

Community Of Property Regime: Need For Women's Role In Family Recognition

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Abstract

Women are an essential part of a family, making up a community and consequently a country. A woman's life includes roles such as daughter, wife, mother, sister, and others. She becomes a multi-skilled family backbone once she is married, and the concept of a wedded house appears to be null and void without her. Despite her omnipresence, she is frequently considered a simple slave of her husband, lacking her own identity. Homemakers, in particular, seldom earn cash compensation because their contribution to the family is not deemed productive labour. With the shift in the concept of marriage from sacrament to contract, and the progression of divorce laws from challenge to agreement, it is becoming increasingly vital to recognize the diverse responsibilities played by women. Marriage should be viewed as an equal economic partnership between the couples, regardless of their separate financial contributions. The concept of a community of property regime should be included in Indian family law. This study tries to concentrate on women's current marriage property rights and future prospects that can be implemented into our legal system. The author prefers to confine the scope of the law to the Hindu Marriage Act. In order to achieve those mentioned above, special attention has been paid to various legal systems around the world and the ideal model for Indian family law.

Keywords: *Marriage, Divorce, Maintenance, Matrimonial property rights, Breakdown of marriage, Post-divorce status of women, the contribution of a homemaker.*

1. INTRODUCTION

“you can tell the condition of a nation by looking at the status of its women - Pandit J. Nehru.”

The international human rights instruments, including the Universal Declaration of Human Rights and the Convention on the Elimination of all forms of Discrimination Against Women, prohibit any gender discrimination against women, and India is a party to these instruments.

Article 1 of CEDAW¹ Discrimination against women is defined as "any distinction, restriction or exclusion, made solely on the basis of sex that has the effect or purpose of impeding or exercise by women or nullifying the enjoyment, recognition, irrespective of their marital status, on a basis of equality of men and women, of fundamental freedoms and human rights in the social, political, economic, cultural, civil, or other spheres." Article 2(f) requires that State parties condemn discrimination against women and agree to undertake "all necessary measures, including legislation, to amend or repeal existing laws, rules,

customs, and practises that discriminate against women." Article 16 specifically lays down that "State Parties shall take reasonable steps to eliminate discrimination against women in all issues relating to marriage and family relations, with a focus on ensuring:..... (h) Both spouses have the same rights in terms of property ownership, acquisition, management, administration, enjoyment, and disposition, whether free of charge or for a monetary fee."²

To implement the Convention (CEDAW), a Committee on the Elimination of Discrimination against Women of 23 experts has been constituted. The Committee formulates general recommendations and suggestions. General recommendations are directed to States and concerns Articles in the convention. General Recommendation No. 21³ deals with Equality and Marriage, and family relations. Commenting on Article 16 (1) (h), the Committee states, "In most nations, a large proportion of women are single or divorced and may be responsible for supporting a family on their own. Any property partition discrimination based on the premise that a man is solely responsible for the support of his wife and children, and that he can and will honourably perform this burden, is manifestly impractical. As a result, any rule or tradition that gives men a larger portion of the property after the termination of a marriage or de facto relationship is unconstitutional or when a relative dies, is discriminatory and will have a significant impact on a woman's ability to divorce her spouse, support herself or her family, and live a dignified life as a self-sufficient individual".⁴ The committee further emphasizes that "When it comes to dividing marital property, certain countries place a larger focus on financial contributions to property gained during a marriage, while other contributions, such as raising children, caring for ageing relatives, and performing home responsibilities, are downplayed. Such non-financial contributions by the woman frequently enable the husband to generate an income and enhance the assets. The equal weight should be given to financial and non-financial contributions."⁵

Article 51 (c) of the Constitution provides that "In the dealings of organised persons with one another, the state shall strive to develop respect for international law and treaty obligations".⁶

Indian Courts are also obligated to give due regard to international convention and norms while interpreting domestic laws, mainly when there is no inconsistency between them. There is a void in domestic law.⁷

The author of this paper intends to carve out the concept of women's matrimonial property rights, mainly in divorce cases. There has been a long conversation on the introduction of Irretrievable Breakdown of Marriage as the ground of Divorce, and attempts have been made by Law Commission twice (1978 and 2009). Marriage laws amendment Bill was introduced twice (2010 and 2013) to incorporate the concept of irretrievable breakdown of marriage in the present divorce laws of Hindu Marriage Act, 1955 and Special Marriage Act, 1954. Both the times, it was heavily opposed by the women's organization across the country as it would add to the misery of women based on liberalized divorce because, as such, women have minimal rights on divorce. The only claim that a woman can make on divorce is that of maintenance. The maintenance dole is kept at the minimum so that divorce does not become a more attractive proposition so that the institution of the marriage can be preserved and strengthened.⁸ Most women keep living in economic subordination in the name of the glorified institution of marriage. Irrespective of the fact that she spends the lifetime looking after the family and bringing up the children, if the marriage breaks down, the husband's rights are only recognized on the house and property acquired during the subsistence of marriage.

The contribution of women in the matrimonial home is not treated as productive work. In *Arun Kumar Agrawal v. National Insurance Company*⁹, the Hon'ble Supreme

Court criticized the 2001 census in which 367 million homemakers were categorized as "non-workers" along with beggars, prisoners, and prostitutes. Such an approach towards women's role in the household is alarming when the law is becoming divorce friendly, yet the position of women is still the same – Archaic.

In western countries, whenever the Irretrievable Breakdown of Marriage has been introduced as a ground for divorce, the concept of community of property regime (an equitable division of all marital assets) has been recognized alongside. When the Marriage Laws (Amendment) Bill, 2010, was introduced in parliament to incorporate the inclusion of Irretrievable breakdown of marriage in the family jurisprudence of Hindu Law and Special marriage Act based on 71st Report of the Law Commission of India recommended in 1978, it was withdrawn due to the protests by the women's group. The Rajya Sabha Standing Committee released its 45th Report in 2011¹⁰. It recognized that the committee too recognized the concept of division of property and economic contribution of women to marriage in its report.

A crucial topic of marriage law has been brought to the committee's attention: the wife's rights to matrimonial property in the event of divorce. Several women's organizations have underlined this point in front of the committee. They demanded that when a divorce is granted, the women receive at least a share of the assets/properties obtained by the parties to the marriage over the marriage's duration. This demand of many women's organizations makes sense to the Committee. Women are frequently left with little to fall back on after a divorce, and they frequently have to carry the burden of children conceived out of marriage. In such circumstances, it is understandable for women to feel betrayed when they are left without a roof or financial support. In the prime of their lives, they may have contributed in many ways to the matrimonial family during the marriage's survival. This is especially true for women who are employed. As a result, the Committee considers that an effective legal system should be in place to ensure that women receive at least a piece of the matrimonial property acquired during the marriage. As a result, the committee recommends that the government make adequate provisions in matrimonial law to ensure that, when adjudicating on divorce petitions, the courts also decide on the women's share of the matrimonial property when granting a divorce so that they do not lose the assets/properties to which they contributed during the marriage. The committee thinks that liberalization of divorce laws should be accompanied by suitable legislation that recognizes women's legal rights to marital property/assets, at the very least, those to which they contributed.¹¹

The Marriage Laws Amendment Bill, 2013 too, was opposed by women organizations for the non-inclusion of women's matrimonial property rights. The liberalized divorce would give the men an easy way to sneak out of the marriages leaving the women destitute. Even though the proposed section 13D (1) of the Hindu Marriage Act and section 28B (1) of the Special Marriage Act did provide the right to the respondent-wife to oppose the divorce on the ground of "Grave financial hardship," proposed section 13F (1) and section 28D (1) talks about the compensation towards the settlement of her claim. Nowhere do the law or proposed law does recognize the economic investment of the wife into the marriage. In short, it is high time that we incorporate the concept of community of property regime in our family jurisprudence to finally give the women her due recognition so that she no longer compromises in the name of security in marriage or suffer due to the mere maintenance provided as compensation.

To understand women's property rights, we need to look at the historical aspect attached to them. Under the Hindu Law *Vijnaneswara*, recognized full proprietary rights to females. Section 14 of the Hindu Succession Act, 1956 is the literal reproduction of

Vijnaneswara's rule that all property, howsoever acquired, shall become the absolute property of a Hindu female. During the British Indian legal history, the Privy Council preferred the Dayabhaga rule limiting the proprietary independence of Hindu females and, thus, *Vijnaneswara's* view could not develop into a rule of law.¹²

The concept of women's 'limited estate' was statutorily recognized in the Hindu Women's Right to Property Act, 1937. However, this concept of restricted rights was undone by the Hindu Succession Act, 1956. With the enactment of the Hindu Succession Amendment Act, 2005, a new era of women's property rights emerged in India where a daughter was made a coparcener in her own right along with the son. This amendment is a very empowering provision concerning the status of daughters, but this provision provides equal proprietary rights in the family of birth only. If the argument suggests that why women do not claim their rights in their parental home, then the obvious answer is that every right comes with a corresponding duty. In India, if a woman asks to set up a separate matrimonial home, the husband gets a divorce decreed on the grounds of mental cruelty¹³ based on the fact that taking care of the elderly is the responsibility of the son as well as the daughter-in-law. If the women claim the proprietary rights in the property of her parents, would not that puts her into the shoes of a son in the sense that she too needs to look after her parents. So, will a woman, too, get the divorce on the grounds of mental cruelty if the man refuses to stay with her parents.

In the prevailing circumstances, there is a solid need to recognize marriage as an 'economic partnership' where the wife contributes to the family and often compromises her own career prospects to raise their children. Instead of retaining the antiquated test of real financial contribution in matrimonial property, the legal acknowledgment should be given to the economic worth of the contribution made by the wife through homework to decide ownership of the marital property.¹⁴

Matrimonial Property Rights of Women

Stridhan

The name Stridhan comes from the words 'stri,' which means woman, and 'dhana,' which implies property. As a result, the expression 'property of woman' denotes 'property of woman' over which she has complete control. The Hon'ble Supreme Court ruled in *Pratibha Rani v. Suraj Kumar* that Stridhan is the wife's absolute property. As a result, neither the husband nor his relatives will have any claim to the stridhan. If the stridhan were ever placed in their hands, they would be considered trustees. 15 The Supreme Court ruled in *Rashmi Kumar v Mahesh Kumar Bhada*¹⁶ that any sort of property, whether movable or immovable, donated to a woman before or during the marriage is solely her property. As a result, it is known as *Stridhan*.

Maintenance

Prevention of vagrancy and destitution has been the reason behind the concept of maintenance. Maintenance is granted to the women during the continuation of the marriage, during the court proceedings, or after the divorce has been granted.

Since the husband accumulates property during the subsistence of the marriage through the active contribution of the homemaker wife and exercises exclusive rights over it hence, when a marriage breaks down, most women are rendered destitute. A woman's right is confined to a monthly maintenance dole. Suppose the woman happens to have an independent source of income. She is denied even this meager amount.¹⁷

In India, we have a separate property regime, in which each spouse gets the property to which he or she holds title upon divorce. At the most woman's property right is confined to the monthly maintenance or permanent alimony, which hampers her property

right. The matrimonial property also includes the matrimonial home where the spouses reside during the marriage. In the light of the evolving role played by women juggling between the house and her career, it becomes imperative to recognize her right in the properties acquired during the subsistence of marriage. That does not mean the homemakers do not contribute to the earnings of her spouse. Their role is also crucial as her contribution to the family by looking after kids and managing the home cannot be ignored. Therefore, the marriage should be recognized as an 'economic partnership', Women regardless of their career status, should be given equal rights in the property acquired during the subsistence of marriage. This should not be looked like a charity offered to her, but she needs to be recognized as a rightful owner; hence, the matrimonial home should be recognized as belonging to both spouses holding as joint tenants. The problem arises when the matrimonial home is a joint family house of the husband where he himself does not have any rights. In India, the problem lies at the very root of society's mentality where women though given rights as a coparcener in their parental home. However, due to socio-religious influence, she hesitates in claiming those rights. As such, she does not have any proprietary rights in the property where she is married into.

The legislation was made to infuse the concept of matrimonial property within the family jurisprudence via section 27 of the Hindu Marriage Act, 1955. The court may make such provisions in the decree as it deems just and reasonable concerning any property provided, at or about the time of marriage, which may belong jointly to both husband and wife, in any process under this Act.¹⁸ The scope of this section is very narrow in scope because it limits the property presented at or around the time of marriage only, hence keeping the property acquired during the subsistence of marriage out of the scope. Secondly, such property should be given jointly to husband and wife. Hence, the present section does not serve any purpose to introduce the concept of matrimonial property for such properties which have been acquired during the marriage, mostly the matrimonial home.

There is a complete absence of recognition of the wife's contribution in the making of the household and indirectly contributing towards the acquisition of properties. A wife's non – economic contribution should be recognized and property acquired during the marriage must be made jointly owned by both spouses. If the spouses want to part ways in the future, such property should be divided equally between them.

Contribution of the homemaker

The four fundamental concepts which are invoked while prescribing the rules for the division of property at divorce are title, fault, need, and contribution.¹⁹ The theory of contribution recognizes the non-monetary household work by the woman in the context of the partnership of equality. Unfortunately, Indian family jurisdiction fails to recognize the contribution of the homemaker.

General Recommendation number 17 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) dealt with measurement and quantification of the unremunerated domestic activities of women and their recognition in the Gross National Product.²⁰ The Committee agreed that measuring and quantifying women's unpaid household duties contributing to development in each country will aid in revealing women's de facto economic role. State parties should also encourage and support research and experimental studies that measure and value women's unpaid domestic activities by conducting time use surveys as part of their national household survey programs and collecting gender-disaggregated statistics on time spent on activities both in the home and on the labor market.²¹

A Time use survey is a statistical survey that aims to report data on how, on

average, people spend their time. After developing a suitable conceptual framework and methodology, the pilot time use survey was conducted in six states of India from July 1998 to June 1999. The burden of unpaid non-SNA work is shared highly unequally between men and women. On average, women devote 28.96 hours per week to household administration or taking care of the home. Cooking takes the most time (14.59 hours), followed by cleaning and washing (7.89 hours), textile care (2.31 hours), and household maintenance, shopping, and other activities (2.14 hours). Men spend less than an hour each week on each of these activities on average. Women spend 4.47 hours a week on childcare and caring for the elderly, sick, or disabled in the home, compared to 0.88 hours per week for men. Women devote the most time to physical child care (3.09 hours), followed by non-physical child care (teaching and training children, accompanying them to places, etc.). Women also devote more time to other forms of care than men. Men spend 2.17 percent of their total time on non-SNA work on average, compared to 20.61 percent for women. This is a significant barrier for women seeking to enter the workforce.²²

The unequal distribution of unpaid domestic work between men and women coupled with archaic socio-cultural norms restricts women's participation in their career choice. In India, most households consider that housework is the domain of women only; men are exempt from domestic work. In the absence of distribution of household responsibilities, it becomes really tough for women to concentrate on her career. However, that does not mean that if a woman spends most of her life looking after her family and taking responsibility for the household, her existence is worthless since she does not contribute economically.

The House of Lords in *White v White*²³ held that Judicial approaches that would give the wife enough to meet her needs but would allocate the surplus over needs to husband mean that discrimination would be creeping in by the back door. Needs are only one factor, and courts must give equal importance to other factors such as available resources and parties' contributions. It is further settled that domestic and financial contributions should be treated equally.

*"Today, people are more aware of the importance of non-monetary contributions to the family's well-being. There is a clearer understanding of the extent to which one spouse's commercial success, which was gained via many years of hard effort, may have been made feasible or enhanced by the family contribution of the other spouse, which likewise needed many years of hard labor. There is a growing awareness that a wife's ability to obtain and develop her own money-earning qualifications and skills may be permanently lost if she stays at home and cares for her children."*²⁴

It is evident in various judgments and legislation²⁵ on matrimonial property rights of most countries that significant attempts have been made to quantify the contribution of the homemaker; Indian Courts and legislation have refrained from discussing this issue. As a result, we do not have any legislation that recognizes the contribution of a homemaker. Nevertheless, there have been several judgments where such a contribution has been accepted for the purpose of an insurance claim.

In *Lata Wadhwa v State of Bihar*²⁶, the Supreme Court, while awarding compensation to the deceased's family and injured in the fire, fixed the compensation based on various services rendered by the housewives for managing the entire family at Rs. 3000/- per month and Rs. 36000/- per annum for all homemakers between the age group of 34 to 59. For the age group of 62 to 72, the value of services rendered was modified to be Rs. 20,000/- per annum.

The 2009 Madras High Court judgment²⁷ is an illuminating judgment on this subject. Justice Prabha Sridevan referred to CEDAW principles and UNICEF's report of 2000 for the assessment of work done by the homemaker. The relevant portion of the said

judgment is as follows: -

"9. "Unpaid care work is the foundation of human experience," UNICEF stated in 2000. Care work is what a woman does as a mother. Given the social understanding of the role of a mother in India, the woman herself will be the last person to assign an economic value

to her function...

..... One is the opportunity lost, which assesses her salary by determining how much she would have made if she had not stayed at home, i.e., the opportunity lost. The second way implies that marriage is an equal economic partnership, and the homemaker's wage is valued at half of her husband's pay in this technique. However, another way to assess homemaking is to calculate how much it would cost to replace the homemaker with hired employees. The Replacement Method is what it is called.....

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By devoting her energy, time, and attention to household activities, the homemaker frees up her spouse to dedicate his energy, time, and attention to duties that increase his income and develop the property for the family. The National Organization for Women in the United States has accepted a proposal for an economic rights suggestion for homemakers, which involves valuing the commodities and services produced and provided by homemakers in the Gross National Product."

The Court further held that the time has come to scientifically assess the value of the unpaid homemaker both in accident claims and in the division of matrimonial property. This is a significant judgment as it recognized the unpaid work contributed by the women. The very next year, in 2010 Honorable Supreme Court cited the reasoning in the Deepika case with approval in *Arun Kumar Agrawal v. National Insurance Co. Ltd.*²⁸The Hon'ble Supreme Court observed and discussed the contribution of women as a housewife and her role in bringing up children, cooking, cleaning, working as an agricultural hand, etc., all of which are considered as unremunerative. If the women were instead of working in the home were working outside, they would have got the remuneration for that work. Despite being a signatory to an international instrument like CEDAW, no positive step has been taken for according monetary value to the household work done by the homemakers. The Court pointed out gender bias against women in various social welfare legislation, executive policies, etc. In the words of Justice Ganguly:

4. In the Census's work, this bias is startlingly familiar. Cooking, household work, cleaning utensils, caring after children, fetching water, and collecting firewood seemed to have been classified as non-workers in the 2001 Census and equated with beggars, prostitutes, and criminals who, according to Census, are not engaged in economically productive employment. As a result of such categorization about 36 crores (367 million) women in India have been classified in the Census of India, 2001 as non-workers and placed in the category of beggars, prostitutes, and prisoners. This entire exercise of Census operation is done under an Act of Parliament.

The Court further observed that the services rendered by women help sustain the supply of labor to the economy. It further helps to keep human societies going by weaving the social

fabric. However, if the services are taken for granted and are not given due importance, then it may deteriorate the human capabilities and social fabric. It was further observed that:

"26. The value of domestic work performed by women in India exceeds \$ 612.8 billion per year (Evangelical Social Action Forum and Health Bridge, page 17). However, we sometimes overlook the fact that the time spent by women as homemakers on household chores is time that they could be working or furthering their education. This lack of sensitivity and appreciation for women's jobs is a significant contributor to their high prevalence of poverty, marginalization in society, and various medical, social, and psychological issues.

27. The Australian Family Property Law has taken a gender-sensitive approach in this regard. It provides that while distributing properties in matrimonial matters, for instance, one has to factor in "the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of a homemaker or parent."

In his concluding remarks, Justice Ganguly added that amendments in matrimonial laws might also be made to give effect to the mandate of Article 15(1) in the Constitution. Hence it is clear that there have been attempts by various judges for recognizing the role of women as equal partners in marriage and suggested the necessary changes in our matrimonial laws.

Concept of Matrimonial property: Matrimonial Property Regime

The concept of matrimonial property may not fit in a straight formula. It depends upon the kind of matrimonial property regime followed in a country. For a general understanding, matrimonial property is the property owned or obtained by the spouses before or during the subsistence of marriage. The matrimonial property also includes the matrimonial home where the spouses reside during the marriage. In the light of the evolving role played by women juggling between the house and her career, it becomes imperative to recognize her right in the properties acquired during the subsistence of marriage. That does not mean the homemakers do not contribute to the earnings of her spouse. Their role is also crucial as her contribution to the family by looking after kids and managing the home cannot be ignored. Therefore, marriage should be recognized as an 'economic partnership.' Regardless of their career status, women should be given equal rights in the property acquired during the subsistence of marriage. This should not be looked at as a charity offered to her, but she needs to be recognized as a rightful owner; hence, the matrimonial home should be recognized as belonging to both spouses holding as joint tenants. The problem arises when the matrimonial home is a joint family house of the husband where he himself does not have any rights. In India, the problem lies at the very root of society's mentality where women though given rights as a coparcener in their parental home. However, due to socio-religious influence, she hesitates in claiming those rights. As such, she does not have any proprietary rights in the property where she is married into. There is no clear answer to the question of women's rights in the joint family house post-divorce.

The rights of matrimonial property are dependent upon the type of marital property regime. Marital property regime refers to the management and rights over the property during the subsistence of marriage and division of property when the marriage gets dissolved. The various kinds of marital property regime are as follows:

Separate Property Regime – In this kind of property regime, the property acquired before and during the marriage is considered to be the separate property of the spouse who acquired it. At the time of dissolution of marriage, each spouse is entitled to his/her own share. The other spouse does not have any right in the share of the other spouse. Under the separate property, regime marriage does not have any impact on the title of the property. India follows the pattern of this marital property regime.

Community of Property Regime - Under this doctrine, marriage alters property ownership rules and entitles both the spouse's rights and interests in each other's property. All the property which is brought into and acquired during the marital relationship by the spouses is pooled into a community of property over which both the spouses acquire equal interest and right of control. When the divorce takes place, the property is divided equally between the spouses. Most of the western countries follow the community of property regime.

Deferred Community of Property Regime – Under the legal premise of a deferred community of property, the property remains the separate property of spouses during the subsistence of the marriage. During the dissolution of marriage, it operates as a community of property regime, i.e., the property is divided equally between the spouses.

Matrimonial Property Laws in various countries

Principally, matrimonial property laws did not exist in English law. The marriage did not play any role in the matter of property. Under the English common law tradition, the property of the spouse remained separate. However, there were long campaigns for the right of women to own property, for a share in the matrimonial property. Until the mid-nineteenth century, married women in England had no right to divorce and no right to own property. There was a long battle for the English women to fight the Blackstonian principle prevailing in those times, which considered the married women property of their husband and could not own property.

Since the battle against coverture had resulted in a separation of property regime in championing women's economic rights, the UK adopted a division of assets policy, reliant on the discretion of the courts in accordance with specific statutory guidelines contained in Section 25 of the matrimonial causes Act.²⁹

In *White v White*³⁰, the courts relied on the principle of equality of division to both parties, ensuring they receive their rightful share of the matrimonial property on division or dissolution of the partnership. Lord Nicholls had stated, "there should be no bias in favor of the money-earner and against the home-maker and child-carer."³¹

The **German system of separation provides the legislative regime known as the community of gains** during marriage with equalization of accrued gains upon divorce. Each spouse is required to account for the increase in his or her property between the commencement and the conclusion of the regime if the regime is terminated by divorce. The difference between the two amounts will be shared, with the spouse whose gain was less than the other's having the right to claim up to one-half of the difference from the other in personam.³²

If the marriage is annulled, the spouses are entitled to split each other's fortune under Austrian law. If the spouses are unable to agree, the court must apply the equity principle to the partition of their property. The assets will be shared based on each spouse's contributions to the acquisition of the assets, the wellbeing of the children, and the debts associated with conjugal life expenses such as maintenance, housekeeping, child upbringing, and general assistance. If an equitable split cannot be achieved through other

means, the judge might order the transfer of property or anticipated rights, movables, and even real estate.³³

Regardless of whether the property was purchased jointly or separately, both spouses hold property (immovable and moveable) jointly throughout marriage in the Italian legal matrimonial system. Property that belongs to a spouse individually (e.g., via gift or inheritance), is used solely for personal purposes, or is used in a specific location (e.g., a business formed and managed by either spouse) is not included. During the marriage, profits from property and income from each spouse's separate profession are owned separately by each spouse. However, upon dissolution of the community, they become part of the community of property.³⁴

In **France**, a community of Property regime is followed if the parties do not have a contract for property division in case of dissolution of their marriage. Title V³⁵ of the French Civil Code deals with Ante-nuptial.

Agreements and Matrimonial Regimes.

An Ante-Nuptial Agreement is mandatory before the celebration of marriage.³⁶

In **China**, Marital property is jointly owned by the spouses. However, a couple may opt-out of the matrimonial property regime with the pre-nuptial or post-nuptial agreement. The family laws are governed by the Marriage Law of the People's Republic of China.³⁷ As per Article 13, the Husband and Wife shall have equal status in the family.

2. CONCLUSION: SUGGESTION FOR A BEST-SUITED MODEL FOR INDIA

In **India**, though the property regime which is followed is Separate Property Regime, **Goa** follows a unique civil code that incorporates a community of property regime. The civil laws in Goa pertaining to marriage, divorce, succession is non-discriminatory in nature. According to this code, registration of marriage is compulsory. Marriage is considered to be a contract rather than a sacrament.³⁸ Section V deals with Contracts between the spouses in respect of assets. Parties are free to decide how their properties would be divided when the dissolution of their marriage.³⁹ In the absence of an antenuptial contract regarding the distribution of property, the custom prevails, which presumes that the spouses are married under the communion of property.⁴⁰

The Maharashtra Legislative Assembly took a positive step towards recognizing women's property rights to provide an equal share to women at the time of dissolution of marriage by introducing the 'Matrimonial Property' (Rights of Women upon Marriage) Bill 2012. The bill defines 'matrimonial property' to include self-acquired properties – movable and immovable, husband's property, agricultural land along with pensions, provident fund.⁴¹

The registration of marriage is made compulsory as per the judgment of the Hon'ble Supreme Court in *Seema v Ashwani Kumar*⁴² In this case, directions were given to the States and Union Territories for framing necessary statutes regarding compulsory registration of marriage. Compulsory registration would be proof of marriage and would help women in seeking a matrimonial remedy.

The present system of personal laws regarding property division is biased against women as it does not recognize the contribution made during the subsistence of marriage and, in the case of dissolution of marriage, leaves her with a meager amount of maintenance which is again subject to realization. Therefore, India should follow the community ownership of 'matrimonial property' rather than separate property ownership. The following suggestions are made for conceptualizing more equitable legal schemes for the protection of property rights of women:

- It is high time that marriage needs to be recognized as an equal economic

partnership between husband and wife. In addition, the concept of the Community of property regime needs to be incorporated into the Indian family law.

- Concrete statutory provisions need to be incorporated for the introduction of matrimonial property in the existing laws. There is a need for a more precise and inclusive definition of matrimonial property as already given under section 27 of the Hindu Marriage Act, 1955.
- A pre-nuptial or Ante-nuptial agreement should be entered into by the spouses for clarification on their property rights.
- Property acquired during the course of marriage should be treated as joint property despite the financial contribution of the spouses. Equal share in the matrimonial property will ensure financial security to women.
- There is a need to bring in a Uniform Civil Code as envisaged under Article 44 of the Constitution of India for the unification of various personal laws.

ENDNOTES

¹ Convention on the Elimination of All Forms of Discrimination Against Women, available at <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> visited on 4th March 2020.

² *Ibid.*

³ Committee on Elimination of Discrimination Against Women. General Recommendation No. 21. 13th Session, 1994.

⁴ *Idat* para 28, available at <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> visited on 4th March 2020.

⁵ *Idat* para 32.

⁶ Constitution of India, 1950.

⁷ Law Commission of India, Consultation Paper on Reform of Family Law, p 15, para 1.38, 31st August 2018.

⁸ Flavia Agnes, "Maintenance for Women: Rhetoric of Equality," Economic and Political Weekly, 1992, 27(41), p2233.

⁹ *Arun Kumar Agrawal vs. National Insurance Company* (AIR 2010 SC 3426).

¹⁰ Rajya Sabha Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Forty Fifth Report on The Marriage Laws (Amendment) Bill, 2010*, 2011.

¹¹ *Id.*, chapter IV, para 7.

¹² Vijender Kumar, *Matrimonial Property Law in India: Need of the Hour*, Journal of Indian Law Institute, 57(4) Oct-Dec 2015, p. 501.

¹³ *Narendra v K. Meena*, 2016 (9) SCC 455.

¹⁴ Indira Jaising, "Women's Inheritance Rights in Contemporary Jurisprudence" in Nitya Rao and Luise Rurup (eds.), *A Just Right: Women's Ownership of Natural Resources and Livelihood Security* 110-21 (1993).

¹⁵ *Pratibha Rani v. Suraj Kumar* A.I.R. 1985 SC 628.

¹⁶ (1997) 2 SCC 397.

¹⁷ Flavia Agnes, "His and Hers," Economic and Political Weekly, 2012, 47(17), p.11.

¹⁸ Section 27, Hindu Marriage Act, 1955.

¹⁹ Flavia Agnes, *Marriage, Divorce, and Matrimonial Litigation*, 2011, Oxford University Press, p.225.

²⁰ Committee on Elimination of Discrimination Against Women. General Recommendation No. 17. 10th Session, 1991.

²¹ *Ibid.*

²² Indira Hirway, “India’s time use data show women spend 69.03 hours on total work, men spend 62.71 hours”, Counterview.Org, April 12, 2017, available at <https://counterview.org/2017/04/12/indias-time-use-data-show-women-spend-69-03-hours-on-total-work-men-spend-62-71-hours/> visited on 15th March 2020.

²³ *White v. White* (2001) 1 A.C. 596.

²⁴ *Id* at 605.

²⁵ Discussed under next heading.

²⁶ A.I.R. 2001 SC 321.

²⁷ *National Insurance Company v. Deepika &Ors.*, 2009 Mad LJ 1005.

²⁸ *Arun Kumar Agrawal v. National Insurance Co. Ltd.*, AIR 2010 SC 3427; 2010 (9) SCC 218.

²⁹ Radhika Chitkara, “*Between Choice and Security: Irretrievable Breakdown of Marriage in India*”, *Jurisprudence*, 2014, 21(3), p. 847-865, Available at <https://pdfs.semanticscholar.org/7fff/c7dee3dcbfe8ff0a3aef8d0d35dcdf222c52.pdf> visited on 07 April 2020.

³⁰ (2000) UKHL 54.

³¹ *Ibid.*

³² Branka Rešetar, *Matrimonial Property in Europe: A Link between Sociology and Family Law* (December 2008) Volume 12.3, *Electronic Journal of Comparative Law*, Available at <https://www.ejcl.org/123/art123-4.pdf> visited on 07 April 2020.

³³ *Iid.*

³⁴ *Ibid.*

³⁵ French Civil Code, Articles 1387 to 1581.

³⁶ *Id.*, Article 1395.

³⁷ Marriage Law of People’s Republic of China, Adopted at the Third Session of the Fifth National People’s Congress on September 10, 1980, and promulgated by Order No.9 of the Chairman of the Standing Committee of the National People’s Congress on September 10, 1980; and amended following the Decision on Amending the Marriage Law of the People’s Republic of China, adopted at the 21st Meeting of the Standing Committee of the Ninth National People’s Congress on April 28, 2001. Available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/37821/108011/F-1849345468/CHN37821%20Eng.pdf> visited on 05 April 2020.

³⁸ Portuguese Civil Code, 1867, Article 1056 - Concept of marriage as a civil contract and its purpose - Marriage is a perpetual contract made between two persons of different sex to constitute a family legitimately.

³⁹ *Id.*, Article 1096 – Ante-nuptial conventions principle of freedom - It is lawful for the spouses to stipulate, before the solemnization of the marriage and within the bounds of the law, whatever they think fit in respect of their assets.

⁴⁰ *Id.*, Article 1108 – Concept of the communion of the matrimonial estate - The marriage as per the country’s custom consists in the communion between the spouses of all their assets, present and future, not excluded by law.

⁴¹ *Supra* note 12 at p. 505.

⁴² AIR 2006 SC 1158: (2006) 2 SCC 578.