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LEGAL RIGHTS OF SIKKIMESE WOMEN

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ABSTRACT

India as a country has witnessed a tumultuous change in post-colonial period by strengthening its position in every frontiers of human societal pursuits. However, women at large have not been able to find an equal footing with its male counterpart as India in general is a male oriented-dominated society. They are being subjected to social atrocities and discriminatory practices like dowry, sati (self-immolation), child marriage and female feticide. A country cannot really develop in a true sense if women are left out in the process of development as they play an equal role in making of society. Keeping this in mind a conscious effort should be made to ensure equal status of rights to women. Sikkim is an exceptional state of India which doesn't witness social atrocities and discriminatory practices like other states of India. Sikkim, also known as Demojong (hidden valley of rice) or Nye-ma-el (heaven) is a tiny Himalayan state with the smallest population of 6,10,577 covering an area of 2,814 square miles in the eastern Himalayan region of India Its total population is 6,10,577 out of which women comprise 47.09 per cent of the total population thereby, making women one of the minority groups in Sikkim (2011 census). According to 2011 census, conducted by Directorate of Census Operations the sex ratio of Sikkim is 889 women:1000 men. In Sikkim, female's literacy rate is 75.61 per cent which is less than male literacy rate which is 81.42 per cent (2011 census). This paper will employ historical, analytical and case-study methods to study of the status of women during monarchical phase and post-merger phase in Sikkim. It will employ legal standards in Sikkim as a single variable to study the status of women in Sikkim. The status of Sikkimese women rights is studied based on three indicators that are i) citizenship rights of women ii) property or inheritance rights of women iii) women's rights relating to marriage and divorce. However, this paper will also briefly discuss about the various rights conferred to Sikkimese women.

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INTRODUCTION

The status of women rights is one of the basic indicators of human development and gender equality. Its importance is felt from the famous saying 'women rights are human rights'. The significance of ensuring equal status to women rights is not only emphasised by democratic governments in the world but also by international organisations like United Nations. Women rights encompasses many areas but in context to Sikkim the status of Sikkimese women legal rights have caught much attention in recent academic debates.

Framers of the Indian Constitution realising the importance of uplifting the status of women rights ensure certain social, political and economic rights to women through various provisions under the chapter of Fundamental Rights, Fundamental Duties and the Directive Principles of State Policy such as:

- Right to equality (Article 14, 16)
- Right to equality and equal protection before law (Article 15)
- Prohibition of discrimination on the basis of sex [Article 15 (1)]
- State can ensure special provision for women and child [Article 15 (3)]
- No discrimination in employment on the basis of sex [Article 16 (2)]
- Right to life (Article 21)
- Prohibition of trafficking in human being and forced labour (Article 23)
- Right to adequate means of livelihood for both men and women [Article 39 (a)]
- Equal pay for equal work for both men and women [Article 39 (d)]

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- To secure just and humane conditions of work and maternity relief (Article 42)
- Renounce practices derogatory to the dignity of women [Article 51 (A) (e)] (Yasin & Chhetri, 2012: 127; Dighe & Wadhvaniya, 2013: 96).

Citizenship Rights of Sikkimese Women

Sikkim witnessed 333 years monarchical rule of Namgyal dynasty under whose reign there many invasions, foreign interference, accession and annexation. On 28th March, 1861 Sikkim became a formal protectorate of the British Government and on 16th May, 1975 it became the 22nd state of the Indian Union.

In erstwhile Himalayan Kingdom of Sikkim, no legal rights were conferred to Sikkimese women. Political, military and monastic powers were monopolized by men while women's role was confined to the private/domestic sphere (Bothe & Sachdeva, 2013:310). The marital status of Sikkimese women not only determined their legal rights but also their identity within the Kingdom. In 1968, the *Chogyal (ruler)* of Sikkim issued a Royal Proclamation stating that Sikkimese women would lose their Sikkim subjectship if they married non-Sikkim subjects (Lama, 1994: 38). However, after Sikkim's merger with India such Regulations relating to Sikkim citizenship and subjectship have become futile and non-operational.

Property or Inheritance Right of Sikkimese Women

The status of rights conferred to Sikkimese women is different from that of women from mainstream India but also from Sikkim's immediate neighbours. Bhutan is one of the such neighbours of Sikkim which in spite of sharing similar religious background have placed women in different position vis-à-vis men. The Bhutanese Land Act of 1979 ensures inheritance rights to Bhutanese women by allowing lands to be registered in the name of women (Bothe & Sachdeva: 2013). In Central and Western Bhutan, having sizeable number of Buddhist population the inheritance rights of Bhutanese women are largely upheld while in Southern Bhutan, having majority Hindu population traditional patrilineal inheritance norms are followed (Pommeret, 1998: 18-19; CEDAW, 2009)¹.

Whilst Sikkimese women do not enjoy inheritance rights even if she is the only child of her parents (Bothe & Sachdeva, 2013: 302). Customarily, a Sikkimese woman after marriage is given gifts of movable assets rather than immovable assets like property (Bhattacharya, 1994:37). In the past, there were no such laws in Sikkim which legally safeguarded Sikkimese women right to inherit their ancestral property but among the tribal communities (Bhutias and Lepchas) a common practice known as *pewa* of "giving the daughters gifts and assets including livestock, utensils, ornaments, land (household if wealthy) and other goods" is followed only if they married within their own community (Eckman; 1996)². A widow belonging to Bhutia-Lepcha community could inherit the property of her deceased husband only for her life and upon her

death the property would regress back to the male members of her deceased husband (Lama, 1994:37). During her lifetime she cannot sell, transfer or mortgage the property of her deceased husband (Lama, 1994: 37). The majority Nepali community also follow a similar practice of giving non-compulsory gifts known as *daijo* if their daughters married within their own community.

In 1962, their legal status suffered a major setback when *Chogyal (ruler)* passed the Married Women Property Regulation Act. Some of the important provisions under this Regulation were as follows

1. It forfeited the property or inheritance rights of Sikkimese women if they married non-Sikkim subjects.
2. Such Sikkimese women could sell or mortgage her property to a Sikkim subject during her life time.
3. The husband and the offspring of such Sikkimese women cannot have any interest in her property (Lama, 1994:38).

The property rights of Sikkimese Bhutia-Lepcha women is different from that of Sikkimese women belonging to other communities as laws relating to property of tribal Bhutia-Lepcha communities are governed by Revenue order no. 1. Revenue order no. 1 which was issued by the *Chogyal* on 2nd January, 1897 prohibits selling, mortgaging or subletting Bhutia-Lepcha lands to any person other than a Bhutia or Lepcha without the express sanction of the Durbar (Palace) or officers empowered by the Durbar in this behalf whose order will be obtained by the landlord concerned.

On 21st April, 1969 another proclamation was issued by the State Government to ensure property rights to Sikkimese Bhutia-Lepcha women after marriage. Some its provisions are as follows:

1. Woman follows the nationality and community of her husband
2. Bhutia/Lepcha woman marrying a person of community other than her own may sell the land to her own community only if such land was acquired by her prior to her marriage
3. Land acquired by her after marrying non-Bhutia Lepcha may be sold to any community
4. Sikkimese of Tibetan and Bhutanese origin enjoy all rights and privileges of Bhutia-Lepchas except that they may not buy land from the latter community³.

In post-merger Sikkim, there has been a remarkable improvement in the legal status of women as a result of the Indian laws being extended to Sikkim and the reforms introduced by democratic political establishment in Sikkim. On 1st, May 1989 was Hindu Succession Act of 1956 was extended to Sikkim (Lama, 1994:30). This Act applies to all the Hindus, Buddhist, Jain or Sikh residing in all the territories of India except for the state of Jammu and Kashmir⁴. It does not apply to person that are Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage. It

¹ Buddhist communities unlike the Hindu communities follow matrilineal heritage pattern (Crins, 2004: 582).

² The Presidential Order No. 111 and 110 dated 22nd June, 1978 declared Bhutias and Lepchas as Scheduled Tribes (STs). It also included other tribal groups like Sherpas, Dukpas, Tibetans, Dophthapas, Kagateys, Yolmos, Trompos and Chumbiapas in the category of 'Bhutia'. Bhutias and Lepchas constitute 63.4 per cent and 36.6 per cent respectively of the total Scheduled Tribe (ST) population.

³ Sikkim Proclamation <http://districtcourtsnamchi.nic.in/laws/oldsikkim/sikkimcodevol5.pdf>

⁴ Hindu Succession Act of 1956 <http://revenue.tripura.gov.in/sites/default/files/hindu-succession-act-1956.pdf>

specifies the rules relating to the acquisition, succession, inheritance, distribution or disqualification of both movable and immovable property for males and females.

Sub-section (1) of the Hindu Succession Act states that nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs⁵. Therefore, Sikkimese women belonging to Scheduled Tribes category are not subject to Hindu Succession Act of 1956 (Lama, 1994: 30). Their property or inheritance rights are governed by their customary laws.

The present ruling government led by Sikkim Democratic Front (SDF) introduced the Sikkim Succession Bill in 2008. This Bill is significant for all Sikkimese women as it expanded the scope of their property or inheritance right by granting them the right to inherit ancestral property. However, certain conditionalities were imposed upon their property or inheritance right such as the following:

1. Immovable property inherited, gifted or purchased by women married to non-locals cannot be transferred and registered in their names.
2. Immovable property of a Sikkimese woman cannot be transferred or registered to her legal heirs if her husband is non-Sikkimese.
3. Mandatory requirement for Sikkimese women to submit an “unmarried certificate in all government procedures”.
4. Identity of women is to be based on the identity of not one, but two men. A Sikkimese woman will be considered Sikkimese only if both, her father and husband are also Sikkimese.

Sikkim Succession Bill fails to address the question as to whether a woman reclaims her Sikkimese status if she divorces her non-local husband or what identity extends to children born out of wedlock to Sikkimese women (Sikkimnow:blogspot;2015). One crucial fact in this regard remains that if Sikkimese women married into equally “protective” regimes like Jammu and Kashmir or for that matter daughters from such societies married into Sikkim- they will end up belonging to neither place and would have no career or livelihood prospects at either address. Nevertheless, there has been some sense of relief for the Sikkimese women considering that the Sikkim Succession Bill has not been enforced or its date of enforcement has not been notified till date.

Sikkimese Women Rights Relating to Marriage and Divorce

The old customary laws of Sikkim predominantly favoured women’s marginalisation in household chores and rearing of children. Women had little or no say in the decision-making or running of the household. Women married to non-locals not

only lost her Sikkimese identity (forfeiting of Sikkim subject) but also lost her claim to ancestral inheritance. Customary laws relating to marriage and divorce were discriminatory as Sikkimese women in order to divorce from her husband had to pay certain amount of money known as “zho”. They received alimony from their husbands depending on the duration of their marriage. After divorce women were given the custody of only the girl child.

On 1st, May 1989 Hindu Marriage Act of 1955 was extended to Sikkim (Lama, 1994:30). This Act applies to all the Hindus, Buddhist, Jain or Sikh residing in all the territories of India except for the state of Jammu and Kashmir⁶. It does not apply to person that are Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage. It seeks to uphold the customs and usage that have been continuously and uniformly observed for a long time and; have obtained the force of law among Hindus in any local area, tribe, community, group or family but such customs and usage should not be unreasonable or opposed to public policy. It lays down the rules of Hindu marriage, guardianship in marriage and judicial separation or divorce.

Sub-section (1) of the Hindu Marriage Act states that nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs. Therefore, Hindu Marriage Act of 1955 does not apply to Sikkimese women belonging to Scheduled Tribes category. Their rules relating to marriage and divorce are governed by the customary laws. They can divorce with their husband based on their mutual consent and elder’s consent. These elders of the family or society also settle the issues relating to alimony and custody of children.

The present ruling government led by Sikkim Democratic Front (SDF) has formulated various measures and implemented various schemes to status of Sikkimese women rights such as:

Sikkim State Commission for Women

This statutory body was constituted by the state on 12th November, 2001 vide Notification no. 11/LD/2001. It was created with the objective of seek justice for Sikkimese women, safeguarding their rights, ensuring their empowerment and providing legal aid facilities through State Legal Aid Service Authority.

Protection of women from domestic violence

This Act was enforced on 13th September, 2005 and implemented in Sikkim vide Notification no.11/LD/RC on 17th May, 2007. It endeavour’s to provide speedy civil and criminal remedies for aggrieved women to approach the legal system and obtain relief.

The Sikkim Panchayat (Amendment) Act, 2011

On 17th December, 2011 the State Government vide Notification No.11/LD/P/11 amended the Sikkim Panchayat (Amendment) Act, 2011 to ensure 50 per cent reservation for women in every Gram Panchayat, municipalities and Panchayat

⁵The term ‘Scheduled Tribes’ is an administrative and legal category (Panda, 2015). The Indian Constitution defines Scheduled Tribes as those tribal communities in India that have been declared as such by the President of India through a public notification (Chhetri, 2013). Its classification is done for administrative purpose by employing the criterion of primitive traits, distinctive culture, geographical location, shyness of contact with the community at large and economic backwardness. Amongst all these cultural markers, the most significant and acceptable marker in determining the tribalness of a group are non-Hindu religious and cultural practices as well as distinct language, script, mythology and folklore.

⁶Hindu Marriage Act http://highcourtchd.gov.in/hclsc/subpages/pdf_files/4.pdf

elections. This Act also allotted seats to different wards in a Gram Panchayat on a rotational basis.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

This act provides a redressal mechanism for woman to lodge a complaint against a harasser who threatens or undermines her morality and dignity at the workplace.

Small Family Scheme

This scheme is a state initiative programme which was launched in 1997. It aims to ensure social security benefit in the form of incentives to women from the tender age of thirteen. It is mainly implemented for prohibiting child marriage and encouraging the girl child to delay their marriage.

The State Government has ensured 30 per cent of reservation for women in Government sectors. As a result of such initiative 20.74 per cent of government employees in Sikkim are women out of which 35 per cent belong to the minority Bhutia and Lepcha communities (Lama, 1994).

The State Government makes sure that all the government benefits are provided in the name of mother of a family only.

The State Government has made it mandatory to have the consent of both the spouses for purchasing/selling of immovable property and withdrawing money from General Provident fund

Chief Minister Rural Housing Mission (CMRHH)

It is an initiative taken by State government to transform all *kutcha* "unstable" houses to be made pucca. It is noteworthy that under this scheme women have been given priority in the registration of the household.

CONCLUSION

Discriminatory laws of the past relating to citizenship, marriage, divorce and inheritance continue to be in force even after Sikkim's merger with India. Till date Sikkimese women lose their Sikkim citizenship and property or inheritance right if they marry a non-Sikkimese. The paradox is that even in the post-merger phase a Sikkimese man does not lose his Sikkimese citizenship or inheritance right even if he marries non-Sikkimese but a Sikkimese woman loses her Sikkimese citizenship if he marries non-Sikkimese. Therefore, Sikkimese women need to be more vigilant and aware of their rights that the law of the land has conferred upon them. Specific hurdles faced by women such as legal rights of women should be immediately addressed in order to uplift the status of their rights. Upliftment in the status of legal rights of women has a domino effect on the status of their political rights. Above all Sikkimese women need to come together and create a voluntary organization or coalition to uplift the status of their legal rights. The State Government should also make conscious effort to uplift the status of legal rights of Sikkimese women by replacing the existing discriminatory laws with new laws or policies.

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