

Parental Property Rights of Women in India: Theory and Practice

Abstract

Women constitute more or less than half of the population of our country. But their involvement in property rights is insignificant compared to men. A modern democratic country can not progress if energies of its half of the population are concerned in the kitchen only. After attaining independence Indian Constitution ensured gender equality through various provisions and regulations. It was presumed that these rights including property rights automatically get granulation into the development of women in our country. It is true that no society or democracy and development can be realized without women's full participation in economic sphere. No country can march towards attaining the goal of justice, living and equality under the socialistic, egalitarian and democratic framework without active participation of women in property rights also.

Keywords: Parental, Parental Property Rights, Theory, Practice, Constitution, Mitakshara, Coparcenary, Dayabhaga.

Introduction

Women all over the world have remained subjugated to men since beginning of the human civilization in one or the other form. Many people in the world even today believe like Hitler that women are for hearth and men are for the field. Given equal opportunities for self development, there is no reason to doubt that our women will fully able for their own development. The poverty leads to general economic backwardness of women in a male-dominated society and this ultimately accounts for the deprivation of women from enjoying equal rights and opportunities. With the development of international organizations and institutions several laws were formed for giving equal opportunities and rights to women. Indian Constitution gave equal rights to women. (Article 16) Right to Property (in Parental Property) was given according to the Article 15. Several measures have been taken by the Government of India to uplift the status of women. Right to Property is one of the important measures which is deemed to ameliorate the gender inequality and improved the social status of women. Over the last few decades, lot of literature has appeared on the examining the links between gender, land and property, kinship and cultural values, on the one hand, and women's rights within state and legal frameworks and personal laws, on the other. Studies have also consistently dwelled on how and why land rights are so important in ameliorating women's situation (Chowdhary 2009).

Patriarchy is a social system in which the role of the male is as the head of the household central to social organization, and where fathers hold authority over women, children, and property. It implies that women are under Males' subordination. Many patriarchal societies are also patrilineal, meaning that property and title are inherited by the male lineage. This concept is used to describe the dominance of men over women, a dominance, which appears in several quite different kinds of society. It is also used to describe a type of household organization in which an older man dominates the whole household. For most sociologists patriarchy is Socio-cultural articulated situation. It is not concerned with nature in any way.

Parental property is usually conceived as a collection of rights of man over both inanimate (land, house, etc.) and animate (animals, people) objects. These rights are socially determined and thus vary from society to society, place to place and time to time and within particular society overtime. Property rights imply social relationships between people, because they define who does and does not have authorized access to objects, because the possession may give power over others to possessors, and because in some property societies people are themselves property objects (Bhushan 1989). In general sense, property



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is any physical or virtual entity that is owned by an individual or jointly by a group of individuals. Property has economic, socio-political, sometimes religious and legal implications. It is the legal domain, which institutes the idea of ownership. The basic postulate of the idea is the exclusive control of an individual over some 'thing'. Here the most important aspect of the concept of ownership and property is the word 'thing', on which a person has control for use to consume, sell, rent, mortgage, transfer and exchange his property.

Women in History

If we explore the subordination of women historically, Engels noted down that the transformation of women from equal productive members of society to dependant wives may be found in the shift from community ownership and production for use to private ownership under the control of men and production for sale (Bhatt 2008). Possession of private property and the means of production in the hands of one class are seen as the reason behind the exploitation of the labour class. Under this primary concern, all other considerations were subsumed. Hence, the gender problem is seen as part of the class problem. Automatically the solution to the class problem becomes the solution to the gender problem, which means when private property is abolished and production is collectivized it should also help the betterment of position of women. Concomitant with the Marxian perspective to the women's problem is the feminist perspective that pins down the root of the problem to the existence of patriarchy. Some feminist feel that it would be necessary to combine the perspectives of both Marxism and feminism to build a proper theoretical framework, i.e., afford equal importance to patriarchy as well as to the consequences of capitalism (Andal 2002).

Since time immemorial the framing of all laws have been exclusively for the benefit of man, and woman has been treated as subservient, and dependent on male support. The right to property is important for the freedom and development of a human being. Prior to the Hindu Succession Act, 1956, Shastric and Customary laws that varied from region to region governed Hindus and sometimes it varied in the same region on a caste basis resulting in diversity in the law. Consequently in matters of succession also, there were different schools, like Dayabhaga in Bengal and the adjoining areas; Mayukha in Bombay, Konkan and Gujarat and Marumakkattayam or Nambudri in Kerala and Mitakshara in other parts of India with slight variations. The multiplicity of succession laws in India, diverse in their nature, owing to their varied origin made the property laws even more complex.

The ancient texts had given different dictates for property rights of Hindu woman. While some were liberal and granted specific shares to women there were others that severally restricted a woman's right to property (Saxena 2010). A woman in a joint Hindu family, had a right to sustenance, but the control and ownership of property did not vest in her. In a patrilineal system, like the Mitakshara School of Hindu law, a woman, was not given right in the family property since birth like a son. Under the Mitakshara

law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson and a great grandson constitute a class of coparceners, based on birth in the family. No female is a member of the coparcenary in Mitakshara law. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of a male in the family, the share of every other surviving male either gets diminished or enlarged. If a coparcenary consists of a father and his two sons, each would own one third of the property. If another son is born in the family, automatically the share of each male is reduced to one fourth (Agarwal 2005).

The Mitakshara laws also recognise inheritance by succession but only to the property separately owned by an individual, male or female. Females are included as heirs to this kind of property by Mitakshara law. Before the Hindu Law of Inheritance (Amendment) Act 1929, the Bengal, Benares and Mithila Subschool of Mitakshara recognised only five female relations as being entitled to inherit namely - widow, daughter, mother, paternal grandmother, and paternal great-grandmother. The Madras sub-school recognised the heritable capacity of a larger number of female's heirs that are of the son's daughter, daughter's daughter and the sister, as heirs who are expressly named as heirs in Hindu Law of Inheritance (Amendment) Act, 1929. The son's daughter and the daughter's daughter ranked as Bandhus in Bombay and Madras. The Bombay school which was the most liberal to women recognised a number of other female heirs, including a sister, father's sister and women married into the family such as stepmother, son's widow, brother's widow and also many other females classified as Bandhus.

The Dayabhaga School neither accords a right by birth nor by survivorship though a joint family and joint property is recognized. It lays down only one mode of succession and the same rules of inheritance apply whether the family is divided or undivided and whether the property is ancestral or self acquired. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father's life time. However, on his death, they inherit as tenants-in-common. It is a notable feature of the Dayabhaga School that the daughters also get equal shares along with their brothers. Since this ownership arises only on the extinction of the father's ownership none of them can compel the father to partition the property in his lifetime and the latter is free to give or sell the property without their consent. Therefore, under the Dayabhaga law, succession rather than survivorship is the rule. If one of the male heirs dies, his heirs, including females such as his wife and daughter would become members of the joint property, not in their own right, but representing him. Since females could be coparceners, they could also act as Kartas, and manage the property on behalf of the other members in the Dayabhaga School. However, during the British regime, the country became politically and socially integrated, but the British Government did not venture to interfere with the personal laws of Hindus or of other communities. During this period, however, social

reform movements raised the issue of amelioration of the woman's position in society (Joshi 1996).

Women's Parental Property Rights in Modern India

With the demands of some social reformers the British Indian Government realized the problems of our women and enacted some of the laws. The earliest legislation bringing females into the scheme of inheritance is the Hindu Law of Inheritance Act, 1929. This Act, conferred inheritance rights on three female heirs, i.e., son's daughter, daughter's daughter and sister (thereby creating a limited restriction on the rule of survivorship). Another landmark legislation conferring ownership rights on woman was the Hindu Women's Right to Property Act (XVIII of) 1937. This Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. The Act of 1937 enabled the widow to succeed along with the son and to take a share equal to that of the son. But, the widow did not become a Coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights. Despite these enactments having brought important changes in the law of succession by conferring new rights of succession on certain females, these were still found to be incoherent and defective in many respects and gave rise to a number of anomalies and left untouched the basic features of discrimination against women. These enactments now stand repealed.

Women's Property Rights after Independence

The framers of the Indian Constitution took note of the adverse and discriminatory position of women in society and took special care to ensure that the State take positive steps to give her equal status. Articles 14, 15(2) and (3) and 16 of the Constitution of India thus not only inhibit discrimination against women but in appropriate circumstances provide a free hand to the State to provide protective discrimination in favour of women. These provisions are part of the Fundamental Rights guaranteed by the Constitution. Part IV of the Constitution contains the Directive Principles which are no less fundamental in the governance of the State and inter alia also provide that the State shall endeavour to ensure equality between man and woman. Notwithstanding these constitutional mandates/directives given more than fifty years ago, a woman is still neglected in her own natal family as well as in the family she marries into because of blatant disregard and unjustified violation of these provisions by some of the personal laws. Pandit Jawaharlal Nehru, the then Prime Minister of India, expressed his unequivocal commitment to carry out reforms to remove the disparities and disabilities suffered by Hindu women. As a consequence, despite the resistance of the orthodox section of the Hindus, the Hindu Succession Act, 1956 was enacted and came into force on 17th June, 1956. It applies to all the Hindus including Buddhists, Jains and Sikhs. It lays down a uniform and comprehensive system of

inheritance and applies to those governed both by the Mitakshara and the Dayabaha Schools and also to those in South India governed by the Murumakkattayam, Aliyasantana, Nambudri and other systems of Hindu Law.

Situation After 2005

Year 2005 is a breakthrough in the history of parental property rights to women after independence. In this year the amending Act of 2005 is an attempt to remove the discrimination as contained in the amended section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as to sons have. Simultaneously, section 23 of the Act as disentitles the female heir to ask for partition in respect of dwelling house wholly occupied by a Joint Family until male heirs choose to divide their respective shares therein, was omitted by this Amending Act. As a result the disabilities of female heirs were removed. This is a great step of the government so far the Hindu Code is concerned.

Conclusion

The government enacted the Hindu Succession Act 1956 and Succession Amendment Act 2005; and gave equal rights to a woman in her parental property equal to her brother. Though, after the implementation of Act, How many women are getting parental property after the death of her father (head of the parental property)? It is question of research. The answer is very simple. Male siblings get all the parental property by psychological brain washing or by threatening to her or her family. This situation is not only the violation of law but violation of women's rights also, because, she is the legal successor of her parental property, equal to her brother. There is a great difference between theory and practice in women's parental property rights. Theoretically they have all the rights regarding parental property as their male siblings have but practically she is subordinate to her male siblings. She is still neglected, discriminated not only in her natal family but in her in-laws family also because after 68 years of independence the male dominance nature of the society could not change. Our national leadership has Lack of its commitment and will-power do for women in practice and on ground reality. Theoretically the property rights given to women are decorating our legal documents and governmental files and good for speeches. These rights have nothing to do with practical problems which are standing in the way of women's rights. 68 years ago she was property less and today she is also property less. A lot has to be done regarding parental property rights of women in ground. Only laws can not solve the issues and problems of property rights of women.

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