
A CRITICAL ANALYSIS OF LITERATURE ON COMMUNITY OF PROPERTY FOR THE MARRIED WOMEN IN INDIA

Dr. S. Arockiam, B.Sc., M.A., M.L., Ph.D. (Law), Assistant Professor, Chennai Dr.
Ambedkar Govt. Law College, Pudupakkam, Chengelpet, Tamil Nadu

Dr. V. Vijayashri, M.L., P.G.D.I.T.L., Ph.D. (Law), Assistant Professor, Chennai Dr.
Ambedkar Govt. Law College, Pudupakkam, Chengelpet, Tamil Nadu

ABSTRACT

In India, there is no such legal intent to be divided equally either on divorce or intestacy even if the income of a married woman is blended with that of her nuptial home property. This has become the legal hindrance for recognizing the marital share for a married woman in India. Hence, married woman has no legal rights to claim any share from such property in case of divorce or separation even if her income is blended with the marital property. The right of married women to 'marital/community of property' upon divorce/separation is a new legal regime that needs a close study in the present development in the Indian context. There is hardly any legislation or literature on the matrimonial property rights of women in India. This has made the married women to face different treatment upon divorce and forced to litigate for the maintenance under various provisions of law. There is no active effort or campaign carried out for a legislation to be put in place on the marital property rights in India. The judicial writers of this time and women's rights advocates in India have not awakened to these issues. Hence this article traces out literature available on marital property/community of property in India and other nations for the purpose of implementing the same in India.

Keywords: Women's Property rights/ marital property/ community of property/ Indian married women/ Literature on community of property.

I. Introduction

The review of various literatures that speaks about the present situation of women and their rights essentially to their property rights reveals the fact that there must be a change in the attitude of the present Indian society. This article on such review of literature would essentially tries to examine the property rights of married women to marital property or community of property in India. Socio- legal development in India in protecting women's right to property needs a close look to see the fate of the women. The changing dimension of the family life and their changes need to be understood to know what women in India feel about their property rights in the present era. This review of literature under this article would trace out how women in India have to take another fight to get the recognition of their contribution to the marital property. And further to fight to get their rights in the marital property or community of property in case of the breakdown of the marriage. The right of the divorced women can be established only between her and her divorced husband. It is therefore important to protect the divorced women upon divorce. In these circumstances the marital property/community of property rights to married women justifies the needs of the hour. Our endeavor under this article is to critically analyze the literature available on the rights of women and married women right to their property rights in case of divorce or breakdown of marriage to the property in the nuptial family. This article on literature review on marital property/community of property and married women's right to property rights would attempt to contribute to the literature that would formulate legislation on the marital property rights of married women in India. This is attempted to trace out the historical origin and evolution of property rights to married women in India. This article would examine the level of recognition of these rights to married women at national and international level by reviewing literature available in India and in foreign countries. This article on literature review on community of property rights would provide a better outlook in assessing the suitability and enforceability of the marital property provisions in India by finding the gaps in this topic. Marital property/community of property is understood as all the property acquired, developed and earned by the both or either of the couple during the marriage. Community of property right is the right of a couple to get the share or claim to the community of property upon divorce or separation.

II. Married Women and Divorce: The Requisite

Women in India have become major contributor to the financial status of their nuptial

family. Through their household activities and personal job the married women in India have become the main source of wellbeing of the marital family. However, contribution of married women as home maker and its economic value in the nuptial family is rarely recognized by the Indian society and legal system. The contribution made by a married woman needs legal and social recognition as equal partner in the nuptial family. The salary, gift, other source of money from the intellectual activities of a married woman are blended with that of her husband's property. In the event of divorce or separation married women face lot of economic hurdles and face legal battle to fight for their financial security.

Hence, there is a need for proper legislative measures to protect their marital property interests. If married women are given equal share in the marital property, they would get economic security and independence. Therefore it is considered as an important input to the debate on marital property rights to married women in India. In the absence of formal legal framework, no one loudly speaks about the marital property rights of spouses upon divorce in India. In India the marital property rights of spouses is not regarded as an important issue.

The main aim and scope of this article on literature review is to discover the traces of legislation or literature on the matrimonial property rights of married women in India and address the gaps in formulation and implementation of law relating to the marital/community property to married women within the area of family law/property law regime.

(A) Property Right in India: Married Women Should Know

“Women are the only oppressed group in our society that lives in intimate association with their oppressors” the Evelyn Cunningham's quote denoted by the Shuma Talukdar(2013), in the book titled *Women's Property Rights in India*¹ says it everything the women at present era stands with regard to their rights to property.

The property rights of women India is affected by various statutory laws, personal laws. And in addition to that the social and other customary norms also play a massive role in affecting the property rights of women in India. The author reveals the fact that there is no uniform law to govern the property rights of women in India. More over the right of women to

¹ Shuma Talukdar(2013), Women's Property Rights in India, Droit INDIA Legal Services. Available at <http://socialregenerationandequity.blogspot.com/2013/10/womens-property-rights-in-india.html>, visited on 13/04/2021

property depends on their religion, marital status, part of the country they belong and so on. Women's status in the family she belongs also has vital role to play in deciding her rights to property in India. The rights of women vary depending upon their role and status whether the woman is a mother, daughter, wife, married, unmarried, widow or deserted. The right of women rights to property in India also depends upon the kind of property at issues. It depends upon whether the property is ancestral or self-acquired, land or dwelling house or matrimonial property.

Through the literature survey and the situational analysis the author of the book cites the recommendation of 'women commission on status of women in India' (1971)². The Commission had recommended that "In *Matrimonial property, legal recognition should be given to the economic value of the contribution made by the wife through household work for purposes of determining ownership of matrimonial property, instead of continuing the archaic test of actual financial contribution; on divorce or separation, the wife should be entitled to at least 1/3rd of the assets acquired at the time and during the continuation of marriage*". This was the first step forward to recognize the contribution of married women in ascertaining her rights to marital property rights.

The author cites certain amendments to be brought in in laws relating to women and property in India which was recommended by the National Commission for Women³. This recommendation of the commission speaks about the widow's rights to administer the estate of the deceased husband and the rights of any heir to claim partition of a dwelling house to arise only after the settlement is made to the widowed mother's rights.

The author concluded with the observation that though law is equal, the practice, and customs in India stands as an obstacle to giving recognition to women. The view of the author is that mostly women are to be blamed for this situation. Women as daughters, wives, daughters-in-law, mothers or sisters relinquish their right to property. This gets complicated when they lose the security of the family, as a single woman, divorced or separated or widow. Social awareness of the women rights to property under law, attitudinal change of an individual towards the recognition of women's right to property is the need of the hour to end this problem.

² In 1971, the Ministry of Education and Social Welfare, Government of India also appointed the Committee on the Status of Women in India (CSWI) to study the status of women in India. EXECUTIVE SUMMARY – REPORT ON THE STATUS OF WOMEN IN INDIA, 2015.

³ The National Commission for Women (NCW) established in 1992 is the statutory body of the Government of India, generally concerned with advising the government on all policy matters affecting women.

The society must be ready to accept the changing trends in the family setup and property rights to improve the status of women in the Indian society.

The philosophical understanding of the marriage is explained by *Rudrani Gupta (2020)* in the book titled '*Every Married Woman in India Should Know Her Legal Rights. Here's A List*'⁴. The marriage is an institution in which each member plays their role as husband and wife. A woman pedals the home and tends to the need of the family. Indian women who are entering into the marriage are not taught that the marriage can be an unhappy or a difficult one too. Most of the women in India were not prepared to deal with a situation where the marital alliance can be traumatic. The words such as separation and divorce carry with it some stigma. Women need to be aware of the same and have to be prepared to change to the change of times. Women in India are no longer need to be dependent on their near ones. Married women in India must be informed of their legal rights in the marriage and must be aware of their rights. The awareness will help the married women to penalise in case of any harassment in marriage and claim freedom from the alliance of cruel marriage.

In this article the author, through the doctrinal analysis, enumerates the rights available to the Hindu married women in case of any harassment, separation, divorce. And also cites the law relating to the intestate property of her husband. The author enumerates the certain rights of married women rights to marital property. A married woman has a legal right to live in a matrimonial home even after the death of her husband and also in case of separation. A married woman is entitled to the intestate property of her husband as one of the legal heir. And this right is available to her even if her husband remarries without dissolving the first marriage.

Anuradha Ramamirtham, in her article, '*4 Benefits of Married Couples Jointly Owning Property*'⁵ speaks about the advantages of holding joint ownership to the property by the married couple. The empirical analysis of the author reveals the benefits of married couple in holding joint ownership to the property. Jointly registering the property and jointly owning the same by the married couple will elevate the status of the wife in a patriarchal society. This would enhance their financial status. By the virtue of holding the joint ownership in the property, the couple will have better bonding, commitment and trust between the spouses.

⁴ RUDRANI GUPTA (2020), *Every Married Woman In India Should Know Her Legal Rights. Here's A List*. Available at <https://www.shethepeople.tv/law-and-her/legal-rights-married-women-india/> visited on 1/11/2020

⁵ *Anuradha Ramamirtham* (2019), *4 Benefits of Married Couples Jointly Owning Property*. Available at <https://housing.com/news/4-important-benefits-of-spouses-jointly-owning-property/> visited on 31/3/2020

Succession to jointly owned property is easy in case of the death of the one owner as the spouse is always the successor.

III. Matrimonial Property: The Need of the Hour in India

Isha Kabra, the author of the “*Matrimonial Property Laws in India: Need of the Hour*”⁶, is concerned about the right of the married women after her divorce and the present scenario in the Indian contexts. Women have equal status in India and improved their rights to property. Yet there is a void with regard to marital property rights of a woman. In the present era, women come forward to opt out of marital relationship, in case their marriage is cruel to them. In such event, the divorced/separated women face lots of economic hurdles after the divorce legislations like maintenance laws, Protection of Women from Domestic Violence Act, 2005 etc are available to in India to redress their problems. yet there is no legislation that regulates the division of marital property after divorce.

The prevalence of separate marital property regime in India becomes a hurdle. This is because the mind-set of the Indian society is always male dominated one. The major financial contributor of the family holds the title to the property in India even after the marriage. Mostly the property is held by the men and the contribution of the women as homemaker is ignored. And ultimately whoever holds the titles takes the property after divorce. The Society and law have not given space to married women to improve their condition after they get divorced. We need to consider giving the right to married women on matrimonial property. The divorce in India has become very common. Therefore, we need to give importance to the married women who are housewife or homemaker after they get divorced. The very important question before us is that whether the law available help such women to sustain after their divorce.

According to the author personal law regime in India developed and modified by us was not in response to our own society rather it was in response to a very different English society. They have just left certain field as personal laws. Any reform to these personal laws is prevented by the veil of the personal sentiments of the religion. Most of the personal law treat men in higher position than women. Therefore, and in such complex situation we need to discuss the issue of matrimonial property rights of married women in India.

⁶ Isha Kabra, MATRIMONIAL PROPERTY LAWS IN INDIA: NEED OF THE HOUR, Nirma University Law Journal. 2015, Volume-5, Issue-1, pp 92-104

Stridhan is the only existing property rights of women in a marital relationship in India. The woman is entitled to some monetary relief in the form of 'maintenance' only if women are not at fault upon divorce. This shows that the maintenance laws are biased against women and do very little good to provide economic protection and social security to the women. Other acts such as the Protection of Women from Domestic Violence Act, 2005 which provide the right to residence etc to the women, are based on the same premise of no fault theory⁷.

The law is silent over the issue of matrimonial property in India and the only existing system of property law is the separate property regime. There is no legislation either enacted or judge made speaks about the matrimonial property regime in India. No law acknowledges the financial and non-financial contribution made by the spouse who does not hold title to the property acquired during marital life. This discrimination mostly affects the married women who normally do not hold title to the property or matrimonial home after they divorce their husband. Personal laws of Hindus and Muslims do not speak about the concept of marital property in India. They only speak about personal property or separate property. According to the author there is lack of judicial or statutory guidelines with respect to matrimonial property in India. The equality will prevail only if the contribution of married women in her matrimonial home is recognised and brought legislation on matrimonial property.

This Marriage Law (Amendment) Bill seeks to make certain changes in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. There are flaws in the draft bill and will not fully useful in realizing the marital property rights. However, this enactment of a draft Bill will surely lead to positive step on matrimonial property. Accordingly, it would make all the property earned and developed in a marital relationship getting converted into joint property of the spouse. This step will help to distribute the matrimonial property in case if the marriage breaks up. The author urges to bring in such legislation that guarantees marital property rights to all married women in India.

(A) Economic Independence of Women through Marital Property

Economic independence of women is a major catalyst in achieving equality for women. The advent of divorce laws has freed many women from the shackles of unhappy or abusive

⁷ Kirti Singh, Matrimonial Property Rights, COMBAT LAW (23rd July 2010), available at <http://www.combatlaw.org/matrimonial-property-rights/>. See also, Isha Kabra, MATRIMONIAL PROPERTY LAWS IN INDIA: NEED OF THE HOUR, Nirma University Law Journal. 2015, Volume-5, Issue-1, pp 92-104

marriages. This divorce law has also steered the phenomenon of destitution, which results from the in egalitarian nineteenth century English doctrine of separate property regime. The practice of separate property regime in India as well as the personal laws on marriage and property has not quantified the contribution of homemaker in a matrimonial home either by the courts or law. Jhuma Sen (2009) in '*Matrimonial Property Rights: Is India Ready for a Law*'⁸ has analysed the economic independence of women and the advent of divorce laws. Accordingly, this article discuss about the economic rights of Indian married women on marriage and after the breakdown of marriage. The personal law regime on marriage and property regime is discussed to find out rights of women at the time of marriage and after the divorce. Such study would help to understand the pressing need for uniform matrimonial law in India.

The India women are culturally improved but still their property rights remain as dream. Dr. Kamalaveni and S. Saraswathy (2015) in the study entitled "*Journey of Indian Women with property rights are still in dreams- A study with special reference to marital property rights*"⁹ has explained the factual position of the right of women in India. It is analysed that there are few supporting legislation on property rights to women. However, women in India are hesitant to utilise them for the fear of break up relationship in the parental as well as matrimonial home. In the patriarchal Indian society, it is an established understanding that a woman belongs to her husband's family upon marriage. However a woman's right to property in her marital home is almost absent. The studies reveal that in India, educated women have little knowledge on matrimonial property rights. It is found that women should fight for their rights even if the legal systems are in favor of them. The Gender bias in all forms should be eliminated in the grass root level to bring equality in property rights. Willingness by men to share their property with their women should be researched at a larger level and the impact should be measured to bring out changes.

⁸ Jhuma Sen (2009) *Matrimonial Property Rights: Is India Ready for a Law*. Indian L. & Soc'y 129. Available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jindlas1&div=9&id=&page> visited on 29.6.2021

⁹ Dr. Kamalaveni and S. Saraswathy (2015) *JOURNEY OF INDIAN WOMEN WITH PROPERTY RIGHTS ARE STILL IN DREAMS- A STUDY WITH SPECIAL REFERENCE TO MARITAL PROPERTY RIGHTS*. International Conference on Women and Social Transformation: A New Era of Just and Gender-Fair Society (2015: the Department of Women's Studies, Alagappa University Karaikudi, Tamilnadu) edited by Prof.K.R.Murugan & Prof.K.Manimekalai. p 76-79. Available at https://www.researchgate.net/profile/Dr-Murugan2/publication/350744240_Women_And_Social_Tranformation/links/606fabb24585150fe993aff6/Wom-en-And-Social-Tranformation.pdf#page=85. Visited on 29.06.2021

(B) Marital Property and Legal Measures in India

The aspiration that the women may be able to stake claim to marital property need practical realisation. Women can be allowed to get the rights in the matrimonial property if an amendment to matrimonial laws is made. Mahendra Kumar Singh & Himanshi Dhawan (2012)¹⁰, in the article written in the Times of India titled as '*Marriage law: Women may get right to marital property*' analyses the new steps taken by the Indian parliament to amend the provision of family law in India. The Marriage Laws (amendment) Bill seeks to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. The amendments are based on the recommendations of the standing committee on personnel, public grievances, law and justice. The panel had recommended empowering the court to decide on the share of the women to matrimonial property on divorce to which they have contributed during the marriage.

Women's rights advocate and former Law Commission member Kirti Singh opined that the measure to bring in amendments is less than a half measure and requires widespread discussion with women's groups. Woman should get half or more of the share of matrimonial property because they have contributed to it. They have no resources to take care of children and the aged in the family. The contribution of women as homemaker must be kept in consideration in amending the provisions of the family law in India.

In a Delhi accident case, the Supreme Court in India has enhanced the compensation to the relatives of the couple who died in an accident. The Court opined that the value of a woman's work at home was no less than that of her office-going husband. The Supreme Court further opined that such recognition signals to society at large that the law and courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is a reflection of changing attitudes and mind sets and of our international law obligations. Further, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals.

IV. A Review of Foreign Literature on Jurisprudence on Community of Property

The various concepts of marital property rights or community of property rights

¹⁰ Mahendra Kumar Singh & Himanshi Dhawan (2012), *Marriage law: Women may get right to marital property*. Available at <https://timesofindia.indiatimes.com/india/marriage-law-women-may-get-right-to-marital-property/articleshow/12360486.cms?frmapp=yes&from=mdr> visited on 20.6.2021

jurisprudence exists in different nations. The available literature explains the matrimonial property regimes existing in England, Wales and Scotland. The marriage in England does not alter the rights of spouse in the matters of property rights. Initially House of Lords did not recognise the rights of married women to acquire family property when she did not directly invest in those assets. They recognised the right of married women to acquire only in those assets in which they have contributed financially. However, the judges were given power to reallocate the property among spouses by giving property adjustment orders at the time of divorce. By this power, the court was even empowered to grant the property of one spouse to another. The court while making such order has followed the reasonable requirements of the spouse in distributing the same.

Accordingly, the author points out the *Lambert v Lambert* case. In this case, the Court emphasised on the point that it was unjustified to accord a greater value to the contribution made by the breadwinner and place lesser value on the contribution made by the homemaker. And hence, using this as a ground to unequally distribute the property among the spouse is not right. This shows that there is the prevalence of deferred community of property regime in the English Laws¹¹.

The various literatures on community of property jurisprudence also explain how the community of property regime existed in Norway, Sweden and Austria. The assets are to be divided equally between the spouses upon the termination of marriage in Norway. The Supreme Court of Norway took into account the indirect contribution made by a housewife such as rearing the children, contribution in housework even from the year 1975. In the famously known as the “Housewife Case” the Supreme Court in its landmark judgement said that a housewife, who takes care of the children, manages the household etc., could become the co-owner of the house held by her husband while the marriage was still subsisting. This rule was transformed into a legislation called as the Marriage Act of 1991. The indirect non-financial contributions of the wife such as taking care of the children, organising the household, making payments for household expenditure etc. are considered as sufficient enough for making the wife a co-owner with the husband who made direct financial contributions towards

¹¹ KATHARINA BOELE WOELKI, PERSPECTIVES FOR THE UNIFICATION AND HARMONISATION OF FAMILY LAW IN EUROPE 11 (2003) See also, Isha Kabra, MATRIMONIAL PROPERTY LAWS IN INDIA: NEED OF THE HOUR, Nirma University Law Journal. 2015, Volume-5, Issue-1, p101

procuring the assets¹². The literature of various writers on this subject reveal the fact that statutory regime called as the community of gains in Germany was prevailing. Under this regime the increase or addition to the property of the spouse after marriage is accounted and distributed accordingly in the event of divorce.

In Australia, if the marriage fails, the spouses are given the right to have a share in each other's wealth. The Court is required to apply the principal of equity and decide how the division of property will take place if they fail to reach an agreement. Division of marital property is based on the contributions made by the spouses in the acquisition of assets, contributions made in the upbringing of children, maintenance of the house and other forms of general assistance.

(A) Division of Community of Property: Pre-Nuptial Agreement

*Gilllanh Amilton (1999)*¹³ in the research study entitled as '*Property Rights and Transaction Costs in Marriage: Evidence from Prenuptial Contracts*' has surveyed that prenuptial contracting behaviour in early-nineteenth-century Quebec. The survey was to explore property rights within families and the efficacy of marital property laws. The decision to sign a contract and couples' property rights choices revealed that couples signing contracts tended to choose joint ownership of property. And considered wives were particularly important to the household. These findings on the study clearly illustrate the potential effects of legal institutions on individuals' behaviour.

*E. K. Quansah (2004)*¹⁴ in the research study entitled as '*Determining Matrimonial Property Rights of Non-Domiciled Spouses: The Applicable Law in Botswana*' explains the underlying principle of the Tanzanian provision of marital laws. The view of the law is the equality of division of matrimonial property based on certain factors. Therefore, the parties can decide the matrimonial property to be divided upon a strict equal division as may be required by the law of Botswana. They can also choose to decide on the less clear-cut basis of division specified by the law of Tanzania. The fundamental justification behind this proposed reform

¹² Branka Rešetar, Matrimonial Property in Europe: A Link between Sociology and Family Law (2008) 12.3 EJCL, available at <http://www.ejcl.org/123/art123-4.pdf> See also, Isha Kabra, MATRIMONIAL PROPERTY LAWS IN INDIA: NEED OF THE HOUR, Nirma University Law Journal. 2015, Volume-5, Issue-1, p102

¹³ Gillian.H, (1999). Property Rights and Transaction Costs in Marriage: Evidence from Prenuptial Contracts, The Journal of Economic History, 59 (1), 68-103. Accessed on 5/07/2021

¹⁴ Quansah E.K. 2004. Determining Matrimonial Property Rights of Non-Domiciled Spouses: The Applicable Law in Botswana, Journal of African Law, 48,(1), 104- 110. Visited on 4/7/2021

was very clear. Accordingly, the division of family assets should aim towards an outcome that is fair and just for both parties and their children.

The authors, *Mary Adebola Ajayi and Abiodun Olukayode Olotuah (2005)*¹⁵ in '*Violation of Women's Property Rights within the Family*' speak about the African society on property rights. Among many African societies, there are unwritten customary laws that are more oppressive to women. The cultural attitudes and practices in Nigeria is that in all aspects women's property rights both in paternal and matrimonial families are violated. Their research presents various forms of violation of women's property rights from girlhood to widowhood. The authors also offer recommendations to change the biased cultural attitudes against females and to strengthen the laws that support property rights of women. The other need is to provide legal literacy and to support for women, especially widows, whose property rights have been violated.

V. Matrimonial Property in Europe

Branka Rešetar in his study on "*Matrimonial Property in Europe: A Link between Sociology and Family Law*" has explained how the matrimonial property has evolved in Europe.¹⁶ Soviet Union was the first country in Europe to introduce a limited form of community of property regime in 1926. The step to introduce such community of property regime in Soviet Union was solely based on the principles of equality and emancipation. Author quotes that normative equalization of spouses by introducing a separate property system had not provided expected results. Accordingly "formal equalization regarding matrimonial property and mutual independence of spouses in a separate property system put woman into a de facto unfair position."¹⁷

The influence of the Soviet Union made most of the eastern European states to

¹⁵ Mary Adebola Ajayi & Dr Abiodun Olukayode Olotuah), *Violation of Women's Property Rights within the Family*, *Agenda: Empowering Women for Gender Equity*, No. 66, *Gender-Based Violence Trilogy* 1,(1) 58-63, 2005. Available at <https://www.tandfonline.com/action/showCitFormats?doi=10.1080%2F10130950.2005.9674649>. Visited on 5/7/2021

¹⁶ Branka Rešetar, *Matrimonial Property in Europe: A Link between Sociology and Family Law*, vol. 12.3 *ELECTRONIC JOURNAL OF COMPARATIVE LAW*, (December 2008), <<http://www.ejcl.org/123/art123-4.pdf>>.

¹⁷ GAMS, A., *Bračno i porodično imovinsko pravo (Matrimonial and Family Property Law)*, Naučna knjiga, Beograd 1966, p. 19-20; ANTOKOLSKAIA, M., "Harmonisation of Family Law in Europe: A Historical Perspective", Intersentia, Antwerp/Oxford, 2006, p. 240; and BRADLEY, D., *Convergence in Family Law: Mirrors, Transplants and Political Economy*, Oxford University Comparative Law Forum (2001), www.ouclf.iuscomp.org.

introduce the limited community of property after World War II. A number of other countries had also moved to some form of the limited community of property (e.g., France, Italy, Spain, Belgium, Portugal and Malta).¹⁸ In order to resolve the problem of inequality the deferred community of property systems were also developed in the Nordic region from 1920 to 1929. Such systems were later introduced in Germany, Austria, Greece and Switzerland.

(A) Object of Introduction of Community of Property in Europe

The core common aim of community of property regimes was to safeguard the economic protection of the married women in cases of divorce or the termination of marriage. In the traditional sense of marriage the male is considered to be a breadwinner and a female as housewife. Therefore with the aim to balance the position of women and men the community of property regimes was introduced and these concepts of deferred and limited communities of property law helped to achieve the objectives of present day matrimonial property law in Europe. According to the available literature, limited community of property system is preferred and considered as most suitable form of the regulation of matrimonial property relations in Europe.

The present notion of marriage today label marriage as only the traditional relationship with a male breadwinner and a housewife. The present notion of marriage also goes beyond with modern union of an equal division of labour inside and outside the marital home. The principle of equal sharing between spouses is based on the concepts of contribution. Whether it is direct contribution or indirect contribution the essence of justification for equal share of the marital property is the contribution of spouses.

The literature reveals the system of separation of property introduced by Russian with the aim to equalise the spouses in terms of matrimonial property in the first half of the 20th century was a failure. The system of separate matrimonial property had put women in a de facto unfair position as compared to men. This flaw was corrected and they replaced the above system with a limited form of community of property. This system was also widely adopted by other eastern European countries after World War II. The intention of legal matrimonial property system was to deal with the problem of de facto social inequality of men and women.

¹⁸ ANTOKOLSKAIA, M., (note 1), p. 456-461, See also Branka Rešetar, *Matrimonial Property in Europe: A Link between Sociology and Family Law*, vol. 12.3 ELECTRONIC JOURNAL OF COMPARATIVE LAW, (December 2008), <<http://www.ejcl.org/123/art123-4.pdf>>.

Community of property system which is prevailing today is the recognition of the value of indirect contributions regarding the acquisition and division of matrimonial property.

Accordingly in European nations the matrimonial property system is based on the concept of value of indirect contributions and its equalization with direct contributions in terms of the acquisition and division of matrimonial property. The system of community of property is implemented by means of legislation in some country while other countries leave that to the court. The unequal position of married women is corrected and the basic concept of equality is preserved in all the European legal system by introducing the system of community of property law. The European ideology of the family is male dominant where the husband is considered to be the main breadwinner and the wife is considered to be the primary carer of children and other dependants.

The modern concept of marriage is based on partnership which requires equality, autonomy and independence does not fully accepted in Europe today. Therefore, the concept of community of property or marital property seems to be the best suited system even today. Considering the de facto inequality between men and women and the European Union ideology of the family which is male dominant in nature, the concept of community of property is the best solution. Hence, the concept of community of property or marital property which was intended to be introduced for the protection of women is the common property system in Europe even today.

The author in conclusion points out from the research that the European spouses are striving for independent regulation of matrimonial property relations in terms of separation of property. Now the new trend emerges among the younger generations is that they want the division of housework and childbearing that may induce the modification of the classical ideology of the traditional family. The author says that this trend suggest the possibility of real equality of spouses. Though it is the dream, if this idea is materialised, the author ascertains that it will be possible to talk about marriage as a modern model of partnership which should be based on the independent positions of husband and wife, autonomy and negotiated division of labour inside and outside the home.

VI. Law and Rights of Women in India: A Review

Deere, C.D., Oduro, A.D., Swaminathan (2013), in the research article entitled as

*'Property rights and the gender distribution of wealth in Ecuador, Ghana and India'*¹⁹ explain the women's ability to earn wealth and their legal personality to own the property and manage the same. The surveys that collected 'individual level ownership data' in Ecuador, Ghana and the state of Karnataka in India, estimated married women's share on spousal wealth. The survey details related to how properties are owned within marriage and to different inheritance regimes and practices. According to the data, married women own 44 % in Ecuador, 19 % in Ghana, and 9 % of couple wealth is owned in in Karnataka. In contrast, Ghana and India are characterized by the separation of property regime. This regime does not recognize contribution of wives to the formation of marital property. Inheritance rules are strongly male biased. Reforming marital and inheritance regimes must remain a top priority in order to attain gender economic equality.

Varsha Chitnis and Danaya Wright(2007), in the research article entitled as '*The Legacy of Colonialism: Law and Women's Rights in India*'²⁰ speak about legal reforms carried out in colonial India affecting women's rights with regard to the widow's inheritance law along with the marriage reform laws. The authors found that the English law had been adopted to deal with the problems in India. The application of law of English to Indian situation without understanding the culture and history of India had either promoted the policy of British or unsatisfied the welfares of Indian women. According to the author, most of the reform movements towards women in India is understood from the viewpoint of male rulers of the colony and male elites of the native.

Pradeep Panda and Bina Agarwal (2005), in the article titled as '*Marital violence, human development and women's property status in India*'²¹ speak about the women's development as expansion of human capabilities that comes from freedom from domestic violence. In this paper the authors focus on an unexplored factor underlying women's risk of marital violence, namely, women's property status. Based on a household survey in Kerala (India), the authors assess the prevalence and correlates of both physical and psychological violence—long term and current. The researches by the authors reveal that women, who own

19 DEERE, C.D., ODURO, A.D., SWAMINATHAN, H., (et al), "Property Rights and the Gender Distribution of Wealth in Ecuador, Ghana and India". *J Econ Inequal* 11, 249–265 (2013). <https://doi.org/10.1007/s10888-013-9241-z>.

²⁰ VARSHA CHITNIS and DANAYA WRIGHT, "The Legacy of Colonialism: Law and Women's Rights in India", 64 *Wash. & Lee L. Rev.* 1315 (2007), <https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss4/3>.

²¹ PRADEEP PANDA & BINA AGARWAL, *Marital violence, human development and women's property status in India*, Elsevier (2005), <https://doi.org/10.1016/j.worlddev.2005.01.009>.

immovable property i.e. land or a house, are found to face a significantly lower risk of marital violence than women who does not own the right over the immovable property.

Roy K.C. and C.A Tisdell, (2002), in the article '*Property Rights in Women's Empowerment in rural India: a review*',²² examine the significance of property rights to women for their empowerment in rural India. The authors present the justification and argue for the need to grant property rights to women. The authors also discuss the difference is made between legal and customary rights. The authors say that the institutional impediments also make the customary rights ineffective. The authors explain the model of development process the rural women needed in some state in India. They support their view on the need for development of women through their field study conducted in rural West Bengal and Orissa. They conclude that the property right is one of main component that rural women in India need.

Moonis Shakeel and Vinky Sharma (2015)²³ in '*Right to Marital Property Act and Economics of Marriage*' speak about the concepts of marriage and reasons for the marriage life of the spouse and consequential effects of divorce in marriage. This article speaks about the equitable treatment of the spouse in marriage and recommends for the new legislation for the marital property rights and that the law needs to recognize a woman equal partner with their husband and her contribution to the household or the productive nature of work that women do.

Aarushi Bhatnagar (2018), in the research article entitled as '*Marital Property Law: A Prerequisites for Progressive Divorce Reforms in India*'²⁴ says that the women empowerment of married women can be achieved only by introducing marital property regime in India. The author further states that the present alimony and maintenance law is ineffective. There is no marital property law in India to ensure that women accumulate their due share in property during the tenure of marriage. The author concludes by arguing for the introduction of marital property regime in India which is the need of the hour to ensure the empowerment of the

²² ROY KC & TISDELL C, Property Rights in Women's Empowerment in rural India: a review, International Journal of Social Economics, Vol. 29 No. 4, pp. 315-334, (2002). <https://doi.org/10.1108/03068290210419870>.

²³ MOONIS SHAKEEL and VINKY SHARMA, *Right to Marital Property Act and Economics of Marriage*, IRJBM, www.irjbm.org, Volume.No.VIII,(2015),Issue,3,P.59,<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1057.6486&rep=rep1&type=pdf>.

²⁴ AARUSHI BHATNAGAR, *Marital Property Law: A Prerequisite for Progressive Divorce Reforms in India* (2018), <https://ssrn.com/abstract=3201944> or <http://dx.doi.org/10.2139/ssrn.3201944>.

married women in India.

VII. Conclusion

This research paper is essentially tries to examine the evolving jurisprudence on property rights of married women to marital/ community of property in India. In order to understand the struggle that is ahead in recognizing the contribution of women to the marital property, socio- legal development in protecting the property rights of married women is traced through this literature review. The marital property right of spouses is not regarded as an important issue in India. There is hardly any legislation or literature on the matrimonial property rights of women in India.

This literature review on Marital/ Community of Property would attempt to contribute to the literature that would evolve new jurisprudence on the marital property rights to married women in India. This literature review is attempted to trace out the historical origin and evolution of property rights to married women in India. This review would examine the level of recognition of these rights to married women at national and international level by reviewing literature available in India and in foreign countries. The main aim and scope of this literature review is to address the gaps in formulation and implementation of law relating to the Marital/Community of Property to married women within the area of family law/property law regime in India. This literature review would provide a better outlook in assessing the suitability and enforceability of the Marital/Community of Property Regime in India.