



PROPERTY RIGHTS OF WOMEN: MYTHS, REALITIES, AND CRITICAL PERSPECTIVES

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ABSTRACT:

After the Hindu Succession Act 1956 which opened married daughter's access to father's property, the enactment of the 2005 Hindu Succession Amendment Act (HSAA) was a significant move to herald and sustain gender equality by facilitating women's property rights, which was biased against them before this enactment. It has ensured that the daughters can be coparceners in the ancestral property of their father.

This paper is based on a study conducted on "married women's assertion of their rights in parental property. Taking a sample of a few households in the urban fringe villages near the city of Mysuru and using qualitative methods of data collection, its findings have shown a mixed result: the process is impacted by many complex processes. Women have faced several administrative and bureaucratic hurdles; are hesitant to approach a court of law due to lack of resources but more due to public gaze that paints them as being unfair to brothers and parents who have borne the cost of their weddings. But they are also compelled to do good to husband and parents - in - law to avoid rising domestic violence and crime.

The paper concludes that there is still a long way to go for the daughters who brave themselves to claim. The state and civil society organizations have to take steps to safeguard their interests through proper avenues.

Key Words: Gender and Property Rights, Law, Inheritance, Patriarchy

MYTH AND REALITY OF PROPERTY RIGHTS OF WOMEN: CRITICAL REFLECTIONS

Introduction:

Inheritance rights in father's property by sons are an age-old tradition well accepted and practiced in the patriarchal family system almost universally prevalent in India. Societal practices have traditionally excluded women from these rights. Inheritance by sons is the overwhelming manner in which ownership rights on parental property is traditionally practiced in India. As we all know, The Hindu Succession (Amendment) Act 2005 as an inheritance law has brought a revolutionary change in this practice by enabling women also to claim their rights to ancestral property in the parental family. In practice this was mainly as legal heirs to father's immovable property, i.e., agricultural land. It is no doubt that the Legal amendment has brought reforms and corrections in the ills that were heavily biased against women's or daughters' rights to father's and family property. It has led greater awareness than the earlier (law of 1956). The law has enabled equal access to family property to daughters like sons, thereby aiming at their equal status as children to parents.

A study carried out during 2012-2017 has shown that the ground reality is different and bitter than what is expected as a follow up of the legal enactment. Then and even now, nearly 10 years after its enactment, law has been not completely successful in empowering women to inherit equal share in parental property on an equal basis with their brothers. The empirical study was carried out in the city of Mysuru based on a sample

of 150 households on its peripheral wards, bordering the urban fringe villages. The reason behind it was to test the hypotheses that the law of inheritance would have enabled women's empowerment.

Information was collected from the women (daughters-in-law) in these households using a structured interview schedule. Of the 150 respondents, 50 were daughters in law who had demanded a share in father's property through legal intervention. Besides these 50 women, 50 each of males and females in the same universe of study were interviewed to learn their opinions and perceptions on the issue.

The main objective of the study was to capture the barriers that prevent full implementation of the Act and understand the socio-cultural barriers behind the lacunae in it.

Brief Review of Literature

Studies have argued that granting of rights to own economic assets through inheritance of property helps in increasing their autonomy, empowerment and also promotes gender equality (Deininger et al 2013, Anderson 2018). Women's inheritance rights are sure to enable them access to control and using their property, wealth, and power to use them in improving their social and economic prospects. But in practice such inherited property is from male to male through female and women have not used it directly. Women function as only carriers of property from father to husband and to their children, as active managers of wealth (Jain 2014; Jain 2023). The fact that a woman's inheritance belongs to her husband's lineage, her family take interest in organizing her marriage within their lineage. In upper caste and class families, women taking up outside work like agriculture to earn a living are discouraged for reasons of patriarchy as well as traditional norms calling it social stigma. Only women from low-income families across castes and communities work in agriculture and secondary occupations.

Economic empowerment of women in developed countries has increased their control over decisions and their bargaining power within the household. It is also likely that it brings about positive outcomes such as reduced domestic violence. But this may not be guaranteed.

Gender inequality is common in almost all countries in the sectors of health, income, asset ownership, labour market participation and household decision making (The World Bank 2012). In fact, the completed Millennium Development Goals (in 2015) had given prime importance to promotion of gender equality and empowerment. Including India, several developing countries drew up programs and policies and implemented them in order to increase women's access to "rights, resources and voice" as the World Bank called it (2001). One of the ideas behind granting direct benefits to women has been increasing women's control over household decision making over economic resources towards children's well-being. Many studies have also come out with findings that with their new found economic power mothers try to direct their property or resources to improve their children's education and health (Duflo and Udry 2004), that too of their daughters. Some studies have gone further to prove that mothers' empowerment would reduce incidence of child mortality (Alfridi 2010).

The reform to increase women's access to property has increased their empowerment and subsequent impact on their children's development. The Hindu Succession Act 1956 was amended in 2005 and the Hindu Succession (Amendment) Act was passed allowing women to claim equal share in ancestral property. Undoubtedly this was a significant move towards gender equality. It was possible by using this legal enactment to alter the bias against women in India as noted by famous feminist economist Bina Agarwal (1994).

However, studies have shown that even with this law in action, families with strong traditions have not given their daughters equal share in agricultural landed properties of the family. Education to daughters and Dowry to the husband during their marriage are considered to be the major ways of the family compensating daughters. This is proved by the study of Roy (2015) who has stated that girls were aged 10 years when the Act was passed and were given more years of education after that. She also found an increase in the payment of dowry after the Act was brought into existence. In her study area she found education of daughters also to have increased after the law was passed. But such actions by families as reported in studies are also a proof that the bias between sons and daughters has not been erased due to the law.

Another impact of the amended law is the likelihood of improvement in women's bargaining power on the one hand, and their labour force participation.

The negative impact is more grave. Female mortality is supposed to have increased post-law, due to the feeling that girls are costly now than before. They take away parental property to husband's house (Rosenblum 2015). Anderson and Genicot (2014) have observed that the amended law has instigated more marital discard and conflict, often resulting in suicides. Domestic violence has been the cause of higher domestic violence and court cases regarding claim to property.

When women are given inheritance rights towards family property, it may affect her marriage prospects in the sense of they becoming constraints. Choice of choosing a husband for her may influence more of consanguineal marriages where cousins may be selected, so that family property remains within the lineage. A study conducted in 2005, such women will be forced to marry their paternal cousins and not likely to themselves work on farm lands.

Sample for the Study

Our sample consisted of a total of 150 persons drawn from 4 wards in the urban fringe area of Mysuru city. Of them 50 were women who had sought legal help and filed a case against parents to obtain share in the paternal property, in accordance with the Act. The remaining 100 respondents were equally divided into 50 males and 50 women whose opinion about the inheritance Act's amendment was sought. For the purpose of this paper we have considered the data obtained from the first group, i.e., the 50 married women who had sought legal help to claim their share in father's property.

Findings of the Study and Critical Analysis

a) Demographic profile of respondents

A brief demographic profile of the 50 women respondents is discussed as under: a majority of them were aged 50 and above years (46%) and those who were around 25 years of age formed 20 per cent of the sample (Refer to the table below).

Table-4.1 Age

Sl. No.	Age	Number	Percentage
1	20-25	02	04.00
2	26-35	10	20.00
3	36-50	5	30.00
4	51 above	23	46.00
		50	100.00

Source: Field Data

In their caste composition, 44 per cent hailed from the dominant Vokkaliga caste and 38 per cent were from SC category (see Table 4.2)

Table-4.2 Caste

Sl. No.	Caste	Numbers	Percentage
1	Brahmin	00	00.00
2	Dominant Castes (Vokkaliga/ Lingayitha)	22	44.00
3	Scheduled Castes and Scheduled Tribes	19	38.00
4	Other Backward Classes	03	06.00
5	Not applicable	00	00.00
6	Don't Want to say	00	00.00
7	No Response	06	12.00
	Total	50	100.00

Source: Field Data

In their educational attainments, as cold be seen in the table 4.3, it is shocking to see even now a large number of illiterates among women that too living in an urban area – Mysuru city, our universe of study. 44 per cent were illiterate out of the total sample of married women interviewed for the study. Graduates were a very small proportion (2%), and those studied up to PUC were 14 per cent of the sample. Similar proportions were matriculates (SSLC). The remaining was educated up to primary and secondary school (12% each).

Table-4.3 Educational Qualification

Sl. No.	Educational Qualification	Numbers	Percentage
1	Primary	00	12.00
2	Secondary	06	12.00
3	High School	07	14.00
4	College-PUC	07	14.00
5	College-Degree	01	02.00
6	Post-Graduation/Technical/Medical/Professional Course	01	02.00
7	Illiterates	22	44.00
	Total	50	100.00

Source: Field Data

The study purposefully covered only married women. Among them majority were ever married with husbands living (64%). Widows formed about 36% of the sample.

Table-4.4 Annual Income

Sl. No.	Annual Income	Numbers	Percentages
1	1000-10000 Rs.	03	06.00
2	10001-30000 Rs.	15	30.00
3	30001-50000 Rs.	08	16.00
4	50001-70000 Rs.	03	06.00
5	70001-90000 Rs.	05	10.00
6	90001-100000 Rs.	02	04.00
7	10001-200000 Rs.	09	18.00
8	200001-300000 Rs.	04	08.00
9	300001-400000 Rs.	01	02.00
	Total	50	100.00

Source: Field Data

The average annual income of the respondents was ranging from Rs. 30,000 to Rs.3 lakhs (Refer to table below). Those whose family's annual average income was between 1 to 2 lakhs formed the largest group (18%). Earning Rs. 50,000 annually by the family was the next highest income with 16 per cent. Rs. 30000 being the annual income of most families of respondents (30%), it shows that they were from relatively poor background. Most of them had own property (64%) and own house (86%).

b) Legal Awareness

Coming to awareness about the legal provision about share to daughters in father's property, a large majority were aware (86%). About 24 per cent of parents objected to the law conferring their daughters this right in their parental property.

As far as awareness about the law is concerned, it is interesting to find that about 86 per cent of our respondents were aware of their right to their parents' ancestral property as daughters. The source of awareness in the majority of cases was from neighbours surprisingly. The next high source of awareness was from relatives (60%) and newspapers and media (50%). About 34 per cent and 22 per cent of respondents attributed their source of awareness about the law to be friends and lawyers respectively.

For a majority of women in our sample (and even in men's view) the amendment Act 2005 aimed at empowering women economically, even after marriage. About 66 per cent of them were aware of *StreeDhana*.

c) Motivation to Claim Share in Parental Property

It is shocking to learn that the compulsion to claim their rightful share in father's property, had led 68 per cent of our respondent women to suffer domestic violence at the hands of their husband and parents in law, who were constantly pestering them to obtain their share from their father/brother. It was their neighbours who had encouraged them most (48%) to seek legal aid to file a case and seek their share. The next in

importance to motivate or force them were the relatives (40%) and the lawyers (20%). The role of friends and newspaper was 16 per cent each. It is surprising that the husband and his parents had a limited role in influencing them (10%) and (2%) respectively.

d) Impact of the Law

First of all, we should note that more than 90 per cent of respondents (married daughters) who had claimed their share in parental property had not been given any justice even after a decade. But there were a number of unintended consequences. Conflicts with father and brother were experienced by 22 per cent of them. 46 per cent mentioned about their two families (husband and fathers) involved in hatred and conflicts due to this. But the maximum numbers of them reported the relations between the families breaking up (68%).

A very interesting finding is relating to the cost of this whole process of empowerment by utilizing the law to become equal partners in parental assets, like one's brothers by the women respondents. It relates to the expensive nature of approaching lawyers to make a claim to father's property as legal heirs by daughters also like sons. While 66 per cent have expressed this, wastage of both money and their valuable time on running around to the lawyer was expressed by 86 per cent of the respondents.

There were other forms of fall outs such as husband and wife rifts in 10 per cent of cases and notably, widows among our sample suffering more challenges and difficulties even to seek the legal support to make a claim to their father's property as per the Amendment Act 2005.

The sad part was that besides not achieving any success by 90 per cent of the respondents who had mentioned that they had sought legal support to claim their share, 26 per cent completely lost their relationship with parents, brothers and others in the natal home. For half of the total number of respondents relationships between them and parental home had become 'so so'. Another 32 per cent have experienced conflicts between the two families.

The male point of view is that the same men/husbands who had pressurized their wives to claim their share as daughters have not supported the view that they have to part their share in their father's property to their own married sisters. 52 per cent of males interviewed for the study have not agreed to this. Whenever their own sisters came to ask, they have sent them back by saying that already a lot of money has been spent on their weddings and gifts in gold, silver, and silk, besides cash money as dowry with or without a house site too. Why again? They have questioned, without realizing that they have expected their wives to fetch their share as daughters despite their father-in-law spending similarly dowry and wedding expenses for them.

e) Perceptions of Women Regarding Property and Inheritance

The study gathered information from the respondents managing their roles not only as daughters-in-law but also as daughter, wife, and sister. One major outcome of our study is that women are still very traditional in their outlook and consider or think that they do not have equal rights in their father's property like their brothers. 90 per cent of respondents felt that their natal family had given dowry in the form of cash, gold ornaments, silverware and site or house during the time of their marriage. Besides, on several occasions like children's birth, naming ceremonies and birthdays and during festivals like Gowri festival Deepavali festival they also received valuable gifts like silk sarees, silver lamps, and some money from father's house. If father was dead, the tradition had been continued by elder or younger brother/s. all these were considered by them as fulfilment of social obligations almost equivalent to share in land or other property. Moreover, they felt that in the case of their father having several daughters (respondents' sisters) he had to end up giving to all daughters in an equal manner. This also was considered as burdensome on him by our respondents.

Another major objection to demanding their share from paternal property for married daughters was found to be tricky. The respondents stated that the property in the form of agricultural land in majority cases and other ancestral property is supposed to remain with in her father's family line. This is because and as per the dictates of patrilineal residence, her husband remains to stay after his marriage to her, in his father's house and village. Thus, the daughter after marriage becomes the part of another family. "Daughters get dowry and sons, father's land" they said. There is wide acceptance and prevalence that sons are entitled to inherit ancestral property. Equally well established is the fact that married daughters' inheritance rights over it. Receiving dowry and shifting residence to husband's house after her marriage are the determinants on which basis the argument goes that her rights are now with her husband's property from his father.

The third important revelation from our study is also equally interesting. The respondents have argued that it is their brother/s who take care of their parents in their (parents') old age, sickness, disability, widowhood etc. It is unfair to take away a share but with no liabilities (of having to take care of parents in their old age, sickness etc). Thus, it appears that a daughter's shift in residence to her husband's home determines many things including her claim over father's property as a share in it, denying that much of property to her brother/s.

Many of the respondents have argued that while they are being tortured by mother-in-law to get a share in their father's property, the same is not implemented by them (parents-in-law) by asking/demanding their daughters to claim similar share in their (parents-in-law's) property. They (respondents) felt angry at the in laws saying that they are protecting their daughters and their property from going to another house (their daughters' husbands' houses) while they expect daughters-in-law to transfer their father's wealth to the husband's house. This is very much wrong they argued.

Thus, inheritance rights of married daughter in terms of share in father's property depended upon many contexts and conditions. Some women in our study have argued that a daughter in law can claim a share in parents' property only if she is not treated well in her husband's home. In the event of domestic violence, dowry harassment for more dowry in the form of automobile, site, job for husband, money etc., the daughter can request for some help from father or brother, which can be in the form of share in paternal property.

There are respondents in our sample, who have no brothers. Thus, if there is any financial crisis in father's house, or when parents – both or one of them – is dead or severely sick, they think that there is nothing wrong in asking for father's property. They consider their husband (the son in law to their parents) to be treated like their son by parents and allow him to take care of them in old age and/or whenever some help is needed.

A further outcome of the study is the mind set of daughters that by property is meant agricultural land and not the dwelling house of parents. More than saying so, we should interpret as the feeling among the in-laws. Land anyway and any time has a much higher value than the built and lived-house that too in rural areas. we have not come across responses pointing to the division of the dwelling house of parents nor the intention to reside in it, leaving husband's home.

A clash seems to be existing regarding how the respondents perceived their rights over paternal property vis-à-vis their rights over husband's property. They are well aware that there is no law allowing them to have rights over husband's property when he is still alive. What seems to be widespread is the strong and traditional belief in which Hindu women are socialized. It relates to the widespread notion that for a woman her husband's home is the ultimate home and she has a lot of ownership like command over whatever assets are there. She may not or is not permitted to use them, sell, or change them on her own in both situations of husband being alive or dead; because her son is expected to be the legal heir and authority to do all that. That is the reason we have 'son preference' and female foeticide cases, despite abolition of sex detection tests during pregnancy.

Coming to that matter, the respondents have expressed that there is more recognition and legitimacy to widow's rights in husband's property as compared to daughter's inheritance rights over her father's property. But as stated in the above paragraph, a widow is a guard to the property of husband (in whatever capacity that she can do so) only till her son grows up. She cannot easily transfer agricultural land transferred to her name. she remains a custodian only till he grows up to a mature age to himself take care of land and other assets. They felt that as a widow a woman may get access to owning husband's house, but that will be a temporary arrangement. Several factors determine their access to even husband's property: their age or at what age they were widowed, birth of her sons as future heir, her relationships with parents-in-law, any remarriage after losing husband, and if she has changed her residence with or without children to her father's house after husband's death, etc.

Thus, women in our study held a variety of perceptions regarding their property rights over father's assets like land etc. When we speak of gender empowerment, their opinions as we found them were themselves were highly discriminatory and biased. There is still a long way to see the Amendment of Hindu Succession Act 2005 to completely materialize and give fruits to women's economic improvement. The degree of women's inheritance rights among themselves and the public in general is still limited. The existing social practices seem to be the major obstacle in the successful implementation of the Act.

Conclusions:

The paper calls for key interventions in the governance system (Panchayat Raj and NagarPalikas), review of revenue codes, training of the staff responsible for implementation and vigilant state administration – combined effort of all concerned line departments like women and child development, rural development and Panchayati Raj, agriculture, etc., - to ensure full implementation and empowerment of women.

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