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## Propertius Crime against Women's in ancient Text

By: Sham Chand\*  
Prof.(Dr) Ajeet Singh\*\*

\* Research Scholar, Deptt. of Law, Mewar University, Chittorgarh, Rajasthan.

\*\* Dean, Deptt. of Law, Mewar University, Chittorgarh, Rajasthan.

### Introduction:

The best way to judge the position-of a nation is to find out the status of women in reality the status of women is the measuring rod for assessing the standard of culture of any age. Thus the social status of women in a country represents the social spirit of the age<sup>1</sup>. The rights of women to succeed to any property vary from one religion to other depending on the personal laws followed by them. The religion played a very important role in the devolution of property on the woman in the earlier days.

Initially the entire law of succession was uncodified but with the advent of modern governments and legislatures, most of the succession laws have been codified and consolidated. However there is no uniformity in the succession law relating to women following different religions<sup>2</sup>.

In India, the women enjoyed a secondary status with regard to the succession. This unequal status was sought to be removed by certain legislations governing different religions like The Hindu Women's Rights to Property Act, 1937, The Hindu Disposition of Property Act, 1916, The Hindu Inheritance (Removal of Disabilities) Act, 1928, The Indian Succession Act, 1925, and The Cochin Christian Succession Act, 1902.

It is proposed to review the familial or social, legal and political position of woman as wife, widow and a daughter in the various stages of development of Hindu law. This position is traced in the historical perspective from Vedic period to the modern era. However, to draw a conclusion about the position of women is difficult and complicated problem.

Diametrically opposite views about the worth, nature and importance of women have been expressed in the same period there are different schools of thought. The one school believes that a woman is the best gift of God to man. She brings prosperity when she is properly treated and respected and has been called "Lakshmi", the goddess of

<sup>1</sup> Dr. Kulwant Gill, Hindu Women's Right to Property in India, 1986, p.528

<sup>2</sup> G.B. Reddy, Women and Law 2nd Ed., 1998 p. 42

wealth and prosperity. The holiest object in the world is a virtuous woman, a tear of sorrow rolling down from her eyes melts the heart of even a mighty tyrant.

The second school of thought holds the view that the best way to reach God is to avoid women. Sage Agastya says as stated by A.S. Altekar Women combine the fickleness of the lightning, the sharpness of weapon and the swiftness of the eagle<sup>3</sup>. Shakespeare has said, Frailty, thy name is woman." They were of the view that woman is the source of all evils, her love is to be dreaded more than the hatred of man; the poor young men who seek women in matrimony are like fish who go to meet the hook."

### **Lack of Legal Knowledge:**

There was no necessity for elaborate rules of law, when people in consciously followed the prevailing practices of enjoying property. When disputes arose property was then held by the family as the unit of society Under the Patriarchal system, the father represented the, family and had complete control over it. On his death the family and properties passed under the care of the successors to the head of the family.

### **A few important rules are discernible:**

- i) Primogeniture was the settled law of the succession in the ancient India. The death of a member did not affect the corporate existence of the family which was to be maintained intact. In that unit the first born would become the leader of the family, entitled to the family property as his birth right.
- ii) In the course of time equal distribution of the property among the sons came to be recognised? though the normal mode of enjoyment of the property was the joint family system or communistic system, the rival principle of individual ownership reared its head at an early stage in the history of Hindu Law and both existed together.

The principle of primogeniture helped to preserve the joint family system. The text in Taithriya Samhita "they distinguished the eldest son by the heritage" recognizes the superior right of the first born. On the other side there was rule of equality illustrated by texts like, "Manu divided his wealth equally among his sons".

On examination of the Smritis, it is patent that original rule or primogeniture had been gradually declining giving place to the equitable rule of equal distribution.

- iii) The germs of inheritance according to law are to be formed in the unit of coparcenary consisting of sons, grandsons and the great grandsons.

The primary heir, when the heritage does not pass to the family as a whole, was no doubt the son. In normal cases, the son would be son of body born in lawful wedlock. The aurasa son was the best type of son from the religion point of view. But besides the aurasa son, there were subsidiary admission of the strangers into the family and such admission was justified by fictitious extensions of consanguinity.

Though no uniform principle was adopted, it would appear that among subsidiary sons those with slightest trace of blood connection even though illegitimate, were preferred to those whose relationship was only artificially

<sup>3</sup> Dr. A.S. Altekar, *The Position of Women in Hindu Civilization*, 1987, p. 320

created.

In course of time, fresh principles of conduct got established. Besides the son, ruled had to be framed regarding persons entitled to succeed to the property of a deceased and the order in which they could claim priority. The rules stated by some of Smriti writers are:

- i) Gautama: Persons allied by the funeral or lations, bearing the same family name and connected with the same Rishi shall share the estate of childless owner or the widow shall take the estate.
- ii) Budhayana: on the failure of sapindas, sakulya are heirs, if there be none, the spiritual preceptor the pupil or the priest takes the inheritance.
- iii) Apastamba: If there is no male issue, nearest kinsman inherits or in default of kindred the preceptor or failing him disciple or the daughter may take the inheritance.

In Smritis, no undue importance should be attached to the omission of all female relations as heirs, as the rules of inheritance themselves were very scanty. While in some respects the position of woman particularly that of the daughter, the wife and mother, was high, passages derogatory to women, scattered in the earliest literature have been taken to spell the inferior status of women<sup>4</sup>.

The father protects a woman in her childhood, husband during youth; her son in old age, a woman is never fit for independence. In the case of inheritance to the property of men, males were preferred to women as heirs there were subsidiary admission of the strangers into the family and such admission was justified by fictitious extensions of consanguinity. Though no uniform principle was adopted, it would appear that among subsidiary sons those with slightest trace of blood connection even though illegitimate, were preferred to those whose relationship was only artificially created.

Neither brothers, nor parents but sons are, heirs to the deceased, but if he leaves no sons, the father instead of brothers takes the share.

The rights of women to maintenance were, in every case very substantial right in the family on the whole. It seems that some of the later commentators erred in drawing adverse inferences from vague references to women's succession in the earlier Smritis. The view of 'Mitakshara' on the matter, which are unmistakable, ought to be decisive, Vijnanesvara nowhere endorses the view that women are incompetent to inherit. He does not even refer to the Vedic text.

He points out that the text of Narada which declares dependence of women is not incompatible with their acceptance of property. Vijnanesvara does not accept the position that the chains of such females only to be admitted as have the support of express text. His definition of sapinda and his postponing the father to the mother, the grandmother to grandmother, the great grandmother, as well as his treatment, of Stridhana are clear indication in the same direction.

<sup>4</sup> Dr. J. Jolly, (T.L.L., 1883), *Outline of History of Hindu Law of Partition, Inheritance and Adoption*, p. 192.

**Right of Widow:**

The right of the widow to succeed as heir to her husband was recognized two thousand years ago. Virdha Manu, Yajnavalkya, Vishnu, Brihaspati, Katyayana, Sankha Likhita and Devata fully recognized her right to succeed to her husband. Narada's refusal to recognize her, evidently after the time of Vishnu and Yajnavalkya, is puzzling. It must have been due to a difference in the usages of his country, where remarriage, evidently prevailed as, about the same time; Brihaspati is most emphatic in her favour. She is, in fact, the first heir to the property of a man who dies without male issue<sup>5</sup>.

In all the authoritative digests and commentaries, the widow's right of succession to her husband is universally acknowledged. Widow heir to separate Property- Vijnanesvara's conclusion is that the widow is entitled to inherit to her husband, if he died separated and not reunited and left no male issue. It is immaterial whether the division was in status only or was followed by a division by metes and bounds.

The text of Mitakshara is, therefore, it is settled rule, that a wedded wife, being chaste, takes the whole estate of a man, not subsequently reunited with them, dies leaving no male issue<sup>6</sup> and this rule which necessarily followed from the view taken by the Mitakshara of the rights of undivided members, applied, till recently, in the Mitakshara jurisdiction.

Even where a man died undivided but left separate or self acquired property, his widow succeeded to it though the undivided left separate or self acquired property, passed by survivorship to his coparceners, as was settled by Shivaganga case. Their lordship referring to the Mitakshara(II, 1, 39) observed: "the text is propounded as a qualification of the larger and more general proposition in favour of widows and consequently in construing it we have to consider what are the limits of that qualification rather than that are the limits of the rights<sup>7</sup>."

According to Dayabhaga, on the other hand, which proceeded on the ground of her right to offer funeral obligations to her deceased husband, a widow succeeded to her husband's share when he was undivided just she would succeed to the entire property of one who was separated<sup>8</sup>. But as in a Dayabhaga joint family the husband is held quasi severalty, the distinction is merely a verbal one.

**Conclusion:**

By the whole study, it can be concluded that women play a significant role in the life of every individual human being. Securing her better birthrights would mean giving better future to our own society, family and to every individual. Developed societies/Nations are developed because they have always taken keen interest in providing equal rights to women with that of men. Developing societies/Nations are developing because they understand the need of the hour and in every possible way trying to give women better rights.

As discussed in previous chapters gender inequality facets in different form, but the most tedious one percept relates to the effective property rights. This disparity in property right pertaining to gender, spells from ancient times. Dharmashastra itself recites the inheritance and the traditional inheritance is the brainchild of such legal

<sup>5</sup> Sheo Singh v. Mt. Dakho 1870) 6NWP 382,406, So, by local custom, a widow is sometimes

<sup>6</sup> Rewan Persad V. Mt. Radha (1846), 4M 1 A 137, 148,152.

<sup>7</sup> Tikari v. Tikari (1878) 51A 160; 4 Cal. 190.

<sup>8</sup> Durag Nath v. Chintamani (1904) 31 Cal. 214.

text. The two important legal doctrines viz., Mitakshara and Dayabhaga date back 12th century A.D. govern the practice of inheritance of Hindus. Besides these two legal doctrines, Vyavhar Mayukhya is common in parts of Western South India where as Marumakkatayam, Aliyasantana and Nambudri systems are followed in southern plane for guidance of Hindu inheritance<sup>9</sup>.

The law of inheritance is of gradual growth and generally applies only to property held in absolute severally as distinctive from property within joint family. The fundamental concept of such a Hindu joint family where there is a common male ancestor with his lineal descendants in the male line. Even under early Hindu law, the rights of sons were recognized and they acquired equal interest with the father in the ancestral property as coparceners<sup>10</sup>.

Broad distinction can be made between two types of property viz., joint family properties or ancestral property and self acquired or separate property. The joint family property is generally inherited from the male line of descent and consists of property that is jointly acquired or is acquired separately but merged into the joint property.

Under the old Mitakshara Law, on birth, the son acquires a right and interest in the family property. According to this school, a son, grandson, and a great grandson constitute a class of coparceners, based on births in family. No female is a member of the coparcenary in Mitakshara Law. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary.

This means that with every birth or death of male in the family, the share of every other surviving male either gets diminished or enlarged. The Mitakshara law also recognizes inheritance by succession but only to the property separately owned by an individual male or female. The females are included as heirs to this kind of property by Mitakshara Law. Under the Dayabhaga Law succession rather than survivorship is the rule. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father's lifetime. However, on his death they inherit as tenants-in common. Daughters also get equal share along with their brothers.

Since this ownership arises only on extinction of the father's ownership none of them can compel the father to partition of property in his lifetime and father is free to sell the property without their consent. As females could be coparceners, they could also act as Kartas and manage the property on behalf of other members.

As the property law is a gradual growth, it continued to be complex and continued to be discriminatory against women. The pre-independence social reform movement minimised the gender discrimination, but the issues pertaining to the changed socio-economic conditions as to the equitable distribution between male and female heirs and as to enlarging the Hindu women's limited estate into full ownership are not only desirable but necessary.

<sup>9</sup> P.K. Das, *Handbook on Hindu Succession (Property Rights of Women and Daughters)*, 2007, p. 3

<sup>10</sup> *Supra-1*

## **Bibliography:**

### Books

- 1) **Handbook on Hindu Succession (Property Rights of Women and Daughters), 2007 by P.K.Das.**
- 2) **Hindu Women's Right to Property in India, 1986 by Dr. Kulwant Gill.**
- 3) **Women and Law 2nd Ed., by G.B Reddy.**
- 4) **The Position of Women in Hindu Civilization by Dr.A.S.Altekar.**
- 5) **Outline of History of Hindu Law of Partition, Inheritance and Adoption by Dr. J. Jolly, (T.L.L., 1883).**

### Case Law:

- 6) **Sheo Singh vs. Mt. Dakho 1870) 6NWP 382,406.**
- 7) **Rewan Persad vs. Mt. Radha (1846), 4M 1 A 137, 148,152.**
- 8) **Tikari vs. Tikari (1878) 51A 160; 4 Cal. 190.**
- 9) **Durag Nath vs. Chintamani (1904) 31 Cal. 214.**

