



Women's Property (Stri-Dhana): A Critical Appraisal

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Abstract

The term "Stridhana" first occurs in the Dharmasastra of Goutam but he did not define it. It literally means "Women's Property", Stri which means Woman and 'Dhana' which means Property, Stridhan means Women's Property, that is to say, property over which a women has got absolute power of disposal. Before 1956 the property of woman was divided into two heads : (a) Stridhan and (b) Woman's Estate, Section 14, Hindu Succession Act 1956 has abolished Woman's Estate and virtually introduced Vijnaneshwaras interpretation of Stridhan. The important feature of Stridhan is that the women can dispose off such property at her pleasure if not always during covertures (i.e. marriage) in all cases during her widowhood.

Keywords : Covertures, maintenance, nuptial fire, maidenhood

1. Introduction

Women's property is a comprehensive term and it may embrace property it may embrace property which a women may acquire by inheritance as partition or that which may come to her by gift from her parents, husband or his or her other relations.

In India, in Manu Smriti¹ opines that a wife, a son and a slave can have no property and that the wealth they acquire belongs to the person to whom they belong, is often quoted to show that ancient Hindu law did not recognize any Right of Property of women but in Yajhavalkya Smriti² says what was given to a women by the father, mother, her husband, or her brother, or received by her at nuptial fire or presented on her supersession³ and the like is denominated women's property⁴ Later on, Gautama smriti⁵ explicitly recognising women's right to hold and dispose of property .

As referred earlier Yajnavalkya employed the term Stri Dhana to denote the quality of the right in property which she obtained mostly by gifts over which she had absolute power of disposal.

Thus it is certainly a remarkable thing that the institution seems to have developed among the Hindus at a period relatively in the post-Vedic time in India. Thus it was primarily gifts and presents received by women from others which were known by the technical name of Stri-Dhana in the ancient Hindu law. As such Gautama, Narada and Devala, all authorities acknowledge the rights of women for owing separate property furthermore, according to Katyayana⁶ neither the husband, nor the son, nor the father nor the brother of the women has authority over the Stri-Dhana, if they utilize it by any circumstances they have to repay it with interest.

Prior to the passing of the Hindu succession Act in 1956, property owned by a woman could be classified in two categories. Viz (1) property of which she was an absolute owner (Stri-Dhan) and (2) property of which she was only a limited owner (woman's estate).

Property which was owned by a woman as Stri-Dhana passed on her death to her heirs she could also dispose of such property at her pleasure, if not in all cases during covertures (marriage), at least in all cases during widowhood.

Broadly speaking, whether a particular kind of property could be called Stri-Dhana would depend on the following three factors, Viz :

- (a) The source from which the property was acquired
- (b) The status of the woman at the time of acquisition. (i.e whether she was unmarried, married or a widow) and
- (c) The school of Hindu law to which she belonged⁷.

Literally, the word Stri-Dhana means woman's property' But in Hindu law it has, all long been given a technical meaning. In the entire history of Hindu law, woman's right (To hold and dispose of property has been recognized. At no time whether as a maiden, wife or widow, has the woman been denied the use of her property as an absolute owner (apart from the husband's dominant position in respect of certain type of Stri-Dhana)⁸ It is also true that at no time the quantum of her property has been anything but meager. The Smritikars differ from

each other as to what items of property constitute her Stri-Dhana. Gooroodas Banerjee very aptly said.

The difficulties besetting an enquiry into the question what constitutes Stri-Dhana, arise from the fact that majority of sages and commentators give neither an exact definition of Stri-Dhana, 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.⁹

According to the Smritikars, the Stri-Dhana constituted those properties which she received by way of gift from relations which included mostly movable property (Though sometimes a house or a piece of land was also given in gift) such as ornaments, jewelry and dresses. The gift made to her by strangers at the time of the ceremony of marriage (before the nuptial fire) or at the time of bridal procession also constituted her Stri-Dhana. Among the commentators and Digest writers, there is a divergence of opinion as to what items of property constitute Stri-Dhana and what do not. Vijnaneshwara commenting on the words "and the like" in Yajnavalkya's text expanded the meaning of Stri-Dhana by including properties obtained by inheritance, purchase, partition, seizure and finding (This expansion was not accepted by the privy council which resulted in the emergence of the concept of woman's estate). Jimutvahana gave a different enumeration of Stri-Dhana. so did the sub-schools of the Mitakshara.

Whether the property is Stri-Dhana or woman's estate mostly depends upon the source from which it has been obtained¹⁰.

Enumeration of woman's property.

The following may be the sources of acquisition of the property by a female.

1) Gifts and bequests from relations or strangers:-

Property given or bequeathed to a female whether during maiden hood, covertures or widowhood is her Stri-Dhana under the law of all schools except immovable property given or bequeathed by the husband. Where the gift is under a deed or will, the nature or her interest will depend upon the construction of the terms of the deed or will. If it is transferred absolutely, it would be Stri-Dhana if only limited, it would not be her Stri-Dhana¹¹. Regarding the gifts and bequests from strangers, it will depend upon the question whether it is given during maidenhood, covertures or widowhood and also to which school she is governed.

2) Property obtained in lieu of maintenance :-

According to all schools property given for or in lieu of maintenance to a wife or widow is her Stri-Dhana.¹²

3) Property acquired by mechanical arts :-

Property acquired by a woman by mechanical arts or otherwise by her own exertion during maidenhood or widowhood is her Stri-Dhana according to all schools. Property acquired during covertures, it is not Stri-Dhana in Dayabhaga and Mithila schools, but if she survives her husband it becomes her Stri-Dhana.

4) Property obtained by compromise :-

Sometimes a female is given property under a compromise or family settlement. Whether the property is her Stri-Dhana or not would depend upon the intention which can be determined on the terms of the deed and other circumstances. So where the property is obtained by the woman in a family settlement in consideration of her giving up her rights regarding her Stri-Dhana, it would be her Stri-Dhana in all the schools¹³. Where coparcenary consisted of two brothers and on the death of one brother, the other claimed his share by survivorship and his widow claimed it as his heir, the matter was referred to arbitration, certain properties under the award were allotted to the widow. The privy council held that it was her absolute property as there was nothing in the award to limit her interest on title¹⁴. Where a daughter who was not an heir by custom received property from a reversioner under a compromise, it was held to be her Stri-Dhana¹⁵.

5) Property purchase with Stri-Dhana :-

In all schools of Hindu law, it is a well settled law that the properties purchased with Stri-Dhana or with the savings of Stri-Dhana, as well as all accumulations and savings of the income of Stri-Dhana, constitute Stri-Dhana.

6) Property obtained by adverse possession :-

In all schools of Hindu law, it is a settled law that any property that a woman acquires at any stage of her life by adverse possession in her Stri-Dhana.

7) Property obtained by inheritance :-

A Hindu female may inherit property from a male, or a female. She may inherit it from her parent's side or from husband's side. The Mitakshara considered all inherited property as Stri-Dhana. But the Privy Council in a series of decisions treats such property as woman's estate. In one set of cases, the privy council held that property inherited by a female from males, is not her Stri-Dhana but woman's estate¹⁶. In another set of cases, it took the same view in respect of property inherited from the females. This is the law in all the schools except the Bombay school.¹⁷ According to the Bombay school, the property inherited by a woman from females, is her Stri-Dhana¹⁸. As to the property inherited from a male, the female heirs are divided into two : (a) those who are introduced into the father's Gotra by marriage such as intestate's widow, mother etc. and (b) those who are born in the family, such as daughters sisters, brother's daughter, etc. In the latter case the inherited property is Stri-Dhana, while in the former case it is woman's estate. After the coming into force of the Hindu succession Act, 1956, she takes all inherited property as her Stri-Dhana,

8) 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 Bombay¹⁹ and the Dayabhaga school. It is an established view that the share obtained on partition is not Stri-Dhana but woman's estate²⁰. This property is also now her absolute property or Stri-Dhana after the coming into force of the Hindu succession Act, 1956²¹.

Post-Act women's property:-

Any property that a Hindu female acquires after the coming into force of the Act will be her absolute property unless given to her with limitations. Thus, the property, obtained on succession or on partition is now her absolute property²² sub-section (2) Of s. 14, Hindu succession Act, 1956 lays down the limitations. The sub-section runs : "Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under will or any other instrument or under a decree or order of civil court or award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property" This sub-section enacts a well established principle of law, Viz, if the grant is given subject to some restrictions, the grantee will take the grant subject to those restrictions. Section 14 (2), lays down that if the gift, will or any instrument, decree or order of a civil court or an award grants only a restricted estate to a Hindu female, she will take property accordingly. In the absence of

such a intention, the women's grant will be her absolute property. The object of Section 14 is to remove the disability of a Hindu woman and not to interfere with the contracts etc. Sub-section (2) is based on the principle of sanctity of contracts and grants²³. The distinction between Sub-section (1) and sub-section (2) of s 14 is : "if the acquisition of the property by a female Hindu can be related to her antecedent right or interest in the property, in a limited sense, it will confer absolute ownership on the widow on and from the day of coming into force of the Act. If, however acquisition of property cannot have any connection or relation to any of the antecedent right or interest in the property of the female Hindu and the acquisition is conditioned by a restrictive clause, she will not become absolute owner but will be governed by the restrictive clause mentioned in the gift, will, instrument, decree or order of a civil court or an award²⁴.

Sectoon 14, Hindu Succession Act 1956 :-

Sub-section (1) of s. 14 of the Hindu Succession Act runs as under.

"Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner".

Explanation to Section 14 explains the meaning of the term 'property' in this context. The explanation runs as follows.

"In this sub-section 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise or at a partition or in lien of maintenance or arrears of maintenance or by gift from any person whether a relative or not, before, at or after her marriage or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever and also any such property held by her as Stri-Dhana immediately before the comment of this Act.

It may be seen that the above definition of property includes all the heads of Vijnaneshwar's enumeration of property

Sub-section (2) of Section 14 retains the power of any person or court to give limited estate to a woman in the same manner as a limited estate may be given to any other person.

Under s 14 (1), any property acquired by a Hindu female, except that which is covered by sub-section (2), before the Act came into force and which is in her possession when the Act came into force will become her absolute property and the property acquired by a Hindu

female except that which is covered by sub-section (2), after the commencement of the Act, will be her absolute property once her limited estate becomes her full estate by virtue of s. 14, a Hindu female can alienate it by gift or otherwise²⁵. Right that came to widow by virtue of this provision cannot be taken away by compromise suit or decree²⁶.

In Jose vs. Ramakrishna Nair,²⁷ It has been observed that expression "Female Hindu" and "any property" would mean a daughter also. Therefore, limited interest of daughter in the property would also get enlarged to full right after coming in force of this section²⁸.

Stri-Dhana according to judicial decisions

We will discuss this heading under two sub-headings :-

1) Property inherited by a women :-

According to privy council the property inherited by a woman whether from a male²⁹ or from female³⁰ does not constitute her Stri-Dhana in any case. But in Bombay Inherited property is Stri-Dhana except where it is inherited from a male into whose family she has entered by marriage³¹.

The rule of Bombay remains unaffected by the decision of decision of the Privy Council referred to above.

In Bhugwandeem v. Mynabayee.³² The Privy Council held that property obtained by a widow from her husband was not her Stri-Dhana property and therefore it passed to the heirs of the husband after her death and not to her heirs similarly in Sheo Shankar v. Devi³³ The Privy Council held that the property obtained by a daughter from her mother which property was Stri-Dhana in the hands of the mother was not Stri-Dhana in the hands of the daughter and therefore on the death it passed to the heirs of the mother and not to her heirs. It was held by the supreme court in A Perumalakkal V. Kumaresan Balkrishna³⁴ that the gift of immovable ancestral property by husband out of affection, to his wife and in fulfillment of his father's wishes, cannot be considered as one made for pious purposes or be treated as Stri-Dhana.

2) Share obtained by a widow on partition :-

The share obtained by a widow on partition of the joint family property is according to privy council, not her Stri-Dhana even under Mitakshara Law³⁵ and it passed on her death to the next heirs of her husband, in the absence of any agreement to the contrary.

- 3) Property given in lieu of maintenance either periodically or in a lump sum all arrears of maintenance and property transferred absolutely as gift in lieu of maintenance is Stridhana.
- 4) Property which given as a gift to a women by her parents and their relations during maidenhood, coverture or widowhood is Stri-Dhana Dayabhaga school does not Recognise gift of immovable property by husband as Stri-Dhana.

Property given is to woman by strangers whether by a gift or by a testamentary disposition during coverture is Stri-Dhana according to madras and Bombay schools, but it is not Stri-Dhana according to Bengal and Mithila schools.

- 5) Property acquired by a Hindu women either during maidenhood or coverture by mechanical arts or otherwise by her own exertions is Stri-Dhana.
- 6) Property acquired by a hindu women by adverse possession or purchased with her Stri-Dhana is Stri-Dhana.

CONCLUSION

In summing up, under the Hindu succession Act, 1956, among the twelve class I heirs of a deceased male eight and out of the twenty-three class II heirs twelve are women.

As a matter of fact it was basically un-realistic on the part of the architects of the Hindu succession Act to have raised a pious hope that a society which for centuries together had no system of giving any share by inheritance to most of the females would overnight began giving each one of them a share equal to that of her male counter-part.

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