

**Kautilya's Arthashastra on Property Rights of Women and its relevance in the Indian
Judicial System of the 21st century**

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Abstract:

Property rights of women is one of the neglected rights of women all over the world from ancient times. In India too though women were placed as Goddesses mortal women were still traumatized in the name of property. In the name of property many women have lost their lives. However, the objectives of providing 'stridhana' was not to weaken her but to empower her. There were various ancient documents such as manusmirit, Naradasmirit, Yajnavalkyasmirit, Arthashastra where property rights of women were discussed.

Keywords: Property rights, Stridhana, Arthashastra

Introduction

In ancient India, society gave a noble and respectful place to women. In mythological stories there are many goddesses who were worshipped like other male gods. But, there was an absence of equality in proprietary rights of women. Women could not inherit immovable forms of property. Women had no right to patrilineal inheritance. But, she was permitted to keep 'stridhana'. Literally, the word 'Stridhana' means woman's property (ParasDiwan, 2008). But, in the ancient Smriti works the word was restricted to certain kinds of property given to a woman in different kinds of occasion or at certain stages of life (Kane, 1946). As per Kautilya's Arthashastra women can keep her stridhana even after marriage and also after the death of her husband.

Arthashastra (Sanskrit: अर्थशास्त्रम्, 300 BC to 100 AD) is an intellectual masterpiece of ancient India which composed of treaties for governance, economics and politics authored by Kautilya or Chankya. Chankya recognized the concept of stridhana (woman's property) in his book Arthashastra. There are very rare examples of ancient civilizations which have clearly discussed and recognized the proprietary rights of women as clearly as Kautilya.

The aim of this article is to analyse the impact of Arthashastra in the protection of stridhana or property rights of women and its interpretation in the current legal system of India.

Concept of Stridhana or Women's Property Rights in Arthashastra

Kautilya defined the concept of stridhana as means of subsistence and what could be tied on the body (i.e. ornaments and jewellery). The means of subsistence should be fixed at 2000(panas) at the maximum, while there will be no limitation on abadhya (i.e ornaments)(Kane,1946).

Kautilya, in the restricted literal sense, referred Stridhana over those wealth which are obtained by a woman by mechanical arts(by spinning) or from a stranger through affection.(Kane,1946).

The gift from a stranger here referred to those which are received before the nuptial fire or at the time of the bridal procession(Kane,1946).

From this definition it can be understood that a gift which is presented by a stranger to an unmarried woman or widow is also a property of the woman.

Kautilya observed that on obtaining property of saudayika (i.e. Whatever is given to a woman at her marriage by her parents or a relative in general which becomes her own property)kind it is declared that women have independent power over it since it is given to them as support in order that women may not reduced to a terrible condition(Kane,1946).

In case of movable property which is given to a woman by her husband may preserve it or spend on the family unless and until the husband is alive, after the death of the husband a widow can deal with such property as she pleases(Kane,1946).

In case of forcible consumption of stridhana by husband, son ,father and brothers of a woman they should made to return it and liable to pay fine or with punishment and if any of those people consume the stridhana with the consent of the woman then he would liable to return the principal sum only when he is well off(Kane,1946).

These rights protect women from forceful consumption of women's property from another person of the family.

Succession on the property of woman or stridhana as per Arthashastra

Kautilya suggests that if a woman dies during the life time of her husband then her stridhana should be divided between her sons and daughters;if she does not have any son then daughters will divide it and on failure(both son and daughter) the husband takes it and that the sulka, anavedya or any other kind of stridhana given by her relatives is taken by her relatives(Kane,1946).

Property Right of Women In Arthashastra and Indian Judiciary

The Hindu law which is in practice in India at present time, brings its origin from the ancient and traditional Hindu scriptures. The Hindu Law of Succession in its ancient and traditional form

remained in application in India without any substantial change till the middle of the 19th century(B.M Gandhi,2008).

Before the Hindu Succession Act,1956 came into force different systems of succession to the property of a Hindu were in vogue in different parts of the country namely Mitakshara and Dayabhaga, the Mayukha, the Marumakkattayam, the Aliyasantana and Nambudri, (B.M. Gandhi,2008).

In the year 1937, the first initiative to alter the multiplicity of succession rules was taken by enacting the Hindu Woman's Right to Property Act. This was followed by Hindu Succession Act, 1956.This Act bases its rule the basic Mitakshara principle of propinquity i.e. preference of heir on the basis of proximity of relationship(Paras Diwan,2008).Any property possessed by a Hindu female have the right of absolute ownership on property whether movable or immovable(Section. 14(1), Hindu Succession Act, 1956).

One of the earliest recorded cases where the property right of a woman, where Arthashastra and Kautilya mentioned is Hiralal Singha vs. Tripura Charan Ray, (1913)ILR 40 Cal 650 before the Calcutta High Court. In this case, substantial reliance was put on Arthashastra to decide whether property can be inherited from a woman who has turned into a prostitute.

Similarly, in the case of Gajanan Yeshwant Kale vs. Pandurang Govind ChithadeAIR 1950 Bom 178,(1950) BOMLR 238, before the cBombay High Court the question was raised that whether property inherited by a woman from her parents is saudayakiya or non saudayika stridhana. While deciding the case the definition of 'Stridhana' as per 'Arthashastra' and other relevant ancient Indian texts were referred.

In the case of State of Jammu & Kashmir, Dr. ... vs. Dr. Susheela Sawheny And State of ..AIR 2003 JK 83, the Full Bench of Jammu & Kashmir High Court while hearing a petition on the question of inheritance right of a daughter of a permanent resident of the then State of Jammu and Kashmir who married a non-resident of the then state, referred the Arthashastra in para 60 of the judgment.

Conclusion

From the above discussion it can be said that women did not enjoy absolute property rights on all movable and immovable property during the discussed era of history. Male domination was prevalent in distribution of property.It is observed that in Arthashastra Kautilya recognized the role of family as a root of the property rights of women. Kautilya too did not give absolute rights over the property by a woman. However, he recognized the right of woman on her 'stridhana' i.e. means of subsistence or vritti and ornaments. He also recognized the equal distribution of the share of mother's stridhana to her son and daughter. In Arthashastra, there is another provision which



provides that a woman can use her stridhana to help her husband during calamities and to maintain her family. But, if anyone from the family i.e. husband, son, father and brother uses such property without her consent then they will be punished with fine. So, it can be said Kautilya's Arthashastra was the stepping stone towards the protection of property rights of women in ancient India.

The relevance of Arthashastra can also be seen in the modern Indian judiciary system with the help of discussed case laws. In those cases our Hon'ble judges along with other Vedic scriptures also referred to Arthashastra while writing judgements.

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