her the autonomy to decide the devolution of property which is inherited by her from her marital family or natal family.

Arguably, women are treated as conduit of property and are being treated inferior as compared to men. If a Hindu man is given a right to hold the property absolutely irrespective of the sources, then why should women be denied the same opportunity. The 207th Law Commission Report has proposed a recommendation to amend Clause (a) of Section 15 so that parental heirs along with her husband's heirs are given priority in the devolution of self-acquired property of women.⁸ The proposed amendment suggested by this report is to add clause (c) and (d) to Sub-section 2 of Section 15 as follows:

"(c) if a female Hindu leaves any self-acquired property, in the absence of husband and any son or daughter of the deceased (including the children of any pre-deceased son or daughter), the said property would devolve not upon heirs as mentioned in Sub-Section (1) in the chronology, but the heirs in category (b)+(c) would inherit simultaneously. If she has no heirs in category (c), then heirs in category (b) + (d) would inherit simultaneously."

The arguments put forth under this report are based on the changed social and economic conditions of women in today's society resulting in her being close to her parents rather than her in-laws. Further, women also prefer that in the absence of her husband and children and parents her property should be inherited by her brothers and sisters rather than brother-in-law or sister-in-law which seems to be rather reasonable.⁹ This shows the gendered framework displayed under Hindu Succession Act.

LGBTQ+ Communities: Inheritance and Succession Rights

Now, if we see the status of queer individuals or commonly known as LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) communities, inheritance rights are restricted or denied due to the limitations existing in our succession laws.¹⁰ Inheritance rights are fundamental to legal and social recognition of an individual. Indian laws are based on traditional sense of family and kinship which is the root cause of exclusion from the succession process. Countries where same sex marriages are not legally recognized as valid marriages, queer communities are not considered as legal heirs for intestate succession. Even, for testamentary succession through wills, lack of legal and societal recognition may lead to disputes resulting in denial of inheritance.

Along with legal and social barriers, lack of inclusive definitions in succession laws aggravates this issue further resulting in unjust and unequal treatment.

Granting legal recognition to queer communities has been rather a slow process in India. The first step was taken in the Census of 2011 wherein a separate category was added for individuals identifying themselves as transgender under the column of gender.¹¹ Some landmark judgments like *NALSA v. Union of India*¹² and *Navtej Singh Johar v. Union of India*¹³ and *Naz Foundation vs. Govt. of NCR Delhi*¹⁴ recognized the right to identify one's own gender and decriminalized homosexual marriages respectively, have been a stepping stone for the advocates of LGBTQ communities. However, the lack of clear legal provisions of succession in the personal laws are still mostly binary identifying only male and female as primary genders. Constitutional law advocates have been constantly bringing attention to this issue citing the blatant constitutional discrimination incidents. However, till date, our laws largely remain binary.

The Hindu Succession Act, 1956, continues to follow a binary recognition of gender, granting inheritance rights to sons and daughters without recognizing other identities such as transgender, non-binary or intersex persons. This statute is silent on how to apply these provisions to individuals who do not identify themselves as male or female. This omission has created grey areas and problems like change in gender identity in order to obtain property rights. Though, Indian Parliament passed the Transgender Persons (Protection of Rights) Act, 2019,¹ which provides a legal mechanism for transgender persons to get official recognition of their gender identity through a certificate issued by the District Magistrate,² however, this Act does not address the lack of succession rights in personal laws. Occasionally, the courts have awarded property rights to transgenders by stretching customary norms like in *Illyas v Badshah alias Kamla*³ and *Sweety v General Public*.⁴ However, these remain a rarity and does not provide a long-lasting solution to the problems of transgenders.

Suggestions and Conclusion

It is imperative that we give legal recognition to queer communities and include them within the definitions of gender, family, heirs and spouses in personal laws. Homosexual spouses should be treated on par with heterosexual spouses. It will provide them with legal foundation for granting succession rights in testamentary and intestate succession. However, changing laws alone is not enough, there should be sensitization of society at the stage of judiciary, law officers, law professionals and enforcement agencies. A broader change at the societal level is necessary.

The Government also should introduce clear guidelines and processes to cater to the unique circumstances of the queer communities. Tailored legal aid and counselling services will go a long way in helping resolve the disputes and problems. A multi-pronged approach is required at different stages of stakeholders, then only the reforms will take root as property rights are not just a matter of money or wealth rather, they are reflection of the just and equitable society.

¹ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India)

² *Id* § 5

³ *Illyas v Badshah alias Kamla* 1990 (2) MP LJ 503

⁴ *Sweety v General Public* AIR 2016 HP 148

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- ¹ *Abraham v. Abraham*, (1863) 9 Moo Ind App 199
 - ² Devadasan, *Christian Law in India*, 1974, p 297
 - ³ Hindu Succession Act, 1956, § 3(a), No. 30 of 1956, Acts of Parliament, 1956 (India)
 - ⁴ Hindu Succession Act, 1956, § 2, No. 30 of 1956, Acts of Parliament, 1956 (India)
 - ⁵ *Id* § 15
 - ⁶ *Id* § 8
 - ⁷ Omprakash & Others vs Radhacharan & Others, Civil Appeal No. 3241 of 2009
 - ⁸ 207th Law Commission Report (2008)
 - ⁹ *Id* at Part 5.5
 - ¹⁰ Shanmuga Priya R and Dr. Brinda P, *Property Rights of LGBTQ+: Legal Developments and Challenges*, Volume VII Issue III, ISSN: 2582-8878, IJLLR, 3897, 3897 – 3906 (2025).
 - ¹¹ *Id* at 3898
 - ¹² National Legal Services Authority v Union of India (2014) 5 SCC 438
 - ¹³ Navtej Singh Johar v Union of India (2018) 10 SCC 1
 - ¹⁴ Naz Foundation v Government of NCT of Delhi [2009] 160 DLT 277 (Del HC)