

## Historical Background of Gender Equality and Succession Right of Hindu Women's Right of Property in Tamil Nadu

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### Abstract

Woman has been the Centre of study from the ancient to the modern times. She has been branded as a mysterious creature as well as a devoted mother and self-sacrificing wife. Moreover, the economic status of women is considered to be a touchstone for the development of the society. A description of status, position and education of women of ancient India is incomplete without making any reference to Manu's views. In the words of Manu Smiriti (about 200 BC) 'woman is a perpetual minor and has to lead entire life under the guardianship of the father, the husband or the son'. The position of women in a given society can be understood properly through the agency of the different customs which the property rights have recognized and protected. Succession rights to women have taken them to heights and new consciousness. Primitive Age is the beginning stage of human culture. In the beginning man led a life like that of animals. Hunting animals was his only means of livelihood. Man had fought with other human beings and animals for food.

**Keywords:** Hindu; Proprietary; Law; Rights and Women

### Introduction

Woman has been the Centre of study from the ancient to the modern times. She has been branded as a mysterious creature as well as a devoted mother and self-sacrificing wife. Moreover, the economic status of women is considered to be a touchstone for the development of the society. According to Jawaharlal Nehru, status and social position of women indicates country's progress more than anything else.

The ancient Indian social society held a noble and respectful view about women in the society. There were references in the ancient literature that they had given counsel to men in their society. To worship women as Goddesses by saying that "Yatra Naryastu Pujyanta Ramante Tatra Devatha (i.e.) where women are held in respect, there dwells the goddess (Satisfaction and Happiness) [1]. They held this view because they considered women as the custodians of their culture and sensible beings in life.

A description of status, position and education of women of ancient India is incomplete without making any reference to Manu's views. In the words of Manu Smiriti (about 200 BC) 'woman is a perpetual minor and has to lead entire life under the guardianship of the father, the husband or the son' [2].

The progress of a country depends upon the welfare and progress of all the members of its society at a given time, in the society which consists of nearly half of its members who are women. Women perform nearly two-thirds of work hours, receive one length of the world's income and own less than one-hundred of world's property [3].

The position of women in a given society can be understood properly through the agency of the different customs which the property rights have recognized and protected. Succession rights to women have taken them to heights and new consciousness. The word "succession" is a transmission by law or by the will of man to one or more persons of the property and the transmissible rights and obligations of a deceased person [4]. The right of women to succeed to any property differs from one religion to another depending on the personal laws. Religion plays an important role in the devolution (the passing of property to another on the death of a person) of property on women in the earlier days. But, with the advent of the modern government and legislatures, most of the succession laws have been codified and consolidated.

Primitive Age is the beginning stage of human culture. In the beginning man led a life like that of animals. Hunting animals was his only means of livelihood. Man had fought with other human beings and animals for food.

During this period, there were no instances to prove that man dominated over woman. Men and women had been on equal terms. Then, in the next stage, he learnt the art of hunting animals and he learnt how to use stones and iron tools as weapons. He became interested in agriculture and rearing of animals. So the chief occupations of men were agriculture and rearing of animals. Women helped men and became equal partners. Thus the men started settled life. This aspect of settlement paved way for creation of family, institutions and concept of property. To protect their family, institutions and properties, it was made compulsory to fight with each other frequently. Muscle power played decisive role in acquiring property. Women who were naturally weak were given household works such as nourishment of children, preparation of food, and the maintenance of houses. Thus a mere glance over the life style of man and woman in primitive age shows that their equality began to give room for division of labor between man and woman. This division of labour started and was regularized in the primitive stage. In this primitive stage, women's right of ownership of the property and management were recognized [5]. In fact, there were several tribes established on the basis of matriarchal system. The surname was being called and carried on the name of mother. If any man died, his entire property was entrusted to his mother or wife or daughter. Thus women were equally honored in the society. In certain periods, she was given more priority than man.

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## Ancient period

This system waned and male domination started in ancient period. Slowly, the patriarchal (Pertains to power relations; men have the right to exercise power, to take all decisions and execute the decisions) societies occupied the place of matriarchal (Pertains to power relations; women have the right to exercise power, to take all decisions and execute the decisions) societies. So the surname was carried on the name of father. If a man died, his property was distributed among his sons, father and other male relatives. The priority to the females was lessened or completely suppressed up. Gradually she was thrown into the corner and was made as the weaker and dependent person.

In wars, the defeated men and women and their property were handed over to the victorious. The defeated men and women were treated as slaves. The slaves were not given political, social and economic rights in the society. Just as the houses, lands etc., the slaves were also treated as property [6]. Gradually, this position was also applied to the women. Women were also treated as the property of the men. Women's independent existence and their freedom were smashed. Their property rights were usurped by men. In succession, only men were recognized as the legal heirs (A person who succeeds by descent; who inherits or may by law inherit) and the women were completely excluded. Women were left without property and became socially the weaker section. Their position was no better than that of slaves, since matriarchal societies were completely or more or less destroyed. In place of them, patriarchal societies came into existence in the middle age. Father began to dominate all the affairs of the family. Politically too, the state was ruled only by men.

In Hindu tradition, the husband and the wife should be the joint owners of the house hold and its property. The husband was required to take a solemn vow at the auspicious occasion of marriage that he would never transgress the rights and interest of his wife in economic matters. The theory of the joint ownership of the couple had kept the wife at a minor advantageous position. It was not pressed to its logical conclusion in order to secure her an absolute equality with the husband in the ownership of the family property [7].

General circumstances in society were very unfavorable to the theory of the joined ownership being utilized to invest the wife with the powers and rights. Landed property was for a longtime being owned either by village committees or by large joint families. Individual ownership was but slow in coming into general recognition in the case of males. By the time individuals and coparceners could assert their individual rights in the estate of the family, the husband had come to be denied and it became very difficult for jurists to invest the wife with any substantial rights as against the husband. The joint ownership of the husband and the wife practically remained a legal fiction. In effect, the husband was the sole owner of the family property and the wife had no legal remedy, if he proceeded to squander it and defeat her right to maintenance or a share. It was only with reference to immovable property that Hindu society was for a long time unwilling to invest the wife with full or exclusive ownership. As far as movable property like ornaments, jewels, costly apparel etc., was concerned, a woman's right to own, it was recognized at a very early date. All this property went under the category of stridhana or women's special property.

**Vedic age:** The position of women in Vedic period can be judged by the way in which the birth of a girl was received. People received the birth of a girl without happiness. The birth of a girl would not give as much joy as that of a boy. The daughter had always been under the control of her father until the time of marriage, and then

she was under the control of husband and his family. Sometimes, if a daughter remained unmarried throughout her life, she would be under her father's protection. If her father died, she would come under the control and protection of her brothers, provided the brothers had undertaken to maintain her. Otherwise she had to live on her own. Perpetual tutelage of women is of later origin [8]. The social or familial status of the daughter was fairly satisfactory in the early Vedic period. Women were educated like boys and had to pass through a period of brahmachariya [9]. Instances of Gargi Vacaknavi and Maitreyi, of course prove that education was imparted to females, and some of them attained to rare intellectual heights. Daughters did not have any right to hold, acquire or dispose off property. It simply means that she did not enjoy legal status in the early Vedic times. But the daughter living in her fathers' house throughout her life got a share in his property. However she could not claim any share with her brothers because it has been laid down in the Rig Veda that a son born in the family does not transfer wealth to the sister. Married daughters living with their husbands could inherit from their fathers only when they had no brother. Wife in the Vedic period suffered a disability of not having any legal status with respect to property. She could neither hold nor inherit property [10].

The wife was obviously unable to defend her property and so she could not hold property. However among the Aryan community as a whole, the earliest traces of separate property of women known as "bride price" can be perceived [11]. A part of this price was paid by bridegroom either at the wedding or the day after it. When he went to the bride's father and paid an amount as compensation for the family authority which was transferred to the husband. And another part went to the bride herself and this part was enjoyed by her separately and kept apart from her husband's property.

Daughters did not have any right to hold, acquire or dispose off property. She did not enjoy any legal status in the Rig Vedic times. Daughters were looked upon as encumbrances. Ceremonies were performed with the special object of avoiding the birth of a girl. The social and familial position of daughters deteriorated in the age of Smiritis and Commentaries [12]. Thus females were not considered to be equal to males in respect of property rights. But so far as her rights in the property of the father were concerned, she was not altogether ignored. Manus said, "As is self, so is a son, and a daughter is equal to a son, how they, when one's self is living in a form of one's daughter, can anyone else take the wealth" [13].

With respect to the separate property of the father, the daughter's right to succeed to that property was restricted and limited. She could only succeed in default of son, grandson, great grandson and a widow. In some circumstances, the Smiriti writers held the view that she should get to the extent of one-fourth share of what she should have had, had she been a son. Manus said: "But to the maiden (Sister) the brothers share severally give (portion) out of their share, each out of his share, one fourth part, those who refuse to give (it) will become outcastes" [14]. So, it can be summed up that in the past the position of the daughter with respect to her right of succession (the process by which the right to property descends to one on the death of another) to her father's property was far from being satisfactory.

**Post Vedic age:** During the post Vedic period, there were slow changes in the position of women. The proprietary right of the wife also continued to be unrecognized, the only exception being in favour of marriage gifts of movable property. But, Manus, has said regarding the legal status of the wife that she had no proprietary right, "a wife, a son, a slave, these three are declared to have no property;" the wealth which they earn is acquired for him to whom they belong [15].

The reason behind this was that wife had no separate entity of her own apart from her husband. They were considered to be mere spectator in the eyes of law. Therefore, wife was entitled to possess no separate ownership. She had no rights over the property of her husband during his life time beyond the rights of maintenance and residence. Although the right to property of wife was not recognized, there was an exception of that the marriage gifts of immovable property given to her which later developed into the concept of limited ownership.

Marriage during the Vedic period was considered to be indissoluble. Like wife, widow had no right in the property. She could live in the joint family and receive maintenance. Her living in the joint family was considered to be unsafe. Because of the vicious wishes of brother in law, the desire for her husband's share of property was not recognized. The case of a widow is peculiar, because she had nobody to look after her as daughter, wife or mother. And she was not recognized as heir to her husband.

**Age of Smirti:** This Smiriti period witnessed conferment of certain rights on female heirs by Manu, Yajna Valkya, Brahaspati, Narada, the Hindu law givers and Smiriti writers in the order of succession. The Smirithikars right from Gautama and Manu in around 5<sup>th</sup> to 3<sup>rd</sup> century B.C, acknowledged a concept of ownership which they called *streedhan* - a woman's exclusive property. Moreover Manu admitted widow, daughter and mother in the order of succession. Brahaspati emphasized the right of succession to daughters and wives. Naradha also recognized the right of daughter [16].

The Dharma sutra of Gautama also throws ample light on the property right of women. Kane has quoted some passage from the Vedas in support of his view that women's separate property was absolutely enjoyed by her, yet it is possible to trace two entirely different views which is not in consistent lines of thought. On the one hand, woman was assigned an exalted rank and on the other hand, she was treated incompetent to hold property of her own.

In the Smiriti period, widow, daughter and mother were expressively recognized as heirs. But at the same time, this right of inheritance (succession by descends. It also includes that which descends to the heir on the death of owner intestate) was made subject to certain conditions such as chastity and absence of remarriage. After the Smiriti period, the right of succession was embodied in the commentaries. In course of time, the commentaries appear to have acted with ever increasing force to give an impulse to the systematic building up of law. The law was basically and essentially traditional and rooted in custom. As a result, the process of development and assimilation continued. In the meantime, the law came to be ascertained and composed in different parts of India, several of these gained ascendancy in those parts of the country. The authors were accepted as of pre-eminent authority. Different commentaries came to be referred to as the chief guides on law. The result was that the two principal schools of Hindu law, the Mitakshara and Dayabhaga came into existence [17].

The Dayabhaga School prevails in Bengal; the Mitakshara School prevails in the rest of India. The schools mark a new stage in the evolution of Hindu law. These two principal schools of Hindu law relates to the law of inheritance. According to Mitakshara law, each son acquires at his birth an equal interest with his father in all the ancestral property held by the father. And on the death of the father, the son takes the property, not as his heir, but by survivorship [18]. (The right of a person to property by reason of his having survived another person who had an interest in it).

Under Dayabhaga School, the son does not acquire any interest by

birth in the ancestral property. His rights arise for the first time on the father's death. On the death of the father, he takes such of the property as is left by the father. Among the four divisions of Mitakshara school (Benares, Mithila, Maharastra and Dravida or Madras), the Dravida school is also known as the school of southern India. It is consisted of Smriti Chandrika, Parashara Madhaviya, araswathi Viliasa and Vyavahara Nirnaya. Smriti Chandrika is an exposition on the law of inheritance. It enumerates certain kinds of property recognized as the Supreme Court; this legal position has been materially altered - under section 8 of that act. Stridhana, being the kinds of property recognized as stridhana by the Smiriti writers. The Prashara Madhaviya puts its own interpretation on the suppletive term 'adya' in the text of Yajnavalkayas, and says that it refers to the property purchased by a woman with gifts made to her at the bridal procession etc. [19].

The Mitakshara School which is the most widely recognized source of the present Hindu law, spelt out the concept in clear terms. While the sages differed in the exact definition of the term, they were unanimous in holding that gifts and ornaments received from the husband constitute a woman's stridhanam [20].

### Stridhana

Most of the legal authorities in ancient India did not recognize the right of a woman to own property like land, houses etc., which came under the category of immovable property. But those authorities admitted the right of a woman to stridhana (Ornaments, jewelers etc.,) which were given to her at the time of her marriage by her husband, parents, relatives etc., on those things the women had exclusive right. Those things which formed part of the stridhana could not be taken away from her even by her husband according to the Hindu law.

There are elaborate laws regarding stridhan. Basically it is of two types: maintenance (in money or land given by the husband) and anything else like ornaments given to her by her family, husband, in laws and friends of her husband. The maximum amount of first type might or might not be fixed by law, depending on the laws of the kingdom. But there was no limit to the second type, since these are gifts. Pre-nuptial contracts are mentioned where the groom would agree to give a said amount of bride price to both parents and the bride. Stridhan is divided into various types - the property given by parents at marriage, given by the parental family when she is going to her husband's house, given by her husband out of affection, and that property given separately by brother, mother, father, in laws anytime after marriage; if the groom gave bride price in excess of what was originally agreed on, then the excess belongs to the bride alone and is stridhan as well.

But this description of stridhan was adhered to by more orthodox communities because others have widened the scope of stridhan. Such property belonged to the wife alone and was not to be touched by the husband or her parents. However the husband could use it in emergencies like sickness, famine, looted by robbers, or for performing holy deeds. Otherwise a wife had the right to complain in court of law [21]. So the categories of stridhan varied from region to region and age to age. The Rig Veda society seems to have recognized the following items of property as constituting a woman's stridhana [22]. They are: gifts from parents and brothers, gift before the nuptial fire, earning mechanical arts, gifts in the bridal procession. There are also references to daughters growing old in their father's house and getting a share and to a child less widow claiming husband's property. In the Taittiriya Samhita of Yajur Veda, there are references of father making gifts to daughter at the time of daughter's marriage [23]. It is said that these

gifts would become her own property which means that she had even after marriage absolute dominion over such property unfettered by her husband. However, stridhana was the only property recognized to be woman's property. Different schools gave different meanings to stridhana. Manu shows six kinds of stridhana [24].

They are: gift given before the nuptial fire, gifts given at the brides' procession, gift given in token of love, gifts made by the mother, gifts made by the father and gifts made by the brother. Katyayana mentions the same six kinds of stridhana as Manu and he defines the first three enumerated by Manu and gifts subsequent [25]. Katyayana expressly excludes from the category of stridhan gifts made by stranger during converture as also property acquired by a woman during converture by mechanical art [26].

Yajnavalkya defines stridhana as "what was given (to a woman) by the father, the mother, the husband or a brother or received by her before the nuptial fire or presented to her on her husband's marriage to another wife and the rest (adya) is denominated stridhana. So that which is given by kindred, as well as her marriage fee (sulka) and anything bestowed after marriage [27]. Gifts obtained from strangers except at the time of marriage and her acquisition of property by labour and skill was not considered to be stridhana.

Vigneswara has defined stridhana in Mitkshara as, "that which was given by the father, by the mother or by the husband or by the brother and that which was presented by the maternal uncle and rest at the time of wedding before the nuptial fire and a gift on a second marriage and property obtained by inheritance, purchase, partition, adverse, possession and finding". Stridhana according to Madras school takes its sense from the definition of Mitakshara. According to Dayabaga or Bengal schools, all gifts from relations constitute stridhana, except a gift of immovable property made by the husband and the gifts from strangers also constitute stridhana if made before the nuptial fire or at the bridal procession.

Stridhana is recognized as a woman to property on the basis of sources from which the property was acquired, her status at the time of acquisition and the school to which she belongs. A woman had the absolute right of ownership over the stridhana. It means that she could dispose off the property at her pleasure. If the property could not be termed as stridhana, she could not dispose of it at her pleasure and she had only limited interest. To sum up, the evolution of recognition created certain circumstances for women to hold property on her own.

Buddhism and Jainism did not evolve a code to govern family relationships or property inheritance. Their precepts were more spiritual than material. In certain areas this resulted in people from one local area following the same laws of inheritance and succession, irrespective of their religious affiliations [28].

The Arthashastra of Kautilya not only stated that the stridhana was the property of the married woman but also laid down that a woman could not own money up to 2000 silver panas [approximately 1 pana = 2 ½ to 3 Rupees] or any sum that being held by her husband in trust on her behalf. Stridhana consisted of Vritti or means of subsistence or abandhya such as ornaments, Vritti thus includes bhumi, agricultural land and cash [Hiranyadi] above a minimum of 200 Karshapanas which would produce an income from its investments. Her property used to pass on to her daughters and not to her sons or she was permitted to part with the stridhana if she wanted to give it as a present to her daughter.

Moreover, Arthashastra states that a remarried widow can retain

her claim on stridhan given to her by her husband and husband's kin only if she marries with the permission of her senior in laws, otherwise it must be handed over to her sons. It records that there are men who tried to marry rich widows. While in Arthashastra itself the king was advised to employ spies in the dwelling of rich widows. So obviously, all widows did not lose their stridhan by remarriage and many were left comfortably off.

During the Gupta period, the wife had the right to own the property of her husband immediately after the sons. Her daughters also were given the right to property. Since the 7<sup>th</sup> century, there was a general tendency to enlarge the scope of stridhana. Yajna valkya had used at the enumeration of the usual six varieties of stridhana. This commentator declared that the expression in question was used in order to include the property acquired by inheritance, purchase, partition, change and adverse possession. This simplified definition of stridhana is so comprehensive that it will include every type of property in the possession of a woman; however it may have been acquired by her.

The form 'stridhana' which occurs first in the Bhrama Sutra of Gautama is a compound word made of stri-women (female) and dhana – property. He further states that finding from its derivation, it is capable of denoting any species of property belonging to a woman [29]. Similarly, MacNaghten and Sir Thomas Strange are also of the opinion that female's wealth does not necessarily mean money, it may consist of anything else of value, land or as it more usually does, of jewels or other ornaments or to constitute stridhana, it must have been the gift, not from a stranger but from a husband and his relatives. Thus in course of time landed property also began to be conveyed to women as stridhana property.

### Middle age

The position of women in Indian society underwent many changes as a result of social changes in the country. But in the middle age, the position of women further deteriorated. In the middle age, the male began to dominate in martial system, domestic affairs and also political and administrative fields [30]. The widow was compelled to depend upon any one of the male relatives, because all the property rights were transferred and enjoyed by male members only. If a male died, his properties were distributed to his sons, grand sons and other male relatives only. (i.e.,) one-twentieth is set aside for the eldest son, one eightieth for the youngest and one fortieth for the intermediate sons; what remains is equally divided among them all. Unmarried daughters are to be supported by their brothers and receive no share of the father's estate, but share equally with their brothers along with their mother [31]. No female member was given any share.

The rulers enforced strict rules on women by competing each other. Sati, prohibition on widow remarriage, performances of child marriage, keeping the women behind the curtains had become part and parcel of Hindu culture. Besides, the development of caste system and the birth of capitalism played an important role in the suppression of women on the basis of gender [32].

There were changes in their clothing, food habits, social habits, and certain customs as well. Besides, an important and favourable change took place with regard to the position of Hindu women. Now they could be owners of certain type of property besides what was called Stri-Dhan (property of wife) [33]. Even under the Mughal period, the Hindu women did not have any share in the property although they possessed movable property like ornaments, jewels etc. [34]. In Tamil Nadu women were not disqualified from the enjoyment of rights and there were no restraints on their political, social, cultural, religious and

economic activities. The status of women was fairly high in the upper strata of society. Their rights of property may be presumed and the charities and gifts to temples attested to this fact [35]. The medieval Tamil inscriptions refer to several kinds of property transaction -gifts to the temple, sales and assignment revenues to the devaradiyars for their services [36]. These transactions also indicate that ownership rights of women with regard to their property extended of property and or land to the power of alienation through gifts and sales. Women also brought property in addition to acquiring property through inheritance or being employed. So that virtually all the forms of women's property rights were found to operate among the Tamil people, though the Smiritists did not acknowledge some of these rights [37].

Though the Tamil society have convincing evidence of women's property rights, it is also equally clear that such rights were not universal or uniform for all women. The extent to which women could control their property depended on the usage current in their immediate social circle. Among the well to do, land was given as stridhanam to the daughter on her marriage. There is even a reference to land gifted as stridhanam to the Goddess in the temple. But this gave the husband the status and the right of doing service in the temple and the privileges due to that in local affairs [38].

### Position of women in Tamil Nadu

The place of women in Sangam society could not have been the same as it is today. Though paradoxically enough, it could not have been very much different either from what it is now. The fact is that while legally the written constitutions of today grant to woman a certain condition of equality with man and says that she cannot be excluded on the ground of sex alone from the rights and duties of public life. There is no idea of knowing that if the grant has materially and factually altered the condition of women in society. In ancient Tamil Nadu there was no statement of legal and social equality between the sexes [39]. On the other hand, it was clearly understood that the duties of a woman in society are different from those of a man and by implications therefore woman is not to aspire to the same place in society as man.

Moreover the status of woman was clearly one of subordination to man. The humiliating second class position they enjoyed in the domestic setup and nearly the total absence of any position in public life were prescribed as appropriate to them.

To woman, her husband was her God. Throughout her life she was subject to the authority of one male or another, first her father then her husband and if she survived her husband then her son. This perpetual minority condition of woman was largely due to the fact that she had no property right [40]. The pin money she got is often misconstructed as property right. Women were not given equal status with men, theoretically the importance of the housewife was conceded and in brahmanical households, the importance of the wife rose close to that of the husband.

The position of subordination occupied by women during this period was explained as due to her having no property rights. Widows enjoyed some reversionary rights to property and newly wed- girls brought stridhana but all this did not mean the same thing as inheriting property by right [41]. But women of those times do not seem to have resented their condition. The value system in regard to women in society was so continuously and completely communicated through religious and other media and the women were exposed so thoroughly to this communication that they came to believe fully in the efficiency of the status quo. The status of women was fairly high in the upper strata of society in Pallava period. Their right of property may be presumed

and the charities and gifts to temples attest this fact [42]. But there was no idea of the existence of dowry system.

During the Chola period, dowry system existed. It was given at the time of marriage of the girls. It was given either in the form of a village, house or land or cash. It is called 'sridhanam' or 'sitanam'. The woman who received the sridhanam could give the same to the temple was a practice in those days. It is obviously seen from the inscription found in the temple at Kumaravayalur [Tiruchirapalli District]. The women folk had great faith in temples and hence they gave their own property to the temples during the Chola period [43]. In the Pandya period, women occupied a prominent place in the society. They maintained their respectable position. In the later Pandyan period a lady sat on the council of Nayattar. They did not show keen interest in public services and government jobs. But they showed great interest in sharing the social customs alone with their husband. Sufficient education was given to them. But there was no progress in this field. Property right was given to them. Even dowry system existed during the Pandyan period. Costly jewels and lands were given to the brides as sritanam [44]. The system of dowry was also mentioned in many inscriptions.

During the Vijayanagar Empire, the women maintained their respectable position. But they were under the control of their husband. Husband dominated their wives. Certain restriction was imposed on them. Really their condition was pitiable. By seeing the pitiable position of women, there was no idea of women having property rights during the Vijayanagar Empire.

From the accounts of Christian missionaries, there was an idea about the position of women during Nayak period. They enjoyed respectable position in the society. But there was no idea of having property rights of women. After the fall of Nayak power in 1676, truly speaking, the condition of women was deteriorating in the Tamil land. There were many restrictions for women. By that time, the contact of Islam with Tamilham occurred during the early middle ages. Islam gave equality to women as a daughter, wife, mother and sister and in some cases even to the more distantly related. Tamil society was influenced partially by the principles of Islam. Contact with the West and the impacts of British rule have left a profound dose of European culture. The Western education was highly responsible for many social and religious reforms in the Tamil Country. In the economic field, the missionaries distributed land for the landless. Even in the social field, they raised the status of women and widows in particular.

Two epigraphs capture the anomalies in women's status very well. One refers to a woman who was a member of the local committee of justice (niyayatattar): the other two Brahmin widows without sons were forced to sell their land [45]. The latter gives the bare outlines of what was perhaps a fruitless struggle on the part of the widows to retain their land. They were however not given any help by their relatives and finally had to sell the land. The fact that they were represented by close male relatives-one by her father, and the other by her son in law who was also her brother in the sale negotiations. It indicates that there was strong social and intra family opposition to their owning land when they had no sons. While the rights of women of the royal families were not questioned in the middle classes, these rights were not equally protected or accepted.

With the beginning of Nayak rule, women probably continued to enjoy the more open traditional arrangements in Tamil Nadu, the culture of the rulers discouraged the public display of these rights through recorded endowments, sales, etc., [46] Some scattered evidence exist which indicates that women did inherit non-agricultural property,

both movable and immovable [47]. There was also an intriguing case in which a woman claimed the estate of her first wife's son (which he had inherited from his mother) as the natural heir, because the son was mentally deranged [48]. On the other hand, the Ananda Renga Pillai's diary records several cases where widows were disinherited, mistreated and even denied maintenance rights [49]. Family customs local social mores and in these times the attitudes of the colonial rulers are seem to have been important in the effective realization of women's rights. The English at Madras, as the 18<sup>th</sup> century progressed, seems to have abandoned their earlier deference to local customs and case decisions.

The 19<sup>th</sup> century brought about a significant change in the condition of woman in India. And therefore Tamil Nadu also witnessed much legislation towards the welfare of women. It is needless to mention here that several social reformers had born in India. Among them Ramasamy Naicker, who is fondly remembered by the women of Tamil Nadu, is the real father of women's liberation. He had sacrificed a lot for the upliftment of the society at large especially on the equal share to the women, education to the women, remarriage of widows, encouraging the inter caste marriages and giving equal opportunity in employment and condemning caste discrimination.

Since time immemorial the framing of all property laws has been exclusively monopolized by men for their own benefit and women have been kept in such a state of subservience that they have rarely questioned any law laid down by them, even if it was totally nugatory with respect to their own rights. The result is an expression and codification of a woman's secondary status in society to make sure that she could not survive without male support and can under no circumstances lead an independent life. To sum up, it can be concluded that the Muslim rulers did not interfere with local customs and civil laws although they introduced the Islamic criminal courts.

### Modern age

The coming of Vasco da gama in 1498 A.D to the Indian shores brought about a lasting impact on the lives of Indian people. The British merchants entered India in 1600 A.D. and gradually occupied entire India. The advent of the British rule in India brought out new awakenings in the minds of Indian people. Not only the British, even the social reformers like Raja Rammohan Roy, Eswar Vidhyasagar and others started movements and fought for the welfare of women. They started to educate women and struggled to remove evil customs such as sati, ill treatment of widows, prohibition of widow remarriage, polygamy, dowry, child marriage, denial of property rights and education to women. The socio-religious reformers provided an ample scope for women to fight for their rights. Raja Rammohan Roy took up the problem of the right of inheritance for women. He said that all ancient law givers had awarded the mother an equal share with her son, in property left by a person. Raja Rammohan Roy realized that the economically helpless position of women, especially after her husband's death, led them to voluntary practice of sati, at least in some cases.

For the first time Raja Ram linked the practice of sati with the problem of property. He also for the first time stressed the need of making existing laws made know to the common people. As regards daughter's right she is entitled to one-fourth the portion while a son has the right to inherit [50], but the modern law givers like those of the Dayabhaga school asserted that the daughter was entitled only to her marriage expenses. He suggested that the government should enact and enforce laws to remove these disabilities of women and put an end to such callous practice of society and bring economic freedom and education to them. But it did not basically change the structure of gender subordination; therefore, the status of women did not improve.

The colonial rulers did not interfere in the religious beliefs and traditions but they interfered in the realm of family and social relationships. They introduced law reforms namely "Bengal Sati Regulation Act of 1829, Widow Remarriage Act of 1856 and the Child Marriage Restraint Act of 1929 etc.," [51]<sup>1</sup> It was for the first time in 1850 in British India, a rule forming part of Hindu Law of Succession was abrogated by the central legislature in the form of Caste Disabilities Removable Act 1850. The widow Remarriage Act 1856 did not achieve any great success and only a few widows remarried. Even the economic impact of the act was almost insignificant. The act suffered two primary limitations [52].<sup>2</sup> Firstly, section 2 of the act did not provide the Hindu widow with any substantial right over her deceased husband's property and she could be deprived of whatever right she had as soon as she remarried. Secondly, section 4 of the act gave the right of inheritance to the widow only in default of a son. Her right over her husband's property was also subject to certain restrictions.

The Act of 1872 was the first piece of legislation which prescribed restrictions on early marriages. In 1891, the age of consent was raised from ten to twelve. The Saradha Act 1929 fixed fourteen as the marriageable age for girls and in the Hindu Code; fifteen was fixed as the minimum age for a girl's marriage. But these laws had little impact on the actual practice of the time.

These legislations focused only on women's welfare. The British intervention did not stop at the level of welfare legislation for women but extended into two other spheres which had not received due attention. By this time, leaders of the progressive reform movements raised a demand for a civil law concerning marriage. In spite of the opposition from the conservative sections, the Special Marriage Act 1872 was passed providing an opportunity for Indians to make provision for civil marriage. But the parties had to clearly declare that they had ceased to practice their own religion. It was a hindrance as people who wanted to opt for a civil ceremony, were not willing to renounce their religion. So in 1912, there was a demand to delete this provision but in 1923 an amendment was passed to delete this practice.

In the meantime, after the Queen's proclamation of 1858, the British parliament initiated a process of law reform in India. As a result, a number of laws were passed. It was at this juncture that the term 'personal' was introduced into the legal sphere. It is the law applicable to the person on the basis of his/her religion. Some of these personal laws exhibit strong features of discrimination against women. Laws governing marriage, divorce, inheritance, succession, adoption etc., are termed as 'personal'. Further it is considered that the personal laws are 'religious' although most of them are state enacted. These laws were outdated and reflected rigid Victorian code of morality. Moreover, it was a historic moment, because it was after the implementation of the Victorian code of morality that a smaller section of women got the right to opt divorce through the state enactment. This was a progressive act for the Hindu women, they were granted this right after much debate and opposition, almost a century later in the year 1956.

The Hindu law of inheritance had deprived women of the right to property (except the right to stridhan) and as a result, their economic security was completely dependent on the stature of man – father, husband, brother and son. The movement to strengthen the position of women in society began from the second half of the nineteenth century. The earliest attempts may be traced back to 1865, with Act X of that year as the first step towards confirming economic security

<sup>1</sup>Flavia Agnes, *Women and Law in India*, (New Delhi: 2004), pp.190-191

<sup>2</sup>ibid., p.146

upon Indian women. The Indian Succession Act 1865 laid down that no person shall by marriage, acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done if not married to that person [53].

The Married Women's Property Bill 1874 was a natural consequence of this act. On 24<sup>th</sup> February 1874, the council of the Governor General of India met at Government House to consider the Bill [54]. The bill was passed into Act III of 1874, which was the first law in modern times extending the scope of stridhan. It declared that the wages and earning of any married woman, any property acquired by her through the employment of her art and skill and all her savings and investments shall be her separate property. This act, though a radical one, did not create stir in Hindu society. Because, until 1923, the act applied only to Indian Christian women, but married women belonging to Hindu, Mohammedan, Sikh and Jain communities remained outside the purview of the act [55].

In 1923, the Married Women's Property Act of 1874 was amended by Act XIII of 1923 so as to bring Hindu women and others within its limits. The year 1923 was very significant landmark for Hindu Women's Independent Right to Property was recognized for the first time, to a limited extent. No doubt, section 4 of the Widow Remarriage Act 1856 entitled the childless widow to a share of her husband's property; this right was limited in its scope [56]. So the attempt made in 1923 may be regarded as the first move to ensure women's economic rights.

The Married women's Property Act of 1874 was further amended in 1927 by Act No XVIII of that year. Apart from safeguarding the interests of wives and husbands by the Act of 1923 and 1927, respectively, another act was passed in 1929. It aimed at giving preference to some nearer degrees of female heir over certain remoter degrees of male heirs [57].

After the select committee report, the bill again came up in the legislature Assembly on 27 March 1923. Mukherjee suggested that before considering the report of the select committee, the bill should be re circulated so that more opinions could be voiced [58]. But Seshagiri argued that the principle of Hindu law on property was based on three demands of bandhus- anabandhus (one's own descendants), Pitribandhus (father's descendants) and matribandhus (mother's descendants). Based on these principles, the bill was passed but it was lost by a margin of eleven votes. On 19<sup>th</sup> July 1923, when the bill came before the council of states, it was postponed. Thus Seshagiri's bill on the Hindu Law of Inheritance remained pending.

**Indian succession Act 1925:** Social reform movements raised the issue of amelioration of women's position in society. As a result, in 1925, the Indian succession act was passed. This is another secular and pro-women law passed during the British era which gave women equal property rights. The act can be considered as the most progressive piece of legislation even when tested against the present day parameters of women's rights.

The Indian Succession Act 1925 is by far the only progressive law of succession in India. Except for the provision regarding exclusion of the mother in presence of the father, it does not contain any provision which discriminates against the rights of females [59]. The discriminatory attitude against the daughter is followed with such rigour that even if she has been given a share, practically she gets nothing. Her property rights have therefore been reduced to paper rights. The pre-dominant reason for it remains the absolute testamentary powers.

**Hindu law of inheritance act 1929:** By following this Indian Succession Act 1925, the other legislation bringing females into the scheme of inheritance was the Hindu Law of Inheritance Act 1929. It governs succession only to the separate property of a Hindu male who dies intestate. The seeds of this act were sown in 1923 on 15 February of that year, besides the members of the select committee Kamath, Seshagiri Ayyar also moved a bill in the Legislative Assembly to change the order of inheritance in the Hindu family so as to give priority to certain female members. This bill sought to ensure that the inheritance rights of female heirs were between those of the fathers' father and the uncle. The House agreed to refer Seshagiri's bill to a select committee.

The legislators continued their endeavour, though Seshagiri's bill was kept in abeyance. It was moved again in the legislative Assembly by the legislator Sir Shasmulkham Chetty on 12<sup>th</sup> February 1929 [60]. The law member Siddheswar Prasad moved the amendment that the bill should be circulated for public opinion, while the legislator Aney supported the amendment on the ground that it was a question which affected everyone who called himself a Hindu, so the opinions of Hindus must be collected. He asserted that the reformers had no right to force their views on them. He felt, the idea of the reformers amounted to showing disrespect to the dead, contrary to one of the radical beliefs of Hindu society which was its duty to the dead.

According to Aney, many people did not make a will as they wanted the natural inheritance laws of the land to prevail in his own case. Laying down new rules of succession meant hurting that sentiment and faith of those dying interstate, while age old tradition was based upon the duties of the living to the dead. So, if the amendment was not accepted, it would tantamount to striking at the very root of the Hindu people's faith in their achaars [61].

Miter, the law member said that the intention of the bill was to be gathered from the bill itself and not from the proceedings of the council of states. Madan Mohan Malaviya was avowedly opposed to the bill [62]. He said that the Hindu law of succession was a personal law and the Government had promised not to interfere with such laws. Hence, it was not right on the part of the legislators to alter the law. Malaviya then asked the Hindu members to record their protests in the official report and to publish it in the newspapers so that the Governor General in council had a right to take notices of them.

Motilal Nehru said that as a social reformer he sympathized with the bill, but as a lawyer he could not support it [63]. The amendment was necessary to protect reversionary heirs, but no man of property died without making a will. If the man died without making any will, it would be inferred that the deceased person's wishes were that of the law of succession. What had been followed for ages should be applied to his case also, for every Hindu knew the ordinary law of succession.

Jayakar vehemently opposed the amendment [64]. He said that the bill had been examined by the select committee and its principles had been accepted by the House. The bill was then postponed by the council of states. He said that the bill was already old and the demand for amendment would only delay its enactment further. Eventually, the amendment when put to vote, was rejected, but Seshagiri's bill received the assent of the Governor General on the 21<sup>st</sup> February 1929 and became a law under the name of the Hindu Law of Inheritance (Amendment) Act 1929 [65]. The provision of the act reads as follows: 'A son's daughter, daughter's daughter sister and sister's son shall, in the order so specified be entitled to rank in the order of succession next after a father's father and before father's brother, provided that a sister's son shall not be included, if adopted after the sister's death [66].

**Scope of the act:** This act was very limited in its scope and did not make any radical change provided with the right of inheritance. Moreover, the act only emphasized that certain degrees of remote male heirs would be benefited. This act conferred inheritance rights of three female heirs (i.e.,) son's daughters, daughters' daughter and sister (there by creating a limited restriction on the rule of survivorship). Thus the sister is now recognized as an heir in all the schools. The effect of this act is to improve the position of the sister in all schools except the Bombay school. Under this law, the widow of a person governed by Mitakshara had only a right of maintenance in respect of coparcenary property in which the husband had interest. In respect of separate property left by her husband she had only the right of maintenance when the husband has left a son, grandson or a great grand son. She could inherit his separate property only in the absence of these immediate heirs [67].

So the provisions of the act were not particularly radical in support of women's right to property. Further, Act II of 1959 was limited in the sense that it regulated succession only in the case of the separate property of a Hindu male dying intestate. Thus, the legal position of women, according to Act II of 1929, was far from satisfactory. Understanding this, the legislators continued to fight for greater inheritance rights for women.

On 26<sup>th</sup> September 1929, Jogia introduced another Hindu law (Amendment) bill for the purpose of making 'better provision for certain heirs, especially with respect to Hindu women regarding their rights of inheritance [68]. On the same day, the member of Council of States Munshi Narayan Prasad Asthana introduced in the Council of States, the Hindu Law of Inheritance (Second Amendment) bill. The aim of the bill was to give some recognition to the rights of women related by marriage to the family of the deceased but it remained unparsed for further consideration. On 26<sup>th</sup> September Raisaheb Harbilas Sarada introduced the Hindu Widow's Rights of Inheritance bill to secure a share for Hindu widows in their husband's property, but there was no effect. The same bill was again introduced by Sarada on 21 January 1930.

The most important provision of the bill was: "Where the husband of a widow was at the time of his death a member of a joint family, the widow shall be entitled to such share of the joint family property as her husband would have been" [69]. This share would become her absolute property. Accordingly, a widow did not get any share in her husband's property as a son did. A widow's right of inheritance was very limited and this right was often interpreted in the sense that she was entitled to maintain the property and reside in her deceased husband's house.

The bill was supported by women all over India who demanded the right of inheritance in women's conferences held in different parts of the country. At the successive annual meetings of the All India Women's Conference at Poona in 1927 under the President ship of Her Highness, the Queen of Baroda, at Delhi in 1928 under the President ship of Her Highness, the Begum of Bhopal, in 1929, at Patna with the Dowagar Rani of Mandi as the President and at Bombay in 1930 under the President ship of Sarojini Naidu and at various other provincial Constituent conferences of women, the right of inheritance was being demanded at regular intervals repeatedly [70].

Brojin Mitter, the law member, appreciated the object of the bill and said that it really was a positive step towards improvement of the widow's position in the family. After giving a description of the deplorable condition of Hindu widows, Sarada made an important reference to the old Hindu Shastras by which a woman became the co-owner of her husband's property as soon as she got married.

But the bill was vehemently criticized by a number of members particularly those from Bengal, viz., Amar Nath Dutta, Sen, Sen, Lahiri and others. Amar Nath Dutta emphasized that in Bengal, the lot of Hindu widows was never deplorable. And Sen was afraid that if the widows were given the right of inheritance, they would lead a life of luxury and squander their wealth. He quoted from the ancient scriptures to show that the Hindu shastras never approved of the concept of either their independence or of absolute right to property. Lahiri Chaudhury said that in Bengal, widows always received their due share of maintenance.

Even though, the bill was supported by Rai Bahadur Lala Brijji Kishore that the condition of Hindu widows was in general truly deplorable, they had no legal position and were under the control of the male members of the family. Thousands of them were humiliated, disgraced and even driven away from their homes; so it was necessary to improve their lot [71]. By that time, Sir Hari Singh Gour said that the society then urgently needed such a piece of legislation and that if there was any defect in the bill, a select committee would make suitable amendments in view of the changing times.

Undaunted by earlier failures, Harbilas Sarada moved another bill entitled "The Hindu Widow's Right of Maintenance Bill" in the Assembly on 29<sup>th</sup> August 1933. He said that Hindu law gave widows the right of maintenance. But since there was no definite standard yardstick to measure the amount of maintenance, the bill proposed that if a widow was sonless, she was entitled to get as maintenance, the entire income which her husband's share in the joint family estate would as on partition, yield. But after a long discussion, the bill never came up again. Therefore, Saradha's bill for the Hindu widow's right for maintenance met the fate of its predecessor. But his efforts did not go unrewarded. His idea caught the imagination of the reformers and a few years later an act was passed in 1937 which eventually recognized the rights of Hindu widows.

The bill to amend the Hindu law, governing women's right to property was circulated for the purpose of getting public opinion on 17<sup>th</sup> April 1936 [72]. This bill proposed new ideas but was merely a restoration. Dr. Deshmukh said that the Indians for a thousand years had been dependent and no Indian had the right to hold property. This bill was not meant for material gain to a Hindu widow, but moral gain as much as it recognized her right of partition. Moreover, Baij Nath Bajoria an orthodox, declared that it was not desirable to give a widow an unfettered right to have partition because she was likely to come under the influence of her relatives who might deprive her of whatever she obtained by partition. In the meantime, Dewan Lalchand Navabrai and Baij Nath Bajoria wanted a few changes to the bill. But they were not accepted fully, even though the House passed the bill among the officials with cheers. That bill act was called- The Hindu Women's Right to Property Act (Act XVIII) of 1937 [73].

### **Hindu women's right to property act 1937**

The Hindu Women's Right to Property Act 1937 has been hailed as an eye opener in the history of women's right to property. Whatever the position of the Hindu women in the social structure of ancient India might have been, their successors had the feeling that their condition is not very good as they deserve. This feeling is fast gaining ground and unfortunate too. Any difference in the Hindu law is denounced as a mark of oppressive in justice to women. Women occupied a very dependent position in the family and her rights to hold and dispute of property were limited but the history reveals that Hindu law had never been progressive. It was only during British period due to their policy

of noninterference in the matters of personal laws that it ceased to grow with the time. But the Hindu Women's Right to Property Act 1937 was passed. It introduced important changes in the law of succession by conferring new rights of succession on certain females [74]. So, this Hindu women's right to property act is undoubtedly the biggest success so far achieved. The reason is that this act brought about revolutionary changes in the Hindu law of all schools and affected not only the law coparcenary; but also the law of partition, alienation of property, inheritance and adoption [75].

Though, it has been criticized in some places as being revolutionary in character leading to the breakup of the Hindu joint family system, according to others, it is nothing more than a halfhearted rights to property. The object of the Hindu women's rights to property act is to give fresh rights to Hindu women. The legislator at that time Roger de covertly had a soft corner for widows than for women in general [76]. The result was that the act satisfied itself with dealing of widows. And it refrained from improving the legal position of the women as a class. This bill was first introduced by Dr. Deshmukh and contained provisions dealing with the position of the daughter in the line of heirs. But they were all withdrawn while the bill was presented before the select committee of the legislature.

The act came into operation from 14<sup>th</sup> of April 1937 [77]. It is specifically enacted that its provisions will be applicable to the property of any Hindu dying intestate before the state. The act has no application to properties situated in foreign countries or to agricultural lands in governor's provinces or to properties which did not belong to the deceased in his own right. The act applies only when a Hindu dies intestate either partially or wholly. It does not apply where he has disposed off all his property.

**Changes in succession:** The act introduced changes in the law of succession. It was not retrospective in its operation. It did not apply to the property of any Hindu who died intestate before the commencement of this act. But it intended to redress disabilities and to give better rights to women.

It was ameliorative in character and enacted to carry out important social reform by recognizing women's claim to fair and equitable treatment in matters of succession. The act conferred new rights on three widows, namely intestate's widow, his son's widow and his grandson's widow, his son recognized than as heirs along with the son, grandson and great grandson. But it was expressly declared that (under section 3(3) the interest devolving on a Hindu widow would be the limited interest [78]. It is known as Hindu women's estate which had been interpreted to mean widow's estate. Further it provided that she would have the same right of claiming partition as a male owner. Thus the widow's interest arose neither by inheritance nor by survivorship but by statutory provisions.

**Devolution of property:** The change introduced by the act in the law of devolution under the Dayabhaga is not very considerable when compared with the change in the law of devolution obtaining under the Mitakshara and the Dayabhaga, so far as succession to the property of a deceased Hindu is concerned, there is no difference between his once ancestral and self-acquired property [79]. On the father's death the son succeeded to the ancestral property held by the father not as a co-owner or coparcener with him under the Mitakshara but as his heirs. The only change is that on the death of a Hindu, not only his sons succeed but also his widow and the widows of predeceased sons and widows of predeceased sons of predeceased sons can succeed. A daughter had virtually no inheritance rights despite these enactments having

brought important changes in the law of succession by conferring new rights on certain females, these were still found to be incoherent and deceptive in many respects. It gave rise to a number of anomalies and left unfounded the basic features of discrimination against women. But finally these enactments now stand repealed.

**Remarkable changes:** The act introduced far reaching changes in the law of succession. It was intended to give better rights to women by recognizing their claim to fair and equitable treatment in certain matters of succession. Moreover, this act as a consequence, touched many branches of Hindu law such as joint family and partition, adoption, maintenance and inheritance. This act effects important changes both in the law governing the devolution of a person's separate property and in the law governing the interest which he might have in undivided joint family properties [80]. Regarding the separate property of a person is concerned a widow can take only in default of a son, grandson or great grandson.

Moreover, the act provides that the widow shall be entitled to a share in the inheritance along with such persons. It also gives them a very high rank in the line of heirs that they are permitted to share the inheritance along with the widow and the sons, grandsons and great grand sons of the deceased superseding even his daughter and grand daughter's sons.

Further the act provides that whatever be the character of the property which the widow gets on her husband's death, it is only the limited estate (i.e.) Hindu Women's Estate. However, she shall have the same right of claiming partition as a male owner. Thus, under this act, when a widow succeeds as to her husband, the ownership in the properties both legal and beneficial vests in her. She is entitled to the full beneficial enjoyment of the estate. She cannot alienate the property unless it is for legal necessity or for the benefit of the estate [81].

**Effects of the act:** The act confers new rights on widows. It puts the widow as a member of the joint family in the place of her deceased husband. The husband interest in the joint family under Mitakshara vests immediately upon his death on the widow and does not devolve by survivorship. The acquisition by the widow of the same interest as the deceased husband in the joint family property does not it self disrupt Mitakshara joint family. The widow continues as before to be a member of the joint family.

**Defects of the act:** An important defect of this act was that it gave undue rights to a predeceased son's widow, who got more concrete rights than those of the widow of the deceased owner. There was no such limitation in respect of the interest (Hindu Woman's Estate) conferred on the predeceased son's widow. Another serious defect was that it affected the daughters. The Hindu law gives expressly laid down that the maiden daughters maintenance till her marriage and her marriage expenses were to be paid out of her father's estate. The act of 1937 was not specific as to what would happen if a man died leaving a son and a predeceased son's widow and her son. Consequently, the maiden daughter could not enforce her claim to maintenance or her marriage expenses from the pre deceased son's widow [82]. In fact, there was not given any justification to the maiden daughter.

### Introductions of private bills

In view of the above shortcomings of the act, a series of private bills came up. The first amendment bill was moved by Akhil Chandra Dutt, Member, and Legislative Assembly on 18 February 1939. On 15 September 1939, the motion for the circulation of Dutta's bill was adapted to client public opinion and on 22<sup>nd</sup> November 1940 a

discussion on the bill took place [83]. Akhil Dutta moved for reference of the bill to a select committee. His bill did not accept to amend the Hindu Women's Rights to Property Act of 1937 but the amending act of 1938 and related to the right of inheritance of Hindu daughters. Their place in the order of succession, according to the bill, should be thus: When a Hindu died intestate, the son should come first followed by the grandson, great grandson, then the widow and after the widow, the daughters. So Hindu daughters occupied fifth place in the order of succession and were sacrificed in the act of 1938 in preference of the daughters in law, who had no right of inheritance at all under Hindu law.

The bill was supported by Banerjee of Calcutta, Aney and Syed Ghulam Bhik Nairang who explained that the bill was intended to restore the Hindu daughter to the position she enjoyed before the amending act of 1938 was passed [84]. The Home Member, Reginald Maxwell explained that such legislation must have the support of a large section of the community it affected. But it claimed that the mass of opinion received on the bill was opposed to the principle on which it was based.

Therefore, the government would be justified in opposing the bill. At last, Akhil Dutta's bill failed. But it was followed by a number of other bills, such as: a) The Hindu Women's Right to property (Amendment) bill presented by Chattopadhyay. b) The Hindu Women's Right to Property Bill introduced by Gadgil. c) The Hindu Women's Estate Bill put up by Deshmukh.

Faced with such problem in the private bills, the Government appointed a small Hindu Law Committee known as the Rau committee with Rau, a judge of the Calcutta High Court as its Chairman and three other lawyers as its members. They were Mitter, ex-judge of Calcutta High Court, Gharpure, Principal, Law College of Poona and Rajratna Vasudev Vinayak Joshi, a lawyer of Baroda. The committee advocated a Hindu code a blend of the finest elements of various schools of Hindu law. On the basis of the various private bills on property, the committee evolved a common law of intestate succession for all Hindus in British India. The code recognized the equality of the status of men and women.

In course of time, women had also participated in the national movement. It raised a demand for a comprehensive code regarding marriage: it started movements demanding equal rights. Even Mahatma Gandhi supported their movements and aspiring equal rights and duties for women, like men. According to Gandhi, purdah, child marriage, ban on widow remarriage, denial of education and property were all results of inequalities between men and women in laws and customs. He believed that women must labour under no legal disability not suffered by man. He recommended equal shares of sons and daughters in parental property, joint ownership of husband and wife of the husband's earnings as he makes money only by assistance [85]. He said that without giving equal rights to women, no society could become prosperous. But the political developments necessitated bringing out the demand in the form of Hindu law. Between 1941 and 1944, a number of committees were formed to prepare legislation especially on Hindu women. As a result, these committees submitted the reports in favour of codification of Hindu law by stages starting with marriage and succession. Again, the government of India, after referring to the committees report, appointed a committee under the chairmanship of Benegal Narsing Rau on Jan 20, 1944 [86]. Bill should be taken up by compartments.

#### 1. Hindu Marriage

2. Hindu Succession
3. Hindu Minority and Guardianship
4. Hindu Adoption and Maintenance

### Hindu code bill

It was essential to reduce the law relating each part to a statutory form and then consolidate the various acts into a single code. On 24<sup>th</sup> March 1943, the Hindu code bill relating to intestate succession came up before the assembly for discussion. The salient features of the bill were- that it embodied a common law of intestate succession for all Hindus in British India; it removed the sex disqualification by which Hindu women in general had been precluded from inheriting property. It abolished the Hindu woman's limited estate and converted it into an absolute one. Sultan Ahmed, the Law Member, discussed the background of the bill and made an announcement that due to the defects of the act of 1937 and of the amending act of 1938, it became very urgent necessity for full revision of the acts.

Bhai Parmananda, opposing the bill, indicated the Government for taking upon itself the task of framing a code for Hindu society but there was no demand for change among the people in particular. Because the bill was likely to interfere with Hindu religion, destroy the family structure and lead to fragmentation of property. Babu Bhai Nath Bajona, leader of the opposition to the bill moved an amendment for postponement of the bill. Lalchand Navalrai warned women and the associations of women that "more or less we are plunged into the ocean of Western ways and we should not allow ourselves to be drowned" [87]. He raised an opposition regarding the right of a married daughter who would get a share from her husband's side and also a share in her parental house. Therefore, she would get two shares whereas the son would get only one. By that time, Amarendra Nath Chattopadhyaya of Bengal welcomed the bill and said that men and women should have equal rights. He appreciated the idea of codification of Hindu law, because the Hindu society would be brought into harmony all over the country. Govind V Deshmukh supported the bill and Banerjee mentioned a number of defects in the bill. Both of them wanted that the bill should be made to the people for publicity and discussion.

Renuka Ray did not think that the bill could come as a surprise to anyone. She referred to the countrywide agitation that was carried on ten years before the bill was framed in favour of women's rights. She thought that the denial of property rights to women was based on old traditions. She remarked that when a man had eight or ten sons and each of them inherited a share of the property, no disintegration took place; but when a man had a son and a daughter and the daughter got a share, only then disintegration took place. So she hoped that the bill, if passed, would mark the beginning of a new era of social reform in India.

She analyzed that in the Vedic and post Vedic period's women had a great measure of equality. But due to a multitude of causes, woman lost her position in society and the same was also reflected in the law. By the time the British came, women's rights had been further curtailed. The reason was that the pandits and priests expounded the laws. Moreover, the British common law did not allow women the right to hold property. So the British jurists did not think it strange that Hindu women possessed no such rights either. In that process, Hindu women were deprived of their rights. The Rau committee wanted to restore some of these features of Hindu law, not by any revolutionary reform but by attempting to revive the old glory of Hindu law [88].

Moreover, Atul Chandra Gupta, a lawyer made an announcement that the consequences of the bill had a far reaching effect on the whole Hindu community i.e. one unified law of inheritance for Hindus. On the submission of the report of the joint committee, the Government of India issued a notification on 21<sup>st</sup> January 1944 to revive the Hindu Law Committee with Rau as Chairman. During the time of debates on the bill, Dr. Ambedkar said that the bill was 'no revolutionary measure, not even a radical measure' [89]. The bill was taken to a select committee on 9<sup>th</sup> April 1948. It came up for discussion in the Legislative Assembly on 24<sup>th</sup> February 1949. The supporters of the bill argued within the discourse of equal rights insisting that equality within the public sphere is extended to the family. Many women members of parliament as well as the congress like Reunka Roy, Durgabai Deshmukh and Sucheta Kriplani argued that political equality was meaningless without economic and social equality provided by female inheritance rights. The Hindu code relating to succession had its repercussions in different parts of India. The Hindu code interfered with the religious and socio-religious life of Hindus [90]. Many vehemently opposed the bill and some however was in favour of the bill.

The Rau committee was given the task of framing the Hindu code. Accordingly, it submitted its report and drafted the Hindu code in 1947. In the Hindu code, the position of Hindu women remained the same, even though it provided for the abolition of the joint family system. But this Hindu code bill which was submitted could not be implemented due to the absence of equitable distribution of the property between sons and daughters.

In the mean time, the debate by Rochona Majumdar regarding the Hindu code bill of 1955-1956 gave Hindu women the right to inherit paternal property even after they got married [91]. The story of women's rights emerged out of a seemingly continuous rift between law on the one hand and sentiments on the other hand in such a way that women in India have often lived in a state of tension between their idea of rights and sentiments related to duties. This conflict between legal rights and sentiments was not a replay of the modernity vs. tradition binary [92].

1955-56 was a memorable year in the annuals of Indian modernity as sections of the famous Hindu code bill, were codified as law during this time. After the release of this film, the question of history was framed in debates on India about Hindu woman hood. One conception favoured by legislators and activists, irrespective of sex, advocating women's rights was formulated that history, the collective past of Indian society represented a disadvantage for Indian women. Therefore, it became incumbent upon all reform minded men and women to bring about a struggle for women's rights so that women could become the equals of men in both private and public life.

The changing nature of Indian feminism was most obvious in times when the women's movement declared its differences with the official nationalist line. For instance, when the British government appointed the Hindu law committee to review the diverse body of Hindu family laws under the chairmanship of Rau, that eventually led to the framing of the Hindu code, there was an organization like the All India Women's Conference (AIWC) that would co-operate with the committee or not. The issues that were uppermost in the campaigns and struggles of these women's groups related to marriage, divorce and inheritance and towards expanding educational and economic opportunities to women [93]. Gandhi argued that women should not spend their time and energy on the question of their legal status, but focuses their attention to more pressing matters. Rajkumari Amrit Kaur, a follower of Gandhi, however, disagreed with the views of Gandhi. She said that the AIWC had worked very hard to get the government to appoint this

committee and so women should co-operate with it [94]. Many women (like Vilasini Devi Shenai) declared that the battle for women's equality was expedient if not more important than the struggle for Indian freedom [95].

By that time, India was also participated many international conferences and seminars and made equal treatment of Indians in foreign countries. All the foreign countries admired India's move. At this juncture, if India failed to enact a Hindu code, there was no equality and could not ignore India's recent announcement of fundamental rights. Finally India came to the conclusion that the bill will not be completed unless it provides for a share to the daughter in Mitakshara coparcenary.

As a result, the dawn of Indian freedom gave a new birth. The women of free India could not be ignored at this hour of their triumph as they had contributed much to the independence of India. Therefore, it was only when India gained her political freedom and emerged as an independent Sovereign Republic and Secular that women truly became equal to men. The principle of equality was incorporated in the objectives of Free India in 1947 and was later enshrined in the Constitution of the Indian Republic [96].

### **Independent India - Constitutional provision**

The Indian Constitution has ushered the Indian women into a new era. They enjoyed the same rights as men had enjoyed. They got the same opportunities and openings as men had. They were in no way inferior to them. Article 15 of the Constitution provides in mandatory terms that no discrimination can be made on the basis of sex. And special provisions can be made in favour of women.

The most important achievement of Independent India is the recognition and granting of equal status to women through the Constitution of Sovereign India. The constitution has proclaimed the equality of men and women in all domains of life. Article 15 of the Constitution provides, "The state shall not discriminate against any citizen, on ground only of religion, caste, sex, place of birth or any of them." [97]. Further in Article 16, it is mentioned that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state". Thus, gender equality is one of the most important objects of the Constitution of India and subsequently, the history of legislation also has proved to bring out laws. To follow the main objectives of the Indian Constitution, India at the initial stage, introduced adult franchise without any discrimination of sex in the Constitution [98]. Voting rights of women have been given without any hesitation.

After giving the voting rights to women, they were allowed to contest for elections and take active part in the political life and hold any office in the country everywhere [99]. Directive Principles of State policy also provide certain directives towards the emancipation of women. Equal pay for equal work has been provided irrespective of sex under the Directive Principles of state policy [100]. The modern Indian legislation also has helped in stabilizing the position of women and giving them economic independence on par with men.

### **Enactment of hindu succession act of 1956**

The question however of enacting a common civil code has never been on the agenda of the government in spite of the fact that from time to time various committees, women's organizations and others interested in women's rights have asked for a uniform secular family law based on equality. In fact several women's groups and others

were actively working toward a uniform civil code based on equality that would apply to all Indian women regardless of their community. Various reforms in Hindu personal laws have come about due to the separation of family laws from religion. In fact the progressive changes that have been brought about in Hindu Personal law have nothing to do with religion, but were instead, based on the concept of equality [100]. Thus there is a dire need to bring about the uniform laws for Hindu women. Various independent acts were enacted i.e. The Hindu Marriage Act 1955, the Hindu Adoption and Maintenance Act and the Hindu Minority and Guardianship Act 1956 respectively.

As a result, to improve the sorrowful plight of the women and make them economically independent, the right to property of the Hindu daughter has been recognized by passing the HSA of 1956. This act has made a remarkable change to place the daughter on par with the son in getting a right to inherit the property from her father. Another important feature of this act is that any property possessed by a female Hindu is now held by her as her absolute property. And she has full power to deal with it and can even dispose of it by will as she likes.

To sum up, it can be said that all these legislations concerning marriage, succession, adoption, maintenance and guardianship has promoted the level of emancipation of women to a very large extent. However, still, there is a hindrance on women's progress. Gender equality regarding the property rights will be possible only when the provisions for the constitutional equality are taken into realization by the people and followed it in its truest sense and spirit. Status of women in matters of property was recognized partially only under ancient and medieval conditions. But in times of social emancipation and equality, the pressing necessity is that in matters of succession there should be equitable distribution between male and female heirs and the Hindu women's limited estate should be enlarged into full ownership.

## Conclusion

The position assigned to a woman by the Hindu shastras was a state of dependence and submission. As women were considered incompetent to perform religious rites, they were deprived of their right to property during the period of Smritis. The only kind of property which a woman was allowed to have control over was the 'stridhana'. It consisted mostly of gifts of jewels, ornaments and clothes. The seeds of 'stridhana' were sowed in the Rig Vedic period in the form of bride price and later on; it was included in the category of gifts which were given to the bride during certain ceremonies. These gifts were also recognized by Mitakshara School too.

The concept of stridhana was changed and the principle of 'Limited Estate' of woman was introduced during British period. She could have only limited estate in respect of the property which she inherited. It means that she could enjoy the fruits of such property during her life time. And she had no right to alienate it. Women's property could be divided into two categories viz., stridhana and woman's estate. Stridhana was the property, over which a woman enjoyed certain power of alienation with some limitations. But woman's estate was a special kind of estate and it did not pass on to her heirs on her death but passed on to her male inheritors.

During the period of national struggle for freedom, a new awakening took place with collective consciousness of the people of India in respect of education, emancipation from poverty, property rights, gender equality etc. As the political awakening was dawning, the urge of women to achieve equality gained momentum. The concept of equality of women in education and occupation brought about the

feeling that the property rules should also be changed according to the needs of the time. The Hindu Law of Inheritance (Amendment) Act 1929 was passed on to remove the discrimination that existed in the old traditions of Hindu law. This act modified the traditional law of inheritance in favour of female heirs by providing that a son's daughter, daughter's son would be entitled to give preference in the order of succession.

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