

## A QUEST FOR SUITABLE LAWS ON MATRIMONIAL PROPERTY: A SOCIO-LEGAL PERSPECTIVE

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### ABSTRACT

Marriage as a dynamic institution has been changing rapidly in contemporary society with multiple complex issues, wherein married spouses are static in their interpersonal behavioral patterns. The most complicated Concepts include matrimony, matrimonial home, and matrimonial property. The situation becomes complex when cultural, social, and legal conflicts arise among spouses, and an informal resolution mechanism fails to resolve their disputes, leaving them in an adversarial state of affairs to solve their marital issues. As the concept and nature of matrimonial homes change, matrimonial property becomes prevalent in marital relationships. This research paper meticulously evaluates historical, cultural, and legal contexts that define matrimonial property within Hindu marriages, pinpointing inadequacy in current legal statutes, particularly Section 27 of the Hindu Marriage Act, 1955. Further, the authors argue for standalone legislation to ensure equal or equitable distribution and joint ownership of matrimonial assets among married spouses.

*Keywords: Marriage, Marital Relation, Matrimonial Home, Matrimonial Property, Right, Equal, and Spouse.*

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### I. Introduction

MATRIMONIAL RELATIONSHIPS among heterosexual Hindus had been a well-respected relationship in the form of marital relationships. Marriage confirms a status to its members, which has social acceptance and due legal recognition. There has been a well-regulated sexual

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behaviour among heterosexuals in marriage, which regulates their reproductive capacities while making a family. Family *per se* is the basic unit of any civilised society. There has been a set of norms for creating a family in India. Marriage is considered the gateway to creating a family of one's choice. However, there have been many other norms, customs, and laws regarding marriage among Hindus. Once the status of being a husband and wife is confirmed to the parties of a marriage, it guarantees them a set of matrimonial rights, including property rights in the said matrimony. Marriage not only guarantees worldly (materialistic) status, rights, or claims but also guarantees its parties' spiritual and religious beliefs. Both parties to marriage become one once it is solemnised properly, as emphasised in the *Shastric* law. These parties of the marriage not only procreate children to fulfil one of the objectives of marriage but also perform religious ceremonies together to achieve prosperity in the family.

While living married life within the matrimonial home, whether established by the husband or wife or jointly by both spouses, both earn, acquire and inherit the property. Though there have been well-settled norms, customs, and laws to regulate matrimonial homes. However, a few customs or laws have regulated the matrimonial property of married spouses in the country. There is a state of confusion on which property among the spouses is to be called matrimonial property within the matrimonial home and which one is not to be considered matrimonial property on which both spouses are supposed to have joint ownership.<sup>1</sup> The lawmakers had attempted to provide legal protection to married couples regarding their accumulation of property during the subsistence of marriage under Section 27 of the Hindu Marriage Act, 1955. Still, they have failed to compartmentalise property with its nature and share to be awarded by the court on demand among the married couples. This ambiguity extends to whether certain properties should be considered jointly owned by both spouses or individually owned by one, leading to disputes over ownership. When the creation, identification, and validation of matrimonial property itself are unclear among the spouses, imagining equal and equitable ownership and distribution of matrimonial property on demand by one of the spouses becomes beyond human understanding. Hence, the existing law relating to marital property does not provide sufficient indicators on which married couples can seek legal remedy towards their marital property or a share of that property.

In contemporary Hindu society, where young male and female married couples are working in the majority of cases, they find it illogical and unfair when they don't own matrimonial property jointly in the present set of norms, customs, and personal laws. In most cases,

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1 Vijender Kumar, "Matrimonial Property Law in India: Need of The Hour", 57 JILI (2015).

exceptions apart, both the married spouses on marriage set their matrimonial home at the place of their convenience and fill it with their emotions, decorate it with the best of the best presents, and live with the hope of completing life circle while owning it with abandoned caution. They procreate children in the matrimonial home and give them all possible love, care, and support in every aspect of their lives. In such a situation, once the female spouse comes to know that she has no ownership in the matrimonial property except the gifts which she, along with her husband, received at or about the time of marriage<sup>2</sup> or her *Stridhana*<sup>3</sup> or property inherited from her father<sup>4</sup> or the mother<sup>5</sup> or on her husband's death, she gets disappointed and loses her faith and confidence in the matrimonial relationship. This could be one of the reasons why young people do not prefer marriage, either by choice or by chance; instead, they remain engaged in live-in relationships.<sup>6</sup>

There have been attempts to make relevant laws for Hindus since 1955 in different forms in the country but it seems they are not sufficient for the creation, identification, validation, and distribution of matrimonial property among married spouses. When we explore matrimonial relationships between two heterosexuals and try to know the binding forces among them, one must understand that the commitment agreed upon by both the parties to such relationships for life, unconditional support agreed upon, acceptance of good and not good habits, attitude towards care and affection, etc. are such attributes which bind them for life. Such long-lasting attributes of the spouses help them to make their lives enjoyable, meaningful, and rewarding in terms of spiritual, emotional, and social relationships. However, in matrimonial relationships, there is an intriguing element of faith and confidence among the spouses wherein both spouses need to give their full attention and contribute to the best of their capabilities in making the matrimonial home a place of happy living. However, in such a committed relationship, each spouse needs financial and economic support. At the same time, there is also a need for financial independence among the spouses wherein, together or individually, one can earn, accumulate and invest her savings. Nowadays, in almost all cases, both spouses work and earn to the best of their abilities. However, being young, many of them do not lead their personal and professional lives correctly. Let's presume they are well educated and earning

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2 The Hindu Marriage Act, 1955, s.27.

3 Pandurang Vaman Kane, History of Dharmasastra, Vol. 3 1993, at 772, 777, available at: History Of Dharmasastra Vol. 3 : Kane, Pandurang Vaman : Free Download, Borrow, and Streaming : Internet Archive (last visited on October); *Pratibha Rani v. Suraj Kumar*, (1985) 2 SCC 370.

4 As Class-I heir to her father under the Schedule (Heirs in Class I and Class II) the Hindu Succession Act, 1956, s.8.

5 As legal heir to her mother under the Hindu Succession Act, 1956, ss. 15,16.

6 Harsimran Kaur Bedi, "The Concept of Marriage Under Hindu Law and it's Changing Dimensions", Winter Issue ILI Law Review 105 (2022).

well, but experiencing difficulties in the matrimonial relationship is such a life-changing challenge, which they face for the first time at a young age, and they have no life experience to solve them on their own. Hence, they need emotional, psychological, and financial support from their parents, well wishes, and friends to lead a happy married life. Their families rescue and guide these young married couples on various interpersonal issues at this stage.

While browsing many materials on the issues at hand, one quickly understands that a happy married life needs commitment among the parties and experience of leading life with a problem-solving attitude and skills. There are cultural, emotional, and psychological issues arise among married couples, which are to be addressed timely and patiently by both parties. In most cases, one or another issue irritates them, but they need to understand that the diversity of each of the spouses plays a crucial role in their daily routine. Therefore, they need to understand each other carefully, communicate, and share feelings to find a way forward in resolving difficulties. Reference points can be found in the Shastric law, which prescribes the qualities of a wife and a husband and the family background of each of them.<sup>7</sup> A well-searched background, besides habits, qualifications, and earning potential of a would-be bride and groom, makes a desired beginning to a happy married life one can think of.

Moving further from the guidance and supervision of the parents and in-laws, the law comes as a tool to guarantee and resolve any issues among married spouses. A legal provision on the matrimonial property among Hindus in the form of Section 27 of the Hindu Marriage Act, 1955 is such an instrument that provides substantive law on the issue and a mechanism for resolving a dispute over the matrimonial property among the disputed spouses. It has been a welcome attempt on the part of the lawmakers, and it has been interpreted by the courts in a plethora of cases while protecting the rights of women in matrimonial disputes in general and matrimonial property disputes among Hindus in particular. But to a great extent, this provision of law takes care of the property being accumulated at or about the time of marriage in the matrimonial relationship where a lot of emphasis is given to the intention and motive of the donor towards the donee. The said Section does not address the issue of the financial contribution of the wife in establishing the matrimonial home, investing in bearing, caring, and upbringing of children, and unconditional commitment towards the husband, his parents, and the children while leaving her parents and siblings in the natal family.<sup>8</sup> John Stuart Mill also “draws significant

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7 Pandurang Vaman Kane, *HISTORY OF DHARMASTRA*, 3<sup>rd</sup> ed. 1997, Vol. 2, p. 576.

8 Arundhati Katju, “Because Jack Did Not Build This House Alone: The Right to the Matrimonial Home as a Property Right”, 15 *Student Bar Review* 24 (2003); Arvind Kurian Abraham, “*Case for a standalone law to deal with matrimonial property*”, *THE LEAFLET*, available at: <https://theleaflet.in/case-for-a-standalone-law-to-deal-with-matrimonial-property/> (last visited on April 11, 2023);

attention to the unfairness of repulsing married women the right to own a share in matrimonial property during the subsistence of marriage”.<sup>9</sup>

In *Alka Bhaskar Bakre v. Bhaskar Satchidand Bakre*<sup>10</sup>, the Bombay High Court, while deciding on a matrimonial home of the parties, held that “in the present modern set up it can no longer be claimed that it is only the house of the husband or the house of the parents that will be the matrimonial home of the parties. In the present times, husband and wife are equal partners, and in the present case, the wife is little more than an equal partner. She has an equal right to have a say in determining the place of their matrimonial home. The fact that the parties had booked the ownership flat in Bombay, which, according to the husband, is a pointer to the intention of the parties to settle down in Bombay. Therefore, it is this house which is the matrimonial home of the parties”<sup>11</sup>. Further, in *Shammi Nagpal v. Sudhir Nagpal*<sup>12</sup>, the Court held that “Matrimonial home means a home where both spouses have an equal right to possession, regardless of the ownership. That is, one spouse may legally own the home, but, nevertheless, both spouses will be equally entitled to live in it. If a relationship breaks down, the spouse owning the matrimonial home is not entitled to require the other spouse to leave it. Even the home, such as one in the present case, could also be treated as a matrimonial home so long as the employee either continues to be in possession of such home or is entitled to retain possession thereto till termination of his service or till retirement or resignation or death or termination of the service occupancy agreement”<sup>13</sup>.

Further, Section 27 of the Hindu Marriage Act, 1955 provides the law on the distribution of the joint property of the disputing spouses only at the time of disposing of the divorce petition. At this point, it becomes pertinent to mention that any personal laws never welcome divorce; it is supposed to be the last resort to dissolve a marriage. Ideally, efforts should be made to preserve marriage wherein interpersonal relations can be restored by refurbishing the married relationship. However, Section 27 of the Hindu Marriage Act, 1955, does not provide any meaningful understanding of the issue of distribution of matrimonial property, jointly owned, on demand by the wife during their peaceful married relationship. Furthermore, the said Section does not provide any mechanism for equal or equitable distribution of matrimonial property which is jointly owned by both spouses. In such a situation, the wife is left with no other option

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9 Henry Kha, “*John Stuart Mill on Matrimonial Property and Divorce Law Reforms*”, 24 *FUNDAMINA: : A Journal of Legal History* 38 (2018).

10 AIR 1991 Bom 164.

11 *Id.* at 175.

12 AIR 2009 (NOC) 544 (Bom): 2008 (6) AIR Bom R 610.

13 *Ibid.*

but to invoke provisions for divorce. Once the marriage is dissolved by a decree of divorce, either by her choice or otherwise on legal grounds of divorce, her status changes, which she may not have even thought of, but it happens. Here lies the core concern of the research as to why marriage is to be dissolved when not desired; cannot there be a suitable provision in law wherein marriage remains intact, and distribution of the jointly owned property of the married spouses takes place peacefully, as partition happens among the coparceners of a Hindu joint family whether governed by Mitakshara or Dayabhaga laws, wherein joint Hindu family remains joint in many matters, then the jointness of coparcenary property, partially or wholly. A Hindu daughter in the natal family, being a coparcener, can ask for the partition after the Hindu Succession (Amendment) Act, 2005, came into force from other coparceners as a matter of her right guaranteed by law<sup>14</sup>, but the same woman in the matrimonial home, as a wife, cannot ask her share from the matrimonial property earned, and accumulated during her married life from her husband? How irrelevant, irresponsible, and unreasonable proposition is this, where a woman invests her emotions, youth, and earnings but gets no legal protection towards her basic right over her property and cannot claim the same? This research paper explores the nuances of matrimonial property among Hindus, the rights of the spouses over the matrimonial property, and the distribution of matrimonial property among the disputed spouses.

## II. Marriage and Property among Hindus

Marriage as an institution, well established among Hindus, is not only a social institution but also has legal protection with its spiritual significance because it is only in the family that legally wedded spouses create the welfare of the soul of ancestors and also of one's soul are worked out. It is through the medium of the family that all the obligations, whether pious or spiritual or legal or secular, are fulfilled. Hindu law, like Christianity, does not consider celibacy as meritorious. In the Hindu social system, *Dharmashastras* “do not separate the spiritual from the secular”; therefore, in the *Grasthasrama*, “a person is given the training to lead a complete and meaningful life for the benefit and welfare of those who left, and those who are present, and those who will be born”. It is a unique phenomenon of Hindu philosophy that “the Hindu family has been thought of as one of the most important institutions because all other institutions like *Brahmacharya*, *Vanaprastha*, and *Sanyasha* depend on it”. Hence, the importance of marriage and family lies in the *Dharmashastras*. Over some time, there have

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14 The Hindu Succession Act, 1956, s.6.

been developments in Hindu law regarding the proprietary positions of women.<sup>15</sup> It is pertinent to mention here that property is an integral part of the marriage institution or the family system among Hindus. Till now, there have been no dialogues among social scientists or lawmakers on the separation of property from marriage as an institution. For example, the Hindu family, especially the joint Hindu family in which a coparcenary is now changed by the amendment into the Hindu Succession (Amendment) Act, 2005, while providing an equal right to a daughter in the Mitakshara coparcenary. However, there is no legal provision on providing an equal property right to a daughter-in-law in the matrimonial home along with her husband.

Further, one finds that in Hindu law, great importance has been attached to the property, and there is even a discussion on the nature of the property. This discussion occupies the attention of great sages and contemporary scholars. There are two views: one view is that “*Shastras* indicate the property and only that is the property which is obtained according to the *Shastras*, i.e., *Shashtra samedhigamyatva*”; and the second view is that “the property has its basis on popular recognition without any dependence of *Shastras*”. This view is known as *laukika svatvada*. Dharieswara, Jimutavahana and their followers advocated the former view. The latter view was that of Vijnaneshwara and his followers.”<sup>16</sup>

The concept of property in Hindu jurisprudence is the product of the institution of family in general and marriage in particular. For the first time, the coparcenary concept of property in Hindu jurisprudence gave rise to the concept of socialisation of property. If we study the code of Manu, one shall find that Manu is the first treatise that propounds the socialisation of property. A family is a miniature form of society. No member of the family, even the *Karta*, was the absolute owner of the property. The Hindu social system, if one studies the function and structure, will exhibit, is based on the socialisation of property because property is a means to an end and not an end in itself. It is one of the four ends of human life known as *Dharma*, *Artha*, *Kama* and *Moksha*. In ancient Indian society, whatever you acquire must conform to *Dharma*, whether the satisfaction of desire or the acquisition of wealth. They were all further acquired to attain the highest aim of life liberation, which meant the cessation of miseries, that is, the freedom from birth and death. That way, Manu, in the 12<sup>th</sup> Chapter, requires a person to strive to make his life and the attainment of this end. In Manu, the property was a means to an end, so he socialised it. The following text of Manu makes it clear that,

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15 Debarati Halder and K. Jaishankar, “Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India”, 24 (2) *Journal of Law And Religion* 663-687 (2008-09).

16 Paras Diwan, P.N. Sen, et.al. (eds.), *General Principles of Hindu Jurisprudence*, Allahabad Law Agency, 1984).

*“Ye jata ye pyajata ya ca garbhe vyavasthitah  
Vrttim teapi hi kanksanti vrtilopo vigarhitah.”<sup>17</sup>*

In Hindu jurisprudence, the family is not only a proprietary or social institution but also a spiritual institution. The female is given the most crucial place in the family as a wife. The text of Manu<sup>18</sup> mentioned that in the families wherein the females are honoured and pleased, god blesses such families, and in the families where the females live in grief, the family is doomed. Those who want to prosper and lead a prosperous and honourable life must give the respect the females deserve. The female’s contribution and importance in the family are conspicuous by their contribution to the welfare of society and the family; therefore, the wife is the inseparable member of the home with her husband. The following text of Manu makes it clear that,

*“Prajanartham mahabhagah pujarha grhadiptyah  
Striyah sriyasaca gehesu na visesoasti kascan.  
Utpadanamapatyasya jatasya paripalanam  
Pratyaham lokayatrayah pratyaksam strinibandhanam.  
Apatyam dharmakaryani susrusa ratiruttama  
Daradhinastatha svaragah pitrnamatmanasca ha.”<sup>19</sup>*

Meaning thereby is that “between wives (*striyah*) who (are destined) to bear children, who secure many blessings, who are worthy of worship and irradiate (their) dwellings, and between the goddesses of fortune (*striyah*, who reside) in the houses (of men), there is no difference whatsoever. In the production of children, the nurture of those born, and the daily life of men (of these matters), women are visibly the cause. Offspring, (the due performance of) religious rites, faithful service, highest conjugal happiness, and heavenly bliss for the ancestors and oneself, depend on one’s wife alone.”<sup>20</sup>

In ancient literature, legal, religious, or philosophical discrimination against women was not found to be sustainable because of the highest place in Indian philosophy, according to the female phenomenon. Hence, those who criticize Indian literature as discriminating towards women their knowledge of Indian literature is poor.<sup>21</sup> A woman reigns supreme in the family,

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17 Attributed to Manu in Dayabhaga, p. 42. q. in Mitakshara, p. 611. Parasharamadhava, p. 332. Viramitrodaya, pp. 532 and 533. Smrititattva, II, p. 177.

18 Manu, III, 56, SACRED BOOKS OF THE EAST, Vol. 25; “where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rite yields rewards”.

19 Manu, IX, 26-26.

20 *Ibid.*

21 Rig. X, 85, 46. Available at: <https://www.wisdomlib.org/hinduism/book/rig-veda-english-translation/d/doc839507.html#:~:text=The%20Rig->



and the concept of home in Hindu jurisprudence cannot be thought of without the presence of a wife. In Hindu jurisprudence, marriage is a union of spiritual, economic, and social natures upon which the social order is based. If we examine the *Asavalayana's Grahayasutra*, the nature of Hindu marriage and its sanctity and importance will become clearer. Hence, marriage is neither an individual institution nor a social institution. It is an institution that is concerned chiefly with personal, spiritual, and social aspects. However, there is no paucity of ancient and modern thinkers who seek more complimentary modes of life.<sup>22</sup>

In contemporary times, the disruption of the family in the name of freedom and the influence of Western thoughts due to British rule in India has changed the complexion of the Hindu family, and this change, unfortunately, proved more disastrous than the evil intended to be removed. Even in the West, thinkers recognise the prime importance of family. The importance of family is recognised by every rational person except the power-hungry votaries of the vote bank, who determine everything without its essence, impact, and importance to the family. Dr. Sarvepalli Radhakrishnan rightly observed that “without family may be reduced to an inactive gathered mass of humanity.”<sup>23</sup>

### III. Impact on Property in the Family

Family under Hindu law has influenced and articulated the idea of property in Hindu jurisprudence. The notion of property through family unfolded in society as the family socialized the concept of property. The emergence of the idea of property in West jurisprudence is influenced by Sir Henry Maine's famous aphorism that “*the development of the society has hitherto been from status to contract*”<sup>24</sup>.

In contemporary times, the truth of Sir Henry Maine's aphorism proved wrong because of enacting social legislation and the curtailment of freedom of contract. Jhering remarks, “the weakening of the sense of property strengthens the feeling of honour”<sup>25</sup>. The modern concept of socialisation of property was inherent in ancient Indian thoughts as the only means to the end was and is *Moksha*. The concepts of *Dharma*, *Artha*, *Kama*, and *Moksha* make it clear because Manu, in the following texts, dealt thoroughly with the acquisition and use of the property. “Without a full knowledge of the rules prescribed by the sacred law to accept

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Veda, %20English%20translation, %20including%20the%20commentary%20of%20Sayana%20and (last visited on October).

22 Vide Russell, “Principles of Social Reconstruction” Ch. V. “it is doubtful whether he has sufficiently thought out the consequences of his proposals”.

23 Sarvepalli Radhakrishnan, *The Hindu view of Life*, 71 (HarperCollins Publishers India, 2015).

24 Sir Henry Maine, *Ancient Law*, 100 (1st ed. 1861).

25 Scherz and Ernst in der, *JURISPRUDENCE*, 424 (4th ed. 1891).

presents, a wise man should not take anything, even though he may pine with hunger. A man who knows the law should not offer even water to a Brahmana who acts like a cat, to a Brahmana who acts like a heron, nor to one who is unacquainted with the Veda. For property, though earned following prescribed rules, which is given to these three persons, causes the world misery to both the giver and the recipient. Those Brahmanas, who act like herons, and those who display the characteristics of cats, fall in consequence of that wicked mode of acting into the hell called *Andhatamisra*<sup>26</sup>.

A critical examination of the text of Manu reveals that the ancient jurists always kept in mind the sustainable aspect of development and never lost the interest of the generations to come. They never thought of the fulfilment of certain ends, which would be distracting to the future prospectus of the generations to come. Ancient Hindu legal history points to the fact that ancient jurists were always conscious of the effect of maintaining a balance between the rights of society and the individual. Therefore, the more significant interest was given predominance.

However, it cannot be denied that a school of jurists in ancient India attached absolute importance to property. This school, of course, had quite large followers who believed in the free enjoyment of property without any restrictions whatsoever. They proclaimed: “While life is yours, live joyously, none can escape death’s searching eye, when once this frame of ours burns, how shall it ever again return”. This approach was called *Lokaya*.<sup>27</sup> Hence, the concept of property in Hindu jurisprudence naturally underwent various changes throughout history. But at every stage of evolution, the focus was on the interest of the people. One may find that the Hindu jurists never allowed the acquisition of property without any restraint. They laid down elaborate rules for the acquisition of property, and acquiring property by means not approved by the Shastras or by common usage was abhorred. Society’s disapproval was a sufficient sanction. When Brahmanas (men) acquire property by an objectionable act, they become pure by giving it up, repeating sacred texts (making gifts), and performing austerities. This text of Manu implies that “people may acquire wealth, by objectionable means, but they should not do so, and even if they have acquired property through unapproved means, they should abandon such property and undergo penance”<sup>28</sup>. It is interesting to note that Manu disapproves of acquiring wealth from a person who has not acquired it, according to Shastras.

*“Yodattadayino hastallipseta brahmano dhanam*

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26 Manu IV, Sacred Books of East, at. p. 187, 192, 193, and 197.

27 *Lokayata* is directed to the world of sense, which is the Sanskrit word for materialism.

28 Manu, XI, 193, Sacred Books of The East, Vol. 25, quoted by Mitakshara, (603), Viramitrdaya, (537).

*Yajanadhyapanenapi yatha stenastathaiva sah.*<sup>29</sup>

Let's make it simple to understand that "A Brahmana, seeking to obtain property from one who took what was not given to him, either by sacrificing for him or by teaching him, is even like a thief."<sup>30</sup> However, Vijnaneshwara differs on this point because he says that the ownership is purely temporal, and therefore, it is not logical to impose a penalty.

A discussion on the concept of property between different thinkers of ancient times indicates that there was awareness of the legal and social impact of property on society. As Roscoe Pound opined, "If ideals of what law ought to be have done much in all ages to shape legal precepts as they were, it is no less true that the actual legal situation for the time being has greatly influenced the ideals."<sup>31</sup> Hence, the concepts of property, coparcenary, and coparcenary property in Hindu jurisprudence are offshoot products of ancient Indian metaphysical thoughts because property is intimately connected with religious aspects.

### V. Matrimonial Property Rights of a Female Hindu

Marriage as an institution has legal requirements for a husband and a wife to be fulfilled before they settle their matrimony and set up their matrimonial home; and once these requirements are fulfilled by the intended parties to a marriage, it confirms to them a status of being a legally wedded husband and legally wedded wife, irrespective of the personal law which governs them. In *Doly Singh v. Manish Kumar Chanchal*<sup>32</sup>, a civil transfer petition, the Supreme Court of India opined that "A Wife is considered to be half of oneself (Ardhangini) but to be accepted with an identity of her own and to be a co-equal partner in the marriage. There is nothing like a 'better half' in a marriage, but the spouses are equal halves in a marriage".<sup>33</sup> Further, a lawful wedlock provides certain matrimonial rights and remedies to the parties. Matrimonial remedies can be categorised into two, *viz.*, *first*, principal matrimonial remedies such as (a) restitution of conjugal rights,<sup>34</sup> (b) judicial separation,<sup>35</sup> and (c) divorce<sup>36</sup>; and *secondly*, ancillary matrimonial remedies such as (a) custody<sup>37</sup>, (b) maintenance<sup>38</sup>- *pendent lite* and permanent

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<sup>29</sup> *Id.*, Manu, VIII, 340.

<sup>30</sup> *Ibid.*

<sup>31</sup> Roscoe Pound, JURISPRUDENCE, Vol. I, p. 365.

<sup>32</sup> Transfer Petition (C) No. 2043 of 2023 Order issued on April 19, 2024.

<sup>33</sup> *Id.*, p. 11.

<sup>34</sup> The Hindu Marriage Act, 1955, s.9.

<sup>35</sup> *Id.*, Section 10.

<sup>36</sup> *Id.*, Section 13.

<sup>37</sup> *Id.*, Section 26.

<sup>38</sup> *Id.*, Sections 24 and 25.

alimony, and (c) litigation expenses. There are well-settled legal provisions for claiming these matrimonial remedies available to the parties to the legal wedlock. However, there is no clarity on identifying the matrimonial property of the parties to a valid marriage, the matrimonial property rights of both the parties to a valid marriage, and the rights of a wife in the matrimonial property in the existing laws, more specifically for a Hindu married woman. After reviewing the existing legal materials on the issue of matrimonial rights and remedies, one understands easily that her position and the legal forum where she can claim her rights, but one doesn't understand her right to the matrimonial property within the marriage and how she can claim her due rights.

Section 27 of the Hindu Marriage Act, 1955 provides a law on the disposal of property when disposing of a divorce petition. The Hindu Marriage Act, 1955 makes it mandatory for the court dealing with matrimonial cases, "The court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife"<sup>39</sup>. This provision of law creates three probabilities, *viz.*, *first*, the matter relating to the matrimonial property, which is jointly owned by both the parties to a valid marriage, must be made part of the original divorce petition along with the ground/s for divorce.<sup>40</sup> *Secondly*, the court may first decide about the ownership over the property mentioned in the original divorce petition and then design a formula on its division if the property, so mentioned, is found to be jointly owned before deciding the outcome of a divorce petition.<sup>41</sup> *Thirdly*, the court may dispose of such property as mentioned in Section 27 of the Hindu Marriage Act, 1955, along with the decree of divorce. However, in most divorce cases, it has been observed that the original divorce petition rarely mentions any matrimonial remedy other than the prayer for the dissolution of marriage on a particular ground of divorce. Further, the disposal of matrimonial property in a marital suit is a special remedy provided under Section 27 of the Hindu Marriage Act, 1955, which requires a specific application for the claim or return of either *Stridhana* or gifts or shares in jointly owned matrimonial property during the subsistence of the marriage. The lawmakers have used the term '*may*' and not '*shall*' in section 27 of the Hindu Marriage Act, 1955; therefore, it is left to the court to decide whether the court decides to dispose of the property jointly owned by both spouses along with a decree of divorce or it is left to the civil court to decide it as routine civil matter *first*, and then only a

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39 The Hindu Marriage Act, 1955, s.27. See also *Balkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam*, (1997) 7 SCC 500: AIR 1997 SC 3562.

40 *Urmila Rani v. Raj Kishan Gupta*, 1995 Supp (4) SCC 602.

41 *Mehul Mahendra Thakkar v. Meena Mehul Thakkar*, (2009) 14 SCC 48.

divorce petition may be entertained.<sup>42</sup> Such a probability may occur in cases where divorce petitions are filed before the Family Courts as the Family Courts do not have power under the Family Courts Act, 1984, to decide property matters such as ownership, possession, etc., even in family property matters. Therefore, in such circumstances, a Hindu married woman is compelled to file two separate civil suits, one for identification of matrimonial property, ownership over such property, and her share in that matrimonial property, if any. The second one is for the dissolution of her marriage based on a ground provided in Section 13 of the Hindu Marriage Act, 1955. However, that is not the case for the researcher at hand, and the researchers would like to make it clear that, in the matrimonial home, can't a wife asks for her identification of ownership over the matrimonial property and a share therein during the subsistence of her marriage? And if she wants to use it as a bonafide owner for better investments, or if she wishes to dispose of it for obvious reasons known only to her? Why should she go for the dissolution of her marriage if she doesn't want it to be dissolved? Can't there be suitable laws where a husband and wife can enjoy jointly owned property without dissolving their marriage? The researchers pondered to find a way forward within the existing laws to govern such sensitive issues among spouses without disturbing the peace in the matrimonial home.

## VI. Conclusion

Marriage is a fusion of two sane souls that requires efforts from both sides to keep it intact, and efforts shall continue to persist from both sides in a setting where both spouses have equitable obligations. No efforts made by either spouse to achieve the success of a marriage are in vain. Consequently, the earnings, not just materialistic, are to be shared proportionately among spouses during the subsistence of a duly solemnised marriage. From the above segments of the research paper, it can be derived carefully that there is no proper legal existing framework dedicated to addressing the concepts of matrimonial property, matrimonial property rights, and distribution of matrimonial property among spouses during the subsistence of marriage. The present framework on matrimonial property demands standalone legislation to deal with the dilemmas on the claim and distribution of matrimonial property among married spouses. Comprehending the status and rights of Hindu married women in the existing legal system would render the right direction toward reproducing an equal and equitable matrimonial property law. Therefore, Section 27 of the Hindu Marriage Act, 1955 needs suitable amendment on the creation, identification, and validation of matrimonial property of a married

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42 B. Sivaramayya, *Matrimonial Property Law in India*, 59 (Oxford University Press, 1<sup>st</sup> ed. 1999).

spouse so that matrimonial property may be disposed of by a court of competent jurisdiction at the time of dissolution of marriage. The present text of Section 27 of the Hindu Marriage Act, 1955 does not clarify which property is to be considered as matrimonial property, such as gifts received, individually or jointly, at or about the time of marriage, property bought during the marriage, property acquired by, inherited by, or any other instrument of law; therefore, there is need of clarity in identification of property under this section. Additionally, the said section also needs clarity on whether a married spouse can file a property suit claiming his or her share from the property, as mentioned in the section, during the subsistence of the marriage. Further, the family courts should be empowered under the Family Courts Act, 1984 provisions, with sufficient power to decide upon the nature of property, ownership over property, title and share of disputing spouses from matrimonial property as an integral part of a marital suit. Though the family courts are empowered under the Family Courts Act, 1984 to invoke all powers of a civil court and provisions of the Code of Civil Procedure, 1908, in reality, the family courts are not procedurally equipped with the civil procedure to deal with property matters as these courts are mandated to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs; hence, it is a grey area of law which needs the attention of the lawmakers to enact or empowered the family courts with sufficient power. In such a situation, the disputing married spouses are left with no other options but to file civil suits before the civil court and dissolution of marriage before the family court. However, Section 19 of the Hindu Marriage Act, 1955 provides the law on the court of competent jurisdiction in matters relating to dissolution of marriage, but after the Family Courts Act, 1984 came into force, the dissolution of marriage petitions is to be filed before the family courts and not before the civil courts, this dual jurisdiction has led to confusion and the unnecessary multiplication of marital suits, further complicating an already complex legal landscape. To conclude, rights are an indispensable part of human life, and depriving one of the basic rights would create an imbalance in the matrimonial home and, at large, in society, which is not desirable at any stage of human existence. A suitable matrimonial property law for spouses would act as an asset and bring stability to the institution of marriage, which is the foundation of any civilised society.

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