

LAW & WOMEN'S STATUS : PROPERTY LAWS AS SYMBOLS  
OF SEX DISCRIMINATION

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Indian Law, as it exists today, merely codifies a woman's secondary status in society. For its application to the life of a woman often makes it impossible for her to lead an existence of economic independence and exist without male support. While no one will deny that an inequitable distribution of wealth within society can create avenues of oppression, yet when this occurs between the sexes, few accept that it enforces gender inequality. When a woman finds that such male support comes only if she also tolerates indignities on her person and when her situation deteriorates to a point where there appears little chance for escape, the result is often suicide.

Dowry deaths are one such instance of women preferring to kill themselves rather than submit to what appears to be a living death. While such tragedies have brought much needed focus on the assumptions behind the practice of dowry, they also force us to examine the range of laws which are formulated to uphold and to support a social order which is maintained by denying a woman the same economic freedom and status, which on paper, is provided to a man.

Take the laws of succession and inheritance. The basic premise of all our laws inheritance and ownership is that from birth, women must stay under the control or protection of men, and that males must necessarily have near-total control over the possession and distribution of the family assets. Consequently, in their present form, Hindu laws of ownership give women negligible ownership rights, as independent entities over family income, assets and property. It is only the inheritance laws which offer some recompense.

THE HINDU SUCCESSION ACT

The 1956 Hindu Succession Act was legislated to change the



situation which existed before Independence, when there were various systems of succession and inheritance among Hindus. The position of women was one of dependence on their males. Although they had some rights, there was little to which they had full ownership.

Take the joint family. This institution, with all its assets, is commonly called a coparcenary. There are 2 major coparcenary systems prevailing at that time : the Mitakshara and the Dayabhanga which dealt with property rights. In the former coparcenary, only males could be members, which meant that only the father and the male descendants four generations from the common ancestors could hold joint family property. A female (wife or daughter or sister) could never be a member of such a coparcenary. Under the Dayabhanga system the daughter got an equal share with the brothers and she was also a coparcenary to the property.

Ostensibly, the Hindu Succession Act was legislated to rectify this confused situation for women. The Act abolished the different systems and established a common code. But such was the resistance against giving women equal ownership that the Dayabhanga school, which gave daughters equal rights to property and made women members of a coparcenary, was rejected. The Act of 1956 thus codifies a power structure which excludes women from exercising direct control over family assets.

Thus it is learnt that the same forces which have effectively thwarted the successful implementation of laws dealing with the re-distribution of property and land reform have prevented women from establishing direct ownership rights to both. The reason is simple and clear. If property is to remain within the family, it must remain with the males. Women cannot have claims to either because the destiny of a woman is to be the daughter of a man and then depart to another family to become another man's wife.

The Hindu Succession Act has, however, defined women's inheritance rights and ensured that as widows, mothers, daughters and widows of predeceased sons, they could inherit an equal share.



as absolute owners, the property of the deceased coparcenor. It says that as 'Class I' heirs of man, women can inherit his property in equal shares and as absolute owners. Under Section 6 and 30, if a male member of a coparcenary dies, to ensure that his heirs get a share of the property, his share in the coparcenary is demarcated and divided among his heirs. Here women can claim their rights if they come in Class I Category.

The result, however, is still a good deal for the sons. Suppose a coparcenary consists of a father and two sons. The share of a father to the common property is one-third. His sons, class I heirs, inherit their portion of his share. This comes in addition to their own share in the coparcenary. Naturally, there is unequal distribution between brother and sister.

The 1974 Report of the National Committee on the Status of Women in India stated that females are affected by this system adversely, in many ways. Firstly, a coparcenor can renounce his rights to joint family property. Thereon, his share in the property is divided by others. His female heirs, having no right to dispute such actions, are thus left in the cold. The same results can be achieved if a father also partitions his joint family property among the coparcenary members during his lifetime, without reserving any share for himself. Next men have converted self-acquired property to reduce income tax. This reduces the female heir's share.

Hence, the Committee recommended the abolition of right by birth and the conversion of the Mitakshara coparcenary to the Daya-bhanga one. For obvious reasons, this is one of the Committee's numerous suggestions which have found fellow followers.

#### OTHER SUCCESSIONS ACTS

The Indian Succession Act, 1925 which applies to all communities except Hindus (including Jains, Buddhists and Sikhs) further undercuts succession rights of women from the minority communities. If a husband from the Christian community dies without making a will, a widow is allowed just one-third of



or Rs.5,000/- of his property. The rest is shared by his lineal/male descendants. If he has a widow and no lineal descendants, but has kindred, only half his property goes to the widow. The distant relatives can claim the rest.

The Law Commission of India, in a working paper in which it has documented sections of the Indian Succession Act which are in need or reform, has suggested that a widow's share in her husband's estate should be increased from Rs.5,000 to Rs.20,000. At the same time, it has observed that under the English Intestates Act, 1952, when the husband leaves no children, the widow inherits all his property.

A law which denies a widow the right to her husband's property, is blind to the reality of the numerous direct and indirect ways in which a woman, even if she is not a wage earner, contributes to the growth of the family income. Whether it is through providing unpaid labour in the form of housework or sustaining the principal bread earner in more ways than she is given credit for, women's silent input into family assets are yet to be quantified. In the U.S.A. when couples sue for divorce, in 30 of the states of the Union, the economic value of housework has figured in alimony settlements and these figures range from \$ 100 to \$ 300 a week. Little wonder then, that widowhood is considered a curse in India.

I emphasise this point because while some attention has focused on married women through the dowry issue, very little interest or emphasis is given to the problems faced by married women. One widow wrote to me the following note :

It is good to say that dowry should be abolished and noble. I'm sure many people suffer because of it. But on the other hand 99 per cent of women, once they are married, will not see a paisa of their inheritance.

Men almost always will their property to their sons. Money is also usually placed by the husband into the joint bank account of his sons. From my own experience, I am telling you that our money has been put into



fixed deposits mostly between my husband and his sons. It is impossible for me to touch it. My daughter is completely out. Where does that leave us? With nothing except a few saris and a few pieces of gold given at marriage.

Our husbands boss over us, our sons are waiting to take control. We are abused, neglected and lonely, but we have kept on somehow. We look after the grandchildren and the kitchen. Our sons become the masters of the house and in charge of our money. Nobody worries about us, only about young brides. I suppose we can go to Varanasi if we do not like it at home.

To further complicate matters, the Travancore High Court has held that the Indian Succession Act should not apply to the Christians of Kerala. It also permitted the continuation of numerous other laws governing Christians in Travancore. The Travancore Succession Act governs Christians in Travancore other than Protestants and Latin Catholics. The Cochin Christian Succession Act governs Christians in the former Cochin State but not the Anglo-Indians or Tamil Christian communities.

Particularly biased are Sections 16, 17 and 24 of Travancore Act. The Act holds that a daughter's right to her family property ends when she is given streedhan at her marriage. This amount is fixed as Rs.5,000 or one-fourth the value of son's share. A widow has only a life interest in her husband's property, This ends with her death or her remarriage. This Act has been challenged as unconstitutional and violative of Articles 14 and 15(1) of the Constitution by a woman from the Syrian Christian community, Mrs. Mary Roy, in the Supreme Court of India.

The Cochin Act is no better. While it states that the daughter can get one-third the share of a son, she is denied this if 'streedhan' is given by the father at the time of her marriage.



Under Chapter II of the Indian Succession Act, as amended in 1939, which applies to Parsis, the son's share of his father's property is twice as that of a daughter. The widow gets as much as her son. When a woman dies intestate, leaving her husband and children, then the property is divided equally among the widower and the children. Thus, while the son is entitled to an equal share of the mother's property along with the daughter, the daughter is not entitled to the same rights when she inherits the property of the father.

When the intestate is a male who has left children, the father is entitled to a share equal to half the share of the son. But the mother is entitled to a share equal to half the share of the daughter. If an unmarried son dies intestate, the father, if alive, claims the entire estate. The mother has no such claim. If the father is also dead, and there are brothers and sisters, then the mother has to share property with them.

Pointing out these discriminations, the Law Commission suggests that we follow the principle of the English law, where even if a brother and sister are alive, the father and mother share the property and share it equally. If only one of them survives, he or she takes the whole.

#### MUSLIM WOMEN AND SUCCESSION

Muslims in India are enabled, under the Muslim Personal Law 'Shariat' (Application) Act, 1937 to avail of their personal law rights of inheritance marriage and divorce. Today, Muslim women are beginning to question the fundamentally sexist bias in the laws of inheritance. As a general rule, a woman is given half the share of a male.

In India, the majority of Muslims follow the Hanafi doctrine of Sunni law. The court presume that Muslims are governed by Hanafi law unless it is established to the contrary. Under the Hanafi law there are three groups of heirs, related to the deceased by blood : the sharers of Koranic heirs the agnates or 'residuaries' and finally the uterine relations or distant kindred. Each category is further subdivided and allotted its



specific share in the property.

If a Muslim dies leaving a daughter and a son, the estate is divided into three sections : the son gets two parts and the daughter gets one. If a man dies leaving a daughter as his only relative, she is not allowed more than half of his estate. The rest will go to the distant kindred according to detailed portions. The father of a dead man cannot inherit more than a dead man's daughter. He gets one of the property plus one-third, leaving the daughter with just one-sixth.

Particularly precarious here is again, the position of a widow. If a husband dies without a child, she gets one-fourth of the property. If there are children, then her share is reduced to one-eighth. If a man dies leaving a mother and a father, the mother gets one-third and the father the remaining two-thirds.

It is said that along with this uneven distribution of assets came a duty of the male to support the female, be she his widowed mother, divorced, widowed or single sister and of course his wife. But women have begun to object to this, because it continues the culture of dependancy of the woman on the man. It restricts the right of a woman to live as a free human being.

#### TRIBAL WOMEN PROTEST

Such then, is the dependance on a male, enforced by laws, for women. Little wonder then that women see the institution of marriage as the only form of social security for the future, gratis, of course, at the husband's goodwill, or later, that of her sons. So there are women who prefer to remain single because they would otherwise lose their rights of ownership, in this particular case, their ownership rights to land. There are illiterate and poor tribal women in Singhbhum, Bihar, who prefer to remain single because they would otherwise lose their usufructory rights over parental land once they did so. Since marriage results in desertion, divorce or physical violence, women from the Ho tribe in Singhbhum prefer to remain single and live off their land.

Tribal lands in Bihar have been protected under the Chotanagpur



Tenacy Act, passed by the British to prevent sale and consequent alienation of these lands by tribals to non-tribals. Under this Act, a tribal cannot sell, mortgage or dispose off his land to anyone but a tribal or a member of the Scheduled Caste. However, the law permits land inheritance only by male heirs and effectively excludes females from such access to the land.

No tribal unmarried women living in their parents' homes have usufructary rights only till the time of their marriage. Such women do not have the right to bequeath the land to anyone of their choice. Inheritance rights can only be claimed by male descendants of the male land owner.

Once married, a wife has usufructuary rights to her husband's land during her lifetime. If her husband dies, she can claim maintenance rights only from the male agnates (relatives) of her husband. It is they who inherit the land. If she has no sons, then the land goes to the nearest male agnate. If there are none of the latter, then the land becomes village property. In other words, the community can claim the land, not the wife, daughter or mother.

Three women have challenged such customary tribal law in the Supreme Court. One is a widow, Maki Bui, the second is her married daughter, wife of an unskilled labourer working in an asbestos mine and the third is a young woman Madhu Kishwar, editor of a feminist magazine published from Delhi.

It is interesting to examine how deep and insidious is the impact of such laws on a tribal woman's life. Maki Bui's husband was a retired police constable with a monthly pension of Rs.135. Maki Bui's only income was what she got from the sale of produce of her land. But since her husband's death, she lived a life of fear. Allegedly her husband's younger brother and sons have been threatening to kill her if she does not give over her husband's land to them before she dies. She wants to give it to her only daughter who has two children.

So Maki Bui does not plough her land because her husband's agnates would forcibly take away her harvest. One of them is the village 'Mukhiya'. If she is murdered, she feels no one in the



village would volunteer evidence because they fear the 'Mukhiya'. She has put the matter before an all-male 'panchayat' and she says that she expects no assistance from them.

The petitioners have pointed out that such law affect women in numerous ways. Among the Hos, at least 80 per cent of all agricultural operations, except ploughing, are performed by women. This includes all other ritually forbidden agricultural operations. Doing such work without owning the land on which they work means that women labour has been devalued with the women **themselves** being reduced to mere labourers. Such devaluation has made them peripheral in the economic and political life of the tribe. Ho women are excluded from the tribal 'panchayats' and all other political decision-making institutions. Their powerlessness is thus rooted in their absence of land rights.

Thus, while attention must continue to be focused on laws specifically related to atrocities on women like the dowry and rape laws and those dealing with divorce, maintenance and cruelty, it is equally imperative that laws like those dealing with ownership and succession receive some attention. For when one strikes at the different areas of oppression, it is important to examine how such issues originate and then deal with the roots of the matter.

ACTION NEEDED :

This cannot be done in isolation but through concerted effort of all women. They should not be satisfied with symbolic actions or window dressing, but should demand that reforms suggested in theory should be implemented in practice. For example, women must agitate that the new Government of Mr. Rajiv Gandhi which has changed the description of the Department of Social Welfare Ministry into Ministry of Women and Social Welfare, should give a new emphasis to the issue of women's rights. Legal and other changes have been suggested in 1974 by the Committee on the Status of Women. What is now needed is the establishment of the requisite machinery which will implement some of their basic recommendations. The Law Ministry must be urged to take the initiative and convene a Working Group which will examine the various laws-civil, personal and penal-and then put forward the necessary amendments



to Parliament for inclusion in the statute books. The task is not as difficult as it seems. Neglect need not continue any longer.

As far as the laws on property and ownership stand, the 1974 Committee has stated that the various personal laws in our country are uniform in recognising the obligations of a husband to maintain his dependent wife. To this it must be added that the extent of a husband's responsibilities are not always clear and defined. However, the report goes on to say that the right of a wife to a part of the husband's property on his death is not absolute like, for instance, maintenance. The only exception is Muslim law. For under the present system, the husband can, if he chooses, deprive his wife completely of her due share with a will duly notarised before his death. Therefore, the Committee recommended that since the Indian Succession Act and Hindu Law do not restrict the power of testation, the right should be adequately limited so that it does not deprive the legal heirs, particularly the wife and daughter, of their rights.

In the Lok Sabha debates in the early part of the 1950s when the fear was voiced that the absence of the power of restriction may deprive the female heir of her rights, the fear was frequently brushed aside. The then Law Minister was quoted as saying : 'I believe that a normal father will never do any such thing and if at all he has to do it for any reason, he will surely make a provision for his daughter when he is going to deprive her of her share by will'. But it was also pointed out that this was an over-simplification of the issue. Mrs. Renuka Roy is quoted by the Commission as pointing out in 1949 that 'an analysis of the inmates of rescue homes in the country will prove how many of these women are those who have been turned out of the joint family'. The Committee added that during the interviews done by its own members in many Indian cities, particularly in Benares in 1972-73, it was clear that there were many women who had been reduced to destitution and beggary because their families had deprived them of all financial support. And let it be added that this is not just a feature of Hindu law. The Indian Succession Act is not too different.



TRADITION OF PATRIARCHY :

Any change in the law of succession will strike against the very roots of patriarchy. In its working paper on the laws of succession, the Law Commission attempted a brief analysis of Hindu jurisprudence to show how the idea of succession originally developed. Its roots go back to primitive animism. Here, the source of worship was the house spirit. This was almost always a male, generally an ancestor. Such vesting of succession in the heir, himself originally like the house spirit always a male, was necessary, according to his analysis, to continue the family's rights and observances on which, according to primitive belief, the very existence of the family depended. Thus property and the son were indissolubly combined.

It was a point of family honour that the spirit of the deceased and through him the house spirit, was to be propitiated by ritual observances. As far as the law of testamentary succession goes, it had its genesis in Roman law. Through, succession or intestacy, the inheritance devolved on those members of the family who, at the time of the death of its head, were under his paternal power and through his death, became independent. In the absence of such heirs, relatives tied to the deceased by descent from a common ancestor through the males, received the inheritance.

Consequently, challenging these laws in practice involves challenging such fundamentals as the woman's role and status in the family and in society. The existence of a family unit is supposed to depend on the survival and progress of the male heirs. It is he who is seen as perpetuating the family and its name. The male hitherto had always been the focus of the family and of the household.

Today, an ever increasing number of families are headed by women who are the sole, not supplementary, bread earners. In spite of such a reality today we only have general data on women workers and lack detailed statistical record of the status of women from specific communities. For example, how many Hindu, Parsi, Muslim and Christian women are earning members and what do they contri-



bute to the family budget? How many are divorced, or single and thus meeting their own needs? It is important that these questions be answered so that the communities concerned do not remain indifferent to the need for emancipating their women. At least, it will no longer be said that the demand for women's economic emancipation has no basis in our social reality.

Such a data basis on the role of women is essential for the task of legal reform faces many impediments. Besides lack of information, one of the biggest hurdles which those who talk of giving women equal rights in property and inheritance will face is the image of the women, as projected in traditions, formalised religions and rituals of our country.

What those who seek change in these laws are actually saying is that because a woman is a man's equal, she should have the same economic rights and opportunities as a man. She must be given an equal share in the family property because she too is one of its members, born of the same parents as the son. The fact that both son and a daughter will marry should not be used to subjugate the latter. Changes in the laws of property and ownership will then collide with concepts of 'kanyadan' and a range of other attitudes all of which stress that a woman's sanctioned position in society is as the wife of another male, and within that position, her *raison D'etre* is to serve him.

#### RELIGIOUS TRADITIONS AND WOMEN'S ROLE :

Religious traditions create and sustain female role stereotypes. For example, after examining the various images of women in the lore of Hinduism, the 1974 Committee stated that the woman in this culture, is viewed only in specific roles. With the concept of marriage as the true destiny of a woman and with her important obligation to bear a son, the roles of wife and mother emerge as proper to women. By idealising the quality of sacrifice in a mother and by eulogising her motherhood, religion binds a woman to the home and to her role of creating and nurturing children. Such lores place a strong emphasis on a faithful and uncomplaining wife. The ideal woman is the devoted wife who is willing to suffer all kinds of troubles for the sake of loyalty to her husband.



The Committee has concluded that the dominant characteristic of the well known characters of Hindu mythology are loyalty to their husbands, steadfastness and chastity. A woman's husband is her lord and her master. She has no separate existence-'sati' is but the extreme conclusion to the notion. So Hindu law which excludes women from being coparcenaries, which excludes women from exercising direct control over property or family assets as she desires, all stem from their law maker's implicit acceptance of a woman's role and place in society.

Looking at the Islamic tradition, the Committee concluded that in their relationship to the divine, men and women stand on an equal footing in Islam. The woman, like man, is an individual who prays to the almighty and hopes for redemption. The Committee found that a non-ascetic religion like Islam does not consider women as impediments to the path of religion nor does it consider her as the root cause of man's downfall. It found the Koran replete with injunctions all aimed at bettering the lot of women, who in pre-Islamic societies had a very inferior and servile position. In Islam a woman is as much a believer as a man and has an equal right to undertake religious duties like praying and fasting. But a woman cannot be a priest nor can she lead prayers. She has no place in the formal religious organisations and legal affairs of the community. She cannot be appointed a Kazi.

The disadvantages, it found, arose from interpretations of Koranic verses or the sayings of the Prophet in the light of cultural norms prevailing in medieval times. Sometimes, traditions of the Prophet were even invented to validate later cultural norms which were adopted. For instance, women's rights to inheritance, the Committee has stated, as provided in Islam, are significant, especially in view of the fact that they were meant for a patrilineal social structure, Islam introduced shares for wife, daughter, mother, sister, grandmother—the general rule being that the female would inherit half of the what the corresponding male did. But the woman's right to hold or inherit property is often not respected in practice. The Committee found that this is largely due to her seclusion, the absence of education and the prevalence of customs and conventions which in the Indian culture setting all go against women's rights.



Looking at Christianity, the committee found that the myth of creation which said that Eve was created after Adam to act as his companion and help mate has accorded a second place to women in domestic and social life. So a woman has to be subordinate first to her father and then to her husband. The mythic image of Eve as the one who tempted Adam to eat the forbidden fruit has put a permanent stamp on women as temptress and seducer and has thus given the husband the right to control the wife. The Indian Christians believe that the wife belongs to the husband. This is reflected in the limited ownership and property rights which women have, first as daughters and then as wives and widows.

Among Zoroastrians, women are entitled to both religious and secular education. Boys as well as girls go through the investiture rites. Although a woman has inheritance rights both in her capacity as a daughter and a wife and although a widow does not have to forego the inheritance of her husband's property if she remarried, yet the forces of patriliney are working here too. For neither by religion nor law can a child of a Parsi mother and non-Parsi father be received as a Zoroastrian.

CONCLUSION :

Although it would be simple to suggest changes in each of the laws discussed above, the fact that they deal with such fundamental symbols of power like property and ownership rights makes our task doubly difficult. But it is an area for reform which the emerging women's movements in this country cannot ignore much longer. They seem to restrict themselves to immediately visible issues like dowry. While these issues are important, attention needs to be focused on other groups like widows and other issues like property and religious legitimation that maintain women in their inferior status.

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