
A CRITICAL ANALYSIS OF GENDER INEQUALITY RELATING TO PROPERTY RIGHTS IN INDIA

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INTRODUCTION

The Indian constitution provides equal rights to both men and women and a quantity of liberal laws. Women in India just like any other country women have faced a continuous struggle between the status quoits and progressive forces. Property rights of women have always been unequal and unfair in terms of both quality and quantity. Gender inequality in India is a heterogeneous issue which is a concern for both the genders. Many argue that several gender inequalities place men at a disadvantage in India. However, when we examine India's population as a whole, we can determine that women are at a disadvantage in various principal laws in both rural and urban settings in areas such as maintaining a survival, economic opportunities and security of home. Property rights for women in India are far from Just. There is no basic law to safeguard the property rights of women. In this country the property rights of women are governed by personal laws instead.

There are many personal laws in India, every religious community is governed by its own personal laws in various matters and property rights are one among them. Each religious group is further put into different sub-groups, local customs and norms. To complicate it more, the Indian constitution allows the competency of states and central government to enact laws on matters of succession and now states can enact their own variation of property laws within each personal law. Women have always been discriminated against and denied the right to ancestral property due to numerous reasons. One of the major reasons could be that there is no uniformity in inheritance laws, with different communities governing their own personal laws and different state tribes with their customary laws.

Years ago, Hindu daughters were not granted their rights of joint heir-ship in parental property as per the codes of Mitakshara, Mitakshara is a school of Hindu law governing succession.

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Only after the Lata Mittal case in 1985 which took 20 years to fight a legal battle and win in the Supreme Court of India, the Hindu daughters were granted their equal rights in ancestral property rights. In India there has always been a discrimination between both the genders which has existed for generations and has affected both the sexes. The Constitution of India provides equal rights to both but gender disparities still remain.

Women are constitutionally assured of their basic right to property. In exercise, the constitution is compensated by a parallel system of personal law that limits women's inheritance. Maintenance rights, protection and inheritance are salient instances of gender. Raju, E. (2014), has observed the gender discrimination in India on the basis of demographic, social, economic and political context. The paper has broadly discussed the issue of gender inequality in both Hindu and Muslim families of India, their inheritance rights and also the property rights of Christian Women.

IMPORTANCE OF WOMEN'S PROPERTY RIGHTS

According to the legal and political aspect of gender inequality, the Indian constitution provides equal rights to both men and women in India, they both are equal in the eyes of law and there will be no discrimination with regards to gender inequality. A country can not develop unless women have equal property rights. These rights demote gender inequality and thus this helps the nation in their development. Absence of these rights causes underemployment of women and makes them impoverished. According to UN habitat, if there are any 4 developing countries, any 1 country would have laws which would impede women from owning their own property and infringe their rights. This was argued by the World Bank that the countries which have unequal inheritance laws have also unequal property rights governments.

Therefore, Women's Property rights are important as they are the fundamental to Women's economic security, land and property ownership gives a women a sense of security as it empowers women and provides them income. It also gives them social and legal status. It gives them the power in decision making in the family and upholds their social status. Women usually have limited say in the decision making of the family. Infringing property rights of women also result in domestic violence as it is supposed that they do not have any value in the family. It helps in the positive impact of political participation and women empowerment. These rights are basic human rights which should be granted to women as well. It increases their standard of living as it gives them a source of income by either renting the land or also

by agricultural means. Lack of property rights for women makes them dependent on others and their good work remains invisible and unaccountable.

DISCRIMINATION OF THE TWO GENDERS WITH REGARDS TO PROPERTY RIGHTS

The factors which include for violation of right in accordance with inequality is “discriminatory laws and traditional customs, prejudiced attitude towards women property rights, indifferent authorities and inefficient court system. In today’s society as well women who demand for their fulfillment of property rights are termed to be “greedy”. Personal laws also do not give equal inheritance to women, there is a division in giving property to a woman as unlike the boy they do not carry the family name forward and cannot be viewed as an additional status in the family. Not just this but parents even have the perspective of giving away their daughter to her husband’s family and paying away expensive dowry earlier to further demotivate and discourage the parents to treat their daughters equally. In many countries’ women work more than men as farmers and do more than 70% of the agricultural work, but still they are denied their property rights and are given minimally their rightful property. History records that framing of property laws has always been an exclusive male prerogative; therefore, these laws tend to be heavily loaded in favor of men, with little scope of questioning their inherent unequal character.⁴

Chaudhary, & Sarkar, D. (2012), had made an attempt to research and come to conclusion on certain factors of educational status, work participation, level of gender inequality, of the Cooch Behar, a district of West Bengal, India and recommended some relevant and appropriate strategies implication for reducing this gender inequality to promote the deprived women of this district.

A STUDY ON HINDU PERSONAL LAWS WITH REGARDS TO THE GENDER INEQUALITY IN PROPERTY RIGHTS

Hindu Personal laws are laws which are applied to all Hindus and it deals with their marriage, succession, inheritance, adoption, divorce, property rights, maintenance, son’s duties towards their fathers’ debts, **guard ship**. These laws could be found in Shruti which contains all the four Vedas. In furtherance talking about the property rights of women and the difficulty and

⁴ Inheritance of Indian Women; a Perspective by Sona Khan

discrimination which they have to face in a Hindu family will be discussed.

Dunn, D. (1998), has concentrated on the condition of women in scheduled castes and tribes groups which are considered to be weaker and underprivileged sections of the society and they are granted special safety measure and concessions under the Indian Constitution. This research paper will briefly discuss the condition of women in the weaker society and also their condition specially when there is male domain in the family.

Female Property Rights In Male Controlled Family

A Hindu father in male-controlled family adored complete power like the Roman father in prehistoric Rome.⁵ In a Hindu family the father is known as the absolute ruler. It is said that the wife, the son and a slave are said to have no wealth of their own exclusively. Nararda believed that a son does not grow old until his parents are dead, during the whole lifetime of their parents the son is dependent on them. So in male domain family, females do not have equal property rights and the male in the family are treated as the absolute head of the family. Females are inferior and do not have the right to open their views in front of the head. In old orthodox Hindu families, males of the family take all decisions related to all the important aspects of the family including the inheritance and property rights of a woman. Women may get a part of the property but is usually unequal in form or in many Hindu families Women's property rights are infringed and their share of the property is been divided to the male members of the family.

Widows' Domain

Narada had introduced the procedure for survivorship in which the male affiliates and coparceners are survivorship and widow women are barred from this. However, this rule was repealed and replaced by the Women's Property Rights Act, 1937. As per this act the widowed women are eligible to get their portion of share in the property despite the coparceners living in the family. Section 6 still preserves the Mitakshara coparcenary eliminating women from survivorship as a consequence father and sons grip the joint family property to the complete barring of the mother and daughter in spite of providing a even scheme of without a will Succession.⁶ Widow women in Hindu family usually do not have the right to take the part of their deceased husband's share of property instead that part of the property is been given to

⁵ "Gender Inequality And Personal Laws" by Anchit Bhandari and Urvarshi Jaswani, Page 2

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his brothers and are divided among them in equal shares.

Property rights of Women in Hindu Succession Act, 1956

Before the amendment of Hindu Succession Act 1956, in 2005 it was before that the son of the family would get the property of the father and the daughter could only access her right of property until she is married.⁷ Hindu succession Act 1956, proved that the women property rights are discriminated against and are in a lower place than the men's property rights. On 9th September 2005 this act was amended and an upper rank was given to the daughters as well as the women present in the Hindu family. The amendment in the act provides that, though the daughter is married she still gets equal rights, duties, liabilities and responsibilities in the property held by the family.

A STUDY ON MUSLIM PERSONAL LAWS WITH REGARDS TO THE GENDER INEQUALITY IN PROPERTY RIGHTS

Inheritance is considered to be one of the most important part of the Shariah Law. It is known that Muslims inherit property from one another. And the most integral part is that the property after the death of the person should be passed on to a relative as it is one of the important rules of Quran. Now the question which arises is that if the women of a Muslim family has equal rights over the property of a father or a husband or son.

❖ Inheritance Rights of Muslim Women

Inheritance in Muslim Law is very firm, though the Islamic constitution allows women to inherit minimum of half of the property as a man would but the society does not give equal rights to a women and she is been discriminated in sharing the property as well. If a man is getting 2 acres of a property there a woman would get just half of it which is one acre of the property. This concept is because they believe that women are equal to half of a man. Even if a Muslim family does not have any son, the daughter of the family is given half of the share of the father. When a woman is married, her status is not considered to be inferior to men and so she keeps control over all the goods and properties. A mother is entitled to take one sixth of her deceased son's property.

Shariat and the Property rights of Muslim Women

⁷ Anush Agarwal, Daughter's Property Right

The Customary laws were replaced by Shariat Act of 1937, and previously Muslims were governed by customary law which were unjust. Shairat law deals with the personal matter of a Muslim family. This new application of law has made husband and wife become the legal heir and also the females of the family to inherit the property. However, there is still discrimination relating to the distribution of property rights given to a male and a female. This law does not restrict to daughters, wives and deceased son's mother but this law also deals with women who are unmarried and are divorced. A woman who is divorced can inherit almost one fourth of the husband's property and if they both do not have any children then it may come up to one-eighth. A widowed or a mother who is divorced has the right to inherit one-sixth of the deceased son's estate.

PROPERTY RIGHTS OF CHRISTIAN WOMEN

Christians in India are governed under the India Succession Act, 1925. Under the Christian section of Act when a daughter inherits a property, she gets equal share as her brothers from her parents. A widow in the family gets one third share and the remaining two third is shared with the lineal descendants. A Christian is allowed to marry a second time when his first wife is alive or even not divorced, the second wife's children will have no legal right over the property of their father. However, the children of a legally divorced wife have an equal share over their father's property as that of the second wife and her children.⁸ When a person is dead without having any will and also without having any lineal descendant then after removing the share given to his widowed wife, the mother of the deceased person is allowed to have equal share as given to other members.

CONCLUSION

To expand the property rights of a Hindu women an act was envisioned called Hindu Succession Act of 1956. This Act has reduced gender inequality but still it has not vanished and continues to stay in the society. The son always has a right over the father's property but if the father disowns his daughter she is removed from having any inheritance right. Many times, we can also see that the laws themselves are inequitable, either from the side of the women or from the side of the men. In most of the cases the women suffer in inheriting the property of their parents or getting equal share. Hindu and Muslim laws both do not identify marital property and because of which at the time of divorce, the women do not have any right

⁸ Riju Mehta, Inheritance right of women, Economic times, July 2019

over any property or the household of the husband.

Jayachandran, S. (2014), has presented the roots of gender inequality in developing countries.⁹ He raised the question if the ratio was high in the developing countries with respect to the gender inequality in education, personal autonomy and whether it was explained by under development itself. He also looked into the under privileged societies and raised a question whether the society which are poor hold certain cultural views that lead to gender inequality¹⁰ and This paper also discusses the importance of Women's Property rights and the discrimination which leads to the violation of women's property right.

To quote from Justice Sujata V. Manohar of Supreme Court of India "It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society."

⁹ A study of Gender Inequality in India- Priti Jha and Niti Nagar – Pg. 49

¹⁰ The Roots of Gender Inequality in Developing Countries- Jayachandran, S.