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Stridhan: A Study of Vedic Period to British Period

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Abstract

Stridhan has been the most controversial topics of Hindu law. Upon matters such as what constitute stridhan, what are the right of women over stridhan, and what is the order of succession to strdhan, there existed great diversity of doctrines, in consequence of which the law of stridhana has become a complicated subject. In this regard kamalakara's apt observation in the Vivada Tandava is noteworthy: "the lawyers fight tooth and nail." Jimutavahana, in concluding his chapter on the branch of law, complacently observes. Thus has been explained the most difficult subject of succession to childless women's stridhana. Literally the word stridhan means women's property but in Hindu law it has all along, been given a technical meaning. In the entire history of Hindu law, women's right to hold and dispose of property has been recognized at no time, whether as a maiden, wife or widow, has the women been denied the use of her property as an absolute owner. It is also true that at no time the quantum of her. Property has been anything but marriage. The smritikars as differ from each other to what items of property constitute her stridhan. Coorooass Banerjee very aptly said: The difficulties be setting an enquiry into the questions what constitute stridhan, arise from that majority of sages and commentators give neither an exact definition of stridhan, nor an exhaustive enumeration, and if the mitakshara gives a simple and intelligible definition that definition has been qualified and restricted in its application by our courts, in consequence of its disagreement with the view of other authorities.

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Introduction

Woman's property is a comprehensive them and it may embrace property which a woman may acquire by inheritance or partition or that which may come to her by gift from her parent, husband or his or her other relation. According to Yaj navalkya stridhan is defined as: "what has been given to a woman by the father, the mother, the husband or a brother, or received by her at nuptial fire or presented to her on her husband's marriage to another wife as also any other separate acquisition is denominated as women's property". Katyayana also any recognizes women's right of separate ownership. His enumeration of kind of stridhan is somewhat more elaborate. Says he, "what is given to women at the time of her marriage near the nuptial fire is celchrated form her feature's house to her husband's dwelling is instanced as the property of a women under the name of gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or has been offered to her as a token of respect is denominated as an offutionate present.

That which is received by a married woman from her parents is termed a king gift.

Concept of Stridhan

The women's inferior position throughout the ages not merely in family and society but also in the matter of proprietary right has been the subject of deep concern in our contemporary society. Before Manu, the structure of Indian society was quite flexible. The concept of 'Ardhangini' was propagate at a time when men and women had equal states and rights, neither one was superior to the other. But gradually nthe position of women deteriorated to a subordinate status. As in Mahabharata, Satyabhama, the wife of Lord Krishna asked Draupadi the Pandeva's wife "How you manage yourself with your five husbands? She replied, "with devotion and obedience." This was basic maxim in Hindu society, i.e., Hindu women was totally dominated and subservient.

According to Manu and Katyayana, a woman's earnings were absolutely at the disposal of the man to whom she belonged. This subordinate status of women was rooted into the social and economic structure of the society of that time. In ancient times although the position of Hindu women was of an inferior nature as compared to the man, still her position was better than the position of other countries inasmuch as men were having absolute proprietary right over their women.

The law of Stridhana is most difficult as it is the least settled branch of Hindu law. The term stridhana literally means, 'unfettered means, 'the women's property' a property over which she possess the 'unfettered power of disposal'. It may be gathered from the examination of the smritis and the doctrine of each school that whatever is regarded as stridhana which is derived according to Machanaghten and Sir Thomas Strange, from Stri-femal and Dhan-Wealth. According to Jullius Jolly the term stridhana which occurs first in the Dharmasutra of Gautama, is a compound word made up of Stri-woman Dhan-property.

Stridhana during the British Period

The English judges were not familiar with Indian culture, customs, usage's, traditions and laws, and the other problem which they faced was the uncodification of the law. The only source which is available as law was the Digests and written commentaries. Even these sources of law, i.e., commentaries and digests differed in interpretations of various terms. The Mitakshara interpreted the term Stridhana in a liberal and etymological sense so as to term every kind of woman's property as stridhana, while according to Dayabhaga only that property, over which a woman had absolute power of disposal, was stridhana on the basis of such different interpretations, it became a problem for the English judges to lay down the correct principles of law governing a particular subject including stridhana. Mitakshara view about gifts of movable or immovable property from close relations was followed by the British judges in a number of judicial decisions mainly the emphasis was laid on the nature of the property. In this way *saudayika* property was considered as stridhana, woman had absolute control over it because of the nature of the property: It was the property obtained by a married woman, by a maiden, in the house of her husband, or from her father, brother or parents as gift.

It was held that property obtained by a married woman by bequest even from her maternal grandfather is her *saudayika* stridhana and she can alienate it without the consent of her husband. Gifts from a brother were also considered as stridhana in British period. The courts followed the Mitakshara in many of the cases. The Allahabad High Court in *Munia V. Puran*, held that since the property could not come to *Munia* by inheritance, it was a gift made to her by her brother from which it necessarily followed that the property could be stridhana only.

An examination of various commentaries shows that stridhana property is divisible into *Yautaka* and *Ayautaka*. *Yautaka* is that gift which is given at the nuptial fire. In this term included all gifts made during the marriage ceremonies, and *Ayautakais* that gift made before or after marriage. So, *Saudayika* includes both type of gifts. It is defined gifts from affectionate kindred and it is her stridhana. In *Basant Kumari Debi V. Kamikshya Kumari Debi*, the facts were that *soondasi* *Debi* brother executed a deed of gift in her favour for maintenance and one of the clauses in the deed was that her heirs would succeed to the gifted property. She died leaving behind her daughter and husband.

The husband took possession of the property and applied for its registration in his name by falsely stating that his wife died issueless. The registration was done accordingly wherever he married again. After his death his widow took possession of that property. The daughter sued for the recovery of the property and for its mesne profits. The subordinate judge took the view that since *Soondari Debi* got the property by a deed of gift from her brother if could pass to her daughter only. That decision was affirmed in first appeal by the Privy Council. It was held that the property was *Soondari Debi Ayautaka Stridhana*.

This principle was also reiterated by the Calcutta high court in the case of *Mahendra Nath Maity V. Girish Chandra Maity*, But the above mentioned principle, i.e., the gift from the brother was stridhana was not prevalent in nor recognized by the privy council in *V.R.M. KM; M. Kulandaivelan Chettier V. Official receiver of South Arcot*. It was customary in the *Nattu Kottai chetty* community that any gift of the daughter by her parental relations had to be handed over to her father-in-law.

Dayabhaga also does not recognize immovable property given or bequeathed by a husband to his wife as stridhana. The Bombay High Court in *Kotarbaspas. V. Chanverova* and *Bhaubin Abaji Gurav V. Roghu Nath Krishna* expressed the same view and held that a woman had no right to alienate or dispose of by gift or will any immovable property over which she had a right of alienation. *Knox and Aikman, J.J.* of the Allahabad High Court quoting *Mitakshara*, Propounded the same view in *Surajmani V. Rabi Nath*. An exception to the above view was however laid down by the Privy Council in *Venkata Rama Rao V. Venkata Suria Rao and Thakro V. Ganga Prasad*. In *Venkata Rao* case the widow purchased some immovable property with her stridhana funds, i.e., she borrowed money on the security of her jewels. The question arose before Privy Council was whether she could dispose of that immovable property as it was contrary to the basic principle of Hindu law. But it was held that the jewels were her stridhana and she had a full right to dispose.

Enumeration of Woman's Property Gift and Bequests from Relations

From the early time this has been a recognized head of the stridhana. Such gifts may be made to woman, during maidenhood, coverture or widowhood, by her parents and their relations, or by the husband and his relations. Such gifts may be made *inter vivos* or by will. The *Dayabhaga* School does not recognize gift of immovable property by husband as stridhana. The property coming under this head was technically known as stridhan.

Gifts and Bequests from Strangers

Property given by gift *inter vivos* or by will by strangers to a woman, during maidenhood or widowhood constitutes her stridhana. The same is the position of gifts given to a woman by strangers before the nuptial fire or at the bridal procession. Property given to a woman by a gift *inter vivos* or bequeathed to her by strangers during coverture is stridhan according to the Bombay, the Benaras and Madras schools, but not according to the Mithila and the *Dayabhaga* schools. The position before 1956 was that the gifts received from strangers during coverture were stridhana, but these were during her husband's life time under the husband's control. On his death, these became her full-fledged stridhana.

Property Received in Lieu of Maintenance

The Mitakshara law concerning the property which the woman received for maintenance was followed by the Privy Council in Sowdaminu Dossel V. The Administration general of Bengal held that the property given to a woman in lieu of her maintenance was her stridhana and she had a right to dispose it of according to her own sweet will. The Madras high court also expressed the same view in Subramanian Chetty. V. Arunachalam Chetty, Pethasasi V. Sendamarai and Magunta Veeraraghava Reddi V. Mangunta Kota Reddi. The decisions of the Nagpur high court in Girja Bai V. Babulal and Oudh chief court in Ram Das V. Ram Sewak Tewari are also in line with the above-mentioned decision that is that the property which a woman received as her maintenance is her stridhana and she is the absolute owner of it.

Property Obtained by Inheritance

A Hindu female may inherit the ordinary property of a male such as her husband, son and the rest. The Mitakshara School considered all inherited property as stridhana. According to Dayabhaga School, Banaras as well as Mithila and Madras schools the property inherited by a woman is not her stridhana, she takes only a limited interest in the property and on her death the property passes not to her heirs but to the next heirs of the person from whom she inherited it.

Property Acquired by Self-exertion and Mechanical Arts

A woman may acquire property at any stage of her life by her own self-exertion, such as by manual labour, by employment, by singing, dancing etc., or by mechanical art. According to all schools of Hindu law, the property thus acquired during widow hood or maiden hood is her stridhana. But the property thus acquired during coverture does not constitute her stridhana according to the Mithila and-Bengal school, but according to rest of the schools it is stridhana. Again, during the husband's life-time it is subject to his control.

Property Obtained by Compromise

Such type of property obtained by a woman under a compromise or mutual understanding or family arrangements, are not only for her life time but it depends upon the nature of the property deed and other circumstances also. As it is also held by Privy Council in Nathulal V. Babu Ram, the facts of the case were that in a joint family there were two brothers, one of them died, his share was claimed by right of survivorship by the other brother.

Share Obtained on Partition

When a partition takes place, except in Madras, father's wife, (not in the Dayabhaga School) mother and grandmother take a share in the joint family property. In the Mitakshara jurisdiction, including Bombay, and the Dayabhaga School it is an established view that the share obtained on partition is not stridhana but women's estate.

Property Obtained by Adverse Possession

Property acquired by a Hindu female whether during coverture or widowhood by adverse possession becomes her stridhana according to all schools of law. The Oudh chief court also followed the above view in Rampal Singh V. Bajrang Singh. The facts of the case were that there were three brothers, Harpal, Harbaksh, Bhawanidin, it was a joint family. Harpal Singh died and his widow Mrs. Jassoo took the possession of the property of his share. After some time Harbaksh died and Mrs. Jassoo took possession of his share

too. Coincidentally Bhawanidin also died leaving behind his widow; again Jassoo took possession of his share too. The Bhawanidin's widow challenged the possession of Mr. Jassoo. But the court held that since the property was acquired by Mrs. Jassoo by adverse possession it became her stridhana.

I. Reasons for Peculiar Line Descent

Why the devolution of stridhana was peculiar and distinct was not explained anywhere property. The commentators had sometimes assigned a most fanciful reason for that difference. For example, Vijnaneswara observed as the women's property goes to her daughters because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children. Similarly Yajnavalkya said, "As portions of the female abound in the female children, the stridhana property goes to the daughter, and as portions of the father abound in the male children, the father's estate goes to the sons." This can be said as a marked tendency of partiality in Yajnavalkya for the enfranchisement of women. He might have done so to compensate her for the absence of her right in the father estate as against brothers.

II. Succession to Maiden's Stridhan

In the early times a maiden could have hardly possessed any property other than the ornaments and the presents received from relations. With respect to such type of property the commentators followed the text of Baudhayana, for its devolution, which runs as follows; "The wealth of a deceased damsel let the uterine brothers themselves take, on failure of them, it shall belong to the mother, or if she be dead, to the father." The Mitakshara School based its notion of succession to maiden's property on the text of Baudhayana. But the views of its sub-schools, which differed from the Mitakshara are also worthy of note. Therefore, it is proposed to study their notions separately.

III. Succession to the Married Woman's Stridhana

No doubt, the devolution of Stridhana was the outstanding feature which distinguished the Hindu law of succession from the other systems of law, but the succession to stridhana, particularly of a married woman, was peculiar in itself. It was the only subject on which the schools of Hindu law differed from one another perhaps more widely than they did on any other subject, though the basic principle was the same, i.e., the preference of females over males. The variance or the difference between them arose primarily on account of the extent to which that preference was shown and the categories of stridhana for the purposes of succession not being the same according to all the schools. The categories used to differ depending upon the form of marriage-approved or unapproved, upon the source of property and upon the school to which she belonged. In fact the complicated or the intricate nature of the subject makes it obligatory, rather necessary, to study the subject according to the various schools of Hindu law separately.

Adopted Son

The adopted son was said to have the same rights as son of the body. But there was a conflict of opinion whether the adopted son was the son of the wife also or he was the son of the wife also or he was the son of the adoptive father only? One view was that adoption was more an act of the husband than of the wife. So the adopted son was more a son of the former than of the latter. On the other hand, was Dattaka

Mimmansa, an authority in the Benares school in the matter of adoption, which laid down the doctrine that by husband's "mere act of adoption, foliations of the adopted as son of the wife, is complete in the same manner as her property, in any other thing accepted by the husband." So, the adopted son was considered a son of the adopter's wife as well as of the adopter himself. But the problem was that the Hindu law was totally silent as to the succession to the adoptive mother's stridhana.

Succession to the Stridhana of Childless Woman

How the property of the childless woman used to devolve in this school is also imperative to know. Nilkantha for the purposes of succession divided the childless women's property into two parts:

- i) Paribhasika or Technical Stridhana, i.e., comprising the above mentioned (i) to (IV) classes of property.
- ii) Apparibhasika stridhana i.e., consisting of the property mentioned in the second category of stridhana.

For the first of these two descriptions of woman property Nilkantha, like Vijnaneswara, gave two-fold order of succession depending upon the form of woman's marriage and based his rule upon the same text of Yajnavalkya that was in the Mitakshara on the subject. But the Mayuka, like the Viramitrodaya, differed from the Mitakshara in constructing the text, and held that the husband and his Kinsmen were the heirs when the marriage of the woman took place in the Brahma form, or in any of the other four unblamed forms, i.e., Daiva, the Arsha, the prajapatya, and the Ghandharva, and the parents and their Kinsmen succeeded if the marriage took place in any of the remaining forms- the Asura, the Rakshasa, and the Paisacha. For the purpose of succession, on the failure of the husband of the deceased woman, if she was married according to an approved form, or on the failure of the parents, if she was married in an unapproved form, the following text of Brihaspati was quoted:

Conclusion

"The mother's sister" the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced similar to mother. If they leave no son born in lawful wedlock, nor daughter's son nor his son, then the sister's son and the rest shall take their property.

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