

THE CRITICAL STUDY OF LEGAL REGIME GOVERNING PROPERTY RIGHTS OF WOMEN – A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

In the history of humanity woman has been as important a factor as man, yet she was always looked down as an inferior creature. It is harsh reality that women have been ill- treated in every society for ages. The developments of a nation solely depend on the social status of women and women constitute almost one half of the globe's population. However, women have been the victims of exploitations by male dominated society and continue to be exploited. But now it is required that women need to be empowered and men need to be oriented about their obligations towards women. Women are entitled to enjoy the same human rights and fundamental freedoms as other individuals. International human rights treaties require state parties to take proactive steps to ensure that women's human rights are respected by law and to eliminate discrimination and practices that negatively affect women's rights. The significance of gender equality in property is accepted not only from human rights point of view but it also important for every human development because now a day's world move to 'socialize' and to achieve it the gender equality is necessary. It also includes women's rights in access and control the property. Women's property right is an important for her overall living conditions. The object of international human rights laws is to give a basic skeleton to each human being by the State which helps to achieve the object of it. The role of International Human right laws is to bring social reform for property rights of women and empower women which vary from country to country. Thus, women deprived her property rights due to gender inequalities in custom, religion and so on. The international human rights laws are important

tools by which women empower themselves. International law as well as Domestic law used to protect rights and responsibility of citizens including women. The article examines the international Resolutions, treaties and Covenant that relate to women's property rights. This article examines how the 'women's property right' concern to other important international instruments with women's human rights; in particular, the issue of equality in property.

Keywords: Women, Property rights, Human rights, Gender Equality

INTERNATIONAL HUMAN RIGHT LAWS AND WOMEN'S PROPERTY RIGHTS: AN OVERVIEW

The utilization and possession of Human Rights by each Individual is necessary for full development as human being. Human Rights help to develop individual basic needs and important rights.ⁱ The recognition of Rights and basic freedoms is necessary to achieve international co-operations is specifically expressed in United Nations charter. The preamble of U.N. expressed those basic rights are important for the dignity and equality.ⁱⁱ There is linkage between ownership, access of property and development and poverty. Hence property right became a central social justice and human right issue. A traditional approach of access and ownership rights of women is ignored hence property rights are claim as fundamental human right of women. Property rights are human rights which not only represent her financial benefits as well as a base of her identity and tradition. Property rights of women not found in human rights treaties directly but indirectly it is connected with various rights without that it will not be complete. Property right is important because it is source of wealth, culture, and social life. It is also affected overall economic and social base. The access and management of property will determine by law of state. Various documents on human right to property hold property law and property reform in state. Human right perspective is a necessary factor to recognized cultural and economic value of property.ⁱⁱⁱ

INTERNATIONAL INSTRUMENTS AND WOMEN

A woman is victim of brutality and delinquency in the society hence protection is necessary. In every country due to traditional system women have been victimized in the name of religion, pretext of writing, scriptures and by social sanction. Therefore, there is a need to protect and enforce each right of women through various mechanisms.^{iv}

The “International legal framework” for preservation of women’s property deals with various provisions in treaties, conventions, and covenant directly and indirectly. Women’s property is also one of them which are recognized by “International Human Right Law” by the various points of view such as equality, dignity, health, poverty etc. In “Beijing Platform for Action”, Countries committed to “undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology”. Again, “United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey”, and its “Istanbul Declaration and Habitat Agenda” gives a plan of action on rights in 1996. It includes the women’s right in regard to property. In that States gives a legal protection and same access to land property to all irrespective of sex.^v

UNIVERSAL DECLARATION OF HUMAN RIGHTS

It is the first international recognized document which deals with “human rights and fundamental freedom” of every individual. Eleanor Roosevelt described it as, “the declaration stands out as the international Magna Carta for mankind everywhere”. General Assembly in 1966 adopted two important instruments ICESCR and ICCPR which provided for the implementation of the UDHR. The UDHR deals with core principles of individual rights which involve universal values, such as independence, equity and non-discrimination. The concept of rights which is enumerated in UDHR is for shielding of the human being from oppression. The nature of these rights is independently inalienable and in voidable and universal. The UDHR by its resolution proclaimed that “Human Rights” are a common Code for all persons and nations. UDHR was only a Declaration and not a treaty. Hence, state had to take certain steps to commit themselves to human rights protection. UDHR not deals with any enforcement

machineries. The framers of Declaration divided it into three parts namely, “a set of general principles”, “the codification of those principles into law” and “a practical means of implementation”. UDHR set out human rights and every state has an obligation to promote it, but it is not binding. It is important document as it specifies with great precision and obligation of member state.^{vi}

There is gross human right violation of women in various aspects such as domestic violence, forced marriage, unequal treatment, and oppression. Traditional system of property ownership and inheritance fail to provide her basic income and dignity of life. The Declaration accepted the nation’s gender equality. The basis of it is the human right violation on part of women, all over the world. Thus, all human being with women have to enjoy various rights freely without any torture or cruelty.

APPLICATION OF UDHR IN INDIA

Our country accepted and signed UDHR. A various provision of UDHR is guaranteed by our constitution. The preamble of UDHR ensures the “social economic justice, liberty of thought and expression, belief, of faith and worship, equality of status and opportunity to all”. Several fundamental rights in Constitution enumerated the various provision of UDHR. The Indian Constitution is similar to the UDHR and it has incorporated certain “civil and political rights” as Fundamental, “economic, social and cultural rights” as Directive Principles of State Policy. The Fundamental Rights of Indian Constitution gives negative obligations on the State and the DPSP cast affirmative obligations. Our Constitution gives recognition to certain international human rights standard such as right to from a family, right against inhuman and degrading treatment. Consequently, poverty, torture, disappearance of persons, fake encounters, right to privacy, right to compensation, right to fair trial, right to dignity, right to livelihood, right to decent environment under Article-21. Again in “The Protection of Human Rights Act, 1993” is a special legislation in India which is made with an object to give protection and enforcement of Human Rights.

In *Keshavananda Bharti v State of Kerala* ^{vii}apex Court observed that, “UDHR may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the constitution was adopted”.

There is gross human right violation of women in various aspects such as domestic violence, forced marriage, unequal treatment, and oppression. Traditional system of property ownership and inheritance fail to provide her basic income and dignity of life. Each part and country of the world suffers with the problem of infringement of rights of women directly or indirectly it includes various problems such as inheritance, cruelty, poverty, inheritance and so on. Due to the traditional system of inheritance and ownership, women always deprived the economic power in family and hence, she suffers various problems including property, maintenance and child custody.

Preamble:

The preamble of UDHR deals with following provisions for women’s rights. First Para read us under: The first Para of UDHR preamble give recognition of the “inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.⁵¹ Women are one of the members of human family hence she has to right of dignity and equality rights; in all rights property right is also included. This Para also deal with the justice hence it is also important to give equal property right to women to secure justice for her.

Fifth Para read as under:

The fifth Para of UDHR preamble deals with “the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom”. This Para deals with equal rights of all for promoting the progress of nation and standard of life. Property right is also one of the important rights for women for her improvement for dignity of life hence it can be given equally to women with men. Article 1 read as under: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. This Article specifically deals with “equal rights of all human beings”. It proclaims the inherent freedom and equity in dignity in life. Hence every woman is having equal property right to achieve the dignity in life.

Article 2 read as under:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Article 2 deals with no discrimination for rights which are ensure by UDHR on the various ground as mention above. However, woman also not deprived from equal property rights due to the gender basis. Thus, it accepted the equality in all rights including the property without any variation women is eligible to enjoy it. This provision of UDHR is the foundation which compels the state party to provide equality in all rights. ^{viii}

Article 7 read as under:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”. This Article gives obligation to every state party to make the equal laws for all human being and equal protection of laws. Therefore, property laws in every state should be equal and not discriminating.

Article 16 read as under:

“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution”.

According to this Article, every state party must ensure equal rights for both spouses, which also include property right which may be ancestral property or self acquired property. On the dissolution of marriage property should be divided equally with men and women. Again, women should be entitled to interest in the property of deceased husband. Similarly, husband and wife would be equally entitled to take all decision relating to property.

Article 17 read as under:

- “1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property”.

Article 17 (1) and (2) provides property rights for all human being without discrimination of sex. Hence every woman has a equal property right with men without any discrimination and country have to take the measures to protect it.

Article 25 read as under:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”. It is deals with the sufficient standard of living. In that housing right is also included when women get the property right. She can claim the housing right otherwise she would be deprived it. Article 1, 2 and 7 deals with the general idea about the certain rights. But this right cannot be full fill by protecting something, “property” is one of them. Thus, for protecting dignity, equality there must be equality in the property. While Articles 17, 25 and 16 directly relating to property and it should be protected for women security. However, it doesn’t have the binding nature on the state party. Thus, it cannot be strictly followed by the state party.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

“This ‘women’s Bill of Rights ‘stands as a milestone. It reflects the principle of universal and indivisible rights shared by all nations, Foreign to no culture and common to both genders”. The United Nations “convention on the elimination of all forms of discrimination against women” is one of the important documents which ensure the enforcement of the Rights of women on the basis of equality. Among the all-other human rights documents, it became necessary and important. It is considered as “international bill of women’s human rights”. CEDAW was accepted in 1981 and 99 signatories and 189 Member states. It deals with 30 articles which define what constitutes “discrimination against women”. The convention also regards with the equality on basis of gender.

The adoption of CEDAW is necessary to protect and enforce the various rights of women in the world. This convention was result of step started by the “United Nations commission on

the status of women” (CSW). This document gives a one uniform code for equal right to the women. This convention is not operative as a treaty but operative as a moral force. Again, it is not created a binding obligation. It defines rights of women such as civil, political, social and economic. It deals with two kinds of provision, firstly, no discrimination on ground of sex and marital status. Secondly, obligation on part of state parties for women equality.^{ix}

It set out the principles which are legally bound, internationally accepted which is operative to all women. The fundamental principle of it is no prejudice on part of women. The foundation of Convention is “equality and equal protection of law to women”. It also gives certain measures for equality and marital status. According to this Convention state Parties are under the obligation to eliminate bias on part of women with various measures such as legal, policy, and programmatic. This obligation to state applies to all matters including family matter and personal laws.

APPLICATION OF CEDAW IN INDIA

Our country signed the “Convention on Elimination of All forms of Discrimination” on July 30, 1980 and ratified on July 9 1993.^xIn case of Vishakha v/s State of Rajasthan^{xi} highest Court of India consider the subject of equality on basis of it. It was held that “sexual harassment was not a fiction and the gender-based violence is, discrimination and it violates a women basic human right”.

The India made the following Declaration and Reservation while confirming the Ratification Declarations:

- i. “With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent”.
- ii. “With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of

marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy”.^{xii}

RESERVATION

“With regard to article 29 of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article”. The UN Committee on the Elimination of Discrimination against Women declared that the reservations to articles 5(a) deals with same rights to change the social and legal frame work based on sex. Article 16(2) consist with state should remove the discrimination in marriage and family relation. By studying and analyzing the Declaration and reservation made by the India regarding CEDAW, it is found that India itself limits its sphere not to interfere with individual religion, customs and practices, whether it’s equal or unequal. Hence, it is not possible to apply the provision of Article 5 and Article 16 in India even though India ratified the convention. But according to change in social circumstances and for development of women it is necessary to make the require changes for giving her equal right to property. The important provisions and elements of convention regard to women’s property are summarized below, Part I of Convention from Article 1 to 6 deals with provision according to which states parties have to initiate all measures for the benefit of women. It may be in form of constitutional, legislative, administrative or other steps and measure.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

“International Covenant on Economic, Social and cultural Right” was accepted for opened for signature and ratification on December 1966, entry into force on 3 January 1976, in accordance with article 27. Economic, social as well cultural rights guaranteed by ICESCR and also by various Universal and regional treaty. Women are deprived to social and economic rights due to community and family structure. Unequal laws of state prevent women from “owning, inheriting, occupying or accessing land or other forms of property”. Even women will not entitle to obtain credit or loans without a male guarantor. ESCR are an essential and important

part of International Human Right Law UDHR also recognized it. ESCR are an important and necessary part of International Human Right Law. While comparing ESCR with CPR it always found that ESCR received less attention than CPR. But ESCR and CPR are independent and indivisible, without exercising ESCR individual cannot enjoy CPR.^{xiii}

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

“The rights of every man are diminished when the rights of one man are threatened.” The United Nation prepared two important documents for protection of Human Right in 1966 i.e. “International covenant on civil and political right” and “International covenant on economic social and cultural rights”. ICCPR contain all civil as well as political rights of the individual. These rights are not new one but developed from, “Magna Carta 1215”, “Bill of Rights of America” and “French Declaration of the rights of man and of the citizen”. The object of ICCPR is to give civil and political rights for protection to all people in the globe. It was adopted on December 1966 and came into force on March 1976. It recognizes the people’s dignity to enjoy their civil and political rights. ICCPR is the important document which ensures the equality of civil and political right to men and women. Under the civil rights “property” is one of the right and which is necessary for human dignity and development. Thus, each woman has dignity in equal property right to enjoy it. The covenant is divided into six major part and 53 Articles. Part I recognizes the “right of all people to self determination”. Part II obligates state party’s makes laws to protect right enumerated by covenant. Part III described as the heart of the covenant, it deals with substantive right and the fundamental freedoms guaranteed by the covenant. Part IV deals with the provision of establishment and operation of Human Right Committee. Part V gives rights relating to utilization of natural wealth and resources freely. Part VI deals with provision regarding ratification.^{xiv}

OTHER INTERNATIONAL DOCUMENT RELATING TO WOMEN’S PROPERTY

There are various other international documents which talk about the women property rights as follows,

International Instrument: Besides the above-mentioned documents there are various relevant and regional International Instrument deals with the women right to property directly and indirectly as discuss follows,

Convention on the Rights of the Child (CRC) 1989:

Under this state parties have to take all measures for protection children's rights irrespective of gender. Thus, under this country has to take certain measures for it and send the report accordingly. The “Article 1”, “Article 16(1)”, “Article 23”, “Article 27”, “Article 29”, “Article 31” of Convention deals with rights of child including girl child indirectly connected to property right.^{xv}

Convention concerning Indigenous and Tribal Peoples in Independent Countries 1991:

Under this state parties have to take all measures for protection “indigenous and Tribal people’s rights” as laid down in this Convention. The “Article 3”, “Article 4”, “Article 7”, “Article 8(2)”, “Article 14”, “Article 16” and “Article 17” of Convention deals with rights which also include the tribal peoples including land rights of women.

Regional Instruments:

The African Charter on Human & People's Rights (ACHPR) 1981: Under this the participating country has to initiate all steps for securing of rights of every individual with woman rights as laid down in this Convention. The “Article 1”, “Article 2”, “Article 3”, “Article 18”, “Article 28” and “Article 29(5)” of Convention deals with property rights.^{xvi}

It deals with under Article 14 and Article 8(1) regarding to right to home. Article 1 of first protocol is talk about the “peaceful enjoyment of property”.

The European Social Charter 1961:

Under this state parties have to take all measures for security of individual rights as stated in this Charter. The Article15 (3), Article 16, Article 19-4(c), Article 30(a) and article 31. Charter deals with various provisions related to property such as equality, nondiscrimination, housing right, family rights of women.

The European Union Charter of Fundamental Rights 2000:

The Article 17, Article 23, Article 25, Article 26 and article 34(3) of Charter deals with various provisions related to property such as equality, nondiscrimination, housing right, family rights of women.^{xvii}

CONCLUSION

Property rights are essential to women's equality and well-being. Women's rights in, access to and control over land, housing and property are a determining factor in their living conditions especially in rural economies, essential to women and their children's daily survival, economic security and physical safety. Despite the importance of these rights for women and female-headed households, women still disproportionately lack security of tenure. This is often because property is registered in a man's name; the father, husband or brother. In the event of separation, divorce or widowhood, the man or his family often retains rights to the property or the land whereas the woman becomes homeless or will have to share the property with her in-laws without gaining control or rights over it.

Discriminatory legislation on and lack of control over property, land and housing also mean that women are excluded from community decision making processes that are led by men who normally are the landowners. In rural communities, ownership of land determines both social status and the way in which control is exercised over a household's resources and income. Women's disadvantaged economic position in this regard creates a structural dependence on men for access to resources, which in turn can subject women to insecurity and violence.

ENDNOTES

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- ⁱⁱ R.C. Hingorani, “International Law through United Nations” pg.no. 76, Tripathi pvt. Ltd., 1973
- ⁱⁱⁱ Available at, http://roar.uel.ac.uk/3548/1/2014_Gilbert_Land-rights.pdf
- ^{iv} Dr.S.K. Awasthi and R.P. Kataria, “Law Relating to Protection of Human Right”, pg.no164, Millennium edition Orient Publishing co.
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- ^{viii} Available at, http://shodhganga.inflibnet.ac.in/bitstream/10603/34296/11/11_chapter%20iv.pdf
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- ^x Available at, <http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>
- ^{xi} (1997) 6 SCC 214
- ^{xii} http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV8&chapter=4&lang=en
- ^{xiii} Available at, <http://www.legalserviceindia.com/articles/escrights.htm>
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