

COLONIAL LAWS' AGENDA TO MODERNIZE INDIAN ATTITUDE TOWARDS WOMEN

Written by *Surabhi Vats*

4th Year BA LLB Student, Jindal Global Law School

INTRODUCTION

This paper looks at areas of legal reforms which affected women's rights such as widow remarriage, abolition of sati and age of consent law. It examines whether colonial law modernized Indian attitudes towards women. It is argued that the British applied laws without taking into consideration the plurality of Indian society, which either promoted British interest or thwarted the interest of Indian women.

THE REFORMING AGENDA

Pre-colonial India was characterized by a pluralistic and fragmented society. Multiple tribes, sects, castes, family groupings existed across societies. Much of the law was customary, which gave rise to a common notion by outsiders that pre-colonial India lacked law altogether. When the East India Company acquired the revenue rights in Bengal and Bihar in 1765, it had to devise a new legal structure for these lands. There was a drastic administrative shift in 1858 when the company rule was replaced by the Crown. The colonial authorities had established a self-proclaimed role of civilizing the natives by initiating reforms which reflected the British spirit of modernity and progress.¹ (Bannerji, 1998) The civilizing mission was seen as a way to assert that the native Indian men were incapable of taking care of their women. The struggle over legal power between the colonists and the natives was based on women because it was the

¹ Bannerji, H. (1998). *Age of Consent and Hegemonic Social Reform, in gender and imperialism*. Manchester University press.

degraded position of Indian women and the brutal actions of Indian men that justified the colonial mission.² (Agnes, 1999)

Manusmritis or other commentaries which developed over centuries were quite varied, some gave women- right to inherit property while others did not.³ (Agnes, 1999) Some of the tribes however were governed by customs which were more liberal than the Smritis.⁴ (Agnes, 1999) Many customs which governed the upper castes of northern India were considered to be more patriarchal than those which governed women in Dravidian regions. For instance divorce and remarriage were prevalent among the Lingayats, Kapus and Jats, remarriage was also permitted by all castes and tribes in parts of Bihar, Orissa, and Chotta Nagpur except the Brahmins, Kayasthas and Rajputs.⁵ (Agnes, 1999). There was thus a great diversity of customs in castes and sub-castes as well. To bring the plurality in control the British redefined Indian society along religious and caste lines which had little correlation with norms previously accepted by Indian communities, as pointed out by Janaki Nair.⁶ (Nair, 1996). It was thought that the imperial reforms would be easier to implement in a society driven by religion and culture.

At a time when there was no real understanding of the term “Hindu”, the codification movement of 1880s brought even the tribes and castes outside the Varna system under the Hindu fold.⁷ (Agnes, 1999). The codes referred to Shastras which were interpreted by Pandits, these produced the position of women in scriptures. Codification was an attempt to homogenize women irrespective of their class or caste, it was considered that all women had common characteristics and deserved to be subordinated and controlled.⁸ (Nair, 1996). Codification of law had opposing promises for the Indian women, on one hand it offered upliftment of women while on other it cut down on their customary privileges by imposing Bhramanic code.⁹ (Nair, 1996).

The earliest colonial authorities feared that the continuation of British rule would be at risk if they interfered with the religious practices of the natives, however this view expired as soon as

² Agnes, F. (1999). In F. Agnes, *Law and gender inequality: The politics of women's rights in India* (p. 54). Oxford University press.

³ *Id.* at 12-14.

⁴ *Id.* at 18.

⁵ *Id.* at 21.

⁶ Nair, J. (1996). The foundations of Modern legal structures in India. In J. Nair, *Women and the law in colonial India* (p. 22). Kali for women.

⁷ *Supra* note 2, at 24-25.

⁸ *Supra* note 6, at 31.

⁹ *Supra* note 6, at 41.

the British rule became more secure. This was partly because of the emergence of the Indian middle class which recognized the need to reform their social practices. But as time passed the anti-British feelings grew amongst the natives, as was expressed in the revolt of 1857. This produced new anxieties which led Queen's order in 1859 promising absolute non-interference with the religious matters of the native.¹⁰ (Nair, 1996).

ABOLITION OF SATI

Widow immolation caught the attention of colonial officials the most, not because a woman was burnt alive, because the practice had shastric sanction. The British did not legislate on Sati for a long time, fearing retaliation from the public. But, as Janaki Nair points out this was at odds with the self-proclaimed role of the British to civilize India. Therefore a compromise was made by distinguishing between good sati (sanctioned by the scriptures) and bad sati.¹¹ (Mani, 1986). Sati was not a common or widespread practice, it was confined to some social groups only. The caste and status of women varied immensely.¹² (Yang, 1990). Lata Mani examines the discourse on Sati, she points out that the problem was not seen by everyone in the same way. Walter Ewer, Superintendent of Police in the lower regimes observed that the scriptural form of sati was quite different from what was practiced. In the former, the act was done voluntarily but in reality women were coerced for sati.¹³ (Mani, 1986). As a result, colonial intervention was deemed to be necessary to allow women to exercise their own will and to enable Indians to live their lives as per the scriptures.¹⁴ (Nair, 1996). The British officials equated religion with scriptures. As Mani points out, the scriptures were employed by the British to support their views.

The manner in which Indian liberals saw the problem was not quite different from the colonisers. They too focused on scriptural sanction. Even reformers like Ram Mohun Roy did not make an effort to break from the past, as Sumit Sarkar points out Roy's efforts were deeply

¹⁰ Nair, J. (1996). 'Social Reform' and the Women's question. In J. Nair, *Women and the law in colonial India* (p. 52). Kali for women.

¹¹ Mani, L. (1986). The production of an official discourse on sati in nineteenth century Bengal. *Economic and political weekly*.

¹² Yang, A. (1990). Who's Sati? Widow burning in early nineteenth century India. *Journal of women's history*, 11-14.

¹³ *Supra* note 11, at 9.

¹⁴ *Supra* note 10, at 56.

contradictory. Roy in his work *Tuhfat al Muwahiddin* denied religion altogether, but based his discourse on sati on religious grounds. Rather than questioning the necessity of such a practice he tried to establish whether or not such practice was sanctioned in the scriptures. He tried to replace the notion of sati with ascetic widowhood.¹⁵ (Sarkar, 1985). The conservative Indians also made references to the scriptures, to save the tradition.

One thing common to all these discourses as Lata Mani points out was that the focus remained on tradition rather than women. It was thus not the brutality of widow immolation which led to the reform and discourses but, was the clash between the colonisers who critiqued the Indian tradition and the Indian intellectuals who defended tradition by sparking a reform themselves.

WIDOW REMARRIAGE

Indian patriarchy condemned widows and forced them to live in terrible and deplorable conditions. Widows were prohibited from remarrying, strictly amongst the upper caste Hindus. Ishwar Chandra Vidyasagar inaugurated a campaign for the remarriage of widows. Even his idea of social reform was ambivalent like Ram Mohun Roy. Vidyasagar had written about child marriage where he did not invoke the authority of the Shastras but, he heavily relied on shastras in his campaign for widow remarriage.¹⁶(Sen, 1977). The discourse on widow remarriage was similar to that of widow immolation especially in its reliance on the shastric authority.

The Hindu Widow Remarriage Act XV of 1856 did not respond well of Vidyasagar's proposals. The act had less impact on promoting widow remarriage but, was more effective in transforming the control over the property of widow.¹⁷ (Nair, 1996). In fact remarriage became nearly impossible because of the property clause of the act for the women of castes which never had any restriction on their remarriage.

¹⁵ Sarkar, S. (1985). A critique of colonial India. In S. Sarkar, *A critique of colonial India* (p. 1).

¹⁶ Sen, A. (1977). Ishwar Chandra Vidyasagar and his elusive milestones. In A. Sen, *Ishwar Chandra Vidyasagar and his elusive milestones* (p. 54). Riddhi Publishers.

¹⁷ *Supra* note 10, at 64.

THE AGE OF CONSENT DEBATE

In the mid nineteenth century there was a concern amongst the Indians to fix the minimum age of consent for men and women. The age of consent bill consolidated the debate on women and tradition. Ishwar Chandra Vidyasagar criticized child-marriage, he blamed the Shastras to be outdated and causing the misery.¹⁸ (Nair, 1996). Vidyasagar believed that child marriage was detrimental for the health of the women. Despite his sincere efforts, the problem was not resolved easily. His efforts were continued by Keshab Chandra Sen in 1880s.

The cases of *Phulmoni Das* and *Rakhmabai* attracted national attention and spoke of an urgent need of a reform. *Phulmoni Das* had died at the age of ten due to injuries sustained by sexual intercourse with her thirty five year old husband. In *Rakhmabai's* case she refused to live with her husband who was illiterate and unemployed.¹⁹ (McGinn, 1992). The above sparked a support to raise the age of consent but faced opposition by those who opposed social transformation. Bal Gangadhar Tilak was one such opponent of reform of Indian tradition. He subordinated the question of reform to freedom.

The oppositions of the campaign did affect the Act, the age of consent was raised to 12 for girls but this did not have any restriction on the marriage. In March 1891, the age of consent was raised to 12 for married and unmarried girls, however prosecuting under this act for marriage was very difficult.²⁰ (Nair, 1996)

The politics of colonial masculinity had constructed an independent sphere of indigenous masculinity that is the private sphere of the home and family. The colonisers were caught between the native males who demanded them to stay out of their private sphere and the British feminists who demanded reforms to save Indian women.²¹ (Bannerji, 1998). The colonial state alleged that they were not interfering in the private lives of the natives, but were protecting young girls from acts which were physically dangerous. However, the state raised the age of consent without raising the age of marriage which introduced marital rape in Indian societies at a time when England itself did not recognize the crime.²² (Borthwick, 1984). This clearly

¹⁸ *Supra* note 10, at 71.

¹⁹ McGinn, P. A. (1992). The age of consent act reconsidered: Women's perspective and participation in the child marriage controversy in India. *South Asian Research*, 100.

²⁰ *Supra* note 10, at 75.

²¹ *Supra* note 1.

²² Borthwick, M. (1984). The Changing Role of Women in Bengal, 1849-1905. In M. Borthwick, *The Changing Role of Women in Bengal, 1849-1905* (pp. 128-129). Princeton legacy library

showed that the concern was not for the benefit of child bride, as the act against child marriage was not passed until 1929, which was nearly forty years later. By raising the age of consent by two years from ten to twelve, the colonial state appeared to have taken some action while in reality they did little to protect young girls.

CONCLUSION

Gender reform in India was initiated to strengthen the elite, patriarchal and upper caste political power. Colonial rulers had little to gain and much to lose by interfering in the Indian family and marriages. Similarly, native elites had much to gain by retaining control over women and family. Between these two groups of men there was little incentive to upset the cultural norms, therefore it is not surprising that it took another forty years after the age of consent act was passed to outlaw child marriages.

With the onset of nineteenth century it became clear that the colonial state was interested in seeking associations amongst Indians and to achieve this it supported the Indian patriarchies rather than rescuing women from them.

Conventionally modernity is used in opposition to tradition, but this understanding has been critiqued by feminists and recent historical analyses. Feminists are of the view that the ‘modernization’ theory failed in the Indian context as it only reproduced the ‘traditional’ gender hierarchies.²³ (Nair, 1996).

From all the legal reforms discussed above it can be concluded that improving the position of women in the society was never the central issue of any of the discourses. Rather, all the discourses were an outcome of the scuffle between the native elites and the colonisers. Thus the colonial laws did not improve the position of women and certainly did not modernize Indian attitudes towards women. Some advances however were made, like the middle class woman’s entry in the professional world. She claimed her rights somewhat after 1920s, critiquing the Indian patriarchy.²⁴ (Nair, 1996)

²³ *Supra* note 10, at 14.

²⁴ *Supra* note 10, at 91.