

Marriages Are Still Traps For 21st Century Women

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Do divorced/separated women in India have a right to marital property? How do they support themselves especially if they are among the 74.3 per cent full-time housewives with no independent source of income? Many need to support not only themselves but also their children.

We may have stepped into the second decade of the 21st century, but some old issues that dog women just don't seem to go away, notably their continuing vulnerability within marriage. And this was the theme of an seminar on 'Economic Rights and Entitlements of Separated and Divorced Women in India Including Child Support and Right to Marital Property' held in Delhi recently.

Said Mumbai-based lawyer-scholar Flavia Agnes, speaking at the seminar, "Women have no rights until they make it happen! Divorced and separated women ought to have a right to marital property but in practice they are seldom able to exercise this right." Added Delhi's Keerti Singh, a seasoned lawyer and activist, "The right to marital property is based on the woman's contribution to maintaining home and children over the years. It is not a dole or a charity. It is her right." Yet, this right is consistently and flagrantly violated in every part of the country. According to a research study by the Economic Research Foundation (ERF), New Delhi, done by Keerti Singh, a wife's entitlements upon divorce or separation are extremely limited under all Indian laws. The ERF's 250-page report, entitled 'Economic Rights and Entitlements of Separated and Divorced Women', states, "In India, in the absence of any laws for division of marital property, when a separation or divorce takes

place the male spouse/husband usually walks away with all the moveable and immoveable assets of the household."

This startling and stark revelation is part of the reason that women do not walk out of abusive marriages. Despite high levels of violence within marriage, wives tend to continue in the institution because it at least promises a modicum of survival - particularly if there are children. However, such survival takes place in situations of compromised dignity. Daily injustice becomes a routine affair, so much so that women become numb and carry on stoically, hoping things will improve one day. Ironically enough, most divorces or separations in India are at the behest of the husband. Not only does he have an upper hand within the marriage, he also has an upper hand when it comes to the dissolution of marriage. Most of the property remains in the hands of the man or of his parental family. Interestingly, the study shows that while 23 per cent of women owned land during their marriage, only six per cent continued to own land after separation/divorce. Although the husband and his parental family had bought land only in 39 per cent of the cases, they managed to grab more land in another 30 per cent cases.

Of the women who owned vehicles before marriage (cars, scooters/ motorcycle or bicycle), in 46 per cent cases she or her parents had bought the vehicle. Yet, a whopping majority of the vehicles – 77 per cent - remained with the male spouse after marital breakup. From her years of experience with divorce and maintenance cases, Agnes analysed the roots that lie within a corrupt male-oriented family system. "In a marriage both are deemed to be partners. There is a tacit understanding that whatever the husband has is also mine. But, in fact, whatever the husband has is his own and doesn't automatically become hers. Most of India has patrilocal families and the woman remains an outsider while the man is the central figure," she pointed out.

There are many blind spots in the law. For instance, the woman has to provide evidence regarding her (former) husband's income. Ninety per cent of women interviewed said the onus of proving his income should not fall on them - rather this responsibility should be shouldered by the court. Lawyers and researchers concur that it is impractical to expect the woman to gather evidence regarding the income of her estranged husband. Even within marriage, a substantial percentage of women are kept in the dark about their husband's income. Upon divorce or separation strenuous efforts are usually made to conceal income and wealth. In propertied families there is a great deal of activity around the time of a man's divorce. Large swathes of his property and other assets are transferred to the names of his brothers or other parental family members. This effectively circumvents the possibility of reasonable division of assets with a just proportion going to the wife. Tax returns are routinely doctored in any case.

Goa's Albertina Almeida, a practicing lawyer for nearly two decades, said that although Goan law seems to promise equality to women, with a common civil code granting equal rights in marital and parental property to them, these are nullified by one provision: Control of property is vested with males. "Gender-neutral laws are not sufficient in a patriarchal context. Laws must be gender-conscious, with a tilt to correct prevailing gender imbalances in families," she reiterated.

Law anywhere in India entails a long and bitter struggle, at the end of which the woman gains little or no property rights. Agnes noted that "endless negotiations" are more common than up-front battle in court. The man may be desperate for a quick divorce, because he has

another woman, who might be pregnant already. In such a situation the wife has some bargaining power. If the husband is really wealthy, she may demand ` 20 million, he may say he will give ` 200,000. She may come down to ` 10 million while he may go up to one million. The lawyer's job is to help the woman reach the best compromise. Of course, most families in India do not own property at all. What support can women expect from the law, state or civil society in the eventuality of being on their own, with children to look after, no property and no income? Said Madhu Mehra, Director of Partners for Law in Development, says, "We have researched the rights of women who live at the margins and are financially dependent. Financially dependent women cannot access any support from the state for their own maintenance or the maintenance of their children. Society severely restricts their choices. In middle-caste middle-class families when a marriage breaks up, women face stigma. In Rajasthan, under the practice of 'naata', women or men may leave a marriage and remarry but the children remain with the husband. It is the same in tribal and Muslim communities."

Activist Ginny Srivastava, based in Udaipur, Rajasthan, believed that the only way ahead for single women is to unite and fight for their rights. She helped set up Ekal Nari Sangathan (Single Women's Forum), a collective of single women - widowed, divorced, separated or never-married. The Sangathan helps women struggle for land and property rights, right to ration cards, pensions, and overall social acceptance and dignity. The collective, according to Srivastava, "has 33,000 members in Rajasthan, mostly women from rural areas, making it the largest people's organisation in the state. It has spread beyond Rajasthan to six other Indian states. The Sangathan has registered many victories, entirely due to the courage and fighting spirit of the women."

If it's true that "no women have rights until they make it happen", then - as we enter the second decade of the 21st century – it appears that women are quite determined to make it happen. (Women's Feature Service)