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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **WOMEN'S RIGHT TO PROPERTY IN INDIA:**

## **CONTRIBUTION OF DR. B.R. AMBEDKAR**

AUTHORED BY - DR. PREM CHANDRA<sup>1</sup>

& DR. RAM NAVAL<sup>2</sup>

### **ABSTRACT**

In the intellectual world, Dr B.R. Ambedkar is popularly known and recognised as the symbol of knowledge. He was the man of Philosophy, Legal Reasoning, Social and Political Reforms in India. The philosophy, idea, thought and legal reasoning presented to us by Dr. B.R. Ambedkar through his writings and speeches are relevant for the progress of whole human race. He was one of the leaders of gender justice, social, political and economic equality in India. He fought a lot in his whole life for the upliftment of the women in India. He said that “I measure the progress of a community by the degree of progress which women have achieved”. Despite this, we are not paying proper attention to the role and capabilities of the women for the progress of the society. In our society, there is a misconception that Dr. B.R. Ambedkar was the champion of the Dalit community and Dalit women only. There is a need to understand to the vision and philosophy of Dr. B.R. Ambedkar in the correct perspective. Dr. B.R. Ambedkar was not only a supporter for the upliftment of Dalits but he was fighting for the rights and upliftment of whole women irrespective of caste and class etc. The Hindu Code Bill was introduced in Parliament in 1948. The object of the Hindu Code Bill was to make the provision for the upliftment of women of all class and caste of society in India. Most of the conservative and Hindu orthodox were against the Bill. Later on, it was passed in four parts. That time he fought for the gender equality against all types of conservative forces. The crucial problem of our present society is that we are not ready to accept and understand the philosophy of Dr. Ambedkar for the growth of social and human values.

**Key Worlds:** Feminism, Rights of Women, Education, Equality, Gender.

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# INTRODUCTION

India has male dominated society and since ancient period this sentiment is deep rooted in our Indian society. In every class and caste of our society, females had been discriminated since long period which is unfortunately to some extent is continue. Despite clear mandate of Constitution of India, women are not treated socially, politically and economically equal in our country. They are ill-treated in different manner in different time. The protection of sexual liberty of women is a big challenge in present scenario. Before independence, Sathi Pratha, Pardha Partha, Child Marriage, restriction to widow remarriage, devadasi system were very core problems related to women in our society. Even in 21st century, birth of a girl child is not treated good in family. Since time immemorial, women always had to fight for their rights. Right to property is one of the most important rights among them. In the era of 17th century, Thomas Hobbes, John Locke and John Rousseau had propounded three main rights such as right to life, right to property and right to liberty of human. They said that these rights are very crucial and without these rights to live a human life is not possible. But in our Hindu system of philosophy, it was always assumed that the girl would marry one day and leave the house. It was only the male member of the family who was entitled to get a share in the property. At the time of marriage, a Hindu woman was offered some property which was known as Stridhan<sup>3</sup>. With the changes of time, we have made progress in every field of life. Right to life, right to liberty and dignity has also become the matter of concern. Various people thought about them and their rights and liberty. Various Statutes were passed for the protection of right of property of women. Various philosopher propagated the right to life, liberty and property without any discrimination on the ground of gender or sex. Here, it is important to mention that without right to property, the right to life, right to dignity and right to liberty has no value. Before independence, the Hindu Women's Right to Property Act, 1937 was passed. After the independence of India, the Hindu Succession Act, 1956 and the Hindu Succession (Amendment) Act, 2005 has been passed. Under both the statutes, the right to property of the women has been legally recognized.

In every society women play a very important role. They come as mother, sister, and wife in the life of male member of society. They prepare, teach and guide to our new generation since birth. They also are care taking of all children since birth. The origin and existence of humane are in

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<sup>3</sup>Aarushi, Evolution of Women's Right to Property in India, Lawyers Clubs in India, Available on: [https://www.lawyersclubindia.com/articles/evolution-of-women-s-right-to-property-in-india-14572.asp#:~:text=After%20the%20enactment%20of%20the%20Hindu%20Succession%20\(Amendment\)%20Act%2C,over%20their%20self%2Dacquired%20property](https://www.lawyersclubindia.com/articles/evolution-of-women-s-right-to-property-in-india-14572.asp#:~:text=After%20the%20enactment%20of%20the%20Hindu%20Succession%20(Amendment)%20Act%2C,over%20their%20self%2Dacquired%20property). Last visited on 03.05.2023.



hand of the women. This is very unfortunate that we do not respect to the women who are originator, caretaker of all human race. They are maltreated in the society at each and every stage. The number of customs of our society is derogatory to the life of the women. Though Constitution of India provides that it is fundamental duty of every Indian to denunciate the practices which are derogatory to the dignity of the women.

The life of average Indian women is still governed by customs, habits, prejudices and unwritten codes of conduct. The Indian society is averse to treating a woman as a human being. The legal equality which, women enjoy under the Constitution and the special privileges are all on papers. Though in their public utterances, men praise the concept of equality and show concern that women should be able to avail of their Constitutional and legal rights, but still by core of their heart they are the most conservative. She has to undergo sex determination test to know the gender of the child. She is teased on streets, harassed everywhere, molested in public places but she is tight-lipped because of the fear of retaliation from the offender. Most crimes against women go unreported. The condition of women in India cannot be improved by any single method or merely by pronouncing the word 'Women Empowerment'. There is need to change the traditional mental set-up which is deep rooted in the minds of the society only then this concept can turn into reality. The traditional social structure, equal norms and value systems continue to place Indian women in a situation of disadvantage in terms of role relationship, decision making and sharing of responsibility. Their social status is still shrouded by a variety of institutional complexes, connections and myths. The emancipation of women will not be handed over on a silver-plate by some party or political movement. In order to strive for equality, women must express their will to achieve it. Women must fight back for their participation and respond to the demands of progress. No social change can occur without talking about women. Any social change that does not include a change in the position of women is futile and is ultimately bound to fail. President A.P.J. Abdul Kalam in one of his speeches mentioned that the empowering of women is a prerequisite for creating a good nation, when women are empowered, society with stability is assured. Empowerment of women is essential as their thoughts and their value system led to the development of a good family, good society and ultimately a good nation. Therefore, the empowerment of woman is very important not only for the growth and development of the family and our society but also to the nation as a whole.

## **RIGHT TO PROPERTY AND ECONOMIC EMPOWERMENT OF WOMEN**

The role and status of women is a widely discussed and debatable issue in our country. The present position and status of women in general and rural women in particular is not satisfactory rather their position in society is in no way better than second class citizen. Theoretically women are considered important and equal partners in the process of development, but in practice they are generally ignored. In spite of so many statutory productions, women still remain under privileged, under-valued and exploited and various kinds of discriminations continue to persist against them. The women's empowerment has become a social word or a 'buzzard' for a long time. It is a result of several important critical discussions, dialogues and debates generated by the feminist movement all over the world which is widely used but seldom defined. It is crucial to clarify what is empowerment? Empowerment is a word which stands by for the sense of increasing power, gaining control or participating for decision making. The word empowerment is not listed in the Webster's New World Dictionary but in Webster Collegiate dictionary the word 'empowerment' means to authorize or to give authority. Generally, the word signifies about the process by which power is gained, developed, seized, facilitated or given. This empowerment must be multidimensional. They must be empowered politically, economically and socially. Right to property is very important for economically empowering to the women.

### **LAWS OF MANU AND RIGHT TO PROPERTY OF WOMEN**

The great Hindu law giver Manu says in his writing that a son, a wife and a slave had no right over property and any property which had been acquired by them would belong to the men who controlled them. This indicated that any transaction which were done by women in those times were invalid. Women's property was divided into two categories. First is known as Stridhan. Stridhan was the property which a bride received from her close relatives and strangers, during the marriage ceremony or the bridal procession. It is further divided into categories. First type of Stridhan is known as Saudayika Property. On such property, women had full rights of ownership and alienation. This was gifted to her by her family members. Second type of Stridhan is known as Non-Saudayika Property. On such property, women had the rights of ownership, but if she wanted such property to alienate, she would require her husband's permission. This was gifted to her by strangers.

Second type of women property is categorised as Non- Stridhan Property. Such property was inherited by the women through a male or a female. The women who inherited the property had only the rights to use it. she had not any rights to alienate it<sup>4</sup>.

## **RIGHT TO PROPERTY OF WOMEN UNDER THE HINDU WOMEN RIGHTS TO PROPERTY ACT, 1937<sup>5</sup>**

The object of the Act was to amend the Hindu Law governing Hindu Women's Rights to Property. It was said in object clause of the Act that it is expedient to amend the Hindu Law to give better rights to women in respect of property<sup>6</sup>. Section 3 of the Act is very important. Devolution of property. Sub-Section (1) of Section 3 provides that when a Hindu governed by the Dayabhag School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son. Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son. Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son. Sub-Section (2) of Section 3 provides that when a Hindu governed by any school of Hindu Law other than the Dayabhag School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had. Sub-Section (3) of Section 3 provides that any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner. Sub-Section (4) of Section 3 provides that the provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Succession Act, 1925 (XXXIX of 1925), applies.

With the introduction of this Act, the widow's widow wife had a right on the property of her

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<sup>4</sup>Id.

<sup>5</sup>ACT NO. XVIII OF 1937. Available on: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104955/128192/F-1759061266/PAK104955.pdf>. Last visited on 03.05.2023.

<sup>6</sup> Preamble of THE HINDU WOMEN RIGHTS TO PROPERTY ACT, 1937.

husband after the death of husband. However, it did not make her a coparcener in the property. This left the widows with a Right to limited estate on the property of her deceased husband and gave them the right to ask for a partition. The widow had no rights to dispose of the property, but only to use it. It was inherited by the rules of inheritance and survivorship in case of self-acquired and ancestral property, respectively by the heirs of her deceased husband. Though the main aim of the Hindu Women's Right to Property Act was to strengthen the rights of women in matters of properties, it only helped to bring about a change for the widows.

During British rule in India and after independence Dr. B.R. Ambedkar fought for the rights of women and made such provisions in Constitution of India so that women must be treated equally in the society. The provision of equality to women made for all streams whether it is education, employment, social and economic rights. It is due to Dr. Ambedkar's legislative reforms that today women can be self-dependent. Dr. Ambedkar's passion to reform the Hindu society by empowering women is perhaps best effort to get passed the Hindu Code Bill in the parliament. The Hindu Code Bill was the most controversial Bill, and perhaps the greatest piece of legislation. The Hindu Code Bill is nothing but a declaration of women's rights. It was introduced by Dr. B.R. Ambedkar in the Constituent Assembly on 11th April, 1947. It was provided in the Bill that the property including both movable and immovable property should be acquired by a woman. The acquisition of property should be made by a woman before and after marriage even during the widowhood from her parents or husband. The share of the property of each unmarried daughter shall be half that of each son and the share of each married daughter shall be one quarter of that of each son. Hindu Code Bill covered various right for women such as right to property, order of succession to the property, right to maintenance, right to marriage, right to divorce, right to adoption and guardianship etc. The Bill was moved for referring to the Select Committee on 9th April, 1948. The Parliamentary debates continued for more than four years. This was the first longest discussion on any single Bill in the Parliament. Dr. Ambedkar felt that the Government was not eager to clear the Hindu Code Bill. The Bill challenged the base of patriarchy and awarded women the equal position as of men. The provisions of the Bill were against the structure of male dominated society and it was contrary to the very philosophy of Hinduism. The orthodox Hindu and the President of the Constituent Assembly Dr. Rajendra Prasad was against the Bill. Avanthasayanam Ayyangar, the speaker of the Constituent Assembly was also against this Hindu

Code Bill<sup>7</sup>.

To make his resentment clear to the government, he tendered his resignation as the Law Minister to PM Nehru in 1951. In his explanation for his resignation, he said that in the opinion of some it may be wrong for me to have held on for the sake of the Hindu Code Bill. I took a different view. The Hindu Code Bill was the greatest social reform measure ever undertaken by the Legislature in this country. No law passed by the Indian Legislature in the past or likely to be passed in the future can be compared to it in point of its significance. To leave inequality between class and class, between sex and sex which is the soul of Hindu Society untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code Bill<sup>8</sup>.

Dr. Ambedkar was a great protagonist of Hindu Code Bill but his identity of being an untouchable was a problem which created retardations in his way to reform Hindu law. As it is evident from the statement of Jereshastri who said, in an indecent language, "that Ganges water from a gutter cannot be considered holy". Some members openly declared that as long as Dr Ambedkar was piloting the Bill, they would not allow it to pass. It is apparent from the fact that when the bill was split into 4 separate Bill's post India's first general election in 1951-52, it was met with much less opposition. These four separate Bills included - The Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoptions and Maintenance Act which were effectively introduced and passed in the Parliament between the years 1952 and 1956.

## **HINDU SUCCESSION ACT, 1956 AND WOMEN'S RIGHT TO PROPERTY**

The Hindu Succession Act was passed in 1956 by Parliament. Section 14 of this Act gave absolute property rights to women. It says that any property which is possessed by a Hindu female shall be held by her through complete ownership. In the explanation of this Act, it has been explicitly mentioned that the property stated above includes both immovable and movable property, acquired by the woman through inheritance, partition, gifts - by close or distant relatives, before or after marriage, purchase or any other manner or the property which she had through Stridhan.

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<sup>7</sup>Dr. Ambedkar and His Contribution to Women's Rights in India, Early Times, News Details, Available on: <https://www.earlytimes.in/newsdet.aspx?q=289552#:~:text=Ambedkar%20in%20the%20Constituent%20Assembly,from%20her%20parents%20or%20husband>. Last Visited on 03.05.2023.



This meant that there was no difference between Stridhan and Non-Stridhan property or Saudayika or Non-Saudayika property. Women could now transfer or sell such property as per their own wish. This Act, however failed to give coparcenary rights to women in terms of inherited property.

Dr. Ambedkar's ideas influenced the enactment of many subsequent pro-women Acts viz. Sati Prevention Act, 1987, Dowry Prohibition Act, 1961, the Family Courts Act, 1984, Protection of Human Right Act, 1993, The Maternity Benefit Act 1961, Immoral Traffic (Prevention) Act, 1956, The Child Marriage Restraint Act, 1929, The Equal Remuneration Act, 1976, The National Commission for Women Act, 1990, Protection of Women from Domestic Violence Act, 2005 etc.

## **CONCLUSION**

It is not easy to eradicate deep-seated cultural value, or alter tradition that perpetuates discrimination. Babasaheb Dr. B.R. Ambedkar gave his whole life for the betterment, rights and justice to underprivileged sections of society. Due to his reforms, women got their independence and learnt to live with honour and pride. It is due to the efforts and contribution of Babasaheb that women are self-dependent today and government has initiated many schemes and implemented many laws for the empowerment of women in Indian society. Despite of passing various laws and framing rules for empowerment of women, they are suffering from various problems. They have not been accepted in society at large as equal to the men. In matter of economic affairs, they are not entitled to use the property in her own choice. On Dr. Ambedkar's death, in the condolence message in Parliament, Prime Minister Jawaharlal Nehru rightly said "Babasaheb Dr. Ambedkar was a symbol of revolt against all oppressive features of Hindu society". His dream of an equal society lives on.