



HINDU WOMEN'S PROPERTY RIGHTS'S

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ABSTRACT

His paper deals with the Hindu Marriage Act, 1955 which has changed Hindu law of Marriage. It is a point of interest ever. It has not just systematized the Hindu law of marriage but rather has presented certain vital changes in numerous regards. The Hindu marriage thought about by the Act barely stays holy. The Act has gotten a few changes of expansive outcomes which have undermined the holy idea of marriage and rendered it legally binding in nature as it were. The Hindu Marriage Act is an Act of the Parliament of India in 1955 as a feature of the Hindu Code Bills. Three other essential acts were additionally instituted amid this time: the Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956), the Hindu Adoptions and Maintenance Act (1956).

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Introduction

The word Hindu is extremely popular and famous term. Generally every person is known to it. But the term Hindu is not defined till now. A person may be called as Hindu, but only few know why they are called Hindu. Sh. Radhakrishnan in his book "Hindu view of life" at one place said that there was a time where a person was identified as Hindu on the basis of the religion i.e., a person who resided in India was called as Hindu, it also represented the nationality.

A time also came in the middle when a person was called Hindu who believed in the Hindu religion or followed it. But this identity does not remain for too long. It is said that though several codified Hindu laws were enacted in 1955 and 1956 out the term Hindu was not defined. Today is broadly said a person who is not Muslim, Christian, Parsi, or Jew shall be Hindu. Now the term Hindu can be widely defined the person to whom Hindu law applies shall be Hindu.

Person to Whom Hindu Law Applies

1. Hindu law applies to the following categories of person-
2. Hindu by birth, and also to Hindus by religion i.e., converts to Hinduism.¹
3. Illegitimate children where both parents are Hindus²
4. Illegitimate children where the father is a Christian and the mother a Hindu, and the children are brought up as Hindu. But the Hindu Law of coparcenary, which contemplates the father as the head of the family and the sons as coparceners by birth with rights of survivorship, cannot form the very nature of the case apply to such children³;
5. Jain, Buddhists in India, Sikhs and Nambudri Brahmans except, so far such law is varied by custom and to Lingayats who are considered as Shudras;

¹Jowala v. dharma,(1866) 10 MIA 511

²Dattatrayatya v. mathabala , ILR (1934) 58 born 119

³Moynaboyee v. octaram, (1861) 8 MIA 400

6. A Hindu by birth who, having renounced Hinduism, has reverted to it after performing the religious rites of expiation and repentance or even without a formal ritual of reconversion when he was recognized as a Hindu by the community;⁴
7. Sons of Hindu dancing girls of the Naik caste converted to Mohammedanism where the sons are taken into the family of the Hindu grand-parents and are brought up as a Hindu;
8. BrahmosAryaSamajists, and to Santhals of Chota Nagpur, and also to Santhals of Manbhum except so far as it is not varied by custom;
9. Hindus who made a declaration that they were not Hindus for the purpose of the Special Marriage Act, 1872; and
10. A person, who is born in a Hindu religion, does not cease to be a Hindu merely because he departs from the standard of orthodoxy in matters of diet and ceremonial observations.

Marriage

Marriage is one of the most important social institutions today. It forms the very basis of social organization. Hindu shastras and law regard marriage as a sacrament which is eternal. It is considered to be a contract by some as well. Marriage, is considered to a contract or a sacrament, confers the status of husband and wife on the parties to marriage, of legitimacy on the children born out of the marriage and gives rise to certain spouse mutual rights and liability of spouses. This sacramental character of marriage has given rise to certain difficult situations. The declaration of Manu that “neither by sale nor by desertion is wife released from the husband” was hitherto applied only to women and not men. Thus there was an element of inherent injustice on the wife in Hindu law.

Marriage is just not only a ceremony, it also includes various marital duties and legal rights associated with it. One of the fundamental purposes of marriage is that the spouses live together and one spouse is entitled to the society and comfort. A cause of action, therefore, arises when one party to the marriage withdraws from the society of the other without reasonable and just cause and excuse would be proceeded against by the other in the court of law praying for a decree of restitution of conjugal rights

Property Rights of a Woman- Historical Background

Before 1956, the property of the woman was divided into two

- Stridhan
- Women's estate

Stridhan

The word stridhan is composed of two words: Stri (woman) and Dhana (Property). The word means the property belonging to a woman or woman’s property. This is the etymological sense but the word has a technical meaning given in law.⁵ As observed in Rajamma Case.⁶A gift given to a Hindu woman before and after her marriage constitutes woman’s property.

There was never an exact definition of Stridhan. According to the Smritikars, Stridhan constituted those properties which the woman received by gift from her relations. These gifts mostly included movable properties such as jewellery, ornaments etc. Gifts received from strangers at the time of ceremony of marriage or at the time of bridal procession also constituted Stridhan.

Stridhan implied absolute ownership of property for the female. She had full rights of alienation of property when she was a maiden or a widow. However, certain restrictions were placed on the woman with respect to disposal of such property when she was married. On marriage, the Stridhan was classified into two heads-

Sources of Stridhan

⁴ Rani bhagwankoe v. bose, ILR (1903) 31 cal 11: 30 IA 249

⁵ B.M. Gandhi, Hindu Law, 1999 p. 178

⁶Rajamma vs. VaridarajulaChetti, AIR 1957 Mad 198.

- Gift received from relatives.
- Gifts and bequests from strangers during maidenhood.
- Property obtained in partition.
- Property got in lieu of maintenance.
- Property acquired by inheritance.
- Property acquired through technical skill and art.
- Property acquired by compromise.
- Property acquired by adverse possession.
- Property purchased with the earnings of the stridhan or with savings of income from stridhan.

Property acquired by self exertion and mechanical arts- A woman acquired property at any stage of her life by self exertion such a manual labour, employment, singing etc. These properties were also under the control of the husband

- Property purchased with Stridhan
- Property acquired by compromise
- Property obtained by adverse possession
- Property obtained in lieu of maintenance

According to Judicial Decisions Stridhan: According to Privy Council, any property inherited by a Hindu female either from a female or a male did not constitute stridhan. But in the State of Bombay, a property received through inheritance was placed in the category of Stridhan provided' that it was not inherited from a person in whose family she enters.⁷

Right over Stridhan of Widow

During widowhood the woman has an absolute and unrestricted right of alienation of property, irrespective of the fact whether it has been acquired prior or after the death of the husband.²² Thus she can alienate the properties without any constraint. So far as the question of succession to the property of a woman of bad character is concerned, her bad character does not extinguish the blood relationship. Thus her near relatives, who have not professed the profession of bad character, can inherit the property.⁸

Women Estate

Hindu female may inherit property from a male or a female. She may inherit it from her parent's side or from husband's side. The Privy Council in *Bhagwande v Maya Bae* held that property inherited by a female from male is not her Stridhan but woman's estate. A similar view was taken with respect to property inherited from females.

Widow, who is a limited heir, acquires the property for her life time but she is the owner of the property thus inherited as a tenant. But her right of alienation is limited and after her death the property does not pass to her heirs rather to heirs of the last full owner thereof. Therefore, the characteristic feature of woman's estate is that the female take it as a limited owner, however, she is an owner of this property in the same way as any other individual can be owner of his or her property subject to basic limitation:

- 1 she cannot ordinarily alienate the corpus and;
- 2 On her death it devolves upon the next heir of the last full owner.⁹ In *Janki vs. Narayaswami*¹⁰, the Privy Council has observed. "Her right is of the nature of right of property, her position is that of owner; her powers in that characters are, however, limited. So long as she is alive, no one has vested interest in succession."

⁷BalwantRao vs. BajiRao, (1920) 7IA 213.

⁸Hira Lai vs. Tripura, 40 C 650: WN679 (FB).

⁹Bijay vs. Rrishana, 44, IA 87.

¹⁰Janki vs. Narayaswami (1916)43I.A.207

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With respect to these properties, the woman had power to

- Management
- Alienation
- Surrender

Power of Management: The woman had full power to management. She was the sole owner. She alone was entitled to the possession of the entire estate and she alone was entitled to its entire income. Her power of spending the income was absolute. She need not save but if she saved, it shall be her stridhan. She alone could sue on behalf of the estate and she alone could be sued in respect of it. She continued to be its owner until the forfeiture of estate, by her re-marriage, adoption, death or surrender.

Power of Alienation: With respect to alienation, the women could alienate her property under the following conditions -

- Legal necessity i.e. for her own need and for the need of dependents of the last full owner
- For the benefit of the estate
- For the discharge of indispensable religious duties such as marriage of daughters, funeral rites of her husband etc. She could alienate for the benefit of the last full owner but not for her own spiritual benefit. She could alienate for religious acts that are not essential or obligatory but are still pious observances which conduce to the bliss of her deceased husband's soul.
- **Power to Surrender:** the law for this was laid down by the Supreme Court in *Natwar v Dadu*. It said that there were three conditions of surrender
- It must be for the entire estate though a small portion could remain for her maintenance
- Surrender must be made in favour of reversioners.
- Surrender must be bonafide and not device of dividing the estate among the reversioners.

The followings constituted woman's estate-

- Property Obtained by inheritance
- Share Obtained on Partition

This was the old Hindu law.

Property Right of Women in Vedic Age

During this age the Brahmins occupied the highest position in the socio-religious hierarchy and they for legalizing their superiority adopted the method of relying upon Dharamsastras. The sources of these Dharamsastras were supposed to be Hindu religious texts like the Vedas and Smritis, approved customs and good conscience.

The Vedas were religious hymns, perhaps 3000 years old, and the Smritis were collection of rules of conduct and explanatory principle based on Vedas. The Smritis comprised texts, such as *Manu Smriti* which was written between 300 BC and 300AD and later on commentaries and digests. An important digest on all the Smritis written by *Jimutvahana* in 12th Century was *Dayabhaga* which got much acceptance in Bengal.

The *Mitakshara* which was again written in 12th Century is a running commentary on one of the Smritis called *Yajanavalika* written by *Vijnaneshwara* which was accepted in the rest of India. Later on these two (digest and commentary) emerged as two different schools known by the name *Mitakshara* and *Dayabhaga*. These two schools differed on the subject of inheritance¹¹ regarding the position of women in early Vedic society; women occupied the same position as the man. There was complete gender equality in all spheres of life and women

¹¹Jana Matson Everett, *Women and Social change in India*, Heritage Publishers, New Delhi (1978), p. 142.

enjoyed great respect, significant rights and privileges. A girl was free to get herself educated just as boys in those days. During the Vedic period, studies started after the thread ceremony, which was called 'UpnayanaSamskara'.

In Rig Veda it was mentioned that who wore sacred thread were considered capable of performing many responsible jobs. Many statements in the Vedic literature indicate clearly that women were undergoing UpnayanaSamskara, studied Holy Scriptures and recited Mantras. With regard to the institution of marriage, women had also an effective say in the selection of her life partner. The famous system of marriage by 'Svayamvara' had its origin in Vedic literature. It was intended that man cannot perform various religious ceremonies alone.

For the performance of religious rites and ceremonies the presence of wife was must. A man was believed to be incomplete so long as he does not have a wife. The wife was said to be her husband's 'Ardhanagini' i.e. half of the man. So far as the property rights of females are considered the Rig Veda speaks about the individual proprietorship, the sons dividing their father's property after the demise of father, unmarried daughter staying in father's home also have a share of a father's property. In Vedic literature the unmarried daughter had the right to get a share of her paternal wealth, but the brothers did not partition their paternal property with their married sisters. Similarly the position of the daughter's son was also recognized for religious ceremonies. It was said that sonless father honouring the son-in-law goes to the grandson born of the daughter. Again where the daughter was the only child of the family, she can perform funeral rites of her father. This gives her right to inherit the property also but if she has brother the general opinion of Dharamsastras was that sisters should not get share in father's property.

During the Vedic period the husband and wife were treated as joint owners of the household. The husband was required to take a solemn vow at the time of marriage that he would never contravene the economic rights and interests of his wife. Along with this joint ownership theory, another important fiction i.e. the fiction of identity between the husband and wife also gave females right to inheritance. Brihaspati¹², on the basis of this fiction, declared that a widow to be entitled to succeed the estate of a sonless husband in preference of all other heirs.

So if husband and wife are treated as one and there is joint ownership the question naturally arises as to how, in Hindu Law, the wife was deprived of her right of ownership and inheritance on the **death of her husband**. On this question, Kane's statement concisely summarizes the position. Apastamba postulated the identity of husband and wife in the religious matter.

But this identity of the husband and wife was not accepted by the ancient sages for secular or legal purposes. Later on with the passage of time there was a slow recognition by the Hindu law writers of women's right of inheritance as a natural corollary of her joint ownership¹³. But the theory of joint ownership of the husband and wife in the household gave only minor advantages to the wife.

She was given the right over her husband's property to enjoy it as a usufruct and not as her absolute property. Thus it did not, however, secure for her equality with the husband in the ownership of the property.¹⁴

In Vedic times widow was not given right to inherit her husband's property.

Property Right of Women Under Schools

After the rights of female as given in Smritis the next came digests and commentaries. In these commentaries modern law of Hindu Succession is embodied. But the commentators of these commentaries gave their own views on the ancient texts and as a result the authority of these commentaries having been received in one and rejected in other part of India. This led to the emergence of schools with conflicting doctrines. Basically there were two important schools of Hindu Law- Mitakshara and Dayabhaga.

¹²Brihaspati, 25, 46-52 quoted in Samritichandrika, Oriented Library Series No 48, Mysore Govt. 673

¹³B. Sivaramayya, Matrimonial property Law in India, Oxford University Press, New Delhi, (1999), p. 4.

¹⁴P.C Jain, Heritable Rights of Hindu female: General survey, Journal of legal Studies, University of Rajasthan, Vol. 28 (1997-98), p. 3.

Mitakshara is a running commentary on the code of Yajnavalika. It is however more a digest than a mere commentary on a particular Smiriti. It was written in latter part of 11th century by Vijnaneswara. The Mitakshara is further sub divided into four minor sub schools i.e. Benarsschool, Mithila School, Bombay School and Dravida School. Mitakshara was accepted as supreme authority in whole of India except in Bengal where Dayabhaga written by Jimutvahana was prevalent.¹⁵

These two Schools differ from each other in various aspects but one of the principal differences between these two main schools relates to the law of inheritance, because regarding inheritance, Mitakshara system is based on consanguinity or proximity of blood relations where as Dayabhaga system is based upon the religious efficacy. According to the Mitakshara the nearest "sapinda" is one who is nearest in blood relation but according to Dayabhaga the nearest Sapinda is one who offers greatest spiritual benefit by making offerings of 'Pinda'.

Females Entitled to Get a Share

Under Mitakshara School there are certain female who are entitled to get a share on partition but there share was again in form of limited estate i.e. during there life time. After the death of these female the estate reverts back to the reversioners of last male owners. These female who are entitled to get a share are:

- **Father'Wife** whenever a partition takes place between her sons and her husband, then the father's wife is entitled to get a share equal to the share of son. She can hold this share and enjoy it separately from her husband. If there is more than one wife, then each wife is entitled to take a share equal to the share of a son. It is immaterial that whether a wife has her own son or not. If no share is allotted to her then she has a right to get the partition re-opened. Under the Dayabhaga School she has no such right.
- **Mother** whenever a partition takes place among the sons, a widowed mother has a right to take a share equal to the share of son. This right accrues to her only when partition by metes and bounds takes place. Under the Mitakshara School the mother, including the step-mother even if she is childless is entitled to take a share when ever partition takes place after the death of the father among sons. Mother and step-mother each take a share equal to the share of son. Under the Dayabhaga School a childless step-mother is excluded from taking a share on partition.
- **Grandmother** In the Mitakshara school the paternal grandmother and stepgrandmother are entitled to a share on partition in the following situations:
 1. When partition takes place between her grandsons (son's son), her son being dead, she is entitled to a share equal to the share of a grandson.
 2. When partition takes place between her son and sons of a predeceased son, she is entitled to a share equal to the share of a grandson.
 3. When partition takes place between her sons and their sons,

According to the Allahabad and Bombay High Courts,¹⁶ she is not entitled to a share, but according to the Calcutta and Patna High Courts,¹⁷ she is entitled to a share equal to the share of a grandson. In Ramdhan v. Bala¹⁸ the Nagpur High Court has evolved a fresh scheme. In this case there is a partition suit, between an uncle and nephew. The mother of the uncle, as grandmother and the mother of the nephew as mother were allowed to participate in the distribution of properties.. Here it is submitted that there is no Meaning of Stridhan: - As the world denotes, Stridhan comprises of two words Stridhan. Thus it means Dhan of the 'Stri' i.e. women's property. The term 'Stridhana,' first occurs in the Smritis and literally means woman's property but various sages use the word in different senses. Some extend the scope of the word, others try

¹⁵ http://shodhganga.inflibnet.ac.in/bitstream/10603/129459/9/09_chapter%202.pdf

¹⁶Shoe Narayan v. Janki Prasad ILR (1912) 34 AII 505; Joti Ram v. Ram Chandra, A.I.R. 1941, Bom 378

¹⁷Badri v. Bhagwant (1882) 8 Cal 649; Krishna Lal v. Nandeshwara A.I.R. 1918, Pat 91.

¹⁸ A.I.R., 1946 Nag 206.

to restrict it, like a text of Manu states that a wife, a son and a salve can have no property and that the wealth which they earn is acquired for him to whom they belong.

Coparcener Widow

Now, it seems to be settled law that after partition whenever two or more widows succeed to the property of their husband then each widow acquires a right of survivorship alongwith this either widow also gets the right to partition with or without the consent of the other or others. Thus coparcener widow can put an end to joint status of the family. Even when a father's widow succeeds along with her sons, she also acquires right to partition. Similarly if a partition takes place among the brothers, after the death of the brother his widow is entitled to a share.¹⁹

Prior to the passing of the Act the widow in respect of the separate property left by her deceased husband had no right of inheritance. If the deceased husband had left a son, grandson or great grandson then the widow had only right of maintenance. She could inherit as an heir to her husband in respect of his separate property only when he had not left any son, grandson or great grandson.

Even when in the absence of these persons she inherited as an heir, she would be divested of the same, the moment she adopted a son to her husband. This Act conferred better rights on the above mentioned widows in the devolution of separate property of the deceased dying intestate as well as in the joint family property in which the deceased had an interest at the time of his death.

By the Act of 1937 new rights of inheritance have been conferred on her and she had been given the right to inherit her deceased husband's property in the same manner as the son. In other words, the Act has made her co-heir with the sons and entitled her to inherit in her husband's property the same share as that of a son.

In the case of more than one widow, the Act together gave them a share equal to that of a son. Similar rights were conferred on the widow of a predeceased son and the widow of a predeceased son of a predeceased son²⁰

Right of Widow in Property: Historical Prospective (at instance)

The right of the widow to succeed as heir to her husband was recognized tow thousand years ago. Virdha Manu, Yajnavalkya, Vishnu, Brihaspati, Katyayana, SankaLikhita and Devata fully recognized her right to succeed to her husband. Narada's refusal to recognize her, evidently after the time of Vishnu and Yajnavalkya, is puzzling.

It must have been due to a difference in the usages of his country, where remarriage, evidently prevailed as, about the same time; Brihaspati is most emphatic in her favour. She is, in fact, the first heir to the property of a man who dies without male issue.²¹ In all the authoritative digests and commentaries, the widow's right of succession to her husband is universally acknowledged. Widow heir to separate Property- Vijnanesvara's conclusion is that the widow is entitled to inherit to her husband, if he died separated and not reunited and left no male issue.²²

It is immaterial whether the division was in status only or was followed by a division by metes and bounds. The text of Mitakshara is, Jagdamba v. Secretary of State (1889) 16 Cal, 367, 373. 148 The act does not affect succession to estate descendible to a single heir.

Sheo Singh v. Mt. Dakho 1870) 6NWP 382,406, So, by local custom, a widow is sometimes therefore, it is settled rule, that a wedded wife, being chaste, takes the whole estate of a man, not subsequently reunited with them, dies leaving no male issue²³ and this rule which necessarily followed from the view taken by the Mitakshara of the rights of undivided members, applied, till recently, in the Mitakshara jurisdiction. Even where a man died undivided but left separate or self acquired property, his widow succeeded to it though the undivided left separate or self acquired property, passed by survivorship to his coparceners, as was settled by Shivaganga case.

¹⁹Duddi v. Duddin, A.I.R., 1983, S.C 583 ;Munnalal v. Rajkumar, A.I.R. 1962 S.C 1493.

²⁰The Act of 1937 is discussed in detail in chapter 1, pp. 24-26.

²¹Sheo Singh v. Mt. Dakho 1870) 6NWP 382,406, So, by local custom, a widow is sometimes

²²RewanPersad V. Mt. Radha (1846), 4M 1 A 137, 148,152.

²³Tikari v. Tikari (1878) 51A 160; 4 Cal. 190.

Their lordship referring to the Mitakshara observed: “the text is propounded as a qualification of the larger and more general proposition in favour of widows and consequently in construing it we have to consider what are the limits of that qualification rather than that are the limits of the rights.”¹⁵¹ According to Dayabhaga, on the other hand, which proceeded on the ground of her right to offer funeral obligations to her deceased husband, a widow succeeded to her husband’s share when he was undivided just she would succeed to the entire property of one who was separated.¹⁵² But as in a Dayabhaga joint family the husband is held quasi severalty, the distinction is merely a verbal one

Conclusion

Vedic period witnessed much more deterioration in the status of female. She could never enjoy an independent status of her own, and did not possess any socio-economic rights. Regarding her proprietary position, she possessed right to maintenance only and no right of ownership and inheritance. Though during this period Gautama included the widow, Apastamba - the daughter and Sankha – the mother and the eldest wife as the heirs, but they are included as heirs only after exhausting the long list of male kindred and even strangers.

Following points can describe position of Widow Right in Property

- (1) When a Hindu governed by the Dayabhaga School or by any other school of Hindu Law died intestate leaving separate property; it would devolve upon his widow along with his lineal descendants, if any, in the same manner as it devolved upon a son. Provided, that the widow of a predeceased son would inherit in like manner as a son. Provided, further that the same provision should apply mutatis mutandis to a widow of a predeceased son of a predeceased son.
- (2) When a Hindu governed by any school of Hindu Law, other than the Dayabhaga School died intestate, having at the time of his death an interest in a Hindu joint family property, his widow would have in the property the same interest as he himself had.
- (3) Any interest which devolves on a Hindu widow would be limited interest known as ‘Hindu Women’s Estate’ provided, however, that she would have the same right to claim partition as a male owner. Before the passing of this Act she was not entitled to inherit any property but was entitled to maintenance only.

The Act of 1937 was passed to provide better property rights to helpless widows, but this Act was criticized as it contains various uncertainties and anomalies. ¹⁹⁸ After this Act various private bills also came up for consideration, but setting aside these private bills, the Government of India constituted the Hindu Law Committee on January 25, 1941 with B.N. Rau, as its chairman.