

Inheritance Rights for Women:

A Response to Some Commonly Expressed Fears

by

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IN 1956, in the course of the parliamentary debate on the Hindu Succession Bill, Smt Ammu Swaminadhan, MP, arguing in favour of the Bill and of equal inheritance rights for women, said "I would ask the hon. Members to turn to Kerala... If you will only see what is happening and what has happened there all these years when women have had equal rights, I am sure that you will agree that... nothing terrible will happen in this country if they had equal rights."

Yet, many today continue to fear that terrible things will happen if women actually (not just on paper) get an equal share in inheritance. The arguments put forward against daughters inheriting parental property equally with sons are the same arguments that were put forward over 50 years ago, when the Hindu Succession Bill was first mooted. The Bill, when it finally became law, gave women very unequal rights and even those remained largely on paper. Hence, today, we still need to work for actually getting women equal inheritance rights, as the majority of women in our country, even those of wealthy families, do not own income generating property independently in their own right, and are disinherited by their fathers for no reason other than that of their gender.

We shall here attempt to deal with some of the fears commonly expressed regarding women's inheritance rights.

Land Fragmentation

In India the chief form of income generating property is agricultural land. The Hindu Succession Act, by denying women equal rights in ancestral property, effectively denies them a share in most agricultural land. In addition, the various state administrations have resorted to a number of legal stratagems to further obstruct women's ownership of land.

That giving a share in family land to daughters will result in excessive fragmentation, making each holding uneconomical is a favourite and long-standing argument for denying women a share in this form of property. However, no one argues that giving a share to all the sons will also result in fragmentation. It would be more logical to argue for primogeniture (the eldest child, most frequently, the eldest son, alone inheriting).

Denying women their rights is no answer to the problem of fragmentation, as is evident from the persistence of the problem today, despite such denial. The cause of fragmentation is overpressure on land. A disproportionately large ratio of the Indian population is compelled to depend on land for subsistence. This is

a sign of an unbalanced economy. Neglect of agriculture and of rural areas, and draining of agricultural surplus for the benefit of the elite in the urban population, has increased the misery of the land dependent peasantry.

A part of the answer to this problem lies in implementing honest land reforms, in making agriculture more viable and providing larger sections of the rural poor population with alternative sources of income generation. Denying women a share in land means making them the most powerless section within the already powerless poor peasantry. Certainly, if a piece of land can be divided between three sons, there is no reason why it cannot be divided between two sons and a daughter.

The Daughter Goes Away

Another favourite argument is that since the daughter marries and goes to her husband's house, which is often far away, she cannot cultivate her parental land, live in her parental house or run her parental business, so these properties should be inherited by her brothers. A subsidiary argument frequently put forward is that since the woman becomes a member of her husband's family, she should be restricted to inheriting a share of his parental property.

This argument assumes that marriage and going away from the parental home and village are as inevitable as water flowing from a higher to a lower level. But this is not the case. In our own country, many different communities have widely different arrangements. In some tribal communities, where women do most of the land cultivation and where singleness is not despised, a number of women choose to stay single and to remain with their parents, cultivating the land. In several other communities which are matrilineal, married women continue to live in their parental home where their husbands either join them (without being despised as *gharjamais* as in the north) or visit them.

In many more communities, women are married within the same village or into neighbouring villages. This is the case both in communities where cross cousin marriage is practised and in some others. Yet, women do not inherit land in these communities and such is the power of ideology that the same argument of women going away continues to be used to deny them equal inheritance rights.

When this argument was used to counter the petition filed by **Manusbi** and two tribal women in the supreme court to demand equal inheritance rights in land for women, our study of a Ho

village in Bihar (see Madhu Kishwar, "Toiling Without Rights: Ho Women of Singhbhum," *Economic and Political Weekly*, January 17, 24, 31, 1987) showed that of a sample of 22 married women interviewed, seven had married in their own village, six lived less than three hours' walk away, eight were more than three hours' walk away. Thus, most of the women were reasonably close to the parental village and land. They routinely cover much longer distances on foot for subsistence activities such as gathering and marketing of forest produce. Yet, as soon as they marry, these tribal women are denied the right to cultivate parental land.

That this is not a reason but a pretext for disinheriting daughters is clear from the fact that however far sons may go from the parental home, they are almost never disinherited on this account. It is as common for sons to migrate from villages to cities, even go abroad in pursuit of employment and career, but they rarely relinquish their claim on parental property. In fact, this claim acts as a bond, encouraging them to visit during vacations, lease out the land or the orchard, claim its produce, even plan to return to the family home after retirement. The claim acts as an important form of security, financial and emotional,

for the son. However far away, he continues to be acknowledged as a family member, who must be consulted before property is sold or altered, while a daughter, even in the next village, is treated as a member of another family.

This crucial difference in status is a factor in women's overall powerlessness in society. It is idle to imagine that a daughter-in-law can be treated as a full member of her marital family with an equal share in its property, after she has been totally disinherited by her natal family. The powerlessness of the daughter and of the daughter-in-law are two sides of the same coin. A culture which uproots its daughters and in fact sees this uprooting as the pivot of a woman's life, which labels a daughter from birth "a stranger's wealth", "a migrant bird", and "a guest" in her father's house, views its daughters-in-law at best as bringers of wealth, themselves the wealth of their husbands and parents-in-law (witness the popular slogan *Dulhan hi dahej hai* -the bride herself is the dowry) but not as an owner of their wealth.

A woman who has full rights in her parents' property will relate to her husband and in-laws from a position of relative strength. She will have more of a chance to be viewed as an entity in her



own right, not as a helpless creature whose only chance of survival and identity lies in “adjusting” to her husband’s and in-laws’ demands and whims.

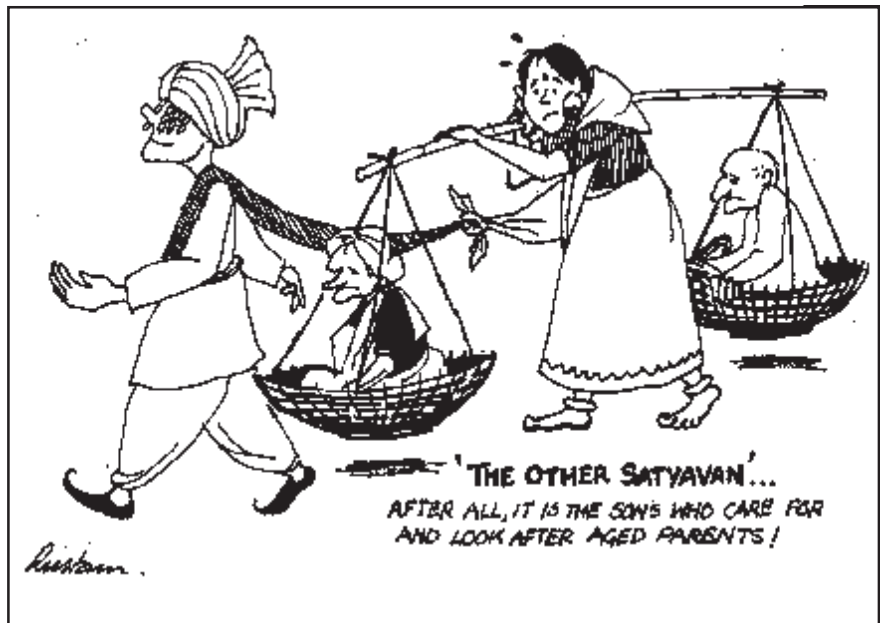
Parents who refuse to recognise their own daughter’s full membership in their family and equality with their sons, have no reason to expect that her in-laws, to whom she is a complete stranger, will automatically treat her as an equal inheritor with their sons.

Sons Look After Old Parents

This argument runs: since sons, not daughters, support and look after parents in their old age, sons should inherit the parents’ property.

First, we should note that the implication that sons inherit property as a compensation or reward for supporting old parents is not correct. Even if parents die young or in early middle age, when fully self supporting sons’ still inherit and daughters do not. Further, many old parents are “supported” by sons from the property or family business that the parents have built up. If the daughters inherited, they could as well support their parents. Significant numbers of women now earn an income and could support their parents. Even women who do not have a job contribute crucially to household income by their work in the fields and the home, and should have the right to support their old parents.

A second, very important, dimension of the situation is that since “looking after” old parents is not just a matter of financially supporting them but of serving and nursing them, the actual care is generally provided by the woman, not the man, that is, in our dominant family set-up, by the daughter-in-law, not the son. The daughter-in-law, who is forbidden to care for her own parents, is expected to channel her emotional energy into serving her parents-in-law. Every lapse of hers is noted, more severely than a daughter’s lapse would be. Old parents themselves often acknowledge their need for their



daughter, but this need is denied and thwarted. This family set-up therefore places strangers in intimate proximity while cutting off from each other those who have been close for years. The resultant frustration, friction and misery, not just for daughters-in-law but also for old parents, is visible in almost every home.

Especially when a very old and ailing mother is in need she is often treated as having no rights in the property, now perceived as her son’s, and is neglected by the daughter-in-law. The present set-up conduces not to the welfare of old parents or of women, whether as daughter or daughter-in-law, but to the welfare of adult sons, who virtually take over parental property in the lifetime of the parents. The culturally unquestioned right of even a misbehaving son over the property of parents he may neglect or maltreat places the old in a powerless situation just as it does women. Indian literature teems with examples of how old parents are sidelined, neglected and allowed no say in matters affecting their own lives and the property they have helped build (see for example, Munshi Premchand’s story “A Mother of Sons” in *Manushi* No. 42-43, 1987).

It will be argued that for married daughters to live with their parents and care for them is “against our culture.” But this assumes that our culture is a monolith. The taboos on eating in, even drinking water in, a married daughter’s home are restricted to certain communities in certain parts of the country, where discrimination against women is most severe. The prevalence of such taboos gives the lie to the argument that the married woman is a member of her husband’s family and should claim property rights there. How can a woman who cannot entertain guests of her choice hope to claim a share in the property of her marital home?

But in many other parts of the country, in most of the south, for instance, such taboos do not obtain. In some communities where it was formerly customary for married daughters to remain in the parental home, there is still a tendency, even after that custom’s demise, for old parents to go and live with their married daughter in her marital home, rather than to live with their son.

If both sons and daughters inherited equally (after parents’ death rather than in their lifetime) it would not be as easy for a child simply to take over parental

property and then treat parents as a useless burden. It would also mean that parents could choose to live with the child to whom they feel closest and who they think will look after them best. They could even, as some parents do, live with their children by rotation. The decision regarding which child to live with should not be determined arbitrarily by the child's gender, but rather by the parents' and the child's preference, on the basis of their mutual relationship.

Brother - Sister Love will be Destroyed

Another argument often used against giving daughters property is that it will breed animosity, even litigation, between brothers and sisters, destroying the harmonious and beautiful brother-sister relationship which now obtains.

The flaw in this argument is that it is based on untenable generalisations. Not all brother-sister relationships are beautiful any more than are all brother-brother or sister-sister relationships. Those that are truly so, are unlikely to be disrupted merely because the sister gets her due. If the beauty of the relationship is based solely on inequality, on the brother's full endowment and the sister's deprivation, it is a beauty of a questionable kind.

Sisters' one-way dependence on brothers is occasioned by the powerless and insecure position of those sisters. The status of a woman in her in-laws' house is affected by how much concern her brothers demonstrate, how often they invite her and how many gifts they give her. These visible demonstrations of concern serve to remind her in-laws that she is not altogether friendless and cannot be maltreated with absolute impunity. A woman cannot call on her married sister's support as easily, not because sisters care less for one another, but because married women are not usually expected or allowed to shelter or financially help their sisters. A brother, however many his marital problems, does

not need his sister's support in the same way because his survival and well being are not at his wife's mercy, as the woman's are at her husband's. Thus, the brother-sister relationship in many communities is structured by the power of men and the powerlessness of women. It does not make for mutual support but compels the brother to be a perpetual giver and the sister to be a perpetual taker. This is very likely to breed resentments, especially between sisters-in-law. The brother's wife is forced to forever give, often at her own cost, even from her own dowry, to her husband's sisters. Such one-way giving cannot conduce to the development of friendship or amity between women. Instead, it sets them up as rivals.

If brothers and sisters inherited equally, better, more equal, relationships could develop between brothers and sisters, and also between sisters, who would be better able to help out one another in times of crises.

Dowry is the Daughter's Share

This is a red herring which should nevertheless be considered because of its wide prevalence.

Dowry cannot be considered a daughter's share because:

(a) it is not in her control as property is in the son's control;

(b) it functions as a bribe to her in-laws to keep her in their house, while property enhances the son's independent standing; and

(c) dowry generally consists of extravagant display which enhances family status, and of cash and items which are expendable and do not appreciate in value; while property often comprises income generating assets such as land, house, tools, machines. Thus, property provides or enhances a son's livelihood, while dowry enhances a daughter's total dependence for survival on marriage and on her husband.

Dowry often provides an incentive for a man to ill treat his wife and throw



her out of the house. Knowing that she has no culturally sanctioned right to stay in her parents' house and will be viewed as a burden there, he can demand and extract more and more from her parents as the price for keeping her in his house. The flow of dowry is dependent on her remaining married to him.

Conversely, if she owned certain assets in her own right, and if these assets were legally nontransferable by her, this would be an incentive for the husband to treat her well and keep her in his house. As an owner of property, she would not be viewed solely as a burden by her brothers either. Knowing that she could go to live in her parental home or even live on her own, the husband would be aware that he shares the use of her property only if she lives with him. Thus, ownership of property would strengthen a woman rather than weaken her as dowry does now.

If equal inheritance by women became the rule rather than the exception, the pattern outlined above would be greatly furthered.

She will Inherit Doubly

It is often objected that a woman will end up getting double rights - inheriting both from her father and from her husband. However, in the natural course of things, as many men would also inherit doubly - from their parents as well as from their wives. Since today in our country men have a longer life expectancy than women, it is even possible that more men outlive their wives than vice versa, though this may be partially offset by the disparity of age at marriage between men and women.

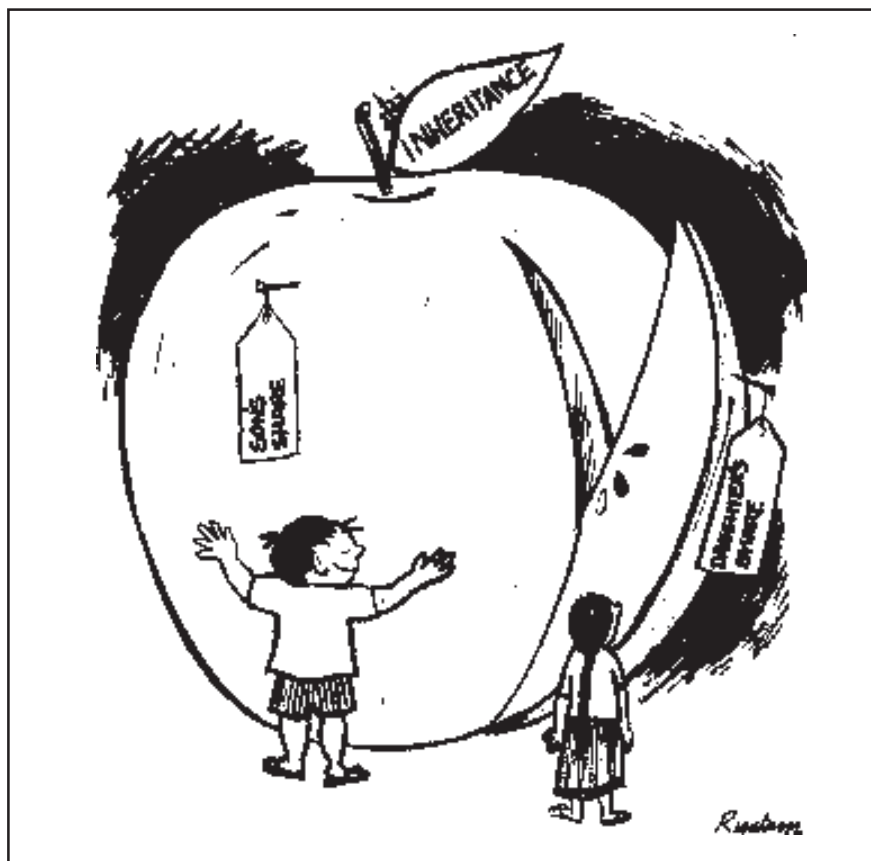
The law should provide that if a woman dies an unnatural death or under suspicious circumstances in her marital home, her property inherited from her parents should revert to her parental family. The husband would inherit only if she died a natural death. The sons and daughters would inherit both parents' property equally.

Women Cannot Manage Property

It may also be objected that since women in most parts of the country have historically less experience of managing property, and lack the alliances and mobility in the outside world that men have, and also since that women do not have the resources to use violence in defence of property that men have, especially in violence fraught areas of the countryside, the effect of the control of property nominally inherited by a daughter will pass on to her husband and his male kin. It is true that members of any group which has historically been deprived and oppressed will take time to assume full control of any resources they may get. This is true, in different ways, of such groups as Dalits, the landless poor, and women. However, this is not a reason for continuing the deprivation. Rather, putting resources in the hands of oppressed groups is a step towards

making the overall culture more egalitarian, and, hopefully, in the long run, less violent.

In the short term, especially as long as women who own resources are isolated individual exceptions, or in pockets surrounded by a culture of women's deprivation, it may be true that their husbands will wield more control over their property than they will. But even a nominal acknowledgment of the woman's ownership rights or semicontrol by her will be an improvement over the present situation in which exclusive male ownership is not only the practice but the norm. For example, in matrilineal households in certain communities in Kerala, property was passed from mother to daughter but was often controlled equally or more by the mother's brother. Yet, women's status was relatively better in terms of greater autonomy, mobility and better rights in marriage, than in communities where women are disinherited.



We are not, by any means, arguing that inheritance rights are a magic wand which on their own will empower women overnight. But these rights are one important form of empowerment, which, especially if achieved on a sufficiently large scale, could help move the culture in the direction of greater equality and freedom for women.

What about the Propertyless?

Another objection frequently raised is the entire debate on inheritance rights applies only to the propertied sections of our society.

This is true, but property and assets are not in most cases the equivalent of great wealth. The middle and lower middle classes, the middle and poor peasantry, and even the labouring poor, generally have some assets - a piece of land, a dwelling, trees, animals, implements, a vehicle, a small family trade. Many have a job that can be passed on to a child - also an important resource. The absolutely propertyless or destitute section is significantly large but in the total population they would be a distinct minority.

Further, all those concerned to better the lot of the poor, do wish for and work for the poor to get control over more assets and independent resources such as land and housing. Our government has a policy of giving small groups among the very poor sections of society different kinds of assets - whether in the form of land to the landless, reservations in educational institutions and in jobs to those categorised as scheduled castes and scheduled tribes, housing to slum dwellers, or loans and subsidies, cattle, trees, implements, and vehicles. Too often, the government, influenced by the dominant cultural norms, gives these resources to the male "head" of the family, wrongly assuming that this would take care of the needs of the whole family. In fact, this often further

re-inforces the inequality between man and woman in the family. Even in reserved categories, there is no special reservation for women.

If we are committed to improving the condition of the poorest and the most oppressed, these are inevitably the women in each oppressed group. Ensuring that they are endowed with assets is also the most likely way of ensuring that the benefits actually reach whole families, as women spend a far larger proportion of their income on the



other members of their family than do men.

As more sections of society move in the direction of acquiring assets, they tend to follow the norm set by those sections who already own assets. This trend is visible in the spread of dowry practices from upper caste groups to upwardly mobile lower caste groups, imitating those higher up in the social scale. Thus, changing the norm of inheritance and making it more egalitarian as between men and women is a crucial part of making the whole society and its culture more egalitarian.

Making of Wills

Theoretically, a person making a will is supposed to have complete freedom to leave his or her property to whom he or she wills. In a society where sons and

daughters were more or less equally valued, wills would tend to be made fairly equally in favour of both, except when a parent's relations with a particular child were strained, a consideration not determined by the child's gender. In our society, however, the cultural assumption that sons are the naturally privileged heirs generally overwhelms all other considerations. Wills are used to disinherit daughters on account of their gender alone, and to keep assets in the hands of men as a group. One has only

to look at land records to see how rarely women's names figure there, or to glance at business establishments' signboards to notice how frequently "... & Sons" or "... Brothers" occurs, with the female variant rarely if ever in evidence.

One may compare the situation with that caused by the current misuse of amniocentesis selectively to abort female foetuses. In a society where daughters and sons were more or less equally desired, amniocentesis would present no serious problems;

however, in our society it assumes problematic, even threatening, dimensions. So also, with the use of the will as a weapon to disinherit daughters.

It therefore becomes necessary to take certain steps to redress the situation so as to empower women whose present powerlessness has serious adverse consequences for their lives and for society as a whole. It is for this reason we would suggest that any will that disinherits daughters in favour of sons should be treated as a legally invalid document. This could be a temporary measure, tried on an experimental basis.

Fears have been expressed by some that in such a situation parents would resort to female infanticide rather than allow daughters to inherit. While it is

possible that this may occur as an exceptional aberration, it is unlikely to happen on a wide scale. More likely would be attempts to evade the measure by other means. In any event, in certain regions of the country even today, neglect of female children to the point of death is not unknown, as is evident from the imbalanced sex ratio amongst infants in these regions. Available data from different regions and countries suggest that infanticide and neglect of female infants are characteristic of those societies where women are disinherited and perceived as a useless burden, while in societies where women inherit and are perceived as full human beings, the proportion of women in the population is significantly larger. The high sex ratio (larger numbers of women to men) in Kerala and in certain parts of the north east is evidence supporting this interpretation. So, trying to right the imbalance in inheritance is one way of trying to change the overall imbalanced man-woman relationship which renders women powerless

Implementation

While it may not be at all easy to implement such a measure, especially given the failure of our administrative machinery to implement almost any measure successfully, yet it would be worthwhile for the State to commit itself more unequivocally to the principle of women's equal inheritance rights. This would involve changing the laws governing inheritance to remove the inequalities contained in them (see grey pages). It would also mean passing laws to render any will that disinherits female heirs in favour of male heirs a legally invalid document, and forbidding the gift or transfer of immovable property by a father in his lifetime to his sons alone; and in the event of a sale, enforcing equal distribution of the proceeds amongst all children. If, however, parents wish to disinherit all children equally in favour of some third unrelated party or a charitable institution, this would be

permitted. Property inherited by a married woman should be nontransferable by her.

Even if the measures are not fully implemented at once, they will have some advantages over the present situation:

1. A public acknowledgement by the State of its commitment to the principle of equality in inheritance and the need to redress the present highly imbalanced situation. At present, the State machinery actively supports the passing of property from father to son, and the exclusion of female heirs. Even if the State is not able to halt this, it should withdraw its support.
2. Individual women who are in a position to demand their rights will be enabled to fight for them, unlike at present when they are disinherited by legal means.
3. Just as certain land reform laws endow not just individual landless persons but a whole section of the landless poor with land rights, even though only a few individuals may

be able to take advantage of the measure, so also, such measures as outlined above will endow women as a group with certain rights, and throw the weight of the law in their favour, so that if they organise to assert their rights over time, the number of women able to claim their rights may grow.

While it is true that these suggestions are fraught with difficulties and complications, this is one possible way to try and make some change in the present situation of near total disinheritance of women, which causes untold large scale oppression and suffering. In the long run, the full endowment of women will not only improve their lives but also those of men, who will be freed of the anxiety of having to marry off dependent daughters and sisters, and then having to ineffectively intervene when they are maltreated after marriage. We would appreciate further suggestions and a debate on these proposals. □