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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

STRIDHAN V. MEHR: AN ANALYSIS OF WOMEN'S RIGHT TO PROPERTY UNDER PERSONAL LAWS

AUTHORED BY - KASHISH KHANNA,
IILM UNIVERSITY, GURUGRAM.

I. ABSTRACT

Stridhan in Hindu law and Mehr in Muslim law are materialistic advantages that women in these religions entitled to. How are they different from each other? What are the impacts of such practices? How they have been discriminatory? All these questions shall be answered by the end of this research paper.

According to Hinduism, "Stridhan" refers to the possessions that a woman acquired as presents from her family, most of which are items that are moveable. According to Islam, a woman is the exclusive owner of Mehr, sometimes referred to as Dower. However, despite their differences, they are similar in that they both represent the status of women in Indian society. Both are provided in cash and take the form of gifts either before, during, or in relation to marriage.

It is well known that patriarchy predominates in Indian culture, and the preference rights afforded to males in relation to property are only one more manifestation of this male-centric socioeconomic structure. The issue of women's property rights has been debated for a very long time due to deeply ingrained preconceptions in culture and society. The capacity for women to inherit, own, use, and dispose of property is a relatively recent phenomenon.¹ Part III of the Indian Constitution provides some essential rights to all people, while the Preamble envisions social, political, and economic equality for all Indian citizens.

¹ Property Rights of women under Hindu and Muslim Law, Legal Service India, <https://www.legalserviceindia.com/legal/article-10463-property-rights-of-women-under-hindu-and-muslim-law.html>, Last Visited on 4th February, 2024.

II. INTRODUCTION

Everyone is equal before the law under Article 14, and discrimination is prohibited by Article 15. Article 15 also aims to enhance the position and conditions of women and children. The State is allowed to create specific arrangements for women and children under Article 15(3). The courts have the authority to overturn legislation that violate the provisions of the constitution. Despite this, the rules governing marriage, divorce, child custody, maintenance, succession, inheritance, and adoption—all of which are secular in nature—have been linked to the spouses' respective religions. They specify each party's rights in the private realm, and rights conferred in the public sphere become inaccessible when those rights are restricted.²

III. RESEARCH METHODOLOGY

The approach that will be applied in this study is doctrinal research. There will be glimpses of comparative research as well. When situational or objective comparison is involved, comparative research is employed. For this research, secondary sources of data including research papers, scholarly publications, published books, journals, and online journals will be used.

IV. STRIDHAN UNDER HINDU LAW

1.1 Historical Background: A text from Yajnavalkya Smriti runs as under:

“What was given to a woman by the father, mother, her husband or her brother, or received by her at the nuptial fire or presented to her on her supersession (adhivedanike) and the like (adi) is denominated woman's property”.³ Speaking about these texts, Vijnaneshwar noted that Yajnavalkya's use of the term "adi" to refer to property that she may have obtained via inheritance, purchase, partition, seizure, or discovery, and that Manu's six-fold description of Stridhana is only symbolic. In the past, jewelry played a significant role in the Stridhana of Hindu, Jain, and Sikh communities, where women are not allowed to inherit landed property. Since, jewelry is easily converted into currency, it was considered an investment and a means of security. Many ornaments worn by members of migrating and nomadic tribal tribes serve as both investment pieces and markers of identity. Stridhana is then enhanced with additional

² Areti Krishna Kumari, Streedhan and Mehr, SSRN Papers, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=956235, Last Visited on 6th February, 2024.

³ Mitakshara II, IX.2

money, land, and other treasures. The only property on which a woman had complete rights up until 1956 was stridhana. She was not permitted to take possession of her mother's property through coparcener or intestate succession. Her estate was small, and worse, she was receiving just upkeep at times.⁴

1.2 Legal Status: Section 27 of the Hindu Marriage Act, 1955 grants women, the authority to have complete ownership of their Stridhan. Section 14 of the Hindu Succession Act of 1956 grants women the right to stridhan. The Protection of Women from Domestic Violence Act, 2005, Section 19(8), also grants the magistrate the authority to direct the respondent—that is, the person putting a stop to Stridhan—to transfer ownership of Stridhan to the accused lady. Significant modifications to women's property were brought about by the Hindu Succession Act, 1956, as stated in detail in Section 14 of the Act. The idea of the "women's estate" has been eliminated by this clause, which also introduces Vijnaneshwara's interpretation of Stridhan. The source from which either Stridhan or women's estate is derived mostly determines their differences. In order to remove any gender discriminatory components from the Hindu Succession Act of 1956, the Hindu Succession (Amendment) Act, 2005 (39 of 2005) was approved. As per the amendment, a coparcener's daughter, just like his son, acquires the status of a coparcener upon birth.⁵

1.3 Case Laws: In Rashmi Kumar v/s Mahesh Kumar Bhada the Court further stated that if the lady, in an effort to keep her Stridhan secure, gives it to her husband or in-laws, they will be held criminally accountable for breach of trust if they willfully misappropriate or convert such property for their own purpose.

The Supreme Court held in the Pratibha Rani v. Suraj Kumar case that any Hindu married woman becomes the sole owner of her Stridhan property and is free to handle it however she pleases. She can even appoint her husband or in-laws as trustees of the property, but she has the right to reclaim it should they fail to do so, in which case they will be held accountable

⁴ Supra Note 2.

⁵ Oishika Banerjee, Women's Property under Hindu Law; An Overview, <https://blog.ipleaders.in/womens-property-under-hindu-law-an-overview/>, Last Visited on 10th February, 2024.

under Section 406 of IPC. Section 406 of the Indian Penal Code defines criminal breach of trust and imposes a sentence of three years imprisonment, fine, or both.

In *Bhai Sher Jang Singh v. Smt. Virinder Kaur*, the court ruled that Jang Singh would be prosecuted under Section 406 of the IPC for Criminal Breach of Trust because, although he was given safe custody as a trustee, he dishonestly stole the ornaments and items, which he then retraced his steps to return—the Stridhan of Virinder Kaur.

1.4 Stridhan as defined by yajnavalkya smriti:

Lets first understand yajnavalkya smriti. The Sanskrit term "smriti" comes from the root "smara," which denotes recollection or recall of what is learned. This clearly establishes that the Smriti granthas are the recorded recollections of the sages who thoroughly studied the Vedas and internalised the teachings they articulated. Sometimes credited to Yajnavalkya is the "Yajnavalkya Smriti," a literature that explains dharma, or religious obligation; however, since it was composed hundreds of years after the Upanishads, it could not have been written by the sage. Some academics think that Yajnavalkya was the name of various Hindu instructors, but it's also plausible that the Smriti was named after him. Yajnavalkya acknowledged that Vyavahara, or "law," is a component of dharma. In addition to discussing the whole legal system, including substantive law—which deals with the rights and obligations of parties—and procedural law—which deals with how those rights and obligations are enforced—he also explains judicial process. Yagnavalkya smriti is the most often used smriti.⁶ Stridhan under this smriti is defined as under:

- Wealth that the lady received out of love and devotion from her brother, father, spouse, or mother.
- Gifts given to the bride at the time of the wedding in the presence of her maternal uncle, relatives, etc.
- The wealth received from her parents' cousins and other relatives.
- Prior to marriage, the bride-groom gave her wealth as a sign of respect for her duties.

⁶ Pushpalatha, Introduction To Smriti, IJHA Journal, https://www.ijha.in/assets/doc/journal/VOL-4_ISSUE-2/VOL-4_ISSUE-2_JULY-AUG_2022_10.pdf Last Visited on 14th February 2024.

- Riches bestowed upon the recently married bride as she left her father's home. Wealth given to the new daughter-in-law by her mother-in-law or father-in-law as a token of their love and devotion.⁷

1.5 Difference between dowry and stridhan

The present that the girl's parents give to her and her family is known as the dowry. A new daughter-in-law would imply higher costs in the past when people were farmers and had limited revenue sources; as a result, the bride's father would send some presents or necessities with her on the wedding day. Due to the patriarchal nature of our culture, where daughters were traditionally prohibited from inheriting their father's property, the dowry custom persisted in some areas. As a result, when a girl marries and moves in with a new family, her father gives her a portion of the family's assets, of which the male members would thereafter receive a portion. Whereas, Stridhan is a gift that is presented to a bride and remains with her till the end of her life. Mangal sutra, Wedding Ring, Toe Ring, Payal, and any other gift that the bride received solely from her parents or in-laws at her wedding.

The distinction between Stridhan and Dowry is that the former can be requested and given to the entire in-law family, while the latter is something that is presented to the bride by the families of both the groom and the bridegroom and remains with her forever.⁸ The main justification for this distinction is that, unlike dowry presents, in the event of a future marital breakdown, the lady will be entitled to reclaim the assets she got as Stridhan. After observing the suffering of an estranged wife, the Apex Court established the distinction between dowry and stridhan in the *Pratibha Rani v. Suraj Kumar* (1985) case. It was agreed that the woman would possess her Stridhan exclusively and that she may use it as she pleased. Additionally, it was determined that although the husband had no interest in or right to the Stridhan under normal circumstances, he was obligated to restore it when he was able to and may use it in times of extreme suffering.⁹

V. Mehr Under Muslim Law

⁷ Streedhan and Taxation Provisions, CA Club India, <https://www.caclubindia.com/articles/stridhan-and-its-taxation-under-provisions-of-it-1961-49675.asp>, Last Visited on 14th February, 2024.

⁸ Dowry and Stridhan , Word Press, <https://aishwaryasandeep.wordpress.com/2020/05/29/dowryvsstridhan/>, Last Visited on 16th February, 2024.

⁹ Supra Note 5.

A sum of money paid to the bride, or rather the wife, at the moment of marriage is known as the dower, sometimes called the Mehr. Numerous academics have seen this sum as a type of consideration since, according to Islamic law, marriage is a contract, and one of the requirements of a contract is a consideration. Mehr, however, is more than simply the money paid out at the moment of marriage; it is a right of the bride or wife and a way to provide financial security for the couple. Although the two are distinct from one another, one might even refer to this as upkeep for the wife. The Quran places a high value on Mehr, as seen by the following passages, which are examined in more detail below: "And give the women their dower as a free gift (after marriage); but if they remit any portion of it to you at their own free will, accept it and enjoy it with proper good cheer." "Go find something, even if it's just an iron ring." And even if you had given the first wife a substantial quantity of gold, do not take away anything from her if you choose to divorce her in order to accept another. Would you undo it by defaming her and committing a clear misconduct? These are some of the verses that may be found in the Quran. The narrative associated with the second verse listed above has several variants, but the main idea is that when a man approaches the Prophet to propose to a woman, he presents his garments to her even though he has nothing on him—not even an iron ring. But the Prophet states that you should educate your wife at least twenty Quranic verses (which the man knows). therefore, conveying the core of Mehr's importance. It doesn't necessarily have to be money; it might also be something that will improve the woman's quality of life. In this manner, one of the several Sunnahs encounters the idea of Mehr.¹⁰ According to Islamic marital customs, the husband is required to offer his wife a monetary gift called "Mehr." It is a crucial component of the marriage contract since it represents the husband's promise to sustain his wife financially and meet her requirements for the duration of their union.

Due to the nature of Mehr, it is essentially a gift that the husband gives to his wife and is not expected to be repaid until the marriage contract specifically states otherwise. At the time of the marriage contract, the parties agree on the amount of Mehr, which may be expressed as money, property, or any other kind of valued asset. According to Islamic law, the husband, regardless of his financial situation, must give his wife the whole Mehr. This guarantees the wife's financial security in the event of a divorce, death, or other unanticipated event. The Mehr intends to provide

¹⁰ Supra Note 2.

the woman with a sense of security, enabling her to feel independent and secure financially inside the marriage.¹¹

Although Mehr has its own lacunas. Mehr's fixed nature might work against it. At the time of marriage, the sum is usually decided upon and agreed upon, frequently depending on the husband's ability to make ends meet. But, as financial conditions might alter over time, the preset Mehr could not accurately represent the husband's current financial situation, which could put him under financial hardship. Mehr is frequently decided upon and agreed upon at the time of marriage, with the husband's financial situation being one among the many criteria that determine the amount. The fact that Mehr is set in stone and predestined might unintentionally reinforce gender norms. By highlighting the husband's financial responsibilities, it perpetuates the social norm that males should be the major breadwinners, which may restrict women's ability to pursue their own financial objectives and make equal contributions to the family's financial security. Furthermore, Mehr may be seen as a transactional aspect of marriage, emphasizing a financial agreement rather than developing a relationship based on respect and shared duties. Mehr enforcement and collection provide additional difficulties, especially in cases when a spouse is incapable or unwilling to meet this financial commitment. For women, this may result in drawn-out legal disputes and financial instability.

Moreover, the Mehr system can unintentionally put women in a position where they feel pressured to marry for financial stability as opposed to choosing partners based on personal preference and emotional compatibility. In the larger framework of advocating for gender parity, customs like Mehr must be reexamined and modified. This can entail promoting more adaptable agreements that take into account the changing financial realities of contemporary partnerships. Mehr attempts to safeguard women's financial rights, but it has drawbacks when it comes to gender equality because of its fixed character, possible transactional overtones, difficulties in enforcement, and consequences for women's autonomy.

VI. Discriminatory Provisions

How are the women discriminated against? Why are women at the mercy of some other person to

¹¹ Mehr under Muslim Law, Law octopus, <https://lawctopus.com/catalogue/clat-pg/concept-of-Mehr-under-muslim-law/>, Last Visited on 18th February, 2024.

stridhan or Mehr or any other property? Are these actually privileges or do they hide behind themselves age old prejudices? A woman was not permitted to be a coparcener, according old Hindu law. Then, where did she obtain the land? Her parents obviously approve of it. Adhyagni refers to goods given prior to the nuptial fire, whereas adhyavahanika refers to property given prior to the woman leaving the mother's house for her husband's. In addition to these two categories, the money known as dattam pritikarmani—a gift of affection presented to the bride by her mother, father, or brother—also falls under the category of Stridhana.

In the Muslim law, since the time of the Quran, Mehr has often only been worth Rs. 101. It is never raised. Grooms typically pledge large sums of Mehr to the bride at the moment of marriage, but they seldom ever follow through on their promises. The notion of Mehr was undoubtedly developed by Islam to protect women's rights, particularly those of married women who are always in danger of being talaq'd. Theoretically, that is accurate. However, the requirements are really quite conflicting. It is not feasible for a wife to be polite to her husband and demand Mehr at the same time. Furthermore, A women has to give up a certain amount of Mehr to dissolve marriage with her husband under the Khula form of Divorce. It can thus be derived that the discriminatory practices are age old although post an amendment in the Hindu law in 2005, women are entitled to be coparceners now but there is still a log gap to fill. Under Muslim law, there still are various discriminatory practices amongst various genders.¹²

VII. Conclusion

Regardless of their religion, Indian women face severe economic and social discriminations. Despite years of independence and a secular democracy with full suffrage, they nevertheless endure suffering. Hindu communities with high social and religious rank have dispersed some customs, such sati and dowry, across socioeconomic and religious divides. Neither Mehr nor Streedhana would be able to advance their standing or feel comfortable in their financial situation until women had greater political and economic influence.¹³ Streedhana as an idea is almost extinct now. Though theoretically existing, the notion of Mehr does not advance the status of women due to its religious, sociological, and other components. Thus, it has no positive impact on women's

¹² Supra Note 2.

¹³ Supra Note 2.

social or economic standing. Thus as suggestions, it can only be said that the status of women to be seen as equivalent with the men, old customs and non-discriminatory thinking should be harmoniously constructed together in a way that it does not portray women in need of either Stridhan or Mehr but as independent individuals not dependent on someone else's mercy and grace to have absolute right over a property.



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