

THE HINDU SUCCESSION ACT: ONE LAW, PLURAL IDENTITIES¹

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Introduction²

Issues of gender and legal pluralism are complex and multidimensional, and thus require varied research strategies. Recent ethnographic and comparative studies reveal the significance of property rights in shaping gender inequality. Ursula Sharma's (1980) study of two villages in Northwest India was the first to examine women's access to property in this region. However, data on gender and property

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rights are scattered among studies of other topics. Significant recent exceptions include Bina Agarwal's (1994) book on women and property rights, Martha Chen's (1998 and 2000) books on widows, and recently the first intensive local case study of women and property rights conducted by Srimati Basu in New Delhi (Basu 1999). These investigations clearly demonstrate that understanding women's access and rights to land, and other forms of property, is a key element in the study of women's status. Also, these studies confirm women's marginal land and property ownership, despite legal reforms (Agarwal 1994; Chen and Drèze 1995; Chen 2000).

My research draws on data collected through intensive field research in Bheema, a village of the Pune district, in the state of Maharashtra. It is complemented by legal research on statutes, case law, and court procedures. I focus on widows in rural Maharashtra in order to analyze how legal reforms, as well as social and economic changes, influence their entitlement to property. Another objective is to provide depth and add a new dimension to multidisciplinary research in India, by focusing on property rights in Maharashtra, a region relatively neglected by social scientists and anthropologists.

Finally, this study undertakes comparative analysis of socio-economic, as well as regional variations, in the ability of a widow to claim her legal property rights and cope in other ways, thereby deepening our understanding of the interaction of legal reforms, socio-economic trends, and customary law.

1. Methodology: the Elaboration of a Socio-Legal Ethnography

In order to understand how Indian women interact with various perceptions of social order and modes of conflict resolution, it is important to investigate key elements of their lives such as household dynamics, kinship systems, marriage rules, economic resources, inheritance patterns, gender socialization, caste organization and concepts of rights and duties. In addition, to explain access to property rights and the legal system, it is necessary to examine how the social status and legal status of women are both changing in Maharashtra. Ethnographic accounts provide concrete examples of the way women cope with crises during particularly vulnerable phases of the life-cycle, such as widowhood.

My fourteen months of fieldwork in India was composed of two interrelated

phases. The first, starting in March 2001, consisted of intensive ethnographic research, while during the second, from September 2001 until May 2002, I undertook legal analysis in addition to ethnographic research. During each phase, I combined ethnographic research techniques with methods generally used by legal anthropologists. Various forms of data collection were adapted and re-shaped according to the requirements of both the research objectives and the research participants.³

I stayed in the village of Bheema⁴ for four months (March to July 2001), during which I conducted interviews with thirty-five women and their families, fourteen of the women being widows. Men also participated in my study, which enabled me to explore further nuances of gender issues, married life, and inheritance practices. Accompanied by a research assistant, I visited these people regularly during my four months in Bheema, and also in the following nine months when I was based in Pune for the second phase of my research. As well as conducting interviews, I collected through informal discussions individual life stories, family histories, and some marriage and inheritance genealogies. This data is of the type on which the narratives presented by Anne Griffiths through life histories were based. As she writes, these narratives

... portray village people's perceptions of law, the circumstances under which they do or do not have access to formal legal forums, and, in particular, the conditions under which individuals find themselves silenced or unable to negotiate with others in terms of day-to-day life. (Griffiths 2002: 161)

Participant observation provided a way to contextualize the information obtained

³ My sincere thanks to the Apte family who made me feel at home in Pune and who were so generous helping me with my research. I would like to thank the people of the village of Bheema who, with great generosity, welcomed me into their community during my fieldwork in India. Similarly, I am indebted to all the people in Pune who invited me into their homes, thereby allowing me to witness most aspects of Maharashtrian society. I would also like to thank my Research Assistant, Mira, for her generous collaboration on my fieldwork project.

⁴ I have given the village the fictitious name of Bheema in order to preserve the anonymity of the people who were generous enough to share their knowledge and life experiences with me.

through talking with respondents. The participants in the study belonged to different castes, classes and age groups and had different levels of education. The widows had lost their husbands to various causes, such as accidents, old age and disease. To facilitate comparison of the data collected through fieldwork in Bheema, I conducted additional interviews with 30 women (including 12 widows) from several other villages in Pune district.

The data collected through fieldwork was complemented by legal research, specifically the analysis of statutes, jurisprudence, legislative records, court procedures and cases. Because so few widows go to court to claim their inheritance rights and the *Hindu Succession Act* (hereafter HSA) is seldom used, I found it useful to observe non-widowed women and men in Pune's District and Family Courts. The court disputes observed were directly related to property issues in cases of alimony, land partition, pension claims and marriage registration certificates, and indirectly related in cases of separation and divorce.

Furthermore, since access to justice is highly procedural, it was instructive to investigate case preparation between lawyers and clients. One lawyer opened her office to me and allowed me to observe her interactions with clients. There I was able to explore widows', non-widows', and men's interpretations and understandings of the law, their opinions on whether widows should claim their property rights, and their general views on the condition of widows. It was useful to meet with those persons to obtain further information concerning their relationship with the legal system because only one of the widows interviewed in the village had actually gone to court to claim her inheritance rights. Alternative mechanisms of conflict resolution were studied through the follow up of various cases heard by the social workers and women's rights organization.

Overall, this methodology allowed me to explore the broader social context of widowhood, the reasons why widows do not claim their inheritance rights under the *Hindu Succession Act* and the elements that make up access to justice.

2. The Hindu Succession Act of 1956: Modifying Social Roles and Reorganizing Kinship

The study of women's property rights in India is particularly pertinent when we consider how many of the post-independence legal reforms are the results of the

cohabitation of various legal traditions. Like other national laws concerning the personal rights of the Hindu population, the HSA is the result of a compromise between different legal traditions, such as various Hindu schools of law, Hindu legal patterns, British common law and the Western philosophy underlying the concept of equality. The long debate over personal laws that took place in the 1950s led Indian legislators to envisage a new ‘social order’ in their laws, which consequently became potential agents for social change. But such legislative initiatives are not sufficient because their success depends on the reactions of tribunals along with their capacity and/or desire to elaborate a new jurisprudence. In addition, innovative legal cases depend on people’s knowledge of the law and their desire to use it instead of other forms of conflict resolution.

One of the most important ideologies of the Western philosophy of law is its particular conception of equality, a concept that has been implemented in different ways by the diverse national legal systems in the West. In India, this ideology was introduced and then transformed, in the philosophies of certain charismatic political leaders prior to the country’s independence, namely Gandhi, Tagore and to some extent Nehru, who all promoted the ideal of increased equality among the castes (Dandekar 1986: 23).

After Independence, rights to equality became an integral part of the fundamental rights of the Indian Constitution. Three articles in the Constitution specify the scope of the fundamental right to equality: Article 14 is concerned with equality before the law, Article 15 expresses the prohibition of discrimination based on religion, race, caste, birthplace and sex, and Article 16 outlines equality of opportunity in public employment (Béteille 1986: 123).

Although the principle of individual rights entrenched in the Constitution may be inspired by a Western legal tradition that associates equality with individualism, the concept of equality in India may be different. For example, the man who led the framing of the Constitution, Ambedkar, spoke strongly in support of the individual, but he also pleaded for and obtained the recognition of special rights to specific groups, such as the Scheduled tribes and castes. According to Ambedkar, “[w]hat was at issue was not simply equality as a right available to all individuals but also equality as a policy aimed at bringing about certain changes in the structure of society.” (Béteille 1986: 126) According to Béteille the Indian perspective differs from the more individualistic view of the Western concept of equality.

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The same makers of the Constitution refused to have one uniform civil code by which women could enjoy equal rights within the family, because the code might then interfere with the religious rights of various communities. In this they echoed what the British rulers had said when they refused to have one civil code for India. Nowadays, in the absence of a uniform civil code, women and men are governed by different legislation depending on their religion.⁵

Even though the Indian Government has expressed interest in the idea of women becoming equal to men, very few legislative initiatives have been taken regarding the property rights of Hindu women. The major exception to this is the HSA, enacted in 1956, which legislates for Hindus in cases of intestate succession.⁶ Since one of its goals was to stop gender-based discrimination, women received some access to the property of their deceased fathers or husbands.

However, this legislation only provides for a limited equality of succession rights for Hindu women (Agarwal 1994: 211-212; Agnes 1999: 82).⁷ The following case illustrates its possible applications. Take a Hindu family composed of a husband, his wife and three children (two sons and one daughter). If the husband dies before the other family members, then his acquired or self-accumulated property will be divided into four equal parts: one for the widow and one for each child, both male and female.⁸ But the ancestral property will not be divided equally among the female and male members of the family. A detailed review of the Act is beyond the scope of this paper. What is important to acknowledge is that the national law had maintained the longstanding division between ancestral and acquired property prevailing in many Hindu communities.

⁵ The HSA applies to all Hindus, Buddhists, Sikhs and Jains (but not to Scheduled Tribes – unless otherwise indicated by the Central Government).

⁶ Section 3(g) of the *HSA*: “intestate” – a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect. It is important to note that testamentary disposition are seldom in a village like Bheema, even in materially affluent families.

⁷ According to the *HSA*, the preferential heirs of a Hindu male is his children (daughters and sons), his widow and his mother. They are part of what the Act refer to as Class 1 heirs. The father of an Hindu male is not a “preferential heir.”

⁸ Ancestral property cannot be willed away by the father.

Ancestral property is formed in the following way. In Maharashtra, prior to Independence and the HSA, the inheritance pattern was patrilineal and the Mitakshara was the predominant school of law. Under Mitakshara, the property was divided among male heirs *per stirpes* (between branches) and not *per capita* (Attwood 1995). This *per stirpes* division led to the creation of a coparcenary.

Under the Mitakshara law, the property of a Hindu male devolved through survivorship jointly upon four generations of male heirs. The ownership was by birth and not by succession. Upon his birth, the male member acquired the right to property (Agnes 1999: 14).

Under this coparcenary system, the widow could only take a limited interest, called the widow's estate, which meant that she had no power to dispose of the *corpus* of the property (except in certain cases). In practice, the widow really depended upon her sons to take care of her and ethnographies report numerous cases of abandoned widows. Post-Independence legislation tried to put an end to this; however, the HSA does not grant daughters and widows full property rights in a coparcenary because they are not considered to be part of the coparcenary as men are by birth.

The Indian Constitution allows each state to modify personal laws. In 1994, the Government of Maharashtra took further steps to enhance women's access to property. Following reports from the National Commission for Women, the Government of Maharashtra elaborated its 'Policy for Women', whose explicit goal:

... is to ensure an improvement in the physical, mental and emotional quality of life of the women of the State. This goal will be attained through ensuring equality for women in every sphere of life, but specially in political, economical, social, emotional and cultural areas.... In order to achieve these goals, the Government recognizes the need to evaluate existing traditions and ideas on societal roles and relationships existing between men and women, and accepts the responsibility to assist organizations and individuals to alter them in keeping with the needs and realities of today's society (GoM 1994: 5).

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In section 8 on *Women and Law* of this policy, the Maharashtra State Government recognizes that: “The opportunity to obtain redressal of grievance through recourse to the law is the fundamental right of every citizen. For most women, however, this opportunity has remained largely on paper.” In line with the policy, the HSA was amended to give women access to coparcenary rights. Thus Maharashtra, like Karnataka, Andhra Pradesh, and Tamil Nadu, has adopted more progressive laws that allow women to obtain a share in both the acquired and the ancestral property of the father or husband.⁹

The HSA Amendment of September 2005 has entrenched the progressive trends found in the southern states into the national law. The effects of this law providing women coparcenary rights have yet to be seen. What we learn through ethnographic research is that, in practice, despite progressive initiatives by the State of Maharashtra, the HSA is not used by the people, female or male. The limited success of the HSA can be explained by a complex interplay of factors. Inspired by the ideology of ‘equality’ as framed in Western philosophy, and by a desire to respect some Hindu legal schools (mainly the Mitakshara), the HSA was the result of combining two legal systems that are partially at odds with one another. Furthermore, this Act was a legislative initiative that had to be implemented in a rapidly changing young nation whose centuries-old history had been characterized by various phases of cultural and religious invasions and colonization. In addition, local and regional practices have often modified the impact written laws have had on different Hindu legal schools of thought. It is in this context of legal pluralism that the policy-makers of independent India elaborated laws for the new state, hence establishing a new social order concerning access to property.

Property rights are so crucial to one’s place in society that the HSA has the potential to modify many aspects of a woman’s life. By giving inheritance rights to daughters and widows this act proposes a radically different organization of the ideal household, which is commonly referred to as ‘the Indian joint family’. This joint family, that is both patrilineal and virilocal, consists in two or more married couples, which means that senior parents live with their sons as well as the wives and children of their sons. The traditional ideal to which every Hindu and his wife aspire is to have a household composed of themselves, several sons, and their wives and children (Shah 1988: 35). The daughter stays with the household until

⁹ In Kerala, it is the legal concept of joint family that has been abolished, rendering the issue of coparcenary rights by birth irrelevant.

she is married and afterwards her periodic visits to the natal household are also part of this ideal (Shah 1988: 35). After marriage, she belongs to her in-laws' family and, as we will see, the daughters do not want to cause problems to her parents and brothers even after her patrilocal move.

However, very few households achieve this goal for various reasons (Shah 1988: 36). The deviations from the norm are often caused by demographic accident and lack of opportunity (Attwood 1995: 4). First, the couple may be childless. Secondly, the couple may only have daughters. Thirdly, they may only have one son. Finally, even if the couple has many sons, they may separate. Indeed, the establishment of separate households by the sons is one of the major phases of dispersal of the Indian family (Shah 1988), although it does not always mean that they have given up joint control of family property (Shah 1974: 30). Even if there are separate households during the parents' lifetime, the sons and parents still constitute a single 'family'. Competition and inequality among brothers may provoke partition (Attwood 1995). "Members of a lineage are supposed to be equal, but villagers are acutely aware that the relationship is fraught with competition and potential hostility" (Carter 1974: 91-92). On the other hand, fraternal co-operation may also lead to greater efficiency, leading to the expansion of assets (Attwood 1995: 12).

In her study of women's difficulties in using the legal system in Botswana, Anne Griffiths relates that various forms of power "differ on the basis of gender, but also vary between members of the same sex and across generations" (Griffiths 2002: 175). In addition, like property rights and legal interpretations of succession rights, the joint family has always been subject to regional variations.

3. The Study of Property Rights and Widowhood in a Context of Regional Variations

Barbara Miller (1981) initiated the comparative study of female experience in rural India. She found that women tend to be vulnerable in certain phases of their life cycle, specifically in early childhood, the early stages of marriage and widowhood. This finding is supported by Bina Agarwal's (1994) comparative analysis of women and property rights in South Asia. Martha Chen's (2000) research shows that widows are placed in an even more precarious situation if they cannot claim property devolved from parents or ex-husbands. Scattered data confirm that, in

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rural Maharashtra, widows sometimes face problems in claiming rights to their deceased husbands' property (Dandekar 1986; Attwood 1995, n.d.).

Agarwal has noted the difficulty in constructing a comparative regional analysis of women and property rights, given the general lack of ethnographic data on this topic (1994: 4647). There is significant variation between regions, like the contrasts between North and South India that have been extensively discussed (e.g. Caldwell et al. 1988; Drèze and Sen 1997; Dyson and Moore 1983; Jeffery et al. 1989, 1996, 1997; Maclachlan 1993; Miller 1981; Minturn 1993; Wadley 1994). Yet gender inequality in Western India has largely not been explored by most social scientists.

Legal reforms related to property rights in Maharashtra tend to follow a southern pattern¹⁰ of progressive legal and social movements. Yet, with northern patterns of patrilineal inheritance, patrilocal residence, and increasing dowry practices,¹¹ how are these progressive laws perceived and understood by its population?

Maharashtra is a compelling location to study for its regional variations because, on the one hand, Maharashtra has a leading position within the Indian context in terms of economic development, urbanization, and social reforms. On the other

¹⁰ I refer to Sen to define the northern patterns as including the states of Harayana, Himachal Pradesh, Punjab, Rajasthan, Uttar Pradesh (Sen et al 1997). Agarwal designates these states as being part of the North-West pattern and includes Jammu and Kashmir (Agarwal 1994). Both Sen and Agarwal consider Andhra Pradesh, Karnataka, Kerala, Tamil Nadu as the states forming the southern model. In addition, according to Agarwal, the following states of North-East India follow, such as in the South of India, socio-economic patterns that gives women better access to property: Arunachal Pradesh, Assam, Manipur, Meghalya, Mizoram, Nagaland, Sikkim, Tripura. For the purpose of this thesis, this last series of states will be indirectly included in the 'Southern model'. Close to the southern patterns are the states included in the eastern zone of Bihar, Orissa and West Bengal (Sen et al. 1997). Finally, Maharashtra and Gujarat are part of the Western zone of India (Sen et al. 1997).

¹¹ In spite of the fact that dowry is an illegal practice according to the *Dowry Prohibition Act* (1961).

hand, it has a transitional position between North and South in terms of literacy rates,¹² fertility rates,¹³ sex ratio¹⁴ and kinship organization.¹⁵

The economists Jean Drèze and Amartya Sen (1997) showed how socio-economic changes affect rural women of North and South India in different ways. Their comparative statistical analysis of gender inequality in selected states (particularly Uttar Pradesh and Kerala) is enlightening. However, this type of analysis cannot fully explain variation in the dependent variables. Indeed, Murthi, Guio and Drèze emphasize how important it is to take into account “differences in kinship systems, property rights, and related features of the economy and society”, but they underline that there is insufficient data on these variations (Murthi et al. 1997: 387). I should add that there is also a lack of data on the construction of justice, rights and duties. The ways in which legal awareness is transmitted and transformed should also be considered as a pertinent variable.

¹² In India as a whole, 54% of females of the age of 7 and more are literate, and 76% of males. In Maharashtra, female literacy rate is 67% for females compared to a male rate of 86%. Yet Maharashtra lies between the Kerala rates (88% for female and 94% for male) and Uttar Pradesh (44% for female and 71% for male) (Drèze and Sen 2002).

¹³ Between 1996 and 1998, the total fertility rate for India as a whole was 3.3 children per woman. In Maharashtra, this rate was 2.7 over the same period. Maharashtra’s fertility rate lies between Kerala’s 1.8 and Uttar Pradesh’s 4.8 (Drèze and Sen 2002).

¹⁴ Kerala is also exemplary in terms of infant mortality rate, which is of 11 deaths of children under the age of one per 1000 of live births compared to a national average of 60 deaths for the same amount of births, 76 deaths in Uttar Pradesh and 42 deaths in Maharashtra.

¹⁵ Kinship patterns in Maharashtra are mostly related to North Indian culture, though the influence of southern cultures is significant in many respects (Carter 1974). Both Dravidian and Indo-Aryan kinship terminologies have influenced Marathi kinship (Bénéï 1996).

4. Daughters and Widows of Maharashtra: Shaping Identities in a Transitional Region

As several authors have noted, widowhood can lead to a family crisis that threatens the woman's economic security and survival (Agarwal 1994; Chen 1998, 2000; Chen and Drèze 1995). Various social factors influence the severity of the crisis, including age, education, employment, support by adult sons, support from the ex-husband's family, and support from the widow's natal family. How do Maharashtrian Hindu widows (and their children) cope with the loss of a senior male worker and property owner? How, and to what extent, do they take advantage of available legal reforms? Chen's recent book provides a cross-regional perspective on widowhood in seven Indian states (Chen 2000). However, Central and Western India are omitted, thus leaving a gap in the study of widows and property rights in the transitional zone between North and South.

Overall, the status of widows in Maharashtra is changing, as more alternatives to their state of dependency emerge. Recent local case studies in rural areas discuss the tremendous diversity in the experiences women have and demonstrate that women are not the sole victims when they are widowed (Jeffery et al. 1989, 1996; Raheja and Gold 1994). In fact, the loss of a senior male may provoke a family crisis that affects men, as well as women, and the impact on each family member varies according to their sex, age, economic situation, and status in the family and the village. However, it is clearly demonstrated in the literature that widows are more vulnerable than widowers.

Though many widows face major difficulties, some are helped by their natal or affinal families. Furthermore, a growing number of women in Maharashtra are gaining economic independence via increased access to education and employment. Widows' life experiences and inheritance practices can be better understood by reviewing the ideologies and the social expectations linked with womanhood and widowhood. As will be seen, certain beliefs and local practices associated with womanhood in Maharashtra affect the chances that daughters and widows will set out to claim their rights.

In nineteenth-century Bombay, the ideal wife or *pativrata* was defined as "the devoted wife whose entire existence is dedicated to her husband" (Leslie 1989: 1). This is a wife whose 'only duty' and 'main purpose in life' was service to her husband (Kapadia 1968: 169). The stereotype was long-lived. It is found in early

Puranic texts and the laws of Manu and Kautilya's *Arthashastra*, as well as in subsequent Hindu commentaries such as the *Stridharmapaddhati* written by the Brahman author Tryambaka. The influence of the latter persisted in the legal cases of the early nineteenth century. As pointed out by Sir Gooroodass Banerjee in his Tagore Law Lectures of 1878, early nineteenth century case precedents reaffirmed the applicability of Hindu Law on the position that "a woman's husband is like unto her god, and she must remain obedient to his orders and conform to his will" (Banerjee 1915: 119-120). It is true that the husband was directed to 'honour the wife' but as Banerjee pointed out, "[n]o system of law has ever surpassed our own in enjoining on the wife the duty of obedience to the husband and veneration for his person" (Banerjee 1915: 120). The ideal of *pativrata* still influences women's lives, as clearly demonstrated when we look at widows' experiences in Bheema.

Among Hindus, the ideology of widowhood includes references to some forms of *suttee*,¹⁶ asceticism, and sexual control. None of the respondents I spoke with could remember hearing about cases of *suttee*, not even during their grandmothers' or great-grandmothers' time, although they knew that this practice used to be current in North India. Some women mentioned instances of widows having their heads shaved, but these cases occurred over 40 years ago and mostly among Marathas. The practice does not take place nowadays.

Nowadays widows wear colourful bangles but other jewellery is rare. *Mangalsutra*¹⁷ is removed and burned with the husband's body, after which the widow will wear a simpler necklace, which is not made of gold. The *kumkum*¹⁸ (married women's red dot on the forehead) is replaced by a black dot. I did not observe any widows wearing white saris in Bheema or in any other rural areas of Pune district, unlike other parts of India. On the other hand, widows' saris are often pale-coloured and of lesser quality than other women's saris.

Women from the village I studied were all of the opinion that the impact of the loss of a husband depends on the 'widow's behaviour'. When I asked what they meant by that it was difficult to obtain clear answers, but they did say that a widow

¹⁶ *Suttee* refers to the immolation of the widow upon her husband's funeral pyre.

¹⁷ A woman's bridal necklace made of black pearls with two ornaments and five gold beads.

¹⁸ The red dot on the forehead worn by a married woman.

should be 'nice' to people in the community and should maintain a good reputation. Having observed the fragility of women's status, and their vulnerability to gossip, we can infer from these comments that the widow should not have 'affairs' (in the sense of love affairs) with men. Hence, fancy saris can be considered to be too attractive for a widow. Her appearance should be simple, and her sexuality should be constrained. Although the remarriage of widows may be acceptable in lower castes, this is a forbidden practice in the higher castes, especially among Marathas and Brahmins. Many widows said that, even if it was possible, they would not remarry. But many admitted that it was more difficult for a young woman to remain a widow because it would be harder for her to support herself and her young children.¹⁹

Overall, while widows' lives have to be simple and discreet (and have to be seen to be so), they do not fit the image of strict social exclusion mostly associated with a northern pattern. In Maharashtra, widows seem to be better off than in other regions, although they are excluded from rituals and festivals, which results in sadness. These observations are quite apart from the personal grief that women feel from losing someone with whom they have shared their life. The importance of a husband in a woman's life is underlined through the observance of certain festivals and fasts dedicated to the husband's health and long life. Widows who have lost their husbands recently express insecurity and loneliness.

The predicaments of widows do not feature in widowers' lives. Apart from potential sadness, widowers continue their lives without having to show any external signs of their loss and it is socially acceptable for them to remarry. Also during marriage, husbands are not pressured to follow any rituals or fasts centered on the well-being of their wives.

Overall, women who lost their husbands more than fifteen years ago tend to have suffered more than those who were widowed more recently. Respondents typically explained this by saying that social expectations of widows were different – that is, stricter – fifteen years ago or more. Social isolation was greater because the belief that widows were inauspicious was more widely held by family and community members, especially among the Maratha and the Brahmin castes.

¹⁹ According to the *Hindu Widows Remarriage Act* (1983), the widows can legally remarry.

The identity of a woman continues to be largely defined according to her marriage and to the network of her husband. In spite of the increased social mobility of widows in Bheema, which reflects changes in the overall situation of women, they still do not claim their inheritance rights.

5. Inheritance Practices in Bheema

When I asked widows whether they had access to their husband's property, the majority of them answered that they had a right to it after his death. However, the respondents never mentioned the HSA, leading to the inference that they are not aware of this specific law. The actual understanding of inheritance rights is vague and varies considerably. For example, the majority of women believe that it is necessary to go to court in order to obtain a share. Also, it was never mentioned that the law divided the property between the widows and the children (sons and daughters). No women mentioned that a will could take precedence over the law and therefore deprive a widow of her codified rights (or accord her additional ones).

Overall, contrary to widespread belief, women in rural areas do know that they are entitled to some rights as widows. When asked how they had learned of the law, two answers came through clearly, either from television or by word of mouth from other villagers, family members and neighbours. No one mentioned that they had learned their rights in school. Whether or not this awareness is sufficient to encourage them to claim their rights is a more subtle issue. The mere knowledge of the existence of rights does not ensure access to property. Therefore, like in the past, the widows from rural areas seldom have any rights in land or other forms of property. In order to understand this continuity of practice it is necessary to see the law not as a set of fixed rules and institutions, but as a space of social interactions (Moore 1978).

When I asked Sunita, a married woman, about her access to property, she explained that her husband provided her with everything she needed. If she asked her brothers to give her a legal share in familial property, then they would be very unhappy. Now, she has the love of her brothers and they never forget to give her saris at various festivals, which is very meaningful to women. Sunita also mentioned that she is welcomed in the homes of her brothers when she visits them periodically. Village exogamy applies in most arranged marriages and implies that after marriage the bride moves into her husband's pre-existing household. In

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Sunita's case, it was approximately 35 km from her natal village. Hence her comment: "What would I do with that land? Nothing! It is in another village and I will lose the love of my brothers!"

Her spontaneous reaction exemplifies the feedback of the women interviewed in the village, and also represents the practices related to legal claims. In general, to go to the police or court is not well regarded by women or men. Claiming inheritance rights to her deceased husband's property also shames the widow and her natal family. Some men told me that before going to the court, the brothers of a widow try to solve the matter directly with the other family. Men also mentioned that it is their duty to help their sister when she becomes a widow. However, many widows, especially the elder ones, have lost contact with their brothers or receive little help from them in practice. Hence, many widows live with both economic and emotional insecurities.

Women utilized social factors to explain why they did not, or would not, claim their rights. As a young female pointed out, "it is not good to create conflict with the parents-in-law. We have to keep quiet for the sake of our children". This reasoning is also found among the widows who do not continue to stay with their in-laws after the death of their husbands, even though they have been practically abandoned by the families of their husbands.

Another problem is that if a young widow becomes the owner of some property, it would modify the power relationship with her own mother-in-law who may not have an official property title. A change in the generational hierarchy of rural joint families may also lead to various social tensions. In addition, if a widow has adult sons, then there is little possibility that she will go to court to claim a share in her deceased husband's property which may instead go against her own son's interests.

As a sister, a woman is very uncomfortable in claiming her rights to a share of the father's property. Women who have already received some goods from their parents are reluctant to claim more from their familial property because they feel their parents and brothers already spent so much on their marriage and their dowry. An important problem for a widow, if her in-laws abandoned her, is to recover her *hunda* (dowry). They also find it very intimidating to ask for something from their in-laws, even their own saris, jewels and so on. In fact, women often do not know exactly what their *kunda* consisted of.

Women do not see the advantages of claiming their inheritance rights. If they claim their inheritance, they risk disrupting their security network along with jeopardizing the reputation of their family. For example, if a young married girl loses her husband and takes the initiative to consult a lawyer, to obtain her share in his property, her action will be very negatively perceived by her own natal family. First of all, she will be perceived as rebellious and undisciplined because she did not ask her natal kin if she should take legal action. However, if she had done so, they would probably have refused to go to court. Instead, her brothers (if she had any) would have tried to negotiate with her in-laws to ensure that she continued to be treated well despite losing her husband. Secondly, her independent initiative would diminish the possibility her unmarried brothers and sisters would have in finding suitable partners to marry, because a bad reputation is gained by the parents of a vindictive widow.

If a woman finally brings her case to court, it is not often an individual decision, but instead it will be a familial one. Both financial and psychological support from the brothers, and some members of the extended family, is necessary in most cases to confront the legal system. Changes in individual rights are difficult to implement in a society where the actions of one person are deeply embedded in a kinship network.

6. Going to Court: A Learning Process of Personality Building

In a context of legal pluralism, people will use various forums of justice depending on power and social relationships between the different claimants.

Which specific repertoire, in which specific case, people will orient themselves to, will mostly be a matter of expediency, of local knowledge, perceived contexts of interaction, and power relations (Spiertz 2000: 191).

At this point, before looking at the state court system, it is pertinent to explore the alternatives to filing a lawsuit. Nowadays, caste *panchayat* (caste council, led by the elders of the caste) in Pune and its region are not very active, except in some tribal communities. However, even before the creation of a national court system, caste *panchayat* did not really deal with ‘women’s issues’ except in cases where a property claim created a dispute between two families.

Women may go to a women's organization to obtain advice or deal with the conflict through mediation. In the Pune district, such organizations are concentrated in the city of Pune and its immediate surrounding areas. But even where organizations or social workers are present in the community, widows seldom seek their advice. Firstly, women are not always aware of the presence of these organizations. Secondly, as described above, widows seldom claim their general rights for all types of socio-economic reasons that also render them an underprivileged part of society. If they do not go to Court, it is unlikely that they will seek help from another organization, although they may approach them to find sources of financial aid in order to ensure the education of their children.

There are few institutions and organizations that offer alternatives for conflict resolution. We have seen why and how women tend to avoid conflicts. The process of claiming her rights implies that a woman will, to some extent, adopt a deviant behavior by defying the norms defining womanhood. Once in the realm of the state legal system, and on the margins of its bureaucracy, women – and men – have to modify the way they present and interpret their life experiences to 'fit' within the parameters of the legal culture of a particular court. Both the individual's level of education and the quality of communication between them and their lawyer play a vital role in the extent to which the claimant will shape his or her personality in order to achieve the status and identity recognized – and hence heard – by the legal system.

6.1 The Role of Education

Women's perception of the role of law does not imply that they are against change. In fact, women and men in the village are proud to talk about the improved position of women in the community, especially concerning their levels of education. According to the economists Jean Drèze and Amartya Sen, the role of education (along with health care) in India is crucial in provoking social changes, often more than legislative reforms (Drèze & Sen 2002).

As mentioned earlier, schooling has an unclear influence on legal awareness. Yet education has a positive impact on the ability to fill out official forms and to navigate through the bureaucracy. Moreover, as can be observed in the Pune District Court and Pune Family Court, education provides parties to a case with many tools necessary to understand and negotiate within the processes taking place within these tribunals. Ethnographic research conducted in the United States by

Conley and O’Barr (1998) underlines that the power of law is embedded in judicial language. “Law is a language, and it is through this language that the macro-dynamics of law’s power play themselves out” (O’Barr 1998: 112. See also Mertz 1994). For example, people who speak assertively are more likely to be believed by the courts than people who speak deferentially (O’Barr 1982).²⁰ The *rule-oriented* claimants, compared to *relational-oriented* claimants, are favoured by judges of small claims courts in the United States because the language they use is better understood by the courts (Conley & O’Barr 1990: 58-59).²¹

For various reasons, it is not easy for women to be ‘rule-oriented’. When they speak in front of a judge, at the Family Court or District Court, these women are often speaking in public for the first time, as also are many men. Not only is speaking in public an intrinsically intimidating experience, but the fact that women and men have to speak about their home life and their relationships with other household members can be demeaning.

The embarrassment may also lie in the fact that the hearings take place in both Marathi and English. The judge ‘repeats’ in English the ‘statements’ of the parties to the case and the witnesses, statements that were in Marathi. This is necessary so that the clerk can transcribe simultaneously the ‘facts’ in English for the court records. Such a translation is not necessarily precise and includes interpretations of the facts by the judge, in addition to the transformations of meanings due to the normal process of translation. The construction of narratives by disputants, the community and the court is an integral part of the disputing process (Just 1991), and these elements should be taken into account while studying access to justice. Consequently, education in English provides the claimants with additional means to be assertive and increase their control over the legal process.

In Pune district, like elsewhere in India education is not the only social factor influencing the relationship of women with the legal system. Yet, it is certainly an important element in the process of reshaping an identity that will fit the requirements of the state legal system and that will facilitate the control over

²⁰ This study was an interdisciplinary work: it combined anthropology, linguistics, social psychology and law.

²¹ Claims courts were chosen as a site of study because these courts offer a legal environment in which judges invited the litigants to tell their story open-endedly, unlike in formal courtrooms.

resources. Ownership is not only an official title, it is an “umbrella concept” (F. and K. von Benda Beckmann and Spiertz 1996) which includes various types of rights, mainly the right to use a resource and the decision-making rights to regulate and control its use (F. and K. von Benda Beckmann and Spiertz 1997). Hence, to acquire and maintain property rights, the claimant should acquire a powerful personality that will be recognized by the community, as well as the court.

6.2 Relationships with a lawyer, and with the bureaucracy

In Family and District Courts the paperwork is in English. Therefore the claimants have to sign documents that they cannot understand. Hence, they have to rely completely on their lawyers, or on the judge, if they do not have a lawyer. Also, all the paperwork has to be completed by a legal professional, a lawyer, since the jargon of the legal system is very difficult for a layperson to understand.

It is also important that the lawyer prepares the client for her court appearance. The court is an official setting that can be intimidating. The claimant has to feel confident enough to listen carefully to what the judge or other lawyers are asking and to answer in a coherent manner. One requirement of the court discourse is that the witness should provide a chronological account of her story. To increase the chance to be well perceived, listened to and understood by the judge, a good lawyer will help the client in organizing the facts. A good level of communication between the lawyer and the client improves the client’s chances of winning the case despite of the intricacies of the legal system.

The dense bureaucracy of the legal system and the governmental apparatus partly explains why access to justice is limited for widows. During my observation of court proceedings in the District Court of Pune, I realized that gaining access to property is often a highly technical procedure. For example, in order to obtain this right she has to produce her husband’s death certificate. The ease with which the widow will be able to obtain the desired certificate seems to vary at random. Firstly, it is not always easy for a widow to go to the *gram panchayat*, or governmental offices, by herself. For most women, the paperwork that follows the death of their husbands will be the first administrative work that they have ever had to tackle on their own. Ration cards, caste certificates and birth certificates are almost always not kept in the hands of the woman, but rather by her father or, after marriage, by her husband. Even women who are breadwinners are not necessarily familiar with administrative work and negotiating with governmental

agencies. The intricacies of governmental administration also transform the task of finding a simple piece of information into a real challenge, which can be very discouraging for someone who is unfamiliar with such procedures. Widows often told me of their concern and despair regarding administrative procedures. Indeed, their frustration is such that it is not uncommon to find widows who have given up pursuing access to their husband's pension, widow's pension, or other type of property to which they have a right.

In other cases, the widow has to go to court to obtain her husband's death certificate. For example, even in a case of intestate succession where the right of the widow is not disputed by the in-laws, the Government office may need the certificate to give the inheritance to the widow or one of her children. Then, what seems to be a pure formality can become a long judicial procedure, since it can easily take four or five years for a widow to obtain such a death certificate. During that time, she and her children are deprived of a source of income and a better social status.

Contrary to the official law, marriages are almost never registered, so it is very hard to prove officially that one is married. Clearly, if it is difficult to prove that someone was your husband, it will be even harder to claim rights to his property. Wedding photos and invitations often constitute good evidence that the wedding occurred, but these can be produced only if they are in the hands of the widow.

The costs associated with heavy bureaucracy are also important factors in influencing people's access to justice. Since the mid-1990s, women litigants in Maharashtra have been exempt from court fees in cases relating to maintenance, property, violence, and divorce. Still, the cost for lawyers' services can be very high. In one case, a widow claimed compensation for her husband's fatal accident but had no money left to claim her share in his property. Also, many women are not aware that they may have access to a government lawyer through legal aid. Lengthy procedures are also sources of discouragement from going to court or pursuing the legal matter to the end. Delays caused by numerous procedures also have the effect of further increasing the costs of the access to justice.

Conclusion: Fighting for Property Rights: the Challenge of Acquiring a New Self

The long debate over personal laws led Indian legislators in the 1950s to choose a new 'social order'. In the process they created possible social disruption or 'social disorder', through a revision of the ideal of the Hindu joint household and the place of women and men within this model. If they follow this legislation, every household member has to reshape their parameters of identity, which leads them to appropriate a new sense of self.

In a transitional context of legal pluralism and rapid socio-economic change, before shopping for forums of justice (K. von Benda-Beckmann 1984), women will first – and not necessarily consciously – shop for 'avoidance of conflict forums'. In that space of conflict-avoidance, women, along with men, can reshape their sense of identity by balancing their constellation of rights and duties and renegotiating a meaning of justice.

Disputes over property are shaped and solved by various perceptions of women's rights, along with ideals of gender relationships and inter-generational organization. Legal anthropology provides a useful framework in which to understand the interplay of various concepts of rights and duties, within a context of legal pluralism. Legal anthropology also contributes to research on women's relationship to the legal system by focusing on the cultural analysis of

the ways legal institutions and actors create meanings, the impact of these meanings on surrounding social relationships, and the effect of the cultural framework on the nature of legal procedures themselves (Engle Merry 1992: 360).

In spite of progressive legal initiatives in Maharashtra, women in Bheema do not see the advantages of claiming their inheritance rights. For, if they claim their inheritance, they risk disrupting their security network. Yet, since Independence, the social changes that have occurred in Bheema for both men and women, including widows, suggest that legal reforms concerning property rights may eventually be utilized by the population. Over recent decades the steady increase in literacy rates for men and women, the larger acceptance of female education in the formal and informal sectors, and the better community acceptance of women going outside the village for education and jobs indicate a deep movement towards social

changes leading to larger gender equality. Those factors in the long term reduce the negative impacts of social indicators associated with the North (such as the prevalence of patrilocality and patrilineal inheritance practices). In Bheema, and Maharashtra, positive effects of education are already found in the fact that widowhood is less difficult among Hindu communities of Maharashtra than in the North. Schooling and a popular education movement have been crucial factors leading to, on the one hand, the reduction of biases concerning lower castes and widowhood and, on the other hand, to the slight but persistent increase in job opportunities for women.

If the Indian government really wishes to implement the HAS, legal literacy programs are necessary to educate the population on the benefits of women's access to property rights for the whole society. Moreover, the State must encourage local initiatives that aim to support communities as they face changes brought about by the reallocation of land and other forms of property.

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