V. OMPRAKASH V. RADHACHARAN-JUSTICE DENIED

- *VINOD DIXIT*[*]

Abstract

This case comment is a critical appraisal of Om Prakash v. Radhacharan, a case decided by a bench of the Supreme Court in 2009. We are of the opinion that the judgement has disappointed those who cherish the cause of woman-empowerment. A widow, turned out by the in-laws immediately after widowhood, was supported, educated and made capable of lucrative employment by her mother. The woman having earned considerable property, died intestate. The property was claimed by heirs of her mother and of her in-laws. In accordance with the literal interpretation of the provisions of the Hindu Succession Act, the Court decided in favour of the in-laws, who not only violated their legal duty under the provisions of section 19 of the Hindu Adoption and Maintenance Act, to maintain the daughter in laws, but were her tormentor. If a murderer cannot inherit the property of the victim, why should a tormentor be allowed to inherit the property of the tormented? Not only the Court decided in favour of the in-laws but also dismissed the issues of equity as emotional and sentimental issues, of no consequence. Can the judgement be called 'per incuriam' because it is decided without referring to section 19 of the Hindu Adoption and Maintenance Act? Had the Court applied the maxim, 'no

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> *one can be allowed to take advantage his own wrongs', or the doctrine of promissory estoppel, the result could have been different*

Is it not strange that we are commenting on *Omprakash v. Radhacharan,* AIR (2009) SC (Suppl) 2060, in 2026 on a case decided by the Supreme Court in 2009? It is so because this case, unfortunately has been decided from the point of view of patriarchal legal eco-system. To the best of our knowledge, no one has commented on this case from the point of view of women's empowerment. Therefore, even at this late stage, we have decided to comment on it.

Narayani Devi married Dindayal Sharma in 1955 but after 3 months of marriage she became widow. Immediately after widowhood she was driven out of her matrimonial home, thereby acting contrary to their religious and legal duty under the Hindu Adoption and Maintenance Act 1956, though the case is absolutely silent about the provisions of this Act. She was taken care of by her mother, Ramkishori. She was educated by her natal family; she was employed and died intestate in 1996. She left considerable amount of money and real estate after her death. Ramkishori applied for succession certificate under section 372 of Succession Act. But her in-laws contested on the grounds that her property was self-acquired and under section 15 and 16 of the Hindu Succession Act, the relatives of her husband are preferred to her relatives in her natal family. In this case Omprakash represents Ramkishori and Radhacharan the in-laws.

The Respondent, Radhacharan claimed the property of Narayani Devi on the basis of provisions of sections 15 and 16 of the Hindu Succession Act 1955. Section 15 provides that in what order property of a female dying intestate shall devolve. Section 16 provides that in clause (1) and (2) of section 15, the heirs of a preceding entry shall be preferred over the succeeding entry. Section 15 provides the property of a female Hindu dying intestate shall devolve upon the husband and children and in their absence upon the heirs of the husband. On the other hand, section 15 (2) provides the rules for devolution of inherited property, inherited from the natal family and from matrimonial family. Radhacharan, the son of Dindayal Sharma's sister, claimed the property of Narayani Devi as her property was neither inherited from her natal family nor did she made a will and it was self-acquired.

On the other hand, Omprakash, the brother of Narayani Devi claimed the property, under section 15 (2) (a) as the family of the husband turned her out immediately after widowhood and did not make any contribution in her education and employment. Section 15 (2) (a) provides that in case of property inherited by a female Hindu from her natal family, the property shall be inherited by the heirs of the father in the absence of children. The argument was that the self-acquired property should be treated as the property inherited from the natal family as Narayani was able to earn property with help of monetary and emotional support of the natal family. On this ground the Appellant

claimed the application of section 15 (2) of the Hindu Succession Act rather than that of section 15 (1).

However, the Bench preferred to decide by the strict letter of the law. Literal interpretation was preferred over purposive interpretation. The following arguments were given in favour of literal interpretation.

1. The self-acquired property is absolute property of a Hindu female under section 15 (1), therefore, section 15 (2) would not apply as claimed by the Appellant.
2. The Bench admits that it is a 'hard' case because Narayani never visited her in-laws during her widowed life and all support came from her natal family. The Bench, however, avoids saying that it was unjust situation and it is wrong to allow her tormentors to inherit her property. Rather the Court observed that simply because a case is hard, it does not allow the Court to apply some different rules; that is impermissible.
3. The Court observed that simply because of 'sentiments and sympathy' 'alone' unambiguous rules cannot be denied application. In support Court cited HSIDC v. Hari Om Enterprises (2009) 16 SCC 208. The Supreme Court observed that though the Court applied the doctrine of proportionality yet the Court cautioned that 'only' on grounds of sentiments or sympathy no order should be passed. In Subba B. Nair v. state of Kerala, (2008) 7 SCC 2010 and Ganga Devi v. District Judge Nainital, (2008) 7 SCC 770, the Supreme Court observed that

no order should be passed 'only' on grounds of sympathy or sentiments. In the latter case the Court further observed that 'stricto sensu' equity has no application.

4. The Bench observed that the applicable provision for women dying intestate would be section 15 (1). 15 (2) cannot apply to a woman dying intestate when her property is self-acquired and hence, absolute property. There is no prohibition for a woman to make a will of her self-acquired property. The spheres of clause (1) and (2) of section 15 are different. Clause (1) applies to a woman dying intestate and clause (2) (a) to the property inherited by a woman from her father or mother. Thus, 15 (1) covers all property of a woman dying instate and 15 (2) (a) the property inherited by her from father or mother. According to section 16, in case of application of section 15, succeeding entry will operate only in the absence of heirs in preceding entry. In the absence of a husband or children, the property of a woman dying intestate will be inherited by the heirs of the husband. Therefore, the property of Narayani will be inherited by Radhacharan and not by Omprakash.

Reading of this case makes it clear that the Bench decided to obey the command of law to the hilt. It is a clearly stated position of the positivists that the letter of the law must be accepted even if it leads to undesirable consequences. Obedience of law is good provided it is intelligent obedience, not mechanical. If a mistress, knowing not what

the maid is doing at the particular moment, yelled at her, "drop everything at your hand and come running to me", does it mean the maid who at the particular moment was giving bath to the infant of the mistress in a bath tub, should drop the baby in the bath tub and attend the mistress?

A perusal of the judgement makes the following points clear: -

1. The statutory provision is set out in a patriarchal legal eco-system.
2. The Court was not prepared to deviate from this eco-system.
3. The Court admitted that it is a hard case.
4. But the 'hard' case is hard, the Bench thought, only for reasons of sympathy or sentiment. The sympathy or sentiment is devoid of legal logic or reason. Therefore, patriarchal legal eco-system of the statute does not require any interference.
5. The sentiment or sympathy in favour of the Appellant is devoid of any consideration of equity ('justice'), therefore, no purposive re-interpretation of section 15 is required. The Court specifically observed that Appellant's case depends only on considerations of sympathy and sentiments but not on 'equity.' And even if it is on equity, equity alone, cannot persuade the Court from deviating from the statutory provisions.
6. Therefore, it can be observed that literal interpretation is not literal but it is aimed at perpetuating the legislative preference for patriarchal eco-system. The literal interpretation displays

legislative patriarchal preference, which was found satisfactory by the Bench. The Bench went a step further than the legislature in as much as it ignored the duty to maintain the daughter in law, imposed under the Hindu Adoption and Maintenance Act 1956. We are certain that literal interpretation is also purposive interpretation. A court has alternatives of application of literal rule, golden rule and mischief rule; why does the court prefer literal rule? It is because, for the court's preferred value system compels the court to apply literal rule.

7. The fact that Narayani was turned out of her matrimonial home (in violation of a legally imposed duty), was only a matter of sympathy or sentiment for the Court and 'only' for sympathy or sentiments the Court is not required to interfere in the statutory provision. Afore stated factual situation being of no consequence, hence, general statutory rule should be applied according to its plain grammatical meaning.

The author of this paper considers the case a step backward in the movement of woman's empowerment. In the context of our liberal constitution, 'equality' provisions are enshrined in Articles 14,15 and 16. Article 14, a generic provision prohibits any arbitrary discrimination. Articles 15 and 16 prohibit discrimination on grounds of 'sex'. Article 16 (3) specifically provides that the state can make special provisions for advancement of women and children. Then five years after the Constitution was promulgated, when Hindu Succession

Act was passed by the Parliament, why did the Parliament pass the Hindu succession Act in patriarchal settings? Perhaps the people were willing to accept constitutional equality in general terms. But when it comes to specific equality in the sphere of family, the legislature did not deviate from patriarchal preference. Social reforms can take place only progressively. It is inconceivable that homosexuality and adultery could have been decriminalised in 1950's but it is possible for the judiciary to do so in 21st century. If gross injustice has been done to women in 1955 under Section 15 of the Hindu Succession Act, there is no reason to perpetuate it in 2009. There is no reason to treat our 'girls' 'paraya dhan' (property of the family of the husband).

No one expects the Court to amend the Hindu Succession Act 1955, but a situation of injustice can at least be corrected particularly in the changed context of 21st century. In the emerging industrial Indian society, women need to be liberated and bondage of patriarchy must be loosened. Even in the context of the Hindu Succession Act there are reasons which compel us to re-interpret the provisions of sections 15 and 16 of the Hindu Succession Act. Statutory provisions are enacted by the legislature. Enactments are futuristic. General provisions of statutory law control the situations that are likely to arise in future. It is impossible for a legislature to fore-see all the situations that may arise in future. It is for the courts to re-interpret the law when an unforeseen situation arises, if literal and ordinary grammatical interpretation of law leads to an unjust solution. A number of rules of interpretation, the legal

maxims and rules of equity may be found useful to cope with such a situation. However, in the present case the Court did not attempt to use any alternative rules of interpretations or maxims of equity. This was because the Court was convinced that no injustice was done. Though the case is 'hard' that may arouse 'sympathy' or 'sentiments', but the sentiments and sympathy are devoid of any consideration of equity or justice. Perhaps it was merely sentimental fuss. In other words, adherence to patriarchal set up of the Hindu Succeession Act was prioritised. We do not understand as to why it was a hard case if no issue of equity or justice was involved.

However, we find it impossible to agree with the opinion of the Court. In the context of constitutional morality of equality between sexes, she as much belongs to her natal family as to her matrimonial home. She does not cease to be the daughter of her parents or the sister of her brother. Only her children, if any are more important than her other relatives, natal or matrimonial. It must be understood that all relations are reciprocal; if they involve duties, they also create rights. The Maintenance and Welfare of Parents and Senior Citizens Act 2007 imposes a duty on children to maintain their parents in their old age when they are not able to look after themselves. The law is backed by a social morality, which is in conformity with the constitutional morality and relations of reciprocity. If the parents can help children in taking their first steps, the children must help the parents taking their last steps. This moral principle is based on reciprocity. If parents

deliberately abandon their child after birth and throw it into a dustbin, have they any right to be maintained by such child in old age? If we want to put parents in law in the position of parents, it can be done only on the basis of reciprocity. The parents in law are under a moral duty to help the daughter in law when she is in need of their assistance.

Narayani Devi, when immediately after widowhood needed the help of her parents in law, instead of helping her they turned her out; they did not behave like parents in law, they became tormentors. They ceased to be their parents in law: they became her tormentors. If a murderer cannot inherit the property of the victim, why should a tormentor inherit the property of the tormented. Section 19 of the Hindu Adoptions and Maintenance Act 1956 is an important provision in this regard. Clause (1) of the section provides, "A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained, after the death of her husband, by her father-in-law." Narayani's husband's family instead of fulfilling the obligation under section 19 of the Hindu Adoptions and Maintenance Act, turned her out. We can also say the parents in law, when they turned Narayani out of her matrimonial home, they in effect said they no longer were parents in law and hence, rule of promissory stopple should apply to them. The Divisional Bench of the Supreme Court, enforced the rights given to the matrimonial family of Narayani, but failed to take cognisance of the duty imposed on the parents in law under the Hindu

Adoption and Maintenance act. The Court treated rights and duties as unrelated to each other.

The Court has categorically stated that, sentiments alone cannot affect statutory rights, but the Court failed to take into consideration deliberate violation of statutory obligation towards Narayani by her matrimonial family. The Court refused to apply the maxim of equity, 'he who comes to the Court must come with clean hands'. Respondents hands are unclean. It is a well-established practice of common law, if statutory provisions create a situation of 'injustice' legal maxims are applied. We propose to discuss two important cases, American and Indian, where the Court refused to enforce strict statutory provisions as they created a situation of injustice.

Riggs v. Palmer, 115 N.Y. 506 (1889), a probate case, is a case decided by New York state Court of Appeal. Mrs. Riggs and Mrs. Preston sought to invalidate the will of their father, Francis Palmer, who testated in 1880. The will of Francis Palmer gave small legacies to plaintiff daughters, Riggs and Preston, and the bulk to grandson, Elmer Palmer, a minor defendant, represented by his mother. The grandson, fearing that the grandfather may change the will, murdered him by poison, the crime was proved. But Elmer Palmer argued that will must be enforced on ground that if a will is validly made it must be enforced, (in the absence of any rule prohibiting a murderer from inheriting the property of the victim). The majority refused enforce the rule, 'if a will

is validly made it must be enforced', on ground of the maxim of equity, that 'no one can be allowed to take advantage of one's own wrongs'.

The whole equity jurisdiction came into existence, in the context of newly emerging mercantile society, when the rigid unchanging classical English law could not respond to the needs of the mercantile society and created many situation of injustice. Equity jurisdiction was invoked by chancery to correct the shortcomings of classical law. Maxims of equity played a major role in developing the mercantile friendly law in United Kingdom. The basic purpose of equity and maxims is to tone down the harmful effect of statutory law.

Indian jurisdiction has also used many devises to tone down the unjust effect of statutory law in many cases. We would confine to cases relating to woman-empowerment. One of the important cases is *Miss X v. Principal Secretary Health and Family Welfare (*2022 SCC online SC 1321). A major woman of Manipur, residing in Delhi, in consensual relationship with a man discovered on June 2022 that she has pregnancy of 22 weeks. With a degree of B.A. in the absence of a source of living she would not be able to raise the child. Her parents are kisans, would not be able to support her. She moved a petition before the High Court of Delhi, praying (a) permission to terminate her pregnancy through a registered medical practitioner (b) restrain the Respondent from taking any coercive action against her or the medical practitioner. (c) include unmarried women within the ambit of Rule 3 B of the Medical Termination of Pregnancy Rules 2003 (as amended

on 21.10.2021). The High Court restricted itself to issuing notice only to prayer (c) and in effect rejected prayers (b) and (c). on grounds that being major unmarried woman, not a victim of rape, she cannot terminate pregnancy of more than 20 weeks.

Under section 3 of the Medical Termination of Pregnancy Act a pregnancy can be terminated by a registered medical practitioner if the pregnancy does not exceed 20 weeks on the failure of any device used by the woman or her husband (in 2021 the word 'husband has been substituted by 'partner' that is after 21.10.21 the facility is applicable also to unmarried women) to limit the number of children and it shall be presumed that the termination of pregnancy is necessary to avoid anguish which causes grave injury to her mental health.

The second provision is applicable to women with pregnancy of more than 20 weeks but not exceeding 24 weeks, the list of women eligible to get pregnancy terminated, in accordance with Rule 3B of Medical Termination of Pregnancy Rules 2003 are (a) survivors of rape sexual assault or incest; (b) minors; (c) change of marital status during ongoing pregnancy (widowhood and divorce); (d) women with disabilities and mentally ill women including mental retardation. It is strange that there is mismatch between section 3 (2) (a) and 3 (2) (b) in as much as in the former case of pregnancy up to 20 weeks eligible woman may be married or unmarried but in the latter case woman needing termination up to 24 weeks, in case she is major, mentally sound and living in consensual relations must be married (the

controlling words are ‘change in marital status) if such a woman is unmarried she cannot take the advantage of termination of pregnancy. Because of the provisions of rule 3 B, the High Court refused to grant her permission to terminate pregnancy.

The Supreme Court, on the other hand observed that the High Court has taken a restrictive view of Rule 3B (c) which provides that a major, sane and married woman can get pregnancy up to 24 weeks, terminated in case of change in marital status; widowhood or divorce are given in parenthesis. The Supreme Court observed that widowhood or divorce should not be treated as exhaustive of the category of ‘change in marital status’: the category should be interpreted in its entire context and in harmony with the overall scheme of the Act. The scheme of the Act intended to include unmarried women, that is why for termination of pregnancy up to 20 weeks, the amendment of the Act in 2021 changed the phrase from ‘a woman and her husband’ to ‘a woman and her partner.’ The amendment recognises a woman’s reproductive choice, bodily integrity and autonomy. The Supreme Court observed that in view of this context there is no reason to deny termination of pregnancy of 24 weeks to an unmarried woman. Appellant’s partner deserted her on knowing her pregnancy, she was not employed and her family was not in a position to support her raise a child. Pregnant woman’s actual or foreseeable environment should be taken into consideration. The substance of the case is that in the interest of empowerment, autonomy,

bodily integrity of a woman and justice, 'change in marital status' was interpreted as change in status and environment.

But in case of Narayani, Sinha J. refused to treat 'change in status' (her widowhood and consequent ouster from her matrimonial home) of no consequence. He treated the claim of the tormentors (her in laws who turned her out of matrimonial home on widowhood) as just claim in accordance with literal interpretation and that of her rescuers (her natal family who stood up with her and made her capable of earning livelihood) as sentimental (fuss) sympathy devoid of any just cause.

In all cases of woman's-empowerment, the substance consists in restoration of her 'dignity.' In case of Miss X, the Court restored her 'dignity' and respected her bodily integrity. There is another case, *Suchita Srivastava v. Chandigarh Administration* [(2009) 9 SCC 1]. The case relates to a female major inmate of under developed mind of a state government institution. A number of males of the institution has sexual intercourse with her, consequently she became pregnant. That criminal action was taken against the accused is another matter. The Psychologist certified her mental age only 9 years and that she does not understand that it is morally wrong to have sexual relations with multiple persons simultaneously; it was also stated that she is extremely happy that she will have a baby. The Chandigarh Administration moved the Punjab & Haryana High Court seeking permission to terminate her pregnancy, which was granted by the Court on ground that she is incapable of performing the duties of a mother.

However, a good Samaritan Suchita Srivastava moved the Supreme against the decision of the High Court. The Supreme Court per Chandrachud J., invoking Article 21, observed that reproductive autonomy is a dimension of Article 21. It is interesting to note that the text of Article 21 does not mention any thing about reproductive autonomy; this dimension has to be inferred. Has the Court interpreted Article 21 literally, reproductive autonomy could not have been its dimension? In interest of woman's empowerment, bodily integrity, autonomy and reproductive choice, Article 21 was interpreted to include reproductive autonomy, not for sentimental reasons or on grounds of sympathy but for doing justice to her. The Court ordered she has a right to become a mother, and it is the duty of the Administration to provide appropriate support in raising the child.

If we try to understand the position of Sinha, J. through Kantian imperatives, we may find a rational explanation of his positivist position. Kant's position is, whatever the life form-pattern of the phenomenal world, which constitutes a person's sociological or psychological position, these do not affect the evil of his deed. A wrong is not converted into non-wrong on account of his activities which precedes it, nor can it be dissolved by what comes afterwards. (Morrison, Wayne: from the Greeks to post-modernism, Cavendish Publishing, London, 2000, pages 140-141) A wrong is wrong, irrespective of what comes before or after it. Right and wrong must be a priori acknowledged by all rational beings. Rules of morality are

universal if they had the imperative of a priori. To apply in the present case, Sinha, J., may mean a rule is a binding rule irrespective of what its attendant circumstances may be. A right of inheritance is an inviolable right even if the bearer of the right has not fulfilled his/her duty imposed by the Hindu Adoptions and Maintenance Act. Rights of inheritance are not connected to the duty to maintain the son's widow. Both exist a priori independent of each other. On the contrary in Riggs v. Palmer, the court refused to treat duty not to kill the grandfather and right to inherit his property as unconnected.

However, the author of this paper is of the view that, though the Kantian deontological position on 'right' is the accepted rule to distribute benefits and burdens, but the deontological position cannot be allowed to be treated as inviolable, particularly when, deontological concept of 'right' creates an unjust situation. It must be remembered that our courts are courts of justice not of merely those of law.