

# WOMAN IN BHADRABAHU SAMHITA – THE ANCIENT JAIN LAW

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Man, and women are two wheels of the chariot of life. It is impossible to think of welfare of men or women independent of each other. It is nature that has made them dependent on each other. Their set of responsibilities has been differentiated for the sake of successful running of the society. Indian society has a culture of respecting women, be it Hindu community, Sikh, Christianity or Jain community. Status of the woman in ancient Indian society was dignified or not, is the main research question. The author shall explore the ancient Indian Law book Bhadrabahu Samhita for the purpose of this study. Verses from Bhadrabahasamhita explain Jaina Law of succession, inheritance and property for disowned son, wife, adopted son etc. The verses from the book have been studied to correlate the content with the variables associated with dignity of woman in that era. This will give us a clear picture of the social as well as legal status of Indian woman in the ancient era. Till now the researches have discussed either legal rights or social dignity only. Proposed research aims at combining the two elements of her status. This knowledge may contribute to improve the present status of Indian society which looks at women with a lower dignity. The research outcome may wake up the sleeping female community and make them aware of their rights of succession and inheritance in parental property. Just the slogan 'नार्यस्तु यत्र पूज्यन्ते, रमन्ते तत्र देवताः' is not enough, we need to prove that this social statement was supported by a strong legal system for the other half of the society, hence this research has a strong rationale behind it.

**Keywords:** Bhadrabahu Samhita, Indian law, woman, dignity of women, Jaina law, Jainism, law, Jaina ethics, Jain Modernism.

## INTRODUCTION

Law and morality are though mixed in such research efforts but we will have to draw a thin line defining morality and law differently. In fact morality comes first in the priority list because all laws are based on morality. Law is an essential constituent of the whole life of a community. It not only looks at the material affairs of the public but also common morale like on stealing, non violence are also established through it which make the world comfortable and secure to live for a human being. Books like Bhadrabahu Samhita and Tirukkural can be called Manusmriti of Jainism. Bhadrabahu Samhita has been consulted for understanding of Jaina Law.

## OBJECTIVE OF THE STUDY

Objective of this study is to bring forward the rights of women in the ancient Jain era and check if they have been portrayed correctly to the public or a misleading picture has been created by arbitrary findings and ignorant misinterpretations. The community has the right to know how our legal practitioners in ancient time used to make the women benefitted by making them exercise their legal rights. Also this paper may work as a mirror of Jaina Law to the community of Janis and Law experts.

## METHODS AND MATERIALS

The research is historical by nature. Ancient Jain literature has been consulted from the ancient Jain literature. A few books and research papers by experts of Law have also been studied. Bhadrabahu Samhita is the main source of information on law in Jainism. Original as well as the translated text has been analyzed to describe the Jaina Law for women.

## LAW OR CODE OF CONDUCT IN JAIN LITERATURE

Peter Flugel has come up with an interesting definition of Jain Law which is worth quoting here when we study Jainism, he clearly defines Jain Law in his paper, 'Short History Of Jaina Law' when he says, " In a more specific sense it points to the totality of conventions (vyavahāra) and law codes (vyavasthā) in Jaina monastic and lay traditions.<sup>2</sup> Sanskrit vyavasthā and its Arabic and Urdu equivalent qānūn both designate a specific code of law or legal opinion/decision, whereas Sanskrit dharma can mean religion, morality, custom and law. (iii) The modern Indian - legal system is primarily concerned with the 'personal law' of the Jaina laity. In Anglo-Indian

case law, the term 'Jaina law' was used both as a designation for 'Jain scriptures' (śāstra) on personal law, and for the unwritten 'customary laws' of the Jains, that is the social norms of Jain castes (jāti) and clans (gotra).<sup>1</sup>

The above excerpt uses the two terms- 'Vyavastha' and 'Qanun' which indicate a system or a code of conduct. The Urdu term Qanun stands for law as a translation from Urdu to English. Hence we can say that the concept of Jain Law in the ancient Jain literature has been supported by modern scholars also.

"In 1916, Barrister Jagomandar Lal Jaini (1881-1927) published a translation of Bhadrabahu Samhita, which went on to form the basis of modern Jain law." The details on Wikipedia share how he went for a case in which Jain religious and legal scriptures were quoted. This effort told the world that Jain community has an independent law for its people. Champat Rai Jain (1917) was another scholar who gave a definite shape to Jaina law in his prominent book on Jain law. But somehow. In 1955, the Government of India dissolved Jain law and the Jain community came under Hindu Law. Till today the scenario has not changed for the community.<sup>2</sup>

Jaini in 1916 felt that Hindu and Jain laws are being ignored by the government, He expresses so in the publisher's note of the book('The Jaina Law:Bhadrabahu Samhita) on Jaina Law, "In theory some queer and absurd prepositions of law and history have crept into law books and law reports that the Jainas are Hindu dissenters and that they have no law of their own." He gives authentic details from the great book Bhadrabahu Samhita which at that time was preserved somewhere in Jhalarpatan. Unfortunately name of the library etc. are not available in the notes.<sup>3</sup>

"The Jains acknowledge the authority of a Digest of their laws contained in a work known as the 'Bhadrabahu Samhita' stated to have been compiled in the third century B.C." This statement was made during the settlement of a court case Allahabad High Court in October, 1927. The case is available at Indiakanoon.org which confirms the separate entity of Jain Law in India in that era. The case was about a dispute over parental property where married and unmarried daughters, both have same and equal rights. The counsel referred to Champat Rai's book 'The Jaina Law' for this case from page 109 where a verse is translated saying that the mother's property goes to the daughter whether married or unmarried. But unfortunately this single text was not considered sufficient to suffice the requirements of the law.<sup>4</sup>

## WOMAN IN BHADRABAHU SAMHITA

Jaini's words are worth quoting here, "Jainas if they are not now, have been a united body of men and women in the past. They had a law of their own. It is not altogether lost. It is buried in the mass of our literature and tradition but it is there all right." Infact he opines that Jainas evolved a system of jurisprudence, which was in cordial harmony with the essential theological and moral teachings of Jainism. This law grew out of this inner necessity of their corporate life. He is also of the view that the spirit of Jaina Law remains as distinct from that of the law of Brahmins and others, as Jainism is different from the religion of Vedas, Upanishads and Puranas. Jain heritage also has a book 'Bhadrabahu Samhita'<sup>3</sup> that gives the ancient and authoritative law texts of the important Jaina people. In the book Jaina law covers mainly

Law of Succession : In chapter 1, verse 4 of Bhadrabahu Samhita explains the law of inheritance and partition. "पित्रोरुर्ध्वं भ्रातरस्ते समेत्य वसु पैत्रिकिम,विभजेरनसमं सर्वं जीवितो पितुरिच्छया" meaning "on the death of father and mother, all the brothers get together the patrimony and divide it equally among themselves. But during the lifetime of father (the brothers take only). According to the desire of the father." This verse holds the right of inheritance for sons only, not for the daughters. (verse 5) Among sons also eldest son had the maximum right on the property as his father : " ज्येष्ठ एव हि गृहणीयापित्यंच धनमशेषतः, अन्य तदनुसारित्वं भजेयुःपितरं यथा" meaning "The eldest son alone takes the remaining property of the father. Other brothers, looking upon the eldest son as a father should live in accordance with his wishes." In verse 10 the elder brother has been instructed to treat his younger brothers as their father only - ज्येष्ठोऽविभक्तभ्रात्रिन वै पिता एव परि पालियेत". Also divided brothers live separately each with his own family.- विभक्ता भ्रातरो भिन्नस्तिष्ठन्तु सपरिच्छदाः" There are many verses which clearly decline the right of daughter in father's property even if she is eldest, son born after her will inherit the property(Verse 21). Among twin born sons, the first born has the privilege to be the eldest (verse 20). In case of no son, the daughter and her son inherit the property (verse 22) and daughter's

<sup>1</sup> Peter Flügel, 'Short History of Jaina Law' International Journal of Jaina Studies Vol. 3, No. 4 (2007) pp 1-15.

<sup>2</sup> En.wikipedia.org/wiki/Jain\_law, retrieved on 13th November, 2019.

<sup>3</sup> J L Jaini, 'The Jaina Law: Bhadrabahu Samhita' The Central Jaina Publishing House, Arrah & Butterworth & Co. Ltd, Calcutta, 1916

<sup>4</sup> Indiakanoon.org/doc/1663729/, retrieved on 12th November, 2019.

sons are to be treated like sons only (verse 23). At length questions of daughter's right in the property have been discussed and justifications have been made. The seekers may please consult 'Bhadrabahu Samhita'. Interestingly son born from Brahman woman is also specified to have some special rights in the property (Verse 29) so the effect of casticism in these laws can be seen. Brahmin mother's son gets four parts, kshitraya's son, three parts, two by waishya's son, tenth part is kept for religious purposes.

Law of property : In verse 12 the property has been defined and divided into two parts 'स्थावर' and 'जंगम'. स्थावर is immovable property (land etc.) And जंगम is movable (silver, gold, clothes, ornaments, women, cattle etc.). It is to be pointed out that woman was considered a property just like cattle. Immovable property was not subject to partition (स्थावर न विभागार्ह) in Jain law. Such a thought among the brothers was not encouraged, they were supposed to make adjustments accordingly. All brothers from the movable property that is to be partitioned should give some portion to the eldest brother and then divide the remainder equally among them. Daughters (married or unmarried) of the family did not have any right in the property of father. "आत्रिणाम यदि कन्या स्यादेका बहवः सहोदरैः, स्वान्शात्सर्वेस्तुरी यांशमेकीकृत्य विवाहयते" meaning if the brothers have more uterine sisters, a fourth part of the share of each brother should be collected and the girls married." She was to be married by the money inherited by their brothers from her father. (Verse 18- "ऊढयास्तु न भागोस्ति किंचिद्भरात्रिसमक्षतः") declines any sort of her right on father's property. The share of a married daughter in the property of the father, in the presence of her brothers is nothing. Whatever the father gave her at the time of marriage that only belongs to her. This 'whatever' hints at the gift or dowry. (Verse 19) the rights of wife in presence of her sons also exist in Jaina Law. The mother is also said to be entitled to an equal share with the brothers (sons). She is entitled to a slightly larger share for meeting the ordinary social expenses (व्यावाहारार्थ) and after her death all share it.<sup>5</sup>

## LIMITATIONS

Unfortunately only 30 verses have been explained in the paper out of 117. Rest verses from Bhadrabahu Samhita explain Jaina Law of inheritance and property for disowned son, wife, adopted son etc. And many other useful observations can be made. Analyzing these verses can be a further scope of research.

Translation of Bhadrabahu Samhita has been used for understanding the law, hence dependence on the efficiency of the translator is heavy.

## CONCLUSION

An effort has been made to present the translation of a few excerpts from Jain literature which can be considered as most authoritative law quotes. It was interesting to observe the depth of each law of property and inheritance. Jaina law has a scope far wider and it is difficult to describe Jainism in just one paper, but an effort has been made by the author. A blend of morality and law is also studied through the vows of a layman, this approach of Jaina Law will not only help in common moral law establishment but also will bring ultimate peace to the world.

<sup>5</sup> Amrit Lal Gpani (edited), ' Bhadra Bahu Samhita' Bhartiya Vidya Bhawan, Bambay, and Vikram samwat 2005.