



STRĪDHANA: IS IT HER DHANA?

Snigdha Singh, Ph. D.

Department of History, Miranda House, University of Delhi, Delhi, India.

Abstract

This paper aims to examine the attitude of some of smritikāras regarding property rights of and for women. One will also make an effort to research her legal options regarding the alleged strīdhana. I will also attempt to look at the kind of resources accessible for women to call their own, such as landed property or money. Is strīdhana the only type of property that a woman may gift? Did she have the right to alienate property or did she have maintenance rights only? These are some of the issues that will be examined in this paper. The time frame for this paper will be 2nd century BCE to 3rd century CE.

Keywords: *stridhana, dāna, smritikāras, agency, daughter, wife, roles, property, alienate*



Scholarly Research Journal's is licensed Based on a work at www.srjis.com

Introduction

This essay concentrates on the relationship of property and women from 2nd century BCE to 3rd century CE. The idea of property began only from the time agriculture came in as a means of production. During the time of pastoralism people were in a nomadic stage of life with subsistence economy. It was only with the advent of agriculture that human beings went into a sedentary form of life. After settling down difference between men and women arose regarding division of labor and over aspects of power and control. Institutions were also developed by society to facilitate society's operation, in which both men and women should participate. Unfortunately, institutions are male oriented and male dominated, therefore rules of inheritance were formulated by men to suit the patriarchal society. One is aware that patriarchy is a system of social structures and practices in which men dominate, exploit and oppress women (Walby: 1990, p.20). Thus, these laws were shaped and interpreted by men to suit their convenience and I will give a glimpse of this.

Defining the idea of property and its dimensions as they were understood in ancient times is crucial at the outset. Linguists assert that there are no distinct phrases for individual property in Indo-European. Nevertheless, a number of phrases that denoted property, welfare, and general well-being were used in the Family Books to express the concepts of possession,

wealth, and riches. The sense of possession was indicated by the word 'sva' (one's own) in many languages (R.S. Sharma:1983, p.27).

During the time of Paleolithic and Mesolithic cultures human beings were in transition from being hunters to food gatherers. Both, men and women hunted animals unlike popular belief that women were only gatherers. In actuality, women played a significant role in reproduction and productivity. This can be testified from the paintings found at Bhimbetka where women were depicted dragging a deer by antlers or engaged in catching fish. Thus, women were engaged in gathering food and hunting small game with the help of baskets and nets. Therefore, it is authenticable to say that there was no really difference in the occupation of men and women. Women have played an invaluable role in the creation and nurturing of offspring and knowledge. It was from the time of neolithic cultures along with the advent of agriculture and animal husbandry that difference in occupation begins to emerge. The idea and concept of property begin to emerge with women also being seen as a form of property. The Rg Vedic culture was in a stage of nomadic existence with subsistence economy, and it is well documented that there was intertribal conflict over resources. The winning tribe brought back loot of cattle, men and women who were termed as *dāsa* and *dāsī* respectively. Women were therefore both a type of property and a part of the economic production in this system.

What was the idea of ownership and of *strīdhana*?

The notion of ownership, according to Dharmaśāstra, did not necessarily entail that the owner should have the right to dispose of his or her possessions at will. On the contrary, the owner was subject to limitations imposed by the *śāstras*, including a prohibition on making presents that might be detrimental to the family. *Strīdhana*, on the other hand is a combination of the words *strī* (woman) and *dhana* (property). Literally, it means 'property of women'. Etymologically, the word indicated a woman's property, which would include all different types of property that belonged to her. Technically speaking, it is suggested that a woman's property belonged to her exclusively. Therefore, moveable and immovable property accumulated by a woman over the course of her life as a result of grants of *strīdhana*, inheritance, or maintenance is her property (Singh:1989, pp.38-40).

The question then is why did women face problems in accessing property that belonged to her. To comprehend this issue, it is important to critically evaluate how society views women. First and foremost, girls were never initiated into education. She was denied the *upanyāna* ceremony which was meant for boys of *dvija varṇa* only. The *upanyāna* ceremony was performed to mark the beginning of formal education. For girls it was performed during

the time of marriage as that was meant to be her education. Socialization of girls begins from an early stage of life. Manu says that initiation of women consisted not in the commencement of Vedic study but in their marriage. Serving the spouse is equal to serving the teacher's home, and taking care of the home is equivalent to offering sacrifices to the holy fire. The Vedas indicate that the husband and wife execute religious responsibilities jointly because 'women are intended for procreation and males must propagate'.

The consequence of women not being educated was that they were unable to pronounce the Vedic hymns and were never allowed to perform rituals on their own. During Vedic age, it was believed that sacrifices were made for *prajā* and *paśu*. *Prajā* meant people and wealth but as women could not perform sacrifices, they had to forfeit their right to property. According to *Śantiparvan*, all *dravya* that is wealth was earned and accumulated in order to be sacrificed. As a result, just food and clothing are available to those who are unable to make sacrifices, not the wealth of the ancestors. Thus, women were classified as *adayadas*, or non-sharers, by the Taittiriya Samhita.

What is *strīdhana* according to the *smṛitikāras*?

According to *smṛitis* women were considered incapable of inheriting property because wealth was produced for the sake of sacrifices (as stated earlier) and as women were incapable of performing sacrifices without their spouse, wealth needed to be diverted in such a way that it did not come into disuse. Yet women did inherit property, moveable or immovable. It is important to examine what constituted *strīdhana* according to the *smṛitikāras*. According to the *smṛitis* the word *strīdhana* was restricted to certain kinds of property given to women at different stages of her life. *Strīdhana* can also be seen as a material guarantee of marriage (Vigasin 1985, p.83). It is believed that a bridegroom lost his right over the property of his wife if he was sexually deficient. The wife would be eased off her right to *strīdhana* if she indulged in adultery or eloped with someone else.

Let us first examine what constituted *strīdhana* according to different *smṛitikāras*.

The six kinds of property (*ṣaḍ-vidhana- strīdhana*) enumerated by Manu are:

- (a) gifts made before the nuptial fire (*adhyagni*)
- (b) gifts made at the bridal procession (*adhyāvahanika*)
- (c) gifts made in token of love from father-in-law, mother-in-law, or any relations (*prīti-dattam*) and that made at the time of taking obeisance at the feet of her elders (*padavandanika*)
- (d) gifts made by father (*pitṛ -praptam*)

- (e) gifts made by mother (*matṛ-prāṭptam*)
- (f) gifts made by brother (*bharāṭṛ-prāṭptam*).

Viṣṇu-*smṛiti* added three more aspects to the list reckoned by Manu. These are

- (a) gifts made by husband to his wife on the occasion of taking another wife (*ādhivedanika*)
- (b) gifts made after marriage by relatives or husband (*anwādheyaka*)
- (c) *śulka*, a marriage fee.

The term *śulka* has been interpreted differently by different *smṛitikāras*. According to Kātyāyana-*smṛiti* whatever was obtained by a woman as equivalent of household utensils, beasts of burden, or ornaments was declared *śulka*. On the other hand, Mitākṣarā was of the view that *śulka* was a price given in exchange for the bride. Although for Dāyabhāga, it was a special gift given to the bride in order to persuade her to gladly travel to her husband's house.

Strīdhana, according to Yajñavalkya, is what belonged to a woman and includes gifts from her father, mother, spouse, or brother as well as items received by her before the nuptial or presented to her on her husband's marriage to another woman. Kātyāyana-*smṛiti* expanded the definition of *adhyagni* and *adhyāvahanika* to gifts gifted by strangers and relatives during the nuptial fire and was included as *strīdhana*. According to Mitākṣarā any property that belonged to a woman became *strīdhana* regardless of whether she inherited it from a man as his widow or mother or acquired it through a divorce (Kane:1973) but what a woman acquired after marriage via her own labor or from outsiders did not become *strīdhana*.

With reference to immovable property the Hindu society for a long time was unwilling to invest in the wife full or exclusive ownership. As for movable property, like ornaments, her right to ownership was recognized as *strīdhana*. A possible reason why women were not granted rights over landed property may be that in a majority of cases it used to be a gift from the husband and so it originally belonged to the joint family. It was not in the interest of the latter to fritter away its resources by allowing a man to make an unconditional gift to his wife from his family property (Altekar:1991).

Thus, *strīdhana* was the property she had earned by gifts, purchases, inheritances, partition, or by her own hard work and talent. *Strīdhana* also depended on source from which the property was acquired, her marital status (maiden/widow), and the school she belonged to at the time the property was acquired. Even gifts given to her in lieu of maintenance came within the definition of *strīdhana* (Singh:1989, p.43). Property purchased by women with funds absolutely belonging to her or obtained in exchange for another property which was her

strīdhana would belong to her. The new property thus acquired by her was really her *strīdhana* which was only transformed into another form. However, property which was acquired with the accumulation of the income of her husband's estate could not constitute her *strīdhana*, instead it would form part of the estate. Thus, right over property fell into three categories

- (a) property over which she had absolute control,
- (b) property over which her control was limited by her husband only,
- (c) property which she could deal with for limited purpose only.

According to Yajñavalkya-*smṛiti*, if a husband borrowed money from a woman out of her *strīdhana* in times of distress either natural calamities, financial distress, or charitable acts then he had the option to not return it. Kātyāyana adds that husband could choose to return the borrowed sum to his wife but if father, husband, or son forcibly takes her *strīdhana* then the principal amount along with interest had to be returned to the woman. However, if *strīdhana* was taken with her consent then principal amount needed to be returned whenever they were in a position to pay. Arthaśāstra, represents an early stage in the husband's dominion of *strīdhana* wherein Kauṭilya, brought in form of marriage. According to him if marriage was contracted according to *gandharva* or *asura* style then *strīdhana* should be returned with interest (Kane 1973: pp.784-86). If marriage was in *rākṣasa* or *paiśāca* form then expenditure should be dealt in the form of theft.

Kātyāyana-*smṛiti* and Nārada-*smṛiti* appear to be the most authoritative regarding a woman's dominion over her *strīdhana*. They added a special rule that if the husband has two wives and does not reside with one of them or neglects one of them then he had to return her *strīdhana*, even if it had to be done forcibly. Kātyāyana-*smṛiti* also highlights that *strīdhana* promised by the husband was not paid then the said amount would be considered as debt which became the duty of the sons/step-sons to pay it to the mother/step-mother if she remains chaste.

Control over her so-called property—

The very conception of 'dāya' was hostile from the beginning to the claims of women with regard to property. The vedas declared that women were deficient in an *indriya*, therefore, they were *adāyadaha* non takers of 'dāya'. Baudhayana was of the opinion that those who were not entitled to soma juice were powerless. Therefore, women were not qualified to inherit. Manu-*smṛiti* reasons for finding women incapable of inheriting wealth could be that they lacked virtue of heroism which was pre-eminently needed. He believed that women were incapable of maintaining and defending family property against intrusions from strong neighbours.

The wife was given the title of '*dampatni*' which meant that she was a co-owner of the property but in actuality she could not demand partition of the property (Singh:1989, p. 38). Therefore, according to the textual sources control over her property was in an extremely limited manner yet one needs to examine these limitations. During her maidenhood days her father or guardian alone had the right to control her property. As wife all her property was under the control of her husband as no property could be called her own according to *Manu-smṛiti*. During widowhood a woman's right over her *strīdhana* was greater than what she had as a married woman. In this stage of life, her right to enjoy the property became unlimited. Even moveable property given to her by her husband which she could enjoy frugally during his lifetime became absolutely alienable after his death. According to all schools of law, what a widow earned by her skill or labor, or what she got as gifts from strangers became her *strīdhana* over which she had absolute power. However, there was a caveat as a woman's power over her *strīdhana* depended on the nature of property (Singh:1989, pp.48-50). *Saudāyika*, which encompassed all sorts of property, immovable and moveable gifted to her by her husband and relatives were supposedly at her disposal. However according to Banerjee (1915, p.348) the question of alienating immovable property never arose for women. In reality according to the prescriptive texts' women could never alienate their immovable property. Thereby, attesting that ownership for women were only of a qualified nature. The other kind of *strīdhana* was *asaudayika* which referred to wealth acquired through gifts from strangers or acquired by mechanical arts. This kind of property was subject to the husband's control and he was entitled to use it even if there was no distress.

Succession to *strīdhana*

The daughter was always preferred to sons for succession of *strīdhana*. No law-giver provides a detailed explanation for the various devolution patterns; however, several legislators have made the following assumptions: according to *Kātyāyana-smṛiti* when a son is born the seed of the father predominates but when a girl is born the woman contributes more to the foetus. Therefore, a woman's property goes to her daughter and father's estate to the sons because portions of him abound in the male children. It could also be possible that daughters were probably preferred as heirs to *strīdhana* as a sort of equity for sons were allowed to exclude daughters in the inheritance of the father's wealth, in the beginning. In later days *strīdhana* devolved on the sons after daughters, may be due to the fact that the property of women had enlarged by many folds (Singh:1989, p.53).

Amidst the *smṛitikāras* there is a variance on the devolution of *strīdhana*. The succession to *strīdhana* depends on a few factors like whether the woman was married or maiden. If she was married then what form of marriage, approved or unapproved and the school to which she belongs. According to Manu-*smṛiti* when a mother dies her *strīdhana* devolves on her brother and sister equally. Manu-*smṛiti* (Buhler:1970) said that if a woman was married according to *anuloma vivāh* and dies without an issue then her *strīdhana* would go to her husband but if she was married according to *pratiloma vivāh* then her *strīdhana* would go to her mother and father.

Bṛhaspati-*smṛiti* is of the opinion that *strīdhana* should be handed down to children only. If the sister was married then she should get only an honorary trifle. Kauṭilya agreed with Bṛhaspati-*smṛiti* that *strīdhana* should be divided amidst brothers and sisters and if there were no children then it should be handed over to the husband. In accordance with Yajñavalkya-*smṛiti*, right to *strīdhana* was first by daughter, if the woman died without any issue, then to husband if she was married by approved form but in case *patiloma* form of marriage then *strīdhana* goes back to the parents. Nārada-*smṛiti* follows the rule laid by Yajñavalkya-*smṛiti* with the addition that mother's wealth should first be divided amidst daughters and in their absence, it then should pass down to their children. Kātyāyana-*smṛiti* agrees with Yajñavalkya-*smṛiti* that *strīdhana* is first inherited by daughter and then by sons. The immovable property which was given to her by her parents went to her parents and in their absence to her brothers only if she died without an issue. Property given to her kinsmen would go back to them if she died issueless and if they were not present then her husband would inherit. Mitākṣarā gave daughters preference over sons wherein first preference to unprovided daughters and then to provided daughters. In a nutshell *smṛitikāras* were in agreement that daughters were always the first preference for their mother's *strīdhana*.

As far as the property of a maiden was concerned her property was inherited by her brothers, mother and then father. This is the law of succession. In case a betrothed girl died before the marriage then all gifts given by the groom and his family needs to be returned to the bridegroom after deduction of expenditure made by the families.

As far as the widow is concerned Yajñavalkya-*smṛiti* and Viṣṇu-*smṛiti* were of the view that she should be assigned a definite share in the property. Kauṭilya makes provision for maintenance of widows by whoever inherits her husband's wealth. However, this was not all beneficial for the widow therefore, Viṣṇu-*smṛiti*, Yajñavalkya-*smṛiti*, and Bṛhaspati-*smṛiti* said that wife and husband were joint-owners of the family property. In this light till the wife

was alive the man could never be completely dead. Thus, till his widow was alive the property could not be passed to someone else. The wife could never demand for participation but if the husband was separating his property, then she would get a share equal to the son. If the son's divided the property after the father's death, then also, they would have to give their mother an equal share of the property, according to Yajñavalkya- *smṛiti*. If there were several wives, then each got a share equal to that of the son (Kane:1973). Another alternative in case of several wives was division of property according to *patnibhaga* rather than *putrabhaga*.

Mitākṣarā recognized the widow's right of inheritance if the husband had separated from the joint family system. However, Mitākṣarā later revised the view to state that a widow succeeds to the self-acquired property even if he died undivided. If he had left ancestral property and self-acquired then the ancestral property would pass to the members of the family by survivorship, whereas the self-acquired property would go to the widows. The only disqualification for a widow would be unchastity. Although unchastity was a cause for disinheriting but if a widow had once succeeded the estate of the deceased husband, then she could not be disinherited even if she was subsequently found to be inconsistent. This was not the case under the Dāyabhāga law where the widow would have to forfeit the property if she was found to be unchaste at any point of time in her life.

Yajñavalkya, was probably the earliest to mention a widow as the first in the line of heirs of a sonless man. A possible objection to widow inheritance rights may have been on religious grounds, for she was unfit to perform religious rites. Brihaspati too makes a wife the first heir of a sonless man since in her half survived the husband (*dampati*). Certain questions like unchastity were left to be settled by local traditions.

The *smṛitis* and their commentaries recognized the daughter's rights before that of the wife. The daughter through her son could fulfill the secular and religious needs of the father because there was no difference between a daughter's son and a son's son. The daughter was just like the son of being born of the father. If the son was the cause of the future generation, then the daughter was also a cause for it. Therefore, her claim as an heir became inevitable and Yajñavalkya-*smṛiti* placed her as an heir after the widow. In the beginning Yajñavalkya-*smṛiti* assigned to her one-fourth share of the property which she would have got if she was born a son but the feeling that women could not be partakers of *dāya* converted this one-fourth share to bare maintenance later on. The daughter of the family had the right to be maintained and brought up until her marriage took place. As long as the daughter was not married, she had to be maintained out of patrimony but she could not incur any debits in her capacity.

The daughter-in-law had no distinctive rights but she should be maintained out of the ancestral property if she was obedient to the mother-in-law and father-in-law. However, she had no right of maintenance as far as the self-acquired property of the father-in-law was concerned.

An *avāruddhastri* (concubine) belonging to the upper three *varna* were entitled to maintenance along with her son. If the *avāruddhastri* belonged to the śūdra class she was given a share of the property. It has also been pointed out that the *avāruddhastri* would get maintenance only if she continuously and exclusively living with her deceased paramour till his death. This was one of the conditions for her maintenance. Prostitutes on the other hand who were married by approved form of marriage but had fallen from the path of chastity then her property went to the heirs of her husband instead of her associates. But if the prostitute leaves her profession and leads a life of a married woman then her property would devolve in the ordinary manner irrespective of the fact how she had acquired the property. When a dancing girl practices her calling of her caste the *strīdhana* devolves in the same manner as *strīdhana* that is females get preference over males.

Conclusion

The prevailing dominant private-property-based patriarchal structure of society that was in use mirrored the mentality. Second, the proprietary rights of women were not allowed to develop under Brahmanical law. The institution of *strīdhana* which started during the Dharmaśāstra was limited to ornaments, utensils, gifts etc. Her right to inherit and get a share of the property grew slowly yet the question loomed large whether she had absolute right over her *strīdhana*.

For a right to be actual, effective, and genuine, it must coexist with the right to freely alienate it. The question arises then that when a widow inherits her husband's estate, a daughter her father's or a mother her son's, what rights did she have therein? Did the different rules for a woman's acquisition also provide her the right to freely alienate her property? Based on the evidence different levels of property restrictions, such as the father's power, have been highlighted. It is possible to conclude that restrictions simply served to limit the independent disposal of property thus gained, rather than necessarily denying the wife ownership rights in what she earns. A fresh perspective and new significance may be given to the discussion of women's inheritance rights if one tries to examine other sources like inscriptions, sculpture etc. It may help us to develop a better understanding of the social and economic fabric of the said time-frame.

Note: This is a revised and enlarged version of the paper presented at the Department of History, University of Delhi in 1989.

Reference

- Altekar, A.S., Position of Women in Hindu Civilization: From Prehistoric Time to the Present Day, Delhi: Motilal Banarsidass, 2005 (rprt).*
- Banerjee, Sir G., The Hindu Law of Marriage and Stridhana, Calcutta, 1915.*
- Kane, P.V., History of Dharmasāstra, vol 3, part 2, Poona: Bhandar Oriental Research Institute, 1973.*
- Sharma, R.S., Material Culture and Social Formations in Ancient India, Delhi: Macmillan India, 1983.*
- Singh, Snigdha, Development in the rules of Inheritance from second century BC to third century AD, (Unpublished Mphil thesis), 1989.*
- Sontheimer, G. D., Joint Hindu Family. Its evolution as a legal institution, New-Delhi: Munshiram, 1977.*
- Vigasin, A.A. and Samozvantsev, A.M., Society State and Law in Ancient India, Jalandar, 1985.*
- Walby, S., Theorizing Patriarchy, Oxford: Basil Blackwell, 1990.*