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**LAW
COMMISSION
OF
INDIA**

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.

Report No. 207

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**THE 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.

Presented to the Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on 10th day of June, 2008.

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June 10, 2008

Dear Shri Bhardwaj ji,

I am forwarding herewith 207th Report of the Commission on proposal to amend section 15 of the Hindu Succession Act in case a female dies intestate leaving her self-acquired property with no heirs. This subject was taken up for consideration by the Commission suo motu in view of vast changes in the social scene in the past few years. Over the years, women have taken a stride in all spheres. The consequence is that women are owning property earned by their own skill. These situations do not seem to have been in the contemplation of Legislators when the Act was enacted. Another aspect which the Commission feel is very important in the present scenario is that when amendments are made to the effect that women have been entitled to inherit property from her parental side as well as from husband's side, it would be quite justified if equal right is given to her parental heirs along with her husband heirs to inherit her property if such a situation arise. It is in this context, the Commission proposed an amendment to section 15 of the Hindu Succession Act as indicated in the Report.

The Terms of Reference of the Commission, inter alia empower it to examine the existing laws with a view to promoting gender equality and suggesting amendments thereto as well as to revise the Central Acts of general

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importance so as to simplify them and to remove anomalies, ambiguities and inequities. Therefore, the aforesaid subject was taken up by the Commission suo motu in relation to laws governing inheritance and succession of property. Social justice demands that the women should be treated equally both in the economic and social sphere. The Commission feels that the proposed amendment is needed as per the points stated in the Report. The recommendations contained in the Report are aimed at suggesting changes in section 15 of the Hindu Succession Act so that equal right is given to the parental heirs along with husband's heirs to inherit the property. We hope that the recommendations in this Report will go a long way in attaining the objectives set out above.

With warm regards,

Yours sincerely,

(AR. Lakshmanan)

Shri H.R. Bhardwaj,
Union Minister for Law and Justice,
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LAW COMMISSION OF INDIA

**REPORT ON 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.**

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LAW COMMISSION OF INDIA

REPORT ON 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.

1. INTRODUCTION

1.1 The Hindu Succession Act, 1956 is a part of the Hindu Code which includes the Hindu Marriage Act, 1955 Hindu Adoptions and Maintenance Act, 1956 and the Hindu Minority and Guardianship Act, 1956. These Acts brought revolutionary changes in the law relating to Hindus. It codified the law relating to marriage, succession, adoption etc.

1.2 The Hindu Succession Act made a revolutionary change in the law relating to succession especially for female Hindus. For the first time, a Hindu female could become an absolute owner of property. She could inherit equally with a male counter-part and a widow was also given importance regarding succession of her husband's property as also to her father's property. The Hindu Succession Act was amended in 2005 to provide that the daughter of a coparcener in a joint

Hindu family governed by the Mitakshara Law, shall, by birth become a coparcener in her own right in the same manner as the son, having the same rights and liabilities in respect of the said property as that of a son (see Section 6 of the Act).

2. SCHEME OF SUCCESSION IN THE CASE OF A HINDU FEMALE

2.1 Section 15 of the Hindu Succession Act propounds a definite and uniform scheme of succession to the property of a female Hindu who dies intestate. There are also rules set out in Section 16 of the Hindu Succession Act which have to be read along with Section 15 of the Act.

2.2 **Section 15** of the Hindu Succession Act is as under :

“15. General rules of succession in the case of female Hindus

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

- (a) firstly, upon the sons and the daughters (including the children of any pre-deceased son or daughter) and the husband;
 - (b) secondly, upon the heirs of the husband;
 - (c) thirdly, upon the mother and the father;
 - (d) fourthly, upon the heirs of the father; and
 - (e) lastly, upon the heirs of the mother.
- (2) Notwithstanding anything contained in sub-section (1) :

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

2.3 Section 16 of the Hindu Succession Act provides for the order of succession and the manner of distribution among heirs of a female Hindu. The Section reads as follows:

“16. Order of succession and manner of distribution among heirs of a female Hindu.-- The order of succession among the heirs referred to in section 15, shall be and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:

Rule 1.--Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2.--If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.--The devolution of the property of the intestate on the heirs referred to in Clauses (b), (d) and (e) of sub-section (1) and sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's, as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.”

3. RELEVANCE OF SOURCE OF ACQUISITION

3.1 The group of heirs of the female Hindu dying intestate is described in 5 categories as ‘a’ to ‘e’ of Section 15 (1), which is illustrated as under:

3.1.1 In a case where she dies intestate leaving property, her property will firstly devolve upon **her sons and daughters** so also the husband. The children of any pre-deceased son or daughter are also included in the first category of heirs of a female Hindu.

3.1.2 In case she does not have any heir as referred to above, i.e. sons, daughter and husband including children of any pre-deceased sons or daughters (as per clause 'a') living at the time of her death, then the next heirs will be the **heirs of the husband.**

3.1.3 Thirdly, if there are no heirs of the husband, the property would devolve upon the **mother and father;**

3.1.4 Fourthly, if the mother and father are not alive, then the property would devolve upon the **heirs of the father which mean brother, sister etc.;**

3.1.5 The last and the fifth category is the heirs of the mother upon whom the property of the female Hindu will devolve if in the absence of any heirs falling in the four preceding categories.

3.2 This is the general rule of Succession but the Section also provides for two exceptions which are stated in sub-section (2). Accordingly, if a female dies without leaving any issue then the property inherited by her from her father or mother will not devolve according to the rules laid down in the five entries as stated earlier but upon the heirs of father. And secondly, in respect of the property inherited by her from her

husband or father-in-law, the same will devolve not according to the general rule but upon the heirs of the husband.

3.3 The Hindu Succession Bill, 1954 as originally introduced in the Rajya Sabha did not contain any clause corresponding to sub-section (2) of Section 15. It came to be incorporated on the recommendations of the Joint Committee of the two Houses of Parliament. The reason given by the Joint Committee is found in Clause 17 of the Bill, which reads as follows:-

“While revising the order of succession among the heirs to a Hindu female, the Joint Committee have provided, properties inherited by her from her father reverts to the family of the father in the absence of issue and similarly property inherited from her husband or father-in-law reverts to the heirs of the husband in the absence of issue. In the opinion of the Joint Committee such a provision would prevent properties passing into the hands of persons to whom justice would demand they should not pass.”

3.4 The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father. So also under clause (b) of sub-section (2) of Section 15, the property inherited by a

female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. The fact that a female Hindu originally had a limited right and later, acquired the full right, would not, in any way, alter the rules of succession given in sub-section (2) of Section 15. (See Bhagat Ram (D) by L.Rs, Appellants vs. Teja Singh (D) by L.Rs, Respondents – AIR 2002 SC 1 at p.3)

3.5 The 174th Report of the Law Commission of India had also examined the subject of “Property Rights of Women: Proposed Reforms under the Hindu Law” and after eliciting views from the public had noted that the rules of devolution of the property of a female who dies intestate reflects patriarchal assumptions. The 174th Report had explained the position thus:-

“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 property is to devolve first to her children and husband; secondly, to her husband’s heirs; thirdly to her father’s heirs, and lastly to her mother’s heirs. The

provision of section 15(2) of HAS is indicative again of a tilt towards the male as it provides that any property she inherited from her father or mother should devolve, in the absence of any children, to her father's heirs and similarly, any property she inherited from her husband or father-in-law, to her husband's heirs. 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 to her husband's family (Page 32 para 2.5 of the Report).

3.6 The basis of inheritance of a female Hindu's property who dies intestate would thus be the SOURCE from which such female Hindu came into possession of the property and the manner of inheritance which would decide the manner of devolution.

4. SELF-ACQUIRED PROPERTY – A GREY AREA

4.1 The term 'property' though not specified in this Section means property of the deceased heritable under the Act. It includes both movable and immovable property owned and acquired by her by inheritance or by devise or at a partition or by gift or by her skill or exertion or by purchase or prescription. The Section does not differentiate between the property inherited and self acquired property of a Hindu female it only prescribes that if a property is inherited from

husband or father-in-law, it would go to her husband's heirs and if the property is inherited from her father or mother, in that case, the property would not go to her husband's but to the heirs of the father and mother.

4.2 This Section, has not clearly enumerated and considered about succession of a female Hindu property where it is self-acquired. Or to put it this way, the Legislators did not contemplate that Hindu females would be in later years would be having self-acquired property and in certain cases where her heirs in the first category fail, the property would devolve totally upon her husband's heirs who may be very remotely related as the compared to her own father's heirs.

4.3 This is very aptly illustrated by the following illustration:-
A married Hindu female dies intestate leaving the property which is her self-acquired property. She has no issue and was a widow at the time of her death. As per the present position of law, her property would devolve in the second category i.e. to her husband's heirs. Thus, in a case where the mother of her husband is alive, her whole property would devolve on her mother-in-law. If the mother-in-law is also not alive, it would devolve as per the rules laid down in case of a male Hindu dying intestate i.e. if the father of her deceased husband is alive, the next to inherit will be her father-in-law and if

in the third category if the father-in-law is also not alive, then her property would devolve on the brother and sister of the deceased husband.

4.4 Thus, in case of the self-acquired property of a Hindu married female dying intestate, her property devolves on her husband's heirs. Her paternal and maternal heirs do not inherit but the distant relations of her husband would inherit as her husband's heirs.

5. THE CASE FOR CHANGE

5.1 The Hindu Succession Act was enacted in 1956 when in the structure of a Hindu society, women hardly went out to work.

5.2 There has been a vast change in the social scene in the past few years and women have taken a stride in all spheres. The consequence is that women are owing property earned by their own skill. These situations were not foreseen by the Legislators.

5.3 If that is so, what is the impact of these socio-economic changes? Do they warrant any change in the law of succession in relation to the property of a female Hindu dying intestate? What is the fall out of gradual disintegration of joint Hindu family and emergence of nuclear family as a unit in society

over the years in the context of law of succession governing the issue at hand? One of the fundamental tenets underlying the law of succession has been the proximity of relation in which a successor stands to the person who originally held the property that may be the subject matter of inheritance in a given case. The fact that women have been given right to inherit from her parental side, also assumes relevance in the present context. These developments and changes lead to competing arguments and approaches that may be taken in redefining the law of succession in case of a female Hindu dying intestate. Thus, three alternative options emerge for consideration, namely:

1. Self-acquired property of a female Hindu dying intestate should devolve first upon her heirs from the natal family.
2. Self-acquired property of a female Hindu dying intestate should devolve equally upon the heirs of her husband and the heirs from her natal family.
3. Self-acquired property of a female Hindu dying intestate should devolve first upon the heirs of her husband.

5.4 The third option may be taken first as this can be disposed of summarily. The option essentially means continuation of status-quo. We have already seen earlier that

socio-economic changes warrant corresponding changes in the law on the subject as well.

5.5 We may now take up the first option. The protagonists of this approach contend that the general order of succession reflects gender bias. It will be relevant to refer to the following passage in this regard:

“Succession for male and female intestates: Under the Hindu Succession Act the provisions for two entirely different schemes of succession on grounds of the sex of the intestate create a distinction between the male and female intestates. There is a further divergence in case of female intestates linked with the source of the property that is the subject matter of inheritance. Thus, where a woman inherits property from her parents, and dies issueless, this property on her death does not go to her own heirs but goes to the heirs of her father. Similarly, where she inherits the property from her husband or from her father-in-law, on her death this property goes to her husband’s heirs from whom or whose father she had inherited the property. The subdivision of the schemes of succession in case of female intestate is outdated and irrational. The heirs are not described as brother, sister, her brother-in-law etc., but as heirs of her parents and heirs of her husband. She is perceived as having no

identity of her own. The legislature while framing this scheme was very much influenced by the whole Mitakshara law, its concept of *stridhana* and inheritance by a female in a double capacity. This reversion of the once-inherited-property back to her father's or her husband's heirs shows a desperateness on the part of the legislature to treat her only as a temporary occupier.” (See Pradhan Saxena – Succession Laws & Gender Justice in Redefining Family Law in India – Edited by Archana Parasar, Amit Dhanda, Routledge, New Delhi, 2008).

5.6 The supporters of this approach contend that the joint family system in our country has slowly been eroded and an increasing number of nuclear and semi-nuclear families have replaced the traditional Mitakshara Hindu joint family system. Women are also becoming more economically independent. With the growth of the nuclear family a married woman dependency on her natal family and continued closeness to it is much greater today even if it was not so earlier. Most married women would prefer that their parents should be the more preferred heirs to inherit her property if her children etc. and husband are not alive. She would also prefer that her sister and brother have a better right to inherit her property than her brother-in-law and sister-in-law. Accordingly, it is urged that Section 15(1) should be modified to ensure that the

general order of succession does not place a woman's husband's heirs above those who belong to her natal family like her father and mother and thereafter her brother and sister. It is contended that when a man dies intestate, his wife's relatives do not even figure in the order of succession despite the manner in which he may have acquired the property. In view of this, parity is sought in the case of female by applying the same rules as applicable to male's property. Accordingly, it is suggested that it would be better to amend Section 15(1) to specify the general rules of devolution, which will apply not only to self-acquired property by a women but also to other property acquired through her family, gifts, etc. The only proviso which would then be needed would be to property that a woman acquires from her husband's family.

5.7 The second option in this regards is that the whereas property of a female Hindu dying intestate devolves upon the heirs depending up-on the source from which the said property was acquired by her, the self-acquired property of such female be simultaneously inherited by her heirs both from the husband family as well as the natal family in equal share. The fact remains that in spite of her closeness to, and dependence on, her natal family, her relations with her husband's family are not separated and uprooted in entirety. She continues to be a member of her husband's family, getting support from it in all walks of life. One cannot afford to ignore

the ground realities in this regard. The social ethos and the mores of our patriarchal system demand that the existing system should not be totally reversed as claimed by the protagonists of the first option. Lest, there may be social and family tensions which may not be in the overall interest of the family as a whole and, as such, ought to be avoided. In any case, it is open to the female Hindu to bequeath her property the way she likes by executing a will.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 In the present scenario when amendments are made to the effect that women have been entitled to inherit property from her parental side as well as from husband's side, **it will be quite justified if equal right is given to her parental heirs along with her husband's heirs to inherit her property.**

6.2 It is, therefore, proposed that in order to bring about a balance, Section 15 should be amended so that in case a female Hindu dies intestate leaving her self-acquired property with no heirs, as mentioned in clause 'a' of Section 15, the property should devolve on her husband's heirs and also on the heirs of her paternal side.

6.3 If this amendment is brought about, the effect will be as under:

A married Hindu female dies intestate leaving self-acquired property at the time of her death, the only surviving relatives are her mother in law(L) and her mother (M).

<u>Pre Amendment</u>	<u>Post Amendment</u>
As per the present law, her property would devolve entirely on 'L' and 'M' will not get anything from her property.	By proposed amendment, her mother-in-law and mother should equally inherit to her self acquired property.

A married Hindu female dies intestate leaving self-acquired property and she has no heirs as per clause 'a' of the Schedule, the only surviving relatives are her husband's brother and sister (BL&SL) and her own brother and sister (B&S).

As per the present law, her property would normally devolve upon 'BL' and 'SL'. 'B' and 'S' do not inherit anything from her in this property.	By the proposed amendment, her own brother and sister should equally inherit along-with her brother-in-law and sister-in-law.
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7. PROPOSED AMENDMENT

7.1 In Section 15 of Hindu Succession Act, 1956, 15 (2) (c) be added.

“(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.”

7.2 Thus, Section 15 along with the proposed amendment will be as under :

15. General rules of succession in the case of female Hindus –

- (1) The property of a female Hindu dying intestate shall devolve according to the rule set out in Section 16, -
 - (a) firstly, upon the sons and the daughters (including the children of any pre-deceased son or daughter) and also the husband;
 - (b) secondly, upon the heirs of the husband;
 - (c) thirdly, upon the mother and the father;
 - (d) fourthly, upon the heirs of the father; and
 - (e) lastly, upon the heirs of the mother.
- (2) Notwithstanding anything contained in sub-section (1) :
 - (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) and not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
 - (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband; and
 - (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 and if she has no heirs in category (c), then heirs in category (b)+(d) would inherit simultaneously and so on.

7.3 It is recommended accordingly.

(Dr. Justice AR. Lakshmanan)
Chairman

(Prof. Dr. Tahir Mahmood)
Member

(Dr. D.P. Sharma)
Member-Secretary