

EVOLUTION OF PROPERTY RIGHTS FOR WOMEN

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ABSTRACT

The study of legislative measures to ameliorate the position of Hindu women demands historical-analytical account of women's rights from ancient law to present day position. The egalitarian term more forcefully relates to equality between men and women. Gender inequities throughout the world are among the most pervasive, though deceptively subtle forms of inequality. Gender equality concerns each and every member of the society and forms the very basis of the just society. Evolution of legal rights of Hindu females as to matrimonial, proprietary status and with regard to adoption and guardianship etc. as been dealt with along with legal rights under Modern Hindu Law.

Hindu women's position in all ages has always been of dependence on man. There may be a difference of degree here and there as time and circumstance permitted. A Hindu women has been a second rate citizen through ages. It is proposed to make an attempt to trace the evolution of legal status of Hindu women in this Chapter as below:-

- (i) *Ancient Period*
- (ii) *Smriti Period*
- (iii) *Post Vedic Period*
- (iv) *Muslim Period*
- (v) *British Period*

Key Words: *Gender equality, Legal rights, Women's position.*

INTRODUCTION

The women's movement all over the World offers a wide-ranging feminist critique of society. In fact, what seems radical in the contemporary feminist analysis parallels the criticism made by the feminists of the 19th century.¹ Equality and freedom, however, evaded women, as in the chequered history of mankind, one finds that different and disparate cultures, however distant they may be in time and space, have one thing in common and that is contempt for women. This unequal status of women, being offensive to human dignity and human rights, emerged as a fundamental crisis in human development, all over the World.

Another reason is the economic control that has kept women in their sorry state. The root of

¹ Mamta Rao, *Law Relating to Women and Children* 3 (2012).

women's subjection has been their economic dependence on men. As long as women were denied the opportunity to earn their own living, there could not be equality between sexes. "Since money symbolises power, having to ask other for it, it signifies subservience and an inferior status."²

Then the psychological message given to women that they should be happy with their place has proved most effective instrument of social control. The qualities that receive the most praise were those traditionally associated with a "lady" and being a non assertive individual ready to face the world.

Woman's inferior position throughout the ages not only in family and society but also in the matter of property right has been a subject of deep concern in recent times not merely to feminists but to all shades of opinion, both in public and private life. It appears that women form half of the Indian population. But she has always been discriminated against men and has suffered denial and is suffering it silently. Self sacrifice and self denial are their mobility and fortitude and yet have been subjected to all kinds of inequalities, indignities, incongruities and discrimination³. She has not only been denied of full justice, social, economic and political but as a "weaker sex" she has been used to be abused and exploited to maximum extent and subject to ignorance at all levels by male dominated society⁴.

She is not treated equally with men. This inequality or discrimination is visible when they are provided minimum education, poorly paid jobs, lower status expectations and very few rewards than men in comparable situation. Indian mythology places women on a very high pedestal and they are worshipped and honoured as Goddess of learning Saraswati; of wealth Laxmi; of power Parvati but we adopt double standards insofar as her guaranteed rights are concerned.

The concept of ardhagini suggests that there was equality between man and woman, neither one being superior to the other. Later on, barbarous practices developed and women were relegated to a subordinate status. This becomes clear from the Manu's treatment for women in his book 'Manusmriti'. He remained too harsh towards her by ordaining that she is congenially impure in body and thus is liable to increase if she is left independent and allowed freedom to move out of home. This danger precluded many to order that never independence should never be allowed to women.¹²

It is understandable that in patriarchal societies, women should have been subjected to total subjugation and denied all rights including property rights. But what one fails to understand is that in modern India, despite Constitutional guarantees of equality of sexes, equality of opportunity and equality of right to hold and dispose of property, the woman's position continues to be far from being satisfactory. Even today man says that woman cannot protect herself and her property because she is weak. Proprietary position of a woman in any system of law represents the thought and the feelings of

² Sach Albie and Wilson Joan Hoff, "Sexism and the Law" in Comphehl and Wiles (ed.), *Law in Society Series 11* (1978). According to them patterns of behaviour and belief can best be understood in terms of material or economic interest. Chafe W.H., *Women and Equality* 60 (1977).

³ B.K. Ravindra, "Personal Laws – A Study in Feminist Perspective" in C.A. Gurudath, (ed.), *Women, Child, Law and Society* 95 (2006).

⁴ Ramesh, "Political Empowerment of Women in India" in C.A. Gurudath, (ed.), *Women, Child Law and Society* 119 (2006).

the community and Hindu legal system is not an exception in this regard.

CONCEPT OF PROPERTY

The concept of property is as old as the evolution of society itself. It always kept on changing and it is rather difficult to give precise definition to the term property in view of the fact that its meaning and nature vary with the developments in the spheres of science and technology as well as with the views of men in regard to their social and economic philosophies.

In **Oxford English Dictionary**⁵, "property means the condition of being owned by or belonging to some person or persons; hence, the fact of owing a thing, the holding of something as one's own; the right to the possession, use or disposal of anything (usually of a tangible material thing)".

The property may be moveable and immovable, corporeal and incorporeal, tangible and intangible property, intellectual property, etc. According to Section 22 of the Indian Penal Code⁶ the term moveable property is defined as property which is not immovable property. Moveable property which can move from one place to other places and it would include shares of a limited company, intellectual property such as copyrights, patents except actionable claims and goodwill of a business. So far as immovable property is concerned it is can't move and it is defined in the Transfer of Property Act, 1882⁷, the Registration Act, 1908⁸, Stamp Act, 1899⁹, Income Tax Act, 1961¹⁰. Under Section 3 (36) of the General Clauses Act, 1897¹¹, it also includes land, benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth. Property should be given a wide connotation and extends to all those well-recognised types of interests, which have the insignia, or characteristics of proprietary rights. In other words, it is the proprietary and not mere property right that is in the heartland of the right to property.

PROPERTY RIGHTS OF HINDU WOMEN IN DIFFERENT PERIODS

In India, the inferior position¹² of women in a family, society and in the matters of property rights has been subject of deep concern since ancient times. Initially, men and women had equal rights, neither and one being superior to the other. But after early centuries, woman was given a subordinate status. She was known as *abala*, as weak, powerless being utterly incapable of preserving family property from the encroachment of powerful neighbours. Her subordinate position was rooted in the social and economic structure of the society of that period. Legal rights¹³ were discriminatory and iniquitous and the disabilities

⁵ Second ed. Vol. XII, Charendon Press, Oxford, p. 639.

⁶ Act XIV of 1860.

⁷ Section 3 of the Act IV of 1882.

⁸ Section 2 (6) of the Act 16 of 1908.

⁹ Section 2 of the Act 2 of 1899.

¹⁰ Section 2 (14) of the Act 43 of 1961.

¹¹ Act 10 of 1897.

¹² In *Manusmriti* woman has been equated with the other chattels of a man.

¹³ Son was given birth right in the joint family property under *Mitakshara* coparcenery but daughters were

of a woman arose from the fact that she was born as a girl. In traditional India woman was only a member of the family or a group as a daughter, wife and mother and not as an individual with a personality or identity or rights of her own.

In the West, 19th Century witnessed a movement for the emancipation of women from the shackles by which man had bound her for ages.¹⁴ Step by step, woman has been emancipated though she is still subject to a number of disabilities. Even today in some civilized countries, she is subject to various discriminatory laws, but on the whole, equality of sexes, has been established at least in the letter of law though she, to a great extent, continues to be economically dependent upon man, and this economic dependence has stood in the way of equality of sexes. Yet, it appears certain that her future is not bleak and very soon she will be able to get rid of these fetters.

1.1 Vedic Period

The Vedic period¹⁵ was a golden period for women when they, like men, participated in all the social fields and took active part in each and every sphere of human life. During the early Vedic period women in India enjoyed almost an equal status with men in different spheres.¹⁶ The Vedic period can best be termed as the period of feminine glory and also of masculine sagacity and liberalism. Women participated in all spheres like men. They studied in *Gurukuls* and enjoyed equality in learning the *Vedas*. Girls in higher societies were allowed to undergo *Upanayana* rite. Great women like *Gargi*, *Atreyi*, *Ghosa*, *Apala*, *Lopamudra*, *Visvara*, *Indrani* and *Yami*, *inter alia*, were accomplished in art, music, and dance and even in warfare. In *Aitareya panishad*, the wife had been called companion of husband. In the *Rigveda*, the wife has been blessed to live as a queen in the house of her husband. The word *Dampati*, so often used in the *Vedas*, characterises both wife and husband. According to Macdonell and Keith, this word signifies the high status of women in Ancient India. Men and women together performed religious duties, enjoyed.

The *Aitareya Brahmana* preserves an ancient *Gatha* in which a daughter has been characterised as a misery. But it is heartening to find that the period of the *Upanishads*, that witnessed the glory of the *Brahmavidinies*, endorsed the birth of a daughter with acclamation for which they prescribe certain rituals to be performed by the man who wants a learned daughter to be born.

But she could not claim any share with her brothers for it is clearly laid down in the *Rig Veda* that "*a son born of the body does not transfer wealth to sister*". Married daughter living with their husbands

only having a right of maintenance and for her marriage expenses.

¹⁴ In England, the married woman had no right to own separate property from her husband. The husband had the sole right on whole marital property prior to the Married Women's Property Act, 1882.

¹⁵ P.V. Kane and several other authorities put the Vedic period till 300 B.C., during which the *Brahmanas*, *Grhyasutras*, *Yascarya*, *Panini* and *Brahaddeveta* were written.

¹⁶ K.M. Kapadia, *Marriage and Family in India* 80 (1955).

could inherit from their father only when they had no brother.¹⁷ There was no right of inheritance to women in general was nothing at that time. The physical weakness and their dependence on men seemed to be the basis for their exclusion from the inheritance. In this regard, Manu says :

"No religious ceremony for women should be (accompanied) by mantras – with these words the rule of right is fixed; for women being weak creatures, and having no share in the mantras, are falsehood itself. So stands the law."

Baudhayana cited a Vedic text : *"Women are nirindriyah or devoid of valour and are therefore useless or incompetent to inherit."*¹⁸

In Taithriya Samhita, it is said : *"Therefore women are without strength, take no daya and speak more weakly than even a wretched man."*¹⁹

The Satpath Brahma says : *"The wives being Smitten (With ghee – the thunderbolt) and unmanned neither rule over themselves nor over daya (share of property)".*

It is said by Baudhayana and Jaimini²⁰ that women are incapable of performing sacrifices thus they do not need wealth and, therefore, no property rights are necessary for them. Since woman and property are bracketed together in several references, there is no doubt that woman herself was regarded as a sort of property. She was considered incapable of exercising her independent will and could be given away or loaned as any other item of property. In the law- books, women and *Sudras* are represented as life-long slaves, from birth to death. Anyhow the position of the wife in Vedic age was on the whole fairly satisfactory.

A wife, after her husband's death, was not free to marry again and she was expected to lead a life of piety and absolute self-denial. The legal status of widow was same as that of the wife. Like wife, widow too had no proprietary right.

1.2 Post Vedic Period

During Post Vedic Period, certain limitations and restrictions were placed by *Manu*, on the rights and privileges of women and certainly the status of women suffered a setback and they were confined to the four walls of their houses. They were considered as one of the three 'W's – the wine, women and wealth. The women were expected to show complete obedience to men. They were denied property of men.²¹ *Manu* states in an oft-quoted text that the father protects a woman in her childhood, husband in youth, and a son in old age, therefore she is not entitled to independence.²²

With the changing times the position of the daughter also changed. As the thoughts turned to get a

¹⁷ *Rig Veda* III, 31-32.

¹⁸ *Baudhayana* II, 2.3, 45, 131.

¹⁹ *Taithriya Samhita* XVI, 50, 51.

²⁰ *Baudhayana* II, 2.3, 46 and Jaimini VI. I. 4. 17-20, 983-986. 57 Neera Desai, *Women and Society in India* 171 (1987).

²¹ Nazeer H. Khan; *Ambedkar on Gender Equality: Myth and Reality* 176 (2001).

²² T. Buhler, "The Laws of Manu" in Mac Muller (ed.), *The Sacred Books of the East Series* Vol. 25 105 (1964).

son for the future benefits, daughters came to be looked upon as encumbrances and ceremonies were performed with the special object of avoiding the birth of a daughter. Her proprietary right in Brahman period was also the same as it was in the Vedic age. However, there was a slight improvement with respect to her economic status i.e. proprietary rights. There is no doubt that daughter like sons did not have right by birth in joint family property.

*"A wife, a son, a slave – these three are declared to have no property; the wealth which they earn is acquired for him to whom they belong."*²³

In the matter of partition, however, *Mitakshara* law allowed a wife to get an equal share with her own son or sons when the division took place in the lifetime of her husband. But she could not herself demand partition, she could get share only if the husband himself separated his sons during his lifetime or if sons claimed partition during the father's lifetime.²⁴ But there was a provision that the wife must not be in possession of *Stridhana* property given by the husband or by the father-in-law and if there was *Stridhana*, then only so much of wealth would be allotted to her as will make her share equal to that of a son.²⁵

"Women should never make expenditure out of the family property belonging to several or even out of her own Stridhana without the assent of her husband".²⁶ Thus, in nutshell we can say that position of wife with respect to her legal status i.e. in the sphere of proprietary right has improved.

1.3 Muslim Period

The position of women in Indian society underwent many changes in the country. The advent of Islamic culture led to further deterioration of the status of women. With it, came the veil and segregation of women in the upper echelons of the ruling classes.²⁷

The position of a wife received further set-back. *Pardah* became more rigid and women were even forbidden to visit the holy shrines. These restrictions show the plight of women during the Mughal period and the legal position of Hindu women especially from the point of view of inheritance was again, generally speaking, unsatisfactory. Though the doctrine of *Stridhana* (or woman's property) was liberally interpreted under some Schools of Hindu law but women were generally excluded from succession to property and this led to their dependence on men.²⁸

The greatest tragedy in the life of a Hindu woman was the death of her husband. Unlike the Muslims, widow-remarriage was not permitted among the Hindus in the Mughal period except among some lower classes. A widow had to burn herself with the dead body of her husband or had to lead a life of suffering and misery and was treated with contempt by the other members of the family. Society looked

²³ *Manu*, VIII-416.

²⁴ *Yajnavalkya Smriti*, 11-115.

²⁵ *Yajnavalkya Smriti*, 11-148. 68 Power of disposition.

²⁶ *Manu Smriti*, IX-199.

²⁷ S.C. Raj Chaudhary, *History of Muslim India* 250 (1986); Neelam Upadhyay and Rekha Pandhay, *Women in India, Past and Present* 17-18 (1990).

²⁸ Tara Ali Baig, *Women of India* 12 (1976).

down upon the widows who did not perform *Sati*. They were not allowed to grow their hair long or to put on ornaments and good dresses. In spite of all these efforts *Sati* could not be altogether suppressed under the Mughals. During the Mughal period there was no question of having any political status for women or their participation in the administration of the country because of the lower age in marriage, *Sati* Custom²⁹ and *Purdah* System. In brief, it can be said that the familial, legal and political position of the women was in the worst possible condition during the Mughal regime.³⁰

1.4 British Period

At the dawn of British period the position of women was the worst in the history of India. The reason being that they were the subject of abject exploitation and discrimination as was ordained in the Shastric texts. According to Altekar : "... *Denied the benefits of education, brought up in the authoritarian atmosphere, having no opportunities to develop their natural capacities, women became helpless, illiterate, narrow- minded and peevish...*"³¹

In this period, certain changes were introduced relating to Hindu law by process of legislations. The British rulers introduced a new type of economy, State structure and educational system which laid basis for the transformation of the position of women. Another important factor was the political struggle for Indian independence that gave a tremendous impetus to the feminist movement in India.

During this period there were two major movements which affected the position of women. These were the Social Reform Movement of the nineteenth century and the Nationalist Movement of the twentieth century. Both these movements raised the question of equal status of women. The issues which attracted the attention of the nineteenth century social reformers were *Sati*, ill- treatment of widows, the ban on widow remarriage, polygamy, child marriage, denial of property rights and education to women. The Reformers thought that by giving women access to education and by enacting progressive legislation social change could be initiated. Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, M.G. Ranade, Mahatama Phule,

The Hindu Inheritance (Removal of Disabilities) Act, 1928 laid down that no person, except one who has been lunatic or idiot from birth would be excluded from inheritance by reason only of his disease, deformity, physical or mental defect. The Act applied only to the Mitakshara School and not to the Dayabhaga School. The Hindu Law of Inheritance (Amendment) Act of 1929 altered the order of intestate succession under the Mitakshara law with a view to prefer certain near cognates to agnates. Thus son's daughter, daughter's daughter, sister and sister's son were declared to be entitled to succeed next after the paternal grandfather. In 1946, *Hindu Women's Right of Separate Residence and Maintenance Act* was passed which provided for separate residence and right of maintenance to Hindu wives even without having judicial separation under certain circumstances. The Act made her legal status and social position better than before. To improve the legal position of the widow the *Hindu Women's*

²⁹ After the independence of India, the Commission of Sati (Prevention) Act, 1987 was passed to abolish Sati custom.

³⁰ *Supra* note 13 at 35.

³¹ A.S. Altekar, *The Position of Women in Hindu Civilization* 338 (1962).

Right to Property Act, 1937 was passed. The Act was passed to amend the Hindu law of all the schools so as materially to confer greater rights on women than they had.

1.5 Post Independence Period

During the Post independence period, some contemporary trends like, industrialization, socialization, changing work scenario, etc. affected people to leave the joint family in search of work. The twentieth century developments like, globalization, advancement of biotechnology, a revolutionary change in information technology, change in morality and values from character to career have a tremendous impact on the traditional myopic outlook of joint family.

After Independence, the movement for empowerment of women gained momentum. It was felt that if women would be economically sound, then many problems relating to them could be solved. To improve the awful plight of the daughter and make her economically independent, the right to property of the Hindu daughter has been statutorily recognized in the Hindu Succession Act, 1956. This Act has conferred a share in the coparcenary property of the family on the daughters of the family and the children of predeceased daughter.

Now the Government of India has passed the Hindu Succession (Amendment) Act, 2005, introducing a uniform law for all the Hindus in India making changes in the Act of 1956. This Amendment Act has made the daughter, by birth, a coparcener in her own right in the same manner as the son. Like men, women too can acquire and hold property. According to the right of inheritance of the property, the daughter is treated exactly in the same way as the son. It completely abolished the notion of limited or life interest. An heir, whether male or female, takes the property absolutely. Widow, unlike the old Hindu law, enjoys a respectable position. She is not tortured as before. There is no bar to widow's remarriage.

She enjoys very satisfactory property rights. Section 8 of the Hindu Adoptions and Maintenance Act, 1956 empowers her to adopt a son or daughter to herself.³² Pursuant to a request by the United Nations General Assembly to prepare a report on the status of women in the country, a Committee on the Status of the Women in India (CSWI) was constituted in 1971. The matters referred to the Committee were:

- a) To examine the Constitutional, legal and administrative provisions that have a bearing on the social status of women, their education and employment.
- b) To assess the impact of these provisions during the last two decades on the status of women in the country, particularly in the rural sector, and to suggest more effective measures.
- c) To consider the development of education among women and determine the factors responsible for the slow progress in some areas and suggest remedial measures.
- d) To survey the problem of working women including discrimination in employment and remuneration.
- e) To examine the status of women as housewives and mothers in the changing social pattern and their

³² By the Marriage Laws (Amendment) Act, 2010.

problems in the sphere of further education and employment.

- f) To undertake survey or case studies on the implications of the population policies and family planning programs on the status of women.
- g) To suggest any other measures, which would enables women to play their full and proper role in building up the nation.

The CSWI's report, 'Towards Equality', became the 'Founding Text a landmark in the women's movement in the country as did the Feminine Mystique of Betty Friedman in the USA. The paradigm of women's development did undergo a sea change since the report.

RESEARCH METHODOLOGY

Research in any field means an intensive, purposeful and systematic search for knowledge and understanding of social or physical phenomena. The purpose of research is to discover answers to questions through the application of scientific produce that is research methods. During the last two decades, the methodology has come to occupy an increasingly important place in social research. Methodology can be considered as the application of fundamentals of science. Research is carried through a certain procedure called a design. The present study was designed to explore the actual enforcement of property rights of women. Keeping in view the nature and the objectives of the present study different aspects of methodology applied in conducting the present work can be described under following headings.

It will not be possible to rely upon a single approach or method. So both deductive³³ and inductive methods³⁴ of research have been used. Keeping in mind the nature of our research problem we have used both primary and secondary sources for research purpose. It was deemed essential to go through various, statutes, books, journals, periodicals, law reports, law reviews, Committee reports, Constituent Assembly Debates and Parliamentary Debates, etc. with an intent to acquire a sound theoretical background of the problem, selected for investigation.

OBJECTIVES

The main object of present research work is to examine the law relating to property rights of Hindu women from socio-legal angle, both intensively and extensively. In this context it is ventured to :

- historically trace the origin and evolution of property rights of Hindu women.
- examine the recognition of these rights of women at international as well as at national level.
- analyze the relevant provisions of the Constitution of India and other legislations dealing with women's property rights.
- discover the various lacunae in the implementation and enforcement of the law relating to woman's

³³ Also known as analytical, abstract and apriori method.

³⁴ Also known as historical, empirical and a posseriori method. 110 S.N. Jain, *Legal Research and Methodology* 35 (1983).

rights.

- critically examine the judicial approach towards this branch of law.
- ascertain extent of awareness of common people towards property rights of women.
- propose amendments in various legal provisions and suggest other steps to remove the lacunae, to plug the loopholes and to make it more effective for achieving the desired results.

HYPOTHESIS

This study is based on the hypothesis that Indian society, which is generally male dominating and there is no exception in property matters. There are several legislative provisions which give property rights to the Hindu females but these are not gained properly enforced. So far as non-rosy picture of female's right is concerned along with other sections of the society, they are also responsible for this discrimination. It is also hypothesized that agencies are not playing encouraging role for enforcement of property laws of women.

CONCLUSION

Thus, we have seen that starting from the Act of 1937 whereby a widow was made a 'substituted coparcener' and the right of a female was only to own a property inherited from a male as 'limited owner' thereof, now the providing the female with the capacity to own property absolutely without any limitation and the daughter being given the status of a coparcener, we have come a long way. So the saying of Manu that "*for woman there can be no freedom*" is no longer sacrosanct in the modern era. Her social, political and legal status is satisfactory. The legislations concerning Marriage, Succession, Adoption, Maintenance and Guardianship has promoted emancipation of women to a very large extent. The United Nations designated 1975 as International Women's Year in order to concentrate attention and the advancement of women all over the world. However, a woman's progress is still being thwarted by certain social evils, the biggest of them being dowry. It is very disheartening to note that the evil of dowry has not been eradicated so far, although the Dowry Prohibition Act was passed in 1961. Dowry is still given and taken and it is must even if the bride is a doctor, engineer or a professor. But this is a social evil which can be eradicates by awakening the social conscience of the people at large. True parity will be possible only when the implications of the Constitutional equality are accepted by the people and practised in the true spirit.

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