

GENDERING CASTE, RITUALS AND INHERITANCE IN THE
DHARMASŪTRAS AND MANUSMṚTI

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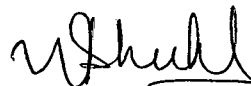
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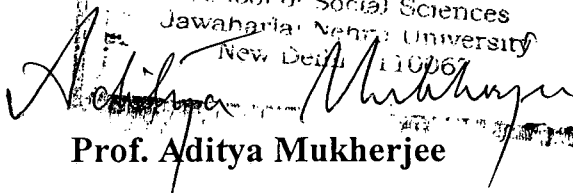
This is to certify that this dissertation entitled “**Gendering Caste, Rituals and Inheritance in the Dharmasūtras and Manusmṛiti**” being submitted to the Centre for Historical Studies, Jawaharlal Nehru University, New Delhi, in partial fulfilment of the requirements for the award of the degree of Master of Philosophy has not been previously submitted for any other degree of this University or any other and is my original work.

New Delhi
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To my parents

and

my brother

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ABBREVIATIONS

Gaut.	Gautama Dharmasūtra
Baudh.	Baudhāyana Dharmasūtra
Āp.	Āpastamba Dharmasūtra
Vas.	Vasiṣṭha Dharmasūtra
M.S.	Manusmṛti

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ABBREVIATIONS

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Chapter 1

INTRODUCTION

I

- The objective of this dissertation is to study the categories of caste, rituals and inheritance from the perspective of gender in the *Dharmasūtras* and the *Manusmṛti* and to present a comparative analysis thereof. Thus, at one level, while it intends to highlight the gendered / otherwise nature of the texts, at another level it aims to reveal dynamism in the Brahmanical tradition by exhibiting variations within the texts.

The primary sources used for the purpose of the study are the four *Dharmasūtras* - that of Gautama, Baudhāyana, Āpastamba and Vasiṣṭha and the *Manusmṛti*. These texts primarily dilate upon the code of conduct, laws and customs of men and women in the *Āryāvarta* (land of the Aryans).

‘The term *sūtra* literally means thread. It is used to denote the complete work as well as the sentences and paragraphs which go into its composition.’ (Roy 1994:14). The typical characteristic of the *sūtra* is to compress as many instructions in as few words as possible. The *Gautama Dharmasūtra* is the oldest of the four *Dharmasūtras*. Its language conforms to Pāṇini’s grammar much more than what the other *Dharmasūtras* do. It belongs to the time period c.600B.C.- c.400 B.C.

This is followed by the *Baudhāyana Dharmasūtra* chronologically. Its language is archaic and it often departs from the Pāṇinean standard. The text is placed between c.600 B.C.- c.300 B.C. The next in the chronological sequence is the *Dharmasūtra* of *Āpastamba*. It is written in a more concise and compact style than that of Baudhāyana and has more archaic forms than any other extant *Dharmasūtra*. It is placed between c.450B.C.- c.350 B.C. The last is the *Vasiṣṭha Dharmasūtra* which is in style like the Gautama Dharmasūtra with its *sūtras* closely resembling that of Gautama and Baudhāyana. It is assigned to the period between c.300 B.C.- c.100 B.C.

The *Manusmṛti* is attributed to Manu who is regarded in ancient literature as the father of human race. The *Manusmṛti* has a lot in common with the doctrines of the *Dharmasūtras*. It is written in a simple and flowing style and it is assigned to the period between c.200 B.C.- c.200 A.D. The codes of Manu are the first systematic expositions of Brahmanical law. For details of the contents of the texts, see Appendix. It is to be kept in mind that each of these texts were written over a period of time as mentioned above and they are not the prescriptions of a particular individual, rather they represent a school of thought and are authored by different men.

II

The methodology for studying a historical text (or for that matter any text) depends on the basic nature and characteristics of the text. The same goes for my primary sources as well. These texts suffer from some serious limitations. They were the expressions of

upper caste men and they targeted an audience comprising the same. They give a top-down view of society. They are highly prescriptive in nature. The rules and codes prescribed in these works are merely an echo of the desires and ambitions of upper caste men. Based on this narrow perspective, without a realization of it, if one was to build a description of society, she/he would be erroneous. The texts also suffer from the dilemma of concentrating on the woman of the upper caste, thus marginalising the existence of lower caste women.

The nature of the texts is such as to promote 'Brahmanical Patriarchy' which entails essentially two aspects- one, the suppression of the lower castes and two, the suppression and subordination of women. And thus, these texts would not be the best of places to look for the reality of women's lives. But viewing the situation from another angle, these texts by male elite actually aid us in another manner. By reading between the lines, by deducing from what is not being said and finally by contemplating on the concerns and anxieties of the *Brāhmaṇa* authors, one can perhaps get a more descriptive view of the world. What they were repeatedly laying more emphasis on was probably not easily achievable- hence the anxiety and concern.

This brings us to the different treatments given to these texts by historians. Some historians have by and large used these texts to arrive at an 'unproblematic, literal reconstruction' while on the other hand, and more recently, others have attempted to hear the voices of women in these andro-centric texts. "This is not to assume that women have

a radically different world view than the one allocated to them by men or male authored texts. It is the small deviations from the norm which may be crucial.” (Leslie 1992: 3).

III

To have an understanding of the direction in which gender studies have been going, we will refer to the works of three scholars- A.S.Altekar, Uma Chakravarty and I.B.Horner. A.S.Altekar, in his book, “The position of Women in Hindu Civilisation” (1st edition 1938; 2nd edition 1956) has attempted to present the picture and position of women in Hindu Civilisation from the prehistoric times to almost the time of the second edition of the book in 1956. Thus, it is a very comprehensive work, strongly demonstrating the author’s keenness to study every aspect touching women’s lives and that too, for a period as broad as possible making his work extremely holistic. Now Altekar wrote at a time when the environment was charged with an emotion of intense nationalism. As such, it seems at times, even at the cost of an honest depiction of women in ancient India, it is the feeling of nationalism that takes the priority.

Uma Chakravarti has rightly pointed out that Altekar’s reflection on the position of women in Early Indian History is deeply steeped in the nationalist understanding of the women’s question.

Let us at this juncture, briefly focus on the “History of Women’s studies in Early India” which is as important as “Women’s studies in Early India”. When the Indian and British culture came into contact with each other during the colonial rule of England on India, educated Indians were irked by the colonialist distortions of their past history and

distressed by the contrast between the decaying society of India and the progressive society of England. This gave the context for the emergence of nationalist historiography which shaped the way the history of early India inclusive of the history of women in early India was written. It led frequently to what Uma Chakravarti refers to, “the inversion of the Vincent Smith syndrome”. Vincent Smith as well as other European colonial writers had contempt for everything Indian. What the nationalist writers did was exactly reversing the picture.

Thus, Altekar was actually vindicating the Hindu Civilisation when he was trying to establish the high status of women in it. This is because, as was also explicitly stated by Altekar that the ‘position of women’ was an ‘index of civilisation.’ (Altekar 1987: 1) Wherever in his book, he has drawn comparisons with other cultures and civilisations, Hindu culture is inevitably shown to be better towards women. The general thrust of his study as well as that of other nationalist historians has been to demonstrate that the status of women was very high in the *Vedic* period, there was gradual deterioration thereafter and the situation became the very worst with the coming of the invaders especially the Muslims which resulted in the rise of various evils associated with women such as the *Purdāh*, *Sati* and female infanticide. However the truth as Uma Chakravarti puts it as is “The structure of institutions that ensured the subordination of women was complete in all essentials long before the Muslim as a religious community had come into being.”

Though, Altekar’s work is probably the best we have by way of women’s studies, it does not enable us to understand the subtle nature of social relations between men and women.

In spite of its limiting and biased nature, the Altekarian paradigm continues to influence and even dominate historiography. Altekars' description of women in the Vedic period is rather idyllic and our finer sense of instinct precludes us from accepting it.

Uma Chakravarti, has raised a few very significant issues which will help outline the kind of work that needs to be done in future. These are – why historians started studying positions of women in the first place? Why these studies were confined to the ancient period of Indian history? And, review the state of existing literature so as to evaluate the worth of available studies.

Chakravarti has essentially questioned the unchallenged authority of the Sanskritic model based on which traditional writers have written about women. She has challenged the validity of unconditional reliance on Brahmanical sources to study position of women. She has emphasized on the urgent need to move forward and rewrite women's history by critically examining the nature of various social institutions and the subtle relations between men and women.

As Kumkum Roy has pointed out women's history vis-à-vis historical processes can be envisaged to revolve around two broad possibilities. These are that either women are passive receptacles of historical processes or women have a certain degree of agency vis-à-vis historical processes.

I.B.Horner's work (1930s) on women in early Buddhism belongs to the second category. She not only visualises an impact that Buddhism had on women but also the other way around i.e. how women shaped and influenced Buddhism. Also, where traditional writers have limited their vision to the "women within domestic spaces", Horner has visualised a space for women outside the domestic realm. Another merit of her work has been the amount of sensitivity she has shown to the complex nature of texts she has drawn on unlike Altekar. Her belief that the life of women as nuns, so long ago as c.600 B.C., is worthy of more than the passing attention, has indeed been justified by her work. However, a serious limitation of her work is the rather simplistic imagination of women's agency in direct and unmediated terms. Notwithstanding, her work is a milestone in itself.

IV

The institution of caste is considered to be one of the most salient and striking hierarchies found in the Brahmanical social system. Not surprisingly then, several theories have evolved and works written on different aspects of the caste system in an attempt to understand a seemingly immortal hierarchy.

The history of the system of castes is traced back to the *Puruṣa –sūkta* hymn in the last *maṇḍala* of the *Rg Veda*. It is this hymn which explains the creation of the four great *Varnas* – the *Brāhmaṇa*, the *Kṣatriya*, the *Vaiśya* and the *Śūdra* from the head, arms, thighs and feet of *Puruṣa* respectively.

Needless to mention, that the anti-Mandal agitation of the 1990s and the very contemporary ambition of the present-day government to increase reservations for depressed classes keeps the caste issue alive and burning, generating heated debates in the country.

When historiography began in India, (in its modern meaning) in the second half of the eighteenth century, the caste system came in for severe criticism at the hands of colonial administrator-historians. It was precisely the system of castes which was seen by these historians to lend a sort of stagnation to Indian history because of which Indians were charged with an absence of a sense of historiography. That the structure of caste was not an unchanging, static monolithic pattern was a realisation deliberately or otherwise avoided by these imperialist-minded writers.

Very naturally then, as a response to the above mentioned historiography, nationalist historians wrote in a manner to highlight and glorify the virtues of the past. It was in this attempt that the caste system was defended as a system which facilitated the smooth functioning of society by eminent historians like Altekar and Kane. The system was also, though in a different breath approved of by scholars like Louis Dumont¹ and by orientalist (Indologists) by and large who were dejected by the Western spirit of individualism, capitalism and industrialisation. Thus, the caste system earned both critics

¹ As Suvira Jaiswal writes, "It is impossible for Dumont to conceive of a genuinely egalitarian classless society. And since the West has failed miserably in eliminating inequality in spite of its professed faith in moral and political egalitarianism, the Indian variety of hierarchy is to be viewed with much more sympathy and understanding." (according to him) (Jaiswal 1998:38).

and defenders of it in the process of being one of the main basis for discrimination in society.

At another level, gender identification forms another basis of discrimination in society. “Students and Teachers would readily agree that the position of women in our society is an unequal one and (they) have difficulty in penetrating beyond this ‘taken for grantedness’ of everyday phenomena.” (maithreyi krishnaraj cited in Chakravarti 2003: viii). ‘Women’s studies’ as a discipline is picking up pace in the country with a lot of research being done on it as well (as it is on caste). However, it is only quite recently that a linkage (and quite a subtle one at that) has been recognised between the two most significant kinds of discriminations that plague Indian Hindu Society- the caste and the gender discriminations.

As pointed out by Chakravarti, the term ‘Brahmanical Patriarchy’ which was devised in the aftermath of the Mandal agitation indicates the linkage between caste and gender discriminations. She writes, “Brahmanical Patriarchy is a set of rules and institutions in which caste and gender are linked, each shaping the other and where women are crucial in maintaining the boundaries between castes.” (ibid: 34). Uptil very recently, writings on caste fell largely in the domain of sociology whereas writings on gender came from women’s studies scholars and no obvious or conspicuous congruence was thought to be there between the two. Caste and gender were viewed as two discrete entities in the Hindu system of stratification.

Perspectives began to change as analyses of caste sharpened. To understand this change and primarily the interface between gender and caste, we need to understand the concept of caste, a little more in detail.

The term 'caste' which is used to refer to the Hindu system of stratification is of a foreign origin. The Portuguese are credited with the initial use of the term '*casta*' to refer to the social order of India. Scholars generally agree that the English/French term 'caste' is an extremely unhappy translation of the indigenous terms *Varṇa* / *Jāti*. Does caste refer to *Varṇa* or does it refer to *Jāti*? It is actually used for both to indicate a system of stratification. The term 'caste' assumes meaning only in the colonial period but by and large, it is used even by scholars working in the social arena of ancient India. Here, perhaps, it would be useful to mention that '*Varṇa*' refers to a status order system with *Brāhmaṇa*, *Kṣatriya*, *Vaiśya* and *Sūdra* (as mentioned earlier) being the four main *varṇas*. Later, a fifth *varṇa*, that of 'untouchables' was added to the structure. '*Jāti*' on the other hand, refers to an endogamous unit within which one must marry and members of a *Jāti* are said to practice a unique occupation to earn a living.

Now, delving more into the nature of the caste system, Declan Quigley asserts that the debate about the nature of caste has generally led to a division between two main sets of protagonists. The first believes in a materialist interpretation of caste and the second believes in an idealist interpretation. According to the materialist sense of caste, 'caste is simply a rationalisation and obfuscation of more base inequalities.' i.e. the structure of caste has a material (economic) base (Quigley 1993: 2). In other words, what the

materialists basically mean is that caste is similar to class with economic exploitation being its hallmark and the entire concept of purity-pollution is merely an eyewash.

However, what the idealist interpreters feel is “caste is a cultural construct, the product of religious ideas: castes are higher or lower in relation to religiously conceived notions of purity and impurity. ‘On this view, material considerations are largely irrelevant because caste is essentially an ideological framework for explaining universal problems of social order.’ (ibid: 3). The strongest exponent of this view is Louis Dumont whose classical work ‘Homo-Hierarchicus’ still remains an extremely influential treatise on caste. Dumont focuses on the dichotomy between purity and pollution as the underlying principle of the caste system. Returning to Quigley, he argues that it is impossible to explain caste as the product of a particular ideology.

My opinion is that even though caste is not synonymous with class; it is not completely unrelated to it. Caste has essentially and very significantly the ‘class quality’ within it. Very unfortunately, over-emphasis on the ideological aspect of the caste system namely, on its ritual quality, to the point of exclusion of material conditions and questions of power has enabled the presentation of the caste structure as a system of consensual values- a set of values accepted by both the dominant and the dominated. This is the consequence of focusing on the Brahmanical view drawn from Brahmanical texts, which are still held sacred in the name of tradition, and this masks the real face of the caste system. ‘Caste is not merely the opposition between pure and impure but at a more fundamental level it incorporates other kinds of oppositions such as domination and

subordination, exploitation and oppression, based on unequal access to material (and other) resources.' (Chakravarti 2003: 21). And, this also involves exploitation of women.

Now, coming to the very core of the issue (i.e. the gender-caste linkage), we see that caste tends to be a closed group. The caste system was seen by the ancient lawgivers in terms of the distinctiveness of each caste from the other. This distinctiveness could be maintained through reiterating separation. Thus, caste was made the focal point around which laws, customs, rituals etc. were made to revolve. Strict rules were framed about commensality.

However, it was well realised by the privileged sections in society that perpetuation of the caste system could be achieved only by structuring the process of reproduction and tying it strictly with marriage. The institution of marriage was made to reproduce both class and caste inequality and thus the entire production system through its tightly controlled system of reproduction. In a stratified society, as a legitimate mother, a woman is to be worshipped but as an unmarried mother, she is the biggest sinner alive. Thus, it was primarily through the institution of marriage that the caste society attempted to subordinate women.

The rule for marriage was endogamy i.e. marrying within the caste. Now, it would have been alright if both men and women were marrying within the caste i.e., the same rule

applied to both the genders. But, it was a difficult thing to do, because, there was a possibility of wanting to marry someone out of caste, and not being allowed to do so entailed a curb of one's sexuality. Therefore, what the lawgivers ruled was that women were to control their sexualities, their needs and emotions and follow endogamy whereas upper caste men could enter into endogamy as well as marry women of lower castes provided their first marriage was an endogamous one. This also means that the sacred texts allowed polygyny. Thus, it was essentially through control of female sexuality that women were discriminated against.

The caste system extolled purity and chastity in general and emphasized them for women in particular. In other words, the continuation of the caste structure depended on the control of female sexuality and from this arose the need to subordinate women. How exactly was this attempted to be achieved, will be examined next. But, briefly, it was through an entire paradigm of rituals, the notion of purity-pollution, ideology, coercion and economic dependence. Thus, caste for its survival necessarily needed patriarchy.

V

The word *Sam̐skāra* (like caste) defies every attempt at its correct translation into English. 'The word *Sam̐skāra* hardly ever occurs in the ancient Vedic literature, but the root 'kr' with 'sam' and the past passive participle *sam̐skṛta* occur often enough. In the *Rg Veda* the word *sam̐skṛta* is applied to 'gharma' (vessel) (Kane, 1974 Vol. II: 190). 'It means religious purificatory rites and ceremonies for sanctifying the body, mind and

intellect of an individual, so that he may become a full-fledged member of the community... The *samskāras* with their paraphernalia were regarded as producing a peculiar indefinable kind of merit for the man who underwent them.’ (Pandey 1993: 16,17). ‘Samskaras are purificatory rites in which the participants, the sacrificial utensils, and the substances to be offered are consecrated and brought into the sacred realm.’ (Frederick M. Smith cited in Leslie 1992: 24). The term ‘ritual’ in Brahmanical literature includes both sacrifices and *samskāras* (commonly used to denote rites of passages such as birth, onset of puberty, marriage etc.).

The classical dharmaśātra based on Vedic precedents equated women with the lowest class of men. Women maintained their caste identities for purposes of marriage and for maintaining purity of lineage. However, the ritual implications of caste status were denied to them. They were not allowed to participate in most of the significant *samskāras* by virtue of which upper caste men were called twice born (*dvija*).

‘The transference of Indra’s Brahmin-murder (*brahmahatyā*) was the vital moment for women in India. It was the mythic catalyst that led her into Varuṇa’s noose. Eternally cursed, she participated in religious affairs bound.’ (ibid: 43). The position of the women was degraded and her role was one of an incidental and silent partner in her husband’s ritual. Thus, rituals were employed to achieve exclusion of women and deny them an independent status.

VI

The importance of the material structure underlying gender discrimination has been studied for some decades now. The *Dharmasūtras* are explicitly in favour of an extremely patrilineal form of inheritance along with recognition to women's separate property or *strīdhana*. This *strīdhana* was carefully defined in terms of movable goods such as ornaments, furniture, utensils etc. In other words the possibility of converting *strīdhana* into productive resources was limited.

Not only through access to means of production but also through that to means of distribution are equally determinant in understanding the implications of rights of women to property. In prescriptive Brahmanical tradition, women are clearly dependent on men in this sphere as well. The question of post-marital residence has been regarded as an important factor in determining the extent to which women exercise effective property rights, especially over immovable resources such as land (Roy 1999: 14). In the context of the post-Vedic period (c.600B.C.– c.300B.C.), the emergence of a patrilineal succession system and of private property required a sharp distinction to be made between motherhood and female sexuality. The latter was to be challenged into legitimate motherhood within the institution of marriage to ensure patrilineal succession.

Chapter 2

GENDERED CASTE

I

After having discussed caste as a gendered category (in chapter 1), we will go on to the specific sphere of the *Dharmasūtras* (*Gautama*, *Baudhāyana*, *Āpastamba* and *Vasiṣṭha*) and the *Mānusmṛti* and find out what evidence these texts give us on the gendered nature of caste.

As has already been mentioned in chapter-1, the *Dharmasūtras* and the *Mānusmṛti* were composed by an upper caste male elite, in other words by *Brāhmaṇa* male lawmakers. One of their primary concerns was clearly the suppression and subordination of *Śūdras* and women (i.e. a section of men and all women). Thus, the texts are deeply steeped in the notion of Brahmanical Patriarchy².

A separate chapter/section has been written on women in each of these texts except *Āpastamba* (*Gautama* chapter-XVIII; *Baudhāyana* II, 2, 4; *Vasiṣṭha* chapter-V; *Mānusmṛti* section of chapter-V) which on first thought gives the reader an idea that the rest of the text is concerning the man (i.e. rules, penances, etc for him) and women are treated as an item of property or commodity which is to be patronized by men.

² Brahmanical Patriarchy has been discussed in chapter 1.

Here, it would be relevant to ask what is meant by caste being gendered. It means that caste discrimination is linked with gender discrimination and to that extent, gender constitutes caste. Caste divides women. “Caste is extraordinarily successful in dividing women, in erasing a possibility of sisterhood.” (Maithreyi Krishnaraj cited in Chakravarti 2003: xii). Also, the same caste affiliation has a different meaning for a man and a different meaning for a woman which means, by merely belonging to a caste, a woman does not get the same privileges like the man for e.g. the *Brāhmaṇī* does not get the same privilege as the *Brāhmaṇa*.

From a reading of these texts, we find that by the post-Vedic period (c.600 B.C.-c.300 B.C.), the caste system was intended by the *Brāhmaṇa* elite supported by political authority to become a rigid, hereditary and omnipresent system. Baudhāyana (I,8,16-1); Āpastamba (I,1,1-3,4,5; I,4,13-2) and Vasiṣṭha (II-1,2,3) explicitly proclaim that there are four castes- *Brāhmaṇas*, *Kṣatriyas*, *Vaiśyas* and *Śūdras* and amongst these, each preceding caste is superior by birth to the one following. The three castes *Brāhmaṇas*, *Kṣatriyas* and *Vaiśyas* are called twice-born owing to their second birth from the investiture with the sacred girdle. However, Gautama and Manusmṛti do not explicitly mention the existence of the four castes (it is implicit in the texts).³

³ Even though, *Manusmṛti* does not explicitly declare that there are four castes, it discusses their origin from the divine one as mentioned above.

Baudhāyana (I,10,18-6)⁴, Vasiṣṭha (IV-2,3) and *Manusmṛti* (I-31) explicitly declare that the divine one in order to protect and sustain this universe caused the four castes: *Brāhmaṇa*, *Kṣatriya*, *Vaiśya* and *Śūdras* to proceed from his mouth, arms, thighs and feet. This kind of an explicit declaration of the origin of the four castes (a manifestation of Ṛg Vedic influence) is missing in the *Gautama* and *Āpastamba Dharmasūtras*.

Each of the five texts is unanimous as regards the lawful occupations to be followed by the four castes. The *Brāhmaṇas* were assigned teaching and studying the *Veda*, sacrificing for themselves and others and giving and accepting alms. The *Kṣatriyas* were assigned the task of protecting the people, bestowing gifts, offering sacrifices and studying the *Veda*.

The *Vaiśyas* were allocated the work of tending cattle, giving gifts, offering sacrifices, studying the *Veda*, trade, money lending and agriculture. Only one occupation was prescribed for the *Śūdras*, which was to serve the three upper castes. {Gautama (X-1,2,5,6,7,8,41,42); Baudhāyana (I,10,18-2,3,4,5) Āpastamba (I,1,1-6,7; II,5,10-4,6,7); Vasiṣṭha (II-13 to 20) and *Manusmṛti* (I-87,88,89,90,91)}. Those who are unable to live by their own lawful occupations may adopt that of the next inferior caste; but never that of a higher caste. *Brāhmaṇas* who neither study nor teach the *Veda* nor keep sacred fires become equal to *Śūdras* (Vas. II-22, 23; III-1; M.S. II-168). Lavish praise is showered on

⁴However, it is to be noted that Baudhāyana only mentions about the origin of the *Śūdras* from the feet of Brahman and omits the explanation of the creation of the other three castes.

the *Brāhmaṇa*, calling him the most excellent of created beings. His very birth is said to symbolize an eternal incarnation of the sacred law. The three lower castes are to live according to the teaching of the *Brāhmaṇas* (Āp. II,2,4-24; Vas I-39; XXX-2, 3, 5, 6; M.S. I-92, 93, 94, 95, 96, 98, 99, 100, 101, 102, 103, 104, 105; X-3). At the same time, the system was unfairly gendered. Let us see how.

II

As has been mentioned earlier, the ancient lawgivers made elaborate rules to emphasize caste identity. Caste was made to touch all aspects of life and religion. But, it was clear to the privileged sections in society that the key to their perpetual advantage lies in reproduction of the system through generations. Endogamy was the obvious answer agreed upon by each of the texts (Gaut. IV-1; Baudh. I,8,16-6; I,9,17-2; II,9,16-3; Āp. II,6,13-1,4; Vas. I-38; VIII-1; XVII-68; M.S. III-4, 12; V-89; VII-77; X- 68). Thus, the texts recommend householders to take a wife of equal caste, who has not belonged to another man (as if she is an item of property) and is younger than himself (so that the husband can dominate her easily).

The wife is recommended to be married when she is a child which makes it all the more easier for the husband to dominate her (Gaut. XVIII - 21, 22, 23; Baudh. IV,1-11, 12, 13, 14, 17; Vas. XVII- 67, 68, 69, 70, 71; M.S. IX-88). A father should not keep his daughter in his house after she has reached the age of puberty. If a suitable husband is not found,

she should be married to even one who is not suitable. At each appearance of the menses of an unmarried daughter, the father incurs the guilt of a mortal sin (i.e. slaying of an embryo). But if through a father's negligence, a maiden is married after the suitable age has passed, she destroys her father: just as the fee which is paid too late to the teacher destroys the pupil. The *Āpastamba Dharmasūtra* is the only text which is silent on the issue of pre-pubertal marriage of the girl.

Again, *Manusmṛti* is the only text which informs about the desired age gap between the husband and the wife. It says that a man of thirty years shall marry a girl of twelve or a man of twenty years shall marry a girl eight years of age (M.S. IX-94). Therefore, while the other texts (except *Āpastamba*) only inform about the ideal age of the bride and do not talk about the age gap between the bride and the groom and it is left to imagination whether the husband is a child or an adult; it is the *Manusmṛti* which is clear on the issue. It is also added that virtuous sons who are born of wives of equal caste wedded according to the approved rites are considered as legitimate sons of the body (*aurasa*) and they sanctify their father's family (Gaut. IV-29; Baudh. II,2,3-14; *Āp.* II,6,13-1,2,4,5; M.S. X-5).

However, endogamy was naturally difficult and besides upper caste men did not want to set any limitation to themselves, they thought of making women symbols of honour and purity, not only of their own but their husband's family as well (M.S. IX-5). This could

only be done by ensuring the subordination of women and by making *Anuloma* (hypergamy i.e. marriage between a male of a higher caste than the female) permissible (Gaut. XV 18; Baudh. I.8.16-2, 3, 4, 5; Āp. I.6.19-33; II.7.17-21; Vas. I-25; XIII-51,52,53; XXVII-9; M.S. II-238, 240; IX-23; X-41) but *Pratiloma* (hypogamy i.e. marriage between a female of a higher caste than the male) impermissible according to the sacred law⁵ (Gaut. IV -25; Baudh. II,2,3-49; Āp. I, 7, 21-13; Vas. XVIII-7; M.S. X-66,67).

Women were made the entry points into the system. Under Brahmanical Patriarchy women of the upper castes are considered gateways-literally points of entry into the caste system (Chakravarti 2003: 35). Thus, where women had to control their sexualities and could not get married to men of lower castes, upper caste men could marry women of the same/lower castes. Thus, women were required to enter into endogamous marriages or marry men of higher castes, not out of their own desire but only because upper caste men could marry women of lower castes.



⁵ “Among the rules that social groups have created for the exchange of women, ritualised as marriage, have been exogamy (the rule prohibiting marriage within a specified group) and endogamy (as mentioned earlier, the rule enjoining marriage within a specified group). For a suitable marriage the bride and groom must belong to the same caste or sub caste and be outside the exogamous category of *gotra* (where members are believed to have descended from the same ancestor)”. (Chakravarti 2003;30).

Baudhāyana (II,1,1-37; also Vas VIII-1) mentions that if a man unintentionally marries a woman who belongs to his own *gotra*, he shall support her, treating her like his mother and if such a woman bears his child, he shall perform a *Kṛcchra* penance.

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III

The entire system worked with the nexus of the *Brāhmaṇas* and political authority headed by the person of the king. Gautama (XI-14, 27) and *Manusmṛti* (IX-322) overtly proclaim, “*Kṣatriyas* prosper not without *Brāhmaṇas*, *Brāhmaṇas* prosper not without *Kṣatriyas*; *Brāhmaṇas* and *Kṣatriyas*, being closely united, prosper in this world and the next”. However, the sentiment is implicit in all the texts as is discussed below.

Political authority and kingship supported the Brahmanical religion; and the former in turn was legitimated and upheld by the Brahmanical texts. Needless to mention that the highest office of kingship was entrusted to men alone. The king was proclaimed to be divine and was above the realm of the ordinary. All power was invested in his person. It is emphasized in the texts that the king is to be partial to *Brāhmaṇas*. He is to patronize the Brahmanical norm and is to uphold the Brahmanical pattern.

A king, who rules in accordance with the sacred law, may take the sixth part of the wealth of his subjects (except from *Brāhmaṇas*) (Gaut. VIII-1,2,12,13; Ap. II,10,25-11, II.10.26-1; Vas. I-42. 43. 45. 46; M.S. VII-4. 5. 9. 12. 32. 37; IX-313-319). The *Sūtras* declare that the Vedas proclaim that a realm where a *Brāhmaṇa* is appointed as domestic priest prospers (Gaut. XI-12; Baudh.⁶ I,10,18-7,8; Vas. XIX-4; M.S. VII-78). He is concerned with maintaining orderly sexual relations within marriage. It is his divine duty to ensure that the four castes observe the sacred law and he is to prevent intermixture of

⁶ Baudhāyana, however, does not mention that the domestic priest has to be a *Brāhmaṇa*.

castes. He is to inflict punishment on those who disturb the Brahmanical paradigm. In fact, it is the duty of all upper caste men to prevent the same whether they have to resort to violence or need to keep a strict vigil on their women to attain that objective (Gaut. XI-9,10,11,13; Vas. III-24; XIX-8; M.S. VII-13,17, 24,28,35; VIII-172,418;).

Even judges in lawsuits who decided on all kinds of civil and criminal cases are advised to consist of upper caste men and it is likely that judgements were biased and went in favour of upper caste men. Disputed points of law were to be decided by an assembly consisting of ten members each of whom was an upper caste man. Four students of the four *Vedas*, one who knows the *Mīmāṃsā*, one who knows the *Āṅgas*, a teacher of the sacred law, and three eminent men, who are in three different orders, compose a legal assembly consisting of at least ten members (Gaut. XXVIII-49; Baudh. I,1,1-7,8; Āp. II.11.29-5; Vas. III-7,20; M.S. XII-111).

IV

The *Manusmṛti* talks (in favour) of *Anuloma* marriages⁷ (Vas. I-25; XIII- 51,52,53; XXVII-9; M.S. II-238, 240; IX-23; X-41;). *Manusmṛti* (III-13, also Baudh. I,8,16-2, 3, 4, 5) explicitly declare, "... a *Śūdra* woman alone can be the wife of a *Śūdra*, she and one of his own caste the wives of a *Vaiśya*, those two and one of his own caste the wives of a

⁷ Though, the *Manusmṛti* also in certain places tends to discourage the practice of upper caste men marrying lower caste women (M.S.III-6,7,15,16,17,63; X-13,47,48; Baudh II,1,2-7; Āp. I,9,26-7; I,9,27-10) isogamy, being the most favoured option, but, by and large, it seems to be having no problem with hypergamy, isogamy being difficult to achieve. *Manusmṛti* (X-6) also states that children born of a hypergamous marriage are to be blamed on account of their mothers.

Kṣatriya , those three and one of his own caste the wives of a *Brāhmaṇa*”. Sons begotten on wives of equal or of the next lower caste are called *Savarnas* i.e. of equal caste (Baudh I,8,16-6).

However, the *Gautama and Āpastamba Dharmasūtra* do not directly refer to *Anuloma* marriages. However, in *Gautama* (XV 18), it is declared that the man whose only/first wife is a *Śūdra* (also *Āp.* I,6,19-33; II,7,17-21; *Vas.* XIV-11) cannot be an invitee to a *śrāddha* (food given by such a man should not be eaten); it means if he has other wife/wives along with the *Śūdra* wife, the lawgivers see no problem which in turn means they have no problems with *Anuloma* marriages.

It seems to me, that the texts had this imaginative stand on the negation of the *Śūdra* wife becoming the first or only wife as if readily allowed, it would lead to instability in the Brahmanical caste structure and so that, *Brāhmaṇa* women do not remain unmarried or worse are required to opt for *Pratiloma*.

Gautama does not clearly bring out its stand on *Anuloma* marriages as in XX-1 it is declared that, a man is to be cast off if he cohabits with a female of a lower caste. But, again the penance prescribed for it seems to be simple even though it is not clearly explained and in *Gautama* (XXIII 32), a man is to perform a *Kṛcchra* penance for one year for intercourse with a female of lower caste. This too is followed by a *sūtra*, which says that if the above sin was committed unintentionally, the penance needs to be

performed for twelve days and nights only. This seems to be an easy way out as well. Again in Gautama (XXV-7), for connection with a *Śūdra* woman, a very simple penance is prescribed. In fact, none of the texts readily allow *Anuloma* marriages but they do not condemn them as well.

On the other hand, *Pratiloma* marriages are condemned in the harshest words. A child born from an *Anuloma* union derives the better qualities of his father but that born from a *Pratiloma* union does not derive the same from his mother (Gaut. IV -25; Baudh. II,2,3-49; Āp. I, 7, 21-13; Vas. XVIII-7; M.S. X- 66,67). Thus, the woman as mother cannot transfer the status and qualities of her caste to her son (That is because high caste women are scarcely ever considered as carriers of their status). In fact, the whole purpose of marriage is that the man may start his own *vamśa*.

What is being gifted as part of the *kanyādāna* is not just the daughter but her woman's 'quality' and 'thing', her femaleness (*matr shakti*), her procreative power, which is thereafter shared by her sons and daughters. *Matr shakti* is given to a man so that a *vamśa* may be started. Men are born into a particular line, and *matr shakti*, in the person of a woman from another line, has to be given to it in order to perpetuate it. As objects of exchange women therefore have to leave the *gotra* and the *vamśa* they are born into and enter into a new *gotra* and *vamśa*; a man's position is fixed into the line, but women come into and go out of lines. In sum, the whole ideology and symbolism of Hindu marriage and birth is designed to express, interpret and define the coming and going of

women between *vamśas* or lines as well as the meaning of being male and female. Women, then, are mere receptacles and transmitters, never the carriers of a line (Chakravarti 2003:31, 32).

Children born from a *Pratiloma* union are declared to stand outside the pale of sacred law (Gautama IV -25; M.S. X-31, 46,60,61). It is in this context that the theory of mixing of castes known as *Varnasamkara* is inserted in the texts. The ideal of endogamy can be breached in two ways- *Anuloma* and *Pratiloma*. Though the other texts discuss hypergamy and hypogamy, it is Manu alone who mentions the terms- *Anuloma* and *Pratiloma*. “The terms used in Manu for the two different types of violations of endogamy are significant: *Anuloma*, going with the direction of the hair is acceptable....this is the natural order. In contrast *pratiloma* means going against the direction of the hair- it is unnatural; it is not only reprehensible but it is in the inverse order. The true conclusion of the past is a consequence of *pratiloma* marriages” (Chakravarti 2003: 55).

A voluminous list of mixed castes appears in the texts especially in the *Manusmṛiti* and though both *anulomic* and *pratilomic* unions are condemned, it is the *pratilomic* unions which bear the brunt of condemnation more severely (for example Vas. XVIII-7). *Pratilomic* *Varnasamkara* has been seen by scholars ‘as a convenient intellectual device for generating various disapproved categories, assigning degraded positions and ideologically explaining, and rationalising, why so many groups in the caste hierarchy are

placed in low or downtrodden positions' (Chakravarti 2003: 55). Thus, the theory of *Varnasamkara* aimed to create a pyramidal structure- 'a narrow top comprising thinkers and fighters and a broad base comprising producers and labourers'(Chakravarti 2003: 55). The structure was made flexible, enabling the base to grow. 'Varṇasamkara was the means by which the caste system could proliferate and the control over women's sexuality could be differentially organised according to the location of the specific caste in the caste hierarchy' (Chakravarti 2003: 56). This comes out clearly in the texts which depict the sexuality of the upper caste women as an extremely valuable resource of the society. Particularly if the man is a *Śūdra* in the above case, then the children will be treated like outcastes (Gaut. IV-27). In addition if the woman is of *Brāhmaṇa* caste, then the children born (*cāṇḍālas*) are the foulest, lowest of men and the most condemnable (Gaut. IV-28; Baudh. II,2,4-14; Āp. I,3,9-15, 17; Vas. XI-9; XX-17; M.S. X-12, 16, 26, 51, 52, 53, 54, 55, 56;).

It is sinful to touch a *Cāṇḍāla* so it is also sinful to speak to him or to look at him. The penance for touching him is to bathe, for speaking to him to speak to a *Brāhmaṇa*; and for looking at him to look at the lights of heaven (Baudh I,5,9-5,7; I,5,11-36; Āp. II,2,3-8, 9; II,4,9-6;). Sons born from *Pratiloma* union would not inherit their father's property- they would only receive a provision for maintenance even if the father has no other male issue (Gautama XXVIII-45, 39). A woman is declared to become an outcaste if she has any connection with a man of lower caste (Gaut. XI-9; Āp. I, 7, 21-13; Vas. XXI-10, 12, 13). Also, a woman who commits adultery with a man of lower caste would be ordered

by the king to be devoured by dogs in a public place (Baudh. II,2,3-49) prescribes a lunar penance⁸ for such a woman) whereas either the adulterer would be killed or his organ shall be cut off and his property shall be confiscated (Gaut. XXIII-14,15,16; Baudh. II,2,3-52; Āp. II,10,27-9,10; Vas. XXI-1,2,3,4,5).

Manusmṛti (VIII- 364, 366; also, Vas. XXI-16, 17) declares that a man who enjoys a willing maiden is not to suffer corporal punishment if his caste were the same as hers. This implies that if the man belongs to a lower caste than the woman, he will have to suffer punishment for any kind of sexual intimacy with her, even if she is willing. So, her willingness or compliance is of no significance.

It is also mentioned that a woman who makes advances to a man of a higher caste is not to be punished but if the man is of a lower caste, then she is to be confined forcibly in her house till she is cured of her attachment (M.S. VIII-365).

Also, let us consider the following two *sūtras*. i) M.S. (VIII-377) announces, ' But if any man through insolence forcibly contaminates a maiden, two of his fingers shall be instantly cut off, and he shall pay a fine of six hundred *panas*.' And, ii) M.S. (VIII-378) proclaims, "A man of equal caste who defiles a willing maiden shall not suffer the amputation of his fingers, but shall pay a fine of two hundred *panas* in order to deter him from a repetition of the offence". The first *sūtra* is liable to be misused in case of *Pratilomic* unions (where even if the girl is willing, her family might pressurise her to change her stand) whereas; the second *sūtra* is likely to be employed in case of *Anuloma*

⁸ The person undertaking lunar penance needs to fast on the fourteenth day of the bright half of the month. Details of the penance are explained in Baudhāyana (III,8-19,20,21,22,23).

unions. On the whole, we find that the *Manusmṛiti* takes a more rigid stand as compared to the *Dharmasūtras* as regards *Pratiloma* marriages.

These were impediments the lawgivers thought of to discourage *Pratiloma*. The very need to introduce these kinds of impediments means that probably such marriages were taking place.

V

Marriage, as an institution, was also made rather sacrosanct by making strict rules like the younger brother/sister prohibited marrying before the elder etc (Baudh. II,1,2-39; Āp. II,6,12-22; Vas. I-18; XX-7,8,9,10; M.S. III-171,172;).

Not only marriage, but the entire act of love-making and sex was structured and made unspontaneous (Āp. I,2,30-19; II,1,1-9; M.S. IV-64,128; IX-42,166;). The house holder is advised not to have intercourse in the daytime. During intercourse he is to be dressed in a particular dress kept for this purpose. He is to enjoy conjugal intercourse only during the proper season (Baudh II,2,3-1; Āp. II,1,1-17; II,2,5-17; Vas VIII-17; XII-21). The objective of intercourse is explicitly stated to be the birth of a male child (Āp. II,1,1-16,17,19,20). "Marriage is the focal point of the obligations through which the householder reproduces the social order-the family, the lineage, the property system and the Brahmanical status order-the householder is thus obliged to marry and have sons" (Chakravarti 2003: 51). A structured marriage system is therefore a prime prerequisite for the Brahmanical society. Not surprisingly then, the marital institution receives considerable attention in the texts.

VI

Thus caste identity had a different meaning for the male and the female. So, whereas the *Brāhmaṇa* man had an option of women of four castes, the *Brāhmaṇa* woman had only one option – the *Brāhmaṇa* man to marry.

The caste system controlled the valuable resource of female sexuality by making women the entry points into the caste system. Here, the sexuality of the upper caste woman was the object of utmost concern and panic. “The lower caste male whose sexuality is a threat to upper caste purity of blood has to be institutionally prevented from having sexual access to women of the higher castes, so such women have to be carefully guarded” (Chakravarti 2003: 35).

Manusmṛti (IX-2) declares that if women attach themselves to sensual enjoyments they are to be kept under supervision. Needless to add here, that sexuality/sexual reproduction was given legitimacy only when tied with the institution of marriage. Female sexuality had to be organised to secure the goals of social reproduction. As a legitimate mother, the woman achieves a high respectable position as is testified by (Gaut. II-50, 51) which says that the teacher is chief among all Gurus but adds that some say that the mother holds that place.

The *Manusmṛti* (II145; also Vas. XIII-48) lays it down more explicitly by stating that the father is hundred times more venerable than the teacher but the mother in turn, is

thousand times more venerable than the father. Though one's father's or mother's or one's own elder sister are venerable but the mother is more venerable than them (M.S. II 133). The mother along with the teacher, the father and an elder brother are not to be treated with disrespect though one is offended by them (*Āp.* I,4,14-6; M.S.II225, IV162). Infact, he who defames them is to pay a fine of a hundred *panas* (M.S. VIII 275). The mother, father, the wife and son are not to be cast off unless guilty of a sin causing loss of caste (M.S. VIII 389). There is said to be no difference between wives (*striyah*) who are mothers and the goddess of fortune (*śriyah*) as both bring prosperity to the household (M.S. IX-26).

The supreme duty of the woman is to reproduce children, nurture them and observe faithfulness and loyalty (M.S. IX-27,28). Losing her virginity before marriage is declared to be a blotch on a woman's character (M.S. VIII-205). A fine of ninety-six *paṇas* is to be imposed on him who attempting to hide such a flaw of a woman tries to give her in marriage (M.S. VIII-224). And, though she may have been married, the husband may later unhesitatingly abandon her and annul the marriage (M.S. IX-72, 73,77,78,80). Children of only those women who are married as virgins and are of the same caste as their husbands will belong to the same caste as their fathers (M.S. X-5). The distinct emphasis on the necessity of virginity of the woman is more pronounced in the *Manusmṛti* than in the other texts. Abortion is condemned and women who resort to it are considered as social outcastes (*Āp.* I,7,21-8; Vas. XXVIII-7; M.S. V-90).

The texts in fact, lay a lot of stress on chastity in general. Ideally, a child before initiation, a student, a *snataka*, a householder, a hermit and an ascetic are to remain chaste (Gaut. II-1.7:III-12; Baudh I,2,3-23; II,10,18-2; II.10,18-16; III,1-24; III,4-1;III,7-7;III.8-17;III,10-13; Āp. I,1,2-26; I,1,3-11,12,16; II,2,3-13; II,9,21-8,19; Vas. II-9;IX-5; X-17. 28 : M.S. II-70, 93, 94, 95, 96, 97, 107, 175, 178; IV-133, 134; VI-1, 26, 49; VIII-354, 355, 356, 361). A student who approaches a woman is called an *Avakīrnin* (Baudh. II,1,1-30). The student is not to even gaze at or touch women, if there was a danger of a breach of chastity (Gaut. II-16; M.S. II-179). He is to sleep alone and if he happens to waste his manhood in his sleep, he needs to perform a small penance (Baudh. II,1,1-29; Vas. XXIII-4; M.S. II-180,181). There is a proper code of conduct to be followed even while being with one's close female relatives (M.S.II-215). The woman is said to be an object of pleasure from which a student is to abstain himself at all costs (Baudh. II,3,6-22; Āp. I,2,7-8,9,10; M.S. II-177).

The implication is that, if he fails to abstain, no benefit of his study is going to accrue to him (M.S. II-213,214). A female who is the wife of another is to be addressed by a man, by the terms '*bhavati*' (lady) or 'beloved sister' (M.S. II-129) so as to avert even a possibility of sexual attraction between the two of them. And, even though similar respect needs to be paid to the teacher's wife as the teacher himself, the student is not to attend them while bathing or at their toilet or wash or even embrace their feet (Gaut. II-31,32; Baudh. I,2,3-33,34,37; Āp. I,2,7-27; M.S. II-211,212,216,217). Both the maternal and

paternal aunts and the mother-in-law are to be given similar respect as the teacher's wife (M.S. II-131).

Even a *śnātaka* who was married was not to recite the *Vedas* on that bed on which he slept with his wife (Gautama IX -26). He was not to look at a naked woman wedded to another man (Gautama IX-48; Āp. I,2,7-3; M.S. IV- 53) and must at no cost cohabit with another's wife (Āp. I,7,21-9; M.S. IX-41). He is neither to bathe nor sleep naked (Baudh II,3,6-24; Āp. II,5,15-9; M.S. IV- 45,75). He is not to get attached to any sensual pleasures and is to reflect on their worthlessness in his heart (Āp. I,1,3-18; M.S. IV- 16,35).

Defiling the bed of one's guru (a *Brāhmaṇa*) was treated as the worst possible sin (a *mahāpātaka* M.S. IX-235; Vas. I-20; XX-44) and the sinner was to lie on a heated iron bed or embrace a red hot iron image of a woman (Gautama XXIII-8,9; Āp. I,10,28-15) or the mark of a female part shall be impressed on his forehead with hot iron (Baudh. I,10,18-18; M.S. IX-237) or he was to cut off his organ and walk towards the south till he fell down dead (Baudh. II,1,1-13,14,15; Āp. I,9,25-1,2; Vas. XX-13,14) . Such a sinner is to be completely isolated from all social activities (M.S. IX-238, 239). Relatively, much easier penances have been prescribed in Vasiṣṭha (XXVI-7,8) for defiling the bed of a Guru.

The teacher is advised to avoid conjugal intercourse during the rainy season and in autumn. He is not to teach sitting on that couch on which he lies at night with his wife.

After sexual intercourse with his wife he is advised not to lie with her during the whole night (Āp. II,1,1-1,2,4; II,1,2-21,22,23; II,2,5-16). Thus any kind of after play is discouraged by the texts. The texts view intercourse as a purely physical activity devoid of any emotions. The woman is viewed as a passive 'reproduction' machine and her emotional aspects are completely marginalised.

The wife of an elder brother is like the guru's wife and that of a younger brother is like a daughter-in-law to one (M.S. IX-57). The severest of punishments are to be meted out to adulterous men as sexual adultery which apart from intercourse also includes such trivial acts like offering presents to a woman, sitting with her on a bed etc. (Āp. II,10,26-20,21; M.S. VIII-356,357,358) is believed to be the root behind mixture of castes (M.S. VIII-352,353). Such was the heightened fear of female sexuality in the minds of the lawgivers.

A penance was prescribed for students who broke the vow of chastity (Gaut. XXV-1,2,3,4,5; Baudh. II,1,1-34,35; III,4-2; IV,2-10, 11; Vas. XXIII-3). However the penance was not of a difficult nature, which meant that the offence was considered minor. In fact, Baudhāyana (II,1,2-12) puts it in the category of a minor offence (*upapātaka*). Was it perhaps because of the frequency of its occurrence?

Likewise, the penance prescribed for one who co habits with a *Śūdra* female also seems to be a cinch (Baudh. IV,1-5, IV,2-13). The penance prescribed by *Āpastamba* for a student who broke the vow of chastity was to offer to *Nirriti* an ass, according to the *Pākayajña* rites (Baudh. II,2,1,1-31,32; Āp. I,9,26-8; Vas. XXIII-2). Even an ideal king is

one who is not addicted to sensual pleasures chiefly being, excess with women (M.S.VII-30, 47).

In the *Gautama Dharmasūtra*, we read 'For adultery with the wife of a *Śrotriya* (one has to remain chaste) for three years' (Gaut. XXII -30). On the other hand, the penance for killing an unchaste woman, who was merely in name a *Brāhmaṇī*, one had only to give in return a leather bag and for killing a harlot, nothing at all (Gaut. XXII-26,27).

Prostitution is also condemned in the *Manusmṛti* ((M.S. IV- 84,85).

A man who lives with another man's wife and the husband who allows that, the children born from such a union called the *kunḍa* while the husband lives and the *golaka* who is begotten after the husband's death (M.S. III- 174, 175), a man who eats the food of a person born from adulterous intercourse (outside marriage), who has intercourse with females who must not be touched etc. should not be called at a *Śrāddha* (Gaut. XV-18; M.S. III-155).

Food given by a woman of bad character should not be taken (Gaut. XVII-17; Baudh. III,6-5; Vas. XIV-2,,10; M.S. IV-209, 219, 220) nor that given by those who bear with paramours of their wives (Vas. XIV-6,11; M.S. IV-217). Lesbianism is a highly condemnable situation, to be dealt with very strictly (M.S.VIII-369, 370). Thus, we see that attainment of sexual chastity was a high priority for the lawmakers. This was appropriate with the kind of biological reproduction they desired – one that follows the institution of marriage.

VII

The texts clearly allow polygyny for e.g. the *Manusmṛti* says that a *Brāhmaṇa* can take four wives, a *Kṣatriya* - three, a *Vaiśya* –two and a *Śūdra* –one (Gaut. II-18; Baudh. 1,2,3-33; Vas. I-24; XVII-11; M.S. III-13,12; IX-85,86,87).⁹ The husband is in fact compared to an ocean and the wife with a river (M.S. IX-22) implying that just as many rivers flow into a sea many women can get married to one man. Also, comparisons with the river and sea denote unequal power relations.

Though the Gautama D.S. does not discuss polygyny that directly, it declares that a man whose only wife is a *Śūdra* female should not be invited to a *śrāddha* (funeral oblation) which indicates that had he also married someone else from preferably his own caste, he wouldn't have incurred any sin which in turn indicates a polygynous situation. Also, Gautama (II-18) reads “A student is to avoid pronouncing the names of the teacher, of the teacher's sons and wives....” which means that the *Brāhmaṇa* teacher has more than one wife (also Baudh. I,2,3-33). Though the texts mention that if a householder has a wife who is willing and able to perform her religious duties and who bears sons, he shall not marry another woman, but it seems to be a rule which can be easily flouted by men (Āp. II,5,1-12,13).

Apart from polygyny, more *Sūtras* indicate that the texts recognize men of upper caste having sexual relations with women apart from their wives as well. Gautama (XXIV-

⁹ It is in fact, explicitly stated in M.S.III-12 that men can enter into polygyny solely out of desire. Thus, polygyny is used by upper caste men to exercise their sexualities.

4) declares that a man who has connection with a woman during her courses becomes pure by bathing while the next *Sūtra* (XXIV-5) declares that this rule holds good in the case of one's own wives only. Do we infer then that with other women, the man does not become pure by bathing?

Here the *Sūtrakaras* may have devised some other means to attain purity but it means nevertheless one could have intercourse with other women (may be prostitutes) and the texts do not condemn the behaviour of such men directly.

Also, it is mentioned in (M.S.V-163) that women who cohabit with men of higher castes, forsaking their own husbands are to be held with contempt and they are to be termed *parapūrvā*- remarried woman. However, no such terms have been devised for men who cohabit with other women neither is that cohabitation treated as a marriage putting all the more strain on women who enter into such relations.

One at this stage may get a confused, distorted picture of what the texts were actually trying to prescribe. At one level, they were extolling sexual chastity and morality and at another, they were permitting polygyny and intercourse with women (apart from wives).

My opinion is that the *Sūtras* did not have a very tight logic about them. Whatever benefited the upper caste males, ways and means were devised to extract that from society.

Where polygyny is allowed, perhaps even favoured, polyandry is strictly condemned. Strict monogamy is envisaged for the woman. Perhaps we can infer this from the texts where the son of a twice-married woman is excluded from the list of invitees to a *Śrāddha* (Gaut. (XV-18) M.S.-III-181). Even though, *Manusmṛti* (IX-76) mentions that the wife is to wait for around eight years if the husband went abroad for some sacred duty; six years, if he went to acquire learning or fame and three years if he went for pleasure, it is not mentioned what is the wife meant to do if her husband does not return even after the expiry of the period. A woman should not be married twice- she should belong to only one man. Her sexuality belonged to one man and he would not share it with any one else, just like his any other item of property.

VIII

As regards the wife, the texts have virtually set out the *Pativrata* ideology. She is not to violate her duty towards her husband (Gaut. XVIII-2; M.S.V-151, 155,156; VIII-371;IX-46). She is to control her tongue, eyes and organs of action (Gaut. XVIII -3; Baudh. II,2,3-47; Vas. XXI-14; M.S. V-165,166; IX-21). She who controls her thoughts, speech and acts and is dutiful towards her husband is called a *sādhvī* (a faithful wife) and is said to gain heaven. This is the '*strīdharma*' that the texts have laid down for women.

In contrast to this, '*strīsvabhāva*' or women's innate nature is depicted as marked by ghoulish sexual thirst, natural heartlessness, disloyalty and fickle temper. (M.S. IX-14.

15, 17). Thus, human nature was attempted to be gendered, where- in women's innate nature was portrayed as evil.

The wife is clearly allotted a status inferior to her husband (M.S. V-151, 152,153; VII-213; IX-6, 35). The texts mention that married women must be saluted according to the respective ages of their husbands (Āp. I,4,14-21). This implies that the status of a married woman is subservient to that of her husband. She has neither an independent status nor an independent identity. Her life and work is wholly envisioned in domesticity (M.S. V-150; IX-11, 13).

Given that violence has been so central to the reproduction of patriarchy, it is significant that the women's movement has not been linked up sufficiently the violence inherent in the caste system to the violence in patriarchy (Chakravarti 2003: 175). Domestic violence is approved of by the texts well realizing that force is not completely effective on women but when required it can and should be used (M.S. VIII- 299,300; IX-10). However, women can keep the best guard on their own selves, which is possible by the propagation, internalization and clout of corresponding ideology (M.S. IX-12). A disloyal wife is to be censured among men and her punishment will last her not only this life but the next one as well (Āp. I,7,20-15; Vas. XIV-19; M.S. IX-30). She needs to be punished, not only when she has actually committed adultery, but also when she has been mentally unfaithful to her husband (Vas. XXI-6,7,8). However, it is also mentioned, that the sin of such a woman will fall on her husband (Vas. XIX-44; M.S. VIII-317) meaning thereby,

that it is primarily the husband's duty to keep his wife under check (Baudh. II.2.4-2; M.S. IX-7).

The woman is compared with soil and the husband the owner of the soil. The begetter of a child on the woman is called the giver of the seed. Therefore, a fear is expressed that women need to be guarded to avoid the seed of strangers. And, such a seed (son) is considered to belong to the begetter in the world of *Yama*, thus being of no value to the husband (Baudh. II,2,3-34,35; Āp. II,6,13-7; Vas. XVII-9).

The texts deprive women of any sense of agency and independence (Baudh. II,2,3-44; Vas. V-1; M.S. IX-4). "Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence" is declared by *Manusmṛti* (IX-3, also Baudh. II,2,3-45; Vas. V-2). By a girl, by a young woman or even by an aged woman nothing must be done independently even in her own house (M.S. V-147).

According to *Manusmṛti* (IX-75) if the husband went on a journey, then his wife is to restrain herself and even if she needs to financially sustain herself, she has to preserve her chastity at all costs. That means she can enjoy only when her husband is there otherwise no. therefore the widow. Her sexuality is to be totally controlled by her husband and after his death by his family.

It seems from the text, that the widow is to continue living with her in-laws¹⁰ and the option of remarriage is not allowed to her (M.S.V-151, 156,157,158,160 IX-65, 71). If she is childless and desires one/two sons and if that is deemed fit by her in-laws, then she can opt for *Niyoga*. (Baudh. II,2,4-9,10; Vas. XVII-61,63; M.S.IX-146). The decision of the husband's family seems to be more important than the widow's desire which is not mentioned at all, in certain places (Vas. XVII-56).

Niyoga is cohabitation with her brother-in-law / *Sapinda/Sagotra /Samanapravara* or a person of same caste to get a son from him. This means that the widow has no sexual freedom to choose her sexual partner. *Niyoga* is visualised simply to procure a (male) child for the continuance of the husband's family and for preservation of property within the husband's family itself the inheritance matter of sexual desire of the widow. (Baudh. II,2,4-9,10; Vas. XVII-61,63; M.S. V-161,IX-58,60,61,62,63,70).

Such a son, who is known as a *Ksetraga* is explicitly stated to belong either to the husband's family or to that of the begetter's or to both (not to his mother) (Baudh. II.2.3-17. 18; Vas. XVII-64; M.S. IX-32). Sixteen years after puberty is the period for appointing a widow (Vas. XVII-59). While the husband is alive, the caste controls the woman through the husband (as it is primarily the husband's duty to keep his wife under control); and when he is dead, it controls her through the family.

¹⁰ However, there is a mention of widows who return to their former family in the list of persons not to be taxed by the king (Vas XIX-24). These widows were clearly not allowed widow remarriage and were prescribed to lead an extremely austere life (Vas XVII-55).

Also, Gautama (XVIII -12) reads, “And the child begotten at a living husband’s request on his wife belongs to the husband.” This means that if the husband is not able to conceive, the option of *niyoga* is open to the couple – obviously even the question of the woman’s remarriage does not arise here (M.S. IX-59). But, if the woman is not able to conceive, the husband could conveniently remarry (polygyny being allowed by the text). Here, it is interesting to note that it is mentioned that if a sick wife (one who cannot conceive a son) is kind and virtuous, she cannot be superseded without her consent (M.S. IX-82) but such a wife by the very definition of her nature will never say no to her husband’s remarriage.

However, the same texts, in certain places, also talk against the practice of *niyoga* as the sexuality of the widow belonged to her husband and now that he is not there, it has no value and is not to be exercised¹¹(Āp. II,10,27-2,5,6,7; M.S. IX-64,65,66,67,68). It is mentioned in this context, that in former times, a bride was given to the family of her husband, and not to the husband alone but that was at present forbidden on account of sexual desires of men (Āp. II,10,27-3,4). This statement made by Āpastamba demonstrates that the Brahmanical tradition was dynamic and the authors themselves were aware of changes.

A widow is only allowed remarriage if immediately after her marriage, her husband died and her marriage was not consummated (Baudh. IV, 1-16; Vas. XVII-72, 73, 74). This entails, that a woman is obliged to offer not just her sexuality to her husband but

¹¹this may be the case where questions of inheritance and continuance of the husband’s family may not be a problem

necessarily her virginity to him. Also, according to Gautama (XVIII- 16), if the husband renounces domestic life/plans to enter the order of a hermit or ascetic, the wife must refrain from intercourse with other men. But according to Gautama (XXII- 35), in the case of a wife who violates her duty to her husband and who has to remain chaste for a year as a penance, the husband could satisfy his sexual desire with another wife/wives (again due to polygyny). Thus we see that the texts place the wife's sexuality subordinate to that of the husband. The husband is to be worshipped as God. Even if he seeks pleasure elsewhere, the wife is to stick to him. This clearly spells of unequal sexual commitments (M.S. V-154).

IX

The caste system also discriminates between the genders in the following manner. The higher the caste of a man, the more could he exercise his sexuality whereas the higher the caste of a woman, the more her sexuality needed to be curbed. In fact the 'high-ness' of a caste is very often determined by the depth and extent of control the men of that caste exercise over their women. The higher the caste of a man, the more was his right to ownership over the sexuality of his wife. Thus, whereas a non-*Brāhmaṇa* wife is to wait for six years if her husband disappeared (Gaut. XVIII – 15), a *Brāhmaṇī* has to wait for double a period (Gaut. XVIII – 17).

The *Vasiṣṭha Dharmasūtra* differs from Gautama regarding the time period prescribed to wait. A wife of the *Brāhmaṇa* caste who has issue shall wait five years and one who has

no issue shall wait for four years. A wife of the *Kṣatriya* caste who has issue shall wait for five years and who has no issue shall wait for three years. For a wife of the *Vaiśya* caste with issue, the time prescribed to wait is four years and one without issue is two years. And finally, a wife of the *Śūdra* caste with issue shall wait for three years while one without issue shall wait for a year (Vas. XVII-78). Thus, as we move from the period of the *Gautama Dharmasutra* to that of Vasiṣṭha, the caste system seems to have become more rigid and all-encompassing, at least theoretically.

A man who is not a *Brāhmaṇa* is to suffer death for adultery (*samgrahaṇa*), but not a *Brāhmaṇa* (Baudh. II,2,4-1; M.S.VIII-359). A *Brāhmaṇa* who has once committed adultery with a married woman of equal class is to perform one-fourth of the penance prescribed for an outcast (Āp. II,10,27-11). An initiated *Brāhmaṇa* is to beg for food, beginning his request with the word 'lady' (*bhavati*); a *Kṣatriya* , placing the word in the middle, but a *Vaiśya*, placing it at the end of the formula (Baudh. I,2,3-17; Āp I,1,3-28,29,30; Vas. XII-68,69,70; M.S. II-49). This seems to symbolise an easier access to women for the *Brāhmaṇa* male as compared to males of other castes. Inheritance laws were used to suppress women and their sexualities, which will be explained in chapter 4.

X

Caste was also used to shape the lives of all women –both upper caste and lower caste. While basing caste on patriarchy, the texts carefully divided women based on caste. Thus, the lifestyle of an upper caste woman was different from that of a lower caste woman because of caste. Let us see how.

To begin with, as has been already mentioned, the *Śūdra* female could not be the only wife of an upper caste man (Gaut. XV-18; Vas. XIV-11; M.S.III-64). She has been singled out on several occasions in the texts, each time to denote her polluting nature for e.g. Gautama XV-22 declares “ If he enters the bed of a *Śūdra* female immediately after partaking of a funeral repast, his ancestors will lie for a month in her ordure” (also M.S. III-19). The son whom a *Brāhmaṇa* begets through lust on a *Śūdra* female is, though alive (*pārāyan*), a corpse (*śava*), and hence called a *Pāraśava* (a living corpse) (Vas. XVIII-10; M.S. IX-178).

If a student and a *Śūdra* woman merely look at each other, the recitation of the Veda must be interrupted (Āp. I,3,9-11). The manes and the gods would not accept the offerings of that man who performs the rites chiefly with a *Śūdra* wife’s assistance and such a man would not go to heaven (M.S. III-18). “A *Śūdra* wife who belongs to the black race is espoused for pleasure, not in order to fulfil the law”, is declared by (Vas. XVIII-18). Thus, the *Śūdra* wife is discriminated against, ritually as well.

Symbolically as well, wives of different castes are discriminated. The ceremony of joining hands is prescribed for marriages with women of equal castes. Whereas, on marrying a man of a higher caste, a *Kṣatriya* bride must take hold of an arrow, a *Vaiśya* bride that of a goad, and a *Śūdra* bride that of the hem of the bridegroom’s garment (M.S.III-43, 44).

Manusmṛiti (IX-85) unambiguously states, 'if twice-born men wed women of their own and of other lower castes, the seniority, honour, and habitation of those wives must be settled according to the order of the castes.' It is the wife of the same caste alone, who is to personally attend her husband and assist him in his daily sacred rites. If a twice born man marries a *Śūdra* female, then the marriage is to take place without the recitation of sacred Vedic mantras and such a marriage results in degradation of the husband's family (Vas. I-25, 26, 27). Thus, where other women obtain the 'privilege' of sacred mantras at least during the marriage-rite, the *Śūdra* female is not deemed suitable for even this.

Also, the son by a *Śūdra* wife is not to inherit his *Brāhmaṇa* father's property and is to merely receive a provision for maintenance even if there is no other male issue (Gaut. XXVIII-39; M.S.IX-154; Vas. XVII-38). Similarly, if the son of a *Brāhmaṇa* by a *Kṣatriya* wife is eldest, then he would not get the additional share of an elder brother. Instead, he has to share equally with his younger brother born of a *Brāhmaṇī*.

In the same manner, the inheritance laws discriminate between the castes of the mothers while determining the shares of half-brothers (with common father and mothers of different castes) (Gaut. XXVIII-35-39; Baudh. II,2,3-10; Vas. XVII-47 to 50). Also Gautama XXVIII-14,15,16; M.S.IX-123 declare that if a man has several wives the additional share of the eldest son is one bull, in case he be born of a later married wife; but the eldest son being born of the first married wife shall have fifteen cows and one bull or let the eldest son who is born of a later married wife share the estate equally with his

younger brethren born of the first married wife. This divides women based on caste. One because normally, the first wife should be a *Brāhmaṇa*, the second a *Kṣatriya* and so on (Baudh. I,8,16-2,3,4,5; Vas. I-24; M.S III-13). And even if the *Brāhmanī* is not the first wife, her son will not lose much due to the caste of his mother. So, caste is used to divide wives of the same family.

Also, we find in the texts, arguments both for and against *Niyoga*, and though one can visualize this situation as *Niyoga* being prohibited for upper caste women and permitted for lower caste women, as has been suggested by some scholars, the texts do not explicitly state so. The practice of *niyoga* or 'levirate for widows among many castes associated with agriculture or other kinds of work is not so much a recognition of her sexual needs but an arrangement to utilise the productive and reproductive labour of widows.

The upper castes did not allow the lower castes to give up the practice of widow marriage (or *Niyoga*) and adopt the marriage practices of the upper castes. It was a means by which the upper castes manipulated and controlled the demographic structure of all the castes whether high or low. Manu's condemnation of levirate marriages as fit only for cattle and the *Śūdras* had a dual purpose: the reproductive practices of the labouring castes/ classes were simultaneously castigated and utilised- multiplying cattle and those who must labour for others was quite consistent with the Brahmanical caste order'

(Chakravarti 2003: 84). Thus, what was sought by the upper castes was the pyramid structure, much like the Varnaśamkara model. The differences in widow marriage and widow mating patterns between the high castes and the low castes demonstrates that different patriarchies operated for different castes.

Also, according to Gautama (XII-2, 3), rape by a *Śūdra* of an Aryan woman alone (not the *Śūdra* female) leads to dire consequences for him and more so if she is married. The sexuality of the Aryan woman (not the *Śūdra* female) was the most valuable resource after all. *Manusmṛti* (VIII-382) declares, "If a *Vaiśya* approaches a guarded female of the *Kṣatriya* caste, or a *Kṣatriya* a guarded *Vaiśya* woman, they both deserve the same punishment as in the case of (their approaching) an unguarded *Brāhmaṇa* female." Thus the text places the status of a guarded *Kṣatriya* or *Vaiśya* woman equal to that of an unguarded *Brāhmaṇī*. The punishment is in the form of a monetary fine. However, the punishment for a *Śūdra* for intercourse with a woman of a twice-born caste is to be corporal or even lethal (M.S. VIII-376, 374). However, again, it is mentioned that if the *Brāhmaṇī* is guarded and is the wife of an eminent man, then the punishment to a *Kṣatriya* or a *Vaiśya* would be similar to that meted out to a *Śūdra* (M.S. VIII-377). Thus, we see that the sexuality of a woman becomes more precious if she is a wife of a respectable upper caste man.

No man is to converse with the wives of others after he has been forbidden to do so; but he, who does so, in spite of a prohibition, shall be fined one *suvarṇa*. However, this rule would not apply to the wives of actors and singers and such men who send their wives to others (Baudh. II,2,4-3; M.S. VIII-361, 362,363). Here, the text is naturally referring to wives of lower caste men. Thus, women like wives of teachers and wives of actors (singers, dancers) stand at the two opposite poles of society, owing to their respective husbands' social positions and not due to any personal difference. The respect of upper caste women is derived from the respectability of their men, whereas lower caste women have less of a derivative position (Chakravarti 2003: 87).

Consequently, upper caste women are obliged to feel a sense of gratitude towards their men much more than what the lower caste women need to feel and the ideology of *Pativrata* is thus logically more pronounced for upper caste women. This is not to negate the existence of lower caste patriarchy but at the same time, one needs to recognise that upper caste women have been traditionally ascribed no function outside reproduction i.e., providing sexual labour whereas lower caste women are thoroughly integrated into labour systems as is testified by the texts. Thus, where upper caste women are only valued and identified for their reproductive labour, lower caste women are valued and identified for both productive and reproductive labour, though devoid of social status.

It is also interesting to note that whereas; five hundred *paṇas* will be fined to a *Brāhmaṇa* who approaches an unguarded *Kṣatriya*, *Vaiśya* or *Śūdra* female; double this

amount will be fined to him if he approaches a female of the lowest castes (for example. a *cāṇḍāli*). Therefore, even though, the sexuality of a *cāṇḍāli* is much less valued than that of an upper caste woman; a heavier fine in this case is intended to discourage sexual relations between upper caste men and lower caste women (M.S. VIII-385)

According to Gautama (XXII-11, 12,16,17) for the murder of a *Brāhmaṇī*, whether she is in a pure/polluting state, a penance needs to be performed but nothing is mentioned for the murder of a woman of any other caste. As the term ‘female’ in Gautama XXII-17 is interpreted by Haradatta, the commentator on Gautama, to mean only a *Brāhmaṇī*.

The *Vasiṣṭha Dharmasūtra*, on the other hand, describes the penance for murder of women according to their castes. For killing a female of the *Brāhmaṇa* caste who is an *Ātreyī*,¹² the same penance must be performed as for murdering a *Brāhmaṇa* and for one who is not an *Ātreyī*, the penance performed should be the same as that prescribed for a *Kṣatriya*. For killing a female of the *Kṣatriya* caste the penance prescribed for the murder of a *Vaiśya*, for killing a female of the *Vaiśya* caste the penance prescribed for the murder of a *Śūdra* and finally, for killing a female of the *Śūdra* caste, one is to perform during one year, the penance prescribed for the murder of a *Brāhmaṇa* (Vas XX-34,37,38,39,40). In terms of status as well, we see, that caste forms an important determinant. The feet of the wife of one’s brother is to be clasped everyday. but only if

¹² She who has bathed after temporary uncleanness is an *Ātreyī*. Of the four Dharmasūtras and *Manusmṛti* . the term is mentioned only in *Vasiṣṭha* (XX-35).

she belongs to the same caste (M.S.II-132). Only those wives of the teacher are to be treated as respectfully as the teacher, who belong to the same caste as the teacher (M.S.II-207, 210).

XI

At one level, while the texts use caste to divide woman, at another level they put all women in the category of *Śūdras* - the subordinate servile class. Sacred Vedic knowledge is denied to both *Śūdras* and women (Gaut. X-50; Āp. I,1,1-6; II,2,29-11; Vas. IV-3; M.S. IX-18; X-4). Just as *Śūdras* are deemed polluting, menstruation is also viewed as extremely polluting. A woman in her courses is impure during three days and nights. During that period, a multitude of restrictions are imposed on her for example, she is not to bathe in water nor clean her teeth, nor eat meat, nor run, nor smile etc (Vas. V-5,6). Though these restrictions seem to be normative, they demonstrate the extent of the idea of sin that the law makers want to attach with menstruation and thereby femininity. “Claude Meillasoux has argued that the notion of impure was crucial to the ideology of the caste system because it was required to keep the low in a state of subordination; this too applies to gender and to the impurities that inhere in women” (Chakravarti 2003: 21).

Of the four *Dharmasūtras* under scrutiny and the *Manusmṛiti*, it is the *Vasiṣṭha Dharmasūtra* alone which explains the belief behind the idea of pollution attached with

menstruation given in chapter V-7. When Indra had slain *Vṛtra*, the son of *Tvaṣṭṛ*, he transferred one third of the stain of murdering a *Brāhmaṇa* to women. Thus, the guilt of *Brāhmaṇa*-murder appears every month as the menstrual flow. It is the mark of their innate impurity as well as their innate sexuality. The husband is not even to embrace his wife while she is in her courses (Gaut. IX-30; M.S. IV-40. 41. 42: IV-57). A menstruating woman is as impure as an outcast, a *cāṇḍāla*, a corpse and on touching her the man too gets impure and he needs to purify himself by bathing dressed in his clothes (Gaut. XIV -30; Baudh. I,5,11-34,35; Vas. IV-37; V-8, 9; XII-6; XXIII-33, 34). Such a woman should not cook/touch food as that food cannot be eaten (Gaut. XVII-10). It is almost like breaching the rules of commensality. However, it is also declared by Baudhāyana (II,2,4-4), Vasiṣṭha (III-58; V-4; XXVIII-2,3,4,5,6,9) and *Manusmṛti* (V-108) that menstruation purifies a woman whose thoughts have been impure.

Also, unless the woman purifies herself by bathing, her status is equivalent to a *Śūdra*. The punishment for murdering such an 'unclean woman' is the same as that prescribed for murdering a *Śūdra* (Baudh. I,10,19-3). Only after purification, she is elevated to the level of the *Brāhmaṇa* man (Gaut. XXII-11,12,16,17; Baudh. II,1,1-12; Vas. XX-34; M.S. V-66:) and that too, not always as is suggested by Baudhāyana (I,10,19-5) where she is elevated to the level of the *Kṣatriya* male..

If a student, who is about to study the Veda, wishes to talk to a woman during her courses, he shall first speak to a *Brāhmaṇa* and then to her, then again speak to a

Brāhmaṇa and afterwards study (Āp. I,3,9-13). *Manusmṛiti* (IX-18; also Baudh- II,2,3-46) reads " For women no (sacramental) rite (is performed) with sacred texts, thus the law is settled; women (who are) destitute of strength and destitute of (knowledge of) Vedic texts, (are as impure as) falsehood (itself), that is a fixed rule". Thus when women die, no funeral cakes or water needs to be offered to them nor is their body to be burnt. Some do it in the case of married women but, by and large, 'women are considered to have no business with the sacred texts', reads Baudhāyana (I,5,11-7).

'Let him who desires bodily purity first sip water three times, and then twice wipe his mouth but a woman and a *Śūdra* shall perform each act once only' is acknowledged by M.S. (V-139), Baudhāyana (I,5,8-19,20,22,23) and Vasiṣṭha (III-34). One is to avoid both *Śūdras* and women while performing penances and rites for success (Baudh. IV,5-4; Vas. XXIV-5). Notions of pollution are also attached to women during pregnancy and after childbirth as well as a miscarriage in which females remain impure as many days and nights as months elapsed after conception (Gaut. XIV -15. 16: Baudh. I.5.11-19,20,21,23,31; Vas. IV-21,22; M.S. IV-44). Thus, female sexuality is treated as polluting. Sex (i.e., sexual association with the female) itself is considered defiling and consequently chastity is extolled in the texts (Vas. XI-37, 38; XIII-25,26; M.S. IV-116;).

XII

So, to sum up, we see that the texts depend on patriarchy to sustain caste and caste in turn, sustains patriarchy to survive. We have seen how caste discrimination is based on

gender discrimination (by control of female sexuality), how caste divides women and how caste treats all women as *Śūdras*. In the context of social power, four sources of power have been generally identified: ideological, economic, military and political. Likewise in the *Sūtras* and in *Manusmṛti*, upper caste men attempted to make society patriarchal by controlling the economy, polity, and the military as well as legitimating this control ideologically. The entire concept of Brahmanical Patriarchy along with *Varṇasamkara* was the most important weapon in this ideology. “Through the recalcitrance of women, the established property and status order, sought to be established and then consolidated by the repeated invocation of the need of the lower castes and women to conform to the Brahmanical injunctions, can be subverted. To prevent such a contingency women’s sexual subordination was sought to be institutionalised in the texts and enforced by the power of the state/king’ (Chakravarti 2003: 67). But as mentioned earlier, the authors as well as the audience of these texts were most likely men of the upper castes. To what extent, these prescriptions were implemented in society is open to question. Next, we move on to the category of ‘rituals’ in these texts and examine the gendered nature and role of rituals.

Chapter 3

GENDERED RITUALS

For women no sacramental rite is performed with sacred texts, thus the law is settled: women who are destitute of strength and destitute of the knowledge of Vedic texts, are as impure as falsehood itself, that is a fixed rule (*Manusmṛti* IX-18).

I

The *Dharmasūtras* and the *Manusmṛti* are texts, which as described in the first two chapters, are primarily concerned with establishing the domination of upper caste men (i.e. the *Brāhmaṇas* and the *Kṣatriyas*)¹³ in society. Inevitably, the presence of a dominant section in society necessitates the presence of a subordinate section and moreover, very often, the claim to superiority is not an uncontested one. The importance of legitimation for the firm establishment of a social hierarchy in such a case can hardly be overstated. “Legitimation, moreover, is necessary only in a situation where the facticity of the social order is challenged and is essential both as an offensive mechanism against those who challenge the system and as a means of defence to strengthen the

¹³ This, obviously, does not mean that all men belonging to the *Brāhmaṇa* and *Kṣatriya* castes held a privileged social position. What is implied is that, it was mostly the *Brāhmaṇas* who were expected to be the teachers and the performers of sacrifices and the *Kṣatriyas* headed by the king who were expected to rule and fight (to expand or protect) and these were the occupations that were respected and regarded as dominant in society, as per the texts.

beliefs of those who attempt to uphold it.” (Berger as cited in Roy 1994:17). That the Brahmanical authority was a contested one is indicated by the dire and persistent anxiety and the endeavour by the *Brāhmaṇa* authors to assert their superiority over the other castes. In other words, it was not a smooth claim to power and control. It is in this context and from this perspective, that the chapter aims to study the category of rituals outlined in the texts.

II

Samskāras are solemn rites of passage, ceremonial services, formal conventions and traditional customs. They involve important transitions such as birth, attainment of puberty, marriage, childbirth, death etc. They are the means whereby social groups deal with biological or natural processes and convert them into events of social celebration. It is likely that in most early societies ritual constituted one of the most important mechanisms of legitimation.

“Ritual action ...serves to express the status of the actor vis-à-vis his environment, both physical and social; it may also serve to alter the status of the actor. When ritual functions in the latter sense, it is a manifestation of power” (Leach as cited in *ibid*: 18). Most of the rituals described in the Brahmanical texts “attempt to evolve a degree of uniformity which would have been relevant only in a situation where such hierarchies in general or the specific ordering within a particular hierarchy was challenged.” (*ibid*: 18). The texts repeatedly, assert the need to keep the Śūdras and women under control. In fact,

Brahmanical sources¹⁴ frequently 'represent the breakdown of the elaborate edifice of social order, epitomised in the anxiety about *kaliyuga*- a time when families are broken, rites are forgotten and women are defiled. When women and lower castes do not conform to the rules, that is, *kaliyuga*'. (Chakravarti 2003: 35).

Rituals, then, not only function as important rites of passage but also and perhaps more importantly serve as symbols of both upper caste dominance as well as male dominance in a patriarchal and caste-stratified society. In the Brahmanical caste-stratified society, ritual knowledge was considered as the most significant form of knowledge and consequently, access to it was carefully regulated. Those who possessed ritual knowledge were accorded a high status in society and it is clearly stated in the texts itself that they (i.e., the texts) were meant for men of the three upper castes, for whom the rituals were to be performed accompanied by mantras.

It is seen that typically two categories, women and *Śūdras*, are denied access to ritual knowledge. The *Śūdra* is said to belong to the fourth caste, which has one birth only and *Śūdras* are not to receive any sacraments (Gaut. X-50; Āp. I,1,1-6; Vas. IV-3; M.S. X-4). However, the texts opined (the *Manusmṛti* more prominently) explicitly opined that the sacraments could be performed for women and *Śūdras* also, but without the recitation of mantras (M.S. II-66; IX-18; X-127). The *Brāhmaṇa*, *Kṣatriya* and *Vaiśya* are said to have two births – the first one is their physical birth and the second one is on their initiation

¹⁴ However, this representation of the *Kaliyuga* is missing in the four *Dharmasūtras* and the *Manusmṛti*

(discussed later). However, the *Manusmṛiti*¹⁵ states that an Āryan has three births- the first is his physical birth, the second happens on the tying of the girdle of *muñja* grass and the third is initiation (M.S. II-169). The sacraments which sanctify the body and purify it from sin are to be performed for twice-born men with holy rites prescribed by the Veda. Baudhāyana, Vasiṣṭha and the *Manusmṛiti* declare that the four castes are said to be distinguished by their origin and by particular sacraments. Gautama and Āpastamba contain the sentiment implicitly (Baudh. I,11,21-14; Vas. II-2; IV-1; M.S. II- 16, 26,136).

III

Some texts like that of Gautama and the *Manusmṛiti* have enlisted forty rituals or sacraments (Gaut. VIII-14 to 21; M.S. II-27 to 30). These are the *Garbhādhāna* (or ceremony to cause conception), the *Pumsavana* (or ceremony to cause the birth of a male child), the *Sīmantonayana* (or arranging the parting of the pregnant wife's hair), the *Jātakarman* (or ceremony on the birth of the child), the ceremony of naming the child, the first feeding , the *Caula* (or tonsure of the head of the child), the initiation, the four vows undertaken for the study of the *Veda*, the bath on completion of studentship, the taking of a help-mate for the fulfillment of religious duties, the performances of the five sacrifices (to gods, manes, men, goblins and *Brahman*), the seven kinds of *Pākayagñas* (or small sacrifices), the seven kinds of *Haviryagñas* and the seven kinds of *Soma* sacrifices.¹⁶ Thus, the rituals are arranged in a linear pattern (beginning from the

¹⁵ Out of the five texts selected for the purpose of the study, *Manusmṛiti* is the only text which states so.

¹⁶ This is the list, as given in *Gautama*.

conception of the child) in the *Gautama Dharmasūtra*. Though many of the rituals have been mentioned and described in the Baudhāyana, Āpastamba and Vasiṣṭha (for example the *agnyādheya* sacrifice, *agniṣṭoma* sacrifice etc.) they do not list the forty rituals separately at one place.

The *Manusmṛti* also contains the list of rituals (M.S. II-27,28,29,30) (though it does not enumerate them like the Gautama) and its list differs somewhat from that of Gautama. The *Garbhādhāna*, *Pumsavana* and the *Sīmantonayana* are merged into one ritual in the *Manusmṛti*. This ritual is to be followed by the *Jātakarman*, *Nāmadheya*, *Caula*, *Upanayana*, study of the Veda, by vows, burnt oblations, recitation of sacred texts, acquisition of the threefold sacred science, by offering to the gods, *rishis*, manes, by the procreation of sons, by the great sacrifices and by *Śrauta* rites. The *Jātakarman* and the *Nāmadheya* rites are described separately in the *Manusmṛti* (not in the other texts). Here, the *Nāmadheya* or the *Nāmkarana* rite is gendered as it gives the father of the child (and not the mother) the right to give a name to the child which becomes his primary identity.

One of the most important rituals outlined in the *Dharmasūtras* and the *Manusmṛti* is the eighth ritual, that of initiation. The ritual of initiation was to be performed for a student before he commenced his sacred education and it comprised of the investiture with the sacred girdle. It is implicit in each of the texts that initiation was meant for men of the three upper castes- *Brāhmaṇa*, *Kṣatriya* and *Vaiśya* and not for the *Śūdras* and women. . Initiation has been called the second birth where the *Sāvitrī* verse is the mother and the

teacher is the father (Gaut. I-8; Vas. II-3; M.S. II-170,171 this statement is absent in Baudhāyana and Āpastamba). The texts are unanimous in opining that the initiation of a *Brāhmaṇa* was to ordinarily take place in his eighth year, that of a *Kṣatriya* in his eleventh year and that of a *Vaiśya* in his twelfth year (Gaut. I-5, 11; Baudh. I,2,3-7,8,9; Āp. I,1,1-19; Vas. XI-49 to 51; M.S. II-36). As initiation was not to be performed for a woman, she was given the same ritual status as a *Śūdra*. She was placed in the once-born category devoid of the potential for higher learning and sacred knowledge. It is mentioned that sacred learning is not to be imparted to scorners, to wicked men, to men of uncontrolled passions (Gaut. X-50; Baudh. I,2,3-6; Vas. II-8; M.S. II-39,40,114). This indicates that women and *Śūdras* were scorned at and generally considered worthless.

IV

As discussed in chapter 2, marriage was at the heart of Brahmanical society and was the very base by which kinship and caste structures multiply. Thus, marriage has been given considerable attention by all the *Dharmasūtras* and the *Manusmṛti*. Eight kinds of marriage rites have been discussed by Gauṭama, Baudhāyana and the *Manusmṛti* (Gaut. IV-6-13; Baudh. I,11,20- 2 to 9; M.S. III-20,21). The Āpastamba and the Vasiṣṭha *Dharmasūtras* discuss six of these (Āp. II,5,11-17 to 20; II,5,12-1,2; Vas.¹⁷ I-28 to 35). The eight rites are the *Brāhma*, *Prājāpatya*, *Ārṣa*, *Daiva*, *Gāndharva*, *Āsura*, *Rākṣasa* and *Paiśaca* rites. Āpastamba and Vasiṣṭha omit the *Prājāpatya* and the *Paiśaca* rites. This is because the features of the *Brāhma* and the *Prājāpatya* rites are merged in one rite in the

¹⁷ In the *Vasiṣṭha Dharmasūtra*, the *Rākṣasa* rite is called the *Kṣātra* rite and the *Āsura* rite is renamed the *Mānusha* rite.

Āpastamba (hence the omission of the *Prājāpatya* rite) while no conspicuous reason for the omission of the *Prājāpatya* rite is traceable in Vasiṣṭha. The *Paiśaca* rite was probably too condemnable to be included in these two texts. Another probable reason for omission has been mentioned later.

The more superior of these eight rites namely, the *Brāhma*, the *Prājāpatya* and the *Daiva* forms practically led to the commodification of the woman where she was gifted as a bride (*Kanyādāna*) by the male relatives of her family. The *Brāhma* rite was the preferred form of marriage: here the father was expected to gift his daughter, appropriately accompanied by clothes and ornaments to the groom (Gaut.IV-6; Baudh. I,11,20-2; Āp. II,5,11-17; Vas. I-30; M.S. III-27).

‘Clearly, the father ritually hands over the daughter, and her sexuality, to the husband and his consent to the performance of the marriage is enough; in the case of other castes mutual consent is envisaged as a possibility, but not in the case of the *Brāhmaṇa* woman’ (Chakravarti 2003: 52,53). In the *Kanyādāna*, the daughter is considered as a ‘sacred gift’ i.e., the status of the recipient is higher than that of the donor. ‘Moreover, the inequality is perpetuated overtime, the wife-givers sending a one-way flow of prestations to their daughters’ conjugal families.’¹⁸ (Quigley 1993: 69). In the *Daiva* rite, (Gaut. IV-9; Baudh. I,11,20-5; Vas. I-31; M.S. III-28) the daughter was to be gifted to the officiating

¹⁸ Though this practice is not overtly mentioned in any of the *Dharmasūtras* or the *Manusmṛti*, it is widely established in the Brahmanical system.

priest and she was regarded to be like any other sacrificial offering and a part of the sacrificial fee. The *Prājāpatya* rite, on the other hand, unambiguously describes that the purpose of the marriage is to continue the family of the groom i.e., the male *vaṁśa* (Gaut. IV-7; Baudh. I,11,20-3; M.S. III-30). The gift of daughters among *Brāhmaṇas* was most approved if it is preceded by a libation of water (M.S. III-35) which is the custom in case of other gifts as well, to *Brāhmaṇas*. Thus, the woman was ritually commodified.

The *Gāndharva* marriage was based on the mutual love between the bride and the groom (Gaut. IV-10; Baudh. I,11,20-6; Āp. II,5,11-20; Vas. I-33; M.S. III-32) and was not one of the more favoured forms of marriage, as it involved an exercise of choice by the marrying partners themselves and to that extent, it subverted patriarchal powers.

The lower forms such as *Āsura* (Gaut. IV-11; Baudh. I,11,20-7; Āp. II,5,12-1; Vas. I-35; M.S. III-31) (which were permitted typically for the lower castes as discussed later) were associated with bride price wherein the bride could be procured in return for material wealth. Some important reflections are derived from this. In the higher forms of marriage where the bride was handed over to the groom along with other gifts (dowry), this kind of an exchange was not termed groom price and the boy's family was not treated as sellers of their son. Thus, where bride price was condemned, dowry was viewed in a preferable and respectable light. Baudhāyana is the most vocal (of the five texts) in condemning bride price. The text says (Baudh. I,11,21-2) that a female who has been purchased for

money is not a wife. She could not assist at sacrifices offered to the gods or the manes. Further it adds that those men who, due to greed, sell their daughters commit a great crime and fall into hell after death (Baudh. I,11,21-3; II,1,2-27). The *Manusmṛti* is ambivalent as regards bride price (M.S. III-51,53,54; IX- 97 to 100).

It also seems that the *Āsura* rite (as well as the *Ārṣa* rite where the bridegroom was to present a fixed price -a cow and a bull to the bride's family-(Gaut.IV-8; Baudh. I,11, 20-4; Āp. II,5,11-18; Vas. I-32; M.S. III-29) also made it easy for men of upper castes to marry women of the same / lower castes by simply giving money in return¹⁹.

A *Rākṣasa* marriage was defined as one where the bride is taken by force (Gaut.IV-12; Baudh. I.11.20-8; Āp. II.5.12-2; Vas. I-34; M.S. III-33) and a *Paiśāca* wedding was one following the rape of the woman by the man (Gaut.IV-13; Baudh. I,11,20-9; M.S. III-34). While the *Rākṣasa* marriage is treated with ambivalence in the texts, the *Paiśāca* is condemned, nevertheless included. Typically, the *Paiśāca* form of marriage has been visualised for the lower castes. It is unfair that the woman has to marry her rapist whether she desires it or not. Also this form of marriage is visualised for the lower castes alone and one wonders about the possibility of a *Brāhmaṇa* rapist (and his punishment for rape) which the texts seem reluctant to recognise.

¹⁹ It was in any case, easier for the upper caste man to buy a wife than his lower caste counterpart.

However, there might be another possibility (as regards the *Rākṣasa* and *Paiśāca* forms of marriage) that both the bride and the groom wanted to marry but there was opposition from their families (mostly the girl's family) and they (the parents) termed the marriage as *Rākṣasa* or *Paiśāca* to demote the legitimacy of the marriage and may be that is one important reason why Āpastamba and Vasiṣṭha omit the *Paiśāca*. It is also interesting to note in this context that one of the texts (*Vasiṣṭha Dharmasūtra* I-33) defines the *Gāndharva* wedding which is a love marriage as being possible only between a girl and a boy of the same caste. Thus, the voluntary union in a *Gāndharva* marriage and that in a *Rākṣasa* or *Paiśāca* marriages are treated differently.

The texts give several conflicting opinions on the permissibility of the different marriage rites for the different varṇas. The *Manusmṛti* (and Baudhāyana to some extent) offer the most extensive discussion of this (M.S. III-22 to 26), the essence of which is that that the *Brāhma*, *Prājāpatya*, *Ārsha* and *Daiva* are approved for a *Brāhmaṇa*, the *Gāndharva* and *Rākṣasa* for a *Kṣatriya* and the *Āsura* for a *Vaiśya* and a *Śūdra*.

However, Gautama, Āpastamba as well as Vasiṣṭha are silent on the suitability of the different marriage rites for different *varṇas*. They do not mention which marriage rite is recommended for which caste unlike Baudhāyana and the *Manusmṛti*. Gautama simply says that the first four rites (sometimes the first six) are considered lawful (Gaut. IV-14,15) while Āpastamba declares *Brāhma*, *Ārsha* and *Daiva* to be praiseworthy; each

preceding one better than the one following (Āp. II,5,12-3) and Vasiṣṭha declares that the *Kṣātra* (i.e., the *Rākṣasa*) rite is meant for the *Kṣatriyas*. On the other hand, Baudhāyana declares that the first four marriage rites are lawful for a *Brāhmaṇa*. Among these rites, each earlier named rite is preferable (Baudh. I,11,20-10). Among the four later named rites, each succeeding one is declared to be more sinful than the preceding ones (Baudh. I,11,20-11). The sixth and the seventh rites i.e., the *Āsura* and the *Rākṣasa* rites are lawful for the *Kṣatriya* as power is their attribute (Baudh. I,11,20-12). The fifth and the eighth rites i.e., the *Gāndharva* and the *Paiśaca* rites are lawful for *Vaiśya* and *Śūdras*, the reason given, being, these two castes are not particular about their wives (Baudh. I,11,20-13). Baudhāyana also recommends the *Gāndharva* rite for all castes because it is based on mutual affection (Baudh. I,11,20-16).

An important rule contained in the *Manusmṛti* (not found in the other texts), from the aspect of the study says that, “The nuptial ceremony is stated to be the Vedic sacrament for women and to be equal to the initiation, serving the husband equivalent to the residence in the house of the teacher and the household duties the same as the daily worship of the sacred fire.” (M.S. II-67). From this ritual, we can conclude that women were denied sacred education, as marriage was their initiation whereby their husbands became their Guru and confinement within the house, their sacred duty. Thus, rituals ensured male monopoly over productive resources by restricting the ambit of women’s activities.

Again, this is the only ritual for the woman where sacred mantras were uttered which is possible because of the association of the female with the male. This was intended to convey a sense that the woman's status was elevated and she became ritually sacred and pure due to her association with the man.

This rule also made marriage a very important rite of passage for the woman, not so much for the man as he underwent a new birth after his initiation. So, marriage was a new birth ritually, as it were, for the woman and not so much for the man. Only virgins could participate in the nuptial ceremony (M.S. IX-176). Thus, rituals promote chastity.

V

Primary to the consciousness of an upper caste male dominated society, is the procreative power of the woman. Though the child is born from the union of the male and the female, biologically it is the woman who gives birth. A secure and comfortable means to overcome the complex regarding sexuality was to ritually demote the procreative powers of women. As has been discussed in chapter 2, a strong notion of impurity was attached to menstruation (Gautama IX-30; XVII-10; Baudh. I,5,11-34,35; Āp. I,3,9-13; Vas. IV-37; V-9; M.S. IV-40, 41, 42, 44; IV-57,208; V-85). It was menstruation, the symbol of feminine sexuality and reproductive power, itself then which has been made the reason

for women's ritual exclusion. Thus, rather than celebrating the female power, it was condemned.

Not only menstruation, the very process of childbirth is stigmatised. The impurity is said to fall on both the parents (Gaut. XIV -15; Baudh. I,5,11-19,23; Vas. IV -21; M.S. V-62) or on the mother alone (Gaut. XIV-16; Baudh. I,5,11-20; Vas. IV-21,22; M.S. V-62) as she was seen as the immediate reason behind the childbirth. This issue is absent in Āpastamba. The Baudhāyana text ²⁰ however, mentions that according to some, the impurity on childbirth falls on the father alone as the semen is the chief cause of the generation. The incorporation of this opinion seems to be an attempt to downgrade the reproductive power of the woman. The text (Baudhāyana I,5,11-23) opines that the impurity should logically fall on both the parents as they are equally connected with the process of childbirth. Let alone childbirth, a miscarriage as well is viewed as polluting where the impurity is declared to last for a number of days and nights equal to the number of months from conception (Gaut. XIV-17; Baudh. I,5,11-31; M.S. V-66).

Where physical birth was deemed polluting, the second birth from *Upanayana* i.e, the initiation ceremony was held sacred. The second birth was said to be better than the first birth (Āp. I,1,1-17,18; M.S. II-146,147,148) as the first birth from the mother merely gave the man his physical existence whereas the second one gave him a life exempt from age and death. However, Gautama, Baudhāyana and Vasiṣṭha do not overtly compare the

²⁰ It is the only text which mentions so.

two births declaring the second one to be better though the sentiment is expressed in different ways as discussed below. It is this ritual which is said to give identity to the twice born castes and the prohibition of this ritual for the *Śūdras* makes them known as once-born (Gaut. X-50). After his first birth (physical birth from his mother) and before his second birth, a child was regarded as being like a *Śūdra* (Baudh. I,2,3-6; Vas. II-6; M.S. II-172). Though Gautama does not explicitly place the child in the same category as the *Śūdras*, the text declares that he (the child) is not to perform oblations in the fire or perform Bali offerings nor could he recite Vedic texts except pronouncing *Svadhā* (Gaut. II-4,5). The desire for a male child meant that the procreative powers of the woman were of no value if she did not give birth to a son and this power was transmitted to the woman by rituals like *Garbhādhāna*, *Pumsavana* and the *Śimantonnayana*. This is more pronounced in the *Manusmṛti* than the Dharmasūtras which state that sons are conceived on even nights and daughters are conceived on uneven ones (M.S. III-48). Thus the husband was expected to approach his wife in the due season on even nights.

At the same time, there are indications that this ritual construction of reproduction was by no means uncontested. There are references to men who did not get the initiation performed, even though they were eligible for it and they were to be treated as *Vrātyas* (outcasts) (Gaut. XXI-11; Āp. I,1,2-28, 32, 33, 34; Vas. XI- 74 to 79; M.S. II-39; X-20; XI-63).

VI

Following are some other rituals that have been found to be gendered in the texts. The honey-mixture (*Madhuparka*) was to be offered to an officiating priest, to one's teacher, one's father-in-law, paternal or maternal uncles, a king, a bridegroom and a learned man (all men) when they came on a visit (Gaut. V-27; Baudh. II,3,6-36,37; Āp. II,4,8-5,6; Vas. XI-1.2; M.S. III-119,148). The ritual importance of honey is well established in each of the texts. Thus, selected men were given a high ritual status in each of the texts (Gaut. II-13; Baudh. II,2,4-7,8; Āp. I,1,4-6; Vas. XVII-55; M.S. III-156).

Further, all guests at funeral oblations had to be *Brāhmaṇa* men (Gaut. XV-7, 9, 10, 13, 14; Baudh. II,8,14-2,3,4; Āp. II,7,17-22; Vas. III-19, XI-17,18,27,29; M.S. III-124,128) as they were considered to be sanctifiers of any company. Deceased women could be offered libations of water depending on whether their male relatives had performed the ritual of *Caula* (mentioned only in Gaut. XIV- 34,35,36). The manes to whom libations of water were to be offered comprised of all male ancestors- the father, grandfather and great grandfather (only males were thought to have immortal souls)(Āp. II,7,16-3; M.S. III-70,122,216).

From his birth a *Brāhmaṇa* was thought to be born loaded with three debts; he owed studentship to the sages, sacrifices to the gods and a son to the manes (Baudh. II,9,16-7; Vas. XI- 48; XVII-2; M.S. IX-106,107). Thus, ritually he it was incumbent on him to produce a son.

A person who sacrificed for women was not to be invited to a *Śrāddha* (mentioned only in Gaut. XV-16; Āp. II,5,10-9; M.S. IV -205,206). This is because women were denied a ritual status independent of their husbands. A wife was not independent with respect to the fulfilment of the sacred law. A woman was explicitly prohibited from offering any burnt oblation. When the wife offered the evening *Vaiśvadeva*, she was not to recite sacred mantras unlike her husband who offered it in the morning with mantras (Gaut XVIII-1; Āp. II,6,15-17; M.S. III-84,85,86,121; V-155). The householder was to offer the sacrifices (*Viśvadeva* and *Bali* offerings) himself (Vas. XI-3,4). Thus, while the wife was to assist him, it was the husband who was the main participant.

After marriage, the rites prescribed for a householder and his wife were to be performed (Gaut. VIII-16; Āp. II,1,1-1; M.S. V-168). Since the householder was to perform sacrifices all through his life and he needed a wife for that purpose, if the wife died he was ritually bound to marry again. Thus, rituals promoted polygyny. Further, a twice born man could cremate a wife of equal caste with the sacred fires used for the *Agnihotra*, thus treating her as a sacrificial offering. This is mentioned only in the *Manusmṛti* (V-167). Even if a wife was not willing/able to perform her share of the religious duties, the householder was recommended to take a second wife (Āp. II,5,11-12).

VII

“...anything which threatens to unmask man’s image of himself as ‘socially pure’, of standing above nature, must be controlled: (especially) the ingestion of food (a natural substance, at least before the chemical industry took over) (Quigley 1993:46). So, intake of food is one significant activity where ‘natural impurity’ gets into the area of ‘social purity’. Thus, we find strict rules regarding food-intake. A man was not to take his meals along with his wife (Gaut. IX-32; Vas. XII-31; M.S. IV-43). This is not mentioned in the Baudhāyana and Āpastamba. A menstruating woman, who was herself impure was regarded as believed to transmit her impurity to food. Thus, she was not to touch food during her courses. Preparation of the ritual food to be used in sacrifices was also entrusted to men of the first three castes (Āp. II,2,3-1).

The text state that the syllable *Om*, the *Vyāhrtis* and the *Sāvitrī* daily cleanse the *Brāhmaṇa* from guilt. One who was sanctified by the forty rituals outlined in the texts and whose soul was endowed with the eight excellent qualities was united with *Brahman* and dwelled in heaven after death (Gaut. VIII-25; Baudh. II,5,8-13; II,10,18-26; IV,1-27; Vas. XXVII-14,19; M.S. II-81,82; IV-146; VI-36). Thus, women were in some ways treated as devoid of souls, not capable of gaining final liberation (*Mokṣa*).

Sex in general and sexual association with the female in particular was regarded as ritually impure. It was considered defiling and consequently chastity was extolled in the texts (Gaut. II-1,7;III-12; Baudh I,2,3-23; II,10,18-2; II,10,18-16; III,1-24; III,4-1;III,7-

7;III,8-17;III,10-13; Āp. I,1,2-26; I,1,3-11,12,16; II,2,3-13; II,9,21-8,19; Vas. II-9;IX-5; X-17, 28 ; XI-37, 38; XIII-25,26; M.S. II-70, 93, 94, 95, 96, 97, 107, 175, 178; IV-116,133, 134; VI-1, 26, 49; VIII-354, 355, 356, 361). A child born from intercourse immediately after offering a *Śrāddha* or partaking of a funeral repast, was considered as unable to acquire sacred learning and short lived (Gaut. IX-25,26; Āp. I,2,32-3; Vas. XI-38; M.S. III-184; V-144).

Rituals were also used to divide women on the basis of caste. It was only the wife of equal caste who could assist her husband in the performance of sacred rites. Also, as discussed in chapter 2, the ceremony of joining hands was prescribed for marriages with women of equal castes, whereas, on marrying a man of a higher caste, a *Kṣatriya* bride was to hold an arrow, a *Vaiśya* bride a goad, and a *Śūdra* bride the hem of the bridegroom's garment (M.S.III-43, 44).

VIII

Thus it is seen, that rituals were employed to subordinate women and treat them as second class citizens. Women were treated as ritually impure by chiefly three means. They were not allowed to chant Vedic mantras, further, no mantras were to be chanted by the priests for the women's rituals and finally they were not granted an independent status as regards the performance of rituals. Rituals promoted caste discrimination and served as an equally effective means to legitimise patriarchy. They thus essentially legitimised gender discrimination through legitimising male control over production and

reproduction. Next, we move to the issue of inheritance in the texts and examine the gendered role of laws of inheritance.

Chapter 4

GENDERED INHERITANCE

A man who has business abroad may depart after securing maintenance for his wife; for a wife even though virtuous, may be corrupted if she be distressed by want of subsistence. (M.S. IX-74)

I

The importance of access to means of production as a very important determinant of power and dominance can hardly be overstated. The economic dependence of women on the male members of their families²¹ has been a very important factor in sustaining patriarchy in the household at a micro-level and that in society at the macro-level.

In the post-Vedic period (c 600B.C. – c 300B.C.), the emergence of private control over land (i.e. the notion of private property) is seen to be already in place. Consequently, patriarchy beckons for a patrilineal succession of property by blocking

²¹ The woman in this context is qualified as the woman located in the familial sphere as the location of a single woman in the Brahmanical texts has problems that need to be worked out for the post Vedic period.

the access to productive resources for women²². At this point, let us once again turn to the *Dharmasūtras* of Gautama, Baudhāyana, Āpastamba and Vasiṣṭha and the *Manusmṛti* to evaluate the (comparative) evidence in these texts as regards women and laws of inheritance bearing in mind that the *Dharmasūtras* and the *Manusmṛti* are the first systematic treatment of law, the question of property rights and inheritance forming an important aspect of civil law.

Here, it is important to keep in mind that, “definitions of property are subject to change... notions of property have a history; for example, in the early Vedic context, absolute rights to land do not seem to have been important. Thus, what constitutes property is in itself variable as are definitions of legitimate and illegitimate uses of and access to property.” (Roy 1999: 12,13). The post-Vedic period also known as the period of the second urbanisation was marked by a significant change in material milieu. The fruitful use of iron, the introduction of burnt brick, coinage, polished wares were some of the more significant examples of advancement in technology. The forms of private property most commonly outlined in the *Dharmasūtras* comprise the family estate (land and building), animals used for agriculture and dairy (such as bulls, oxen and cows) carts and carriages drawn by animals, horses, sheep, food grains, furniture and iron utensils. Interestingly, the category of ‘slaves’ is also included under the items of property.

²² Here, the term ‘woman’ is qualified as one belonging to the upper caste as the Brahmanical texts are primarily concerned with the women of the upper castes.

II

Let us come to the codes of inheritance. The *Dharmasūtras* as well as the *Manusmṛiti* (Gaut. XXVIII-1,2; Baudh. II,2,3-2,8; Āp. II,6,14-1; Vas. XVII-40,81,82; M.S. IX-104) are openly in favour of a patrilineal form of inheritance and state that following the father's death, the sons are to divide the family property among themselves. Even before his death, and with his permission, the property may be divided between the sons. However, Manu asserts that the division should take place after the death of both parents. Does this indicate that after the death of the father, the property is owned by the mother or rather does it mean that the eldest brother should take the whole property and the other brothers should live under him without partition till the mother dies – is not explained.

Each of the texts raises the issue of primogeniture (Gaut. XXVIII-3 to 8, 14,15,16,17; Baudh. II,2,3-3, 4, 5, 6, 7,9; Āp. II,6,13-13;II,6,14-6,7,10,11,,12,13,14; Vas. XVII-42,43) whereby the eldest son would inherit all the property or a greater part of it but maintain an ambivalent position with regards it, sometimes favouring it and at other times favouring a division between all the brothers with the eldest, middlemost and the youngest brother getting additional shares in the property. However, Manu's insistence on primogeniture is conspicuous. (M.S. IX-107 to 110).

It is also perceived that while the *Gautama*, *Baudhāyana* and *Vasiṣṭha Dharmasūtras* do not envisage women inheriting property, the *Āpastamba* takes a slightly different stand (Āp. II,6,14-2,3,4). According to it, sons get the first priority for inheritance followed by the *Sapinḍas*, followed by the spiritual teacher followed by the pupil or the daughter. Thus, while this *Dharmasūtra* mentions the possibility of a daughter inheriting her paternal property, (though a low priority is given to that possibility) according to *Gautama*, *Baudhāyana* and *Vasiṣṭha*, a daughter in no circumstance (with or without a brother) can inherit her father's property. It is also remarkable that the *Dharmasūtras* rule that in the absence of sons the property will rather go to the near and remote agnates of the property holder than to the daughters of his own seed. The *Manusmṛti* states it rather more explicitly that a wife, a son and a slave cannot possess property (M.S. VIII-416).

“Though Manu was no less patriarchal than the authors of the *Dharmasūtras*, but as the first universal lawgiver he had to take into consideration the existing laws belonging to other popular traditions apart from the Vedic sources, which speak of women's right to inherit their ancestral property so he had to make a compromise.” (N.N.Bhattacharya cited in Roy 1999: 118). Thus, on the hand, nowhere in his codes does he state that sisters are equally entitled to the patrimony as their brothers but, on the other, he says that for the purpose of the marriage of their sisters the brothers should forego one- fourth of their own shares in favour of the sisters (M.S. IX-118).

III

A man without a male issue and who has a daughter may appoint her to raise up a son for him, who will then inherit his grandfather's property (Gaut. XXVIII-18,19; Baudh. II,2,3-15; Vas. XVII- 15,16,17; M.S. IX-130 to 140). Such a daughter is known as a *putrikā* and her son is known as *putrikaputra*. It again looks like one of Manu's compromises when he states that "A son is even (as) oneself, (such) a daughter is equal to a son; how can another (heir) take the estate, while such (an appointed daughter who is even) oneself, lives?"(IX-130).

However, it is interesting to note that both Gautama and *Manusmṛti* (Gaut. XXVIII-20; M.S. III-6,7) have added that a man should avoid marrying a girl who has no brothers. This might be because, if in the mean time, the man (i.e. the father of the daughter) dies, his property would go to the *Sapīṇḍas* (blood relations within six degrees), *Sagotras* (relations bearing a common family name), or those connected by descent from the same *ṛṣi* (*vaidika gotra*) and his widow (Gaut. XXVIII-21); thus depriving the appointed daughter from any benefit of the property²³ which she could have availed had she raised a son to her father.

²³ It might be assumed here, that an appointed daughter after raising a son to her father enjoys some benefit out of her father's property.

Manu proclaims that if, after a daughter has been appointed, a son is born to her father, the division of the inheritance between the son and the *putrikaputra* must in that case be equal, for a daughter does not enjoy the right of primogeniture. It is only meant for the son. If the *putrikā* dies without a son, it is her husband who will inherit the property (IX-134,135). Manu also lays down a condition for a daughter to be appointed which is that she needs to marry a man of the same caste as hers (IX-136). The *Āpastamba Dharmasūtra* does not mention the *putrikā*.

IV

All the Dharmasūtras declare that the widow is not entitled to a share in her husband's property after his death. Gautama mentions that in case of not reunited brothers (i.e. brothers among whom the property has been partitioned), if one of them dies without male issue his property will go to the eldest brother. Similarly, if a reunited coparcener dies without male issue, his reunited coparcener takes the heritage²⁴ (Gaut XXVIII-27,28). *Śrotriyas* are to receive the estate of a childless *Brāhmaṇa* while the king shall take the property of childless men of other castes (Gaut. XXVIII- 41,42; Baudh. I,5,11-15; Vas. XVII-83,84; M.S. IX-189). The *Āpastamba* mentions that the king inherits the property in the absence of sons, *Sapindas*, spiritual teachers, pupils and daughters (*Āp.* II,6,14-5).

²⁴ The property goes to the coparcener and not to the deceased's widow or daughter.

Nowhere do the texts mention the right of a widow to inherit her late husband's property. If the widow is childless, then the option of *Niyoga* for the purpose of inheritance is open to her (Gaut. XXVIII-22; Baudh. II,2,4-9,10; Vas. XVII-56 to 63; M.S. IX-59) and the male child born from such an association inherits the widow's husband's property. While Manu is silent about widow rights, he states that the widower inherits the property of his deceased wife in case of the higher forms of marriage. This was sure to benefit upper caste men who resorted to the higher forms of marriage.

V

The *Dharmasūtras* (Gaut. XXVIII-24; Baudh. II,2,3-43; Āp. II,6,14-9; Vas. XVII-46) as well as the *Manusmṛti* (IX-131) recognise a woman's separate property (*strīdhana*) which on the death of the woman would pass on to her daughters. Gautama mentions that the first preference would be given to unmarried daughters and then to poor married daughters followed by other married daughters. Baudhāyana and Vasiṣṭha do not make this kind of a distinction between daughters.

Manu declares that the *strīdhana* should be inherited by unmarried daughters alone²⁵. It therefore seems that, the notion of a married daughter belonging to some other family and lineage (and hence having no right to patrimony) is more pronounced in the *Manusmṛti*. Thus, as regards *strīdhana*, the woman constitutes an independent stock of descent essentially matrilineal in nature. However, the Āpastamba does not mention anything about the passing of the *strīdhana* from the mother to the daughter.

The exact nature and composition of this separate property of women i.e. *strīdhana* is not mentioned in the Gautama Dharmasūtra. Baudhāyana, however, mentions in passing that the *strīdhana* is to comprise of the mother's ornaments. Āpastamba, Vasiṣṭha and *Manusmṛti* also list a woman's ornaments along with the wealth which she may have received from her relations at the time of a marriage under *strīdhana*. It would do well to remember that these ornaments are to be treated as gifts rather than the inheritance of a daughter from her father.

It is explicitly stated in Gautama and implicitly in Baudhāyana, Āpastamba, *Manusmṛti* that the sister's fee (i.e., the bride price) belongs not to the bride but her father from whom it is to pass to her brothers (Gaut. XXVIII-25,26; Baudh. I,11,21-3; M.S. IX-97,98). Thus, bride price does not become a part of *strīdhana*.

²⁵ In another part of the text Manu declares that the 'mother's estate' shall be divided equally between the daughters and the sons after her death (M.S. IX-192,195).

Āpastamba mentions that the husband and the wife are one entity as regards acquisition of property and that no division is to take place between them (Āp. II,6,14-17,18,19). However, if the wife is of an evil temperament, she should be abandoned and deprived of her *strīdhana* (M.S. IX-77,78). This means that the wife did not have an exclusive right of ownership even over her *strīdhana*.

It is finally in the *Manusmṛti* that we find the formulation of the six fold concept of *strīdhana*. What was given before the nuptial fire, what was given in the bridal procession, what was received from her husband, brother, mother or father formed the *strīdhana*. Thus, an attempt was made to make the scope of *strīdhana* as narrow as possible and listing such wealth which could not be directly used for production. 'In other words, any notion of economic empowerment through access to such resources was obviously limited. Besides, in economic contexts where monetisation may have been weak, the possibilities of converting *strīdhana* into productive resources may have been limited.' (Roy 1999: 12). If a woman marries a husband of her choice, she is denied her *strīdhana*. Thus *strīdhana* is employed to nurture patriarchy as well (M.S. IX-92).

VI

It is of interest to note, that while examining women's access to property, one comes across the notion of women themselves being treated as an item of property. Women have been listed along with animals, land and other material assets while declaring that

they are not lost to the owner by another's possession (Gaut. XII-39; Vas. XVI-18; M.S. VII-96; VIII-149). The woman has been compared to the soil and field with the husband as its owner. Also, as mentioned in chapter 3, the more superior marriage rites namely, the *Brāhma*, the *Prājāpatya* and the *Daiva* forms practically lead to the commodification of the woman where she is gifted as a bride (*kanyādāna*) by the male relatives of her family. Moreover, the use of terms such as a damsel 'purchased for money' while describing the *Āsura* marriage rite also indicates the commodification of a woman (Vas. I-35; M.S. VIII-204)²⁶.

VII

In all discussions on inheritance issues in each of the texts, a lot of emphasis is laid on the control of the wife's sexuality so as to ensure that the inheritance remained in the pure family lineage (Baudh. II,2,3-34,35; Ap. II,6.13-7; Vas. XVII-9). Further, two groups of six sons each, have been classified as regards to inheritance (Gaut. XXVIII-32,33,34; Baudh. II,2,3-31,32,33; Vas. XVII- 12 to 39; M.S. IX-158 TO 160). This is absent in the *Āpastamba*.

Gautama declares that the first group of six sons inherit the estate of their fathers while the second group of six sons inherit only a fourth of the estate, that too in the absence of a

²⁶ The term 'purchase' is missing in other texts while describing this marriage rite. Nevertheless, the sentiment is present implicitly.

son of the first group. Baudhāyana, Vasiṣṭha and Manu declare that the first group of sons are heirs while the second group of sons are not heirs but simply kinsmen (Vasiṣṭha declares that they are to inherit in the absence of sons of the first group). Gautama as well as Manu places the son of an unmarried damsel, the son of a pregnant bride and the son of a twice married woman in the second group i.e. while Baudhāyana and Vasiṣṭha mention that the son of an unmarried damsel is entitled to inherit his father's property and accordingly place him in the first group. Vasiṣṭha also places the son of a remarried woman as well as the son of an unmarried damsel in the first group.

Thus, we see that the laws of inheritance in Gautama and Manu are stricter in this case with regards to the promotion of female chastity by controlling female sexuality. Also, the *putrikāputra* has been put in the second category in the Gautama whereas Baudhāyana and Vasiṣṭha place him in the first category of sons. (Gaut. XXVIII-33; Baudh. II,2,3-31; Vas. XVII-26). The *putrikāputra* is not mentioned by Manu at all while mentioning the twelve kinds of sons. It is declared that in *Niyoga*, if the proper code of conduct is not followed, the son born loses the right to inheritance of his paternal estate (M.S. IX-143 to 145).

VIII

Inheritance laws have also been used as an effective medium to divide women based on caste lines. The son by a *Śūdra* wife is not to inherit his *Brāhmaṇa* father's property and is to merely receive a provision for maintenance even if there is no other male issue

(Gaut. XXVIII-39; Vas. XVII-38; M.S. IX-123,124,154). The same rule holds for all sons born from *Pratiloma* unions (Gaut. XXVIII-45). Similarly, if the son of a *Brāhmaṇa* by a *Kṣatriya* wife was the eldest, then he would not get the additional share of an elder brother. Instead, he had to share equally with his younger brother born of a *Brāhmaṇī*. In the same manner, the inheritance laws discriminate between the castes of the mothers while determining the shares of half-brothers (with common father and mothers of different castes) (Gaut. XXVIII-35 to 39; Baudh. II,2,3-10; Vas. XVII-47 to 50; M.S. IX-149 to 154).

Also Gautama (XXVIII-14,15,16; M.S. IX-123) declares that if a man has several wives the additional share of the eldest son is one bull, in case he be born of a later married wife; but the eldest son being born of the first married wife shall have fifteen cows and one bull or let the eldest son who is born of a later married wife share the estate equally with his younger brethren born of the first married wife. This also divides women based on caste. One because normally, the first wife should be a *Brāhmaṇa*, the second a *Kṣatriya* and so on (Baudh. I,8,16-2,3,4,5; Vas. I-24; M.S. III-13). And even if the *Brāhmaṇī* is not the first wife, her son will not lose much due to the caste of his mother.

IX

While discussing the issue of inheritance here, one is perhaps more interested in finding out what are the resources open for production and to what extent they are open for women. Though the nature of the texts is such that they do not delve much into the economics of production and distribution of the post-Vedic period, but nevertheless certain conclusions can be drawn from them.

The ritual of marriage found in the *Manusmṛti* which as discussed in chapter 3, envisions domesticity within the four walls of the house as the ideal duty of the wife and the negation of the possibility of the single woman in the texts, as a whole, strongly imply that women were not seen taking the reins of production in their hands and that biological reproduction was seen as the only 'production' women were capable of. In return for submission and compliance, the wife received material security from her husband (M.S. IX-95). The texts also mention women in the category of non-taxpayers. Widows are thought of as persons unfit to transact legal business (Vas. XVI-8; M.S. VIII-28). When the husband went abroad, he had to secure his wife's maintenance as she could not obviously look after herself (M.S.IX-74). This too, supports the view that women were not active in the economy.

Here, of course, the term 'woman' needs to be qualified. The 'sacred texts' are essentially concerned with the upper caste woman and hither and thither, in the texts we find

references to women labourers, professional women singers and actors, prostitutes, female slaves, women in royal services and menial women servants (Āp. I,5,17-31; M.S. IV-84,85; VII-125,219; VIII-362,363; IX-48) etc.

It is also seen that the texts make a derogatory reference to most of these women (M.S. IV-84,85). These are naturally women belonging to lower castes but they are seen to play a much larger role in the economy vis-à-vis their upper caste counterparts. However, in this context, a very important question is the extent of control these women exercised over their labour and its produce.

X

It is mentioned in the *Dharmasūtras* that where no rules have been given, the advice of well instructed *Brāhmaṇas* or an assembly the members of which are all upper caste men should be taken (Gaut. XXVIII-48,49). It is not unexpected then, that their advice or jurisdiction should go in favour of men.

Women had no rights to political inheritance, kingship being entrusted to men alone. All members of the legal assembly were also meant to be men. (Gaut. XXVIII-49; Āp. II,11,29-5; Baudh. I,1,1-7,8; Vas. III-7,20; M.S. XII-111). It is recommended that ministers, officials (for example in mines, manufactures and storehouses) to be employed

by the king should all men be from noble families (M.S. VII-54,58,60,62,63). Similarly, headpersons for all villages were male (M.S.VII-115).

Thus, women were excluded not only from economic inheritance but from political inheritance as well. It is obvious that this male-dominated political structure further engendered relations of production and distribution.

Chapter 5

CONCLUSION

After a study of the texts, one finds that in each of them, the categories of caste, rituals and inheritance are gendered. Certain themes are common to all the texts. Thus, all of them prescribe chastity, emphasise on *strīdharmā* and they unanimously deny women agency and independence. The upper caste woman is depicted as the object of moral panic and her sexuality the most precious commodity in each of the texts. Each of them formulates marriage as an extremely sacrosanct institution and endogamous marriages are presented as the ideal and the most preferred.

At one level, the texts collectively divide women on the lines of caste and at another they place all women (irrespective of caste) in the category of the lowest of men- the *Śūdras*. Also, they unanimously employ rituals to relegate a polluting status to women with the primary objective of demoting their procreative powers. All these patriarchal schools of thought also recognise that economic dependence of women is an effective means to sustain patriarchy. Not surprisingly, they unanimously prescribe a patrilineal form of inheritance. To an extent, they treat women themselves as a form of property with a lot of emphasis on control of their sexuality so as to ensure that the inheritance remained in the pure family lineage. While being essentially concerned with upper caste women, the sacred texts deny both economic as well as political inheritance to women.

At the same time, variations are discernable as one moves from one text to the other. Though, intervarṇa marriages are mentioned in the *Dharmasūtras*, it is only in the *Manusmṛti* that one comes across the terms ‘*anuloma*’ and ‘*pratiloma*’. Though the *Dharmasūtras* acknowledge hypergamous marriages, it is the *Manusmṛti* that lends the most vocal support to it. Again, while the *Dharmasūtras* condemn hypogamous marriages, it is again the *Manusmṛti* that rejects hypogamy most vehemently.

Again, one finds a striking increase in the number of *pratilomic* mixed castes by the time of the *Manusmṛti*. This has been taken as indicative of the incorporation of a larger section of society within the Brahmanical fold by virtue of the *Vaṇṣasamkara* theory. One also notices within the *Dharmasūtras* themselves that compared to Gautama and Āpastamba, Baudhāyana and Vasiṣṭha give a bigger list of mixed castes.

Again, while each of the texts have extolled chastity, the distinct emphasis on virginity is more pronounced in the *Manusmṛti*. While each of the sources talk about pre- pubertal marriages of the girl (Āpastamba does not mention this), it is only the *Manusmṛti* that gives the desired age gap between the bride and the groom. Also, one discovers that Gautama does not discuss polygyny that directly unlike the later texts such as Vasiṣṭha and the *Manusmṛti*. Thus, one finds patriarchy and the control over female sexuality by caste to be more pronounced in the *Manusmṛti* than the *Dharmasūtras*.

While discussing the different kinds of marriage rites, the *Manusmṛti* emphasises on the suitability of the different rites for different varṇas while Gautama, Āpastamba and

Vasiṣṭha are absolutely silent on the matter. One may conclude from this that caste became more rigid an institution in the Christian era.

It is the *Manusmṛti* only which declares marriage to be the Vedic sacrament for women. Again, it is the *Manusmṛti* which emphasises on the second birth (the upanayana) to be better than the first one to degrade physical reproduction. *Niyoga* also seems to have fallen into disfavour from the times of Manu. This is because Manu seems to be too harsh while condemning *niyoga* even though in certain places he has spoken in favour of the practice.

In the sphere of inheritance as well, certain variations are noticeable. Manu's insistence on primogeniture is more conspicuous than that found in the other texts. Out of all the sources, it is only Āpastamba which mentions the remote possibility of a daughter's inheritance of her paternal property. Manu mentions that brothers should forego a part of their inheritance for their sisters for the purpose of their marriages.

While the concept of the *putrikā* is mentioned by all the sources, Āpastamba does not mention it. While each of the texts are silent on the widow rights, Manu unashamedly talks of the rights of the widower. Again, while each of the texts talks about *strīdhana*, Manu declares that it is only the unmarried daughter who can inherit the mother's separate property unlike the *Dharmasūtras*. Excluding Gautama, the other authors give some idea of the composition of *strīdhana*. The *Manusmṛti* in fact gives the formulation

of the six fold concept of *strīdhana*, thus showing a greater concern in narrowing its scope and convertibility into economic empowerment.

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