

**Socio-Legal Values in Mitakshara, Vachana,  
Dasa and Folk Literature in Karnataka  
An Exploration**

**Editors**

**Justice Dr. Shivaraj V. Patil  
Prof. P. Ishwara Bhat and  
Prof. Chidananda Reddy S. Patil**

**Vijnaneshwara Adhyayana Peetha  
Karnataka State Law University  
Navanagara, Hubballi- 580 025, Karnataka, India**

**Socio-Legal Values in Mitakshara, Vachana, Dasa and Folk  
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(A Collection of Research Articles)**

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## **PREFACE**

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Medieval Karnataka was blessed with a prolonged and mass cultural movement preceded by socio-religious renaissance. It was an age of reform and reason marking an indelible impact upon society for several centuries inspiring benevolent human action and deterring inhuman practices. The message is for the eternity. The intellectual reawakening in Karnataka is part of the general development of the country as a whole. Any discussion on the core socio-legal values emerged in the crucible of social experience reinforces our faith in human rights, welfare and harmony as the redeemers of society.

The present book at your hands on the above theme is a product of collective effort of scholars from multiple disciplines and professions. The context that enabled this production is a national level webinar organized by Shri Vijnaneshwara Chair of the Karnataka State Law University in August 2021. The Chair is exploring evolution of legal principles and philosophy in Karnataka and contribution of jurists, judges and statesmen in this regard. The Chair is held by Honourable Justice Shivaraj Patil, the former judge of the Supreme Court of India, who has guided the activities of the Chair. The Webinar was inaugurated by Honourable Justice B. N. Srikrishna, former judge of the Supreme Court and valediction was done by Shri Veerappa Moily, former Union Minister for Law and Company Affairs and former Chief Minister of Karnataka. The inaugural and valedictory sessions were presided over by Shri Basavaraj Bommai, Hon'ble Chief Minister of Karnataka and Shri J. C. Madhuswamy, Hon'ble Law Minister, Government of Karnataka respectively.

Vijnaneshwara was a renowned jurist lived in Karnataka in 12<sup>th</sup> century and adorned the court of Chalukya King Vikramaditya VI. He wrote the famous Mitakshara, a commentary on Yajnavalkya Smriti. Mitakshara gained wide popularity because of its reformist posture, radical ideas and favourable approach towards better protection of women. It became the basis of Hindu law all over India except Bengal. Basaveshwara was a great socio-religious reformer, statesman, poet and a great visionary whose verses

or *Vachanas* set a new trend in literature. Numerous followers of Basaveshwara, called *Shivasharanas* carried this intellectual movement further through *Vachanas* and discussions in *Anubhava Mantapa*, a Parliament for social and moral values. Allama Prabhu, Akka mahadevi, Jedara Dasimayya, Chennabasavanna, Ambigara Chowdiah, Dohara Kakkayya, Neelambika and a great many scholars built the wide canvas of moral propositions of new religious faith. This was followed by another stream of *Bhakti* movement spread in Karnataka during the 15<sup>th</sup> and 16<sup>th</sup> centuries by *Haridasas* of Karnataka, the followers of Madhwacharya and Ramanujacharya. Sripadaraja, Sri Vysaraya, Sri Raghavendra, Purandara Dasa, Kanakadasa, Vijayadasa and host of others enriched the social thinking through their reformatory devotional songs. The Kannada poets of the age, Harihara, Raghavanka, Sarvajna and Sanchi Honnamma added to the strength of literature to uphold moral principles. Folk literature in Kannada propounded ethical values of gender justice, respect to elders and sense of dignity and equality. All these streams of literature formed the confluence of sublime thoughts on equality, fraternity, dignity, harmony, justice and welfare. The cultural ethos and moral underpinnings of these intellectual developments supplied foundational views that influenced social reform movement of 19<sup>th</sup> century, freedom movement and the constitution-making process. The well-researched articles included in this collection reflect over the value processes that fructified in the literary forms.

There are four Parts in the present book. Part I deals with generic aspects comprehending the overall gamut of intellectual movement transcending the barriers of time. The first article (Ishwara Bhat) traces the genesis of socio-legal values in Rta principles, Vedic thoughts, ancient concepts and their influence through commentaries on books of law. It narrates how the Rta principles got reiteration in subsequent literature produced by the Bhakti saints. Modern public law values gathered support from cultural inputs and became strong with popular acceptance. In the making, supporting and interpreting the Constitution also the cultural values have made great contributions. The second article (Veerappa Moily) analyses the sprouting of socio-religious, cultural and political revolution of Veerashaiva movement from the dissatisfied vortex of people's wrath against injustice, denials and discriminations. He surveys major aspects of *Vachana*, *Haridasa* and *Janapada* literature highlighting the morals underlying their essence. The third article (Gururaja Karajagi) surveys the pro-society values in *Dasa* and *Vachana* literature which laid foundation for the concept of justice and law. They constitute two matrices of great legacy. The *Veerashaiva* revolution of the 12<sup>th</sup> century was multi-

dimensional, engaged all the sectors of the society and evolved alternative thoughts of self-perfection and structural changes in the society. Value is action based norm bringing good of the person and the world. The fourth article (Vijendra Kumar) explores interpretation and application of Mitakshara through a socio-legal analysis of Hindu law in modern times. He starts with a major premise that *dharma*, a supreme authority that guides a person to be of good conduct, commands through duties towards family members, elders and society and ensures that wealth and pleasure shall conform to ideal behavior. This theme has influenced various facets of Hindu law such as law of marriage, property, maintenance, partition and succession. He states that the Supreme Court's approach to Mitakshara law has reinforced the basic commitment to the notion of welfare of family and better protection of woman. The fifth article (V. Sudhish Pai) goes to the roots of Hindu law's aim at expanding happiness through ideal conduct of *dharma* and questions whether transformation of Hindu law in modern times has kept that valuable link between *dharma* and personal law. Easy dissolution of marriage, fall in family values of respecting and caring elders, bothering less about *shatric* principles have delinked Hindu law from original purpose of compliance with *dharma* for the sake of happiness of all. Equal right of women in coparcenary property without an approach of harmony from the side of men folk belittles woman's right. While secularism and UCC thrive on the basis of human rights and influence changes in personal laws they are not able to substitute the valuable links between family law and happiness. Love and affection shall assume a central position of family law. Mitakshara which aims at happiness through fair relations within the family becomes relevant in this regard.

Part II starts with a profile of Paramahansa Vijnaneshwara (B. N. Sampath) that acquaints the reader with the life, philosophy and approach of the great jurist. Vijnaneshwara, true to his name, is scientific in approach about relations of marriage and *sapinda*. His modernist approach asks for adequately examining the potency of parties to marriage before the marriage ceremony. By *sapinda* Vijnaneshwara meant commonness of blood particles among the descendants or blood relatives rather than right to offer rice ball in *shradh* ceremony. He secularized the concept of property by relying on ownership and possession rather than rigid rule of acquisition of property only in accordance with *shastras*. He considered woman as a preferential heir and generously included many items within the ambit of *stridhana*. The second article (T. V. Subba Rao) identifies the basic thrust of Mitakshara as promoting *dharma*, lists the sub-schools of Mitakshara and distinguishes between Mitakshara and Dayabhaga. He points out that

Mitakshara did not exclude woman from entitlement to property when she claimed the right on the status of mother or wife. He discusses the impact of amendment to section 6 of the Hindu Succession Act made in 2005 and explains the expansion of woman's right with the help of latest cases. Vijnaneshwara's pro-woman approach in the context of *stridhana* is also explained. The third article (P. Ishwara Bhat) brings out the philosophical foundation of property right from the perspective of Mitakshara. It argues that Mitakshara gives a valuable focus on avoidance unjust enrichment and undeserved misery in the matter of conceptual aspects of property in addition to labour theory, fair relations doctrine and social security purpose of property. In matters dealing with *charitra* form of pledge, adverse possession, women's rights and law of voluntary organizations the approach of avoiding unjust enrichment and undeserved misery has a laudable and unique outcome. The fourth article (C. Rajashekhar) discusses the Mitakshara principles on debts. It explains varying rate of interest in proportion to the risk of non-recovery, ceiling on interest, rules regarding recovery, issue of order of priority among creditors and rules of liability for debts. Balancing between keeping of promises and promotion of economic justice is the crux of the matter.

The central theme of Part III is exposition of the phenomenon from a feminist perspective. It starts with a discussion (C. N. Ramachandran) of a proposition that changes co-exist with continuity in the context of *Smriti* and women, and even in the context of the Constitution and women. The article makes a scathing criticism of *Manu Smriti* and Mitakshara for gender discrimination and even permitting *Sati* in spite of the fact that *Vedas* had a liberal approach towards women. The control exercised by male class over women by denial of freedom and dignity is a serious deviation from *Rta* principles. Emergence of a progressive constitution and reformatory laws did not change the position of woman substantially as can be seen from perusal of NCRB record of crimes against women. The second article (Chidananda Reddy S. Patil) analyses the legal framework to address the offences against women during the times of Vijnaneshwara. Its scope is comprehensive to include laws on adultery, prevention of sexual harassment, kidnapping, defiling, enticing, living relationship, prostitution and forcible intercourse. The complexities involved in caste-based differentiation in quantum of penalty, punishment to both male and female involved in adultery, tolerance of consent-based relations, prevention of indignity and protection of women are brought out along with comparison with the modern law. The third article (Gurudath Chilakunda) reads Mitakshara from feminist perspective with reference to *Stridhana*. Widening the net of *Stridhana*, allowing

the woman to use *Stridhana* independently, preferring daughters to succeed *stridhana*, priority to indigent daughters in the matter of succession and entitlement of unmarried daughters to *stridhana* are important contributions made by Vijnaneshwara. Mitakshara has a progressive and feminist approach in safeguarding the interests of women. The fourth article (Akhila Basalalli) traces in *Vachanas* strong arguments for treating women on par with men, emphasis on dignity of woman, rationale for equality in common possession of soul and equal human worth and equal status of husband and wife in marital life in order that life's goal of happiness and devotion to God may be realized. It elaborates the theme of bridal mysticism taking support from well-chosen *vachanas* of Akka Mahadevi and others. It fruitfully discusses contemporary relevance of *vachanas* in the context of a progressive constitution, and impact of them as component of culture on judicial thinking.

Part IV has varieties of themes focusing on specific aspects of socio-legal values. The first article (Lohit Naikar) focuses on Basaveshwara and human rights. It links the notions of dignity, equality, fairness, compassion and welfare as exhibited in Basaveshwara's *vachanas* to the basic concepts of human rights. It draws analogy between basic thoughts underlying *vachanas* and the ideology embedded in the modern international human rights instruments starting with UDHR. Gaining of equality through the practices of spirituality, Ishtalinga, ritual purity, open community, *kayaka* and *dasoha* is the practical method of promoting human rights. Harmony, social solidarity and commitment to values of ideal life make equality a realizable goal. In addition, attainment of social justice through distribution of rights, power and wealth builds up social competence for reaping human rights values. The second article (T. R. Subramanya and Aruna L.) makes an assessment of the application of principles of equity by the British Indian courts while giving effect to Mitakshara and Dayabhaga. Grafting of Dayabhaga's concept of pious obligation into the Mitakshara school on the basis of equity exemplified judicial role of promoting equity and good conscience. The growth of marriage law through statutory reforms (widow remarriage, prohibition of child marriage, etc.) was followed by application of rules of equity in individual cases and providing remedies. Adoption law was also influenced by considerations of equity. Thus, equity added flexibility and humanism to the legal framework. The third article (G. C. Tallur) explores socio-legal values in Sarvajna literature, which could be categorized as part of Neetishastra or science of moral principles. The article lists seven legal values such as liberty, equality, truth, primacy and purity of justice delivery system, witnesses' commitment to truth and avoidance of

miscarriage of justice. For each of the values it relies on the supporting vachana triplets. The fourth article (P. Ishwara Bhat) depicts the Mitakshara's approach to polity, good governance and people's welfare. Good conduct is a rule prescribed for all while good governance is a supreme duty of the ruler in order to escape from the fire of people's wrath. Mitakshara uses *saptanga* theory of State, fairness in external affairs, justice in internal administration, non-corruption and people's welfare as the means of good governance. The fifth article (Ramzan Darga) discusses the concept of social justice in Basavanna's *Vachanas*. In order to conceptualize, plan and attain social justice, there is a need of understanding the differences and conflicts between the haves and have-nots and the factors of class consciousness in the society. Caste, sex, race and class differences are artificial and unjustifiably put the vulnerable into severe disadvantages. Instead of questioning the fellow being's extrinsic personal identity, a mindset that recognizes him or her as part of his own community becomes appropriate for promoting social justice. The paper draws parallels between UDHR and Basavanna's *vachanas* pointing out that social justice is an essential value of human rights.

The sixth article (Balasubrahmanya Kanjarpane) throws interesting light on the socio-legal values in Dasa literature which was a product of the 15<sup>th</sup> and 16<sup>th</sup> century Karnataka. It was a period of monarchy which believed in divine status of the king and people's inclination to imitate King's examples. People intimately received *Dasa* literature communicated in their languages. The *Dasas* upheld the social values, morals and ideas of justice in the same way as that of *Vachanakaras*. It mirrored the rise and fall of Vijayanagara dynasty and pointed out the need for political stability, order and peace for a happy social life. The article points out how dasa literature laid emphasis on purity in public and private life, avoidance of avarice and petty behavior, rejection of caste discrimination, inculcating religious tolerance and lowering the rigour of patriarchy. Humanism, equity and justice were the core values projected through the appealing songs. The seventh article (B. S. Anilkumar) lays a focus on inter-disciplinary approach required for understanding the process of interaction between law and morality in the light of *Haridasa* literature. The force operating behind social morality is the concern for justice, self-perfection and avoidance of harm to others. The efforts of the *Dasa* saints have been to build up in the minds of devotees a strong defence against evil propensities. The reception of *Dasa* preaching by social minds is enabled by simple, intimate and thought provoking songs in people's language communicated through incessant contacts by the *Dasas* with people of all sections. The component of social morality upgrades the



value and basis of devotion to divinity. The final article in this part (Balanna Sheegihalli) deals with legal values in the stories of Vaddarahane, a ninth century Kannada literature of great repute known for its unique style, attractive structure and substantive morals. The author points out that the heroes aim at attainment of salvation (moksha) by meticulous effort of ideal action. At the worldly level common people adhere to rules of their profession whereas at the metaphysical domain there is a journey through variety of janmas according to one's previous karma and elevation from the cycle is possible through good conduct. At both the levels, fairness in adjudication and proportionality of penalty are aimed at. Two stories that the author takes up for discussion vindicate clear prevalence of these principles and conformity to the prime legal values of an advanced legal system. Reasonable procedure for investigation of crime, giving benefit of doubt, protection of the innocent against any penalties and saving the deserved from execution of death sentence are some of the legal values which the author brings out in the narration.

All the above articles are products of in-depth study, thoughtful reflection and exquisite learning. They are both descriptive and critical. They go to the roots of the issues, analyze with a perception of historical objectivity and a purpose of social betterment. They are not the verbal garlands hastily woven to bedeck a webinar. They carry forward the objectives of the Vijnaneshwara Chair. Some contributions are in Kannada and the rest are in English language. English abstracts are given for Kannada Articles. We thank each one of the authors for their painstaking efforts and memorable contribution. Their oral presentation in the Webinar mesmerized the audience. Three of the articles included in this collection are taken from an earlier seminar on Vijnaneshwara. We are thankful to the authors for permission for publication of the same. We also thank KSLU authorities for supporting the organization of the webinar and enabling publication by generous grants.

**Hon'ble Justice Dr. Shivaraj V. Patil (Chair Professor, Vijnaneshwara Chair, KSLU)**  
**Prof. P. Ishwara Bhat (Vice-Chancellor, KSLU) and**  
**Prof. Chidananda Reddy S. Patil (Professor, KSLU)**

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## ABOUT THE EDITORS

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**Honourable Mr. Justice Shivaraj V. Patil** is a Former Judge, Supreme Court of India, former Member of the National Human Rights Commission of India. He is a recipient of Basavashree Award, National Law Day Award, Honorary Doctorate from the Gulbarga University, Karnataka Honorary Doctorate from the Karnataka State Law University, Hubballi. He is the first Chair Professor of KSLU's Vijnaneshwara Adhyayana Peetha.

**Prof. (Dr.) P. Ishwara Bhat** is the Vice Chancellor of the Karnataka State Law University, Hubballi. He was the former Vice Chancellor of the West Bengal National University of Juridical Sciences, Kolkata and Dean, Faculty of Law, University of Mysore, Mysore. He has obtained his M.A., LL. M. and Ph.D. degrees from University of Mysore, Mysore and LL.D. from the National Law School of India University, Bengaluru. His major publications include *Fundamental Rights, Law and Social Transformation, Non-Profit Voluntary Organizations Law, Idea and Methods of Research*. He has edited 8 books and authored more than 140 articles. He is recipient of Upendra Baxi National Award for Legal Research from the Capital Foundation Society in 2020.

**Prof. (Dr.) Chidananda Reddy S. Patil** is Head of the Centre for Research in Democracy and Constitutional Government, Karnataka State Law University, Hubballi. He has acquired his Master of Laws from University of Mysore, Mysore and Doctorate in Law from Karnatak University, Dharwad. He has taught law at Mysore, Bengaluru and Hubballi- Dharwad. He has authored one book, edited two books and more than 80 articles.

## ABOUT THE CONTRIBUTORS

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**Dr. Veerappa Moily**, is an Advocate by profession. He was the Chief Minister of Karnataka; Minister of Law and Justice; Minister of Corporate Affairs; Minister of Power, Minister of Petroleum and Natural Gas; Minister of Environment, Forest and

Climate Change in the Government of India. His major publications include *Shri Ramayana Mahanveshanam* (5 Vols.), *Sri Bahubali Ahimsa digvijayam* (both in Kannada), *The Edge of Time, Unleashing India* (4 vols.). He has written several novels, short stories and plays and was a regular columnist for *The Hindu* and *Deccan Herald* and for *Samyukta Karnataka* newspapers.

**Late Prof. B.N. Sampath**, was an authority in Family Law, served in the Banaras Law School for over 33 years. He did his LLM from Osmania University, he was the winner of several medals in Muslim Law. He has several papers and articles to his credit. He was the UGC Visiting Professor at NLSIU, Bengaluru. He was a Ford Foundation Research Scholar at the School of Oriental and African Studies, University of London and was associated with renowned Scholar Prof. J.D.M. Derrett. He was also the Director of Indian Institute of Legal Literacy, a trust that he founded with the avowed objective of making law understandable to the layman. He has authored Hindu Law in 2 volumes.

**Prof. T. V. Subba Rao**, B.Sc., M.L., Ph.D. is well-known as an excellent teacher, able academician and efficient administrator, the support for which is drawn from his academic and professional background and more than 40 years of experience at various levels. He is a Former Professor, SPMVV, TIRUPATI; Professor Emeritus, VIPS, New Delhi; Former Visiting Professor, NLSIU, Bangalore.

**Prof. (Dr.) C.N. Ramachandran**, is a noted Kannada writer and recipient of Central Sahitya Akademi Award for his book of essays, *Akyana-Vyakyana*. He was a Professor of English at Mangalore University. He has taught English language and literature in various universities in India, Somalia, Saudi Arabia, and the U. S. Primarily a critic-translator, he has published both in English and Kannada. He is bestowed with Karnataka Rajyotsava Award, Karnataka Sahitya Akademi Award for lifetime Achievement, Katha-award for translation, and K K Birla Fellowship.

**Dr. Gururaj Karajagi** is the Chairman of the Academy for Creative Teaching, Bengaluru. He holds a doctoral degree holder in Chemistry from Karnataka University, has published over 22 research papers in International journals. He is a life Fellow of the Electrochemical Society of India. His books entitled "*Karunaalu Baa Belake*" (10 Volumes) are immensely popular. He is instrumental in building over 86 schools of very high quality all over the world. He is also a member of the Karnataka Jnana Aayoga.

**Sri. G. C. Tallur**, B.E, B.A, F.I.E, F.I.C.A is an engineer-administrator and arbitrator. He is former Secretary PWD, Government of Karnataka and former Member Karnataka State Environment Appellate Authority. He has been member of several arbitration tribunals and dispute resolution boards and sole Adjudicator that dealt with disputes between entities of Government of India, Government of Karnataka, Government of erstwhile Andhra Pradesh and various infrastructure companies. He is currently Chairman of Dispute Resolution Boards of two infrastructure projects and Sole Adjudicator of another. He is an empanelled arbitrator of Bangalore Metro Rail Corporation, Indian Roads Congress and Indian Council of Arbitrators.

**Prof. (Dr.) Vijender Kumar**, is a 'Commonwealth Fellow, UK' (2009-2010), a 'Meritorious Law Teacher Awardee' (2019) from the Government of Telangana, and the Vice-Chancellor of Maharashtra National Law University, Nagpur. He had been the Vice-Chancellor of National Law University and Judicial Academy, Assam; and the Registrar of NALSAR, University of Law, Hyderabad before joining Maharashtra National Law University, Nagpur as its Founder Vice-Chancellor. An astute academician and research scholar, he has numerous research articles and books to his credit. He has edited J.D....Treatise on Hindu Law.

**Prof. Dr. T.R. Subramanya** is currently the Dean of CMR University School of Legal Studies, Bengaluru after serving as Coordinator & Research Fellow at the Centre for Regulatory Studies, Governance and Public Policy (CRSGPP) in The WB National University of Juridical Sciences, Kolkata. Before that, he was the Vice Chancellor of Karnataka State Law University, Hubballi. He has also served as Dean and Chairman of the Faculty of Law, Bangalore University; Registrar (Evaluation) of Bangalore University. He has also served as Legal Advisor to the Kingdom of Bahrain for over 7 years. Prof. Subramanya has obtained M.Phil and Ph.D. Degree in International Law from the School of International Studies, Jawaharlal Nehru University, New Delhi. His book on Hazardous waste and law was recently published.

**Sri. V. Sudhish Pai**, M.Sc., LL.B., is an eminent advocate at Bengaluru. He has practice mainly in Civil Law, Constitutional Law and Administrative Law matters. He has held the positions of Government Advocate, High Court of Karnataka; Member, Karnataka Section of International Commission of Jurists; Senior Research Scholar, Law Commission of Karnataka. He has assisted Dr.Durga Das Basu in the revision of Commentary on Constitution and edited V.G. Ramachandran's *Law of Writs* (in 2 vol-

umes). His notable publications include *Justice M N Venkatachaliah - The Man & The Judge*, *A Judge Nonpareil - A B K Mukherjea Reader*, *Constitutional Supremacy – A Revisit*, *Working of the Constitution - Checks and Balances*, *Legends Of Law: Our Great Forebears*.

**Prof (Dr.) C. Rajashekhar**, was the Registrar Evaluation of the Karnatak University, Dharwad. He was a Professor at the P.G.Department of Law and Dean, Faculty of Law, Karnatak University, Dharwad. He has authored one book and many articles in journals of repute. He has taught law at Mysore and Dharwad.

**Prof (Dr) C.A. Gurudath Chilkunda**, MA., LL.M., MBA., Ph.D (Law) is presently Dean, School of Law, SRM Institute of Science and Technology, Tamil Nadu. He has served as the Principal of Vidyavardhaka Law College, Mysore and Dean Academics and Dean & Director School of Law, JagranLakecity University, Bhopal.

**Dr. Lohit D. Naikar**, B.A., LL.M.(England), LL.M. (Karn.), Ph.D. is an Advocate by profession and Social Worker. He was a visiting faculty at the University College of Law, Dharwad; Visiting Professor at The National Law University and Judicial Academy, Assam. He has written several books and articles on law and issues of social concern, His major publications include *The Law Relating to Human Rights*; *Manava Hakkugalu mattu Kanoonu* and *Basava and Human Rights*.

**Sri. Ramjan Dargah** is a progressive writer. He is a recipient of Basava National Award, Rajyotsava Award, The Vachana Thinker Award and Sahitya Sri Awards. He has authored many books including *Vachana Belaku: NooronduvachanaVishleshanae*, *Basavanna Mattu Ambedkar Haagu Itara Lekhanagalu*, and *Basavanna Eke Beku*. His other works are- *To the street where poetry came*, *There is a flower in the navel*, *The BasavaPragne*, *God of Basavanna*, *The World Message of Basava Religion*, *The Nudity Doctrine and Wisdom of Oath*.

**Sri Balasubrahmanya Kanjarpane** B Sc., LL. B., M. A. (English) is a Senior Advocate of Madikeri Bar. He has made rich contribution to Kannada literature. His collections of poems include ‘*Swayamprabhe*’ and ‘*Odeda Pratimegalu*’ and his collection of short stories is ‘*Adrishtada Hudugi*’. His collection of legal articles in Kannada is ‘*Thakkadiya Mullu*’ and compilation of essays is ‘*Bisila Handara*’. His poetic work ‘*Garudavathara*’ has won Muddana Kaavya Puraskara in 2009. He has also contributed by translating some chapters of Will Durant’s *Story of Civilization* and *Report of*

*the Cauvery Water Tribunal Award*. He also writes the column 'Anugala' to Varthabharathi regularly.

**Dr. B. S. Anilkumar** completed his B.ED., M.A., Ph.D all from University of Mysore, Mysore. Presently he is working as Assistant Director, Pasaranga, University of Mysore, Mysore. He is rapture associated with research in Dasa literature for more than a decade. He has published five books and edited three books apart from publishing many articles. Before occupying the present position, he has worked as teaching faculty also.

**Dr. Aruna L.**, is an Associate Professor at School of Legal Studies in CMR University Bengaluru and chairperson of the Anti-Sexual harassment committee. She is a researcher on gender nutral laws on sexual harassment at work place. She has experience in corporate as Asst. Manager Risk and Compliances with HSBC, has also practiced as an advocate in the trial and High Court at Bengaluru.

**Dr. Akhila Basalalli** is a Senior Research Assistant at the Centre for Research in Water Law and Management at Karnataka State Law University. She has obtained Doctorate from Centre for International Legal Studies, Jawaharlal Nehru University, New Delhi, India. Her research interests include the interface between international law and domestic law, engagements of judiciary with international law, third world approaches to international law, water law, environmental law and feminist studies. She has presented papers in ISA, World Congress of International Law (ISIL), AISC, IPSA with publications. She is also a part of the research group on Domestic Courts and International Law.

**Prof. Balanna Sheegihalli** is a retired Professor of Kannada and Kannada Litterateur. He has authored and edited many books. He is known to be a very humble person who always remains away from limelight and works silently. Many awards and accolades are bestowed upon him. He was conferred with the Dr.S.S.Kotin Critique award for Kriti Sangaati and Karnataka Nataka Academy Award for Kannada Rangachintanegalu. He is also the recipient of Sri.Prabhudeva SamsthanaVirakthamatha Basava Belagu Award; Aacharya Bahubali Kannada Sahitya Prashasti; Sree Guru Puttaraja Sahitya Ratna Prashasti, and other awards.

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**Part-I**

**General Discourse on “Socio-legal values in  
Mitakshara, Vachana, Dasa and Folk Literature in  
Karnataka: An Exploration”**

Socio-Legal Values in Mitakshara, Vachana, etc in Karnataka / 2

## The Gorgeous Flow of Socio-Legal Values: Eternal, Interactive and Inspiring - A Note on the Medieval Karnataka Experience and its Aftermath\*

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P. Ishwara Bhat\*\*

Culture of a country with its bundle of social values casts a deep impact upon both law and literature. Values are widely accepted norms in accordance with which a society aspires to live.<sup>1</sup> Such acceptance comes from the bosom of the society out of its experience, vision and deeper thinking about social welfare. Values become both social and legal when they are evolved or accepted by the society and enforced by the legal system. The social movements, protests against arbitrary or exploitative conditions and reflections over community's experience also shape both law and literature. As common products of culture,<sup>2</sup> these two manifestations

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\* Key Note Address to the National Webinar on 'Socio-legal Values in *Mitakshara, Vachana, Daasa* and Folk literature in Karnataka: An Exploration' held at Karnataka State Law University, Hubballi

\*\* Vice Chancellor, Karnataka State Law University, Hubballi

<sup>1</sup> SB Chavan Committee on Education Curriculum had viewed, "Values are principles which are consistent and universal and which direct our action and activities. They are in-built in our society, common to not only all the communities but also to all religions at all times. Values are, in other words, virtues in an individual. These values, if deteriorated, will hasten or accelerate the breakdown of family, society and nation as a whole. India has age-old tradition of values interwoven in the national fabric." Cited in *Aruna Roy v. Union of India* AIR 2002 SC 3176 paragraph 32. M Haralanabos and R M Heald, *Sociology: Theory and Perspectives* (New Delhi: Oxford University Press, 2004) 4: Value is a belief that something is good and desirable. It defines what is important, worthwhile and worth striving for.

<sup>2</sup> Tylor considers culture as that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of the society. Edward Tylor, *Primitive Culture* vol.I (1871 rept.1958) p.1 cited in Milton Singer, *Encyclopaedia of Social Science* p.527. According to Abid Hussain, "culture is a sense of ultimate value possessed by a particular society as expressed in its collective institutions by its individual members in their dispositions, feelings and attitudes and manners as well as significant forms which they give to material objects" Abid Hussain, *The National Culture of India* (New Delhi: National Book Trust, 1994) p.3.

of human endeavor not only influence each other but also mutually reinforce for greater synergy. The reservoir of values – justice, liberty, equality, fraternity, dignity, morality, harmony and welfare - that is cherished and nourished by successive generations over centuries of development, both national and regional, shape the social structure. The intellectual structure of law, morality, religion and customs ought to receive commands from these basic values, and the infrastructures of the polity such as economic system, population and the governance shall abide by these values, to put in the words of Alur Venkata Rao.<sup>3</sup> Although not amenable to accurate definition and not visible to bare eyes, the socio-legal values are flowing as silent streams that enrich the societies incessantly. They form the conscience of community, agenda of action and a basis for constitutional development.

The Webinar organised by the Vignaneswar Centre is a collective effort of tracing the footprints of value process that evolved in medieval Karnataka owing to people's involvement in a movement for socio-religious reforms that had far reaching consequence. To use the words of its greatest leader Sri Basaveshwara, it is like watering a tree through the mouth of its roots so that the tree will grow, bloom and yield fruits for the benefit of the world.<sup>4</sup> The discourses in this *Anubhava Mantapa* will garner knowledge about the basis, nature and impact of the socio-legal values spread over unprecedented mass production of inspiring literature which are philosophically sublime, practically action-oriented and socially ameliorating. The literature and social developments that will be discussed is pertaining to a period starting from the early 12<sup>th</sup> century spreading over to 17<sup>th</sup> century whose ethos is continuing even in the present constitutional system and will last eternally. At the beginning there was *Mitakshara*, although it was not the beginning of the beginning. It was a commentary by a Yogin, Vijnaneshwara on *Yajnavalkya Smriti*. While it propounded new approaches and reforms, it had inherent limitation of working within a framework set long time ago with an effort of conforming to *Sruti* or *Veda*, an effort which was not that perfect. The evils of caste system and discriminations continued as the *Mitakshara* approach was only evolutionary but was not revolutionary. But the new concepts it evolved through the process of interpretation, especially about women's estate, basis of property right, king's duty towards welfare, expiation as a method of reforming the criminals made this product of a scholar from Karnataka a

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<sup>3</sup> Aluru Venkata Rao, 'Karnatakavada Vikasa' in Jaya Karnataka 1922 cited by Devendra Kumar Hakari, *Karnatakada Kulapurohita Aluru Venkata Rava* (Kannada Kulapurohita Aluru Venkata Rava National Trust, Dharwad, 2011) 42.

<sup>4</sup> Siddayya Puranik, *Human Values in Vachana Literature* (Bangalore: Bharatiya Vidya Bhavan, Gandhi Centre, 1997) pp. 13-14.

nationally acceptable legal framework to govern people all over India except people of Bengal who adhere to *Dayabhaga*.<sup>5</sup>

In contrast, the story of Basaveshwara was one of revolt against the existing social order, caste-based discriminations, poverty, ignorance, superstitions and emphasis on social and religious reforms. These enable individuals and people to ultimately unite with God on the basis of good conduct, social service, equitable distribution of good things of life, humanitarian treatment and obligation towards equality based on human dignity. The movement spearheaded by Basaveshwara was staunchly supported by his followers in large numbers, and it became a people's movement. The *Vachana* literature was a clarion call for reforms, addressed in simple language understandable by people. It was produced by hundreds of *Shivasharanas* with different backgrounds containing maxims of wisdom and capsules of advice. The movement had social, economic, cultural and political dimensions and had a mass character with a long term effect. It was dynamic, and not dogmatic.

The *Daasa* literature which flourished during the Vijayanagara period is another stream of intellectual discourse, where along with *bhakti* or devotion to God, the ideas of humanism, equality, morality, gender justice, altruism, harmony, selfless service and respect to elders have been propounded. As a parallel to this, the folk literature in Karnataka is a valuable treasure of human values developed through songs, ballads, tales, dramas and proverbs which have ample dimensions of fair and harmonious relations within the family and community supporting collective life, human rights, love, compassion, duties and tolerance. All these literatures project ideals and norms addressed to and accepted by both the elites and common people. There are common themes, factors and approaches underlying the above rich and variegated literature reflecting the socio-legal values advanced for a better life. They reflect the law-morality interface. They are eternal for the reason that they were relevant two thousand years ago, now and another two thousand years in future. It is pertinent to identify these values and know their philosophical base, nature, application and impact in the overall functioning of the society.

### **Sources of values: *Rta* and *dharma***

The bundle of values that influenced the thought content of morality, justice and law and shaped the ideals about human conduct from the ancient times and through the centuries is

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<sup>5</sup> It is Jimutavahana's commentary on *Narada Smriti*.

*Rta*. It is 'eternal'<sup>6</sup>, 'dynamic'<sup>7</sup> and 'omnipresent'<sup>8</sup> because of its manifestation of good. *Rta* is an ancient concept evolved in *Rig Veda* standing for universal order based on welfare, a 'course of things'<sup>9</sup> standing on truth and harmony.<sup>10</sup> It is peace in action, an ultimate destination of seekers of truth and an abode of happiness because of housing many moral virtues.<sup>11</sup> Sankaracharya finds in it increasing manifestation of knowledge and power and so on.<sup>12</sup> P. V. Kane identifies three aspects of *Rta*: being a course of nature; ordered way of cult of gods; and moral conduct of man.<sup>13</sup> U. C. Sarkar writes that *Rta* reflected divine origin of law, embodied moral order and remained uniform and regular in nature.<sup>14</sup> S. Radhakrishnan identifies it with law in general and the immanence of justice.<sup>15</sup> As a nucleus of ideas on right conduct, its impact upon the cultural ethos of India was long standing, wide and enormous. *Rta* became a criteria for good law, a norm in Karma theory, a basis for morality and a restorer of order. Hence, law, morality and justice owe their existence to *Rta*. *Varuna*, as a trustee of *Rta*, enforced it upon the deviants by compelling them to undergo expiation and thereby reforming the deviants. Living in accordance with *Rta* brings spiritual bliss because it helps in realization of true human nature and also justice or *dharma*. This link between *Rta* and *dharma* made the latter, a part of the former. Gradually, *dharma* became a popular and widely applied concept. Living in accordance with *dharma* protects both individual and collective interests. The interconnected concepts of *Rta* and *Dharma* comprehended substantive ideas of equality, liberty, fraternity, human dignity, harmony, tolerance, compassion and order, and also included the methods of doing justice by fair procedure. *Rta* provided theoretical basis and justifications

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<sup>6</sup> *Rig Veda* X 62.3: "Raising of sun to heaven and spreading of earth wide-scale symbolise eternal law, *Rta*." Radhabinod Pal, *The History of Hindu Law* (1958) 114.

<sup>7</sup> *Rta* as *Satya* has its own force, its strength annihilates enemies and its relations with forces of nature yield mighty powers. *Rig Veda* 1,2,8.

<sup>8</sup> "The wheel of *Rta* with twelve spokes revolves around the sky" *Rig Veda* I. 164.11; Rivers and the dawn follow *Rta*. *Rig Veda* II. 28, 4; *Rig Veda* I. 123, 9.

<sup>9</sup> S Radhakrishnan, *Indian Philosophy* (1962) 78-79

<sup>10</sup> According to *Rig-Veda*, "Eternal Law (*Rta*) and Truth (*Satya*) were born from the Fervour (*Tapas*) kindled to its heights." *Rig-Veda* X, 190. 1. Also see Bloomfield, *The Religion of Veda* (1927) 126, 128 for a description that it connoted order, harmony and absence of disturbance; S D Sharma, *Administration of justice in Ancient India* (3<sup>rd</sup> Ed. Mohan Law House, New Delhi, 2019) 7.

<sup>11</sup> *Rig Veda* IV. 23.9. A B Keith writes that *Rta* is connected with gods and is described by the learned as equivalent to truth and order. A B Keith, *The Religion and Philosophy of Veda and Upanishads* (1925) 35, 37-38.

<sup>12</sup> S Radhakrishnan, *Indian Philosophy* vol II (1962) 590

<sup>13</sup> P V Kane, *History of Dharmasastra* vol. IV (1973) 2

<sup>14</sup> U C Sarkar, *Epochs in Hindu Legal History* (Vishweshwarananda Vedic Institute, 1958) 25.

<sup>15</sup> S Radhakrishnan, *Indian Philosophy* vol II (1962) 78-79.



for subordinating human desires (*kama*) and economic interests (*artha*) to *dharma* in order to facilitate salvation (*moksha*);<sup>16</sup> for basing *varna* classification on attainment, nature and quality of professional work and not on birth;<sup>17</sup> for bringing discipline and obedience in the matter of ashrama-related duties;<sup>18</sup> for imposing duty upon the King to administer justice justly and impartially<sup>19</sup> and promote people's welfare;<sup>20</sup> and for structuring the prayaschitta practices to reform the wrong doers.<sup>21</sup>

Three types of debts (*runas*) i.e., towards ancestors (*pitṛ runa*) towards God (*deva runa*) and towards knowledge system (*rushi runa*) compel all to perform their respective social duties.<sup>22</sup> M Rama Jois adds one more i.e., towards society (*manava runa*). All these constituted essential elements of good conduct both at the individual and collective levels, promoted social solidarity, and profoundly influenced human imaginations, thoughts and

<sup>16</sup> This is called as *purushartha* principle applicable to all individuals and authorities. Such a process was expected to yield highest good and welfare, as per Manu II, 224. S D Sharma views that the concept provided liberty of action to people to attain happiness. P. 148. Aiming at eternity through ideal conduct of keeping *arishdvargas* (six enemies such as desire, anger, greed, passion, adamancy and jealous) away and insisting on sacrifice, the principle is product of *Rta* principle. The concept of progressive society contemplated here is distinguishable from Henry Maine's idea of contractual freedom.

<sup>17</sup> The requirement of organising the society to meet the requirements of knowledge, defence, prosperity and food production made the people of Vedic period to classify the communities based on attributes and nature of occupation. *Purusha Sukta* of *RigVeda* (X. 90), Chapter XXXI of *Yajur Veda* and *Atharva Veda* (XIX. 6) classify the social strata as Brahmana, Kshatriya, Vaishya and Sudra. Same family had members belonging to different *varnas* owing to occupations such as carpenter, physician, corn grinding etc., (*Rig Veda* IX. 112.3); in subsequent literature such as *Bhagavadgita* also one can find classification based on attributes and occupation. Mobility from one *varna* to another was recognised in the examples of Vyasa, Valmiki, Vishwamitra and others. In *Bhagavata Purana* it is stated: "One becomes a Brahmana by his deeds and not by his family or birth; even a Chandala is a Brahmana, if he is of pure character."

<sup>18</sup> People belonging to four different stages of life, viz., studentship (*brahmacharya*), household (*grihastha*), life of social welfare (*vanaprastha*) and life of renunciation (*sanyasa*) have to perform duties attached to those stages which are learning, enriching social life, helping the needy and renouncing ego respectively. Social welfare is the outcome of due compliance with these duties. Manu IX. 107; S D Sharma pp. 124-5.

<sup>19</sup> Manu VIII, 174-176; Gautama, X, 7-10. S D Sharma 62.

<sup>20</sup> *Rigveda* X. 173. 1-6 mandating King to provide security, stability, good service, protection of natural resources, public prosperity and fair treatment. Manu, Kautilya and Yajnavalkya detail the welfare duties of the King.

<sup>21</sup> P N Sen, *General Principles of Hindu Jurisprudence* (Tagore Law Lectures, 1918, Allahabad Law Agency, Faridabad) 359-360; S D Sharma, 63 and 86.

<sup>22</sup> Mahabharat Adiparva 120, 17-20 cited by M Rama Jois, *Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System* Vol. I (N M Tripathi, Bombay, 1984) 83

expressions especially those flowered in the form of literature. In *Bhagavadgita* and *Upanishads* one can find profuse expression of *Rta* values such as fundamental character of duties, equal worth of all human beings, avoidance of sorrow by eschewing the mind distractors like passion, anger, adamancy, jealousy etc., developing good character by devotion and knowledge, and love of nature.<sup>23</sup> Culturally, it is a great phenomenon that the greater part of Indian literature aimed at realizing these values as knowledge was considered as an instrument for greater social happiness and welfare along with attainment of individual perfection. The brooding omnipresence of these values can be traced in the ancient literature in Sanskrit, the *bhakti* and other literature in various parts in India in a multitude of regional languages. It is these values that have provided unity of thought with diversity of expression. Not only that regional languages grew richer and powerful but also that their competence to arouse people towards attainment of these goals by intimate appeal got enhanced. These values also became measuring rod of their innate quality and social utility.

The most authentic and pristine articulation of *Rta* can be found in *Vedas*.<sup>24</sup> But they were mixed with metaphysical doctrines and worship of the almighty and were less concerned with 'lawyer's law'<sup>25</sup>. The Vedic references to human rights and welfare values substantiate the *Rta* commitments to the ethical ideals emanating from the perception of divine self of all human beings.<sup>26</sup> *Rig Veda* ordained, "Let brothers, of whom no one is elder, no one is younger, they grow up together for their mutual prosperity."<sup>27</sup> Its final prayer for a life of equality, harmony and collective effort for the welfare of all is highly inspiring.<sup>28</sup> *Yajur Veda*'s invocation of divine bliss for one's truth, faith, wealth, family, religious rites, life and longevity, freedom

<sup>23</sup> Bhagavadgita VI- 5 (perfection in individual action), III-20 (collective welfare), IV-6 (punishing the wicked and protecting the good), V-18, 19; III-27, 28; IX-32 IV-13 (equality and non-discrimination); VI-29 (fraternity), III-14, X-25-27, XIII-21,22 (protection of environment), II-47, 48 (performance of duty); IV-11, III-35, VI-21 (equality in religious freedom), XVI-24 (rule of law); II-62, 63, III-37, 38 (control of desire and anger); III-10, 13 (use of property only for social benefit and not for exploitation); Isa Upanishad I. 1 (not coveting the wealth of others) In CAD, and judgments of the Supreme Court and High Courts these principles are referred to and applied.

<sup>24</sup> According to Romilla Thapar the period of *Vedas* was from 1500 BC to 500 BC.

<sup>25</sup> Golap Chandra Sarkar, Hindu Law 3<sup>rd</sup> Ed p. 11 cited by P N Sen 11-12.

<sup>26</sup> "Srinvantu Vishve Amritasya Putraha" Svetasvatara Upanishad 2.5; *RigVeda* X. 191.1 God is addressed as universal unifying factor and as enkindled in the heart of everyone.

<sup>27</sup> *RigVeda* V. 60

<sup>28</sup> *RigVeda* X. 191. 2-3: "May you move together, speak together in one voice; let your minds be of one accord; and like the ancient sages, may you enjoy your assigned share of fortune. May our counsel or the public prayers be common, and common be our assembly. May our minds move in accord; may our thinking be in harmony – common the purpose and common the desire. May our prayers and worship be alike, and may our devotional offerings be one and the same."

from disease and consumption, freedom from enemies and danger, happiness, sleep and good time reflects human rights.<sup>29</sup> It emphasized on universal friendship.<sup>30</sup> *Atharva Veda* aspired for fearlessness, security, safety,<sup>31</sup> equality,<sup>32</sup> love and freedom from hatred.<sup>33</sup> Tolerating people of different speech, diverse customs and religions became people's responsibility as earth was invoked to bring prosperity to all.<sup>34</sup> Love and respect towards nature is the essence of its *Bhumisukta*.<sup>35</sup> *Vedas* also recognized equal rights of women in education, religious rites and marriage, a proposition historically supported.<sup>36</sup> The *Rta* values found ample support in *Brahmanas* or commentaries on *Vedas*, *Upanishads* and *Puranas* like *Ramayana*, *Mahabharata*, and also the latter's parts like *Bhagavadgita* and *Bhagavata*. The deeper philosophical discussions in *Upanishads* and narrations in the *Puranas* gave insights and inspirations about *Rta* to both the elite and common masses. In practice, occupation-based social mobility had avoided birth-based stagnations. It was not a strange thing to have members of the same family belonging to different castes owing to differences in occupation.<sup>37</sup> But gradually (500 BC) caste became hereditary and occupational mobility was lost, and marriage only within the caste came into vogue.<sup>38</sup> Insofar as women were concerned, recognition of liberty to choose marriage partner after one's childhood, acceptance of the practice of monogamy, symbolic immolation without death, opportunity to learn *Vedas* and practice of widow remarriage reflected an approach of gender justice.<sup>39</sup>

As a parallel to *Rta* principles, similar in content, but based on different lines of reasoning and focusing on human nature, social reality and right path of conduct, Buddhism propounded

<sup>29</sup> Yajur *Veda* XVIII. 5-6.

<sup>30</sup> Yajur *Veda* XXXVI. 18: "May all beings regard me with an eye of a friend; may I regard all beings with the eye of a friend."

<sup>31</sup> Atharva *Veda* XIX. 15. 5-6.

<sup>32</sup> Atharva *veda* VI. 64; similar to samajnanam sukta of *RigVeda* X. 191. 1-3.

<sup>33</sup> Atharva *Veda* III. 30. 1-3: "Freedom from hate I bring to you. One minded with mother, let the son be loyal to his sire. Let the wife, calm and gentle, speak words sweet as honey to her Lord. No brother hate his brother, no sister to sister be unkind. Unanimous with one intent, speak your speech in friendliness."

<sup>34</sup> Atharva *Veda* XII. 1. 45 "Let the earth, bearing in many places people of different speech, of diverse religions/customs, according to their homes, yield me a thousand streams of property, like steady unresisting milch-cow." "Janam vibhrati bahudha vivachasam nana dharmenam prithvi yaya okasam"

<sup>35</sup> Atharva *Veda* XII. 1. 10-63

<sup>36</sup> Dhananjay Vasudev Dwivedi, 'Thoughts for Human Rights in Vedic (Indian) Tradition' *The Indian Journal of Political Science*, Vol. LXXII, No.1, Jan-March, 2011

<sup>37</sup> *RigVeda* IX. 112. 3; father being physician, son a carpenter and mother agriculturalist.

<sup>38</sup> Romilla Thapar, *History of India* vol. I (Penguin Books, 1966, 2001) 40.

<sup>39</sup> Ibid 41.

right views, resolves, speech, conduct, livelihood, effort, recollection and meditation.<sup>40</sup> Rejecting caste discriminations and aiming at salvation through good conduct and compassion, it preached ideal behavior of non-hurt in Prakrit, a language understandable to common people. Jainism taught that purification of the soul by practicing non-violence, meditation, non-accumulation of wealth and balanced life and added to the *Rta* values.<sup>41</sup>

The values revealed in *Vedas* were generic and even metaphysical. For prescribing duties and prohibitions in the matter of family, property, transactions, security, charity, crimes and administration of justice elaborate code was required. Various learned sages like Manu, Yajnavalkya, Narada, Katyayana, Gautama, Harita, Vishnu, Atri, etc.,<sup>42</sup> prepared legal codes based on *Vedas* (*Sruti*) and declared to be in conformity with those revelations. As per Jaimini, in case of conflict between *Sruti* and *Smriti*, *Sruti* shall prevail.<sup>43</sup> Since they were codifying the prevalent practices there were not much variations in core principles although the approaches had diversity. In case of conflict among *Smritis*, it shall be resolved by reconciliation through harmonious reading as per Brihaspati or by appeal to reason as per Parasara, Narada and Yajnavalkya.<sup>44</sup> Because of codification of the prevalent practices there were deviations from the *Sruti* principle especially about *varnashrama* concept and position of women, which was, no doubt, a retrograde step. Still, traces of human rights values and justice can be found in *Smritis*. Brihaspati ranks *Manu Smriti* on the top. But Manu did not give scope for reason to shape the understanding of *Sruti* and *Smriti* and also contained rigid principles. In the 8<sup>th</sup> century AD, Sri Sankaracharya, a renowned Hindu monk, addressed the absurdities of orthodoxy accumulated over the ages and attempted at restoration of *Rta* values especially equality of human souls cutting across illusion (*maya*), rejection of birth-based distinctions, rejection of unnecessary rituals and practice of asceticism and control of senses as the method of salvation.<sup>45</sup> Madhvacharya laid emphasis on unqualified devotion and pluralism of souls.<sup>46</sup> Ramanujacharya preached about love and forgiving traits of God and opposed exclusion of shudras from temple entry.<sup>47</sup>

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<sup>40</sup> These are called Eight Fold Path. See Romila Thapar 66

<sup>41</sup> Ibid 65

<sup>42</sup> Yajnavalkya (I. 4.2) lists 20 *Smritis* whereas Yajnavalkya considers the list as not exhaustive. These were written from 2<sup>nd</sup> to 6<sup>th</sup> century AD

<sup>43</sup> Jaimini, *Purva Mimamsa*, I.3.3 cited by P N Sen, p.12

<sup>44</sup> Parasara II. 2; Narada I. 4; Yajnavalkya II. 21; P N Sen, 13-15

<sup>45</sup> Romila Thapar 185-186

<sup>46</sup> Romila Thapar 217

<sup>47</sup> Romila Thapar 218

Commentators like Vijnaneshwara (11<sup>th</sup> and 12<sup>th</sup> century AD) wrote commentaries on *Yajnavalkya Smriti* (3<sup>rd</sup> to 5<sup>th</sup> century AD), which had bit liberal approach by relying on reason and recourse to *Vedas* in the course of analysis. The choice had paid rich dividend as *Mitakshara* could bring big changes through interpretation although within the framework of *Yajnavalkya Smriti*. The deteriorations and perversions that accumulated over the centuries were to a certain extent reduced by application of reason and making a recourse to the *Vedas*. The subsequent *Bhakti* developments in various parts of India, viz., Tamil Nadu, Maharashtra, North and Bengal with spiritual leaders such as Thiruvallavar, Ramananda, Tukaram, Kabir, Chaitanya and others arousing people's consciousness through thought provoking literature in people's language. In Karnataka, the socio-religious reform movement took place in the twelfth century with a massive involvement of common people through use of their language. The cult of devotion to divinity was associated with adherence to good conduct, egalitarian outlook, compassion, respect to others, dignity and individual autonomy, non-possession of wealth and altruism. The *Shiva sharana* tradition was followed by leaders of *Daasa pantha* and creative contributors of folk literature also. It is these brilliant pages of medieval history of Karnataka (11<sup>th</sup> century to 17<sup>th</sup> century AD) that is the material for the present discourse on socio-legal values. It is the story of great intellectuals and literature highly persuasive for best human conduct that maintained symphony with *Rta* values which provide criteria for comparison and evaluation.

**Description of *dramatis personae* who produced literature having socio-legal content in Karnataka (12<sup>th</sup> to 17<sup>th</sup> century AD)**

The period under study in Karnataka is studded with erudite jurists, statesmen, intellectual leaders, socio-religious reformers, steadfast devotees, enlightened bards and monks who heightened the moral vision of the society in an unprecedented manner. The great personalities of the age who enriched through their thoughts, words and deeds included eminent jurists like Vijnaneshwara and Devanna Bhatta who wrote commentaries like *Mitakshara* and *Smritichandrika* in Sanskrit; epoch making statesman Basaveshwara, philosopher poet Allama Prabhu, Chennabasavanna, Devara Dasimayya, Akka Mahadevi, Siddarama, Aadayya, Ambigara Chowdayya, Madara Chennayya, Dohara Kakkayya, Shivanagamayya, Urilingapeddi, Nagalambike, Gangambike, Nilambike, Sankavva, Akkamma, Amugerayamma and various followers of Basaveshwara as a part of Veerashaiva and *Vachana* movement. This was followed by a catena of renowned Haridasa bards and scholars such as Sripadaraja, Vyasatirtha, Vadirajathirtha, Raghavendra thirtha, Purandara Dasa, Kanakadasa, Vijayadasa, Gopaladasa, Jagannathadasa, Helavanakatte Giriyamma, Mahipati Dasa, Harapanahalli

Bhimavva and many other Haridasas who produced enormous body of socio-religious literature in Kannada. *Vachanas* of Sarvajna, and varieties of folk literature produced by anonymous common people also added to the treasure of literature. Except Vijnaneshwara, Sayana and Devana Bhatta, who wrote in Sanskrit the rest produced literature in simple and easily understandable Kannada language with tremendous insight. These were in addition to the classical and formal literature produced by poets such as Harihara, Raghavanka, Kumaravyasa, Lakshmisha, Sanchiya Honnamma and others. People in ancient India were respecters of values rather than of individuals. But in order to know the value processes which grew in response to social conditions, it is necessary to understand the role of individuals in strengthening the values by briefly depicting the profiles of great people of the time. This section makes an attempt in this regard.

Vijnaneshwara described himself at the end of his treatise *Mitakshara* as Bhattaraka, Sanyasian of the order of Paramahansa, son of Padmanabha Bhattopadhyaya and a disciple of Uttama.<sup>48</sup> The Martur inscription of AD 1123 discovered in 1970s refers to Chalukya Emperor Vikramaditya VI (AD 1076-1127) bowing his head at the feet of the Yogin, royal and public respect shown to the treatise and grant made for perpetual study of *Mitakshara*.<sup>49</sup> The treatise is believed to have been written between AD 1070 and 1100.<sup>50</sup> Being well versed in *Purva Mimamsa*, Vijnaneshwara engages in in-depth discussion of each clause by referring to alternative sources and explaining different dimensions and suggesting appropriate meaning. He had great respect for *Yajnavalkya Smriti* probably because of its liberal approach as compared to other *Smritis*.<sup>51</sup> Vijnaneshwara has kept the same structure and order in his treatise also. Broadly, there are three major parts: *achara*, *vyvahara* and *prayaschitta* with

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<sup>48</sup> Srisha Chandra Vidyarnava, a translator of *Mitakshara* conjectures that Vijnaneshwara seemed to be Bengali because of the use of the word Bhattopadhyaya. Srisha Chandra Vidyarnava, *Yajnavalkya Smriti with the Commentary of Vijnanesvara* called *The mitaksara* (The Panini Office, Bhuvaneshwari Ashram, Allahabad, 1918). But this view is falsified by the epigraphic evidence. Vijnaneshwara was eminent jurist who adorned the court of Vikramaditya VI of Chalukya Karnataka (AD 1076-1126) as legal advisor and courtier. Vikramaditya VI is known for treating all the religious sects equally by giving grants.

<sup>49</sup> K. Krishnamurthy, 'Vijnanesvara's Contribution to Hindu Law' in M S Nagaraja Rao (Ed), *The Chalukyas of Kalyana*, (Asiatic Society, Bangalore) 131-136 at 113; S. Gururajachar, 'Vijnanesvara and Contemporary Society' in M S Nagaraja Rao (Ed), 137-142.

<sup>50</sup> Robert Lingat views it as end of 11<sup>th</sup> century; Derret states as between 1121 and 1125; P V Kane gives the date of 1050. Any way it should be before 1123.

<sup>51</sup> Vijnanesvara starts his treatise with salutation to the venerable Guru, Yajnavalkya; see J R Gharpure (tr), *The Yajnavalkya Smriti with Commentaries of the Mitakshara and the Viramitrodaya*, (Collection of Hindu Law Text, 1936) 1-2. Vidyarnava xvii; 410.

their subdivisions. Duties of good conduct, the ritual practices associated with various stages of life, charity and kings' duties are prescribed in 13 chapters of *achara* part. In the *vyvahara* part there are 25 chapters covering civil and criminal laws, family law, debt, boundary dispute, evidence, agreement, administration of justice and sentencing. In *prayaschitta* part there are 5 chapters which deal with treatment of the tainted ones, isolations of members of diseased persons' families, *vanaprastha* and penance for wrongful acts and crimes. Thus, *Mitakshara* is not purely a law book nor its nature resemble systematic legal code. It contains morals, guidelines for flawless life, family manual for good conduct and norms prescribed for ideal behavior of king in addition to legal norms.

Being a Commentator, Vijnaneshwara had to interpret and comment within the framework of the original text and had to be loyal to it. Hence, caste-based discriminations in matters of marriage were continued with the consequences of treating the children of such marriage separately.<sup>52</sup> But there was no absolute prohibition or criminalization of such inter-caste marriages as was done by Bijjala in the twelfth century. Regarding the position of widows Yajnavalkya merely prescribes that she shall live with her father, mother, son, brother, mother-in-law or maternal uncle; otherwise she might become liable to censure.<sup>53</sup> There is no mention of *sati*. *Mitakshara* refers to other *smritis* which prescribe *sati* or *anugamana* and rejects them as mandatory in view of *Sruti* principle that "one desiring for heaven must not pass away before the end of his natural life." By this he emphasized on the duty to live. But he did not categorically reject *anugamana* and permitted widows who were wishing for heaven to make a recourse to it. If we take the major thrust of his reasoning based on *Sruti*, it is clear that he was reducing the rigour of *sati* practice through his pro-life interpretation.<sup>54</sup> But it was unnecessary for him to refer to other *Smriti* and make any suggestion when *Yajnavalkya Smriti* had not prescribed *Sati*. But his ideals of pro-life were quite ahead of his time but were not fully realizing the *Rta* values of *Sruti* period. His remarkable exposition of the very first shloka of Yajnavalkya *Smriti* which refers to *Dharmas* of classes, orders and others takes the readers to *dharmas* related to *varna*, *ashrama*, *guna*, *nimitta* and *sadharana*, and then explains how without *dharma* there cannot be wealth, desire and salvation, and how *dharma* can prevail independent of these.<sup>55</sup>

<sup>52</sup> Yajnavalkya I. 94-96

<sup>53</sup> Yajnavalkya I. 86

<sup>54</sup> After discussing various versions given by *Vyasa*, *Sankha*, *Angirasa*, *Harita* and other *Smritis* and undesirability of suicides and *syena* sacrifice (religious ritual to kill another human being) and also *Mitakshara* states that for a woman who does not wish for *moksha*, *anugamana* may be proper. Gharpure, 227-231.

<sup>55</sup> Yajnavalkya I. 1; from the use of the word 'others' (*itara*) he does not infer any meaning as the preceding words are only two in number and common genus cannot be found.

Yajnavalkya lists the factors which generate *dharma*, which includes: country (*desha*), time (*kala*), design (*upaya*), thing (*dravya*), proper person (*paatram*), absolute giving (*pradiyate*) and faith in God (*sraddha*). *Mitakshara* comments that because of the word *sakalam*, other factors mentioned in *shastras* such as caste, quality, substance and action, each one of which is impregnated with *shraddha*, are also causes of *dharma*.<sup>56</sup> *Mitakshara* makes *dharma* broad-based and links *shraddha* to each of its components. Compliance with *sruti*, *smriti* and *sadachara*, control of conduct to ensure harmlessness and liberality and realization of one's Self without bothering about external objects is the highest *dharma* or yoga.<sup>57</sup> Thus *Mitakshara* was aspiring to become a book for 'good conduct'.

Scientific approach exuberates in the *Mitakshara* analysis at various places. The explanation given in *Mitakshara* for the word *sapinda* is scientific by focusing on blood relationship or connection of particles of one's body rather than entitlement to offer rice balls to the deceased.<sup>58</sup> *Mitakshara* treats property as the product of human action<sup>59</sup> and also instrument of action<sup>60</sup> and gives a materialist (*laukika*) rather than religious image to it.<sup>61</sup> It believes in labour theory of property (*svatva*) and takes care in avoiding unjust enrichment and undeserved misery.<sup>62</sup> For example, on adverse possession his approach was to restore the right to possession of land even after a lapse of twenty years of adverse possession without protest but not to confer the profits earned by the adverse possessor. Interpretation of the word "loss" by confining to the profit and not extending to corpus is a thoughtful application of *Rta* principle of justice.<sup>63</sup> While this may appear as strange for a lawyer versed in statutory law of limitations based on colonial rule, the soundness of the interpretation is unquestionable, highly innovative and worth emulating. It obligates upon the State to compensate private owner of property in case of acquisition.<sup>64</sup> Similarly, *Mitakshara* excludes sons' pious obligation to pay the debt incurred by father if it is contracted for the purposes of

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<sup>56</sup> *Mitakshara* on *Yajnavalkya Smriti* I. 6; Vidyarnava 12-13

<sup>57</sup> *Mitakshara* on *Yajnavalkya Smriti* I. 7

<sup>58</sup> *Mitakshara* on *Yajnavalkya Smriti* II. 52, 53.

<sup>59</sup> Swamatmasambadhi dravyam' *Yajnavalkya Smriti (Mitakshara)* II. 168

<sup>60</sup> Laukikartha kriyasadhanatvam' *Mitakshara* on *Yajnavalkya Smriti*

<sup>61</sup> I S Pawate, *Daya Vibhaga or the Individualisation of communal property and communalization of individual property* (2<sup>nd</sup> ed. Karnatak University, Dharwad, 1975) 230-232.

<sup>62</sup> P. Ishwara Bhat, 'Protection against Unjust Enrichment and Undeserved Misery as the Essence of Property Right Jurisprudence in *Mitakshara*' 48 (2) *Journal of the Indian Law Institute* (2006) 155-174.

<sup>63</sup> *Mitakshara* on *Yajnavalkya Smriti* II. 24

<sup>64</sup> *Mitakshara* on *Yajnavalkya Smriti* II. 121; also see Gururajachar 139



liquor, lust, gambling and without consideration such as those promised to rogues, dancers, swindlers, thieves or for illegal or immoral purposes. It treats family property as a measure of social security for the joint family as a whole by excluding unjustified alienations by the karta. Regarding stridhana, *Mitakshara* includes additional categories of woman's entitlement by elaborately understanding the word "aadya" occurring at the end of the list, and also by allowing her to take part in purchase, partition and inheritance. According to him unchaste woman or widow is also entitled to maintenance from the family.<sup>65</sup> In the matter of *nripa*'s (protector of people, king) duty to impose appropriate punishment upon the criminals, *Mitakshara* says that the intention of the culprit, the factor of first offender or habitual offender, and so on (including impact of punishment on protection of society) shall be taken into account in addition to place, time, age, act and wealth of the criminal.<sup>66</sup>

Scholars like P.V.Kane praise *Mitakshara* for its brilliant reasoning, lucid presentation and apt use of semantic construction and equate its author to Panini and Mammata.<sup>67</sup> But the greatest credit of *Mitakshara* consists in bringing out innate values of *Rta* and linking justice with social welfare. Perhaps, it is for this reason that whole of India except Bengal, which opted to follow *Dayabhaga*, embraced *Mitakshara* as its governing principle. Its approach was one of evolution and consensus rather than that of conflict, a model of social transformation explicit in the life, words and deeds of Basaveshwara.

An important stage of development in medieval Karnataka in re-establishing the universal moral order or *Rta* principles is emergence of dynamic leadership of Basaveshwara, an all-time great in many respects, a revolutionary thinker, statesman, social reformer, founder of new religious philosophy and practice, poet with new form of literary writing and ardently propounding the precepts of socio-economic justice.<sup>68</sup> He is believed to be born in 1105 and lived until 1167.<sup>69</sup> He revolted against orthodoxy, blind belief and discriminations at a very early age, and defied holy thread which was mark of caste differentiation. He grew in devotion

<sup>65</sup> *Mitakshara* on *YajnavalkyaSmriti* II. 140

<sup>66</sup> *Mitakshara* on *Yajnavalkya Smriti* I. 368

<sup>67</sup> P. V. Kane, *History of Dharma sastras* Vol. I, p 287; K Krishnamurthy, 131; B N Sampath, *Paramahansa Vijnanesvara: Secular Icon of Medieval India*

<sup>68</sup> There are numerous biographies on Sri Basaveshwara: H. Thipperudra Swamy, *The Maker's Mint* (tr.) Sadananda Kanavalli (Veerashaiva Samaja of US and Basaveshwara Peetha, KUD, Dharwad, 2011); D Javare Gowda, *Basava Darshana* (Shri Shivaratrishwara Granthamale, Mysore, 2004); Lok Sabha Secretariat, *Mahatma Basaveshwara* (2003); H. Thipperudraswamy, *Makers of Indian Literature: Basaveshwara* (Sahitya Akademi New Delhi, 1975, 2017); P B Desai, *Basavesvara and His Times* (Kannada Research Institute, Karnatak University, Dharwar, 1968)

<sup>69</sup> P B Desai, xvii

to Kudala Sangama and became mature with distinct philosophical thoughts which were close to pristine *Rta* principles and opposed to the later accretions in the form of *Smritis* and Puranas and practices of caste discrimination. Moved over to Mangalavedhe to act as royal treasurer under the Kalachuri Bijjala. When Bijjala became sovereign by defeating Chalukya Emperor, he moved over to Kalyana. His popular association with *Shiva Sharanas* witnessed periodic discussions in *Anubhava mantapa*, involvement in social reforms like eradication of caste discriminations, gender equality, support to *kayaka*, *dasoha* and *jangama* and preaching of moral principles of equality, dignity and respect for women. Religion based on moral principles and compassion came into vogue with distinct practices like *lingadharana*, *shatsthala* form of worship, charity and respect for *jangama* which meant respect for the whole society. Bijjala's cruel and arbitrary action of death penalty on Madhuvarasa and Haralayya for arranging inter-caste marriage triggered a bloody revolution, assassination of *Shiva Sharanas* and Bijjala, and return of Basaveshwara to Kudala Sangama, where he breathed his last.<sup>70</sup> His success in leading the social movement was due to several reasons such as his towering personality of uprightness, simple moral lessons adaptable in daily life, convincing reasoning in communication, courteous and wise words, love of humanity and output of justice and fairness to the vulnerable.<sup>71</sup> His concern for reduction of misery and selfless service to the society and systematic planning and demonstration through personal practice and experience also contributed to his success. His *Vachanas* became not only religious and social guides for human actions, but also trend setters in philosophical, poetic and moral expositions.<sup>72</sup> Unlike Vijaneshwara who had to have loyalty to the text of *Smriti* and *Sruti*, Basaveshwara had freedom to shape his outlook and approach to suit the social requirement of people's welfare, human dignity and equality.

Basaveshwara had the support of the *Shivasharanas*, who were great personalities drawn from various layers of social life in the organised efforts of social movement and intellectual awakening for all round reform. Jedara Dasimayya states that like the wheel pin

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<sup>70</sup> P B Desai, 195-197

<sup>71</sup> P B Desai, 205-212; also see Karigowda Beechanahalli, *Basavanna: Punarleha* (Prasaranga, Kannada Vishvavidyalaya, Hampi, 2015)

<sup>72</sup> M M Kalaburgi, *Basavannanavara Vachanasamputa* Volume I of *Samagra Vachana Samputa* in 15 volumes (Kannada Pustaka Pradhikara, Bengaluru, 1993, 2001); P V Narayana, *Vachana Samasta* (Sapna book House, Bengaluru, 2017); O L Nagabhushan Swamy, *Vachana Savira* (Prasaranga, Kannada Vishvavidyalaya, Hampi, 2004, 2014); S. S. Bhusanurmatah (Ed) *Vachana Sahitya Sangraha* (Department of Kannada and Culture, Government of Karnataka, 2006); Basavaraja Sabarada, *Vachana Samskriti* (Pallavi Prakashana, Gulbarga, 2007)

that controls and safeguards the chariot, good conduct saves the human life from disaster.<sup>73</sup> Equal treatment of others, sincere work and keeping promises elevate the individual to higher moral pedestal. Allama Prabhu wrote about intimate relation between the almighty and the devotee, the need to attain perfection in the opportunity available, avoidance of hypocrisy in behaviour and winning over desire by abandoning indulgence in land, wealth and women.<sup>74</sup> Akkamahadevi laid emphasis on unambiguous belief in human dignity, purity of thought words and deeds and love towards God.<sup>75</sup> Chennabasavanna preached charity, sacrifice and modesty.<sup>76</sup> Siddarama not only facilitated by construction of tanks and lakes but also gave call for control of human desire which was the cause of sorrow and for promotion of dasoha as a part of worship of god and society.<sup>77</sup> Madivala Maachaiah pleaded for escape from the snares of desire, anger and ignorance.<sup>78</sup> Ambigara Chowdiah propounded the importance of benevolent knowledge for emancipating from the traps of desires, impure thoughts and fallacies of mind.<sup>79</sup> The Shivasharana Lingayat movement had impact upon subsequent centuries in North Karnataka, Maharashtra and Andhra Pradesh and received acceptance in formal Kannada literature.

Another development in medieval Karnataka is the spread of Vaishnavism and growth of Haridasa Sahitya in Kannada.<sup>80</sup> There was influence of Visistadwaita of Sri Ramanujacharya (1077-1157) owing to an atmosphere of religious tolerance and the encouragement given by Hoysala King Vishnuvardhana.<sup>81</sup> Sri Madhwacharya (1238-1317) was another eminent philosopher and *Bhakti* saint, born in Pajaka of Udipi who propounded Dwaita philosophy. The tradition of Haridasa Sahitya, which began in the 9<sup>th</sup> century AD by

<sup>73</sup> S. Rudramuni Shastri, *Vachanakararu: Vachanagalu hagu avugala vivarane* (Vasanthha Prakashana Bengaluru, 2018) 8-22 at 10

<sup>74</sup> Ibid 47-69; also see B. V. Mallapura, *Allama Prabhudevara Vachansamputa* (Kannada Pustaka Pradhikara, Bengaluru, 1993, 2001)

<sup>75</sup> S. Rudramuni Shastri, 70-84; Viranna Rajur, *Shivasharaneyara Vachanasamputa* (Kannada Pustaka Pradhikara, Bengaluru, 1993, 2001) 33-36 preface 1-130

<sup>76</sup> S. Rudramuni Shastri, 85-90; B V Mallapura, *Chennabasavannanavara Vachanasamputa* (Kannada Pustaka Pradhikara, Bengaluru, 1993, 2001)

<sup>77</sup> S. Rudramuni Shastri, 93-103; also see S Vidyashankar, *Siddarameshwara Vachanasamputa* (Kannada Pustaka Pradhikara, Bengaluru, 1993, 2001)

<sup>78</sup> S. Rudramuni Shastri, 104-109

<sup>79</sup> S. Rudramuni Shastri, 110-116

<sup>80</sup> Shalini Raghunath, 'Haridasa Sahityada Itihas' in H S Krishnaswamy Iyengar, *Dasasahitya Darshana* (Mangala Bharathi Prakashana, Mysore, 1984) 32-62; Sitaram Jagirdar, 'Karnatakadalli Haridasapantha' 1-31. Beluru Keshavadasa [Ed.] *Shri Haridasa Sahitya: Vimarshhe*, (Harimandira, Mysore, 1944)

<sup>81</sup> Romila Thapar, 218

a scholar named Sri Achalananda got revived by Sri Narahari Tirtha (1203) who was a disciple of Sri Madhwacharya.<sup>82</sup> But the golden period of Haridasa sahitya started from the times of Sripadaraja (1389-1487) with a continuous Guru-shishya tradition.<sup>83</sup> Sri Vysaraya (1447-1539) was a renowned disciple of Sripadaraja. Both of them built a grand team of Haridasa disciples.<sup>84</sup> Sri Vadiraja Tirtha (1480-1600) was a philosopher, poet and Haridasa who enriched Haridasa sahitya.<sup>85</sup> Sri Raghavendra Tirtha of Mantralaya (1595-1671) also contributed to Haridasa literature. Purandara Dasa (earlier name Srinivasa Nayaka 1484-1565) was the greatest of Haridasa who made enormous contribution of thousands of *kirtanas* and enriched Carnatic music through his compositions.<sup>86</sup> Kanakadasa (1509-1607) was another eminent Haridasa poet, who hailed from lower strata of the society, and made great contribution to Haridasa and Kannada literature.<sup>87</sup> Sri Vyasaraaya initiated both these stalwarts into Haridasa fold.<sup>88</sup> Both of them preached high morals of equality, eradication of caste discrimination, dignity and quality of life and criticised the social evils, hypocrisy and narrow mindedness. They were the visionaries and had a great concern for social reforms. Subsequently Sri Vijayadasa (1682-1755), Gopaladas (1728-1765) and Jagannatha Dasa (1728-1809), Helavanakatte Giriyamma and Harapanahalli Bhimavva (1822-1902) carried this tradition further.<sup>89</sup> Thus, both the Shaiva and Vaishnava traditions of *Bhakti* movement in Karnataka have made valuable contribution to Kannada literature and social life by their simple and popular lyrics which are pregnant with high socio-legal and moral values.

Sarvajna was a poet, philosopher and eminent moralist of early 16<sup>th</sup> century hailing from Haveri. He was a prudent thinker having concern for healthy moral principles and best practices of human life.<sup>90</sup> Ideas of equality transcending the caste differences, humanism, harmony and welfare are studied in his three liners. Sanchiya Honnamma is also a poetess of this era with feminist ideas. She raises the woman question, since human progeny is begot by women and

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<sup>82</sup> Shalini Raghunath

<sup>83</sup> S Ramamani, 'Shripadarajaru' in H S Krishnasawamy Iyengar, 72-102

<sup>84</sup> T K Indubai, 'Dasakuta and Vyasakuta' in H S Krishnasawamy Iyengar, 63-71

<sup>85</sup> Subbanna Ranganatha Ekkundi, 'Shri vadiraja Gurugalu' in H S Krishnasawamy Iyengar, 161-191

<sup>86</sup> G Varadaraja Rao, 'Haridasa sahitya Sarvabhooma Shri Purandaradasaru' in H S Krishnasawamy Iyengar, 103-138

<sup>87</sup> G S Bhatta, 'Santakavi Anubhaavi Kanakadasaru' in in H S Krishnasawamy Iyengar, 139-160

<sup>88</sup> T G Manjunathan, 'Vyasarayaru' in in H S Krishnasawamy Iyengar, 358-368

<sup>89</sup> Akka Mahadevi, 'Dasasahityada Mahila Kritikararu' in in H S Krishnasawamy Iyengar, 344-357

<sup>90</sup> P. mahadevayya, Sarvajna: Thoulanka Adhyayanagalu (Prasaranga, Kannada Vishvavidyalaya, Hampi 2014)

as there lies no superiority of males over females why there shall be downgrading the status of woman and glorifying the position of man?<sup>91</sup>

Another important literary resource is folklore literature contributed by anonymous people which have sublime content of humanism, pragmatism, equality, welfare and dignity. The human rights content in Kannada folk literature is of high order.<sup>92</sup> The fact that producers of folk literature are common people, that it is based on valuable experience of life and that it is accepted by the community through oral tradition of passing from generation to generation speaks about people's participation and interactional way of developing values. Folklore literature in the form of ballads, songs, dramas, stories, proverbs, etc., have been continuing intellectual resources. But factors of gender and caste bias are also problematic ones which need to be carefully addressed.

It can be inferred from the survey of *dramatis personae* spread over 5 centuries of medieval Karnataka as follows: while interactive approach in *Mitakshara* was confined to discourse on other *Smrities*, comparative analysis, application of *mimamsa* rules of interpretation and author's own philosophy, the subsequent authors or socio-religious reformers had no such constraints as they were not commentators upon a text already in existence. Their interaction took place at the larger level of the contemporary community or with the people of the region. Put into seminar type of discussion in Anubhava Mantapa the literary or philosophical product had a seal of scholarly approval or people's consent. In making various concepts of ideal life and good behaviour socially acceptable the interactive process was a successful pin public churning of visions. Even at the teeth of revolution the resolute for harmony and peaceful change was put into action. Further, interaction took place inter-generationally, and the earlier views inspired the latter views. Basaveshwara gathered support from Jedara Dasimayya and the subsequent generations responded to the precepts laid down by Basaveshwara owing to their brilliance, social relevance and pragmatism. Moreover, interaction was the means of communication eased by use of simple and quickly understandable language and literary quality of elegance. People's language as the language of social movement brought great strength to language. Repertories after repertories whether of Shivasharanas, Haridasas or Folk artists kept the process of dissemination of knowledge and interaction alive and socially intimate. The authors gained social experience because of the exposure to

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<sup>91</sup> Sanchiya Honnamma, *Hadibadeya Dharmagalu* [Duties of Wife] ed. A Ramanujayyengar, (GTA Press, Mysore 1935) Chapter 5 verse 7.

<sup>92</sup> Jyoti Mutalik Deshpande, *Janapada Samskritiyalli Maanava Hakku Mattu Kartavyagala Parikalpane* (Srijana Prakashana, Bengaluru, 2012)

peoples of villages and petty towns, and got input from social reality. The interface between polity and social reforms or rather society made the value process interactive whether by antagonising the ruler as in case of Bijjala or by placating to the fold as in the case of Vijayanagara kings like Srikrishnadeva Raya. Larger interaction with the *Bhakti* movement and literature in other parts of India paved the way for universalisation of values. Interactions did not become haphazard as the works got anchored into *shatsthala siddantha*, Vaishnava philosophy or folk morality. In brief, the interactive and participative literature made the *Rta* values people's concepts based on consent.

### **Specific socio-legal values as reflected in literature**

Literature's competence to house, harness and harp the socio-legal values became manifest in the medieval Karnataka. This section tries to unravel such values evolved or reflected in literature.

#### ***Good Governance***

Following the rule of law, avoidance of corruption and arbitrariness, participation by people, accountability, transparency, protection of human rights and promotion of welfare are the components of good governance. *Mitakshara* contemplated good conduct of all – kings, servants and people – as the basis of good governance.<sup>93</sup> King's entitlement to one sixth of the income of people comes from performance of the duty of benevolence and ensuring discipline on the part of families, castes, guilds, unions and communities.<sup>94</sup> *Mitakshara* explains that non-doing of harm, uttering truth, non-stealing, external and internal purity, employment of the intellect and the organs of action in lawful objects, liberality or removal of the pain of living creatures by giving food and water, self-control or repression of the internal organ or mind, mercy or protecting the afflicted, forgiveness or non-emotion of the mind under injury are the means for the acquisition of *dharma* for all men beginning with the Brahmanas and ending with Chandalas.<sup>95</sup> It ordains for vigilance over public servants, identification of the corrupt officer and expulsion of him after confiscating his wealth.<sup>96</sup>

Basaveshwara had set a high moral standard for public servant. One of his *Vachanas* asks, why to go after a curvy gutter when the stream of milk flows in front of one's place, why to lose shame and name so long as God exists and why to have Bijjala's treasure.<sup>97</sup> As a

<sup>93</sup> *Mitakshara on Yajnavalkya Smriti* I-7

<sup>94</sup> *Mitakshara on Yajnavalkya Smriti* I-335, 342

<sup>95</sup> *Mitakshara on Yajnavalkya Smriti* I-122

<sup>96</sup> *Mitakshara on Yajnavalkya Smriti* I-338, 339

<sup>97</sup> S. S. Bhusanurmata, (ed) *Vachana Sahitya Sangraha* (Department of Kannada and Culture, Bengaluru, 2006) 284

dutiful servant one has to fight and win without fraud in body and mind and self.<sup>98</sup> He said that in this mortal world of Maker's mint it is only merit of good work that one performs counts in the present and future world. He set an example of good and clean administration assisting the public treasure and public life. He claims himself as adamant defender of rights and not a hesitant interloper, a fearless devotee with renouncement of the world because the Lord dwells in the sovereign and commands such action.<sup>99</sup> Basaveshwara had clear perception of democracy and participation of representatives in Anubhava Mantapa. When he realised that Bijjala's rule did not help people's welfare he resigned from the position of minister.<sup>100</sup> In Haridasa literature there is a divine mantra, stating that *dharma* shall be always victorious.<sup>101</sup> Good governance and life of tolerance alone can bring such a condition. Purandara Dasa goes a step ahead stating that it is a fallacy (*lolalotte*) to have wealth, kingdom and military force and even good governance unless it is linked to divine happiness.<sup>102</sup> Another *Kirtana* appeals to common man to pray for a life that does not violate the law laid down by the Lord of the three worlds for attaining salvation as the King's statutes are binding on this world only.<sup>103</sup> The requirement that the man-made law and human action shall be in conformity with higher law is emphasised here.

### ***Equality and eradication of caste discrimination***

*Mitakshara* continued the existing practice of caste discrimination whereas Basaveshwara, Shivasharanas, Haridasas and Sarvajna introduced revolutionary concept of equality and strived for eradication of caste discrimination. Basaveshwara stated that nobody was inferior to him nor was there anybody superior to devotees of Shiva. His inclusive approach is reflected in his appeal against asking who he is and who he is, and in his plea to consider each person as belonging to his community. According to him, equality of castes was a scientific fact as there was no criterion for differentiation. The embryo in the womb has seven elements

<sup>98</sup> Cited in H Thipperudraswamy, *Makers of Indian Literature: Basaveshwara* (New Delhi, Sahitya Academy, 1975 rept 2017) 19.

<sup>99</sup> Lohit Naiker, *Basava and Human Rights* (Basava Samiti, Bangalore, 2009) 158

<sup>100</sup> Lok Sabha Secretariat, *Mahatma Basaveshwara* (2003) 2

<sup>101</sup> Purandara Dasa, '*Dharmave jayavemba divyamantra*' Aralumallige 835. The song preaches tolerance and love to face hate, cheat, oppression and violent actions.

<sup>102</sup> Purandara Dasa, '*Lolalotte*' extracted in Aralumallige Parthasarathi, Haridasara 1000 Hadugalu (Aralumallige Prathisthana, Bengaluru, 2020) 1474; for a discussion about Purandara Dasa's discourse on ruler-ruled relation, duty of the king to maintain good order and prosperity see K. Keshava Sharma, '*Prabhutva*' in Amaresha Nugadoni (Ed) *Purandara Sahitya Adhyayana* (Prasaranga, Kannada Vishvavidyayaya, Hampi, 2010) 1-36

<sup>103</sup> B S Anil Kumar Bommaghatta, *Haridasara Lokaniti* (Niranthara, Bengaluru, 2019) 212.

irrespective of caste and the factors of womb, birth and soul remain the same. What then, caste avail?<sup>104</sup> He was averse to the burden of birth in upper caste. He called himself born from lower caste. Referring to the castes of eminent scholars like Vyasa, Markandeya, Agastya, Kashyapa and Koundinya who were born in lower castes but rose to great intellectual heights he said that only the devotee of Shiva was well-born. He totally rejected the idea of pollution arising from caste or mixing of castes. Pollution arises from unacceptable conduct like killing and eating dirt. The devotee of Kudala Sangama, the one who wishes good of all living beings is really the high caste born. Works of blacksmith, money lender, washer-man and scholar might confer the membership of occupation; but it is only the possession of divine knowledge that gives superiority. God's appreciation of achievement of good work gives the higher status. The only two classes in the world are: *bhavi* (pleasure seeker) and *bhakta* (self-surrendering devotee), the person who does not touch *linga* and worship *jangama* and the person who commits himself to both *linga* and *jangama*. Equality is also a concept that brings equal dignity to all types of labour (*kayaka*). It inspires distribution (*dasoha*) of food, knowledge and services to all persons equally. The *sharana* philosophy of equality wipes off the notion of birth-based pollution and preaches a sound sense of humanism and compassion. The positive side of equality aims to bring welfare of the downtrodden and establish substantive equality. Thus, the concept of equality propounded by Basaveshwara and his followers was comprehensive, ameliorative and dynamic. It was also based on human experiment and social experience.

In Haridasa literature, especially in those of Purandara Dasa and Kanaka Dasa, who hailed from non-Brahman communities, one can notice condemnation of caste discriminations and championing the cause of equality. According to Purandaradasa, Holeyya (untouchable, low caste man) is not an external feature but an internal factor, an attitude of mind when a person acts immorally, when the servant puts his master into great difficulty, when he fails to engage in charity even while he has plenty, when he poisons and kills another, when uses impolite words, boasts purity in spite of being corrupt or immoral, when fails to keep promise, when abstains from doing good to others, when omits to traverse path of good conduct or when abuses women elders and teachers.<sup>105</sup> Thus it is these deviant behaviours that shall be condemned not a person born in low caste. If the soul's language is understood, caste does not matter, and hence one shall not go after caste. Kanakadasa asks, "Why utter caste and

<sup>104</sup> Siddayya Puranika, *Human Values in Vachana Literature* (Bharatiya Vidyabhavan, Bangalore, 1997) 55-56. Basaveshwara precedes this *vachana* by a Sanskrit shloka: "*Saptadhatu samam pindam samayonisamudbhavam, Atma jiva samutpannam varnaanaam kim prayojanam*"

<sup>105</sup> Aralumallige, 1843



caste? What is caste for truthful people? What is the caste of soul? What is the caste of life? What is the caste of sense organs?"<sup>106</sup> Like the lotus born in murky mud and milk produced from animal flesh, people born in low class are socially acceptable and not condemnable only on account of the birth status.<sup>107</sup> Sarvajna asked, "When there is only one earth to traverse, one water to drink and one fire to burn, why there should be caste differentiation?"<sup>108</sup> He also sang, "The light of the home of a man of despised caste, is it despicable? Speak not of this caste or that. He whom God loves alone is of a noble caste."<sup>109</sup> When the footwear prepared by the cobbler is used by the man of upper caste, what is the justification for caste discrimination?

### ***Equality and gender justice***

Equality had the dimension of bringing gender justice. Jedara Dasimayya makes a logical exposition of gender equality when he states, "When breast and braid come, they say woman, when beard and moustache come, they say man; but the soul that hovers in the midst is neither man nor woman, O Ramanatha"<sup>110</sup> He goes a step ahead by conceptualising sexuality and ruling out discrimination on that count by asking, "When a pole is cut into two pieces, and the lower one is made woman and the upper one is made man, and when the two are rubbed, whether the fire born is woman or man?"<sup>111</sup> This reminds the 21<sup>st</sup> century discourse on LGBTQ. Whether the life a wife, husband or the untouchable has external characteristics such as breast, sacred thread or a stick? Allama Prabhu asked, "When both husband and wife become devotees of god, is there still husband for wife and wife for husband?" Basaveshwara avoids the question of superiority and inferiority by saying that he is both man and a woman and prefers to be bride of God's devotee. Akka Mahadevi raises the woman question, "How can the unwounded know the pain of the wounded?" Similarly, mother alone knows the pang of birth. She asserted that she was not helpless woman, uttering no futile threat, remained undaunted and daring hunger and pain, and treasured her autonomy. She considered the illusion of sexuality is common to both man and woman.

<sup>106</sup> Aralumallige, 539

<sup>107</sup> Aralumallige, 539

<sup>108</sup> <https://www.vishaya.in/vachana/sarvajna-vachana-collection/> 96 Similar verse can be found in Basaveshwara *Vachana* stating that the earth is the same whether for slum or Shiva temple; it is the same water for bathing or drinking; and it is the same caste for people who are able to understand.

<sup>109</sup> <https://www.vishaya.in/vachana/sarvajna-vachana-collection/>

<sup>110</sup> S S Bhusanurmath, *Vachana Sahitya Sangraha* p 296; similar reasoning can be found in a *vachana* of Ambigara Chowdiah which also states that all the embryo, whether male or female, have similar particles, mind, breathing and life.

<sup>111</sup> Ibid

There is a view that the above radical thoughts cannot be found in *kirtanas* of Haridasas who give a call for emancipation from illusion of sexuality and sometimes consider woman as impediment to salvation.<sup>112</sup> Some have advised brides to venerate their spouses and parents-in-laws and tolerate all strains and stresses. But *kirtanas* have extensively condemned debauchery, sexual exploitation, abandonment of women, and putting women into hardship and distress. One bold woman question raised is on the issue of gender bias in making of shastras. In fact, male monopoly in law making was age old phenomenon. Kanakadasa asks, 'Where are *dharmashastras* written by woman? Are there mores and norms shaped by woman? By saying woman and woman, and filling her eyes with lime, rejecting and suppressing woman's aspirations, men conspire to put the woman into snare. O Chennakeshava, can you not see this discrimination? Is this acceptable to You O Chennakeshava who is also addressed as mother?'<sup>113</sup> A very forceful feminist argument that raises woman consciousness can be seen here. While finding reasons for earth quake, Kanaka suspects whether it was due to mother earth's sadness to bear the weight of males who committed crimes against women.<sup>114</sup> There is also advice by Purandaradasa to treat wife as a part of husband as she is brought from a different family and made lady of the house. He had high regards for women as his own wife was responsible for his absorption into Dasa Kuta. Sarvajna expressed similar views when he wrote, "The mortal world comes from woman; the future world is also from woman; all the good fortunes are from woman; there should be no man who does not like woman."<sup>115</sup> Thus, against the age old practice of gender discrimination there was a revolting voice consistently raised over during the medieval period.

Kannada folklore literature has exhibited both patriarchy and feminist thoughts. There are advices in folklore triplets to the daughter to respect her husband as god, treat parents in law with high regards and fear, render works of household without questioning, and tolerate all the difficulties, irritations and denials.<sup>116</sup> Her life without male child is compared to that of hired ox or banana leaf thrown off after consuming meals. The attitude of male preference is traceable here. The helplessness of a wife harassed by mother-in-law compelling her to

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<sup>112</sup> The *kirtanas* with titles, 'Hendathi nodanna eeki' and 'Hendathi prana hinduthi' reflect such viewpoints. See Aralumallige, 1829-30

<sup>113</sup> Aralumallige, 1831-32

<sup>114</sup> Anil Kumar Bommaghatta 332

<sup>115</sup> <https://www.vishaya.in/vachana/sarvajna-vachana-collection/> 131

<sup>116</sup> 'Husband is guru, god and every fortune; he is the ultimate to rely upon.' 'Live in fear of parents in law and your lord (husband) in marital home' 'Bring reputation to the parental home' etc.

embrace death by suicide is the tragic story of Uttaradevi.<sup>117</sup> A daughter-in-law's forced sacrifice of life in construction of tank is another sad story of female subordination in *Kerege Hara*.<sup>118</sup> But in contrast, there are poems glorifying women as fruits of divine benediction.<sup>119</sup> There are also bold assertions in ballads against domestic violence or male dominance in marital relations. Sankamma's lines in *Male Mahadeshwara Kavya* narrate the insulting approach of husband Nilayya in demanding from his wife a promise of marital loyalty during his absence and response by Sankavva to her husband to 'look for his own way and she would look at hers' as she was not a person to promise by sacrifice of her own dignity.<sup>120</sup> Similar instance of wife's protest and assertion of right to divorce can be found in Siri Padthana of Tulunadu.<sup>121</sup> Siri protests marital disloyalty of her husband, curses, divorces and leaves the marital home even being pregnant. Her conduct was radical at the teeth of rigid tradition of male chauvinism. She later remarries another man in spite of dissent by her son. In the new marriage also she maintains her stance of dignity by compromising little with the new husband's earlier wife. In Junjappa epic a son suspects and tests the modesty of his mother Cinnamma, who in fact begot him after a long penance with God.<sup>122</sup> But she comes out of the ordeal successfully in spite of her sexual relation with a third person. Sankavva's story of begetting a child from Madayya outside the marital tie and Kamma's rejection to give alms in order to defy the superior position of Madayya in Mahadeshwara epic speak about the factors of sexuality and ego in inter-personal relation.<sup>123</sup> The urge for equality and dignity is visible in *Janapada Mahabharatha* and *Budakattu Ramayana*. Draupadi asks the woman question on ownership of husband over wife especially after losing the gamble and becoming a slave.<sup>124</sup> Sita opts not to re-join Rama after the war by Lava and Kusha against Rama in view of an unsuccessful attempt at her assassination planned by Rama and unites with earth after due prayer.<sup>125</sup> Thus, in spite of the strong practice of patriarchy, questioning the patriarchy culture for its bias reflects the love for *Rta* values.

<sup>117</sup> Jyoti Mutalik Deshpande, *Janapada Samskritiyalli Maanava Hakku mattu Kartavyagala Parikalpane* (Srijana Prakashana, Bengaluru, 2012) 169-180

<sup>118</sup> Ibid 165-170

<sup>119</sup> Ibid 147; reason given for such a position is opportunity to give in marriage!

<sup>120</sup> H C Boralingaiah, *Janapada Mahakavya: Mimamse and Tatvikate* (Prsaranga Kannada Visvavidyalaya, Hampi, 2018) 68

<sup>121</sup> Amrita Someshwara, 'Siri Kathanakadalli Streetvada Adarshavideye?' 54-65; Sabiha Bhumigowda, 'Siri Mahakavya: Stree sangharshada nelegalu' 122-141 in Venkatesh Indwadi, *Siri Janapada Kavya: Sanskrutika Mukhamukhi* (Prsaranga Kannada Visvavidyalaya, Hampi, 2010)

<sup>122</sup> Boralingaiah, 116-117

<sup>123</sup> Boralingaiah, 65-75

<sup>124</sup> Boralingaiah, 161

<sup>125</sup> Boralingaiah, 211

### ***Dignity of life***

Life is inseparable from dignity because human life is a great opportunity for happiness. Purandaradasa said, ‘Human life is great. Never spoil it, O madmen.’<sup>126</sup> The temporary opportunity to do good and reap the fruits of satkarma shall not be frittered away by indulging in temporal works without worshipping the God in a single mind. He also sang that it is from the earth that the human body is made and ultimately it is into the earth that it joins; the wealth, food, house and everything is mud. The philosophy of equality, modesty, temporary character of human life in contrast to eternity of nature, and duty to do good to others and nature are implicit in this *kirthana*. Kanakadasa says that community ordains everybody to live with dignity and respect.<sup>127</sup> According to Basaveshwara dignity has nothing to do with wealth, it is connected with mind. He said, “Look at their hearth, they are poor indeed; Look at their heart, they are great (with dignity).”<sup>128</sup> Allama Prabhu preached that living shall not be at the cost of another life as non-violence shall be the superior rule.<sup>129</sup> Basaveshwara propounded that compassion is the root of religion and one shall have compassion towards all living beings. God is pleased when the living soul of another is respected by a human life.<sup>130</sup> Thus, duty not to kill, but to protect oneself and others is the basis of right to life. *Mitakshara* permits man whose body is in the process of extinction to voluntarily absorb death with a determination to join the almighty (Ishwara) with a single mind of devotion after duly observing the rituals.<sup>131</sup>

### ***The philosophy of kayaka and economic justice***

‘When a Sharana walks, the path becomes holy (*pavana*), when he speaks it is Shivatatva (god’s philosophy) and when he works, his body (*kaya*) is Kailasa (the abode of god)’ says Basaveshwara.<sup>132</sup> A true and pure *kayaka*, whether of agriculture, commerce or service, done with honesty benefitting Guru, Linga and Jangama shall be the utmost duty of all.<sup>133</sup> All *kayaka* is one and one vow is as good as another.<sup>134</sup> Whatever may be the *kayaka*, keeping

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<sup>126</sup> Aralumallige, 1321

<sup>127</sup> Aralumallige, 649

<sup>128</sup> Lohit Naiker, 71

<sup>129</sup> S S Bhusanurmath, 177

<sup>130</sup> S S Bhusanurmath, 177

<sup>131</sup> *Mitakshara* on Y S III. 4. 162 (Yathi *dharma* prakarana)

<sup>132</sup> MM Kalaburgi, 228

<sup>133</sup> S S Bhusanurmath, 209-210

<sup>134</sup> Gangeshwaralinga Gangamma;

one's own comfort or monetary benefit as the last objective, treating all the beneficiaries equally with pure heart brings great satisfaction to the God, Ishanyamurthy.<sup>135</sup> Persons who delve in *kayaka* shall forget even the visits of guru, linga and jangama because work is worship.<sup>136</sup> The wealth that the God gives as reward for work shall be given back to God alone.<sup>137</sup> It is only the income or crop earned through hard work that shall be fit for distribution.<sup>138</sup> A sinner's money is fit only for atonement and not suitable for any deserving cause.<sup>139</sup> Treatment of all *kayakas* on equal pedestal is an approach that has established dignity of labour by rejection of superiority or inferiority of any job.<sup>140</sup> When intrinsic nature of all human beings is equal or similar with regard to physiological and psychological factors, and the professions arose due to performing of specific works (like weaving, washing or reading), a person's status is not determined by the work he performs but by his character and deeds like knowing the divinity.<sup>141</sup> Basaveshwara stated that he would not hesitate to do even lowest services in paraiah's house.<sup>142</sup> Similar approach can be found in Purandara dasa's *kirthana* wherein he says that he is a casteless slave of several dasas working with one mind and praying god.<sup>143</sup> Another *kirthana* appeals to god to save from the demon of poverty who swindles to the core while the six enemies of mind strive to deeply influence towards bad conduct.<sup>144</sup> Yet another *kirthana* points out miseries of poverty which erode dignity of life. While it externally appears that a rich man commands respect from others, temporary nature of richness is no match for God's benediction because pious man's poverty is superior to the affluent man's pride.<sup>145</sup> Since *Dharma* alone helps, earning the wage called *dharma* gets a saviour from difficulties.<sup>146</sup> Purandara dasa says, monetary coin (*duggani*) brings bad company, makes bad things, dictates relations, establishes fame and comes in the

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<sup>135</sup> S S Bhusanurmath, 210

<sup>136</sup> Ibid

<sup>137</sup> Ibid 209 Basaveshwara

<sup>138</sup> Not by begging, cajoling and pestering, but by exposing one's body to hard work and by making the mind earn it, one shall get the fruit for serving the guru, linga and jangama.- Nuliya Chandayya

<sup>139</sup> M M Kalaburgi, 56

<sup>140</sup> Being born in whatever caste or gotra, one should have no pollution in one's *kayaka* or devotion; whatever vow is taken one shall follow it in body, mind and words – Kannadi Kayakada Ammidevayya.

<sup>141</sup> Basaveshwara *vachana* cited in Lohit Naikar, 122-123

<sup>142</sup> Lohit Naikar 123

<sup>143</sup> Aralumallige 787

<sup>144</sup> Ibid 786 the six enemies are *arishadvarga*: *kama, krodha, lobha, moha, mada, matsara*.

<sup>145</sup> Ibid 836

<sup>146</sup> Ibid 834

way of realizing God and hence, one shall avert such impact of wealth.<sup>147</sup> Non accumulation of wealth or surplus food grain is also part of *kayaka* philosophy as it compels one to work.<sup>148</sup> Like the crow that calls its fellow mates to share food however scanty it is, human being shall promote welfare of community by distribution.<sup>149</sup> Economic justice consists in distribution of the surplus.

### ***Charity, an instrument of social support***

Giving appropriate donation to the deserving person without any material benefit as consideration but with pious mind of helping others is theme elaborated in *Mitakshara*.<sup>150</sup> It recognizes merit in giving shelter and food to a tired wayfarer, medicine to patients, knowledge of *vedas* to disciples, house to the houseless and land, lamp and choultry to temples.<sup>151</sup> Charity by providing food, shelter, knowledge and financial assistance to a person in need is a duty of every *shiva sharana*. Called as *dasoha* it shuns pride in the donor and showers dignity on the donee.<sup>152</sup> It is preposterous to drive away the hungry *jangama* and offer feast to *Linga* who does not eat, tells Basaveshwara.<sup>153</sup> With an approach that no other person is inferior to oneself and nobody is superior to *shivabhakta* each person shall involve in charity by mixing one's property with *guru* (soul), *linga* (god) and *jangama* (group of people) so that social benefit shall be the outcome of wealth.<sup>154</sup> True charity reduces desire and jealousy, brings self-satisfaction, enhances the confidence in the receiver and never encroaches human dignity.<sup>155</sup> Basaveshwara prays for motivating for *dasoha* of all property with unity of *tanu, mana, dhana* (body, mind and wealth) to benefit the worthy man as a continuous act of piety, love and surrender of ego.<sup>156</sup> Folk literature prescribes that one shall not regret for giving, nor shall insult the receiver after giving; one shall not give a defective thing keeping for oneself a good one.<sup>157</sup> Sarvajna advises to keep charity confidential, to give reasonably and

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<sup>147</sup> Ibid 813

<sup>148</sup> 'Ishwara will not agree with accumulation of surplus food grain' Aydakki Lakkamma cited in S Rudramuni Shastri 132-133

<sup>149</sup> S S Bhusanurmatha, 255

<sup>150</sup> *Mitakshara* on YS I. 9. 200-208

<sup>151</sup> *Mitakshara* on YS I. 9. 209-216

<sup>152</sup> Ramzan Darga, *Basava Prajñe* (Lohia Prakashana Ballari, 2002) 10-13

<sup>153</sup> S Rudramuni Shastri, 39. Basaveshwara points out similar dichotomy in the approach of people who offer milk to the stone image of serpent but kill the real snake.

<sup>154</sup> S S Bhusanurmata, 205-206

<sup>155</sup> Ramzan Darga, *Basava Prajñe* (Lohia Prakashana, Ballari, 2002) 10.

<sup>156</sup> Lohit Naikar, 126-127

<sup>157</sup> Jyoti Deshpande, 155, 157

befittingly, to give to the deserving, to give by inviting when he gets fortune and to give with dignity.<sup>158</sup> He also argued against accumulation of wealth.<sup>159</sup> A *kirthana* states that no charity is equal to charity of food, which the greatest when is given with pleasure.<sup>160</sup> Vijaya Vithala Dasa says that giving after verifying the deserving status of receiver brings high position to the donor.<sup>161</sup> Thus conversion of individual resource into social fund for the benefit of needy people is a phenomenon recognized by thinkers as a part of cultural value of the society.

### ***Duties to practice good morals and ideal behavior***

Performance of duty as the basis of rights is well-recognized in the Indian culture. *Mitakshara* has elaborate code on ideal conduct at various stages of life (*ashrama dharma*).<sup>162</sup> Kings are also amenable to duties of good governance and have to set examples by right conduct.<sup>163</sup> Persons not complying with these principles but violate the civil law or commit crimes (*sahasa*) are amenable to legal actions and atonements (*prayaschitta*).<sup>164</sup> The seven duties prescribed by Basaveshwara for both internal and external purity are: not to steal, kill or tell lie, not to be angry or pose intolerance to others, and not to praise one's own or insult others.<sup>165</sup> A true *sharana* shall eschew *kama, krodha, lobha, moha, mada* and *matsara* in order to attain purity of mind. It is by good conduct and best practices that one shall establish one's worthiness because of which he will get recognition both in this world and the world after life.<sup>166</sup> The Maker's mint sets the standards and tests the fitness for such recognition.<sup>167</sup> The *vachana* literature has abundant resource of moral principles to prepare the people for protecting human rights and promoting social welfare. In Haridasa literature also the effort to establish a morally conscious healthy and harmonious society can be found profusely. Vadiraja's *kirthana* lists the persons who cannot attain salvation because of serious

<sup>158</sup> <https://www.vishaya.in/vachana/sarvajna-vachana-collection/>

<sup>159</sup> S V Ranganna, 'Sarvajnana Shaili' in P Mahadevayya, *Sarvajna: Thoulanika Adhyayana* (Prasaranga, Kannada Visvavidyalaya, Hampi, 2014) 180. That which is given to others is given to oneself; that which is secretly kept for oneself becomes property of others; that which is given does not perish, it will bring benefit later.

<sup>160</sup> Aralumallige 165

<sup>161</sup> Anil Kumar Bommaghatta, 179

<sup>162</sup> *Mitakshara* on YS I-ii to vi- 10-166

<sup>163</sup> *Mitakshara* on YS I-xiii- 309 to 368

<sup>164</sup> These are laid down in Vyvahara and Prayaschitta Adhyayas.

<sup>165</sup> S S Bhusanurmatha, 189

<sup>166</sup> Ibid 180-183

<sup>167</sup> S Rudramuni Shatri, 37; S S Bhusanurmatha, 525

faults such as failure to respect teachers and elders, protection of bad elements, adultery, adamancy with evil actions, greedy amassing of wealth by unfair means and hate and violence.<sup>168</sup> Purandaradasa warns against recklessness in exercise of power, sinful action against the poor, coveting women and wealth belonging to others and acting on baseless complaints with anger because what ultimately remains is the credit of good action.<sup>169</sup> He gives the postal message of the God that desire and anger shall be left out and pious life shall be led.<sup>170</sup> He also asks the listeners not to raise loan, not to covet the wealth and women of others, and be satisfied with whatever they could get by providence. He refers to the futility of having children who do not care about parents, longevity of life without knowledge and life without esteem.<sup>171</sup> He condemns hypocrisy and champions the cause of honest living.<sup>172</sup> Further, he condemns persons violating their own promises, cheaters, liars, persons abandoning wives, traitors and greedy persons who do not help others.<sup>173</sup> Kanakadasa advises to lead happy and harmonious family life through mutual respect, to forget past disputes and not to make mountain out of a molehill.<sup>174</sup> The Dasas advocated patience, tolerance and balanced mind in front of varieties of difficulties.<sup>175</sup> Sarvajna *vachanas* are full of moral preaching, aphorisms and tips for ideal conduct and smooth life. He said that as the whole earth is his family god, there was nobody to be left with.<sup>176</sup> The religion which allows killing shall be put into the fire in the oven, and that religion that saves life shall be greatly respected.<sup>177</sup> Keeping desires of sex, money and tongue in control elevates man to divinity.<sup>178</sup> Company of a noble person reforms even a thief while company of thief by a noble makes the noble a real thief.<sup>179</sup> The medieval literature became a terrain of moral principles that provided a basis for socio-legal values.

***Expressional freedom: speech shall be a lace of pearls***

Ancient Indian law recognized the duty not to abuse others by words. *Mitakshara* continued this approach and prescribed penalty for *Vakparushya*.<sup>180</sup> The purpose of this

<sup>168</sup> Anil Kumar Bommaghatta, 106

<sup>169</sup> Ibid 138

<sup>170</sup> Aralumallige, 521

<sup>171</sup> Ibid 142-143

<sup>172</sup> G Varadarajarao, 232-233

<sup>173</sup> Ibid 144-146

<sup>174</sup> Ibid 152

<sup>175</sup> Aralumallige 742; Anil Kumar 140

<sup>176</sup> G S Shivarudrappa, 'Kavi Sarvajna' in P Mahadevayya (ed) 86-96 at 96

<sup>177</sup> S V Ranganna, 'Sarvajnana Shaily' in P Mahadevayya (ed) 172-206 at 181

<sup>178</sup> Ibid 180

<sup>179</sup> Ibid 194

<sup>180</sup> *Mitakshara* on YS II. Xviii. 204-211



policy was to protect the esteem and dignity of persons and avoid social disorder.<sup>181</sup> Basaveshwara used speech for dialogue and discourse on social evils and critical views through words for communicating to the people. He dared to test the *vedas*, critique the *shastras*, evaluate *tarka* and repair the nose of agamas. He considered that when the *shivasharanas* open up their mind gems and precious stones emerge. He stated with great emphasis that words shall be like the lace of pearls, lustrous like ruby and flash like crystal. It should be getting even god's approval. Not only that, each *sharana* shall act according to the words. He was concerned with consequence of abuse of words. Carrying this theme further, Haridasas appealed to uncultured tongue to leave aside its evil propensities to defame others.<sup>182</sup> Sarvajna also reiterates that good speech brings smiles, hate speech begets hate and murder, speech is embodiment of all wealth, and hence speech shall be like ruby.<sup>183</sup> Excess of speech spoils relations.

### ***Religious freedom***

Medieval Karnataka had faced the problem of sectarian intolerance and few instances of religious skirmishes between groups. Basaveshwara challenged the attackers of religion who would harm them for following the new religion and ignored even entire town's anger as if it is a false threat like dog's barking at an elephant rider.<sup>184</sup> *Kirthanas* have praised Lord Shiva in addition to Vishnu. Royal intervention used to settle religious disputes between vaishnavas and Jains, etc.,. Sarvajna rejected the differentiation between Hari and Hara. He also rejected the attitude of searching for another god when a person already believes in one god.<sup>185</sup> The coexistence of Brahmanical order, Shaiva and Vaishnava devotional cults and continuation of Jaina and Buddhist religions showed the pluralist and cosmopolitan character of Indian society. Romila Thapar refers to the temporary communal conflicts between Lingayats and Jaina communities and their rivalries in agriculture and commerce, and the general atmosphere of peace.<sup>186</sup> There are also views that the virashaiva movement was against the ascendancy of Jainism and caste system in the orthodox order. Haridasa literature refers to the idea of co-existence of Hindu and Islamic religions.<sup>187</sup>

<sup>181</sup> J B Gharpure (ed) *Yajnavalkya Smriti with Mitakshara* vol. II Part IV 1246-1253

<sup>182</sup> Aralumallige, 189

<sup>183</sup> <https://www.vishaya.in/vachana/sarvajna-vachana-collection/>

<sup>184</sup> Lohit Naikar, 96

<sup>185</sup> S V Ranganna, 181

<sup>186</sup> Romila Thapar, 'Imagined Religious Communities? Ancient History and the modern Search for a Hindu Identity' in David n Lorenzen, *Religious movements in South Asia 600-1800: Debates in Indian History and society* (Oxford University Press, New Delhi, 2004) 333-359 at 345

<sup>187</sup> Aralumallige 141

### ***Social justice***

The principal theme of literature of medieval Karnataka was social justice, protection of the vulnerable and open minded approach to welfare. Basavanna regarded that the bygone sin would depart with the touch of sacred ash and utterance of *shivanama*. It is the self confidence that enables the individual to treat his body as temple of god with benevolent action in contrast to rich man's competence to construct temple. *Sharanas* shall have perseverance to defy wealth, woman and god belonging to others and determination to believe in guru, linga and jangama. Equality transcends caste, gender and region and brings justice to those who were denied of comforts, facilities and advantages so far. Haridasas said that the sense of impurity in a person's thinking is owing to mind's indulgence in bad ideas and actions, and driving away such impurities establishes fair relations within the society. Social justice comes from such an approach.

### **The flow of *Rta* values in other streams of *Bhakti* movement outside Karnataka: the proliferation**

The medieval Karnataka experience had matched similar experiences in various other regions of India with a common theme that along with Brahmanical order the pluralist devotional cults propounded their ideas and songs in praise of God, critiquing the unfair social practices (especially caste system) and articulating moral aphorisms in people's language of the region under the leadership of regional socio-religious reformers, saints or thinkers. In Tamil region, the ancient work of Thiruvalluvar viz., *Thirukkural*, had already provided a sound basis for comprehensive moral guidance and spiritual wisdom to lead an ideal life.<sup>188</sup> Written 2000 years ago, it appealed to all for leading a virtuous life without falling prey to evils like envy, greed, anger and harsh words;<sup>189</sup> for traversing the path of justice which involves impartial treatment to everyone and avoidance of unjust enrichment;<sup>190</sup> for exercising self-control in words and deeds through a disciplined conduct;<sup>191</sup> for not coveting the wife or wealth of another;<sup>192</sup> for eschewing wicked and vain words and doing evil to others;<sup>193</sup> and for generous help to the society by charity and wealth distribution.<sup>194</sup>

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<sup>188</sup> M Rajaram (Tr) *Thirukkural* (Rupa Publications, New Delhi, 2009)

<sup>189</sup> Ibid 8

<sup>190</sup> Ibid 24

<sup>191</sup> Ibid 26

<sup>192</sup> Ibid 30

<sup>193</sup> Ibid 20

<sup>194</sup> Ibid 46

Among the *Bhakti* saints/poets of Tamil region during the 5<sup>th</sup> century to 10<sup>th</sup> century AD, there were two groups who wrote and sang devotional songs in Tamil: *Vaishnava Alvars* and *Shaiva Nayanars*. The *Rta* values exuberate in their songs and approaches. According to *Alvars* real faith in Vishnu makes persons *Bhaktas* irrespective of their occupation or caste, and Chaturvedins become slaves in the absence of their devotion to god and upright behavior.<sup>195</sup> Quoting *gotra* or *kula* is a useless task unless one has refuge in God, they said.<sup>196</sup> The fact that many of the *Alvar* poets were non-Brahmanas and that agrarian community leaders were involved in temple administration gave impetus to equality in religious activities.<sup>197</sup> Nayanars popularized through their Shaiva hymns the superiority of Shaiva siddanta over social hierarchy or differences of social background and recognized equal degree of relation between Shiva and each individual.<sup>198</sup> The Appar hymns asserted against persecution by the Jaina rulers, “We are slaves to no man nor do we fear death; hell holds no torment for us; we know no deceit, we rejoice, we are strangers to disease, we bow to none”.<sup>199</sup> The construction of both Shiva and Vishnu temples gained equal importance, assignment of various works relating to administration and service was open to people belonging to various castes, and pilgrimage to both the types of temples made the temples popular through people’s participation on equal pedestal.<sup>200</sup> The *Shaiva siddanta*, which gave vital importance to equality, had its impact upon early *virashaiva* movement in Karnataka. But royal patronage to religious cults varied, and sometimes persecution of rival religious community had also occurred.<sup>201</sup> Persecution of Srivaishnavas (the followers of Ramanuja b. 1017) by Shaiva kings caused tension in 12<sup>th</sup> and 13<sup>th</sup> centuries AD. Participation of *shudras* in Srivaishnava sect and gradual attaining royal patronage were the factors that set right the equilibrium.<sup>202</sup> Equality in religious freedom and social rights filled strength to the concept of dignity. Ramanuja’s call for temple entry of shudras had a foresight of social reform and inspiring principle of equality.<sup>203</sup>

<sup>195</sup> R Champakalakshmi, ‘From Devotion and Dissent to Dominance: The *bhakti* of the Tamil Alvars and Nayanars’ in David N Lorenzen (Ed) 47-80 at 56.

<sup>196</sup> Ibid, 57 Tirumarperu , V.2.3

<sup>197</sup> Ibid 58

<sup>198</sup> Ibid 59-60

<sup>199</sup> Ibid, 61 cited from Appar, V.312.1 trans., I V Peterson

<sup>200</sup> Ibid 62-64

<sup>201</sup> Ibid 61-62

<sup>202</sup> Burton Rein, ‘Social mobility and Medieval South Indian Hindu Sects’ in David N Lorenzen (ed) 81-101 at 87-91

<sup>203</sup> Ibid., 93

Santa Ramananda, the *Bhakti* poet of 14<sup>th</sup> century in Benares, propounded that each human person is a replica of God, that rituals and caste distinctions do not bring salvation and that an approach of treating all human beings equal in competence to worship god irrespective of caste, family and sex is a true approach.<sup>204</sup> His disciple Kabir preached to abandon caste distinctions, to respect knowledge, to find God in truth, to discard rituals and ceremonies, to prefer love over bookish knowledge and to treat Ram and Rahim as pots of the same clay.<sup>205</sup> Guru Nanak taught that true religious conduct consists in looking on all men as equal.<sup>206</sup> As Romila Thapar puts it, the call for social equality in these preaching was a powerful magnet to attract people into a life of values and harmony.<sup>207</sup> In Bengal, Assam, Orissa, Kashmir, Maharashtra and Gujarat the *bhakti* poets of the region had emphasized on devotion, equal treatment of others, love of mankind and humanism.<sup>208</sup> Poet Vemana of Telugu region (16<sup>th</sup> c) extensively wrote on themes of social equality, eradication of caste distinction, presence of God in each and every human soul, futility of rituals like pilgrimage, abandonment of anger which lowers dignity and inflicts disasters, and abstinence from coveting women and wealth of others.<sup>209</sup> Thus, the ubiquitous streams of *Bhakti* nourished the *Rta* values of moralism all over the country.

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<sup>204</sup> Romila Thapar, 304; also see Richard Burghart, 'The Founding of Ramanandi Sect' in David N. Lorenzen (ed) 227-250; lalchand Doohan 'Jigyasu' (Compiler) 1008 Kabir Vani Tr. 'Kunwar' Anil Kumar ed. Anuradha Srivastava (Manoj Publications, Delhi, 2011)

<sup>205</sup> Romila Thapar, 307-309; also see

<sup>206</sup> Romila Thapar, 312

<sup>207</sup> Romila Thapar, 311

<sup>208</sup> In Bengal, the devotional writings of Chaitanya and Chandidas taught the importance of absolute love towards divine being. Shankaradeva (15<sup>th</sup> century) of Assam filled the Brahmaputra vallwey with the litereary ideas of devotion, moralism and equality. (Romila Thapar, 312-3). Jayadeva and the five friends of Orissa (Balarama Das, Jagannatha Das, Achyutananda Das, Yasobanta Das and Sishu Ananta Das) led the *Bhakti* cult with *sankirthanas* participated by all without discrimination (Nishamani Kar, The Saint-Poets of Odisha' Odisha Review July 2014). In Kashmir the rishi movement emerged as a social force welding the emotions of Hindus and Muslims. (Mohammad Ishaq Khan). In Maharashtra, the lineage of *Bhakti* saints (Sant Dnyaneshwar, Namdeo, Eknath, Tukaram and Ramdas) during the period from the 13<sup>th</sup> to 16<sup>th</sup> century popularized the values of equality of human worth, involvement of all in devotion, rejection of caste –based discriminations and condemnations of sacrifices and rituals. In Rajasthan and Gujarat, Vallabhacharya's (1479-1531) pushtimarg of vaishnavism preached *bhakti* tradition with an approach of equal treatment and involvement of all in devotion to God.

<sup>209</sup> Vemana writes that all men in the earth have equal birth and equal blessing of God; food or caste or place of birth cannot alter human worth; caste dispute is empty and folly of passing time; why should scorn the Pariah when his flesh and blood are like ours? What caste is He who doth dwell in all we see? V D Mahajan, *Ancient India* (S Chand & co, 1971) 140-141; also see Thangirala Venkatasubba Rao, 'Vemana-Sarvajna' in P. Mahadevayya (ed) 207-243

A challenge faced by the medieval Indian society was religious persecution, forced conversion and destruction of temples inflicted by some of the Muslim rulers.<sup>210</sup> Introduction of caste system within the Muslim fold, introspection among Hindus to bring reforms to prevent voluntary conversion and gradual development of sense of co-existence at some social level emerged as a consequence.<sup>211</sup> Instead of absorption or assimilation, the interaction between two different types of civilizations had distinct consequences of mutual influence in social life, art and health practices.<sup>212</sup> But exclusiveness continued in religious and educational traditions.<sup>213</sup> But the Sufi saints introduced the doctrine of synthesis between Hindu and Muslim ideas. Under the guidance of Lal Ded, a Hindu woman saint of Kashmir, Nuruddin Rishi wrote on Hindu-Muslim harmony stating that both were sailing on the same boat, and that among the brothers of the same parent there was no reason for creating a barrier.<sup>214</sup> He said that by exploiting others, a man really robs himself.<sup>215</sup> It may be noted, these ideas of harmony and justice are components of eternal principles.

### **Social reforms, freedom movement and the *Rta* values**

The nineteenth century developments of intellectual reawakening, social reforms, and national movement for freedom were inspired by the values of equality, social justice, dignity and humanism and in turn, carried them to a greater heights. Both the indigenous thinking and exposure to the European ideas strengthened the belief in *Rta* values. Social reform leaders like Raja Rammohun Roy, Dayananda Saraswati, M G Ranade, Ishwara Chandra Vidyasagar, Ramakrishna Paramahansa, Swamy Vivekananda, Jyotiba Phule, freedom fighters like Bala Gangadhar Tilak, Gandhiji, Dadabhai Navroji, Sardar Vallabhbhai Patel, Jawaharlal Nehru, Rajendra Prasad, Subhash Chandra Bose, Bhagat Singh and erudite constitutional jurist and crusader for rights of socially vulnerable sections, Dr B R Ambedkar propounded the fundamental values of liberty, equality, fraternity, social justice and human dignity both in

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<sup>210</sup> P D Bartwal, 'The Times and their Need' in David N Lorenzen (Ed) 253-268 at 254-55. The theoretical explanations for conversion are: religion of the sword theory, political patronage theory, libertarian theory (to escape from the rigidities and discriminations of the present religion) and accretion and reform theory as per Richard M Eaton, 'Approaches to the Study of Conversion to Islam in India' in David N Lorenzen (Ed) 105-127.

<sup>211</sup> Romila Thapar, 305-307

<sup>212</sup> R C Majumdar, H C Raychaudhuri and Kalikinkar Datta, *An Advanced History of India* (4<sup>th</sup> ed, Macmillan, 1978) 304

<sup>213</sup> Romila thapar, 306

<sup>214</sup> Mohammad Ishaq Khan, 'The Rishi Movement as a Social Force in Medieval Kashmir' in in David N Lorenzen (Ed) 128-149 at 136-137

<sup>215</sup> Ibid 144

social and political life. Great literary figures like Rabindranath Tagore and Subramanya Bharati made the basic human values popular. The traces of eternal values in their thoughts, words and deeds demonstrate their relevance in shaping the popular movements for reforms, liberties and national independence.

The very idea of social reform was one of liberation. As Ranade said, “The end of social reform was to renovate, to purify and also to perfect the whole man by liberating his intellect, by elevating his standard of duty and by perfecting all his powers.”<sup>216</sup> Rammohun Roy had comprehensive ideas of equality, liberty and welfare. He considered that God has equally subjected all living creatures, without distinction of caste, rank or wealth, etc., and has equally admitted all to be partakers of the bountiful mercies which He has lavished over nature.<sup>217</sup> Although women were physically not strong as men, they did not have to live as ‘a slave in the house’ and were allowed to have proper instruction in knowledge and wisdom they would be able ‘to exhibit their natural capacity’.<sup>218</sup> He argued in favour of liberating people from ‘the useless restraints of religion’, make ‘boundless improvement’ in intellectual, moral and social spheres and to move away from fetters of prejudices to dignity of human being.<sup>219</sup> He regarded education as a great device to free the individuals from fetters of prejudices and advocated for public support to educational institutions.<sup>220</sup> His belief in freedom in economic rights made him to propound continuance of *dayabhaga* which allowed the family head the right of alienation of property.<sup>221</sup> He argued in favour of rights of peasants or personal cultivators. He championed the cause of free press as essential for socio-economic progress of the community, dissemination of knowledge and good governance.<sup>222</sup> Dayananda Saraswati argued for revival of pristine Vedic thoughts, equality of all persons and respectful treatment of women. Sublime thoughts of equality, liberty, humanism, social harmony and eradication of exploitations can be found in the writings and preaching of Ramakrishna Paramahansa and Swamy Vivekananda.

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<sup>216</sup> M.G.Ranade, *Revival or Reform*, p.18. also see P. Ishwara Bhat, *Law and Social Transformation in India* (2<sup>nd</sup> ed. EBC, Lucknow, 2022) chapter 3.

<sup>217</sup> R. Roy, ‘The Precepts of Jesus, The Guide of Peace and Happiness’, *The English Works*, pt. v, p. 4. Also see S Mukherjee, ‘The Social Implications of Political Thoughts of Raja Rammohun Roy’ *Citizen Historian* [https://openjournals.library.sydney.edu.au>article](https://openjournals.library.sydney.edu.au/article)

<sup>218</sup> R. Roy, *A Second Conference between an Advocate for and an Opponent of the Practice of Burning Widows Alive*, *The English Works*, pt. iii, p. 125.

<sup>219</sup> R Roy, *The English Works*, pt. ii, p. 23

<sup>220</sup> R. Roy’s letter to Lord Amherst on Western education as reprinted in Biswas and Ganguli (eds), *The Life and Letters of Raja Rammohun Roy*, p. 453.

<sup>221</sup> *The English Works*, pt. i, p. 19

<sup>222</sup> *The English Works*, pt. iv, pp. 6-9, 27-31.

Jyotiba Phule and Vivekananda emphasised on equal access to education irrespective of caste, sex and poverty. The movement against Sati and in favour of widow remarriage was aiming at protection of woman's dignity. The discourse on question of caste and woman had entered into other spheres.

The influence of *Rta* values and the intellectual thrusts of social reform movement had motivated the freedom fighters and political leaders to expound their political and social dimensions. Tilak conceived the idea of freedom as everybody's birth right. Navoroji contended against drain of wealth by a foreign force, impoverishment of the economy and favoured the need for economic and political freedom of the country. Gandhiji's thesis of Swaraj contemplated responsibility on the part of individuals to inculcate qualities of good citizenship and responsibility so that inner *swaraj* matches the imperatives of political *swaraj*. It also argued against the unethical character of colonial rule on all counts. Gandhiji extensively preached, practised and persuaded for removal of untouchability, caste based discrimination and discrimination against women; ardently advocated the cause of religious harmony, gram swaraj, non-violence, truth, economic justice and political freedom; planned for democracy, language harmony and rural development. Dr. Ambedkar criticised the religious basis for caste system, its obnoxious consequence on society and advocated the need for special provisions for their uplift through affirmative action. His philosophic outlook about comprehensive idea of justice, welfare and democracy and dynamic relations among the trinity of equality, liberty and fraternity is also reflecting eternal values. Sardar Vallabhabhai Patel had conceptualized, planned and implemented the goal of national unity and merger of 560 Princely states. Jawaharlal Nehru had a great vision of socialistic pattern of society, economic justice and friendly relations with foreign nations. Owing to people's movement and mass participation on various issues including freedom struggle the above values became shared principles of WE the people of India at large.

### **Culture and the Constitution Making**

Culture is a wide and socially and politically significant concept that comprehends ultimate values of a particular society expressed through collective means and institutions. Law, custom, morals, knowledge, literature, religions, belief, practice and habits are parts of culture. The flow of eternal values have not only enriched these components but also set standards for their social acceptance. The prime values underlying this intellectual structure, albeit their openness to the factors of continuity and change, have a role in shaping supreme law of the land. Sociologically a constitution is a socially embedded legal order manifesting political

power recognized by social phenomenon.<sup>223</sup> While culture shapes the Constitution in this sense, the Constitution also mirrors the culture of the nation.<sup>224</sup> The composite character of culture, the rich *Rta* values in it, the idea of co-existence of diverse cultural identities and the determination to conserve culture sans faults have entered into the constitution making process in India.

While discussing the concept of religion Shri H V Kamath referred to the meaning of *dharma* in ancient Indian literature and the views of S Radhakrishnan and Shri Aurbindo to point out its inclusive character.<sup>225</sup> Regarding prohibition of imparting of religious instructions in public educational institutions and implicit permission for the same in private educational institutions Sri Anantashayana Ayyangar referred to the teaching in *Bhagavad Gita* to the effect that through sacrifice and service, human beings shall find God in human society.<sup>226</sup> Prof. Shibbanlal Saxena viewed that due to the need to protect the interests of religious minorities teaching of *Bhagavad Gita* was kept outside the public educational institutions.<sup>227</sup> Sri Loknath Mishra stated, "Justice demands that the ancient faith and culture of the land should be given a fair deal, if not restored to its legitimate place after a thousand years of suppression."<sup>228</sup> The discussion on Bharat as an alternative name to India under Article 1 had taken members of the Constituent Assembly to *Yajurveda*, *Bhishmaparva* of *Mahabharatha* and *Vayupurana* about description of Bharat.<sup>229</sup> R V Dhulekar pointed out pluralism in Hindu thoughts as expressed in *Veda* and *Upanishad*.<sup>230</sup> While discussing about protection to be given to economic and agrarian reforms Pandit Balakrishna Shastri referred to a verse in *Bhagavad Gita* to the effect that it is a sin and theft on the part of the rich to use their properties for their luxuries and extravaganza and forget the society.<sup>231</sup> Pointing out the importance of taking oath by constitutional functionaries in the name of god, Sri H V Kamath referred to *Bhagavad Gita* pointing out that devotion to God and sacrifice is an appropriate

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<sup>223</sup> Chris Thornhill, *A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective* (Cambridge University Press, Cambridge, 2011) 11 also 12-15.

<sup>224</sup> M P Singh, *Comparative Constitutional Law: Festschrift to Prof. P. K. Tripathi* (Eastern Book Co, Lucknow, 1989) 479-480.

<sup>225</sup> CAD 6 December 1948

<sup>226</sup> CAD 7.12.1948

<sup>227</sup> CAD 9.12.1948

<sup>228</sup> *Ibid*

<sup>229</sup> Seth Govinda Das, Kollur Subba Rao, Shri Kamalpathi Tripathi CAD; 18th September 1949

<sup>230</sup> CAD 23 November 1949

<sup>231</sup> *Bhagavad Gita* III-10, 13 CAD dt. 12.9.1949



approach in public actions.<sup>232</sup> In addition, Sri Alagur Rai Shastri referred to the poems of Kabir and others extensively while speaking about the strength of regional languages and their claim for recognition of language rights.<sup>233</sup> Syed Muhammad Sanaullah referred to Persian literature and Sanskrit verses in depicting the work of Constituent Assembly for human welfare.<sup>234</sup> Shri H. J. Khandekar observed about the efforts of social reform leaders in eradicating untouchability, “Well, Sir, even the social, political and religious reformers in the country like Gautama Buddha, Ramanuja, Kabir, Sant Tukaram, Raja Ram Mohan Roy, Swami Dayanand Saraswati, Paramahansa, Mahatma Jyoti Rao Phuley, Vithal Ramji Shinde, Thakkar Bapa and last but not the least, Mahatma Gandhi, found it very difficult to get rid of this ghost of untouchability. They agitated in the country but they did not succeed.”<sup>235</sup> In the original constitutional text there is incorporation of paintings and sketches made by Nandlal Bose and others depicting the cultural features such as Indus Valley Civilization, Vedic village, Ramayana, Gitopadesha, Hanuman, Akbar, Tipu Sultan etc. All these reflect tremendous contribution of culture in the constitution making process.

The Constitution makers were determined to remove the irrational elements such as inequities in personal law, caste based discriminations and exclusions from temple entries. Subjection of all existing laws including customs to the purging effect of fundamental rights is also a policy of superiority of constitutional culture upon people’s culture. Their focus on protection of the culture and social traditions and customs of indigenous communities are also visible. Conferment of fundamental right to conserve culture is also an attempt to establish appropriate relation between popular culture and constitutional culture.

### **Constitutional culture and the popular culture: the ongoing dynamics of interaction**

The words ‘constitutional culture’ connote the mindset to abide by the Constitution or adhere to its values. Justice V R Krishna Iyer found deeper wound on constitutional culture when a State official running berserk, regardless of human rights, to beat a person in police custody unconscionably.<sup>236</sup> He also said that handcuffing fouls the soul of constitutional culture.<sup>237</sup> Initially understood thus as strict adherence to the constitution it slowly began to reflect different

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<sup>232</sup> *Bhagavad Gita* XIII-6 and IX-27 CAD dt.27.12.1948

<sup>233</sup> CAD 13.9.1949

<sup>234</sup> CAD 21.11.1949

<sup>235</sup> *Ibid*

<sup>236</sup> *Kishor Singh Ravinder Dev v. State of Rajasthan*, AIR 1981 SC 625; also see *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

<sup>237</sup> *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCR 855: (AIR 1980 SC 1535).

shades of prominent constitutional values. In *Francis Coralie Mullin* right to dignity formed essential component of constitutional culture.<sup>238</sup> Pointing out the role of constitutional culture, the Court in *Poudyal* said “It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals.”<sup>239</sup> In *S. R. Bommai*, dividing the people and destroying the social structure on the basis of religion or caste was regarded as obnoxious and anathema to the constitutional culture.<sup>240</sup> In the *NJAC* case<sup>241</sup> disciplined exercise of constitutional power formed constitutional culture whereas in *Navtej Singh Johar*<sup>242</sup> dignity was part of constitutional culture. In *Jagdish Sharan* combination of the values of unity of the nation and equality of opportunity was regarded as constitutional culture.<sup>243</sup>

Since culture is a part of tradition, and has subjective elements, accretion of biases and discriminatory beliefs and practices have posed some challenges to constitutional culture. Paul Kahn distinguishes between popular culture and (legal) professional culture.<sup>244</sup> The beliefs and practices of people form popular culture whereas lawyer’s perception of constitution constitutes professional culture. In the Indian context one can notice dichotomy or clashes between the two in the context of entry of women of a particular age group into Sabarimala temple and unilateral pronouncement of triple talaq.<sup>245</sup> The outcome in both the contexts is superiority of constitutional culture/morality over popular culture/morality.

Another dimension of the interface is that (professional) constitutional culture as evolved through judicial review has borrowed from the socio-legal values undergirded by popular culture. Courts have referred to Bhagavad Gita, Upanishads,<sup>246</sup> Swamy Vivekananda’s writings,<sup>247</sup> Gandhian literature,<sup>248</sup> etc., in a number of cases. In the *Indian Academy of*

<sup>238</sup> In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 (paras 7 and 8): (AIR 1981 SC 746)

<sup>239</sup> *R.C. Poudyal Petitioner v. Union of India and others*, AIR 1993 SC 1804

<sup>240</sup> *S R Bommai v. Union of India*, 1994 AIR SCW 2946

<sup>241</sup> *Supreme Court Advocates-on-Record Association and Anr. v. Union of India*, 2015 AIR SCW 5457

<sup>242</sup> *Navtej Singh Johar and Ors. v. Union of India* AIR Online, 2018 SC 146

<sup>243</sup> *Jagdish Saran and others Petitioners v. Union of India and others Respondents*, AIR 1980 SC 820

<sup>244</sup> Paul W Kahn, ‘The Constitution and United States’ Culture’ Mark Tushnett et al (Eds) Oxford Handbook the US Constitutional Law (Oxford University Press, New York, 2015) 1013-1034

<sup>245</sup> *Indian Young Lawyers Association v. State of Kerala; Shayara Banu v. Union of India*, AIR 2017 SC 4609

<sup>246</sup> *V. V. Giri v. D. Suri Dora* AIR 1959 SC 1318

<sup>247</sup> *Scheduled Castes and Scheduled Tribes Officers Welfare Council v. State of U.P* AIR 1997 SC 1451; also see Vikramjit Banerjee, ‘The Philosophy of Swami Vivekananda and the Ideology of the Indian State’, (2012) 2, *SCC Journal*, Section J-17, 17– 32.

<sup>248</sup> P. Ishwara Bhat, ‘Impact of Gandhian Thoughts on the Indian Constitutional Jurisprudence; A Postmodernist Perspective’ 61 *Journal of the Indian Law Institute* (2019) pp. 182-212

*Naturopathy v. State of Uttar Pradesh* the Allahabad High Court reasoned on lines of Benjamin Cardozo who had stated that courts can hardly exclude ethical consideration just like they can hardly exclude the vital air from the room in which they live. The Court said, “Of course, while considering the Ancient Indian Text like *Veda*, *Upnishad*, *Geeta*, Courts and the government have to ensure that they should act *within the constitutional and statutory limits* but where ever there is vacuum or indecisiveness while dealing with human subjects, the material available in the Ancient Indian Text like *Veda*, *Upnishad*, *Geeta* may be looked into for the welfare of the peoples across the board.”<sup>249</sup>(emphasis added). The Court identified learning of yoga as indispensable for a moral society and rule of law system. Similar approach can be found in numerous cases. In *Manoranjan Raut* case the requirement that organ donor shall be a close relative of the patient undergoing transplantation of human organ was read to include paternal aunt’s son also since protection through selfless and eternal action (*karma*) keeps the society integrated through the practice of mutual cooperation.<sup>250</sup> In developing a theme that human life is god’s gift and shall not be put an end to unless it is justified on the basis of consent, Justice Ashok Bhushan in the *Common Cause* case relied on *Bhagavad Gita*.<sup>251</sup> Justice Sanjay Kishan Kaul referred to *Bhagavad Gita* in *K. S. Puttaswamy* for evolving right to privacy from the concept of the supervening spirit of justice manifesting in different forms to cure the evils of a new age and protect basic human right.<sup>252</sup> The idea of co-existence with wild animals, as evolved in *Ivory Traders* case, relied on the *Bhagavad Gita* teaching that all living beings are born from the same source and deserved equal compassion.<sup>253</sup> Right to esteem as an aspect of dignity and respect for self has been emphasised on the basis of *Bhagavad Gita* in a number of cases.<sup>254</sup> Speedy trial, right to be

<sup>249</sup> *Indian Academy of Naturopathy v. State of Uttar Pradesh* Misc. Bench 5138 of 2001 judgment dated 16 July 2014 “The reason is individual right and the collective right of the society or a section of society should be balanced keeping in view our history which includes Ved, Upanishad, Customs, traditions and culture.” *Bhagavadgita* II-48 was relied on

<sup>250</sup> *Manoranjan Raut v. State of Orissa*, AIR 2010 Orissa 99

<sup>251</sup> *Common Cause (A Registered Society) v. Union of India*, (2018) 5 SCC 1

<sup>252</sup> *Justice K S Puttaswamy (Retd) v. Union of India*, AIR 2017 SC 4161 para 460. *Bhagavad Gita* IV-8: “That each age and each generation brings with it the challenges and tribulations of the times. But that Supreme spirit of Justice manifests itself in different eras, in different continents and in different social situations, as different values to ensure that there always exists the protection and preservation of certain eternally cherished rights and ideals.”

<sup>253</sup> *Ivory Traders and Manufacturers Association v. Union of India*, AIR 1977 Del 267; *Bhagavadgita* VI-30, X-8; also see *Forum, Prevention of Environmental and Sound Pollution v. Union of India*, AIR 2006 SC 348

<sup>254</sup> *Kiran Bedi v. Committee of inquiry* AIR 1989 SC 714; *Subramanian Swamy v. Union of India*, AIR 2016 SC 2728; *Om Prakash Chautala v. Kanwar Bhan*, AIR 2014 SC 1220; *J Jayalalitha v. M Chenna Reddy*, (1995) 2 MLJ 187; *Bhagavadgita* XVI-2,3,4; II. 34

heard and right to counsel have supporting principle in *Bhagavad Gita*.<sup>255</sup> Equality, and classification based on quality and occupation have also been analysed by reference to *Bhagavad Gita*.<sup>256</sup> In developing the concept of *sarva dharma samabhav*, *Bhagavad Gita* has been referred.<sup>257</sup> Good governance and fair service in temples and mathas is also a principle gathering support from *Bhagavad Gita*.<sup>258</sup> In the *Jallikattu* case<sup>259</sup> the Supreme Court found the idea in *Ishopanishad* as relevant for animal welfare and observed, “The Court, we are inclined to think, while dealing with law and legal principles can refer to the cultural ethos and the ancient texts of this country as far as they do not run counter to constitutional and statutory thought and principle.” In another case, while propounding the concept of equality reinforced by dignity, support was gathered from *Brihadaranyaka Upanishad*.<sup>260</sup> Thus, constitutional culture gained support from popular culture.

### **Towards conclusion**

In India, the eternal values of good human life – justice, equality, liberty, brotherhood, dignity and welfare – have flown through successive generations for several millennia as the golden thread that have woven the cultural and legal fabric with a highly beneficent outcome. The flow has been gorgeous, enhancing the social and political competence and preparing the collective mindset for implementing such values.

While the intellectual leaders sowed the seeds of *Rta* values over the centuries and across the length and breadth of the nation, people’s participation through debate, acceptance, and application provided a social basis for these values. Plurality of religious beliefs and practices, inspiring literature in diverse languages and formation of multiple ethnic culture provided a medium through which these socio-legal values became parts of the social structure. Interaction by various sections of society and inter-generation responses became the crucible

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<sup>255</sup> *Scheduled Castes and Scheduled Tribes Officers Welfare Council v. State of U.P* AIR 1997 SC 1451

<sup>256</sup> *V V Giri v. D Suri Dora*, AIR 1959 SC 1318; *K C Vasanth Kumar v. State of Karnataka*, AIR 1985 SC 1495; *Bhagavadgita* IV-13

<sup>257</sup> *Justice Dharmadhikari in Aruna Roy v. Union of India*, AIR 2002 SC 3176

<sup>258</sup> *Shyamlal ranjan Mukherji v. Nirmal Ranjan Mukherji* Allahabad High Court judgment dated 30.8.2007; *Mrinalini Padhi v. Union of India*, Supreme Court judgment dated 5<sup>th</sup> July 2018; *Bhagavadgita* IX-23

<sup>259</sup> *Chief Secretary to the Govt. Chennai, Tamil Nadu v. Animal Welfare Board*, AIR 2016 SC 5522 para 21 per Dipak Misra J.

<sup>260</sup> “The *dharma* is the controller of the Ksatriya (the holder of power and authority). Therefore, there is nothing higher than that, even a weak man hopes (to defeat) a stronger man through *dharma*, as (one contending) with the king. That *dharma* is verily truth.” *Scheduled Castes and Scheduled Tribes Officers Welfare Council v. State of U.P.*, 1997 AIR SCW 138.

for verification of them. At all levels, people's participation became the tower of strength for their support. Values are not built in single day. It is their social acceptance, utility and polity's approval that give them eternal character. This is also storehouse of its strength because of which irrespective of gaps of centuries the values continued just like grass roots respond to every rain after summer and maintain greenery.

The substantive content of socio-legal values reflect basic human rights principles, focus on welfare of all sections of society, and inspire for comprehensive reforms. They have sublime moral philosophy of happy and harmonious society. They have the proven potentiality of high degree of inspiration to bring good to the society.

With the entry into constitutional era, culture became a reckoning force in the constitution making process. In building the scheme of constitutional multiculturalism the culture based on socio-legal values played its role in the forum of Constituent Assembly. Interaction between Constitutional Culture (legal professional) and Popular Culture has provided scope for interesting theoretical debate about the superiority issue, means and limits of reform and direction of development. But a visible comfortable position consists in prevalence of constitutional culture over popular culture although the former responds to and gathers support from the latter.



## **Social-legal Values in *Mitakshara, Vachana, Dasa* and Folk Literature in Karnataka: An Exploration\***

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**-M. Veerappa Moily\*\***

I must compliment Prof. P. Ishwar Bhat, Vice Chancellor, Karnataka State Law University, Hubballi and also Registrar Mohamed Zubair and Professors for the unique subjects chosen by them from time to time to reinvigorate the students and faculties with the legacy of India. Today the subject chosen for the National Webinar on “Socio-legal values in *Mitakshara, Vachana, Dasa* and Folk Literature in Karnataka: An Exploration” is one such forward looking subject to take back the students to the fundamentals of rule of law in Karnataka and acquaint them with the roots of Indian law system.

The Preamble of the Indian Constitution which envisages “Sovereign, Socialist, Secular, Democratic Republic” and to secure to all its citizens:

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity;

and to promote among them all

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

Pluralism is the keystone of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection of God realisation.

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\* Valedictory address delivered at the National Webinar on ‘Socio-legal Values in *Mitakshara, Vachana, Daasa* and Folk literature in Karnataka: An Exploration’ held at Karnataka State Law University, Hubballi

\*\* Former Union Minister for Law and Company Affairs and former Chief Minister of Karnataka

Articles 14 and 16(4) of the Constitution intend to remove social and economic inequality to make equal opportunities available. Most important components of secularism are as under:

1. *samanata* (equality) is incorporated in article 14;
2. prohibition against discrimination on the ground of religion, caste, etc., is incorporated in articles 15 and 16;
3. freedom of speech and expression and all other important freedoms of all the citizens are conferred under articles 19 and 21;
4. right to practise religion is conferred under articles 25 to 28;
5. fundamental duty of the State to enact uniform civil laws treating all the citizens as equal, is imposed by article 44;

If we go through the various scriptures the powers enunciated in the preamble of Indian Constitution was purely based upon the spiritual Constitution of India which existed for thousands of years. While the rule of law actually found a place in the annals of European countries only after Magna Carta was adopted by United Kingdom in 1215. The rule of law was ingrained in the democratic polity in India more particularly in Karnataka.

The discrimination in any segment of life is the cancerous growth in a democratic polity. The *Vachanakars*, *Haridasa's* and also folklore particularly focus their attention on the curse of "discrimination". If we go through the legal history of Karnataka or India, those principles were actually written on the blood of *Vachanakars* and thousands had become martyrs for the cause. Mahatma Gandhi was really inspired by such noble principles. Under the legacy of Lord Basaveshwara '*dasoha*' was adopted as one of the tenets of secular religion. When I was the Minister for Corporate Affairs in the Government of India, I drew inspiration of the concept of Corporate Social Responsibility (CSR) from *Dasoha* preaching's and practised by Basaveshwara and his followers. Hence, it is not a foreign concept but a concept from the soil of India, nay, Karnataka.

### ***Shatsthala Vachanas of Basaveshwara***

Basaveshwara humanized religion and called the devotees of Shiva as its lifeline. He condemned the prevalent discrimination towards *dalits* despite of their inclusion into Shaivism and appealed that as they go to pilgrimages they should visit the gatherings of *Shivasharanas* (*dalits*) and respect them. He believed that this alone can eliminate mutual infamy and instil harmony in the society.

ವ್ಯಾಸ ಬೋಯಿತಿಯ ಮಗ, ಮಾರ್ಕಂಡೇಯ ಮಾತಂಗಿಯ ಮಗ, ಮಂಡೋದರಿ ಕಪ್ಪೆಯ ಮಗಳು-  
ಕುಲವನಸದಿರಿಂ ಭೋ-ಕುಲದಿಂ ಮುನ್ನೇನಾದಿರಿಂ ಭೋ? ಸಾಕ್ಷಾದಗಸ್ತ್ಯ ಕಬ್ಬಿಲ, ದುರ್ವಾಸ ಮಚ್ಚಿಗ,  
ಕಶ್ಯಪ ಕಮ್ಮಾಜ, ಕೌಂಡಿಲ್ಯನೆಂಬ ಋಷಿ ಮೂರು ಭುವನರಿಯೆ ನಾಯಿದ ಕಾಣಿ ಭೋ! ನಮ್ಮ ಕೂಡಲ  
ಸಂಗನ ವಚನವಿಂತೆಂದುದು: “ಶ್ವಪಚೋಪಿಯಾದರೇನು ಶಿವಭಕ್ತನೇ ಕುಲಜಂ” ಭೋ!

Vyaasa fisherman's son; Markandeya, of an outcast born; Mandodari is daughter of a frog! O, look not for caste; in caste, what were you in the past? Indeed, Agastya was a flower, Durvasa, a cobbler, Kashyapa, a blacksmith; Kaundilya rishi was a barber as known in three worlds; Our Kudalasangana vachana says: “even if a person is consumer of dog's flesh, if he is a devotee of Shiva, he is truly born in high caste.”

Many great intellectuals, devotees or prestigious persons are not always born in upper caste families. As noted in the above *Vachana*, Agastya, Durvasa, Kashyapa, Koudinya among many other great saints were born in the families of hunter, cobbler, blacksmith and barber. Though they were all associated with the castes that were treated supposedly low, their status in the society got elevated because of their devotion towards Lord Shiva and his glory. The justification among *Aagamas* as Basavanna points out is upon the words *Swapachopiyadharenu Shivabhakthane Kulajanu* meaning *Shivasharanas* are a true race regardless of their caste. The *vachana* further unveils the bigotry, madness and selfishness of the society, which by segregation of people belonging to backward communities, *dalits* and tribals as *shudras* and untouchables has hampered their growth and development.

### **Poet and poetie heritage (ಕವಿ ಕಾವ್ಯ ಪರಂಪರೆ): Basaveshwara**

Basaveshwara's life has been most meaningful and magnificent. From resisting the ritual of *Upanayana* and leaving his home despite of being born in a brahmin family, he continued to challenge the social evils through poems becoming one of the mystical revolutionaries.

The twelfth century Veerashiva movement did not transpire abruptly similar to any other social change that doesn't happen spontaneously. The brewing discontent with the social situation manifests internally until it revolutionizes under the direction of an eminent leader and this is a true character of a social movement. Similarly, there must have been severe resentment decades before the Veerashiva movement among the people against the prevalent caste system. All of these manifested under the leadership of Basavanna, Allamaprabhu, Channabasavanna and others to eliminate the foundations of discriminant socio-religious practices.

Basavanna appears to associate the term '*Jaathishivas*' to the ones who were already known as '*Bhavishivas*'. Perhaps the ones who do not belong to the Veerashivism are called '*Bhavishivas*'. Moolige Marayya has named '*Shuddashiva*', '*Poorvashiva*',



'*Margashiva*' and '*Adhishiva*'. Similarly, Aadhayyanu names '*Shuddha*', '*Mishra*', '*Sankeerna*', '*Poorva*' '*Margashiva*' and '*Adhishiva*' and opines that all these sects in shivism have acquired '*Karmabhakthi*' and not '*Nirmalabhakthi*.'

People were following violent practices to worship some deities. Without having strong faith in one god, people started worshipping whatever object they found out of blind faith and fear.

“ಮಡಕೆ ದೈವ, ಮೋರೆದೈವ, ಬೀದಿಯ ಕಲ್ಲು ದೈವ, ಹಣಿಗೆ ದೈವ, ಬಿಲ್ಲನಾರಿ ದೈವ, ಕಾಣಿರೋ; ಕೊಳಗ ದೈವ, ಗಿಣ್ಣೆಲು ದೈವ ಕಾಣಿರೋ! ದೈವ ದೈವವೆಂದು ಕಾಲಿಡಲಿಂಬಿಲ್ಲ”

Pot is god; winnow is god; stone in the street is god; comb is god; bow string is god; metal vessel is god; bowl is god, O look. Every item is god, and there is no space for putting one's leg.

As Basavanna says looking for god in every other material object is nothing but the ignorance of people. He further says that worshipping plants and trees like grass, *uttarani* (*Achyranthes aspera*), *lokki* (*Litsea chinensis*), *ekke* (*Calotropis gigantea*), *banni* (*Prosopis cineraria*) as family deity will be ridiculed by God himself.

During the rise of the *Vachanakaras*, in the saga of rituals and traditions, the immoral activities and discrimination was widespread across Karnataka. A few cunning people to further their selfish needs had under the veil of caste and God, camouflaged their evil intentions resulting in the lowered moral standards of the society. Violence, immoral activities, selfishness which otherwise were treated as heinous by all the religions, emerged as path towards success. The trend was such that even the naïve and innocent people were attracted to such means. Over the period of time these practices intensified to pave way for the revolution. The propaganda of *Veerashivism* and their ideals was further spread and propagated by those innocent people who were upset with the existing social system.

In the era of rising *Veerashivism*, Karnataka witnessed the rising violence, sorcery, immorality instead of promoting pious atmosphere and serenity of devotion and peace. People perturbed by this situation, craved for a new clean socio-religious atmosphere and the *Shivasharans* devoted their lives for such a cause. Such a change by the movement however was initially limited to a few areas of Karnataka. It gained the momentum with growing distress among people and attempted to eliminate the discrimination altogether. Basavanna dedicated a major portion of his income to the *Dasahas* (charity) for the people and there was no discrimination in *Dasoha* on the basis of caste or gender.

### Shape of Basavanna's Socio-Religious Movement

The Movement saw its success because of the hope and faith it had kindled in the society.

“ಕೊಲುವವನೇ ಮಾದಿಗ, ಹೊಲಸ ತಿಂಬುವವನೇ ಹೊಲೆಯ”,

“ಕಾಸಿಕಮ್ಮಾರನಾದ, ಬೀಸಿ ಮಡಿವಾಳನಾದ;

ಹಾಸನಿಕ್ಕಿ ಸಾಲಿಗನಾದ; ವೇದವನೋದಿ ಹಾರುವನಾದ”

“One who kills is a maadiga; one who eats dirt is holeya”

By heating iron red a person becomes blacksmith, by swinging the cloth he becomes washer man

By spreading trap he becomes creditor, by reading Vedas he becomes a Brahmana

The *Vachanakaras* observed that the people are responsible for creation of castes and they explored the economic roots of the castes system to eliminate the caste disparities and treat all *shivites* equal. This movement emancipated a few *Dalits* creating a ray of hope. People from different caste and sects joined this new faith and the *Vachanakaras* lived their lives on the ideals of equality inspiring others towards these egalitarian values.

### Vachanas- Outline, Values and Contribution to the Literature

The period of *Upanishad* has evidenced the spiritual space enjoyed by women. Aftermath this period the rights of the women were not recognized. ‘*Sthriyo vashyasthatha shudra*’ meaning women, prostitutes and shudras are to be treated alike. Treating women as low and subhuman was a predominant practice. Since Basavanna's values of egalitarianism were strong, he would in no circumstance accept women inferior to men. The identity of women as illusion, her life being limited to the family and household work were considered as discriminant practices. Her right towards spiritual growth and curiosity were recognized and treated equal to men. The importance of both the genders in life is metaphorically described with reference to the importance of two eyes for the best vision.

*Vachanakaras* further explain that the difference in the sex is only limited to the physical appearance and it doesn't have any bearing upon the *atma* (inner self) of a human being. The *Atmalinga* makes no discrimination on basis of caste or gender, thereby devotion, curiosity; spirituality has to be regardless of the binary distinction. They appealed that the women have to be treated with respect as they are not just important for family life alone but also for the spiritual attainment.

Another important principle the *Shivasharanas* preached that essentially became important for the rebuilding of society was the principle of *Kayaka* (work). The principle of *Kayaka* (work), labour of the body and everyone has to work for a living. The principle also highlights the moral lesson of self-esteem where a person doesn't have to live a dependent life if he works. The *Vachanas* also preach that the unemployed and dependents who live their life like parasites have no place in the society. Everybody has to earn their food with labour and this practice will remove the possibility of exploitation in the society. Basaveshwara and other *Sharans* just didn't preach this principle but followed it in their lives. For instance, Basaveshwara worked in the Court of King Bijjala.

### **Equality**

One has to earn his/her own food and share it with the ones who doesn't have it depicts the emotional bonding the *vachanas* attempt to inculcate in the society. The *vachanas* highlighted that the acceptance of one's profession as his/her own, performance of such work without any fraud and treating such work as God brought enormous satisfaction and respect. Basaveshwara's disciplines belonged to different professions. As pointed out earlier, Basaveshwara himself worked in the court of King Bijjala as a minister. Likewise, Madivala Machaiyya was a launderer and Moolige Marayya made a living selling firewood. Hence, all the people who were influenced by Basaveshwara's ideologies and propagation of his values had adopted different professions. These different professions never created atmosphere of distinction or discrimination. When they met at *Anubhava Mantapa* for discussions and debates, they treated each other alike. This was natural course, but had a great impact in eliminating the division between the rich-poor, instilling respect for all professions, goodness in the social life. This egalitarianism was predominantly reflected in *Anubhava Matapa*.

People across India joined the *Anubhava Mantapa* under the leadership of Basavanna and spread the values of the religious, social and literary movement. They tried to eliminate the perennial distinctions of upper and lower caste and discrimination among the sects and creeds. They tried to dismantle the rigid temple rituals and priesthood that governed the religion with rationality and morality. They emphasized on looking for divinity within one's inner-self and aim for inner purity. They preached the principles of *Kayaka* (work), *Dasoha* (charity), respecting other professions and equality among people. They projected that the caste doesn't come with birth but by the profession one is associated to. The effort of the *Shivasharanas* in eradicating socio-economic status is remarkable feature of the *Veerashiva* faith.

*Kolluvavne madiga, holasu thimbuvane holeya,  
Kulaveno aavadhira kulaveno?  
Sakala jjevathmarige leesanne bayasuva sharanare kulajaru.  
Arethade sharana, marethede maanava  
Aiyya endhede swarga, ellavo odhede endare naraka  
Deehave degulla  
Dayave dharmada moola*

The above *vachana* in an attempt to dismantle the caste system and reinforce the human values states that the one who kills and eats rot is the lower caste, but the one who intends good for the humanity is upper caste. With the pure devotion to God and humane intentions any person can reach heaven, if not then hell. The body is temple and kindness the root of religion. The basis idea of the *vachana* is to bring equality regardless of the caste and gender.

### ***Vachana***

*Vachanas* express the struggles of the *Vachanakras* with themselves and their environment. They give us an impression that they were engaged in a stupendous task of bringing about a social regeneration, and conventions and traditions to create a new society.

Some of the noted figures of this renaissance were Basaveshvara and Allamaprabhu. Almost every saint has sung his saying on various topics in various strains. Saints, who emerged from the lowest social orders, spoke comprehensively and intelligible to the common people. About 15,000 *vachanas* of 130 *vachanakras*, including about 30 women, have expressed themselves in these *vachanas* using their every-day experience to communicate their thought on religion, philosophy and society.

Some *vachanakaras* include Madivala Machayya, a washerman; Medara Kotayya, a basket-weaver; Ambigara Chaudayya, a ferry man; Hadappada Appanna, a barber; Dakkayya Bommanna, a drummer; Turugayi Ramanna, a cowherd; Sunkada Bankappa, a tax-collector; Kinnari Bommanna, a gold-smith; Vakkalu Madayya, a farmer etc. and a host of women mystics such as Satyakka, Muktayakka, Lingamma, Rammeevve, Kalavve and most of all Akka Mahadevi.

It is learnt from the early works that men and women of various faiths flocked under the banner of Basaveshvara. Their spirit was free from superstitions and rigidities which had caused stagnation among the classical Indian schools. Thus a new philosophy based on human values sprang forth and began to blossom, founded on the latent divinity of the human soul, on the universality of love and respect for all. The saints and mystics continued their low

vocations side by side with their holy mission. They believed in the honest, productive, useful and devout life of a householder. Their sayings penetrated into the hearts of the people, lifted from their soul the inertia of the daily chores and sowed the seeds for a new religion.

*Vachanas* (poetic prose) depict a rare combination of individual insight of a *bhakta* and sheer poetic exuberance. The *Vachanashastra* is considered to be the scripture of religion. The *Sharanas* who were also the *Vachanakaras* were free thinkers respected for their authority. They did not hesitate to differ from the *Agamas* whenever circumstances demanded it.

The *Vachanakaras* have maintained that all persons irrespective of caste, creed, colour, rank, position, and sex become equal the moment they get initiated.

Basaveshvara's *vachanas* blend the concept of devotion and reformation, thereby making them very much relevant in the contemporary society. The *Vachanashastra* is the fruit of deep meditation, containing true sublimity, exquisite beauty, pure morality and fine strains of poetry. The importance and value of the *Vachanashastra* cannot be too greatly emphasized in these days of uncertainties, when men and nations are prone to decide questions from the standpoint of expediency rather than in the light of eternal principles.

Basaveshvara advises a *Sadachari* thus: "Steal not, kill not, speak no untruth, be not angry, show not contempt for others, do not pride upon thy virtue, do not speak ill of others. This is the way to internal purity, this is the way to external purity, and this is the way to win God's favour".

*Vachanas*, which could be considered as the source of law, can be further classified into four categories:

1. Eradication of Discrimination: Annihilation of Caste;
2. Eradication of Discrimination: Annihilation of Birth Superiority;
3. Eradication of Discrimination: Attack on Scriptures; and
4. Eradication of Discrimination: Between High and Low, Purities and Impurities, Fit and Unfit.

The last category can be further divided into:

- a. Between Man and Woman,
- b. Between Man and Man,
- c. Between *Guru-Linga-Jangama* and *Bhakta*,
- d. Between 'I' and 'You', and
- e. Between Heaven and Hell.

All these categories of *vachanas* reflect the legal characteristics and therefore can be viewed as the sources of law. *Vachana* literature was a by-product of a great socio-religious movement led by Basaveshvara to build a casteless society on the cardinal principles of democracy – liberty, equality and fraternity.

**Sadachara:** *Abhakta* should engage in truthful and honest occupation and keep in mind the good of all living beings. This concept helped in upholding the dignity labour and the ideal of equality. It accords respect to physical labour and relates labour with religion.

**Shivachara:** It means not discriminating among the Shiva *bhaktas*. The concept has helped in eliminating caste hierarchy, at least among *Lingayats*. **Ganachara:** It means avenging the ill-treatment meted out to the *Lingayats* by others, and indicates the militant aspect of Lingayatism. **Brityachara:** It refers to humility in everyday life.

**Kriyachara:** It insists on the importance of initiation and sublimating everyday activities.

**Jnanachara:** It refers to the need of intellectual discipline that can be obtained by contemplating on *vachanas* and correcting one's path.

**Bhavachara:** It is the practice of cleansing unnecessary and harmful feelings and emotions, thus upholding religious morality.

**Satyachara:** It is the practice of committing one's self to one's statements and upholding the virtue of truthfulness.

**Nityachara:** It is the practice of considering everything that one gets as the grace of God.

**Dharmachara:** It means following one's own *Dharma*, i.e. *Lingayata Dharma*.

**Sampathinachara:** It is the practice of considering the soul's wealth as superior to worldly riches.

### **Legal Concepts in Vachana Literature**

There are at least two kinds of sources of law in *Vachana* Literature. One is divine and the other is customary. But *vachanas* have another dimension also. They are the dictions of code of conduct. If we proceed on this argument, then we can state that *vachanas* have a lot of legal material.

*Vachanas* are a rich tributary of knowledge based on real time experience after thorough deliberations. *Vachanas* are the basis for number of disciplines of learning and human knowledge. *Vachanas* enrich knowledge in many fields viz. religion, spirituality, philosophy, ethics, logic, language, literature, arts, science, environment, management, sociology, political science, economics, psychology and law.

The legal ideas, concepts and norms built by the *vachanakaras* under Basaveshvara were relevant not only for their times but are relevant even today. The legal concepts such as democracy, secularism, liberty, equality, freedom, etc. developed in the 20th century as after-effect of European renaissance were already in practice in the 12th century in Karnataka. Due to lack of documentation and language barriers, these ideas did not percolate beyond the borders of India.

**Democracy:** Basaveshvara built a society which is not just democratic in political sense but democratic in all other aspects of the society. He established *Anubhava Mantapa*, a platform for intellectual, spiritual, social and cultural discourse. This was a democratic institution where all were welcome.

**Welfare State:** Basaveshvara dreamt of establishing a welfare state and developed his new philosophy of socialistic idealism to achieve this end. According to some writers who are experts in the study of Basaveshvara philosophy *sharanas* were all one with their leader in achieving this goal. The views of *sharnas* about the welfare state and the casteless society are unique, and carry a ring of authenticity.

**Secularism:** *Lingayat* philosophy advocates secularism. People of all religions, castes and creed should have equal status and opportunity to develop and live a peaceful life.

**Equality:** The concept of equality is like a golden thread running through *vachanas* of almost all *sharanas* writing *vachanas*. Demolishing the old order of the society divided on the bases of caste, birth, gender, etc. Basaveshvara and his followers reconstructed it based on equal opportunities to all: men and women, low-caste and high-caste, rich and poor.

**Freedom:** *Sharanas* taking part in the epoch-making movement started by Basaveshvara were bold and free thinkers endowed with intellectual abilities to carve out *vachanas* out of their personal experiences with courage of conviction. All the members of *Anubhava Mantapa*, the Parliament of free thinkers enjoyed freedom of thought and expression. Women too thought independently and expressed their views freely at the *Anubhava Mantapa*. *Vachanas* written by the *Sharanas* stand as a testimony for their freedom in thinking and also building a democratic set up with freedom for all in a socialist system of equality, liberty and fraternity.

**Liberty:** In tradition ridden India, women and *shudras* were not given certain basic rights. Basaveshvara argued that these people should be given the liberty so that they are made entitled for the basic rights. He says thus in a *vachana*: “Why fear that you are made slaves? Why feel shy that you are denied access to God? Whoever you are submit to God thinking that you do not know anything do not remain silent, Feel free in the presence of Lord Kudala Sangama!”

**Dignity:** Human dignity is one of the paramount concerns of Basaveshvara. All human beings irrespective of their caste, creed and status should be treated with dignity. This is reinforced in a *vachana* regarding a washerman: It is *Madivala* who purified my body; It is *Madivala* who cleansed my mind; It is *Madivala* who illuminated my inner self; It is *Madivala* who freed me from the trammels of worldly existence; It is *Madivala* who made me worthy of Thee, O Lord Kudala Sangama!

**Prohibition of Discrimination:** Basaveshvara being an advocate of equality developed principles in his *vachanas* that negate all kinds of discrimination. One *Vachana* songs: “There is but one soil on which stand the house of *holeyas* and the temple of Shiva. There is but one water for toilet and rituals. There is but one caste for the man who knows himself. There is but one goal for the six philosophies of salvation. There is but one stance for those who know Lord Kudala Sangama.”

**Abolition of Caste:** Basaveshvara was up in his arms against the caste system and waged a war against it. Caste is a big social problem and evil. He sought to abolish caste system by his powerful *vachanas*.

**On annihilation of caste:** The last of the last category of *Varna*, the *Atishudras*, are the ill-fated untouchables. Basaveshvara pulled down the *Varna* barricade and encouraged inter-dining and inter-caste marriages. His aim was to abolish the practice of untouchability.

**Kayaka:** Concept of *Kayaka* is the most eminent concept evolved by Basaveshvara. Everybody should be engaged in work. No one should live on the gains of other’s efforts. Work itself is heaven; there is no heaven outside elsewhere. One should engage in the work not for the sake of profit or in order to become rich. One should engage in work that promotes national and social interests and not his own personal or individual interests. One should do his work with honesty and sincerity.

**Dasoha:** Very closely connected with the concept of *kayaka* is the concept of *dasoha*. According to this principle a person must give a part of his earnings for the good of the society.

**Gender Equality:** In Basaveshvara’s time woman was treated as a *shudra* and reduced to a level of a slave. Basaveshvara gave women opportunities of access to education, property, wealth, religion and speech. Due to the efforts of Basaveshvara there emerged a fleet of 33 lady mystics and philosophers. Prominent among them are Akka Mahadevi, Satyakka, Muktai Akka, Lakkavva, Sankavve, etc. The stigma attached to widows in the Hindu society was removed by Basaveshvara. All women, irrespective of their caste, status as married, widows and spinsters were provided the equal status with men.



***Mitakshara:***

The codified law and uncodified law are two types of Modern Hindu Law. Codified law administers each Hindu. The concepts of schools of Hindu Law do now no longer exist in codified law; however, it exists in uncodified Hindu Law. *Vedas* and *Smritis* had been the forms of sources in which, many pupils all-round India, wrote the commentaries which shaped the idea for schools of Hindu Law.

Schools of thought refer to the divided opinions on a subject matter. Thus, schools of thought on Hindu law refers back to the various and divided opinions on the policies and principles of Hindu Law. Unlike statutes, they may be now no longer codified. They do now no longer have the force of law. However, they affect the minds of the legislature or lawmakers.

Schools of Hindu law are commentaries and the digestives of the *smritis*. These schools have widened the scope of Hindu law and explicitly contributed to its development. The two major schools of India are *Mitakshara* and *Dayabhaga*.

***Mitakshara:*** Means a short compendium - is a running commentary on the Code of Yajnavalkya, 187, and a veritable digest of *Smriti* law. It was written in the latter part of the eleventh century by Vijananeshwara, an ascetic additionally mentioned as bearing the name *Vijnana Yogin*.

The chief merit of the work consists in its comprehensive treatment of almost all vital topics of the law and also the synthesising of assorted *Smriti* texts. It's of supreme authority throughout the Republic of India except in Bengal where the *Dayabhaga* of Jimutavahana is given dominant importance.

*Mitakshara* has a very wide jurisdiction. However, different parts of the country practice law differently because of the different customary rules followed by them.

**Sub-Division of *Mitakshara* School:**

The *Mitakshara* School is sub-divided into four minor schools; these differ between themselves in some matters of detail, relating particularly to adoption and inheritance. All these schools acknowledge the supreme authority of *Mitakshara*, but they give preference to certain treatises and to commentaries which control certain passages of *Mitakshara*. This accounts for the differences between those schools.

- They are namely:
- Banaras Hindu law school
- Mithila law school

- Maharashtra law school
- Dravida or madras law school

### **Banaras School**

This law school comes under the authority of the *Mitakshara* law school and covers Northern India including Orissa. The Banaras School is sometimes called the most orthodox of the different schools of Hindu law.

### **Mithila School**

This law school exercises its authority in the territorial parts of tirhoot and north Bihar. The principles of the law school prevail in the north. The major commentaries of this school are Vivadaratnakar, Vivadachintamani, Smritsara. The Kalpataru by Lakshmidhara is a work that is freely cited by the exponents of the Mithila School.

### **Maharashtra or Bombay School**

The Maharashtra law school has the authority to exercise its jurisdiction over the territorial parts including Gujarat Karana and the parts where Marathi language is proficiently spoken. The main authorities of these schools are Vyavhara Mayukha, Virmitrodaya, etc.

### **Madras School**

This law school tends to cover the whole southern part of India. It also exercises its authority under *Mitakshara* law school. The Smriti Chandrika of Devanna Bhatta, who flourished at the close of the twelfth century, has a commanding influence in South India. It is an exposition on the law of inheritance and was considered by Colebrooke to be a work of uncommon excellence, equal, if not superior, to Parashara Madhaviya which also is a leading authority in the South.

### **Difference between *Mitakshara* and *Dayabhaga* Schools:**

#### **Joint Family:**

According to the *Mitakshara* law school a joint family refers only to the male member of a family and extends to include his son, grandson, and a great-grandson. They collectively have co-ownership/Coparcenary in the Joint Family. Thus, a son by birth acquires an interest in the ancestral property of the joint family.

1. Under the *Dayabhaga* law school, the son has no automatic ownership right by birth but acquires it on the demise of his father. In the *Mitakshara* School, the father's power over the property is qualified by the equal rights by birth enjoyed by a son, a grandson, and a great-grandson.

2. An adult son can demand partition during his father's lifetime or his three immediate ancestors. He has a say in the disposition of the family property and can oppose any unauthorized disposition of ancestral or family property. This is not possible under *Dayabhaga* school as the father has overall and uncontrolled power over the family property till death.
3. **Coparcenary/Co-ownership:** Under the *Mitakshara* School of law all the members of the joint family enjoy coparcenary rights during the father's lifetime. Under *Dayabhaga* School when the father is alive the sons do not have coparcenary rights but acquire them on the death of the father. In the *Mitakshara* School of coparcener's share is not defined and cannot be disposed of. In the *Dayabhaga* the share of each Coparcener is defined and can be disposed of.
4. Partition: While both the *Mitakshara* and the *Dayabhaga* schools hold that the true test of partition is in the intention to separate, the manifestation of this intention is different in each of the schools. In the case of *Mitakshara* School, the intention involves holding the property in defined definite shares while in the *Dayabhaga* School there has to be a physical separation of the property into specific portions and assigning of separate share to each coparcener.
5. In the *Mitakshara* system, none of the members of the coparceners can claim a definite physical share of the joint property. So, partition in this system involves ascertaining and defining the share of the coparcener i.e., in the numerical division of the property. In the *Dayabhaga* system, each of the coparceners has a definite share in the joint family property even though the family is joint and undivided and the possession is common. So, partition in this system involves the physical separation of the joint property into the separate shares of the coparceners and assigning to each of the coparceners the specific portion of the property.
6. Rights of Women: In the *Mitakshara* system the wife cannot demand partition. She, however, has the right to a share in any partition affected between her husband and her sons. Under the *Dayabhaga* this right does not exist for the women because the sons cannot demand partition as the father is the absolute owner. In both the systems, in any partition among the sons, the mother is entitled to a share equal to that of a son.
7. Similarly, when a son dies before partition leaving the mother as his heir, the mother is entitled to a share of her deceased son as well as a share in her own right when there is a partition between the remaining sons.

8. Widow's rights: When one of the brothers dies, his widow can succeed to his share under the *Dayabhaga* but under the *Mitakshara* her rights are excluded by the right of survivorship of the brothers. The widow can then have only a right to maintenance.
9. *Sapinda*: Heirship: The relationship of *Sapinda* arises according to *Mitakshara* by propinquity or community of blood. Under the *Dayabhaga* it arises utilizing *Pinda* offerings to deceased ancestors. The spiritual benefit is the criterion for heirship under the *Dayabhaga* while consanguinity (blood relationship) is the guiding principle under the *Mitakshara*.
10. Survivorship: Brothers who have inherited property from their father have a right of survivorship in the *Mitakshara* joint family. The *Dayabhaga* does not respond to any right of survivorship and the brothers hold in quasi-severalty with the full power of alienation.

### **Purandara Sahitya**

‘ಮಾಮೇಕಮೇವ ಶರಣಮಾತ್ಮಾನಂ ಸರ್ವದೇಹಿನಾಂ  
ಯಾಹಿ ಸರ್ವಾತ್ಮಭಾವೇನ ಮಯಾ ಸ್ಯಾದಕುತೋಭಯಂ’  
I am an abode to all the animals of the world  
Being one in all, where is the fear for me?

When Haridasa used this *purana* as the guiding material, he didn't only use them for his works but also to adopt the liberal temperament that came with it. It was possible only through this vision that he could embrace all the devotees who were dismayed with the rigid caste system.

### **Sense of Equality**

ಜೀವ ಜೀವಕೆ ಭೇದ  
ಜಡ ಜಡಕೆ ಭೇದ  
ಜೀವ ಜಡ ಪರಮಾತ್ಮನಿಗೆ ಭೇದ  
ಜೀವಾಜೀವ ಮುಕ್ತಾಮುಕ್ತರ ಭೇದ  
ಸಂಸಾರದೊಳು ಭೇದ  
ಮುಕ್ತರೊಡೆಯ ಹರಿಭಕ್ತರಾಧೀನ ಜಗ  
ತ್ಕರ್ತು ನೀ ಸಲಹಯ್ಯ ಪುರಂದರವಿಠಲ  
Difference between living being and living being  
Difference between the non-living and non-living  
Differences among living, non-living and divine being

Differences between living and non-living, free and the unfree  
Lord who is free from all differences in society  
O Creator of the world and committed to the devotees  
Protect O Purandhara Vithala

The sense of equality and the irony of discrimination is explained beautifully in a very lucid way in the above verse.

### **Purandara Dasa**

Purandara Dasa fought the evils of casteism through his songs. In his song *aavakulavaadarenu aavanadarenu aatma bhavavariyada mele* he wonders what is the use if one does not understand the spirit of humanism whatever caste or status one might be accredited to.

According to Purandara Dasa there were no inequalities among men and women. Both of them had same rights and obligations in their conduct of everyday life as well as observation of pity. He made some forceful expressions on untouchability, which was dogging society. He preached the divinity of the soul and worthlessness of pride of caste, among other things, through his simple and colloquial language, understandable diction that could reach the masses *Dasa Sahitya*: In simple terms, *Dasa* means servant and *Sahitya* means literature. In this context, Purandara Dasa considered himself to be a *Dasa* of God and literature would mean lyrics of his songs.

### **Kanakadasa's principle of equality**

Kanakadasa's writing depicts his innovativeness in using day-to-day activities of common man. He joined Haridasa movement and became a follower of Vyasaraaja who named him as Kanakadasa. His poems and *Krithi* deal with many aspects of life and expose the futility of external rituals. They stress the need for cultivation of moral values in life. His compositions addressed social issues in addition to devotional aspect.

Kanakadasa had raised his voice against the caste system and inequality in society. His compositions speak on social justice, humanitarian values and also highlight the feeling of communal harmony.

Kanakadasa was very aggressive and straight forward in criticizing evils of society such as superiority claims of caste system. His poem "*Kula Kula Kulavendu hodedhadadi*" asks humans not to segregate themselves from one another. His major works are *Nalacharitre*

(ನಳಚರಿತ್ರೆ), *Haribhaktisara* (ಹರಿಭಕ್ತಿಸಾರ), *Nrisimhastava* (ನೃಸಿಂಹಸ್ತವ), *Ramadhanyacharitre* (ರಾಮಧ್ಯಾನಚರಿತ್ರೆ), a rare work on class struggle, *Mohanatarangini* (ಮೋಹನತರಂಗಿಣಿ).

### **Karnataka Janapada**

After the reign of Champuyug, Karnataka witnessed a huge surge in literature on social equality and populist vision. The leadership of Basaveshwara brought religious, social, economic, cultural, linguistic and literary revolution under a single movement and this massively changed the dimensions of Kannada language and literature.

The slogan of Pampa '*Manava Kulamadondevalam*' meaning unity of human race has inspired the folklife of Karnataka than the Jainism. Similarly, '*Kulam kulamalthu, chalam, kulam, annu kulam*' meaning caste is not acquired by birth but by persistence and valour.

Ancient Karnataka has been living epitome of an enriched political, social, religious, literary and cultural condition. One of the inscriptions of Hampi best reflects the social system existing during that period.

ಕೆರೆಯಂ ಕಟ್ಟಿಸು, ಬಾವಿಯಂ ಸವೆಸು, ದೇವಾಗಾರಮಂ ಮಾಡಿಸ  
ಜ್ಜೆರೆಯೊಳ್ ಸಿಲ್ವಿದನಾಥರಂ ಬಿಡಿಸು, ಮಿತ್ರಗಿಂಬುಕೆಯ್ ನಂಬಿದ  
ಗೆರವೆಟ್ಟಾಗಿರು, ಶಿಷ್ಟರಂ ಪೊರೆಯೆನ್ನುತ್ತಿಂತೆಲ್ಲವಂ ಪಿಂದೆ ತಾ  
ಯೆರೆದಳ್ಳಾಲೆವೆಂದು ತೊಟ್ಟು ಕಿವಿಯೊಳ್ ಲಕ್ಷ್ಮೀಧರ ಮಾತ್ಸನಾ//  
Keryam kattisu, baviyam sevisu, devagaram madisa,  
Jareyol silikinatharam bidisu, mithrargiyabukey nambida  
Grevettagiru, shisharom poreyennuthintellavam pinde tha  
Yeredhaltalevindu thota kiwiyol lakshmidhara maathsna

The inscription means that one must construct tanks, dig wells, build temples, help the one needy by protecting them, help friends. One must never desert the people who believe you but give shelter. Mother while breastfeeding whispers in the ears of Lakshmidhara. A mother's whisper of the above words in the ears of her child while feeding unveils the heritage of Karnataka. A few inscriptions detailing the charities given to the temples and donation to the *Agraharas* have long been a testament to the spiritual, social and educational prosperity of the people of Karnataka.

The Kappe Aryabhatta inscription at Badami portrays the true character of a Kannadiga as '*Kannadigaru sadhuvige sadhu, madhuryange madhurya, badippa kalige Kaliyuga*' meaning that people of Karnataka are peaceful and serene to those who are peaceful, sweet to those who are soft mannered and bad to those who are bad. This necessarily means that

Kannadigas reflect the treatment shown to them. There are several other inscriptions before us that praise the valour, generosity and sacrifices of the noble Kannadigas.

Moreover, the religious tolerance of Kannadigas is meaningfully described by the inscriptions which have become the embodiments of Folk culture of Karnataka.

ಶಿವಾಯ ಧಾತ್ರೇ ಸುಗತಾಯ ವಿಷ್ಣು ವೇ

ಜಿನಾಯ ತಸ್ಮೈ ಸಕಲಾತ್ಮನೇ ನಮಃ

*Shivaya Dhartre sugathaya vishnuve*

*Jeenaya thasmay sakalathmane namah*

The stanza means deities such as Shiva, Buddha, Vishnu and Mahaveera, all of them together paid their salutations to the supreme, eternal and universal soul. This epic poem is a classic example of a noble culture and secularism of the people of Karnataka. The legitimacy of the folk culture of Karnataka can be ascertained from this inscription.

The main tributes of the culture of the Tulunadu are desire to achieve, scientific temper and rationality in examining the aspects, and miraculous strength of truth, justice and equality. The origins of Gods of Tulunadu are not fictitious, but the real ones associated to the Dalit and backward communities. They are the martyrs who have fought for justice, truth and equality. It is noteworthy, that Siri agitated against her husband when she was subject to injustice and she was responsible for the feminist movement for the rights of the women. Koti, Chennaya have sacrificed their lives fighting for the justice and equality. They really are the authors of land reform revolution of those regions. It has remained forever in the form of Paddana which is huge oral repository of Tulu culture. This is the reason that in the culture and heritage of Tulunadu, the caste, religion, servitude and social discrimination is not stigmatized. The demons-deities and their worship is the root cause of tolerance and cultural harmony in rural life.

The *Aliyasanthana* law, which otherwise is known as sister's son lineage is the matrilineal system of inheritance having its origin in Tulu region. Similarly, the Nagabana culture symbolizes environment conservation. Hence, there is a wide scope for further study of the folklore and law origins in Tulunadu.

## **Conclusion**

Pluralism is an essential feature of India. The reflections of pluralism are prevalent not only in the social, cultural and religious tenets in India but the very Indian Constitution embodies its existence. The rule of law, a foundation of any legal system was engrained in India, particularly

in Karnataka from ancient time. The attempts to trace the origin of the social and legal norms in Karnataka, is important as their revival is of a great contemporary relevance. Firstly, *Mitakshara*, has initiated the tone of reforms. Secondly, *Vachanas*, were a compendium of verses that bring social regeneration to create a new society by eradicating the societal discrimination. With their diction on code of conduct they aimed at annihilation of caste and birth superiority, attacked scriptures and rigid temple practices. With the sense of devotion, they preached the principles of equality, freedom, secularism, dignity of labor, *Dasoha* (charity) and *Kayaka* (work). This movement of 12<sup>th</sup> century is essentially a socio-religious movement in Karnataka. Thirdly *Dasa Sahitya*, also preaches divinity and voices against the caste system and inequalities in society. They try to communicate the message of social justice, humanitarian values and communal harmony. Finally, *Janapada Sahitya*, the folklore of Karnataka that is generally the repository of songs and poems, the tradition preserved orally by singing from generations. The songs sung and the inscriptions in the ancient temples written in *Halegannada* depicts the egalitarian edifice of Karnataka. Similarly, the culture of Tulunadu with its noble values of equality and justice is yet another example of the Karnataka's rich heritage.





## The Socially Oriented Values of Law in *Dasa* And *Vachana* Literature

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-Gururaj Karajagi\*

Law is to achieve values of life. It is a systematic arrangement of rules. The principles and doctrines underlying these rules are the basis of jurisprudence. The law also punishes those who oppose natural and moral values. Thus, in attaining justice and to sustain peace in society and in the State, law and values play very important role.

There have been many revolutions in the history of the world. Industrial revolution, Social Revolution, Education revolution etc., but these happened in different times and at different places. But they all took place at the same time in 12<sup>th</sup> century Karnataka through *Sharana* and *Dasa* movement. The world has witnessed the devotion, social concern, alternative thinking and drastic changes in the society in the *Sharana* and *Dasa* movement. The values contributed by *Sharana* and *Dasa* literature helped to govern the society; these values were the force behind building of peaceful society. The values of these great two literatures have influenced the society and Kannada literature.

The *Sharana* and *Dasa* literature are full of values of social concern. *Sharana* Basavanna says 'Maari' (evil) is not something different, if our eyes watch wrong thing that is 'Maari' (evil), if tongue speaks wrong word that is 'Maari' (evil), if a person forgets KoodalaSangama Deva (Almighty) that is 'Maari' (evil).

Another *Sharana* BalleshMallayya (1160) says, 'don't hurt any animal, don't be a womanizer, don't eye for others money and don't revere another's deity, if a person forgets these things he will be in monstrous hell. In this way *Vachanas* of *Sharanas* teach social values. Like *Sharanas*, *Dasa* literature also enlightened society with values through their poems. Purandaradaasa, Kanakadaasa, Urapeddi, Tontada Lingayya, Jedara Dasimayya, etc., wanted to create equality in the society, they all emphasised eradication of caste system,

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\* President, Academy for Creative Teaching, Bengaluru- 560 032

which was predominant at that time. That is why Kanakadaasa said, 'do not fight on the basis of caste, whether you really know the basis of your caste?', DasaPurandara said 'don't believe in your body, don't think it is a permanent one, don't say no to needy, don't forget God, don't trouble your parents and don't doubt almighty'. Through these poem Dasas wanted to encourage goodness in the society and maintain law and order.

Thus, to develop consciousness and values and transformation of individual, the role of visionary philosophers like *Sharanas* and *Dasas* are very important. Their ability as orators to inspired the entire masses, and the social movement, the *Sharana* and *Dasa* literature, which put forth the society on path of development along with the social transformation.

### ದಾಸ ಮತ್ತು ವಚನ ಸಾಹಿತ್ಯದಲ್ಲಿ ಕಾನೂನಿನ ಸಮಾಜಮುಖಿ ಮೌಲ್ಯಗಳು

—ಗುರುರಾಜ ಕರ್ಜಗಿ

ಮೂರು ಶತಮಾನಗಳಿಗೂ ಮಿಕ್ಕಿ ಹರಿದು ಕನ್ನಡದ ಮತ್ತು ಅದರಿಂದ ಜಗತ್ತಿನ ಸಾಹಿತ್ಯಿಕ, ಸಾಮಾಜಿಕ, ಶೈಕ್ಷಣಿಕ ಹಾಗೂ ಸಾಂಸ್ಕೃತಿಕ ಸ್ತರಗಳನ್ನು ಶ್ರೀಮಂತಗೊಳಿಸಿದ ಎರಡು ಮಹಾ ಪ್ರಭಾವಗಳಾದ ವಚನಸಾಹಿತ್ಯ ಹಾಗೂ ದಾಸಸಾಹಿತ್ಯಗಳ ಸಮಾಜಮುಖಿ ಮೌಲ್ಯಗಳ ಬಗ್ಗೆ ಒಂದಿಷ್ಟು ಚಿಂತಿಸುವ, ಮೆಲಕು ಹಾಕುವ ಅವಕಾಶ ನೀಡಿದ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಕಾನೂನು ವಿಶ್ವವಿದ್ಯಾಲಯದ ಕುಲಪತಿಗಳಾದ ಪ್ರೊ. ಈಶ್ವರ ಭಟ್‌ವರಿಗೆ, ಆಡಳಿತ ಮಂಡಳಿಯ ಎಲ್ಲ ಸ್ನೇಹಿತರಿಗೆ, ಇದಕ್ಕೆ ಮುಖ್ಯ ಪ್ರೇರಣೆಯಾದ, ನನ್ನ ಅತ್ಯಂತ ಗೌರವಕ್ಕೆ ಪಾತ್ರರಾದ ನ್ಯಾಯಮೂರ್ತಿ ಡಾ. ಶಿವರಾಜ್ ಪಾಟೀಲ್ ಸರ್‌ಗೆ ನನ್ನ ಕೃತಜ್ಞತೆಗಳು.

ನನಗೆ ದೊರೆತಿರುವ ವಿಷಯದ ಹರಹು ಆಕಾಶದಷ್ಟು ಆದರೆ ಮಿತಿ ಬೊಗಸೆಯಷ್ಟು, ಎರಡು ಮಹಾನ್ ಚಿಂತನೆಗಳ, ದರ್ಶನಗಳ ಸಂಗಮ ಒಂದು ಸಂಭ್ರಮದಕೂಟ. ಆದರೂ ಈ ಪ್ರಯತ್ನ ನನಗೆ ವೈಯಕ್ತಿಕವಾಗಿ ಧನ್ಯತೆಯನ್ನು ತರುವಂಥದ್ದು.

ಕಾನೂನು ಎಂದರೇನು? ಅದು ನಿಯಮಗಳ ಕ್ರಮಬದ್ಧ ಜೋಡಣೆ. ಈ ನಿಯಮಗಳ ತತ್ವ ಮತ್ತು ಸಿದ್ಧಾಂತವೇ ನ್ಯಾಯಶಾಸ್ತ್ರದ ತಳಹದಿ. ಬದುಕಿನ ಮೌಲ್ಯಗಳನ್ನು ಅನುಕರಿಸುವುದನ್ನು ಸಾಧಿಸುವುದು ಕಾನೂನು. ಹಾಗೆಯೇ, ನೈಸರ್ಗಿಕ ಮತ್ತು ನೈತಿಕ ಮೌಲ್ಯಗಳನ್ನು ವಿರೋಧಿಸುವವರಿಗೆ ಶಿಕ್ಷೆ ಕೊಡುವುದೂ ಕಾನೂನು.

ಆದ್ದರಿಂದ, ನ್ಯಾಯವೆನ್ನುವುದು, ತನ್ಮೂಲಕ ಕಾನೂನು ಎನ್ನುವುದು ಸಮಾಜ ಮತ್ತು ರಾಜ್ಯವನ್ನು ಸುಸ್ಥಿತಿಯಲ್ಲಿ ಇಡಲು ಬೇಕಾದ ಮೌಲ್ಯಗಳ ಒಟ್ಟು ಮೊತ್ತ. ಈ ಮೌಲ್ಯಗಳು, ಗೌರವ, ನ್ಯಾಯ, ಸಮಾನತೆ ಮತ್ತು ಸ್ವಾತಂತ್ರ್ಯ. ಈ ಮೌಲ್ಯಗಳಿಗೆ ಅಪಚಾರವಾದಾಗ ನ್ಯಾಯವು ಆದೇಶ ಮಾಡುತ್ತದೆ, ನಿರ್ಬಂಧಿಸುತ್ತದೆ.

ಪ್ರಪಂಚದ ಇತಿಹಾಸದಲ್ಲಿ ಅನೇಕ ಕ್ರಾಂತಿಗಳು ಅಲ್ಲಲ್ಲಿ ನಡೆದಿವೆ. ಬೇರೆ ಬೇರೆ ಪ್ರದೇಶಗಳಲ್ಲಿ ಔದ್ಯೋಗಿಕ ಕ್ರಾಂತಿ, ಸಾಮಾಜಿಕ ಕ್ರಾಂತಿ, ಸೈನ್ಯಕ್ರಾಂತಿ, ಶೈಕ್ಷಣಿಕ ಕ್ರಾಂತಿ, ಸಾಂಸ್ಕೃತಿಕ ಕ್ರಾಂತಿಗಳು ಬೇರೆ ಬೇರೆ ಕಾಲದಲ್ಲಿ ನಡೆದಿವೆ. ಆದರೆ ಅವೆಲ್ಲವೂ ಏಕಕಾಲದಲ್ಲಿ, ಒಂದೇ ಪ್ರದೇಶದಲ್ಲಿ ನಡೆದದ್ದು ಹನ್ನೆರಡನೆ ಶತಮಾನದಲ್ಲಿ ಮತ್ತು ಕನ್ನಡದ ನೆಲದಲ್ಲಿ, ಅದೂ ಶರಣರ ವಚನ ಚಳುವಳಿಯಲ್ಲಿ. ಭಕ್ತಿ, ಸಾಮಾಜಿಕ ಕಾಳಜಿ, ವ್ಯವಸ್ಥೆಯ ಆಮೂಲಾಗ್ರ ಬದಲಾವಣೆ, ಪರ್ಯಾಯಚಿಂತನೆ, ಆತ್ಮೋನ್ನತಿ ಹೀಗೆ ಹಲವು ಆಯಾಮಗಳಲ್ಲಿ ಹರಡಿ, ಶರಣರ ವಚನ ಚಳುವಳಿ ತನ್ನ ವಿಶಿಷ್ಟ, ಸೃಜನಶೀಲ ಛಾಪನ್ನು ಮೂಡಿಸಿದ್ದು ದಾಖಲಾದ ಸತ್ಯ. ಹಾಗೆ ನೋಡಿದರೆ ವಚನ ಚಳುವಳಿ ಎಂಬ ಸಾಹಿತ್ಯದ ಗಮ್ಯತೆ ಸಮಾಜಮುಖಿಯಾದ ಚಿಂತನೆಯೇ ಆಗಿದೆ.

ಬಸವಾದಿ ಶರಣರು ನಮ್ಮ ನೆಲದಲ್ಲಿ ಅರಳಿದ ಅನನ್ಯ ಬಂಡಾಯಗಾರರು. ನೆಲಮೂಲದ ಜಾನಪದ ಸಂವೇದನೆಗಳು, ಜನಸಾಮಾನ್ಯನ ಆಡುಭಾಷೆ, ಆತನ ಮೂಲಸಂಸ್ಕೃತಿಯ ಆಶಯಗಳನ್ನು ರಕ್ಷಿಸಲು ಹೆಣಗಿದರು. ಅಂತಹ ಶರಣರ ವಚನಗಳನ್ನು, ಅವುಗಳ ಮೂಲಕ ಅವರ ಜೀವಪರತುಡಿತ, ಮನಸ್ಸುಗಳನ್ನು ಕಟ್ಟುವ ಪ್ರಯತ್ನ, ವೈಚಾರಿಕ ಚಿಂತನೆಗಳನ್ನು ಗಮನಿಸುವುದು ಅವರಿಗೆ ನಮ್ಮ ಶ್ರದ್ಧಾಪ್ರಣಾಮಗಳನ್ನು ಸಲ್ಲಿಸುವ ಕ್ರಿಯೆ.

ಯಾವುದು ಶಾಶ್ವತ ಮೌಲ್ಯವೋ, ಅದು ನ್ಯಾಯ. ಅದರ ನಡವಳಿಕೆ ಕಾನೂನು. ಮೌಲ್ಯ ಎನ್ನುವುದು ನಡವಳಿಕೆ, ಮಾತಲ್ಲ, ಭಾಷಣವಲ್ಲ, ಲೇಖನವಲ್ಲ. ಯಾವ ನಡವಳಿಕೆಯಿಂದ ತನಗೂ ಪ್ರಪಂಚಕ್ಕೂ ಒಳ್ಳೆಯದಾಗುತ್ತದೋ ಅದು ಮೌಲ್ಯ. ಈ ನೋಟದಿಂದ ಗಮನಿಸಿದರೆ ವಚನಧರ್ಮವೆಂದು ನೀತಿಸಂಹಿತೆ. ಅದಕ್ಕೇ ಬಸವಣ್ಣನವರ ಸಪ್ತಸೂತ್ರ ಮನುಜಕುಲದ ಸುಖ ಸೋಪಾನ.

ಕಳಬೇಡ, ಕೊಲಬೇಡ, ಹುಸಿಯನುಡಿಯಲು ಬೇಡ,

ಮುನಯಬೇಡ, ಅನ್ಯರಿಗೆ ಅಸಹ್ಯಪಡಬೇಡ,

ತನ್ನ ಬಣ್ಣಿಸಬೇಡ, ಇದಿರ ಹಳಿಯಲು ಬೇಡ.

ಇದೇ ಅಂತರಂಗ ಶುದ್ಧಿ, ಇದೇ ಬಹಿರಂಗ ಶುದ್ಧಿ.

ಇದೇ ನಮ್ಮ ಕೂಡಲಸಂಗಮದೇವರನೊಲಿಸುವ ಪರಿ.

ಇದರಂತೆಯೇ ಮಧ್ಯಕಾಲೀನ ಕರ್ನಾಟಕದ ಸಾಂಸ್ಕೃತಿಕ ಜಗತ್ತಿನಲ್ಲಿ ಹರಿದಾಸರು ರೂಪಿಸಿದ ಅಂದೋಲನ ನಮಗಿಂದು ಮುಖ್ಯವಾಗಿರುವುದು ಅದು ಕೊಡಮಾಡಿದ ಭಕ್ತಿಯ ತಾತ್ವಿಕತೆಗಾಗಿ ಮಾತ್ರವಲ್ಲ, ಅದು ಪ್ರತಿಪಾದಿಸುವ ಸಮಾಜಮುಖಿ ಚಿಂತನೆಗಳಿಗೆ. ಹದಿನೈದನೇ ಶತಮಾನ ಭಕ್ತಿಪಂಥದ ಭರಪೂರ ಸಮೃದ್ಧಿಯ ಕಾಲ. ಉತ್ತರಭಾರತದಲ್ಲಿ ರಮಾನಂದರು (1400-1470), ಕಬೀರದಾಸರು (1440-1518), ರಾಜಸ್ಥಾನದಲ್ಲಿ ಮೀರಾಬಾಯಿ (1470), ಪಂಜಾಬದಲ್ಲಿ ಗುರುನಾನಕ ದೇವರು (1409-1539), ಬಂಗಾಲದಲ್ಲಿ ಕೃಷ್ಣಚೈತನ್ಯರು (1486-1534), ಮಹಾರಾಷ್ಟ್ರದಲ್ಲಿ ನಾಮದೇವರು (1270-1350), ಜ್ಞಾನದೇವರು (1275-1296), ಬ್ರಜಭೂಮಿಯಲ್ಲಿ ಸೂರದಾಸರು (1478- ), ಕಾಶಿಯ ಕಡೆಗೆ ತುಳಸಿದಾಸರು (1532-1623) ಇವರೆಲ್ಲ ಬಂದದ್ದು ಅದೇ ಸಮಯದಲ್ಲಿ. ಭಾರತದ ತುಂಬೆಲ್ಲ ಹರಡಿದ್ದು ಭಕ್ತಿಯ ಪೂರ. ಆಗಲೇ ಕರ್ನಾಟಕದಲ್ಲಿ ದಾಸರ ಪರಂಪರೆಯೇ ಬಂತು. ಶ್ರೀಪಾದರಾಜರು, ವ್ಯಾಸರಾಜರು, ಪುರಂದರದಾಸರು, ಕನಕದಾಸರು, ವಾದಿರಾಜರು ದಾಸವಾಣಿಯನ್ನು ಮೊಳಗಿಸಿದರು. ದಾಸರು ಸ್ವಂತದ ಮೋಕ್ಷಕ್ಕೆ ಹೆಣಗಲಿಲ್ಲ. ಸಮಾಜದ ಕೊಳಕಿನ ನಿರ್ಮೂಲನೆಗೆ ಶ್ರಮಿಸಿದರು. ಬದುಕನ್ನು ಹಸನಾಗಿಸುವ ಕಾಳಜಿ ತೋರಿಸಿದರು. ದಾಸರು ಸಮುದಾಯದ ಜೊತೆಗೇ ಬದುಕಿದವರು. ಹಾಗಿದ್ದೂ ಎಲ್ಲ ವ್ಯವಸ್ಥೆಯನ್ನು ಒಪ್ಪಿಕೊಂಡವರಲ್ಲ. ದಾಸಸಾಹಿತ್ಯವನ್ನು ಸಾಹಿತ್ಯದ ಒಂದು ಪ್ರಕಾರವಾಗಿಯೇ ನೋಡದೆ ಅದನ್ನು ವರ್ತಮಾನದ ಸನ್ನಿವೇಶದಲ್ಲಿ ಅದು ಮಾಡಬಹುದಾದ ನೈತಿಕ, ಸಾಮಾಜಿಕ, ಸಾಂಸ್ಕೃತಿಕ ಪ್ರಭಾವಗಳನ್ನು ಗುರುತಿಸಬೇಕು.

ಈಗ ವಚನಕಾರರು ಮತ್ತು ದಾಸರು ಕಂಡರಿಸಿದ ಕೆಲವು ಸಮಾಜಮುಖಿ ಮೌಲ್ಯಗಳ ಕಡೆಗೆ ಗಮನಹರಿಸಬೇಕು.

#### I. ನೈತಿಕಜೀವನಮಾರ್ಗ:

1. ಮಾರಿ ಮಸಣಿಯೆಂಬುದು ಬೇರಿಲ್ಲಕಾಣೆರೋ.

ಮಾರಿಯೆಂಬುದದೇನು ?

ಕಂಗಳು ತಪ್ಪಿ ನೋಡಿದರೆ ಮಾರಿ,  
ನಾಲಿಗೆ ತಪ್ಪಿ ನುಡಿದಡೆ ಮಾರಿ,  
ನಮ್ಮಕೂಡಲಸಂಗಮದೇವರನೆನಹ ಮರೆದಡೆ ಮಾರಿ.

ಮಾರಿ ಎಂದರೇನು ಎನ್ನುವುದಕ್ಕೆ ಇದಕ್ಕಿಂತ ಸುಲಭ ವಿಶ್ಲೇಷಣೆ ಬೇಕೇ ?

2. ಆವ ಪ್ರಾಣಿಗೂ ನೋವ ಮಾಡಬೇಡ.

ಪರನಾರಿಯರ ಸಂಗ ಬೇಡ  
ಪರಧನಕ್ಕಳುಕಬೇಡ, ಪರದೈವಕ್ಕೆರಗಬೇಡ.  
ಈ ಚತುರ್ವಿಧತವಕ ಮಾಡುವಾಗ  
ಪರರು ಕಂಡಾರು, ಕಾಣರು ಎಂದೆನಬೇಡ.  
ಬಳ್ಳೇಶ್ವರ ಲಿಂಗಕ್ಕಾರು ಮರೆ ಮಾಡಬಾರದಾಗಿ  
ಅಘೋರ ನರಕದಲ್ಲಿಕ್ಕುವ.

ನೈತಿಕಜೀವನ ಹೇಗಿರಬೇಕೆಂಬುದನ್ನು ಬಳ್ಳೇಶ ಮಲ್ಲಯ್ಯ ಹೇಳುತ್ತಾನೆ. ಆತ ಜನ್ಮತಃ ಜೈನ ವ್ಯಾಪಾರಿಯಾಗಿದ್ದ ಮಲ್ಲಶೆಟ್ಟಿ ಶರಣನಾಗಿ ಮಲ್ಲಯ್ಯನಾದ. ಧಾನ್ಯವನ್ನು ಅಳೆಯುವ ಬಳ್ಳವನ್ನೇ ಲಿಂಗವೆಂದು ಭಾವಿಸಿ ಬಳ್ಳೇಶ ಮಲ್ಲಯ್ಯನಾದ (ಕಾಲ:1160).

ಇದನ್ನೇ ಪುರಂದರದಾಸರೂ ವಿಸ್ತರಿಸಿ ಹೇಳಿದರು  
ನೆಚ್ಚಬೇಡ, ನೀ ನೆಚ್ಚಬೇಡ.  
ನೆಚ್ಚಬೇಡ, ಕುಲಧರ್ಮ ಬಿಟ್ಟು ನಡೆಯಬೇಡ.  
ದೇಹಿಯೆಂದರೆ ನಾಸ್ತಿಯೆನ್ನಬೇಡ,  
ದೇಹಸ್ಥಿರವೆಂದು ನಂಬಬೇಡ.  
ದೀನತನದಲ್ಲಿ ದೈವ್ಯಗಳಿಸಬೇಡ  
ದೀನನಾಥನ ನೀ ಮರೆಯಬೇಡ || 1 ||

ನೆಂಟರಿಲ್ಲದ ನಾಡಿಗೆ ನೀ ಹೋಗಬೇಡ,  
ಉಂಟೆಂದು ಒಬ್ಬರಕೂಡ ಹೇಳಬೇಡ,  
ಕಂಟಕನಾಗಿ ನೀ ತಿರುಗಬೇಡ, ನರ  
ಕಂಠೀರವನ ನೀ ಮರೆಯಬೇಡ|| 2 ||

ಅಂತರಂಗದ ಮಾತು ಅಗಲಿ ಕೆಡಬೇಡ,  
ಪಂಕ್ತಿಯೊಳು ಪರಭೇದ ಮಾಡಬೇಡ, ನಿ  
ನ್ನಂಗವನೆ ನೋಡಿ ಹಿಗ್ಗಬೇಡ,  
ಜಗದಂತರ್ಯಾಮಿಯ ನೀ ಮರೆಯಬೇಡ || 3 ||

ತಂದೆ-ತಾಯಿಗೆ ಕೇಡ ನೀ ನೆನೆಯಬೇಡ,  
ಎಂದಿಗೂ ಹುಸಿ ಮಾತನಾಡಬೇಡ,  
ಸಂದೇಹ ಬೇಡ ಸರ್ವೋತ್ತಮನಾದ  
ತಂದೆ ಶ್ರೀ ಪುರಂದರವಿಠಲನ ಮರೆಯಬೇಡ || 4 ||

II. ಎರಡನೆಯ ಮೌಲ್ಯ ಮಾನಸಿಕ ನೈರ್ಮಲ್ಯ :

ತನು, ಮನ ಶುದ್ಧವಿಲ್ಲದ ವ್ಯಕ್ತಿ ಅಪಾಯಕಾರಿ. ಕಲ್ಪು ಕುರಿಕೆಯ ಅರಸನಾಗಿದ್ದ ಈತ ವೈರಾಗ್ಯಪರನಾಗಿ ಕಲ್ಯಾಣಕ್ಕೆ ಬಂದು ಶರಣನಾದವನು ಸಕಲೇಶ ಮಾದರಸ. ಆತನ ಕಾಲ ಸುಮಾರು ಕ್ರಿ.ಶ. 1130. ಆತ ಸಂಗೀತಜ್ಞನಾಗಿದ್ದವನು. ವೀಣಾದಿ ವಾದ್ಯಗಳ ಕಲಾವಿದ. ಸಕಲೇಶ್ವರದೇವ ಎಂಬ ವಚನಾಂಕಿತದಿಂದ ಬರೆದ ಆತನ ವಚನಗಳು ನೇರ ಹಾಗೂ ಸ್ಪಷ್ಟ.

ಜನಮೆಚ್ಚಿ ಶುದ್ಧನಲ್ಲದೆ, ಮನಮೆಚ್ಚಿ ಶುದ್ಧನಲ್ಲವಯ್ಯಾ.  
ನುಡಿಯಲ್ಲಿಜಾಣನಲ್ಲದೆ, ನಡೆಯಲ್ಲಿಜಾಣನಲ್ಲಯ್ಯಾ.  
ವೇಷದಲ್ಲಿಅಧಿಕವಲ್ಲದೆ, ಭಾಷೆಯಲ್ಲಿಅಧಿಕನಲ್ಲಯ್ಯಾ.  
ಧನದೊರಕದಿದ್ದಡೆ ನಿಸ್ತೃಹನಲ್ಲದೆ, ಧನದೊರಕಿ ನಿಸ್ತೃಹನಲ್ಲಯ್ಯಾ.  
ಏಕಾಂತದ್ರೋಹಿ, ಗುಪ್ತಘಾತಕ, ಮುಕ್ತಿಶೂನ್ಯಂಗೆ,  
ಸಕಲೇಶ್ವರದೇವ ಒಲಿ ಒಲಿಯೆಂದಡೆ, ಎಂತೊಲಿವನಯ್ಯಾ ?

ಇದಕ್ಕೆ ಸಂವಾದಿಯೆಂಬಂತೆ ಕನಕದಾಸರ ಕೀರ್ತನೆ.  
ತೀರ್ಥಪಿಡಿದವರೆಲ್ಲ ತಿರುನಾಮಧಾರಿಗಳೆ, ಜನ್ಮ  
ಸಾರ್ಥಕವಿಲ್ಲದವರೆಲ್ಲ ಭಾಗವತರೆ || ಪ ||

ಮುಗ್ಧಿಡಿದು ನೀರೊಳಗೆ ಮುಳುಗಿ ಜಪತಪಮಾಡಿ,  
ಭಾಗವತ ಶಾಸ್ತ್ರಾದಿಗಳನೆಲ್ಲ ತಿಳಿದು |  
ಬಾಗಿ ಪರಸತಿಯರನು ಬಯಸಿ ಕಣ್ಣಿಡುವಂಥ,  
ಯೋಗಭ್ರಷ್ಟರುಎಲ್ಲದೇವ ಬ್ರಾಹ್ಮಣರೆ ?  
ಲಿಂಗ ಲಿಂಗದೊಳಿರುವ ಚಿನುಮಯನ ತಿಳಿಯದೆಯೆ,  
ಅಂಗಲಿಂಗದ ನೆಲೆಯಗುರುತನರಿಯದೆ |  
ಜಂಗಮ ಸ್ಥಾವರದ ಹೊಲಬನರಿಯದಇಂಥ  
ಭಂಗಿ ಮುಕ್ಕಗಳೆಲ್ಲ ನಿಜಲಿಂಗವಂತರೆ? || 2 ||

ಅಲ್ಲಾಖುದಾ ಎಂಬ ಅರ್ಥವನು ತಿಳಿಯದೆಯೆ  
ಮುಲ್ಲಶಾಸ್ತ್ರದ ನೆಲೆಯ ಮುನ್ನರಿಯದೆ |  
ಪೊಳ್ಳುಕೂಗನು ಕೂಗಿ ಬಗುಳಿ ಬಾಯ್ತೆರೆವಂಥ  
ಕಳ್ಳರಿಗೆ ತಾ ವೀರಸ್ವರ್ಗದೊರಕುವುದೆ ?

ಆರುಚಿಕ್ರದ ನೆಲೆಯಅಷ್ಟಾಂಗಯೋಗದಲಿ  
ಮೂರು ಮೂರ್ತಿಯ ಮೂರುಕಡೆಯೊಳಿರಿಸಿ |  
ಕಾರುಣ್ಯನಧಿ ಕಾಗಿನೆಲೆಯಾದಿ ಕೇಶವನ  
ಸಾರಿ ಭಜಿಸಿದವರಿಗೆ ಯಮಬಾಧೆಯುಂಟೆ ?

(ಆರು ಚಕ್ರಗಳು: ಕುಂಡಲಿನೀ ಚಕ್ರಗಳು : ಮೂಲಾಧಾರ, ಸ್ವಾಧಿಷ್ಟಾನ, ಮಣಿಪೂರ, ಅನಾಹತ, ವಿಶುದ್ಧ, ಆಜ್ಞಾ ಇವು ಆರು ಚಕ್ರಗಳು. ಕೊನೆಯದು ಸಹಸ್ರಾರ.

**ಅಷ್ಟಾಂಗಗಳು** : ಯಮ, ನಿಯಮ, ಆಸನ, ಪ್ರಾಣಾಯಾಮ, ಪ್ರತ್ಯಾಹಾರ, ಧಾರಣಾ, ಧ್ಯಾನ ಮತ್ತು ಸಮಾಧಿ.

**ಮೂರು ಮೂರ್ತಿಗಳು** : 1. ಕಣ್ಣಿನಲ್ಲಿಕಾಣುವ ವಿಶ್ವ 2. ಕನಸನ್ನು ಕಂಠದಲ್ಲಿ ಕುಳ್ಳಿರಿಸಿದ ತೈಜಸ್, 3. ನಿದ್ರೆಯಲ್ಲಿ ಹೃದಯದಲ್ಲಿ ಕುಳಿತ ಪ್ರಾಜ್ಞ)

### III. ಆಸೆ:

ಸಮಾಜಮುಖಿ ಜೀವನಕ್ಕೆ ಕುಠಾರ ಪ್ರಾಯವಾದದ್ದು ಸ್ವಾರ್ಥದ ಆಸೆ. ಸಮಾಜದ ಬಹುಸಮಸ್ಯೆಗಳಿಗೆ, ಕಾನೂನು ಭಂಗಗಳಿಗೆ, ಅಹಂಕಾರ, ಅಧಿಕಾರ ಮದ, ಭ್ರಷ್ಟಾಚಾರ, ಮತೀಯ ಭಾವನೆಗಳಿಗೆ ಮೂಲ ಕಾರಣ ಈ ಆಸೆ. ಇದರ ಬಗ್ಗೆ ಮತ್ತು ಇದರಿಂದಾಗುವ ಅನಾಹುತಗಳಿಗೆ ಉರಿಪೆದ್ದಿ ಹೇಳುವ ಮಾತು ಮಾರ್ಮಿಕವಾದದ್ದು. ಉರಿಲಿಂಗಪೆದ್ದಿಯ ಪೂರ್ವಾಶ್ರಮದ ಹೆಸರು ಪೆದ್ದಣ್ಣ. ಮೊದಲು ಚೋರ ವೃತ್ತಿಗೈಗೊಂಡಿದ್ದ ಈತ ಉರಿಲಿಂಗದೇವರ ಶಿಷ್ಯ. ಲಿಂಗದೀಕ್ಷೆ ಪಡೆದು ಗುರುಪೀಠವನ್ನೇರಿದ ಮಹಾಂತ.

ಆಸೆಯುಳ್ಳನ್ನಬರ ಆಶ್ರಯಿಸುವಆಶ್ರಯವು  
ದಾಸಿಯಿಂದ ಕರಕಷ್ಟಕಾಣೆರೊ !  
ಆಸೆಯೆ ದಾಸಿ ಕಾಣೆರೊ, ಅಯ್ಯಾ !  
ಆ ನರಾಸೆಯೆ ಈಶ ಪದ, ಕಾಣೆರಣ್ಣಾ  
ದಾಸತ್ವದಈಶತ್ವದ ಅನುವನು ವಿಚಾರಿಸಿ,  
ಆಸೆ ಅಡಗಿದಡೆಅದೆಈಶಪದ, ತಪ್ಪದಯ್ಯಾ,  
ಉರಿಲಿಂಗಪೆದ್ದಿಪ್ರಿಯ, ವಿಶ್ವೇಶ್ವರಾ.

-ದಾಸರ ಮತವೂಅದೇ,

ಈಸಬೇಕು ಇದ್ದು ಜೈಸಬೇಕು  
ಹೇಸಿಗೆ ಸಂಸಾರದಲ್ಲಿ ಆಸೆ ಲೇಶ ಇಡದ ಹಾಗೆ || ಪ ||  
ಗೇರುಹಣ್ಣಿನಲ್ಲಿ ಬೀಜ  
ಸೇರಿದಂತೆ ಸಂಸಾರದಲಿ  
ಮೀರಿ ಆಸೆ ಮಾಡದಂತೆ  
ಧೀರಕೃಷ್ಣ ಭಕುತರೆಲ್ಲ ..... ಈಸಬೇಕು. ಇದ್ದು ಜೈಸಬೇಕು || 1 ||

ಮಾಂಸದಾಸೆಗೆ ಮತ್ಸ್ಯಸಿಲುಕಿ  
ಹಿಂಸೆಪಟ್ಟ ಪರಿಯಂತೆ  
ಮೋಸಹೋಗದ ಹಾಗೆ  
ಜಗದೀಶ ಪುರಂದರ ವಿಠಲನ ನೆನೆದು ..... ಈಸಬೇಕು ಇದ್ದು ಜೈಸಬೇಕು || 2 ||

ವಚನಕಾರರು ಮತ್ತುದಾಸರು ನಂಬಿದ ಒಂದು ವಿಷಯವೆಂದರೆ ನಾಲಿಗೆಗೂ ಮತ್ತು ಕೈಗೂ ಹತ್ತಿರದ ಸಂಬಂಧವಿದೆ. ಕೈ ಚಾಚಿದತಕ್ಷಣ ನಾಲಿಗೆ ಬಿದ್ದು ಹೋಗುತ್ತದೆ. ಈ ಆಸೆಯಿಂದ ಪ್ರಪಂಚದಲ್ಲಾಗುವ ಅನ್ಯಾಯಗಳಿಗೆ, ಅನೀತಿಗಳಿಗೆ ಮಿತಿಯೇಇಲ್ಲ.

#### IV. ಸಮಾನತೆ:

ಸಮಾಜ ಮುಖಿಯಾದ ಮೌಲ್ಯಗಳಲ್ಲಿ ಸಮಾನತೆ ಬಹಳ ಮುಖ್ಯವಾದದ್ದು. ಅಸಮಾನತೆಯೇ ಅನ್ಯಾಯಗಳಿಗೆ, ಅಪರಾಧಗಳಿಗೆ ಪ್ರೇರಣೆ. ಅಸಮಾನತೆಯ ವಿರುದ್ಧ ವಚನಕಾರರು ಮತ್ತು ದಾಸರು ಅನವರತ ಹೋರಾಡಿದರು.

ಹದಿನಾರನೆ ಶತಮಾನದ, ಮಂಡ್ಯಜಿಲ್ಲೆಯ ಕಾಪನಹಳ್ಳಿಯ ವಚನಕಾರ ಶರಣ ಸ್ವತಂತ್ರ ಸಿದ್ಧಲಿಂಗೇಶ್ವರ. ತೋಂಟದ ಸಿದ್ಧಲಿಂಗಯತಿಯ ಶಿಷ್ಯಪರಂಪರೆಗೆ ಸೇರಿದವನು. ಅವನ ವಚನ ಬಹಳ ಮಾರ್ಮಿಕವಾದದ್ದು

ಅನಲಸಂಗದಿಂದ ಕಾಪ್ಯ ಅನಲವಾದಂತೆ,  
ಶಿವಸಂಸ್ಕಾರ ಸಂಪನ್ನನಾದ ಶಿವಭಕ್ತನು,  
ಶಿವನಹುದಲ್ಲದೆ ಮಾನವನಾಗಲರಿಯನಯ್ಯಾ  
ಅದುಕಾರಣ, ಶಿವಭಕ್ತನೆಗೆ ಜಾತಿಯಿಲ್ಲ, ಸೂತಕವಿಲ್ಲ.  
ಶಿವನೆಂತಿಹನಂತೆ ಇಹನು.  
ನಿಜಗುರು ಸ್ವತಂತ್ರಸಿದ್ಧಲಿಂಗೇಶ್ವರನ ನಿಜಭಕ್ತನು.

ಜೇಡರ ದಾಸಿಮಯ್ಯನ ಅಭಿಮತವೂಅದೇ.

ನಿಡಿದೊಂದು ಕೋಲುವನು ಕಡಿದುವರಡು ಮಾಡಿ  
ಅಡಿಯ ಹೆಣ್ಣುಮಾಡಿ, ಬಡತಣದಗಂಡಮಾಡಿ  
ನಡುವೆ ಹೊಸೆದಡೆ ಹುಟ್ಟಿದ ಕಿಚ್ಚು ಹೆಣ್ಣೋ, ಗಂಡೋ ? ರಾಮನಾಥ  
ಹೀಗೆ ಜಾತಿಸಮಾನತೆ ಮತ್ತು ಲಿಂಗಸಮಾನತೆಯ ಹರಿಕಾರರಾದರು ಶರಣರು.  
ಕನಕದಾಸರ ಘೋಷ ವಾಕ್ಯವೂ ಇದೇ ಆಗಿದೆ.  
ಕುಲಕುಲವೆಂದು ಹೊಡೆದಾಡದಿರಿ ನಿಮ್ಮ  
ಕುಲದ ನೆಲೆಯನೇನಾದರೂ ಬಲ್ಲಿರಾ ? .....

ಹೀಗೆ ಕಾನೂನಿನ ಬುನಾದಿಯಾದ ನ್ಯಾಯಪ್ರಜ್ಞೆ, ನ್ಯಾಯಪ್ರಜ್ಞೆಯ ಮೂಲ ಆಕರಗಳಾದ ಮೌಲ್ಯಗಳು, ಇವುಗಳ ಚಿಂತನೆ ಮತ್ತು ಅವುಗಳೆಡೆಗೆ ವ್ಯಕ್ತಿಗಳ ಮನಃ ಪರಿವರ್ತನೆಯೇ ದಾರ್ಶನಿಕರ ಕಾಯಕ.

ಸಕಲ ಜನಸಮೂಹವನ್ನು ಪ್ರೇರೇಪಿಸಿ, ಸಾಮಾಜಿಕ ಚಳುವಳಿಯನ್ನೇ ಮಾಡಿದ ವಚನಕಾರರ ಸಾಮರ್ಥ್ಯ, ಭಕ್ತಿಪಥವನ್ನೇ ಮುಂದಿಟ್ಟಿಕೊಂಡು, ಅದರಜೊತೆಗೇ ಸಮಾಜ ಪರಿವರ್ತನೆಗೆ ಹವಣಿಸಿದ ದಾಸ ಸಾಹಿತ್ಯ, ಎರಡೂ ಪ್ರಮುಖ ನೆಲೆಗಳು.

ಭಗವಂತ ನಮಗೆ ಶರಣರು ಮತ್ತು ದಾಸರು ಎಂಬ ಎರಡು ಶ್ರೇಷ್ಠ ಸಂಸ್ಕೃತಿಯ ಶಿಖರಗಳನ್ನು ದಯಪಾಲಿಸಿದ್ದಾನೆ. ಅವುಗಳ ಬೆಲೆಯರಿತು ನಮ್ಮ ಬಾಳು ಹಸನಾಗಲಿ. ಅವರಿಬ್ಬರೂ ನಮ್ಮವರೆಂದು ಹೇಳಿಕೊಳ್ಳುವ ಹೆಮ್ಮೆಯ ಹೆಗಲು ಆಕಾಶವನ್ನು ತಾಗಲಿ.

# Exploring Interpretation and Application of *Mitakshara* in Contemporary Hindu Law Through Lens of Vijnaneshwara: A Socio-Legal Analysis

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-Vijender Kumar\*

## Introduction

Hindu law is a law governing various facets of relationships which are established on the authoritative texts on sacred laws by scholars who were exceptionally known for that purpose of interpretation and writings on sacred texts. One of such ancient Hindu scholars and writers of an authoritative text was Vijnaneshwara, who is considered to be one of the quintessential figures in laying down the basic tenets of Hindu jurisprudence. His writings are very exploratory and analytical which have propounded a new era in Hindu law, wherein the subjects mentioned in his text are deeply enriched with the nuances relevant even in the contemporary Hindu society. There are several renowned commentaries written on *Yajnavalkya Smriti* but the celebrated commentary by Vijnaneshwara has a special place and value even in contemporary Hindu law.

Vijnaneshwara wrote a commentary on *Yajnavalkya Smriti* known as *Mitakshara* which is the leading text for Hindus. In fact, *Mitakshara* has developed as one of the schools of Hindu law. *Mitakshara* school is prevalent all over India except the states of Bengal and Assam wherein *Dayabhaga* is a leading authority. The significance of *Mitakshara* can be understood first by the territorial extent of it, and secondly the laws defining the subjects. Vijnaneshwarahas enunciated on subjects relating to marriage, property, *Dharma* etc. which define the law, its application and has also been codified to a great extent. However, the law relating to partition largely remains uncodified and is governed as per the *Mitakshara* law.

## Vijnaneshwara's Manner of Writing

Vijnaneshwara has been a celebrated author of *Mitakshara*-a commentary on *Yajnavalkya Smriti* which has enormous influence on Hindu law. Vijnaneshwara was born

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\* Professor of Law and Vice-Chancellor, Maharashtra National Law University, Nagpur.



in Bhardvaja lineage (*Gotra*) and was son of Padmanabha Bhatta. His teacher was *Uttama* and Vijnaneswara who is believed to have also served in the court of king, Vikramaditya VI. He lived in modern day northeast Karnataka region and described himself as an ascetic and a scholar.<sup>1</sup> The significance of writing of Vijnaneshwara and its influence even in the modern era remains undisputed. He was highly analytical in designing his ideas and the inspiration of his artistic skills in writing and its interpretations has been highly appreciated and admired in the domain of personal laws.

Vijnaneshwara's relevance of *Mitakshara* can be understood on the basis of his elucidation of concepts in a comprehensive manner wherein he explained the central concept of *Dharma*. He has explained the subjects in a systematic way by taking the aid of already existing texts at the time by acknowledging the same. He had a reasoned interpretation of legal and religious principles/texts which he enunciated by taking into account various illustrations wherever required. He has also provided a critical explanation on kinship, ancestral rites etc. in his writings.

### **Significance of Mitakshara School**

It is important to understand the nature of the Yajnavalkya Smriti which was chosen by Vijnaneshwara to express his interpretations and meaning on various subjects. Yajnavalkya Smriti is a detailed and systematic mention in the form of three chapters- *Achara*, *Vyavahara* and *Prayaschit* dealing with different subjects. Therefore, the chapters illustrate in a great detail duties of a person in a coherent manner. Thus, there was a clear demarcation of the ideas about law and religion in the *Smriti*. It is considered that it may have been the reason for Vijnaneshwara who desired to write a commentary on Yajnavalkya Smriti instead of any other authoritative text acceptable, recognized and prevalent at that time.<sup>2</sup> *Mitakshara* is a predominant school among Hindus which governs a majority of the Hindus.

The *Mitakshara* school prevails across India in majority of the territories. The school developed as a result of the different interpretations and application of Vijnaneshwara as compared to Jimutavahana who authored *Dayabhaga*. Two schools, *viz.*, *Mitakshara* and *Dayabhaga* differ in many aspects relating to funeral obligations, marriage, property rights on the basis of which the laws were framed. The *Mitakshara* school is further divided into four major sub-schools depending upon its reliance on the textual authorities; however, the sub-

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<sup>1</sup> Patrick Olivelle and Donald. R. Davis, Jr. (eds.), *Hindu Law: A New History of Dharmashastra*, 1<sup>st</sup> ed. 2018, p. 40.

<sup>2</sup> Markandey Katju, "*The Importance of Mitakshara in the 21<sup>st</sup> Century*", (2005) 7 SCC J-4.

schools mostly are in consonance with the Mitaksharaschool on fundamental issues but differs in minor or ancillary issues.

### **Vijnaneshwara's Interpretation of *Dharma***

The importance and place of *Dharma* in Hindu law is very distinctive. It has been mentioned and acknowledged in various authoritative texts. Annie Besant in her address on '*Dharma* in an annual convention of the Theosophical Society' in 1898 stated the importance of *Dharma* and how it was the concept given by India to the world.<sup>3</sup> Mitakshara mentions six kinds of *Dharma*- *Varna*, *Asrama*, *Varna-Asrama*, *Guna*, *Nimitta*, and *Sadharana*.<sup>4</sup> These *Dharmas* enumerate the duties of a person and their nature.

The modern law is a result of *Dharma* or a branch of *Dharma* which developed in ancient times and it is a word of widest connotation and significance.<sup>5</sup> *Dharma* is considered to be of supreme authority which guides a person to be of good conduct. It has various facets which inculcates the duties of a person towards ancestors, society and others as well. *Dharma* is the foundation for other duties as well. It is also believed that *Artha* (wealth), *Kama* (pleasure) and *Moksha* (emancipation) are also dependent on *Dharma* for their fulfillment.<sup>6</sup>

### **Vijnaneshwara's Interpretation of Hindu Law**

#### **1) Law of Marriage**

Vijnaneshwara has also enunciated the conditions for a Hindu marriage, eligibility and capacity for a marriage and most importantly the objects to a marriage. The Yajnavalkya Smriti states that "*without breaking (the rules) of studentship, let him marry a woman with auspicious characteristics who has not belonged to another man, who is lovely, who is not a Sapinda and who is younger (than himself)*".<sup>7</sup> Mitakshara has interpreted the said verse by explaining that once a boy completes the student life, he enters into householder's duties wherein he should get married to a girl of marriageable age with the required qualities (*Gunas*). The word '*Striyam*' is used for a woman who is marriageable and who has not been accepted by any other man in the form of a gift or enjoyment. There are also other

<sup>3</sup> J.P. Suda, "*Dharma: Its Nature and Role in Ancient India*", THE INDIAN JOURNAL OF POLITICAL SCIENCE, Vol. 31 No. 4 1970, p. 1.

<sup>4</sup> Rai Bahadur Srisa Chandra Vidyarnava (translator), THE SACRED BOOK OF THE HINDUS, Vol. XXI Book I, 1<sup>st</sup> ed. 1918, Ch. I- Introduction, pp.3-4, <https://archive.org/details/yajnavalkyasmrit00yj/page/n5/mode/2up>, (visited on July 20, 2021).

<sup>5</sup> Vijender Kumar (rev.), John D. Mayne, TREATISE ON HINDU LAW AND USAGE, 18<sup>th</sup> ed. 2020, p.6.

<sup>6</sup> *Supra* n. 4, p.5.

<sup>7</sup> *Supra* n. 4, p.91.

attributes which were considered relevant for selection of a bride for marriage. Only after the ascertainment of these attributes, a girl had the required qualities for a marriage. A man should marry a woman not having the *saman Gotra*, and Gautama and Manu were also of the similar opinion in their interpretations.

The qualities for a bridegroom were also defined by Vijnaneshwara wherein he stated that the bridegroom should be free from any defects, should be of the same or higher caste as that of a bride, and should be learned in Vedas and wise to understand the worldly affairs. Further, Mitakshara also defines various forms of marriage which were categorized into approved and unapproved forms (lower forms) of marriages depending on the consent of *parivara*, caste, community. However, after the enactment of the Hindu Marriage Act 1955, these forms do not exist independently and only the term 'marriage' is mentioned in the provisions of the Act.

The Hindu Marriage Act 1955 contains the provisions dealing with the solemnisation of a Hindu marriage. Under Hindu law of marriage, two *Sapindas* are not legally permitted to marry each other unless the custom or usage governing each of them permits of a marriage between the two.<sup>8</sup> Therefore, the general provisions contains an exception in the form of a valid custom as defined in Section 3(a) of the said Act. The Hindu Marriage Act also defines a '*Sapinda*' to mean relationships which extends to three generations in the line of ascent through the mother and five generations in the line of ascent through the father.<sup>9</sup>

The present codified law has its roots tracing to the text of Vijnaneshwara wherein he interpreted the word '*Sapinda*' which has its meaning different from the previous interpretations. As per the previous texts, which defined *Sapindas* only in the light of funeral obligations, whereas Vijnaneshwara derived his theory not from any Smriti but from Vedic texts. He defined a *Sapinda* to mean 'whose *Pinda* or body is *saman* or common'. Such relationships are a result of being the particles of the same body.<sup>10</sup> Therefore, a father and son are *Sapindas* of each other as the particles from the body of a father has entered into the body of a son. Similarly, a son and grandson are *Sapindas* to each other as they share the similar particles. A son and mother are also *sapindas*, same is the case with an uncle and nephew. Hence, Mitakshara mentions various relationships which are covered under the ambit of *Sapinda* relationship and these relationships are duly codified in subsequent enactment by the law makers.

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<sup>8</sup> Section 5(v) of the Hindu Marriage Act 1955.

<sup>9</sup> Section 3 f)(i) of the Hindu Marriage Act 1955.

<sup>10</sup> *Supra* n. 4, p. 94.

## 2) Law of Property

Vijnaneshwara has given a detailed analysis of the concept of property and ownership wherein he has quoted other authoritative texts to support his arguments. He has relied on the Mimamsa commentator Prabhakara's explanation of *Sutra* which has enunciated that the acquisition of property should affect only the person and not the rituals. If a person owns a property of any nature, then only he can sacrifice it, and therefore, ownership cannot be *via* transcendental means.<sup>11</sup> This premise stated by Vijnaneshwara led to the establishment of a larger premise which relied on the ownership in property as a right by birth in Hindu joint family and not after the death of father. Consequently, corporal ownership emerged in his jurisprudential philosophy and not individual ownership, unlike Dayabhaga school.

The interpretations provided by Vijnaneshwara on the concept of property are in a detailed manner wherein the rights and obligation of a son and father are expressed. Under the Mitakshara law, a son by birth acquires a right in joint property owned by father, grandfather and/or any other ancestor. Thus, right by birth is a notion which is given due recognition under this school as per the analysis of Vijnaneshwara. The definition of inheritance as given in Mitakshara is a quote from NaradaSmriti which states '*Arthasya Pitryasya*'. The Mitakshara restricts itself to the reference of 'father' and 'son' in terms of the wider meaning under 'paternal property'. However, the Dayabhaga school has interpreted the word '*Pitrya*' which originates from the father which means that a son can only have a share in the property of his father after his death and not during his lifetime.

The Mitakshara school has a different interpretation of the word '*Pitrya*' and Vijnaneshwara has meticulously argued that ownership is not a *Shastric* concept but it is a worldly concept. It means that the concept of property is not confined to the ways as mentioned in Shastras; however, it means that the family members acquire a right by birth in property.<sup>12</sup> The said interpretation reflected in Mitakshara has been codified in Hindu law in the form of the Hindu Succession Act 1956. The said Act aims to govern the intestate succession and this law of inheritance is uniformly applicable to all Hindus irrespective of whether they are governed by Mitakshara or Dayabhaga school.

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<sup>11</sup> Donald. R. Davis, Jr., THE SPIRIT OF HINDU LAW, 1<sup>st</sup> ed. 2013, p. 61.

<sup>12</sup> Patrick Olivelle and Donald. R. Davis, Jr. (ed.), HINDU LAW: A NEW HISTORY OF DHARMASTRA, 1<sup>st</sup> ed. 2018, p. 175.

**(a) Law of Partition**

Under Hindu law, partition (*Vibhaga*) means allotment of specific portion in property or wealth owned by several family members. Mitakshara lays down the rules of partition which consists of various facets dealing with the capacity to demand partition, entitlement of share after partition, the power and rights to a person etc. The law of partition remains largely uncodified even in the contemporary times wherein majority of personal laws are codified in their nature. However, partition in a joint Hindu family is primarily governed by the text of Vijnaneshwara with different or minor variations of sub-schools under Mitakshara law.

It is important to understand the meaning of the term *Daya* with reference to partition of a joint Hindu family property under Hindu law. *Daya* (heritage) signifies the wealth which becomes the property of another, solely by reason of relation to the owner.<sup>13</sup> It is of two kinds- obstructed (*Sapratibandha Daya*) and unobstructed heritage (*Apratibandha Daya*) in which the nature of ownership and acquisition differ. It means that the son has a right in property via inheritance of his father, grandfather which is not liable to any obstruction. However, when the property devolves on paternal uncles, brothers and other relations in absence of a male issue, then the existence of a son, if there is any, is an impediment for inheritance of the property.

Partition means two things, (i) a division of joint property, and (ii) severance of status from other coparceners in the family. The Mitakshara states the relevance and procedure for partition in a joint family which still remains the law in contemporary Hindu society. The allotment of specific shares after the partition of coparcenary property determines and identifies the severed coparceners and rest may continue to remain joint in their status. In order to have partition of a property, it should be divisible in its nature. A property indivisible by its very nature such as apparels, carriages, water, rights of way etc. cannot be the subject matter of partition under Hindu law. However, there are norms of family settlement which covers indivisible property among the legitimate claimants.

It is also important to understand the law with respect to who can ask for partition in the Mitakshara coparcenary property. It is only a coparcener by virtue of birth in that family that becomes entitled to demand partition of the joint Hindu property. A father can impose partition of his share with that of sons during his lifetime without their consent as well. A son is also entitled to ask for partition being a coparcener; however, in Bombay sub-school as per the

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<sup>13</sup> S.S. Setlur, A COMPLETE COLLECTION OF BOOKS ON HINDU LAW OF INHERITANCE, 1<sup>st</sup> ed. 1911, p.1.

law laid down by Vijnaneshwara has interpreted that a son is not entitled to ask for a partition in the lifetime of his father without his consent, particularly when the father is not separated from his brothers or nephews. Hence, the law has been subject to changes in society but the basic principles have remained the same.

### **(b) Law of Succession**

The Hindu Succession Act 1956 governs the law primarily relating to intestate succession among Hindus. The said Act contains the provisions dealing with the coparcenary as well as self-acquired property of Hindus. The significance of the law laid down in Mitakshara as written and interpreted by Vijnaneshwara has taken a shape of codified law in the form of the Hindu Succession Act 1956. The provisions governing law relating to intestate succession among Hindus are a unique feature of the ancient Hindu jurisprudence.

There are various provisions and relations which are mentioned in the Hindu Succession Act 1956 which have reasons for the inclusion or non-inclusion based on the theories by Vijnaneshwara in the schedule attached with Section 8 of the Act. For example, mother is mentioned as Class I heir in the Act whereas father as mentioned in Class II heir of the Act. The inclusion of one relation to the exclusion of other needs to be understood in light of the explanation given in Mitakshara Hindu law. Vijnaneshwara believed that mother has more closeness in relationship to a son as compared to a father; and hence, she should be prioritised over a father in inheriting property of her son.<sup>14</sup> Hence, when a son dies intestate leaving behind an interest in the coparcenary property as well as self-acquired property, if any, mother being Class I heir will inherit the property of her son along with other Class I heirs. On the other hand, father will only have a chance of inheriting the property of his son, if there is no Class I heir surviving, when son died intestate.

It is only the law stated by Vijnaneshwara wherein he recognized full property rights to a Hindu woman. The liberal and equality approach in his text reflects the progressive outlook which intended to provide equal rights to woman and man in property. Section 14 of the Hindu Succession Act 1956 which deals with the conferment of absolute ownership of a Hindu female over a property irrespective of the source of acquisition is considered to be a literal reproduction of Vijnaneshwara's rule regarding the property rights of a female.<sup>15</sup>

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<sup>14</sup> ParasDiwan, "Ancestral Property After Hindu Succession Act 1956- Joint Family Property or Separate Property? A muddle under Tax Cases", JOURNAL OF THE INDIAN LAW INSTITUTE, Vol. 25 No. 1 1983, p. 9.

<sup>15</sup> Vijender Kumar, "Matrimonial Property Law in India: Need of the Hour", 57 (2015) JILI, p. 500.

Hence, the present laws relating to property are derived primarily from the laws stated by Vijnaneshwara albeit the interpretations and applications may vary depending on various social and legal factors.

### **An Analysis of Judicial Developments on Mitakshara Law**

The judicial pronouncements have also interpreted and analysed the text of Mitakshara relating to the concepts of marriage, adoption and property frequently. There have been decisions with a fountain head of relevance of Mitakshara and its interpretation and reference in the codified laws. The Hindu Succession Act 1956 mentions intestate succession among Hindus and has partially codified the law laid down in Mitakshara. One of such brave attempts was made in 2005 when daughters were conferred with the status of a coparcener in the same manner as that of a son. However, after the said Amendment Act, there have been challenges before the Supreme Court of India to consider the extent, scope and interpretation of Section 6 of the said Act. Similarly, there have been judicial decisions on various aspects on the law laid down in Mitakshara which can only be elucidated by taking references of those decisions.

In *State Bank of India v. Ghamandiram*,<sup>16</sup> the Supreme court has elaborated the nature and incidents of a Mitakshara coparcenary. The court stated that Mitakshara coparcenary consists of a corporal ownership over a property and not individual ownership in which all the coparceners have an interest until their shares are identified. The following incidents were expressed by the court - (1) lineal male descendants acquire a right by birth in coparcenary property; (2) the shares out of an interest in coparcenary property can be determined if a coparcener desires to have a partition along with an intention for the same; (3) unless and until partition of a coparcenary property does not takes place, every coparcener owns the property collectively and not individually; (4) there is common enjoyment of property due to the common ownership; (5) alienation of coparcenary property can only be done with the consent of all the coparceners unless there is legal necessity for that alienation; and (6) the interest of a deceased member will lapse to the surviving coparceners which is the essence of Mitakshara coparcenary being a fluctuating body of interest. Therefore, Mitakshara coparcenary is creation of law and not an act of parties.<sup>17</sup>

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<sup>16</sup> AIR 1969 SC 1330.

<sup>17</sup> *State Bank of India v. Ghamandiram* AIR 1969 SC 1330: (1969) 2 SCC 33; *Hardeo Rai v. Shakuntala Devi* (2008) 7 SCC 46.

*Gurupad v. Hirabai*<sup>18</sup> case is one of the landmark judgments which enlarged and interpreted the doctrine of Notional Partition and its relevance for determination of a share of a deceased Mitakshara coparcener. The said doctrine is a legal fiction created for ensuring that the share of a deceased coparcener can be determined immediately before his death had a share been allotted to him if partition had taken place during his lifetime. The said explanation remains intact in the Hindu Succession Act even after the amendment in 2005 in the Act.

In *Thamma Venkata Subbamma v. Thamma Tattamma*,<sup>19</sup> the court held that while enacting the Hindu Succession Act 1956 by the virtue of Section 30 of the Act which empowered a Hindu to make a testamentary disposition of the property. There is an explanation attached to Section 30 which states that a male Hindu and his interest in the Mitakshara coparcenary property can be disposed of by him/her if that property is capable of disposition. However, the Section 30 does not mention gift under its ambit which indicates that legislature has deliberately not altered the law relating to making of a gift by a coparcener of his undivided coparcenary property. A coparcener cannot make a gift of his undivided interest without the consent of all the other coparceners. The said strict law against alienation by way of gift is to ensure that the Hindu joint family remains intact and not disintegrated. As the essence of Mitakshara coparcenary is unity of possession and community of interest, wherein the coparceners have a fluctuating interest in the Mitakshara coparcenary property. The interest in property increases by a death in family and diminishes by a birth in the family.<sup>20</sup>

In *Sheela Devi v. Lal Chand*,<sup>21</sup> the court held that if a property is owned by a single coparcener, the nature of that property will be separate property in which that coparcener will have an absolute right. However, the moment a son is born to that coparcener, the nature of the property changes and it becomes a coparcenary property in the hands of son by the virtue of his birth in the family.<sup>22</sup> So, even if a son is born in the family prior to the commencement of the Hindu Succession Act 1956, his right in his father's property will not be altered. Hence, the Act has not changed the said law relating to interest in the property by birth which is the foundational law of property under Mitakshara Hindu law.

In *Vineeta Sharma v. Rakesh Sharma*,<sup>23</sup> the judgment which shall have a far reaching impact on the status and rights of a daughter in the Mitakshara coparcenary. The Supreme

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<sup>18</sup> (1978) 3 SCC 383.

<sup>19</sup> (1987) 3 SCC 294; AIR 1987 SC 1775.

<sup>20</sup> *Ibid.*

<sup>21</sup> (2006) 8 SCC 581.

<sup>22</sup> *Ibid.*

<sup>23</sup> (2020) 9 SCC 1.



court judgment settled the ambiguities in law and its interpretation which were prevalent in the previous judgments relating to Section 6 of the Hindu Succession (Amendment) Act 2005 which conferred on daughters of a Mitakshara coparcener the status of a coparcener in the same manner along with same rights and liabilities as that of a son.

Section 6(1)(a) of the Act reflects the concept of unobstructed heritage under the Mitakshara law and thus the uncodified law has taken the form of a codified law under the sub-clauses of Section 6. But, after the amendment in the Act, a legal fiction is created to grant the status of a coparcener to a daughter as well. This can be witnessed as an extension of the Mitakshara law to inculcate within its ambit the empowerment of women who were long denied their rights in coparcenary property. The judiciary has played a pivotal role in interpreting the law of Mitakshara as laid down by Vijnaneshwara.

### **Conclusion**

The Hindu law as prevalent today has been a result of meticulous interpretations by distinguished scholars who portrayed their thoughts and life in the form of texts. Vijnaneshwara was also one of those scholars who is renowned for his art of analysis, interpretations of religious and legal principles by taking the assistance of Smritis, and most importantly, he should be given utmost credit for establishing a school of thought which is relevant and has been codified for Hindus. A major part of Hindu jurisprudence can be said to have been influenced by the writings of Vijnaneshwara. His work is a blend of various Smritis which has become a chief source of laws relating to various facets in personal and public relationships. The law as it prevails today has received the influence from the Mitakshara as the ultimate authority and hence it is also imperative to keep that law alive with changing dynamics of contemporary Hindu society. The immaculate research conducted by Vijnaneshwara also inspired the future scholars to interpret the law stated in Mitakshara. The law laid down in Mitakshara has been the framework also for the present codified laws speaks volumes about the quality of his analysis which were unique in their nature. There is a greater need in contemporary times to pursue and adopt the innovative skills of Vijnaneshwara which will help in ensuring and implementing clear and coherent legal reasoning and principles.



## The Nuances and Upshot of the Transformation of Hindu Law

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-V. Sudhish Pai\*

1. It has been rightly remarked by Prof. Upendra Baxi that we live in an era of massacre of ancestors which is now considered a public virtue and a sign of progress. But collective amnesia of what happened in the past is not an estimable value. Without living in the past its recall is important for it necessarily presages a future. We cannot forget or overlook the enduring relevance of the past or its torch bearers.
2. Among various obligations that we owe to society and to one another, there is the *Rishiruna*- the debt or obligation due to scholars. One such scholar is the savant Vijnaneswara, the celebrated author of 'Mitakshara' which is a splendid commentary on Yajnavalkya Smriti. We redeem a part of our *Rishi runa* by remembering and honouring him today. Late Justice Rama Jois whose birth anniversary is being observed and who would have completed 90 years in July this year has placed us under a deep debt of gratitude by establishing the Vijnaneswara Prathisthana Trust, bringing the great 11<sup>th</sup> century scholar to the attention of the 21<sup>st</sup> century. Our profound salutations to both Vijnaneswara and Justice Rama Jois.
3. Extolling the work of Vijnaneswara, Sir Ameer Ali said in the Privy Council in *Budha Singh v. Laltu Singh* (AIR 1915 PC 70) that Vijnaneswara 'explains the meanings of recondite passages in the *Smritis*, supplies omissions, reconsiders discrepancies and clarifies the doubts and conflicts.'" The logical acumen of this great jurist, judging from his work, seems to have been remarkable. The Supreme Court has also acknowledged the pre-eminence of his work in many cases. Mahamahapadhyaya P.V.Kane hailed Vijnaneswara's work as equal to the Mahabhashya of Patanjali for its scholarship and masterly presentation of the subject. He further states that Vijnaneswara is described in the *Dwaitanimaya* of Shankara Bhatta of Benaras (16<sup>th</sup> century A.D.) as the most eminent

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\* Senior Advocate, High Court of Karnataka, Bengaluru

of all writers of Nibandhas, ie, commentaries. 'Mitakshara' etymologically means 'limited letters'.

4. Societies in ancient India were governed by moral law-Dharma. *Dharma Sastras*-the ancient codes- conceptualized an aspiration towards justice. 'Dharma' is not amenable to a precise definition. As Dr. Kane points out Dharma defies all attempts at an exact rendering in any other language. The Mahabharata says '*Dharmadharayantipraja:*' Dharma is what holds people together. That which sustains is Dharma. It embraces a variety of values and concepts. It is something like what St. Augustine said about time: I know what is time, I cannot define it; or Lewis Powell, J. said about obscenity, that while he could not define it, he knew when he saw it. In what was considered law in pre-British India, there was an underlying concept of justice. Whether it supplemented the law or could also supplant it, was a matter on which scholars differed.
5. It is important to remember that many of our present day public law concepts which are attributed to the West have been prevalent in Hindu law.

With Dharma being the foundation of law and justice dispensation, the supremacy of law was firmly embedded in our system. The Brihadaranyaka Upanishad says: *Tad etatkshtrasyakshtramayatdharma:/Tasmatdharma paramnasti/ Athoabaliyanbaliyamsamashastedharmena/ Yatharajnaevam.*" Law is the King of Kings, far more powerful than they, nothing is superior to law; with its aid as that of the highest monarch, the weak shall prevail over the strong." We see in this the power of the law and that right is might. It is this soul stirring idea that we hear ringing down the ages in Thomas Fuller's words: 'Be you never so high, the law is above you', and it applies to all from the highest sovereign to the most ordinary person.

It is now settled that in a constitutional democracy the State is as much bound by the law as the citizen. In ancient India, the King too was bound by and was under the law.

Unlike in the West, the King was not considered the fountainhead of all powers- legislative, executive and judicial. The laws were those laid down by the *Dharma Sastras*. The King had no power to legislate. The power to decide complicated questions of law- resolving conflicts or laying down a new legal position- was recognized in the Parishad, an assembly of persons with prescribed qualifications.

It was a requirement that the King reigned according to Rajadharm- *Dharmasastras* which could control all human activities and keep them within the bounds of law. Thus Dharma was supreme- superior to and binding on the sovereign too who had to rule in accordance with it. The reverberations of this were heard in what Coke, CJ quoting

Bracton told King James I: 'The King ought not to be under a man, but under God and the law.'

The duties of a King, the constitution and functions of a council of ministers, administration, foreign policy, conduct of warfare were all laid down. There was no absolutism. There were checks and balances. There was no uncontrolled rulership. This is akin to the constitutional supremacy that we speak of today.

Dharma may be said to be the fountainhead of the rule of law. We hear the earliest echoes of the rule of law in Empress Gandhari's words before the Mahabharata war: May the righteous win. Much later in Rajatarangini there is the example of King Chandrapida of Kashmir in the 7th century AD. In a portion of the site where a temple was being constructed there was a hut of a cobbler who resisted the encroachment. The King upheld his objection. It was said that the cobbler's hut is to him the same as the palace is to the King. The King took the hut and the land paying a price to the cobbler's satisfaction. We see in this one of the earliest expositions of the common law aphorism that a man's home is his castle recognized in *Semayne* case (1604) 5 Co Rep 91a: 77 ER 194 and *Entick's case* (1765) 95 ER 807 and the concept of 'eminent domain' - taking property for public purpose on payment of just compensation. All these are the manifestations of the prevalence of the rule of law.

These public law concepts that we cherish now were present, recognized and practised in Hindu jurisprudence.

6. We have reliable historical accounts of the institutions of administration of justice in ancient India and how good and effective the system was. But the fortunes and survival of those systems depended upon the continuance of the political organizations of which they were a part. The consequence and impact of the political and military conquests brought about changes and these systems ultimately ceased to be functional.
7. As John Mayne said in the Preface to the very first edition of his book on Hindu law in 1878, Hindu law has the oldest pedigree of any known system of jurisprudence. Hindu law dealt with the whole corpus of jurisprudence. Vijnaneswara's work 'Mitakshara' was a commentary on Yajnavalkya Smriti which covered all aspects- ecclesiastical law as also civil and criminal law. But Hindu law in modern times, for the last about two centuries, was applied only as personal law and its extent and operation limited by various enactments. Hindu law as it came to be known was, apart from such piecemeal codification of some of its branches, largely judge-made law interpreting the ancient texts and

commentaries on them. Accordingly the juristic weight of Smrtis like that of Yajnavalkya and the profundity of Vijnaneswara's commentary on it- Mitakshara cannot be underestimated or lost sight of.

8. However, it may be stated that issues of Hindu law which are agitated in the courts seldom, if at all, require any reference to the original texts-Dharmasastras or Smrtis. These issues need to be traced back not to the ancient Indian jurists, "but to so much of their ideas as have been filtered through a century and more of continual social and economic ferment, during which popular notions have heaved the law into new positions, often inconsistent with those which the Dharmasastras used to take for granted." Rules of common law and equity were applied in the administration of Hindu law to cases not covered by the Smrtis and the Commentaries. Thus besides the various sources, custom, justice, equity and good conscience and, where the law is silent, judicial decisions have all played a vital role in the development of Hindu law which has not remained static. A scholar notes that the basic sources were the sutras and smrtis and the courts applied the sense of the smrtis as taken and expanded by the commentators... There are some cases which are veritable little treatises in their own right. The Indian courts have recognized the painstaking endeavours of the judges of the Privy Council and "their setting an example in judicial gravity and expertise, against which rock the occasional wave of protest by an Indian court or an Indian academic broke in vain", to borrow the language of V. Ramaswami, J (the first).
9. More than 60 years ago, Prof. Duncan Derrett wrote that although all signs seemed to be against the future welfare of the Hindu joint family, and although the amount of property available for enjoyment was being diminished progressively, the institution centring upon the relationship between father and son, was firmly rooted in Hindu society and showed features which would enable it to surmount its then handicaps and prolong its usefulness into the new age. Has it been so? I do not think. The joint family property has further diminished and even the joint family concept is fast disappearing.
10. Hindu law in the realm of public law had already ceased to apply and was, in that sense, extinct. Over the decades now, particularly since the codification of Hindu law in the 1950s and the various amendments that have been brought, great changes have taken place and it has been transformed beyond recognition. In the last seventy years pristine Hindu law has been turned upside down, it has been washed away. With the codification almost the whole of the personal law has also been lost. One is left wondering as to what is left. It may not be wrong to say that *there is no Hindu law any longer, there is only*

*law for and governing Hindus.* This is the theme of my talk today. This has resulted in many other changes. What is the net result? Whether all this has been for good or not is an issue on which views may differ. Like everything in life it is not an unqualified boon or an unmitigated disaster.

11. There are many areas and aspects where this has happened. We may touch upon some of them- take for example, joint family and coparcenary and property with all its nuances.
12. Notions of property drawn from English law were alien to the concepts of property in India. In England, ownership generally is single, independent and unrestricted. In India, however, joint ownership was the rule and the presumption existed until the contrary was proved. Property held in severalty would in the next generation become a joint tenancy. A Hindu might have acquired property by his ability and exertions and he would be the absolute owner of the estate. But in a couple of generations the off spring would have ramified into a joint family. Self-acquired property, in the strict sense, did not exist in earlier Indian society. There is an excellent piece by Prof. Duncan Derrett on 'An Indian Contribution to the Study of Property' in the Bulletin of the School of Oriental & African Studies. The best studies of 'property' as a concept have been written by Indians.
13. The joint and undivided family was the normal condition of Hindu society. 'Joint family' and 'undivided family' are synonymous. Whatever be the school of Hindu law by which a person is governed, the basic concept of Hindu Undivided Family (HUF) in the sense of who can be its members is the same. A joint Hindu family is a body- a larger body- consisting of all persons lineally descended from a common male ancestor and includes wives and unmarried daughters. The Hindu coparcenary is a much narrower body. It comprises the propositus- common ancestor and his lineal male descendants up to three degrees- sons, grandsons and great grandsons who take by birth an interest in the property. The reason for so limiting the coparcenarship is in the tenet of Hindu religion that only male descendants up to three degrees can offer spiritual ministrations to an ancestor. Thus women were not coparceners. Outside this body there is a fringe of persons possessing inferior rights such as maintenance. The joint Hindu family with all its incidents is a creature of law and cannot be created by act of parties, except to the extent to which a stranger may be affiliated to the family by adoption. The wife becomes a sapinda on marriage. The daughter too on her birth becomes a sapinda and until she leaves the family by marriage the tie of sapindaship will bind her to the family of her birth. "Those

who are called by Nature to live together, continue to do so”, (Golapchandra Sarkar Sastri: *Hindu Law*) and form a joint Hindu family.

14. Coparcenary property is ancestral property which a man inherits from a direct male ancestor not exceeding three degrees higher than himself and held by him in coparcenary with his own male issue. Coparceners are joint tenants, not tenants-in-common. In Mitakshara coparcenary property there are the concepts of unobstructed heritage and obstructed heritage. A right created by birth is unobstructed-*apratibandha*. It is obstructed –*sapratibanda* where the accrual is obstructed by the owner’s existence. It is only on his death that succession can take place if it is obstructed heritage.
15. The Mitakshara of Vijnaneswara propounded the theory that the ancient text-Yajnavalkya Smṛti contemplated joint family tenures and confined intestate succession to the divided and unreunited interest of a Hindu male owner and his self-acquired property. The common sense aspects of the position need to be acknowledged. A traditional business or agriculture cannot be worked as satisfactorily and efficiently and as economically as under the joint family system. The traditional Hindu marriage, joint family and inheritance system took care of all social problems. It provided social security to all. The family was the unit and measure of everything. The sons were assured of their inheritance of ancestral property. The work put in would redound to their advantage eventually. And people eating, clothing and accommodating themselves in common cut down overhead expenses. The psychological benefits of all this were also considerable.
16. This may be said to have been a happy Indian invention of a miniature welfare state. In order to work that well, the Anglo-Hindu law established the *karta*- manager with his powers. The handicapped members of the family were taken care of; widows and other persons whose contribution might have been substantial but becoming minimal in later years were maintained. A large number of people- three or even four generations- were concerned and worked in different ways with their variety of skills and qualities for the prosperity and welfare of the whole. There was restraint on alienation of joint family property. The power of a *karta* to alienate coparcenary property is subject to well known restrictions-for legal necessity or benefit of the estate. The family was protected from imprudence and fraud as well as any group could expect to be protected by a legal system. Protection was afforded to the family by the law cushioning it against mishaps which such an institution may be expected to face.
17. Various social and economic factors have contributed to the breakup of coparcenaries and the breakdown of joint Hindu family. As society progressed and as arts, crafts and

industries developed, self acquisition received increasing recognition and its area gradually widened. The claims of the joint family and those of the individual were sought to be reconciled. The earliest forms of self acquisition seem to have been the gains of science and valour, really gains of learning. In order to meet the needs of increasing individualism and enterprise, changes in the law were introduced both by the legislature and the courts. Traditionally even salary was treated as belonging to the joint family because the funds for education came from the family. Everything was earned or gained because of the joint family, its support financially and otherwise and all those gains and earnings were treated as of the family. It is to get over the effect of such a view in *Golakchand v. Hukumchand* (AIR 1921 PC 35) that the Hindu Gains of Learning Act, 1930 was enacted. One of the very far reaching changes brought about nearly a century ago has been that whatever a coparcener gained by any form of education or learning could be retained by him free from the claims of coparcenary. Further whatever a coparcener earned in a commercial enterprise, other than the traditional joint family business, was understood to be earned on his individual account unless it could be shown that the earning was by reason not of an investment to that end by the family but also it was intended at its inception to be a means whereby the family and not the individual made an income.

18. Over the years there have been many more inroads into the concept and working of the joint Hindu family. As time passed need was felt for codification particularly as regards women's rights and to remove anomalies. Various aspects of personal law were codified and amended from time to time. Succession and its rules have been greatly changed. The essential feature of ancestral property according to Mitakshara that the lineal male descendants of the person who inherits it acquire an interest and rights attached to such property at their birth was modified by the Hindu Succession Act that if a person inherits a self acquired property from his paternal ancestors, that becomes his self acquired property and ceases to be coparcenary property. The final break with tradition was the daughter also being statutorily recognized as a coparcener like the son with equal rights. Daughters also now enjoy rights by birth and unobstructed heritage. While legal reforms for gender justice to bring about equality between sons and daughters is indeed laudatory, it could have been achieved by conferring on the daughters too equal rights as the sons in all properties including coparcenary property. But to say that the daughter also is a coparcener like the son is distorting the concept and the law. Coparcener and coparcenary has a definite connotation in Hindu law and which is based on religious tenets. That is relatable to the sons' obligation/duty to offer oblations and the corresponding right to



inherit property. It would have been more advisable to abolish birthright and dissolve all coparcenaries as the Kerala Joint Family System (Abolition) Act, 1975 did. The provisions of the Hindu Code Bill originally framed by the B.N.Rau Committee and piloted by Dr. Ambedkar was for abolishing the Mitakshara coparcenary with its concept of survivorship and sons' right by birth in a joint family property and replacing it with the principle of inheritance by succession. Improving the economic condition and social status of women by giving them equal rights by birth was a long felt social need. A radical reform of the Mitakshara law of coparcenary was called for. How far all that has been achieved and how effectively is a question which I have not addressed here. A natural counterpart to the birthright is the duty to pay the ancestor's debts. That obligation/liability has also been done away with. *With most people hardly conforming to what is ordained in the Sastras, Sastric rules governing personal laws does not seem to have relevance or significance any longer.*

19. The traditional joint Hindu family system and the reformed system resemble, in a way, the European and American concepts and economic philosophies yielding different results. We get a neat and powerful delineation of this in Will Hutton's *The World We're In*. He points out that these are not just differences of emphasis, but go to the heart of the difference between the two cultures. In America the most basic practical right is that everyone should be given a chance, an opportunity; and a fair society is one which promotes opportunity for all but is indifferent to and unconcerned with the prior or consequential distribution of risk and rewards. It is a very materialistic attitude: that every person has a right to be happy, that property is owned by and is for oneself. The European value is that property is owned in trust for the society to which one owes reciprocal obligations and duties. Their notion of a fair society comprehends a larger integrative role for the State as actively conciliating social partner providing public services and regulating business and society thus ensuring that risk and rewards are fairly distributed in what John Rawls characterizes as an infrastructure of justice. This is no longer the position now with reforms and the emphasis on the individual. This may be said to be the downside.
20. With the various reforms over the years, particularly in personal law, the focus is now on the individual. This has made the system more amenable to International law and covenants. The international human rights regime has also had a profound influence on personal laws, especially, in the area of succession, marriage, divorce, etc. This has helped to achieve gender justice and given a fillip to women's rights. However, the importance of 'family' cannot be forgotten. Even under the Universal Declaration of Human Rights-

Article 16—family is the unit and foundation of marriage. That, of course, is rightly so. Art 16 recognizes and guarantees that men and women of full age without reference to race, nationality or religion have the right to marry and found a family and that they are entitled to equal rights as to marriage, during marriage and at its dissolution. The family is recognized and declared as the natural and fundamental group unit of society entitled to be protected by society and the State.

21. Many of these changes, whether by legislation or judicial interpretation, have brought about quite a few unintended results. We recall that the concept of dual estate in England was the lawyers' response to the challenge of the Industrial Revolution when ownership was detached from land and attached to the estate in land. With the change in the notions of ownership of property under Hindu law, it has become amenable to transformation from asset to capital. Property was earlier a social security for the whole family, it being joint family property. Today with individual ownership that concept has vanished. It has been held (*Arunachala Mudaliar*- AIR 1953 SC 495) that self acquired property when bequeathed or gifted to a son, in the absence of any already expressed intention that it should be taken as ancestral, will be the son's self acquired, individual property and not ancestral property in his hands. Now under Sec. 8 after the decisions in *Chandra Sen* (1986) 3 SCC 567 and *Yudhishter* (1987) 1 SCC 204, if a person inherits a self acquired property from his paternal ancestor, that becomes his self acquired property and it is no longer coparcenary property, that is, the property devolving on a Hindu male governed by Mitakshara will be his separate property and not joint family property in his hands as against his sons.
22. The consequence of a property being separate or individual or self acquired and unlike joint family/coparcenary property is that such property is freed from the shackles of non alienation. The owner/holder of it is free to deal with it in any manner. The best advantage is that it becomes amenable to easier transfer including international transactions which would be almost impossible in the case of coparcenary/ ancestral property. That is conversion of asset to capital making economic sense also. Hernando de Sato in his *The Mystery of Capital* speaks of unraveling the mystery of how assets are transformed into live capital. This is also expected to encourage initiative and enterprise. These are indeed the economic gains of social reform. All this may be said to be the upside of the reforms and changes.
23. We cannot also forget that constant change in judicial dicta in these matters with no underlying philosophy erodes the vitality of the system. Cardozo famously said: "The inn

that shelters for the night is not the journey's end and the law like the traveller must be ready for the morrow." But it is equally important to be mindful of his admonition that the weekly changes in the composition of the court should not bring about changes in its rulings.

24. All the changes that we have talked about is another example of the interrelation between law and society- law stimulating and bettering individual life and society, and changing society, in turn, shaping legal systems and institutions. Law is, to an extent, the result of the operation of sociological forces in society, but social progress is also controlled and regulated by law which is an efficient instrument for individual and social well being. It is not unoften that that the enunciation of a new legal principle may give a new direction and impetus to social change. Law stems from the springs of civilized life and also shapes and moulds life and society. Law is a social science which is not static: old principles are reformulated and applied to suit the times and receive fresh vitality and strength by flexible application of living and expanding principles.
25. Prof. Derrett suggested long ago, and rightly, that the abolition or virtual abolition of the Hindu joint families is the right moment to abolish Muslim and Christian joint families too, so that for the first time family law can be covered by a uniform statute, conformably to the intentions of Article 44 of the Constitution which projects a uniform civil code for all Indians.
26. Both the systems of the personal laws of the Hindus and Muslims have their religious and theological origins. Religious texts that prescribe a code of conduct regulating both the religious and temporal affairs of its votaries present dilemmas in their application to conditions that have vastly changed over time. What amongst those rules represent the eternal and unchanging values and what others are merely intended as solutions to the social issues and problems under conditions then existing and are, therefore, to be considered merely ephemeral admitting of further interpretation and change as society evolves and its needs change is the all important question. Unfortunately these issues are now more emotive rather than logical which would necessarily blur our vision and make difficult a rational solution.
27. The process of change and codification of Hindu Law went through a similar phase. At one extreme were persons of orthodox rigidity vehemently opposing the very idea of change itself. At the other end were persons who wanted a complete change and one uniform civil code governing all citizens. It is amidst these apparent tugs and pulls that the

Hindu Law Committee was appointed by the Government of India on January 20, 1944. That Committee published its report with a Draft Code on February 21, 1947. Thereafter there have been many developments.

28. These reforms in Hindu personal law would in all probability and great measure, and should, pave the way for a uniform civil code making the realization of that more possible and real. That again is perhaps an unintended gain of the reforms. We have seen in the transformation of Hindu law a marked feature of the progressive secularization of what was earlier entirely religion based. Some of the notions of joint family, coparcenary, even of the very purpose of ownership of property and several other beliefs once held fundamental to the basic tenets of Hindu religion have been totally transformed. Progress of reason brings about great changes. The centuries old shastric influences on law have been obliterated by one stroke.
29. The world is changing at an amazing pace. Science and technology will usher in far reaching changes in mind-sets and life-styles. Our world picture will change. That will be the testing time for all our beliefs and institutions. This is the experience of humanity during all crossover points in civilizations. Only the enduring values and not ephemeral superstitious ones will survive the onslaught of the challenges of this re-assessment which is inevitable in our age.
30. Gajendragadkar, CJ writing in the Annual Number of the Bhavan's Journal in 1971 said that questions about marriage, divorce, succession are all matters which should be determined not by scriptural injunctions but by rational considerations and are outside the legitimate domain of religion as contemplated by Arts. 25 & 26. Similar is the view of Beg, CJ who said, "Questions of personal law, such as marriage or succession, are not matters of religion ....It would be against reason to urge that 'a urge of succession' which is just for a Hindu or a Sikh family .... could be unjust in another family simply because they profess a different religion." (Motilal Nehru Lecture on 'Impact of Secularism on Life and Law')
31. It is equally interesting and enlightening to refer to the remarks of two other scholars. Professor Tahir Mohammed has made a powerful plea for framing a uniform civil code for all citizens. "In pursuance of the goal of secularism the State must stop administering religion based personal laws.....Instead of wasting their energies in exerting theological and political pressure in order to secure an 'immunity' for their traditional personal law from the State's legislative jurisdiction, the Muslims will do well to begin exploring and

demonstrating how the true Islamic laws, purged of their time worn and anachronistic interpretations, can enrich the common civil code of India.” Prof. A.A.A.Fyzee, a giant among Muslim philosophers and jurists expounded the difference between law and religion. ‘Laws are impersonal and objective. Religion is based on personal experience, it is immediate and intuitive. It is unchangeable in its innermost kernel. Laws must ever seek to conform to the changing pattern of society. They are like metals in the crucible of time and circumstance. This process of revolution is co-terminus with human society. Nothing is static except that which is dead or lifeless.’

32. The idea of a uniform civil code stems from the concept of secularism in one sense and also it aids secularism to strike deep and pervasive roots. Secularism, it is said, stands for a tendency that is broad and basic, primordial and significant in the evolution of human thought and experience. The process of secularisation of life and thought consists in the withdrawal and separation of religion properly so called from other spheres of life and thought. Secularism as a concept of non-discrimination on the basis of religion is but a facet of the rule of law of which it is a product while also being an imperative for the rule of law to flourish. This concept pervades the whole constitutional fabric and is intended to be both a view of life and a way of life. Secularism is equal respect for all religions-tolerance and acceptance in a positive sense and religion being kept out of other spheres of life in a passive sense. Secularism also means that in all civil matters including family laws, common citizenship postulates common family law. Any discrimination whether based on religion or sex violates secularism.

It is to be noted, however, that the constitutional protection of religious freedom terminated disabilities; it did not create new privileges. It gave religious equality not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.

33. In the Constituent Assembly Dr.Ambedkar stated that religion should be limited to where it truly belongs and should not cover the whole of life, for, otherwise in social matters we would come to a standstill; that liberty guaranteed by the Constitution is to enable reform of our social system which is full of inequities, inequalities, discriminations and other things which conflict with fundamental rights and that it is quite impossible for anyone to conceive that personal law shall be excluded from the jurisdiction of the State.
34. What is important to note is that a uniform civil code does not mean a common Hindu code or a common Muslim code but one which is secular taking the best from everywhere

and attuning it to the signature tune of the welfare state and to keep pace with the international community. As Justice Krishna Iyer reminded us, a common code is an eclectic adventure in legislation and what is good and just in any law may be picked up because it is more progressive. He also said that as a matter of strategy the uniform civil code may be brought in gradually. As an intermediate measure, a progressive Islamic Code drafted by eminent Muslim jurists may be a good idea; so too a progressive code for Christians. There is one for Hindus although that may also require updating and improvement. Thus, we may reach a stage where codes for different religions with more or less similar provisions may pave the way for a uniform civil code for all.

35. A deeper analysis of the connection between law and religion would indicate that “religious jurisprudence has utilized religious doctrines as a means to an end, namely the justifying and systematizing of rules which on purely objective grounds had every reason for being enforced.” Prof Derrett says that Hindu law, as a system, is no less than any system not nominally derived from religious doctrines, fitted for comparative treatment by analytical jurists; and that “the actual relationship between religious doctrines and the rules of substantive law is not that of cause and effect, but rather that of form and substance. The teaching of law and its judicial development cannot indeed dispense with formal theories and ‘a-priori’ arguments, but it is plain that the law as a living expression of justice can exist, and often does exist, without their aid.”
36. The aim of all laws is the happiness and welfare of the people. Now both sons and daughters have equal rights to property. Property is available as capital for investment. Marriage with all its concomitants including dissolution of marriage has become simpler and easier. Have the changes and reforms in the law- the personal law of Hindus promoted happiness and contributed to the well being of the people? That is a million dollar question which I have not attempted to answer here. Suffice it to say that happiness depends far more on things other than material. Happiness, it is said, is when what one thinks, what one says and what one does are in harmony.
37. May I conclude by saying that my endeavour today has only been to stimulate the thought process-to think of all these issues and their ramifications and consequences. Adapting the language of Frankfurter, J. in speaking on today’s topic I have come to you with more questions than answers. The answers to the problems of an art are in its exercise.

**[Lecture delivered under the aegis of VijnaneswaraPratisthana Trust and Kalyana Karnataka Human Resource, Agriculture & Cultural Society to mark the Amritmahotsava of India’s Independence and the 91<sup>st</sup> Birth Anniversary of Justice M.RamaJois, August 15, 2021]**



## **Part-II**

### **Vijnaneshwara and Concept of Property**

Socio-Legal Values in Mitakshara, Vachana, etc in Karnataka / 94



## Paramahansa Vijnaneswara: Secular Icon of Mediaeval India

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-B.N.Sampath\*

The legal fraternity of modern India, be they the academics, judges or lawyers, have been less than fair to one of the greatest commentators of mediaeval India. A doyen among the jurists of his times, whose doctrines have influenced the lives of millions of people of this country during the nine centuries and whose legal acumen evokes awe among the discerning people for refreshingly modern outlook, has not been studied with the diligence and dedication commensurate with his contribution in the field of law. Modern generations of law people have been merely mouthing the cliché that he was the founder of a widely prevalent school of Hindu law and state categorically the doctrines espoused by him in his celebrated treatise. It is indeed surprising that hardly any attempt has been made for evaluating the contemporary relevance of his doctrines in meeting the challenges of modern India. The great jurist who is subjected to such callous neglect by us is none other than Vijnaneswara, the jurist par excellence, who wrote *Mitakshara*, the celebrated commentary on Yajñavalkya Smṛiti. Vijnaneswara and his magnum opus *Mitakshara* stand out on two counts in the Indian legal firmament. Whereas his commentary outshone all other commentaries on Yajñavalkya Smṛiti preceding *Mitakshara*, it also overshadowed most of *sastric* works in succeeding centuries. Indeed, it was a rare tribute to *Mitakshara* that it became a source book on which many later commentaries were based. It is unique that the authority of *Mitakshara* was acknowledged all over the country within a short span of time when even rudimentary communication network had hardly existed. It is interesting to observe that a large number of jurists from all over India adhered deferentially to his views and even where some of them dissented, they refuted his views assiduously for acquiring some credence to their stand!

Before undertaking an assessment of Vijnaneswara's contribution to Indian juridical thought, it is necessary to enquire about the life and times of this great jurist. Western scholars

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\* Former Professor of Personal Laws, Banaras Hindu University (1961-93)U.G.C.; Professor of Law, National Law School of India University (1998-99, 2002-2003).

and some of their contemporaries in this country hurl, quite often, the charge that the traditional India writers were oblivious to historicity and it needs all the skills and ingenuity of the researchers for fixing the chronology of Indias works and their authors. There may be some truth in this criticism when we examine these writings in the western frame of reference. However we must bear in mind the psyche of traditional Indian writers in this regard. Our scholars in general, whether ancient or mediaeval, though capable of comprehending the *yugas* or *aeons* of time, were unconcerned about the personal life of an individual and his mundane achievements however exalted a position he might have occupied. Such an attitude may appear to be inexplicable to modern minds but not so to those who are well acquainted with the Indian tradition. Ancient India attached more importance to *values and ideas than to individuals and their achievements*. In such a milieu it was alien to a scholar to divulge the details of his personal life and predilections which were absolutely secondary in his perception. It was therefore but natural, in such a society which promotes self-abnegation as a virtue, for even an eminent scholar to be extremely reticent to speak about himself and his achievements. Indeed many of them do not even reveal their proper names, some have merely indicated the *gotras* into which they were born, a few may state that they were the students of such and such a *guru* and some may sing the poems of their patron kings under whom they flourished. We must remember in this context that the concept of biodata, a modern western practice and which projects, most of time, bigger than life image of the scholar, was totally distasteful to ancient Indian scholars. But such a humility is incomprehensible to we modern academics! Vijnaneswara true to this tradition discloses very scanty information about himself and on the basis of which researchers conclude that he was born in *Bharadwaja gotra*, his father's name being Padmanabha Bhatta and also studied under the *guru* Uttma. They have also arrived at the conclusion that Vijnaneswara who acquired the stature of Paramahansa in the later years of his life was the *astana pandit* of Vikramaditya, the Chalukyan king who reigned in the twelfth century with his capital at Kalyan in northern Karnataka.

It is necessary to observe at the outset that any evaluation of Vijnaneswara's contribution in the development of traditional jurisprudence will be incomplete without a survey of the entire gamut of *sastras*, for the great commentator has left a stamp of authority on practically all branches of law. So we have to confine ourselves to a couple of concepts of contemporary interest and examine how Vijnaneswara has handled them within the *Dharma Sastraic* parameters.

A survey of the modern Indian academic exercise in humanities in the form of conferences, seminars, symposia, colloquia (the latest to sneak into the pompous jargon being the brain-

storming round tables.) reveals the academia being obsessed with three important topics, namely secularism, empowerment of women and humanism. As a participant in this academic revelry(!) the author may be pardoned if he feels that such an exercise lasting for decades has merely rendered these topics cliché-ridden, the result being inconsequential. An attempt is made in this paper to examine the views of Vijnaneswara on what are taken for purely modern ideas. It will not be surprising if our endeavour is interjected by a few, may be with cynicism, “will not any such attempt to read these modern concepts into *Mitakshara* amount to rank anachronism?.” Let us lay aside the tenability or otherwise of this observation until we examine some of these concepts in the context of some illustrations drawn from *Mitakshara*.

Let us first of all take term secularism, its semantic connotation, its gradual transformation in the Indian context and the form in which such of a similar concept has been expounded by Vijnaneswara in his treatise. It is interesting to observe that this term of English language which has found place practically in all Indian languages, pops up most frequently in all discourses whether academic or political in contents. However, we are constrained to observe that the term is being continuously used, misused and abused in the Indian context, the result being that the term has strayed away from its original meaning and content. It is therefore imperative that we delineate the term in the context of this paper.

All of us are aware, irrespective of our comprehension of the term, that secularism as a concept in its original form had its genesis in west. They understood it in the sense of separating law, state and government from the influence of religion, its appurtenant institutions and ritualism. Western societies had to wage a relentless battle for achieving the supremacy of state over church. In the Indian context, however, we have witnessed in west and most of the people who frequently use the term in our country are blissfully ignorant of the historical perspective of the concept. In their lexicon the terms secular and communal have undergone a sea change in their connotation where the elucidation of one concept involves the other as a crutch. We cannot undertake a comprehensive examination of these two terms in this brief paper for such a venture will result in a tome by itself. It is however imperative that we clarify the meaning of the term for the limited purpose of this paper.

In the context of the exposition of the term *Dharma*, this author had highlighted elsewhere the connotation of the terms law and religion. We have stated therein :

“Law as understood in western jurisprudence, shorn of all its verbiage, is a set of rules meant to regulate human action with the exclusive objective of promoting the temporal welfare of the community in which the welfare of the individual is also involved.” and

“Religion, on the other hand, while inculcating faith or belief in an individual which may be superstitious also regulates human action aiming essentially at the spiritual welfare of the individual but promoting incidentally the temporal welfare.”

We have to bear in mind the aforesaid exposition of the two terms while critiquing the common law model that was implanted and nurtured by the British in this country. In such a legal system if we have to deem a set of norms to be secular, it must regulate only temporal matters of the individual essentially aiming at promoting the community welfare (in which the individual welfare is also included) and which is unconcerned about spirituality that necessarily focuses on the individual. Positive law does not care whether the compliant goes to heaven or hell. Therefore ‘secular’ connotes that it is one hundred percent temporal in content, unconcerned about religion, devoid of spirituality and bereft of belief system which concerns of other worldly matters. In this short write up we will examine how Vijnaneswara attempts at ‘temporalising’ law! and outclasses the modern proponents of secular tradition! Anyone with even a smattering knowledge of Hindu Law may loudly protest by asserting how is it ever possible when law and religion are closely intertwined with each other under the oriental systems, a reflection of the observation of the Privy Council endorsed by many western scholars and accepted as gospel truth by Indians! They may assume that our statement involves a basic, patent and inherent contradiction. Indeed they cannot visualize any secular content in *Dharma Sastra*! It is our object to show how a bold commentator attempted to secularise law and accomplished the impossible.

Let us take, for instance, the chapter on marriage of *acharadhyaya* of Yajnavalkya Smriti. Yajnavalkya directs a student who has completed his education to marry a girl who fulfils certain qualifications. He states :

“*Avipluta brahmacharyo lakshanyam striyamudwahetAnanya purvikam kantam asapindam yaviyasim Arogineem Bhratrumateem assamanarsha gotrajam Panchamat saptamat oorddhvam matrutaha pitrutastatha*”

Yajnavalkya I, 52, 53

“A student who has completed his life of uninterrupted celibacy should marry a girl who is good looking, does not belong to another person, who is not a sapinda, who is younger in stature free from diseases, who is endowed with brothers and does not belong to his *gotra* of *pravara*.....”

We will passover the gloss of *Mitakshara* regarding *ananya purvikam* and confine our attention to the most significant term, namely, *asapindam* used by the *smritikar*.

Vijnaneswara expatiates at great length the expression that the person should marry a girl who is an *asapinda*. He lays down :

*Asapindam* means a women who is not a *sapinda*, *sapinda* means one who has the same *pinda* or particles of the body, *sapinda* relationship arises between two persons from their being connected by particles of the same body. Thus the son has *sapinda* relationship with his father by reason of the fact that particles of the father's body continue in him. Similarly there is *sapinda* relationship with the grand-father and the like because the particles of the grand-father's body are transmitted through the father to the grandson. Similarly the son has *sapinda* relationship with his mother because particles of the mother's body continue in him. So is a person *sapinda* of his mother's father through his mother; so is the relationship with one's mother's sister or mother's brother and so on.

Keeping in prespective the elaborate comments of Vijnaneswara, let us probe further the term *sapinda* used practically by every *smriti* writer. When a Hindu hears the term *pinda*, he can make out its gross meaning intantly. Be he an ignorant or an illiterate person, he can visualise the rice balls, a person offers to his manes, at the *Sradh* ceremony. However, when the term *Sradh* is used, we find that it is associated with a cluster of supersensuous ideas related to ther worldly concept. *Sradh* presupposes the spiritual existence of the deceased ancestors of the person offering the *pindas* which postulate the ensuring of some benefits to the manes and so on. These ideas have nothing to do with the temporal activities of an individual. When we survey the *Dharma sastraic* literature, we find most of the writers comprehending the term *pinda* only in its spiritual sense.

At the outset we notice that the religious connotation of the term *sapinda* is not palatable to Vijnaneswara. He is determined to dispense with its religious content by giving the term a novel and purely temporal or secular orientation. This he does by drawing mainly upon worldly knowledge and also some interesting scientific materials and achieves his objective of secularising law. Vijnaneswara's comments on *asapindam* with several illustrations for clarifying the *sapinda* relationship among different members of a Hindu family highlight his eagerness to provide a secular forndation to the term. He is not satisfied merely with worldly knowledge which he draws upon but attempts to furnish a purely scientific basis for his comments. It is fascination to notice that he invokes a text from a rarely cited *upanishad*, namely *Garbhopanishat* for justifying his construction. This *upanishad* while elucidating the formation of human body states that "of the six things constituting human body, a person receives three from the father and three from the mother, namely, bones, nervous system and bone marrow from the father and organs, muscles and blood from the mother". This text of

the upanishad exemplifies the high water mark of scientific temper of the seers of ancient India and evokes the admiration of even some of the cynics who refuse to accept that there are anything worthwhile in *sastras*. Vijnaneswara tactfully handles two situations whereby the nature of relationship commonness of blood particles cannot exist. For example, a husband and wife, as also two wives married to two brothers are members of a family by affinity. However Vijnaneswara treats them as *sapindas* in a constructive sense since husband and wife as also the wives or wives of two brothers can beget sons who will have common blood particles with their parents.

Vijnaneswara encounters a tricky situation that since blood relationship being the quintessence of *sapindaship*, some one may assert that all human beings irrespective of the degrees of relationship are *sapindas* in a generic sense. However Vijnaneswara circumvents such a construction by referring to *smriti* text which lay down that *sapinda* relationship extends to five degrees on the mother's side and seven degrees on the father's side. However some 'scientific fundamentalists' may even make fun of this text by saying that perhaps the commonness of blood particles may get diluted after the prescribed degrees! We would like to refer them to a study report of Prof. Niyogi (Former Dean of faculty of Medicine in Baroda University and U.G.C. Professor in the Department of Social and Preventive Medicine at Institute of Medical Sciences, Banarsa Hindu University) about the genetic transmission of certain diseases where the learned author has concluded that a strict adherence to the prohibited degrees on the ground of *sapinda* relationship statistically eliminates the possibility of transmission of many diseases by way of heredity.

Vijnaneswara's modernity could be gauged by his elaboration of some of the qualifications of the parties to a marriage. He examines quite uninhibitively the capacity of the parties to consummate the marriage. Vijnaneswara lays down that the bride should be examined for the absence of impotency and states "*Napumsakatva Nivruttaye Stritvena Parikshitam*". As law people we are aware of the traumatic situation the spouses face when one of them is impotent and incapable of consummating the marriage. We are also conscious of the difficulties the modern family courts face in ascertaining the truth or falsehood of the allegation made on this ground. It is interesting to observe that no modern matrimonial regime has made it incumbent on the parties to get examined before marriage for their sexuality. In this background Vijnaneswara was far ahead of us in his scientific temper by laying down the prior examination of the bride. It may be pointed out in this connection that a practice prevails among some south Indian communities wherein the sister of the bridegroom assists the bride in draping her

saree in a special manner for the occasion. This practice may appear to be quaint. However, knowledgeable purohiths say that this convention has its genesis in the subtle handling of the sensitive issues namely, of ascertaining whether the bride is, at least externally endowed with the proper anatomical structure! Vijnaneswara's enjoinder, in a way, rationalizes this practice. Unfortunately the modern Hindu tradition has transformed this salutary prescription to merely helping the bride in her sartorial excellence! Vijnaneswara cannot be accused of being one sided in his approach. Commenting on Yajnavalkya I, 55, the Commentator endorses Narada that the bridegroom should also be tested for virility. It is opined by knowledgeable sources that the barber who has a special role to play in marriage ceremonies is also required to ascertain whether the bridegroom is free from physical imperfections relating to his manhood. Unfortunately the present practice is devoid of its original content.

We may take another interesting example to secularization of law attempted by our savants of mediaeval India particularly the approach of Vijnaneswara. The concept of ownership as expounded by our ancient jurists is no less advanced and refined than the one found in Roman law which was a precursor to modern jurisprudential disquisitions. Infact, we find a whiff of contemporaneity when we examine the various forms of ownership as dealt with by our mediaeval commentators. At the outset we come across a fascinating controversy regarding the acquisition of ownership as found in these works. *Dharma sastras*, namely, *sutras* and *smritis*, while enumerating various modes of acquisition lay down that a person becomes an owner of some property by succession, purchase, division, seizure and treasure trove and prescribes some special forms of acquisitions to the members of the four castes (for instance see Gautama-X-39-42).

Noticing the various modes of acquisition of property commentators and digest writers have raised a very interesting controversy in this regard. They say that since sastras have specifically enumerated the modes of acquisitions, should people strictly adhere to these modes of acquisition? Or can they acquire property in modes not covered by express texts. Conservative section of jurists has adhered to the strict but not very logical view that people should conform only to those forms of acquisition as ordained by the *sastras* and this was designated as "*Sastraic Swatvavad*". However many others vehemently opposed this stand of the traditional jurists. They emphasized that 'acquisition of ownership' was strictly a temporal matter and its existence or otherwise depends entirely on popular recognition and this theory is known as "*Laukika Swatvavad*." This controversy like the '*Bija Vrikshanyaya*,' namely 'whether the seed precedes the tree or vice versa' presents a

circular logic, whether people should meticulously follow *sastras* or *sastras* merely reflect those modes recognized by popular recognition.

Jurists who strictly upheld the *sastraic swatvavad* put forth an argument which they though was irrefutable by stating that if *sastras* merely acquiesced in the various modes of acquisition which had received popular recognition, would it mean that *sastras* were quite unnecessarily repeating what was already well established? Would it not mean that *sastras* were engaging in purposeless repetition of something which was well known. Priyanath Sen very aptly meets this argument by stating “(I)t may be pointed out that a specification in the *sastras* of some of the recognized modes of acquisition of ownership does not amount to a mere useless repetition of what is already recognized by popular usage, for it serves the useful purpose of enunciating the approved methods of acquisition of ownership and indirectly reprobates those other methods of acquiring property which are opposed to directions contained in the texts of the *sastras*.... In other words acquisition of ownership is not an outcome of *sastraic* injunctions; they are not creative... but are partly illustrative and partly regulative in their character”. Commentators upholding the *laukika swatvavad* also tried to buttress their stand by pointing out that even those communities which did not follow *sastras*, namely, like *mlechhas*, recognized certain forms of acquisition of ownership. The dialectical skills exhibited by these jurists of yore certainly evokes the admiration of any modern jurist. Vijnaneswara and his follower the renowned Mitra Mista convincingly upheld *Laukika swatvavad* which necessarily meant the endorsing of secular tradition.

Vijnaneswara’s determination to secularise legal doctrines can also be discerned when we examine the doctrine of right by birth, the bed rock of *Mitakshara* school. This doctrine finding its place in Yajnavalkya has been refined by the elaborate gloss of Vijnaneswara who discards religious reason given by most of the early smriti writers. Vijnaneswara while examining the *raison de atre* of this doctrine emphatically states that the ‘quality of being the son or the grandson’ (*Putratvena pautratvenacha*) confers on him the right by birth and not any other reason.

On account of constraints of time we would like to point out in a sketchy way some of the other areas where Vijnaneswara’s modernity is highlighted. For instance, even though the term ‘*Sapinda*’ appears in the law of marriage commentators had fixed their sights on the law of succession. Vijnaneswara was determined to completely secularise the law of succession. Whereas Jinuthavahana fully invokes the religious doctrine of *parvana Sraddha* for developing the law of succession based on Yajnavalkya and others. Vijnaneswara



steadfastly pursues his task entirely on secular tradition. In fact, he makes propinquity, a purely scientific reason, as the bedrock of his law of succession. Those of us of the earlier generation who had to pursue the details of the law of succession as expounded by these two savants know well how Jimuthavahana's spiritual benefit theory was instrumental in erecting a complex occasionally inconsistent structure. On the other hand, Vijnaneswara's propinquity theory coupled with his incisive intellect was instrumental in evolving a logical and consistent law of succession which practically became the law of the land.

We would like to merely point out here the care and logic Vijnaneswara exhibits in substantiating the claims of women heirs to be preferential heirs, for highlighting his role as a feminist who was determined to elevate women and who had thus far occupied very unenviable position in property rights.

Vijnaneswara's bias for ameliorating the condition of women heirs may be illustrated by his gloss on '*pitarau*' finding place in the compact list of heirs of Yajnavalkya. '*Pitarau*' signifying parents poses the difficulty as to whether the mother or the father has the preferential right to succeed to the property of the son. It is very interesting to note that Vijnaneswara relies upon a rule of grammar for preferring the mother. Though this construction may appear to be amusing, it highlights the concern of *Mitakshara* to do away with the dominance of a very important agnate like father. Further, he brings in grandmother and great grandmother as heirs even though the two do not find a place in '*baddhakrama*' heirs.

We would like to wind up this brief paper by referring to the interpretation of Vijnaneswara on the text of Yajnavalkya relating to *stridhana*. The great seer after illustrating the various forms of *stridhana* uses in the *sloka* the word '*adyancha*.' Vijnaneswara utilizes this opportunity to break the shackles of women relating property rights by including all kinds of property which a women acquires in her life.



## ***Mitakshara* Joint Family Property and Property Rights of Women\***

-T.V. Subba Rao\*\*

### **Introduction:**

Hindu system of law is based on *Dharma* which is considered a guide to life, but very difficult to define. Elucidations, expositions, instancing, exemplifying and characterizing are more than defining. It is complex and ubiquitous. It is not surprising that it has no equivalent term in English.<sup>1</sup> It is believed that initially the principles of *Dharma* were applied to Aryans only, but verifications reveal that it was universal.

A brief discourse on '*Dharma*' is required for property rights of women under ancient law to be meaningfully understood. The word *dharma* comes from the root word *Dhri* which means a thing that uphold, wear or 'Have on'<sup>2</sup>—*dharayatetiitidhrmaha. Dharamath Dharmamityahuhu*, what is followed in practice or applied in life is called *Dharma*. The world is upheld by *dharma* (*pruthivimdhrmanadhrutham*). In Rig-Veda it appears in number of places, sixty times with different meanings. Principles of *dharma* are all pervading starting prior to birth to death and beyond

*Vedic* injunctions often referred to as *Rita- ritam* is considered as cosmic order- as nature's harmony. In its moral aspect it includes morality and justice and as a ritual it is orderly performance of ritual. It is expected to vary as per the human needs (*Navyajayatamritam*). One will come across the expressions of Sanatana *Dharma* – Arsha *Dharma* – Bharathiya *Dharma*.

Initially *Dharma* was equated with laws of sacrifice. Its meaning has wide amplitude and encompasses morality, ethics and religion. Justice obligates striving, righteousness, custom

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\* This paper is based on the discourse in the National Webinar on " Socio-legal values in *Mitakshara*, vachana, dasa and folk literature in Karnataka – An exploration," conducted under the aegis of Vijñaneswara Adhyayana Peetha and Karnataka State Law University, Hubballi

\*\* Former Professor, SPMVV, Tirupati; Professor Emeritus, VIPS, New Delhi; Former Visiting Professor, NLSIU, Bangalore.

<sup>1</sup> Kane, P.V., *History of Dharmasastra*, (1930) digitallibraryindia; JaiGyan; Alf Hildebeitel, *Dharma....*(2011)

<sup>2</sup> <https://dict.hinkhoj.com/dhri-meaning>

and secular law (*vyavahara*). Sometimes *dharma* is also referred to as property. In *Shanti Parva* of *Mahabharat*, Bhishma tells Yudhishtir that it is difficult to define *Dharma* and adds that it is a thing that helps the upliftment of living being, that ensures welfare and *rishis* have declared that one which sustains is *Dharma*. It was further stated that: nonviolence, purity, truth, control of senses, not coveting the property of others - are considered as “*Dharmalakshanam*”. Lord Krishna ordains, *Dharma* upholds both this-worldly and other-worldly affairs”<sup>3</sup>

*Brihatnaraynaopnishad* states that ‘that which is *dharma* is truth. Therefore, they say of man who speaks truth as he who speaks truth speaks *dharma*. A man who speaks *dharma* speaks truth’ (*Dharmehi paramoloke dharme satyam pratishthitam*). Truth is always one (*ekam sat, vipradhabahudhavadanti*). Ultimately it is stated that ‘one should never do another what one regards as injurious to oneself. This is in brief the law of *dharma* (MB XVIII).

*Dharma* is considered king of kings. Even king is bound by *dharma*, his power is limited by *dharma*. Ancient system did not make distinction between positive law and morality and ethics. Till the period of *Dharma Sutras* principles of positive law were mixed with religious injunctions. It was an admixture of secular as well as religious precepts. It is always subtle and at times led to apparent conflicts. There were number of instances of such apparent conflicts both in *Mahabharatha* and *Ramayana*.

*Dharma* is promulgated in the form of commands, positive and negative- *vidhi* and *nishedha*). *Dharma* is variedly classified as *Vyaktidharma* - the *dharma* of an individual ; *Parivarikadharm*a - family *dharma* (also called *kutumbadharm*a) ; *Samajadharm*a - societal *dharma* ; *Rashtradharm*a - national *dharma* ; *Manavadharm*a - the *dharma* of mankind ; *Varnadharm*a - professional *dharma* ; *apaddharm*a - exceptional/abnormal situational *dharma* ; *Yuga dharm*a - *dharma* applicable for an age; *Ashramadharm*a - *dharma* for stage of life ;

In its various aspects it covers; *Varna Dharm*a, *Ashrama Dharm*a and *Purusahrthas*, *Dharma Arthakamamokasha*. It is believed that if one follows *dharma* in earning *artha*, and *kama* automatically he will reach moksha. People always preferred higher *dharma* that sustains the society.

Rules of *dharma* are not static but change according to *yuga* – they are subject to time and space limitations in so far as the changing needs of human being are concerned – principle

<sup>3</sup> (*Mbh 12.110.11*).

of *kalivarjya*, to be avoided in the present *Kali* age, obsolete,<sup>4</sup> appeared mostly in the *Purâ Ga-s* around A. D. 1000. The *Dharma* that was followed in *satyayuga* was different – it was different in *tretayuga* and *dwaparayuga*.

The sources of *Dharma*<sup>5</sup> are Sruti, *Smriti*; Digests and Commentaries; Custom; Good Conscience

*Srutihî, smritihîsadacharahaha*

*swasyachapriyamatnam*

*etatchaturvidahaprahuhu*

*sakshatdharmasyalakshnam*

*Vedahakhilodharmamulam*

*Smritimilechatatvidam*

*Achrachivasadhunam*

*Atmanamthushtirevacha – Manu*

#### **Evolution of Vijaneswara's Mitakshara:**

The *Smriti* period can be classified as *Dharma Sutra* Period (800 to 200B.C – Gautama, Boudhayana, Apastambha, Vasishta, Vishnu, Haritha to name few) and *Dharma Sashtra* Period (200 B.C. to 200 AD – Manu, Yagnavalkya, Narada). The periods are as given by western scholars who are criticized for falsification of history and periods thereof.<sup>6</sup> The commentaries and digest cover the period starting from 700 B.C. to 700 A.D. and even after. From 12th century onwards synthesizing and covering usages and customs was started. According to Desai this was a period of critical inquiry, expansion and consolidation. Of all the commentaries Vijaneswara's Commentary on *Yagnyavalkya Smriti* occupies a prime

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<sup>4</sup> <https://www.wisdomlib.org/definition/kalivarjya>. Ch. 103, Episode of Krasna concluded, Sloka 8". *Brahma Purana*. Vol. Part II. MotilalBanarsidass. 1955. p. 515. It was on the day on which Krishna left the Earth and that the *Kali* age set in.

<sup>5</sup> Jha, Ganganatha, *Hindu Law in its sources*, (1933), digital library india; JaiGyan

<sup>6</sup> The claim of ancestry as arrived by western scholars about vedic period was 6000years B.C. it may be much earlier than that even though one cannot properly fix the period. Based on astrological constellations Sri Ram was born at 12-10 p.m. n 10<sup>th</sup> January 5114 BC when five planets in Uuccha, of course with 7<sup>th</sup> house occupied by Kuja. However, Valmiki's Ramayan (1-1-97) says *Dasa Varsha Shasrani Dasa Varsha Satanicha* he lived on the earth. one can see that Lord Krishna had completed his voyage on the earth on 18th February 3102 B.C. after attaining 125 years of age. Theses births are preceded by vedic period and probably *smriti* period as vyavahara *dharma* was followed, explained and clarified both in Ramayanand Mahabharath. However, fasciculus interpretations and interpolations are not ruled out. See Belvalkar S.K., Ranade, R.D., *History of Indian Philosophy* (3<sup>rd</sup>Edn, 1997)

and pride place.<sup>7</sup> The commentary is known as *Mitakshara* and practically freed the Hindu System of law from religious fetters and made it acceptable to all communities and regions.

In the sacred Books of the East, Vol. XXXIII, it is pointed out that “In modern Hindu Law as administered in the British Courts in the whole of India, the *smriti* of Yajnavalkya (and thus the commentary of Vijnaneswara on that) has become the guiding work for the whole of India. This position it richly deserves by its concise but clear statement of principles, its breadth of vision and its comparative impartiality towards the claim of both sexes and the different *varnas*”. Vijnaneswara (Kancha), belonged to 12<sup>th</sup> Century and adored the court of Emperor Vikramaditya the VI of Chalukya dynasty. He was born in Masimadu, Karnataka. He commanded a very great respect. He did not give divine powers to the king. Strongly advocated *dandaniti* irrespective of whether he is a son or relative etc. Refers to *rajasanas* on the edicts but preeminent position was not given. Importance was given to custom – *Acharahparamodhrmaha*.<sup>8</sup>

The paramount position of the *Yajnavalkya smriti* is largely due to the commentary on it by Vijnaneswara. This commentary known as *Mitakshara* holds sway throughout India. The *Mitakshara* school of law is paramount outside Bengal, Assam and parts of Orissa where in Jimutavhana’s *Dayabhaga* was opted for. Even in Bengal the *Mitakshara* ranks next only to the *Dayabhaga* which is accorded primacy in that part of the country. For this reason the *Yagnavalkaya smriti* as expounded by *Mitakshara* holds a dominant position amongst the various *smrities*. The *Mitakshara* means measured words or few words. On *Yadnavalkya Smriti* not only the work of Vijnaneswara, Vijnaruph had written *Balakrida* (900 A.D.) and Apararka had written *Aparaditya* (1200 A.D.).

#### **Sub-Schools of the *Mitakshara*:**

The *Mitakshara* School is usually subdivided into four schools, namely, the Benaras School, the Mithila School, the Maharashtra and the Dravida School.

**(i) Dravida School:** In addition to the *Mitakshara*, in southern India certain works incorporating local custom are also referred for instance:

(a) *Parasara Madhaviya* of 14<sup>th</sup> Century; (b) *Smritichandrika* by Devanna Bhatta, considered as *Nibandha* or digest of law mostly dealing with inheritance. This was compiled

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<sup>7</sup> Bhat, Ishwar, P., “Protection Against Unjust Enrichment and Undeserved Misery as the Essence of Property right Jurisprudence in *Mitakshara*”, JILI Vol.48, 155

<sup>8</sup> *The Collector of Madura v. Mootoo Ramalinga Sathupathy (Privy Council) No. 1 29-02-1868*

during the period of Vijyanagar Empire.(c) *Saraswativilasa* (1515) (d) *Vyavahara Nimaya*, this is a work of Varadaraja of 17th Century.

**(ii) Maharashtra School/Bombay School:**In addition to the *Mitakshara*, the Bombay School attaches great importance to the following works: (a) *Vyavahara Mayukha* (1610 and 1645), it mainly deals with secular law. (1610 and 1645); (b) *Nirnaya Sindhu* (1612) by Kamalakara.

**(iii) Benaras School:**This School recognizes the following as authoritative in addition to *Mitakshara*. (a) *Viramitrodaya* (1610-1640 ) by Mitra Misra. In *Vedachela v. Subramania*, 1921 (48) IA 349, the Privy Council observed: “*The Viramitrodaya* holds in Western India a high position. It supplements many gaps and omissions in the earlier commentaries and illustrates and elucidates with logical preciseness the meaning of doubtful prescription”. In *Girdharilal v. Bengal Government*, 1868 (12) MIA 448, the Privy Council had observed: “*The Viramitrodaya* is properly receivable as an exposition of what may have been left doubtful by the *Mitakshara* and declaratory of the law of the Benaras School.” (b) *Nirnayasindhu*: This work is received as an authority not only in Western India but also in the Benaras School. Similarly in Western India *Viramitrodaya* is received as an authority.

**(iv) Mithila School:** The important authorities of this School are:(a) *Vivada Chintamani*, a *Nibandha* work of Vachaspati Misra and was written in the 15th Century; (b) *Vivada Ratnakara*, a *Nibandha* work written by Chandeswara in the 14th Century; (c) *Madanaparijata*: composed between 1360 and 1390 by Visweswara bhatta who was also the author of *Subodhini*, a commentary on the *Mitakshara*.

#### **Effect of Migration from one sub-school to another sub-school:**

Hindu law being a system of personal law, it attaches to a person even when he shifts from one place to another. So if a Hindu migrates from a place comprised in one sub-school to another place where a different sub-school of law prevails he carries his personal law with him.

In *Keshao Rao v. Sadasheorao*, 1938 Nag. 163, Maharashtra Brahmin family settled down in Central Provinces where the Benaras School prevails. The family acquired property in that province. It was held that succession to this property was governed by the Mayukha law even after the migration.

Adherence to family usages is a strong oriental habit. This is the reason for applying the law of the place of origin. In *Balwantrao v. Bajirao*, 1920 (48) Cal. 30 (PC), parties from

Poona had settled down in Central Provinces. The Privy Council held that it was not the Banaras School but the Maharashtra School of Law that would apply to such a case.

**Differences between *Mitakshara* and *Dayabhaga* Schools:**

The essential differences between *Mitakshara* and *Dayabhaga* relate to the following.<sup>9</sup>

- (i) Joint Family: According to the *Mitakshara* a son, grandson and great-grandson acquire by birth a right in the ancestral property. This doctrine is the basis of the *Mitakshara* joint family. According to the *Dayabhaga* the ownership of the son can arise only after the death of the father. There is no right by birth. The father has un-controlled power of alienation over the family property under the *Dayabhaga*. Under the *Mitakshara* the father's powers are qualified by the son's equal right by birth.
- (ii) Survivorship: Brothers who have inherited property from their father have a right of survivorship in the *Mitakshara* joint family. The *Dayabhaga* does not recognise any right of survivorship and the brothers hold in quasi-severalty with full power of alienation.
- (iii) Widow's rights: When one of the brothers dies, his widow can succeed to his share under the *Dayabhaga* but under the *Mitakshara* her rights are excluded by the right of survivorship of the brothers. The widow can then have only a right to maintenance. The position in Northern India is different.
- (iv) *Sapinda*: Heirship: The relationship of *Sapinda* arises according to *Mitakshara* by propinquity or community of blood. Under the *Dayabhaga* it arises by means of *Pinda* offerings to deceased ancestors. Spiritual benefit is the criterion for heirship under the *Dayabhaga* while consanguinity (blood relationship) is the guiding principle under the *Mitakshara*. Vijnaneswara's explanation of *sapindas* was apparently unknown to previous law givers
- (v) *Mitakshara* was departure from the *Dayabhaga* school which propounded 'acquisition of right on the demise of last owner' and inheritance based on offering of '*pindaudakakriya*' to the ancestry.
- (vi) *Mitaskhra* recognised right by birth, based on blood relationship or propinquity. *Sapinda* is interpreted like that.

*Yatrayatrasapindasabdatasyete*

*Ekasariraavayavaanvayaha*

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<sup>9</sup> Sampath, B.N., "The Joint Hindu Family- Retrospect and Propspect", *Banares Law Journal*(1) 1965  
Bhattacharya, K.K. "Joint Hindu Family," *Tagore Law Lectures* (1984-85).

Mitra, R.C., "The Law of the Joint Family Property and Partition", *Tagore Law Lectures* (1913)

However, one could see grafting of local customs and usages as crystalised by the sub-schools or derivative commentaries have found exceptions and modifications in relations to inheritance or marriage.

**Mitakshara Joint Hindu Family**

Vijnaneswara abandons the theory of connection through rice-balls offering and accepted the theory of transmission of constituent atoms.- Nila Khanta (*Samskara Mayukha*)

This institution like every other has advantages and disadvantages, but its advantages are both spiritual and secular, while disadvantages are merely secular in character.- G. Sarkar Sastry, (*Hindu Law p. 114*)

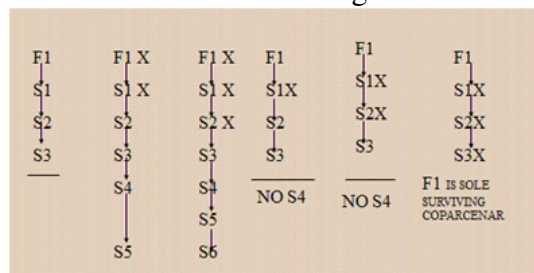
*Mitakshra* joint family is a unique and one of the cherished institutions. Often it is referred as *Avibhakta Kutumba* – even though it was contested that it may have a larger meaning or narrower one. Because it may treat whole world as a family or may be confined to wife and children.

Every Hindu Family is presumed to be a joint family. It is like a banyan tree with branches and sub branches – sons, daughters, sons’ sons, their children, their wives, widowed daughters in law etc.,. For bringing into existence common ancestor is necessary (*gothra* and *pravara*) – but for its continuation not necessary. Even illegitimate children, widowed daughter may come to its field. It is different from corporate personality or composite family. It is not juristic person-no outsider will become a member, except through marriage or adoption. Hindu Undivided Family (HUF) is used for tax and revenue purposes.

Joint food, worship, property, living together may be normal – but not essential for the presumption of joint family. There is no presumption that joint family should necessarily hold joint property.

**Coparcenary**

Coparcenary is a inner body of joint family consisting of only male persons. Father + three degrees of male lineal descendants. If first and senior most holder dies one more degree will be added. If one in the middle dies no new generation will be added.





Neither the joint family nor the coparcenary is a juristic person. *Chhotey Lal v. Jhandey Lal*, AIR 1972 All. 424 (FB). There may be joint family even when there is no coparcenary.

Thus, if at a partition A acquires some property, such property is held by a joint family of which A, his wife and his daughter are members, though as A has no son there is no coparcenary. Such property in the hands of A will have to be taxed for purposes of Wealth Tax Act as property of a joint family. *Narendranath v. Commissioner of Wealth Tax*, AIR 1970 SC 14.

Suppose A, a Hindu, marries under the Special Marriage Act, 1954, a Christian woman and a son is born to them who is brought up as a Hindu. Since the marriage was solemnised under the Special Marriage Act, A and his son are not coparceners. Still A and his son constitute a joint family. It is open to A, therefore, to claim that he should be taxed not as an individual but as a joint family. *Rosa Marie v. Wealth Tax Commissioner*, AIR 1970 Mad. 249.

### **Incidents of Coparcenary**

Coparcenary is a unique creature of Hindu law. Interest by birth<sup>10</sup> – right to survivorship – right to partition are its important features. Fluctuating interest by births and deaths of the male members is envisaged. Thus, it has Community of interest and unity of possession by the male members. The right to maintenance is inherent. Coparcener can object improper alienation by the *Karta* of the joint family.

An illegitimate son is entitled to maintenance but not as a coparcener except among *sudras*. Among *sudras* if father effects partition he may allot share to *dasiputra*. After his death he is entitled to half the share. There can be a coparcenary between a sane and insane persons though the insane person cannot ask for partition. There is a possibility of coparcenary within the coparcenary. In *Bhagwan Dayal v. Mst. Reoti Devi*, 1962 (1) SCJ 348 : AIR 1962 SC 287, the Supreme Court pointed out that some members from one branch either separately by themselves or along with some members from another branch cannot constitute a subordinate joint family. Only an entire branch can be such a coparcenary within a coparcenary. A non-Hindu can't become a coparcener. *No female member could be a coparcener under Mitakshara law for the reason that as per principle of exogamy she will be going to another family, acquiring another gotra<sup>11</sup> and if allowed the property becomes divisible which is not envisaged, but she was entitled to stridhana which was*

<sup>10</sup> Sen Gupta N.C., "Evolution of Ancient Indian Law", *Tagore Law Lectures* (1950), Published in 1953

<sup>11</sup> *Samanagotrasu, samana pravara subharyathvamevanaupadhyate.*

*liberally interpreted by Vijnaneswara.* But after Hindu Succession (Amendment) Act 2005, a daughter is on par with son for all the privileges and responsibilities.

*Marumakattayam* “Tarwad” means a joint family consisting of descendants (male and female) in the female line from a common ancestress. It may consist of two or more branches known as Thavazhies, each thavazhi, consisting of one of the female members of the tarwad and her descendants in the female line. Tarwad property is thus joint family property of the matriarchal type. It cannot be disposed of by will. The manager of the Tarwad is called *Kamavan*.

### **Difference Between Self-Acquired Property and Coparcenary Property:**

The difference between self-acquired property and coparcenary property was pointed out by the Privy Council in the *Shiva-Ganga case: Katama Nachiar v. Raja of Sivaganga*, 9 MIA 539. The East India Company made a grant of the Zamindari in 1801. In 1829 when the Zamindar died the rival claimants were the daughter of the deceased who claimed as heir and the brother’s son who claimed by survivorship. The Privy Council held that “The law of Succession follows the nature of the property”. If the property is coparcenary property the (son son’s son and son’s son’s son) will take by survivorship that in which they had during to the deceased’s lifetime, a common interest and a common possession”. Here the property was self-acquired property. *So the rules of inheritance would apply and the daughter was accordingly held to be entitled to the property. Secondly, self-acquired property may be bequeathed under a will. Coparcenary property could not be the subject-matter of a will for it was subject to the rule of survivorship. Thirdly, self-acquired property is alienable without any restriction but coparcenary property is not thus freely alienable. A gift of coparcenary property, for instance, would be void.*

It may be observed that what was coparcenary property at one time may become self-acquired property and *vice versa*. Thus, what to start with is self-acquired property may be thrown into the hotchpot and by the process of blending become coparcenary property. Suppose two brothers partition their coparcenary property. Then each holds the share allotted to him as his separate property but the moment a son is born to him the property becomes coparcenary property. The converse case of coparcenary property becoming self-acquired property is well illustrated by *Ram Devi v. Gyraasi*, ILR 1949 All. 160 (FB). A died leaving two undivided sons S1 and S2. S1 had a son S3; and S2 had a son S4. So the property was coparcenary property; subsequently S1, S2 and S4 died and S3 became the sole surviving coparcener. In the hands of S3 the property has become separate property. S3 sold the

property to the plaintiff and died. The widow of S4 claimed the property. It was held that the alienation to the plaintiff was valid as the property at the time of the alienation had become self-acquired property freely alienable in the hands of the sole surviving coparcener.

During *Dharmasutra* period and prior to that the theory of absolutism of the father over the property and the theory of coequal ownership of father and sons was predominant. Manu *smriti* was almost a transitory treatise from *sutra* period to *smriti* period and therefore an element of anomalous position was evident in his *smriti*. It is Vijnaneswara who resolved this position in his commentary on *Yagnavalkya smriti*. Jimutavahana stuck to the theory of absolutism of the father and Vijnaneswara made a marked departure. According to *Mitakshra*, the heritage (*daya*) becomes property of a person 'solely' by reason of relationship with the owner. The property was classified into *sapribandhadaya* and *apratibhandadaya*. Vijnaneswara divided the heirs into *Sagotras – Sapindas – samanodakas* for the purpose of succession

(a) *Aprathibandha* (unobstructed heritage) -the property inherited from three degrees of ancestors where in a person has birth right (b) *Sapratibandhadaya*: (Obstructed heritage) – when the property is inherited from any other person.

*Mitakshara* mentions about *Atma Bandhus* (one's own *Bandhus*) :— These are Father's sister's son: mother's sister's son and mother's brother's son. *Pitru Bandhus* (*Bandhus through father*):—These are father's father's sister's son, father's mother's sister's son and Father's mother's brother's son. And *Matru Bandhus* (*Bandhus through Mother*):— Mother's father's sister's son; Mother's mother's sister's son and Mother's mother's brother's son.

The Privy Council had to consider in *Giridharilal v. Bengal Government*, 1868 (12) MIA448, whether the Father's mother's brother is a *bandhu*. He is not in the list of enumerated *Bandhus*. But his son is included in the text among *Pitru Bandhus*. It would be anomalous to suppose that he is not a *Bandhu* while his son is a *Bandhu*. It was held that the enumeration in *Virdh Satatapa's* text is illustrative and not exhaustive.

Daughter's son also fits into the theory of particles of the same body but he would be *bhinna gotra*– the controversy is sought to be resolved through the principles of *Sapratbandadaya*

Vijnaneswara established the right of the cognates for succession on the basis of defining *sapinda*. And they are termed as *bhinna gotra sapindas*.

Agnates are preferred to cognates. As it is seen *Mitakshra* did not relate the property of the deceased, ancient or self-acquired. However it was later development. ( Ref: Shivganga case 1864).

*Mitakshra* preferred the earlier sapinda to the later sapinda. It is noted that *Mitakshara* mentions about son and grandson and then it were the subsequent texts (Mitra Misra in *viramitrodaya*) that mention about great grandson. *Mitakshra* also did not specify in that context the nature of the property whether it is ancestral or self-acquired. Again it were the courts, privy council (*Rao Balwant Kishore v. Rani Kishore*) and other texts that have clarified. Whereas Jimutavahana emphatically refutes the theory of right by birth but still able to recognise certain rights of the sons especially by putting controls over the sale of ancestral property by the father. *It is to be noticed that under Mitakshra woman was never totally excluded as such when they are in the status of mother or wife.* There is another anomalous position regarding the right of survivorship. It is because a coparcener may be a co-owner along with others but never a owner of a particular share. Then how one can arrive at the principle of taking his share by survivorship. But out of expediency this principle was developed even though it was not a part of any *smirities* or commentaries.

While codifying the Hindu Law<sup>12</sup> bringing drastic changes, the law makers did contemplate radical changes with regard to partition. But Sec. 6 of the Hindu Succession Act<sup>13</sup> in principle envisaged the retention of Mitakshra Coparcenary while conferring rights of succession to female members of Class I heirs or male members claiming through such female members. Thus, The Hindu Code Bill, afterwards the Hindu succession Act apparently conceded the principles of *Mitakshara* joint family but in fact undermined it. (Sec.6). Explanation I under Section 6 clearly indicated the importance and existence of partition. In certain northern parts of the country the female members like mother and the widow were entitled for a share if there is a partition. The question that was litigated initially was that whether these female relatives are entitled for share as Class I heir and also share in the deemed partition, as the explanation to the section clearly assumes that the partition had taken place just before the death of the propositus.

It would be noted that in certain parts of the country, in the north, the daughter becomes inferior when compared to widow and mother. The rights of mother and widow to share when partition takes place between sons and fathers emanate from Yagnavalkaya –followed by Vijñaneswara. But one would not see the reference to paternal grandmother.

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<sup>12</sup> Derrett, J. Duncan M., *Modern Hindu Law*, (1963)

<sup>13</sup> Venkatraman, “A Study of Hindu Succession Act”, II MLJ (1956)

There was divergence of opinion with regard to this but better opinion seems to be that she was entitled to such share as the partition per stripes is envisaged. Vijnaneswara brought a distinction between partition during the life time of the father and partition after the death of the father. In the former case a share is allotted to the wife of the father and in the latter to the mother of the sons affecting partition.

There was another problem of maintenance. Thus when the mother or the wife got the share, is it in lieu of maintenance or not. Has section 6 of *Hindu Succession Act* any application in this regard. *Mitakshra* did not suggest that share which a woman gets on partition is in lieu of maintenance, but under *Dayabhaga* and writers of Hindu Law and some of the decisions have assumed the same.

In *Debi Mangal Prasad v. Mahadeo Prasad* (39 IA)121 the Privy Council categorically stated that the share obtained by a female on partition is not her *stridhana* and on her death would devolve on the heirs of the last full owner. However, deviant view was expressed by some of the High Courts.

The Supreme Court in *Munnalal v. J. Kumar* (1962) as an obiter observed that it is true under *sastric* Hindu Law, the share given to a Hindu widow on partition between sons and grandsons was in lieu of her right to maintenance.

Will her share at partition coexist with the right of inheritance? *Parvathi Debi v. Bansi Dhar* (1943) the court opined that allows share at the partition.

### ***Stridhana:***

*Stridhana* is the property of a woman in which she has an absolute estate which carries with it unrestricted power of alienation and capacity to be a fresh stock of descent for purposes of inheritance. Yajnavalkya defined *Stridhana* as follows:

What is given by her father, mother, husband or brother or what is received before the nuptial fire or what is presented to her on her husband's marriage to another wife or the like (*Adya*) is denominated *Stridhana* Woman's property.

The *Mitakshara* gave a liberal interpretation to the word (*Adya* etc., or the like) for Vijnaneswara says: As indicated by the word *Adya* (and other) also property which she may have acquired by inheritance, purchase, partition, seizure or finding, are denominated by Manu and the rest *Stridhana*. The authority of the *Mitakshara* is thus clear that property inherited by a woman is her *Stridhana*. But the Privy Council treated such an estate only as a limited estate.

However, Section 14 of the *Hindu Succession Act* of 1956 (HSA) has abolished the distinction by abolishing the limited estate. Even if at the commencement of the Act a woman was having a limited estate inherited by her previously, it is now converted into her absolute property. To this extent the statutory modification is retrospective. With reference to *stridhana* she constituted fresh stock of descent and on her death it passes on to her heirs. During her life time she would alienate the property. But the regional schools recognised certain restrictions over the nature of getting the property if she is a married women, if she got it as a matter of love and affection and the property she got from strangers. In the latter case the husband has a say in the disposing of property. However, Hindu succession Act changed the position

#### **Women's Estate:**

Deviating from the view of *Mitakshara*, except in Bombay school, the property obtained by a female by inheritance from a male or female or property obtained by her on partition (in Madras School this is not possible) constituted a limited estate in the hands of Women. She cannot ordinarily alienate such property. On her death it devolves on the heirs of the last male holder of the property. She has power of management of that property. Her power of alienation was limited subject to legal necessity, benefit of the estate and for discharging indispensable religious functions. She has right to surrender the property to the reversioners (The reversioners are the persons who are entitled to take the property on the death of a limited estate-holder. They are the heirs of the last male holder). The surrender must comprise the whole estate; Surrender must be in favour of the next reversioner only; The surrender should be bonafide. Where a widow first makes a surrender and then makes an adoption, the adopted son could rely on the doctrine of relation back and divest the surrenderee under the old law: *Srinivas v. Narayan*, AIR 1954 SC 379.

#### **Legislative and judicial in roads:**

Ever since 1857 legislative interference disrupted in some form or the other the joint family. In its first decade of its existence, the Parliament by means of legislations, even though fragmented made many in roads. Judicial decisions too have contributed for the desuetude of the joint family system. The purpose of joint family system was different and it revolved round the concept of *dharma* 'Dharayateti it dharma' - to be together. That is the reason why certain restrictions were placed on the inheritance rights of daughter as she goes away from the family of her birth and the principles of exogamy was followed. *Mitakshara* was sufficiently maimed and retention of the expression is only for the sake of the those critics who wanted the perpetuation of ancient law. Gajendragadkar J., observed in *Jadhav v. Jadhav case* that the difficulties are because of piecemeal codification of Hindu Law.

### **Inroads into Joint Family by Legislation:**

- *The Hindu Women's Rights to Property Act, 1937*
- *The Hindu Succession Act, 1956*
- State Amendments to *The Hindu Succession Act, 1956*.
- Kerala abolished the Hindu joint family system in 1975 through a state legislation due to its inherent unequal nature. Andhra Pradesh (in 1985), Tamil Nadu (in 1989), Karnataka (in 1994) and Maharashtra (in 1994) adopted a reformist approach. They enacted state amendments to the HSA to give daughters coparcenary rights equal to that of sons, and to eradicate the dowry system through positive measures of empowerment. However, this benefit was exclusively for daughters who were unmarried when the amendment came into force; future marriage of the daughter did not divest her of the property rights that had already been vested in her.
- *The Hindu Succession (Amendment) Act, 2005*
- Judicial Interpretation
- Inroads by Tax laws

### **The Effect of *Hindu Women's Right to Property Act, 1937*-**

With reference to law of succession, the widows were recognised namely intestate's widow, sons widow and son's sons's widow. The widow will take equal share of the son. If more than one widow is left by the intestate all of them take one share equal to son's share. In *Mitakshara* joint family property, the widow of a deceased coparcener took the same interest in the property which her deceased husband had. Section 3(2) provided that when a male Hindu dies having undivided interest in the joint family property, his widow shall have the property, the same interest as husband had. But her rights are limited known as Hindu Women's Estate.

This in effect abrogates the right of survivorship. The Supreme Court in *Satrughan v. Sabjipuri* (1967) held that the right of the widow arose out of the statute. She may have power of partition as any other coparcener, the principle of community of interest and unity of possession till she takes her share may continue, she will not become coparcener nor is she entitled to all the rights which the husband has exercised. Thus the rule of survivorship is abrogated her relationship with other coparceners. But if she did not take partition her interest will be fluctuating, alienations made by the *Karta* for legal necessity binds her.

The Act replaced the rules of Hindu Law recognised in all provinces except in Madras where it has become obsolete, that a widow was entitled to a share when sons or step sons actually divided the estate as between themselves was not there in Madras

The Act conferred a right on the widow even if there is only son. Her share is not subject to any deductions as to *stridhana*. The Act did not touch on other members. Though the Act is repealed by the Hindu Succession Act, Section 14 of that Act has converted the Women's estate in to *stridhana* it cannot have the effect of reviving the old rights. Section 6 (a) of the General Clauses Act of 1897 confirms the same. As stated in *Munna Lal v. Raj Kumar* (1962), the previous laws are not applicable after the commencement of *Hindu Succession Act*.

Section 4 of the *Hindu Adoptions and Maintenance Act* specifically abrogates the preexisting custom or usage. Section 22(2) says that where a dependent did not get any property by testamentary or intestate succession on the death of a person, then she would be entitled for maintenance from the estate of the deceased.

Section 2 of the *Hindu Widow's Remarriage Act, 1856* though provided that the rights and interests in certain properties which a widow gets from her husband as a limited estate shall cease upon her remarriage.

It is to be noted that by virtue of Sec. 4 of the *Hindu Succession Act*, Section 14 prevails over the above section and when the Hindu Succession Act came in to force and her limited estate turns into absolute estate, her remarriage will not divest her of the property. But all the ingredients of Section must be satisfied.

The limited estate has been abolished with effect from 17th June, 1956 by s. 14 of the *Hindu Succession Act, 1956*. For s. 14 to come into play the following conditions should be fulfilled.

- i. The property should be in the possession of the Hindu female when the Act came into force. - *Possession should be lawful possession - Possession need not be actual but may be constructive.*
- ii. The Act was not intended to benefit alienees who with their eyes open purchased the property from the limited owners without justifying necessity before the Act came into force and at a time when the vendors had only a limited interest of Hindu women.
- iii. Even if at the date of the coming into force of the Act of 1956 a trespasser is in possession, provided he has not acquired a prescriptive title, the widow has still



legal possession or right to possession, coupled with her limited ownership and so she may be said to be in “possession”. Where the property acquired by a female is created under a will under Sec. 30 of the Hindu Succession Act and a restricted estate is provided under the will in favour of a woman, she would be entitled only to a limited estate under sub-section (2) of Sec.14 and she would not get absolute rights under Sec. 14 (1). The power to dispose of the property under a will under s. 30 includes power to create only limited estate in favour of a female.

- iv. Acquisition of property cannot have any connection or relation to any of the antecedent right or interest in the property of the female Hindu and the acquisition is conditioned by a restrictive clause that she will not become absolute owner but will be governed by the restrictive clauses mentioned in the gift, will, instrument, decree or order of a civil court or an award.

The distinction between a male and a female heir under the rules of Hindu Law has been done away with by the Hindu Succession Act, 1956. The Hindu Succession Act, 1956 abolishes the distinction between *Stridhana* and Hindu Woman’s estate and makes the Hindu woman full owner of all the property possessed by her. Where a Hindu female was given a specifically life estate only in lieu of maintenance under a family arrangement, the court held that it will come under s. 14 (2) and her limited estate would not be converted into an absolute estate by virtue of s. 14 (1).

#### ***The Hindu Succession (Amendment) Act, 2005 (39 of 2005)***

*The Hindu Succession (Amendment) Act, 2005 (39 of 2005)* came into force from 9th September, 2005. This is based on 174<sup>th</sup> Report of the Law Commission (2000). Hindu Code Bill as it stood originally sought to abolish *Mitakshara* Coparcenary. This Amendment Act is sought to remove gender discriminatory provisions in the Hindu Succession Act, 1956. The daughter of a coparcener by birth becomes a coparcener in her own right in the same manner as the son; The daughter has the same rights in the coparcenary property as she would have had if she had been a son; The daughter shall be subject to the same liability in the said coparcenary property as that of a son; and any reference to a Hindu *Mitakshara* coparceners shall be deemed to include a reference to a daughter of a coparcener; The daughter is allotted the same share as is allotted to a son; The share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter. The share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter shall be allotted to the child of such pre-deceased child of

the pre-deceased son or a pre-deceased daughter. It is also provided that after the commencement of the Amendment Act no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt.; It also removes Section 23 and 24 of *Hindu Succession Act*.

As far as partition of a Hindu family is concerned, if the same is effected before December 20, 2004 and if the partition is registered under the provisions of Registration Act, 1908, then such partition shall not be affected by amended law. In section 30 of the principal Act, for the words “disposed of by him”, the words “disposed of by him or by her” are substituted. On and from the commencement of the Hindu Succession (Amendment) Act, 2005, there is equal share in the agricultural property also. There is no distinction between married and unmarried ( debates in the parliament confirm the same). This distinction was possible with state laws prior to this amendment. (*Sugalabai v. Gundappa A. Maradi and Ors* {ILR 2007 KAR 4790:2008 (2) Kar LJ 406}

The new Section 6 provides for parity of rights in the coparcenary property among sons and daughters of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son. (*Ganduri Koteswaramma & Anr. v. Chakiri Yanadi* 2011 (11) SCALE 467 )

However, it is to be noted that the amendment has come at a time the joint family/ ancestral property are becoming irrelevant. Mother and wife in fact are affected if it were to be in Madras School.No limitation over will.

Prior to *Vineeta Sharma v. Rakesh Sharma* (2020), In *Prakash & Others v. Phulavati & Others* delivered in 2016 by a division bench, the Supreme Court introduced two basic criteria for applying the 2005 amendment to daughters. First, it was held that a daughter cannot reopen a partition that took place prior to December 20, 2004. Second, the amended section would apply to the daughter only if her father was alive on the date when the amendment came into force, that is, September 9, 2005. In the legislation, there is no express mention of

this second condition of “the living daughter of a living coparcener”. The court in *Prakash* case observed that if the father who was a coparcener was not alive on the date that the amendment came into force, Section 6 as it existed prior to the 2005 amendment would apply. By this law, there would be a fictional partition of the coparcenary property upon his death, his share ascertained and that property would be distributed as per the rules of intestate succession.

However, a daughter’s eligibility to be a coparcener would remain only so long as there is no partition of the joint family property. Hence a fictional partition due to father’s death meant that the daughter could not be a coparcener under Section 6. This rationale was relied upon in a 2018 judgment of the Supreme Court in *Mangammal v. T. B. Raju*.

Another division bench of the Supreme Court delivered a contradictory judgment in *Danamma & Others v. Amar & Others*, in 2018. The judgment applied the amended Section 6 to give the daughter equal coparcenary rights although her father died in 2001, prior to the 2005 amendment. Here, the court noted that the amended Section 6 stipulates that “on and from the commencement of the amended Act of 2005”, the daughter of a coparcener shall by birth become a coparcener in her own right, in the same manner as a son.”

Thus, it was the factum of birth of the daughter that gave her coparcenary right, irrespective of when she was born, and that devolution of property is a later stage which occurs as a consequence of death of a coparcener.

On August 11, the Supreme Court bench of Justices Arun Mishra, S. Abdul Nazeer and M.R. Shah, in its judgment in *Vineeta Sharma v. Rakesh Sharma*, held that a daughter is a coparcener by birth and that whether the father had died prior to or was alive on the date of the amendment was not relevant. The Supreme Court overruled the *Prakash* judgment in its entirety and partially overruled *Danamma*. It said that since the daughter acquired the coparcenary right by birth, it was not necessary for the father coparcener to be living as on September 9, 2005. The court observed that the words prospective, retrospective and retroactive differ in their meanings. A statute or statutory provision/amendment that has prospective application creates new rights and obligations from the date it comes into force.

It added, conversely, retrospective effect means that the statutory provisions operate backwards and take away or impair rights that were already vested in a person, or attach a new disability, or impose a new obligation or duty on past transactions and actions. Retroactive statute or provision is one that applies subsequent to its enactment, but its operation or

application is based upon status or character that has arisen or been acquired prior to it, drawn from antecedent events.

The court has explained that the 2005 amendment to Section 6 of the HSA gives a right to daughters, by birth, in a Hindu coparcenary. The right can be claimed prospectively, on and from the date of the amendment in 2005. However, it is based on the birth of the daughter which is an antecedent event. Hence, the court clarified that the 2005 amendment has a retroactive effect.

### **Is there any difference between HUF and JF?**

There appears slight difference but not material. For the purpose Tax Laws HUF is an assessable entity. Under Income Tax the HUF is included in the definition of person. As such HUF will enjoy all benefits that an individual has. Similarly under Wealth Tax Act wealth is chargeable to the tax in respect of the net wealth of any HUF. HUF is not recognised in Kerala in view of Kerala Joint Family System (abolition) Act, 1975. A member of the HUF need not be resident of India so long as the control and management lies in India. It is not where *Karta* or a member resides, but the test is where the control and management is situated. The Word Family in HUF refers to group of persons; as such a single person cannot constitute a HUF. Even a married daughter continues to be a coparcener of her parental family – As such she can claim Partition. A daughter in law is only a member of HUF as such she cannot claim partition. Partial partition is not recognised for the purpose of taxation under Section 171 of the IT Act. The HUF which was hitherto assessed in that capacity has to prefer a claim to the assessing officer that all the HUF properties were partitioned. There upon the assessing officer will cause an inquiry in to the claim giving notice to all the members of HUF – on satisfaction of the claim, he will record the findings that on a particular day there was total partition of HUF. For recognition under Hindu law actual partition by metes and bounds immediately is not necessary for recognition of partition under tax law, partition by metes and bounds is essential. There is notional or deemed partition on the death of a coparcener. A child born to a Hindu and non- Hindu couple, and not brought up as a Hindu cannot be member of HUF. For constituting HUF no joint family property is required. Gift can also be source of HUF property. There is a possibility of a coparcener being coparcener of two families. Blending is a power given to a coparcener – since females are not coparceners they cannot blend the property – since daughter being a coparcener she can blend the property – however for tax purposes the property blended is considered to be the property of the transferor. After 2005, a Daughter can become member of HUF both in matrimonial home

and parental home. Supreme Court approvingly stated thus: “A son is a son until he gets a wife. A daughter is a daughter throughout her life”.

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## **Protection Against Unjust Enrichment and Undeserved Misery as the Essence of Property Right Jurisprudence in *Mitakshara*\***

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**-P. Ishwara Bhat\*\***

### **Introduction**

Property relations fundamentally shape a society, while the concept of justice endeavours to mould both property and personal relationship. The task of rendering to each person his due is a respectable agenda in economic processes and in distribution of their outputs. It enhances the moral worthiness of ownership of property. In a predominantly agrarian economy as that of ancient India and in a traditional society with its unique corporate institutions as that of joint family and associations, property had to perform the social security functions and eschew injustice. In addition to looking to the justifications for entitlement to property, a focus on the function that property performs in mitigating the injustices and suffering is a socially worthy task.

The above distinct approach is the hallmark of property jurisprudence in Vijnaneshwara's *Mitakshara*, which is an authoritative commentary written in 11<sup>th</sup> century A.D. on *Yajnavalkya Smriti*. It responded to the prevalent social problems and post Smriti experiences, and developed the approach of justice to property right. Its position as prominent law of the land applicable to whole of India except West Bengal is justifiably owing to the fact that it could build up satisfactory legal principles based on justice and reason rather than on power relations.

When we read it as a whole and as a part of Hindu philosophy<sup>1</sup>, as it should be, we get an impression that the western approaches of looking to property only as the reward for

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\*\* Vice Chancellor, Karnataka State Law University, Hubballi

<sup>1</sup> I.S.Pawate, *Daya-Vibhaga: Or the Individualization of Communal Property and Communalization of Individual Property in Mitakshara Law*, 2<sup>nd</sup> Ed. (Dharwar: Karnatak University, 1975) p.i.

one's labour, or as an outcome of governmental recognition or as reflection of personality or as instrument of oppression fall far short of a comprehensive approach that is required to project and uphold indigenous collectivism. In the modern context, percolation of the values of dignified life, and economic and social justice to the tissues of family life<sup>2</sup> can be supported, not only by application of constitutional principles, but also by finding their doctrinal roots in *Mitakshara*. This paper is an attempt to identify *Mitakshara*'s core approach to property, its basis, use, limits, the method of individual realization and measures of obligations as reflected in its detailed but compact scheme<sup>3</sup>, and evaluate its social significance and present day relevance.

### **The Concept**

Unjust enrichment and undeserved misery are both independent and interconnected situations of imbalances in economic relations. Whereas the former means getting economic benefit to oneself at the cost of another in contractual or property relations, the latter connotes a helpless situation arising from lack of access to resources without justifications for the same. The latter is not exactly opposite of the former. For example, the pathetic situation of women, children and slaves arising from disregard, misconduct and irresponsible act on the part of *karta* (manager or head of the family) or Hindu coparcener brings undeserved misery; but it may not always involve unjust enrichment of the male. However, undeserved serious loss as a counterpart to unjust enrichment of another may also bring misery. Avoidance of misery involves some overt approach to assist the weak by obligating the person who has moral if not legal responsibility to assist. Although many types of miseries deserve to be properly tackled through benevolent state action<sup>4</sup>, misery in the context of family life or contractual or property relations needs to be resolved by imposition of personal obligations upon the concerned individuals. As will be discussed in the paper, it is in wrestling against unjust enrichments in contractual relations, adverse possession or enjoyment of property that *Mitakshara* established clear and sound principles, which go beyond the common law rule against unjust enrichment.

In English common law, the rule against unjust enrichment was developed as a principle of equity and good conscience in the realm of quasi contract and in the law of restitution as

<sup>2</sup> Such development has taken place in *Madhu Kishwar v. State of Bihar*, AIR 1995 SC 1864; *Daniel Latifi v. Union of India*, AIR 2002 SC 3958.

<sup>3</sup> Etymologically *Mitakshara* means compact or precise code.

<sup>4</sup> Manu VIII. 28 ordains that the king shall take care of and protect the property of women who have none to look after them, if they be childless, widows or whose husbands have gone abroad and yet remain loyal to their husbands, or who are afflicted with disease or have no family.

heterogeneous collection of civil actions. Mansfield L.J. attempted to give broad doctrinal base to this branch of law in equity, natural justice and *aequum et bonum* rather than allowing to sink it in the marsh of technicalities<sup>5</sup>. Winfield recognizes quasi-contractual liability as involving inter party relationship to avoid unjust enrichment and not exclusively referable to any specific head of law.<sup>6</sup> Law of Restitution is restated to mean that a person holding title to property is under an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it<sup>7</sup>. In French law, the principle *acteo de in rem verso* is founded on the principle of equity and forbids one man to enrich at the expense of another.<sup>8</sup> The western concept is limited to situations of law of contracts and is influenced by equity. It has no larger aim of avoiding misery within the family and in the collective life. Further, its evolution in technicalities of law rather than in sound jurisprudence of justice has stunted its growth as a general principle. But the *Mitakshara* approach, as will be explained, forms an overwhelming undercurrent that influenced vast area of property right jurisprudence towards a comfortable legal position. In order to know its reach and implications, it is first appropriate to know its philosophical background or objectives in ancient India and examine whether the *Mitakshara* approach transcends some of the property theories such as labour theory, relationship theory, social security theory and religion theory, and whether suggests about more fundamental basis for property right in justice itself.

Property has a facet of social interest. Some of the essential social interests to be recognized in any civilized system for promoting general security are protection of individual interests in personality, in domestic relations and in interest of substance, as Roscoe Pound views.<sup>9</sup> Interests of personality like security of physical person, privacy, honour, reputation and religious belief can be realized only through some access to property. Right to dignified life is the basis for claims for maintenance in order to have satisfaction of these interests. Interests in domestic relations get protected when the interests of parents, children, husbands, wives and other dependents are satisfactorily safeguarded. According to Julius Stone, indissolubility of marital tie brings right of support, incidental to protection of the family.<sup>10</sup>

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<sup>5</sup> *Moses v. Macfarlan*, 1760 2Burr.1005

<sup>6</sup> P.H.Winfield, 54 LQR (1938) 529. He regards mixing of common law and equity as confusing.

<sup>7</sup> G.W.Paton, *A Textbook of Jurisprudence*, 4<sup>th</sup> Ed. London: Oxford, ELBS, 1972, p.485

<sup>8</sup> Ibid

<sup>9</sup> Roscoe Pound, 'A Survey of Social Interests' (1943-44) 57 *Harv. L.rev.* 1.

<sup>10</sup> Julius Stone, *Province and Function of Law* (Sydney: Associated General Publications Ltd., ) 565-6.



Interests of substance include property, promised advantages, advantageous relations with others, freedom of association and continuity of employment.

Regarding property, the western jurisprudence treated power of control over it as the basis without bothering about moral justifications.<sup>11</sup> Assurance of promised advantages in case of injurious reliance is another principle that law honours to avoid undeserved loss.<sup>12</sup> Collective interests involved in the association's property also demand abstinence from fraud, personal profit and other misconduct. Fair wages to labour and protection of employer from losses arising from labourer's work are the interests involved in continuity in employment.<sup>13</sup> On the whole, the emphasis on protection of legitimate expectations is central to property jurisprudence in order to conform to the social interests. While these core principles are traceable in *Mitakshara* also, unlike the Western model, moral expectation about just relations in economic or property matters is a prominent idea put forward by Vijnaneshwara as distinct from earlier *Smritikaras*. That was a logical outcome of reflection upon Hindu philosophy of social obligations embedded in paramourty of dharma. This provokes us to search for property's basis in philosophy.

### **The philosophical roots of property**

Subordination of economic processes (*artha*) and desires (*kama*) to just law/justice (*dharma*) is one of the prominent approaches of Hindu philosophy for attaining salvation (*moksha*).<sup>14</sup> It was laid down in *Yajurveda* (40<sup>th</sup> Ch) and reiterated in *Ishopanishad* that since God is pervaded in all the subjects of this world, one should enjoy all objects with detachment without coveting the wealth of others.<sup>15</sup> Sacrifice (which includes work) is the basis of entitlement to *svatva* or property. One should earn with hundred hands by fair means to perform *dana* with thousand hands<sup>16</sup>. *Taittiriyanishad* appealed, "Ensure an abundance of food all around. Do not turn away any one who comes seeking your hospitality. This is the inviolable discipline of life".<sup>17</sup> *Rigveda* prescribes moral and legal duty upon the individual to feed the starving and says, "Eating for himself alone, he becomes the partaker of

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<sup>11</sup> Ibid. 527-8.

<sup>12</sup> Ibid, 537-8.

<sup>13</sup> Ibid. 558.

<sup>14</sup> Manu II 224 & IV 176; Yajnavalkya I-115; Gautama 221.

<sup>15</sup> *Ishopanishad* Shloka 1

<sup>16</sup> *Atharva veda* 3-2, 4-5; also see S.K.Purohit, *Ancient Indian Legal Philosophy* (New Dehi: Deep & Deep, 1994) p.212-3

<sup>17</sup> *Taittiriyanishad*

sin alone”.<sup>18</sup> Non-theft (*astheya*) and non-acceptance of another’s property (*aparigraha*) were preached as important moral precepts.<sup>19</sup> Introduction of *karma* philosophy into one’s entitlement to property not only ordained to eschew jealousy but also insisted on good work.<sup>20</sup> Within the collective framework of family, duty to maintain all the family members signified social security factors emanating from property.

*Smriti* literature, in addition to continuing the above religious prescriptions and moral principles, elaborated the methods of excluding unfair property relations. *Yajnavalkya Smriti* is an outstanding religious/legal text that reflected these values. Vijnaneshara, an erudite pragmatist who responded to the local customs and practices, made a rational analysis of the concept of property in this way: First, about acquisition of property, he tells, “Property is a thing connected to one’s self. (*Swamatmasambandhi dravyam*).”<sup>21</sup> The act of the acquirer like acceptance of friendly donation or thing found or gift made by the virtuous person; or payment of price in case of purchase; or conquest of enemy and seizure of his property in war; or lending of capital for interest; or performance of work and acceptance of wage for the same linked him to the thing acquired.<sup>22</sup> After establishing that property is product of action, quite importantly, he viewed property as an instrument for action, which has for its purpose a *laukika*, or secular thing (*laukikartha kriyasadhanatwam*).<sup>23</sup> By saying that *svatva* is *laukika* or temporal and not the one that can be perceived only by means of the *shastras* (*shastraika samadhigamya*), the advantage of property has flown to benefit women, widows and children.<sup>24</sup> This action-oriented concept of property visualized about good things and healthy consequences emerging from property’s use and allocation within the family, in contractual relations and in endowments.

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<sup>18</sup> Rig Veda; also see Atharveda 3-30-6 to the effect: “O men your drinking places be common. You take food together I bind you by the bond of love...O men, make you men, who enjoy things together, and become of one mind and take food together”

<sup>19</sup> Manu X-63, VI-92; Mahabharat 19-62.1

<sup>20</sup> Bhirthhari Nitisataka: “*yaddhathraa nijabhaalapattalikhitam stokam mahadva dhanam...*” “Whether little or plenty, whatever property is blessed by the Lord will be got by human being even in desert. He will not get more than what is ordained even by living on the golden mountain, Meru. Hence, be bold. Don’t be humble with the rich in vain. Whether in well or in sea, a pitcher can hold only what it can contain”

<sup>21</sup> Yaj.II.168 cited by IS Pawate, *supra* n.1 p.85.

<sup>22</sup> I.S. Pawate, *supra* n.1 pp.240-2.

<sup>23</sup> Ibid.231-2.

<sup>24</sup> Ibid., 229.

Thus, both in the origin and use, property had to conform to social ethics of good action and fairness. Vijnaneshwara, while propounding this approach, committed himself to the proposition that the ultimate source of information on the validity of acquisition is popular recognition.<sup>25</sup> Finding the principles of justice and fair play in popular recognition was within the acumen of this great jurist. Certainly it was not a mechanical codification of the past law and practice, as new elements of justice were introduced to support the growth of law. The central principle that he developed on the concept of property had foundation in justice, which got manifested in various specific rules.

Let us probe into the justification or basis of property in *Mitakshara* by asking whether any of the following or their combination viz., labour, birth, religion, recognition of legitimate expectation, means of social security, utility, class relations or justice served as *raison d'etre* for property.

Since the social site for property's functioning was family or community life, it is appropriate to have a glance at collectivism that flourished in these institutions, as an initial exercise. *Rigveda* inspired the members of a family with unity of mind and heart: "Like-heartedness, like-mindedness, non-hostility do I make for you; do ye show affection, the one towards the other, as the inviolable cow towards her calf when born. Be the son submissive to the father, like-minded with the mother; let the wife speak to the husband words full of honey, beneficent. Let not brother hate brother, nor sister sister; becoming accordant of like courses, speak ye words auspiciously. Your drinking be the same, in common your share of food; in the same harness do I join together; worship ye Agni united, like the spokes about a nave."<sup>26</sup> Joint family's foundation in natural love and affection<sup>27</sup> and the practice of looking to one's life as a part of the life of others made the members to gather rational, emotional and physical support in their life.

The widening circles of social organizations like guilds, *shrenis*, village community and state provided additional forum for collective economic activities. Property right got purged in the warmth of collectivism and assumed functional importance of service. Because of collectivity of ownership, or property owner's inextricable relations with others in connection with property, the factors of trust, good faith and sincerity stood against unjust enrichment. Now, let us turn to specific theories.

<sup>25</sup> J.Duncan M.Derret, *Religion, Law and the State in India* (London: Faber and Faber, 1968) p.138

<sup>26</sup> Atharva Veda III.30. 1-3, 6-7.

<sup>27</sup> B.N.Sampath, 'The Joint Hindu Family-Retrospect and Prospect' *Banaras Law Journal*, 35 at pp. 47-8.

**Labour theory of property** primarily believes that property can be claimable on the exclusive basis of one's work, which produced that property.<sup>28</sup> This is too individualistic to suit to the collectivity of joint Hindu family. For the aged, the ill ridden or the child, work could not be insisted as the source of entitlement to sustenance as a matter of humanist policy. While *Mitakshara* adheres to this collectivist approach, and goes to the extent of denying *jyeshthabhaga* right of the eldest son on this basis<sup>29</sup>, it recognizes the role of labour at least in following contexts for adequate rewards.

First, when the acquisition is without detriment to the ancestral property (*pitrdravavyavirodhena yadanyat svayamarjitam*) and the acquisition is through the labour of the acquirer, it becomes the acquirer's self acquired property, which need not be shared with other coparceners.<sup>30</sup> Deviating from Brihaspati's text and amplifying Manu's dictum, Vijnaneshwara interprets *Yajnavalkya Smriti* on the point favouring individualization of self-acquisition.<sup>31</sup> He agrees with Katyayana for the proposition that the gains of learning (*vidyadhana*) which are impartible are only those gains, which are directly gained by the proof or display of superiority in learning and specified in the text when the learning itself was not acquired at the expense of the family.<sup>32</sup> Thus, what was exclusively available to him was only the fruit of his own labour, pure and simple. If it had some basis in family property, family's entitlement came to the forefront. Since modes of self-acquisition were exceptions, the tilt in favour of collectivism was obvious. Protection against unjust enrichment is discernible in this balancing task, even while recognizing worker's right.

Second, in the sphere of master-servant relationship the dictum that 'wages proportionate to the work done must be paid' had reflected the principle against unjust enrichment. Commenting on *Yajnavalkya Smriti* (II-195), *Mitakshara* lays down that when a hired servant, who was appointed to sell commodity at proper place and time fails to do so or undersells it, the master may pay wage at his discretion and not the entire wage. On the other hand, when more profits were made by reason of special knowledge of the worker, then the

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<sup>28</sup> John Locke propounded this theory in England in 17<sup>th</sup> century. John Locke, *Second Treatise on Civil Government* (Prometheus Book 1986) p.26.

<sup>29</sup> Mit. On Yaj. II.265.

<sup>30</sup> Mit. On Yaj. II.108.

<sup>31</sup> Mit. On. Yaj. II.118, 119. Srinivasa Iyengar (Ed.), *Mayne's Hindu Law and Usages* (1938) pp.365-6.

<sup>32</sup> Katyayana 867-873; Mit. On Yaj.II-118-119; P.V.Kane, *History of Dharmasastra Vol.III* (Poona: Bhandarkar Oriental Research Institute, 1973) pp.582-4; P.Ishwara Bhat, 'A Critical Appraisal of the Hindu Gains of Learning Act', (27) JILI, 1985, p.578; also see J.R.Gharpure, *Yajnavalkya Smriti*, Vol.II, 2<sup>nd</sup> Ed.(Bombay: Gharpure, 1939) pp.1015-6.

master shall pay an amount exceeding that fixed before to the labourer. Elaborating the Yajnavalkya principle (II-196) 'as much a man does, so much will be his wages', *Mitakshara* points out that when wages have been fixed for single task, which was undertaken but not accomplished due to illness or other impediment, then, in proportion to the work done by the labourer as determined by the arbitrator, wages shall be paid.<sup>33</sup>

Third, the question of ownership over the property acquired by the labour of woman, son and slave has been responded to some extent by *Mitakshara* by an approach avoiding unjust enrichment. Compared to *Manu Smriti* and other texts which regarded women, sons and slaves as not free, and hence not entitled to their earnings, the *Mitakshara* approach was radical, looked at the time and circumstances prevalent during its compilation. It regards that lack of freedom on the part of woman did not come in the way of her acquiring property (*tadastu paratantryam dhanasweekare tu ko virodha*).<sup>34</sup> It gives liberal interpretation of stridhana by elaborating the scope of the word 'adya' to include in it various types of woman's property other than six classes of gifts made to her.<sup>35</sup> Katyayana, whose analysis of *stridhana* is approvingly cited in *Mitakshara*, said, "Wealth which is earned by mechanical arts, or which is received through affection (*pritya*) from any other but her kindred, is subject to her husband's dominion. The rest is pronounced to be her *stridhana*."<sup>36</sup> This meant that wealth earned by application of intellectual ability or business skill by a woman was her property. Husband's dominion over earning from mechanical art was due to his facilitative and regulative role. Dominion did not mean total ownership but only control on wife's right of disposal, as laid down in *Daya bhaga*.<sup>37</sup> In other words, there was hierarchy of ownership as I.S.Pawate viewed.<sup>38</sup> *Smritichandrika* differed from *Mitakshara* and stated, "A woman's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her *stridhana*. She herself has exclusive right to enjoy it."<sup>39</sup> While accrual of interest or profit is included in *labha* by *Vyavahara Mayukha*, *Viramitrodaya* includes in it presents received for pleasing Gowri.<sup>40</sup> J.D.Mayne observed, "The term '*labha*' would include the earnings of a woman in a profession or trade

<sup>33</sup> M.Rama Jois, *Legal and Constitutional History of India*, vol I (Bombay: NM Tripathi, 1984) pp. 192-4.

<sup>34</sup> Mit on Yajnavalkya, II-135-6.

<sup>35</sup> Mit. On Yaj. II. 115 and 123.

<sup>36</sup> Katyayana 895-902.

<sup>37</sup> *Dayabhaga* IV.1.6

<sup>38</sup> *Supra* n.1 p. 29-33.

<sup>39</sup> *Smritichandrika*, IX. 2, 15

<sup>40</sup> *Vyavahara Mayukha*, IV.x.3; *Viramitrodaya*, V.i.3.

or other employment.”<sup>41</sup> This analysis although apparently supports labour theory of property, its delineation of the boundary of *stridhana* keeps the family interests intact by avoiding unjust profit or loss.

*Mitakshara* recognizes son’s position as coparcener by birth. Deviating from the Manu text that whatever is earned by son wholly belongs to father, it gives an opportunity to the son to have self-acquisition, provided it satisfies the test of *pitrdravvyavirodhena*.<sup>42</sup> Again, this avoids undeserved loss.

Regarding the position of slave, *Mitakshara* following Yajnavalkya adopts a radical approach that the sale of a person to become a slave, after having overpowered him by force, is illegal.<sup>43</sup> The buyer has no right to own him. He must release him and, if failed, it is the duty of the king to get him released. Further, if any slave happens to save his master’s life from peril, he shall not only be released from slavery but shall also be entitled to share in his master’s property as if he were his son<sup>44</sup>. Perhaps this influenced *Smritichandrika* to observe that *nija svarupa* or natural condition of man was freedom and that slavery was an unnatural or adventitious condition.<sup>45</sup> While in continuing the practice of slavery, Vijñaneshara had upon him the burden of ages and pressures of social life, his sympathy to slaves as reflected in the text was a trendsetter for humane treatment of slaves. In *vachana* literature that emerged in the same geographical area of Vijñaneshwara’s life and activity in the subsequent century, there was a clear policy of rejecting the practice of slavery.<sup>46</sup> Going beyond condemning slavery, Basaveshwara preached the sound philosophy of *kayaka* that comprised work, purity of means, non-injury, application of one’s own manual or mental labour, surrender of surplus of income for social good, and temporal and spiritual growth.<sup>47</sup>

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<sup>41</sup> Supra n.31, p.749.

<sup>42</sup> Mit. On Yaj. II.108

<sup>43</sup> Mit. On Yaj. II.182; M.rama Jois, supra n. pp.306-7.

<sup>44</sup> Mit. On Yaj. II.182

<sup>45</sup> *Smritichandrika* II.201; This can be compared to the proposition in an English case of 18<sup>th</sup> century, *Somerset v. Stewart* (1772)Lofft. 1.; 20 St Tr 1 to the effect that the air of freedom is too pure to be breathed by a slave, and hence slaves shall be set free.

<sup>46</sup> According to Basaveshwara a doing, donating devotee deserved appreciation because almighty was the owner of all property earned through good work. He said, “If I lend myself, my treasure, my wealth for the business of usury and store it in the corners of my house, it is not my wealth, it is a curse.” Cited with translation from Kannada by Siddayya Puranik, *Human Values in Vachana Literature*, (Bangalore: Gandhi Centre, Bharatiya Vidya Bhavan, 1997) pp29-33.

<sup>47</sup> Ibid.

On the whole, labour theory of property was not espoused in *Mitakshara* as the exclusive approach to property; but it was a tool in the larger concept of protection against unjust enrichment. It was extension of pro-labour approach that could usher in the sublime philosophy of *kayaka*.

### ***Relationship as the basis of property***

Relationship with the owner of property because of birth, adoption or marriage constitutes a basis for claiming property or physical support from the same. In any status conscious traditional society<sup>48</sup>, birth is an important factor of entitlement. The Hindu philosophy believed that birth not only continued the progeny and extended the personality of parents in a new human life, but also opened up opportunity for religious work and salvation.<sup>49</sup> Any addition of new member of family by marriage or adoption is also analogous to birth. Vijnaneshwara uses the term birth to indicate passing into a new state.<sup>50</sup> Accordingly, birth of fatherhood and sonship occur simultaneously just like relation of wife and husband is born out of marriage. *Mitakshara* reasons, “Acquisition is the act of the acquirer; and one, who has the state of ownership dependent on acquisition, is the acquirer. Is not birth, therefore, as the act of the son, rightly deemed his mode of acquisition? And have not sons, consequently, a proprietary right, during their father’s life, and not by reason of his demise?”<sup>51</sup> In a similar fashion, the entitlement of daughter in the property of father and in the *stridhana* of mother; that of wife in the property of husband or that of husband in the property of husband is justified on the basis of relation.<sup>52</sup> Marital relation of a wife with husband connects her to father-in-law’s property. Relationship of a disciple (*shisya*) with his teacher (*guru*) may also bring proprietary right to the disciple. Thus, relations constitute source of property.

Linking of property to familial relations provides sound economic base for healthy family life. It brings emotional unity and builds cohesion with strong fibres of mutual help. Relations espouse expectations, arouse affection and demand positive attitude for cooperation. By

<sup>48</sup> For example ancient Greek, Roman and Egyptian civilizations and medieval Europe

<sup>49</sup> Manu IX. 96; I.S.Pawate, supra n.1, p.279; also note the belief that *aputrasya gatirnasti* referred to by all the Smriti commentators. Also see Kausheetaki Aranyaka Nirukta. Kannada poets like Devakavi, Kumaravyasa and Ponna have referred to the same proposition. See Kanthi Rao, Bharatiya Nyaya Paddhati (Kannada) 2<sup>nd</sup> ed. Mysore: IKS, University of Mysore, 1985, p. 158.

<sup>50</sup> “The body is but a blossoming forth of our own act.” Yoga Vasishtha, Nirvana Prakarana, Uttarardha II.19; Yajnavalkya II.69 and 72. Birth occurs not out of volition of the born, but out of the pre ordained relation of the past (*rinanubandha rupena pati patni sutalaya-Subhashita*).

<sup>51</sup> I.S. Pawate, Supra n.1. p.87-88.

<sup>52</sup> Ibid., 88-89.

holding that relationship itself is birth and vice versa, *Mitakshara* philosophizes the intimacy of relations towards ideals of natural love and affection. The cementing force of economic interest makes the relations strong stripping off bitter feelings amidst family members. Since the collectivist atmosphere of family provides access to basic necessities of life, care and support, in reality, linking property to relations is veritable means of avoiding misery that befalls undeservedly. Extension of relationship theory by *Mitakshara* to extra family situations has benefited concubines (*avaruddha stri, bhujisya*)<sup>53</sup> and illegitimate children.<sup>54</sup>

### ***Property as the means of social security***

One prominent use of property is that it satisfies the requirements of basic necessities of life.<sup>55</sup> The very first example that Vijnaneshwara gives for secular property is rice. Security of food, dwelling house and means of living to the family members in the framework of family and community life is given appropriate attention in *Mitakshara*.<sup>56</sup> Protection of the corpus of family property and residence as against various types of abuses by any of the members and making them available for decent subsistence of all the members are admirable legal policies for healthy family life.

Matching with the superior position of *karta* in joint Hindu family, there are his definite obligations to uphold family benefit. Although he has final powers about family matters, he cannot alienate family property except for legal necessity and family benefit, which includes support of the family and relief from distress (*apathkale*).<sup>57</sup> Birth right of coparceners confer upon them right to be maintained out of family property and the right to claim partition. While they are the co-owners of family property in the eye of law, they cannot alienate family property except during the season of distress and for the sake of the family nor can they bind the family with *avyavaharika* debt.<sup>58</sup> Equal burden upon all the coparceners to bear the burden of family debt puts no single person into greater disadvantageous position exclusively, thus reflecting the application of principle against unjust enrichment.<sup>59</sup> The recognition of rights of unborn coparceners over the family property shows the extent of concern for fair

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<sup>53</sup> Mit. II.1.27-8. J.D. Mayne, supra n.31 p. 823.

<sup>54</sup> Mit. I,xii,3. J.D. Mayne, supra n.31 p. 822.

<sup>55</sup> P. Ishwara Bhat, 'Tracing right to property in the bosom of right to life and personal liberty' (38) *J.I.L.I.*, 1996, P.13.

<sup>56</sup> I.S. Pawate, supra n.1 pp.214-5

<sup>57</sup> Mit. I.1, 28,29.

<sup>58</sup> J.D. Mayne, supra n. 31 p.412

<sup>59</sup> Ibid. 429-431.



and sound economic atmosphere in which coparceners are to lead their life. Vijnaneshwara says, “They who are born, and they who are yet begotten, and they who are still in the womb, require the means of support. No gift or sale should therefore be made (adverse to their interests).”<sup>60</sup> The *Mitakshara* principles that condemn fraud at partition, that enable reopening of partition to share concealed wealth, that give scope for partial separation (separation of few members only), and reunion of partitioned coparceners and father clearly reflect protection against unjust enrichment.<sup>61</sup>

The rights of female members in the family property at partition were given a benevolent treatment in *Mitakshara*. In this respect, Vijnaneshwara deviated from the earlier and later lawgivers who were not that sympathetic to the interests of women. Regarding wife’s and mother’s share in the ancestral property, *Mitakshara* lays down, “When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband or by their father-in-law, must be made participants of shares equal to those of sons; . . . or if any (separate property) had been given, let him assign the half.”<sup>62</sup> On widowed mother’s share in family property, it provides, “Of heirs separating after the decease of father, the mother shall take a share equal to that of a son; provided no separate property had been given to her. But if any had been received by her, she is entitled to half a share.”<sup>63</sup> But in South India, owing to the influence of *Smritichandrika* and *Saraswativilasa*, which have equated the female members’ right in the family property to maintenance, the *Mitakshara* rule on this matter suffered desuetude.<sup>64</sup> This is an unfortunate development as discussed by the present author in another context.<sup>65</sup> Following Yajnavalkya, *Mitakshara* requires that brothers should have their unmarried sisters married at their expenses, giving them a quarter of their own share.<sup>66</sup> The concern of Vijnaneshwara to avoid misery on the part of women stands against the patriarchic prejudices of the Hindu jurisprudence.

Maintenance of male members of the family, their wives and their children by using family property is a legal obligation of *karta* of joint Hindu family in *Mitakshara*. But, “Where

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<sup>60</sup> Mit.I.1, 27-8

<sup>61</sup> Mit. On Yaj. II.126. J. D. Mayne, supra n. 31 p. 575-6.

<sup>62</sup> Mit. On Yaj.II.115.

<sup>63</sup> Mit. I. vii, 2.

<sup>64</sup> *Smritichandrika* IV, 7-17; *Saraswativilasa*, para 116.

<sup>65</sup> P.Ishwara Bhat, ‘Hindu Mother’s right to share in the coparcenary property: A critique of South Indian Practice’ 9, *The Academy Law Review*, 1985, p. 187.

<sup>66</sup> Mit. I, vii, 5-14. Also see J.D.Mayne, supra n. 31 pp.549-550.

there may be no property but what has been self-acquired the only persons whose maintenance out of such property is imperative, are aged parents, wife and minor children.”<sup>67</sup> Maintenance is a right arising from relationship and is strongly justified on humanitarian and familial obligation. Illegitimate sons, when not entitled as heirs, are to be maintained by their father.<sup>68</sup> A concubine who has been kept by a Hindu continuously upto the time of his death is entitled to maintenance from the property whether ancestral or acquired, of her deceased paramour.<sup>69</sup> Widowed daughter who is not maintained by her husband’s family but returns to live with her father shall be maintained as a matter of moral obligation by her father out of his self-acquired property.<sup>70</sup> Further, there is *stridhana*, which is another source that succours not only its holder at the time of distress but also her family, if her husband so chooses. Her husband may take *stridhana* in case of extreme distress, as in famine, or for meeting some indispensable duty, or during his illness, or while a creditor keeps him in prison.<sup>71</sup> He has moral duty to restore the value of the property. What he has taken without necessity, he is bound to repay with interest.<sup>72</sup> Such right to take wife’s property is purely personal to the husband and not available to his creditors.<sup>73</sup> What is emphatically clear in these verses is that property should act as a buffer against distress and misery.

*Mitakshara* rules of succession also largely reflect this concern while regulating the patriarchic rule of survivorship. It says, “Therefore, it is a settled rule that a wedded wife being chaste, takes the whole estate of a man, who being divided from his coheirs and not subsequently reunited with them, dies leaving no male issues.”<sup>74</sup> The rule is applicable to self-acquired property too. Vijnaneshwara includes wives of the ancestor of *sagotra sapindas* as heirs as entitled for succession.<sup>75</sup> He also recognizes the rights of parents and daughter.<sup>76</sup> In the matter of succession to *stridhana*, while only daughters are given the right, preference is given to indigent daughter over the well-off ones.<sup>77</sup> In succession to the property of father

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<sup>67</sup> *Mitakshara* II, 175

<sup>68</sup> Mit. I.xii.3

<sup>69</sup> Mit. II.1, 27-8

<sup>70</sup> J.D.Mayne, supra n. 31, p.825.

<sup>71</sup> Ibid. p.750.

<sup>72</sup> Mit.II. ii. 31, 32

<sup>73</sup> Viramitrodaya II.242.

<sup>74</sup> Mit.II. i. 39

<sup>75</sup> Mit.II.v.5

<sup>76</sup> Mit.II.ii.2

<sup>77</sup> Mit. II, xi, 13.

also, similar rule is prescribed.<sup>78</sup> This shows clear policy of supporting the destitute. From the list of *sagotra sapindas*, *samanodakas* and *bhinnagotra sapindas* given by Vijnaneshwara it is clear that the interests of all close relations of the deceased person are protected against destitution arising from death.<sup>79</sup> His treatment of the interests of illegitimate sons and concubines reflect similar approach.<sup>80</sup>

In the light of recent Supreme Court's judgments in *Madhu Kishwar*<sup>81</sup> and *Daniel Latifi*<sup>82</sup> which recognized right to maintenance as having strong elements of right to dignified life and other human rights principles, Vijnaneshwara's efforts of building property right jurisprudence as a powerful instrument of social security measure for the vulnerable against moral and material abandonment need to be appreciated as pioneering for humanist values. The nourishment that property gives to human personality by being a physical facility and a means of expression, an idea which Hegel developed as personality theory of property, was well focused in these efforts.<sup>83</sup> The belief that from food is a being made points out the link between right to maintenance and right to dignified life.<sup>84</sup> Rice as the first example of property in the *Mitakshara* discourse denotes the life-infusing propensity of property. As stated in Yajnavalkya Smriti, the born and the yet to be born, all of them need property as livelihood and it should not be cut off by alienation or otherwise.<sup>85</sup> Property for food security is an excellent concept of welfare. That the woman who nourishes the family should be nourished in advance speaks immensely of sense of justice.

### ***Religion's linkage with property***

Competence to perform religious rites was regarded as the basis for entitlement to property in earlier *shastrik* writings.<sup>86</sup> But Vijnaneshwara's elaborate exposition of *sapindaship* to get rid of the doctrine of religious efficacy in the matter of succession by saying that heirship

<sup>78</sup> Mit. II,2,2.

<sup>79</sup> I.S.Pawate, supra n.1 pp. 159-160; J.D.Mayne, supra n. 31pp. 627-630.

<sup>80</sup> J.D.Mayne, supra n. 31 pp.646-649, 690

<sup>81</sup> *Madhu Kishwar v. State of Bihar*, AIR 1996 SC 1864

<sup>82</sup> *Daniel Latifi v. Union of India*, AIR 2001 SC 3958

<sup>83</sup> P.Ishwara Bhat, supra n.55.

<sup>84</sup> Bhagavadgita III.4 : 'annadbhavanti bhutani' also see P.Ishwara Bhat, *Fundamental Rights: A study of their interrelationship*, (Kolkata: Eastern Law House, 2004) p.286. Basaveshwara's analysis that it is natural for living beings including crows to call whole of their folk when they come across even a grain of food points out communitarian sharing of food.

<sup>85</sup> Cited by I.S.Pawate, supra n.1 pp.166-7.

<sup>86</sup> Manu cited by I.S.Pawate, supra n.1, p. 292; Narada, XIII.25-26, IX.217.

is because of relationship is a rational and secular approach that drastically deviates from the earlier notion.<sup>87</sup> He frees property relations from the male dominated dogmas of religion, and makes it available for women's ownership. He endorses the view of Narada that dependence of women is not incompatible with their acceptance of property.<sup>88</sup> Replacement of controlling influence of religion by rule of law regime is one of the finest contributions of Vijnaneshwara.

Vijnaneshwara's delinking of property from religion arises out of his elaborate discourse that *svatva* is *laukika* rather than *shastraika samadhigamya*. This implies that property is meant for the satisfaction of secular needs and is understandable by secular knowledge through human reason and application of sense organs. It is not *vidhi* or injunction of *shastra* that motivates a man to earn property; but it is the fruit viz., removal of hunger, which can be seen (*drishta*), that motivates him to earn. If earning were only for sacrifice, there would be no livelihood and no motivation for earning; but when sacrifice is also for pleasure or happiness, the earning is *purushartha*.<sup>89</sup> However, *Mitakshara* recognizes *lokasiddha* principles for right earning. It says, "It should not be alleged that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognized by the world; and it disagrees with received practice."<sup>90</sup> But it would be a permissible practice for a Brahmin to perform sacrifice or to teach for the benefit of a wrongdoer and receive from him in return valuables subject to rendering of atonement, prayer and rigid austerity.<sup>91</sup> The lawful methods of acquisition of property for various *varnas* have also been insisted in *Mitakshara*.

It is interesting to see that Vijnaneshwara effectively puts forth a down-to-earth temporal approach to property along with equally pragmatic principles of social morality on propriety of means in acquisition of property. While this avoided unjust enrichment, weaning property away from religion protected women against undeserved misery. Vijnaneshwara did not preach total abandonment of property for religious merit. Nor did he tolerate anarchical practice in property matter. Unlike him, Basaveshwara took a highly ideological view that property

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<sup>87</sup> I.S.Pawate, supra n.1, p. 212; as stated by Nilakantha in Samskara Mayukha, "Vijnaneshwara abandoned the theory of connection through the rice-ball offering and accepted the theory of transmission of constituent particles." See Markendeya Katju, 'The importance of *Mitakshara* in 21<sup>st</sup> century' a paper presented in Seminar on Vijnaneshwara held at Gulbarga, 2004. Also see, *Balasubramanya v. Subbayya* (1938) 65 IA 93 (102)

<sup>88</sup> I.S.Pawate, supra n.1, p. 271-73.

<sup>89</sup> Quoting Madhava, I.S.Pawate analyses in this manner. P.238.

<sup>90</sup> Mit. I.i.11

<sup>91</sup> Mit. I.i.16

earned through pure and truthful labour could be dedicated to God whereas sinner's wealth fits only to penalty and not for righteous utilization.<sup>92</sup> Religion's links with property as handled by Vijnaneshwara could fill the latter with compassion and sense of fairness rather than with discriminating dogmas.

### **Analysis**

The above analyses of possible theoretical bases of property in *Mitakshara* jurisprudence partly approve each of their relevance and positive role. But these theories fail to emerge as comprehensive explanations about philosophic justifications for property in *Mitakshara*. They only reflected part of the larger theoretic framework, which, in fact, consisted in protection against unjust enrichment and destitution. Equity, good conscience and justice were the specific components of this approach. Quite contrary to the individualistic concept of property espoused in the west, ancient Indian jurisprudence in general and *Mitakshara* in particular, propounded collective right theory of property focusing on the social effect of its institutions and incidents. The ideology that it is theft to retain to oneself beyond that which is suffice to satisfy one's hunger<sup>93</sup>, or that one should earn in hundred hands to give away in gift by thousand hands<sup>94</sup> reflected the concern against concentration of wealth in few hands to the detriment of societal interests. In the background of such healthy thoughts and their desirable effect, the extreme theory of class conflict did not emerge as the theoretical basis of property. *Mitakshara* tried to remedy class conflicts by treating workers, women and destitute in a fair manner.<sup>95</sup>

### **Practical application**

The approach of protecting against unjust enrichment and undeserved misery was applied in *Mitakshara* into various spheres of civil law including family law, some aspects of which are already discussed above. Practical application of the doctrine sensitized the law on debts, mortgages, adverse possession, associations, gifts, treasure trove, bailment and endowments. The *Mitakshara* vision of justice has sensitized the principles against unjust enrichment in each of these spheres.

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<sup>92</sup> Between the property of the affluent that could construct temples and the mental ability of the poor devotee who could convert his body itself into abode of worship, Basaveshwara did not discriminate.

<sup>93</sup> *Bhagavata* VII.xiv.8

<sup>94</sup> *Atharvaveda* 3-2.4-5

<sup>95</sup> Basaveshwara went a step ahead by socially marginalizing the economically powerful in order to purge wealth from the sins of exploitation.

While the rule of pious obligation was approved, which protected against unjust enrichment, an exception is carved out to protect the family against misery. Following Yajnavalkya, *Mitakshara* lays down that son is not liable to pay the debts incurred by father which was contracted for the purpose of liquor, lust or gambling, or which is due as the balance of unpaid fine or toll, as also gift without consideration.<sup>96</sup> *Mitakshara* interprets the phrase ‘gift without consideration’ as the one promised to rogues, dancers, thieves, swindlers etc., or for illegal or immoral purposes.

Regarding the exclusive right of the prior mortgagee against a later mortgagee, there is a clear rule in *Mitakshara*.<sup>97</sup> Further, the scope for redemption of mortgaged or pledged property is not subject to lapse in case it is a *charitra* pledge.<sup>98</sup> *Mitakshara* explains that when a thing of high value is kept in pledge for paltry sum having full faith in the good character of the creditor or when money is lent by accepting a thing of little value by having faith in the good character of debtor, the pledge or mortgage does not lapse.<sup>99</sup> Under the law relating to bailment, loss of property relating to theft from the hands of bailee is exonerated from bailee’s liability in the same way as act of the king or act of God are exonerated since they are above human control.<sup>100</sup>

A brilliant stroke of interpretation of *Yajnavalkya Smriti* in *Mitakshara* could galvanize the rule against unjust enrichment in the matter of adverse possession. Yajnavalkya says: “Right of a person to land is lost to him if he does not question the open and adverse claim and possession by another for twenty years. In case of moveable property, the right is lost after ten years of open and adverse possession by another.”<sup>101</sup> *Mitakshara* interprets, “Here the loss intended to be indicated is that of the profits (or accession) of the land as well as of the wealth, not of the corpus, nor of the right at law. For even if at law the owner gets back the land after twenty years’ possession without protest by him, still he does not get a right to follow the proceeds, both on account of his own fault in the form of non-protest as also on

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<sup>96</sup> Mit. On Yaj. II, 53, 54.

<sup>97</sup> Mit. On Yaj. II.93

<sup>98</sup> Mit. On Yaj. II.23

<sup>99</sup> Mit.on. Yaj. II.61; Mit.on. Yaj. II.59; M.Rama Jois regards this as an example of incorporating the modern doctrine of unjust enrichment by which protection of debtor from exploitation by the creditor or vice versa is ensured. See M.Rama Jois, supra n.33 p. 124.

<sup>100</sup> P.N.Sen, *General Principles of Hindu Jurisprudence*, TLL Rept. With introduction by Paras Diwan, Delhi: Allahabad Law Agency .p.219-220.

<sup>101</sup> Yaj. II.24.

account of this text.”<sup>102</sup> This is a laudable approach as it balances the interests of both the parties. But the true owner can recover his asset only when profits can be detached from the source of those profits. However, in keeping with the thrust of public opinion and texts of other *Smritis*, *Mitakshara* was agreeable for three generations rule rather than 20 years rule in case of adverse possession.<sup>103</sup> Robert Lingat observes, “It is clear that he was profoundly hostile to acquisition by prescription against the true owner and that in his eyes, possession, no matter how long, could not be a means of acquiring ownership. It is this preconceived opinion which guides his steps through the maze of texts, which induces him to align them one after another like landmarks leading whither he knew he would arrive, and brings him finally to reduce to a minimum the significance of the rule actually expressed by his author, Yajnavalkya.”<sup>104</sup> What Vijñaneshwara has done in this process is expounding of the rule *dharma* with all good faith for social practice and high morality, as Lingat views.<sup>105</sup> Promotion of the cause of justice is a notable development even when past practices prevail over reasoning in case of conflict. *Mitakshara* carves out exceptions to rule of prescription. According to him, there could be no prescription against a minor or idiot or woman or king and Brahmana.<sup>106</sup> These persons are unable to protect their interests because of either incompetence or numerous avocations or studies in which they might have submerged. P.N.Sen regards the exceptions as eminently reasonable.<sup>107</sup>

Regarding rights and duties of members of association, *Mitakshara* advocated strict observation of the customary duties, objectives of the association and king’s commands.<sup>108</sup> While Yajnavalkya<sup>109</sup> requires that honest persons acquainted with law and with sense of duty who are able, self-controlled, and come from noble families, and are skilled in business shall be appointed heads of associations, *Mitakshara* elaborates that men knowing *dharma* as laid in *shruti* and *smritis*, who are pure internally and externally, un-avaricious for any pecuniary gain should only be commissioned as the deliberative wing of the assembly. Rama

<sup>102</sup> M.Rama Jois, supra n. 33pp. 293-4.

<sup>103</sup> P.V.Kane, *History of Dharmashastra*, 2<sup>nd</sup> ed. vol III, (Poona: Bhandarkar Orient Research Institute, 1973 ) pp.322-4.

<sup>104</sup> Robert Lingat, *The Classical Law of India*, (Tr.) J.Duncan M.Derret, (New Delhi: Oxford University Press, 1973, rept.1998) p.165.

<sup>105</sup> Ibid.,166-7.

<sup>106</sup> P.N.Sen, sura n.100 p 114.

<sup>107</sup> Ibid pp.115-6.

<sup>108</sup> Mit on Yaj. II.186

<sup>109</sup> Yaj. II.191.

Jois points out the enduring relevance of the rule, “This requirement of entrusting the management of the affairs of an organization or association to men of character and integrity is of utmost importance and holds good even for the present and the future also.”<sup>110</sup> Avoidance of unjust enrichment and misery by a relying on responsible set of directors is a foresightful policy.

About the requirement of valid gift, Vijnaneshwara insisted on clear proof of acceptance of it by the donee.<sup>111</sup> Gifts should be accompanied by possession. Since gift carried with it obligations of atonement and penance on the part of receiver of gift, it appears, he wanted to exclude undeserved misery in this matter.

In the matter of treasure trove, Yajnavalkya states that if the king discovers the treasure trove, he will take one half and the rest shall be distributed amidst *Brahmans*; if a learned *Brahman* finds it, he shall keep the whole himself; in other cases, the king will give one-sixth to the finder and takes the rest himself.<sup>112</sup> To this *Mitakshara* adds that even in such case if the real owner comes forward and establishes his title, the king shall restore the treasure to him after retaining one-sixth to himself and one-twelfth to the finder.<sup>113</sup> About lost articles found by stranger, Hindu law entrusts upon the king right to retain them for definite period, after which he is allowed to appropriate them on making over one-fourth to the finder. *Mitakshara* introduces refinement to the effect that if the owner comes forward even after three years and establishes his claim, the king shall restore the articles or their equivalents to him because title cannot be lost by mere lapse of time.<sup>114</sup> Once again, sense of justice applied by Vijnaneshwara towards avoidance of unjust enrichment is remarkable.

Yajnavalkya permits use of another’s land for the benefit of the neighbours without detriment to the interest of landowner. He says, “an embankment which is beneficial to the people should not be prohibited by the owner of the soil, where the inconvenience is slight, and similarly, a well which occupies a little space, and supplies abundance of water.”<sup>115</sup> This is unique principle reflecting communitarian approach to property, and is continued in *Mitakshara* with due emphasis.

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<sup>110</sup> M.Rama Jois, supra n. 33p.178.

<sup>111</sup> Mit. On Yaj. II-175; Yaj. II-176-2.

<sup>112</sup> P.N.Sen, supra n.100 p. 58.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid., p.59.

<sup>115</sup> Yajnavalkya Smriti II.156.



In order to mitigate the unenviable position of first wife in case of bigamy some provision is made in *Yajnavalkya smriti* and *Mitakshara*. It is provided that in case a man marries a second time during the life-time of his first wife he should pay to the first wife as much as he spends on the second marriage, or if she has already received some property as her peculium, as much as would render this equal to the amount spent over the second marriage.<sup>116</sup> Today bigamy is impermissible due to legal reforms. But to declare at the face of high patriarchic regime that husband's second marriage brings sorrow to the first wife, and hence should be compensated, it required bold empathy.

Similarly, in the matter of distribution of *Stridhana Mitakshara* prefers an un-provided daughter to a provided daughter and also a widowed daughter to other daughters in order that their indigent situation is properly addressed and economic support is given to overcome the misery.<sup>117</sup> However, the *Mitakshara* preference of relation by birth over relation by matrimony puts the father's brother's son's widow into disadvantage as compared to father's brother's daughter's adopted son.<sup>118</sup>

On the whole, *Mitakshara* introduced the rule against unjust enrichment and misery as a general rule of justice and equity that could infuse benevolent principles in various spheres. It is difficult to make an exhaustive survey. What is explained above is only illustrative, and to prove the hypothesis that the *Mitakshara* concept of property is rich in components of justice, which no modern theory could fully comprehend.

### Conclusions

The *Mitakshara* discourse on property represents crucial and typical concern of the ancient Indian legal system to use property as an instrument of benevolent actions and justice. Going beyond the contours of labour, relationship and social security theories of property, it addresses to the central issues on functional concept of property. The undercurrent of the rule against unjust enrichment and undeserved misery has influenced various facets of family law and civil law towards a very comfortable result. The concept is comprehensive and dynamic, and has abundant dimensions of social justice. It ensures fairness in economic relations, ranging from adverse possession, mortgage and pledge to lease. In driving out the exploitative power component in the instrument of property and enhancing the worth of use aspect of

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<sup>116</sup> P.N.Sen, supra n.100 p. 282.

<sup>117</sup> Pothukuchi Mahalakshmi v. Modali Suryakanta Manikyamba AIR 1940 Mad 494

<sup>118</sup> In re P. Kausalya Ammal AIR 1959 Mad 184

property<sup>119</sup>, the policy of *Mitakshara* has a great bearing as it uniquely builds the property concept around justice. In the context of deletion of right to property from Part III of the Constitution, which led to the necessity of protecting just claims of property in the nooks and cranny of Part III or general interests of justice, function-conscious approach to property in *Mitakshara* has great social significance. When we look at it standing on the terrain of 21<sup>st</sup> century we get from it valuable messages of humanism to avoid misery and to strengthen the concern for dignified subsistence. Application of them appreciably adds to the task of translating the value goals of welfare system laid down in Part IV of the Constitution into a reality.



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<sup>119</sup> For a discussion of use and power aspects of property, see P.Ishwara Bhat, 'Tracing right to property in the bosom of right to life and personal liberty' 38, JILI (1996) 13.

## *Mitakshara* on “Debts”

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-C. Rajashekhar\*

*Mitakshara* contains provisions relating to debts. It has laid down the rules relating to the recover debts, as first of the eighteen titles of law. The title of ‘Recovery of debts’ has seven main points for consideration. They are:

- 1) The kind of debt which should be paid,
- 2) The debt which should not be paid,
- 3) The person who should pay the debt,
- 4) At what particular time the debt should be paid,
- 5) In what way it should be paid-in all, five points for the debtor and two for the creditor.
- 6) The mode of advancing a loan, and
- 7) The mode of recovering it.<sup>1</sup>

### **Payment of Interest:**

*Mitakshara* stipulates the payment of interest on the money lent. It stipulates the payment of different types of interest. Thus, transaction secured by pledge is called transaction with a pledge. In such a secured transaction the interest on money advanced would be one-eighteenth part of the principal. In other cases, i.e., without a pledge, the rate of interest was according to classes of the debtors. Thus, in the case of a *Brahmana* debtor two percent, in that of a *Kshatriya* three, in a *Vaisya* four and in a *Sudra* five.<sup>2</sup>

Interest is denoted in *Mitakshara* by several terms. Interest upon interest is called compound interest; it is called *Kalika* when it payable per month; it is *Karita* when it is fixed according to the wish of the parties; it was *Kayika* when it was receivable per day and the period is divided by calculation of days.

Interestingly, the rate of interest payable varies depending upon the risk of loss of the principal. Thus, those who borrow money by interest and enter dense forest which involved

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\* Former Dean, Faculty of Law, Karnatak University, Dharwad.

<sup>1</sup> J.R. Gharpure, *YajnavalkyaSmriti*, Vol. II, P IV, Girgaon, Bombay 1939

<sup>2</sup> Ibid

danger to life and property should pay ten percent and those, who go to the sea, which involves greater risk, has to pay twenty percent, also per month.<sup>3</sup> But, all debtors should pay what they had agreed to pay.<sup>4</sup> Sometimes interest is payable even when not stipulated for. Thus, as *Narada* says, “no interest shall ever be charged on friendly loans, unless there is an agreement to that effect. Even if there be no agreement, interest accrues on such loans after the lapse of half a year.”<sup>5</sup>

Katyayana has laid down a rule for a person who goes to another country after taking a loan for use that “the loan of his will be charged with interest after the lapse of a year.”<sup>6</sup> For one, who after obtaining a loan for use and without returning it, even when he was asked, goes to a foreign region, that loan becomes, chargeable with interest after the lapse of three months.<sup>7</sup> A debtor, who, while remaining in one’s own land, does not return a loan for use when asked for, should be made to pay interest from that time, even though it was not stipulated and he was unwilling to pay.<sup>8</sup>

**Maximum limit of interest:**

*Mitakshara* stipulates the maximum rates of interest in several kinds of properties. Thus, in the case of oil, ghee, etc. upon which no interest has been received, and the loan has remained standing for a long time, the interest as agreed to by the parties would be accumulating and the utmost limit is eight fold of the amount outstanding,. Similarly, in the case of cloth four fold, grain three fold, and two fold in the case of gold would be the maximum accumulation.<sup>9</sup>

Vasishtha, however, has mentioned a three fold increase in the case of fluids, gold taking double its value on repayment and grain trebling the original price.<sup>10</sup> Manu on the other hand, in the case of grain and also flowers, roots and fruits has mentioned a five fold increase. The same limit is stipulated for wool or hair and boasts of burden. There too, the rule should be applied after considering the capacity of the debtor as well as the state of things at the time, such as famine.<sup>11</sup> However, Yajnavalkya has not provided for any such concession.

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<sup>3</sup> Yajnavalkya verse 38(!)

<sup>4</sup> Ibid., verse 38(2)

<sup>5</sup> Gharpure, supra note 1, p.767

<sup>6</sup> Ibid

<sup>7</sup> Katyayana, verse 504

<sup>8</sup> Ibid

<sup>9</sup> Yajnavalkya verse 39

<sup>10</sup> Ch. II 44-47

<sup>11</sup> Ch. VIII 151

In *Dagadusav.Ramchandra*<sup>12</sup> it was laid down that the above rule regarding accumulation was to be understood as applicable in the case of one transaction and one payment. If there are separate transactions with different persons, or even if the person is the same but there are different transactions on more than one occasion, gold, etc., would indeed increase as before, even beyond the two fold and other limits. And even in a single transaction, when the interest is recovered daily, monthly, or every year, and thus it is not possible that the amount as made up of the interest recovered before does certainly increase beyond the two fold limit.<sup>13</sup> It exceeds beyond the double when the dealings are with different persons and give rise to separate transactions.<sup>14</sup>

### **Rules regarding the recovery of property advanced as a loan:**

Several means have been laid down by Yajnavalkya for the recovery of the loan. Thus, he said; 'one (creditor) would not be blamed by the king for trying to recover an acknowledged debt; and if the debtor complain to the king while the debt is being recovered from him, he should be fined and made to pay (back) the loan.'<sup>15</sup> In *mitakshara* it is interpreted that a creditor recovering a debt acknowledged by the debtor or proved by means of witnesses by *dharma* or other means would not be blamed by the King.<sup>16</sup> The *Dharma* and other means have been pointed out by Manu: "by moral suasion, by a suit at law, by deceit, or by starvation, a creditor may receive property lent, and fifthly also by force.'<sup>17</sup>

*Mitakshara* explains these various means. Thus, "By moral suasion, *Dharma*, i.e., by affectionate words and a straight talk. By a suit at law i.e., by such means as witnesses, document and by deceit e.g., by taking ornaments, under the pretext of some ceremonial celebrations, by starvation, by the fifth, by force i.e., by imprisonment with iron fetters. Thus, money advanced for accumulation (of interest) should be recovered to oneself by these means.<sup>18</sup>

Further, it is interpreted that by saying "the trying to recover an acknowledged debt" the Author indicates that he should be prevented by the King, from recovering a debt which has not been acknowledged by the debtor. Where, however, a claim has been (made to be) admitted by *dharma* and other means, and if then while the amount is being demanded or

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<sup>12</sup> 20 Born 611-613

<sup>13</sup> Gharpure, supra note 1, p.770

<sup>14</sup> All Gauthama Ch. XII 31

<sup>15</sup> Yaj verse 40

<sup>16</sup> Gharpure, supra note 1, p.776

<sup>17</sup> Ibid

<sup>18</sup> Ibid

recovered, the debtor goes to the King and complains against the creditor for trying to recover his due, that debtor becomes liable to be punished with a fine according to his capacity; and, moreover he is made to pay the amount to the creditor.<sup>19</sup>

The modes of compulsion by the King are that the King should make a Brahmana pay the creditor only by gentle persuasion, others according to the usage of the country. The wicked should be made to pay by compulsion. An heir and a relative also should be made to pay by recourse to deceitful tricks.<sup>20</sup>

### **Order of Priority:**

When there are several creditors and if they are of the same class, the debtor should be made to pay, by the King, the creditor in the same order in which the loans were taken. When however, the creditors belong to different classes, the Brahmana creditors should be paid first, and then the rest in order.<sup>21</sup>

When a creditor is weak and unable to recover and acknowledged claim by Dharma and such other means and the amount is recovered for him by the King, in such a case the author mentions a fine for the debtor and payment of costs by the creditors. Thus, the King should take from the debtor in the shape of a fine, a tenth portion of the amount recovered from the acknowledged amount. A creditor, however, who has won his case, should be made to pay five percent in the form of costs.<sup>22</sup>

A *Brahmana* creditor and others belonging to superior classes should for a debt, cause the debtor of a lower class such as the *Kshatriya* and others who has become pay by installments, according to his grains.<sup>23</sup> Here the reference to a lower class is indicative also of an equal class; and therefore a debtor of an equal class also, if insolvent, should be made to do the work which is proper for him. The mention of a insolvent, should be made to do the work which is proper for him. The mention of a *Brahmin* is also indicative of the superior class, and therefore *Kshatriya* and other, though insolvent, should be made to pay their *Vaisya* and other creditors of a lower class by installments and according to their ability.<sup>24</sup>

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<sup>19</sup> Ibid

<sup>20</sup> Katyayana, verses 587, 588

<sup>21</sup> Ibid

<sup>22</sup> Yaj verse 42, p.780

<sup>23</sup> Ibid., p. 781

<sup>24</sup> Ibid

It is very interesting to know that an amount lent at interest, being tendered by the debtor, if the creditor, out of greed of interest does not accept, and if the same is deposited in the hands of a third person by the debtor, then, from that time, it does not bear interest. If, however, even if deposited he does not give when demanded, then it carries interest as before.<sup>25</sup>

### **Liability for debts:**

*Mitakshara* deals in greater detail about the repayment of debt and the nature of liability. It has laid down the following rules about the liability for debts.

- 1) A debt which has been incurred by the undivided members of the family, for family purposes; or by each separately, that debt must be paid by the head of the family. When he is either dead or has gone abroad his coparceners should pay.<sup>26</sup>
- 2) The debts of the wife of a cowherd, liquor manufacturer, dancer, a washerman, a hunter should be paid by the husbands as their livelihood depends upon them. It appears that others also whose livelihood depends upon women should also pay a debt incurred by the wife.<sup>27</sup>
- 3) A woman should pay a debt of her husband which she has agreed to or which was incurred by the wife jointly with the husband. So also a debt which was incurred by herself alone should even be paid by her.<sup>28</sup> Explaining the rule it has been observed by Manu that “a wife, a son and a slave—all the three are considered to be incapable of having property; whatever they acquire becomes the property of him to whom they belong’, they are without any property; and a doubt may be created about the non-payment of agreed debts.”<sup>29</sup>
- 4) If the father, without paying a debt which is payable is dead or has gone to a distant country or is attacked by an incurable disease and the like, then the debt incurred by him when made known should be paid by the son or the grandson; and even when there exists no property of the father, in their capacity as son and grandson.<sup>30</sup> Here the order to be observed is that, in the absence of the father the son, in the absence of the son, the grandson. When the son or the grandson set up a denial, a debt proved by the plaintiff

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<sup>25</sup> Ibid p.783

<sup>26</sup> Yaj verse 48, p. 788

<sup>27</sup> Ibid

<sup>28</sup> Ibid verse 49, p.790

<sup>29</sup> Manu VIII

<sup>30</sup> Gharpure, supra note 1,p.792

creditor, by means of witnesses and others should be paid by the sons and grandsons.<sup>31</sup> *Mitakshara* states the rule laid down by Narada that where the father, uncle or the eldest brother has gone abroad, the son, nephew or younger brother is not bound to pay his debt before the lapse of twenty years. And even in the case of death, he should not pay before he reaches the age of majority as, he will become senior only after he attains the age of majority.<sup>32</sup>

- 5) If there are several sons who are divided, they should pay according to their respective shares. If they are undivided, and are living jointly in a body, giving the managership according to qualifications, it appears that the manager alone should pay.<sup>33</sup>
- 6) *Mitakshara* lays down a rule that the debt should be discharged by the son together with interest similarly as the father would do; by the grandson, however, only the amount equal to the original principal and not the interest.<sup>34</sup> However, the great grandson is not liable to pay any debt. Apart from sons and grandsons any other person who takes the property of another, not by purchase, but by heritage should be made to pay the debt.<sup>35</sup>
- 7) Similarly, a person who takes the wife of another should be made to pay the debt of that person. Although it is not possible for one to take the wife of another as the sastras are opposed, still one who transgresses the prohibition certainly becomes liable to discharge the debts incurred by the former husband.<sup>36</sup>

However, several debts incurred by a person need not be discharged by others. Thus a debt which was contracted for drinking spirituous liquor, contracted for lust, or gambling, or which is due as the balance of an unpaid fine or toll, and also a gift without consideration, the son is not liable to pay. So, a debt which is not legal or not capable of being recovered by a suit should not be compelled to be paid by the son.<sup>37</sup>

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<sup>31</sup> Narada Ch.1 35-36

<sup>32</sup> Gharpure, *Ibid.*, p.793

<sup>33</sup> *Ibid.*, pp. 793-794

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, p.795

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*



**Part-III**  
**Securing Interests of Women**



## ***“The More it Changes, the More it Remains the Same”*: A Note on Smritis and Women with Particular Reference to *Manusmriti* and *Mitakshara***

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-C.N.Ramachandran\*

The religious-social-legal texts that have governed the Hindus as individuals and as a society for the last two millennia are, as the great scholar Swami Harshananda explicates, *Shruti*, *Smriti*, and *Purana*. *Shruti* (‘what is heard’) consists of the four *Vedas* and the *Vedantas* (‘what comes in the end’; *Upanishads*), which are considered primary scriptures; *Smritis* (‘remembrance or memory’) are those “which ‘remind’ one of the great spiritual truths contained in the *Shruti*,” and they are considered the secondary scriptures; and *Puranas* (‘ancient narratives’) are partly historical and partly mythical narratives.<sup>1</sup>

Coming to the *Smritis*, there are scores of texts, written in different periods, beginning with the archetypal *Manusmriti* (also called *Manava Dharmashastra*), supposedly written in 300 B. C.,<sup>2</sup> and going through *Yajnyavalkya Smriti* (100 B.C. to 300 A.D.), *Narada Smriti* (100-300 A. D.), *Parashara Smriti* (?), and such to *Nirayasinidhu* (around 1612 A. D.).<sup>3</sup> Yajnyavalkya lists 20 as major *smritis*, Balambhatta the commentator on *Mitakshara* lists 30 as major *smritis*, and the *Bhavishya Purana* 36. And there are commentaries on each one of them and commentaries on commentaries, resulting in a huge bulk of *Smriti* literature. Surprisingly, the commentary on a *Smriti* that enjoyed the status of an original text is *Mitakshara*.

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<sup>1</sup> Swami Harshananda (2008), *A Concise Encyclopaedia of Hinduism*, 3 vols. (Bengaluru: Ramakrishna Math).

<sup>2</sup> Wendi Doniger with Brian K. Smith, tr. (1991), *The Laws of Manu* (New Delhi: India Penguin Books, Ltd.).

<sup>3</sup> Swami Harshananda dates a few major *Smritis* as follows:

*Narada Smriti*(A. D. 100-300), *Brihaspati Smriti*(A. D. 300-500), *Vyasa Smriti*(A. D. 200-500), *Yajnyavalkya Smriti*(100 B. C. -300 A. D.).

*Mitakshara*, by Vijnyaneshwara of Kalaburgi (or Gulbarga) in North Karnataka, was written during 1100 -1120 A. D.<sup>4</sup> It is a commentary on *Yajnyavalkya Smriti*, and many commentaries have been written on this commentary. Owing to Vijnyaneshwara's erudition in 'Purva Mimamsa' (that which lays down a methodology of interpretation of complex Vedic notions and injunctions) and the organization of the work into clear-cut divisions, *Mitakshara* was the authoritative work referred to throughout India (except Bengal and Assam). 'mita' means 'brief,' and 'akshara' means 'letters of the alphabet or words'; Hence, *Mitakshara* is a commentary that briefly and succinctly explains the ideas and dictates of the original voluminous work, *Yajnyavalkya Smriti*.

*Mitakshara* follows the tripartite division, common to *Smritis*: *Aachara* (general conduct), *Vyavahara* (social conduct), and *Prayashchitta* (expiation). "This demarcation between law and religion itself is a great advance over the *Manusmriti*," says Justice Markandey Katju in his talk on "The Importance of *Mitakshara* in The 21<sup>st</sup> Century."<sup>5</sup> He goes further and claims that what is more valuable in *Mitakshara* is that "until the *Mitakshara* by Vijnyaneshwara came into existence, *smritis* and commentaries were largely religious and not secular. It was the *Mitakshara* which was the first to make the laws of property and inheritance secular."

He gives as illustration Vijnyaneshwara's interpretation of 'Pinda' which, according to him, does not mean the 'rice balls offered during *Shraddha* ceremony' but 'particles of the body of the deceased.' (Vijnyaneshwara defines the word 'sapinda' as follows: "Sapinda relationship arises [between two people through their being] connected by particles of one body. Thus, the son stands in *sapinda* relationship to his father because the particles of his (father's body having entered his)."<sup>6</sup>

Talking of the distinctive qualities of *Mitakshara*, we can go further. Although the author follows the iconic work, *Manusmriti*, in general, there are a few occasions where he disagrees with or qualifies the dictates of Manu. For instance, Manu lays down that, in marriage, if the boy is 30 years old, the girl should be of 12 years; and if the boy is 24 years old, the girl should be of eight years. Obviously, this is unsatisfactory as the girl is too young to be married to such an older person. *Mitakshara* (*Yajnyavalkya Smriti*) disagrees with Manu

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<sup>4</sup> Tr. Rai Bahadur Srisa Chandra Vidyarnava (1918), *Yajnyavalkya Smriti, With the Commentary of Vijnyaneshwara Called 'Mitakshara,' And Notes From the Gloss of Balambhatta* (Allahabad: The Panini Office.

<sup>5</sup> Justice Markandey Katju (2005), "The Importance of *Mitakshara* in the 21<sup>st</sup> Century," 7 SCC (3) 3. This was the speech delivered at a function held in honor of the great jurist, Vijnyaneshwara, at Gulbarga University, Gulbarga, on 31.12.2004.

<sup>6</sup> *Mitakshara*, 3: 52, p. 94.

regarding the age-difference between the proposed bride and the groom; hence, both Yajnyavalkya and Vijnaneshwara do not mention the age at all of either the boy or the girl. Vijnaneshwara (Yajnyavalkya) just states: “Let him marry a girl, who is younger, shorter in size, and junior in age” (3:52: p. 101). While listing the qualities of a girl suitable for marriage (such as not having any hereditary diseases, healthy and attractive, coming from a good family, etc.), Vijnaneshwara states that the boy also should have the same qualities. On one occasion, Yajnyavalkya states, “Woman is to be respected by her husband, brother, father, kindred (*jnyati*), mother-in-law, father-in-law, husband’s younger brother, and the bandhus with ornaments and clothes” (3: 82, p. 163). Vijnaneshwara quotes this statement with approval, and adds: “Because, when they are respected, they increase *dharma* (piety), *artha* (wealth) and *kama* (pleasure).

However, the fact that *Mitakshara* is totally patriarchal and conservative regarding the laws of inheritance is too well-known to be discussed in detail in this paper. A son gets the right to be a coparcener of the ancestral property owned by the joint family by birth, and he can demand partition of the property even during the lifetime of the *karta* or the father. As soon as the father dies, the property rights devolve on his son, grandson and great grandson; that is, the three lineal maledescendents of the father. But a female child or the wife / widow of a member of the family cannot become a coparcener at all. Only on rare occasions, when there are no surviving male coparcener, a female gets the right to family property. This long-surviving patriarchal attitude towards women in the Hindu society did not change even after independence when the laws governing inheritance among Hindus were codified 1956, as the Indian Succession Act. Only the amendment brought to this Act in 2005, amending section 6 of the Act, gave the daughters also the rights of inheritance equal to those of sons.

Vijnaneshwara’s more hardened patriarchal attitude is to be found in his views on widows. According to him, after the death of her husband, his wife has two choices, “either to preserve chastity or to ascend the pile after him” (ch. 3: p. 166-167). He doesn’t stop here; he goes on to describe what he calls ‘*vidhava dharma*’ (head shaven, one meal a day, sleeping on a mat on the ground, not beautifying herself, etc), and adds: “There is great virtue in *Anvarohana*” (entering the pyre along with her husband’s dead body). Thus, through his details of ‘*vidhava dharma*’ and his privileging *sahagamana/anugamana*, the options cease to be options, and he makes it very clear that he is a strong advocate of the age-old and unfortunate ‘*Sati*’ or ‘self-immolation’ on the part of the widow.

What is very surprising and saddening here is the fact that **the iconic *Manusmriti* does not mention anywhere self-immolation on the part of the widow.** (Actually, this was the

ground –that *Manusmriti* does not state ‘Sati practice’ anywhere –based on which Raja Rammohan Roy opposed the heinous practice and fought for its repeal, for years together.<sup>7</sup>) Again, **the very text on which Vijnyaneshwara writes his commentary, *Yajnyavalkya Smriti*, does not talk about, let alone advocating , this practice.** Yajnyavalkya merely says: “Deprived of her husband, she should not reside apart from her father, mother, son or brother, from her mother-law or father-in-law, or from her old maternal uncles. Otherwise, she becomes infamous” (*Mitakshara*, 3: 86). Vijnyaneshwara introduces that subject even though it is not there in the original text.

Not only does Vijnyaneshwara advocate the barbarous practice, but also he indulges in a long argument (about ten pages, p.166-176) regarding it, quoting many other *smritis* to justify his stand regarding the *Anugamanapractice*. The *smritis* quoted by him include *VishnuSmriti*, *ShankhaSmriti*, *AngirasaSmruti*, *HaritaSmriti*, etc. (all of these came later than *Manusmriti* and *Yajnyavalkyasmriti*). His commentator, Balambhatta adds a few more *smritis* and *Puranas*. Again, in his discussion, Vijnyaneshwara raises a few questions as *Purvapaksha* (counter argument) and answers them: ‘a woman’s *anugamanais* suicide; haven’t all codes condemned suicide on the part of a man or woman?’ Vijnyaneshwara answers that it is not suicide “because it is a means for the attainment of heaven” (p. 169).

Even after this practice was outlawed by William Bentick in 1827, owing to the continuous struggle and pressure from the Reformists like Raja Rammohan Roy and Ishwarachandra Vidyasagar, neither the practice nor the debate about it died out. In fact, it appeared that in some districts in Bengal it increased after the law banned it.<sup>8</sup> (Kulkarni, 2018) Colonial writers interpreted it as an economic phenomenon. Their argument, in brief, was that because the *Dayabhaga* code gave equal share to the wife in the ancestral property of a Hindu, in order to usurp the widow’s share, she (the widow) was persuaded if not coerced to practice *Sati*. Linda Heaphysums up this argument very succinctly: “The common deciding factor (in all such incidents) was often ownership of property or wealth.”<sup>9</sup>

Though after a few decades it appeared that both such incidents and debates had come to an end, in the post-independence period, the occasional *Sati* incidents (Roop Kanvar, 1987; Charan Shah, 1999), gave rise to a new debate about the practice. While culture

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<sup>7</sup> S. A. Natarajan (1959), *A Century of Social Reform in India* (New Delhi: Asia Publishing House, p. 297-356.

<sup>8</sup> Parashar Kulkarni, “Can Religious Norms Undermine Effective Property Rights?” Published on line by Cambridge Univ. Press, 14. 3. 2017.

<sup>9</sup> Linda Heaphy, “The Practice of Sati (Widow Burning)” ; retrieved on 14.7.2021.

critics ascribed such incidents to the influence of Westernisation and the consequent fear about losing one's culture and way of life (Ashish Nandi),<sup>10</sup> the post-colonial critics attributed it to colonial propaganda. The most stringent attack on the critics opposing the *Sati* practice came from Madhu Kishwar in her influential periodical, *Manushi*. She argued that "it was part of imperial game" and that "there is absolutely no evidence that any of our vast array of religious texts sanctified such murders as *Sati*."<sup>11</sup> (One wishes, ardently wishes that her sweeping comments were true.)

Let us first consider the way major *Smritis*, *Puranas* and classical literary works construct 'woman.' They begin with the presumption that women are born sinners. This presumption may owe its origin to the story of Indra, the king of gods in heaven, who killed *Vrtra* to release waters to the earth; *Vrtra* being a *Brahmin* and a devotee of Vishnu, Indra incurred the sin of *Brahmahatya* (killing Brahmins), which sin he transferred to Woman, Earth, Ocean and trees. There are many variations of this story of 'curse on Indra and his expiation' in different *Smritis* and *Puranas*.<sup>12</sup>

Beginning with this presumption, all the *Smritis* picture women as wicked, weak and insatiably sexual: *Manusmriti*, which was revered and followed by all later *Smritis*, pictures women in these words:

It is the very nature of women to corrupt men here on earth;  
for that reason, circumspect men do not get careless and  
wanton among wanton women. It is not just an ignorant man,  
but even a learned man of the world, too, that a wanton woman

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<sup>10</sup> Ashish Nandi, "Sociology of *Sati*," *Indian Express*, October 5, 1987. In this article he argued that those who opposed the practice, particularly the Feminists, had antipathy to Tradition and equated it with superstition, which was a sign of "a new form of internal colonialism."

<sup>11</sup> Madhu Kishwar, "Deadly Laws and Zealous Reformers: The Conflicting Interpretations and Politics of *Sati*," *Manushi*, 115. Very similar to

Ashish Nandi, she argues that there is no *Smriti* or any other classical text which sanctions the *Sati* system, and that it is a part of "Imperial Game."

<sup>12</sup> Swami Harshananda. A few *Puranas* give a different context to this story of 'Curse on Indra.' *Brahma Purana*, *Brahma Vaivarta Purana*, and many others narrate the story of Indra and Ahalya. Indra the king of heaven seduces Ahalya the wife of Gautama, in his absence; when he comes to know of this incident, Gautama curses his wife to become a rock and suffer, and curses Indra to have a thousand vulvae on his body. When, on behalf of Indra, gods plead with Gautama, he declares that his curse can be transferred to others; Indra transfers one fourth of his curse to each of these four – women, earth, ocean and trees. Hence, menstruation in women, cracks on the earth, waves in oceans and sap in trees.

can lead astray when he is in the control of lust and anger. No one should sit in a deserted place with his mother, sister, or daughter; for the strong cluster of the sensory powers drags away even a learned man (*The Laws of Manu*, 2: 213-215).

*Manusmriti* makes this point that women are always sexually hungry more explicit in these observations:

Good looks do not matter to them nor do they care about youth; 'A man!' they say, and enjoy sex with him, whether he is good-looking or ugly. By running after men like whores, by their fickle, and by their natural lack of affection, these women are unfaithful to their husbands even when they are zealously guarded here.

(9: 14-15)

The bed and the seat, jewellery, lust, anger, crookedness, a malicious nature, and bad conduct are what Manu assigned to women. (9: 17)

Once women are believed to be fickle-minded, wicked and sexually insatiable, it automatically follows that they have to be **controlled** throughout. Control could be achieved through **denial and taboos**. Manu denies freedom to women in these oft-quoted words:

Men must make their women dependent day and night, and keep under their own control those who are attached to sensory objects. Her father guards her in childhood, her husband guards her in youth, and her sons guard her in old age. **A woman is not fit for independence.** (9: 2-3)

Knowing that their very own nature is like this, as it was born at the creation by the Lord of Creatures, a man should make the utmost effort to guard them. (9: 17)

Besides keeping them under guard, they were denied education, sacraments (sixteen in the case of males), hearing or reciting the *Vedas*. Occasionally, they were denied even free movement through 'chastity belts,' practiced by warlords.

Also, many embarrassing taboos regarding women were imposed on them: treating them as 'untouchables' and keeping them away hidden from all during their menstrual periods, observing *sutaka* (pollution) at the time of their birth and death, and their widowhood. (Later



*Smritikaras*, as we have seen, came up with the heartless dictum that the widows, preferably, should follow *Sahagamana* or *Anugamana*.)

The question that haunts us today is the inexplicable views of the *Smritis* regarding women. It is inexplicable because, on the one hand all the *Smritis* declare their whole-hearted allegiance to the *Vedas*, and time and again they hold those *Brahmins* in great respect who are well-versed in the *Vedas* and sincerely perform all the rites and rituals prescribed by the *Vedas*. There is consensus among scholars that during the Vedic period women also had their own sacraments including *Upanayana* and wearing the *Yajnopavita*; they studied the *Vedas* and the *Upanishads*, and some of them were such great scholars that they defeated the male scholars in the debates patronized by the kings. Talking of Gargi in the Vedic period, Swami Harshananda says: “Her learning is representative of the high intellectual standard of the women of the upper classes during the age of the *Upanishads*” (Vol. 1: p.623). Gulvadi Venkata Rao, who wrote the first social novel in Kannada (*Indirabai*, 1898), lists 54 women-scholars who lived and wrote in the Vedic period” (Preface to his novel, *Seemantini*).<sup>13</sup> This being the case, how do the *Smritis* which show great respect to the *Vedas* and *Upanishads* and quote from them for support, degrade women? What went wrong during the intervening period between the Vedic Age and the Age of *Smritis*?

Before we begin to find answers to the questions posed earlier, we have to confront the question regarding the propriety or relevance of such discussions (given earlier): ‘Now that modern Indian constitution has given all citizens equal rights in all fields irrespective of gender and caste and religion, when new Acts like Hindu Marriage Act and Indian Succession Act have replaced all the earlier laws, why should we talk of what was or was not practiced in the past? Why should we go on scratching old wounds and screaming in pain?’

These are pertinent questions that demand satisfactory answers. Yes, old laws have given place to new and enlightened laws, and there is the Indian constitution, guaranteeing fundamental rights to one and all. However, if we cast a glance at the National Bureau of Crimes (NBC), we find that crimes against women such as rape, kidnapping, domestic violence, sexual harassment at work place, and ‘honour killings’ are increasing every year.<sup>14</sup>

<sup>13</sup> Gulvadi Venkata Rao is the writer of the first social novel, *Indiarabayi* (1898) in Kannada. In his last novel, *Seemantini* (1909), he writes a lengthy Preface in which he contrasts the condition of women in the Vedic Age with that of the present age (20<sup>th</sup> century), and lists the names of 54 women scholars who were famous for their expertise in the Vedic period.

<sup>14</sup> According to the National Bureau of crime, whereas in 2017, 3,59,849 cases of crimes against women were registered, the number rose to 3,78,277 in 2018. Similarly, whereas 32,559 Rape cases were reported in 2017, the number for the same crime rose to 33,356.

Also, women below fifty are denied entry into certain ancient temples or places; in higher echelons of any business/ administrative institutions, women are denied positions owing to the fact that they demand long leave during pregnancy and childbirth. Even in the 21<sup>st</sup> century, 'suitable' dress-codes and behavioural codes are imposed on them. These details force us to sadly realize that not much has changed in India regarding women and their right to lead a life of dignity. If old forms of patriarchy have disappeared, their place is taken by new forms like 'female foeticide.' **In other words, the age-old practice of Sati, Jauhar, and burying a widow alive are not independent phenomena<sup>15</sup>; they are the symptoms of a malady deep-rooted in the Hindu male-psyche about Woman. Hence, discussions about them are relevant and very needed even today, in the 21<sup>st</sup> century.**

Such a complex and knotty phenomenon as marginalization of women is bound to have complex and interwoven reasons. Varied reasons are given to explain (or explain away) the patriarchal way the *Smritis* treat women –religious pressures, economic control by vested interests, the rise of non-Vedic religions like Buddhism which threatened *Sanatana dharma*, etc. The reputed historian, Saletore, adds two more reasons: political — during the constant wars between neighboring kingdoms, the assurance that their wives would not be caught and imprisoned/ raped in the eventuality of their death on the war field would motivate the soldiers to fight wholeheartedly; and social –the glorification of self-sacrifice for the sake of any noble cause such as dharma, king, husband, etc. (Saletore, pp. 93-95). All seem to be credible –but only partly; none of them explains fully how and why the women in India have been treated with contempt for the last two millennia.

Power is always accompanied with the pressures of consolidating it and the fear of losing it. Arguably, male power or authority over the female is always accompanied by the fear of losing it. "In general," states Margrit Eichler, "there is a positive relationship between power and the prevalence of sexual fear evoked by powerful persons."<sup>16</sup> Especially, the Hindu male seemingly suffers from a paranoic fear of the womb; he knows too well that 'whereas motherhood is a fact, fatherhood is only a belief,' and this knowledge he can never digest. (It is only very recently that medical technology has come up with DNA tests to prove 'fatherhood.') Consequently, he takes recourse to all sorts of control over women to be sure of his fatherhood and 'purity of blood' in the family.

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<sup>15</sup> Saletore, B. A. (1934), *Social And Political Life in the Vijayanagara Empire, A. D. 1346-A. D. 1646, Vol. II*; Madras: B. G. Paul & Co. Publishers. See the chapter "Women," p. 150-183; Mahalingam, T. V. (1940), *Administration and Social Life Under Vijayanagar*, Madras: University of Madras.

<sup>16</sup> Margrit Eichler, "Power and Sexual Fear in Primitive Societies," *Marriage and Family*, Vol. 37, No. 4, 1975; retrieved on 14. 7. 2021.

Governments may bring into force many, many laws regarding the safety and dignity of women; but unless the male comes out of his fears and accepts women as equal to him, women will continue to live as ‘the second sex.’ As a famous French proverb puts it, ‘the more it changes the more it remains the same.’<sup>17</sup>



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<sup>17</sup> The original French saying is: ‘*plus ca change, plus c’est la meme chose.*’

# Legal Framework to address Offences Against Women during the Time of Vijñānēśvara: An Analysis

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- Chidananda Reddy S.Patil\*

## 1. Introduction

The greatness of *Mitāksharā* of Vijñānēśvarā lies in the fact that it is much more than a mere commentary on *YājñavalkyaSmṛiti*. It is practically an anthology and digest of all that is best in the vast smṛiti literature of the land in a language at once precise and lucid. It is well known that on almost every issue there are conflicting *smṛiti* texts, and it is to the singular credit of Vijñānēśvara that after setting out the conflicting passages, he explains them in such a learned way following the rules of interpretation laid down in Purva-mimansa philosophy, that the apparent contradictions are resolved and clear guidance is offered in settling the legal issues involved.<sup>1</sup> How Vijñānēśvara held very advanced views is clear in his remarks in relation to treating of offences against women.

It is stated that no one book affected the lives of men and women in India more far-reachingly than the *Mitāksharā* of Vijñānēśvara. It gave legal status to the customs obtaining in the land and its soundness is seen in the fact that it has stood the test of centuries....<sup>2</sup> A doyen among the jurists of his times, whose doctrines have influenced the lives of millions of people of this country during the last nine centuries and whose legal acumen evokes awe among the discerning people for refreshingly modern outlook....<sup>3</sup>

Vijñānēśvara's modernity could be gauged by his elaboration of some of the qualifications of the parties to a marriage. He examines quite uninhibitively the capacity of the parties to consummate the marriage. Vijñānēśvarā lays down that the bride should be examined for the absence of impotency and states "*Napunsakatva Nivruttaye Stritvena Parikshitam*". Law people, are aware of the traumatic situation

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\* B.Sc.,LL.M., Ph.D., Professor and Head, Centre for Democracy and Constitutional Government, Karnataka State Law University, Hubballi-580025

<sup>1</sup> Dr.K.Krishnamurthy, "Vijñānēśvara's Contribution to Hindu Law", in Dr.M.S.NagarajaRao ed., *The Chalukyas of Kalyana*, (Bangalore: The Mythic Society, 1983), p.133.

<sup>2</sup> *Ibid.*, p.136.

<sup>3</sup> B.N.Krishnan ed., *Sampat's Hindu Law, Vol.I*, (Bengaluru: Indian Institute of Legal Literacy, 2013), p.1

the spouses face when one of them is impotent and incapable of consummating the marriage. We are also conscious of the difficulties the modern family courts face in ascertaining the truth or falsehood of the allegation made on this ground. It is interesting to observe that no modern matrimonial regime/ has made it incumbent on the parties to get examined before marriage for their sexuality. In this background Vijñānēśvara was far ahead of us in his scientific temper by laying down the prior examination of the bride.<sup>4</sup>

The way the offences against women were treated, the amount of penalty provided to provide for deterrence, the grave and subtle acts in derogation of dignity of women being prohibited all go to prove that the Vijñānēśvara and his forefathers were far ahead of contemporary jurists. The niceties of law will manifest themselves when carefully considers the dichotomy between the permissible and prohibited during those times. Some of the principles they followed are emanating in the form of new crimes in the modern legal system.

## **2. Adultery**

### **a. Both Man and Woman were Punished**

*Manu samhita* provided that, “For acts of infidelity to her lord, a wife becomes condemnable in society and she will be reborn as a she-jackal, afflicted with many a foul disease. A wife, who out of pride of personal beauty and opulent relationship has made transgressions against her husband, the king shall cause to be devoured by ferocious dogs in a well crowded locality.” At the same time, men involved in adultery were also subjected to punishment. For them, it was provided that, “... the king shall cause the male miscreant (adulterer) to be laid down on a hot bed of iron and the public executioners shall cast logs of wood in the fire-bed till his body is consumed to ashes.” The punishment for *sangrahana* (adultery) varied according to the caste of the man and the woman. Furthermore, the ancient *sutras* and *smritis* prescribed more severe sentences than the later *smritis*.<sup>5</sup> Gautama and Manu prescribed for an adultress death by being devoured by dogs, but Vajnavalkya softened the rigour of this punishment and prescribed as under.

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<sup>4</sup> *Ibid.*, p.7

<sup>5</sup> Chidananda Reddy S.Patil, "Protection of Women from Adultery under Mitāksharā: A Rational Approach Designed to Preserve Sanctity of Relations," *JILT* VolIII, 2005, pp-133-140

“Verse 286: In the case of one of the same class, the highest amercement; in an Anuloma (intercourse) the middle (ammercement); but in Pratiloma, death of the man, and the lopping off of the ear and the like of the woman.”

Vijñānēśvara has further rationalised the punishment. The punishments prescribed by him are as follows<sup>6</sup>:

“In the case of a man of any of the four *varnas*, a man shall be fined one thousand and eighty *panas* for having intercourse with a woman of his own caste, but who was another's wife or protected. When, however, he has intercourse with a woman of a lower order, and who is not under the protection of any one, then he shall be fined in the middle amercement. When, moreover, he has intercourse with a woman of his own *varna* who was under protection, then a special penalty has been stated by Manu: ‘A *Brahmana* shall be fined a thousand, when he has intercourse with a guarded *vipra* woman against her will; he shall be fined five hundred when he had connection with one who is willing. A *Brahmana* shall be compelled to pay a fine of one thousand if he has intercourse with women of two (classes) who are under protection; for (a similar offence against) a *Sudra* woman, the fine for a *Kshatriya* and *Vaisyas* shall be one thousand.”

This, moreover, shall be understood to hold in the case of women other than the wives of the preceptor, or a friend; since Narada has observed: ‘Mother, mother's sister, mother-in-law, maternal-uncle's wife, father's sister, the wife of a paternal uncle, or a friend, or a pupil, sister, her friend, daughter-in-law; daughter, spiritual preceptor's wife, a woman of his own *Gotra* come (to him) for protection, the queen, a female ascetic, the nurse, a virtuous woman, and a woman who is of the highest class. When a man carnally knows any one out of these women, he is said to have committed the offence of violating the bed of preceptor. For such a crime, no other punishment is ordained than the excision of the organ.’

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<sup>6</sup> J.R.Gharpure, *The Collection of Hindu Law Texts, Vol-II, Part-IV Yājñavalkya Smṛti*, 2<sup>nd</sup> ed.(Bombay: Office of the Collection of Hindu Law Texts, 1939) p.1345.

Of a woman, however, having intercourse with a man of a lower tribe, the ears -and by the use of the word *Adi*, 'and the like', - the nose, should be lopped off. For one having intercourse with a man of a superior or equal tribe, a fine should be ordered.”

Thus, women were not exempted from punishment for adultery and a law which subjects both the guilty parties (man and woman) to punishment is quite reasonable. It is also to be appreciated that adultery with the wife of a person standing in a respectable or pious relation carries severe punishment than in other cases. This approach is useful in controlling the domestic violence of which the society is much bothered today and the law- makers are grappling with to come out with suitable legislation. This approach is broader than the present understanding of the concept of domestic violence.

The prognostic view of the jurists of those times is to be felt in the prohibition of sexually violating women who come for protection and the extreme punishment of excision of the organ prescribed for such offences. This is comparable to the changes that were brought about the *Indian Penal Code* of 1860 through an amendment in 2013. The amended section 376 prescribes a rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.<sup>7</sup>

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<sup>7</sup> The relevant portion of Sec.376 is extracted here: Punishment for rape.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

- (a) being a police officer, commits rape—(i) within the limits of the police station to which such police officer is appointed; or (ii) in the premises of any station house; or (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

## **b. Adultery under Indian Penal Code:**

When the above ancient approach is contrasted with the definition of adultery under Section 497 of the *Indian Penal Code, 1860*, it becomes apparent that the scope of the offence has been drastically reduced. Sec.497 defines “adultery” as follows:

“Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape. Is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both. In such case the wife shall not be punishable as an abettor.”

The cognizance of this section is limited to adultery committed with a married woman and the male offender alone has been made punishable. Thus, under the code, adultery is an offence committed by a third person against a husband in respect of his wife. It is not committed by married man who has sexual intercourse with an unmarried woman.<sup>8</sup>

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- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital;  
or
  - (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
  - (g) commits rape during communal or sectarian violence; or
  - (h) commits rape on a woman knowing her to be pregnant; or  
\* \* \* \* \*
  - (j) commits rape, on a woman incapable of giving consent; or
  - (k) being in a position of control or dominance over a woman, commits rape on such woman; or
  - (l) commits rape on a woman suffering from mental or physical disability; or
  - (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
  - (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

<sup>8</sup> The fallacy of the reasoning behind the non-punishment of wife is obvious in the statement of the authors of the Code itself. They said: “... We cannot but feel that there are some peculiarities in the state of society in this country which may well lead humane man to pause before he determines to punish the infidelity of wives. The condition of the woman of this country is (that) they are married while still children; they are often neglected for other wives while still young.



This is nothing but saying that Indian women were in need of concession under law to satisfy their sexual instincts outside the matrimonial home. Any such concession or favour conferred on women is *prima facie* an assault on their virtue and an insult to dignity of Indian womanhood. Thus, she was thrown by the Britishers from a position of high esteem in society to the lowest position of sex monger and transgressor of the sanctity of the matrimonial home. A discriminatory rule was placed on the statute book.<sup>9</sup>

Such an arbitrary rule enacted by an alien government which could not appreciate Indian values such as the sanctity of the matrimonial home must not be tolerated in Independent India, especially after adoption of a Constitution with egalitarian ethos. One must not take refuge under the irrational reasoning of the authors of the *Indian Penal Code*(IPC) and allow Sec.497 to remain on the statute book. Article 14 of the Constitution embodies the general principle of equality before the law. A specific application of the same principle is indicated in Article 15. Clause (1) of Art.15 prohibits the State from discriminating against citizens on the grounds or religion, race, sex, caste or place of birth. Art.15(3) provides that, “Nothing in this Article shall prevent the state from making any special provision for women and children.”

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They share the attentions of husband with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his *zenana* with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking, by law, an evil so deeply rooted in the manners of the people this country as polygamy. We leave it to the slow, but we trust, the certain, operation of education and of time. But while it exists, while it continues to produce its never failing effects on the happiness and respectability of women, we are not inclined to throw into a scale, already too much depressed, the additional weight of the penal law.” Quoted by Justice Chandrachud Y.V. *et.al.*, ed. *Ratanlal&Dhirajlal's The Indian Penal Code*, (Nagpur : Wadhwa& Company, 2004) pp.912-13; It seems that the authors of the Code had forgotten the facts that they had made marriage during the lifetime of the other spouse an offence under Sec.494. The reasons given above for not punishing a wife as an abettor seems neither convincing nor satisfactory. Excepting Muslims, no community can practice polygamy. Nor is child marriage permitted. It would be more consistent with Indian ideas if the woman also was punished for adultery. Chidananda Reddy S.Patil, "Protection of Women from Adultery under Mitāksharā: A Rational Approach Designed to Preserve Sanctity of Relations," *JILT* Vol-III, 2005, p.136

<sup>9</sup> Chidananda Reddy S.Patil, *supra* note 5, p.136

Section 497 continued on statute book till *Joseph Shine v. UOI*,<sup>10</sup> wherein, a five-judge Bench of the Supreme Court unanimously struck down Section 497 of the IPC, thereby decriminalizing adultery. It struck down Section 497 on the grounds that it violates Articles 14, 15 and 21 of the Constitution. The Bench held that the section is an archaic and paternalistic law, which infringes upon a woman's autonomy and dignity. The Bench also read down Section 198 of the *Code of Criminal Procedure Code* (CrPC). Section 198(2) CrPC specifies that only a husband can file charges for offences under Section 497. The Bench overruled its judgments in *Yusuf Abdul Aziz v. Bombay*,<sup>11</sup> *Smt. Sowmitri Vishnu v. Union of India*<sup>12</sup> and *Vishnu Revati v. Union of India*<sup>13</sup> which had upheld the constitutional validity of those provisions.<sup>14</sup>

A discordant note against sustaining the discriminatory section was struck by the Committee on Reforms of Criminal Justice System under the chairmanship of V.S.Malimath J. It has recommended that “Section 497 of the *Indian Penal Code* regarding the offence of adultery, be amended to include wife who has sexual intercourse with a married man, by substituting the words ‘whosoever has sexual intercourse with the spouse of any other person is guilty of adultery’” after observing as under<sup>15</sup>:

“As a man can be punished under section 497 of *Indian Penal Code* for adultery, for having sexual intercourse with a wife of another man it stands no reason that a woman should likewise be punished if she has sexual intercourse with another married man.”

Thus the committee advocated for criminalising adultery for women also. However, the result obtaining after the decision of the Supreme Court in *Joseph*

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<sup>10</sup> MANU/SC/1074/2018

<sup>11</sup> AIR. 1954 SC 321

<sup>12</sup> 1985 Cr.L.J. 1302

<sup>13</sup> (1998)2 SCC 72

<sup>14</sup> On 13th January 2021, the SC has admitted a petition by the Ministry of Defense seeking to exempt armed forces personnel from the ambit of Constitution Bench decision of 2018 decriminalizing adultery.

<sup>15</sup> *Report of the Committee on Reforms of Criminal Justice System*, (New Delhi: Government of India, Ministry of Home Affairs, 2003), pp.290-91

*Shine's case* is completely contrary to what was recommended by the Committee on Reforms of Criminal Justice system.

**c. Adultery was treated like a civil wrong from the point of view of punishment**

It is fascinating to note that in terms of punishment and penalty prescribed by Yājñavalkya and subsequently rationalized by Vijñānēśvara compels us to believe that it was more treated like a civil wrong of modern times in those days only. With a view to adjustment with the punishments for the lowest and other *Sahasas*, a threefold division of adulterous intercourse has been specified by Vyasa. The three kinds are the lowest, the middlemost and the highest. Conversation with another's wife in an improper place, or at an improper time, or in a solitary place, throwing side-long glances at each other, and exchanging smiles is known as the lowest *Sahasa*. Sending fragrant scents and flowers, odours, ornaments, clothes, and causing allurements by food and drink is known as the middle most *Sahasa*. Sitting together in the same seat in a solitary place, with mutual contact, as also pulling each other's hair is known as complete act of adultery. Adultery (*Sangrahanam*) is the (carnal) union of a man and a woman.<sup>16</sup>

Punishment for Adultery provided by Yājñavalkya through verse 286 was that: "In the case of one of the same class, the highest amercement; in an *Anuloma* (intercourse) the middle amercement; but in *Pratiloma*, death of the man, and the lopping off of the ear and the like of the woman." This was modified by Vijñānēśvara as under:<sup>17</sup>

"In case of a man of any of the four *varnas*, a man shall be fined one thousand and eighty *panas* for having intercourse with a woman of his own caste, but who was another's wife or protected. When, however, he has intercourse with a woman of a lower order, and who is not under the protection of any one, then he shall be fined in the middle amercement. When, moreover he has intercourse with a woman of his own *varna* who was not under (any one's) protection, or with a woman of a lower *varna*, who was under protection, then a special penalty....

<sup>16</sup>J.R.Gharpure, Yājñavalkyasmṛiti together with the Commentary called Mitāksharā by Vijñānēśvara, Vol.II, (Bombay: The Asiatic Society of Bombay, 1920) p. 399.

<sup>17</sup>*Ibid.*, p. 401.

A *Brahman* shall be fined a thousand, when he has intercourse with a guarded *vipra* woman against her will; he shall be fined five hundred when he had connexion with one who was willing. A *Brahmana* shall be compelled to pay a fine of one thousand if he has intercourse with woman of the two (classes) who are under protection; for (a similar offence against) a *Sudra* woman, the fine for a *Kshatriya* and *Vaishya* shall be one thousand."

In case of a *Pratiloma* offence, for eg. intercourse with a woman of highest caste who was a guarded woman, punishment for men of *Kshatriya* and other lower class was death; for any other women there was a pecuniary fine. If these two classes were to offend a *bhahmani* who is guarded, the punishment was burning in a fire of dry grass. If a *Vaishya* or a man of Royal tribe has intercourse with a unguarded *brahmani*, *vaishya* was fined 500 and *khatriyawas* fined 1000. For a *Shudra* having intercourse with unguarded woman of highest class, the punishment of excision of organ and confiscation of entire property was prescribed; if the woman was a guarded woman the punishment was death and confiscation of property. For woman having intercourse with a man of lower tribe the punishment was lopping off the ear, nose, etc.; if it was with man of superior or equal tribe, only fine was prescribed.<sup>18</sup>

The sanction for adultery varies. Only in certain of the cases severe corporal punishment is prescribed and in all other cases it is a sort of penalty of varying quantum depending upon the class of the adulterer and the woman. Even though arbitrary going by present day standards, it can be perceived that except certain of the cases, adultery was treated as if it was a thing which can be expiated by payment of penalty.

#### **d. Adulteress Wife Protected from Desertion:**

The humane character of the legislation of the Indian sages is seen by the fact that for adultery they did not allow the husband to desert the wife or send her out of the matrimonial home. Goutama prescribes penance, to the effect that she should be kept under guard and be given food. Yājñavalkya prescribes that she

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<sup>18</sup>*Ibid.*, p. 402.

should be deprived of her authority over servants, wear dirty cloths, given food sufficient to live, be treated with scorn, made to lie on ground, becomes pure after monthly period, if she conceives-she may be abandoned. The Mitāksharā provides that the wives of *brahmana*, *vaishya* and *kshatriya* who commit adultery with a *shudra* may be purified by a penance in case no child is born, but not otherwise. Abandonment consists not allowing her to participate in religious rites and conjugal matters, but she is not to be cast on the streets; she is to be kept apart guarded in a room and to be given food and raiment.<sup>19</sup>

The following propositions can be deduced from the texts: (1) There is no absolute right of abandonment of wife in the husband on ground of adultery; (2) Adultery is ordinarily an *upapataka* (a minor sin) and can be atoned by appropriate penance undergone by the wife; (3) the wife who has committed adultery but has undergone penance is to be restored to all the ordinary rights of wives. (4) As long as the adulteress has not undergone penance, she is to be given in the house itself, starving maintenance and to be deprived of all her rights as wife. (5) A wife, who commits adultery with a *Sudra* or has had a child thereby, who is guilty of killing her foetus or of attempt to kill the husband or guilty of one of the deadly sins (*mahapataka*), is to be deprived of the right to participate in religious rites and conjugal matters and is to be kept confined in a room or in a hut near the house and to be given starving maintenance and poor apparel, even after she undergoes penance.<sup>20</sup> All this goes to prove that adultery by wife is akin to civil wrong and an expletive penance was prescribed. The present decriminalisation of adultery by the Constitution Bench of the Supreme Court in *Joseph Shine v. Union of India*,<sup>21</sup> appears to be in consonance with the principles prevailing then.

### 3. Provisions Designed to Prevent Sexual Harassment

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<sup>19</sup>PandurangVaman Kane, *History of Dharmasastra*, Vol II Part I, 3rd ed. (Pune: Bhandarkar Oriental Research Institute, 1997) p.571.

<sup>20</sup>*Ibid.*, pp.572-3.

<sup>21</sup> MANU/SC/1074/2018

Another interesting feature in relation to adultery is the unique way in which the attempt to commit adultery is treated. Yājñavalkya in verse 284 defines it as under<sup>22</sup>:

“Touching the knot of the lower garment, the breasts, the upper garments, thighs, and the hair, holding conversation at an improper place and time, as also sitting together on one seat.”

Commenting and elaborating upon the above provision Vijñānēśvara observes:<sup>23</sup>

“Moreover, he again, who behaves as if with a lustful desire towards another’s wife by touching the part (of her body) bearing the knot of the (lower) garment, or the garment covering her breasts, or the lower parts of her body, or the hair of her head; likewise, he who holds conversation with her at an improper place, *adeśei*.e. in a place which is lonely, or where crowds of people have gathered together, or which is obscured by darkness; or who closets himself with another’s wife on one sofa or any other like seat, as if with intent on having carnal intercourse with her, such a one be arrested as one who had attempted to commit adultery.”

The very reading of the definition makes it clear that they were concerned much more with the dignity of women than the people of today. It is also of interest to note that the language used here closely corresponds with the language used in statutes and judicial verdicts in connection with the prevention of sexual harassment.<sup>24</sup> Further, it is to be noted that one who boasts or declares that that he has enjoyed a woman was also guilty of adultery.<sup>25</sup>

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<sup>22</sup> Quoted by J.R.Gharpure, *Supra* note.6, p.1341.

<sup>23</sup> *Ibid.*, pp.1341-42.

<sup>24</sup> 354A, Indian Penal Code: Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts— (i) physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) a demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment. (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

<sup>25</sup>J.R.Gharpure, *Supra* note.16, p. 400.

#### 4. Kidnapping a maiden:

Yājñavalkya under verse 287 had prescribed that, if any one kidnaps a maiden having ornaments on shall pay highest amercement and lowest amercement in other cases when the maiden belonged to the same varna; in case of a maiden of a superior class, death. This principle was elaborated by Mitāksharā as under:<sup>26</sup>

"One kidnapping a maiden of his own class, who is about to be married, and who had been decked with ornaments, shall be punished in the highest amercement; and one kidnapping a maiden of his own tribe not approaching a marriage shall be fined in the lowest amercement. For a *Kshatria* or any other carrying away a maiden of the highest tribe death alone is the sentence...."

For taking away a willing maiden of inferior class, who is full of love for the kidnapper, there was no punishment.

#### 5. Defiling a woman:

It is to be appreciated that the expression 'defiling a woman' included veritable acts, some of which have found place in the definition of rape under *Indian Penal Code* as amended in 2013.<sup>27</sup> Yājñavalkya prescribed the punishment of lopping off of the hands for such acts of defiling and death if the acts were towards a woman of higher class. When one looks into the punishments as described by Mitāksharā, one will appreciate that the scope of 'defiling' included many acts. Mitāksharā provided that if one forcibly defiles, by nail-scars or otherwise, a maiden who had no sexual desire, then his hand should be lopped off; when he defiles a maiden who had no sexual desire by penetrating into the female organ by thrusting in his fingers, the punishment was lopping off of the fingers and a fine of six hundred *panas*. It was provided that a man of an equal class defiling a maiden having sexual desire shall not incur the punishment of amputation of his fingers, but shall be compelled to pay a fine of two hundred *panas* as a deterrent from

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<sup>26</sup> *Ibid.*, p. 403.

<sup>27</sup> Act 13 of 2013

repetition.<sup>28</sup> When woman has no sexual desire- lopping off hands and fine; when woman has a sexual desire the fine was 600 *panas* was prescribed.

Penalty was also prescribed for slandering a woman and making false accusations. If a person declares defects in a woman such as disease, etc. or that she is not a virgin was prohibited even if it was true, he was liable to pay 100 *panas*. For making false accusations the penalty was 200 *panas*.<sup>29</sup> That means privacy of woman was recognized and protected during those days. To get the right of privacy, the modern India had to wage litigation in the highest court and wait for seven decades after independence.

#### **6. Penalty for talking when prohibited:**

Yājñavalkya's verse 285 provided that a woman being forbidden shall pay a hundred, while a man two hundred as a penalty; when prohibition had been to both, their punishment is as same as adultery. Mitāksharā elaborated this principle to the effect that a woman who has been forbidden, by the husband or the father or the like, from holding conversation with a man, attempts or does the same shall pay 100 *panas* as penalty. A man when similarly prohibited had to pay 200 *panas*. When both were prohibited, the penalty was same as for adultery according to *varna*'s of parties. This rule was not applicable to wives of *Charanas*, nor those who live on their own, for such men send their wives or concealing themselves allow them to have criminal intercourse.<sup>30</sup>

It is to be noted that both men and women were protected from unwanted communication during those days. This can be compared to the present offence of stalking under *Indian Penal Code* which has prohibited men from resorting to certain forms of following and communicating with women.<sup>31</sup> This provision was

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<sup>28</sup> Yājñavalkya, Verse 288(1); J.R.Gharpure, Yājñavalkyasmṛiti together with the Commentary called Mitāksharā by Vijñānēśvara, Vol.II, (Bombay: The Asiatic Society of Bombay, 1920) p. 404.

<sup>29</sup> J.R.Gharpure, *Supra* note.16, p. 405.

<sup>30</sup> *Ibid.*, p. 400.

<sup>31</sup> 354D of Indian Penal Code: Stalking.—(1) Any man who— (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking: Provided that such conduct shall not amount to stalking if the man who pursued it proves that— (i) it was



inserted in the IPC through the *Criminal Law Amendment Act, 2013* and was necessitated due to the fact that new methods of harassing woman started with the innovation in the communication technology which created a necessity to criminalize certain of the activities under the offence of stalking. One has to appreciate that in those days without technology, they had a provision for the protection of both men and women from unwanted communications.

### 7. Akin to living relationship

Yājñavalkya through verse 290 provides that in case of women who are protected slaves of another, and likewise of kept mistresses, even though intercourse with them is permissible, a man shall be compelled to pay a fine of fifty *panas*. Mitāksharā elaborated this to the effect that persons having intercourse with *Avarudha* or protected slaves, i.e., the women who are prohibited by the master from intercourse with other men with an injunction to stay at home with the object of avoiding any lapse of service; or *Bhujishya* or kept mistresses- women restricted in matter of sexual intercourse to certain persons; or wanton women and common women shall be fined fifty *panas* since they are as good as wives, as they have been patronized by another.<sup>32</sup>

In this context an objection is raised to the effect that, it is not correct that wanton women and the like others being common women, intercourse with them is permissible. Answering the objection to be true, certain inference is drawn to the effect that connection with them is possible as under:<sup>33</sup>

"This is true. But here, there being an absence of a visible obstruction e.g. the fear of father or other guardian, or of the Royal sanction, the usage of the language that 'a connexion with them is permissible' is

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pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or (iii) in the particular circumstances such conduct was reasonable and justified. (2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

<sup>32</sup>J.R.Gharpure, *Supra* note.16, p. 406.

<sup>33</sup>*Ibid.*, p. 408.

proper. And also, by the text "In the case of protected female slaves or kept mistresses..." the punishment being confined to a particular case viz. of a woman who has resorted to one particular man, when that condition does not exist, an absence of a punishment is necessarily inferred. And again in the case of wanton women and others there is an absence of punishment, since no rule has been ordained; and also inference may be drawn from what is indicated in the text: "He should not cause anything to be paid "by a maiden who approaches a man of a higher caste."

This analysis allows us to believe that a sort of relationship was allowed between the consenting persons in the society during of those times which in the contemporary times has come to be known as living-in relationship.

### **8. Prostitution:**

Prostitution has been there in all countries from the dawn of history. In ancient India, the courtesans had a peculiar position: though they were despised as persons sacrificing something specially honourable in a woman, they enjoyed a position of fame and honour- like that of Aspasia and Phrynes of classical Greece- and were respected for their achievements in fine arts- the traditional *kalās*- which had, more or less, ceased to be cultivated by other sections of society.<sup>34</sup>

In medieval Karnataka, however, the *Vēśyā* doubtless enjoyed much wider latitude in society than other women. Vijñānēśvara has interesting comments to make in this context. He discusses the problem of *vēśya* in some detail, quoting many authorities on the issue and answering many objections raised by earlier writers in that connection. Such of the *vēśyas* which are not kept specially by a man (*avaruddha*), do not incur any sin nor punishment if they have intercourse with men of same or superior caste; and men approaching them too do not incur any penalty. However, they incur sin.

Vijñānēśvara's view seems to reflect the trend of contemporary thought regarding the institution of prostitution. Contemporary epigraphs do refer to some persons, who took pride in their epithets. What is more, the prostitutes were subject to a certain tax (obviously a profession tax) called *suledere*- a fact clearly indicating

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<sup>34</sup> S.Gururajachar, "Vijñānēśvara and Contemporary Society," in Dr.M.S.NagarajaRao ed., *The Chalukyas of Kalyana*, (Bangalore: The Mythic Society, 1983), at 140.

their considerable number in the society. Epigraphs show that many dancing girls were attached to various temples known as *devadasis*, they were given land grants and quarters were built in the vicinity of temples for them. Some inscriptions even refer to an officer called *sulevala*, who is believed to have been in charge of music and dancing services held regularly in temples; *sulevalike* stood for his office.<sup>35</sup>

### 9. Forcible Intercourse:

It is unbelievable to note that there were provisions akin to the latest provisions introduced in the contemporary criminal law during the time of Vijñānēśvara. Yājñavalkya had prescribed a fine of ten *panas* for having forcible intercourse with a *dasi* if she is unwilling and twenty five *panas* each for several men having forcible intercourse when she is unwilling.<sup>36</sup> The penalty provided under *Mitāksharā* in similar circumstances is more. For a man having forcible intercourse, and without payment of her fee, with a woman of the class who maintain themselves by sexual connexion with men, eg. female slave, a wanton woman or the like, the fine is ten *panas*. If several many have intercourse by force with one single woman even when she was unwilling, then each shall be punished with a fine of twenty four *panas* separately. Thus the aggravated forms of abuse were met with greater penalty.

### 10. Conclusion:

Endeavor to protect women of all classes is manifest in *Mitāksharā*. It is clear that the jurists of 9<sup>th</sup> century were well ahead of their times in terms of protection of the interests of women by imposing severe punishment and penalties for offences against women. At the same time they provided for the security for women, protecting them from being abandoned and becoming destitute. Sex between consenting adults appear to be permissible and adultery by wife was not a ground to abandon her. The offences created were all comprehensive to cover multitude of related activities compared to their modern parallel versions. However, the disparity in treating the offences and offenders dependent upon the class of the perpetrator and the victim is writ large. Subject of certain aberrations, being rich, the *Mitāksharā* offers a treasure of information from which the present policy makers can take a leaf to rationalize and strengthen criminal law to protect women.

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<sup>35</sup> *Ibid.*, pp.140-1.

<sup>36</sup> Verse 291.

## Reading *Mitakshara* in Feminist Perspective – with Reference to *Stridhana*

-Gurudath Chilkunda\*

### Prelude:

The Hindu law stands unique among the contemporary legal systems for its antiquity, rich literature, typical institutions and flexibility to accept changes. From the period of *Vedas* to codification the ball has been rolling persistently. It has never shown the signs of decrepitude. It is very difficult to ascertain the time and place of the Sanskrit scholars and their writings as they hardly specify them. Few scholars prefer to remain anonymous. Western orientalist were not inclined to concede sufficient antiquity to ancient Sanskrit literature, whereas, Indian orientalist assign a very ancient antiquity<sup>1</sup>. P.V.Kane<sup>2</sup> a great scholar of 20<sup>th</sup> century has given authoritative period of texts and authors and found to be decisive. The multitudinous customary practices and cultural differences have not affected the basic values of Law given by the ancient Law givers. The texts and authors have been highly revered across the country since ages. If history offers proof, *Shastras*,<sup>3</sup> amidst innumerable variations and transformations have offered guidance and secured compliance from people in civil society for thousands of years in a plenitude of situations through successive conquests and political uncertainty of the rise and fall of innumerable hostile governments and empires.<sup>4</sup>

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\* Dean, Faculty of Law, SRMIST Deemed to be University , Chennai.

<sup>1</sup> Justice Gajendragadkar, 'The Historical background and Theoretic Basis of Hindu Law,' AIR 1963 Journal Section p 20

<sup>2</sup> See History of *Dharma Shastra* (HDS) Vol III

<sup>3</sup> referred to *Shruti*, *Smritis* and other authoritative Sanskrit texts

<sup>4</sup> Rajeev Dhavan, *Dharma Shastra* and modern Indian Society : A preliminary Exploration, *JILI* Vol. 34 No.4 1992 p 516

*Vedas*<sup>5</sup> are believed to be the foundation for all branches of knowledge and commands highest respect. However, direct contribution of *Vedas* towards the development of Law in modern context appears to be limited. The *Smritis*<sup>6</sup>, the sacred texts are the direct and authoritative sources of Law and the objective is to protect and uphold *Dharma*. The commentaries and digests are extension and expansion of the *Smritis* and constitute the part of legal codes. All these texts unanimously advocate *Dharma* as the foundational value for personal life, public life and governance. These texts were operative in different parts of India at different times. An analysis of these texts and their contribution suggest that they appeared to be rigid in their approach but liberal to incorporate the changes time to time in compliance to the changes of the time and customary practices legal literature got enriched. The Hindu Law does exist, and has existed for upwards of at least three thousand years, and has governed the Hindu Community in the same sense in which the statutes of the British Parliament governed the subjects of Queen of Great Britain and Ireland.<sup>7</sup> The contribution of Judges of 19<sup>th</sup> and 20<sup>th</sup> century play a vital role towards codification of Hindu Law. The Hindu Law today is codified and exhibits total compliance to the modern legal thoughts, changes of society and the constitutional values due to its accommodative trait.

### **Cogent Transition**

All the texts were in Sanskrit Language. Involvement of Sanskrit scholars for interpretation was inevitable. Great western and native scholars endeavoured to translate Sanskrit works and wrote books in English too. The contribution of Colebrooke<sup>8</sup> Buhler<sup>9</sup>,

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<sup>5</sup> It is believed that Vedas otherwise called as *shrutis* were structured around 4000 years ago. On the other hand, the puritans believe that the *Vedas* are *apourusheya* means, not the creation of any human being but bestowed by Lord Brahma

<sup>6</sup> *DharmaSutras* and Dharma Shastras

<sup>7</sup> Raj Kumar Sarvadhikari, Tagore Law Lectures-The Principles of the Hindu Law of Inheritance -1880 p 265

<sup>8</sup> 1765- 1837, considered to be the first great Sanskrit Scholar in Europe, an English Orientalist. His major works in Sanskrit are, translation of *Mitakshara* and *Dayabhaga*, Grammar the Sanskrit Language and Digest on Hindu Laws. The Digest was a joint work of him and pundit Jagannatha. He was one of the founders of Asiatic Society

<sup>9</sup> Prof. Johan George Buhler-1837 – 1898, came to India on invitation of Max Muller. He contributed a lot to the monumental 'Sacred Books of the East' popularly known as SBE. He was good in Prakrit language also. Digest of Hindu Laws, Third Book of Sanskrit, *Vikramankacharita*, *Apastambha Dharma Sutra* are few to mention)

Max Muller<sup>10</sup> A.C.Burnell<sup>11</sup> Dr. Julius Jolley<sup>12</sup>. The contribution of these scholars deserve huge appreciation as they introduced the rich literature and legal system of ancient India to the world. However, the interpretations sometimes, appeared to be prejudicial and interpreted keeping in mind the values of western philosophy. Henry Maine<sup>13</sup> commented, that, ‘...in comparison with XII Tables that the ancient Hindu Jurisprudence has a substratum of forethought and sound judgement’. But irrational imitation has engrafted in it in immense apparatus of cruel absurdities<sup>14</sup>. Gajendragadkar J. points out how and why Maine and others were wrong in their perception in this regard. During their time, Kautilya’s Artha Shastra<sup>15</sup> had not seen the light of the day which existed long before XII Table.<sup>16</sup> Later great Indian authors like, Sir Goorudas Banerjee,<sup>17</sup> Dr.Rajkumar Sarvadhikari, Dr.K.P. Jaswal,<sup>18</sup> P.V. Kane<sup>19</sup> are the few scholars who gave a real perspective to Hindu Law and interpretations. J.D.M.Derret has done an extensive work and his writings on different institutions of Hindu Law have been highly consulted by academicians and the Courts. Hindu Law by V.N. Mandalik and J.D. Mayne, Prof. J.R.Gharpure have been often consulted.

During 18<sup>th</sup> and 19<sup>th</sup> century the British Judges were dependent of Sanskrit pundits and use to refer the translated works of western scholars. Few Judges later studied Sanskrit and use to refer original texts. The usurpation of the British Courts in Hindu Law through incorporating the English Law values like, equity, justice and good conscience effected a remarkable changes leading to Anglo - Hindu Law, especially, the emphasis given to the local customs against *Dharmashastras*.<sup>20</sup> A new trend was initiated upon the importance of

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<sup>10</sup> 1823 – 1900, Friedrich Max Muller, a German Philologist and Orientalist. His monumental work –The Sacred Books of the East in 50 Volume set has been considered as authoritative source for Hindu Law and Texts. He introduced a number of Scholars in his work. Translation of *Rig Veda* Samhita, Studies in Buddhism are a few to mention.)

<sup>11</sup> 1840- 1882, British Sanskrit Scholar in Sanskrit and Dravidian Languages

<sup>12</sup> 1849-1932, a German Indologist, a great scholar. Worked with Max Muller for SBE Series, delivered lectures for Tagore lecture series, later published as Outlines of History of the Hindu Law of Partition, Inheritance and Adoption

<sup>13</sup> 1822-1888., a British Judge.)

<sup>14</sup> Ancient Law p 17, see, P.B. Gajendragadkar J, *supra* note 1, p 26

<sup>15</sup> It was rediscovered by Dr. R. Shamashastry in 1909 in Mysore

<sup>16</sup> see Gajendragadkar J., *supra* note 13 for a detailed discussion

<sup>17</sup> 1844 – 1918, ‘Marriage and *Stridhana* is an authority upon this subject

<sup>18</sup> Hindu polity, History of India , Manu and Yajnavalkya

<sup>19</sup> History of Dharmashastra 5 volumes.,now considered as authoritative work

<sup>20</sup> J. H. Nelson, District Judge in Madras Province and an author also created a controversy in this regard. See Rajeev Dhavan, Dharmashastra and Modern Indian Society: A Preliminary Exploration, JILI, 34:4 PP 529-30

customs and opening the doors to the litigant to prove the customs.<sup>21</sup> Sweeping changes were effected to the traditional institutions of Joint family, Coparcenary, Adoption, maintenance etc. By 20<sup>th</sup> Century, the Hindu Law was loaded with case laws and had to read under the light of decided cases. The case Laws became dominant against the Texts.

### **The Schools of Hindu Law**

The idea 'Schools of Hindu Law' is the creation of British which was unknown to ancient legal system of India. It is a European idea imposed upon Hindu Law during medieval period<sup>21</sup>. This classification has got into academic works and the subsequent lawyers have been tutored to believe the existence of two schools. The British Courts and subsequent native Courts and writers have indoctrinated these classification. Nelson observes<sup>22</sup> 'the extraordinary doctrines of *Schools of Hindu Law* seem to have been invented by British Lawyers in very early times. . . .' He opines that this has happened in the hands of the scholars who had little knowledge of Sanskrit or on the basis of translated versions of the Sanskrit texts. Knowledge of Sanskrit is very essential to understand the Law in textual form along with the local customs, indigenous culture and social background as they play a pivotal role in interpretation. However, the contribution of the foreign scholars through their literary work on traditional Hindu Law deserve huge acknowledgement. On the other hand, interpolations due to subjective interpretations or misunderstanding of the context in which the texts were written have to some extent affected the spirit of basic institutions of Hindu Law. It effected both positive and negative thoughts on Hindu Law. However, the Schools of Hindu Law have become the accepted doctrines for academics and the judicial institutions. The Anglo-Hindu Law developed huge stock of judicial interpretations which constitute a major source of Hindu Law. *Mottoo Ramalinga*<sup>23</sup> became a pointer for future cases. This case on adoption was decided by Privy Council leaving far-reaching effects on the institutions of adoption and importance of customs in interpretation

### **Vijaneswara**

Vijaneswara, otherwise called *Vijnana Yogi, Yogeswara*, was a great Law giver born in Masimadu near Basavakalyana and settled down in Martur, near Gulbarga, Karnataka.<sup>24</sup> He

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<sup>21</sup> See J.H Nelson 'The Scientific Study of Hindu Law 1878 p 14. See the FN

<sup>22</sup> Nelson *ibid*, also see Sarvadhikari p 264-65

<sup>23</sup> *supra*.note 21

<sup>24</sup> Two stone inscriptions in Kalingeswara temple were founded by P.B.Desai of Darwad about him were found in 1932 in Martur. In memory of his invaluable contributions Justice Rama Jois took initiative to construct Vijaneswara Bhavan and research centre in Martur. Prof. B.N. Sampath has done an extensive research about him.

was a court pundit with Raja Vikramaditya IV of Kalyana, belonged to Chalukya dynasty. He lived during 1070A.D. – 1100 A.D.<sup>25</sup> He was called as *Vijnana Yogi*. Colebrook opines that he belonged to the order founded by Adi Shankaracharya.<sup>26</sup> His original name was Kancha, son of Somraj and Bhagyavanite. His wife's name was Kethikabbe. Sarvadhikari writes that, Vijnaneswara himself declares in his treatise that he was the son of Padmanabha Bhatta of *Bharadwaja Gotra* and gave up worldly desires and became a *paramahansa*, a disciple of Viswarupa and authored a treaty against Yajnavalkya Smriti and he hails all his predecessors and praises his king with highest respect.<sup>27</sup> Anquetil Duperron opines that Vijnaneswara or Vijnaneswarudu was the name of a Telugu King who had collected the Laws *Vijnana* that is science. Unequivocally, Vijnaneswara has been placed in the highest pedestal among the Sanskrit text writers and he is relevant even today. A South Indian chose Yajnavalkya who was a Mithilian, today's Bihar region, whom, Vijnaneswara calls as his *Acharya*. Since 12<sup>th</sup> Century till day Vijnaneswara is highly respected and followed and attracted highest numbers of commentators. He still lives through his commentary.

### ***Mitakshara***

Vijnaneswara and *Mitakshara* are inseparable words. *Mitakshara*<sup>28</sup> means limited words. This treatise is an authority on Hindu law since 12<sup>th</sup> Century. As Vijnaneswara himself claims, *I have tried to explain the meaning of my author in simple and concise language; and my commentary, it is hoped, will afford matter for reflection to the thoughtful*<sup>29</sup>. This treatise is primarily on Yajnavalkya Smriti, but the other great Smritis, like, Manu, Narada, Katyayana etc., have been profoundly referred. *Mitakshara* enjoys more scope as its application was extended to all over India except the province of Bengal which has been ruled by *Dayabhaga*. Both the treatises have been referred to by the subsequent text writers, translators, and Courts as two major schools of Law. It is true that there are basic differences between these schools especially on succession and inheritance principles. *Mitakshara* is

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<sup>25</sup> Antiquarians like, Colebrook, Buhler, Burnell, have tried to give different time through their research. Now, finality is given by P.V.Kane. A lot arguments are found regarding his status and king under whom he lived. See, J.H. Nelson, The scientific Study of Hindu Law, 1881 pp72-77, Jyotiprasad Sarvadhikari(Ed), The principles of the Hindu Law of Inheritance- Rajkumar Sarvadhikari 1922, Tagore Law Lecture series, pp281-290. P.V.Kane appears to have agreed mostly with Rajkumar Sarvadhikari. After unearthing the stone inscriptions in Martur in 1932 the argument has been settled.

<sup>26</sup> See, Nelson *supra* note 20 p.74 *fn*.

<sup>27</sup> See Nelson *supra* note 20 p78

<sup>28</sup> Authors write like, *Mitaxara*, *Mitacshara*

<sup>29</sup> See, .Sarvadhikari, p 282



based on propinquity ie nearness of blood relationship or consanguinity, whereas *Dayabhaga* is based on spiritual efficacy or spiritual benefit. Jeemutavahana does recognise the rights by birth. The coparcenary law and joint family system of *Mitakshara* is unique among contemporary Laws of succession. It has direct impact on the property rights female members of the family. Truly speaking, *Mitakshara*'s coparcenary law has limited the scope for a woman particularly in inheritance. Both texts recognise *Stridhana*.<sup>30</sup> These two streams of Law did rule for about 900 years. However, after the enactment of Hindu succession Act 1956, the difference has been dissipated. *Mitakshara* has found the place in statutory Law and *Dayabhaga* has become inoperative. However, influence of local customs especially, tribal customs and few local streams like, Malabar laws cannot be ignored. In fact, *Marumakkatayam* and *Aliyasanthana* rules are more favourable to women for having recognised matrilineal dependency.

### ***Stridhana***

*Stridhana*, the women's peculium occupies a large place in the Sanskrit Law books and is the most difficult branch of Hindu law. Literally, it means woman's property. It is the exclusive property of a woman suggesting property rights thereby. Henry Maine observes<sup>31</sup>: 'it is certainly remarkable fact that the institution seems to have been developed among the Hindus at a period relatively much earlier than among the Romans'. In all legal systems of all societies, women have not been treated equally with men on property rights in terms of possession, ownership, succession and inheritance. This generated series of cascading effects upon the independence, dignity and status of women. This ended up in dependency upon men. *Stridhana* is an exceptionally unique institution creating exclusive property rights in favour of women to ensure that women shall not get in to distress. The Sanskrit text writers developed this institution to identify and empower women in terms of possessing property absolutely which will ensure that a woman will not turn destitute. It is equally true that this entitlement neither compensates nor equal to the property rights bestowed upon a male counterpart in the joint family. Significantly, *stridhana* has stepped into the statute book.

### **Development of *Stridhana***

Except few vague references, there is no mention of *Stridhana* in *Vedic* literature. The *Sutrarakas* and *Shastrakarakas* have dealt with this subject substantially. At early stages, it

<sup>30</sup> For a detailed analysis see Sarvadhikari pp 322,343, 356-367,446, and 450.

<sup>31</sup> Sir Henry Maine 'Early History of Institutions, quoted in Moyne's *Hindu Law and Usage* 12th ed p 841 FN

was limited to *sulka*, the bride's price given at the time of marriage. It included, ornaments<sup>32</sup>including *parineya* the nuptial presents and ornaments inherited by daughters<sup>33</sup>.

The Shastrakaras structured this unique institution by defining the source, scope of enjoyment and succession. They enjoined legal status to this institution. Till the time of Manu<sup>34</sup> there was no clarity. He recognised six folds of *Stridhana*. He says, 'what was given before the nuptial fire (*adyagni*)...given in bridal procession,...given in token of love...received by brother, mother, or father that is called six fold property of women<sup>35</sup>. Further he adds<sup>36</sup>, a gift made subsequent and what was given to her by her affectionate husband... Manu did not recognise absolute rights over her *stridhana* during the life time of her husband, but asks the king to punish those who misappropriate her *stridhana*. Yagnavalkya<sup>37</sup> has been accorded a high position in Hindu jurisprudence, next to Manu. Robert Lingat<sup>38</sup> observes, 'of all Smritis which have come down to us that of Yagnavalkya, is assuredly the best composed and appears to be the most homogeneous...'. He widened the net of *Stridhana* by adding *adyammeansetcetera* in his definition. He says,<sup>39</sup> what was given by the father, mother, husband or brother or received by her before the nuptial fire or what was presented to her on her husband's marriage to another wife (*adivedanika*) and the like (*adya*). He adds what is being by her cognate relations like *sulka* and gifts made subsequent to her marriage. Yagnavalkya's contributions are, firstly, he included new sources. Secondly, he allowed her to use her *stridhana* independently. Thirdly, allowed the daughters to succeed *stridhana* in the absence of male issues. The very important contribution of Yagnavalkya Smrithi is, it attracted Vignaneswara and became the source for *Mitakshara*. Narada<sup>40</sup> follows Manu in recognising six folds of *stridhana*, but a great contribution of him is he empowers the women to dispose such property, *saudayika* at her volition. He follows his predecessors.

<sup>32</sup> Baudhayana 800BC-400BC, the oldest most revered sutrakara,

<sup>33</sup> Vasishta 600BC-300BC

<sup>34</sup> Manu Smriti 200BC-100AD, contains 2694 verse divided into 12 chapters. He has been called as the first Law giver. There are divergent views upon the real author. See Rama Jois J Legal and constitutional History of India, Vol 1 p 28, Buhler *SBE* VolXXX111, Julius Jolly(Tr) p XV 1

<sup>35</sup> Manu, 1X, 194, see, P.V.Kane HDS, Vol.3 P773

<sup>36</sup> 1X 195

<sup>37</sup> 200 AD during Gupta dynasty, Magad, for a detailed note upon him, see, Pandit Laxmikant Jha – Nibandhakaras of Mithila – Studies in Law, Patna Law College Diamond Jubilee commemorative Volume p 392

<sup>38</sup> French born Legal scholar 1892-1972

<sup>39</sup> 11.143-144, see HDS VOL 3 P 773

<sup>40</sup> 100AD-400AD

Katyayana<sup>41</sup> is very relevant as he recognises *priyadatta* i.e. the gifts made by other kinsmen other than husband and gifts made by strangers during her maidenhood constitute *Stridhana*.<sup>42</sup> He declares that women have independent power over *saudhayikaas* it is given by her kindred as a support in order that they may not be reduced to a terrible condition.<sup>43</sup> She has the power to sale and mortgage even over immovable included in their *Stridhana*<sup>44</sup>. If a person has two wives and one is neglected, the king shall force him to restore her *stridhana*<sup>45</sup> and promised *stridhana* shall be treated as a debt till is paid.<sup>46</sup> It is noticeable that the smritikaras developed the Law on *stridhana* in their own style. But the contributory value of it in summation from the perspective of empowering women in terms of holding and enjoying property is invaluable.

### **Mitakshara – a branch out approach to empower Women**

Vijnaneswara refers to his predecessors while defining the concepts. His major contribution is widening the scope of *Stridhana*. He conveniently uses the word *adya* to include the properties obtained by a woman through inheritance, purchase, partition, seizure and findings. This enlarged the area of *stridhana* and a significant contribution towards its quantification. The sources he suggests are the common sources under normal circumstances. As a consequence, a woman is likely to get some or the other property in her life time. He says that the term *stridhana* conforms in its import with its etymology and is not technical. Further he adds to *stridhana*, the property regularly inherited and gifted and bequeathed to a maiden by relation or strangers<sup>47</sup>. He not only expanded the net of sources the property but enjoyment also. He places a woman almost equal to a man in this direction. Secondly, he empowers the woman to use and dispose her *stridhana* independently. It is a kind of liberating the woman from husband's authority. The husband cannot use her property even during distress. If he uses, he shall restore it. It is a remarkable thing to notice that such a right to a woman was conferred during 11<sup>th</sup> and 12 century. Thirdly, Vijnaneswara's prescriptions on succession of *stridhana* are really forward looking. Throughout, he prefers female heirs in

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<sup>41</sup> 400AD – 600 AD, his text in full form is unavailable. The references found here and there in other texts especially *Dayabhaga*

<sup>42</sup> HDS P 778

<sup>43</sup> Quoted in *Dayabhaga* 1 V. 1-22,24,

<sup>44</sup> Altekar A.S The position of women in Hindu Civilisation p 267

<sup>45</sup> Quoted by Apararka, see HDS Vol 3 p 787

<sup>46</sup> Ibid

<sup>47</sup> Mit 11.143-148, see HDS Vol 3 pp780-81

the line. The indigent daughter is preferred to the rich one, which may not pass the test of statutory Law but it shows his concern towards the woman as an heir. This principle passes the test of equity. However, concept of coparcenary limited the rights of women especially in inheritance as per coparcenary laws. Doctrine of limited estate and reversion limited the rights of woman in this regard.

Vijnaneswara's prescribes rules on succession to *stridhana* which gives an edge over male heirs. *Sulka* first devolves on all full brothers, then on mother. Succession to other properties, i.e., other than *Sulka* takes place as follows; (a) unmarried daughters (b) married daughter who is indigent (c) married daughter who is well provided for (d) daughter's daughter (e) daughter's son, further it flows on males and ultimately to the crown. If the marriage is of unapproved form, the property goes to her mother, then father and then to father's *sapindas*. Giving preference to an indigent daughter appears to be morally right but, may not pass the test of Law of equality as all daughters are equal and economic status cannot be a yardstick to create preference. It is very important to observe that as per Vijnaneswara, marriage is not a condition precedent to hold *Stridhana*. His rules regarding succession recognises an unmarried daughter and daughter's daughters also as heirs. It can be inferred that unmarried daughters and daughter's daughters could inherit property and on their marriage they could carry that along with them as absolute property. In this perspective, *Mitakshara* gave significant scope to a woman to possess property. Spirit of these principles are brought in to Hindu Succession Act. But it never equates a woman to the status of a man in coparcenary. The basic reason for all these discrimination is on the marriage, a woman joins the family of her husband and gets integrated into that family along with change of *gotra* to husband's family. All texts preach a woman to be very faithful and subservient to husband and others.

The sub schools of *Mitakshara* like, Madras school<sup>48</sup> Mithila School<sup>49</sup>, Banaras School<sup>50</sup> Bombay School<sup>51</sup> have all recognised *stridhana* in the lines of their parent school with some modifications. Few changes are found in between the texts which might have taken place due to the influence of local practices. Notable improvements are, Devanna Bhatta brings in *labha* to include in it what is received from any person who makes presents for the purpose

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<sup>48</sup> Otherwise called as Dravida School, Smriti Chandrika – Devanna Bhatta 1200 -1225 AD and Parashara Madhaviya - Mdhavacharya under Vijayanagara Dynasty

<sup>49</sup> Vivada Chintamani – Vachaspati Misra 1500-1550 AD, *Dayabhaga* appear to have influenced him more

<sup>50</sup> Vira Mitrodaya - Mitra Misra-1615-1645 AD

<sup>51</sup> Otherwise called Maharashtra School, Vyavahara Mayukha - Neelakanta Bhatta 1615-1645 AD

of pleasing 'Gowry' or other Goddesses, Mitra Misra of Benaras School includes all gifts made when husband and wife are sitting together and introduced the concept of joint ownership over such properties. It is very interesting to note that all text writers base their theories on *Mitakshara* which signifies the influence of the Vijnaneswara and *Stridhana*.

On the other hand, *Dayabhaga* of Jeemuthavahana<sup>52</sup>, another important school which was practiced in Bengal province and runs parallel to *Mitakshara*, gives another direction to *Stridhana*. He says,<sup>53</sup> 'that alone is *stridhana* which she has power to give, sell or use independently of her husband's control. His approach is different from Vijnaneswara as he recognises *Stridhana* from possession perspective wherein, Vijnaneswara and others looks at it from source perspective. Jeemutavahana appears to have been influenced by two great scholars, Katyayana and Narada. Accordingly, he made the earnings from mechanical arts and gifts from strangers amounts to *Stridhana* (katyayana) and which has been given by her husband out of love (Narada). He empowers a woman to enjoy or give away or use as she likes independent of her husband.<sup>54</sup> It is difficult to understand as to why this text could not influence and attract more number of future commentators and got a limited application in terms of geographical area.

### **Mitakshara and Codified Law**

During British period, Privy Council interpreted *Stridhana* and women's right over that as per the local schools interpretations. But, there is no major damage caused to this institution as they interpreted keeping in view the local customs also along with texts.<sup>55</sup> The Hindu Woman's Rights Act (Mysore Act)1933 is the first enactment having direct impact on *Mitakshara Stridhana*. This Act empowered a women to partition and created absolute rights over *Stridhana* and removed husband's authority to intervene with *Stridhana*<sup>56</sup>. The Hindu Succession Act 1956 effected radical changes in the area of women's right to property in different directions. Sec. 14(1) makes absolute all those properties under her possession. Sec.14 (2) identifies the sources of property where *Stridhana* is included. The effect is that a woman is par with a man on her rights to possess and own the properties in her own capacity.

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52 1100-1150 AD, followed Katyayana

53 *Dayabhaga* 1.6. see HDS Vol 3 p 775

54 *Dayabhaga* 1V 1. 20-21

55 See a few cases like, *Salema vs Lachmana* (1898) 21 Mad 100, *Debi Mangalprasad vs Mahadeva Prasad* 34 A 224(PC), *Mathukarupa pilaai vs Sellathammal* (1916) 39 Mad 298, *Subramanian vs Arunachalam* (1905) 28 Mad 1.9.12, *Venkat Reddy vs Hemanth Gowda* (1933) 57. Bom. 85. 141. IC.682

56 Secs 8,9,10 and 11 of the Act

The interpretations given by different Courts<sup>57</sup> on *Stridhana* under codified Law leads to a question as to whether the Court had to read the old texts to determine the heirs for succession instead of applying the general rules of succession under Sec. 15 and 16 of the Act. In *Vinod Kumar Vs State of Punjab*<sup>58</sup> the Supreme Court has settled the issue. In *Pratibha Rani Vs Suraj Kumar*<sup>59</sup> the Supreme Court recognised the absolute rights of the woman over her *stridhana* and husband and in laws are the custodians of her *stridhana* and they shall return it whenever she demands them. The argument extended in this case that exclusive rights over her properties is abolished after Hindu Succession Act and all the gifts made during the marriage becomes 'joint properties' of husband and wife. The Court rejected the argument and affirmed that concept of *Stridhana* is still a part of codified Hindu Law.

Early part of history reveals the fact that all societies were patriarchal and feudalistic in their approach. No country had entitled a woman to own property in her name. United States America allowed her only in second part of 19<sup>th</sup> century. The woman shall be entitled to social, political and economic rights par with her counterpart. It is true that the property rights have direct impact upon the survival, dignity and status of a woman and gender cannot be a ground for discriminatory treatment. Right to property, being a component of economic rights is the basic need to a woman as it has cascading effects upon her life and dignity. The feminist ideologies ultimately focuses on substantial equality between men and women in both private and public life. In India statutes have been enacted to empower women equal property rights. The radical change effected upon *Mitakshara* coparcenary law through the Hindu Succession (Amendment) Act 2005 is a remarkable development in the social process of creating equal property rights in all kinds of properties. This Act has effected a major change by making a woman a coparcener.

## Conclusion

Hindu Law identified exclusive property rights in the hands of woman in such an early age where the other contemporary legal systems were in still primitive stage. Here also she was not entitled for equal rights in *Mitakshara* coparcenary. No text writer has recognised


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<sup>57</sup> See the cases *Palamara setty Atchanna vs Doddi Appanna*, AIR 1967 AP 147, *Hanmanth Bandokale vs Rangelallo Huddar* AIR 1961.Mys 206, *Rajamma vs Varadarajulu Chetty* AIR 1957 Mad. 198, *Soma wife of Veda Prakash vs Brijlal Mudarlal Aggarwal* AIR1966 Pun. 110, *Sarala Balu Devi vs Bhanumathi Sahuand Others* AIR 1964 Ori 141, *Purna Chandra Das vs Chandramani Dibya* AIR. 1966 Ori. 98, *Gopal vs Durga prasad* AIR 1971 Del. 61, *Bhai Sher Sigh vs 1978 Pun. LR 737*

<sup>58</sup> AIR 1982 P&H 372 FB

<sup>59</sup> AIR 1985 SC 628

equal property rights. But establishment and development of *stridhana* and giving it a legal status is a remarkable feature of Hindu law. Primary credit shall go to Manu, Yajnavalkya and Katyayana who gave a wide definition to *stridhana*. Vijaneswara developed this concept by widening its ambit. It is an outstanding contribution which gained a universal application and acknowledgement by the subsequent writers. It is an astonishment to see the adoption of *Mitakshara* text by the entire India (of previous time) in a period where it was very difficult to have access from one place to another. Treating *Stridhana* as a compensatory element against a share in partition or in lieu of maintenance are not acceptable interpretations as *Stridhana* is *sui generis*. It is important to notice that *stridhana* is an absolute property of a woman under statutory Law. Additionally, the women are entitled to equal rights over all kinds of property whether it is succession or inheritance. Making her a coparcener is a radical development in the process of women empowerment. The crux of feminism is to uplift the status of women in all perspectives and empowering her in multiple dimensions. The property has the potential to uplift the social status and dignity of women. Financial independence limits her dependency upon her family members, primarily husband, in-laws and later sons. Woman is entitled to dignity, social status and recognition in proportion to her contribution to sustain her family. The invisible and non-quantifiable contribution of her shall not go unnoticed. She does not need charity or sympathy. In the past, *Stridhana*, to some extent mitigated her misery of being dependent of her family members. But it could not ensure substantial equality in between genders and does not empower her in totality. In this process, Vijnaneswara empowered women during 12<sup>th</sup> century itself. It is her legitimate expectation of being recognised in proportion to her contribution towards family and society.



## Vachanas: A Relic of Feminist Movement and Women's Rights

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-Akhila Basalalli\*

*Vachanas* are literature, but not merely literary. The poets were not bards or pundits in a court but men and women speaking to men and women. They were of every class, gender, caste and trade; some were outcaste, some illiterate.

-A. K. Ramanujan<sup>1</sup>

### Introducing Veerashivism

The Veerashivism of Basaveshwara and his contemporaries is regarded as a socio-religious movement that emanated during the twelfth century. It is a reaction to the existing social situation that was highly discriminant based on gender and caste. The paper limits its scope to the Veerashivism of 12<sup>th</sup> century as this symbolizes a mass movement towards a new social order. It doesn't venture into the origins of Veerashaivism<sup>2</sup>, as many opinions have surfaced arguing the origins of Shivaism to date back to 3000 BC, during the Mahenjo Daro and Harappan civilization. Especially the writings of John Marshall<sup>3</sup> and Henry Heras<sup>4</sup> link Mohenjo Daro with Karnataka and argue the existence of *Shivagmas* and similar symbols and signs of worship.

The term 'Veerashiva' means the 'heroic' or 'firm' worshippers of Shiva and they wear a small stone emblem on the body '*linga/istalinga*' signifying the presence of Lord Shiva in the heart of each believer.<sup>5</sup> The worship of *istalinga* that is worn on the body is the

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\* Senior Research Assistant, Centre for Research in Water Resource Management and Law, Karnataka State Law University, Hubballi.

<sup>1</sup> A. K. Ramanujan, *Speaking of Siva* (Penguin Books India, 1970)

<sup>2</sup> The paper also does not comment on the Veerashiva-Lingayath debate.

<sup>3</sup> John Marshall, *MohenjoDaro and Indus Civilization* (Arthur Probstain, London 1931)

<sup>4</sup> Henry Heras, *Karnataka and Mohenjo-daro*, (Karnataka Historical Research Society, 1937)

<sup>5</sup> Michael R. Blake, *Virashivism* available at <https://www.oxfordbibliographies.com/view/document/obo-9780195399318/obo-9780195399318-0152.xml>, Last Visited on 15/07/2021



replacement to the temple worship predominantly practised. Anybody may wear the *istalinga*, *brahmin* or untouchable, man or woman, rich or poor as it is not just a symbol of God but also social equality and religious freedom. The belief is that by wearing and worshipping *istalinga* the *Bhaktha* will transcend *Varnas*. The worship of such '*istalinga*' signifies the prominence given to monotheism over polytheism. The *Bhakthi* movement, both Shaivite and Vaishnavite, firstly was based on monotheistic devotion began in Tamilnadu in around 6<sup>th</sup> century and later spread to the rest of India, effecting unprecedented socio-cultural revolution wherever they went, and secondly, colossal bhakti movement was the 12<sup>th</sup> century development in Karnataka, which was the fruit of the collective endeavors of hundreds of saint-poets, mostly from the artisan castes.<sup>6</sup>

*Vachanas* literally mean 'sayings' and are verse poems that are either said or sung. They are also called as the expressions of a militantly reformist religious movement. A. K. Ramanujan describes the language of the *Vachanas* to be 'racy colloquial of local dialect speech, earthy and fresh in its images, sinewy in its rhythms, unashamed in its use of the naked native Kannada of the streets.'<sup>7</sup> The *Vachanas* are a great literary contribution to the Kannada language. They are in simple proses that are meant to be understood by the common man. This easy formulation greatly helped to popularize the movement. *Vachanas* continued their traditions since twelfth century, but *Vachanas* of that century were a combination of divinity and defiance, transcendentalism with powerful social protest and flouting of all conventions, whether social or literary.<sup>8</sup>

It was in the city of Kalayana, which is now called the city of Basavakalyana located in the northern-most Bidar district of Karnataka, where the revolutionary Veerashivism, a socio-religious uprising of artisans began<sup>9</sup> and the city of Kalyanas is a pious place for all the

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<sup>6</sup> H.S. Shiva Prakash, "Dasimiah, The Divine Weaver" 52(2) *Indian Literature* 191 (2008).

<sup>7</sup> A. K., Ramanujan, et al. "Five 'Vacanas.'" 6 (2/3) *Mahfil* 92 (1970), pp. 91-93.

<sup>8</sup> Vijaya Ramaswamy, "Madness, Holiness, Poetry: The *Vachanas* of Virasaivite Women." 39 (3) *Indian Literature*, (1996).

<sup>9</sup> H.S. Shivaprakash, "Journeying to Kalyana." 30(3/4) *India International Centre Quarterly* 215 (2003)

Veerashivaites. The depiction of the city is found in many *Vachanas* of *Sharanas*, especially by AllamaPrabhu<sup>10</sup> and Akkamahadevi.<sup>11</sup>

### **Towards a New Social Order**

The Veerashivites distinguish themselves with the following attributes namely; firstly, they give preference to the native language *vachanas* of their own over the revealed scriptures (*sruti*) and remember tradition (*smriti*) of Sanskrit tradition; secondly, condemnation of the rituals, particularly temple worship and temple-practices; thirdly, rejections of norms of social behavior such as pollution taboos surrounding birth, death and menstruation, ban on the remarriages of widows, acceptance of child marriage; and finally, there is a general egalitarianism in the face of the combined hierarchies of gender and caste.<sup>12</sup> The 12<sup>th</sup> century

<sup>10</sup> Let all be well. With all reverence I shall describe at length the glory of the prosperous city of Kalyana. Be blessed after listening to it, Oh! Shiva's attendants! Be blessed! You, Shiva's attendants of the human world! Be blessed! Snake attendants of the snake world! The world of Rudra, the pinnacle of fourteen worlds descended to the human world to be born as the city of Kalyana. There is nobody here who is not true. The men here are of pure conduct, eternal, greatly wise, great Shiva yogis full of direct experience of Shiva and wearing Shiva Lingam- no one except such live here. Sir, sinful, the short-tempered, false and the vicious should never enter Kalyana. If they do, the city becomes the razor's edge. The hidden Kalyana is unperceived and unseen sir. The area of the great Kalyana is as follows: the city with a width of 12 leagues contains 65 gates and 365 doors. Further, each of these doors has 365 diamonds gates, 225 stone gates, 460 gold-decorated gates, 115 nails-gates. The fort around the city is 48 leagues wide with a million houses of priests, a million houses of provincial heads, a million houses of feudal lords and uncountable houses of lords and commanders. There are 150 sun- streets, 12 leagues wide and 160 moon streets, 12 leagues wide. The streets within and without are beyond number...this is how the description goes on.

<sup>11</sup> No one can enter Kalyana  
Impossible sir,  
No one can take the first step towards Kalyana  
Unless desires and temptations are eliminated.  
No one can enter Kalyana  
Unless inside and outside is pure  
No one can enter Kalyana  
Unless ego is torn asunder  
Because I have seen the self  
Because I have loved Chennamallikarjuna  
Because I have eliminated shyness of two kinds  
Because I have seen Kalyana  
I am saying  
I bow down to you, I bow down to you.

<sup>12</sup> Julia Leslie, "Understanding Basava: History, Hagiography and a Modern Kannada Drama." 61(2) *Bulletin of the School of Oriental and African Studies, University of London* 230 (1998)

Veerashivism also called as the *Sharana* Revolution and was a spiritual experience with wider ramifications that had firm faith in community action and movement.<sup>13</sup> Associating themselves to a new sect, that is a religion of dissent, they distinguish themselves from the rest by rejecting or renunciation the caste system, emphasizing the rights of women and avoiding the strict rituals. They opposed ritualism, forbidding the visit to temples or pilgrimages, sacrificial ceremonies or elaborate offerings, and endowments. A. K. Ramanujan calls this as a protest movement against caste and priest, scripture and rituals, superstitions and blind learning, against everything that substituted abstractions for the experience.<sup>14</sup> This 12<sup>th</sup> century Veerashivism may be appropriately called as a movement that established a new social order that was based on egalitarian principles, for instance, the ritual equality, the sanctity of all work (as opposed to the Varna system) and universal purity of all irrespective of sex, caste or occupation.<sup>15</sup> Advocating love and compassion to fellow humans, a Vachana reads as follows,

*What kind of religion can it be without compassion?  
Compassion has to be shown towards all living things;  
Compassion is the root of all religious faiths;  
Lord Kudalasangama does not approve of anything other than this.*<sup>16</sup>

The process of gaining self-identity and self-expression was not easy as the society, economy and language itself was grounded in patriarchy and any effort by women to establish their individuality, either within the familial structure or outside was fraught with tensions and bitter gender contestations.<sup>17</sup> The women and Dalits were given sub-humane treatment as they were considered inferior and impure. They were denied participation in religious, social and cultural activities. S.S. Wodeyar explains “it is a well-known fact that the orthodox Hindus believed that women, as a whole, were unfit to receive education, unfit to participate in serious discussions and that no freedom should be allowed to them. As a result, women’s field of activities was restricted to their homes and there too they had no freedom for the development of their personality”<sup>18</sup> They did not regard women as an illusion or an obstacle in the path of men who were aiming spiritual attainment but, goddesses. For instance,

<sup>13</sup> Pralhad V. Chengte, “Sharanas Concepts of Revolution”, 2 (9) Imperial Journal of Interdisciplinary Research, 1472, (2016)

<sup>14</sup> *Supra* note 7

<sup>15</sup> Medieval Religious Movements I- Veerashaivism available at <http://egyankosh.ac.in/bitstream/123456789/21719/1/Unit-25.pdf> Last Visited on 15/07/2021

<sup>16</sup> Vachana of Basaveshwara

<sup>17</sup> Vijaya Ramaswamy, “Rebels, Mystics or Housewives? Women in Virasaivism”, 23 (3/4) Indian International Centre Quarterly, 190 (1996)

<sup>18</sup> S.S. Wodeyar *Shree Basaveshwara*, (Bangalore Government of Mysore 1967)

*They say that women is an allurement  
No she is not, it is not;  
The real allurement is the unstable  
Appetite of mind  
Lord Guheshwara<sup>19</sup>*

*Woman is not just a female sex  
Woman is not a demoness even  
Woman is the very embodiment of God Kapilasidha Mallikarjuna<sup>20</sup>*

### **Gender Equality in the Vachanas of Male Veerashivites**

The *Vachanas* of the male Veerashivites cover a multitude of areas starting from challenging gender binarism, establishing equality, emphasizing chastity and despising adultery. Though they do not bring about radical reforms and are rooted in the patriarchal structures they are extremely important as they are identified as early attempts in creating a socio-religious space for women. A few *Vachanas* of Basaveshwara and Dasimayya are discussed thematically in the following sections.

Basaveshwara born in 1106 c. in a Brahmin family of Manigavalli.<sup>21</sup> He is believed to have grown up in the care of his grandmother after the death of his parents during early years of childhood. He was looked after by his foster-parents Madarasa and Madambike of Bagevade. There have been pieces of evidence that the Basaveshwara has been a devotee of Shiva and had early education in Sanskrit. Basaveshwara believed that the love of Shiva cannot live with ritual and tore off his sacred thread which bound him like a pastlife's deeds, left the shade of his home, disregarded wealth and propriety.<sup>22</sup> He moved to Kappadisangama, where three rivers meet and chose Kudalasangamadeva as his god, which is usually seen as his closing signature-line.

Devara Dasimayya, an elderly contemporary of Basaveshwara, is said to have been born in Mudanuru. His signature line is Ramanatha as Shiva is worshipped by Rama (incarnation of Vishnu). He spoke against caste/sex discrimination, hypocritical and socially unproductive forms of religion, he pointed the way to rational thinkers of later ages and his philosophy of anubhva (unitive knowledge of Cosmic Reality) and ethico- spiritual founded

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<sup>19</sup> Vachana of Allama Prabhu

<sup>20</sup> Vachana of Siddharama

<sup>21</sup> This is contested by many writers.

<sup>22</sup> *Supra* note1 at 62

on the unique artisan view of Kayaka yoga has great significance even today.<sup>23</sup> Though Shiva may be worshipped in the temples, he emphasizes on anubhava, the abstract principle, the process and the goal of the oneness of self and cosmos makes him one of the first *nirguna* bhakti poets of India, who prepared the ground for the historically important movements like Kabirpanth, which was founded by another weaver-saint Kabir.<sup>24</sup> The hagiography reveals that he believed that men and women, individuals and societies, sects and religions, countries and continents, man and nature are now pitted against each other, repeating divisions creating confusions and conflicts<sup>25</sup> and the vision of the unity of body and spirit, loving and non-living, human and beast, man and women, individual and the cosmos in the Cosmic body of Shiva has a great healing effect on the illness of the present.<sup>26</sup>

### ***Equality by Challenging Gender Construct***

Devara Dasimayya believed in the abstraction of the soul and his *Vachanas* furthers the belief that the soul does not have any character or gender.

*If they see  
breast and braid  
They call it a woman  
If bread and whiskers  
They call it man;  
But, look,  
what hovers in between  
is neither a man nor a woman;  
O Ramanatha<sup>27</sup>*

He talks about the soul being indiscriminate and regardless of gender and sex. Sex merely being the definition of the body, not the soul, must not be subject to discrimination. The *Vachana* further elaborates that gender is a social construct and has necessitated hierarchy among them. An analogy could be drawn to the work of Judith Butler who argues that sex is natural and comes first and gender is perceived as a secondary construct that is superimposed on top of natural distinction.<sup>28</sup> And also Simone de Beauvoir statement that woman is not born but made<sup>29</sup> adds up this argument.

<sup>23</sup> *Supra* note 6 at 189

<sup>24</sup> *Ibid* at 192

<sup>25</sup> He called this as Bhavihood

<sup>26</sup> *Supra* note 6

<sup>27</sup> *Supra* note 7

<sup>28</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge London, 1990)

<sup>29</sup> Simone de Beauvoir, *The Second Sex*, Translated by Howard Madison Parshley 1997

*Did the breath of the mistress  
Have breast and long hair?  
Or did the master's brath  
Wear sacred thread?  
Did the outcaste, last in line,  
Hold with his outgoing breath  
The stick of his tribe?  
What do you fool of this world know  
Of the snares you set,  
O, Ramanatha?*

Further elaborating the purity of soul and its abstraction, Dasimayya attacks the stigma of sin attached to intimacy between a man and woman. He uses fires as a metaphor for life as it signifies purity and radiance.

*When you cut a long stick  
Into two,  
Make a she of the one below,  
And a he of the one above  
And rub the two,  
The fire that us born between them-  
Is it a he or she,  
O Ramanatha?*

Similarly, Basaveshwara challenges the distinction based on sex and explains that the code of dressing and conduct based on sex are merely societal constructs. He further adopts the bridal mysticism of the female Veerashivites and calls himself the bride of lord Kudasangama.

*Look here, dear fellow  
I wear these men's clothes  
Only for you.  
Sometimes I am man,  
Sometimes I am woman.  
Lord Kudalasagama  
I will make wars for you  
But I will be your devotee's bride.<sup>30</sup>*

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<sup>30</sup> Ramanujan. "Basavanna." 39(4) *Indian Literature*, (1994)

The emphasis on the neutral character of the soul by these men imparts the clear message to the society that the soul has no form and biological sex is only attached to the body and not to the soul. Hence without discrimination based on gender and sex, everyone shall have access to spiritual salvation. In other terms, the principles of egalitarianism resonate in these *Vachanas* accommodating and realizing the rights of the women on par with the men. Further, they hold that woman is neither an illusion nor a slave to any man, but rightly occupies the place of a wife to her husband.<sup>31</sup> The traditional conception was that the woman is an illusion and her companionship will delude a man from achieving salvation. The objectification of a woman and societal framework made her participation in society impossible. The treatment of a woman as a slave in the marriage is also frowned upon by the *Vachanas*. They stress upon the devotion from man and wife together to emphasize the equal position of the women in a household or family.

*The devotion of man and wife together  
Is sweet of Shiva  
The devotion in which  
The man and wife are not together  
Is like venom mixed with amrit  
O Ramantha*

### **On Adultery**

The *Vachanas* relating to adultery are very harsh as they loathed the practice of adultery. There are two reasons for such rigidity namely, firstly, the institution of marriage was a sacred and cherish concept. Any deviance from it through the practice of adultery was treated as sin. Adultery continues to be scorned by many legal systems to date. The Indian legal system until the decision of *Joseph Shine*<sup>32</sup> criminalized adultery. Secondly, women were treated on par with the chattels of men. The *Vachanas* shows an analogy been created to another man's wealth and another man's wife.

*If you have sense,  
Can you get others to  
Sleep with woman  
Eat the sumptuous meal  
Worship the lord of the Universe*

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<sup>31</sup> D. Javaregowda, *Basava Darshana*, 31 (Vinayaka Printers, Bangalore, 2004)

<sup>32</sup> *Joseph Shine v. Union of India* 2018 SCC OnLine SC 1676

*For yourself  
O Ramanatha  
Those that forget the guru's command;  
Those who mate with another's wife;  
Those who long for another's wealth-  
Dont show me even for once such dwellers of hells  
O Ramantha  
Slithering snake  
Flaming tongue,  
Razor's edge,  
These I do not fear.  
But one thing  
I do fear-  
The guillotine  
Of lust for wealth  
And women  
Not my own.  
Ravana had not fear  
Of this kind,  
But what fate was his?  
Let me then keep this fear  
O, Lord Kudalasangama<sup>33</sup>  
How can I pretend to be Bhaktha  
Unless I break away from the  
Company of wordings  
How can I pretend to be? Maheshwara  
Unless I break away from the  
Spell of another's wife or property.  
O brother, taking a bath in the river,  
O, master taking a bath in the river  
Give up give up*

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<sup>33</sup> G.S. Amur, "Vachanas of Basavanna : A Selection." 42(2) *Indian Literature*, 147–153 (1998)



*Give up relations with other wives  
Give up desire for another's property  
If you go for a bath in the river  
Without giving up these  
It is like going for both in a river gone dry  
O, Lord Kundalsagama*

### **On Chastity**

Similarly, chastity too is an outcome of the cherished institution of marriage. The woman was expected to be faithful to her husband despite the indifference of the husband. However, this was limited to human relationships, since in the *sati-pati* relationship, when married women's imagination of Shiva was not subject to the condition of chastity.

*Be hold a faithful wife has but one husband  
Behold a devotee, the true believer  
Has but one God  
Look, the fellowship of other Gods in base  
Look, to speak of others Gods in harlotry  
Should Lord Kudalasangama see it?  
Look you, he will cut off your nose.*

*I went out for an adulterous play  
But, all I got was counter felt  
Behind a dilapidated wall I hid  
But, there the scorpion stung me  
The watchman heard my cries  
And he tore off my saree  
I went home in utter shame  
And my husband slashed my back  
So, Lord Kudalasangama took his fine.*

### **Bridal Mysticism of the Female Veerashivites**

Vijaya Ramaswamy elucidates the *Vachanas* of female Veerashivaites as a combination of divinity and deviance, transcendentalism with powerful social protest and flouting of all conventions, whether social or religious.<sup>34</sup> Though the general outcome of Veerashivaites is

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<sup>34</sup> *Supra* note 17

an alternate voice of counter culture, the impact is much stronger in the case of females because of their dual defiance that is against the caste system and patriarchal structure. The 12<sup>th</sup> century Veerashivaism may be appropriately called as feminist movement against misogyny through two means; firstly, subtle conformist means like Ayidakki Lakkamma, Molige Mahadevi, Neelambike, Gangambhike to name a few, and secondly, through a radical burst of Akka Mahadevi. It had created a platform of self-expression for everybody, where not just the wives or maiden enjoyed their spiritual space but also prostitutes like Gangamma, Sankavve and Vaijjakavve too had similar treatment. There were approximately twenty-nine women who were *Vachanakaras* and their *Vachanas* were treated as documents of self-expression and earliest attempts at autobiographical writings.<sup>35</sup> They also depicted sexuality and the importance of sexuality to a woman is explained by Mackinnon as ‘Sexuality is to feminism what work is to Marxism: that which is most one’s own, yet most taken away. Sexuality is the social process through which societal relations of gender are created, organized, expressed and directed creating the social beings we know women and men as their relation creates society.’<sup>36</sup>

Bridal Mysticism is a common phenomenon among the mystics to choose a deity as husband/paramour and surrender oneself to such deity as a bride. It is the expression that challenges the conventional patriarchal structures. The *bhakti* movement in South India has attracted the attention for the bridal mysticism that was predominantly practiced. The saints generally identify themselves as female souls to the deity who is male. The female Veerashivaites are believed to be strongly influenced by the Tamil Nayanars who represented the bridal mysticism as a movement in opposition to Jainism and caste discrimination.<sup>37</sup> The female Virashivaites represented dual defiance; a defiance of the caste system as well of the patriarchal structures and their *Vachanas* exhibited certain madness, mysticism and sheer passion.<sup>38</sup> The verse ‘*lingapatisharana sati*’ is the expression in the *Vachanas* of not just the female Veerashivaites but also the male counter-parts. For instance, Basavanna’s Vachana reads,

*I am like a woman bathed in turmeric,  
Arrayed all over in gold.*

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<sup>35</sup> *Ibid* at 192

<sup>36</sup> Catherine Mackinnon, *Towards a Feminist Theory of the State*, (Harvard University Press: London, 1989)

<sup>37</sup> Malini Adiga, “Bridal Mysticism And Gender: The Woman’s Voice In Virasaiva Vacanas.” 74 *Proceedings of the Indian History Congress* 116 (2013)

<sup>38</sup> *Supra* note 8

*Who lost her husband's love.  
I am like the one who has  
Besmeared himself with ash  
And wound his neck with beads  
And lost your love, O God;  
Within our clan there's none  
Who, falling into sin, yet lives!  
Protect me as you will  
O, Lord Kudalasangama*

Bridal mysticism is a very dominantly occurring theme in the *Vachanas* of Akka Mahadevi. Her *Vachanas* depict her love to Shivain three forms, love forbidden, love of separation and love in union. They are sublime, erotic and passionate, representing her total surrender to her deity Lord Chennamallikarjuna. Mahadevi also popularly known as Akka Mahadevi, a younger contemporary of Basavanna and Allama Pabhu was born in Udutadi village in Shivamogga. Her *Vachanas* adore Lord Chennamallikarjuna or the Lord of white jasmine as her lover or husband. When forcibly married to a local lord, she walks out of her marriage, cutting her relations with family and discarding her clothes as social defiance. She declared “for one wearing the light of the lord, to the shameless girl where is the need for cover or jewel?”<sup>39</sup> The *Sharanas* at Anubhav Mantapa were initially reluctant to accept Akka Mahadevi as one among them, for her flout of societal norms. However, the spiritual debate with Allama Prabhu subsequently led to her acceptance. When questioned by Allama Prabhu “why take off your clothes, as if by that gesture you could peel off illusions? And yet robe yourself in tresses of hair? If so free and pure in heart, why replace a sari with a covering of tresses? She answered,

*Till the fruit is ripe inside  
The skin will not fall off.  
I had a feeling it would hurt you  
If I displayed the body's seals of love.  
O brother, don't tease me needlessly,  
I am given entirely into the hands of my lord white as jasmine.<sup>40</sup>*

The male saints gave acceptance after recognizing that she has transcended all worldly barriers and were one with the lord of her choice. Like other *bhaktas*, her struggle was with

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<sup>39</sup> *Supra* note 37 at 118

<sup>40</sup> *Supra* note 1 at 113

her condition, as body, as woman, as social being tyrannized by social roles, as human confined to a place and time.<sup>41</sup>

*I have fallen in love with the splendid one;  
Death decay form place end part  
Had he none  
And no birthmarks.  
O mother, I love him.  
Listen to me, mother,  
I fell for the handsome one  
Who is not of this world,  
Has no fear:  
Therefore, the Lord of white jasmines  
Is my husband.  
Take the rest of them, these husbands  
Who die, who rot  
And throw them into kitchen fires.<sup>42</sup>*

The Vachanas of Akka Mahadevi does not limit herself to bridal imagery in depicting her relation to her lord, though that is the most common trope but calls herself the child and the slave of Chenna Mallikarjuna though this,

*I am a house slave  
Who has enrolled in your service  
And will not give up following you.  
Then, now and forever I am your child who believed in you  
O father.  
I know only one and not a second master  
Listen, O lord Mallikarjuna,  
I am a slave who survives on your leftovers.*

Ayidakki Lakkamma, a Shudra by caste belonging to Lingsuru of Raichur district earned her living by gathering and cleaning along with her husband. The couple Ayidakka Lakkamma and Marayya depict an ideal family without misogyny. There have been several incidents where Lakkamma has guided her husband towards the right and pious path and

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<sup>41</sup> *Ibid* at 114

<sup>42</sup> *Supra* note 7

reminded him of his duties.<sup>43</sup> She tends towards bridal mysticism with the sati-pati relationship conceiving Shiva as husband and herself as wife,

*When the see is falling  
On the face of the blossom  
Can there be a back and front  
To the blossoming face?  
If you forget it and  
If I realize it,  
Can There be different bodies?  
When the roots vanishes  
The blossom remains.  
Foe this union can there be  
Any other name but sati-pati.<sup>44</sup>*

Molige Mahadevi, originally known as Gangadevi was wife of a Kashmiri King Molige Marayya.<sup>45</sup> She is believed to have given up the royal life as queen and moved to Kalyana. She along with her husband earned a living selling wood. Her *Vachanas* have the Sanskrit tinge, a sample of which is,

*The pupils give life to the puppet  
So with human beings, is not  
Their consciousness energized by the atma?  
This secret rests with the puppeteer.  
My female power derives from my gender.  
Because of the connecting thread of devotion  
My femininity is part of your Godhead.  
Absorbed in you,  
I no longer talk of the difference  
Immadi Nishalanka Mallikarjuna<sup>46</sup>*

‘Nastinatha’ the signature line belongs to Gaggavve or Doopada Goggavve who was born in Amooru of Kerala. Believing Shiva to be her paramour, she rejected all proposals.

<sup>43</sup> T.R. Mahadevaiah, “AyidakkiMarayya- Lakkamma” in *Basaveshwarara Samakaleenaru*, 145-150 (Basava Samiti Bangalore 2007)

<sup>44</sup> *Supra* note 8

<sup>45</sup> ChennappaEreseeme, “MoligeMarayya” in *BasaveshwararaSamakaleenaru*, 473-487(Basava Samiti Bangalore 2007)

<sup>46</sup> *Supra* note 8

An incident records her leaving home and hiding in Shiva temple when pressurized to marry. Her Vachanas exhibit the bridal mysticism.

*After the fire receives offering,  
Can there be any categories?  
Is there any mark  
Where the sea merges in the ocean?  
The body touched by the linga,  
Can there be any merit beyond that?  
All lies, Nastinatha!<sup>47</sup>*

Satyakka being a contemporary of Basavanna was born in 1160 c. in Herejambooru of Shimoga district and she as the wife prays to the Lord, the Linga, as ‘*Sharana sati, Lingapati.*’<sup>48</sup> This attitude plays an important role in the mystic path of the *Sharanas*.

*I heard Pinaki (Shiva) calling me  
An intelligent mystic and I came,  
Till I showed great love.  
I’m anxious he will not allow me  
To utter any words.  
The words Shiva is  
The foundation of one’s life.  
The axle of normalcy is lost  
The moment I see Him.  
On uniting with SahmbuJakkesvara  
I am dumb-struck.<sup>49</sup>*

Married women *Sharanas* not only used the motif of bride of the lord but two other motifs one maternal longing for her child and the other dedication to her husband,<sup>50</sup> for instance, Neelambike and Gangambike- wives of Basaveshwara.

The *Vachanas* of the female *vachanakaras* though depict the bridal mystics which wasn’t a rarity in that century finds its associations also with feminism of different kinds. For instance, the bold and radical writings of Akkamahadevi challenging the very structures of

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<sup>47</sup> *Ibid*

<sup>48</sup> ShantaImrapur, “Satyakka” in *Basaveshwarara Samakaleenaru*, 584- 587 (Basava Samiti Bangalore 2007)

<sup>49</sup> *Supra* note 8

<sup>50</sup> *Supra* note 37 at 120

patriarchy like the institution of marriage, motherhood, celibacy to name a few and eliminating the gender binary found their edifice in the radical feminist thought, whereas, the *Vachanas* of Lakamma, Mahadevi, Neelambike and Gangambike are subtler reinstating the position of a woman as a pious wife and a loving mother which are the attributes of 'the feminine' highlighting the presence of cultural feminist thought.

Similar are the writings of another prominent poetess Sanchi Honnamma of that period which are worthy of discussion. She served the queen Devajammani and King Chikkadevaraja Wodeyar during 1680.<sup>51</sup> She is identified to be hailing from Yelandur<sup>52</sup> but her inclination towards Shivism is disputed for two reasons namely, the first few stanzas of her poems are dedicated to incarnations of Lord Vishnu and her Gurus being Alasingarayathe court poet, Singaraya and Thirumalarya<sup>53</sup> who mostly wrote to propagate Srivaishnava faith.<sup>54</sup> Her work 'Hadibadeya Dharma' consisting of nine chapters and 479 poems emphasizes the need code of conduct and duties of a wife amidst her struggles in the patriarchal society. A few verses translated verses from the Fifth Chapter (*Aidhane Sandhi*) below reflects the arguments of the cultural school i.e. that the females are bestowed with the innate feminine characteristics which are strong and natural and have been devalued by men.

*The kin of the female parents steadily increase,  
The family will increase in number,  
Reputation will come by the birth of a girl,  
Through this an enormous glory will be your way! (4)  
Is she not a woman who has given birth to you?  
Is she not a woman who has raised you ?  
Why do you demean such a woman?  
Don't you see, fool? (7)<sup>55</sup>*

<sup>51</sup> H. S. Shivaprakash, Medieval Kannada Literature, in K. Ayyappa Paniker, *Medieval Indian Literature: Surveys and Selections*, 212 (Sahitya Akademi, New Delhi 1997)

<sup>52</sup> Her caste is however is subject to uncertainty for some sources identify her as Dalit and other as a Vokkaliga. V. Madhu, Honnammana Hadibadeya Dharma: Ondu Adhyayana, submitted to Department of Kannada, Karnataka University on 31/12/1989. The thesis mentions that she was born in a Dalit family and grew up to be one of the greatest women poetesses of Karnataka.

<sup>53</sup> [https://shastriyakannada.org/DataBase/KannwordHTMLS/CLASSICAL%20KANNADA%20LITERATURE%20HTML/HADIBADEYA%20DHARMA%20\(SANCHIYA%20HONNAMMA\)%20HTML.htm](https://shastriyakannada.org/DataBase/KannwordHTMLS/CLASSICAL%20KANNADA%20LITERATURE%20HTML/HADIBADEYA%20DHARMA%20(SANCHIYA%20HONNAMMA)%20HTML.htm) Last visited 15/02/2022.

<sup>54</sup> H.S. Prakash p. 213 Also see the Karnataka History available at <https://www.karnataka.gov.in/info-1/History/History/en>, Last visited on 15/02/2022

<sup>55</sup> Translated from the Kannada version available at <https://web.archive.org/web/20160306001943/http://kanaja.in/archives/14904> Last visited on 15/02/2022.

*Does the birth of a boy mean additional qualities?*

*Does the birth of a girl mean defects?*

*Who ever progresses between them will fetch contentment in both the worlds! (8)*

The verses here celebrate a woman for her innateness, for her characteristics, values and the feminine qualities. The cultural school similarly upholds the distinction of ‘masculine’ and ‘feminine’ by countering androgynies and sex-gender dichotomy.<sup>56</sup> It brings into purview the concepts of essentialism and universalism by arguing that (a) some qualities in women are in some sense innate, unchanging and incapable of being changed, (b) the basic qualities of women do not vary historically across culture, race or class, (c) premised on something in women that overriding in common and that generalization is easily drawn.<sup>57</sup> The outcome that surfaced from the generalization and universalization led to the theoretical dismissal of the third world feminism. Often their subscription to feminist ideals are termed as western, bourgeois and elitists.<sup>58</sup> The third world feminist have rebutted to this, for instance, Narayan argues that “our feminist consciousness is not a hot-house bloom grown in the alien atmosphere of foreign ideas, but has its roots much closer to home.”<sup>59</sup> The indigenous feminist movements are truly authentic and feminism of the developing countries are not imported from the west but has emerged from its own society’s ideology and culture to reflect oppression.<sup>60</sup> The skepticism of westernization has subjected the third world feminist to ‘triple colonization’ which is to mean that such feminist are colonized by first by colonial power, secondly, by patriarchy and thirdly by western feminists.<sup>61</sup> The voices of the third world feminist and the subaltern are described by Spivak as imperialistic , self- contained ‘self’ and ‘other’ and such subaltern at the periphery of the patriarchal power and imperial structures cannot speak for themselves.<sup>62</sup>

<sup>56</sup> Judith Evans, *Feminist Theory Today: An Introduction to Second Wave Feminism*, (Sage Publication 1992), e-book available at [https://www.google.co.in/books/edition/Feminist\\_Theory\\_Today/dJY7CgAAQBAJ?hl=en&gbpv=1](https://www.google.co.in/books/edition/Feminist_Theory_Today/dJY7CgAAQBAJ?hl=en&gbpv=1)

<sup>57</sup> Ibid, Chapter 6

<sup>58</sup> Uma Narayan, *Dislocating Cultures: Identities, Traditions and Third World Feminism*, (Routledge. New York, 2013)

<sup>59</sup> Idid, p. 6

<sup>60</sup> Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity*, (Duke University Press, Durham, 2003)

<sup>61</sup> The Feminist Book, DK Publishers, 2019, See Chapter on- A Community of Sisters in Struggle: Postcolonial Feminism.

<sup>62</sup> Gayatri Chakravathy Spivak, ‘Can the Subaltern Speak?’ in *Marxism and the Interpretation of Culture*, eds. Cary Nelson and Lawrence Grossberg. 271–313, Basingstoke: Macmillan, (1983)



Feminism is not novel to India, the literary works of India have long effervesced with the principle of equality, gender justice and non-discrimination. With evidence of the feminist writings in Vachana and the poems that were formulated much before the introduction of formal education and western thought, the third world feminism may be spared from the ridicule of being influenced by westernization.

The work Hadibedeya *Dharma* is built upon these generalizations and universalizations of the qualities of women like nurturant, wife, mother and care-provider. Though limited to a few verses in chapter 5, it required these characteristics not to be devalued or demeaned but revalued and reaffirmed.

### **Anubhava Mantapa- A Democratic Forum**

Basaveshwara established a socio-religious academy called Anubhava-Mantapa that attracted hundreds of saints and spiritual aspirants from all over India, to name a few, Allama Prabhu, Siddarama, Madivala Macayya, Ambigara Chowdaiah, from Karnataka and Urilingadeva from Maharashtra, Bahurupi Chowdaiah, Sakalesad Madarasa from Andhra Pradesh, Soddala Bacarasa from Gujrat, Moligea Marayya and his wife Mahadevi from Kashmir.<sup>63</sup> It was considered as a democratic forum where several socio-religious aspects were debated regardless of gender and caste. It was in Anubhava Mantappa where the most controversial marriage between Haralayya (a cobbler) and Madhusvara (a Brahmin) took place. It also proved to be the forum where the preaching was put into action.

Anubhava Mantapa also provided a platform for participation of women which otherwise was impossible for women folk in 12 the century. The participation of Sathyakka, Muktayakka, Akka Nagamma, Neelambike, Gangambike, Molige Mahadevi are the examples of encouraged women participation. The popular dialogue between Allama Prabhu and Akka Mahadevi, though she was sixteen years old shows the democratic nature of the platform. As pointed out 'Akka Mahadevi is a rare example of a young woman of sixteen years who participated in the religious discourse. Basaveshwara who pleaded for the equality of women, revered Akka Mahadevi, whose rational and courageous outlook has endeared her to the womenfolk of the present day, is a sublime example of character and devotion, everyone bowed before her in reverence of her spiritual; attainments. Her *Vachanas* are beautiful poetry."<sup>64</sup>

<sup>63</sup> H. Thipperudraswamy, *Makers of Indian Literature- Basaveshwara*, 9 (SahityaAkademi, New Delhi1991)

<sup>64</sup> P.B. Rathod, *Empowerment of women a comparative study on the contributions of Basaveshwara and Dr. Ambedkar*, Gulbarga University 2015, available at <http://hdl.handle.net/10603/39830> Last visited 27/07/2021

### **Exploring the Contemporary Relevance of Vachanas**

The development of law is often the reflection of the social reality. The sociology of law efficiently explores and examines the extent to which social reality has operative effects on the laws and, in turn, laws on society.<sup>65</sup> The contemporary relevance of the Vachanas is understood by venturing into the Indian legal regime for the reminiscence of feminist principles. This exploration manifests in three stages firstly, through an attempt to connect the Indian Constitution with the historical and sociological context and by laying down a brief account of constitutional provisions that replicate such principles; secondly, through the body of legislation enacted towards women empowerment and emancipation; and finally, through locating the reference to Vachanas in the judicial decision in order understand its influence in decision making.

#### ***Within the Constitutional Framework***

No constitution can completely ignore the past of its country and such past is inconceivable.<sup>66</sup> The influence of historical sociology on the constitutions portrays the existence of cultural and social diversities and their influence on the constitutions. Attempting to understand the evolutionary models and legitimacy of state or constitution, Thornhill emphasizes the existence of the social power distinct from the political power and legitimacy incapable of being derived from political power for its lack of autonomy from the rest of the society.<sup>67</sup> The legitimacy is argued to have flown from the interaction of the social conventions with that of societal processes and conjunctures.<sup>68</sup> He opines that the evolution of constitutions of Europe began from 11<sup>th</sup> century and the King's justice and common law system developed during the time.<sup>69</sup> Arjomand reviews the work of Thornhill to be limited to the social processes of Europe and ignoring the constitutional rule of law in the non-western

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<sup>65</sup> Hari Chand, A Sociological Approach to the Study of Constitutional Law, Journal of the Indian Law Institute, Vol. 19, No.1 1977 pp. 1-16, p. 1

<sup>66</sup> Ibid, Hari p. 6

<sup>67</sup> Chris Thornhill, Towards a Historical Sociology of Constitutional Legitimacy, Theory and Society, Vol.37 (2), p.164

<sup>68</sup> Ibid

<sup>69</sup> Chris Thornhill, A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective, Cambridge University Press, Cambridge, 2011. Thornhill builds it on the premise of structural functionalism.

world and constitutional histories of India, South Africa or Middle East.<sup>70</sup> The postulates of Thornhill is further used in the paper to argue that the social power and societal interaction during the 12<sup>th</sup> century through Vachanas has strengthened the legitimacy of the egalitarian edifices of the Indian Constitution.

The paper identifies a few provisions of the Constitution that uphold the principles and ideals concerning gender equality of Vachanas. The Preamble of the Indian Constitution endorses the principle of equality with the words 'Equality of status and opportunity'. About the principle of equality, J. Duke holds,

Equality is not simply about equal treatment, and it is not a mathematical equation waiting to be solved. It is about human dignity and full membership in society. It is about promoting an equal sense of self-worth. It is about treating people with equal concern, equal respect and equal consideration. Those are the values that underline equality. Those are the values that are offended when we discriminate, consciously or not<sup>71</sup>

Article 14 adopts the general principles of equality across all the diversifications and ensure equality before the law or equal protection of the law.<sup>72</sup> The twin Articles 15<sup>73</sup> and 16<sup>74</sup> furthers the principle of equality by prohibiting discriminatory treatment and authorizing preferential treatment. The articulation of Article 21<sup>75</sup> covers a varied range of rights concerning women through the dimensions of privacy, integrity and dignity. The Article 23<sup>76</sup> and 24<sup>77</sup> seek to protect against exploitation. The provisions of Directive Principles of State Policy direct the state to make provision for gender

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<sup>70</sup> Said Amir Arjomand, Reviewed Work: A Sociology of Constitutions: Constitutions and State Legitimacy in Historical- Sociological Perspective, 53 (2) *European Journal of Sociology*, (2012).

<sup>71</sup> Leila Seth, Talking of Justice: People's Rights in Modern India 27-28, (Aleph, New Delhi, 2014)

<sup>72</sup> Article 14- Equality before law- The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

<sup>73</sup> Article 15- Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth. 15(3)- Nothing in this Article shall prevent the State from making any special provisions for women and children.

<sup>74</sup> Article 16 - Equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the state

<sup>75</sup> Article 21 – No person shall be deprived of his life or personal liberty except according to a procedure established by law.

<sup>76</sup> Article 23- Prohibition of Traffic in human beings and forced labour.

<sup>77</sup> Article 24- Prohibition of employment of children below the age of fourteen years in factories.

equality and justice through Article 39(a)<sup>78</sup>, 39(d)<sup>79</sup>, 42<sup>80</sup>, 46<sup>81</sup> and 47<sup>82</sup>. Article 51(A)(e)<sup>83</sup> which is the fundamental duty requires the dignity of the women to be respected. The feminists argue that the participation of women in governance and decision-making leads to different outcomes and hence to accommodate women in such positions, participation of the women in the local governance is ensured by the provisions such as Articles 243 D (3) & (4)<sup>84</sup> and 243 T (3) & (4)<sup>85</sup> of the Constitution.

### ***Within the Legislative Schema***

The idea of Vachanas representing different schools of feminism has been put across in the previous sections of the paper. Some of the provisions of the statutes are manifestations of such schools and resonate with their ideas. The economic rights of women under the Hindu Succession Act, 1956 has undergone change recognizing the rights of women on par with men. The Section 14<sup>86</sup> of the HSA 1956 saw a transition of women's ownership over the property from partial to full. Similarly, Section 23<sup>87</sup> of the HSA 1956, recognized the right of the female heir

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<sup>78</sup> Article 39(a)- The State shall, in particular, direct its policy towards securing- (a) that the citizens, men and women equally, have the right to an adequate means to livelihood

<sup>79</sup> Article 39(d)- there is equal pay for equal work for both men and women

<sup>80</sup> Article 42- State to make provision for securing just and humane conditions of work and for maternity relief.

<sup>81</sup> Article 46- State to promote with special care the educational and economic interest of the weaker sections of the people and to protect them from social injustice and all forms of exploitation.

<sup>82</sup> Article 47- State to raise the level of nutrition and the standard of living of its people.

<sup>83</sup> Article 51(A)(e)- to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.

<sup>84</sup> Article 243D (3)- Not less than 1/3<sup>rd</sup> of the total number of seats to be filled up by direct election in every Panchayath to be reserved for women and such seat to be allotted by rotation to different constituencies in a Panchayath. (4)- Not less than 1/3<sup>rd</sup> of the total number of offices of Chairperson in the Panchayaths at each level to be reserved for women.

<sup>85</sup> Article 243T (3)- Not less than 1/3<sup>rd</sup> of the total number of seats to be filled up by direct election in every Municipality to be reserved for women and such seat to be allotted by rotation to different constituencies in a Municipality. (4)- Not less than 1/3<sup>rd</sup> of the total number of offices of Chairperson in the Municipalities at each level to be reserved for women.

<sup>86</sup> Section 14- Property of a Hindu to be her absolute property- (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

<sup>87</sup> Section 23- This disentitles a female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares therein.

over the intestate property including the dwelling house only after the males have chosen theirs. The Amendment Act 2005, omitted the section<sup>88</sup> making the females claim equal to men. The section 6<sup>89</sup> of the Amendment Act 2005 further made women coparcenary in her own right same as men.

The Hindu Marriage Act 1956, on the other hand, through section 9<sup>90</sup>, provides the spouses with a chance to re-instate the marital relationship. The provision is meant to preserve the institution of marriage. The Supreme Court in *Saroj Rani v Sudharshan Kumar Chadha*<sup>91</sup>, held that the provision serves a social purpose and avoids the breaking up of the institution of marriage. However, the contrary position had been held by the high Court of Andhra Pradesh<sup>92</sup> stating that this provision opposes the right to privacy and sexual autonomy of females. The manifestations of *Puttuswamy*<sup>93</sup> decision on Section 9 challenged in *Ojaswa Pathak v. Union of India*<sup>94</sup> remains to be seen.

The other developments like the Criminal Amendments Acts of 2013<sup>95</sup> and 2018<sup>96</sup> brought to IPC in favor of women, striking down of s. 497<sup>97</sup>, remedy-centric objective of the domestic violence legislation<sup>98</sup> and further crystallization of right to residence with the latest decision *Satish Chander Ahuja v. Sneha Ahuja*<sup>99</sup>,

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<sup>88</sup> Hindu Succession Amendment Act 2005- Section 4- Section 23 of the principal Act shall be omitted.

<sup>89</sup> Devolution of interest in coparcenary property. -(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,- (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

<sup>90</sup> Section 9- when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for the restitution of conjugal right and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

<sup>91</sup> AIR 1984 SC 1562

<sup>92</sup> T Sareetha v. T Venkatasubbaiah, AIR 1983 AP 356

<sup>93</sup> K. S. Puttaswamy (Retd.) and anr. vs Union of India AIR 2017 SC 4161

<sup>94</sup> The case is still pending before the Supreme Court. It was filed in the Supreme Court in February 2019 and was last heard on July 8, 2021.

<sup>95</sup> The *Criminal Law (Amendment) Act, 2013*

<sup>96</sup> The *Criminal Law (Amendment) Act, 2018*.

<sup>97</sup> *Joseph Shine v. Union of India* (2019) 3 SCC 39

<sup>98</sup> The Protection of Women from Domestic Violence Act, 2005

<sup>99</sup> (2021) 1 SCC 414

to name a few are all essential steps towards the progressive realization of women's rights. However, a few other statutes require revisiting for instance Indecent Representation of Women Act 1986, *Immoral Traffic (Prevention) Act, 1956*, Martial rape and sec 375 IPC etc. which allude to compromise with the dignity of women by limiting the indecent representation to women alone, glaring calling trafficking immoral further victimising and stigmatize the women and pushing the concept of 'consent' to the periphery in marriage. The intention of the paper, however is not to make a list of all reforms but to point towards the blatantly gendered conception that continues to exist within the legislative schema. The *Vachanas* of Basaveshwara (seven of them) prescribe the conduct towards women, elucidating that not respecting her person and dignity is a sin.<sup>100</sup> It is fascinating to note the range of progress and emancipation 12<sup>th</sup> century had witnessed owing to this social movement and outcome such movements definitely serve as a beacon for years to come.

#### ***Within in Judicial Pronouncements***

The influence of Vachanas, Anubhava Mantapa and Basaveshwara has been explicitly stated in a few decisions of the Karnataka High Court. The paper examines two such decisions. In *Hulikal Nataraju v. State of Karnataka*<sup>101</sup>, the Karnataka High Court connecting liberty of thought and freedom of expression, held that the liberty of man to search for truth ought not be fettered, no matter what orthodoxies may challenge. The decision tracing India's rich history for truth and challenge to blind belief, drew reference to Anubhava Mantapa, a democratic forum and free rational thinking of Basaveshwara, It held,

The 12th century social reformer of Karnataka Basaveshwara founded a forum called 'ANUBHAVAMANTAPA'. This was a forum of rational, free thinking and discussions. People from all over the country representing all classes and different castes participated in the discussion at Anubhava Mantapa. These discussions gave birth to thousands and thousands of *Vachanas* Literature in Kannada. A reading of *Vachanas* reveals that the discussion were based on rationalism, realism and scientific outlook. The ultimate aim of these *Vachanas* is to establish a classless and casteless society and to eradicate gender inequalities."

<sup>100</sup> Basavannanavara Vacanagani ed. by Prof. S. S. Basavanal (1962 edition). Nos. 445, 446, 640, 641, 643, 676 and 735, 154

<sup>101</sup> (2010) 4 AIR Kant R 508.

Further, the Court quotes the writings of CJ D.M. Chandrashekar and Arthur Miles on Basaveshwara, his rationality and free thinking which are the very essence of a free society.

In *A. Saikumar v. R. G. Shashikala*<sup>102</sup>, when the evidence to declare the marriage null was placed before the trial court, the Court holding that evidence was totally erroneous, fictitious, concocted and forged, relied on the *Vachanas* of Basaveshwara saying that his principles neither believed nor followed by the family of the bridegroom. Though small in number, the decisions go a long way to highlight the relevance of *Vachanas* in the contemporary period.

### **Remarks**

The Veerashivates are compared to European Protestants as their defiance is not discontinuity and they represented a type of particularly sharp and principled protestant reaction to the caste hierarchy.<sup>103</sup> The female Veerashivaites were unable to challenge the very roots of patriarchy as the lord they worshipped was masculine. The *istalingais* masculine not feminine or neutral gender. However, the deity Ardhanareshwara the epitome of androgyny. The women were able to defy the marriages and social conventions associated with gender but were unable to address the patriarchy at the spiritual level. Calling themselves mistress, slave-girls to the lord they evidenced the social reality and gendered language. The semblance was felt towards radical feminism, but it was rather too early to achieve its end goal. And the end goal of the radical feminist revolution is not just the elimination of male privilege but of the sex distinction itself: genital differences between human beings should no longer matter culturally.<sup>104</sup>

On the other hand, the *Vachanas* of a few like Lakamma, Mahadevi, Neelambike and Gangambike are subtle but strong enouncing the feminine qualities and their role in the societal structures. The participation of women in Anubhava Mantapa, the role in a marriage as an equal partner in spiritual attainments, her role as a guide when the husband wrongs are illustrated in the *Vachanas* depicting the ideas of

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<sup>102</sup> MFA No. 318/2011 (FC)

<sup>103</sup> *Supra* note 37 at 234

<sup>104</sup> Shulamith Firestone *The Dialectic of Sex: The Case for Feminist Revolution* 11 (William Morrow, New York 1970)

cultural feminists. The venturing into the Indian legal system looking for similar principles has been quite successful for the paper to relate it to historical- sociology.

The challenges being posed to gender binarism, installation of equality, freedom of expression, unconventional life-style marks this period as one of the earliest progressive movements. Though one cannot categorize this movement into any particular wave of feminism like elsewhere, it nevertheless is nothing short of a feminist revolution of the 12<sup>th</sup> century.





**Part-IV**

**Human Rights, Polity, Social Reforms and Welfare**



## **Basaveshwara and Human Rights**

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**-Lohit Naikar\***

### **I. Introduction**

Ever since the U.N. General Assembly adopted the Universal Declaration on Human Rights in 1948 and declared “all human beings are born free and equal in dignity and rights” and “everyone is entitled to rights and freedoms without distinction of any kind...”, the concern for human rights has assumed global dimension. Its significance has pervaded every inter-State, intra-State political relations and diplomacy. It has been a subject of discussion in almost all national and international conferences, discourses, deliberations, negotiations and transactions. It has been a subject of interpretation in every religious, political, social and economic ideologies. It has been a subject of study in all academic disciplines.

Awareness to protect human rights has grown to such an extent that today it is being used as a yardstick to measure the civilization of Societies, States, regimes and positive laws. It is being used as a criterion for making value judgments, both by the individuals and Governments. It is being used as limitations on the Governments and Authorities. It is being used as a vehicle of development in every international monetary and humanitarian aid. History is now spoken and written in the language of human rights – the rights protected and guaranteed.

In the long history of humanity and its development, the world has witnessed various societies and sub-societies with ‘inequality pervading every aspect of social, political, economic, educational and cultural life. Whenever ‘inequality’ has caused blatant violation of human rights, men and women of exemplary characteristics have arisen and led the societies. One such religious social leader/was Basaveshwara, who came on the stage of history of Karnataka region in southern India during the 12<sup>th</sup> century, who preached equality, liberty and fraternity 600 years before the French Revolution and 800 years before the U.N. Declaration on

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\* Advocate, Dharwad

Human Rights, that led to a formation of a new sub- society called the *Sharana* society; a society where in all human rights we talk today were assured; a society where every member lived with dignity and status; a society where every member respected the rights of others; a society where everyone irrespective of gender, caste, colour and status were equal to one another.

Histories are reinterpreted and rewritten whenever new evidences are brought in, perceptions change and new claims are made. Historically the facts remain same. Because there is a change in perception, an attempt is made to study the teachings of Basaveshwara and its effect on the said sub- society in human rights perspective. An attempt is made to establish that the rights we talk of today are nothing but the rights recognized by Basaveshwara and enjoyed by the *sharana* society. Attempt is also made to establish that Basaveshwara was a champion of human rights.

## **II. Human Rights and *Vachanas*:**

The preachings and teachings of Basaveshwara is Capsulated in the form of '*Vachanas*'. '*Vachana*' is a literary form in Kannada literature, *vachana* literally means a saying or something said. Also termed as cryptic sayings or musings. It was the form of expression chosen by the *Sharanas* of 12<sup>th</sup> century to communicate their ideas, thoughts, sentiments, emotions and mystical experiences to the common masses.

The language used in *Vachanas* is simple Kannada, close to the colloquial spoken by common folk. Since *sharanas* never wrote *vachanas* deliberately and with aim of composing literature, the style is free from traces of scholarly ornamentation. Though the characteristics of modern lyrics is found in *vachanas* they are not regular poems. They are prose pieces. However, the prose style is not that of the time found in Canpa Kavya. They may be regarded as unique types of prose lyrics, possessing the lyrical grace of poetry and the rhythmic articulation of prose. In *vachanas* there are no strict rules of metric and rhyme, alliteration, foot, rhythm, syllable and accent usually found in regular poetry.

The figures and images, the similies and metaphors, the illustrations and examples, wide experiences used in *vachanas* make them more powerful so as to reach the readers' hearts.

*Vachanas* contain the noblest of human thoughts. They range from most ordinary manners and courtesies of social life to highest moral and spiritual values. In *vachanas* we see yearning for divine, prayer, modes of bhakti, universal human values, code of conduct, righteousness, love and compassion, non-violence, peace, universal brotherhood and respect for fellow human beings.

What did *vachanas* in the nature of appeals, commands, declarations, injunctions, illustrations, critiques etc., mean to the thousands of citizenry of Kalyana and followers of Basaveshwara? History evidences that Basaveshwara's ideas, ideals, ideologies in the *vachanas* had such an impact, that led to strong movement and to an establishment of sub society of their own called the '*Sharana* society'.

To this sub-society, mainly comprising of members of the lower castes and the outcastes, *vachanas* became a way of life. They followed the preachings, acted upon them and tried to live accordingly.

This entire process of Basaveshwara's teachings, the devotees following and acting upon the *vachanas*, the denial of existing religious laws, establishment of sub-society, led to a revolution and setting up of a society based on human rights-the right based on dignity, equality, liberty and fraternity. Where individuals led a life based on human dignity, the contemporary basis for respect for human rights and the core value recognized in Article-I. of Universal Declaration on Human Rights. Dignity as core value is a recent academic thought but Basaveshwara recognised this 900 years ago.

### **III. Dignity as core Value of Human Rights :**

Article 1 of the UNDHR recognises one of the most important human rights, in the contemporary thinking, that "all human beings are born free, equal in dignity and rights".

This Article embodies the concept of Natural law which has occupied a pervasive role in the realm of ethics and law, from the time of Greek civilization. The central notion is that there exist objective moral principles which depend on the essential nature of the universe which can be discovered by natural reason. And ordinary human law is only truly law if it conforms to these principles.

The term "born free" means indicates that every individual is a product of nature. To whatever school of thought one may ascribe, a democrat or socialist, a believer or atheist, the truth remains that in creation of every human being, the nature has its share, and therefore all men are equal.

The term 'equal in dignity and rights' means that every individual has some worth which is common to all that there are certain rights which are inherent in man, by virtue of being man himself and these rights belong to them permanently.

Basaveshwara, believed and advocated that all men are born they are worth the same in dignity.

ಹೊಲೆಗಂಡಲ್ಲದೆ ಪಿಂಡದ ನೆಲೆಗಾತ್ರಯವಿಲ್ಲ,  
ಜಲ-ಬಿಂದುವಿನ ವ್ಯವಹಾರ ಒಂದೇ,  
ಆಶೆಯಾಮಿಳರೋಳಹರುಳ ವಿಳಯಾದಿಗಳಲ್ಲಾ ಒಂದೇ.  
ಏನನೋದಿ, ಏನ ಕೇಳಿ, ಏನು ಫಲ?  
ಕುಲಜನೆಂಬುದಕ್ಕೆ ಆವುದು ದೃಷ್ಟಿ?  
ಸಪ್ತಧಾತುಸಮಂ ಪಿಂಡಂ ಸಮಯೋನಸಮದೃವಂ!  
ಆತ್ಮಜೀವಸಮಾಯುಕ್ತಂ ವರ್ಣಾನಾಂ ಕಿಂ ಪ್ರಯೋಜನಂ ಎಂದುದಾಗಿ,  
ಕಾಸಿ ಕಮ್ಮಾರನಾದ, ಬೀಸಿ ಮಡಿವಾಳನಾದ.  
ಹಾಸನಿಕ್ಕಿ ಸಾಲಿಗನಾದ, ವೇದವನೋದಿ ಹಾರುವನಾದ,  
ಕರ್ಣದಲ್ಲಿ ಜನಿಸಿದರುಂಟೆ ಜಗದೊಳಗೆ?  
ಇದು ಕಾರಣ ಕೂಡಲಸಂಗಮದೇವಾ,  
ಲಿಂಗಸ್ಥಲವನರಿದವನೆ ಕುಲಜನು. (590)

*Unless the flow of blood appear,  
There is no harbourage  
Wherein the embryo may dwell.  
The function of the seed is e'er the same.  
Greed, lust, anger and joy,  
All other passions are the same,  
Whatever you read or hear, what fruit?  
What is the rule to judge a caste?  
"The embryo needs the seven elements:  
It is the same birth out of the same womb;  
Same the alliance of self and soul;  
What, then, the usefulness of caste?" (589)  
You are a blacksmith if you heat;  
A washerman if you beat;  
A weaver, if you lay the warp;  
A Brahmin, if you read the Books!  
Is anybody in the world  
Delivered through the ear?  
Therefore, O Kudala Sangama Lord,  
The well-born is the man who knows  
The nature of Divinity!*

In the *vachana*, he clearly expresses that all human beings are one and same, because all are children of God. He says if the embryo of the child has to find a place in the womb of the mother, it has to pass through the same passage. All are subject to desire, anger and joy. How can one conceive high and low? No one has born through the ear.

ಮನೆ ನೋಡಾ ಬಡವರು; ಮನ ನೋಡಾ ಘನ,  
ಸೋಂಕಿನಲ್ಲಿ ಶುಚಿ; ಸರ್ವಾಂಗ ಕಲಿಗಳು  
ಪಸರಕ್ಕನುವಿಲ್ಲ; ಬಂದೆ ತತ್ಕಾಲಕ್ಕೆ ಉಂಟು;  
ಕೂಡಲಸಂಗನ ಶರಣರು ಸ್ವತಂತ್ರ ಧೀರರು. (326)

*Look at their hearth, they're poor indeed;  
Look at their heart, they're great (dignity)  
Their simple touch is bliss;  
They're brave from top to toe;  
There's nothing they can spare,  
But only for the hour that comes;  
Kudala Sangama Saranas  
Are brave and free! (325)*

In this *vachana*, we see that dignity is something, which cannot be evaluated in tangible terms. Dignity has nothing to do with wealth. Basaveshwara says that, even if the *sharana* stay in simple houses they are rich in dignity.

By saying that mind is dignified, he means to say that it is something to do with the psyche of people. It is in the mind of the people who hold someone high and some other low. This is true because contemporary philosophers see dignity in the image of man, the image capable of respecting himself and others, constructively participating in the shaping and sharing of all human values. And this is culmination of many trends in thought, secular as well as religious originating far back into antiquity and coming down through centuries. Thus by saying so, he upheld that dignity inherent is same. Today 'dignity' is the basis and a way of assigning institutions and human rights.

#### **IV . Equality and Basaveshwara**

'Equality' has had a long history. It has figured prominently in many different contexts, and has been given numerous meanings and definitions. Some have viewed it as a fundamentally religious and spiritual notion, namely that all men are equally the children of God and equal in His sight despite their widely differing circumstances. Others have stressed its affinity with and supposed derivations from the state of nature, wherein all the power and jurisdiction is

reciprocal, no one having more than another's; and where all are equal one amongst other, without subordinate or subjection. The famous Declaration on Human Rights have treated equality as a basic political and legal concept, proclaiming in unmistakable terms the self evident truth that all men are created equal and that all are equal in their rights and dignity.

Equality in the real sense is impossible because it depends upon various factors where one is placed. It depends upon the birth, the community, the religion, the socio-economic set up of the family, education, employment, earning, attitudes and moral values one takes up, so on and so forth. Nowhere in the history do we find, in any period, during any rule that there was equality in the real sense. What then does equality mean? Equality means to recognise the preeminence of men in the world of things. It is to draw the line between human and non-human. To insist on equality means to affirm humanity.

Equality means, not to abolish differences between men, but only those differences which might give birth to difference in the situation of men; not in real leveling of conditions of life, but in equal opportunities offered by the given social system, in creating equal and possibly ample opportunity for self realization.

Article 2 of UDHR, declares an important principle on which human rights depend upon, the principle of non-discrimination. Article 2 states everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The remarkable feature of Indian Social System is its caste system. During the times of Basaveshwara, the *varna* system (color), division of the society based on color, and the jati (caste) system existed. It is estimated that there are 3,000 castes today in India. During the times of Basava, the society was segregated into high born and low born based on heredity.

Equality means a non-excluding principle. Since we are all human, members of the same human family, nobody should be let out on the basis of status. It follows all should have the same membership of human race. That is to recognise inalienability and undeniability of being human. It means to recognise the equal worth of all human beings.

The concept of Basaveshwara's equality is unique. It is composite and complete. It encompasses every individual's day to day life, between individual to individual and individual to society.



This complete concept of equality as preached by Basava can be understood in connection to-

1. Spirituality
2. *Ishtalinga*
3. Ritual purity
4. Open community
5. *Kayaka*
6. *Dasoha*.

### 1. Equality and Spirituality

In a highly stratified society in which Basaveshwara lived, caste determined the status of person. In order to eliminate casteism that existed and reform the society, like many great prophets, Basaveshwara too used the instrument of spirituality, religion and metaphysics. He expressed not to respect him on the basis of his family or caste. For him the problem was not a question of birth but of spiritual brotherhood. *Vachana*,

ದೇವ, ದೇವಾ ಬಿನ್ನಹ, ಅವಧಾರು;  
ವಿಪ್ರ ಮೊದಲು, ಅಂತ್ಯಜ ಕಡೆಯಾಗಿ  
ಶಿವಭಕ್ತರಾದವರನೆಲ್ಲರನೊಂದೆ ಎಂಬೆ.  
ಹಾರುವ ಮೊದಲು, ಶ್ವಪಚ ಕಡೆಯಾಗಿ  
ಭವಿಯಾದವರನೆಲ್ಲರನೊಂಬೆ ಎಂದೆ;  
ಹೀಂಗೆಂದು ನಂಬುದೆನ್ನ ಮನ,  
ಈ ನುಡಿದ ನುಡಿಯೊಳಗೆ ಎಳ್ಳ ಮೊನೆಯಳ್ಳು ಸಂದೇಹವುಳ್ಳಡೆ,  
ಹಲುದೊರೆ ಮೂಗ ಕೊಯಿ, ಕೂಡಲಸಂಗಮದೇವಾ. (711)

*Lord, O Lord! Heed my prayer;  
The Brahmin at one end,  
At other the low-born man  
All devotees of siva I deem one;  
The priest at one end,  
The sweeper at another  
All worldlings I deem one.  
It's this my heart believes...  
Should in this talk of mine be doubt*

*As large as a seasmum tip.  
Lord Kudala Sangama  
Will, sure, chop off my nose  
Until the teeth show out! (710)*

The above *vachana* which is in the form of prayer oath, he proclaims that there is no difference between people -Brahmana and untouchable who worship the same Lord. The same is reiterated in the following more radical *vachana*.

ನೆಲನೊಂದೆ; ಹೊಲಗೇರಿ ಶಿವಾಲಯಕ್ಕೆ  
ಜಲವೊಂದೆ; ಶೌಚಾಚಮನಕ್ಕೆ  
ಕುಲವೊಂದೆ; ತನ್ನ ತಾನರಿದವರಿಗೆ,  
ಫಲವೊಂದೆ; ಆಡುದರುಶನ ಮುಕ್ತಿಗೆ,  
ನಿಲವೊಂದೆ; ಕೂಡಲಸಂಗಮದೇವಾ, ನಿಮ್ಮನರಿದವರಿಗೆ.(878)

*There is one earth to hold  
God's temple and the pariah colony,  
One water for the closet and the bath;  
One sect for those who know themselves;  
One meed for those who are released,  
By means of the sixfold mystic way;  
One height of those who know Thee, Lord  
Kudala Sangama!(879)*

Basava transcends all divisions and propagates the ideal of equality, connecting both, extremes of purity scale the temple and settlement of untouchables the traditional contrasts as both are built upon the same earth. So also water is neither holy nor impure used again for all holy and unholy purposes. In the third line he propagates idea of one community who has true knowledge, which knows no distinction between people. It is also explicit in this *vachana* that knowledge leads to liberation (*mukti*) the union of soul with God. Therefore, he concludes that there is only one abode for all people who know the Lord Shiva. Since everybody strive for this destination they must have same attitude in life and they cannot isolate themselves from others; thus bringing to the fore the concept of universal equality of all people.

## **2. Equality and Linga**

The devotion propounded by Basaveshwara revolved around worship of sacred symbol of Shiva the *Linga* and personal *Linga* (*Ishtalinga*). *Ishtalinga*, which is to be worn by the

member on his body, symbolizes the formless and boundless nature, the ultimate truth, the God. It represents the universal spirit.

During the times of Basaveshwara, *Ishtalinga* played an important role in elevating the status of low caste or sudras. It became an instrument to levelise the low caste untouchable *sudras* on par with *dwija* (twice born) people. The effect of *Linga* worship means a drastic social change.

ಬಂದು ಬಿಲ್ಲಹ ಬಿಡಲು ಹೊಲಗೇರಿ ಎಂಬ ಹೆಸರೊಳವೆ, ಅಯ್ಯಾ?  
ಲಿಂಗವಿದ್ದವರ ಮನೆ ಕೈಲಾಸವೆಂದು ನಂಬಬೇಕು  
ಚಾಂಡಾಲವಾಟಿಕಾಯಾಂ ವಾ ಶಿವಭಕ್ತಃ ಸ್ಥಿತೋ ಯದಿ  
ತತ್ ಶ್ರೇಣಿಃ ಶಿವಲೋಕಸ್ಯ ತದ್‌ಗೃಹಂ ಶಿವಮಂದಿರಮ್| ಎಂದುದಾಗಿ  
ಲೋಕದ ಡಂಬಕರ ಮಾತು ಬೇಡ,  
ಕೂಡಲಸಂಗನಿದ್ದುದೇ ಕೈಲಾಸ.(608)

*Is there the name 'pariah colony'  
When a bhakta comes to make his dwelling there?  
We must believe the house where Linga is  
To be Kailasa: thereto this is  
The authority:  
If in a pariah's street  
A Sivabhakta has taken his residence,  
That street will be the Siva-world,  
That house a Siva shrine.'  
Heed not the words  
Of this world's hypocrites:  
Where Kudala Sangama is,  
There is Kailasa!(407)*

### 3. Equality and Pollution

The basic idea underlying caste system is the notion about purity of people. The *Dvija* (Twice) born, eligible to perform religious rites and rituals were considered pure and sudhras ineligible to perform such were considered as impure. Basaveshwara adopted a clear stand with regard to this pollution, with worship of *linga* as a deciding factor, as can be seen in the following *vachana*.

ಹೊಲೆಯುಂಟೆ ಲಿಂಗವಿದ್ದೆಡೆಯಲ್ಲಿ?  
ಕುಲವುಂಟೆ ಜಂಗಮವಿದ್ದೆಡೆಯಲ್ಲಿ?  
ಎಂಜಲುಂಟೆ ಪ್ರಸಾದವಿದ್ದೆಡೆಯಲ್ಲಿ?  
ಅಪವಿತ್ರದ ನುಡಿಯ ನುಡಿವ ಸೂತಕವೆ ಪಾತಕ,  
ನಿಳ್ಳಳಂಕ ನಿಜೈಕ್ಯ ಇವಿಧ ನಿರ್ಣಯ,  
ಕೂಡಲಸಂಗಮದೇವಾ, ನಿಮ್ಮ ಶರಣರಿಗಲ್ಲದಿಲ್ಲ. (770)

*Can there be filth where Linga is ?  
Can there be caste where Jangama is ?  
Can there be offal where Prasada is ?  
The impurity of speaking unholy words Is sin !  
The Formless, the united with Reality,  
The triple consummation, O Lord Kudala Sarigama,  
Is only for Thy Saranas ! (769)*

Here the *linga* is so pure that it renders ineffective all imperials. *Jangama* the religious mendicant, who has given up all attachment of caste, cannot speak of caste. Pollution also fades away where prasada; the sacred offering food is shared.

#### 4. Open Community and Equality

Basaveshwara rejection of pollution made possible people from all castes including the untouchables (sudhras) join the Virashaiva movement.

ಸೆಟ್ಟಿಯೆಂಬೆನೆ ಸಿರಿಯಾಳನ?  
ಮಡಿವಾಳನೆಂಬೆನೆ ಮಾಚಯ್ಯನ?  
ಡೋಹರನೆಂಬೆನೆ ಕಕ್ಕಯ್ಯನ?  
ಮಾದಾರನೆಂಬೆನೆ ಚೆನ್ನಯ್ಯನ?  
ಆನು ಹಾರುವನೆಂದಡೆ ಕೂಡಲಸಂಗಯ್ಯ ನಗುವನಯ್ಯಾ. (345)

*Shall I call Siriyala a man of trade,  
And Macayya A washerman?  
Call Kakkayya a tanner, and  
Cennayya a cobbler?  
And if I call myself  
A priest, will not  
Kudala Sangama just laugh at me? (344)*

In this *vachana* Basaveshwara rejects all distinctions between people on the basis of caste. The persons mentioned in this *vachana* are contemporaries of Basaveshwara and belonging to outcaste sudras. The *vachana* expresses the social structure based on caste and its incompatibility with the egalitarian society visualised by Basaveshwara. The *vachana* simply states that one should avoid characterizing people by caste background, never so with intention of emphasising one's own higher caste

### 5. *Kayaka* and Equality

One of the twin important principles through which Basaveshwara ensured equality was *kayaka*. *Kayaka* literally means physical labour or work of the body. *Kaya* means body and *kayaka* means work done by the body.

In the wider sense, it means an occupation, a profession, a vocation, labour, work, duty undertaken as livelihood.

*Kayaka* was a very important principle through which Basaveshwara not only tried to eradicate the discrimination that existed, but also infused 'dignity; in the labour one puts in., however mean the type of labour may be in the eyes of others. *Kayaka* in principle, opposes the Brahminical theory of karma. *Karma* supposes that each man's vocation is predetermined by birth according to one's *karma* (deeds). That is vocations professions are determined by heredity. This meant that a farmer's son should become farmer, a barber's son a barber and a preacher's son a preacher and so on.

Basaveshwara revolted against this system and infused 'dignity' and 'divinity' in one's labour or work. He vehemently condemned discrimination on the basis of occupation.

In one of the *vachanas*,

ದೇವ ಸಹಿತ ಭಕ್ತ ಮನೆಗೆ ಬಂದಡೆ,  
ಕಾಯಕವಾವುದೆಂದು ಬೆಸಗೊಂಡೆನಾದಡೆ,  
ನಿಮ್ಮಾಣೆ! ನಿಮ್ಮ ಪುರಾತರಾಣೆ! ತಲೆದಂಡ! ತಲೆದಂಡ!  
ಕೂಡಲಸಂಗಮದೇವಾ, ಭಕ್ತರಲ್ಲಿ ಕುಲವನರಸಿದಡೆ  
ನಿಮ್ಮ ರಾಣಿವಾಸದಾಣೆ.(453)

*When devotees come to me  
With God on them, and if I ask  
What is their profession,  
May Thy curse and Thy Pioneers' curse  
Be upon me and my head, my head!*

*O Kudal Sangama Lord,  
May Thy Queen's curse blast me  
If I should seek to know  
What sect they be!*

He swears, if a devotee, wearer of *linga* comes to his house, he would not ask as to what occupation he belongs. To whatever profession he may belong, for him he is incarnation of Shiva.

### **6. Dasoha and Equality :**

*Dasoha* is closely knit with the concept of *kayaka*, they are bracketed together, if *kayaka* is the purpose, *dasoha* is the end. If *kayaka* embodies that everyone should earn their livelihood, *dasoha* prescribes that the money earned through *kayaka* does not entirely belong to the individual, therefore it should be shared with the society.

*Dasoha* involves the principle of distributive justice, that individual should share to some extent the responsibilities of the society. *Dasoha* is not restricted to money or goods sharing. It applies to knowledge and skills. *Dasoha* is a service to human kind through the medium of devotion, realizing that all beings are sparks of divinity and God exists in all creatures. It is a way to seek God through serving human beings. It is not a gift or charity.

ನಾನು ಆರಂಭವ ಮಾಡುವನಯ್ಯಾ, ಗುರುಪೂಜೆಗೆಂದು,  
ನಾನು ಬೆವಹಾರವ ಮಾಡುವೆನಯ್ಯಾ, ಲಿಂಗಾರ್ಚನೆಗೆಂದು  
ನಾನು ಪರಸೇವೆಯ ಮಾಡುವೆನಯ್ಯಾ, ಜಂಗಮದಾಸೋಹಕ್ಕೆಂದು,  
ನಾನಾವಾವ ಕರ್ಮಗಳ ಮಾಡಿದಡೆಯು  
ಆ ಕರ್ಮಫಲಭೋಗವ ನೇ ಕೊಡುವೆ ಎಂಬುದ ನಾನು ಬಲ್ಲೆನು,  
ನೀ ಕೊಟ್ಟ ದ್ರವ್ಯವ ನಮಗಲ್ಲದೆ ಮತ್ತೊಂದಕ್ಕೆ ಮಾಡೆನು,  
ನಿಮ್ಮ ಸೊಮ್ಮಿಗೆ ಸಲಿಸುವೆನು. ನಿಮ್ಮಾಣೆ ಕೂಡಲಸಂಗಮದೇವಾ. (709)

*That, I may worship Guru  
I practice husbandry  
That I perform my rites  
To linga I follow trade:  
That I may slave for Jangama  
I am another's drudge.  
Whatever the work that I may do,  
I know that you*

*Have given me my reward;  
No other occupation do I have  
But for the wages that you give...  
A curse upon me if I fail  
To give you what is yours,  
O Kudala Sangama Lord!(708)*

Basaveshwara makes clear that all vocations must be performed as an act of worship. Whether it is agriculture, business, or manual work, all is done with a spiritual intent. Basaveshwara clearly emphasises that all proceeds are given by God and do not belong to men, therefore man is obliged to give back the fruits of labour. Basava swears that he will not withhold anything that belongs to the Lord, but it will give back all the wages earned.

#### **V. Social justice and Basaveshwara.**

In the contemporary politico-legal philosophy, social justice is the manner in which benefits and, burdens are distributed among the citizenry. This politically is called the distributive principle.

This distributive principle means each member of the group should enjoy an equal amount of happiness. The 'good' whose distribution is referred may consist either of individual status (happiness, want, satisfaction, dignity) or of the resources external to the individual (wealth, education) The principle states how the 'good' is to be divided between individuals and what his/her shall be (medical facilities, housing). The principle also specifies how the wealth or recourses of the state should be distributed. That is the distribution of benefits and burdens throughout the society, as it results from its social institutions.

Basaveshawara was the champion of social justice. In the contemporary legal philosophy. Social justice means striking a harmonious balance between 'rights', 'deserts(deserves) and 'needs' It is concerned with (A) Distribution of and protection of rights through a legal system; (B) Distribution of power (as a benefit), depending on the power structure and social structure. Power as a benefit includes intangibles such as prestige, self respect and dignity, C) Distribution of wealth or material goods and (D) Distribution or allocation of security measures such as housing, medicine, welfare benefits etc.

#### **A. Distribution of Rights:**

During the times of Basava, the legal system which existed was based on the classical religious laws, where rights were not equitably distributed. Only the upper castes enjoyed

and enforced the rights. Enforcement and punishments were based on caste, which were highly discriminative. It was against this Basaveshwara revolted and tried to secure equal rights to the lower castes more particularly the then important claims the right to be equal in worship, religion and right of women to be equal y men.

### **B. Distribution of Power:**

Distribution of power politically or political empowerment was not possible, because the political structure was based on monarchy, wherein the heirs succeeded. Executive power and judicial power vested with upper castes and privileged few.

Through his concept of equality, Basaveshwara empowered large number of people socially, culturally, educationally and economically. Social empowerment through caste eradication, ie., right to equality, cultural empowerment through right to worship, right to religion, right to spiritual attainment, Economic empowerment through 'Kayaka' and 'Dasoha'.

His concept of equality ensured prestige self respect and dignity.

### **C. Distribution of Wealth:**

Basaveshwara absolutely rejected the accumulation of property. He thought that egoist dealing with fruits of labour as highly improper. There are many *vachanas*, which contain warnings against the temptations of wealth. Example,

ಹಾವು ತಿಂದವರ ನುಡಿಸಬಹುದು,  
ಗರ ಹೊಡೆದವರ ನುಡಿಸಬಹುದು,  
ಸಿರಿಗರ ಹೊಡೆದವರ ನುಡಿಸಲು ಬಾರದು ನೋಡಯ್ಯಾ.  
ಬಡತನವೆಂಬ ಮಂತ್ರವಾದಿ ಹೊಗಳಲು  
ಒಡನೆ ನುಡಿವರಯ್ಯಾ, ಕೂಡಲಸಂಗಮದೇವಾ.(132)

*Question you may one bitten by a snake;*

*Question you may one ghost-possessed;*

*You cannot question one possessed*

*By the ghost of wealth... But if*

*The exorcist called poverty*

*Draw near, he speaks at once,*

*O Kudala Sangama Lord! (132)*

Here, Basaveshwara treats wealth as a demonic power, which can destroy everything. He says an unconscious person bitten by snake can be talked to, so also an unconscious person hit by evil planet can be talked to, but a person possessed by evil of wealth cannot be



talked too easily, the only remedy or cure to such possessions is poverty. The exorcist to remedy the evil of wealth in poverty. By saying so, he calls upon his devotees to give up the lust of property.

In many *Vachanas*, Basaveshwara makes clear that all vocations must be performed as an act of worship. He emphasizes that all proceeds are given by God and thus do not belong to men. Since enjoyment of fruits of labour is by His grace, man is obliged to give back these fruits. He swears he will not withhold anything that belongs to God.

Basaveshwara was against the concentration of wealth and he called his devotees to resist the temptation of wealth. True to the principle of social justice which seeks distribution of wealth, Basava through his concept of *Dasoha* not only propagated the idea of distribution of wealth, but also saw it was practiced, which in turn secured social justice to the innumerable devotees more particularly belonging to the weaker sections of the society – the *sudras* and *pachamas*.

His concept of *Dasoha* is nothing but service to humanity, though distribution of wealth. *Dashoha* means the earnings of one labour must be given away, in particular to the religious mendicants, the *jangamas*, and also to the poor needy members of the community. *Dashoha* was a method or means to distribute the wealth. The modern concept of socialism.

ನೀನಿಕ್ಕಿದ ಬೀಯದಲ್ಲಿ ವಂಚನೆಯುಳ್ಳಡೆ  
ಸಂಗಾ, ನಮ್ಮ ತೊತ್ತತನಕ್ಕೆ ದೂರವಯ್ಯಾ.  
ಕದ್ದು ತಿಂದಡೆ ಕೈಹಿಡಿದೊಮ್ಮೆ ಬಡಿದು  
ತುಡುಗುಣಿ ತನವ ಬಿಡಿಸಯ್ಯಾ.  
ಜಂಗಮ ಮನೆಗೆ ಬಂದಲ್ಲಿ ಓಸರಿಸಿದಡೆ  
ಹಿಡಿದು ಮೂಗ ಕೊಯ್ಯಯ್ಯಾ  
ಕೂಡಲಸಂಗಮದೇವಾ.(434)

*If I commit a fraud  
In food bestowed by Thee,  
I'll be, O Lord, removed  
Far from Thy servanthood !  
if I eat thievishly,  
Restrain my hand at once.  
Purge me of thievish ways !  
And should I turn my back  
Upon a Jangama come to my door;*

*Catch me and chop my nose,  
O Kudala Sangama Lord !(433)*

Basaveshwara swears that whatever is given to him, without doubt he would share with devotees. He appeals to the Lord, to punish him if he does not share with devotees.

ಕಾಗೆ ಒಂದಗುಳ ಕಂಡಡೆ ಕರೆಯದೆ ತನ್ನ ಬಳಗವನು?  
ಕೋಳಿ ಒಂದು ಕುಟುಕ ಕಂಡಡೆ ಕೂಗಿ ಕರೆಯದೆ ತನ್ನ ಕುಲವನೆಲ್ಲವ?  
ಶಿವಭಕ್ತನಾಗಿ ಭಕ್ತಿಪಕ್ಷವಿಲ್ಲದಿದ್ದಡೆ ಕಾಗೆ ಕೋಳಿಯಿಂದ ಕರಕಳ್ಳ  
ಕೂಡಲಸಂಗಮದೇವಾ(438)

*Does not a crow, on seeing a crumb,  
Call to its flock?  
Does not a hen, on finding a morsel  
Call, clacking, to her brood ?  
If, being a bhakta, a man lacks loyalty  
To his own faith,  
He's worse than hen or crow,  
O Kudala Sangama Lord! (437)*

Here too Basava, illustrates the same distributive principle by giving example of crow and hen. He says if a crow or hen finds a grain of food, they call their kith and kin to share. Likewise a devotee, should call upon other devotees to share. That is, whatever one has, should be shared.

ಅನ್ಯರ ಮನೆಗೆ ಹೋಗಿ, ತನ್ನ ಉದರವ ಹೊರೆಯದ,  
ಅಚ್ಚ ಶರಣರ ಕಂಡಡೆ,  
ನಶ್ಚಯವಾಗಿ ಕೂಡಲಸಂಗಮ್ಯನೆಂಬನು.

*Whenever I see a devotee  
Rendering service and serving food,  
It is as if I saw  
A hidden hoard.  
Whenever I see one living of  
Prasada and Padodaka,  
It is as if  
Departed breath had come again.  
Whenever I see a perfect Sarana  
Not visiting others' houses to keep himself,  
I call him Lord Kydala Sangama, forsoth! (758)*

## VI. Conclusions :

In the contemporary civilized societies more so after the Universal Declaration of Human Rights and the Covenants of 1966, the primary concern has been the promotion and protection of human rights. It is a subject of interpretation in every religious, political, social and economic ideologies. Modern day Scholars concerned with human rights are constantly in search for a philosophical basis for human rights. The 20th century philosophers have put forwarded many theories based on dignity, justice, respect and concern, with liberty and so on. In their search much is relied on Liberty, Equality and Fraternity of the French Revolution.

However to the author has established in this brief article, Basaveshwara 600 years before the French Revolution and 800 years before UN Declaration on Human Rights used the Dignity, Equality and Justice not only as philosophical basis to assign rights but effectively protected them in his new sub- society formed *sharana* society. The Human Rights we talk today in Declarations, Covenants, Conventions and Constitutions were recognised, enjoyed and effectively protected by Basaveshwara. Thus to this author Basaveshwara has been the greatest champion of human rights and no human rights philosophy can be advanced without the study of Basaveshwaras *vachanas*.<sup>1</sup>



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<sup>1</sup> For a detailed study see Authors' "Basava and Human Rights", Basava Samiti, Bangalore , 2007.

## **The Application of Principles of Equity by British Courts on Mitakshara and Dayabhaga Schools: An Assessment**

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**- T. R. Subramanya\* and Aruna L.\*\***

### **Introduction:**

Hindu Law is a very ancient law. In fact, historians have opined that ancient Roman law was borrowed from Hindu Law. *Dharma* has been considered as the very source of Hindu Law. It is not one set of principles handed down but a series of customs and rituals which was initiated by the sages and philosophers to guide the society. While according to Austin, 'Law is the command of the sovereign', the Hindu law believes that it is beyond the sovereign and that the sovereign is bound by it; so much so that the king is not given the law-making authority rather the law enforcing duty. This enforcement of the law is done through punishment and non-infliction of punishment was considered a breach of *Dharma*. This has been clearly spelt out in *Manu Smriti*.

It is important to note that since the judges in the Muffasil Court did not know the Hindu law, they used to take the help of a '*Pandit*' who was the person whose opinion could be relied upon with regard to the position of Hindu law. His position may be compared to that of an expert as per the *Indian Evidence Act*. This situation prevailed since the Muffasil Courts were required to adhere to the common law requirement of administration through 'justice, equity and good conscience'. The judges not only felt it difficult to understand the Sanskrit texts, they could not also completely rely on custom as a source, since there were diversified castes and customary practices not uniform across the country. Hence, when the Muffasil

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\* Dean, CMR University, School of Legal Studies, Bengaluru.

\*\* Asst. Professor, CMR University, School of Legal Studies, CMR University, Bengaluru.

courts and the common courts culminated, application of judicial precedent was introduced. The Judicial Committee of the Privy Council being the Apex body started administering the judicial decisions from England rather than make tailor made decisions which applied to the Hindus based on their customs and usages. This led to abridgment of several English concepts which were not common in Hindu law and their literal translation did not fall within the fold of the meaning as it were to be used by the original Hindu authors.

### **Inheritance:**

There arose a plateau of problems particularly with regard to inheritance which the English law had never tasted. The patriarchal system of Mitakshara was very different from that of the Dayabhaga School. During the eleventh century, Yagnavalkya propounded of Hindu law principles which was accorded as a commentary by Vijnaneshwara in a book which is very popularly called as 'Mitakshara' on which the Benaras school is founded. Jimuta Vahana authored *Dayabhaga* which is affiliated to the Gauriya School. Though both texts speak about inheritance, there is a different treatment meted out by them. For instance, a member of the *mitakshara* school will be automatically entitled to family property on his birth. Whereas in the *dayabhaga* school the individual right is upheld irrespective of self-acquired or ancestral property. To add to the confusion of the English judges the Muhammadens had a different system completely in contrast to the Hindu system. In their judgment, they just tried to apply the Hindu law within the ambit of equity which resulted in settling a few principles that differentiated the schools by applying a similar treatment. In the landmark case of *Giridhar Lall*, Sir Barnes Peacock evidently unified the schools to equity by making a son liable for his father's debts. According to the *mitakshara* school this was not the position. But it was so according to the *Dayabhaga* school. The proposition is correct from an equity perspective as well since the creditor would otherwise be put at loss on the death of the debtor and he will not be able to recover it from the son/s of the debtor. This was further justified by assigning a religious attribute holding that 'it is the pious duty of the son to repay his father's debts'. This also upholds the maxim *quisensit commodum debet et siniutue onus*, which means that the one who enjoys the fruits must also bear the burden. Thus, a son who enjoys the benefits of inheritance from his father's property is also liable to pay off his debts. Subsequently in *Muttayan Chetty's* case, the ratio of *Giridhar Lall* was not accepted by Justice Muthuswamy Iyer who based his judgment completely on customs and usages, although it was a minority judgment.

There was a clear divide among the Hindu schools with regard to the meaning and application of self-acquired or separate property in comparison to the undivided family interest.

While the *Mithakshara* school appears to have a narrow interpretation, the *Dayabhaga* School has a broader one. The English courts were confronted with the difficulty when it came to such questions which were intrinsically entangled and distinguishing whether it should be separate or joint family property. Where a member of the joint family was provided education out of the joint family funds and subsequently putting such learning acquired to make money was in question, it posed a complicated issue whether such money would fall into the family pool or would be regarded as separate property? But a careful reading of *Mitakshara* had addressed it since Yagnavalkya had made a clear distinction that if income is acquired by application of science which was due to an expense of ancestral wealth it would be his own income which will stand separately from the coparcenary position. This very well blends with the theory of John Locke in terms of acquiring and enjoying the benefits which arise from one's intellect. Yet another instance which startled the British courts was with regard to partition and separate status which meant different things under the *Mitakshara* law, the *Dayabhaga* law and the English common law. While one required ascertainment of shares, the other needed physical division of the joint family property. But the English law recognized that an intention which is equivocal and explicit about the intention to separate was acceptable. Likewise, the position of agnates was different in both the schools and the division was so very clearly instilled particularly in the *Dayabhaga* school that no judicial opinion or intervention of court could quiet oust it. The *Mitakshara* Law was silent about the question regarding absence of an agnate claimant which made it very easy for the British Courts to apply the principles of equity. Furthermore, in the case of *Kenchavva v. Girimallappa (1924) 26 BOMLR 779*, the court followed the equity principle by putting public policy in the forefront and thus deciding that no murderer can inherit the property of his victim.

These cases are only a glimpse into the type of cases which were decided by the British courts which tried to unify the Hindu law with English common law so that equity prevails. These cases are noteworthy not only from the viewpoint of a precedent but also from the point of dilemma which they posed to the Anglo Indian courts in dealing it due to their unique nature which was exclusive only to the Hindus.

Another unique and difficult area for the British courts was dealing with issues regarding marriage. The advent of the Special Marriage Act 1872 brought with it further questions regarding application of personal law as against the provisions of the statute.

### **Marriage:**

Marriage according to the Hindus is a holy sacrament which is indissoluble and irrevocable. The main purpose of marriage as per Hindu law was to ensure perpetuation of the family.

Widows were not allowed to remarry. Wife or widow did not have the right of inheritance except in cases when they were survived by a male issue. They however enjoyed the right of maintenance and authority over her *Stridhana*. All gifts from her relatives and family could be dealt with as per her will subject to the necessary emergency situations of her husband. Though her power over gifts from strangers is absolute, she cannot deal with those gifts without his permission unlike her husband.

The position of women in Hindu marriage was hit by remarkable change during the British period. This was mainly accomplished through statute law. The British set one for the enactment of statutes with the primary objective of being more generous to women and also improving their socio-economic status. However, it is noteworthy that recent legislations by the Indian Legislatures have thrown major light in this aspect of women empowerment.

The Britishers wanted to do away with the social evil of sati, but were unsuccessful as they were reluctant to interfere with Indian Personal Law. Later on, in 1856, the Hindu Widow's Remarriage Act was passed. This legalized widow remarriage but inheritance rights were not attributed to widows. The Indian Succession Act, 1856 which did not apply to Hindus, provided to widows a more favorable position compared to the pre-existing situation. Subsequently in 1872, the Special Marriage Act was introduced. Wife under this statute was not submissive to her husband. Divorce was recognized for dissolution of marriage in cases of grave matrimonial faults. This statute was brought to light on the desire of a Hindu theistic sect called AryaSamaj who adopted western notions rather than orthodox Brahminical thoughts. This as per the Britishers was undesirable. Therefore, such marriages under this Act were to be taking place in front of the Registrar. The conditions remained the same, that is, no living spouse at time of marriage, not within prohibited degrees of relation, etc. Though inter caste and inter religion marriages were validated, inheritance and property devolution took place merely in accordance with the Indian Succession Act. The draft *Hindu Code* of 1948 was a step to apply similar status to Hindu women.

Other legislations introduced during the British era in India include, the *Sharda Act, 1929* which did not abolish child marriages but rather penalized the same. The Hindu Women's rights to *Property Act, 1937* also called the *Deshmukh Act*<sup>1</sup> improved the status of widows and availed her a share in her husband's estate which was equivalent to her son.

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<sup>1</sup> Harold Lewis Levy, *Lawyer-Scholars, Lawyer-Politicians and the Hindu Code Bill, 1921-1956*, 3 LAW & Soc'y REV. 303 (1969).

It can be witnessed in the evolution of marriage laws during British India that the principles of natural justice and equity prevailed at all levels. Though the British were anxious about infringing with the Indian personal laws, yet they were the reason for women to be empowered and uplifted in the male-dominated Indian society.

As against any other colony which the British invaded, India always posed several challenges particularly regarding the application of law which could just not be applied uniformly across the country. Though they attempted at unification, several hurdles had to be overcome and a few situations which were never addressed earlier either by the law or the courts had to be decided and the only tool that could be applied was the concept of equity. Hence this phase of the Anglo-Indian courts can be identified by appreciating the equity principles at its best. To further understand this, adoption under Hindu law is analysed hereunder.

#### **Adoption:**

The main objective of Hindu marriage was for perpetuating family name. But many times this objective failed. In such cases, adoption remained as the best alternative. As per Hindu law, adoption was only possible to be done by an issueless man. His widow was not given the right to adopt in most parts of India mostly because it can be done to spite the reversioners. The main objective of adoption was that from a spiritual benefit of the adopter<sup>2</sup>. So, any other reason was immaterial however, the spiritual reason was the only valid one. If 'F' a male, dies leaving his wife 'M' and son 'S', who is in turn married to 'P' and has a son 'SS', in this case widowed wife 'M' cannot adopt as her duty of perpetuating the family is fulfilled.

In the 1899 leading case of *Sri Balusu* it was decided that giving an only son in adoption is prohibited, while giving an orphan in adoption is reasonable. Another rule which was followed as per *Shastric* view of adoption is that, the son of a woman who before her marriage was within the prohibited degrees with the adoptive father. In such cases there cannot be any adoption. This rule was established by the Privy Council on reversing the decision of Allahabad High Court in the case of *Bhagwan Singh*. However, this decision was not accepted by the Hindus.

From the aforementioned discussed cases it can be concluded that the Privy Council's decisions based on adoption, have acted as a stoppage on the development of law of Indian adoption. However, one such English common law principle which was widely used in Indian adoption cases is the rule of estoppel.

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<sup>2</sup> W. C. Petheram, English Judges and Hindu Law, 14 L. Q. REV. 392 (1898).



The above discussed cases and points make it relevant that adoption in India was not a prominent process. However, the contribution of the British to the development of the Hindu adoption law is limited and in fact can to some extent be called unsuccessful. Here again the principles of equity were tried and applied in as much as possible but due to the very strong mindset and the position of sons in the Hindu rituals did not effectuate synchronization of Hindu laws on adoption with the common law principles.

**Conclusion:**

Although the Britishers did not intend to enforce the British law on the personal laws of the Hindus, yet the British courts made a sincere attempt to make the laws uniform all across the country by the application of the principles of equity whenever there was a conflict of opinion. The above discussed cases clearly highlight the contribution made by the British courts. Though the British courts in their decisions have endorsed the basic principles of natural justice, that is justice, equity and good conscience, yet it appears that they did not appreciate the Hindu personal law in its complete essence.



## ಸರ್ವಜ್ಞ ಸಾಹಿತ್ಯದಲ್ಲಿ ಕಾನೂನಿನ ಸಮಾಜಮುಖಿ ಮೌಲ್ಯಗಳು –ಒಂದು ಅವಲೋಕನ Socio-Legal Values in Sarvajna Literature- An Exploration

–G. C.Tallur\*

ಸಾಹಿತ್ಯವು ಸಮಾಜದ ಚಿಂತನೆಯ ಹರಳುಗಟ್ಟಿದ ಅಭಿವ್ಯಕ್ತಿಯಾಗಿದ್ದು ಅದರ ಪದರು ಒಳಪದರುಗಳಲ್ಲಿ ಅಡಕವಾಗಿರುವ ನ್ಯಾಯ, ನೈತಿಕತೆ ಮತ್ತು ಮಾನವತಾವಾದಗಳ ಪರಿಗಣನೆಯು ನ್ಯಾಯಶಾಸ್ತ್ರದ ಕಾಲಾತೀತವಾದ ಬೇರುಗಳ ಅನ್ವೇಷಣೆಗೆ ಅತ್ಯವಶ್ಯ.

I limit myself to such exploration in the literature of Sarvajna

“ಕಾನೂನಿನ ಸಮಾಜಮುಖಿ ಮೌಲ್ಯಗಳನ್ನು ಜನರ ಆಡುಭಾಷೆಯಲ್ಲಿ ಅಭಿವ್ಯಕ್ತಿಸಿ ಅವುಗಳ ಪ್ರಸರಣೆಗಾಗಿ ನಾಡಿನಲ್ಲಿ ಸಂಚರಿಸಿದ, ಕಷ್ಟಗಳನ್ನು ಅನುಭವಿಸಿದ ಸರ್ವಜ್ಞನು ಮೌಲ್ಯಗಳ ಅನುಪಮ ಪ್ರಸಾರಕ. ತಪ್ಪು ನಡತೆಗಳ ಖಂಡನೆಗಾಗಿ ಸಿಂಹನಾದ ಮಾಡಿದ ಸರ್ವಜ್ಞನು ಸತ್ಯಸಿಂಹನೆಂದೂ ಸೊಗಸಾದ ಕನ್ನಡದಲ್ಲಿ ಮೌಲ್ಯಬೋಧನೆ ಮಾಡಿದುದರಿಂದ ಕನ್ನಡದ ಮೌಲ್ಯಗಳ ಕೋಗಿಲೆ ಎಂದು ಪರಿಗಣಿಸಬಹುದು”. ಚನ್ನಪ್ಪ ಉತ್ತಂಗಿಯವರು ಸರ್ವಜ್ಞನ ಬಗ್ಗೆ ಹೀಗೆ ಹೇಳಿದ್ದು ಅತ್ಯಂತ ಸೂಕ್ತವಾಗಿದೆ.

### Introduction:

Before embarking on Sarvajna proper and his literature for Socio-Legal Values let me recollect the basic characteristic of our society as apparent in our ancient Sanskrit Literature.

Our National Motto adopted after Independence is ಸತ್ಯಮೇವಜಯತೆ which is a mantra taken from Mundak Upanishad meaning ‘Truth Alone Triumphs’ or ‘Truth Stands invincible’. The full sentence in the Mantra is “ಸತ್ಯಮೇವಜಯತೆ ನಾನೃತಂ”–meaning –‘Truth Alone Prevails and not falsehood’.

With such abiding faith in the ultimate triumph of truth our society is indomitably optimistic that truth will prevail finally despite all ups and downs. Our society therefore with such total faith in the victory of truth never composed tragedies whereas in Greek

\* B.E, B.A, F.I.E, F.I.C.A, Former Secretary, PWD, Government of Karnataka, Former Member, Karnataka State Environment Appellate Authority.

literature the most celebrated plays are tragedies such as the Oresteia Trilogy – Argememnon, The Libation – Bearers and The Furies and Antigone of Sophocles and Prometheus Bound by Aeschylus.

Everyone acquainted with Sanskrit Dramatic Literature is aware of the striking feature of the classic drama which is total absence of tragic ending. In several plays there are many distressing occurrences during the progress of the action. But there is never any tragedy in the sense of calamity which remains at the close of the last act. Tragic outcome is always prevented. In “Natya Shastra” of Bharat the rules on this point of avoiding any unhappy ending are very definite which were strictly followed by the classical dramatists. Such a phenomenon of total absence of tragedies, enigmatic though to Western critics, can be explained as Sanskrit Dramatists complying to the belief of Indian people and their irrepressible faith in victory of truth.

It stands to reason that such people who venerated and intrinsically trusted Shruti, Smruti, literature were rooted in the Mantra ‘ಸತ್ಯಮೇವಜಯತೆ ನಾನೃತಂ’ of Mundak Upanishad and thus were deeply optimistic never ready to yield to tragedies. In sum we are an inveterate optimistic society trusting in the ultimate triumph of truth. It is therefore self evident that only for a society whose fulcrum is righteousness such indomitable faith in truth is possible.

**ನಮ್ಮ ಪುರಾತನ ಸಂಸ್ಕೃತ ಸಾಹಿತ್ಯದಲ್ಲಿ ನೀತಿ ಶಾಸ್ತ್ರಗಳ ಸ್ಥಾನ:**

ಇಂತಹ ನೀತಿಯನ್ನು ಆರಾಧಿಸುವ ನಮ್ಮ ಸಮಾಜದ ನೀತಿ ವಿಶ್ವಾಸಕ್ಕೆ ತಳಹದಿ ಯಾವುದು? ಇದನ್ನು ಕಾಣಲು ನಾವು ನಮ್ಮ ಪುರಾತನ ಸಂಸ್ಕೃತ ಸಾಹಿತ್ಯವನ್ನು ವಿಹಂಗಮವಾಗಿ ಪರಿಗಣಿಸಬೇಕು. “ಪುರಾತನ ಸಂಸ್ಕೃತ ಸಾಹಿತ್ಯದ ಮೂಲ ವಿಂಗಡಣೆ ಎರಡು – ಶೃತಿ ಮತ್ತು ಸ್ಮೃತಿ. ಶೃತಿಯಲ್ಲಿ ವೇದಗಳು, ಮಂತ್ರಗಳು, ಬ್ರಾಹ್ಮಣಗಳು, ಅರಣ್ಯಕಗಳು, ಉಪನಿಷತ್ತುಗಳು ಹಾಗೂ ದರ್ಶನಗಳು. ಸ್ಮೃತಿ ಸಾಹಿತ್ಯದಲ್ಲಿ ವೇದಾಂತ, ಸ್ಮಾರ್ಥಸೂತ್ರ, ಧರ್ಮಶಾಸ್ತ್ರ (ಕಾನೂನಿನ ಗ್ರಂಥಗಳು), ಇತಿಹಾಸ, ಪುರಾಣ, ನೀತಿಶಾಸ್ತ್ರಗಳು ಹಾಗೂ ಇನ್ನಿತರ ಸಾಹಿತ್ಯವಾದ ಕಾವ್ಯಗಳು, ನಾಟಕಗಳು, ಇತ್ಯಾದಿ. ಇವುಗಳಲ್ಲಿ ಜನಸಾಮಾನ್ಯರ ನೀತಿ ನಡುವಳಿಗಳಿಗೆ ನೀತಿಶಾಸ್ತ್ರವು ಅತ್ಯಂತ ಸಬಲವಾದ ತಳಹದಿಯನ್ನು ಒದಗಿಸಿದೆ.

*Neetishastra* proper are works whose direct object is moral teaching. In the second place we have didactic portions of epic poems and other works. The aim of *Neetishastra* proper is to serve as guides to right conduct in all relations of domestic social and political life.

*Neetishastra* can be put into two categories – A) Collection of Choice Maxims, striking thoughts and wise sentiments in the form of metrical verses (the Vachanas of Sarvajna can be considered in this category). B) Book of fables in prose which string

together stories of animals and amusing apologues for the sake of morals they contain or to serve as frameworks for introduction of moral precepts. These often represent wise sayings current even today.

Besides *Neetishastra* almost every department of ancient Sanskrit Literature contributes its share to moral teaching and righteous conduct.

Anyone who studies the best ancient Indian writings is struck by their all pervading moral overtone. They constantly present condition of human life as the result of actions in the previous existences.

Hence a right course of present conduct in this life becomes an all important consideration as bearing future happiness in the coming lives:hence we need not be surprised if, to satisfy a constant longing for ನೇತಿ and guidance and instructions in practical wisdom, nearly all departments of ancient Sanskrit Literature ಬ್ರಾಹ್ಮಣಕಗಳು, ಉಪನಿಷತ್ತುಗಳು, ಕಾವ್ಯಗಳು ಮತ್ತು ಪುರಾಣಗಳು are more or less didactic, nearly all delight in moralizing and philosophizing; nearly all abound in wise sayings and prudential rules. Scarcely a book or writing of any kind begins without invoking the Supreme Being and as each work proceeds, the writers constantly suspend the main topic, or turn aside from their regular subject for the purpose of interposing moral and religious reflections and even long discourses on the moral duties of life. This is especially so in ಮಹಾಭಾರತ.

### **Two divisions of *Neethishastra* :**

#### **A) Regular collections of moral maxims and sentiments:**

These are generally in metrical stanzas and sometimes contain charming allusions to natural objects and domestic life with occasional striking thoughts on the nature of God and immortality of soul as well as sound ethical teaching regarding various relations and conditions of society. Our ancient writers always delighted in apothegms. Collections of such apothegms are:

1. The Three Hundred apothegms ascribed to Bhartarhari of which the first '*Shataka*' or collection of hundred verses is on love (*Shringara*) and therefore more lyrical than didactic. The second *Shataka* 'is on good conduct (*Neetishataka*)'. And the Third *Shataka* is on renunciation of worldly desires (*VairagyaShataka*).

So also Panchatantra of Vishnu Sharma (1200 BCE) and *Hitopadesha* of Narayna (800 CE).

2. Vriddha Chanakya or *Rajaneeti Shastra*.

3. *Chanakya Shataka* or Hundred verses of Chanakya.
4. '*Sarangadhara Paddhati*'.

There are numerous other collections of didactic verses in ancient Indian writings.

Sarvajna falls in this category and is an inheritor of hoary antiquity of didactic verses dealing with *Neeti* and righteous conduct.

B) Collections of fables and apologues:

This is a class of compositions in which India is entirely unsurpassed (Panchatantra, *Kathasaritsagara* of Somadev Bhatt and the extinct '*Bruhat Katha*' of Gunadhya)

To such ancient incessant background of didactic apologues and apothegms and verses belongs Sarvajna who is a didactic teacher of righteousness in whose more than 2000 *Vachanas* we can trace wide spread socio legal values.

### **Socio Legal Values in Sarvajna:**

Sarvajna can be taken as born in Abaloor of Hirekerur Taluk in Haveri District and resident in an area around Masur in about the 16<sup>th</sup> Century. His *Vachanas* abound and drenched in socio legal values. There is a vast sweep of socio legal values identifiable in the verses of Sarvajna.

Let us consider only seven (7) legal values in Sarvajna's *Vachanas*:

#### **1. Liberty:**

Talking of liberty let us not forget that Sarvajna composed his *Vachanas* in the 16<sup>th</sup> century when liberty was far from being understood as we understand it now- as a primary ingredient of human existence.

ತಂತ್ರಿವಾದ್ಯವು ಲೇಸು | ಮಂತ್ರಿಯ ಕೆಳೆ\* ಲೇಸು |

ಯಂತ್ರವಾಹಕನ\*\*ದಯೆ ಲೇಸು | ಜಗದಿ

ಸ್ವಾತಂತ್ರ್ಯವೇ ಲೇಸು ಸರ್ವಜ್ಞ |

(\* - ಮಿತ್ಯತ್ತ್ವ, \*\* - ದೇವರು)

In this the urge for liberty is remarkable in more ways than one. Unconcerned about the ways of the world during his time and times earlier to him Sarvajna speaks here about liberty not to please anyone but for the sake of the truth that liberty was a necessary precondition to human happiness. We need to recall that many of the earlier poets who were to please kings and emperors never spoke of such liberty. Sarvajna on the other hand glorified liberty.

This reminds one of Emile Zola's celebrated open letter to the President of France in defence of Alfred Dryfus, a Jewish military officer who had wrongly been accused of treason by the French army, published in the French News paper L'Aurore in 1898 which led to release of Dryfus and his honorable reinstatement.

## 2. Equality: Treating all as equals:

Sarvajna propounds the concept of equality very firmly'

ಕುಲಭೇದ ಹಾಗೂ ಇತರ ಯಾವುದೇ ಭೇದಗಳನ್ನು ಒಪ್ಪದೇ ಕೇವಲ ಗುಣಭೇದವನ್ನು ಮಾತ್ರ ಮಾನ್ಯ ಮಾಡಿದವ, ಸರ್ವಜ್ಞ ಎಲ್ಲರನ್ನೂ ಸಮನಾಗಿ ಕಂಡವ.

ಎಲ್ಲರೂ ಪ್ರಿಯರು

ಊರೆಲ್ಲ ನೆಂಟರು | ಕೇರಿಯೆಲ್ಲವು ಬಳಗ |

ಧಾರುಣಿಯು ಎಲ್ಲಕುಲದೈವವಾಗಿನ್ನು |

ಯಾರನ್ನು ಬಿಡಲೊ ಸರ್ವಜ್ಞ |

ಜಾತಿಖಂಡನೆ

ನಡವುದೊಂದೇ ಭೂಮಿ | ಕುಡಿವುದೊಂದೇ ನೀರು |

ಸುಡುವಗ್ನಿಯೊಂದೆ ಇರುತಿರಲು ಕುಲಗೋತ್ರ |

ನಡುವೆ ಎತ್ತಣದು? ಸರ್ವಜ್ಞ

ಅಸ್ವಶ್ಯತೆಖಂಡನೆ

ಕುಡಿವ ನೀರನುತಂದು | ಅಡಿಗೇ ಮಾಡಿದ ಮೇಲೆ |

ಒಡನುಣ್ಣಲಾಗದೀಶೆಂಬ ಮನುಜರ |

ಒಡನಾಟವೇಕೆ? ಸರ್ವಜ್ಞ

ಜಾತಿ ಹೀನರ ಮನೆಯು | ಜ್ಯೋತಿತಾ ಹೀನವೇ? |

ಜಾತಿ ವಿಜಾತಿಯೆನಬೇಡ, ದೇವನೊಲಿ |

ದಾತನೇಜಾತ | ಸರ್ವಜ್ಞ

ಇವುಗಳಲ್ಲಿ ಸರ್ವಜ್ಞನ ಸಮದರ್ಶಿತ್ವವನ್ನು, ಜಾತಿಖಂಡನೆಯನ್ನು ಹಾಗೂ ಗುಣಭೇದವು ಮಾತ್ರವೇ ಮಾನ್ಯ ಎಂಬ ಇಂದಿನ ಸಂವಿಧಾನಾತ್ಮಕ ಮೌಲ್ಯಗಳನ್ನು ನಾವು ಕಾಣಬಹುದು.

## 3. Quest of truth: ಸತ್ಯ ಶೋಧನೆ

It is trite that legal process is a search and quest for truth. Sarvjna says that such truth lies right around us needing only the eye to behold

ಸತ್ಯವೆಂಬುದುತಾನು | ಹಿತ್ತಲದಗಿಡ ನೋಡ |  
ಮತ್ತೆಲ್ಲಿ ನೋಡಿ ಅರಸದಲೆತಾನಿದರ್ |  
ಹತ್ತೆಲೇ ನೋಡ ಸರ್ವಜ್ಞ

This reminds me of what Justice J. R. Mirdha, Judge of Delhi High Court said recently in his farewell speech when retiring. He is reported to have said “In the Court of Justice, both the parties know the truth. It is the Judge who is on trial”.

Having been an arbitrator since two decades I am inclined to see the truth in the Vachana of Sarvajna and the statement of Justice Mirdha and see Alternate Dispute Resolution mechanism as an easy and sure way of searching truth which for domain expert is ‘ಹಿತ್ತಲದಗಿಡ as Sarvajna says’. Today’s ADR processes appear to be closer to what Sarvajna thus says where truth may be self-evident in ‘Trade Usages’ (ಹಿತ್ತಲದಗಿಡ) for domain experts.

#### 4. Maintenance and welfare of Senior Citizens and Parents:

The rationale of the 2007 Act, ‘Maintenance and Welfare of Parents and Senior Citizens Act – 2007’ can be traced to many Vachana’s of Sarvajna

ಹೆತ್ತವರಿಗೆ ಬೆಲೆಯಿಲ್ಲ

ಮುತ್ತು ನೀರಲಿ ಹುಟ್ಟಿ | ಹತ್ತು ಸಾಸಿರ \* ಹಡೆಗು\*\* |  
ಹತ್ತುಚಿಪ್ಪೊಂದು ಹಣವಿಲ್ಲ | ತಾಯ್ತಂದೆ |  
ಎತ್ತಣವರೆಂದ ಸರ್ವಜ್ಞ  
(\* ಸಾಸಿರ – ಸಾವಿರದತದ್ಧವ, \*\* ಹಡೆಗು – ಹೊಂದು, ಬೆಲೆಬಾಳು)

Obviously all was not well about care of elders even during the times of Sarvajna.

ಹಿರಿಯರ ಪೋಷಣೆ ಸನ್ಮಾನ

ತೆಂಗಿಗೆ ಹಿರಿಯರಿಗೆ | ಹಂಗು ಮಾಡಲೆಬೇಕು |  
ತೆಂಗಿನ ಮೊದಲಿಗೆ ನೀರೆರೆಯೆತುದಿಯಲ್ಲಿ |  
ಹಿಂಗದೀವಂತೆ ಸರ್ವಜ್ಞ

Care of parents is a must like watering the roots of a coconut tree as they are the very roots of ವಂಶ, ಸಮಾಜ ಮತ್ತುರಾಷ್ಟ್ರ.

#### 5. Preservation of Primacy and purity of legal delivery system:

If Justice delivery system fails where can people seek solace?

ಉತ್ತಮರು ಕೆಟ್ಟರೆ ಕಷ್ಟ.

ಉತ್ತರೆಯು ಬರೆತಿಹರೆ | ಹೆತ್ತತಾಯ್ತೊರೆದಿಹರೆ |

ಉತ್ತಮರು ತಪ್ಪಿನಡೆದಿಹರೆ ಲೋಕ ತಾ |

ನೆತ್ತ ಸಾರುವದು ಸರ್ವಜ್ಞ ?

ತತ್ವಮಸಿ ಹುಸಿದಿಹರೆ | ಉತ್ತಮರು ಕುಸಿದಿಹರೆ |

ನಿತ್ಯರುಕೇಡು ಬಗೆದಿಹರೆ ಸತ್ಯವ |

ನೆತ್ತಲರಿಸುವದು | ಸರ್ವಜ್ಞ

Immense faith that people repose in judiciary and concern for the calamitous effect if it fails can be sensed in the above verses.

## **6. Valuing a witness not by his social and economic status but by his allegiance to truth:**

Recently a Special CBI Court in Thiruvananthapuram (23.12.2020) sentenced to life imprisonment a Catholic Priest Father Kottoor, Professor BCM college, Kottayam and a nun Sister Stephy for the murder of Sister Abhaya, 28 years after the crime. Father Kottoor was Secretary to the then Bishop and later had risen to be Chancellor of Catholic Diocese of Kottayam.

A sole witness saw two men in the Convent the night before the murder, one of whom he identified as Father Kottoor. This witness of 'Adukka' Raju, a petty thief who had entered the Convent to steal a copper strip on the day of crime was crucial and sole witness in ensuring justice in the case.

'Adukka' Raju, an ordinary of the ordinary, petty thief, had climbed walls of St. Pius Convent for petty theft on the day Sister Abhaya was murdered. Raju turned out to be an extraordinary man who was to beat a sea of odds to stand strong for 28 years despite treats, inhuman torture, allurements and stood strong as the key witness to have directly witnessed the prime accused on the crime scene. Upon conviction of the culprits Father Kottoor and Sister Stephy, Raju told press "My daughter finally got justice". Raju had been coerced by police to confess that he had murdered Sister Abhaya! Hon'ble Judge Sunil Kumar has graphically depicted in his judgment all the torture, coercion and allurements Raju was subjected to. The Judge in his judgment recorded: "He may have been a thief but he was and is an honest man, a simple person without the need to dissemble, a human being who became a professional thief by force of circumstance but a speaker of truth none the less".



Sarvajna speaks of ಪಕ್ಷಪಾತ in assessing human beings:

ಇಲ್ಲದವನ\* ಅಹುದಾಡೆ\*\* | ಬಲ್ಲಂತೆ ಬೋಗುಳುವರು |

ಬಲ್ಲಿದ\*\*\* ನಲ್ಲದನು\*\*\*\* ಆಡಿದರೆ ಎಲ್ಲವರು |

ಬೆಲ್ಲವೆಂಬುವರು ಸರ್ವಜ್ಞ

(\* ಇಲ್ಲದವ : ಬಡವ, \*\* ಅಹುದಾಡೆ : ಸತ್ಯವನ್ನೇ ನುಡಿದರು

\*\*\* ಬಲ್ಲಿದ : ಸಿರಿವಂತ \*\*\*\* ಅಲ್ಲದನು : ಅಸತ್ಯವನ್ನು)

ಬಡವನಿದ್ದುದನಾಡೆ | ಕಡೆಗೆ ಪೋಗಿಂಬುವರು |

ಒಡವೆಯುಳ್ಳವರು ಸುಡಗಾಡ ನುಡಿದರೂ |

ಪೊಡವಿಯೊಳಗಧಿಕ ಸರ್ವಜ್ಞ |

ಬಡವನೊಳ್ಳೆಯಮಾತ | ನುಡಿದರಲ್ಲೆಂಬುವರು |

ಪೊಡವೀಶ ಪೊಳ್ಳುಗೆಡೆದರೂ ಕೈವಾರಿ\* |

ಕಡು ನಗುತಲಿಹರು ಸರ್ವಜ್ಞ |

(\* ಕೈವಾರಿ - ಪೊಡವೀಶನ ಸೇವಕರು, ಅವನ ಹಂಗಿನಲ್ಲಿ ಜೀವಿಸುವವರು.)

## 7. To avoid miscarriage of Justice:

The culprits and not the innocent must be punished. In criminal Law, Blackstone's Ratio (also known as Blackstone's formulation) is the idea that 'It is better that ten guilty persons escape than that one innocent suffer' as expressed by the English Jurist William Blackstone in his seminal work "Commentaries on the Laws of England" published in 1760. The idea subsequently became a staple of legal thinking in Anglo-Saxon Jurisdictions and continues to be a topic of debate. The message that government and courts must err on the side of bringing in verdicts of innocence has remained constant.

Such deep concern to save the innocent, the truthful, the righteous is evident in the following verses of Sarvajna:

ತಪ್ಪು ಮಾಡದ ಮನುಜ | ಗೊಪ್ಪುವದೆ ಸಂಕೋಲೆ?

ತಪ್ಪು ಮಾಡಿದಗೆ ಸೆರೆಯು, ಸಂಕೋಲೆಗಳು |

ಬಪ್ಪುದೇ ಸರಿಯು ಸರ್ವಜ್ಞ |

ತಪ್ಪು ಮಾಡಿದವಂಗೆ ಒಪ್ಪುವುದು ಸಂಕೋಲೆ |

ತಪ್ಪಿಲ್ಲದಿಪ್ಪ ಶರಣಂಗೆ ಸಂಕೋಲೆ |

ಬಪ್ಪುದೇಕೆ? ಸರ್ವಜ್ಞ?

Such concern by the way, is also crystal clear in Chapter -4 Shloka-8 'Bhagawadgeeta' where Krishna says:

ಪರಿತ್ರಾಣಾಯ\* ಸಾಧುನಾಂ\*\*

ವಿನಾಶಾಯ\*\*\*ಚ ದುಷ್ಕೃತಾಂ\*\*\*\*

ಧರ್ಮ ಸಂಸ್ಥಾಪನಾರ್ಥಾಯ

ಸಂಭವಾಮಿಯುಗೆಯುಗೆ

(\* ಪರಿತ್ರಾಣಾಯ—for the deliverance

\*\* ಸಾಧುನಾಂ—ಸಜ್ಜನರು, \*\*\* ವಿನಾಶಾಯ – for the annihilation

\*\*\*\*ದುಷ್ಕೃತಾಂ— Miscreants)

The above *shloka* also makes it clear that protecting the innocent and pious takes precedence even over punishing themiscreants.

Thus socio legal values are embedded in the literature of Sarvajna.



## **The *Mitakshara*'s Approach to Polity, Good Governance and People's Welfare**

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**-P. Ishwara Bhat\***

### **Introduction**

*Mitakshara*, a great commentary on *YajnavalkyaSmriti*, is generally understood as a treatise that shaped the personal laws of Hindus and guided commercial transactions. It is true. But it is also true that its brilliant analysis provides an insightful exposition of polity and King's duty. The treatment of the subject by *Mitakshara* is not as elaborate as that of other works dealing with *Rajadharma* but the core ideas it emphasizes are quite significant. It makes polity an instrument to attain good governance, people's welfare and justice with social concern. Regarding good governance, the criteria articulated by United Nations Economic and Social Council for Asia and the Pacific (UNESCAP) can help the present discourse. It is as follows: "Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society."<sup>1</sup> Although this is a modern concept, interestingly, these major characteristics can be traced in *Mitakshara*'s chapter on *Rajadharma* in *Vyavahar* part. Much more than that, linking polity with goals of justice and welfare was a unique approach that rendered the legal system a purposive enterprise. The interconnected factors involved in this discourse are (a) principles orienting the conduct of the king, administration and people towards good governance and people's welfare; and (b) organization of the polity for structuring and streamlining the political power to promote these objectives; (c) fairness in external relations; (d) efficient and clean internal administration; (e) fair administration of justice; and (f) people's welfare.

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\* Vice Chancellor, Karnataka State Law University, Hubballi

<sup>1</sup> <https://www.unescap.org/sites/default/files/good-governance.pdf>

**(a) The principles orienting towards good conduct**

The orientation of polity in ancient India was responding to lofty goals of *Rta* such as justice, truth, equality, harmony, peace, morality and welfare of people. The king was to aim at not only his salvation but also salvation of whole of his subjects by subordinating the human desires and economic actions to the imperatives of *dharma* or just social order.<sup>2</sup> The very purpose of forming a State was to ensure that the king and the subjects traverse the path of righteous conduct so that heavenly bliss is product of their determined work.<sup>3</sup> Yajnavalkya said that human effort and destiny were like two wheels of a chariot for attaining a fulfilment.<sup>4</sup> *Mitakshara* comments that destiny is product of past performance in the former incarnation;<sup>5</sup> that fourfold causes such as destiny, *svabhaava*, time and human effort together contribute towards fruitful action;<sup>6</sup> and that human effort on right path being the key to comfortable consequence, exertion of good human action shall be the approach of every human being.<sup>7</sup> The path of right conduct is paved by compliance with *Shruti*, *Smriti* and *Sadaachara*, the conduct of good men, one which is pleasant to one's own self and the desire which springs from good resolution. Thus, responsibility of good conduct is yoked upon the shoulders of everyone.<sup>8</sup> *Dharmasastras* prescribe *prayaschitta* for wrongful acts or for deviances from duty so that through sincere penance and reform the erring person restores social equilibrium.<sup>9</sup>

There are provisions in *Yajnavalkya Smriti* and its commentary *Mitakshara* persuading for virtuous conduct on the part of both the king and his subjects through their mutual relations and obligations. It ordains that being lenient to the learned (*Brahmana*) in spite of insults from them, shedding crookedness towards friends who are affectionate, angry towards enemies and promoting welfare of servants and subjects

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<sup>2</sup> This basic concept of *Trivarga* emphasizing on prevalence of *dharma* over *kama* and *artha* in order to attain moksha was contemplated in

<sup>3</sup> *Nitehphalamdharmarthakamavaptihi*

<sup>4</sup> Mit on YS 351: As verily by one wheel alone there is no motion of the chariot, so without human effort, the destiny does not get fulfilment.

<sup>5</sup> Mit on YSI. 349

<sup>6</sup> Mit on YSI. 350

<sup>7</sup> Mit on YSI. 349. *Mitakshara* comments: "Even from a small human effort may arise great fruit, therefore the manifestation of *Paurursha* or human effort of the previous incarnation is called *Karma* or *Daivam*, fate or destiny. Therefore since in the absence of human efforts there cannot exist destiny, therefore exertion should be made in all human actions or *Purusakara*."

<sup>8</sup> Mit on YSI. 7

<sup>9</sup> Mit on YS III. 206-311

by removing all that is injurious to them, let the King act with mercy like a father.<sup>10</sup> Yajnavalkya states, “*Punyathshadbhagadatte nyayenaparipalayam I Sarvadanadhikam yasmat prajanamparipalanam II* (He takes the sixth part of the virtuous deeds (of his subjects) by protecting them with justice. Because protection of his subjects is greater than all gifts).”<sup>11</sup> The same benefits will accrue to him from the kingdom vanquished and subjugated by him if he treats the subjects of that kingdom justly.<sup>12</sup> On the other hand, augmenting the component of right conduct on the part of all classes of people, which in return increases the King's one sixth share of the good conduct of subjects, is another approach suggested by Yajnavalkya, when he states, “*Kulaani jaathi shrenischa ganaan jaanapadaanapi I Svadharmaachhalithaan raajaa-vineeyasthaapayetpathi II* (The families, castes, guilds, unions and the communities, who have deviated from duty, should be disciplined and set in the right path.)”<sup>13</sup> *Mitakshara* illustrates the terms like *jaati*, *shreni* and *ganawith* examples and interprets duty to include not only the association-related duty but also duties in general. According to *Mitakshara* “disciplined” connoted chastised or corrected in order to maintain the path of their respective duties. In the modern standards these might be termed as undue intervention in the private matters of associations as the state declines to intervene unless state's legal power is invoked by the aggrieved. But these bodies are expected to act fairly towards the members and respect their human rights. The concern of *Mitakshara* that duties relating to the collective bodies shall be performed speaks about its emphasis on rule of law society whose maintenance brings normalcy and fulfilment of expectations. *Rajadharm* is a part of *Achara* part of *Mitakshara*, which is to be read with detailed provisions prescribing good conduct on the part of individuals at various stages of life. For example, a verse under *Grahashta dharma prakarana* states, “*Ahimsaa satyam asteyam shoucham indriyanigraha I daanam damodayaak shaantihisarveshaam dharma saadhanam II*” *Mitakshara* explains that non-doing of harm, truth, non-stealing, external and internal purity, employment of the intellect and the organs of action in lawful objects, liberality or removal of the pain of living creatures by giving food and water, self-control or repression of the internal organ or mind, mercy or protecting the afflicted, forgiveness or non-emotion of the mind under injury are the means for the acquisition of

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<sup>10</sup> Mit on YSI. 334

<sup>11</sup> Mit on YSI. 335

<sup>12</sup> Mit on YSI. 342

<sup>13</sup> Mit on YSI. 361

dharma for all men beginning with the *Brahmanas* and ending with *Chandalas*.<sup>14</sup> *Mitakshara* emphasizes on mutual cordiality and loyalty between husband and wife, respect to elders by the younger ones and protection of women at all the stages of life. Orientation towards good conduct is also reflected in a series of prohibitions prescribed against the King and the subjects. Yajnavalkya states, “*Prajaapidana santaapaath-samudbhuto hutaashanah I Raajnah kulamshriyam pranaamscha dagdhvaananivartate II* (The fire arising from the heat of the suffering of the subjects does not cease without fully burning the family, fortune and the life of the king)”<sup>15</sup> On another verse, *Mitakshara* comments, “That sovereign who increases his own treasure by taking property through illegal means from his kingdom, quickly being bereft of good luck by losing his Lakshmi or good fortune, goes to destruction along with his kinsmen.” This speaks about the limited private estate of the King, duty to treat the public property as trust and prohibition against conversion of public property for personal use. Insofar as the individual subjects are concerned, duty to share family property with the other sharers who are entitled to property, duty to maintain all members of the family, duty to respect the properties of others without commission of encroachment, duty to pay fair wages, duty to keep promises in transactions, duty not to abuse others by words, expressions or deeds, prohibitions of crimes of various degrees, stern punishments for offences against women and duty to give evidence compel the individuals to follow the ideal conduct.

The above dos and don'ts aim at shaping ideal conduct on the part of the king and his subjects, and the state power is operating as the supporting force for upholding the Rta values. Hence, reverence to the State is primarily because of its task of upholding dharma and subordinating the individual will to collective good.

**(b) Organization of the polity, the *Saptanga* theory of state**

During the Vedic times, the political organization was ascending from lower to higher levels and choice of the leadership was by the *Janapada*'s indirect or direct acceptance. The expanding circles of human actions witnessed evolution of policies and leadership from below but always looking for higher achievements. In order to protect the vulnerable from the strong (*matsyanyaya*) and establish a political order that fulfils the aspirations of the society for security, justice and welfare, an organized political structure in the form of

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<sup>14</sup> Mit on YSI. 122

<sup>15</sup> Mit on YSI. 341

*Rajya* came into existence. Like other *Smritikaras* and epic writers, Yajnavalkya also propounded *Saptanga* theory of State:” The Lord (Swami or king), the ministers (*amatya*), the people (*Jana*), the fortress (*durga*), the treasury (*kosha*), the Rod (*danda* or military power or power of doing justice) and the allies (*mitra*) these are the *Prakritis* or constituents, and a kingdom is said to have seven limbs.”<sup>16</sup> The Rod of justice is given a place of special significance as it maintains order, punishes the evil-doer and gladdens the whole world.<sup>17</sup>

About the qualities required of a King, Yajnavalkya states,

“The ruler of men (a king) should be of great enthusiasm, vast aims (liberal and intelligent), remembering the deeds, serving the elders, disciplined, endowed with equanimity of good family, truthful in speech, pure, non-procrastinating, of strong memory, non-lowly and also non-harsh. He should be righteous and without bad habits, intelligent, brave and knower of secrets, and guardian of his weak points. He should be well versed in the knowledge of Anvkisiki, in Danda rule (in the theory of punishment), in varta (in economy) and also in the three fold sciences called Trayi.”<sup>18</sup>

*Mitakshara* explains each of the characteristics and comments about the bad habits to be eschewed and knowledge of self to be developed. Yajnavalkya prescribes that king should appoint intelligent, hereditary servants, steady and pure, as his ministers and should administer consulting them and *Brahmanas*. *Mitakshara* adds that King shall act according to his own reasoning and understanding after consulting the ministers and *Brahmana*.<sup>19</sup> This points out prevalence of mature idea of administrative law that discretion shall be individually exercised by application of mind and there shall not be acting under dictation or surrender of independent judgment. About the country in which he shall dwell and fortress he shall build, Yajnavalkya suggests for choice of a pleasant place where people can find their livelihood which shall be covered by a protective fortress. *Mitakshara* adds that land will be pleasant only if it has good water source, vegetation and diverse plants and animals.<sup>20</sup> The king shall personally inspect income and expenditure, safely deposit his treasures, gather information from spies and regularly review the four-fold forces (elephantry, cavalry, chariots and foot soldiers).<sup>21</sup> Regarding classification of

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<sup>16</sup> Mit on YSI. 353

<sup>17</sup> Mit on YSI. 354 to 356

<sup>18</sup> Mit on YS 1. 309-311

<sup>19</sup> Mit on YS 1. 312

<sup>20</sup> Mit on YS 1. 321

<sup>21</sup> Mit on YS 1. 327, 328 and 329

other sovereigns as natural enemy, natural ally and natural neutral, *Mitakshara* gives the criterion of proximity.<sup>22</sup> Neighbouring sovereign being natural enemy, sovereign beyond the neighbouring state being natural ally and the one beyond the latter natural neutral. It insists on appropriate relations with all the categories of sovereigns.

**(c) Fairness in External Relations: wars, alliances and subjugations**

Diplomacy and negotiation with foreign states – whether friendly or inimical – is a task to be done by due diligence.<sup>23</sup> Referring to *Arthashastra* narrative, *Mitakshara* comments on this verse and advises formation of lotus like circle of 13 kings (both friends and foes) with whom he has to keep appropriate relations with great care. For smooth foreign relations, according to Yajnavalkya, “The means (of success) are negotiation, presents, division, and forms of arms as well. When properly employed they lead to success, while force of arms is the last resource when all other resources fail.” *Mitakshara* makes a pragmatic suggestion that insofar as certain types of enemies are concerned, viz., *Yatavyas* (enemy deserving punishment) and *Uchchetavyas* (enemy deserving extermination) *Danda* can be employed without first employing *Sama*, *Dana* and *Bheda*. How four methods can be employed even for ordinary dealings also, *Mitakshara* illustrates: “Read, O child read, I shall give thee this ball of sweetmeat. But if thou shall not read, I shall give it to another and pull thy ears.” The use of all methods of persuasion is self-explanatory. Yajnavalkya states, “Let him (king) employ as the occasion may require these (following) measures: alliance, war, marching, sitting, seeking, protection and distribution.”<sup>24</sup> *Mitakshara* adds caution that this shall be done looking to the opportunities of place, time, his own power friends etc. The tilt in favour of the policy of peace rather than war is implicit in *Mitakshara* reasoning on two verse of Yajnavalkya. The first verse is about war. Yajnavalkya states, “Let him (king) go the enemy’s kingdom then when it is possessed of provisions and corn, and when the enemy is weak and when he himself has spirited men and individuals.”<sup>25</sup> *Mitakshara* takes a position that destiny is the controlling factor insofar as rise and fall, prosperity and adversity of living beings are concerned, and that if destiny decides to absorb enemy’s kingdom it shall have it, and “hence, it is useless indeed this trouble of invading an enemy’s country.” Yajnavalkya involves in discussion about the factor of destiny versus role of human effort

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<sup>22</sup> Mit on YS 1. 345

<sup>23</sup> Mit on YS 1. 345

<sup>24</sup> Mit on YS 1. 347

<sup>25</sup> Mit on Yaj 1.348



and arrives at a conclusion about inevitability of both the factors. This puts down the drive for blood thirsty wars and recognizes the path of peace. The second verse is on the aspect of making alliances. Yajnavalkya states, "Because the acquisition of allies is better than the acquisition of gold or land, hence let him endeavor in acquiring it, and scrupulously maintain truth."<sup>26</sup> *Mitakshara* emphasizes on the word "scrupulously" and argues for taking utmost care "because the acquisition of friendship has its root in truth."<sup>27</sup> In case war is inevitable, and results in subjugation of another kingdom owing to conquer in war, it is the responsibility of the king to treat the conquered justly.<sup>28</sup> *Mitakshara* explains that by treating the vanquished kingdom and its people equitably the king gets the same merit as of ruling his own kingdom justly. There is a duty to continue the customs and laws of the land when it is subjugated by another king by war. Yajnavalkya says, "Whatever may be the custom, laws and family usages in a country, those verily should be observed by him when the country has come under his control."<sup>29</sup> *Mitakshara* explains that the purpose is to avoid confusion but it mandates that such customs, laws and family usages shall not be against sacred scriptures.<sup>30</sup> Since customary law and law of the land reflect specific cultural identity, the victorious kingdom shall not efface such identity. Principles of just war (*dharma yuddha*) were recognized: not to kill persons surrendering in battle, persons without arms, persons fighting with others, person who has ceased to fight, person who is only spectator in the battle or the like.<sup>31</sup> This reflects cardinal principles of humanitarian law. On the whole, inclinations for peace and respect for the culture of other political entities are some of laudable principles prevalent in the *Mitakshara* thoughts that have parallel in modern international law.

**(d) Efficient and honest internal administration: protection, justice and purity**

*Mitakshara* propounds the idea of good government as a mandatory duty of the king, non-performance of which entails sin.<sup>32</sup> Commenting on Yajnavalkya's verse which states that the king who punishes the punishable and slay those who deserve death gets best gifts of many sacrifices,<sup>33</sup> it points out that performance of such duty is not mere

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<sup>26</sup> Mit on YS I. 352

<sup>27</sup> VidyarnavaP 423

<sup>28</sup> Mit on YS I. 342

<sup>29</sup> Mit on YS I. 343

<sup>30</sup> Vidyarnava 416-7

<sup>31</sup> Mit on YS I. 326; Vidyarnava 407

<sup>32</sup> Ibid 427

<sup>33</sup> Mit on YS I. 359

optional or a *kamya* duty. Regarding befitting punishments Yajnavalkya states, “The unrighteous punishment destroys the heaven, the glory and the worlds of the king. But the proper punishment procures him victory, glory and heaven.”<sup>34</sup> *Mitakshara* comments that the motive of greed etc., operate behind such disproportionate punishments, and such attitudes shall be avoided by the person who handles the rod of justice.<sup>35</sup> Elaborating a verse of Yajnavalkya Smriti,<sup>36</sup> *Mitakshara* states that king’s duty to punish the wicked like cheats, knaves, scoundrels, stealers of other men’s properties and wives is inherent in his royal position as head of the kingdom and that *dharma* in the shape of justice is a time-tested factor.<sup>37</sup> Yajnavalkya states that realizing the importance of good governance through administration of justice the king shall personally supervise judicial proceedings daily in the company of his assessors, separately.<sup>38</sup> *Mitakshara* points out caste-specific assessors to be associated in the course of judicial proceedings. *Mitakshara* believed in the principle that impartial administration of justice goes a long way in protecting the interests of people and bringing joy to the world. The duty to protect the subjects has a correlative in king’s entitlement to one-sixth of produce by the subjects.<sup>39</sup>

While elaborating on Yajnavalkya verse on appointment of royal supervisors who are skillful, pure and experts and who are active in matters of income and expenditure *Mitakshara* points out the range of domains it covers (*Dharma, Artha* and *Kama*), the type of experts that are required and meaning of words pure and active.<sup>40</sup> The emphasis on administrative efficiency is clear. Yajnavalkya states, “having known through his spies the conduct of those who are office-holders in his kingdom, let the king honour the righteous and punish the opposite.”<sup>41</sup> *Mitakshara* adds that honouring may be by conferring titles, grants and hospitality, righteous means well-behaving and the punishment of the unrighteous shall be in proportion to their guilt. Stern action was envisaged for dealing with corruption. “Let him banish the takers of bribes, after having deprived them of their wealth. Let him settle always in his kingdom *Srotriyas* by giving them grants, titles and hospitality.”<sup>42</sup> Thus measures against corruption were in-built part of good

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<sup>34</sup> Mit on YSI. 357

<sup>35</sup> Vidyarnava 426

<sup>36</sup> Mit on YSI. 354

<sup>37</sup> Vidyarnava 424; also see Mit on YSI. 336

<sup>38</sup> Mit on YSI. 360

<sup>39</sup> Mit on YSI. 337; when people are not protected, one sixth of the sin goes to the king

<sup>40</sup> Mit on YSI. 322; Vidyarnava 404

<sup>41</sup> Mit on YSI. 338; Vidyarnava 414

<sup>42</sup> Mit on YSI. 339

governance. In the matter of support to the learned people and educational activity carried on by them, i. e., *Brahmanas*, there are several provisions imposing such obligations.<sup>43</sup>

**(e) Fair procedure in administration of justice**

The King is required to know the nature of legal proceedings (*vyvahara*). *Brahmanas* having knowledge of *dharmashstras* shall be members of the judicature. In order to render justice in accordance with dharma the king shall act without anger and avarice.<sup>44</sup> Members of the judicature acting with partiality, avarice and fear and in opposition to *Smritis* shall be punishable with fine double the sum of the dispute.<sup>45</sup> Detailed recording of the narration made by the plaintiff, hearing the answer of the defendant, examination of evidence put forward by the plaintiff, acceptance or rejection of the claim on the basis of facts and law are the steps involved in civil proceedings.<sup>46</sup> In criminal proceedings, counter claims about criminal conduct of the opposite party shall not be entertained until the initial case is disposed of.<sup>47</sup> The demeanours of witnesses shall be considered in assessing the probative value of the evidence.<sup>48</sup> In the list of persons to be excluded from calling for witness there is mention of women, children, aged, gambler, drunkard, actor and disabled persons.<sup>49</sup> Yajnavalkya states that when two *Smritis* disagree, that which follows equitable practice shall prevail.<sup>50</sup> Mitakshra comments that the rule is that law is stronger than equity. While in money disputes evidence preponderates, in matters of land title preponderates over possession.<sup>51</sup> For administration of justice at the community level, the king shall appoint officers for *Puga*, *Shreni* and the *Kulas* whose orders shall be respected in legal proceedings between men of those communities.<sup>52</sup> Compensation to the finder of treasure trove and restoration of the stolen or lost property to the real owner is a responsibility of the king to ensure that justice is promoted.<sup>53</sup> The witnesses have responsibilities to disclose only truth, adduce evidence reasonably and

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<sup>43</sup> Mit on YS I. 323, 314, 315.

<sup>44</sup> Mit on YS II. 1

<sup>45</sup> Mit on YS II. 4

<sup>46</sup> Mit on YS II. 5-8; *Mitakshara* refers to 18 types of civil disputes.

<sup>47</sup> Mit on YS II.9-11

<sup>48</sup> Mit on YS II.13-15

<sup>49</sup> Mit on YS II. 5, 70-71

<sup>50</sup> Mit on YS II.22

<sup>51</sup> Mit on YS II.23, 27

<sup>52</sup> Mit on YS II. 30

<sup>53</sup> Mit on YS II.34-36.

swear oath in support of evidence.<sup>54</sup> There is also mention of various *divya* or ordeals in cases of serious criminal acts. Regarding resolution of boundary disputes, Yajnavalkya prescribes that 4, 8 or 10 persons from the neighbouring villages or the same village shall determine the boundary.<sup>55</sup> *Mitakshara* adds that the decision shall be unanimous, shall refer to specific boundary markers and shall be recorded in document. The concern for certainty is clear in Vijnaneshwara's approach.

#### **(f) People's welfare**

The ideal conduct and characteristics prescribed by Yajnavalkya for a king include liberal approach, equanimity, kindness, good knowledge of *Trayi* or the three *Vedas* (which contemplate equality, humanism and welfare) and of the science of political economy. Since these factors motivate for people's welfare the very concept of kingship has duty towards people's welfare. Although orientation for people's welfare is not categorical comparable to Kautilya's *Arthashastra*<sup>56</sup> there are provisions hinting at legal policy aiming at people's welfare. Yajnavalkya states, "An embankment producing benefit should not be prohibited when the injury is slight; as also, a well which occupies but little space, but has abundance of water, which deprives another of his land."<sup>57</sup> Subordination of individual interest to the interest of general public has an aim of people's welfare. *Mitakshara* is careful about avoiding excessive effect upon individual right of the neighbor when water in the well occupies the whole field of another. Construction of dyke in another's field without obtaining permission of the land owner confers upon the land owner or the king the right to the produce obtained by use of such water.<sup>58</sup> There are various provisions imposing duties upon the owners of cattle which cause damage to the crops and property of the other land owners. Provisions are also there for protecting the consumers against quack doctors, merchants who cheat by using false weights and measures, persons hoarding medicines, perfumes and essential commodities, persons adulterating the merchandise and persons converting the goods with royal seals.<sup>59</sup> Unfair

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<sup>54</sup> Mit on YS II. 5, 68-83 in general

<sup>55</sup> Mit on YS II. IX 152

<sup>56</sup> "In the happiness of his subjects lies the king's happiness; in their welfare his welfare; whatever pleases himself the king shall not consider as good, but whatever pleases his subjects, the king shall consider as good." Kautilya, *The Arthashastra* (L N Rangarajan ed., Penguin, 1987, 1992) 69-75; M. Rama Jois, *Legal and Constitutional History of India* (N M Tripathi, Bombay, 1984) 607.

<sup>57</sup> Mit on YS II. IX. 156

<sup>58</sup> Mit on YS II. IX. 157

<sup>59</sup> Mit on YS II. XX. 240-248

trade practice among merchants by resort to combinations and agreements to sell the imported good at higher price etc., are subject to penal actions.<sup>60</sup> The King shall fix the price of goods and the transactions shall conform to the price fixed by the royal authority.<sup>61</sup> Provisions prescribing duties upon the King to make donation of land and resources for promoting education, health and food security also aim at people's welfare.<sup>62</sup> The King shall also ensure that appropriate wages shall be paid by the employers to the workers, and in case of non-payment of wages double the due shall be collected by the king from the employer and payments shall be made to the worker.<sup>63</sup>

### **Conclusions**

*Mitakshara* has laudably supplemented the Yajnavalkya Smriti's basic objectives of ensuring good governance by positive interpretations. The policies, institutions, mechanisms and procedures which the ancient text has spread over are primarily orienting towards control of state power, promotion of rule of law, accountability of the power holders, fairness in administration of justice and people's welfare. Sometimes when the Smriti provisions are overbroad by limiting the scope of words in the course of interpretation, *Mitakshara* has tried to strike a fair balance. *Mitakshara* has added the competence of Saptanga of state by insisting that each of the components effectively contributes the overall work output of the polity. It is pleasing to note that the concerted action and coordination among various components of the State are thoughtfully planned for upholding clean administration with social justice. Prohibition of corruption, protection of the vulnerable, maintenance of peace and order and good relations with other sovereign states have been hallmark of *Mitakshara* notion of good governance. Decentralized administration and involvement of the community leaders in the governance have also added accountability and transparency in administration. The foundational principles of polity and their socio-legal values have established the basis for modern constitutional culture of welfare polity.



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<sup>60</sup> Mit on YS II. Xx, 249-250

<sup>61</sup> Mit on YS II. Xx, 251

<sup>62</sup> Mit on YS I. xiii. 315-320;

<sup>63</sup> Mit on YS II. Xvi. 193

ಬಸವಣ್ಣನವರ ವಚನಗಳಲ್ಲಿ ಸಾಮಾಜಿಕ ನ್ಯಾಯದ ಪರಿಕಲ್ಪನೆ

-ರಂಜಾನ್ ದರ್ಗಾ

**The Concept of Social Justice in Basavanna's Vachanas**

**-Ramzan Darga**

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### **Abstract**

The author formulates and establishes three vital propositions in analyzing the concept of justice in Basavanna's Vachanas or sayings. First, recognition of class conflicts and their resolution through appropriate measures promote social justice. Second, social solidarity through harmony, cooperation and help to others brings social justice. Third, recognition and protection of essential human rights is the way of establishing social justice.

Basavanna, who wished welfare of all living beings, identified class conflicts between the haves and have-nots. He perceived with equanimity that the haves constructed temples while the poor relied on self-realization as the method of salvation. Conflicts existed between the people who were well-versed in Vedas and Shastras and the common people like dancers, archers, entertainers and tightrope walkers about their status. Basavanna resolves the issue of superiority by stating that possession of good virtues that uphold human dignity is its criterion. When individual virtues conform to collective welfare and become norms of public behavior, inner purity of the soul works for the welfare of all. Thus, resolution of class conflicts shall take place by balancing between individual and collective interests and by application of the principles of human dignity and social welfare.

The second facet of social justice is based on social solidarity. This entails that community consciousness and collectivism surpass individualism, and by insisting on oneness of word and deed it promotes justice in social relations. Basavanna argues that importance of gender equality, equality in human dignity and economic equality ought to be properly understood before worshipping God and that the Lord of Kudalasangama will be pleased only when the individual streams (based on caste, religion, language or sex) mix with the river of

collectivism. Gender equality presupposes that soul does not differentiate between male and female. Since nature has endowed mankind with equal natural facilities – air, light, moon light, sunlight, water, tastes of fruits- discrimination in their accessibility on ground of economic status-rich or poor- goes against reason.

The third facet of social justice is that it flourishes with recognition and protection of human rights which are explicit in the sayings of Basavanna. The author identifies 30 human rights values which are traceable in Basavanna's *Vachanas* which are essential for social justice. The author draws comparison between *Vachanas* and modern human rights instruments especially Universal Declaration of Human Rights. Compared to the Magna Carta of 1215, the values of human rights propounded in the 12<sup>th</sup> century were profound, comprehensive and more oriented towards social justice. Equality is the master right that links human rights with social justice. Equality upholds human dignity cutting across the distinctions based on legitimacy/illegitimacy of birth, rich and the poor, politically powerful or the weak. Recognition of equal human dignity based on human identity, strong sense of rule of law that defies populism and fearlessness even before the royal authority on account of righteous conduct are the factors that uphold social justice and human rights. Right to privacy, right to marry as per one's choice, fairness in adjudication, right to social identity are also recognized as part of the scheme of justice. Emphasis on duties towards the society, duty not to accumulate property beyond one's need, duty to distribute food, shelter, knowledge and duty to work and earn livelihood are some of the important duties emphasized as a scheme of social justice. Freedom of thought and expressional freedom were associated with duty not to abuse those freedoms. Anubhava Mantapa consisting of 770 representatives including women was the democratic forum for policy making and shaping the social morals. Seven basic principles of right conduct – not to steal, kill, tell lies, anger, intolerance, self-praise, hurting others – became the pathway of internal and external purity through which attaining social justice was a grand feasibility.

Thus, social justice is embedded in human effort of resolving social conflicts through principles of equity, social harmony and cooperation and a strong tradition of human rights and duties.

ಸಕಲ ಜೀವಾತ್ಮರಿಗೆ ಲೇಸನ್ನೇ ಬಯಸುತ್ತ ಕಟ್ಟ ಕಡೆಯ ಮನುಷ್ಯರನ್ನು ಮೊಟ್ಟ ಮೊದಲು ಗುರುತಿಸುವುದು ಬಸವಣ್ಣನವರ ಸಾಮಾಜಿಕ ನ್ಯಾಯದ ಪರಿಕಲ್ಪನೆಯಾಗಿದೆ. ಇದು ಬಹಳ ಮಹತ್ವದ ವಿಚಾರ. ಇಡೀ ಜಗತ್ತಿನಲ್ಲಿ ಮೊಟ್ಟ ಮೊದಲ ಬಾರಿಗೆ ಬಸವಣ್ಣನವರು ಮನುಷ್ಯರನ್ನು ವರ್ಗಗಳಾಗಿ ವಿಂಗಡಿಸುತ್ತಾರೆ. ಐರೋಪ್ಯ ರಾಷ್ಟ್ರಗಳಲ್ಲಿ 13ನೇ ಶತಮಾನದಲ್ಲಿ ವರ್ಗಪ್ರಜ್ಞೆ ಬಂದಿತು. ನಂತರ ಅದು ಸ್ಪಷ್ಟವಾಗಿ ಗೋಚರಿಸಿದ್ದು 19ನೇ ಶತಮಾನದಲ್ಲಿ ಕಾರ್ಲ್ ಮಾರ್ಕ್ಸ್ ಮತ್ತು ಫ್ರೆಡ್ರಿಕ್ ಎಂಗೆಲ್ಸ್ ಅವರು ಬಂದಾಗ. ಆದರೆ 12ನೇ ಶತಮಾನದಲ್ಲಿ ಬಸವಣ್ಣನವರು

“ಉಳ್ಳವರು ಶಿವಾಲಯವ ಮಾಡಿಹರು ನಾನೇನು ಮಾಡಲಿ ಬಡವನಯ್ಯಾ” ಎಂದು ಹೇಳಿದರು. ಈ ಉಳ್ಳವರ ಮತ್ತು ಬಡವರ ಬಗ್ಗೆ ಅರಿವು ಮೂಡಿದಾಗ ಸಾಮಾಜಿಕ ವೈರುಧ್ಯಗಳು ಸ್ಪಷ್ಟವಾಗಿ ಗೋಚರಿಸುವವು. ಒಂದು ಸಮಾಜಕ್ಕೆ ನ್ಯಾಯ ಒದಗಿಸಬೇಕಾದರೆ ಈ ರೀತಿಯಾಗಿ ಸಮಾಜದಲ್ಲಿನ ವೈರುಧ್ಯಗಳನ್ನು ಗುರುತಿಸಬೇಕಾಗುತ್ತಿದೆ. ಸಾಮಾಜಿಕ ವೈರುಧ್ಯಗಳನ್ನು ಗುರುತಿಸಲು ವರ್ಗಪ್ರಜ್ಞೆ ಅವಶ್ಯವಾಗಿದೆ ಎಂಬುದನ್ನು ಬಸವಣ್ಣನವರು ಇಡೀ ಜಗತ್ತಿನಲ್ಲಿ ಮೊದಲ ಬಾರಿಗೆ ತೋರಿಸಿಕೊಟ್ಟರು. ಸಕಲ ಜೀವಾತ್ಮರಿಗೆ ಒಳ್ಳೆಯದನ್ನು ಬಯಸುತ್ತಲೇ ನಮ್ಮ ಸಮಾಜದಲ್ಲಿ ಆಳವಾಗಿ ಬೇರೂರಿರುವ ವೈರುಧ್ಯಗಳನ್ನು ಗುರುತಿಸುವ ಕ್ರಿಯೆ ಬಹಳ ಗುರುತರವಾದುದು. ಇಂಥ ಅದ್ವಿತೀಯವಾದ ಚಿಂತನಾ ಕಾಣಿಕೆಯನ್ನು ಬಸವಣ್ಣನವರು 12ನೇ ಶತಮಾನದಲ್ಲೇ ನೀಡಿದ್ದು ಐತಿಹಾಸಿಕವಾಗಿದೆ.

“ವೇದ ಶಾಸ್ತ್ರ ಆಗಮಗಳನೋದಿದವರು ಹಿರಿಯರೆ?

ಕವಿ ಗಮಕಿ ವಾದಿ ವಾಗ್ಮಿಗಳು ಹಿರಿಯರೆ?

ನಟನಿ ಬಾಣ ವಿಲಾಸಿ ಸುವಿದ್ಯವ ಕಲಿತ ಡೊಂಬನೇನು ಕಿರಿಯನೆ?

ಹಿರಿಯತನವಾವುದೆಂದಡೆ ಗುಣಜ್ಞಾನ ಆಚಾರಧರ್ಮ

ಕೂಡಲಸಂಗನ ಶರಣರು ಸಾಧಿಸಿದ ಹಿರಿಯತನ.”

ಎಂದು ಬಸವಣ್ಣನವರು ತಿಳಿಸಿದ್ದಾರೆ. ವೇದಾಗಮ ಪಂಡಿತರು ಕವಿ ವಾಗ್ಮಿ ಮುಂತಾದವರು ರಾಜನ ದರ್ಬಾರದಲ್ಲಿ ಇರುವವರು. ಇವರ ಜ್ಞಾನಕ್ಕೆ ರಾಜಮನ್ನಣೆ ಇದೆ. ಆರ್ಥಿಕ ಮತ್ತು ಸಾಮಾಜಿಕ ಭದ್ರತೆ ಇದೆ. ಇವರೆಲ್ಲ ಸಮಾಜದಲ್ಲಿ ಉನ್ನತ ವರ್ಗ ಮತ್ತು ವರ್ಣಗಳಿಗೆ ಸಂಬಂಧಿಸಿದವರು. ಈ ಜ್ಞಾನಕ್ಕೆ ಮುಖಾಮುಖಿಯಾಗಿ ಕಾಯಕಜೀವಿಗಳ ಜ್ಞಾನವೂ ಇದೆ. ಆ ಜ್ಞಾನವನ್ನು ಅವರು ತಮ್ಮ ಕಾಯಕದ ಮೂಲಕವೇ ಪಡೆದುಕೊಳ್ಳಬೇಕಾಗುತ್ತದೆ. ಆದ್ದರಿಂದ ಅವರದು ಅನುಭವಜ್ಞಾನ ಎನಿಸುತ್ತದೆ. “ನಟನಿ”, ಅಂದರೆ ನಾಲ್ಕು ಕಾಸಿಗೋಸ್ಕರ ದಾರಿಯಲ್ಲಿ ನೃತ್ಯ ಮಾಡುವವಳು. ಬಹುರೂಪಿಗಾರರು ಹೀಗೆ ಬೀದಿಬದಿಯಲ್ಲೇ ತಮ್ಮ ಕಲೆಯ ಪ್ರದರ್ಶನ ಮಾಡುತ್ತ ಜೀವನ ನಿರ್ವಹಣೆ ಮಾಡುತ್ತಿದ್ದರು. “ಬಾಣ”, ಅಂದರೆ ಬಾಣವನ್ನು ಗುರಿಯಾಗಿಡುವ ತಜ್ಞ ಗುರಿಕಾರರು. “ವಿಲಾಸಿ” ಅಂದರೆ ಜನರನ್ನು ತಮ್ಮ ಚಮತ್ಕಾರದ ನುಡಿಗಳಿಂದ ರಂಜಿಸುವವರು ಮತ್ತು ಹಗ್ಗದ ಮೇಲೆ ಕಸರತ್ತು ಮಾಡುವಂಥ ಸುವಿದ್ಯೆಯನ್ನು ಕಲಿತ “ಡೊಂಬನೇನು ಕಿರಿಯನೆ” ಎಂದು ಬಸವಣ್ಣನವರು ಪ್ರಶ್ನಿಸುತ್ತಾರೆ. ಸಮತೋಲನದ ತತ್ತ್ವವನ್ನು ನಾವು ವಿಜ್ಞಾನದ ಪಾಠದಲ್ಲಿ ಕಲಿಯುತ್ತೇವೆ. ಆದರೆ ಡೊಂಬರಾಟದವರ ಹಾಗೆ ಹಗ್ಗದ ಮೇಲೆ ನಡೆಯಲು ಈ ಸಮತೋಲನದ ಪಾಠ ಹೇಳುವವರಿಗೆ ಬರುವುದಿಲ್ಲ, ಪಾಠ ಕಲಿಯುವವರಿಗೂ ಬರುವುದಿಲ್ಲ. ಏಕೆಂದರೆ ಅದು ಅನುಭವದಿಂದ ಬರುವಂಥದ್ದು. ಇಂಥ ಅನುಭವ ಜ್ಞಾನವನ್ನು ಪ್ರದರ್ಶಿಸುವವರು ಅದು ಹೇಗೆ ಕಡಿಮೆ? ಈ ಕುರಿತು ಮಾತನಾಡುವವರು ಅದು ಹೇಗೆ ಹೆಚ್ಚು? ಎಂಬ ಪ್ರಶ್ನೆಯನ್ನು ಬಸವಣ್ಣನವರು ಎತ್ತುವ ಮೂಲಕ ಕಾಯಕಜೀವಿಗಳ ಮಹತ್ವವನ್ನು ಸೂಚಿಸುತ್ತಾರೆ. ವಚನದ ಕೊನೆಯಲ್ಲಿ “ಹಿರಿಯತನವಾವುದೆಂದಡೆ ಗುಣಜ್ಞಾನ ಆಚಾರಧರ್ಮ” ಎಂದು ಹೇಳುತ್ತಾರೆ. ಇವೆರಡು ಬಹಳ ಮಹತ್ವದ್ದವುಗಳಾಗಿವೆ. ಗುಣಜ್ಞಾನವು ವ್ಯಷ್ಟಿಪ್ರಜ್ಞೆಯಲ್ಲಿ ಬರುವುದು. ಬಡವನಿರಲಿ, ಶ್ರೀಮಂತನಿರಲಿ ಸದ್ಗುಣ(ಶೀಲ)ಗಳು ಅವನ ಘನತೆವೆತ್ತ ವ್ಯಕ್ತಿತ್ವಕ್ಕೆ ಮೆರಗು ನೀಡುತ್ತವೆ. ಅವು ಆಚರಣೆಯಲ್ಲಿ ಅನುಷ್ಠಾನಗೊಳ್ಳುತ್ತವೆ. ವ್ಯಕ್ತಿಯ ಆಚಾರಧರ್ಮವು ಸಾಮೂಹಿಕವಾದಾಗ ಮೌಲ್ಯವಾಗುತ್ತದೆ. ಈ ಮೌಲ್ಯವನ್ನು ನಾವು ಸಮಷ್ಟಿಯಲ್ಲಿ ಪಡೆಯಬೇಕಾದರೆ ವ್ಯಷ್ಟಿಯಲ್ಲಿ ರೂಢಿಸಿಕೊಳ್ಳಬೇಕಾಗುತ್ತದೆ. ಹೀಗೆ ಬಸವಣ್ಣನವರು ನಮಗೆ ಹೊಸ ವಿಚಾರವನ್ನು ಕೊಟ್ಟರು. ಅದೇನೆಂದರೆ ಇಷ್ಟಲಿಂಗದ ಮೂಲಕ ವ್ಯಷ್ಟಿಪ್ರಜ್ಞೆ ಮತ್ತು ಜಂಗಮಲಿಂಗದ ಮೂಲಕ ಸಮಷ್ಟಿ (ಸಮಾಜ) ಪ್ರಜ್ಞೆ ಇಷ್ಟಲಿಂಗದಲ್ಲಿ ನಾವು ಗುಣಗಾಹಿಗಳಾಗಬೇಕು. ನಂತರ ಅದನ್ನು ಆಚರಣೆಯಲ್ಲಿ ತರಬೇಕು. ಹೀಗೆ ಇಷ್ಟಲಿಂಗದ ಮೂಲಕ ಪಡೆಯುವ ಅರಿವನ್ನು ಸಮಾಜವೆಂಬ



ಜಂಗಮಲಿಂಗದಲ್ಲಿ ಆಚರಣೆಗೆ ತರಬೇಕು. ಇಷ್ಟಲಿಂಗ ಅರಿವನ್ನು ಕೊಟ್ಟರೆ, ಸಕಲಜೀವಾತ್ಮರಿಂದ ಕೂಡಿದ ವಿಶ್ವವ್ಯಾಪಿ ಸಮಾಜವೆಂಬ ಜಂಗಮಲಿಂಗ ಆ ಅರಿವನ್ನು ಆಚರಣೆಯಲ್ಲಿ ತರಲು ಪ್ರೇರೇಪಿಸುತ್ತದೆ. ಹೀಗೆ ಒಬ್ಬ ವ್ಯಕ್ತಿ ವ್ಯಷ್ಟಿಪ್ರಜ್ಞೆಯಿಂದ ಸಮಷ್ಟಿಪ್ರಜ್ಞೆಗೆ ಸಾಗುವ ಪ್ರಕ್ರಿಯೆಯನ್ನು ಬಸವಣ್ಣನವರು ತೋರಿಸಿಕೊಟ್ಟಿದ್ದಾರೆ. ಅವರ ದೃಷ್ಟಿಯಲ್ಲಿ ಕಣ್ಣಿಗೆ ಕಾಣುವ ಜಗತ್ತೆಲ್ಲ ಸಕಲಜೀವಾತ್ಮರಿಂದ ಕೂಡಿರುವ ಮಹಾಮನೆ. ಬಸವದರ್ಶನದಲ್ಲಿ ಮಾನವರು ಮನೆಯಿಂದ ಮಹಾಮನೆಯ ಕಡೆಗೆ ಸಾಗುತ್ತಾರೆ. ನಮ್ಮ ಶರೀರ ಒಂದು ಮನೆಯಾದರೆ ಇಡೀ ಜಗತ್ತು ಮಹಾಮನೆ. ಅಂತರಂಗ ಶುದ್ಧಿಯಿಂದ ಪ್ರಾರಂಭಿಸಿ ಬಹಿರಂಗ ಶುದ್ಧಿಯ ಕಡೆಗೆ ಹೋಗಲು ಮಾರ್ಗದರ್ಶನ ಮಾಡುವ ದರ್ಶನವೇ ಬಸವದರ್ಶನ. ಗುಣಜ್ಞಾನವಿಲ್ಲದೆ ಅಂತರಂಗದ ಶುದ್ಧಿ ಇಲ್ಲ. ಸಪ್ತಶೀಲಗಳಿಂದ ಬರುವ ಈ ಗುಣಜ್ಞಾನವು ಸಮತಾಪ್ರಜ್ಞೆಗೆ ಮೂಲವಾಗಿದೆ. ಸಾಮಾಜಿಕ ನ್ಯಾಯವೆಂಬ ಬಹಿರಂಗ ಶುದ್ಧಿಗೆ ಮೂಲವಾದ ಸಮತಾಪ್ರಜ್ಞೆ ಇಲ್ಲದೆ ಆಚಾರಧರ್ಮವಿಲ್ಲ. ಇದಕ್ಕೆ “ನಡೆ ನುಡಿ ಸಿದ್ಧಾಂತ” ಎಂದು ಕರೆಯುತ್ತಾರೆ. ಅರಿವನ್ನು ಪಡೆಯುವುದು. ಪಡೆದ ಅರಿವನ್ನು ಆಚರಣೆಗೆ ತರುವುದು. ಹೀಗೆ ವಿಚಾರವನ್ನು ಆಚರಣೆಗೆ ತರುವ ಕ್ರಮವನ್ನು ಬಸವಣ್ಣನವರು ನಮಗೆ ತಿಳಿಸಿದ್ದಾರೆ.

ಇದನ್ನು ಸಾಧಿಸುವುದಕ್ಕಾಗಿ ಬಸವಣ್ಣನವರು ನಾಲ್ಕು ಸಾಮಾಜಿಕ ಅಂಶಗಳ ಕಡೆಗೆ ಗಮನ ಸೆಳೆಯುತ್ತಾರೆ. ಲಿಂಗಭೇದವಿಲ್ಲದ, ಜಾತಿ ಮತ್ತು ವರ್ಣಭೇದವಿಲ್ಲದ ಹಾಗೂ ವರ್ಗಭೇದವಿಲ್ಲದ ಸಮಾಜದಲ್ಲಿ ಮಾತ್ರ ನಾವು ಇಂಥ ಸಾಮಾಜಿಕ ನ್ಯಾಯವನ್ನು ಕಾಣಲು ಸಾಧ್ಯವಿದೆ. ಈ ವಿಚಾರವನ್ನು ಮನಗಾಣಿಸಲು ಬಸವಣ್ಣನವರು ಅನೇಕ ವಚನಗಳನ್ನು ಬರೆದಿದ್ದಾರೆ. ಅವುಗಳಲ್ಲಿನ ಒಂದು ವಚನ:

“ಲಿಂಗವ ಪೂಜಿಸಿ ಫಲವೇನಯ್ಯಾ?  
 ಸಮರತಿ ಸಮಕಳೆ ಸಮಸುಖವ ಅರಿಯದನ್ನಕ್ಕ.  
 ಲಿಂಗವ ಪೂಜಿಸಿ ಫಲವೇನಯ್ಯಾ?  
 ಕೂಡಲಸಂಗಮದೇವರ ಪೂಜಿಸಿ  
 ನದಿಯೊಳಗೆ ನದಿ ಬೆರಸಿದಂತಾಗದನ್ನಕ್ಕ?

ಫಲಾಪೇಕ್ಷೆ ಇಲ್ಲದೆ ಕರ್ಮ ಮಾಡು ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳುವುದಿಲ್ಲ. ಲಿಂಗಪೂಜೆಯಲ್ಲಿ ಕೂಡ ಅವರು ಫಲವನ್ನು ಬಯಸುತ್ತಾರೆ. ಲಿಂಗಪೂಜೆಯ ಫಲ ಯಾವುದು ಎಂಬುದನ್ನು ಅವರು ವಿವರಿಸುತ್ತಾರೆ. 21ನೇ ಶತಮಾನದ ಇಡೀ ಜಗತ್ತಿಗೆ ಬೇಕಾದ ವಚನವಿದು.

ಮೊದಲಿಗೆ ಮೂರು ವಿಚಾರಗಳನ್ನು ಹೇಳುತ್ತಾರೆ. (ಈ ವಚನ ಆನುಭಾವಿಕ ಅರ್ಥವನ್ನೂ ಹೊಂದಿದೆ. ಸಾಮಾಜಿಕ ಅರ್ಥವನ್ನೂ ಹೊಂದಿದೆ. ಸಮಯದ ಅಭಾವದಿಂದ ನಾನಿಲ್ಲಿ ಅದರ ಸಾಮಾಜಿಕ ಅರ್ಥವನ್ನು ಮಾತ್ರ ವಿವರಿಸುತ್ತಿರುವೆ.) ಸಮರತಿ ಎಂದರೆ ಲಿಂಗಸಮಾನತೆ, ಸಮಕಳೆ ಎಂದರೆ ಮಾನವಕುಲಕ್ಕೆ ಇರುವ ತೇಜಸ್. ಸಮಸುಖ ಎಂದರೆ ನಿಸರ್ಗದಲ್ಲಿ ಬಡವರು ಮತ್ತು ಶ್ರೀಮಂತರು ಪಡೆಯುವ ಒಂದೇ ತೆರನಾದ ಸುಖ. ಲಿಂಗಭೇದ ಮಾಡುತ್ತ ಹೆಣ್ಣನ್ನು ಕೀಳಾಗಿ ಕಾಣುವುದು ಸಲ್ಲದು. ಒಳಗಿರುವ ಆತ್ಮಕ್ಕೆ, ಭಾವಕೋಶಕ್ಕೆ ಮತ್ತು ಜ್ಞಾನಕ್ಕೆ ಹೆಣ್ಣು ಗಂಡೆಂಬ ಭೇದಭಾವವಿಲ್ಲ. ಇಡೀ ಮಾನವಕುಲಕ್ಕೆ ಮಾನವ ಕಳೆ ಮಾತ್ರ ಇದೆ. ಬ್ರಹ್ಮ ತೇಜಸ್ (ಕಳೆ), ಕ್ಷಾತ್ರ ತೇಜಸ್ ಎನ್ನುವುದು ಮಾನವ ನಿರ್ಮಿತವೇ ಹೊರತಾಗಿ ನಿಸರ್ಗ ನಿರ್ಮಿತವಲ್ಲ. ಭೇದಭಾವ ಮಾಡದ ನಿಸರ್ಗವು ಇಡೀ ಜೀವಸಂಕುಲಕ್ಕೆ ಸಮನಾದ ಸುಖ ಕೊಟ್ಟಿದೆ. ಗಾಳಿ, ಬೆಳಕು, ಬೆಳದಿಂಗಳು, ತಂಪು, ಬಿಸಿ, ಹಣ್ಣು ಹಂಪಲಗಳ ರುಚಿ ಹೀಗೆ ಯಾವುದನ್ನು ತೆಗೆದುಕೊಂಡರೂ ಬಡವ ಶ್ರೀಮಂತ ಎನ್ನದೆ ಸಮನಾಗಿ ನೋಡಿಕೊಂಡಿದೆ.

ಲಿಂಗ ಭೇದ, ಜಾತಿ ಭೇದ, ವರ್ಣ ಭೇದ, ವರ್ಗ ಭೇದ ಮುಂತಾದ

ಭೇದಗಳು ಕೃತ್ರಿಮವಾದುವು. ಆದ್ದರಿಂದ ಲಿಂಗಭೇದ ಇರಬಾರದು, ಜಾತಿ ಮತ್ತು ವರ್ಣಭೇದ ಇರಬಾರದು ಹಾಗೂ ವರ್ಗಭೇದ ಇರಬಾರದು ಎಂಬ ಅರಿವನ್ನು ವಚನದ ಮೊದಲೆರಡು ಸಾಲುಗಳು ಮೂಡಿಸುತ್ತವೆ. ಇಂಥ ಅರಿವೇ ಲಿಂಗಪೂಜಾ ಫಲ.ಹೀಗೆ ಸಮರತಿ, ಸಮಕಳೆ ಮತ್ತು ಸಮಸುಖವನ್ನು ಅರಿಯದಿದ್ದರೆ ಲಿಂಗಪೂಜಾ ಫಲವಿಲ್ಲ ಎಂದು ಬಸವಣ್ಣನವರು ಸ್ಪಷ್ಟಪಡಿಸಿದ್ದಾರೆ.

ಸಾಮಾಜಿಕ ನ್ಯಾಯ ಲಭಿಸಬೇಕಾದರೆ ಮಾನವಕುಲ ಒಂದು ಎಂಬುದನ್ನು ತಿಳಿದುಕೊಳ್ಳಬೇಕು ಎಂಬುದು ನಾಲ್ಕನೆಯ ಅಂಶ. ಈ ವಿಚಾರವನ್ನು ವಚನದ ಮುಂದಿನ ಸಾಲುಗಳಲ್ಲಿ ತಿಳಿಸಿದ್ದಾರೆ. “ಲಿಂಗವ ಪೂಜಿಸಿ ಫಲವೇನಯ್ಯಾ? ಕೂಡಲಸಂಗಮ ದೇವರ ಪೂಜಿಸಿ ನದಿಯೊಳಗೆ ನದಿ ಬೆರಸಿದಂತಾಗದನ್ನಕ್ಕ” ಎಂದು ಹೇಳುವಲ್ಲಿ ಮಾನವಕುಲದ ಏಕತೆಯ ಪಾಠವಿದೆ. ನದಿಯೊಳಗೆ ನದಿ ಕೂಡಿದಾಗ ಅವು ಹೇಗೆ ಅಭೇದ್ಯವಾಗುವವೋ ಹಾಗೆ ಮಾನವ ಕುಲ ಎಲ್ಲ ವರ್ಣ ಮತ್ತು ಜನಾಂಗಭೇದಗಳನ್ನು ಮೀರಿ ಒಂದಾಗಬೇಕು ಎಂಬುದು ಬಸವಣ್ಣನವರ ಆಶಯವಾಗಿದೆ.ವರ್ಗ, ಲಿಂಗ, ಜಾತಿ, ವರ್ಣ, ಧರ್ಮ, ದೇಶ, ಭಾಷೆಗಳು ಬೇರೆಬೇರೆಯಾದರೂ ಮಾನವಕುಲ ಒಂದೇ ಎಂಬ ಸತ್ಯದ ದರ್ಶನ ಈ ವಚನದಿಂದ ಆಗುತ್ತದೆ. ಈ ಸತ್ಯವನ್ನು ಅರಿತುಕೊಂಡಾಗ ಮಾತ್ರ ಸಾಮಾಜಿಕ ನ್ಯಾಯ ಕೊಡಲು ಮತ್ತು ಪಡೆಯಲು ಸಾಧ್ಯವಾಗುವುದು. ಸಾಮಾಜಿಕ ನ್ಯಾಯಕ್ಕಾಗಿ ನಾವು ಮಾನವಹಕ್ಕುಗಳ ಕಡೆಗೆ ಗಮನ ಹರಿಸಿದಾಗ ಮತ್ತೆ ಮತ್ತೆ ನಮಗೆ ಬಸವಣ್ಣನವರು ಬಹಳ ವಿಶಿಷ್ಟವಾಗಿ ಕಾಣುತ್ತಾರೆ.

ಮಹಿಳೆಯರು, ದಲಿತರು ಮತ್ತು ಕಾಯಕಜೀವಿಗಳಿಗೆ ಐತಿಹಾಸಿಕವಾಗಿ ಎಂದೂ ನ್ಯಾಯ ಸಿಕ್ಕಿಲ್ಲ. ಬಸವಣ್ಣನವರು ಮಾನವ ಹಕ್ಕುಗಳ ವಿಚಾರದಲ್ಲಿ ಎಲ್ಲ ರೀತಿಯ ಜನರಿಗೆ ಸ್ಪಂದಿಸಿದ್ದಾರೆ. ಈ ಸ್ಪಂದನ ಇಡೀ ಮಾನವಕುಲಕ್ಕೆ ಮಾರ್ಗದರ್ಶಿಯಾಗಿದೆ.

ಮಹಿಳೆಯರ, ಕಾರ್ಮಿಕರ ಮತ್ತು ಕರಿಯರ ಹಕ್ಕುಗಳ ಬಗ್ಗೆ ಪಾಶ್ಚಿಮಾತ್ಯ ರಾಷ್ಟ್ರಗಳಲ್ಲಿ ಯಾರಿಗೂ ಕನಸು ಕೂಡ ಬೀಳದ 12ನೇ ಶತಮಾನದಲ್ಲಿ ಜಗಜ್ಜ್ಯೋತಿ ಬಸವೇಶ್ವರರು ಈ ಎಲ್ಲರ ಹಕ್ಕುಗಳ ಬಗ್ಗೆ ಮಾತನಾಡಿದ್ದು ವಿಶ್ವದ ಇತಿಹಾಸದ ಪುಟಗಳಲ್ಲಿ ಸೇರಬೇಕಾಗಿದೆ. ಅಹಿಂಸಾ ಹೋರಾಟದ ಮೂಲಕ ಸಾಮಾಜಿಕ ನ್ಯಾಯವನ್ನು ಸಾಧಿಸಬೇಕಾದ ಕಲೆಯನ್ನು ಬಸವಣ್ಣನವರು ಕಲಿಸಿದ್ದಾರೆ. ಸಾಮಾಜಿಕ ನ್ಯಾಯಕ್ಕೆ ಪ್ರತಿಕೂಲವಾದ ಲಿಂಗಭೇದ, ಜಾತಿ ಮತ್ತು ವರ್ಣಭೇದ ಹಾಗೂ ವರ್ಗಭೇದಗಳನ್ನು ರಕ್ಷಿಸುತ್ತ ಮಾನವ ಏಕತೆಯನ್ನು ಸಾಧಿಸಲಿಕ್ಕಾಗದು ಎಂದು ಬಸವಣ್ಣನವರು ಪ್ರತಿಪಾದಿಸಿದ್ದಾರೆ.

1776 ರಲ್ಲಿ ಬ್ರಿಟನ್‌ನಿಂದ ಅಮೆರಿಕ ಸ್ವತಂತ್ರವಾಯಿತು. ಅಮೆರಿಕದ ಸ್ವಾತಂತ್ರ್ಯ ಘೋಷಣೆ ಮೇಲ್ವರ್ಗದ ಪುರುಷ ಪ್ರಧಾನವಾದ ಘೋಷಣೆಯಾಯಿತು. ಈ ಘೋಷಣೆಯಲ್ಲಿ ಎತ್ತಿಹಿಡಿದಂಥ ಸ್ವಾತಂತ್ರ್ಯ ಮತ್ತು ಸಮಾನತೆ ಶ್ರೀಮಂತ ಪುರುಷರಿಗಾಗಿ ಮಾತ್ರ ಇತ್ತು.ಮಹಿಳೆಯರು ಗುಲಾಮರು ಆಸ್ತಿ ಇಲ್ಲದವರು ಮತ್ತು ಕರಿಯರು ಈ ಹಕ್ಕುಗಳಿಂದ ವಂಚಿತರಾದರು. ರೂಸೋನ ಸ್ವಾತಂತ್ರ್ಯ, ಸಮಾನತೆ ಮತ್ತು ಸಹೋದರತ್ವದ ಘೋಷಣೆಯು 1789 ರ ಫ್ರೆಂಚ್ ಕ್ರಾಂತಿಗೆ ಕಾರಣವಾಯಿತು. ಆದರೆ ಅದೇ ರೂಸೋ 1762 ರಲ್ಲಿ ಮೌಢ್ಯವು ಮಹಿಳೆಯರಿಗೆ ಸಂಪೂರ್ಣ ಲಾಭದಾಯಕವಾಗಿದೆ ಎಂದು ಪ್ರತಿಪಾದಿಸಿದ್ದ. ಅವರು ರಾಜಕೀಯದಲ್ಲಿ ಇರಬಾರದು ಎಂದು ಕೂಡ ಹೇಳಿದ್ದ. ಹೀಗೆ ಜಗತ್ತಿನ ಎಲ್ಲೆಡೆ ಪುರುಷಪ್ರಧಾನ ಸಮಾಜಗಳಲ್ಲಿ ಮಹಿಳೆಯರು ಪುರುಷರ ಅಡಿಯಾಳುಗಳಾಗುತ್ತಲೆ ಬಂದಿದ್ದಾರೆ.ಫ್ರೆಂಚ್ ಕ್ರಾಂತಿಯ ನಂತರ 1789 ರಲ್ಲೇ ನಾಗರಿಕ ಹಕ್ಕುಗಳ ಘೋಷಣೆಯನ್ನು ಅಂಗೀಕರಿಸಿದಾಗ ಮಹಿಳೆಯರ ಕುರಿತ ರೂಸೋನ ವಿಚಾರಗಳನ್ನು ಆ ಘೋಷಣೆಯಲ್ಲಿ ಸೇರ್ಪಡೆ ಮಾಡಲಾಯಿತು. ಮಹಿಳೆಯರ ಮತ್ತು ಗುಲಾಮರ ಹಕ್ಕುಗಳ ಬಗ್ಗೆ ಮಾತನಾಡದ ಈ ಘೋಷಣೆ

ಅಪೂರ್ಣವಾಯಿತು.ಹೀಗೆ ಇತಿಹಾಸದ ಬಹುಮುಖ್ಯ ಕ್ರಾಂತಿಗಳಲ್ಲಿ ಒಂದಾದ ಫ್ರೆಂಚ್ ಕ್ರಾಂತಿ ಮೇಲ್ವರ್ಗದ ಪುರುಷ ಪ್ರಧಾನ ಕ್ರಾಂತಿಯಾಗಿ ಮಾರ್ಪಟ್ಟಿತು.

ತದನಂತರ ವಿಶ್ವಸಂಸ್ಥೆಯ ಜನರಲ್ ಅಸೆಂಬ್ಲಿ 1948 ರ ಡಿಸೆಂಬರ್ 10 ರಂದು ಮಾನವ ಹಕ್ಕುಗಳ ಜಾಗತಿಕ ಘೋಷಣೆ (ಡೆಕ್ಲರೇಷನ್ ಆಫ್ ಹ್ಯೂಮನ್ ರೈಟ್ಸ್) ಮಾಡುವ ಮೊದಲು ತಯಾರಿಸಿದ ಕರಡುಪ್ರತಿಯಲ್ಲಿ ಮಹಿಳೆಯರನ್ನು ಕಡೆಗಣಿಸಲಾಗಿತ್ತು. ಅಮೆರಿಕ ಅಧ್ಯಕ್ಷ ಫ್ರಾಂಕ್ಲಿನ್ ಡಿ. ರೂಜವೆಲ್ಟ್ ಅವರ ಪತ್ನಿ ಅನ್ನಾ ಎಲೆನೋರ್ ರೂಜವೆಲ್ಟ್ ಅವರು ಅಧ್ಯಕ್ಷರಾಗಿದ್ದರೂ ಮಹಿಳೆಯರ ಹಕ್ಕುಗಳ ವಿಚಾರ ಆ ಡ್ರಾಫ್ಟ್‌ನಲ್ಲಿ ಸೇರಿದ್ದಿಲ್ಲ. ಆದರೆ ನ್ಯೂಯಾರ್ಕ್‌ನ ದುಡಿಯುವ ಮಹಿಳೆಯರು ಸೇರಿ ಪ್ರತಿಭಟನೆ ಮಾಡಿದಾಗ, ಲಿಂಗತಾರತಮ್ಯವಿಲ್ಲದ ಅಂಶವನ್ನು ಘೋಷಣೆಯಲ್ಲಿ ಸೇರಿಸಲಾಯಿತು. ಹೀಗೆ 30 ಅಂಶಗಳಿಂದ ಕೂಡಿದ ಮಾನವಹಕ್ಕುಗಳ ಜಾಗತಿಕ ಘೋಷಣೆಯಾಯಿತು. ಆಧುನಿಕ ಸಮಾಜ ಕೂಡ ಮಹಿಳೆಯರ ಹಕ್ಕುಗಳನ್ನು ಅಂಗೀಕರಿಸಲು ಒದ್ದಾಡಿತು ಎಂಬುದು ಈ ಘಟನೆಯಿಂದ ವ್ಯಕ್ತವಾಗುವುದು. ಆದರೆ ಬಸವಣ್ಣನವರು “ಶರಣ ಸತಿ ಲಿಂಗ ಪತಿ” ಘೋಷಣೆ ಮೂಲಕ ಲಿಂಗತಾರತಮ್ಯವನ್ನು ಆಧ್ಯಾತ್ಮಿಕವಾಗಿಯೂ ನಿವಾರಿಸಿದರು.

ಈ ಧರ್ಮದ ಒಂದು ವೈಶಿಷ್ಟ್ಯವೆಂದರೆ ಶರಣ ಸತಿ ಲಿಂಗ ಪತಿ. ಲಿಂಗ ಅಂದರೆ ದೇವರು. ದೇವರು ಒಬ್ಬನೇ ಪುರುಷ. ನಾವೆಲ್ಲ ಸತಿಯರು. (ಸಸ್ತನಿ ಕುಟುಂಬಕ್ಕೆ ಸೇರಿದವರು.) ನಾನೂ ಸತಿ, ನನ್ನ ಸತಿಯೂ ಸತಿ. ದೇವರು ನನ್ನ ಮತ್ತು ಸಕಲ ಜೀವಾತ್ಮರ ಪತಿ. ಆತ ನನ್ನೊಳಗೆ ಇದ್ದಾನೆ. ಎಲ್ಲರ ಒಳಗೂ ಇದ್ದಾನೆ. ಬಸವಣ್ಣನವರು ಹೀಗೆ ಶರಣ ಸತಿ ಲಿಂಗ ಪತಿ ಪರಿಕಲ್ಪನೆಯನ್ನು ಮಾಡುವ ಮೂಲಕ ಲಿಂಗ ಮುಂತಾದ ತಾರತಮ್ಯಗಳನ್ನು ಆಧ್ಯಾತ್ಮಿಕವಾಗಿಯೂ ನಿವಾರಿಸಿದ್ದಾರೆ. ಕಾಯಕಗಳ ಮಹತ್ವವನ್ನು ಮನವರಿಕೆ ಮಾಡಿಕೊಡುವ ಮೂಲಕ ಯಾವುದೇ ಕಾಯಕ ಕೀಳಲ್ಲ ಎಂಬ ಅರಿವು ಮೂಡಿಸಿದ್ದಾರೆ. ಮಾನವನು ಅಹಂಕಾರದಿಂದ ಮುಕ್ತನಾದಾಗ ಮಾತ್ರ ಸಮಾಜವು ಎಲ್ಲ ರೀತಿಯ ಕೊರತೆ ಮತ್ತು ಹಿಂಸೆಯಿಂದ ಮುಕ್ತವಾಗುವುದು ಎಂಬುದನ್ನು ದಾಸೋಹದ ಘೋಷಣೆಯೊಂದಿಗೆ ತೋರಿಸಿಕೊಟ್ಟಿದ್ದಾರೆ. ಹೆಣ್ಣಿರಲಿ, ಗಂಡಿರಲಿ, ಬಡವನಿರಲಿ, ಶ್ರೀಮಂತನಿರಲಿ, ಸರ್ವೇಯನಿರಲಿ, ಅಸ್ಪೃಶ್ಯನಿರಲಿ ಜಗತ್ತಿನ ಜನರೆಲ್ಲ ದೇವರ ಚೈತನ್ಯದಿಂದ ಕೂಡಿದವರು ಮತ್ತು ಶಿವಸ್ವರೂಪಿಗಳು ಎಂಬುದನ್ನು ಜಂಗಮಲಿಂಗದ ಘೋಷಣೆಯ ಮೂಲಕ ಎತ್ತಿ ಹಿಡಿದಿದ್ದಾರೆ. ಯಾವುದೇ ರೀತಿಯ ಅಸಮಾನತೆ ಕೃತ್ರಿಮವಾದುದೆಂದು ಸಾರಿದ್ದಾರೆ. ಹೀಗಾಗಿ ಬಸವಣ್ಣನವರ ಶರಣ ಸಂಕುಲ ಸರ್ವರೀತಿಯಿಂದಲೂ ಸಮಾನತೆಯಿಂದ ಕೂಡಿದ ಪ್ರಥಮ ಸಮಾಜವಾಗಿತ್ತು.

ಶರಣ ಸಂಕುಲ ಅನ್ನೋದು ಬಸವಣ್ಣನವರ ನವಸಮಾಜ. ಜಗತ್ತಿನ ಮೊಟ್ಟಮೊದಲ ಪ್ರಯೋಗ ಇದು. ಎಲ್ಲಿ ಕುಲಗಳಿಲ್ಲವೋ, ಎಲ್ಲಿ ಜಾತಿಗಳಿಲ್ಲವೋ, ಎಲ್ಲಿ ಲಿಂಗಭೇದವಿಲ್ಲವೋ, ಎಲ್ಲಿ ವರ್ಗಭೇದವಿಲ್ಲವೋ ಅದಕ್ಕೆ ಸಂಕುಲ ಎನ್ನುತ್ತಾರೆ. ಇಂಥಒಂದು ಮಾದರಿ ಸಮಾಜವನ್ನು ಬಸವಣ್ಣನವರು 12ನೇ ಶತಮಾನದಲ್ಲಿ ನಿರ್ಮಿಸಿದರು. ಅಸ್ಪೃಶ್ಯರು, ಮಹಿಳೆಯರು, ಬಡವರು ಮತ್ತು ಎಲ್ಲ ಕಾಯಕಜೀವಿಗಳು ಸರ್ವಸಮಾನತೆಯನ್ನು ಆ ಶರಣ ಸಂಕುಲದಲ್ಲಿ ಅನುಭವಿಸಿದರು.

ಬ್ರಾಹ್ಮಣ ಮಧವರಸರು ಶರಣರಾಗುವ ಮೂಲಕ ಮೇಲ್ವರ್ತಿಯ ಅಹಂಕಾರದಿಂದ ಮುಕ್ತರಾದರು ಸಮಗಾರ ಹರಳಯ್ಯನವರು ಶರಣರಾಗುವ ಮೂಲಕ ಕೆಳಜಾತಿಯ ಕೀಳರಿಮೆಯಿಂದ ಮುಕ್ತರಾದರು. ಹೀಗೆ ವಿವಿಧ ಜಾತಿಗಳ ಸಂಕರವಾದಂಥ ಶರಣ ಸಂಕುಲ ವಿಶ್ವಕ್ಕೆ ಮಾದರಿಯಾಯಿತು. “ಕುಲವನರಸುವರೆ ಶರಣರಲ್ಲಿ ಜಾತಿ ಸಂಕರವಾದ ಬಳಿಕ?” ಎಂದು ಬಸವಣ್ಣನವರು ಪ್ರಶ್ನಿಸಿದ್ದಾರೆ. ಎಲ್ಲ ಜಾತಿಗಳ ಎಲ್ಲ ಜನರನ್ನು ತೆಗೆದುಕೊಂಡು

ಹೊಸ ಮಾನವನನ್ನು ಬಸವಣ್ಣನವರು ಸೃಷ್ಟಿಸಿದರು. ಶರಣ ಎಂದರೆ ನವಮಾನವ. ಈ ಜಗತ್ತಿನಲ್ಲಿ ಯಾರಾದರೂ ನವ ಮಾನವರಿದ್ದರೆ, ನಮ್ಮ ನೆಲದಲ್ಲಿ ಹುಟ್ಟಿದ ಶರಣರು. ಏಕೆಂದರೆ ಅವರು ಲಿಂಗಭೇದ ಮಾಡಲಿಲ್ಲ, ವರ್ಗಭೇದ ಮಾಡಲಿಲ್ಲ, ಜಾತಿಭೇದ ಮಾಡಲಿಲ್ಲ ಮತ್ತುವರ್ಣಭೇದ ಮಾಡಲಿಲ್ಲ. ಹೀಗೆ ಅವರು ತಮ್ಮ ಬದುಕಿನಲ್ಲಿ ಸಮಾನತೆ ಸಾಧಿಸಿದರು.

ಎಲ್ಲ ರೀತಿಯ ಅಸಮಾನತೆಯನ್ನು ಮೆಟ್ಟಿ ನಿಂತು ಮಾನವ ಹಕ್ಕುಗಳ ಧ್ವಜವನ್ನು ಹಾರಿಸಿದ ಸಮಾಜವನ್ನು ಮೊದಲ ಬಾರಿಗೆ ಬಸವಣ್ಣನವರು ಈ ಭೂಮಿಯ ಮೇಲೆ ತಂದರು. ಇಲ್ಲಿ ಎಲ್ಲರೂ ತಮ್ಮ ಮತ್ತು ಇತರರ ಜಾತಿಗಳನ್ನು ಮನಸ್ಸಿನಿಂದ ಅಳಿಸಿಹಾಕಿ ಕಾಯಕ ಉಳಿಸಿಕೊಂಡರು. ಸಮಗಾರ ಹರಳಯ್ಯ ಎಂದು ಹೇಳುವಲ್ಲಿ ಸಮಗಾರ ಎಂಬುದು ಜಾತಿ ಅಲ್ಲ ಕಾಯಕ ಎಂಬುದನ್ನು ತೋರಿಸಿಕೊಟ್ಟರು. ಗಂಡ ಹೆಂಡಿರಲ್ಲಿ ಮೇಲು ಕೀಳಿನ ಅನುಚರ ಭಾವ ಹೋಗಿ ಸಮಾನತೆಯ ಸಹಚರ ಭಾವ ಮೂಡಿತು. ಹೀಗೆ ವರ್ಣ, ವರ್ಗ, ಜಾತಿ, ಕುಲ, ಕಾಯಕ ಮತ್ತು ಲಿಂಗಭೇದಗಳೆಲ್ಲದೆ ಎಲ್ಲರನ್ನೂ ಒಂದಾಗಿಸಿ ಸಮಾನತೆ ಸಾಧಿಸಿದ್ದು ಮಾನವ ಇತಿಹಾಸದ ಬಹುಮುಖ್ಯ ಘಟನೆಗಳಲ್ಲಿ ಒಂದಾಗಿದೆ.

ಇನ್ನೂ ಆಶ್ಚರ್ಯವೆಂದರೆ ವಿಶ್ವಸಂಸ್ಥೆ ಅಂಗೀಕರಿಸಿದ ಮಾನವಹಕ್ಕುಗಳ ಎಲ್ಲ 30 ಅಂಶಗಳು ಬಸವಣ್ಣನವರ ವಚನಗಳಲ್ಲಿವೆ. ಇದು ನಮ್ಮ ಶರಣರ ಬಹಳ ದೊಡ್ಡದಾದಂಥ ಸಾಧನೆ. ವಿಶ್ವಸಂಸ್ಥೆ ಘೋಷಿಸಿದ ಮಾನವ ಹಕ್ಕುಗಳ 30 ಅಂಶಗಳು ಬಸವಣ್ಣನವರ ವಚನಗಳಲ್ಲಿ ಯಾವ ರೀತಿಯಲ್ಲಿ ಮೂಡಿ ಬಂದಿವೆ ಎಂಬುದು ತಿಳಿದುಕೊಳ್ಳುವುದು ಅವಶ್ಯವಾಗಿದೆ.

ಎಲ್ಲ ಮಾನವರು ಹುಟ್ಟಿನಿಂದಲೇ ಸ್ವತಂತ್ರರು ಮತ್ತು ಘನತೆ ಹಾಗೂ ಹಕ್ಕುಗಳಲ್ಲಿ ಸಮಾನರು ಎಂಬುದು ಮೊದಲನೆಯ ಅಂಶ. ದಾಂಪತ್ಯ ಸಂಬಂಧದಿಂದ ಜನಿಸಿದ ಮಗುವಿನ ಹಕ್ಕುಗಳು ಮತ್ತು ಅನೈತಿಕ ಸಂಬಂಧದಿಂದ ಹುಟ್ಟಿದ ಮಗುವಿನ ಹಕ್ಕುಗಳಲ್ಲಿ ಯಾವುದೇ ವ್ಯತ್ಯಾಸವಿಲ್ಲ ಎಂದು 20ನೇ ಶತಮಾನದಲ್ಲಿ ವಿಶ್ವಸಂಸ್ಥೆ ಹೇಳಿತು.

“ಚೆನ್ನಯ್ಯನ ಮನೆಯ ದಾಸನ ಮಗನು,

ಕಕ್ಕಯ್ಯನ ಮನೆಯ ದಾಸಿಯ ಮಗಳು,

ಇವರಿಬ್ಬರು ಹೊಲದಲು ಬೆರಣಿಗೆ ಹೋಗಿ ಸಂಗವ ಮಾಡಿದರು.

ಇವರಿಬ್ಬರಿಗೆ ಹುಟ್ಟಿದ ಮಗ ನಾನು,

ಕೂಡಲಸಂಗಮದೇವ ಸಾಕ್ಷಿಯಾಗಿ.”

ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳಿದ್ದಾರೆ.

ಮಾದಾರ ಚೆನ್ನಯ್ಯ, ಈ ಶ್ರೇಣೀಕೃತ ಸಮಾಜದಲ್ಲಿ ಕಟ್ಟಕಡೆಯ ಮನುಷ್ಯ ಅವನ ಮನೆಯ ದಾಸನ ಮಗ ಮತ್ತು ಕಕ್ಕಯ್ಯನ ಮನೆಯ ದಾಸಿಯ ಮಗಳು ಹೊಲಕ್ಕೆ ಹೋಗಿ ಸಂಗವ ಮಾಡಿದರು. ಇವರಿಬ್ಬರಿಗೆ ಹುಟ್ಟಿದ ಮಗ ನಾನು ಕೂಡಲಸಂಗಮದೇವ ಸಾಕ್ಷಿಯಾಗಿ, ಅಂದರೆ ಹೆಣ್ಣು ಗಂಡಿನ ಅನೈತಿಕ ಸಂಬಂಧದಿಂದ ಹುಟ್ಟಿದ ಮಗು ನಾನು ಎಂದು ಹೇಳಬೇಕಾದರೆ ಬಸವಣ್ಣನವರು ಎಂಥ ಅಂತಃಕರಣ ಮತ್ತು ಸಂವೇದನಾಶೀಲತೆಯನ್ನು ಹೊಂದಿದ್ದರು ಎಂಬುದು ನಮ್ಮ ಕಲ್ಪನೆಗೂ ಮೀರಿದ್ದಾಗಿದೆ. ಕಲ್ಯಾಣದ ಪ್ರಧಾನಿ ಬಸವಣ್ಣನವರು ಹೇಳುವ ಮಾತಿದು. ಹೀಗೆ ಅವರು ಅನೈತಿಕ ಸಂಬಂಧದ ಮಕ್ಕಳ ಪರವಾಗಿ ನಿಂತರು. ಬಸವಣ್ಣನವರು ಅನುಪಮ ವ್ಯಕ್ತಿತ್ವವುಳ್ಳವರಾಗಿದ್ದರು.

ಎರಡನೆಯದಾಗಿ ಮಾನವ ಹಕ್ಕುಗಳ ಘೋಷಣೆಯಲ್ಲಿನ ಎಲ್ಲ ಹಕ್ಕುಗಳು ಮತ್ತು ಸ್ವಾತಂತ್ರ್ಯ ಎಲ್ಲರಿಗೂ ಸಮಾನವಾಗಿವೆ.

“ಇವನಾರವ ಇವನಾರವ ಇವನಾರವ ಎಂದೆನಿಸದಿರಯ್ಯ, ಇವ ನಮ್ಮವ ಇವ ನಮ್ಮವ ಇವ ನಮ್ಮವ ಎಂದೆನಿಸಯ್ಯ” ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳುತ್ತಾರೆ. ಇಲ್ಲಿ ಮತ್ತೆ ಸಮಾಜದಲ್ಲಿನ ವರ್ಗ ವೈರುಧ್ಯಗಳನ್ನು ಸೂಚಿಸುತ್ತಾರೆ. ವರ್ಗಪ್ರಜ್ಞೆ ಇಲ್ಲದೆ ನಾವು ಸಾಮಾಜಿಕ ನ್ಯಾಯ ಒದಗಿಸಲಾರೆವು. ನಮ್ಮ ನ್ಯಾಯ, ಚಿಂತನೆ, ಮೌಲ್ಯ ಹೀಗೆ ಎಲ್ಲವೂ ವರ್ಗಪ್ರಜ್ಞೆಯ ಮೇಲೆಯೇ ನಿಂತಿರುವುದರಿಂದಲೇ ಬಸವಣ್ಣನವರು ಈ ಕ್ರಮದಲ್ಲಿ ಚಿಂತಿಸಿದ್ದಾರೆ.

“ಕುದುರೆ ಸತ್ತಿಗೆಯವರು ಕಂಡಡೆ ಹೊರಳಿ ಬಿದ್ದು ಕಾಲು ಹಿಡಿವರು, ಬಡ ಭಕ್ತರು ಬಂದರೆ ಎಡೆಯಿಲ್ಲ ಅತ್ತ ಸನ್ನಿ ಎಂಬರು” ಎಂದು ಬಸವಣ್ಣನವರು ಸಾತ್ವಿಕ ಕೋಪ ವ್ಯಕ್ತಪಡಿಸಿದ್ದಾರೆ. ಕುದುರೆ ಸತ್ತಿಗೆಯವರು ಅಂದರೆ ಶ್ರೀಮಂತರು. ಸತ್ತಿಗೆ ಅಂದರೆ ಭತ್ತ. ಸಮಾನತೆಗೋಸ್ಕರ ವಿಶ್ವಸಂಸ್ಥೆ ಏನು ಹೇಳುವುದೋ ಅದನ್ನು ಬಸವಣ್ಣನವರು ಸಾಧಿಸಿದ್ದರು.

ಮೂರನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರಿಗೂ ಬದುಕುವ, ಸ್ವತಂತ್ರವಾಗಿರುವ ಮತ್ತು ಭದ್ರತೆಯ ಹಕ್ಕಿದೆ.

“ಶಿವಭಕ್ತನಾಗಿ ಭಕ್ತಿಪಕ್ಷವಿಲ್ಲದಿದ್ದಡೆ ಕಾಗೆ ಕೋಳಿಯಿಂದ ಕರಕಷ್ಟ” ಎಂದು ಬಸವಣ್ಣನವರು ತಿಳಿಸಿದ್ದಾರೆ. ಬಸವಣ್ಣನವರ “ಭಕ್ತಿಪಕ್ಷ”ವು ಪ್ರತಿಯೊಬ್ಬರಿಗೂ ಬದುಕುವ ಸ್ವತಂತ್ರವಾಗಿರುವ ಮತ್ತು ಭದ್ರತೆಯ ಹಕ್ಕನ್ನು ಕೊಡುವುದು.

ನಾಲ್ಕನೇ ಅಂಶ: ಗುಲಾಮಗಿರಿಗೆ ಅವಕಾಶವಿಲ್ಲ.

“ದಾಸೀಪುತ್ರನಾಗಲಿ, ವೇಶ್ಯಾಪುತ್ರನಾಗಲಿ ಶಿವದೀಕ್ಷೆಯಾದ ಬಳಿಕ ಸಾಕ್ಷಾತ್ ಶಿವನೆಂದು ವಂದಿಸಿ ಪೂಜಿಸಿ ಪಾದೋದಕ ಪ್ರಸಾದವ ಕೊಂಬುದೆ ಯೋಗ್ಯ.” ಎಂದು ಬಸವಣ್ಣನವರು ತಿಳಿಸಿದ್ದಾರೆ. ಹೀಗೆ ದಾಸೀಪುತ್ರನೇ ಇರಲಿ, ವೇಶ್ಯಾಪುತ್ರನೇ ಇರಲಿ, ಅನೈತಿಕ ಮಗುವೇ ಇರಲಿ, ರಾಜಪುತ್ರನೇ ಇರಲಿ, ಇಷ್ಟಲಿಂಗ ದೀಕ್ಷೆಯಾದ ಬಳಿಕ ಎಲ್ಲರೂ ಸಮಾನರು, ಗುಲಾಮಗಿರಿಗೆ ಅವಕಾಶವಿಲ್ಲ ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳುತ್ತಾರೆ. ಗುಲಾಮಗಿರಿಯನ್ನು ಬಸವಣ್ಣನವರು ಹೇಗೆ ತೊಡೆದುಹಾಕಿದರು ಎಂಬುದಕ್ಕೆ ಇದೊಂದು ಉದಾಹರಣೆ.

ಐದನೇ ಅಂಶ: ಯಾರ ವಿರುದ್ಧವೂ ಕ್ರೂರವಾಗಿ ನಡೆದುಕೊಳ್ಳುವಂತಿಲ್ಲ. ಅಮಾನುಷ ಶಿಕ್ಷೆ ವಿಧಿಸುವಂತಿಲ್ಲ. “ಸಕಲಜೀವಾತ್ಮರಿಗೆ ಲೇಸನೆ ಬಯಸುವ ನಮ್ಮ ಕೂಡಲಸಂಗನ ಶರಣರೆ ಕುಲಜರು” ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳುವುದರ ಮೂಲಕ ಕ್ರೌರ್ಯ ಮತ್ತು ಅಮಾನುಷ ನಡವಳಿಕೆಯನ್ನು ವಿರೋಧಿಸಿದ್ದಾರೆ.

ಆರನೆಯ ಅಂಶ: ಕಾನೂನಿನ ಮುಂದೆ ಪ್ರತಿಯೊಬ್ಬನು ವ್ಯಕ್ತಿಯಾಗಿ ಗುರುತಿಸಿಕೊಳ್ಳುವ ಹಕ್ಕನ್ನು ಪಡೆದಿರುತ್ತಾನೆ.

ಶರಣರು ಈ ಹಕ್ಕಿನ ಪರವಾಗಿದ್ದರು. ಆದರೆ ಹರಳಯ್ಯ ಮತ್ತು ಮಧುವರಸರ ಮಕ್ಕಳ ಮದುವೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಅವರಿಗೆ ತಮ್ಮ ವಿಚಾರ ವ್ಯಕ್ತಪಡಿಸಲು ಅವಕಾಶ ಕೊಡದೆ ಚಿತ್ರಹಿಂಸೆ ನೀಡಲಾಯಿತು.

ಏಳನೆಯ ಅಂಶ: ಕಾನೂನಿನ ಮುಂದೆ ಎಲ್ಲರೂ ಒಂದೆ.

“ನ್ಯಾಯನಿಷ್ಠುರಿ ದಾಕ್ಷಿಣ್ಯಪರ ನಾನಲ್ಲ, ಲೋಕವಿರೋಧಿ, ಶರಣನಾರಿಗಂಜುವನಲ್ಲ, ಕೂಡಲಸಂಗಮದೇವರ ರಾಜತೇಜದಲ್ಲಿಪ್ಪನಾಗಿ.” ಇದು ಬಹಳ ಮಹತ್ವದ ಸಾಲು. ನಮ್ಮ ದೇಶದಲ್ಲಿ ರಾಜನೇ ಸಾಕ್ಷಾತ್ ದೇವರಾಗಿದ್ದ. ಆ

ರಾಜನನ್ನು ಪ್ರಶ್ನೆ ಮಾಡುವುದು ಯಾವುದು ಅಂದರೆ ಅದು ಸಂವಿಧಾನ. ಇಲ್ಲಿ ಸ್ವಲ್ಪ ವಿವರಣೆಯ ಅವಶ್ಯಕತೆ ಇದೆ. 15.07.1215 ರಲ್ಲಿ ಇಂಗ್ಲೆಂಡ್‌ನಲ್ಲಿ ಕಿಂಗ್ ಜಾನ್ ಮತ್ತು ಬಂಡಾಯವೆದ್ದ ಪಾಳೆಯಗಾರರ ನಡುವೆ ಒಂದು ಒಪ್ಪಂದವಾಗುವುದು. ಅದುವೆ ಮ್ಯಾಗ್ನಾಕಾರ್ಟಾ ಅಂದರೆ ಮಹಾ ಒಪ್ಪಂದ ಅಥವಾ ಮಹಾ ಹಕ್ಕುಪತ್ರ. ಈ ಮ್ಯಾಗ್ನಾಕಾರ್ಟಾದಿಂದಾಗಿ ರಾಜನ ಹಕ್ಕುಗಳು ಮೊಟಕುಗೊಂಡವು. ಈ ಮ್ಯಾಗ್ನಾಕಾರ್ಟಾ ಜಗತ್ತಿನ ಎಲ್ಲ ಸಂವಿಧಾನಗಳ ತಾಯಿ ಎಂದು ನಮ್ಮ ಸಂವಿಧಾನ ತಜ್ಞರು ಹೇಳುತ್ತಾರೆ. ಈ ಹೇಳಿಕೆಯನ್ನು ಒಪ್ಪಲಿಕ್ಕಾಗದು. ಏಕೆಂದರೆ ಇದು 13 ನೇ ಶತಮಾನದ ಒಪ್ಪಂದ. ಆ ಒಪ್ಪಂದ ಯಾರ ಮಧ್ಯೆ ಆಯಿತು? ಒಬ್ಬ ರಾಜ ಮತ್ತು ಮಾಂಡಲಿಕರ ಮಧ್ಯೆ ಆಯಿತು. ರಾಜ ಮತ್ತು ಜನರ ಮಧ್ಯೆ ಆಗಲಿಲ್ಲ. ಆದರೆ ಬಸವಣ್ಣನವರ ವಚನಗಳು ಕಟ್ಟ ಕಡೆಯ ಮನುಷ್ಯನ ಪರ ಇವೆ. ಇವು 12ನೇ ಶತಮಾನದಲ್ಲಿ ಅಂದರೆ ಮ್ಯಾಗ್ನಾಕಾರ್ಟಾಗಿಂತ ಒಂದು ಶತಮಾನ ಹಿಂದೆ. ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ವಚನಗಳು ಜಗತ್ತಿನ ಎಲ್ಲ ಸಂವಿಧಾನಗಳ ತಾಯಿ ಎಂಬುದರಲ್ಲಿ ಸಂಶಯವಿಲ್ಲ. ಆದ್ದರಿಂದ ಕೂಡಲಸಂಗಮದೇವರ ರಾಜತೇಜದಲ್ಲಿರುವುದಾಗಿ ಬಸವಣ್ಣನವರು ಹೇಳುತ್ತಾರೆ. ತಾವೇಕೆ ನ್ಯಾಯನಿಷ್ಠರಿ, ತಾವೇಕೆ ದಾಕ್ಷಿಣ್ಯಪರ ಅಲ್ಲ, ತಾವೇಕೆ ಲೋಕವಿರೋಧಿ ಅಂದರೆ ತಮಗೊಂದು ಸಂವಿಧಾನವಿದೆ ಅದಕ್ಕಿಂತ ದೊಡ್ಡದು ಯಾವುದು? ಎಂಬುದು ಬಸವಣ್ಣನವರ ದೃಢ ನಿರ್ಧಾರವಾಗಿದೆ. ಕೂಡಲಸಂಗಮದೇವರ ರಾಜತೇಜವೆಂಬ ಈ ಆತ್ಮಸಾಕ್ಷಿಯ ಶರಣರ ಸಂವಿಧಾನ. ಅವರ ಅಂತಸ್ಸಾಕ್ಷಿಯ ವಚನಗಳೇ ದೇವರು. ಕೂಡಲಸಂಗಮದೇವ ಶರಣರ ಮಾತಿನಲ್ಲಿ ಅಂದರೆ ವಚನಗಳಲ್ಲಿ ರಾಶಿಯಾಗಿವೆ ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳುತ್ತಾರೆ. ಇದು ಬಸವ ಸಂವಿಧಾನದ ಮೂಲ.

ಎಂಟನೆಯ ಅಂಶ: ತನ್ನ ಮೂಲಭೂತ ಹಕ್ಕುಗಳ ಪ್ರಕಾರ ನ್ಯಾಯ ಕೇಳುವ ಹಕ್ಕು ಪ್ರತಿಯೊಬ್ಬನಿಗೆ ಇದೆ.

“ಆನೀ ಬಿಜ್ಜಳಂಗೆ ಅಂಜುವೆನೆ ಅಯ್ಯಾ” ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳುತ್ತಾರೆ. ಒಬ್ಬ ಪ್ರಧಾನಿಯಾಗಿ ತಮ್ಮ ವ್ಯಕ್ತಿತ್ವವನ್ನು ಹೇಗೆ ಉಳಿಸಿಕೊಂಡಿದ್ದರು ಎನ್ನುವುದಕ್ಕೆ ಇದು ಅತ್ಯುತ್ತಮ ಉದಾಹರಣೆ. ನಾನು ಈ ಬಿಜ್ಜಳನಿಗೆ ಅಂಜುವೆನೆ ಅಯ್ಯಾ ಕೂಡಲಸಂಗಮದೇವಾ ನಿನ್ನ ರಾಜತೇಜದಲ್ಲಿರುವೆ ಅಂದರೆ ತಮ್ಮದೇ ಆದ ಶೀಲಗಳು (ಸದ್ಗುಣಗಳು) ಇವೆ ಎಂದು ಸೂಚಿಸುತ್ತಾರೆ. ಶೀಲಗಳು ಸಾಮಾಜಿಕರಣಗೊಂಡಾಗ ಮೌಲ್ಯಗಳಾಗುವವು. ಈ ಮೌಲ್ಯಗಳು ಯಾವುದೇ ಸಂವಿಧಾನದ ಮತ್ತು ಕಾನೂನಿನ ತಾಯಿ ಬೇರಾಗುವವು. ಇದನ್ನು ಬಸವಣ್ಣನವರು ಇಷ್ಟು ಚೆನ್ನಾಗಿ 12ನೇ ಶತಮಾನದಲ್ಲಿ ಗುರುತಿಸಿದ್ದಾರೆ. ರಾಜ ಹೇಳಿದ್ದೇ ಸತ್ಯ ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳಲಿಲ್ಲ. ಇದು ಆ ಕಾಲದ ಮಹಾ ಬಂಡಾಯದ ವಿಚಾರ ಎಂಬುದನ್ನು ಮರೆಯಬಾರದು.

ಒಂಬತ್ತನೇ ಅಂಶ: ಯಾರನ್ನೂ ಮನಸ್ಸಿಗೆ ಬಂದಂತೆ ಬಂಧಿಸಲಾಗದು.

ಶೀಲವಂತ, ಸಮಗಾರ ಹರಳಯ್ಯನವರ ಮಗ. ಲಾವಣ್ಯವತಿ, ಬ್ರಾಹ್ಮಣ ಮೂಲದ ಮಧುವರಸರ ಮಗಳು. ಅವರು ವಧೂ ವರ ಆಗುವರು. ಇದಕ್ಕೆ ಮನುಷ್ಯತಿಯಲ್ಲಿ ವಿಲೋಮ ಅಥವಾ ಪ್ರತಿಲೋಮ ವಿವಾಹ ಎನ್ನುತ್ತಾರೆ. ಮೇಲ್ಜಾತಿಯ ಕನ್ಯೆ ಕೆಳಜಾತಿಯ ಪುರುಷನನ್ನು ಮದುವೆಯಾಗುವುದು ಮನುಧರ್ಮ ಸಮ್ಮತವಲ್ಲ. ಆದ್ದರಿಂದ ಈ ಹೆಣ್ಣು ಗಂಡಿನ ತಂದೆಗಳಾದ ಮಧುವರಸ ಮತ್ತು ಹರಳಯ್ಯನವರಿಗೆ ಎಳೆಹೂಟಿ ಶಿಕ್ಷೆ ಕೊಟ್ಟು ಅಂದರೆ ಆನೆ ಕಾಲಿಗೆ ಕಟ್ಟಿ ಚಿತ್ರಹಿಂಸೆ ಕೊಟ್ಟು ಕೊಲ್ಲುತ್ತಾರೆ. ಆದರೆ ಇವತ್ತು ಇಂಥ ಮದುವೆಗಳು ಮಾನವಹಕ್ಕುಗಳ ಭಾಗವಾಗಿದ್ದು ನಮ್ಮ ಸಂವಿಧಾನಬದ್ಧವಾಗಿವೆ ಎಂಬುದನ್ನು ನಾವು ಅರ್ಥ ಮಾಡಿಕೊಳ್ಳಬೇಕು. ಬಸವಣ್ಣನವರು ಹೀಗೆ ಮುಂದಾಲೋಚನೆಯುಳ್ಳವರಾಗಿದ್ದರು.

10ನೇ ಅಂಶ: ಸ್ವತಂತ್ರ ನ್ಯಾಯಮಂಡಲಿಗಳ ಮೂಲಕ ನ್ಯಾಯ ಪಡೆಯುವ ಹಕ್ಕು ಪ್ರತಿಯೊಬ್ಬರಿಗೆ ಇದೆ.

ಇದನ್ನು ಬಿಜ್ಜಳ ನಿರಾಕರಣೆ ಮಾಡಿದ. ಬಿಜ್ಜಳನು ಶರಣರಿಗೆ ನ್ಯಾಯ ಪಡೆಯುವ ಹಕ್ಕನ್ನು ನಿರಾಕರಿಸಿ ಹಿಂಸೆಗೆ ಒಳಪಡಿಸಿದ.

11ನೇ ಅಂಶ: ಆರೋಪಕ್ಕೊಳಗಾದವರು ಯಾರೇ ಇರಲಿ ಅಪರಾಧಿ ಎಂದು ತೀರ್ಪು ಬರುವವರೆಗೂ ಮುಗ್ಧರು ಎಂದು ಹೇಳುವ ಹಕ್ಕನ್ನು ಹೊಂದಿದ್ದಾರೆ.

ಈ ಹಕ್ಕು ಶರಣರಿಗೆ ಸಿಗುವಂಥ ನ್ಯಾಯಪದ್ಧತಿ ಬಿಜ್ಜಳನ ರಾಜ್ಯದಲ್ಲಿ ಇರಲಿಲ್ಲ. ಏಕೆಂದರೆ ಆತ ಅನ್ಯಾಯ ಮತ್ತು ಅಸಮಾನತೆಯಲ್ಲಿ ನಂಬಿಕೆ ಇಟ್ಟ ಮನುವಾದಿಗಳ ಒತ್ತಡಕ್ಕೆ ಮಣಿದಿದ್ದ.

12ನೇ ಅಂಶ: ಯಾರದೇ ಖಾಸಗಿ ಬದುಕಿನಲ್ಲಿ ಕೈ ಹಾಕುವಂತಿಲ್ಲ. ಯಾರ ಘನತೆಗೂ ಕುಂದು ತರುವಂತಿಲ್ಲ. ಕೂಡಲಸಂಗಮದೇವಾ ಭಕ್ತರ ಕುಲವನರಿಸಿದಡೆ ನಿಮ್ಮ ರಾಣಿವಾಸದಾಣೆ ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳಿದ್ದಾರೆ.

13ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರಿಗೂ ತಮ್ಮ ದೇಶದಲ್ಲಿ ಮುಕ್ತವಾಗಿ ಸಂಚರಿಸುವ ಹಕ್ಕಿದೆ.

ಮನುಸ್ಮೃತಿಯ ಪ್ರಕಾರ ಅಸ್ತತ್ಯರು ಈ ಹಕ್ಕನ್ನು ಕಳೆದುಕೊಂಡಿದ್ದರು. ಬಸವಣ್ಣನವರು “ಕುಲವನರಸುವರೆ ಶರಣರಲ್ಲಿ ಜಾತಿಸಂಕರವಾದ ಬಳಿಕ” ಎಂದು ಪ್ರಶ್ನಿಸಿ ಎಲ್ಲರಿಗೂ ಮುಕ್ತವಾಗಿ ಸಂಚರಿಸುವ ಹಕ್ಕು ಬರುವಂತೆ ಮಾಡಿದರು.

14ನೇ ಅಂಶ: ತಮ್ಮ ದೇಶದಲ್ಲಿ ಮಾನವ ಹಕ್ಕುಗಳ ದಮನ ನಡೆದಾಗ ಬೇರೆ ದೇಶಗಳಲ್ಲಿ ಆಶ್ರಯ ಪಡೆಯುವ ಅವಕಾಶವಿದೆ.

ಕಲ್ಯಾಣದಲ್ಲಿ ಶರಣರ ಹತ್ಯಾಕಾಂಡ ನಡೆದ ಸಂದರ್ಭದಲ್ಲಿ ಅನೇಕ ಶರಣರು ನೆರೆಯ ದೇಶಗಳಲ್ಲಿ ಆಶ್ರಯ ಪಡೆದರು.

15ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರಿಗೂ ರಾಷ್ಟ್ರೀಯತೆಯ ಹಕ್ಕಿದೆ.

ಇಂದಿನ ರಾಷ್ಟ್ರೀಯತೆಯ ಪರಿಕಲ್ಪನೆ ಹಿಂದಿನ ಕಾಲದಲ್ಲಿ ಇರದಿದ್ದರೂ ಬೇರೆ ಕಡೆಯಿಂದ ಕಲ್ಯಾಣಕ್ಕೆ ಬಂದ ಶರಣರು ಬಸವಣ್ಣನವರ ಶರಣಸಂಕುಲದಲ್ಲಿ ಸ್ಥಾನ ಪಡೆದಿದ್ದರು.

16ನೇ ಅಂಶ: ದೇಶ ಕುಲ ಮತ್ತು ಧರ್ಮಗಳನ್ನು ಮೀರಿ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುವ ಹಕ್ಕಿದೆ.

ಇಂಥ ಹಕ್ಕನ್ನು ಚಲಾಯಿಸಿದರೆಂದು ಆರೋಪಿಸಿ ಹರಳಯ್ಯ ಮಧುರಸರಿಗೆ ಎಳೆಹೂಟೆ ಶಿಕ್ಷೆ ವಿಧಿಸಲಾಯಿತು.

17ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರಿಗೂ ಆಸ್ತಿಯ ಹಕ್ಕಿದೆ.

ಬಸವಣ್ಣನವರ ಪ್ರಕಾರ ಶರಣರು ಸ್ವಾವಲಂಬಿಗಳಾಗಬೇಕು. ಆದರೆ ಸಮಾಜಸೇವೆಯ ಉದ್ದೇಶದೊಂದಿಗೆ ದಾಸೋಹ ಭಾವದಿಂದ ಕಾಯಕ ಮಾಡಬೇಕು.

“ನಾನು ಆರಂಬವ ಮಾಡುವೆನಯ್ಯಾ ಗುರು ಪೂಜೆಗೆಂದು.” ಬರಿ ನನಗಾಗಿ ಮತ್ತು ನನ್ನ ಕುಟುಂಬಕ್ಕಾಗಿ ಕಾಯಕ ಮಾಡುವುದಿಲ್ಲ. ನನ್ನ ಸಮಾಜಕ್ಕಾಗಿಯೂ ಕಾಯಕ ಮಾಡಬೇಕಾಗುತ್ತದೆ. ಆರಂಬ ಎಂದರೆ ಕೃಷಿ ಕಾರ್ಯ. ಗುರುಪೂಜೆ ಎಂದರೆ ಜ್ಞಾನಪೂಜೆ. ಕಾಯಕದ ಮೂಲಕ ಜ್ಞಾನ ಪಡೆಯುವುದು. ಇವನ್ನೆಲ್ಲ ಅವರು ಸಾಂಕೇತಿಕವಾಗಿ ಹೇಳುತ್ತಾರೆ. “ನಾನು ಬೆವಹಾರವ ಮಾಡುವೆನಯ್ಯಾ ಲಿಂಗಾರ್ಚನೆಗೆಂದು” ಎಂದರೆ ನಮ್ಮ ವ್ಯವಹಾರ ದೇವರ ಪೂಜೆಯ ಹಾಗೆ ಪವಿತ್ರವಾಗಿರಬೇಕು. “ನಾನು ಪರಸೇವೆಯ ಮಾಡುವೆನಯ್ಯಾ ಜಂಗಮ ದಾಸೋಹಕ್ಕೆಂದು.” ಎಂದರೆ ಸಮಾಜಸೇವೆಗಾಗಿ ನಾನು ಬಿಜ್ಜಳನ ಪ್ರಧಾನಿಯಾಗಿರುವೆ ಎಂದು ಬಸವಣ್ಣನವರು

ಸೂಚಿಸಿದ್ದಾರೆ. ತಾವು ಪ್ರಧಾನಿ ಎಂದು ಅವರು ಹೇಳಿಕೊಳ್ಳಲಿಲ್ಲ. ಜಂಗಮಕ್ಕೆ ಬಹಳಷ್ಟು ಅರ್ಥಗಳಿವೆ. ಇಲ್ಲಿ ಜಂಗಮ ಎಂದರೆ ಸಮಾಜ.ಸಮಾಜವನ್ನು ಸಮೃದ್ಧವಾಗಿ ಇಡುವುದಕ್ಕೋಸ್ಕರ ನಾನು ಪರಸೇವೆ ಮಾಡುತ್ತಲಿದ್ದೇನೆ ಎಂದು ಅವರು ಮಾರ್ಮಿಕವಾಗಿ ತಿಳಿಸಿದ್ದಾರೆ. ಹೀಗೆ ಮಾನವಹಕ್ಕುಗಳ ಜೊತೆಗೆ ಮಾನವ ಕರ್ತವ್ಯಗಳ ಬಗ್ಗೆಯೂ ಸೂಚಿಸಿದ್ದಾರೆ.

18ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರು ವಿಚಾರ ಸ್ವಾತಂತ್ರ್ಯ ಮತ್ತು ಧಾರ್ಮಿಕ ಸ್ವಾತಂತ್ರ್ಯ ಪಡೆದಿದ್ದಾರೆ.

ಬಸವಧರ್ಮ ವಿಚಾರ ಸ್ವಾತಂತ್ರ್ಯದ ಮೇಲೆ ನಿಂತಿದೆ. “ಗಂಡ ಶಿವಲಿಂಗ ದೇವರ ಭಕ್ತ.ಹೆಂಡತಿ ಮಾರಿ ಮಸಣಿಯ ಭಕ್ತೆ.”ಎಂದು ವಚನವೊಂದರಲ್ಲಿ ತಿಳಿಸಿದ್ದಾರೆ. ಈ ಇಬ್ಬರು ಬೇರೆ ಬೇರೆ ಧರ್ಮ ಪಾಲಿಸುತ್ತಿದ್ದರೂ ಗಂಡ ಹೆಂಡಿರಾಗಿ ಉಳಿದಿದ್ದಾರೆ.

19ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರು ಅಭಿಪ್ರಾಯ ಮತ್ತು ಅಭಿವ್ಯಕ್ತಿ ಸ್ವಾತಂತ್ರ್ಯ ಹೊಂದಿದ್ದಾರೆ.

ಅಭಿಪ್ರಾಯ ಮತ್ತು ಅಭಿವ್ಯಕ್ತಿ ಸ್ವಾತಂತ್ರ್ಯವನ್ನು ಮೊದಲಿಗೆ ಎಲ್ಲಿಯಾದರೂ ನೋಡುವುದಾದರೆ ಅದು ಅನುಭವ ಮಂಟಪದಲ್ಲಿ.

ಬಸವಣ್ಣನವರಿಗೆ ಪ್ರಶ್ನೆ ಕೇಳಿದಷ್ಟು ಯಾವ ದಾರ್ಶನಿಕನಿಗೂ ಕೇಳಿಲ್ಲ. ಹೆಂಡತಿ ಗಂಡನನ್ನು ಪ್ರಶ್ನಿಸಿದ ದಾಖಲೆ ಭಾರತೀಯ ಸಾಹಿತ್ಯದಲ್ಲಿ ಕಂಡುಬರುವುದಿಲ್ಲ. ಅದು ನಮಗೆ ಮೊದಲ ಬಾರಿಗೆ ಅನುಭವ ಮಂಟಪದಲ್ಲಿ ಸಿಗುವುದು. “ಆಸೆಯೆಂಬುದು ಅರಸಿಂಗಲ್ಲದೆ ಶಿವಭಕ್ತರಿಗುಂಟೆ ಅಯ್ಯಾ” ಎಂದು ಆಯ್ದಕ್ಕೆ ಲಕ್ಕಮ್ಮ, ಅವಶ್ಯಕತೆಗಿಂತಲೂ ಹೆಚ್ಚಿಗೆ ಅಕ್ಕಿಯನ್ನು ಆಯ್ದು ತಂದ ತನ್ನ ಪತಿ ಆಯ್ದಕ್ಕೆ ಮಾರಯ್ಯಗೆ ಪ್ರಶ್ನೆ ಮಾಡುತ್ತಾಳೆ. ಇಂಥ ಪ್ರಶ್ನಿಸುವ ಹಕ್ಕನ್ನು ನಮ್ಮ ಸಮಾಜದಲ್ಲಿ ಹೆಣ್ಣುಮಕ್ಕಳಿಗೆ ಸಿಕ್ಕಿದ್ದು ಬಸವಣ್ಣನವರಿಂದ.

20ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರಿಗೂ ಶಾಂತಿಯುತವಾಗಿ ಸಭೆ ಸೇರುವ ಸ್ವಾತಂತ್ರ್ಯ ಇದೆ.

ಅನುಭವ ಮಂಟಪದಲ್ಲಿ ಶಾಂತಿಯುತವಾಗಿ ಇದ್ದಂಥ ಶರಣರಿಗೆ ಕಿರಿಕಿರಿ ಮಾಡಿದರು, ಬಹಳ ತೊಂದರೆ ಕೊಟ್ಟರು, ಅನೇಕ ಶರಣರ ಕೊಲೆ ಮಾಡಿದರು. ಅವರ ವಚನ ಸಾಹಿತ್ಯವನ್ನು ಸುಟ್ಟರು.

21ನೇ ಅಂಶ: ತಮ್ಮ ದೇಶದ ಸರ್ಕಾರದಲ್ಲಿ ಭಾಗಿಯಾಗುವ ಹಕ್ಕನ್ನು ಪ್ರತಿಯೊಬ್ಬರು ಪಡೆದಿರುತ್ತಾರೆ.

ಬಸವಣ್ಣನವರು ಕಲ್ಯಾಣದ ಪ್ರಧಾನಿಯಾಗಿದ್ದರು.

22ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರು ಸಾಮಾಜಿಕ ಭದ್ರತೆಯ ಹಕ್ಕನ್ನು ಹೊಂದಿರುತ್ತಾರೆ.

ಶರಣ ಸಂಕುಲದಿಂದಾಗಿ ಶರಣರು ಸಾಮಾಜಿಕ ಭದ್ರತೆ ಪಡೆದಿದ್ದರು.

23ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರು ದುಡಿಯುವ ಮತ್ತು ಕಾರ್ಮಿಕ ಸಂಘವನ್ನು ರಚಿಸುವ ಹಕ್ಕನ್ನು ಪಡೆದಿದ್ದಾರೆ.

ಶರಣರು ಸ್ವಯಂ ಕಾಯಕಜೀವಿಗಳಾಗಿದ್ದರು. ಬಸವಧರ್ಮದ ಮೂಲಕ ಎಲ್ಲರೂ ಒಂದಾಗಿದ್ದರು.

24ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರು ವಿಶ್ರಾಂತಿಯ ಹಕ್ಕನ್ನು ಪಡೆದಿದ್ದಾರೆ.

ಸ್ವತಂತ್ರ ಕಾಯಕದಿಂದಾಗಿ ಸಹಜವಾಗಿಯೆ ಶರಣರು ವಿಶ್ರಾಂತಿ ಪಡೆಯುತ್ತಿದ್ದರು.

25ನೇ ಅಂಶ:ಗುಣಮಟ್ಟದ ಬದುಕಿನ ಹಕ್ಕನ್ನು ಪ್ರತಿಯೊಬ್ಬರು ಪಡೆದಿದ್ದಾರೆ.

ಶರಣರು ಘನತೆವೆತ್ತ ಬದುಕನ್ನು ಬಾಳಿದರು.

26ನೇ ಅಂಶ: ಪ್ರತಿಯೊಬ್ಬರಿಗೂ ಶಿಕ್ಷಣ ಪಡೆಯುವ ಹಕ್ಕಿದೆ.



ಕಾಯಕಜೀವಿ ಶರಣರು ವಚನ ರಚನೆ ಮಾಡುವಷ್ಟು ಪ್ರತಿಭಾವಂತರಾಗಿದ್ದರು.

27ನೇ ಅಂಶ: ಸಮಾಜದ ಸಾಂಸ್ಕೃತಿಕ ಬದುಕಿನಲ್ಲಿ ಪಾಲ್ಗೊಳ್ಳುವ ಹಕ್ಕು ಪ್ರತಿಯೊಬ್ಬರಿಗೆ ಇದೆ.

ಜಾತಿ ಮತಗಳನ್ನು ಮೀರಿದ ಶರಣರು ಹೊಸ ಸಮಾಜದ ಸಂಸ್ಕೃತಿಯನ್ನು ನಿರ್ಮಿಸಿ ಇತಿಹಾಸ ಸೃಷ್ಟಿಸಿದರು.

28ನೇ ಅಂಶ: ಮಾನವ ಹಕ್ಕುಗಳ ಘೋಷಣೆ ಪ್ರಕಾರ ಸಾಮಾಜಿಕ ಮತ್ತು ಅಂತರಾಷ್ಟ್ರೀಯ ವ್ಯವಸ್ಥೆಯನ್ನು ಬಯಸುವ ಹಕ್ಕು ಪ್ರತಿಯೊಬ್ಬರಿಗೆ ಇದೆ.

ತಮ್ಮ ಸರ್ವಸಮಾನತೆಯ ಸಮಾಜ ಲೋಕದಲ್ಲಿ ಹಬ್ಬಲಿ ಎಂದು ಶರಣರು ಬಯಸಿದ್ದರು.

29ನೇ ಅಂಶ: ಸಮಾಜಕ್ಕೆ ಸೇವೆ ಸಲ್ಲಿಸುವ ಕರ್ತವ್ಯ ಪ್ರತಿಯೊಬ್ಬರದಾಗಿದೆ.

ಶರಣರು ದಾಸೋಹದ ಮೂಲಕ ಸಮಾಜ ಸೇವೆಯ ಕರ್ತವ್ಯ ಪಾಲನೆ ಮಾಡಿದರು.

30ನೇ ಅಂಶ: ಮೇಲೆ ತಿಳಿಸಿದ ಮಾನವ ಹಕ್ಕು ಮತ್ತು ಸ್ವಾತಂತ್ರ್ಯವನ್ನು ಹಾಳುಮಾಡುವಂಥ ವ್ಯಾಖ್ಯಾನ ಮಾಡಬಾರದು.

ಶರಣರು ತಮ್ಮ ಬಲಿದಾನ ಮಾಡಿದರೆ ಹೊರತು ತತ್ತ್ವಗಳಿಂದ ವಿಮುಖರಾಗಲಿಲ್ಲ.

'ಅಭಿವ್ಯಕ್ತಿ ಸ್ವಾತಂತ್ರ್ಯ ಆಮೇಲೆ ಸಾಮೂಹಿಕ ನಿರ್ಧಾರ.' ಇದು ಬಹಳ ಮುಖ್ಯವಾದುದು. ಅನುಭವ ಮಂಟಪದಲ್ಲಿ 770 ಅಮರಗಣಂಗಳಿದ್ದರು. ಅವರು ಅನುಭವ ಮಂಟಪ ಎಂಬ ಸಮಾಜೋದ್ಧಾರ್ಮಿಕ ಸಂಸ್ಥೆಯ ಸದಸ್ಯರು. 700 ಎಂ.ಪಿ.ಗಳು ಇರುವ ಯಾವ ಪಾರ್ಲಿಮೆಂಟೂ ಜಗತ್ತಿನಲ್ಲಿ ಇವತ್ತಿನವರೆಗೂ ಹುಟ್ಟಿಲ್ಲ. ಜಗತ್ತಿನಲ್ಲೇ ಅತಿದೊಡ್ಡ ಪಾರ್ಲಿಮೆಂಟ್ ಅಂದರೆ ಭಾರತದ ಪಾರ್ಲಿಮೆಂಟ್. ಇಲ್ಲಿ ಕೂಡ 770 ಎಂ.ಪಿ.ಗಳು ಇಲ್ಲ. ಅನುಭವ ಮಂಟಪದಲ್ಲಿ ಎಲ್ಲ ಸಮಾಜದಿಂದ ಬಂದ ಮಹಿಳೆಯರು ಕೂಡ ಇದ್ದರು. 71 ಶರಣೆಯರ ಹೆಸರುಗಳು ಸಿಗುತ್ತವೆ. ಅವುಗಳಲ್ಲಿ 33 ಮಹಿಳೆಯರ ವಚನಗಳು ಸಿಕ್ಕಿವೆ. ಆಗ ದೇಶದಲ್ಲಿ ಕೆಳವರ್ಗದವರಿಗೆ ಶಿಕ್ಷಣ ವ್ಯವಸ್ಥೆ ಇದ್ದಿದ್ದಿಲ್ಲ. ಜಗತ್ತಿನಲ್ಲಿ ವಯಸ್ಕರ ಶಿಕ್ಷಣ ವ್ಯವಸ್ಥೆ ತಂದವರು ಬಸವಣ್ಣನವರು. ಕೆಳಜಾತಿ, ಕೆಳವರ್ಗ ಮತ್ತು ಬೇರೆ ಕಡೆಗಳಿಂದ ಬಂದವರಿಗೆ ಕನ್ನಡ ಸಾಕ್ಷರರನ್ನಾಗಿ ಮಾಡಿದ ಕೀರ್ತಿ ಬಸವಣ್ಣನವರಿಗೆ ಸಲ್ಲುತ್ತದೆ. ಹೀಗೆ ವಯಸ್ಕರ ಶಿಕ್ಷಣ ಶರಣಸಂಕುಲದಿಂದಲೇ ಶುರುವಾಯಿತು. ಹೆಣ್ಣು ಮಕ್ಕಳು ಪ್ರಶ್ನಿಸುವುದು ಅಲ್ಲಿಂದಲೇ ಶುರುವಾಯಿತು. ನಮ್ಮ ಕಸಗುಡಿಸುವ ಸತ್ಯಕ್ಕೆ ವಚನಗಳನ್ನು ಬರೆದಾಗ 12ನೇ ಶತಮಾನದಲ್ಲಿ ಇಂಗ್ಲಿಷ್ ಭಾಷೆಯಲ್ಲಿ ಒಂದು ಸಾಲಿನ ಸಾಹಿತ್ಯ ಕೂಡ ಇದ್ದಿದ್ದಿಲ್ಲ. ಇದು ನಮ್ಮ ಶರಣರ ಬಹುದೊಡ್ಡ ಸಾಧನೆ. ಇಷ್ಟೊಂದು ಜನ ಮಹಿಳೆಯರು ಅನುಭವ ಮಂಟಪದಲ್ಲಿ ಭಾಗವಹಿಸಿದ್ದಾರೆ. ಪಾರ್ಲಿಮೆಂಟ್‌ಗೆ ಸ್ಪೀಕರ್ ಪರಿಕಲ್ಪನೆ ಕೊಟ್ಟವರು ಕೂಡ ಬಸವಣ್ಣನವರೇ ಆಗಿದ್ದಾರೆ. ಬಸವಣ್ಣನವರು ಅನುಭವ ಮಂಟಪ ಸ್ಥಾಪಿಸಿ, ಶೂನ್ಯಸಿಂಹಾಸನವಿಟ್ಟು ಕೆಳವರ್ಗದ ಮಹಾಜ್ಞಾನಿ ಅಲ್ಲಮಪ್ರಭುಗಳನ್ನು ತಂದು ಆ ಸಿಂಹಾಸನದ ಮೇಲೆ ಕೂಡಿಸಿದ್ದು ಇದೆಯಲ್ಲ ಇದು ದೇಶಕ್ಕೆ ಬಹಳ ದೊಡ್ಡ ಸಂದೇಶವನ್ನು ಕೊಡುವ ಸಾಮರ್ಥ್ಯವನ್ನು ಹೊಂದಿದೆ.

ನಾವು ಜಾತಿ ಜಾತಿ ಎಂದು ಸಾಯುತ್ತಿದ್ದೇವೆ. ದಿನವೂ ನೋಡುತ್ತಿದ್ದೇವೆ ದಲಿತ ಮಹಿಳೆಯರ ಕೊಲೆ ಆಗುತ್ತಿದೆ. ದಲಿತರ ಕೊಲೆ ಆಗುತ್ತಿದೆ. ಜಾತಿ ವ್ಯವಸ್ಥೆಯಿಂದ ಹಿಂಸೆ ಆಗುತ್ತಿದೆ. ಆದ್ದರಿಂದ ಬಸವಣ್ಣನವರು ನಟುವರ ಜನಾಂಗದ ಅಲ್ಲಮಪ್ರಭುಗಳನ್ನು ಅನುಭವ ಮಂಟಪ ಎಂಬ ಪಾರ್ಲಿಮೆಂಟಿನ ಸ್ಪೀಕರ್ (ಶೂನ್ಯಸಿಂಹಾಸನಾಧೀಶ್ವರ) ಮಾಡಿದರು. ಎಲ್ಲ ಜಾತಿಗಳಿಂದ, ಎಲ್ಲ ಸಮುದಾಯಗಳಿಂದ, ಎಲ್ಲ ಹಿನ್ನೆಲೆಯಿಂದ ಬಂದಂಥ 700 ಪ್ರತಿನಿಧಿಗಳು ಅಲ್ಲಿರುವ ವ್ಯವಸ್ಥೆ ಮಾಡಿದರು.

ಮಸೂದೆ ಕಾಯ್ದೆಯಾಗುವ ರೀತಿಯಲ್ಲಿ ಯಾವುದೇ ಶರಣನ ಒಂದು ವಚನ ಅನುಭವ ಮಂಟಪದಲ್ಲಿ 770 ಅಮರಗಣಂಗಳ ಒಪ್ಪಿಗೆ ಪಡೆದ ಮೇಲೆ ಹೊರಗೆ ಬರುತ್ತಿತ್ತು. ಆಮೇಲೆ ಅವರು ಆ ದಿನದ ಮುಖ್ಯವಾದ ಸಾಲನ್ನು ಗೋಡೆಯ ಮೇಲೆ ಬರೆಯುತ್ತಿದ್ದರು. ದೇಶದಲ್ಲಿ ಹೀಗೆ ಮೀಡಿಯಾ ಕೂಡ ಅವರೇ ಮೊದಲು ಶುರು ಮಾಡಿದರು. 12ನೇ ಶತಮಾನದಲ್ಲಿ ಎಷ್ಟೊಂದು ರೀತಿಯ ಸಾಧನೆಗಳಿದಾವಲ್ಲಾ ಆಶ್ಚರ್ಯವೆನಿಸುತ್ತದೆ. ಅಂಥ ಒಂದು ಚಿಂತನೆಯನ್ನು ನಾವು ಇವತ್ತು ಮಾಡಬೇಕಿದೆ.

ಪ್ರತಿಯೊಂದು ಶಬ್ದ ವಿವಿಧ ವಚನಗಳಲ್ಲಿ ಆಯಾ ಸಂದರ್ಭಕ್ಕೆ ತಕ್ಕಂತೆ ಅರ್ಥವಿಸ್ತಾರ ಹೊಂದುತ್ತ ಹೋಗುತ್ತದೆ. ಅಂತರಂಗದಲ್ಲಿ ವ್ರತ, ನೋಡಿ ವ್ರತದ ಪರಿಕಲ್ಪನೆ ಎಷ್ಟು ಅದ್ಭುತ ಇದೆ. ಇಲ್ಲಿ ವ್ರತ ಎಂಬುದು ಏನು ಮಾಡಬೇಕು ಅಥವಾ ಏನು ಮಾಡಬಾರದು ಎಂಬ ಸಂಕಲ್ಪವಾಗಿದೆ. ಅಂತರಂಗದ ವ್ರತ ಬಹಿರಂಗದಲ್ಲಿ ಆಚಾರವಾಗಿ ಕ್ರಿಯೆಗೆ ಇಳಿಯಬೇಕು. ಬರಿ ವ್ರತ ಇಟ್ಟುಕೊಂಡು ಯಾವುದೇ ಉಪಯೋಗವಿಲ್ಲ. ಇದು ಕೇವಲ ವಾಗ್ದೈವ್ಯತೆ ಎಂದು ಶರಣರು ಕರೆಯುತ್ತಾರೆ. ವಾಗ್ದೈವ್ಯತೆ ಎಂದರೆ ಮಾತಿನಲ್ಲೇ ಎಲ್ಲ. “ಸರ್ವೇಜನಾ ಸುಖಿನೋ ಭವಂತು.”, “ಆನೋ ಭದ್ರಾ ಕೃತವೋ ಯಂತು ವಿಶ್ವತಃ” ಅಂದರೆ ಎಲ್ಲ ಜನರು ಸುಖವಾಗಿರಲಿ ಮತ್ತು ಉದಾತ್ತ ವಿಚಾರಗಳು ನಮಗೆ ಎಲ್ಲೆಡೆಯಿಂದ ಬರಲಿ ಎಂದು ಹೇಳುವುದು. ಆದರೆ ಈ ಮಾತು ಕೃತಿಯಲ್ಲಿ ಇಲ್ಲದ ಕಾರಣಶರಣರು ಇಂಥ ವಾಗ್ದೈವ್ಯತೆಯನ್ನು ಒಪ್ಪಲಿಲ್ಲ. ಅಂತರಂಗದಲ್ಲಿ ವ್ರತ ಬಹಿರಂಗದಲ್ಲಿ ಆಚಾರ. ಶರಣರು ಸದ್ಗುಣಕ್ಕೆ ವ್ರತ ಎಂದು ಕರೆದರು. ಅದನ್ನು ಆಚಾರಣೆಗೆ ತಂದು ಸಾಮಾಜಿಕಗೊಳಿಸುವ ಮೂಲ ಮೌಲ್ಯವಾಗಿಸಿದ್ದಾರೆ.

ಇನ್ನು ಜಂಗಮವೇ ದೇವರೆಂದು ನಂಬಿದೆ ಎಂದು ಬಸವಣ್ಣನವರು ಹೇಳುತ್ತಾರೆ. ಜಂಗಮ ಅಂದರೆ ಸಮಾಜ. ಈ ಸಮಾಜವನ್ನೇ ನಾನು ದೇವರೆಂದು ತಿಳಿದುಕೊಳ್ಳುವೆ. ಕಾಯಕ, ಪ್ರಸಾದ, ದಾಸೋಹದ ಮೂಲಕ ನಾವು ಸ್ವಾವಲಂಬಿಯಾಗಬೇಕು. ಕಾಯಕ ಮಾಡಬೇಕು ಬಂದದ್ದನ್ನು ದೇವರ ಪ್ರಸಾದ ಎಂದು ಸ್ವೀಕರಿಸಬೇಕು, ಆಮೇಲೆ ಒಕ್ಕಮಿಕ್ಕಿದ್ದನ್ನೆಲ್ಲ ಸಮಾಜಕ್ಕೆ ಕೊಡಬೇಕು. ನಾನು ಆವಾಹ ಕರ್ಮಗಳ ಮಾಡಿದೊಡೆಯೂ ಅದರ ಫಲಭೋಗವ ನೀ ಕೊಡುವೆ ಎಂಬುದು ನಾ ಬಲ್ಲೆ. ನಿಮ್ಮ ಸೊಮ್ಮಿಗೆ ಅಂದರೆ ಶಿವನಿಧಿಗೆ ಸಲ್ಲಿಸುವೆನು ಎಂದು ಬಸವಣ್ಣನವರು ತಿಳಿಸಿದ್ದಾರೆ.

ಉದ್ದಂಡ ವೃತ್ತಿ ಕಾಯಕವಲ್ಲ. ಕಾಯಕ ಎಂದರೆ ಯೋಗ್ಯ ಉತ್ಪಾದನೆ. ಪ್ರಸಾದ ಎಂದರೆ ಸದ್ಭಳಿಕೆ. ದಾಸೋಹ ಎಂದರೆ ಸಾಮಾಜಿಕ ವಿತರಣೆ. ದಾರ್ಶನಿಕ ಬಸವಣ್ಣನವರು ದೊಡ್ಡ ಅರ್ಥಶಾಸ್ತ್ರಜ್ಞರೂ ಆಗಿದ್ದರು. ಆಡಳಿತ ತಜ್ಞರಾಗಿದ್ದು ಮನೋವಿಜ್ಞಾನಿಯಾಗಿದ್ದರು.

ಯೋಗ್ಯ ಉತ್ಪಾದನೆ, ಸದ್ಭಳಿಕೆ, ಯೋಗ್ಯ ಸಾಮಾಜಿಕ ವಿತರಣೆಯಾದಾಗ ಈ ಜಗತ್ತಿನಲ್ಲಿ ಯುದ್ಧಗಳು ಆಗುವುದಿಲ್ಲ. ಜಾತಿಗಳು ಇರುವುದಿಲ್ಲ. ಅಸಮಾನತೆ ಇರುವುದಿಲ್ಲ. ಎಂಬುದನ್ನು ಅವರು ತೋರಿಸಿಕೊಟ್ಟರು.

“ಕಳಬೇಡ ಕೊಲಬೇಡ ಹುಸಿಯ ನುಡಿಯಲು ಬೇಡ,

ಮುನಿಯಬೇಡ ಅನ್ಯರಿಗೆ ಅಸಹ್ಯ ಪಡಬೇಡ,

ತನ್ನ ಬಣ್ಣಿಸಬೇಡ ಇದಿರ ಹಳಿಯಲು ಬೇಡ.

ಇದೇ ಅಂತರಂಗ ಶುದ್ಧಿ, ಇದೇ ಬಹಿರಂಗ ಶುದ್ಧಿ.

ಇದೇ ನಮ್ಮ ಕೂಡಲಸಂಗಮದೇವರನೊಲಿಸುವ ಪರಿ.”

ಈ ಸಪ್ತಶೀಲ ಅಥವಾ ವ್ರತಗಳನ್ನು ನಾವೆಲ್ಲ ಆಚರಿಸಿದಾಗ ಅವು ಸಾಮಾಜಿಕ ಮೌಲ್ಯಗಳ ರೂಪು ತಾಳುತ್ತವೆ. ಈ ಸಪ್ತಶೀಲಗಳು ವಚನದ ಮೊದಲ ಭಾಗದಲ್ಲಿವೆ. ಈ ಏಳು ಶೀಲಗಳನ್ನು ಪಾಲಿಸಿದಾಗ ಏನಾಗುವುದು ಎಂಬುದನ್ನು ಮುಂದೆ ಹೇಳುತ್ತಾರೆ.

“ಇದೇ ಅಂತರಂಗ ಶುದ್ಧಿ, ಇದೇ ಬಹಿರಂಗ ಶುದ್ಧಿ.”ಇದು ವಚನದ ಎರಡನೇ ಭಾಗ.ನಾವು ದೇಶವನ್ನು ಸ್ವಚ್ಛಗೊಳಿಸಬೇಕಾದರೆ ಮೊದಲಿಗೆ ನಮ್ಮ ಅಂತರಂಗವನ್ನು ಸ್ವಚ್ಛಗೊಳಿಸಬೇಕು.ಒಳಗಡೆ ಸ್ವಚ್ಛ ಇರದಿದ್ದರೆ ಹೊರಗಡೆ ಸ್ವಚ್ಛ ಹೇಗಾಗುವುದು?ಸ್ವಚ್ಛ ಮನಸ್ಸುಗಳಿದ್ದಾಗ ಸ್ವಚ್ಛ ಭಾರತದ ನಿರ್ಮಾಣವಾಗುತ್ತದೆ. 130 ಕೋಟಿ ಮನಸ್ಸುಗಳು ಸ್ವಚ್ಛವಾದಾಗ ಇದು ಸಾಧ್ಯವಾಗುವುದು.

ವಚನದ ಮೂರನೇ ಭಾಗದಲ್ಲಿ “ಇದೇ ನಮ್ಮ ಕೂಡಲಸಂಗಮದೇವರನೊಲಿಸುವ ಪರಿ.”ಎಂದು ಹೇಳುತ್ತಾರೆ.ಇದುವೇ ಧರ್ಮದ ಪರಿಪೂರ್ಣತೆ. ಹೀಗೆ ಸಪ್ತಶೀಲಗಳನ್ನು ಆಚರಿಸುವುದರಲ್ಲಿ ಧರ್ಮದ ಪರಿಪೂರ್ಣತೆ ಇದೆ. ಇದರಿಂದ ನಾವು ಶುದ್ಧರಾಗುತ್ತೇವೆ, ನಮ್ಮ ಸಮಾಜ ಶುದ್ಧವಾಗುತ್ತದೆ.ನಮಗೆ ದೇವರನ್ನು ಒಲಿಸಲು ಬೇರೆ ದಾರಿಯಿಲ್ಲ. ನಮ್ಮ ಪೂಜೆ ಪುನಸ್ಕಾರಗಳು ಮುಂತಾದವೆಲ್ಲ ಇಲ್ಲಿ ಪ್ರಮುಖವಾಗಿಲ್ಲ. ಶೀಲ ಪಾಲನೆಯೇ ಕೂಡಲಸಂಗಮದೇವರನ್ನು ಒಲಿಸುವ ಕ್ರಮವಾಗಿದೆ. ಇದು ಬಸವಣ್ಣನವರ ಪರಿಕಲ್ಪನೆ.

ಹೀಗೆ ಬಸವಾದಿ ಪ್ರಮಥರು ನಡೆನುಡಿಯಲ್ಲಿ ಮಾನವ ಹಕ್ಕುಗಳ ಪ್ರತಿಪಾದಕರಾಗಿ ಕಂಗೊಳಿಸುತ್ತಿದ್ದಾರೆ.ಈ ವಿಚಾರಗಳು ಪಾಶ್ಚಿಮಾತ್ಯ ಜಗತ್ತಿಗೆ ಹೊಳೆಯಲು 19ನೇ ಶತಮಾನದ ವರೆಗೆ ಕಾಯಬೇಕಾಯಿತು.ಅಲ್ಲದೆ ಎರಡು ಮಹಾಯುದ್ಧಗಳನ್ನು ಎದುರಿಸಬೇಕಾಯಿತು. ಭಾರತದ ಸಂವಿಧಾನ ಕೂಡ ಈ ಮಾನವಹಕ್ಕುಗಳನ್ನು ಒಳಗೊಂಡಿರುವುದರಿಂದ ಬಸವಣ್ಣನವರ ವಚನಗಳು ಭಾರತ ಸಂವಿಧಾನದ ಜೀವಾಳವಾಗಿವೆ. ಬಸವಣ್ಣನವರ ವಚನಗಳಂತೆ ನಡೆದರೆ ಅಂತರಾಷ್ಟ್ರೀಯ ಮಟ್ಟದ ಮಾನವ ಹಕ್ಕುಗಳನ್ನು ಮತ್ತು ನಮ್ಮ ದೇಶದ ಸಂವಿಧಾನವನ್ನು ಏಕಕಾಲಕ್ಕೆ ಗೌರವಿಸಿದಂತಾಗುತ್ತದೆ. ಬಸವಣ್ಣನವರ ವಚನಗಳಿಗೆ ವಿರುದ್ಧವಾಗಿ ನಡೆದರೆ ಸಂವಿಧಾನ ಬಾಹಿರ ಕೃತ್ಯವಾಗುತ್ತದೆ.ಅಲ್ಲದೆ ಅಂತರಾಷ್ಟ್ರೀಯ ಮಾನವ ಹಕ್ಕುಗಳಿಗೆ ಅಪಮಾನ ಮಾಡಿದಂತಾಗುತ್ತದೆ. ಕಲ್ಯಾಣ ಹತ್ಯಾಕಾಂಡಕ್ಕೆ ಕಾರಣವಾದ ಹರಳಯ್ಯ ಮಧುವರಸರ ಮಕ್ಕಳ ಮದುವೆಯನ್ನು ಇಂದು ಅಂತರಾಷ್ಟ್ರೀಯ ಮಾನವ ಹಕ್ಕುಗಳು ಮತ್ತು ಭಾರತದ ಸಂವಿಧಾನ ಜೊತೆಯಾಗಿಯೆ ಗೌರವಿಸುತ್ತವೆ. ಅನುಭವ ಮಂಟಪದ ಮೂಲಕ ಸಂಸದೀಯ ಪ್ರಜಾಪ್ರಭುತ್ವದ ಬೀಜಗಳು ಈ ನೆಲದಲ್ಲಿ ಮೊಳಕೆ ಒಡೆದವು ಮತ್ತು ಮಾನವಹಕ್ಕುಗಳ ಹೂಗಳು ಅರಳಿದವು. ಹೀಗೆ ಬಸವಣ್ಣನವರು ಸಾಮಾಜಿಕ ನ್ಯಾಯದೊಂದಿಗೆ ಈ ನೆಲದ ಪ್ರಜಾಪ್ರಭುತ್ವ ಮತ್ತು ಮಾನವಹಕ್ಕುಗಳ ಮೂಲ ಪುರುಷರಾದರು.



ದಾಸ ಸಾಹಿತ್ಯದಲ್ಲಿ ಸಾಮಾಜಿಕ ಮತ್ತು ನ್ಯಾಯದ ಮೌಲ್ಯಗಳು

—ಬಾಲಸುಬ್ರಹ್ಮಣ್ಯ ಕಂಜರ್ಪಣೆ\*

**Social Values and Values of Justice in Dasa Literature**

**-Balasubrahmanya Kanjarpane**

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**Abstract**

In the native Indian jurisprudence, there was a notion of justice but not a concept of law. Traditional principle ensured equality before justice and did not provide for equality before the law. In the period of *Dasa* literature (15<sup>th</sup> and 16<sup>th</sup> century AD), monarchy believed in divine theory of kingship, and all properties belonged to the King. The only protection against a bad king was the belief in justice. Although prominent scholars in Dasa kuta were well-versed in Nyaya type of reasoning and argumentation, *Dasas* produced lucid literature in Kannada, comprehended and communicated the divine voice, and came close to the hearts of people like the Vachanakaras or Shivasharanas of 12<sup>th</sup> century. *Dasas* followed *Vedic* and *Puranik* tradition and concentrated on Madhwa and Visistadwaitha philosophy and sang in praise of all Hindu Gods and Goddesses. Theirs was a different stream than that of Bhashyakaras like Vijnaneshwara or commentators of *Smriti*. After almost three centuries of *Vachanas* movement when the social position was again deteriorating because of rigidity of caste, avarice of merchant class, patriarchy, narrow mindedness of priests and superstitions, the collective efforts of *dasa* tried to rejuvenate the values of fairness, humanism and equity through a medium of popular songs composed with music.

The *Dasas* paid attention to the theme of good governance as the factors of political instability and dominance of the powerful people with evil tendencies made life difficult to the truthful people and eased the wicked. Prayer for condoning the commission of offences was reflecting an effort of humanizing the justice administration system. *Dasas* had the strategy of reducing the crimes by enhancing the moral standards of people. They called for taking a bath in the *jnana thirth* by abandoning ego, greed and debauchery and by serving the society, parents, parents-in-laws and divine people. Both Purandara Dasa and Kanakadasa witnessed

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\* ವಕೀಲರು, ಸಿರಿ, ಬ್ರಾಹ್ಮಿನ್ ವ್ಯಾಲಿ, ಮಡಿಕೇರಿ, ಕೊಡಗು ಜಿಲ್ಲೆ 571201

the downfall of polity and arbitrary rule which made the people to migrate. They appealed to give up corruption and use of abusive language to others. They expressed precautions against decline of Vijayanagara dynasty.

Another socio-legal value championed by *Dasa* literature is equality. Both Purandara Dasa and Kanakadasa wrote kirthanas against discriminations based on caste and race. They pointed out discriminations within the *Dasa kuta* against the dasas of lower caste. They also condemned religion-based discriminations and treated Allah on the same pedestal as that of Hindu gods. Combining secularism with morality, harmony and social justice is an important value-based approach of *Dasa* literature.

Economic justice as the basis of legal principles governing relation between the money lender and borrower is a theme that can be found in *Dasa* literature. Dasas criticized the approach of greed, knocking the property of others and economic exploitations. Some of the references in kirthanas to treatment of thieves, drunkards, gamblers and adulterers reflect the embryos of legal principles. Happy family life without exploitative relations and distrusts is another theme found in kirthanas.

Ambivalence can be found in the approach of *Dasa* literature in the matter of feminism. Worship of goddesses and recognition of role of wives in changing the approach of avarice by the husbands and encouraging spiritualism and treating with respect can be found. There are also *Dasa* literature setting high standards of obedience by the wives to husbands and in-laws, loyalty to the spouse and hard work in the marital home. There is a *kirthana* by Kanakadasa criticizing the denial of opportunity of participating in moral norm making which has resulted in suppressing the aspirations of women and causing gender discrimination.

The purpose of Haridasa literature was to promote devotion to Lord Hari, metaphysics, social welfare, society free from various types of exploitations and superstitions, social harmony and moral uprightness. Their advocacy of pure and simple life of devotion is based on their deeper thoughts and noble approaches. In keeping the society's conscience morally alert at a time when Vachana influence had faded was a big contribution from which sprouted the socio-legal values of justice and welfare.

ನಮ್ಮ ಆಧುನಿಕ ಅಥವಾ ವರ್ತಮಾನದ ಕಾನೂನು ಎಷ್ಟರ ಮಟ್ಟಿಗೆ ಪಾಶ್ಚಾತ್ಯ ಅದರಲ್ಲೂ ಬ್ರಿಟಿಷ್ ಕಾನೂನು ಪದ್ಧತಿಯನ್ನು ಅನುಸರಿಸಿದೆಯೆಂದರೆ ನಮಗೆ ಸುಲಭವಾಗಿ ಅರ್ಥವಾಗುವ 'Socio Legal Values' ಎಂಬ ಆಂಗ್ಲ ಪದ ಸಮುಚ್ಚಯವು ಕನ್ನಡದಲ್ಲಿ ಅರ್ಥವಿಸಿಕೊಳ್ಳಬೇಕಾದರೆ ರಾಧಾಂತವನ್ನೆಬ್ಬಿಸುತ್ತದೆ. 'ಸಮಾಜೋನ್ಯಾಯಿಕ' ಎಂದು ಹೇಳಿದರೆ ಅದು 'Legal' ಎಂಬ ಪದಕ್ಕಿಂತ ಬೇರೇನೋ ಹೇಳುತ್ತದೆ. 'Legal' ಎಂದರೆ 'ಕಾನೂನು ಸಮ್ಮತ' ಅಥವಾ 'ಕಾನೂನು ರೀತ್ಯಾ' ಎಂದರ್ಥ. ಹಾಗೆ ನೋಡಿದರೆ ನಮ್ಮ 'ನ್ಯಾಯಾಂಗ' ಎಂಬ

ಪದವು ಆಂಗ್ಲ 'Judiciary' ಪದಕ್ಕೆ ಸಂವಾದಿಯಲ್ಲ. 'Judicial' ಬೇರೆ; 'Justice' ಬೇರೆ. ಪ್ರಾಯಃ 'Justice' ಎಂಬ ಪದಕ್ಕೆ 'ನ್ಯಾಯ' ಎಂದು ಬಳಸಬೇಕು. ಆದರೆ ನಾವು ರೂಢಿಯಲ್ಲಿ 'Judicial' ಎಂಬ ಪದಕ್ಕೆ 'ನ್ಯಾಯಿಕ' ಎಂದು ಬಳಸುತ್ತೇವೆ. ಅಧೀನ ನ್ಯಾಯಾಧೀಶರಿಗೆ 'Judge' (ತೀರ್ಪು ನೀಡುವವನು) ಅಥವಾ 'Judicial Officer' (ಇದಕ್ಕೆ ಅಷ್ಟೇನೂ ತೃಪ್ತಿಕರವಲ್ಲದ 'ನ್ಯಾಯಿಕ ಅಧಿಕಾರಿ ಎಂಬ ಪದ ಬಳಕೆಯಲ್ಲಿದೆ!) ಎನ್ನುತ್ತೇವೆ. ನ್ಯಾಯಾಧೀಶ, ನ್ಯಾಯಮೂರ್ತಿ ಈ ಪದಗಳು ಕನ್ನಡದಲ್ಲಿದ್ದರೆ ಅದಕ್ಕೆ ಪರ್ಯಾಯವಾಗಿ ಉಚ್ಚ ಮತ್ತು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಧೀಶರಿಗೆ 'Justice' ಎಂದು ಉಲ್ಲೇಖಿಸುತ್ತೇವೆ ಅಥವಾ ಸಂಬೋಧಿಸುತ್ತೇವೆ. ಈ ಕೆಲವು ಪದಗಳು ಸಮಾನಾರ್ಥದ ನ್ಯಾಯ ಪಡೆಯದಿರುವುದಕ್ಕೆ ಕಾರಣ ಅವುಗಳ ಸಾಂಸ್ಕೃತಿಕ ಹಿನ್ನೆಲೆ ಮತ್ತು ಪರಿಸರ. ನಮ್ಮ ಕಾನೂನಿನ ಮತ್ತು ನ್ಯಾಯಿಕ ಹಿನ್ನೆಲೆ. ನಮ್ಮಲ್ಲಿ ನ್ಯಾಯವೆಂಬ ಮೌಲ್ಯವಿತ್ತು. ಕಾನೂನಿರಲಿಲ್ಲ. ನ್ಯಾಯ ನಿರ್ಣಯಗಳಿದ್ದವು; ನ್ಯಾಯದ ಮುಂದೆ ಎಲ್ಲರೂ ಸಮಾನವೆಂಬ ಅಲಿಖಿತ ಮತ್ತು ಸಾಂಪ್ರದಾಯಿಕ ನೀತಿಯಿತ್ತು. ಕಾನೂನಿನ ಮುಂದೆ ಎಲ್ಲರೂ ಸಮಾನ ಎಂಬ ಪ್ರಕ್ರಿಯೆಯಿರಲಿಲ್ಲ.

ನಾನು ಹೇಳಬೇಕಾದ ಮಾತುಗಳಿಗೆ ಇದು ಹೇಗೆ ಅನ್ವಯಿಸುತ್ತದೆಯೆಂದು ನಾನು ವಿಷದಪಡಿಸಬೇಕಾಗಿದೆ. ದಾಸ ಸಾಹಿತ್ಯವೆಂಬುದು 15-16ನೇ ಶತಮಾನದ ಕೊಡುಗೆ. ಆಗ ಇದ್ದದ್ದು ರಾಜಸತ್ತೆ. ಯಥಾ ರಾಜಾ ತಥಾ ಪ್ರಜಾಃ ಒಂದೆಡೆಯಾದರೆ ರಾಜಾ ಪ್ರತ್ಯಕ್ಷ ದೇವತಾಃ ಇನ್ನೊಂದೆಡೆ. ಲೋಕನ್ಯಾಯ ಎಂಬ ಪದವನ್ನು ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ಪ್ರಜ್ಞಾಪೂರ್ವಕವಾಗಿ ಬಳಸಬೇಕು. ಏಕೆಂದರೆ ಆಗ ಇದ್ದದ್ದು ಭೂಪತಿ ನ್ಯಾಯ. ರಾಜನ ನ್ಯಾಯವೇ ದೇವರ ನ್ಯಾಯ. ಪ್ರಜೆಗಳು ಸ್ಥಿರ ಮತ್ತು ಚರ ಆಸ್ತಿಗಳನ್ನು ಹೊಂದಿದರೂ ಎಲ್ಲವೂ ರಾಜನಿಗೇ ಅಂದರೆ ದೇವರಿಗೇ. ಇಲ್ಲಿ ಆಸ್ತಿಗಳ ಕುರಿತು ಉಲ್ಲೇಖಿಸುವಾಗ ಅದಕ್ಕೆ ಇಂದಿನ ಅರ್ಥ ಸೇರದು. ಆಗ ಸ್ಥಿರ ಮತ್ತು ಅಸ್ಥಿರ ಮಾತ್ರ ಇದ್ದದ್ದು. ಶರಣರ ಕಾಲದ ಸ್ಥಾವರ-ಜಂಗಮದ ಹಾಗೆ. ಕೊನೆಗೂ ಸ್ಥಿರ ಎಂದರೆ ದೈವಿಕ ಮತ್ತು ಪಾರಮಾರ್ಥಿಕ. ದಾಸರೂ ಈ ಕುರಿತು 'ಹಿಂದೆ ಶತಕೋಟಿ ರಾಯರುಗಳಾಳಿದ ನೆಲನ..' ಎಂದು ಹಾಡಿದ್ದರು.

ರಾಜನ ಅನುವಂಶಿಕ ಹಕ್ಕನ್ನು ಪ್ರಜೆಗಳು ಮಾನ್ಯ ಮಾಡುತ್ತಿದ್ದ ಕಾಲ ಅದು. ಒಮ್ಮೆ ರಾಜನಾದನೆಂದರೆ ಎಲ್ಲರಿಗೂ ಅವನು ಹೊಣೆ. ರಾಜನು ಕೇಡಿಗನಾದರೆ ರಾಜ್ಯದಲ್ಲಿ ನ್ಯಾಯವಿಲ್ಲ. ಲಿಖಿತ ಹೋಗಲಿ, ಮೌಖಿಕ ಕಾನೂನೂ ಪಾಲನೆಗಾಗಿ ಇರಲಿಲ್ಲ. ನ್ಯಾಯವೇ ಎಲ್ಲರನ್ನೂ ಹರಸುವುದು, ದಂಡಿಸುವುದು ಪ್ರಚಲಿತ. ಇಂತಹ ಕಾಲದಲ್ಲಿ ರೂಢಿಯ, ಸಂಪ್ರದಾಯದ ನೀತಿ ಅನೀತಿಗಳು ಸಮಾಜವನ್ನು ಆಳುತ್ತಿದ್ದವು. ಮುಂದೆ 19ನೇ ಶತಮಾನದ ವರೆಗೂ ದಾಸಸಾಹಿತ್ಯವು ಬೆಳೆದುಬಂದರೂ ಅವೆಲ್ಲವೂ ಶ್ರೀಪಾದರಾಜರ, ವ್ಯಾಸರಾಯರ, ವಾದಿರಾಜರ, ಕನಕ-ಪುರಂದರರ ಕಾಲದ ದಾಸಸಾಹಿತ್ಯವಲ್ಲ. ಭಕ್ತಿಪಂಥದ ಬರೆಹಗಳು.

ದಾಸಸಾಹಿತ್ಯ ಎಂದಾಗ ಮಧ್ವಪಂಥ, ದ್ವೈತ, ಭಕ್ತಿ, ವೈಷ್ಣವರನ್ನು ಉಲ್ಲೇಖಿಸಿಯೇ ಹೇಳುತ್ತೇವೆ. ಹಾಗಾದರೆ ಆ ಕಾಲದಲ್ಲಿದ್ದ ಅದವೈತ ಮತ್ತು ವಿಶಿಷ್ಟಾದ್ವೈತ ಪಂಥ ಅಥವಾ ತತ್ವಗಳ ಜಿಜ್ಞಾಸೆ ಮಾಡಬೇಕಲ್ಲವೇ ಅನ್ನಿಸುತ್ತದೆ. ಹೌದು: ಕೆಲವಂಶಗಳನ್ನು ಗಮನಿಸಿದಾಗ ಕನಕದಾಸರು ವಿಶಿಷ್ಟಾದ್ವೈತದ ಬೆನ್ನುಹತ್ತಿದ್ದರು ಮತ್ತು ಕನಕ-ಪುರಂದರರು ಸೇರಿದಂತೆ ದಾಸಪಂಥದವರೆಲ್ಲರೂ ಬ್ರಾಹ್ಮಣರೇನಲ್ಲ ಎಂಬುದು ನೆನಪಾದಾಗ ಈ ವೈದೃಶ್ಯ ಸಸ್ಪಲ್ಮ ಮರೆಗೆ ಸರಿಯುತ್ತದೆ.

ಇಂತಹ ಸಂದರ್ಭದಲ್ಲಿ ನೆನಪಾಗುವುದು ಗುರು ವ್ಯಾಸರಾಯರ ಕುರಿತು ಪುರಂದರ ದಾಸರ ಒಂದು ಸುಳಾದಿಯ ಮೊದಲ ಎರಡು ಸಾಲುಗಳು:

‘ನ್ಯಾಯಾಮೃತ ತರ್ಕ ತಾಂಡವ ಚಂದ್ರಿಕೆ ಮೊದಲಾದ  
ನ್ಯಾಯಗ್ರಂಥಗಳ ರಚಿಸಿ ತನ್ನಯ ಭಕ್ತರಿಗಿತ್ತೆ’.

ವ್ಯಾಸರಾಯರು ಉದ್ಧಾಮ ಪಂಡಿತರು. ಅವರು ಬರೆದ ಗ್ರಂಥಗಳ ಪೈಕಿ (ಅದ್ವೈತಮತಖಂಡನರೂಪವಾದ ನಾಲ್ಕು ಪರಿಚ್ಛೇದಗಳ) ‘ನ್ಯಾಯಾಮೃತ’, (ವೈಶೇಷಿಕ ಮತಗಳ ಖಂಡನೆಗಾಗಿ ಬರೆದ ಮೂರು ಪರಿಚ್ಛೇದಗಳ) ‘ತರ್ಕತಾಂಡವ, ಮತ್ತು (ಜಯತೀರ್ಥರ ‘ತತ್ವ ಪ್ರಕಾಶಿಕಾ’ ಎಂಬ ಬ್ರಹ್ಮಸೂತ್ರ ಮಾಧ್ವಭಾಷ್ಯಟೀಕಾಗ್ರಂಥದ ಟಿಪ್ಪಣಿರೂಪ) ‘ತತ್ವ ಪ್ರಕಾಶಿಕಾ ತಾತ್ಪರ್ಯಚಂದ್ರಿಕಾ’ ಗಳ ಹೆಸರಿದೆ. ವ್ಯಾಸರಾಯರ ಈ ಮೂರು ಗ್ರಂಥಗಳಿಗೆ ಅವರ ಶಿಷ್ಯರಾದ ವಿಜಯೇಂದ್ರರು ಕ್ರಮವಾಗಿ ‘ಲಘು ಆಮೋದ’, ‘ಯುಕ್ತಿ ರತ್ನಾಕರ’, ಮತ್ತು ‘ನ್ಯಾಯಮೌಕ್ತಿಕಮಾಲಾ’ ಎಂಬ ಟೀಕಾಗ್ರಂಥಗಳನ್ನು ಬರೆದಿದ್ದಾರೆಂದು ತಿಳಿದಿದ್ದೇನೆ. ನ್ಯಾಯಗ್ರಂಥಗಳೆಂದರೆ ಬ್ರಹ್ಮಸೂತ್ರದಲ್ಲಿ ಬರುವ ಪ್ರಮೇಯಗಳ ಕುರಿತು, ಖಂಡನೆಗಾಗಿ ಸಿದ್ಧವಾದವುಗಳು. ಬಾದರಾಯಣರ ಬ್ರಹ್ಮಸೂತ್ರಕ್ಕೆ ‘ನ್ಯಾಯ ಪ್ರಸ್ಥಾನ’ವೆಂಬ ಹೆಸರಿದೆ. ನ್ಯಾಯದರ್ಶನದಲ್ಲಿ ವಾದವಿವಾದಗಳ ಪ್ರಕ್ರಿಯೆ ಬಹುಮಟ್ಟಿಗೆ ಇದೆ ಎನ್ನಲಾಗಿದೆ. ಕುರ್ತಕೋಟಿಯವರು ಹೇಳಿದಂತೆ

‘ವ್ಯಾಸಕೂಟದ ಪಂಡಿತರು ಖಂಡನ-ಮಂಡನಗಳ, ವಾದ-ವಿವಾದಗಳ ಸಂರಚನೆಯಲ್ಲಿ ನಿರತರಾಗಿದ್ದರು. ವಾದವಿವಾದಗಳ ಕಂಠತ್ರಾಣದಲ್ಲಿ ದೇವರ ದನಿ ಅವರಿಗೆ ಕೇಳಿಸುತ್ತಿರಲಿಲ್ಲ. ದೇವರಿಗೆ ದನಿ ಇದೆ ಎಂದು ಸಿದ್ಧಮಾಡಿ ತೋರಿಸಿದರೆ ಸಾಕಾಗಿತ್ತು. ದೇವರು ಗೀರ್ವಾಣ ಭಾಷೆಯನ್ನು ಮರೆತು ಕನ್ನಡದಲ್ಲಿ, ಪ್ರಾದೇಶಿಕ ಭಾಷೆಗಳಲ್ಲಿ ಮಾತಾಡತೊಡಗಿದಾಗ ಪಂಡಿತರಿಗಾದ ದಿಗಿಲು ಇನ್ನೂ ಹೋಗಿಲ್ಲ.’

ಹೀಗೆ ‘ನ್ಯಾಯ’ ಎಂಬ ಪದಕ್ಕೆ ಈಗಿರುವ ಅರ್ಥ ಹಿಂದೆ ಇರಲಿಲ್ಲ ಎಂದು ವ್ಯಾಖ್ಯಾನಿಸಬಹುದು. ಇಂದಿನ ಕಾನೂನಿಗೂ ನ್ಯಾಯನಿರ್ಣಯ ಪದ್ಧತಿಗೂ ಹಿಂದಿನ ಪದ್ಧತಿಗೂ ಸಂಬಂಧವಿದ್ದಂತೆ ಕಾಣುವುದಿಲ್ಲ. ಒಂದರ್ಥದಲ್ಲಿ ‘ನ್ಯಾಯವಾದಿ’ ಎಂಬ ಪದವಷ್ಟೇ ಈ ನಿಟ್ಟಿನಲ್ಲಿ ಅತೀ ಹತ್ತಿರದ ಅರ್ಥವನ್ನು ನೀಡಿದೆಯೆಂದು ಅನ್ನಿಸುತ್ತದೆ.

ದಾಸ ಸಾಹಿತ್ಯ ಸೃಷ್ಟಿಯಾದದ್ದು ಕ್ರಿ.ಶ.15-16ನೇ ಶತಮಾನದಲ್ಲಿ ಎನ್ನಲಾಗಿದೆ. ಆದರೆ ಭಕ್ತಿಪಂಥವು ಮೊದಲೇ ಇದ್ದಿರಬೇಕು. ಹಿಂದೂ ಧರ್ಮ ಅಥವಾ ಕಾನೂನಿನ ಮೂರು ಬೇರುಗಳೆಂದರೆ ಶ್ರುತಿ, ಸ್ಮೃತಿ ಮತ್ತು ಸಂಪ್ರದಾಯಗಳು. ಧರ್ಮಶಾಸ್ತ್ರದ ಮೂಲಪಠ್ಯಗಳನ್ನು ಭಾಷ್ಯ ಅಥವಾ ವ್ಯಾಖ್ಯಾನ, ನಿಬಂಧನೆಗಳು ಮತ್ತು ಸಂಪ್ರದಾಯವೆಂಬ ಮೂರು ವಿಭಾಗಗಳಾಗಿ ವಿಂಗಡಿಸಬಹುದೆಂದು ಹೇಳಲಾಗಿದೆ. ಮಿತಾಕ್ಷರ ಎಂದರೆ ಯಾಜ್ಞವಲ್ಕ್ಯ ಸಂಹಿತೆಯ ಭಾಷ್ಯ. ಅದನ್ನು ವಿಜ್ಞಾನೇಶ್ವರನು 11ನೇ ಶತಮಾನದ ಉತ್ತರಾರ್ಧದಲ್ಲಿ ಬರೆದರೆ ದಯಾಭಾಗವನ್ನು ಜೀಮೂತವಾಹನನು 12ನೇ ಶತಮಾನದಲ್ಲಿ ಬರೆದನು. ವಿದ್ವತ್ಪೂರ್ಣವಾದ ಈ ಪ್ರಮೇಯಗಳು ಶರಣರ ಸಮಾಜವನ್ನಾಗಲೀ ಶತಮಾನಗಳ ನಂತರ ಬಂದ ದಾಸಜೀವನವನ್ನಾಗಲೀ ಪ್ರಭಾವಿಸಲಿಲ್ಲವೋ ಅಥವಾ ಇವೆರಡೂ ಪ್ರತ್ಯೇಕ ಹಳಿಗಳಲ್ಲಿ (ವಿದ್ವತ್ತು ಮತ್ತು ಸಾಮಾನ್ಯತೆ) ಸಂಚರಿಸಿದವೋ ಎಂದು ಸ್ಪಷ್ಟವಾಗಿ ಹೇಳಲಾಗದು.

ಭಾಷೆಯನ್ನು ಸರಳೀಕರಿಸಿ ಜನರ ನಡುವೆ ಇದ್ದ ವಚನ ಸಾಹಿತ್ಯವು ದಾಸ ಸಾಹಿತ್ಯದ ಕಾಲಕ್ಕೆ ಯಾಕೆ ಮರೆಯಾಯಿತು ಎಂದು ಅರ್ಥವಾಗುವುದಿಲ್ಲ. ಆದರೆ ದಾಸರ ಕಾಲದಲ್ಲಿ ಹರಿಹರ, ರಾಘವಾಂಕ, ಕುಮಾರವ್ಯಾಸ, ಚಾಮರಸ ಮುಂತಾದವರು ಜನಜೀವನವನ್ನು ತಮ್ಮ ಕಾವ್ಯದಲ್ಲಿ ಬಿಂಬಿಸಿದರೂ ವಚನಸಂಭ್ರಮವು ಮರೆಯಾಗಿತ್ತು. ಇದ್ದರೂ ಅದು ಕಾದಭೂಮಿಯ ಗರಿಕೆಯಂತೆ ನೆಲದಡಿಯಲ್ಲಿದ್ದು ಮಳೆಗೆ ಕಾದಿತ್ತು. ಅದು ಮರುಕಳಿಸಬೇಕಾದರೆ ಆಧುನಿಕ ಅಧ್ಯಯನ ಮೂಡಬೇಕಾಯಿತು. ಆದ್ದರಿಂದ ಹೇಗೆ ವಚನಕಾರರು ಒಂದು ಸಮೂಹವಾಗಿ ತಮ್ಮ

ಕಾಲದ ಸಮಾಜದ ಟೀಕಾಕಾರರಾದರೋ ಹಾಗೆಯೇ ದಾಸರು ಸಮಾಜಕ್ಕೆ ಎಲ್ಲ ಮೌಲ್ಯಗಳನ್ನು ಪ್ರತಿಪಾದಿಸಬೇಕಾದ ಜವಾಬ್ದಾರಿಯನ್ನು ನಿರ್ವಹಿಸಿದರು. ಇದರಲ್ಲಿ ಅವರ ಟೀಕೆಗೆ ಮತ್ತು ಚಿಂತೆ-ಚಿಂತನೆಗೆ ಗುರಿಯಾದವುಗಳೆಂದರೆ ಸಾಮಾಜಿಕ ಅವ್ಯವಸ್ಥೆ. ಈ ಅಸ್ತವ್ಯಸ್ತತೆಗೆ ಕಾರಣವೆಂದರೆ ಸಾಮಾಜಿಕ ಶಿಸ್ತಿನ ನೀತಿಯ ಅಭಾವ.

ವಿಜಯನಗರ ಸಾಮ್ರಾಜ್ಯದ ವೈಭವ ದೂರದೇಶಗಳಿಗೆ ತಲುಪಿದ ಕಾಲ ಅದು. ವಿಜಯನಗರದಿಂದ ಸಾಕಷ್ಟು ಸಂಬಾರ ಜೀನಸುಗಳು, ಪರದೇಶಗಳಿಗೆ ಮಾರಾಟವಾಗುತ್ತಿದ್ದವು; ಇಂದಿನ ಪರಿಭಾಷೆಯಲ್ಲಿ ಹೇಳುವುದಾದರೆ 'ರಘು' ಆಗುತ್ತಿತ್ತು. ವಿದೇಶೀಯರು ವಿಜಯನಗರದ ವೈಭವವನ್ನು ಕೇಳಿ ಅಥವಾ ತಮ್ಮ ವ್ಯಾಪಾರದ ಅಗತ್ಯಗಳಿಗೆ ಚರಿತ್ರೆಯ ಕಾಲವೇ ಹೊರತು ಪೌರಾಣಿಕ ಕಾಲವಲ್ಲ. ವಿಜಯನಗರದ ಉಚ್ಛ್ರಾಯ ಸ್ಥಿತಿಯಲ್ಲಿ ದಾಸರು ಮೆರೆಯಲಿಲ್ಲ. ಆಲ್ಲಿದ್ದದ್ದು ಆಸ್ಥಾನದ ಕವಿರತ್ನಗಳು. ದಾಸರು ಮೆರೆಯುವ ಕಾಲಕ್ಕೆ ವಿಜಯನಗರವು ಅವನತಿಯತ್ತ ಸಾಗುತ್ತಿತ್ತು. ಆದ್ದರಿಂದ ಶ್ರೀನಿವಾಸನಾಯಕನು ಪುರಂದರದಾಸನಾಗುವುದಕ್ಕೆ ಕಾರಣವಾದ ವಿಷದ ಬಟ್ಟಲಿನ ಮೂಗುತಿ, ಕನಕದಾಸರಿಗೆ ಉಡುಪಿಯ ಶ್ರೀಕೃಷ್ಣನು ಬಾಗಿಲನು ತೆರೆಯುವ ಬದಲು ಗೋಡೆಯಲ್ಲಿ ಹೃದಯವನ್ನು ತೆರೆದು ಸೇವೆಯನು ಕೊಟ್ಟ ಕಥೆ, ಆಧುನಿಕತೆಯ ಬದಲಾವಣೆಯ, ಚರಿತ್ರೆಯ, ನಡುವೆಯೂ ಯಾರೋ ಒಬ್ಬನ ಭವ್ಯ ಮತ್ತು ಆಕರ್ಷಕ ಕಲ್ಪನೆಯೇ ಹೊರತು ವಾಸ್ತವಿಕವಾಗದು. ಕುರ್ತುಕೋಟಿಯವರು

'ಈ ಕಥೆಗಳ ಐತಿಹಾಸಿಕತೆಯ ಬಗ್ಗೆ ಅನುಮಾನ ಹುಟ್ಟಬಹುದು. ಆದರೆ ಮನುಷ್ಯಜೀವ ಅನಿರೀಕ್ಷಿತವಾಗಿ ತನ್ನ ಸಂಸ್ಕಾರಗಳನ್ನೆಲ್ಲ ಕಳೆದುಕೊಂಡು ಬೇರೆ ದಾರಿಯನ್ನು ಹಿಡಿದಾಗ ಈ ಅವಸ್ಥಾಂತರವನ್ನು ವಿವರಿಸಲು ಒಂದು ಕಥೆ ಬೇಕಾಗುತ್ತದೆ.'

ಎಂದಿದ್ದಾರೆ.

ಇದನ್ನು ನಾವು ಒಪ್ಪಲಿ ಬಿಡಲಿ, ನಾವು ಗಮನಿಸಬೇಕಾದದ್ದು ಆ ಕಾಲದಲ್ಲಿ ಈ ದಾಸರುಗಳು ಚಿತ್ರಿಸಿದ ವ್ಯವಹಾರಸ್ಥರ, ದೇಗುಲಗಳ ಬಳಿಯಿದ್ದವರ, ಜಿಪುಣತನ, ಧೂರ್ತತನದಂತಹ ಸಣ್ಣತನಗಳು.

ದಾಸರ ಕಾಲದಲ್ಲಿ ಆಡಳಿತ ಹೇಗಿತ್ತೆಂದು ಚರಿತ್ರಕಾರರು ಉಲ್ಲೇಖಿಸಿದ್ದಾರೆ. ವಚನಕಾರರನ್ನು ಬಾಧಿಸಿದಷ್ಟು ರಾಜಸ ಪ್ರಕ್ಷುಬ್ಧ ಸ್ಥಿತಿ ದಾಸರ ಕಾಲದಲ್ಲಿರದಿದ್ದರೂ ಸಾಮಾಜಿಕ ಮತ್ತು ನ್ಯಾಯಿಕ, ನೈತಿಕ ಬದುಕಿನ ಗುಣಮಟ್ಟವು ತೀವ್ರ ಕುಸಿದಿತ್ತೆಂದು ಕಾಣುತ್ತದೆ. ವಚನಕಾರರ ಕಾಲದಲ್ಲಿ ಜಾತಿ ಸಾಮರಸ್ಯವನ್ನು ಬೆಸೆಯಲು ವಚನಕಾರರು ತೀವ್ರ ಯತ್ನವನ್ನು ಮಾಡಿದ್ದರು. ಆದರೆ ದಾಸರು ಅಂತಹ ಪ್ರಯತ್ನಕ್ಕೆ ಹೋದದ್ದು ಗೊತ್ತಾಗುವುದಿಲ್ಲ. ಕೀರ್ತನೆಗಳು ಕ್ರಾಂತಿಗಾಗಿ ಸೃಷ್ಟಿಯಾಗಲಿಲ್ಲ. ಸಮಾಜದ ಹುಳುಕುಗಳ ನಡುವೆಯೂ ಭಕ್ತಿಯನ್ನು ಹಬ್ಬಿಸಿದರು. ಸಾಮಾಜಿಕ ವಿಷಮತೆಯನ್ನು ಟೀಕಿಸುತ್ತಲೇ ಅದಕ್ಕೆ ಬೆನ್ನು ಹಾಕಿ ಆಧ್ಯಾತ್ಮ, ಭಕ್ತಿ ಮುಂತಾದ ವೈಯಕ್ತಿಕ ಮಾದರಿಗಳ ಹರಿಕಾರರಾದರು. ಹೀಗಾಗಿ ಸಮಾಜವನ್ನು ಕಾರ್ಯೋನ್ಮುಖವಾಗಿ ತಿದ್ದಲು ಅವರಿಂದ ಸಾಧ್ಯವಾಗಲಿಲ್ಲ. ಬಿಜ್ಜಳನ ಕೊಲೆಯೊಂದಿಗೆ, ಹತಾಶರಾದ ಬಸವಣ್ಣನ ಲಿಂಗೈಕ್ಯತೆಯೊಂದಿಗೆ ವಚನಯುಗ ಭೂತಕ್ಕೆ ಸರಿಯಿತು. ವಚನಕಾರರು (ಮತ್ತು ವಚನಗಳನ್ನು ಬರೆಯದೆಯೂ ಅವರೊಂದಿಗೆ ಜೊತೆಯಾಗಿದ್ದವರು, ಭಾಗವಹಿಸುತ್ತಿದ್ದವರು, ಸಹಕರಿಸುತ್ತಿದ್ದವರು) ಅಪೇಕ್ಷಿಸಿದ ಸಾಮಾಜಿಕ, ನ್ಯಾಯಿಕ ಸಾಮರಸ್ಯವು ಕೊನೆಗೂ ನೆರವೇರಲೇ ಇಲ್ಲ. ಆದರೆ ದಾಸರ ಕಾಲವು ಮುಂದೆ ಮಠ-ಮಂದಿರಗಳ ಮೂಲಕ ಅಧ್ಯಾತ್ಮಕ್ಕೆಂತ ಹೆಚ್ಚಾಗಿ ಮಾಧ್ಯಮತವನ್ನು, ಬ್ರಾಹ್ಮಣ್ಯವನ್ನು, ಸನಾತನ ಸಂಪ್ರದಾಯವನ್ನು ಮೇಲೆತ್ತಿತು.

ದಾಸಸಾಹಿತ್ಯ ಬಹುಪಾಲು ಸಂಗೀತಕ್ಕೆ ಒಪ್ಪುವ ಕೀರ್ತನೆ ಮುಂತಾದ ಪದ್ಯರೂಪದಲ್ಲಿದೆ. ಆದ್ದರಿಂದ ಸಹಜವಾಗಿಯೇ ವಿವರಣೆಗಳು ಸಂಕ್ಷಿಪ್ತವಾಗಿವೆ. ಇವು ವಚನಗಳಂತೆ ಕನ್ನಡ ರೂಪದಲ್ಲಿದೆ. ಸಂಸ್ಕೃತದಿಂದ ದೂರವಿದ್ದದ್ದು ದಾಸರುಗಳಿಗೆ ಜನರ ಸಮೀಪವಿರುವುದಕ್ಕೆ ಅನುಕೂಲವಾಯಿತು. ಈ ದೃಷ್ಟಿಯಿಂದ ವಚನಗಳಿಗೆ



ದಾಸ ಸಾಹಿತ್ಯವನ್ನು ಹೋಲಿಸಬಹುದು. ಸಂಪ್ರದಾಯದ ಸುಳಿಯ ನಡುವೆ ಉದಿಸಿದ ದಾಸರುಗಳು ನೇರ ಚಳುವಳಿ ಹೂಡಲಿಲ್ಲ. ತಮ್ಮ ಕೀರ್ತನೆಗಳ ಮತ್ತಿತರ ಪದ್ಯಮಾಧ್ಯಮಗಳ ಮೂಲಕ ಸಮಾಜದ ವಿಷಮತೆಯನ್ನು ಟೀಕಿಸಿದರು. ಈ ಪೈಕಿ ದಾಸ ಸಾಹಿತ್ಯದ ಹೊರತಾದ ಕನ್ನಡ ಕಾವ್ಯ ಪರಂಪರೆಯ ಮೂಲಕ ಛಂದೋಬದ್ಧವಾಗಿ ಬರೆದು ಶುದ್ಧ ಮತ್ತು ಉತ್ತಮ ಸಾಹಿತ್ಯನಿರೀಕ್ಷಿಸಿಕೊಂಡವರು ಕನಕದಾಸರೊಬ್ಬರೇ.

16ನೇ ಶತಮಾನದ ದಾಸ ಸಾಹಿತ್ಯದಲ್ಲಿ ಸಾಮಾಜಿಕ ಓರೆಕೋರೆಗಳು, ಅಂಕುಡೊಂಕುಗಳ ಕುರಿತಂತೆ ತೀವ್ರ ಮತ್ತು ಕೆಲವೊಮ್ಮೆ ವಿಷಾದಕರ ಟೀಕೆಗಳಿವೆ. ವ್ಯಾಸರಾಯ, ವಾದಿರಾಜ, ಶ್ರೀಪಾದರಾಯರ ಶಿಷ್ಯ ವೃತ್ತಿಯ ದಾಸರೇ ಹೆಚ್ಚು. ಇವರ ಪೈಕಿ ವ್ಯಾಸರಾಯಸ್ವಾಮಿಗಳ (ಇವರನ್ನು ವ್ಯಾಸತೀರ್ಥರೆಂದು ಕರೆಯುವುದು ವಾಡಿಕೆ) ಶಿಷ್ಯರಾಗಿದ್ದ ಕನಕ-ಪುರಂದರರು ಹೆಚ್ಚು ಪ್ರಸಿದ್ಧರು. ಕನಕದಾಸರು (1491-1580) ಆಡಳಿತದ ಭಾಗವಾಗಿದ್ದವರು. ಯುದ್ಧದ ಸಾಮಾಜಿಕ ಸಂಕಟ ಮತ್ತು ವೈಯಕ್ತಿಕ ಸಂಕಟ ಇವೆರಡನ್ನೂ ಅನುಭವಿಸಿ ದಾಸರಾದವರು. ಭಗವಂತನ ಪಾದಾರವಿಂದ ಸೇವೆಯೆಂಬ ವ್ಯಾಪಾರವನ್ನು ಪುರಂದರ ದಾಸರು ((1485-1565) ವ್ಯಾಪಾರ ವೃತ್ತಿಯವರು. ಸಂಪತ್ತಿನ ನೌಕೆಯಿಂದ ಸಮುದ್ರಕ್ಕೆ ಹಾರಿದವರು. ಇಬ್ಬರೂ ಸಾಮಾಜಿಕ ಹಿನ್ನೆಲೆಯವರು. ಕುಮಾರವ್ಯಾಸ ಇವರಿಗಿಂತ ಒಂದು ತಲೆಮಾರಿನಷ್ಟಾದರೂ ಹಿರಿಯರು. (ಕೆಲವರು ಇವರು ಸಮಕಾಲೀನರೆಂದು ಹೇಳುವುದುಂಟು.) ಹಾಗೆಯೇ ವಿಠಲದಾಸರು, ಗೋಪಾಲದಾಸರು, ವೆಂಕಟದಾಸರು ಹೀಗೆ ಒಂದೆರಡು ಶತಮಾನಗಳ ಕಾಲದ ಶ್ರೇಷ್ಠ ದಾಸಕೋಟಿಯ, ದಾಸಸಾಹಿತ್ಯದ, ಪರಂಪರೆಯೇ ಇದೆ. ಅವರ ಕಾಲದಲ್ಲಿ ಅವರು ಏನು ಮಾಡಿದ್ದರು ಎಂಬುದನ್ನು ಈ ಸಾಹಿತ್ಯ ತೋರಿಸಲಾರದು. ಆದರೆ ಅವರ ಬರೆಹಗಳು ಅವರ ಕಾಲದ ಈ ವಿಷಮತೆಯನ್ನೂ ಅವರು ಇದನ್ನು ಸುಧಾರಿಸಲು ಸೂಚಿಸಿದ ಮಾರ್ಗಗಳನ್ನೂ ದರ್ಶಿಸಿದೆ. ಉದಾಹರಣೆಗೆ ಪುರಂದರದಾಸರು

‘ಸತ್ಯವಂತರಿಗಿದು ಕಾಲವಲ್ಲ|

ದುಷ್ಟ ಜನರಿಗೆ ಸುಭಿಕ್ಷ ಕಾಲ|

..

ಧರ್ಮ ಮಾಡುವಗೆ ನಿರ್ಮೂಲವಾಗುವ ಕಾಲ|

ಕರ್ಮಪಾತಕರಿಗೆ ಬಹುಸೌಖ್ಯ ಕಾಲ’

ಎಂದರು. ಹಲವು ಶತಮಾನಗಳ ಹಿಂದೆ ದಾಸರು ದಾಖಲಿಸಿದ ಇಂತಹ ಸಮಾಜವನ್ನು ಕಂಡಾಗ ಬದಲಾವಣೆಯೆಂದರೆ ಶಿಥಿಲವಾಗುವುದು ಎಂಬ ಮಾತಿನಂತೆ ಈಗ ಇಷ್ಟೊಂದು ವಿಷಮತೆಯಿರುವುದು ಹೆಚ್ಚೇನಲ್ಲ ಅನ್ನಿಸುತ್ತದೆ. ಆ ಕಾಲದಲ್ಲೇ ದಾಸರು

‘ಅಪರಾಧಗಳ ಕ್ಷಮಿಸೋ’

ಎಂದರು.

ಇಷ್ಟಕ್ಕೂ ಕಾನೂನು ಎಂದರೇನು? ನಿಷೇಧರೂಪವಾದದ್ದು. ತಪ್ಪುಗಳ ಪಟ್ಟಿ ಮಾಡಿ ಅದಕ್ಕೆ ಶಿಕ್ಷೆ ಹಾಗೂ ಬಲಿಪಶುವಿಗೆ ಪರೋಕ್ಷ ನ್ಯಾಯದ ಪರಿಹಾರ. ಅಪರಿಹಾರ್ಯವಾದ ತಪ್ಪುಗಳಿಗೆ ಯಾವ ಶಿಕ್ಷೆಯೂ ಸಾಲದು. ಕೊಲೆಗಾರನಿಗೆ ಮರಣದಂಡನೆ ನೀಡಬಹುದು. ಆದರೆ ಹೋದ ಜೀವ ಬರದು. ಇನ್ನೊಂದು ಸಾವು, ಅಷ್ಟೇ. ದಾಸರು ಈ ಅಪರಾಧಗಳನ್ನು ತಗ್ಗಿಸಲು ಯತ್ನಿಸಲು ಸರಿದಾರಿಯನ್ನು ಹೇಳುತ್ತ ಹೋದರು. ಪುಣ್ಯ-ಪಾಪದ ನೀತಿ ಹೇಳಿದರು.

‘ಸ್ನಾನ ಮಾಡಿರಯ್ಯ ಚ್ಚಾನತೀರ್ಥದಲಿ ನಾನು ನೀನೆಂಬಹಂಕಾರವನು ಬಿಟ್ಟು’

ಎಂಬ ಹಾಡು ಮುಂದೆ ತನ್ನೊಳು ತಾನು ತಿಳಿದರೆ, ಅನ್ಯಾಯಗಾರಿ ಕಳೆದರೆ, ಅನ್ಯಾಯವಾಡದಿದ್ದರೆ, ಪರಸತಿಯ ಬಯಸದಿದ್ದರೆ, ಪರನಿಂದೆ ಮಾಡದಿದ್ದರೆ, ಪರದ್ರವ್ಯ ಅಪಹರಿಸದಿರೆ, ಪರತತ್ವ ತಿಳಿದುಕೊಂಡರೆ, ತಂದೆತಾಯಿಗಳ ಸೇವೆ, ಅತ್ತೆಮಾವನ ಸೇವೆ, ಭರ್ತನ ಮಾತು ಕೇಳಿದರೆ, ವೇದಶಾಸ್ತ್ರಗಳನೋದಿದರೆ, ಭೇದಾಭೇದ ತಿಳಿದರೆ, ಸಾಧುಸಜ್ಜನರ ಸಂಗ-ಇವೆಲ್ಲವೂ ಸ್ನಾನ ಎನ್ನುತ್ತದೆ. ಬದುಕಲು ಬೇಕಾದ ಇತ್ಯಾತ್ಮಕವಾದ ಮೌಲ್ಯಗಳನ್ನು ಬಿಟ್ಟು ಯಾವಾಗ ದಂಡವಿದಾನದ ಕಾನೂನು ಪ್ರವೇಶಿಸಿತೋ ಆಗ ನೇತ್ಯಾತ್ಮಕತೆ ಕಾಲಿಟ್ಟಿತು. ‘ಇಲ್ಲಿ ಧೂಮಪಾನ ನಿಷೇಧಿಸಿದೆ’ ಎಂದರೆ ಸಿಗರೇಟು ನೆನಪಾಗುತ್ತದೆ. ‘ಸದ್ಗು ಮಾಡಬೇಡಿ’ ಎಂದರೆ ಮಾತನಾಡುವರು ಜನರು.

ವಿಜಯನಗರ ಸಾಮ್ರಾಜ್ಯವು ಉಚ್ಚಾಯ ಸ್ಥಿತಿಯಲ್ಲಿದ್ದಾಗ ಹುಟ್ಟಿದ ಈ ಇಬ್ಬರು ದಾಸರೂ ಸಾಮಾಜಿಕ ಅವನತಿಯ ಕಾಲದಲ್ಲೇ ಈ ಇಬ್ಬರೂ ತೀರಿಕೊಂಡರು. ಆಗಲೂ ರಾಯ ಮುನಿಯುತ್ತಿದ್ದ. ಮುನಿದರೆ ಪ್ರಜೆ ರಾಜ್ಯಭ್ರಷ್ಟನಾಗುತ್ತಿದ್ದ. ಕನಕದಾಸರು ಇದನ್ನೇ

‘ರಾಯ ಮುನಿದರೆ ಮತ್ತೆ ರಾಜ್ಯವನು ಬಿಡಬಹುದು’

ಎಂದು ಬರೆದಿದ್ದಾರೆ.

ಧರ್ಮದ ಹೆಸರಿನಲ್ಲಿ ಜಾತಿ ಮತ್ತು ಮತ ಪದ್ಧತಿ ತನ್ನ ಕೇಡುಗಳನ್ನು ಇಂದು ಭಯಾನಕವಾಗಿ ಪ್ರದರ್ಶಿಸುತ್ತಿದ್ದರೆ ಅದು ಭಾರತೀಯ ಸಂಸ್ಕೃತಿಯಲ್ಲೇ ತನ್ನ ಕೊಳೆತ ಬೇರನ್ನು ಊರಿಕೊಂಡಿದೆಯೆನ್ನಬಹುದು. ಪುರಂದರದಾಸರ ಕಾಲದಲಿ ಮಾತ್ರವಲ್ಲ ವಚನಕಾರರ ಕಾಲದಲ್ಲೇ ಅದಿತ್ತು. ಇವುಗಳನ್ನು ಶುದ್ಧ ಭಾರತೀಯ ಪ್ರವೃತ್ತಿಯೆನ್ನಬೇಕೋ ಪ್ರಾಣಿಜನ್ಯ ವಿಕೃತಿಯೆನ್ನಬೇಕೋ ತಿಳಿಯದಾಗಿದೆ. ಪುರಂದರದಾಸರು ಸೂಚ್ಯವಾಗಿ

‘ನಾನಾ ವರ್ಣದ ಆಕಳು ಅದು|  
ನಾನಾ ವರ್ಣದ ಕ್ಷೀರವೇನೋ|’

ಎಂದು, ಮತ್ತು ವಾಚ್ಯವಾಗಿ

‘ಆವ ಕುಲದವನಾದರೇನು|  
ಆವನಾದರೇನು ಆತ್ಮ|  
ಭಾವವರಿತ ಮೇಲೆ’

ಎಂದಿದ್ದಾರೆ.

ಭ್ರಷ್ಟಾಚಾರವೆಂಬ ಪದ ಇಂದು ನಿನ್ನೆಯದಲ್ಲ. ಆದರೆ ಅದರ ಆಯಾಮಗಳು ಬೇರೆ ಬೇರೆ ಇದ್ದಿರಬಹುದು. ಪುರಂದರದಾಸರ ಒಂದು ಹಾಡು ‘ಭ್ರಷ್ಟರಾದರು ಮನುಜರು’ ಎಂದೇ ಆರಂಭವಾಗುತ್ತದೆ. ಈ ಹಾಡಿನಲ್ಲಿ ಬೇರೇ ಬೇರೆ ರೂಪಿನ ಭ್ರಷ್ಟತನದ ವಿವರಗಳಿವೆ. ಮನಸ್ಸನ್ನು ಕಂಗೆಡಿಸುವ

‘ಬಡವರಿಗೆ ಕೊಟ್ಟ ನುಡಿ ನಡೆಸದವ ಭ್ರಷ್ಟ’,  
‘ಸೇರದವರೊಡನೆ ಸ್ನೇಹಿಸುವ ಭ್ರಷ್ಟ’

ಇತ್ಯಾದಿ ಇಂದಿನ ರಾಜಕಾರಣಿಗಳ, ಜನಪ್ರತಿನಿಧಿಗಳನ್ನು ಸಂಕೇತಿಸುವ ನುಡಿಗಳಿವೆ.

‘ಆಚಾರವಿಲ್ಲದ ನಾಲಿಗೆ ನಿನ್ನ|  
ನೀಚಬುದ್ಧಿಯ ಬಿಡು ನಾಲಿಗೆ’

ಎಂಬ ಸಾಲುಗಳು ಇಂದು ಸಾರ್ವಜನಿಕ ಜೀವನದಲ್ಲಿ ಪರಸ್ಪರ ಬೈದಾಡಿಕೊಂಡು ಕೆಸರೆರೆಚುವವರಿಗೆ ಅನ್ವಯಿಸುವಂತಿದೆ.

'ಮೂರ್ಖರಾದರು ಜನರು ಲೋಕದೊಳಗೆ' ಎಂಬ ಹಾಡಿನಲ್ಲಿ ಮೂರ್ಖತನದ ಪಟ್ಟಿಯೇ ಇದೆ:

'ನೆಂಟರಿಗೆ ಸಾಲ ಕೊಡುವಾತ ಮೂರ್ಖ'  
 'ಒತ್ತೆಯಿಲ್ಲದೆ ಸಾಲ ಕೊಡುವವನು ಮೂರ್ಖ'  
 'ಕೊಟ್ಟ ಸಾಲವ ಕೊಡದ ನಾಯಿ'  
 'ಇಟ್ಟ ಭಾಷೆಯ ತಪ್ಪುವ ನಾಯಿ'

ಕನಕದಾಸರ ರಾಮಧಾನ್ಯ ಚರಿತ್ರೆಯಲ್ಲಿ ಆಗಿನ ಶ್ರೀಮಂತ ಧಾನ್ಯವಾದ ಅಕ್ಕಿ ಮತ್ತು ಬಡವರ ಧಾನ್ಯವಾದ ರಾಗಿ ಇವುಗಳನ್ನು ಹೋಲಿಸಿ ರಾಗಿಯೇ ಶ್ರೇಷ್ಠವೆಂದು ಕಾವ್ಯರೂಪದಲ್ಲಿ ಹೇಳಿದೆ. ಇದೊಂದು ರೀತಿಯ ಸುಧಾರಣಾ ಮತ್ತು ಪ್ರಗತಿಪರ ಕಾವ್ಯ.

ದಾಸರ ಕಾಲದಲ್ಲಿ ಇಸ್ಲಾಮ್ ಭಾರತದಲ್ಲಿ ಸಾಕಷ್ಟು ವ್ಯಾಪಕವಾಗಿ ಬೆಳೆದಿತ್ತು. ಅವರು ಸಮಾಜದ ಭಾಗವಾಗಿದ್ದರು; ಬೆರೆತಿದ್ದರು. ಸರ್ವಧರ್ಮ 'ಸಹಿಷ್ಣುತೆ' ಮಾತ್ರವಲ್ಲ, 'ಸಮಭಾವ'ವೂ ಇತ್ತು. ಪುರಂದರ ದಾಸರ ಹಾಡೊಂದರಲ್ಲಿ

'ಅರಿತು ಬಂದೆನಲ್ಲಿ, ಪುರಂದರ ವಿಠಲನಲ್ಲದಿಲ್ಲಲ್ಲಾ'

ಎಂದೂ,

'ಅಲ್ಲಾ ಖುದಾ ಎಂದು ಆತ್ಮದಲಿ ತಿಳಿಯದೆ  
 ಮುಲ್ಲ ಶಾಸ್ತ್ರದ ನೆಲೆಯ ತಾನರಿಯದೆ',

ಎಂದೂ,

'ಅರಿಯದೆ ಬಂದೆವು ಕಿಮ್ನಾನ್, ಪರಿಹರಿಸಯ್ಯ ಬಮ್ನಾನ್,  
 ಪರಿಯಿಂದಲೆ ಹರಿ ಹರಿ ಎಂದರಿದುರಿತದ ಭಯ ಒಂದಿಲ್ಲವಲ್ಲಾ'

ಎಂಬ ಸಾಲುಗಳಿವೆ.

ಐದು ಶತಮಾನಗಳಿಂದ ಬಂದಿರುವ ಈ ಜಾತ್ಯತೀತತೆ ಆಗಿನ ಸಾಮಾಜಿಕ ಲೋಕ ನ್ಯಾಯವನ್ನೂ ಹೇಳುತ್ತದೆ.

ಇವೆಲ್ಲ ಕಾನೂನಿನ ಪರಿಧಿಯನ್ನು ದಾಟಿದ ವ್ಯಾಪ್ತಿಗಳು. ವಿಜಯನಗರದ ಇಳಿಕೆಯ ಕಾಲದಲ್ಲಿ ದಾಸರು

'ನೆಚ್ಚಿದಿರಿ ಈ ಭಾಗ್ಯ ಸ್ಥಿರವಲ್ಲ'

ಎಂದು ಮುನ್ನೆಚ್ಚಿಕೆಯನ್ನು ನೀಡಿದ್ದರು. ಮುಂದೆ ನಡೆದದ್ದು ಸರ್ವನಾಶ. ಬಿಜಾಪುರದ ಸುಲ್ತಾನರ ವಿಜಯದೊಂದಿಗೆ ಸುಖೀಸಾಮ್ರಾಜ್ಯದ ಕನಸು ಹರಿಯಿತು. ದಾಸರು

'ಭಾವಿಸಿದ್ದೆಲ್ಲ ಭೂಮಿ ಪಾಲಾಯಿತು,  
 ಸರಸ ಸಂಸಾರದ ಸವಿ ಹಾರಿಹೋಯಿತು,'

ಎಂದರು.

ಕನಕದಾಸರ ಕಾಲದಲ್ಲೇ ಕುಲ, ಜಾತಿ, ಮತ ಇವುಗಳ ಆಧಾರದಲ್ಲಿ ವಿವಾದ ನಡೆಯುತ್ತಿತ್ತು. ಮೇಲುಕೀಳುಗಳ ಅಂತರ ಸ್ಪಷ್ಟವಿದ್ದಿರಬೇಕು. ಸ್ವತಃ ಕೆಳಜಾತಿಯವನೆನಿಸಿಕೊಂಡಿದ್ದ ಕನಕದಾಸರು

'ನಾವು ಕುರುಬರು ನಮ್ಮ ದೇವರೋ ಬೀರಯ್ಯ,  
 ಕಾವ ನಮ್ಮಜ್ಜ ನರಕುರಿಯ ಹಿಂಡುಗಳಿ'

ಎಂದು ಹಾಡಿ 'ನರಕುರಿಯ ಹಿಂಡುಗಳ' ಎಂಬ ಬಳಕೆಯ ಮೂಲಕ ಮನುಷ್ಯನ ದಡ್ಡತನದ ಕುರಿತು ಖಾರವಾಗಿ ಪ್ರತಿಕ್ರಿಯಿಸಿದರು.

ಸಮಾಜಕ್ಕೆ

'ಕುಲಕುಲವೆಂದು ಬಡಿದಾಡದಿರಿ ನಿಮ್ಮ!  
ಕುಲದ ನೆಲೆಯನೇನಾದರೂ ಬಲ್ಲಿರಾ'

ಎಂದು ಟೀಕಿಸಿದರು. ಅನಂತರ

'ಕುಲಕುಲ ಕುಲವೆನ್ನುತಿಹರು!  
ಕುಲವ್ಯಾವುದು ಸತ್ಯಸುಖವುಳ್ಳ ಜನರಿಗೆ'

ಎಂದು ಹಾಡಿದರು. ಡಾಂಭಿಕತನವನ್ನು ಸಹಿಸದೆ

'ಕೆಟ್ಟ ಕೂಗನು ಕೂಗಿ ಹೊಟ್ಟೆಯನು ಹೊರೆವಂಥ!  
ಹೊಟ್ಟೆಗುಡುಮಗಳೆಲ್ಲ ಪರಮ ವೈಷ್ಣವರೆ?'

ಎಂದೂ

'ಅಲ್ಲಾ ಖುದಾ ಎಂಬ ಅರ್ಥವನು ಅರಿಯದೆ!  
ಮುಲ್ಲಾ ಶಾಸ್ತ್ರದ ನೆಲೆಯ ಗುರುತರಿಯದೆ'

ಮುಂತಾಗಿ ದನಿಯೆತ್ತಿದರು.

ಇತರರು ಹೋಗಲಿ, ಕನಕದಾಸರಂತಹವರೇ ದಾಸರ ಕುರಿತು ಮೇಲ್ವಾರ್ತಿಯ ಜನರು ಹೇಗೆ ನಡೆದುಕೊಳ್ಳುತ್ತಿದ್ದರೆಂಬುದನ್ನು ನೋಂದುಕೊಂಡು ಹೀಗೆ ಹೇಳಿದರು:

'ಕನಕದಾಸನ ಮೇಲೆ ದಯಮಾಡಲು, ವ್ಯಾಸ!  
ಮುನಿಮಠದ ಜನರೆಲ್ಲ ದೂರಿಕೊಂಬುವರೊ'

ದಾಸರ ಪದಗಳಲ್ಲಿ ನ್ಯಾಯದರ್ಶನವನ್ನೊದಗಿಸುವ ಸಾಕಷ್ಟು ಉಕ್ತಿ-ಸೂಕ್ತಿಗಳು ಲಭ್ಯ: ಕಂಠೀರಾವ್ ಇಂಥದೊಂದು ಪಟ್ಟಿಯನ್ನೇ ಮಾಡಿದ್ದಾರೆ:

'ಕಳ್ಳನೊಳ್ಳಿದನಲ್ಲ ಕಳ್ಳ ಸೊಕ್ಕಲಾದುದಿಲ್ಲ'  
'ಕಳ್ಳ ತಾ ಕೆಟ್ಟು ಏಳೊಕ್ಕಲಂ ಕೆಡಿಸಿದನೆ ಕಳವೇಲಿ ಕೊಲ್ಲದೆ ಕಾಯ್ದುದೇ'  
'ಕಳ್ಳ ಸತ್ತೊಡಮಕ್ಕುಂ ಕಳ್ಳಡುಕಿಗಳಂ ನಿರ್ದಯರುಂ ಮಾಡದ ಪಾಪವಿಲ್ಲ'  
'ಮಧುಪಾಯಿಗಳಿಗುಂಟೆ ಶುಚಿಭಾವ'  
'ಶಪಥಮುಂಟೇ ದ್ಯೂತವರ್ತಿಗೆ'  
'ಹೆಣನಿರಿದು ಹಗೆಗೊಂಡರೆ'  
'ಪೆಂಡಿರ ದೋಷಕೆ ಮಕ್ಕಳ ಮೂಗಂ ಕೊಯ್ವರೆ'  
'ಗಂಡನಿಲ್ಲದ ಶಶಿವದನೆಗೆ ಗರ್ಭಮಾದ ತೆರದಿಂ'  
'ಹಾದರ ಸದರವೆ ಸಾವಿಗೆ ಮೊದಲು'  
'ಸಾಲ ಮಾಡಲೆಬೇಡ, ಸಾಲವೆಂದೆನಬೇಡ' ((ಲೋನ್)  
'ಒತ್ತೆಯಿಲ್ಲದೆ ಸಾಲ ಕೊಡುವವನು ಮೂರ್ಖ' (ಆಧಾರ, ಮಾರ್ನೇಜ್)

‘ಋಣಭಾರಕೇಣೆಯಾವುದೈ’

‘ತರಬೇಡೂತ್ತಗೆ ಬಡ್ಡಿಯಂ’

‘ಸಾಕ್ಷಿಯಿಲ್ಲದೆ ಸಾಲಂಗೊಟ್ಟೋನಂತೆ’ (ಭಾರತೀಯ ಸಾಕ್ಷ್ಯ ಸಂಹಿತೆಯ ಪುಷ್ಪಿಕರಣ ಸಾಕ್ಷ್ಯ)

‘ಭೂಪನಂ ಹೊದ್ದುವುದು ರಾಷ್ಟ್ರದ ಪಾಪ’ (ಭಾರತೀಯ ದಂಡಸಂಹಿತೆಯ ಕಲಂ332, 352)

‘ಶಿಶುಗಳಪರಾದಕ್ಕೆ ನಯನದಂಜಿಕೆ ಶಿಕ್ಷೆ’ (ಬಾಲಾಪರಾಧ)

ಇವೆಲ್ಲ ಇಂದಿನ ಕಾನೂನಿನ ಭೂಣರೂಪಗಳು. (ಸಾಕ್ರೆಟಿಸ್ ಶಿಷ್ಯರೊಂದಿಗೆ ನಡೆಸಿದ ಚರ್ಚೆಯಲ್ಲಿ ನ್ಯಾಯವೆಂದರೇನು ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಒಬ್ಬ ಋಣಮುಕ್ತನಾಗುವುದೇ ನ್ಯಾಯ ಎನ್ನುತ್ತಾನೆ. ಸಾಕ್ರೆಟಿಸ್ ಸಾಯುವ ಹೊತ್ತಿನಲ್ಲಿ ಕ್ರೀಟೋ ಎಂಬ ಶಿಷ್ಯನಿಗೆ ‘ಸ್ಲೇಪಿಯಸ್‌ಗೆ ನಾನೊಂದು ಕೋಳಿ ಕೊಡಬೇಕು, ಮರೆಯದೆ ಕೊಡುತ್ತೀ ತಾನೇ?’ ಎಂದಿದ್ದನಂತೆ. ಹೀಗೆ ‘ಸಾಲ ಮಾಡಲೇಬೇಡ, ಸಾಲವೆಂದನೇಬೇಡ’, ‘ಋಣಭಾರಕೇಣೆಯಾವುದೈ’ ಮುಂತಾದ ಸುಸಂಗತಗಳಲ್ಲಿ ಪೂರ್ವಕ್ಕೂ ಪಶ್ಚಿಮಕ್ಕೂ ಶತಮಾನಗಳಂತರದ ನಡುವೆಯೂ ಸಾಮ್ಯವಿದೆ.)

ದಾಸ ಸಾಹಿತ್ಯದಲ್ಲಿ ಸ್ತ್ರೀವಾದವಿತ್ತೇ? ಇಂದಿನ ಅರ್ಥದಲ್ಲಿ ಇರಲಿಲ್ಲ. ವಚನಕಾಲದಲ್ಲಿ ವಚನಕಾರ್ತಿಯರು, ಶಿವಶರಣೆಯರು ಇದ್ದಂತೆ ದಾಸಪಂಥದಲ್ಲಿ ‘ದಾಸಿ’ಯರು ಇರಲಿಲ್ಲ. ಬಹಳ ತಡವಾಗಿ ಹೆಳವನಕಟ್ಟೆ ಗಿರಿಯಮ್ಮನಂತಹ ಭಕ್ತಿಪಂಥದವರು ಬಂದರು. ಭಗವಂತನಿಗೆ ಲಿಂಗವಿಲ್ಲ. ಆತ ನಿರಾಕಾರ. ಭಕ್ತಿ ಆತನಿಗೊಂದು ಆಕಾರ ಕೊಟ್ಟು ಅರ್ಚಿಸುತ್ತದೆ, ಭಜಿಸುತ್ತದೆ, ಪೂಜಿಸುತ್ತದೆ. ಶರಣರ, ದಾಸರ ಕಾಲದಲ್ಲಿ ಮತ್ತು ಇತ್ತೀಚೆಗಿನ ವರೆಗೂ ಇದ್ದು ಪುರುಷಪ್ರಧಾನ ಕುಟುಂಬ ವ್ಯವಸ್ಥೆ. ಗಂಡುಮಗುವೇ ವಂಶಾಭಿವೃದ್ಧಿಯ ಸಂಕೇತವಾಗಿ ಸೃಷ್ಟಿಯಾದ ಯುಗ. (1956ರ ಹಿಂದೂ ವಾರಸುದಾರಿಕೆ ಕಾಯಿದೆಯ 2005ರ ತಿದ್ದುಪಡಿ ಬಂದ ಅನಂತರವೇ ಹೆಣ್ಣುಮಗಳೂ ದಾಯಾದಿತ್ವಕ್ಕೆ ಒಳಪಟ್ಟು ಗಂಡುಮಕ್ಕಳಂತೆಯೇ ಹಿಂದೂ ಅವಿಭಕ್ತ ಕುಟುಂಬದಲ್ಲಿ ಸಮಾನ ಹಕ್ಕನ್ನು ಪಡೆದಳು.) ‘ಯತ್ರ ನಾರ್ಯಸ್ತು ಪೂಜ್ಯಂತೇ ರಮಂತೇ ತತ್ರ ದೇವತಾಃ’ ಎನ್ನುವ ಮೂಲಕ ಮಹಿಳೆಯರನ್ನು ಗೌರವಿಸಬೇಕೆಂಬ ತಾತ್ವಿಕ ಚಿಂತನೆಯಿದ್ದಾಗಲೂ ‘ನಹಿ ಸ್ವಾತಂತ್ರ್ಯಮರ್ಹತಿ’ ಎಂಬ ಸಿದ್ಧಾಂತವು ನೆಲೆನಿಂತಿತ್ತು. ಇದು ಮಹಿಳೆಯನ್ನು ಕೀಳಾಗಿ ಕಾಣಬೇಕೆಂಬುದಕ್ಕಲ್ಲ. ಬದಲಾಗಿ ಅವಳು ಸುಕೋಮಲೆ, ಮದುವೆಯಾಗಿ ತೌರನ್ನು ತೊರೆದು ಗಂಡನ ಮನೆಗೆ ಹೋಗುವವಳು, ಮತ್ತು ಪುರುಷನಿಗಿಂತ ಸುಲಭವಾಗಿ ಪೀಡನೆಗೆ ಬಲಿಯಾಗಬಹುದಾದವಳು ಎಂಬ ನಿಲುವಿತ್ತು. ಜೊತೆಗೆ ಬಹುಪತ್ನಿ ವ್ಯವಸ್ಥೆಯಿತ್ತು. ಆದ್ದರಿಂದ ಎಲ್ಲವನ್ನೂ ಪುರುಷದೃಷ್ಟಿಯಿಂದ ನೋಡಲಾಗುತ್ತಿತ್ತು. ನಾಲ್ಕು ಶತಮಾನಗಳ ಹಿಂದೆಯೇ ಅಕ್ಕಮಹಾದೇವಿ ಶರಣರೊಂದಿಗೆ ಅನುಭವಮಂಟಪದಲ್ಲಿ ಕಂಗೊಳಿಸಿದಳಾದರೂ, ದಾಸರ ಕಾಲದಲ್ಲಿ ಈಗಿನ ಉತ್ತರ ಭಾರತದಲ್ಲಿ ಮೀರಾಬಾಯಿ ಸಂತಳಾದರೂ, ಶ್ರೀನಿವಾಸ ನಾಯಕ ಪುರಂದರದಾಸರಾಗಿ ಬದಲಾಗುವಲ್ಲಿ ಅವರ ಪತ್ನಿ ಮಹತ್ತರ ಪಾತ್ರ ವಹಿಸಿದರೂ ಅದೇನೂ ಸಮಾಜದಲ್ಲಿ ಕ್ರಾಂತಿಯನ್ನು ಸೃಷ್ಟಿಸಲಿಲ್ಲ. ಆದರೆ ದಾಸರುಗಳು ಮಹಿಳೆಯ ಹಿರಿತನವನ್ನು, ಪ್ರಾಮುಖ್ಯತೆಯನ್ನು ಘೋಷಿಸಿದ್ದಾರೆ. ವಿಷ್ಣುವನ್ನು ಆರಾಧಿಸುವಾಗ ಲಕ್ಷ್ಮಿ ಕೃಷ್ಣನೊಂದಿಗೆ ರುಕ್ಮಿಣಿ (ಯಶೋದೆ ಕೂಡಾ) ಸಹಜವಾಗಿಯೇ ಪೂಜಾರ್ಹರಾಗಿದ್ದರು. ಭಾಗವತದಲ್ಲಿಲ್ಲದ ರಾಧೆ ಕೃಷ್ಣನೊಂದಿಗೆ ಮುಖ್ಯಳಾದದ್ದು ದಾಸಯುಗದ ಸಮಕಾಲೀನರಾದ ಕೃಷ್ಣಚೈತನ್ಯ ಮಹಾಪ್ರಭುವಿನ ಭಕ್ತಿಪಂಥದ ಮೂಲಕ; ಗೀತಗೋವಿಂದದ ಮೂಲಕ. ದಾಸರ ಮೂಲಕವಲ್ಲ. ಕನಕ-ಪುರಂದರರ ಗುರು ವ್ಯಾಸತೀರ್ಥರು ದೇವರನ್ನು ತಾಯಿಗೆ ಹೋಲಿಸಿದ್ದಾರೆ:

‘ಕಣ್ಣಿರೆಯದ ಹಸುಳೆ ತಾಯನರಿಯದಂತೆ|

ಎನ್ನಲ್ಲಿ ಹೊಂದಿಪ್ಪ ನಿನ್ನನರಿಯದಂತೆ|’

ಬರೀ ಸೊಗಸಿಗಾಗಿ ಅಲ್ಲ, ದಾಸರ ಪಾಲಿಗೆ ಕೃಷ್ಣ-

‘ದೇವಕಿ ಕಂದ ಮುಕುಂದ’.

ಇನ್ನೊಂದೆಡೆ,

‘ಭಾಗೀರಥಿಯ ಪಿತ’

ಪ್ರಸಿದ್ಧವಾದ ಒಂದು ಹಾಡು ಆರಂಭವಾಗುವುದೇ—

‘ಜಗದುಧಾರನ ಆಡಿಸಿದಳೆತೋದೆ’

ಎಂಬ ಸಾಲಿನಿಂದ.

ಮಧ್ಯಮಾವಧಿಯ—

‘ಭಾಗ್ಯದ ಲಕ್ಷ್ಮಿ ಬಾರಮ್ಮ’

ಪೂರ್ತಿಯಾಗಿ ಲಕ್ಷ್ಮಿಯ ಆರಾಧನೆ. ಅಷ್ಟೇ ಅಲ್ಲ, ಮೋಹಿನೀ ಭಸ್ಮಾಸುರ ಐತಿಹ್ಯದ ವಿಷ್ಣುವನ್ನು—

‘ಹೆಂಡಿರುನಾಳುವಳೇ ಕನ್ನಿಕೆ ಗಂಡನಿಲ್ಲದ ಹೆಂಗಸೀ ಕನ್ನಿಕೆ’

ಎಂದು ಕಂಡು ಭಗವಂತನನ್ನು ಹೆಣ್ಣು ಅಲ್ಲದ ಗಂಡೂ ಅಲ್ಲದ ಸ್ವರೂಪವನ್ನು ಕಾಣುವುದರಲ್ಲಿ ವಚನಕಾರರೊಡನೆ ಸಾಮ್ಯತೆಯಿದೆ.

ಹೀಗೆ ಬರೆದ ಪುರಂದರದಾಸರು ಜಾನಪದದಂತೆ ಭಾಸವಾಗುವ ಒಂದು ಹಾಡಿನಲ್ಲಿ ಹೆಣ್ಣಿಗೂ ಬುದ್ಧಿ ಹೇಳಿದ್ದಾರೆ:

‘ಬುದ್ಧಿ ಮಾತು ಹೇಳಿದರೆ ಕೇಳಬೇಕಮ್ಮ!

ಮಗಳೆ ಶುದ್ಧಳಾಗಿ ಗಂಡನೊಡನೆ ಬಾಳಬೇಕಮ್ಮ!’

ದಾಸಯುಗದಲ್ಲಿ ದೇಸಿ ಪೂಜಾವಿಧಿಗಳಿದ್ದವು. ಎಲ್ಲಮ್ಮ ಮುಂತಾದ ಶಕ್ತಿದೇವತೆಗಳ, ಗ್ರಾಮದೇವತೆಗಳ ತೃಪ್ತಿಗಾಗಿ ನಡೆಸುವ ಸಿಡಿ, ಬನದ ಹುಣ್ಣಿಮೆ ಮುಂತಾದ ಅನೇಕ ಹಿಂಸಾತ್ಮಕ ಮತ್ತು ಸ್ತ್ರೀಶೋಷಕ ಆಚರಣೆಗಳನ್ನು ನಿಷ್ಪ್ರಯೋಜಕವೆಂದು ಅವರು ಹೇಳಿದ್ದಾರೆ. (ಬತ್ತಲೆ ಪೂಜೆ ಮುಂತಾದ ವಿಧಿಗಳು ಇತ್ತೀಚಿನವರೆಗೂ ಪ್ರಚಲಿತವಿದ್ದವು.):

‘ತಾಳಿಯ ಹರಿದು ಬಿಸಾಟೆ ಇಂಥ!

ಕೀಳು ದೇವತೆಗಳ ಹೆಸರಲ್ಲಿ ಕಟ್ಟಿದ!

ಒಡತಿಯೆಲ್ಲಮ್ಮನೆಂದು ಇಲ್ಲದ್ದರಿಕೆ ಹೊತ್ತು!

ಸಿಡಿಯಾ ಊರಿಸಿಕೊಂಡು ಜೋಲಾಡುವೆ!’

ಈ ಹಾಡಿನಲ್ಲಿ

‘ಕರಿಮಣಿ ಕೇಶವಿಲ್ಲದ ಮುಂಡೆ ಕರೆತಂದು’,

‘ಹಡೆದ ಮಕ್ಕಳ ಮುಂಜಿ ಮದುವೆಗೆ ನೇಮಿಸಿ!

ಮಡಿವಾಳತಿಯ ಅಧಃಕೇಶ ತಂದು’

ಮುಂತಾದ ಶಾಕ್ತಪಂಥದ ಆಚರಣೆಯ ಮತ್ತು ಕ್ರೌರ್ಯದ ಚಿತ್ರಣವೂ ಇದೆ.

ಇವೆಲ್ಲ ಪುರಂದರ ದಾಸರ ಕೃತಿಗಳಲ್ಲಿ ಕಂಡುಬಂದರೆ ಕನಕದಾಸರ ಕೃತಿಯಲ್ಲೂ ಮುಖ್ಯವಾಗಿ ನಳಚರಿತ್ರೆ, ಮೋಹನ ತರಂಗಿಣಿ ಗಳಲ್ಲಿ ಹೆಣ್ಣಿನ ಚಿತ್ರಣವಿದೆ. (ಸಾಮಾಜಿಕವಾಗಿ ಬಂಡಾಯದ ಧ್ವನಿಯಾಗಿ ಕಾಣಿಸುವ ಕನಕದಾಸರು ತಮ್ಮಕಾಲದಲ್ಲಿ ನಡೆದಿರಬಹುದಾದ ಸ್ತ್ರೀಯರ ಶೋಷಣೆಯನ್ನು ಗಮನಿಸಿದ್ದಾರೆ. ಒಂದೆಡೆ ಹೆಣ್ಣು ಗಂಡು ಹಾಕಿದ ಗೆರೆಯನ್ನು ಮೀರದೆ ನಡೆದರೆ ಒಳ್ಳೆಯದು ಎಂಬಂತೆ ಬರೆದಿದ್ದಾರೆ:

‘ಹೇವವಿಲ್ಲದ ಹೆಣ್ಣು ಗಜುಗ ಬೆಳೆದ ಕಣ್ಣು  
ಗಂಡಗಂಜದ ನಾರಿ ಅವಳೆ ಹೆಮ್ಮಾರಿ’

ಹಾಗೆಯೇ

‘ಸೋತು ಹೆಣ್ಣಿಗೆ ಹೆದರಿ ನಡೆವ ಪುರುಷನ್ಯಾತಕಿ  
ಸನ್ನೆಯನರಿತು ನಡೆಯದಿರುವ ಸತಿಯು ಯಾತಕಿ’

ಎಂದಿದ್ದಾರೆ.

ಇನ್ನೊಂದೆಡೆ ಹೆಣ್ಣನ್ನು ಟೀಕಿಸಿದಂತಿದ್ದರೂ ಸಂಸಾರದಲ್ಲಿ ಆಕೆ ತನ್ನ ಕುಟುಂಬಕ್ಕೆ ತಂದುಕೊಡಬಹುದಾದ ಗೌರವವನ್ನು ಹೀಗೆ ಬರೆದಿದ್ದಾರೆ:

‘ಮಾನಿನಿಯ ಮನಸು ನಿಧಾನವಿರದಿರೆ  
ಮಾನಾಭಿಮಾನಗಳುಳಿಯುವುದೆ’

ಹೆಣ್ಣಿಗೆ ಸಾಂಸ್ಕೃತಿಕ ಸಮಾಜದಲ್ಲೂ ಅವಕಾಶ ಸಿಗಲಿಲ್ಲವೆಂಬುದನ್ನು ಹೀಗೆ ಮರುಗಿದ್ದಾರೆ:

‘ಹೆಣ್ಣು ರಚಿಸಿಹ ಧರ್ಮಶಾಸ್ತ್ರಗಳು ಎಲ್ಲಿಹವು  
ಹೆಣ್ಣು ರೂಪಿಸಿದ ನೀತಿ ನಿಯಮಗಳು ಇಹವೇ  
ಹೆಣ್ಣಿನಾಕಾಂಕ್ಷೆಗಳ ಧಿಕ್ಕರಿಸಿ ತುಳಿಯುತ್ತ’

(ಈ ಬಗ್ಗೆ ನನ್ನ ಗಮನ ಸೆಳೆದ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಕಾನೂನು ವಿಶ್ವವಿದ್ಯಾಲಯದ ಉಪಕುಲಪತಿ ಡಾ.ಈಶ್ವರ ಭಟ್ ಅವರಿಗೆ ನಾನು ಋಣಿ.) ಇಂತಹ ಸ್ತ್ರೀವಾದದ ಕೆಲವು ಸ್ಪಷ್ಟ ಮತ್ತು ಕೆಲವು ಅಸ್ಪಷ್ಟ ನಿಲುವುಗಳ ಹಲವು ಹಾಡುಗಳಿವೆ. ಇವು ಹೀಗಿರಲು ಕಾರಣಗಳಿವೆ: ದಾಸರ ಉದ್ದೇಶ ಹರಿಭಕ್ತಿ, ಪಾರಮಾರ್ಥಿಕತೆ, ಸಾಮಾಜಿಕ ಒಳಿತು. ಒಂದು ಹಂತದ ಬಳಿಕ ಅವರು ಎಲ್ಲವನ್ನೂ ಭಗವಂತನ ಪಾದಕ್ಕೆ ಒಪ್ಪಿಸುವವರು.

ಆರಂಭದಲ್ಲಿ ಹೇಳಿದಂತೆ ದಾಸರ ಕಾಲದಲ್ಲಿ ಇಂದು ನಾವು ಹೇಳುವ ‘ಕಾನೂನು’ ಇರಲಿಲ್ಲ. ನ್ಯಾಯನಿರ್ಣಯವೇ ಮುಖ್ಯವಾಗಿತ್ತು. ಆದರೆ ರಾಜಸತ್ತೆಗೆ ವಿರುದ್ಧವಾಗಿ ವಾಚ್ಯ ಪ್ರಚಾರ ಸಾಧ್ಯವಿರಲಿಲ್ಲ. ಮೇಲಾಗಿ ದಾಸರು ವಿರಕ್ತರು. ಸನ್ಯಾಸಿಗಳಂತಲ್ಲದಿದ್ದರೂ, ಲೌಕಿಕರ ಸತತ ಸಂಪರ್ಕದಲ್ಲಿದ್ದರೂ ಅಲ್ಲಿಂದ ಏನನ್ನೂ ಅಪೇಕ್ಷಿಸದ ಅವರ ಚಿಂತನೆಗಳು ಸಮಾಜವಿಮುಖವೇ ಆಗಿದ್ದವು. ಆದರೂ ಅವರು ಸಮಾಜದ ನೀತಿ-ನಿಯಮಗಳನ್ನು ಗಮನಿಸಿದ್ದರೆಂಬುದನ್ನು ಮತ್ತು ಅದರ ಕುರಿತು ಗಾಢ ಚಿಂತನೆಯನ್ನು ನಡೆಸಿದ್ದರೆಂಬುದನ್ನು ಮತ್ತು ಹೀಗೆ ಜೀವಿಸುವ ಮೂಲಕ ತಮ್ಮ ಕಾಲದ ಸಾಕ್ಷಿಪ್ರಜ್ಞೆಗಳೆಂದಿದ್ದರೆಂಬುದನ್ನು ನಾವು ಕಂಡುಕೊಳ್ಳಬಹುದಾಗಿದೆ. ಇಲ್ಲಿ ಕೆಲವು ವಿಚಾರಗಳನ್ನಷ್ಟೇ ಸ್ಥೂಲವಾಗಿ ಗಮನಿಸಿದ್ದೇನೆ. ಹೆಚ್ಚಿನ ಅಧ್ಯಯನದಿಂದ ಮತ್ತು ಚರ್ಚೆಯಿಂದ ಇನ್ನೂ ಹೊಸ ಬೆಳಕು ಉದಿಸಬಹುದು. ದುರಂತವೆಂದರೆ ವಚನ ಸಾಹಿತ್ಯ, ದಾಸ ಸಾಹಿತ್ಯ ಮತ್ತು ವರ್ತಮಾನದ ನಡುವೆ ತಲಾ ಐದು ಶತಮಾನಗಳ ಅಂತರವಿದ್ದರೂ ಸ್ಥಿತಿ ಹಾಗೇ ಇದೆ. ಆದರೆ ಸಮಾಜವನ್ನು ಸಾಮಾಜಿಕ ನ್ಯಾಯದ ಸರಿದಾರಿಗೆ ತರಬಲ್ಲ, ಅಥವಾ ಕನಿಷ್ಠ ತರಲು ಯತ್ನಿಸುವ ಶರಣರೂ ಇಲ್ಲ; ದಾಸರೂ ಇಲ್ಲ.

**ಆಕರ:**

1. ಸಮಗ್ರ ದಾಸಸಾಹಿತ್ಯ- ಕರ್ನಾಟಕ ಸರಕಾರದ ಪ್ರಕಟಣೆ.
2. ಪುರಂದರ ಸಾಹಿತ್ಯ ದರ್ಶನ- ಕರ್ನಾಟಕ ಸರಕಾರದ ಪ್ರಕಟಣೆ.
3. ಕನಕ ಸಾಹಿತ್ಯ ದರ್ಶನ- ಕರ್ನಾಟಕ ಸರಕಾರದ ಪ್ರಕಟಣೆ.

4. ದಾಸಸಾಹಿತ್ಯ ಮತ್ತು ಸಂಸ್ಕೃತಿ-ಸಾ.ಕೃ.ರಾಮಚಂದ್ರ ರಾವ್. (ಕನ್ನಡ ಪುಸ್ತಕ ಪ್ರಾಧಿಕಾರದ ಪ್ರಕಟಣೆ.)
5. ಕನ್ನಡ ಸಾಹಿತ್ಯ ಸಂಗಾತಿ-ಕೀರ್ತಿನಾಥ ಕುರ್ತಕೋಟಿ.(ಕನ್ನಡ ವಿಶ್ವವಿದ್ಯಾಲಯ, ಹಂಪಿ ಇವರ ಪ್ರಕಟಣೆ.)
6. ಕಾನೂನು ಪದಕೋಶ-ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಪ್ರಕಟಣೆ.
7. ಕಾನೂನು ಮತ್ತು ಸಾಹಿತ್ಯಕ್ಕೆ ಹಾಗೂ ಅನುವಾದಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಇತರ ಕೆಲವು ಇಂಗ್ಲಿಷ್ ಕೃತಿಗಳು/  
ಲೇಖನಗಳು.





ಹರಿದಾಸ ಸಾಹಿತ್ಯದಲ್ಲಿ ನೀತಿ ಮತ್ತು ಕಾನೂನುಗಳ ವೈದಾನಿಕತೆ: ಅಂತರ್‌ಶಿಸ್ತೀಯ  
ಅನುಸಂಧಾನ

– ಬಿ.ಎಸ್. ಅನಿಲಕುಮಾರ ಬೊಮ್ಮಾಘಟ್ಟ\*

## The Method of Ethics and Law in Haridasa Literature : An Interdisciplinary Approach

- B.S. Anilkumar Bommaghatta

### Abstract:

Devotionalism (*Bhakti Pantha*) has played a key role in shaping the social morals and setting patterns for ideal behaviour. *Vachanas*, folk principles and *Haridas*'s devotional songs were preached in the language of the common people in the form of solution to the anxieties of the day. They were easy to comprehend and remember. Purandaradasa, Kanakadasa and other *Dasas* propounded social reforms, inspired to eradicate social evils of caste and gender discriminations. The saints (*Haridasas*), tried to change lives of common people through their simple verses. The people had who pains and hardships found answers to all the pain and suffering through *Haridasa* literatures. Irrespective of timeframe, this literature has endeared itself to the people of all ages who love principles of good conduct. It is necessary to understand how the words of *Haridasas* are useful in dealing with new aspects of the modern life, on a personal and national level. The relevance of this literature to respond to shocking complexities of modern life is to be discovered through an interdisciplinary study. In this context, it is important to know the ethical principles that were preached to bring harmony in public life in *Haridasa* literature.

Although many theories interpret the law as the sum of commands, the law is least effective in its commandments. The effectiveness of the law is based not only on legal sanction but also its social acceptance. In addition to that people respect the rule of law because of a particular mental status, such as inclination to follow morality. Conduct obedient to law will be moral. Morality forms the basis of law, justifies the law and brings authority to the law. The relation between the two is traceable to the factor of social acceptance although there are

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\*ಸಹಾಯಕ ನಿರ್ದೇಶಕರು, ಪ್ರಸಾರಾಂಗ, ಮೈಸೂರು ವಿಶ್ವವಿದ್ಯಾನಿಲಯ, ಮೈಸೂರು

differences between them on account of formalism, generality, certainty and method of enforcement through institutional mechanism. As long as the law is an instrument of social control, the law will obtain the kind of consent it wants. Morality supplies force of obedience to law by creating guilty conscience or satisfaction of behaving in a noble way and getting social appreciation for the same.

When we subject the disciplines of law and ethics to interdisciplinary study and examine from the angle of sociology, anthropology, culture and political science it can be seen that the social relation between the bard and the people is an outstanding phenomenon for the tremendous power of appeal underlying the *kirthanas*' whereas law relies on formal power of the State supported by sanction or fear of punishment. *Haridasa* literature, because of poetic expression, melodious tone and easily understandable idea operated as friendly suggestions, intimate advice and humble request exhorting good behaviour. In a social world where universal literacy was not prevalent, community leaders were organising *Harikatha*, music and narrations from puranas in order to promote good understanding of moral norms. The daily public discourse by *Haridasas* who were moving from village to village or towns became a routine affair of public education on morals. The exposure of *Haridasas* to people's difficulties, attitudes, narrow approaches and bad conducts provided a pragmatic dimension to their thinking and reformative outlook. Instead of teaching complex metaphysical concepts they sowed the seeds of simple morality and humanism in the minds of listeners in a lucid song easy for remembrance. There was a desire to console the people's anxieties, rather than engaging in the religious preaching. It is this social link between *Haridasas* and common people that brought popularity to *Haridasa* literature and success for the moral discourses. It is in this context that the *Haridasa* heritage has become important because of its unique traits amidst the indigenous cultural heritage that was born in Kannada. The whole experience is that both the methods of law and ethics are social embedded and need a social orientation in their identification and implementation for being efficacious.

**ಪೀಠಿಕೆ:**

ಭಾರತವು ಬಹು ಸಂಸ್ಕೃತಿಗಳ ದೇಶ. ಬಹು ಧರ್ಮಗಳ ನೆಲೆವೀಡು. ವಿವಿಧ ಜಾತಿ ಮತ ಪಂಥಗಳ ಜನರು ಇಲ್ಲಿ ಒಟ್ಟಿಗೆ ಬದುಕಿದ್ದಾರೆ. ಸಂಘರ್ಷ ಅತಿಯಾಗದಂತೆ ಸಾಮರಸ್ಯದಿಂದ ಬಾಳಿದ್ದಾರೆ. ಈ ಸಹಬಾಳ್ವೆಗೆ ಭಕ್ತಿಪಂಥದ ಕೊಡುಗೆಯು ಮುಖ್ಯಪಾತ್ರ ವಹಿಸಿದೆ. ಪ್ರಾಚೀನ ಕರ್ಣಾಟಕದಲ್ಲಿ ಬೌದ್ಧ, ಜೈನ, ಶೈವ, ವೈಷ್ಣವ ಮತ್ತು ಇತರ ಜಾನಪದ ದೈವಗಳ ಆರಾಧಕರು ತಮ್ಮ ಅನುಯಾಯಿಗಳ ವಲಯದಲ್ಲಿ ಭಕ್ತಿಯ ಜೊತೆಗೆ ನೀತಿ ಪ್ರಸಾರವನ್ನೂ ಮಾಡುತ್ತ ಬಂದಿರುವುದು ಕಂಡುಬರುತ್ತದೆ.

ವಡ್ಡಾರಾಧನೆ ಮತ್ತು ನೋಂಪಿಯ ಕಥೆಗಳು ಜೈನಧರ್ಮದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಮಾನವನ ಆದರ್ಶ ವರ್ತನೆಗಳನ್ನು ತಿಳಿಸಿದಂತೆಯೇ, ವಚನಕಾರರ ವಚನಗಳು, ಹರಿದಾಸರ ಕೀರ್ತನೆಗಳು, ಜಾನಪದರ ತತ್ವಪದಗಳು ಲೋಕನೀತಿಯನ್ನು

ಬೋಧಿಸಿವೆ. ಅದರಲ್ಲೂ ಹರಿದಾಸ ಸಾಹಿತ್ಯವು ಸಾಮಾನ್ಯ ಜನರ ಆಡುಭಾಷೆಯಾದ ಕನ್ನಡದಲ್ಲಿ ಅಂದಿನ ತಲ್ಲಣಗಳಿಗೆ ಪರಿಹಾರ ರೂಪದಲ್ಲಿ ರಚನೆಗೊಂಡದ್ದರಿಂದ ಮತ್ತು ಆ ಪರಿಹಾರದ ಮಾತುಗಳು ಸುಲಭವಾಗಿ ನೆನಪಿಟ್ಟುಕೊಳ್ಳಲು ಸಾಧ್ಯವಾದ್ದರಿಂದ ಸಮಸ್ತ ಜನಮಾನಸದಲ್ಲಿ ನೆಲೆನಿಂತಿತು. ಪುರಂದರದಾಸರು-ಕನಕದಾಸರೆ ಮೊದಲಾದವರು ಕೀರ್ತನೆಗಳ ರಚನೆಯ ಮೂಲಕ ಕನ್ನಡಿಗರ ಭಾಷೆ-ಬದುಕು-ಬರೆಹಗಳಿಗೆ ಹೊಸತನವನ್ನು ತಂದುಕೊಟ್ಟರು. ಇವರಿಗೆ ಯತಿತ್ರಯರಾದ ಶ್ರೀಪಾದರಾಯರು ವ್ಯಾಸರಾಯರು ವಾದಿರಾಜರು ಮಾರ್ಗದರ್ಶಕರಾಗಿದ್ದರು.

ತದನಂತರದ ಕಾಲಘಟ್ಟದಲ್ಲಿ ಜಗದ್ವಿಖ್ಯಾತರಾದ ಮಂತ್ರಾಲಯದ ಶ್ರೀರಾಘವೇಂದ್ರತೀರ್ಥರ ಪ್ರಭಾವದಿಂದ ವಿಜಯದಾಸರು, ಗೋಪಾಲದಾಸರು, ಜಗನ್ನಾಥದಾಸರು, ಹೆಳವನಕಟ್ಟಿ ಗಿರಿಯಮ್ಮ, ಹರಪನಹಳ್ಳಿ ಭೀಮವ್ವ ಮುಂತಾದ ಹರಿದಾಸರು ಈ ಸಂಸ್ಕೃತಿಯನ್ನು ಉಳಿಸಿ ಬೆಳೆಸಿದರು. ಅಗಾಧ ಜೀವನಪ್ರೇಮವನ್ನು, ಬದುಕಿನ ಏಳುಬೀಳುಗಳಿಗೆ ಹೆದರದೆ ನಿರಂತರ ಜೀವನೋತ್ಸಾಹವನ್ನು ಮೈಗೂಡಿಸಿಕೊಂಡಿದ್ದ ಇವರು ತಮ್ಮ ಸುತ್ತಮುತ್ತಲು ಬಲಕಷ್ಟಗಳಿಂದ ಕಂಗೆಟ್ಟು ಬದುಕುತ್ತಿದ್ದ ಜನರ ಮನೆಯಂಗಳಕ್ಕೆ ಹೋಗಿ ತಮ್ಮ ಅನುಭವದ ಮಾತಿನ ಮೂಲಕ ಅವರಲ್ಲಿ ಭರವಸೆಯನ್ನು ತುಂಬಿದರು.

1990ರ ದಶಕದವರೆಗೆ ಪ್ರಮುಖ ಹರಿದಾಸರ ಕೀರ್ತನೆಗಳ ಸಂಪಾದಿತ ಸಂಪುಟಗಳು ಉಪಲಬ್ಧವಿದ್ದವು. ಉಳಿದ ರಚನೆಗಳನ್ನು ಆಸಕ್ತರಿಗೆ ತಟ್ಟನೆ ಏಕತ್ರ ದೊರಕಿಸಿಕೊಡುವ ವ್ಯವಸ್ಥೆ ಆಗಬೇಕಿತ್ತು. ಇದನ್ನು ಮನಗಂಡ ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಕನ್ನಡ ಮತ್ತು ಸಂಸ್ಕೃತಿ ನಿರ್ದೇಶನಾಲಯವು ನೇಮಿಸಿದ ಸಂಪಾದಕ ಮಂಡಲಿಯು ನಾಡಿನ ಅನೇಕ ವಿದ್ವಾಂಸರ ನೆರವಿನಿಂದ, (ಕ್ರಿ.ಶ.2003ರಲ್ಲಿ) 139 ಹರಿದಾಸರ ಸುಮಾರು ಹದಿನಾರು ಸಾವಿರ ಕೀರ್ತನೆಗಳನ್ನು 35 ಸಂಪುಟಗಳಲ್ಲಿ 53 ಪುಸ್ತಕಗಳ ರೂಪದಲ್ಲಿ ಪ್ರಕಟಿಸಿದೆ. ಈ ಪ್ರಕಟಣೆಯಿಂದ ದಾಸಸಾಹಿತ್ಯದ ಬಹುಪಾಲು ಕೀರ್ತನೆಗಳು ಏಕತ್ರ ದೊರೆತದ್ದರಿಂದ ಹೊಸ ಸಂಶೋಧನೆಗಳಿಗೆ ಅವಕಾಶ ದೊರೆತಿದೆ. ಅಲ್ಲಿಯ ಎಲ್ಲ ನೀತಿಪ್ರತಿಪಾದಕ ರಚನೆಗಳನ್ನು ಒಂದೆಡೆ ಸಂಗ್ರಹಿಸಿ ವಿಷಯವಾರು ವರ್ಗೀಕರಿಸಿ ನೋಡಿದಾಗ ಇದೊಂದು ಪ್ರತ್ಯೇಕ ಅಧ್ಯಯನಕ್ಕೆ ಯೋಗ್ಯವಾದ ಕ್ಷೇತ್ರವೆಂದು ಮನವರಿಕೆಯಾಗುತ್ತದೆ.

ಕಳೆದ ಐದಾರು ಶತಮಾನಗಳಿಂದ ಕನ್ನಡಿಗರ ಮೇಲೆ ದಟ್ಟ ಪ್ರಭಾವ ಬೀರಿರುವ ಹರಿದಾಸರ ಲೋಕನೀತಿಯ ಮಾತುಗಳು ಭಾರತೀಯ ಸಂಸ್ಕೃತಿಯ ಎಲ್ಲ ಬೃಹತ್ ಗ್ರಂಥಗಳ ಸಾರ ಸಂಗ್ರಹಗಳಾಗಿವೆ. ವಯಸ್ಸಿನ ಲೆಕ್ಕವಿಲ್ಲದೆ ಒಳ್ಳೆಯವರಾಗಿ ಬದುಕಲು ಬಯಸುವ ಎಲ್ಲಕಾಲದ ನೀತಿಪ್ರಿಯರಿಗೆ ದಾರಿದೀಪವಾಗಿವೆ. ಹತಾಶೆ, ಜುಗುಪ್ಸೆ, ಮಾನಸಿಕ ಕ್ಲೇಶ, ಕೌಟುಂಬಿಕ ವಿಘಟನೆಯಾಗದಂತೆ ನೋಡಿಕೊಳ್ಳುವಲ್ಲಿ ಇವರ ಮಾತುಗಳು ಉಚಿತ ಆಪ್ತ ಸಮಾಲೋಚನೆಯ ಮಾದರಿಗಳಾಗಿವೆ. ಶಿಷ್ಟ-ಪರಿಶಿಷ್ಟರೆಂಬ ಭೇದವಿಲ್ಲದೆ, ಸ್ತ್ರೀಪುರುಷರೆಂಬ ಬಿಗುಮಾನವಿಲ್ಲದೆ, ಹಳ್ಳಿ ನಗರವೆಂಬ ವ್ಯತ್ಯಾಸವಿಲ್ಲದೆ, ಕರ್ನಾಟಕದ ಎಲ್ಲ ಜನರು ಇಂದಿಗೂ ಈ ಮಾತುಗಳನ್ನು ಉಳಿಸಿ ಬೆಳೆಸಿ ಕೊಟ್ಟಿದ್ದಾರೆ.

ಹೀಗೆ ಉಳಿದುಕೊಂಡುಬಂದ ಹರಿದಾಸ ಸಾಹಿತ್ಯವನ್ನು ಕುರಿತು ಈಗಾಗಲೇ ನೂರಾರು ಅಧ್ಯಯನಗಳಾಗಿವೆ. ಅವು ಸಾಹಿತ್ಯ ಚರಿತ್ರೆ, ಜೀವನ ಚರಿತ್ರೆ, ಪರಂಪರೆಯ ಹಿನ್ನೆಲೆ, ಕೀರ್ತನೆಗಳ ಸಂಗ್ರಹ, ಭಾಷಿಕ ರಚನೆಯ ಅಧ್ಯಯನ, ತೌಲನಿಕ ಅಧ್ಯಯನ, ಅಲ್ಲಲ್ಲಿ ಆಯ್ದು ಕೆಲವು ಕೀರ್ತನೆಗಳಿಗೆ ವಿಮರ್ಶಾ ಲೇಖನಗಳ ರೂಪದಲ್ಲಿ ಪ್ರಕಟಗೊಂಡಿವೆ.

ನಾಗಾಲೋಟದ ಆಧುನಿಕ ಬದುಕಿನ ಹೊಸ ತಲ್ಲಣಗಳನ್ನು ವೈಯಕ್ತಿಕ ಹಾಗೂ ರಾಷ್ಟ್ರೀಯ-ಅಂತರಾಷ್ಟ್ರೀಯ ನೆಲೆಯಲ್ಲಿ ಎದುರಿಸಲು ಹರಿದಾಸರ ಮಾತುಗಳು ಉಪಯುಕ್ತವಾಗುವ ಬಗೆಯನ್ನು ಅರಿಯಬೇಕಿದೆ. ಅಲ್ಲಿಯ ಜಾಯಮಾನಕ್ಕೆ ಒಗ್ಗುವ ವೈಜ್ಞಾನಿಕ ಯುಗದ ಎಲ್ಲ ವಿಧಾನಗಳೊಂದಿಗೆ ಅಂತರ ಶಿಸ್ತೀಯ ಅಧ್ಯಯನ ನಡೆಸಿ ಖಚಿತ ಉತ್ತರಗಳನ್ನು ಕಂಡುಕೊಳ್ಳಬೇಕಿದೆ.

ಇದಕ್ಕಾಗಿ ಹರಿದಾಸರ ಕೀರ್ತನೆಗಳ ಆಶಯವನ್ನು ನೀತಿಯ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಗ್ರಹಿಸುವ-ಕಾನೂನಿನ ಪರಿವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಅಧ್ಯಯನ ನಡೆಸುವ, ಆ ಮೂಲಕ ಆನ್ವಯಿಕ ವಿಧಾನದಿಂದ ಅರ್ಥಚಿಂತನೆಗೆ ಒಳಪಡಿಸುವ ಒಂದು ಪ್ರಯತ್ನವಾಗಿ ಪ್ರಸ್ತುತ ಅಂತರ್ಜಾಲದ ಮೂಲಕ ರಾಷ್ಟ್ರೀಯ ಮಟ್ಟದ ವೆಬಿನಾರ್‌ಗೆ ಈ ಸಂಪ್ರಬಂಧ ರೂಪುಗೊಂಡಿದೆ.

### ಹರಿದಾಸರ ನೀತಿ ಪ್ರತಿಪಾದಕ ರಚನೆಗಳು

ಸಂಘಜೀವಿಯಾದ ಮಾನವನು ತನ್ನ ಸಮುದಾಯಗಳ ಬದುಕನ್ನು ಹಸನುಗೊಳಿಸಲು 'ಸಮಾಜಶಾಸ್ತ್ರ'ವನ್ನು ರೂಪಿಸಿಕೊಂಡಿದ್ದಾನೆ. ತನ್ನ ಜೀವನವು ಮೌಲ್ಯಯುತವಾಗಿರಲೆಂದು ತನಗೆ ತಾನೇ ನಿಬಂಧನೆಗಳನ್ನು ಹಾಕಿಕೊಂಡಿದ್ದಾನೆ. ತನ್ನ 'ವರ್ತನೆ ಹೇಗಿದ್ದರೆ ಸರಿ?' ಎಂದು ಕಂಡುಕೊಳ್ಳಲು 'ವರ್ತನಾ ಸಿದ್ಧಾಂತ'ಗಳನ್ನು ರಚಿಸಿದ್ದಾನೆ. ತನ್ನ 'ಮನಸ್ಸು, ಕೃತಿ, ನಡೆ-ನುಡಿಗಳು ತಪ್ಪು ಹೆಜ್ಜೆ ಇಡದಿರಲಿ' ಎಂಬ ಉದ್ದೇಶದಿಂದ 'ನೀತಿಶಾಸ್ತ್ರ'ವನ್ನು ಮತ್ತು ಕಾನೂನುಶಾಸ್ತ್ರವನ್ನೂ ರೂಪಿಸಿಕೊಂಡಿದ್ದಾನೆ. ಈ ಪ್ರಕ್ರಿಯೆ ಇಂದು ನಿನ್ನೆ ಆರಂಭಗೊಂಡದ್ದಲ್ಲ. ಮಾನವ ತನ್ನ ಅಸ್ತಿತ್ವವನ್ನು ಕಂಡುಕೊಂಡಂದಿನಿಂದ ಇಂತಹ ಹಲವು ಮಾರ್ಗಗಳನ್ನು ಹಸನುಗೊಳಿಸಿಕೊಂಡಿದ್ದಾನೆ. ಇದು ಒಂದು ದೇಶಕ್ಕೆ, ಒಂದು ಕಾಲಕ್ಕೆ ಸೀಮಿತಗೊಳ್ಳದ ವಿಶ್ವಾತ್ಮಕ ಪ್ರಕ್ರಿಯೆ.

ಆಧುನಿಕವಾಗಿ ಇಂದು ಮಾನವ ಎಷ್ಟೇ ಮುಂದುವರಿದಿದ್ದರೂ, ಸಮಾಜದ ಕಟ್ಟುಪಾಡುಗಳನ್ನು ಮೀರಲು ಹಂಬಲಿಸಿದರೂ ಜೀವನದ 'ಶಿಷ್ಟಾಚಾರ'ವನ್ನಾಗಲಿ, ನೈತಿಕ ಪ್ರಜ್ಞೆಯನ್ನಾಗಲಿ ಕಳೆದುಕೊಂಡಿಲ್ಲ. ಒಂದೊಮ್ಮೆ ಕಳೆದುಕೊಳ್ಳುವ ಹಂತಕ್ಕೆ ಬಂದಾಗಲೆಲ್ಲ ಪ್ರಕೃತಿ-ಸಂಸ್ಕೃತಿಗಳು ಎಚ್ಚರಿಸುತ್ತಲೇ ಬಂದಿವೆ. ಎಲ್ಲ ಭಾಷೆಯ, ಎಲ್ಲ ದೇಶಗಳ, ಎಲ್ಲ ಜನವರ್ಗಗಳ ಬದುಕಿನಲ್ಲಿ 'ಸಭ್ಯ ಸಂಸ್ಕೃತಿ' ಇಂದಿಗೂ ಉಳಿದಿರುವುದು ಮನುಕುಲ ಕಂಡುಕೊಂಡ 'ಲೋಕನೀತಿ'ಗಳಿಂದ.

ನಯ, ವಿನಯ, ಸಭ್ಯತೆಗಳಿಂದ ಕೂಡಿದ ಜಗದ ಜನರ ವರ್ತನೆ ಅಥವಾ ನಡವಳಿಕೆಗಳನ್ನು ತೋರಿಸಿಕೊಡುವುದೇ 'ಲೋಕನೀತಿ'. 'ಸಚ್ಚಾರಿತ್ರ್ಯ', 'ಶಿಷ್ಟಾಚಾರ', 'ವಿವೇಕಯುತ ವರ್ತನೆ', 'ನ್ಯಾಯವಾದ ವರ್ತನೆ' ಎಂಬ ಅರ್ಥವುಳ್ಳ 'ನೀತಿ'ಯನ್ನು ಬೋಧಿಸುವ ಗ್ರಂಥಗಳಿಂದ; ಮನುಷ್ಯನು 'ಧರ್ಮಾಧರ್ಮ ವಿವೇಕ', 'ಕಾರ್ಯನಿರ್ವಾಹದಲ್ಲಿ ಚಾತುರ್ಯ', 'ರಾಜ್ಯಾಡಳಿತ ನೈಪುಣ್ಯ' ಮುಂತಾದ ಅನೇಕ ವಿಷಯಗಳಲ್ಲಿ ಪ್ರಾವೀಣ್ಯ ಪಡೆದು ಸಮಾಜದಲ್ಲಿ ಆದರ್ಶಪ್ರಾಯನಾಗಬಹುದು. ನೀತಿಯನ್ನು ತನ್ನ ಜೀವನದಲ್ಲಿ ಅಳವಡಿಸಿಕೊಂಡು ಲೋಕಕ್ಕೂ ಮಾರ್ಗದರ್ಶನ ಮಾಡಿ ಜನತೆಯ ಜೀವನವನ್ನು ಸುಖಮಯವನ್ನಾಗಿ ಮಾಡಬಹುದು.

ವಿಶ್ವದ ವಿವಿಧ ಜನವರ್ಗಗಳಲ್ಲಿ ಇರುವ 'ರೀತಿ-ನೀತಿ'ಗಳಂತೆಯೇ ಬಹುಸಂಸ್ಕೃತಿಗಳ ದೇಶವಾದ ಭಾರತದಲ್ಲೂ ಈ ಬಂಧವನ್ನು ಕಾಣಬಹುದು. ಅದರಲ್ಲೂ 'ಭಕ್ತಿ ಪರಂಪರೆ'ಗೆ ಹೆಚ್ಚಿನ ಸ್ಥಾನಮಾನವನ್ನು ಕೊಟ್ಟ ಕರ್ನಾಟಕದ ಸುಸಂಸ್ಕೃತ ಜನಸಮೂಹದಲ್ಲೂ ನೀತಿ ಪ್ರತಿಪಾದಕ ಮಾತುಗಳನ್ನಾಡಿದ ಸಂತರನ್ನು, ತತ್ವಜ್ಞಾನಿಗಳನ್ನು, ಚಿಂತಕರನ್ನು ಕಾಣುತ್ತ ಬಂದಿದ್ದೇವೆ. ಇವರಲ್ಲಿ, ಇಲ್ಲಿಯ ಜನರ ತೊಳಲಾಟಗಳನ್ನು, ಕಷ್ಟ-ದುಃಖಗಳನ್ನು ಹತ್ತಿರದಿಂದ ಕಂಡು, ತಾವೂ ಅನುಭವಿಸಿ, ಆ ಎಲ್ಲ ನೋವು ನಲಿವುಗಳಿಗೆ ಉತ್ತರಗಳನ್ನು ಕಂಡುಕೊಂಡವರು ಹರಿದಾಸರು.

ಗಭೀರಚಿತ್ತರೂ, ವಿವೇಕಿಗಳೂ ಆದ ಕನ್ನಡಿಗರ ವೈಚಾರಿಕತೆ ಕಾಲದಿಂದ ಕಾಲಕ್ಕೆ ಪರಿಷ್ಕೃತವಾಗಿದೆ. ಹೊಸ ಹೊಸ ಜ್ಞಾನಶಾಖೆಗಳನ್ನು ಹುಟ್ಟುಹಾಕಿದೆ. ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಕನ್ನಡನಾಡಿನಲ್ಲೇ ಹುಟ್ಟಿ ಬೆಳೆದ ಸ್ಥಳೀಯ ಸಾಂಸ್ಕೃತಿಕ ಪರಂಪರೆಗಳ ಮಧ್ಯೆ 'ಹರಿದಾಸ ಪರಂಪರೆ' ತನ್ನದೇ ಆದ ವಿಶೇಷಗುಣಾಂಶಗಳ ಕಾರಣದಿಂದ ಮಹತ್ವಪಡೆದಿದೆ. ಈ ಕಾರಣಕ್ಕಾಗಿ ಇಂದಿಗೂ ಹರಿದಾಸರ ಮಾತುಗಳು ಜನರ ಮಧ್ಯದಲ್ಲಿ ಉಳಿದು ಬೆಳೆದು ಬರುತ್ತಿವೆ.

ಎ.ಮುರಿಗೆಪ್ಪ ಅವರ ಪ್ರಕಾರ "ದಾಸರು ಸಮಾಜವನ್ನು ತಿದ್ದುವ ಕೆಲಸ ಮಾಡಿದರು. ಅವರ ಕೀರ್ತನೆಗಳು ಅಸ್ವಸ್ಥಗೊಂಡ ಜನರಿಗೆ ನೆಮ್ಮದಿಯನ್ನು ನೀಡಿದವು. ಧರ್ಮವನ್ನು ಜಟಿಲಗೊಳಿಸದೆ ಸರಳವಾಗಿ ಸಾಮಾನ್ಯರಲ್ಲಿ

ಆಚರಣೆಗೆ ತಂದರು. ಅಧ್ಯಾತ್ಮ ಬೋಧನೆಯಿಂದ ವ್ಯಕ್ತಿಗಳಲ್ಲಿ ಸಮಾನತೆಯನ್ನು ತರಲು ಪ್ರಯತ್ನಿಸಿದರು. ಕನ್ನಡ ಸಾಹಿತ್ಯವನ್ನೂ, ಕನ್ನಡ ಸಂಸ್ಕೃತಿಯನ್ನೂ ಶ್ರೀಮಂತಗೊಳಿಸಿದ ಕೀರ್ತಿ ದಾಸರಿಗೆ ಸಲ್ಲುತ್ತದೆ. ಅವರನ್ನು ಕುರಿತು, ಅವರ ಕೀರ್ತನೆಗಳನ್ನು ಕುರಿತು ಪರಿಣಾಮಕಾರಿಯಾದ ಅಧ್ಯಯನಗಳು ನಡೆದಿವೆ.”<sup>1</sup>

ಹರಿದಾಸರ ರಚನೆಗಳಲ್ಲಿ ಕಾವ್ಯಕಟ್ಟುವ ಗೀಳಿಗಿಂತ, ಧಾರ್ಮಿಕ ಉಪದೇಶ ನೀಡುವ ಹಪಹಪಿಗಿಂತ, ಜನರ ತಲ್ಲಣಗಳಿಗೆ ಸಾಂತ್ವನ ಹೇಳುವ ಹಂಬಲವಿದೆ. ಅವರ ಆಪ್ತಸಲಹೆಗಳು ಬದುಕನ್ನು ಹಸನುಗೊಳಿಸಿಕೊಳ್ಳುವವರಿಗೆ ದಾರಿದೀಪವಾಗಿವೆ. ಕೇವಲ ದೇವರ ಮಹಿಮೆಯನ್ನು ಮಾತ್ರ ಹೇಳದೆ, ಮಹಿಮೆ ಹೇಳುವ ನೆಪದಲ್ಲೂ ಬದುಕಿನ ಪಾಠಗಳನ್ನು, ಮಾರ್ಗೋಪಾಯಗಳನ್ನು ತಿಳಿಸಿಕೊಟ್ಟಿದ್ದಾರೆ. ಆದರೆ ಅವರ ಮಾತುಗಳಲ್ಲಿಯ ಆ ಜಾಡನ್ನು ಸರಿಯಾಗಿ ಗ್ರಹಿಸುವ ಅಗತ್ಯ ಹಿಂದಿಗಿಂತಲೂ ಇಂದು ಪ್ರಮುಖವೆನಿಸಿದೆ. ಮಾನವಪರವಾದ ಅವರ ಮಾತುಗಳ ‘ನಿಜದನಿ’ ಏನು? ಎಂಬುದನ್ನು ಅರಿಯಬೇಕಿದೆ. ಅಂದರೆ ಹರಿದಾಸರ ಲೋಕನೀತಿಯ ಕೀರ್ತನೆಗಳ ಅನುಸಂಧಾನವನ್ನು ಕೈಗೊಳ್ಳಬೇಕಿದೆ.

**ನೀತಿ ಮತ್ತು ಕಾನೂನಿನಪರಿಕಲ್ಪನೆ ಮತ್ತು ಅಧ್ಯಯನದ ಆವಶ್ಯಕತೆ:**

‘ನೀತಿ’ಯನ್ನು ತಿಳಿಯದವನು ನಿಜವಾದ ಹರಿದಾಸನಾಗಲಾರ. ಹರಿದಾಸ ಪರಂಪರೆಗೆ ಲೋಕನೀತಿಯ ಆಯಾಮವನ್ನು ಕಸಿಗೊಳಿಸಬೇಕೆಂಬ ಕನಸನ್ನು ಕಂಡವರು ವ್ಯಾಸರಾಯರು. ಅದನ್ನು ತಮ್ಮ ಶಿಷ್ಯರಾದ ಕನಕದಾಸರ-ಪುರಂದರದಾಸರ ಮೂಲಕ ಸಾಕಾರ ಗೊಳಿಸಿದರು. ‘ನೀತಿಯೆಲ್ಲವನರಿತು ನಿಗಮವೇದ್ಯನ ನಿತ್ಯ ವಾತಸುತನಲ್ಲಿಹನ ವರ್ಣಿಸುತಲಿ, ಗೀತ ನರ್ತನದಿಂದ ಕೃಷ್ಣನ್ನ ಪೂಜಿಸುವ ಪೂತಾತ್ಮ ಪುರಂದರ ದಾಸರಿವರಯ್ಯ || ದಾಸರೆಂದರೆ ಪುರಂದರ ದಾಸರಯ್ಯ’ ಎಂದು ಹಾಡುವ ಮೂಲಕ ಹರಿದಾಸ ಪರಂಪರೆಗೆ ಗಾಯನ-ನರ್ತನಗಳು ಮಾಧ್ಯಮಗಳಾಗಿರುವಂತೆಯೇ ‘ಲೋಕನೀತಿ’ ಮತ್ತು ‘ದೈವಭಕ್ತಿ’ಗಳು ಆ ಪರಂಪರೆಯ ಮುಖ್ಯ ಧ್ಯೇಯಗಳಾಗಿವೆ ಎಂಬುದನ್ನು ಪ್ರಣಾಳಿಕೆಯಂತೆ ಘೋಷಿಸಿದರು. ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಹರಿದಾಸರ ‘ಲೋಕನೀತಿ’ಯನ್ನು ವಿಶ್ಲೇಷಿಸುವ ಮೊದಲು, ಈ ಅಧ್ಯಾಯದಲ್ಲಿ ‘ನೀತಿ’ ಎಂದರೇನು? ಸಮಾಜದ ಜನರ ವರ್ತನೆಗಳನ್ನು ನಿಯಂತ್ರಿಸುವುದರಲ್ಲಿ ಅದರ ಪಾತ್ರವೇನು? ಕಾನೂನು, ರೂಢಿ, ಸಂಪ್ರದಾಯಗಳಿಗೂ, ನೀತಿಗೂ ಇರುವ ವ್ಯತ್ಯಾಸವೇನು? ‘ನೈತಿಕತೆ’ಯ ಕಾರ್ಯವಿಧಾನ ಯಾವುದು? ಎಂಬ ಪ್ರಶ್ನೆಗಳಿಗೆ ಉತ್ತರಗಳನ್ನು ಕಂಡುಕೊಳ್ಳಲು ಪ್ರಯತ್ನಿಸಲಾಗಿದೆ.

‘ನೀತಿ’ ಎಂಬ ಪದಕ್ಕೆ ಶಬ್ದಕೋಶಗಳಲ್ಲಿ: 1. ಹೊಂದಿಸುವುದು, ತಲುಪಿಸುವುದು, ಮುಟ್ಟುವುದು; 2. ನೇತೃತ್ವ ಮಾರ್ಗದರ್ಶನ, ಕಾರ್ಯವಿಧಾನವನ್ನು ತೋರಿಸುವುದು; 3. ನಡತೆ, ವರ್ತನೆ, ನಡವಳಿಕೆ; 4. ನಯ, ವಿನಯ, ಸಭ್ಯತೆ; 5. ವಿವೇಕದಿಂದ ಕೂಡಿದ ವರ್ತನೆ, ನ್ಯಾಯವಾದ ವರ್ತನೆ; 6. ಕಾರ್ಯದ ವ್ಯವಸ್ಥೆ, ಯೋಜನೆ, ಕಾರ್ಯ ನಡೆಸುವ ಏರ್ಪಾಡು; 7. ರಾಜ್ಯಾಡಳಿತ ಶಾಸ್ತ್ರ, ರಾಜತಂತ್ರ, ರಾಜಕೀಯ ವ್ಯವಹಾರದ ತತ್ತ್ವ;<sup>2</sup> 8. ಒಯ್ಯುವಿಕೆ; 9. ಮುನ್ನಡೆಸುವಿಕೆ; 10. ಒಳ್ಳೆಯ ನಡತೆ, ಸಚ್ಚಾರಿತ್ರ್ಯ, ಶಿಷ್ಟಾಚಾರ; 11. ನ್ಯಾಯ, ಧರ್ಮ; 12. ಒಳ್ಳೆಯ ಉಪದೇಶ, ಹಿತೋಕ್ತಿ; 13. ರಾಜನೀತಿ, ಅರ್ಥನೀತಿ, ರಾಜ್ಯಾಡಳಿತ ತಂತ್ರ; 14. ವಿವೇಕ, ಸಾರಾಸಾರ ವಿಚಾರ, ವಿವೇಚನೆ; 15. ತಂತ್ರ, ಯುಕ್ತಿ; 16. ಕಾರ್ಯನೀತಿ, ಧೋರಣೆ<sup>3</sup> ಎಂಬ ಅರ್ಥಗಳಿವೆ.

ಈ ಎಲ್ಲ ಅರ್ಥಗಳನ್ನು ಕ್ರೋಡೀಕರಿಸಿ ಚರ್ಕವರ್ತಿ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲಾಚಾರ್ಯರು “ನೀತಿಯನ್ನು ಬೋಧಿಸುವ ಗ್ರಂಥಗಳಿಂದ ಮನುಷ್ಯನು ಧರ್ಮಧರ್ಮ, ನಯ, ವಿನಯ, ವಿವೇಕ, ಕಾರ್ಯನಿರ್ವಹದಲ್ಲಿ ಚಾತುರ್ಯ,

1. ಮುರಳೀಧರ ಎಚ್.ಎನ್. (ಸಂ), ‘ಶಬ್ದಪಾರಮಾರ್ಗಮಶಕ್ಯಂ’, ಈ ಪರಿಯ ಸೊಬಗು, (ಈ ಭಾಗಕ್ಕೆ ಅವರು ಪುಟಸಂಖ್ಯೆ ಹಾಕಿಲ್ಲ)  
2. ಚಕ್ರವರ್ತಿ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲಾಚಾರ್ಯ, (ಸಂ) ಶಬ್ದಾರ್ಥ ಕೌಸ್ತುಭಃ, ಸಂ: 4, ಪು. 1644  
3. ಜಿ. ವೆಂಕಟಸುಬ್ಬಯ್ಯ, (ಸಂ) ಕನ್ನಡ ನಿಘಂಟು, ಸಂ: 5, ಪು. 4796

ರಾಜ್ಯಾಡಳಿತ ನೈಪುಣ್ಯ ಮುಂತಾದ ಅನೇಕ ವಿಷಯಗಳಲ್ಲಿ ಪ್ರಾವೀಣ್ಯ ಪಡೆದು ಸಮಾಜದಲ್ಲಿ ಆದರ್ಶಪ್ರಾಯನಾಗಬಹುದು. ನೀತಿಯನ್ನು ತನ್ನ ಜೀವನದಲ್ಲಿ ಅಳವಡಿಸಿಕೊಂಡು ಲೋಕಕ್ಕೂ ಮಾರ್ಗದರ್ಶನ ಮಾಡಿ ಜನತೆಯ ಜೀವನವನ್ನು ಸುಖಮಯ ಮಾಡಬಹುದು. ನೀತಿಶಾಸ್ತ್ರದ ಅಧ್ಯಯನದಿಂದ ಮನುಷ್ಯನ ಜೀವನದಲ್ಲಿ ಕರ್ತವ್ಯ ಮತ್ತು ಅಕರ್ತವ್ಯಗಳ ವಿವೇಕ ಉಂಟಾಗುವುದು”<sup>4</sup> ಎಂದು ವಿವರಿಸಿದ್ದಾರೆ.

‘ನೀತಿ’ ಎಂಬ ಪದಕ್ಕೆ ‘ನ್ಯಾಯ’, ‘ಆಚಾರ’, ‘ನಿಯಮ’ ಎಂಬ ಸಮಾನಾರ್ಥಕ ಪದಗಳಿದ್ದರೂ ಅವುಗಳಲ್ಲಿ ಸೂಕ್ಷ್ಮ ವ್ಯತ್ಯಾಸಗಳಿವೆ.<sup>5</sup> ಆ ಎಲ್ಲ ಪದಗಳಿಗಿಂತ ‘ನೀತಿ’ ಎಂಬುದು ಹೆಚ್ಚು ವಿಶಾಲವಾದ ವ್ಯಾಪ್ತಿಯನ್ನು ಹೊಂದಿದೆ. ಸಂಕ್ಷಿಪ್ತವಾಗಿ ಹೇಳುವುದಾದರೆ ‘ಜಗದ ಜನರ ನಡವಳಿಕೆಯನ್ನು’ ಕುರಿತ ಜ್ಞಾನದ ಮೊತ್ತ’ವನ್ನು ‘ಲೋಕನೀತಿ’ ಎಂದು ಕರೆಯುತ್ತೇವೆ.

‘ನೀತಿಶಾಸ್ತ್ರ’ ಪದಕ್ಕೆ ಶಬ್ದಕೋಶದಲ್ಲಿ: 1. ಆಚಾರ, ನಡವಳಿಕೆ, ಲೋಕವ್ಯವಹಾರ, ಧಾರ್ಮಿಕ ವೃತ್ತಿ ಮೊದಲಾದವುಗಳನ್ನು ತಿಳಿಸುವ ಶಾಸ್ತ್ರ; 2. ರಾಜನೀತಿಯನ್ನು ಕುರಿತ ಶಾಸ್ತ್ರ, ಆಡಳಿತಶಾಸ್ತ್ರ<sup>7</sup> ಎಂಬ ಅರ್ಥಗಳಿವೆ. ಇವೆಲ್ಲ ಭಾರತೀಯರ ಪರಿಕಲ್ಪನೆಗಳು.

ಈ ಬಗ್ಗೆ ಪಾಶ್ಚಾತ್ಯ ಮತ್ತು ಆಧುನಿಕ ನಿಲುವುಗಳನ್ನು ಸಹ ತಿಳಿಯುವುದು ಅಗತ್ಯ. ನೀತಿಶಾಸ್ತ್ರ(Ethics)ಕ್ಕೆ ವಿಕೀಪೀಡಿಯಾದಲ್ಲಿ ಈ ಕೆಳಗಿನ ವ್ಯಾಖ್ಯೆಗಳಿವೆ:

4. ಚಕ್ರವರ್ತಿ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲಾಚಾರ್ಯ. (ಸಂ) ಪೂರ್ವೋಕ್ತ, ಪುಟ: 1644
5. ಉದಾಹರಣೆಗೆ: ‘ನ್ಯಾಯ’ ಪದಕ್ಕೆ ಶಬ್ದಕೋಶದಲ್ಲಿ: 1. ಉಪಾಯ, ಕ್ರಮ, ರೀತಿ; 2. ಯೋಗ್ಯವಾದ ನಡವಳಿಕೆ, ಒಪ್ಪು ಔಚಿತ್ಯ; 3. ಪ್ರಾಮಾಣಿಕತೆ, ನೀತಿ, ಧರ್ಮ; (ದೇಹಲಿದೀಪನ್ಯಾಯ, ಸ್ಥಾಲೀಪುಲಾಕನ್ಯಾಯ);- ಚಕ್ರವರ್ತಿ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲಾಚಾರ್ಯ, ಪೂರ್ವೋಕ್ತ, ಪು. 1662
4. ತಿಳಿದವರು ಒಡಂಬಡಲು ಯೋಗ್ಯವಾದದ್ದು; 5. ನಿಯಮ, ಕಟ್ಟಳೆ; 6. ಸರಿಯಾದುದು, ಯೋಗ್ಯವಾದುದು, ಉಚಿತವಾದುದು; 7. ನೀತಿ, ಧರ್ಮ; 8. ನ್ಯಾಯಾಲಯದ ನಿರ್ಣಯ, ತೀರ್ಪು, ತೀರ್ಮಾನ; 8. ತರ್ಕಶಾಸ್ತ್ರ, ನ್ಯಾಯಶಾಸ್ತ್ರ; 9. ತರ್ಕಬದ್ಧವಾದ ವಾದ, ತಾರ್ಕಿಕರ ವಾದ; 10. ಕಾನೂನು, ಕಾಯಿದೆ, ನ್ಯಾಯ ಪ್ರಕ್ರಿಯೆ; 11. ಲೋಕಪ್ರಸಿದ್ಧವಾದ ದೃಷ್ಟಾಂತ, ಲೋಕೋಕ್ತಿ; 11. ಪ್ರಸಿದ್ಧವಾದ ದೃಷ್ಟಾಂತದಿಂದ ವಿಷಯವನ್ನು ಸ್ಪಷ್ಟಪಡಿಸುವ ರೀತಿ ಎಂಬ ಅರ್ಥಗಳಿವೆ. - ಜಿ. ವೆಂಕಟಸುಬ್ಬಯ್ಯ, (ಸಂ) ಸಂ: 5, ಪೂರ್ವೋಕ್ತ, ಪು. 5012-5013
- ‘ಆಚಾರ’ ಪದಕ್ಕೆ ಶಬ್ದಕೋಶದಲ್ಲಿ: 1. ಆಚರಣೆ, ಅನುಷ್ಠಾನ; 2. ಒಳ್ಳೆಯ ನಡತೆ. (ಮನುಷ್ಯನ ಆಚಾರವೇ ಸರ್ವಶ್ರೇಷ್ಠವಾದುದು. ಸದಾಚಾರವು ಐಶ್ವರ್ಯವನ್ನೂ, ಕೀರ್ತಿಯನ್ನೂ, ಆಯುರ್ವೃದ್ಧಿಯನ್ನೂ ಉಂಟುಮಾಡಿ ಅನಿಷ್ಟಗಳನ್ನು ದೂರಮಾಡುತ್ತವೆ. ಆಚಾರದಿಂದ - ಧರ್ಮವೂ, ಧರ್ಮದಿಂದ - ಆಯುರ್ವೃದ್ಧಿಯೂ ಉಂಟಾಗುತ್ತದೆ.); - ಚಕ್ರವರ್ತಿ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲಾಚಾರ್ಯ, ಪೂರ್ವೋಕ್ತ, ಪು. 291
3. (ವ್ಯಕ್ತಿಯ ಧಾರ್ಮಿಕ ಜೀವನದಲ್ಲಿ ಅನುಸರಿಸಬೇಕಾದ ಮತ ಸಂಬಂಧವಾದ) ಕಟ್ಟುಪಾಡು, ನಿಯಮ, ಸಂಪ್ರದಾಯ; 4. ಒಳ್ಳೆಯ ನಡತೆ; ಎಂಬ ಅರ್ಥಗಳಿವೆ. - ಜಿ. ವೆಂಕಟಸುಬ್ಬಯ್ಯ, (ಸಂ) ಸಂ: 1, ಪೂರ್ವೋಕ್ತ, ಪು. 581
- ‘ನಿಯಮ’ ಪದಕ್ಕೆ ಶಬ್ದಕೋಶದಲ್ಲಿ: 1. ಶಾಸ್ತ್ರೋಕ್ತವಾದ ಕರ್ಮದ ಆಚರಣೆ; 2. ಆವಶ್ಯಕತೆ, ನಿರ್ಬಂಧ, ಅಗತ್ಯವಾಗಿರುವಿಕೆ; 3. ಪರ್ಯಾಲೋಚನೆ, ಸಲಹೆ ಕೇಳುವುದು, ಕೂಡಿ ಮಾತಾಡುವುದು; 4. ನಿಯಂತ್ರಣ, ತಡೆ, ನಿರೋಧ, ಪ್ರತಿಬಂಧಿಸುವುದು; 5. ನಿಶ್ಚಯ, ನಿಧಾರ; - ಚಕ್ರವರ್ತಿ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲಾಚಾರ್ಯ, ಪೂರ್ವೋಕ್ತ, ಪು. 1587
6. ಅಂಕಿಯಲ್ಲಿಡುವುದು, ಹತೋಟಿ, ನಿರೋಧಿಸುವುದು, ನಿಗ್ರಹಿಸುವುದು, ಪ್ರತಿಬಂಧ; 7. ಹೀಗೆಯೇ ಇರಬೇಕೆಂಬ ಕಟ್ಟು, ವಿಧಿ, ಕಟ್ಟಳೆ; 8. ನಿರ್ಣಯ, ನಿರ್ಧಾರ, ನಿಶ್ಚಯ; 9. ಒಪ್ಪಿಗೆ, ಸಮ್ಮತಿ, ಅಂಗೀಕಾರ, ವಾಗ್ದಾನ; 10. ದೇವರ ಪ್ರೀತಿಗಾಗಿ ಮಾಡುವ ಉಪವಾಸ, ಧ್ಯಾನ ಮೊದಲಾದ ಆಚರಣೆ, ವ್ರತ; ಎಂಬ ಅರ್ಥಗಳಿವೆ. -ಜಿ. ವೆಂಕಟಸುಬ್ಬಯ್ಯ, ಸಂ: 5, ಪೂರ್ವೋಕ್ತ, ಪು. 4636
6. ‘ಲೋಕ’ ಪದಕ್ಕೆ ಶಬ್ದಕೋಶದಲ್ಲಿ: 1. ಭುವನ, ಜಗತ್ತು, ಪ್ರಪಂಚ; 2. ಜನ, ಮನುಷ್ಯ; 3. ದರ್ಶನ, ನೋಟ; - ಚಕ್ರವರ್ತಿ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲಾಚಾರ್ಯ, ಪೂರ್ವೋಕ್ತ, ಪು. 2329
4. ಲೋಕದ ವ್ಯವಹಾರ, ನಡವಳಿಕೆ; 5. ನೋಡುವುದು, ನೋಟ; ಎಂಬ ಅರ್ಥಗಳಿವೆ. (ಜಿ. ವೆಂಕಟಸುಬ್ಬಯ್ಯ, (ಸಂ) ಸಂ: 5, ಪೂರ್ವೋಕ್ತ, ಪು. 1733)
7. ಜಿ. ವೆಂಕಟಸುಬ್ಬಯ್ಯ, (ಸಂ) ಸಂ: 5, ಪೂರ್ವೋಕ್ತ, ಪು. 4796

“ನೈತಿಕವಾಗಿ ಯಾವುದು ಸರಿ, ಯಾವುದು ತಪ್ಪು ಎಂಬ ಕಲ್ಪನೆಯ ವಿಚಾರಗಳನ್ನು ಆಧರಿಸಿದ ವರ್ತನೆಯ ನಿಯಮಗಳೇ ನೀತಿಶಾಸ್ತ್ರ.”

“ಯಾವುದು ಸರಿಯಾದ ವರ್ತನೆ, ಯಾವುದು ತಪ್ಪಾದ ವರ್ತನೆ ಎಂಬ ಕಲ್ಪನೆಗಳೊಂದಿಗೆ ಒಪ್ಪಂದ ಮಾಡುವ ಅಧ್ಯಯನಕ್ಕೇತ್ರ. ನೈತಿಕವಾಗಿ ಯಾವುದು ಸರಿ, ಯಾವುದು ತಪ್ಪು ಎಂಬುದನ್ನು ಕುರಿತ ತತ್ವಶಾಸ್ತ್ರದ ಶಾಖೆಯಾಗಿದೆ.”

“ನೈತಿಕ ಕರ್ತವ್ಯ ಮತ್ತು ಹೊಣೆಗಾರಿಕೆಯೊಂದಿಗೆ ಯಾವುದು ಸರಿ, ಯಾವುದು ತಪ್ಪು ಎಂಬ ಬಗ್ಗೆ ಅಧ್ಯಯನ ನಡೆಸುವ ಶಾಸ್ತ್ರ.”

“ನೈತಿಕ ತತ್ವಗಳ ಸಮೂಹವೇ ನೀತಿಶಾಸ್ತ್ರ. ನೈತಿಕ ಮೌಲ್ಯಗಳ ವ್ಯವಸ್ಥೆ ಅಥವಾ ಅವುಗಳನ್ನು ಕುರಿತ ಸಿದ್ಧಾಂತಗಳೇ ನೀತಿಶಾಸ್ತ್ರ.”

ರಷ್‌ವರ್ತ್ ಕಿಡ್ಡರ್‌ನ ಪ್ರಕಾರ: “ಆದರ್ಶ ಮಾನವವರ್ತನೆಯೇ ನೀತಿಶಾಸ್ತ್ರ ಅಥವಾ ನೈತಿಕ ಕರ್ತವ್ಯಗಳ ವಿಜ್ಞಾನವೇ ನೀತಿಶಾಸ್ತ್ರ.”

ರಿಚರ್ಡ್ ವಿಲಿಯಂ ಪಾಲ್ ಮತ್ತು ಲಿಂಡಾ ಎಲ್ಡರ್ ಇವರ ಪ್ರಕಾರ: “ಯಾವ ವರ್ತನೆಗಳು ಸಚೇತನ ಜೀವಿಗಳಿಗೆ ಸಹಾಯ ಮಾಡುತ್ತವೆ ಅಥವಾ ತೊಂದರೆ ಮಾಡುತ್ತವೆ ಎಂಬುದನ್ನು ನಿರ್ಧರಿಸಿ ಮಾರ್ಗದರ್ಶನ ನೀಡುವ ಪರಿಕಲ್ಪನೆ ಮತ್ತು ತತ್ವಗಳ ಮೊತ್ತ.” ಅವರೇ ಹೇಳಿರುವಂತೆ: “ಸಾಮಾಜಿಕ ಬದ್ಧತೆ, ಧಾರ್ಮಿಕ ನಂಬಿಕೆ ಮತ್ತು ಕಾನೂನುಗಳೊಂದಿಗೆ ವರ್ತಿಸುವಾಗ ಬಹುಪಾಲು ಜನರು ಯಾವುದು ನೀತಿ ಎಂಬ ಬಗ್ಗೆ ಗೊಂದಲವನ್ನು ಹೊಂದಿದ್ದಾರೆ ಮತ್ತು ನೀತಿಶಾಸ್ತ್ರವನ್ನು ಅದ್ವಿತೀಯ ಪರಿಕಲ್ಪನೆಯನ್ನಾಗಿ (ಒಂದು ಪ್ರತ್ಯೇಕ ಪರಿಕಲ್ಪನೆಯನ್ನಾಗಿ) ಪರಿಗಣಿಸುವುದಿಲ್ಲ.”

ಕೇಂಬ್ರಿಡ್ಜ್‌ನ ತತ್ವಶಾಸ್ತ್ರದ ಪದಕೋಶದ ಪ್ರಕಾರ: “ನೀತಿಶಾಸ್ತ್ರ ಮತ್ತು ನೈತಿಕತೆ ಎರಡೂ ಸಮಾನಾರ್ಥಕ ಪದಗಳಾದರೂ ಸೀಮಿತವಾಗಿ ಹೇಳುವುದಾದರೆ ಒಂದು ನಿರ್ದಿಷ್ಟ ಸಂಪ್ರದಾಯದ ಅಥವಾ ಸಮೂಹದ ಅಥವಾ ವ್ಯಕ್ತಿಯ ನೈತಿಕ ತತ್ವಗಳೇ ನೀತಿಶಾಸ್ತ್ರ.”

ಲೋಕನೀತಿಯನ್ನು ಕುರಿತು ಚರ್ಚಿಸುವ ಸಂದರ್ಭದಲ್ಲಿ ‘ನೈತಿಕತೆ’ (Morality), ಎಂಬುದಕ್ಕೆ ಸಮಾನಾರ್ಥಕವಾದ (synonyms) < ethics < virtue < righteousness < morals < principles < goodness < decency < probity < honesty < integrity ಎಂಬೆಲ್ಲ ಪದಗಳ ಪರಿಚಯ ಮತ್ತು ಅವುಗಳ ಪರಸ್ಪರ ಸಂಬಂಧವನ್ನು ಸಹ ತಿಳಿಯಬೇಕಾಗುತ್ತದೆ.

### ನೈತಿಕತೆ

**ನೈತಿಕತೆ (Morality):** ಯಾವುದು ಸರಿಯಾದ ವರ್ತನೆ, ಯಾವುದು ತಪ್ಪಾದ ವರ್ತನೆ ಎಂಬುದರ ಬಗೆಗಿನ ನಂಬಿಕೆಗಳೇ ನೈತಿಕತೆ. ಮಾನವನ ಸದ್ವರ್ತನೆಗಳ ಆದರ್ಶಕ್ಕೆ ಬದ್ಧವಾಗುವುದೇ ನೈತಿಕತೆ.<sup>8</sup> ಸರಿ-ತಪ್ಪು ಅಥವಾ ಒಳ್ಳೆಯ-ಕೆಟ್ಟ ವರ್ತನೆಗಳ ಮಧ್ಯೆ ವ್ಯತ್ಯಾಸವನ್ನು ಕುರಿತ ತತ್ವಗಳೇ ನೈತಿಕತೆ.

ಎ.ಹೆಗರ್‌ಸ್ಪಾರಮ್ ಅವರ ಪ್ರಕಾರ: “Morality helps law not because it leads the people to perform a number of actions required by the law, but also because it often leads the people to obey the law as such. In this case morality justifies law, giving it legitimacy: obedience to the

8. Merriam webster’s learners dictionary (ಅಂತರ್ಜಾಲದಿಂದ)

law is felt as moral, that is, obligatory in itself; a formidable strength is giving to present and future law; a sense of duty predisposes the people to obey the law in advance.”<sup>9</sup>

ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ 'ನೀತಿ' ಮತ್ತು 'ಕಾನೂನು'ಗಳಿಗೆ ಇರುವ ವ್ಯತ್ಯಾಸಗಳನ್ನು ಈ ಕೆಳಗಿನಂತೆ ಪಟ್ಟಿ ಮಾಡಬಹುದು:

ನೀತಿ / ನೈತಿಕತೆ (Ethics / Morality)	ಕಾನೂನು (Law)
1. ನೀತಿಯು ಅನೌಪಚಾರಿಕವಾದದ್ದು ಮತ್ತು ಬಹುಪಾಲು ಅಲಿಖಿತ ರೂಪದಲ್ಲಿರುತ್ತದೆ. ಲಿಖಿತ ನೀತಿ ಗ್ರಂಥಗಳೂ ಇವೆ.	ಕಾನೂನು ಔಪಚಾರಿಕವಾದದ್ದು ಮತ್ತು ಸಂಪೂರ್ಣವಾಗಿ ಲಿಖಿತ ರೂಪದಲ್ಲಿರುತ್ತದೆ. ಒಂದೊಮ್ಮೆ ಅಲಿಖಿತ ರೂಪದಲ್ಲಿದ್ದರೆ ಅದು ಆಯಾ ಕಾಲದ ರಾಜಕೀಯ ವ್ಯವಸ್ಥೆಯನ್ನು ಅವಲಂಬಿಸಿರುತ್ತದೆ.
2. ನೀತಿಯು ಸಾರ್ವತ್ರಿಕವಾದದ್ದು, ಸಾರ್ವಕಾಲಿಕವಾದದ್ದು, ಧರ್ಮಗಳಲ್ಲಿ ವ್ಯವಿಧ್ಯವಿದ್ದರೂ ನೀತಿಯು ಬಹುಪಾಲು ಏಕರೂಪವಾದದ್ದು. ಆಚರಣೆಯಲ್ಲಿ ವ್ಯತ್ಯಾಸವಿದ್ದೀತು. ಆದರೂ ನೈತಿಕತೆಯು ಸ್ಥಿತಿಸ್ಥಾಪಕ ಗುಣವನ್ನು ಹೊಂದಿದೆ. ಅಂದರೆ ಅಲ್ಪ ಸ್ವಲ್ಪ ಬದಲಾಗುತ್ತದೆ. ವ್ಯಕ್ತಿಯಿಂದ ವ್ಯಕ್ತಿಗೆ, ಸಂಸ್ಕೃತಿಯಿಂದ ಸಂಸ್ಕೃತಿಗೆ, ಕಾಲದಿಂದ ಕಾಲಕ್ಕೆ, ಸಮಾಜದಿಂದ ಸಮಾಜಕ್ಕೆ ಅಲ್ಪ ಸ್ವಲ್ಪ ವ್ಯತ್ಯಾಸವನ್ನು ಹೊಂದುತ್ತದೆ.	ಕಾನೂನು ಏಕರೂಪವಾದದ್ದು. ಆದ್ದರಿಂದ ಅದು ಒಂದು ಸಮಾಜದಲ್ಲಿ ಸಾರ್ವತ್ರಿಕವಾಗಿರುತ್ತದೆ. ಅದು ಒಂದು ದೇಶದ ಎಲ್ಲ ವ್ಯಕ್ತಿಗಳಿಗೂ ಸಮಾನವಾಗಿ ಅನ್ವಯವಾಗುತ್ತದೆ. ವ್ಯಕ್ತಿಯಿಂದ ವ್ಯಕ್ತಿಗೆ ಬದಲಾಗುವುದಿಲ್ಲ. ಅಂದರೆ ಕಾನೂನು ವ್ಯಕ್ತಿವಿಶೇಷತೆ, ಸಂಸ್ಕೃತಿ, ಕಾಲ ಮತ್ತು ಸಮಾಜಗಳ ಹಿನ್ನೆಲೆಯನ್ನು ಪರಿಗಣಿಸದೆ ಎಲ್ಲ ಪ್ರಜೆಗಳ ವರ್ತನೆಗಳನ್ನೂ ಒಂದೇ ಮಾನದಂಡದಿಂದ ಅಳಿಯುತ್ತದೆ. ಆದರೆ ವ್ಯವಿಧ್ಯತೆಗಳಿಂದ ಕೂಡಿದ ರಾಷ್ಟ್ರಗಳಲ್ಲಿ ಜಾತಿ ಸಮುದಾಯಗಳಿಗೆ ಒಳಪಟ್ಟು ಕೆಲವೊಮ್ಮೆ ಪ್ರತ್ಯೇಕ ರೂಪ ತಾಳುತ್ತದೆ. ಉದಾಹರಣೆಗೆ: ಭಾರತದಲ್ಲಿ ಪಾರ್ಸಿ, ಮುಸ್ಲಿಂ, ಕ್ರಿಶ್ಚಿಯನ್ ಸಮುದಾಯಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ ಕಾನೂನುಗಳು.
3. ಮಾನವ ವರ್ತನೆಯು ಸಂಸ್ಕಾರದಿಂದಲೂ, ಸಂಸ್ಕಾರವು ಆಧ್ಯಾತ್ಮಿಕ ಪರಿಸರದಿಂದಲೂ ರೂಪುಗೊಳ್ಳುತ್ತವೆ. ಹಾಗಾಗಿ ನೀತಿಗೆ ಇರುವ ಅನೇಕ ಮೂಲಗಳಲ್ಲಿ ಮಾನವ ವರ್ತನೆಯು ಪ್ರಮುಖವಾಗಿದೆ. ನೀತಿಗಳು ಸಮಾಜಮುಖೀಕರಣದ ಅಂಗಗಳಾಗಿವೆ.	ಆಡಳಿತಾತ್ಮಕ ಕಾನೂನುಗಳನ್ನು ರಚಿಸಲು ಮತ್ತು ಜಾರಿಗೆ ತರಲು ಸಂವಿಧಾನಾತ್ಮಕವಾಗಿ ರೂಪುಗೊಂಡ ರಾಜ್ಯಾಂಗ ಮತ್ತು ಸರ್ಕಾರಗಳಿರುತ್ತವೆ.
4. ನೀತಿಯನ್ನು ರಾಜಕೀಯ ಅಧಿಕಾರಿಗಳು ರಚಿಸುವುದೂ ಇಲ್ಲ. ಜಾರಿಗೆ ತರುವುದೂ ಇಲ್ಲ. ನೈತಿಕ ನಿಯಮಗಳಿಗೆ ಸರ್ಕಾರದ ನೇರ ಬೆಂಬಲ ಇರುವುದಿಲ್ಲ. ಅಂದರೆ ನೈತಿಕ ನಿಯಮಗಳನ್ನು ಮೀರಿದ್ದಕ್ಕಾಗಿ ಸರ್ಕಾರವು ಯಾವುದೇ ಬಾಹ್ಯ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸುವುದಿಲ್ಲ. ನೈತಿಕ ನಿಯಮಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿದಾಗ ವ್ಯಕ್ತಿಯ ಆತ್ಮಪ್ರಜ್ಞೆಯು ಚುಚ್ಚುತ್ತದೆ. ಸಮಾಜವು ನಿಂದಿಸುತ್ತದೆ. ಆದ್ದರಿಂದ ನೈತಿಕ ವರ್ತನೆಗಳು ಒಬ್ಬ ವ್ಯಕ್ತಿಯ ಅಂತಃಪ್ರಜ್ಞೆಯ ಅಂಶಗಳಾಗಿರುತ್ತವೆ. ಆದಾಗ್ಯೂ ಬದಲಾದ ಸನ್ನಿವೇಶದಲ್ಲಿ ಸರ್ಕಾರಗಳು ನೈತಿಕ ನೆಲೆಗಟ್ಟಿನ ಮೇಲೆ ಕಾನೂನನ್ನು ರಚಿಸುವ ಇಚ್ಛಾಶಕ್ತಿ ತೋರಿಸಿವೆ. ಉದಾಹರಣೆಗೆ: ವೃದ್ಧ ತಂದೆ-ತಾಯಿಗಳನ್ನು ಕುತ್ಸುಹೆ ಮಾಡುವ ಮತ್ತು ಪೋಷಿಸುವ ಕಾನೂನು.	ಕಾನೂನನ್ನು ರಾಜಕೀಯ ಅಧಿಕಾರ ಹೊಂದಿದ ಶಾಸಕಾಂಗವು ರಚಿಸುತ್ತದೆ. ಕಾನೂನುಪಾಲನೆಯ ಮೇಲ್ವಿಚಾರಣೆಯ ಹೊಣೆಹೊತ್ತ ನ್ಯಾಯಾಂಗವು ಕಾನೂನನ್ನು ಜಾರಿಗೆ ತರುತ್ತದೆ. ಕಾನೂನಿನ ನಿಯಮಗಳಿಗೆ ಸರ್ಕಾರದ ಬೆಂಬಲವಿರುತ್ತದೆ. ಅಂದರೆ ಕಾನೂನಿನ ನಿಯಮಗಳನ್ನು ಮೀರಿದ್ದಕ್ಕಾಗಿ ಸರ್ಕಾರವು ನಿರ್ದಿಷ್ಟ ಬಾಹ್ಯ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸುತ್ತದೆ. ಆದರೆ ಕಾನೂನಿನ ನಿಯಮಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿದಾಗ ವ್ಯಕ್ತಿಯ ಆತ್ಮಪ್ರಜ್ಞೆಯು ಚುಚ್ಚುತ್ತದೆ ಎಂಬ ಭರವಸೆಯೇನಿಲ್ಲ. ಆದ್ದರಿಂದ ಕಾನೂನು ಸಮ್ಮತ ವರ್ತನೆಗಳು ಒಬ್ಬ ವ್ಯಕ್ತಿಯ ಅಂತಃಪ್ರಜ್ಞೆಯ ಅಂಶಗಳಾಗಿರದೆ ಕಾನೂನುಗಳ ಒತ್ತಾಯಗಳಾಗಿರುತ್ತವೆ.
5. ನೈತಿಕತೆಯು ನೀತಿಶಾಸ್ತ್ರ ಎಂಬ ಪ್ರತ್ಯೇಕ ಜ್ಞಾನಶಾಖೆಗೆ ಸೇರುತ್ತದೆಯೇ ಹೊರತು ನ್ಯಾಯಶಾಸ್ತ್ರಕ್ಕೆ (ಬರಿಸ್ಪಡೆನ್ಸ್) ಸೇರುವುದಿಲ್ಲ.	ಕಾನೂನು ನ್ಯಾಯಶಾಸ್ತ್ರ (ಬರಿಸ್ಪಡೆನ್ಸ್) ಎಂಬ ಪ್ರತ್ಯೇಕ ಜ್ಞಾನಶಾಖೆಗೆ ಸೇರುತ್ತದೆಯೇ ಹೊರತು ನೀತಿಶಾಸ್ತ್ರದ ಸಂಪೂರ್ಣ ವ್ಯಾಪ್ತಿಗೆ ಸೇರುವುದಿಲ್ಲ.
6. ನೀತಿಯು ಶಾಶ್ವತವಾದದ್ದು. ಇದರ ತಿದ್ದುಪಡಿಗೆ ಅವಕಾಶವಿಲ್ಲ. ಆದರೆ ಜೀವನ ಶೈಲಿಯಲ್ಲಿನ ಬದಲಾವಣೆ ಸಾಮಾಜಿಕ ಬದುಕಿನ ಕೆಲವು	ಕಾನೂನು ಕಾಲಕಾಲಕ್ಕೆ ಅಗತ್ಯಕ್ಕೆ ತಕ್ಕಂತೆ ಬದಲಾಗುತ್ತದೆ. ಅಗತ್ಯವಿದ್ದಲ್ಲಿ ತಿದ್ದುಪಡಿಗೆ ಅವಕಾಶವಿದೆ.

9. A.HAGERSTROM, Inquiries into the Nature of Law and Morals, 1953, page no. 30-194) (Enrico Pattaro, Law and Morality, Politics of the means of social control, page no. 277



	ಸ್ವರಗಳಲ್ಲಿ ಸ್ವಾಭಿಮಾನ ಸಾಮಾಜಿಕ ಮೌಲ್ಯಗಳನ್ನು ಸಡಿಲಗೊಳಿಸಿ ನೀತಿಯ ಸ್ವರೂಪವನ್ನು ಬದಲಿಸಬಹುದು. ಉದಾಹರಣೆ: 'ಗಂಡ-ಪೆಂಡತಿ' ಎಂಬ ಪವಿತ್ರ ಸಂಬಂಧಕ್ಕೆ ಇಂದು 'ಲಿವಿಂಗ್ ಟುಗೇದರ್' ಎಂಬ ಪರ್ಯಾಯ ಪರಿಕಲ್ಪನೆಯನ್ನು ಒಪ್ಪಿರುವುದು.	
7.	ನೀತಿಯು ಉತ್ತಮ ಸಾಮಾಜಿಕ ಸಂಬಂಧವನ್ನು ನಿರ್ಮಿಸುತ್ತದೆ. ಕಾನೂನನ್ನು ಗೌರವಿಸಲು ಬೇಕಾದ ಮನಸ್ಕತಿಯನ್ನು ನಿರ್ಮಿಸುತ್ತದೆ.	ಕಾನೂನು ತನ್ನದೇ ಆದ ಕ್ರಮಗಳಿಂದ ನೀತಿಯನ್ನು ಪುನಃ ಸ್ಥಾಪಿಸಲು ಯತ್ನಿಸುತ್ತದೆ.
8.	ನೀತಿಗಳು ವ್ಯಕ್ತಿತ್ವವನ್ನು ನಿರ್ಮಿಸುತ್ತವೆ. ಆರೋಗ್ಯಕರ ಸಮಾಜ ನಿರ್ಮಾಣಕ್ಕೆ ಉತ್ತಮ ವ್ಯಕ್ತಿತ್ವ ಅಡಿಪಾಯ.	ಕಾನೂನನ್ನು ಪಾಲಿಸುವವರಿಗೆ ರಾಜ್ಯದ ರಕ್ಷಣೆಯಿರುತ್ತದೆ. ಉಲ್ಲಂಘಿಸಿದವರಿಗೆ ದೈಹಿಕ ಶಿಕ್ಷೆಯೂ ಇರುತ್ತದೆ. ಶಿಕ್ಷೆಯು ಭಯವೇ ರಾಜಕೀಯ ಕಾನೂನಿನ ಪಾಲನೆಗೆ ಪ್ರೇರಕಶಕ್ತಿಯಾಗಿ ಪಾತ್ರ ನಿರ್ವಹಿಸುತ್ತದೆ.
9.	ನೈತಿಕತೆಯು ಮಾನವನ ಅಂತರಂಗದ ವರ್ತನೆ ಹಾಗೂ ಬಾಹ್ಯ ಕ್ರಿಯೆಗಳೆರಡನ್ನೂ ನಿರ್ದೇಶಿಸುತ್ತದೆ ಮತ್ತು ನಿಯಂತ್ರಿಸುತ್ತದೆ. ಹೀಗಾಗಿ ನೈತಿಕತೆಯು ವ್ಯಾಪ್ತಿಯು ಕಾನೂನಿಗಿಂತ ವಿಸ್ತಾರವಾಗಿದೆ. ಅಂತರಿಕ ಪರಿವರ್ತನೆಯಿಂದ ಬಾಹ್ಯ ವರ್ತನೆಗಳು ಉನ್ನತೀಕರಿಸಲ್ಪಡುತ್ತವೆ.	ಕಾನೂನು ಮಾನವನ ಬಾಹ್ಯ ಕ್ರಿಯೆಗಳನ್ನು ಮಾತ್ರ ನಿಯಂತ್ರಿಸುತ್ತದೆ. ಅಂದರೆ ಒಬ್ಬ ವ್ಯಕ್ತಿ ಕೆಟ್ಟ ಉದ್ದೇಶವನ್ನು ಹೊಂದಿದ್ದರೂ ಸಹ ನೈತಿಕತೆಯು ಅದನ್ನು ನಿಂದಿಸುತ್ತದೆ. ಆದರೆ ಕಾನೂನು ಆ ಉದ್ದೇಶವು ಕಾರ್ಯರೂಪಕ್ಕೆ ಬಂದಾಗ ಮಾತ್ರ ಕ್ರಮಕೈಗೊಳ್ಳಲು ಅಂದರೆ ಕಾನೂನನ್ನು ಕಾರ್ಯಗತಗೊಳಿಸಲು ಸಾಕ್ಷಿ ಆಧಾರಗಳು ಬೇಕಾಗುತ್ತವೆ.
10.	ನೀತಿ ಪಾಲನೆಗಾಗಿ ಸಾಮಾಜಿಕ ಸಂಸ್ಥೆಗಳಾದ ಕುಟುಂಬ, ಧರ್ಮ, ಜಾತಿ, ಊರ ಪಂಚಾಯತಿಗಳು ಶ್ರಮಿಸುತ್ತಿದ್ದವು. ಈಗ ಅವು ಪರಿಣಾಮಕಾರಿಯಾಗಿಲ್ಲ. ಕುಡಿಸಿದವರ, ಲಂಚಕೊಟ್ಟವರ ಪರ ಪಕ್ಷಪಾತ ತೋರಿದ್ದರಿಂದ ಮಾನ್ಯತೆ ಕಳೆದುಕೊಂಡಿವೆ.	ಕಾನೂನಿನ ಪಾಲನೆಗೆ ನಿಗದಿತ ಸಂಸ್ಥೆಗಳಿವೆ. (ನ್ಯಾಯಾಲಯ, ವಕೀಲರು, ಆರಕ್ಷಕ, ಸಿ.ಐ.ಡಿ, ಸಿ.ಬಿ.ಐ., ಲೋಕಾಯುಕ್ತ, ಎ.ಸಿ.ಬಿ. ಹಾಗೂ ಸರ್ಕಾರ ನಿರ್ದೇಶಿತ ಇತರೆ ಇಲಾಖೆಗಳು / ಸಂಸ್ಥೆಗಳು) ಆದರೆ ನೈತಿಕತೆಯನ್ನು ಮೀರಿದಾಗ ಈ ಸಂಸ್ಥೆಗಳು ಸಹ ಜನರ ವಿಶ್ವಾಸವನ್ನು ಕಳೆದುಕೊಳ್ಳುತ್ತವೆ. ಅರಾಜಕತೆಯನ್ನು ಪುಟ್ಟುಹಾಕುತ್ತದೆ.
11.	ನೀತಿಗಳು ಮಾನವ ಜೀವನದ ಆಂಗಗಳು. ನೀತಿಯ ವಿಷಯದಲ್ಲಿ ಒಳನುಸುಳುವಿಕೆಗೆ ಅವಕಾಶವಿಲ್ಲ. ಬಳಸುವಾರಿ ಇಲ್ಲ.	ಕಾನೂನು ವಿಧಿಸುವ ಶಿಕ್ಷೆಗಳಿಂದ ತಪ್ಪಿಸಿಕೊಳ್ಳಲು, ಒಳನುಸುಳುವಿಕೆಗೆ ಬಳಸುವಾರಿ ಇವೆ. ಉದಾಹರಣೆಗೆ: ಸಾಕ್ಷಿನಾಶ, ಭ್ರಷ್ಟತೆಯಿಂದ ಸಾಕ್ಷಿ ತಿರುಚುವಿಕೆ.
12.	ಆಧುನಿಕ ಸಮಾಜಗಳಲ್ಲಿ ನೀತಿಯಷ್ಟೇ ಸಾಕಾಗುತ್ತಿಲ್ಲ. ಕಾನೂನಿನ ಬಿಗಿಹಿಡಿತವೂ ಬೇಕಾಗುತ್ತದೆ. ನೀತಿಪಾಲನೆಗೆ ಕಾನೂನು ಪುಷ್ಟಿಕೊಡಬೇಕು	ಎಷ್ಟೇ ಕಾನೂನುಗಳು ಜಾರಿಯಲ್ಲಿದ್ದರೂ ನೀತಿ ಇಲ್ಲದೆ ಕಾನೂನಿನ ಪಾಲನೆ ಪೂರ್ಣಗೊಳ್ಳಲಾಗದು. ನೈತಿಕತೆಯು ಕಾನೂನಿಗೆ ಶಕ್ತಿಯುಂಟುಬೇಕು.
13.	ನೀತಿಯು ಉಲ್ಲಂಘನೆ ಪಾಪಪ್ರಜ್ಞೆಯನ್ನು ಮೂಡಿಸುತ್ತದೆ. ಆದರೆ ದೈಹಿಕ ಶಿಕ್ಷೆ ಇಲ್ಲ. ದೈಹಿಕ ಹಿಂಸೆಗಿಂತಲೂ ಮಾನಸಿಕ ತೊಳಲಾಟ ವ್ಯಕ್ತಿಯನ್ನು ಬಿನ್ನನ್ನಾಗಿಸುತ್ತದೆ.	ಕಾನೂನನ್ನು ಉಲ್ಲಂಘಿಸಿದರೆ ಶಿಕ್ಷೆಯಿದೆ. ಶಿಕ್ಷೆಯಿಂದ ತಪ್ಪಿಸಿಕೊಳ್ಳಲು ಸಾಧ್ಯವಿಲ್ಲ. ಆದರೆ ಉಲ್ಲಂಘನೆ ಸಾರ್ವಜನಿಕವಾಗಬೇಕಾಗುತ್ತದೆ.
14.	ಸಮಾಜವು ನೀತಿಯನ್ನು ಉಲ್ಲಂಘಿಸಿದ ವ್ಯಕ್ತಿಯನ್ನು ನೋಡುವ ದೃಷ್ಟಿಕೋನದಲ್ಲಿ ಬದಲಾವಣೆ ಬರುತ್ತದೆ. ಅಪವರ್ತನೆಯಲ್ಲಿ ತೊಡಗಿದವರನ್ನು ಅಡಿಕೊಳ್ಳುವುದು, ದೂರ ಇಡುವುದು.	ಕಾನೂನು ಮಾನವನ ಬಾಹ್ಯ ವರ್ತನೆಯನ್ನು ನಿರ್ಧರಿಸುತ್ತದೆ ಮತ್ತು ನಿಯಂತ್ರಿಸುತ್ತದೆ. ಆದರೆ ಇದು ಅವನ ಅಂತರಂಗದ ಪ್ರವೃತ್ತಿ ಉದ್ದೇಶಗಳ ಬಗ್ಗೆ ತಲೆಕೆಡಿಸಿಕೊಳ್ಳುವುದಿಲ್ಲ. ಒಬ್ಬ ಮನುಷ್ಯನು ತನ್ನ ಮನಸ್ಸಿನಲ್ಲಿ ಕೆಟ್ಟವಿಚಾರಗಳನ್ನು ಹೊಂದಿದ್ದರೂ ಕಾನೂನು ಅದನ್ನು ಪರಿಗಣಿಸುವುದಿಲ್ಲ.

	ದ್ವೇಷಿಸುವುದು ಅಲ್ಲಲ್ಲಿ ಕಂಡುಬರುತ್ತದೆ. ಧಾರ್ಮಿಕ ಗ್ರಂಥಗಳು ನೀತಿಯ ಮೌಲ್ಯಗಳ ಆಕರವಾಗಿ ಕೆಲಸಮಾಡುತ್ತವೆ.	ಈ ಕೆಟ್ಟ ಅಲೋಚನೆಯು ಕಾರ್ಯರೂಪಕ್ಕೆ ಬಂದಾಗ ಮತ್ತು ಇನ್ನೊಬ್ಬ ವ್ಯಕ್ತಿಗೆ ಅದರಿಂದ ತೊಂದರೆಯಾದಾಗ ಮಾತ್ರ ಕಾನೂನು ತನ್ನ ಕಾರ್ಯಚರಣೆಯನ್ನು ಪ್ರಾರಂಭಿಸುತ್ತದೆ. ಅದೂ ತೊಂದರೆಗೆ ಒಳಗಾದಾಗ ವ್ಯಕ್ತಿಯು ದೂರನ್ನು ದಾವಿಲಿಸಿದರೆ ಮಾತ್ರ.
15.	ನೀತಿಯ ಉಲ್ಲಂಘನೆಗೆ ನೇರ ಶಿಕ್ಷೆ ಇಲ್ಲದಿದ್ದರೂ ಆತ್ಮವಲೋಕನ, ಪಶ್ಚಾತ್ತಾಪಕ್ಕಿಂತ ದೊಡ್ಡ ಶಿಕ್ಷೆಯಿಲ್ಲ. ಇಷ್ಟಕ್ಕೂ ಶಿಕ್ಷೆಯೇ ಅಂತಿಮವಲ್ಲ.	ಕಾನೂನಿನ ಉಲ್ಲಂಘನೆಯ ವಿವಿಧ ಅಪರಾಧಗಳಿಗೆ ವಿವಿಧ ರೀತಿಯ ಶಿಕ್ಷೆಗಳಿರುತ್ತವೆ.
16.	ನೈತಿಕ ನಿಯಮವು ಖಚಿತ ಮತ್ತು ನಿಖರತೆ(ಅಡಿಜಫಿಯುಟಿ)ಗಳ ಹೊಂದಿದೆ. ಏಕೆಂದರೆ ನೈತಿಕ ನಿಯಮಗಳನ್ನು ಯಾವುದೇ ಒಬ್ಬ ವ್ಯಕ್ತಿ ಅಥವಾ ಸಂಸ್ಥೆಯು ರಚಿಸುವುದಿಲ್ಲ ಮತ್ತು ಜಾರಿಗೆ ತರುವುದಿಲ್ಲ. ಅವು ನಮ್ಮ ನಾಗರಿಕ ಪರಂಪರೆಗಳಿಂದ ಪಾಲಿಸಿಕೊಂಡುಬಂದ ನಿಯಮಗಳಾಗಿವೆ.	ಆದರೆ ಕಾನೂನಿಗೆ ಖಚಿತ ಮತ್ತು ನಿಖರತೆ(ಅಡಿಜಫಿಯುಟಿ) ಗಳಿವೆ. ಏಕೆಂದರೆ ಕಾನೂನನ್ನು ಶಾಸಕಾಂಗವು ರಚಿಸುತ್ತದೆ. ನ್ಯಾಯಾಂಗವು ಕಾನೂನಿನ ಸಾಂವಿಧಾನಾತ್ಮಕ ಬದ್ಧತೆಗೆ ಒಳಪಡಿಸುತ್ತದೆ. ಕಾರ್ಯಾಂಗವು ಜಾರಿಗೊಳಿಸುತ್ತದೆ. ಸಾರ್ವಜನಿಕರು ಪಾಲಿಸುತ್ತಾರೆ.
17.	ಸಮಾಜದಲ್ಲಿ ಎಷ್ಟೇ ಕಾನೂನು ಇದ್ದರೂ ನೀತಿಗೆ ಒಳಗಾಗಬೇಕು. ನೀತಿಗೆ ಹೊರತಾದ ಕಾನೂನು ನಿರರ್ಥಕ.	1. ಕಾನೂನು ಮೀರುವವರನ್ನು ಗುರುತಿಸದಿದ್ದರೆ ಮತ್ತು ಸರ್ಕಾರಕ್ಕೆ ದೂರು ನೀಡದಿದ್ದರೆ ಆರೋಪಿಯು ಪಾರಾಗುತ್ತಾನೆ. ಅವನ ವಿರುದ್ಧ ಯಾವುದೇ ಕ್ರಮ ಜರುಗದೆ ಅವನು ಮಾಡಿದ್ದೇ ಸರಿ ಎಂಬಂತಾಗುತ್ತದೆ. 2. ಕಾನೂನನ್ನು ಜಾರಿಗೆ ತರಲು ಆರೋಪಿಯ ವಿಚಾರಣೆ ಮತ್ತು ನ್ಯಾಯಾಧೀಶರ ತೀರ್ಮಾನ ಅಗತ್ಯ. 3. ಇದು ದಂಡ ಮತ್ತು ಸೆರೆವಾಸವನ್ನು ಒಳಗೊಳ್ಳುತ್ತದೆ.

ಎಮ್ಯಾನುಯಲ್ ಎ.ಮೇಟಿ ಅವರ ಪ್ರಕಾರ: 'ಅಪರಾಧದ ಅಂಕಿಸಂಖ್ಯೆಗಳು ಸಮಾಜದ ನೈತಿಕತೆಯನ್ನು ಪ್ರತಿಫಲಿಸುತ್ತವೆ' ಎಂಬ ಒಂದು ಸಾಮಾನ್ಯವಾದ ತರ್ಕಾಭಾಸವಿದೆ. ಸ್ವಲ್ಪ ತಾಳ್ಮೆವಹಿಸಿ ಒಂದಲ್ಲ ಎರಡು ಬಾರಿ ಯೋಚಿಸಬೇಕಾದ ವಿಷಯವಿದು. ಅಪರಾಧದ ಅಂಕಿ ಸಂಖ್ಯೆಗಳು 'ಎಷ್ಟರಮಟ್ಟಿಗೆ ಮಾನವನ ವರ್ತನೆಯನ್ನು ಅಪರಾಧವೆಂದು ಪರಿಗಣಿಸಬೇಕು' ಎಂಬುದನ್ನು ಅವಲಂಬಿಸುತ್ತವೆ. ಅಂದರೆ ಈ ಸಂಖ್ಯೆಗಳು ಕೆಲವು ವರ್ತನೆಗಳ ಅಪರಾಧೀಕರಣವನ್ನು ಅವಲಂಬಿಸುತ್ತವೆ. ಉದಾಹರಣೆ: ಸ್ವೀಡನ್‌ನಲ್ಲಿ ವೇಶ್ಯಾವೃತ್ತಿ ಅಥವಾ ಮದ್ಯಪಾನದ ಸಗಟು ವ್ಯಾಪಾರವನ್ನು ಕಾನೂನುಬದ್ಧಗೊಳಿಸಿದರೆ ಅಪರಾಧಗಳ ಸಂಖ್ಯೆ ತುಂಬ ಕಡಿಮೆಯೇ ಆಗುತ್ತದೆ. ಆದರೆ ಅಲ್ಲಿಯ ಜನರ ನೈತಿಕ ಪರಿಸ್ಥಿತಿಯೇನೂ ಉತ್ತಮವಾಗುವುದಿಲ್ಲ.

ಆದ್ದರಿಂದ ಎಮ್ಯಾನುಯಲ್ ಎ.ಮೇಟಿ ಅವರು 'ಕಾನೂನನ್ನು ರಚಿಸುವವರ ಮೇಲೆ, ಜಾರಿಗೆ ತರುವವರ ಮೇಲೆ ನೀತಿಯ ಪಾತ್ರವೇನು? ಒಬ್ಬ ನ್ಯಾಯಾಧೀಶನಿಗೆ ನೀತಿಯು ಪ್ರಮುಖ ವಿಷಯವಾದೀತೇ?'<sup>10</sup> ಎಂಬ ಚರ್ಚೆಗಳಾಗಬೇಕು ಎಂದು ಒತ್ತಾಯಿಸಿದ್ದಾರೆ.

### ನೈತಿಕತೆಯ ಕಾರ್ಯವಿಧಾನ

ನೈತಿಕತೆಯು ಕೆಲವು ವಿಭಿನ್ನ ಮಾನಸಿಕ ಮತ್ತು ಸಾಮಾಜಿಕ ಲಕ್ಷಣಗಳಿಂದ ಕೂಡಿದೆ. ನೈತಿಕ ನಿಯಮಗಳನ್ನು ವಿಧೇಯವಾಗಿ ಪಾಲಿಸುವವರಿಗೆ 'ಗುಣಶೀಲಗಳನ್ನು ಹೊಂದಿದ ಧನ್ಯತೆಯ ಭಾವನೆ' ಮೂಡುತ್ತದೆ. ನೈತಿಕ ನಿಯಮಕ್ಕೆ ಅವಿಧೇಯತೆ ತೋರಿದವನು 'ಅಪರಾಧೀ ಪ್ರಜ್ಞೆ'ಯನ್ನು ಅನುಭವಿಸುತ್ತಾನೆ. ಕೆಲವು ನೈತಿಕ ನಿಯಮಗಳು ಜನರ ಉಪಸಮುದಾಯದಿಂದ ಉಪಸಮುದಾಯಕ್ಕೆ ಬೇರೆ ಬೇರೆಯಾಗಿರುತ್ತವೆ.<sup>11</sup>

10. Emanuela A. Matei Antitrust Law Institute (ಅಂತರ್ಜಾಲದಿಂದ)

11. ಈ ಭಾಗಕ್ಕೆ ಪೂರಕವಾದ ಮಾಹಿತಿಯನ್ನು ಅಂತರ್ಜಾಲದಲ್ಲಿ ಲಭ್ಯವಿರುವ ವಿವಿಧ ಲೇಖನಗಳಿಂದ ಸಂಗ್ರಹಿಸಲಾಗಿದೆ.

ನೈತಿಕ ನಿಯಮಗಳ ಸ್ಥಾಪನೆಯು ಸಾಮಾಜಿಕರಣದ ಸಂಕೀರ್ಣ ಮಾರ್ಗದಲ್ಲಿ ಸಾಗುತ್ತದೆ. ಒಂದು ಮಗುವನ್ನು ತಂದೆತಾಯಿಗಳು ಬೆಳೆಸುವಾಗ, ಸಮವಯಸ್ಕರೊಂದಿಗೆ ಆಡುವಾಗ, ಶಾಲೆಗೆ ಹೋಗುವಾಗ ಅದು ಅನೇಕ ಪಾಠಗಳನ್ನು ಗ್ರಹಿಸುತ್ತದೆ. ತನ್ನ ಕೆಲವು ವರ್ತನೆಗಳ ಬಗ್ಗೆ ಅಪರಾಧೀ ಮನೋಭಾವವನ್ನೂ, ಕೆಲವು ವರ್ತನೆಯ ಬಗ್ಗೆ ಹೆಮ್ಮೆಯನ್ನೂ ಅನುಭವಿಸುತ್ತದೆ. ಈ ಪಾಠಗಳ ಜೊತೆಯಲ್ಲೇ ಮಗುವು ತಪ್ಪು ವರ್ತನೆಗೆ ನಿಂದೆಯನ್ನೂ, ಸದ್ವರ್ತನೆಗೆ ಮೆಚ್ಚುಗೆಯನ್ನೂ ತಿಳಿದು ಕಲಿಯುತ್ತದೆ. ನೈತಿಕ ನಿಯಮಗಳನ್ನು ಮನುಷ್ಯರು ಅನುಸರಿಸಿದಾಗ ಮಾತ್ರ ಅವು ಜಾರಿಗೆ ಬರುತ್ತವೆ. ಅದರಂತೆಯೇ ಬಾಹ್ಯ ಪರಿಣಾಮಗಳು ಕೂಡ ಮುಖ್ಯ. ಜನರು ನನ್ನ ವರ್ತನೆಯನ್ನು ಗಮನಿಸುತ್ತಾರೆ. ಸತ್ಕಾರ್ಯಗಳನ್ನು ಮಾಡಿದಾಗ ಗುರುತಿಸಿ ಪ್ರಶಂಸಿಸುತ್ತಾರೆ, ಪೋಷಿಸುತ್ತಾರೆ. ಸತ್ಕಾರ್ಯಗಳನ್ನು ಮಾಡದೆ ಇರುವಾಗ ನಿಲ್ಲಿಸಿ ಕೇಳುತ್ತಾರೆ, ನಿಂದಿಸುತ್ತಾರೆ ಎಂಬ ಎಚ್ಚರಿಕೆಯೇ ನೈತಿಕ ಪ್ರಜ್ಞೆಯಾಗಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತದೆ.

ಎಮ್ಯಾನುವೆಲ್ ಎ.ಮೇಟಿ ಅವರ ಪ್ರಕಾರ: “ನೈತಿಕ ನಿಯಮಗಳ ಜಾರಿಗೆ; ಸದ್ವರ್ತನೆಗಳ ಬಗೆಗಿನ ವರ್ತನೆಯು ಧನಾತ್ಮಕವಾಗಿಯೂ, ದುರ್ವರ್ತನೆಗಳ ಬಗೆಗಿನ ಪ್ರತಿಕ್ರಿಯೆಯು ಋಣಾತ್ಮಕವಾಗಿಯೂ ಕಾರಣವಾಗುತ್ತವೆ. ಆದ್ದರಿಂದ ವ್ಯಕ್ತಿಗಳು ನೈತಿಕ ನಿಯಮಗಳಿಗೆ ದೊರಕುವ ಪ್ರೋತ್ಸಾಹದ ಲೆಕ್ಕಾಚಾರ ಮಾಡಿಕೊಂಡೇ ವರ್ತಿಸುತ್ತಿದ್ದಾರೋ ಎಂಬಂತೆ ವರ್ತಿಸುತ್ತಾರೆ. ಆದರೆ ಅವರು ಪ್ರಜ್ಞಾಪೂರ್ವಕವಾಗಿ ಹಾಗೆ ಮಾಡುತ್ತಿರುವುದಿಲ್ಲ.”<sup>12</sup>

ಮೇಲೋಟಕ್ಕೆ ಕಾನೂನು ಮತ್ತು ನೈತಿಕತೆಗಳಿಗೆ ಯಾವುದೇ ವ್ಯತ್ಯಾಸವಿಲ್ಲವೆಂಬಂತೆ ತೋರುತ್ತದೆ. ಪ್ರಾಚೀನ ಗ್ರೀಕ್ ಬರಹಗಾರರ ಪ್ರಕಾರ ಯಾರು ಕಾನೂನಿಗೆ ವಿಧೇಯರಾಗಿ ಇರುತ್ತಾರೋ ಅವರೇ ಸಜ್ಜನರು. ಪ್ರಾಚೀನ ಸಮಾಜಗಳಲ್ಲಿ ಕಾಯ್ದೆಗಳನ್ನು ರಚಿಸುವವರೇ ‘ಯಾವುದು ಸರಿ’, ‘ಯಾವುದು ತಪ್ಪು’ ಎಂಬುದನ್ನು ನಿರ್ಧರಿಸುತ್ತಿದ್ದರು.

ಆದರೆ ಕಾನೂನು ಸಮ್ಮತಿ ಎಂದರೇನು? ಅಥವಾ ಆಡಳಿತಗಾರರ ಪ್ರಕಾರ ಕಾನೂನು ಸಮ್ಮತಿ ಎಂದರೆ ಏನಾಗಿರಬೇಕು? ಎಂಬ ವ್ಯತ್ಯಾಸವನ್ನು ಇತ್ತೀಚೆಗೆ ಗುರುತಿಸಲಾಯಿತು. ಯಾವುದು ನೈತಿಕತೆಯ ಪ್ರಕಾರ ಸರಿಯೋ ಅದನ್ನು ನಾವು ಸರಿ ಅಥವಾ ನ್ಯಾಯ ಎಂದು ಕರೆಯುತ್ತೇವೆ.

ಆದ್ದರಿಂದ ಆಡಳಿತಗಾರರು ತಮಗೆ ಬೇಕಾದಂತೆ ಕಾನೂನು ರಚಿಸಿಕೊಂಡು ಹೊಸಹೊಸ ಸಂಪ್ರದಾಯವನ್ನು ಹುಟ್ಟಿಸುತ್ತಾರೆ. ಅಂದರೆ ‘ಆಡಳಿತಗಾರ ರಚಿಸಿಕೊಳ್ಳುವುದೇ ಬೇರೆ’, ‘ಸಹಜವಾದ ನ್ಯಾಯವೇ ಬೇರೆ’. ಆ ಸಹಜ ನ್ಯಾಯವನ್ನೇ ‘ನೈತಿಕತೆ’ ಎಂದು ಕರೆಯುತ್ತೇವೆ. ‘ಯಾವುದು ಒಳ್ಳೆಯ ಆಜ್ಞೆ’, ‘ಯಾವುದು ಅಧಿಕಾರಶಾಹಿಗಳ ಆಜ್ಞೆ’ (ಅದೇ ಕಾನೂನು ಸಮ್ಮತ?) ಇವುಗಳ ಮಧ್ಯೆ ಒಮ್ಮೊಮ್ಮೆ ವಿರೋಧ ಏರ್ಪಡುವುದನ್ನು ಕಾಣುತ್ತೇವೆ. ಮಾತ್ರವಲ್ಲದೆ ಕಾನೂನನ್ನು ಗೌಣವಾಗಿಸಿ ನೈತಿಕತೆಯನ್ನು ಎತ್ತಿಹಿಡಿಯುವ ಮಾನವೀಯ ಸಂದರ್ಭಗಳನ್ನು ಅಲ್ಲಲ್ಲಿ ಗುರುತಿಸಬಹುದು. ಉದಾಹರಣೆ:

ಸೋಫೋಕ್ಲೆಸ್‌ನ ರುದ್ರನಾಟಕದಲ್ಲಿ ‘ಅಂತಿಗೊನೆ’ ಎಂಬ ನಾಯಕಿಯು ದೇಶದ್ರೋಹಿಯಾದ ತನ್ನ ಸಹೋದರನು ಯುದ್ಧದಲ್ಲಿ ಕೊಲೆಯಾದ ಸಂದರ್ಭದಲ್ಲಿ, ರಾಜಾಜ್ಞೆಯನ್ನು ಧಿಕ್ಕರಿಸಿ ಅವನ ಅಂತ್ಯಕ್ರಿಯೆ ನಡೆಸುತ್ತಾಳೆ. ಅವಳ ಈ ಕೃತ್ಯವನ್ನು ಕಾನೂನು ತಜ್ಞರು ಅಪರಾಧವೆಂದು ಪರಿಗಣಿಸಬಹುದು. ಆದರೆ ನೀತಿಪ್ರಿಯರಾದ ಪ್ರೇಕ್ಷಕರು ಅಣ್ಣನ ಶವಸಂಸ್ಕಾರಕ್ಕಾಗಿ ತನ್ನ ಪ್ರಾಣವನ್ನೇ ಬಲಿಕೊಟ್ಟ ಅವಳ ಮಾನವೀಯ ವರ್ತನೆಯು ನೈತಿಕವಾಗಿ ಸರಿ ಎಂದೇ ನಿರ್ಧರಿಸುತ್ತಾರೆ.

12. Emanuela A. Matei Antitrust Law Institute (ಅಂತರ್ಜಾಲದಿಂದ)

ಆದ್ದರಿಂದ ನೀತಿಶಾಸ್ತ್ರವು 'ನ್ಯಾಯಾಂಗ ವ್ಯವಸ್ಥೆಯನ್ನು ವಿಮರ್ಶಿಸುವ ಮತ್ತು ಅದರಲ್ಲಿ ಬದಲಾವಣೆ ತರಲು ಶಿಫಾರಸ್ಸು ಮಾಡುವ ಅಧಿಕಾರ'ವನ್ನು ಚಲಾಯಿಸುತ್ತದೆ. ಕೆಲವು ಮುಖ್ಯ ಸನ್ನಿವೇಶಗಳಲ್ಲಿ 'ಒಂದು ಕಾನೂನು ಆ ಸಂದರ್ಭಕ್ಕೆ ಉಚಿತವೋ ಅಲ್ಲವೋ' ಎಂಬ ಬಗ್ಗೆ ಸಂವಾದ ಗೋಷ್ಠಿಗಳಾಗುತ್ತವೆ. ಅಂತಹ ಗೋಷ್ಠಿಗಳು ನೈತಿಕ ವಾದಗಳೇ ಆಗಿರುತ್ತವೆ. ಕಾನೂನು 'ನೀತಿಶಾಸ್ತ್ರದ ಸಾರ್ವಜನಿಕ ಅಭಿವ್ಯಕ್ತಿ'ಯಾಗಿದ್ದು ಸಾರ್ವಜನಿಕ ಮಾರ್ಗದಲ್ಲಿ ಆ ಸಮಾಜಕ್ಕೆ ಸಮತವಾದ ವರ್ತನೆಯ ಮೂಲಭೂತ ತತ್ವಗಳನ್ನು ಕ್ರೋಢೀಕರಿಸುತ್ತದೆ. ಈ ರೀತಿಯಲ್ಲಿ ಸಮಾಜವು ತನ್ನ ಮುಂದಿನ ತಲೆಮಾರಿನ ಮಕ್ಕಳಿಗೆ ಕಲಿಸಬಯಸುವ ಮೌಲ್ಯಗಳ ಸ್ಪಷ್ಟ ರೂಪರೇಷೆಯನ್ನು ಶಿಕ್ಷಕರಿಗೆ ಒದಗಿಸುವ ಮೂಲಕ ನೈತಿಕತೆಯು ಮಾರ್ಗದರ್ಶನ ಮಾಡುತ್ತದೆ.

ಹಾರ್ವರ್ಡ್ ಲಾ ಸ್ಕೂಲಿನ ಸ್ಟೀವನ್ ಶಾವೆಲ್<sup>13</sup> ಅವರ ಪ್ರಕಾರ: "ನೈತಿಕತೆಯು ಸಾಮಾಜಿಕ ಪ್ರೋತ್ಸಾಹವನ್ನು ಒಳಗೊಂಡಿದೆ. ತಪ್ಪು ವರ್ತನೆಗಳು ಅಪರಾಧೀ ಪ್ರಜ್ಞೆ ಮತ್ತು ಸಾಮಾಜಿಕ ನಿರಾಕರಣೆಯನ್ನು ಉಂಟುಮಾಡುತ್ತವೆ. ಉತ್ತಮ ವರ್ತನೆಗಳು ಸದ್ಗುಣಶೀಲ ಭಾವನೆ ಮತ್ತು ಪ್ರಶಂಸೆಯನ್ನು ನೀಡುತ್ತವೆ. ನಾವು ತಪ್ಪು ಮಾಡಿದಾಗ ಅಳುಕಿನಿಂದ ಒದ್ದಾಡುತ್ತೇವೆ. ಜನರು ನಮ್ಮ ವರ್ತನೆಯನ್ನು ಸರಿಯೆಂದು ಒಪ್ಪುವುದಿಲ್ಲ. ನಾವು ಸದ್ವರ್ತನೆಯನ್ನು ತೋರಿದಾಗ, ನಾವು ಸದ್ಗುಣಶೀಲತೆಯನ್ನು ಹೊಂದಿರುವ ತೃಪ್ತಿಯನ್ನು ಅನುಭವಿಸುತ್ತೇವೆ ಮತ್ತು ನೆರೆಹೊರೆಯವರ ಪ್ರಶಂಸೆಯನ್ನೂ ಪಡೆದು ಹಿಗ್ಗುತ್ತೇವೆ. ಇಂತಹ ಲಾಭ ನಷ್ಟಗಳ, ಸ್ತುತಿನಿಂದೆಗಳ ಒತ್ತಡವು ನಮ್ಮ ವರ್ತನೆಯ ಮೇಲೆ ಅತಿಮುಖ್ಯವಾದ ಪ್ರಭಾವವನ್ನುಂಟುಮಾಡುತ್ತದೆ."

ಈ ಚರ್ಚೆಯು 'ಹರಿದಾಸರ ಲೋಕನೀತಿಯ ಕೃತಿಗಳು ಈಗ ಇರುವಂತೆ ಏಕೆ ಇವೆ' ಎಂಬುದನ್ನು ವಿಶ್ಲೇಷಿಸಲು ಪ್ರಮುಖ ಕೀಲಿಕೈಗಳಾಗಿ ಒದಗಿಬರುತ್ತದೆ. ನಮ್ಮ ಸಾಮಾಜಿಕ ಉಪದೇಶಗಳನ್ನು ಮತ್ತು ದೈನಂದಿನ ವರ್ತನೆಗಳನ್ನು ಕಾನೂನುಗಳಿಗಿಂತ ನೀತಿಯೇ ಹೆಚ್ಚಾಗಿ ನಿಯಂತ್ರಿಸುತ್ತದೆ. ಕಾನೂನು ಮತ್ತು ನೈತಿಕತೆಗಳು ಮಾನವ ವರ್ತನೆಯ ಬಹುಭಾಗಗಳನ್ನು ಒಟ್ಟಾಗಿ ನಿಯಂತ್ರಿಸುತ್ತವೆ. ಬಹುಪಾಲು ಅಪರಾಧಗಳಿಗೆ ಕಾನೂನಿನ ಸಮ್ಮತಿ ಇರುವುದಿಲ್ಲ. ಮಾತ್ರವಲ್ಲದೆ ಕಾನೂನನ್ನು ಉಲ್ಲಂಘಿಸುವುದು 'ಅನೈತಿಕ'ವೆಂದು ಸಹ ಪರಿಗಣಿಸಲ್ಪಡುತ್ತದೆ. ಅಂತರ್‌ಶಿಸ್ತಿಯ ಅಧ್ಯಯನದ ಆಯಾಮಗಳು

ನೀತಿಶಾಸ್ತ್ರವು ಒಂದು ಸ್ವತಂತ್ರ ಜ್ಞಾನಶಾಖೆಯಾದರೂ ಅದನ್ನು ಇತರ ಸಮಾಜ ವಿಜ್ಞಾನಗಳು ಅಧ್ಯಯನ ಮಾಡುತ್ತ ಬಂದಿವೆ. ತತ್ವಶಾಸ್ತ್ರ, ರಾಜ್ಯಶಾಸ್ತ್ರ, ಸಮಾಜಶಾಸ್ತ್ರ, ಮನಃಶಾಸ್ತ್ರ ಮುಂತಾದ ಮಾನವಿಕ ಅಧ್ಯಯನಗಳು ನೀತಿಯ ಬಗ್ಗೆ ಅನೇಕ ಅಭಿಪ್ರಾಯಗಳನ್ನು, ಸಿದ್ಧಾಂತಗಳನ್ನು ಮಂಡಿಸಿವೆ. ಪಾಶ್ಚಾತ್ಯರಲ್ಲಿ ನೀತಿಯ ಬಗ್ಗೆ ವಿಶ್ವವಿದ್ಯಾಲಯಗಳ ಮಟ್ಟದಲ್ಲಿ ಮಾತ್ರ ಚರ್ಚೆ, ಅಧ್ಯಯನ, ಸಂಶೋಧನೆಗಳು ನಡೆಯುತ್ತಿದ್ದವೇ ಹೊರತು ಜನಸಾಮಾನ್ಯರಿಗೆ ಆ ಸಿದ್ಧಾಂತಗಳ ಪರಿಚಯವೇ ಆಗುತ್ತಿರಲಿಲ್ಲ.

ಸಮಾಜಶಾಸ್ತ್ರಜ್ಞರು 'ಸಾಮಾಜಿಕ ನಿಯಂತ್ರಣ' ಎಂಬ ವಿಭಾಗದಲ್ಲಿ ಕಾನೂನು, ರೂಢಿ, ಕಟ್ಟಳೆ, ಸಂಪ್ರದಾಯ ಇವುಗಳ ಜೊತೆ ನೀತಿಯನ್ನೂ ಗುರುತಿಸುತ್ತಾರೆ. ಆದರೆ ನೀತಿಗೂ ಕಾನೂನಿಗೂ ಇರುವ ಸಂಬಂಧವನ್ನು ತತ್ವಶಾಸ್ತ್ರ, ರಾಜ್ಯಶಾಸ್ತ್ರ, ಮನಃಶಾಸ್ತ್ರಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ನೋಡುವಾಗ ನೀತಿಯ ನೈಜ ಸ್ವರೂಪ, ಪಾತ್ರ ಹಾಗೂ ವ್ಯಾಪ್ತಿಗಳ ಸ್ಥೂಲ ಪರಿಚಯವಾಗುತ್ತದೆ. ಎಷ್ಟೋ ಸಂದರ್ಭಗಳಲ್ಲಿ ಕಾನೂನಿಗಿಂತ ನೀತಿಯೇ ಹೆಚ್ಚು ಪರಿಣಾಮಕಾರಿ ಎಂಬುದು ಮನವರಿಕೆಯಾಗುತ್ತದೆ.

13. Law versus Morality (Steven Shavell, Harvard Law School) (ಅಂತರ್ಜಾಲದಿಂದ)

ನೈತಿಕತೆಯು ಕಾನೂನು, ಆಜ್ಞೆ, ಬೆದರಿಕೆ ಮತ್ತು ಸಲಹೆ ಎಂಬ ಬೇರೆ ಬೇರೆ ನೆಲೆಗಳಲ್ಲಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸುತ್ತದೆ. ಅವುಗಳ ಕಾರ್ಯವಿಧಾನವನ್ನು ಸಂಕ್ಷಿಪ್ತವಾಗಿ ಪರಿಚಯಿಸಿಕೊಂಡರೆ; ಹರಿದಾಸರ ಲೋಕನೀತಿಯ ವಿವಿಧ ಆಯಾಮಗಳನ್ನು ತಿಳಿಯಲು ಈ ಜ್ಞಾನವು ಸಹಕಾರಿಯಾಗಲಿದೆ.

### ಕಾನೂನು

'ಕಾನೂನು' ಪದಕ್ಕೆ ಶಬ್ದಕೋಶದಲ್ಲಿ 1. ಕಟ್ಟಳೆ, ನಿಯಮ, ಕಾಯಿದೆ<sup>14</sup> ಎಂಬ ಅರ್ಥಗಳಿವೆ. ಕಾನೂನು ಆಡಳಿತಗಾರರಿಂದ ಮಾಡಿದ ಶಾಸನವಾಗಿದೆ. ಇದು ಭೌತಿಕ ಕಾಳಜಿಯನ್ನು ಆಧರಿಸುತ್ತದೆ. ಕಾನೂನಿನ ಉಲ್ಲಂಘನೆಯು ಶಿಕ್ಷಾರ್ಹವಾಗಿದೆ. ಇದು ಆಡಳಿತಗಾರರ ಇಚ್ಛೆಯನ್ನು ಪ್ರತಿನಿಧಿಸುತ್ತದೆ ಮತ್ತು ಅವರ ಉದ್ದೇಶವನ್ನು ವಾಸ್ತವಕ್ಕೆ ಇಳಿಸುತ್ತದೆ.

ಕಾನೂನುಗಳು ಸಮಾಜದಲ್ಲಿರುವ ರಾಜಕೀಯ, ಸಾಮಾಜಿಕ ಮತ್ತು ಆರ್ಥಿಕ ಸಂಬಂಧವನ್ನು ಪ್ರತಿಫಲಿಸುತ್ತವೆ. ಇವು ಪ್ರಜೆಗಳು ರಾಜ್ಯದೊಂದಿಗೆ ಮತ್ತು ಇತರ ಪ್ರಜೆಗಳೊಂದಿಗೆ ಹೊಂದಿರುವ ಹಕ್ಕುಗಳನ್ನು ಮತ್ತು ಕರ್ತವ್ಯವನ್ನು ನಿರ್ಧರಿಸುತ್ತವೆ. ಒಂದು ಸರ್ಕಾರವು ಜನರಿಗೆ ನೀಡಿದ ವಾಗ್ದಾನಗಳನ್ನು ಕಾನೂನಿನ ಮೂಲಕವೇ ಪೂರೈಸುತ್ತದೆ. ಕಾನೂನುಗಳು ಸಾಮಾನ್ಯವಾಗಿ ಒಂದು ಸಮಾಜದ ನೈತಿಕ ತತ್ವಗಳನ್ನು ಆಧರಿಸುತ್ತವೆ. ಕಾನೂನು ಮತ್ತು ನೈತಿಕತೆ ಇವೆರಡೂ ಸಮಾಜದಲ್ಲಿ ವ್ಯಕ್ತಿಯ ವರ್ತನೆಯನ್ನು ನಿಯಂತ್ರಿಸುತ್ತವೆ. ಬಾಲಕಾರ್ಮಿಕ ಪದ್ಧತಿಯ ನಿಷೇಧ ಮತ್ತು ಪ್ರಾಥಮಿಕ ಶಿಕ್ಷಣ ಪ್ರಸಾರದ ಕಾನೂನುಗಳು ಈ ರೀತಿಗೆ ಉದಾಹರಣೆಗಳು. ನೈತಿಕತೆಯನ್ನು ರಾಜಕೀಯದಿಂದ ಪ್ರತ್ಯೇಕಿಸಲು ಸಾಧ್ಯವಿಲ್ಲ. ಮನುಷ್ಯನ ಸಾರ್ವತ್ರಿಕ ಅಭಿವೃದ್ಧಿ ಹಾಗೂ ನೈತಿಕ ನಿಷ್ಠೆಯನ್ನು ಪ್ರೋತ್ಸಾಹಿಸುವುದೇ ಒಂದು ದೇಶದ ಮುಖ್ಯ ಗುರಿಯಾಗಿರುತ್ತದೆ.

ರಾಜ್ಯಶಾಸ್ತ್ರದ ಆರಂಭದ ಬರಹಗಾರರು ಕಾನೂನು ಮತ್ತು ನೈತಿಕತೆಯ ಮಧ್ಯೆ ಯಾವುದೇ ವ್ಯತ್ಯಾಸವನ್ನು ಹೇಳಿಲ್ಲ. ಪ್ರಾಚೀನ ಭಾರತದಲ್ಲಿ ಧರ್ಮ ಎಂಬ ಪದವು ಕಾನೂನು ಮತ್ತು ನೈತಿಕತೆ ಎಂಬ ಎರಡೂ ಅರ್ಥಗಳನ್ನು ಒಳಗೊಂಡಿತ್ತು. ಕಾನೂನು ಕೇವಲ ಸಾರ್ವಭೌಮನ ಆಜ್ಞೆಮಾತ್ರವಲ್ಲ ಅದು ಆಚರಣೆಯಲ್ಲಿರುವ ನೈತಿಕತೆಯನ್ನು ಆಧರಿಸಿದ ಸರಿ ತಪ್ಪುಗಳ ಪರಿಕಲ್ಪನೆಯನ್ನು ಪ್ರತಿನಿಧಿಸುತ್ತದೆ. ಕಾನೂನಿಗೆ ವಿಧೇಯತೆಯನ್ನು ತೋರುವುದು ಆ ಜನರು ನೈತಿಕತೆಯ ಬಗ್ಗೆ ಹೊಂದಿದ ಭಾವನಾತ್ಮಕ ಸಂಬಂಧದ ಬೆಂಬಲವನ್ನು ಅವಲಂಬಿಸಿದೆ.

ಅಂಕಿತ ಅವರ ಪ್ರಕಾರ: '--Laws which are not supported by the moral conscience of the people are liable to become dead letters.'<sup>15</sup> 'ಜನರ ನೈತಿಕ ಪ್ರಜ್ಞೆಯ ಬೆಂಬಲವಿಲ್ಲದ ಕಾನೂನುಗಳು ನಿರ್ಜೀವ ಅಕ್ಷರಗಳಾಗಿ ಉಳಿಯಲು ಅರ್ಹವಾಗುತ್ತವೆ.' ಉದಾ: ಭಾರತದಲ್ಲಿ ಮದ್ಯಪಾನ ನಿರೋಧವು ಯಶಸ್ವಿಯಾಗಿಲ್ಲ. ಕಾರಣವೇನೆಂದರೆ ಇಲ್ಲಿಯ ಬಹುಜನರ ನೈತಿಕ ಪ್ರಜ್ಞೆಯು ಮದ್ಯಪಾನವನ್ನು ಒಂದು ಅನೈತಿಕ ಸಂಗತಿ ಎಂದು ಒಪ್ಪುವ ಮಟ್ಟಕ್ಕೆ ಏರಿಲ್ಲ.

ಎನ್ನಿಕೋ ಪಟ್ಟಾರೋ ಇಟಾಲಿಯಾ ಅವರ ಪ್ರಕಾರ: "ಕಾನೂನು ಹಾಗೂ ನೀತಿಗಳು ಸಾಮಾಜಿಕ ನಿಯಂತ್ರಣದ ಸಾಧನಗಳಾಗಿವೆ. ಅವುಗಳ ಭಾಷೆ ನಿರ್ದೇಶಾತ್ಮಕವಾಗಿದೆ. ಸಾಹಿತ್ಯದ ವಿವರಣಾತ್ಮಕ ಭಾಷೆಯು ಮಾಹಿತಿ ನೀಡುತ್ತದೆ. ಆದರೆ ಕಾನೂನಿನ ನಿರ್ದೇಶನಾತ್ಮಕ ಭಾಷೆಯು ನಮ್ಮ ವರ್ತನೆಗೆ ಮಾರ್ಗದರ್ಶನ

14. ಜಿ. ವೆಂಕಟಸುಬ್ಬಯ್ಯ, (ಸಂ) ಸಂ: 2, ಪೂರ್ವೋಕ್ತ, ಪು. 1711

15. Ankita, 'Relation between law and morality or ethics' (ಅಂತರ್ಜಾಲದಿಂದ)

ನೀಡುತ್ತದೆ. ವಿವರಣಾತ್ಮಕ ಭಾಷೆಯು ಹೇಳಿಕೆಯ ರೂಪದಲ್ಲಿದ್ದು ಒಂದನ್ನು ಒತ್ತಿಹೇಳಿ ಮತ್ತೊಂದನ್ನು ನಿರಾಕರಿಸುತ್ತದೆ. ಆದರೆ ನಿರ್ದೇಶನಾತ್ಮಕ ಭಾಷೆಯ ಮೂಲಕ ಸಲಹೆ ನೀಡಲಾಗುತ್ತದೆ.”<sup>16</sup>

ವಸ್ತು ನಿರ್ಧಾರವಾಗದೆ ಬಳಸುವ ಭಾಷೆಯನ್ನು ನಿರ್ಧರಿಸುವುದು ಹೇಗೆ? ಭಾವಕ್ಕೆ ತಕ್ಕ ಭಾಷೆ ಇರಲೇಬೇಕಲ್ಲವೆ? ನಿರ್ದೇಶಕ ಭಾಷೆಯು ಕೇಳುಗನಲ್ಲಿ ಮಾನಸಿಕ ಸಿದ್ಧತೆ-ಸಂಕಲ್ಪದ ಸ್ಪಂದನೆಯನ್ನು ಪ್ರಚೋದಿಸುತ್ತದೆ. ಅವನಿಗೆ ತಕ್ಕ ಕಾರ್ಯಗಳನ್ನು ಮಾಡಲು ನೀತಿ ಹಾಗೂ ಸಾಮಾಜಿಕ ನಿಯಂತ್ರಣದ ಇತರ ಸಾಧನಗಳು ಕಾರ್ಯನಿರ್ವಹಿಸುವ ವಿಧಾನಗಳ ವ್ಯತ್ಯಾಸವನ್ನು ತಿಳಿಯಲು ಈ ಜ್ಞಾನವು ಬೇಕಾಗುತ್ತದೆ.

ಒಂದು ನೈತಿಕ ಕ್ರಿಯೆಯು ನಿರ್ಲಿಪ್ತ, ಸ್ವಾರ್ಥರಹಿತವಾಗಿರುತ್ತದೆ. ಅಂದರೆ ನೈತಿಕ ನಡವಳಿಗೆಗೆ ಪ್ರಶಂಸೆಯ ಆಸೆಯಾಗಲೀ, ಶಿಕ್ಷೆಯ ಭಯವಾಗಲೀ ಕಾರಣವೇ ಅಲ್ಲ. ಒಂದು ನೈತಿಕ ಕರ್ತವ್ಯವನ್ನು ಸಲಹೆ ಮಾಡುವಾಗ ಆ ಸಲಹೆಯು ಒತ್ತಾಯಪೂರ್ವಕವಲ್ಲ, ಕಡ್ಡಾಯವೂ ಅಲ್ಲ. ಆ ಸಲಹೆ ಕೇವಲ ಆ ನೈತಿಕ ಕ್ರಿಯೆಯ ಒಳಗಿರುವ ಮಹತ್ವವನ್ನು ಒತ್ತಿಹೇಳುತ್ತದೆ. ಅವು ತಮ್ಮ ಸ್ವರೂಪದಲ್ಲೇ ಕಡ್ಡಾಯವಾಗಿರುತ್ತದೆ. ಏಕೆಂದರೆ ಅವುಗಳನ್ನು ಪಾಲಿಸಲು ಜನರು ಅಪ್ರಚೋದಿತ ಮಾನಸಿಕ ಸಿದ್ಧತೆಯ ಸ್ಪಂದನೆಯನ್ನು ಅನುಭವಿಸುತ್ತಾರೆ. ಬಾಲ್ಯದಿಂದ ಬಂದ ಸಾಮಾಜಿಕರಣದ ಪ್ರಭಾವವೂ ಇದಕ್ಕೆ ಕಾರಣವಾಗಿರುತ್ತದೆ.

ಒಂದು ನೈತಿಕ ವರ್ತನೆಗೆ ಒಂದು ಬಾಹ್ಯ ಪ್ರಚೋದನೆ ಬೇಕೇಬೇಕು ಎಂದೇನಿಲ್ಲ. ಅಂತಹ ವರ್ತನೆಯು ಸ್ವಯಂ ಪ್ರಚೋದಿತವೇ ಆಗಿರುತ್ತದೆ. ಆ ನೀತಿಪ್ರಜ್ಞೆಯೇ ಅವರಲ್ಲಿ ಸ್ವಪ್ರೇರಣೆಯನ್ನು ಉಂಟುಮಾಡುತ್ತದೆ. ಆದ್ದರಿಂದ ಅದು ಕಡ್ಡಾಯವೆಂದು ಪ್ರಜ್ಞಾಪೂರ್ವಕ ಲಾಭ ನಷ್ಟಗಳ ಅಥವಾ ಆಸಕ್ತಿಗಳ ವಿರುದ್ಧವಾಗಿಯೂ ನೀತಿಯನ್ನು ಪಾಲಿಸಲು ಸಿದ್ಧರಾಗಿರುತ್ತಾರೆ. ಇದನ್ನೇ ಕರ್ತವ್ಯ ಪ್ರಜ್ಞೆ ಎನ್ನಬಹುದು.

ಎ.ಹೆಗರ್‌ಸ್ಪಾರ್ಮ್ ಅವರ ಪ್ರಕಾರ: “The effectiveness of the sense of duty depends on the greater or smaller depth that familiar and social conditioning have reached in people's psycho.”<sup>17</sup>

ಇದಕ್ಕೆ ನಿದರ್ಶನ: ‘ಮಾತಾಪಿತರನು ಸೇವಿಸಲಾಗಿ’ ಎಂಬ ಪುರಂದರದಾಸರ ವಾಕ್ಯವು ಬೇರೆ ಬೇರೆ ಕೇಳುಗರಲ್ಲಿ ಬೇರೆ ಬೇರೆಯದೇ ಆದ ರೀತಿಯ ಪರಿಣಾಮವನ್ನು ಬೀರಬಹುದು. ‘ಮಾತೃದೇವೋ ಭವ’ ಎಂಬುದನ್ನು ಬಾಲ್ಯದಿಂದಲೂ ರೂಢಿಸಿಕೊಂಡ ಜನರಿಗೆ ಪುರಂದರದಾಸರ ಈ ಮಾತು ವೇದವಾಕ್ಯದಂತೆ ಎನಿಸಬಹುದು. ಪರಮೋಪಕಾರಮಾಡಿದ ತಂದೆ ತಾಯಿಗಳನ್ನು ಸುಖವಾಗಿ ನೋಡಿಕೊಳ್ಳಬೇಕು ಎಂಬ ಸಂಕಲ್ಪವನ್ನು ಮಾಡಿಸಬಹುದು. ಆದರೆ ಇದೇ ವಾಕ್ಯವು ತಂದೆತಾಯಿಗಳನ್ನು ಕಳೆದುಕೊಂಡು ಅನಾಥ ಪ್ರಜ್ಞೆಯಲ್ಲಿ ಬಳಲುತ್ತಿರುವವರಲ್ಲಿ ಕೊರಗನ್ನು ಮೂಡಿಸಬಹುದು. ‘ನನಗೆ ಇನ್ನೆಲ್ಲಿಯ ತಂದೆತಾಯಿ? ಅವರನ್ನು ಸೇವಿಸುವ ಭಾಗ್ಯದಿಂದ ನಾನು ವಂಚಿತನಾಗಿದ್ದೇನೆ’ ಎಂಬ ವಿಷಾದವನ್ನು ಉಂಟುಮಾಡಬಹುದು. ತಂದೆ ಅಥವಾ ತಾಯಿ ದುಷ್ಟರಾಗಿದ್ದರೆ, ಭ್ರಷ್ಟರಾಗಿದ್ದರೆ, ಕಳಂಕಿತರಾಗಿದ್ದರೆ, ‘ಅಂತಹ ಅಯೋಗ್ಯರನ್ನು ನಾನೇಕೆ ಸೇವಿಸಲಿ?’ ಎಂಬ ತಾತ್ಕಾರ ಭಾವವನ್ನು ಮೂಡಿಸಬಹುದು. ಅದೇ ಸ್ಥಿತಿಯಲ್ಲೂ ಒಂದೊಮ್ಮೆ ಕೇಳುಗನು ನೀತಿಪ್ರಿಯನಾಗಿದ್ದರೆ ‘ಅವರು ದುಷ್ಟರೋ ಭ್ರಷ್ಟರೋ! ನನಗೆ ಜನ್ಮವನ್ನಂತೂ ಕೊಟ್ಟಿದ್ದಾರಲ್ಲ, ಅವರನ್ನು ಗೌರವಿಸಬೇಕಾದ ನನ್ನ ಪಾಲಿನ ಕರ್ತವ್ಯದಲ್ಲಿ ಲೋಪ ಬರದಂತೆ ನಡೆದುಕೊಳ್ಳುತ್ತೇನೆ’ ಎಂಬ ಜಾಗೃತಿಯನ್ನು ಉಂಟುಮಾಡಬಹುದು.

16. Enrico Pattaro, Italia, ‘Law and Morality, Politics of the means of social control’ html file, (ಅಂತರ್ಜಾಲದಿಂದ)

17. A HAGERSTROM, Inquires into the Nature of Law and Morals, 1953, page no. 127-170) (Enrico Pattaro, Law and Morality, Politics of the means of social control, page no. 274

ಅದರಂತೆಯೇ ಒಂದೇ ಭಾಷೆಯ ಬೇರೆ ಬೇರೆ ಶೈಲಿಯ ವಾಕ್ಯಗಳು ಬೇರೆ ಬೇರೆ ಪರಿಣಾಮವನ್ನು ಉಂಟುಮಾಡುತ್ತವೆ. ಕೇಳುಗನ ನೈತಿಕಪ್ರಜ್ಞೆ ಮತ್ತು ಮನಃಸ್ಥಿತಿಯನ್ನು ಅವಲಂಬಿಸಿ ನೈತಿಕ ಸಲಹೆಯು ಕೇಳುಗನ ಶಿಕ್ಷಣ ಹಾಗೂ ಕರ್ತವ್ಯಪ್ರಜ್ಞೆಯ ಆಧಾರದ ಮೇಲೆ ಈಗಾಗಲೇ ಅವನಲ್ಲಿ ನೆಲೆಗೊಂಡ ಮಾನಸಿಕ ಕಾರ್ಯವಿಧಾನವನ್ನು ಬಿಡುಗಡೆಗೊಳಿಸುತ್ತದೆ. ಇದು ಕಾರ್ಯಗತವಾಗಲು ಉದ್ದುದ್ದನೆಯ ಉಪದೇಶ ಬೇಕಿಲ್ಲ. ಗಂಟೆಗಟ್ಟಲೆ ಪ್ರವಚನ ಬೇಕಿಲ್ಲ. ಒಂದೇ ಸಣ್ಣ ಸೂಚನೆಯೂ ಗಮನಾರ್ಹ ಪರಿಣಾಮವನ್ನು ಬೀರುತ್ತದೆ. ಹರಿದಾಸರ ಲೋಕನೀತಿಯ ವಾಕ್ಯಗಳು ಇಂತಹ ಕಿರುಸೂಚನೆಗಳ ರೂಪದಲ್ಲೇ ಇರುವುದನ್ನು ತಪ್ಪದೆ ಗುರುತಿಸಬೇಕು.

ಎ.ಹೆಗರ್‌ಸ್ವಾರ್ತ್ ಅವರೇ ಮುಂದುವರಿದು ಹೇಳಿದ: “Moral prescriptions release psychical mechanisms which are prearranged by education and social conditioning. To their functioning it is necessary not so much the directive as the representational meaning of the sentence: the presentation of an action already associated in the receiver with a sense of duty.”<sup>18</sup> ಎಂಬ ಮಾತುಗಳು ಮೇಲಿನ ವಿಚಾರಸರಣಿಗೆ ಅನುಗುಣವಾಗಿವೆ. ನೈತಿಕಪ್ರಜ್ಞೆ ಮೊದಲು. ಅಂತರಂಗದಲ್ಲಿ ರೂಪುಗೊಂಡ ನೈತಿಕ ಪ್ರಜ್ಞೆಗೆ ನೀತಿಯ ಉಪದೇಶ ಬಾಹ್ಯ ಪ್ರಚೋದಕ ಮಾತ್ರ.

### ಆಜ್ಞೆ

ಒಂದು ಕ್ರಿಯೆ ಮತ್ತು ಕರ್ತವ್ಯಪ್ರಜ್ಞೆ ಇವುಗಳ ಸಮ್ಮಿಲನವೇ ನೈತಿಕ ನಿಲವು. ಆಜ್ಞೆಗಳು, ಭಯ, ಒಪ್ಪಿಸುವಿಕೆ, ದಬ್ಬಾಳಿಕೆ, ಉದಾಹರಣೆಯ ಸಾಮರ್ಥ್ಯ, ಇವು ಆಜ್ಞೆಯ ವಿವಿಧ ರೂಪಗಳು. ಕುಟುಂಬ ಹಾಗೂ ಸಮಾಜದ ಆಶ್ರಯದಲ್ಲಿ ನೀತಿಯೇ ಬೇರೆ; ಆಜ್ಞೆ ಭಯ ಮತ್ತು ಸಲಹೆಗಳೇ ಬೇರೆ. ಆಜ್ಞೆ ಮಾಡುವಲ್ಲಿ ಆಜ್ಞೆ ನೀಡುವವನ ಪ್ರಾಬಲ್ಯ ಮುಖ್ಯ. ಅಂತೆಯೇ ಕೇಳುವವನ ಅಧೀನತೆಯೂ ಮುಖ್ಯ. ಇದು ನಿರ್ದಿಷ್ಟ ಕಾಲಕ್ಕೆ ಸೀಮಿತ. ಆದರೆ ನೀತಿ ಹಾಗಲ್ಲ. ನೀತಿಬೋಧಕನು ಪ್ರಬಲನಾಗಿರದೆ ದುರ್ಬಲನಾಗಿದ್ದರೂ, ಕೇಳುವವನು ನೀತಿಬೋಧಕನ ಅಧೀನನಾಗಿರದೆ ಸ್ವತಂತ್ರನಾಗಿದ್ದರೂ ನೀತಿ ಪ್ರಸಾರಕ್ಕೆ ಯಾವುದೇ ತೊಡಕು ಇರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದಲೇ ಹಾದಿಬೀದಿಯಲ್ಲಿ ಸಂಚರಿಸಿದ ಹರಿದಾಸರು ಅಂದಿನ ಸಮಾಜದ ಪ್ರತಿಷ್ಠಿತ ಸ್ಥಾನಗಳಲ್ಲಿದ್ದ ರಾಜರಿಗೆ, ಯತಿಗಳಿಗೆ ಹಾಗೂ ಗಣ್ಯರಿಗೂ ಸಹ ನೀತಿಬೋಧನೆ ಮಾಡಲು ಸಾಧ್ಯವಾಯಿತು.

### ಬೆದರಿಕೆ

ಕೇಳುಗನು ಬೆದರಿಕೆಯಿಂದ ಕೂಡಿದ ಸಲಹೆಯನ್ನು ಪಾಲಿಸುವಾಗ ಬೆದರಿಕೆಯಲ್ಲಿ ನಿರೀಕ್ಷಿಸಿದ ಶಿಕ್ಷೆಯ ಭಯಕ್ಕಾಗಿ (ಈ ಕಾರ್ಯಮಾಡದೆ ಪಾರಾಗುವಂತಿಲ್ಲ. ಮಾಡದಿದ್ದರೆ ಶಿಕ್ಷೆಯಾದೀತು ಎಂಬ ಭಯಕ್ಕಾಗಿ) ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಾನೆಯೇ ಹೊರತು ಕರ್ತವ್ಯಪ್ರಜ್ಞೆ, ನೈತಿಕಪ್ರಜ್ಞೆ ಅಥವಾ ಹೇಳಿದವರ ಸ್ಥಾನಮಾನದ ಬಗೆಗಿನ ಗೌರವ ಇವು ಕೆಲಸಮಾಡುವುದಿಲ್ಲ.

### ಸಲಹೆ

ಸಲಹೆಯನ್ನು ಪಾಲಿಸಿದರೆ ಆ ಸಂದರ್ಭದಲ್ಲಿ ಲಾಭವಿರುತ್ತದೆ. ಉದಾ: ‘ನೀನು ಕೊಡೆ ಒಯ್ಯುವುದು ಒಳ್ಳೆಯದು. ಮಳೆ ಬರುವಂತಿದೆ’ ಎಂಬುದು ಒಂದು ಸಲಹೆ. ಸಲಹೆಯು ಲಿಖಿತ ನಿಯಮ ಮತ್ತು ಅಲಿಖಿತ

18. A HAGERSTROM, *Inquires into the Nature of Law and Morals*, 1953, page no. 127-170) (Enrico Pattaro, *Law and Morality, Politics of the means of social control*, page no. 274

ವಿವರಣೆಯ ಮಧ್ಯದ ಸ್ಥಿತಿಯಲ್ಲಿರುತ್ತದೆ. ಒಂದು ಸಲಹೆಯ ಪರಿಣಾಮ ಕೇಳುಗನ ಆಸಕ್ತಿಯನ್ನು ಮತ್ತು ಒಂದು ಕ್ರಿಯೆಯ ವಿವರಣೆಯ ವಿಶ್ವಾಸಾರ್ಹತೆಯನ್ನು ಅವಲಂಬಿಸಿರುತ್ತದೆ.

#### ಸಾಮಾಜಿಕ ನಿಯಂತ್ರಣದ ಸಾಧನವಾಗಿ ಕಾನೂನು

ಅನೇಕ ಸಿದ್ಧಾಂತಗಳು ಕಾನೂನನ್ನು ಆಜ್ಞೆಗಳ ಮೊತ್ತವೆಂದು ವ್ಯಾಖ್ಯಾನಿಸಿದರೂ ಆ ಕಾನೂನು, ಆಜ್ಞೆಗಳ ಮೂಲಕ ಪರಿಣಾಮಕಾರಿಯಾಗುವುದು ಅತಿವಿರಳ. ಕಾನೂನಿನ ಪರಿಣಾಮಶೀಲತೆಯು ಸಾಂದರ್ಭಿಕ ಅಥವಾ ತಕ್ಷಣದ ಆಜ್ಞೆ ನೀಡುವ ಶಕ್ತಿಯ, ಕೇಳುಗನ ಮೇಲೆ ಹೇಳುಗನು ಹೊಂದಿದ ಆಜ್ಞಾಶಕ್ತಿಯನ್ನು ಆಧರಿಸಿರುವುದಿಲ್ಲ. ಬದಲಾಗಿ ಕಾನೂನು ನಿರ್ಬಂಧಗಳು ಮತ್ತು ಕೆಡುಕಿನ ಬೆದರಿಕೆಯ ಶಕ್ತಿಯ ಆಧಾರದ ಮೇಲೆ ಹೆಚ್ಚು ಕ್ರಿಯಾಶೀಲವಾಗುತ್ತದೆ ಎಂಬುದೇ ಸತ್ಯ.

ಇದಲ್ಲದೆ ಕಾನೂನು ಅನುಕೂಲಸಿಂಧುತ್ವದ ಆಧಾರದ ಮೇಲೆ ಗೌರವಿಸಲ್ಪಡುತ್ತದೆ. ಅಂತಹ ಸಂದರ್ಭದಲ್ಲಿ ಪ್ರಚೋದನಕಾರಿ ಶಕ್ತಿಯು ಮುಖ್ಯವಾಗಿರುತ್ತದೆ. ಅದಲ್ಲದೆ ಕಾನೂನು ರೂಢಿ ಮತ್ತು ತೋರಿಕೆಯ ಸ್ಫೂರ್ತಿಯನ್ನು ಅವಲಂಬಿಸಿರುತ್ತದೆ. ಕೊನೆಯದಾಗಿ ಕಾನೂನು ಮತ್ತು ನೀತಿಯ ಮಧ್ಯೆ ಎರಡು ಮುಖ್ಯ ವ್ಯತ್ಯಾಸಗಳಿವೆ.

ಒಂದನೆಯದಾಗಿ, ಕಾನೂನಿನ ನಿಯಮಗಳನ್ನು ಕೇಳುಗರು ಗೌರವಿಸುವ ಕಾರಣವೇನೆಂದರೆ ಅವರು ನೈತಿಕತೆಯಂತಹ ನಿರ್ದಿಷ್ಟ ಮಾನಸಿಕ ವ್ಯವಸ್ಥೆಯು ಅವರನ್ನು ಹಾಗೆ ಮಾಡಲು ಪ್ರೇರಿಸುತ್ತದೆ. ಕಾರಣವೇನೆಂದರೆ ನಿರ್ದಿಷ್ಟ ಕ್ರಿಯೆಯು ಕರ್ತವ್ಯಪ್ರಜ್ಞೆ ಮತ್ತು ಅವನ ಮನಃಸ್ಥಿತಿಯೊಂದಿಗೆ ಸೇರಿರುತ್ತದೆ. ಉದಾಹರಣೆ: ವ್ಯಭಿಚಾರ, ಕೊಲೆ, ವಿಶ್ವಾಸದ್ರೋಹ, ಸುಳ್ಳು ಮೊದಲಾದವುಗಳನ್ನು ನಮ್ಮ ಸಮಾಜವು ಪುರಸ್ಕರಿಸುವುದಿಲ್ಲ. ಜನರು ಕಾನೂನಿನ ಭಯಕ್ಕಾಗಿ ಮಾತ್ರ ಇವುಗಳಿಂದ ದೂರವಿರುತ್ತಾರೆ ಎಂದೇನಲ್ಲ. ಬಹುಪಾಲು ಜನರು ಅಂತಹ ನಡವಳಿಕೆಗಳು ನೈತಿಕವಾಗಿ ತಪ್ಪೆಂದೂ, ನೀತಿಯ ಕಾರಣಕ್ಕಾಗಿ ಮತ್ತು ಕರ್ತವ್ಯ ಪ್ರಜ್ಞೆಯ ಕಾರಣಕ್ಕಾಗಿ ಅಂದರೆ ನಾವು ಇಂತಹ ಕಾರ್ಯಗಳನ್ನು ಮಾಡಬಾರದು ಎಂಬ ಭಾವನೆಯಿಂದ ದೂರವಿರುತ್ತಾರೆ.

ಎರಡನೆಯದಾಗಿ, ಕಾನೂನಿನ ಎಲ್ಲ ಪಾಲನೆಯನ್ನು ಕರ್ತವ್ಯಪ್ರಜ್ಞೆಯಿಂದ ಮಾಡಿದರೆ ಅವೆಲ್ಲವೂ ನೈತಿಕ ಕ್ರಿಯೆಗಳೇ ಆಗುತ್ತವೆ. ನೈತಿಕತೆಯು ಕಾನೂನನ್ನು ಸಮರ್ಥಿಸುತ್ತದೆ. ಕಾನೂನಿಗೆ ಅಧಿಕೃತತೆಯನ್ನು ತಂದುಕೊಡುತ್ತದೆ. ಕಾನೂನನ್ನು ಗೌರವಿಸುವುದೇ ನೈತಿಕತೆ, ಇದು ಕಡ್ಡಾಯ.

ಹೀಗಾಗಿ ನೈತಿಕತೆಯು ಈಗ ಇರುವ ಮತ್ತು ಮುಂಬರುವ ಕಾನೂನುಗಳಿಗೆ ಅಸಾಧಾರಣ ಶಕ್ತಿಯನ್ನು ತುಂಬುತ್ತದೆ. ಮಾತ್ರವಲ್ಲದೆ ಕಾನೂನನ್ನು ಗೌರವಿಸಲು ಬೇಕಾದ ಕರ್ತವ್ಯಪ್ರಜ್ಞೆಯ ಒಲವನ್ನು ಸಾಕಷ್ಟು ಮುಂಚೆಯೇ ಮೂಡಿಸುತ್ತದೆ. ಕಾನೂನಿಗೆ ಅಥವಾ ಕಾನೂನಿನ ಕೆಲವು ವಿಷಯಗಳಿಗೆ ವಿರುದ್ಧವಾಗುವಂತಹ ಕೆಲವು ನೀತಿಗಳೂ ಇವೆ. ಇವು ನಿಯಂತ್ರಣದ ಬೃಹತ್ ತಂತ್ರವಲ್ಲದೆ ಮತ್ತೇನಲ್ಲ ಎಂದು ಸಮಾಜಕ್ಕೆ ಅಥವಾ ಸಮಾಜದ ಒಂದು ದೊಡ್ಡ ಭಾಗಕ್ಕೆ ಕಾಣುವಂತೆ ಮಾಡಿದರೆ ಕಾನೂನಿಗಿಂತ ನೀತಿಯೇ ಗೆಲ್ಲುತ್ತದೆ. ಈ ಸಂದರ್ಭದಲ್ಲಿ ಕಾನೂನು ಕಾನೂನಾಗಿ ಉಳಿಯುವುದಿಲ್ಲ. ಅದು ಕೇವಲ ಒಂದಷ್ಟು ನಿಯಮಗಳ ಅವಾನವೀಯ ಗುಚ್ಛವಾಗಿಯೋ, ಅಪರಾಧಿಗಳ ಕೈಗೆ ತೊಡಿಸಿದ ಕೈ ಕೋಳಗಳಾಗಿಯೋ ಉಳಿದುಬಿಡುತ್ತವೆ.

ಎಲ್ಲಿಯವರೆಗೆ ಕಾನೂನು ಸಾಮಾಜಿಕ ನಿಯಂತ್ರಣದ ಸಾಧನವಾಗಿರುತ್ತದೆಯೋ ಅಲ್ಲಿಯವರೆಗೆ ಕಾನೂನು ತಾನು ಬಯಸುವ ಒಂದು ರೀತಿಯ ಸಮ್ಮತಿಯನ್ನು ಪಡೆಯುತ್ತದೆ. ಆದ್ದರಿಂದ ಕಾನೂನು ಸಾಮಾಜಿಕ ನಿಯಂತ್ರಣದ ಸಾಧನ ಎಂಬುದು ನಿಜವಾಗಬೇಕಾದರೆ ಕನಿಷ್ಠ ಎರಡು ಅಂಶಗಳನ್ನಾದರೂ ಒಳಗೊಂಡಿರಬೇಕು.



1. ಸಮಾಜದಲ್ಲಿ ಬಲಪ್ರಯೋಗವು ವ್ಯಾಪಕ ಸಮ್ಮತಿಯನ್ನು ಪಡೆದಿದ್ದರೆ ಮಾತ್ರ ವಾಸ್ತವ ಅಥವಾ ಸಂಭಾವ್ಯ ಒತ್ತಡದ ಬಳಕೆಯನ್ನು ಮಾಡಲು ಸಾಧ್ಯ. ಆಗಲೂ ಸಮಾಜವು ತನ್ನದೇ ಒಂದು ಭಾಗದ ಜನರ ಮೇಲೆ ಯಾವ ರೀತಿಯ ಬಲಪ್ರಯೋಗವನ್ನು ಒಪ್ಪಿಕೊಳ್ಳುತ್ತದೆ, ಸಹಿಸುತ್ತದೆ ಎಂಬುದು ಬಹುಮುಖ್ಯ. ಈ ಪ್ರಶ್ನೆಗೆ ಉತ್ತರವು ಸಾಮಾಜಿಕ ನಿಯಂತ್ರಣದ ಸಾಧನಗಳನ್ನು ಕುರಿತ ರಾಜಕೀಯ ನೀತಿ(Political policy)ಯನ್ನು ಅವಲಂಬಿಸುತ್ತದೆ.
2. ಎನ್ನಿಕೋ ಪೆಟ್ಟಾರೋ ಇಟಾಲಿಯಾ ಇವರ ಪ್ರಕಾರ: ವೈಚಾರಿಕತೆಯಲ್ಲಿ ಎರಡು ವಿಧ. ಒಂದು ವೈಚಾರಿಕ ನೈತಿಕತೆ ಮತ್ತು ಎರಡನೆಯದು ಆಡಳಿತಪರವಾದ ನೈತಿಕತೆ. ನೈತಿಕತೆಯು ನಿರಂಕುಶಪ್ರಭುತ್ವಕ್ಕೆ ಮತ್ತು ಒಮ್ಮೊಮ್ಮೆ ಏಕಚಕ್ರಾಧಿಪತ್ಯಕ್ಕೆ ದಾರಿ ಮಾಡಿಕೊಡುತ್ತವೆ. ಯಾವ ನೈತಿಕ ವರ್ತನೆಗಳು ಕ್ರೌರ್ಯವನ್ನು ಪ್ರೋತ್ಸಾಹಿಸುತ್ತವೋ ಅಂತಹ ನೈತಿಕ ನಿಯಮಗಳು ಮತ್ತು ಅವುಗಳ ಬೆಂಬಲದಿಂದ ಬರುವ ಕಾನೂನುಗಳು ನಿಜವಾದ ಅರ್ಥದಲ್ಲಿ ಕಾನೂನುಗಳಾಗದೆ ಕ್ರೌರ್ಯಗಳಾಗಿ ಉಳಿಯುತ್ತವೆ. ಇವರ ಪ್ರಕಾರ ನರಹತ್ಯೆಯನ್ನು ಮಾಡುವಂತಹ ಕರ್ತವ್ಯಪ್ರಜ್ಞೆಗಳನ್ನು ನೀತಿ ಅಥವಾ ಕಾನೂನು ಬೋಧಿಸುವುದಾದರೆ ಅದು ಅವೈಚಾರಿಕ ನೈತಿಕತೆಯಾಗುತ್ತದೆ. ಉದಾ: ನರಬಲಿ, ಪ್ರಾಣಿಬಲಿ, ಮದ್ಯ ಕುಡಿದು ಕುಣಿಯುವುದು, ಬೆತ್ತಲೆಸೇವೆ, ದೇವದಾಸೀ ಪದ್ಧತಿ, ಇಂತಹ ಕ್ರೂರ ನೈತಿಕತೆಯನ್ನು ಹರಿದಾಸರು ಬೆಂಬಲಿಸುವುದಿಲ್ಲ.

### ಸಂಸ್ಕೃತ - ಕನ್ನಡ ನೀತಿ ಗ್ರಂಥಗಳು

ಎಲ್ಲ ಭಾರತೀಯ ಭಾಷೆಗಳಲ್ಲೂ ನೀತಿಬೋಧಕವಾದ ಚಿಕ್ಕ ಚೊಕ್ಕ ಮಾತುಗಳು ಕಂಡುಬರುತ್ತವೆ. ಲೋಕ ವ್ಯವಹಾರದ ಅನುಭವವನ್ನು ಆಧರಿಸಿ ಏಕವ್ಯಕ್ತಿಮೂಲವಾಗಿ ಹುಟ್ಟುವ ಇಂತಹ ಸೂಕ್ತಿಗಳು ಸಮಾಜದಿಂದ ಸ್ವೀಕೃತವಾಗಿ ಸಾರ್ವಕಾಲಿಕ, ಸಾರ್ವತ್ರಿಕ ಸತ್ಯವೆಂಬಂತೆ ಸ್ಥಾಪಿತವಾಗುತ್ತವೆ. ಇಂತಹ ಸಂದರ್ಭಗಳಲ್ಲಿ ಮಾನವ ವರ್ತನೆಯನ್ನು ವಿಧಿ-ನಿಷೇಧಗಳೆಂದು ವಿಂಗಡಿಸಿ ಹೇಳುವ ಪದ್ಧತಿಯನ್ನು ಕಾಣುತ್ತೇವೆ.

ಸಂಸ್ಕೃತದಲ್ಲಿ ಧರ್ಮ ಮತ್ತು ದರ್ಶನಗಳ ಪ್ರಭಾವದಿಂದ ರೂಪುಗೊಂಡ ಉಪದೇಶಾತ್ಮಕ ಪದ್ಯರೂಪವಾದ ಕಾವ್ಯರಚನೆ ಬಹುಕಾಲದಿಂದಲೂ ಇದೆ. ಹುಟ್ಟು ಸಾವುಗಳ ಚಕ್ರದಲ್ಲಿ ತೊಳಲುವ ಜೀವದ ನೋವು, ಸತ್ಯ ಶೋಧನೆಯ ಹಂಬಲಕ್ಕೆ ಎಡೆಮಾಡಿಕೊಡುತ್ತದೆ. ನೋವು ನಲಿವುಗಳು ಎಲ್ಲ ಮಗ್ಗಲುಗಳನ್ನೂ ವಿಮರ್ಶೆಗೆ ಒಳಪಡಿಸಿ ಪ್ರಗತಿಯ ಹಾದಿಯಲ್ಲಿ ಗುಣ ದೋಷಗಳ ಬೆಲೆಗಳನ್ನು ಗುರುತಿಸಿರುತ್ತದೆ. ಬದುಕಿನ ಒಳಿತು ಕೆಡಕುಗಳ ಕಡೆಗೆ ಜನ ಸಾಮಾನ್ಯದಲ್ಲಿ ಪ್ರಭಾವವನ್ನು ಬೀರುವ ಸಜ್ಜನ ದುರ್ಜನರ ಕಡೆಗೆ ಇಲ್ಲಿ ಹೆಚ್ಚಾಗಿ ಒತ್ತು ಕೊಡುವುದು ಕಂಡುಬರುತ್ತದೆ. ಹಾಗಾಗಿ ಒಳ್ಳೆಯ ಮತ್ತು ಕೆಟ್ಟ ನಡವಳಿಕೆಗಳು ದೃಷ್ಟಾಂತ ಪೂರ್ವಕವಾಗಿ ನಿರೂಪಿಸಲ್ಪಟ್ಟಿರುತ್ತವೆ. ಆದ್ದರಿಂದಲೇ ಈ ಬಗೆಯ ಸಾಹಿತ್ಯವು ಸಹನೆ, ಭ್ರಾತೃತ್ವಗಳ ಆವಶ್ಯಕತೆಯನ್ನು ಉಗ್ಗಡಿಸುತ್ತದೆ. ಮನುಷ್ಯ ಪ್ರೇಮದ ಪರಿಧಿಯು ಪ್ರಾಣಿ ಪಕ್ಷಿಗಳಿಗೂ ವಿಸ್ತರಿಸಬೇಕು ಎನ್ನುವುದು ಇಲ್ಲಿಕಾಣುವ ಆಶಯ.

ಟಿ.ವಿ.ವೆಂಕಟಾಚಲಶಾಸ್ತ್ರಿ ಅವರ ಪ್ರಕಾರ: “ಈ ನೀತಿಕಾವ್ಯಗಳ, ಕಾವ್ಯಸ್ಥ ಪದ್ಯಗಳ ಉದ್ದೇಶವಾದರೂ ಬದುಕಿಗೆ ನೆಮ್ಮದಿ ನೀಡುವುದು, ಹುಟ್ಟು ಬದುಕುಗಳ ತೊಡಕಿನ ಬಲೆಯನ್ನು ಹರಿದೊಗೆಯುವುದು, ನೋವು ನಲಿವುಗಳನ್ನು ಸಮಾನವಾಗಿ ತಿಳಿದು ತೊರೆಯುವುದು, ಒಳಿತು ಕೆಡಕುಗಳನ್ನು ಗಮನಿಸುವುದು, ಚಿರ ಸತ್ಯವನ್ನೂ ಅತೀತ ಶಕ್ತಿಯನ್ನೂ ಶೋಧಿಸುವುದು ಹಾಗೂ ಸಹನೆ ಸಹಬಾಳ್ವೆಗಳನ್ನು ರೂಢಿಸುವುದು - ಇವೇ ಆಗಿವೆ”<sup>19</sup> ಎಂದಿದ್ದಾರೆ.

19. ವೆಂಕಟಾಚಲಶಾಸ್ತ್ರಿ ಟಿ.ವಿ., ‘ಪೀಠಿಕೆ’, ಕನ್ನಡ ಚಿನ್ನುಡಿ, ಪು. 11 ರಿಂದ 38

ವಿವೇಕಯುತವೂ ಉದಾತ್ತವೂ ಆದ ಅಸಂಖ್ಯ ನೀತಿಗಳು ಸಂಸ್ಕೃತ ಸಾಹಿತ್ಯದ ವಿವಿಧ ಶಾಖೆಗಳಲ್ಲಿ ಚದುರಿ ಹೋಗಿವೆ. ವಿವಿಧ ರಾಜನೀತಿ ಗ್ರಂಥಗಳಲ್ಲಿ, ಮಹಾಕಾವ್ಯಗಳಲ್ಲಿ, ನಾಟಕಗಳಲ್ಲಿ, ಇನ್ನಿತರ ಗ್ರಂಥಗಳಲ್ಲಿ ಸಮೃದ್ಧವಾಗಿ ಕಂಡುಬರುತ್ತವೆ.

ನೀತಿಶಾಸ್ತ್ರದ ಹಳಮೆ ಋಗ್ವೇದ, ಐತರೇಯ ಬ್ರಾಹ್ಮಣ ಮತ್ತು ಉಪನಿಷತ್ತುಗಳ ಕಾಲದಷ್ಟು ಹಿಂದಕ್ಕೆ ಮುಟ್ಟುತ್ತವೆ. ಮಹಾಕಾವ್ಯಗಳಾದ ರಾಮಾಯಣ, ಮಹಾಭಾರತ, ಪುರಾಣಗಳಲ್ಲಿಯೂ, ವಿಖ್ಯಾತ ಮಹಾಕವಿಗಳಾದ ಕಾಳಿದಾಸ, ಭಾರವಿ, ಮಾಘ, ಶ್ರೀಹರ್ಷ ಮೊದಲಾದವರ ಕಾವ್ಯಗಳಲ್ಲಿಯೂ ನೀತಿನಿರೂಪಕ ಸುಂದರ ಸೂಕ್ತಿ ಸಂದರ್ಭಗಳು ದೊರೆಯುತ್ತವೆ. ಭಾರತವಂತೂ ಇಂತಹ ನೀತಿವಾಕ್ಯಗಳಿಗೆ ಅಥವಾ ಉಪದೇಶಾತ್ಮಕ ಪದ್ಯಗಳಿಗೆ ಒಂದು ಗಣಿ. ಭಗವದ್ಗೀತೆ, ವಿದುರನೀತಿ, ಯಕ್ಷಪ್ರಶ್ನೆ ಈ ಕೆಲವು ಭಾಗಗಳಲ್ಲಿ ಬರುವ ನೀತಿಗಳು ಹೃದಯಂಗಮವಾದವು. ಇನ್ನು ಸಂಸ್ಕೃತದ ನೀತಿಬೋಧಕ ಪ್ರಾಣಿ ಕಥೆಗಳಲ್ಲಿ ಬಹಳ ಜನಪ್ರಿಯವಾಗಿರುವ 'ಪಂಚತಂತ್ರ', 'ಹಿತೋಪದೇಶ'ಗಳು ಮುಖ್ಯ ಕಥೆ ಅದರ ಭಾಗವಾದ ಉಪಕಥೆ ಇವುಗಳ ಮೂಲಕ ರಾಜನೀತಿ, ಲೋಕನೀತಿಗಳನ್ನು ಸಾರುತ್ತವೆ.

ಆಚಾರ್ಯ ಸುಂದರ ಪಾಂಡ್ಯನು (ಸುಮಾರು 500ರ ಹಿಂದೆ) ಬಹುಶಃ ಮಧುರೆಯ ನಿವಾಸಿಯಾಗಿದ್ದನು. 'ನೀತಿ ದ್ವಿಷ್ಣುಷ್ಠಿಕಾ' ಎಂಬ ಗ್ರಂಥವನ್ನು ಸಂಕಲಿಸಿದ್ದು ಇದೇ ತುಂಬ ಹಳೆಯದಾಗಿರಬೇಕು. ಈ ಕೃತಿಯಿಂದ ಆಯ್ದ ಪದ್ಯಗಳು ಕೆಲವು ಸಂಕಲನಗಳಲ್ಲಿ ಆಕರ ಸೂಚನೆ ಮಾಡದೆ ಉದ್ಧೃತವಾಗಿವೆ. 'ಪಂಚತಂತ್ರ', 'ಜನಾಶ್ರಯಿ'ಗಳಲ್ಲಿಯೂ, ಕುಮಾರಿಲ, ಶಂಕರ ಮತ್ತು ಕೃಷ್ಣಲೀಲಾಶುಕರ ರಚನೆಗಳಲ್ಲಿಯೂ ಅವನ್ನು ಗಮನಿಸಬಹುದಾಗಿದೆ.

ಸಂಸ್ಕೃತ ನೀತಿಸಾಹಿತ್ಯದಲ್ಲಿ ಭರ್ತೃಹರಿಯ (ಸು.600) ಹೆಸರು ಅತ್ಯಂತ ಪ್ರಸಿದ್ಧವಾದುದು. ಈತ 'ನೀತಿಶತಕ', 'ಶೃಂಗಾರ ಶತಕ' ಮತ್ತು 'ವೈರಾಗ್ಯ ಶತಕ'ಗಳೆಂಬ ಶತಕತ್ರಯ ರಚಿಸಿದ್ದಾನೆ.

ಇವಲ್ಲದೆ ಇನ್ನೂ ಹಲವು ನೀತಿಗ್ರಂಥಗಳುಂಟು : ಪದ್ಮಾನಂದ, ಅಪ್ಪಯ್ಯದೀಕ್ಷಿತ, ಜನಾರ್ದನ, ಶಂಕರಾಚಾರ್ಯ, ಸೋಮನಾಥ ಇವರ 'ವೈರಾಗ್ಯ ಶತಕ'ಗಳು; 'ಪಂಚತಂತ್ರ ಸಂಗ್ರಹ', ಸದಾನಂದನ 'ನೀತಿಮಾಲ'; ಶಂಭುರಾಜ ಮತ್ತು ದ್ಯಾಧ್ವಿವೇದರ 'ನೀತಿಮಂಜರಿ'; ವೆಂಕಟರಾಯ, ಶ್ರೀನಿವಾಸಾಚಾರ್ಯರ ಮತ್ತು ಅಜ್ಞಾತ ಕರ್ತೃಕ 'ನೀತಿಶತಕ', ಘಟಕರ್ಪರನ 'ನೀತಿಸಾರ' ಮತ್ತು 'ನೀತಿಶಾಸ್ತ್ರ ಸಮುಚ್ಚಯ'; ಸೋಮದೇವಸೂರಿಯ 'ನೀತಿವಾಕ್ಯಾಮೃತ'; ವೇತಾಲಭಟ್ಟನದನ್ನಲಾದ 'ನೀತಿಪ್ರದೀಪ'; ಸಾಹಿಬ್ರಾಮನ 'ನೀತಿಕಲ್ಪಲತಾ', 'ಕವಿಕಂಠಾಭರಣ'; ಜಲ್ಲಣನ 'ಮುಗ್ಧೋಪದೇಶ'; ಮುಂತಾದವು. ನಾರಾಯಣ ರಾಮ ಆಚಾರ್ಯ (ಚೌಖಾಂಬಾ ಪ್ರಕಾಶನ 1952) ಇವರು ಸಂಪಾದಿಸಿದ 'ಸುಭಾಷಿತ ರತ್ನಭಾಂಡಾಗಾರ' ಎಂಬ ಸಂಸ್ಕೃತ ಗ್ರಂಥವು ಮೇಲಿನ ಎಲ್ಲ ಆಕರಗಳ ಸುಭಾಷಿತಗಳ ಸಾರಸಂಗ್ರಹ ರೂಪದಲ್ಲಿದೆ.

ಕನ್ನಡದ ಪ್ರಥಮ ಉಪಲಬ್ಧ ಗ್ರಂಥವಾದ ಕವಿರಾಜಮಾರ್ಗವು ಕನ್ನಡಿಗರ ಸ್ವಭಾವವನ್ನು ವಿವರಿಸುವಾಗ ಅವರ ನೈತಿಕ ಪ್ರಜ್ಞೆಯನ್ನು ಕುರಿತು ಹೇಳಿದ ಮಾತುಗಳು ಮನನೀಯವಾಗಿವೆ.

ಪಾಪಮಿದು ಪುಣ್ಯಮಿದು ಹಿತ

ರೂಪಮಿದಹಿತಪ್ರಕಾರಮಿದು ಸುಖಮಿದು ದುಃ-

ಖೋಪಾತ್ತಮಿದೆಂದರಿಪುಗು

ಮಾ ಪರಮ ಕವಿಪ್ರಧಾನರಾ ಕಾವ್ಯಂಗಳ್ || (ಕವಿರಾಜಮಾರ್ಗ, 1,18)

ಮಹಾಕವಿಗಳ ಕಾವ್ಯಗಳು ಅನುಭವದ ಪರಿಪಾಕಗಳು. ಜೀವನದ ಸಾರಾಸಾರ ವಿವೇಕವನ್ನು ಕಣ್ಣೆದುರು ತೆರೆದು ತೋರುವ, ಮನಮುಟ್ಟುವಂತೆ ಬೋಧಿಸುವ ಜ್ಞಾನದ ಗಣಿಗಳು. ಕಾರಣವೇನೆಂದರೆ ಯಾವುದು ಪುಣ್ಯ, ಯಾವುದು ಪಾಪ, ಯಾವುದು ಹಿತ, ಯಾವುದು ಅಹಿತ, ಯಾವುದು ಸುಖದ ಫಲ, ಮತ್ತಾವುದು ದುಃಖದ ಫಲ ಎನ್ನುವ ವಿವೇಕವನ್ನು ವಿವರಿಸಿ ಹೇಳಿದ್ದಾರೆ ಕನ್ನಡದ ಕವಿಗಳು. ಜನಸಾಮಾನ್ಯರನಿಸಿದ ಜಾನಪದರು ಓದಲು ಅರಿಯದವರು, ಅಕ್ಷರವನ್ನು ಗುರುತಿಸದವರು. ಅಂತಹ ಅಕ್ಷರವನ್ನು ಬರೆಯದವರೂ ಸಹ ಉತ್ತಮವಾದ ನೀತಿ ಕಾವ್ಯಗಳನ್ನು, ನೀತಿ ಕಥೆಗಳನ್ನು, ಗಾದೆಯ ಮಾತುಗಳನ್ನು ಕಟ್ಟಿದ್ದಾರೆ. ಅವನ್ನು ಪ್ರಸಾರ ಮಾಡಿಕೊಂಡಿದ್ದಾರೆ, ಅರಿತಿದ್ದಾರೆ, ಆಚರಿಸಿದ್ದಾರೆ, ಮುಂದಿನ ಜನಾಂಗಕ್ಕೂ ಉಳಿಸಿಕೊಟ್ಟಿದ್ದಾರೆ.

ಕನ್ನಡದ ಬಹುಪಾಲು ನೀತಿಗ್ರಂಥಗಳು ಸ್ವತಂತ್ರವಿರಲಿ, ಅನುವಾದಿತವಿರಲಿ, ಹಳಗನ್ನಡದಲ್ಲಿಯೇ ಅಥವಾ ಹಳಗನ್ನಡ ನಡುಗನ್ನಡ ಮಿಶ್ರಿತವಾದ ಭಾಷೆಯಲ್ಲಿಯೇ ಇರುವುದೆ ಸಾಮಾನ್ಯ. ಇದಕ್ಕಾಗಿ ಆಯ್ದಿರುವ ಛಂದಸ್ಸು ವಿಶೇಷವಾಗಿ ವೃತ್ತ ಅಥವಾ ಕಂದ.

ಪ್ರಾಚೀನ ಕನ್ನಡದಲ್ಲಿ ಮೊದಮೊದಲು ಸೂಕ್ತಿ ಸಂಗ್ರಹ ರೂಪದ ನೀತಿಗ್ರಂಥಗಳು ಕಾಣಿಸಿಕೊಂಡವು. 'ಸುಜನೋತ್ತಂಸ' ಬಿರುದಿನ ಬೊಪ್ಪಣಪಂಡಿತ (ಸು.1180) ರಚಿಸಿದ್ದೆಂದು ತಿಳಿಯಲಾಗಿರುವ 'ನೀತಿಕಂದಗಳು' ಕನ್ನಡದ ಸ್ವತಂತ್ರ ನೀತಿಗ್ರಂಥಗಳಲ್ಲಿ ಬಹುಶಃ ಮೊದಲನೆಯದು. ಇಲ್ಲಿ 'ಸುಜನೋತ್ತಂಸ' ಎಂಬ ಕೆಲವು ಕಂದಪದ್ಯಗಳಿದ್ದು, ಇವು ಲೋಕನೀತಿಯನ್ನು ಸುಂದರವಾಗಿ ನಿರೂಪಿಸುತ್ತವೆ. ಪುಲಿಗೆರೆಯ ಸೋಮನಾಥನು (1299) ರಚಿಸಿರುವ 'ಸೋಮೇಶ್ವರ ಶತಕ' ಜನಪ್ರಿಯವಾದ ಶತಕಗಳಲ್ಲಿ ಅಗ್ರಗಣ್ಯವಾದುದು. ಇದು ನೀತಿರೂಪವಾದ ಸುಂದರ ಸೂಕ್ತಿಗಳಿಂದ ನಿಬಿಡವಾಗಿದ್ದು 'ಹರಹರಾ ಶ್ರೀಚನ್ನಸೋಮೇಶ್ವರಾ' ಎಂಬ ಅಂಕಿತದ 103 ವೃತ್ತಗಳಿಂದ ಕೂಡಿದೆ.

ಪ್ರಾಚೀನ ಕನ್ನಡ ನೀತಿಗ್ರಂಥಗಳನ್ನು ಈ ಕೆಳಗಿನಂತೆ ಪಟ್ಟಿಮಾಡಬಹುದು:

ಕವಿರಾಜಮಾರ್ಗ	- ಶ್ರೀವಿಜಯ	(ಸು.850)
ಕರ್ನಾಟಕ ಪಂಚತಂತ್ರ	- ದುರ್ಗಸಿಂಹ	(1031)
ಕಾವ್ಯಾವಲೋಕನಂ	- ನಾಗವರ್ಮ	(1042)
ನೀತಿಕಂದಗಳು	- ಬೊಪ್ಪಣ್ಣ ಪಂಡಿತ	(1180)
ಅನುಭವ ಮುಕುರಂ	- ಜನ್ನ	(1190)
ಜೀವ ಸಂಬೋಧನಂ	- ಬಂಧುವರ್ಮ	(ಸು.1190)
ಕುಸುಮಾವಳಿ	- ದೇವಕವಿ	(ಸು.1200)
ರಕ್ಷಾ ಶತಕ	- ಹರಿಹರ	(ಸು.1200)
ಸತೀಧರ್ಮಸಾರ	- ಬಂಧುವರ್ಮ (?)	(ಸು.1200)
ಸೂಕ್ತಿಸುಧಾರ್ಣವಂ	- ಮಲ್ಲಿಕಾರ್ಜುನ	(ಸು.1245)
ಶಬ್ದಮಣಿದರ್ಪಣಂ	- ಕೇಶಿರಾಜ	(ಸು.1260)
ಸೋಮೇಶ್ವರ ಶತಕ	- ಪುಲಿಗೆರೆಯ ಸೋಮನಾಥನು	(ಸು.1299)
ಅಶ್ವಶಾಸ್ತ್ರ	- ಅಭಿನವಚಂದ್ರ	(ಸು.1400)
ಚಿಕ್ಕಶ್ರಾವಣಾಚಾರ	- ಅಜ್ಞಾತಕರ್ತೃಕ	(ಸು.1400)
ಅರ್ಧೇಂದು ಮೌಳಿಶತಕಂ	- ಗುಮ್ಮಟಾರ್ಯ	(ಸು.1500)

ಜ್ಞಾನಸಾರ	- ಅಜ್ಞಾತಕರ್ತೃಕ	(ಸು.1500)
ನೀತಿರಸಾಯನಶತಕ	- ಅಜ್ಞಾತಕರ್ತೃಕ	(ಸು.1500)
ಕಾವ್ಯಸಾರಂ	- ಅಭಿನವ ವಾದಿವಿದ್ಯಾನಂದ	(ಸು.1533)
ಕಾವ್ಯಸಾರಂ	- ಮಲ್ಲಕವಿ (?)	(ಸು.1550)
ಕಣಿಕಂಠ ಶತಕ	- ಶ್ರೀಕಂಠ	(ಸು.1600)
ನೀತಿಪದ್ಯಗಳು	- ಅಜ್ಞಾತಕರ್ತೃಕ	(ಸು.1600)
ನೀತಿಕಂದ ಶತಕ	- ಅಜ್ಞಾತಕರ್ತೃಕ	(ಸು.1600)

ಟಿ.ವಿ.ವೆಂಕಟಾಚಲಶಾಸ್ತ್ರೀ ಅವರು 'ಕನ್ನಡ ಚೆನ್ನಡಿ' ಎಂಬ ಗ್ರಂಥದಲ್ಲಿ ಹಳಗನ್ನಡದ ಬಹುಪಾಲು ನೀತಿವಾಕ್ಯಗಳನ್ನು ಏಕತ್ರ ಸಂಗ್ರಹಿಸಿ (ಹೊಸಗನ್ನಡ ಅನುವಾದ ಸಹಿತ ಮುದ್ರಿಸಿ) ಓದುಗರಿಗೆ ಉಪಕರಿಸಿದ್ದಾರೆ. ಆದರೆ ಇದರಂತೆಯೇ ಜನಪದ ಸಾಹಿತ್ಯದ ಮತ್ತು ನಡುಗನ್ನಡ ಕಾಲದ ಕನ್ನಡ ನೀತಿವಾಕ್ಯಗಳನ್ನು ಏಕತ್ರ ಸಂಗ್ರಹಿಸಿ ಪ್ರಕಟಪಡಿಸುವ ಕಾರ್ಯವು ನಡೆದಂತೆ ಕಾಣುತ್ತಿಲ್ಲ. ಈ ಕೊರತೆಯನ್ನು ತುರ್ತಾಗಿ ತುಂಬುವುದು ಅಗತ್ಯವೆನಿಸುತ್ತದೆ. ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಹರಿದಾಸರ ಲೋಕನೀತಿಯ ಎಲ್ಲ ವಾಕ್ಯಗಳನ್ನು ಎಂಟು ಸಂಪುಟಗಳಲ್ಲಿ ಪ್ರಕಟಿಸುವ ಯೋಜನೆ ಪ್ರಗತಿಯಲ್ಲಿದೆ.

#### ಹರಿದಾಸರ ಲೋಕನೀತಿ : ಸ್ವೀಕರಣದ ಆಯಾಮಗಳು

ಹರಿದಾಸರ ಲೋಕನೀತಿ ಪ್ರತಿಪಾದಕ ವಾಕ್ಯಗಳು ಸಮಾಜವನ್ನು ತಲುಪಿದ್ದು ಹೇಗೆ? ಅವುಗಳನ್ನು ಅಂದಂದಿನ ಕಾಲದ ಜನರು ಯಾವ ಮನೋಭಾವದಿಂದ ಸ್ವೀಕರಿಸಿರಬಹುದು? ಯಾವ ನೆಲೆಗಳಲ್ಲಿ, ಬಗೆಗಳಲ್ಲಿ ಬಳಸಿಕೊಂಡಿರಬಹುದು? ಎಂಬುದನ್ನು ತಿಳಿಯಲು ಆಧುನಿಕ ಕನ್ನಡ ಸಾಹಿತ್ಯದ ಹಿರಿಯ ಬರಹಗಾರರ ಲೇಖನಗಳ ಉದ್ಧರಣೆಗಳನ್ನು ಇಲ್ಲಿ ಯಥಾವತ್ತಾಗಿ ಬಳಸಿಕೊಳ್ಳುವ ಮೂಲಕ ಹರಿದಾಸರ ಲೋಕನೀತಿಯ ಬಳಕೆಯ ಬಗೆಗಳನ್ನು ಒಂದು ಸಂಕಥನದಂತೆ ಕಟ್ಟಬಹುದಾಗಿದೆ.

ಮಾಸ್ತಿ ವೆಂಕಟೇಶ ಅಯ್ಯಂಗಾರ್ ಅವರು ಗುರುತಿಸಿರುವಂತೆ "ಹಿಂದಿನ ಕಾಲದಲ್ಲಿ ಎಲ್ಲರೂ ಓದು ಬರಹವನ್ನು ಕಲಿಯುತ್ತಿರಲಿಲ್ಲ. ಈಗಿನಂತೆ ವಿದ್ಯಾಭ್ಯಾಸದ ಏರ್ಪಾಡುಗಳೂ ಇರಲಿಲ್ಲ. ಆದ್ದರಿಂದ ತಿಳಿದಂಥ ಒಬ್ಬನ ತಿಳಿವನ್ನು ನೂರು ಜನಕ್ಕೆ ತಿಳಿಸುವುದಕ್ಕಾಗಿ ಸಮಾಜ ನೇತೃಗಳು ಪುರಾಣ, ಹರಿಕಥೆ, ಪ್ರಸಂಗ ಮೊದಲಾದ ಅನೇಕ ಸಂದರ್ಭಗಳನ್ನು ಕಲ್ಪಿಸಿದರು. ಅಲ್ಲಿಗೆ ಬಂದು ಕೇಳಲು ಸಾಧ್ಯವಾಗದ ಜನರಿಗೆ ಮನೆಗಳಲ್ಲಿ ಕೂಡ ಈ ಸಂಬಂಧದ ಮಾತು ಕಿವಿಗೆ ಬೀಳುವಂತೆ ಮನೆಮನೆಯನ್ನೂ ಸುತ್ತಿ, ನೀತಿ ವಾಕ್ಯಗಳನ್ನು ಜನರಿಗೆ ತಿಳಿಸುವುದಕ್ಕಾಗಿ 'ನಿತ್ಯಯಾತ್ರೆಯೆಂಬ ಭಿಕ್ಷೆಯ ಏರ್ಪಾಡನ್ನು ಮಾಡಿದರು. ಆದ್ದರಿಂದಲೇ ನಿತ್ಯಯಾತ್ರೆಯ ಜನರಿಗೆ ಆಗ್ಗೆ, ಬಹಳ ಮರ್ಯಾದೆ ಇದ್ದದ್ದು. ಪ್ರಾಪಂಚಿಕ ವಿಷಯಗಳಲ್ಲಿ ಆಸಕ್ತಿಯಿಲ್ಲದವರೇ ಪ್ರಾಯಶಃ ಈ ಕಾರ್ಯಕ್ಕೆ ಕೈಹಾಕುತ್ತಿದ್ದರು. ಈ ಕೆಲಸವನ್ನು ಮಾಡುವುದರಲ್ಲಿಯೇ ಅವರಿಗೆ ಆಸಕ್ತಿ. ಜನರಿಗೆ ಜ್ಞಾನವನ್ನು ತಂದುಕೊಡುವುದೇ ಅವರ ಮುಖ್ಯ ಉದ್ದೇಶವಾಗಿತ್ತು. ಜನರು ಇಷ್ಟಪಟ್ಟು ಕೊಟ್ಟ ಅಲ್ಪಸ್ವಲ್ಪದಿಂದ ಅವರ ಜೀವನ ನಡೆಯುವುದಕ್ಕೂ ಇದು ದಾರಿಯಾಗಿತ್ತು. ಸಮಾಜಕ್ಕಾಗಿ ಕೆಲಸ ಮಾಡುವವರ ಭರಣ ನ್ಯಾಯವಾಗಿ ಸಮಾಜವನ್ನೇ ಸೇರಿದ್ದು. ಇಂತಹವರು ಬಹುಮಟ್ಟಿಗೆ ವ್ಯವಹಾರ ಪ್ರಪಂಚದ ಉದ್ಯೋಗ ಜೀವನವನ್ನು ಬಿಟ್ಟು ಜನರ ಉನ್ನತಿಗಾಗಿ ಬಾಳನ್ನು ಅರ್ಪಿಸಿ ಆ ಯತ್ನ ಸಫಲವಾಗಲು ತಾವು ಸರ್ವದಾ ಜ್ಞಾನಾರ್ಜನೆಯಲ್ಲಿಯೂ ಸತ್ಯಾನುಷ್ಠಾನದಲ್ಲಿಯೂ ನಿರತರಾಗಿ ನಿಂತರು. ಇಂಥವರಲ್ಲಿ ಒಂದು ಮುಖ್ಯ ಕೂಟವು ವೈಷ್ಣವದಾಸರ ಕೂಟ.

ಭಕ್ತಿಪೂರಿತಗಳಾದ ಅವರ ಹೃದಯಗಳು ತಮ್ಮ ಭಕ್ತಿಯನ್ನು ಕೀರ್ತನೆ, ಸ್ತೋತ್ರ, ನೀತಿಬೋಧಕ ಪದ್ಯ ಮೊದಲಾದ ರೂಪಗಳಲ್ಲಿ ವ್ಯಕ್ತಪಡಿಸಿದವು. ಇವೇ ದಾಸರ ಕೀರ್ತನೆಗಳು, ದೇವರ ನಾಮಗಳು, ಪದ್ಯಗಳು. ಇವುಗಳನ್ನು ರಚಿಸಿದ ದಾಸರೂ ಇವರ ಶಿಷ್ಯರೂ ಈ ಕೃತಿಗಳನ್ನು ಹಾಡುತ್ತ ಮನೋರಂಜನವನ್ನು ಮಾಡುತ್ತ ಜನಗಳಿರುವ ಕಡೆಯಲ್ಲೆಲ್ಲ ಅತ್ಯುತ್ತಮವಾದ ನೀತಿಯನ್ನು ಹರಡಿ ಧರ್ಮಬದ್ಧವಾದ ನಡವಳಿಕೆಯನ್ನು ಒಂದು ಸಂಪ್ರದಾಯವಾಗುವಂತೆ ಮಾಡಿದರು.”<sup>20</sup>

ವಿ.ಸೀತಾರಾಮಯ್ಯ ಅವರು ವಿಶ್ಲೇಷಿಸಿರುವಂತೆ: “ಬೀದಿಯಲ್ಲಿ ಹೋಗುತ್ತಿರುವಾಗ ಯಾವ ಜನ ಸಿಕ್ಕಿದರೆ ಅವರಿಗೆ ಅವರ ಕಷ್ಟ ಸುಖ ವಿಚಾರಿಸಿ ತಮ್ಮ ಕಾಲದಲ್ಲಿ ಬದುಕು ಯಾವ ಸತ್ಯ, ಕಪಟ ಉಳ್ಳದ್ದಾಗಿತ್ತೋ, ಮಾತಿನಲ್ಲಿಯೂ, ನಡತೆಯಲ್ಲಿಯೂ, ಆಲೋಚನೆಯಲ್ಲಿಯೂ ಯಾವ ಸರಿತಪ್ಪು ಅಪ್ರಾಮಾಣಿಕತೆಗಳಿದ್ದವೋ ಇವನ್ನೆಲ್ಲ ಕುರಿತು ಸಂಕೋಚ ಪಡದೆ ದಾಸರು ಧಾರಾಳವಾಗಿ ಹೇಳುತ್ತಿದ್ದರು. ಕೇವಲ ಆಕ್ಷೇಪಣೆ ಮಾಡಬೇಕೆಂದಲ್ಲ. ಜನರ ದಿನಜೀವನ ಚೊಕ್ಕವಾಗಬೇಕು. ವ್ಯಕ್ತಿಗಳ ಬದುಕು ಶುಚಿಯಾಗಬೇಕು, ಸಾತ್ವಿಕವಾಗಬೇಕು, ಒಳಗೊಂದು ಹೊರಗೊಂದು ಏನು ಪ್ರಯೋಜನ, ಎಂಬಂತೆ ಮಾನವ ಕಾರುಣ್ಯದಿಂದ ನುಡಿಯುತ್ತಿದ್ದುದರಿಂದಲೂ ದಾಸರಂಥವರ ನುಡಿತದಲ್ಲಿ ಒಂದು ನಗೆ, ಬಗೆ, ಹಾರ್ಮನಿ, ಮಾನವತೆ ಇದ್ದುದರಿಂದ ಅವನ್ನು ಸ್ವೀಕರಿಸುವುದು ಸುಲಭವಾಯಿತು.

ಭಾವ ಯಾವುದೂ ಭಾರತಕ್ಕೆ ಹೊಸದಲ್ಲ. ಮೊದಲಿಂದ ವೇದಶಾಸ್ತ್ರಪುರಾಣ ಇತಿಹಾಸಗಳಲ್ಲಿ, ಕಾವ್ಯದಲ್ಲಿ, ವಚನಗಳಲ್ಲಿ, ಸಂತರು ನುಡಿದುದೇ ಲೋಕವಿವೇಕ. ಅಲ್ಲಿ ಅನುಭವ ತುಂಬಿರುತ್ತವೆ. ಎಷ್ಟೇ ಸಲ ಹೇಳಿದರೂ ಹಳಸದ - ಮಾಸದ ಧಾತುವುಳ್ಳದ್ದೇ ಆಗಿರುವ ಗಾದೆ, ಲೋಕೋಕ್ತಿ ಎಲ್ಲರ ಬದುಕಿಗೂ ಪರಿಚಿತವಾದುದೂ, ವಾಡಿಕೆಯುಳ್ಳದ್ದೂ, ಆಗಿರುತ್ತಿದ್ದುದರಿಂದ ಇವರ ಉಕ್ತಿಗೆ ಹೆಚ್ಚು ಬೆಲೆ, ವ್ಯಾಪಕತೆ ಬಂತು. ಹೀಗೆ ಸಂಗೀತ, ಸಾಹಿತ್ಯ, ಜೀವನ ಸುಧಾರಣೆ, ಮೂಲಭೂತ ಸತ್ಯಗಳು ಸೇರಿಕೊಂಡದ್ದರಿಂದ ಅದಕ್ಕೆ ಸ್ವಾಗತ ನೇರವಾಯಿತು. ತಮ್ಮನ್ನೂ ತಮ್ಮ ಲೋಪದೋಷಗಳನ್ನೂ ಕುರಿತೇ ದಾಸರು ನುಡಿಯುತ್ತಿದ್ದಾರೆ ಎಂದರಿತಾಗಲೂ ಒಳ್ಳೆಯ ದೃಷ್ಟಿತಂದುಕೊಟ್ಟು ದೈವಭಕ್ತಿಯ ಕಡೆಗೆ, ಉದಾರ ಜೀವನದ ಕಡೆಗೆ, ಮನಸ್ಸು ತಿರುಗುವಂತೆ ಮಾಡುತ್ತಿದ್ದುದರಿಂದ ದಾಸರಿಗೆ ಎಲ್ಲೆಲ್ಲಿಯೂ ಪುರಸ್ಕಾರ ದೊರೆಯಿತು.

ದಾಸರ ಹಾಡುಗಳಿಗೆ ಹೆಚ್ಚಾಗಿ ತರ್ಕ ವೇದಾಂತಾದಿಗಳ ಅಥವಾ ವಾದ ವಿವಾದಗಳ ಸಾಧನೆ, ಗ್ರಹಣ ಅಗತ್ಯವಾಗಿರಲಿಲ್ಲ. ಅದು ಸಿದ್ಧಾನ್ತ, ಸಂಗೀತದ ಚೌಕಟ್ಟು ಅದನ್ನು ಒಂದು ಇತಿಯಲ್ಲಿ ರಂಜಕವಾಗಿ ಸವಿಯಾಗಿ ಉಳಿಸಿಕೊಡುವ ಸಾಧನವಾಯಿತು. ಸಂಗೀತವೇ ದಾಸರ ಉದ್ದೇಶವಲ್ಲ. ಈ ಬಗೆಯ ಲೋಕೋಪಕಾರ ಜನಕ್ಕೆ ಅನ್ನ ಬಟ್ಟೆಗಳನ್ನು ಒದಗಿಸಿಕೊಡುವ ಮಾರ್ಗಕ್ಕಿಂತಲೂ, ಹಿರಿದಾದುದು. ನಿತ್ಯ ಜೀವನವನ್ನು ಉತ್ತಮಗೊಳಿಸುವ ಸಾಧನವಾಗಿ ಮನಸ್ಸಿಗೆ ತೃಪ್ತಿ ಶಾಂತಿಗಳನ್ನು ಸಂತೋಷವನ್ನು ಉನ್ನತ ಭಾವನೆಗಳನ್ನು ಕೊಟ್ಟು, ಅವರಲ್ಲಿ ನೀತಿಯ ಕಡೆಗೆ ದೇವರ ಕಡೆಗೆ ಮನಸ್ಸನ್ನು ತಿರುಗಿಸಿತು. ದಾಸರಂಥ ಮಹಾತ್ಮರು, ತಮ್ಮ ಉತ್ಥಾನತೆಗಾಗಿಯೆ ಇದನ್ನೆಲ್ಲ ನುಡಿಯುತ್ತಿದ್ದಾರೆಂಬ ನಂಬಿಕೆ ಇದಕ್ಕೆ ಜನರನ್ನು ಒಲಿಸಿತು.”<sup>21</sup>

ಪುರಂದರದಾಸರ ಪದಗಳು ಬಹುಮಟ್ಟಿಗೆ ಲೋಕಶಿಕ್ಷಣವನ್ನು ಭಕ್ತಿಯೊಂದಿಗೆ ಬೆರೆಸಿದ ರಚನೆಗಳಾಗಿವೆ. ಕನಕದಾಸರ ಪದಗಳು ‘ಲೋಕನೀತಿಯ ಮೂಲಕವೇ ಭಕ್ತಿಗೆ ನೆಲೆ-ಬೆಲೆಗಳನ್ನು ಒದಗುತ್ತವೆ’ ಎಂಬುದನ್ನು ದಿಟ್ಟಿ ಗಟ್ಟಿ ದನಿಯಲ್ಲಿ ಮನವರಿಕೆ ಮಾಡಿಸುತ್ತವೆ. ಕನಕದಾಸರು-ಪುರಂದರದಾಸರಂತಹ ಸಾವಿರಾರು ಹರಿದಾಸರು ಹಳ್ಳಿಹಳ್ಳಿಗಳಲ್ಲಿ, ಊರುಕೇರಿಗಳಲ್ಲಿ ಸಂಚರಿಸಿ ಹಾಡಿ ಕುಣಿಯುವ ಮೂಲಕ ಕೈಗೊಂಡ ನೀತಿಪ್ರಸಾರದ ಆಂದೋಲನದ ಸ್ವರೂಪವನ್ನು ಅ.ರಾ.ಮಿತ್ರ ಅವರು ಹೀಗೆ ಹೇಳಿದ್ದಾರೆ: “ಚಾರಣ ಗಾಯಕ ವರ್ಗ ಜನತೆಗೆ

20. ಮಾಸ್ತಿ ವೆಂಕಟೇಶ ಅಯ್ಯಂಗಾರ್, ‘ವೈಷ್ಣವದಾಸರ ಕೀರ್ತನೆಗಳು’, ಈ ಪರಿಯ ಸೊಬಗು, ಪು. 2

21. ಸೀತಾರಾಮಯ್ಯ ವಿ., ‘ದಾಸಸಾಹಿತ್ಯ ಸಮೀಕ್ಷೆ’, ಈ ಪರಿಯ ಸೊಬಗು, ಪು. 19-20

ನೀಡುವ ಲೋಕಶಿಕ್ಷಣ ಒಂದು ವಿಶಿಷ್ಟ ಬಗೆಯದು. ಮನೆಮನೆಗಳ ಮುಂದೆ ಒಂದು ಚರಣವನ್ನು ಪಲುಕಿಸುತ್ತ ನಡೆಯುವ ಇವರು ಕೇಳುವ ಜನರ ಮನಸ್ಸಿನ ನೆಲದಲ್ಲಿ ಒಂದು ವಿಚಾರದ ಬೀಜವನ್ನೂ ಬಿತ್ತುತ್ತ ಹೋಗುತ್ತಾರೆ. ಜನರ ಮಾತುಕತೆಯಲ್ಲಿ ಕೂಡ ಈ ಸಾಲುಗಳು ಅನುರಣಿತವಾಗುತ್ತವೆ. ಮಕ್ಕಳಿಂದ ಹಿಡಿದು ಮುದುಕರವರೆಗೆ ನಾನಾ ವಯೋಮಾನದ, ಬುದ್ಧಿಮಾನದ ಜನ ನಾನಾಕಾರಣಗಳಿಗಾಗಿ ಈ ಸಾಲುಗಳನ್ನು ನೆನಪಿನಲ್ಲಿಟ್ಟುಕೊಳ್ಳುತ್ತಾರೆ, ಉದ್ಧರಿಸುತ್ತಾರೆ. ಶಾಲಾ ಶಿಕ್ಷಣದ ಕಟ್ಟುಪಾಡಿನಿಂದ ಪಾರಾದ ಈ ಮುಕ್ತ ಶಿಕ್ಷಣದಿಂದ ಆಗುವ ಸಾಹಿತ್ಯ ಪ್ರಸಾರ ಹೆಚ್ಚು ವ್ಯಾಪಕವಾದದ್ದು. ಅನಕ್ಷರಸ್ಥರೇ ಹೆಚ್ಚಿನ ಸಂಖ್ಯೆಯಲ್ಲಿದ್ದ ಕರ್ನಾಟಕ ದೇಶದಲ್ಲಿ ಇಂಥ ಗಾಯಕರಿಂದಾಗಿ ನಮ್ಮ ಜನ ಪರಂಪರೆಯ ಸತ್ವವನ್ನೂ, ಪುರಾಣಪ್ರಜ್ಞೆಯನ್ನೂ, ಸಂಘ ಜೀವನವನ್ನೂ ಮೈಗೂಡಿಸಿಕೊಂಡರು.”<sup>22</sup>

ಜಿ.ವರದರಾಜರಾವ್ ಅವರು ಗುರುತಿಸಿದಂತೆ “ಶ್ರೀವ್ಯಾಸರಾಯರ ತಾರ್ಕಿಕ ನಿರೂಪಣದ ನೈಪುಣ್ಯವೂ ಸಹ ಸಮ್ಮೋಹಕವಾದುದು. ವಯೋಧರ್ಮ ಮತ್ತು ಮನೋಧರ್ಮಗಳೆರಡರ ವೈಪರೀತ್ಯವನ್ನು ಚಿತ್ರಿಸುವಲ್ಲಿ ಅವರ ವಾಣಿ ಹೀಗೆ ಸಾಗಿದೆ.

ದೇಹ ಜೀರ್ಣವಾಯಿತು ಧನ | ನೇಹ ಜೀರ್ಣವಾಗದು ಅಯ್ಯ ||  
 ಕಣ್ಣು ಕಿವಿ ಮಂದವಾದುವು | ಹೆಣ್ಣು ಮಣ್ಣಿನಾಶೆ ಮಂದವಾಗದು ||  
 ಕಾಲು ಕೈ ಜವಗುಂದಿದವು | ಭೋಗಭೋಲಕೆ ಜವಗುಂದವು ||  
 ಜರೆರೋಗದಿಂದ ನೆರೆಹೊರೆ ಹೇಸಿತು | ಶರೀರದಲ್ಲಿ ಹೇಸಿಕೆ ಇನಿತಿಲ್ಲ ||  
 ಪಾಪಕೋಟಿಗಳ ಮಾಡಿದರಿನ್ನು | ತಾಪ ಮನದೊಳಗಿನಿತಿಲ್ಲ ||  
 ಹೀಗೆ ಸರಿದು ಹೋಯಿತು ಕಾಲವೆಲ್ಲವು | ಮುಂದಣಗತಿ ದಾರಿ ತೋರದು ||  
 ಅನಾದಿಯಿಂದ ನಿನ್ನವನೆನಿಸಿದೆ | ಎನ್ನ ಕುಂದು ನಿನ್ನದಲ್ಲವೆ ||  
 ಇನ್ನಾದರೂ ದಯೆಯಿಂದ ನೋಡಿ | ಮನ್ನಿಸಬೇಕಯ್ಯ ಎನ್ನನು ಸಿರಿಕೃಷ್ಣ ||  
 (ಸ.ದಾ.ಸಾ. ಸಂ-1, ಪು.232)

ಯತಿಗಳಾದರೂ ಲೋಕದ ರೀತಿ - ನೀತಿಗಳನ್ನು ಗ್ರಹಿಸಿದ ಅವರ ಮತಿ ಇಂತಹ ನೈಜಚಿತ್ರಗಳನ್ನು ನೀಡುವಲ್ಲಿ ತುಂಬ ಯಶಸ್ವಿಯಾಗಿದೆ.”<sup>23</sup>

ಬಿ.ಜಿ.ಎಲ್.ಸ್ವಾಮಿ ಅವರು ಅಭಿಪ್ರಾಯ ಪಡುವಂತೆ: “ಪುರಂದರದಾಸರ ಪದಸಾಹಿತ್ಯದಲ್ಲಿ ಎದ್ದು ಕಾಣುವುದು ದೈವದಲ್ಲಿ ಅವರಿಗಿದ್ದ ಭಕ್ತಿ. ಅವರನ್ನು ಸುತ್ತಿವರಿದ್ದ ಸಮಾಜಪ್ರಜ್ಞೆ ಮತ್ತು ಸಮಾಜದ ಹುಳುಕುಗಳನ್ನು ತಿದ್ದುವುದಕ್ಕಾಗಿ ನೇರವಾಗಿಯೋ, ಸೂಚ್ಯವಾಗಿಯೋ, ವ್ಯಂಗ್ಯವಾಗಿಯೋ ಹೇಳಿದ ನೀತಿ.”<sup>24</sup>

ಕೆ.ವಿ.ನಾರಾಯಣ ಅವರ ಪ್ರಕಾರ: “ಕೀರ್ತನೆಗಳು ಸಮೂಹದ ಸ್ಮೃತಿಗಳು ಪುನರಭಿನಯಗೊಳ್ಳಲು ತಕ್ಕ ಪ್ರಚೋದಕಗಳಾಗುತ್ತವೆ. ಅದು ದೈವವನ್ನು ಕುರಿತು ನೂರಾರು ನಂಬಿಕೆಗಳಿರಬಹುದು. ಪುರಾಣ ಪ್ರತೀಕಗಳಿರಬಹುದು. ಮಹಾಕಾವ್ಯದ ಅಂಶಗಳಿರಬಹುದು. ಹೀಗೆ ಜನರ ಒಟ್ಟು ಸಾಮಾಜಿಕ ಮನಸ್ಸು ಹೊಂದಿರುವ ಸಾಮಾನ್ಯ ಅಂಶಗಳು ಪರೋಕ್ಷವಾಗಿ ಜಾಗೃತವಾಗಲು ಈ ಕೀರ್ತನೆಗಳು ನೆರವಾಗುತ್ತಿರುತ್ತವೆ. ಇದು ಒಂದು ಸಂಕೀರ್ಣ ಕ್ರಿಯೆ. ಒಂದು ಬಗೆಯ ಆಚರಣೆ ಕೂಡ.

22. ಮಿತ್ರ ಅ.ರಾ., ‘ಪುರಂದರದಾಸರ ಪದಗಳಲ್ಲಿ ಸಾಹಿತ್ಯ ವಿಮರ್ಶೆ’, ಈ ಪರಿಯ ಸೊಬಗು, ಪು. 186

23. ವರದರಾಜರಾವ್ ಜಿ., ‘ಹರಿದಾಸ ಸಾಹಿತ್ಯ ಸಾರ’, ಪು. 339

24. ಸ್ವಾಮಿ ಬಿ.ಜಿ.ಎಲ್., ‘ಪುರಂದರದಾಸರು ಮತ್ತು ಬಿ.ವಿ.ಕಾರಂತರು’, ಈ ಪರಿಯ ಸೊಬಗು, ಪು. 232

ಇಲ್ಲಿ ಕೀರ್ತನೆ ಕೇವಲ ಒಂದು ಭಾಷಿಕ ದಾಖಲೆಯಾಗಿ ಮಾತ್ರ ಬಳಕೆಯಾಗುವುದಿಲ್ಲ. ಭಾಷೆಯ ಲಯ ಹಾಗೂ ಅರ್ಥನಾದ ಮತ್ತು ಆಂಗಿಕ ಅಭಿನಯ ಮೂರು ಸೇರಿ ಒಂದು ಆದಿಮ ಕಲೆಯ ರೂಪವನ್ನು ಪಡೆಯುತ್ತವೆ. ಭಜನೆಯ ತೀವ್ರ ಸ್ಥಿತಿಯಲ್ಲಿ ಇಲ್ಲವೇ ಹರಿಕತೆಯಲ್ಲಿ ಕೀರ್ತನೆ ಬಳಕೆಯಾಗುವ ಬಗೆಯನ್ನು ಎಚ್ಚರಿಕೆಯಿಂದ ಗಮನಿಸಿದರೆ ಈ ಮಾತು ಸ್ಪಷ್ಟವಾಗುತ್ತದೆ.”<sup>25</sup>

ಅಂದರೆ ಕೀರ್ತನೆಗಳು ಇಂದಿನ ಜೀವನಕ್ರಮದ ಒಂದು ಮುಖ್ಯ ಆವಶ್ಯಕತೆಗಳನ್ನು ಪೂರೈಸಲು ಬಳಕೆಯಾಗುತ್ತಿವೆ. ಜೊತೆಗೆ ನಮ್ಮ ನೆಲದ ನೀತಿಯ ಅರಿವನ್ನು ನೇರವಾಗಿ ಹಾಗೂ ಕಾನೂನಿನ ಅರಿವನ್ನು ಪರೋಕ್ಷವಾಗಿ ಇವುಗಳ ಮಹತ್ವವನ್ನೂ ವಿವರಿಸುತ್ತಿವೆ.

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25. ನಾರಾಯಣ ಕೆ.ವಿ., 'ಕನಕದಾಸರ ಕೀರ್ತನೆಗಳು ಮತ್ತು ಆಧುನಿಕ ಮೌಲ್ಯಗಳು : ಒಂದು ಟಿಪ್ಪಣಿ', ಈ ಪರಿಯ ಸೊಬಗು, ಪು. 300

“ವಡ್ಡಾರಾಧನೆ”ಯ ಕಥೆಗಳಲ್ಲಿ ಕಾನೂನಿನ ಮೌಲ್ಯಗಳು

–ಬಾಳಣ್ಣ ಶೀಗಿಹಳ್ಳಿ

## Legal Values in ‘Vaddaradhane’ Stories

-Balanna Sheegihalli\*

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### Abstract

‘Vaddaradhane’ or ‘Aradhana Karnataka Tika’ is a classical pioneering Kannada literature written in Halegannada style by Shiva Kotyacharya in 870 AD. It propounds the greatness of Jaina dharma and its principles by narrating various interlinked stories and sub-stories. Balanna states that the heroes in the Aradhana story aim at attainment of *moksha* through right conduct, sacrifice and self-control. Both at the worldly level and in the other world, people at large and the spiritual achievers abide by basic values of right procedures and decisions and proportionate punishments. The stories refer to fair principles practiced in monarchy in getting evidence, establishing proof, finalizing the conviction, choice of suitable punishment and its enforcement. Balanna briefly narrates the stories of Sudame and Vidyutchora to illustrate these principles.

First, Sumati’s story of Sudame. A merchant by name Sumitra Shetty distributes prize money of thousand dinaras each by throwing purses at four watchmen who were entrusted to take care of his son who had fallen unconscious during night after a snake bite. When one of the watchmen complained about not receiving the purse (even though he had, in fact, received it) the merchant submitted a complaint to the King. The King called Talawar, the police officer, and entrusted the investigation work with an admonition of personal liability in case of failure to investigate the real culprit. The Talwar’s intelligent daughter, Sumati tells a story of Sudame to the watchmen to identify the real culprit. The Sudame story is that in order to fulfill a vow given by her to a relative she went to meet him in bridal dress during the first night. A thief, a policeman and a man-eater stop her temporarily and permit her to move in lieu of promise of fulfilling their demands while returning. Because of her good conduct and truthfulness all the four leave her safe and unscathed. After telling the story to the four watchmen she asked them to identify the most virtuous person. In fact, among the four watchmen who were to look after the unconscious boy in the night, one had gone for stealing a sheep,

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\* Rtd.Professor and Litterateur, Dharwad



another had gone for collecting fuel wood, the third to fetch fire and the last one remained in the spot and all had feast of cooked mutton. Each answered according to his nature, but the watchman who stole the sheep glorified the thief in Sudame story as the great. Sumati suspected this watchman and privately promised him to marry in case he offers suitable gifts of ornaments. The watchman showed his concealed purse carrying prize money and handed over to Sumati for preparing ornaments. Soon he was arrested by her father, Talawar, and due punishment was given after production before the King. Sumati's diligence and astute investigative skill resulting in identifying the real culprit enabled the King to punish the wrong doer and render justice.

Second, the story of Vidyutchora. In King Vamaratha's palace of Mithila, an antique and precious jewelry secretly kept and worshipped everyday by the King was surprisingly stolen. Vidyutchora, King of Abhira residing in the capital city of Venathata, had gone to Mithila to avenge and fulfil a vow against his childhood friend Yamadanda, now a Talawar of Vamaratha. Vidyutchora had mastered the skill of stealing by his ability to change his form, vanish and move in cognito. He had stolen the jewelry. Vamaratha asked Yamadanda to investigate the crime. Yamadanda, who had also some knowledge of changing the identity of persons by application of anjana, suspected Vidyutchora who was in the form of a leper and changed him into normal appearance, and convinced the King Vamaratha that Vidyutchora was the culprit. Vamaratha asked Yamadanda to torture and penalize Vidyutchora to extract truth. In spite of 32 types of torturous treatment in the chilly night Vidyutchora did not confess. On the other hand, he counter-accused Yamadanda of unjustified attempt to kill him. Yamadanda doubted about the criminality of Vidyutchora because of withstanding of torture and took him to King's court stating that he had failed in the investigation work and the detainee might be an innocent person. Vamaratha imposed death sentence upon Yamadanda. When all preparations were made for execution of Yamadanda at the burial ground, Vidyutchora disclosed his identity and his intention of fulfilling the childhood vow of getting Yamadanda executed, and asked the butchers to stop killing the innocent person. Again, the King was approached. Vidyutchora confessed his acts of theft of valuables in the city including the precious jewelry of the King. He handed over all the stolen goods except the money he spent for pleasing the prostitutes. When asked about his ability to withstand torture in the chilly night, Vidyutchora stated that his learning of stories of Purana depicting the cruel tortures in hell and the way of escaping from them by following spiritual life made him to withstand the torture. Understanding the royal identity of Vidyutchora and lack of intention to harm others, he was acquitted off the crime and was even offered with a marriage proposal. He convinced

the King Vamaratha to offer the marriage proposal to Yamadanda, who, in fact agreed to marry the royal princess. Vidyutchora chose a spiritual life after a brief visit to his capital city politely declining the demands of citizens to rule. He became a great scholar and spiritual leader although met a tragic death at the hands of pests released by an evil force.

Both the stories demonstrate the prevalence of numerous principles of fair legal procedure and substantive idea of justice, proportionality and reasonableness. Giving benefit of doubt to the accused person, requirement of proving beyond reasonable doubt, giving adequate time and opportunity to adduce evidence and arguments, protection of innocent person against penalties, avoidance of capital punishment, proportionality of penalties to suit the crimes, supremacy of dharma over economic actions and human desires and supreme duty of state officers to maintain law and order are some of the due process values traceable in the story. It is amazing that monarchical rule in 9<sup>th</sup> century Karnataka had such advanced and refined principles.

“ವಡ್ಡಾರಾಧನೆ” ಹತ್ತೊಂಬತ್ತು ಮಹಾಪುರುಷರ ಕಥೆಗಳನ್ನು ಒಳಗೊಂಡಿರುವ ಮತ್ತು ಹಳೆಗನ್ನಡ ಕಾಲಘಟ್ಟದಲ್ಲಿ ರಚನೆಗೊಂಡ ಗದ್ಯಗ್ರಂಥವಾಗಿದೆ. ಈ ಗ್ರಂಥದ ಕಥೆಗಳ ಆರಂಭದಲ್ಲಿ ಬರುವ 19 ಗಾಹೆಗಳು ಪ್ರಾಕೃತ ಭಾಷೆಯ “ಭಗವತೀ ಆರಾಧನಾ” ಗ್ರಂಥದಲ್ಲಿರುವ ಗಾಹೆಗಳ ಕ್ರಮದಲ್ಲಿಯೇ ಇವೆ. ವಡ್ಡಾರಾಧನೆ ಯಾವ ಕಾಲದಲ್ಲಿ ರಚನೆಯಾಯಿತೆಂಬುದನ್ನು ಶೋಧಿಸಲು ವಿದ್ವಾಂಸರು ಸಾಕಷ್ಟು ಪರಿಶ್ರಮ ಪಟ್ಟಿದ್ದಾರೂ ಖಚಿತವಾದ ಕಾಲ ನಿರ್ಣಯ ಮಾಡಲು ಸಾಧ್ಯವಾಗಿಲ್ಲ. ಆದರೆ ಕನ್ನಡ ವಡ್ಡಾರಾಧನೆ ಕ್ರಿ.ಶ. 870ರ ಕಾಲಾವಧಿಯಲ್ಲಿ ರಚನೆಗೊಂಡ ಕೃತಿ. ಇದರ ಮೂಲ ಹೆಸರು “ಆರಾಧನಾ ಕರ್ನಾಟಕ ಟೀಕಾ”. ಈ ಕೃತಿ ಕರ್ತೃ, ಶಿವಕೋಟ್ಯಾಚಾರ್ಯ ಅಲ್ಲ ಬ್ರಾಜಿಷ್ಣು. ಈತ ಯಾವನೀಯ ಪಂಥದವನ್ನು ಪ್ರಾಕೃತ, ಸಂಸ್ಕೃತ ಭಾಷೆಗಳ ಭಂಡಾರದಲ್ಲಿದ್ದ “ಆರಾಧನಾ ಸಾಹಿತ್ಯ”ವನ್ನು ಕನ್ನಡಕ್ಕೆ ಇಳಿಸಿದ ಮೊದಲಿಗ ಇವನು. ‘ವಡ್ಡಾರಾಧನೆ’ ಅಥವಾ ‘ಆರಾಧನಾ ಟೀಕಾ’ ಗುಲಬರ್ಗಾ, ಬೀದರ ಪ್ರದೇಶದ ಪರಿಸರದಲಿ ಪಲ್ಲವಿಸಿದ ಕೃತಿ. (ಹಂಪನಾ: ವಡ್ಡಾರಾಧನೆ, ಹೊಸಬೆಳಕು. ‘ಸಾಧನೆ’ ಸಂಪುಟ-19 ಸಂಚಿಕೆ 3-4 ಜುಲೈ ಡಿಸೆಂಬರ್-1990) ಇದಕ್ಕೆ ‘ಉಪಸರ್ಗ ಕೇವಲಿಗಳ ಕಥೆ’ ಎನ್ನುವ ಇನ್ನೊಂದು ಹೆಸರೂ ಇದೆ.

ಈ ಕಥೆಗಳಲ್ಲಿ ಬರುವ ನಾಯಕರೆಲ್ಲ ಧರ್ಮವೀರರು, ಅಂತೆಯೇ ಈ ಕಥೆಗಳಲ್ಲಿ ಧರ್ಮದ ನಿರೂಪಣೆಗೆ ಆದ್ಯತೆ ನೀಡಿವೆ. ಇಲ್ಲಿಯ ಧರ್ಮವೀರರ ಗುರಿ-ಗಮ್ಯ ಮೋಕ್ಷ ಸಂಪಾದನೆ ಅಥವಾ ಮೋಕ್ಷಕ್ಕೆ ನೆರೆಮನೆಯಾಗಿರುವ ಸರ್ವಾರ್ಥಸಿದ್ಧಿ ಮೊದಲಾದ ಸ್ವರ್ಗವನ್ನು ಪ್ರಾಪ್ತಿಸಿಕೊಳ್ಳುವುದು. ಇವೆರಡನ್ನೂ ಸಾಧಿಸಲು ಇರುವ ಏಕೈಕ ಮಾರ್ಗ ಪುಣ್ಯ-ಪಾಪ ರೂಪವಾದ ಕರ್ಮವನ್ನು ಕಳಚಿಕೊಳ್ಳುವುದು. ಈ ಕರ್ಮಷಯವು ತಪ್ಪಿನಿಂದ ಮಾತ್ರ ಸಾಧ್ಯ. ಈ ತಪ್ಪಿಗೆ ವಿರಕ್ತಿ, ಇಂದ್ರಿಯ ನಿಗ್ರಹ, ಕಾಯಕ್ಷೇಶ, ಸಂಯಮ ಇತ್ಯಾದಿಗಳ ಪಾಲನೆ ಕಡ್ಡಾಯ. ತಪೋನಿರತ ಯತಿಗೆ ದೇವೋಪಸರ್ಗ, ಮನುಷ್ಯೋಪಸರ್ಗ, ತಿರಿಕೋಪಸರ್ಗ, ಚೇತನೋಪಸರ್ಗಗಳೆಂಬ ನಾಲ್ಕು ಬಗೆಯ ಉಪಸರ್ಗಗಳನ್ನು ಜಯಿಸಬೇಕಾಗುತ್ತದೆ. ವಡ್ಡಾರಾಧನೆ ಗ್ರಂಥವು ತನ್ನ ಕಥೆಗಳ ನಿರೂಪಣೆಗೆ ಅನುಸರಿಸಿರುವ ಕಥನ ತಂತ್ರವು ಅತ್ಯಂತ ಆಕರ್ಷಕವೂ, ವೈವಿಧ್ಯಪೂರ್ಣವೂ, ವಿಶಿಷ್ಟವೂ ಆಗಿದೆ. ಇಲ್ಲಿಯ ಮುಖ್ಯ ಕಥೆಗಳ ಪ್ರಧಾನ ಆಶಯ ಜೈನಧರ್ಮ ಮತ್ತು ಅದರ ತತ್ವಾಚರಣೆಗಳ ಶ್ರೇಷ್ಠತೆಯನ್ನು ಸಾರುವುದು. ಈ ಆಶಯಕ್ಕೆ ದುಡಿಯುವ ಹಲವಾರು ಉಪಕಥೆಗಳನ್ನು, ಮುಖ್ಯ ಕಥೆಗಳಲ್ಲಿ ಸಂಗಡಿಸಿಕೊಂಡಿರುವುದು ಕಥೆಗಾರನ ಸ್ವೋಪಜ್ಞತೆಗೆ ನಿದರ್ಶನವಾಗಿದೆ.

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ಈ ಕಥೆಗಳಲ್ಲಿ ಲೌಕಿಕ ಮತ್ತು ಅಲೌಕಿಕವೆನ್ನುವ ಎರಡು ಸ್ತರಗಳಲ್ಲಿ ಬಿಚ್ಚಿಕೊಳ್ಳುತ್ತವೆ. ಲೌಕಿಕ ಸ್ತರದಲ್ಲಿ ಅಸರ-ಅರಸಿಯರು, ಮಂತ್ರಿಗಳು, ವರ್ತಕರು, ತಳವಾರರು, ಅವರ ಮಕ್ಕಳು, ಮಂತ್ರವಾದಿಗಳು, ಸಿದ್ಧಿಪುರುಷರು, ಗೂಢಚಾರರು, ಬಹುರೂಪಿಗಳು, ನಗರ ವಾಸಿಗಳು, ಜೈನ ಸನ್ಯಾಸಿಗಳು, ವೃತನಿಷ್ಠರು, ಕಾವಲುಗಾರರು, ರಾಜಭಟರು, ಉಪಾಧ್ಯಾಯರು, ಆಚಾರ್ಯರು, ವ್ಯಭಿಚಾರಿಗಳು, ವೇಶ್ಯೆಯರು, ಸಪ್ತ ವ್ಯಸನಾಭಿಭೂತರು, ಸಕಲಶಾಸ್ತ್ರ ಪ್ರವೀಣರು ಮುಂತಾದ ಹಲವು ವರ್ಗ, ಜಾತಿ ಮತ್ತು ವೃತ್ತಿಯ ಜನರು ವ್ಯವಹರಿಸುತ್ತಿದ್ದುದು ತಿಳಿದು ಬರುತ್ತದೆ. ಇನ್ನು ಅಲೌಕಿಕ ಸ್ತರದಲ್ಲಿ ಪುಣ್ಯ-ಪಾಪ ಕರ್ಮಗಳ ಫಲಾನುಫಲಗಳು, ಚತುರ್ಗತಿ (ಮನುಷ್ಯಜನ್ಮ, ದೇವತಾಜನ್ಮ, ತೀರ್ಯಕಜನ್ಮ, ನಾರಕಿಜನ್ಮ) ಗಳಲ್ಲಿ ಜನ್ಮಾಂತರ ಪರ್ಯಟನೆ, ಇಲ್ಲವೇ ಉಪಸರ್ಗಗಳನ್ನು ಸೈರಿಸಿ ಸರ್ವಾರ್ಥಸಿದ್ಧಿ ಮೊದಲಾದ ಸ್ವರ್ಗಗಳಲ್ಲಿ ಹಲವು ಸಾಗರೋಪಮ ಆಯುಷ್ಯವುಳ್ಳ ಇಂದ್ರನಾಗಿ ಹುಟ್ಟುವ ಪರಕಲ್ಪನೆಗಳು ಬರುತ್ತವೆ. ಈ ಎರಡೂ ಸ್ತರಗಳ ಕಾಣಿಸಿಕೊಳ್ಳುವ ಚಿಂತನೆಗಳು ಜೈನ ಆಮ್ನಾಯಕೆ ನೆಲಗಟ್ಟಿನಂತಿರುವ ಲೌಕಿಕ-ಆಗಮಿಕ ಎಂಬ ಎರಡು ದೃಷ್ಟಿಕೋನಕ್ಕೆ ಅನುಗುಣವಾಗಿಯೇ ಇವೆ. ಅದೇ ಕಾರಣಕ್ಕೆ ಇಲ್ಲಿ ಲೌಕಿಕ ಮತ್ತು ಅಲೌಕಿಕ ಹೀಗೆ ಎರಡು ನೆಲೆಗಳಲ್ಲಿ ನ್ಯಾಯ ತೀರ್ಮಾನ ಮತ್ತೆ ಅಪರಾಧಗಳನ್ನನುಲಕ್ಷಿಸಿ ಶಿಕ್ಷೆ ವಿಧಿಸುವ ವೇದಿಕೆಗಳನ್ನು ಕಲ್ಪಿಸಿಕೊಂಡಿರುವುದು ಸ್ವಾಭಾವಿಕವೆನಿಸುತ್ತದೆ.

ವಡ್ಡಾರಾಧನೆ ಗ್ರಂಥದ ಕೆಲವು ಕಥೆಗಳಿಂದ ಆಯ್ದು ಮತ್ತು ಪ್ರಸ್ತುತ ಎರಡು ನೆಲೆಗಳಲ್ಲಿ ಕಂಡುಬರುವ ಪ್ರಸಂಗಗಳನ್ನು ಆಧರಿಸಿ ತೀರ್ಪು ನೀಡುವ ಕ್ರಮವಿದ್ದು, ಅಪರಾಧನಗಳನ್ನು ಸಾಬೀತುಪಡಿಸಲು ಸಾಕ್ಷ್ಯಾಧಾರಗಳನ್ನು, ಪುರಾವೆಗಳನ್ನು ಸಂಗ್ರಹಿಸುವ ವಿಧಾನ, ಅಪರಾಧ ಖಚಿತವಾದ ನಂತರ ಅಪರಾಧಿಗೆ ವಿಧಿಸುವ ಶಿಕ್ಷೆಯ ಸ್ವರೂಪ. ಆ ಶಿಕ್ಷೆಯನ್ನು ಜಾರಿಗೊಳಿಸಲು ನಿರ್ದೇಶಿಸುವ ಅಧಿಕಾರ ಇತ್ಯಾದಿ ಸಂಗತಿಗಳನ್ನು ಇಲ್ಲಿ ವಿವೇಚಿಸಬಹುದಾಗಿದೆ:

'ವಡ್ಡಾರಾಧನೆ' ಗ್ರಂಥದ 19 ಕಥೆಗಳಲ್ಲಿ ಮೊದಲನೆಯದು ತುಂಬ ಜನಪ್ರಿಯವಾಗಿರುವ 'ಸುಕುಮಾರಸ್ವಾಮಿಯ ಕಥೆ'. ಈ ಮುಖ್ಯ ಕಥೆಯ ಧ್ಯೇಯೋದ್ದೇಶವನ್ನು ಪೋಷಿಸಲು ಕಥೆಗಾರ ಆ ಕಥೆಯ ಒಳಗಡೆ ಕೆಲವು ಸರಣಿ ಉಪಕಥೆಗಳನ್ನು ಸಂಯೋಜಿಸಿಕೊಂಡಿದ್ದಾನೆ. ಅಂಥವುಗಳಲ್ಲಿ 'ಸುಮತಿ ಹೇಳಿದ ಸುದಾಮೆಯ ಕಥೆ'ಯೂ ಒಂದು. ಲೌಕಿಕ ನೆಲೆಯ ಈ ಕಥೆಯಲ್ಲಿ ನ್ಯಾಯಾಲಯದ ಕಲಾಪಗಳಿಗೆ ಸಮೀಕರಿಸಬಹುದಾದ ಕೆಲವು ಅಂಶಗಳಿದ್ದು; ಅವು ರಾಜಸತ್ತೆಯ ಕಾಲದ ನ್ಯಾಯದಾನ ಪದ್ಧತಿಯ ಮೇಲೆ ಬೆಳಕು ಚೆಲ್ಲುತ್ತವೆ. ಕಥೆಯ ತಿರುಳು ಹೀಗಿದೆ:

ಕೌಶಾಂಬಿ ಎಂಬ ಪಟ್ಟಣ. ಆ ಪಟ್ಟಣದಲ್ಲಿ ಸುಮಿತ್ರನೆಂಬ ಸೆಟ್ಟಿ ಇದ್ದನು. ಕೋಟಿ ಚಿನ್ನದ ಒಡೆಯನವನು. ಅವನ ಮಗ ವಸುಮಿತ್ರ. ಆ ಹುಡುಗನನ್ನು ಒಂದು ಹಾವು ಕಚ್ಚಿತು. ಸತ್ತುಹೋದನೆಂದು ಭಾವಿಸಿ ಆ ಬಾಲಕನನ್ನು ಸ್ಮಶಾನಕ್ಕೆ ಕೊಂಡೊಯ್ದರು. ಅಲ್ಲಿಗೆ ಬಂದ ಗರುಡನಾಭಿ ಎಂಬ ಮಂತ್ರವಾದಿ ಮಂತ್ರಹಾಕಿ ತಾನು ಆ ಹುಡುಗನನ್ನು ನಾಳೆ ಬದುಕಿಸಿಕೊಡುವುದಾಗಿಯೂ ಅದೊಂದು ರಾತ್ರಿ ಅಲ್ಲಿ ಯಾರನ್ನಾದರೂ ಕಾವಲಿಗೆ ಇರಿಸಬೇಕೆಂದೂ ಹೇಳಿ ಹೋದನು. ಅದಕ್ಕೊಪ್ಪಿದ ಸುಮಿತ್ರಶೆಟ್ಟಿ; ನಾಲ್ಕು ಜನ ಭಟರನ್ನು ಕಾವಲಿಟ್ಟು ಮನೆಗೆ ಹಿಂತಿರುಗಿದನು. ಹಾಗೆ ಕಾವಲಿದ್ದ ಆ ನಾಲ್ವರಲ್ಲಿ ಒಬ್ಬನು ಕುರಿಯನ್ನು ಕದ್ದು ತರಲು ಹೋದರೆ; ಇನ್ನೊಬ್ಬ ಸೌದೆಯನ್ನು ತರಲು ಹೋದನು. ಮತ್ತೊಬ್ಬ ಕಿಚ್ಚು ತರಲು ಹೋದನು. ನಾಲ್ಕನೆಯವನು ಕಾವಲಿಗೆ ಕುಳಿತನು. ಅಂತೂ ಕೊನೆಯಲ್ಲಿ ಎಲ್ಲರೂ ಸೇರಿ ಕದ್ದುತಂದ ಕುರಿಯನ್ನು ಕೊಂದು ಸುಟ್ಟು ತಿಂದರು. ಅಷ್ಟೊತ್ತಿಗೆ ಬೆಳಗಾಯಿತು. ಗರುಡನಾಭಿ ಬಂದು ಮಂತ್ರ ಬಲದಿಂದ ಬಾಲಕನ್ನು ಬದುಕಿಸಿದನು.

ಸುಮಿತ್ರಸೆಟ್ಟಿಗೆ ಅಪಾರ ಸಂತೋಷವಾಯಿತು. ಕಾವಲು ಕಾಯ್ದು ಆ ನಾಲ್ವರು ಭಟರಿಗೂ ತಲಾ ಸಾವಿರ ಚಿನ್ನದ ನಾಣ್ಯಗಳಿದ್ದ ಒಂದು ಪೊಟ್ಟಣ ಸಿಗುವಂತೆ ಸುಮಿತ್ರಸೆಟ್ಟಿ ಉಪ್ಪರಿಗೆಯ ಮೇಲೆ ನಿಂತು ಕೆಳಗಿದ್ದ ಜನರ ಮಧ್ಯೆ ತೂರಿದನು. ಆದರೆ ನಾಲ್ವರು ಭಟರಲ್ಲಿ ಒಬ್ಬನು ಮಾತ್ರ ತನ್ನ ಪಾಲಿನ ಪೊಟ್ಟಣವನ್ನು ತೆಗೆದುಕೊಂಡೂ ತನಗದು ಸಿಗಲೇ ಇಲ್ಲ ಎಂದು ಸುಳ್ಳು ಹೇಳಿದನು. ಆಗ ಸೆಟ್ಟಿಯು ರಾಜನ ಬಳಿಗೆ ಹೋಗಿ "ದೇವಾ ನನ್ನ ಸಾವಿರ ಚಿನ್ನದ

ನಾಣ್ಯಗಳ ಪೊಟ್ಟಣ ಕಳೆದುಹೋಗಿದೆ” ಎಂದು ದೂರು ಕೊಟ್ಟನು. ರಾಜನು ತಳವಾರನನ್ನು ಕರೆದು “ಒಡನೆಯೇ ಕಳ್ಳನನ್ನು ಹುಡುಕತಕ್ಕದ್ದು, ಇಲ್ಲವಾದರೆ ಕಳ್ಳನಿಗೆ ವಿಧಿಸಬೇಕಾದ ಶಿಕ್ಷೆಯನ್ನು ನಿನಗೆ ವಿಧಿಸಬೇಕಾಗುತ್ತದೆ” ಎಂದು ಆಜ್ಞೆ ಮಾಡಿದನು. ತಳವಾರನಿಗೆ ಏನು ಮಾಡಬೇಕೆಂಬುದು ತೋಚದೆ ಆ ನಾಲ್ವರು ಭಟರನ್ನು ತನ್ನ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಬಂದು ಅರಸರ ಆಜ್ಞೆಗೆ ಹೆದರಿ ತುಂಬ ದುಃಖಿತನಾಗಿ ಸಪ್ಪಗೆ ಕುಳಿತುಬಿಟ್ಟನು. ಆತನ ಚಿಂತಾಕ್ರಾಂತ ಸ್ಥಿತಿಯನ್ನು ಕಂಡ ಅವನ ಮಗಳು ಸುಮತಿ, ಕಾರಣವನ್ನು ತಿಳಿದುಕೊಂಡು ತಂದೆಗೆ “ನೀವು ಬೇಸರಪಡಬೇಡಿ. ನಾಳೆಯೇ ನಿಮ್ಮ ವಶಕ್ಕೆ ಕಳ್ಳನನ್ನೂ ಆತ ಕದ್ದಿರುವ ಚಿನ್ನವನ್ನು ತಂದು ಒಪ್ಪಿಸುತ್ತೇನೆ.” ಎಂದು ಸಮಾಧಾನಪಡಿಸಿದಳು.

ತುಂಬಾ ಜಾಣೆಯಾಗಿದ್ದ ಆಕೆ, ಅಂದೇ ರಾತ್ರಿ ಆ ಭಟರನ್ನು ಪರೀಕ್ಷಿಸಲು ಇಚ್ಛಿಸಿ, ಅವರ ಪಕ್ಕದಲ್ಲೇ ಕುಳಿತು ಅವರಿಗೆ ಕಥೆಯೊಂದನ್ನು ಹೇಳಿದಳು. ಅದು 'ಸುದಾಮೆ ಎಂಬ ಕನ್ನೆಯ ಕಥೆ'ಯಾಗಿತ್ತು. ಪಾಟಲೀಪುತ್ರದಲ್ಲಿ ಸುದತ್ತ ಎನ್ನುವ ಸೆಟ್ಟಿ ಇದ್ದನು. ಅವನ ಮಗಳೇ ಸುದಾಮೆ. ಒಂದು ದಿನ ಆಕೆ ಗಂಗೆಗೆ ಸ್ನಾನಕ್ಕೆಂದು ಹೋಗಿದ್ದಳು. ನೀರಿನಲ್ಲಿ ಅವಿತ್ತಿದ್ದ ಮೊಸಳೆ ಅವಳನ್ನು ಹಿಡಿದುಬಿಟ್ಟಿತು. ತಕ್ಷಣ ಅವಳು ಅದೇ ದಡದಲ್ಲಿದ್ದ ತನ್ನ ಸೋದರ ಮೈದುನ ಧನದತ್ತನೆಂಬವನನ್ನು ಕಂಡು; ತನ್ನನ್ನು ಮೊಸಳೆಯು ಬಾಯಿಂದ ಬಿಡಿಸು ಎಂದು ಕೂಗಿಕೊಂಡಳು. ಆಗ ಧನದತ್ತನು ನನ್ನ ಬೇಡಿಕೆಯನ್ನು ನಡೆಸಿಕೊಡುವುದಾದರೆ ನಿನ್ನನ್ನು ಬಿಡಿಸುತ್ತೇನೆ ಎಂದು ಷರತ್ತು ಹಾಕಿದನು. ಅದಕ್ಕೆ ಸುಧಾಮೆಯೂ ಒಪ್ಪಿದಳು. ಧನದತ್ತನು ನೀರಿಗೆ ಧುಮುಕಿ ಮೊಸಳೆಯಿಂದ ಆಕೆಯನ್ನು ರಕ್ಷಿಸಿದನು. ಆಗ “ನಿನಗೇನು ಬೇಕು ಕೇಳು” ಎಂದಳು ಸುದಾಮೆ. ಅದಕ್ಕೆ ಧನದತ್ತನು “ನಿನ್ನ ಮದುವೆಯ ದಿನದ ಅಲಂಕಾರವನ್ನು ನನಗೆ ತೋರಿಸಬೇಕು ಅಷ್ಟೆ” ಎಂದನು. ಆ ಕರಾರಿಗೆ ಸುದಾಮೆಯೂ ಒಪ್ಪಿ ಮನೆ ಸೇರಿದಳು.

ಕಾಲಕ್ರಮದಲ್ಲಿ ಸುದಾಮೆಗೆ ವಿವಾಹವಾಯಿತು. ತಾನು ಮೈದುನ ಧನದತ್ತನಿಗೆ ಕೊಟ್ಟ ವಚನವು ಅವಳಿಗೆ ನೆನಪಾಯಿತು. ಅಂದು ನಟ್ಟನಡು ರಾತ್ರಿಯಲ್ಲಿ ಆಕೆ ಸರ್ವಾಲಂಕಾರಭೂಷಿತಳಾಗಿ ಮನೆಯಿಂದ ಮೈದುನನಿದ್ದ ಅಂಗಡಿಯತ್ತ ಹೊರಟಳು. ದಾರಿಯಲ್ಲಿ ಸುದಾಮೆಯನ್ನು ಅಡ್ಡಗಟ್ಟಿದ ಕಳ್ಳನೊಬ್ಬ ಆಕೆಯನ್ನು ತಡೆದು ನೀನು ತೊಟ್ಟಿರುವ ಆಭರಣವೆಲ್ಲವನ್ನು ಕೊಟ್ಟುಹೋಗು ಎಂದನು. ಆಗ ಸುದಾಮೆ ತಾನು ಎಲ್ಲಿಗೆ ಹೊರಟಿದ್ದೇನೆ ಎಂಬುದನ್ನು ತಿಳಿಸಿ, “ಅಲ್ಲಿಂದ ಹಿಂತಿರುಗಿ ಬರುವಾಗ ನಾನು ತೊಟ್ಟಿರುವ ಆಭರಣಗಳೆಲ್ಲವನ್ನೂ ಬಿಟ್ಟುಕೊಡುತ್ತೇನೆ. ಅಲ್ಲಿಯವರೆಗೆ ಇಲ್ಲಿಯೇ ಕಾಯಿ” ಎಂದು ಅವನನ್ನು ಸಮಾಧಾನಪಡಿಸಿ ಮುಂದೆ ಹೋದಳು. ಸ್ವಲ್ಪದೂರ ಸಾಗುವಷ್ಟರಲ್ಲಿ ತಳವಾರನೊಬ್ಬ ಅವಳನ್ನು ಅಡ್ಡಗಟ್ಟಿ ನಿಲ್ಲಿಸಿ, “ಇಷ್ಟು ಅಪರಾತ್ರಿಯಲ್ಲಿ ಎಲ್ಲಿ ಹೋಗುತ್ತಿದ್ದೀಯೆ ಕೆಟ್ಟ ಹೆಂಗಸೆ” ಎಂದು ಗದರಿಸಿದನು. ಅದಕ್ಕೆ ಅವಳು, “ಬಹಳ ಮುಖ್ಯವಾಗಿ ಒಂದು ಕೆಲಸವಿದೆ; ಅದಕ್ಕಾಗಿ ಹೋಗುತ್ತಿದ್ದೇನೆ. ತಿರುಗಿ ಬರುವಾಗ ನಿನ್ನ ಇಷ್ಟದಂತೆ ನಡೆದುಕೊಳ್ಳುತ್ತೇನೆ” ಎಂದು ಅವನನ್ನೂ ಸಮಾಧಾನಪಡಿಸಿ ಅನತಿ ದೂರ ಸಾಗುವಷ್ಟರಲ್ಲಿ, ಬ್ರಹ್ಮರಾಕ್ಷಸನೊಬ್ಬ ಎದುರಾಗಿ ಅವಳನ್ನು ತಿಂದುಬಿಡಲು ಹವಣಿಸತೊಡಗಿದನು. ಆಗ ಸುದಾಮೆ “ಅಯ್ಯಾ ನನಗೊಂದು ಬಹಳ ಮುಖ್ಯವಾದ ಕೆಲಸವಿದೆ. ಅದನ್ನು ಪೂರೈಸಿಕೊಂಡು ಬರುತ್ತೇನೆ. ಆಗ ನೀನು ನಿನಗೆ ಇಷ್ಟಬಂದಹಾಗೆ ಮಾಡುವಿಯಂತೆ” ಎಂದು ಹೇಳಿದಳು. ಬ್ರಹ್ಮರಾಕ್ಷಸನು ಅದಕ್ಕೆ ಸಮ್ಮತಿಸಿ ಅವಳನ್ನು ಕಳುಹಿಸಿಕೊಟ್ಟನು. ಆದರೆ ಇಷ್ಟೊಂದು ಅವೇಳೆಯಲ್ಲಿ ಅವಳು ಎಲ್ಲಿಗಾದರೂ ಹೋಗುತ್ತಿರಬಹುದು ಎಂದು ನೋಡಬೇಕೆಂಬ ಕುತೂಹಲದಿಂದ ಅವಳಿಗೆ ತಿಳಿಯದಂತೆ ಆಕೆಯನ್ನು ಹಿಂಬಾಲಿಸಿದನು.

ಸುದಾಮೆ ನೇರವಾಗಿ ತನ್ನ ಮೈದುನ ಧನದತ್ತ ಮಲಗಿದ್ದ ಅಂಗಡಿಗೆ ಹೋಗಿ ಬಾಗಿಲು ತಟ್ಟಿ ಅವನನ್ನು ಎಬ್ಬಿಸಿದಳು. ಬಾಗಿಲು ತೆರೆದು ಹೊರಬಂದು ನೋಡಿದ ಧನದತ್ತನಿಗೆ ಆಶ್ಚರ್ಯವಾಯಿತು. “ಇದೇಕೆ ಇಷ್ಟೊತ್ತಿನಲ್ಲಿ ಇಲ್ಲಿ ಬಂದೆ?” ಎಂದು ಪ್ರಶ್ನಿಸಿದನು. ಅದಕ್ಕೆ ಸುದಾಮೆ ಅವನ ಆ ಮುಂಚೆ ಹಾಕಿದ್ದ ಕರಾರನ್ನು ಜ್ಞಾಪಿಸಿ, ಅದರಂತೆ ತಾನು ತನ್ನ ಮದುವೆ ದಿನದ ಅಲಂಕಾರವನ್ನು ತೋರಿಸಲು ಬಂದೆನೆಂದಳು. ಧನದತ್ತನು ಅವಳ ರೂಪಾತಿಶಯವನ್ನು

ಕಣ್ತುಂಬಿಕೊಂಡು ಸಂತೋಷಪಟ್ಟನು. ವಿದ್ಯಾಧರಿಯ ಹಾಗೆ, ಅಪ್ಸರೆಯ ಹಾಗೆ ಇದ್ದೀಯೆ ಎಂದು ಬಾಯ್ತುಂಬ ಹರಸಿ “ಮಾತಿಗೆ ತಪ್ಪದೆ ನೀನು ನಿನ್ನ ಪ್ರತಿಜ್ಞೆಯನ್ನು ನಡೆಸಿಕೊಟ್ಟೆ. ಈಗ ನಡುರಾತ್ರಿಯಾಗಿದೆ; ಬಹಳ ಕೆಟ್ಟ ಸಮಯವಿದು. ಕಳ್ಳರು, ತಳವಾರರು ಕಾಡುತ್ತಾರೆ. ಬೇಗ ಮನೆಗೆ ಹೋಗಿ ಸೇರಿಕೊ” ಎಂದು ಅವಳನ್ನು ಅಲ್ಲಿಂದ ಬಿಳ್ಳೊಟ್ಟನು. ಇವರಿಬ್ಬರ ಮಾತುಗಳನ್ನು ಹೊರಗೆ ಮರೆಯಲ್ಲಿ ನಿಂತು ಕೇಳಿಸಿಕೊಳ್ಳುತ್ತಿದ್ದ ಬ್ರಹ್ಮರಾಕ್ಷಸ, ಕಳ್ಳ, ತಳವಾರ ಮೂವರೂ ಸರಸರನೆ ಹಿಂದಿರುಗಿ ತಾವು ಮೊದಲಿದ್ದ ಸ್ಥಳಗಳಲ್ಲಿ ನಿಂತು ಸುದಾಮೆ ತಿರುಗಿ ಬರುವುದನ್ನೇ ಕಾಯತೊಡಗಿದರು. ಕೊಟ್ಟ ಭರವಸೆಯಂತೆ ಆಕೆ ಮೊದಲು ಬ್ರಹ್ಮರಾಕ್ಷಸನನ್ನು ಕಂಡು “ಇದೋ ನಾನು ಮರಳಿ ಬಂದಿದ್ದೇನೆ. ನಿನ್ನ ಆಸೆಯನ್ನು ಈಡೇರಿಸಿಕೋ” ಎಂದಳು.

ಆಗ ಬ್ರಹ್ಮರಾಕ್ಷಸನು ಅವಳಿಗೆ “ನೀನು ಸತ್ಯವಾದಿ. ರೂಪ, ಲಾವಣ್ಯ, ಸೌಭಾಗ್ಯ, ಕಾಂತಿ, ಹಾವಭಾವ, ವಿಲಾಸ, ವಿಭ್ರಮಗಳಿಂದ ಕೂಡಿದವಳು. ನಿನ್ನನ್ನು ತಿಂದು ನಾನು ಯಾವ ಗತಿಗೆ ಹೋಗಲಿ? ನಿನ್ನ ರೂಪವನ್ನು ನಾಶಪಡಿಸಲು ನನಗೆ ಮನಸ್ಸಾಗುವುದಿಲ್ಲ. ಹೆದರಬೇಡ, ಹೋಗು” ಎಂದು ಅವಳನ್ನು ಕಳುಹಿಸಿಕೊಟ್ಟನು. ತಳವಾರನೂ ಅಷ್ಟೆ. “ನೀನು ಕೆಟ್ಟ ಹೆಂಗಸು ಎಂದು ಭಾವಿಸಿದ್ದೆ. ನಿನ್ನಷ್ಟು ಒಳ್ಳೆಯವರು ಯಾರೂ ಇಲ್ಲ. ಕೊಟ್ಟ ಮಾತಿಗೆ ತಪ್ಪದೆ ಬಂದಿದ್ದೀಯೆ. ಸತ್ಯವಾದಿ ನೀನು. ನಿನ್ನನ್ನು ಏನೂ ಮಾಡಲಾರೆ ಹೋಗು ಎಂದು ಕಳುಹಿಸಿದನು. ಮುಂದೆ ಕಳ್ಳನ ಬಳಿಗೆ ಬಂದ ಸುದಾಮೆ ತಾನು ತೊಟ್ಟಿದ್ದ ಆಭರಣಗಳೆಲ್ಲವನ್ನೂ ಒಪ್ಪಿಸಲು ಮುಂದಾದಳು. ಅದಕ್ಕೆ ಅವನು “ಇದೇನಿದು? ನನಗೆ ಇದೊಂದೆ ಜನ್ಮವೇ? ನಿನ್ನ ಆಭರಣಗಳನ್ನು ಕಸಿದುಕೊಂಡು ನಾನೇನು ಸೂರ್ಯಚಂದ್ರರಿರುವವರೆಗೆ ಬದುಕುತ್ತೇನೆಯೇ? ಹಾಯಾಗಿ ಮನೆಗೆ ಹೋಗು” ಎಂದನು.

ಹೀಗೆ ಮೂವರು ಸುದಾಮೆಯನ್ನು ಘಾಸಿಗೊಳಿಸದೆ ಕಳುಹಿಸಿಕೊಟ್ಟರೆಂಬ ಕಥೆಯನ್ನು ಹೇಳಿ ಮುಗಿಸಿದ ಸುಮತಿ, ತನ್ನ ತಂದೆ ಮನೆಗೆ ಕರೆತಂದಿದ್ದ ನಾಲ್ವರು ಕಾವಲು ಭಟರನ್ನುದ್ದೇಶಿಸಿ, ಒಬ್ಬ ನುರಿತ ನ್ಯಾಯವಾದಿ ಪ್ರಶ್ನಿಸುವಂತೆ “ಅಣ್ಣಂದಿರಾ ಹೇಳಿ ನೋಡೋಣ! ಕಥೆಯಲ್ಲಿ ಸುದಾಮೆಯನ್ನು ಅಡ್ಡಗಟ್ಟಿದ ಬ್ರಹ್ಮರಾಕ್ಷ, ತಳವಾರ ಹಾಗೂ ಕಳ್ಳ ಈ ಮೂವರಲ್ಲಿ ಯಾರು ಒಳ್ಳೆಯವರು? ಎಂದು ಪ್ರಶ್ನಿಸಿದಳು. ಆಗ ಕುರಿಯನ್ನು ಕೊಂದ ಭಟನು, ಸುದಾಮೆಯನ್ನು ತಿನ್ನದೆ ಬಿಟ್ಟುಕಳಿಸಿದ ಬ್ರಹ್ಮರಾಕ್ಷಸನೇ ಒಳ್ಳೆಯವನು ಎಂದುತ್ತರಿಸಿದನು. ಕಾವಲು ಕುಳಿತಿದ್ದ ಇನ್ನೊಬ್ಬನು ಸುದಾಮೆಯನ್ನು ಶಿಕ್ಷಿಸದೆ ಕಳುಹಿಸಿದ ತಳವಾರನು ಒಳ್ಳೆಯವನು ಎಂದು ಹೇಳಿದನು. ಬೆಂಕಿ ತರಲು ಹೋಗಿದ್ದನು -ಏಕಾಂತ ಸಮಯದಲ್ಲಿ ತನ್ನ ಬಳಿಗೆ ಬಂದ ಸುದಾಮೆಗೆ ಆಸೆ ಪಡದೆ ಹಾಗೇ ಕಳುಹಿಸಿದ ಸೋದರ ಮೈಯ್ದುನ ಧನದತ್ತನೇ ಎಲ್ಲರಿಗಿಂತ ಒಳ್ಳೆಯವನು ಎಂದನು. ದೀನಾರರದ ಪೊಟ್ಟಣವನ್ನು ಕದ್ದಿದ್ದ ನಾಲ್ಕನೇಯ ಭಟನು-, ಮದುವಣಗಿತ್ತಿ ತೊಟ್ಟಿದ್ದ ಆಭರಣಗಳನ್ನು ದೋಚದೆ ಬಿಟ್ಟುಕಳಿಸಿದ ಕಳ್ಳನೇ ಒಳ್ಳೆಯವನು ಎಂದು ಹೇಳಿದನು. ತಕ್ಷಣ ಅವನೇ ಪೊಟ್ಟಣವನ್ನು ಕದ್ದಿರುವ ಕಳ್ಳ ಎನ್ನುವುದು ಸುಮತಿಗೆ ಖಾತ್ರಿಯಾಗಿ ಹೋಯಿತು. ಹಾಗೇ ಮಾತಾಡುತ್ತಾ ಎಲ್ಲರೂ ಮಲಗಿದರು. ತಡರಾತ್ರಿ ಆ ಕಳ್ಳನನ್ನು ಎಬ್ಬಿಸಿದ ಸುಮತಿ, ಏಕಾಂತದಲ್ಲಿ “ನನಗೆ ನೀನು ತುಂಬಾ ಇಷ್ಟವಾಗಿದ್ದೀಯಾ, ನೀನು ನನಗೆ ಸಾಕಷ್ಟು ಆಭರಣಗಳನ್ನು ಮಾಡಿಸಿಕೊಡುವಿಯಾದರೆ ನಿನ್ನೊಂದಿಗೆ ನಾನು ಬಂದುಬಿಡುತ್ತೇನೆ” ಎಂದು ಹೇಳಿದಳು. ಆ ಮಾತಿನಿಂದ ಪರಮ ಸಂತೋಷಪಟ್ಟ ಆ ಕಳ್ಳ, ತಡಮಾಡದೆ ತಾನು ಕದ್ದು ಮುಚ್ಚಿಟ್ಟುಕೊಂಡಿದ್ದ ದೀನಾರದ ಪೊಟ್ಟಣವನ್ನು ಸುಮತಿಗೆ ತೋರಿಸಿ “ನಡೆ ಹೋಗೋಣ” ಎಂದನು. ಕುಶಾಗ್ರಬುದ್ಧಿಯ ಆಕೆ “ಹಾಗೇ ಆಗಲಿ” ಎಂದು ಹೇಳಿ, ಅವನ ಕೈಯಿಂದ ಪೊಟ್ಟಣವನ್ನು ಇಸಿದುಕೊಂಡು ತನ್ನ ತಂದೆಯ ಬಳಿಗೆ ಹೋಗಿ, ಮಲಗಿದ್ದ ಅವನನ್ನು ಎಬ್ಬಿಸಿ ಪೊಟ್ಟಣವನ್ನು ಆತನ ಕೈಗಿತ್ತಳು. ಆಗ ತಳವಾರನು ಮಗಳು ತನ್ನ ತಲೆದಂಡವನ್ನು ತಪ್ಪಿಸಿದಳು ಎಂದು ಸಂತಸಪಟ್ಟು, ಕಳ್ಳನನ್ನು ಹಿಡಿದು ಅವನು ಕದ್ದಿದ್ದ ಮಾಲುಸಮೇತ ಅರಸನಿಗೆ ಒಪ್ಪಿಸಿದನು.

ಈ ಇಡೀ ಕಥೆಯಲ್ಲಿ ತಳವಾರನ ಮಗಳು ದಲಿತ ಕನ್ಯೆ ಸುಮತಿ, ಕಳುವಿನ ಪ್ರಕರಣದ ಅಪರಾಧಿಯನ್ನು ಕಂಡುಹಿಡಿಯಲು ಪ್ರಯೋಗಿಸುವ ‘ಕಥನತಂತ್ರ’ ಆಧುನಿಕ ಅಪರಾಧ ವಿಜ್ಞಾನ ಕ್ಷೇತ್ರದಲ್ಲಿ ಉಪಯೋಗಿಸುವ ‘ಸುಳ್ಳು

ಪತ್ತೆ ಪರೀಕ್ಷೆ' ತಂತ್ರಜ್ಞಾನಕ್ಕೆ ಸರಿಸಾಟಿಯಾದುದು. ಅಪರಾಧಗಳನ್ನು ತಡೆಯಲು, ಅಂಥ ಪ್ರಕರಣಗಳು ಘಟಿಸಿದಾಗ ಅಪರಾಧಿಗಳನ್ನು ಪತ್ತೆಮಾಡಲು ಅರಸನಿಂದಲೇ ನಿಯುಕ್ತಗೊಂಡಿದ್ದ ಸುಮತಿಯ ತಂದೆ ಅನುಭವಿ ತಳವಾರನು, ಸುಮಿತ್ರಶೆಟ್ಟಿ ರಾತ್ರಿಹೊತ್ತು ಸ್ಮಶಾನದಲ್ಲಿ ತನ್ನ ಸತ್ತ ಮಗನ ಶವದ ಕಾವಲುಕಾಯ್ದು ನಾಲ್ವರು ಭಟರಿಗೆ ಸಂಭಾವನೆ ರೂಪದಲ್ಲಿ ಚೆಲ್ಲಿದ ಸಾವಿರ ಚಿನ್ನದ ನಾಣ್ಯಗಳ ಪೊಟ್ಟಣವನ್ನು ಪಡೆದಿದ್ದರೂ "ತನಗದು ಸಿಗಲೇ ಇಲ್ಲ" ಎಂದು ಸಾಧಿಸಿದ ಕಳ್ಳಭಟನನ್ನು ಕಂಡುಹಿಡಿಯಲು ವಿಫಲನಾಗುವುದು ಪ್ರಕರಣವನ್ನು ಕಗ್ಗಂಟಾಗಿಸುತ್ತದೆ. ಇಂಥ ಜಟಿಲ ಸಮಸ್ಯೆಯನ್ನು ಸವಾಲಾಗಿ ಸ್ವೀಕರಿಸಿದ ಸುಮತಿ, ಒಬ್ಬ ಪ್ರಬುದ್ಧ ನ್ಯಾಯವಾದಿಯಂತೆ ವ್ಯವಹರಿಸಿ ನಿಜವಾದ ಅಪರಾಧಿಗೆ ಶಿಕ್ಷೆ ಕೊಡಿಸುವಲ್ಲಿ ಯಶಸ್ವಿಯಾಗುತ್ತಾಳೆ. ರಾಜನೇ ಇಲ್ಲಿ ಅಂತಿಮ ತೀರ್ಪು ನೀಡುವ ನ್ಯಾಯಾಧೀಶ. ಸುಮಿತ್ರಶೆಟ್ಟಿಯೇ ಇಲ್ಲಿ ದೂರುದಾರ. ಕಳ್ಳಭಟನೇ ಇಲ್ಲಿ ಶಿಕ್ಷೆಗೆ ಒಳಪಡುವ ಅಪರಾಧಿ ತಳವಾರನು ಒಬ್ಬ ಅಸಮರ್ಥ ಪತ್ತೇದಾರನಂತೆ ತೋರುತ್ತಾನೆ.

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ಇದೇ ಗ್ರಂಥದ 'ವಿದ್ಯುಚ್ಛೋರ ರಿಸಿಯ ಕಥೆ' ಕೂಡ ಕಾನೂನಿನ ಮೌಲ್ಯಗಳ ದೃಷ್ಟಿಯಿಂದ ಗಮನಾರ್ಹವೆನಿಸುತ್ತದೆ. ಇದು ಕೂಡ ಮಿಕ್ಕ ಕಥೆಗಳಂತೆ ಜಂಬೂದ್ವೀಪದ ಭರತಕ್ಷೇತ್ರದಿಂದಲೇ ಶುರುವಾಗುತ್ತದೆ. ಆ ಕ್ಷೇತ್ರದಲ್ಲಿ ವಿದೇಹ ಎನ್ನುವ ನಾಡಿದೆ. ಅಲ್ಲಿ ಮಿಥಿಳೆ ಎಂಬ ಪಟ್ಟಣವಿದೆ. ಅದನ್ನು ಅಳುತ್ತಿದ್ದವನು ಪದ್ಮರಥನೆಂಬ ಅರಸನ ಮಗ ವಾಮರಸ ಎಂಬುವನು. ಯಮದಂಡನೆಂಬವನು ಆ ಪಟ್ಟಣದ ತಳವಾರ. ಅಲ್ಲೊಬ್ಬ ವಿದ್ಯುಚ್ಛೋರನೆಂಬ ಕಳ್ಳನಿದ್ದಾನೆ. ಅವನು ಜ್ಯುಂಬಿನಿ, ಸ್ತಂಭಿನಿ, ಮೋಹಿನಿ, ಸರ್ಪಪಿ, ತಾಳೋದ್ವಾಟಿನಿ, ವಿದ್ಯಾಮಂತ್ರ, ಚೂರ್ಣಯೋಗ, ಘಟಿಕಾಂಜನ ಮೊದಲಾದ ತಸ್ಕರ ಶಾಸ್ತ್ರಗಳಲ್ಲಿ ಪರಿಣತನು. ಆತನು ರಾತ್ರಿಹೊತ್ತು ನಗರದಲ್ಲಿ ಚಿನ್ನಾಭರಣಗಳನ್ನು ಕದ್ದು, ಪಟ್ಟಣದ ಹೊರಗೆ ಸ್ವಲ್ಪ ದೂರದಲ್ಲಿದ್ದ ಪರ್ವತದ ಗುಹೆಯೊಂದರಲ್ಲಿ ಅವುಗಳನ್ನೆಲ್ಲ ಬಚ್ಚಿಟ್ಟು ಅದರ ಬಾಯಿಗೆ ದೊಡ್ಡದೊಂದು ಕಲ್ಲನ್ನು ಅಡಕುತ್ತಿದ್ದನು. ಹಗಲು ಹೊತ್ತು ಅಂಜನ ಲೇಪಿಸಿಕೊಂಡು ತೊನ್ನ ರೋಗಿಯಂತೆ ವಿಕಾರರೂಪ ತಾಳಿ, ದೇವಾಲಯದಲ್ಲಿ ವಾಸಿಸುತ್ತ ಭಿಕ್ಷೆ ಬೇಡುತ್ತಿದ್ದನು. ಮತ್ತೆ ರಾತ್ರಿಯಾಗುತ್ತಲೆ ತನ್ನ ಸ್ವಾಭಾವಿಕ ರೂಪ ಧರಿಸಿ ರಸಿಕ ಶ್ರೀಮಂತನಂತೆ ಸೂಳೆಗೇರಿಗಳಲ್ಲಿ ಆಡ್ಯತೆಯಿಂದ ಸಂಚರಿಸುತ್ತ ತನಗೆ ಇಷ್ಟವಾದ ಹೆಣ್ಣುಗಳಿಗೆ ಚಿನ್ನಾಭರಣಗಳನ್ನು ಕೊಟ್ಟು ಅವರನ್ನು ಭೋಗಿಸುತ್ತ ಇದ್ದುಬಿಡುತ್ತಿದ್ದನು.

ಒಂದು ದಿನ ಅರಮನೆಯಲ್ಲೇ ಕಳ್ಳತನ ನಡೆದು ಹೋಯಿತು. ವಂಶದ ಮೂಲ ಪುರುಷ ಪದ್ಮರಥನಿಗೆ ಅಚ್ಯುತೇಂದ್ರನು ಪ್ರೀತಿಯಿಂದ ಕೊಟ್ಟಿದ್ದ ಸರ್ವರುಚಾಪಹಾರವೆಂಬ ಹಾರವು ವಂಶವಾರಂಪರ್ಯವಾಗಿ ಈಗ ವಾಮರಥನ ಕೈಸೇರಿತ್ತು. ಅವನು ಅದನ್ನು ತುಂಬ ಜೋಪಾನದಿಂದ ಕರುಮಾಡದ ಏಳನೆಯ ನೆಲೆಯಲ್ಲಿದ್ದ ಶಯನ ಗೃಹದಲ್ಲಿ ಒಂದು ಪೆಟ್ಟಿಗೆಯಲ್ಲಿ ಭದ್ರವಾಗಿಟ್ಟು, ಎಲ್ಲ ಕಾಲದಲ್ಲಿಯೂ ಪೂಜಿಸುತ್ತಿದ್ದನು. ವಿದ್ಯುಚ್ಛೋರನು ಒಂದು ದಿನ ಯಾರ ಕಣ್ಣಿಗೂ ತಾನು ಕಾಣದಂತಹ ಅಂಜನವನ್ನು ಕಣ್ಣಿಗೆ ಖೇದಿಸಿಕೊಂಡು ಅರಸನ ಮಲಗುವ ಕೋಣೆಯನ್ನು ಪ್ರವೇಶಿಸಿ ಪೆಟ್ಟಿಗೆಯಲ್ಲಿದ್ದ ಆ ಹಾರವನ್ನು ಕದ್ದುತಂದು ಗುಹೆಯಲ್ಲಿ ಹೂತಿಟ್ಟು, ಎಂದಿನಂತೆ ತೊನ್ನನ ರೂಪು ಧರಿಸಿ ಏನೂ ನಡೆದಿಲ್ಲವೆಂಬಂತೆ ಇದ್ದು ಬಿಟ್ಟನು.

ಬೆಳಗಾಗುತ್ತಲೆ ಹಾರ ಕಳುವಾದದನ್ನು ಅರಿತ ಅರಸನು ಕಳವಳಿಸಿ, ತಳವಾರ ಯಮದಂಡನನ್ನು ಆಸ್ಥಾನಕ್ಕೆ ಕರೆಸಿ, "ಎಲವೋ ಯಮದಂಡ, ಇಷ್ಟು ದಿನ ಪಟ್ಟಣದಲ್ಲಿ ಪಾರ್ವಕ, ಪರದರ, ಸೂಳೆಯರ ಒಕ್ಕಲು ಮಕ್ಕಳ ಒಡವೆ-ವಸ್ತುಗಳು ಕಳುವಾಗುತ್ತಿದ್ದವು. ಈಗ ನೋಡಿದರೆ ಅರಸರ ಮನೆಯ ಶಯನಗೃಹದಲ್ಲೇ ಕಳ್ಳತನ ನಡೆದಿದೆ. ಆದರೂ ನಿನಗದರ ಅರಿವಿಲ್ಲ. ಒಡನೆಯೇ ಕಳ್ಳನನ್ನು ಹುಡುಕಿ ಎಳೆದು ತಾ. ಇಲ್ಲವಾದರೆ ಅವನಿಗೆ ವಿಧಿಸಬೇಕಾದ ಶಿಕ್ಷೆಯನ್ನು ನಿನಗೆ ವಿಧಿಸಬೇಕಾಗುತ್ತದೆ." ಎಂದನು. ಆಗ ತಳವಾರನು ಕಳ್ಳನನ್ನು ಹಿಡಿದು ತರಲು ತನಗೆ ಏಳು ದಿನ ಅವಕಾಶ

ಕೊಡಿ. ಅಷ್ಟರೊಳಗಾಗಿ ಕಳ್ಳನನ್ನು ತಮಗೊಪ್ಪಿಸದಿದ್ದರೆ ತಾವು ಕೊಡುವ ಶಿಕ್ಷೆಗೆ ನಾನು ಸಿದ್ಧನಿದ್ದೇನೆ ಎಂದು ಹೇಳಿ ಅಲ್ಲಿಂದ ಹೊರಟುಹೋದನು.

ಅವನು ಕಳ್ಳನನ್ನು ಸೂಳೆಗೇರಿಗಳಲ್ಲಿ, ಅಂಗಡಿ-ಮುಂಗಟ್ಟುಗಳಲ್ಲಿ, ಬಸದಿ, ವಿಹಾರಗಳಲ್ಲಿ, ಕೇರಿಗಳಲ್ಲಿ, ತೋಟಗಳಲ್ಲಿ, ದೇವಾಲಯಗಳಲ್ಲಿ ನಿರಂತರ ಆರುದಿನಗಳವರೆಗೆ ಹುಡುಕಿದರೂ ಅವನ ಸುಳಿವು ಸಿಗಲೇ ಇಲ್ಲ. ಏಳನೆಯದಿನ ಹಾಳು ದೇವಾಲಯವೊಂದರಲ್ಲಿದ್ದ ತೊನ್ನನು ಅಲ್ಲಿಂದ ಹೊರಹೋಗುವುದನ್ನೇ ಗಮನಿಸುತ್ತಿದ್ದನು. ಆಗ ಯಮದಂಡನಿಗೆ ಅವನು ಒಂದು ಸಣ್ಣ ಹಳ್ಳವನ್ನು ವಿದ್ಯಾಧರ ಕರಣದಿಂದ ಲಂಘಿಸಿ ಮುಂದೆ ಹೋಗುತ್ತಿರುವುದು ಗೊತ್ತಾಯಿತು. ತಕ್ಷಣ ತಳವಾರನಿಗೆ ಅವನೇ ಕಳ್ಳನಿರಬೇಕೆಂದು ಅನ್ನಿಸಿ ಅವನನ್ನು ಅರಮನೆಗೆ ಎಳೆದೊಯ್ದನು. “ಈತನೇ ಕಳ್ಳನೆಂಬುದರಲ್ಲಿ ಅನುಮಾನವೇ ಇಲ್ಲ” ಎಂದು ಹೇಳಿ ಮಹಾರಾಜನಿಗೆ ಒಪ್ಪಿಸಿದನು. ಆದರೆ ಯಮದಂಡನ ಆರೋಪವನ್ನು ಒಪ್ಪದ ಕಳ್ಳನು, “ದೇವಾ ನಾನು ಕಳ್ಳನಲ್ಲ. ನಿಜವಾದ ಕಳ್ಳನನ್ನು ಕಂಡುಹಿಡಿಯಲಾರದ ಈ ತಳವಾರನು ಊರಿನಲ್ಲಿ ಭಿಕ್ಷೆ ಬೇಡಿ ಜೀವಿಸುತ್ತಿರುವ ನನ್ನನ್ನು ಹಿಡಿದುತಂದು ಅನ್ಯಾಯವಾಗಿ ಕೊಲ್ಲಿಸುತ್ತಿದ್ದಾನೆ” ಎಂದು ಪತ್ಯಾರೋಪ ಮಾಡಿದನು. ಆದರೆ ಕಳ್ಳರನ್ನು ಹಿಡಿಯುವ ಶಾಸ್ತ್ರವನ್ನು ತಿಳಿದಿದ್ದ ಯಮದಂಡನು “ ಪ್ರಭು, ಈತ ತನ್ನ ನಿಜರೂಪವನ್ನು ಬದಲಾಯಿಸುವ ವಿದ್ಯೆಬಲ್ಲವನಾದುದರಿಂದ ರಾತ್ರಿಹೊತ್ತು ಬೇರೆ ರೂಪದಲ್ಲಿ ಕಳವು ಮಾಡಿ ಹಗಲಲ್ಲಿ ತೊನ್ನನಾಗಿ ಭಿಕ್ಷುಕನಂತೆ ನಟಿಸುತ್ತಾನೆ. ಇದನ್ನು ನೀವು ನಂಬಲಾರಿರಾದರೆ ನಾನು ಈಗಲೇ ಪ್ರತ್ಯಕ್ಷ ಮಾಡಿ ತೋರಿಸುತ್ತೇನೆ” ಎಂದು ಹೇಳಿ, ಪತಿ ಘಟಿಕಾಂಜನಗಳನ್ನು ತರಿಸಿ ತೊನ್ನನ ಕಣ್ಣಿಗೆ ಲೇಪಿಸಿದನು. ಆ ಕ್ಷಣವೇ ತೊನ್ನನ ರೂಪ ಬದಲಾಗಿ ಸ್ವಾಭಾವಿಕ ರೂಪ ಬಂದಿತು. ಅಷ್ಟಾದರೂ ತನ್ನ ಪಟ್ಟು ಸಡಿಲಿಸದ ತೊನ್ನನು, “ಈ ತಳವಾರನಿಗೆ ಇಂದ್ರಜಾಲ ವಿದ್ಯೆ ಗೊತ್ತಿರುವುದರಿಂದ ಯಾವ ರೂಪವನ್ನಾದರೂ ತೋರಿಸಬಲ್ಲನು. ಆದ್ದರಿಂದ ಅವನ ಮಾತನ್ನು ನಂಬಬಾರದು” ಎಂದು ಬಲವಾಗಿ ವಾದಿಸತೊಡಗಿದನು ಅದನ್ನು ಖಂಡಿಸಿದ ಯಮದಂಡನು ಹಾಗಿದ್ದರೆ ಬೇರೆಯವರ ಮೇಲೆಯೂ ಅದನ್ನು ಪ್ರಯೋಗಿಸಿ ತೋರಿಸುವುದಾಗಿ ಹೇಳಿ, ಅರಸನ ಅನುಮತಿ ಪಡೆದು ಅರಸಿಯರ, ದಾಸಿಯರ ಮೇಲೂ ಘಟಿಕಾಂಜನವನ್ನು ಪ್ರಯೋಗಿಸಿ ಅವರನ್ನು ತೊನ್ನೆಯರಾಗುವಂತೆ ಮಾಡಿದ್ದಲ್ಲದೆ ಪುನಃ ಪ್ರತಿಘಟಿಕಾಂಜನವನ್ನು ಪ್ರಯೋಗಿಸಿ ಅವರಿಗೆ ಮೊದಲಿನ ರೂಪವೇ ಪ್ರಾಪ್ತವಾಗುವಂತೆ ಮಾಡಿದನು. ಅದನ್ನು ಪ್ರತ್ಯಕ್ಷ ಕಂಡ ಅರಸನು, “ಆ ತೊನ್ನನೇ ನಿಜವಾದ ಕಳ್ಳ, ಅವನನ್ನು ಈಗಲೇ ದಂಡಿಸು” ಎಂದು ಆಜ್ಞಾಪಿಸಿದನು.

ತಡಮಾಡದೆ ಯಮದಂಡನು ವಿದ್ಯುಚ್ಛೋರನನ್ನು ತನ್ನ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ, ಮಾಘಮಾಸದ ರಾತ್ರಿ ಚಳಿಯಲ್ಲಿ ಭಯಂಕರವಾದ ಮೂವತ್ತೆರಡು ಬಗೆಯ ದಂಡನೆಗಳಿಂದ ಶಿಕ್ಷಿಸಿದನು. ಅವೆಲ್ಲವನ್ನೂ ಸಹಿಸಿಕೊಂಡ ವಿದ್ಯುಚ್ಛೋರನು “ಅಯ್ಯೋ ನಾನು ಕಳ್ಳನಲ್ಲ, ಈ ತಳವಾರನು ಬಲವಂತವಾಗಿ ನನ್ನನ್ನು ವಿನಾಕಾರಣ ಕೊಲ್ಲುತ್ತಿದ್ದಾನಲ್ಲ!” ಎಂದು ಬೊಬ್ಬೆ ಹಾಕುತ್ತಿದ್ದನು. ಅದನ್ನು ನೋಡಿದ ತಳವಾರನಿಗೆ ಅವನು ಕಳ್ಳನಿರಲಿಕ್ಕಿಲ್ಲ ಎನ್ನುವ ಸಂದೇಹ ಮೂಡಿತು. ಬೆಳಗಾದೊಡನೆ ಅವನನ್ನು ಪುನಃ ಅರಸನ ಬಳಿಗೆ ಎಳೆದುಕೊಂಡು ಹೋಗಿ “ದೇವಾ ಮೂವತ್ತೆರಡು ಘನಘೋರವಾದ ದಂಡನೆಗಳಿಂದ ಇವನನ್ನು ಶಿಕ್ಷಿಸಿ ನೋಡಿದೆನು ಇವನು ಕಳ್ಳನಲ್ಲ. ನಾನು ಕಳ್ಳನನ್ನು ಪತ್ತೇಮಾಡುವಲ್ಲಿ ವಿಫಲನಾಗಿದ್ದೇನೆ. ತಾವು ನನಗೆ ಇಷ್ಟಬಂದ ದಂಡನೆ ವಿಧಿಸಬಹುದು” ಎಂದು ತನ್ನ ಸೋಲನ್ನು ಒಪ್ಪಿಕೊಂಡನು. ಅರಸನು ಯಮದಂಡನನ್ನು ಸ್ಮಶಾನಕ್ಕೆ ಎಳೆದುಕೊಂಡು ಹೋಗಿ ಅಲ್ಲಿ ಶೂಲಕೇರಿಸುವಂತೆ ಆಜ್ಞೆ ಮಾಡಿದನು.

ಇನ್ನೇನು ದಕ್ಕು ನೆಟ್ಟು ಶೂಲಕ್ಕೆ ಏರಿಸಬೇಕು ಎನ್ನುವಷ್ಟರಲ್ಲಿ ವಿದ್ಯುಚ್ಛೋರನು ತನ್ನ ರೂಪ ಬದಲಾಯಿಸಿಕೊಂಡು ಅಲ್ಲಿ ಪ್ರತ್ಯಕ್ಷನಾಗಿ ಶೂಲಕೇರಿಸಲು ಸಜ್ಜಾಗಿದ್ದ ಭಟರನ್ನು ತಡೆದು, “ಅಣ್ಣಗಳಿರಾ ನೀವು ಈಗಾಗಲೇ ಈತನನ್ನು ರಾಜಾಜ್ಞೆಯಂತೆ ಪರೋಕ್ಷವಾಗಿ ಶೂಲಕೇರಿಸಿದಂತಾಯಿತು ಸ್ವಲ್ಪ ತಡೆಯಿರಿ ಎಂದು ಹೇಳಿ, ಯಮದಂಡನನ್ನು ಉದ್ದೇಶಿಸಿ “ಎಲಹೋ ಯಮದಂಡ ನೀನೂ ನಾನೂ ಚಿಕ್ಕಂದಿನಲ್ಲಿ ಒಬ್ಬರೇ ಉಪಾಧ್ಯಾಯರ ಬಳಿ ಓದುತ್ತಿರುವಾಗ

ನಾವಿಬ್ಬರೂ ಶಪಥ ಮಾಡಿದ್ದನ್ನು ನೆನಪು ಮಾಡಿಕೋ ಯಾವ ದೋಷವೂ ಇಲ್ಲದೆ ನಿನ್ನನ್ನು ನಾನು ಪರೋಕ್ಷವಾಗಿ ಕೊಲ್ಲಿಸಿದನೋ ಇಲ್ಲವೋ?” ಎಂದು ಪ್ರಶ್ನಿಸಿದನು. ಅದಕ್ಕೆ ಯಮದಂಡನು “ಚೆನ್ನಾಗಿ ನೆನಪಿದೆ; ದೇವಾ ನೀನು ಗೆದ್ದೆ ನಾನು ಸೋತೆ ಹಾಗೂ ಸತ್ತೆ” ಎಂದು ಉತ್ತರಿಸಿದನು. ಇವರಿಬ್ಬರೂ ಆಡುತ್ತಿದ್ದ ಒಗಟು ಒಗಟಾದ ಮಾತುಗಳನ್ನು ಕಾಪಿನವರೂ, ಪಟ್ಟಣದ ಜನರೂ ಕೇಳಿ ಬೆರಗಾಗಲು ವಿದ್ಯುಚ್ಛೋರನು ತನ್ನನ್ನೂ, ಯಮದಂಡನನ್ನೂ ಮರಳಿ ಅರಸನ ಬಳಿಗೆ ಕರೆದುಕೊಂಡು ಹೋಗುವಂತೆ ಹೇಳಿದನು. ಕಾವಲಿನವರು ಹಾಗೇ ಮಾಡಿದರು. ಅಲ್ಲಿ ಅರಸನು ವಿದ್ಯುಚ್ಛೋರನಿಗೆ “ನೀನೇಕೆ ಈತನ ವಧೆಯನ್ನು ತಡೆದೆ? ಎಂದು ಪ್ರಶ್ನಿಸಿದನು. ಅದಕ್ಕೆ ವಿದ್ಯುಚ್ಛೋರನು “ಅರಸಾ, ಯಮದಂಡನು ತಪ್ಪಿತಸ್ಥನಲ್ಲ. ನಿಮ್ಮ ದೇವತಾ ರಕ್ಷಿತಮಸ್ಥ ಸರ್ವರುಜಾಪಹಾರದಿಂದ ಮೊದಲೊಂದು ಈ ಊರಿನಲ್ಲಿ ಕಳುವಾದ ಎಲ್ಲ ನಗನಾಣ್ಯಗಳನ್ನು ರಾತ್ರಿವೇಳೆ ನಾನೇ ಈ ರೂಪಿನಲ್ಲಿ ಕದ್ದು, ಹಗಲು ಹೊತ್ತಿನಲ್ಲಿ ಹಾಳು ದೇಗುಲದಲ್ಲಿ ತೊನ್ನನ ರೂಪಧರಿಸಿ ಇದ್ದುಬಿಡುತ್ತಿದ್ದೆ. ಆದ್ದರಿಂದ ನನ್ನನ್ನು ಕೊಲ್ಲಿರಿ” ಎಂದು ಬೇಡಿಕೊಂಡನು. ಆಗ ಅರಸನು “ಕದ್ದ ವಸ್ತು-ಒಡವೆಗಳನ್ನು ಏನು ಮಾಡಿದೆ ಎಂದು. ಅದಕ್ಕೆ ವಿದ್ಯುಚ್ಛೋರನು “ಎಲ್ಲವೂ ಹಾಗೆಯೇ ಇವೆ. ಸುಮಾರು ಐದುಸಾವಿರ ದೀನಾರಗಳನ್ನು ಮಾತ್ರ ಸೂಳೆಯರಿಗಾಗಿ ವೆಚ್ಚ ಮಾಡಿದ್ದೇನೆ” ಎಂದು ಹೇಳಿದನು. ಹಾಗಿದ್ದರೆ ಅವುಗಳನ್ನು ತಂದು ಒಪ್ಪಿಸು ಎಂದು ಅರಸನು ಆಜ್ಞಾಪಿಸಿದನು. ವಿದ್ಯುಚ್ಛೋರನು ಜನರೊಂದಿಗೆ ಗುಹೆಗೆ ಹೋಗಿ ಸಲ್ಲಬೇಕಿದ್ದ ಜನರಿಗೆ ಆಭರಣಗಳನ್ನು ಕೊಟ್ಟು ಸರ್ವರುಜಾಪ ಹಾರವನ್ನು ತಂದು ಅರಸನಿಗೆ ಒಪ್ಪಿಸಿದನು.

ಆಗ ಅರಸನು “ಮಾಘಮಾಸದ ಇರುಳಿನ ಶೀತದಲ್ಲಿ ನಾಲ್ಕು ಜಾವವೂ ಭಯಂಕರವಾದ ಮೂವತ್ತೆರಡು ದಂಡನೆಗಳನ್ನು ನೀನು ಹೇಗೆ ಸಹಿಸಿಕೊಳ್ಳಲು ಸಾಧ್ಯವಾಯಿತು? ಎಂದು ಪ್ರಶ್ನಿಸಿದನು. ಅದಕ್ಕೆ ವಿದ್ಯುಚ್ಛೋರನು – “ದೇವಾ ಚಿಕ್ಕಂದಿನಲ್ಲಿ ಒಂದು ದಿನ ನಾನೂ ನನಗೆ ಕಲಿಸುತ್ತಿದ್ದ ಉಪಧ್ಯಾಯರೂ ಕೂಡಿ ಸಹಸ್ರಕೂಟ ಚೈತ್ಯಾಲಯಕ್ಕೆ ದೇವರನ್ನು ವಂದಿಸಲೆಂದು ಹೋಗಿದ್ದೆವು. ಅಲ್ಲಿ ಶಿವಗುಪ್ತಾಚಾರ್ಯರೆಂಬವರು ಚರಿತ ಪುರಾಣಗಳನ್ನು ವ್ಯಾಖ್ಯಾನ ಮಾಡುತ್ತಿದ್ದರು. ಅವರ ವ್ಯಾಖ್ಯಾನವನ್ನು ಕೇಳುತ್ತಿರುವಾಗ ಅವರು ನರಕವನ್ನು ಹೀಗೆ ವರ್ಣಿಸುತ್ತಿದ್ದರು: “ವ್ರತಶೀಲ ಚಾರಿತ್ರ ಗುಣವಿಲ್ಲದವರು, ಜೀವಗಳನ್ನು ಕೊಲ್ಲುವವರು, ಕಳ್ಳತನ ಮಾಡುವವರು, ಪಂಚಮಹಾಪಾತಕಗಳನ್ನು ಮಾಡುವವರು ಸತ್ತು, ನಗರಕದಲ್ಲಿ ಹುಟ್ಟಿ ಅಪಾರವಾದ ದುಃಖಗಳನ್ನು ಅನುಭವಿಸುತ್ತಾರೆ. ಕೊಂತ ಈಟಿಗಳಿಂದ ಕರಳು ಕಿತ್ತು ಬರುವಂತೆ ಅವರನ್ನು ಕುತ್ತುತ್ತಾರೆ. ಆವಿಗೆಯಲ್ಲಿಟ್ಟು ಬೇಯಿಸುತ್ತಾರೆ, ಗರಗಸದಿಂದ ಮರವನ್ನು ಸೀಳುವಂತೆ ಸೀಳುತ್ತಾರೆ. ಇಂಥ ದುಃಖ, ಸಂಕಷ್ಟಗಳನ್ನು ಕಣ್ಣರೆಪ್ಪೆ ಹೊಡೆಯುವಷ್ಟಾದರೂ ಬಿಡುವಿಲ್ಲದೆ ಅವರು ಅನುಭವಿಸಬೇಕಾಗುತ್ತದೆ. ಆದರೆ ದಾನ, ಈಜೆ, ಶೀಲ ಉಪವಾಸವೆಂಬ ಚತುರ್ವಿಧ ಧರ್ಮಗಳಲ್ಲಿ ನಡೆಯುವವರು, ತಪಸ್ಸು ಮಾಡುವವರು ಸ್ವರ್ಗ, ಮೋಕ್ಷ ಸುಖಗಳನ್ನು ಅನುಭವಿಸುತ್ತಾರೆ ಎಂದು ಆಚಾರ್ಯರು ವಿವರಿಸಿದರು. ನಾನು ಅದನ್ನು ಕೇಳಿ, ಅವರ ಬಳಿಯೇ ದ್ವಾದಶ ವಿಧವಾದ ಶ್ರಾವಕ ಧರ್ಮವನ್ನೂ, ಅಂಬಹ್ರತ, ಗುಣವ್ರತಗಳನ್ನೂ ಕೈಕೊಂಡು ಬಂದೆ. ಈಗವಾದರೋ ನರಕಿಗಳ ದುಃಖಕ್ಕೆ ಸಂಕಟ್ಟಕ್ಕೆ ಹೋಲಿಸಿದರೆ ಅವುಗಳ ಶತಸಹಸ್ರ ಪಾಲಿಗೂ ಸಮನಲ್ಲ ಎಂದು ಭಾವಿಸಿಕೊಂಡು ಯಮದಂಡನು ನನಗೆ ಕೊಟ್ಟ ಶಿಕ್ಷೆಗಳನ್ನು ನಾನು ಸಹಿಸಿಕೊಂಡೆ” ಎಂದನು.

ಆಗ ಅರಸನು “ನಿನ್ನನ್ನು ನೋಡಿ ನನಗೆ ತುಂಬ ಮೆಚ್ಚಿಗೆಯಾಗಿದೆ. ನಿನಗೆ ಏನುಬೇಕು ಕೇಳು ಕೊಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದನು. ಪ್ರತಿಯಾಗಿ ವಿದ್ಯುಚ್ಛೋರನು “ನನಗೇನು ಬೇಡ ಪ್ರಭು, ನನ್ನ ಗೆಳೆಯನಾದ ಯಮದಂಡನನ್ನು ಕ್ಷಮಿಸಬೇಕು ಅಷ್ಟೆ” ಎಂದನು. ಆಗ ಮತ್ತೆ ಅರಸನು ಯಮದಂಡನು ನಿನಗೆ ಎಲ್ಲಿ ಹೇಗೆ ಗೆಳೆಯ? ಶ್ರಾವಕ ಧರ್ಮವನ್ನು ಕೈಕೊಂಡಿದ್ದ ನೀನು ಏಕೆ ಕಳ್ಳತನ ಮಾಡಿದೆ? ಎಂದು ಕುತೂಹಲದಿಂದ ಕೇಳಿದನು. ಅದಕ್ಕೆ ವಿದ್ಯುಚ್ಛೋರನು ತನ್ನ ಪೂರ್ವವೃತ್ತಾಂತವನ್ನು ವಿವರಿಸಿದ್ದು ಹೀಗೆ :

ಈ ಜಂಬೂದ್ವೀಪದ ಭರತಕ್ಷೇತ್ರ ತಿಲಕದಂತೆ ದಕ್ಷಿಣ ಪಥದಲ್ಲಿ ಆಭೀರ ಎಂದ ನಾಡಿದೆ. ಅಲ್ಲಿ ವರ್ಣ ಎಂಬ ನದಿಯ ದಡದಲ್ಲಿ ವೇಣಾತಟವೆಂಬ ಪಟ್ಟಣವಿದೆ. ಅದನ್ನು ಆಳುವ ಅರಸ ಜಿತಶತ್ರು, ಆತನ ಮಹಾದೇವಿ ವಿಜಯಮತಿ.



ಅವರಿಬ್ಬರ ಮಗ ನಾನು; ವಿದ್ಯುಚ್ಛೋರ. ಅದೇ ನಗರದ ಯಮಪಾಶವೆಂಬ ತಳವಾರ ಮತ್ತು ಅವನ ಹೆಂಡತಿ ನಿಜಗುಣದೇವತೆಯರಿಗೆ ಮಗ ಈತ ಯಮದಂಡ. ನಾವಿಬ್ಬರೂ ಸಮಾನ ವಯಸ್ಕರು. ಐದಾರು ವರ್ಷದವರಿದ್ದಾಗ ಸಿದ್ಧಾರ್ಥರೆಂಬ ಉಪಾಧ್ಯಾಯರ ಬಳಿ ವ್ಯಾಸಂಗಕ್ಕೆಂದು ನಿಂತೆವು. ಏಳೆಂಟು ವರ್ಷದಲ್ಲಿ ಸಕಲ ವಿದ್ಯೆಗಳನ್ನು ಕಲಿತೆವು. ನಂತರ ತಳವಾರನ ಮಗನಾದ ಯಮದಂಡನು ಕಳ್ಳರನ್ನು ಪತ್ತೇಮಾಡುವ ಸುರಖವೆಂಬ ವಿದ್ಯೆಯನ್ನು ವಿಶೇಷವಾಗಿ ಕಲಿತನು. ನಾನೋ ಕದಿಯುವ ಉಪಾಯಗಳನ್ನು ಕಲಿಸುವ ಕರಪಟಶಾಸ್ತ್ರವನ್ನು ಕಲಿತೆನು.

ಒಂದು ದಿನ ನಾವಿಬ್ಬರೂ ವನಕ್ರೇಡೆಗೆಂದು ಇಂದ್ರೋಪಮವೆಂಬ ವನಕ್ಕೆ ಹೋಗಿ ಮರಗಿಡಗಳ ನಡುವೆ ಮುಳುನೆಂಡಾಟವಾಡುತ್ತಿದ್ದೆವು. ಯಾರಿಗೂ ಕಾಣಿಸದಂತಿರುವ ಅಲೋಕನ ವಿದ್ಯೆಯನ್ನು ಯಮದಂಡ ಬಲ್ಲವನಾದುದರಿಂದ ಎಲ್ಲೋ ಅವಿತುಕೊಂಡ ನಾನು ಎಲ್ಲೆಲ್ಲೋ ಹುಡುಕಿ ಬೇಸತ್ತು “ಮಗನೇ ಆಗಲಿ. ನೀನು ತಳವಾರನಾದಾಗ ನಿನ್ನ ಕಾಪಿನ ಪ್ರದೇಶದಲ್ಲೇ ಕದ್ದು ನಿನ್ನನ್ನೇ ಕೊಲ್ಲಿಸದಿದ್ದರೆ ಆಗ ಕೇಳು” ಎಂದು ಪ್ರತಿಜ್ಞೆ ಮಾಡಿದೆ. ಇವನೂ ಮಗನೇ ನಾನು ತಳವಾರಿಕೆ ಮಾಡುವಾಗ ಕದ್ದದ್ದೇ ಆದರೆ ನಿನ್ನನು ಹಿಡಿದು ಕಟ್ಟಿ ಕಳ್ಳರ ದಂಡನೆಗಳಿಂದ ನಿನ್ನನ್ನು ದಂಡಿಸಿಯೇತೀರುತ್ತೇನೆ ನೋಡು. ಈ ಮಾತು ನೆನಪಿರಲಿ” ಎಂದು ಒಬ್ಬರಿಗೊಬ್ಬರು ಮೂದಲಿಸಿಕೊಂಡು ಊರಿಗೆ ಹಿಂತಿರುಗಿದೆವು.

ಕೆಲಕಾಲ ಕಳೆದ ನಂತರ ನನ್ನ ತಂದೆ ನನಗೆ ರಾಜ್ಯ ಪಟ್ಟ ಕಟ್ಟಿ ಭಟಾರರ ಬಳಿಗೆ ತಪಸ್ಸಿಗೆ ನಿಂತನು. ಯಮದಂಡನ ತಂದೆಯೂ ಮಗನಿಗೆ ತನ್ನ ಅಧಿಕಾರವಹಿಸಿಕೊಟ್ಟು ಅರಸನೊಂದಿಗೆ ತಪಸ್ಸಿಗೆ ಹೋದನು. ಈತನಿಗೆ ಆಮೇಲೆ ರಾಜನು ಕಳ್ಳತನ ಬಲ್ಲವನಾಗಿದ್ದಾನೆ. ತಾನು ಈ ಪಟ್ಟಣದಲ್ಲಿ ತಳವಾರಿಕೆ ಮಾಡುವುದು ಯುಕ್ತವಲ್ಲ” ಎಂದು ಅನ್ನಿಸಿ ನನಗೆ ಹೆದರಿಸಿಕೊಂಡು ಆ ನಾಡನ್ನೇ ತೊರೆದು ಇಲ್ಲಿಗೆ ಬಂದು ನಿಮ್ಮ ಬಳಿ ಕೆಲಸಕ್ಕೆ ನಿಂತನು. ನಾನು ಅವನು ಎಲ್ಲಿ ಹೋಗಿದ್ದಾನೆಂದು ಚರರ ಮೂಲಕ ತಿಳಿದು, ವಜ್ರಸೇನನೆಂಬ ಹೆಗ್ಗಡೆಗೆ ರಾಜ್ಯಭಾರವನ್ನು ಒಪ್ಪಿಸಿ, ಅರ್ಧರಾತ್ರಿಯಲ್ಲಿ ಚಿಂದಿಯುಟ್ಟು ಯಾರೂ ತಿಳಿಯದಂತೆ ಒಬ್ಬನೇ ಹೊರಟು ಇಲ್ಲಿಗೆ ಬಂದು ಸೇರಿದೆ ಮತ್ತು ನನ್ನ ಪ್ರತಿಜ್ಞೆಯನ್ನು ಪೂರೈಸಿಕೊಳ್ಳುವುದಕ್ಕಾಗಿ ಕಳ್ಳತನ ಮಾಡಿ, ಈ ಯಮದಂಡನನ್ನು ಕೊಲ್ಲಿಸುವಂತೆ ಮಾಡಿದೆ.

ವಿದ್ಯುಚ್ಛೋರನು ಹೇಳಿದ ಈ ವೃತ್ತಾಂತವನ್ನು ಕೇಳಿ ಅರಸನು, “ಆ 'ಸರ್ವರುಜಾಪಹಾರ' ಎನ್ನುವ ಹಾರವು ನಿನ್ನ ಬಳಿಗೆ ಹೇಗೆ ಬಂದಿತೆಂದು ಪ್ರಶ್ನಿಸಿದನು. ಅಷ್ಟೊತ್ತಿಗೆ ಅಲ್ಲಿಗೆ ಬಂದ ಒಂಟಿಯ ಹರಿಕಾರರು ತಂದಿದ್ದ ಪತ್ರದ ಮೂಲಕ ವಿದ್ಯುಚ್ಛೋರನನ್ನು ಒಬ್ಬ ಮಂಡಳಿಕ ಅರಸನೆಂಬುದು ತಿಳಿಯಿತು. ಅರಸನು ಆಗ ತನ್ನ ಆಸನಕ್ಕೆ ಸಮಾನವಾದ ಇನ್ನೊಂದು ಆಸನವನ್ನು ಹಾಕಿಸಿ ಅದರ ಮೇಲೆ ವಿದ್ಯುಚ್ಛೋರನನ್ನು ಕುಳ್ಳಿರಿಸಿ” ಅಪ್ಪಾ ನೀನು ನನ್ನ ತಂಗಿಯ ಮಗ, ಸೋದರಳಿಯ. ನನ್ನ ಪ್ರಾಪ್ತ ವಯಸ್ಸಿನ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಮದುವೆ ಮಾಡಿಕೋ ಎಂದು ಕೋರಿಕೆ ಇಟ್ಟನು. ಅದಕ್ಕೆ ವಿದ್ಯುಚ್ಛೋರನು ನಾನು ಈಗಾಗಲೇ “ಮುಕ್ತಿ” ಎಂಬ ವನಿತೆಯನ್ನು ಪ್ರೀತಿಸಿದ್ದೇನೆ. ಆಕೆಯನ್ನೇ ವಿವಾಹವಾಗುತ್ತೇನೆ. ನೀವು ಈ ನನ್ನ ಗೆಳೆಯ ಯಮದಂಡನನ್ನು ಒಪ್ಪಿಸಿ ಅವನಿಗೆ ಮದುವೆ ಮಾಡಿರಿ” ಎಂದನು. ಅರಸನೂ ಅದಕ್ಕೆ ಒಪ್ಪಿದನು. ನಂತರ ಅಲ್ಲಿಂದ ಹೊರಟ ವಿದ್ಯುಚ್ಛೋರ ಯಮದಂಡನೊಂದಿಗೆ ಒಂಟಿ ಹತ್ತಿಕೊಂಡು ಪ್ರಯಾಣ ಮಾಡುತ್ತ ವೇಣಾತಟವನ್ನು ಸೇರಿದನು. ಇವರು ಆಗಮಿಸುತ್ತಿರುವುದನ್ನು ತಿಳಿದ ಪುರಜನರು, ಊರ ಹೊರವಲಯದ ಉದ್ಯಾನವನದಲ್ಲಿ, ಊರಲ್ಲಿ ಅಷ್ಟಶೋಭೆಗಳಿಂದ ಅಲಂಕರಿಸಿದರು. ಮಂತ್ರಿ, ಸಾಮಂತರು ಬಂದು ಅವರ ಕಾಲಿಗೆ ಸೇಸೆಯನ್ನು ಸೂಸಿದರು. ಪಟ್ಟದಾನೆಯನ್ನು ಹತ್ತಿಕೊಂಡು ಪುರ ಪ್ರವೇಶ ಮಾಡಿದ ವಿದ್ಯುಚ್ಛೋರ ಅರಸನು ಮರುದಿವಸ ಆಸ್ಥಾನ ಮಂಟಪದಲ್ಲಿ ಮಂತ್ರಿ, ಮಾನ್ಯರ, ಸಾಮಂತರ, ಅರಸಿಯರ ಸಭೆ ಕರೆದು ಅವರ ಮುಂದೆ “ನಾನು ಈ ಸಂಸಾರದ ಭೋಗೋಪಭೋಗಗಳಿಗೆ ಬೇಸತ್ತಿದ್ದೇನೆ. ವಿರಕ್ತಿಯಿಂದ ತಪಸ್ಸಿಗೆ ಹೋಗಲು ನಿರ್ಧರಿಸಿದ್ದೇನೆ” ಎಂದು ಹೇಳಿದನು. ಅದನ್ನು ಕೇಳಿದ ಅವರೆಲ್ಲ ಒಕ್ಕೂರಲಿನಿಂದ “ಎಲ್ಲಾದರೂ ಉಂಟೇ? ನೀನಿನ್ನೂ ಹುಡುಗ; ನವಯುವಕ. ಸ್ವಲ್ಪಕಾಲ ರಾಜ್ಯವಾಳಿದ ಮೇಲೆ ತಪಸ್ಸಿನ ಆಲೋಚನೆ ಮಾಡಬಹುದು” ಎಂದರು. ಅದಕ್ಕೆ ಅರಸನು

“ಯಾವಾಗ ಸಾಯುತ್ತೇವೋ ಯಾರು ಬಲ್ಲರು. ಆಯುಷ್ಯವೆನ್ನುವುದು ನೋರೆಯ ಮುದ್ದೆ ಇದ್ದ ಹಾಗೆ. ರೂಪ-ಯೌವನಗಳು ಕಾಮನಬಿಲ್ಲಿನಷ್ಟೆ ಅನಿತ್ಯ. ಇನ್ನು ದೇಹವೋ ದುರ್ಗಂಧ, ಅಸಹ್ಯ, ದುಷ್ಟತೆ, ಅತಿಯಾದ ಕ್ಲೇಶಗಳಿಗೆ ಆಗರ. ಆದ್ದರಿಂದ ಅದನ್ನು ನಂಬಲಾಗದು. ಅಷ್ಟೇ ಅಲ್ಲ, ನಾನು ಆಳುವವನು, ನೀವೆಲ್ಲ ಆಳಿಸಿಕೊಳ್ಳುವುದಕ್ಕೆ ಇರುವವರು ಎನ್ನುವ ತರತಮ ಭಾವದಿಂದ ನಿಮಗೇನಾದರೂ ಹೀನಾಯವಾಗಿ ಮಾತಾಡಿ ನಿಮ್ಮ ಮನಸ್ಸನ್ನು ನೋಯಿಸಿದ್ದರೆ ದಯವಿಟ್ಟು ಅದನ್ನು ಮರೆತುಬಿಡಿ. 'ಸರ್ವಜೀವಗಳನ್ನೂ ನಾನು ಕ್ಷಮಿಸುತ್ತೇನೆ, ಸರ್ವಜೀವಗಳು ನನ್ನನ್ನು ಕ್ಷಮಿಸಲಿ' ಮುಂತಾಗಿ ಹೇಳಿ ತನ್ನ ಹಿರಿಯ ಮಗ ವಿದ್ಯುದಂಗನಿಗೆ ರಾಜ್ಯದ ಪಟ್ಟಕಟ್ಟಿ ನೀವೆಲ್ಲ ಈತನನ್ನು ಅನುಸರಿಸಿ ಬಾಳಿರಿ ಎಂದು ಸಭಿಕರಿಗೆ ಹೇಳಿ, ಯಮದಂಡನಿಗೆ ಪಟ್ಟಣದ ತಳವಾರಿಕೆಯನ್ನು ಒಪ್ಪಿಸಿಕೊಟ್ಟನು. ತಾನು ಪಟ್ಟದಾನೆಯನ್ನೇರಿ ಸತಿಯರೊಂದಿಗೆ, ಸಮಸ್ತ ರಾಜ್ಯಚಿಹ್ನೆಗಳೊಂದಿಗೆ ತುಷ್ಟಿದಾನ ಮಾಡುತ್ತ ಸಹಸ್ರಕೂಟ ಚೈತ್ರಾಲಯಕ್ಕೆ ಹೋದನು.

ಅಲ್ಲಿ ದೇವರಿಗೆ ವಂದಿಸಿ, ಗುಣಧರರೆಂಬ ಆಚಾರ್ಯರ ಬಳಿ ಕುಳಿತು “ಭಟಾರಾ, ಸಂಸಾರವೆಂಬ ಸಮುದ್ರದಲ್ಲಿ ಮುಳುಗಿಹೋಗುತ್ತಿದ್ದೇನೆ. ದಯತೋರಿ ಮೇಲಕ್ಕಿತ್ತಿರಿ ನನಗೆ ದೀಕ್ಷೆಯನ್ನು ಕೊಡಿರಿ” ಎಂದು ಬೇಡಿ ಅವರ ಅನುಮತಿ ಪಡೆದು, ಸಾವಿರಜನ ಇತರ ಅರಸುಮಕ್ಕಳೊಂದಿಗೆ ಎಲ್ಲವನ್ನೂ ತ್ಯಾಗಮಾಡಿ ದೀಕ್ಷೆ ಪಡೆದು ತಪಸ್ವಿಯಾದನು. ಮುಂದೆ ಮುನಿಯಾಗಿ ಹನ್ನೆರಡು ವರ್ಷಗಳ ಕಾಲ ಗುರುಗಳ ಬಳಿ ದ್ವಾದಶಾಂಗ, ಆಗಮಗಳನ್ನೆಲ್ಲ ಅಧ್ಯಯನ ಮಾಡಿ ಆಚಾರ್ಯರಾದರು. ಐನೂರು ಜನ ಶಿಷ್ಯರೊಂದಿಗೆ ಸಂಚರಿಸುತ್ತ ಪೂರ್ವದೇಶದ ಖಾಳಿಮಂಡಳವೆಂಬ ನಾಡಿನ ತಾಮ್ರಲಿಪ್ಪಿ ಎಂಬ ಪಟ್ಟಣವನ್ನು ಸೇರಿ ಊರ ಹೊರಗಿನ ಉದ್ಯಾನದಲ್ಲಿ ತಂಗಿದರು. ಅಲ್ಲೊಬ್ಬಳು ವರಾಂಗಾಯಿ ಎಂಬ ಉಗ್ರದೇವತೆ ನೆಲೆಸಿದ್ದಳು. ಪ್ರತಿ ಆರು ತಿಂಗಳಿಗೊಮ್ಮೆ ಅವಳಿಗೆ ಜಾತ್ರೆ, ಉತ್ಸವ ಜರುಗಬೇಕು. ಆ ದುರ್ಗಾದೇವತೆ ವಿದ್ಯುಚ್ಛೋರ ರಿಸಿಯರ ಆಗಮನವನ್ನು ತಿಳಿದು ಅವರ ಬಳಿಗೆ ಹೋಗಿ, “ನನ್ನ ಜಾತ್ರೆ ಉತ್ಸವ ಮುಗಿಯುವವರೆಗೆ ನೀವು ಈ ಪಟ್ಟಣಕ್ಕೆ ಬರಬೇಡಿ” ಎಂದು ಅಡ್ಡಿ ಪಡಿಸಿದಳು ಆದರೆ ವಿದ್ಯುಚ್ಛೋರ ಮುನಿಗಳ ಶಿಷ್ಯರು” ಈ ದೇವತೆ ನಮ್ಮನ್ನು ಏನುತಾನೆ ಮಾಡಿಯಾಳು? ಬನ್ನಿ ಭಟರಾ ಹೋಗೋಣ ಎಂದು ಅವಳು ಅಡ್ಡಿಪಡಿಸುವುದನ್ನು ತಿರಸ್ಕರಿಸಿ ಪಟ್ಟಣವನ್ನು ಪ್ರವೇಶಿಸಿದರು.

ಆ ಪಟ್ಟಣದ ಉದ್ಯಾನದಲ್ಲಿ ವಿದ್ಯುಚ್ಛೋರ ಭಟಾರರು ರಾತ್ರಿ ಪ್ರತಿಮಾಯೋಗದಲ್ಲಿ ನಿಂತರು. ಅದರಿಂದ ದೇವತೆ ಕುಪಿತಳಾಗಿ ಪಾರಿವಾಳಗಳಷ್ಟು ಗಾತ್ರದ ಸೊಳ್ಳೆಗಳನ್ನು ಸೃಷ್ಟಿಸಿ ಅವರ ಮೇಲೆ ಬಿಟ್ಟಳು. ಅವು ನಾಲ್ಕು ಜಾವಗಳವರೆಗೂ ಪೂರ್ತಿಯಾಗಿ ಮುನಿಯ ಮೈಯನ್ನು ಕಿತ್ತು ಕಿತ್ತು ತಿಂದವು. ನರಕವೇದನೆಗಿಂತಲೂ ಅಸದಳವಾದ ವೇದನೆಯನ್ನುಂಟು ಮಾಡಿದವು. ಆ ಯಾತನೆಯನ್ನೆಲ್ಲ ಸೈರಿಸಿದ ಆ ಮುನಿ ಧರ್ಮವನ್ನು ಧ್ಯಾನಿಸಿ, ಬಳಿಕ ಶುಕ್ಲ ಧ್ಯಾನಗಳನ್ನು ಧ್ಯಾನಿಸಿ, ಘಾತಿ, ಅಘಾತಿ ಕರ್ಮಗಳನ್ನು ಕೆಡಿಸಿ ಮೋಕ್ಷಕ್ಕೆ ಸಂದರೆಂದೂ ಅಂತೆಯೆ ಭವ್ಯರು ವಿದ್ಯುಚ್ಛೋರ ಋಷಿಗಳನ್ನು ಮನಸ್ಸಿನಲ್ಲಿರಿಸಿಕೊಂಡು ದಂಡನೆ, ವ್ಯಾಧಿ, ಉಪಸರ್ಗ, ಹಸಿವು, ಬಾಯಾರಿಕೆ ಮುಂತಾದ ಯಾತನೆಗಳನ್ನೆಲ್ಲ ಸೈರಿಸಿ, ರತ್ನತ್ರಯವನ್ನು ಸಾಧಿಸಿ ಸ್ವರ್ಗಸುಖವನ್ನು ಪಡೆಯಲಿ ಎನ್ನುವುದು ಈ ಕಥೆಯ ಧ್ಯೇಯವಾಗಿದೆ.

ಆದರೆ ಕಥೆಯ ತಂತ್ರ ಮತ್ತು ವಿನ್ಯಾಸವನ್ನು ಸೂಕ್ಷ್ಮವಾಗಿ ಗಮನಿಸಿದರೆ ಅದು ಲೌಕಿಕ ನೆಲೆಯಲ್ಲಿ ಕಣ್ಣೆರೆದು ಅದೇ ಪರಿಸರದ ಕುತೂಹಲ ಭರಿತವಾದ ಕಥನತಂತ್ರದೊಂದಿಗೆ ವಿನ್ಯಾಸಗೊಂಡು ಕೊನೆಗೆ ಪಾರಮಾರ್ಥಿಕ ನೆಲೆಯಲ್ಲಿ ವಿರಮಿಸುವುದು ನಿಚ್ಚಳವಾಗಿ ಕಾಣುತ್ತದೆ. ಸುಕುಮಾರಸ್ವಾಮಿ ಕಥೆಯ ಉಪಕಥೆಯಾಗಿ ಬರುವ ಸುಮತಿ ಹೇಳಿದ ಸುದಾಮೆಯ ಕಥೆಯಲ್ಲಿಯಂತೆ ಈ ವಿದ್ಯುಚ್ಛೋರನ ಕಥೆಯಲ್ಲಿಯೂ ನ್ಯಾಯಾನ್ಯಾಯದ ಸೂಕ್ಷ್ಮಗಳನ್ನು ಪರಿಭಾವಿಸಿ ತೀರ್ಪು ನಿಡುವ ಅಧಿಕಾರವಿರುವುದು ಅರಸನಿಗೆ ಮಾತ್ರ. ಆ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಈ ಕಥೆಯಲ್ಲಿ ಬರುವ ವಾಮರಥನೇ ಇಲ್ಲಿ ನ್ಯಾಯಾಧೀಶ. ಯಮದಂಡನೆಂಬ ತಳವಾರನೇ ಆಡಳಿತ ವ್ಯವಸ್ಥೆಯಿಂದ ನಿಯೋಜನೆಗೊಂಡ ಪತ್ತೇದಾರ

ಮತ್ತು ಸಮರ್ಥವಾಗಿ ವಾದ ಮಂಡಿಸುವ ವಕೀಲ. ವಿದ್ಯುಚ್ಛೀರ ಅಪರಾಧಿ ಮತ್ತು ತನ್ನ ಮೇಲಿನ ಆರೋಪ ಸುಳ್ಳೆಂದು ಸ್ವತಃ ಸಾಧಿಸಬಲ್ಲ ಪ್ರತಿವಾದಿ, ಕೊನೆಗೂ ನಿರಪರಾಧಿಗೆ ಶಿಕ್ಷೆಯಾಗಬಾರದೆಂದು ತನ್ನ ಅಪರಾಧವನ್ನು ಒಪ್ಪಿಕೊಂಡು ಮರಣದಂಡನೆಗೆ ಸಿದ್ಧವಾಗಿ ಬಾಲ್ಯ ಸ್ನೇಹಿತ ಯಮದಂಡ ಹಾಗೂ ತನ್ನ ಮಧ್ಯೆ ನಡೆದ ಪ್ರತಿಜ್ಞೆಯನ್ನು ಈಡೇರಿಸಿಕೊಂಡ ಛಲಗಾರ, ಧೈಯವಾದಿ. ನಿರಪರಾಧಿಗೆ ಶಿಕ್ಷೆಯಾಗಬಾರದು, ನ್ಯಾಯಾಲಯ ನಿಜವಾದ ಅಪರಾಧಿಯನ್ನು ಗುರುತಿಸುವುದಕ್ಕೆ ಸರಿಯಾದ ಸಾಕ್ಷ್ಯಾಧಾರಗಳನ್ನು ಒದಗಿಸಲು ಕಾಲಾವಕಾಶ ನೀಡಬೇಕು. ಅಂದರೆ ಮಾತ್ರ ಸರಿಯಾದ ನ್ಯಾಯ ಸಿಗುವುದು ಎಂಬಿತ್ಯಾದಿ ಕಾನೂನು ಮೌಲ್ಯಗಳು ಪ್ರಸ್ತುತ ಎರಡೂ ಕಥೆಗಳಲ್ಲಿ ಅಂತರ್ನಿಹಿತವಾಗಿರುವುದು ಒಳನೋಟದ ಓದಿಗೆ ದಕ್ಕುವ ವಿಷಯವಾಗಿದೆ.

