



# FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 1st Semester

SUBJECT: HISTORY - I

SUBJECT CODE: BAL 102

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# Lecture-28



## **Kinship, Caste and Class**

### **Social Differentiation**

#### **Rules of Marriage**

#### **Access to Property and Gender**

During this age the Brahmins occupied the highest position in the socio-religious hierarchy and they for legalizing their superiority adopted the method of relying upon dharamsastras. The sources of these dharamsastras were supposed to be Hindu religious texts like the Vedas and Smritis, approved customs and good conscience. The Vedas were religious hymns, perhaps 3000 years old, and the Samritis were collection of rules of conduct and explanatory principle based on Vedas. The Samritis comprised texts, such as Manu Samriti which was written between 300 BC and 300AD and later on commentaries and digests. An important digest on all the samritis written by Jimutvahana in 12th Century was Dayabhaga which got much acceptance in Bengal. The Mitakshara which was again written in 12th Century is a running commentary on one of the samritis called Yajñavalkya written by Vijnaneshwara which was accepted in the rest of India. Later on these two (digest and commentary) emerged as two different schools known by the name Mitakshara and Dayabhaga. These two schools differed on the subject of inheritance

Regarding the position of women in early Vedic society, women occupied the same position as the man. There was complete gender equality in all spheres of life and women enjoyed great respect, significant rights and privileges. A girl was free to get herself educated just as boys in those days. During the Vedic period, studies started after the thread ceremony, which was called 'Upnayana Samskara'. In Rig Veda it was mentioned that who wore sacred thread were considered capable of performing many responsible jobs. Many statements in the Vedic literature indicate clearly that women were undergoing Upnayana Samskara, studied Holy Scriptures and recited Mantras. With regard to the institution of marriage, women had also an effective say in the selection of her life partner. The famous system of marriage by 'Svayamvara' had its origin in Vedic literature. It was intended that man cannot perform various religious ceremonies alone. For the performance of religious rites and ceremonies the presence of wife was must. A man was believed to be incomplete so long as he does not have a wife. The wife was said to be her husband's 'Ardhanagini' i.e. half of the man.

So far as the property rights of females are considered the Rig Veda speaks about the individual proprietorship, the sons dividing their father's property after the demise of

father, unmarried daughter staying in father's home also have a share of a father's property. In Vedic literature the unmarried daughter had the right to get a share of her paternal wealth, but the brothers did not partition their paternal property with their married sisters. Similarly the position of the daughter's son was also recognized for religious ceremonies. It was said that sonless father honoring the son-in-law goes to the grandson born of the daughter. Again where the daughter was the only child of the family, she can perform funeral rites of her father. This gives her right to inherit the property also but if she has brother the general opinion of Dharmasastras was that sisters should not get share in father's property

During the Vedic period the husband and wife were treated as joint owners of the household. The husband was required to take a solemn vow at the time of marriage that he would never contravene the economic rights and interests of his wife. On the basis of this joint ownership theory of husband and wife in the household, it was concluded in the Apastamba Dharmasutra that the wife was entitled to incur normal expenditure on the household during her husband's absence. Along with this joint ownership theory, another important fiction i.e. the fiction of identity between the husband and wife also gave females right to inheritance. Brihaspati<sup>7</sup>, on the basis of this fiction, declared that a widow to be entitled to succeed the estate of a sonless husband in preference of all other heirs. So if husband and wife are treated as one and there is joint ownership the question naturally arises as to how, in Hindu Law, the wife was deprived of her right of ownership and inheritance on the death of her husband. On this question, Kane's statement concisely summarizes the position. Apastamba postulated the identity of husband and wife in the religious matter. But this identity of the husband and wife was not accepted by the ancient sages for secular or legal purposes. Later on with the passage of time there was a slow recognition by the Hindu law writers of women's right of inheritance as a natural corollary of her joint ownership<sup>8</sup>. But the theory of joint ownership of the husband and wife in the household gave only minor advantages to the wife. She was given the right over her husband's property to enjoy it as a usufruct and not as her absolute property. Thus it did not, however, secure for her equality with the husband in the ownership of the property.

## MCQ

1. 'Feminist movements' are aimed at: [CBSE 2011]

- (a) Liberty
- (b) Equality
- (c) Participation
- (d) Power

2. Which one of the following is not a cause of communalism? [CBSE 2011]

- (a) Religion is taken as the basis of the nation
- (b) When one religion is discriminated against other
- (c) State has no official religion
- (d) Demands of one religious group are formed in opposition to another

3. Which of the following divisions is unique to India?

- (a) Gender division
- (b) Caste division
- (c) Economic division
- (d) Religious division

4. Select the laws enacted by the Parliament for the welfare of women.

- (a) Special Marriage Act of 1955
- (b) Dowry Prohibition Act of 1961
- (c) Equal Remuneration Act of 1976
- (d) All the above

5. Women in India are discriminated in;

- (a) Political life
- (b) Social life
- (c) Economic life
- (d) All of the above

