

# The Study on Validity of Legislative Stand on Doctrine of Pious Obligation over Married Daughters in Indian Hindu Families

B. Leelesh Sundaram<sup>1</sup>, Priyanka<sup>2</sup>

<sup>1</sup>Saveetha School of Law, Saveetha Institute of Medical and Technical, Sciences, (SIMATS) Saveetha University, Chennai 77, India

<sup>2</sup>Assistant Professor, Saveetha School Of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS) Saveetha University, Chennai.77, India

**Abstract:** Ancient Indian literature unique concept of Pious Obligation evolved as a legal right from a moral obligation, thus the perusal of Vedic doctrines in Hindu law through modern developments gained a legal codified recognition to Pious Obligation doctrine, obligation or commitment of a youngster to repay the obligations of the lapsed father is revived upon an exceptional doctrine. Feminist movements which struck the economic circle to a great extent which transformed women as a working class in the general public encouraged for revolution in property rights, the revision to Hindu Succession Act, empowered the women to wind up as a coparcener like a male in familial property and exclusion of the doctrine of pious obligation which was considered as essential change. Though the legislative stand on the doctrine of pious obligation under the Hindu Succession Act is widely welcomed by the feminist groups a lacunae prevails with respect to the intelligible differentia of such intent and thus an ambiguity prevails when it comes to the validity, thus this research is carried out. By virtue of non probability conveyance sampling having sample size of 1573 it could be found out that the exclusion of doctrine of pious obligation under the Hindu Succession Act is valid. The study recommends that a uniform civil code may be brought into being for this purpose and the ambiguity may be addressed as a whole in the legislations.

**Keywords:** uniform civil code, Hindu Succession Act, doctrine of pious obligation, validity, Hindu law

## 1. Introduction

The notion Hindu religion which is solely practiced in India which is notable for its time old religious customs and traditions, Property benefits and the part of division had their own need and stand in the schools of thought, the plan of which contradicted each other principle of the doctrine (Monier-Williams 1887). In Mitakshara school of thought the Sapinda relationship is of blood, and the benefit to Hindu joint family property is by birth of a son instantly. The arrangement of devolution of property is by survivorship (Monier-Williams 1887; Banerjee 1879). The offer of coparcener right in the joint family property isn't clear or ascertainable, as their offers are fluctuating with births and passing overs (Agarwal & Institute of Development Studies (Brighton, England) 2002). A women could never transform into a coparcener neither single or married or bereft of a lapsed coparcener can maintain segment of her loved one's offer against his siblings (Anand 1996). Though in Dayabhaga School relies upon the code Jimutavahana, Inheritance relies upon the standard of other advantage like pinda offerers, this school pursued the principle in which the benefit to Hindu joint family property isn't by birth anyway just on the downfall of the father (Lubin et al. 2010). These troubles about the property inheritance and succession won until the cutting edge concept for contemporary society came into force which gave a legitimate enforcement to Dayabhaga school which had a straightforward plan and perceived women also has a coparcener (Ambedkar 1979).

By ideals of Mitakshara school of thought son were esteemed to satisfy the pious obligation method connected for both profound and mainstream obligations, including monetary obligations are incurred upon the son (Thapar 1978). Statute of Pious Obligation suggests the moral risk of kids to satisfy and discharge their father's obligations and

further non-payment of obligations is a wrongdoing and furthermore a wrongdoing. This obligation or commitment of a youngster to repay the obligations of the lapsed father is revived upon an exceptional doctrine, known as "The Doctrine of Pious Obligation" (Sen 2012). In this manner a Hindu recipient is at a risk to pay back the obligations paying little mind to whether honestly procured or for an indecent or unlawful reason of the died, out of the advantages he has gained from the lapsed. The commitment exists whether the youngsters are major or minor, or whether the father is alive or dead. The obligation exists notwithstanding in the midst of the father's life-time and subsists inasmuch as the father is subject.

Feminist movements which struck the economic circle to a great extent which transformed women as a working class in the general public encouraged for revolution in property rights, (Rajivan & United Nations Development Programme 2010) The consensus of opinion of different requests and decisions over equivalent protection of womens property over Vedic age through present day legislation endured a revolution or turnover of noteworthy conditions in religious customary Hindu law. Legitimately enforced property rights of women by Hindu Women's Right to Property Act, 1937 illuminated the denied rights of the women in more seasoned days a reformation which inspired the position of women in Hindu joint family, the revision to Hindu Succession Act of 2005, empowered the women to wind up as a coparcener like a male in familial property and exclusion of the doctrine of pious obligation which was considered as essential change (Raworth 2017). Still an ambiguity prevails with respect to the reasons for the sudden inclusion by virtue of amendment and its validity, this research aims to determine validity of Legislative Stand on Doctrine of Pious Obligation over Married Daughters in Indian Families through the public opinion.

Volume 8 Issue 4, April 2019

[www.ijsr.net](http://www.ijsr.net)

Licensed Under Creative Commons Attribution CC BY

## 2. Objectives

- 1) To study the validity of the Amendment to Hindu Succession Act 2005
- 2) To Analyse the public opinion towards the Amendment to Hindu Succession Act 2005
- 3) To understand public opinion towards the Doctrine of pious obligation

## 3. Review of Literature

### Division of Property

Property privileges and the aspect of division had their very own need and stand in the schools of thought, the scheme of which contradicted each other guideline of the regulation. In Mitakshara school of thought the Sapinda relationship is of blood, and the privilege to Hindu joint family property is by birth of a son instantly (Monier-Williams 1887).

The arrangement of devolution of property is by survivorship (Buxbaum & Assoc. of Southeast Asian Institutions of Higher Learning 2013). The offer of coparcener right in the joint family property isn't clear or ascertainable, as their offers are fluctuating with births and passing overs. A women could never transform into a coparcener neither single or married or bereft of a terminated coparcener can maintain section of her significant other's offer against his kin (Ambedkar 2018a).

Whereas in Dayabhaga School relies upon the code Jimutavahana, Inheritance relies upon the standard of other advantage like pinda offerers, this school pursued the rule in which the privilege to Hindu joint family property isn't by birth anyway just on the demise of the father (Ambedkar 2018b). The arrangement of devolution of property is by legacy. The legitimate beneficiaries either son or daughters have the privilege after the death of the father.

Each kin has obligation regarding positive division of the joint family property along these lines can exchange his offer and a widow had also the privilege to prevail to life partner's share in the property as after death of husband the widow transforms into a coparcener (Kapadia 1966). This demonstrates that while the applicability of the inheritance guideline is required in present day law the Mitakshara school of thought having an unforeseen and a conservative scheme of property division which de perceived women from coparcenary or inheritance privileges of them denied their status in the Hindu joint family.

These troubles about the property inheritance and progression prevailed until the advanced idea for contemporary society came into force which gave a legal enforcement to Dayabhaga school which had a simple scheme and perceived women as well has a coparcener.

### Doctrine of pious Obligation

A doctrine of minimum morality and a concept of legal obligation of repayment of debt was clearly dealt in Hindu religious customary laws which has its existence from Vedic period. Ancient Indian literature unique concept of Pious Obligation evolved as a legal right from a moral obligation, thus the perusal of Vedic doctrines in Hindu law through

modern developments gained a legal codified recognition to Pious Obligation doctrine

By virtue of Mitakshara school of thought son were deemed to fulfill the pious obligation procedure applied for both spiritual and secular debts, including monetary debts are incurred upon the son (Ambedkar 1979). Precept of Pious Obligation implies the ethical liability of children to pay off and release their father's debts and further non-payment of obligations is a wrongdoing and furthermore a crime. This obligation or commitment of a child to reimburse the obligations of the expired father is refreshed upon an exceptional doctrine, known as "The Doctrine of Pious Obligation" (Menski 2008). Thus a Hindu beneficiary is at a liability to pay back the obligations regardless of whether legitimately acquired or for an indecent or unlawful reason of the perished, out of the benefits he has acquired from the expired (Klostermaier 2010). The commitment exists whether the children are major or minor, or whether the father is alive or dead. The obligation exists notwithstanding amid the father's life-time and subsists inasmuch as the father is subject (Rocher 2014).

### Determination of Doctrine of pious obligation

Though the property inheritance right was granted to the women who in the degree of wife, daughter, sibling or at the time of widowhood, the doctrine of Pious Obligation gained legal enforcement encountering various difficulties (Harari 2014).

In codified legal environment various questions raised with respect to leftover interests in the reformation process, with respect to coparcenary rights of the women which granted them inheritance of father's or the family property encountered with a query about the pious obligation doctrine and its responsibility upon women in repayment of debts which remains as a obligation only for sons (Raman 2011).

Tangible improvement in the statutes of women which abolished biasness in coparcenary rights was deemed to upheld all the clauses of Hindu religious customs which had various transformations in the doctrines and principles adopted, in the modern legality clause Hindu Succession Act, 1956 after amendment ensured rights to daughters the same rights as that of sons in the process of inheritance has left the inheritance of pious obligation doctrine, a process of repayment of debt (Derrett & Derrett 1976).

The repugnancy of the legal jurisprudence in incorporating the pious obligation doctrine with the amending clause later witnessed a biasness with son who are alone deemed for pay back of debts, As per the Section 6 of the Hindu Succession Act, 1956, after the amendment the daughters who gained the same rights as the son and by this amendment the pious obligation has been deleted after the amendment Act of 2005 but the liability to repay the debt of the deceased father before the enactment remained working, therefore the rights of the creditors will be preserved if the debt was taken before the commencement of this amendment (Harper 2000; Müller 1883).

Analytically Pious Obligation should be deemed that daughters should be a duty bearers in repayment of debts,

therefore the codified concepts of law regarding Hindu religious customs should pose responsibility upon daughters for repayment of debt procured by father under pious obligation doctrine (Harper 2000).

#### 4. Statement of Problem

Though the legislative stand on the doctrine of pious obligation under the Hindu Succession Act is widely welcomed by the feminist groups a lacunae prevails with respect to the intelligible differentia of such intent and thus an ambiguity prevails when it comes to the validity, thus this research is carried out.

#### 5. Research Methodology and Materials

##### Study area

A. As the researcher intends to understand the legislative stand opinion of public is taken into account, the study is divided into 3 categories –

- 1) Public opinion on the repayment of deceased father's debt by married women
- 2) Public opinion on casement of right of daughter after marriage
- 3) Constitutionality

##### Methodology

This research is primarily based on public opinion and Constitution of India, hence the study includes both qualitative as well as quantitative method. Since application of constitution in the doctrine under the study is needed, the study also includes applied method.

##### Data collection

Present study is based on Primary as well as Secondary sources of data, which are as –

- 1) Primary Sources – Primary data is collected by collecting questionnaire from general public
- 2) Secondary Sources – Secondary data is collected through literature of N.G.O. reports, Government Reports, Websites, Research Articles, Newspapers

##### Variable used:

- 1) Independent variable: educational qualification
- 2) Dependent variable
  - a) Public opinion on the repayment of deceased father's debt by married women
  - b) Public opinion on casement of right of daughter after marriage

##### Statistical Tool used:

1. Chi square analysis
2. Correlations

##### Sample size and frequencies

		Frequency	Percent	Valid Percent
Valid	ug	768	48.8	41.5
	illiterate	719	45.7	45.7
	pg	86	5.4	5.4
	Total	1573	100.0	100.0

##### Sample size Calculation

A sample size of 1573 is chosen by which 768 respondents are in undergraduates, 719 respondents are Post graduates and 86 respondents are illiterates as the study include non probability convenience sampling method.

##### Tables and Calculation

In this study for each issue a survey is done where a sample size mentioned is taken and the percentage is also mentioned, to determine the validity and the determine the study results chi- square analysis and correlation symmetric measures method is used. when the pearson value of 'Asymp. Sig' value is less than 0.05, the alternate hypothesis is considered and when the pearson value 'Asymp. Sig' value is greater than 0.05, the null hypothesis is accepted. For the determining the hypothesis the variables are cross tabulated.

##### Hypothesis

$H_0$ : the legislative stand with respect to Doctrine of pious obligation is not Valid

$H_1$ : the legislative stand with respect to Doctrine of pious obligation is Valid

#### 6. Concept Analysis

##### Determining the legislative stand

The Hindu Succession Act, 1956 after amendment ensured rights to daughters the same rights as that of sons in the process of inheritance have left the inheritance of pious obligation doctrine, a process of repayment of debt. The repugnancy of the legal jurisprudence in incorporating the pious obligation doctrine with the amending clause later witnessed a biasness with son who are alone deemed for pay back of debts, As per the Section 6 of the Hindu Succession Act, 1956, after the amendment the daughters who gained the same rights as the son and by this amendment the pious obligation has been deleted. Any amendment or law should be based on religious custom and constitution, opposing which would make such enactment void; hence this research studies the public opinion (for the purpose of knowing the acceptance) and constitutionality as explained in Figure 1.

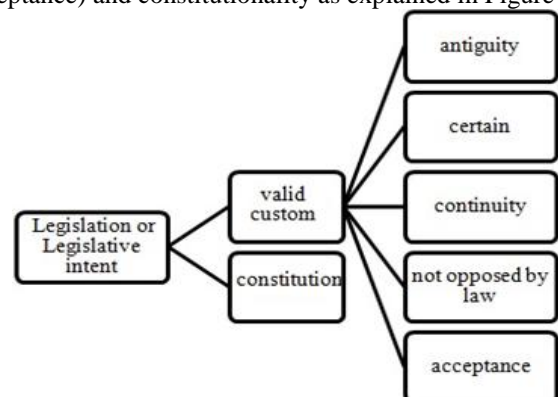


Figure 1: Essential requirement in the legislative Intent

##### Constitutionality of Doctrine of pious obligation

In order to understand the constitutionality of this doctrine it is essential to look into the fundamental rights guaranteed under the constitution. There are six fundamental rights which recognized under the Indian constitution which include:

- 1) Right to equality
- 2) Cultural and Educational Rights
- 3) Right to freedom
- 4) Right against exploitation
- 5) Right to freedom of religion, and
- 6) Right to constitutional remedies. For the purpose of this determination Right to equality, Right to freedom of religion and cultural right is taken into being.

Equality before the law, equality in the eyes of the law, legal equality, or legal egalitarianism, is the cardinal principle where each individual must be treated equally by the law, in this case the right of women in the family after marriage is violated and thus it could be stated that doctrine of pious obligation violates constitutional right (equality) of women, but on the other when we look into the cultural and religious right, it can be understood that the doctrine of pious obligation arose in the Hindu Succession Act as a result of religious and cultural practice and custom. Article 25 of Indian Constitution reads as Freedom of conscience and free profession, practice and propagation of religion

- 1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
- 2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
  - a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
  - b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

Under the concept of law morality means public morality and restriction is subjected to any of public character, Hindu succession Act is a personal law and not public, thus under the ambit of testing the morality, it becomes essential to note the public opinion.

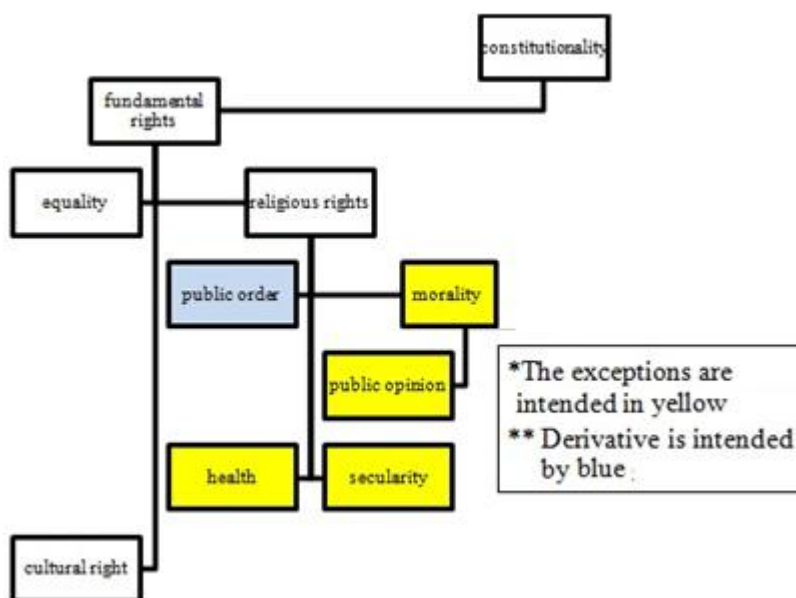


Figure 2: Determination of constitutionality

**1) Public opinion on Seizure of Rights over her paternal after Marriage in case of daughters**

**H<sub>0</sub>** : there is no relationship between public opinion on Seizure of Rights over her paternal after Marriage in case of daughters and educational qualification

**H<sub>1</sub>**: there is relationship between public opinion on Seizure of Rights over her paternal after Marriage in case of daughters and educational qualification

**Table 1:** Public opinion on Seizure of Rights over her paternal after Marriage in case of daughters

		Crosstab					Total
		Count					
		Public opinion on A daughter right over her paternal family cease to exist at the time of marriage					
		strongly disagree	disagree	neutral	agree	strongly agree	
Education	UG	241	256	200	14	57	768
	PG	172	245	202	32	68	719
	Illiterate	0	0	8	26	51	86
Total		413	501	410	72	176	1573

**Descriptive Statistics**

	Mean	Std. Deviation	N
education	2.01	.883	1573
Public opinion on A daughter right over her paternal family cease to exist at the time of marriage	2.63	1.038	1573

**Correlations**

	Age	public opinion on A daughter right over her paternal family cease to exist at the time of marriage?
education	Pearson Correlation	-.258**
	Sig. (2-tailed)	.000
	Sum of Squares and Cross-products	1224.720
	Covariance	-.237
	N	1573
public opinion on A daughter right over her paternal family cease to exist at the time of marriage?	Pearson Correlation	-.258**
	Sig. (2-tailed)	.000
	Sum of Squares and Cross-products	-372.137
	Covariance	1.078
	N	1573

Generally in India, it is of the opinion the daughter loses her right over her paternal family at the time of marriage. This is religious custom that is been followed in India, based on which the doctrine of pious obligation is stated, but in the recent amendment, the obligation was removed on the basis of fundamental rights. The graduates or the literates unanimously agree to that the daughter right will not cease, but the illiterate doesn't agree.

As per the doctrine of pious obligation the married daughter doesn't have the right to repay the debt of the deceased father, the public state that the married daughter, the pearson chi square value of 'Asymp. Sig' is 0.00 which value is less than 0.05, thus it could be stated that there is a relationship between educational status and the repayment of debt by married daughters.

**2) Public opinion on Right of married daughters to repay the deceased father's debt**

**H<sub>0</sub>** : there is no relationship between public opinion on Public opinion on Right of married daughters to repay the deceased father's debt and educational qualification

**H<sub>1</sub>**: there is relationship between on Public opinion on Right of married daughters to repay the deceased father's debt and educational qualification

**Table 2:** Public opinion on Right of married daughters to repay the deceased father's debt

		Public opinion on repayment of deceased father debt by married daughter		Total
		yes	no	
education	ug	513	255	768
	pg	648	71	719
	illiterate	7	79	86
Total		1169	405	1573

**Chi-Square Tests**

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	29.414 <sup>a</sup>	3	.000
Likelihood Ratio	29.578	3	.000
Linear-by-Linear Association	22.413	1	.000
N of Valid Cases	1573		

**7. Discussion**

A doctrine of minimum morality and a concept of legal obligation of repayment of debt was clearly dealt in Hindu religious customary laws which has its existence from Vedic period. Ancient Indian literature unique concept of Pious Obligation evolved as a legal right from a moral obligation, thus the perusal of Vedic doctrines in Hindu law through modern developments gained a legal codified recognition to Pious Obligation doctrine. The repugnancy of the legal jurisprudence in incorporating the pious obligation doctrine with the amending clause later witnessed a biasness with son who are alone deemed for pay back of debts, As per the Section 6 of the Hindu Succession Act, 1956, after the amendment the daughters who gained the same rights as the son and by this amendment the pious obligation has been deleted. the right of women in the family after marriage is violated and thus it could be stated that doctrine of pious obligation violates constitutional right (equality) of women, but on the other when we look into the cultural and religious right, it can be understood that the doctrine of pious obligation arose in the Hindu Succession Act as a result of religious and cultural practice and custom. Under the concept of law morality means public morality and restriction is subjected to any of public character, Hindu succession Act is a personal law and not public, thus under the ambit of testing the morality, it becomes essential to note

the public opinion. The graduates or the literates unanimously agree to that the daughter right will not cease after marriage, but the illiterate doesn't agree and there is a relationship between educational status and the repayment of debt by married daughters. Since there is a conflicting opinion, awareness of rights must be taken into account, it could be found out that illiterates are not aware of their rights when compared to the awareness to literates taking this notion into consideration, it could be stated that the exclusion of doctrine of pious obligation is valid.

The current study is influenced by awareness of constitutional rights among individuals, The systematic nature of science involves the use of both inductive and deductive research strategies. Inductive reasoning involves the formulation of a general principle or theory based on a set of specific observations. Conversely, deductive reasoning involves the formulation of specific observational predictions based on a general principle or theory, this principle is magnified or becomes easy to implement when educational knowledge of individuals.

The study includes 3 main parameters which is discussed in the study are, Public opinion on the repayment of deceased father's debt by married women, Public opinion on casement of right of daughter after marriage and Constitutionality. When the current study is compared with other common law countries, it could be elicited that doctrine of pious obligation is a practice only in India and not in any other countries under the common law system and thus the above mentioned parameters prove negative.

The study recommends that a uniform civil code may be brought into being for this purpose and the ambiguity may be addressed as a whole in the legislations.

## 8. Findings

- 1) The graduates or the literates unanimously agree to that the daughter right over paternal family will not cease after marriage.
- 2) The illiterates unanimously agree to that the daughter right over paternal family will not cease after marriage.
- 3) Illiterates are not aware of their rights when compared to the awareness to literates.
- 4) Legislative stand on doctrine of pious obligation under the Hindu Succession Act is valid.

## 9. Recommendations

- 1) The responsibilities of married daughters may be expressly mentioned.
- 2) Uniform civil code may be brought into being for this purpose
- 3) The ambiguity may be addressed as a whole in the legislations.

## 10. Conclusion

The study reveals that the doctrine of pious obligation violates constitutional right (equality) of women, but on the other when we look into the cultural and religious right, it

can be understood that the doctrine of pious obligation arose in the Hindu Succession Act as a result of religious and cultural practice and custom. Under the concept of law morality means public morality and restriction is subjected to any of public character, Hindu succession Act is a personal law and not public, thus under the ambit of testing the morality, it becomes essential to note the public opinion. The graduates or the literates unanimously agree to that the daughter right will not cease after marriage, but the illiterate doesn't agree and there is a relationship between educational status and the repayment of debt by married daughters. Since there is a conflicting opinion, awareness of rights must be taken into account, it could be found out that illiterates are not aware of their rights when compared to the awareness to literates taking this notion into consideration, thus it could be concluded that the legislative stand on doctrine of pious obligation under the Hindu Succession Act is valid. The study recommends that a uniform civil code may be brought into being for this purpose and the ambiguity may be addressed as a whole in the legislations.

## References

- [1] Agarwal, B. & Institute of Development Studies (Brighton, England), 2002. "Bargaining" and legal change: toward gender equality in India's inheritance laws,
- [2] Ambedkar, B.R., 1979. Dr. Babasaheb Ambedkar, Writings and Speeches,
- [3] Ambedkar, B.R., 2018a. India and the Pre-Requisites of Communism,
- [4] Ambedkar, B.R., 2018b. Philosophy of Hinduism, Independently Published.
- [5] Anand, A.K., 1996. Buddhism in India: From the Sixth Century B.C. to the Third Century A.D, Gyan Books.
- [6] Banerjee, S.G., 1879. The Hindu Law of Marriage and Stridhan,
- [7] Buxbaum, D.C. & Assoc. of Southeast Asian Institutions of Higher Learning, 2013. Family Law and Customary Law in Asia: A Contemporary Legal Perspective, Springer.
- [8] Derrett, J.D.M. & Derrett, J.D.M., 1976. Essays in Classical and Modern Hindu Law, BRILL.
- [9] Harari, Y.N., 2014. Sapiens: A Brief History of Humankind, Random House.
- [10] Harper, S., 2000. The Lab, the Temple, and the Market: Reflections at the Intersection of Science, Religion, and Development, IDRC.
- [11] Kapadia, K.M., 1966. Marriage and Family in India,
- [12] Klostermaier, K.K., 2010. Survey of Hinduism, A: Third Edition, SUNY Press.
- [13] Lubin, T., Davis, D.R., Jr & Krishnan, J.K., 2010. Hinduism and Law: An Introduction, Cambridge University Press.
- [14] Menski, W., 2008. Hindu Law: Beyond Tradition and Modernity, Oxford University Press.
- [15] Monier-Williams, S.M., 1887. Brāhmanism and Hindūism: Or, Religious Thought and Life in India, as Based on the Veda and Other Sacred Books of the Hindūs,
- [16] Müller, F.M., 1883. India: what Can it Teach Us?: A Course of Lectures Delivered Before the University of Cambridge, London : Longmans, Green.

- [17] Rajivan, A.K. & United Nations Development Programme, 2010. Power, Voice and Rights: A Turning Point for Gender Equality in Asia and the Pacific, United Nations Publications.
- [18] Raman, V.V., 2011. Indic Visions: In an Age of Science, Xlibris Corporation.
- [19] Raworth, K., 2017. Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist, Chelsea Green Publishing.
- [20] Rocher, L., 2014. Studies in Hindu Law and Dharmaśāstra, Anthem Press.
- [21] Sen, A.P., 2012. Rammohun Roy: A Critical Biography, Penguin UK.
- [22] Thapar, R., 1978. Ancient Indian Social History: Some Interpretations, Orient Blackswan.