

The Matrimonial Home: Historic Origins of the Doctrine of Property Division and the Consequential Evolution in India and Abroad

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Abstract

*This paper examines the central role of matrimonial homes and the right to matrimonial homes and property, in the administration of Indian law and abroad. This has historically occurred at three levels. First, the protection of matrimonial residence is provided under the Domestic Violence Act of 2005, which provides independent relief to women by providing for protective injunctions against violence, dispossession from the matrimonial home, and alternate residence. Second, these protections were encapsulated under various acts like the Special Marriage Act of 1954, the Hindu Marriage Act of 1955 (Section 27), and the Hindu Adoptions and Maintenance Act of 1956, and the precedents under *Banoo Jal Daruwalla V. Jal C. Daruwalla* in 1963 and *Madhu Limaye vs the State of Maharashtra* in 1977. Third, the advancement of matrimonial home doctrine, in England and Wales, the United States and Canada, Australia and New Zealand, Singapore and Malaysia, and the countries administered by Islamic law. Among the central interests of matrimonial settlement laws was the 'need versus contribution' concept, in the division of property, and this paper uses knowledge developed about matrimonial homes to illustrate the way 'equitable, not equal' principles must be adopted in order to remedy the problem of poverty and destitution among divorced Indian women.*

Keywords: Divorce settlements, government agency, matrimonial household, property

INTRODUCTION

Right to Matrimonial Home and Property

The entitlement to reside in the matrimonial home and the right to monetary damages upon divorce are the two distinct rights that are implicit in a marriage contract. While maintenance of spouses is also considered an economic right, it falls within the category of a conditional right, which is contingent upon a person's need for or ability to sustain oneself. Therefore, a person who is capable of supporting oneself is not entitled to maintenance. In this context, the right to the division of assets, at the time of the termination of a marriage becomes a crucial economic right. While maintenance can be viewed as sustenance for basic survival (which the prevailing social conditions necessitate), matrimonial home and property can be construed as rights which would economically empower a woman and redeem her from the situation of perpetual dependency.

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As would be discussed in the latter part of the paper, during the latter half of the 20th century, when divorce laws became more lenient, various countries enacted laws which would economically empower women at the time of divorce. However, this issue seems to have escaped the attention of legislators and law reformers in our country, during the same period.

Possession privilege over the matrimonial home is a fundamental survival right for the majority of

married women in India, given the structure of familial relations is rather implicit within the contract of marriage itself. Nevertheless, since a specific statute did not protect this right, a husband could (at his desire) drive his wife out of the domestic residence. Lacking statutory protection, the right was contingent upon astute lawyering, sympathetic and sensitive judges, and stray innovative judicial precedents. Women's groups in India had been crusading for several decades for a specific law which would protect this right. This right was recently recognised statutorily under the Protection of Women from Domestic Violence Act, 2005 (PWDVA), under the concept of a shared household. However, the right provided under the PWDVA is of a limited nature and does not actually give the woman a title or an interest in the matrimonial property. Furthermore, it does not safeguard the woman from third-party claims (for instance, from the property owner). It is also difficult to enforce after the divorce has been finalized, since divorce leads to the severance of the marital bond, in most marriages.

To expand the extent of economic rights upon divorce, the idea of matrimonial property must be evolved. According to the prevalent opinion, because marriage is not considered an 'economic partnership', a woman does not inherit any subsequent rights to her husband's property upon marriage, and thus, she is not entitled to claim division of assets, at the time of the divorce proceedings. The only important factors for determining property claims are the title to the property and the financial contributions of the spouse [1]. As a consequence, the husband's property is deemed to be his exclusive possession. The Indian matrimonial statutes do not award any recognition to a woman's non-monetary contribution to the domestic household, during the continuation of the marriage. The contribution of the wife in creating family assets, through her unpaid labour by performing her domestic duties, is not considered as a relevant factor, during the process of determining her proportion of the family's assets. In this respect, India trails far behind most other countries which give recognition to the woman's contribution, in order to create a family asset and hence, have established precise criteria for calculating a woman's share of marital property. Since this is an emerging aspect of family law, it is essential to be discussed here for conceptual clarity, and to understand the legislative interventions therein.

PROTECTION OF MATRIMONIAL RESIDENCE: UNDER THE DOMESTIC VIOLENCE ACT, 2005

The Protection of Women from Domestic Abuse Act of 2005 [2] provides women with self-contained remedies by consenting to preventive injunctions against violence, expelling them from the matrimonial home, and making other accommodations accessible. Today, under the terms of the aforementioned act, even a victim of spousal violence may seek protection. The act also makes available provisions for claiming economic protection including maintenance from the spouse's property. The wide definition of domestic violence (physical, mental, economic, and sexual) encompasses into its scope the 'invisible' violence perpetrated against a sizable segment of women in Indian households and thus, authorizes them to claim protection from the courts. While the act does not specifically create any new rights which were not available to women prior to this legislature, through statutory or precedential laws, it provides a one-stop-shop kind of solution, through simple procedures for claiming rights, which were scattered under different statutes and legal provisions. The litigation forum is the magistrate's court which is being made increasingly accessible to women. In addition, the provisions of this act can be invoked in any proceedings which are pending in any other civil or criminal court in the country.

The campaigns by women's groups, prior to the enactment of the legislation and the media publicity it received, after the enactment, has contributed to raising awareness regarding a woman's right to live in her matrimonial household. Considering that the act establishes a formal recognition for the idea which was advanced through precedents, many more women are staking their claims to reside in their matrimonial home and for protection, are obtaining orders, restraining their husbands from dispossessing them, and causing any harm to them. A judge who is called upon to provide relief

to a woman, under the new act, is bound by not just the provisions of the act but also the ideological framework which underscores the enactment that a husband is bound to provide his wife, a roof over her head and that she has a right to live in that house, without having a constant fear of violence. After this enactment, it is no longer possible to hold that the matrimonial home, as the exclusive domain of the husband and that the woman has no right to reside in it, against her husband's wishes. It is also important to note here that even if the woman is not residing in the premises, it is possible for her to obtain an order of re-entry, along with a protection order, a residence order, and an order of maintenance, for herself and for her children.

HISTORICAL ORIGINS OF THE DOCTRINE OF PROPERTY DIVISION

Under the English common law tradition, the property of the spouses remained separate, and marriage did not create any specific rights in the property of the other spouse. In contrast, European family laws or the continental legal system accepted the theory of 'community of property'. Under this concept, marriage itself altered the rules of property ownership and maintenance, and gave both spouses, rights and interests in each other's property. All property obtained (during the duration of the marriage) by one of the other spouses, individually or jointly, was pooled together into a community of property over which both spouses acquired equal interests and rights of control. Upon initiation of proceedings for divorce, this property becomes divisible between the spouses on a commensurate basis. According to the legal principle of distinct communities of property, the property remained the separate property of the spouses (during the subsistence of marriage) and was thrown into a common pool only at the time of divorce, when it became divisible. Under the separate property regime, the marriage had no real impact on the title or rights to the property, and assets were regulated by standard property law principles. As a consequence, the property did not become separable upon divorce.

The woman's financial claim was limited only to maintenance and, according to the recent legislation, to a right of residence in the dwelling house. The introduction of various statutory provisions for smooth divorces, led to severe economic hardships for women, as they lost their bargaining power for negotiating divorce settlements. Earlier, in fault-based divorces, women could successfully defend themselves against frivolous litigation (initiated by their husbands), as the husbands were mandated by law to prove the allegations brought forward by their wives, and if they failed, their petition was likely to be dismissed. In this context, the husband became ready to bargain, in order to obtain the wife's consent for divorce, and during these negotiations, the spouses would undertake some pecuniary concessions as part of their divorce agreements. With the emergence of the no-fault divorce paradigm, women's reach over this authority vanished, as husbands did not have to prove any matrimonial fault, but could merely plead irretrievable breakdown of marital relations. This created a great deal of suffering for women, in terms of their right of residence and the right to acquire matrimonial assets, during divorce proceedings.

Research studies have time and again confirmed that divorce has a major detrimental effect on the basic standard of living of women. The reason for the differential is primarily that the earning capacity of a divorced woman is less than that of a man. They are more likely to have taken a sabbatical from their occupations to have children, generating less income compared to their male counterparts, and are less inclined to return to (or remain in) full-time work to compensate for the loss if and when their relationship ends. Even after their children have reached adolescence, they are likely to remain economically vulnerable because they are not able to save sufficient funds for their retirement. Thus, beginning in the 1970s, a larger emphasis has been placed on the financial impact of divorce for women and their children. This has led to the introduction of the notion of 'division of property upon divorce' to ensure justice and equity to women. This doctrine has been introduced within the family laws of several countries which have adopted different structures of property distribution. While some depend upon the premise of equality, others function from the premise of dependency. The primary question, which arises while arbitrating over property disputes is, what essentially constitutes matrimonial property and the rules which govern such a division of property.

The four fundamental principles that are cited while establishing the guidelines for property settlement in divorce are as follows: 'Title, Fault, Need, and Contribution'. Title describes legal ownership and this concept has benefitted the husband, as he usually held the title to the property acquired, during the marriage. The notion of 'matrimonial fault' has been used to deny women, accused of cruelty or adultery, of their entitlements under marriage. Maintenance, an individual lump sum payment, or the opportunity to re-enter the matrimonial residence, was based on the woman's dependent status (within marriage) due to which the need for providing economic support was recognized. The 'theory of contribution' has been evolved in order to provide recognition to the non-monetary contribution of women to the household, within the background of a promotion of equality. While 'title' has stopped to be a determinative factor, under most matrimonial laws in Western countries, 'fault' is still relevant in deriving a conceptual framework, for developing and implementing a variety of distribution variables. The arrangement of the four classifications is frequently used to suggest a transition from the straightforward focus on title in common law to a more nuanced understanding of the distribution system's functions and operations.

PROGRESSION OF THE MATRIMONIAL HOME DOCTRINE IN INDIA

The deserted wife's right in equity was being formulated around the time when the Hindu Marriage Act was being enacted. However, this crusade did not affect the law-making process in India. This becomes clearer, when we examine the provisions of the two statutes which were enacted around the same time: The Hindu Marriage Act of 1955 and The Special Marriage Act of 1954. These laws were formulated based on the rights present earlier, under the English law and were confined only to the traditional matrimonial reliefs such as divorce, separation, annulment of marriage, etc., even though the English law had expanded on from there. 'Section 27 of the Hindu Marriage Act' includes references to property but undertakes so within the framework of a Hindu woman's rights over ceremonial offerings received jointly by the spouses at the time of marriage. The section's language is as follows: "property received at or around the time of matrimonial ceremony, that might belong equally to the husband and wife". It is possible to expand the scope of this provision to matrimonial properties acquired after the marriage, as was decided by the Supreme Court in *B. P. Achala Anand v. S. Appi Reddy*, 2005, 3 SCC 313. The court observed that it is an extrapolation and it did not undermine the need for a separate law, regarding distribution of matrimonial property on divorce.

Over the years, it has become the established norm that on divorce, women are entitled to only a minimum amount of maintenance which is clearly insufficient to procure a separate residential premises for themselves and the children present, under their custody. Women, who have secured a job are no longer entitled to a maintenance even though during the subsistence of marriage, they may have opted out of paid employment, in order to support their family and to raise the progeny. A decree of divorce disentitles a woman of her inherent right to a shelter or a matrimonial residence. Therefore, this becomes a compelling reason for women not to opt for divorce, even in situations of excessive domestic violence. The fear of being rendered shelterless proves to be overwhelming especially for women in the urban setting where housing rates are extravagant and beyond the access of an ordinary middle or low-income group person, especially for one with dependants (grandparents, children, etc.).

The 'Hindu Adoptions and Maintenance Act of 1956' is the primary statute that recognises women's right to live in the matrimonial household where maintenance is described as being inclusive of a provision of residence [3]. However, habitation does not necessarily correspond to the marital dwelling. Since residence comes from within the ambit of maintenance, the courts are of the viewpoint that an enhanced maintenance would compensate the woman for the loss of shelter. Two legal concepts related to property are important in disputes over the matrimonial home, 'ownership and possession'. While ownership implies legal title, the courts are bound to protect the women's right to shelter by bringing in the principle of possession. The courts have the authority to preserve this right, taking into account the contribution of women in a household unit, both economically and through services rendered by performing domestic duties. Though the right is not defined under the

prevailing matrimonial statutes, (due to escalating property prices) 'injunction against dispossession' is materializing as a highly contested issue in matters of matrimonial litigation.

The earlier established notion was that since the title is in the name of the husband or his family members (like father-in-law, mother-in-law, brother-in-law, etc.), it is the sole privilege of the person holding the title, to allow residential rights in these premises [4]. The contract of marriage did not include within itself, the woman's right in equity to stay in these premises, and it did not protect her against dispossession. Regardless of the gains made in other areas, the notion that 'a man is the master of his home' seemed to prevail, until recently. The fact that most women support the matrimonial home, either through their own earnings or through their unpaid labour, was overlooked, while determining the right of residence and the entitlement of property, in respect of the matrimonial household. However gradually, this provision paved way to a notion which was similar to the 'constructive trust' under English law and the courts began to admit the women's right of residence. For most middle- and lower-class families, the dwelling house (or matrimonial home) is their primary asset (in terms of land property). In urban centres, with ever-increasing property prices, the right to the dwelling home becomes an important economic issue in matrimonial litigation. In recognition of the same, the courts tentatively and gradually started awarding recognition to women's right to matrimonial residence.

In one of the earliest cases on the issue of matrimonial homes, *Banoo Jal Daruwalla v. Jal C. Daruwalla* 1963 AIR 1964 Bom 124, it was held that the court does not take into consideration, questions of titles to properties and questions arising between a husband and wife, as co-owners of properties, except in cases of joint properties, presented at the time of marriage. In consideration of all other properties, owned (or alleged to be owned) as co-owners between husband and wife, the lawsuit would be dealt with in accordance with customary property law. However, the decision made reference to a wife's freedom to participate in the matrimonial household by relying upon the observations of Lord Denning, in *Bendall v. McWhirter*, 1952, 2 QB 466, that it is the duty of the court to guarantee, that the wife is not thrown out of the matrimonial home. Since it was not conceivable for the wife to reside in the matrimonial home, the wife was awarded ₹ 275 per month as maintenance, under the Matrimonial Homes Act of 1967.

In 1977, in the landmark decision of *Madhu Limaye vs the State of Maharashtra* 1978, AIR 1978 SCR (1) 749, the Bombay High Court introduced the concept of 'protective injunctions' to protect women's rights and held that, while adjudicating on a matrimonial decree, the court has the requisite power to grant an injunction, restraining the husband from invading the matrimonial home. In this case, the premises belonged to the wife, who was estranged, and the injunction was granted against the husband, restraining him from entering her property. After facing extreme physical cruelty and embarrassment, the wife filed a petition for judicial separation and for an injunction, restraining the husband from entering the matrimonial home. While granting her judicial separation, the court held that a woman, who wanted to be economically independent, would be fearful of living with a husband, who assaults her violently and accuses her of having extramarital connections with her co-workers.

THE ADVANCEMENT OF THE MATRIMONIAL PROPERTY DISTRIBUTION DOCTRINE IN VARIOUS COUNTRIES

England and Wales

After the introduction of the Divorce Reform Act of 1969 [5] (breakdown theory), there was an apprehension that various innocent wives, divorced against their will, would be left with insufficient financial support. This resulted in the 'Matrimonial Proceedings and Property Act of 1970' being approved. The 'Matrimonial Homes and Property Act of 1981' modified this act, which provided the divorce courts, the required statutory power to order the sale of any of the spouses' property. Most significantly, the Matrimonial and Family Proceedings Act of 1984 expanded the court's jurisdiction by authorising it to implement a clean break (a settlement between the spouses), with no continuing

financial ties) upon a spouse and changed the way the powers were to be exercised. Two of the most substantial changes were:

1. To compel the court in determining what orders should be implemented to prioritise the welfare of any minor child (under the legal age of 18), in the family; and,
2. To impose a requirement on the court to evaluate whether it is necessary to utilise its powers in order to terminate each party's financial obligations immediately or as soon as it seems practicable.

While this discussion concisely summarizes the position of statutory law in England and Wales, the following landmark case shows how the law of division of property has progressed in England. The concept of division of property was popularized in a very tentative manner, during the 1970s, in the case of *Wachtel v. Wachtel* 1973 CA 8 Feb 1973 EWCA Civ 10 Fam 72, when Lord Denning introduced the 'one-third rule of property distribution' as a justifiable starting point. He abstained from applying the rule of equal distribution, on the basis that it may be considered valid in future but is not appropriate in the present case. Although he did not state that this rule should act as a presumption in subsequent cases or not, the courts have frequently applied this approach in deciding petitions for distribution of matrimonial assets.

United States and Canada

In the United States and Canada, family laws are state or provincial laws, and therefore, each state or province has the autonomy to enact its own laws. The states follow the practices of the English common law or the Continental or European law, based upon the history of their colonization. The states/provinces ensue the common law tradition of English law, started adopting the continental model of division of property around the 1970s, on the basis of equality. With the advent of no-fault divorce concept, it became important to move away from the earlier concept of "maintenance", which indicated a long-standing dependency on the theory of a clean break, by distributing the assets amassed throughout the marriage's duration.

Different jurisdictions in the United States adhere to a variety of distinct distribution determinants, which are often acknowledged in common law legislation or judicial decisions in conjunction with broad legislative directives. These factors include:

1. The duration of the marriage;
2. Each party's property is brought forward at the time of marriage;
3. Each party's contribution to the marriage, with a reasonable economic worth, is to be compensated for commitments of domestic duties and child-care services provided;
4. Assistance of one side or either party to the other party's learning, experience, or greater earning potential of the other;
5. Whether one of the parties has substantial assets that are not subject to judicial partition by the court;
6. The parties' ages, as well as their cognitive and psychosocial health at the time of partition;
7. Earning potential of each party, taking into consideration educational achievements, employment, work experience, job abilities, and duration of job vacancy in employment;
8. Custodial accountability for children;
9. The time and expenditure necessary to achieve an elementary education or training that enables the party to aspire to a self-supporting quality of living that is fairly equivalent to that experienced by the parties throughout the duration of their marriage.

Australia and New Zealand

Australia and New Zealand both belong to the common law tradition, but the legal arrangements for the distribution of property vary greatly, between these two countries. Australia follows the common law doctrine for family related issues, which is basically non-interventionist, during the subsistence of marriage. Marriage has no legal bearing on a spouse's property ownership. Any asset owned before

marriage or acquired during the marriage, remains the property of the owner, with predetermining shares on death or divorce, in the Anglo-Australian legal system. The Family Law Act (FLA) enacted in 1975 [6], contains no definition of what is or is not matrimonial property, other than its unhelpful reference to property, to which the parties are entitled at the moment of divorce, in reversion divorce.

In New Zealand, married couples were attended to under the equal-sharing rules, in the Matrimonial Property Act of 1976 [7]. The act distinguished property under two headings: 'Matrimonial and Separate' and provided that property would be divided equally. The act further classified matrimonial inheritance:

The family home and chattels (including the furniture and family car) would be divided equally unless:

1. The marriage was valid for a period less than three years (short duration marriage);
2. Due to unforeseen circumstances, equal sharing would have been irreconcilable with the principles of equality and justice;
3. In which case, the home and chattels were distributed, according to the parties' beneficence, to the marriage partnership.

Separate property also included all the properties which were acquired out of individual properties and the earnings of selling any such separate property. However, if there was an increase in the value of one party's separate property or any gains were enjoyed from the said property, since matrimonial property was undertaken, the profits were regarded as a matrimonial asset rather than separate property.

Singapore and Malaysia

The Republic of Singapore and the Federation of Malaysia were administratively connected in the past and thus, share a common legal tradition, which was inherited from the British. Singapore officially became the State of Singapore in 1959, after Malaysia gained independence in 1957. It had internal self-government powers, however, the authorities of foreign affairs and security remained under British supervision. In 1965, Singapore disassociated itself from Britain and emerged as an independent state. One of the first legislations undertaken was the enactment of the 'Women's Charter' in 1961 [8], which contributed towards the empowerment of women. In Malaysia, conversely, the 'Law Reform (Marriage and Divorce) Act of 1976' was used to accomplish family law amendments [9].

The laws pertaining to marriage and family relations are present in 'Section 46 of the Women's Charter', which reads as follows:

1. Following the solemnization of marriage, the husband and wife are jointly obligated to work together in defending the union's interests and caring for/providing for the children, under the confirmation of separation of the spouses;
2. The husband and wife ought to be free to participate in various businesses, occupations, or community engagements as they see fit;
3. The woman should be entitled to use her maiden name and surname independently;
4. In matters pertaining to the management of the married family, the husband and wife should have equal rights in the matrimonial household.

This provision was acquired from 'Section 159 of the Swiss Civil Code' and it postulates a moral framework required for regulation of matrimonial relationships in Singapore. The second provision of Section 46(4), which is a coherent progression, consists of the provisions for matrimonial property. The aspect of 'ownership and management of the property' had to be removed, as it was opposed to the ideas of justice and equity. However, in 1996, the Women's Charter was amended to include Section 112, which authorised courts to impose a reasonable and equitable division of marital assets.

Countries Administered by Islamic Law

In countries administered by Islamic laws, marital assets are generally divided inequitably, with women acquiring the smaller share in the property. Such inequitable division results from the undervaluing of women's contributions, in two distinct ways. First, some countries (for example, Iran) link the division of marital property, with 'fault' rather than 'comparative contribution' of each spouse, and if the wife is accepted to be responsible for the divorce, she may be compelled to surrender her portion of property. By conditionally establishing a woman's claim to her portion of matrimonial property, this system is unable to identify a woman's right to her share of matrimonial assets as absolute and they presume that, only a man's entitlement to such possession is absolute and unconditional. Second, when dividing marital assets among the spouses, the courts and others tend to pay attention to women's direct financial contributions through wages and thus, attempt to undervalue or fail to recognize altogether, their contributions through unpaid domestic labour.

In some legal arrangements while granting divorce, the courts adjudicating on their own discretion may conclude the division of matrimonial property unequally, for example, in countries like the Central Asian Republics, Fiji, and Singapore. However, in other countries (for example, Cameroon, the Philippines, Senegal, and Iran), the assets are divided according to the spouses' chosen matrimonial property alternative (joint or separate).

In Fiji, jobless wives are not recognized as having positively contributed to the marriage. Senegal's Code de la Famille [10] recognizes a woman's ownership of assets which she purchased through her paid line of work. In such systems, the husbands get an advantage from the wife's contribution of her time to the family.

In Malaysia, even assets acquired individually by one spouse may be divided, as long as the party, which purchased the asset, draws a greater share. Although, this may seem just and equitable in theory, it allows a judge to undervalue a woman's contribution and appropriately, bestow upon the wife a meagre ownership share of the matrimonial property. Nevertheless, a woman's household and familial efforts are sometimes taken into consideration, in countries such as Iran, Malaysia, and Singapore.

In Singapore, after the 1999 amendments to the "Administration of Muslim Law Act of 1966 (ADMLA)" [11], the definition of matrimonial assets was formulated and the factors which the courts could take into consideration, while adjudicating on the division of these assets, was also explained. The factors that are to be taken into consideration are under 'Section 52(8) (a) of ADMLA':

1. The proportion to which each spouse contributed money, estate, or manpower toward obtaining, expanding, or preserving the property;
2. Any unsettled debt or obligation incurred or undertaken by either spouse, for their joint interest or in the interest of any child of the marriage;
3. The requirements of the children, if any;
4. The proportion to which each spouse participates in family's welfare, whether via household duties or caregiving for the household or any disabled or elderly relation or dependant of either of the spouses;
5. Any agreement between the spouses, concerned with the ownership and distribution of the property, made in deliberation of divorce;
6. Any period of rent-free profession or other benefit, enjoyed by one spouse in the matrimonial home, to the exclusion of the other spouse;
7. The giving of benefit or support by one spouse to the other spouse (whether or not of a material kind), including the giving of benefit or support, which aids the other spouse, in the discharge of his or her occupation or business;
8. Income, property, earning ability, and other financial resources that either spouse has or is anticipated to possess in the near future;

9. The financial requirements, duties, and liabilities that each spouse has or is anticipated to possess in the near future;
10. The family's standard of living preceding the marriage's irreparable breakdown between the spouses;
11. Both of the spouses' ages and the duration of the marriage (short-term marriage).

CONCLUSION: 'NEED VERSUS CONTRIBUTION' IN MATRIMONIAL HOME DIVISION

When the 'no-fault divorce' doctrine and the partnership paradigm of marriage collide, based on equality was popularized, it was felt that the earlier doctrine of 'title' as well as 'need' and 'fault', would cease to have any relevance while determining matrimonial settlements. The preceding status-based model of marriage was resurrected by a socially progressive or equality model, in which spouses' responsibility ideally ended with marriage and any persistent economic obligations, such as payment of existing marital debts or child support, were viewed as shared and equal responsibilities. However, since marriage is not a partnership between equals, these presumptions end up being unjust and inequitable to women, who do not confirm to this 'formula' of an ideal partnership model. The transformation from a rigorous common law system based on 'title' to a contemporary concept of partnership based on equally valued (but qualitatively different) responsibilities in a marriage cannot be expected to benefit all kinds of women equally. It is fallacious to presume that the conditions that gave rise to the justifications for a distribution system based on 'need' no longer exist. Nonetheless, the socioeconomic realities of divorced women and children are largely neglected, with the emphasis instead being placed on contribution as the key equitable notion between the concerned spouses.

The commitment to the equality paradigm, as embodied in the partnership analogy, as the efficient assessment instrument for guiding divorce legislation prevents us from confronting the truth that women's and children's interests in our society have continued to be undervalued and disregarded. Women in many Western countries, where the 'equality' model has been adopted and property is distributed based on contribution, may suffer due to the same. In India, the primary deciding factor continues to be 'need', which is translated into the traditional remedy of maintenance claims, which is to provide a 'basic minimal survival level'. Research studies indicate that desertion and divorce renders a large number of women destitute. In order to remedy this, property settlements have to be incorporated into matrimonial laws, through legislative reforms. The reforms would have to take into account both, 'need and contribution', so that the problem faced by women in Western countries is not replicated here in India. The principles have to also take into account, specific Indian realities, such as the prevalence of joint families as opposed to the nuclear family structure, widespread in the West, as well as the legal ramifications of a Hindu joint family property. The principles undertaken have to be not just 'equal, but also equitable and just', which would remedy the obstacle of poverty and destitution among divorced Indian women.

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