

WOMEN AND PROPERTY ITS CHALLENGES AND PROSPECTS

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ABSTRACT:

The property rights of Indian women have evolved out of endless struggle between the standing quoits and therefore the progressive forces. whereas reforms are led to to boost the position of womens, statutory laws chiefly reflects non secular norms. Indian women still still get inadequate rights in property than men, each in terms of quality and amount, that depends upon the school she follows, that square measure ruled by the several personal laws within the matter of property rights. Till date, the Muslim law has been certain by the patricentric forces within the name of faith. Though, Republic of India could be a individual and has sanctioned varied International Conventions with reference to the rights of womens, the provisions of bound personal laws still stay offending to the Conventions. In several cases, women voluntarily renounce their statutory rights in favour of male members of the family, underneath the pressure of bound socio-cultural factors and their economic dependence on the kin. The response of the judiciary in matters with reference to the property rights of womens has been ambivalent. For, by and huge, with a number of exceptions, the Republic of Indian Courts have refused to check the private laws on the standard of Constitution to strike down people who square measure clearly unconstitutional which square measure offending of the elemental Rights underneath half III of

the Constitution of Republic of India. except for the continuing struggle for the same Civil Code in accordance with the Constitutional framework, Indian women square measure fighting for rights in martial property, denied uniformly to them across all religions. during this context, the current paper makes an attempt to analyse the nexus between property rights of womens, personal laws and therefore the Constitution of Republic of India.

KEYWORDS: Property Rights, Women, Personal law, Constitution of India, Equality, Muslim Law,

AIM: The aim of this paper is to study the concept of women and their property rights.

RESEARCH METHODOLOGY: only secondary sources are referred for this study. the first sources relies on interviews with individuals available. Secondary sources contains books and different relevant analysis articles even lots of websites and blogs for sources have additionally been said the study. this can be a descriptive methodology of study.

INTRODUCTION:

Throughout the globe, Gender difference once it involves land is intimately regarding women's impoverishment and exclusion. The Indian women face an equivalent downside once it's regarding land and different productive resources. The women's right to property is adversely affected in Republic of India. The phrase "Women's right to property" entail the skills of womens to possess, use, access, control, transfer, inherit and take choices regarding the property. The rights additionally cover women's right to secure tenure and to meaningfully participate in any respect stages of law, programme development, designing and style, budgeting and finance, implementation, watching and analysis. Though, the laws have evolved throughout the last century, it fails to convert the de-jure reality into de-facto reality. The laws governing the property of womens still depends on the private laws that's supported the faith and non secular colleges that square measure followed by them. Even at intervals the various faith teams, there square measure sub-groups, native customs and norms with the several property rights. In several communities, gender disparities with relation to land and different productive resources square measure regarding assumptions that men, as heads of households, management and manage land-implicitly reflective concepts that womens square measure incapable of managing productive resources admire land effectively. want{the necessity|the requirement} for equality regarding the rights to property is that the need for the hour during this fashionable transcending world. .

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INTERNATIONAL DIMENSION:

Women's access to property can't be separated from the broader context of economics policy and therefore the world financial system. during this context, it's rumored that just one p.c of the world's women own land. This showcases the difference and human rights violation. The increasing land pressure, the development of land grabbing and therefore the increasing commoditisation of land round the world, has junction rectifier to the students in noting that "The issue of women's property rights isn't solely vital these days, it's doubtless to become progressively thus over time".

These circumstances have junction rectifier to the International Legal and Policy Instruments to play a very important role in protective the rights of women in Property.

Article a pair of of the Universal Declaration of Human Rights, lays the principle of equity, as well as supported sex, within the enjoyment of rights warranted within the Declaration. Among several different rights, the Declaration recognises the proper to property.

Article 3 of the International Covenant on Civil and Political Rights, guarantees equality between men and women on varied grounds. It guarantees right to life, property, etc.

Article 3 of the International Covenant in Economic, Social and Cultural Rights calls on State parties to "undertake to make sure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth within the Convention" and prohibits discrimination supported sex. The Covenant additionally acknowledges the proper to food, housing, education, health, culture, work and associations.

The Convention On The Elimination Of All kinds of Discrimination Against women in laws, policies and practises, as well as through the adoption of temporary special measures. Its article a pair of obliges states to "take all acceptable measures, as well as legislation, to switch or get rid of existing laws, rules, customs and practices that represent discrimination against women". Its article 14 states that "States parties shall take all acceptable measures to eliminate discrimination against women in rural areas so as to make sure, on a basis of equality of men and women that they participate in and profit for rural development.

This includes the proper to education, access to credit and loans, access to housing and therefore the right to participation. significantly, it additionally includes guarantees of equal treatments in

land and rural reforms also as in land transplantation schemes. Article 15 obliges states to accord women equal legal capability in civil matters, particularly "equal rights to conclude contracts and to administer property". Article sixteen calls on states parties to "take all acceptable measures to eliminate discrimination against women altogether matters with reference to wedding and family relations." per article sixteen.1 (h), states should guarantee "the same rights for each spouses in respect of the possession, acquisitions, management, administration, enjoyment and disposition of property, whether or not freed from charge or for a valuable thought." The convention additionally guarantees several different rights admire the rights to health or work. CEDAW has been said and relied upon by the Supreme Court of Republic of India during a variety of judgements.

The Convention On The Rights Of the kid, The International Convention On The Elimination Of All kinds of discrimination, The Convention On The Rights Of Persons With Disabilities International Convention On The Protection Of The Rights Of All Migrant staff And Members Of Their Families also guarantee varied rights regarding access, use and management over land and different productive resources.

The bodies that monitor the implementation of the international human rights treaties, as well as the committee on the elimination of discrimination against women and therefore the committee on economic, social and cultural rights, oftentimes turn states parties to make sure women's human rights regarding access, use and management over land and different productive resources.

States square measure needed to implement specific measures to forestall forced eviction, admire consultation with affected persons, as well as women, availableness of remedies and compensation, and a series of procedural needs. every of those procedural protections applies to women and will consequently be seen during a gender-sensitive manner.

The world organization Declaration On The Rights Of autochthonic individuals provides that autochthonic peoples have the proper to the lands, territories and resources that they need historically in hand, occupied or otherwise used or non inheritable which states shall provide legal recognition and protection to those lands, territories and resources. Such recognition shall be conducted with due relevance the customs, traditions and tenure systems of the autochthonic peoples involved. The declaration additionally provides that autochthonic women shall be

shielded from discrimination which explicit attention shall be paid their rights and special desires.

The question on why men abuse their wives, and why a lot of in some societies than others remains unreciprocated. Some students have attributed the prevalence and persistence of fabric violence to a mixture of individual and community factors, also as wider social factors. a major unknown issue is that the impact of women's property standing on form hood of violence. In fact, we tend to chanced on no study either for Republic of India or elsewhere wherever this has been studied through empirical observation.

Rights to land, housing and property square measure essential to women's equality and upbeat. Women's rights in access to and management over land, housing and property could be a determinative think about women's living conditions particularly in rural economies, essential to women and their children's daily survival, economic security and physical safety. Despite the importance of those rights for womens and womens headed households, women still disproportionately lack security of tenure.

Male dominance:

The worldwide prevalence of matrilineal inheritance customs, each productive resources and property admire house merchandise have finished up within the hands of man and not women. once solely man have rights of inheritance or family succession, women have very little chance to boost their standing or living conditions at intervals the family and community. Consequently, they're rendered addicted to male relatives for survival and have very little say over however property is employed to come up with financial gain or to support families. to boot, at intervals direct communities, there's a powerful resistance by men towards endowing women, particularly daughters, with rights to land access.[\(Fagnani 2002\)](#)

Patriarchal property rights:

Women World Health Organization square measure doubtless able to meet their subsistence desires on their own might threaten to go away the house if they're not given an oversized share of surplus. However, because of patricentric property rights, husbands management over the allocation of wives labour time, husbands will create choices that cut back the worth of their wives alternatives to wedding. each the proper to manage land and management the financial gain from production, encompassing secure rights to land access, have a lot of deeper

implications than mere access. for several women, access to land and property square measure essential to the assembly of food also as property livelihoods, however square measure addicted to natal and material affiliations. In several countries, women will lose rights to land once there's a modification in legal status, as well as wedding, divorce, or maybe death of a partner. ([Goeltz and Hatlie 2002](#))

Inadequate laws and systems of enforcement:

While there square measure a growing variety of up to date laws, as framed by the trendy state, that provide inheritance rights to daughters once they square measure recognized as people among the communities, the method of wedding and therefore the historically direct customs have remained for the most part unchanged. Thus, there remains a match between wedding practices and inheritance laws. this can be additionally proved within the method of gift practises. In several cultures, a daughter's gift is viewed by her family as her portion of her inheritance, although it should be usually absorbed by the new husband and his family. Thus, whereas in some communities' women do have the formal rights to inherit lands, the social illustration of inheritance within the style of dowries and therefore the strength of the follow of wedding trump given laws.

Lack of awareness existing laws and depleted understanding of legal redress options:

Levels of education, oftentimes merchandise of restrictions on women's interaction with establishments that square measure primarily composed of men, produce a air and illusion regarding legal actions. to boot, ideologies regarding the conduct that a women displays, unremarkably taking the shape of tractability, will bring shame to the thought of difficult continuous gender inequalities in law, policy and land rights.

Prevalence of ancient attitudes and practices:

Gender ideologies, or beliefs and stereotypes of the expected characteristics of a selected gender, give a barrier for womens to realize property rights and enhance standing. These ideologies might take the shape of assumptions of the role that a women plays in society, her desires or capabilities, that so have an effect on the method that a problem is framed and enforced. ([Mayer et al. 2016](#))

MUSLIM WOMEN AND PROPERTY RIGHTS:

Muslim women rights are a subject of dialogue ever since the Constitution came into force in 1950. sharia law (Shariah) is taken into account by several as patricentric and oppressive to women. but the religious writing has self-addressed women's problems fourteen hundred years ago by making some reforms to boost the standing of womens through these reforms don't appear to be practiced in Muslim society these days. although these reforms don't appear to be practiced in Muslim society these days. Though, Islam as disclosed through the actions, practices and preaching of Prophet Mohammad isn't oppressive to women its interpretation enacted within the family law, and each day living its patricentric.

In fact the oppression of Muslim women is because of the conservative readings of Shariat what additionally embody gender discriminating customary norms that square measure bestowed as god's changeless words. Muslim feminists trace the supply of women's oppression to an equivalent jurisprudence laws that interpret the divine laws wrong.

Further sharia law is saturated with pro-patriarchal interpretations. though the standing of womens improved throughout the time of the prophet it absolutely was solely short lived Muslim plenty don't look on the far side Islam and that they read it as complete method of life. ([Mayer et al. 2016](#))

CONSTITUTION AND PROTECTION OF MUSLIM WOMEN:

India could be a country with diversified culture and plenty of religions. The Constitution of Republic of India being the backbone of all the laws within the country protects the individuals with the vital principles of justice, liberty, equality and fraternity. This constitution of Republic of India assures dignity and equality of people no matter their sex, faith or place of birth. The voters square measure protected and given equal rights no matter their sex, caste, faith or race by the varied elementary rights given underneath part III of the Constitution of Republic of India. Article fourteen of the Constitution of Republic of India states that, " The State shall not deny any personal equality before the law or the equal protection of the laws at intervals the territory of India".Thus, Article fourteen aims at protective the rights of a personal the bottom level with none denial of equality.

Moreover, Article fifteen of the Constitution of Republic of India strengthens the read of Equality by birthing down prohibition of discrimination on any ground, as well as the bottom of sex.

Article twenty one of the Constitution of Republic of India that acts because the umbrella provision takes and vastly expansive definition of the elemental right to life.

The Directive Principles of State Policy underneath half IV of the Constitution lend support to the principles of equality, social justice and authorisation. The Directive Principles of State Policy is to guide the conscience of the State and are wont to constructively interpret the scope of and reach of elementary rights.

Inspite of constitutional assurances, the standing of Muslim has not improved because of the conservative approach. the private laws prevail and so, the Muslim women couldn't get pleasure from the varied welfare legislations. The centuries recent principles of Islam square measure still applicable on the matters regarding wedding, divorce and spousal relationship.

The Courts have additionally upheld the validity of the many special provisions protective the rights of womens. However, within the case of Muslim women, the law is 1st tested on the standard of the Muslim Personal Law.

THE RESPONSE OF THE JUDICIARY:

The response of the judiciary has been ambivalent. In bound cases, the Supreme Court of {india|India|Republic of Republic of India|Bharat|Asian country|Asian nation} has command that the private laws don't seem to be at risk of elementary Rights underneath half III of the Constitution of India and so can't be challenged on the bottom that they're in violation of the elemental rights, particularly those warranted underneath Article fourteen, fifteen and twenty one of the Constitution of Republic of India.

On the opposite hand, the Supreme Court during a variety of cases has tested the private laws on the standard of elementary rights. Though, in these choices the private laws haven't been smitten down, the choices were on deserves that in turn shows that the enactment of the same Civil Code underneath Article 44 of the Constitution of Republic of India might need legislative intervention. The discriminatory aspects of the private laws will most positively be challenged as being offending of the elemental rights of womens underneath Articles 14, Article 15 and Article 21 of the Constitution and may be smitten down.

In a variety of judgements, the Supreme Court of India has suggested to the State to hold out its obligation underneath Article forty four of the Constitution to formulate the same Civil Code for proper functioning.

One positive trend that has emerged is that the Indian Courts have started counting on international standards derived from varied International Declarations and Conventions.

CONCLUSION:

The road ahead for womens achieve equal rights, not solely within the case of property, however normally is stuffed with challenges. The challenges square measure several, within which the social acceptance of women's rights in property comes 1st. one in every of the largest struggles that Republic of India faces is that of the applying of the Uniform Civil Code with the Constitutional framework.

It is the duty of the Legislative wing of the govt {and the|and therefore the|and additionally the} Judiciary to figure hand in hand to boost the current conditions and also to achieve equality in terms of standing and rights of womens. The Judiciary in its capability should interpret and hold those Personal Laws that square measure derogative to the elemental Rights to be unconstitutional and invalid. it's the duty of the individuals of Republic of India to jettisoning of the conservative concepts and actions, that square measure against the principles of the Constitution of Republic of India that's enshrined within the Preamble, namely, Equity, Justice, smart Conscience.

Therefore, the private Laws, the Constitution of Republic of India and therefore the Rights of womens in Property go hand in hand with each other.

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