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# Impact of Hindu Code on Indian Women

MONMAYEE BASU

THE path of reformers to whom we owe whatever little civilisation there is, has always been long and hard. The Hindu Code, when it came soon after Independence, was a historic milestone in women's movement in India. But it was possible for Jawaharlal Nehru to put it on the Statute Book, despite his most eminent critics, because a climate of opinion had been created in the first and second half of the 19th century by men like Rammohun Roy, Ishwarchandra Vidyasagar in Bengal and Ranade and Telang in what was then the Presidency of Bombay. They had struggled tenaciously against orthodoxy, bigotry and evil customs and made Nehru's task easier.

The Hindu Code transformed, at least theoretically, women's lives by providing with two very important rights to them — right to divorce and property right. These went a long way towards empowering them and giving them a new status in society. According to Hindu — and Christian — tradition, marriage was a sacrament. It was permanent union between the husband and wife who were exhorted to strive their utmost to make it a success. However, often marriages did not succeed and unhappy and incompatible marriages became nothing but fetters for the couples concerned. By the Hindu Marriage Act of 1955, the right of divorce was for the first time granted to women on certain specific grounds.

So, in a male-dominated society as it was in India, women were free to relieve themselves of unhappy married lives and to choose lives of their own. Moreover, the second part of the Hindu Code, that is the Hindu Succession Act of 1956, made a Hindu woman owner of all property, acquired from a male Hindu dying intestate. This gave her economic independence necessary to lead a life of her own choice. The Hindu Code, therefore, was a significant contribution to the attainment of freedom by Indian women.

The extent to which the Hindu Code transformed the lives of Hindu women can be analysed by an attempt to assess their position before the passing of the Code and after.

It is not very easy to evaluate the condition of the Hindu women in India during the second half of the 19th century. The life of an average Hindu woman was very difficult and pitiable owing to the existing social customs and practices of time. It is now a matter of common knowl-

edge that during the Vedic period, Indian women enjoyed a great deal of freedom. In the pursuit of knowledge and virtue, in the performance of rituals, in the composition of hymns and in other activities — temporal or spiritual — women were considered to be equals of men. Famous women like Gargi and Maitrayee were prized possessions of ancient Indian society. The Hindu women displayed outstanding capabilities as administrators and warriors. Apart from Meerabai who distinguished herself as the poet queen of the fifteenth century, the warrior queens Ahalya Bai and Rani Laxmi Bai of Jhansi, became immortal for displaying rare courage and determination in the field of battle. Rani Bhawani of Natore in Bengal exhibited rare ability in managing her estates. Hati Vidyalkar, a Bengali resident of Varanasi, and Shyammohini Devi of Bengal were two eminent Sanskrit scholars.

## Inferior Status

The condition of Indian women in general and of Hindu women in particular, began to deteriorate after the coming of the Muslims in India. This was largely due to a natural social response to the challenge posed by the disturbed condition following foreign invasions of the country as well as internecine conflicts. Some undesirable social customs consequently crept into the society which gradually reduced the Indian women to a state of perpetual bondage. When raids and warfare became a common occurrence in India, the fear of insecurity of unmarried young women was perhaps largely responsible for the emergence of the system of early marriage. This most probably led to the emergence of the cruel dowry system which prevailed in India for centuries and persists even today. The fear of insecurity was to a great extent responsible for the growth and continuance of the system of Sati. The emergence of Purdah system and seclusion of women was a by-product of such fear. With no organised system of education to sustain her, a female child, often married even before she had learnt the alphabets, remained unlettered and absolutely dependent upon men economically and otherwise. Gradually, the belief grew in Indian society that women were destined to have a status inferior to men.

At the beginning of the 19th century, the position of Indian women had reached the "lowest depth of degrada-

tion". Any discussion of the condition of women during the second half of the 19th century must analyse the social customs with the accompanying evils, which prevailed in the society.

Family was the most important centre in the life of an Indian. The traditional pattern of family was the joint family which included father, mother, grandfather, grandmother, brothers, sisters and also other relatives. The Western concept of nuclear family consisting of husband, wife and children only had not emerged then. Marriage was a social institution and the union of a couple was regarded as a social alliance between the two families of the bride and the bridegroom. Making one's family happy was one's sole aim of life. Personal happiness and gratification were given the least priority. The chief objects of Hindu marriage were Dharma (religious duty), Proja (progeny) and Rati (conjugal love).

Child marriage was a bane of the Hindu society. The girls were often given in marriage at the age of ten or even below. More tragic than the child brides was the lot of upper caste Hindu widows in the society. Often looked upon as a drudge in the family, a widow invariably led a miserable life. The condition of a child widow was still worse. Women in Hindu society had no right to succession to property. That made them dependent on men. A Hindu widow, therefore, inherited nothing on either side. She was only entitled to stay and live in her husband's family till death. She had no right beyond maintenance to keep her body and soul together.

### Dowry System

The dowry system was yet another evil of the Hindu society. The daughter was a perennial source of worry in the Hindu family. She was to be married in time and in proper caste. The father of a girl sometimes found it very difficult to meet these needs of the society. Taking advantage of this predicament of the father, an exorbitant dowry was often demanded by the bridegroom's father. The girl's father had no option but to agree to this high demand.

Polygamy was another evil practice of the time. There were several laws of marriage in the Hindu Shastra. Some of these stated that a man had the right to remarry only if his first wife died or was barren. In the latter case, the husband had the right to remarry, even while the first wife was alive. He was not entitled to remarry without any valid reason. But Hindus, especially those belonging to the upper caste, practised polygamy without any restraint.

So, confined within the precincts of the four walls of the house, denied of the enlightenment of education and

constrained by the prevailing stringent social practices, women of India were undoubtedly in a pitiable condition from which they needed deliverance. Attempts were made even before the passing of the Hindu Code to ameliorate their condition by several legislative measures. Mention may particularly be made of the Widow Remarriage Act of 1856 by which the widows were permitted to remarry. The Act further sought to improve the economic status of the Hindu widow by rendering the right of inheritance to a widow in a very limited sense. For the widow was the heir to her deceased husband's property only in the default of a son. But even this right to her husband's property was not absolute and she could be deprived of it as soon as she was remarried. Moreover, her right to inherit was subject to many restrictions. Jimutvahana, the author of *Dayabhaga* school of Hindu law, prescribed definite restrictions on the widow's right to alienate property inherited from her late husband. The widow was allowed only to enjoy her husband's estate during her life time. After her husband's death the estate passed to the heirs of her deceased husband. She had no right to make a gift, mortgage or sell it at her pleasure. Dayabhaga, therefore, made it clear that property inherited by a widow from her husband was not woman's property. Contrary to this, *Mitakshara*, the other school of Hindu Law, treated such property as *stridhan*. However, it was the Dayabhaga doctrine which was wholly upheld by the highest judicial tribune in British India.

### Sarda Act

The age of marriage was likewise attempted to be raised through the Act of 1891 from 10 to 12. It was raised further by the Sarda Act of 1929 which came into force on April 30, 1930. It fixed the marriageable age for boys at 18 and for girls at 14. The most glaring defect of the Act was that it did not make child marriage a cognisable offence. No action could be taken by the government for its breach, unless a complaint was made within one year of the performance of the marriage. Finally, the first part of the Hindu Code, passed in 1955, fixed the age of marriage for girls at 15.

Thus it can be seen that Hindu law, prior to the passing of the Hindu Marriage Act of 1955 (first part of the Hindu Code), attempted to provide matrimonial relief to the wife. The remedy of restitution of conjugal rights was made available to women at the end of the 19th century by the courts. The right to have separate residence and maintenance of married Hindu women was recognised by legislation in 1946. Relief of nullity and annulment of

marriage was also judicially recognised by the courts prior to the passing of the Hindu Marriage Act. As regards divorce, Hindu law always recognised the right of divorce by virtue of custom, though it was generally practised amongst the so-called lower castes. The Hindu law had not yet prescribed laws of matrimonial remedies. Sporadic acceptance to the contrary were more in the nature of exceptions than the rule.

Similarly, the economic status of women is also sought to be improved through several measures before the Hindu Succession Act of 1956 — the second part of the Hindu code — was passed. The earliest attempts may be traced back to 1865. Act X of that year was the first step towards conferring economic security upon Indian women. The Indian Succession Act of 1865 or Act X laid down that “no person shall, by marriage acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried”. The Married Women’s Property Bill of 1874 (later Act III of 1874) was a natural consequence of this Act. This was the first law in modern times extending the scope of stridhan. It declared that wages and earnings of any married woman and any property acquired by her through the employment of her arts and skill and all savings and investments there of, shall be her separate property and that a married woman shall maintain a suit in her own name in respect of her own property.

But the Act III of 1874, though a radical one, did not create any stir in the Hindu society because until 1923, the Act applied only to Indian Christian women. Married women belonging to Hindu, Muslim, Sikh and Jain communities remained outside the purview of the Act.

It was in 1923 that the Married Women’s Property Act of 1874 was amended by Act XIII of 1923, so as to bring Hindu women and others within its jurisdiction. The Hindu Women’s Right to Property Act of 1937 and its amendment in 1938 also attempted to widen the property rights of the Hindu women by giving rights of inheritance to not only the widow of the deceased but also “the widow of his deceased son and even the widow of his deceased son’s deceased son”.

### Filling Gaps

Despite these efforts, lot of gaps remained in the legislation intended to improve the position of women in society. Though they cannot be discussed here for want of space, they are significant in the sense that they led to the framing and passing of the Hindu Code of 1956. The

Hindu Code aimed largely at filling up these gaps. It had two parts — the first part dealing with marriage was passed in 1955 and the second part dealing with property was passed in 1956.

The right of divorce was eventually granted to women by the Hindu Marriage Act of May 18, 1955. This is the first part of the Hindu Code which provided for divorce, the principal grounds for which were:

- (1) Living in adultery;
- (2) ceasing to be a Hindu by conversion;
- (3) renouncing the world by entering a religious order;
- (4) incurable insanity for three years;
- (5) virulent and incurable leprosy for three years;
- (6) not having been heard of for seven years;
- (7) not having resumed cohabitation for two years after the passing of a decree for judicial separation;
- (8) failing to comply for two years with a decree for restitution of conjugal rights;
- (9) the husband having married again and the second wife still being alive;
- (10) the husband was guilty of rape, sodomy or bestiality.

Divorce by mutual consent was provided for in section 28. No hasty divorce could be obtained on this ground. Every petition was to be preceded by living separately for a period of at least two years.

The Hindu Marriage Act also granted two other matrimonial remedies. These were the restitution of conjugal rights and judicial separation. A decree for restitution, where one party had deserted the other, could be granted where the grounds relied upon by the respondent were found to be unsatisfactory. However, the court’s order for restitution of conjugal rights is often violated, because a mere order of the court is not expected to change the mind of a spouse who has severed all connection with the other.

A significant benefit acquired by women from the Hindu Code was that monogamy was strictly emphasised. This relieved the Hindu women from the pang of suffering the existence of a co-wife.

The Hindu Succession Act of 1956, the second part of the Hindu Code, provided a share to a female even in respect of property owned by a joint Hindu family of the Mitakshara type. The Act provided a proper solution to strong divergent views regarding Hindu women’s position in the order of succession without disrupting the Mitakshara coparcenary. The Act adopted the Dayabhaga system under which property was to be held by the wife

and children as personal property with an absolute right to dispose it. Under the old law, a discrimination was made among female heirs on grounds such as whether a particular female was rich or poor, whether she was with issue or without issue. All these discriminating points were now abolished by this Act. It converted the women's limited estate into an absolute estate; and secondly, it abolished the right of the reversioners to claim the property after the widow.

The Hindu Code further gave women their due importance by two other significant provisions — the Hindu Minority and Guardianship Bill as well as the part dealing with adoption. Under the former, the custody of a child under the age of three was to be normally with the mother, though the natural guardian was to be the father and after him the mother. The mother was not deprived of her right of guardianship by her remarriage and the widowed mother might also appoint a guardian by will so long as her husband had not already appointed a testamentary guardian for the same minor child.

Similarly, according to the adoption part of the Hindu Code Bill, the father, who under the shastric rules could give his son in adoption without his wife's consent, was forbidden to do so as long as she was alive and was competent to give consent, that is to say, was sane and was above 18 years of age. No other qualification for the mother was required. Further, the mother alone could give the boy in adoption if the father was dead or had renounced the world by becoming a hermit or ascetic or had ceased to be a Hindu or was not capable of giving consent.

### Benefits Summarised

So the mothers received their proper places in the Hindu Code. In fact, the benefits derived by the Hindu Women from the Code may be summarised as follows:

- (1) No girl below the age of fifteen could be married;
- (2) monogamy was strictly to be followed;
- (3) marriage was no longer sacrosanct and divorce could be obtained under certain specific grounds;
- (4) sons and daughters were given equal footing in the matter of inheriting the parent's property;
- (5) women derived the right to succession and their property were to be life estates and they were given the full authority to dispose them of in the manner they liked;

- (6) the mothers received the full custody of their children less than three years of age;
- (7) children could not be given in adoption without the mother's consent if she was in a position to do so.

The Hindu Code, therefore, intended to provide a breakthrough in the life of Hindu women by setting them free from the shackles of unhappy marriages and by providing them with rights of inheritance. This was supposed to infuse a sense of confidence in women and to empower them to fight independently and boldly against the injustices committed against them. Regrettably, however, the dream of the legislators of giving Hindu women a position of equality in society was belied. For the law did not work well in actual practice. Because, a society cannot, after all, be reformed by legislation alone. This has to be done by an accompanying transformation of ideas and outlook of the society at large. First of all, divorce was looked upon as a stigma in Indian society. Divorcee girls, therefore, found it extremely difficult to resettle in life by getting married for the second time. Secondly, children were the worst sufferers of the consequences of divorce. So few women could gather courage to walk out of their husbands' homes and continued to suffer silently the evils of unhappy marriages. Further, majority of women had no refuge to take shelter after leaving their husbands' homes, because of refusal by their parents to help them out in their distress. Many of them lacked education and thereby failed to reestablish themselves by securing a job. Very difficult job markets enhanced their miseries sharply. Social institutes for rehabilitating displaced women, therefore, became an urgent necessity.

Things have, however, changed recently. As has been elaborated in the May issue of *The Week*, during the nineties divorce cases have gone up greatly because "more and more women are refusing to suffer in silence the horror at home". It was pointed out that while Delhi had only one or two divorce cases a year in the conservative sixties and fewer than 200 cases a year even in the 'liberated' eighties, now the courts in the capital have a daily diet of 25 divorce petitions, that is about 9000 a year. Bombay has had a 100% increase and Punjab and Haryana about 150%. Madras had an annual 20% increase in recent years and in Kerala the increase has been 350%. Now divorces are sought not only for the women to be relieved of the pangs of unhappy marriages or to resettle in life, but mainly to obtain maintenance. The lawyers make their clients file divorce petitions to help them to get alimony to

*(Continued on page 62)*

world which results in political wrongs being righted.

The result of this misjudgement on the part of the developed democratic countries is already visible. The SLORC seems to be in no mood to relax its grip. It wants the political parties, particularly the NLD to succumb to its pressure and accept a constitution which gives the armed forces a domineering place in the governance of the country. It seems to be dead set on reconvening the so-called Constitutional Convention on 28th of November. Suu Kyi, on the other hand, announced on 24th November at a large meeting of students in front of her residence that her Party could not wait indefinitely for the rulers to start a dialogue to restore the democratic process. Thus, any hope that there would be a thaw in the situation in Myanmar has faded.

The question that rises in one's mind at this juncture

is: Does the above picture of Burma have any impact on the thinking of the policy-makers in New Delhi? The answer is: "Perhaps not." An indicator of this was the strange coincidence that at the Nehru Award ceremony for Aung San Suu Kyi at Rashtrapati Bhavan, the two persons who were conspicuous by their absence were the Ambassador of Myanmar and the Prime Minister of India. It is, therefore, safe to assume that hard ground realities do not seem to be guiding the thinking of the foreign policy-makers of South Block. According to a Press report, even China has promised to the Thai Defence Minister Chavalit that it will cease supporting the build-up of Burmese armed forces.

It is high time that the mandarins in South Block wake up to the gong from the great golden Shwedagon Pagoda of Yangon.

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#### IMPACT OF HINDU CODE ON INDIAN WOMEN (*Continued from page 49*)

support them which is very essential if they are not working. "The petition is filed not because the woman wants to terminate the marriage. There is no other way to make husbands accountable to wives and children within the marriage".

Despite this perceptible change in attitude, some of the handicaps still remain. The moment a woman gets a divorce her greatest problem becomes the need for a place to stay. Because a Hindu woman forfeits the right to stay in her father's home from the day she is married, shelter becomes the immediate problem for the divorced women. Similarly, the economic right women gained through the Hindu Succession Act, 1956, proves largely to be a dead letter in most of the cases because of lack of education of the women. Regrettably, very often, they prove to be incapable of managing their finances on their own. So, for the maintenance of their property, they become dependent on their male relatives who sometimes cheat them. There-

fore, besides a minuscule fraction of women of the Hindu society, that is, the enlightened and educated urban women, the large majority of Hindu women have been hardly affected by the Hindu Code and their position remain as before. Mention may be made of the Committee on the Status of Women in India formed by the Central Government in the International Women's Year. The Committee visited all the States and talked to the people from various walks of life — statisticians, politicians, academicians, different women's organisations and the like. The Committee declared unequivocally that discrimination between male and female was remarkable in every sphere. Their 400 odd page report, *Towards Equality*, published in 1975 is still considered to be one of the major data source on the position of women. The Committee concluded that without education, women belonging to the Hindu community failed to utilise the opportunities provided to them by the Hindu Code.