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WIFE'S RIGHT IN MATRIMONIAL PROPERTY UNDER HINDU LAW: A CRITICAL APPRAISAL

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Abstract

Various personal laws in the country are uniform in recognizing the obligation of a husband to maintain his wife. While maintenance is an economic right, it is a conditional right contingent upon a person's need or ability to sustain oneself. A person capable of supporting oneself is not entitled to maintenance. In this context, the right to reside in the matrimonial home and a right to financial settlement, or division of assets at the termination of marriage are crucial economic rights. While maintenance can be viewed as a sustenance 'dole' for basic survival, which the prevailing social conditions necessitate, matrimonial home and property can be construed as rights which would economically empower a woman and redeem her from the situation of perpetual dependency. Since marriage is not viewed as an economic partnership, on marriage a woman does not acquire any rights in her husband's property and hence she is not entitled to claim division of assets at the time of divorce. The only relevant factors for determining property claims are title and financial contributions. Hence the property acquired by the husband is treated as his exclusive property. Our matrimonial statutes do not award any recognition to a women's non-monetary contribution to the domestic household during the subsistence of the marriage. The contribution of the wife in creating family assets, through her unpaid labour by performing her domestic duties, is not considered a relevant factor for determination of her share in these assets. This article confines itself to a study of economic rights of Indian women within the family structure especially after the breakdown of marriage. Post divorce maintenance and property division are of paramount importance because they signify the status of women within marriage and their contribution to the marriage.

Introduction

Gender has always shaped the legal and cultural landscapes of all countries. Women, though numerically near equal are a minority group in terms of power and influence. The differences between man and woman may be small but they have snowballing effects on the

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status of a majority of women. Even the most significant, rich and civilised empires cannot boast of providing their women equal treatment. It was soon realised that no country can progress if half of its total population lags behind – socially, economically and politically. Hence, after Independence, the country enshrined not only the noble principles of equality, liberty and social justice but also provided for benign discrimination in favour of women and children in the Constitution[1] of the country. The legislative reforms have perpetuated a myth that Indian women occupy a high status in Indian society. The reality is, however, that legislation has not improved everyday life for the majority of women as bulk of Indian women is illiterate and hold little or no property in their own names. Economically, socially and politically, women remain at the lowest strata of society in India. In spite of constitutional guarantee of equality, many gender biased legislations continue to view women through a feudal lens thereby threatening to destroy the very foundation of constitutional mandate of equality.

In patriarchal societies in India, although it is customarily accepted that a woman belongs to her husband's family upon marriage, a woman's rights to property within her husband's family are meager. Marriage in India is considered in terms of obligations, not rights. The law offers little help to a wife who seeks to be economically independent [Gopal, 1990:340]. As a wife; a woman has little or no control over her husband's property. She has no right over any property legally belonging to her husband during her lifetime, even if it may have been acquired during the pendency of their marriage. The husband may will, gift or waste the entirety of his property as he pleases.

Two distinct rights which are implicit in the marriage contract are the right to reside in the matrimonial home and the right to a financial settlement at the termination of marriage. While maintenance is also an economic right, it is a conditional right contingent upon a person's need or ability to sustain oneself. A person capable of supporting oneself is not entitled to maintenance. In this context, the right to reside in the matrimonial home and a right to financial settlement, or division of assets at the termination of marriage are crucial economic rights. Since marriage is not viewed as an economic partnership, on marriage a woman does not acquire any rights in her husband's property and hence she is not entitled to claim division of assets at the time of divorce. The only relevant factors for determining property claims are title and financial contributions. Hence the property acquired by the husband is treated as his exclusive property. Our matrimonial statutes do not award any recognition to a women's non-

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monetary contribution to the domestic household during the subsistence of the marriage [Agnes,2011: 207]. The contribution of the wife in creating family assets, through her unpaid labour by performing her domestic duties, is not considered a relevant factor for determination of her share in these assets. It is unfortunate that absence of a settled and definite law for ascertaining the respective property rights of the spouses, when marriage terminates by divorce, could not be a cause of concern either for the jurists or for the legislatures of this country. The seriousness of this lacuna may be highlighted by contemplating a situation where a housewife who, though educated and capable of earning, has been busy in maintaining and running the household carefully so that husband could go out for work and earn money for the family, finds on divorce that she has nothing to share in the household assets with which she had been associated for many years [Sinha,1996: 56].

I- Women's Property Rights upon Divorce and the Notion of Separate Property Regime

The dissolution of a marriage takes place either by the death of a spouse or by divorce between the spouses. If the dissolution of marriage takes place by death, the law provides three broad approaches: 1. the right of succession of a widow, in law; or 2. the division of assets of the community under the legal systems that recognise the community of property; or 3. the provisions related to maintenance of the wife or the husband, according to the provision of law. The last may be in addition to succession where it is inadequate or a substitute for it. The law regarding the division of assets on divorce is unsatisfactory and inadequate in India.

During the subsistence of marriage, the legal systems traditionally follow one of the two systems to govern the property of the spouses: 1. the separation of property; or 2. the community of property. Under the former, the wife is the owner of her property, distinct from her husband, as she had been before her marriage as the husband is, of his. Each spouse has independent powers of disposition over his or her property without the need for consent of the other spouse. While the separation system confers the freedom of management and disposition, it eliminates the prospects of sharing the assets of the other spouse as of right. In the community of property the husband and wife are regarded as partners with respect to a contract entered into between the spouses before the marriage[2][Friedman,1959:239]. Practically, the joint management of property is not possible; the husband has the control and manages community of property belonging to the spouses. In an attempt to achieve the advantages of both the systems – freedom to manage one's assets and sharing of assets on dissolution- a third system, deferred community has been adopted by legal systems in recent times. Under deferred community, the spouses are separate with respect to their properties during marriage and the sharing of assets comes into being on dissolution of marriage. The Hindu Law follows the separation of property the notion of joint ownership of husband and wife appears to have been prevalent in the Vedic times, as has been in medieval texts of Hindu law [Altekar, 1959: 251]. If this notion of jointness is carried to its logical extent, the widow of a deceased should have been entitled, at least, to a substantial portion of the estate of the deceased husband. But this conclusion does not find a place in the writings of Hindu jurists.

Before the Hindu Marriage Act, 1955, divorce was not permitted [Siajwani, 1989: 50], only the customary divorce was known among Hindus hence questions involving the respective rights of spouses over matrimonial property never arose except where inheritance was involved. In the lower sections of the society where customary divorce was practiced, the wife who deserted her husband was bound to refund to him whatever she had received during the marriage or afterwards[3]. In general, mutual gifts and presents were exceptions to the above rule in all other sections of the society[4]. However, the rules in this respect were not fixed, and the husband had the lion's share in the matrimonial property. The Hindu Marriage Act provides both the husband and the wife the right to file a petition for a decree of divorce[5]. Aside from its social unacceptability, divorce is usually not a realistic option for most women who have little or no financial independence or education. [McGovern, 1984:18]

Though Hindu Marriage Act [HMA], 1955, incorporated divorce provisions but the law was no longer worried about the disposal of matrimonial property, as it incorporated divorce as a remedy to terminate the married status of the spouses. To cope with the impending problem of determining proprietary rights, the Act provided that the property jointly presented to the spouses at or about the time of marriage may be disposed of by the court as it may think "just and proper"[6]. For the application of Section 27 following three conditions are important:

a) The application should be filed before the disposal of the main matrimonial proceeding. When the main petition is dismissed no relief under this Section can be granted;
b) The property should have been presented at or about the time of marriage;
c) The property must belong jointly to husband and wife.

The expression "jointly" in Section 27 of the HMA, 1955 is of significance; it demarcates

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the limits of matrimonial courts as well as their jurisdiction over the disposal of such property. This jurisdiction has been narrowed in two respects: First, by limiting it to property which has been given to the spouses either at or about the time of marriage; second, such property must have been given to them jointly. This construction is too thin and a majority of cases are left out of the purview of the Act. There are cases relating to various other kinds of property, which become the subject- matter of the dispute between the spouses; for example, the property given to them jointly in the form of gifts and presents from any source either "before" or "after" the marriage[7], property jointly pooled by the spouses during their covertures for meeting the needs of the family and consisting of their individual earnings or separate property, furniture, utensils, apparel and other things of personal use which are clearly outside the purview of the Act. Courts are often called upon to adjudicate with respect to these matters while determining the respective rights of the spouses in the wake of the dissolution of their marriage, and no doubt the courts often meet with difficult situations while so doing. The distribution of chattels and other household articles between spouses after a break up presents still more difficult questions. The better principle seems to be that the specific articles such as clothes, ornaments and other personal belongings which by their nature are to be used by a particular spouse, may be given to him or her, but property other than this should be treated as belonging to both as co-owners and may be divided between them at the time of the dissolution of their marriage.[8]

The principles applicable in such matters are those of common sense. Application of formal and rigid rules of law will not be of much advantage, and on the contrary may perpetuate the trouble. The main reason for this is that spouses never pool their chattels or other similar articles of their daily use with a view towards determining their respective shares in them and their rights cannot be determined on principles of contract as none exist in this situation. As unsound as it may seem, it is nonetheless a fact that spouses never foresee the eventuality of divorce at a start of a marriage. It is also a matter of common experience that spouses do not intend to create any formal legal relationship when they use goods belonging to each other; it cannot be definitely held when one was acting as agent or bailee for the other. These are some considerations which prevent matrimonial courts from deciding the respective claims of the spouses on more equitable grounds than the formal principles of law. The courts are rather handicapped in the absence of any fixed set of rules or a clear judicial practice in this area. Hence, any tendency towards general principles of law and a resort to justice, equity and good conscience encourages the play of a subjective element in the judiciary. A civil code, perfect in itself[9], would avoid such mischief to a major extent and it seems imperative that laws

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applicable to Hindus should be thoroughly revised and any lacunas or loopholes plugged through the legislative process. The judiciary, of course, might be helpful in doing this but it inherently suffers from the same weakness for which the process of judicial law making has often been decried; that it moves too slowly in comparison to the legislative process. In disposing of property cases the civil courts of India generally make good use of general principle of law, particularly those of partnership, agency, bailment and pledge.[10] General principles of law relating to joint ownership are frequently resorted to while disposing of such property. It cannot be said that this is a happy state of affairs. For a nation which has developed elaborate statutes for governing property relations with respect to its acquisition, enjoyment and disposal, it seems to be a matter of mere apathy preventing the legislative machinery from establishing rules for disposal of matrimonial property either during the subsistence or after the dissolution of marriage.

The Court under the Hindu Marriage Act, 1955 is required to act in conformity with what it thinks "just and proper". These words indicate their indefinite ambit and place on the courts the burden of applying principles which may appear to be equitable and just. While handling the problems, the courts either consciously or unconsciously scoop precedents set forth by the English courts in this area. Some of the generalised rules for enforcing the claims of the spouses with respect to their matrimonial property after the dissolution of their marriage are as follows [11:]
1. Where either of the spouses has his or her separate property, this may be retained solely by him or her. 2. Where the spouses have pooled their property, it should be divided equally between them irrespective of their respective contribution to it. 3.Where either of the spouses has been found guilty of one of the matrimonial offences, such as adultery or desertion, the guilty spouse should be enjoined to claim any share in the property. 4.Gifts and presents made to the spouses either jointly or singly, before, at, about or after the marriage, either by parents, relations or friends may be disposed off in accordance with the following rules: a)Gifts or presents made jointly to the spouses should be divided between them in equal shares irrespective of the source; b) Gifts or presents made individually to the spouses should be treated as their respective separate and exclusive property and should not be divided at the time of the dissolution of the marriage. c) In the case of mutual gifts or presents made by the spouses, where it appears that the intention of the donor at the time of making the gift was merely to allow the other its beneficial use and not to pass the ownership to the donee spouse, such donee spouse must refund the subject-matter of the gift to the donor spouse.[12].The courts in every

country face the difficulty of being umpire between husband and wife with respect to their matrimonial property. The tendency of the common law courts has always been in favour of a separate property system [Bromley, 1962:400] although the adoption of community property system has been advocated from time to time.

Hence, the legal system is inherently unfair to women seeking a divorce. A woman is the legal owner of her *Stridhan*[13] only and under Section 27 of HMA, 1955, in a divorce court may only adjudicate rights regarding property presented at or about the time of the marriage, which may belong jointly to the couple. Because *Stridhan* is not joint property, a woman must endure two law suits. She must first participate in the divorce proceedings. The woman must then bring another suit in a civil court against her ex-husband to recover the *Stridhan*. The additional legal expenses and stress from prolonged litigation deter women from trying to recover their property[14]. Another unpleasant alternative is that the wife can initiate an action against her husband for a criminal breach of trust if she can prove that the disputed property is part of a dowry which is illegal. Section 27 of the HMA, 1955, therefore, operates against a women's economic interest.

II. Contribution of the Homemaker: Evolving Jurisprudence

The Indian Judiciary and the personal laws have also consistently failed to quantify the contribution of the homemaker. General Recommendation No. 17 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) dealt with measurement and quantification of the unremunerated domestic activities of women and their recognition in the Gross National Product. It affirmed that the measurement and quantification of the unremunerated domestic activities of women which contribute to development in each country will help to reveal the *de facto* economic role of women and it recommended that State-Parties should *inter alia* encourage and support research to evaluate the unremunerated domestic activities of women to quantify and to include this in the Gross National Product. It recognized that most of the unpaid work around the world is performed by women.

The House of Lords in Miller v. Miller[15] strongly articulated that there has to be some sort of rationale for redistribution of resources from one party to another. It held that there are at least three rationales—need (generously interpreted), compensation and sharing for redistribution, which individually or collectively look at factors which were linked to the parties' relationship, either causally or temporally. The most common rationale is that the

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relationship has generated needs which the other party should meet. The court in such cases try to ensure that each party and their children have enough to supply their needs which is set at a level as close as possible to the standard of living previously enjoyed. A child is the major source of need. Another source of need is having had to look after children or other family members in the past which compromise the ability of many homemakers to attain self sufficiency as a result of family responsibilities. Yet another source of need may be the fact how the parties chose to run their life together. The House said that even dual career families are difficult to manage with complete equal opportunity for both as compromises often are made by one so that the other can get ahead. 'The needs generated by such choices are a perfectly sound rationale for adjusting the parties' respective resources in compensation.' The second rationale closely related to need is compensation for relationship generated disadvantages. The economic disadvantage generated by the relationship may go beyond the need. The third rationale is the sharing of fruits of matrimonial partnership. Earlier, in White v. White[16] it was already settled that domestic and financial contribution should be treated equally. It clarified that Section 25 (2) (f) of the 1973 Act[17] does not refer to contribution which each has made to the parties' accumulated wealth but the contributions they have made and will continue to make to the welfare of the family.

The Indian patriarchal system strengthens control over material assets in favour of males and perpetuates stereotyping of roles firming financial dependency of women on men. An Indian women's assumption of household responsibilities take her nowhere if after spending substantial part of her life in domestic drudgery a broken marital cord forces her to fight for her survival. In absence of evaluation of homemaking as an economic contribution, this important though unremunerative work does not translate into a right to own material assets looked after by a wife as part of her house-keeping control and meager quantum of maintenance to be squeezed out from the pocket of an unwilling husband under the compulsions of a court's direction[Saxena,2006:394].

While a string of legislations on matrimonial property rights has been made in most countries which have taken into account the hitherto unexplored subject of quantifying the contribution of the homemaker and courts have from time and again dealt at length with this issue, Indian courts, very strangely and unfortunately have refrained from discussing this issue. No attempt has been made in passing any suitable legislation to address critical issues in division of matrimonial property. However, scattered efforts have been made to appraise the value of the homemaker in insurance suits. In an extremely slow pace a skeleton of jurisprudence pertaining to contribution of homemaker is shaping in cases related to insurance claims and the like. In Lata Wadhwa v. State of Bihar[18], the Supreme Court, while awarding compensation to the family of the deceased (including housewives) and injured in fire, attempted to estimate the value of services rendered by them to the house and held that a notional income of Rs. 3,000/- should be awarded for housewives and fixed Rs. 3,500/- as monthly income. In Malay Kumar Ganguly v. Dr Sukumar Mukherjee and Ors[19], the Apex Court following Lata Wadhwa stated that:

"For compensating a husband for loss of wife, therefore courts consider the loss of income to the family. It may not be difficult when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes contribution to his family. It is capable of being measured on monetary terms although emotional aspect of it cannot be. It depends upon her educational qualification, her own upbringing, status, husband's income."

Justice Prabha Sridevan in a recent case[20] of the Madras High Court relied heavily on the decision of the Apex Court in Lata Wadhwa and noted that:

"The role of a housewife includes managing budgets, coordinating activities, balancing accounts, helping children with education, managing help at home, nursing care etc. One formula that has been arrived at determines the value of the housewife as, Value of housewife= husband's income+ wife's income+ value of husband's household services, which means the wife's value will increase inversely proportionate to the extent of participation by the husband in the household duties. The Australian Family Property Law provides that while distributing properties in matrimonial matters, for instance, one has to factor in 'the contribution made by a party to the marriage, to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent.'

If we look at some of the rulings of the CEDAW with regard to complaints made to it, we find the high prevalence of the stereotypical attitudes with regard to the role of women that constitutes a serious impediment to the full implementation of the said Convention. One cannot ignore or forget that the homemaker, by applying herself to the tasks at home, liberates her spouse to devote his energy and time and attention to tasks that augment his income and generate property for the family. In fact the National Organisation for Women, USA has

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adopted the proposal for recommendation of economic rights for homemakers, which includes giving of a value to the goods and services, produced and provided by the homemaker in the Gross National Product."

Concluding, the Court held that the time has come to scientifically assess the value of the unpaid homemaker both in accident claims and in division of matrimonial property. Recognition must be given to contribution of the household work of wife even if the contribution is not financial. Therefore, in Shishupal @ Shish Ram & Ors. v. Surjeet & Ors. (2026 INSC 634)**,** the Supreme Court (Justice Sanjay Karol and Justice N. Kotiswar Singh) dealt with a claim arising from the death of a homemaker in a motor vehicle accident on 25 November 2001. Observing that the unpaid domestic labour of a homemaker has extensive economic and social value, the Court described homemakers as **"Nation Builders"** and recognised **"Loss of Domestic Care"** as a distinct head of compensation under the Motor Vehicles Act. It held that the value of domestic services should be assessed at a minimum of ₹30,000 per month, subject to 10% cumulative increase every three years to account for inflation. The Court further clarified that where a homemaker also had an independent source of income, compensation for Loss of Domestic Care must be awarded **in** addition to her actual earnings. The judgment indicates a significant advancement in gender-sensitive jurisprudence by recognising unpaid household work as economically valuable and reinforcing the constitutional principles of equality and dignity under Articles 14, 15 and 21**.**

IV Conclusion

The various personal laws in the country are uniform in recognising the obligation of a husband to maintain his dependant wife, but the right of a wife to claim as part owner of a property acquired and owned jointly by the husband and wife during marriage is not recognised. The contribution of the female to the family's income is not recognised even today and a women's contribution in the acquisition of family property is still not evaluated in terms of the contribution. This fact is of great significance that most married women do not have any independent source of income and many women give up their employment after marriage or do not take it up for many years after marriage in order to denote their time to family obligations, particularly bringing up of children. They are, therefore, economically dependant on their husbands. In most cases of property acquired during marriage, both movable and immovable, it is paid for out of the husband's earnings. A matrimonial home is normally

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registered in the husband's name and so also things brought for the household. The principle of determining ownership on the basis of financial contribution is unjust and works inequitably against women. The demand for recognition of the wife's contribution in the way of work is growing in many countries. A legal recognition should be given to the economic value of the contribution made by the wife through housework, for purposes of determining ownership of immovable property instead of continuing the archaic test of actual financial contribution.

Unfortunately, a matrimonial property regime could not develop in India because of reasons more than one. Firstly, the marital rights in India are governed by diversified personal law systems which, for the most part, rest on religion and traditional practices. And, these personal laws still continue to maintain that family is the domain only of the husband, ignoring totally the socio-economic realities of life today. Secondly, under the separation of property principle, being followed by the courts in India, on the English pattern, the property may either belong to husband or to wife. But, above, all prime reason why matrimonial regime could not be developed in this country has been the lack of sense of claim to matrimonial assets in the divorced women. Legal equality apart, in Indian women, irrespective of the denomination to which she belongs, still considers, divorce as such a curse that finding that she has now no right to share the company of her husband, has hardly any heart for the claim of her share in the matrimonial home. Closer home in the context of matrimonial property, the Portuguese Civil Code, the living legacy left in Goa by the Portuguese is of paramount significance. For almost 500 years, a working model of uniform civil code has existed in Goa. The civil laws currently in force in Goa that pertain to marriage, divorce, protection of children and succession are non-discriminatory in terms of caste, ethnicity or gender. Marriage is a contract and the civil registration of marriage is compulsory. Under this system the spouses register their separate properties at the time of marriage. Separate properties include property that each spouse holds at the time of marriage, or that which is acquired by succession, gift or under a previous exclusive right. If separate property is not registered at the time of marriage, it is considered to be community property. All property acquired during the marriage is considered to be owned jointly by both spouses and is to be divided equally if parties divorce. This regime provides the baseline for fairness and security in marriage. The argument on the side of communion of property by default seeks to protect the woman who gave up her career to be a housewife and is being divorced after many years of marriage. Giving her a share in the marital property recognizes her contribution to the union, even if the contribution is not financial. A systematic study of the Goan family laws is required. In the light of the current issue the Goan laws could serve as a model for the entire nation.

There are some methods to circumvent the inequality in the separate property regime. The husband and the wife, during the marriage can agree to hold titles jointly and in an equitable manner. During the marriage or upon divorce one spouse can agree to transfer the title of certain assets to the other one. But both these methods of minimizing the inequality of separate property require the consent of at least one person. Joint title requires some amount of forethought that may be absent at the time the couple acquire the property. Using the mechanism of constructive trust, the Court may also be able to ameliorate the suffering of the non-title holding party. However constructive trusts do not create legal rights for the beneficiary. The court may also compel a spouse to sell his or her property in order to make court mandated maintenance payments. Despite these ways in which the separate property regime can be dodged, it remains an inequitable system which fails to recognize marriage as a partnership and discriminates against women who lack title to the marital home and other property. Courts elsewhere have responded to these economic realities by evolving a jurisprudence of joint matrimonial property regime where all assets acquired from the time of marriage are viewed as joint marital assets to be divided equitably or evenly between the divorcing parties. In India, however the woman, while enjoying the formal status of equality at law, in essence remains economically dependent on her husband. The separate property regime has resulted in the perpetuation of subordination of women's economic interests.

Many countries[21] have already enacted law relating to matrimonial property. The Marriage Laws Amendment Bill 2010 provides that Courts would decide the "extent"[22] of the wife's share in her husband's self acquired property both movable and immovable, in case of a divorce. While the wife will have no share in the inherited property, its value will be taken into account by court while fixing the amount of compensation or alimony to her. The judge will decide as per the facts and circumstances of each case. Rajya Sabha passed the Bill on 26th august 2013 and it awaits the nod from Lok Sabha. But still the terms are not clear and it is left at the discretion of the Court. It is necessary to recognize marriage as an equal economic partnership between husband and wife, and to give weight to the wife's contribution to the acquisition of assets by the husband by suitable legal mechanisms. Although the adage is, "behind every successful man there is a woman", this is hardly recognized in the context of married couples. Since, matrimonial property exists independently of the separate properties of the spouses and does not rest on their religion based personal laws, the Indian Parliament

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now must enact an independent Act providing a statutory regime of matrimonial property for every couple in India irrespective of their religion, caste or creed, …a step towards achieving the Constitutional directive of the Uniform Civil Code under Article 44.

Notes and References

1. *The Constitution of India*, Articles14, 15(1)(3), 16(1(2), 21,.
2. "… Community property means largely that husband and wife are one and the husband is the one."
3. This practice of refunding chattels and other property is not uncommon with women belonging to Chamar, Pasi, Kori, Dhanuka and other scheduled castes among whom customary divorce is quite in vogue, they are also often obliged to hand over custody of children born out of the union.
4. Vatsyayana, Adhikarana, Ch. 2, V. 46, 47.
5. The Hindu Marriage Act, 1955, Section 13 (1).
6. The Hindu Marriage Act, 1955, Section 27 lays down: *Disposal of property*- In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

7.These words have been carefully avoided in the section and it seems that the property acquired either 'before' or 'after' the marriage has been left within the jurisdiction of ordinary civil courts.

8. Referring to such difficulties and their solution , Denning , L.J., as he then was , remarks in *Newgrosh vNewgrosh* , (1950) 100 L.J. 525 (C.A.): " In the ordinary running of a home , where the parties agree to buy clothes or furniture ,they may also agree to whom it is to belong ; but if as so often happens they have left that unsaid, the title to it depends as a rule on the nature of property bought or the investment made .It does not necessarily depend on who provided the money. If clothes are bought for the wife they are of course hers. Conversely, where money is invested in the husband's name, it is presumably his. But if they invest money in their joint names or if they buy furniture with it, which it is obviously, intended as a continuing provision for the benefit of them together it may properly be presumed to belong to them jointly…. Full effect is, therefore, given to their intention by holding them to be joint owners."

9. Of course even a perfect Civil Code admits the scope of gaps, and the caution posited by Cardozo, J., in "The Nature of the Judicial Process" will be taken into consideration by the courts on the basis of peculiarities of each case.

10. See particularly the Indian Partnership Act, 1932 and The Indian Contract Act, 1872 and the case law developed there under.

11. The suggestions here in no way indicate an adoption of any particular legal system but are based on the practice and law of both systems, separate as well as community property and even more on equitable principles. Nonetheless, they venture to lay down some principles for legislation with regard to the social circumstances prevailing in among the Hindu Community.

12. In *Spellman v Spellman* (1961) 2 All. E.R. 498 (C.A.) , where the husband purchased a car under a hire – purchase contract and gave the same to his wife as a gift along with the connected papers relating to title, it was held that the husband was still owner of the car and not his wife in proceedings under Sec 17 of the Married Women's Property Act, 1882. The principal reasons were: (a) the relationship between the two was informal as that of husband and wife usually is, and it was not to be decided by formal rules ; (b) it is difficult to say that the husband under the circumstances can pass a title in favour of his wife by way of gift where under hire – purchase he himself does not own the property until all the investments are paid; (c) as papers relating to title were connected with the hire – purchase transaction of the car , possession of them by the wife did not give her a title to the property. Curiously enough the case deals with the modern problems of hire-purchase transactions which are getting wide currency in India these days.

13. Pratibha Rani v Suraj Kumar, 1985, A.I.R. 628, 636 (P&H).

14. Maharajan v Sarojini, 1988 A.I.R. 175, 178 (Or.). The Court further stated that the consequence is not an enviable one,

particularly in view of the weaker status of women in our society and thus there is urgent need of a remedial measure through appropriate legislation.

15. [2006] UKHL 24.

16. [2001] 1 A.C.596.

17. Matrimonial Causes Act, 1973.

18. A.I.R. 2001 SC 3218

19. 2009 (10) SCALE 675

20. National Insurance Company v Minor Deepika, MANU/TN/1304/2009.

21. Tanzania: Law of Marriage Act, 1971(Section 114); Kenya: Draft Bill Provision (Section 123 deals with power of court to order division of matrimonial assets); Malaysia: Law Reform [Marriage and Divorce] Act,1976, Section 76; Singapore: Women's Charter; The Ontario Family Law Act, 1986, Chapter F.3.

22. The Marriage laws Amendment Bill, 2010, **Section 13(F)** : Special Provision relating to share in immovable and movable property in proceedings under Section 13C.: 1) Without prejudice to any custom or usage or any other law for the time being in force, the Court may, at the time of passing of the decree under Section 13C on a petition made by the wife, order that the husband shall give for her and children as defined in Section 13E, such compensation which shall include a share in his share of immovable property (other than inherited or inherited immovable property) and such amount by way of share in movable property, if any, towards the settlement of her claim, as the Court may deem just and equitable and while determining such compensation the Court shall take into account the value of inherited or inheritable property of the husband.2) Any order of settlement made by the Court under subsection (1) shall be secured, if necessary, by a charge on the immovable property of the husband.

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