

Co-ownership Rights for Wives

A Solution Worse than the Problem

Madhu Kishwar

AN important reason for the limited appeal of the women's movement in India among women themselves is its narrow focus on the rights of women as wives, with little appreciation of their rights as daughters, or as sisters, mothers or grandmothers. This is partly due to the fact that most women's organisations are flooded with complaints of harassed wives and have thus come to focus on women's problems in their role as daughters-in-law or wives.

A new offshoot of this narrow concern is the demand that the existing property laws of all communities be amended to create joint matrimonial property. In deference to pressure from women's rights activists, the Maharashtra government has declared a New Policy for Women which provides that as soon as a marriage is solemnised, the wife become a joint owner of the properties and assets earned by the husband. Efforts are being made to pass all - India legislation along the same lines. The assumption is that a wife should be able to claim half of the joint matrimonial property in case of divorce.

Inappropriate for India

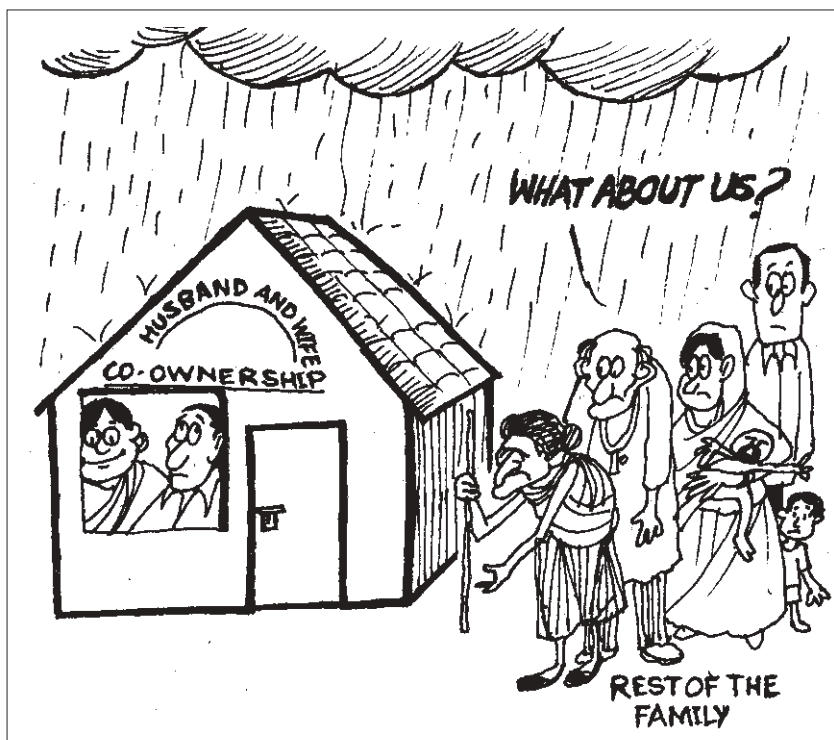
This proposal is beset with several difficulties. To begin with, the proponents of women's rights tend to forget that at least 70 percent of our population lives in villages and a large majority of these people belong to peasant families. Very few of these families are nuclear. In the vast majority of instances land and other

property are jointly owned and get partitioned among the sons, usually after the death of the father. How do we make the wife a co-owner in her husband's property and earnings when the husband in most cases does not have a separate property or income at the time of his marriage, and often for years afterwards?

In most peasant families, income is jointly shared. Even if one or more sons are earning a wage through urban employment, they contribute much of their earnings to the common family kitty. In most cases, elder brothers take responsibility for the education and even marriages of the

younger brothers and sisters - often even of their nephews and nieces. Thus, there are many more claimants to a man's earnings in the Indian family set-up than in the West. Are we giving the wife the right to negate the claims of other members of the family, claims that include old parents and younger siblings?

The move to make wives co-owners in the husband's property is out of tune with social reality in many other important respects as well especially when combined with, another important plank of the women's movement that is abolition of dowry. Women's organisations continue



harping on the need to put an end to dowry system without ensuring that in lieu of dowry, daughters get equal inheritance rights with sons. Dowry has been seen only in terms of a financial burden on the bride's parents, overlooking the fact that dowry exists only among those communities where families are not willing to treat daughters as co-inheritors with sons.

One Way Sharing?

The absurdity of trying to abolish dowry without ensuring inalienable inheritance rights for women is sought to be further extended by proposing new laws which make it possible for a woman to be an equal sharer in her husband's property from the moment she gets married - with the implicit right to demand partition in case of divorce. Are we willing to allow husbands to be co-owners in the wife's inheritance? If the idea is joint matrimonial property, this follows logically. Or is it to be only one way sharing?

The idea of joint matrimonial property would make sense only if women brought their share of inheritance from their parental home at the time of marriage, merging their own property into that of their husbands'. The couple could then become co-owners of their genuinely "joint" property. Though there is mention in the Maharashtra Policy that the Hindu

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Succession Act be amended to give women coparcenary rights in their natal property, there is no mention whether a woman's husband will also acquire a joint right in her property. Most important of all, merely amending the Act will not ensure that the daughters actually claim and get their share.

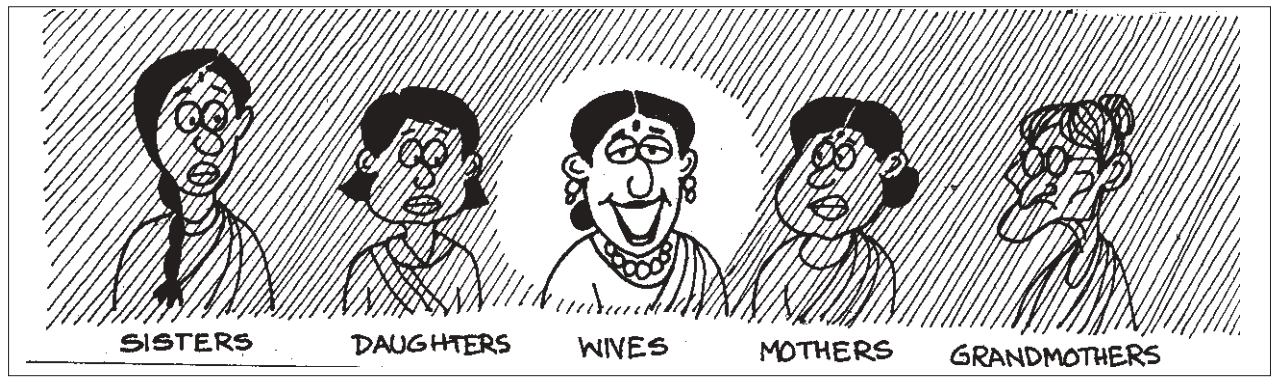
Andhra Pradesh has already given coparcenary rights to women but reports show that daughters continue to be deprived of their due share through the instrument of the will. It is a common practice in India to make a daughter sign away her rights in favour of her brothers even before she gets married. Thus to combat the culture of disinheritance we would need a law which prevents women from signing away their rights in their parental property in favour of their brothers.

It is absurd to expect that a woman's husband will willingly make her an equal co-sharer from the day

they get married, while her own father and brothers are allowed to disinherit her. The culture of keeping women economically dependent can be fought only if we start at the root of it all - namely, the woman's natal family. If a woman enters her husband's house as an economic dependent, she is bound to be more vulnerable, as well as desperate to push other claimants out of her way.

The concept of joint matrimonial property being currently proposed by feminists in India has been unthinkingly borrowed from some western countries without taking into consideration the radically different economic and social organization of Indian families. Even in the US, a wife can usually claim a share only from that portion of property or income which is earned after her marriage to that particular man. Moreover men can also claim maintenance as well inheritance from wives. Our social reform advocates are making no such distinction between self-earned and inherited property - the assumption being that a wife has a right to even what was earned and inherited before the two got married.

As it is, women are viewed as economic liabilities to be passed on from parents to husbands. With this law change they will also be viewed as grabbers out to snatch a man's wealth from him. This will only



strengthen the image of women as an economic drain and the entry of a daughter-in-law would be more dreaded than even the birth of a daughter.

Wives Versus Others

An important reason for the ferocity of battles waged by women with their sisters-in-law and mothers-in-law is that they usually come into their marital homes after being disinherited from their parental inheritance, and are taught to believe that they are to find economic security through a stake in their husband's property. Consequently, the desire to push the other dependents, younger brothers and sisters and aged parents, out of the way.

The flip side of the coin is that many women continue to prefer maltreatment in their husband's homes rather than return to their parental home, because of the hostility and humiliation they face at the hands of their brothers' wives, who want their husband's sisters out of the way. Most women would rather be dead than come and live with their natal family, even when in need, because they fear the taunts and maltreatment at the hands of *bhabhis* (brothers' wives).

This ugly tussle between women is primarily due to their fragile rights in their natal homes. For a daughter, a *bhabhi* represents a threat, for she affects her already fragile rights in her own parents' house. Similarly, mothers-in-law fear a daughter-in-law's entry into the house lest they be either pushed out or left uncared for. Attempts to strengthen the rights of women as wives at the cost of their rights as daughters, sisters, and mothers-in-law is bound to be counter productive and lead to still more murderous power tussles between women in the family.

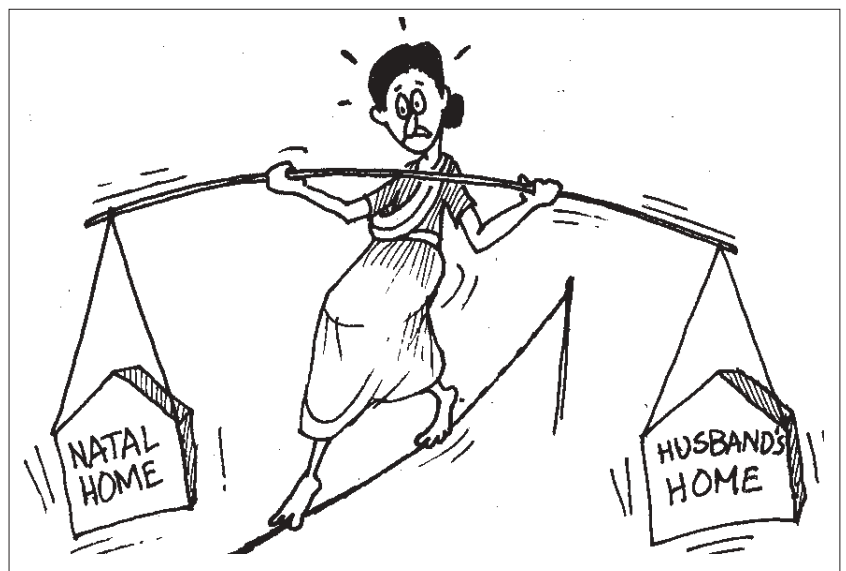
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It is a mistake to think that women face maltreatment only as wives and daughters-in-law. Maltreatment of women as mothers-in-law is no less frequent. In cases where a wife manages to get the upper hand, one often finds old mothers made to live a life of humiliation and callous neglect. But it has not yet become acceptable to consider the full significance of such instances.

The maltreatment tends to be more severe in cases where the old parents have handed over their property to their sons in their own life-time or are too poor to leave an inheritance, and therefore, get treated as liabilities. One comes across numerous cases

where a widowed mother-in-law was left uncared for when grievously ill, or not allowed even a small amount of pocket money and treated as an unpaid domestic servant and *ayah* rolled into one.

The problems of widowed mothers are also due to the absence of secure formal and legal property rights for them. In cases where the sons take over control of the father's property, widowed mothers become as vulnerable to abuse as a powerless daughter-in-law. An important reason why such instances do not get to be highlighted is that in most cases mothers cannot bring themselves to lodge police complaints or seek newspaper publicity against their daughters-in-law because of their attachment and loyalty to their sons. Wives do not have a similar sense of loyalty, especially as new brides. For all the stereotyping of Indian women as silent-suffering *Sitas*, maltreated wives today are more likely to seek outside help than mothers or even sisters. Our law courts testify to this. Far fewer mothers or sisters take their sons or brothers to court for denying them their share of property. But wives have



relatively fewer inhibitions fighting court cases against their estranged husbands. Even among those of my friends who are very assertive of their rights as women, I find that hardly any of them have fought with their fathers or brothers when they were disinherited from parental property. But virtually none of them would be similarly willing to surrender their rights in their husband's property.

Misuse of Section 498A

One is beginning to hear complaints that Section 498A, which provides for a jail term for "cruelty" to a wife or daughter-in-law is being misused by wives and their parents. This should not come as a surprise. Our police has perfected the art of using legal provisions for personal enrichment. The stricter the law, the higher the bribe rate of the police, who do not hesitate to use any and every law in favour of anyone willing to bribe them adequately. While misuse of stringent laws like TADA (Terrorist and Disruptive Activities Act) is being acknowledged, women's organizations are reluctant to acknowledge a similar misuse of Section 498A of the IPC.

I quote from a letter I recently received from Anil Agarwal of Bombay. This is just one of the several cases I have come across in recent years of misuse of this legal provision. He writes: "Section 498A has given a ready-made tool in the hands of unscrupulous daughters in law to drive out an in-law and usurp their property. The police is too willing to go along with such complaints [provided they are adequately bribed] and lock up anybody named in the complaint to languish in jail, since Section 498A allows for no bail. I know a case where the daughter-in-law and her husband succeeded, with the help of



an unscrupulous lawyer and the police, in driving out the mother-in-law (the owner of the house) and her two mentally retarded daughters from the house by lodging a complaint of harassment against them under Section 498A. This lady is now at the mercy of others. When they approached an all - India women's organization, the response they got added insult to injury: 'Kindly ask the old lady to refer her daughters to an institution where the mentally handicapped are looked after. As for the elderly lady, she can also go to a Home for the Aged'."

Such cruelties are not confined to cases of mentally retarded sisters-in-law. One reason why most parents prefer to marry off daughters before bringing a daughter-in-law into the

house is because of their fear of their son disowning all responsibility for his sisters under the influence of his wife.

However, all this is not to deny that under the present system wives deserve a better deal and that only too frequently men abandon their wives without providing for them even while their parents are unwilling to take them back. Our inheritance laws are heavily weighted against daughters and our maintenance laws hopelessly inadequate to help women thrown out of their home by unscrupulous husbands.

The idea of joint matrimonial property is in fact a product of women's dissatisfaction with the existing maintenance laws. But the idea as it stands is a knee jerk reaction. Far from solving the problem, it will make for even more conflicts between men and women and within families. It will open a floodgate of litigation because the provision has ample scope for misuse by wives and their families and will make the groom's family as vulnerable as wives are today.

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Not at Other's Cost

If we want our family life to be less acrimonious, we have to ensure that the rights of one member do not encroach upon those of the others. The current battles between *saas-bahu* (mother-in-laws and daughters-in-law) as well as between sisters-in-law), *nanad-bhabhi* can be minimised only if every woman has inalienable rights in her parental home and property and therefore she is not treated as *paraya dhan*, a burden to be passed on to another family. It would be far more practical to propose that instead of spending money on dowry, which mostly consists of consumer goods, parents give income generating forms of property to their daughters such as cash deposits, house, land, shop or factory - all in the daughter's own name - and that she retains these as her own even after marriage so that she does not enter her husband's home as a dependent and an economic liability but rather as an economically self sufficient unit. The property may be made joint only if and when the husband and wife both want to pool their economic resources and become a single economic unit.

Practice Before You Preach

Our social reformers have perfected the art of proposing laws which are so impractical that they can only be observed in the breach. To ensure that social reformers do not propose absurd laws, we must make it mandatory that those who propose such far reaching changes in our family laws demonstrate their viability by first implementing the proposed changes in their own family and social circle.

Thus the persons responsible for recommending that women become equal co-owners in the husband's property from the day of marriage should provide undertakings from at

least 10 of their relatives and an equal number of friends or neighbours that they have already implemented it in their family's inheritance papers. Such a process will ensure that even social reformers become accountable for their acts and that they test out

their ideas, on however small a scale, before they are unleashed on to the hapless millions of this country by way of new legislation. Only through such a process we will understand the weaknesses and limitations of the reforms we propose. □

Tears in God's Eyes

*It was not
when mosques or temples
were razed to the ground.*

*It was not
when misdeeds reigned
during preaching profound.*

*It was not
when hunger stalked
the grain-filled godowns.*

*God enjoyed unconcerned
in his high heavens
taking these as man's foibles
or faith's cynicism –
like naughty boys
throwing stones
at window panes.*

*When flames licked life
out of unsuspecting sleepers,
sharp-tongued edges pierced
limbs of lambs and creepers.*

*Red hounds chased roots
deep into the wide, wide sea
inferno engulfed rocks
and the age-old tree.*

*Even the air was scared.
No one was spared,
the birds in their nests,
infants clinging to breasts.*

*God could not hold his cries,
tears rolled down his eyes.*

Santosh Khanna