

RIGHTS AND MARITAL STATUS OF INDIAN WOMEN-A STUDY

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Marriage is an important social institutions and it still exists as a well established foundation for the family. Legally, the idea of marriage refers to a united husband and wife according to the social law throughout their life by fulfilling their duties to the society and to each other. In any legal system the marriage will be legal only if it has formal validity and essential validity. Former validity is determined by the marriage ceremonies of the place or *lex loci* celebrations whereas the essential validity is determined by the personal law of the parties or the law of the place of residence or *lex domicilli*. The position of a married woman as the mistress in the home is very important in nation building. Any calamities like war, epidemics, financial crisis and the negative personality traits of husband like drunkenness and immorality and treatment of relatives often affects her existence and that of the children and those who are being nursed by her. This can be cited as the backdrop for the formulation of social religious and state laws in its different stages.

In this paper I would like to highlight the nature of the rights of Indian Women with special reference to their marriage legislation. Vedic Age speaks of the prevalence of a healthy marital relationship. The ideal of marital life was 'never parting', 'united pair' sharing the same married pleasure. There was a complete surrender on the part of the wife to which her husband responded and which he returned in full measure. The activities of the mission - aries gave way to Hindu revivalism. Rajaram Mohanroy, the father of Indian Renaissance opposed sati and polygamy and encouraged widow remarriage. Due to this certain regulation acts were passed in favour of women.

Bengal Sati Regulation Act of 1829, caste Disabilities Removal Act of 1850, Widow Remarriage Act of 1856, The married Women's property Act of 1874, Child Marriage Restraint Act 1929 etc. provided safeguard and protection to the Indian Women. In the twentieth century many women associations came forward to fight for the amelioration of the grievances of women. All India Women's Conference conducted campaign against early marriage, polygamy, purdah, dowry and pleaded for widow remarriage and the property right for women. The Indian Criminal Procedure Code of 1973 provided for a thorough police enquiry into the suicide by a woman within seven years of her marriage. According to the Special Marriage Act of 1954 the male should have completed the age of twenty one and the female the age of eighteen years at the time of marriage.

The Muslim Women Protection of Rights on Divorce Act of 1986 protects the rights of Muslim Woman who have been divorced by their husbands. The Dowry Prohibition Act of 1981 stated that if any person demands directly or indirectly from the parents of a bride any dowry he shall be punishable with imprisonment for six months to two years with five ten thousand rupees. However, the lack of a uniform law for guiding the marital life womanhood has been a grave problem for women activities.

The advent of the British and the missionary activities brought new trends in the position of marriage and divorce in India¹. The activities of the missionaries gave way to Hindu revivalism. Raja Ram Mohan Roy who is acclaimed as the father of the Indian Renaissance opposed sati and polygamy and encouraged widow remarriage². Until 1858, the British rulers concentrated on consolidating their political base, and were cautious about their policy and actions regarding religious beliefs and traditions. They did modify certain practices, on the grounds of public demand (stimulated by the social reformers) and humanitarian consideration for the woes of women, by enacting such legislation as the Bengal Sati Regulation Act of 1829, the Caste Disabilities Removal Act of 1850 and the Widow Remarriage Act of 1856. After 1858, they adopted a continuous policy of not disturbing the traditions of Indian Society³. In 1856, the widow remarriage Act was passed which validated the marriage of the widows⁴. The Indian Penal Code enacted in 1860, two years after the takeover of the administration of the companies' territories by the crown provided,

1. Where the death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her or any relative of her husband for or in connection with, any demand for dowry, such death shall be called dowry death.
2. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life⁵.

Native Convert's Marriage Dissolution Act, 1866, allowed a Hindu to appeal for adivorce if a spouse converts to Christianity. In 1874, The Married Women's Property Act was passed and this enabled married women to inherit family property⁷. The Child Marriage Restraint Act XIX of 1929 (Sarda Act) punished the parties concerned if the marriage was performed in contravention of the law which prescribed 14 years for the girl and 18 years for the boys as minimum ages⁸. The highest aim of marriage for Gandhi was spiritual maturation, followed by service to society, duties towards the family and ancestors, and mutual attraction between husband and wife⁹. Nehru wanted women to have a share in the property of their fathers and husbands¹⁰. The national leaders had really realised the importance of empowering women through legal protection.

In the twentieth century many women's associations came forward to fight for the amelioration of the grievances of women. All India Women's Conference conducted campaign against early marriage, polygamy, purdah, dowry, and pleaded for widow remarriage and the property right for women. In view of these developments we find many laws for providing protection to married women and prohibiting illegal divorce were enacted during the post-independence era.

Clause (1) of Article 15 provides that the state shall not discriminate between citizens on grounds of religion, race, caste, sex, place of birth or any of them. Clause (3) of Article 15 of Article empowers the state to make special provisions for the protection and welfare of women". The Indian Criminal Procedure Code of 1973 provided for a thorough police enquiry into the suicide by a woman within seven years of her marriage and suspicious death of a woman seven years of her marriage. Such cases should be forwarded to the civil surgeon for examination. The District Magistrate or Sub-divisional Magistrate or any other Executive Magistrate specially empowered on this behalf by the State Government or the District Magistrate were empowered to hold inquests⁷. Section 304-B of 1986 provides for imprisonment of not less than seven years but which may extend to imprisonment for life in the cases of dowry death. Section 498-A provides for a punishment for three years and fine to the husband or the relatives of husband for subjecting a woman to cruelty¹³.

According to the Special Marriage Act of 1954 the male should have completed the age of twenty-one years and the female the age of eighteen years at the time of marriage¹⁴. Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity, if (i) the marriage has not been consummated owing to the willful refusal of the respondent to consummate the marriage, or (ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or the consent of either party to the marriage was obtained by coercion or fraud¹⁵.

But in India as personal law is dependent on the religion of the parties there is no common personal law for the inhabitants of a place. Each community has its own personal law and consequently the concept of marriage has no uniformity. All major religions have their own law which govern divorces within their own community, and separate regulations exist regarding divorce in interfaith marriages. Hindus, including Buddhists, Sikhs and Jains, are governed by the Hindu Marriage Act, 1955. Christians by the Indian Divorce Act, 1869, Parsis by the Parsi Marriage and Divorce Act, 1936, and Muslims by the Dissolution of Muslim Marriages Act, 1939, which provides the grounds on which women can obtain a divorce, and unmodified civil law Civil marriages and inter community marriages and divorces are governed by the Special Marriage Act, 1954¹⁶.

The Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands. A divorced woman shall be entitled to:

(a) A reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband,

(b) Where she herself maintains the Children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children.

(c) An amount equal to the sum of Maher of dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law and

(d) All the properties given to her before or at the time of marriage or after her marriage by her relatives of friends or the husband or any relatives of the husband or his friends¹⁷.

Five main reasons are generally accepted as sufficient grounds for divorce Adultery, Desertion, Cruelty, and Impotency¹⁸. The Christian law concerning marriage and divorce began to be practiced among the Christian converts. The Bible stands sternly against divorce and so Christianity never sanctions divorce, except in the case of unfaithfulness in marriage. The devotes were instructed to love their spouses as Jesus loves the church. But the Indian Divorce Act permits divorce for adultery, desertion for three years, imprisonment for seven or more years, cruelty, unsound mind, leprosy, absence of news about the husband for seven years or more, lapse of two years after the passing of judicial separation, failure to comply with a decree of conjugal rights or when both parties together request the court that they have been living separately for a period of one year or more, that they have been unable to live together and that they have mutually agreed that the marriage should be dissolve¹⁹.

Dowry is an evil practice and it has been one of the reasons for breaking up of marital relations. Psychological reports reveal that it is very difficult to settle the family problems arising out of dowry. Government of India has made much legislation to prevent the causalities emanating from the question of dowry. The Dowry Prohibition Act, 1961, stated that if any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees Provided that the Court may, for adequate and special reasons to be mentioned in the Judgment, impose a sentence of imprisonment for a term of less than six month²⁰. The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom), Rules, 1985 mentions that the list of presents which are given at the time of the marriage to the bride shall be maintained by the bride and the list of present to the bridegroom shall be maintained by the bridegroom²¹.

To conclude, I would like to say that the irrational and to some extent male-made laws, the lust of men for bigamous life, distortion of religious texts and the exploitation under the mask of fake spirituality subordinated the Indian women and consequently they had to suffering lots of severity in marital life. The philosophical system, religious precepts, the colonial and post-colonial developments have also really determined the welfare of married women in the Indian society. In the beginning, agitations for the amelioration of their grievances first formed a part of the general social awakening. Later, it merged with the national movement, but this provided the necessary training for their women to organise movements of their own. At present, men have their hold in the activities of the women's associations for they are working as the branches of political parties. It can also be observed that other than the legal protection guaranteed through the Acts relating to marriage, the court judgment have also reinforced the protection of women in marital life. However the lack of a uniform law for guiding the marital life of womanhood has been pointed out as a grave problem by the jurists and the women activities.

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