Streedhana and Mehr

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Introduction:

Streedhana is the exclusive property of woman under Hindu Law. Mehr, which is also known as Dower, is also the exclusive property of woman under Islamic Law. But, both are very different and at the same time not different as both reflect the position of women in Indian society. Both are in monetary form and given at the time of or during the time of marriage or in connection with the marriage.

Indian Constitution and the pledge of equality:

The Preamble of Indian Constitution envisages social, political and economical equality to all the citizens of India. Part III of the Constitution guarantees certain fundamental rights to the citizens. Under Article 14 everybody is equal before law. Article 15 prohibits discrimination. And at the same time to improve the status and conditions of women and children Article 15 (3) gives the State the right to make special provisions for women and children. The laws, which are violative of the constitutional provisions, are liable to be struck down by the Courts. In spite of this fact the laws pertaining to marriage, divorce, maintenance, custody of children, succession, inheritance and adoption though secular in nature have been tied to the religion followed by the parties. They define the rights of the parties in the private sphere and when rights in the private sphere are curtailed the rights granted in the public sphere cannot be accessed. The laws pertaining to

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1 Preamble: We the people of India, having solemnly resolved to constitute India into a sovereign social secular democratic republic and to secure all its citizens, justice, social economic and political, equality of status and opportunity in our constituent assembly this 26th day of November 1949, do hereby adopt, enact and give to ourselves this Constitution.

2 Article 14: Equality Before Law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

3 Article 15: Prohibition of discrimination on grounds or religion, race, caste, sex or place of birth: (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to......

4 Article 15 (3) Nothing in this article shall prevent the State from making any special provision for women and children.
inheritance and the right to property will have to be looked at under the laws governing Hindus, Muslims and Christians.

**Streedhana:**
Under Hindu Law a woman can hold property as Streedhana, which is her absolute property and she could alienate it and on her death it would be devolved on her heirs. Streedhana is any valuable property, which exclusively belongs to the woman. This valuable property includes land, money, ornaments etc.

According to ancient Hindu Law a woman cannot be a coparcener. Then from where did she get the property? Obviously her parents give it. When the property is given before the nuptial fire it is called adhyagni and when it is given before she leaves to her husband’s house from the maternal home it is called as adhyavahanika. Other than these two kinds the money, which is given either by mother or father or brother as a token of love to the bride, which is known as dattam pritikarmani, also comes under Streedhana. The latter includes the gifts given by other relatives from mother’s side and father’s side. Manu extended the scope of Streedhana by adding the gifts subsequent to marriage, which are known as anavadheyam and the gifts given by her husband shall also fall under Streedhana.

Manu prescribed that the property and the gifts given by her husband, shall go to her children, even if she dies, in the lifetime of her husband. According to the Brahma, the Daiva, the Arsha, the Gandharva, or the Prajapati rites shall belong to her husband alone, if she dies without issue. But it is prescribed that the property, which might have been given to a wife on an Asura marriage or one of the other blamable marriages, shall go to her mother and to her father, if she dies without issue.

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5 Sheila Jayaprakash: www.csa-chennai.org/WLS-Sheila%20Jayaprakash.htm

6 Skt. *striedhana*, women’s property.' A term of Hindu Law, applied to certain property belonging to a woman, which follows a law of succession different from that which regulates other property. The term is first to be found in the works of Jones and Colebrooke (1790-1800), but has recently been introduced into European scientific treatises. See Mayne, Hindu Law, 541page.

7 http://www.asiatica.org/jsaws/vol2_no1/n11
A text from Yajnavalkya Smriti runs as under:

“What was given to a woman by the father, mother, her husband or her brother, or received by her at the nuptial fire or presented to her on her supersession (adhivedanike) and the like (adi) is denominated woman's property. Commenting on these texts, Vijnaneshwar said that Manu's six fold classification, of Streedhana is merely illustrative and added that in Yajnavalya's text the word adi includes property which she may have acquired by inheritance, purchase, partition, seizure and finding.⁸

On a close look at the enumeration of Streedhana as given by the smritikars and commentators, we would find that most of the items of Streedhana were received by her on or about or after the marriage. They are adhyagni, adhaygini, adhyavahanika, pritidatta, anyadheyaka and bandhudatta. Other than these gifts which are received after marriage are known as Adhivedanika (gift by her husband). Property obtained by adverse position, property obtained in lieu of maintenance and property acquired by her own self exertion or by mechanical art or science⁹ also come under Streedhana.

Under the old Hindu Law Streedhana was classified from various aspects so as to determine its characteristic features; such as source from which the property was acquired, the status at the time of acquisition i.e. whether the female was a maiden, married or widow and the school to which she belonged. However the Streedhana has all the characteristics of the absolute ownership of property. This implies two features.

“The Streedhana being her absolute property, the female has full rights of its alienation. This means that she can sell, gift, mortgage, lease, exchange or if she chooses she can put it on fire. This is entirely true when a maiden or a widow is. Some restrictions were recognized on her power of alienation, if she was a married woman. Then the Streedhana gets classified as saudayika-under which gifts received out of love and affection from relations of both sides and the non-saudayika – the property acquired by self exertion or gifted by strangers. The peculiarity is that

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⁸ Mitakshara II, XI.2
over the former kind of property she has full rights of disposal and on the latter she has no right of alienation without the consent of the husband\textsuperscript{10}.

In Hindu, Jain and Sikh communities in the ancient times, where women do not inherit landed property; jewelry was a major component of the Streedhana, because of its easy convertibility into cash, was thus regarded as security and investment. Jewelry as investment and identity marker is evident in the plethora of ornaments worn by people from nomadic and migrant tribal communities\textsuperscript{11}. Later, money, lands and other valuables are added to Streedhana. Till 1956 Streedhana was the only property on which a woman had absolute rights. Neither she was coparcener in the maternal home nor could she inherit her husband’s property through intestate succession. All she had was limited estate and at times worse than that -she was getting only maintenance.

**Hindu Succession Act:**

The Hindu Succession Act of 1956 sought to codify the law pertaining to intestate succession. The changes brought about by this Act were far-reaching and fundamental. Earlier, property inherited by a Hindu female was only a limited estate, which on her death would revert to the heirs of her late husband. This concept of limited estate was abolished under Sec 14 of The Hindu Succession Act. It conferred rights on both movable and immovable property. It removed the disability of a Hindu female to hold property as an absolute owner and converted the limited estate held by women at the commencement of the Act into her absolute property. This section comprehensively defined the word 'property' to include property received as an inheritance, at partition, as a gift, property received in lieu of or as arrears of maintenance and also Streedhana property\textsuperscript{12}.

**The Change:**

The old Hindu Law prescribed a different mode of succession to Streedhana. It was different in different schools and it was different for different kinds of Streedhana. Vijnaneswarapropounded the broad principles thus:

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    \item \textsuperscript{10} Supra at p.1432
    \item \textsuperscript{11} http://www.craftsinindia.com/indian-art-culture/indian-jewelry.html
    \item \textsuperscript{12} Supra note 5
\end{itemize}
“The woman’s property goes to her daughters because portions of her abound in her female children and the father’s estate to his sons because portions of him abound in his male children. “

As a general rule Streedhana went by succession to female, though it was not a rule of universal application. For instance in the case of maiden’s Streedhana the first heir was not a female. It was a male. In all schools, it went to her uterine brother\textsuperscript{13}. However, the Hindu Succession Act, 1956, abrogates the old law of Streedhana.

\textbf{Mehr:}

As far as Muslim Law is concerned- the pre-Islamic customs are the basis for the present day Muslim Law. Some customs are accepted and some are rejected. In certain areas slight improvements are made. Under Muslim Law, marriage is a civil contract- contrary to Hindu Law, which always treated it as a sacrament. Only after the codification in 1955 the marriage has taken the shape of a civil contract for Hindus. In this regard Islamic law was far ahead.

In Muslims, Mehr is part of the requirements for a valid marriage. People marry with a presumption that they are going to live in the wedlock till the end of their lives. But life is not, full of roses. When two individuals with different wavelengths have to live together, sometimes a situation arises, when part they must. Differences become so pronounced that it becomes necessary to severe this relationship. In such a situation a woman who do not have her own earnings should sustain at whose mercy? Islam protects such deserted wives by way of Mehr.

This concept of Mehr was introduced in Islam, for the sake of providing economic security for women especially for wives. Only then can women preserve their honor. Mehr, for example is textually defined as a sum of money or other property, which the wife is entitled to receive from the husband in consideration of the marriage\textsuperscript{14}. In the explanation it is said that the word ‘consideration’ is not used in the sense in which the word is used in Contract Act. It is further said that under Mohammedan law Mehr or Dower is an obligation imposed upon as a mark of respect to the wife\textsuperscript{15}.

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  \item \textsuperscript{13} Banerjee: Hindu Law of Marriage and Streedhana: p. 355
  \item \textsuperscript{15} Baillie: Digest of Mahomedan Law, Part I, 1875, Part II, 1869.
\end{itemize}
\end{footnotesize}
Mehr, which is also known as dower, becomes confirmed in three circumstances—when the marriage is consummated, when the wife retires from the company of her husband voluntarily and in the case of death of either spouse.

Mehr is a kind of marriage settlement. This practice was in vogue in some of the countries of Europe. The husband settles a part of his property on the wife as a security for her. Mehr is of two kinds—prompt and deferred. Prompt Mehr is that which the husband must give the wife any time she demands it. Deferred Mehr is that which the wife agrees not to demand until the marriage is dissolved by death or divorce. The latter form is more prevalent in India.16

Mehr is part and parcel of the wedding contract. It not only consists of money but some valuable gifts also. Women in a given society are the weaker section. They need some help and support. Marriage is expected to give such a support. When the marriage does not materialize, when it gets dissolved, she should be provided with some monetary security. The principle behind Mehr is as simple as that. A Muslim woman is free to stipulate any amount of Mehr she likes. A Muslim woman gets her Mehr under three circumstances—when she is contracting the marriage, during the sustenance of her marriage or after she gets divorce. Mehr is the exclusive property of the married Muslim woman. She has exclusive rights over her Mehr. Neither her husband nor any of the family members do have any right over it. If she wishes she can forfeit her right to Mehr. The holy Quran says, "And give women their Mehr as a free gift. But if they of themselves be pleased to give you a portion thereof, consume it with enjoyment and pleasure." There is no upper limit to the Mehr money. The Quran encourages men to give as much as possible. Quran insists women deserve to get as much as possible—even a heap of gold and preaches men should not expect anything from women in return. The Second Caliph Hazrat Umar wanted to impose a ceiling on Mehr. But one of the women stood and reminded the verse of Quran which said that Allah wanted men to give a heap of gold to them. Caliph obliged to the demand and no ceiling on Mehr was imposed thereafter. The Quran insists that men should not take anything from their wives once they have given it. Thus, Mehr has been created as material security for women entering in a marriage contract and is protected through the Quran.17

17 http://www.bibimagazine.com/N_HR_Mehr.asp
As mentioned in the previous part of the article according to Muslim Law marriage is a contract. The rules of contract apply to the marriage and its dissolution also. The divorce is called as Talaq. Contrary to the general notion, Islam provides an equal right to man and woman to take divorce. There is difference, that a man divorces a woman while a woman demands a divorce.

Maintenance is another ingredient in the matters of divorce. Unlike Hindu man, a Muslim man need not maintain his wife throughout her life. He has to maintain his wife during the iddat period. This period is a conciliation period. He can still make amends to his previous decision of divorcing her. During this period he can make amends to his earlier decision of divorcing her. If he does not change his stand even after the iddat period, the wife is considered as separated permanently. She is now a woman without any commitments to the previous husband. In case she intends to marry for a second time, she can marry a man of her choice. After observing certain rules, in case the previous husband wants to marry her and she is willing to accept she even can marry him. Because, now they have parted ways, a husband as a matter of right cannot take back the property or gifts which he had given to her during the sustenance of their marriage. Along with the property and gifts he has to give back the Mehr money, which he had promised at the time of marriage. Sometimes the Mehr does get fixed at the time of marriage. No woman insists for Mehr during the sustenance of the marriage. But, it the duty of the husband he should give her something. At times, the Mehr gets fixed, but before the payment of the Mehr, the divorce takes place. In such circumstances, the husband should return at least half of the money. But, the wife can waive the Mehr.

The Debate:

Mehr provides financial security for the fair sex. There is a controversy, which argues that in Muslim Law marriage is a civil contract. When both the parties are equal in a marriage why in the name of economic security women should be treated specially? The conditions in the society—especially in India indicate that women suffer from inherent inequality. The money offered to the bride as Mehr reflects the woman’s social and economic status and institutionalizes woman’s subordinate position. This is an indication to prove that that women are economically and socially weak. In this context Streedhana and Mehr stand on the same footing as the latter also provides women economical and social security where men are superior in every aspect.
Mehr is one such area where several changes are made. Prior to Quran Mehr used to be paid to the father of the girl and in the absence of the father to the guardian. It is more or less like selling the girl to the groom. In case of Hindus- Kanya Sulka existed where the groom paid the bride’s father. After sometime, the idea of sale disappeared and the money is paid to the girl herself. The condition in Bangladesh is different. They consider Mehr only at the time of dissolution of marriage. According to them Mehr is debt and husband is due to his wife and he should pay it to her at the time of dissolution of marriage. They consider Mehr as an honor to women and an advantage provided to them by Shariat. Islam has awarded women with financial support.

Shia Law holds a different point of view. The right to dower is established by consummation or by death of either party. It is not considered in case of “valid retirement”. The death of the husband before the consummation of marriage reduces the amount of dower to half. In case the husband dies before consummation, the full dower is payable to the wife. This shows the vision of Prophet . He never wanted a woman to be in an insecure position. To safeguard the interests of the women this provision is made.

Since the days of Quran Mehr remained in most of the cases as Rs. 101 only. It is never increased. On the other hand dowry, which is not known to Muslim law, is demanded from the parents of the bride. The common practice is that grooms promise high amounts of Mehr at the time of marriage but seldom pay it to the bride. Though a wife can refuse to live with her husband unless the Mehr is paid, in practice no woman insists upon that. As long as women remain socially and economically weak Mehr is beneficial to them. It is a way of reinforcing, institutionalizing and perpetuating women’s dependency on men. The belief that Mehr gives security to women is merely theoretical as the practical experiences show that women are seldom able to realize the claim either during continuation of marriage or at its dissolution18.

Undoubtedly, Islam introduced the concept of Mehr to safeguard the interest of women-especially married women, who constantly live under the threat of talaq. It is true theoretically. But, in practice the conditions are quite contradictory. It is impossible for a wife to demand Mehr and maintain cordial marital relationship with her husband. Islam provides that a woman who does not

18 http://www.jananeethi.org
get her Mehr money can demand a divorce. In spite of such a safeguard women seldom avail the benefit. Lack of proper knowledge also makes it difficult to get Mehr even after divorce\textsuperscript{19}.

It does not mean that Islam recommends extravagance in fixing Mehr. On the other hand it envisages that if the groom is of good character one shall never bargain over Mehr, not to make fuss over monetary issues and shall fixed by the parties with amicability.

**The Law Differs:**

Islamic marriages are not same everywhere. In Balochistan Mehr is called a lab- it is a bride price. Again a part of Balochpakistan by name Panjgur marriage rituals are different from other parts of country. Here the bride herself takes the money. She has all the rights to spend it. This is known as Haq Mehr. The parents of the bride do not get any money from the groom's parents. Endogamy is the prevalent style of marriage especially among Gichkis. Most of the people are monogamous as a second marriage is expensive.\textsuperscript{20}

Guardians through marriage brokers arrange marriages. Guardians enter into agreement and guardians decide even the dissolution also. The practice of Mehr has been an indispensable element in Muslim marriage contracts for untold generations. In contemporary Bangladesh, Mehr is the sum of money the groom agrees to pay the bride either at the time of marriage or at a later date.\textsuperscript{21}

**Nikhanama:**

In the interest of the women the Nikhanama insists that the Mehr should not be in cash. It should be either in the form of gold, land, silver or shares so that there would be some appreciation in their value. Neither the husband nor any of his relatives can pressurize the wife to give it up. But over

\textsuperscript{19} http://sachet.org.pk/home/gender_columns/webcolumn_26.asp

\textsuperscript{20} http://bdd.sdnpk.org/districts/Panjgur/marriage%20Panjgur.html

\textsuperscript{21} http://www.unescap.org/esid/psis/population/journal/1998/v13n2dn.htm
the years, the concept had got diluted. It was originally meant for the security of the women, especially the poor. But now it is reduced to a symbolic value.

Nikahnama suggested other measures also. Triple Talaq, which has been hanging over the heads of Muslim women for centuries, is discouraged. If he prefers to pronounce talaq in one sitting then he should pay double Mehr. Actually Prophet preferred talaq-e-ahsan. In this form of divorce the husband pronounces talaq once in the presence of four respected members of society two from each side. Then gives a gap between three talaq pronunciations. The Nikahnama also stipulates that the husband will not marry without the first wife's consent. If he does so he will have to pay her double her Mehr22.

Recommendations:

1. The best practice is to give the whole amount of Mehr at the time of marriage. In case the groom happens to be poor and cannot pay at the time of marriage, then it can be paid later but as soon as possible after the marriage has taken place.

2. Prophet with his vision always preferred Mehr in the form of gold and silver. If it happens to a deferred Mehr, it is better to specify it into gold or silver.

3. Prophet was never for divorce and much less for whimsical divorce. He preferred when a dispute arises between the couple they should resolve it amicably. The husband should make the wife understand and remind her of Allah’s wrath. In spite of the efforts from both sides if the dispute is not resolved then the husband and wife should make one or two persons from the elders of both families and Ulama as the arbitrators. They should abide by the decision of Ulama and the elders. If the conditions do not improve in spite of such efforts, then under the compelling circumstances, it is allowed for them to adopt the Sharai procedure for separation. In this regard, they should consult Darul Qaza or any authentic Islamic scholar23.

Khula:

Perhaps, Islam is the first religion to give a right to woman for divorce. In case of the husband he just divorces his wife. But, a wife has to demand the divorce. If the husband refuses, she has a

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22 http://www.islamicvoice.com/december.99/community.htm

23 http://www.islamicvoice.com/August2005/Feature/
right to approach the court. In case of women a husband has to give her Mehr, which is due for her. As far as husband is concerned he does not have such a right. And in fact Islam prohibits a husband to demand anything from his wife on this occasion.

In case the wife wants to give back some of the money, which had been presented to her by her husband, or some valuable property, if she wishes she can return that to end the controversy. However, this is not a general rule. It is an exception.

In case followers of the faith stick to the rules and regulations laid down by their religious scriptures, there will not be any controversy. But, human beings seldom stick to the rules and very often deviate from the path set forth. Such deviations are not part of the Islam. They are breach of law it is up to the legislature of a country to enact laws about such departures. At times, such cases are even left to the discretion of the judge and at other times the judge himself is bound by the legislation²⁴.

**Present Position:**

As far as India is concerned Kerala was the first State to abolish the concept of coparcenary system by enacting The Kerala Joint Family System (Abolition) Act, 1975. The Act envisages that the heirs either male or female do not acquire property by birth. However, they hold the property as tenants as if a partition has taken place. In 1986 Andhra Pradesh followed the suit and made the daughters coparceners in the ancestral property. Tamil Nadu in the year 1989 and Karnataka in 1994 and Maharashtra in 1994 enacted laws. These laws made the daughters coparceners made them entitled to claim a share in the ancestral property by birth as the sons. In 2000, the 174th report of the 15th Law Commission suggested amendments to correct the discrimination against women, and this report forms the basis of the present Act.

An amendment made in 2005 gave women equal rights in the ancestral property. It is a significant step in bringing the Hindu Law of inheritance in accord with the constitutional principle of equality. As per the amendment, Section 6 of the Hindu Succession Act, 1956 gives equal rights to daughters in the Hindu Mitakshara coparcenary property on par with her brothers.

Thus, the concept of Streedhana has almost become defunct. Because of the religious, social and other aspects the concept of Mehr though nominally present does not serve the purpose of upliftment of women. It does not improve either the economic or the social status of women.

Indian women are subjected to intense economic and social discrimination to whichever religion they belong to. They continue to suffer, despite six decades of independence in a secular democracy with universal suffrage. Certain practices, such as sati and dowry have spread from high status Hindu groups across social and religious boundaries. Unless women are politically and economically empowered neither Streedhana nor Mehr can improve their status nor they would be secure economically.