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# An Assessment of the Notions of Women's Immovable Property Rights in Ethiopia in light of John Locke's Theory of Property

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**Abstracts:** *According to John Locke's theory of property, once the person mixes their labour with a common property then that property, be it movable or immovable, belong to that person and they can use, possess or transfer it to a third party. But things are different in Ethiopia when woman's right to property:-specifically their rights to immovable property are concerned. According to norms and values prevalent in most parts of Ethiopia, women cannot have rights to immovable property at all. They cannot possess, use or transfer these property by any means even if they contributed or mixes their labour with these different kinds of property. These customary laws are still winning out over legal frameworks in most rural parts of Ethiopia. This is a serious problem and results in unjust system of property.*

**Keywords:** *Women Rights, Property Rights, Immovable Property, Customary Laws.*

## 1. INTRODUCTION

John Locke proposes his theory of property rights in *The Second Treatise of Government* (1690). According to that theory "once the person mixes their labour with a common property then that property, belong to that person and they can use, possess or transfer it to a third party." This theory is central to the structure of Locke's argument in the *Second Treatise* and serves both as an explanation for the existence of government and a criterion for evaluating the performance of government. The theory is rooted in laws of nature that Locke identifies, and that permit individuals to appropriate, and exercise control over, things in the world, such as land and other material resources. In other words, Locke's theory is a justificatory account about the legitimacy of private property rights. Unlike this Lockean concept of property rights, however, Ethiopia's notion of immovable property rights when it comes to women is different. In most rural parts of Ethiopia, a women right to immovable property is determined by customary norms and values that are prevalent in different parts of the country. Even



though there are different laws that contravene with these norms and values, they are still vibrant in most rural parts of the country. Thus, the aim of this paper is to review the status of Ethiopian women's property rights in immovable property in light of the Lockean conception of property rights. This research will show how the concepts of women's immovable property rights in Ethiopia are inconsistent with concept of property rights envisaged by John Locke. An attempt will be made to show an account of property that better protects women's rights to immovable property.

This paper proceeds as follows. I first summarize the status and extent of women property rights in Amhara and Tigray, in Northern Ethiopia. I then consider the status of women's immovable property rights in Southern and Western Ethiopia, as well as Central Ethiopia. In all cases I demonstrate that the notion of women's rights to immovable property in most rural parts of Ethiopia is depends on pervasive norms and values which still winning out over laws enacted by governments. Finally my conclusion is that the notion of women's rights to immovable property in Ethiopia is inconstant with John Locke's concept of property that better protects women's rights.

## **2. MATERIALS AND METHODS**

Researchers identify three different approaches to social science research: qualitative, quantitative and comparative methods based on their general goals and specific research strategies. In order to attain the intended objectives of the study, the writer of this research employed comparative research methodology. Property rights as envisaged by John Locke are used as bench mark to assess women property rights in Ethiopia. Thus different literatures including books, researches and journal articles are consulted in course of conducting this research.

## **3. DISCUSSIONS AND RESULTS**

### **Women immovable Property Rights in Northern Ethiopia**

The Lockean approach to property underline that "If ones labour is annexed to a property, for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to at least where there is enough and as good left in common for others." The implication of this statement is that one's right to property is only clear and exclusive as long as it does not jeopardize anyone else's ability to create an equivalent kind of property for themselves. But there is no such approach to private property rights in northern Ethiopia, at least not where immovable property rights of women are at stake.

In his article 'Women's right to resource access in Northern and Central Ethiopia, Tamrat diachronically presents how the deprivation of women's access and control over land resources were made during the feudal regime (13<sup>th</sup>- 20<sup>th</sup> C) in northern and central parts of Ethiopia. By showing the evolution of the land tenure system during the period under focus, Tamrat argues that access to land had political and cultural, in addition to economic implications. During this time, the acquisition and inheritance of land had been only through male line because the state mobilized men for military service in order to expand its territory. New territory was also occupied and defended mostly by men. Thus, the claim to possession of land was based on belonging to a descent line of an original occupier of the land. As a result, women were deprived of the right to possess land since they were not permitted to



participate in military service for the purpose of territorial expansions and land acquisition. Consequently, the land tenure system resulted in a gender biased socio-political structure that denied women right to key resources such as land.

Askale (2005) also examines women property rights and related property inheritance regimes in the Amhara Regional State of Ethiopia (one of the northern regions of Ethiopia). According to this study, which was focused primarily on divorce, customary law allows a woman to share all movable properties she owned during the marital life except immovable property, namely the land and the house. That is, while women's marital property rights extend to the acquisition of property during their marital life, such property does not include the land and house as traditionally such property was brought into the marriage by men. The case of the Tigray region (the other northern region of Ethiopia) is not very different. As Mebrat rightly pointed out in his research entitled "Breaking the Norms: Gender and Land Rights in Tigray, Ethiopia", women were not allowed to possess immovable property such as lands in Tigray even if they contribute to its cultivation and development.

Thus in general, the criterion for ownership of immovable property in northern Ethiopia is determined not by one's contributions to the development of that immovable property but by one's sex. Prevalent societal norms and values played pivotal roles in informing this decision. In other words, the criteria for ownership of immovable property in northern Ethiopia is not one's contributions to that immovable property but rather flow from the societal norms and values that put women in a secondary position.

### **Women's immovable Property Rights in Southern and Western Ethiopia**

In his famous labour theory of property, John Locke also stated that "Everyman has a property in his own person. This nobody has any rights to but himself. The labour of his body and the work of his hand, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he has mixed his labour with, and joined to it something that is his own, and thereby make it his property." This implies that the addition of something that had economic values to existing assets will enable the contributor(s) to own an asset at least to the extent of or in proportion to his/her contributions. But this will not work for women in southern and western Ethiopia. For instance, Yilma(2002) reports that among the Konso people of south eastern Ethiopia women play a dominant role in food production, but they don't participate in management and decision-making having to do with basic resources which they themselves produce. The management and decision making rights of these resources are always undertaken by their husbands. The deprivation of women's rights to resources is also reflected in the consumption of food, as protein-rich foods are mainly consumed by men. This has resulted in many women to becoming protein-deficient and contribute to their ill-health, at least when compared to similarly situated men.

With regards to women's land ownership rights, the Konso women are also denied the right to land ownership due to the fact that they leave their family and clan for another group as a result of exogamous marriage. The reason for the prohibition is that is a woman married into another clan, and was able to bring immovable property with her that woman would alienate land of her parents to an alien clan. The view that women can inherit land from their husband is also somewhat theoretical as she cannot claim or assert any rights to that land on divorce. If the husband dies:-and especially if he dies before his wife gives birth to a male



child: - she has no right to inherit her husband's land. On the other hand, a woman whose husband dies and who gives birth or has given birth to male has the right to control her husband's property including land and houses until her male children mature and are able to assume responsibility on behalf of their deceased father for the land in question. This means that the woman's right to land is merely temporary: she enjoys those rights until her male children are mature enough to exercise their own rights over the land in question.

The same holds true of women in Wolaita. According to the customary law of the Wolaita people of southern Ethiopia, land is generally considered as the sole property of men. Women have no customary right to inherit land from their family; and the control of land during marriage falls chiefly under the control of the husband. In addition a woman cannot control the fruits of the land as she is not entitled to be involved in household decision making. In addition, on divorce, a woman must leave her husband's home and return to her family to wait for another marriage without claiming her share of the matrimonial property.

Similarly, in her work, 'The Socioeconomic Role and Status of Gumuz Women' of western Ethiopia', Meron(2005) determines that while Gumuz women do take active role in works related to agriculture, fishing, honey collection and marketing in addition to their reproductive role they exercise no decision making power on the fruits of their work and basic resources. In support, Kalkidan's (2012) research shows that Gumuz women have limited access to, control over and ownership of property in general and immovable property such as land in particular regardless of their superior workload when compared with men. In Gumuz society, land is regulated by customary laws that do not recognize the capacity of women to own or inherit land and property in their own name.

What the foregoing clearly shows is that the right to immovable property in most rural parts of southern and western Ethiopia is clearly contrary to Locke's concept of property which suggest that the basis of property rights is the amount of work, or labour that individual contribute to the building, development or cultivation of property. As Locke stated "God, who hath given the world to human being in common, hath also given them reason to make use of it to the best advantage of life and convenience."

In generally, women's rights to property in southern and western Ethiopia, and especially their rights to immovable property is custom-based, when assessed in light of John Locke conception of private property rights which underline the natural right of each man to appropriate for himself certain things out of the common stock for his own use and consumption. Locke said that 'if this natural right to property is denied he would starve and God's gift to the earth to men would be in vain.'

From the outset it is clear that Locke's conception of property rights is broad enough to include both "the fruit of the earth and the earth itself" both the goods that one creates and the land that one cultivates. According to Locke, moreover the protection of these natural rights is the primary justification for the existence of government. As Locke stated, "The great and chief end therefore of men uniting into commonwealths, and putting themselves under government, is the preservation of property." Locke also argued that if a ruler violates any of his subjects' property rights he is "at war" with them, and therefore the ruler may be disobeyed. This clearly shows the emphasis given by John Locke to the protection of natural rights to property. This is clearly very much unlike the southern and western Ethiopian



conception of property rights that relegate women rights to immovable property secondary to men.

### **Women's Immovable Property Rights in Central Ethiopia (Most Parts of Oromia)**

The status of women's rights is, however, somewhat different in the Oromo society of Ethiopia. Trimmingham (1965) argues that the social position of Oromo women is generally good as the Oromo women have many rights that could help them to make significant influences in the society. Nevertheless, Trimmingham doesn't identify the scope of women's rights in Oromia, does not discuss their rights to immovable properties. In support of the relatively better social position thesis of the Oromo women, Jeylan (2004) argues that the Oromo women had significant and relatively a better socio-economic position in the past. In relation to this, Kuwee (1997) reveals that before the second half of 19<sup>th</sup> century, the Oromo women had a parallel women's institution with gadaa system called siiqqee/ateetee. This institution was exclusively a women's institution which had both social and religious values symbolizing Oromo woman hood protecting their rights, and respecting their equality. Furthermore, Kuwee states that as an institution, siiqqee refers to the "...weapon by which Oromo women fought for their rights. Gadaa law provided for them and society honoured it. Thus, the siiqqee institution functioned hand in hand with the Gadaa system as one of its built-in mechanisms of checks and balances."

These literatures demonstrate that the Oromo nation had values and norms that protect women rights better than other parts of Ethiopia. But this was true only before the expansion of Islamic and Christianity to the Oromo land. The expansion of these two major religions has contributed to the decline of these values and norms. As a result of the decline of these values and norms, current status of women's right to immovable property in some parts of Oromia are mostly similar to the situation in rest parts of Ethiopia.

According to Locke, property rights can be seen as a bundle of basic rights, namely the rights of possession, use (usus), fruition (usus fructus) and alienation of the subject of the rights. Thus the owner of property has a right to possess, use and alienate the property he owns. But as per the customs prevalent in some Oromo sub-clans, women didn't have these rights to properties. Almaz reports, under the customary law of the Ada'a Oromo of East Shewa, divorced women's access to marital land at divorce are hardly realized. Ada'a customary divorce law allows women to take only their clothes as they leave their homes on divorce. Mamo and Dejene have also stated that the happening of divorce usually resulted in the deprivation of women's property rights share claim with their husbands. Mamo (2006) also discusses the fate of divorced woman among the Arsii Oromo from multiple angles. He stated that, among Arsii Oromo women have no right to inherit either movable or immovable property on divorce. He stated that "a woman does not receive any share, let alone the land, of family property on divorce."

Some studies around Ambo area also show that, according to customary law of that society, divorced women have no right to inherit immovable property such as land.

### **Which Concept of Property Better Protects Women's Rights to Immovable Property?**

When he put the right to property on equal footing with the right to life, John Locke was saying that "without property rights, no other rights are possible. Since human being has to



sustain his life by his own effort, a man who has no right to the product of his labour or effort has no means to sustain his life. The man who produces while others dispose of his product is a slave.” Thus when compared with the situation with respect to women’s immovable property rights in most parts of Ethiopia, a Lockean approach would justify the idea that women have or should have rights to both moveable and immovable property provided that they have contributed their labour to the acquisition or development of that property. Therefore it is fair to say that the Lockean concept of property right is better in protecting women’s rights to immovable property.

#### **4. CONCLUSION**

Unlike the Lockean conception of property rights, which claims that a person acquires the right to property upon mixing his/her labour with such property, be it movable or immovable, the above discussion shows that in historical and contemporary Ethiopia, among diverse cultures of people, rural women have enjoy no rights over immovable resources such as land even if their contributions to this immovable property are immense. They have no right to use, possess or transfer land and other immovable property like houses. This implies that property rights in most Ethiopian cultures are determined not by one’s contributions, but rather by a societal norms and values that relegated women rights to immovable property to the second position. These norms and values are still winning out over legal frameworks in most rural parts of Ethiopia. This is fundamentally different from the Lockean approach of the right to property that guarantee the rights over certain property depends on ones contributions to that property, either by their physical or their mental labour.

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