

THE RIGHT TO PROPERTY: TRACING THE WOMEN'S RIGHT TO PROPERTY ACROSS USA, UK & INDIA

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ABSTRACT

Land, property, and housing rights for women are crucial to achieving their rights to equality and a decent quality of living. Having safe access to land, property, and housing promotes a woman's independence and autonomy, provides for her and her family's basic needs, and empowers her to endure some of life's most challenging obstacles. Existing gender disparities in both the public and private sectors impede women's capacity to exercise their land, property, and housing right This article seeks to trace the intellectual waves and political and social forces that shaped the outlines of the controversial discussions surrounding the establishment of the basic right to property. It compares and analyses how the right to property was developed in the jurisdictions of USA, UK and India. The article concludes by highlighting the necessity to uniformize the property law for women in India.

Keyword: *Right to Property, Land, Family, Women, Gender, equality*

1. INTRODUCTION

According to research conducted by World Bank, women in more than 100 countries in the world are unable to get equal property rights despite the legal protection offered to them.

Relentless oppressive practices that are widely accepted and social stigmas are among the most significant hindrances for women and their property rights. Ineffective execution of policies, inability to enforce laws, and an absence of political will further intensify the issue. Also, poor access to the courts, and legal illiteracy among the general population, more among women, – construct an undetectable yet close to invulnerable divider to women realizing their land and property rights in rural and urban regions of the country. In the rural areas, unsure land rights create difficulties for women who indulge in farming and other related activities. They often are unaware of their rights, which in turn create an obstacle in running a home-based business. As urbanization is on a rise, land rights are becoming more and more important in the urban areas as women seek housing which is safe and decent.

As in many other countries, property rights of Indian women came out as a result of an intellectual battle between the Indian conservatives and the progressives. Indian women have come a long way, and the situation is many times better than the past. However, the gap still remains and the law in paper is far from the real-life implementation. In the twenty-first century, when a

paradigm shift in the society is taking place and Indian women are reaching heights, millions of Indian women still struggle to acclaim their property and land rights, and in many cases, the ones denying them, have the same blood running through their veins as them.

2. PROPERTY RIGHTS OF WOMEN IN INDIA

The Indian Constitution seeks to establish equality amongst the genders, which it is explicitly mentioned in Article 14 as a fundamental right. The right is not restrictive and guarantees equality to all persons. The Article allows affirmative action and positive discrimination, so that the underprivileged sections of the society can find their voice and justice is served to them.

According to Article 14 of the Indian Constitution, the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Indian courts have time and again through various judgments proven that this equality doesn't only mean that everyone should be treated as equals but it means that only equals must be treated as equals and that the unequal must not be treated as equals. This was further elaborated by Article 15 of the Indian Constitution which prohibits discrimination on any ground including the ground of gender and sex. The Indian Constitution recognizes women as vulnerable and allows positive discrimination and affirmative action to be taken to protect them. In India due to the lack of a Uniform Civil Code, the property laws of women are determined by different personal laws. Property rights for Hindu women

not only depend on the religion and geographical region but also the status of the women in the family and the marital status. They differ if the woman is a daughter, married, unmarried, deserted, or is a mother or widow, and the property is also of several kinds- hereditary or ancestral, self-acquired, matrimony property land or dwelling house.

The Hindu Succession Act governs the system of inheritance among Hindus and addresses gender inequalities in the same. It was enacted in 1956 and provides a comprehensive and uniform system. Under the Act, the right given to the woman is an absolute one. The female members of the family, other than the widow were recognized and the widows' position was significantly improved. Grounds for disability to inherit property like remarriage conversion and unchastity were done away with. Before the Hindu Succession Act, only 'Streedhan' which is the property given to the bride at the time of marriage by the bride's own family and the groom's family was the only absolute property that the widow owned. She had limited rights in the rest of the properties and had very limited rights of alienation. Section 14 of the Hindu Succession Act was an oasis of water in the parched desert. After its enactment, the female could also acquire and hold property as an absolute owner instead of a limited owner. Section 14 was retrospective in effect, and even the property and the land that women held before the Act came into force become hers in an absolute sense.

In the landmark case of Tulsamma, the Supreme Court held that "The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognized and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists star property rightly to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained from it. If a charge is created for the maintenance of a female. The said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognizing such a right does not confer any new title but merely endorses or confirms the pre-existing rights."

Migration to greater developed cities is taking place at an unprecedented level in modern-day India as more and more men shift to urban areas in search of a livelihood. In their absence, women have to take charge of managing the household and the farm. The percentage of de- facto female-headed households is already growing and is estimated to be around 20-30% . This includes not just widows and separated women, but also women whose husbands have gone to the cities to earn. These women manage the entire agriculture production, put in a lot of hard work, and take the household responsibilities as much as a man, but due to their lack of land titles, they do not get their due respect and return which is unfair and arbitrary.

When talking about property rights for women in India, we should also take into account the property rights for tribal women , who continue to be governed by the more archaic system of customary laws as compared to the laws of the land. They are unaware of their rights and have very little to nil rights of succession and partition. Any attempt to give them these rights is met by protest by the tribals in the name of preservation of tribal culture.

In the landmark case of Madhu Kishwar and Ors. V. the State of Bihar and Ors , a PIL was filed by Madhu Kishwar, who is a women's right activist, questioning the sanctity of the customary law governing the property rights of women in Bihar and the rest of India. She challenged the custom related to the inheritance of land and the property belonging to the father, mother and husband of the woman and the custom in which the male heir and the male lineal descendant being the only ones to inherit the property, discriminatory on the grounds of sex, therefore violating Article 14 of the constitution. She found it utterly unfair as tribal women toiled equally hard on the farm and faced all the trouble of family management and agricultural operations but was kept away from the glorious fruit of owning property. Married and unmarried daughters were not spared either, and weren't allowed to inherit their fathers' or deceased husbands' property as after their death, they were accused of adultery without any proof- so that the male members share in property is not reduced. If a widow got remarried, her right on the property of a dead husband was exterminated. The activist further narrated incidents of women who should have inherited but were denied their right by either forcing them to give up the life interest or torturing them physically. Therefore, this customary law was declared to be discriminatory and unconstitutional. In this case, the Supreme Court held, "The public policy and Constitutional

philosophy envisaged under Articles 38, 39, 46 and 15(1) & (3) and 14 is to accord social and economic democracy to women as assured in the preamble of the Constitution. They constitute core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing." Another important point to note in the judgment is, "The reason assigned by the State level committee is that permitting succession to the female would fragment the holding and in the case of inter-caste marriage or marriage outside the tribe, the non-tribals or outsiders would enter into their community to take away their lands. There is no prohibition for a son to claim partition and to take his share of the property at the partition. If fragmentation at his instance is permissible under law, why is the daughter/widow denied inheritance and succession on par with son?" Eventually, the court held that the general principles of the Hindu Succession Act 1956 would apply to Tribal women as well and they would succeed to the property of their parents and husband by intestate succession. They will get an equal share of property as the male members, with an absolute right over it.

In India, Muslims are predominantly divided into two groups - Sunni and Shia. The Sunnis and Shias are further divided into subgroups, the most dominant ones being the Hanafis among the Sunnis and Ithna Asharis among the Shias. Hence, to be exact the law we take into consideration is the Hanafi law and the Ithna Ashari School. While the Sunni law recognizes only the relatives in relation to the male members of the family, which include the son's daughter, son's son, father's mother, the Shia law, does no such discrimination and the heirs which are related to the deceased through a female are also entitled to the inheritance. The son gets double share than the daughter. In case there is no brother, she gets half the share. The share the daughter gets is absolute in nature that means that she can legally manage, control and alienate with it. There is no limit on the gifts she can receive from the male deceased. In case of an unmarried woman, she has the right to stay in her father's house and get maintenance. After the sensational Shah Bano case, in case of divorce the husband has to maintain the wife in a fair and reasonable manner, even after separation and this period extends even after Iddat. In case of the death of the husband, the widow gets 1/4th share (in case are no children) and 1/8th share in case there are children. If the deceased husband had more than one wife, the 1/4th

or the 1/8th share will be divided equally among them. In case of a deceased son, the mother is entitled to inherit 1/6th of the property, if there is a grandson and in cases there are no grandchildren, she will get 1/3rd.

The most important judgment concerning Christian women's right to property is Mary Roy

v. State of Kerala and others. In this case, the provisions of the Travancore Christian Succession Act were challenged as discriminatory to women and were claimed to restrict the rights of a woman on the property belonging to the Indian Christian community in the southern state of Travancore. According to the act, as far as the succession of immovable property of the interstate is concerned, the mother or widow is only allowed to have a life interest which was terminable at death or on the occasion of remarriage. Daughter was entitled to just one-fourth of the value of the share the son was entitled to, or Rs. 5000 whichever was lesser. These provisions were seen as unconstitutional and void as they were discriminatory against women and violated the right to equality enshrined in the Indian Constitution as a fundamental right. The petition was allowed by the Supreme Court and the Act of Travancore was declared to be invalid as after the enactment of the Indian Succession Act of 1925, all Indian Christians were to be governed by that. But the provisions of the Travancore Act were not declared to be unconstitutional, as the court felt that they were anyway inoperable due to the overriding effect of the Indian Succession Act.

The Parsi community is a small migrant community in India and the majority of it resides in Maharashtra and Gujarat. Their property distribution is prima facie gender just and exemplifies equality. The widow of the deceased person, the children- both daughter and son get an equal share in the property of the deceased and each parent of the deceased get half of the share of each child. Although, some anomalies do exist like the widow of the predeceased son who does not have any children is not entitled to any share in the property.

3. PROPERTY RIGHTS OF WOMEN IN THE UNITED KINGDOM

The situation of women in the Western world was not much different from India. Before the 19th century, they had very limited rights over their property. In the beginning of the 19th century, several historical legislations for uplifting the married women's right to property in the United Kingdom were passed, which paved way for equality and the women's suffrage

movement at the end of the century. The doctrine of 'coverture', a legal English common law doctrine, was widely accepted and applied during the Middle Ages. This doctrine did not consider women as individuals and the identity of the woman was merged with that of her husband. The married couple was considered to be one unit under the law and the married woman did not have any separate legal identity. This meant that the women could not draft their own will, own property or enter into a contract. She could own, inherit and earn very little. As the husband and wife were considered to be a single unit, the woman had no absolute right even on her earnings, and they automatically became the property of a husband. This meant that all the belongings and property of the women either owned or inherited became the husband's as well. The woman was entirely at the mercy of a husband, who had ultimate control over her, as, if the husband left her, she would become destitute. The woman was forced to follow every whim and fancy of the husband and the sole purpose in life became to keep the husband satisfied as the entire property and earning was in his hand. This is precisely the reason, why so many women were in favor of prohibition as they did not have the societal or financial support to leave their alcoholic or abusive husbands.

During the late 1860's, some women who had the privilege of education and some power, began to lobby for a law, which would enable them to own their own wealth and property. Their struggle bore fruits and the Married Women's Property Act, 1870 was passed in the parliament of the United Kingdom, which replaced the archaic English common law doctrine and gave married women got more rights on their property. Under this Act, the married woman had legal ownership and control over all her property which she earned on her own including the wages, gifts, inheritance and the income from her investment. The Act even protected the women's property from the husband's debtors. However, the Act had many loopholes like- the woman had an absolute right only over the property she became entitled to after marriage, but not the property she owned at the time of marrying, as was automatically transferred to him on solemnization of their marriage. Also, the Act wasn't applicable on the property if it was put into a trust.

To amend the defects in the previous Act, another Act was passed, namely the, Women's Property Act of 1888. Under this Act, women could retain their property even after marriage and they could buy, sell and own property while still being married. The doctrine of 'coverture' died

a slow natural death and women were considered to be separate legal entity by the law and had their own special place separate place in the society. They were considered to be a 'person' under the law when it came to property rights. The passing of this Act is considered to be a watershed moment and facilitated the woman suffrage movement in the early 20th century. Recognizing married women as separate legal entities also meant they will have to be given a right to vote and make an informed choice, thanks to the Married Women's Property Act 1888. Women started making great strides towards equality after the passing of this Act and is inspired several women fighting for justice. In 1922, another Act was passed which allowed the husband and the wife to inherit each other's property in case of death and also enabled them to inherit the property of their intestate children, equally. In 1926, women were finally able to hold and dispose of property just like a man. Both men and women were held liable to support the children and also hold rented property.

In the present day, the Act has been amended several times and the most of its sections have been repealed to meet with the present day demands and now the provisions of this Act can also be availed by formally engaged couples. Under section 17 of the Act, in case a dispute arises between the husband and the wife, concerning the entitlement, share or possession of the property, either of the parties can move to the court and let the judge decide the matter and pronounce an order which he thinks is fit, including an order for sale. In case, the couple separated, divorce or decides to dissolve the marriage, the property will be divided during the family court proceedings, but in case there is no such court proceeding, then they can avail their rights under section 17 of the said Act.

4. WOMEN'S RIGHT TO PROPERTY IN THE UNITED STATES OF AMERICA

In modern day USA, taking out a line of credit, applying for a home loan or owning property is as common as breathing. However, the rights present-day women enjoy were fought for very hard and took a lot of courage and persistence. For centuries, the status of women's right to property in the United States was not much very different from the United Kingdom. Any property allotted to the woman was controlled by her husband or another male relative. The process that started in the 1700s, took years and the struggle only materialized in the 20th century when women could be property owners just as men. It is implied that colonized America followed the same as law

as its masters, England, Spain and France. As in the United Kingdom, the husbands controlled the wives' property. Legislations were passed in the United Kingdom, and gradually more and more colonies started giving women limited property rights.

The 'Act to Confirm Certain Conveyances and Directing the Manner of Providing Deeds to be Recorded' was passed in New York in 1771. Under this Act, women had some say in what the husband could do with her assets.¹⁸ The husband could not sell her property without his wife's signature and to confirm that the wife has given her approval without any coercion or force, the judge met her privately to take her approval for her husband's actions.

Maryland passed a similar legislation, three years down the line, which required a private meeting between the judge and the married woman to make sure, that the property has been sold or transferred by husband, with her approval. This did not mean that women had absolute right over their property, but it prevented the husband to misuse her property and assets or use her property in a manner detrimental to her present and future interests. In the landmark case of *Flannagan's Lessee v. Young*, this law was put to test. The court held the transfer of property to be invalid, since the verification that the woman wanted the deal to go through this way was not done.

Following the precedent set by Maryland and New York, Massachusetts was all set to take women into consideration and passed the law which allowed married women to act as 'femme sole traders' in limited circumstances in 1787. Femme sole traders referred to women who had the permission to carry on a business on their own, when their husbands were out to the sea or had migrated into another land, for some reason. For example, the wife could make transactions during the husband's absence to keep the coffers full, if the husband was a merchant.

To understand the women's property rights movement in the United States, we need to take into consideration that slavery was still widely practiced at that time, and the rights were only available to white women. The enslaved Africans did not have any property rights as they were deemed to be property themselves. They were further denied of their property rights, by broken treaties and force relocations by the US government. By the 1800s, white women had certain rights for property while the people of color continued having no control over theirs. Connecticut allowed married women to execute wills in

1809 and the concepts of prenuptial and marriage agreements came into place. The aftermath of this was that the woman's husband could manage the assets that the woman brought into the marriage in a trust. These arrangements deprived women of agency but were successful in preventing the husbands from exercising total control on their wives' property. In 1839, a law was passed in Mississippi, allowing white women limited property rights which included 'slaves' as property. This resulted in white women owning their own personal slaves like any white man. New York led the way, in giving women property rights by passing the 'Married Women's Property Act' in 1848 and the Act 'Concerning the Rights and Liabilities of Husband and Wife' in 1860. The property rights of women were expanded, thanks to these laws and other states soon followed. The Married Women's Property Act allowed women to conduct business independently from their husbands', have sole ownership on the gifts they receive and file lawsuits. The Act Concerning the Rights and Liabilities of Husband and Wife' recognized mothers to be joint guardians of the child along with the fathers. This gave women legal authority over the child she nurtured for nine months and gave birth to. Things improved by early 1900s when many states started giving married women control over their property. But, women continued facing discrimination in financial matters. Only until the late 1970s, women were allowed to get credit cards in their names as opposed to earlier when women needed the husbands' signature to get a credit card. The struggle continued till the 20th century.

Today, the rights of women to own and manage property are equal to that of a man in the US. In the real estate market, women represent a vital segment. Single female buyers are the second largest home buyers at 17 % after married couples. With Metro areas having the largest home ownership rate among single women, single women are said to not only purchase more homes than single men, but also purchase homes that are more expensive. As per the 2020 Profile of Home Buyers and Sellers, "single, female buyers accounted for 19% of the homes purchased in 2020. 19% of first-time home buyers and 17% of repeat home buyers were single women, while 11% of first-time home buyers and 9% of repeat buyers were single men. The median age of these single, female, first time homebuyers is 33, while the median age of single, female repeat buyers is 59. Single women and men are both more likely to purchase a townhome or condo than a married couple, and single women, more than any other household composition, cited the convenience to

friends and family as an influencing factor in their neighborhood choice, at 50 percent.”

5. CONCLUSION

After examining the property rights of women in India, US and UK, one can conclude that property rights of Indian women are slightly different from that of the property rights of US and UK women. In India, the matter of property rights is highly divided among Indian women themselves and differs from religion to religion and region to region. India is a home to a plethora of spectacular cultures, languages and religions, each one more marvelous than the other, but as far as property law is concerned, it acts as a barrier. The need for a Uniform Civil Code is greatly felt as women of every religious community continue to be governed by its respective personal laws, which are often discriminatory and arbitrary. Not only there are different religious groups, but within these religious groups there are also subgroups and local customs and norms. Hindu, Sikhs, Jains and Buddhists are governed by one code of property rights, while Muslims have not yet codified it. Christians are governed by another code and Parsis by their customs. The state does not interfere in the property rights, due to which, the women of the community suffer at the hands of the conservative clergy which denies them their rights. The Indian Constitution permits both the central and the state government to frame laws on the matter of succession, under which, the state can also enact their own variation of the property law.

Unlike in USA and UK, there is no single body of property rights for Indian women. The share in property the Indian women is entitled to is totally dependent on the religion and the region she was born into, whether she is married or unmarried or whether she is a tribal or not. Being a citizen of India does not guarantee her equal right to property as a man. Born in a certain community or in a certain region is the deciding factor upon which the women's right to property is decided, something on which she has control. Except in a few cases, the Indian courts have failed to toss personal laws for being discriminatory and arbitrary. The wide range of property rights for Indian women in several ways are discriminatory and arbitrary and violate the constitutional guarantee of equality.

The court should strike down those laws which are unconstitutional and are in violation of Articles 14, 15 and 21 of the Constitution. Personal laws should be tested upon the touchstone of these rights and should be amended to meet the demands of the modern-day

women. The country should formulate a Uniform Civil Code as per the Directive Principle of State Policies, i.e., Article 44 of the Indian Constitution, which even the courts have started recommending states. Indian laws should be formed, in accordance with international standards and conventions and work towards ensuring greater gender justice and equal rights. In spite of the legal advancements, Indian women still struggle to get their share in the marital property, and socially, there is still not much acceptance for equal distribution of property among the sons and daughters. In a country like India, where women are still considered to be societal burdens and female foeticide is so prevalent, a long road lies ahead for women to achieve equality in all paths of life.

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