



Women's right to property with special reference to Hindu and Muslim Personal Laws

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A) *STRIDHAN* A Landmark of 'Proprietary Rights of Married Women

Toward the start of the Smriti time frame, ladies' property freedoms for the most part relapsed, and from that point forward, it has turned into a general decide that she can't claim property. Yet, under excellent conditions, she is permitted to have outright control over specific sorts of property. This characteristic is called Stridhana. The seeds of Stridhana appear to have been planted during the Rigveda time frame. Wedding gifts, for example, gems worn by the lady are viewed as her main individual property. Be that as it may, its extension extended during the smriti period. As indicated by the creator of Smriti, the term stridhana incorporates different gifts given by direct relations on specific events and functions. Assuming it is a gift from a more interesting, it is just given before the wedding or during the marriage march that is her stridhana. As a rule, utilization of the word stridhana in Smritis is just from a specialized perspective, despite the fact that there is no meaning of it.

For instance, Manu separates stridhana into six classifications, to be specific, adhyagni or gifts before marriage, adhyavahanika or gifts in the wedding march, prtidatta or gifts that express sentiments; gifts from sibling, gifts from father, and gifts from mother. Manu request approved an exemplary lord to rebuff hoodlums, family members who stole a lady's property, and was endorsed in all resulting Smritis. Vishnu 5 referenced more property classifications as stridhana, which is adhivedanika or a gift given by a spouse to his significant other while wedding one more wife as a comfort for her put in a bad mood; Sulka or her honor and anavadeyaka or mailing in her dad's home Wedding gifts from her family members.

Legislations Strengthening Property Rights of Women

The Indian Succession Act 1865:

The movement to strengthen women's property rights in society began in the second half of the 19th century. The earliest attempt can be traced back to 1865, when Act No. 10 was the first step to give Indian women economic security. The Indian Inheritance Act of 1865 (Act X of 1865) stipulates that "no one shall acquire any rights in the property of the person with whom he is married through marriage, nor shall he be incapable

of taking any action against his property. If he does not marry the person, the property he or she could have owned.¹

The Married Women's Property Act of 1874:

The Married Women's Property Act of 1874 was a natural result of the Act. On February 24, 1874, the Council of Governors of India met in the Governor's Mansion to consider the bill². This bill was passed as the third bill in 1874, which was the first modern law to expand the range of striding motion. It declares that the salary and income of any married woman, any property she obtained through the use of her arts and skills, and all her savings and investments are her independent property. The property has its own name. Although the bill was radical, it did not cause a sensation in Hindu society, because until 1923, the bill only applied to Indian Christian women. Married women belonging to Hindu, Muslim, Sikh and Jain communities are still not subject to the law³. In 1923, the Married Women's Property Act of 1874 was amended by Act No. 13 of 1923 to include Hindu women and others under its jurisdiction. On February 15, 1923, in accordance with Camas' motion, the Special Committee's report on the further amendments to the 1874 Married Women's Property Act was taken into account.

The Hindu Succession Act, 1956: In the field of law the year 1956 was a year of great achievements in India, particularly for women⁴. In terms of property rights, Indian married women are in the same position as women in other liberated countries in the West. The 1956 Act abolished property rights inequality based solely on gender. This achievement is a milestone in the process of women's economic liberation. It forcibly opens up men's horizons and allows married women to have greater control over their own property by changing the property characteristics that married women can own under the Act right.

Contract and spouse

In ancient times, the law maker Manu seemed very rigid, refusing to accept any property ownership of a married woman and saying that no matter what she got, she would get ⁵ for her husband. Another authority established a general rule that no one is allowed to borrow anything from a woman because her financial situation makes her debts uncollectible, because women usually do not own any property, and the debts owed by women cannot be repaid by her⁶. Despite these prohibitions, women in the Hindu community seem to often borrow money to deal with several unforeseen emergencies, and the rule allows certain exceptions. However,

¹ Act X of 1865, Section 4

² *Venkata Rama Rao v Venkata Suriya* (1880) ILR 2 Mad 333 (P.C). In this case it was held that where a widow, who received presents of movable property from her husband from time to time during her married life, purchased immovable property after the death of her husband, partly out of this property and partly out of the proceeds of the jewellery forming part of the *stridhana*, the immovable property thus purchased by her was her *stridhana*.

³ Act III of 1874, Section 1

⁴ The Hindu Succession Act, 1956, Section 14. It appears that our legislators in 1956 restored the wider view of *Stridhan*, once taken by Vijneswar in his *Mitakshara*, and even included all sorts of property as woman's absolute which had never been treated as her *Stridhana*, and which they could not precisely exhaust even though they attempted to do so.

⁵ Whatever is earned by the three -- wife, son and slave- belongs to one, to whom they belong||. Manu, chap. VIII, sloka 417.

⁶ Let no man lend anything to woman, to slaves, or to children. Whatever thing or value has been lent to them, lender can not in general recover, with out the assent of their master or guardian||. Katyayana, as cited by Colebrooke, *Digest of Hindu Law* (1797) vol.1 at p 16

these exceptions are well-known⁷. In this case, the claim of a third party who lent anything to the wife will not be rejected by the husband's defense, that is, the debt was never borne by him, but by his wife. . However, nothing in ancient or modern laws can prevent a third party from seeking relief against the separate property of a wife who has signed a debt or obtained a loan. According to Hindu law, there has never been a case in history where women have been deprived of their freedom of contract with regard to personal property and property. With regard to debt repayment, the general rule is that a woman is not obliged to pay any debts unless she agrees or signs a contract jointly or separately with her husband⁸.

Antenuptial Agreements or Law of *Sulka*⁹

The property acquired by a married woman as a result of the pre-marital settlement executed by her scheduled husband is regarded as her absolute property⁶¹. However, Indian spouses are obliged to perform the obligations arising from their contracts concluded before marriage, because Indian law does not recognize the principle of the integration of personality in subsequent marriages.

Contracts during Coverture

In the British Indian courts, a married woman is considered to have a common identity with her husband, and therefore, the husband is responsible for the contract she entered into, although the judgment trend does not seem to be uniform. Generally speaking, a wife cannot restrain her husband without the authority of the husband. The binding force of this type of contract depends more or less on the agency principle. It is not absolutely forbidden for a wife to sign a contract. Of course, Hindu married women will not be unable to sign a contract because of their marriage.

Disposition of Property by a Married Woman

The transfer of property by a married Hindu woman in India is not only governed by her personal laws. Specific regulations¹⁰ and her personal law determine her legal capacity to dispose of property owned by her alone or jointly with her husband. Nothing can stop her from selling real estate or even movable . Similarly, she has the ability to make mortgages ⁶⁸, gifts ⁶⁹ or exchange . According to the general law, she can lease for non-agricultural purposes¹¹

⁷ Bhriḡu ordained that a man shall pay a debt contracted in his remote absence, even with out his assent, by his servant, his wife, his mother, his pupil, or his son, provided it were contracted for the subsistence of the family||. Katyayana, as cited by Colebrooke, *Digest of Hindu Law, Supra* note 46.

⁸ Yagnavalkya, Book II, chap. III, V. 49.

⁹ *Sulka*: the fee which is variously described (i) as the gratuity for the receipt of which the girl is given in marriage; (ii) as being a special present to the bride to induce her to go cheerfully to the mansion of her lord; and (iii) as what is received as the price of household furniture, conveyance , milch cattle and ornaments. Mayne, *Hindu Law and Usage* (1955) 727. Presents to the parents of the bride to persuade them to marry their daughters are not uncommon in oother countries. In 1963 the Minister for Justice in Kenya, who himself gave handsome presents to the parents of his bride at the time of his marriage, said that he hopes that brides in Kenya would be cheaper now. National Herald, 1963.

¹⁰ ⁶⁵ See Indian Sale of Goods Act, 1930, and Transfer of Property Act, 1882.

¹¹ Transfer of Property Act, 1882,

Gifts from different sources

The law concerning gifts among Hindus is not a recent one. Gifts given to the bride by her relatives, friends, parents and even her husband during or after the bride's marriage have always been a continuous source of new acquisitions, and she can exercise power without restriction even during her concealment period. However, the gifts that the bride and groom often give together when they get married have become the subject of many lawsuits between spouses. Katyayana refers to the cross-classification of stridhan attributes, referring to women's independent power to handle it. He called these attributes "saudayika" stridhana. "A married woman or girl obtained from her brother¹² or her parents at the home of her husband or father is called saudayika¹³"

Gift between husband and wife

A gift from a husband to his wife is usually regarded as her Stridhana, she is the absolute owner and passed on to her heirs instead of her husband's heirs. This rule still prevails until now. The question that often arises is whether the wife has accepted such gifts as the absolute owner in all cases, or whether her interest in property is only limited. The real answer may depend on the nature of the property given to her. If the subject matter of the gift is family property, the wife is only a limited owner; the property is returned to the donor after her death¹⁴. However, when these words are sufficient to express absolute property, she will be regarded as the absolute owner¹⁴. Of course, the presumptions and concepts of limited property in favor of the wife do not apply at all¹⁵. Such cases deserve more free interpretation¹⁶

iv) Dowry

A Transformed Form of *Stridhan*

Over time, the concept of Stridhan slowly and steadily changed to 'dowry'. The origin of the dowry may be related to the most pious rule of Hindu marriage, namely kanyadaan, which literally means the gift of a virgin. Shastras suggested that she "wear jewelry appropriately and then give it away. However, the merit of giving is still incomplete until the recipient is given to Daxina. Therefore, when the bridegroom or 'Vara' gets cash or in kind and kanyadaan, it is Varadakshina. Initially, this behavior is voluntary, without any mandatory hint. The implicit ideology of dowry is that it is a way for girls to inherit inheritance from their parents' wealth before death. Under the Mitakshra system, women Without the right to share the wealth of parents, it seems that a system of spoiling daughters with a beautiful dowry has been introduced to overcome this limitation.¹⁷

¹² The Dayabhaga reads —from her husband || instead of —from her brother||.

¹³ Katyayana as cited in the Mitakshara, Smrti Chandrika, Mayukha and Virmitrodaya.

¹⁴ *Hitendra Singh v Rameshwar Singh* A.I.R. (1928) P.C. 112.

¹⁵ *Ramchandra Rao v Ramchandra Rao* I.L.R. (1919) 42 Mad. 283.

¹⁶ *Chetty v Naidu* (1919) 51 I.C. 217.

¹⁷ Mamta Rao, *Law Relating to Women and Children*, Eastern Book Company, 2008, p 99.

a) The Dowry Prohibition Act, 1961.

To destroy the uncontrolled social evil of settlement from Indian culture, the parliament passed the "Share Boycott" in 1961, which applies not exclusively to Hindus yet additionally to any remaining networks. This is a little punishment sculpture with just 10 sections, and marriage-related share is disallowed. Both giving and getting an endowment accommodate punishments and that on the off chance that a settlement is given, it ought to be treated as a confidence for the lady of the hour. As per the Demonstration, these violations are not recognizable,ailable and non-joined. The focal government is approved to make rules to accomplish the motivation behind the bill. The expression "endowment" utilized in the Demonstration not just alludes to what the lady of the hour's folks provide for the husband to be or their little girl, yet additionally the contrary importance. In the meaning of the first bill, "thought as a marriage" was supplanted with "marriage-related". In its 1982 report, the Joint Parliamentary Settlement Board of trustees held that the preclusion of the share regulation fizzled for two reasons: First, the understanding of Area 2 of the law bars the meaning of all gifts (whether in real money or in kind) as endowment, except if it will be It is given due to marriage, and it is exceedingly difficult to demonstrate that the gift or gift given at the hour of marriage, before marriage, or after marriage was provided for the motivation of marriage. Since the individual giving the gift wouldn't stand up and say that he gave it out of marriage contemplations, it is both hostile and hostile to give the settlement. Second, the law has no powerful method for implementation. Except if somebody stops an objection in something like one year from the date of the unlawful endowment, no court can find the share unlawful. It is ridiculous to expect the lady of the hour or the lady's folks or different family members to grumble. Guardians are normally casualties of share.

They are reluctant to come forward because they fear that this might cause their daughter to be harmed¹⁸.

b) Dowry and Stridhan

On account of Pratibha Rani v. Suraj Kumar, Judge Fazar Ali cited Hindu lawful texts on stridhan and brought up that: a lady has outright freedoms to her stridhan; her significant other has no privileges or advantages. The main special case is that he can involve it in the midst of outrageous experiencing like starvation or illness; all things being equal, he is ethically obliged to reestablish the property or its worth. Consequently, he called attention to that supporting the perspectives on the high courts of Punjab and Haryana is troublesome. Kumar Sethi's case that stridhan Once the couple enter the marriage family, the property turns into the joint family property of the husband and spouse. In such manner, most perspectives plainly express that once a wedded lady goes into the marriage room, stridhan's property will go through significant changes to shield her better half from indictment. This view can't be upheld regardless of whether he misused the property insincerely. In the event that a lady gives her stridhan or other individual property to her better half or parents in law for supervision, and they steal or sell the property, assuming that they will not return her stridhan, she can indict the individual at legitimate fault for criminal break of trust. If stridhan or individual property is in joint authority, the court will assume that it is in the guardianship of the spouse or shared with him by the wife. A lady won't lose her responsibility for property since she permits the joint utilization of the property. On the off chance that the spouse insincerely abused or would not return it under such conditions, he would

¹⁸ Dr. J.S.Singh, *Dowry Prohibition Act, 1961: Retrospect And Prospect*, Nyayadeep, Vol IX, Issue 2, April 2008, pg 160

be at fault for criminal break of trust. For this situation, the lady doesn't have to show any exceptional consent to demonstrate that the property is depended.¹⁹

A) Maintenance Rights of Hindu Women

In the absence of matrimonial property regime in India, in addition to stridhan, provision of maintenance for wives under different laws is the only alternative that saves women from vagrancy. A Hindu women's right to claim maintenance can be studied under following provisions:

- i) Maintenance under The Hindu Marriage Act, 1955.
- ii) Maintenance under The Hindu Adoptions and Maintenance Act, 1956.
- iii) Maintenance under The Code of Criminal Procedure, 1973

i) Maintenance under The Hindu Marriage Act, 1955

a) Section 24, Maintenance Pendente Lite:

The HMA contains two specific provisions (Section 24 and 25) dealing with maintenance of spouses involved in a matrimonial litigation. These provisions are not available to any of the spouse during the smooth running of marriage or upon a mere refusal of either of the spouse to Maintain the other without any litigation. Two things are very important in this regard. First, alimony can only be claimed when the marriage petition is pending in the court or the final judgment is judged; second, the alimony can be completely dependent on the husband or wife who is in poverty and who has the financial resources. Guaranteed standards²⁰.

Section 25: Permanent Alimony and Maintenance

The legal corpus defines alimony as "the allowance given to the wife from the husband's estate is required by law to be used for the alimony provided during the matrimonial proceedings or at the termination of the marriage. When the fact of marriage is the alimony, the alimony means The existence of the person is responsible for providing services to the needs of another person or other people who are related to or dependent on him. The basic assumption of alimony and alimony is that the husband must support his wife, not only while she is still his wife And after the divorce, as long as she is no longer married²¹. According to SEC 25 of the Hindu Marriage Act of 1955, the court has the right to instruct the other party to pay the petitioner's maintenance when the decree is issued or subsequently.²² The court should consider when awarding maintenance. The situation of the opposing party.

In the *Gunvintary v. Bay Prabha*²³ case, the Gujarat High Court held that the above wording does not limit the applicability of the article to divorce and invalidity cases, but it also applies to cases of judicial separation, invalidation judgments and restoration of spousal rights. In *Durga Das v. Tara In the Ranemi*²⁴ case, the High Court of Punjab and Haryana held that when the language of SEC 25 (3) is read together with SEC 23 (1), it

¹⁹ *Rashmi Kumar v Mahesh Kumar Bhada*, (1997), 2 SCC 397.

²⁰ Poonam Pradhan Saxena, *Hindu Law*, XLV *ASIL* (2009) p483.

²¹ Paras Diwan, *Modern Hindu Law*, Allahabad Law Agency, 2001, p 173.

²² The Hindu Marriage Act, 1955, Section 25 : Permanent alimony and maintenance:-

²³ A.I.R. 1963 Guj. 242.

²⁴ A.I.R. 1971 P&H 141.

is clear that in SEC 25, the parties involved Not only before the passage of the law under the law, but also after the grant of permanent alimony, the lawsuits filed under the law are described as husband and wife. Therefore, for the purposes of SECTION 25, the description of the parties remains exactly the same as the description in the procedure initially initiated for the Act under the Act. The fact that the procedure for granting permanent alimony is an incidental procedure to the main procedure also supports this approach. Therefore, even after the divorce judgment is approved, an application for alimony can be filed under SECTION 25(1). The views in *Sishan Kumar v Sabita*²⁵are similar.

Ordeals in Getting Maintenance under the Code of Criminal Procedure

Some husbands often frustrate their wives' attempts to obtain alimony. Some of the obstacles that wives face in obtaining alimony under the regulations are as follows:

'Unable to maintain herself'

Since the reason for the bill is to forestall vagrancy, the bill specifies that help requests must be passed for incapable to keep up with their own spouses. Notwithstanding, practically speaking, this sentence created many issues. On the off chance that the spouse is instructed and ready to find a new line of work, yet doesn't buckle down for it, she is qualified for provision, yet the sum might be decreased. The accompanying assertion from AWAG (Ahmedabad Ladies' Activity Gathering) to advance the situation with ladies, call attention to why the expression ought to be erased²⁶

'Living in Adultery'

According to section 125(4) of the law, if a wife commits adultery, she is not entitled to alimony. In order to prevent the execution of the maintenance order, delay the execution, or humiliate the wife, the unscrupulous husband defended the wife's adultery.

According to section 125 of CrPC, this article is intended to be a universal and fast law for providing alimony for poor/poor women in all communities, and there is an outdated and discriminatory subsection of section 141. This paragraph stipulates that "if a wife commits adultery, or if she refuses to live with her husband without any good reason, she is not entitled to alimony." Therefore, alimony depends on the wife's behavior, not because of her past marriage and family Contribute and empower women. The laws of many countries have abolished the practice of relying on such behavior to frustrate the wife's support requirements. For example, the Canadian Divorce Law of 1983 on spousal support clearly stipulates that when applying for support, the court "should not consider any improper behavior of the spouse in relation to the marriage"²⁷.

²⁵ A.I.R. 1972 Cal. 4.

²⁶ Personal communication from Dr. Ila Pathak, Secretary of AWAG quoted by B.Sivaramayya in *Matrimonial Property Law in India* at p 24.

²⁷ The Canadian Divorce Act, 1985, Section 15(6).

Delay

Albeit the code imagines a speedy cure, the passed judgment on cases show that this objective might be disappointed practically speaking. On account of *Gupteswar Panda v Slam Pearl*, the support request couldn't be implemented even following 11 years, in light of the fact that the pain request gave against the spouse was returned by the police because the husband didn't have a different property that could be joined and sold. In the *Changi v Manni* case, the gatherings arrived at a split the difference during the implementation procedures. The support request was passed on December 8, 1969, however was not understood until December 20, 1976, when the report was sent back to the court of first occasion to decide if the trade off was negated by extortion.

Stubborn husband and avoidant husband

Some husbands are resolved instead of paying the cost of local orders to raise them. So here comes, whether the choice satisfies the order of the court? For the adoption of the wife, the wife's support fee is 207 rupees, the child's companionship fee is 207 rupees, and the child's companionship fee is 200 rupees. Defining arrears of 5,090 rupees in crime report alimony. According to the order, the husband's fee is 1 month. When arrears, the magistrate believes that the arrears have met the arrears claim.

The high court likewise dismissed the spouse's application for change. The spouse engaged the court and said that the allure was permitted. It's anything but a substitute for recuperating the delinquent obligations consistently. This isn't a method of exception. Thakkar keeps on requesting.

What appears to be ridiculous is that the law professes to concede men the option to get divorce settlement from their spouses for the sake of correspondence. In the two cases, the separated from ladies in this manner reserve no privilege to get divorce settlement from their spouses, and when they bring in cash and are expected to help them, the husbands can claim the wife's overflow work. By keeping the spouse's portion from getting property during the marriage, and not perceiving the wife's commitment to the husband's vocation by dealing with the family and kids, the law makes ready for ladies to be financially subordinate to men and men. Reinforce the better place of men over ladies. It additionally makes ladies' work undetectable by not giving them esteem.