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Matrimonial Property Law for ‘Women Empowerment’: Its Relevance, Need and Applicability

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The empowerment of women, particularly the ‘married women’ in the assertion of their ‘matrimonial rights’, has to be multifaceted and at a multi-level in the institutional setup, whether it is at the level of family, society, and nation. The rights pertaining to ‘Matrimonial property’ cannot be seen in isolation from the wider superset of ‘Matrimonial Rights’ which a married woman is entitled to in the canvas of extant laws including that in the realm of ‘Family Laws’. The quintessential aspect that becomes invariable important is the need to recognize the efforts of the women at the basic unit of institutional setup, that is the unit of the family. India is a country that is rich not only in diversity but also in culture and its strength of it is derived from the enormous tolerance and solidarity which it has demonstrated from time immemorial. The essence of any family system, partly the joint family system in common family setup in India is to provide a ground for recognition of oneself as part of the greater whole when it comes to the protection of social, legal, and cultural rights within the members of the family with a sense of unity of purpose. The vision of Sarada Devi, wife of Ramakrishna Paramhansa has been of empowering women as Swami Vivekananda had emphasised, "Education is the manifestation of perfection already in man". The empowerment of women has to be at various stages of the life cycle of the family where proper education and training of women becomes the fulcrum on which ‘the self-acquired property’ should be recognised as a property where the women have a complete right to alienation and control to assert her right irrespective of what her husband thinks as to the disposal of the property. The choice and consent should be absolute without any encumbrances in the practical sense.

Keywords: *family law, matrimonial family, mitakshara coparcenary, stridhan, vijñaneswara.*

INTRODUCTION

The societal awareness for any aspect particularly on 'Family Laws' has to be reinforced with strict vigilant behaviour at the individual level to arrest and prevent heinous crimes such as rape, organized crimes across trans-boundary, trafficking of women bringing within its ambit much wider and strengthened vigilant monitoring role in the context of Cyber-Crimes in this technological era. Research has demonstrated that mothers are worth a hundred schoolmasters and a mother's role in the family value system in our Indian culture and tradition can be playing a seminal role in building that framework and infrastructure of a robust, nimble, and yet supple environment for woman's growth. History is replete with examples where Indian society which has been at the forefront of humanity in the motto of '*Vasudhaiva Kutumbakam*', the whole world is a family, in upholding the values of tolerance and all-inclusive growth of all including the woman. The need of the hour is to break the shackles of any perceptions, stereotypes, and premonitions; whereby, gender-based challenges could be addressed in a holistic manner.

ECONOMIC RELEVANCE OF 'MATRIMONIAL PROPERTY'

The basic idea or the notion of having a '*Matrimonial Property*' is from the relevance of socio-economic rationale of equality of share in the rights of the nature of economic and financial support. With time and with liberal thinking, women have taken lead in all spheres of activities including errands of household work or working in services sectors, or contributing to the progress and development of entrepreneurial culture, whereby the greater good and the well-being of family members have been one of the pillars in their endeavour to seek employment opportunities. This can be seen from the prism of growth and development of family culture at one end and progress of mindset where women are the building blocks of the national development.

The share of contribution of women in the national Gross Domestic Product, commonly called GDP of the nation has been increasing with the passage of time. Broad basing the idea

sustained with Hindu Succession (Amendment) Act, 2005 where a woman can have rights over the paternal family property where she is born as 'daughter' eligible for 'equal property rights just as a son in her birth in the family', whereas when she marries her husband in her new 'Matrimonial family' her rights are the limited and equitable distribution of the property of the married spouses which should be fructified for truly empowering the women in real life. The essential services including education and healthcare have to be dovetailed with a progressive mindset for encouraging and empowering the citizenry to provide opportunities for married women so that there is no discrimination at various stages of progress in the life cycle of a woman and her development as a child giver who starts the family with 'child' in her womb.

IDEA OF EMPOWERMENT BEYOND MARITAL DOMAINS

The idea of women has gone beyond the realm of contemplation of a wife engaged in just 'household work' where the sphere of her activities has been progressive which reflects in the development of their scope of opportunities in personal, industry, and entrepreneurial sectors of work. In a progressive and forward-looking democratic country, the panacea of 'equal opportunity' for all strata of society fructifies if the men and women are seen from an 'equal and equitable' dimension. In Indian culture, from ancient times the significance of women has been seminal in the progress of civilization. History talks about *Gargi* and *Maitreyi* as torch bearers of woman's all-around development as they inspire women for generations to come.

Critically analysing from the perspective of Coparcener after 9th September 2005

After 2005, if the daughter asks for her portion by partition, she would be eligible to get the property as a 'coparcener'. After getting her portion, she might separate in status or with respect to property and go to her husband's family. Before 2005, the daughter was not eligible as a coparcener, so the other coparceners would make some provision to calculate the possible 'marriage expenses' or for the dependent as an unmarried sister in the family and leave it as surplus and decide what is the subject matter of partition, and out of the remaining partition would apply.

In Mitakshara School of Hindu Family Law, the three doctrines in Partition become very relevant, *firstly*, the 'Doctrine of per Stripes' denotes the division of shares as per branch or branch. *Secondly*, the 'Doctrine of per capita' implies that each member of each branch or branch takes a share as regards each other. *Thirdly*, the 'doctrine of representation', pertains to a woman taking the shoes of the coparcener on the death of her husband. In the Lifetime of the husband, the property after the partition would be jointly held by wife and husband. The wife cannot alienate her part of the property till the husband is alive. However, it is important to note that the husband does not have any such restrictions as the wife may have with respect to the portion of the property which was fixed during partition and can sell or alienate at will even during the lifetime of the wife.

Pertinently, Hindu Succession (Amendment) Act 2005 with the parent Hindu Succession Act 1956 as well as other extant Hindu Laws along with Judicial Precedents lays the foundation for applicability of understanding the rights and obligation of a coparcener who is a woman in a Hindu Joint Family. Section 14(1)¹ of the aforesaid Act along with Section 15(1) and 15(2)(a)² read together forms a vital analysis in that endeavour. Section 14(1) of the Hindu Succession (Amendment) Act 2005 has the provision of property inherited by females seen with the lens of 'notional partition'.

Reliance is placed on the case, *Arunachala Gounder (D) by LRS. v Ponnusamy and Ors.*³ the two-judge bench of Hon'ble Supreme Court of Justice Abdul Nazeer and Justice Krishna Murari, whether the first observation was on the daughter's right over the father's self-acquired property and second observation was that even if considering the situation where the daughter has no legal heirs, still the daughter would have the rights to acquire the property of her father which was self-acquired by him in his lifetime and subsequent to his death would go to her daughter also as being inherited from her father. Whereby, until the landmark judgment, hitherto the rights of the woman were limited with respect to acquiring an interest in her father's self-acquired property, but this judgment is empowering the woman to get the self-acquired property of her father.

¹ Hindu Succession (Amendment) Act, 2005, s 14(1)

² Hindu Succession (Amendment) Act, 2005, ss 15(1) and 15(2) (a)

³ *Arunachala Gounder (D) by LRS. v Ponnusamy and Ors.*, (2011) Civil Appeal No. 6659/2011

Analysis done from Ancestral vis-a-vis Self acquired Property by Woman Coparcener

The property which comes as unobstructed heritage following the four degree rule as such the ancestral property can be via, Inheritance, taken by Birth, Survivorship, and Partition. It is vital to mention that if anyone inherits the property via obstructed heritage it is not ancestral property. The obstructed heritage is collateral succession. Adopting a son by the mother (woman) breaks the obstructed heritage and is a part of the unobstructed heritage as such has it as 'ancestral property'. The analysis is done from the perspective of Self Acquired Property which the woman acquires as part of professional and educational qualifications and skills. As per Hindu Personal Laws, the self-acquired property can from various sources, that is Gift from a friend, a Gift from nuptial parents, which includes that from the maternal side like the mother's father and mother's mother, Some ancestral property was already lost and gone into other hand and later has been recovered, Gains from own experience or professional activities.

For Christian women, the property rights are well laid out in the Indian Succession Act, 1925, and in the case *Mary Roy v State of Kerala*⁴, it was held that the woman had the same property rights as to 'equal share in the property of her father' as that of the son. Likewise, for Parsis, the succession laws are defined by the *Parsi Interstate Succession Act, 1925*, which was added as Chapter III Part V with the insertion of Section 50 to 56⁵ of the Indian Succession Act 1925, where the criteria are based on membership of being a Parsi community member, whereby the children of a Parsi man marrying a non-Parsi woman are brought in the ambit of Parsi Succession Laws, which is not the case when a Parsi woman marries a non-Parsi man.

Gender Justice on 'Matrimonial Property Rights' with extant Personal Laws

With the Uniform Civil Code not yet implemented country-wide, though, in Goa, Article 44⁶ of the Constitution of India applies which enunciates that the State has endeavour to put in place a uniform and one law that is applicable irrespective of religious practices/procedure/belief which one professes or practices pertains to matters of marriages, inheritance, adoption, and divorce. The issue has been a debatable one with voices and arguments from different schools

⁴ *Mary Roy v State of Kerala* (1986), AIR 1101

⁵ Indian Succession Act, 1925, ss 50-56

⁶ Constitution of India, 1950, art.44

of thought. In the parlance of Matrimonial Property, there have been different takes depending on the varied religious and cultural groups and their views on the same. The efforts of the BN Rau Committee while codifying the Hindu laws were of vital importance to look at common personal Hindu laws of that time in harmony and in synchronization with extant law, for example, the Hindu Succession Act 1956 which applied to Hindus, Sikhs, Jains, and Buddhists. The law provides the opportunity for women to have a right to their father's estate.

In 2005, the inclusion of the woman as coparcener, akin to that of the son has been monumental not only from the perspective of rights which a married woman can have in her family where she was born but also on the property of her husband's Joint Hindu Family. In Muslim Law, the concept of 'Dower' or 'Mahr' as it is commonly known in Muslim communities has been construed to be a consideration for marriages to which the wife is entitled, for the very fact that marriages in the Muslim Law are a 'contract'. The entitlement to this consideration at the time of Marriage is vital for the protection and providing financial security in the emergent situation warranting a look at the entitlement bestowed on the married parties to Muslim Marriage. The concept of 'Matrimonial Property' has been a subject matter of debate and has been contentious as to who shall be eligible for 'Ownership and Possession' of the property as an entitlement to the wife at the time of her marriage. The question which emerges does the husband or the family members or coparceners in the husband's family have a right to that 'Matrimonial Property'. If the answer is in an affirmative sense, then to what extent or proportion are they entitled to those rights.

In *Sangeeta B Kadam v Balkrishna Ramchandra Kadam*, the wife had the contention of getting back her jewelry and ornaments which were alleged to have been with her husband which was part of Stridhana and in the instant case, because of lack of evidence, the case was rejected by the Hon'ble Court as the wife could not provide evidence nor had any proof that the list of the article was with the husband⁷.

In *Krishnan v the Padma*⁸, it was held by the Karnataka High Court that the interpretation of the word "at" in section 27⁹ of the Hindu Marriage Act 1955 should be 'at the actual time of

⁷ *Sangeeta B Kadam v Balkrishna Ramchandra Kadam* AIR 2005, Bom 262

⁸ *Krishnan v Padma* AIR 1968, Kant 226

marriage’ and the interpretation of “about” was ‘near and roundabout the time of marriage’ and this should not be construed as ‘time subsequent to the marriage’. The genesis of the **Uniform Civil Code** in Goa has its roots in the **Portuguese Civil Code, 1867** and which mandated the registration of marriages. If *Seema v Ashwini Kumar*¹⁰, laid the ground for compulsory registration of marriages, it is another step to acknowledge the importance that women have remedial measures to seek with ‘Marriage Registration Certificate’ as evidential proof from Marriage Registrar while addressing their concerns on divorce and maintenance. Equal distribution of ‘Matrimonial Property’ provides socio-economic security in a society where male chauvinism and patriarchal society, the gender-based biasness are heavy lop-sided towards the male dominant society.

From a comparative law perspective, in France, they have a system of ‘**Community Ownership of Matrimonial Property**’ where they predefine apriori the percentage of the portion of the property how it would devolve in case of termination of the marriage. Such a model and jurisprudential analysis are very difficult to be sustained in the Indian scenario as the villages and towns are still working to provide the basic infrastructure of education, health care, and micro-financing to sustain the growth and progress of the nation. It is vital to include the hinterlands in that ambit of consideration to bring about awareness and a progressive mindset that is forward-looking and provides the apt platform for women to grow and progress in the fields of their liking. In *Arun Kumar Agrawal v National Insurance Company Ltd.*¹¹, where the observation of Justice AK Ganguly is pertinent that the work of women is not valued as they form part of delivering goods and services where consumers are the family members and hence, have no monetary contribution in terms of goods and services rendered.

MATRIMONIAL PROPERTY WITH THE ‘SOCIETAL DEVELOPMENTAL’ DIMENSION

To quote author Ms. Laurel Atherton, "*A daughter is one of the most beautiful gifts this world has to give*". The nutrition and education requirement of a woman is of paramount importance for societal growth and well-being. The education of a woman should not be empowering but also

⁹ Hindu Marriage Act, 1955, s 27

¹⁰ *Seema v Ashwini Kumar* (2006) Transfer Petition (Civil) No. 291/2005

¹¹ *Arun Kumar Agrawal v National Insurance Company Ltd.*, (2010) Civil Appeal No. 5843/2010

enlightening at the same time. The Central Government's development endeavor in the form of '**Poshan Abhiyan**' has to be seen in that light which endeavors to address the pressing issues related to malnutrition in a comprehensive manner including the nutritional need of adolescent, pregnant and lactating mothers, reducing anemia in women and children with special and particular emphasis on girl child and women in particular. The societal angle has a vital aspect in 'providing recognition to the Matrimonial Property rights' which may go beyond the realm of Gifts, Wills, or Property inherited by her. According to the Hindu Succession Act 1956, the married woman, even if acquires any property on her self effort by virtue of professional expertise and qualification it is considered as 'self-acquired property' where the decision as to how it would devolve on the surviving coparceners after her death is a subject matter which has been largest dwelt into by the Hon'ble Courts of the law of the land.

In *Kamesh Panjiyar v State of Bihar*¹², the dichotomy of a female losing her gotra and maidenhood once she moves from her paternal home to her matrimonial home was deliberated upon and the dichotomy related to her rights in her matrimonial home with respect to Joint Hindu Family and limited rights as to alienation of ancestral property during the lifetime of her husband came up. In the practical scenario as seen in a catena of judgments that there have been issues related to a woman dying intestate and her self-acquired property goes to her male and female heirs after her death and the female relinquishes their rights with 'relinquishment deeds' in favour of male counterparts. This is an inherent dichotomy that defeats the purpose of extant laws when seen in tandem with the social mindset of the populace as to the rights over the property of a female who dies without leaving any registered 'Will' or 'Gift' for her kith and kins.

ASSERTING RIGHTS ON "MATRIMONIAL PROPERTY"

In the Hindu Joint family, asserting rights by the woman in her matrimonial property received by her during, before, and after her marriage with a purpose or for love and affection has been a quintessential component and pillar in building the security for meeting any emergent and

¹² *Kamesh Panjiyar v State of Bihar* (2005) Appeal (Criminal) No. 205/2005

pressing situation for a newly married woman once she embarks on her journey with her Husband in her newly married family. It is pertinent in that endeavour to look into her capacity and at the same time her capability to sustain a family on her own earnings if she is a working lady. The Matrimonial property, prior to the effective enforcement of the Hindu Succession Act 1956, has been restrictive one with that being equated to 'Stridhan' and 'Right on the limited estate'.

The inalienable rights of the woman once married to her husband with regards to 'Stridhan' has been construed in a different manner over the years with the inception of the Joint Hindu Family setup and reliance on the ancient scriptures as that of works of **Vijnaneshwara**, who was a sage and a scholar and his interpretation of *Yajnavalkya Smriti* had a profound influence, where *Mitākṣarā* is a '*viṛti*' that is of the nature of legal commentary on the inheritance of property rights by birth. In India, dishonest misappropriation of '**Stridhana**' property could amount to a criminal breach of trust. Doing a comparative study with other common law countries, in English Laws, a woman has joint possessory rights with her husband along with 'Matrimonial property' with the defined share of allocation as to how it would be disposed of in emergent conditions.

However, in India, as seen in *Rashmi Kumar v Mahesh Kumar Bhada*¹³, it was seen that when the wife had entrusted her husband with the 'Stridhana' and later the husband misappropriated it dishonestly, or converted it for his own usage the property 'entrusted' to him. The Hon'ble Court held that any special agreement to establish that the property provided to the husband was not an issue in question but rather a 'Criminal breach of trust' is evident considering that in another case *Balram Singh v Sukhwant Kaur*¹⁴, the Court held that 'Criminal Breach of trust' is to be construed as a continuing offence and whereby, a fresh cause of action accrues to the wife till the return of property.

RELOOKING FROM THE PRISM OF AN IMMENSE SEA OF OPPORTUNITIES

The role of women in a family has to be seen beyond that of giving birth to a new baby, nurturing and caring for an infant and the introduction of "The Matrimonial Property (Rights

¹³ *Rashmi Kumar v Mahesh Kumar Bhada* (1997) 2 SCC 397

¹⁴ *Balram Singh v Sukhwant Kaur* (1992) CrLJ 792

of Women upon Marriage) Bill in 2012 was an attempt in that direction to provide that security to a newlywed woman in her 'Matrimonial family'. The social issues pertaining determination of fetal sex when the child is in the womb of the mother via non-invasive prenatal testing (NIPT) have to be condemned unequivocally by all in society. In that endeavor, the campaign '*Beti Bachao Beti Padhao*' has to be a strategic awareness exercise drawing all the sections of the society for efficacious information dissemination with the intended objective of eradication of female foeticide and arresting the decline of 'sex ratio' with policy decision segmented and targeted in a strategic, clustered and systematic manner.

Indian Author Shri Amit Ray says, "*Smiling face of every little girl is the signature of God's presence.*" Providing more teeth to the implementation of legal statutes in the form of statutory provisions of The Child Marriage Restraint Act, 2006, The Protection of Children from Sexual Offences Act, 2012 or commonly known as POCSO Act, and Juvenile Justice (Care and Protection of Children) Act, 2015, among other Acts requires a holistic and all-inclusive approach. The approach should not only be multi-level in society but also multi-institutional level. Institutionalization of best practices and preventing any form of discrimination against the female in admission opportunities in schools and colleges and in furtherance of the intended objective in employment is another vital area.

In this context, the Fundamental Right enunciated in Article 21A¹⁵ of the Constitution of India in providing free and compulsory education to all children in the age group of six to fourteen years has to be read in conjunction with Article 23¹⁶ enunciates 'Prohibition of traffic in human beings and forced labour' along with Directive Principles of State Policy in Article 45¹⁷ where State role of providing early childhood education and care to child up to 6 years is pivotal. The evolving concept of 'Gender Budgeting' and the growing responsibility of statutory bodies such as 'Central Adoption Resource Authority' (CARA) has to be seen in that light.

¹⁵ Constitution of India, 1950, art.21A

¹⁶ Constitution of India, 1950, art.23

¹⁷ Constitution of India, 1950, art.45

CONCERTED EFFORTS FROM STAKEHOLDERS TO RECOGNIZE THE “MATRIMONIAL PROPERTY RIGHTS”

The instant issue of “Matrimonial Property” as deliberated upon in the instant paper has to be seen from the legal, social, and socio-economic security of women in the responsibility matrix in the family system. Section 27 of the Hindu Marriage Act 1955, has to be reviewed with new vigour to include in its ambit ‘property’ at the time of marriage to include the earnings of the wife and inherited property from her paternal family of birth when she embarks on a new journey with her husband in her ‘Matrimonial family’. Broad basing the analysis, it is pertinent to mention that concerted efforts from the Ministry of Women and Child Development along with various nodal agencies including the NGOs, Child Right Activists have to dovetail their policies, awareness initiatives, and sensitization programs.

The awareness activities have to have an Information, Education, and Communication (IECs) strategy synergized at the national and international levels such as UN Women and UNICEF among others. The advocacy programs oriented and developed in a concerted fashion can be instrumental in that endeavour. The Central government initiatives such as *Ujjawala*, and the *Swadhar Greh* scheme have to be in unison with the responsibilities of nodal psychologists and counselors in that sector of workers who have to be made stakeholders in this journey of growth which includes women at each level of progress of the country.

Various line ministries such as the Ministry of Law and Justice, Ministry of Education, Ministry of Labour and Employment, and Ministry of Information and Broadcasting have to work in tandem with the Ministry of Women and Child Development for meeting the broader goals, safeguard the interest of all the stakeholders including a woman and girl child which has ramification on social security and social well-being of the tender age of the woman and girl child for their holistic and inclusive empowerment for Nation Building.

CONCLUSION

Marriages are a sacrament that is ‘made in heaven’ and is of high institutional value in the family value system and the point of ‘**Matrimonial Property**’ is to see as ‘**equal economic partnership at the time of marriage between the spouses**’. In the case of *Sujata Sharma v*

*Manu Gupta & Ors*¹⁸ which was decided on 22nd December 2015, the Hon'ble Delhi High court observed that being the eldest female member of a family and after the 2005 amendment to Hindu Succession Act, a female being the coparcener in a HUF, it was held that the female woman may become the 'Karta' of a Hindu Undivided family.

A three-judge panel led by Justice Arun Mishra in *Vineeta Sharma v Rakesh Sharma*¹⁹, delving into Section 6²⁰ of the Hindu Succession Act 1956 with amendment held that daughter inheritance rights are 'absolute' and without any condition. The Court also held that even if the father was not alive when Hindu Succession (Amendment) Act 2005 came into effect, still the daughter is the coparcener as the aforesaid Act was applied retroactively, entitling the daughter the same rights as a son in her Hindu undivided family. **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** was the result of the judgment *Vishakha v State of Rajasthan*²¹ case framing the guidelines for women's safety at the workplace. *Shayara Bano v Union of India*²² case held that instant triple talaq, also known as talaq-e-bidat is against the basic tenets and is in contravention in light of the Quran.

The Apex Court decision on *The Secretary, Ministry of Defence v Babita Puniya & Ors.*,²³ with permanent commission extended to women army officers is a landmark judgment to empower the rights of the woman having a profound effect on the socio-economic conditions of women in society. The catena of judgments such as *Mohd. Ahmed Khan v Shah Bano Begum*²⁴, *Joseph Shine v Union of India*²⁵ judgements, and the **Sabrimala case** that is *Indian Young Lawyers Association v State of Kerala*²⁶ are not only empowering but also revisiting the empowerment of women in a different dimension which is the fulcrum for recognition of the contribution of woman and their role as a vital pillar in the societal value system. Recognition of '**Matrimonial Property**' and the rights of a newlywed couple should form the perfect epitome of institutional

¹⁸ *Sujata Sharma v Manu Gupta & Ors.*, (2015) CS (OS) No. 2011/2006

¹⁹ *Vineeta Sharma v Rakesh Sharma* (2020) Civil Appeal No./Diary No. 32601/2018

²⁰ Hindu Succession Act, 1956, s 6

²¹ *Vishakha v State of Rajasthan* (1997) 6 SCC 241

²² *Shayara Bano v Union of India* (2017) Writ Petition (Civil) No. 118/2016

²³ *The Secretary, Ministry of Defence v Babita Puniya & Ors.*, (2020) Civil Appeal Nos. 9367-9369/2011

²⁴ *Mohd. Ahmed Khan v Shah Bano Begum* (1985), AIR 945

²⁵ *Joseph Shine v Union of India* (2018) Writ Petition (Criminal) No. 194 OF 2017

²⁶ *Indian Young Lawyers Association v The State of Kerala* (2018) Writ Petition (Civil) No. 373/2006

empowerment and a holistic impetus for financial autonomy of women from the perspective of the societal ecosystem and its sustainability in long run.