

# Influence of Ancient Indian Legislation on Traditional Law in Mainland

## Southeast Asia: The Study of the Concept of Women

### อิทธิพลของกฎหมายอินเดียโบราณต่อกฎหมายจารีตในภาคพื้นทวีป

### เอเชียตะวันออกเฉียงใต้: การศึกษามโนทัศน์เกี่ยวกับผู้หญิง

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**คำสำคัญ:** กฎหมายอินเดียโบราณ, มโนทัศน์เกี่ยวกับผู้หญิง, กฎหมายจารีตในภาคพื้นเอเชียตะวันออกเฉียงใต้

#### Abstract

**Background and Objectives:** Since ancient times, the Mainland Southeast Asian kingdoms have engaged in cultural interactions with India, resulting in distinctive social and cultural patterns evident in the region's traditional legal codes. This research aims to examine the concept of women in ancient Indian laws, specifically the Manava Dharmasastra and Kautilya's Arthashastra, and to study the influences of these ancient Indian laws on the legal traditions of Mainland Southeast Asia, particularly with the adaptations of the laws of the Mon, Lan Na, Lan Xang, and Siamese kingdoms regarding their views on women.

**Methods:** This qualitative research employs historical and documentary research methods. Primary and secondary sources, including the documents from online databases, were analyzed alongside field data. The data were analyzed using content analysis and presented in a descriptive-analytical format.

**Results:** Ancient Indian laws, like the Manava Dharmasastra and Kautilya's Arthashastra, had a significant influence on the laws of the kingdoms of Mainland Southeast Asia. However, these kingdoms adopted and adapted these laws selectively, merging them with indigenous traditions rooted in Buddhist principles and local beliefs as part of their cultural assimilation. It led to a distinct concept of women's roles, as demonstrated in the Mon Dhammasat and the traditional laws of Lan Na, Lan Xang, and Siam (The Three Seals Law). The legal provisions that reflect the influence and adaptation of concepts concerning women and gender roles are found in the laws on family, disputes, property, and inheritance. These are 1) family law, which required women to have guardians; 2) adultery laws, which strictly governed male-female relations to maintain social order; 3) varying views on divorce; and 4) women's rights and responsibilities regarding inheritance law. Understanding women's roles influenced by Indian civilization leads to a deeper comprehension of gender dynamics in history, as well as perspectives on the relationship of gender roles from the past to the present.

**Application of this study:** This study contributes new historical insights into women's roles by analyzing the important legal documents which are ancient Indian laws and the old laws in Mainland Southeast Asia. This constitutes an essential body of knowledge for the study of history and conceptualizations of women in Thailand and related regions, as certain ideas continue to persist through cultural transmission into the present. It also serves as a valuable foundation for further research in the fields of history, gender studies, law, and cultural studies.

**Conclusions:** Mainland Southeast Asian kingdoms were influenced by Indian culture such as the legal concepts from the Manava Dharmasastra and Kautilya's Arthashastra, the religious and ideological influences of Brahman-Hinduism and Buddhism, including the concepts of womanhood. Nevertheless, these traditional states adapted and merged with local cultures, resulting in their own distinctive social and cultural characteristics. In particular, they shaped social attitudes toward the roles and duties of women, where women were found to possess relatively high status and gender roles, as reflected in the ancient legal codes of these states.

## บทคัดย่อ

**ที่มาและวัตถุประสงค์:** อาณาจักรต่าง ๆ ในภาคพื้นทวีปของเอเชียตะวันออกเฉียงใต้มีปฏิสัมพันธ์ทางวัฒนธรรมกับอินเดียมาตั้งแต่อดีต จนเกิดเป็นลักษณะเฉพาะทางสังคมและวัฒนธรรม สะท้อนให้เห็นจากกฎหมายโบราณของดินแดนในภูมิภาคนี้ งานวิจัยนี้จึงมีวัตถุประสงค์เพื่อศึกษามโนทัศน์เกี่ยวกับผู้หญิงในกฎหมายโบราณของอินเดีย ที่สำคัญคือ มนุษรรมศาสตร์และอรรถศาสตร์ของเกาฏิลยะ และเพื่อศึกษาอิทธิพลของกฎหมายโบราณอินเดียและการปรับปรุงนมนทัศน์เกี่ยวกับผู้หญิงที่ปรากฏในกฎหมายของรัฐจารีตในภาคพื้นทวีปเอเชียตะวันออกเฉียงใต้คือ กฎหมายมอญ ล้านนา ล้านช้าง และสยาม

**วิธีการศึกษา:** งานวิจัยนี้เป็นการวิจัยเชิงคุณภาพ ใช้วิธีการวิจัยทางประวัติศาสตร์ และการวิจัยเชิงเอกสารด้วยการวิเคราะห์ข้อมูลจากหลักฐานชั้นต้น หลักฐานชั้นรอง และเอกสารบนฐานข้อมูลออนไลน์ ประกอบกับการเก็บข้อมูลภาคสนาม การวิเคราะห์ข้อมูลใช้วิธีการวิเคราะห์เนื้อหา และนำเสนอในลักษณะการพรรณนาวิเคราะห์

**ผลการศึกษา:** กฎหมายอินเดียโบราณ เช่น มนุษรรมศาสตร์และอรรถศาสตร์ของเกาฏิลยะ มีอิทธิพลสำคัญต่อกฎหมายของอาณาจักรในภาคพื้นทวีปของเอเชียตะวันออกเฉียงใต้ อย่างไรก็ตาม อาณาจักรเหล่านี้ได้เลือกสรรและผสมผสานให้เข้ากับแนวคิดของตนที่วางอยู่บนฐานของพุทธศาสนาและความเชื่อท้องถิ่น สะท้อนให้เห็นจากแนวคิดเกี่ยวกับผู้หญิงที่ปรากฏในพระธรรมศาสตร์มอญ กฎหมายล้านนา กฎหมายล้านช้าง และกฎหมายตราสามดวง โดยบทบัญญัติที่สะท้อนอิทธิพลและการปรับปรุงนมนทัศน์เกี่ยวกับผู้หญิงและบทบาทเพศภาวะ คือ กฎหมายลักษณะครอบครัว วิเวท ทรัพย์สินและมรดก ดังนี้ 1) กฎหมายลักษณะครอบครัวที่ผู้หญิงต้องมีผู้คุ้มครอง 2) กฎหมายลักษณะผู้ที่กำหนดความเข้มงวดต่อความสัมพันธ์ระหว่างหญิงชายเพื่อป้องกันการวิวาทที่สร้างความไม่สงบในสังคม 3) ความแตกต่างของทัศนคติทางสังคมต่อการหย่าร้างของผู้หญิงจากกฎหมายลักษณะหย่า 4) หน้าที่และสิทธิต่อทรัพย์สินของผู้หญิงในกฎหมายลักษณะมรดก การสร้างความเข้าใจต่อบทบาทของผู้หญิงที่ได้รับอิทธิพลจากอารยธรรมอินเดียจะนำไปสู่ความเข้าใจเกี่ยวกับพลวัตทางเพศในประวัติศาสตร์ และมุมมองต่อความสัมพันธ์ของบทบาททางเพศที่สืบเนื่องมาจนถึงปัจจุบัน

**การประยุกต์ใช้:** การศึกษานี้เป็นการเปิดพรมแดนความรู้ใหม่เกี่ยวกับผู้หญิงในมิติประวัติศาสตร์ผ่านการศึกษาศึกษาและวิเคราะห์เอกสารสำคัญคือกฎหมายโบราณอินเดียและกฎหมายเก่าในภาคพื้นทวีปเอเชียตะวันออกเฉียงใต้ ซึ่งเป็นชุดความรู้สำคัญต่อการศึกษาด้านประวัติศาสตร์และมโนทัศน์ต่อผู้หญิงในประเทศไทยและพื้นที่ที่เกี่ยวข้อง เพราะความคิดบางอย่างยังคงปรากฏสืบทอดทางวัฒนธรรมมาจนถึงปัจจุบัน และเป็นประโยชน์เพื่อต่อยอดการวิจัยในด้านประวัติศาสตร์เพศภาวะศึกษา กฎหมาย และวัฒนธรรมศึกษา

**บทสรุป:** อาณาจักรในภาคพื้นทวีปเอเชียตะวันออกเฉียงใต้ต่างได้รับอิทธิพลทางวัฒนธรรมของอินเดีย เช่น แนวความคิดด้านกฎหมายจากมนุษยศาสตร์ และอรรถศาสตร์ของเกาฏิลยะ อิทธิพลด้านศาสนาและความเชื่อทั้งคติพราหมณ์ฮินดู และศาสนาพุทธ รวมถึงมโนทัศน์เกี่ยวกับผู้หญิง อย่างไรก็ตามรัฐจารีตเหล่านี้ได้ปรับปรุงและผสมผสานกับวัฒนธรรมท้องถิ่นจนเกิดเป็นลักษณะเฉพาะทางสังคมและวัฒนธรรมของตน โดยเฉพาะการสร้างทัศนคติทางสังคมต่อบทบาทและหน้าที่ของผู้หญิง ที่พบว่าผู้หญิงมีสถานภาพและบทบาทเพศภาวะค่อนข้างสูงซึ่งสะท้อนให้เห็นจากกฎหมายเก่าของรัฐจารีตเหล่านี้

## Introduction

India is recognized as one of the oldest cradles of civilization. On the one hand, the concept of "Indianization" suggests that the prosperity of Southeast Asian states was mainly due to economic exchanges and ongoing interactions with Indian civilizations. Sanskrit played a crucial role in disseminating Indian religions. Those interactions involved the exchange of cultural ideas, primarily through the process of Sanskritization. This initiative aimed to reflect the status and wealth of the Brahmins, enabling their voluntary assimilation into Indian civilization (Coedès, 1968; Pollock, 1998; Mishra, 2021). However, these interactions were not solely about cultural transplantation or domination; instead, they exemplified a dynamic process of cultural selection and adaptation. Southeast Asian societies selectively adopted, modified, and localized Indian elements to align with their social and cultural contexts, a process known as cultural assimilation, wherein societies integrate foreign elements into their local frameworks. This procedure led to the formation of socio-cultural identities within ancient Southeast Asian polities (Wolters, 1982; Wanliphodom, 2020 : 2–3).

The historical and cultural contexts of India and mainland Southeast Asia (hereafter referred to as MSEA) are crucial for understanding the role of women in their traditional legal systems, dominant gender ideologies, and perceptions of gender differences, socially constructed and reinforced by politics, family, and religion (Beasley, 2005).

These constructions operate within a specific historical, political, economic, social, and cultural framework, where internalized norms and practices govern behavior. The concept of women in ancient Indian law was introduced into MSEA's legal systems through the adoption of principles from the *Dharmasastra* and *Arthashastra*. Once introduced, these ideas were reshaped by indigenous customs, beliefs, and values, resulting in both parallels and divergences from the Indian model.

The prevalence of male-centered narratives in political and economic records often overshadows historical research on women, while gender-specific customs, values, and behaviors remain underrepresented. This study examines the gender ideologies and societal structures in MSEA by investigating the roles and perceptions of women within traditional family law. The *Manava Dharmasastra*, *Kautilya's Arthashastra*, the *Mon Dhammasat*, the Lan Na, the Lan Xang, and Siam's legal codes are indispensable. These sources offer insightful examinations of historical perceptions of women in MSEA, particularly in Thailand and its neighboring countries, as certain viewpoints continue to be culturally transmitted today, laying the groundwork for future interdisciplinary research in history, law, gender studies, and cultural studies.

## **Research Objectives**

This study aims to examine the portrayal of women in ancient Indian laws, specifically the *Manava Dharmasastra* and *Kautilya's Arthashastra*, and to explore how these concepts shaped the legal traditions of MSEA, particularly with the adaptations of the old laws of the Mon, Lan Na, Lan Xang, and Siamese kingdoms regarding their views on women.

## **Research Methods**

This qualitative research employs historical and documentary research methods. Primary and secondary sources, including traditional legal texts and literature, were analyzed alongside field data. The data were interpreted using content analysis and presented through descriptive analysis. The study examines women in ancient Indian legal texts, specifically the *Manava Dharmasastra* and *Kautilya's Arthashastra*, with a focus on the grounds for litigation, based on English translations.<sup>1</sup> These ideas are also reflected in MSEA customary laws, such as the *Mon Dhammasat*, as well as Lan Na legal texts, Lan Xang legal codes, and the Siamese *Three Seals Law Code*.

## **Research Results**

### **1. Ancient Indian Laws: Manava Dharmasastra and Kautilya's Arthashastra**

#### **1.1 Manava Dharmasastra**

The *Dharmasastra* is a Sanskrit Brahmanical legal and moral code rooted in the Vedic scriptures (c. 1500–900 BCE), the earliest religious corpus of the Aryan peoples. The term *Dharmasastra* in ancient Indian law refers to *dharma*, which relates to duty as interpreted within Brahmanism–Hinduism, and the moral principles derived from the *Vedas*<sup>2</sup>

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<sup>1</sup> This study employs the *Manava Dharmasastra*, referencing two works: George Claudius Haughton (1982), *Manava Dharma Sastra, or The Institutes of Manu*, and Patrick Olivelle (2005), *Manu's Code of Law*. This study also incorporates *Kautilya's Arthashastra* and references two works: *Kautilya's Arthashastra* (Shamasastri, 1967) and *Kautilya: The Arthashastra* (Rangarajan, 1992) (see references).

<sup>2</sup> The *Vedas* are categorized into two segments: 1) the *Śruti* segment, encompassing the four Vedas: *Rig-Veda*, *Yajur-Veda*, *Sāma-Veda*, and *Atharva-Veda*; and 2) the *Smṛti* segment, comprising texts authored by religious scholars to elucidate the content and promote the proper study of the Vedas, including the *Upanishads*, *Manusmṛti*, *Puranas*, *Bhagavadgītā*, *Mahābhārata*, and *Rāmāyaṇa*.

(Lingat, 1973). It addresses civil law, jurisprudence, social duties, and religious concerns, including rituals, sacrifices, sin, and expiation. It holds enduring significance for its profound influence on governance, social organization, and cultural life (Rocher, 2005), serving as an emblem of Hindu India (Bühler, 1886). Among its notable works, the *Manusmṛiti*, also known as *Manava Dharmasastra*, is the most influential, alongside the *Vishnu Smṛiti*, *Yajñavalkya Smṛiti*, and *Narada Smṛiti*.

Grounded in the Vedic canon and Brahmanical traditions (Doniger & Smith, 1991), the *Manava Dharmasastra* predates the formal emergence of Hinduism (Basham, 1982; Pennington, 2005). Composed in verse and framed as divine wisdom transmitted to sages, it codifies the duties of the four *varnas* (castes) (Kounsamakom, 2015). The text profoundly shaped governance, law, and culture in India, influencing legal systems in MSEA (Lingat, 1973; Olivelle, 2005).

Its themes center on *dharma* (moral and social order), ritual practices, and the *varna* hierarchy, with *Brahmins* at the apex, followed by *Kshatriyas*, *Vaishyas*, and *Shudras*. The text's four main sections address (1) the genesis of the universe; (2) the origin of *dharma*; (3) the *dharma* of the *varnas*; and (4) the principles of *karma*, reincarnation, and final emancipation. The third section is the most extensive, prescribing the duties and obligations of members of all four *varnas*. For *Brahmins* in particular, life was structured around the four *asramas* (life stages): *brahmacharya* (studenthood), *grihastha* (householder), *vanaprastha* (forest dwelling), and *sannyasa* (renunciation). *Manu* provides more detailed prescriptions for the *Brahmin* caste than for the others, placing particular emphasis on the *grihastha* stage, which he regarded as central to sustaining society, family, and lineage (Olivelle, 2005).

The *Manava Dharmasastra* reflects the social and cultural milieu of traditional India, encompassing caste as a societal framework, delineating individuals' rights and responsibilities, and describing an agrarian economy and trade conducted through barter and currency. In situations where women's roles were framed primarily through kinship as wives and mothers, societal perceptions of women become a critical consideration.

The legal system described in *Manava Dharmasastra* outlines the duties of the king, judicial administration, and the enforcement of law, with punishment (*danda*) regarded as a primary instrument for maintaining social order and peace. The legal portion—composed relatively late (Doniger & Smith, 1991)—is divided into two principal components: juridical procedure and 18 grounds for litigation. These grounds reflect recurrent societal disputes and reveal their patriarchal nature, with the senior male head of the household holding decision-making authority. For example, the sixteenth ground concerns the "Law Concerning Husband and Wife." In adjudication, kings were to apply *sanātana dharma*—eternal, universal principles of justice (Olivelle, 2005). This study will employ the *Manava Dharmasastra*, specifically the 18 chapters addressing grounds for litigation, to examine the concept of Indian women, for instance, the delineation of women's duties in familial contexts, such as the roles of wife and mother.

Compiled between 200 BCE and 200 CE (Olivelle, 2004), the *Manava Dharmasastra* coincided with the post-Mauryan Brahmin revival after diminished influence under Emperor Ashoka (c. 268–233 BCE) and amid challenges from Bactrian<sup>3</sup> and Kushan<sup>4</sup> groups often linked to Buddhism (Olivelle, 2005). Within the legal texts, non-Brahmin *varnas* were confined to their prescribed roles, and any breach—especially caste mixing (*varnasankara*)—was severely punished. The reinforcement of the four *asramas* further entrenched Brahmin authority over social organization (Kantekure, 2021; Olivelle, 2004). Some scholars also interpret the *Manava Dharmasastra* as a guide for balanced living, harmonizing *artha* (material prosperity), *kama* (sensual fulfillment), and *moksha* (liberation), with *moksha* being the ultimate life goal (Tripathi, 2015).

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<sup>3</sup> Bactria was a kingdom within the Persian Empire, covering a region in Central Asia from south of the Amu Darya River to the northern Hindu Kush mountains—corresponding to present-day Afghanistan, Tajikistan, and Uzbekistan.

<sup>4</sup> The Kushan Empire, also known as Kushan or Kusana, was located in the northwestern region of India. Its capital is now Peshawar, in present-day Pakistan.

## **1.2 Kautilya's Arthashastra**

In ancient Indian society, the study of governance, economic management, and foreign policy had a long-established tradition. The origins and development of such disciplines can be traced back to approximately 650 BCE (Rangarajan, 1992 : 4). An important example is the *Arthashastra*, an ancient Indian treatise on the principles of statecraft—referred to as the "science of politics" (Altekar, 1949 : 1)—which has its roots in the Vedic corpus. The *Vedas* describe how the god Brahma created this treatise as a foundational guide to ensure peace and order in the human world, consisting of hundreds of thousands of *Śloka* (verses) covering the *trivarga*—dharma (duty), *artha* (material wealth), and *kama* (physical pleasure)—as well as *dandaniti*, the science of conquest and protection of the realm.

The most significant of these works is *Kautilya's Arthashastra*, which is believed to have been composed between 321 and 296 BCE (Krishna Rao, 1958). Written in Sanskrit by Kautilya—also known as Chanakya or Vishnu Gupta—most scholars agree that these three names refer to the same individual (Rangarajan, 1992 : 4). Kautilya served as chief advisor to King Chandragupta (c. 321–297 BCE), the first monarch of the Maurya dynasty (c. 322–185 BCE). He played a pivotal role in supporting Chandragupta's rise to power and in establishing the Mauryan Empire, which is regarded as one of the golden ages of Indian history.

However, Kautilya was not the first to compose a treatise of this kind. The *Arthashastra* draws upon five earlier schools of thought—*Brihaspati*, *Ushana*, *Pracetasa*, *Parasara*, and *Ambhi* (Rangarajan, 1992 : 4; Altekar, 1949 : 1). Kautilya critically engaged with these earlier traditions, either refuting or adapting their views, ultimately synthesizing them into his own distinctive vision of governance, political science, and political economy (Jain & Mukherji, 2009 : 437-439). His *Arthashastra* served as a practical manual for rulers (Rangarajan, 1992 : 6) and, more specifically, as a guide to support the administration of King Chandragupta in establishing and consolidating the Maurya dynasty.

*Kautilya's Arthashastra* comprises 15 principal topics that address politics, economics, military affairs, the duties of the state, and social organization, all designed to enhance the effectiveness of monarchical governance under autocratic regimes. Within such a system, the ruler was expected to manage the economy efficiently and effectively. The text outlines the duties and responsibilities of the king as a sovereign, as well as the ethical principles underlying economic governance. As such, the treatise may be regarded as a "handbook of governance for the kings of ancient India" (Raksamanee, 1981 : 4), giving primacy to the authority of the ruler, who was to employ political judgment—particularly in the imposition of punishments—as a means of maintaining social control (Gautam, 2013). The ruler's functions and instruments of governance in *Arthashastra* include *Rajadharma* (duties of the king), *Rajyashastra* (science of state), *Nitishastra* (science of ethics), *Dandaniti* (science of law enforcement), and *Arthashastra* itself (science of politics) (Altekar, 1949 : 1).

The influence of *Kautilya's Arthashastra* extended beyond India, shaping statecraft traditions in MSEA (Hooker, 1978: 201-219), including concepts such as *Rajaniti* (the conduct of kings) and the *Dasa-raja-dharma* (the virtues of kings). While it does not focus on women as extensively as the *Manava Dharmasastra*, it nonetheless addresses their rights and social roles—for instance, the right to choose a husband, the right to divorce, and the right to remarry (Shamasastri, 1967). These provisions are found in Book III, "Concerning Law," which comprises twenty chapters on legal matters and serves as a key source for the present study.

## **2. Traditional Laws in Mainland Southeast Asia: Influence and Adaptation**

For millennia, Southeast Asia has engaged in cultural exchange with India through religious missions, commerce, and migration, a process that was active by the 3rd Century BCE (Cœdès, 1968; Brown, 1994). Changmai et al. (2022)

note successive waves of Indian-born Southeast Asians disseminating Indian culture, with Gujarati rulers influencing Java before the Common Era (Majumdar, 1963). Archaeological evidence—such as Sanskrit inscriptions and Amaravati-style Buddha images—attests to Indian cultural penetration by the 3rd–4th Centuries CE (Diskul, 2006).

The *Mahavamsa*<sup>5</sup> records Emperor Ashoka (273–232 BCE) dispatching Buddhist emissaries, Sona and Uttara, to Suvarnabhumi, possibly Mon or Thaton (Geiger, 1912). The Mon Kingdom sustained enduring cultural connections with India and was among the initial recipients of Indian influence, encompassing language, governance, and religion (Cooler, 2002). It evolved into a center for the propagation of Buddhism and Buddhist culture (Guillon, 1999).

The dissemination of the Indian *Dharmasastra* in the old Mon Kingdom, centered in Thaton from around the 3rd to 4th Centuries CE, led to the adoption of principles and rules contained in these legal treatises, which compiled and codified legal norms for state administration. The Indian model, grounded in Brahmanical moral philosophy, was adopted as a framework for governance and social organization (Lingat, 1950). In its early stages, the transmission of the *Dharmasastra* relied on oral memorization and recitation. By around the 7th Century CE, the Mon had developed their own script, adapted from the South Indian Pallava script, incorporating certain vowels and consonants from Sanskrit (Weeraprajak, 1986).

However, when adopting the Indian *Dharmasastra*, Mon scholars revised, compiled, and codified the legal norms to align with the metaphysical foundations of Buddhist philosophy, rather than Brahmanical concepts, as found in the original texts. Despite these adaptations, the Mon continued to place great importance on the Indian *Dharmasastra*, venerating "Manu," the reputed author of the *Manava Dharmasastra*, as the sole legitimate authority to legislate laws, and frequently citing him as the originator of all legal principles (Lingat, 1950).

Brahmins performed rituals, particularly in the court, despite the Mon Kingdom being Buddhist and adhering to Buddhist principles in legislation and judicial processes. They conducted royal court ceremonies and impacted daily life through Brahmanical traditions (Bronkhorst, 2011). Exclusive access to sacred texts and Sanskrit literature on governance, including the *Arthashastra* and *Rajaniti*, conferred power upon the Brahmins (Bechert & Braun, 1981). Consequently, they served as royal advisors, educators, or *purohits* (court priests), the latter of whom had a significant impact on the Mon and Burmese royal administrations. MSEA Brahmins disseminated their doctrines at the behest of local rulers or elites (De Casparis & Mabbett, 1992 : 278; Bronkhorst, 2011).

The adaptation is reflected in the Mon compilation of the *Dhammasattha*, a Pali-language legal treatise corresponding to India's Sanskrit *Dharmasastra*, which served as a foundational text for governance (Lingat, 1950). Distinct from its Brahmanical counterpart, it integrated Buddhist doctrine, earning the designation "Buddhist Law" (Huxley, 1995; McGeachy, 2002). Brahmanical religious elements from ancient Indian law—beliefs, customs, and rituals—were omitted, retaining only secular legal principles, such as the principles of justice and fairness. In their place, Buddhist moral precepts and commentarial literature were incorporated, linking legal provisions to the Buddha's discourses and Jataka tales in the Tipitaka and aligning social roles with a Buddhist moral framework. Certain supernatural beliefs persisted, as seen in Debt Law, Article 5, which allowed disputes over high-interest debts to be resolved through oath-taking before a sacred Buddha image or by "ordeal by water" for the highest-interest loans (Forchhammer, 1892 : 2)

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<sup>5</sup> The *Mahavamsa*, or "Great Chronicle," is a historical document in Pali, the sacred language of Buddhism, detailing the history of Ceylon (present-day Sri Lanka). The text primarily examines the history of Buddhism and dynastic succession in Sri Lanka, covering the period from the 6th Century BCE until the early 4th Century CE. It has influenced Pali literature in both the Lan Na and Rattanakosin kingdoms.

Following the Pagan conquest in 1057 CE, the *Dhammasattha* was recopied in Mon and Burmese, resulting in a hybrid Brahmanical-Buddhist law (Lammerts, 2010). Its influence extended across MSEA—among Mon, Burmese, Tai, and Lao polities—governing marriage, property, inheritance, debt, kingship, and other civil matters. Terminology varied—*Dhammasat* (Mon), *Thammasat* (Tai and Lao), *Dhammathat* (Burmese)—but all denoted a body of legal principles rooted in Indian models, reframed through Buddhist metaphysics.

### **3. Traditional Laws in Mainland Southeast Asia in the 12th–19th Century CE**

This study examines the *Dammavilasa Dhammasat*,<sup>6</sup> as cited in the Kalyani Inscription, authored by the Mon monk Dhammavilasa in Pali circa 1174 CE (Taw, 1892). This text was translated into Mon for governance and social administration purposes, which delineates 16 grounds for litigation. *Wagaru Dhammathat*,<sup>7</sup> comprising 18 grounds for litigation is also indispensable. King Wareru (r. 1287–1296) of Martaban commissioned its creation circa 1290 CE. He instructed the Mon scholars to compile legal principles and texts for governance and administrative social systems based on the *Manava Dharmasastra*. Subsequently, King Bayinnaung (r. 1550–1581) of Pagan rendered the *Wagaru Dhammathat* verbatim from Mon into Burmese, utilizing the Pali text as a reference (Pan Hla, 1992). *The Wagaru Dhammathat*, based on this translation, is regarded as the most authoritative *Mon Dhammasat* (Lingat, 1949).

The *Mon Dhammasat* remained the principal law of the Mon-speaking kingdom until the mid-16th Century CE, when the conquering First Toungoo Empire adopted it. Translated into Burmese and Pali, it became the empire's foundational law, and by 1640, it was amended to incorporate Burmese customary law supported by explicit references to Buddhist scriptures. The code was subsequently integrated into the *Dhammathat* of the empire's successor states. Its influence extended to neighboring kingdoms, such as Lan Na and Lan Xang, whose legal texts share familiar sources with the *Mon Dhammasattha*. While adapted to their respective spatial and cultural contexts, these codes retained a shared core framework. In Lan Na, this is exemplified by the *Mangraisat* (มังรายศาสตร์), compiled at least by the late 13th Century CE and regarded as the oldest legal code used for governance and judicial rulings. The *Mangraisat* reflects a synthesis of religious morality, promoting virtuous conduct, and customary laws based on societal traditions, beliefs, and values that serve as communal norms (Na Nagara, 1978).

In Lan Xang, legal codes such as the *Phathammasat Luang* (คำพิพากษาตัดสินหลวง), compiled in the reign of King Souigna Vongsa (พระเจ้าสุริยวงศา) (r. 1637–1694), organized legal categories in line with the Five Precepts: *Pāṇātipāta* section—addressing acts of killing, assault, and physical harm; *Adinnādāna* section—concerning theft, robbery, looting, and fraud; *Kāmesumicchācāra* section—relating to adultery, illicit relationships, deception, sexual assault, marriage, and divorce; *Musāvāda* section—dealing with lies, deceit, and manipulation; and *Surāmeraya-majja* section—focusing on intoxication, negligence, and indecent conduct (Baosisavat, 1993).

Ayutthaya adopted Mon legal principles as early as the mid-14th Century CE, as evidenced by Pali verses prefacing its laws and references to *Dhammasattha* texts attributed to sage Manu, translated from Mon into Siamese (Pramuan Kotmai Ratchakan Thi 1, 1986 : 10). These laws endured into the Rattanakosin period and formed the core of the *Three Seals Law Code* (กฎหมายตราสามดวง) of 1805. However, some Mon historians have contended that this code, revised under King Rama I (r. 1782–1809), was more influenced by Burmese legal traditions than by Mon sources (Pan Hla, 1992 : 28-29).

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<sup>6</sup> This research employs the English translation of the *Dammavilasa Dhammasat*, referencing Nai Pan Hla (1992), *Eleven Mon Dhammasat Texts*, see reference.

<sup>7</sup> This study utilizes the English version of the *Wagaru Dhammathat*, translated by Emmanuel Forchhammer in 1892, titled *King Wakaru's Manu Dhammasattham: Text, Translation, and Notes*, see reference.

Ancient Indian legal concepts influenced MSEA kingdoms, yet they were often selectively adapted to local cultural contexts. For example, the caste system of the *Manava Dharmasastra* was reinterpreted in the Mangrai Dynasty of Lan Na (late 13th to mid-16th Century) as a lineage-based hierarchy, in which only royal descendants were allowed to rule. Many MSEA kingdoms, practicing Theravada Buddhism, absorbed *Dhammasattha* principles directly through intermediaries, such as the Mon and Khmer. As a result, their legal systems blended Buddhist teachings with Brahmanical frameworks, as seen in the use of Pali verses and Jataka citations in legal rulings.

#### **4. Concept of Women in Traditional Indian Law and Mainland Southeast Asian Law**

The portrayal of women in ancient Indian legal texts had a significant influence on gender roles in MSEA. Rooted in Brahmanic ideology from the Vedic period<sup>8</sup> (c.1500–1000 BCE), which subsequently led to the creation of essential systematic texts, such as the Vedas, which formed the basis for the *Dharmasastra*, particularly the *Manava Dharmasastra* (Lingat, 1973), composed between 200 BCE and 200 CE during the post-Vedic period. This text reflects a shift toward Brahmanical patriarchy, integrating religion into the subordination of women (Patil, 2021 : 4). The ideology has traditionally favored men, particularly from higher castes, while constraining women's roles through control of sexuality, prioritizing patrilineal inheritance, and caste purity (Chakravarti, 1993). Such gender constructs persisted into Medieval Indian history (13th–19th Century CE) (Patil, 2021 : 5).

Brahmanic ideology entered the legal systems of MSEA through the adoption of Indian legal and political concepts from the *Dharmasastra* and *Arthashastra*. Traditional MSEA states in the region drew on the *Manava Dharmasastra* as a legal foundation, and traces of Brahmanic–Hindu influences on women's roles remain evident. While shaped by Indian civilization, these states adapted traditions, beliefs, and cultures to Buddhist principles, eliminating caste and ritual sacrifices, and developing distinctive social structures rooted in subsistence agriculture, interdependent labor, a male-exclusive conscription system, and a spirit cult system that defined gender roles (Wongthes, 2006). This cultural assimilation is evident in legal codes from the 12th to the 19th Century CE, in which women's status reflected both parallels and differences with Indian norms.

The dissemination of ancient Indian legal concepts in MSEA involved adapting Brahmanic principles to local contexts, blending them with Buddhist doctrines, spirit cult traditions, and indigenous gender perspectives (Mabbet, 1977). Ancient laws—codified customary norms—governed social conduct, especially in family matters, to preserve order and harmony (M.K.S. Aung, personal communication, March 14, 2024).

This study examines the legal provisions and grounds for litigation in traditional Indian and MSEA laws concerning women, with a focus on family law as a branch of jurisprudence that addresses gender-related issues. However, it does not adhere to a comparative analysis based solely on historical periods, given substantial disparities across those periods. The research will analyze the influence of ancient Indian law and the modification of family law, disputes, property, and inheritance, as evidenced in the traditional laws of MSEA.

##### **4.1 Social Attitudes Toward Femininity in Family Law: The Requirement of Female Guardianship**

The Brahmanical *Manava Dharmasastra* mandates that Indian women remain under male guardianship for their entire lives—first under their fathers during childhood, then under their husbands in adulthood, and finally under their sons in old age (Olivelle, 2005 : 190). This viewpoint has been construed as a representation of women's lack of autonomy or

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<sup>8</sup> The Vedic period saw Aryan dominance, the transition from copper to iron tools, and the shift to agriculture. Women still held social respect and could choose their spouses, with marriage largely monogamous. Religion focused on deity worship, with Brahma as the supreme god (Patil, 2021 : 2).

as a male-familial obligation to safeguard them. *Kautilya's Arthashastra* asserts that anyone who attends to a woman must also oversee her property, given that women were frequently wed at a young age<sup>9</sup> (Shamasastri, 1967 : 220, 223). Consequently, guardianship was essential for the woman's personal and financial protection. Traditional laws in MSEA also address the issue of female guardianship. These traditions provided the opportunity for familial men and women to assume the role of guardians. The sociocultural context, along with local customs, rituals, and values of bilateral kinship systems, affects this adjustment (Wongthes, 2006).

It revealed the concept of women in MSEA's inclusive approach, which encompasses guardianship of both patrilineal and matrilineal kin. Parents are obligated to protect women according to the *Mon Dhammasat* (Pan Hla, 1992 : 586; Forchhammer, 1892 : 9). Similar to the *Mangraisat*, the Lan Na and Lan Xang legal traditions classified women into eight categories necessitating guardianship (Na Nagara, 1978 : 94-95). Guardians were typically male family members (e.g., father, eldest brother, or younger brother) or female family members (e.g., mother, older sister, or younger sister). Moreover, the adaptations illustrate regional Buddhist beliefs, exemplified by monks safeguarding women in monastic service (*kha phra*; ข้าพระ) (Wichienkeo & Wijeyewardene, 1986 : 53). The Lan Xang legal codes, such as *Khamphi Phosarat Lae Sangkhapakon* (คำพิพาสตราดและสังกะปะกอน), contain provisions akin to those found in *Mangraisat*. The texts permit male or female guardians for 12 categories of women (Baosisavat, 1996 : 23-24).

Society regarded women as requiring familial protection. The guardian's social standing influenced the woman's status, particularly in legal matters concerning violations or abuse, where penalties and compensation were adjudicated. The *Manava Dharmasastra* safeguarded women and penalized sexual offenders. These actions compromised caste integrity and jeopardized social order by transgressing *varna dharma*. A man who raped a virgin faced capital punishment unless he was a Brahmin; however, if both individuals belonged to the same caste, amputation could be substituted with a fine of 200 panas<sup>10</sup> (Olivelle, 2005 : 186). *Kautilya's Arthashastra* also penalized servants, nursemaids, cooks, and slaves who sexually assaulted women under their authority. Confiscation of property, financial restitution, and a state penalty amounting to double the woman's value were imposed as punishments (Shamasastri, 1967 : 261).

Conversely, a man who sexually assaulted a widow or divorcee was mandated to pay 15 ticals<sup>11</sup> of silver in restitution according to the *Mon Dhammasat*. Female victims who are minors or elderly received double compensation. If the offense transpired in private and the woman did not consent, the perpetrator was required to pay 15 ticals of silver. The legislation additionally safeguarded vulnerable groups, including women with disabilities and mental illnesses, instituting penalties that varied from financial restitution to perpetual assistance and care (Forchhammer, 1892 : 11; Pan Hla, 1992 : 587).

In addition to social, cultural conventions were also considered. The *Mon Dhammasat* imposed penalties based on Buddhist ethics rather than Brahmanic–Hindu principles. One stipulation asserts that a man who engages in sexual relations with another man's daughter without parental consent shall be condemned to hell (Forchhammer, 1892 : 9). The Lan Xang legal code penalized sexual misconduct in accordance with Buddhist principles. The third Buddhist precept

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<sup>9</sup> Ancient Indian law set the age of legal maturity at 12 years for females and 16 years for males (Shamasastri, 1967 : 223).

<sup>10</sup> Pana, also sometimes referred to as Karshapan, was the primary currency during the Maurya Empire era (322–185 BCE) in India. *Kautilya's Arthashastra* denotes this pana as a gold coin, a silver coin, and a copper coin. These coins featured images of the sun, moon, peacock, deer, and bull (Kumar, 2025 : 69).

<sup>11</sup> The *tical* was a unit of weight used in measurement systems, with one tical equivalent to one-quarter of a *tamlueng*, or approximately 16.33 grams. The tical was later adopted as a unit of currency across mainland Southeast Asia and became the basis for Myanmar's kyat and Thailand's baht. It is believed that the term tical derives from the South Indian word *tacca* (from Tamil Nadu), which was introduced through trade into the Mon Kingdom (see Wicks, 1992; de Campos, 1941).

(*kāmesu micchācāra*; กามเมสุมิชฌาจาร) was transgressed, and violators were penalized via *khan mai* (ขันหมาก), which pertained to men who exerted coercion against women under protection (Baosisavat, 1993 : 129). The *Mangraisat* stipulated that if a man transgressed against a woman in monastic service, he was not liable for a monetary penalty but was instead obligated to present flowers, incense, and candles as a formal act of atonement to the monk (Wichienkeo & Wijeyewardene, 1986 : 53).

The unique attribute of legislative conviction in Lan Na society, the notion of gender roles manifested in transgression, was termed "offending the spirits" (*phit phi*; ผิดผี), positing that unlawful sexual behavior by either gender could incite the ire of ancestral spirits. These entities were thought to inflict illness or misfortune upon the woman's protector. The man was obligated to conduct a ritual of apology to the woman's guardian as a means of reconciliation, acknowledging his transgression. This practice demonstrates that a woman's guardian may extend beyond living family members to encompass spiritual entities believed to possess the authority to uphold moral and social codes alongside the state's legal framework.

#### **4.2 Adultery Law: Strict Regulation of Male-Female Relationships**

The *Manava Dharmasastra* outlines *asrama dharma* in the second of the four *asramas*—the *grihastha* (householder) stage—which undergirds the Brahmanic social framework. The wives' duties included preparing *yajna*<sup>12</sup> offerings and prayers to deities on her husband's behalf, forming the Dharma of the householder's wife (Olivelle, 2005 : 194–195). Marriage was thus grounded in the wife's duties and loyalty, regarded as sacred and indissoluble. Women were expected to maintain fidelity, revere their husbands as deities, refrain from harboring negative thoughts, and remain loyal to preserve social honor (Olivelle, 2005 : 190–192).

Indian legal codes reinforced such gender roles, paralleled by literary archetypes like Sita from the *Ramayana*, revered in MSEA as the ideal wife. Didactic literature in MSEA further emphasized feminine virtue, portraying loyalty as essential and infidelity as a grave transgression. Traditional legal texts echoed this view: in the *Wagaru Dhammathat*, adultery was among six principal offenses (Forchhammer, 1892 : 6). The *Mangraisat*, *Phrathammasat Luang*, and the *Three Seals Law Code* imposed harsh penalties, granting husbands the right to punish adulterous wives and their partners without legal repercussions, even allowing a man to kill his wife's paramour without consequences.

A core principle of ancient Indian law was that caste duties upheld social order. Manu asserted that societal peace and stability depended on each varna fulfilling its prescribed dharma, with the four *vanas* essential for maintaining discipline. Failure to observe one's duties would bring suffering in both this life and the next. Adultery was a grave legal offense, its severity determined by the offender's caste and *dharma*. Married women—regardless of caste—were to be protected by their husbands, making sexual relations with them a serious crime. The *Manava Dharmasastra* prescribed punishments such as exile or branding for a man who committed adultery with another's wife, as the act was considered reprehensible. Cross-caste adultery was deemed a severe breach of duty, threatening social harmony. The harshest penalty—a death sentence—was reserved for a Sudra man who committed adultery with a Brahmin woman (Olivelle, 2005 : 186–187).

However, traditional MSEA legal systems adapted and reinterpreted concepts of Brahmanic–Hindu ideology to align with Buddhist ideology and cultural contexts. Following the principle of safeguarding loyal wives, they renounced the Indian concept of the fourfold caste system. They substituted it with locally significant concepts, such as ancestry and

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<sup>12</sup> *Yajna* rituals, originating from Vedic traditions, are sacred fire ceremonies integral to Hinduism, encompassing offerings and prayers to deities. The rituals, detailed in texts such as the *Brahmanas* and *the Yajurveda*, typically involve the recitation of mantras and the offering of substances such as ghee, grains, and herbs into a sanctified fire (*Agni*).

social status. These localized frameworks are reflected in traditional teachings from the *Hit Ban Khong Mueang* (ฮีตบ้านคองเมือง)<sup>13</sup> of Lan Na and Lan Xang, which influenced legal interpretations and punishments for adultery. The *Mon Dhammasat* imposed fines on men who committed adultery with another man's wife, considering the woman's lineage (Pan Hla, 1992 : 570). Additionally, the fine imposed on the male adulterer could vary according to the social status of the woman's husband—the higher the husband's rank, the more substantial the fine (Forchhammer, 1892: 10).

The harsh penalties for adultery were also deeply intertwined with Buddhist moral principles, which formed the foundational ethical framework of MSEA societies. Adultery was not only viewed as a source of personal and social conflict but also as a grave moral transgression. For example, a man who has sexual relations with another man's wife will be condemned to hell for 500 lifetimes. If reborn on earth, he would be reincarnated as a hermaphrodite or as a woman across three consecutive lifetimes (Forchhammer, 1892 : 9). Similarly, adultery is classified within the *kāmesu micchācāra* section, which prohibits sexual misconduct, designating it as a serious behavioral offense, or *micchācāra* (มิชฌาจาร) (Baosisavat, 1993). This alignment with Buddhist ethics reinforced the belief that adultery was both a legal and a spiritual violation, one that disrupted both worldly order and karmic balance.

The Brahmanic gender ideology in legal codes mandates that women have one husband and be faithful. Wives demonstrate fidelity by respecting and submitting to their husbands verbally, physically, and mentally. A devoted wife will be admired (Haughton, 1982 : 47). The king could order dogs to devour a disloyal wife in front of a large crowd if she was unfaithful (Olivelle, 2005 : 187). Secret conversations with men resulted in corporal punishment and public humiliation, including five lashes from an outcaste, a *Caṇḍala*,<sup>14</sup> in the village square, which indicates harsh condemnation (Shamasastri, 1967). Outcasts were forbidden from interacting with the four varnas. A Brahmin, Kshatriya, or Vaishya man dating an outcast woman would shame and shun her. An outcaste man who dated an Arya (a varna woman) would be executed (Olivelle, 2005).

The *Three Seals Law Code* indicates that MSEA societies expect women to exhibit honesty and refrain from infidelity; however, the penalties for "sexual misconduct" apply to both genders and are not influenced by caste-based Indian law. A woman who engaged in two affairs in a single day was labeled a "whore," while men faced no repercussions. When a woman committed adultery shortly after her husband's death—before his cremation—and her family lodged a formal complaint, she was subjected to humiliation, while the male adulterer was fined (Lingat, 1963 : 210–211). Women who engage in adultery with another's partner face legal consequences. The law permitted a wife to verbally or physically assault the female adulterer without legal repercussions, except in cases of serious injuries requiring compensation. The husband may face consequences for instigating such assaults (Lingat, 1963 : 222). Additionally, under Burmese law, *Mangraisat*<sup>15</sup>—Women found guilty of adultery were punished by the amputation of their ears and breasts (Na Nagara, 1978 : 94).

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<sup>13</sup> *Hit Ban Khong Mueang* denotes the conventions and regulations that serve as practices to be adhered to in accordance with the societal norms of individuals across all social strata within the kingdom.

<sup>14</sup> The *Caṇḍala* were a social group frequently mentioned in ancient Indian texts, referring to individuals who had been expelled from the varna system. This included those born from inter-caste unions or individuals who committed acts such as treason against the king. As outcastes (*avarna*), they existed outside the four varnas and were labeled untouchables, occupying the lowest status in the social hierarchy.

<sup>15</sup> Throughout the era of Burmese governance in Lan Na (1558–1774), the region experienced a certain level of Burmese legal influence, although the Burmese predominantly permitted Lan Na to maintain its own legal framework. References to Burmese law in various Lan Na legal manuscripts, including various versions of *Mangraisat* (the *Notong* (นอตอง) version, the *Wat Chang Kham* (วัดช้างค้ำ) version, and the *Wat Sao Hai* (วัดเสาไห้) version), provide evidence of such influence.

In the traditional period (13th–19th Century CE), while men in Lan Na were mandated to engage in a conscription system (Na Nagara, 1978 : 5), women occupied significant economic positions. This is indicated by legal documents that illustrate their autonomous involvement in market trade (Pongsripan, 2006: 99), a notable exception in ancient Indian law, where women were frequently married at a young age and were reliant on their husband's family. Didactic literature suggests that the financial independence and wealth accumulation of Lan Na women render infidelity to one's spouse morally objectionable and may be detrimental to household finances, as women may potentially retain assets for their love affairs (Phayomyong, 1979).

#### **4.3 Diverging Social Attitudes Toward Women and Divorce in Marital Law**

Ancient Indian legal codes highlighted Brahmanic–Hindu marriage ideology, which emphasized *ashrama dharma*, or the duties associated with life stages, alongside the sanctity of marriage as ordained by God. Marriage constitutes the paramount obligation for both men and women. This argument promotes early marriage for women by stipulating that 30-year-old men should wed 12-year-old girls or that 18-year-old men should marry eight-year-old girls. Fathers are responsible for failing to arrange a suitable marriage for their daughters upon reaching adulthood, even when an appropriate suitor is available and they are still young (Olivelle, 2005 : 190, 194). This perspective asserts that men and women were designed for reproduction. The *Manava Dharmasastra* states that all beings derive from women, referred to as the "field," and men, termed the "seed"; thus, the child belongs to the father (Olivelle, 2005 : 191). The *Mon Dhammasat* integrates Indian Manu principles and indigenous beliefs. The wife represents the earth, while the husband represents rain; when both are in harmony, the harvest is plentiful. This metaphor exemplifies the relationship between children, rain, and earth, highlighting the Mon worldview that esteems the essential role of women in society (Pan Hla, 1992). This notion was reiterated by *Mangraisat*, which stated that the children belonged to their mother and father (Na Nagara, 1978 : 22-23).

Furthermore, marriage is considered sacred and indissoluble, with the expectation that, once united, spouses will maintain lifelong fidelity in ancient Indian law (Haughton, 1982: 101). The duties of wives were established to bear sons, while men married to generate male heirs (Haughton, 1982 : 96; Shamasastri, 1967 : 219). Since only sons were allowed to perform religious rituals, it was crucial for the husband and his ancestors to have a son to achieve salvation (Haughton, 1982 : 150). The *Manava Dharmasastra* emphasizes the importance of having a son. A widow without a son may engage in sexual relations with her husband's younger brother and conceive a legitimate child with familial responsibilities. Supporting male offspring in maintaining the family was one of the principal responsibilities of wives. Alternatively, parents lacking a son may designate their daughter as a "female son" and mandate that her progeny undertake familial religious rites (Olivelle, 2005 : 191–193, 196).

Nevertheless, the notion of marriage was viewed as divinely sanctioned; however, it did not materialize in MSEA societies, where marriage was not considered a divine obligation. The union of husband and wife was perceived as the outcome of shared accumulated merit (*bun barami*; บุญบารมี) between the two individuals. Upon depletion of this merit, separation ensued naturally. The *Mon Dhammasat* states that the marital union was perceived as transcending both this life and the afterlife, with reciprocal obligations fulfilled harmoniously. If the couple treated one another kindly, they would be reincarnated together in heaven; otherwise, they would descend into perdition (Pan Hla, 1992 : 585-586; Forchhammer, 1892 : 6). Consequently, the couple attributed their separation to "the end of merit" (*sin bun*; สิ้นบุญ) from previous lives, as stated in the *Three Seals Law Code* (Lingat, 1963 : 242).

In ancient India, divorce and remarriage were distinct concepts. Women were permitted to marry only once due to the sanctity of the matrimonial ceremony. They were unable to remarry following their husbands' deaths due to the

necessity of purity and loyalty to achieve spiritual ascendance and reunite with them in the afterlife.<sup>16</sup> Furthermore, because women typically married young and moved in with their husbands' families, they became dependent on their husbands and in-laws in nearly every aspect of life (Mohapatra, 2015). On the one hand, the legislation did not permit a woman to initiate divorce from her husband, regardless of his conduct. Although specific texts, such as those of Kautilya, suggested that women could initiate divorce, these options were rarely accessible to them (Olivelle, 2005 : 66). Legal divorce required the consent of both parties, particularly in the case of a *dharmya* marriage,<sup>17</sup> which could not be dissolved without the approval of the bride's father (Shamasastri, 1967 : 224). In contrast, men were allowed to initiate divorce, and husbands could remarry under specific conditions based on their wives' deficiencies. These conditions included circumstances such as a woman dying without a son, being infertile, being addicted to alcohol, physically abusing her husband, squandering family resources, or engaging in slanderous speech (Olivelle, 2005 : 194).

In the context of marriage in MSEA, divorce may transpire between spouses, regardless of the existence of a male heir. Divorce regulations in traditional MSEA legal systems were therefore grounded in Buddhist principles. The end of a marital relationship was assessed through the lens of two Buddhist concepts: "the craving of desire" (*icchā tanhā*; อิจฉาทัณหา)<sup>18</sup> and "the craving of mourn" (*ālaya tanhā*; อาลัยตัณหา)<sup>19</sup> (Ganjanapan et al., 1985; Baosisavat, 1993 : 148). Once the couple's desire to marry was established, they were considered legally and spiritually united as husband and wife. Divorce, then, would be recognized when both forms of craving ceased and when both parties consciously declared, without emotional impulsiveness,<sup>20</sup> that they no longer wished to live together.<sup>21</sup> Additional legal criteria for ending a marriage included the possibility of allowing the couple to remarry, regardless of gender. A man's three-year abandonment of a woman without the transfer of assets entails legal ramifications. Lan Na legal codes asserted that a man who abandons his wife and avoids government service for more than a year is no longer considered married, thereby permitting the woman to remarry without repercussions (Na Nagara, 1978 : 21; Pongsripan, 2006 : 104). This notion is also evident in the *Wagaru Dhammathat*, which allowed both men and women to remarry (Forchhammer, 1892 : 15).

Buddhist social structures in MSEA kingdoms integrated with the animistic beliefs and spirit veneration of agricultural societies. Women served as essential ideological and ritual intermediaries between the sacred and human realms. They possessed ceremonial authority, unlike men (Reid, 1988). Most societies exhibited matrilineal kinship structures. This influenced societal expectations regarding women's roles, which markedly contrasted with those in India.

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<sup>16</sup> This concept may have resulted in the "sati," the practice of widows self-immolating on their husbands' funeral pyres. The word "sati" originally means "a virtuous or good woman (wife)" and is an enduring Indian tradition; yet, its origins remain obscure, and it is absent from the *Tripitaka*, the *Manava Dharmasastra*, and the *Arthashastra*. Indian historians assert that *sati* proliferated between the 11th and 7th centuries BCE. The British colonial administration prohibited it in the 18th Century following centuries of tradition (Salangi, 2022).

<sup>17</sup> *Dharmya marriage*, also known as *Dharmya Vivaha*, refers to a type of marriage that aligns with dharma, embodying the moral and ethical responsibilities inherent in Hinduism. It is recognized as one of the eight conventional forms of valid Hindu marriage, alongside the Brahma marriage, or as any marriage that fulfills its intended purpose and obligations.

<sup>18</sup> The term *Ichchā Tanhā* (อิจฉาทัณหา) refers to the initial mutual attraction between man and woman, without material exchanges, physical contact, or a marriage promise.

<sup>19</sup> *Ālaya Tanhā* (อาลัยตัณหา) represents a profound emotional attachment, as evidenced by gift-giving, physical intimacy, and a mutual commitment to marriage.

<sup>20</sup> In Buddhism, a divorce is invalid if declared in anger during a quarrel; it is only recognized when, after calming down, the husband deliberately and consciously decides to end the marriage.

<sup>21</sup> For this reason, legal disputes between spouses were among the three types of cases that the state would not except for adjudication. The Lan Na law, referred to as *The Judgments of Phra Buddhaghosacarya* (คลองตัดคำพระพุทธรโฆษาจารย์), forbids a wife or servant from initiating legal action against her husband and a child from suing their parents. These cases were precluded from formal adjudication due to their foundation in intimate personal relationships and emotional factors (Pongsripan, 2006 : 100–104).

Following marriage, men frequently resided with the woman's family or close by (Wongthes, 2006; Davis, 1984). Consequently, women occupied distinct roles and depended less on their husbands than in ancient India. In the divorce laws of traditional Lan Na and Lan Xang, property was assigned a prominent status. The wife acquired additional property while the husband was with his wife's family, as the husband acquired one portion of the property, while the wife obtained the remaining two portions. The *Mangraisat* stipulates that the woman should receive a greater share of assets post-separation as the proprietor of the household (Wichienkeo & Wijeyewardene, 1986 : 41–42). The *Mon Dhammasat* asserts that if a man resides on his wife's family's land, she and her family possess two-thirds of the property and its benefits (Pan Hla, 1992 : 556).

#### **4.4 Difference of Women's Rights to Property in Inheritance Law**

In Indian ancient Indian jurisprudence, inheritance laws reflect societal perspectives on the Brahmin–Hindu social structure. It states, "A girl should obey and seek protection from her father during childhood, her husband in youth, and her son in widowhood; moreover, a woman should consistently revere her husband as a deity" (Olivelle, 2005 : 190). These writings demonstrate that ancient Indian legal texts sustain the social and cultural status of women within Brahmanic–Hindu society. The *Manava Dharmasastra* revealed that the patrilineal system granted Indian women legal rights to personal property, as married women possessed six categories of property: jewelry and gifts from their father, brothers, husband, and brother-in-law; gifts from the husband's family and relatives; and property bestowed upon them by their husband. Her offspring would succeed to her estate in the event of her predeceasing her husband (Olivelle, 2005 : 200).

It posited that honoring women and bestowing ornaments would confer prosperity upon men (Haughton, 1982 : 55). According to the *Arthashastra*, women's property is defined as "means of subsistence or jewelry" (Shamasastri, 1967 : 219). While women were permitted to possess unlimited quantities of jewelry, it was evident that this was the sole category of ownership they were allowed. Women were allowed to utilize their jewelry as they wished; however, it should serve the family's interests. The legal code stated that a woman's husband may utilize it. The primary issue with the *Arthashastra* is that women were prohibited from possessing wealth or authority, such as owning ancestral property, real estate, or a "special share of properties," including goats, horses, cows, or sheep (Shamasastri, 1967 : 556). Although jewelry may possess greater value than specific properties or real estate, Kautilya established a social and economic framework that overlooked women's rights and adversely affected their financial entitlements.

*Arthashastra* does not address matrilineal inheritance, and the inheritance provisions it contains appear to reflect a perspective that discouraged women from remarrying. The text suggests that women had no right to own or manage property if they divorced and remarried. In contrast, a man could inherit and retain his wife's property upon her death and was allowed to remarry while retaining any inherited assets. However, if a woman remarried, particularly if her new husband was not from her former husband's family, she lost the right to use her personal property and could not transfer it as inheritance to children from the new marriage (Shamasastri, 1967 : 221).

Conversely, women in the traditional MSEA occupied significant roles and exhibited flexibility within the socio-structural context, actively participating in the socio-economic sphere through kinship-based affiliations with men—as wives, mothers, daughters, sisters, and even secondary wives or concubines, whose progeny were also entitled to inheritance, as noted in *Mangraisat* (Na Nagara, 1978 : 26). Kinship ties defined and potentially strengthened this subsistence system's social structure. This inherently entailed the interplay between economic activities and gender roles as they were required to collaborate in the production of goods in a mutually dependent fashion. Therefore, inheritance practices in traditional MSEA legal traditions typically granted property shares to both sons and daughters (Pan Hla, 1992 : 591–592).

Moreover, the mother's social status often influenced the distribution of inheritance. For instance, the *Mon Dhammasat* provided guidelines on the inheritance rights of children born to different fathers and mothers in the case of remarriage (Pan Hla, 1992 : 568; Forchhammer, 1892 : 15). The *Thammasat Luang* likewise affirmed that children of different mothers could inherit property from both their father and their own mother, though they were not entitled to property belonging to the mother of another sibling (Baosisavat, 1993 : 160–163). The *Three Seals Law Code* prescribed inheritance shares for all children, adjusting the proportions based on the hierarchical status (*sakdina*; สักดินา) of their mothers (Lingat, 1963 : 28). Similarly, the laws of Lan Xang also recognized the right of a mother to bequeath her property to her children (Baosisavat, 1993 : 160–163).

Inheritance laws were closely aligned with Buddhist ethical teachings, particularly regarding familial duties and intergenerational relationships. Caring for one's parents was a fundamental duty of a responsible child, especially in times of hardship or old age. As a result, one of the key criteria for determining inheritance allocation was the moral conduct of the children—particularly their devotion and care toward their parents. The child who "brought happiness and benefit to the parents" would obtain a larger share of the inheritance. Daughters who tended to their elderly parents and protected the family estate frequently received a greater share of the inheritance (Baosisavat, 1993: 155–156). In accordance with Siam's customary law, it was observed that only children exhibiting gratitude and obedience were considered deserving of an inheritance (Lingat, 1963 : 28-29; Pan Hla, 1992 : 55). In Lan Na society, passing down homes and land through daughters<sup>22</sup> was one way to ensure that property remained within the maternal line across generations (Mougne, 1981).

## **Discussion and Conclusion**

This study reveals that Indian civilization, a foundational source of Eastern cultural traditions, significantly influenced various traditional kingdoms in MSEA. Key influences included ancient Indian legal thought, such as the *Manava Dharmasastra* and *Kautilya's Arthashastra*, as well as religious and ideological frameworks rooted in Brahmanic–Hinduism and Buddhism. A particularly compelling aspect of this influence concerns the concept of women in MSEA states, which were shaped by Indian patriarchal traditions. However, MSEA societies did not fully embrace these cultural elements. Instead, they selectively integrated Indian influences and adapted them to local cultural contexts, resulting in unique sociocultural configurations—a process that Wolters (1982) described as cultural localization. This localization process gave rise to distinctive social and legal features in traditional MSEA, where women were accorded relatively high status and significant gender roles. Traditional legal codes reflect this. For example, while the *Manava Dharmasastra* required Indian women to be under the lifelong guardianship of male family members only, MSEA laws also mandated female guardianship. Still, they allowed the guardian to be either male or female, drawn from within the family. Similarly, women's roles and duties were deeply embedded in kinship structures—reflected in marriage practices, the rights of wives, divorce, and property and inheritance rights. These dimensions unfolded within systems of mutual obligation—between spouses, parents and children, and between men and women—highlighting foundational human relationships present in all societies. This study argues that these legal and cultural expressions shaped the social status, roles, and responsibilities of women. Understanding how women's roles were influenced by Indian civilization contributes to broader insight into gender relations and gender roles—continuities that have evolved from the past to the present.

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<sup>22</sup> According to the *Mon Dhammasat*, a son is entitled to inherit various items, including weapons such as knives and spears; livestock such as elephants, horses, cattle, buffaloes, and pigs; and tools, implements, money, and other property (Forchhammer, 1892: 14).

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