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## **STREEDHAN AND WOMEN'S RIGHT TO PROPERTY**

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### **ABSTRACT**

Tracing back to ancient times women never had the right to property nonetheless they were only treated as one, streedhan was her only property over she had rights but still, that wasn't absolute they were limited. With time streedhan was misinterpreted as dowry and women were exploited and killed for dowry demand. After the enactment of the Hindu Succession Act of 1956 women were given the absolute right to have ownership of their streedhan property but still, coparcenary rights over Hindu Joint Family property were not yet recognized. Soon after the 2005 amendment of the Hindu Succession Act of 1956 daughters were entitled to coparcenary rights over their ancestral property and they were also recognized as the legal heir to have ownership in father's separate property. Through this research paper, the researcher tries to explain the concept of streedhan and its misinterpretation to dowry, how women got their property rights, what changes were brought under the act and recommendations upon how to combat against creating awareness and making women avail their property rights.

**Keywords:** Streedhan, Hindu Succession Act of 1956, Hindu Joint Family, coparcenary rights.

## **INTRODUCTION**

Streedhan is an absolute right which a woman possesses, nobody else but only a woman has absolute ownership over her Streedhan. Streedhan is a pure concept that is being practised from the ancient period but with evolving time it's evident enough that the concept of Streedhan got interpreted as dowry.

Dowry is a social evil it's considered to be an illegal act and it's punishable many females had already given their lives due to this very system if the female's family were not able to fulfil the dowry demands after marriage females are tortured, abused and killed. Even if we have strict laws against dowry prohibition it's still prevalent in India. Dowry is totally different from Streedhan because Streedhan is a right of a woman. In many families, it's generally observed that the daughter's family give dowry in order to not entitle their daughter with property rights so that the property does not go to another household. With this mentality and lack of awareness, streedhan is interpreted into dowry and it's still in practice. It has become so rigid that there is no difference between educated people and non-educated people when it comes to giving and taking dowry.

After the 2005 amendment now daughters also have coparcenary rights on ancestral property and she is also entitled to have proprietary rights over the separate property of her father. Numerous changes were brought under the Hindu Succession Act of 1956 which will be discussed in detail. The awareness must be created and parents should give these rights to daughters as well, and should not believe in giving or taking dowry.

## **STREEDHAN- A RIGHT OF THE WOMAN**

The term Streedhan is constituted by two words which are 'stree' and 'dhan' which means women and property in English if we have to define the term Streedhan we say that it's a woman's property upon which she has absolute ownership. The practice of Streedhan can be traced from ancient times as Hindu Veda purana mentions how women are entitled to get their streedhan. Streedhan is given out of love and affection to women before marriage, at the time of marriage, after the marriage, during childbirth and when they become a widow. Streedhan is given by the parents to their daughter, in-laws to their daughter-in-law and relatives.

Streedhan is whatever a woman receives during her lifetime, it includes movable as well as immovable property gifts. According to the age-old Smritis and all old schools of Hindu law such as Dayabhaga and Mitakshara. Streedhan in the hands of a woman whether she is a

maiden, married woman or widow were the Gifts made to a woman before the nuptial fire, Gifts made to a woman at the bridal procession, Gifts made in token of love by father-in-law, mother-in-law, Gifts made by father, mother and brother. For a married woman streedhan was divided into two types namely Saudayika and Non- Saudayika gifts I will be discussing these two types later in detail.

Nobody can possess or absorb streedhan of any woman if the husband or the in-laws tries to misappropriate the Streedhan then the woman has been guaranteed full right to get her ownership back as she is the sole owner of her Streedhan even if she gives someone to take in care of such property and at the time when claims the property back and if that person fails on giving back the possession they will be penalized under Criminal Breach of Trust. With time Streedhan is being misunderstood as Dowry which has taken the essence of Streedhan and has made people even criticize streedhan but Streedhan is completely different when compared to dowry. This paper will try to differentiate between dowry and Streedhan in later sections. In the case where a woman has self-acquired any property and is making any sort of profits from that particular property that property would be her streedhan at the time of her marriage.

Whereas there are few cases wherein if women possess any property it's not treated as her streedhan. In the case of *Bhagwandeem v Maya Bae*<sup>1</sup> Privy Council had decided this case and stated that if a husband gifts any property to his wife and when she dies the property will go to the husband or the heirs of the husband and not to the heirs of the wife. In another case of *Debi Sahai vs Sheo Shanker Lal And Anr*<sup>2</sup>, it was stated that if a mother gives her property to her daughter then it will be regarded as the streedhan of the mother and not of the daughter. Also in a wedding, there are many gifts which are given for common use which the husband and the wife both can commonly use hence, these gifts are also not considered as a Streedhan.

## LEGAL STATUS OF STREEDHAN

Streedhan is very well recognised under the eyes of the law, as it's the absolute right of women the law tends towards the women in order to protect their Streedhan. There have been many cases wherein in the time of divorce there is also a dispute of who will keep what part of the article or the property which was given during the time of marriage, in such cases the husband and the in-laws often try to have a hold on the property of women which is her Streedhan. Hence, there have been many judicial pronouncements that have stated that whatever the

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<sup>1</sup> (1867) 11 MAI 487

<sup>2</sup> (1900) ILR 22 All 353

women got before, during the marriage and after the marriage will be considered as her Streedhan and she can do whatever she likes to do with the articles and the property, husband or the in-laws are not entitled to restrain the Streedhan.

In the case of *Pratibha Rani v/s Suraj Kumar*<sup>3</sup> the Supreme Court ruled that any Hindu married woman becomes the absolute owner of her Streedhan property and she can deal with the property in whichever manner she deems and even if she makes her husband or in-laws as trustees of the property she can claim back such property and if the trustees fail to return such property then they will be held liable under Section 406 of IPC, which gives punishment for three years of imprisonment, fine or both for Criminal breach of Trust which is again defined under section 405 of IPC.

In the case of *Bhai Sher Jang Singh v/s Smt Virinder Kaur*<sup>4</sup> the Court stated that Jang Singh will be held liable under Section 406 of IPC for Criminal Breach of Trust as for safe custody he was allocated as a trustee but he has dishonestly misappropriated as the ornaments and articles which he took a step back to return was the Streedhan of Virinder Kaur.

Further in the case of *Rashmi Kumar v/s Mahesh Kumar Bhada*<sup>5</sup> the Court also mentioned that if the woman aiming to keep her Streedhan safe handover it to her husband or in-laws and if they dishonestly misappropriate or converts such property for their use then they will be held liable for criminal breach of trust.

As Section 14 of the Hindu Succession Act, 1956 provides women a right to get Streedhan simultaneously Section 27 of Hindu Marriage Act, 1955 gives power to women to have absolute ownership over her Streedhan. Also, Section 19(8) of the Protection of Women from Domestic Violence Act, 2005 gives power to the magistrate to order the respondent i.e. the person who's restraining Streedhan to hand over the ownership of Streedhan to the alleged woman. In a very recent case of *Sri Dipak Biswas v/s Smt Aditi Kar (Biswas)*<sup>6</sup> the husband forcefully restrained Streedhan of the woman the High Court of Tripura had ordered to give back the possession of Streedhan, the Court in its judgement also stated that "*A women's maintenance (vritti), ornaments, perquisites (sulka), gains (labha), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in*

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<sup>3</sup> AIR 1985 SC 628

<sup>4</sup> 1979 Cri. L J 493

<sup>5</sup> (1997) 2 SCC 397

<sup>6</sup> CrI. Rev. P No.27/2018

*distress... ”<sup>7</sup>*

## **DIFFERENCE BETWEEN STREEDHAN, DOWRY AND GIFT**

In a country like India where the dowry system is so profound that even after making laws related to dowry prohibition still, it continues to be in practice either directly or indirectly. The system is so well established that it has become more like a societal pressure and even societal status, if a party ponders upon not giving or taking dowry it more becomes like a societal pressure as the constant thought of societal shame prompts and whereas in some cases it has become a societal status as of the more you give the more prestigious you become for the society, with this thought everyone always find themselves confused in between the terms of Streedharan, dowry and gift.

With the evolving society, people have deemed to misinterpret dowry to Streedhan but there is a difference between dowry, Streedharan and gift. The term dowry is seen as a negative term it's different from streedhan as Streedharan is the right of women, she is entitled to get her streedhan for her own use and she has an absolute right over her streedhan nobody can take possession over her streedhan and if we talk about dowry then it's a demand which is made by one of the party in the marriage and this demand becomes an essential condition for marriage, if such demand or condition is not fulfilled then the marriage will not take place. A women during marriage brings her Streedhan to her in-laws house and when the in-laws or the husband or any relative make demand for money, articles or property in the name of the women for their own use then it will be termed as a demand for dowry The gift is made out of love and affection it cannot be considered as streedhan as gifts can be given which can be used by either the spouses or the in-laws family similarly, gifts cannot be considered as dowry because a gift is a voluntary act and there is no such demand made out for any party.

With the increasing crime rates against women mostly related to dowry, there was an evil necessity of enacting laws to prohibit dowry and protect women from such exploitation hence, The Dowry Prohibition Act was enacted in the year 1961 which defined dowry under Section 2 as any property or valuable security which is given or agreed upon to be given before or at the time and after the marriage. Under section 3 of the act, any person who will be found giving or taking dowry will be punished with five years of imprisonment and for a fine which will be not less than 15,000 or to the amount equal to the value of dowry.

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<sup>7</sup> <https://drive.google.com/file/d/1D1zE3bFZ9zuJEDkofQrjvoPG598E5ar3/view>

## TAXATION LAW VIEW ON STREEDHAN

Tax laws of India can be defined as a body that has a set of rules and regulations which gives power to any public authority to make a claim upon any taxpayers, making them liable to transfer their income or property to that particular authority. As we know Streedhan is given to the woman, it's her right to acquire her Streedhan, the question arises when any property or articles are given as a Streedhan to any woman then who will pay the tax upon Streedhan. The tax laws have clearly analyzed this situation and have also made clear that who will be and can be made liable to pay the tax upon such property.

Streedhan which is given out of love and affection is not made attached by a wealth tax. Under Section 64 of the Income Tax Act of 1961, it states upon which condition the woman will be made liable to pay upon her Streedhan and in which situations she will be not be held liable. From the point of view of clubbing, if any transfer is made without consideration or without entering into an agreement then in this case the transferor will be burdened to pay the tax on the transferred Streedhan. For better understanding, we can look upon an illustration wherein a mother-in-law gifts a property to her daughter-in-law during the time of marriage, the property becomes a Streedhan property of women but as the transfer was without any consideration and without having an agreement and most importantly being a Streedhan the mother-in-law will only be liable to pay tax upon such property but there is an exception to this, as in cases where any gift made by other than relatives such transfer will be considered as Streedhan but in this case, the spouses will be liable to pay the tax only in such case the transferor can't be burdened for paying the tax

There are instances where women are too made liable to pay tax upon her own Streedhan, following in which a woman has self-made her Streedhan, broadly speaking when a woman with her own income owns her Streedhan and out of such Streedhan gains profits then the woman will be held liable to pay the tax on her Streedhan, the in-laws or the husband cannot be burdened for paying the tax.

Getting jewellery as Streedhan or gift is a very normal phenomenon in India, In the case of *Ashoke Chadha v/s IOT*<sup>8</sup> the High Court of Delhi held that if pieces of jewelry are given as Streedhan which is very normal in India and if it's given over a span of 25 years then it cannot be stated as an unexplained investment this decision was made with the purview of Section

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<sup>8</sup> 144(Del)/2009

61(a) of the Income Tax Act of 1961.

## **STRUGGLE FOR ACQUIRING RIGHT TO PROPERTY**

I would like to mention a quote, quoted by Justice Arun Mishra “*A daughter always remains a loving daughter. A son is a son until he gets a wife. A daughter is a daughter throughout her life.*” He quoted this in a landmark case that cleared all the confusion related to the property rights of women. I would like to discuss this case later, as we know that Women have to fight to acquire even their basic rights in India such rights include property rights as well. In ancient Hindu society, it was presumed that a daughter one day has to get married and go to someone else’s home and the son had to carry on with the family lineage but with changing time the society also evolved that this thought was dusted hence as society changes the law also tends to change.

In the ancient period, it was presumed that women can take good care of the property as mentioned under Vedas and commentaries still they weren’t given any right over the ancestral property and even if they tried to do any transaction on their own it was considered to be void. Their property was divided into Saudayika property and Non- Saudayika property. Saudayika property included the property upon which women had absolute ownership, the property that she was gifted by her parents. Husband or in-laws and whereas Non- Saudayika property includes those properties upon which women had limited ownership and if she wishes not to make alienation taking consent was necessary her husband was necessary, it included those properties which were gifted by non-relatives.

In the year 1937, Hindu Women Right to Property Act was enacted in order to give property rights to women especially to widows the act by its name suggests to be granting absolute property rights to women but it failed to do so, as it gave only limited property rights to the widow. Before the commencement of this act if a married male coparcener died then that part of the property was made divided into the surviving coparceners but after the enactment of this act the property was made held with the widow but this right was limited as absolute ownership was not given only till she is alive she would be regarded to hold the property and as soon as she dies the property will go back to the surviving coparceners. Even if she wishes to alienate the property she wasn’t given the power to do so.

## **HINDU WOMEN RIGHT AFTER HINDU SUCCESSION ACT, 1956**

With the enactment of the Hindu Succession Act, women ambit of securing property rights was

made wide a little as earlier they were not allowed to alienate such property without taking prior consent from their husband but by coming up of this act women could alienate any property of which she was given possession off without taking consent from her husband. They also got an absolute right to alienate Non- Sautayika property as well but there were still many drawbacks of this particular act. The act passed on realizing the importance of women right and proving their absolute right of alienation but it was only for those properties of which she got the possession. The act still failed to recognize women as a coparcener and it didn't keep males and females in the same pedestrian, precisely speaking the act was seen as a gender-biased act that discriminated between male and female upon the ownership, the act nonetheless gave absolute possession rights but it failed in granting ownership rights. In the case of ***Radha Rani Bhargava v/s Hanuman Prasad Bhargava***<sup>9</sup> Supreme Court stated that women are deemed to have absolute possession over the property and her possession shall not be challenged on any basis.

There were many debates over this particular biasness it was always contended that women can never be made coparcener as first of all the mitakshara law does not give daughter such power to acquire property and secondly women have to get married and go to another household which will directly mean that the part of the joint family property will also go with her to another household, Speaking of which in the case of in the case of ***Pratap Singh v/s Union of India***<sup>10</sup> Hindu men criticized Section 14(1) of the act stating it to be unconstitutional the Supreme Court disagreed with the contentions and stated the section to be constitutional as women need to have such right and their rights need to be strengthened. Another side of the argument stated that similarly as a son, a daughter should also hold an equal right because she is also a child of her parent and belongs to a family like a son, marriage could not be taken as an excuse for not granting such rights to women. With all these heated arguments soon there was a demand for an amendment to be brought in the act, which effected in bring the Hindu Succession (Amendment) Act, 2005.

### **CHANGES BROUGHT BY THE 2005 AMENDMENT**

The Hindu Succession (Amendment) Act, 2005 finally recognized women as a coparcener making a daughter a coparcener since birth same as a son and also rendering her equal liabilities

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<sup>9</sup> 1966 AIR 216, 1966 SCR (1) 1

<sup>10</sup> 1985 AIR 1695, 1985 SCR Supl. (2) 773



as of a son had over the joint Hindu family property. In the case if their father dies and there is debt which had to be paid, both of them will hold equal liability of paying such debts. The survivorship rule which made only males as a coparcener in the ancestral property was abrogated and daughters were also included as a coparcener. The act was enforced on 9th September 2005 there were series of arguments upon whether women can claim upon property whose father died before 9th September 2005 or not there was judicial tension as well because some cases Courts granted women to claim rights whereas in some cases the Courts failed on granting such rights to the women finally in a very recent case this tension was over, we will look upon the series of cases.

In the case of *Prakash v/s Phulwati*<sup>11</sup>, the Division Bench comprising Justice Anil Dave and Justice A.K Goel stated that the father must be alive on the day of enforcement only then a woman will be getting coparcenary rights over the ancestral property if the father has died before the date of enforcement then she will be not given the coparcenary rights.

Whereas in the case of *Danamma v/s Amar*<sup>12</sup> the Court totally had a different approach, it said in its judgement that if the father has died before the date of enforcement of the act still the daughter will be provided with the coparcenary rights.

With the confusion upon the applicability, the tussle of opinions was finally over when in the case of *Vineeta Sharma v/s Rakesh Sharma*<sup>13</sup> the Constitutional Bench comprising Justice Arun Mishra, Justice Abdul Nazeer and Justice M.R Shah stated that women had the right to the ancestral property since birth whether father alive or not it doesn't matter. Accordingly, this case cleared all the confusion and in this case, only the quote that I had mentioned earlier was used by Justice Arun Mishra.

Well, these cases tried to clear upon the status of women coparcenary right over the ancestral property but as the Hindu Succession Act classifies property in two types firstly the ancestral property and secondly separate property so the question was still prevalent that what would be the status of women on father's separate property whether she will be having the coparcenary rights over separate property or not and also what would be the status of an acquired property

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<sup>11</sup> CIVIL APPEAL NO.7217 OF 2013

<sup>12</sup> CIVIL APPEAL NOS. 188-189 OF 2018

<sup>13</sup> (2020) 9 SCC 1

if the daughter had died intestate. All these questions were answered in a recent case of *Gounder v/s Ponnuswamy*<sup>14</sup> the Court stated that with respect to the father's separate property if the father had died intestate then the daughter will have equal right over the property as of son will have. Whereas in the case if the daughter had died intestate then the property will go back from where it has come which means it will go back to her father heirs and if she has acquired the property of her husband or in-laws then it will go back to her husband's heir.

The amendment also talked about interstate succession. The term interstate means when one dies without making any will over their property, the amendment gave a list of classes in which case who will be having the possession of the property first. There are four classifications of heirs and in the first class, it holds the widow/ husband whose wife passed, son and daughter that means if any person dies without will then the property will be held by class one heir if there is no one in class one heir only then the property will be passed on other class of heirs.

## **CONCLUSION AND RECOMMENDATION**

With the enactment of the Hindu Succession Act of 1956 the property rights of which women were deprived were granted, due to this act women were granted property rights of which they were deprived for centuries. Streedhan on which only a woman had right, she was not having alienation power for Non-Saudayika property if a woman wanted to dispose of the property she needed prior consent from her husband. All these laws were overcome by the enactment of the Hindu Succession Act of 1956.

Although even after the implementation of the act and bringing the 2005 amendment to the act still in many sections women are deprived of holding on to their property. This is due to a list of reasons which includes unawareness at its utmost level. Women aren't aware about their property rights there is a lack of awareness firstly they must be made aware of their rights hence it should be the duty of the government to take this responsibility of creating awareness in the society. The other issue is people who are aware of the fact are not ready to accept or consider women as coparcener, the mainstream thought is that they don't want women to carry away their share from the property in another household because the benefit may be enjoyed by the people of that particular household. Their thought and they still think that the property should be passed from son's to son's and hence daughters should not be the part for the same but it's

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<sup>14</sup> CIVIL APPEAL NO. 6659 OF 2011

a high time for saving such thoughts and in today's scenario both the son and the daughter should be treated equally and should have the entitlement of property rights.

As mentioned in the research paper how Streedhan is being misinterpreted as dowry everyone should try to understand the true essence of streedhan as dowry was never in the system it was made by the people themselves. Even after having harsh laws on dowry it's still practised in India irrespective of any ground whether it be a rich or a poor, an educated or a non-educated person dowry is so deeply melded and has become such an evil that nowadays it's being celebrated it has become a status symbol for the society though, there are a few sections of the society which have stopped this practice but there are many which do follow this practice. The dowry crimes are still very prevalent as according to the National Crime Records Bureau (NCRB) data it has been highlighted that there were 19 dowry deaths in the year 2020 with recoding a total of 6,966 cases of dowry deaths, with 7,045 victims, were reported last year.

By analyzing and comparing data of previous years, I can conclude that we are a progressive society slowly and gradually we are towards change and on a positive note we will achieve the day soon when all these issues will have their full stop. The door of Justice is always open for injustices prevailing in the society and the Courts have a record concerning the timeline of cases pertaining to woman's property rights which have been always in favour of women holding such rights.