

DISINHERITANCE OF DAUGHTERS IN PUNJAB: PAST AND PRESENT

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ABSTRACT

Punjab culturally exhibits the perfect case of gender inequality on numerous indices of Human Development. The state is notorious for one of the lowest Sex Ratio in the country, along with declining Female Work Participation Rate. The dismal state of affairs is attributed to culturally embedded patriarchal social norms that devalue girl child and women. Of all the legal rights, one pertaining to inheritance rights of daughters in the parental property has received maximum opposition given the male-dominated socio-political order. While disinheritance is the norm in Punjabi society, the Hindu Succession Act, 2005 enforcing it, falls flat on the surface itself. Writing off the shares to brothers is a well-followed tradition, forcing on women economic hardships later. In this light, the paper attempts to situate the disinheritance of daughters in a historical and cultural construct which accounts for the non-fulfillment of the legal right of inheritance. Tracing the antiquity of tradition helped in accounting the lack of social sanction for independent property rights of women in an economically agricultural state where land is the ultimate resource. Analysis reveals several reasons rendering the inheritance rights null and void and still resonates as the biggest obstacle for claiming a share in the property.

KEYWORDS: Sex Ratio, Female Work Participation Rate, Inheritance, Hindu Succession Act, 2005

INTRODUCTION

Of all the legal rights, the property rights of women in India developed entirely on a different course altogether. The issue of inheritance to the property for women has been defined along the contours of personal religious laws in India as well as complex ancient schools of inheritance. It is important to note that primarily women in India inherit any property in four capacities namely: a) as a daughter (unmarried or brother less married daughter) b) as a wife (from husband's property) c) as a widow (from husband's share in joint property and individual property) d) as a mother (from the son's property). To begin with, inheritance rights of women in above-mentioned capacities had a dominant bearing upon ancient and modern lawgivers equally. While the ancient lawgivers treated women as a consort of man, what all she was provided was partial self-dependence and subsistence. The modern law, on the other hand, committed to the ideals of equality, justice and inclusion wrestled with discriminatory statues of ancient law. Ancient Hindu law was based on three pillars namely caste, religion and sex. As such, in matters of succession, ancient Hindu laws favored men over women in terms of quantity and quality of assets, social sanction, and cultural legitimacy. Men were the rightful heirs of the ancestral fortune while women were only entitled to maintenance. This unequal characteristic of ancient Hindu doctrine was compounded by the adjective of the plurality of Indian tradition. Different religions in India defined the body and extent of women inheritance rights differently, under the garb of their respective personal laws. Further geographical variations and caste

regulations coalesced into these religious variants. Therefore, different religious groups and subgroups within them, along with locally practiced customs and usages present a complex matrix of property rights of women in India. Personal laws primarily legislate in the matters of marriage, divorce, adoption, and succession. As India is home to multiple religions, cultures, and sects, there is no single body of property rights of Indian women. These rights get determined depending on which religious school a woman follows, if she is married or unmarried, which part of the country she comes from, is she a tribal or not and so on. (Raghvan, 2013) These highly fragmented and branched property rights statutes of women are attributed to various canonical (*shastric*) Hindu laws prevalent in the form of various schools of succession. Prominent among them are *Mitakshara* and *Dayabhaga*. *Dayabhaga* ruled in Bengal in eastern India and adjoining areas while *Mayukhya* in Bombay, Konkan and Gujarat, and *Marumakkattayam* or *Nambudri* in Kerala in South.

On the other hand, *Mitakshara* operated in rest of India with slight variations in the form of sub-schools of *Benaras*, *Mithila*, *Madras* (Dravida), *Bombay* (Maharashtra) and *Punjab*. All the sub-schools regarded the authority of the *Mitakshara* as supreme but some differences between them particularly relating to adoption and inheritance made their emergence quite conspicuous. Every sub-school under the *Mitakshara* preferably acknowledged the authority of certain treatises and commentaries, written in a particular region¹. It is important to point out that the *Punjab* variant of *Mitakshara* law was chiefly governed by customs and usages.

Even though the plurality and complexity of several inheritance schools are well established, it is the issue of economic rights of women in India which is the epicenter of debate. The politico-judicial space in India time and again attempt to revisit the 'tradition' to deal with 'modern' issues concerning women, thereby adding fuel to the whole narrative of the existence of women since ages. Furthermore, the colonial encounter introduced substantial changes in the already existing complex and diverse body of succession laws. The non-state arbitration fora were transformed into a state-regulated and state-controlled adjudicative system (Agnes, 1999). Noticing, the colonist, foreign to the structures and processes of Indian society tried to make sense of their 'new subjects' and rule them accordingly. In doing so, they focused on pristine *Shastric* texts rather than "what was in actual' practiced. This was the famous "reinvention of Indian tradition" and "writing of Indian history" through foreign lens and hands. They applied their own respective notions of jurisprudence endeavored to comprehend the inextricably complex social system of India. This colonial engagement with Indian tradition took off along with the consolidation of East India company, with some of the officials working at the project. Their preferential research to locate authentic Indian tradition, resulted in "what ought to be practiced" rather than "what is practiced in real." There exists a definite difference between community practices and religious doctrines. The colonial episode in Indian legal history had profound effects that resonate until now. In this light, the paper attempts to situate the disinheritance of daughters in a historical and cultural construct which accounts for the non-fulfillment of the legal right of inheritance. Tracing the antiquity of tradition helped in accounting the lack of social sanction for independent property rights of women in an economically agricultural state where land is the ultimate resource. Analysis reveals several reasons rendering the inheritance rights null and void and still resonates as the biggest obstacle for claiming a share in the property.

¹Ghosh, Pragati, <http://www.shareyouressays.com/knowledge/essay-on-the-mitakshara-school-of-hindu-law/117867>

PAST: Punjab as an Exceptional Case

Distinctively, Punjab and for that matter, significant part of North India was governed by customs; of high antiquity and validity. A rule of human conduct by continual observance for some period of time with the common sanction of the people gets the status of custom. The birth and growth of the custom are the natural consequences of organized living of the people. They have been observed because they enjoyed the expressed and tacit sanction of the community (Diwan, 1990,). As has been observed by Mr. Roy in his Customs and Customary Law in British India "it is impossible to ascertain the precise beginning or to discover the rudimentary growth of an ancient and long-established custom. It is of such high antiquity that neither human memory nor historical research can retrace it. Indeed, on its antiquity and immemorial practice depends the goodness of a custom"². These customs have been the guiding principles of the conduct in agrarian communities for a fairly long time. The first official attempt to record custom was made when the regular settlement records were prepared by the government in 1845 and 1865. During the preparation of these records, Sir Charles Roe (1869) made an observation that in Punjab it was *jigra*, the tribal council who were the depositories of the customary law (Sethi, 2009). The Punjab custom is much anterior to Hindu law and Muslim law, and it is most remarkable that the Punjabis though adopted Hinduism or Islam as their religion yet declined to be governed in their secular matters by either Hindu law or Muslim law (Diwan,1990). In Punjab, the secular matters were never regulated by religious law- Hindu law or Muslim law but by tribal custom and occasionally, by the local custom. While recording these customs it was further observed that these customs varied from community to community and from one place to another and were specific to tribe, sect and even family (Sethi, 2009). It is interesting to note that the term 'customary law' has come into vogue and is used to refer to a body of rules of human conduct which govern Punjab tribes and it is as much binding and enforceable as rules of law.

Hindu law or Muslim law might have affected the Punjab customary law marginally, here or there, but the Punjab customary law throughout remained a secular law (Diwan,1990). The Punjab Laws Act, 1872 laid down that 'all questions regarding succession, female's special property, betrothal, dower, adoption, guardianship, minority, custody, family relations, wills, legacies, gifts, partition, religious institutions and allusion and dilution are to be settled according to the custom prevailing in the first instance and where no custom exists, the personal laws of the parties must be applied'. Thus, in Punjab, the political purpose of the state was served by a commitment to upholding custom (Jassal, 1998). It is difficult to find any trace of Brahmanism in the agricultural customs of Punjab. In particular, there is absolutely no indication that the title of one person to succeed to another in the possession of the property is based on the capacity of the former for benefiting the latter by the offering of funeral oblations. This fact differentiates Punjab sharply from Bengal (Prenter,1924). Brahmins who enjoyed distinct social and ritual hierarchy in south India possessed neither any political authority nor wealth nor learning or social influence in Punjab. It was the *Jats* as 'dominant caste' group in Punjab that have come to acquire the place of prominence being economically and numerically dominant, they had overcome their handicap of low ritual status by virtue of being landowner; for possession of the land was regarded as the symbol of high social status (Mohan,2006). The resonance of this particular dominance is still deeply felt in Punjab, where land in terms of acres translates the power and the socio-economic standing of a particular family.

² A Digest of Customary Law in Punjab: An Introductory. Available at < <http://revenue.punjab.gov.in/cust2.html>

To this end, in Punjab, the village community and its successor, the present customary family are based on agnatic theory. Primarily this theory informs and regulates the principle of succession in Punjab. It is, of course, based on what Sir Henry Maine called the " Patriarchal System," the idea being that all the descendants of a proprietor form one united family and that each descendant, no matter how remote from that proprietor, has a right to succeed to the family property in virtue of his descent. (Prenter,1924). The village community existed as a corporate body whose members were families. They visualized communal ownership of the property and its common possession and enjoyment by all the members of the community. With due course of time in the process of evolution, this village community split into families but the individualization of the property did not take place. The family became a unit, nor the individual. Once the land came to be held by individual families, it was a logical next step that on the death of a proprietor, the land should devolve to other members of the family. Sir Henry Maine theorized that the separate ownership of land is a modern phenomenon facilitated at the behest of English law, whereby land passed from the hands of a village community into a patriarchal customary family. Thus, the history of landed property in Punjab may be presumed to be not of the joint family, the house community, and the village community in that order, but successively the tribe, the village, and the family. Punjab customary law resembles the *Mitakshara* joint family in two cases i.e. of common ownership and right of survivorship. As contradistinguished to *Mitakshara* joint family, the rule of sons right by birth in joint family property and sons right to partition do not apply. In Punjab the mode of devolution that evolved was succession on the basis of the doctrine of agnatic preference (Diwan,1990). It is this feeling of agnatic kinship apart from the common interest in land which regulates their customary practices. The strong sense of family origin and a preference for members of the wider tribe or caste group, which includes their own clan, has been the guiding force behind the custom of clan exogamy, through this custom, daughters are married outside the clan or the village. Since the daughter and her children belonged to another clan there was no need to provide them share in village patrimony (Sethi,2009). Henceforth, only sons who could trace their origin from a common ancestor, are the rightful heirs of the property. In this scheme of things, daughters and sisters are provided in the tribe, clan or family they are married in. Customarily, daughters are excluded from inheritance, but few instances indicate that the daughter of a sonless proprietor inherits her father's land to the exclusion of distant and even of near collaterals, up to the time of her marriage. But in some places, it was felt that this was an infringement of the rights of collaterals, and merely maintenance was allowed. Even when daughter did inherit, she is only acting as a channel to pass on the property to her sons and their decedents. The propriety of gifts of land to daughters, sister, and their children would depend on whether the land would pass to a man of another village or clan. In exogamous clans, there existed a strong bias against such gifts. In the absence of a son, sometimes it so happened that the daughter's son would be adopted or settle in maternal grandparents' village and inherit the property.

In the same vein, the institution of *khanddamdi*, whereby the husband of the daughter was taken into the family and treated as a son. He helped in the cultivation and ultimately, he and his wife succeeded to the property (Prenter,1924). But this all happened in case of the ancestral property only, the daughter had preferential right to inherit the self -acquired property viz-a-viz the collaterals. With regard to inheritance rights of the widow, she was entitled to take life interest in the property of the husband, which will revert back to the collaterals in case she dies issueless or sonless. In cases of unchastity or remarriage, the widow has to forgo her rights to the property. Though on the whole the women folk stood discriminated against men in the system of agnatic kinship, the life interest of the woman in the husband's estate and the guardianship to daughters and sisters by agnates provided them considerable space. Under this system of restricted tenure, it was ensured

that the widow remained a part of the brotherhood. However, under the *karewa* or *chadarpauni* (as practiced in Punjab) form of marriage (marriage with deceased husband's brother) there was no forfeiture of the widow's life estate in the property of the husband, this custom which is common among the Sikh *Jats* of Punjab uphold the widow's right to life estate in her former husband's property (Sethi, 2009). The institution of clan and village exogamy made certain that daughters were excluded for inheritance in the presence of sons and male collaterals, all they were provided was maintenance. This meant basically that daughters and sisters who were potential introducers of fresh blood and new descent lines through their husbands had to be kept legally outside the purview of inheritance rights. This was necessary for land to be maintained within the immediate kinship group, not only to maintain the extensive 'tribal' structure of society upon which the British had built their system of authority in Punjab but also to prevent the uneconomic fragmentation of holdings (Chowdhry, 1997).

The position of a daughter is that of one who will leave the patrilineage, and the position of a wife is that of an outsider to the patrilineage who lives within the household. In this social structure, women are conceived as transitory components, the vessels whereby the men of the lineage reproduce themselves. There is no question of a woman's owning land. If she should try to insist on her right to inherit land equally under civil law, she would stand a good chance of being murdered (Gupta, 1987). All things considered, it must be remembered that with the promulgation of the Hindu Succession Act in 1956, the hitherto operating customary law of Punjab has been abolished and the 'Sikhs', the most dominant religious category of Punjab are covered under the definition of 'Hindu' as prescribed in the Hindu Succession Act of 1956.

PRESENT: Past Still Resonates

Even though a prosperous state, Punjab has been beset with social backwardness and handicaps like lowest sex ratio since 1921. At present, it is 886 as against the national average of 935. The workforce participation of women in Punjab is ranked as one of the lowest in the country and as one having the lowest proportion of female workers to the total workers³. Moreover, the social landscape of Punjab is characterized by a virtual silence while engaging with women's efforts to acquire or retain or hold control over land. Since the promulgation of Hindu Succession Act, 1956 the apprehension of losing exclusive male rights over the lands rather than the ground reality made landowners of Punjab act in a rather unusual rush to abolish this Act. They tried to have it abolished through the legislative proceduresⁱ, simultaneously accelerating their attempts through the caste Panchayatsⁱⁱ to control its fallout. As tension mounted in rural society, voices to abolish or amend the 1956 Act gained momentum. Advocates began to aid stream of male members with the potential female inheritors in tow to get them to write off their land claims in favor of their brothers through "*likhat-padhat*" thus putting the onus for relinquishment of rights on the female. This predominantly explains the surge in gift and sale deeds registered in favor of male members in Punjab and Haryana post-1956. In some cases, the land is automatically registered in the girl's name but remains in *de facto* possession of the brother.ⁱⁱⁱ

³Jhurani, Kamlesh Women's Participation and Development : A Case Study from Rural Punjab.
<http://www.cwds.ac.in/OCPaper/WomenParticipationKamlesh.pdf>

Thus, in a deeply patriarchal Punjabi society, this amendment has brought landed families in conflict with their women, who are now seen as a threat to family property and fermenting society by pitting brothers against sisters, fathers against daughters, sons against mothers. This is not just a matter of a piece of paper awarding them ownership rights. It is about power, security, equality, and opportunity but daughters stand customarily excluded from inheritance to land in Punjab.

Predominantly there are Two Ways of Disinheriting Daughters

- Relinquishment deed: A legal document used to transfer one's property rights to co-owner. It has to be signed by both parties and registered by a revenue official. The document is most commonly used when a person dies without leaving a will and all the siblings inherit the property. In Haryana, unlike a gift deed which attracts stamp duty, relinquishment deeds can be executed on a Rs 20 stamp paper. They are most commonly used by women to relinquish their share of the inherited property in favor of their brothers. 'Blood Relation Transfer Deed': Since June 16, 2014, this deed can be used to transfer immovable property to blood relations without paying stamp duty. The exemption is applicable for parents, children, grandchildren, brothers, sisters, and spouses. A similar concession was given by Punjab in May 2014. Here brother-sister relationship was added to the category of people eligible for remission of stamp duty.
- Wills: Soon after a daughter is married and has gone into "another family" wills are drafted transferring property to sons or grandsons⁴. It is pertinent to mention that the provisions of the Hindu Succession Act apply only in case of Intestate succession. Property devolution through Wills is valid and guaranteed under Article 30^{iv} of the Hindu Succession Act, 1956 and remains unaltered even after the amendment of 2005.

In the initial years, few women staked claim to their share, choosing family love over the property. But the dramatic rise in land prices owing to the chronic shortage of land⁵ has resulted in an increasing number of women asserting their right and newer methods have evolved to deprive them of it." The strong votaries of patriarchal norms in the state, alleging that the new law is "breaking up age-old structures" and in fact doing more harm to girls than the practice of dowry. Conferring property rights on women has emerged as one of the main reasons for the skewed sex ratio in our region. Putting the onus on women, many argue that, earlier brothers would give sisters gifts and cash on festivals and be there in case they had trouble at their husbands' home. "But now, as girls break norms and marry for love, that protection is forsaken. Similarly, when she stakes her claim to the land, she forsakes that protection too.⁶ Claiming property rights by women significantly add to women's vulnerability and few incidents nation-wide have cost women their very lives. Revealing the deep patriarchal bias of northern India towards women daring to claim their share of the land, a woman was set ablaze over a land dispute in Haryana⁷. Surprisingly, the women won the court case but lost her life in this bloody

⁴Vandana Shukla, <http://www.tribuneindia.com/news/comment/hindu-women-property-myth-vs-reality/131896.html>

⁵https://www.ecoi.net/en/file/local/1145219/1226_1374668656_india-land-disputes-and-moneylenders.pdf

⁶Dogra, ChanderSuta, The Sunday Story: Haryana's Out-lawed Daughters, Indian Express, Feb 15, 2015.

⁷https://www.indiatvnews.com/amp/news/india/woman-set-ablaze-over-land-dispute-in-haryana-8712.html#referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s

battle. Similarly, in another ghastly occurrence in Punjab, a 30-year old woman was allegedly shot dead by her brother over the maternal property dispute in Tarn Taran district⁸. Few more events of identical nature were reported from Barnala, Sangrur, Moga, and Ludhiana. Women were at the receiving ends in such brutal episodes and the perpetrators were mostly family members of politically influential people in villages.

Statistically speaking, according to an index^v created by the Bhubaneswar-based Center for Land Governance, an arm of consultancy firm NR Management Consultants (NRMC) Punjab and West Bengal are the worst, among all 35 states and Union Territories of India at providing land rights to women. The index ranks states in terms of women holding land rights in percentage points. In the percentage of women holding land, large agrarian states such as Madhya Pradesh (8.6%), Rajasthan (7.1%) and Uttar Pradesh (6.1%) rank low on the index, with Punjab (0.8%) the lowest. The average size of women's land holdings in the country is small. A woman holds an average of 0.93 hectares (ha), while men hold 1.18 ha. The average figure is 1.15 ha. Nationally, on average, 12.9% of Indian women hold land. Women constitute a third (32%) of India's agricultural labor force and contribute 55-66% to farm production, according to the gender and land rights database of the Food and Agriculture Organization of the United Nations (FAO). Yet, women hold only 12.8% of operational holdings in India.⁹ The statistics clearly exhibit the gender gap in land ownership in India whereby patriarchal social structures with strongly enforced customs deny women their constitutional right to equality.

CONCLUSIONS

Despite the progressive and egalitarian mandate of the constitution and judiciary committed to the task of welfare and equality, women fall at the center of Venn diagram of misogyny, patriarchy, violence, and inequality in India and Punjab exhibits the perfect example. Even though a prosperous state, Punjab has been beset with social backwardness and handicaps like the lowest sex ratio in the country. It also has one of the lowest female workforce participation of women in India. Though legally women are very well graduated to own property the customarily governed customs debar women of enjoying these legal entitlements. The cost of opposing such cultural norms is huge and terrible. Until and unless, this dimension of daughter's disinheritance is addressed with proper policy action, the issue of women property rights will remain only on paper while the glaring ground realities will continue to discriminate women socially and economically.

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⁸<https://www.dnaindia.com/india/report-punjab-shocker-30-year-old-woman-shot-dead-by-her-brother-over-property-dispute-2602447>

⁹<http://www.indiaspend.com/special-reports/lakshadweep-meghalaya-have-most-women-land-holders-punjab-west-bengal-fewest-54024> Angel Mohan & Bhasker Tripathi, February 19, 2018

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ⁱPunjab assembly passed a resolution to affect change in Hindu Succession Act, 1956.

ⁱⁱ Several *Panchayats* have actually outlawed daughters from inheriting land and made efforts to annul the 2005 amendment through signature campaigns

ⁱⁱⁱThe stock question continued to be asked even today before a girl signs off her rights in the “*likhat-padhat*” (formalization of rights) takes place is, “*tum khush ho kerbhaiyon ko de rahi ho*” (Are you giving the land to your brothers of your own sweet will?)

^{iv} Testamentary succession- Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925, (39 of 1925), or any other law for the time being in force and applicable to Hindus.

^v The index was prepared using data on women’s operational holdings from the agriculture census of 2011, the share of adult women owning agricultural land from the Indian Human Development Survey of 2011-12, the share of women-headed households owning land from the Socio Economic Caste Census of 2011, and the share of women owning house and/or land (alone or jointly) from the National Family Health Survey of 2015-16.