Chapter VI

Gender and Law

Recently, there was an article in The Times of India of May 9, 2003 in its regular feature "The speaking tree" titled "Total liberation: No place for Gender" by Andrew Cohen. In this article Cohen has raised the question whether the path for liberation which implies doing away with ego, fundamentally the same for both sexes? If the goal is enlightenment, Cohen says the path is one and the same. Total liberation means transcendence of all differences to discover the true self. He remarks "Our true self is free from any notion of gender, from any sense of difference whatsoever. And in order to discover that self, which is our 'natural state or already liberated condition, the intense attachment to and identification with being a separate personality, including its maleness or femaleness has to be transcended. 'Very truly, men and women may be physically separate identities but what is required for total freedom is doing away with the investment, both emotional and psychological in being male and female. 'Only then gender consciousness would be free from the ego's unsavory motives-desire to dominate, control and seduce."

But doing away with this gender consciousness, at the emotional and psychological level is very difficult in a pre-conditioned, patriarch driven society where gender plays an important role. A society may be patriarchal or matrilineal or egalitarian but what is nearly always pervasive as a constitutive element in the society is the consciousness of gender, the awareness of the maleness or femaleness of oneself. It is this consciousness, then that lends to a framework of society which defines the place of men and women over there. In this way, in connecting with the past, gender becomes not only an important and useful tool of analysis but an essential category for historical understanding. What appears paradoxical is that despite an innate consciousness about the existence of gender thoughts, there is a deliberate attempt to mute these voices of gender especially of women on the part of earlier historians. The history that we have then becomes the history with respect to various aspects of men in society and hardly any women to talk of.
Considering a gendered perspective would involve the study of social relations of sexes, as a source of change and power. It would then enable us to acknowledge men and women as gendered identities and explain their behavior towards the social responsibility. Gender is an axis that we need to understand in consonance with other axes such as class, race, ethnicity, political structures or economic institutions. Gender is embedded in these axes.¹

Alice puts it, “The focus of post modern theory, not merely on identity but on multiple identities introduces gender into the formula for assessing consciousness, turning masculinity and femininity into the central tropes through which interpretation is rendered. This enables a better comprehension of the past for gender then comes as a beacon light on the dark corners of the history. Moreover, Alice emphasizes two important aspects of gender, one that gender is fluid, it is a process, changing over time and its participation varies with historical circumstance and like class it is identical and normative, conditioning both individual futures and views of the world. Second, because it constitutes the ground on which identity is built, and consciousness formed, it is more pervasive than class and becomes a constitutive element of it. More simply, the influence of gender varies from society to society. The consciousness of gender is more far reaching than the consciousness of class and both have a conditioning role in society parallel to each other.

In the Indian context, where the patriarchal society defined the norms of social and ethical living in ancient society, gender comes forth as an influence that determined not only the larger framework of society but dictated even the minutest details. The consciousness of masculinity and femininity seems to be cast on the minds of the smrti writers so much that nearly every injunction is with respect to men and women separately rather than treating them as a single identity. These gendered identities define the respective status of men and women in society. The all – pervasive masculinity relegates women to a secondary position in society and from there builds up her position as one in need of special legal protection.

Historically seen, the earliest gods, which is the Vedic gods, were genderless. Vedic society too was deemed to be fairer towards women then the society of the Dharmaśāstra period. The Vedic texts do not forbid women from performing any
rituals either. In other words, the masculine and the feminine components of the society both were more or less equally important even though the logic for it was derived from the argument that no religious action was complete without the participation of the better half. Even the Upanisads do not speak of discrimination based on gender. The ātma by itself is believed to be genderless. Then how did gender differences originate? Probably the only explanation lies in the fact that it is human constructions or barriers of thinking that brought forth these discriminations based on gender. It was a post Vedic phenomenon and legitimized by the Dharmaśūtras period. More specifically, the patriarchal elements by means of their rising superior positions continuously idealized and imposed a society with explicit gender differences. A schemed consciousness created such texts and enunciations that ensured that women were systematically relegated to a subjugated status and by attaching divine sanctions or venerable status to the law writers, the same was strengthened in the society. Subsequently, these gender discriminations were given the veil of customs and further perpetrated. A going back at any point was neither aimed nor desired for it ensured the male superiority position as well as the Brāhmaṇa’s privileged status and upper hand in the society. The casualty however was the society, for gender differences dictated first the social norms and then entered in law itself.

Law seems to be the most appropriate area which needs to be focused under the auspices of gender. Law not only defines or determines the gender boundaries but also gets affected vice-versa. It sets the pace for development of men and women in society, it also gets affected by the status of gender in society. Law and gender are somewhat in a symbiotic relationship. An understanding about this dynamics will help us in understanding both law and gender.

In early India, conjugal togetherness was seen as the converging point of gender holism. Any balanced approach would begin from the premise that in Indian thinking, the concept of ‘eternal companionship’, i.e. the union of ‘Purusa’ and ‘Prakriti’ was the essence of eternal peace and perpetuation in the society. Any deviation from it was considered gender imbalance. Quite naturally then, nearly all the sūtris, epics and dramas extolled the men and more so women within the familial context rather than in isolation from this basic social unit. Both men and women were bestowed with privileges of varying gradient but not
without obligations and disabilities. Law was not equal for both the genders for the social status was not of parity. The social status in turn brought the gender prejudices in law which not only restricted the evolutionary nature of law but marred it with such weaknesses that led to deterioration of women in society as such and their subserviation to the patriarchal elite in early India.

Law in ancient India considered men as invested with a juristic personality and women as a dependent on him. She was deemed to have no juristic individuality although she was punishable for her offences. Whether we study the celestial or terrestrial, divine or semi divine, characters, princesses, hermit girls or courtesans, the predominant conception of women is in the capacity of daughter, sister, mother or wife. The man however, could stand outside these relations as well. Both were expected to adhere to the laws of dharma introduced in the concept of rta or the smrti laws. Any breach or deviation from it was a crime that called for punishment committed by them in person. Women, however, being assumed into a subjugated status, for crimes committed by her, it was the male relation to whom she obeyed, that was called for owning the responsibility. For her crimes, it was the feminine character that was deemed despicable, was considered the reason. For men, however, no definition or limits of male character were laid down. Hence, he could commit crimes under the influence of vices laid down in the śāstras which were more a matter of circumstance than the inherent nature of the masculine sex.

Equality before law was a far cry from the gender point of view. Along with gender prejudices, the caste distinctions accentuated, the rigors of punishment for the legally and socially less privileged men and women in society. A Brāhmaṇa male enjoyed far better immunities in law than a Śūdra male. Similarly, sudra woman, who was considered despicable by birth, got far less legal protection than a Brāhmaṇi or a Kṣatriyani. For the same crime that a sudra man was to be hanged, the Brāhmaṇa offender was not to be punished more than banishment. Likewise for a similar crime, that man was to be put to death, a female was to be either mutilated or publicly ostracized (adultery). The husband seems to have been holding some kind of correcting powers over the wife (with law permitting a certain degree of violence for this sake). She could act as witness but to her group alone. Male witnesses were however, not bound by any such gender rules.
In all, it seems law viewed women as one in the list that needed protection. Building from this basis of her vulnerable weaker position, a legal system was created that gave greater legal protection to women than their male counterparts (for they did not need any protection). Also, the legal protection was far greater for one born to higher caste than lower. Rule of law was neither equal nor equitable from gender point of view nor from the social point of view.

Here, we undertake a review of the legal provisions as laid down by the smṛtis, epics and seen in the dramas with respect to men and women with respect to various social segments. Although at same places, moral and social injunctions have also been cited along with legal injunctions, the purpose is to give a complete perspective to the place of gender prevalent in law as seen in early India.

The smṛtis, as a whole have devoted long sections dwelling upon the duties of husband and wife. That is because marriage was considered the ultimate need of society for the sake of continuance of peace and perpetuation. Nearly all the smṛtis have given much importance to the 'grhaṭha' āsrama which is considered the most important dharma of a person. For women, especially, marriage was seen as essential sacrament, without which she was not only incomplete but also devoid of any respect in the society. As Manu, put it "Between wives (striyāh) who (are destined) to bear children, who secure many blessings, who are worthy of worship and irradiate (their dwellings) and between goddesses of fortune (stīyāh who reside) in the houses (of men), there is no difference whatsoever". The Arthasastra succinctly states that “The aim of taking a wife is to beget sons’ (3.2.4.2): From this followed the principle of partition of the family line through sons, and the basis of discrimination between sons and daughters. Also, within the class of women, it distinguished between women who were blessed with children and those who for some reason failed to beget offsprings.

For the men, all the āsramas were important. As a ‘snātaka’ or student, he was expected to follow the rules of brāhmacharya while when married, the husband held an authority over his wife and was emphasized upon the role of wife. Manu writes – "Offsprings, religious rites, faithful service, highest conjugal happiness and heavenly bliss for the ancestors and oneself depend on one’s wife alone." Women were to be
honored if they were wives, daughters, sisters and mother. Some moral injunctions even coaxed the men to take care of women in relation, if they desired their own welfare. In verse 57, Manu says - "where the female relations, live in grief the family soon wholly perishes, but that family where they are not unhappy ever prosperous."

Viewed from the legal eye, marriage was a compulsion for women and a matter of choice for men. The legal tie of marriage was stronger for the weaker sex in the society. It was a lifelong contract between the husband and the wife, considered sacred and above law. As Manu puts it, neither by sale nor by repudiation is a wife released from her husband, such we know the law to be which the Lord of creatures (Prajapati) made of old. However, permission was there to supercede women if they failed in begetting the offsprings. Manu quite blatantly puts it that "a barren wife may be superceded in the eighth year, she whose children all die in the tenth, she who bears only daughters in the eleventh but she who is quarrelsome without delay." However for a sick but virtuous wife, Manu tells she may be superceded only with her consent and must never be disgraced.

For the wife, Manu spells that if the husband went abroad for some sacred duty, (she) must wait for him eight years, if to acquire learning or fame six years, if for pleasures, three years. However, she was not to be considered independent at any time. 'Her father protects (her) in childhood, her husband protects (her) in youth and her sons protect (her) in old age; a woman is never fit for independence.' Moreover, she who controls her thoughts, speech and acts, violates not her duty towards the lord, dwells with him in the heaven and in this world is called virtuous. Manu enjoins that a virtuous wife should serve her husband as if he were a god, whether he be of evil character or lustful or devoid of good qualities."

Likewise, Yājñavalkya (1.77), opines that for women, this is the highest duty that they obey their husband’s words.

Kane quotes the Rāmāyana (Ayodhya Kṛṣṇa 24.26-27), which says - "The husband is the God and the master of the wife, while she is alive and she obtains the highest heaven by serving her husband."
Marriage is so important that if the father did not fulfill the duty, the maiden could select the bridegroom by choice without incurring any guilt (Ch. IX, V.91). In fact, there is a beckoning for the male relations if they fail in this duty. As Manu put it—‘Reprehensible is the father who gives not (his daughter in marriage) at a proper times, reprehensible is the husband who approaches not (his wife in due season) and reprehensible is the son who does not protect his mother after her husband has died’ (Ch. IX V.24). Wife was essential for the performance of religious sacraments in the Hindu household, hence religious rites were to be performed by the husband together with wife (Manu, Ch. IX, V.96). The father was condemned if he accepted a gratuity for his daughter’s marriage. Manu says—“Even a Sūdra ought not to take a nuptial fee, when he gives away his daughter, for he who takes a fee sells his daughter, covering (the transaction by another name)’ (Manu, Ch. IX, V.96).

Much has been said despicable about the feminine character in the smṛtis. Husbands were supposed to guard their wives against evil inclinations, which was supposed to be the second nature of women. Manu puts it quite distastefully that—“women must particularly be guarded against evil inclinations, however, trifling, for if they are not guarded they will bring sorrow on two families (Chi, V.5)’. However, no such assertion in any of the smṛtis is made about the character of men who often exhibited such inclinations”. Manu has even discussed the causes of ruin of women, not of men. It is difficult to imagine that women who were already relegated to a weaker position and made dependent, did they dare to follow any such inclinations? He says “Drinking (spirituous liquor) associating with wicked people, separation from the husband, gambling abroad, sleeping (at unreasonable hours) and dwelling in other men’s houses are the six causes of the ruin of women. “The texts, however, do not speak anything on causes of ruin for men as such.

On the other hand, a virtuous wife is extolled to immense heights. All the smṛtis and digests speak about the duties of wife and that she should not only obey but be devoted to her husband. Rewards were there for such faithful women (Pativrata) as being called virtuous in this world and securing place in the heaven. If however, she was faithless to her husband, she could incur censure is this world and may be as a female jackals in the next life or could be afflicted with bad diseases (Ch. IX, V.165). Likewise, Yājñavalkya (1.75 & 87) too
praised a faithful wife—She attains glory in this world and plays Uma in the heaven. Nearly all the epics, Puranas speak of the powers of faithful wife. However, here again faithfulness is again an attribute that is expected more from the women than men. Why the smritis and other texts do not talk of bestowing heaven on faithful husbands falls in line with the argument of patriarchal preceptors of the society.

However, a wife had the legal right to reside in her husband’s house. She was further entitled to be maintained in the house by the husband. As Manu puts it (XI.10) — “One must maintain one’s aged parents a virtuous wife and a minor son by doing even a hundred bad acts. "They can never be cast off as such. Nārada (Strīpūmsa V.95) suggests that the king should bring to the proper path by inflicting heavy fines, a husband who abandons his wife that is obedient, not harsh of tongue, vigilant, chaste and endowed with sons. Maintenance was an essential element of the husband duties. Manu tells that a man must never leave his wife without maintenance — “A man who has business may depart after securing maintenance for his wife, for a wife even though virtuous may be corrupted if she be distressed by want of subsistence”. Hence, for the wife (who was expected to be faithful), maintenance by husband was her legal right and privilege, which could not be neglected.

Yājñavalkya, I.76, Nārada (Strīpūmsa, V.95) says that the husband is liable to pay one-third of his estate or a fine for deserting a virtuous wife. Also, in number of instances, the king had the right to interfere to ensure justice.

Manu and other smrti writers have emphasized mutual fidelity as the highest law of the dharma of husband and wife. Both were to consciously avoid venturing outside the marriage, although the prevalence of instances of polygamy and an organized class of courtesans suggests that men had the option to look beyond the legally wedded wife. However, punishments for adultery were severe for both the sexes. (as discussed under adultery section)

Men had certain legal protection against deception in marriage agreements. Giving a damsel without having told the defect was a punishable offence (only Kauṭilya explicitly mentions that arranging the marriage of a man married without mentioning
a sexual defect is also an offence punishable with a fine double that for a girl. (VIII 3.15.).

Nārada (Strīpumṣa, V.89) prohibits the husband or wife to lodge a complaint against one another with their relations or with the king. Yājñavalkya (11.294 – Mitaksara) tells that a judicial proceeding between husband and wife as plaintiff and defendant before the king is forbidden. However, if the king gets to know personally or individually of the wrong done by one to the other, the king must bring round the husband or the wife to the path of duty by appropriate punishment or it is the king who incurs the sin. Kane has listed certain matters of which the king could take cognizance without anybody’s complaint – such apradhas as the murder of a woman, varnasankara, adultery, pregnancy of a widow from a person other than the husband, abortion etc.

Marriage was further an insoluble tie for both men and women. Manu (IX. 46) Dissolution of marriage was not legally permissible. Mutual fidelity was the law for the husband and wife until death. There is nothing in the smṛtis, epics or digests to suggest that a legal divorce kind of thing existed in early India. In fact, as Kane puts it “Divorce in the ordinary sense of the word has been unknown to the Dharmaśāstras and to the Hindu Society for about 2000 years (except on ground of custom among lower castes). Even when the husband was allowed to abandon the wife for her lapses still she in most cases was entitled to at least a starving maintenance”. The word ‘punarbhū’ might suggest a remarriage of widow but divorce does not appear to be in vogue from any instance.

The right to super cession in marriage, under certain circumstances led to practices like polyandry, instances of polyandry is very meager, except for the glaring example of Draupadi in Mahābhārata. Likewise, suggesting a period of waiting for women when her husband had gone abroad, the smṛti writers also suggest a possibility of remarriage for women. Dr. Kane cites that the story of Damayanti which suggests that when the husband was not heard of for many years, a wife could remarry again. Damayanti is said to have sent a message to Ṛtuparna that as Nala was not heard for many years, Damayanti was going to celebrate svayamvara and Ṛtuparna hurries for it without thinking it as a strange thing (vānaparva 70.24). However, remarriage was more an idealistic alternative than a practical option for chastity of women and especially wife was
emphasized not only till the husband was alive but even after his death. Nowhere, is a second husband recommended for virtuous women (Manu says IX.47 – "a maiden can be given only once"). A husband could however take another wife in practical life, Kane has written that Haradatta quotes Manu 111.174 and says that a son procreated on another’s wife is called ‘Kunda’ if the husband is, living and ‘golaka’ if the husband is dead. Narada prescribes a fine for taking a second wife without reason but it is doubtful whether it was enforced. Kautilya (3.241) writes – A man may marry any number of wives (subject to conditions spelt out) provided that he pays (each of) the wives their dowry, their property and adequate maintenance.

Moreover, in suggesting the maintaining of chastity, the smṛti writers were harsh on the widows. Sati was advocated for the chaste wives after the death of the husband. However, none of the smṛtis actually talk of sati, except for a reference about it in Viṣṇu. The Manusmrīti is silent on it. The Visnu-dharmasūtra says that – “On her husband’s death, the widow should observe celibacy or should ascend the funeral pyre after him.” Kane has studied these. Strabo (XV, 1.30 & 62) mentions that Greeks under Alexander found sati being practiced among the C orthodox in the Punjab and the practice arose from the apprehension that wives would desert or poison their husbands. However, sati was a social practice with no legal sanction. However, the state showed no special initiative to mitigate this evil which continued illegally till much after.

After the death of the spouse, it was woman who suffered the stigma as a widow and nowhere the smṛti writers talk of a widower. Remarriage being an easier option for men, it was the women who suffered the social abuse after the death of the husband. Widows were referred as having disheveled hair, in despair and inauspicious. There were no special laws for the protection of widows except that she got few rights in the property (discussed later). Nonetheless, a host of duties have been ascribed to the widows.

Niyoga was permitted within certain limits. Manu first suggested it and then condemned it in strongest possible terms. Manu (IX.59-61) and Nārada (Stripumsa, 80-83) allow a woman to go for niyoga or secure a son from her brother-in law, if her husband is dead and she desires to have an offspring (Gautama, 18, 4-8). If the child was begotten at the request of a living
husband, the child belonged to the husband. The focus was so much on begetting a ‘son’ or a ‘legal heir’ (waaris) that woman’s wishes were neglected to a secondary position. More often than not, niyoga was a matter of compulsion than choice. Nārada however, providing certain immunities says that if a widow or a male acts contrary to the stringent provision about niyoga, he or she should be severely punished by the king in order to avoid confusion. Yājñavalkya (11.234) makes such a person liable to be sentenced to a fine of 100 panas. These restrictions must have made the prevalence of such practices on large scale impossible.

The Hindu Law of Inheritance does not presume any property rights for sons or daughters while the parents are alive. For the sons, however, the law of primogeniture applied and the eldest son succeeded to the property taking care of the youngsters giving them respective shares. A daughter however, had no direct legal right in the property of her father. To maiden sisters, as the smṛti writer envisaged the brothers were expected to give a share (1/4th each of his share) and if anybody refused, he was to be considered an outcaste (there was no legal punishment for him but a social one). In short, the brothers were expected to arrange the dowry of their sisters. An appointed daughter (putrika)’s son, however, could be taken as an heir. Kautilya allows the daughters to succeed if there are no sons. Among wives of different castes, however, son of a Brāhmaṇa wife was allowed three shares, son of a Kṣaṇṭriya two, son of a Vaiśya a share and a half and the son of a Sudra was allowed to take one share (Ch. IX, V.157 – Manu).

A wife had the right to maintenance but no explicit legal share in the property of her husband is spelt out. Manu and other writers, however, recognize the separate property of women (strīdhana) that was for the unmarried daughters alone. Manu and Nārada do not allow the widow of a sonless male to succeed as heir (Gautama contemplates that she could be the heir along with other sapindas and sagotra. Yājñavalkya (II. 85) mention the widow as the first heir to the property of a sonless husband. Brhaspati declared that the wife was to be the successor to the wealth of her husband, and in her default the daughter. But Kātyāyana puts across a hedging and says a widow could take the wealth of her husband provided she was chaste (and in her default, the unmarried daughter (V.926). But a wife who is full of evil deeds immodest, wastes her property or given to adultery,
does not (deserve) to inherit the wealth of her husband (V.929). The fact that widows actually enjoyed very meager rights and no practical right to succeed becomes clear from Sākuntala (Act VI) where the minister writes to the king that the estate of a merchant dying at sea will escheat to the crown and will not go to his widow.

Women were given the legal right over her property called stridhana. Kātyāyana, who is the most advanced in the treatment of the topic, recognized six types of stridhana. This right was not over the immovable property. But Kātyāyana tells that if any property was brought by her labor, the wife’s ownership was recognized over it, but the right of alienation was subject to the husband’s writers. Kātyāyana says that where basic maintenance was denied, the wife had full right to demand her stridhana and also her share (that would have been her husband’s on partition) from the coparceners. She had the perpetual legal right to reside in her husband’s house (V.910) except when afflicted with deadly disease. None of the male members were deemed to have any right over this woman’s own property and if anybody would forcibly take it away, he was to be fined along with interest. Another verse (V.916) makes it binding for the sons to pay the stridhana promised to a woman by her husband as seriously as a debit. Here, as Kane pointed out the instance from Smṛtichandrikā (III P 656) that when a wife got married, she had some kind of dominion over her husband’s property, though always subordinate to him but the man did not even enjoy any kind of dominion over his wife’s stridhana. Stridhana hence was then only area in which women enjoyed absolute legal right without any interference from men side. Even when the stridhana devolved in the absence of daughters, it went to the sons in their absence to relatives (who gave this wealth) and only as a last option to the husband (Kauṭiliya 111.2 P.153).

Among the epics, especially, if we focus on gender picturisation, we get a picture of society where Dharma was considered the supreme goal of human life, the ‘Summum bonum of life’ and both, Sītā and Rām come forth as the epitomes of ideal ‘womanhood’ or ‘manhood’. It is so much a glorious illustration of the ideal ‘women’ perceived by the Brāhmaṇa preceptors that her purity of moral character and her devotion to her husband in prosperity and poverty have become proverbial. Likewise, Rāma is picturised as the ideal son, ideal brother and
ideal husband. Vālmiki, in fact, finds an obedient wife synonymous with dharma in which Artha and Kāma fully reside.

Te Tatra sarve syurasamsāyam me
Bhāryeva Naysabhimātā saputra

Righteousness, Karma and Artha combine in one as a virtuous woman. If obedient and dutiful, she helps a man to acquire Dharma by her charm and beauty. She satisfies Kāma and by giving birth to a son, she brings profit. In short, Sita is the representative of the typical stereotype of a subservient woman that was picturised by the Brāhmaṇical patriarchs. No wonder, it is she who is chosen as the ideal than the women characters from Mahābhārata who seem to be more independent and assertive.

Rāma, fulfilling the roles as ideal son and brother also appears as an ideal husband (in vow of ekapatiṇī). His love and devotion towards his wife depicts a society where husband respected the wife. Vālmiki describes the relationship between husband and wife and says – "The lute without strings does not sound; and the car without wheels does not move, so although having a hundred sons, a woman without her husband cannot attain happiness". (Ayodhya Kāṇḍa, 39-39, 30). However, the epics do not reflect much upon the legal rights of men and women. The only allusion to law is probably with the reference to 'ṣṭriḥatya'.

When Rāma killed Tattaka, a woman rakṣasi, his act is defended on the grounds that she was a murderer, so the act was an act of self defence and it is cited that even Parasurāma had killed his mother at the instance of his father. Strīḥatya was a condemned crime but it is told that if it was the need of the hour in one's defense or if the woman was a murderer, same could be permitted.

The smṛti writers offer a great variety of thoughts in women. Right from her character to the set of duties prescribed for her, there seems to be a ‘gender suffering’ on the part of the women. Either she has been elevated to the pedestal of a goddess or plunged into the throes of critical remarks against her. Women are declared to be the incarnation of falsehood (Maitranyāya, S, I, 10-11). The Satapatha Brāhmaṇa declares that women were not worthy of friendship for they have hearts of
hyenas. Manu not only denies them an independent existence at any stage of life but stresses their continual dependence on male relations. Whether it is the epics on the plays, all have mostly remarked strongly against the women and their character. The Mahābhārata compares women with the edge of a razor, prison, snake and fire in one (Anuśāsana 38.12 & 29), The Rāmāyana sees women as the ‘renegades from dharma, fickle, cruel and create estrangement’ (Aranyakānḍa, 45. 29-30).

The ideal characterization of women begins from her familial context and lies within it only. The idea of the whole and sole submission of woman to her one lord or husband is the predominant stereotype image envisioned by the Brāhmaṇa preceptors. She was neither acceptable as an individual of own identity nor with an identity of an ascetic (shunning the prescribed duties). The society permitted the courtesans to practice their profession and men were privileged to use license to enjoy them. But, the courtesans themselves were given a low grade status.

If one cites the dicta in favor of woman, the defense seems incomplete, whatsoever good or appreciative his been said about women, it is most vividly about the woman, who are dutiful or chaste wife, mother, daughter or sister.

The gender quest would bring us the question as to the characterization of men. Men, per se, as a gender have not been remarked in favor or against. But the verses that came forth depict an explicit tilt in the favor of men, giving them an upper hand with respect to legally permissible rights. Where then duties and liabilities have been imposed, they seem to be more in the nature of assertion reminding them of their responsibilities. But nowhere these obligations erode or undermine the privileges which they were prized by the Brāhmaṇa śṛṅti writers.

Within the legal arena, this gender divide is even more visible. The discriminations against women are discernible both in civil and criminal law. Women have been treated as of secondary status right from the beginning of legal history. She has therefore, been awarded same special protections with respect to punishment or been treated as a class different from men. Within the sphere of procedural law, women had negligible roles. Women judges were unheard of and even for writers, she was deemed unfit except for her own category.
According to Yājñavalkya (11.70), Nārada (Ṛṇadāna 178,190,191) a woman was unfit to be a witness in the court of law. But Manu, VIII.68,70, Yājñavalkya 11.72 and Nārada (Ṛṇadana, 155) allow women to be witnesses in disputes, between women or in such cases where witnesses other than her was unavailable. She could also be witness in cases of theft, adultery or other offences in which there was an element of force or where to gather witness was difficult. Yājñavalkya considered a transaction with women as invalid.

In the field of civil laws, women enjoyed a host of legal protections starting from the premise that she had not enjoyed a status independent of men. A woman was not compelled to pay the debt of her husband or son (Yaj. Ill.46, Viṣṇu, VUI. 31). However, if the wife contracted the debt and husband went away without providing for her, the husband would be responsible (Kauṭṭilya 3.11-21-24). Moreover, the debt of the wife of a herdsman, vintner, dancer, washerman or hunter should be paid by the husband, since their livelihood depends on them (Yaj, Ch.VII, V.48, Viṣṇu, VI.37).

As far as property rights are concerned, we have already seen (in early part of this chapter) that women per se had no legally sanctioned property rights as daughter, wife, mother or sister. They were deemed to have no property of their own. This probably referred to movable property. The only rights legally permitted were the right to maintenance and an absolute right of control over her movable property called stridhana.

As mentioned earlier, in the inscriptions, we come across a gender related ideal with respect to accusation of crime. It says ‘purusa aprādhe stṛi na grāhyaṁ’ – this is probably the single most assertion which saves her from becoming a convict for a crime committed by her husband. It also puts forward the premise that crimes are committed individually and each should be held responsible singly for the wrong committed by him or her. However, if any wrong is committed by women, the indirect responsibility say the smṛtī writers lies with her male relation on whom she may be dependent. The Mahābhārata even says that it is not the woman who is at fault but it is the man who is at fault (when the woman goes astray) (Santiparva 267.38).

Among the plays, those of Kālidāsa and others reflect nearly similar views upon the status of women. We do not came
across any gender defense with respect to women but only a
dittoing of the stereotype of conventionally subjugated
womenhood visioned by the smrītī writers.

If we make a survey of the historical plays that fall in our
period the gender consciousness seems no less pervasive.
There is a predominance of male characters while female
characters, surface in various forms such as celestial and
terrestrial women, women of noble descent princesses,
affectionate mothers, hermit girls or courtesans. The picturisation
of women is mostly with respect to her familial identity and where
courtesans are discussed their status was deemed to be
secondary to those with family links. It is a story of continuous
deterioration of women’s position with changing positions of male
superiority.

The dutiful wife Sītā is depicted by most poets as the
highest ideal of womanhood. From Bhāsa to Kālidāsa
(Raghuvamsa, the stereotype of Sītā is considered to be the ideal
meant to be emulated by the female section in the society. Her
wifely duties are more emphasized than her rights, Bhavabhūti,
asserted a slightly different image of Sītā, for the poet wished to
uphold the society which respected women’s honor. However,
law givers as much as the play writers (especially, Saktibhadra,
the author of Ascaryacudāmanī) talked about the character of
women (stṛśvābhava), more often denouncing it. Sītā, a
representative of the Arya family is portrayed by most poets with
same, traits such as simple, obedient, soft hearted and
completely dependent on husband. Women of Dravidian races –
Surpanakha, Sramana and others are depicted as having an
emotional individuality of their own. Ratnamayidevi Dikshit has
remarked after surveying the plays that “Perhaps it may not be
wrong to conclude that while in the North, which was the birth
place of the Dharmasūtras, the smrītī etc, the women were being
pushed down, the south which was kept safely apart from those
influences due to geographical, historical and political reasons,
had its women continuing more or less in the same old way,
enjoying equal rights with the men”18.

In the Mrčchakatika of Śūdraka, it is again the married
women who is held with dignity, that is the wife of hero Carudatta
.Vāsantsenā, the courtesan is dying to become respectable but as
Sarvīḷāka says, it is not easy to secure (the position as the
first wife. 19 A polygamous society (Cārudatta takes Vāsantsenā
as his wife when his first wife is living) definitely implied the woman as having a secondary position. He, the hero, however, has the freedom of extra marital relation (for which no objections are raised). The existence of the class of courtesans is also a testimony to promoting relationships outside the marriage. Dhuta's attempt at immolating suggests the prevalence of Sati.

The play has snide remarks on women's character, too which is reminiscent of Manu's strictures on the nature of women such as where Sarvilākā says – "Only fools can put faith in women and in riches; both wriggle like serpents. Women do not deserve deep attachment, they are apt to insult a man who is attached to them. They should be enjoyed as long as they are themselves in love; otherwise, they deserve to be abandoned".

REFERENCES

3. Manu explains, 'putra' as the 'deliverer from hell', who alone could do the 'pinda' for the ancestors.
6. Ibid, Ch.IX, v.46.
8. Ibid, Ch.IX, v.74, 76, p.340-41
10. P.V. Kane, History of Dharmaśāstra, p.562, quotes Mahābhārata and Kamasutra, too.
11. Ibid, p.574.
14. Quoted by Mitākṣarā or I.86
17. Mentioned in Chapter on Civil Laws.

192