

## A Comparative Talk on Women Era

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### Abstract

In the original philosophy of Mahatma Gandhi the proverbial principle is to “see no evil, hear no evil, and speak no evil”. Probably a fourth monkey should have been shown with crossing his arms as to convey “do no evil” or “do nothing”. Looking it in other way would mean, refusing to acknowledge it or feigning ignorance. It seems that in the present scenario with reference to Women era, gives us a feeling to have a relook at the three wise monkeys in a manner as shown above.

The principles of jurisprudence are not confined to the texts in Sanskrit. Manu attests that custom is the foremost basis of jurisprudence. Customary law delimits Brahmnic legal theory. And customs differ according to districts, towns, castes guilds and corporations. Manu asserts the precedence of provincial custom. The Dharma Shastras are the pre-eminent Hindu legal texts written in Sanskrit, excerpts of which were translated into the early Javanese and Khmer languages. *Niti* i.e. Justice, is based on Dharma, which is moral law in these works. The term dharma may be traced from the root word *dhr* which means sustains or supports. The expression seems to have a wide range of meaning. It signifies the prudence of highest virtue to human welfare.

*We know how to swim*

*In water like fishes*

*We know how to fly*

*In air like birds*

*But we do not know how to*

*Live on earth like human beings.*

**Alexander Selkirk**

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### Introduction:

In the field of social justice, much has been said, deliberated upon. It can't be said that it was a matter of talking only and nothing has been done. If the focus is with reference to women

empowerment and social justice we need to compare the primitive society and present day comparatively. We have to look back and then arrive to a conclusion as to whether any change is visible or not in the matter of women's status in our society.

Before expressing the concern about women empowerment or development of women, a series of question may arise in the mind of all right thinking people as to what is the need of women empowerment and why? That no human male could say that he is not related to woman in any manner. Let us take some direct relations with man and think, which are definitely women only.

- i) Mother
- ii) Sister
- iii) Wife
- iv) Daughter
- v) Even a female friend

It is really unfortunate that despite the fact that no man can be in existence without women, still we talk about discrimination and feel the necessity of women empowerment with special reference to social justice.

### Women's strength

Now a day we find that women are walking with men shoulder to shoulder at equal pace and even more, they have proved from kitchen to cockpit, in every sphere of their life that they are second to none. Be it medical, engineering, armed forces, judiciary, academic, government officials or business field, women are doing extremely well.

If we look towards the highest position in the country like ours we find that the Hon'ble President of India was a woman, many chief ministers and Governors of the States were/are women Judges in the Hon'ble High Courts and Supreme Court were/are women. Even in the neighbouring countries so many highest positions were/are held by women. Still we need to think about empowerment of women and to have social justice. It may be quoted that

“*Abla jeevan hai tumhari yehi Kahani, anchal men dudh aur ankhone men pani.*”

### Historical Background

History, Holy Books and Smritis are evidence that women have never been treated with dignity. Ram Charit Manas says “*Dhol, Ganwar, Sudra, Pasu, Nari, sakal tadana ke adhikari*”. With all due regards it is stated that Goddess Sita was subject to Agni Pariksha by Lord Rama who is known as Maryada Purosoottam, just because there was a statement from a washer man with reference to Mata Sita’s unchastity. This could be another way of viewing towards the issue as to the greatness of King Ravana who stated that he would not touch her. The circumstances in which Goddess Sita was there, the high possibility was available that she might be forced to lose her chastity but in view of the situation, whether she could be blamed is again a question mark, then why agni pariksha? is a further controversial question.

In present day we have laws at hand and it has been decided by the Hon'ble High Court of Allahabad in the Case of *Rajesh Kr. Singh v. Smt Rekha Singh*<sup>1</sup> that rape of wife cannot be a ground for divorce. Husband can't claim cruelty as he has to live with a rape victim. Probably during Ramayna no law equivalent to Indian Penal Code, Section 325,<sup>2</sup> and 326,<sup>3</sup> (wrt lord Rama) or alike was available and the sister of learned King Ravana i.e. Supnakha's nose was chopped off for the reason of making love appeal to Lakshmana. It really compels to think about the position of women in our society. If we do not close our eyes and ears towards the

painful story of women, automatically the fact comes to our sensation that women are always subject to ill treatment/violation either on the name of caste, region or religion.<sup>4</sup>

Today, convenient behaviour patterns has been replaced by Risk society turning out to be a part of our daily life and activities. a German sociologist, Ulrich Beck explains the term risk society as a systematic way of dealing with dangers and insecurities induced and In Mahabharata the Dharmaraj Yudhister had put Draupadi on bet treating her as property, lost her in gamble and the consequences thereafter, how far were justified is really a big question. Now slowly moving ahead towards Sati Pratha and its abolition, further cases of happening sati pratha has compelled us to think of social development and women empowerment. Surprisingly the social evils are so deep rooted that a woman becomes enemy of a woman eg. female feticides and female infanticides despite the fact that curbing provisions are already available in IPC 1860<sup>5</sup>.

It is evident from the law of land that discrimination among men and women were available since its beginning, a bare reading of Article 15 (1) of the Constitution of India shall suffice the statement<sup>6</sup>.

<sup>1</sup> AIR 2005 ALL 16

<sup>2</sup> Punishment for voluntarily causing grievous hurt: whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>3</sup> Voluntarily causing grievous hurt by dangerous weapons or means: whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any substance which it is

deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

<sup>4</sup> “Lajja” by Ms. Taslima Nasrin a Bangladesi writer.

<sup>5</sup> Sections 312 to 318.

<sup>6</sup> Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth- (i) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

### Legal Aspect –

If we take a glance of Section 509,<sup>7</sup> 354,<sup>8</sup> 376<sup>9</sup>, 498A<sup>10</sup> of I.P.C., 112<sup>11</sup> of Indian Evidence Act we find that the women are only at disadvantageous position. The question mark is solely relevant with women for the purpose of legitimacy but the section reads about son and not daughter. Though, the meaning of legitimacy is clear and construed for female child too. Further, if few of the existing laws are viewed in a social justice perspective it may reveal that women are not on equal footing with man. For example Section 12 (1) (d) of Hindu Marriage Act 1955<sup>12</sup> is read with reference to Section 13 (1) (i) of the same Act<sup>13</sup>. It may be noted that the discrimination among men and women are available in the law itself, might be

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<sup>7</sup> Word, gesture or act intended to insult the modesty of a woman: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object intending the such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

<sup>8</sup> Assault or criminal force to woman with intent to outrage her modesty: whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment or either description for a term which may extend to two years, or with fine, or with both.

<sup>9</sup> Punishment for rape: Whoever, except in the case provided for by sub-section(2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: PROVIDED that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

<sup>10</sup> Husband or relative of husband of a woman subjecting her to cruelty: Whoever, being the husband or the relative of the husband of a woman,

for the justifying reasons but definitely not in the spirit of social justice.

Again in the matter of succession to Hindu male with reference to preference Section 3 (a)<sup>14</sup> & (c),<sup>15</sup> 8 (c)<sup>16</sup> & (d),<sup>17</sup> and 12,<sup>18</sup> of Hindu succession Act 1956 the heirs are excluded only on the ground of female occurring in the way of tracing relation with propositus.

If we see the concept of marriage in Hindus it would be found that it is an eternal union, a union for this life and all lives to come. For Hindus wife is not just *patni*, she is *dharmapatni*, *sahadharmini*, *Hridayaswamini*. In the idealized, form she is *samarajyi*, *patrani*, *bharya*, *sachiva*, *sakhi*, *grihalakshmi*, *hridayaswamini* and in the most idealized form wife is considered to the source *dharma*, *artha*, *kama* and *moksha*. Husband is called *bhartri* the supporter, *pati* the protector, and *patiparmeshwara*, the lord and master of his

subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

<sup>11</sup> Birth during marriage, conclusive proof of legitimacy: The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

<sup>12</sup> That the respondent was at the time of the marriage pregnant by some person other than the petitioner

<sup>13</sup> Has, after solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse;"

<sup>14</sup> "agnate" one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males;

<sup>15</sup> "cognate" one person is said to be "cognate" of another if the two are related by blood or adoption but not wholly through males;

<sup>16</sup> Thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased;

<sup>17</sup> Lastly, if there is no agnate, then upon the cognates of the deceased.

<sup>18</sup> Order of succession among agnates and cognates : The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder;

wife who must be adored and obeyed no matter, he be devoid of all merits, virtue or be a gunda. Astonishingly the wife is *ardhangni* and *sahadharmini* but the husband is never *ardhangana* or *sahadharmana*.

A brief reference to Muslim marriage and divorce would clear the picture of women as to the rights of pronouncing divorce is not available to wife as available to the husband. In cases of evidence in Muslims, for contradiction of one Muslim male witness two women are required. While comparing the marriage and dower with contract, Mahmood, J., had stated in the case of *Abdul Kadir v. Salima*<sup>19</sup> "Dower may be regarded as consideration for connubial intercourse by way of analogy to the contract for sale. The right to resist her husband so long as the Dower remains unpaid is analogous to the lien of a vendor upon the sold goods while they remain in his possession and so long as the price or any part of it is unpaid and her surrender to husband resembles the delivery of the goods to the vendee....." Article 44 of the Constitution of India<sup>20</sup> is yet to be implemented. Uniform law for all persons may be desirable. But its enactment in one go may be counterproductive to the unity of the nation;<sup>21</sup> After 18<sup>th</sup> May 1955 Hindus are legally bound to follow strict monogamy but as per Muslim personal laws one Muslim male can have four wives at a time subject to other conditions. The right to have more than one husband during existence of marriage is not available to the women. However, we find in Mahabharata Draupadi was having five husbands, but it is again a matter of further research based on the prevailing circumstances of that time

### Conclusion

A serious view towards work place of women also needs to be considered to upkeep their modesty and dignity could be by way of social awareness and framing appropriate laws as to keep high the social justice. Without going into the controversy against women that, at work places, so long they are not expected to discharge any good towards the benefit of

organization and not asked to do their assigned work properly, generally their modesty are not at stake but at time when they are asked to discharge excellence in the best interest of institution the double edged swords on the name of social injustice, insulting/outraging of modesty, women's dignity etc are likely to be used. Of course the facts of the cases like *Saheli, A Women's Resources cener, Through Ms Nalini Bhanot and Ors. v. Commissioner of Police Delhi Police Headquarters and Ors. AIR 1990 SC 513*, *Mrs. Rupan Deol Bajaj and another. Kanwar Pal Singh and another AIR 1996 SC 309*, *Vishaka and others v. State of Rajasthan and Others SCC 1997 (6) 241* are to be also kept in mind while deliberating towards the women empowerment and social justice.

The axis of concern is to empower women so as to enable the prevalence of social justice. The participant humbly wish to submit and suggest that all the laws having relevance with women needs to be relooked and redesigned accordingly so that social justice should prevail.

<sup>19</sup> ILR (1886) 8 All 149

<sup>20</sup> Uniform civil code for the citizens: The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

<sup>21</sup> Pannalal Bansilal v. State of Andhra Pradesh, AIR 1996 SC 1023