

## Laws of Inheritance Reflected in Dharmasāstras

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### **Abstract**

*Dharmasāstras are genre of Sanskrit texts and refer many treatises. Smṛti-s are considered to be the most authentic and famous works in the field of Dharmasāstra. Other works in this category include the early Dharmasūtra texts such as that of Āpastamba, Gautama and Vasiṣṭha, the Nibandha works of medieval age, commentaries on earlier Smṛti texts, works on Arthasāstra and certain portions of epics and Purāṇa-s. Smṛti-s are said to have collected the legal principles from the Vedic literature and Dharmasūtra-s and the customs and practices accepted by the society. The laws and principles gathered from different sources are arranged in a systematic manner in Smṛti-s. Manusmṛti, is the earliest extant text in this genre, in which all kinds of religious, social and legal rules are seen described. The eighth chapter of Manusmṛti which includes 420 verses mainly deals with eighteen legal procedures, their definitions and rules related to their practice. Among them laws of inheritance was one of the prominent legal procedures. The present paper is an attempt to trace out the laws of inheritance which are described in the Dharmasāstras.*

**Keywords:** *Inheritance, Dharmasāstras, Smṛtis, Manusmṛti, Ancient India, Medieval India.*

## Introduction

Dharmaśāstras are genre of Sanskrit texts and refer many treatises. Smṛti-s are considered to be the most authentic and famous works in the field of Dharmaśāstra. Other works in this category include the early Dharmasūtra texts such as that of Āpastamba, Gautama and Vasiṣṭha, the Nibandha works of mediaval age, commentaries on earlier Smṛti texts, works on Arthaśāstra and certain portions of epics and Purāṇa-s. Smṛti-s are said to have collected the legal principles from the Vedic literature and Dharmasūtra-s and the customs and practices accepted by the society. The laws and principles gathered from different sources are arranged in a systematic manner in Smṛti-s. *Manusmṛti*, is the earliest extant text in this genre, in which all kinds of religious, social and legal rules are seen described. The eighth chapter of *Manusmṛti* which includes 420 verses mainly deals with eighteen legal procedures, their definitions and rules related to their practice. Among them laws of inheritance was one of the prominent legal procedures.

## Laws of Inheritance in Ancient and Medieval India

No branch of jurisprudence is more important than the law of inheritance, as it constitutes that part of any national system of laws, which is the most peculiar and distinct and which has most frequent use and extensive application. Inheritance signifies the wealth which becomes property of another, a son or other person bearing relation, in right of the relation of offspring and parent or the like which he bears to his father or other relative, who is the owner of that wealth. The law of inheritance and ancestral worship had close connection in ancient time. The religious rites like ancestral worship became integral part of the life of people at that time. The son, the grandson and the great grandson were supposed to be competent to perform these rites. The person who performs these rites got the ancestral wealth.

Dharmasūtra-s, by considering its social importance gives some general points regarding the law of inheritance. All Dharmasūtra texts give importance to the legitimate son in the case of inheritance. If there is no legitimate son, it will go to the subsidiary sons. In the absence of these two types of sons the Dharmasūtra-s say that the nearest heir at that time would take the property. Gautama-Dharmasūtra says the property of a sonless man goes to relative who is related to him through ancestry, lineage, or a common seer and by his wife.<sup>1</sup>

## Time of Partition

There are two occasions when the property of the father is divided. One is the father divides his property to his sons during his life time.<sup>2</sup> And the other is after the death of the father; the property is divided by the sons. In the later division, after the death of the father and of the mother, the brothers assemble and equally share the paternal and maternal estates. In some cases, after his death the eldest son takes the whole paternal property and the other members live under this eldest one as they lived under their father.<sup>3</sup> The times of partition are of another three kinds viz;

1. During the life time of the father with his desire,
2. Partition of property during father's life time even against his wish,
3. After the death of the father.

<sup>1</sup> · *Gautama-Dharmasūtra*, XXVII.21.

<sup>2</sup> · *Yājñavalkyasmṛti*, II.114.

<sup>3</sup> · *Manusmṛti*, IX.105.

## Son's right to Inheritance

Son's right to inheritance come under the Smṛti-s in different ways. First of all the eldest son gets all property of father and the rest may live under him as under their father. The reason behind this type of partition given by *Manusmṛti*<sup>4</sup> is immediately on the birth of his first born a man is called the father of a son and free from the debt to the manes, and that son therefore is worthy to receive the whole estate and also the eldest son makes the family prosperous and he is considered among men most worthy of honor, the eldest is not treated with disrespect by the virtuous. The division of the estate takes place as the eldest gets the one-twentieth of estate and the best of all chattels for the middle most half of the estate and the youngest had got the one-fourth of the estate.<sup>5</sup> *Manusmṛti* gives an unequal partition of the wealth of the father after his decease or death. But according to *Yājñavalkyasmṛti* the inheritance among the sons should be equal. He is of opinion that the sons may divide equally both the effects and the debts, after the demise of their two parents.<sup>6</sup>

## Daughter's Inheritance to Property

Ancient Indian jurisprudence did not give more considerations to daughters in the property right of the father. She is mostly not considered as the heir to the paternal property even in the absence of brothers. Dharmasutra-s like that of Gautama, *Baudhāyana* and *Vasiṣṭha* do not include daughter in the category of heir. Āpastamba-Dharmasūtra though included her as an optional heir enumerating as the last one in the order.<sup>7</sup> Manu despite considering daughter as an heir, he further states the right of inheritance of a daughter is actually the right of inheritance of her son not for her. In same verse, he says that the daughter's son, not the daughter, becomes the heir of the wealth of a sonless man and he should offer piṇḍa to his father as well as maternal grandfather.<sup>8</sup>

*Yājñavalkyasmṛti* gave more right to daughter than the sons in mother's property. He opined that the mother's peculiar property has to go to her daughters. It means the sons may part of the effects after the death of their father and the mother. But the separate property of the mother should go to daughters.<sup>9</sup> Besides, the sons should discharge the debts of the mother not the daughters. Means the debts, incurred by the mother, should be discharged by her sons not by her daughters. Women's property goes to her daughters, who are unmarried or unprovoked. If the competition of married and unmarried the women are separate property belongs to such of them as are unmarried or among the married if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed, means who is destitute of wealth on failure of daughters, it goes to her sons. In short, the women's property goes to her daughters because portions of her abound in her female children, and the father's estate goes to his sons because portions of him abound in his male children.

## Inheritance of a Wife in the Family Property

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<sup>4</sup> · *Ibid*, IX.103.

<sup>5</sup> · *Ibid*, IX.112.

<sup>6</sup> · *Yājñavalkyasmṛti*, II.123.

<sup>7</sup> · *Āpastamba-Dharmasūtra*. II.6.14.2-5.

<sup>8</sup> · *Manusmṛti*, IX.32.

<sup>9</sup> · *Yājñavalkyasmṛti* II. 1. 18. However, it remains obscure that how do the mother being women got the property, if the law does not favour their right in their hereditary wealth.

After the death of a father, when the son is to make partition, his mother, the wife of the deceased, is entitled to a share equal to that of the son in the coparcenary wealth.<sup>10</sup> But many of the authorities did not give the right to share the ancestral wealth to the woman. A paternal grandmother or step grandmother cannot herself demand a partition, but when a partition takes place between her son's son, her own son being or when it takes place between her son and the sons of a deceased son, she is entitled to a share. But the widows get more consideration in the succession. The widow of a childless man got his entire share. It means that the whole wealth of a deceased man, who has no male issue, as well the immovable as the movable property, the gold and the other things, belongs to his widow, although there are brothers of the whole blood paternal uncles, daughters, daughter's sons and other heirs.

According to *Yājñavalkyasmṛti*, 'the wife and the daughters also both parents, brothers likewise and their sons, gentles, cognates a pupil and a fellow student on failure of the first among the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes.'<sup>11</sup>

## Conclusion

The outlook and culture of a society are reflected in its legal system. In these, system laws of inheritance have relevant part. It constituted the part of any national system of laws, which were of most frequent use and extensive application. This law is set forth mainly on the basis of Dharmasūtra-s and later Dharmaśāstra-s mainly Smṛti-s, where the fundamental juristic principles prevailed in those times. While concluding the topic 'The law of inheritance' it is clear that the ancient Smṛti writers have given more importance to the succession. From ancient time itself the right of property was an important part of the family. While going through the topics dealt with this issue, it can be understood that who is the original heirs of the property and also who will get all the property. Smṛti writers had differences of opinion about the heir ship of the property. But it must be noted that, first of all authorities give the right to the legitimate son. Another remarkable point is that the right of property of daughters and wives were comparatively less.

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<sup>10</sup> · *Smṛticandrikā*, II.268 cited in P.V. Kane, *History of Dharmaśāstra*, Vol III, Bhandarkar Oriental Research Institute, Pune, 1893., p.605.

<sup>11</sup> · *Yājñavalkyasmṛti*, II.139 and 140.