

Women, property rights and HIV in India

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Photo: Annelies van Brink

In 2006, UNAIDS reported that almost half of the adults living with HIV and AIDS today were women. According to estimates, 38% of HIV-positive adults in India are women, and the number of young women, aged 15-24, living with HIV and AIDS is twice that of young men.¹ HIV/AIDS has exposed the social inequities that predispose girls and women to HIV infection, but women need more than rights in order to protect themselves. In India, the AIDS epidemic magnifies the devastation of women's property violations. In this country, women and their children are likely to face not only stigma against people affected by HIV and AIDS, but also deprivations caused by their inability to own and access property.

This inability to own and access property is one of the biggest difficulties facing women in households affected by HIV/AIDS. HIV-positive women who have been abandoned by their husbands and ostracized from their communities and widows who have lost their husbands to AIDS-related illnesses are very often denied a rightful share of their husbands' property. The community or their in-laws throw them out, leaving them destitute and homeless. Sometimes, the women are sent back to their parents without a dowry, making it difficult for their families to support them.²

Laws and customs prohibit widows from inheriting property. This leads to their being evicted from their lands and homes by in-laws, and stripped of their possessions. Evidence shows that women whose partners fall sick and die due to AIDS-related illnesses suffer discrimination, abandonment, and even violence. In some places,

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women lose their homes, inheritance, possessions, livelihoods and even their children when their husbands die. Such insecurity forces many of them to adopt survival strategies that increase their chances of contracting HIV.

In many families, the women – daughters, wives and daughters-in-law living with HIV – face more discrimination than sons, husbands and sons-in-laws.³ Married women testify that they may not disclose their HIV-positive status to their husbands for fear of being victimized

and deserted. Women are often blamed by their in-laws when husbands are infected with HIV. They are seen as vectors of the infection even if the family has knowledge that the husband had visited sex workers. This blame is made in the belief that the wife was unable to satisfy her husband sexually resulting in his seeking sex workers. Ironically, the wives are still expected to provide care for husbands living with HIV/AIDS. After the husband's death, however, the usefulness of the wife will have ended. This is demonstrated by the in-laws denying the wife a share of her husband's property or pension.³

Human Rights Law Network (HRLN) is a not for profit NGO based in India. It is a network of lawyers and social activists working towards ensuring that the poor and vulnerable access justice. In the last few years, we documented cases of property grabbing by in-laws of people living with HIV and AIDS in several Indian states. Some examples suffice:⁴



- Suniti Chauhan's husband died of an AIDS-related illness a year ago. They lived in the district of Kishanganj in Bihar State. Suniti is also HIV-positive. Currently, she is staying with her father. Her in-laws have refused to acknowledge her stake in the household's property.
- Rukmaniu from Ethah district in Uttar Pradesh State is also HIV-positive. Her husband also died of an AIDS-related illness after a few years of marriage. She has a son who is living with HIV. She was beaten up and thrown out of her marital home and was not allowed to take even her clothes, because her in-laws blamed her for their son's death. She has filed a case for return of her property. She is currently staying with her brother.
- Roshani Singh from Varanasi was thrown out of her in-law's house after her HIV status was known. Her husband died of fever two years ago. She was beaten up by the husband's three elder brothers and denied a share in the property. She begged for a year on the streets to support her two-year-old child.

Property laws in India

In India, as in other parts of the world, women's rights to property are limited compared to men. The denial and violations of women's property rights widens the economic disparity between men and women. Women's property rights are affected by a complex web of statutory laws, personal laws and social norms and customs.

Photo: Annelies van Brink



Personal laws govern family law matters and determine a woman's share in her parents' or matrimonial property. The applicability of any set of personal laws depends on a person's religious affiliation. For instance, Hindus, Sikhs, Buddhists and Jains are governed by the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956, whereas Muslim women are governed by the Muslim Personal Law (Shariat) Application Act, 1937 and the Muslim Women's (Protection of Rights on Divorce) Act, 1986. Additionally, tribal women's property rights are governed by the customs and norms of their tribe. It is clear that there is no uniform body of law governing Indian women's property rights. An Indian woman's property rights depend on her religion, her marital status, which part of the country she comes from, her tribal association and so on.

Hindu women

It will be useful to take the example of property rights of Hindu women. Their property rights, as well as those of Sikh, Buddhist and Jain women in India, depend not only on religion and region, but also on their status in the family: whether the woman is a daughter, mother, married or unmarried or deserted or widowed. Her property rights also depend on the kind of property at issue, that is, whether the property is hereditary/ancestral or self-acquired, land or dwelling or matrimonial property.

The recent amendments to the Hindu Succession Act of 1956 (September 2005), have improved the property rights of Hindu women. The Act now covers agricultural holdings whereby a daughter is recognized as heir by birth in the same manner as her brothers. The sections of the Act that prevented a female residing in the family house from asking for a partition (dividing up) of the house and did not allow widows remarrying to inherit the property of their deceased husband, have been repealed. However, under the Hindu Succession Act, daughters still have limited rights regarding ancestral property. For example, in the case of *Narashimha Murthy v. Smt. Susheelabai and others* (1996), the Supreme Court of India held that the right of the female heir to claim partition is restricted by the rights of the male heirs; she cannot seek partition unless and until the male heirs decide to partition the house.

Additionally, a will can deny a daughter all rights to parental property. This is because Hindu parents' right to hand down self-earned property is unrestricted and therefore they can and often do leave such property only to their sons.

Access to justice

Ensuring equality of property rights protects a woman and ensures her family's economic security, while also empowering her to fight against social and political injustices. However, it is pertinent to emphasize that having gender-just laws does not necessarily ensure access to justice. Despite equal rights provided to women in India, women remain deprived of equal status compared with men. Hence, at HRLN, the Women's Justice Initiative and the HIV/AIDS and the Law Initiative oppose all forms of gender-based discrimination and violence against women and aim at enabling women's access to the justice system, as a vital means to their empowerment.

In keeping with our philosophy, we provide comprehensive *free legal services* to poor and marginalized women. We attempt to demystify legal terms, concepts and procedures so that those neglected by the system of justice can also realise their rights. To achieve this goal, we emphasize the role of legal education. We also campaign among the population for better understanding of the law and the judicial system through different channels in a variety of

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Indian languages. Campaigns are carried out through material that is designed to meet the specific demands of the target audience. HRLN also fosters the formation of *community-based legal teams* and *national law collectives* to achieve these goals on a larger scale by helping activists network with lawyers and by sharing our knowledge and practical experience. Finally, *public interest litigation* is another legal tool which we use to redress the violations of property and inheritance rights of women affected by or living with HIV and AIDS. Crucial and professional interventions at the level of the Supreme Court can bring about changes in conservative state policies and bring relief to millions of Indian women. ■

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1. Kaiser Family Foundation, *Fact sheet HIV/AIDS in India*, September 2006: www.kff.org/hiv/aids/7312.cfm
2. A dowry is a gift of money or valuables given by the bride's family to that of the groom to permit their marriage.
3. UNAIDS, *India: HIV and AIDS-related Discrimination, Stigmatization and Denial*, August 2001: http://data.unaids.org/Publications/IRC-pub02/JC587-India_en.pdf
4. Names have been changed to protect confidentiality.