

## WHY THE AMENDMENT TO SECTION 15 OF THE HINDU SUCCESSION ACT 1956 FALLS SHORT OF TRUE JUSTICE

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### Abstract

The amendment to Section 15 of the Hindu Succession Act, 1956, was introduced to address illegalities, unfairness and complexities in the inheritance of property by female Hindus. However, the changes, particularly in the State of Kerala's 2015 amendment, have raised concerns about fairness and equity to female inheritance. By restricting the mother's rights to a "life interest" in property inherited from a predeceased son, the amendment conflicts with the principles of vested ownership under Section 19 of the Transfer of Property Act, 1882, and absolute ownership under Section 14 of the Hindu Succession Act. This article critically evaluates the amendment's implications, arguing that it reinforces patriarchal norms, creates inconsistency with existing legal provisions, and adversely affects the women's autonomy over inherited property. The amendment requires reconsideration to align with the principles of equality and justice in inheritance law.

**Keywords:** Hindu Succession Act 1956, Inheritance Rights, Female Hindus, Property Law, Kerala Amendment, Section 15, Vested Interest, Life Interest, Patriarchal Norms, Succession Law Equity.

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### Introduction

The Hindu Succession act of 1956 was enacted with the intent to provide a fair and equal inheritance framework among Hindu families, particularly in recognising the rights of women in property matters. However, the amendment to Section 15 governing how the property of a deceased Hindu female is inherited has raised questions about its effectiveness and fairness. While the amendment aims to bring more clarity and Justice to inheritance laws, many believe it falls short of its purpose. Critics while going through the amendment has posed a vital question, did the changes instead of ensuring their property is passed to rightful heirs may inadvertently reinforce patriarchal norms and create unintended complications in inheritance rights. This article explores why the amendment to Section 15 may fail to serve its intended purpose; analysing its potential limits and the broader implications for equity in Succession Law.

### General Rules of Succession for Female Hindus under Section 15 of the Hindu Succession Act, 1956.

Section 15 of the Hindu succession Act 1956 deals with the general rules of succession in the case of female Hindus. clause (1) of Section 15 provides that:

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, —

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1), —

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.<sup>1</sup>

### **Sections 14, 15, and 16: Absolute Ownership and Testamentary Rights of Female Hindus**

Section 15 read with section 16 of the Hindu Succession Act 1956 deals with succession of the property of a female Hindu dying intestate and will devolve upon the heirs as prescribed in section 15. This rule is applicable only if the female Hindu is the absolute owner of the property when she dies intestate, here the pertinent point is that the female should be the absolute owner.

The rules provided in Section 15 and 16 is connected with section 14 of the act which provides that:

**Property of a female Hindu to be her absolute property.** —(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.<sup>2</sup>

The combined reading of section 14 and 16 indicates recognition of rights of women on the basis of the prevailing socio-economic perspective. In order to seek shelter under sections 14 and 16 the female Hindu should be the "full owner" of the property and not as a "limited owner". When the widow becomes the absolute owner of the property under section 14 (1) of the Hindu Succession Act 1956, she is entitled under section 30 of the act to dispose of the said property by will<sup>3</sup>.

Here the pertinent question which may arise is as to the effect of the will executed by the widow before and after the commencement of The Hindu Succession act

Here two arguments can raise to answer the question. Firstly, the argument is that the will is invalid since the same was executed when the widow has a limited estate. Another argument is in favour of the widow, as the will is valid since the will would take effect on the death of the testatrix and not on the date of its execution. In such a situation the second argument was accepted by the Rajasthan High Court in *Sundar Devi vs Manak Chand* <sup>4</sup> and held that the will is valid.

### **Kerala Amendment to Section 15 of the Hindu Succession Act, 1956: Inference and Implementation**

Section 15 of the Hindu Succession Act 1956 was amended by the Kerala government as reported by the subject committee in the year 2015 in its application to the state of Kerala<sup>5</sup> by which under Section 15, after clause (b) of subsection 2, the following was inserted:

"(c) any property inherited by a female Hindu from her pre-deceased son shall devolve not upon the other heirs of the pre-deceased son from whom she inherited the property."

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

<sup>2</sup> Hindu Succession Act, 1956, s 14(1).

<sup>3</sup> *ibid*

<sup>4</sup> AIR 1975 Raj 211 (1975).

<sup>5</sup> Hindu Succession Act, 1956, s 15(2)(c) (Kerala Amendment)

As per the amendment property inherited by the mother from her son will, upon her death will revert back to her Son's heirs (his wife and children) rather than her own general heirs, such as her other children (brothers and sisters off the deceased of the deceased).

Section 10 of the Hindu Succession act, 1956 deals with distribution of property among class-I heirs by which the property of an Intestate shall be divided among them for the rules provided therein. The distribution of deceased Son's property will be exclusively among his class-I heirs by which wife, children and mother will get equal shares and they become the full owners of their own respective shares. As and when the pre-deceased son dies his wife, children and mother will get a vested interest on their respective shares and what is postponed is division, possession and enjoyment of their shares.

### **Impact of Section 19 of the Transfer of Property Act, 1882, and the Amendment to Section 15 of the Hindu Succession Act, 1956**

Section 19 of the Transfer of Property Act 1882<sup>6</sup> explain the rules of vested interest by which "where an interest therein is created by will, they will become the owners of that interest and only the Possession and enjoyment is postponed." <sup>7</sup>

Therefore, when the mother inherited the property of her pre-deceased son, she gets a vested interest though the same is not partitioned. Here the pertinent aspect under section 19 of the Transfer of Property Act 1882 is, when the mother gets vested interest she will be the absolute owner over the share she got from her Pre-deceased Son. Therefore, it can be alienated but the possession and enjoyment only is postponed until partition. In that case what is the effect of the new amendment to Section 15 of the Hindu Succession Act 1956?

As per the amendment when the female Hindu inherited property of her son the legal implications are:

- (a) Class-II Heirs, such as the brothers and sisters of the deceased, cannot claim any portion of the property under this amendment, either directly or indirectly.
- (b) The intent of the amendment is; the Mother's rights to her son's property are limited to a life interest. Upon her death, her share reverts to the son's heirs (wife and children), ensuring that her other heirs (such as her remaining children) do not inherit that portion.
- (c) The amendment does not confer any special property rights upon class-II heirs nor was it intended to do so.

#### **The effects of this amendment are**

1. The mother's rights are reduced to a "life interest," restricting her ability to alienate or bequeath the property.

a. Upon her death, the property automatically reverts to the son's heirs (his wife and children).

2. The amendment was not intended to change this status of a class-II Heir.

a. Brothers and sisters of the pre-deceased son's (Class-II heirs) lose any claim to the property, ensuring it stays within the deceased son's immediate family.

The amendment gives predominance to the immediate heirs of the pre-deceased son and limits the mother's autonomy over inherited property.

The only interpretation is that the property remains with the pre-deceased son's nuclear family and undermines the mother's absolute ownership guaranteed by Section 19 of the Transfer of Property

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<sup>6</sup> Act No. XX of 1882

<sup>7</sup> Transfer of Property Act, 1882, s 19

Act, 1882. The amendment creates a narrower inheritance path while clashing with the broader ownership rights enshrined in the Transfer of Property Act, 1882.

### **Conflict of Section 19 of the Transfer of Property Act, 1882, and the Amendment to Section 15 of the Hindu Succession Act, 1956: Legal and Practical Concerns**

(a) The provisions of section 19 of the Transfer of Property Act 1882, which deals with vested interest will adversely be affected, because though the property inherited from her pre-deceased son creates vested interest and she will become the full owner of the share but the Mother's right is limited to life interest as per the amendment.

When the mother got vested interest the property becomes the absolute property of the female Hindu under section 19 of the Transfer of Property Act<sup>8</sup> and she is entitled under section 30 of the Hindu Succession act 1956 to dispose of the said property by will<sup>9</sup> notwithstanding that any property possessed by a female Hindu, weather acquired before or after the commencement of this act, shall be the full owner thereof and not as a limited owner.<sup>10</sup> When reading section 14,15 and 30 of the Hindu Succession Act 1956 read with section 19 of the Transfer of Property Act 1882, when any female Hindu inherit property she becomes the full owner of the said property and is entitled to alienate by transfer or by will but by the amendment to section 15 of the Hindu Succession Act 1956 any female Hindu inherits property from her pre-deceased son, the Mother's right to her son's property is limited to a life interest and upon her death her share reverts to the deceased son's heirs.

Here as per the decision of *Sundar Devi Vs Manak Chand*<sup>11</sup> When a will executed by a female Hindu before or after the commencement of the Hindu Succession Act 1956, the alienation of property by will is valid if she died after the commencement of the Act because the will would take effect on the death of the testatrix and not on the date of execution. So, if the female Hindu executes a will before or after the commencement of the new amendment the provisions of the new amendment will take effect on the death of the testatrix. Thus, the female Hindus Right of transfer of her absolute property fails and hence the new amendment requires reconsideration because the will is valid only after the death of the testatrix. Here if the property devolved upon the mother before the commencement of the amendment, she as per the law, is the absolute owner of her share and it will devolve upon her legal heirs after her death but as per the new amendment the right of the legal heir will fail and her death will result in change of the absolute ownership to a limited one and hence it will merely be a life interest and devolve upon the legal heirs of her Pre-deceased son.

### **Conclusion**

The amendment to Section 15 of the Hindu Succession Act, 1956, is inconsistent with the rights conferred under Section 19 of the Transfer of Property Act, 1882, and Sections 14 and 30 of the Hindu Succession Act. Therefore, the new amendment is unfair and leads to injustice. It is also against the provisions related to succession under the Hindu Succession Act 1956 and hence requires reconsideration.

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<sup>8</sup> *Supra note 9*

<sup>9</sup> Hindu Succession Act, 1956, s 30

<sup>10</sup> Hindu Succession Act, 1956, s 14

<sup>11</sup> AIR 1975 Raj 211 (1975).

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