

# MARRIAGE AND INEQUALITY: THE NECESSITY TO REGULATE MATRIMONIAL PROPERTY LAW IN INDIA

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**Abstract:** Men and women form an integral part of the civilized society and they have specific roles in the community. These roles are observed through the existing morals, customs, norms and laws. Though the roles have been changing through the ages, at the present stage most of them have been stereotyped based on gender. Women are supposed to conform to the gender assigned roles and so are the men. Any deviance from the same is generally frowned upon. In the matrimonial space too, though wife was referred to as “ardhangini” and was considered to be half along with her husband of the eternal being under Ancient Hindu marriage, she was mostly confined to household work and their main role was to take care of the domestic chores, bring up children and take care of sick and elderly people. But as society progressed, women broke out from these gendered roles and became part of the market forces. Irrespective of whether the wife is working or not she still has to adhere to the gender assigned role and take care of the domestic work. The pertinent issue here is that household work is not considered to be a value oriented work and that is the primary reason as to why the wife is denied any share in the matrimonial property acquired by the husband after the marriage. Though the wife doesn’t make any financial contribution per se in the acquisition of the property her relentless work in the household is easily overlooked in the patriarchal set up. It is time that India adopts the law on matrimonial property so that the wives can get their due and live a respectable life even after dissolution of marriages. This article discusses the status of wife in the Hindu society and the need for matrimonial property law in India.

**Keywords:** Domestic Work, Financial Contribution, Matrimonial Property, Patriarchal.

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**Introduction:** Men and women perform different roles in the society. These roles are observed through the existing morals, customs, norms and laws. These roles have not been rigid and have seen variance since the ages. In the primitive civilizations, when the sexual relationships between men and women were completely unregulated and promiscuous, “the mother right” was considered to be the dominant principle as maternity was a certain fact but paternity was not. As the society progressed from hunting to herding state, men and women shared their societal role equally. The men involved themselves in agriculture and husbandry whereas women took the charge of domestic chores. In this society descent was calculated through the female line. Furthermore the advent of domestication of animals, breeding of herds, weaving, agriculture and metal-working have generated surplus resources. Slavery emerged at this point leading men to gain more power and property. The acquisition of new wealth led men’s position in the household to become dominant. Thus “mother’s right” was overthrown quite conveniently and men passed their property to their children through strict monogamy. Besides the women’s sexuality was commodified on the basis of their reproductive capacities and the related services rendered by them. Friedrich Engels in his book *The Origin of the Family, Private Property and the State* (1884) states that “the overthrow of mother right was the world historic defeat of the female sex.”

Margaret Benston in *The political economy of women’s liberation* (1969) has explored the women’s domestic labor in a detailed fashion. She maintains that the women folk are equally responsible for the production of simple use values associated with homes and families. Unlike the paid work of men, which produces exchange as well as use value, the unpaid work of women is perceived as superfluous from the standpoint of capital because it produces only use value. It therefore acquires a secondary status as it does not directly produce for the market or command wages.

Within the domestic space men and women share different responsibilities. Even though women constitute a major share in the work force now, she still is expected to conform to the gender roles assigned through patriarchy. Basically the work outside the household comes as an addition to the household chores. For the women who are home-makers the situation is even worse, no matter how much effort she puts in her household in child bearing to child rearing to caring the sick and elderly, it is considered as unproductive, unprofitable and economically cheap. The fact that a woman’s work is considered to be of no economic value she is denied any

co-ownership of property with her husband upon her marriage. The concept of matrimonial property doesn't find a place under the Indian legal system. The spouses continue to treat their property acquired after marriage as separate property. The valuation or distribution of property upon the death of the husband or after the dissolution of marriage is referred to as "separation of property" model. Under the present legal regime, there is no corpus of "matrimonial property" over which the spouses can exercise a claim. The disproportionate holding of assets among women is primarily due to the reasons discussed above of not recognizing her household work as a value oriented one, confining her to the domestic sphere and even if she does steps into the job market paying her low wages.

**Status of Wife in Ancient Hindu Society:** In the Hindu society, paternal power existed in its full swing there is no doubt about the fact. It was probably at its zenith during the Dharmasutra period. One of the most remarkable features of Hindu legal history is the transformation of the patriarchal family Vedic age into the Hindu joint family, which, despite various stresses and strains has survived till date. The Dharmasutra period has marked the beginning of the process by which the patriarchal family was transformed into joint family. The emergence of the joint family, on the one hand, curbed and curtailed the absolute paternal power; on the other hand it provided continuity to the family. It became a perpetual institution which continued generation after generation. The death of the head of the family did not mean dissolution of the family. It merely meant substitution of another head for the deceased head of the family. In the Vedic age the father was the head of the family because it was essentially a patriarchal family and as the head he enjoyed vast powers. There are clear indications in the ancient literatures which prove that the father had the power of life and death over children and all those persons who belonged to his household. Whatever acquisitions were made by children, they automatically belonged to the father. Not only sons but daughters also were under his absolute power so long as they were not married.

The position of wife further deteriorated in this period, the husband's dominion over her became more extensive. Still she retained her right of participation in sacrifices with her husband, still she was considered half of her husband, and still it was she who completed him. Yet she passed into the complete tutelage of her husband and he exercised great powers over her including the power of correction.

**Wife's Right to Property:** Under the ancient Hindu law, the wife passed into the absolute dominion of her husband. Marriage was considered to be a sacrament, a permanent, indissoluble and eternal union. The wife was required to adore her husband even though he was devoid of virtues as he is her lord and master. A wife was never supposed to do anything that might displease the husband irrespective of whether he was dead or alive.

In the year 1937 on the 14<sup>th</sup> April, The Hindu Women's Right to Property Act came into force. The Act of 1937 was the result of dissatisfaction expressed by certain sections of the society specially the feminists with regard to the discriminatory legal status of property rights of women despite the enactment of earlier legislations. At the very outset it is important to note that the Act conferred limited right to property only on three types of widows- a) intestate's widow's b) intestate's son's widow c) widow of predeceased of a predeceased son. This meant that these three widows could inherit the property alongside the male heirs which was not the case according to the customary laws of the Mitakshara joint family prior to the enactment of this Act. In *Shamlal v. Amarnath*, (1970) 1 SCJ it was held that a widow is entitled to inherit only a separate property of her husband and not the coparcenary property.

Woman's estate means limited estate, the woman holds property for her lifetime as a limited owner only. After the termination of her period to retain the property, the property reverts to the reversioners of the last full owner. In the Mitakshara jurisdiction, it is an established law that when a partition takes place, the share obtained by a woman on such partition constitutes woman's estate. The Privy Council in *Thakur v. Raj*, (1886) 11 MIA 140 held that the property inherited by a woman from males is woman's estate. Therefore the characteristic of a woman's estate is that a woman cannot alienate the corpus and on her death, the property devolves upon the next heir of the last full owner.

The persona of the husband after his demise continues through his wife who is the surviving half of the husband and he continues to live through his widow so long as she is alive. It was this concept of the Hindu law which was sought to be acknowledged and given consequence to by the Act of 1937.

The right of the widow put the 'survivorship rights' of the other coparceners in abeyance and on the death of the widow those rights revived. This piece of legislation not only made the widow an heir along with her sons, but also introduced the widowed daughter-in-law and the widowed grand-daughter-in-law as new heirs. These widows succeed with the sons and before the daughter, the daughter's son and the parents. It was in fact unfair, intimidating and absolutely inexcusable to stick to the theory of limited estate for women in the property inherited by them.

**Concept of Matrimonial Property:** The Hindu Succession Act, 1956 granted absolute property rights to women over the property inherited by her from her father, husband or over her "Stridhan" under section 14 of the Act, thereby removing the disabilities attached to her property rights by the virtue of Women's right to Property Act, 1937 under which a widow held only limited right over her property.

Further the Hindu Succession (Amendment) Act, 2005 for the first time recognized the rights of daughters and equated her with the son by making her a coparcener and thereby giving her an interest by birth in the ancestral property. But neither these legislations nor the subsequent amendments dealt with the issue of matrimonial property.

Under the personal laws of Hindus, a wife's right accrues only when she becomes a widow where she is the Class-I heir under the Hindu Succession Act 1956 or as a widow of the pre-deceased son and takes the share that her husband would have taken had he been alive. She also gets a right to maintenance from her father in law under the provisions of Hindu Adoption and Maintenance Act, 1956 upon the death of the husband out of the ancestral property of the father in law. But during her husband's life, the only rights she gets is of maintenance and in case of dissolution of marriage an alimony which may or may not be sufficient to live her life with dignity.

The concept of matrimonial property states that whatever property is acquired by the husband after marriage, the wife has a share over it which would be determined by the court.

The state of Goa is the only state where the Uniform Civil Code applies under which all the religions are treated equally. The matrimonial property law under the Goan law states that women belonging to all the religions would have a right over their husband's property howsoever acquired after marriage. The law doesn't differentiate between an inherited or self-acquired property for the purposes of division. The Goa model is based on the civil law system which provides for joint ownership as opposed to separate ownership under the common law system. India follows the common law system hence this inequality has been perpetrated against the wife under the institution of marriage.

In the patriarchal Indian society it is typically accepted that upon marriage, a wife belongs to the husband and his family. She becomes the sapinda-gotraja of the family of marriage. Therefore denying her the share in the property is not in the spirit of the marital union.

There are several reasons for not recognizing the concept of matrimonial property in India. Firstly, the gender biased approach favoring men who have been holding the property in their name traditionally. The laws are not gender neutral and leading to the discrimination of women within the marital institution. The second reason is the non-recognition of non-financial contribution of a wife in the household. In a patriarchal society, domestic work is considered to be non-value oriented which is treated as a duty to be done by the wife in the home without any value. Often a wife's non-financial role is considered to be irrelevant and meaningless. In most cases the women are often forced to leave jobs after birth of children or accept low paying ones after marriage just to stay with their husband. These sacrifices often go unnoticed by the society and also by the courts while awarding alimony or maintenance in case of breaking of marriage. In countries such as UK and others in Europe, the courts apply the doctrine of constructive trust to determine how to distribute the matrimonial property between spouses at the time of dissolution of marriage. This doctrine recognizes the non-financial contribution of a woman's work in the domestic sphere like domestic chores, child bearing and rearing taking care of sick and elderly and so on while deciding the share of women in the matrimonial property. Thirdly, the courts in absence of any legislation fail to recognize husband and wife as equal entities, thereby awarding minimum maintenance in most cases. The maintenance amount in majority of the cases is given as a gratification supported by the logic that it is given to an ex-spouse from the property of the husband who is the rightful owner of the same.

**Recent Developments in India:** In India for the first time, beyond the state of Goa, the Marriage Laws Amendment Bill was introduced in Parliament in 2010 which aimed to recognize the concept of “matrimonial property” among Hindus. The objective of the bill was to vest the wife with a certain share in the assets of the husband that have been acquired by him in the course of their marriage. In the event of the marriage getting dissolved, the proposed bill provided that the wife would be entitled not only to maintenance but also a share in the husband’s “share of the immovable property” to be determined by the court. But the bill provided for such a mechanism only for those marriages which were dissolved based on the irretrievable breakdown theory.

**Conclusion:** There is a need to adopt the concept of matrimonial property in the Indian legal system by giving adequate legal recognition to the wife’s non-financial contribution in the household instead of continuing the test of actual financial contribution.

Over the centuries women have been treated as a chattel and have been given minimum rights, their sole purpose was to please the family members and take care of the household chores. They were not considered to be at par with the male progeny in any regard. Slowly with the evolution of Joint family system, their importance also was felt and they were extended certain limited rights with regard to enjoyment and ownership of property. Eventually these rights were substantiated with the enactment of women’s right to property Act 1937 and later solidified further by Hindu succession Act 1956. But the major breakthrough came in 2005 when daughters by birth could be the coparcener in her father’s property and would be subjected to same rights and liabilities like her brother. Though the amendment was a huge step in recognizing daughter’s rights, it didn’t create any substantial changes regarding the position of the wife.

It is a testimony to growing feminist consciousness around the world that several common law countries such as Britain, United States, Canada and South Africa have in varying forms and degrees embraced the concept matrimonial property and that India should do the same if substantive as well as formal equality among men and women is to be achieved.

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