



## Stop Son Preference in Laws and Their Implementation!

At a recently held state-level training programme on the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, social circumstances that drive the 'son preference' were factored as responsible for the adverse sex ratio. It is to be noted that Goa's child sex ratio, according to the last census of 2011, stands at 942 females per 1000 males. It would seem that the son preference even informs law making, law implementation, law interpretation, or omission in synchronizing new laws with relatively progressive past laws. There are umpteen examples that can be given to illustrate this problem.

For instance, while the family laws of Goa provide that sons and daughters have equal rights in parental properties, married daughters seem to be discriminated against, because of presumptions of patrilocality, that is, moving to their husbands' places after their marriage.

Judicial persons who manifested overt gender bias, have generally fortunately not survived in the judiciary in Goa. But this bias abounds in the quasi-judicial and administrative authorities, such as revenue authorities who preside over mutation proceedings and Block Development Officers and officers in the Panchayats, who determine house tax record issues, and Sub-Registrars who register land conveyance documents. They seem to be completely ignorant or feign ignorance about how to import the family law in practice and read the law that is invoked along with the family laws of Goa.

The Goa Land Revenue Code, 1968, is a reproduction of the land revenue codes as prevalent in other parts of the country. Goa's law recognises that all assets of the couple are considered matrimonial property, whether inherited or acquired before or after marriage. Therefore a woman is entitled to half of the husband's share (moiety share). Therefore the Code needed to explicitly and proactively recognize that women have rights to have their names entered in the land records as moiety share-holders, upon marriage.

In the absence of this proactive provision, I do not even want to suggest to any married woman to go through the labyrinth of the mutation proceedings (proceedings which are initiated for entering names in the land records after acquiring rights by inheritance, marriage, purchase or any other form), upon her marriage, lest she come out of the same totally mentally mauled. There is no culture of women applying for entering their names in the land records upon marriage, and any effort in this regard will generally be taken negatively by the male spouse, to start with.

Further to compound matters, the mutation proceedings can take forever (this could be because of corruption or because revenue authorities are saddled with several

responsibilities, apart from having to preside over mutation proceedings), thereby causing secondary victimization to the married woman seeking mutation of her name in land records. Stop Son Preference in Laws and Their Implementation!



Then, you have laws such as the Goa Mundkars (Protection from Eviction) Act, 1975[1], wherein the definition of family of the mundkar, does not include a married daughter. Therefore though mundkarial rights are heritable and the inheritance should have devolved as per family laws, the definition of family, as described in the mundkar act, is considered for the purposes of inheritance. At the legislative level, thus, this already causes a part of the confusion. This provision ought to be struck down as being unconstitutional. There cannot be provisions of beneficial discrimination in favour of men, as per the Constitution of India.

As regards the Mundkar law, let us assume for a moment, that since mundkarial rights are premised on residence, married women are to be treated as not part of the mundkarial family, because the woman has moved to the husband's house on marriage. If that be so, then the same criteria of residence should hold for those married sons who do not reside with their mundkar parents. How can there be different yardsticks, when we in Goa have a family law that clearly stipulates equal rights of inheritance to sons and daughters?

Also, should not the factum of residence with parents, be inquired into before presuming that a married daughter has not been residing at her parents' place with a fixed habitation? Again, what constitutes 'fixed habitation' for married daughters may be determined either by choice, or by circumstances related to their marriage. The Courts need to take judicial note of this reality.

Then again, the Goa Panchayat Raj Act, 1994, also has no proactive provisions that remind the enforcers to recognize women's rights as per Family Laws, when transferring house tax records. Nothing precludes the family laws from being applied. But the Panchayat vested with powers to make entries of transfer in house tax records, first of all generally resists more than one name being inserted in the house tax records, or arbitrarily transfers the house tax records. Corollary to this misinterpretation about sole house owner or arbitrary transfer, is the gender bias again. So the one name translates as the male spouse's name. This also makes it easy for the male spouse to sell or alienate properties unilaterally without the signature of his wife by not declaring his marital status or concealing his marital status, or because of Sub-Registrars who do not pay due attention to this aspect, even where the marital status is declared.

There has also to be a clear monitoring by Sub-Registrars to ensure that married or divorced men, either make their spouse a party to the conveyance such as a sale deed or a deed of mortgage, being registered, or to produce appropriate documentation, indicating that they are married under the regime of separation of assets and as per the pre-nuptial contract, the

property belongs to them alone, or there has been an inventory following the divorce.



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No Doubt these are societal biases, which are reflected in the legislature, executive and judiciary, who emerge from that very society. But one expects that the touchstone of the Constitutional values of equality and non-discrimination, that the legislators, the executive and the judiciary swear by, at the time of assuming office, should inform all legal processes. And that the administrative authorities should also have to swear by the Constitution of India, when assuming office, and then toe the line of the Constitution, the whole Constitution and nothing but the Constitution.

Nothing short of a proactive provision in the law, or a fiat from the Revenue Secretary/Law Secretary/Panchayat Secretary, or, *suo motu* cognizance of this problem by the High Court or the Supreme Court or directives following any cases before the Bench can remedy this gender bias. Otherwise this so-called Uniform Civil Code that the Supreme Court has extolled as exemplary, will be reduced to a mere piece of paper, even when it has some progressive provisions.

[1] Mundkar law was enacted to secure the homesteads of persons residing in the landlord's property and providing him services on the property, including caretaking, without a salary for years together.

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