CHAPTER - II
Concept of Women’s Property Under Different Legal System

An Overview

In early stages, the word ‘property’ was not understood in its modern sense. With the passage of time and the development of the industrialized world, the notion of ‘property’ has become complicated. As an object of legal right, the property means a thing or group of things owned by an individual in the context where it is found. With the globalization of the world, the word property became the technicality of law. It includes so many interests and rights concerning the objects. Its area is going to be very wide.

It is difficult to understand the real nature of any thing unless we know when and how it was born. The true nature of things really lies in their genesis, ‘it is’ says, Vico, “nothing but their birth in certain times and in certain forms.”\(^1\) The history of property indeed lies in the analysis of the history of human nature itself.

The Concept of Property

The English word, ‘property’ derives its origin, either directly or through French ‘propriete’ or from Latin ‘proprietas’, which means the peculiar nature or quality of a thing and (in post Augustian writing) ‘ownership’. The Latin word, ‘proprietas’ is derived from ‘proprius,’ which means ‘peculiar’ or ‘own’. The origin of the word ‘proprius’ is uncertain it may be originated from the Latin- ‘pro’, ‘prae’ and ‘prope,’ Greek ‘pro’ and ‘prin’

\(^1\) Pal Radhabinod : The History of Hindu Law (1958) p. 6
and Sanskrit – ‘pra’ which may stand for ‘in front of’, ‘before’, ‘choose, to’ and ‘on behalf of’.²

Generally, property is defined as the rights of a person with respect to a thing. Thing may be tangible or intangible. Jurist used the term property in more than one application. The diversity of the property system of societies, suggests that any concept of property depends upon the culture in which it is found. Lord Porter said, that ‘property’ is not a term of art but takes its meaning from the context in which it is found.³

The essence of property is, in its relations among men arising out of their relations to things. By ‘property’ means an exclusive right to control an economic good. By ‘private property’ means the exclusive right of a private person to control an economic good. By ‘public property’ means the exclusive right of political unit (city, state, nation etc.) to control an economic good.⁴

According to Charmer, ‘general property is a synonymous for ownership where as special property refers to lesser interest.’⁵

Holland stated, “the sum total of man’s fortune, including not only the objects of which he is owner but also the value of any claims which he may have against other persons, after deducting the amount of any claim,

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⁵ Cf. Sewell v Burdick (1884) 10 APP cases 74, 92, 93,
which might be made good against himself, is described as his property and he is said to own it.\textsuperscript{6}

Homes described, "property denotes the consequences and connotes the facts ... there are always two things to be asked, firstly, what are the facts which make up the group in question and then, secondly, what are the consequences attached by the law of that group."\textsuperscript{7}

Bentham said, "property is nothing but a basis of expectation, the expectation of deriving certain advantages from a thing which we are said to possess, in consequences of the relation, in which we stand towards it. There is no image, no painting, no visible trait, which can express the relation that constitutes property. It is not material, it is metaphysical, it is a mere conception of mind. To have a thing in our hands, to keep it, to make it, to sell it, to work it up into some thing else, to use it, none of these physical circumstances, nor all united, convey the idea of property. The idea of property consists in an established expectation; in the persuasion of being able to draw such an advantage from the things possessed according to the nature of the case."\textsuperscript{8}

At another place Bentham said,\textsuperscript{9} "property is fictitious entity seeming to have some connections with possession and possession itself proves to be a fictitious entity." According to him, in speaking of a property there are four things, to be considered.

\textsuperscript{6} Holland: On Jurisprudence, 10\textsuperscript{th} ed. p. 202.
\textsuperscript{8} Morris R. Cohen & Felixs Cohen: Reading in Jurisprudence & Legal Philosophy (New York) Prentice Hall Inc. (151) p. 8

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First: - The nature of the thing is whether corporeal or incorporeal.

Second: - The person who is said to possess the property or to whom the property is said to belong, who is styled as the proprietor and whose property, the thing is said to be.

Third: - The nature of the relation or proprietorship which subsists between that person and the things and in virtue of, where the person is said to be the object of the property or the possession of the thing, briefly the property or the possession of that person.

Fourth: - The facts in which the exercise of the property consists.

Some jurists use the term 'property' to denote ownership or the subject of ownership or valuable things. In the first of these applications, ownership is not frequently considered, as the aggregate of the rights of an owner, who has absolute control over the thing, whose interest is unlimited as to duration, and who has absolute power to dispose of it. But this is taking too limited a view of significance of the word. It seldom happens that all the rights over a thing are centered in the same person. The distribution of rights, says Sir William Marks-by, 'detached from ownership which we actually find in use, is very extensive and yet it is the holder of the residuary right in a thing or subject of ownership, whom we in common parlance, always consider as the owner of the thing and distinguishes the holder of the detached rights as owner of a particular right.' In all above these applications, the word 'property' and the idea of a right to exclude all others from the enjoyment of the subject of ownership are predominant. In
the case of public property although no one has the right to exclusive
enjoyment, and none can rightfully prevent another from enjoying it.”10

Salmond points out in his book, ‘On Jurisprudence’ that the word
‘property’ is used in four different senses.11

First :- In the widest sense ‘property’ includes all person’s legal
rights of whatever description. A man’s property is all
that is his in law.

Second:- In the narrow sense property includes not all rights of a
person but only rights in respect of things and not in
respect of persons, the former constitutes his status or
personal condition. In this sense a man’s land, chattels,
shares and debts due to him or his rights in action, are
his property but not his life or liberty or reputation.

Third:- The property includes not even all proprietary rights, but
only those which are both proprietary and real, in other
words a man’s right in things in rem and not a man’s
right in things in personum. In this sense free hold or
lease hold estate in land or a patent or copy right is
property but a debt or the benefit of a contract, is not.

Fourth:- Finally, in the narrowest use of the term property
includes nothing more than corporeal property that is to
say that the right of ownership in a material object or
that object itself identified with the right by way of
metonymy.

The relation between religion and wealth changes from one type of
society to another, so we have to look the socio-religious traditions, which
have affected the different economic conditions of the primitive, archaic or
prehistoric societies. A new tapestry of myth emerged about the concept of
wealth and property due to the influence of religion. The theological based

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societies changed from hunting to agriculture. With the advent of cities, settled agriculture, writing and the historic religions like Hinduism, Christianity, and Islam, the relation between religion and wealth changed from Africa to the far East. Ancestral spirits were worshipped in order to bring wealth and prosperity to the family. The religion sanctioned the family ownership of wealth.\footnote{Encyclopedia of Religion Vol. 15, p. 362}

**Under Different Legal System.**

The concept of property is changed according to the society, culture and legal system, in which it is founded. Ehrlich says that, "*the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision but in society itself.*"\footnote{Prof. Eugen Ehrlich: Fundamental Principles of the Sociology of Law (foreword)} Religion played a very important role in the development of legal ideas in primitive days, according to their own tenets and philosophies. Max Weber writes, "*When we are concerned with law, legal order and rule of law, we must strictly observe the distinction between a juristic and a sociological point of view. Jurisprudence asks for the ideally valid legal norms. Sociology investigates what is actually happening in the society because there is a certain chance that its members believe in the validity of an order and adopt their behaviour to this order.*"\footnote{Webber Max: Essays in Sociology, (translated and edited by H.H. Gerth and C.W. Wills), New York (1946), p. 226} Now we have a look upon the different legal system to ascertain in what sense the term property is used or understood there, such as in Islam, Christianity and Hinduism.
Islamic Legal System

In Islam the concept of property is very simple. It includes wealth, estate, attribute and what is one's own. "The word property under Islamic legal system is applicable only to the objects which have a perceptible existence in the outside world that is, to say, to things corporeal and tangible,"\(^{15}\) says Abdur Rahim. This definition of Abdur Rahim does not cover the modern concept of property, which is recognized at present by all Islamic luminaries and jurists. It is a very narrow one and does not cover many rights such as intangible and incorporeal, as intellectual property right or copyright etc. Actually in the Islamic legal system there is no classification of different kinds of properties, as real or personal property, legal or equitable estates and ancestral or self-acquired property.\(^{16}\)

Generally, the word 'mal' is used for the property in Islamic law which is defined as that can be hoarded or secured for use and enjoyment, can be made at the time of need or that to which a man's desires incline and which can be given away to others and excluding others there form.\(^{17}\) The word 'mal' has much narrower meaning than the word 'property' and it cannot be said that the 'mal' is the true reflector of Islamic concept of property. In Islamic legal system the word property is used in much more wider sense than any other legal system because there is no concept of limited estate and ownership without possession. It recognizes absolute ownership. Islamic law does not recognize the concept of community or

\(^{15}\) Abdur Rahim: The Principles of Mohammeden Jurisprudence, p. 249

\(^{16}\) Ram Abidi v Mirza Ahmad AIR (1925) Oudh

\(^{17}\) Ibid
joint family property. Proprietorship is individual. Islamic law does not recognize the joint Muslim family or tenancy in common.\textsuperscript{18}

When the members of a Muslim family live in commensality they do not form a joint family in the sense in which the expression is used under Hindu Law.\textsuperscript{19} In \textit{Shahid Ahmad vs Sultan}, \textsuperscript{20} the recognition has not been given to a joint family as a legal entity under Islamic law. Under Islam there is no concept of matrimonial property or common property resulting from marriage as in Western Law. There does not exist, any thing like Stridhana, Woman's limited estate or hold property in lieu of maintenance as under Hindu Law. Islamic law does not divide or make any distinction between male or female's property. Under Islam, female got absolute right to hold and dispose of the property like males.

Privy Council in the case of Nawazish Ali Khan discusses the distinguishing features of Islamic laws at length.\textsuperscript{21} About the concept of property there is not much difference among the different schools of Islamic law. According to Abu Yousuf & Abu Mohammad, 'the waste land are, as sort of common goods and become the property of cultivator by virtue of his being the first possessor in the same manner as in the case of seizing game or gathering fire wood'.\textsuperscript{22}

In the light of the given definitions of property, it is deduced that property has two different meanings one is narrow, which includes person's rights in respect of a thing, On the other hand, property in its

\textsuperscript{18} Abdul Rashid v Sirajuddin (1933) 145 (C,461)
\textsuperscript{19} Krishnajiram v Md. Masihuddin Mandal AIR, (1921) Cal. 653; see also Hakim Khan v Cool Khan (1882) 8 Cal. 826.
\textsuperscript{20} (47) A. Mad. 287; Sukrullah v Zakira Bibi AIR (1932) ALL 512
\textsuperscript{21} AIR (35) 1948 p.c. 134 (from Oudh; 30 AIR (1943) Oudh 243)
\textsuperscript{22} Hamilton : Hedaya, Book IXLV para 3 (Gardy's ed.) 610
wider sense includes all the person's legal rights of whatever description they may be. Under Islamic law the word property is understood in such a wider sense that it covers all the conceptions of property, which is understood in the modern society.

In Encyclopedia of Islam the word 'mal' which is used as the property in Islamic law, stand for the possession. Property referring among the Bedouin was particularly to camels but also to estates, money and in any case to concrete things.

The word is originated from the word 'ma' and 'le' means property or any thing, which belong to any one.\(^\text{23}\)

In Islam the wealth and property is regarded as a part of creation. since Allah (SWT) is the owner of the world, so absolute property rights are impossible. Religious traditions established limitations on the possession of land and slaves. The ownership vests in Allah (SWT) and the individual is only a trustee. "Islamic economics" is often based on the welfare state and religious antinationalistic idealism but rejected the Western hedonism.\(^\text{24}\)

The 'mal,' 'property' or 'estate', which is the subject of inheritance, is called 'tarka'. The word 'tarka' is derived from the word 'tark' which means property left. In relation to inheritance, 'Tarka' means, the property left behind by the deceased. 'Tarka' in Al-Bahr-al-Ra'iq has been defined as :

"Tarka means that property, which the deceased leaves behind him and there is no right of another particular person attached with that

property.\textsuperscript{25} It means that a property, with which the right of another person is attached, shall not form part of the estate of the deceased, until the liability on that property paid off.

**Hanafi School**

According to Hanafi School, \textit{“only that property is the estate of the deceased over which there was no right of a stranger”}\textsuperscript{26} Hence, the property over which there exists a right of stranger as mortgagee etc. shall not be included in the estate until the mortgage money is paid or it has been released from the property itself.\textsuperscript{26}

**Maliki School**

According to Malikis, the right of some other person in the estate of the deceased attached to the property itself shall be considered as having excluded the said property from the definition of the estate.\textsuperscript{27}

**Shafi-i-School**

Shafi-i as jurists said, that every thing which belongs to man in his life and what he leaves behind after his death whether it be the properties or rights, shall be called his estate, but if stranger’s right is attached with the estate that property will not be considered deceased property, till it is not paid off.\textsuperscript{28}

\begin{itemize}
\item\textsuperscript{26} Dr. Rehman, Tazwilur- A Code of Muslim Personal Law, Vol. II, Islamic Publishers, D-73/J North Nazimabad, Karanchi 33 Pakistan, p. 408
\item\textsuperscript{27} Al-Abdul Sami ‘Jawahar-al-Akliil Matha Mustafa-al-Babi, Cairo 1366 A.H., Vol. II p. 327
\item\textsuperscript{28} Al-Sharbini Mohd-al-Katib : Mughni-al-Muhtaj Matba Mustafa-al-Bibi. Cairo 1377 A.H., vol. III, p. 2
\end{itemize}
Hanbali School

Hanbali jurist also considered same as Hanafis. To them the estate is that property or proprietary right which the deceased leaves behind him.29

Shia School

According to Shia jurists, the property left by the deceased, should be considered to be his estate, but if it is submerged under debt it shall be the property of the ancestor merely in law. Being submerged under debt, it shall not devolve upon the heirs. If it is not so submerged, it shall be divided among the heirs, after payment of debts.30

In fact there is not much dispute so far as the question for the property of inheritance is concerned but the only difference is about the rights. Whether rights also included within the meaning of property or not? Maliki, Hanbali and Shafii all considered that the property or estate includes both properties and rights (except right in perosnum). Hanafis hesitate to include rights in estate.

Hindu Legal System

The ancient or earlier hymns are claimed to show, that the people were nomadic herdsmen having no fixed habitation, wandering about from place to place with their cattle – being their only property, with the agricultural development they settled down to permanent habitation.31 So

29 Yousuf Musa (Dr.) Al-Zarkaho-wal-Mirath, Daral Kutub-al-Arbi, Cario 1960, p.72
30 Al Hilli, Najamuddin (d. 474 A.H) Beirut pt. Iv, P.N. 183
long as men knew of no means of subsistence but the chase pasturage or agriculture, his patrimony was a share in the soil a part of the all mend.\(^\text{32}\)

Coulanges said about the property, "the land belongs to the man who first cleared it as the deer belongs to the man who first wounds it."\(^\text{33}\)

**Rig Veda** speaks about, "the individual's proprietorship of a log of wood." (x:155,3)

The idea of property begins with the development of the civilization. Traditional societies were based on a zero sum economy; greed was roundly condemned in scripture, myth and folk-lose. As time passed by, more specific guidance was offered. In India Kautilya Arthshastra described, an economy based on agriculture, guilds, family ownership and a bureaucratically centralized state. Most interesting thing was, that this text elevates the pursuit of wealth and power (artha). In contrast the law of Manu reverses the relationship between artha and dharma and idealizes more or less static economy based on caste duties (varna dharma).\(^\text{34}\)

Artha is defined in the Kamsutra (1:20) as education, land, gold, cattle, corn, domestic utensils and friends and augmenting of what is acquired.\(^\text{35}\)

The idea of property refers to the ownership of the whole complex of the mass of rights in rem and in personam, as man's property. The word property cannot be confined to the material object eg- a person may have

\(^{32}\) Ibid p. 312.
\(^{33}\) Coulanges F. De : Origin of the Private Property p. 131.
\(^{34}\) The Encyclopedia of Religion Vol. 15, p. 362.
\(^{35}\) Vide, Hindu Dharamshastra Vol. II part I p. 9, note 22 (quoted by V. Kane History of Dharamshastra)
certain rights as lease holder or mortgagee, over the property of another. In this way the word property is much more comprehensive and things in action and obligation both are included in the definition of the term property. Under Roman law the right to the performance of an act by another was considered as property though an incorporeal one. In the Conveyancing Act 1882 (Sec.11), property was defined as including any debt and anything in action and any other right or interest.

The two words 'swa' and 'swami' are co-relative. The idea underlying both is the same and they are the two aspects of the same question 'swa' means what belong to a person i.e. property, swami means master or owner for the idea of ownership. It means both these are interdependent. These two represents the relation between the person and the thing but property is more than mere ownership.

**Classification of Property**

Property is generally divided by most Smritis into two kinds 'stharva' immovable such as land and houses and gangama-movable such as cattles etc. Some other Smritis divided property into three kinds 'bhu' (land including houses),'nibandha' (inaccurately rendered as corrdy) and 'dravya' (gold, silver and other movable). Sometimes, however the word 'dravya' is employed in the sense of all property whether movable or immovable as –

'**dravya pitamahopatto gangma stharva tatha.**'
Under ancient Hindu law the property is divided into two kinds: joint family property and separate property. Joint family property is either ancestral property, or property acquired with or without the aid of ancestral property, or property acquired separately but thrown into the common stock. This contains the doctrine of merger of estate by blending. The very nature of joint family pre-supposes a continuing preference for a sharing of gains and losses.

Derrett said, "In keeping with what I have said there is no presumption that a joint family has any property, it is, in its property aspects a reservoir into which property flows from various quarters and out of which rivulets flow feeding the numerous categories of members and dependants. It is primarily a psychological set up and secondarily a legal entity." The word 'ancestral property' has a technical sense it belongs to 'pitamah' i.e. paternal grandfather or great grandfather. In Md. Hussain, case it was made clear. The Oriisa High Court held, that there could be no presumption that the family because it is joint, possesses joint property. Even a member in a joint family may possess separate property which would exclusively belong to him and no other member of the coparcenary not even his male issue, acquires any interest in it by birth.

Self acquired property or separate property is also called the 'svaarjit' property. It is earned by the skill and labour of the earner and it is

39 Manu-IX 204, Quoted by V. Kane p. 576.
40 See Shibaprasad v Priya Kumari, L.R. 59, A. 331 : 34 Bom. L.R.
41 Derrett: A critique of Modern Hindu Law p. 587
42 Derrett, op cit, p. 61
43 Md. Hussain v Krishwa Nandan 64, 1-A, 250
absolutely one's own. Sometimes the difficulty arises when the manager or the coparcener of a joint family earned money on the basis of his personal qualities without using the joint family assets, and the question has to be decided whether it is his separate property or joint family assets. In an old case — M/S Piyare Lal Adishwar Lal vs I.T. Commissioner, Supreme Court held, that earnings made by the manager was his separate property. The argument was made that the manager earned the salary, which he could not have earned if a large part of family's capital was not deposited as security. But Supreme Court held, that the earnings were the reward of the earner's skill and labour and not the fruit of family investment. In another case, the plaintiff was a teacher drawing good salary and there were documents which revealed that he had drawn substantial amounts of loan from (GPF) account, the property in dispute was purchased by him in the same year in which he had withdrawn the loan. The properties were consequently held to be self-acquired and not joint family property.

The word 'daya' has been used even in the oldest period of the Vedic literature 'Sarvasya dayam Vibhajantey ebhyah'.

It means a share or a reward. Daya' stands for 'dhana' follows from another passage of Tai. S (11. S, 2,7) which simply means wealth that is to be divided. The V. Mayukha defines ‘daya’ as that wealth, which is to be divided and which is not the wealth of re-united member. The word ‘daya’ though derived from the word ‘da’ means to give, does not apply to heritable wealth in the literal sense of gift. Mit divide ‘daya’ into two

\(^{45}\) AIR (1968), SC 678.
\(^{46}\) Supra note 44.
\(^{47}\) Rig. II, 32:4, p. 388.
\(^{49}\) Ibid p. 547.
varieties – ‘apratibandha’ (unobstructible) and ‘sapratibandha’ (obstructible). All ‘daya’ is sapritibandha and the ownership arises in another only on death of the previous owner. Dayabhaga’s doctrine is ‘uparamasvatvavada’ ownership arising on death. On the other hand the Mitakshara hold the view of ‘ganamsvatavada’ means the ownership arises by birth. Dayabhaga does not recognize that the son, grand son or great grand son acquire by birth any interest or right of ownership in the ancestral property held by father or their ancestor. But Mitakshra recognizes it.

Thus we see that there is vast difference between the concept of the property and its ownership between the two schools of Hindu law.

**Stridhanam**

Stridhanam is the most controversial term of Hindu Jurisprudence. There is great difference of opinions about the Stridhana among Smrities, Vedas and Shastras. The germs of the Stridhana can be traced back to the Vedic literature. As Derrett says,\(^{50}\) that Indian jurists have been proud rightly, that at least in theory their indigenous jurisprudence allowed women (Stridhanam) assets at their disposal or atleast generally available for their enjoyment and for their security at a time when in the west wives were unable to own property, separately from their husbands except as beneficiaries under some trust or settlement. Though Muslim women have traditionally enjoyed the absolute right to own and to dispose of or to manage the property in whatever manner they like. It is a novel feature of Hindu jurisprudence because Stridhana is women’s absolute property with all rights to dispose of at her own pleasure though not in all cases, as

\(^{50}\) Derrett J.D.M. : op cit p. 195.
during coverture or widowhood. Sir Guroodas Banerjee remarks,\textsuperscript{51} nowhere were proprietary rights of women recognized so easily as in India; and in very few ancient system of law have these rights been so largely conceded as in our own.

Great diversity of views prevail on the topic that what constitute the Stridhana. As Jimutvahana says, in the Dayabhaga after finishing his discourse on Stridhana, "thus, has been explained the most difficult subject of succession to a childless woman".\textsuperscript{52}

By parsing of the term of Stridhana, it clearly shows that the meaning of the term ‘Stri’ – means woman and ‘dhana’ stand for wealth. It means, Stridhana signifies the woman’s wealth or property. The term Stridhana is referred by different names – as ‘manjal kani’ in south, ‘bangdicholi’ in Bombay, ‘Kalnam’ in Andhra Pradesh and ‘Patribhagam’ in Madras.\textsuperscript{53} In an ancient Smiriti work the literal meaning of the Stridhana was restricted to certain kinds of property given to woman on certain occasions or at different stages of her life.

Kautilya defines, "Stridhana as means of subsistence and what could be tied up on the body (i.e ornaments or jewellary) constitute Stridhana".\textsuperscript{54}

Manu defines, "what was given before the nuptial fire, what was given on the bridal procession, what was given in token of love, what was

\textsuperscript{51} Sir Guroodas Benerjee: Marriage & Stridhana 5\textsuperscript{th} ed. of 1923, p. 370.
\textsuperscript{52} Mulla Dinshaw: Principles of Hindu Jurisprudence, p. 168.
\textsuperscript{53} AIR (2004), p. 151.
\textsuperscript{54} 111.2, p. 152
received from her brother, mother and father, that is called the six fold woman's property.\textsuperscript{55}

Katyana defines the stridhana in most comprehensive way, 'what was given to women at the time of marriage before the nuptial fire is declared by the wise to be 'adhyagni'. "Stridhana, what was obtained at the time of procession from her father's house is declared to be 'adhyvahmika" Stridhana, what was given to a woman through affection by her father or mother in law at the time of doing obeisance at the feet, is said to be 'pritidatta' Stridhana, what was given to her as the price of household utensils, of beasts, of milch cattle, ornaments and slaves is declared to be 'sulka,' what was given to her after marriage from the family of her husband and also from the family of her kinsmen is declared to be 'anvadheya', Katyana's definition have been accepted by all digests. At another place Katyana restricts the literal sense of the Stridhana over that wealth that is obtained by a woman by mechanical arts or from a stranger through affection.

'Samdayika' is a synonymous of Stridhana in the technical sense. The Stridhana is also defined by yajnavalkya, Narada and Vishnu. But all these definitions only says about the kinds of Stridhana, which means what constitute the Stridhana. From the analysis of the above definitions it seems that only those properties or wealth are Stridhana over which the woman have absolute authority to donate, sell or enjoy, independently of her husband's control. To ascertain whether the particular thing is Stridhana or not? Three test are laid down by jurists and commentators which are as follows--

\textsuperscript{55} Dharamshatra – IX, 194
• from which source the property is acquired?
• when the property is acquired what is the status of the woman, whether she is maiden, coverture or widow?
• the last test is to which school the woman belongs?

If the property held by a Hindu female is not a Stridhana then, what it be called. Actually the property held by Hindu woman is of two types- women estate and Stridhana. Hindu female property is either some form of entitlement of maintenance of a Hindu woman from the joint family which is called the women’s estate, or it is women’s absolute property for which the term Stridhana (women’s wealth) has been known since classical times. V. Mayukha divides, Stridhana into two kinds-’Paribhashika’ (technical) and ‘apribhashika’ (non technical), which has been already discussed in the passing paragraph.

Women Estate

The property, which is not Stridhana, is Women’s estate over which she possesses very different rights. She is the owner of that property as long as she lives. She has exclusive right of enjoyment and management of it but her ownership is restricted. She cannot dispose of neither she can sell it, except in some special circumstances. On her death the property does not pass to her heirs, but to the next person from whom she has inherited it. The property obtained in lieu of maintenance would be divided amongst the other sharer, as it would have been if she has never taken it. Any interest devolving on a Hindu widow shall be limited interest

57 V. Mayukha, p. 160
known as a Hindu women's estate, provided however that she shall have
the same right of claiming partition as a male owner. The Apex court in
Kalawati Bai v Soiryabai,\(^59\) held that under the provision of the Act of 1956,
the limited ownership of Hindu widow would be converted into absolute
ownership, existed when the Act came into force or there after. The
intention of the legislature is clear that in fact a female Hindu originally had
a limited right and later acquired the full right does not in any way alter the
rules of succession given in sub sec (2) of section 15 of the Act of 1956.\(^60\)
The topic of Women's estate will be discussed at length at another place.

Now come to the continuing topic of Stridhana.

Under the Hindu Law in operation prior to the coming into force of
the Hindu Succession Act, 1956, a woman's ownership of property was
limited. Great diversity of opinions prevail over the issue of Stridhana and
woman's property in regard the absolute power of alienation. In this
connection the main thing, which was considered, is the source from which
the property is acquired and the status of woman as maiden, married or
widow. No doubt it is true to say that the complexity of the shastric laws
relating to Stridhana argues that it was never a wholly settled system.\(^61\)

In Prahadoeswara Mudaliar v Rajgopal Pillai\(^62\) an interesting
question came before the court that, whether the property of a dancing girl
can be treated as Stridhana. It was held that the property of a dancing girl
is her Stridhana and will devolve upon her female issue in preference to
her male issue.

\(^59\) AIR (1991) SC 1581.
\(^60\) Bhugat Ram v Teja Singh (2002) 1 SCC 210
\(^61\) Goorodas Bannerji: op cit.
\(^62\) AIR (34) 1947, Mad. 71 (C.N.30).
The verses of Katyana and Narada,\(^63\) which governed the rules of the rights of a female over Stridhana depend on three things the sources, the status and the school of women.

"The wealth, which is earned by mechanical arts or which is received through affection from a stranger, is subject to her husbands dominion.\(^65\)" Katyayana.\(^64\)

The property, which she has received from her husband, father or brother, or gifts from kindred, are technically, considered her Stridhana over which she has absolute ownership. The property given to her, by her husband if movable, after his death, she may dispose of it at her own pleasure.

A very crucial question came before the court in the case of Rashmi Kumar v Mahesh Kumar Bhada,\(^65\) whether the Stridhana property was exclusive property of the wife or was a joint property owned and held by both the spouses? All the three judges concurred on the point, that the Stridhana is the exclusive property of the wife. Fazal Ali J said, that the possession over Stridhana of a Hindu married female is clear and unambiguous. Stridhana is not a joint property of the wife and husband. By merely living in matrimonial home the stridhana does not becomes joint property of the spouses. It is also not a partnership property of the spouses. Though the husband in extreme distress can utilize it. Yajnavalkya\(^66\) says "that the husband is not liable to return to the wife her

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\(^63\) Verses 905-907, 911
\(^64\) Dayabhaga, Chap.4 section 1, para 19, cited by Mulla (op cit)
\(^65\) (1997) 2 SCC 397
\(^66\) Verses 11.147.
stridhana taken by him in a famine, for religious acts, in distress or when imprisoned."

Status of the female also plays an important role in deciding the woman's right over Stridhana. In maidenhood a Hindu woman could dispose of her Stridhana property of every description at her pleasure. During the maidenhood what the female earned, by her own labour is her absolute property, over which she has all the right to dispose of and to alienate it, minor can not dispose of her property. Married woman have absolute right over the property, which is called Saudayika or Stridhana in technical term. In Brij Inder v Janki Koer\textsuperscript{67} held that a Hindu widow has absolute power over every kind of property.

Dayabhaga School allows the women to claim as Stridhana only the movable property that is not inherited, but given to her by her husband. The immovable property is excluded from the preview of Stridhana. Under Mitakshara school very little property is treated as stridhana.

\textbf{Christian Legal System}

Christianity is defined by Friedrich Schiermacher (1768-1834) as a "**monothestic faith.** ...Essentially distinguished from others. Such faith by the fact that in it, every thing is related to the redemption accomplished by Jesus of Nazareth.\textsuperscript{68}

Magnificent (Luke 1:52) stated that "God has put down the mighty from thrones and exalted those of low degree" The early church father

\textsuperscript{67} (1877) 1 Cal.
\textsuperscript{68} Encyclopedia of Religion Vol. 3, p. 348.
rarely addressed the issue of economic justice but later on the leaders began to soften the hard saying of Jesus about riches. In scholastic period, the distribution of wealth was treated from a point of view that combined scripture and the writings of the church fathers with the works of Aristotle and Islamic thinkers. 69

In England a notion of property in land emerged at the end of 12th century from a mass of partly discretionary, partly customary, feudal rights and obligation. 70 Property according to Pufendorf, is founded in the physical power manifested in seizing in the object of property (occupation) 71 Bentham viewed, 'property is nothing but an expectation of protection created by the legislator and by settled practice.' John Stuart Mill associated property with liberty and suggested, that security of property is essential for man to maximize his potential for liberty. The communist Manifesto (1847) of Karl Marx and Friedrich Engle's held, 'property is nothing but a device in the social warfare between the capitalist and proletarian classes the means by which the capitalist expropriates the labour of the proletarian and keeps him in slavery.' 72

Now in the civil law system the term 'property' applies to those tangible things that can conveyed inter vivos and to a very few, if any intangible. It includes every thing that is the object of the law of succession.

Anglo American law distinguishes between real and personal property. The real property is land and every thing attached to it as

69 Ibid. 363.
70 The Origin of the Western Idea of Property are examined by Barry Nicholas in An Introduction to Roman Law (1962) reprinted 1987.
72 Ibid.
Immovable property and all other property – as moveable is termed as personal property. There are also two sets of laws to be adopted to these real and personal property.  

The roots of American property law are in the feudal land law of England. Accordingly, it distinguishes real and personal property. Real property, is historically consisted, chiefly of feudally important estate in land, personal property includes such intangible as contract right including bank deposits, corporate stocks, industrial property including patents and copy rights. They are consisted of others assets like corporeal and incorporeal. In U.S. the rules of intestate succession are now largely the same for real and personal property. In the feudal age practical ownership consists of a life interest inalienable in most cases and of a reversion or remainder which again when vested, is simply another life interest.

In later part of the 18\textsuperscript{th} century the Nepolean code was framed on individualistic principles and the right of ownership to be absolute exclusive and perpetual, was recognized. The concept of family property is accepted in France and rules were made for the protection of this property for the benefit of future family member. The assets of family are considered as family property. Till then the concept of family property is unknown to English law.

In classical Roman Law the sum of rights, privileges and powers which a person could have in a thing, was called dominium, ownership or

\begin{footnotes}
\footnotetext{73}{Walsh W.F., Outlines of the History of English & American Law; (1626), pp. 41-42.}
\footnotetext{74}{Powell: An Introduction to the Legal System of United State, p. 126.}
\footnotetext{75}{Smith S.: The Development of European Law, p. 172.}
\footnotetext{76}{Alarez A.: The Progress of Continental Law in the 19\textsuperscript{th} Cen. (1819) p. 1-3.}
\footnotetext{77}{“Financial Obligation with in the Family,” The Cambridge Law Journal Vol. 60 (2001) part-1.}
\end{footnotes}
less frequently proprietors. In the English Bankruptcy Act 1914, Property is defined in section 167 as- 

"Property includes, money, goods, things in action, land and every description of estate, interest and profit present, past and future, vested or contingent arising out of or incident to property as above defined."  

In Jones v Skinner, Landale M.R. has described the word 'property' as being the most comprehensive of all terms which can be used in as much as it is indicative and descriptive of every possible interest which the party can have. But Bentham consider as metaphorical and improper the extension of the term to includes other rights than those which relate to material thing.  

The Concept of Matrimonial Property  
Traditionally under English law the married woman was subject to a variety of legal disabilities, which grew out of the view that husband and wife were one person. The legal personality of a female merged in that of her husband after the marriage. The husband was regarded as the quasi guardian of her wife. All of the woman's personal property and real property vest to the husband on marriage. This property is called the marital property over which the wife has no power. The woman was cursed economically and made wholly to depend on man. She had no control even on her own earnings as those were all seized by the husband with full propriety rights, though she would regain all the property if she became widow. 

78 Cited in Bans Gopal Case (1949) AIR (36) All 433.  
79 1835-42 R.R. 274 at p. 276 (5 L.J.N.S.) Ch. 87.  
81 Vernier: American Family Laws (1931-38) p. 133
Many writers commented on the concept of Stridhana in Hindu law and the concept of marital property in English law. In marital property the personality of wife is merged in that of husband and what ever the property she possess goes to husband, disadvantaging...women in terms of property rights.\textsuperscript{82} Though the concept of Stridhana and marital property are different but also resemble up to some extent. In regards to Stridhana the wife has absolute right subject to some exceptions and not so handicapped as under the concept of marital property of English Law.

As long as western law remained under the sway of Christian priest woman remained without rights in those land.\textsuperscript{83}

In some countries and under some religious set ups though the situation is different, as Muslim woman owned and managed their own property and have absolute right to property. In Russia the wife is permitted to own and manage her property. In relation to property the Roman wife also enjoyed independence.\textsuperscript{84}

In the later part of the 19\textsuperscript{th} century some radical reform were made in the laws related to marital property. As the consent of both the spouses were made necessary for disposal of property. The Fedral Republic of Germany in 1950 introduced legal equality in the matter of finance and property of the male and female. In 1965 the French Civil Code, in 1969 Quebec Civil Code and in 1950 China made comprehensive changes in the laws related to property for women in terms of property rights. These reforms effected the other countries also and tremendous changes were brought in the position and power of women.

\begin{itemize}
\item \textsuperscript{82} Werner: op cit, p. 486.
\item \textsuperscript{83} Encyclopedia Britanica Vol. 19, p. 80.
\item \textsuperscript{84} Kidwai M.H. ‘Woman Under different Social and Religious Laws, p. 26.
\end{itemize}
Parsi Law

Under Parsi law there is no difference between movable and immovable, real and personal, self-acquired and ancestral property. It means there is no different set of rules like Christian law or Hindu Law to govern these properties. Though before the amendment the laws governing the succession of agricultural land of a Parsi intestate was the subject of the Act of 1865 in which the son's share was four times more than the daughter and widow's share was double of daughter but the Orrisa High Court held that succession to agricultural land would be same as any other property.

Recapitulation

At last it can be said that the word property has different meaning in different times under different legal systems in different circumstances and even in different mythologies. Sometime it is treated as fictitious entity, on the other hand some one has understood the word property in terms of possession and ownership. Whatever the meaning is ascribed to the property its relation with human being is never denied. It is some thing, which is related to a human being, though under Muslim Law the property is related to Allah (SWT) who is considered under Islamic law the absolute owner of the world. Every thing in this world belongs to Allah (SWT) and man is only an agent or trustee.