Vol II Issue IV Oct 2012

Impact Factor : 0.1870

ISSN No :2231-5063

Monthly Multidiciplinary Research Journal

Golden Research Thoughts

IMPACT FACTOR : 0.2105

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RNI MAHMUL/2011/38595 **ISSN No.2230-7850**

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Golden Research Thoughts
Volume 2, Issue. 4, Oct 2012
ISSN:-2231-5063

Available on all social networks
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ORIGINAL ARTICLE

GRT

The Legal Status Of Women In India

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Abstract:

The movement for the improvement of the legal status of women was an integral part of the general movement for the emancipation of women and was inspired by the equalitarian idea. The marriage laws, the property laws and the personal laws are some of the legal methods by which woman can be made subordinate to man. The social reformers and in the later phases women themselves realised the obstacles in the way of full freedom and free development of women and therefore they advanced demands for improving their legal status also.

KEYWORDS:

Legal ,Status, Women, Social Reformers, Marriage laws,Remarriage.

INTRODUCTION:

The movement for the improvement of the legal status of women was an integral part of the general movement for the emancipation of women and was inspired by the equalitarian idea. The marriage laws, the property laws and the personal laws are some of the legal methods by which woman can be made subordinate to man. The social reformers and in the later phases women themselves realised the obstacles in the way of full freedom and free development of women and therefore they advanced demands for improving their legal status also. The process of winning legal rights for women was very slow since people and the Government did not exhibit much earnestness and enthusiasm for it. There was marked indifference and even hostility to it. When the age of consent bill was being discussed in 1928 in the legislature, some members suggested that the punishment for infringement of the proposed law should be only fine and not imprisonment. The home member had to declare that, "The punishment proposed under either of these amendments was "ludicrously inadequate", and that it was much better to reject the bill altogether, rather than to make the punishment a force".

The British Government also, either in the garb of religious neutrality or under the pretext that social conditions were not ripe, showed apathy towards legislative ameliorations.

In 1884 when Malbari sent his "Notes on infant marriage and enforced widowhood" to the Government, it replied that "the reasons will be apparent why his excellency in council considers, that interference by the state is undesirable and that the reforms advocated by Mr. Malbari which affect the social customs of many races, with probably as many points "of difference as of agreement, must be left to the improving influences of time and to the gradual operation of the mental and moral development of the people by spread of education". Hence whatever social amenities for women were secured through enactments, they were the results of the pressure brought, to bear on the Government by the progressive minority section of the society.

The social reformers from the very beginning held the view that one of the principal means of improving the status of women was legislation. As Ranade declared, legislation was one of the important

Please cite this Article as :A. PREMA , The Legal Status Of Women In India : Golden Research Thoughts (Oct. ; 2012)

methods of changing the social structure to a higher level. The study of the history of social legislation in India thus becomes necessary to ascertain and evaluate the progress made by Indian womanhood.

I MARRIAGE LAWS

The most important section of the legislation enacted to elevate the position of women relates to marriage laws.

We propose to deal under this heading such aspects of marriage as

1.Remarriage
2.Age of consent for sexual consummation
3.Age of marriage
4.Right to dissolve marriage

REMARRIAGE

The problems of remarriage arises for women of two categories viz., those whose marriage has been dissolved and those whose husbands have been dead, i.e. widows. We will take the second category first. In the Hindus society, the wife was attached to her husband not only as long as he was alive, but even after his death. So, naturally on the death of her husband the wife became sati. This in human custom was opposed by social reformers like the Raja Ram Mohan Roy. Lord William Bentinck put an end to this custom by the act of 1829 XVII by declaring Sati as a "Culpable homicide".

The judge of Allahabad high court remarked in 1913 that "the regulation of 1829 seems to have had immediate effect and the practice was almost completely stamped out. In fact I can only find three reported cases of Sati in he Law reports for the provinces and for Bengal since that date. They occurred in 1834, 1854 and 1871. However as observed by Thompson, "Sati in one form or another, public or private and irregular, has occurred almost every year in some part of India".

The widow remarriage Act XV, which validated the marriage of widows, was passed in 1856 with the zealous co-operation of Ishwarchaundra Vidyasagar. It also declared, "All rights and interests which of any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property with no power of alienating the same shall upon her remarriage cease and determine as if she had then died, and the next heirs of her deceased husband or other persons entitled to the property on her death shall there upon succeed to the same". The guardianship of the children should devolve upon the male relative of the deceased.

Though the law granted freedom to widows to remarry, it precisely prevented them from remarrying since it implied loss of property. The social reform conference, therefore, repeatedly pressed for the reforming of the Act. The Bombay Presidency Social Reform Association, in course of time, drafted a bill to amend the Remarriage Act in 1938, but even at such a late date, the desirable change was not incorporated into the Act.

AGE OF CONSENT

The second vital problem connected with marriage was the fixing of the age of consummation young married girls were much harrassed by their husbands in this matter. A number of them, as a result, seriously suffered physically. In order to save the young married girls, the first step was taken in 1860. The Indian penal code declared that it" included the offence under rape and prescribed the punishment which might extend to transportation for life for the husband who consummated the marriage when the wife was below 10 years".

As we have noted Behramji Malabari carried on a great campaign for raising the age of consent, which met bitter opposition from reactionary forces of society. In 1891, however, the age of consent was raised to 12 years. Even here, due to insufficient publicity and propaganda, the existence of the law remained unknown to the vast majority and the evil, consequently, persisted. An act was passed for the first time in 1925 which made distinction between marital and extra-marital sexual consummation. It also raised the age of consent to 13 in the case of former and 14 in the case of the latter. In 1928, age of consent committee under the presidentship of Mr. Joshi was appointed. The committee recommended 15 years as he age of consent in the case of marital relations and 18 years in the case of extramarital relations. It did not however result into any further positive legislation except the enactment of the Sarda Act, which tried to fix

the minimum age for marriage.

AGE AT MARRIAGE

The social reformers, through such organizations as the Brahmo Samaj, the Arya Samaj and the national social conference, were clamouring for raising the age of marriage of the girls. The girls were married at a very early and premature age as revealed even in the very lives of the reformers. Ranade married a girl of eight, D.K. Karve, a girl at nine Mahipatram, a girl of five. This obstructed their education, health and general physical, mental and cultural development moreover early marriage resulted in a considerable amount of child widowhood and ill-assorted marriages. It also gave rise to the practice of dowry and in Bengal especially to the Kulin polygymy. All these problems were interconnected and arose from child marriage. The life of the girl was full of suffering and torment since marriage, the most vital event in her life, was misshaped. In the earlier phases no legislation to combat the curse of child marriage was enacted.

In the Indian states, wherever some enlightened ruler was ruling, the age of marriage drew attention earlier. For example, Mysore enacted an act in 1894, Baroda in 1904, and Indore in 1918 fixing the marriage age.

In the British India, he problem of child marriage was first posed in 1921 by Lala Girdharilal, who formulated a question to the Government as to whether it, would undertake legislation prohibiting the marriage of the girl below the age of 11 years and that of the boy below that of the 14 years. The Government expressed the view that, due to backward social conditions in the country, initiative in the matter should come from private individuals rather than from the Government.

It was in 1924 that Mr. Ranglal Jajodia sought to introduce a bill regarding child marriage in the legislature. But some how the bill was not brought before it though permission was granted by the viceroy.

In 1927, Harbilas Sarda brought a bill before the legislature to regulate marriage among the Hindus. The bill fixed the minimum age for marriage at 12 years. A select committee was "appointed to go through the bill, the select committee gave its report in 1928. The most important recommendation made by it in the report was the extension of the application of the bill from only the Hindus to all communities. Another select committee was appointed some time after. The act which was subsequently passed was known as "the child marriage Restraint Act (XIX of 1929)" or more popularly Sarda Act.

DIVORCE

The problem of divorce has particular significance in India due to two reasons. The prevalence of child marriage and lawful permission of bigamy till recently. In order to mitigate the evil effects of the customs, it often becomes necessary to dissolve the marriage.

The Hindu woman has to put up with all sorts of hardships and suppressions in the name of family prestige and welfare of the children. The new woman is not likely to tolerate the marital hardships. The full development of her personality requires that under specific conditions divorce is absolutely essential. Of course, as Dr. Kapadia as observes, "The principle of divorce may sound alien to the social pattern in which Hindus have been living for centuries".

The Hindu marriage is considered a sacrament and so, once entered into, cannot be dissolved although in past Kautilya and others permitted it under specific conditions. The passing of Hindu Marriage Act (1955) starts a new tradition with its provision or divorce. The new Act permits dissolution of marriage on grounds of adultery, change of religion, lunacy, incurable disease, desertion and others, in short, when the purpose and aim of marriage which is joint living and companionship cannot be realized. It should be however noted that the problem of divorce is only for the minority of upper castes of the Hindu society. Large groups of lower castes have no such problem because divorce is permitted by custom.

The native sate like Baroda and the Bombay province in British India of course preceded in this matter and enacted legislation permitting divorce in 1937 and 1947 respectively. In the state of Baroda, divorce was permitted if no news was heard from he party for seven years or due to change or religion or if the party took to religious order, desertion, drinking, adultery and cruelty. Along with these grounds, woman was allowed to take divorce in case husband proved to be impotent, had married a second wife (after the legislation of 1942) and indulged in unnatural sexual life. In the Baroda state there was provision for judicial separation. The divorce law of Baroda was very comprehensive and tried to take into consideration the interests of both parties.

In Bombay also, under the Bombay Hindu divorce Act XXII of 1947 impotency, lunacy, leprosy, desertion for a continued period of four years, absence for seven years leading to the conclusion of his or her death and bigamy were the grounds on which dissolution was permitted.

DIVORCE IN ISLAM

The Islamic Marriage has the character of a contract and hence it allows divorce to both the parties though on different conditions. The husband can divorce his wife without even assigning reason and without resorting to the court. Head only to utter the word "Talaq" or divorce three times. The Islamic religion expected woman to observe fidelity towards her husband. When this obligation of marital union was not fulfilled, the husband could divorce his unchaste wife. The Mohomedan wife can dissolve her marriage in two ways.

i.By obtaining a judicial decree or

ii.With the consent of her husband. For the former the circumstances necessary are as prescribed in the Dissolution of Muslim Marriage Act VIII of 1939. Accordingly, desertion, non-provision of maintenance, imprisonment, impotency, insanity, leprosy, cruelty and also when the girl has been given in, marriage before she has attained the age of 15 years are some of the grounds for the dissolution of marriage.
Divorce among the Parsis

The Parsis are also allowed to dissolve marriage and they are governed by the parsi marriage and divorce act (III of 1936). The grounds for divorce are non-consummation of marriage with in one year of its solemnization, unsound mind, pregnancy of wife prior to marriage, adultery, cruelty imprisonment, desertion, forcing the wife to prostitution, non compliance of restitution of conjugal rights, elapsing of three years time after the order of judicial separation has been passed or if the defendant has ceased to be a Parsi.

DIVORCE AMONG THE INDIAN CHRISTIAN

The Indian Christians are governed by the Special Marriage Act. This Act has been amended in 1954 and the divorce facilities under new conditions are, adultery, desertion for three years, imprisonment for seven or more years, cruelty, unsound mind, leprosy, absence of news about him for seven years or more, elapsing of two years after the passing of decree for judicial separation, failure to comply with a decree of conjugal rights or when both the 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 dissolved.

The Special Marriage Act is applicable not only to the Indian Christians but also to any person who marries under that act. The last clause that of divorce by mutual consent is absolutely a novel feature in the Indian society. Uptil now the people were somehow or other reconciled to he idea of dissolving the marriage on specific grounds but the provision mentioned above will start a new phase where in marriage tie could be dissolved by mutual consent.

In the new Act, there is also provision for nullification of marriage and judicial separation under certain specific circumstances.

DOWRY

The other problem associated with marriage is that of Dowry. As Dr. Kapadia remarks "the amount of the dowry is generally regulated by the social and economic status of the bridegroom's father, the social prestige of the bridegroom's family and the education qualifications of the bridegroom. A girl may be at times married to an undeserving person when the latter is prepared to marry her with a dowry with in the means of her father. Education, instead of eradicating the evil, has worsened it to a scandalous proportion". Some of the Indian states attempted to take lead in the matter. The Indore state in 1941 limited the amount of the dowry to be accepted to Rs. 80/- in the Burellas communities. The Assembly of the newly formed Andhra state assigned the task of proposing some measures to counteract this evil to a select committee. The Parliament of Indian union has also expressed some pious wish to counteract this evil. However the evil still continues unabated. The reactionary opposition does not permit the progressive forces to check this evil.

CONCLUSION

We have surveyed he legislation regarding marriage and allied problems. We have referred to the laws passed by the Central Government by the state governments and by some of the Indian states in this sphere. The review of the different acts passed by different Governments from time to time reveals than

some of the problems of women have been partially solved though much remains to be done as yet.

The existence of the Special Marriage Act on the statute book signifies that a revolution in the ideal of the marriage and the choice of a partner is slowly taking place. It is the most secular marriage form that exists in India. Further it is one of those Acts which is in the direction of woman's liberation. The Act by its provisions of minimum age, of monogamy, of divorce and of succession, paves way for real benefit to the women of all sections.

The Government of India has enacted many legislations and Acts for providing security to women and for supporting development o women. The Government of India has also provided policy frame work and guidelines for implementing various development programmes. The State Government too evolved many programmes aimed at development of women. Non-Governmental organizations were also encouraged to play a meaningful role in the development of women. Among the Acts of Government of India, The Special Marriage Act of 1954, The Hindu Marriage Act of 1955, The Equal Remuneration Act of 1976 and the Marriage Laws Amendment Act of 1976 provided a supportive role to improve the position of women.

Further, the Child Marriage Act of 1956, the Dowry Prohibition Act of 1961, The Child Marriage Restraint (Amendment) Act of 1979, The Commission of Sati (Prevention) Act of 1987, The Prohibition of Eve Teasing Act 1998 provided security to women. There are substantial numbers of Acts and legal measures to support the development of women and also to protect them.

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