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**WOMEN'S PROPERTY RIGHTS-
ROLE OF WOMEN LEADERS IN TAMILNADU**

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Abstract

This paper attempts to bring into light the role of women leaders of Tamilnadu for improving the legal status of women in inheritance. Number of women leaders, political as well as social and women organizations were centered on the major problems of property rights for women. The Madras Branch of All India Women's Conference had played a very important part in supporting social legislations to improve the status of women. A close association of Indian women with the political movement enabled them to bring about radical changes in their status with the least resistance from men. The women activists of Tamilnadu such as *Muthulakshmi Reddy, T.S. Soundaram, Anandanayaki* and others focused their attention on the gender based oppression of women.

Keywords: Inheritance, All India Women's Conference, Devolution of Property, Joint Family, Inheritance, Mitakshara, Dayabhaga, Coparcenary, Succession, Hindu Code.

Inheritance

In India, women's inheritance rights have suffered serious setbacks among all communities. The law of inheritance comprises rules which govern devolution of property, on the death of a person, upon other persons solely on account of their relationship to the former. In Hindu law the joint family system comes first in historical order. The law of inheritance was of later growth and, in general, applied only to property held in absolute severalty as distinguished from property held by the joint family.¹ The joint and undivided Hindu family is the normal condition of Hindu society. The fundamental conception of the Hindu joint family is a common male ancestor with his lineal descendants in the male line. So long as that family is in its normal condition, that is, its undivided state, it forms a corporate unit, though not a juridical person. The joint family traces its origin to the ancient patriarchal system and the transition from that system to the joint family was natural and logical development.² In the joint family also the paterfamilias was the unquestioned ruler and the authority of the father of the family and some of his exclusive privileges are even now traceable in the rights of the father as the leader of the joint family, though the principle of Patria protests has long ceased to be recognized.

Mitakshara Coparcenary

Social conditions, however, underwent considerable transformation and grew up a body of rules of inheritance. Coparcenary literally means Joint inheritance or heirship of property; also called parcenary. Coparcenary is a narrower body of persons within a joint family, and consists of father, son, son's son, son's son's son. The disparity in the property rights on the basis of gender is deep rooted and can be traced back to the ancient times. Traditional Hindu inheritance laws evolved from the ancient texts of Dharmashastras and the various commentaries and legal treatises on them. In particular, the Mitakshara and the Dayabhaga legal doctrines, dated around the twelfth century A.D govern the inheritance practices among the Hindus. In most of northern and parts of western India Mitakshara law is prevalent. Under the Mitakshara law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson and a great grandson constitute a class of coparceners, based on birth in the family. No female is a member of the coparcenary in Mitakshara law.³ Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of a male in the family, the share of every other surviving male either gets diminished or enlarged. If a coparcenary consists of a father and his two sons, each would own one third of the property. If another son is born in the family, automatically the share of each male is reduced to one fourth. The Mitakshara law also recognizes inheritance by succession but only to the property separately owned by an individual male or female. Females are included as heirs to this kind of property by Mitakshara law.

Hindu Law of Inheritance Act, 1929

This was the earliest piece of legislation, bringing woman into the scheme of inheritance. It conferred inheritance rights on three female heirs i.e. son's daughter, daughter's daughter and sister, thereby creating limited restriction on the rule of survivorship.⁴

Hindu Women's Right to Property Act (XVIII of), 1937

This was the landmark legislation conferring ownership rights on women. The Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. The Act of 1937 enabled the widow to succeed along with the son and to take a share equal to that of the son.⁵ But, the widow did not become a coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The

widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights.

Despite these enactments having brought important changes in the law of succession by conferring new rights of succession on certain females, these were still found to be incoherent and defective in many respects and gave rise to a number of anomalies and left untouched the basic features of discrimination against women. These enactments now stand repealed.

Simultaneously AIWC was fighting for women's right to property and inheritance. In its 1930 session,⁶ the Madras branch of AIWC put on its programme and the campaign for equal rights for women in the matter of inheritance and the control of property. At its fifth session in 1931, *Dr. Muthulakshmi Reddy* placed on record its opinion that there should be complete equality between the sexes in the matter of inheritance and control of property. Members enthusiastically took up the work by holding meetings and inviting lawyers to speak and persuading members of legislatures to introduce bills to promote inheritance reform.⁷

The Conference appointed a special committee to remove the legal disabilities of women. Throughout 1934, an intensive campaign was conducted to educate women and make them interested in their rights. 24th November was declared Legal Disabilities Day. The Tamilnadu Women's Conference of AIWC under the presidency of Muthulakshmi Reddy passed a demanding one more that a commission be appointed to enquire into the whole question of removing the legal disabilities of women.⁸

The concern for reform was supported by other members *Mrs M. Chelliah, Mrs. Nesamani Paul, Mrs. Navamani Pillai, Mrs. Rahamathunnissa Begum, Mrs. Mc Dougall, Mrs. Alamelumangathayarammal, Ms. Jayanthi Srimathi, Krishnaveni Ammal, Smt. Vishalakshi Ammal* including members of the assembly such as Hari Singh Gour, Sir Moropant Joshi (a leading advocate, of Berar and Home Member of the then government of the Central Provinces) *Sir Har Bilal Sardar* and *Dr. G.V. Deshmukh* members of the bar such as V.V. Joshi, a high court pleader from Baroda and a number of political moderates also extended their support. These men were committed to the same ideals as the nineteenth century social reformers and believed that law was capable of bringing about social change.

AIWC with its branches concentrated on propaganda, discussed with assembly members to introduce reform bills. In 1934 *Lady Abdul Qadir, Rani Lakshmi Bai Rajwade, Charulata Mukherjee and Renuka Ray* issued an appeal for the setting up of such a committee. They asked for a commission with a non-official majority and a strong representation of women to enquire into the present disabilities of women in regard to marriage and inheritance.^{ix}

As a result of the agitation carried on by the AIWC, the government finally appointed the Hindu Law Committee to examine the legal position of women under Hindu law.^x They were to solicit the views of interested groups and prepare a report by June 1941. To Gandhi, the liberation of Indian women was intimately tied up with the liberation of the country. He advised the women working for reform to look to the needs of their poor sisters, who formed the majority, rather than the needs of the upper classes. The poor women faced no stigma regarding widow remarriage nor were concerned about legal status. He did not support the idea that women should spend their time and energy on the question of legal status at the cost of other more crucial problems. *Rajkumari Amrit Kaur*, a follower of Gandhi, however, disagreed with him and said that the AIWC had worked very hard to get the Government to appoint this committee and so women should cooperate with it.

The Assembly took up in 1943 two bills drafted by the Rau Committee, one relating to intestate succession and the other to marriage and divorce. As a result of persistent demand by the AIWC, the govt. nominated Renuka Roy, out of panel of names submitted by it, to the assembly.^{xi} The AIWC carried out a countrywide campaign in favour of codification, canvassing among members of the assembly and getting branches and standing committee members to send letters and telegrams to the law member. *Rameswari Nehru*, founder and president of the Delhi Women's League (the Delhi Branch of the AIWC), *Renuka Roy* and *Chandralekha Sahai* testified before the committee on the response of the AIWC's 37 branches including Madras Women's conference to the proposed legal changes.^{xii} *Renuka Ray* made an excellent speech in the assembly in which she ably answered all the arguments put forward by the opponents of the bill. Because of opposition to the bill from orthodox sections of Hindus, it was referred to a select committee and shelved for the time being.

Hindu Code

In 1946 the AIWC prepared a Charter of Women's Rights and Duties to secure for women their due rights and circulated it to the state and central governments. Nehru declared 'I am personally anxious to do everything in my power to advance the cause of women in the country', which gave a great boost to the women fighting for legal justice. Immediately after independence, under Nehru's stewardship, the Draft Code was resurrected and sent to the Law Ministry for suggestions. The bill, after some modifications, was referred to a select committee in 1948 under the chairmanship of Dr. B.R. Ambedkar, who was the then Law Minister.^{xiii} As there was some delay about taking up the report of the select committee, *Renuka Ray* pursued the matter with the Prime Minister and the Congress Party members pointing out the party's commitment to women's equality and to the principles of the Code. The AIWC drew up a memorandum^{xiv} and circulated it among the members of the assembly. About 120 women waited in a deputation near the room where the

Congress Legislative Party was meeting to consider the matter. As a result of all these efforts, assurance was given that the Code would be taken up in the Budget Session.

After the Law minister introduced the bill, many members welcomed it and hoped that it would soon be discussed by the House. Among the members *Sharadaben Mehta, Shantabai Bhale Rao, Vimla Deshmukh, Leela Menon, Gutistan Billicoria, Saudamini Mehta, Sita Parmanand, Hansa Mehta* who referred to the bill as a revolutionary measure even though 'we are not quite satisfied with it, it will be a great landmark in the social history of the Hindus'.^{xv} The members shed all inhibitions and came out openly to oppose the passage of the Hindu Code Bill. Eloquent speeches were made by members who saw in the bill an attempt to demolish the entire fabric and structure of the Hindu Society.

In Madras the women leaders were very active during the years 1953-1955 arranging meetings to mobilize public opinion for the Hindu Marriage and Succession bill. *Smt. Hemalatha Devi*, secretary of WIA, Salem, arranged for a meeting in Salem and created awareness among the people.^{xvi} *Muthulakshmi Reddy, Anandanayaki*, lawyer and member of AIWC *Smt. Chubwala*^{xvii} conducted the meetings in Madras to mobilize the support of the people.^{xviii} An All- India Day for the removal of legal disabilities was successfully held on April 19, 1954 in Delhi^{xix} and Madras.^{xx} In September 1954, *Roshni*, the journal of the AIWC, published a special issue on Women's Legal Disabilities. It included articles by Prabhudas Patwari, a senior advocate of the Supreme Court and MLC K. Rajan Iyer, Ex-Advocate General, Madras, *Mithan Lam, Lakshmi Menon* and others. The Hindu Law Code came into force in 1954-56 as a series of acts in relation to intestate succession, marriage and divorce, minority and guardianship and adoption and maintenance,^{xxi} fully three decades after the AIWC first sounded the call for justice for women.

The Hindu Succession Act amends and codifies the law relating to intestate succession among Hindus and brings about some fundamental and radical changes in the law of succession.^{xxii} Even if it seems to break violently with the past, it has to be conceded that it is a characteristic of the age, which is one of great ideals and fast changing social, economic and political theories. Hindu law, at no time in its long history, static but was empiric and progressive. It was only after the taking over of India by the British and because of their policy of non-interference in matters of personal law that it ceased to grow with the time. Its principal characteristics of elasticity and assimilation were ignored and the decree of rigidity given to it was such that legislation alone could cope with the felt necessities of the times.

In the ensuing years, the conference had to literally act on the motto, 'Eternal vigilance is the price of freedom'. A decade later attempts were afoot to curtail women's succession rights by withdrawing the daughter's right to inherit agricultural land. AIWC, *Raksha Saran* and *Lakshmi Raghuramaiah* met the prime

minister, leaders *Hansa Mehta*, *Muthulakshmi Reddy* law minister, the attorney general and others to press their views against such a measure. A big meeting was organized in Punjab by *Pritpal Kaur Wasu*, branch representative from Chandigarh, to alert its women. As a result of this agitation the proposed legislation was shelved. A resolution was passed by the Conference at the 1964 session stated that no distinction should be made in the shares of sons and daughters on grounds of sex as it is repugnant to the Constitution and violates the principle of equality, especially in view of the alimony provision for divorced husbands in the Hindu Marriage Act.

The members of the Conference *K. Tarabai*, *Gul Banu*, *Amina Naqve*, journalists such as *Kamala Mankekar*, and lawyers such as *Sunanda Bhandari*, and *Shyamala Pappu* also detected the threat to women's property rights in the move during 1971-72 to fix a ceiling on agricultural and urban land holdings and to take the family as the unit so for fixing it. A resolution at the 1972 session urged that women and children should not be deprived of their property rights in this manner and the ceiling, whatever is the quantum, should treat spouses as separate entities. The Conference noted with regret that land reform bills and tenancy acts in certain states had indirectly removed the inheritance rights of women and as a result, about to create a view category of destitute women.

Hindu Succession Act and Gender Equality

The recent legislative proposals amending the Hindu Succession Act are important steps towards gender equality and abolition of the patrilineal system of inheritance prevailing among Hindus. These proposals seek to give Hindu women equal rights in the Mitakshara Joint Family Property. The proposed Bill also seeks to do away with Section 23 of the Hindu Succession Act which denies a woman the right to seek partition of an inherited and dwelling unit / house if other male heirs are residing in it and further restricts her right to reside in the inherited residence unless she is a widow or has been separated from or deserted by her husband.

It is relevant to note that the Hindu Code Bill, as originally framed by the B.N. Rao committee and piloted by Dr. B.R. Ambedkar, had recommended abolishing the Mitakshara coparcenary with its concept of survivorship and the son's right by birth in a joint family system and substitute it with a principle of inheritance by succession. In fact, the Tamilnad State members of All India Democratic Women's Association^{xxiii} *Mrs. Pappa Umanath*, *Kamatchi*, *Janaki Ammal* had also during the Dowry Prohibition Act amendments in early 1980s, asked for abolition of the Joint family System. In this sense the Amendment doesn't go far away. The other Amendment, which was cleared by the Cabinet, was to abolish Section- 23 of the Hindu Succession Act 1956. This provision denies a married daughter the right to residence in an inherited parental home unless she is widowed, deserted or separated from her husband. The section further denies the daughter, who has

inherited a house along with a male member of a family from asking for her share of the property if any member of the family resides in the inherited house, until the male heirs also agreed. However, no such restriction has been placed by the Section 23 on a male heir.

Tamilnadu Amendment Act 1989

With the efforts of the elite women, the Tamilnadu Government enacted an amendment in the succession Act in 1989.^{xxiv} It proposed equal rights to the daughter in coparcenary property. In a joint family governed by the Mitakshara law, the daughter of a coparcenary shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparceners property as she would have had if she had been a son 'inclusive of the right to claim by survivorship'; and shall be subject to the same liabilities and disabilities in respect thereto as the son. In the allotment of the property same share should be allotted to a daughter. It was not applied to a married daughter before the date commencement of this Act. When a female Hindu died before the date of the commencement of the Act, her interest in the property should devolve by survivorship upon the surviving members of the coparcenary. The child of the deceased should devolve by testamentary or intestate succession. An interest in any immovable property of an intestate or in any business carried on by him or she devolves upon two or more heirs, any one of such heirs proposed to transfer his or her interest in the property or business, the other heirs should have a preferential right to acquire the interest proposed to be transferred. Any interest in the property of the deceased may be determined by the Court. The heir who offers highest consideration for the transfer shall be preferred. This amendment gives preference and importance to Tamil women in securing and protecting their position in the society.^{xxv}

The Hindu Succession (Amendment) Act, 2005

The AIWC and the members of its branches met at Delhi to discuss about the removal of anomalies of the 1956 Act.^{xxvi} Resolutions were framed and attempts were made to pass them in the parliament. Women members took part in the debate efficiently and as a result the amending Act of 2005^{xxvii} was passed. It is an attempt to remove the discrimination as contained in the amended section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara Coparcenary property as to sons have. Simultaneously section 23 of the Act as disentitles the female heir to ask for partition in respect of dwelling house wholly occupied by a Joint Family until male heirs choose to divide their respective shares therein, was omitted by this Amending Act. As a result the disabilities of female heirs were removed. This is a great step of the government so far the Hindu Code is concerned. The amendment of Hindu Succession Act of 1956 in 2005 is a total

commitment for the women empowerment and protection of women's right to property. This Amending Act in a matrilineal system, like Mitakshara School of Hindu Law opened the door for the women, to have the birth right in the family property like the son. The women were vested the right of control and ownership of property beyond their right to sustenance. The significant change of making all daughters (including married ones) coparceners in joint family property has been of a great importance for women, both economically and symbolically. Economically, it can enhance women's security, by giving them birthrights in property that cannot be willed away by men. In a male-biased society where wills often disinherit women, this is a substantial gain. Also, as noted, women can become kartas of the property. Symbolically, all this signals that daughters and sons are equally important members of the parental family. It undermines the notion that after marriage the daughter belongs only to her husband's family. If her marriage breaks down, she can now return to her birth home by right, and not on the sufferance of relatives. This will enhance her self-confidence and social worth and give her greater bargaining power for herself and her children, in both parental and marital families.

Conclusion

Thus, these amendments can empower women both economically and socially and have far-reaching benefits for the family and society. Independent access to agricultural land can reduce a woman and her family's risk of poverty, improve her livelihood options, and enhance prospects of child survival, education and health. Women owning land or a house also face less risk of spousal violence. And land in women's names can increase productivity by improving credit and input access for numerous de facto female household heads.

Making all daughters coparceners likewise has far-reaching implications. It gives women birthrights in joint family property that cannot be willed away. Rights in coparcener property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter. Millions of women - as widows and daughters - and their families thus stand to gain by these amendments. However, the spirit underlying the entire Act is so different from that of the traditional Hindu Outlook, that its impact on the Hindu social organization would create great tensions. The Hindu Code provides a powerful weapon in the hands of the progressive forces of the Hindu society. It has given a powerful blow to the traditional authoritarian, male-dominated, Hindu social edifice. It closes a big chapter of women's oppression with regard to property rights and inaugurates a new phase in the history of women's struggle for equality with men in the Hindu Society.

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