CHAPTER-VI

THE RIGHTS TO PROPERTY

Property is anything that is owned by a person or entity. Property is divided into two types: "real property" which is any interest in land, real estate, growing plants or the improvements on it, and "personal property" (sometimes called "personally") which is everything else. "Common property" is ownership by more than one person of the same possession. "Community property" is a form of joint ownership between husband and wife recognized in several states. "Separate property" is property owned by one spouse only in a community property state, or a married woman's sole ownership in some states. "Public property," refers to ownership by a governmental body such as the federal, state, county or city governments or their agencies (e.g. school or redevelopment districts). The government, and, in particular, the courts are obligated to protect property rights and to help clarify ownership.[1]

Property is inherited from a father, a thing bought, a pledge, property given to a wife after marriage by her husband's family, a gift, property obtained for performing a sacrifice, etc. In the ancient times it is mentioned that the king should protect the property of his subjects. According to Kauṭilya, whatever of the property of his own subjects the king brings back from the forests and countries of enemies shall be handed to its owner. Whatever of the property of the citizens robbed by the thieves the king cannot recover shall be made good from his own pocket. If the king is unable to recover such things, he shall either allow any self-elected person to fetch them, or pay an equivalent ransom to the sufferers.[2] Whatever kinds of property have been enjoyed by another person for ten years continuously is lost to the owner but a pledge, a boundary, the property of minors, the aged, those that are away from home and rejourning abroad, or those that have deserted their country during national disturbances, an open deposit, a sealed deposit, women, the property of a king, and the wealth of a *srotriya*, are not lost by being enjoyed by others.[3] Property entirely given up by its owner goes to the king[4] and the property of any person who has no heir also goes to the king.[5] With regard to minors and widows, there are provisions to the effect that the king shall administer their property and the elders of the village should augment the property of a minor till he comes of age, also the property of a

temple.[6] The king should exempt from taxes a region laid waste by the army of an enemy or by foresters or affected by disease or famine and he should prohibit expensive sports.[7]

According to Manu, the king should protect the estate and other inherited property of a boy until he has come home (after his studies) or passed beyond his childhood. In the same way, he should protect women who are barren or have no sons, who have no families, who are faithful wives, widows or ill. If these women are alive, their own relatives take away their property; a king must punish them with the punishment for theft. If the owner of any property has disappeared, the king should keep it in trust for three years; within three years the owner may take it, and after that the king may take it. If someone sa**ys,** "this is mine" he should be questioned in accordance with rules; if he describes the shape, the numbers and so forth, he deserves that property as the owner. But if he does not accurately declare the time and shape (of the loss) and color, shape and measurements of the lost property, then he deserves a fine equal to its value. Now, the king may take a sixth part of property (thus) lost and found or a tenth or a twelfth, bearing in mind the laws of good men. Property that has been lost and then found should be placed in the keeping of the appropriate people; if the king catches thieves trying to steal it he should have them killed by an elephant.[8] According to Kauṭilya, it is the duty of the minister for the settlement of the country, he should settle the people which had been settled before (but was apparently abandoned by its inhabitants because of famine etc.) or which had not been settled before (in the virgin land) by bringing in people from foreign lands or by shifting the overflow of population from his own country.[9]

Inheritance:

We come to the most important portion of the civil law, the law of inheritance. To leave male issue was considered religious duties by the ancient Hindus, and in the older law-books several kinds of sons are recognized, some of whom were legitimate or quasi-legitimate, and might therefore inherit, while others were considered unlawful and were debarred from all rights to their father's estates. In the ancient India the joint family system remained in vogue, the property of the father was

inherited by the eldest son, who supported the rest as a father.[10] It would seem, however, that to live in a joint family under the eldest brother was never the universal custom in India.

There is common opinion of the legal writers regarding the law of inheritance, particularly about the preferential share of the elder. But there are some writers like Baudhayāna, Kauṭilya, etc., who ordinarily prefer an equal distribution of property, though they also recognize the additional claim of the eldest son of the family.[11] And of giving preference to the best qualified son, irrespective of the fact whether he is born of a woman belonging to the next lower caste to that of the husband. Kauṭilya says that an *antara* son of Brāhmaṇa (i.e. the son begotten by a Brāhmaṇa on a woman of next lower caste), shall if endowed with manly or superior qualities take an equal share with other sons. Similar provisions are being made for the *antara* sons of Kṣatriya and Vaiśya.[12] Kauṭilya enjoins that the eldest son among the Brāhmaṇa shall receive the goats, among Kṣatriya horses and among Vaiśya cattle, while among Śūdra, sheep. In the absence of quadrupeds, the eldest son shall take an additional share of 1/10 of the whole property excepting precious stones.[13] Manu and Gautama give a greater importance to seniority. According to Gautama the eldest son should receive 1/20 as a preferential share over and above a male and a female (of animals with one row of front teeth, such as cows), a carriage yoked with animals that have two rows of front teeth, (and) a bull. The middle one can receive one eyed, old hairless and tailless domestic animals. To the youngest belongs the sheep, corn, iron utensils, house, a wagon with team, as well as one of each remaining animals. All the remaining property shall be divided equally. As an alternative, he allowed the eldest two shares and the remaining sons one share each; or he would permit each to take one kind of property by choice, according to seniority; or the special shares might be adjusted according to their mothers.[14] He further says that the eldest may inherit the whole property and he shall support the rest as a father[15]. Manu holds the same view. Manu says "after the death of the father and the mother, the brothers should assemble and divide the paternal wealth equally, because they have no power over it during the lifetime of the parents.[16] In the next *sloka*, Manu says "the eldest alone may take the whole paternal estate, and the others shall be dependents on him, as they depended on the father during the father's life time."[17] Later in the same chapter he says "when

there is a partition of the paternal property among the sons, the eldest son takes one-twentieth of the entire property as his special share and some specially valuable article in addition, the middle son should take half of what the eldest son gets and the youngest son should get one-fourth of the special share of the eldest son." In other words, if there are three sons, the eldest son gets $1/20^{th}$, the middle son gets $1/40^{th}$, the youngest son gets $1/80^{th}$ and the remaining $73/80^{th}$ part of the property is divided equally among the three sons.[18] Manu again says that the eldest son should take two shares, middle son takes one share and a half and the youngest sons take one share each. In other words, in partitions among three sons, the eldest son takes $4/9^{th}$, the second takes $1/3^{rd}$ and the youngest takes $2/9^{th}$ share.[19] Manu provides other alternative rules of partition. Shraddhakar Supakar observes that Manu supports the claim of the first born, yet in another place he observes that if all brothers are equally skilled in their occupation then there is no additional share. In that case the paternal property shall be equally divided among all the brothers and some trifle only shall be given to the eldest as a token of respect.[20] Thus indirectly Manu recognizes the claim of sons who possess good qualities. *Vasiṣṭha* permitted the eldest brother to take a double share and a little of the kine and horses; he allowed the youngest to take the goats, sheep, and house; while the middlemost received utensils and furniture. If a Brāhmaṇa had sons by Brāhmaṇa, Kṣatriya, and Vaiśya wives, the first obtained three shares, the second two, and the third one obtains one share. Baudhayāna allowed all the children to receive equal shares, or the eldest son might take one-tenth more than his brothers. Where there were sons born of wives of different castes, the sons were to receive four, three, two, and one shares respectively, according to the order of the castes. Āpastaṁba differed in this respect from his predecessors, and protested against the unequal division of property, declaring that all sons who were virtuous should inherit, but that he who spent money unrighteous should be disinherited, though he were the eldest son. The separate property of a wife, that is, her nuptial presents and ornaments, was inherited by her daughters. (Āpastaṁba II. 6-14-6 10-16).[21] Yājñavalkya says in a partition among sons, in the above case, requires that all the sons should get equal shares. So, unequal division of property among sons should be avoided-unless there is a family custom entitling the eldest son to a special share (*jyeṣthānśa*) or unless the custom of impartibility of the estate leaves no option for the court but to allot the whole of the estate to the eldest son.[22]

Ancient law-givers declares that when a Brāhmaṇa has son from wives of the four *varnas*, the son of the Brāhmaṇa wife takes four shares, (out of ten in which his wealth is to be divided), the son of the Kṣatriya wife takes three, of a Vaiśya wife two and a son of the Śūdra wife one.[23] In *Mahābhārata* also we observe caste distinctions even in the matter of law of inheritance. The son born of the Brāhmaṇa wife shall, in the first place, appropriate from his father's wealth a bull of good marks, and the best car or vehicle. What remains of the Brāhmaṇa's property, after this should be divided into ten equal portions. The son by the Brāhmaṇa wife shall take four of such portions of the paternal wealth. The son that is born of the Kṣatriya wife is, without doubt, possessed of the status of a Brāhmaṇa. In consequence, however, of the distinction attaching to his mother, he shall take three of the ten shares into which the property has been divided. The son that has been born of the wife belonging to the third order, *viz*., the woman of the Vaiśya caste, by the Brāhmaṇa sire, shall take two of the three remaining shares of the father's property. It has been said that the son that has been begotten by the Brāhmaṇa sire upon the Śūdra wife should not take any portion of the father's wealth, for he is not to be considered an heir. A little, however, of the paternal wealth should be given to the son of the Śūdra wife, hence the one remaining share should be given to him out of compassion. Even this should be the order of the ten shares into which the Brāhmaṇa's wealth is to be divided. All the sons that are born of the same mother or of mothers of the same order, shall share equally the portion that is theirs. The son born of the Śūdra wife should not be regarded as invested with the status of a Brāhmaṇa in consequence of his being unskilled (in the scriptures and the duties ordained for the Brāhmaṇa). Only those children that are born of wives belonging to the three higher orders should be regarded as invested with the status of Brāhmaṇas. It has been said that there are only four orders there is no fifth that has been enumerated. The son by the Śūdra wife shall take the tenth part of his sire's wealth (that remains after the allotment has been made to the others in the way spoken of). That share, however, he is to take only when his sire has given it to him. He shall not take it if his sire does not give it to him. Some portion of the sire's wealth without doubt, is given to the son of the Śūdra wife. Compassion is one of the highest virtues. It is through compassion that something is given to the son of the Śūdra wife. Whatever be the object in respect of which compassion arises, as a cardinal virtue it is always productive of merit. Whether the sire happens to

have children (by his spouses belonging to the other orders) or to have no children (by such spouses), to the son by the Śūdra wife, nothing more than a tenth part of the sire's wealth should be given. If a Brāhmaṇa have more wealth than what is necessary for maintaining himself and his family for three years, he should with that wealth perform sacrifices. A Brāhmaṇa should never acquire wealth for nothing. The son born of the Kṣatriya wife has been said to be equal in status to the son born of the Brāhmaṇa wife. For all that, a distinction attaches to the son of the Brāhmaṇa wife in consequence of the superiority of the Brāhmaṇa to the Kṣatriya in respect of the order of birth. The Kṣatriya cannot be regarded as equal to the Brāhmaṇa woman in point of birth. Hence, the son born of the Brāhmaṇa wife must be regarded as the first in rank and superior to the son born of the Kṣatriya wife. Similarly, the Vaiśya cannot be regarded as the equal of the Kṣatriya in point of birth. For the Kṣatriya two wives have been ordained. The Kṣatriya may take a third wife from the Śūdra order. The property of a Kṣatriya should be divided into eight shares. The son of the Kṣatriya wife shall take four of such shares of the paternal property. The son of the Vaiśya wife shall take three of such shares. The remaining one or the eighth share shall be taken by the son of the Śūdra wife. The son of the Śūdra wife, however, shall take only when the father gives but not otherwise. For the Vaiśya only one wife has been ordained. A second wife is taken from the Śūdra order. If a Vaiśya has two wives, one of whom is a Vaiśya and the other a Śūdra, there is a difference between them in respect of status. The wealth of a Vaiśya should be divided into five portions. The son born of the Vaiśya wife shall take four of such shares of his father's wealth. The fifth share has been said to belong to the son born of the Śūdra wife. Such a son, however, shall take when the father gives. He should not take anything unless the father gives it to him. The Śūdra should have only one wife taken from his own order. He can under no circumstances, take any other spouse. Even if he happens to have a century of sons by such a spouse, all of them share equally the wealth that he may leave behind. As regards all the orders, the children born of the spouse taken from the husband's own order shall, it has been laid down; share equally the father’s wealth. The eldest son's share shall be greater than that of every other son, for he shall take one share more than each of his brothers, consisting of the best things of his father. This is the law of inheritance.[24] According to Kauṭilya after the death of the father, his carriage and jewellery go to the eldest son, his bed and seat, bronze plate etc (in which he used to take his meals) should be given to the middle-most, and black grains, iron (objects)

domestic utensils, cows and cart should go to the youngest.[25] In case where there are no natural sons, adopted sons may inherit the estate. But if after adoption a legitimate son is born to a man, then the adopted son if *savarṇ* sons got 1/3 of inheritance and *asavarṅa* sons got only food and clothing.[26] Sons begotten by Brāhmaṇas or Kṣatriyas or the women of the same caste are called *savarṇas*, but on women of lower caste are called *asavarṇas*. According to Manu, if, after a daughter has been appointed, a son be born (to her father), the division (of the inheritance) must in that (case) be equal; for there is no right of primogeniture for a woman.[27] But if an appointed daughter by accident dies without (leaving) a son, the husband of the appointed daughter may, without hesitation, take that estate.[28] Between a son's son and the son of a daughter there exists in this world no difference; for even the son of a daughter saves him (who has no sons) in the next world, like the son's son.[29] Of the man who has an adopted (*datrima*) son possessing all good qualities, that same (son) shall take the inheritance, though brought from another family.[30] He who takes care of his deceased brother's estate and of his widow, shall, after raising up a son for his brother, give that property even to that (son). A born to an outcast and an impotent person are not entitled to a share, also an idiot, a lunatic, a blind and a leprous person. If these have a wife their progeny is not of the same kind (as the father), shall receive a share. The other shall receive only food and clothing, excepting the outcasts.[31] A son who is (begotten) by a Śūdra on a female slave, or on the female slave of his slave, may, if permitted (by his father), take a share (of the inheritance); thus the law is settled.[32]

Sons had the right to have a certain private property which he could have acquired through his own action without making use of the property of his father or which he had received as a gift. If the father has made a division of his estate among his sons during his life-time, he freed them. If the son was capable of supporting himself, and if he had no desire to share in his father’s estate, the father had the right to emancipate him without making any division of his estate. In that case the father had the duty to give his son ‘something’. The something was the beginning of the son’s private property. In this case all that the son earned after his emancipation became his private property which he had the right to dispose of, as he pleased. The individual property became property of all the members of the community i.e. the property of the joint-family. All property acquired subsequently by any member of the joint family did not become the property of the person who had earned it but the

property of the joint-family as such on the other hand all individual expenses of the members of the joint family became expenses of the whole joint family.[33] According to Kauṭilya self-acquired property of any of the son, with the exception of that kind of property which is earned by the help of paternal property, is not divisible. An individual thereby has sole claim to the property earned by him privately, without the aid of the family. But whatever is earned with family's help becomes the property of the family and it is divided equally among all the members. Sons and grandsons till the fourth generation from the first parent shall also have prescribed shares (*aṁśabhāja*) in the property, which is acquired by means of their undivided ancestral property.[34] Such sons, who bring the ancestral property to a prosperous condition, shall also have shares of the profit.[35] Manu also declare if one of the brothers, being able (to maintain himself) by his own occupation, does not desire (a share of the family) property, he may be made separate (by the others) receiving a trifle out of his share to live upon.[36] What one (brother) may acquire by his labour without using the patrimony, that acquisition, (made solely) by his own effort, he shall not share unless by his own will (with his brothers). But if a father recovers lost ancestral property, he shall not divide it, unless by his own will, with his sons, (for it is) self-acquired (property).[37]

Women:

Girl did not enjoy property rights in the Ancient Indian period, she only allowed keeping her *Strīdhana* as her separate property. The *Strīdhana* was passed on to the daughter by the mother. P.V. Kane in history of *Dharmaśāstra* says that even in Vedic times women were often looked down upon, had no share in the property and were dependent. He quotes from *taittirīya, samhitā* and *Śatapatha brāhmaṇa* to prove this.[38] The Vedic texts declare the woman to be incapable of inheriting any property, much less a widow having any right to inherit the estate of her dead husband. No doubt, the *Ṛgveda* contains a reference to the brotherless daughter seeking legal recourse to get her father's property, but such cases were exceptions. Moreover, there is no a single reference of any widow inheriting the property of her deceased husband. Actually no legal writer upto *c*. B.C. 300 gives this right to women. The writers of the *Dharmasūtras*, the earliest manuals of the Indian law, definitely oppose this idea. *Baudhayāna* rejects the right of widows to inherit husband's property on the Vedic authority and *Āpastaṁba* lays down that in the absence of the son the property should

devolve upon the nearest male *Sapiṇḍa* up to the seventh degree in order and in the absence of any *sapinda* to the teacher and disciple respectively. The ideas of the Dharmasūtras were followed by the earliest Smṛti writer Manu, who lays down that the property of a sonless father goes to his father, brother, a sapinda and a sakulya in accordance with the closeness of relation. If none of these were forthcoming, then a preceptor or a disciple and finally the state could take away the property of the dead in that order.[39]

With Yājñavalkya, there arose a school of liberal thinkers who started raising their voice for the cause of widows, granting them some limited rights in the property of their husbands. There is a story that the Upaniṣadic sage Yājñavalkya divided his entire property between his two wives. Soon afterwards we find Gautama making a plea to recognize the widow atleast a co-heir with other male relatives of the deceased. However, the Viṣṇu-dharmasūtra (c. A.D. 100) is the first work to recognize a widow as the sole heir. It definitely lays down that the widow shall inherit the whole estate on the failure of sons. The Yājñavalkya smṛti (c. A.D. 200) clearly recognizes the widow as heir to the husband's property with the first and absolute right to it in the absence of sons. The others can claim only on the failure of the widow. In the Gupta period also women right to inherit the full share should be recognized in the Bṛhaspati. Kauṭilya said that the widow should only be provided with the maintenance (III. 5), makes sons, daughters, sakulas, bāndhavas, and a member of the same caste as heirs respectively. On their failure the property was to go to the state but not to the widow. There were some thinkers like Vyāsa who tried to adopt a middle path and recommended some additional money to be given to the widow (2000 to 3000 paṇas) in addition to her strīdhana. This view is found in the Mahābhārata also (Mbh. XIII, 50-52). With the development of the property rights of the widows, the institution of the sati also became more popular. P.V. Kane has rightly remarks that the "greed of property frequently induced the surviving members to get rid of the widow by appealing at most distressing hour to her devotion to and love for her husband." It is an irony that she was denied proprietary rights and when the latter was provided for, she was induced to die.[40]

There are two types of *strīdhana*: maintenance (in money or land) and objects given to her by family and friends. This becomes the wife's personal property, over which she has exclusive rights. Manu subdivides this into six types: property given by

parents at marriage, given by her in-laws when she goes to her husband's house, given by her husband out of affection (not maintenance, which he is obligated to give), and property given by her brother, mother or father.[41] Prenuptial contracts are mentioned, in which the groom agrees to give a bride price to the bride and her parents. Such property belonged to the wife, and was inaccessible to the groom, his family or her parents except in an emergency (sickness, famine, robbery or for performing holy deeds). Kauṭilya also writes about the *strīdhana*, dividing it into two categories viz., *bṛtti* (or maintenance) and *ābandhya* (ornaments etc.).[42] However Kauṭilya does mention land as an item in addition to the ornaments. Being a realist, he wrote in terms of financial certainly and actual items constituting the *strīdhana*. He prescribed cash limit up to two thousand *kārṣāpaṇas* or land assigned for her subsistence (*bṛtti*) and ornaments.[43] Women sometimes possessed more than was usually allowed to them by the rule of strīdhana. Jain traditions mention a potter woman of the town of Śrāvastī who owned a pottery with one hundred potter's wheels. Her status is nowhere mentioned and it may be that she was thought of as a widow, for we have seen that some legal schools allowed a widow to inherit when there were no sons.44 These were here exclusive property. According to Yājñavalkya what was given to a woman by her father, the mother, the husband or a brother or received by her before the nuptial fire or presented to her on her husband's marriage to another wife or any other is denominated *strīdhana* .[45] In the *Dharmasūtras* only movable items appears to have been conceived. According to Āpastaṁba, the share of the wife consists of her ornaments and from the wealth (which she may have received) from her relatives.[46] Gautama recognizes separate property of a woman which (goes) to her unmarried daughters and (on failure of such) to poor (married daughters).[47]

However there is a question whether our law givers permitted absolute property rights to woman or not. It is interesting to note that Manu talks of *strīdhana* at one place, as referred to above, but far from permitting her any freedom in the matter says at another place, "A wife, a son, a slave- all these are without property. Whatever wealth they acquire belongs to him to whom they belong."[48] Manu also emphasized in another context, "Women should not make expenditure from the property of the family which is common to many (members of the family) nor even from their own wealth without the permission of their husbands."[49] However he also legislates that on such of their kinsman as seize the wealth (of women) while the

women are alive, a righteous king should inflict the punishment meted out to the thief.[50] The ornaments which may have been worn by women during their husband's lifetime, his heirs shall not divide; those who divide them become outcasts.[51] Yājñavalkya permits the husband's power on *strīdhana* but under extraordinary conditions. (II. 147).52 According to Yājñavalkya (II.145) if a woman married according to the brāhma, daiva, ārṣa or prājāpatya-vivāha died childless her property i.e. the strīdhana belonged to her husband and if she was married according to one of the other four forms of marriage the Strīdhana belonged to her father. The same point of view was also expressed in Manu (IX.196,197) with the sole distinction that the Strīdhana belongs to the husband not only in the case of the orthodox forms of marriage but also in the case of the gāndharva-vivāha (probably the gāndharva-vivāha not combined with the raksasa vivāha); in the case of a marriage concluded according to the three lowest rites the property belonged not to the father but to both the parents of the dead woman, if the women died without leaving issue. According to the Kauṭilya the manner in which the Strīdhana was used depended on the form in which the marriage was concluded.[53] According to Kauṭilya, the woman should be able to make use of the Strīdhana if she required it, that is, in the case that she was a widow and had no sons. She was further able to make use of the Strīdhana to maintain a son, daughter-in-law or herself, should an absent husband have made no provision for her maintenance. The husband could make use of the *strīdhana* in the event of calamity, disease or famine, toward off danger and for charitable purpose. These were exceptional occasions. Another exceptional activity permitted the use of the *strīdhana*, it could be used by mutual consent" by a couple that had brought forth twins. Yet another exceptional case depended on whether not the marriage had taken place according to one of the orthodox forms of marriage.[54]

If the marriage was according to the brāhma, prājāpatya, ārṣa or daiva vivāha the married couple were themselves able to agree upon use of the Strīdhana , but not for longer than three years. If, however, the marriage was not concluded according to one of the orthodox forms of marriage the couple had no right to such agreement. In the case of marriage contracted according to the gāndharva or the ārṣa, they were obliged to restore the Strīdhana together with interest and in the case of marriage contracted according to the *raksasa* or *paisāca* the use of Strīdhana had to pay the penalty for the theft.[55]

In other words Kauṭilya states that, if the marriage was concluded according to the *brāhma*, *prājāpatya*, asra and *daiva* forms of marriage, the wife did not have the exclusive rights to dispose use of her property for the three years of marriage. Only when the three years of marriage had elapsed did the principle of separate property for husband and wife come into force. Kauṭilya further describes, if the wife became widowed and was childless and instead preferred to lead a pious life**,** that is, to become a nun of a religious order (One had to obtain the permission of the civil judge, to become a monk or nun. 2.1.29). She had to be handed over her *strīdhana,* which was in the custody of her husband. She had to be paid also the balance of the *sulka***,** maintenance allowance due to her for the rest of her life, calculated and paid in aggregate as she left their home**.** Withholding it was an offence. If after receiving the above *sulka*, a widow got remarried, she forfeited her claims to it and had to return it with interest**.** If however, she is desirous of having a family, she received, at the time of remarriage, what was given to her by her father-in-law and her late husband**.** If the widow refused to accept the person chosen by her father-in-law and opted to marry one of her own choice, it became *gāndharva* marriage and she forfeited all claims to what her first husband and his father had already given her and agreed to give her.[56] Permission for remarriage was not denied but the widow was not allowed to take the kinsmen of her first husband for a ride. Civil law tried to protect the interests of all concerned. If she remarried in a legitimate manner, the acceptor (second husband) had to protect her property given to her by her first husband and his father. The above rules were applicable not only to widows but also to wives who were deserted by their husbands and were hence eligible to remarry after the stipulated period of waiting for his return. A woman who remarried lost all her claims to what she had received from her first husband**.** She was not permitted to take away the property left behind by the missing husband if she had chosen to marry and live with a man not stipulated by her father-in-law. But she was allowed to enjoy that property if she intended to live as a pious woman. Arthaśāstra protects the woman in distress against her husband's kinsmen but does not allow women to defraud them. If she had sons from the absent husband, she was not permitted to seek the refuge of another person. She had to protect them with the help of her strīdhana. Violation of this rule would lead to her forfeiting even the *strīdhana* given by her father at the time of her first marriage. If she remarried in order to maintain her sons by her first husband she might not only retain the *strīdhana* given to her on her first marriage but also receive further

contributions from his family. Her father might contribute *strīdhana* for the second marriage too. However, the *strīdhana* received for the first marriage would be inheritable by the children by the first marriage and that for the second marriage by those by the second. Separate identities of the two amounts are maintained**.** A sonless woman who did not want to betray the memory of her husband's bed was permitted to use the *strīdhana* with her till the end of her life**.** For *strīdhana* was meant for protection during such a calamity. After she died, it could be claimed by the kinsmen of her husband. The kinsmen of her husband could inherit the *strīdhana* only if she died without any issue.[57] Kauṭilya also state that, if a woman dies while her husband is living, her sons and daughters shall divide her property among themselves, daughters only if she had no sons, in the absence of these, the husband shall receive it. The dowry, the post-marriage gifts and other things given by her relations, they shall receive.[58] There also existed full separation of property of consorts. This rule is found in Yājñavalkya. The wife was then not obliged to pay a debt incurred by her husband and the husband of his wife. This general principle is to be found in Yājñavalkya.[59] But sometimes husbands lived on the earnings of their wives.

According to Mahābhārata, the highest sum that the husband should give to the wife is three thousand coins (of the prevailing currency). The wealth that the husband gives to the wife, the latter may spend or dispose of as she likes. Upon the death of the childless husband, the wife shall enjoy all his wealth (She shall not, however, sell or otherwise dispose of any portion of it). The wife should never take (without her husband's knowledge) any portion of her husband's wealth.[60] In *Anushasana parva,* it is declares that, a woman has the right to enjoy but not sell her husband's property if she becomes a widow. The property owned by a woman is 100% inherited by her daughters.[61]

A widow could not inherit her husband's property in the Ramayana's society. After the death of her husband she was dependent for maintenance on her son. Tara found the situation unpalatable in which a widowed mother was required to live on the subsistence provided by her son. Kausalya recognized Bharata as her guardian (natha), the king Dasaratha being dead and Rama being away in the forest. Rama found it improper to look after his mother so long as his father was living. This must, however, be noted that even in those days a widow was allowed to retain her *stridhana* (woman's property) which could include besides gold, silver and other

valuables, immovable property. Kausalya, it is said, owned one thousand villages which were exclusively for her personal use. Widows (who had none to look after them and whose sons were not yet come of age and hence not in a position to support their mothers, and who being poor and old had no other sources of income) were maintained by the charities of the king liberally distributed on the occasion of sacrifices.[62]

The concept of strīdhana, of a woman's separate property however, developed during the Dharmaśāstra period, to what it was under the Hindu law, till 1956 C.E.63 It is described by the Manu, if a wife predeceased her husband, her strīdhana would be divided equally among her sons and daughters. If there were no sons, the daughters would get it. If she died childless, her husband could take it. Her father could not take it back. A daughter is equivalent to a son. In her presence, how can anyone snatch away her right over the property. A daughter alone has the right over personal property of her mother.64 Thus, as per Manu, while daughter has equal share as her brothers over property of her father, she has exclusive rights over property of her mother. But if there is no son the share goes to the (appointed) son daughter shall take the whole estate of (his maternal grandfather) who leaves no son.[65] The son of an (appointed) daughter, indeed, shall (also) take the estate of his (own) father, who leaves no (other) son. If the elder brother refuses to give due share to other brothers and sisters, he is punishable by law.[66]

The scriptures say that a mother's property belongs to her daughters. When a father died, unmarried daughters receive a share in their father's property equal to one-fourth of each brother's share (it was assumed that the married daughter had been given her share at marriage).[67] If a family has no sons, a daughter is the sole inheritor of the property.[68] The daughter has been ordained in the scriptures, to be equal to the son.[69]

P.V. Kane generalizes the position of women by saying that "in the Dharmaśāstra literature the position of women become worse and worse as time went on, except as to rights of property.70 He also says Āpastaṁba and Manu do not allow the widow of a sonless male to succeed as heir along with sapindas and sagotras.71 It is clear from the Abhijñāna Śākuntalam (act VI), we get the idea of the law of inheritance prevailing in the days of Kālidāsa. The Prime Minister, the noble Piśuna, sends the following report of a case to the king for decision: - "a sea-faring merchant

named Dhanamitra has been lost in ship wreck. He dies childless, and his immense property becomes by law forfeited to the king". Now the king's reply is "as he had greed riches, he must have several wives. Let inquiry be made. There may be a wife who is with child." And when he is told that one of his wives-the daughter of a merchant from Sāketa is soon to become a mother, the king decided that the child shall receive the inheritance. The unborn child has a title to his father's property. From this passage it is clear that in the days of Kālidāsa a widow was not entitled to inherit her husband's property.[72]

But there are so many inscriptions which describe the names of the females prove that they had absolute property rights in ancient times and contributed and donate the property for the religious purposes. Jain inscription from Mathura (no III), describe female pupil of the venerable Jayabhūti out of the Mahika Kula and female pupil of the venerable Gaṅgamika;[73] divine image of Vardhanana constructed by married lady, the cherished daughter of Grahahathi (no.VI); inscription (no.VII) talking about the gift by female pupil; inscription no. X about the donation by daughter; inscription no. XI stone pillar was dedicated, being the gift of Sihadatā the first wife of the village headman, Jayanāga, the daughter-in-law of the village headman Jayadeva daughter etc. Jain inscription no. XII, also talk about the gift by daughter of Dasa, wife of Priya, at the request of the venerable Vasula[74] and inscription no. XVII a Toraṇa has been erected by order of a lay-pupil of the ascetics, together with her parents, together with her mother-in-law and her father in law.[75] Another inscription (no. XXVIII, Mathura) gifted by the house wife of Matila etc.[76]

There are some unpublished Amaravati inscriptions. There are references about the donation by the nuns mothers to the Stūpa. Railing was gifted by the kumba, mother of Utika, one reference of Sōmadattā, the wife of Bala, the royal scribe and etc are mentioned in inscription no.23; no.13 and no.47 also described about the gift of the slab with Svastika and on Abātamāla are the pious gifts established by lakradatta wife of……, together with her father and their grandsons, friends and relatives.[77]

Another inscription of Siri-Pulumāyi, son of Vāsiṭhi, there the donation was given to the community of Valūraka, of the Valūraka caves, a village with its taxes ordinary and extraordinary with its income fixed or proportional.[78] Nasik cave no. II, talks about the Gotami Balasiri and Gautamiputa Sātakarni, Balasiri grant the village

Pisājipadaka on the south west side of mount Tiraṇhu.[79] Renunciation to the enjoyments of every kind. In period 120 B.C., donation was given by the queen of the great Satrap Rājūla, daughter of Āyasikōmūsā, mother of the heir Apparent Kharaōsta, Nandesi-Akasā (by name), together with her daughter Apūhōlā, her paternal grandmother Pispasi, her brother Hayuarā, her daughter Hena, etc. a relic was deposited in this piece of land in a Stūpa. We have another reference to a Kosalan queen of king Bimbisāra who brought with her the district of Kāśī as her bath-money. The so called queen's edict issued by Aśoka conveys instructions to his officers that they should register the gifts of his second queen Kāruvāki in her own name. The items of gifts enumerated are a mango-grove, a monastery, an institution for dispensing charity or, perhaps, cash donation.[80]

There is description of Agastya, in the epics, the *Purāṇas* and in the Tamil literature. In the *Mahābhāratā* the story is more fully developed, and Agastya's connexion with the south comes into prominence. His marriage with Lopāmudrā, a princess of Vidarbha, is mentioned together with her demand that, before claiming the exercise of his marital rights, he should provide her with costly jewellery and all the luxuries she was used to in her father's house, without in any manner impairing his asceticism.[81] This story shows the position of the women in their parental home was better than boys sometimes. In the Sātavāhana period, girls were prominent in social life and held property in their own right is seen from records of their lavish charity mentioned in inscriptions.[82] In the period of Andra Ikshvaku, almost all the royal ladies were Buddhists. An aunt of Virapurisadata built a big Stūpa at Nagarjunikonda. Her example was followed by other women of the royal family. Most of the inscriptions of the Andhra Ikshvaku period record either the construction of the Buddhist *Viharas* or the gifts made to them. All the donors and builders of the *Viharas* were the female members of the Andhra Ikshvaku royal family. This was the period during which Andhra became a flourishing center of Buddhism and a place of pilgrimage for the Buddhists.[83] This shows that girls have property rights in ancient times. In the VII pillar edict, Aśoka announces that dhamma-mahāmattas and many other chief officers are busy in the distribution of charity both on his account and on that of his queens. From the Nasik cave inscription of Gautamiputra Sātakarṇī we learn of the assignment of a field situated on the outskirts of the city by the queen-

mother specifically referred to as 'our own' (*amha satkam*).[84] From the bhisa jataka we know that the women had the right of property. Kañcanadevī daughter of rich merchant donated the wealth and property which was given by her parents.

Property rights to the prostitutes:

Although, *gaṇikās* were not free, they were under the king. Girls becoming *gaṇikās* could bring with them jewellery (they were classified according to its value) and they received salary and gifts which they could do what they wished. If she a courtesan sells or mortgages her property she shall be fined 50 paṇas. Everything they possessed would be used by them on a usufructual basis; they would have the right to use it as long as they lived, but would not be entitled to inherit it, since gaṇikā would not have the ownership over it. The palace where gaṇikās lived, garment given to them for the use of their paramour, etc. might not be their property. Gaṇikās could use them during their lifetime, or as long as they worked as government servants, but could not sell them or pledge them. They same interpretation should be given to the other sentence of Kauṭilya where we read this, 'if a gaṇikā puts the jewelry in the hands of another person than her mother, the fine amounts to 4 ¼ paṇas we have seen that girls entering the profession of gaṇikā government servant, were classified as of first, middle and highest rank, according to their beauty and the jewellery they brought. It is also stated in Arthaśāstra that anyone who deprived a gaṇikā of her jewellery had to pay as a fine eight times the value of such jewelry. Kauṭilya states that if a gaṇikā died, her daughter or her sister inherited her household (kunṭumba) and if any one of them was not available, then the king inherited from the deceased gaṇikā. It is said that when a gaṇikā goes abroad or dies, the daughter or sister should get the housedhold. Or the mother shall give a substitute gaṇikā. In the absence of them the king should take it.[85] Unfortunately, the Dharmaśāstra do not deal with this problem.

Property Rights of Brāhmaṇa:

It is describes in the Arthaśāstra that the head of the settlement of the country side department should grant lands to priests, preceptors, chaplains and Brāhmaṇas learned in the Vedas as gifts and exempt from fines and taxes, with inheritance passing on to corresponding heirs and to the heads of the departments, accountants and other, and gopas, sthānikas, elephant-trainers, physicians, horse-trainers and

couriers, but without the right of sale or mortgage.[86] The general rule about the property of one dying heirless is that it escheats to the king, but there was an exception in the case of an heirless Brāhmaṇa.[87] It is quoted by Shraddhakar Supakar that when a Brāhmaṇa died without any heir, his property was to go either to his disciples or the disciples of his own guru (or when none of them are there it was to be given to a Śrotriya. (Gautama, XXV. 41). A śrotriya was exempt from all taxes. Āpastaṁba and Vasiṣṭha prescribe this. Manu[88] says that even when the king is dying (i.e., in direst need), he should not take any tax from a śrotriya. All the grants of land by king to the Śrotriyas throughout the ages were rent free.[89]

If a Brāhmaṇa (learned priest) found a treasure that was previously hidden, he may take it even without leaving anything, for he is the overlord of everything. But when the king finds ancient treasure hidden in the earth, he should give half to the twice-born and put half in the treasury. The king gets half of ancient treasure and minerals in the ground because he protects it and because he is the overlord of the earth. There are so many examples of the gifted lands to the Brāhmaṇas, the Edict Paderia of Aśoka in Nepal. In this it is mentioned that the village of Lummini (where Sokyamuni born) has been made free of taxes and a recipient of wealth. karle cave insc. No. 13 talking about the donation : Vsabhadāta, the son of Dinika and son in law of the king, the Khaharāta, the Kshatrapa Nahapāna- who gave three hundred thousand cows, who made gifts of gold and a tīrtha on the river Baṇāsā, who gave to the (the dēvas) and the Brāhmaṇas sixteen villages, who at the pure tīrtha pabhāsa gave eight wives to the Brāhmaṇas and also fed hundred thousand Brāhmaṇas annually and also give the village of Karajika for the support of the ascetics living in the caves at Valūsaka without any distinction of set or origin, for all who would keep the varsha (there)" In the case of various offences people of other three varnas were banished from the country any they were not allowed to take anything with them, but Brāhmaṇa in the case of various offences be banished from the country taking with him all his possessions.[90] It is also describes that, one who takes away the property of the Brāhmaṇas, gods, women and children and takes back again what has been given away in charity, perishes along with one's all dear ones. One who takes away the property belonging to the Brāhmaṇas and the gods, soon goes to the fearful hell known as 'Avici' one who takes away even mentally the property belonging to the gods and the Brāhmaṇas, goes down from one hell to another." The person and

property of a Brāhmaṇa were considered inviolable. The Brāhma-sva (brāhmana's property) was free of state taxation and any person (be he a prince) who unlawfully seized it or caused damaged to it was severely punished by the king.[91]

Disputes:

Arthaśātras recognizes the authority of the village courts which were self-sufficient and independent from empirical control. Gramvarddhas or the village elders decided the cases arising in the village. In the disputes about boundaries in the villages were decided on the spot by the elders and the wise men of the neighboring five to ten villagers. In case of difference of opinion among them, they shall arbitrate in favour of that in favour of which are the majority, the honest or the approved, or they shall follow the middle course. The king shall take that property to which the claim of both is rejected, also that the owner of which has disappeared. Or he may allot it as it may be beneficial.[92] There was a gradation of the courts of justice ranking from the local courts of village community to the supreme court of judicature. Manu laid down the following rules regarding settlement of disputes of boundaries between two villages: "if there be no witness, let four men, who dwell on all the four sides (of the two villages) make a decision concerning the boundary in the presence of the king."[93] Manu further said "the decision regarding boundary-marks of fields, well, tanks, of gardens and houses, depends upon (the evidence of) the neighbours."[94] During the Mauryan period the village headman had to work under the supervision of the gopas who were the lowest representatives of the state authority in fiscal and police matters of the provinces. According to Kauṭilya, there should be a court for every ten villages called sangrahaṇa, for every four hundred villages (a district) a droṇamukha court, and for every eight hundred villages (a province) a sthanīya court[95]. These courts were evidently hierarchical. All these three kinds of courts mentioned by Kauṭilya must have been inferior to the king's court. Kauṭilya mentions courts on the borders of the kingdoms. Each of the courts mentioned above by Kauṭilya had three judges, known as dharmasthas to decide disputes about cases. Besides the courts mentioned above were the tribunals, who had the power to decide law suits. Yājñavalkya mentions (a) the king's officers, (b) the pūgas, (c) the śreṇis and (d) kulas, they were entitled to decide legal disputes and each one was superior to the succeeding ones.[96]

If anyone wants to sell something, shall proclaim a dwelling as for sale in front of the house, in the presence of members of forty neighbouring families, and a field, park an embankment, a tank or a reservoir (as for sale) at the boundaries, in the presence of village elders who are neighbours, according to the extent of the boundary, saying 'at this price who is willing to purchase?'. What has been thrice proclaimed and not objected to, the purchaser shall be entitled to purchase.[97] When a person did not return the property he has borrowed or hired or when a person did not hand over the property entrusted to him for delivery to the third person, he was punished. When a person misappropriates the revenue he collected as the agent of a household, he was punished with fine of 100 paṇas imposed.[98] According to the Arthaśāstra, Sale without ownership, on the detection of the lost property in the possession of another person, the owner had to cause the offender arrested through the judges of a court. If time or place did not permit that action, the owner himself caught hold of the offender and brought him before the judges. The judge had put the question, how the offender came by the property if he narrated how he had got it, but could not produce the person who sold it to him, he was let off and had to forfeit property. But the seller if unable to produce another seller who sold it to him had not only paid the value of the property but also he was liable to the punishment for the theft. If a person was found with a stolen property in his possession runs away or hide himself till the property was wholly consumed, he had not only to pay the value but also liable to the punishment. In the case if the owner failed to prove his title on his property which was claimed by him, then he was fined five times the value of property and the property was taken by the king. If the owner takes the possession of a lost article without obtains permission from the court, he was punished with the first amercement.[99] When a creditor urges the king for the recovery of a debt from a debtor, he should make the debtor give the creditor the money that he has proven due him. If a creditor recovers his money from a debtor by himself, the king should not prosecute him for recovery his own property. King must give back to men of all classes property taken by thieves, a king who uses it for himself commits the offense of a thief.

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