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Women and their legal position in India from 500 B.C.E. to 1772 C.E.

Abstract: The paper's purpose is to describe women and their position, focusing on their legal, historical, socioeconomic, and cultural position in society so as to understand the legal traditions of this area and period. While the text will mainly focus on their general position (with short explanations of certain differences or exceptions), a special accent will be placed on the position and role of women in ancient Hindu family law, inheritance law, commercial law, and differences between the rights of male and female children. The sources of law will be analysed to understand the spirit of the law and teachings (theological and non-theological stances) about women who lived in India from 500 B.C.E. to 1772 C.E.

Key words: Religious rights of women, sexual rights of women, position of women in the family unit.

1. Introduction

As the title of the paper suggests, it will mostly give an outline of the social, economic and legal position of women who lived in India in the period from 500 B.C.E. to 1772 C.E. .[†] The timeline of this period slightly coincides with the periodization of Indian history, which comprises the following periods: *Ancient era* (2600 B.C. – 5th century C.E.), *Medieval era* (6th century C.E – 1555 C.E.), *Early modern era* (1556 C.E. – 1798 C.E.), *Late Modern era* (1799 C.E. – 1980 C.E.)[‡] However, some authors, when researching or commenting on the status of women in the ancient Indian civilization use the following periodization: *Early Vedic*

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[†] Some authors call this period of Indian history "the Classic Hindu law period"; for more see: Purushottama Bilimoria, „The Idea of Hindu law: Dharma, custom, the legal system in Classical India”, *Journal JOSA* 43/2011, 103.

[‡] Michelguglielmo Torri, „For a new periodization of India history: the history of India as part of history of the world”, *Journal studies in history* 1/2014 vol. 30, 101 – 106.

period (1500 B.C. – 1000 B.C.), *Later Vedic period* (1000 B.C. – 600 B.C.), *Jainism and Buddhism period* (600 B.C. – 200 B.C.), *Age of Dharmasāstras* (200 B.C. – 647 A.D).[§] Due to the nature and purpose of this paper, the author will use the previously mentioned periodization of the ancient Indian civilization.

Section 2 will explain the domains and roles of *Yamarāja* and *Durgā* while focusing on determining which of the two is the deity of justice. Section 3 provides an overview of the development of the active and passive religious rights and it will provide several interpretations of the role or position of the *devadasis*. Section 4 provides an outline of the different types of queens who ruled in different periods, with separate parts which deal with the queens of Kashmir and the comparison between South India and North India in the field of educating the female nobility.

Section 5 analyses the sex life and sexual rights of women or the lack thereof. Section 6 lists the Kamasutra's categorization of courtesans, explaining the general position of courtesans in the royal court and how the criminal code protected them. Section 7 examines different criminal code provisions which recognize female offenders and, more particularly, the different forms of punishment that were administered to female criminals.

Section 8 is divided into two parts, with the first part covering the general obligations of a woman towards her husband and the obligations of a husband towards his wife, while the second part will show, through an analysis of economic and inheritance rights of women, whether women were economically independent, or depending on their families or husbands. Section 9 will display the origins, development, and aspects of *sati*, and the ultimate goal of the author in this section is to prove that *sati* as a practise was voluntary and that widows had various rights.

[§] Bhaswati Pal, „The saga of women's status in Ancient Indian civilization”, *Miscellanea geographica* 3/1984 vol. 23. 180.

The author's intention with all of the above is to give the reader a comprehensive outline of the essential legal, historical, socio-economic and religious factors which influenced and moulded the legal position of women and their rights in India in the period between 500 B.C.E. and 1772 C.E.

2. Clash or duality of the gods of justice?

Before starting any further elaborations of this section, let us focus on several key facts. Firstly, *Yamarāja* and *Durgā* belong to two different registers of Hinduism – Vedic and Puranic, respectively.⁵ The *Rigveda* represent the oldest sacred books of Hinduism – it is a collection of 1028 poems, which are grouped into 10 circles or *mandalas*.⁶ The *Purana* represent the third oldest form of sacred books of Hinduism; it has the following five subjects or signs: primary genesis of the universe, secondary genesis after the cycle of annihilation, the genealogy of gods and patriarchs, the reign of the first humans, and the history of the lunar and solar dynasties.⁷

The first mention of *Yamarāja* as a god of justice can be found within the *Rigveda* in the *Mandala* X, X.14 hymn (840) Yama, etc., verses 1-12, describing his role thusly: in order to achieve fair existence within the human realm, *Yamarāja* ends *Saramā's* offspring (two mystical dogs, which belong to *Yamarāja*) to protect the life of the king and his subjects and keep them safe.⁸ The aforementioned sacred text and his role as god of justice are not sufficient to understand *Yamarāja's* role within the Hindu pantheon; festivals devoted to *Yamarāja* such as the *Yama Panchak* festival (five days of *Yamarāja*) depict his additional role as the god of death, who provides guidance to the souls of the dead during their

⁵ W.J. Wilkins, *Hindu mythology, Vedic and Puranic*, Global Grey ebooks, London 2019, 80 257.

⁶ Editors of Encyclopaedia Britannica, *Rigveda – Hindu literature*, Encyclopaedia Britannica, <https://www.britannica.com/topic/Rigveda> accessed 29.07.2020.

⁷ Wendy Doniger, *Purana – Hindu literature*, Encyclopaedia Britannica, <https://www.britannica.com/topic/Purana> accessed 29.07.2020.

⁸ Stephanie W. Jamison, Joel P. Brereton, *The Rigveda – the earliest religious poetry in India volume 3*, Oxford University press, New York – Oxford 2014, 1391 -1392.

transition, deciding which souls will be sent to hell, and which to heaven.⁹ The *Puranas* delegated to *Yamarāja* the power to judge over the souls of the dead, and the rule over the dominion of the wicked.¹⁰ We can conclude that he was mainly concerned in passively enforcing public order to achieve fair existence in the kingdom, while the only example of *Yamarāja*'s active enforcement of justice was passing judgment on the souls of the dead with the sole intent of either banishing them to his dominion or sending them to heaven.

When compared to *Yamarāja*, *Durgā*, the goddess of justice, has an active and primary role in enforcing justice; the male gods created her with the sole purpose of sending her to ward off a demon which they could not subdue by themselves, the will and presence of *Durgā* being the *ius puniendi* of heavenly justice.¹¹ The *Durgā Puja* festival (festival devoted to *Durgā*) ultimately celebrates the victory of good over evil; during the festivities the devotees pay homage to the goddess's feminine nature and the festival traditions are meant to teach the devotees that justice should never be blind; instead of being blind, it must be passionate in order to overcome any obstacles which may obstruct the administering of justice (even gods who disrespected others of their own kind, their devotees, their own traditions or the concept of justice were banished and tortured in hell for a certain time).¹² Using the same method as before, we can come to the same conclusion – her dominion as the goddess of justice mainly covers the active enforcement of justice; even if we argue that she was created by the male gods, *Durgā* of her own accord introduced the idea that justice must be passionate and used to overcome obstacles in your own judgment, instead of blindly denying their existence. There are three possible answers, we feel, to the question whether or not there is a possibility of a clash or duality between these two deities of justice. The first conclusion would be that both

⁹ Bal Gopal Shrestha, *The Sacred Town of Sankhu*, Cambridge Scholars Publishing, Newcastle 2012, 328 – 329.

¹⁰ W.J. Wilkins, *op.cit.*, 81 – 84.

¹¹ David R. Kinsley, *Hindu goddess – visions of divine feminine in the Hindu religious traditions*, University of California press, Berkley 1998, 95 – 97.

¹² Hillary P. Rodrigues, *Ritual Worship of the great goddess – liturgy of the Durga Puja with interpretations*, State University of New York press, New York 2003, 35 – 38.

Durgā and *Yamarāja* are one and the same, but represented in different forms. The second possible answer would be that they are separate and independent deities of justice. Finally, the third possibility would be that *Yamarāja* is the god of justice, while *Durgā* is the goddess of public and cosmic order.

3. Active and passive religious rights of women

During the Early Vedic period women were able to study the sacred scriptures and they had the opportunity to be sages or seers (sages and seers gave their contributions by writing new *Vedic* hymns).¹³ The names of the donors inscribed on the surface of a Sanchi Buddhist temple from the 2nd century B.C. (the said temple was built during the Early Vedic period) are mostly those of ordinary women or female Buddhist nuns; it should be pointed out that women donated in larger numbers to the Sanchi Buddhist temple (when compared to the total number of male donors), thus proving that the women of the Early Vedic period were also benefactors of temples.¹⁴ During the earliest period of Indian history, there was a Festival of the Sabaras (festival of fertility) in which all of the members of the tribe, male and female, took part in.¹⁵

The caste system was created during the Early Vedic period through the introduction of the Rigveda (the Rigveda explains why the cast system exists and the importance of the caste system in general); the obligations of the castes are extensively regulated in the Laws of Manu and *Dharmaśāstra* (we have to emphasize the fact that the caste system only represented ritual purity and, more importantly, it allowed individuals to move up the caste system

¹³ Bhaswati Pal, *op.cit*, 180 – 181.

¹⁴ Upinder Singh, *The Idea of Ancient India – essays on religion, politics and archaeology*, Sage Publications India, New Delhi 2016, 60.

¹⁵ Romila Thapar, *Ancient India Social History – some interpretations*, Orient Longman Ltd, New Delhi 1978, 178.

regardless of their gender).¹⁶ These are the following *varnas*: the pure and aesthetic (*brahmana*), the nobility (*ksatriya*), the merchants (*vaisya*) and the cultivators, slaves and hired labourers (these three were *sudras*); the exclusivity of the groups **was not strictly applied** because during the ancient and medieval period the members of the *sudras* caste were permitted to study and attend the lessons taught by the brahmans.¹⁷ The *sudras* held such a low position because of **the legal fiction**, which considered them to be of mixed caste origin; we have to emphasize that the *jati* system was used to show the socio-economic status of the *varnas*.¹⁸ We must note, though, that the *jati* system and the *varnas* are not one and the same; the former is a limited regional endogamous group of families which practiced certain professions, whilst the latter represents a universal all-Indian model of a social class system that uses ritual purity to determine which of the four *varnas* an individual belongs to.¹⁹

The untouchables were certain tribes, considered to be polluters by those claiming a high caste status (a member of another caste could also become an untouchable by being permanently banished from their caste as a form of public punishment for committing certain crimes, or by marrying an untouchable). The untouchables faced many limitations; for example, they were forbidden from being in the same place or room with the other castes, they were not allowed to eat at the same place with the other castes (certain foods which were found impure or non-exclusive caste food were the only thing the untouchables were allowed to eat), it was prohibited for them to walk alongside the members of the other castes on the street, if another caste member were to touch an untouchable, then the offender would be

¹⁶ N. Shukla-Bratt *et alia.*, Hinduism through its scriptures, Harvard Ex, Coursera, accessed 17.05.2020. <https://www.edx.org/course/hinduism-through-its-scriptures-2>.

¹⁷ Gen'ichi Yamazaki, „Social discrimination in Ancient India and its transition to the Medieval period”, Hiroyuki Kotani (eds), *Caste system, untouchability and the undressed*, Manohar, New Delhi 1997, 9 – 10.

¹⁸ R. Thapar, *Ancient India Social History – some interpretations*, 43 – 45.

¹⁹ Both the caste system and the *jati* system had a strong and adverse influence on the position of women; for more, see: Editors of Encyclopaedia Britannica, *Jati*, Britannica., <https://www.britannica.com/topic/jati-Hindu-caste>, accessed 10.09.2020.

publicly punished and shamed by other members of his caste.²⁰ Thapar reaffirms the previous definition by further explaining that the untouchables constituted the fifth caste and were considered as such because they were regarded as polluters due to their occupations (for instance, tending to the cremation grounds or scavenging), or because they were members of primitive tribes (the *Nisada* tribe and the *Bhilla* tribe) whose languages and ways of life were alien and strange to the other castes.²¹

During the Late Vedic period women were only allowed to adhere to the practice of *pativrata* (strict devotion to the husband), and the only way for women to exercise their religious rights was to conduct prayers or rituals meant for the betterment of their family.²² Shalini Shah in her findings shows that a husband was worshiped and required strict devotion from his wife, because it was thought that only the husband could make his wife happy and ensure her entrance into heaven.²³ The wife was also expected to be strictly devoted to her husband's household (the wife was required to: serve him in harmony with his other wives, serve his parents and utter nothing against him).²⁴

The reason behind this change in the religious rights of women during the Late Vedic period could be explained by the notion that the Hindu household of the Late Vedic period was a space where the cohabitants were ritualistically bonded with the householder just by living under the same roof and by doing the day to day activities or rituals together (this meant that a household also represented a place of worship).²⁵ Jaya Tyagi further elaborates that the previously mentioned transition from the temple to the house as a place for women to

²⁰ Louis Dumont, *Homo hierarchicus: the caste system and its implications*, Oxford University press, Oxford – New York 1998, 123 – 143.

²¹ R. Thapar, *Ancient India Social History – some interpretations*, 45.

²² Bhaswati Pal, *op.cit* ,181.

²³ Shalini Shah, „On gender, wives and pativratas”, *Journal Social Scientist* 5/6/2012 vol. 40, 81

²⁴ *Ibid*, 82.

²⁵ Jaya Tyagi, „Brahmanical ideology on the ritual roles of Grhapati and his wife in Grha: a study of the early Grhyasiltras”, *Studies in History*, 2/2002 volume 18, 190.

practice religious rites or rituals was done in order to achieve the following objectives: to consolidate Brahmanical ideology, to solidify *varna* and gender hierarchy, **only to highlight to women rituals centred around the household.**²⁶ Thus, the household as a sacred place could only be used for production and reproduction.²⁷ In doing so, a separation was made by which the household became the personal domain of the householders, while brahmins had the monopoly over the rituals and the duty of protecting the sanctity of the rituals.²⁸

The definition and meaning of the practice called *devadasi* is a matter of academic debate. The author will provide an outline of the most important and interesting thoughts of several key academics who wrote on the topic of *devadasis*. Leslie Orr states that the *devadasis* were temple women and that their participation in temple rituals or helping the priests with the rituals was optional and occasional; they participated actively by singing and dancing during festivals.²⁹ The social historian Davesh Soneji presents *devadasis* as women who were professional dance performers with an educational background in music and dancing; they also performed in front of the royal court or during state functions, and they were mostly deprecated by the Hindu priests only because the pilgrims came to the festivals to see the *devadasis* perform.³⁰ Lucinda Ramberg presents *devadasis* or *jogatis* as servants or slaves of the goddess; only those women who chose to partake in the initiation rite could become *Yellamma's* priestesses or caretakers (*devadasis*), they were wrapped in saris and they embodied the devi within them.³¹ Frederique Marglin explains that *devadasis* were ritual specialist for dancing and singing; they participated in temple rituals and festivals on a daily

²⁶ Jaya Tyagi, *Engendering the early household: Brahmanical precepts in the early Gṛhasūtras, middle of first millennium B.C.E.*, 62.

²⁷ *Ibid.*, 65 – *et seq.*

²⁸ *Ibid.*

²⁹ Leslie C. Orr, *Donors, Devotees and daughters of god – temple women in medieval Tamil Nadu*, Oxford University Press, Oxford – New York 2000, 7 – 8.

³⁰ Davesh Soneji, *Unfinished gestures – devadasis, memory and Modernity in South India*, University of Chicago Press, London 2012, 164 – 168.

³¹ Lucinda Ramberg, *Given to goddess – south Indian devadasis and the sexuality of religion*, Duke University Press, Durham – London 2014, 3.

basis and their dedication to the temple was based upon their marriage to the main deity *Jagannatha* (*Jagannatha* was one of the many forms of Vishnu).³² There is no real consensus in academia as to a uniform definition or meaning of the practice of *devadasis*, and even trying to find a common theme or connecting points in works of renowned authors who dealt with the topic of *devadasis* is indeed a frivolous endeavour.

The period of Jainism and Buddhism once again gave women the opportunity to study religious texts (it's important to note that Hindu princesses had to study religion as a part of their mandatory education).³³ When comparing this period to the Early Vedic period, the only difference is the fact that if the nuns were acknowledged as sharp and witty in intellect by their male superiors, they were allowed to establish and run their own *sangha* (also known as *bhikkhunisangha*).³⁴ More importantly, women could only enter a *sangha* when the women of the Buddha's kin-group had successfully pleaded on their behalf, or through an intervention of another kinsman in their favour.³⁵ Interestingly, before Ananda and his disciples reformed the Buddhist teaching on the salvation of women, the Buddha himself was of the opinion that women were not capable of salvation as men were.³⁶ His thoughts on this matter went so far that during his funeral an act of sympathy by the weeping *Malla* women, who wished to see his earthly remains, was treated by the Buddha's disciples as an act of defiling his body.³⁷ Smita Sahgal in her findings shows that the question of salvation of women was one of the major factors which contributed to the schism within Jainism religions.³⁸ The major sects of Jainism (the sky clad sect and the white clad sect) were open to the idea of female nuns in their temples, though at the same time they were critical towards the possibility of a person

³² Frederique Apfell Marglin, *Wives of the god-king – rituals of the devadasis of Puri*, Oxford University Press, Oxford – New York 1985, 18.

³³ Bhaswati Pal, *op.cit*, 182.

³⁴ *Ibid*.

³⁵ Uma Chakravarti, *The social dimensions of early Buddhism*, 30.

³⁶ *Ibid*, 32

³⁷ *Ibid*,

³⁸ Smita Sahgal, „Strinirvana: a dent in spiritual hegemony – a historical perspective”, *Journal of trends in social science research* 2/1998 vol. 5, 41.

becoming spiritually liberated immediately after a life in the female body.³⁹ A small sect (the *yapaniyas*) did not exclude women from salvation because they considered them to be strong, but the sky clad sect and the white clad sect denied the right of salvation to women due to the structure of the female body in itself.⁴⁰

The Laws of Manu limited the religious rights of women with the following article: “No rite is performed for women with the recitation of ritual formulas – that is well-established Law. Without strength or ritual formula, women are the untruth – that is the fixed rule”.⁴¹ We must critically analyse the previously mentioned “fixed rule”, because professor Robert Goldman in his synopsis of the *Ramayana* mentions two important instances where *Sita* (the wife of prince Rama) used her piousness to prove her marital purity to *Rama*, the first being the ordeal of fire (in order to succeed she needed to survive the flames of a circle of fire).⁴² In the second instance he mentions that *Sita* called upon the Earth, her mother, to pass judgment upon her in order to prove her marital purity to *Rama* (if she was deemed impure by the goddess, that same goddess would devour *Sita*).⁴³ The previous two examples only covered the right of a husband to temporarily delegate some religious rights to his wife under certain circumstances. But in Arti Dhand’s analysis of the *Mahabharata*, he provides several key points in which women did not have temporarily delegated religious rights, but rather they were yogi sages with godly powers, acting as the king’s advisors, or ascetics who devoted their entire lives to the practise of *diksa*.⁴⁴ Also, Dhand provides an important passage from the *Mahabharata* about the liberation (from ignorance) by all who undertake proper yoga: “Whether a person is of low caste or a woman who is attached to *dharma*, both, by following

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 42 – 43.

⁴¹ Patrick Olivelle, Suman Olivelle, *A critical edition and translation of the Mānava-Dharmaśāstra*, Oxford University Press, New York 2005, 191.

⁴² Robert Goldman, *The Ramayana of Valmiki – an epic of Ancient India: volume I Balakanda*, Princeton University Press, Princeton – New York 1990, 12.

⁴³ *Ibid.*, 13.

⁴⁴ Arti Dhand, *Women as fire, women as sages – sexual ideology in the Mahabharata*, State University of New York Press, New York 2008, 81 - 89.

this path [of *yoga*] may achieve the highest end; in order to achieve the highest end one must liberate himself from ignorance, to liberate oneself from ignorance one should with reverence accept instruction from whomever has the wisdom and then the whole universe will be inhabited by Brahmans.”⁴⁵

Neelima Shukla-Bratt provides an important statement in which she claims that the very notion of different practices, ceremonies, rituals, and a wide range of festivals across India in which women do and can participate contradicts the fixed rule in the Laws of Manu which regulates religious rights of women; she further explains that during the last day of the *Diwali* festival (this festival is celebrated all across India and in Nepal, over the centuries it transitioned from an exclusive festival of the Hindu community into the biggest and most important national festival in India)⁴⁶ the brothers must bring gifts for their sisters after they **return home**, while the sisters must prepare a feast and recite mantras for their brothers' good health. The second example is the Brother – Sister festival or *Raksha Bandhan*; this festival is celebrated by both Hindus and Sikhs in parts of Northern and Western India (and across the Indian subcontinent in general), while in Nepal it is celebrated as a public holiday.⁴⁷ **During the festival women who have brothers join other sisters in singing or dancing together in the streets and it is rooted in legend that this practice saved a dying brother from certain death.**⁴⁸

The first documented celebration of *Durgā Puja* was in 1500 C.E. in West Bengal; the *Diwali* festival and the *Raksha Bandhan* festival, on the other hand, are fairly modern festivals. However, in actuality, they are either based upon ancient lunar and seasonal festivals or they

⁴⁵ *Ibid*, 37.

⁴⁶ Karen Gardiner, See the dazzling pictures of Diwali, the festival of lights, National geographic 7th November 2018, <https://www.nationalgeographic.com/travel/lists/seasonal/pictures-diwali-celebration/>, accessed 13.07.2020.

⁴⁷ Joy Pamnani, Raksha Bandhan 2019: everything you need to know about it the Hindu festival dedicated to the brother sister bond, 15th August 2019 Young Post, <https://www.scmp.com/yp/discover/advice/relationships/article/3065847/raksha-bandhan-2019-everything-you-need-know-about> accessed 13.07.2020.

⁴⁸ Neelima Shukla-Bratt *et alia.*, Hinduism through its scriptures, Harvard Ex, Coursera, <https://www.edx.org/course/hinduism-through-its-scriptures-2>, accessed 03.05.2020.

¹³ *Ibid*.

replaced older *Rigveda* festivals (but some elements of the ancient festivals were incorporated into the fabric of modern day festivals in order to achieve historical continuity, or to create a common national religious holiday, as was the case with the *Durgā Puja* festival and the *Diwali* festival).⁴⁹

⁴⁹ P.K. , „Studies in the history of Hindu festivals – some notes on the history on the Diwali festival – (between c. 50 A.D. – 1945)”, *Annals of Bhandarkar Oriental Research Institute* vol. 26 no. 3/4 July – October 1945, 216 – 223.

Both the anthropological and literary sources prove that even if the Laws of Manu had a fixed rule on the religious rights of women, it did not prohibit religious right of women. Neelima states that the Laws of Manu were not the only source of law in India and did not hold the highest position; in some areas, the Laws of Manu had the goal of codifying certain norms, they did not prohibit different ways of honouring the gods, nor the indirect participation of women in religious rites, or them being sages or ascetics.¹³

4. The lives and rules of conduct for women in the royal court

During the period of India's antiquity, four types of queens existed: the first type were female sovereign rulers, who ruled before and after the death of their husbands, they were the *de facto* or *de jure* heads of government, the second type were regional princesses who had the right to ascend to the throne only if they did not marry (the only exception to this rule can be found in the time of the Gupta dynasty, when *Chandragupta* I jointly ruled with his queen *Kumaradevi*), the third type were regent queens who took administrative power if a prince was a minor or captured, and the fourth type were dowager queens (the most notable example was queen *Massaga* who fought Alexander the Great after her husband died in battle).⁵⁰ Thapar notes two important facts, the first being that queen *Kumaradevi* as co-ruler of her husband had the authority to award grants (give whole villages or cultivated land along with the peasants to the receiver of the grant) that included some judicial rights and administrative rights (such as being exempt from paying certain taxes, and having the authority to impose new taxes only on those peasants living in the village that was part of the grant). The second fact was that the queens in ancient India derived their power either from participating in court intrigues or by getting involved in the politics of court factions.⁵¹

⁵⁰ A.S. Altekar, *The position of women in Hindu civilization – prehistoric times to modern day*, Culture publication house Benares Hindu University, Benares 1938, 218 – 220.

⁵¹ R. Thapar, *Penguin History of Early India*, 295 416.

The queens of Medieval India were usually queen dowagers who defended the capital during sieges (these queens participated in battle, commanding the army during defensive and offensive battles – in other words, they were both ground commanders and warriors).⁵² Daud Ali gives us a palpable understanding of queens during peace time, when instead of using “queen” as their title, they used titles such as “daughters of great kings”. Interestingly enough, the king lived alone in a large building on the royal estate, while the wives (and their children) lived in separate buildings on the same estate (this was due to the fact that the queens were more loyal to their sons than to their royal husbands, which occasionally lead to attempts on a king’s life, especially while they were asleep).⁵³ The last queen was *Anubai Ghorpade* (1745 – 1775) and she had the most efficient administrative rule.⁵⁴

It is noteworthy to point out that education of women belonging to the court was important (especially for kings and high dignitaries who had daughters).⁵⁵ The previous statement can be proved by comparing Northern and Southern India in this respect, with the former on the whole having no female rulers.⁵⁶ The female rulers of Kashmir were the exception to this rule, there were only four queens who ruled over Kashmir, respectively: *Yasovati*, *Suganda*, *Didda* and *Kota Rani*.⁵⁷ The explanation to why Kashmir was an exception to the previously mentioned rule may lie in the fact that Kashmir was known as the land of the goddess Parvati’s material manifestation.⁵⁸ The claim to the throne of the first female ruler, *Yasovati*, was based on the legend that the land of Kashmir represented Parvati’s material manifestation, and on the following instruction given by Lord Krishna: „all of the

⁵² A.S. Altekar, *op.cit* , 220 – 221.

⁵³ Daud Ali, *Courtly culture and political life in early Medieval India*, Cambridge University Press, New Delhi 2006, 34 – 64.

⁵⁴ A.S. Altekar, *op.cit*, 221 – 222.

⁵⁵ Harmut Scharfe, *Education in Ancient India*, Brill, Amsterdam 2002, 210 fn. 83.

⁵⁶ Shashi Punam, Naina Sharma, „The Role and Position of Women Ancient Society to Modern Society in India”, *Development and change in Agrarian society* (eds. Geet Gamba), Twenty first century, New Delhi 2017, 130.

⁵⁷ Asif Rashid Raina, „Yasovati: the neglected queen”, *Journal of JOUR* 17/2020, 17.

⁵⁸ Devika Rangachari, *Exploring spaces for women in early medieval Kashmir*, Nehru Memorial museum and library, New Delhi 2012, 2 – 3.

occupants of the throne represent portions of Shiva and therefore must be obeyed”.⁵⁹ Rangachari recognizes several roles of Kashmiri queens, such as: king-makers, sovereigns, mediators, diplomats, regents, administrative and financial officers.⁶⁰ Royal and non-royal women of Kashmir were active in financing building projects (for example, erecting whole cities and temples, which held their names) and they were generous donors for numerous causes.⁶¹ Royal women of Kashmir were depicted as pragmatic women with vast knowledge, whose professions were so varied that they ranged from leaders in commerce, horse handlers, and astrologists, to professional gamblers and even blacksmiths.⁶²

Southern India had more queens, local female rulers, and lesser noblewomen who held positions within the royal accounting offices and the royal records office of foreign affairs.⁶³ This sheer number of women holding different positions of power in South India could be attributed to the fact that the political history of South India is known for numerous rivals fighting for power over the territory, creation of peripheral zones, emergence of feudalism and conflicts over the control of strategic areas.⁶⁴ The famous historian Ibn Batuta gives an interesting statement in which he shows that there is no archaeological evidence of public schools in Northern India, while in *Honnovar* (South India) there is archaeological evidence demonstrating that there were 13 public schools for girls and 21 public schools for boys. This huge percentage of female only schools proves that the upper-class women of Southern India were educated, active in the administrative branch of government and, when compared to their Northern counterparts, had more queens.⁶⁵ Women were allowed to debate during public assemblies with their male peers, but females were forbidden from entering a *sabhas* (*sabhas*

⁵⁹ *Ibid*, 3.

⁶⁰ *Ibid*, 11 – 12.

⁶¹ *Ibid*, 14 – 15.

⁶² *Ibid*, 17.

⁶³ Shashi Punam, Naina Sharma, *op.cit.* ,130.

⁶⁴ Ranabir Chakravarti, „The pull towards the coast: politics and polity in India (C. 600 – 1300 C.E.)”, *Journal of the proceedings of the Indian History congress* 1/2011 vol. 72, 33.

⁶⁵ Shashi Punam, Naina Sharma, *op.cit.* ,130.

were meeting places where men made political decisions or enjoyed leisure activities together). After the Early Vedic period, however, the active participation of women in debates and their attendance at public assemblies dwindled.⁶⁶ Brajadulal Chattopadhyaya reflects that the same trend led to a total exclusion of all women from certain areas of life, for example: royalty (the women who held power were usually the monarch's wife, the mother of the king or the queen representing her king abroad and within the kingdom), the **development of Dharma's rituals and from the use of language** (because they would only know to write and speak the Prakrit language and not the sacred Sanskrit language).⁶⁷

5. Sexual life and the rights of women

To understand this topic, we must make a difference between a woman's position in sexual relations **with the other sex** and *surata* (*surata* – pleasures of sex).⁶⁸ The former is best explained by this legal provision concerning *ritu* (*ritu* – period of menstruation): „A menstruating girl in a father's house is a heavy sin for him; the daughter is now dedicated to the divinities of married life”.⁶⁹ The father would marry off his daughter before her first menstruation happened **and her husband could only take her from her home when she was sexually mature**, but none of the Hindu epics portray or promote child marriage.⁷⁰ Before her marriage, she could not financially contribute as her brothers, after the Hindus had partially adopted the Muslim *purdah* system in which they were not even allowed to work outside of their house (***her virginity had more worth, if she was not a virgin then finding a husband would be difficult***) and for these reasons alone child marriages represented an economically profitable decision for the parents, because the dowry for child brides were larger than those

⁶⁶ *Ibid*, 125.

⁶⁷ Brajadulal Chattopadhyaya, *A social history of Early India*, Pearson Longman, Delhi – Chennai – Chandigarh 2009, 15.

⁶⁸ See Johann J. Meyer, *Sexual life in Ancient India – a study in comparative history*, The Standard literature Co Ltd, Calcutta 1952, 214 – 258.

⁶⁹ *Ibid*, 216.

⁷⁰ *Ibid*, 216 – 217.

for mature brides.⁷¹ If a woman had an unproductive menstrual period (in other words if she missed her period or had health complications during her menstrual cycle) it was viewed by the Brahmans as a most heinous crime and that is abortion, after her period ends (no matter if it was productive or unproductive) she must immediately move to her husband's house and if not her family would be viewed as having no honour or virtues; also a woman could choose whom to marry only if her parents were not able to find a suitable husband for her.⁷²

But after her period has ended, a married woman had the right and duty to procreate; otherwise she was deemed unclean and full of magic that could harm anyone.⁷³ Evidently, in literature a woman during her period is portrayed as a seductress who seduces her husband's disciples into committing the dreadful crime of adultery with the teacher's wife (the teacher is a member of the brahman caste, while the perpetrator of this crime can only be a student or a disciple).⁷⁴ It is strictly forbidden to have intercourse with a woman during her period; if a man does have intercourse with a woman during her period, he will be punished by wearing a wet garment for six months and sleeping on ashes; a woman during her period must not be in the neighbourhood during the ancestral offering proceedings intended for festivals or rituals and the offerings (usually food) must not have been previously seen or touched by a woman who has or recently had a period.⁷⁵ If a woman tries to have intercourse during her period, the punishment is more drastic when compared to a male offender: „The woman who does wrong with *Candala (pariah)* must confess her guilt before the gathering of ten Brahmans, then fall a day and night plunged up to the neck in well with cow-dung, water, and mud, then shave her head quite bald and live outside the house practicing further mortification, and cleansing acts

⁷¹ Ashraf Uddin Ahmed, „Marriage and its transition in Bangladesh”, *International Journal of sociology of the family* 1/1986 vol. 16, 52.

⁷² A. Dhand, *op.cit*, 188.

⁷³J. J. Meyer, *op.cit*, 219.

⁷⁴ *Ibid*, 222.

⁷⁵ *Ibid*, 225.

up to her period; then she is clean... but, must furthermore give food to Brahmans, and bestow a pair of oxen”.⁷⁶

Surata (instructions on how to enjoy the pleasures of sex) is understood as an instrument of healing for men and a method to increase sexual prowess; however, if a man has any other, unnatural form of intercourse with his wife, he will be punished by **having his forefathers live in his mouth** or he could be killed or suffer permanent expulsion from his caste (interestingly, any forbidden form of sexual intercourse is equated to the crime of killing a Brahman).⁷⁷ There is no better way to explain the lack of active sexual rights of women than to quote a general rule concerning touching a married woman belonging to any caste: “There is no greater sin than to touch another's wife; this punishment will fall upon on him (the same for killing a Brahman), as a robber of another's property”.⁷⁸ In other words, the wife is the sole property of her husband (evidently her father decides whom she may marry and this also shows that the daughter is the sole property of her father).

The *Kamasutra* and women's *dharma* introduced the obligation of the husband to make intercourse pleasurable to his wife (the *Kamasutra* is a codification of all of the allowed and natural types of intercourse which were deemed acceptable by the Brahmin caste), but even if a woman calls upon the *dharma* to choose when she wants to have intercourse with her husband, their husbands are instructed by the Brahmin caste to follow this advice : **“If a man is begged by a woman for dharma's sake: -Pour in the seed!”**.⁷⁹ The edition of the *Kamasutra* dating from the second century CE, apart from being known for its sensual pages, is also a ritual book which enables the spouses to change their gender roles for a brief moment in which the female becomes a male during intercourse, while the male becomes a female and he

⁷⁶ *Ibid*, 227.

⁷⁷ *Ibid*, 238 – 242.

⁷⁸ *Ibid*, 247.

⁷⁹ *Ibid*, 257.

must ensure his spouse reaches her climax before him.⁸⁰ Even if the author of the *Kamasutra* was male, his attempt to introduce sexual chivalry to the minds of Hindu husbands, can be compared to queen Eleanor's (spouse of Henry II) stealthy introduction of chivalry in the minds of her noble knights through poetry with the help of her ladies in waiting.⁸¹

6. Types and position of courtesans

The *Kamasutra* recognizes two classifications of courtesans, the first classification has the following types:

- (i) The common prostitute (*kumbha-dasi*) – drawn from the menial servant class;
- (ii) The attendant (*paricharika*) – daughter of a courtesan married in early youth (her husband loses his right of exclusivity after one year of marriage, but retains the first choice during particular nights)
- (iii) The secret adulterers (*kulata*)
- (iv) The open adulterers (*swairini*)
- (v) The theatrical artist (*nati*)
- (vi) The woman artisan (*silpakarika*)

Categories iii to v were women whose husbands were washer men, florists, perfumers (any of other professions), and their husband had to give their approval for them to become courtesans.

The second one classifies courtesans depending on the quality of their services, resulting in the following types:

⁸⁰ Wendy Doniger, „On the Kamasutra”, *Journal of American Academy of Arts and Sciences* 2/2002 vol. 131, 127.

⁸¹ Amy Kelly, „Eleanor of Aquitaine and her courts of love”, *Speculum a Journal of medieval studies* 1/1937 vol. XII, 13 – 14.

- (i) The deserter-wife (*prakasa binashta*) – as the name implies, a woman who is willing to leave her husband and become a concubine of another for financial gain
- (ii) The beautiful body-seller (*rupa-jibi*).
- (iii) The courtesan (*ganika*).⁸²

The position of the royal courtesans during the pre-Buddhist period is intentionally left out in the *Kamasutra*, because at same time they were something between a slave and a public servant (having a yearly salary of 1000 *granik*⁸³). The position of a royal courtesan was hereditary and in the event of their death their daughters would inherit their positions; the only way a royal courtesan could become free from enslavement was if the king allowed another man to pay for her freedom, which automatically made her that man's spouse; the punishment for kidnapping or raping, or endangering in any other way the life of a royal courtesan would be a fine around 3000 *granik* (possibly more – the amount which had to be paid mostly depended on the position and status of the royal courtesan); the offenders will only get punished by paying a lower fine, only if they do anything against the will of the non-royal courtesans and the voluntary intercourse with their underage daughters is punishable by being fined with a financial penalty worth 2000 *granik*.⁸⁴

The Buddhist period introduced a way for courtesans to return to a dignified state; they could only achieve this by discarding their material possessions (in order to start the circle of rebirth), and if they did not choose the path of Buddha then the believers would not show them any respect.⁸⁵

⁸² B. N. Basu, *Kama Sutra*, Kama Shastra Society of London and Benares, London 1883, 254.

⁸³ Granik was probably an old square punch coin of copper which was valued above 160 cowrees, See: A. Cunningham, *Coins of Ancient India from the earliest times down to VII century a.d.*, Asian educational services, New Delhi – Madras 2000, 46.

⁸⁴ Fernando Henriques, *Prostitution and Society a survey – volume I : Primitive, medieval and oriental*, Panther, London 1965, 134 – 135.

⁸⁵ *Ibid*, 160.

7. Women and punishment

The most notable difference in the punishment of women for certain crimes can be found in the provision concerning sexual crimes such as these: the first example is if a man should commit adultery with an elder's or teacher's spouse – the elder's wife will receive no punishment for committing adultery, but the lover is punished either by castration or by being forced to hold a red hot metal cauldron (if he commits adultery, he will only be punished by branding a shape of the female organ on his forehead); the second example is taking the virginity of a girl – in this situation, a male would lose the fingers which he used to commit the crime, while a female offender would be punished by leaving her bald and she would also either lose her fingers or be paraded on a donkey as a form of public humiliation (here the Laws of Manu predict less painful and aggressive punishments for female criminals and, depending on the crime, leave the option to choose public humiliation as a lesser punishment over a harsher one).⁸⁶ If a woman commits adultery she may be forgiven through pilgrimage or fasting, but any private sins do not cling to women, because they are cleansed by the menstrual period.⁸⁷ When choosing a punishment, if the law offers alternative punishments, the following elements are taken into account: caste, wealth and age of the criminal (a judge will not take into account the gender of the offender, but the Laws of Manu do the opposite as we can see that in the previous examples there were different punishments for female criminals for certain crimes).⁸⁸

Interestingly, the Laws of Manu do not consider adultery with the queen a crime, but even if it's not a crime there were two schools of thought regarding possible punishments, the first one seeing death by fire as a suitable punishment, while the second school supported the

⁸⁶ Patrick Olivelle, „Penance and Punishment: Making the body in criminal law and social ideology of Ancient India”, *Journal of Hindu Studies* 1/2011 vol 4, 29 – 31.

⁸⁷ A. Dhand, *op.cit*, 196.

⁸⁸ P. Olivelle, *op.cit*, 32.

notion that castration would be a better form of punishment (a female offender would not be punished, of course).⁸⁹ Defecating on the highway or in public places was punished by paying a fine of 2 *panas*, but pregnant women and infants (also older people) were freed from paying the fine and they were only requested to remove or clean what they left behind.⁹⁰ As we saw, the lover and adulterer will be punished, but for some reason he will not be punished for using witchcraft if he used it “to merely arouse love in an indifferent wife, in a maiden by her lover or in a wife by her husband is no offense”.⁹¹

From a certain point of view deserting an obedient and virtuous wife equals being a thief, but even if she is not (an obedient and virtuous wife) the deserting husband or father or son will be fined.⁹² A significant example of punishing women and men who committed premeditated murder can be also found in the Laws of Manu: “If a man poisons another, he will suffer death by drowning, if a woman kills any man and if she kills her husband or preceptor or offspring, she will be drowned (if pregnant, she will be drowned one month after the delivery) and if she kills her offspring she will be torn by a bull; a man will be **impaled** if he kills anyone with a weapon and if he kills men and women with violence (but if he did not do it intentionally he will be killed quickly)”.⁹³ A separate form of punishing women for committing abortions can be found in the Laws of Manu: if it was done to a female servant, the person committing such a crime will be fined 100 *panas*, if a woman procures for herself or for others medicine (for the abortion) she will be exiled and others who cause (abortions) will be fined 100 *karshapans*.^{94 95}

⁸⁹ Ramaprasad Das Gupta, *Crime and punishment in Ancient India – Book II*, Book company, Calcutta 1930, 7.

⁹⁰ *Ibid*, 32 – 33.

⁹¹ *Ibid*, 47.

⁹² *Ibid*, 51.

⁹³ *Ibid*, 57.

⁹⁴ *Ibid*, 60.

⁹⁵ *Panas* or *karshapans* are one-die coins from Taxila, they were one of the several types of coins that were used during the times of Ancient India, 2 *panas* were worth 160 cowrees and *karspahan* were worth 80 cowerees See: A. Cunningham, *op.cit*, 46.

8. The position of women in the family unit

To clarify, the earliest *Upanishads* (the later *Upanishads* slightly differ from the older ones) dictate two important duties of women in the Hindu family law; her first duty is to procure a male heir in order to secure immortality for her husband (by the teachings of the brahman, immortality is only achievable by having male offspring; to contrast this thought, another possibility of reaching immortality is presented by *Upanishad's* female figures, which humorously remind the male characters that they can get immortality simply by not having children at all). Her second duty was total subservience to her husband (in all of the early *Upanishads*, women had the ability and right to speak up, but words uttered by a woman did not have the same bearing as a man's word, they would only have weight if a brahman man provided recognition by restating the woman's words).⁹⁶ Smita Sahgal notes that even if a man was dead or impotent, his widow (or wife) could commit *niyoga* to procure a male heir.⁹⁷ The practise of *niyoga* implied that a wife of an impotent husband or a widow could procure a male heir for her husband by sleeping with a *devara* (a man selected by the husband or the family of the deceased husband), or with the husband's younger brother.⁹⁸ Saghlas continues to explain that the female children who came from the *niyoga* union were viewed by Brahman teachings as unfit for religious functions and marriage, due to the fact that they were born from unlawful intercourse (male children from these *niyoga* unions did not face these limitations, due to the fact they were considered by the Brahman teachings as born from lawful intercourse).⁹⁹ During the ritual of giving away of the daughter at the time of marriage, brides who came from *niyoga* unions could only be given away by their maternal

⁹⁶ Brian Black, *The Character of self in Ancient India: priests, kings and women in the early Upanishads*, State University of New York, New York 2007, 134 – 135.

⁹⁷ Smita Sahgal, „Gendered inquiry into *niyoga*: appraising the institution from the perspective from the female”, 179.

⁹⁸ *Ibid*, 182.

⁹⁹ *Ibid*, 189.

grandmother, maternal uncle or mother.¹⁰⁰ The legal father (the husband of the woman who went through *niyoga*) of a female child from a *niyoga* union bears no responsibility as a father, and the female child was probably cared for and lived with her mother, her mother's uncle and maternal grandmother.¹⁰¹ Uma Chakravarti points out another form of limitation concerning marriage, in which a man from the brahmana/ksatriya/vasya caste must first marry a woman from his caste and afterward he can marry women from other castes below his own.¹⁰²

Also, the Laws of Manu highly condemn brahman men who marry women from the sudras caste first, because that action was seen as polluting and violating the status order.¹⁰³ Besides using the caste system as a sign of ritual purity or as status order, it also served to tame the conflict within women between their so called innate nature as sexual beings and their duty of fidelity towards their husbands.¹⁰⁴ The mechanism which was used to achieve absolute control of the said conflict comprised the following instruments: the first was the ideology, the right of kinsmen to control and discipline women, and the second was power of the king to punish and discipline women who violated the rules of the ideology.¹⁰⁵

The women's *Dharma* (*strīdharmā*), strictly defined their position within the following provisions: "Even in their own homes, a female – whether she is a child, a young woman, or an old lady – should never carry out any task independently (*na svātantryeṇa*). As a child, she must remain under her father's control; as a young woman, under her husband's; and when her husband is dead, under her sons". She must never seek to live independently (*na bhajet strī svatantratām*). She must never want to separate herself from her father, husband, or sons;

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, 190.

¹⁰² Uma Chakravarti, *Gendering a caste – through a feminist lens*, Sage Publishing, New Delhi 2019, 208.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, 215.

¹⁰⁵ *Ibid.*, 216.

for by separating herself from them, a woman brings disgrace on both families.¹⁰⁶ The previous provision has to be taken with certain reserves due to the fact that women had the right to demand protection from their husbands (including from their fathers and brothers); if they were not satisfied with the level of protection they received, the women could leave them and find a better protector. Also, the husbands were obligated to be faithful to their wives and love them dearly.¹⁰⁷ The provisions of the Apastamba's *Dharmaśāstra* and of the Gautama's *Dharmaśāstra* show that women had no independent legal status and that their husbands' rule over them resembled the institute of a legal guardian (the earlier *Dharmaśāstras* enabled the husband to punish his wife in private, while the later *Dharmaśāstras* instructed that only the king could publicly punish another man's wife).¹⁰⁸

Before the sixth century CE, all women of the Gupta Empire had the following property rights: 1) property over gifts and bequests from relations; (2) property over gifts and bequests from strangers; (3) property acquired by hard labour and handicrafts; (4) property purchased with women's estate; (5) property acquired by a compromise decree; (6) property obtained by adverse possession; (7) property obtained in lieu of maintenance; (8) property obtained by inheritance; and (9) share obtained by partition; also, women's estate differentiates between these two types of property: a) the *sauadayika* (gifts from relatives of both sides (parents and husband), and that which she acquired by hard labour and handicrafts during her maidenhood or widowhood, over which she had full rights of disposal) and b) gifts from strangers and property acquired by hard labour, handicrafts, and so forth as a married woman, over which she had no right of alienation without the consent of her husband, her husband only had *ius*

¹⁰⁶ Alf Hiltebeitel, *Dharma – its early history in law, religion and narrative*, Oxford University Press, New York 2011, 338.

¹⁰⁷ A. Dhand, *op.cit.*, 110 – 111.

¹⁰⁸ Stephanie W. Jamison, „Women: strīdharmā”, Patrick Olivelle, Donald R. David Jr, Gavin Flood (eds), *Hindu law – a new history of Dharmasastra*, Oxford University Press, New York 2018, 139.

usus (if the husband alienates shares obtained by partition without the permission of his wife, he must return it to her with interest).¹⁰⁹

In the Ancient Hindu law, the right of inheritance was closely tied to ancestral worship, and it was only to be achieved by offering *Śraddha* as a form of fulfilling obligations towards the ancestors. The only parties to have this right were sons, grandsons and great-grandsons (women were not considered competent to give offerings and because of that they didn't have right of inheritance).¹¹⁰ The *Dharmaśāstra* period paints a terrible picture because only the four generations of the direct male descendants can inherit *de cuius*; women could only inherit their fathers if they were sonless and if the father repeated the following formula: “My daughter is my son”, which would turn her into a *putrikāputra* (a *putrika* was considered an equal to an “aurasa son - direct male descendant”, as a legal consequence she becomes the sole heir **of her mother's father**, on the condition that the father does not produce a son before he dies).¹¹¹ ¹¹² But the intestate succession differs in the two texts; in the Gautama *Dharmaśāstra* – if a man dies sonless, then the estate will be shared by those related to him by ancestry, lineage, **or a common seer** and by his wife, while Apastamba's *Dharmaśāstra* states that if a man is sonless, then the estate is shared by his closest relatives; if he does not have any living close relatives, then the teacher will take it; if the teacher is dead, then the teacher's student will only use the estate for rituals for the benefit of *de cuius*; if the teacher's student is dead, then *de cuius* daughter will take it; if *de cuius* does not have a daughter, then ultimately the king will inherit the estate.¹¹³ The only thing that children can inherit from their

¹⁰⁹ Debarati Halder, K. Jaishankar, „Property rights of Hindu women: a feminist review of succession of ancient, medieval and modern India”, *Journal of Law and Religion* 2/2008 volume 24, 668 – 669.

¹¹⁰ K. Viswanathan, *Succession and adoption in Ancient India – a study with special reference to mitaksara commentary on yajnavalkyasmṛti*, Sree Sankaracharya University of Sanskrit 2008, 49.

¹¹¹ Ludo Rocher, „Inheritance: *dāyabhāga*”, Patrick Olivelle, Donald R. David Jr, Gavin Flood (eds), *Hindu law – a new history of Dharmasastra*, Oxford University Press, New York 2018, 165 – 168.

¹¹² If a sonless father chooses to proclaim his daughter as his *putrika*, then by the Brahman teaching she could never be recommended for marriage because she has no father or brothers See: Smita Sahgal, „Ancient India Social History“, 190.

¹¹³ K. Viswanathan, *op.cit.*, 50.

mothers is *sauadayika*; if a woman is childless, then her husband will take it; if her husband is dead, then her father will take it.¹¹⁴ The question of whether testate succession existed is a matter of debate. One school of thought states that the *Dharmaśāstra* succession system did not forbid writing wills and making wills was generally allowed (there were no limitations),¹¹⁵ while the second school of thought is of the opinion that the *Dharmaśāstra* succession system only allows intestate succession as a way to inherit property (they also exclude survivorship).¹¹⁶

The best way to answer the question of what was the general position of female children and their obligations within the family can be summed up by the thoughts of the brahmins: “A son is a blessing, but a girl is a curse and also she is a nuisance (but under the direct control and obedient to all males, from her father and brother to her husband and his male relatives), she is sufferance to the home until she is given up for marriage”.¹¹⁷ The previous provision could be explained by the fact that only royal courtesans (and, to an extent, female members of the royal court and the daughters of the kings) were guaranteed economic rights such as a regular income (they received a substantial yearly salary), an education, and receiving gifts (they could sell them or give them away), and women who were not royal courtesans would only receive dowry as a guaranteed economic right (before asking the father for his blessing, the future husband must first negotiate with the family of the future bride on the amount which the wife will receive from him while they are married), because dowry was viewed both as maintenance of a future wife and it was a beneficial way for the parents of the bride to dispose of her, because daughters represented a financial burden (the amount of the

¹¹⁴ *Ibid*, 109.

¹¹⁵ *Ibid*, 113.

¹¹⁶ Raj Rani, Testamentary succession – a comparative study of the family laws in Indian context, Maharshi Dayanand University 2010, 15.

¹¹⁷ Sukamari Bhattacharji, „Economic Rights of women of Ancient India”, *Economic and Political Weekly* 9,10/1991 volume 26, 507.

dowry mostly depended on the caste the girl belonged to, and later on her age became a major factor).¹¹⁸

9. Sati as a voluntary practice

Before starting any analysis of sati (the custom of burning widows alive), we must review the economic rights of women who became widows. When a woman became a widow, she was considered a financial liability and a menace; to avoid the issues of finding a new husband and limiting her property rights, they chose the following solution: “If a women has no husband (read as: lost or does not have one) her father, mother, brother, mother-in-law, father-in-law or son must take care of her; if not, she will be an object of censure (meaning she would have to fend for herself); if her husband’s disappearance lasted 8 to 10 years, she could remarry, and if she does not have someone to take care of her she will be allowed to adopt a son of wealth on which she can financially lean on”.¹¹⁹

We must not confuse *jauhar* with *sati*; we can find an example of *jauhar* in the epic poem *Padmavati*, in which the princess Padmavati (and her court ladies) self-immolate in order to avoid being captured, enslaved or raped by foreign invaders.¹²⁰

Committing sati was not mandatory for widows; we can come to this conclusion by reading the following provision from a law book written by Brihaspati during the VI and VII century a.d. (even if the following example proves to be written in terms that are too general, the author directly quoted it in order to prove that this practice was voluntary for widows, not mandatory): “A wife is considered half the body of her husband, equally sharing the result of his good or wicked deeds; whether she ascends the pile after him, or chooses to survive him

¹¹⁸ *Ibid*, 508 – 511.

¹¹⁹ *Ibid*, 509.

¹²⁰ A. G. Shreff, *Padmavati of Malik Muhamad Jaisi*, The Royal society of Bengal, Calcutta 1944, 369 – 371.

leading a virtuous life, she promotes the welfare of her husband”.¹²¹ Notwithstanding the previous statement, the brahman wife had two options: the first one is to ensure that she dies before her husband by becoming a **living sati**, while the second option would be that if her husband dies before her, she has the power and ability to reject widowhood by committing sati.¹²² The Laws of Manu and *Parāśara's* Code of laws both added a religious aspect to sati by promising the widow automatic acceptance to heaven (like the Brahmins), but only if she either chose the life of chastity, or followed her husband to the afterlife.¹²³ However, this passage suggests otherwise: “A woman of the Brahman caste (who) follows her dead husband does not, on account of suicide, lead either herself or her husband to heaven”; it seems that sati and its afterlife rewards could only be given to female members of a non-Brahman caste.¹²⁴ It is important to point out that there were incidents of voluntary sati performed by the kings or queens when they became widows.¹²⁵ Sati can also be viewed as a possible extensive and broad interpretation of oath of allegiance given to a queen; there was a documented instance of an officer self-immolating during the burial of his dead queen, after which his family was rewarded by the state and king.¹²⁶

10. Conclusion

The most important goal of this paper was to give a comprehensive overview of the development of legal position and rights of women who lived in India between 500 B.C.E. and 1772 C.E. While writing this paper, the author set out to find codifications of rules concerning the legal position and rights of women. The author noticed that every time a codification of this topic was mentioned, it seems the rules were never really enforced. Though the codifications in general may have failed, there are some successful examples in

¹²¹ Sakuntala Rao, „Sati”, *Annals of Bhandarkar Oriental Research Institute* 3,4/1932-1933 volume 14, 225.

¹²² Uma Chakravarti, „Gender, caste, labour: ideological and material structure of widowhood”, 2250.

¹²³ *Ibid*, 227.

¹²⁴ *Ibid*, 230.

¹²⁵ *Ibid*, 235 – 238.

¹²⁶ *Ibid*, 239.

the form of legal provisions in some legal sources. First of all, the rules of the general position of women and their rights were indirectly solidified through the rules of the caste system, family law, inheritance law and criminal law. Even if Indian women in the examined period had certain limitations in the previously mentioned branches of law, they favoured and fought relentlessly for their religious rights, right to education and right to be rulers (albeit of a different type), to practice different professions and the results of their struggles were mostly fruitful. The success of their struggle can be found in the existence of the festivals mentioned in this paper and in their acts of charity. These examples represent the living landmarks which honour their sacrifices.

The author is of the opinion that the best conclusion to this work would be that rules concerning women and their legal position in India in the designated time period were filled with contradictions and conflicting rules, and due to different practices in different parts of India they mostly resemble an unfinished mosaic, rather than a finished work of art.

Жене и њихов правни положај у Индији од 500 год. П.Н.Е. до 1772 год.

Н.Е.

Резиме: Сврха овог рада је да прикаже жене и њихов правни положај с усредређеношћу на правни, историјски, социјално-економски и културни положај у друштву ради разумевања правних традиција овог периода у датој области. Док ће се главнина текста тицати генералног положаја (с кратким појашњењима о разликама и изузецима), посебно ће се посветити пажња положају и улози жена у древном Хинду породичном праву, наследном праву, трговинском праву и разликама у правима које поседују женска и мушка деца. Извори права ће бити анализирани ради поимања духа закона и учењима о женама (световним и овоземаљским мишљењима) које су живеле у Индији у периоду од 500 год. п.н.е до 1772 год. н.е.

Кључне речи: *Религиозна права жена, сексуална права жена, положај жена у породици.*

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