

Research Article

**RIGHT OF INHERITANCE OF HINDU WOMEN IN ANCIENT INDIA: ANALYSIS OF
“STRIDHAN” IN ANCIENT HINDU TEXTS**

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Abstract

The right to property is particularly important because, in a patriarchal culture, women's conditions are much pitiful due to financial insecurity. The legal right of Hindu women to inherit property has been restricted in Indian culture since ancient times. Hindu women were refused legal rights to inherit ancestral and marital property in patriarchal societies. The sole property which they were entitled to receive was ‘Stridhan’. The situation of women was alleviated with the establishment of several schools, and she was granted more rights in some domains. As time progressed, numerous legislations were adopted, resulting in the removal of hurdles and a trend toward more equality in the sphere of Hindu women's property rights. Rights of women in ancient Indian laws have been dealt with in this article.

Key Words: patriarchal society, marital property, financial deficit, equality.

1. INTRODUCTION

“A woman is protected by her father in childhood, by husband in youth and by son in old age; she is not fit for independence”. This quoted phrase has been taken from Manusmriti, an ancient legal text. In early times, women were considered not fit for freedom. They were seen as an object which was meant to be protected by the male preserver of the family. “Na striswatantramahati-‘Swatrantam Na KachitStriyah’”. This quote itself is a rule which states that women can't be allowed to be free or independent and it's the same rule which the ancient society of ours used to follow.

If we go through our ancient texts and scriptures, then we would notice that there is no talk about unmarried women property rights in any of those texts.

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They were authorised to inherit only a particular type of property even after marriage, i.e., Stridhana but absolute right of even Stridhana was not permitted because of the customs of the society and also because of the teachings from Manusmriti.

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2. VARIOUS SCHOOLS OF HINDU LAWS

The above mentioned position began to develop afterwards the evolution of several institutions or schools of Hindu laws. The most eminent schools of those were Mitakshara School and Dayabhaga School and they were formed on the basis of different explication of the Yagnavalkya Smriti. While vedic literature was being scripted, evolution of these schools of thoughts took place.

(a) Mitakshara School

Except the eastern part of India, almost every part of the country followed this particular school of thought. Further, it has been sub divided into four different schools of thoughts i.e. Dravida, Banaras, Maharashtra and Mithila. The key characteristics of Mitakshara School are mentioned below:

1. The blood relation has to play the most dominant role in the matters related to inheritance of the property.
2. Stated some uncanny contrast between the male and female coparceners of the family.
3. Talked about the limitations to be laid down on the heirs of the family in the matters related to shares in a joint family.

According to the Mitakshara School of thoughts, women should not be permitted to be a heir. Also, the widow of the deceased heir should not hold any right to ask for the partition of the property against the brother heirs-in-law. However, she has right to demand for a share in the property if the partition is asked by her husband or her son.

(b) Dayabhaga School

After Mitakshara School, Dayabhaga school was another popular school of thoughts. Most of its followers were from the eastern part of the country, mainly from Assam and Bengal. The key characteristics of Dayabhaga school are stated below:

1. The ritual of the worship of deceased ancestors gives rise to the concept of right to inheritance.
2. It recognises right to ancestral property not on the birth but on the death unlike Mitakshara School.
3. Each share in the property is fixed and certain and coparceners can see their particular share.
4. In case the male successors are absent, the widow has right to demand for the partition and subsequently she can claim the share of her husband in the property.

Key Differences between Mitakshara School and Dayabhaga School (In general):

The differences in regards to the joint property:

1. Mitakshara School recognizes right to ancestral property by birth, i.e., the boy enjoys the similar rights as of his father and becomes the co-owner of the property right after his birth, Under Dayabhaga School, right to ancestral property does not arise by the birth of the male child. It arises only after the last owner's death.
2. Mitakshara School does not provide absolute right to the father for the purpose of alienation of ancestral property but under Dayabhaga School, the father possesses the absolute right of alienation of the property since he is the sole owner of that property till his death.
3. As under Mitakshara School, the son has co-ownership on the ancestral property right after his birth, he definitely can demand for the partition of that property against his father and can ask for his share too but Dayabhaga School does not provide the right to demand for the partition of the property to the son against his father as the son has no co-ownership on the ancestral property during his father's lifetime.
4. Under Mitakshara School, the doctrine of survivorship is pervasive. If any member of the joint family dies, their interests shall pass on to other members of that joint family but under Dayabhaga School, in case of the death of any member of the joint family, their interests shall pass on to their heirs-at-law like son, wife, daughter.

The differences in regards to inheritance:

Under Mitakshara School, doctrine of blood relationship is prevailing, i.e., blood relations are given preference during the process of inheritance but in the case of Dayabhaga School, inheritance depends on the doctrine of the offering of pinda.

It is important to note that the Mitakshara School is more conservative as compared to the Dayabhaga School of thought. It did not recognize the right of women to inherit the property from her husband's family and were only allowed to possess the Stridhan.

3. THE NOTION OF 'STRIDHAN's

Under Hindu Law, a woman can hold property basically of two types: Stridhan and Non-Stridhan. The word 'Stridhan' is constructed of two words, i.e., 'Stri' and 'Dhana'. The word 'Stri' means woman and 'Dhana' means property. Therefore, the word 'Stridhan' refers to the property that women receive at the time of their marriage. Prior to the establishment of the schools, the concept of stridhana was vague because of the lack of clarity on succession criteria and features. Later, the Mitakshara School defined the Stridhan's legal and technical significance. Also, Stridhan is basically of nine types- 1. Gifts and Partnership Bequests; 2. Offerings and legacies of strangers; 3. Land gained by self-effort and the mechanical arts; 4. Land acquired via Stridhan; 5. Land obtained by transaction; 6. Land gained by wrongful possession; 7. Land gained in lieu of maintenance; 8. Property received by inheritance; and 9. Share received by partition. The Mitakshara designated these successions as Stridhan. But, there seemed to be a contradiction between Mitakshara school of thought and Privy Council. In the case of *Bhagwandeen v. Maya Baef*, the Privy Council decided that when a woman inherits any property from a man, stridhan

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loses its features and modifies into women's estate. With the passage of time, the notion of Stridhan was divided into two categories. -

- a. the sauadayika
- b. the non-sauadayika.

In the first sort of Stridhan, women were granted complete freedom to dispose their possessions off as per their will. During her maiden or widowhood, she obtained this property by self-effort or by the use of mechanical skills. The second sort of Stridhan is one in which women have no right to sell their property without their husband's permission. She obtained this property following her marriage. Also, in this case, her husband has the authority to use the property, whereas in the first case, i.e., the sauadayika, he does not. So, in the ancient period, Hindu women's rights were essentially confined to those of Stridhan, and many aspects of property rights were also unclear at the time. In many ways, she was limited to the right of property. She was regarded as a second-class citizen and was never acknowledged as a full owner of the landed property.

The struggle for their property rights spawned a slew of socio-religious offences that were given legal character in the purpose of safeguarding the family's landed holdings. Bigamy, female infanticide, male remarriage, and a variety of other socio-religious crimes were deemed permissible in cases when she was unable to provide a male successor to the household. Throughout the ancient Hindu law legislation, women are regarded as second-class citizens to men. Her autonomy had been stripped from her, and she had been reliant on and controlled by males (relatives and others too for that matter) for her fundamental necessities. Women were denied property rights in ancient law systems like as the Arthashastra, Manusmriti, and other Dharmshastras as a result of this process.

(a) Various types of Stridhan : the property given to her by parents at the time of her marriage, given by her parental family when she is about to go to the house of her husband, given by her husband out of love, care and affection, and that property given individually by mother-in-law, father-in-law and brother-in-law afterwards her marriage; If the groom gives the bride a higher price than what was initially agreed upon, the excess belongs solely to the bride and is stridhan. However, while others have broadened the scope of stridhan, more orthodox communities have stuck to this definition. Such property belonged only to the wife, and neither the husband nor her parents were entitled it. The husband, on the other hand, may utilise it in times of need, such as sickness, starvation, robbery, or doing holy deeds. Otherwise, the wife has all the right to file a lawsuit in the court.

(b) The Rig Veda society: The following items of property appear to be considered a woman's stridhana by this society. They are the gifts received from parents, brothers, etc, gifts given prior to the nuptial ceremony, mechanical arts earned, and presents given during the bridal procession. There are additional references to a daughters growing up in her father's house and receiving a piece of the estate, as well as a childless widow claiming her husband's estate. There are allusions to fathers giving presents to daughters at the time of their marriage in the Yajur Veda's Taittiriya Samhita.

(c) Conception of stridhana in different schools :Manu demonstrates six different types of stridhana. Presents given before the wedding, gifts provided during the bride's procession, gifts provided as a gesture of affection, gifts which is made by girl's mother, presents created by the father, and gifts created by the brother are among them. Katyayanacites the same six types of stridhana as Manu, also defined the first three. The Katyayana clearly eliminates gifts given by

strangers during converture, as well as goods gained by a woman during converture via mechanical art, from the category of stridhan gifts. Stridhan was defined by Yajnavalkya as “what was given (to a woman) by the father, the mother, the husband or a brother or received by her before the nuptial fire or presented to her on her husband’s marriage to another wife and the rest (adya) is denominated stridhana. So that which is given by kindred, as well as her marriage fee (sulka) and anything bestowed after marriage”.

In Mitakshara, Vigneswarahas defined stridhanas, “that which was given by the father, by the mother or by the husband or by the brother and that which was presented by the maternal uncle and rest at the time of wedding before the nuptial fire and a gift on a second marriage and property obtained by inheritance, purchase, partition, adverse, possession and finding”.

According to the Madras school, Stridhana derives its meaning from Mitakshara's concept. All presents from relatives, with the exception of a gift of immovable property provided by the husband, are considered stridhana by Dayabaga or Bengal schools. Gifts from strangers are likewise considered stridhana if given before the nuptial ceremony or during the bridal procession. On the grounds of the resources by which the property was obtained, position of the woman at the time of acquisition of the property, and the school of thoughts from which she comes from, Stridhan is considered as a woman to property. A woman holds the absolute right on Stridhan which means that she has complete control over the usage of the property. She could not dispose the property off at her will if it could not be classified as stridhana, and she had only a small interest in it.

According to the Arthasastra written by Kautilya, Stridhana is nothing but the property owned by a married woman. Apart from that, it also directed that amount owned by a woman could not be upto 2000 silver panas [approximately 1 pana = 2 ½ to 3 Rupees] or any amount that has been put in trust by her husband on her behalf. Vritti, or means of subsistence, or abandhya, such as jewellery, were included in Stridhana. Vritti therefore comprises of bhumi, agricultural land, and cash [Hiranyadi] over a minimum of 200 Karshapanas that would provide an income from its investments. Her property was passed on to her daughters rather than her sons, and she was allowed to part with the stridhana if she wished to give it to her daughter as a gift.

Furthermore, Arthashastra specifies that a remarried widow can only keep her claim on stridhan given to her by her husband and his relatives if she marries with her senior in laws' agreement; otherwise, it must be surrendered to her sons. It also states that there are males who attempted to marry wealthy widows. Hence, the king was urged to send spies into the homes of wealthy widows. As a result, not all widows lost their stridhan as a result of remarriage, and many were well-off. During the Gupta dynasty, the wife had the ability to own her husband's property after the sons. Her daughters were also given property rights. There has been a general trend to broaden the scope of stridhana from the 7th century. The numeration of the basic six types of stridhana was done by Yajnavalkya. He commented that the expression in dispute was used to comprise the property obtained by inheritance, acquisition, partition, change and adverse possession. This simplified definition of stridhana is so broad that it encompasses every sort of property in a woman's possession, regardless of how it was acquired.

4. TOOL IN THE DENIAL OF PROPERTY RIGHTS: CASTE

It is suggested by Sociological and Anthropological readings that most of the political, social and cultural identifications have gender inequality at their center. Ancient Indian religious scriptures lay out the ‘moral’ and ‘ideological’ support for the position or status and part for women to play

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in the society. Endogamy, or marriage within the caste sphere exclusively, was mandated to maintain caste purity as women in a caste-based culture are regarded the gateways of caste because of their reproductive capacities. In order to carry it out, women were to be under the supervision of men (Ambedkar, 2013, p. 10) all the time so that they would not be able to independently take their decisions. However, since caste rules can be broken, several methods, such as excommunication, were implemented to preserve the purity of Caste Hindus. However, such measures were patriarchal discriminatory practises, under which if a woman marries a man from a lower varna than hers, her excommunication from her paternal varna to a lower varna would take place and hence, she would not be entitled to enjoy her former caste privileges. However, if a man marries a lady from a lower varna than his own (but not lower than two degrees), he will not be excommunicated from his paternal varna unlike a woman and will retain his varna privileges. In such environment, A woman's right to property (both movable and immovable), such as land (which is one of the greatest sources to have an independent and powerful position or status) had been refused because if a woman is holding right to property in such cast based patriarchal structure, that property could be transferred to anybody else, even to a man of different and lower caste if the girl marries him because after her marriage, a woman is usually controlled by her husband in patriarchal society.

5. PATRIARCHAL APPROACH OF THE SOCIETY.

In his Arthashastra, Kautilya declared that if a woman lives a virtuous life after her husband's death, she will receive her endowment and jewellery, and also, If her father-in-law arranges a second marriage for her, she will inherit whatever her father-in-law and spouse have given her. However, if she marries anybody other than her father-in-law's preferred man, she will have to give up everything her father-in-law and spouse have given her. She will also lose the right to use her in-laws' property if they divorce. So, we have seen that in ancient times, a woman could only have maintenance rights with several terms and conditions. In order to avail or continue to use of that property for maintenance, she had to compromise her autonomy regarding marriage, divorce, etc., which is still prevalent. It is obvious that Women's exclusion from heirship is because of the patriarchal approach of the society right from the very beginning. It was considered that since men are the main bearers of a lineage, property should accrue to them only as women move into a different family (or lineage) after marriage. As a result property was safeguarded by keeping it under male control.

6. THE HINDU CODE BILL

The Hindu Code Bill, for the very first time, was introduced on August 1st, 1946 in the Indian parliament but was not accepted. Later, on April 11th 1947, the bill was reintroduced in the constituent assembly by Dr. B.R Ambedkar. The Hindu Code Bill reflects the major concern of B.R Ambedkar for women's status. He even said that his work on this bill would be as important as his work on constitution of India itself. The Hindu code Bill was an immense exodus from Hinduism and its customs and rules regarding gender which were degrading and promoting discrimination against women. Until that point, “Hindu Law” was not codified and had no uniformity. Lives of women were usually in the hand of Hindu male interpreters who used to interpret laws through oral readings of several contents from ancient texts like Vedas, Smritis and Puranas. In those times, female heirs were discriminated based on their status of being married or not married and having children or no children. The Hindu code Bill was very well

against this discrimination and even proposed to wipe out this above mentioned discrimination. The bill also proposed to place the widow, daughter and the widow of dead son at equal level in terms of share in the property. In order to promote gender equality, share of daughter, same as the son, was prescribed in both her father's property and her husband's property.

In Dayabhaga School, women were granted only 'life estate', i.e., the property which she could enjoy during her lifetime but was not allowed to sell. Through the Hindu code Bill, women were to be given absolute right in regards to all property, i.e., they were made entitled to sell the property as well. The bill also reckons that the dowry women receive at the time of their marriage, known as Stridhana must be considered as an absolute property by their in-laws. After the Bill's reintroduction in constituent assembly in April 1947, it was to the subject of huge criticism from Hindu leaders and Institutions like Hindu Mahasabha and Bhartiya Jana Sangh. Hindu Mahasabha opposed the Hindu code Bill by stating that it is against the 'Hindu Culture'. Dr. Rajendra Prasad too expressed his criticism on the bill by arguing "The bill intervenes in Hindus' personal law and would satisfy only a few purported expressive people". Also, some members openly stated that as long as Ambedkar is the one piloting the bill, they would not allow the bill to pass at any cost. As a result, the bill was not conceded and hence was withdrawn. Later when Dr. B.R. Ambedkar was not in the cabinet during 1955-56, the bill was finally enacted, not in concrete form but somewhat in diluted form in four separate acts, i.e., Hindu marriage act (1955), Hindu Succession Act (1956), Hindu Maintenance and Adoption Act (1956) and Hindu Minority and Guardianship act (1956). This bill paved the way to remove the 'graded inequality' of caste society by offering the hypothesis that men and women both should be treated equally for a society to progress. Bill sought to put an end to gender discrimination and grant women right to property. Evidences show that the women who do not own any assets are subjected to threats of violence and other inequalities within the household.

7. CONCLUSION

The Constitution of India guarantees equality to all or any citizens regardless of their sex, caste, religion, region, etc. Denial of the proper to inherit ancestral property goes against women's rights as citizens, and against the principle of gender egalitarianism which has been conserved within the Constitution wherein Ambedkar laid down the foundations of social justice. Without gender equality, the target of social justice can't be realized. From this egalitarian perspective, women's inheritance right is that the subject of much scrutiny and investigation. to know this, the dichotomy of tradition and modernity is interrogated

References

1. A.M. Bhattacharjee, Hindu Law and the Constitution, Eastern Law house Pvt. Ltd. (1994).
2. Agarwal, B. (1994). A field of one's own: Gender and land rights in South Asia. Cambridge, UK: Cambridge University Press.
3. Agnes F (2002) Gender and the Rhetoric of Law Reform, Research Centre for Women's Studies, Shreemati Nathibai DamodarThackersey Women's University, Bombay, India p: 189.
4. Agnes F, Chandra S, Basu M (2004) Women and Law in India. Oxford University Press, UK. 190-191.

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5. Altkar AS (1959) Position of Women in Hindu Civilization 337.
6. Ambedkar, B. R. (2013). Castes in India: Their mechanism, genesis and development. New Delhi, India: Critical Quest.
7. Ambedkar, B. R. (2014). Dr. Babasaheb Ambedkar writings and speeches (Vol. 3, 14 [part 1 & 2]). New Delhi, India: Dr. Ambedkar Foundation, Ministry of Social Justice, Govt. of India.
8. Banerjee A and Sen RK (2000) Women and Economic Development (1stedn) New Delhi, India 182.
9. Buhler G (2004) The Laws of Manu. Cosmo publications, Genesis Publishing Pvt Ltd. New Delhi, India 118: 246-247.
10. Chaudhury, M. (2004). Feminism in India. New Delhi, India: Kali for Women and Women Unlimited.
11. Chopra PN, Ravindran TK, Subramanian N (1979) History of South India (Vol. I) Digital Library Of India, New Delhi, India p: 56.
12. Derrett, J., Duncan, M. (1959). The Hindu succession act, 1956: An experiment in social legislation. The American Journal of Comparative Law, 8(04), 485–501.
13. Desai SA (2005) Mulla’s Principles Hindu Law, vol. II, Lexis Nexis Butterworths, Wadhwa Nagpur, India
14. Economic and Political Weekly (2003) May 31 Mumbai p: 2130.
15. Elphinstone E, Cowell EB (1866) The History of India The Hindu and Mohammedan Periods, Google from the library of Oxford University, USA p: 135.
16. Gupta S (2007) Status of women under Hindu Succession Act 1956 94: 65-72.
17. Halder D, Jaishankar K (2009) Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India. Journal of Law and Religion 24: 663-687.
18. Hamilton EJ (1938) Revisions in Economic History. The Economic History Review, 8: 168-179.
19. Samya Shakthi, A Journal of Women’s Studies, 1: 33-34.
20. Jaishankar Karuppanan and Raksha Shakti University, Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India, Journal of Law and Religion (January, 2008).
21. Kamei, S. (2011). Customary inheritance practices and women among the Kabui Naga of Manipur. Indian Anthropologist, 41(1), 55–69.
22. Kanti A (2003) Women and the Law. Allahabad: p: 321.
23. Majumdar M (2004) Social Status of Women in India (1stedn) Sujana Books, Delhi, India 11.
24. Meenakshi C (1977) Administration and Social Life under the Pallavas. University of Madras p: 186.
25. Mitra NH (1923) The Indian Annual Register (Vol.2). Gyan Publishing house, New Delhi, India 69-70.
26. Nagendra S (2004) Women and Human Rights. The Indian Law Institute 234
27. Narayanan S (2016) Historical Background of Gender Equality and Succession Right of Hindu Women’s Right of Property in Tamil Nadu. Intel Prop Rights. 4: 162. doi: 10.4172/2375-4516.1000162 Page 3 of 14 Intel Prop Rights, an open access journal Volume 4 • Issue 2 • 1000162 ISSN: 2375-4516

28. Pandey S (2006) Property Rights of Indian Women. Belgaum Chamber of Commerce & Industries p: 17.
29. Paras Diwan, Modern Hindu Law Codified and Uncodified, Allahabad L. Agency (1995).
30. Pruthi R, Ranishanthi B (1955) Social Movements and Women. Anmol Publications, Delhi p: 240.
31. Raghavachariar RN (1970) N.R. Ragavachariar, Hindu Law. Madras Law ,Journal Office 2: 755.
32. Ray B, Basu A (1990) Women's Struggle: The History of the All India Women's
33. Ray, R. (1952). The background of the Hindu code bill. Pacific Affairs, 25(3), 268–277.
34. Raychoudhary SC (2000) Social, cultural, and economic history of India: modern times. Delhi: Surjeet Publications, New Delhi India p: 62.
35. SAMP Holdings List (1929) Legislative Assembly Debates South Asia ,Microform Project, India.
36. Sastri SR (2001) Women in the Vedic Age. New Delhi, India 23-24.
37. Shams S (1991) Women, Law and Social Change, Ashish Publishing House, the University of Michigan, New Delhi 110-111.
38. Sharma LP (1987) History of Medieval India. Konark Publishers, New Delhi, India p: 208.
39. Shodhganga (1936) Legislative Assembly Debates. Indian Annual Register 17: 4153-4154.
40. Sinha, C. (2007). Images of motherhood: The Hindu code bill discourse. Economic and Political Weekly, 42(43), 49–57.
41. Som, R. (2008). Jawaharlal Nehru and the Hindu code: A victory of symbol over substance? In Sarkar, S.,
42. Sarkar, T. (Eds.), Women and social reform in modern India: A reader (p. 477). Delhi, India: Indian University Press.
43. Sonalkar, W. (1999). An agenda for gender politics. Economic and Political Weekly, 34(1/2), 24–29.
44. Subhrangshu G (1989) Amrita Bazar Patrika, 13 February Patrika Press, Calcutta, India.
45. Subramanian TN (1953) South Indian Temple Inscription, (Vol. I) Government Oriental Manuscripts Library, Madras, India p: 1000.
46. Tagore PC (1986) Vivadachintamani: a succinct commentary on the Hindoo law prevalent in Mithila. From the original Sanscrit of Vachaspati Misra. Madras J. Higginbotham, USA p: 256.
47. The Ordinances of Manu (1884) begun by A. C. Burnell and completed by Professor E. W. Hopkins, published in London.
48. Venkataraman S (1937) The Hindu Women's Rights to Property Act 1937. Law Journal 3: 81.