

“Women Property and Inheritance Rights”**Sornalakshmi.R¹**Assistant Professor of Law,
Saveetha School of Law,**Saveetha Institute of Medical and Technical Sciences (SIMATS)****Gayathri.U²**Saveetha School of Law,**Saveetha Institute of Medical and Technical Sciences (SIMATS)***ABSTRACT**

The cultivated norms of our country have positioned the women in the centre and proved her to be equivalent to men. Tracing back to the ancient times women were held in an eminent position in our country, most of the divine origin were considered to be women and she was praised. But in the midst of revolution of the new era the long strained traces were started to diminish and women's position slowly reduced to ashes. In this research the authors have slowly begun to enrich the concept of women's property and inheritance rights. This research is constituted in such a way which begins to give a gist of knowledge about the life of women from ancient to after the independent Indian era. And adding a significant value towards the women's property and inheritance rights. Even though getting back women her rights has been a far cry but societal norms had always oppressed women throughout the history, beginning from later Vedic period. But the evolving legislation can always get women back her rights and this work of art revolves all the way around fundamental provisions which acts as a backbone for treating women equally and giving her equal share in the property and further plays a dominant role in enhancing her inheritance rights.

Keywords: Women, property rights, inheritance, ancient era, Legislation, equality.

INTRODUCTION

The laws are considered as one of the main pillars in granting equal rights in the democratic states like India. Gender justice in respect to property rights is key in empowering women. Democracies embraced justice, liberty, equality: the ingredients that enable every human being to achieve their aspiration. After independence, India was declared a sovereign, socialist, secular, democratic republic, that enumerated power and responsibilities of an individual. Although the Indian Constitution professes equal rights and a harmonious relation among its citizens, there are also many murky areas where a large swath of women are denied their rights. They have to negotiate for their rights under the roof of traditional customs, practices and the conventional theory of justice. Indian society is known to be built upon a

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deep-rooted structure of patriarchal settings and a widely-accepted notion of male domination and which further degrades a woman's position. In this context, this chapter contextualised the discourse between the different existing laws and the status of women in India. Indian society designated as multicultural and pluralistic in nature, has communities that are governed by their own laws and regulations, in-spite of Constitutional provision. The ideology of multi-ethnic society represents the diversity of culture, customs and faith in religious matters, where individuals determine their identities or demand rights according to their respective communities: this is known as personal laws. The first objective of this chapter is to understand the provision of the Constitution of India that guarantees equal rights to people.

WOMEN IN INDIA

This section deals with women's status in different phases:

- a) ancient period (Vedic period and later Vedic period)
- b) colonial
- c) independent period.

ANCIENT PERIOD

The early Rig Vedic period society appears to be almost egalitarian gender wise. In this period, there was no individual ownership, but only community ownership of property and wealth, among the tribal. Women then would enjoy equal position in the fields of education and were free to choose their life partners too. Women observed a high standard of morality and they were permitted to own jewelry and clothing. Also, after the death of a mother, property was passed on to daughters. Many women made a mark as renowned scholars and philosophers like Visvavara, Ghosala and Apala. A patriarchal system was followed in ancient India where, male domination was prevalent. Here, women were respected, revered and participated in religious ceremonies. They were free to select their conjugal partner and exercised free-will in entering into the matrimonial bondage; in fact they even married at a mature age. Women enjoyed a sense of justice in the sphere in public and private spheres. But during later Vedic period perspective over women changed dramatically and various concept such as child marriage came into play and women was seen lower to men.

COLONIAL PERIOD

This colonial period can also be called as British rule in India. Once the British gained exclusive control over Indian subcontinent they mischievously understood the importance of the caste system in India. And using the caste system they slowly gained access all over India and finally undertook the sovereignty of the country. During this period women faced tremendous discrimination, inequality, injustice etc. The Indian men were subordinate to British Subjects, whereas Indian women were subordinate to Indian men and British subjects.

POST INDEPENDENT

After independence, the Constitution of India guaranteed equal rights for men and women, under articles 143, 154, 15 (3), 166, etc. A series of legal legislation emerged such as Women's Legal Right, 1952, the Special Marriage and Divorce Act, 1954, the Hindu Minority and Guardianship Act, 1956, and Intestate Succession Act, 1956. Post independence witnessed several women's movements which include Telangana Movement, Bodhgaya Math movement (1978), Chipko Movement, etc. Among them, the Bodhgaya Math movement specifically dealt with property rights which was initiated in 1978. This movement also addressed women's issues such as domestic violence, access to political rights, access to natural resources and many more, which was carried by Chatra Yuva Sangha Vahini. It is considered to be the first land rights movement in Bodhgaya district, in Bihar. It was a struggle of the Dalit landless peasants who demanded the legal right to their land, which they had cultivated over a long period, with a low wages. Women were active participants of this movement: they basically wanted to destroy the rules which were imposed by math, and demanded access to land rights.

PROPERTY RIGHT AND PERSONAL LAW

Personal law refers to those rights which an individual can enjoy by virtue of being a member of a religious or ethnic group or community. It is a "range of religion-based family laws governing marriage, separation, inheritance, maintenance and adoption, which vitally affected the status of all Indian women, even as they were wholly instituted and implemented by men". Agnes argues (2011) that the personal develops from the religious, in aspects, ideologies and is considered as pre-ordained, static and infallible. Such unfeasible character defines the communities' attire. The interpretation can be made from this definition that personal laws draw its legitimacy from an individual's religious background and it is not possible to challenge the domain of such laws for its attachment with a particular community. Individuals can claim their rights on the basis of being a member of that particular community. Pre-independent as well as independent India proved to be biased in women ownership and inheritance of property, set strongly in a patriarchal domain.

HINDU LAW

As mentioned, the ancient Hindu law was gender-biased in nature with respect to property rights. Women substantially could not claim property inheritance rights and in cases where they could, they would inherit only a small portion of land. Hindu Succession Act (HSA), 1956 was enacted on the basis of equality of inheritance rights for both daughters and sons. However, it considerably does not guarantee full rights in the joint family property, in which sons have coparcenary rights by birth but daughters have no such rights. This, because they are not considered as a part of coparcenary. The joint family system purported joint ownership and such practices still govern the rural areas. The concept of joint family is biased, further crippling the inheritance rights for women in India. Under classical Hindu law,

women were denied entitlement of independent share in property rights. HSA 1956, under section 6, the fathers' one third interest in the family property, will be divided among the children. "It has been argued that Hindu law are rooted upon the dominance of religion principle as well as largely based on the false assumptions of the cultural and social reality which are not necessarily given due recognition within official legal frameworks and processes"

Independent state witnessed some changes in the position of Hindu women with the enactment of HSA, 1956. Section 6 of HSA, 1956, provides equal intestate property where sons not only inherit the share of the father's property but also have a direct right by birth to an independent share of the joint family. Under this Act, sons could demand partition of joint Hindu family property. For example, if the dwelling house is the family property, then sons were allowed to claim it, but daughters were only allowed for residence, not ownership or possession of rights.

A reform to the Hindu Succession Amendment Act 1956 was made in 2005, to establish egalitarianism, by making daughters as a coparcener in the joint family. It sets women out to be equal coparceners, that the inherent discrimination of the Mitakshara system of exclusive membership in joint family formally eliminated. However, the legislation, at the same time leaves women with lesser rights, than men in terms of inheritance rights.

MUSLIM LAW

Islam came to India through the trade routes of the Arabs via the Arabian Sea and some of the trader settled down in the Malabar Coast in eighth century. Sultans of Afghan and Turkish rulers entered India around the twelfth to thirteenth century and they started to introduce Shariat law. They assimilated with Hindu people and also adopted Hindu customs and culture like the caste system, joint family property system, etc. The development process of Islamic law in India can be identified from three stages. First, form the duration of Islamic law. Second, from the period of imperialism, and finally from what was marked as the beginning of the independent period. The Quran is considered the divine revelation and is an important source of Islamic law. Its first principles exhibit equality between men and women, in all spheres. Despite this, it has been criticised on the ground that it guarantees unequal inheritance share of property: because women only receive half the share of what her male counterpart does. Though, Muslim women are supposed to receive half of what her brother would, in practice, they are frequently deprived of that entitlement as well. Practically, women still face gender inequality. Quranic laws still accord an inferior position to women by showcasing men above. Women's limitations in inheritance rights are compensated by maintenance: this shows the notion of dependency, Muslim social structure, which is basically rooted on male dominance is considered as the diminishing women's access to property rights. Though, Islamic laws offer property rights when compared to women of other communities, yet they may not experience the same degree as that of their male counterpart. The law governing system of Christianity in India was influenced by the colonial

legacy, especially from British imperialism. Christians were governed by Indian Succession Act of 1865 as well as customary laws, with regard to matters of inheritance. Further, until the nineteenth century the converted Christian still followed their previous-customs and practices, with respect to inheritance, marriages rituals. It was only during the later-half of the nineteenth century that statutory law was enacted, by British and the Portuguese. Indian Succession Act 1925, connotes a liberal view towards gender equality, on the ground that it creates equal rights for daughters and sons, in parental property. Even widows are entitled to one-third of her husband's property. A large section of Indian Christians were still governed by the customary laws, which prohibited daughters from inheriting rights in parental property. Though, Christians were governed by the provision of the Indian Succession Act, 1925, with respect to inheritance or succession, yet owing to legislative and judicial decisions, they were also governed by discriminatory personal laws in some regions.

PROPERTY RIGHTS IN INDIAN CONSTITUTION

The conquest of British in India led to the changes in the land holding system in India. The new system introduced by the British led to the destruction of the traditional system of rights, of the village community. They basically engaged in activities such as collecting taxes and introduction of land reforms, which included the idea of permanent settlement (1793), in which zamindar were to pay a fixed amount of tax to the government. They established landlordism and individual peasant proprietorship, with the help of zamindari and ryotwari system, based on the private property land holding system. Further, the British also started an agrarian revolution, which ultimately created the formation of individual ownership of land in India. The basic problem of the zamindari and ryotwari system created an elite land holding pattern. There was also a large amount of land holding in the ryotwari system. This kind of situation led to the notion of a serious political issue, and the Indian National Congress was the first to demand land reforms, especially the abolition of the zamindari system and some intermediaries like landlords. In order to address such a situation, the British Government introduced the right to property, in the section 299 (compulsory acquisition of land) of the Government of India Act, 1935. The section of 299 (I) states that, "no person shall be deprived of his property in British India save by authority of law" (The Government of India Act, 1935). The concept of right to property began with the Government of India Act, 1935, and after the independence Constitution of India, was also dominated by the provision of this Act. The Indian Constitution guaranteed right to property as a fundamental right in Part III. Under article 19 (1) (f) and 31, under Article 19 (1) (f), it states that every person shall have right to acquire, hold and dispose of property, and Article 31 provided that no person shall be deprived of his property rights and shall be respected by the law. It was repealed after the 44th Amendment Act, 1978, by inserting article 300A which states that, "no person shall be deprived of his property save by authority of law". After this amendment, the right to property no longer remained a fundamental right: it became a legal and constitutional right. On the ground of any infringement of property rights, people do not have right to file writ to

the Supreme Court and under the Article 32 of the Constitution, he/she can approach the District Session Court or file writ to the High Court under Article 226

WOMEN IN CUSTOMARY LAW

The sources of customary laws may be a comprehended set of traditional rules and norms, considered as intrinsic to the tribal people. Tribal customary law may be seen as a pattern of individuals and groups behavior, which might be practiced from one generation to the next. Customary laws gain their strength from the habitual obedience of community members (Ghosh, 2007, 130). The traditional theories of justice, along with customs and traditional practices favoured male-centric and patrilineal inheritance interests. This can be considered as a form of violence, because women are at a large disadvantage, as far as land is concerned. However, these rights are derived from customs and traditions, and they have equal validity in framing the laws. The notion of equal validity of sources of law creates some kind of gender discrimination, unable to incorporate women's rights especially inheritance rights. The Indian society carries the settings of patriarchal, patrilocal and patrilineal characters: patriarchy denotes the power of a cultural relationship, with enhanced man's supremacy. The notion of patriarchy is a widely known norm. Such traditional and social structure of ownership in property inheritance ensures the governance of men, limiting a women's right. Most of the tribal communities in India also follow the patriarchal social structure. They too have son preference, but there are likely less discrimination pattern between daughter and son. Tribal societies share the same experience of inheritance of property rights, where tribal women do not inherit land, except in the case of a few tribal communities, where matrilineal inheritance is common or under special circumstances.

UNIFORM CIVIL CODE

The Indian Constitution, in its part IV, under Article 44, states that, State shall provide a uniform civil code throughout the territory of India. It is a Directive Principle of State Policy, not a Fundamental Right, which can be enforced by the Supreme Court. Constitution of India, under Article 44, directs the states to enact a UCC, but personal laws in the name of 'protecting religion' constantly disadvantages women's rights at large in the society: it grants limited sharing of property by inheritance or succession. It has been widely agreed that women are always treated as inferior and their rights are sandwiched between the controversy over UCC and the discourse over personal laws. Personal laws have come to be seen as a community identity, so it cannot be controlled by the state because of their religious aspects; it also justifies the preservation of minorities' identity. The demand of a uniform family law or personal law should be independent from any religious ideology. Then only can it ensure equal rights for women. When the state is unable to address the issue of personal laws, even the Court comes to the conclusion that it is not law under the Constitution. There are several cases which challenged the provision of personal laws, such as Madhu Kiswar, Shah Bano, Shayara Bano, etc. but these cases read out that if UCC is imposed, then it automatically weighs down the religious and cultural identities of the community. Personal laws have

become an island within the Constitution, untouched by its ethos, in fact the introduction of family law in the Constitution is like, ‘bull in a china shop’. It has been generally argued that women in India theoretically enjoy a number of legal rights, under the provision of the Constitution, but in practice they are in an inferior position which is clearly articulated from the lack of control over ownership of property and inheritance. The long tradition of discrimination against women’s claims on property rights is not only ideologically constructed but also materially affected. Hence, laws relating to marriage, inheritance, succession are guided by a male-bias, which has led to the dependency position of women.

CONCLUSION

Community-based laws are always driven by a traditional setting: including patriarchal or male hegemonic structure, where women have to negotiate for their rights. In this context, the historical background of women’s rights cannot be denied, in order to know the present position of women. In the ancient Vedic period, the status of women was satisfactory. It was only in the post-Vedic era that women started to lose their grip with the expansion of private ownership of property. Undoubtedly, ownership of property favoured the male lineage and women were sidelined from inheritance of property rights. Further, the injunctions of various sacred religious Hindu texts such as Dharmasastras, Manusmriti, etc., further deteriorated the position of women, in the family and the society at large. The introduction of two schools of thought i.e. Mitakshara and Dayabhaga in the Hindu tradition, itself occupied discriminatory positions on the ground of inheritance rights. Under this classical law, women were excluded from inheritance rights, and not allowed to demand partition or inheritance rights. Women could enjoy property only in the scope of ‘stridhana’ in both the schools of thought, but it was given at the time of marriage as a bridal price. It has been argued that the concept of stridhana takes the form of dowry in the modern period. The status of women in medieval period worsened with the foreign invasion and the introduction of various social evil practices such as female infanticide. Women were treated like minors and their subordination further created a situation of dependency, upon men. In the colonial period, some reformation took place in areas like sati, ban on widow remarriage, female infanticide, etc. but, the context of inheritance rights was still governed by community-based laws.

In fact, colonial legacy had no concern about the personal laws of the different communities. Though, reform took place in 1937, with the Woman’s Right to Property, which provided equal right to widow as their husband, yet the truth was, this was far from what was actually practiced. After independence, Hindu Succession Act 1956, was passed which provided some relief to the depressed, again it was Amendment in 2005, which entailed equal coparcenary for both sons and daughters in the joint family property. The Constitution of India became the benchmark in determining the scope of equal rights for women and men.

Right to property was inserted under Article 300A of the Constitution which stated that no person shall be deprived from property rights. Indian society is characterised by pluralism, in which different communities are guided by their own traditional culture and customs along

with personal laws. Personal laws basically derived its sources from the religious aspects of the respective ethnic group or community, which govern in the area like marriage, inheritance and adoption. Different communities such as Hindu, Muslim, Christian and Parsi have their own personal laws, which have remained as discriminatory against women. These laws reinforce the concept of lineal descent or inheritance through male, and the patriarchal hegemonic structure always retains the dependency of women upon men in all the spheres.

Shah Bano, Madhu Kiswar, Mary Roy and many more cases have challenged personal laws on the ground of violating Constitution provision, under Article 14, 15 (3) and 16 which guarantees equal rights to the citizens. Moreover, the amendment of personal laws endorsed the violation of religious faith and diminished the identities of the different communities. For example, Muslim antagonism towards amendments of the Muslim Personal laws in Shah Bano case. The Constitution of India guaranteed special provision under the recognition of Fifth and Sixth Schedule for the administration of justice in the Northeast region. These areas were considered as 'excluded and partially excluded areas' in the colonial period. Sixth Schedule exclusively focused on the protection of tribal areas and interests, culture, customs, etc., through the self-governance system. The Constitution of India also created special provisions for the state of Nagaland (Article 371A), Sikkim (371F), Mizoram (371G), and Arunachal Pradesh (371H) with respect to their administration of justice. It has been noticed that vulnerability of tribal land is in terms of losing ownership, control over resources, and cultural identity. The state government has special constitutional provisions which empower the making of certain rules and regulations, regarding the prohibition on transfer of land from tribal to non tribal. Even though due to the enactment of new laws women's property rights are being enhanced but the society is always in a position to suppress women and due to this women are often not aware of their rights to claim equal share in property. As we are the beings who often find our traces in the societal, in order to bring equality into reality, the society's view towards women has to be changed.