
FROM BEAUVOIR AND WOOLF’S CRITIQUE AND ANALYSIS OF “WOMEN AS PROPERTY” TO THE EVOLUTION OF THE HINDU SUCCESSION LAW: HOW FAR HAVE WE COME IN ACHIEVING EQUALITY IN WOMEN’S PROPERTY RIGHTS IN INDIA?

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“Why are Women Poor?” asks Virginia Woolf in her book *A Room of One’s Own*. The reason for women, who make nearly half of the human population in the world to be posited on lower ground as compared to the men is because of how easily and actively women have been marginalised and alienated as the "Other". The otherization of the woman not only makes her a sub-standard, second-class citizen but also degrades and diminishes her existence in terms of legal rights as well as domestic and political needs and desires. Simone de Beauvoir opines that the idea of classifying an entity as the "Other" is as natural as consciousness itself, furthermore what justifies it is the inept disability to describe one without consequently creating the "Other" that stands in opposition to the One. She draws upon Hegel when she claims that the reason otherization is problematic is simply because, a world built on the binaries of One and Other, Male and Female has not been able to subsist devoid of power imbalances in the tipping of the scale to one side. An essential antagonism exists between the two, in that when one asserts itself as indispensable, as the subject, it instinctively sets the other as inconsequential or dispensable, as the object¹. The cause of women's oppression is rooted deep within human consciousness by confounding "The Woman" as the "Other" and therefore justifying her relegation to a mere object, or rather, "property" as Beauvoir puts it. Concerning women and Property, Virginia Woolf states that women have always been subjugated and in a vulnerable situation, the primordial reasons for these, she cites, are the patriarchal institutions of marriage and the State-one making it impossible for them to earn money and the other is the law, by denying them the right of possession and inheritance of wealth². Woolf's theory of ownership of property bears

¹ Simone de Beauvoir, *The Second Sex*, trans. Constance Borde and Shelia Malovany-Chevallier (New York: Alfred A. Knopf, 2010) 6-7.

² Wagner, *Marriage, Property, and Law*, p. 62.

the heavyweight of the question- How did the convention of marriage affect a woman's position and her property rights within the husband's family? And whether it further diminished the scope of women's rights and inheritance within the Hindu Joint Family?

Upon reading, *A Room of One's Own*, *Three Guineas* and *Mrs Dalloway*, one would assume, that from a feminist author such as herself, her characters would be radical revolutionary feminists who through the ownership of property, also have ownership over themselves. However, Woolf chooses to rather portray the harsh realities of nineteenth-century women with a co-dependent economic situation which upheld the notion that marriage controls the money³. Since, in a patriarchal monogamy, which was (and still is) the norm in most cases, as Beauvoir succinctly amplified that the Woman is the Other who is inevitable dominated by the oppressing consciousness⁴ and will of the Man. Thus, this continuum of Man being the One and Woman forced into being the Other, makes him the owner of property and the lack of which, for women, transcends to them being viewed as property themselves devoid of any agency or ownership over their individual selves. The woman simply plays the role of being the man's property. Women's oppression is due to the interplay of marriage, state and ownership of private property. Moreover, further scrutiny of Virginia Woolf's theory of marriage being nothing but an exile, yet, also being the dirty slippery path to the liberation of a woman trapped within a man's world. She emphasises how a woman only gained her identity as being related to a man, her identity gained value by the virtue of her being someone's daughter, sister, wife and mother and not her own individual being. Woolf sets out to say, in her book, *Mrs Dalloway*, that there are four kinds of female experience namely- wives, widows, yet-to-be married women, and then the unmarried women. However, throughout the book, she emphasises that the freedom of choice of women is so truncated that the women get married without contemplation or choice, such is the desecration of marriage. Why? Because in a patriarchal society, the unmarried woman is simply powerless⁵.

In ancient Hindu Law as well, women as a whole were made to be subordinate to men, stripped of any agency but their inevitable cogency to be controlled by and related to men, even for her most basic necessities. Furthermore, archaic codified literature and legislations such as the

³ Livingston S, *Marriage, Property, and Women's Narratives* (sn 2012)

⁴ Beauvoir Simone, *The second sex* (Vintage Classic 2015)

⁵ Supra 3

Aarthashastra, and Manusmriti overtly decreed that woman were not meant to have property rights. The interference of the personal in the political was an unexplored, prohibited idea⁶.

Beauvoir, throughout her work in *The Second Sex*, argues that the male-female relationship of dependency and non-freedom is one of the prime challenges that is faced by human beings making it close to impossible to mitigate antagonism and power imbalances between the dichotomy of the sexes⁷. Furthermore, she posits that women's oppression is a direct albeit non-singular consequence of patriarchal monogamy which, as Fredrich Engels believed, grew out of the development and possession of the private property⁸. She was right in that the personal laws in India too, is prefaced on orthodox, archaic traditions, customs and is spread across varying ethnicities. This makes the presence of sexist practices, misogynist legislations, all the more evident in the public and domestic sphere. The problem with customary laws is its lack of inclusivity, built on the foundations of ancient theories and assumptions that shushed the personal by making it sweep along the political sphere, women's concerns, their interests and rights were never taken into consideration. Especially within the realm of property, in the form of wealth and land, whereas both Beauvoir and Woolf theorised that, a woman's worth was only significant when tied to that of a man's. Women and Property were seen as two mutually exclusive entities, unfortunately, women instead were seen and treated as a man's property. Rights of inheritance, marriage and property should be provided to everyone at par regardless of their gender and sexual identity. Woolf advocated for the inheritance rights for women in her famous book *Orlando* penned in 1928, where she criticises the practice of non-recognition of women as coparceners, much like the Hindu Succession Act prior to its 2005 Amendment. Woolf, in this story, was enraged about her deceased father's property being inherited by her uncle due to the absence of any male heirs, leaving her without money and resource. This speaks volumes because similarly, the topic of inheritance in the Indian Hindu Code is a fraught one. This is not to say that there have not been instances in history wherein advocacy for women's property rights peaked. The decade of 1930-1937 had witnessed the emergence of an Indian Female subject with the advent of The Hindu Women's Right to Property Act of 1937 which secured important property rights for Hindu Women⁹. Historically there have been many

⁶ Rajak K, "Trajectories of Women's Property Rights in India: A Reading of the Hindu Code Bill" (2020) 12 Contemporary Voice of Dalit 82

⁷ Markowitz S, "Beauvoir and The Limits of Philosophy" (Project MUSE)
<<https://muse.jhu.edu/article/478362>>; accessed June 30, 2021

⁸ Engels F and Untermann E, *The Origin of the Family: Private Property and the State* (University Press of the Pacific 2001)

⁹ Newbigin E, *Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (Cambridge University Press 2017)

instances where qualms to achieve gender equality have surfaced but repressed aggressively. Under the colonial rule especially, the complexity of the Hindu Property Law was disintegrated in the landmark case of *Vedathanni v. Commissioner of Income Tax*¹⁰ as early as the 1930s where a widow had proved successful in suing her brother in law, upheld a remarkable judgement by Justice Vepa Ramesam in 1932 who defined that a Hindu Undivided Family was a concept that need not confine itself to the shackles of the Mitakshara coparcenary laws because family wealth rightfully belonged to everyone in the family including female dependants. He was one of the firsts to rule that a Hindu undivided Family should not just make compromises for male property owners, but also to “unproductive” dependants who needed to draw from this pool of capital¹¹. Another focal of history that marks the movement for Women's Property Rights in India was the appeal to pass Dr G.V Deshmukh's Hindu Women's Rights to Property Bill and to say it was ahead of its time, is an understatement. The Bill, with the aim to raise the status quo of women, framed the noteworthy law as: 'No woman because of her sex shall be excluded from the right of owning property gained by inheritance, on partition, settlement, gift or present, or be deemed to be disqualified from having a right in property.'¹² The Bill not only elevated female heirs such as the wife, mother, daughter, widow and the widowed daughters-in-law of a deceased man in the hierarchy and procedure of succession to inhabit the same place as a son but also abolished the practice of women's limited or lifetime estates and made them absolute owners of inherited property¹³. Furthermore, the act stated,

“If a man had no sons, both his self-acquired and his joint family property would pass to his widow and his daughters, and not to his coparceners, so that they would form a joint family unit. If he did have one or more sons, they would share the estate with their mother and other close female relatives, rather than with distant male coparceners. In these cases, female heirs were not permitted to partition the joint family estate as long as any of the sons were alive¹⁴.”

Although there were indeed extraordinary movements and Bills in pursuit of Women's Property Rights, none were strong enough to withstand the ravages of time nor were they able to escape the closing in on the walls of patriarchy in what is a claustrophobic world for women.

¹⁰ *Vedathanni v. Commissioner of Income Tax* [1932] AIR Mad 734.

¹¹ *Ibid.*

¹² Sturman R, *Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (Cambridge University Press 2017)

¹³ *Supra* 9.

¹⁴ A Bill to amend the Hindu Law governing Hindu Women's Right to Property, NAI Home Department F.36/X/1935 – Judicial

In an alternative universe, Beauvoir suggests that the abolishment of private property and inherited wealth would free women from the un-freedom of the patrimony. She claims that women will continue to be oppressed for as long as she remains within the total dependency that comes with family, that escaping from a familial life would also free her from the clutches of reliance on a male. The collective rejection of the need for private property by abolishing the idea of a family would, according to Beauvoir improve the condition of a woman. For this she explains with the example of Spartans, a communist society thriving on the equality of the sexes, where the concept of adultery disappears simply because of the absence of inheritance. - *“that possessing neither personal wealth nor individual ancestry, the citizen does not possess a woman either”*¹⁵ thereby leaving no room for women to be treated as property¹⁶.

However, the harsh reality still stands that, women continue to be thought of as second-class citizens, and this manifests in the most peculiar ways. The case in point is the lack of sufficient progress through the introduction of the Hindu Succession Act in 1956 to its consecutive amendments in 2004 and then later in 2005. The advent of the Amended HSA abolished "stridhana"¹⁷, made women the absolute owners, provided widows with the right to partition and made daughters coparceners of ancestral property. Yet, the attempt to revolutionize the rules of inheritance fell short, in that, it still denies coparcenary rights that could be claimed by birth with which the son is guaranteed with, to the daughter of the coparcener in the same manner. Additionally, one of the provisions in Section 23 is highly discriminatory as it negates the share in the property of residence for the daughter unless the male coparceners decide to divide their respective shares of a dwelling house. However, after considerable debates, through an amendment in 2005, the scriptures of law finally addressed these anomalies.

The courts, in recent times, have successfully taken a more progressive, inclusive approach with the aim and effort to strike down discriminatory laws that harbour bias and affect women adversely. The results have shown in recent judicial developments beginning with the recognition of inheritance rights of tribal women in property by ruling that HSA has an

¹⁵ Supra 4.

¹⁶ Ibid.

¹⁷ Section 14, Hindu Succession Act 1956: 14. Property of a female Hindu to be her absolute property.—
(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as **stridhana** immediately before the commencement of this Act.

overarching effect and takes precedence over any unjust customary law. The introspection of ancient statutory provisions has led to the broader interpretation which gave right by birth to Hindu daughters in ancestral, coparcenary property. It also paved way for the partition rights in husband's ancestral property for Hindu widows. Furthermore, due to the husband's second marriage, the Hindu woman has the right to absolute ownership in lieu of limited estate¹⁸. The recognition of increasing rights for women in Property Law and Inheritance Law are steps towards bridging the schism caused by the otherization of the woman, it leads to securing gender equality and ensuring the quality of status for women in terms of property rights. However, there still exists a requirement for progress and accountability, because, while we have indeed created a niche with respect to Women's Rights of Property in the epochs of time – acts like the dismissal of the public interest litigation that challenged the constitutional validity of the law of succession in place when a Hindu woman dies intestate wherein the property devolves onto the heirs of the husband¹⁹ and not the woman and many more as mentioned above, shows the dire need for a stronger, more robust approach in preserving and implementing women's right in property. The positive steps taken by the Judiciary as well as the legislature mean nothing if the law continues to be perpetuate sexism and inequality by being oppressive and biased against an important sector of the population it governs. The call for a firm feminist stance against laws that are purposely arbitrary and evidently sexist and misogynistic is more urgent than ever. In a country where women have been continually subjugated and reduced to mere property, the move towards a more egalitarian society that recognises the equality of the sexes, where there is a recognition of the role of women in property rather than the perspective of women as property, is a tenacious and pertinent one essential to conquer the surely bumpy and long road to achieving equality in women's rights in property.

¹⁸ Mishra A, "Towards Women's Equal Right to Property - Recent Judicial Developments in India" (*SSRN* March 4, 2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2672561> accessed July 1, 2021

¹⁹ Mishra A, "Towards Women's Equal Right to Property - Recent Judicial Developments in India" (*SSRN* March 4, 2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2672561> accessed July 1, 2021

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