CHALLENGING THE PROPERTY RIGHTS OF WOMEN IN INDIA

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Abstract

The battle to fight the centuries old concept that women are misbegotten male started in late nineteenth century. In a struggle for equal status, proprietary rights of women also called for attention. It took continuous endeavor by civil societies and special references by International organizations that brought to the focus that women are not property and discrimination against them should be stopped.

India, a pluralistic society has faced problems in balancing between women's property rights and the practices in personal laws of various communities. Where legislation, with compulsion of appeasement of the vote bank, failed to give equal proprietary rights, Indian Judiciary has stood up for the dignity of women and given them claim in the property of their family. This paper focuses on the enforcement of proprietary rights of women by the Indian courts and their endeavor to interpret legislation in favour of marginalized women.

I. Evolving Property Rights of Women Through Evolving Civilizations

Last few decades have seen spurt in strong opinions for equal rights for women at all forum. Discrimination against women in all spheres of life has been prevalent from time immemorial. The fight for their own space in public and private life is still continuing. The significant area of concern had been the problem of historical exclusion of women from public life. The famous propounds of Justice and Equality in society has never considered women as part of society. She had been heckled and scoffed as commodity or property. Plato and Aristotle, teacher and student and two of the most influential philosophers had somewhat contrarian opinion about women in the ancient world. Former, championed for same social roles for women as men after giving training to them[1]whereas latter opined:

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[1]Though both Plato and Aristotle considered women inferior than men but Plato called for their training and education and then giving them role in the decision making. *Available at:* http://www.classicsnetwork.com/essays/the-nature-of-women-in-plato-and/786 (Visited on 6 June, 2014)

> "...as regards the sexes, the male is by nature superior and the female inferior, the male ruler and the female subject. And the same must necessarily apply to all mankind[2].

Aristotle divided the society in public and private space. Women had no role in public life. Family life had three relations that of husband and wife, parent and child and master and slave. And he envisaged:

> "The slave is wholly lacking the deliberative element; the female has it but it lacks authority; the child has it but it is incomplete"[3].

The authority which was denied in 7th century B.C. continued even till 18th century. Kant refused to consider women as citizens and gave no role in democracy and law making[4]. Hegel, as well believed that women have no role in public life and constitute an ongoing threat to rational political order[5].

These great philosophers' idea of women extended to her proprietary rights as well. Plato advocated for only public property and excluded both man and woman from owing private property but Aristotle argued that private ownership promotes virtues like prudence and responsibility in a person[6]. Despite this, he was against the idea of slaves and women owing property[7].Like his predecessors, Kant considered women as property[8]. From Plato to Marx, the

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[2]Aristotle, *The Politics* [c. 330 BCE], Stephen Everson (ed.), (Cambridge: Cambridge University Press, 1988), *available at:* http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0058%3Abook%3D1%3Asection%3D1254b, (Visited on 6 June, 2014)

[3]*Available at*: http://www.iep.utm.edu/aris-pol/ (Visited on 6 June, 2014)

[4] Though Kant talks about each member's equality but does not give equal right to people who lack economic self-sufficiency in law making procedure. While Kant thereby denies women and others full citizenship in the ability to take part in legislation, he stresses that he is not denying them the rights entailed by freedom and equality as "passive" members of the state. When Kant discusses voting for representatives, he adheres to many prevailing prejudices of the time. According to him, the right to vote requires "being one's own master" and hence having property or some skill that can support one independently. Kant leaves women out of the voting populations for what he calls "natural" reasons which are left unspecified. *Available at*: http://plato.stanford.edu/entries/kant-social-political/ (Visited on 6 June, 2014)

[5]Kimberley Hutchings and Tuija Pulkkinen (eds.), *Hegel's Philosophy and Feminist Thought: Beyond Antigone,* 271pp, (Palgrave MacMillan, 2010). *Available at*: https://ndpr.nd.edu/news/24621-hegel-s-philosophy-and-feminist-thought-beyond-antigone/ (Visited on 7 June, 2014); Hegel described gender as "The difference between man and woman is the difference between animal and plant; the animal is closer in character to man, the plant to woman, for the latter is a more peaceful unfolding whose principle is the more indeterminate unity of feeling whose principle is the more indeterminate unity of feeling". Also See: G. W. F. Hegel, *The Philosophy of Right*, H.B. Nisbet trans., Allen W. Wood, ed., (Cambridge: Cambridge University Press, 1991)

[6]'When everyone has a distinct interest, men will not complain of one another, and they will make more progress, because everyone will be attending to his own business' (Aristotle, *Politics*, 1263a). Even altruism, said Aristotle, might be better promoted by focusing ethical attention on the way a person exercises his rights of private property rather than questioning the institution itself.

[7]*Ibid*; Aristotle also reflected on the relation between property and freedom, and the contribution that ownership makes to a person's being a free man and thus suitable for citizenship. The Greeks took liberty to be a status defined

proprietary rights majorly revolved around community ownership to individual ownership yet it never came in the realm of women. In late-nineteenth century the feminist movement started and it gained momentum in the mid-twentieth century in Europe and the United States. But yet woman was denied the property right in all legal systems.

Indian sub-continent, during Vedic era, gave women the dignity of existence but Greek and Mongolian attacks forced them into vulnerable group. The protective measures against property and women swirled into women being treated as property. The law of Property of a hindu female followed a down trajectory from the Vedic society when female enjoyed equal status to a very inferior position when Manu declared: a wife, son and a slave are declared to have no property and if they happened to acquire it would belong to male under whom they are in protection[9]. But Indian civilization was a notch above the west as they still continued giving absolute ownership to women in certain types movable properties like stridhan, mahr etc. During Pre-Independence era, British Government also did not interfere with personal laws existing in India[10]. So the prevalent discriminations against women were addressed by many social reformers during British era which led to the passing of Hindu Law of Inheritance (Amendment) Act, 1929 and Hindu Women's Right to Property Act, 1937. But these Acts had many inherent defects which were not addressed even by Hindu Women's Right to property (Amendment) Act XI, 1938. A coparcenary interest was created but that was not vested rather contingent, to be given to her on demand. Free India adopted the policy handed over by British and the legislators did not dare to interfere in the personal laws of various communities of India. It was judicial outreach which came to the rescue of Indian women in consonance to Article 14 of Indian Constitution.

II. Judicial Outreach in India

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by contrast with slavery, and for Aristotle, to be free was to belong to oneself, to be one's own man, whereas the slave was by nature the property of another. Aristotle had no hesitation in extending this point beyond slavery to the conditions of 'the meaner sort of workman.' He believed that obsessed with need, the poor are 'too degraded' to participate in politics like free men hence they must be ruled like slaves, for otherwise their
Pressing and immediate needs will issue in envy and violence. *Available at:* http://plato.stanford.edu/entries/property/ (Visited on 7 June, 2014)

[8]Property is of three types for Kant. First is the right to a thing, to corporeal objects in space. Examples of these things include land, animals, and tools. The second is the right against a person, the right to coerce that person to perform an action. This is contract right. The third is the "right to a person akin to a right to a thing", the most controversial of Kant's categories in which he includes spouses, children, and servants. *Available at*: http://plato.stanford.edu/entries/kant-social-political/ (Visited on 6 June, 2014)

[9]Sir Gooroodas bannerjee in Marriage and Stridhana, remarks, nowhere were proprietary rights of women recognized so early as in India; and in very few ancient systems of law have these rights been so largely conceded as in our own. P.V. Kane has quoted some passages from the Vedas which support the view that women owned property in those times, Kane HDS, Vol. III (1968). Ch. XXX. *available at*: http://shodhganga.inflibnet.ac.in/bitstream/10603/7870/10/10_chapter%203.pdf (Visited on 1 November, 2014)

[10]Gerald James Larson, *Religion and Personal law in Secular India, A call to Judgment*, (Indiana University Press, Bloomington, 2001)

Judicial activism in, twenty first century, in India led to formulation of Hindu Succession Act, 2005. But other religions are still governed by their age old customs. The patriarchal mind set is not letting to achieve the equal status to women even after plethora of amendments in various legislations. Judiciary is called upon regularly to interpret and implement the legislations. Indian judiciary has exercised its powers regularly to uphold women's property rights. It has been seen that when women have lost the battle against patriarchal mindset, Indian judiciary never failed them. In *Vaddeboyina Tulasamma v. Vaddeboyina Shesha Reddi*[11], Supreme Court held that under sastric hindu law a widow has a right to be maintained out of joint family property and her this interest in joint family property was absolute and not limited[12]. Though earlier in *Gummalapura Taggina Matada Kotturuswami v. Seta Veeravva*[13], SC had construed the words "possessed of" in sec. 14(1) of The Hindu Succession Act, 1956 in a widest sense yet it took Bhagwati J. to interpret the intendment of legislature. He stated:

> ".....the legislature was brought to wipe out the disabilities from which a hindu female suffered in regard to ownership of property under the old Sastric Law, to abridge the stringent provisions against the proprietary rights and to recognize her status as an independent and absolute owner of the property. And that sub-section (2) of section 14 must be read in the context of sub-s. (1) to leave as large a scope for operation as possible to sub-s. (1)....."[14].

In above case, Supreme Court settled the maintenance right of a hindu widow in joint family property. It was then called to decide upon the constitutional validity of the muslim women (Protection of Rights on Divorce) Act, 1986[15] in *Daniel Latif v. Union of India*[16]. The question before the Constitutional Bench was to interpret secs. 3 & 4 of the abovementioned Act in

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[11] 1977 SCR (3) 261, 1977 AIR 1944

[12]Like many earlier cases this case was referred to S.C. for interpreting sec. 14(1) &sec. 14(2) of The Hindu Succession Act, 1956. Hitting at the inapt draftsmanship of the statute, Bhagwati, J opined "It is indeed unfortunate that though it became evident as far back as 1967 that subsections (1) and (2) of section 14 were presenting serious difficulties of construction in cases where property was received by a Hindu female in lieu of maintenance and the instrument granting such property pre- scribed a restricted estate for her in the property and divergence of judicial opinion was creating a situation which might well be described as chaotic, robbing the law of that modicum of certainty which it must always possess in order to guide the affairs of men, the legislature, for all these years, did not care to step in to remove the constructional dilemma facing the courts and adopted an attitude of indifference and inaction, untroubled and un- moved by the large number of cases on this point encumbering the files of different courts in the country, when by the simple expedient of an amendment, it could have silenced .judicial conflict and put an end to needless litigation.

[13][1959] Supp. 1 SCR 968

[14] *Supra note* 11

[15]This Act came to over-ride the judgement of *Mohd. Ahmed Khan V. Shah Bano Begum & Ors*. (1985) 2 SCC 556 where a muslim woman was ordered to get maintenance from her ex-husband under sec. 125 of the Criminal Procedure Code. This landmark judgement gave the overriding effect to Cr.P.C. over personal laws in case of conflict.

[16] 2001 (7) SCC 740

consonance with sec. 125 of Code of Criminal Procedure and Art. 14, 15 and 21 of Indian Constitution. The court extended its earlier ruling[17] where it had stated that a husband's liability towards a divorced (not re-married) wife would cease with the end of iddat period provided she is able to maintain herself afterward, as per muslim personal law. But if she is unable to do so, husband's responsibility would continue even after iddat period under sec. 125 of the Code of Criminal Procedure. Here[18], Supreme Court reiterated that husband has duty to provide for maintenance of divorced wife, even after iddat period, the payment of which has to be done during iddat period[19]. Further by applying sec. 4 of Muslim Women (Protection of Rights on Divorce) Act, 1986 the bench gave a verdict establishing the right for maintenance of a divorced (not re-married) muslim women, who was incapable to maintain herself after iddat period, against her relatives (parents, brothers and sons) in proportion to the benefits they would enjoy through inheritance on her death. And in case of there being no relative or relatives being incapable to maintain her, State Wakf Board would be responsible.

It was not that in India only Hindu and Muslim personal laws were prejudice to women's property right but Christianity also unfairly treated its women population. Travancore Christian Succession Act, 1902 gave to a widow or mother only life interest in the deceased husband's property which would terminate at death or remarriage. Under the above law a daughter was entitled to one fourth share of father's intestate property or Rs. 5000, whichever was less. The daughter could not claim her share if she had been provided or promised 'streedhanom'. Settling hindu women's absolute proprietary right in joint hindu family property in 1977, Justice P. N. Bhagwati who along with Justice V. R. Krishna Iyer is considered as pioneer of judicial activism in India decided on Christian daughters' right in intestate property in the landmark case of *Mrs. Mary Roy etc. etc. v. State of Kerala & Ors*[20]. The bench of P. N. Bhagwati, CJ, and R.S. Pathak, J, brought Christian women of Kerala under the ambit of Indian Succession Act, 1925 and gave equal right in father's property as that of sons[21]. This right was granted retrospectively from the time of coming into force the Part-B States (Laws) Act, 1951 as with the merger of princely state of Travancore into Cochin, the Travancore Christian Succession Act, 1902 stood repealed and Chapter II of Part V of the Indian Succession Act, 1925 became applicable[22].

III From Sustenance to Equal Property Rights: A Paradigm shift

[17] *Mohd. Ahmed Khan V. Shah Bano Begum & Ors*. (1985) 2 SCC 556
[18] *Supra note* 16
[19] Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3(1) (a)
[20] 1986 AIR 1011, 1986 SCR (1) 371
[21] Before this judgment Christian women in Kerala were governed by the provisions of Travancore-Kochi Christian Succession Act, 1092 and were entitled to one fourth of the sons' share in her father's property.
[22] *Available at*: http://indiankanoon.org/doc/1143189/ (Visited on June 6, 2014)

Fighting the centuries' old mindset is no less than a herculean task. From Legislature to judiciary to executive, when all organs of Government are male predominant, fighting for equal proprietary right is a daunting task. Legislations unwillingness to challenge the unfair personal laws became evident when there was a huge uproar in Parliament against Shah Bano's judgment and thereafter immediately, Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed to dilute the effects of the above judgment. This Act denied divorced Muslim women the recourse to secular law i.e. Cr.P.C. which women of other faith have.

The personal laws have also affected the formulation of secular/neutral laws like the Transfer of Property Act, 1882. Keeping the customs in mind a transfer of a property to Christian married women can be made with a condition restricting her right to alienation[23]whereas this condition would be void in case if same transfer is made to married Hindu, Muslim or Buddhist woman. If a transfer of property is made to any married Christian women with no right to alienation, it will stay with her only till she is married and with the dissolution of marriage, she will lose the right over it.

Crimes against women in India like dowry deaths, trafficking, abandonments of widow, increasing number of women in old age homes are mostly economic driven. Women empowerment by providing equal opportunity for education, livelihood and proprietary rights would assist greatly in bringing down these offences. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women[24] and India is signatory to it. The biggest challenge that India faces in removing the discriminations against women is that there are varied legislations for the same problem of different communities. Article 14, one of the fundamental rights, ensures to all, citizens and non-citizens, equal status and no discrimination on grounds of religion, race, caste, sex or place of birth. Article 15 not only condemns discrimination of citizens but also encourages State to make special provisions for women and children. Though there are clear instructions from the Constitution yet the legislation is not moving towards Article 44 of Indian Constitution. Formulation of Uniform Civil Code will not only reduce the number of legislations but would also meet the objective of Article 14 & 15 of Indian Constitution.

[23]Transfer of Property Act, 1882, sec. 10

[24]The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." *available at*: http://www.un.org/womenwatch/daw/cedaw/cedaw.htm (Visited on 10 Nov., 2014)

Women are still fighting the 'Aristotle Syndrome'[25].Their status has not substantially improved from the belief that 'women are misbegotten male'. Enactments of statutes are not sufficient, strife towards continued enforcement is necessary. Few privileged women who have come out of the jeopardy should continue the fight for entire class. World has started recognizing equal status of women, now only hurdle is challenging the patriarchal mindset.

[25] See: N.Vittal, *Ideas for Action*, pg.8, (Pritchard G, Macmillan India Ltd., 2002)