

An Appraisal of Women's Property Rights in India

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Abstract-

Women play an important role in every man's life. Protecting her better birth rights would mean giving a better future to our own society, family and every person. There is gender inequality in various forms, but most of it relates to property rights granted to fatigued women. Women continue to be exploited at home and outside in most parts of the country. Male superiority and unfavorable status for women are still widely prevalent. Complete development of personality, and fundamental freedom and equivalent participation by women in political, social, economic and cultural landscapes are concomitant with national development which depends on social and family stability. All forms of discrimination based on sexual race disturbance.¹

Keywords— Property Rights, Rights of Women, Property Rights of Women, Laws for Women

Introduction-

Women play an important role in every man's life. Protecting her better birth rights would mean giving a better future to our own society, family and every person. There is gender inequality in various forms, but most of it relates to property rights granted to fatigued women. This inequality in property rights related to gender has been true since ancient times. In India, a woman is viewed as celestial and loved as the embodiment of all virtues on the one hand, but on the other, she is discriminated against and victimized by norms created by the male dominated society. Even after all the civilizations and cultural revolutions, it has not been given a proper and legitimate place in the society. Women continue to be exploited at home and outside in most

¹ Aftab Alam, Human Rights in India : Issues and Challenges 76 (1998)

parts of the country. Male superiority and unfavorable status for women are still widely prevalent. Complete development of personality, and fundamental freedom and equal participation by women in political, social, economic and cultural landscapes are concomitant with national development which depends on social and family stability. All forms of discrimination are based on sexual and racial disturbance.²

The main source of prejudice came from joint family wealth, with sons enjoying an independent share right from birth, but daughters did not. Both had equal rights to a succession of separate assets accumulated by their fathers in their lifetime. Daughters had a stake in their father's daughters' property and a father's self-acquired wealth. But due to the fact that a lot of property, particularly in rural zones, is still jointly owned, such biased rights had a serious impact on the status of women in India.³

A major feature of this legal structure of Hindu heritage in India is the distinction between joint family property and separate property. Generally, joint family property consists primarily of paternal property, that is, property inherited from the father, paternal grandfather, or paternal great-grandfather, also any assets that were jointly acquired or acquired separately, but the combined assets were merged. Separate property, on the other hand, includes what was acquired on its own and any property inherited from persons other than the father, paternal grandfather or paternal great grandfather.

Gender inequality occurs in different forms, but the most tedious is related to the effective property rights of women. Because the Parliament, enacting the Hindu Succession Act 1956, conferred on women the rights to property from which they could constitute their independent rights of inheritance and independent stock of descent. Prior to the passage of this act, the right of women to inherit, own and control property is determined primarily by the values and norms that are socially satisfactory and the primary objective of heritage systems in Indian society is

² Aftab Alam, Human Rights in India : Issues and Challenges 76 (1998)

³ Radhabinod Pal, (Tagore Law Lectures) The History of Hindu Law 45 (1930)

property, especially The property has to be protected on the land, the male heir remains intact.⁴

Concept of Coparcenary Property-

According to common law, where an individual, seized in charge basic or expense tail, kicks the bucket, and his next beneficiaries are at least two women, his daughters, sisters, aunts, cousins, or their representatives; In this case they all inherit, and these co-workers, then called "coparceners", or, for "parceners" only. Particularly according to custom, where the land descends, as in gavelkind, to all fellows in the same degree, as sons, brothers, uncles, etc.... a property that many holds as an heir, regardless Is it male or female. This property has three units of time, title and authority; but coparceners interests may be disproportionate.⁵

Hindu Women's Right to Property-

It was Gautama Dharmashastra who first called the wealth of women Stridhana Shari. Means also stated that the original bride price payable to parents appears to have shifted to dowry for the wife. In addition to this stridhana, a married woman may receive gifts from strangers; She can also contribute by doing other skilled labor. Even then she had no complete control over her property because her right to dispose of the property was restricted.

This was done to control her. If there was no control, she would become independent. Therefore, it is clear that in ancient times women did not enjoy the right to property. Nevertheless, the woman was allowed to keep her stridhan as her separate property.

Muslim Women's Rights of Property-

In fact, the oppression of Muslim women is caused by conservative readings of the Shari'a which also include gender discriminatory customary norms that are presented as immutable words of God. Muslim feminists trace the source of

⁴ J. Dancan. M. Derret, A Critique of Modern Hindu Law, N. M Tripathi Pvt. Ltd, Bombay (1970), p.193.

⁵ Bryan A. Garner, Black's Law Dictionary, 10th ed. 2014, p. 335.

oppression of women to the same Sharia laws that misinterpret theocratic laws.⁶ Furthermore Islamic law is saturated with patriarchal interpretations. Although the situation of women had improved during the time of the Prophet, it was only short-lived. The Muslim people do not look beyond Islam and they consider it a complete way of life. The divorce law has become a tool in the hands of husbands to persecute Muslim women. Muslim scholars are of the view that the Muslim Personal Law prevailing under the Shariah Act brought untold grief to Muslim women and if Allah appears personally, he will bow his head in shame at the plight of Muslim women.⁷

India is a multicultural and multi-religious society and its citizens are given the opportunity for their full development by securing various fundamental rights in Part III of the Constitution irrespective of their gender, race, religion or race. Despite constitutional assurances, the status of Muslim women has not improved due to the conservative view of religious orthodoxy. Muslim women could not benefit from various welfare legislations as they are still governed by their own Islamic laws. The centuries-old principles of Islam are still applicable to various matters related to marriage, divorce and polygamy.⁸

Christian Women's Rights of Property-

The property rights of Christian women are still a distant dream because of strong religious teachings, church lessons and the maintenance of the customary law concept of women's subjugation by making them non-unit after marriage. The Church always emphasized the obedience of her husband to women.⁹

It is pertinent to note here that Christian women of Kottayam district are also from families with ancestral property. Even then they do not get any birth right, instead many times they are sent to matrimonial homes, after giving nominal amount, this way the entire family will be cut off with Srinatham. She has to depend on her husband for a lifetime. In other words, he has to live like a slave, surrendering all his

⁶ Melanie P.Mejia. "Gender Jihad Muslim woman, Islamic jurisprudence and women's rights." Vol-1, No.1 *Kritike*, 1-24 (June-2007), available at: <http://www.kritike.org>

⁷ R.Upadhyay, "Muslim Personal Law Should it be Politicized", available at: <http://www.imcindia.com>,

⁸ Dr.A.K.Srivastava "Muslim Personal Law and Rights of Muslim women, A Sociolegal Study" Vol.3.SCJ.18 (2007)

⁹ Wives submit yourselves unto your husbands" said St. Paul "for the husband is the head of the wife... So let the wives be subject to their own husbands in everything."

freedom, honor and self-respect. She gets 1/3 of her husband's property only when she is widowed. Also he has to hand over the stridhanam to the husband or father-in-law.

Hindu Women's Property Rights under the Hindu Succession Act 1956-

The property rights Under section 14 of The Hindu Succession Act 1956, the restricted enthusiasm of a Hindu woman is converted into full rights. If she gets the property from her husband, at that point she can sell it and the buyer gets full rights in the property.¹⁰

In the past, she was not given the power of secession.¹¹ The provision has been given retrospective effect. As a result, limited property becomes absolute and another significant change is the interpretation of section 6 of the 1956 Act.¹² On the death of a coparcener, the property survives a will or intestinal succession with her mother, widow and daughter along with her son . This rule relies on women with equal rights with male members of the Coparcenary.¹³ It is to be noted that Section 6 still upholds Mitakshara covenants in which women are barred from surviving as father and son jointly provide a uniform scheme of intestinal succession despite total exclusion of mother-daughter. The stringent restrictions under the Shastric law on women's heritage were finally overcome by Parliament to make it in line with the constitutional mandate of equality. Under Section 6 of the 1956 Act, the disability of women in acquiring father's property was undone.¹⁴

¹⁰ Prior to the Act, she could sell it only for the necessities of the family or to perform religious ceremonies for the benefit of her deceased husband.

¹¹ See Section 14 of the Hindu Succession Act 1956. Section 14 is wide in its ambit. The legislation has defined women's property in the widest possible manner. The property includes both movable and immovable property acquired by a female by inheritance, partition, in lieu of maintenance, arrears of maintenance, gift from any person, a relative or not, before or after marriage or by her own skill, exertion, by purchase or by prescription or in any other manner whatsoever and also any such property held by her as stridhanam immediately before the commencement of the Act

¹² Section 6 of the 1956 Act provides: Devolution of interest in coparcenary when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship up on the surviving members of the coparcenary and not in accordance with this Act: provided that if the deceased has left him surviving a female relative specified in class – I of the schedule or a male relative specified in that class who claims through such female relative the interest of the deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be under this Act and not by survivorship.

¹³ Sruthi Pandey, "Property Rights of Indian Women. " available at: <http://www.muslim.personallaw.com>

¹⁴ Amrito Das, "Notional Partition, A critique., Section 6 of The Hindu Succession Act 1956", J 149 AIR (2004)

Similarly, Section 15 is the first statutory enactment which deals with the succession of the property of a Hindu woman when she dies intestate before the act, which was the property of the women who died of intestacy was governed by customary Hindu law. She had only limited interest which would be terminated on her death. It is heartening to note that the Act provides two different laws based on the sex of the intestine.¹⁵ This dual plan is the traditional way to protect family property. As per the rules laid down under section 16 (a), the property of a female Hindu dying intestate will be the first (including the children of a predecessor son or daughter) of the sons (b) the second time on the beneficiaries of the husband. Mother and father (d) fourthly on the beneficiaries of the father and (e) lastly on the heirs of the mother.

Hindu Succession (Amendment) Act 2005-

It is pertinent to keep in mind the amendment of the objects and reasons of the Hindu Succession Act 1956 to pass the Act 2005. It is said that the Hindu Succession Act 1956 has been amended to codify the law identifying with intestate succession among Hindus. Its further states that social justice demands that a woman should treat both economic and social justice equally. It is unjust to prevent daughters from participating in the ownership of coparcenary property simply because of their gender. The Commission has taken into account the changes made through the state enactments concept of Mitakshara Coparcenary. The Act brought a change in the law of succession of Hindus and gave them rights which till then were unknown in relation to the property of women.¹⁶

Property Rights of Muslim Women under the Customary Law-

However, the Prophet completely reformed the pre-Islamic law of inheritance without repealing all the customs of pre-Islamic Arabia. They retained many Arab customs in their original form that did not conflict with the basic tenets of Islam. The prophet overcomes some economic and social evils. For example, in pre-Islamic Arabia, women had no right to inheritance. Therefore, Islam succeeded the husband or wife. The females and cognates were enabled to inherit. Parents and mountaineers

¹⁵ Section .15 of HSA provides general rules of succession in the case of Hindu females.

¹⁶ The Section.6 of the 2005 (Amendment) Act provides devolution of interest in coparcenary property (1) on and from the commencement of the Hindu Succession (Amendment) Act 2005.

were given inheritance rights even when they were male descendants. As a general rule, women were given half of a man.¹⁷

Thus, Islam gave a share to women who were denied a share in pre-Islamic Arabia. Pre-Islamic Arabs were against the succession of women because of their weakness. He is not capable of acts of defense and bravery. So, the family's distant people inherited the property. When Thabit, the well-known poet of Arabia, died leaving behind him a wife and a few daughters, the sons of his uncles confiscated all their property and left nothing to his wife and daughters. The widow complained to the prophet. The prophet then narrated to him the verse that appeared to him. Therefore, the Quran created inheritance rights for women at a time when no such right existed. The daughter gets half of the brother.¹⁸

Conclusion-

The implementation of the 2005 Act stays a difficult inquiry. Crusade for Legal Literacy; endeavours to raise social familiarity with the advantages to the entire family if women possess property, and legal and social help for women guaranteeing their rights are only a couple of the many advances required to finish the change remembered for the Act.

Finally, A strong woman not only protects herself but also protects those around her. Therefore, the time has come to break the silence; women should fight for their place in this male dominated society. It should start with the family. The mentality and patriarchal ideas have given rise to the mentality of the Indian people because age should change only then the real fruits of the law will be given to women.

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¹⁷ Dr. Rakesh Kumar Singh, *Text Book on Muslim Law* 315 (Universal Publishers, New Delhi, 2011)

¹⁸ Quran 2:228

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- **Prior to the Act, she could sell it only for the necessities of the family or to perform religious ceremonies for the benefit of her deceased husband.**
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