Ketevan Nadareishvili (Tbilisi)

WOMEN IN THE LAW OF DEMOCRATIC ATHENS

It is universally considered that Classical Greece is one of the most interesting and important periods of the Ancient World both from the socio-political and cultural points of view. "It was the epoch full of the most significant events — the processes, that began in the Archaic period acquired surprising perfection, the Greek culture gave birth to majority of its important heights, the power of the Greek polis ideology as well as its weakness was completely revealed at this time. It was the period during which the Greek culture achieving the great ascents has suffered such a great and final decay. Every aspect of the versatile and full-blooded life of this period arouses a great interest up to now". \(^1\)

Achievements of Classical Greece is straightforwardly linked with emergence and development of the new system – democracy, which reached its peak in Athenian polis. The Athenian democracy elaborated the democratic principles in a most perfect way. Athenian citizens had the same rights and could equally take part in the political life of the day; at the same time they had a free choice for their activities, for founding their business and e.t.c. But these were considered the privileges of the citizens. Despite the fact, that women also were the citizens of Athens, they were deprived of the abovementioned rights of citizen. It was a paradox of the Athenian democracy. Thus the democratic freedom of the classical polis entailed the legal and cultural subordination of women. What was the reason of it? But before we can answer this question there is a point we should discuss. We must investigate the way how the democratic system of governing had been found and see, what was the basis of the newly established state.

Gordziani R., The Greek Civilization, v. II, I, The Classical Era, Tbilisi, 1997, 5 (in Georgian).

Arthur M., "From Medusa to Cleopatra: Women in the Ancient World" in (edd.) R.Bridental and C.Koontz, Becoming Visible: Women in European History, Boston, 1977, 79.

The new system, more egalitarian form of the government – democracy was formed by the class developed step by step in the aristocratic society – the class of middle farmers. This change entailed emergence of the new type of the family, so-called nuclear – small family, which as it seems at this point of history appeared to be the most appropriate form in creating and transmitting the wealth of the newly born class. In the conditions of a new system this small family – oikos became the nucleus of social organization of the new state – polis and was developed as the productive unit of society.³

The new state was based on small households, and even more, the polis was defined as the sum of all the individual households. Head of a house became a citizen automatically. For this result the nuclear family acquired specific importance in the life of the polis. The virtue of the polis as a whole greatly depended on the virtue of the oikos, as a part. 5

Proceeding from the increased importance of an oikos, protecting and maintaining a family became the principal concern of the state.

The overwhelming importance of an oikos in the Greek state caused transformation of the woman's role in the oikos. The functions of wife and mother, that she always performed, acquired a new significance as they were construed to be necessity and duty. Woman had to perform two main obligations – to ensure the legitimacy of heirs for the family and to transfer the property with reserved rights to the transferor. Failure to perform these duties would have dangerous consequences for a vitality of families and hence for the middle class on the whole. Thus woman became a necessary part of an oikos and consequently acquired essential importance for the state. Essential nature of her contributions caused the necessity of special control and protection of a woman. But besides these measures Greeks imposed restrictions on woman's

³ Gluskina L.M., "Social Institutions, Economic Relations and Legal Practice in the 3rd Century Athens According to the Court Speeches of Demosthenes", Demosthenes, Speeches, v. I-III, Moskow, 1994, v. II, 411.

⁴ Arthur, 1977, 85.

Aristotle, Politics 1260b10-20. The ways of the relationship between polis and oikos are discussed in the various passages of Aristotle's Politics. Pol.1253b3; 1261a20; 1263b32; 1261b11: 1253a18.

Arthur assumes, that the function of women was to ensure legitimacy of heirs. Arthur, 1977,79, while Gould attributes a great importance to the transmission of the property by women, Gould J., "Law, Custom and Myth: Aspects of the Social Position of Women in Classical Greece" JHS 100,1980, 38-59, 44.

It was in the interests of Athenian State to maintain individual families, both because it ensured a supply of warriors, and because economic viability of an oikos helped to escape the civil strife and ensure the political stability. Blundell S., Women in Ancient Greece, London, 1995, 119.

freedom to ensure her subservience for the needs of the state any time it was necessary.⁸

All these seem to be the main reasons of her above-mentioned subordination – a paradox of the Greek democratic system.

One of the main characteristics of the Greek polis was so-called "totalitarism" – the Greek state demanded the priority of her interests over the interests of others. Individuals – both women and men had to subordinate their interests to the interests of the city, to sacrifice themselves to the needs of the polis. Subordination of women to the interests of the polis was not quite obvious, as there was an oikos between a woman and a polis and women had to perform their obligations and duties first and foremost for a family.

But while discussing the definite aspects of the legal status of a woman, the social institutions bound up with a woman and the customs defining her role, we shall make sure, as it seems to us, that nearly everything concerning her position depended on the needs of the state itself functioning successfully only through the families.

We shall proceed by first discussing her subordinate position in a family; second, we shall try to present how far the social institutions linked with women resulted from the inner structure of society.

According to the law of Athens woman had not the status of fully autonomous being. Women thus were not entered on the lexiarchikon grammateion of the deme, where all male members of the community were registered, neither were they considered as members of a phratry. In Athenian reality there existed no documents declaring legitimacy of a woman. The legitimate status of women could be established only in the roundabout way, with the help of indirect and informal evidences. It is significant, that the pattern of naming respectable women is almost fully absent in Attic tombstones of women as well as in the private speeches of the Attic orators. ¹⁰ Women were referred to by complex paraphrases, which marked their status-dependence

Marinovitch L.P., Kochelenko G.A., "Introduction for the Edition of 1994", Lysias, Speeches, Moscow, 1994, 14. For the clearest example of individual-state relationship pattern in Antiquity see, Aristotle, Eth. Nic.1094b.

⁸ Arthur, 1997, 85.

The issue of woman's name in Tombstones is investigated in the articles: Vérilhac A.M., "L'image de la femme dans les épigrammes funéraires gresques" La femme dans la monde méditerranéan. I. Antiquité, Lyon, Paris, 1985, 85-112. D.Schaps' article treats the problem of naming of women in the private speeches of the Attic Orators, D.Schaps "The Women Least Mentioned: Etiquette and Women's Names", CQ 27, 1977, 323-330.

upon male kinsmen.¹¹ "A woman was not somebody to respect, but was somebody's mother, or sister, or wife, or daughter – that was another matter.¹²

As far as a woman was not an independent being, she was always assumed to be incorporated in the structure of an oikos. The institute of kyrieia – or guardianship was common for the reality of Athens. It meant, that throughout her life woman was under the legal control of a male kyrios, who was her nearest male relative. If unmarried she was usually in the kyrieia of her father, or brother or grandfather on her father's side. Upon marriage her husband acted as her kyrios, but it would be more correct to say that she fell under a kind of divided kyrieia, as the former kyrios had kept definite rights upon her (More detailed discussion of these special aspects of kyrieia will be presented below).

On her husband's death if she did not have any children she reverted to the guardianship of her fathers. If widow had sons, she passed to the kyrieia of her sons. In the case they were minors, she fell under the guardianship of their kyrios. The Archon protected widows and if women were somehow abused, it was his obligation to protect the offended.

A kyrios had to ensure economic and social security of a woman under his guardianship. He represented her in a court and his consent was necessary for any legal action undertaken on her behalf. As woman legally was not permitted to engage in transactions, it was her guardian, who had to do it instead of her. 13

Marriage and motherhood were considered to be primary goals and events in the life of a female. And even more, those were her duties she owed to Athens. Greeks lamented the death of young unwed maiden first of all because she had not fulfilled her roles as a wife and a mother.¹⁴

Women had no right to choose her future husband. It was her guardian, who in law determined whom a woman should marry. Marriage was generally contracted within an "anchistea" – an extended household. Marriages between uncles and nieces, between first cousins, between siblings (on the fathers' side only) were usual. ¹⁵ If suitable candidate was not found in the extended

¹¹ Dem.XI, 60.

¹² Schaps, 1977, 330.

¹³ Just R., Women in Athenian Law and Life, London, 1989, 34-36.

¹⁴ Pomeroy S.B., Goddesses, Whores, Wives and Slaves, Women in Classical Antiquity, New York, 1975, 62.

¹⁵ Plutarch, Themistokles, XXXII, 1-2; Dem.LVII, 20; XXVIII, 1,3; LIX, 1-2: XLIV, 10. Iseos, XI, 16.

family, a woman might marry a close friend of her father, ¹⁶ or a person unconnected with her family, in the latter case a bride might have not even seen her husband-to-be prior to her betrothal. But she was not allowed any say in that matter.

Girls in Athens were married for the first time very early – between the ages of fourteen and eighteen.¹⁷ The reason for early female marriages dealt with the perception of Greeks that sexually mature girls were ungovernable. And as according to their custom, a bride was to be a virgin, to avoid further difficulties, Greek males preferred to marry them in an early age. The majority of the man, on the other hand, married at about thirty. The disparity in the ages of husband and wife, naturally aroused a gap between them, made difficult true partnership between spouses. But at the same time according to Ehrenberg sexual relationships bound married couples closely and caused strong mutual attachment among them.¹⁸ Besides, the disparity in ages helped to accentuate the intellectual inferiority of the wife and reinforced patriarchal attitudes toward women.¹⁹

All these discussed regulations undoubtedly manifest that woman had subordinate status and as Gould states, existed only as an extension of her male kyrios.²⁰ On the other hand woman's role was simultaneously the essential and crucial one for the maintenance and security of families and hence for the vitality of the state. Now we shall proceed to explore how the main women social institutions were arranged to serve the needs of the state.

Up to the certain period of Athenian history a marriage had no formal character. It was living together, which made a marriage a marriage; its existence was therefore essentially a question of a fact. Living together – sunoikeion is the Greek for being married and procreation of children was its explicit object.²¹ In 451/0 Pericles introduced the law according to which qualification as an Athenian citizen included being of Athenian parentage on both sides, and not, as previously on his father's side. Hence the legal personality of a male citizen became dependent upon his being the son of an Athenian woman. It seems likely, that a formal marriage became obligatory after

One of these cases is described in Iseos, II, 3-9, where the brothers (guardians of their sister) not only married her to their father's friend, but latter also demanded from her to agree upon the divorce.

¹⁷ Pomeroy, 1975, 64.

¹⁸ Ehrenberg V., The People of Aristophanes, Oxford, 1951, 144.

¹⁹ Blundell, 1995, 120.

²⁰ Gould, 1980, 45.

²¹ Lacey, The Family in Classical Greece, London, 1968, 110.

introducing this law.²² Only formal marriage made it possible to show that the bride had the legal status. Thus the formal character of marriage had primarily a public side. The need of the formal marriage was due to the importance of asserting the child's legitimacy.²³ That is why a marriage was registered with the phrateres of the husband, but when the girl was an epikleros, it was registered also with her family.²⁴

Besides these customs, there were some other obligatory conditions to consider a marriage a formal one, performed according to the Greek wedding rules. One of them was a betrothal – engue. Women were to be betrothed before wedding. A betrothal had a formal character as well and the witnesses should have been presented from both sides. The proof of engue was utmostly important in the case the legitimacy of children was ever called in question. Thus a betrothal was considered to be one more affirmation of the formal marriage and the legitimate status of an heir. In connection with this the formula sworn by the father after introducing the child to the phrateres is worth mentioning. He said, he knew, that the child had citizen-status, being born to him from a citizen mother, properly (i.e. formally) married. The Great public importance of these ceremonies is undoubtedly obvious.

Here we came up to the most important institutions of marriage, namely, a dowry that acquired a very specific character in the case of Athenian wedding system. A marriage of a woman had one more obligatory precondition – producing a dowry for a bride. It was the business of her kyrios. Probably it was not his legal obligation, but by the 5th century dowry was an established convention and was a notion of both father's economic status and his self-esteem.²⁸

Athenian women did not directly inherit their fathers' property, but had a share in the patrimonial inheritance, which was reflected in the dowry. So

The issue remains debatable. E.g. Wolff believes, that it had always been necessary, see Wolff H.J., "Marriage, Law and Family Organization in Ancient Athens", Traditio 2, 1944, 43-95. Lacey himself assumes, that it is not certain whether a formal marriage was necessary till 403/2 B.C., Lacey, 1968, 104. For Pericles' citinzenship law and a formal marriage, see Hignett C., A History of the Athenian Constitution to the End of the Fifth Century B.C., Oxford, 1958.

²³ Lacey, 1968,111.

²⁴ Isaeos.VIII, 18: III, 75, 79; Pollyx, 107.

²⁵ Formally arranged marriage was denoted by Greek terms "kata tous nomous" and "epi dikaios", e.g. Dem. XLVI, 18.

²⁶ Lacey, 1968,105.

²⁷ The formula is cited in Dem.LVIII, 54.Though here the term "properly" is not mentioned. Here is just stated "being born to him from citizen-mother married to him".

²⁸ Dem.XXXVII, 42-45; Is.XI, 40.

they received their portion of the family's inheritance on marriage and not on the death of their father.²⁹

Dowry functioned as a kind of mechanism, that ensured woman's economic and social security. Husband had to invest the dowry and was required to maintain his wife from the income computed at 18 per cent annually. Husband was not advised to dispose of the capital sum. Usually this sum was remained as a legally separate piece of property and was passed over their sons, when they were old enough to inherit it.

Dowry protected wife from both frivolous divorce initiated by her spouse and ill treatment on her husband's side. This social safeguard resulted from husband's obligation to return dowry in case of divorce. And it must be borne in mind, that woman's family always had the right to terminate the marriage and reclaim a dowry back. If man did not return the dowry, he had to pay interest on its value of 18 per cent annually.³⁰ In the case he failed paying this sum, he could be prosecuted by woman's family. The dowry was to be returned no matter which partner was an initiator of the divorce, even when the divorce resulted from adultery of a woman.³¹ A widow took her dowry back to her natal household if spouses had no children, or if there were only daughters in a family.³² If there were sons and wife remained in her dead husband's family, then the kyrios of her sons managed the dowry. In the case she chose to return to her natal family, she took her dowry with her.

The specificity of the dowry lies mainly in the condition that woman, an owner herself, was not legally capable of disposing it, she did not really own what she possessed – it meant, that she was only the instrument to transmit the inheritance from one family to another.³³ As we have already emphasized, even husband – her guardian was not advised to dispose of the principal part of it, which was to remain intact throughout her lifetime. The established mechanism of transmitting the property was by no means accidental, neither was accidental the very reason why women were deprived of the rights to dispose of their property. The essence of the dowry was to remain as a legally separate piece of property, hence to be a kind of a guarantee for the vitality of a family. "The state thus limited individual freedom to dispose of property to

About the issue of women's inheritance, see especially Schaps D., Economic Rights of Women in Ancient Greece, Edinburgh, 1979 and his "Women in Greek Inheritance Law" CQ 25, 1975, 53-57.

³⁰ Dem.XXVII, 17; Dem.XXX, 7; Dem.LIX, 52.

³¹ It is worth mentioning, that a divorced woman took her dowry back, while her son(s) remained with their father. It meant, that son(s) did not inherit their mother's dowry. The owners of the property would become the woman's children from her next marriage.

³² Blundell, 1995, 116, see also note 8.

³³ Gould, 1980, 44.

prevent the exercise of that right from conflicting with the higher principle of the inviolability of each oikos."³⁴ This primarily principle established by the polis ideology served first and foremost to retain the basis of the state – the middle class, whose government was "the best form of political society" as Aristotle put it, the class, the members of which "should possess moderate and adequate property".

The utmost importance of the dowry caused special control of the rules concerning it. The maintenance of these rules was probably the responsibility of the archon, but at the same time it was the concern of the whole society. And since the property was of such significance for Athenians, it was women's role as the transmitters of property that caused such a concern about them and impelled to protect them.³⁵

The ultimate importance of the inviolability of individual families is most obviously manifested in another specific Greek institution – epiklerate. In families in which there was not a son daughters were responsible to perpetuate the oikos. These daughters were called "epikleroi". For the reason that there is not a more appropriate term available, the word is often translated as "heiress", but "epikleros" literally means "with the property ",³⁶ or "attached to the family property",³⁷ which very neatly displays the essence of the term. It could only seem, that the epikleros inherited property, but in reality the property was passed over to her husband and through him to their children, who in fact owned the property, since epikleros' husband only held it in trust until the son(s) came of age. On the other hand, epikleros could not be separated from the inheritance, as her husband had no right to take inheritance without first marrying her.³⁸

Epikleros' marriage was stipulated by very hursh rules. An epikleros was obliged to marry the nearest male kinsman. The groom was chosen in an extended household – an "anchisteia" according to the order of succession, which existed among the male candidates of an "anchisteia". And it did not matter if one of the wedding partners was married by that time. Married epikleros, if she had not produced a son, might be divorced even without her will.³⁹ Afterwards she had to return to her natal family and marry a claimant (nearest male kinsman). If the male candidate was himself already married,

³⁴ Arthur, 1977, 87.

³⁵ Gould, 1980, 44.

³⁶ Blundell's interpretation, Blundell, 1995, 117.

³⁷ Pomeroy, 1975, 61.

³⁸ Blundell, 1995, 117.

³⁹ See Harrison A.R.W., The Law of Athens, The Family and Property, 1968,Oxford, 309-11, citation according to Blundell, 1995, 117, n.13.

then he also had to divorce, or give up his claim. It is to be emphasized, that epikleros' husband forfeited his rights to inheritance within his own family.

The Greek term for marriage "ekdosis", which literally means giving out, loaning, betrays its essence primarily in the institution of epiklerate.

Woman appeared to be an object, which her kyrios lent out to another family to perform the functions of a wife and mother. But the former kyrios always retained the right to dissolve the marriage and require the "loaned object" back. The necessity primarily occurred, when there were no male heirs and women had to perpetuate their father's line. She had to return to her natal household and bear an heir. Hence "ekdosis" obviously displays the unbreakable bond existing between a woman and her natal oikos. Epikleros is the clearest example, that women owed her generative functions primarily to the oikos of her birth. And it must be remembered, that while perpetuating a line of a natal family, epikleros acted against disappearance of an individual oikos. Performing her function of an "heiress" she served first of all interests of the polis.

The subordination of the woman's status has caused the reevaluation of the crime of adultery. In Homeric period the attitude toward woman's morality can be characterized as much more loyal. In former times adultery was considered to be primarily an offence against a husband, it might become the cause of a war between households, but by no means did it engender a danger for social stability. It democratic Athens the crime of adultery acquired quite different estimation. It was not only a private offence any more, but became a crime against society, since adultery put in question the legal status of a heir, hence threatened the integrity of the oikos itself. As Pomeroy states, "since the aim of marriage between citizens was the production of legitimate children, adultery was a public offence because it could result in the introduction of a child unrelated to husband – and possibly the offspring of a non - Athenian – into the husband's house and kinship-group cults". "

Greeks were very cautious to prevent this ultimate danger to society, that is why they had estimated adultery as a very heavy crime. One of the passages of Lisias' famous speech *Against Eratosthenes* explains very obviously, what the point for such a strict estimation of adultery was: "the lawgiver prescribed death for adultery" (though not for rape).... because he, who achieves his ends by persuasion thereby corrupts the mind as well as the body of woman.... gains access to all a man's possessions, and casts doubt on his children's parentage".⁴¹

⁴⁰ Dem. LVII, 41.

⁴¹ Lysias, I, 33.

Having all these in view, the state therefore regulated very strictly the sexual life of Athenian citizen women. Some time before, Solon's laws had defined not only the obligatory sexual norms for women, but considered in detail the regulations concerning women's voyages, or their behavior during walking. The "double standard" claiming different types of sexual life for men and women, was encouraged in Solon's time. It did allow men extramarital sexual relationship provided, that they were not with women, who were under the guardianship of other citizens. Women had no sexual liberty. As we have already explored, the reason of such attitude towards women's behavior was primarily civic and not moral.⁴² The ultimate control and regulations of women's sexual life resulted from the threat that their sexual freedom could bring to society.

Both sexes suffered heavy penalties for committing adultery. The kyrios of a woman had the right to kill a seducer caught in the act with any woman under his guardianship. But as it seems in Classical Greece an adulterer more frequently was put into prison with the aim of taking from him monetary compensation.

The law did not demand to kill adulteress, but a divorce for a woman taken in adultery was compulsory. As She was excluded also from participation in religious festivals. In reality it meant, that woman was almost deprived of the rights of citizenship, "since religion and marriage were the only spheres, where the citizen woman was privileged". An adulteress somehow became a social outcast. If regardless of exclusion, an adulteress tried to participate in religious ceremonies, any member of society had the right to punish her physically and tear off her clothes in public. According to Solon's laws an unmarried Athenian daughter caught with a man could be sold into slavery, but in later times she was merely kept at home unmarried. The very fact of reevaluation of adultery and the penalties imposed on the crime affirms in addition that integration and inviolability of an oikos and thus well being of the state dictated the norms of behavior in this area of Athenian life.

Proceeding from this primal concern for Athenian polis, women unconditionally were confined to private sphere entirely (except religion). In Athens they could not attend or vote at the Assembly, sit on Juries, or serve as council members and magistrates, they could not make public speeches, or speak in a court. The citizenship of Athenian woman was much more frequently

⁴² Lacev, 1968, 113.

⁴³ Dem.LIX, 86-87.

⁴⁴ Arthur, 1977, 87.

reproduced by the term "aste", than by the term "politis".⁴⁵ Women had no political rights at all. The term "aste" referred to woman's possession of civil rights, but we must bear in mind, that civil rights of an Athenian woman were quite restricted. According to Blundell, citizenship of Athenian women meant only that they had a s h a r e in the religious, legal and economic order of the Athenian community".⁴⁶

In 451/450 B.C. the Assembly introduced the citizenship law of Pericles, which had modified the existed rules for entitlement to citizenship. The issue was briefly surveyed above. From this period onwards a mother together with father granted her children the citizenship status, but to do this, she was to be a citizen herself. Athenian women became important, "as channels through which political as well as economic rights were transmitted to the next generation of citizens". 47 It seems, that the new law somehow altered attitude of men towards Athenian women. The way in which Athenian citizen women were viewed by male sex, was considerably different from the way, Athenian men estimated alien women. From the midst of the 5th century Athenian women were enjoying the privileges that other groups of women were deprived of. One can say even more, regardless of the subordination, women of Athens were highly respected in the state. The recognition of women's contribution to the polis was displayed in the important role they had in the religious sphere of Athens. But these issues are not of our interest at the present moment. We are primarily concerned with the motives of introduction of Pericles' citizenship law - namely, how far was this law preconditioned by the interests of the polis itself.

Despite the fact, that the motives of the law are quite divergent, the majority of scholars speak in favor of the priority of the state's interests in implementing the law. E.g. According to one of the popular arguments, Pericles' law was introduced in order to limit the influence of aristocratic families, who by arranging marriages with powerful families in other states acquired control over the foreign policy. Hence, it suggests, that the goal of Periclean law was to maintain and secure the interests of the middle class – the basis of the Greek polis.

⁴⁵ Fem. of polites. This word is normally translated as "citizen", but it mostly signifies citizen with full political rights.

⁴⁶ Blundell, 1995, 128.See also term "aste" in H.G.Liddell, R.Scott, Greek-English Lexicon, Oxford, 1961.

⁴⁷ Blundell, 1995, 129.

⁴⁸ The summary of these arguments is given by Patterson C.B., Pericles' Citizenship Law of 451-450 B.C., The Aver Company, 1981.

According to Pomeroy, the new citizenship law was imposed in order to regulate Athenian population. While making her speculations, the scholar takes into consideration two ancient sources: Aristotle and Diogenes Laertius. Aristotle stated, that Pericles' citizenship law was enacted because of the large number of citizens.⁴⁹ While Diogenes Laertuis explained the relaxation of the citizenship law in 411 B.C. by the need of Athenians to increase their population. As Pomeroy puts it, these ancient accounts for Periclean law depicted, that Athenians understood how to regulate their population – the simplest means of controlling the growth of the population was increasing or decreasing the number of females, who could produce citizen children.⁵⁰ Pericles' law restricted the number of citizen brides and thus prevented engendering additional families – the surplus of population seemed to be undesirable for successful functioning of Athenian polis in the period of Pericles' governing.

Among other motives of the law the concern of Athenians to make their city more coherent attracts special attention. And indeed from the middle of the 5th century, Athenian community became endogamic – the citizen body was constituted from marriages arranged within the community, exchange of women between Athenians brought together different families and thus facilitated the cohesion of the Athenian state.⁵¹

All the discussed material makes clear the point we have stated in the very beginning. Women's role and family relations in general were secondary issues for Greeks of that period. Their primary concern was for the state.

⁴⁹ Aristotle, Athen. Pol.26, 4.

⁵⁰ Pomeroy, 1975, 70.

⁵¹ Blundell, 1995, 127.