



ISSN: 3049-2017
IJMH 2025; 2(2): 77-80
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www.themultijournal.com

Received: 11-04-2025
Accepted: 28-04-2025
Publish : 30-04-2025

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Women's Legal Status in Dharmaśāstra Tradition: A Study of Divorce, Remarriage, and Associated Rights

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Abstract:

The legal status of women has been an important subject in the Dharmaśāstra tradition. Although Hindu marriage was generally regarded as a sacred and enduring union, Dharmaśāstra literature contains several provisions that address situations in which marital relationships became difficult or impossible to maintain. The present study examines the legal position of women with special reference to divorce, remarriage, and associated rights in Dharmaśāstra texts. It explores the views of major legal authorities such as Manu, Yājñavalkya, Nārada, Parāśara, and Kauṭilya, together with references found in the Vedas and later Smṛti literature. The study shows that while formal divorce was not commonly recognized in the modern sense, various legal mechanisms existed to protect women in cases of abandonment, desertion, widowhood, cruelty, impotence, and other exceptional circumstances. The Dharmaśāstra tradition also acknowledged remarriage under specific conditions and developed the concept of Punarbhū to describe women entering a subsequent marriage. Furthermore, the texts discuss women's rights relating to maintenance, property, inheritance, adoption, and Strīdhana. The paper argues that the legal status of women in Dharmaśāstra was more nuanced than often assumed. While the system remained rooted in a patriarchal social structure, it nevertheless provided several safeguards intended to ensure social stability and economic protection. A comparison with modern Hindu law demonstrates both continuity and transformation in the development of women's legal rights. The study contributes to a deeper understanding of women's position within the classical Hindu legal tradition and its continuing relevance in contemporary legal discourse.

Keywords:

Dharmaśāstra, Women's Rights, Divorce, Remarriage, Punarbhū, Widow Remarriage, Strīdhana, Inheritance, Maintenance, Hindu Law

Introduction:

The position of women in ancient Indian society has long attracted the attention of scholars of law, religion, and social history. Among the various sources that discuss women's status, the Dharmaśāstra literature occupies a particularly important place. These texts sought to regulate social life by prescribing duties, rights, and legal norms for different members of society. As marriage formed the foundation of family life, considerable attention was devoted to defining the rights and responsibilities of husbands and wives.

A common assumption is that Dharmaśāstra completely denied women any legal remedy in cases of marital hardship. However, a closer examination of the textual evidence presents a more complex picture. Although marriage was generally regarded as a sacrament (saṃskāra) and not merely a civil contract, the legal authorities recognized that circumstances such as desertion, widowhood, impotence, cruelty, and prolonged absence could create serious difficulties for women. Consequently, several Dharmaśāstra texts developed rules concerning remarriage, maintenance, inheritance, property rights, and other legal protections.

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The present study investigates women's legal status in relation to divorce, remarriage, and associated rights. Special attention is given to the views of Manu, Yājñavalkya, Nārada, Parāśara, and Kauṭilya, whose legal discussions significantly shaped the Hindu legal tradition. The study also considers the relationship between classical Dharmaśāstra provisions and modern Hindu legislation. By examining these sources together, the paper seeks to present a balanced understanding of women's legal position and to highlight the continuity and transformation of legal ideas concerning women across different periods of Indian history.

1. Concept of Divorce in Dharmaśāstra Tradition

Marriage (vivāha) was regarded in the Dharmaśāstra tradition as a sacred union and an important saṃskāra. Unlike modern legal systems, classical Hindu law did not generally recognize divorce as a formal legal institution. The marital bond was expected to continue throughout life and was closely connected with religious duties, family continuity, and social order.

Nevertheless, Dharmaśāstra texts were not entirely silent regarding marital breakdown. Several legal authorities discuss circumstances in which a woman could separate from her husband or enter another marriage. Conditions such as the husband's disappearance, death, renunciation of worldly life, impotence, loss of caste, or immoral conduct are mentioned as situations requiring legal remedies.¹ These provisions indicate that the jurists were aware of practical social problems and attempted to address them within the framework of Dharma.

Among the classical authorities, Kauṭilya adopts a more legal and pragmatic approach. The Arthaśāstra recognizes separation arising from mutual hostility and provides rules regarding compensation, maintenance, and the return of property.² Similarly, Yājñavalkya states that a woman abandoned without fault should receive maintenance and protection.³

Thus, although Dharmaśāstra did not develop a formal concept of divorce comparable to modern Hindu law, it acknowledged situations in which marital relations could effectively cease. The legal remedies prescribed by the Smṛtis reveal an effort to protect women from social and economic hardship while preserving the sanctity of marriage as a religious institution.

2. Remarriage Rights of Women

Although marriage was regarded as a sacred and enduring institution in the Dharmaśāstra tradition, remarriage was permitted under certain exceptional circumstances. The legal texts acknowledge that a woman could face difficulties when her husband died, disappeared, became an ascetic, was impotent, or lost his social standing. To protect women from social and economic insecurity, some Dharmaśāstra authorities allowed remarriage in such situations.

Nārada clearly states that a woman may remarry if her husband is missing, dead, has renounced worldly life, is impotent, or has become degraded from his caste status.⁴ Parāśara accepts a similar position and permits remarriage under these circumstances.⁵ The roots of this practice may be traced to Vedic literature. The Ṛgveda contains references that are commonly interpreted as supporting widow remarriage, while the Atharvaveda also reflects the continuation of family life through a subsequent marriage.⁶ Kauṭilya adopts a practical legal approach and permits remarriage when the husband remains absent for a prolonged period or fails to fulfil his marital responsibilities.⁷ These provisions demonstrate that Dharmaśāstra did not entirely prohibit remarriage but recognized it as a legitimate remedy in exceptional cases. Such rules reveal an attempt to balance the sanctity of marriage with the welfare and protection of women.

3. Types of Punarbhū and Forms of Remarriage

The concept of Punarbhū occupies an important place in Dharmaśāstra discussions on remarriage. The term generally refers to a woman who enters a subsequent marriage after the dissolution or failure of a previous marital relationship. The recognition of Punarbhū demonstrates that remarriage was a known social reality and that Dharmaśāstra jurists attempted to regulate it within the legal framework of society.

Different Smṛti writers define Punarbhū in varying ways. Baudhāyana refers to a woman who leaves one husband and enters into a relationship with another as a Punarbhū.⁸ Manu also discusses women who contract a second marriage and recognizes the legal consequences arising from such unions.⁹ Yājñavalkya adopts a comparatively broader view and acknowledges remarriage irrespective of whether the first marriage had been consummated.¹⁰ Nārada further elaborates the concept and classifies different situations in which a woman may become a Punarbhū.¹¹

The legal status of children born from such marriages was also considered. Dharmaśāstra texts recognize the Paunarbhava son, that is, the son born of a remarried woman. Although his status was generally lower than that of the Aurasa son, he nevertheless enjoyed legal recognition within the system of inheritance and family relations.¹²

The discussion of Punarbhū indicates that Dharmaśāstra did not entirely reject remarriage. Rather, it sought to regulate subsequent marriages and define the legal rights and responsibilities arising from them. This reflects a pragmatic approach aimed at maintaining social order while addressing the realities of human life.

4. Property, Inheritance, Maintenance, and Strīdhana Rights

The Dharmaśāstra tradition contains several provisions intended to protect the economic interests of women,

particularly in situations involving separation, widowhood, or remarriage. One of the most important concepts in this regard is *Strīdhana*, which refers to property belonging exclusively to a woman. Classical jurists recognized her right to possess and enjoy such property, and some authorities prescribed its restoration if it had been wrongfully withheld.¹³

Maintenance was another significant legal safeguard. *Kautilya* states that a wife who was deserted or neglected by her husband was entitled to financial support and compensation.¹⁴ Similarly, *Yājñavalkya* provides that a woman abandoned without fault should receive maintenance and protection from economic hardship.¹⁵ These provisions reveal an effort to ensure the welfare of women when marital relationships deteriorated.

The *Dharmaśāstra* texts also discuss inheritance rights. Although the son was generally regarded as the principal heir, daughters and widows were not entirely excluded from succession. *Manusmṛti* acknowledges the importance of daughters in matters of inheritance, while *Yājñavalkya* grants inheritance rights to wives and daughters in the absence of sons.¹⁶ *Nārada* likewise recognizes the daughter as an heir after the widow.¹⁷

These legal provisions demonstrate that *Dharmaśāstra* jurists were concerned not only with regulating marriage but also with protecting women's economic security. Through maintenance, inheritance, and *Strīdhana*, the legal tradition sought to provide women with a degree of financial stability within the family and society.

5. Adoption Rights and Contemporary Relevance

The legal status of women in relation to adoption underwent significant changes from the classical *Dharmaśāstra* period to modern Hindu law. Traditional legal literature generally viewed adoption as a function connected with lineage preservation and religious obligations. Consequently, a woman's independent authority in matters of adoption was often limited, and such decisions were commonly associated with the husband or the husband's family.¹⁸

Nevertheless, *Dharmaśāstra* discussions reveal concern for the continuation of family lineage and the protection of widows. In later legal developments, widows were granted greater authority to participate in adoption under specific circumstances. The legal position of remarried women, however, often differed, as remarriage could affect rights connected with the former husband's lineage.¹⁹

Modern Hindu legislation substantially expanded women's legal rights. The Hindu Adoption and Maintenance Act, 1956, recognizes the right of a divorced woman to adopt a child in her own capacity and grants mothers' legal authority in matters of adoption under prescribed conditions.²⁰ Such provisions represent a major departure

from many earlier restrictions found in traditional legal practice.

The study of divorce, remarriage, inheritance, maintenance, *Strīdhana*, and adoption demonstrates that women's legal status in *Dharmaśāstra* was neither wholly restrictive nor completely egalitarian. While the system operated within a patriarchal social framework, it nevertheless developed several mechanisms to protect women from social and economic vulnerability. The continuing evolution of Hindu law reflects both the influence of the *Dharmaśāstra* tradition and the changing needs of modern society.

Conclusion

The *Dharmaśāstra* tradition presents a complex and nuanced understanding of women's legal status in matters relating to divorce, remarriage, property, inheritance, maintenance, and adoption. Although marriage was generally regarded as a sacred and lifelong institution, the legal texts recognized that exceptional circumstances could arise in which women required protection and legal remedies. Consequently, authorities such as *Nārada*, *Yājñavalkya*, *Parāśara*, and *Kautilya* developed provisions addressing issues of abandonment, widowhood, impotence, prolonged absence of the husband, and other situations affecting marital life.

The study demonstrates that while formal divorce in the modern sense was largely absent from the *Dharmaśāstra* framework, mechanisms existed to safeguard women against social and economic insecurity. The recognition of remarriage under specific conditions and the concept of *Punarbhū* reveal that the jurists attempted to accommodate social realities within the broader framework of *Dharma*. Similarly, the provisions concerning *Strīdhana*, maintenance, inheritance, and adoption illustrate an effort to ensure a measure of economic protection for women.

At the same time, these rights operated within a predominantly patriarchal social structure that often placed limitations on women's legal autonomy. Modern Hindu legislation has significantly expanded women's rights and introduced principles of equality that were not fully developed in the classical texts. Nevertheless, many modern legal reforms may be understood as evolving from concerns already present in the *Dharmaśāstra* tradition. Therefore, the study of these texts remains valuable for understanding both the historical development of Hindu law and the continuing discourse on women's rights in India.

Footnotes

1. *Nāradasmṛti* XII.97–101; *Parāśarasmṛti* IV.30–31.
2. *Kautilīya Arthaśāstra* III.3.10.
3. *Yājñavalkyasmṛti* I.74–76.
4. *Nāradasmṛti* XII.97.
5. *Parāśarasmṛti* IV.30–31.

6. Ṛgveda X.18.8; Atharvaveda IX.5.27–28.
7. Kauṭīliya Arthaśāstra III.2.29.
8. Baudhāyana Dharmasūtra II.2.3.42–44.
9. Manusmṛti IX.175–176.
10. Yājñavalkyasmṛti I.67.
11. Nāradaśmṛti XII.46–48.
12. Manusmṛti IX.175; Yājñavalkyasmṛti II.128.
13. Kātyāyana Smṛti 908.
14. Kauṭīliya Arthaśāstra III.2.26–27.
15. Yājñavalkyasmṛti I.74–76.
16. Manusmṛti IX.130; Yājñavalkyasmṛti II.137–139.
17. Nāradaśmṛti XIII.50.
18. Manusmṛti IX.137–138; Yājñavalkyasmṛti II.130–135.
19. P. V. Kane, History of Dharmasāstra, Vol. II, Part I.
20. Hindu Adoption and Maintenance Act, 1956, Sections 8, 9(3), and 14(4).

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10. Yājñavalkya. Yājñavalkyasmṛti. Translated by Umesh Chandra Pandey, Chaukhambha Sanskrit Pratishthan, 2006.