



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

### **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL TEAM**

### **Raju Narayana Swamy (IAS) Indian Administrative Service officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and

a professional diploma in Public Procurement from the World Bank.

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & PHD from university of Kota. He has successfully completed UGC sponsored M.R.P for the work in the Ares of the various prisoners reforms in the state of the Rajasthan.



## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

### **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



### **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CRITICAL EXAMINATION OF INTESTATE SUCCESSION OF FEMALE HINDU IN REGARD TO HER SELF ACQUIRED PROPERTY.**

AUTHORED BY - KAMINI AMBE & DR. POONAM VERMA

## **Abstract**

Intestate Succession are the succession where one dies without making will. So the devolution of property governed by Hindu Succession Act 1956. Where Class I Class II heirs are classified for male under sec 8 of the act and under sec 15 for female. But the question arise the heirs are not same for both. In Kamal Anant Khopkar V. UOI W.P.(C) No.15/7/2018<sup>1</sup>, contented that the legal preference granted to husband 's heirs over a woman pare particularly concerning self acquired property constituted a form of discrimination in contrast to the inheritance provisions applicable to Hindu Men outlined in Section 8. The section 15: does not talk about self acquired property of female as at that time the females are not that much progressive as of now. This result highlights a prudent judicial approach to strategic litigation and indicates that authentic systemic challenges should be addressed by entities possessing sustained legal standing. The overarching challenge to Section 15 persists, embodying the continuous discourse surrounding the inheritance rights of women, especially in relation to self acquired property and the legislative body's role in the reform of personal laws.

## **Introduction**

The Hindu Succession Act came into force in 1956 to dissolve the clash between individuals regarding property dispute when one dies intestate i.e. without making a will.

Devolution of property as per the act.

Sec 6 deals with devolution of interest in coparcenary property

Before the amendment of 2005 Sec 6 was based on principle of survivorship only male members have coparcenary rights. Daughters have no right to claim for ancestral property. 2005 Amendment<sup>2</sup> provides equal coparcener rights for daughters regardless to marital status. Further partition by statutory fiction was redefined entitling daughters to seek partition.<sup>3</sup>

---

<sup>1</sup> Kamal Anant Khopkar vs Union Of India W.P.(C) No.15/7/2018

<sup>2</sup> The Hindu Succession (Amendment) Act, 2005

<sup>3</sup> Hindu succession Act 1956 ,s.6.

Section 8 deals with general rules of succession for male hindus

It applies to self acquired property, property received by gifts, assets inherited from collaterals, and property inherited from a separated father. According to Sec 8 the property devolves to Class I heirs firstly then to Class II when no class I were present then to agnates when no Class II present then to cognates when no agnates present.

The class I heirs hold

- 1-Mother
- 2-Son, Daughter
- 3-Widow
- 4-Widow of pre deceased son, widow of pre deceased son of pre deceased son
- 5-Son / Daughter of pre deceased son/daughter
- 6-Son/daughter of a pre deceased son/daughter of a pre deceased son/daughter.<sup>4</sup>

Here the point should be remembered the property will devolve to each one simentensoly.

The class II heirs also have broad list but there no simentensoly devolution took place.

Section 14 states property of female hindu to be her absolute property she possess whether acquired before or after the act. Sub section ensures that any property a woman owns through inheritance, maintenance, gifts, partition, purchase or self efforts she held a full owner discarding old belief and widow estate.<sup>5</sup>

Section 15 states the rules of succession of female hindu

Firstly upon her sons daughters (including children of pre deceased son or daughter) and the husband.

Secondly upon heirs of husband

Thirdly upon mother and father

Fourthly upon heirs of father

Lastly upon heirs of mother<sup>6</sup>.

Critical Analysis of Sec 15

The property devolve in female intestate does not go simentensoly to each one .

The question also arise about the self acquired property of the female hindu.

The question arise in Omprakash **v. Radhacharan**,<sup>7</sup> where a woman was expelled from her

---

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

<sup>5</sup> Hindu succession Act 1956 ,s.14.

<sup>6</sup> Hindu succession Act 1956 ,s.15.

<sup>7</sup> Omprakash & Ors vs Radhacharan & Ors AIR 2009 SC (SUPP) 2060

matrimonial residence within three months of marriage and observed her self-acquired property being transferred to her husband's sister's sons, bypassing her own parents. This case effectively illustrated the ability of the husband's distant relatives to present a more substantial claim than the woman's own family, underscoring the urgent need for legal reinterpretation or reform. The primary aspect of the challenge lies in the surrender of individually acquired resources. Section 15(2)<sup>8</sup> establishes a "source-rule" for inherited property, ensuring its return to the originating family. However, there is a notable lack of a corresponding provision for self-acquired property as detailed in Section 15(1)<sup>9</sup>. This establishes a scenario in which a woman's economic independence and contributions are compromised, as her acquired assets may be transferred to her husband's family, despite her limited connections or difficult relationships with them, while her own parents are overlooked. This highlights a significant shortcoming in the Act's structure concerning the economic independence of modern women. The legal framework appears to assume that a woman's essential identity and economic connections are entirely shifted to her marital family, even in relation to assets she acquires independently. This compromises the fundamental principle of individual autonomy and ownership, rendering her self-acquired property vulnerable to a patriarchal devolution framework. The Omprakash case illustrates this absurdity in a notable way. This specific element of self-acquired property serves as a significant foundation for future challenges, as it has a direct impact on a woman's economic rights and autonomy, thus making a compelling argument for legislative reform or judicial reinterpretation. The Supreme Court's acknowledgement of "arguable issues pertaining to the devolution of self-acquired properties of a female Hindu dying intestate" highlights the importance of this issue as a central area of examination.

Petitioner, Kamal Anant Khopkar<sup>10</sup>, represented by advocates Mrunal Dattatraya Buva and Dhairyashil Salunkhe, has formally challenged Section 15 of the HSA. The core argument was that this provision unjustly favours the husband's heirs, including the husband himself, over the woman's own parents in the allocation of her property after her intestate death, thereby disadvantaging Hindu women. Section 15(1)(b)<sup>11</sup> clearly delineates the order of inheritance, stipulating that the property shall first pass to the deceased woman's sons, daughters, and husband. Subsequently, the husband's heirs are designated as the next in line, with the woman's

---

<sup>8</sup> Hindu succession Act 1956 ,s.15.

<sup>9</sup> Hindu succession Act 1956 ,s.15.

<sup>10</sup> Kamal Anant Khopkar vs Union Of India W.P.(C) No.15/7/2018

<sup>11</sup> Hindu succession Act 1956 ,s.15.

parents recognised as heirs only after these parties. This regulation was argued to be particularly objectionable and "glaringly unjust" when applied to a woman's personally acquired assets. The petitioners contended that assets obtained independently by the woman would be passed on to her husband's heirs before being distributed to her own parents. The argument highlighted a scenario where a surviving husband could potentially assert a claim to the entire estate of the woman, consequently excluding her parents from any inheritance rights. The question arise Why Parents of female Hindu can't inherited her self acquired property in Kamal Anant Khopkar V Union of India<sup>12</sup>

The petitioner's argument prominently highlighted the significant disparity between Section 15, which deals with female intestate succession, and Section 8,<sup>13</sup> which concerns male intestate succession, as outlined in the HSA. Section 8 outlines that upon the intestate death of a Hindu male, his parents are classified as Class I or Class II heirs, which grants them a significant status in the succession order. This indicates a significant departure from Section 15<sup>14</sup>, where a woman's parents are situated much lower in the succession hierarchy. The argument put forth asserts that this unequal treatment constitutes direct discrimination based on sex, thus violating Article 15<sup>15</sup> of the Constitution of India, which clearly prohibits discrimination on multiple grounds, including sex. The observation presented by Mamta D. Vakil in the case concerning Kamal Anant effectively summarises the argument: "While... a female succeeds equally and alongside a male Hindu without discrimination between the sexes, her own succession is fraught with discrimination solely based on her sex." The petition further emphasised that Section 15<sup>16</sup> granted priority to the heirs of the woman's father, overriding the claims of her mother or the mother's heirs, despite the property in question being originally inherited by the woman from her mother.

### **Wider Consequences and Continuing Difficulties Pertaining to Section 15**

Importantly, although Kamal Anant Khopkar's<sup>17</sup> particular petition was dismissed, the Supreme Court affirmed its commitment to examine "associated legal matters in pending petitions, wherein family members of deceased women were challenging the claims of the in-laws

---

<sup>12</sup> Kamal Anant Khopkar vs Union Of India W.P.(C) No.15/7/2018

<sup>13</sup> Hindu succession Act 1956 ,s.8.

<sup>14</sup> Hindu succession Act 1956 ,s.15.

<sup>15</sup> The Constitution of India, art.15.

<sup>16</sup> Hindu succession Act 1956 ,s.15.

<sup>17</sup> Kamal Anant Khopkar vs Union Of India W.P.(C) No.15/7/2018

regarding the deceased's assets". This suggests that the overarching constitutional challenge to Section 15 is still ongoing. Indeed, the Court had commenced the examination of a series of petitions contesting Section 15 of the HSA. On January 31, 2022, the Supreme Court mandated that a petition contesting Section 15 be presented before a three-Judge Bench, underscoring the significance and intricacy of the matters at hand. The central concern of these continuing writ petitions pertains to the legal validity of Section 15(1)(b) of the Hindu Succession Act, 1956. The discourse persists regarding the distribution of assets when a deceased daughter passes away intestate, particularly in the absence of offspring, alongside the ramifications of Section 15(2)(b) in relation to property bequeathed by a husband or father-in-law. The subsequent hearing for these interrelated issues has been postponed to January 15, 2025, thereby affirming their ongoing relevance.

### **Supreme Court's Observations and Stance**

The continuous challenges to Section 15 highlight the enduring and dynamic discourse regarding gender equality in the context of Hindu inheritance law. The fundamental concern persists regarding the perceived inequitable treatment delineated in Section 15 in contrast to Section 8, especially in relation to the precedence afforded to the husband's heirs over a woman's own parents, particularly in the context of self-acquired property. The Supreme Court's recognition of "arguable issues" concerning self-acquired property indicates that this dimension may emerge as a pivotal point for forthcoming judicial discussions in the outstanding petitions. This may result in a more precise judicial interpretation or potentially a declaration of partial unconstitutionality should the discrimination be deemed unjustifiable. The Court's focus on legislative action, along with the government's prudent approach to amendments that necessitate widespread agreement, suggests that thorough statutory reform is likely to unfold gradually and in a stepwise manner. Nonetheless, persistent examination by the judiciary and the continuous public dialogue regarding these matters will probably exert pressure on both the judicial system and the legislative body to advance towards enhanced gender equality in succession laws.

The ongoing consideration by the Supreme Court of a "batch of petitions" regarding Section 15, <sup>18</sup>even after resolving Khopkar's particular case, suggests a persistent judicial impetus for the legislature to confront the inequitable elements of the HSA. The government's response,

---

<sup>18</sup> Hindu succession Act 1956, s.15.

which recognises the recommendations yet necessitates state consensus, underscores the legislative inertia or the intricate political dynamics involved in reforming personal laws. This illustrates a fundamental dynamic within constitutional law, wherein the judiciary, despite frequently yielding to the legislature regarding policy matters, possesses the authority to underscore constitutional deficiencies and stimulate legislative response. The observation regarding "arguable issues" related to self-acquired property distinctly highlights the particular domain in which the existing legal framework is most susceptible to constitutional scrutiny. The necessity for state consensus by the government underscores the federal architecture of India and the complex political dynamics inherent in the amendment of laws that engage with deeply entrenched social and cultural traditions. This dynamic suggests that although judicial decisions can advocate for reform, the primary obligation for thorough change lies with the legislative branch, which must adeptly manoeuvre through varying societal perspectives and political factors to reach a consensus.

To what degree does the emphasis on a Hindu woman's husband's heirs, as articulated in Section 15(1)(b) of the Hindu Succession Act, 1956, hold constitutional validity, especially in light of Section 8, which accords greater significance to the parents in the succession of a Hindu male? Is it possible for this differential treatment to be justified under Article 15(1) of the Constitution, or does it contravene the principle of equality by reinforcing gender-based discrimination within the context of Hindu personal law?

The Hindu Succession Act of 1956 represents a significant legislative milestone aimed at codifying and reforming the legal framework governing intestate succession within the Hindu community. A primary aim was to establish a certain level of consistency and fairness in the succession laws governing Hindus. Nonetheless, the Act has faced significant scrutiny for reinforcing gender-based disparities, especially regarding the succession regulations established for Hindu females in contrast to their male counterparts. Section 15(1)(b) of the Act presents a significant point of contention, as it delineates a hierarchy of heirs for a Hindu female who dies intestate, prioritising the heirs of the husband above those of the woman's natal family. This provision contrasts with Section 8, which regulates the intestate succession of Hindu males, placing paramount significance on the heirs of the deceased male, including his parents. The disparate treatment observed in these sections prompts essential enquiries regarding its alignment with Article 15(1)<sup>19</sup> of the Indian Constitution, which forbids

---

<sup>19</sup> The Constitution of India, art.15.

discrimination based on sex. This calls for a thorough examination of the constitutional and legal legitimacy of such differential treatment under Hindu personal law, and whether it constitutes a justifiable and constitutionally sound classification or merely reinforces patriarchal frameworks that violate the principle of gender equality.

In order to grasp the constitutional validity of Section 15(1)(b), one must first clarify the particular provisions and their ramifications. Section 15(1)<sup>20</sup> of the Hindu Succession Act, 1956, delineates the hierarchy of inheritance pertaining to property for a Hindu female who passes away without a will. Clause (b) of this section stipulates that in the event a Hindu female passes away intestate and without descendants, her property shall be inherited primarily by the heirs of her husband. This indicates that regardless of whether the woman obtained the property through her own endeavours or inherited it from her parents, in the absence of her offspring, the property will not revert to her family of origin but will instead pass to her husband's heirs. Conversely, Section 8, which addresses the intestate succession of Hindu males, gives precedence to his immediate heirs, encompassing his offspring, spouse, and progenitors. In the absence of such heirs, the property is transferred to the subsequent agnates, followed by the cognates. The male's parents are consequently afforded a significant position within the succession hierarchy, while the natal family of a deceased woman occupies a subordinate role. This distinction transcends mere procedure, embodying profound symbolic and material consequences. This suggests an underlying presumption in the legal framework that a woman, even posthumously, is predominantly associated with her marital residence, while her birth family holds merely a secondary entitlement to her assets. This illustrates the historically entrenched patriarchal framework of Hindu society, wherein a woman's identity, autonomy, and property rights were perceived as subordinate to the authority of her husband and his family. In this context, one must scrutinise the constitutional validity of such a provision by referencing Article 15(1) of the Constitution, which clearly forbids the State from engaging in discrimination against any citizen based on religion, race, caste, sex, or place of birth. The fundamental question at hand is whether the distinction drawn between the succession rights of male and female Hindus under the Hindu Succession Act amounts to discrimination based on sex, and whether this classification can withstand constitutional scrutiny.

---

<sup>20</sup> Hindu succession Act 1956 ,s.15.

The legal interpretations surrounding Article 15<sup>21</sup> and Article 14<sup>22</sup>, which ensure equality before the law and equal protection under the law, have undergone significant development over time. The Supreme Court of India has consistently maintained that the principle of equality does not equate to absolute uniformity, but rather forbids arbitrary and unreasonable classifications. In the case of *State of West Bengal v Anwar Ali Sarkar*<sup>23</sup>, along with several subsequent rulings, the Court established a fundamental principle regarding legal classification. It asserted that any classification enacted by law must meet two essential criteria: firstly, it must be based on an intelligible differentia that effectively distinguishes the individuals or entities included in the classification from those excluded; secondly, this differentia must bear a rational connection to the objective intended to be accomplished by the legislation.

When examining Section 15(1)(b)<sup>24</sup>, the initial inquiry pertains to whether the distinction made between Hindu male and female intestate succession is grounded in a coherent and rational basis. Advocates of the existing framework may contend that the distinction resides in the assumed customary and societal conventions, wherein a woman, upon entering into matrimony, integrates into her husband's family, thus rendering it reasonable for her assets to revert to that familial unit. Nonetheless, this line of reasoning presents significant challenges within a contemporary constitutional framework that seeks to dismantle rather than uphold patriarchal norms. The notion that a woman irrevocably disconnects from her birth family upon entering marriage and becomes wholly integrated into her husband's family is a construct rooted in patriarchal ideology, which has faced extensive critique from feminist scholars and social reformers alike. The concept of a woman as a temporary inhabitant of her parental residence while being a permanent fixture in her marital abode fails to capture the complexities of the experiences of numerous women, particularly those who are unmarried, divorced, widowed, or maintain difficult relationships with their in-laws.

Furthermore, the second criterion for assessing constitutional validity – that the distinction must possess a rational connection to the purpose of the legislation – also seems to remain unfulfilled. The aim of the Hindu Succession Act was to systematically organise and modernise Hindu law concerning intestate succession, while promoting uniformity, clarity, and gender

---

<sup>21</sup> The Constitution of India, art.15.

<sup>22</sup> The Constitution of India, art.14.

<sup>23</sup> *The State Of West Bengal vs Anwar All Sarkar* Habib Mohamed 1952 AIR 75, 1952 SCR 284

<sup>24</sup> Hindu succession Act 1956 ,s.15.

equality. By placing the husband's heirs above the woman's own natal family, Section 15(1)(b) seemingly undermines the pursuit of gender equality and does not satisfy the criteria for reasonable classification. The connection between the objective of guaranteeing equitable succession and the regulation that precludes a woman's immediate family from having a primary claim to her property in the absence of offspring is devoid of logical coherence.

The discriminatory implications of Section 15(1)(b) have garnered considerable attention from both the judiciary and scholarly critiques. In the case of *Omprakash v. Radhacharan*,<sup>25</sup> the Supreme Court of India rendered an interpretation of Section 15(1)(b)<sup>26</sup> that has been perceived as reinforcing existing disparities. Subsequent rulings have demonstrated an openness to engage more thoughtfully with the gendered ramifications of the provision. In the matter of *Kamti Devi v. Poshi Ram*<sup>27</sup>, the Court recognised the necessity for a more fair and balanced interpretation of succession laws. Nevertheless, the foundational legal framework persists in regarding women as inferior stakeholders in matters of property ownership and inheritance.

In the course of examining the series of petitions contesting Section 15<sup>28</sup>, the Supreme Court expressed noteworthy insights that illuminate its viewpoint on the norms and structures inherent within Hindu society and family dynamics. The Court posited that "established norms of Hindu society should not be challenged solely for financial gain," indicating an apprehension that property disputes could potentially erode traditional values. An essential element of this judicial viewpoint was the focus on the notion of a woman obtaining a "new gotra" and a "new family" through marriage, along with associated rights and titles concerning her husband's properties. The Court enquired, "You seem to be overlooking the fundamental principles." To what destination are we proceeding? Do not diminish the foundational principles of Hindu society. Moreover, the bench alluded to the cultural sentiments that exist in rural areas, where it is customary for a married woman's parents to abstain from food or drink in her husband's household, thus highlighting the perceived transformation in familial identity and loyalty following marriage. These observations collectively suggest a judicial tendency to maintain conventional interpretations of Hindu family structures and property devolution, perceiving the current law as fundamentally "scientific and logical" within that cultural context.

---

<sup>25</sup> *Omprakash & Ors vs Radhacharan & Ors* AIR 2009 SC (SUPP) 2060

<sup>26</sup> Hindu succession Act 1956 ,s.15.

<sup>27</sup> *Smt. Kamti Devi & Anr vs Poshi Ram* AIR 2001 SUPREME COURT 2226

<sup>28</sup> Hindu succession Act 1956 ,s.15

The Supreme Court has consistently emphasised that Parliament, in its role as the legislative authority, has developed a framework for inheritance under the Hindu Succession Act that is both "scientific and logical." The Court asserted that any requisite modifications to the Act ought to stem from the legislative body, rather than through judicial interpretation or intervention in specific cases, particularly after the fundamental personal dispute has been resolved. The Court emphasised that a married woman maintains the autonomy to create a will for the distribution of her property according to her preferences, suggesting that testamentary succession provides a means for women to circumvent the intestate regulations should they seek an alternative allocation of their assets. This indicates that the current legal framework offers avenues for personal agency, while significant statutory modifications warrant careful consideration by the legislature.

### **Suggestion and Conclusion**

The judiciary has advocated in various case laws and law report of commission Kamti Devi v. Poshi Ram<sup>29</sup>, the Court recognised the necessity for a more fair and balanced interpretation of succession laws.

Law Commission of India, in its 204th Report<sup>30</sup> entitled 'Proposal to Amend Section 15 of the Hindu Succession Act, 1956 in the event of a Female Dying Intestate Leaving Self-Acquired Property,' advocated for an amendment to the provision to guarantee that if a woman passes away without offspring, her self-acquired property should be inherited by her natal family instead of her husband's heirs. The Commission observed that the current provision is rooted in an antiquated belief that a woman is subsumed under her husband's family post-marriage, a notion that stands in stark contrast to the principles of equality articulated in the Constitution. The Commission underscored that this provision effectively diminishes the entitlement of a woman's own family to her property, regardless of whether it was acquired without any contribution from her husband or his family.

Law Commission<sup>31</sup> and the National Commission for Women (NCW) submitted it is imperative to gather comprehensive perspectives from all states and Union Territories prior to any further deliberation on potential amendments. This role suggests that extensive legislative

---

<sup>29</sup> Smt. Kamti Devi & Anr vs Poshi Ram AIR 2001 SUPREME COURT 2226

<sup>30</sup> Law Commission Of India ,”204 Report on Proposal to Amend Section 15 of the Hindu Succession Act, 1956”

<sup>31</sup> Law Commission Of India ,”204 Report on Proposal to Amend Section 15 of the Hindu Succession Act, 1956”

reform, although recognised as a possible future endeavour, is not on the immediate horizon and necessitates a wider political and social agreement.

Omprakash v. Radhacharan,<sup>32</sup> the Supreme Court of India rendered an interpretation of Section 15(1)(b)<sup>33</sup> that has been perceived as reinforcing existing disparities.

The discriminatory implications of Section 15(1)(b) have garnered considerable attention from both the judiciary and scholarly critiques.

Kamal Anant Khopkar's<sup>34</sup> the personal law must evolve to align with constitutional principles of equality and autonomy. Therefore there is a need for a purposive reinterpretation of Section 15 which acknowledges the kingship and succession should be rid of outdated gender roles.

From the above it is submitted that judiciary has curtailed itself in the interpretation of Sec 15 of HAS which needs to be amended by the legislature as judiciary can't amend the laws but only interpret the law this power of amending and making power is with the legislature. Section 15 need a change as women has become empowered and has her own earned money [self acquired property]. The days have gone when female only had "Streedhan" as her property. Now a days due to awareness which has been spreaded by the government "Beti Bachao Beti Padoo" people have become more aware and concern about their daughters so they are educating them to become financially independent.

Then how much it is right to give her self acquired property to her husband heirs than to her parents who made her to achieve such in her life.

That's why anew legal framework need for self acquired property of Women by the Parliament.

Men and Women have  
Roles-their roles are  
Different, but their  
Rights are equal  
Harri Holkeri

---

<sup>32</sup> Omprakash & Ors vs Radhacharan & Ors AIR 2009 SC (SUPP) 2060

<sup>33</sup> Hindu succession Act 1956 ,s.15.

<sup>34</sup> Kamal Anant Khopkar vs Union Of India W.P.(C) No.15/7/2018