

## **Women Rights in India in terms of Equality, Equity and Empowerment**

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*It has been observed that in spite of legislative protection and declaration by the world body the cause for anxiety remains in ground reality. Women constitute half of the world's population, perform nearly two thirds of its work-hours and receive one-tenth of the world's income and less than one hundredth of the world's property-1980 UN Report. That is why in the Cairo Declaration (September, 1994) access to economic resources had been set as one of objectives to achieve equality and equity based on harmonious partnership between men and women and enable women to realize their full potential and empower themselves. This paper describes about the several constitutional provision in India for women so that they can achieve the equality, equity and finally get empowered. In patriarchal society there is always the dissimilarity and discrimination between male and female so here constitutional rights play an important role for women empowerment.*

[**Keywords** : Equality, Equity, Empowerment, Uniform-Civil-Code, Muslim laws]

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## **1. Introduction**

In the situation described and the concern for it expressed above equal property rights for women is the most important global goal for women. Land and real property are not only essential resources for all people everywhere, but they have been the basis used throughout the history to control people's lives. It is land that all wars have been and are fought for. The present paper is an attempt to analyze Women rights in India in terms of equality, equity and empowerment. Secondary sources of data have been used in this paper.

## **2. Women Rights in India**

Now, in India there are several succession rights applicable to individual communities. These succession rights claim their origins to the personal laws of different communities. And these personal laws, again, owe their allegiance to respective religions. The Hindu, i.e., the followers of Hinduism, account for over 80 per cent of India's total population. The Muslims, i.e. the followers of Islam, form the second largest religious community in India's population. Parses comprise 01 per cent of Indian population; for the last two decades they are having negative growth rate. Although these religious communities have different percentages, and yawning gaps in them of population, 'their personal laws wield the power and strength equally applicable to their respective communities'.

In this contest the Hindus are guided by the 'Hindus Succession Act, 1956 [30 of 1956]; the Muslims are basically guided by the Muslim law; the Christians and Parses are guided by the Indian Succession Act, 1925 [39 of 1925]. The main scheme of the Hindu succession Act, 1956 is to establish equality between male and female in regard to rights to property and hence the limited estate of a female under the old Hindi law was completely abolished in the matter of intestate succession. But the intention of the legislature is however not to repeal all fundamental elements and concepts of Hindu law prevailing before the commencement of the Act.

As mentioned earlier, Hindu Succession Act could establish equality between men and women, but in the niceties and nuances of law. Several sections of the Act have been criticized. Under Section 15 of the Act, the property of a female Hindu dying intestate shall devolve, firstly, upon the sons and daughters and the husband. In the

case of a male Hindu, the mother is also a class 1 heir and inherits equally with the children and the wife of the deceased son; But in the case of female, mother stands excluded by the children and the husband of the deceased daughter. The provisions cannot be justified on any conceivable ground and is patently prejudicial to the interest of the mother.

Then again, under the provisions of sections 15 (1) read with the provisions of sub-section (2) in the absence of children, the order of succession in the case of a female Hindu would vary according to the source of acquisition of the property. If the property was inherited from her husband or father-in-law, it would devolve, not upon her own heirs, but upon the heirs of the husband. And similarly, if the property was inherited from her parents, it would devolve, again not upon her own heirs, but upon the heir of the father. The very first incongruity that appears to be is that these rules would apply only when the property is inherited by the Hindu female, but not where the same is acquired by gift, will or otherwise from the husband or the parents, as the case may be. If devolution of the properties of Hindu male is not to depend upon or according to the source of acquisition, it is difficult to appreciate as to why it would do so in the case of a female Hindu, unless we want to perpetuate in somewhat different form, the old outmoded view that women's ownership of property cannot be full, but must be somewhat limited. These provisions obviously discriminated against women to a considerable degree and cannot be regarded to be a special provisions in favour of women within the meaning of Act 15 (3) of the constitution.

Section 53 of the Act patently discriminates against female heirs, providing as it does, that if a dwelling house wholly occupied by the members of the family heirs, providing as it does, that if a dwelling house wholly occupied by the members of the family of the of the deceased devolves on both male and female heirs, then "the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares therein." The section further provides that "the female heir shall be entitled to a right of residence therein", but "If such female heir is a daughter, she shall be entitled by to a right of residence only if she is unmarried or has been deserted by or has separated from her husband or a widow". One of the objections against the females succeeding equally and unqualified as full coheirs with the males is that allotment of shares to them, particularly when they are married,

would bring in serious complications to the disadvantage of the male heirs and the married female heirs, expected to reside elsewhere with the members of their respective families, would be tempted to reside in the same house or may transfer their shares to the strangers. If a married male heir has the right to reside in the dwelling house with the members of his family or to transfer his share, the denial of such right to female heirs cannot be justified, particularly when section 22 is there to take care of such transfers. But justification apart, as already noted here in before, however, justifiable and even laudable the object and reason may be, what is determinative is the direct effect and consequences of the provisions and if the effect and consequence of section 23 is discrimination against the female heir and favouring the males, the section would be hit by the equality clause according to the thesis propounded by the supreme court in the Eleven-Judge Bench decision in Bank Nationalization case in R. C. Cooper (Air 1970 Sc 564) and the decisions (Benner Calman Air 1973 Sc 1061] following the same.

In the South, succession laws were a bit different. The state Government of Kerala and Andhra Pradesh have sought to remove some of the discriminations with a view to give daughters ownership in the family property on the same level as the sons. But even these changes do not go far enough and still discriminate against a married daughter and a widow do not apply equally to separate properties of the father in the Hindu customary Law. Karnataka government is taking steps for joint ownership of property between husband and wife and accordingly change the Hindu succession Act announced in All India Radio on September 8 1994.

In the customary law of certain tribes, only male agnates on the male line agnates on the male line are recognized as valid heirs and unmarried daughter is only entitled to unfructuary maintenance. In no case amongst the tribals of Arunachal found to be defacto managers of farm operations. It would be necessary to introduce corrective measure to overcome the discrimination, in order that the gap between the state's proclamation to achieve equality of the sexes and its laws which deny it, is bridges.

Women these days begun questioning the consequences of legitimacy succession in section 30 of the Hindu Succession Act, where a Hindu may dispose of by will or other testamentary disposition of any property. The situation being so, the probate Court probates the will if it is technically all right and is genuine. Usually

the father in his will deprives the daughters on the plea that he had to spend a lot at their weddings, without considering how much the father spent in weddings compared to the valuation of property he willed. In the questions-answer session in all India Radio the other day a married women asked the answering lady lawyer whether the will of this nature worked against the interest of women; the lady lawyer could not answer her back satisfactory. That is why it is has been rightly pointed out, The Hindu Succession Act allows the widow to inherit equally with sons and daughter. But it also has a questionable provision whereby the husband, if he so wishes, can will always all his property, leaving the widow no support. A change in testamentary provision of the Hindu Succession Act or a change in the procedure of probating the will in this situation is very much required, otherwise, the purpose of the Act itself would be frustrated.

The excellence of 'Muslim Law' of inheritance is not so much commonly appreciated by laymen, as it attracts the brilliant minds of scholars. Nearly all the modern writers have admitted the Muslim System of inheritance of its utility and formal excellence : "The Mohammedan Law of inheritance comprises beyond question the most refined and elaborate system of rules for the devolution or property that is known to the civilized world" (Rumsey).

It must be remembered that celibacy is extremely rare among the Muslims of India, where the overwhelming majority of Muslim women are married; that it is a fundamental principal of Islamic law that a husbands must provide his wife with a dower, while the provision of a dowry by the wife's father has no place in the Islamic System; that it is incumbent on the Muslim husband to provide his wife with maintenance and housing, however poor he may be and however affluent may be her own circumstances; and that the duty to support the children of a marriage is invariably placed primarily at least, on the father. In view of these manifold obligations, it is distinctly arguable that the greater share normally given to males in the Islamic law of inheritance dose not, in fact, constitute a discrimination, which can be said to base on sex alone particularly in view of the fact that there is no question whatever of the exclusion from inheritance of a daughter, sister, mother or wife in the sharia, common though that often is in the customary law of different part of the subcontinent.

So much so about the Muslim law of inheritance and the question of discrimination against women therein.

Much furore went on the Travancore Cochin Christian Succession (Validation and Revival) Bill, meant to counter the Supreme Court decision of equal property right to Christian Women (The Statesman, Calcutta, July 22, 1994) otherwise, as mentioned earlier, Christians are guided by the Indian Succession Act, 1925 and nothing appears to be mentionable on the question of equality/inequality therein.

But the Parses who are pretty well known for their advance thinking in some aspect of personal laws even discriminated by giving sons double shares to the shares of daughters in dividing male intestate's property (Sections 51(1)(a) and (1)(b) of the Indian Succession Act, 1925).

The problem here lies not so much on the differences and inequalities in different personal laws as it does in the sphere of there adjudication. The problem of adjudication again arises from the lack of uniformity in personal laws in spite of Article 44 in the constitution as well as from the controversy centering round the part III of the constitution (Fundamental Rights) and personal laws. Without entering into the debate of controversial interpretations of Article 13 and 372 (i) of the Constitution it may well-right be contended that the ratio of judgment does not give us any definite direction as to where the constitution stand vis-à-vis personal law (AIR 1952 Bom. 84; AIR 1980 SC 707; AIR 1992 Bom. 214).

There Seems to be two ways out of this rut. One by the application of laws made through-'judicial decisions', and two by 'legislative measures'. If the judicial decision are looking for specific provision, which is not there in law, in that case they may well apply 'Equity'. In cases for which the law makes no provision, the courts are sometimes expressly authorized to decide in accordance with the principle of natural law. The commissioners for preparing a body of substantives law for India recommended that the judges should decide such cases in the manner they deem most consistent with the principles of justice, equality and good conscience.

### **3. Conclusion**

In India, there was never any separate court for administering equality. The greater part of the law to be applied by the court has been codified. But in the absence of specific law or usage in any matter, the court has to act according to the principles of 'equity', justice and equity jurisdictions.

Legislative measures should primarily be directed to deciding the question whether the Constitution is to be upheld in case of any aspect of personal law coming in conflict with the Constitution. The measures should also decide if a Uniform Civil Code (Article 44 of the constitution) is at all a feasible and viable proposal. If so, the frame such code; and if not, to find out any alternative (which would take a long and elaborate discussion). Equality is one of the maxims of equity and the latter delighted in equality. Any attempt to empower women in any form would lead to fiasco if the effort is devoid of equality and equity.

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