

*WIP*

**Women  
Empowerment  
and  
Gender Issues**

**Editors**

**Harsh Purohit  
Bhupal Bhattacharya  
Momina Zahan**

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Edited by

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## Woman and Law - Lessons from History

Sourabh V. C. Ubale

### Introduction

अतुलन्तत्रतत्तेजःसर्वदेवशरीरजम् | एकस्थन्तदभून्नारीव्याप्तलोकत्रयंत्विषा ||

One of the hymns says that incomparable radiance born from the bodies of all forms of energy from the entire universe came to one place and took the form of a woman (*Durga Saptashati*, C.300 BCE). This is how number of chants, hymns and quotes talk about the spiritual soul i.e. woman. While going back to the past and tracing the instincts which portrays the status of woman, we can find the different interpretation of history and laws too. And that's why I want to focus more upon these interpretations instead of going with either side of the flipping coin.

Ideas are the strongest things of all in history because they can be passed down and change the behaviour of future generations—even a gun was originally an idea (Durant, W. & Durant, A., 1968). It's up to us whether to blame the history all the time or take lessons from History by trying to find out the explanations prevailing during the said period is on us. On this ground, the present topic would be justified and analysed. As said by Justice V.R. Krishna Iyer in his 'Law and Life', "The fight is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony which never comes till woman comes" (Krishna Iyer, V. R., 2015).

### Lessons from History

History is one of the best research discipline, as it illuminates the path in understanding the concept and become a beacon for forestalling the future problems. History is always an incomplete task because though it's always built up on the evidence but rest it depends upon the theory which may be a guesswork or the interpretation which is different for different personalities. This arbitrariness cannot deny the reliability of history but cannot agree it totally. History in any part of the world is the

victim of manipulations and contradictions. When we talk about Indian situation, we witnessed the conflicts and have seen how this extremism can be an outcome of such contradictions in the history. It is rightly said by G. W. F. Hegel, "Rulers, Statesmen, Nations, are not to be emphatically commended to the teaching which experience offers in history. But what experience and history teach is this - that people and governments never have learned anything from history, or acted on principles deduced from it. Each period is involved in such peculiar circumstances, exhibits a condition of things so strictly idiosyncratic, that its conduct must be regulated by considerations connected with itself, and itself alone" (Hegel, G. W. F., & Rauch, L., 1988). Dan Brown's Da Vinci Code on 'The Last Supper' infers that the search of holy grail ends in the discovery of woman's ability to carry forward a genetic heredity by giving birth and nurturing a child which is supposed to be an unending duty of woman and that too exclusively reserved for her forever!

### **Etymology and Interpretation**

Some scholars believe that the word 'Female' is derived from two old English word 'fee' and 'male' where 'fee' means 'an estate of land, especially one held on condition of feudal service or one can say cattle or property'. And thus 'female' means property of male or men. It may be true in some situation when we trace the history of some offences from Indian Penal Code. But again it's an interpretation on one side. The word is female and not the fe-male; nevertheless if we try to find out origin we come to know that the word 'female' is derived from the Latin 'femina' or 'femella' or 'femelle' in old French. The English scholars agree that the change from 'femella' is due to its association with the word 'male' but both of these words are not linked etymologically. Rather the word 'male' is derived from Latin 'mas' or 'masculus' or French 'masle'. Taking Lessons from history now one must agree this has been changing now as 'fe' from female is taking the meaning of 'Fe' from Latin 'Ferrum' i.e. Iron.

Same is in the case of the word 'Woman'; the word is derived from old English 'wifmon' which means 'wife of man' where one shall not connect it to property of man or a female servant as some scholars did. At the same time English scholars also held that 'man' stand for 'human being', 'werman' for 'male human being' and 'wifman' for 'female human being'. Thus again it's not the word derived from 'man'. Taking Lessons from history now one must agree this has been changing now from 'Woe'-man i.e. cause of sorrow or troubles, to the 'W/O'-man,

without which there cannot be an existence of human being.

Some may link the word 'female' to '*fetus*' and word 'woman' to 'womb' due to her ability to produce offspring which is nothing but paying honour to the fertility of the female. As she is the only one who has the ability to up bring the child or in greater context she is the only creator. And this justifies the hymn which initiated this discussion.

### **Women, Law and History – The Interrelation**

As it has been well said that how a country views its history, reflects how it views and understands itself. A wrong assessment of past may weaken the cultural ethos and soul of a country. Those who forget their past may also forfeit their future. History can be traced from ancient through medieval to modern and with the futuristic approach as well. As we have started our discussion, women are one of the most vulnerable being, despite of being almost half of the population. Thus we have to study the history of woman, her status and her empowerment from the roots of history, where the evidentiary traces are available and that may be from pre-historic age. This study will definitely aid us in not forfeiting the future of status of women in the society but improving her status on each phase of her life that is before taking birth till the natural death. Law is the instrument to control the behaviour of individuals in the society; may it be natural or sanctioned by the sovereign authority or judicially pronounced. Thus development in the field of law in tune with the women empowerment and development is significantly important for the national as well as international development of the society and within society. Though we have laws but still some laws lack in its implementation and thus we fail to achieve the goal of women empowerment and development to the fullest. The concept of Development always has a positive connotation implying betterment, progress and upward advancement. Thus it is always suggested that one has to take lessons from the history.

### **A Journey through Pre-Historic and Indus Valley Civilization**

Pre-Historic period is the early development of the human being which can be seen from various paintings from the caves painted during Palaeolithic, Mesolithic and Chalcolithic ages i.e. from 2.5 million years ago till 10,000 years ago. These Paintings do not show much difference between men and women, even if the family and community gathering. Women are painted both nude and clothed. Then in Indus Valley Civil-

sation, the different figurines tell us about woman and her status. Col-lectibles of women statuettes are the most bountiful. Though the reason is unidentified, it may be interpreted as women were given a special status culturally, socially and traditionally in society. It has been projected by some historians that it may be due to their ability to produce offspring. It has also been seen that a man was often buried with family of his wife as per the burial sites at Mohenjo-Daro and Harappa. The effect of these female figurines is two-fold: it emphasizes the beauty, and phal-lic sexual nature of the female; and at the same time, cherishes the nur-turing, motherly nature of the female (Bromley, David J., 1998). Heavily ornamented women statuettes can be seen on sites. It has also been seen that the position of the statuette is typically a nursing infant situated on the left hip and the right arm of the mother is free to do the other work. This structural position is similar to the pose of women in rural areas. The female deity of Harappan people was the Mother Goddess. The most talked figurine of this age is of the 'dancing girl'; as she might be standing in some position but scholars assumed it as her profession. British archaeologist Mortimer Wheeler described the item as his fa-vourite statuette, according to his description:

*"She's about fifteen years old I should think, not more, but she stands there with bangles all the way up her arm and nothing else on. A girl perfectly, for the moment, perfectly confident of herself and the world. There's nothing like her, I think, in the world"* (Anisur Rahman, 2017):

### **A Journey from Vedic to Pre-Independence**

Altekar argues that "the position which women occupied in Hindu society at the dawn of civilization during the Vedic age is much better than what we ordinarily expect it to have been" (Altekar A.S., 1956). During Vedic period, women enjoyed good status especially with reference to religion, rituals and even access and ability to acquire highest knowledge. Ancient literacy and historical research have the evidences where women were treated equally with men and thus there are concepts of *Sahadharmacharini* (one who helps her partner to do his righteous-ness and duties and participate equally with men in all activities of high-est social ends – *Dharma, Artha, Kama, Moksha*), *Ardhangini* (better-half), *Ardhanareeshwara* (one whose half body is of God – Shiva and half is of Goddess – Parvati) and even *Swayamwar* (Freedom to select their husband). *Atharvaveda* says that the triumph of women in her mar-ital life depends upon her appropriate training during the *Brahmacharya*. Now this is again an interesting fact that in historical traces we find the

type of education was different for male and female. Discrimination may have been en-rooted at the primary level of education. At starting period, women were allowed to go to *Gurukul* (residential schooling system in ancient India) but afterwards they were denied. Polygamy and Polyandry were also much prevalent during that period.

It was the era of Manu when the status of women started degrading. Manu described women as dependent throughout her life time as she is dependent on father during childhood, then husband after marriage and then son at old age. Some texts including *Arthasastra* restricted the movement of women and not allowed her to live independently. In the *Smriti Sastras* as well, as in Manu, it has been mentioned in strongest terms that woman should be honored. But then again Manu has given absolute rights to men to inflict corporeal punishment on her and discard her if she said anything disgraceful to him. Thus, a contradiction in the rules of treatment to woman was traced. Manu's system continued for longer time. Aryans were patriarchal and a man had almost absolute power over his wife and children.

But on the other side, there are some of the instances that show the status of women was somehow equal to men. Some verses in *Rig Veda* are written by women. Women were allowed to take education and some of the women were highly intellectual. There were two types of scholarly woman firstly the *Brahmavadinis*, or the woman who never married and cultured the Vedas throughout their lives; and secondly the *Sadyodvahas* who studied the Vedas till they married (R.C. Majumdar, 1982). Panini mentioned female students studying Vedas. During period of *Upanishadas*, we have the instances of women scholars like *Gargi*, *Maitraye*, *Ghosa*, *Apala*, *Visvavara*, etc. During this period, widow marriages were allowed and there were no traces of Sati system during this period. *Atharva Veda* laid stress on the importance of girls' education in the period in the following words, "By Vedic studentship, a girl wins a young husband". This shows that good education was regarded as a necessary accomplishment for being well placed in life (R.C. Majumdar, 1982). Matrimony was not compulsory as we knew from the life of *Brahma Vadinis*. Absence of any age limit for marriage is clearly evinced from the theory of adult marriage (D.C. Ganguli, 1969).

According to Vedic hymns both husband and wife were joint owners of the family property. All the ancient law-givers unanimously awarded to a mother an equal share with her son in the property left by her deceased husband in order that she might spend her remaining days independently

of her children. In this regard, *Brihaspati* says: After his (the husband's) death, a mother, the parent of his son, should be entitled to an equal share with his sons, their step-mother also to equal shares, but daughters to a fourth part of the shares of the sons (Rammohan Roy, 1822). Similarly *Katyayunu* describes the manner of the distribution of property after the death of the father in the following words: A fourth part is declared to be the share of unmarried daughters, and the three fourth of the sons, if fourth part of the property is so small as to be inadequate to defray the expenses attending their marriages the sons have an exclusive right to the property, but shall defray the marriage ceremony of the sisters (Rammohan Roy, 1822).

With regard to women's status, later Vedic society showed a striking contrast to the early Vedic society. During the period of *Smritis*, the period of codification of social laws-women were bracketed with the Sudras, and were denied the right to study Vedas, to chant Vedic mantras and to perform Vedic rites (D.C. Ganguli, 1969).

By A.D. 700, the position of woman further deteriorated due to foreign invasion. It continued to be degraded up to A.D. 1800 when woman was socialised to play the role of a person entirely dependent on man, and having no faculty to take decision on her own. The position of women deteriorated after Muslim invasion of the country. The social circumstances compelled father to give his daughter in marriage as early as possible. Custom forbade girls to remain in the house of their parents for more than six to eight years from birth (P.N. Chopra, 1969). *Purdah* and child marriage had become common during these days.

In India, along with the developments the civilization, social discrimination increased. Jainism and Buddhism emerged as potent religious reform movements. It also includes Bhakti Movement. They started considering Women's spiritual capacities equal to men's. The universal prejudices against women, who are said to be weak-minded, fickle, treacherous and impure are shared by the Jains and expressed in several passages of the canon and in the form of maxims. Although in the Vedic period women had access to education in India, they had gradually lost this right. In cultural reality, women enjoyed a privileged position in the Vedic period. Women had special customs, rituals and spirituality, with which men were not allowed to interfere.

The position of women reached an all-time low during the age of the later Vedic period. It is during this age that codes of conduct prescribing

behaviour norms for women were evolved. This period saw the exclusion of women from both economic and religious sphere. The medieval period witnessed wars and invasions and a steady deterioration of women's position. Social changes and war have relegated their rights to the background. The advent of Muslim rule further secluded women on all fronts. Their rights within marriage have also been curtailed. In the British period there was revival of interest in women's education in India. Initially social reformers emphasized the need to educate Indian women. Women's education was supported by not only social reformers, but also by philanthropic foreigners, missionaries, and the British government.

After the independence of India, Parliament had made significant efforts to give equal status to women with men by removing inequality.

### **Status of Women after Independence**

The post-independence era gives better version to the woman empowerment and development. Taking lessons from history, the framers of the Constitution of India incorporated general as well as specific provisions for the woman empowerment and development in the status of women in the society as compared to history. The preamble of the constitution as a forerunner also enumerate the aims and objective of this law of the land which treats and gives equal rights, opportunities, protection and many more aspects. The chapter of Fundamental Rights guards the individual against the State irrespective of his sex. State has power to make special laws for women. State has to provide equality of opportunity. Irrespective of the gender, State has to provide equality before law, equal protection of laws, free and compulsory education between 6 to 14 and various freedoms. Prohibition of human trafficking and child labour is also the part of this chapter.

Directive Principles of State Policy lay down the 'roots of State Action', though not justiciable, enjoy the sanction of public opinion and are fundamental to the governance of the country. State according to these articles shall securing right to an adequate means of livelihood, equal pay for equal work, just and human conditions of work and for maternity benefits too. Along with these, various social legislations are the outcome of the implementation of these directive principles. The Constitutional Amendments post-1992 incorporated the reservation for women in Panchayats and Municipalities which proved to be one of the best policies for the women empowerment through political participation.

## Status of Women & Women Commissions

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 to review the Constitutional and Legal safeguards for women; recommend remedial legislative measures; facilitate redressal of grievances and advise the Government on all policy matters affecting women. Section 10 of the said Act gives us the detailed functioning of the Commission. There are State Commissions for women working at the State Levels. National Human Rights Commission and State Human Right Commissions also help in uplifting the status of women in various aspects.

### Conclusion

*"Real progress for women is not merely opposition to patriarchal values of power and authority, although confrontation is sometimes a successful strategy for change. Women's challenge is to go beyond the status quo to create structures and norms that do not merely adapt to existing conditions"* (C. Margaret Hall, 1990)

From the above discussion, it is observed that in the Vedic Period, Women were having a high status in the society. The Aryan dominance on non-Aryans redirected in a caste system which affected the status of woman and restricted her behaviour and freedom. The religious activities also got restricted during sutra period. Then status of women started declining especially after the invasions of Arab. In various places she was (is) considered physically weak. But it started improving somehow after Bhakti movement. After 14th Century women started participating in politics and administration. Women were liberated by legal reforms during British rule. After independence in 1947, the prior equal rights were put into practice to some extent.

As we have observed various Acts and Schemes of the central government as well as state government to empower the women of India. But in India women are still discriminated and marginalized at every level of the society whether it is social participation, political participation, economic participation, access to education, and also reproductive healthcare. Women are found to be economically very poor all over India. Women empowerment cannot be possible unless everyone helps them to self-empower themselves.

I would like to conclude with a quote of Mahatma Gandhi or a question

to be posed to the society – “To call woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant brute strength, then, indeed, is woman less brute than man. If by strength is meant moral power, then woman is immeasurably man's superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? Without her, man could not be. If non-violence is the law of our being, the future is with woman. Who can make a more effective appeal to the heart than woman?” (M. K. Gandhi, 1930).

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