

Chapter 2 -Historical Context of Women's Economic Rights in Hindu Law

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ABSTRACT

The economic rights of women in Hindu law have evolved significantly over time, transitioning from restrictive traditional practices to more equitable legal frameworks. Historically, women's rights were limited to *stridhan* (gifts received during marriage) and excluded ownership or inheritance of ancestral or marital property, reflecting a patriarchal social structure. Ancient texts like the *Manusmriti* reinforced women's economic dependency on male relatives. Gradual changes began with the development of Hindu law schools, such as Mitakshara and Dayabhaga, which slightly expanded women's property rights. The colonial era marked a shift with the Hindu Women's Right to Property Act, 1937, challenging gender inequality in inheritance. Post-independence laws, including the Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956, further codified women's legal protections. The Hindu Succession (Amendment) Act, 2005, was a landmark reform granting daughters equal inheritance rights to ancestral property. This research examines the historical progression of women's economic rights in Hindu law, highlighting the role of legislative reforms in addressing gender biases and fostering greater economic empowerment for women.

OVERVIEW OF HINDU LAW & ITS ORIGINS

For thousands of years, the people of the Indian subcontinent have structured their lives according to the principles and teachings outlined in the Vedas. Over time, these guidelines evolved into norms widely observed by society and enforced by rulers, eventually becoming de facto laws. These laws have been adapted to suit contemporary needs and codified into various statutes, the most notable being the Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, and the Hindu Succession Act of 1956.

Hindu law is traditionally believed to have divine origins. Unlike England's common law, which is purely customary, Hindu law comprises a blend of norms and legal principles derived from centuries-old Sanskrit and Hindu texts¹. This is evident from the fact that numerous ancient Indian kings adhered to these laws, which have largely persisted to the present day. Even under British rule in India, as well as in subsequent Indian legislation, these laws were recognized and upheld as long as they did not conflict with statutory law. The concept of Dharma is integral to Hindu law. In Hindu mythology, Dharma signifies "duty"² and

¹ Sources of Hindu law. Retrieved on Dec 20, 2024 from <https://www.legalserviceindia.com/legal/article-8549sources-of-hindu-law>.

² History and Evolution of Hindu law. Retrieved on Dec 20, 2024 from <https://blog.ipleaders.in/introduction-tohindu-law-in-india>.

carries different meanings depending on the context and religious interpretation. For instance, Buddhists regard Dharma as a universal principle crucial to life, while Jains and Sikhs view it as a spiritual path leading to truth and righteousness.

In Hindu law, Dharma encompasses various duties—spiritual, social, and legal—and can be broadly understood as the idea of justice (Nyaya)³. Hindu law is thus seen as a branch of Dharma, with the latter serving as its foundation. This analysis, along with a study of the sources of Hindu law, aims to highlight inconsistencies within these sources and propose solutions to address them. The origin and development of Hindu Law can be traced to ancient India, where it evolved into a complex system of legal and ethical principles governing various aspects of life for Hindus. Often referred to as Dharmaśāstra⁴, its growth can be understood through the following stages:

1. **Vedic Period:** The foundations of Hindu Law lie in the Vedas, sacred Hindu texts composed between 1500 BCE and 500 BCE. The Rigveda, Yajurveda, Samaveda, and Atharvaveda provided principles that would later shape the development of legal systems.
2. **Dharmaśāstras:** During the later Vedic period and into the early centuries of the Common Era, the Dharmaśāstras were written. These texts outlined guidelines for social, moral, and legal behavior, addressing personal law (e.g., marriage and inheritance), societal rules, and religious duties. The Manusmriti, attributed to Manu, is one of the most well-known texts in this category.
3. **Smritis:** Following the Dharmaśāstras, Smritis emerged as a distinct body of texts. These works, created by sages and scholars, provided more detailed and practical laws, tailored to specific regions and their customs⁵. Smritis supplemented the Dharmaśāstras and reflected the diverse traditions across India.
4. **Commentaries and Schools:** Scholars later wrote commentaries on the Dharmaśāstras and Smritis, analyzing and interpreting the texts. This gave rise to various schools of Hindu Law, each offering unique interpretations and emphasizing different principles:
 - Mitākṣarā School:** Based on the Yājñavalkya Smṛti, prevalent in western and southern India.
 - Dāyabhāga School:** Derived from the Mitākṣarā with notable differences, prominent in Bengal and northeastern India.
 - Vyavahāra Mātrkā:** A key school practiced mainly in Gujarat.
5. **Colonial Influence:** The British colonial period significantly impacted Hindu Law. British courts began applying their own legal principles to Hindu personal law cases, including matters of marriage, succession, and property rights. This created the Anglo-Hindu legal system, a blend of traditional Hindu law and British jurisprudence.
6. **Post-Independence Reforms:** Following India's independence in 1947, substantial legal reforms were introduced to modernize and unify personal laws while respecting religious practices. Key statutes, such as the Hindu Marriage Act (1955), the Hindu Succession Act (1956), and the Hindu Minority and Guardianship Act (1956), codified Hindu personal laws and brought them in line with contemporary standards.

³ Origin of Hindu law. Retrieved on Dec 20, 2024 from <https://www.iilsindia.com>

⁴ Development of Hindu Law. Retrieved on Dec 21, 2024 from <https://www.learnpick.in/prime/documents/note/2351/origin-and-development-of-hindu-law-are-one-even-thendifferent-schools-developed-discuss>.

⁵ Sources of Hindu Law. Retrieved on Dec 21, 2024 from <https://lawcolloquy.com/publications/blog/sources-ofhindu-law/65>.

Despite its evolution, Hindu Law has maintained the diversity of its different schools, shaped by regional and cultural variations. Today, it remains an integral part of India's legal framework, coexisting with personal laws of other religious communities.

STATUS OF WOMEN IN ANCIENT HINDU SOCIETY

The status of women in ancient times can be understood through early texts and literature.

During the early Vedic Period (1500 BC–1000 BC), women were accorded a position of high respect and dignity. In Dravidian culture, which has historically been associated with southern India, women were both honoured and empowered, particularly within the spheres of family and household affairs⁶. They were actively involved in various socio-cultural activities that shaped early Indian civilization. Furthermore, the Aryan culture, rooted in Vedic traditions, served as a unifying force during this era. Women enjoyed significant freedom, participating in activities such as warfare, gymnastics, archery, horse riding, education, public engagements, decision-making, and even choosing their life partners, reflecting their prominent status in the Rig Vedic social framework.

Women's contributions to society during the Vedic period extended far beyond their roles as household caretakers, showcasing their immense potential in advancing human civilization. Deities like Saraswati, Lakshmi, and Durga were deeply revered, often held in higher regard than their consorts, Brahma, Vishnu, and Maheshwar. Additionally, sculptures from this period depict women as holding elevated positions in society, further emphasizing their esteemed status in early Vedic culture.

In ancient times, women were permitted to have multiple husbands, and forced child marriages were not practiced. Women had the freedom to choose their husbands through a form of marriage called *Swayamvara*⁷. In this tradition, potential grooms would gather at the bride's house, and the bride would select her spouse. Instances of the *Swayamvara* ceremony are mentioned in the *Ramayana* and *Mahabharata*, and the practice persisted among high-caste families in later periods. Women also had the freedom to leave their husbands.

The *Rig-Veda* and *Atharva Veda* suggest that it was customary for widows to symbolically lie beside their husband's corpse during funerals. The practice of Sati, where widows burned themselves alive on their husband's funeral pyre, was likely in existence during the early Aryan period. Greek records document such incidents, highlighting that it was considered a great honor. Notable examples include the queens of Kshemagupta and his predecessor Yashkar in Kashmir, who committed Sati. However, the practice was not sanctioned by the Vedic religion, and other factors may have influenced these incidents.

When the Muslim conquests occurred in India, the widows of Hindu soldiers were reportedly subjected to brutal treatment. To escape such indignities, many women voluntarily adopted the Sati system, preferring death over dishonour.

The origins of the Hindu religion can be traced back to the patriarchal structure of Aryan society, where the family was regarded as the most significant social unit. In ancient times, the joint family system was prevalent, characterized by multiple nuclear families living together under one roof⁸. This system typically included grandparents, parents, children, grandchildren, siblings, aunts, uncles, and cousins.

⁶ Women in Ancient India. Retrieved on Dec 23, 2024 from <https://www.lwtcpl.com/post/women-in-ancientindia>.

⁷ Status of Women in Ancient India. Retrieved on Dec 23, 2024 from International Journal of Humanities & Social Science Studies. (IJHSSS)

⁸ Position of Women in Hindu Society. Retrieved on Dec 23, 2024 from https://www.researchgate.net/publication/330220793_Status_of_Women_in_Ancient_India.

In Aryan families, the birth of a son was highly celebrated, as it was believed that male children would contribute significantly to the welfare of the family and the community. However, women were also granted a degree of freedom. Hindu Dharma upholds the belief that men and women represent two complementary aspects of a single being. Scriptures describe Lord Shiva as having a body divided into two halves—one male and one female. Women, considered embodiments of power, are revered as the Goddess Shakti (power).

The society of that era adhered to established norms and customs, which played a crucial role in maintaining order and guiding social behaviour.

ECONOMIC RIGHTS OF WOMEN IN ANCIENT INDIA

In ancient times, women were allowed to own personal property, such as jewellery and clothing. According to the *Arthashastra*, women could possess up to 2,000 silver Panas. Any amount exceeding this limit was held in trust by the husband on behalf of his wife. A husband's use of a woman's property was permitted only in cases of extreme necessity, and he could restrict her from giving it away frivolously. Upon a woman's death, her property was inherited by her daughters rather than her husband or sons. In the absence of sons, a widow inherited her husband's property⁹.

However, in many references, women were treated as commodities, often given away or loaned like material possessions. This reflects the patriarchal nature of a society rooted in private property ownership. Under Brahmanical law, women were denied significant proprietary rights.

The concept of *Stridhana* was limited to a woman's personal assets, including jewellery, ornaments, and gifts received during her marriage, offering only minimal rights over property.

In most Indian families, women often do not own property in their names and are typically denied a share in parental property. Weak enforcement of laws protecting women exacerbates this issue, leaving them with limited access to land and property. Additionally, certain laws are inherently discriminatory toward women in matters of land and property rights.

The Hindu personal laws enacted in the mid-1950s (applicable to Hindus, Buddhists, Sikhs, and Jains) granted women inheritance rights. However, sons were entitled to an independent share of ancestral property, while daughters' shares were derived from their father's portion. As a result, a father could disinherit a daughter by relinquishing his share of ancestral property, whereas the son's share remained unaffected. Moreover, married daughters, even those enduring marital abuse, lacked residential rights in the ancestral home. The 2005 amendment to Hindu laws rectified this disparity, granting women equal property rights as men.

In 1986, the Supreme Court of India ruled in Favor of Shah Bano, elderly divorced Muslim woman, entitling her to maintenance¹⁰. However, this decision faced strong opposition from fundamentalist Muslim leaders, who accused the court of interfering with their personal laws. In response, the Union Government enacted the Muslim Women's (Protection of Rights Upon Divorce) Act.

⁹ Economic Rights of women in ancient India. Retrieved on Dec 24, 2024 from International Journal of Humanities & Social Science Studies.

¹⁰ Economic status of Women in ancient India. Retrieved on Dec 24, 2024 from <https://www.legalservicesindia.com/article/1867/The-Socio-Economic-Status-of-Women-in-India-Ancient-to-Modern-Era>.

Similarly, Christian women have long struggled for equal rights in divorce and succession. In 1994, churches collaborated with women's organizations to draft the Christian Marriage and Matrimonial Causes Bill, but the government has yet to amend the relevant laws to address these issues.

ECONOMIC RIGHTS OF WOMEN IN ANCIENT HINDU TEXT: MANUSMRITI

Hindu women's rights to inherit property have historically been restricted in Indian culture. Ancient texts like the Manusmriti reflect this inequality, with Manu stating: "Her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age; a woman is never fit for independence¹¹." However, women were not entirely excluded from inheriting property, whether movable or immovable, from their ancestral or marital families. Yet, their share was significantly smaller compared to their male counterparts.

Over time, restrictions on Hindu women's property rights evolved, and modern laws are more progressive than those in ancient Hindu society. Historically, patriarchal Hindu society allowed women to own property in the form of *stridhan* (literally meaning "women's property" or "fortune"), which typically comprised gifts received during marriage, such as clothing, jewelry, and occasionally land. Despite this, women were largely excluded from inheriting ancestral or marital landed property, with limited rights to succession. The emergence of various schools of Hindu law gradually broadened the concept of *stridhan*, granting women greater rights to certain types of property. Significant legislative developments in the 19th and 20th centuries aimed to dismantle barriers to equal property rights for Hindu women. The Hindu Succession (Amendment) Act of 2005 has been instrumental in addressing gender discrimination in inheritance laws, ensuring more equitable property rights for women.

TRANSITION FROM TRADITIONAL PRACTICES TO CODIFIED LAWS

The transition from traditional practices to codified laws in Hindu law has significantly shaped the protection of women's economic rights within marriage. Historically, Hindu society was deeply rooted in patriarchal customs that restricted women's access to economic resources. While practices such as *stridhan* provided women some degree of economic security, this was limited to personal gifts received during marriage, with little to no rights over ancestral or marital property. Women's economic dependency was perpetuated by societal norms and religious texts that emphasized their subordinate role within the family structure.

The development of various schools of Hindu law, such as the Mitakshara and Dayabhaga schools, marked the beginning of a gradual shift in recognizing women's rights to property. These schools expanded the concept of *stridhan* and acknowledged women's entitlement to certain forms of property, albeit with many restrictions. However, these traditional frameworks still fell short of providing comprehensive economic rights to women, especially in terms of inheritance and succession.

The colonial era ushered in the first wave of legislative reforms aimed at addressing gender inequality in property rights. Laws such as the Hindu Women's Right to Property Act, 1937, granted limited inheritance rights to widows, challenging the traditional norms of male-centric succession. Post-independence, the codification of Hindu personal laws marked a pivotal moment in protecting women's economic rights. The

¹¹ Economic rights of women in ancient Hindu text Manusmriti. Retrieved on Jan 3, 2025 from <https://www.cambridge.org/core/journals/journal-of-law-and-religion/article/abs/property-rights-of-hinduwomen-a-feminist-review-of-succession-laws-of-ancient-medieval-and-modern-india>.

Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956¹², laid the foundation for a more equitable legal framework, although women's inheritance rights remained limited in certain aspects.

The landmark Hindu Succession (Amendment) Act, 2005, was a transformative step in this journey. It granted daughters equal rights to ancestral property, placing them on par with sons. This amendment effectively dismantled centuries of gender-based discrimination, ensuring that women could claim their rightful share of economic resources within the family.

The evolution from traditional practices to codified laws highlights the dynamic interplay between societal norms, judicial interventions, and legislative reforms. While challenges persist in the practical implementation of these laws, the legal framework today provides a robust mechanism for safeguarding the economic rights of Hindu women in marriage, reflecting a significant departure from the constraints of traditional practices.

¹² Disparity of economic rights of women in India. retrieved on Jan 3, 2025 from <chromeextension://efaidnbmninnibpcapjcgclcfindmkaj/https://www.tnsja.tn.gov.in/article>.