

Gender Equality: the Indian Law, Society and Mindset

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Abstract: Gender equality is not only a vital human right, but its realization has enormous socio-economic ramifications. Empowering women fuels prosperous economies, spurring productivity and growth. However, gender inequalities remain deeply ingrained in every society. Women lack access to decent work and face professional seclusion and gender wage gaps. They are under-represented in political and economic decision-making processes. Several legal reforms have taken place since independence in India, including an equal share of daughters to property. Nevertheless equal status remains an illusion. Enactment of laws and bringing practices in conformity thereto is inevitably 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 sphere of competency and in an arduous manner for the course of action to be speedy and effective. Keywords: Gender Equality, Law, Society, Judiciary, Mindset.

1. INTRODUCTION

“In the nineteenth century, the central moral challenge was slavery. In the twentieth century, it was the battle against totalitarianism. We believe that in this century the paramount moral challenge will be the struggle for gender equality around the world.”

- [Nicholas D. Kristof](#)

Gender equality is not only an indispensable human right, but its realization has gigantic socio-economic ramifications. Empowering women fuels flourishing economies, spurring productivity and growth. However, gender inequalities remain deeply ingrained in every society. Women lack access to decent work and face professional seclusion and gender wage gaps. They are in addition often denied access to elementary education and health care. Women in all parts of the world experience violent behavior and discrimination. They are under-represented in political and economic decision-making processes.

For many years, the UN has faced grave challenges in its efforts to prop up gender equality globally, including insufficient financial support and no single recognized driver to direct UN activities on gender equality issues. UN Women, which has become operational from January 2011, has been created to address such challenges. It will be a vibrant and sturdy supporter for women and girls, providing them with a potent voice at the global, provincial and local levels. Grounded in the idea of equality enshrined in the UN Charter, UN Women will, among other issues, work for the:

- Elimination of discrimination against women and girls
- Empowerment of women
- Achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

In today's world where women are playing a pivotal role in almost all the spheres of life the idea to deny them their dues will be lethal to the growth and transformation of the society. Though the judiciary, legislative bodies and of course the executive in India are striving to decentralize and democratize the patriarchal nature of our society but there is still so much of it to be done.

As per the census held in 2011, the female population in India constitutes about 48.46 percent of the total population of the country. The empowerment of women by various legislative as well as other measures is an avowed policy of the Government and bringing complete equality for them in all spheres of life is, therefore, a matter of utmost concern for the Government as well as for the wellbeing of the society.

The National Common Minimum Programme of the then Government also enunciated that complete legal equality for women in all spheres of life will be made a practical reality, especially by removing discriminatory legislation and by enacting new legislation that gives women, for instance equal rights of ownership of assets like houses and land.

In history, a woman's property has often, but not always, been under the control of her father or, if she was married, her husband. Property rights include the legal rights to acquire, own, sell and transfer property, collect and keep rents, keep one's wages, make contracts and bring lawsuits.

Although so many legal reforms has taken place so far but enacting laws and to bring them in practical conformity are two different things. There is still a big gap in between which can only be abridged by reckoning social awareness.

To quote Justice Sujata V. Manohar of the 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." The Apex Court of India has for the last two decades been taking many courageous steps for ameliorating the condition of the women while administering substantial justice. Three notable recent judgments in the sphere of 'gender justice' are: *Vishakha v. State of Rajasthan*, *Apparel Export Promotion Council v A K Chopra* and *Gita Hariharan v. Reserve Bank of India*

'In all these cases, the SCI invoked and strongly relied on the provisions of international instruments, ostensibly to fill the void in the domestic law. This represented a significant departure from the Court's earlier stand in keeping with the traditional rule as to the applicability of international instruments which (unlike customary International Law), ordinarily, must go through "the process of transformation into municipal laws", before becoming enforceable by the domestic courts'.

The Constitution of India guarantees gender equality and the right to life and liberty in Articles 14, 15 and 21 and also provides for the Fundamental Right of each citizen to practice any profession or to pursue any occupation, trade or business, vide Article 19 (1) (g). There exists a Fundamental Right to Judicial Remedy in the event of violation of

any of these Rights (Article 32).

Though our Constitution contains several provisions to give equal status to both male and female but if it's a matter of property, then legally and socially male rule the society. There are numerous laws that say that there should be no bigotry between the sexes, but in reality none are effective enough to truly bring about an insurrection or a change in the society.

Earlier, the Hindu law used to put the male heirs on a higher footing by providing that they shall accede to an additional independent share in co-parcenary property over and above what they inherit equally with female heirs in the self acquired property of their father. The very notion of co-parcenary was that of a total male oriented domain. Now this concept has been abolished.

But surprisingly, even today, even after the new law, co-parcenary remains a primary privilege of males; no doubt law provides for equal division of share between all heirs, male and female on the death of a male co-parcener, but when put into practice the picture is totally diverse. Legally, Intestate's self acquired property devolves equally between male and female heirs; but, even today female heirs are asked to surrender their share by making relinquishment deeds on their signature and are generally submitted in the courts. If the intestate property includes a dwelling house, the female heirs have no right to partition until the male heirs choose to divide their respective shares. If a Hindu female dies intestate, her property devolves first to husband's heirs, then to father's heirs and lastly upon mother's heirs; hence the intestate Hindu female property is still kept within the reach of the husband or his heirs only.

To achieve equal inheritance for all in point of fact, the laws have been amended. In regard to succession to property among Hindus the amendments are as follows -

1. The right by birth has been abolished and the Mitakshara School co-parcenary of Hindu Law has been converted into Dayabhaga School that means equal distribution of not only separate or self acquired properties of the deceased male, but also of undivided interests in coparcenary property.
2. Daughter of a coparcener in a Hindu joint family governed by Mitakshara Law now is coparcener by birth in her own right in the same manner as a son;
3. Rule of survivorship has also now been abolished; and
4. She has same liabilities and disabilities as a son;
5. Now co-parcenary property to be divided and allotted in equal share.

2. CONCLUSION

The notional reforms so far have not been sufficient to give all Indian women a right to property on the same footing and terms as men. It varies with region and religion. Even where law has given a right, customs and social mores, which govern the people, do not recognize them. Women themselves give up their rights. Women, as daughters, wives, daughters-in-law, mothers or sisters tend to lose out and often suffer deprivation. This further gets accentuated when they lose the protection of the family, as single women, divorced, separated or widowed. Social consciousness of the rights under law, mind-set

to stick to it and an approach to alter law and practice to ensure social justice is therefore urgent.

Therefore a social transformation movement is necessary for such wakefulness and change of mindset. Since 'marriage' is the most conventional institution of initiating a family and preserving it. It is recommended that to achieve more power for women we must increase awareness of laws through education institutions, general awareness and legal awareness programmes. By making Judiciary, administrators and legislators more sensible in implementation of laws in letter and spirit, and by considering long pending recommendations for amendments of legal provisions on inheritance and by strengthening the administrative machinery for the purpose of effective implementation of related legal provision, a lot more may be achieved in this direction.

3. REFERENCES

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- [9] Act 8 of 1890
- [10] Eighty- third Report, 26April, 1980
- [11] Act 78 of 1956
- [12] Mary Roy v. State of Kerala, AIR 1986 SC 1011; 1986(2) SCC 209
- [13] Three successive generations in the male line (son, grandson and great - grandson) who inherit the ancestral property are called coparceners and together constitute coparcenaries.
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