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A Human Rights Perspective**

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A Review of Sikkim Succession Act, 2008: A Human Rights Perspective

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ABSTRACT

Sikkim's unique constitutional status under Article 371F allows for the preservation of old laws and customs. However, this often creates a conflict with Part III of the Indian Constitution. The Sikkim Succession Act, 2008 was considered as a positive move towards codifying property rights in a state governed by customary laws. While it aimed to modernize traditionally patriarchal customary practices, the Act introduced several provisions that have been criticized as discriminatory. The paper reviews the Act's discriminatory nature, judicial rulings and the necessity of aligning the Act with the international human rights standard.

KEYWORDS

Sikkim Succession Act, Human Rights, Constitution.

I. INTRODUCTION

India's Succession laws have a long history of exploiting women's rights as they are rooted in culture and religion. Women in India have faced discrimination and exclusion under the succession laws for a variety of reasons. One of the causes is that numerous religious communities have their own personal laws and tribal people in several states are regulated by their own customary laws, thus, leading to inconsistency of the laws.¹ Customary laws are upheld in the name of preserving the customs and traditions. However, customary laws have been criticized for being outdated and archaic.

The old laws of Sikkim have been protected and safeguarded under Article 371F. The Sikkim Succession Act was enacted in 2008 by the state however, it has not yet been notified. Thus, the

¹ Mehta, R. (2019), Inheritance Rights of Women: How to protect them and how Succession Laws Vary, <https://www.sngpartners.in/2019/07/29/inheritance-rights-of-women-how-to-protect-them-and-how-succession-laws-vary/>.

objective of the study is to ascertain whether the Sikkim Succession Act, 2008 are consistent with the principles of gender equality outlined in the Constitution and aligns with the human rights standard.

The methodology used in this research paper is doctrinal. To have a thorough understanding for the research, secondary sources of information and data such as articles, journals and books related to the successions laws of India and Sikkim have been examined.

II. SIGNIFICANCE OF ARTICLE 371F AND PROTECTION OF OLD LAWS OF SIKKIM

The legal landscape of Sikkim is unique within the Indian Union. Following its merger in 1975, Sikkim was granted special protections under Article 371F. The article begins with non-obstante clause: “*Notwithstanding anything in this Constitution...*”.² This means that the provisions following this phrase take precedence over any other article in the Indian Constitution. It was designed to ease the transition of Sikkim from a protectorate to a full state of the Indian Union in 1975.

Article 371F preserved its ‘old laws’ to maintain social stability and protect indigenous interests. Clause (k)³, which deals with old laws, states that all laws that existed in the state of Sikkim prior to its merger with India should be preserved. It stipulated that the sanctity of “old laws” would be protected and maintained.⁴ It means that the non-obstante clause ensures these local laws remain valid even if they are inconsistent with the general central laws. A non-obstante clause in a statute usually overrides other sections of that statute. Thus, Article 371F grants the provisions of Sikkim precedence over almost the entire rest of the

² Note: A clause beginning with ‘notwithstanding anything contained in this Act’ is sometimes appended to an article or a section in the beginning, with a view to give the enacting part of the article or section in case of conflict, an overriding effect over the provision or Act mentioned in the non-obstante clause. It's the same as saying that, regardless of the provision or the Act mentioned in the non-obstante clause, the enactment that follows it will have full operation, or that the provisions mentioned in the non-obstante clause will not constitute an impediment for the operation of the enactment

³ The Constitution of India, Article 371F: Special provisions with respect to the State of Sikkim: Notwithstanding anything in this Constitution:- (k): all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority.

⁴ Chakaravarthi, K.R. (2020), Significance of Article 371F of the Constitution of India for Sikkim, Sikkim Express, Wednesday, Aug 05, 2020 <http://www.sikkimexpress.com/news-details/significance-of-article-371-f-of-the-constitution-of-india-for-sikkim>.

Constitution.

In regard to non-obstante clause, the Apex court in *R.C. Poudyal v. Union of India*⁵ held that Article 371F cannot transgress the basic features of the Constitution.⁶ In this case, the validity of clause (f)⁷ was challenged and it was contended that Article 371F begins with a non-obstante clause and therefore the other provisions of the Constitution would not apply to the state of Sikkim.⁸ Despite the Apex court's observation, the honorable court upheld the constitutionality of clause (f), citing historical reasons for the insertion of such a clause under Article 371F, and dismissed the petition

Thereafter, in the case of *State of Sikkim v. Suresh Prasad Sharma*,⁹ examined Rule 4(4) of Sikkim Government Establishment Rules, 1974 that made a discrimination on the grounds of residence i.e. it prohibited non-Sikkimese from holding government jobs and this rule was challenged on the ground of violating equality provision under Article 14. The court held Rule 4(4) valid under the non-obstante clause.

III. SIKKIM SUCCESSION ACT, 2008: AN OVERVIEW

There are no laws of succession and inheritance that is in force in Sikkim, there are some regulations which are in effect in regard to transfer of property in Sikkim.¹⁰ Thus, the enactment of Sikkim Succession Act, 2008 was viewed as a progressive initiative towards providing rights to Sikkimese women at par with

⁵ *R.C. Poudyal v. Union of India*, AIR 1993, SC 804.

⁶ The honorable court held that:

“There is no doubt that the non-obstante clause in a statute gives overriding effect to the provisions covered by the non-obstante clause over the other provisions in the statute to which it applies and in that sense, the non-obstante clause used in Article 371F would give overriding effect to clauses (a) to (p) of Article 371F over other provisions of the Constitution. But at the same time, it cannot be ignored that the scope of the non-obstante clauses in 371F cannot extend beyond the scope of the legislative power of Parliament under Article 2 or the amending power under Article 368. Therefore, the non-obstante clause has to be so construed as to conform to the aforesaid limitation or otherwise Article 371F would be rendered unconstitutional.”

⁷ The Constitution of India, Article 371F (f): Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the state of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the Assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the state of Sikkim.

⁸ Parulkari, I. (2021), “Case commentary on *R.C. Poudyal v. Union of India*”, *International Journal of Law Management & Humanities*, 4(1): 1334-1338.

⁹ *State of Sikkim v. Suresh Prasad Sharma*, 1994 AIR 2342, 1994 SCC (5) 28.

¹⁰ Bhutia, T.R. (2017), “Legal rights of Sikkimese women”, *International Journal of Recent Scientific Research*, 8(12): 22110-22114.

Sikkimese men in the matters of succession.

The Sikkim Succession Act, 2008 was intended to unify successions laws for the holders of the Sikkim Subject Certificate (SCC)¹¹ or Certificate of Identification (COI)¹². However, instead of fostering equality, it institutionalized a gendered form of property exclusion that violates fundamental human rights.

Sikkim Succession Act, 2008 establishes a legal framework for the succession of Sikkimese people's moveable and immovable property. The act is applicable to any person who possesses Sikkim Subject Certificate/Certificate of Identification (COI) and to descendants of Sikkim Subject Certificate holder identified through COI.

In the event of intestate property, the Act provides that 'when a male Sikkimese dies and has an interest in the property or has self-acquired property, the property passes to the surviving members of his family in equal proportion to the extent of his interest, which includes his wife, sons and daughters if unmarried.

The Act provides that when a female heir or descendent marries a person who does not have a Sikkim Subjects Certificate/Certificate of Identification (COI) or has acquired foreign citizenship, the female heir or descendent shall follow her husband's personal law and shall have no claim to the property.¹³ Further, the Act stipulates that if a person does not have a son, the property will devolve on the daughter, subject to sub-section 5 of Section 6 and the Act also provides for disposition of one's property by way of "Will".¹⁴

The Act shifted the legal landscape from unwritten customary practices to a formal statutory framework. Under Section 6, the act mandates that when a male Sikkimese dies, his self acquired or ancestral property devolves equally upon his wife, sons and unmarried daughters. If a person dies without a will, the property is distributed among "Class I" heirs (widow, children, mother) in equal shares. It allows individuals to execute a Will (testamentary succession) to bequeath self-acquired property provided it is attested by at least two witnesses.

IV. THE CONSTITUTIONAL CONFLICT: ARTICLE 371F vs.

¹¹ The Sikkim Subject Certificate is a document that recognized a person as a subject of erstwhile kingdom of Sikkim.

¹² Domicile certificate, also known as the Certificate of Identification (COI) is a proof that the applicant is a resident of the Sikkim State.

¹³ Sikkim Succession Act, 2008, Section 6 sub-section 5.

¹⁴ Sikkim Succession Act, 2008, Section, 11.

PART III OF THE CONSTITUTION

The primary challenge in analyzing this Act is the shield provided by Article 371F of the Indian Constitution. Article 371F protects the old laws and the customs of Sikkim to maintain the state's distinct identity. However this often clashes with Part III (fundamental Rights) especially Articles 14 and 15 of the constitution. From a human rights perspective, no special status or customary law should supersede the basic human right to be free from gender based discrimination. The Act effectively uses state protectionism to justify the economic marginalization of women.

V. KEY HUMAN RIGHTS CONCERNS

The most prominent human rights critique involves Section 6(5) of the Act, where it states that a Sikkimese woman who marries a non-Sikkimese (someone without an SSC/COI) or has acquired foreign citizenship loses her right to inherit or hold ancestral property in Sikkim. This restriction does not apply to Sikkimese men who marry non-Sikkimese women. A Sikkimese man who marries a non-Sikkimese woman faces no such penalty, in fact, his wife often gains rights through him. The critics argue that this violates Article 14¹⁵ (Right to Equality) and Article 15 (1)¹⁶ (Prohibition of discrimination on the ground of sex) of the Indian Constitution. Further, by penalizing a woman's choice of partner with the loss of her ancestral heritage, the Act violates the right to choice and right to privacy, recognized as fundamental rights under Article 21 of the Indian Constitution.

While the Act does not physically stop a woman from marrying. It imposes a severe economic penalty on her choice of spouse. This violates several international instruments such as Article 16 of Universal Declaration of Human Rights (UDHR) which states that men and women of full age have the right to marry and to found a family and are entitled to equal rights as to marriage, during marriage and at its dissolution. Similar rights are mentioned under Article 23¹⁷ of International Covenant on Civil and Political

¹⁵The Constitution of India, Article 14: The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁶ The Constitution of India, Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

¹⁷ International Covenant on Civil and Political Rights, Article 23: 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending

Rights (ICCPR).

Proponents of the Act argue that the restrictions are necessary to prevent the alienation of land to ‘outsiders’, thereby preserving the demographic and cultural integrity of Sikkim. However, from human rights perspective the customary law cannot be used as a tool for discrimination. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁸, to which India is a signatory, mandates that states take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Further, Article 16 of CEDAW provides that “women are empowered to own and give away their property”.¹⁹ International law requires states to not only provide equal laws but to ensure equal outcomes. The 2008 Act ensures an unequal outcome where land—the primary source of wealth in Sikkim remains concentrated in male lineages.

Further the Supreme court of India has interpreted the Right to Life to include ‘Right to choose a life partner’. In *Shafin Jahan v. Asokan K.M.* (2018)²⁰, the honorable judge had held that ‘*The right to marry a person of one’s choice is integral to Article 21 of the Constitution. The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual.*’

By stripping women of their economic security upon marriage, the Act treats property not as an individual right but as a patriarchal asset used to control social lineage. By tying a woman’s property rights to her choice of spouse, the Act uses economic marginalization as a tool to control social behaviour. This reduces a woman to a chattel whose legal identity is fluid based on her marital status, whereas a man’s identity remains fixed and protected.

VI. LEGAL LIMBO: THE ‘UN-NOTIFIED LAW’

spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

¹⁸ India ratified CEDAW convention on 9th July 1993. State parties to the convention are obliged to refrain from acts that would defeat the object and purpose of the convention—namely, the elimination of *all forms* of discrimination against women.

¹⁹ Onuoha, A.R. (2008), “Discriminatory property inheritance under the customary law in Nigeria: Ngos to the rescue”. *The International Journal of not-for-profit Law*, Vol. 10, Iss 2. <https://www.icnl.org/resources/research/ijnl/discriminatory-property-inheritance-under-customary-law-in-nigeria-ngos-to-the-rescue>.

²⁰ *Shafin Jahan v. Asokan K.M.*, AIR Online 2018 SC 1136.

The case of *Basanti Rai and Others v. State of Sikkim*²¹, is the most significant judicial turning point for the Sikkim Succession Act, 2008. It exposed a major administrative lapse that rendered the Act effectively non-existent for nearly a decade after its passing. The petition was filed as a public interest litigation by a group known as the 'Daughters of Sikkim'.²² They challenged the constitutional validity of the Sikkim Succession Act, 2008, specially provisions that deprived women of their ancestral property rights if they married outside the community. They argued this was a violation of Article 14 (Right to Equality) and Article 15 (Prohibition of discrimination on grounds of sex) of the Indian Constitution. They also challenged the requirement of an unmarried certificate²³ for women to claim property rights.

The Act prohibits Sikkimese women married to non-Sikkimese from owning shares or holding property. However, the honorable court did not discuss the constitutionality of the Act. The High Court of Sikkim observed that the Act was essentially non-existent in the eyes of the law because the state government had not formally notified the commencement of the Act. Since the Act was not in force, the high court declared that any orders previously passed by administrative authorities relying on the provisions of the 2008 Act were null and void. The court disposed of the writ petition stating that it was 'premature' to challenge the validity of an Act that hadn't been enforced yet. However, it granted the petitioners liberty to approach the court again if the government took any future action based on these discriminatory provisions.

The legal aftermath of the Basanti Rai Case led to significant changes in how the Sikkim government handles property rights for woman. While the case technically failed because the 2008 Act was never notified, it however compelled the state to address the discriminatory 'old laws' that had persisted since the era of the Chogyal²⁴ Monarchy.

Following the case verdict, the Land Revenue and Disaster Management Department, Government of Sikkim, issued a notification No. 08/LR&DMD/R/2018 on 7th June, 2018.²⁵ This

²¹ *Basanti Rai and Others v. State of Sikkim*, W.P.(PIL) NO. 05/2017.

²² Eyben, V. (2019). Dual citizenship and Sikkim's ticking time-bomb-IIx1, Newslick, 04 Sep 2019 <https://www.newslick.in/Dual-Citizenship-Sikkim-Ticking-Time-Bomb-IIx1>.

²³ Note: The Unmarried Certificate in Sikkim is issued to confirm an individual's marital status as unmarried or single. The certificate is required for availing government job opportunities, other government services in Sikkim.

²⁴ The Chogyals were monarchs of former kingdom of Sikkim.

²⁵ Note: This notification allows Sikkimese women who are married to non-Sikkimese to register their property in their own names. However, upon her death, the deceased woman's property will be governed as per the existing rules, which means the Married Women's Property Regulation will be

was an attempt to provide relief to Sikkimese women married to non-Sikkimese men. However, the relief came with a 'Limited Ownership'. It meant that a Sikkimese can now have land mutated (registered) in her name. This right is often for life only, meaning they still cannot pass the property to their children (offspring), maintaining a cycle of disinherited generations.²⁶

VII. RECENT JUDICIAL TURNING POINT

In *Association of Old Settlers of Sikkim v. Union of India*²⁷, the Supreme Court struck down a similar discriminatory proviso in the Income Tax Act that denied exemptions to Sikkimese women who married non-Sikkimese men. The court held that stripping a Sikkimese woman of her tax benefits upon marriage to a non-Sikkimese man was arbitrary and discriminatory. The court held: "*A woman is not a chattel and has an identity of her own and the mere factum of being married to a non-Sikkimese cannot take away her status as a Sikkimese.*"

This judicial observation strikes at the heart of the Sikkim Succession Act. If marriage cannot strip a woman of her identity for tax purposes, it logically follows that it cannot be used as a trigger for the forfeiture of her ancestral property.

VIII. RECOMMENDATIONS AND REFORMS

First and foremost, it is necessary to remove the marital disqualification clause from the Sikkim Succession Act, 2008 which is the key area of concern. The Act should be amended to ensure that inheritance is a vested right by birth, independent of marital status. The fear that women marrying 'outsiders' (non-Sikkimese) will lead to land alienation can be addressed without stripping women of their inheritance. Inherited land could remain with the woman, but its sale or transfer could be restricted to non-Sikkim Subject holders. This protects the demographic integrity of the land i.e. protects the goal of Revenue Order No. 1²⁸, while

applicable. As per the said Regulation, the woman can only enjoy her property during her lifetime. But, she cannot transfer, sell, or gift it to anyone else. Neither the spouse nor the offspring can claim any share in the property.

²⁶The Sikkim Code (n. d.). "The Sikkim Code, Volume II, Part I", *Law Department Government of Sikkim*, Gangtok
<https://hcs.gov.in/hcs/sites/default/files/rules/sikkimcodevol2.p>
<https://indiankanoon.org/doc/21637149/df>.

²⁷*Association of Old Settlers of Sikkim v. Union of India*, W.P. (C) No. 1283 of 2021.

²⁸ Revenue Order No. 1 is a significant historical directive issued on 1897 that prohibits Bhutia and Lepcha landowners from selling, mortgaging, or subletting their land to non-Bhutia/Lepcha without the Darbar (royal court) sanction.

respecting the woman's economic right to her ancestral property.

In Sikkim the progressive Hindu Succession (Amendment) Act, 2005, which makes daughters equal coparceners have not been fully integrated. It is recommended that the state should formally adopt the principles of the 2005 Act. By making daughters "coparceners²⁹" by birth, the law would shift from a system of giving rights to women to recognizing their inherent legal status.

IX. CONCLUSION

The Sikkim Succession Act, 2008 while intending to protect local interests, inadvertently has led to human rights violations. The protection of ethnic identity under Article 371F must not come at the cost of basic human dignity and gender equality. To align the 2008 Act with the international human rights standards and the Indian Constitution, reforms are necessary. First and foremost, repeal of Section 6(5) should be done. Secondly, notification of the Act is required in order to remove the legal ambiguity. Further, recognize that a woman remains a 'Sikkimese' regardless of who she marries and ensure that the right to inherit property passes to children regardless of the father's origin.

²⁹ Coparcenary is the division of property between the co-owners or joint owners who have inheritance to the Hindu joint family.