

The Rights of Major Unmarried Daughters in Hindu Co-Parcenary

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In the light of Judgment of Supreme Court in **B Chandrashekhara Reddy v State of Andhra Pradesh AIR 2003 SC 2322**

Introduction

The United Nation's Report in 1980 presented that :

"Women constitute half the world's population, perform nearly two-thirds of its hours, receive one-tenth of the world's income and less than one hundredth of the property."¹

India is a multi-linguistic, multi-cultural and multi-religious state of more than a billion people, of which almost half comprise females. The principles of fairness and equity are enshrined in the Constitution of India, that unequivocally mandates gender equality. Discrimination and violence against women do not just victimize the individual women, but do indeed hold back whole sections of society. Guaranteeing rights to women is an investment in making the whole nation stronger and self-reliant.²

In India, it is particularly the Personal law that principally governs the lives of women, though to many, the exact dimension and how it controls the lives of each one of us may not be very clear. Simply stated, Personal law is the set of rules which govern the behavior of individuals vis a vis their family i.e. spouse, parents, children etc. As often seen, law by itself is no deterrent against crime. In fact it is the attitude of society in general and the individual in particular that determines the effectiveness of any legal system. Thus, laws are nothing but codified social behaviour, so in order to make the law effective there is equally a back-up requirement for social education and social transformation.

It has been widely observed that the rights that women have under personal law are often usurped. Though the law provides for a judicial procedure to enforce the law by way of courts as well as the penalty for violating the law, women being socially and economically subservient are either unaware or unable to enforce these legal rights through courts. Most common people are apprehensive and reluctant to approach the court because the language of the law is difficult and the procedure often extremely complicated, for example, if two people are faced with the same legal problem, depending on where they reside, their religion etc., the court of jurisdiction and remedy available to them may be different.³

A female Hindu's⁴ right to property is governed by the Hindu Succession Act, 1956

Prior to the enactment of the Hindu Succession Act, 1956 a female Hindu only had a right to

maintenance from ancestral property and a widow had a limited estate which she was disentitled to part with. The amendment in the act has gone a long way to make the law far more egalitarian.

Now, as an heir a daughter is identically placed to a son as far as inheritance of ancestral property is concerned. ⁵The only disability put on a female heir under Section 23 of the Hindu Succession Act is that a female heir cannot seek partition of the dwelling house till the male members choose to have such a partition even though if the female heir is single or widowed she has a right of residence and maintenance.⁶

However, there is a substantial difference in the right to succession of the property of a woman. While a man's property devolves upon his children, wife and mother at the first instance and upon his extended family at the second, the property of a woman devolves upon her children at the first instance, her husband at the second and his relatives at the third. Only in the event that her husband does not have any family does any right accrue to the family of the women. The only exception to this rule is that her family inherits property, which devolves upon a woman from her family.

The Hindu Succession (Amendment) Bill 2004 proposes to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. It is based on the recommendations of the Law Commission of India as contained in its 174th Report on "Property Rights of Women: Proposed Reform under the Hindu Law".

The amendment which will have far reaching implications is the proposal to omit Section 23 so as to remove the disability on female heirs contained in that section. Section 23 of the Act disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein.

The Response of the Judiciary

It is clear from the foregoing that though the property rights of Indian women have grown better with advance of time, they are far from totally equal and fair. There is much that remains in Indian women's property rights, that can be struck down as unconstitutional.

The response of the judiciary has been ambivalent. On one hand, the Supreme Court of India has in a number of cases held that personal laws of parties are not susceptible to fundamental rights under the Constitution and therefore they cannot be challenged on the ground that they are in violation of fundamental rights especially those guaranteed under Articles 14, 15 and 21⁷ of the Constitution of India⁸. On the other hand, in a number of other cases the Supreme Court has tested personal laws on the touchstone of fundamental rights and read down the laws or interpreted them so as to make them consistent with fundamental rights. Though in these

decisions the personal laws under challenge may not have been struck down, but the fact that the decisions were on merits go to show that though enactment of a uniform civil code may require legislative intervention but the discriminatory aspects of personal laws can definitely be challenged as being violative of the fundamental rights of women under Articles 14 and 15 and can be struck down.⁹ In some earlier decision of the Patna High Court¹⁰, subsequently reversed by a full bench of the same high court¹¹ and a decision of the Allahabad high court¹², the rule was made that any property acquired by a female hindu anytime before the commencement of this act is to be her absolute property. In fact in one case the Supreme Court has held that that personal laws, to the extent that they are in violation of the fundamental rights, are void¹³. In some judgments the Supreme Court has expressly recommended to the State to carry out its obligation under Article 44 of the Constitution and formulate a uniform civil code¹⁴.

Another heartening trend is that the Indian courts are increasingly relying on international standards, derived from various international declarations and conventions¹⁵. Specifically CEDAW has been referred to and relied upon by the Supreme Court of India in some judgments¹⁶. These line of judgments give a firm basis for the women of India to demand gender justice and equal rights on par with international standards.

Apart from the ongoing struggle for a uniform civil code in accordance with the Constitutional framework, today the India women are fighting for rights in marital property, denied uniformly to them across all religious boundaries. There is also a significant movement in some of the hill states, towards community ownership of land by women by creating group titles and promoting group production and management of land and natural resources by landless women for joint cultivation or related farm activity. Land rights would be linked directly to residence and working on land under this approach being lobbied for under the Beijing Platform for Action. However, the challenges are many: social acceptance of women's rights in property leads them. In a country where women continue to be property themselves the road ahead promises to be long and bumpy.

Conclusion

Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Several legal reforms have taken place since independence in India, including on equal share of daughters to property. Yet equal status remains illusive. Establishment of laws and bringing practices in conformity thereto is necessarily a long drawn out process. The government, the legislature, the judiciary, the media and civil society has to perform their roles, each in their own areas of competence and in a concerted manner for the process to be speedy and effective.¹⁷

These amendments can empower women both economically and socially. Independent access to agricultural land can reduce a woman and her family's risk of poverty, improve her livelihood

options, and enhance prospects of child survival, education and health. Women owning land or a house also face less risk of spousal violence. And land in women's names can increase productivity by improving credit and input access for numerous de facto female household heads.¹⁸

Making all daughters coparceners like wise has far-reaching implications. It gives women birthrights in joint family property that cannot be willed away. Rights in coparcenary property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter. Millions of women - as widows and daughters - and their families thus stand to gain by these amendments.¹⁹

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1. UNDP 'Convention on equal right to women',1998
 2. Werner Menski, Hindu Law: Beyond Tradition and Modernity (Delhi: Oxford UP: 2003).
 3. Ibid
 4. Vidya Nand Ram (2001) 10 SCC 747; Dhanishta Kalita v Ramakanta AIR 2003 Gau 932
 5. Rambai Patil v Rukminibai Vekhande AIR 2003 SC 3109
 6. Mulla on 'Principles of Hindu Law' Twentieth edn. Vol. II By S.A. Desai
 7. Pratap Singh v UOI AIR 1985 SC 1694
 8. Krishna Singh Vs. Mathura Ahir (AIR 1980 SC 707), Maharshi Avdhes Vs. Union of India (1994 Supp (1) SCC 713),Ahmedabad Women Action Group & Ors. Vs. Union of India (1997 3 SCC 573), Pannalal Pitti Vs. State of A.P. (1996 2 SCC 498)
 9. Anil Kumar Mhasi Vs. Union of India (1994 5 SCC 704), Madhu Kishwar Vs. State of Bihar (1996 5 SCC 125), Gittha Hariharan Vs. Reserve Bank of India (1999 2 SCC 228), Daniel Latifi Vs. Union of India (2001 7 SCC 740), N. Adithyan Vs. Travancore Devaswom Board & Ors. (2002 8 SCC 106), John Vallamattom Vs. Union of India (2003 6 SCC 611).
 10. RA Missir v Raghunath AIR 1957 Pat 480; Janki Kuer v Chharthu Prasad AIR 1957 Pat 674
 11. Harak Singh v Kailash Singh AIR 1958 Punj 581 (FB)
 12. Hanuman Prasad v Indrawati AIR 1958 All. 304
 13. Masilamani Mudaliar Vs. Idol of Sri Swaminathaswami Thirukoil (1996 8 SCC 525)
 14. National Textile Mazdur Union Vs. P.R.Ramkrishnan (1983 1 SCC 224), Mohd. Ahmed Khan Vs. Shah Bano Begum

(1985 2 SCC 556), Jordam Diengdeh Vs. S.S. Chopra (1985 3 SCC 62), Sarla Mudgal Vs. Union of India (1995 3 SCC 635), Lily Thomas Vs. Union of India (2000 6 SCC 224), John Vellamatham Vs. Union of India (2003 6 SCC 611)

15. For instance: Jolly George Verghese & Anr. v. State Bank of India: AIR 1980 SC 470, Gramophone company of India Ltd. v. Birendra Bahadur Pandey & Ors.: AIR 1984 SC 667, People's Union for Civil Liberties v. Union of India & Anr.: (1997) 3 SCC 433,

16. Vishaka & Ors. v. State of Rajasthan & Ors.: AIR 1997 SC 3011, Gita Hariharan v. Reserve Bank of India: AIR 1999 SC 1149, C. Masilamani Mudaliar & Ors. v. The Idol of Sri Swaminathaswami: 1996 8 SCC 52

17. Dr. Saralan Gopalan, "Women's Entitlement to Property," retrieved from <http://timesfoundation.indiatimes.com/articleshow/47870733.cms>

18. Adv. Jagdish Walmik Chavan, "Progress in Hindu Succession Law" retrieved from <http://www.lawyersclubindia.com/articles/Progress-in-Hindu-Succession-Law-1610.asp>

19. Ibid.