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Law with loopholes

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While welcoming the amended divorce law, activists raise concern about it leaving the wife's share in the property ambiguous and dependent on the discretion of the courts

For about two decades now, Amita Basu, 49, has not had a salary hike. She is paid Rs. 8,000 at a hospital where she works as a receptionist. However, working as an office assistant in the 80s, Amita was earning the same amount. At that time, she quit her job to get married and spent all her time working at home. Meanwhile, her husband earned a fortune: a tea estate, some land, a couple of houses, cars, cash in joint fixed deposits and inherited assets from his father.

After separation, however, Amita couldn't negotiate for much of that. Maintenance for the kids -- Rs 15,000 -- came after two years of court battles and the mother of three had to take up a small job to keep going. During the court battle, she also lost out on the couple's fixed deposits and her rightful share in the marital property.

Amita's is one of several stories in a recent book on the subject, *Separated and Divorced Women in India: Economic Rights and Entitlement*, and underscores the economic situation of a majority of Indian women after the breakdown of a marriage. However, last month, when the Rajya Sabha passed the Marriage Laws (Amendment) Bill, 2013, some relief was expected, at least for women who had married under the Hindu Marriage Act and the Special Marriage Act.

Wives would now be "compensated" by a "share" in the man's share of property — other than "inherited" or "heritable" — if divorce is filed under the "irretrievable breakdown of marriage" section, the Bill says. Based on the "no fault" divorce theory, this section promises to make divorce "easier" and "faster" but also allows for wives to oppose separation on grounds of "financial hardship".

An equitable division of property under this section had been a long-standing demand by several women's groups and lawyers. The unpaid labour that women performed within the house should be considered as their contribution to the marriage, and thus, a share in the matrimonial property is their right, the groups argued.

However, the Bill does not seem to offer much in terms of equality, according to lawyers working on the issue: the definition of property and the exact nature of its division are unclear, along with other legal loopholes.

“A mere ‘share’ in the property is not enough; our demand has always been about an equal, or a 50 per cent share. Women are equal partners in the marriage, and their contribution has to be recognised with an equal division of matrimonial property. It's not compensation, it's their right,” says Kirti Singh, senior lawyer in the Supreme Court and the legal convenor of the All India Women's Democratic Association (AIDWA). She is also the author of *Separated and Divorced Women in India: Economic Rights and Entitlement*, based on a survey of 405 separated, deserted and divorced women in India. The book details the economic hardship faced by women after separation: property and assets are lost despite years of unpaid labour in the house, lengthy court battles ensue over maintenance, and living standards go down drastically. Survey results paint a grim picture: 41 per cent women said they had no income after separation and only 14 per cent earned more than Rs. 6,000. On the other hand, more than half the men earned Rs. 10,000 and more, indicating a wide disparity in the economic conditions of the estranged couples.

Such hardship desist many women from filing for divorce, despite facing violence and abuse. According to the survey, most women don't want divorce even if they have faced violence: only 18 per cent of the women had asked for divorce, as opposed to the 77 per cent of men. Divorced and separated women constitute a mere 0.2 per cent of Indian female population, the Census 2001 data states.

“Women tend to stay in bad marriages because they are unsure of what financial package they can get after separation. Often they end up with nothing. This law gives them an exit option, but too much is left unsaid,” says Indira Jaising, additional solicitor general, Supreme Court and the architect of the law for protection of women against domestic violence.

In India, even maintenance for wife and children doesn't come easy. “Half of the workload of the family courts comprises maintenance cases. Cases can go on for years, and the amounts decided in favour of women can be as low as Rs. 200 at times,” says Srimati Basu, professor of women's and gender studies at the University of Kentucky, U.S. Ms. Basu, who has done extensive ethnographic research in Kolkata's family courts, feels that while the larger goal of gender equality must amount to women not being treated as dependent subjects, in this context, their economic condition post separation cannot be ignored. “Many men who earn really well end up claiming in the courts that they have no money for maintenance,” she says, citing her experience in the courts. Survey findings state a similar instance: in Kerala, a woman whose husband was earning Rs. 56,000 per month received Rs. 900 as maintenance after a court battle of 17 years. In this context, leaving the wife's share in the property ambiguous and dependent on the discretion of the courts is a problem, lawyers feel.

The Bill also excludes the wife's right to "inherited" or "heritable" property — the definition of which itself is unclear, several lawyers feel. Rights of female relatives who have contributed with unpaid labour to the couple's self-acquired property are also ignored, according to the website of Partners for Law in Development (PLD), an organisation that works on women's rights and law.

Other issues that raise concern include the shortening of the period within which divorce is granted. The new law states that if either of the parties "fails to appear within a period of three years from the date of the presentation of the petition", the court may waive the requirement of moving the motion by both the parties. Ms. Singh, who is also a former member of the Law Commission, feels that this may not give couples a chance to re-evaluate their decision. "In the case of divorce by mutual consent, the first motion is moved after a year and the second, after six months. Under this section, even if one doesn't agree after six months, the court may pass the decree of divorce," she says. The Bill also defines "living separately" as not living in the same household. "This is unfair as women do live separately, albeit in the same household, as they do not have any place else to go," says Ms. Jaising.

The ambiguities in the division of property and other issues aside, the Bill is limited to those belonging to a certain class. "What happens to those who don't have property or wealth in the family?" asks Madhu Mehra, director of PLD. The larger question of women's economic rights must include social security for single women or single mothers, regardless of their status as being unmarried, divorced or abandoned, she says.

Indeed, the new law in the making is only the beginning of that debate.

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