

## VI

### **Gendered Edifices: *Manu-Smṛiti***

In this chapter an attempt is made to explore the discursive structures that construct the 'family' and 'woman' through social regulations in the region called India. Culture, religion, caste, class, politics, law and language are the main discourses that generate such discursive structures and *Manu-Smrti* appears to have immensely influenced those discourses in modern India. It is an effort to analyze the gendered edifices out of which those discourses produced, and to which *Manu-Smrti* could be interlaced. Though one woman researcher from India can claim this textual authority reflexively on the basis of the social impacts it made, contemporary foray by various writers into the scriptural injunctions could be noticed for the purpose of strong evidences. The religious, cultural, judicial, political, caste and class discourses in modern India would seem to be obviously getting along with the conceptualizations of household and woman in the text *Manu-Smrti*, particularly in fastening the woman's role, identity and sexuality inside the family structure.

### **Religion, Culture and Hinduism**

Religion and culture have ever been concepts of extensive exigency in all the stages of change in any society. Same is the case with a stage of the social transformation in terms of gender. Clubbing the two concepts of religion and culture is an unavoidable task as they form the main strategies of social organization infused through scriptures, in a province like India. Malory Nye has written about the approach that could be labeled as the study of 'religion and culture'.<sup>420</sup> According to her, religion is not something abstract and God-given, but it is integral to other cultural activities

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<sup>420</sup> Nye, Malory. *Religion: The Basics*, Routledge, London, 2003, p.2- 21

and is the fundamental aspect of culture. The most accessible proponent of this idea is the American anthropologist Clifford Geertz (1973) who defined 'religion as a cultural system'.<sup>421</sup> The points posed by Malory Nye are crucial in the Indian context because the usage of the term 'religion' becomes a noun, adjective, adverb or even verb as she said. Interesting is her explanation that, this issue sounded with the explanation on religion of Hinduism that as *sanatana dharma*, making religion as a verb. The beginnings of such Indian problematic can only be constructed through reflections on the earliest texts.<sup>422</sup> Vedas and the texts created thereafter claiming the Vedic ideas as their roots are quintessential to understand religion and culture in India. An inversely proportional apprehension about the religious as well as cultural concepts also is necessary to interpret the texts written in India.

Malory Nye has asserted the significance of texts to religions and cultures, although she puts aside Max Muller's preferential suggestion for the reference that the sacred texts could produce.<sup>423</sup> Although she thinks it is important to read other forms of texts than the religious ones, the relevance of analyzing such texts of Hinduism is not denied by her as they exercise as the main outlet of culture and religion in India. Especially the *Smrti* codes which are believed to 'be written out of Vedic inspiration'<sup>424</sup> to make a social order has enormously propagated the amended concepts of Hinduism so as to make it a dominant religion in the contemporary condition. And the well-known *Manu-Smrti*, that is considered as the law-book of

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<sup>421</sup> Ibid.,p.37 Also see, Geertz, Clifford. *The Interpretation of cultures*, Westview, Basic Books, 1973

<sup>422</sup> Krishna,Daya. *Classical Indian Thought*, Oxford University Press, 1996, p.8

<sup>423</sup> Nye, Malory.,2003, p.157,149

<sup>424</sup> Krishna, Daya. *Classical Indian Thought*, Oxford University Press, 1996, p.17

Hindus could be found as the most anti-woman Sanskritic core of Hinduism, according to Pandita Ramabai, who refused to remain Hindu and converted to Christianity because of the androcentric nature of Hinduism.<sup>425</sup> But there are arguments that religions always provided subordinate position to women no matter whether that is Hinduism, Islam, Christianity or any other.<sup>426</sup> The most vocal example of such a view is Mary Daly, who argues that the concept of belief in a male deity leads to profound sexual inequalities.<sup>427</sup> Similar forms of androcentricism of religion and culture has been of great discussion among feminist theorists. Accordingly, the lies about the nature and function of woman that are intrinsic to patriarchal religion have informed the legal, educational, political, economic, and medical/psychiatric systems of our society and are accepted as ‘natural truths’ by even the most modern and atheistic citizens.<sup>428</sup> This stream of feminist theorizing put forward the relevance of female Goddesses and female spirituality while it upset ‘God’s natural laws’<sup>429</sup> on ‘natural roles of the sexes’<sup>430</sup>. There are opinions that women’s spirituality would help the reestablishing of collective female

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<sup>425</sup> See, Omvedt, Gail. *Dalit Visions : The Anti-Caste Movement and the Construction of an Indian Identity*, Reprint. New Delhi, Orient Longman, 2006. Chakravarti, Uma. *Rewriting History: The Life and Times of Pandita Ramabai*, Kali for Women, New Delhi, 1998. In 1882 Ramabai founded Arya Mahila Samaj (undoubtedly the first autonomous women’s organization in India) and then shortly after departed for England where she converted to Christianity. For this, she was condemned by even the moderate Brahmins who had originally sponsored her efforts. Anyhow, Ramabai’s activities are the empirical evidence for the feminist move proving the anti-woman elements of Indian scriptures.

<sup>426</sup> There are discussions on Qur’an and Bible showing that they are basically women friendly, but the it was the later interpretations made them male-centric. The issues of translating Qur’an and the language of interpretation being anti-woman inflicting such ideas in the real life situations etc. have been discussed by various writers. See for eg., Al-Faruqi, “Towards a New Theology for Quranic Exigesis”, *Islamic Studies*, March 1962. For some discussions on Bible and Women, see, *Jeevadharma*, XXI No.122 March 1991

<sup>427</sup> Nye, Malory. *Religion: The Basics*, Routledge, London, 2003, p.74-75

<sup>428</sup> Spretnak, Charlene (ed). *The Politics of Women’s Spirituality: Essays on the Rise of Spiritual Power Within the Feminist Movement*. Anchor Press, U.S.A, 1982, p.xi

<sup>429</sup> Ibid.

<sup>430</sup> Ibid.

consciousness to develop a way of life which doesn't need hierarchy.<sup>431</sup> This might change the status of women as anomalies in many cultures which have male-biased ideological foundations. There were Buddhist nuns in India during BC600 such as Soma, Sumangalamata, Nandutara and Vimala who addressed women's spirituality and their status in religious matters. Their rhetorical self-deprecation echoed by many women activists and writers later on. Sumangalamata celebrated the life by becoming a homeless world-renunciation and escaping the pestle and cooking pots of the 'householder'.<sup>432</sup> Soma also fought against conceptions such as the domestication of women and her cooking skill, by attacking the ideas about the 'two-finger intelligence of women'.<sup>433</sup> This proves how deep is the historical root of the women's subordination inside the family whatever the religious structure it had.

At the foyer of *brahmanical* revivalism after *budhist* period, one can watch the same kind of inferior role assigned to women in the form the text *Manu-Smrti* puts it. The modern Indian culture also takes the text *Manu-Smrti* to construct and preserve more rigid form of the family.<sup>434</sup> The cultural construction of the concept of 'woman' and 'her space- family' could be observed as gullied by the codes of Manu which is celebrated as a banner of Hinduism and Indian culture even in the contemporary India. Scholars have explained the cooperative mission of culture and religion to form the gendered identities, to make statements such as 'women tend to be more

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<sup>431</sup> Ibid.,p.385

<sup>432</sup> De Lamotte, Eugenia., Meeker, Natania., O'Barr, Jean. (eds.) *Women Imagine Change: A Global Anthology of Women's Resistance; From 600 BC to Present*, Routledge, NewYork, 1997

<sup>433</sup> Ibid.

<sup>434</sup> Doniger, Wendy and Smith, Brian K. Trans. *The Laws of Manu*, Penguin, New Delhi, 1991, see, p. xvii

religious, but men make effective religious leaders or men should be the religious leaders'.<sup>435</sup> This idea is reflected in *Manu- Smṛti*, as it clearly states that the women have no right for doing religious rituals and only men are supposed to do that. It is clear from the verse saying:

*Nasti streenam kriya mantrairiti dharme vyavasthitih*

*Nirindriya hyamantrascha striyo/nrtamiti sthitih (IX: 18)*

The translation of this verse has been done as follows, by M.N. Dutt ( Sharma, 1998:394):- 'The purificatory rites of women are (i.e. must be performed) without the Vedic mantras; this is the decision of the law code. And for this disqualification of *Mantra*-less-ness, women are like unto inorganic things. This is the conclusion.' The low status given to the women`s existence as inorganic things, is clearly drawing the religious reason as having no right to chant *mantras*. Thus the verse itself ensnares not only the religious reasons of women`s stumpy status but even the very existence of women as mere objects of men. It is contradictory to the scientific evidence of African origins of humans and the oldest divinity of the 'dark mother'.<sup>436</sup> The disgruntlement on the religious conditions with which women were objectified and deemed to be inorganic was visible in feminist studies.

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<sup>435</sup> Ibid., p.77

<sup>436</sup> Birnbaum, Lucia Chiavola. *Dark Mother: African Origins and Godmothers*, Author`s choice press, USA,2001, see p.3. African and African American scholarship and the popular understanding about the African origins of humans is dealt within this section of the book. Proceeding from the fact it elaborates on the oldest divinity known as 'dark mother'.

Judith Butler has explained about the powerful discourse of gender that is created by religion and culture, and the way in which behavior is shaped through culture and religion.<sup>437</sup> And the texts that claim to be the authority of religion or culture doubtlessly becomes the tools or agents to propagate the gendered concepts to form the behaviour or mind-set of the people inhabiting in any particular area. The hermeneutical attempts on the religious/cultural texts could see the gender disparities involved. The cultural complexity of India, because of its population including people from various religions encompasses a massive amount of research enterprises in the country. Anyhow Hinduism is known and accepted as the primordial form of religion in India by various scholars as well as the general public. But the discourse on Hinduism as the core religion has grown into the critical issue, if it is a religion at all.

Sister Nivedita says, Hinduism as a religion, is coupled with its resistance power as a civilization and this furnishes one of the most startling paradoxes in the history of human.<sup>438</sup> She explains Hinduism as originally derived from veritable network of religions in which the co-ordinating element was the philosophy now known as *Vedanta*.<sup>439</sup> Nevertheless, noteworthy is the blindness of the orthodox school of *Vedanta* about of the existence of female-self while it assigns every phenomenon in the world as the manifestations of *Brahman* which is evidently masculine being

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<sup>437</sup> Doniger, Wendy and Smith, Brian K. Trans. *The Laws of Manu*, Penguin, New Delhi, 1991, p.77

<sup>438</sup> Sister Nivedita (Margaret E. Noble), *Religion and Dharma*, Longman, Green and Co. London, 1915, p.1

<sup>439</sup> Ibid.

explained as pure consciousness. Wendy Doniger O` Flaherty says, Hinduism has always been noted for its ability to absorb potentiality schismatic developments.<sup>440</sup> But it doesn` t seem to be much absorbing the gender issues while it had the gendered mode of *purusha* and *prakrti* concepts in the *Sankhya* philosophy. While *purusha* is the conscious self, *prakrti* is explained as unintelligent and unconscious, but uncaused all-pervading principle which is the cause of the production of objective world. This could be found as a basis of gendering in the history of Indian philosophizing. There are references showing the tendency of *Sankhya* thought to pervade all the literature of ancient India including the *Smrtis*, *Srutis* and *Puranas*.<sup>441</sup> Anyhow, the philosophical background of India and its religions are renowned, in spite of the various counter arguments for Hinduism being conceived as the ideology of Hindu religion. Hinduism was just meaning the way of life of the people who lived on the Indus valley, according to Persians who used the term in the beginning. These points facilitate to view Hinduism not just as a religion for the so-called Hindus and to subvert the meanings of the usages of the term as well. The gendered structures of the religion and culture in the present form of Hinduism nowadays could be reflexively traced in the increasing religious fundamentalism as a political agenda visible in the social life in India. Foucault describes religion as a political force, in the discussion about religion and politics in the West,<sup>442</sup> which may seem to be true for the present religious situations in India as well.

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<sup>440</sup> Economic and Political Weekly, April 28,2001, P.1398. Also see Wendy Doniger O` Flaherty, ‘The origin of Heresy in Hindu Mythology’, *History of Religions*, Vol.10, 1970, p.271

<sup>441</sup> Kapoor, Subodh (Ed). *The Systems of Indian Philosophy*, Cosmo Publications, New Delhi, 2004, p.277

<sup>442</sup> Carrette, Jeremy R. (Ed.) *Religion and Culture by Michel Foucault*, Manchester University Press, UK, 199, p.107



Every religion has got some particular idea as its corner stone. For example, the religion in Ancient Egypt is around death, Persia around the mystery of Good and Evil, Christianity around the redeeming love of divine incarnation.<sup>443</sup> Like this way, Hinduism in India is said to be aiming at the heights of *Vairagya* (non-attachment) and *Moksha* (liberation). *Atmalabha* (self-realization) is the summum bonum of Hinduism as per some interpretation.<sup>444</sup> Hinduism is also taken as a misnomer for a religion that has no name nor a prophet nor a single authority to swear by.<sup>445</sup> It is described as neither fatalism nor pessimism, neither asceticism nor quietism, neither agnosticism nor pantheism, neither illusionism nor polytheism.<sup>446</sup> Then we have to see the view, the main feature of Hinduism is the ideology of *sanatana dharma* which means eternal order.<sup>447</sup>

There are opinions that it is not fundamentalist or sectarian to keep an order and it is the only way to eliminate chaos in the life.<sup>448</sup> Even though it doesn't promote any religious fundamentalism, there are unaddressed questions about the *sanatana dharma* the Hinduism put forward. Who are the people supposed to maintain the order in the world and life, by following the doctrine of *sanatana dharma*, is a problem to be deeply analyzed. This also tags on the issue how the order is destroyed

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<sup>443</sup> Sister Nivedita (Margaret E. Noble), *Religion and Dharma*, Longman, Green and Co. London, 1915, p.1

<sup>444</sup> Naganathan, G. *Spirituality: Hindu Scriptural Perspectives*, New Age Books, New Delhi, 2004, p.29

<sup>445</sup> *Ibid.*, p.1

<sup>446</sup> *Ibid.*

<sup>447</sup> *Ibid.*

<sup>448</sup> *Ibid.*, see back cover.

so that there should be some people to make it up and maintain. All such issues are ostensive to women, putting that they are by nature orderless and men are supposed to order the women's lives and thus fulfill the great duty of retaining the eternal order. Almost all social theorists considered 'woman as permanently subversive force within the order' like Rousseau did. Woman has been considered as a threat for social and political order through out the mainstream socio-political history. Both eastern and western thinkers propagated the idea that women are 'in opposition to civilization' as Freud said in his book 'Civilization and its Discontents'. There are enough evidences to argue that the civilization promoted by Hinduism, no matter in any of its varied versions, conceptualized women as some creatures to be controlled by men who are the authority to sustain the ordered civilizations. Some verses from *Manu- Smrti* are the best referential in this occasion. For example, the eleventh verse of ninth chapter speaks of the way in which the life of the woman should be ordered by their men.

*Arthasya samgrahe chainam vyaye chaiva niyojayeth*

*Sauche dharme/nnapanktyam cha parinahyasya vekshane (IX: 11)*

That means the women 'should be (may be) employed' ( *niyojayeth*) in taking care of the wealth of her husband and the expenditure of it. And she should be employed in the activities such as keeping cleanliness of the people at home, cooking for them and looking after the furniture. This is really provocative for any gender sensitive study, as it is strictly regulating the woman's life and ordering her activities in the day-to-day life. Though the usage *niyojayeth* leaves the semantic freedom to see the

meaning as ‘should be’ or ‘may be’ employed, the idea that ‘someone else would employ her’ is the surplus meaning derived from this, and that would be the men according to other related verses. Moreover this has the broad meaning that the woman could be transgressing if their life is not ordered in this way. This fact is literally advocated in a following verse. The fifteenth verse of the same chapter talks about the innate fickleness of women to transgress against their husbands out of erotic fancies, though they are well protected (IX: 15).

According to Pandita Ramabai *Manu-Smrti* is one of the best examples for scriptural attempt to make women hateful beings in the eyes of the world. Her conversion testimony stressed that ‘there were only two things on which all the *Dharmasastras*, the sacred epics, the *Puranas*, and the modern poets, the popular preachers of the present day and orthodox high-caste men, were agreed. That is, women of high and low caste were bad, worse than demons, unholy that they could not get *Moksha* as men could’.<sup>449</sup> In spite of her initial acceptance of most assumptions of Hindu nationalism,<sup>450</sup> she finds the core of Hinduism as fundamentally patriarchal. It is evidential from the eighteenth verse of ninth chapter in *Manu-Smrti* that authenticates the point saying that the women are deprived of *mantras* ( *nasti streenam kriya mantrairiti dharma vyavasthithi* ) and so that they are not supposed to do religious duties. They are apparently appeared in the textual reference such as

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<sup>449</sup> Omvedt, Gail. *Dalit Visions, Tracts or the Times/8*, p.27. See, *Dalit Visions : The Anti-Caste Movement and the Construction of an Indian Identity*, Reprint. New Delhi, Orient Longman, 2006

<sup>450</sup> Ibid. Ramabai and Tarabai who were living in the nineteenth century had raised their voices against what Partha Chatterjee has described as the ‘ nationalist resolution of women’s question’.

Also see,

De Lamotte, Eugenia., Meeker, Natania., O’Barr, Jean. (eds.) *Women Imagine Change: A Global Anthology of Women’s Resistance; From 600 BC to Present*, Routledge, NewYork, 1997

they can attain *moksha* by fulfilling the duties to the husband as suggested in the following verse.

*Nasti streenam prthagyajno na vratam napyuposhanam*

*Patim susrooshate yena tena sarge maheeyate (V: 155)*

[A wife has no other religious rite of vow of her own than an unflinching devotion to her lord, whereby she will be glorified in heaven ( Sharma,ed., 1998:254)]

Verse 146 of fifth chapter uses the term '*streedharmam*' to preach about the duties of women. But the duties described in the verses from 146-166 are just the duties at home and towards her husband (V: 146-166). Tarabai Shinde who wrote '*stri-purusha Tulana*' (comparison of women and men) in 1882 attacked the whole pattern of life laid out for women by Hinduism and its scriptures.<sup>451</sup> She raised the question in public what is the *stri-dharma*. She thought the *dharma* which is mere devotion to a single husband behaving according to his whims is nonsense and she screamed out various reasons for breaking the model of '*pativrata*'. Although '*Stri-purusha Tulana*' is not a reasoned critique of the Hindu scriptures, it is a satirical attack on them in a language of familiarity. And such a critique in the nineteenth century shows the impact of *Manu-Smrti* even in the present century modern India and the relevance of deconstructing such texts in terms of its gendered edifices. The

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<sup>451</sup> Ibid. Tarabai was concerned about the atrocities against women and she raised voice against widows being blamed for trying to dispose their babies etc. Also see, Susie Taru and K.Latha, 'Tarabai Shinde', De Lamotte, Eugenia., Meeker, Natania., O'Barr, Jean. (eds.) *Women Imagine Change: A Global Anthology of Women's Resistance; From 600 BC to Present*, Vol.I, 221-223, Routledge, New York, 1997

Ramayana and the Mahabharata were also a part of the lives of the majority but according to some views this did not necessarily make them part of a religion, as was made out by religious spokesmen.<sup>452</sup> When Hindu nationalists began to turn such texts into ‘scriptures’, women like Tarabai and Ramabai had to show aggression, to find a different direction for the discussions on woman based on ancient texts. Although the recent scholar Meera Kosambi thinks it is hard to deal with that feminism,<sup>453</sup> Tarabai and Ramabai could be considered as the powerful critics of early feminism in India who fought against the concepts of *pativrata* which standardizes the role, identity and sexuality of a woman by legitimizing the misogynist family structure.

### **Role, Identity and Sexuality**

Role, Identity and sexuality are crucial in the analysis of the conceptualizations of family and gender by means of the family model of *Manu-Smrti*. Especially it is based on the feminist critique that women were ever simply appropriated as sexual objects by fixing their roles in the household.<sup>454</sup> In a third-world country like India, women’s roles and status are largely determined by the leading ideologies, no matter they were religious or social and modern or ancient ones. The discursive traces of femininity and masculinity could be found in every area of culture and language of the society. There are opinions that the Hindutva hegemony of masculinity and

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<sup>452</sup> Ibid.

<sup>453</sup> See, Chaudhuri, Maitrayee. Ed. *Feminism in India*, Kali for Women, New Delhi, 2004, p.xiii,xiv  
Also see , Kosambi, 2000, p.27

<sup>454</sup> See, Natarajan, Kanchana. ‘Gendering of Early Indian Philosophy: A Study of *Samkhyakarika*’, and Lokaneeta, Jinee. ‘Alexandra Kollontai and Marxist Feminism’, in ,*Economic and Political Weekly*, April 28, 2001

femininity has been rehearsed by social spheres in India.<sup>455</sup> With the ever dominated male-world-view, the discourse on the identity and sexuality of women in India builds upon parallel references from the ancient scriptures and nationalist, reformist movements. Both European-inspired histories and the Indian texts shared a belief in a unique female identity.<sup>456</sup> Indian texts essentialized women as devoted and self-sacrificing, yet sporadically rebellious and dangerous.<sup>457</sup> This is visible in the binary of ‘*Devi vs. Kali*’ in the conceptualizations of religions. The women who could be considered as *devi* while holding the qualities of devotion (to family and God) and self-sacrifice, and *kali* type woman is dangerous for not having such qualities. The *kali* type is treacherous being cruel and sexually loose. These conceptions also follow the *kulina/kulata* (good-woman/bad-woman) binary concept about woman existing in the society.<sup>458</sup> *Manu-Smrti* also puts down such textual essentializations of the role and identity for the woman by the expressions of monogamous family.<sup>459</sup> Along with the point of mutual fidelity between man and woman in marriage, the verses stress on the chaste duties of woman to man forming

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<sup>455</sup> For more details of masculinity discussion, see P.K.Vijayan, “Outline for an Exploration of Hindutva Masculinities” in Brinda Bose,ed., *Translating Desire: The Politics of Gender and Culture in India*. Katha, New Delhi, 2002

P.K.Vijayan, “Developing Powers: Modernisation and the Masculine Hegemony of Hindu Nationalism” and Monti, Alessandro. “The Hero as a Holy Man: A Plea for a Communal Hindu Identity” in Chopra Radhika., Osella, Caroline., Osella, Phillippo.( eds.) *South Asian Masculinities: Context of Change, Site and Continuity*, Kali for Women and Women Unlimited, New Delhi, 2004

<sup>456</sup> See, Forbes, Geraldine. *Women in Modern India*, Cambridge University Press, 1998, p.1

<sup>457</sup> Ibid.

<sup>458</sup> See for a detailed description in a case study made in the southernmost Indian area (Kerala), on this type textual conceptualization, Radhika, P. “Gender and Sexuality in Medieval Kerala” (Unpublished paper) ), Presented at Cultural History Kerala History Wokshop, Organised by the Kerala Goveernment, 2001. Also see, Devika, J. “Beyond *Kulina* and *Kulata*: The Critique of Gender Difference in the Writings of K. Saraswati Amma”, *Indian Journal of Gender Studies*, 10: 2, 2003

<sup>459</sup> See Madan, 1989, p.97

their role as to fulfill them. Indian texts and historical narratives appreciated and cited woman`s identity only if the accomplishments were significant by male standards.<sup>460</sup>

There are feminist criticisms that the nationalist discourse has not resolved the ‘question of woman’ as Partha Chatterjee claims.<sup>461</sup> And even the subaltern historians have not sufficiently uncovered the suppressed identities of women, in their attempt to explain the hegemonic processes, though they have paid some attention to women.<sup>462</sup> Gayatri Spivak says, the ideological construction of gender keeps on being the male dominant and ‘the subaltern as female’ still cannot speak in the mainstream historicization.<sup>463</sup> As Maitrayee Chaudhuri puts it, any attempt to trace the conceptual history cannot separate history of action from history of ideas.<sup>464</sup> ‘If the idea comes first or the act’, is a problem still under the philosophical debate and the deconstructive attempt on the women`s lives continues with woman`s history. While writing on modern India has explored the recasting of women in colonial India,<sup>465</sup> scholars of ancient India have interrogated the Altekarian vision of the high and noble status of women in ancient India.<sup>466</sup>

Although a great deal of feminist theorization has happened in India in the last decade, defining Indian feminism still remains a perplexing matter. As we define

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<sup>460</sup> See, Forbes, 1998

<sup>461</sup> Ibid.

<sup>462</sup> Ibid.

<sup>463</sup> See *ibid.*, p.5

<sup>464</sup> Chaudhuri, Maitrayee. Ed. *Feminism in India*, Kali for Women, New Delhi, 2004, p.xii

<sup>465</sup> *Ibid.*, p.xiii Also see ,Sangari and Vaid, 1989; Chaudhuri, 1993; Tharu and Lalitha, 1993

<sup>466</sup> *Ibid.*, Also see Chakravarti, 1989; Roy, 1996

feminism in relation to the West, there is a conception that the Western feminists are developing ever more theoretically sophisticated twists on the cross-cultural construction of gender.<sup>467</sup> The western theorization of identity has wedged many new arenas lately including the conceptualization of the homosexual and transgender identities.<sup>468</sup> But the initial theorization of the identity and sexuality of a female human suffered much tension and got waves only in recent centuries even in the West. The second half of twentieth century witnessed an acerbic feminist intervention, with which the identity of woman became a thinkable topic. The thoughts on behalf of women were strongly mainstreamed in the West, with ‘the Vindication of Woman’s Rights’ (1792), written by Mary Wollstonecraft during the period of eighteenth century enlightenment. Although the concepts on women’s identity were fortified by the post-feminism or third-wave feminism, a historical infringement into the derivative activities of feminism could be traced back from the 1550s. The European writers of early feminism (1550-1700) have used the Scriptures such as Old Testament to talk about the issues of inferior identity and controlled sexuality of women.<sup>469</sup> With the poststructuralist perspective, feminist criticism sustains that language has been a site of the cultural production of gender identity.<sup>470</sup> The mode of revisionism has questioned from the root of the Aristotelian concept of

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<sup>467</sup> Ibid., p.xiv. Also see John, 1996, p.144

<sup>468</sup> See, Foucault, Michel. *The History of Sexuality* Vol. I , Penguin, England, 1976  
Foucault, Michel. *The History of Sexuality* Vol. II Vintage Books, New York, 1986

<sup>469</sup> Gamble, Sarah. ed. *A Rutledge Companion to Feminism and Post feminism*, Routledge, New York, 2001, see p.5-8

<sup>470</sup> Gamble,ed. 1998, p.146



‘woman as mutilated men’<sup>471</sup>, which was strongly referred by classical philosophy as well as religious scriptures.

The social construction of identity and sexuality of women in the Indian context could be profitably analyzed from the Vedic period. Daya Krishna has given a hint that the self-centric and male-centric character of large parts of Hindu *sadhana* need to be explored in greater depth and with greater detachment than has been done until now.<sup>472</sup> He puts one of the possible reasons of this as the identification of the feminine principle itself with *prakrti* and *maya*, which are conceived as non-self or even ‘antagonistic to self’ and as the main cause of non-realization by the self of its own nature. The historical account of philosophical thoughts during Vedic, Epic, Sutra and later periods has exacerbated the gendered identity constructions in the Indian milieu. The scriptural ideas gave rise to the oppressed roles of women in the emergence of modern society defined by the concepts of man-woman relationship. Meena Kelkar has written about how the metaphysical theory of classification of reality gives the models of man-woman relationship in ancient Indian philosophy.<sup>473</sup> The *Brahma-Maya* concepts of *Vedanta*, *Purusha-Prakrti* concepts of *Samkhya* and the *Siva-Sakti* concepts of *Saivism* are models depicting the classification of reality into male-female types, personification of reality being the unique feature of

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<sup>471</sup> See, Aristotle, *Politics*, 1885 Translation of Benjamin Jowett, web edition at <http://www.mdx.ac.uk/www/study/xari.htm> Also see, Aristotle, *The Politics & Economics of Aristotle*, Edward English Walford & John Gillies, trans., G. Bell & Sons, London, 1908.

<sup>472</sup> Krishna, Daya. *Indian Philosophy: A Counter Perspective*, Oxford University Press, Oxford, 1991, p.198

<sup>473</sup> Kelkar, Meena A. ‘Man-Woman Relationship in Indian Philosophy.’ *Indian Philosophical Quarterly*. January 1999. 26(1). P.71-87.

classical Indian Philosophy. Among these dualist models only *Saivism* suggests both are equals. *Vedanta* doesn't give any separate identity to woman as it holds *Maya* is non-different from *Brahman*. *Purusha-Prakrti* model gives importance to the difference between man and woman. She raises the deconstructionist possibility on these organic models which are rooted in real life. The ever-changing meanings and ever-changing interpretations emphasized by deconstructionism give rise to the complexity of scriptural conceptualizations.

*Samkhya* theory of *Purusha-Prakrti* is the most important to be taken into account, since it is a very old system of thought that pervades all the literature of ancient India including *Srutis*, *Smrtis* and *Puranas*.<sup>474</sup> And evidently it has played a crucial role in constructing the concepts of femininity and masculinity. Chattopadhyaya convincingly argues for the view that the basic philosophical categories of *samkhya* were rooted in human analogy and the *prakrti* and *purusha* of the original *samkhya* meant the female and the male.<sup>475</sup> Kanchana Natarajan notes in her article that the *Samkhyakarika* has caused the construction and perpetuation of specific ideologies of gender.<sup>476</sup> Although it does not attempt to explicitly define norms governing gender relations like contemporary *smrtis* do, it draws on the experiences, perspectives, and attitudes developed by men in a gender stratified society to define

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<sup>474</sup> See, Kapoor, Subodh. Ed. *The Systems of Indian Philosophy*, Cosmo Publications, New Delhi, 2004, p.277

<sup>475</sup> Natarajan, Kanchana. 'Gendering of Early Indian Philosophy: A Study of *Samkhyakarika*', *Economic and Political Weekly*, April 28, 2001

<sup>476</sup> *Ibid.*

women as objects of pleasure and manipulation, as a source of bondage from which liberation was essential, and as awesome and fearful in their reproductive role.<sup>477</sup>

Not only the roles and identities are formulated by the *Samkhyakarika*, but the sexuality is also conceptualized and appropriated by the description of *prakrti*. For example, verse 61 of *Samkhyakarika* declares,

.....there is nothing more sensitive and delicate than primal, creative nature, who, having realized that she has been seen, withdraws and never again comes into the sight of consciousness (that is to say, primordial materiality behaves like a lovely and shy young virgin, who, having been seen in her nakedness by a man quickly withdraws from his view).<sup>478</sup>

Such statements would essentially construct the concepts of woman's sexuality as passive and fix the nature of woman as shy and submissive. T.N Madan has drawn the attention to the fact that polygyny tends to strengthen man's dominance over woman and this has persisted in India right from Vedic times.<sup>479</sup> But polyandry was there as a practice of the cis-Himalayan tract in north India and among some tribes of the pre-Dravidian or Dravidian groups in South India.<sup>480</sup> *Ramayana* associates women as essentially weak and sinful,<sup>481</sup> though the epic period witnessed some different women characters in *Mahabharata*. Along with many examples of

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<sup>477</sup> Ibid.

<sup>478</sup> Ibid.

<sup>479</sup> Madan, 1989, p.96

<sup>480</sup> Ibid.p53,54

<sup>481</sup> Chakravarti, 2003, p.70

polygyny, there is at least one cited character of Panchali in *Mahabharata*, which breaks the typical monogamous family concept. But the status of marriage in legitimating polyandry, is noticeable in the example of Panchali as she was honored as a *kulastree* (good-woman in the family) even having five husbands. Having sex with many men inside the system of marriage instead of transgressions or illegal/pre/post marital sex, seems to be legible according to the epic references. But the *Brahmanical* patriarchal paradigm shift,<sup>482</sup> authenticated the concepts of monogamous/polygynous family as the best *kulam* and the *kanyaka* (virgin) and *pativrata* (chaste wife) as *kulinas*. And it assumes and conceptualizes the man is the active enjoyer and doer; women are the objects for his enjoyment. This may be contradictory to the existence and role of the other types of women as *vesyas* and *bhrthyas*. Such entities might seem to be causing the process of ‘othering’ among the category of woman as ‘the other’. This is clear from the statement of *Manu-Smrti* as well, by suggesting that a *Sudra* woman should be taken only for pleasure though the text has not openly discussed much of such a binary. Along with such archetypes of class and caste hierarchy, the ancient text conceptualizes the monogamous family suggesting the fidelity of woman.<sup>483</sup>

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<sup>482</sup> The term is used referring Thomas Kuhn’s idea of paradigms. Paradigms gain their status because they are more successful than their competitors in solving a few problems that the group of practitioners has come to recognize as acute. Kuhn, Thomas. *The Structure of Scientific Revolutions*, Chicago University Press, 1970, See, p.23

<sup>483</sup> See, for eg. Madan, 1989, p.96,97,251

*Dharmasastra* tradition of orthodox *Brahmanism* proceeds as the normative nature in respect of women in the *Sutra* period.<sup>484</sup> Uma Chakravarty has written about the disappointing patriarchal family structure of *Brahminical* agenda that appropriates woman`s identity putting them just as sexual objects.<sup>485</sup> According to her, the essential nature of women vested in their sexuality is dealt with most explicitly and directly by the most systematic *Brahmana* ideologies.<sup>486</sup> Similar ideas of submissive woman are clearly put into *Manu-Smrti* by the elaboration of rules or norms for wife and husband. The roles of woman as a daughter, wife and mother are stipulated by the verses of the text. And the social identity of a woman is not even within the imagination of the conceptualizations in the text. It is clear from the verses that the woman of *Manu-Smrti* has got only a sexual identity, and that is also a subordinate one. While putting the rules for the duties of woman, the text avers how the sexuality of a woman should be regulated. The chastity and fidelity of woman is elaborated by reminding that they are lazy and fickle ones. Such textual ideas that suggest keeping women controlled in the family in every manner have been thoroughly attacked by the social and academic moves of feminism. Chandra Nisha Sing discerns that the text held main role in the growing of patriarchal hegemony seeing woman as just passionate creatures to be controlled by men.<sup>487</sup> Many feminist reviewers have

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<sup>484</sup> See, Shah, 2001

<sup>485</sup> Chakravarty, Uma. 'Conceptualizing Brahminical Patriarchy in Early India: Gender, Class, Caste and State' *Economic and Political Weekly*.28, No.14 April 3, 1993, 579-85

<sup>486</sup> Chakravarty, Uma. *Gendering Caste: Through a Feminist Lens*, Stree, Calcutta, 2003, p.70-74

<sup>487</sup> Singh, Chandra Nisha. *Radical Feminism and Women`s Writing*, Atlantic Publishers, NewDelhi, 2007,p.272

criticized the succeeding literature of *Manu-Smrti* that remains a philosophy of such worst ideologies that construct the identities for women as simply transgressive.<sup>488</sup>

Alexandra Kollontai says sexual relations had a close link with struggles for social transformations.<sup>489</sup> As part of her Marxist criticism, she raises issues of marriage, family and sexuality. Women were always subordinated in a Marxist socio-economic system as it was in a *Chaturvarnya* system of *Smrtis*. In *Manu-Smrti*'s model of family and the social structure, the roles of women are figured inside the household and are devalued. Their household work is conceived as natural to them and the secondary identity construction is happening through that. The verses in *Manu-Smrti* ( for example, Chapter V, verses 145-165 and chapter IX verses 1-21 ) show they are followed word by word in the process of family formation, feminization and good-wifization of female human beings even in the modern discourse. Recent years added studies on *Brahmanical* patriarchy in south India along with that in north India and that illustrate the modern representation of feminized identities similar to that of *Manu-Smrti*'s family model. And the studies on lower caste women in different parts of the country as well, depict such role models. Anna Lindberg has explained about the effeminization, the representation of women with the kinds of epithets relating to femininity such as weakness and dexterity, and housewifization<sup>490</sup> of

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<sup>488</sup> For eg., See, Kelkar, Meena A. 'Man-Woman Relationship in Indian Philosophy.' *Indian Philosophical Quarterly*. January 1999. 26(1). P.71-87.

<sup>489</sup> Lokaneeta, Jinee. 'Alexandra Kollontai and Marxist Feminism', *Economic and Political Weekly*, April 28, 2001

<sup>490</sup> Lindberg, Anna. *Experience and Identity; A Historical account of class, caste and gender among the Cashew Workers of Kerala, 1930-2000*, Department of History at Lund University, 2001, p.338.

women that is happening even in the lower caste, lower class families in South Indian areas.<sup>491</sup> According to her observation the housewifization of women could be solely ideological, lacking any material ground and leaving women in paradoxical situation of being looked upon as economical liabilities even though they work outside house. The modern women who have started working outside house irrespective of the caste/class status are still suffering from the *Manu-Smrti* model family having the double-labour. This is crucial to be criticized as it becomes a matter of self-respect for the women as they constitute 'the other' in the society and life.

Carole Gilligan has written about the tension between 'the self and the other' in the developmental processes as well.<sup>492</sup> The developmental challenges are faced by female individuals as the theories are of men and the sexuality of women remains more diffuse, the perception of woman's self is so much more tenaciously embedded in relationships with others and the moral dilemmas hold them in a mode of judgment that is insistently contextual.<sup>493</sup> It could be comprehended that there is not much difference in the nature of domestication of women in the upper caste and class as well as lower caste and class in a third world country such as India. In spite of its multi-cultural and secular nature it is an important fact to be checked, as that the

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It is a term used by Maria Mies to designate ' a process in which women are socially defined as housewives, dependent on their sustenance on the income of a husband ,irrespective of whether they are de facto housewives or not. See also Mies, *The Lace Makers of Narsapur*, p.180

<sup>491</sup> Ibid., p.338-41,

<sup>492</sup> Meyers, Diana Tietjens.(Ed.) *Feminist Social Thought: A Reader*, Routledge, New York, 1997,p.549

<sup>493</sup> Ibid.

identity of a woman is still intertwined with her roles in the family in the Indian context.

The cultural construction of sexuality of woman in India entails an interpretation of the text *Manu- Smrti*, as it is seen as a mile-stone in the evolution of Indian culture. The concepts that count sex as constructed culturally, would assault the identity formation of woman as daughter or wife or mother as consolidated by the ordinances of Manu through his *Smrti*. Many scholars have elucidated sexuality as an integral part of identity on both a personal and social level.<sup>494</sup> Although the text gives woman a subordinate identity as wife, there are arguments that it gives more veneration for mother than father.<sup>495</sup> It is said as follows:

‘A father is a hundred times more venerable than the teacher, but the mother is a thousand times more (so) than the father.’ (Buhler, 1969: 56-7).<sup>496</sup>

Nevertheless the woman of *Manu Smrti* does not seem to have a social identity that gives any opportunity to entertain the creativity of the minds of women. They have been conceptualized by the language of the text as bodies for reproduction.

*Kshetrabhoota smrta nari beejabhootah smrtah puman*

*Kshetrabeejasamayogatsambhavah sarvadehinam (IX:33)*

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<sup>494</sup> Caplan, Pat. Ed. *The Cultural Construction of Sexuality*, Routledge, New York, 1989, p.20

<sup>495</sup> *Ibid.*, p.284

<sup>496</sup> *Ibid.* Also see *Manusmrti*, II.145



[The woman is said to be like unto field, and the man is like unto a seed; the origin of all creatures is in the union of the seed and the soil.]<sup>497</sup>

Using the language in such derogatory way for explaining the woman and her body with the male standards inevitably brings the concept that the female human being is just a body and it is a 'not-self' as the *prakrti* of *sankhya*. Indeed, our present social system refers this idea that the main the duty of woman is reproducing what the man sows. Leela Dube has done serious comments on this metaphor of conception as the seed sown in the soil, used for the biological symbolization of descent in Indian family.<sup>498</sup> She says, this process of human reproduction could be seen in texts of Vedic origin and important among them is *Manu-Smrti*.<sup>499</sup> She draws examples to show that this conception is pervading in various parts of India. Uma Chakravarti has also elaborated the historical process of subordination and objectification of women in India shaping the social practices through the religious texts.<sup>500</sup>

The identification of woman as mother is enforced in some other verses of *Manu-Smrti* though there is the usage of some pleasing language saying 'wives are the lights of house-holds, the repositories of bliss and auspiciousness and are to be honored with presents of apparels and ornaments for conceiving progeny'( IX:

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<sup>497</sup> See the translation in ,Sharma,ed., 1998

<sup>498</sup> Dube, Leela. *Anthropological Explorations in Gender*, Sage Publications, New Delhi, 2001, pp.119-142

<sup>499</sup> *Ibid.*, p.120

<sup>500</sup> Chakravarty, Uma. 'Conceptualizing Brahminical Patriarchy in Early India: Gender, Class, Caste and State' *Economic and Political Weekly*.28, No.14 April 3, 1993, 579-85

26).<sup>501</sup> The message - ‘the wife is the manifest source of procreation and bringing up of children, and of the performance of the duties of everyday life as well’ (IX: 27), constitutes the terrain of the problematic. The reproductive labour that embodies a sexual aspect wherein biological sex is seen as a source of life as Foucault said, determines the woman’s role and identity in the family and outside.<sup>502</sup> There are arguments that the reproduction is a labour that derives from body and represents sexual and social aspects. The sexual characteristic encompasses biological procreation and provision of bodily pleasure through sex.<sup>503</sup> The social aspect covers a wide spectrum of functions for physical and emotional sustenance, such as cleaning, cooking, laundering, nurturing etc., popularly subsumed under the label of ‘domestic work’.<sup>504</sup> These arguments, splashed out in the last decades as part of feminist social thought, demonstrate the issues of the existing universal mode of family. And the inexorableness of deconstruction of the family with extensive gender sensitization is revealed from such contemplation.

The text *Manu-Smrti* seeks support from Vedas and *Nigamas* to talk about the proneness of woman to infidelity ( See, IX:19). The fear about the fall of the patriarchal structure or the eagerness to construct and continue such a patriarchal structure is evident in the couplets which maintain the ideas of woman as a good wife (*Manusmrti* ,V- 147, 148,149, 154). The regulation of woman’s sexuality and

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<sup>501</sup> See translation in, Sharma,ed., 1998

<sup>502</sup> Tapan, Meenakshi. Ed.*Embodiment: Essays on Gender and Identity*, Oxford University Press, Delhi, 1997, p.246

<sup>503</sup> Ibid.

<sup>504</sup> Ibid. The discussion about the political economy of reproductive labour is dealt within the article written by Jean D’Kuncha

identity is visible from the verses of *Manu-Smṛiti*. In the individual life, the infusion of concepts such as virginity, chastity and motherhood makes the sexuality of woman inscribed in the minds of women themselves. These types of concepts are disseminated by the cultured and religious languages and that might be internalized consciously and unconsciously by the individuals during the process of socializations. This holds Judith Butler's idea that people are performing gender.<sup>505</sup> During the preparatory process for a woman, to perform femininity, *Manu-Smṛiti* indeed provides a turning point as a reference in making some specific social constructions.

If we look the roles stipulated for a woman as a daughter, wife and mother, it could be observed that her sexuality is ever present with her life. The association of woman's identity with the body is derived from the dualistic way of thought both part of the Eastern and Western philosophy. If woman is identified as a body, then it could even be recognized with its superior position. Judy Grahn's writings which claim that 'the menstruation created the world',<sup>506</sup> illustrate the western feminist attack on the conceptualizations on woman, beginning from the issues of creation. In the Indian region the world view of an indigenous culture prior to the large scale incursion of patriarchal *Brahminical* culture based on *Sanskrit* texts, is reflected in the *Sangam* literature written between 100 and 500 AD.<sup>507</sup> Dianne Jenet draws the attention into the ways in which female body and its powers were worshipped in the

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<sup>505</sup> Butler, 1990

<sup>506</sup> Grahn, Judy. *Blood, Bread and Roses: How Menstruation Created the World*, Beacon Press, Boston, 1993

<sup>507</sup> Shail, Andrew., Howie, Gillian. Ed. *Menstruation: A Cultural History*, Palgrave Macmillan, New York, 2005, p.176

pre-*brahminical* or *Dravidian* culture.<sup>508</sup> Her article tries to censure the impurity assigned to menstruating female body by elucidating the worship of the menstrual blood of female goddesses in some South Indian areas. This type of female centered rituals was mitigated by the male-centered *Brahminism* and as part of that the impurity of female body was asserted and the woman got expelled from the religious rituals. *Manu-Smṛiti* has apparently discussed this in the law making for women. The day-to-day life of a woman in the modern India seems to get standardized by such a conceptualization of female body constructed from the discourse generated by the ordinances of Manu.

The discussions on social construction underlie the rejection of transhistorical and transcultural definitions of sexuality and suggest instead that sexuality is mediated by historical and cultural factors.<sup>509</sup> Carole Vance's analysis even on the usage of the term 'social construction' that appears in Mary McIntosh's 1968 essay on the homosexual role in England, notes the first attempt to grapple with questions of sexual identity in a way now available as social construction.<sup>510</sup> The theorization of sexuality and identity has developed upto the problematization of heterosexuality as well in recent years. This has strengthened the question about the 'Cult of Domesticity',<sup>511</sup> as Jonathan Ned Katz puts it. Katz calls the period after second World War as an era of heterosexual hegemony, in which the reassociation of women with the home, motherhood and childcare; men with fatherhood and wage

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<sup>508</sup> Ibid.

<sup>509</sup> Parker, R. and Aggleton, P., *Culture, Society and Sexuality*, UGL Press, U.K., 1999, p.43

<sup>510</sup> Ibid., p.41

<sup>511</sup> Katz, Jonathan., ed., *The Invention of Heterosexuality*, Socialist Review, V.20, n.1 ,Jan-Feb. 1990

work outside home, happened. This proves to be a possible way of reading the historical junctures world-wide to problematize family concept as a ground for the personalization and socialization of sexuality.

Family being the starting sect for socialization, in fact, the invention of sexuality has to be seen from that space. Kinship and family systems are crucial in the social organization of sexuality.<sup>512</sup> These appear as the most basic and unchanging forms of all pre-eminently ‘natural’ focus of sexual socialization and experience.<sup>513</sup> It is clear from *Manu-Smrti*'s ideas of family and kinship. The sexual socialization and experience for men and women are permitted by law only inside the family structure, but the law for women, seem to be rather more restricting her sexuality. Even though verses 101 and 102 of ninth chapter, suggests there should be mutual fidelity between husband and wife till death and prevents them from transgressions against each other, some other verses give options in favour of men. Verses 14, 15 and 19 are talking about the fickleness of the women and thus orders men to take the authority to control them and their sexuality as well by imprisoning them inside the house always, engaging them in the household works ( IX: 11, 12). So the only kind of socialization available in her lifetime for a woman is with the other family members. If the husband could not impregnate his wife, a woman is allowed to lie down with a younger brother or with a *Sapinda* relation of her husband under an appointment, just for procreation of a son (IX, 59 and up to 63). A relationship out of appointment, transgressing the rules out of amorous exuberance commits the sin.

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<sup>512</sup> Weeds, Jeffrey. *Sexuality*, Ellis Horwood-Tavistock Publication, 1986, p.27

<sup>513</sup> Ibid.

Even a widow is allowed to make a son like this, but she is not allowed to marry again, unless she was virgin (IX. 64, 65, 69, 97). The perplexing verses convey the idea that, in the case she was widowed after getting the nuptial fee, she is allowed to get married again, but only by her betrothed husband's brother. Verse IX: 97 says she 'should be married', 'if she approves' (in Sharma,ed., 1998 translation) to the brother of the betrothed husband who has given the bride price already. But verse IX: 69 says the brother 'shall take her in marriage'. These verses could be interpreted in one dimension that the woman's consent was mentioned in the laws, but it was not exercised because men were given the power to rule by the laws. And in the case of a man such rules are more lucid and he could marry again (V: 168). And one particular verse shows he could keep many wives, even some from other castes as well, provided they cannot participate in his religious rites (IX: 86). This may be meaning that adultery and caste mixing are sin, but marriage is acceptable for men from lower castes as per another verse VIII: 353 along with IX: 86.

Though these laws are not existing in the present society, even at the present time the unchanging nature of family bonds in India, determine the factors forming one's identity and sexuality. For a woman, experiences such as marriage and childbirth etc are the aspects on which her identity and sexuality are bound. The abjection of woman as Julia Kristeva said could be seen as generated from the discursive structures of family. There may be some progress in the status of woman in relation to her roles in the society and identity formations through the trenchant feminist political movements in recent years. Yet, a total conceptual subversion and language

revolution is necessary to rupture the rooted versions of religious and cultural textual afflictions that produced woman's subordinate status.

### **Caste, Class, Politics and Power**

Caste and class have been ever present in the modernized Indian society formed after the long process of social sortings. The construction and representation of third world woman has been under discussion by various scholars in the sense that it has been reinforced by modernization process.<sup>514</sup> One could easily derive an idea that the caste system prevailing in India at present might have had a reference from *Manu-Smrti's chaturvarnya* concept though it was positively interpreted as a system according to the job assignments. According to Romila Thaper, in the Indian situation the *varna*-based lineage society gave a shape and form to caste structure and the *varna* system has played a vital role in the social stratifications.<sup>515</sup> Then the lineage elements that structure the family and the woman's subordination in it, would have greatly influenced by the text *Manu-Smrti*. In this sense it has laid down the base for a hierarchical social structure in terms of caste, class and gender.

Subordination of woman is a common feature of almost all stages of history, and is prevalent in large parts of the world. Uma chakravarti says, the general subordination of women assumed a particularly severe form in India through the powerful

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<sup>514</sup> See, Marchand, Marianne H., Parpart, Jan L. Ed., *Woman and Place: Feminism, Post-modernism and Development*, Routledge, NY, 1995

<sup>515</sup> Thaper, Romila. *From Lineage to State*, Oxford University Press, 1984, p.18

instrument of religious traditions which have shaped social practices.<sup>516</sup> She puts it as a marked feature of Hindu society that its legal sanction for extreme expression of social stratification in which women and the lower castes had been subjected to humiliating conditions of existence. Her opinion strengthens the conviction that caste hierarchy and gender hierarchy are the organizing principles of *brahmanical* social order created or propagated by texts like *Manu-Smrti*. She reminds about the limited focus that has left a major lacuna in our understanding of social processes which have shaped men, women and social institutions in early India.<sup>517</sup> Her article is the best reference to argue that the basis of the conceptualization of woman as a subordinate being, and the foundation of gender-power-relations in the social institution family should be traced back to the early Indian society. Family and the household, being the conceptual and architectural spaces from where people get the first lessons of power relations are running basically with a male politics. May be the nature of exercising power would be different according to the class and caste to which the families belong to. But the negotiation of women to the power structures has become ever stronger with the discourse produced by the textual concepts, as power is inscribed in every relationship. And the patriarchal form of family model of *Manu-Smrti*, reflected in the present society entails the negotiating attempts of women as patriarchy is fundamentally about power relations. In patriarchy, women's interests are subordinated to that of men and which has been probed by feminist

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<sup>516</sup> Chakravarty, Uma. 'Conceptualizing Brahminical Patriarchy in Early India: Gender, Class, Caste and State' *Economic and Political Weekly*.28, No.14 April 3, 1993, p.579

<sup>517</sup> *Ibid.*



theorists.<sup>518</sup> Power is the politics of everyday life,<sup>519</sup> and it is exercised in institutions of family to maintain woman`s subjugation, even sometimes with textual reference. It is evident from the modern Indian society which refer texts like *Manu-Smrti* in every attempt to construct and uphold power structures by limiting woman`s freedom.

Caste is a strong arena of power politics and that also is connected to the gender inequality. The social stratification in India has situated women as the points of entrance into the caste system as Uma Chakravari said.<sup>520</sup> She explains this in terms of the regulation of sexuality of women. The lower caste male whose sexuality is a threat to upper caste purity is conceived as something that has to be institutionally prevented from sexual access to women of the higher castes.<sup>521</sup> At the same time according to *Manu-Smrti`s* reference, the higher caste men are allowed to have sex or marry with a lower caste woman if needed ( see, III: 43,44 , speaking about the conditions of such inter-caste marriages). And this is akin to the fear of black male priapism and the converse exploitation of black women to service their masters, which was integral to slave society in the American South in nineteenth century. In apartheid South Africa as well, mixed marriage was prohibited by law.<sup>522</sup> The anxiety about their sexuality is the reason for women are suggested to be carefully protected by her family men. This is proposed clearly in the verses of *Manu-Smrti*,

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<sup>518</sup> Weeden, C. *Feminist Practice and Post-structuralist Theory*, Blackwell, Oxford, 1987

Stewart R. Clegg, *Frameworks of Power*, Sage Publications, London, 1989

<sup>519</sup> Stewart R. Clegg, *Frameworks of Power*, Sage Publications, London, 1989, p.150

<sup>520</sup> Chakravarty, Uma. 'Conceptualizing Brahminical Patriarchy in Early India: Gender, Class, Caste and State' *Economic and Political Weekly*.28, No.14 April 3, 1993, p.579

<sup>521</sup> *Ibid.*

<sup>522</sup> Weeds, Jeffrey. *Sexuality*, Ellis Horwood-Tavistock Publication, 1986, p.39

saying, the female should be protected by her father in her adolescence, by her husband in her youth and by the son in her old age (IX:3). Dr. Ambedkar`s argument that the untouchables also had the same culture of Hindu community,<sup>523</sup> verifies the fact that this kind of textual authority was followed not only by the upper caste but by the lower caste people as well. So the cultural tendency to control women`s freedom was irrespective of caste/class status in the Indian context. The entire working of caste/class power, in the contemporary society has something in relation with the oppression of women as the subaltern, which has started being addressed by feminist political movements in Indian region.

The constitutional equality that Indian women and women in many other countries enjoy today is the result of the political struggles by feminist women in the West, according to Ilina Sen.<sup>524</sup> In the nineteenth and early twentieth centuries women in Europe, Britain and America faced blatant discrimination in wages, employment, education and they had to fight even for the voting right and legal equality.<sup>525</sup> This fact shows to what extent women were subordinated worldwide, because of the power being invested in the men folks. Any ideologies that have come during eras to fight against oppressions have never solved the woman`s issues properly. An idea of a new democracy has been proposed by feminist politics raising the need for the conceptions of freedom, equality and alliance informed by a variety of political and

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<sup>523</sup> Ambedkar, B.R. *Essays on Untouchables and Untouchability*, Book-II-Social, in Vasant Moon (Compiled), Dr. Babasaheb Ambedkar: Writings and Speeches, Vol.5, Education Department, Govt. of Maharashtra, Mumbai, 1989, p.133

<sup>524</sup> Menon, Nivedita.Ed. *Gender and Politics in India*, OUP, New Delhi, 1999, p.371

<sup>525</sup> Ibid.

philosophical sources.<sup>526</sup> A catalogue of feminist practices of the past two decades would include entries of black, cultural, ecological, lesbian, liberal, materialist, socialist and third-world politics. And deconstructive, psychoanalytic, semiotic feminisms along with the Foucauldian, Lacanian and Marxist feminisms,<sup>527</sup> have interrogated into the existing phallogocentric power structure and the politics behind it.

The feminists have problematized the Marxian class concept and methodology that has deeply influenced the social stratification analysis. The gendered division of labour forming the power structure was an issue addressed by feminist during this time. It is evidential that in spite of all other social changes happened in the caste division of labour proposed by the *Manu-Smriti*, the gender division of labour prevalent in the present Indian society reflects the same textual ideas. This issue about the structure and function of family has been addressed by feminist politics with a critique of Marxian views of labour and labourer. Vimal Ranadive criticizes feminists for making the question of women's 'unpaid labour' at the house as an issue and finds their attempts to ascribe value to it as absurd.<sup>528</sup> Though there are such views that won't find any meaning in feminist discourse, sensitive explorations into these matters occurred in social thought. The most insightful arguments of this issue from within the socialist tradition is found in the works of Alexandra Kollantai. She goes a step further and view the 'double-labour' concept extended as if 'triple insupportable burden' - that are of a wage-worker, housekeeper and mother.<sup>529</sup> The

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<sup>526</sup> Dean, Jodi. *Feminism and the New Democracy*, Sag Publications, London, 1997, p.3

<sup>527</sup> *Ibid.*, p.146

<sup>528</sup> Menon, Nivedita. Ed. *Gender and Politics in India*, OUP, New Delhi, 1999 p.375

<sup>529</sup> See *Ibid.* Also see Kollantai, A., *Communism and the Family*, Bookmarks, London, 1984.

woman of our family model is expected to do all these three jobs at once. Given the sacramental relationship of women with house work and domestic labour, to what extent public productive labour liberates her with some power and to what extent it crushes her further, is really an open question to be deciphered.<sup>530</sup> These type of problems has to be addressed within the context of the political economy of women`s reproductive and domestic labour.<sup>531</sup> The patriarchal monogamous family has traditionally been the most important site for women`s domestic labour and reproductive labour for reasons related to norms of descent and transmission of inheritance through the male line.<sup>532</sup> These sites are often organized on class and caste lines and so the political challenges to oppressive forms of caste, class and gender often overlaps.

The enormous influence of *brahmanical* patriarchy through the texts such as *Manu-Smrti*, in the social stratification in India is a noticeable background for the political moves against gendered oppressions. Segmentation is the basis of patriarchal socialism or capitalism- separation of women and men, of theory and practice, of learning and working, of experience and belief, of production and product, of means and ends, of mind and body, of race, of class, of age, and , interestingly enough of religion and government.<sup>533</sup> The integration and recognition of relationship between all these are the basis for the sanity and power of feminism.<sup>534</sup> Integration of self-

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<sup>530</sup> See Ibid., p.376

<sup>531</sup> Tapan, Meenakshi. Ed. *Embodiment: Essays on Gender and Identity*, Oxford University Press, Delhi, 1997,245-47

<sup>532</sup> Ibid.

<sup>533</sup> Spretnak,Charlene, *The Politics of Women`s Spirituality: Essays on the Rise of Spiritual Power Within the Feminist Movement*, Anchor Press, USA, 1982, p.382

<sup>534</sup> Ibid.

change and institutional change is the revolutionary practice to tackle with the hierarchies within the caste, class and gender paradigms. Some recent feminists suggest that the task of our age is to draw on our spiritual heritage and through reestablishing our collective female consciousness, to develop a way of life which doesn't need hierarchy at its base. According to them, this kind of a politics of feminist spirituality assumes to free our minds and our bodies from our cultural restrictions as well as legal restrictions.<sup>535</sup>

### **Ethics, Law and Order**

*Manu-Smṛiti* has been cherished by having formulated the ethical codes for the life of people in India. The text was an attempt at a reconsolidation of an already ancient heritage as well as a reorientation of that heritage around new 'principles of life' i.e. *dharma*s.<sup>536</sup> From Apastamba's statements, *dharma* could be understood as 'right things to do' and one of his statements points to the very complexity about the ethical judgments standing inside the tradition. According to Apastamba, 'Right and wrong (*dharma* and *adharma*) do not go about saying, 'Here we are'; nor do gods, centaurs, or ancestors say, 'This is right, that is wrong'''.<sup>537</sup> The epigram also leads to the coherence and contradiction in the text while taking positions on some central issues of human life. Any study benign to the gender matters would never be able to

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<sup>535</sup> See Ibid., p.385 for this idea.

<sup>536</sup> Doniger, Wendy and Smith, Brian K. Trans. *The Laws of Manu*, Penguin, Calcutta, 1991, p.xxxv

<sup>537</sup> Ibid., p.xv

Also see, *Apastamba Dharma Sutra* 1.7.20.6.

skip the analysis of the moral laws, as the goal of gender theory is to promote justice towards women`s lives.

*Manu-Smrti* concedes with the Vedic idea of sacrifice and entails many ethical codes in relation to it. The concepts on ethical life resemble the kind of *dharmas* prescribed by *Manu-Smrti* in the context of modern Indian way of life, though not in every terms. Dr Jatava says, the ethical life was linked to the adherence of caste rules, and the four ends *dharma*, *artha*, *kama*, *moksha* of life were accepted in the *Dharmasastras* as people`s moral ideals.<sup>538</sup> *Moksha* was then declared as the summum bonum of life. The *moksha*, however, was attainable only when other ends were achieved. Kapadia says, *dharma* is to know that *kama* and *artha* are only means but not the ends.<sup>539</sup> The ethical ideal had to be followed through the four *asramas* in life. The *Dharmasastras* brought a strict code based on social laws engineered by the *Manu-Smrti*.<sup>540</sup> The text is an encompassing representation of life in the world explaining how it is, and how it should be lived. It is basically about *dharma*, which subsumes the English concepts of religion, duty, law, right, justice, practice and principle.<sup>541</sup> The following comments on the title of the text and the world-view proposed by it proves to be worth noting in the discourse about moral laws.

The title of the work poses a problem, in part because the text is known by two different names: *Manusmrti* and *Manavadharmasastra*. Th first term omits the key term *dharma*, while the second title includes it. Moreover *smrti* designates

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<sup>538</sup> Jatava, D.R., *Evolution of Indian Social Thought*, Bohra Publications, Jaipur, India,1987, p.58

<sup>539</sup> Kapadia, 1955, p.26,27

<sup>540</sup> Jatava, 1987, p.58

<sup>541</sup> Doniger, Wendy and Smith, Brian K. Trans. *The Laws of Manu*, Penguin, Calcutta, 1991, p.xvii

a traditional sacred text, in contrast with *sruti*, revelation (i.e. the Veda), while *sastra* can be translated as ‘laws’, but also by ‘teaching’ or ‘science’ ‘treatise’ or ‘text’ (though these last two terms give a mistaken impression of a written text : *sastra* and *smṛti* are often orally transmitted ). The most common translation of the title, ‘laws’, skews it towards what the British hoped to make of it: a tool with which to rule the Hindoo. A broader title like ‘teaching’ would better suggest what the text is, beyond its function as the basis of a legal tradition: a book of philosophy, a religious book that grounds the law in a complex world-view that is the point of the work.<sup>542</sup>

This interpretation might be taken by some scholars as an alibi to draw the text not as a ‘law-book’ or a basis of India’s legal tradition, but as a ‘sacred teaching’. At the same time this analysis supports the point that the text is of the philosophy of life and it brings about the laws for the complicated life in the world. Seeing that as the idea of the creation of the text, the shrouding nature of it in the topics of gender, might no way escape some condemnation. Especially a study on the family concepts would see the laws on the institution inscribed by sacred texts are in need of interpretation. T.N. Madan was annoyed about many scholars who were translating and commenting on ancient and medieval Sanskrit texts, regarding them as the perennial source from which all the jural norms and the ideals of Hindu kinship flow.<sup>543</sup> As the dominant lineage and kinship ideas in Indian region that influenced the family laws of all other religions in the area, the idea of considering the ancient texts for building legal system in the modern society could be probed. Though not only

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<sup>542</sup> Ibid., p.xvii, xviii

<sup>543</sup> Madan,1989, p.4

because of the gender issue, but because of changing social situations and psychological demands, no legal system could remain unchanged in the development process. Quoting the ancient textual concepts and insisting to follow them as the laws is typical of Indian society, especially for keeping the conquest of women in family affairs

The moral codes for men and women in *Manu-Smṛiti* have been formulated in terms of the duties ascribed to them, which are prejudiced according to a gender perception. It is obvious that, in the verses the moral behaviour of women is laid out as frivolous and this has been cited as the reason for giving the authority to men for controlling them. For example verses IX.12 of *Manu-Smṛiti* puts forward the laws for women to protect themselves from their perky nature of indiscretion and IX.13 gives the decrees of defiling a woman.

*Arakshita grhe ruddhah purushairaptakaribhih*

*Atmanamatmana yastu raksheyustah surakshitah* ( IX.12)

That is, ‘imprisoned in the house and closely guarded by their male relations, (bad) women are not sufficiently protected (i.e., they can find opportunities to gratify their evil propensities). Woman who guard themselves are said to be truly guarded (and protected)’<sup>544</sup>.

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<sup>544</sup> Sharma,ed., 1998, p.393



This is apparently constituting a law that gives the right to men for controlling women`s lives and to keep them as domestic animals and assign them to work for the men. The imprisonment of the women is made clear by saying *grihe rudhah* (closed in the house), though the verse suggests that it is good if the women guard themselves. The message given by many other verses of the text repeat those women are indecisive and they cannot look after themselves. But surprisingly enough one cannot find even a single verse which says that men are to be guarded by women or some others to control their vacillation. From this verity it is debatable that the text gives the dominant position to the male human beings so that they could rule the female human beings setting canons.

Feminist theories of laws have developed considerably over the last two decades.<sup>545</sup> Nivedita menon writes about the feminist intervention into the legal discourse. According to her the society being steeped in patriarchal values and practices and so the law and the state were seen as the only agents with the power and legitimacy to bring about egalitarian social transformation.<sup>546</sup> The canons of female life organized by the ancient text of India could not be neglected calling them just primordial because the legislation of the country itself has been regulated by such scriptures. The way Personal Laws were constructed and contributed by the scriptures had been analyzed by various scholars.<sup>547</sup> Henry Sumner Maine studied the Indian joint family and termed this type of family as patriarchal relying on the classical textual sources

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<sup>545</sup> Menon, Nivedita. *Recovering Subversion: Feminist Politics Beyond the Law*, Permanent Black, New Delhi, 2004, p.3

<sup>546</sup> Ibid.

<sup>547</sup> Bagchi, Jasodhara (ed). *Indian Woman: Myth and Reality*, Sangam Books (India) Limited, 1995

of Hindu law along with contemporary ethnographic and administrative reports.<sup>548</sup> He find Indian joint family as the earliest and ancient form of human family and, and there are other reference to ‘uncover the influence of Hindu law on changing Muslim customs of marriage and family’<sup>549</sup>. This is evidential to the abject condition of women`s lives in India due to the family laws and social norms in general.

Jasodhara Bagchi mentions how the Nationalist period made a ‘national myth’ about the voluntary abstinence and purity of Indian woman arguing in terms of scriptures.<sup>550</sup> The nationalist reformers such as Raja Rammohan Roy and Iswarachandra Vidyasagar were to ameliorate the wretched condition of Indian women through legislation and to save them from the brutal clutches of Hindu orthodoxy. But this provided quite contradictory effect upon the very purpose of doing justice towards women as individuals. Although the ideology of this dominant myth has recently been analyzed by different scholars,<sup>551</sup> the patriarchal moral codes for women are still not mitigated. The Indian womanhood is transfixed on an essentialist notion of ‘purity’ that was used in a particular historical juncture (Sarkar, 1987:20) and this in turn opens into other stereotypes of gender construction that had been hitherto used by feminist critics to explain marginalization and devaluation of women globally as well as locally.<sup>552</sup>

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<sup>548</sup> Maine, [1861]1972.

<sup>549</sup> Hutchinson, 1989, Also see, Marshall, Gloria A. “Marriage: Comparative Analysis” in David L. Sills (ed.) *International Encyclopedia of Social Sciences*, The Macmillan Company and the Free press, Vol.10 , 1988

<sup>550</sup> Bagchi,1995, p.3

<sup>551</sup> See Ibid. And ,Sarkar, 1987; Bagchi, 1990, 1993; Chowdhury Sengupta, 1993; Sen 1993.

<sup>552</sup> Ibid., p.2

In India the years of colonial domination had a significant role in recasting the ‘woman and the colonial state’ by keeping the Personal Laws, as the legal overseer of women’s social status kept it under the direct supervision of religious scriptures.<sup>553</sup> One of the major sources of control over women’s lives are the injunctions contained in the religious scriptures and in India and these formed the bases of Personal Laws in the colonial period, with which the state adjudicated over women’s legal rights.<sup>554</sup> Colonial legislators left women as the domestic slaves out of abolitionist programs, and simultaneously erected standards of legitimacy, proofs of marriage and purity of descent that eroded the positions of women.<sup>555</sup> Bagchi (1995:8) says, Indian women fared abysmally under an ancient law-giver such as Manu. According to her, it is this normative model of surveillance over the lives of upper caste Hindu women under *Brahmanical* dispensation that provided the myth of the ‘pure’ Indian woman in the Nationalist period. And she adds, this myth is again being revamped by the Hindu fundamentalists today (Bagchi, 1995:8).

While making the idea of ‘purity’ of Indian women, one may find different standards of morality practiced among upper castes and lower castes. The verse IX.6 of *Manu-Smṛti* asserts to protect their wives as the highest duty of men of all the four *varnas*. Flavia Agnes holds the opinion that the *Smṛti* codes of sexual morality did not apply to the lower castes since they do not belong to any of the *varnas* in the system

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<sup>553</sup> See Ibid., p.4,5

<sup>554</sup> See Ibid.,p.8

<sup>555</sup> Chatterjee, Indrani. *Gender, Slavery and Law in Colonial India*, Oxford University Press, New Delhi, 1999

prescribed by Manu.<sup>556</sup> At the same time she takes the fact with enough magnitude that the text influenced the legal moves in India and the customs seen in it were important sources of Hindu law though there were wide regional variations of local customs as well as variations among different castes in the same region. In her opinion personal laws in India was moulded with a judicial bias by the introduction of principles of Anglo-Saxon jurisprudence such as justice, equity, good conscience and public morality.

Through these legal precepts, British Jurists assumed the role of commentators and interpreted the ancient texts or *Smritis* according to what they believed were the new requirement of contemporary Hindu society. By overemphasizing the ancient scriptures, they undervalued the role of later commentaries as well as local custom. Since they could not comprehend the plurality of the prevailing non-state legal systems, and locally evolved practices, British jurists disturbed established customs of the community.<sup>557</sup>

One can derive such a point from this inspection that the customary and local variations were made homogeneous by the British jurists. For Flavia Agnes the interpretations of the texts by the orientals became binding on Indians and made laws certain, rigid and uniform. This has a notion that the texts were laying the codes positively and the interpretations that contributed the jurisprudence were wrongly influential. They are acceptable only as if some of the of the laws like Sati

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<sup>556</sup> Agnes, Flavia., 'Women, Marriage, and the Subordination of Rights', in Partha Chatterjee and Pradeep Jeganathan (eds), *Community, Gender and Violence : Subaltern Studies XI*, HarperSanFrancisco, USA, 1993, p.114

<sup>557</sup> *Ibid.*, p.119, 120.

Regulation act of 1829, Age Consent Act of 1860 and 1891, Female infanticide Act of 1872 and Child Marriage Restraint Act of 1929 were hopeful for the time being. Anyway this position of Flavia Agnes is evidential for the matter that with the ushering of colonial modernity the women in India suffered rigid laws followed by the ancient scriptures. Also from her idea that the Hindu laws and Christian laws were more rigid than the Muslim laws about the inheritance and marriage related matters, one can draw the picture of gender compassion levels of Indian legal system.

Thinking more about the scheme of 'law and order' in Indian context, one would have to look back again into religion and scriptures. The concept of *sanatana dharma* or 'eternal order' which lays the foundation of Hindu religion, according to some interpreters, definitely meant an ethical one. 'What is the right thing to do for keeping the eternal order in the universe', could be found as the core of the religion in the above sense. Then the contentious issue is that the religion takes male humans as capable of keeping the order, acting ethically. The moral consciousness of women is constructed through the family structure and is formed through the marriage that is seen only as one of the *dharmas* of men according to *Manu-Smriti*. Hindu marriage is said to be a *dharma* and *dharma* is the knowledge that *kama* and *artha* are just means but not ends.<sup>558</sup> It is staggering to know that that the harmony between temporal interests and spiritual freedom is achieved by the discipline achieved by *dharma* according to Indian view.

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<sup>558</sup> See for such comments, Kapadia, 1955 and Madan, 1989

Religion creates and fosters moral duties as revelations and in which women have no roles as 'living selves'. In case of Hinduism it claims everything out of the revelations of Veda. But moral consciousness is just a name applied to human recognition and awareness of those ethical and emerging moral values which duty demands that man shall abide by in the day-by-day control and guidance of conduct. Morality can be distinguished from law or from justice, as the latter is publicly enforced and sanctioned through the power of the state, while the former is regarded as a private matter where wrongs are to the moral discredit of a person but not such as to allow legal recourse for those wronged.<sup>559</sup> The idea turns to be revealing that the men would abide by the jurally formed laws as women do but the morality developed by the religious and cultural languages could be created by men to regulate the moral consciousness of women. This forms the double burden for women, as they have to obey the laws of the state which are basically misogynistic along with the social laws created by the male-centered religion and culture. Though virtue or private morality cannot be legislated and there would be distinctions between law and the polynomic domains of value and women have no scope even in such distinctions. Thinking this way it becomes clear how the moral codes stipulated for women, by scriptures such as *Manu-Smrti* becomes double edged weapons to limit the lives of women.

There are verses in *Manu-Smrti* emphasizing woman`s morality, though that may not be directly applied in legislation. But obviously those verses are interfering into the concepts of 'moral Indian woman'. These concepts may not be in the jurisprudence

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<sup>559</sup> See [http:// www.friesian.com/moral-2.htm](http://www.friesian.com/moral-2.htm)

but they are pertained as part of the construction of moral society and the legal discourses. For instance verse IX: 7 of *Manu-Smṛti* says, ‘by assiduously protecting his wife, a man protects the purity of his progeny and family as well as his character, self and virtue’ (*Manu-Smṛti*, IX: 7). This idea of the ‘purity’ and ‘protection’ would seem to be outlandish because, it maintains different measures for the virtues of men and women. The character and virtue of a man is upon his capability to control his women and offspring in the family. The virtue of men is said to be saved through protecting his women from transgressing. This means the morality of men is not an issue but the issue is the women’s morality. The authority to manage their women’s morality is given to the men who are conceived to be the perfect humans. The non-legislated moral codes that manage the morality of women even at present day contexts are justified by the kind of codes written in *Manu-Smṛti* forming the discursive structures of purity.

*Panam durjanasamsargah patya cha viraho/tanam*

*Swapno/nyagehavasascha narisamdooshanani shat ( IX:13)*

This states the six factors which would defile a woman. Accordingly, wine-drinking, evil company, separation from the husband, idle rambling, sleep at the improper time and residence in others house, are to tarnish a woman. By the consecutive codes, men are given the position to direct women against such corruptions because women are lighthearted and erratic and erotic in mind. Such verses evidently are targeting women’s nature, identity and sexuality. And the scriptural influence of law-making

and morality-making might no way escape such concepts being inflicted. The laws on the marriage, divorce and inheritance are particularly woven by such concepts in India. Flavia Agnes has written about the challenge of releasing matrimonial laws from their narrow and archaic confines of marriage defined as mere marital conjugality or free access to sexual intercourse, and the consequential presumption of divorce as a termination of this conjugality.<sup>560</sup> According to her, contrary to popular myths regarding the sublime nature of marriage and its holiness, the concept of property and women`s access to it governed all ancient systems of law.

A consideration simple and important yet, is about the un-written laws about the work and domesticity. The intellectually powerful and politically radical interventions of feminism on family as a sole agency for women`s victimization raised strong critique on the laws as well.<sup>561</sup> According to Rajeswari Sunder Rajan the rhetoric of reform in India seems to be couched in the language of modernization, not only in relation to institutional structures and practices but also in relation to legal provisions.<sup>562</sup> In spite of the judicial laws on marriage and inheritance uplifted by scriptural references, an analysis over the codes of work related to domesticity would prove to be dreadful for women no matter which religion/caste/community/locality/class they belong to. It would remind the unexpected issues on kinship making laws which would neglect the relationship

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<sup>560</sup> Agnes, Flavia. `Women, Marriage, and the Subordination of Rights', in Partha Chatterjee and Pradeep Jeganathan (eds.) *Community, Gender and Violence: Subaltern Studies XI*, Harper San Francisco, USA, 1993 , p.106,107

<sup>561</sup> See, Sunder Rajan, Rajeswari. *The Scandal of the State: Women, Law and Citizenship in Postcolonial India*, Permanent Black, New Delhi, 2003, see p.99,100

<sup>562</sup> Ibid.,see p.97



between individuals in the family, as Marilyn Strathern puts it.<sup>563</sup> Nirmala Banarjee has written about the dominant myth of seeing womanhood always with the domestic sphere and a consequent blocking out of social valuation of her work.<sup>564</sup> According to the view, subordination of women is concealed but endemic in the construct of ‘sexual division of labour’ that formed with Adam Smith. The work of women were considered only as reproductive but not productive according to this idea. Although the lower caste women who were out of *varna* system enjoyed more freedom in matrimonial relationships as Flavia Agnes poses, it doesn’t seem to be holding true in terms of domestic work. Leela Gulati’s article is evidential for even the lower caste/ class women being suffered in terms of their work and domesticity.<sup>565</sup> As Jasodhara Bagchi puts it, the image of woman as a long suffering, chaste, self-sacrificing, super woman, accentuates the myth as a double edged weapon. Although there were some laws created against the devaluation of women’s work, the myth of domestic work in relation to womanhood has never been questioned or mitigated by any judicial move.

In the scenario of the modern complex civil society that yet follows the scriptural and religious inspirations, the legal remedy could be seen only as a context of necessity when there is a decline of private morality. There might be people who would not abstain from doing illegal activities and they might not be afraid of rigid

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<sup>563</sup> Strathern, Marilyn. *Kinship, Law and the Unexpected*, Cambridge University Press, Cambridge, 2005

<sup>564</sup> Bagchi, Jasodhara (ed). *Indian Woman: Myth and Reality*, Sangam Books (India) Limited, 1995, p.9,10,

<sup>565</sup> See Ibid. The terms caste and class used here are with the presumption of the social fact that the lower caste constituted the lower class in India for a long time until modernity.

law enforced on them. And there might be people who don't need laws to discipline themselves, but would keep personal ethics always. The relationship of morality to freedom, autonomy and rationality has been points of discussion in philosophy.<sup>566</sup> The role of rationality in obeying or not obeying laws is significant and the autonomous individuals can work out reason with freedom. Such autonomous individuals would work with their own conscience and would find the best of their own by going beyond the laws, with reason, self-discipline or self-realization. If we try to sieve any positive possibility of *Manu-Smrti* with the background of such a philosophy, we can find the fact that the text considered self complacency as one of the four positive proofs of virtue, though it prescribes the teachings of *Smrti* should not be put to the test of logic (*Manu-Smrti* II.11). The text has suggested at least indirectly the use of conscience, one of the four ways (*Veda, Smrti, Achara* and Conscience) of determining right and wronging (*Manu-Smrti, II.12*).

## Summary

The above was an attempt, to make explicit those implicit norms and rules that produce the language of culture, politics, law, religion, caste and class in modern India, with a feminist perspective. Particularly interested in seeing the way that discourse consists of sets of hierarchical units which make up discursive structures, an analysis is made on the problems around the conceptualization of woman and family in the modern era. As part of the feminist movements and gender theorizations, the hierarchical social organization by the influence of ideas of the

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<sup>566</sup> See, Nizar, Ahmed. "Post-modern Ethics" in *Vision*, Volume .IX, Jan.2000

ancient text *Manu-Smṛiti* has been viewed as a problematic to be probed. The production of textual reference of the *brahmanical* patriarchy has influenced the process of social stratification in India, in terms of caste, class and gender. The power structures of family and the power relations between men and women have been produced and preserved by religious, cultural and legal discourses. Determining the role, identity and sexuality of women are seemed to be a main agenda of the power politics put forward by the institution family, which is constructed through many such discursive structures. The family model of *Manu-Smṛiti* that conceptualizes woman as a submissive ‘family-being’ seems to have made immense impact on the cultural and religious semantics and practices in modern Indian society.