

DDA Move For Joint Allotments

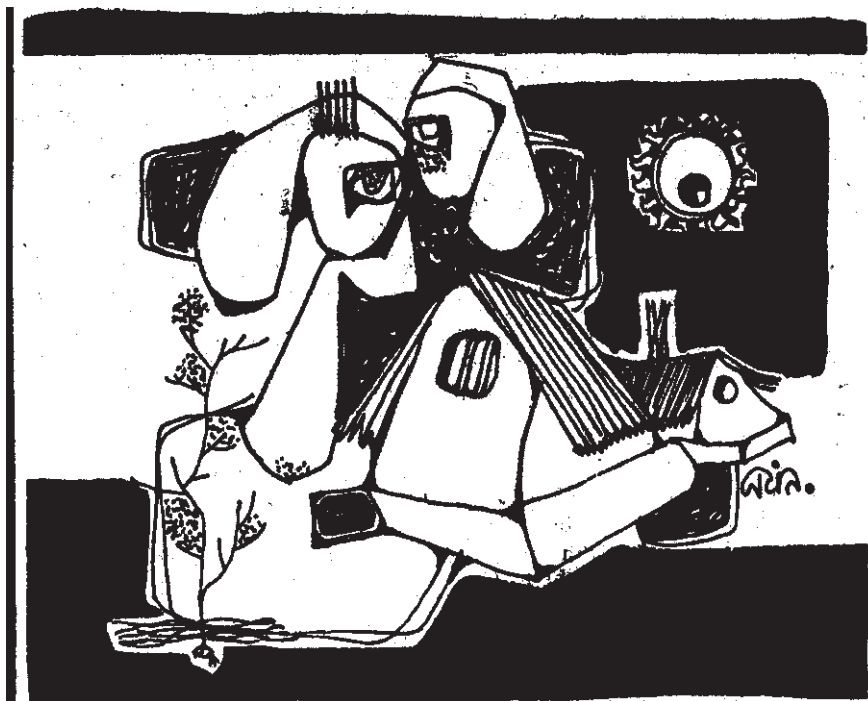
IN December 1986, the Delhi Development Authority (DDA) issued a public notice that, with retrospective effect from January 16, 1966, all registrations and allotments of flats would be made only in the joint names of husband and wife.

A single person applying for allotment; would have to furnish an affidavit to that effect. It would be open to the DDA to cancel an allotment if facts were misrepresented by an allottee. If allottees did not apply for joint ownership within three months of the issue of the notice, DDA could cancel their registration. Flats applied for by either spouse before the marriage are exempted from the provision.

The notice stated that this move was intended to give "the housewife her due" and "to implement welfare measures for women, to protect their social and domestic status, and to promote the objectives of Articles 15(3), 38 and 39 of the Constitution of India."

This move amounted to introducing the concept of joint matrimonial property, which exists in the legal systems of many countries. It means that any property acquired after marriage by either spouse is considered joint property and is to be shared equally if the marriage breaks down.

In the sixth plan, government had sought to take a step in this direction by urging that an anti-poverty programme, titles for all assets be given jointly to



husband and wife. However, only four states have introduced legislation approximating to this exhortation. In Andhra Pradesh, Bihar and Maharashtra, a few experiments are also being conducted in giving title deeds to land to the wife, and title to other assets to the husband.

In 1985, two seminars were held to discuss the move. One was a preliminary, thinly attended session. The next was a brainstorming session structured around a background paper on joint matrimonial property presented by Justice Deshpande. Curiously, the women's welfare ministry did not attend these seminars,

In February 1986, the minister for women's welfare, Margaret Alva, at the prime minister's request, hastily drafted priority social legislation, including the right to joint matrimonial property. Yet, when DDA issued its notice on Joint ownership, the women's welfare ministry was taken completely by surprise. There had been no coordination at all.

There does not appear to be much sympathy in the DDA for the joint ownership move. DDA officials privately

admit that they do not expect the joint ownership notice to survive and, with barely disguised glee, refer to letters written by some women, objecting to the move. According to R.K. Kaul, legal advisor to the DDA, about 50 couples have so far applied under the rules for joint ownership. But before much headway could be made, the notice was challenged by one V.P. Shaima, who filed a public interest petition in the Delhi High court.

Sharma claims that the DDA notice is an encroachment on the Individual's fundamental right to sell and own property at will. In fact, the right to property has been deleted from the constitutional list of fundamental rights, and now subsists only as an ordinary constitutional right.

Sharma also claims that since the provision applies only to the DDA, it is discriminatory. It does not affect other parts of the country or other housing arrangements in Delhi. He objects to the retrospective applicability of the provision, contending that persons who applied for DDA flats may not have done so, had they known that this provision

would be introduced.

It is clear that the crux of his objection is: "Why should a man be obliged to share his hard earned money or property with his wife?" Building on this argument, he adds: "if the above DDA public notice is accepted in principle, a day may come that each man will have to open a bank account jointly with his wife, the salary of the man will have to be paid jointly... the business operated jointly, the plot/land, TV, fridge, vehicles,... purchased in the joint names of wife and husband."

Dare one say that this would be the desired logical culmination of the concept of joint matrimonial property, based on a recognition of the woman's contribution to the building of the home and the house-hold assets ?

For Sharma, however, property or economic control over property by the man is a means to "tempt" the wife to remain in a marriage. He remarks that if a

wife deserts her husband but has equal rights in the matrimonial property, "the situation will become even worse because the wife will not be tempted for a compromise...." He also fears that there will be "no shelter for the man and his children."

Given the contemporary social reality, it is surely more likely that fewer women will be left shelterless if they have a right to matrimonial property, and more of them will be able to claim custody of their children. Also, husbands may be discouraged from summarily abandoning their wives, if the latter are joint owners of the property.

The attendant danger of course is that a husband may have recourse to murder rather than allow her to claim half the property. Unless women are socially empowered to exercise their legal right, this danger will continue to be a very real one. It is noteworthy, however, that in Goa, joint matrimonial property does

exist amongst Hindus, Catholics and Muslims,

Several women's organisations, such as Karmika, Joint Women's Programme, YWCA, CWDS and Mahila Dakshita Samiti, as well as the Legal Aid Centre have intervened in the case, on the side of the DDA. Some of Sharma's arguments are untenable, since DDA, which provides housing at subsidised rates, is entitled to lay down its own contractual conditions, particularly if these are in line with public policy. Yet, the hasty shoddy drafting of the notice has left many loopholes for litigation, such as the retrospective clause, which may lead to its being struck down and setting a bad precedent. It will be tragic if this happens, and will only confirm that even presumably well intentioned moves from the top must be executed less shoddily and accompanied by campaigns at the ground level in order to be effective.