

Gender discrimination in devolution of property under Hindu Succession Act, 1956

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Abstract

In India, statutes governing individuals on matters of personal law (marriage, divorce, inheritance, adoption) differ as per the religion of the individual. In this framework, matters of inheritance of property amongst Hindus, Buddhists, Jains and Sikhs are governed by the Hindu Succession Act, 1956 (HSA). This legislation applies to the transmission of all assets owned by Hindus.

The provisions of the HSA discriminate against Hindu women by prescribing different rules for devolution of property held by men and women. These provisions have the effect of excessively, and unfairly prioritising the husband's family in the scheme of devolution as compared to the woman's own family, even when the property belongs to the woman. The legislation is a product of an era when it was inconceivable for Indian women to own and acquire property. However, these biases continue to be perpetrated upon Hindu women in India today.

This discrimination is ultra vires of Articles 14 and 15 of the Constitution of India, it violates India's commitments under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, and leads to several undesirable consequences especially in cases where the property in question is acquired by the woman through her own skill or effort. Indian legislation such the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (GSSNIP) and Indian Succession Act, 1925 (ISA), and succession laws of developed countries are far more gender-equitable, and can serve as an inspiration for eliminating the gender-discrimination in the HSA.

The efforts, so far, to reform the HSA on this particular matter have been myopic at best. We provide a principles-based approach to comprehensively amend the HSA, to remove the gender discrimination in devolution of property. We propose a draft amendment to the HSA to effect this reform.

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All errors remain ours.

Contents

Acronyms	5
1 Introduction	7
2 Devolution of property under the Hindu Succession Act,1956 (HSA)	8
2.1 General scheme of devolution for men and women	9
2.1.1 Sources of discrimination in Section 15(1)	10
2.2 Source-based succession under Section 15(2)	11
2.3 Sources of discrimination in Section 15(2)	11
3 Case-law on Sections 8 and 15 of HSA	12
3.1 Constitutionality of differing schemes of devolution for men and women	12
3.2 Undesirable outcomes resulting from Section 15: An extreme example	14
3.3 International obligations under Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)	16
3.4 The legislature holds the solution	18
4 Gender equality within other Indian succession laws	18
4.1 Civil code of Goa	19
4.2 Devolution of property under the Indian Succession Act, 1925 (ISA)	20
5 Prior attempts at reform	21
5.1 174th Law Commission of India Report, 2000	21
5.2 207th Law Commission of India Report, 2008	21
5.2.1 Issues with the recommendations of the 207th LCI	22
5.3 Hindu Succession (Amendment) Bill, 2013	23
5.4 Hindu Succession (Amendment) Bill, 2015	24
5.5 Consultation paper on reform of family law, LCI, 2018	25
5.6 Review of laws and legislative measures affecting women, NCW	25
6 Reforming the HSA	26
6.1 Approach to reform	27
6.2 Gender-neutral devolution under HSA	27
7 Urgency of reform	28
7.1 The law is incompatible with women’s position in the economy and society	28
7.2 Conclusion	29
A Proposed amendment to the Hindu Succession Act	30
References	33

Acronyms

ASG Additional Solicitor General.

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

GSSNIP Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

HSA Hindu Succession Act, 1956.

HSAA Hindu Succession (Amendment) Act, 2005.

ISA Indian Succession Act, 1925.

LCI Law Commission of India.

NCW National Commission for Women.

PCC Portuguese Civil Code, 1867.

Important definitions

Agnate (n.) : A person is said to be an “agnate” of another if the two are related by blood or adoption wholly through males. E.g.: For a Person X, the child of his father’s brother is an agnate. The child of his father’s sister is not an agnate.

Cognate (n.) : A person is said to be a “cognate” of another if the two are related by blood or adoption but not wholly through males. E.g.: For a Person X, the child of his father’s sister is a cognate. The child of his father’s brother is an agnate.

Collateral (n.) A person is said to be a collateral of another if they both share a common ancestor, but one is not a direct lineal descendant of the other. Siblings, uncles, aunts, and cousins of any degree are collaterals. This is a superset of agnates and cognates.

Intestate (adj.) : A person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition (i.e. living will) capable of taking effect

Intestate (n.) : An intestate is a person who dies without creating a living will (with respect to the specific property in question). If a (hypothetical) person owns two items of property — X and Y — but only mentions Property X in his/her will, he/she would still be termed as an “intestate” with respect to Property Y.

Lineal consanguinity (n.) : Lineal consanguinity is the relationship between two persons wherein one is a direct descendant of the other. E.g.: Children, grandchildren, parents, grandparents etc.

Kindred (n.) : Two persons are said to be kindred if they have a common ancestor. It is a superset of collaterals and lineal consanguinous relations.

Per stirpes (adj.) : Division of property per stirpes means each branch of the family receives an equal share. For example, say an intestate A has two surviving children — B and C — and one pre-deceased child — D. Say further that D has two surviving children — X and Y. B and C are each entitled to 1/3rd share of A’s property. X and Y are each entitled to 1/6th share of A’s property, which is an equal division of D’s share of 1/3rd.

Testamentary succession (n.) : Succession on the basis of a valid will made by a person before their death.

1 Introduction

“The egalitarian bluestocking that the Hindu society may have become, in consonance with the constitutional mandate, it has still left untouched perhaps the last discriminatory corner of the Hindu Society which has otherwise come of age and which would have to be looked upon as wanting in an equal society.”

— Justice Dalvi, in *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748]

Narayani Devi got married in the year 1955 and moved into her matrimonial home. Her husband died within three months of marriage. The marital family banished Narayani Devi from the matrimonial home. She returned to her parents, who supported her and provided her an education in the succeeding years. So equipped, Narayani Devi, over 40 years, gradually amassed substantial property. She died childless in 1996, the sole owner of various bank accounts, provident funds and land. Her mother claimed the right to inherit her property, but the claim was challenged by the brothers of Narayani’s late husband.

Who is the rightful heir to Narayani’s properties? This was the subject matter of the dispute in the Supreme Court of India in *Om Prakash v. Radhacharan*. The Court relied upon provisions of the Hindu Succession Act, 1956 (HSA) to grant all her properties to her late husband’s nephews, while her mother received nothing. The Court privileged the marital family, which had disowned Narayani Devi, over her natal family, which supported her, and therefore contributed towards her acquiring the property in question. Distant relatives of her late husband inherited her *self-acquired* property in preference to Narayani Devi’s closest relatives.

This injustice would not have occurred if the gender roles were reversed — the property would have remained within her family if Narayani Devi were a man. In fact, the property would have remained within her family even if she were a practicing Christian, Parsi or Jew under the Indian Succession Act, 1925 (ISA), or a resident in the state of Goa under the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (GSSNIP). An injustice was propagated solely due to Narayani Devi’s identity as a married Hindu woman. The Hindu law of succession is inherently discriminatory against women in matters of devolution of property.

The HSA prescribes different rules of devolution for property belonging to men (given under Section 8) and property belonging to women (given under Section 15). As seen in the example above, the discrimination is most apparent in cases where the property belongs to a woman who does not have a surviving spouse or children. The schemes of devolution in Sections 8 and 15 have the effect that the husband’s family (including his extended family) has a stronger claim to such property than the wife’s family, even in cases where the wife may have acquired the property through her own skill or effort (Bombay High Court 2012).

Under Article 15 of the Constitution of India the State cannot discriminate between citizens solely on the basis of religion, race, caste, sex, or place of birth. This implies that the state cannot make laws which treat people differently on the basis of the aforementioned distinctions (except in very specific circumstances).¹ Despite this explicit prohibition under Article 15(1), provisions of the HSA — which is part of the Hindu personal law — discriminate between men and women solely on the basis of gender.

The courts have not made a definitive ruling on whether this discrimination is unconstitutional. The Bombay High Court in a single-bench judgment in *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748] has ruled it to be unconstitutional, but since it conflicts with a previous single-judge bench’s ruling in *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav* [AIR 1983 Bom

¹Clauses (3), (4) and (5) of Article 15 provide exceptions to clause (1). The State may make laws designed to provide special benefits for women, children, and socially and economically backward classes of citizens.

156], the matter has been referred to a division bench. The division bench has not resolved this matter as of date. While the unconstitutionality of the discrimination may not be a settled question, several judgments such as *Om Prakash v. Radhacharan* [(2009) 15 SCC 66] highlight the fact that the discrimination is, in the least, extremely unfair to women.

In re the case of *Om Prakash v. Radhacharan* [(2009) 15 SCC 66], the Court's reasoning is flawed. It did not invoke Article 142 of the Constitution of India which empowers the Court to do "complete justice". It ignores the principles of equity, justice and good conscience, and it contradicts its own logic in the interpretation of the concept of the source of the property (Upasana P 2016; Singhal 2015; Sridevan 2011). Hindu personal law has evolved to some degree, and become incrementally more gender equitable over time. For example, the Hindu Succession (Amendment) Act, 2005 (HSAA) eliminated gender discrimination in one area — granting male and female siblings equal rights over ancestral property. However, the provisions which discriminate against women and their natal families in matters of devolution of property are still part of the legislation. The *174th Report of Law Commission of India, 207th Report of Law Commission of India, Consultation Paper on Reform of Family Law*, and even courts have all explicitly recognised this fact. The discrimination violates India's commitments under the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), which courts have repeatedly ruled that the government has an obligation to meet.

Courts have limited ability to interpret provisions of the law. The ideal remedy for this issue is an amendment to the HSA, and the ideal authority for reform, therefore, is the Parliament (Sridevan 2011). The efforts at reform so far have been piecemeal and unsatisfactory. A comprehensive reform of the scheme of devolution in the HSA is necessary to remove the inherent gender discrimination. Other Indian laws such as the ISA and GSSNIP provide good examples to follow for amending the HSA.

In this paper, we describe the provisions of the HSA which deal with devolution of property (Chapter 2). We describe how the schemes of devolution are different for men and women. We then examine case law on this discrimination (Chapter 3). We discuss other existing Indian laws which are more equitable than the HSA, and can serve as an inspiration for reforming the HSA (Chapter 4). We examine what efforts have already been put into reforming the HSA and where they fell short (Chapter 5). We propose an approach for drafting an amendment to the HSA (Chapter 6), and also provide a draft amendment which remedies the gender discrimination in the provisions governing devolution of property (Appendix A).

2 Devolution of property under the HSA

The HSA specifies separate schemes of devolution of property for men and women dying intestate. Devolution for male intestates' property is covered by Sections 8 and 9 read with the Schedule to the HSA. Section 8 lays down the general rules for devolution of property. The Schedule lists the different classes of heirs. Section 9 is an enabling provision for Section 8. Section 9 gives the rules governing the priority of heirs in different classes specified in the Schedule, and the priority for heirs in different sub-classes of the same class. It also provides for heirs having a higher priority to inherit property at the exclusion of heirs of lower priority. Sections 15 and 16 of the HSA cover devolution of female intestates' property. Section 15(1) lays down the general scheme of devolution. Section 15(2) provides for exceptions applicable to property which a female intestate herself inherited. Section 16 is an enabling provision for Section 15, and it provides heirs having a higher priority to inherit property at the exclusion of heirs of lower priority.

Our discussion of the discrimination against women under the HSA will be limited to Sections 8 and 15, since these two sections contain the general rules of succession, and are the source of the

discrimination. Sections 9 and 16 will not be analysed, since they are only enabling provisions, and do not themselves contain gender-discriminatory rules.

2.1 General scheme of devolution for men and women

Table 1 summarises the general schemes of devolution for property belonging to men and women. These schemes of devolution only apply to intestate succession. Section 8, which governs devolution of male intestates’ property, dictates the priority of succession by way of classes of heirs. Class I heirs include, broadly, the male intestate’s mother, and lineal descendents. Class II heirs are the father, siblings, lineal descendents of siblings, and the siblings of the parents of the male intestate. Section 15(1), which provides the general rules of succession of property belonging to female intestates, does not organise the heirs by classes. Instead Section 15 explicitly lists the persons who are eligible to succeed, within the text of the section. However, it does contain implicit references to Section 8 and the Schedule to determine who counts as “heirs of the husband”, and “heirs of the father”.

Table 1: Comparison of Sections 8 and 15(1) of Hindu Succession Act, 1956

Section 8	Section 15(1)
<p>The property belonging to a Hindu male dying intestate devolves in the following manner (details of classes of heirs are given in the Schedule to the Act):</p> <ol style="list-style-type: none"> 1. First, upon the Class I heirs. Broadly this includes the wife, mother, children, and children of pre-deceased children. 2. If there is no heir of Class I, then upon Class II heirs. Class II heirs are further divided into nine sub-categories. The heirs at each level in this hierarchy exclude the heirs featuring below them from inheriting any property. The Class II heirs featuring at the top of the hierarchy include the father of the deceased, the deceased’s siblings, the sibling’s children, and the grandparents of the deceased. 3. If there is no heir of any of the two classes, then upon the agnates of the deceased; 4. If there is no agnate, then upon the cognates of the deceased. 	<p>Property held by Hindu females dying intestate devolves in the following manner:</p> <ol style="list-style-type: none"> 1. First, upon the children and husband of the deceased. The term ‘<i>children</i>’ also includes the children of any pre-deceased children. 2. If there is no surviving husband or children, then upon the heirs of the husband. The heirs of the husband means the heirs specified in Section 8. Their claims over the property are governed by the scheme of devolution given in Section 8. 3. If there are no heirs of the husband, then upon the parents. 4. If there are no parents, then upon the heirs of the deceased’s father. As with “husband’s heirs” the father’s heirs inherit according to the provisions of Section 8. 5. If there are no heirs of the father, then upon the heirs of the deceased’s mother.

In the schemes of devolution given under Section 8 and 15 — described in Table 1 — the heirs in one class completely exclude heirs in the other classes. For example, in the case of property belonging to a man dying intestate, if his Class I heirs (e.g.: children) are alive, none of the Class II heirs (e.g.: his siblings) can claim any share in it. Similarly, in the case of property belonging to a woman dying intestate, if her children are alive, her husband’s heirs, and her parents have

no claim over it.

In the case of men, the scheme of devolution given in Section 8 applies to all the property they own. In the case of a woman, the scheme of devolution given in Section 15(1) applies to all property which she inherits from her husband, husband’s family or any natal relative. However, property which she inherits from her parents devolves as per Section 15(2), if the woman dies childless.² Section 15(1) also applies to property which she acquires herself through gift, wills or purchase. Thus, all “self-acquired” property of the woman is governed by Section 15(1).

2.1.1 Sources of discrimination in Section 15(1)

In the scheme of devolution for property belonging to a woman, the husband’s heirs (which includes his natal relatives, their spouses and their children) have a higher priority than the woman’s parents and siblings. In contrast, the scheme of devolution for property belonging to a man under Section 8 does not include any of the woman’s relatives. Furthermore, the list of the husband’s heirs is so exhaustive, that in practice a woman’s parents and siblings would rarely stand to inherit property from her.³ We do not see any analogous provision in Section 8 and 9 of the Act. For any property which belongs to a man, his wife’s natal family is never in line to inherit it. The property devolves only to his heirs, specified in the Schedule, which includes his distant relatives and their spouses. This lack of reciprocity is *prima facie* unfair (Mishra 2015).

The rules of devolution for women given in Section 15(1) apply to all situations subject to the exceptions given in Section 15(2). This includes the property which the woman acquires through gifts, or through her own skill and effort. Therefore, even when the property in question is acquired by the woman by, for example, purchasing it with her own earnings, the husband’s heirs have a higher priority in the scheme of devolution of such property than her parents and siblings. In other words, the husband’s natal family members (and their spouses) — including very distant relatives — are prioritised over even the wife’s closest natal family members, if she dies childless.⁴

Even in cases where the woman’s family stands to inherit her property, her father’s heirs have a higher priority over her mother’s heirs. This means even distant relatives on her father’s side have a higher priority over the closest relatives on her mother’s side.

This discriminatory treatment is rooted in the nature of property ownership and acquisition in India at the time this law was drafted. According to the *Report of the Hindu Law Committee*, this formulation of the law is based on property in Hindu households historically being owned collectively by the joint family.⁵ The legislative intent was thus geared towards prioritising the property rights of the family over and above those of individuals, least of all the women in the household. Furthermore, most women in India were not engaged in paid work at the time this law was drafted. It was therefore considered inconceivable for women to acquire property through the exercise of their own skill.⁶ As a result even for a woman’s self-acquired property, her husband’s heirs are given priority over her closest natal relatives, if she has no surviving children.

²This is discussed in detail in Section 2.2

³See the Schedule to the Hindu Succession Act, 1956

⁴For further reading see Law Commission of India 2018.

⁵The Rau Committee was charged with drafting the Hindu Code Bills, to codify Hindu personal law. The Hindu Code Bills which the Committee drafted, after due modification were passed by the Parliament of India as *Hindu Marriage Act, 1955*, *Hindu Succession Act, 1956*, *Hindu Minority and Guardianship Act, 1956*, and *Hindu Adoptions and Maintenance Act, 1956*. These four acts currently constitute Hindu personal law. For details see: *Report of the Hindu Law Committee*

⁶This underpinning of the Hindu Succession Act, 1956 has also been noted by the Law Commission of India. See: Law Commission of India 2000.

In contrast, if a man dies intestate and childless, if he has no surviving spouse, his mother has highest priority for succession, followed by his father, siblings, and then more distant relatives. However, at no point does the woman's natal family stand to inherit his property.

2.2 Source-based succession under Section 15(2)

While Section 15(1) of HSA lays down the general scheme of succession for Hindu women, Section 15(2) carves out two exceptions to this rule in case a woman dies leaving behind no children (or children of pre-deceased children). This alternate mechanism for devolution of property overrides the scheme of devolution of property in Section 15(1) in specific circumstances. Under Section 15(2) if a woman intestate has no surviving children:

1. In case of any property the woman inherited from her father or mother, the property devolves upon the heirs of her father.
2. In case of any property the woman inherited from her husband or father-in-law, the property devolves upon the heirs of the husband.

In the context of Section 15(2), the term "inherited" only means property inherited intestate. The property which a woman acquires through any other manner devolves as per the provisions of Section 15(1). To clarify, the property that a woman receives from her parents devolves differently depending on whether she received it through intestate succession or through a will, and whether she has any surviving children. If her parent bequeaths the property to her through a will or gift, it devolves as per Section 15(1). (*Jayantilal v. Chhanalal*, [AIR 1968 Guj 212] and *Dr. Shashi Ahuja v. Kulbhushan Malik* [AIR 2009 Del 5]). Section 15(1) also applies if she inherits that property as a result of her parent dying intestate, but she herself is survived by her children. However, if the woman inherits that property as a result of her parent dying intestate, and she is childless, it devolves as per Section 15(2).

This *source-based succession* is interpreted quite narrowly, and is restricted to the relations specified in the section, viz. her parents. For property inherited from any other relations, the general scheme of devolution under Section 15(1) applies. For example, property inherited from a brother does not revert to the natal family of the woman through *source-based* succession, but follows the general scheme of devolution laid down in Section 15(1) instead. (*Balasaheb v. Jaimala* [AIR 1978 Bom 44])

2.3 Sources of discrimination in Section 15(2)

There are no *source-based* rules for property owned by Hindu males. The property owned by a male does not revert to the source from which he obtained his property, and continues to flow through his family line. The scheme of devolution of property for a male does not envisage any property flowing to the natal heirs of his wife after his death. This is unlike the case for a Hindu female (who dies childless), where any property she inherited from the husband or husband's family would devolve to the husband's heirs.

This provision was not part of the recommendations of the *Report of the Hindu Law Committee*. The Joint Parliamentary Committee, which drafted the final version of the Hindu Succession Bill, 1954, specifically added this provision. The Committee justified this scheme of *source-based* succession on the grounds that it would "*prevent properties from passing into the hands of persons to whom justice would demand they do not.*" The implicit assumption is that properties are only supposed to pass through male lines. This is also borne out by the fact that in the case of property inherited from the mother, the heirs of the father get priority, not the natal relatives

of the mother. The 174th Report of Law Commission of India also makes note of and criticises this underlying bias. The Law Commission opines, “The provision of section 15(2) of HSA is indicative again of a tilt towards the male... These provisions depict that property continues to be inherited through the male line from which it came either back to her father’s family or back to her husband’s family.” However, this position that any inherited property of a female intestate (who dies childless) must flow back to the last male owner (or his heirs) has been upheld by the Supreme Court of India, as well as several High Courts. (for example *Bhagat Ram v. Teja Singh* [AIR 2002 SC 1] and *Dhanishta Kalita v. Ramakanta Kalita* [AIR 2003 Gau 92]).

In effect, this reduces a woman’s rights in the property she may have inherited to a life interest. She may enjoy the property during her lifetime, but after her death (in case she dies childless), the property devolves upon the heirs of her husband or father, as if the woman never existed.

The fact of marriage thus has the effect of altering the manner of devolution of a woman’s property. It makes no difference to the corresponding pattern of inheritance for property held by a man. The HSA, thus, only recognises succession of property through the female line in limited circumstances.

3 Case-law on Sections 8 and 15 of HSA

There are three arguments against the discrimination inherent in the HSA: (1) that the discrimination is unconstitutional [under Article 15(1)], (2) that it leads to unfair and undesirable outcomes, and (3) it violates India’s commitments under international treaties. The argument about the discrimination being unconstitutional has featured in two landmark cases — *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748] and *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav* [AIR 1983 Bom 156]. While the question of constitutionality of the gender discrimination is not a settled one, the arguments for it being unconstitutional are far stronger than for it being constitutional. The unequal treatment of men and women leading to unfair outcomes has been seen in multiple cases, of which we will examine one landmark case — *Om Prakash v. Radhacharan* [(2009) 15 SCC 66]. This case illustrates the worst case scenario that can result from the existing formulation of Sections 8 and 15 of the HSA. The argument about the enforceability of international treaties has arisen in multiple Supreme Court cases, and the Court has ruled that the State is obliged to meet the commitments of the treaties.

3.1 Constitutionality of differing schemes of devolution for men and women

We discuss two cases where the constitutionality of the differing schemes of devolution for men and women under Sections 8 and 15 has been challenged. The first time was in the case *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav* [AIR 1983 Bom 156] and second time was in *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748]. Both cases were heard by single-judge benches, and contradict each other. In the *Sonubhai Yashwant Jadhav* case the Bombay High Court held the discrimination to be constitutional, while in the *Mamta Dinesh Vakil* case it held the discrimination to be unconstitutional. The judgment in the latter case contains a clear refutation of the former case, so we will examine the *Sonubhai* case, in the course of examining the *Mamta Dinesh Vakil* case.

In *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748], the Bombay High Court heard two suits challenging the constitutional validity of Sections 8 and 15 of the HSA. In the *first* suit, the maternal aunt of a deceased (a Hindu male) challenged the validity of Section 8 of the HSA as being unreasonable for giving preference to the paternal aunt (father’s relatives) of the deceased over the maternal aunt (mother’s relatives). In the *second* suit, the self-acquired

property of a deceased (Hindu female) was claimed by her brother-in-law, being her husband's heir, thereby forcing her siblings to challenge the validity of Section 15(1) of the HSA.

There were thus two questions before the court:

1. Is the priority given to the male's relatives, for devolution of a male intestate's property under Section 8, in line with Article 15 of the Constitution; and
2. Is the priority given to the husband's heirs over a female intestate's property under Section 15(1), in line with Article 15 of the Constitution.

With respect to the first question, the Court observed that there is no gender-discrimination in the list of Class I heirs, since sons, daughters and their heirs have equal rights. However, the court notes that in sub-classes V to IX under Class II, gender discrimination does persist. For instance, the mother's parents feature lower than the father's parents, lower even than the father's siblings.

On the second question, the court observed that:

“The rules relating to the succession of Hindu females for the items specified in Section 15 are wholly distinct and different from those relating to succession of Hindu males in class I of the Schedule. The codification of the old Hindu law has not kept pace with the constitutional mandate of gender equality and in removing gender disparity completely.”

The court goes on to note that, in contrast to the HSA, the rules of intestate succession set out in the ISA are gender neutral and gender equal. It also observes that while the rules of succession for Parsis were discriminatory in a manner similar to Sections 8 and 15 of the HSA, the succession laws governing Parsis have also been made gender neutral after an amendment to the ISA made in 1991. The court therefore points out that the ISA which was enacted in 1925, made greater strides towards gender equality than the HSA did.

The Additional Solicitor General (ASG) arguing for the constitutionality of the HSA stated that the different schemes of devolution prescribed for men and women under the HSA are discriminatory, but the discrimination is justified. The ASG argued that:

“... a Hindu family is essentially based upon family ties in one's patriarchal family... the woman, upon marriage, goes into the family of her husband; the converse is not true. A woman gives up her maternal / paternal ties upon her marriage and assumes marital ties. Hence, intestate succession for Hindus takes into account this ground reality and the other reason for the difference is the family ties are sought to be maintained and strengthened by the distinction in the rules of succession relating to Hindu males and Hindu females aside from their sex.”

In other words, the ASG argued that the discrimination under Sections 8 and 15(1) was not solely on the basis of gender, but meant to discriminate on the basis of *maintenance of family ties*. To support this argument, the ASG relied on the decision of the Bombay High Court in *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav [AIR 1983 Bom 156]*. In this case, the constitutional validity of source-based succession under Section 15(2) of the HSA was challenged before the courts. In response to the constitutional challenge, the court held that the object of the HSA was to *further the institutional integrity of the family and maintain continuous succession to property in favour of the family*. To this effect, the heirs of the husband were permitted to succeed to a woman's property as a result of the *merging* of the female with her husband's family upon marriage.

In response to the above arguments, the court in the instant case went on to analyse the scheme of succession for males and females under the HSA. It noted that while the property of the

female inherited from her husband or father is legislated to remain within the respective family, the property of a male Hindu is not legislated to remain in the family where it originated. The heirs of the Hindu male under Class II of the Schedule to the HSA include his daughter, sister's son and sister's daughters. However, the rules of succession for males and females from the same family, who would presumably have the same kind of incentives to maintain those family ties are completely different.

Further, the judgment in *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav* [AIR 1983 Bom 156] reasoned that the objective of the discriminatory schemes of devolution was to ensure unity of the family which requires closer blood relations to be preferred to distant blood relations. The court in the instant case disagreed with this thesis by pointing out that many of the classes of persons who fall under the category of husband's heirs would not even be related by blood to a deceased Hindu female. Even so, these distant relations are preferred over her parents and siblings. Therefore, the court concluded that the classification is not based on family ties at all, and is wholly on the basis of gender. The court reasons, therefore, that while a woman can inherit equally with a male sibling, her own succession is rife with discrimination solely on the grounds of sex.

While the question of the constitutional validity of Section 15(2) was not before the court, it noted that the source-based succession provisions under Section 15(2) reduce a woman's rights in a property to a mere life-interest. This goes squarely against the legislative intent of Section 14(1) which sought to grant women absolute rights over the property they owned. The court also notes that analogous source-based succession provisions do not exist for Hindu males.

The Court also points out that in the formulation of Section 15(1)&(2) there is glaring lack of recognition of women's self-acquired property. Under the current scheme, the self-acquired property of the female would devolve first upon the heirs of her husband, and then upon her own parents. "*Conversely*", the Court notes, "*a Hindu female who would otherwise hope to succeed to the estate of another Hindu female as an heir would receive a setback from the distant relatives of her husband*".

The Bombay High Court, therefore, in the instant case, held that the discrimination between males and females does not satisfy the test of equality under Article 15 of the Constitution, and consequently declared Sections 8 and 15 to be violative of the Constitution. However, since this was a single-judge bench — the same as the bench which passed the contrasting judgment in *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav* [AIR 1983 Bom 156] — the court referred the matter to a larger bench. This matter was thus referred to a division bench of the Bombay High Court, which has not come out with its decision yet.

To conclude, even though courts have expressed their discomfort with the constitutionality of differing schemes of devolution, no authoritative pronouncement has been made on this point yet. While there are conflicting judgments on whether the different treatment of men and women constitutes discrimination violative of Article 15, the law as it stands has led to undesirable outcomes in several cases.

3.2 Undesirable outcomes resulting from Section 15: An extreme example

The scheme of devolution for women laid down under Section 15, privileging the husband's heirs over her own, can lead to some undesirable outcomes. In *Om Prakash v. Radhacharan* [(2009) 15 SCC 66] the Supreme Court of India heard a challenge to the scheme of devolution for a woman's self-acquired property under the HSA.

In this case, one Narayani Devi was married to Dindayal Sharma in the year 1955. Within three months of their marriage, her husband died of a snakebite. Immediately upon his death, Narayani Devi was driven out of her matrimonial home and received no support from her marital family going forward. Her parents supported her and gave her an education. Subsequently, as a result of her own labour and exertion over 40 years, Narayani Devi amassed substantial property, including various bank accounts, provident funds and land. She eventually died intestate in 1996.

Upon her death, her mother and brother sought to claim her self-acquired property under Section 15(2) of the HSA 1956. However, her late husband's nephews argued that the property should devolve as per the ordinary rules of succession contained in Section 15(1) of the HSA, and should accordingly belong to the *husband's heirs*, given that she had no children.

The main issue that was framed for consideration was whether Section 15(1) or Section 15(2) would be applicable given that the property was the self-acquired property of the Hindu female?

The Supreme Court held that as per the scheme of Section 15 of the HSA, the property of a Hindu female can only be classified under the following heads:

1. Property inherited by a Hindu female from her parents,
2. Property inherited from her husband or in-laws, and
3. All other property.

In line with this classification, it was held that Section 15(1) makes rules for devolution of all property of a female Hindu barring property inherited intestate from her parents or in-laws. As such, there is no distinction between the female's self-acquired property, and the property that she inherits or receives from elsewhere. Accordingly, it was held that Section 15(1) of the HSA would apply and the heirs of the husband would get preference over her own parents in obtaining a share of her self-acquired property. The fact that the marital family had made no contribution to the acquisition of the property by the deceased would have no adverse consequences for their claim.

The Court further opined that sympathy and sentiments cannot be guiding principles to determine interpretation of law. The intent of the legislatures is clear from the text of the HSA, and the Court did not look beyond legislative intent. As such, the fact that the husband's heirs are preferred to the female's own parents under the scheme of devolution laid down in Section 15(1) of the HSA is sufficient for them to have a valid claim to her self-acquired property.

Although the Supreme Court was justified in aligning its opinion with the legislative intent intrinsic to Section 15 of the HSA, this decision sets a poor judicial precedent for three reasons:

1. Equity and good conscience : The ambit of the HSA is not only restricted to the heirs who are entitled to any property, but also to those who should be disqualified from inheriting it (Singhal 2015). An example of this is Section 25 of the HSA, wherein a murderer is barred from inheriting any property from the individual they have murdered. This is premised on the assumption that the deceased would never want their murderer to inherit any of their property.

Mulla (2018) notes that Section 15(2) of the HSA is also premised on the understanding that property should not devolve upon an individual to whom justice demands it should not pass. In *Om Prakash v. Radhacharan [(2009) 15 SCC 66]*, the husband's heirs threw the woman out of her matrimonial household immediately after her husband's death and shied away from supporting her in any manner. They sought to recognise the relationship

only upon her death 40 years later, when they saw an opportunity to benefit from the relationship. It is unconscionable as per principles of equity and good conscience that the property devolve upon such recipients, who should have been disqualified from inheriting her property.

2. Failure to invoke powers under Article 142 : Under Article 142(1) of the Constitution, the Supreme Court has the power to “*pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it...*”. Upasana P (2016) argues that the Supreme Court — in not invoking its powers under the Article to do “complete justice”, and instead relying on a literal reading of the law — violated constitutional values of justice, equity and good conscience.

3. Contravention of principles of source-based succession : Since the time of the *Report of the Hindu Law Committee*, separate schemes of devolution of property in the HSA have been justified on the grounds of keeping property within the family and ensuring that the property went back to its source. This has been affirmed by the Law Commission of India (LCI) in various reports (Law Commission of India 2000) (Law Commission of India 2008), as well as by the Supreme Court in *S.R Srinivasa v. S. Padmavathamma [(2010) 5 SCC 274]*.

In *Om Prakash v. Radhacharan [(2009) 15 SCC 66]* , the property was accumulated on account of the financial support provided by the woman’s parents. The matrimonial family did not contribute to the acquisition of the property. It is hence logical that the source of the property were the parents, and the property so earned should have devolved upon the natal family after the woman’s death. The fact that the husband’s relatives, who were strangers to the property, were preferred over the natal relations contravenes the very reasons that have been set out to justify differential schemes of devolution of property.

The binding precedent set by the Supreme Court in this case has further been relied upon by Courts to devalue the autonomy of women and refute the devolution of the self-acquired property of a woman to her natal heirs. Examples of this can be seen in the 2018 decisions of the Madras High Court in *Pushpa v. N. Venkatesh [(2018) 3 LW 249]* and Guwahati High Court in *Anima Das v. Samaresh Majumdar [AIR 2018 Gau 114]*. None of these cases involved challenges to the constitutionality of Section 15. Therefore, the courts did not rule on the question.

3.3 International obligations under CEDAW

Removing gender discrimination in property-related legislation is one of the core requirements under the CEDAW. India became a signatory to this convention in 1980, and the Parliament ratified it in 1993. The purpose of this treaty was to acknowledge that there exists widespread discrimination against women, and to get signatories to commit to take all possible measures to end this discrimination.

The articles relevant to the issue of gender and devolution of property are as follows:

Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: ...

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women...

Article 5: States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women...

Article 15: 1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals...

Article 16: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

...

- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration...

That the HSA discriminates against women has been acknowledged by various arms/officials of the government. For instance, the *Report of the Hindu Law Committee* committee report acknowledges that women have a lower socio-economic status as compared to men, and that the customary Hindu Laws perpetuate this discrimination. The Bombay High Court, in *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav [AIR 1983 Bom 156]*, acknowledges that the HSA discriminates against women, but justifies it on the grounds that the basis of discrimination is maintenance of family ties. The ASG, uses this same argument in *Mamta Dinesh Vakil v. Banssi S. Wadhwa [LNIND 2012 BOM 748]*, and acknowledges and justifies the discrimination against women hard-coded in the HSA. The Bombay High Court in its judgment in *Mamta Dinesh Vakil v. Banssi S. Wadhwa [LNIND 2012 BOM 748]* declares the discrimination to be against Article 15 of the Constitution of India. Similarly, the LCI has recognised differential treatment of women in several of its reports. In each of these cases, even where a justification was provided, the fact that the law discriminates against women is not contested. Therefore, the HSA is in contravention with the aforementioned articles of the CEDAW to which India is a signatory.

The Supreme Court has in multiple cases ruled that the legislature, administration and judiciary have an obligation to give due regard to India's international commitments under treaties such as the CEDAW (*Madhu Kishwar & Ors. v. State of Bihar & Ors. [(1996) 5 SCC 125]*, *Vishaka & Ors. v. State of Rajasthan & Ors. [(1997) 6 SCC 241]*, *Apparel Export Promotion Council vs. A.K. Chopra (MANU/SC/0014/1999)*, *Githa Hariharan and Ors. vs. Reserve Bank of India and Ors. (MANU/SC/0117/1999)*, and *Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr. [(2000) 3 SCC 224]*). In *Madhu Kishwar & Ors. v. State of Bihar & Ors. [(1996) 5 SCC 125]*, the Supreme Court states:

“Though the directive principles and fundamental rights provide the matrix for development of human personality and elimination of discrimination, these conventions add urgency and teeth for immediate implementation. It is, therefore, imperative for the State to eliminate obstacles, prohibit all gender based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related articles of CEDAW, the State should by appropriate measures including legislation, modify law and abolish gender based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.”

Further, since the Parliament has ratified the treaty, it has accepted that it has a duty to satisfy the requirements of the treaty. While the commitments under the CEDAW would include gender discrimination in all personal laws, the fact that the HSA affects a vast majority of the population of India makes fixing it a priority.

3.4 The legislature holds the solution

There is adequate reason to conclude that the HSA is at least extremely unfair, if not unconstitutional, and it definitely violates India's international commitments. However, the Supreme Court is not completely unjustified in its judgment in *Om Prakash v. Radhacharan* [(2009) 15 SCC 66]. As Upasana P (2016) notes, a positivistic interpretation of the HSA does indeed lead one to the same conclusions as the Supreme Court in *Om Prakash v. Radhacharan* [(2009) 15 SCC 66]. The purpose of a court's interpretation of a law is to establish the intent of the legislature in making the law, not to create new legislation. To that end, it is established principle that if a plain reading of the law is possible, then the court must prefer it over a creative interpretation. A Court cannot be expected to fix fundamental infirmities which exist in a legislation: that is the duty of the legislature.

In *Saroja Chandrashekhar and Ors vs The Union of India and Ors* (MANU/TN/1905/2015), the High Court of Madras has conceded that Section 15 of the HSA is unfair to women, and that it was drafted without envisaging the possibility that women could acquire their own property. The Court also concedes that there is no good reason to prefer the husband's heirs to an intestate woman's own parents. However, it does not rule on the constitutional validity of the Section. In fact the Court reaffirms the findings of the Supreme Court in *Om Prakash v. Radhacharan* [(2009) 15 SCC 66], and recommends that the Law Commission look into the matter and draft amendments to make the HSA more gender-equitable.

The observation of the Bombay High Court in *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748] that the ISA is more gender equitable than the HSA is useful in this regard. In the next section we examine the ISA and other Indian legislation which can serve as models for reforming the scheme of devolution given in Sections 8 and 15 of the HSA.

4 Gender equality within other Indian succession laws

There are two specific examples in other Indian laws of schemes of devolution which are more gender equitable than Sections 8 and 15 of the HSA. The first is the GSSNIP, and the second is the ISA. Goa became part of the Union of India in 1961 — well after the enactment of the HSA. In matters of personal law the state was previously governed by the Portuguese Civil Code, and the same statute continued to apply after it joined the Union of India. The civil code of Goa — GSSNIP, which is based on the Portuguese Civil Code — contains a gender equitable scheme of devolution. The ISA governs testamentary succession for citizens of all religions. In addition to this, it also governs intestate succession for citizens of all religions other than Islam, Hindus, Jains, Buddhists and Sikhs. As the Bombay High Court has pointed out in the landmark judgment in *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748], the scheme of devolution under the ISA is more equitable than the one prescribed by Sections 8 and 15 of the HSA, despite the ISA being significantly older. In this section we discuss the schemes of devolution in these two pieces of legislation and compare them to Section 8 and 15 of the HSA. The purpose of this exercise is two-fold. First, the comparison can yield useful insights on how to reform the HSA. Second, it serves to demonstrate that making the schemes of devolution in HSA gender neutral is not a novel idea. Precedents for this already exist in India.

4.1 Civil code of Goa

When Goa became part of the Indian union in 1961 through the *Goa, Daman and Diu (Administration) Act, 1962*, the Indian parliament extended most central laws prevailing in the rest of India to the new territory, except for the personal laws. Provisions of the Portuguese Civil Code, 1867 (PCC), which governed matters of personal law in the territory of Goa before 1961, remained in force. These laws were consolidated by the Goa government through the enactment of the *Goa Succession, Special Notaries and Inventory Proceeding Act, 2012* (GSSNIP).

An important distinction between the GSSNIP and the rest of India is that the GSSNIP applies to everyone who was born in Goa or had parents who were born in Goa on matters of personal law, irrespective of the person's religion. Unlike the rest of India each religion does not have distinct personal laws. That also means the HSA does not apply to Hindus in Goa.

Furthermore, the scheme for intestate devolution of property under the GSSNIP is gender neutral. Section 52 of the GSSNIP lays down the order of intestate succession as follows:

“52. Order of legal succession:-

(1) The legal succession shall devolve in the following order:-

- (i) on the descendants;*
- (ii) on the ascendants, subject to the provisions of sub-section (2) of section 72;*
- (iii) on the brothers and their descendants;*
- (iv) on the surviving spouse;*
- (v) on the collaterals not comprised in clause (iii) upto the 6th degree;*
- (vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner.*

...”

The key difference between this scheme of devolution and the one in Sections 8 and 15 of the HSA is the use of gender-neutral terms — “descendants” instead of “sons/daughters”, “ascendants” instead of “father/mother”, “spouse” instead of “wife/husband” and “collaterals” instead of “agnates/cognates”. It has the effect of having identical rules for male and female intestates. In not specifying the gender of the ascendants, descendants and collaterals, it has the effect of recognising lineage through a female line, and treating it on equal terms as lineage through male line. In turn this also has the effect of not privileging male relatives of an intestate over female relatives, and the degree of separation from the intestate being the only differentiator. In not prescribing *source-based* succession rules for property belonging to married women who are childless, it in effect recognises them as having full ownership rights over their inherited property, instead of treating it like a life-interest.

The GSSNIP does however fall short of complete gender-neutrality. Under subsection (4), the brother of the intestate and his descendants get priority over sisters, and even the intestate's spouse.⁷

⁷Interestingly the GSSNIP prioritises descendants and ascendants of the intestate over the spouse. This kind of prioritisation was common among civil law countries in Europe till the 1970s. However, many of them have amended their succession laws since then to accord spouses rights equal to descendants. Ruggeri, Kunda, and Winkler (For further reading, see: 2019)

4.2 Devolution of property under the ISA

The provisions related to intestate succession under the ISA apply to all Indian citizens who are not Hindu, Buddhist, Jain, Sikh, or Muslim. Intestate succession for Hindus, Buddhists, Jains and Sikhs is governed by the HSA, and for Muslims is governed by customary law, under the Muslim Personal Law (Shariat) Application Act, 1937. While the ISA is older than the HSA, the scheme of devolution prescribed in it is far more progressive in terms of gender-equality as compared to the HSA. The Bombay High Court, in *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748], also makes note of this fact.

Intestate succession under the ISA is governed by Sections 23 to 56.⁸ The prioritisation of heirs under the ISA is as follows:

1. The spouse and lineal descendants share.⁹
2. If there are no lineal descendants, then the spouse and kindred share. Among kindred father has highest priority, followed by mother and siblings, followed by remoter kindred.¹⁰
3. If there are no kindred and no lineal descendants either, then the spouse alone.¹¹
4. If there is no spouse, then lineal descendants.¹²
5. If there is no spouse, nor lineal descendants, then father.¹³
6. If there is no father, then mother, brothers and sisters.¹⁴
7. If none of these are living then to remoter kindred, who are nearest in degree.¹⁵

Sections 33 and 34 (which cover points one to three in the aforementioned list) use the term “widow”, not spouse, implying the rules govern the devolution of a male intestate’s property. However, Section 35 explicitly states that the widower of a female intestate has the same rights in respect of her property, as the widow of a male intestate would in his. This means, the scheme of devolution is identical for men and women. Further, the use of the gender-neutral terms “kindred” and “lineal descendants” implies male and female relatives are treated equally, and that lineage through male and female lines is equally recognised. The brothers and sisters of an intestate have equal claims. Finally, where no lineal descendants or ascendants are available, agnates and cognates have an equal right to succeed to an intestate’s property; the only factor that affects their claim is the degrees of separation from the intestate.

The ISA does fall short of being truly gender-neutral, however. Under Sections 42 and 43, an intestate’s father gets priority over the mother. Even so, the ISA presents a useful contrast to the HSA, with respect to equal treatment of men and women both in the right to inherit, and in the scheme of devolution.

In the next section, we describe the previous attempts various actors within the government have made to amend the rules of devolution under the HSA.

⁸Sections 23 to 48 govern succession in the case of all persons other than Parsis, while Sections 50 to 56 contain provisions for intestate succession for Parsis. We will concern ourselves primarily with Sections 23 to 49, since the schemes of devolution for Parsis have been made very similar to the schemes of devolution for the rest through an amendment in 1991.

⁹Sec 33(a) Government of India 1925.

¹⁰Sec 33(b) Government of India 1925.

¹¹Sec 33(c) Government of India 1925.

¹²Sec 34 Government of India 1925.

¹³Sec 42 read with Sec 33 and 34 Government of India 1925.

¹⁴Sec 43 read with Sec 33 and 34 Government of India 1925.

¹⁵Sec 48 read with Sec 33 and 34 Government of India 1925.

5 Prior attempts at reform

The issue of discrimination against women in the HSA has not gone unnoticed by the Indian state over years. Over the years, several different stakeholders in the Indian state have suggested solutions to address this problem of unequal devolution of property in the HSA, but in all the cases the approach to reform has been piecemeal. None of the suggestions or recommendations tackled the problem in its entirety. In this section, we review some of the prominent attempts at reforming the HSA.

5.1 174th Law Commission of India Report, 2000

The *174th Report of Law Commission of India* in 2000 analysed the property rights of women, commenting upon the gender discrimination inherent in the provisions of the HSA. The report focused primarily on ensuring equal coparcenary and succession rights for males and females (which was subsequently introduced through the enactment of the HSAA). The report made a few observations on the patriarchal rules governing devolution of property of women who die intestate, however did not suggest any tangible reforms in this respect. Paragraph 2.5 of the report states:

“Again the patrilineal assumptions of a dominant male ideology are clearly reflected in the laws governing a Hindu female who dies intestate. The law in her case is markedly different from those governing Hindu males.”

The report further states:

“Legislation that on the face of it discriminates between a male and a female must be made gender neutral.”

This report stopped at recommending equal coparcenary rights for women, and did not give much attention to the discriminatory framework governing devolution of property owned by women. The question of the constitutionality of the differing schemes of devolution had already been raised by this point in time in the case of *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav* [AIR 1983 Bom 156], 17 years before this report. This should have been a cue for the LCI to take serious note of this issue and give recommendations for a comprehensive reform of the HSA. Subsequently, the LCI itself pointed this out in 2018 in the *Consultation Paper on Reform of Family Law*, that the problem with the HSAA is that it attempts to bring gender-neutral coparcenary provisions within an inherently gender-discriminatory framework. However, the *174th Report of Law Commission of India* did bring attention to the fact that gender discrimination still does exist in the HSA.

5.2 207th Law Commission of India Report, 2008

The *207th Report of Law Commission of India* proposed to amend Section 15 of HSA to remedy the gender discrimination in the schemes of devolution. The report recognised that there is a strong case to recognise self-acquired property of women, recommending an amendment to the scheme of devolution of property for women. The report considered this necessary, given the changed socio-economic realities where an increasing number of women were acquiring property through their own efforts.

The report considered three alternative options while suggesting potential reforms:

1. The self-acquired property of a female dying intestate should devolve first upon heirs from the natal family;

2. The self-acquired property of a female dying intestate should devolve equally upon the heirs of her husband and heirs from her natal family;
3. The self-acquired property of a female dying intestate should devolve first upon heirs from the husband's family.

The report dismissed the third option summarily as maintaining *status quo*. On the first option of prioritising the natal heirs of the female, the report opined that the social ethos of India's patriarchal systems should not be reversed completely, lest there are social and family tensions on this account. The LCI was of the opinion that despite the closeness to and dependence of women upon their natal families, the relations with the husband's family are not separated and uprooted in entirety. The fact that most women continue to get support from their husband's family should not be overlooked.

The LCI thus preferred the second option, suggesting equal succession rights to property to a woman's natal heirs and her husband's heirs. It felt that simultaneous inheritance by heirs on both sides of a woman's family would strike a balance between the competing considerations at play. As such, insertion of Section 15(2)(c) to the HSA was recommended, wherein both sides of a woman's family would inherit equally in case of her self-acquired property.

The recommended Section reads as follows:

15(2)(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.¹⁶

5.2.1 Issues with the recommendations of the 207th LCI

Implementation of the recommendations in this report would result in a legislative framework wherein property owned by women devolves in three different ways:

1. Property inherited by the woman from her parents, husband or father-in-law would revert to the respective source, as per *source-based* succession under Sections 15(2)(a) and 15(2)(b);
2. Property *self-acquired* by the woman would be shared between heirs in the natal and marital families, as per the newly-introduced Section 15(2)(c); and
3. Any other property (including property inherited from others) would devolve as per the existing scheme of devolution under Section 15(1), the heirs of the husband being given preference to such property.

First, a normative assessment about the possible disruption in family structures should not have been given greater weight than the fundamental right to equality for men and women under Articles 14 and 15(1) of the Constitution. Secondly, the aforementioned recommendations sets up an unnecessarily complicated framework for devolution of property owned by women. Further, even in the limited reforms which the LCI recommended in this report there are two major shortcomings:- (1) the lack of a cogent definition for *self-acquired property*; and the (2) the new framework itself propagates discrimination.

¹⁶Category (b) is "heirs of the husband", (c) is "mother and father", (d) is "heirs of the father", and (e) is "heirs of the mother" under Sec 15(1) of the HSA

Lack of a definition of self-acquired property: Introduction of new terminology to the framework of the HSA, without providing the corresponding definitions will convolute the legislative scheme. For example, there is no clarity on whether property acquired by a woman through gifts or wills constitutes *self-acquired property* devolving through Section 15(2)(c), or other property devolving through Section 15(1). A comprehensive definition of *self-acquired property* is necessary to avoid this ambiguity.

Discrimination in the proposed framework: The LCI merely added a new order of devolution for *self-acquired property* under Section 15(2)(c), while continuing to retain the discriminatory scheme under Section 15(1). It introduces a minor change in the scheme of devolution of *self-acquired property* owned by a woman, in that, it gives equal priority to the heirs of her husband and heirs of her father or heirs of her husband and the heirs of her mother (as the case may be). While this creates some rights for the woman's natal family, the treatment is still not the same as that for her husband's self-acquired property.

This formulation can still lead to situations in which the heirs of the husband are unfairly privileged over the woman's natal heirs, due to the provisions of Section 15(1). The LCI envisages Section 15(1) as a residuary clause applicable to property which is neither *source-based* nor *self-acquired*. Property inherited by a woman from someone in her natal family, except her parents (her brother, sister, cousins etc.) would thus fall in this bracket, and the residuary scheme of devolution under Section 15(1) would apply to it. This means the husband and his heirs would have a greater claim on any property she inherits from her natal family (except from her parents). Therefore, the imbalance between the devolution of property of men and women, is not completely addressed by this amendment.

The scheme of devolution introduced by the LCI under Section 15(2)(c) prefers the heirs of the woman's father to the heirs of her mother. This second-order discrimination on the basis of the gender of the parent is at odds with the purpose of an amendment geared towards ensuring gender equality. To institute a truly equal devolution scheme, the heirs of both parents of the deceased should have equal rights to the property.

For these reasons, the recommendations of the LCI, while being well-intentioned, fell well short of tackling the issue of gender discrimination in the HSA.

5.3 Hindu Succession (Amendment) Bill, 2013

The Hindu Succession (Amendment) Bill 2013 was a private member's bill introduced in Parliament by Anurag Singh Thakur in March 2013. In its statement of objects and reasons, the bill notes that women have taken giant strides in all spheres of life, resulting in them acquiring property through their own skill. This necessitates amendments to the HSA.

This bill proposed that the parental heirs be given preference with respect to inheritance of self-acquired property in case a woman dies intestate and is not survived by her husband or any children.

To this end, the bill introduced a separate scheme of devolution for self-acquired property of women, through introduction of Section 15(2)(c) to the HSA. The following scheme of devolution of property was laid down for a woman's self-acquired property when she is not survived by her husband or any children:

1. First, upon the mother and the father of the female;
2. Second, upon the heirs of the father of the female;
3. Third, upon the heirs of the mother of the female;

4. Fourth, upon the heirs of the husband of the female

The bill also introduced a definition of *self-acquired property* in Section 3(k) of the HSA 1956, defining it as *any property including both movable and immovable property acquired by a female Hindu by her own skill or exertion*.

This bill has four major shortcomings:

1. Although the bill introduced a progressive scheme of devolution of property owned by women under Section 15(2)(c), just like the 207th report of the LCI, it did not repeal the existing discriminatory order under Section 15(1). As discussed in detail in Section 5.2.1, this results in the heirs of a woman's husband being unduly privileged over her natal relatives in case of specific kinds of property.
2. The definition of self-acquired property provided in Section 3(k) does not include property acquired by women through gifts and wills, which should be considered self-acquired property.
3. This bill gives primacy to the heirs of the father over the heirs of the mother, the same as the recommendations of the 207th report of the LCI. This results in second-order gender discrimination between the parents.
4. The bill does not account for situations where a woman is abandoned by her marital family. In such cases, there needs to be a safeguard to ensure that heirs of the husband are excluded completely from inheriting her self-acquired property.

The bill was introduced in the parliament, and the Parliamentary Standing Committee on Private Members' Business recommended that time be allotted for its discussion. However, it was not actually taken up for discussion in either house of Parliament. Eventually, it lapsed with the end of the 15th Lok Sabha's term in 2014. So even this opportunity for an incremental reform was lost.

5.4 Hindu Succession (Amendment) Bill, 2015

The Hindu Succession (Amendment) Bill 2015 was a private member's bill introduced in Parliament by Dushyant Chautala in November 2015. The Bill sought to amend the HSA to provide equal rights to succession of property to the parents of a female Hindu dying intestate, at par with those enjoyed by her husband.

The bill proposed to amend the order of claimants under Section 15(1) of HSA as follows:

1. First, upon the sons and daughters;
2. Second, upon the mother, father and husband;
3. Third, upon the heirs of the husband and heirs of the father; and
4. Fourth, upon the heirs of the mother.

The bill also recognises a lacuna in the HSA, wherein the right of a husband to inherit his wife's property remains unaffected even in situations where he deserts or abandons her. This is addressed by introduction of Section 15(2)(c) into the HSA, wherein any property that is self-acquired by a female Hindu *during the time of desertion* devolves upon the heirs of the father and mother, in case the female is not survived by any children. Unlike the LCI and the amendment bill of 2013, this bill also avoids the problems associated with proposing three different schemes of devolution of property for women, as discussed in 5.2.1.

Although the Bill seems well-intentioned, it does not provide any definitions for the terms *self-acquired property* or *desertion*. Providing precise definitions for these terms is critical to ensure that the scheme proposed to be implemented is not subverted. The same as the 207th LCI report and the 2013 bill, this bill too propagates second-order discrimination against the heirs of the mother, which can be avoided.

The bill was introduced in the parliament, and the Parliamentary Standing Committee on Private Members' Business recommended that time be allotted for its discussion. However, it was not actually taken up for discussion in either house of parliament. Eventually, it lapsed with the end of the 16th Lok Sabha's term in 2018.

5.5 Consultation paper on reform of family law, LCI, 2018

In its *Consultation Paper on Reform of Family Law*, the LCI analysed family laws in India (for all religions) and recommended amendments to reform them. Gender equity was a vital component of these reforms. While the LCI recommends several fundamental changes to the HSA such as completely abolishing the system of coparcenary, and the institution of Hindu Undivided Family, it falls short on its reform ideas on devolution of property.

The LCI notes:

Gender gap in effective ownership is one of the most important reason for gender inequity. Equal right of Hindu women over property will remain a distant dream till the legislature overhauls the succession scheme under the Act 1956. There is no rationale behind providing separate succession scheme for men and women.

Despite denouncing the idea of separate schemes of devolution for men and women, the LCI endorses the recommendations of the *207th Report of Law Commission of India* with minor modifications, viz.

1. that the "heirs of the husband" in Section 15(1)(b) be limited to the husband's parents,
2. that the parents of the husband should inherit simultaneously with the deceased's parents,
3. that if persons in only one of the above categories is surviving, then the property devolves to that category alone, and
4. that if none of the heirs of the above categories are surviving, then the property should devolve to the heirs in Section 15(1)(d)&(e), i.e. heirs of the father and heirs of the mother.

As with the 207th Report, the LCI does not provide a clear definition of "self-acquired" property. Further, even though it strongly criticises the separate schemes of devolution for men and women, it maintains separate schemes. While it limits the scope of the husband's heirs, it still does not treat men's and women's relations equally. Finally, it only makes the issue of source-based succession more complicated, by adding rules for one more source of property. This is unlike the provisions for devolution of a man's property, which essentially treat all his property as the same.

5.6 Review of laws and legislative measures affecting women, NCW

The National Commission for Women (NCW) in its *Review of Laws and Legislative Measures Affecting Women: No. 19 The Hindu Succession Act, 1956 (30 of 1956)* came closest to a fully

gender-neutral formulation of schemes of devolution.¹⁷ The NCW recommended that:

1. Section 8 be amended as follows:

Section 8: General rules of succession — The property of a Hindu dying intestate shall devolve according to the provision of this chapter

- a) *Firstly, upon the heirs, being the relatives specified in Class I of the schedule;*
- b) *Secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in Class II of the schedule;*
- c) *Thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased;*
- d) *Lastly, if there is no agnate, then upon the cognates of the deceased*

2. *Section 15 be omitted*

While this formulation goes much further than the attempts at reform described thus far, it does not go far enough. Firstly, it retains the Schedule to the Act, as is. By extension, therefore, it retains the discrimination against persons related to the deceased through female relatives, and privileges persons related through male relatives, as pointed out in *Mamta Dinesh Vakil v. Bansi S. Wadhwa [LNIND 2012 BOM 748]*. Secondly, this amendment also privileges agnates over cognates, thereby valuing kinship through male lines over kinship through female lines. Finally, it does not recommend the repeal of sections of the HSA which would be rendered redundant viz. Sections 10, 11, and 16.

Thus, all efforts for reform so far have been piecemeal, and even these incremental reforms did not come to fruition. We see this as an opportunity to design a comprehensive amendment to the HSA to fix most of the remaining gender discrimination. In the next section we present recommendations for a comprehensive reform of the HSA, starting from first-principles.

6 Reforming the HSA

The schemes of devolution for men and women under Sections 8 and 15 discriminate against women. The Bombay High Court has ruled it *ultra vires* of Article 15 of the Constitution, in *Mamta Dinesh Vakil v. Bansi S. Wadhwa [LNIND 2012 BOM 748]*, but a conclusive pronouncement on this issue does not exist yet. We have also presented a case for why a legislative approach should be the method-of-choice for effecting reforms. The fact that the schemes of devolution are unfair and discriminate against women has been acknowledged by various constitutional courts, reports of the LCI, as well as the objects of two private members' bills. However, none of these forums have provided a satisfactory solution for this issue. The 174th Report of the LCI articulates what the desired outcome is, viz. "a gender neutral legislation", but does not actually provide a structure, approach and language for actually making the HSA gender neutral. The NCW comes close to providing a gender neutral legislation, but their recommendations also contain a few lacunae.

In this section we set out the design principles for an amendment to the HSA to make the schemes of devolution gender-neutral.

¹⁷These recommendations were likely made to the Law Commission of India during its consultations for the 174th Report, which recommended the 2005 amendment to the HSA. This is evident from the fact that it recommends a repeal of Sections 4(2) and 23, and an amendment to Sec 6 to make daughters coparceners equal to sons. Both of these changes were indeed enacted through the 2005 amendment. However, the document itself does not carry a date-stamp, nor does it refer to any report, so it is not certain when it was created and for whom.

6.1 Approach to reform

Our objective in this exercise is to design a comprehensive reform of the HSA, with respect to the schemes of devolution. From the examination of the schemes of devolution in the GSSNIP and the ISA, and the proposal of the NCW, we have identified the following design requirements, that the amendment has to satisfy:

1. The scheme of devolution for male and female intestates must be identical
2. Natal families of men and women must be treated equally
3. Male and female relatives of an intestate must be treated equally
4. All of an intestate's property must be treated equally; only the intestate's relation to an heir should determine their eligibility
5. Lineage through male and female forebears must be recognised as equal
6. The only differentiator between different classes of heirs should be the degrees of separation from the intestate

In addition to these design principles, the reforms should attempt to achieve the objective of gender-neutrality through a minimally disruptive amendment.

6.2 Gender-neutral devolution under HSA

Mapping the amendments to the aforementioned design principles, we arrive at the following items on which the HSA needs to be amended:

1. In order to satisfy design principle 1, Sections 8 and 15 have to contain identical language or Section 8 should be applied to both men and women. We propose the latter since it would make for simpler legislation, with less scope for confusion.

The specific change required then is to change the language of Section 8 from "*The property of a **male Hindu** dying intestate shall devolve ...*" to "*The property of a **Hindu person** dying intestate shall devolve ...*". This change would also simultaneously require repealing Sections 15 and 16, which currently specify the schemes of devolution for the property of a female intestate.

2. The aforementioned amendment would also have the effect of satisfying design principles 4, and partially satisfies design principles 2, 3 and 5.

One way is to amend the Schedule to HSA to remove references to gender in order to fully comport with design principles 2 and 5. This, however, is a complicated exercise, and the same outcome can be achieved by simply explicitly listing the classes of heirs in the clauses of Section 8 itself.

This would entail the following amendments:

- (a) The words "*upon the heirs, being the relatives specified in class I of the Schedule*" would have to be changed to "*upon the surviving spouse and the children (including children of any pre-deceased children; children of any pre-deceased children of any pre-deceased children; and surviving spouses of any pre-deceased children)*",
- (b) The words "*if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule*" would have to be changed to "*upon the mother and father*",
- (c) Then two new clauses would have to be inserted viz.:

- i. “Thirdly, upon the brothers and sisters (including the children of any pre-deceased brother or sister);” and
 - ii. “Fourthly, upon the grandparents and great-grandparents;”
3. This amendment still only partially satisfies the requirements of design objective 5. In order to fully satisfy it, the agnates and cognates have to be treated as equals. This entails an amendment to Section 8(c)&(d). The current provision in clause (c) which reads “Thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased” has to be amended to read “Lastly, if there upon the agnates and cognates of the deceased”. Under the revised Section 8, this would be clause (e) [or subsection (5)]. It would also be necessary to then repeal the existing clause (d).
 4. The amendment making agnates and cognates equally eligible for succession, read with Sections 12 and 13 of the HSA would have the effect of complying with design objective 6.
 5. The Schedule to the Act would have to be repealed, since the classes of heirs would now be explicitly specified in Section 8, making the Schedule redundant.
 6. Finally, Sections 10 and 11 would have to be repealed, since they would also be made redundant, by the application of the revised Section 8 to both male and female Hindus.

We have provided a full text of the proposed amendment in Appendix A. The proposed amendment also contains a statement of objects and reasons, and notes on clauses, both of which are necessary for a sound legislation.

7 Urgency of reform

While violation of Article 15(1) of the constitution, unfair outcomes for women, and violation of international treaties are in themselves sufficient reasons to reform the schemes of devolution in HSA, there is one other compelling reason to pursue the reform. Women’s position in the economy has changed significantly from the time the HSA was drafted. So the assumptions about women’s ownership and capacity to acquire property do not hold in today’s time.

7.1 The law is incompatible with women’s position in the economy and society

Over time, the status of women in the Indian economy and in society has changed significantly. The change in status is underpinned by four factors:

1. Far more women today are employed than there were at the time the HSA was enacted. The workforce participation rates for women have increased from 12% in 1971 to 25% in 2011 (Government of India 2011). This means more and more women today can acquire their own property.
2. More women today own property than they did in the past. The *National Family Health Survey - 4 (2015–16)* reports that 28% of women (between the age of 15–49) own land — either jointly or by themselves — and 37% own a house (jointly or by themselves). Further, the *National Family Health Survey - 4 (2015–16)* reports that 53% of women have savings accounts in banks.
3. Women today run their own businesses. Women own 21.5% of all proprietary establishments in the country (CSO, Government of India 2019).

4. More and more women are getting educated than they did in the past. Women's literacy has increased from 9% in 1951 to 65% in 2011 (Government of India 2011). Women today represent 46% of the total annual enrolments in higher education (*Women and Men in India, 2018*), and women are the recipients of 53% the total post-graduate degrees awarded every year. This means more and more women are going to be earning incomes and acquiring property in the future.

These socio-economic changes completely refute the assumptions regarding women's property ownership and methods of acquisition on which the schemes of devolution in the HSA are based. The law, therefore, is not compatible with the status of women in modern Indian economy.

7.2 Conclusion

The scheme of devolution under the HSA discriminates against women. This discrimination is likely in violation of Article 15(1) of the Constitution of India. While the unconstitutionality of the discrimination may not be incontrovertibly established through the courts, the discrimination is at least extremely unfair. The discrimination against women is against India's treaty obligations as a signatory to the CEDAW. The law as it stands is incompatible with the socio-economic status of women in modern India.

The discriminatory scheme of devolution is even harder to justify given that devolution under other Indian legislation such as the GSSNIP and ISA — one of which precedes the HSA by several decades — is far more gender-equitable. We can learn from these two pieces of legislation and succession laws in first-world countries to design a scheme of devolution which does not discriminate on the basis of gender. In this paper we have presented the design criteria to formulate such a non-discriminatory scheme of devolution. Finally we have also presented a draft amendment to the HSA as an example of how it can be done (see Appendix A).

A Proposed amendment to the Hindu Succession Act

The simplest option with respect to make the schemes of devolution under HSA gender-neutral is to abolish the separate schemes of devolution of property for men and women under Sections 8 and 15. In its stead the scheme of devolution laid down in Section 8 should be modified to fix its infirmities and then be made applicable to both men and women. We therefore propose the following draft amendment to the HSA (as amended in 2005):

THE HINDU SUCCESSION (AMENDMENT) ACT, 2020

A BILL

to remove the discrimination against women in matters of devolution of property and for matters connected therewith or incidental thereto

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. Short title and commencement:

- (a) This Act may be called the Hindu Succession (Amendment) Act, 2020.
- (b) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 8:

For Section 8 of the Hindu Succession Act (hereinafter referred to as the principal Act), the following section shall be substituted, namely:-

“8. The property of a Hindu dying intestate shall devolve according to the rules set out in Section 9.-

- (i) Firstly, upon the surviving spouse and the children (including children of any pre-deceased children; children of any pre-deceased children of any pre-deceased children; and surviving spouses of any pre-deceased children);
- (ii) Secondly, upon the mother and father;
- (iii) Thirdly, upon the brothers and sisters (including the children of any pre-deceased brother or sister);
- (iv) Fourthly, upon the grandparents and great-grandparents; and
- (v) Lastly, upon the agnates and cognates of the deceased;”

3. Amendment of Section 9:

For Section 9 of the principal Act, the following section shall be substituted, namely:-

“9. Among the heirs specified in Section 8, the heirs in each subsection shall take an equal share simultaneously and to the exclusion of heirs in other subsections; those in subsection (1) shall be preferred to those in subsection (2); those in subsection (2) shall be preferred to those in subsection (3); and so on in succession.”

4. Omission of Section 10:

Section 10 of the principal Act shall be omitted.

5. Omission of Section 11:

Section 11 of the principal Act shall be omitted.

6. Omission of Section 15:

Section 15 of the principal Act shall be omitted.

7. Omission of Section 16:

Section 16 of the principal Act shall be omitted.

8. Omission of Schedule:

The Schedule to the principal Act shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The disparity in property rights between males and females can be traced back to Hindu customary law. Therefore, when the Hindu law of succession was codified in the form of the HSA, certain provisions governing the inheritance and devolution of property continued to favour males over females. While the HSAA has attempted to ensure equality with respect to rights of inheritance over Hindu joint family property, the disparity between the order of devolution of property of males and females respectively still remains unaddressed.

Meanwhile, the socio-economic position of women in Indian society has undergone a substantial change. There has been a measurable increase in literacy levels, workforce participation and property ownership by females in India. This increase has been accompanied by the rise of nuclear families as a social unit. However, the current law continues to discriminate against women by seeking to retain property in the joint family of the male. The schemes of devolution of property for males and females, provided in Sections 8 and 15 of the Hindu Succession Act, 1956 respectively, seek to ensure that property (including the females' property) remains with the male and his family after her death.

The proposed bill seeks to make changes in the sections pertaining to the devolution of property of males and females upon their death. Specifically, the bill seeks to substantially overhaul Sections 8 and 15 by introducing a common order of devolution for property belonging to both males and females. Keeping in mind that proximity of relation is a fundamental tenet of succession law, the common order of devolution prescribed by this bill ranks the heirs based on their degree of kinship to the deceased, such that the property devolves first upon the closest of kin, and continues to devolve based on the closeness of the relationship with the deceased, irrespective of whether the deceased is male or female.

It is expedient in public interest to make the aforesaid amendments with regard to ensuring that the order of devolution of property of both males and females under the Hindu Succession Act, 1956 is equitable.

Notes on Clauses

Clause 2 seeks to amend the scheme of devolution of property for males and females provided under Section 8 and Section 15 of the Hindu Succession Act, 1956, respectively. The clause provides for a uniform scheme of devolution for both males and females. The order of devolution prescribed in the clause is substantially similar to the order of devolution provided in the earlier Schedule to the principal Act, with appropriate modifications to make the earlier Schedule more gender neutral and equitable for females. The orders of devolution under earlier Sections 8 and 15 of the principal Act were designed to keep the property in the male line, especially within the family of the husband. This clause amends Sections 8 and 15 to prescribe an alternate order of devolution, modelled on the earlier Schedule, according to which heirs are ordered

only on the basis of their degree of proximity with the deceased. As per the clause, the property of the deceased devolves first upon the closest of kin, that is the children and surviving spouse of the deceased, then continues to devolve based on kinship to the parents, siblings, children of pre-deceased siblings, ascendants, and agnates and cognates. The prescribed order is based on the closeness of relationship with the deceased, male or female, and therefore devolution of property to certain heirs such as the husband's heirs in the case of females has been done away with.

Clause 3 seeks to amend Section 9 of the principal Act to provide for the order of succession among the heirs listed in clause 1. According to this clause, among the heirs specified in clause 1, those in each entry shall take an equal share simultaneously, and shall be preferred to those in any subsequent entry.

Clause 4 seeks to omit Section 10 of the principal Act, since clause 1 has introduced a uniform scheme of devolution for males and females by amending Sections 8 and 15. Therefore, the concept of class I and class II heirs for males has been done away with. The distribution of property among heirs of a Hindu dying intestate is sought to be carried out according to the amended Section 9 of the principal Act provided in clause 2.

Clause 5 seeks to omit Section 11 of the principal Act, since clause 1 has introduced a uniform scheme of devolution for males and females by amending Sections 8 and 15. Therefore, the concept of class I and class II heirs for males has been done away with. The distribution of property among heirs of a Hindu dying intestate is sought to be carried out according to the amended Section 9 of the principal Act provided in clause 2.

Clause 6 seeks to omit Section 15 of the principal Act, since clause 1 has introduced a uniform order of devolution for males and females based on the degree of proximity of the heirs with the deceased. Accordingly, separate rules of devolution for females under Section 15(1) as well as the scheme of source-based succession under Section 15(2) is now removed.

Clause 7 seeks to omit section 16 of the principal Act, since clause 1 has introduced a uniform order of devolution for males and females by amending Sections 8 and 15. Therefore, separate rules of devolution for females under Section 15(1) as well as the scheme of source-based succession under Section 15(2) is now removed. The distribution of property among heirs of a Hindu dying intestate is sought to be carried out according to the amended Section 9 of the principal Act provided in clause 2.

Clause 8 seeks to omit the Schedule to the principal Act, since clause 1 has introduced a new order of devolution by amending Sections 8, 9, 15 and 16 of the principal Act. The Schedule is rendered redundant by the amended Sections 8 and 9 provided in clauses 1 and 2.

References

- [1] Bombay High Court. *Balasaheb v. Jaimala* [AIR 1978 Bom 44]. 1978.
- [2] Bombay High Court. *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav* [AIR 1983 Bom 156]. 1983.
- [3] Bombay High Court. *Mamta Dinesh Vakil v. Bansi S. Wadhwa* [LNIND 2012 BOM 748]. 2012.
- [4] Central Statistics Office, Government of India. *Women and Men in India, 2018. A statistical compilation of gender related indicators*. 2019.
- [5] Delhi High Court. *Dr. Shashi Ahuja v. Kulbhushan Malik* [AIR 2009 Del 5]. 2009.
- [6] Government of Goa. *Goa Succession, Special Notaries and Inventory Proceeding Act, 2012*. 2016.
- [7] Government of India. *Indian Succession Act, 1925*. 1925.
- [8] Government of India. *Report of the Hindu Law Committee*. 1947.
- [9] Government of India. *Hindu Marriage Act, 1955*. 1955.
- [10] Government of India. *Hindu Adoptions and Maintenance Act, 1956*. 1956.
- [11] Government of India. *Hindu Minority and Guardianship Act, 1956*. 1956.
- [12] Government of India. *Hindu Succession Act, 1956*. 1956.
- [13] Government of India. *Goa, Daman and Diu (Administration) Act, 1962*. 1962.
- [14] Government of India. *Census of India, 2011*. 2011.
- [15] Gujarat High Court. *Jayantilal v. Chhanalal*, [AIR 1968 Guj 212]. 1968.
- [16] Guwahati High Court. *Dhanishta Kalita v. Ramakanta Kalita* [AIR 2003 Gau 92]. 2003.
- [17] Guwahati High Court. *Anima Das v. Samaresh Majumdar* [AIR 2018 Gau 114]. 2018.
- [18] High Court of Madras. *Saroja Chandrashekar and Ors vs The Union of India and Ors* (MANU/TN/1905/2015). 2015.
- [19] Law Commission of India. *Report No. 174: Property Rights of Women: Proposed Reforms under the Hindu Law*. 2000.
- [20] Law Commission of India. *Report No. 207: Proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a female dies intestate leaving her self acquired property with no heirs*. 2008.
- [21] Law Commission of India. *Consultation Paper on Reform of Family Law*. 2018.
- [22] Madras High Court. *Pushpa v. N. Venkatesh* [(2018) 3 LW 249]. 2018.
- [23] Ministry of Health and Family Welfare, Government of India. *National Family Health Survey - 4 (2015–16)*. 2016.
- [24] Archana Mishra. “Devolution of Property of the Hindu Female: Autonomy, Relationality, and the Law”. In: *International Journal of Law, Policy and The Family* (2015).
- [25] Dinshaw Fardunji Mulla. *Principles of Hindu Law*. Ed. by Satyajeet A Desai. 23rd ed. 2018.
- [26] National Commission for Women. *Review of Laws and Legislative Measures Affecting Women: No. 19 The Hindu Succession Act, 1956 (30 of 1956)*. URL: <http://ncwapps.nic.in/frmReportLaws19.aspx#2>.
- [27] Lucia Ruggeri, Ivana Kunda, and Sandra Winkler. *Family Property and Succession in EU Member States: National Reports on the Collected Data*. 2019.
- [28] Ayushi Singhal. “Female Intestate Succession under the Hindu Succession Act, 1956: An Epitome of Inequality and Irrationality”. In: *Christ University Law Journal* 4.2 (2015), pp. 147–157. DOI: <https://doi.org/10.12728/culj.7.9>.
- [29] Prabha Sridevan. “A law that thwarts justice”. In: (2011).
- [30] Supreme Court of India. *Madhu Kishwar & Ors. v. State of Bihar & Ors.* [(1996) 5 SCC 125]. 1996.
- [31] Supreme Court of India. *Vishaka & Ors. v. State of Rajasthan & Ors.* [(1997) 6 SCC 241]. 1997.

- [32] Supreme Court of India. *Apparel Export Promotion Council vs. A.K. Chopra* (MANU/SC/0014/1999). 1999.
- [33] Supreme Court of India. *Githa Hariharan and Ors. vs. Reserve Bank of India and Ors.* (MANU/SC/0117/1999). 1999.
- [34] Supreme Court of India. *Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr.* [(2000) 3 SCC 224]. 2000.
- [35] Supreme Court of India. *Bhagat Ram v. Teja Singh* [AIR 2002 SC 1]. 2002.
- [36] Supreme Court of India. *Om Prakash v. Radhacharan* [(2009) 15 SCC 66]. 2009.
- [37] Supreme Court of India. *S.R Srinivasa v. S. Padmavathamma* [(2010) 5 SCC 274]. 2010.
- [38] Upasana P. “Devolution of the self-acquired property of an intestate Hindu female – A grey area that needs immediate legislative attention”. In: *Journal On Contemporary Issues of Law* 2 (8 2016).

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