

# **Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives**

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## **Lecture 37: Feminine Divine: Indian Philosophy and Fundamental Duties**

Greetings to all of you we are in module 7 where we are analyzing the relationship between fundamental duties and the Indian Knowledge System where the premises to understand the significance of the fundamental duties with additional information with complementary information based on our rich information base from the ancient time and in that series in that discussion today we shall be looking at the relationship between Article 51A(e) which is on renouncing derogatory practices towards women and Indian Knowledge System. So, these are the concepts which we aim to cover, where we shall be looking at women and reflection of ancient Indian texts, then we shall look at that how ah women and constitutional reflections are there. We shall give a reference of a few legislative design and legislative acts which are there for addressing the fundamental duties. And then we shall also look at couple of the decisions given by the Supreme Court which has either directly or indirectly the reference of the fundamental duties. Now, when you look at the very issue of the dignity of women and the very dicta the very command on this very value. Now, when you look at the very issue of the dignity of women and the very dicta the very command on this very value. You find that the very ancient civilization teaches us that women are to be treated in a very dignified way. They must be treated as co-equal contributor to the societal progress. And any kind of practices which treats women in indignified way or in derogatory way must be denounced, must be rejected. That is the reason why we thought of discussing this. And that is the reason why we thought of discussing this. So, that we get an additional argument for the very duty which has been incorporated through 42nd Constitutional Amendment Act. There is not an emphasis or it is not something which is of a newer knowledge that valuing women is very fundamental to the growth of civilization. And that is why it has been said that the essence of any civilization is mirrored in its respect for the dignity of women for they embody creation, nurturance and the continuity of life. So, it is not that that something which we are acknowledging for the first

time through this fundamental duty. The Indian knowledge system which is considered to be a repository of timeless wisdom based on celebrated texts. It has always celebrated, it has always acknowledged women as the cornerstone of existence. From ancient Vedic hymns to the moral fabric of the Indian Constitution, the ideals of women's dignity resonate as an internal symphony. So that's what is a kind of deeper connect between this. So that's what is a kind of deeper connect between this. Women in ancient India played a significant role in various walks of life. We do have an example of illustrious scholars like Gargi and Maitreyi who are prominent examples of the female voices on scholarship on knowledge. We do have an example of illustrious scholars like Gargi and Matri who are prominent examples of the female voices on scholarship on knowledge. Then we have Brahmavadani women who pursued Vedic studies and contributed immensely to religious and philosophical discourses. We have hymns from like the Devi Sukta (Rig Veda 10.125) to celebrate feminine energy as the essence of creation. We have hymns from like the Devi Shukta from Rig Veda to celebrate feminine energy as the essence of creation. It has also been suggested in the ancient text that women are to be seen as foundation of world, which is more of a self realization for every human being that the central role women plays in civilization of the mankind Bhagavad Gita advises “नही कृप्तो गृहान् कुल्या स्मस्मिता” which means the wise see all beings as equal and regard women, men and all creatures with equal vision. This very quote from Bhagavad Gita stresses upon equality and mutual respect essential principles for fostering a society where women's dignity is paramount and to be honored. Devi Bhagavata Purana 9.43 describes Devi as a foundation of the world and Durga Saptashati in Markandeya Purana states that S“सर्व मंगल मांगल्ये शिवे सर्वार्थसाधिके। शरण्ये त्र्यम्बके गौरी नारायणी नमोस्तुते” meaning “O Goddess, who is the auspiciousness of all that is auspicious, the benevolent and auspicious one, who accomplishes all objectives, who provides refuge, the three-eyed one, the fair one, the divine feminine power, I bow to you”. That's what the ancient text refers to the honor, respect one has to bestow on women. That's what the ancient text refers to the honor, respect one has to bestow on women. Philosophy which we follow in India, scriptures which we read, very consistently revered women as divine manifestation of power, wisdom and compassion. Rig Veda proclaims, Rig Veda proclaims “स्त्रीया च ध्रुवणो धर्मक्षमायी” meaning “A woman is the creator and nurturer of the universe; she is the essence of dharma and the embodiment of prosperity”. This very sloka from Rig Veda extols women as the harbingers of dharma and growth and certainly signifies that they do have an indispensable role in maintaining cosmic balance. Manusmriti 3.56 further portrays women in following verse “यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः।” meaning “where women are honored, there the gods

rejoice.” This Indian Knowledge System, this very literature, what I have given, what I have narrated, certainly views women not only as an individual but as manifestations of Shakti, the primal energy that powers creation and this is sort of a narrative which underscores the very inherent dignity of women and their pivotal role in shaping of the society and civilization certainly views women not only as an individual but as manifestations of Shakti, the primal energy that powers creation and this is sort of a narrative which underscores the very inherent dignity of women and their pivotal role in shaping of the society and civilization. For example, Rig Veda 10.125.3 states “अहम् रुद्रैः वसुभिः चरामि, अहम् आदित्यैः उता विश्वदेवैः। अहम् मित्रावरुणोभा बिभर्मि, अहम् इन्द्राग्निः अहम् अश्विनोभा।” meaning “The Rudras, the Vasus, the Adityas, the Vishvadevas, are but my diverse manifestations. In me are present Mitra, Varuna, Indra, Agni and the Pair of Ashvins (twin solar deities)”. This verse celebrates the feminine energy as the essence of creation and universal power. Now, as I said, this ancient text gives a sort of very strong support to the fundamental duties ingrained in the Constitution, where you need not always look at Now, as I said, this ancient text gives a sort of very strong support to the fundamental duties ingrained in the Constitution. Now, as I said, this ancient text gives a sort of very strong support to the fundamental duties ingrained in the Constitution, where you need not always look at these fundamental duties in a very legal sense. This is also a moral compass for all of us to observe, and that is why fundamental duties can truly be said to be a connecting bridge between the ancient and the contemporary texts, urging every citizen to honor and uphold the sanctity of these values. Constitutional provisions concerning women stand as a solemn affirmation of their intrinsic dignity and equal stature in the social and political fabric of the nation. Possibly, that is the reason that a kind of deviation and degradation has crept in because of wrong practices the Constitution explicitly provides measures to correct those injustices in the form of Article 15, Clause 3. Rooted in the ideals of the Indian Knowledge System, one may categorically say that this provision symbolizes a collective commitment to uplift and safeguard women, ensuring that they get their rightful place in the tapestry of human progress. Thus, the constitution, in its wisdom, recognizes the unique vulnerabilities that women may face, and that is why Article 15 is there, which categorically commands the state to undertake necessary steps for improving the condition of women and to address the injustices suffered by women. When I read the text of Article 51A(e), it categorically talks about the responsibility of every citizen to uphold and propagate a sense of respect for women. It reads: “*To promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic, regional, or sectional*

*diversities.*” This part of the fundamental duty we have already explained in the earlier slide, where we talked about fraternity and common brotherhood. The second part focuses on women's dignity. It says that citizen has got a duty to renounce practices degraded to the dignity of women. Specifically it calls upon every citizen to not to practice any such kind of value is not to keep any kind of values not to foster or nurture any kind of practices which brings disrepute to women. Specifically it calls upon every citizen to not to practice any such kind of value is not to keep any kind of values not to foster or nurture any kind of practices which brings disrepute to women. This is this constitutional mandate resonates with our ancient knowledge system of respecting and revering women which is truly reflected in the text which I have mentioned it is just a kind of giving a broad giving a kind of in general perspective that how Indian Knowledge System how the different texts which strengthen Indian Knowledge System describes women. Just to indicate that there are initiatives also taken by the legislature in furtherance of dignity of women though this provisions may not be directly referring to this legislations, may not be directly referring to fundamental duties, but one may read that this provisions play a significant role in addressing dignity of women. Because as I have said that it has been observed that there has been a case of deviation and women were not treated fairly and in a just way and therefore, a need has been felt for enacting a law for penalizing such action which brings defame and disrepute to women. And in that regard this law is there which is Protection of Women from Domestic Violence Act, 2005 which is about protecting dignity of women in a family relationship where if I read the preamble it says “*An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.*” So, in a way it is about restoring the dignity in a family for women. I have also highlighted another law which is about restoring dignity of women at the workplace, which is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, where the preamble if I read “*an Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected there with or incidental there too.*” Now these two Acts I have categorically highlighted just for the sake of establishing this viewpoint that how corrective measures are being taken through the legislative approaches on the matter of regaining or restoring the faith of dignity of women. There are judicial pronouncements also where we find the reference of ancient text to give a relief to women. For example, in this case of Santosh Devi Meena v. State of Rajasthan, where on a matter of granting bail to the accused who are being allegedly committed crime against women, against wife in this case that whether

bail should be given or not. The court has cited the same Manusmriti verse which I have also referred in my slide and citing that has said that women must be revered and if someone has done some kind of heinous crime then he doesn't deserve any kind of bail and court has refused to grant bail on that. Then there is another important case, X v. State of Kerala, AIR 2021 Ker 115, where the court has again looked at Manusmriti for guaranteeing parenting rights to biological mother and father wherein the court has said that when it comes to parenting rights one has to really look into the issues of the very commitment of women. And particularly single women where that woman is not wedded but due to the relationship has given birth to a child and then again if mother wants to get the parenting right then the court must give a due consideration to it. That's how the court in this X v. State of Kerala, AIR 2021 Ker 115 has said that we need to really look at the issue of parenting rights and the very concern of mother who was not wed but then has given birth to a child. Another case of Himachal Pradesh High Court where Namo Devi v. Rattan Chand, the court has highlighted the again the very verse of Manusmriti where the court has talked about right of maintenance of women where it has said that every male has got a responsibility towards wife towards mother and all and if male person gives certain property to mother then mother becomes a kind of absolute owner over that property and give that property as a gift to someone else. Supreme Court in Pratibha Rani v. Saroj Kumar has again referred to Manusmriti while deciding that Sridharan has got a kind of absolute property of wife and there is no claim of the husband on that property what wife brings from her home. This is another important case, Maatr Sparsh an Initiative by Avyaan Foundation vs. Union of India, where the Supreme Court has looked into the fundamental duties and in that way the Supreme Court has imposed an obligation upon the state as well as urge the people to not to look at breastfeeding in public places with any kind of a stigma. In Maatr Sparsh an Initiative by Avyaan Foundation vs. Union of India where the Supreme Court has issued directions regarding breastfeeding in public places and to provide nursery infrastructure to the nursing mothers. So, that they can go for breastfeeding in a very safe environment. So, that they can go for breastfeeding in a very safe environment. In that regard the court has cited the reference and importance of fundamental duty on renouncing practices derogatory to the dignity of women which is given under Article 51A(e). And on that premise the court has said that "Over and above the duty of the State to facilitate the exercise of the right of nursing mothers to breast-feed their children, the citizens must ensure that the practice of breast-feeding in public places and at workplaces is not stigmatized". So that is the kind of clear appeal, urge, and reminder to everyone that this is something so core to family life that people should not look at it with any kind of derogatory sense. Another important case where

the court has refused to accept the plea of the Federation of Obstetrics and Gynecological Societies of India on the determination of constitutional validity of Sections 23(1) and 23(2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The court in this case has said that the rigor, or higher onus, which has been put on gynecologists or the clinical centers to maintain all kinds of records. So that no kind of sex determination should be done in the clinics. The court said that such kind of maintenance of records is very much needed. Because that way one can find out, or the enforcing agencies can find out, whether wrongdoing is being done or not. So, in this case, the court has applied fundamental duties for validating the provision where the formality of fulfilling the paperwork was considered as very significant work for maintaining the objective or fulfilling the objective of the law. So, through these two cases, you can see how fundamental duties have been employed by the court—for one, for giving directions to the state in *Maatr Sparsh Case*, and in another *Federation of Obstetrics and Gynecological Societies of India Case*, to validate the legislative proposal for larger issues of protecting the life of the girl child, if one has to look at the issue of this act and the very objective of this act in that perspective. These two cases are cases - *Lt. Col. Nitisha v. Union of India* and *Patan Jamal Wali v. State of Andhra Pradesh*, on intersectionality where it has been highlighted that one has to, when women's issues come up, not look at women in a very typical way or just in gender, but also to look at the background of women and those factors are also to be taken into account. That is what the court has said in *Lt. Col. Nitisha v. Union of India*, where the court held that the evaluation criteria adopted by the Indian Army to consider the grant of Permanent Commission for women officers were arbitrary and irrational. Where the same criteria was put for male and female officers, where the court has acknowledged that, considering the very working of female officers, there has to be certain considerations taken into account. Because of the very factors which they undergo during the services, and on that premise, the court has declared the same condition put for male and female officers for moving to the next position as arbitrary. In this case again, *Patan Jamal Wali*, the court has again said that concept of intersectional identities of women belonging to marginalized communities and a form that causes a kind of compounding effect of multiple discrimination. Discrimination gets aggravated if a woman is from a vulnerable class or from a marginalized section, and in that case, the court has also taken necessary support from the fundamental duty given under Article 51A Clause (e). There also seems to be a very welcome step taken by the Supreme Court, where the Supreme Court has published a handbook, which is a *Handbook on Combating Gender Stereotypes*, largely to facilitate judges and the legal community in identifying, understanding, and addressing stereotypes about women. Because

there are certain words which are being used and which generally, in a way, which generally give a kind of impression about the conduct of women. So, the court, while formulating this Handbook, targeted outdated investigative and evidential approaches and gender-unjust terms and proposed alternative words or phrases for use in drafting pleadings, orders, as well as judgments. For example, the court has recognized that stereotypes inhibit the transformative project of law and the constitution. For example, using words like 'ravaged' instead of 'raped' is inappropriate. The Handbook points out, and it also singles out words that carry a misplaced sense of moral censure, for example, 'easy,' 'fallen,' or 'slut.' So, one may argue that this Handbook's publication is the manifestation of the principles which are there in the fundamental duty under Article 51A(e), which is about bringing dignity to women and also ensuring that all the practices which bring defame or derogation to them must be adequately and effectively addressed. So, we have seen how ancient literature also very categorically highlighted the role of women in society and how society needs to reciprocate the value that women bring to individual lives as well as societal progress the role of women in society and how society needs to reciprocate the value that women bring to individual lives as well as societal progress. We have also seen that there are laws which are enacted penalizing practices which denounce and derogates women and through that, duties are also highlighted while interpreting such legislations. Women and through that, duties are also highlighted while interpreting such legislations.

So, we conclude by saying that ancient scriptures such as the Rig Veda and Bhagavad Gita, women as manifestations of Shakti and emphasize that they have played a pivotal role in upholding Dharma and shaping societal progress. This reverence resonates in contemporary constitutional provisions and legislative measures aimed at promoting gender equality, safeguarding women's rights, and also addressing historical injustices where categorical provisions on affirmative action for women and children have been provided under the Indian Constitution. Efforts are also being made through policy prescriptions like the Handbook on Combating Gender Stereotypes published by the Supreme Court, which primarily aims to eliminate bias in linguistic usage, drafting, pleadings, and the way judgments are written, which also truly reinforces the idea of gender justice.

These are the references for this session.

Thank you.