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JUDICIAL ACTIVISM AND RIGHT TO PROPERTY OF WOMEN IN INDIA: AN ANALYSIS OF RECENT JUDGEMENTS

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ABSTRACT

In the history of human civilization, discrimination in rights on the basis of gender is against the principle of constitutional equality. Yet, despite clear rules and laws, discrimination against women is a harsh reality of our society. You can also consider lack of awareness about rights as a major reason for this. If you are aware of your rights, you can eliminate all kinds of discrimination. Finally, Indian courts have given clear historical decisions regarding what rights a woman has in her in-laws' property apart from her ancestral house. Needless to say, all these decisions have proved to be milestones in defining the rights of daughters-in-law. Although women have equal rights as men in their father's property, most women are less aware of how much right they have in their husband's property. Therefore, it is important to mention here that even after the death of the husband or divorce, women get many property-related rights, which come in handy to them in difficult times.

Keywords: *Property, Women, Rights, Judiciary, Judgement.*

1. Introduction

According to law, the husband's mother and children as well as his wife have a right on the property earned by the husband. In other words, the wife does not have a right on the husband's ancestral property after his death. Yes, if a woman gets divorced from her husband, she can ask for maintenance from her husband. The special thing is that women have been given equal rights as men on their ancestral property i.e. father's property. However, most women in the country do not take their share in their father's property. At the same time, how much right do women have on their husband's and in-law's property? It is generally believed that the wife has full right on the husband's property, while this is not completely true. Even though women leave their parents' house after marriage and start living in their husband's house. In such a situation, it becomes their house as well, but this does not give them rights on the husband's property, which can be considered a legal irony. Most people believe that the wife has full rights on the husband's property, but this is not completely true. Because apart from the wife, other members of the family also have rights on this property. Yes, if any property is earned by the husband, then along with the wife, the mother and children also have a right on it. However, if a person has made a will, then after his death, only his nominee gets his property. That nominee can also be his wife. On the other hand, if a person dies without a will, then his property is equally divided among the wife, mother, children etc. If a woman's husband dies, she does not have a direct right over her husband's ancestral property. However, after the death of the husband, the woman cannot be thrown out of her in-laws' house. While the in-laws have to pay alimony or maintenance to the woman. The amount of alimony/maintenance is decided by the court on the basis of the financial condition of the in-laws. At the same time, if the woman

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has children, then they get the entire property of their father. Apart from this, if the widowed woman gets married again, then the maintenance she gets will stop.

1.1 Even after divorce, a woman has the right to get property

If a woman gets divorced from her husband, she can ask for maintenance from her husband. However, this is also determined on the basis of the financial condition of both husband and wife. In divorce cases, apart from monthly maintenance, the option of one-time settlement is also available. If the children live with their mother after divorce, the husband will have to provide maintenance to them as well. In case of divorce, the wife has no right over her husband's property. However, the woman's children have full rights over their father's property. If the husband and wife have any property in which both of them are owners, then it will be divided equally.

1.2 Only they have rights over the daughter-in-law's stridhan

According to Hindu law, the daughter-in-law has the ownership of the Stridhan. In fact, whatever a woman receives during the rituals, festivals and ceremonies related to marriage, whether it is movable or immovable property or any other gift, the woman has the right over it. This means that gifts received during engagement, Godhbharai, Baraat, Muh Dikhai or birth of children will come under Stridhan. The woman has the ownership over it, even if that money is kept in the custody of the husband or in-laws. On the other hand, if a mother-in-law has Stridhan received from her daughter-in-law and she has died without any will, then the daughter-in-law has the legal right over that money, not the son or any other member of the family. In this way, the right of ownership of the woman over Stridhan is so permanent that no one can snatch it. Even if she gets separated from her husband, she will have the right over the Stridhan. At the same time, if a married woman is deprived of her Stridhan, it would amount to domestic violence for which the husband and in-laws would face criminal charges.

1.3 A married woman has the right to live with dignity and self-respect

According to Indian law, a married woman has the full right to live with dignity. She is entitled to the same lifestyle as her husband. Here the right to live with dignity means that she should be free from mental or physical torture. If this is not happening then it will also come under the purview of domestic violence.

The house that a woman shares with her husband is called her in-laws' house. Whether this house is rented, officially provided, owned by the husband or relatives, it is her in-laws' house or matrimonial home. Under the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife has the right to live in her matrimonial home, even if she does not own it. It may be an ancestral house, a joint family house, self-acquired or a rented house. However, if the in-laws own the property, then the married woman cannot live in it without their consent, as this property cannot be taken as shared property.

It is clear from this that a woman has the right to live in her matrimonial home, but this right is only as long as her marital relationship with her husband continues. However, even after separation from her husband, the wife is entitled to maintenance to live according to his lifestyle. This also applies to children born from the husband. Despite the sourness in the marital relationship, the husband cannot free himself from the responsibilities of his wife and children's accommodation, food, clothing, education, treatment, etc. He has to provide maintenance for this.

2. Objectives

a) To achieve women empowerment by strongly advocating implementation of property rights to women in India.
b) To study the judicial approach towards branch of law.
c)To make awareness among common people towards property rights of women

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3.Hypothesis

a) Like other Human rights issues, women property rights are linked to discriminatory inheritance practices, agriculture, gender control over economic resource, right to work and domestic violence or violence against women.

b) There has been an active role of judiciary when it comes to protecting the property rights of women in India.

4.1 Recent Judicial Activism and Right to Property of Women in India

First, in December 2006, a two-judge bench of the Supreme Court had given a decision on whether the daughter-in-law has the right to live in the shared house or not. In the Taruna Batra case, the bench of Justice S.B. Sinha and Markandey Katju had said that a wife has rights only on her husband's property, she cannot claim the right to live in the shared house. However, in October 2020, a three-judge Supreme Court bench led by Justice Ashok Bhushan overturned the 2006 decision. The court clarified in its decision that a woman who is a victim of domestic violence has the legal right to live in the shared house of her in-laws.

Second, in May 2022, the Supreme Court expanded the scope of 'shared household'. In the same year, the Supreme Court gave a historic verdict on the right of a woman to live in a shared household while interpreting it. In the verdict, the apex court gave a broad interpretation of the 'right to live in a shared household', which will prove to be a precedent in cases related to it. In its verdict, the Supreme Court clearly explained what will come under the 'shared household' under the Domestic Act. The court said in its verdict that a woman has the right to live in a shared house. Whatever religion the woman belongs to, whether she is a mother, daughter, sister, wife, mother-in-law, daughter-in-law or belongs to any category falling under domestic relationship, she has the right to live in a shared house. She cannot be thrown out of that house.

The Supreme Court bench of Justice M.R. Shah and Justice B.V. Nagarathna clarified in its decision that even if a woman decides to live with her husband at another place after marriage for studies, employment, job or any other valid reason, she will still have the right to live in the shared house. In this way, if a woman is living with her husband in another city, she not only has the full right to live in her husband's house, but also has the right to live in a shared house in another city or place. Section 17 (1) of the Domestic Violence Act gives her this right.

Giving an example in its decision, the Supreme Court said, 'A woman may have to go abroad with her husband for job or employment after marriage. In such a situation, the woman will not get a chance to live in the shared house after marriage. If for some reason she has to return from abroad, then she will have the right to live in her husband's shared house. Even if that house is not owned by her husband or her husband. In such a situation, the in-laws cannot throw the woman out of the shared house.'

The Chhattisgarh High Court gave an important verdict in the case of maintenance of a Hindu widow in August 2022. In which it said that if a Hindu widow is unable to live on her income or other property, then she can claim maintenance from her father-in-law. The court clearly stated that if after the death of the husband, the father-in-law expels his daughter-in-law from the house or the woman lives separately, then she will be legally entitled to maintenance. Even if a Hindu widow marries a second time, she will have full rights over the property of her first husband. In this regard, the Karnataka High Court had ruled that the widow's remarriage does not end her right over the property of her deceased husband.

Under Section 15 of the Hindu Succession Act, when a widow dies without making a will, in such a situation, her heirs including son and daughter or children born from illegitimate relationships are also a sharer in her ancestral property. This decision was given by the Gujarat High Court in June 2022. Under Section 15 of the

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Hindu Succession Act, a Hindu widow can inherit land from her second husband. Also, her children born from the first marriage can also inherit the land of the second husband.

4.2When will the daughter-in-law's 'right to live in a shared house' not be applicable?

From time to time, the courts have also given clear exceptions to the 'right to live in a shared household' and ordered in which types of cases it will not be applicable.

First, the Hon'ble Supreme Court i.e. Supreme Court ordered in a case related to domestic violence in January 2022 that if elderly parents-in-law are harassed by their daughter-in-law, then they can vacate their house from her. In fact, under "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007", made for the maintenance and protection of elderly parents and senior citizens, an elderly person had complained against his daughter-in-law for harassing and torturing him. Also, the elderly person had demanded to throw his daughter-in-law out of his house.

Thereafter, the SDM gave a decision in favour of the elderly man and ordered the daughter-in-law to vacate the house within thirty days. Against which the daughter-in-law went to the High Court. However, she did not get any relief from the High Court either. After that she went to the Supreme Court, but she did not get any relief from there either. In this case, the Supreme Court has made it clear that the daughter-in-law will have to vacate her father-in-law's house.

A bench of Justice Indira Banerjee and Justice Abhay S. Oka gave its verdict on 24 January 2022 on the petition filed by the daughter-in-law against the decision of the Uttarakhand High Court. During the hearing in the Supreme Court, the father-in-law proposed that if she wanted, her daughter-in-law could live in another flat. The Supreme Court termed that proposal as better and ordered that the daughter-in-law would live in another flat with her daughter and would not interfere in the lives of her in-laws. Not only this, the daughter-in-law will not create any legal rights for any third party on the flat in which she will live.

Second, in March 2022, the Delhi High Court in one of its orders clearly stated that a woman who misbehaves with her elderly in-laws does not have the right to live in their house. If such a situation arises, the in-laws can ask their daughter-in-law to vacate the house. Because legally they also have the right to live peacefully. It is worth noting that in a case of domestic violence, the trial court had ordered that the woman cannot live in her matrimonial house. After which the woman challenged it in the High Court. However, the Delhi High Court also upheld the decision of the lower court and bluntly said that in this case the woman's in-laws are elderly, who have the right to live peacefully. Since the marital dispute between their son and daughter-in-law creates an atmosphere of discord in the house, which affects their peace, whereas their peace should not be taken away. However, while granting relief to the woman, the court also made the father-in-law fill an affidavit that as long as the woman's marriage with his son is valid, he will have to make some alternative arrangement for her to stay, which is appropriate.

5. Conclusion

In the modern era with changing times, it has been recognized that for the development of the nation women should also be given equal status and rights as males. Hence, the first major legislation recognizing women's rights to inheritance of property came into existence in the year 1956 named Hindu Succession Act, 1956, since then with the passage of time women's right of property inheritance is getting evolved and has come a long way, the most recent and significant rule for women right to property inheritance was introduced in the year 2005 when an amendment was done in Section 6 of Hindu Succession Act, 1956 and daughters were given equal right compared to the share of the sons in the fathers property, the provision set out the rule that daughter acquires right in

the fathers property by birth and continues to have an interest even when the father disposes of his own interest through a will.

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