

## The Rights and Status of Women in Ancient India: Insights from Hindu Legal Literature\*

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### Abstract

This article offers a comprehensive analysis of the multifaceted roles and rights of women in ancient India, as reflected in Hindu legal texts. It examines how social norms influence women's lives, from their education and intellectual development to the constraints and expectations that shape their experiences. The study delves into family dynamics, addressing women's roles and rights within the family, their marital relationships, and controversial practices such as *niyoga* (levirate) and sati. It also explores the legal aspects of marriage, polygamy, polyandry, and divorce, while considering women's property rights, inheritance, and maintenance. The article emphasises the progressive elements of gender relations and the rights granted to widows, while also briefly discussing their rights to adoption, guardianship, and maintenance. Overall, it provides a thorough overview of the legal status of women in ancient India, revealing the complexities of their social position.

**Key words:** Hindu Women, Ancient India, Rights of Women, Hindu Legal Literature.

### 1. Introduction

The rights and status of women in ancient India have been the focus of extensive debates in historical and socio-legal studies.<sup>1</sup> By examining Hindu legal literature, we gain a concise understanding of their rights, roles, and responsibilities. Key Hindu texts such as the Shrutis (Vedas), Upanisads, Puranas, Dharmasutras and Dharmashastras including the Smritis—along with their commentaries and digests, as well as the great Indian epics, the Ramayana and Mahabharata, provide valuable insights into the social and legal norms that shaped women's lives during this period.<sup>2</sup> This paper explores the complex array of rights envisioned for women in these ancient texts, highlighting their diverse roles and social positions. It reveals

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\* This article is based on the PhD thesis by the author.

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<sup>1</sup> D. Halder and K. Jaishankar, "Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India", *Journal of Law and Religion*, Vol. 24(2), 2008, pp. 663-664

<sup>2</sup> See J. Leslie (ed.), *Roles and Rituals for Hindu Women*, (Motilal Banarsidass Publishers 1992), pp. 1-3

how social norms and legal structures created a blend of respect, protection, and subordination for women. Through this exploration, we gain a deeper understanding of the social, cultural, and moral contexts that influenced the lives of women in ancient India.

Women in ancient India occupied a seemingly paradoxical position: revered as goddesses yet constrained by strict social norms.<sup>3</sup> Hindu legal literature, including the Smritis and their commentaries and digests, offers a comprehensive view of the legal and moral guidelines governing their lives. Written over the centuries, these texts reflect the evolving status, rights, and responsibilities of women.<sup>4</sup> Scholars have varying interpretations of these ancient texts regarding the role and rights of women.<sup>5</sup> Some view them as reinforcing the patriarchal system, while others identify elements of empowerment within them.<sup>6</sup> A careful examination of the complexities of these texts is essential to fully appreciate the status and rights of women in ancient India.

Despite a wealth of research on ancient Indian society, there remains a surprising lack of in-depth studies focusing on women's rights within Hindu legal literature. Many existing studies either generalize women's roles or concentrate narrowly on specific aspects such as marriage or property rights. This article aims to bridge this gap through a detailed analysis of various facets of women's lives as depicted in ancient legal texts, intending to provide a more comprehensive picture of their rights and status.

The primary objective of this article is to critically assess how Hindu legal literature in ancient India represented the rights and status of women. To achieve this, the article examines provisions from the major Smritis and other texts that influence women's lives from birth to death, explores social attitudes toward women and their impact on legal rights, and analyses how the status of women has evolved across different historical periods.

This study investigates various aspects of women's lives, from their roles as daughters, wives, and widows to their access to education, personal freedom, marital

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<sup>3</sup> U. Ray, 'Idealizing Motherhood': *The Brahmanical discourse on women in Ancient India (circa 500 BCE-300 CE)*, Unpublished PhD Thesis, (SOAS 1999), p. 204

<sup>4</sup> A.S. Altekar, *The Position of Women in Hindu Civilization: From Prehistoric Times to the Present Day*, (Motilal Banarsidass Publishers, 1956) p. 76

<sup>5</sup> See R. Thapar, "Interpretations of ancient Indian history", *History and Theory*, Vol. 7(3), 1968, pp. 318-322; V. Singh, "Women Empowerment: Identity of Women in Ancient India and Modern Indian Globalized Society", *International Journal for Multidisciplinary Research*, Vol. 5(6), 2023, pp. 5-6

<sup>6</sup> U. Chakravarti, "Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State", *Economic and Political Weekly*, Vol. 28(14), 1993, pp. 580-581

duties, and property rights. It also addresses contentious issues such as niyoga (levirate), sati, polygamy, polyandry, divorce, and women's legal rights to property, maintenance, adoption, and guardianship. However, the study has limitations. Ancient legal texts may not fully reflect the lived experiences of all women, as they often embody a patriarchal perspective that may marginalize women's voices. Additionally, interpretations of these Sanskrit texts vary among scholars, and the historical contexts are not always well-established. The article includes a critical analysis of both primary and secondary sources. The primary sources consist of ancient texts such as the Vedas, Upanishads, Dharmasutras, Dharmashastras, the later Smritis, along with their commentaries and digests that outline legal and social norms. Secondary sources encompass scholarly articles, interpretations, and historical analyses that offer context and critique. The study employs a hermeneutic approach to interpret these texts by considering their historical and cultural contexts. It entails a thorough examination of the contexts and jurisprudential principles within the texts. Comparative analysis is utilised to juxtapose legal prescriptions with historical accounts to comprehend how these laws were applied and experienced.

By elucidating the legal principles and social norms that influenced women's lives, the article enhances the understanding of gender dynamics in ancient Indian society. It offers valuable insights into the historical evolution of women's rights, emphasizing both continuity and change over time. Moreover, this study is pertinent to contemporary discussions on gender relations and women's rights. By providing historical context, it aids modern scholars and practitioners in appreciating past advancements and ongoing challenges. The article also functions as a resource for comparative legal studies, offering a framework for examining women's rights in other ancient civilisations and legal traditions.

The article is structured around three main sections. The first section highlights the role and experiences of maidens, addressing their education and independence. The second section explores the complexities of marital life, including debates surrounding polygamy, divorce, and remarriage, as well as contentious practices such as sati and niyoga during the post-coverture period. The third section investigates the legal rights and status of women, including the rights to property, adoption, guardianship, and maintenance. Each section builds upon the previous one, ensuring a logical flow and comprehensive understanding of the topic.

## 2. The Position of a Maiden

### 2.1. The Birth of a Daughter

During the Vedic period, the birth of a daughter was not as positively received as that of a son. The Vedas, particularly the Atharvaveda, did not favour the birth of daughters, and there were even negative references to their birth.<sup>7</sup> Hymns in the Rigveda sought blessings for the birth of sons, while magical incantations in the Atharvaveda Samhita aimed to counteract feminine traits.<sup>8</sup> Although girls were not considered inferior, establishing equality with boys was a challenging task.<sup>9</sup>

Despite the initial lack of enthusiasm for daughters, in Vedic households, the birth of a daughter was not a cause for concern. Eventually, she was given equal importance as a son. Altekar highlights a ritual in the Brihadaranyaka Upanishad that advises householders to ensure the birth of an educated daughter: “*atha ya ichhedduhitia me pandita jayeta, tilaudanau pacayitva asniyatamiti.*”<sup>10</sup>

In Vedic society, parents and relatives bestowed equal treatment upon sons and daughters, considering them auspicious symbols within the family. Daughters received affectionate nurturing from their mothers and were safeguarded by their fathers and brothers.<sup>11</sup> Fathers in this society offered prayers for the prosperity and welfare of their daughters, mirroring the prayers they offered for their sons.<sup>12</sup> Daughters were regarded as representations of celestial and terrestrial realms, maintaining a harmonious and favourable bond with their parents.<sup>13</sup>

Over time, social attitudes transitioned, with the later part of the Vedic period showing a growing preference for sons and the performance of rituals aimed at preventing the birth of daughters.<sup>14</sup> The Puranas also offer evidence of social bias towards sons, recounting instances of conducting rites to ensure the birth of a gifted son.<sup>15</sup> The lack of sons was viewed as a challenge, prompting actions such as the *Bhishmapancakavrata* to address this concern.<sup>16</sup>

<sup>7</sup> Atharvaveda VIII.6, 25; VI.11. 3

<sup>8</sup> Ibid. at VI.11; III. 23; Also in Rigveda, VIII. 6, 25

<sup>9</sup> S. R. Shastri, *Women in the Vedic Age*, (Bharatiya Vidya Bhavan 1954), p. 2

<sup>10</sup> Brihadaranyaka Upanishad, IV.4.18

<sup>11</sup> B. S. Upadhyay, *Women in the Rigveda*, (Nand Kishore & Bros. 1941), p. 33

<sup>12</sup> Apastamba Grihya Sutra, XV.12-13

<sup>13</sup> Ibid.

<sup>14</sup> Shastri, supra note 9, at p. 71

<sup>15</sup> The Vishnu Purana and Matsya Purana tell of Kashyapa having relations with Diti to have a brave son. According to the Vayu Purana and Brahmanda Purana, the Yadava king Devavridha performed a rite to have a talented son. Various vows and practices are mentioned in the Puranas for having a male child. The Garuda Purana suggests that having

## 2.2. Social Attitude towards Daughters

The Rigveda illustrates the coexistence of sons and daughters, with daughters inheriting their mothers' glory and receiving respect for their potential roles as mothers.<sup>17</sup> Daughters were valued and cherished within their community, and couples desired both sons and daughters.<sup>18</sup> Fathers were praised for having exemplary daughters, metaphorically likened to a quiver of effective darts.<sup>19</sup> Daughters were affectionately nurtured in their parents' households and often remained there as they aged.<sup>20</sup>

The hymns of the Rigveda suggest that brides were mature enough to bear strong Aryan offspring, and that daughters could stay with their parents until adulthood, with early marriages not being mandated.<sup>21</sup> Upon reaching maturity, daughters gained greater importance and freedom. While most references in Vedic literature depict daughters with affection and esteem, there are occasional mentions of them being sources of difficulty.<sup>22</sup>

In Vedic society, it was believed that unmarried daughters were the abode of Lakshmi, the Goddess of Fortune. As a result, they were chosen for significant roles, such as welcoming important figures and participating in major social events, underscoring their importance. The Ramayana notes that maidens were selected to greet Lord Rama upon his return to Ayodhya and to perform the coronation ablution.<sup>23</sup> Supporting evidence from the Puranas illustrates the honour bestowed

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a son is essential, and there's no peaceful way for someone without sons to attain heaven. The Skanda Purana states that a person without a son shouldn't be invited to auspicious occasions or rites for the ancestors. The house of someone without sons is likened to a funeral ground, and deities and sages don't partake in meals there. The text also mentions the *Bhishmapancakavrata*, advising childless individuals to perform this vow to get a son within a year. As part of the vow, an effigy representing obstacles to having children is given away. Classical Sanskrit literature, including Kalidasa's works, emphasises the importance of having a son. Kalidasa, in *Raghuvamsha*, highlights the emptiness in the life of a person without a son, emphasising that forefathers don't accept offerings from a descendant without a son. The extinction of the male line is seen as a great misfortune, as the merits from austerities and charities contribute to happiness in the next world, with a son from a pure-blooded wife being the cause of happiness in both worlds.

<sup>16</sup> A. Roy, *Women in the Purana Tradition*, Unpublished PhD Thesis, (University of Allahabad, 1998) p. 67

<sup>17</sup> Rigveda, III.31.1-2

<sup>18</sup> Ibid. at VIII.31.8

<sup>19</sup> Ibid. at VI.75.5

<sup>20</sup> Upadhyaya, supra note 11, at p. 34

<sup>21</sup> "As a virtuous (maiden) growing old in the same dwelling house with her parents claims from them her support, so come I to thee for support"- Rigveda, II.17.7

<sup>22</sup> Altekar, supra note 4, at pp.11-12

<sup>23</sup> Ramayana, VI. 138. 38, and 61, referred to Altekar, supra note 4, at pp.10-11

upon virgin girls during festival occasions.<sup>24</sup> The goddess Usha, representing the dawn, is depicted as a young maiden, reflecting the ideals and characteristics of girls in Vedic society.<sup>25</sup>

### 2.3. Her Roles and Responsibilities in the Family

The Vedic daughter was seen as bold and strong, showcasing a distinct personality. Society instilled in her the qualities expected of a responsible and authoritative wife and mother.<sup>26</sup> During her early adolescence, she exhibited traits suitable for the responsibilities she would soon assume.<sup>27</sup> The primary duty of Vedic daughters was to contribute to the family's livelihood. They were tasked with milking cows and preparing dairy products like clarified butter and curd.<sup>28</sup> Additionally, they engaged in spinning, weaving cloth, and embroidering garments. Vedic daughters also took part in various outdoor tasks that were not overly strenuous.<sup>29</sup>

It is important to note that, in addition to their domestic responsibilities, Vedic daughters received a comprehensive education. Female seers, alongside their male counterparts, were acknowledged for composing hymns, underscoring their significant intellectual contributions.<sup>30</sup>

### 2.4. Education for Girls

In the Vedic period, the education of daughters was regarded as equally important as that of sons, highlighting the value placed on marrying a learned partner.<sup>31</sup> Vedic literature underscores this principle:

An unmarried young, learned daughter should be married to a bridegroom who, like her, is learned. Never think of giving in marriage to a daughter of a very young age.<sup>32</sup>

The Yajurveda and Atharvaveda convey similar sentiments, emphasizing the importance of a young, educated daughter marrying a learned groom: "A young

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<sup>24</sup> The Devi Purana specifies that during the '*dhvaja-dana*' in Devi-temples, only virgin girls and Brahmanas should be fed. The text further mandates the feeding of virgin girls during the worship of Devi in various forms and the observance of vratas throughout the year.

<sup>25</sup> Shastri, supra note 9, at pp. 9-10

<sup>26</sup> Rigveda, I.126.3; V.47.6; VI.27.8; VII.18.22; VIII.19.36; 68.17; Also see, Upadhyaya, supra note 11, at p. 40

<sup>27</sup> Upadhyaya, supra note 11, at p. 40

<sup>28</sup> Ibid. at p. 35

<sup>29</sup> Ibid.

<sup>30</sup> Ibid. at pp. 35-36

<sup>31</sup> A. Naqvi, *Women's Rights and Personal Laws: A Comparative Study*, unpublished PhD Thesis, 2014, University of Rajasthan, (2014), p. 37

<sup>32</sup> Rigveda, III.55.16

daughter who has observed brahmacharya (i.e., finished her studies) should be married to a bridegroom who, like her, is learned.”<sup>33</sup>

The Atharvaveda further advocates the dedicated pursuit of knowledge for all, including females:

A king, by observing brahmacharya (the vow of study), can protect his kingdom easily. An acharya can impart education to his students if he has himself observed his brahmacharya. A young daughter, after the observance of brahmacharya, should be married to a young man.<sup>34</sup>

Vedic daughters received education in both spiritual and temporal domains. The spiritual aspect included training in religious lore, historical traditions, and mythology, which occasionally inspired hymns. Concurrently, the temporal aspect encompassed instruction in fine arts and, in specific cases, military science.<sup>35</sup>

Female students were categorized as either *Brahmavadinis* or *Sadyotsvahas*. Brahmavadinis were theologians and philosophers for their entire lives, whereas Sadyotsvahas studied until marriage, typically at the age of 15 or 16. During the eight or nine years of required study, they memorized Vedic hymns for daily and periodic prayers, as well as the rituals and sacraments they needed to observe.<sup>36</sup>

Brahmavadinis pursued academic excellence diligently. Prior to the fourth century B.C., Vedic and philosophical studies dominated society, and women engaged with these subjects with great enthusiasm. Many began with the Vedas and specialised in Purvamimamsa, which dealt with sacrifice-related Vedic topics.<sup>37</sup> Women also participated in philosophical discussions during the era of the Chhandogya and Brihadaranyaka Upanisads, a significant period in Indian intellectual history.<sup>38</sup>

In the post-Vedic Smriti period, women, like Shudras, were considered ineligible for Vedic studies. Manu clarifies their position in Chapter IX, Verse 18, stating:

For women, no sacramental rite is performed with sacred texts; thus the law is settled; women who are destitute of strength and destitute of the knowledge of Vedic texts are impure as falsehood itself, that is a fixed rule.

Jagannatha's interpretation supports the exclusion of women from Vedic studies, arguing that this exclusion renders them morally non-existent or as false beings, despite their physical presence. Additionally, there is a Varna text that explicitly

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<sup>33</sup> Yajurveda, VIII.1

<sup>34</sup> Atharvaveda, XII.3.17.18

<sup>35</sup> Upadhya, supra note 11, at p. 174

<sup>36</sup> Altekar, supra note 4, at pp.13

<sup>37</sup> Ibid. at pp. 13-14

<sup>38</sup> Shastri, supra note 9, at p. 81

forbids women from reciting Vedic mantras. This evidence highlights the historical perspective on the exclusion of women from Vedic education and rituals.<sup>39</sup>

Manu also categorized women as perpetual minors, requiring them to remain under the guardianship of their fathers, husbands, or sons.<sup>40</sup> Consequently, this limitation curtailed the power and dignity of women and denied them direct engagement with the divine.<sup>41</sup>

The rise in child marriage after 300 B.C. significantly hindered the education of women. The initiation ceremony (*upanayana samskara*), which was previously essential for Aryan women, was reduced to a mere formality and eventually abolished. As a result, the hymns of daily prayers became unintelligible to them. Similar to the Sudras, women lost their status as regenerate classes (*dwijas*) when they became unable to recite or hear Vedic prayers. By the eighth or ninth century A.D., the marriageable age for girls was further lowered, effectively eliminating opportunities for education.<sup>42</sup>

#### 2.4.1. Intellectual Pursuits by Them

Vedic daughters engaged in intellectual pursuits comparable to those of men, exploring Vedic hymns, theology, philosophy, and Purvamimamsa.<sup>43</sup> The Rigveda recognizes approximately twenty female Rishis, such as Lopamudra, Vishvavara, Sikata Nivavari, and Ghosha, who made significant contributions through the composition of hymns and prayers for the well-being of humanity.<sup>44</sup>

Notable scholars like Mena, Dhirini, Bhuvana, Aparna, Ekaparna, Ekapatala, and Sannati are recognized in the Puranas. Mena and Dhirini, daughters of Yaska, are celebrated for their lifelong dedication to the study of theology and philosophy.<sup>45</sup> They are described as Brahnavadinis in the Vishnu Purana,<sup>46</sup> Vayu Purana,<sup>47</sup> and Brahmanda Purana.<sup>48</sup> Similarly, the Vayu Purana<sup>49</sup> and Brahmanda Purana<sup>50</sup>

<sup>39</sup> D. N. Mitter, *The Position of Women in Hindu Law* (University of Calcutta, 1913), p. 98

<sup>40</sup> S. Narayanan, "Historical Background of Gender Equality and Succession Right of Women's Right to Property in Tamil Nadu", *Intellectual Property Rights*, 2016, Vol. 4(2), p. 1

<sup>41</sup> Naqvi, supra note 31, at p.39

<sup>42</sup> Altekar, supra note 4, at pp. 17-18

<sup>43</sup> Ibid. at pp. 13-14

<sup>44</sup> Upadhyaya, supra note 11, at p. 174

<sup>45</sup> Altekar, supra note 4, at pp. 10-11

<sup>46</sup> Vishnu Purana, I. 10-19

<sup>47</sup> Vayu Purana, 66. 27.

<sup>48</sup> Brahmanda Purana, II.2.28.

<sup>49</sup> Vayu Purana, LXVI. 27.

<sup>50</sup> Brahmanda Purana, II, 2.28.



document Bhuvana as a Brahnavadini for her proficiency in both yogic practices and worldly exploration.<sup>51</sup> The Vayu Purana<sup>52</sup> and Brahmanda Purana<sup>53</sup> also identify Aparna, Ekaparna, and Ekapatala as 'Brahnavadini' and 'brahmacarini.' Sannati acquired theological knowledge from her father, emphasising a tradition of familial education.<sup>54</sup> The Devibhagavata mentions that Vedavati was well-versed in Vedic lore from birth and practised austerities.<sup>55</sup> According to the Vishnu Dharmottara Purana, Maitreyi, Sulabha, Gargi, and Sannati achieved success in Yoga, transcending caste and gender boundaries.<sup>56</sup> The Matsya Purana notes that Pivari demonstrated profound knowledge of Yoga through rigorous ascetic practices.<sup>57</sup> This array of remarkable women underscores the diversity and depth of intellectual and spiritual contributions by Vedic women in ancient India.

Notable Vedic women such as Maitreyi, Gargi, Atreyi and others were renowned for their scholarly pursuits. Maitreyi was a prominent philosopher who engaged in dialogues with the sage Yajnavalkya. Gargi excelled in philosophical debates at King Janaka's court. Lopamudra made significant contributions to the Rigveda, while Ghosa was recognised for her musical and poetic talents. Atreyi studied Vedanta with sages like Valmiki and Agastya. Many of these female philosophers chose to remain unmarried in order to focus on their spiritual and intellectual pursuits.<sup>58</sup>

## 2.5. Her Freedom and Liberty

During the Vedic Age, daughters in ancient India enjoyed considerable personal freedom. They had access to educational opportunities comparable to those available to men, participated in social and religious gatherings, and had the autonomy to select their life partners. Vedic girls could remain unmarried until the age of 16, received education before marriage, and underwent the Upanayana ritual, which was customary for both genders. They were educated by family elders or qualified female teachers, although advanced education was predominantly reserved for affluent families.<sup>59</sup>

In Vedic India, female seclusion was virtually non-existent, allowing maidens to

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<sup>51</sup> Vayu Purana, XVII. 2 in Roy, supra note 16, at p. 90

<sup>52</sup> Vayu Purana, LXXII. 13-15

<sup>53</sup> Brahmanda Purana, III.10. 15-16

<sup>54</sup> Chandogya Upanisada, I. 11. 4.

<sup>55</sup> Devibhagvata, IX. 16

<sup>56</sup> Vishnu Dharmottara Purana, XCVIII

<sup>57</sup> Matsya Purana, XV. 5-6.

<sup>58</sup> Chandogya Upanisada, I, 11, 4.

<sup>59</sup> Altekar, supra note 4, at pp. 16-17

move freely, participate in festivities, and attend events known as Samanas, which featured horse and chariot racing.<sup>60</sup> Maidens were particularly drawn to these events at night, often appearing adorned and joyfully amorous.<sup>61</sup>

Vedic women were encouraged to pursue love and romance, with the Svayamvara system enabling them to select their own husbands independently. Parental control was minimal, and brothers primarily offered advice rather than imposing decisions on marital choices.<sup>62</sup> Women, including those without brothers, confidently chose their partners based on personal preference. The Rigveda celebrates women who, attractively adorned, select their husbands from among a gathering.<sup>63</sup> This freedom sometimes led to bold actions, such as eloping or clandestinely meeting paramours,<sup>64</sup> resulting in occasional moral laxities.<sup>65</sup>

During more favourable periods, Hindu society demonstrated concern and respect for women by giving them priority in crowded streets, offering assistance during journeys, exempting them from ferry taxes, and ensuring their well-being when they lacked guardians. Bride prices were considered sinful, with the responsibility for marriage expenses resting on the father and brothers. Women received lighter punishments in legal matters.<sup>66</sup> Although later periods introduced restrictions such as purdah (seclusion), these were not prevalent during the Vedic Age and became more common in classical Sanskrit literature and under Muslim rule, where purdah became deeply ingrained in Hindu society.<sup>67</sup>

### **3. Position during the Coverture**

#### **3.1. Getting Married**

In ancient India, marriage was regarded as both a social and religious duty for women and was considered a sacred sacrament.<sup>68</sup> The primary purpose of marriage was procreation, particularly the birth of sons, who were believed to absolve the parents' debts to their ancestors.<sup>69</sup> Motherhood was highly valued, and the presence of a son immediately elevated a woman's status. Women in Vedic society enjoyed considerable freedom and actively participated in social functions and interactions

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<sup>60</sup> Rigveda, I. 48. 6; 124, 8; IV. 58. 8; VII. 2. 5; 9. 4; X. 86. 10.

<sup>61</sup> Ibid. at I. 48. 6; X. 69. 11.

<sup>62</sup> Ibid. at IV. 5. 5.

<sup>63</sup> Ibid, at X. 27, 12

<sup>64</sup> Ibid, at I. 184. 3

<sup>65</sup> Upadhya, supra note 11, at p. 40

<sup>66</sup> Altekar, supra note 4, at pp. 378-380

<sup>67</sup> Mitter, supra note 39, at p. 170

<sup>68</sup> Ibid, at p. 195

<sup>69</sup> Ibid, Altekar, supra note 4, at p. 118

with potential suitors.<sup>70</sup> Marriage facilitated opportunities for young men and women to meet and form families.<sup>71</sup> The ideal husband-wife relationship was perceived as the essence of kinship, the fulfilment of desires, and a source of solace.<sup>72</sup>

Furthermore, being a wife was deemed essential for performing religious rites and ensuring the procreation of sons. The wife was expected to bear heirs to continue her husband's lineage and to defend the family against enemies. Sons were vital not only for inheritance but also for the protection of the family, with Aryans traditionally aspiring to have a significant number of male children, often aiming for ten.<sup>73</sup>

In her domestic role, the wife actively managed the household and cared for her family. She was described as an "*honourable dame*" and a diligent worker.<sup>74</sup> Her primary responsibilities included attending to her husband and overseeing the entire household, which comprised family members, domestic servants, slaves, and animals. The wife was expected to maintain a benevolent demeanour towards all, attending to the needs of her in-laws and ensuring the overall well-being of the family.<sup>75</sup>

In various contexts, the Puranas underscore the importance of a wife's presence in religious observances. For example, the Matsya Purana emphasizes that a wife's participation in religious rites is a traditional obligation.<sup>76</sup> Additionally, the Brahmanda Purana recounts instances of deities worshipping alongside their spouses.<sup>77</sup>

### 3.2. Responsibilities as a Wife

In the Indian view of life, the primary objective of marriage was the birth of male children, serving both religious and temporal purposes. The wife was expected to bear heirs to propagate her husband's lineage. In ancient India, sons were essential not only for inheritance but also for protecting the family.<sup>78</sup>

In performing her domestic duties, the wife actively managed the household and cared for her family. She was described as an "*honourable dame*" and a diligent worker.<sup>79</sup> Her primary responsibility was to attend to her husband and oversee the entire household. The wife was expected to exhibit a benevolent temperament

<sup>70</sup> Rigveda, IV. 58, 8; VI. 75, 4; VII. 2, 5; X. 86, 10.

<sup>71</sup> Ibid. at IV.58.8; VI.75.4; VII.2.5; X. 86.10.

<sup>72</sup> Altekar, supra note 4, at pp. 117

<sup>73</sup> Upadhyaya, supra note 11, at p. 137

<sup>74</sup> Rigveda, I.79.1

<sup>75</sup> Upadhyaya, supra note 11, at p. 138

<sup>76</sup> Matsya Purana, 58. 21.

<sup>77</sup> Brahmanda Purana, IV.40.93-97.

<sup>78</sup> Upadhyaya, supra note 11, at p. 137

<sup>79</sup> Rigveda, I.79.1

towards all, attending to the needs of in-laws and tending to the overall well-being of the family.<sup>80</sup> Vedic texts likened the wife to Usha, emphasizing her role in waking up and caring for all life: “*Rousing all life, she stirs all creatures that have feet and makes the birds of the air fly up.*”<sup>81</sup> “*She comes like a matron waking sleepers.*”<sup>82</sup> As the mistress of the house, she was like a mother to all life, human and animal alike, affectionately caring for their needs. She played a crucial role in starting the day, opening the house like Usha unlocking the eastern gate of the sky to let in sunlight.<sup>83</sup>

Her religious obligations outweighed secular ones, with the primary function being the upkeep of the domestic fire.<sup>84</sup> She participated in worship alongside her husband, fulfilling her duties with devotion. A powerful Rig Vedic verse underscores the dutiful and sacred life of the couple: “Serving the immortal one with gifts of sacrificial meal and wealth, they satisfy the claims of love and pay due honour to the gods.”<sup>85</sup> This verse embodies a sense of balance between the limits of desire and austere renunciation, emphasizing harmony in both material and spiritual pursuits.<sup>86</sup>

In the Aryan family, the wife attended all sacrifices. Religious functions could not be complete without the joint participation of the wife and husband. This indicates that, unlike later times, in the Vedic era, wives could perform religious ceremonies in their own right. The purpose of marriage, in jointly performing social and religious duties, was realized in Vedic society.<sup>87</sup>

### 3.3. Conjugal Relationship

The Vedic hymns reflect a profound mutual love between husband and wife, demonstrating a passionate concern for the wife’s well-being.<sup>88</sup> The wife’s love, fidelity, and submission had a significant influence on her husband, often drawing him back to her through silent suffering.<sup>89</sup> Vedic wives occupied tender yet responsible roles, primarily focused on family and home. Husbands aimed to provide a comfortable life for them; however, wives sometimes participated in battles and even suffered injuries. For instance, Vispala lost a leg in battle and received an iron

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<sup>80</sup> Upadhyaya, supra note 11, at p. 138

<sup>81</sup> Rigveda, I.48.5

<sup>82</sup> Ibid. at I.124.4.

<sup>83</sup> Upadhyaya, supra note 11, at p. 138

<sup>84</sup> Ibid. at p. 133-134

<sup>85</sup> Rigveda, VIII.31.9

<sup>86</sup> Upadhyaya, supra note 11, at pp. 135-136

<sup>87</sup> Ibid. at pp. 136-137

<sup>88</sup> Ibid. at pp. 139-140

<sup>89</sup> Ibid. at p. 140

one to continue fighting.<sup>90</sup> Wives were esteemed as worthy companions of heroes, inspiring valour and motivating courageous acts through their proud support.<sup>91</sup>

The role of a wife is denoted by three terms: *Jaya* (one who shares the husband's affections), *Jani* (mother of children), and *Patni* (partner in sacrifices). These terms, found in the Rigveda, highlight different facets of wifehood without specifying precise duties.<sup>92</sup> The perception of husband and wife as a social unit is evident through the term *Dampati*, used to signify a pair: "*They anoint thee, like a welcome friend, with milk and butter, when thou makest husband and wife of one mind.*"<sup>93</sup>

In the Atharvaveda, the ideal wife is portrayed as a kind and affectionate companion, with verses advocating for harmonious communication: "*Let the wife to the husband speak words full of honey, wealful.*"<sup>94</sup> Earlier texts indicate instances of marital discord, with prayers and incantations aimed at restoring harmony between spouses, emphasizing unity and cooperation.<sup>95</sup> In rituals such as the *Ashvamedha* and *Rajasuya*, the wife's presence was essential. The *Vajapeya* sacrifice involved both the sacrificer and his wife, symbolizing the sun's ascent by mounting a chariot wheel atop a pole.<sup>96</sup>

In Brahmanical rituals, the wife plays a crucial role as a helpmate during sacrifices, actively participating in childbirth and progeny ceremonies. While often a silent partner, her involvement in rituals is sometimes questioned, as even a widower can perform the *Agnihotra*, underscoring the importance of faith and truth in the sacrificial act.<sup>97</sup>

The *Shatapatha Brahmana* mentions a ceremony in which only the wife could perform a sacrifice, indicating evolving roles for women. It also notes women's rights to read sacred texts and perform rituals.<sup>98</sup> The fourth Brahmana of the sixth chapter in the *Brihadaranyaka Upanishad* focuses on ceremonies for a son, portraying it as a religious duty. The woman is symbolised as the *Vedi* of a sacrifice, with the son deemed the fruit of the offering for future benefit. The text criticises a

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<sup>90</sup> Rigveda, I.116.15 in Upadhyaya, supra note 11, at pp. 142-143

<sup>91</sup> Prof. Indra, M.A., *The Status of Women in Ancient India*, (Minerva Bookshop, Lahore 1940), p. 182-183

<sup>92</sup> Rigveda, V.I.131.3; I.144.4

<sup>93</sup> Ibid. at V.3.2; I.127.8; X.68.2; X.10.5; X.95.2

<sup>94</sup> Shastri, supra note 9, at p. 53

<sup>95</sup> Atharvaveda, III. 30. 5

<sup>96</sup> Vajasaneyi Samhita, IX.10; Satapatha Brahmana, V

<sup>97</sup> Shastri, supra note 9, at pp. 73-74

<sup>98</sup> Shatapatha Brahmana, I.1.4.13; Shastri, supra note 9, at pp. 76-77

wife reluctant to follow her husband's directives and permits the use of physical force to ensure compliance.<sup>99</sup>

A ritual involving incantations is described in which a wife seeks to destroy her lover to prevent a *shrotriya* from engaging with another man's wife. Following this, various rituals for bearing sons are outlined, emphasizing the importance of having an educated daughter.<sup>100</sup> During the Upanishadic era, marriage, conjugal love, childbirth, and child-rearing were integrated into religious practices, and treated with the solemnity of a sacred sacrifice. Women were regarded as active partners in a man's religious duties, rather than merely sources of pleasure.<sup>101</sup>

In the Purana tradition, the wife-husband relationship is highly esteemed. The *Brahma Purana* considers a girl essential for performing religious duties, equating the gift of a well-ornamented, chaste girl to a suitable groom with gifting the entire earth. According to Brahma, the completion of a Vedic sacrifice is impossible without the wife, who was created from half of himself.<sup>102</sup>

### 3.4. Freedom and Dignity of the Wife

The husband exerted complete authority over his wife, reflecting a mastery indicative of patriarchal norms. This dominance can be traced back to Manu, Kalidasa, or even the Rigveda.<sup>103</sup> Remnants of such social norms persisted, with women sometimes viewed as possessions. For instance, Draupadi, a queen in the Mahabharata, did not question her husband's right when he staked her in a gambling hall, although the audience disapproved.<sup>104</sup>

Such occurrences were exceptional, as only one reference in the Rigveda's Social Gambler's hymns depicts a wife being staked as chattel.<sup>105</sup> Despite this, the husband's dominance persisted even when women were esteemed. The gambler's hymn highlights the detrimental habit among royals, tarnishing virtues and dimming the splendour of royal courts. This practice had inauspicious origins in the Vedic age or earlier, as seen with the 'dice-blinded' King *Yudhishtira* in the Mahabharata.<sup>106</sup>

The bestowal of slave women as chattel gifts was also common. In the Mahabharata, there is an instance of offering a hundred female slaves as a gesture of regard.<sup>107</sup>

<sup>99</sup> Brihadaranyaka Upanishad VI. 4. 3. in Shastri, supra note 9, at p. 84

<sup>100</sup> Ibid, at VI. 4. 17

<sup>101</sup> Shastri, supra note 9, at p. 85

<sup>102</sup> Brahma Purana, CLXI.33-35 in A. Roy, *Women in Purana Tradition*, Unpublished PhD Thesis, (University of Allahabad 1988) p. 189

<sup>103</sup> See, Upadhyaya, supra note 11, at p. 147

<sup>104</sup> Mahabharata II.89.19

<sup>105</sup> Rigveda, X.34.2. 4.

<sup>106</sup> Upadhyaya, supra note 11, at p. 149

<sup>107</sup> Mahabharata, X.34.2.4.

While the theoretical notion of a husband's ownership of his wife was recognized, its practical application was often met with social disapproval. In Draupadi's case, the assembly protested when Yudhishtira staked his wife.<sup>108</sup> In more cultured circles, husbands and wives were viewed as joint owners of family property, suggesting that, apart from exceptional cases, there was limited evidence of women being treated merely as property in ancient India.<sup>109</sup>

The dignity of Aryan women was upheld; even blind girls were married with sympathy and love.<sup>110</sup> Women held a revered position within their households. Although theoretical supremacy did not always align with practice, husbands acknowledged their wives' roles and power within the family.<sup>111</sup> The wife was considered an equal partner, addressed with dignity, and expected to participate in the popular assembly.<sup>112</sup>

As a bride, she assumed the role of a benevolent ruler, managing the household and sharing responsibilities and spiritual duties with her husband, thus embodying the concept of *sahadharmini*.<sup>113</sup> She had the right to express dissatisfaction and raise objections, unlike the submissiveness observed in later periods. The Vedic wife was theoretically considered equal to her husband and practically held significant authority in household management, wielding considerable influence over decisions.<sup>114</sup>

Over time, however, the Aryan wife became a more subservient figure, losing her individuality and existing primarily for her husband's benefit. Her sacrifices often went unrewarded, and her husband's opportunism exploited her compliant nature. The Smritis prescribed obedient behaviour towards her husband, with expectations that she align her life, and to a greater extent, her death, with his.<sup>115</sup>

The other side of the picture reveals darker facets of the Vedic perspective on women. Certain disparaging remarks are noted: one Vedic passage asserts that some maidens were valued solely for their wealth,<sup>116</sup> while another expresses dissatisfaction with the perceived lack of discipline and intellect among women, stating, "*Indra himself hath said: the mind of women brooks not discipline. Her*

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<sup>108</sup> Altekar, supra note 4, at pp. 254

<sup>109</sup> Ibid, at p. 255

<sup>110</sup> Rigveda, X.27.11

<sup>111</sup> "*Gods, Aryaman, Bhaga, Savitar, Purandhi, have given thee to me to be my household's mistress.*"- Rigveda, X. 85, 36

<sup>112</sup> Upadhyaya, supra note 11, at p. 151

<sup>113</sup> Ibid, at pp. 151-152

<sup>114</sup> Ibid, at pp. 152

<sup>115</sup> Ibid, at pp. 152-153

<sup>116</sup> Rigveda, X. 27.12.

*intellect hath little weight.*<sup>117</sup> An even more vehement denunciation claims that enduring friendship with women is impossible, likening their hearts to those of hyenas: “*With women, there can be no lasting friendship: hearts of hyenas are the hearts of women.*”<sup>118</sup>

Upon closer examination of Vedic society, Upadhyaya concludes that within the free Aryan community, life was vibrant and diverse. Men and women, fulfilling their roles as husbands and wives, collaborated closely, stood united in the challenges of life, and sincerely confessed their shortcomings to their gods. This era was characterized by a peaceful and prosperous existence, where women and their chosen partners experienced love and leisure without the fear of impending restrictions: “*With sons and daughters by their side they reach their full extent of life, both decked with ornaments of gold.*”<sup>119</sup>

### 3.5. The Question of Polygamy and Polyandry

The Rigveda emphasizes monogamy as the ideal, with polygamy recognized as an exception, chosen freely but not commonly practised.<sup>120</sup> Both the sacrificer and deities were depicted with their sole spouses, and a new bride was expected to exercise authority within a monogamous marriage. Happiness was associated with this exclusive union.<sup>121</sup> However, as the Indo-Aryans expanded and interacted with non-Aryans, references to polygamy increased in later Rigvedic texts.<sup>122</sup> The term “*sapatni*,” meaning co-wife, appears frequently, and the husband’s dilemma between jealous wives is portrayed with both humour and poignancy.<sup>123</sup>

In the Atharvaveda, polygamy was more prevalent, with hymns dedicated to it and rituals involving witchcraft to eliminate rivals.<sup>124</sup> The Dharmashastra traditions maintained monogamy as the ideal. The Apastamba Dharmasutra permitted a man to remarry if his wife was found lacking in dharma or progeny, prior to consecrating the Srauta fires.<sup>125</sup> Manu<sup>126</sup> allowed for supersession of a wife under specific conditions, such as misconduct or infertility, while Baudhayana<sup>127</sup> and Yajnavalkya<sup>128</sup>

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<sup>117</sup> Ibid, at VIII. 33, 17

<sup>118</sup> Ibid, at X. 95.15.

<sup>119</sup> Ibid, at VIII, 81, 8

<sup>120</sup> Upadhyaya, supra note 11, at p. 101

<sup>121</sup> Ibid, at pp. 101-102

<sup>122</sup> Ibid, at pp. 102-103

<sup>123</sup> Ibid, at p. 103

<sup>124</sup> Atharvaveda III.18.1. in Shastri, supra note 9, at p. 53

<sup>125</sup> Apastamba Dharmasutra, II.5.11.12-13

<sup>126</sup> Manusmriti, IX. 80-81

<sup>127</sup> Baudhayana, II. 4.6

<sup>128</sup> Yajnavalkyasmriti, I.73



emphasized compensating the superseded wife. Abandoning a faultless wife was met with severe penances,<sup>129</sup> though the strictness of enforcement is unclear.<sup>130</sup>

Devala outlines a hierarchy for the number of wives based on caste: one for Shudras, two for Vaishyas, three for Kshatriyas, and four for Brahmanas, with kings permitted to have as many wives as they desire.<sup>131</sup> While monogamy was idealised in classical Sanskrit texts and Puranas, recognising that true happiness lies in having one wife, polygamy was also practised among the wealthy and rulers.<sup>132</sup> The Puranas document instances of polygamy, including Prajapati Daksha's daughters being given to deities<sup>133</sup> and kings such as Ushinara, Pandu, and Krishna having multiple wives.<sup>134</sup>

The Rigveda provides limited and predominantly negative evidence on polyandry. References are scant and indirect, often viewed as a non-Aryan custom.<sup>135</sup> The Puranas document instances of polyandry, such as Marisha having ten husbands in the Vishnu Purana<sup>136</sup> and occurrences among specific castes in the Skanda Purana.<sup>137</sup> Draupadi's polyandrous marriage in the Mahabharata, justified by Yudhishtira with references to ancient traditions, is particularly notable.<sup>138</sup> However, scholars suggest non-Aryan influences, with potential links to Tibetan practices. Mitter argues that the Rigvedic evidence is insufficient to establish the prevalence of polyandry during that period,<sup>139</sup> and Kane finds it somewhat implausible, noting its lack of recognition in Dharmashastra.<sup>140</sup>

### 3.6. The Question of Divorce and Remarriage

Earlier Dharmashastra literature indicates that divorce was permitted under specific circumstances. Manu allowed a wife to leave an impotent, insane, or incurable

<sup>129</sup> See, Apastamba Dharmasutra, II.1.10.28.19

<sup>130</sup> Roy, supra note 102, at p. 137

<sup>131</sup> Ibid, at p. 137 -138

<sup>132</sup> Brahmavaivarta Purana (*Prakritikhand*), VI.64.

<sup>133</sup> The texts of Vishnu Purana, Vayu Purana, Brahmanda Purana, and Matsya Purana assert that Prajapati Daksha bestowed ten daughters upon Dharma, thirteen upon Kashyapa, twenty-seven upon Soma, four upon Arishtanemi, two upon Angira, and two upon Krishashva, with the aim of augmenting progeny. See, Vishnu Purana, I.7. 24-27; Vayu Purana, X.25-30; Brahmanda Purana, II.9.50-53

<sup>134</sup> The Vayu Purana and Matsya Purana narrate that King Ushinara had five wives, whereas King Pandu had two. See, Vayu Purana, 99.18; Matsya Purana, 48.16; Vishnu Purana, V.21.5; Matsya Purana, LXX.2

<sup>135</sup> Upadhyaya, supra note 11, at p. 112

<sup>136</sup> Vishnu Purana, I.15.8-68

<sup>137</sup> Skanda Purana, VII.1.37.19

<sup>138</sup> Mahabharata (*Adiparva*) Chapter 196.

<sup>139</sup> Upadhyaya, supra note 11, at p. 116

<sup>140</sup> P. V. Kane, *History of Dharmashastra (Ancient and Medieval Civil Law)*, Vol. 2, Part 1, (Bhandarkar Oriental Research institute 1941), pp. 554-555

husband and remarry if the previous marriage was not consummated. The Atharvaveda describes a woman remarrying and performing a ritual to unite with her second husband in heaven, which suggests a form of divorce.<sup>141</sup> Dharmasutra authors permitted Brahmana women to consider their husbands dead if they were absent for five years, and Kautilya's Arthashastra allowed second marriages with court approval if the husband was absent for up to eight years.<sup>142</sup> Parashara also permitted remarriage in cases of impotence, religious renunciation, or loss of caste by the husband.<sup>143</sup>

Kautilya outlined specific rules for divorce, permitting it if a couple was incompatible. A man seeking divorce out of fear had to return wedding gifts, while a complaining wife had to forfeit her rights to her husband's family. Divorce was not allowed if the marriage followed one of the four approved forms.<sup>144</sup> Despite these provisions, divorces were rare, and Buddhist literature suggests they were uncommon in cultured society. The *Kanhadipayana Jataka* indicates that a woman did not remarry due to family tradition. While divorce was practised among the lower classes, it was less common among the upper classes.<sup>145</sup> By the 5th century BCE, the rise of asceticism led to the belief that marriage should be lifelong, which discouraged divorce even in cases of dissatisfaction.<sup>146</sup> The 17th-century *Shudrakamalakara* allowed divorce for lower castes. In the mid-20th century,

<sup>141</sup> Atharvaveda, IX.5.27-28

<sup>142</sup> Before marrying, a childless wife, whose husband is "hrasva-pravasin" should wait only for a year, but more than a year, if she is mother of children. She should wait twice as long if she be provided by her husband; if not, she is likely to be maintained by her relatives for 4 to 8 years after which she is allowed to remarry. If the husband is a Brahmana, studying abroad, his childless wife should wait for 10 years and mother of children, 12 years. The wife of a Kshatriya, however, is not allowed to remarry. But if she bears children to a Savarna husband in order to keep her race, she shall not be disgraced or degraded. Again, a Kumari engaged in any of the first four kinds of marriage must wait for 7 months for her husband who has gone abroad, but is heard of, provided his name is not published, otherwise, for one year. But in case the absent husband is not heard of, the wife shall wait for 5 months. The wife who receives the shulka from her absent husband who is not heard of, shall wait for 3 months, but 7 months, if he is heard of. But the wife who has received the whole amount of shulka shall wait for 5 months, and 10 months, if the husband is heard of. Further, a woman whose husband is dead is also allowed to remarry. See, Das, Sudhirranjan. "The Position of Women in Kautilya's Arthashastra", *Proceedings of the Indian History Congress-3* (1939): 537-63. <http://www.jstor.org/stable/44252408>.

<sup>143</sup> "Naste mrite pravrajite klive ca patite patau pancasu apatsu narinam patiranyo vidhiyate." "In [case of] the disappearance or death or renunciation or impotence or lost caste-status of her husband: in these five predicaments, a woman is allowed to take another husband." – Parasarasmṛti, IV. 28

<sup>144</sup> Altekar, supra note 4, at pp. 99-100

<sup>145</sup> Ibid, at pp. 100-101

<sup>146</sup> Ibid, at pp. 101-102

Gujarati caste panchayats permitted divorce, but this was later invalidated by the Bombay High Court as contrary to Hindu law.<sup>147</sup>

#### 4. Contentious Issues during the Post-Coverture Period

##### 4.1. The Custom of Sati

No Vedic passage incontrovertibly refers to widow-burning, nor do the ancient Grihyasutras prescribe it.<sup>148</sup> This practice likely emerged in Brahmanical India a few centuries before Christ. The Dharmasutras, except for the Visnu-dharmasutra, and the Manusmriti remain silent on sati.<sup>149</sup> The Visnu-dharmasutra suggests that a widow should either observe celibacy or ascend her husband's pyre.<sup>150</sup> References in the Mahabharata and other texts imply that widow-burning was rare and initially confined to royal families and warriors.<sup>151</sup> Texts such as those by Parashara, Angirasa and Vyaghrapada explicitly forbid self-immolation for Brahmana widows.<sup>152</sup> The Veda-Vyasa-smriti<sup>153</sup> and the Ramayana<sup>154</sup> mention widow self-immolation, but this practice for Brahmana widows appears to have started much later than for Kshatriya widows.

The burning of a widow on her husband's death is termed sahamarana or sahamamana, occurring when she ascends the funeral pyre with his corpse. Anumarana occurs when, after her husband is cremated elsewhere, she resolves to die and is burned with his ashes, padukas (sandals), or without any memento.<sup>155</sup>

In Kalidasa's Kumarasambhava,<sup>156</sup> Rati, Kama's wife, speaks of self-immolation but is deterred by a divine voice. The Gathasaptashati<sup>157</sup> and Kamasutra<sup>158</sup> reference anumarana. Varahamihira commends women for their courage in anumarana. In Harshacharita,<sup>159</sup> Yashomati, queen of Prabhakaravardhana, consigned herself to fire before her husband's death. The Bhagavata Purana mentions Gandhari's self-immolation after Dhritarashtra's death.<sup>160</sup>

<sup>147</sup> Ibid, at p. 102

<sup>148</sup> See V. M. Apte in "Social and Economic Conditions" in R.C. Majumdar (ed.), *The History and Culture of Indian People*, Vol. 1, The Vedic Age, (Bharatiya Vidya Bhavan 2017), p. 393

<sup>149</sup> See, Kane, supra note 140, Vol. 2, Part-1, p. 625

<sup>150</sup> Visnu Dharmasutra, 25.14

<sup>151</sup> Kane, supra note 140, Vol. 2, Part-1, pp. 625-626

<sup>152</sup> Ibid, at Vol. 2, Part-1, p. 627

<sup>153</sup> Vedavyasasmriti, II.53

<sup>154</sup> Ramayana, Uttara Kanda, 17.15

<sup>155</sup> Kane, supra note 140, Vol. 2, Part-1, p. 628

<sup>156</sup> Kumarasambhava, IV.34

<sup>157</sup> Gathasaptashati, VII.33

<sup>158</sup> Kamasutra, VI.3.53

<sup>159</sup> Harshacharita, *Ucchvasa* 5

<sup>160</sup> Bhagavata Purana, I.13.57

Numerous epigraphic records, such as the Gupta inscription of 510 A.D. and the Eran stone pillar inscription, reference sati.<sup>161</sup> Initially rare and confined to royal families, the practice eventually spread to other classes. Sati was not imposed by priests but arose from popular sentiment and the harsh realities faced by widows. Manu permits soldiers to retain women as part of their booty.<sup>162</sup> Over time, learned commentators supported sati, promising future rewards.

Brahmin widows were permitted to follow their husbands in death (anumarana) under specific conditions. Restrictions were imposed on widows who were pregnant, had young children, were prepubescent, or were menstruating.

Critics like Medhatithi compared sati to forbidden practices and questioned its alignment with Vedic principles.<sup>163</sup> The Mitakshara defended it as an exceptional case.<sup>164</sup> Kane argues that interpretations of texts related to widow-burning were misused or corrupted.<sup>165</sup> Historical accounts suggest that sati was more prevalent in Bengal due to local property rights laws under Dayabhaga, which granted widows more rights over family property. Despite this, evidence indicates that the number of widows performing sati was relatively small,<sup>166</sup> and there was little widespread resistance to its eventual abolition.<sup>167</sup>

#### 4.2. Niyoga (Levirate)

Niyoga was an ancient practice that permitted a widow to conceive a son with an appointed male if her deceased husband had no offspring.<sup>168</sup> This practice, whose origin and purpose have been the subject of debate, was governed by strict conditions: the widow's husband must be childless, the appointment must be sanctioned by family elders, and the appointed male—who could be a brother-in-law or someone of the same caste—was expected to act out of duty rather than personal desire.<sup>169</sup> The relationship was regulated to prevent emotional attachment and to ensure that only one or two sons were conceived. The practice was subject to

<sup>161</sup> See, M. L. Chadhar, 'Sati Pillars of Eran' DOI: 10.13140/RG.2.2.14936.24322, Date of Accession 13.05.2025

<sup>162</sup> Manusmriti, VII.96

<sup>163</sup> Manusmritibhasya, V.157

<sup>164</sup> Mitakshara, I.86

<sup>165</sup> Kane, supra note 140, Vol. 2, Part-1, p. 634

<sup>166</sup> Apte, supra note 148, p. 518

<sup>167</sup> Kane, supra note 140, Vol. 2, Part-1, pp. 634-636

<sup>168</sup> See Manusmriti, IX.59-61; Baudhyana Dharmasutra II. 2. 17; Yajnavalkyasmriti, I. 68-69; Naradasmriti (*stripumsa*, 80-83); Also see Kane, supra note 140, Vol. 2, Part-1, p. 599

<sup>169</sup> See, Kautilya's Arthshastra, I.17, referred to in Kane, supra note 140, Vol. 2, Part-1, p. 600-601

numerous restrictions designed to prevent misuse and incest, rendering it rare and heavily controlled in ancient times.

While texts such as the Gautama Dharma Sutra permitted *niyoga* under stringent conditions.<sup>170</sup> Manu initially described *niyoga* but later strongly condemned it, viewing it as a violation of ancient dharma and attributing its introduction to King Vena, who, according to Manu, caused moral decline.<sup>171</sup>

Early dharmasutras, such as those by Vishvarupa and Medhatithi, attempted to reconcile the conflicting views on *niyoga*, which was both rare and controversial. Vishvarupa outlined several perspectives: *niyoga* was considered outdated and forbidden in his time, allowed under specific circumstances, or relevant only to certain social classes or contexts. The Mahabharata and other texts reflect the rarity and selectivity of *niyoga*, with royal families potentially preferring Brahmins over Kshatriyas for this role.<sup>172</sup>

## 5. Legal Rights and Status of Women

### 5.1. Proprietary Position of Women

The proprietary rights of women in Hindu society evolved over time. During the Vedic age, women enjoyed notable rights, including access to education, the freedom to choose partners, and participation in social roles. Widows had the option to remarry and were recognized as joint household owners (*dampati*);<sup>173</sup> however, they could not personally hold or inherit property.<sup>174</sup>

In the Brahmana period, women's proprietary rights expanded. They were granted life estates in their deceased husband's share, which allowed them to live separately and protect themselves from undesirable situations.<sup>175</sup>

Later texts, such as the Upanishads, the Shrauta-Sutras, and the Grihya-Sutras, introduced changes and challenges to women's property rights. The Dharmashastras from the first and second centuries A.D. explicitly stated that women and children could not be given away or sold under any circumstances.<sup>176</sup> Women were granted rights to *stridhana*. During this period, the concept of joint ownership between husband and wife emerged as a legal fiction.<sup>177</sup>

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<sup>170</sup> Gautama Dharma Sutra, 18.4-14

<sup>171</sup> Manusmriti, IX.64-68

<sup>172</sup> See, Kane, supra note 140, Vol. 2, Part-1, pp. 604-605

<sup>173</sup> Altekar, supra note 4, at pp. 109-110

<sup>174</sup> Ibid, at p. 409

<sup>175</sup> Ibid, at pp. 426-427

<sup>176</sup> Yajnavalkyasmriti, II.175 in Altekar, supra note 4, at p. 255

<sup>177</sup> Altekar, supra note 4, at p. 258

However, wives did not have automatic rights to property inheritance or partition. Joint ownership did not entitle them to demand a partition if they could not live with their husbands. Although Yajnavalkya permitted a wife to claim a third share if unjustly superseded, this right was not widely upheld, and husbands could evade obligations by citing disobedience.<sup>178</sup>

Records indicate that Vedic maidens had a share in their father's property and could remain in the family until old age, with maintenance as a legal right. The Atharvaveda and Rigveda suggest that daughters' wealth was considered akin to stridhana, and their personal ornaments and marriage dowries were significant. Wealth played a role in attracting suitors, underscoring its importance in courtship.<sup>179</sup>

While Dharmasutras like Gautama, Baudhayana, and Vasishtha generally exclude daughters from inheritance,<sup>180</sup> the Apastamba Dharmasutra<sup>181</sup> and Manusmṛiti<sup>182</sup> acknowledge daughters' rights to inheritance, particularly in the absence of sons. Puranic legends also support daughters' inheritance rights, though evidence on this matter remains somewhat conflicting.<sup>183</sup>

#### 5.1.1. Stridhana

Initially, Hindu society was reluctant to grant wives full or exclusive ownership of immovable property. However, women's ownership of movable property such as ornaments, jewelry and valuable apparel was acknowledged as "stridhana." Stridhana was linked to the practice of bride-price, which was often returned to the bride by her parents as her separate estate. If the bride had no children, her father could reclaim the property; otherwise, it would pass to her offspring. Brides also received wedding gifts considered their own property, even without a bride-price. During the Vedic period, it is unclear if women could dispose of this property without their husbands' consent, as social customs likely discouraged such actions.<sup>184</sup>

Over time, the concept of stridhana expanded to include gifts from husbands during and after marriage. Women gradually gained full control over the property conveyed to them as stridhana.<sup>185</sup> Ancient scholars like Baudhayana and Manu acknowledged women's rights to stridhana, and later thinkers like Vishnu and Yajnavalkya also recognized these rights.<sup>186</sup> Manu identified six types of stridhana: gifts from parents

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<sup>178</sup> Ibid, at p. 327

<sup>179</sup> Rigveda, X.27.12; X.10.12

<sup>180</sup> Kane, supra note 140, at Vol. III, p. 714

<sup>181</sup> Apastamba Dharmasutra, II. 6.143

<sup>182</sup> See, Manusmṛiti, IX.92-200

<sup>183</sup> Vishnu Purana, IV.13.151-54; Brahmanda Purana III.60.21; Vayu Purana, LXXXV.21

<sup>184</sup> Altekar, supra note 4, at pp. 259-260

<sup>185</sup> Ibid, at p. 261

<sup>186</sup> Ibid, at pp. 261-262

and brothers at any time, gifts from the husband after marriage, and presents from anyone during or after the wedding. Vishnu expanded this to include gifts from sons and other relatives and compensation if the husband remarried.<sup>187</sup>

Originally, stridhana mainly included valuable items like jewelry. From the 7th century AD, its definition broadened to cover property obtained through inheritance, purchase, and other means. Vijnaneshwara's wide-ranging definition included nearly all property a woman possessed.<sup>188</sup> It is noteworthy that almost everyone recognized that her earnings from work are not considered part of her stridhana.<sup>189</sup>

Medieval legal scholars had mixed views on Vijnaneshwara's definition. While most, including Apararka and Mitramisra, agreed with it, some, like Ishvarananda and Jimutavahana, did not.<sup>190</sup> This division of opinions among jurists signifies that society did not adhere to a uniform practice in recognising the extent of stridhana.<sup>191</sup>

Vedic literature shows that unmarried daughters had personal ornaments they could dispose of freely. During the marriage, they gave riches and ornaments to Brahmins, another aspect of stridhana.<sup>192</sup> Vedic literature does not specify if a wife could dispose of her property without her husband's consent, and early Smriti writers did not grant women full control over their stridhana.<sup>193</sup> Manu, for instance, stated a wife should not alienate her property without her husband's approval.<sup>194</sup> Later, this was deemed unjust,<sup>195</sup> and jurists divided stridhana into Saudayika (gifts from close relations like the father, mother, or husband, over which women had full control) and non-Saudayika (which women could not alienate but could enjoy during their lifetime).<sup>196</sup>

#### 5.1.1.1. Inheritance of Stridhana

In ancient India, the inheritance of stridhana was complex. If a woman died without children and her marriage was through some unapproved forms, her stridhana often

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<sup>187</sup> Ibid, at pp. 262-263

<sup>188</sup> Ibid, at pp. 263-264

<sup>189</sup> Ibid, at p. 263

<sup>190</sup> Ibid, at p. 265

<sup>191</sup> Ibid, at p. 266

<sup>192</sup> Upadhya, supra note 11, at p. 37

<sup>193</sup> Pioneer D, "Hindu Women's Land Rights in Context of Stridhan" (The Pioneer, January 1, 2023) <<https://www.dailypioneer.com/2023/sunday-edition/hindu-women-s-land-rights-in-context-of-stridhan.html>> accessed 3 June, 2024.

<sup>194</sup> Halder & Jaishankar, supra note 1, at pp. 663-687

<sup>195</sup> Nitisha, "Manusmriti's View on the Status of Women" (Your Article Library, January 28, 2015)<<https://www.yourarticlelibrary.com/women/Manusmritis-view-on-the-status-of-women/47392>> accessed 3 June, 2024.

<sup>196</sup> Altekar, supra note 4, at pp. 266-267

returned to her family as it was seen as a bride price.<sup>197</sup> However, if she had children, they inherited her stridhana.<sup>198</sup>

Traditionally, daughters were the primary heirs of stridhana. While preference was given to unmarried daughters, the concept of equitable distribution among daughters, including those married and in need, was also recognized. In rare cases, granddaughters could inherit.<sup>199</sup>

Over time, a growing acceptance emerged for both sons and daughters inheriting stridhana, especially property acquired after marriage.<sup>200</sup> This reflected a more equitable approach to inheritance. Ultimately, the inheritance of stridhana varied based on factors such as marriage type, family structure, and prevailing legal interpretations.

### 5.1.2. Widow's Property Rights

For a long time, widows had limited inheritance rights. Vedic texts and Dharmashastras generally did not recognize widows as heirs, focusing instead on male descendants or other kin. Practices like "niyoga," where widows married other family members, often rendered inheritance issues less relevant.<sup>201</sup> By around 300 B.C., Indian jurists, including Apastamba and Manu, did not acknowledge widow inheritance rights.<sup>202</sup> Manu recognized the mother as an heir, but not the widow.<sup>203</sup> With the decline of niyoga and widow remarriage around the start of the Christian era, social attitudes shifted to view religious life as more honorable for widows, further suppressing their inheritance rights.<sup>204</sup>

Over time, the recognition of widows' inheritance rights evolved. Early Vedic texts largely excluded widows from property inheritance. By the beginning of the Christian era, this perspective began to shift. The Gautama Dharmasutra proposed co-heir status for widows, and later texts like those of Vishnu and Yajnavalkya recognized widows' rights to inherit their husband's estate in the absence of sons.<sup>205</sup> During 400-1000 A.D., the recognition of widows as heirs faced significant opposition from male property owners, resulting in two main viewpoints: the

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<sup>197</sup> Yajnavalkyasmriti, II.145

<sup>198</sup> Altekar, supra note 4, at p. 273

<sup>199</sup> Ibid, at pp. 273-274

<sup>200</sup> Ibid, at pp. 274-275

<sup>201</sup> Ibid, at pp. 299-300

<sup>202</sup> Ibid, at p. 300

<sup>203</sup> Ibid, at pp. 300-301

<sup>204</sup> David Brick, "Widow Remarriage and Niyoga", *Widows Under Hindu Law* (2023; online edn, Oxford Academic, 23 Mar. 2023), <https://doi.org/10.1093/oso/9780197664544.003.0002>, accessed 22 Jan. 2024.

<sup>205</sup> Altekar, supra note 4, at p. 303



orthodox view, which opposed widow inheritance, and the reformist view, which supported it.<sup>206</sup> Some reformers proposed compromises, such as the inheritance of property of a certain value or only movable property, while others argued that widows should inherit the entire estate.<sup>207</sup> They supported this by citing ancient texts and sages, claiming that since a wife and husband were considered joint owners of family property, the widow should inherit the estate as long as she was alive and could perform funeral rites.<sup>208</sup>

Widows were asserted to have the right to inherit all of their husband's property, including assets, real estate, and ornaments, even if other relatives were alive. They had authority over their property and could seek royal protection against interference.<sup>209</sup> Jimutavahana argued that a widow's rights to her husband's property continued after his death, disputing earlier views that excluded widows from inheritance. Reformers insisted that chaste widows should inherit their husband's entire estate, despite opposition.<sup>210</sup> While this interpretation was innovative, it was not universally accepted until several centuries later, with the Deccan region recognizing widow inheritance rights by the 12th century, as evidenced by inscriptions.<sup>211</sup>

In northern India, widow's inheritance rights were recognized later than in other regions. Initially, the property of those who died without sons would go to the king, who then provided maintenance for the widow.<sup>212</sup> This right began to be acknowledged in Gujarat only in the 12th century, despite previous resistance and the imposition of death duties on such property.<sup>213</sup>

By 1300 A.D., widow inheritance rights were recognized across India.<sup>214</sup> However, interpretations varied: the Mitakshara school allowed inheritance only if the husband

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<sup>206</sup> Ibid, at p. 303

<sup>207</sup> Ibid, at pp. 304-305

<sup>208</sup> Ibid, at pp. 305-306

<sup>209</sup> Ibid, at p. 306

<sup>210</sup> Ibid, at pp. 306-307

<sup>211</sup> Ibid, at pp. 308-309

<sup>212</sup> Brick David, "Widows' Rights of Inheritance", *Widows Under Hindu Law* (2023; online edn., Oxford Academic, 23 March 2023), <https://doi.org/10.1093/oso/9780197664544.003.0003>, accessed 22 Jan. 2024.

<sup>213</sup> Altekar, *supra* note 4, at pp. 309-310

<sup>214</sup> Y. Kulshreshtha, "Overview: A Widow's Inheritance and Maintenance Rights in India — YlCube" (YlCube) <<https://ylcube.com/c/blogs/overview-a-widows-inheritance-and-maintenance-rights-in-india/>> accessed 5 June 2024.

had separated from the joint family, based on Yajnavalkya's texts.<sup>215</sup> In contrast, the Dayabhaga school supported widow inheritance regardless of the husband's family status.<sup>216</sup> These differences reflected concerns about property management and the impact of transferring extensive assets to female heirs.<sup>217</sup>

Jimutavahana's perspective on granting the widow full ownership of her inheritance must be seen in the context of the history of this legal issue. Early jurists like Vishnu and Yajnavalkya, who recognized the widow as an heir, did not explicitly indicate that she had limited rights. It can be argued that they intended to grant her the same rights as other heirs, such as sons, fathers, or brothers, with whom they mentioned her.<sup>218</sup>

In the extensive discussion of this topic in the Mitakshara, Vijnanesvara did not state or imply that the widow's rights were limited. He mentioned that a chaste and legally married wife of a man who died childless and had separated from the joint family would inherit his entire estate. While he used several qualifying adjectives, none of them suggested that he viewed the widow's estate as limited.<sup>219</sup>

Jimutavahana supported full ownership rights for widows, viewing them as heirs with similar rights to other heirs. However, early jurists like Vishnu and Yajnavalkya did not explicitly limit these rights. In contrast, some jurists, including those quoted in the Mahabharata and Katyayana, argued that widows had restricted rights, such as only using income from inherited property and not making transactions or disposals.

In the late medieval period (1200-1800 A.D.), efforts to expand widow's rights emerged, though initially there was reluctance to grant them the right to dispose of inherited property. Over time, texts like Brihaspati's allowed widows to make religious gifts of their property, with some limitations. Writers like Devanabhatta and Nilakantha supported this, emphasizing that gifts for spiritual purposes were acceptable, though consent from reversioners or the caste was sometimes required.<sup>220</sup>

## 5.2. Women's Right to Adopt a Child

Evidence of women's adoption practices during the Vedic period is found in the Rigveda, where Vadrmati, married to an impotent man, prayed to the Asvins for a

<sup>215</sup> "Mitakshara School of Law" <<https://www.legalserviceindia.com/legal/article-5926-mitakshara-school-of-law.html>> accessed 5 June 2024.

<sup>216</sup> Altekar, *supra* note 4, at pp. 310-312

<sup>217</sup> *Ibid.*, at pp. 312-313

<sup>218</sup> *Ibid.*, at p. 314

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*, at pp. 316-317

son and was granted Hiranyahasta.<sup>221</sup> The Aitareya Brahmana also mentions the adoption of Sunasepha, indicating that adoption practices existed at that time. However, it remains unclear whether women were involved in adoption practices.<sup>222</sup> The interpretation of Vedic law does not explicitly exclude women from adopting; thus, unless otherwise specified, the texts should be considered applicable to females.<sup>223</sup>

In the Smritis, most sages, with the exceptions of Vasistha and Baudhayana, do not address a woman's right to adopt. Atri suggests adoption by those who are childless but does not specify gender.<sup>224</sup> Vasistha and Baudhayana explicitly state that a woman cannot adopt a son without her husband's permission.<sup>225</sup>

There is debate among Hindu law commentators regarding women's adoption rights. Vachaspati Mishra argues against women's rights to adopt, even with the husband's permission.<sup>226</sup> Nanda Pandita generally maintains that women cannot adopt but acknowledges an exception if Vasistha's text permits adoption with the husband's consent.<sup>227</sup>

The Dattaka Chandrika, citing Vasistha, permits adoption by women with their husband's consent,<sup>228</sup> whereas the Dattaka Nirṇaya<sup>229</sup> and Dattaka Tilaka<sup>230</sup> assert that a woman cannot adopt without her husband's consent, emphasizing that a woman does not have independent rights in such matters.

Jagannatha emphasizes that traditionally, the responsibility of adopting a son is assigned to men, with no legal provisions indicating it as a woman's duty.<sup>231</sup>

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<sup>221</sup> "The intelligent (Vadhrimati) invoked you, Nasatyas, who are the accomplisheers of desires and the protectors of many, with a sacred hymn; her prayer was heard like the instruction of a teacher, and you Aswins gave to the wife of an impotent husband Hiranyahasta her son. - Rigveda I.116.13

<sup>222</sup> Mitter, supra note 39, at p. 134

<sup>223</sup> Ibid.

<sup>224</sup> Dattaka Mimansa, I.3

<sup>225</sup> Mitter, supra note 39, at pp. 135-136

<sup>226</sup> Ibid, at pp. 136-137

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> "Giving or taking a son in adoption is illegal in a woman unless her husband gives his consent to it." See, Mitter, supra note 39, at p. 138

<sup>230</sup> "In regard to a wife, in regard to wealth, and especially in regard to sacred law, a woman does not deserve independence neither in taking nor abandoning." See, Mitter, supra note 39, at p. 138

<sup>231</sup> Mitter, supra note 39, at p. 138

Currently, all schools of thought except the Mithila school accept the ability of widows to adopt. Generally, women are seen as incapable of adopting independently and do so on behalf of their husbands under delegated authority.<sup>232</sup>

Nanda Pandita argued that individuals without female children could adopt daughters, citing texts from Manu<sup>233</sup> and Yaska,<sup>234</sup> as well as examples such as the adoption of Santa, Dasharatha's daughter, by Lomapada.<sup>235</sup> However, Nilkantha contended that only males could be legally adopted, based on the use of "he" in certain texts. Critics argue that Nilkantha's view neglects texts suggesting that females can also be adopted.

In Bengal, a wife may give her son in adoption with her husband's consent, with the assumption of consent in the absence of explicit prohibition. Even without explicit authority from a deceased husband, a widow may give her son in adoption.<sup>236</sup>

In the Southern School, a wife's power to give or take a child in adoption is considered equal to that of her husband unless explicitly prohibited.<sup>237</sup> In the Maharashtra School, there is debate on whether a mother's right to give a child in adoption derives from her *Patria Potestas* or her maternal relationship.<sup>238</sup>

### 5.3. Her Right to Guardianship of Children

In Hindu law, the minority typically ends at the age of sixteen. Narada defines a youth under sixteen as 'Poganda,' a term indicating someone who is legally incapable of handling legal matters.<sup>239</sup> This definition forms the basis of contemporary Hindu law regarding the age of majority.<sup>240</sup>

There is debate among commentators regarding whether minority concludes at the beginning or the end of the sixteenth year. In Bengal, it is commonly believed that majority begins at the start of the sixteenth year, whereas other schools of Hindu law argue that it begins at the end of the sixteenth year.<sup>241</sup>

<sup>232</sup> See *Amrita vs. Sarnomoyee* L. R. 27. I. A. p. 120, in Mitter, supra note 39, at p. 140

<sup>233</sup> Manusmriti: "Not having read the Vedas, not having produced issue: and not having performed the various sacrifices, a regenerate man desiring absorption falls into a region of horror."

<sup>234</sup> "Manusmriti, descendant from self-existent, has declared at the commencement of the world, without distinction, that wealth is that of children (putra) male and female (mithuna)."

<sup>235</sup> Mitter, supra note 39, at p. 142

<sup>236</sup> Ibid, at pp. 145-146

<sup>237</sup> Ibid, at p. 146

<sup>238</sup> Ibid, at p. 147

<sup>239</sup> Naradasmriti, V.35

<sup>240</sup> Mitter, supra note 39, at pp. 147-148

<sup>241</sup> *Motheoormohan vs. Surendra* I. L. R. I cal. 108, F. B.) In Mitter, supra note 39, at p. 148

Hindu law grants mothers the right to guardianship of their children, subordinate only to fathers. Although Hindu law provides specific rules for guardianship within the context of marriage, it does not offer explicit regulations for other contexts.<sup>242</sup> Manu's text suggests that a mother is the primary guardian of her infant son. In the Bombay region, the Poona Pandits confirmed that a widow would act as the guardian of her son during his minority, overseeing both his person and property. The Mithila school of Hindu law even prioritizes the mother as a guardian over the father.<sup>243</sup>

A female guardian of a Hindu minor is permitted to manage the estate within the constraints set by Hindu law.<sup>244</sup> This authority is limited to instances where it is necessary or beneficial for the estate.<sup>245</sup>

#### 5.4. Her Right to Maintenance

Original Hindu law texts do not comprehensively address the maintenance of females. The law, derived from various commentaries and codes, emphasizes the need to support female family members.<sup>246</sup>

The right to maintenance is purely personal, existing solely for the person in need, and can be enforceable as a personal obligation or dependent on property possession.<sup>247</sup> Manu's text highlights the former, stating:

A mother, and a father in their old age, a virtuous wife and an infant son must be maintained even though doing a hundred times that which ought not to be done.<sup>248</sup>

This right, similar to property rights, ceases upon the death of the entitled female.<sup>249</sup>

While some argue this right is independent of assets, others, like Kamalakara, believe it is the duty of sons and grandsons to support indigent widows and daughters-in-law, regardless of family wealth.<sup>250</sup>

All commentators agree that maintaining the mother, chaste wife, and infant daughter is a personal obligation, independent of property. Manu's text underscores this, emphasising support even if they act improperly.<sup>251</sup>

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<sup>242</sup> Mitter, *supra* note 39, at p. 150

<sup>243</sup> *Jussoda Koer vs. Lallah Nettyah Lall*. I. L. R. 5 Cal - 43.

<sup>244</sup> *Roshan vs. Harsankar* I. L. R. 3 All. 535.

<sup>245</sup> Mitter, *supra* note 39, at pp. 151-152

<sup>246</sup> *Ibid*, at p. 177

<sup>247</sup> *Ibid*, at p. 176

<sup>248</sup> Manusmriti cited in Mitter, *supra* note 39, at p. 177

<sup>249</sup> Mitter, *supra* note 39, at p. 177

<sup>250</sup> *Ibid*, at pp. 177-178

<sup>251</sup> Manusmriti, *supra* note 248.

This obligation falls on the husband and son, and failure to provide support can result in fines imposed by the king.<sup>252</sup>

Revered sages emphasized the importance of maintaining female family members. According to Manu, women should be respected and adorned with ornaments, as honouring them brings divine blessings, while neglect leads to a family's downfall (Manu, Chap. III, verses 55-59).<sup>253</sup>

The author of the Dayabhaga cited Manu, stating that supporting those who should be maintained is essential for attaining heaven, while neglect leads to hell: "The support of persons who should be maintained is the approved means of attaining Heaven but hell is the man's portion if they suffer."<sup>254</sup>

Brihaspati advised providing for one's family's needs before giving to others, warning that neglecting family for the sake of charity may initially seem pleasant but ultimately brings suffering:

A man may give what remains after the food and clothing of his family; the giver of more who leaves his family naked and unfed, may taste honey at first but shall afterwards find it poison.<sup>255</sup>

Hindu law, based on these teachings, implies a moral and legal duty to support dependent female family members, including the wife, widow, widowed daughter-in-law, brother's widow, grandmother, mother, daughter, and sister.<sup>256</sup>

#### **5.4.1. Wife's Right to Maintenance**

Hindu texts, including Manu, emphasize the husband's duty to support his wife, infant son, and aged parents. The wife's right to maintenance arises from her co-ownership with her husband and the moral identity established through marriage: "that the husband receives his wife from the gods; (he does not wed her) according to his own will; doing what is agreeable to the gods, he must always support her while she is faithful"<sup>257</sup>

This right is a personal obligation tied to the marriage relationship, independent of the husband's property possession.<sup>258</sup>

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<sup>252</sup> Ibid, at p. 178

<sup>253</sup> Ibid, at p. 179

<sup>254</sup> Manusmriti, II.23

<sup>255</sup> Brihaspatismriti, XV.3

<sup>256</sup> Mitter, *supra* note 39, at pp. 180-181

<sup>257</sup> Manusmriti, IX.95

<sup>258</sup> *Sidlingapa vs. Sidava* (1878), I. L. R., 2 Bom., 624; *Gopikabai vs. Dattatraya* (1900), I. L. R., 24 Bom., 386.

The wife's right to maintenance can be claimed only from her husband. Other family members are not obligated to provide support unless the husband has abandoned her and his property is in their possession.<sup>259</sup> In such cases, the wife is entitled to receive maintenance, typically not exceeding one-third of the husband's assets held by these family members.<sup>260</sup>

Legal cruelty, which prevents a husband from seeking restitution of conjugal rights, can also justify a wife's departure from her husband's home and her claim for separate maintenance.<sup>261</sup>

#### 5.4.1.1. Forfeiture of Maintenance

A Hindu wife cannot claim maintenance if she refuses to live with her husband without valid reason. Mere unkindness or neglect, unless it amounts to cruelty, does not justify her leaving him.<sup>262</sup> Separating without justifiable cause breaches her duty and disqualifies her from receiving maintenance.<sup>263</sup>

This obligation does not apply to widows, who are not required to reside in their deceased husband's house.<sup>264</sup> However, a wife may be granted separate maintenance if she has justifiable reasons for leaving, such as habitual cruelty or violence by the husband that poses a severe threat to her personal safety.<sup>265</sup>

##### 5.4.1.1.1. Unchastity as a Ground of Forfeiture

In Hindu law, a widow forfeits her right to maintenance if she engages in unchaste behaviour.<sup>266</sup> There is debate regarding whether an unchaste wife can claim maintenance. Manu recommends confining such wives and imposing penances:

*"An exceedingly corrupt wife, let her husband confine to one apartment, and compel her to perform penance which is prescribed for males in cases of adultery"*<sup>267</sup>

Kulluka interprets this as physical restraint to prevent further misconduct. Conversely, Vishnu, Vasistha, and Brihaspati suggest that an adulterous wife can

<sup>259</sup> *Ramabai vs. Trimbak*, 9 Bom. H. C. R., 283; *Gopika vs Dattatraya*, I. L. R., 24 Bom., 386

<sup>260</sup> Mitter, supra note 39, at p. 286

<sup>261</sup> Ibid.

<sup>262</sup> *Kullyanesuree vs Dwarkanath* (1866), 6 W. R., 115; *Sitanath vs Srimati Haimabutty* (1875), 24 W. R., 377.

<sup>263</sup> *Surampalli vs. Surampalli* (1908), I. L. R., 3 Mad, 338.

<sup>264</sup> Mitter, supra note 39, at pp. 287-288

<sup>265</sup> *Matangini Dasi vs. Jogendra Chundra Mallick* (1891), I. L. R., 19 Cal, 84

<sup>266</sup> *Ramanath vs. Rajanimoni*, I. L. R., 17 Cal, 674; *Kanlasami vs. Muru*, I. L. R., 19 Mad, 6.

<sup>267</sup> Manusmriti, XI.177

regain her status through penance and should only be abandoned if she has relations with a low-class man or certain others.<sup>268</sup>

Narada advocates harsher treatment, including sleeping on a low bed, poor food and clothing, and menial tasks.<sup>269</sup>

Yajnavalkya emphasizes reforming behaviour rather than mere punishment. Vijnaneswara explains that this approach aims to eliminate immoral tendencies.<sup>270</sup>

There is debate on whether Yajnavalkya's text concerning the maintenance of an unchaste wife is mandatory or advisory. Some argue it imposes a moral duty, as other texts suggest an unchaste wife can be abandoned without maintenance.<sup>271</sup>

The Mitakshara, commenting on Yajnavalkya, describes abandonment as depriving the wife of conjugal rights and religious ceremonies, rather than expulsion from the home:

A woman guilty of adultery is purified by catamenia; but her abandonment (tyaga) is ordained in case of conception by adultery, and in case of causing abortion or killing the husband as well as in case of committing heinous sins.<sup>272</sup>

This suggests that an unchaste wife should remain within the household and receive necessary provisions.<sup>273</sup>

The Viramitrodaya supports providing food and clothing to unfaithful wives, stating they should be maintained if residing near the husband's home:

Also let one act in the same manner towards even the fallen wives; food and raiment, however, should be allowed to them, if they reside in the vicinity of the dwelling house.<sup>274</sup>

This concept is consistent with the texts of Yogishvara, who emphasizes the husband's responsibility.<sup>275</sup>

Nilkantha and Madhavacharya agree, citing texts that advocate for not abandoning women except in cases of severe sin, and even then, they should undergo penance within the household.<sup>276</sup>

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<sup>268</sup> Vishnu Dharmasutra, LIII.8; Vasistha Dharmasutra, XXI.8-10; Brihaspatismriti, XXIII.14

<sup>269</sup> Naradasmriti, XII.91

<sup>270</sup> Mitakshara, I.71

<sup>271</sup> Yajnavalkyasmriti, II, 142

<sup>272</sup> Yajnavalkyasmriti, I, 72

<sup>273</sup> S. G. Sarkar, *A Treatise on Hindu Law*, 4<sup>th</sup> Ed. (R. Banerjee & Co., 1910.), p. 367

<sup>274</sup> Viramitrodaya, Translation by G. C. Sarkar, p. 153

<sup>275</sup> Mitter, supra note 39, at p. 292

<sup>276</sup> Prayashchitta Mayukha, Benares Edition, p. 91



The challenge lies in distinguishing between legal and moral obligations in Hindu law regarding the maintenance of an unchaste wife. Some interpret texts as treating maintenance as a legal duty and viewing adultery as expiable: “She who has performed expiatory rites, becomes fit for conjugal and social association”<sup>277</sup>

#### 5.4.2. Mother’s Right to Maintenance

According to Manu, a mother is entitled to maintenance regardless of the presence of ancestral property. The Mitakshara asserts that, in the absence of ancestral property, only aged parents, the wife, and minor children are entitled to maintenance from self-acquired property.<sup>278</sup> Hindu law does not obligate a stepson to support his stepmother unless family property is involved.<sup>279</sup>

Unchastity does not preclude a mother from seeking maintenance, and even if she is outcast, she retains the right to maintenance from her sons (Apastamba I, X, 2, 8, 9; Gautama XXI, 15).<sup>280</sup>

#### 5.4.3. Daughter’s Right to Maintenance

Daughters’ maintenance rights typically arise when closer heirs prevent their inheritance. According to Yajnavalkya, daughters are listed as heirs, and fathers are legally obligated to provide for their daughters until marriage, including covering marriage costs. A daughter of a deceased coparcener should be supported from her father’s share until marriage; thereafter, her husband is responsible:

“As regards the daughter of a deceased co-parcener, it is thought that she should be maintained out of her father’s share; let them support her until marriage; afterwards her husband is to support her”<sup>281</sup>

In Bengal, a daughter without a son cannot claim separate maintenance from her father’s estate unless she proves that she cannot be supported by her husband’s family.<sup>282</sup>

Unmarried daughters have distinct maintenance rights compared to married or widowed daughters. If a widowed daughter returns to live with her father or brother, there is a moral obligation but not a legal one to maintain her.<sup>283</sup>

Daughters lose their right to claim maintenance upon marriage.<sup>284</sup>

<sup>277</sup> Apararka, Anandashrama Series, Vol. I, p. 98.

<sup>278</sup> Mitter, *supra* note 39, at p. 181

<sup>279</sup> *Bai Daya v. Natha Govindlal*, I.L.R. 9 Bom. 279.

<sup>280</sup> Baudhayana dharmasutra, II.2.3.4.2

<sup>281</sup> Mayukha, IV. 9. 22

<sup>282</sup> *Mokhada v. Nando Lal*, I. L. R. 28 Cal. 278.

<sup>283</sup> *Bai Mangala vs. Bai Rukhmini*, I. L. R 23 Bombay 291.

#### 5.4.4. Sister's Right to Maintenance

A sister's right to maintenance can be examined based on ancient texts, including those by Yajnavalkya, Manu, Vyasa, and other scholars. These texts highlight the responsibility of brothers to provide for their unmarried sisters, particularly in relation to marriage. Yajnavalkya states:

Uninitiated sisters should have their ceremonies performed by those brothers who have already been initiated giving them a quarter of their own share.<sup>285</sup>

Here, "quarter" is interpreted not literally but as financial support necessary for a sister's marriage. Manu similarly advises:

To the maiden sisters let their brothers give out portions out of their own allotments respectively; to each, the fourth part of the approximate share, and they who refuse it should be degraded.

Scholars like Vachaspati Mishra interpret the "quarter share" as covering wedding expenses,<sup>286</sup> a view supported by Sulapani, the authors of *Smriti Chandrika*, and the *Dayabhaga*.<sup>287</sup> The *Mitakshara*, however, suggests that sisters might have a rightful claim to inheritance shares.<sup>288</sup>

Additionally, it is worth noting that a grandmother is legally entitled to maintenance from her grandson.<sup>289</sup>

## 6. Conclusion

In conclusion, the examination of women's rights and status in ancient India through the lens of Hindu legal literature reveals a complex interplay of social customs, legal provisions, and philosophical foundations. The birth of a daughter, initially met with dichotomy due to prevailing societal attitudes, was nevertheless celebrated as a recognition of the important role that women played within the family structure.<sup>290</sup> Although education for girls was not universally practised, it existed in some contexts, reflecting an awareness of women's intellectual capabilities and challenging prevailing norms.<sup>291</sup> Personal freedom and dignity, though limited by social

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<sup>284</sup> *Tulsha vs. Gopal Rai* I. L. R. 6 All 632

<sup>285</sup> Yajnavalkya, II.124

<sup>286</sup> Vachaspati Mishra is the author of *Vivada Chintamani*

<sup>287</sup> *Dayabhaga*, III. 2. 38-39

<sup>288</sup> Mitter, *supra* note 39, at pp. 186-187

<sup>289</sup> Mitter, *supra* note 39, at p. 187

<sup>290</sup> Altekar, *supra* note 4, at pp 4-9

<sup>291</sup> D. Kashyap, "Women's Education in Ancient India" (*Your Article Library*, October 1, 2015) <<https://www.yourarticlelibrary.com/education/womens-education/womens-education-in-ancient-india/63492>> accessed, 5 June 2024

expectations, manifested in various forms, from autonomy within marriage to the right to conjugal relations.<sup>292</sup>

Practices such as Niyoga and Sati, often misconstrued, illustrate the social structure and pressures of their time, raising important questions about women's agency.<sup>293</sup> Although polygamy and polyandry were practiced, they were governed by complex laws and customs that reflected the complexity of marital relationships.<sup>294</sup> Divorce, though uncommon, was not entirely forbidden, indicating a recognition of the impermanence of human relations.<sup>295</sup> The status of women's ownership, especially in the area of stridhan and property rights for widows, emphasizes a delicate approach to women's economic independence and protection.<sup>296</sup>

The broader question of the inheritance of stridhan, the personal status of the wife, and morality reveals a society grappling with the balance between tradition and individual rights.<sup>297</sup> The legal provisions concerning adoption, guardianship, and maintenance reflect efforts to safeguard women's interests, albeit within a patriarchal framework.<sup>298</sup> The conditions under which maintenance can be forfeited, such as in

<sup>292</sup> S. M. Tharakan, and T. Michael, "Status of Women in India: A Historical Perspective." *Social Scientist*, Vol. 4, No. 4/5, 1975, pp. 117–118

<sup>293</sup> See, S. Sahgal, "Gendered Inquiry into Niyoga: Appearing the Institution from the Perspective of Female Actors" *Proceedings of the Indian History Congress*, Vol. 72, 2011, pp. 179–92; H. Kumar, *Women's Empowerment, Issues, Challenges, and Strategies: A Source Book*, (Daya Books, 2005), pp. 15-17

<sup>294</sup> See, S. D. Singh, *Polyandry in Ancient India*, (Motilal Banarsidass Publ., 1988), pp. 38-76; U. Chakravarti and K. Roy. "The Family in Ancient India: Ideal and Reality." *Social Change*, 1996, Vol. 26(2), pp.16-33

<sup>295</sup> See, R. N. R. Sarma, "Ethics of Divorce in Ancient India." *The International Journal of Ethics*, Vol. 41(3), 1931, pp. 329-342.

<sup>296</sup> See R. Sathiyabama, "Gender Equality in Property Rights: The Position of Hindu Women—Historical Perspective." *Interdisciplinarity: The Palimpsest of Culture*, 2016, p. 45; K. A. Shifaya, "Property Rights of Women under Hindu Law: A Critical Study." *International Journal of Management & Humanities*, Vol. 4, 2021, p. 2999

<sup>297</sup> See, H.C. Satyarthi, "Some Aspects of the Stridhana in Post-Maurya North India (c. 200 BC - c. 300 AD)." *Proceedings of the Indian History Congress*. Vol. 34, 1973, pp. 114-119; H. Today, "Culture: Women's Status in Ancient India - Hinduism Today" (Hinduism Today, October 10, 2021) <<https://www.hinduismtoday.com/magazine/january-february-march-2015/2015-01-culture-womena8099s-status-in-ancient-india/>> accessed, 5 June 2024; S. Verma, "Morality in Indian Society: Significance, Impact, and Cultural Values | Medium" Medium (July 8, 2023) <<https://sahillvermaa.medium.com/morality-in-indian-society-significance-impact-and-cultural-values-5eea5262d31>> accessed, 5 June 2024

<sup>298</sup> J. Goody, "Adoption in Cross-cultural Perspective", *Comparative Studies in Society and History*, Vol. 11(1), 1969, pp. 55-78; R. Kaur, "Legal Aspect of Guardianship Under Hindu Jurisprudence: An Analysis" *Ilkogretim Online*, Vol. 20(1), 2021, pp.1953-1958; S. Kumari, "An Overview of Maintenance in Ancient and Modern India with Reference to Women's Rights under Hindu Law." *Jus Corpus Law Journal*, Vol. 3(1), 2022, p. 6

cases of unchastity, underscore the restrictive moral expectations placed on women, which were both mirrored and constrained by the era.<sup>299</sup>

The right to maintenance for mothers, daughters, and sisters further illustrates the acknowledgement of women's economic needs and their dependence within the family structure.<sup>300</sup> These provisions, while progressive for their time, also highlight the limitations imposed on women's full economic participation in society. Ancient Indian legal literature thus offers valuable insights into a period when women's rights were shaped by cultural, religious, and legal influences.

This historical analysis underscores the importance of understanding past legal frameworks in recognizing the ongoing challenges of achieving true equality while celebrating progress in women's rights. The insights derived from Hindu legal texts are crucial not only for informing historical artefacts but also for contemporary discussions about gender equality and legal reform. When we consider the rights and dignity of women in ancient India, we are reminded of the enduring legacy of this early legal tradition and its continued relevance in shaping the future of women's rights.

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<sup>299</sup> See, S. A. Desai, *Principles of Hindu Law*, 20<sup>th</sup> Edition, Vol. I, Lexis Nexis, 2007, pp. 887-888

<sup>300</sup> *Ibid*, at pp. 877-878