

The Critical Examination of Legal Regime Governance A Human Rights Perspective on the Property Rights of Women

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Abstract

Women have played just as significant a role in human history as men, yet they have always been seen as lower beings. The terrible fact is that women have long been mistreated in all societies. Women make up about half of the world's population, and their social position determines how a country develops. However, women have been and still are exploited in a culture that is mostly male. However, it is now necessary for women to be given more authority and for males to be educated about their responsibilities to women. Women have similar admittance to fundamental opportunities and basic freedoms as every other person. State parties are expected under worldwide common freedoms deals to go to proactive lengths to ensure that women's basic liberties are maintained by the law and to end segregation and different practices that inconveniently affect women's privileges. The importance of gender equality in the workplace is acknowledged from both a human rights and a development perspective. This is because today's society is moving towards "socialisation," and gender equality is required to accomplish this. It also covers the rights of women to use and manage property. Property rights for women are crucial to their overall quality of life. The goal of international human rights legislation is to provide each human being with a fundamental framework by the State that aids in achieving that goal. International human rights legislation have a role in bringing about societal change for women's property rights and empowerment, which varies from country to country. Due to gender disparities in tradition, religion, and other factors, women were therefore denied their right to own property. The international human rights laws are crucial instruments for empowering women. Both domestic and international legislation are utilised to safeguard people's rights and responsibilities, especially those of women. The article looks at the global Covenants, Treaties, and Resolutions that deal with women's property rights. The 'women's property right' problem in relation to other significant international agreements with respect to women's human rights is examined in this article, with a focus on the issue of property equality.

Keywords: Property rights, human rights, gender equality, and women

WOMEN AND INTERNATIONAL INSTRUMENTS

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Protection is required because women are often targets of violence and criminal activity in society. Due to the ancient systems in place worldwide, women have suffered injustice under the guise of religion, under the guise of writing, scriptures, and societal pressure. Therefore, it is necessary to safeguard and uphold each of women's rights via a variety of ways.

The "International legal framework" for protecting women's property deals directly and indirectly with several clauses in treaties, conventions, and covenants. One of the things recognised by "International Human Right Law" from a variety of perspectives, including equality, dignity, health, and poverty, among others, is women's property. Countries vowed to "undertake legislative and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources, and appropriate new technology" in the "Beijing Platform for Action." Again, the "Istanbul Declaration and Habitat Agenda" of the 1996 "United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey" provide a plan of action for rights. It also covers the property rights of women. That state provides equal access to real property and legal protection for all citizens, regardless of gender.

INTERNATIONAL DECLARATION OF HUMAN RIGHTS

It is the first international agreement that addresses "human rights and fundamental freedom" for each and every person. The proclamation "stands out as the international Magna Carta for mankind everywhere," as Eleanor Roosevelt put it. Two significant documents, the ICCPR and ICESCR, were approved by the General Assembly in 1966 and allowed for the implementation of the UDHR. The UDHR addresses fundamental individual rights, including non-discrimination, independence, equality, and other universally held ideals. The idea of rights that is listed in the UDHR is to protect people from injustice. These rights are intrinsically unassignable, unassailable, and universal. The UDHR declared in its resolution that "Human Rights" are a universal set of principles that apply to all people and countries. The UDHR was not a treaty but only a declaration. As a result, the state was required to take specific actions to commit to the preservation of human rights. The UDHR does not deal with any mechanisms for enforcement. Three parts—"a set of general principles," "the codification of those principles into law," and "a practical means of implementation"—were designated by the Declaration's authors. Every state is required to advance the principles of the UDHR, although they are not legally obligatory. It is a significant document since it outlines the obligations of each member state in considerable detail.

Gross human rights violations against women occur in a number of contexts, including forced marriage, domestic abuse, unfair treatment, and oppression. Her basic income and sense of dignity in life are not guaranteed by the traditional systems of property ownership and inheritance. The Declaration recognised gender equality in the country. It is based on the global human rights violations committed by women. All people, including women, must thus be able to exercise their numerous rights without fear of abuse or torture.

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UDHR IN INDIA APPLICATION

Our nation endorsed and ratified the UDHR. Our constitution guarantees a number of UDHR provisions. A guarantee of "social economic justice, liberty of thought and expression, belief, of faith and worship, equality of status and opportunity to all" is included in the UDHR preamble. Numerous basic rights in the Constitution list the numerous UDHR provisions. In the Indian Constitution, which is identical to the UDHR, some "civil and political rights" are recognised as fundamental, while "economic, social, and cultural rights" are seen as guiding principles of public policy. The DPSP imposes positive responsibilities, whereas the Fundamental Rights of the Indian Constitution imposes negative obligations on the State. Certain international human rights standards, such as the right to family and the right against cruel and inhuman treatment, are recognised by our constitution. Consequently, under Article 21, there is a right to a good environment, a right to privacy, a right to compensation, a right to a fair trial, a right to dignity, and a right against torture. A unique law in India called "The Protection of Human Rights Act, 1993" was created to provide protection and enforcement of human rights.

The U.D.H.R. may not be a legally binding document, but it demonstrates how India saw the nature of human rights at the time the constitution was written, the viiapex court said in *Keshavananda Bharti v. State of Kerala*.

Gross human rights violations against women occur in a number of contexts, including forced marriage, domestic abuse, unfair treatment, and oppression. Her basic income and sense of dignity in life are not guaranteed by the traditional systems of property ownership and inheritance. The issue of the violation of women's rights affects every region and nation of the globe, and it encompasses a number of issues including inheritance, cruelty, poverty, inheritance, and other issues. Women have historically been denied economic authority in the family because of the traditional inheritance and ownership systems; as a result, they often face issues with property, maintenance, and child custody.

Preamble:

The UDHR's preamble addresses the following rights for women. First Paragraph to be read: Recognition of the "inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world" is stated in the first sentence of the Universal Declaration of Human Rights preamble.⁵¹ Women have the right to dignity and equality since they are part of the human family, and they also have the right to property, among all other rights. Given that this paragraph also discusses justice, it is crucial to provide women the same property rights as males in order to ensure that she receives justice.

Fifth Para read as under:

"The dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom," reads the fifth paragraph of the UDHR preamble. This sentence talks about how everyone has the same rights to

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advance the country and raise standards of living. Property rights may be granted to men and women equally since they are crucial for women's advancement and life-dignity. All people are conceived free and approach in privileges, as per Article 1 of the Constitution. They ought to act towards each other in a caring way since they have reason and soul. The expression "equivalent privileges of every single person" is utilized unequivocally in this article. It declares the freedom and equality that are fundamental to human dignity. As a result, every woman has an equal property right to live with dignity.

Article 2 read as under:

Regardless for anything, including race, variety, sex, language, religion, political or different conclusions, public or social beginning, property, birth, or other status, everybody is qualified for the opportunities and privileges illustrated in this Announcement. Article 2 resolves the issue of nondiscrimination for the privileges that the UDHR ensures for the many reasons referenced previously.

Women are not, however, denied the same property rights on the basis of gender. As a result, it recognised that women are entitled to all rights, including the ability to own property, without exception. This UDHR clause serves as the cornerstone that obligates the state party to provide equality for all rights.

Article 7 read as under:

"All people are treated equally by the law and are entitled to that protection without distinction. All people have the equal right to protection from any kind of discrimination that violates this Declaration and from any instigation to such discrimination." Each state party is required by this article to create legislation that provide equal protection under the law for all people. As a result, property laws in every state should be impartial and equitable.

Article 16 read as under:

Adult males and females are free to wed and raise children without hindrances based on their race, nationality, or religion. Both prior and after the marriage is finished, they enjoy equal privileges.

Every state party is required by this Article to provide equal rights for both spouses, including the right to property, which may be inherited or acquired by the spouses themselves. Property should be distributed equally between men and women in the event of a divorce. Once again, women should have a right to a stake in their dead husband's property. Similar to this, both the husband and the wife would have an equal right to make any decisions about the property.

Article 17 read as under:

1. Everyone has the right to own property both individually and jointly.
2. "No one shall have his property taken without just compensation."

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All human beings are granted property rights under Articles 17(1) and (2) without regard to their gender. Therefore, without any discrimination, every woman possesses property rights that are equivalent to those of males, and the government must take action to preserve such rights.

Article 25 read as under:

"Everyone has a right to a standard of living adequate for his or her health and the well-being of his or her family, including food, clothing, housing, medical care, and necessary social services, as well as the right to security in the event of unemployment, illness, disability, widowhood, old age, or other lack of livelihood due to circumstances beyond his or her control." It discusses maintaining a high level of life. When women get property rights, they often include the housing right. If she didn't claim the housing right, she would lose it. Articles 1, 2, and 7 discuss the broad concept of specific rights. However, this right cannot be fully exercised by safeguarding "property" or any other such object. Therefore, equality in the property is required to safeguard both dignity and equality. While Articles 17, 25, and 16 specifically address property, it should be safeguarded for the safety of women. It does not, however, have binding effect on the state party. Thus, the state party cannot adhere to it rigidly.

THE CONVENTION ON THE ERADICATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

"This 'women's Bill of Rights' represents a turning point. The concept of universal and indivisible rights—shared by all countries, alien to no culture, and applicable to both sexes—is reflected in it. One of the key texts ensuring the implementation of women's rights based on equality is the United Nations' convention on the elimination of all forms of discrimination against women". It became vital and significant among all other human rights texts. The phrase "international bill of women's human rights" is used to describe it. In 1981, 189 member nations and 99 signatories joined to form CEDAW. The definition of "discrimination against women" is covered in 30 articles. The treaty takes into account gender equality as well.

To safeguard and uphold the numerous rights of women across the globe, CEDAW must be adopted. The "United Nations commission on the status of women" (CSW) initiated the process that led to this treaty. This text provides a single, unified code for women's equal rights. This agreement operates as a moral force rather than as a treaty. Again, no legally enforceable duty has been formed. It outlines women's civil, political, social, and economic rights. First, it addresses the prohibition of discrimination based on sex and marital status. Second, state parties have a duty to promote gender equality. It outlined the globally recognised, legally binding standards that apply to all women. Its essential tenet is that women should not be subjected to discrimination. "Equality and equal protection of the law to women" is the cornerstone of the Convention. Additionally, it provides guidelines for equality and marital status. State Parties are required by this Convention to remove gender prejudice via a variety of programmatic, legal, and policy measures. This need to disclose pertains to all issues, including family law and private problems.

CEDAW APPLICATION IN INDIA

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The "Convention on Elimination of All Forms of Discrimination" was approved by our nation on July 9, 1993, and it was signed on July 30, 1980. The Supreme Court of India takes into consideration the issue of equality on the basis of it in the case of Vishakha v. State of Rajasthan. According to the ruling, "sexual harassment was not a myth, gender-based violence is discrimination, and it infringes on a woman's fundamental human right."

While approving the ratification declarations, India made the following declarations and reservations:

i. "The Government of the Republic of India declares that it shall abide by and ensure compliance with articles 5(a) and 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women in accordance with its policy of non-interference in the personal affairs of any Community without its initiative and consent."

ii "With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that, while in theory it fully supports the principle of mandatory marriage registration, it is not feasible in a large country like India given its diversity of customs, religions, and literacy levels."

RESERVATION

I The Government of the Republic of India announces that it does not consider itself obligated by paragraph 1 of article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women. The caveats to article 5(a), according to the UN Committee on the Elimination of Discrimination Against Women, deal with the same rights to alter the social and legal framework based on sex. According to Article 16(2), the state is required to end prejudice in marriage and family relationships. By looking at and analysing the Declaration and Reservation made by India with relation to CEDAW, it is discovered that India places restrictions on its authority by refusing to meddle with people's own beliefs, traditions, and practises, regardless of how equal or unequal they may be. As a result, even though India accepted the agreement, the provisions of Articles 5 and 16 cannot be applied in India. But in order to accommodate for societal change and the advancement of women, the required adjustments must be made to provide woman an equal right to property. The key clauses and convention components pertaining to women's property are outlined here. Articles 1 through 6 of Part I of the Convention deal with the need that parties to the Convention take all necessary steps to advance the interests of women. It might take the shape of legislative, executive, constitutional, or other actions and measures.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

"When one man's rights are threatened, the rights of all men are weakened." In 1966, the United Nations drafted the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social, and Cultural Rights," two key treaties for the preservation of human rights. All of an individual's civil and political rights are outlined in the ICCPR. These rights were

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established from the "French Declaration of the Rights of Man and of the Citizen," the "Bill of Rights of America," and Magna Carta. Giving all individuals worldwide access to civil and political rights for protection is the goal of the ICCPR. It was enacted in March 1976 after being approved in December 1966. It acknowledges the dignity of the people to exercise their civic and political rights. The ICCPR is a significant agreement that guarantees that men and women have equal access to civil and political rights. "Property" is one of the rights protected by the civil rights laws and is essential to the dignity and advancement of humankind. Each woman has the equal property right to enjoy it as a result of her dignity. The Covenant is composed of 53 Articles and six primary sections. The "right of all people to self determination" is acknowledged in Part I. State parties are required under Part II to enact legislation that preserve the covenant's listed rights. As the core of the covenant, Part III addresses substantive rights and the basic freedoms that the covenant protects. The founding and work of the Human Rights Committee are covered in Part IV. Rights pertaining to the unrestricted use of natural resources and wealth are provided in Part V. The ratification provisions are covered in Part VI.

ANOTHER INTERNATIONAL DOCUMENT CONCERNING THE PROPERTY OF WOMEN

There are several additional international documents that discuss the property rights of women, including the following.

Worldwide Instrument: In addition to the aforementioned texts, there are a number of pertinent regional and international instruments that deal with the right to property of women both directly and indirectly.

Convention on the Rights of the Child (CRC) 1989:

According to this, state parties are required to take all necessary steps to safeguard children's rights, regardless of gender. As a result, this nation is required to take certain actions and provide a report in accordance. The "Article 1", "Article 16(1)", "Article 23", "Article 27", "Article 29", and "Article 31" of the Convention deal with the rights of children, especially female children, in a way that is not directly related to property rights.

Convention concerning Indigenous and Tribal Peoples in Independent Countries 1991:

According to this, state parties are required to take all necessary steps to defend the "indigenous and tribal people's rights" as specified by this Convention. The "Article 3", "Article 4", "Article 7", "Article 8(2)", "Article 14", "Article 16" and "Article 17" of the Convention deal with rights, particularly those of indigenous peoples and women's land rights.

Regional Instruments:

African Charter on Human and People's Rights, 1981: Accordingly, the member nation is required to take all necessary actions to protect every person's rights, including women's rights as outlined in this Convention. The "Article 1", "Article 2", "Article 3", "Article 18", "Article 28" and "Article 29(5)" of the Convention deal with property rights.

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It deals with the right to a dwelling under Articles 14 and 8(1). The phrase "peaceful enjoyment of property" appears in Article 1 of the First Protocol.

The European Social Charter 1961:

State parties are required to take all necessary steps to protect individual rights as outlined in this Charter. Articles 15(3), 16, 19-4(c), 30(a), and 31 all include clauses like these. The charter covers a number of property-related clauses, including those relating to equality, nondiscrimination, housing rights, and women's family rights.

The European Union Charter of Fundamental Rights 2000:

The Charter's Articles 17, 23, 25, 26, and 34(3) deal with a variety of property-related concerns, including equality, non-discrimination, housing rights, and women's family rights.

CONCLUSION

The equality and well-being of women depend on property rights. Women and their children's daily survival, economic stability, and physical safety depend on women's rights to access, control, and ownership of land, housing, and property, particularly in rural areas. Despite how crucial these rights are for women and families headed by women, women still disproportionately lack tenure security. This often occurs when real estate is recorded in a man's name—usually the father, spouse, or sibling. At the point when a couple isolates, gets divorced, or becomes bereft, the fellow or his family frequently holds their freedoms to the house or the land, while the woman either winds up destitute or needs to impart the house to her parents in law without having any control or responsibility for. Women are prohibited from common dynamic cycles that are controlled by guys, who are much of the time the landowners, because of prejudicial regulations about property, land, and lodging, as well as through absence of control over these things.

In rural areas, ownership of land affects a household's ability to manage its resources and income as well as its social standing. Due to their disadvantageous economic status, women are structurally dependent on males for access resources, which put them at risk of violence and instability.

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