
CUSTOMARY LAWS AND PROPERTY RIGHTS OF MARRIED WOMEN IN SIKKIM

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Abstract: Women in Sikkim have greater mobility and gender equality as compare to other parts of the country in the socio-political and economic area. Historically women are neglected in many areas and limited them to private sphere and attributed with such kind of qualities such as emotional, passive etc. and the prevalence of certain customs and practices become hindrances for women to own inheritance of property rights [IPR]. At the same time women in Sikkim are guided by customary laws and followed patriarchal system. At present there are several steps has been initiated by different agencies to empower women in several fields. In this scenario IPR is one of the initiative taken up by Sikkim Government in tandem with the central government. But such kind of rights has been limited to Sikkimese women who do not hold Sikkim subjects which limiting the freedom and development of all the women in the society. IPR would secure life of succeeding future generation and empowers women economically, politically and socially. In this backdrop, this article delves into the historical setting of gender discrimination in Sikkim with special focus on women and their property rights under the customs and the practices that are prevalent in the society.

Keywords: Customary laws, empowerment, gender discrimination, inheritance of property rights.

Introduction: Gender equality and its relation with inheritance of property rights [IPR] become a substantial issue when we confront with the Sikkimese women. Partially women of Sikkim enjoy IPR after the initiation of Sikkim Succession Act (2008), but it has not been implemented yet. They are still guided by their own customary laws even they became the part of Indian Union. Ironically, women of Sikkim cannot perceive the amalgamation of evil social practices such as dowry and sati system. Infact, they occupy better position in the society. The notion of property is a bundle of rights that connect and act as a relationship among social actors. People acquire property rights especially right over land through the process of laws and regulation, cultural norms and different social practices. The Constitution of India guaranteed equal property rights both for men and women. Different personal laws such as Hindu Succession Act (1956), Buddhist Laws, Muslim Law, etc. provide equal rights. Universal Declaration of Human Rights, International Centre for Research on Women, Convention on the Elimination of all forms of Discrimination against Women etc. actively contributing for the upliftment of women in global level. But practically most of the women are not benefiting such rights due to the preponderance of customary laws particularly in tribal society. The main sources of customary laws are derived from the certain type of customs, usages and practices which transfer from one generation to another and thus, become laws.

Customs, practices and old laws of Sikkim: Sikkim consists of three dominant communities such as Lepchas, Bhutias, and Nepalese. Among them Lepchas, who are originally belonged to Sikkim, Bhutias were migrated from the Tibet as traders in seventeenth century. Similarly, Nepalese were migrated from Nepal in nineteenth century. The history of Sikkim reflects the monarchical system under the leadership of Phuntsug Namgyal, who was the first king of Sikkim. There were

no any written laws which can guide the people. The King was the only source of all legal and judicial authority and the subjects were bound by his orders which were the laws [Sengupta 1985:247]. Feudal lords and *Pipons* or villagers headmen were the source of laws. When British entered then they established certain laws. Later the administration of justice in the state of Sikkim were carried out by the *Pepons* (headman), landlords, Mandals, Jongpons (District Officers) etc. In the North District of Sikkim comprising of Lachen and Lachung the system of *Dzumsha* (which means the meeting place of the people) still exists [ibid]. The *Dzumsha* is a traditional self-governing body which is headed by a *Pepon*, he is directly elected by the villagers for the term of one year, but his period can be reduced by direct democracy i.e recall [Chettri: 2013:27]. *Gyapon* is another important officer of *Dumsha* who is appointed by *Pipon* in consultation with other villagers. All the administrative work had looked by the *Pepon*, he alike Chief Minister of the village and enjoys many powers. From each family one person enjoy voting right for selecting *Pipon* and other board members of the *Dzumsha* [Ghatak]. Earlier women cannot participate as a member of the *Dzumsha* but the situation inculcated them to change because of participatory-democratic system. Today both men and women can become the member of *Dzumsha* but women are still abandoning to become a *Pipon*.

This customary law assimilated with judicial system of British India but besides that in Northeast region certain laws made free in order to conserve their norms, culture, tradition and practices. So, most of the Northeast states do not follow the Indian Constitution, they have their own customary laws. Consequently, the problem arises because customary laws of this region are not gender equity and in some of the areas women have to suffer. Hence, there is urgent need to make the reformation of this law. Similarly, Sikkim government introduced Sikkim Succession Act in 2008, which states that

legislation for equal IPR for women but those who do not possess 'Sikkim subjecthood', they cannot inherit the property.

There are other several old laws which debarred women from IPR. The Sikkim Subject Regulation Act (1961) which clearly mentioned that if any Sikkimese women marry a person who is not a Sikkim Subject he should not be provided Sikkim Subject. But women who are from foreign nationality married with Sikkim Subject holder shall be eligible to be registered as a Sikkim Subject. The Married Women's Property Regulation of 1962 Act was also introduced. The Constitution (Thirty-Sixth Amendment) Act was passed in 1975, Sikkim Government has not incorporated inheritance of property laws. By following the old Laws in Sikkim clearly reflect gender discrimination and unequal treatment of women. Feminists precisely argue that conventional or traditional system is fully based on the male bias or male chauvinism. Historically they were sidelined in several areas like socially, politically and economically. The elusive nature of IPR for women still persists gender discrimination in the society.

Status of women and property rights indifferent communities: Lepchas were known as Rong-pas, lived in simple primitive state and they themselves claimed to be hunter race. They have their own language but after the settlement of Tibetans their script destroyed. Their conversion with Buddhism and matrimonial relations among Bhutias led to the destruction of Lepcha tradition. Customary laws of Lepchas explain that after the death of father landed property equally divided into sons and mother's ornaments among the daughters. The eldest son succeeded after his father and the widows and daughters do not receive any share of the land [Sing 1993:90 in Subba 2008:253]. Women do not share IPR but they play significant role in the agricultural fields. They contribute lots in the other household matters such as to collect fuel and fodder for the family and bring water from spring and provide food for the family members [Subba 2008:253]. Beside that they also have a role to play in economic activities and social activities. Bhutias are known as Khampas and most of the Lamas came with the intention to spread the Buddhism in Sikkim. Their political influences started from the Namgyal dynasty, completely controlled the territory. They established matrimonial relations with Lepchas and converted in the religious faith so that clashes occurred among this community. This matrimonial relation between the Tibetan nobles and Lepchas chief or Jongpons gave rise to a new affluent class of Kazis [Sengupta 1985:57].

Patriarchal system and polyandry practice was very common among Bhutia community. But the polyandry system had changed at present because of modernisation and education. Women were treated as equal status as men and they independently take a decisions. Widow women also have right to re-marry and both men and women can seek divorce from each other. The property of the family remains fully under the

control of father until his sons and daughter get married [Subba 2008:270]. All the property either movable or immovable, belong to the father or head of the family [Bhattacharya 2000:37]. After the death of the father, property inherited by eldest son of the family. The small portion of land remained in the name of father known as *Zyuni*, this will be passed on son or daughter who look after their parents in last breadth or moment. But some of the family used to give landed property to their daughters. But legally women cannot relish property rights beside that they perform number of work in household activities and agricultural activities.

The migration of Nepalese started long after the Bhutia settlement but the large number of Nepalese increased from the influence of East India Company. Nepalese constituted various clans with their different culture and customs. They include Limbu, Rai, Manger, Newar, Tamang Brahmins etc. Besides that other low caste tradesman includes Sarki, Kami, Damai etc. who are categorised in Scheduled Castes including Tamang and Limbu. Among this community inter-marriage custom became a common practice at present. Communities have their own language, customs and agriculturalist nature but they speak common language i.e Nepali.

Nepalese communities practiced patriarchal system and sons succeeded property equally among them. All the sub-community deprived the IPR to women. The eldest son succeeds the father and unmarried daughters also received some shares of property from her parents. Women of this community are very hard working and their work in agriculture fields which contribute to the family income [Subba 2008: 302]. They also enjoy better position in the society and do not face any kind of discrimination in the religious hierarchy or on religious rituals.

Women under customary laws do not have any right to inherit the properties from the family even if there are no sons in the family. If the men dies leaving behind him his widow and daughters only and no sons, the widow shall inherit the property only for her life and on her death, the property shall revert back to male agnates of her late husband, but not to daughters [Bhattacharya 2000:37]. The Sikkimese women may, however, acquire property by way of gift or under a will from her father or other relations (ibid). But under the "Married Women" Property Regulation Act, 1962, if such woman marries a non-Sikkimese person then she will forfeit her rights to such properties [ibid].

The state is the ultimate guardian of land and protector of property rights, it secures land rights through legislation and regulation [Cornhel 2005:5]. Except Sikkim Succession Act, there are other initiatives have been taken for the development of women in Sikkim by the state. Sikkim state Commission for Women and other non-governmental organisations (NGOs) such as self-help group (SHG), Human Rights Law Network (HRLN) etc. play significant role to empower women through the IPR.

Study of East Sikkim's Married Women and their

Conditions: The proposed field area in east Sikkim states that women in this area provide contrasting data among women who married with Sikkimese and married with non-Sikkimese. Women who married within Sikkim occupied ample opportunities as compare to women married with non Sikkimese. They still have to face several problems and worried about insecure future generations. For them ownership of property is very important and they reported that if such rights are provided then their future will be secure. Their coming generation will feel secure because if they did not get any jobs then their ultimate sources of income will be land. In any critical circumstances ownership of property helps to tackle such problems. They think themselves empowers in sense that they do not have to depend upon their husband. They can run their family without the consent of husband and so violence towards them will decrease. They reported that IPR is necessary for women because if sons enjoys such right why not women and suggested that equal right should be provide both the sons as well as daughters.

Among this women gender discrimination remains crucial issue of concern because most of the decision taken by the head of the family. A father is head of the family and all the decisions are taken from the angle of male perspectives and women are neglected issue. They suggested that patriarchal system should be eliminated from the society and some of the women who perceived that it's very difficult to wipe out this system. But if all women desire then there may be possibility of eradication of such discrimination from the society. Women in this area follow traditional systems and shows that there is lack of awareness and lack of

education. Customary laws plays significant role among these women.

It has been noticed during the study that there is a vast difference among the privileges enjoyed by Sikkim women who married another Sikkim man and women who married Non-Sikkimese. Their children are excluded not only from IPR from their female parent but also not entitled for government jobs and other privileges. Paradoxically, women who married to Sikkimese men have got better opportunity in various field such as education, employment etc. This shows how the gender discrimination still exists among the women in Sikkim.

In order to address such discrimination against women, certain steps are suggested for the consideration of those who are responsible for the plight of women; State along with civil society and NGOs need to come forward with programmes and initiatives for the empowerment. Equal IPR for women need to be encouraged without any discrimination. Customs and practices that block women and their development should legally banned from Sikkim with stringent punitive actions. State government need to make sure that laws that are passed for the upliftment of women by the international bodies and Indian Parliament should be enforced across state. In this context state should take strong action against violators. State should make sure that women are not only properly represented in all decision-making bodies to the benefit of overall development but also gender equality is maintained both in rural and urban areas. Lastly, awareness programme and Counselling should be provided to married women regarding their rights and duties with special focus on rural women.

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