

CHAPTER II

EVOLUTION OF STRIDHANA

**“We don’t want dowry
Give us right of inheritance”**

- Slogan of Women’s Movement in India

The study of the evolution of *Stridhana* is a very fascinating subject. In a few ancient systems of law, these rights were so largely conceded as in Hindu Law.¹ *Stridhana* will reveal the development of the property, and inheritance rights of the Hindu women to a great extent. Regarding property rights, it has to be approved that the concept of *Stridhana*, so unique to the Hindu legal system, bestows glory on our traditional system, and has been known to have provided relief to the dependent womenfolk. From the early time, property right of woman has been recognized under the head, *Stridhana*.

The term, ‘*Stridhana*’ literally means, ‘the woman property’ (Stri-female and Dhana-wealth) in which she possesses the unfettered power of disposal. Etymologically, the word ‘*Stridhana*’ means the property of a woman. This definition includes all kinds of property belonging to a woman. It is also true that at no time, the quantum of her property has been anything but meager.² The Hindu Law interpreted *Stridhana* as the properties received by a woman by way of gift from relatives. It included movable as well as immovable properties. The term *stridhana* seems to have been confined at one time to *sulka* or bride-price.

According to Jullius Jolly *stridhana* occurs first in the *Dharmasutra* of Gautama.³ In the entire history of the Hindu law, woman’s right to hold and dispose of property has been recognized, in the name of *stridhana*. At no time, whether as a maiden or a wife or a widow, the woman was denied the use of her property as an

1. S.V. Gupta, *Hindu Law*, pp.538-539

2. Paras Diwan, *Dowry and Protection to Married Women*, p.108

3. Preeti Sharma, *Hindu Women’s Right to Maintenance*, p.8

absolute owner.⁴ It is a remarkable fact that the institution of *Stridhana* seems to have developed among the Hindus at a period relatively much earlier than among the Romans.⁵

The influence of their religion was immense on the family life of the Hindus with the further peculiarity that it was the family that owned property which was intended primarily for the performance of the prescribed religious sacrifices.⁶ There are eighteen main *Smritis* or *Dharma Sastras* as state about the Hindu Laws. The most important are those of Manu, Yajnavalkya and Parasara. The other fifteen are those of Vishnu, Daksha, Samvarta, Vyasa, Harita, Satatapa, Vasishtha, Yama, Apastamba, Gautama, Devala, Sankha-Likhita, Usana, Atri and Saunaka.⁷ Some of their commentaries are given below.

According to the *Smritikara*, the *Stridhan* constituted those properties which she received by way of gift from her relations, which included mostly movable properties such as, ornaments, jewellery and dresses. The gift made to her by strangers at the time of the ceremony of marriage or at the time of bridal procession also constituted her *stridhan*.

The old law giver Manu, himself says: 'where women are honoured, the Gods dwells.' He defined *stridhana* as: What was given before the nuptial fire, what was given on the bridal procession, what was given in token of love, and what was received from her brother, mother or father and from her husband and his relatives. The Code of Manu has always been treated by Hindu sages and commentators as of paramount authority. Next to Manu in date and authority was Yajnavalkya, whose

4. *Mitakshara* II, ix,p.2

5. Sir Henry Maine, *Early Institutions*, p.321

6. M.D.Gopalakrishnan, *A Garland to Periyar*, p.64

7. <http://www.lawisgreek.com/concept-of-stridhana-or-dowry-in-hindu-law> 29.8.2010

work was practically the starting point of the Hindu Law in those provinces which were governed by the Mitakshara.⁸

Yajnavalkya's text expanded the meaning of *stridhan* by including properties obtained by inheritance, purchase, partition, seizure and finding. According to Yajnavalkya, the things given to a woman by her father, mother, her husband, or her brother or sister are received by her, at the nuptial fire or presented on her super session.⁹ (Yajnavalkya II, 143)

The next law-giver of importance namely, Baudhayana did not believe in the independence of women and considered them as "destitute of strength".¹⁰ During the period (Later Vedic) of Baudhayana, the position of women had deteriorated. The daughter of a sonless parent had lost her right to inherit property. She could only inherit the ornaments of her mother after her death.

The earliest law-giver Gautama of *Dharmasutra* of 7th century B.C., laid down that the men who succeeded to the sonless person were persons connected by *pinda*, *gotra* and *arsa*, the wife being mentioned as a possible alternative. He also said that put more restrictions on women. According to him, "let her not violate her duty towards her husband and let her restrain her tongue, eyes and actions."¹¹ However, Gautama allowed the daughter to inherit her father's property if her father had no son. Likewise, he gave the wife the right to inherit her husband's property as one of the successors.

Kautilya, was the political law-giver of the 4th century B.C., and his book, *Arthasastra* was considered a book of legal opinions of Maurya period). Girls were sold as commodities by the parents to the bride-grooms who paid money as '*sulka*'

8. K.S.Chandrasekhara Aiyar, *Women's Rights Under the Hindu Law*, p.10

9. Rool.L.Chander, *Op.cit.*, p.6

10. L.N.Rangarajan, *Kautilya's Arthasastra*, p.394

11. *Ibid.*,

to the girl's parents in consideration for marriage. Like other Hindu law-givers, Kautilya too denied to the daughter the right to inherit her father's property. He allowed women to own even money up to 2000 silver coins on which the husband had certain rights.¹² But when she died, it passed neither to her husband nor to her sons, but to her daughters. Yet she had the right to exercise independent control over her own property (*stridhana*). A woman's rights over her *stridhana* were more during her widowhood.

The main purpose of *stridhana* as Kautilya noted was 'to help a woman ride over difficulties after marriage.' He mentioned about eight types of marriages namely, *brahma*, *prajapatya*, *arsa*, *daiva*, *gandharva*, *ausra*, *raksasa* and *paisaca*.¹³ A girl's marriage according to any one of the first four forms of marriage, qualify for enjoying *stridhana* and last four forms of marriage would disqualify her daughter from the inheritance of patrimony.

Vasistha, the next law-giver, considered the males to be masters of female, and the latter could not exercise any right over their parental or spouse's properties except the nuptial presents of their mothers. During the period of Vasistha, the property of a sonless man went to the Sapindas or the spiritual preceptor or the pupil.

The next law giver Apastamba who is believed to have lived during the 3rd century B.C. laid down more strict laws for women. Apastamba's rule of inheritance to the sonless was that the heirs were *Sapindas*,¹⁴ the *Acharya*, the pupils, the daughter and next, the King. The wife was given only her ornaments which were recognized as her property from the earliest times,¹⁵ Like Baudhayana, he denied the

12. R.P.Kangle, *The Kautilya Arthasastra*, pp.398-99

13. L.N.Rangarajan, *Op.cit.*, p.385

14. Vijaya G.Babras, *The Position of Women During the Yadava Period(1000A.D to 1350A.D)*, p.40

15. Apastamba, II, 6, 14

daughter the right of inheritance and the wife could keep her ornaments and presents received from relations.

In this context, it becomes a necessity to refer about Kautilya's view. The right to hold property by a woman was not a formal matter in the *Arthashastra* becomes evident from other indirect sources, and they are,

- (a) the use of her property by her husband was possible on very specific occasions.
- (b) she could demand direct control over the property at specified situations
- (c) on stipulated grounds the property could be transferred to particular persons

In spite of his formal agreement with Kautilya on the women's right to have *stridhana*, Manu was opposed to their claim to hold and enjoy property independently.¹⁶ According to him, women, sons and slaves could not possess any property' and it belonged to whoever owned them. The economic position of women indicates a downward trend in the *Manusmṛti* from that in the *Arthashastra* in the sense that both the source as well as the items of property became fewer in number. She lost her patrimony to a *putrikaputra* (Daughter's son) while there was no longer any stipulation that a man must give his wife *stridhana* or other items of property. Additionally, the concept of *stridhana* becoming sacred, its scope was automatically restricted in the *Manusmṛti*.

Manu did not recognize women's absolute right over *stridhana*, which resulted in the loss of the distinctive character it once possessed in the *Arthashastra*. Thus, a woman was then less secure economically than she was according to the *Arthashastra*.¹⁷ Even what was left of her property, she was not allowed to control or spend freely. Her husband became the de-facto master of her property.

16. Wendy Doniger & Brian K. Smith, *The Laws of Manu*, p. 154

17. L.N. Rangarajan, *Op.cit.*

From the *Arthashastra*, which supplied details on this particular aspect, one could not only perceive the existence of two sets of customs, the condemned and the recommended, but also the entire process of making women following certain customs and practices. Thus, women's life in the *Arthashastra* revealed a clear distinction in their status, because women enjoyed the benefit of property owning if they practiced certain other customs.¹⁸ But Manu seldom offered such alternatives, thereby showing his preference for only one trend in women's status.

Each one of these texts has served to limit some one aspect of women's rights. Thus the first besides enunciating the doctrine of women's dependence, has also furnished, if not by a convincing argument, at any rate a convenient handle, for curtailing their rights and powers generally. The second is relied on to bring the whole of a married woman's *stridhana*, property under the dominion of her husband. The third, which is the text most frequently cited, is also the one stretched farthest and it is treated, not only as asserting women's want of personal freedom, but also as laying down their incompetence to take property by inheritance.

Mitter points out, there are passages in the Vedas indicating that married women pursued independent occupations and acquired gain by them.¹⁹ Jaimini refers to a Vedic text which shows that women had proprietary capacity in those early times.

Women were apparently lost their position of equality and freedom in the overgrowth of another stage in the national existence, to which must be attributed the text of Baudhayana that women are incompetent to inherit. By the time the code of Manu was compiled, women had fallen to a distinctly lower position, in so far as it concerned the position of women, in the well-known verse regarding the wife, son,

18. Shamasastri, *Kautilya's Arthashastra*, p.53

19. D.N.Mitter, *Position of Women in Hindu Law*, p.65

and slave who probably meant no more than that these persons were unable to dispose of their property independently.²⁰

The so-called dependence of women under the early Hindu Law was, after all, nothing more than a sort of moral dependence, and by availing themselves, among other factors, of the liberal attitude of commentators. Many like Vijnaneshwara, the propounder of the Mitakshara system of property, were distinctly favourable to women's rights. And also they could well have developed the law more nearly in consonance with modern conditions and requirements.

The law of *stridhana* stands, therefore, in favourable contrast with the general spirit of the Hindu Law, which in other respects is, no doubt, not very equitable towards women and in no ancient or medieval system of law, except the Mohammedan and the later Roman, have so large concessions been made in favour of the proprietary rights of women, and the Hindus may find some reason for just complacency in their law.²¹

There is a type of male objector whose strong point is that if women are given rights of property, their morals are likely to grow lax. This besides being a coarse-minded and untrue view of the nature and tendencies of the gentler sex betrays a serious misconception as to what the law actually is and some inconsequentiality in the reasoning. When the sacred lawgivers gave absolute rights to women over their *stridhana* property, the objection based on morality did not weigh with them.²² A widow was always been allowed to inherit the separate property of her husband in the absence of sons, and it cannot reasonably be contended that, if her estate is widened into an absolute one, she will go astray. It

20. G.Buhler, *The Laws of Manu*, p.170

21. G.D.Banerjee, *Hindu Law of Marriage and Stridhana*, p.34

22. *Ibid.*, p.11

may be that one reason why some people (mostly of the old fashioned type) would like to keep a widow on the shortest possible is the fear that otherwise she may yield to temptations. Such people do not seem to realize that there are widows enough in their countries, and that they do not all go wrong merely because they have a decent share of their husband's estate to live upon. After all, a widow with innate predispositions to laxity of life is less likely to bestow her favours illicitly when she is adequately provided for, than when she has no legitimate means of maintaining herself in comfort.²³

The Tamil work, *Tirukkural*, mentioned about the wealth as one of the four supreme values, but there is nothing about the grant of *stridhana* or property to women. *Silappathikaram* reveals that the heroine Kannagi, was adorned with jewels and ornaments at the time of her marriage, but nothing talks about the *stridhana* (except her jewels) or property (immovable) given to her daughter. The *Aimpermukappiyam*, are (*Silappathikaram*, *Manimekalai*, *Seevagasinthamani*, *Valaiyapathi* and *Kuntalakesi*) emphasized the doctrines of the Buddhism or the Jainism one way or other. Above all, the literary works highlight the Vaishya community (the merchant class), noble characteristics of women and their chastity, and the truth, wealth is not a static, but it is a vanishing one.²⁴ But they do not stress and mention the term, *stridhana* and nowhere emphasize the property of women.

One of the objections likely to be offered to any material improvement in the status of women is that there is no large demand for reform from the mass of women affected, that the Hindu women as a class are consenting parties to the existing state of things, and that, at any rate, they have made no complaint about disabilities and

23. N.C.Sen Gupta, *Sources of Law and Society in Ancient India*, p.35

24. N.Narayanavelupillai, *urainadai tamizhil aimperumkappiyankal*, (Tamil), p.201

hardships. This objection takes too much for granted. It is not a fact that women who are educated and intelligent accept the situation as at all satisfactory. A considerable amount of agitation in the press and on the platform, and occasionally at popular assemblies, have been carried on for several years past, sometimes by women themselves, and sometimes by men who were interested in the welfare of Indian womanhood. We may refer, by way of example, to the proceedings of various Ladies Conference held in the Mysore State and elsewhere in India, to consider this very matter of the legal rights and disabilities of the Hindu women. We have also before us emphatic expressions of opinion offered by cultured and distinguished ladies and by ladies associations, as also specific resolutions advocating change passed at meetings held to consider the questions sent out by this committee.²⁵ (appointed by Maharaja of Mysore)

Different Schools of Hindu Law

The Madras School of Law had a relatively modern origin. The ancient framework of the Hindu Law was the law of Smritis. The principal Smritis were the Code of Manu, the Code of Yajnavalkya and the Code of Narada. The Sutras, a part of the *Smritis*, were written by Baudhayana, Vasistha Katyayana, Parashara and others. Later, the commentaries and Digests have systematized, consolidated and analysed the *Smritis*, thereby giving an entire body of law.

The Hindu laws laid down a different law of succession to *stridhan*. The law was different in different schools and it was different for different kinds of the stridhan. The commentaries of Parashara, Mahaviya and Smriti Chandrika were regarded as authoritative sources of law by the Madras School. Though the Smritis, the remoter sources of the Hindu Law were common to all, the growth of

25. *Women's Rights under the Hindu Law*, Report of the Committee by K.S.Chandrasekhara Aiyar, 7th June 1929, Government of Mysore, p.11

Commentaries resulted in the evolution of the two principal schools of law, the Dayabhaga School and the Mitakshara School.²⁶ Vijnaneshwara propounded the Mitakshara system of property and Jimuktavahana introduced Dayabhaga system of property rights.

Jimutavahana gave a different enumeration of *stridhan*, so did the sub-schools of the Mitakshara. The Dayabhaga School does not recognize gifts of immovable property by her husband as *stridhan*.²⁷ The Dayabhaga School prevailed in Bengal while the Mitakshara School was treated as the paramount authority in the rest of India.

The old Hindu law regarded the wife as a co-owner in her husband's property and Dutta puts it, "wealth was considered as common to the married pair". This conception of co-ownership was taken as the basis of her rights to receive a share in partition and the right of succession to her husband. Vijnaneshwara maintained that, by marriage, the wife became the co-owner of her husband's property and received a share on partition as such. Jimutavahana asserted her right of succession on the theory of co-ownership. He states, "there is no proof for the proposition that the wife's co-ownership in her husband's property, accruing to her from her marriage ceases on his death".²⁸ This noble idea of co-ownership was abandoned, principles unheard of were introduced to deprive women of their exalted position in the family, and today the law regards them as mere dependents.

The Mitakshara was a running commentary written by Vijnaneshwara on the Code of Yajnavalkya. This school nurtured the growth of four minor schools which were divided by minor differences in detail. These sub-schools were Benaras

26. Moor's *Indian Appeals*, 1868, p.397

27. Paras Diwan, *Op.cit.*, p.130

28. T.Sundarlal Desai, *Mulla Principles of Hindu Law*, p.51

School, the Mithila School, Bombay School and the Madras School. The Madras School was based on Smriti Chandrika of Devana Bhatta, Parashara Madhaviya written by Madhaviya, Sarasvati Vilasa by Prataparudradeva and Vyavahara Nirnaya of Varadaraja. Of these four works the Sarasvati Vilasa presented a picture of the actual working of the law and not merely a series of abstract statements of old rules.²⁹

The Madras School of Law accepted only certain kinds of property as *stridhana*. The treatises accepted as authoritative certain texts of Smriti writers like Manu, Katyayana and Yajnavalkya. Manu has enumerated six kinds of *stridhana*. Katyayana mentioned the same six kinds by Manu. He had stated that *Saudayika* or the gifts from affection was a woman's absolute property, but the property received from strangers and by mechanical arts during coverture was subjected to the husband's dominion.³⁰

Smriti Chandrika contained a number of texts of Katyayana and some texts of Brihaspati. The Parashara Madhaviya agreed with the Mitakshara in many respects and it adopted the text of Yajnavalkya as the basis of its comments but it gave to one significant supplementary term only of limited importance.³¹

The treatise, Vyavahara Nirnaya by Varadaraja was remarkably based on the texts of Manu.³² However, these treatises were not in agreement on all matters relating to *Stridhana*. The High Court of Madras followed the comprehensive definition of *Stridhana*, given in the Mitakshara in case of conflict.³³

29. *Ibid.*, p.53

30. Kulwant Gill, *Hindu Women's Right to Property in India*, p.300

31. A.C.Burnell, *The Law of Partition and Succession*, p.26 ; Varadharaja, *Vyavahara Nirnaya*, p.xvi

32. *Ibid.*

33. *Indian Law Reporter*, 1946, p.47

According to the Bombay School, the property inherited by a woman from females is her *stridhana*. As to the property inherited from a male, the female heirs are divided into two:

- a) Those who are introduced into the father's gotra by marriage such as, intestate widow, mother etc.
- b) Those that are born in the family such as, daughters, sisters, brother's daughters etc.

The latter's inherited property is *stridhan*, while on the former case it is women's estate. The Hindu law classified *stridhan* from various aspects so as to determine its characteristics features: source from which the property was acquired, the status at the time of acquisition i.e. whether the female was a maiden or a married person or a widow under the school to which she belonged. Without going into details, broadly speaking, the *stridhan* has all the characteristics of absolute ownership of property.

This implies two features:

- 1) The *stridhan*, being her absolute property, the female has full rights of its disposal or alienation. This means that she can sell, gift, mortgage, lease, and exchange it. This is entirely true when she is a maiden or a widow. Some restrictions were recognized on her power of disposal, if she were a married woman.

If she was a married woman, the *stridhan* was classified under two heads:

- i) The *Saudayika*,³⁴ that is gifts received by a woman from relations on both sides-parent's and husband's. It includes movable as well as immovable property.

34. Literally means gifts of love and affection

- ii) Non-*Saudayika* that is all other types of *stridhan* such as, gifts from stranger, property acquired by self-exertion or mechanical art. Over the former she had full rights of disposal, but over the latter, she had no right of alienation without the consent of her husband. The husband also had the power to use it.
- 2) On her death all types of the *stridhan* passed on her own heirs. In other words, she constituted an independent stock of descent.

There is no uniformity in right of the Hindu following different schools to succeed to the property of a Hindu who died intestate that is, without leaving a *will* behind him.³⁵ The property of the Hindu woman was divided into two heads that is *stridhan* and woman's estate. The Hindu woman had full rights of alienating the '*stridhan*' being its absolute owner. She could sell, gift, mortgage lease or exchange. On her death, all types of *stridhan* passed to her own heirs and not to the heirs of her husband.

The old Hindu Law was more lenient and considerate towards a daughter. During the Vedic period a daughter could claim a share from her father's property and limited ownership was then unknown to the Hindu Law.³⁶ Smriti text used the term, '*amudha*' for an unmarried girl and during the Smriti period an unmarried daughter was entitled to get one-fourth of her brother's share if partition took place, and this one-fourth share was given because of her interest in her father's property.³⁷

Brahaspati says, "a daughter is as good a child of the father as a son". She should, therefore, have equal rights of inheritance with a son. *Shradas*³⁸ have fallen into disrepute and the preferential right of a son founded upon his ability to offer '*pinda*' must now be abandoned. The Hindu Law makes no substantial provision for

35. G Vijayeswari Rao, *Women and Society*, p.179

36. *Stri-Dharma*, June 1934, p.364

37. *Ibid.*, p.365

38. The word, Shrada means, ritual performed for the benefit of the dead ancestors (Manes)

a daughter who wants to remain or has to remain unmarried, forever. In some cases, marriage may not be advisable especially in cases of physical defects.

A daughter's unchastity should come in her way of inheriting from her father can be hardly supported on reason.³⁹ Where as a profligate son was not excluded from inheritance then why this bar for the daughter? This leads to false imputations regarding the conduct of a daughter and encourages fabrication of false evidence to support them.

Mitakshara School

Vijnaneswara, the author of the *Mitakshara*, was perhaps the first commentator who came forward in the field in defense of the rights of a woman. He says, "the wife and the daughters also both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue". This rule extends to all persons and classes.

The author of the *Mitakshara* seems to regard the texts about dependence as relating not to property, but merely to the personal or moral conduct of women. He did not view them as conveying legal prohibitions, which could affect their legal status or position in respect of property. In ancient systems of law were such large rights conceded to them as have been given to Hindu women over what is known as *stridhana*.

Mitra, in his treatise on the law relating to the Hindu widow, (Tagore law lectures, 1879), has pointed out that Vijnaneswara also refuted the earlier doctrine, "the wealth only for religious purposes" and by quoting the following text which declared that wealth was not intended for religious uses only, but was intended also for lay or human purposes.

39. *Stri-Dharma*, June 1934, p.366

The conclusion at which the sage (Vijnaneswara) arrived on the subject was declared by him as, “therefore, it is a settled rule, which the wedded wife being chaste takes the whole estate of a man who, subsequently, reunited with them, wealth and pleasure. The limited estate is one under which the widow represents the estate of the deceased, but had lesser powers of alienation for legal necessity binding debts etc., but not absolute estate.”⁴⁰

Vijnaneswara supported the right of a widow to succeed to the entire estate of her husband in default of a male off-spring, *inter-alia*, by observing that she was entitled to receive a share equal to a son, even at the partition which took place either during the life time of the husband or thereafter. Yet the Mitakshara recognized a widow’s right only when her husband was separated from his kinsman but said nothing expressly as to the extent of her interest in the estate inherited by her or the order of succession to it after her death.

However, the text from the *Mahabharata* showed another inclination by saying, that for women the heritage of their respective husbands is pronounced applicable to use and let not woman on any account make waste of their husband’s wealth. According to *Vivadachintamani* ‘waste’ means sale and gift at their own choice, and had also been relied on in support of the doctrine of the qualified right of the widow in the property inherited by her from her husband. In the past one century the Mitaksahra branch of the Hindu law has undergone many changes. Particularly the laws relating to joint-family and inheritance have undergone thorough metamorphosis.⁴¹

40. Andhra Law Times, 2003(3) Vol.CXXII, May & June,p.44

41. The Law Weekly, 2003, Vol.138 dated, 29-3-03, p.60

Dayabhaga School

Jimuktavahana, the author of the *Dayabhaga*, perhaps lived in the last quarter of the 11th century and the first half of the 12th century of the Christian era. In Bengal, the *Dayabhaga*, the most famous work of Jimuktavahana, is the main source of Hindu law, which grants property to women.

Jimuktavahana considered the woman's right to property, with reference to the doctrine of spiritual benefits, and according to him, the wife of a man becomes a centre of focus. He says that the wife rescues her husband from hell and since a woman by doing improper acts through indigence cause her husband to fall to a region of horror, for they share the fruits of virtue and of vice, therefore, the wealth developing on her is for the benefit of the former owner, and the wife's succession is consequently proper.

In fact, the logical consequences of what *Dayabhaga* said was that in as much as the widow conferred spiritual benefits under all circumstances, her heritable right could not be restricted by the contingencies of separation or union. It was observed by Dayabhaga that on failure of sons, grandsons and great grandsons the widow was entitled to succeed, e.g., on failure of heirs down to the sons, grandsons, the wife, being inferior in pretension of sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood.

The Dayabhaga School included only those kinds of property in the ambit of *stridhan* over which the woman had absolute power of alienation. Since the woman did not have absolute power over the property received in partition, it was not included in the scope of *stridhan*. It was the woman's estate. The author of Dayabhaga is probably the only writer who has discussed the subject with some fullness, and while discussing that the wife must only enjoy her husband's estate

after his demise, but she is not entitled to make a gift, mortgage or sale the same.⁴² Abiding with her venerable protector, that is, with her father-in-law or others of her husband's estate during her life, and not as with her separate property, make a gift, mortgage, or sale of it as her pleasure.

Let not woman on any account make waste of their husband's wealth, and she should not wear delicate apparel and similar luxuries, but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner even a gift or other alienation is permitted for the completion of her husband's funeral rites. Here, 'waste' means expenditure not useful to the owner of the property. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property or, if still unable, she may sell or otherwise alien it, for the same reason is equally applicable.

Let her give to the paternal uncles and other relatives of her husband, presents in proportion to the wealth at her husband's funeral rites, with their consent, however, she may bestow gifts on the kindred of her own father and mother. A widow should give to an unmarried daughter a fourth part of her husband's estate. Mitra in his lectures on the law to the Hindu widow has observed that from the analysis of the above verses the following propositions could be deduced⁴³

- (1) The widow must enjoy the estate during her life.
- (2) The enjoyment must be by a moderate use of it.
- (3) The use should not be by wearing delicate apparel and similar luxuries.
- (4) She is not entitled to make a gift, mortgage or sale of it.
- (5) But a gift or other alienation is permitted for the completion of her husband's funeral rites.

42. Dayabhaga, Chap. XI, Sec. I, p.17

43. Kulwant Gill, *Op.cit.*, p.134

- (6) If a widow is unable to subsist otherwise she is authorized to mortgage, sell or otherwise alien it.
- (7) The widow is permitted to make presents to the *sapindas* and other relatives of her husband at his funeral rites.
- (8) With the consent of her husband's relatives she may bestow gifts on the kindred of her own father and mother.
- (9) The widow is enjoined to give to an unmarried daughter a fourth part of her husband's estate to defray expenses of the girl.
- (10) On the death of the widow, the property goes to the heirs of her husband, and not to the heirs to her *stridhana*.
- (11) The property inherited by the widow does not become her *stridhan*. From the above discussion it may be concluded that the *Mitakshara* recognized the widow's right to property only when her husband was separated from his kinsman, but nothing was said expressly as to the extent of her interest in the estate inherited by her or about the order of succession after her death.⁴⁴ *Dayabhaga*, on the other hand allowed her to succeed to her husband's estate in all cases on failure of sons, grandsons and great grandsons, but as if to counter balance that concession made in her favour, it limited her interest to more enjoyment with moderation, and declared that on her death, the estate should not devolve on the heirs who inherited her *stridhan* but on the next heirs of her husband. In short, it can be said that the *Dayabhaga* did not recognize full proprietary right of the woman over inherited property but only recognized her right of enjoyment under guardianship of the next heirs of the deceased in fact she had no power of alienation except for her own necessity.⁴⁵

Sir Goorodas Benerjee in his lectures on the 'Hindu law of Marriage and Stridhan' gave a very clear view as to why *Mitakshara* and *Dayabhaga* differed from

44. *Mitakshara* II, ix, p.82

45. *Dayabhaga*, IV, iixx, p.22

each other. According to Mitakshara, a woman was allowed to inherit the property of a sonless male relation only when he was separated from, and not united with his coparceners. But the Dayabhaga allowed a woman to inherit the property of a male relation whether he was separated from, or joint with his coparceners in order to prevent any portion of the family property from passing out of the family. So in this way Jimutvahana gave the simple rule of inheritance that “the property vested in any person should pass to the heirs of such a person, by providing that a female heir would take the inheritance merely as a tenant for life, and that, after her, the estate would pass, not to her heirs but to the next heirs of the last male owner”.⁴⁶

Difference between Mitakshara and Dayabhaga

The *Mitakshara* and the *Dayabhaga* systems have a few fundamental differences.

- (i) Propinquity is the ruling canon for determining the order of succession in Mitakshara, whereas religious efficacy is the criterion in Dayabhaga.
- (ii) Joint and separate property follow different courses of devolution under the Mitakshara, whereas under the Dayabhaga devolution follows one courses whether the family is divided or undivided and whether the property is ancestral or self-acquired.⁴⁷
- (iii) Generally speaking, under the Mitakshara Law, no bandhu or cognate can inherit while there is any gotraja, sapinda or samanodaka in existence. Under the Dayabhaga Law, cognates come in with the agnates and they inherit before sakulyds and samanodaka (8th to the 14th degree)
- (iv) Cognatic heirs under the Dayabhaga law are limited in number compared with those under the Mitakshara law. Every person who is a cognatic heir under the Dayabhaga law is also a cognatic heir under Mitakshara law, but there are some relations who are cognatic heirs under the

46. *Ibid.*

47. *Social Legislation: Its Role in Social Welfare*, p.21

Mitakshara law, but are not recognized as such under Dayabhaga law. The doctrine of spiritual efficacy, which is the governing principles of succession under the Dayabhaga law, accounts for the exclusion of the latter.

- (v) '*sapinda*' according to the Mitakshara means a person connected through the same *pinda* or body, and according to the Dayabhaga, it means a person connected through the same *pinda* or funeral cake presented to the manes of ancestors at the *Parvana Sraddha* ceremony.⁴⁸

Jimuktavahana gave a different enumeration of *Stridhan*, so did the sub-schools of the Mitakshara. Whether the property is *stridhan* or woman's estate, depends upon the source from,⁴⁹

- (i) Gift and Bequests from relations
- (ii) Gifts and Bequests from strangers
- (iii) Property acquired by self-exertion and mechanical arts
- (iv) Property purchased with stridhan
- (v) Property acquired by compromise
- (vi) Property acquired by adverse possession
- (vii) Property obtained in lieu of maintenance
- (viii) Property obtained by inheritance
- (ix) Share obtained on partition

Women's Estate

The other type of property that was given to a Hindu woman was called 'Woman Estate'. It was also called 'widow's estate'. In the beginning of the 19th century the Hindu woman could be the owner of women's estate.

48. T.Sundarlal Desai, *Op.cit.*, p.176

49. Paras Diwan, *Op.cit.*, p.115

In the same way as any individual subject to two basic limitations,

- a) She could not alienate the property
- b) On her death it devolved upon next heirs of owner.

In other words, she had only a limited power in respect of this kind of property. She had full power of possession, management and enjoyment of such property, but she had virtually no power of alienation or transfer. However, the right of a woman to a 'separate estate' was perhaps a mixed blessing for her. As pointed out earlier, it was through property that attempts were made to regulate her conduct in married life and to make her forego certain customs. What becomes evident from these stipulations is that a definite pattern of life was being imposed on women on pain of property deprivation. For example, a maiden should preferably marry (a) within three years of puberty (b) and a person of equal in varna and (c) according to any one of the first four forms of marriage. In her married life she should avoid committing the 'punishable offences' and had better stay in her husband's house. She would be well advised not to break her first marriage, and preferably end her life as a widow should she come to lose her husband by ill-luck. By thus remaining what was characteristically described as *dharmakama*, she derived the maximum benefit from her property.

The Hindu joint families, based on male coparcenaries, were the institutions through which sexual control was affected by denying women the right to own property. During the early periods, there was no distinction between religion, law and morality. The Hindu society was averse to the division of property and women were denied a share in the inheritance.⁵⁰ The fundamental fact remained that a widow after the husband's death and a daughter after the father's were denied

50. *Medhatithi* on Manu I.321

shares.⁵¹ While seconding the resolution Sirur remarked that Sage Brahaspathi had denied that ‘*Stridhan*’ was the absolute property of women.

There is little evidence of any change in the status of wife. Nearly all the writings and commentaries of this period expected absolute obedience and devotion of wives to their husbands. Medhatithi, a renowned commentator says “that the Ancient jurisprudence shows little deviation from this position but prescribes minimum rights in succession or inheritance to a wife”.⁵² A woman, a slave, and a son were said to be poor in the *Matsyapurana*, for the wealth acquired by them belongs to their master.⁵³

Such a statement is quite similar to the age-old saying of Manu wherein he equates wife, son and slave. As far as their right to property was concerned,⁵⁴ these three may have property but not ownership. Visvarupa expressed similar views, while commenting on the Yajnavalkya *Smṛti*. Yajnavalkya allows a share to wife at the time of partition, and while the husband and children are all alive; she was eligible to receive a share equal to that of the sons in case she has received no *stridhana*.

Women from the earliest times have been given not only the right of maintenance but also a right over apportioning of assets termed as, ‘*stridhana*’. The commentators, in the process, had limited or expanded the scope of *stridhana*. From about the 7th century A.D. we find a general tendency to enlarge the scope of *stridhana*.

51. *Matsyapurana*, I.31

52. *Manu*, VIII.416

53. *Encyclopedia of Women in South Asia*, p.15

54. Ashine Roy, *Development of Women, An Assessment*, p.221

According to Devala, maintenance, ornaments, sulka (bride price) gifts and profits would be a woman's property and she has full right to the wife over her *stridhana*. As daughters took nothing from the paternal estate when there were sons, it was thought just that the *stridhana* of the mother should be taken by the daughters and their children. It was considered that the daughter's right was limited to a portion required for her marriage and that the married daughters had no share. The process of evolution passed through a difficult struggle before a daughter's right to inheritance was recognized.

In modern practice, the Dharmasastras were of less importance than the commentaries and digests, which were written by great scholars. The commentators were then the real authorities on the subject.⁵⁵ Vijnaneswara's opinion, for instance, was practically of greater importance now than the text he commented upon. Courts were expected not to impose upon the people any rule of law, simply because it found a place in the institutes of Manu or Yajnavalkya and also in the *Mitakshara* or *Dayabhaga*, which reflected the opinion and customs of their times.⁵⁶

This tendency to ignore the claims of women appears to have reached its culmination during the time of Baudhayana, Vijnaneswara, in particular, was inclined to favour their rights; and his great work, the *Mitakshara*, proceeds on the assumption that women are entitled to inherit. Jimuktavahana introduced under the colour of comments on earlier texts, a number of modifications which have given to women in Bengal a position much in advance of that which they enjoy elsewhere.

Though various schools of thought supported right to *stridhana* for women, but property in the form of land was not given to women. Instead of that they preferred to give cash, hence, women struggled for the same through the women's movements and with the social reformers and feminists.

55. *Dayabhaga*, IV, iixx,p.23

56. K.S.Chandrasekhara Aiyar, *Op.cit.*, p.12