

ON March 18, 1983, the Hindu Succession (Andhra Pradesh Amendment) Bill, 1983, was introduced in the legislative assembly of Andhra Pradesh with the object of amending the Hindu Succession Act, 1956, in its application within the state. The bill was discussed and referred to a select committee. It is likely to come up again in the current session. This is a very important piece of legislation since it proposes to confer certain property rights on daughters which have so far been restricted only to sons.

The Hindu Succession Act, 1956, had made daughters equal inheritors with sons in the self acquired property of their parents. However ancestral property of a Hindu joint family continues to be governed by customary law under the Mitakshara system. The Hindu joint family, also known as a coparcenary, consists, for purposes of inheritance, only of male members. All property which is inherited by a Hindu male from his father, grandfather, or great grandfather is considered to be joint family property. Any property he acquires with the aid of the ancestral nucleus, and which he throws into the common stock, is also considered joint family property. Even property acquired by a male member without the aid of the ancestral nucleus is treated as joint family property if the intention, purpose, and use of such property establishes it to be so. For instance, a house bought by a man from his own earnings can be considered joint family property if it was bought as a dwelling for the whole family and has been used as such.

All members of a joint family are supposed to share and enjoy the property in common. The male members of a coparcenary are a man, his sons, his sons' sons, and his sons' grandsons, not his daughters or their sons and daughters. If a partition takes place, the sons or grandsons of any pre-deceased son are treated as representatives of their male ancestors and are entitled to the share he would have got, in addition to their own share as coparceners. Once

LAW

A Much Needed Change

Land Rights For Women In Andhra Pradesh

the property is divided on this basis, each male member sets up his own joint family and his male descendants become the coparceners in the new coparcenary thus created by him.

Since it was assumed that women would marry and leave the family, they were not coparceners. The Hindu Women's Right To Property Act and the Hindu Succession Act gave mothers, wives and widows of sons, grandsons and great grandsons the right to shares in the share of a deceased man. That is, the women who marry into the family now have an equal right to claim a share



on partition but the women who are born into it do not have any such claim. Coparcenary property has certain peculiar characteristics, namely :

1. It devolves by survivorship, not by succession. This means that a son acquires an interest by birth in the joint family property. The moment he is born, he is already an equal owner of the property. He does not have to wait till his father dies to inherit an interest. Every birth or death of a male member of the family thus modifies the interest of each survivor, but only on partition can a member actually know how much belongs to him.

2. Originally a coparcener had no right to alienate or will away his interest in the joint family property. The Hindu Succession Act allows a man to will away his interest, that is, when he dies,

his share goes to whoever is specified in his will, or to his heirs, including female heirs, if he has not made a will. However none of the heirs become coparceners.

3. Every coparcener has a right by birth to joint possession and enjoyment of the joint property. He also has the right to be maintained from the family income so long as he remains in the joint family. If any of these rights are denied to him, he can enforce them by law. However, he cannot make use of the property in such a way as to obstruct the enjoyment of it by the other coparceners.

4. As soon as a son is born to a man, the son gets a right equal to that of his father in the coparcenary property but the father is entitled to act as manager or *karta* and all coparceners are liable to this common management. The manager has full powers over income and expenditure and no member can later claim compensation on the ground that more money was spent on another member. All property and interests are assumed to be joint and common to the family.

5. If a coparcener is dissatisfied, he can at any time demand partition of his share and separate himself from the coparcenary. As soon as a son is born to him, he automatically becomes in turn the creator of a coparcenary. However, all the separate and self acquired property of a coparcener is his to dispose of as he pleases. If he dies without making a will, it devolves by succession under the Hindu Succession Act, wherein no distinction is made between male and female heirs. To evade the Act, and to evade income tax laws, many people convert self acquired property into joint

family property, thus denying daughters their rights.

The new Andhra Pradesh Amendment bill seeks to make a man's daughter and his son's daughter coparceners. This means that for the first time, a girl will acquire by birth an interest in her father's and paternal grandfather's property. She will thereby acquire the right equally to enjoy and possess such property in common with male coparceners. She will also have the right to become manager or *karta* of the property, since the oldest member is permitted to renounce his right in favour of a junior member.

However the bill lays the following restrictions on her rights as a coparcener:

1. She can claim partition of the coparcenary property but not of the family dwelling house, if the male coparceners are living in it. At present, this restriction already applies to a female heir of self-acquired property. The restriction is sought to be extended to ancestral property as well.

2. She can claim the right to common residence in the family dwelling house only if she is single, widowed or deserted. If she is married, she cannot claim common residence with her brothers and their families in the family dwelling house. This restriction too already applies to self-acquired property under the Succession Act. However, in case the male coparceners are not in occupation of the house, she can claim the right to enjoyment thereof.

3. The most important difference between a male and a female coparcener laid down in the bill is that the female cannot create a coparcenary in her own right, nor do her children become coparceners by birth as do the children of a male coparcener. This means that in case the property is partitioned, her share becomes her absolute property, and in the event of her death will devolve by succession, that is, her husband will be her heir if she has no children. Secondly, if she has children, they do not acquire any interest by birth in the family of which their mother is a coparcener. Thus

the children of a widow living jointly in her undivided natal family will not be entitled to enjoyment of the property or to maintenance from it unless a partition takes place. A man's son's children, both boys and girls, become coparceners by birth but a daughter's children, whether boys or girls, do not become coparceners. It should also be noted that a coparcener can at any time renounce his or her rights in favour of the other coparceners.

Thus though the bill seeks to declare a woman as a coparcener, in fact, her status as defined in the bill is not equal to the status of a male coparcener, but is



substantially different.

The report of the committee on the status of women in India, 1975, had recommended abolition of concept of coparcenary and the right by birth. The committee felt that making women members of coparcenary would not improve the situation, as wives and widows, not having been born in the

family, would continue to have an unequal status.

The statement of the objects and reasons for introduction of the bill says: "The Hindu Succession Act, 1956, governs the property rights of Hindus and provides for devolution of property. Women are not members of the coparcenary under the Hindu Mitakshara law and therefore they are not entitled to claim partition in coparcenary property, and such exclusion of daughters has led to the creation of socially pernicious dowry system with its attendant social ills. In order to eradicate this ill by positive means which will simultaneously ameliorate the condition of women in Hindu society, it is proposed to confer equal rights on Hindu women along with the male members so as to achieve the constitutional mandate of equality by suitably amending the said Act."

While it cannot be doubted that the present bill is a positive step forward in giving content to the idea of equality, it is important to remember the pressures that exist in our society for daughters to renounce their rights in favour of sons. It is quite likely that daughters will be pressured to renounce their rights as coparceners in favour of their brothers, just as they are often pressured to renounce their rights as heirs to self-acquired property under the Hindu Succession Act. Secondly, it is likely that if a married woman demands partition of her natal family's property, her share, being an absolute share, will be appropriated by her marital family, and will not remain in her control. As long as the principles of the woman's transfer to her husband's family after marriage and of her children having rights only in their father's family continue to be the basis of family structure and legislation, the woman's control over property is likely to be limited, as also her power in the family.

However where the bill is likely to be more effective is in its application to single, widowed and divorced women. So far such women had the right to claim

residence in self acquired property of their father but not in an ancestral dwelling house. The right of common possession and enjoyment as a coparcener may give some base to women to choose to remain single, and to resist pressure for marriage. As a coparcener, a woman can claim partition at any time, and once she has her share in her absolute possession she may be able to determine her life independently. Likewise, a widowed, deserted or divorced woman will have a better status. She can claim maintenance,

the right to residence in her natal dwelling, or partition of joint family property. This will now be a legal claim, enforceable in the courts, so she need no longer be dependent on the mercy of her brothers or cousins.

The knowledge that she has this right may give a woman more bargaining power. Her marital family and natal family will realize that she is not completely helpless since she can, if she chooses, claim her rights.

At present, many wives and widows

endure brutal maltreatment in their marital families because their natal families are not willing to take them back. This bill, if it becomes law, may provide such women with the possibility of a more dignified life. Of course, the capacity actually to enforce one's legal rights can exist only if one has certain basic resources and a minimal economic independence. Yet it is important that rights be legally available to all those women who are in a position to claim them, and who wish to do so. □

July 16, 1983, 4.30 p.m. People streamed from different sections of the city into Mulund railway station. At the ticket counter we propped up placards. A woman had been killed, hanged, driven to death, or so it was "alleged."

The image, the shadow, the victim. The bride, wife, mother—all caught in different frames. A woman caught, trapped in and between frames. Women, men, children, chanting anger, moved in protest down winding streets, guided by her silent family, dressed in white.

We stopped by huge apartment buildings where Gujaratis live. One of us spoke: "Why should a woman, a doctor, with a ten month old child and a one day old degree in acupuncture kill herself?"

Did Varsha hang herself? Or was she hanged? She was a Gujarati and her husband was Tamilian. The community difference made no difference. The ropes, the gold, the chain were the same. Varsha's in-laws, the Venkataramans, never let her forget the price that their son, also a doctor, could have fetched—two lakhs. Her husband used to complain: "Your mother did not give me a gold chain." Another woman told the story of Varsha in Tamil to dwellers in another apartment building. They listened in silence.

Varsha. Child. Woman. Healer. Wife. Mother. Child denied her dream. Woman denied her being. Healer denied her skill. An MD not allowed to practise. Mother denied her child. Her child is a family investment, is allowed to learn only the father's tongue, Tamil, not the mother's,

Gujarati. A woman was executed in the circle of denial that was her home.

We reached Dr Venkataraman's clinic. Ashoka building, Mulund east. Here the killer masquerades as healer. "Doctor Venkataraman kahan gaya? Dar ke mare bhag gaya." One of us spoke in Marathi, while others painted the word "Killer" across the corrugated shutters of the clinic. Another woman came forward to tell another tale. Of yet



A Woman Denied Her Being

A Report From Bombay

another woman who was also dead, killed, or so it was "alleged." Some women lawyers who were present undertook to investigate this case.

—Vishwapriya L.I., Purnima Rao

After this demonstration by the Forum Against Oppression Of Women, Chembur Mahila Samiti and FAOW held a joint demonstration in the colony where Varsha's in-laws live. Three street corner meetings were held in this colony on July 24. Varsha's husband, his brother and their friends, who were sitting in their balcony, having tea, mocked at the demonstrators. We politely requested them to come and explain their position but instead they called two van loads of policemen to threaten us. We were peacefully demonstrating without making any personal accusations, but after this behaviour people could not help shouting "Shame." For several days after the demonstration, the husband and his family continued to threaten the women activists of the Samiti.

—Alfie

Women are responsible for 40 percent of the world's food production, yet women constitute 75 percent of the world's malnourished.

—Third World Women's Project. USA